

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE

MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 15 JUNE 2009

DEVELOPMENT SERVICES COMMITTEE

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Officer announced the meeting opened at 6:05pm.

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)**Present**

Cr Jack Walsh	Presiding Member
Cr Jo Dawkins	
Cr Ian Woodhill	
Cr Jay Birnbrauer	
Cr Greg Boland	

Officers Present

Mr Andrew Jackson	Manager Development Services
Mr Ed Drewett	Senior Planning Officer
Mr Will Schaefer	Planning Officer
Ms Pauline Dyer	Personal Assistant, Development Services

Apologies

Cr Victor Strzina

Officer Apologies

Nil

Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 PUBLIC STATEMENT TIME

Mr Greg Chatfield, 9 Athelstan Street, Cottesloe: Item 10.1.5 – No. 9 Athelstan Street, Cottesloe – Two Storey Residence with Swimming Pool

Mr Chatfield outlined the design in relation to the question of overshadowing and the rear setback under the R-Codes and asked that Council approve the proposal.

Mr Frank Iemma, C/- 567 Hay Street, Daglish, Representing Mark & Michelle Barboutis: Item 10.1.2 236 Broome Street, Cottesloe – First Floor Addition and a Portico to an Existing Dwelling

Mr Iemma explained that he had liaised with officers and appreciated the constraints, and requested that the window on the upper-floor southern elevation be obscure glass and that consideration be given to the rear setback in relation to the overshadowing impact.

Mr Marcus LeMessurier, C/- 575 Stirling Highway, Cottesloe – Item 10.1.1 No 1 Station Street, Cottesloe – Three Store Mixed-Use Development (Shop/Café, Office and Residential)

Mr LeMessurier spoke briefly in support of the proposal and positive recommendation and advised that revised elevation plans had been provided.

Mr David Hartree – 1/34 Queen Street, Perth, Representing Mr Steve Tobin, 238/240 Marine Parade, Cottesloe: Item 10.1.6 – Two-Storey Residence with Undercroft and Swimming Pool

Mr Hartree summarised how following last month's deferral he had liaised with officers to produce the revised design, which reduced the wall heights, introduced the curved roof, lowered the floor levels, removed the need for fill, significantly reduced overshadowing, had ample setbacks and support from both side neighbours; hence he now looked forward to an approval.

Mr Peter Webb, Subiaco, Representing Icon Group, 459 Stirling Highway, Cottesloe: Item 10.1.3 No 459 Stirling Highway, Cottesloe – Proposed Second Storey Addition to Extend Professional Office Use.

Mr Webb presented elevations of the proposed second-storey addition and emphasised the existing professional office use, whereby the proposal to have no more staff and adequate parking is considered readily supportable, including that the neighbours' concerns had been addressed. He had liaised with officers previously and emailed Council recently in relation to the recommendation of refusal.

Mr Chris Turle, 9 Henry Road, Cottesloe: Item 10.1.5 – No. 9 Athelstan Street, Cottesloe – Two-Storey Residence with Swimming Pool.

Mr Turle explained that he had significant concern about overshadowing in relation to the R-Codes' 25% standard and the cumulative impact on the amenity of his property if the three abutting lots on the north side were developed with closer setbacks and second storeys. He requested Council to consider limiting the potential for excessive shadow impact in order to manage this anomalous situation.

Mr John Bond, Unit 12/116 Marine Parade, Cottesloe: Item 10.1.4 – No. 64 Marine Parade, Cottesloe – Alterations and Additions (Refurbishment) of Existing Units 1 & 2.

Mr Bond referred to the renovation design and explained the reasons for the outdoor living spaces to the Marine Parade frontage, including the articulated setbacks, weather protection and support of the southern neighbour/s.

6 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Dawkins, seconded Cr Woodhill

[Minutes May 18 2009 Development Services Committee.doc](#)

The Minutes of the Ordinary meeting of the Development Services Committee held on 18 May 2009 be confirmed.

Carried 5/0

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

An email was presented to Committee from Mr & Mrs Owen, owners of 61 Margaret Street, Cottesloe, in relation to Item 10.1.6, which elaborated upon their previous points.

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

10 REPORTS OF COMMITTEES AND OFFICERS**10.1 PLANNING****10.1.1 NO. 1 STATION STREET – THREE-STOREY MIXED-USE DEVELOPMENT (SHOP/CAFE, OFFICE AND RESIDENTIAL)**

File No:	1703
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Andrew Jackson Manager Development Services
Proposed Meeting Date:	15-Jun-2009
Author Disclosure of Interest:	Nil
Property Owner	Onyx Investments Pty Ltd
Applicant:	Onyx Investments Pty Ltd
Zoning:	Town Centre/R100
Use:	AA – A use that is not permitted unless special approval is granted by Council
Density:	R100
Lot Area:	417m²
MRS Reservation:	N/A

SUMMARY

This application is seeking the following variations to Town Planning Scheme No. 2, Council's Policies and/or the Residential Design Codes:

- Parking;
- Setback to residential units from the eastern boundary; and
- Visual Privacy.

Each of these issues is discussed in this report and refers to plans received 6 May 2009. Given the assessment that has been undertaken, the recommendation is to conditionally approve the application.

PROPOSAL

To consider a three-storey mixed-use development comprising carparking and a shop/café on the ground floor, offices on the first floor and two, two-bedroom residential apartments above.

STRATEGIC IMPLICATIONS

This has been discussed in two previous reports to Council, refer attached, which describe the approach to the consideration of new developments and infrastructure improvements in the Town Centre.

STATUTORY ENVIRONMENT

Town Planning Scheme No. 2 and Residential Design Codes.

PROPOSED LOCAL PLANNING SCHEME NO 3

No changes are proposed to the zoning or density of the lot and LPS3 supports the uses and form of development proposed (subject to approval).

POLICY IMPLICATIONS

Vehicle Parking Requirements

Policy No 001

HERITAGE LISTING

The lot is vacant and not subject to any heritage listing.

FINANCIAL IMPLICATIONS

Nil

BACKGROUND

On 25 February 2008 Council approved a mixed-use development on this lot incorporating parking on the ground floor, offices on the first floor and one, two-bedroom residential unit above. At the same meeting Council also resolved to support TPS2 Amendment No. 45 to address certain development standards common to the current proposal, primarily to allow a second apartment on the third storey.

This report should therefore be read in conjunction with the previous related development application and Scheme Amendment reports as attached.

The Amendment has since been finalised and incorporated into TPS2, providing for the necessary plot ratio and wall height, as well as referring to an Indicative Development Plan demonstrating the intent of the two-apartment version of the development. This provides that: *Council, when considering any application for development...will be guided by any Indicative Development Plan for the site that it has supported in-principle.* This means that the plan accompanying the Amendment is a basis for Council's consideration of a similar development application, although a thorough assessment and determination is still required. It is pointed out that the Indicative Development Plan accompanying the Amendment showed a small café on the ground floor and 12 parking bays. The applicant has interpreted this to imply that the 12 bays would be acceptable (whist still subject to technical assessment).

Pursuant to the initial planning approval the site works have been granted a building licence and undertaken in preparation towards development of the building. Despite economic constraints the owner has opted to build the two-apartment version, hence this development application. The opportunity has also been taken to revise the external appearance of the building.

ADVERTISING OF REVISED PROPOSAL

This application has not been formally advertised but the available adjoining landowner/s have been advised of the proposal and invited to view it / make comment. This is considered acceptable as it is similar to the previous development

application advertised prior to approval by Council and the Scheme Amendment that was also advertised.

It is noted that the adjoining eastern owner has again submitted that the development should provide all on-site parking rather than take away any public parking, as set out in a the attached letter. The owner of the shop across the lane previously commented about vehicular access and movements, and the current application is similar to the initial approval in providing parking bays off the lane; however, as a precaution it is considered that a condition is warranted to ensure that adequate manoeuvring area is achieved.

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town Planning Scheme No. 2

Aspect	Required	Provided
Table 2 – Vehicle Parking requirements	16.5 bays (rounded up to 17 bays)	12 bays

Town Planning Scheme Policy

Policy	Required	Provided
TPSP001: Vehicle Parking Requirements – Town Centre	At least half of required parking bays being provided on-site and arrangements made with Council for provision of off- street parking in the vicinity of the site for the balance of such spaces.	No provision of off-street parking required for shortfall.

Residential Design Codes

Design Elements/Special Provisions	Acceptable Standards	Provided	Performance Criteria Clause
Dwellings in mixed-use developments	2.8m – 4.3m from eastern boundary	Zero setback from eastern boundary	Clause 7.2.1 – P1
Visual Privacy	7.5m from terraces to eastern boundary	Zero setback to eastern boundary	Clause 6.8.1 – P1

STAFF COMMENT

The following comments are made regarding the application and plans received on 6 May 2009.

The proposed development complies with Town Planning Scheme No. 2, Amendment No. 45, Council's Planning Policies and the Residential Design Codes, with the exception of the following as discussed below:

Parking

Clause 3.4.2(c) of TPS2 as a starting point requires the proposed development to comply with the provisions of Table 2 – Vehicle Parking Requirements. The number of bays required is as follows:

Criterion	Bays
Proposed shop/café ground floor (GFA 71.97m ²):	4.6 bays (6.5 bays per 100m ² GFA)
Proposed office first floor (GFA – 397.45m ²):	9.9 bays (one per 40m ² GFA)
Two apartments second floor:	2 bays (subject to other bays being available outside normal business hours).
Total bays required:	16.5 bays, rounded-up to 17
Bays proposed:	12
Shortfall of bays:	5
<i>Total bays required if ground floor is office use (2 required):</i>	<i>14 – shortfall of 2</i>

The reason for the shortfall is that the full complement of bays cannot be obtained from the site. Basement parking is financially prohibitive and inefficient, and the objective for an active street-front tenancy consumes some space. In view of this situation, Council may consider a shortfall of parking for new developments within the Town Centre based on the following provisions in TPS2:

Clause 3.4.2c(ii):

In assessing the number of parking bays required for a development containing multiple uses, the Council may have regard to the likely use pattern of the various components of the development, in particular the likely maximum use of the development at any time, and reduce the number of parking bays accordingly.

This is a practical provision where mixed-use developments are desirable yet may not be able to deliver all on-site parking, or may not warrant such owing to the walkable Town Centre, public transport and shared public parking; which mean that a shortfall is unlikely to make a proposal dysfunctional, although it may impact on general parking. In this consideration, the boutique-office nature of this development as a private company HQ, rather than it being a commercial office with many customers or office space leased to a busy tenant(s), should restrain parking demand. Furthermore, the ground floor tenancy, if a shop or café, is likely to attract customers already parked in the Town Centre (ie workers or visitors for multiple purposes), whereby less additional parking demand is actually caused.

Clause 5.5.4:

Where land is proposed for development for a use which may be permitted in the Town Centre...Council may approve the development without the number of parking spaces being provided on or (in Council's opinion) sufficiently near to the land, subject to the applicant making arrangements satisfactory to Council for the provision of off-street parking in the vicinity. In this regard Council may accept cash-in-lieu subject to the following –

- *The cash in lieu payment shall not be less than the estimated cost to the owner of providing and constructing the parking spaces required by the Scheme plus the value as estimated by the Council of that area of land which would have been occupied by those parking spaces;*

- *Before the Council agrees to accept a cash payment in lieu of the provision of parking spaces the Council must either have approved a public parking station nearby or must have proposals for providing a public parking station nearby; and*
- *Payment made under this clause shall be paid into a special fund to be used to provide public parking stations anywhere in the district.*

This is also a practical provision, which again recognises that full on-site parking cannot always be achieved, and that alternative arrangements may still satisfy the additional demand generated by a development. For example, off-site supplementary parking (ie a separate parking site owned or leased by the developer/occupier) is one such solution. Cash-in-lieu is another useful method, although it can be encumbered in terms of the dollar value and Council's plans for parking supply. The trend has been for Council to apply cash-in-lieu of parking where on-site provision is limited, shortfalls are considered significant or the additional demand is likely to be relatively high; and to set realistic payment amounts (which may even be staged). The applicant has suggested that cash-in-lieu would be unviable to the project in this instance; however, it is considered that a not unreasonable amount and spread payments would be a fair requirement in the circumstances, as one way of addressing the shortfall.

While this is acknowledged, it is also noted that, unlike change-of-use applications in the Town Centre where cash in lieu has been approved, the proposal is for a new development on a vacant lot, where the gross floor area could be reduced to minimise parking difficulties arising. Further, were cash-in-lieu approved, a strict interpretation of the Scheme provisions suggests that Council should determine where the money would be spent for additional parking. Concessions could set a precedent for other new developments to seek less parking provision in the Town Centre.

In addition, Planning Policy TPSP001 for Town Centre development provides that:
...at least half of the total number of required spaces must be provided on, or adjacent to, the development site and arrangements made with the Council for the provision of off-street parking in the vicinity of the site for the balance of such spaces still then required.

In this respect it is noted that parking *adjacent* to the development site is not defined in the policy, so might be considered to include kerbside street bays, such as occur next to the site along Railway Street; which, while partially affected by the new access driveway for the proposal, the developer has confirmed is to be retained/rationalised (including the possible addition of a bay to Station Street). There are five parallel bays along Railway Street immediately adjacent to the site, and two more bays just south of the lane. The new crossover will remove one bay, leaving four (plus the other two), with the potential to be compensated by a replacement bay on Station Street (although tight and it would affect alfresco space). Therefore, it can be appreciated that operationally there is some convenient parking adjacent to the development site.

However, the Scheme is otherwise clear that the aim is for on-site rather than on-street parking. Notwithstanding, the existence of on-street parking adjacent to and nearby the site in Railway and Station Streets would supply public parking generally available to the development (eg for business visitors or shoppers attending the premises) in competition with other uses and developments in the Town Centre. There is also the 54-bay Council-owned public car park directly opposite the site on

Station Street. The time-limitation of this general parking is a factor to be taken into account as it assists a turnover of parking as well as restricts longer-term parking. Nonetheless, it is observed that parking in the vicinity is heavily utilised and often fully-occupied by workers and customers in the Town Centre.

The provision of parking in the Town Centre is important due to it being at a premium and this demand is due largely to the diversity and popularity of the activity centre, both during the week and on weekends. There is substantial public parking on streets, Council stations and the railway reserve. A Council study found that the quantum of parking was essentially sufficient and lead to better time-limited parking management to improve the designation and turnover of parking bays. This saw that private sites are typically smallish developments with restricted capacity to create adequate on-site parking.

In terms of the provision of additional parking “stations”, Council has in recent times investigated where this may occur, including to the north of the Town Centre along Railway Street, in Forrest Street, in Station Street as per that dedicated study, and broadly as part of the Enquiry by Design process having regard to the railway lands, Curtin Avenue and east-west connectivity in relation to the Town Centre.

Council proposes approximately 26 additional public parking bays off Railway Street north of Forrest Street, which is to be constructed using existing cash-in-lieu funds derived from previous approvals, and because such monies fund shared parking provision for the benefit of the overall Town Centre there is no specific allocation of bays to particular developments, hence any new parking is available to all. Council has also examined installing angle-parking in Forrest Street for an increased yield of bays, which has not been implemented at present but the existing parallel-parking has been line-marked for more efficient spaces.

Reducing the gross floor area of the development, such as by reducing or deleting the proposed shop/café on the ground floor, would require less parking, but would not achieve street activation. Reduction of the first floor office would not suit the applicant’s needs (or serve the building design/construction). Reduction or deletion of an apartment would defeat the purpose of the Amendment and enhancement of the Town Centre. Conversion of the ground floor tenancy to office use would require less parking, albeit less interactive, although banks, real-estate agents and so on are well-patronised businesses.

In conclusion regarding parking, it is apparent that there is some basis for Council to consider a waiver of parking bays and as a rule of thumb a shortfall of one or two bays may be of little consequence in the interests of the gains from a development. As a question of degree, however, a shortfall of five or more bays may begin to have a discernable impact on the supply and efficacy of parking in the locality. Moreover, when assessed as a proportion of the total parking requirement the shortfall may be seen as relatively substantial, and in this case the 5 bays represent 29%. For this proposal, alternative solutions could be to:

1. Retain the shop/café use and apply a cash-in-lieu requirement for five bays – as advised this may be financially prohibitive to the developer and problematic

- for Council in the administration of the funds for the provision of parking facilities.
2. Designate the ground floor commercial space as office use and charge cash-in-lieu for the two-bay shortfall, or waive that shortfall as a mixed-use development – this would be more financially feasible to the developer and generate a tolerable parking shortfall.
(Note: partial cash-in-lieu and a partial waiver could apply to either of the above).
 3. Delete the ground floor commercial space altogether, and possibly even provide one or two extra bays – this is the least desirable in relation to street-level activity, but the most desirable in relation to parking.

Setbacks to eastern boundary and visual privacy

While an additional residential unit and balconies have been added to the upper floor over the original development approval, the principle of allowing a reduced setback to the eastern boundary has been supported by Council as a variation to the Residential Design Codes (refer previous report). Furthermore, visual privacy from the proposed balconies is considered acceptable, with two terraces on the eastern boundary, as there are only non-residential properties adjoining so there will be no overlooking of active habitable spaces or outdoor living areas. The adjoining eastern commercial-property owner has been consulted and raises no objection to this. Upper level residential apartments in the Town Centre typically interface with commercial development and do not give rise to overlooking concerns, whilst obtaining an outlook to non-residential buildings and over the rooftops of the Town Centre.

CONCLUSION

The proposal has evolved following approval of the original mixed-use development and the Scheme Amendment initiated to foster an enhanced outcome for the site and Town Centre. The design offers advantages to rejuvenation of the Town Centre yet seeks a not insignificant parking concession.

The shortfall would tend to exacerbate parking demand and a complete waiver of five bays may be seen as neither pragmatic nor equitable, setting a precedent for a compounded impact with successive developments. On the other hand, experience has demonstrated that Council has exercised reasonable discretion to accommodate modest shortfalls in parking provision, subject to cash-in-lieu or other arrangements, without undue detriment to the overall parking regime.

It is in this way that changes of use and new developments in the Town Centre can be supported as opposed to discouraged, and subject to Council being consistent in its approach this is considered to be acceptable. With the subject proposal, the implications of the different scenarios for land use, floorspace and parking supply have been explored, and on balance a condition addressing this aspect is recommended to allow a two-bay shortfall.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the approach to parking in the Town Centre generally and considered that overall the relatively minor shortfall of two bays could be supported. Committee was also supportive of a ground floor tenancy and wished to see development of the site proceed.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Walsh

That Council GRANT its Approval to Commence Development for the proposed three-storey mixed-use development (incorporating shop, office and residential uses) at No. 1 Station Street (Lot 15), Cottesloe, in accordance with the plans submitted on 6 May 2009, subject to the following conditions:

- (1) This approval is to the land use classes 'Shop, Office or Professional Office' (for the first storey commercial floorspace), 'Office or Professional Office' (for the second storey) and 'Multiple Dwellings' (for the third storey) under the Scheme. Any additional use, change of use, or physical or aesthetic change proposed for the development in the future shall require further applications for planning determination.**
- (2) Provision being made to the satisfaction of Council for the adequate supply of car parking by either:
 - (i) reduction/redesign of the proposed ground floor shop (ie retail or café) floorspace to result in an overall parking shortfall of no more than two bays; or**
 - (ii) designation of the proposed ground floor commercial space for office/professional office use only, for an overall parking shortfall of no more than two bays.****
- (3) The applicant shall be responsible for the costs of all changes to the public domain outside the site required by the development, including (but not limited to) the removal of any redundant crossover and reinstatement of the verge and kerb (with retention/rationalisation of existing on-street car bays), construction of any new crossover, any upgrading of verge pavements or landscaping, changes to or upgrading of the lane, and alteration of all services, signage and infrastructure. All such works shall be to the specification and satisfaction of the Town of Cottesloe.**
- (4) All off-street parking associated with the non-residential uses shall be available on-site during business hours for all staff and visitors, free of charge, to the satisfaction of the Manager Development Services. The off-street parking is also to be made available by arrangement of the building owners and occupiers for other residential visitors or service vehicles outside normal business hours.**
- (5) No goods or materials shall be stored, either temporarily or permanently, in the parking area or access driveway. All goods and materials are to be stored elsewhere within the building.**

- (6) The building licence plans and supporting documentation shall be formulated in consultation with the Town of Cottesloe and to the satisfaction of the Manager Development Services, and shall include:
- (a) Full details of all proposed external materials, finishes and colours, including glazing, any awnings or screens and the roof cladding, all selected to be of low-reflectivity.
 - (b) Full details of all intended changes within the road reserves and laneway (ie verges, footpaths, kerbs, pavements, drainage, services, public domain signs and infrastructure, landscaping, and any other item.
 - (c) Full details of all plant and equipment and how it is to be located, designed, housed, screened, treated or otherwise managed to ensure amenity and compliance with the relevant environmental regulations.
 - (d) Detailed design of the bin store at a satisfactory size.
 - (e) Full details of all on-site and any off-site drainage management, including any necessary arrangements to utilise land outside the site and link into the public drainage system.
 - (f) A comprehensive signage strategy to manage convenience, amenity, safety and advertising without undue impacts, with pre-determined signage locations / panels and design guidelines. Actual signage shall require further approval under the Scheme or Signage Local Law as required.
 - (g) A comprehensive lighting strategy to manage convenience, amenity, security and advertising in relation to the building and surrounds without undue impacts.
 - (h) All disabled access, energy efficiency and fire management requirements in accordance with the BCA, Australian Standards and other relevant regulations.
 - (i) Detailed building design and traffic management methods, devices and treatments to ensure the satisfactory and safe operation of the vehicular access in relation to the public footpath, laneway and Railway Street. This shall include the building design and vehicular access arrangements in relation to the lane, including any necessary setbacks and adequate manoeuvring space.
 - (j) A comprehensive Construction Management Plan. All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13, Construction Sites.

Carried 5/0

10.1.2 No. 238A BROOME STREET – FIRST FLOOR ADDITION AND A PORTICO TO AN EXISTING DWELLING

File No:	1299
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Ed Drewett Senior Planning Officer
Property Owner	Mr J A Craven-Smith-Milnes
Applicant	Addstyle Master Builders
Zoning	Residential R20
Use	P-A use that is permitted under this Scheme
Lot Area	647m²
Proposed Meeting Date:	15-Jun-2009
Author Disclosure of Interest	Nil

SUMMARY

This application is seeking the following variations to Town Planning Scheme No. 2 (TPS2), Council's Policies and/or the Residential Design Codes (RDC):

- Building (wall) height;
- Setback of portico and eaves to southern boundary; and
- Setback to western (internal) strata boundary.

Each of these issues is discussed in this report and refers to amended plans received 6 May 2009, following liaison with the applicant.

Given the assessment that has been undertaken, the recommendation is to conditionally approve the application.

PROPOSAL

This application is for a new front portico and a first floor addition comprising a bedroom, ensuite, WIR and retreat with a small linen cupboard and bar. No external alterations are proposed to the existing ground floor apart from the portico.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No. 2
- Residential Design Codes

POLICY IMPLICATIONS

- Building heights

HERITAGE LISTING

The existing dwelling is not heritage listed.

PROPOSED LOCAL PLANNING SCHEME No.3

No changes are proposed to the zoning or density of the lot.

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE****Town Planning Scheme**

Policy	Required	Proposed
Height	6m wall height	Wall height – 6.74m above average NGL (5.7m above existing ground floor).

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
6.3 – Boundary setback	1m from portico and 0.75m from eaves to southern boundary. 1.8m from upper floor to western strata boundary.	0.515m from portico and 0.7m from eaves. 1.5m	Clause 6.3.1 – P1 Clause 6.3.2 – P2

ADVERTISING OF PROPOSAL

The application was advertised in October 2007 as per Town Planning Scheme No.2. The advertising consisted of a letter to 6 adjoining property owners. Submissions from 3 adjoining owners were received.

Notwithstanding the length of time that has lapsed between the applicant's first submission and the latest amended plans, the proposal has not been re-advertised as the adjoining owners remain unchanged and the revisions respond to those concerns.

The main points raised in the submissions (to the original proposal) are as follows:

Ian Day, 53 Brighton Street

- Raises no objection to the plans.

Taylor Burrell Barnet, Hotchkin Hanly Lawyers, Greg Rowe & Associates and Oldfield Knott Architects Pty Ltd, on behalf of Mark Barboutis, 236 Broome Street

- There is an existing parapet wall on the southern boundary which is imposing and overbearing and the remainder of the existing dwelling is no better. The proposed upper floor addition will only exacerbate the problem;

- The proposed addition must comply with the acceptable development standards of the R-Codes, TPS2 and draft LPS 3 in respect to height (ie: max wall height 6m);
- Severe overshadowing currently occurs over the adjoining alfresco courtyard area. Light to the family room will be severely compromised if a second storey is approved. All of the alfresco courtyard that is directly accessed off internal living areas will also receive no northern sun in winter if the 2nd floor is approved. The overshadowing would exceed the acceptable development standards of the R-Codes and would not satisfy performance criteria;
- The existing laundry currently overlooks the adjoining property and the proposed upper floor window on the eastern elevation will have direct view to the neighbour's pool which is a privacy concern, particularly when the pool is being used and kids are playing in the backyard;
- The proposed location of a home theatre room on the upper floor raises concerns relative to flickering light/noise as the neighbour's bedrooms on the first floor will bear the brunt of any noise leakage;
- Revised plans should be re-advertised to allow the neighbour to provide further comment;
- A reduction in height and inclusion of some protrusions adequately setback from the southern boundary would provide some relief and visual interest to the building; and
- In view of the additional weight of the proposed upper floor addition on the existing building, a dilapidation report should be required.

Minter Ellison Lawyers, on behalf of Greg Bandy, 238 Broome Street

- The window in the western wall of the proposed lobby directly looks into the private courtyard of 238;
- The setback to the western strata boundary does not meet the acceptable development standards of the R-Codes and offers little architectural interest;
- The proposed addition exceeds the Town's building height requirements. As a matter of orderly and proper planning and, having regard to the very significant amenity issues the addition will have on surrounding properties, including 238, the Town should not exercise its discretion to waive the requirement that 2-storey buildings should have a wall height of no greater than 6m;
- The owner does not have the consent of the adjoining strata owner at 238 and therefore may be in breach of the Strata Titles Act.

BACKGROUND

This application has a lengthy background due partly to the applicant's request to defer the original application to enable issues to be resolved between the owners of the two strata properties (238 & 238A) under the Strata Tiles Act 1985. This matter was subsequently finalised by way of an Order being issued by the State Administrative Tribunal.

Following the Tribunal's decision, the Town has been liaising with the applicant in an attempt to address various concerns including height, storeys, setbacks, visual privacy, solar access and concerns raised by adjoining owners.

The Town subsequently received the latest amended plans on 6 May 2009 which address most of the initial concerns but do not satisfy all of Council's requirements.

APPLICANT'S JUSTIFICATION

The applicant has submitted information in support of the proposal addressing various statutory requirements. A summary of the main points relevant to this assessment are as follows:

- Due to the natural fall of the land towards the rear of the property it is not possible to maintain a 6m wall height for the proposed 2nd storey addition;
- The addition when viewed from the street is within the 6m height requirement and has been designed to relate to the existing front 2-storey strata and thereby maintain the streetscape;
- The majority of shadow cast on the adjacent property is already cast by the existing dwelling at 238 Broome Street. The owner of the neighbouring property has constructed a brick fence along the boundary with the wall itself at the rear being just under 1.8m high which itself casts a shadow of approximately 2.5m into their property;
- The proposed upper floor addition will overshadow a living room window to approximately 1.2m above FFL on June 21 at 12 noon. The remaining windows to this area have an alfresco roof and existing parapet wall blocking northern sun at all times of the year. The stairwell area which is closest to the boundary casts its shadow over the alfresco roof;
- The proposed addition does not block views of significance;
- The proposed portico has been positioned at the same point as the existing skillion roof structure over the front door. It will provide greater consistency between the front and rear strata buildings and will be an open-sided structure; and
- The proposed layout has been adjusted to cater to the objections of the neighbours and to achieve high level of compliance with TPS2 and the RDC, taking account of the difficult site constraints.

STAFF COMMENT

The following comments are made regarding the application and plans received on 6 May 2009.

The proposed development complies with Town Planning Scheme No. 2, relevant Council Policies and the Residential Design Codes (RDC) with the exception of the following:

- Building (wall) height;
- Setback to portico and eaves to the southern boundary; and
- Setback to the western strata boundary.

Each of these issues is discussed below:

Building height

The calculation of building height stems from Council's determination of natural ground level (NGL). Clause 5.5.1 of the Council's Town Planning Scheme No. 2 expresses policy in relation to building height and paragraph (c) provides a basic formula in relation to measurement of such height.

Provision is made for Council to depart from the formula where the natural ground forms indicate that a variation is warranted provided that the amenity of the area is not unreasonably diminished, and also in the case of extensions to existing buildings.

The NGL in this case has been determined to be RL: 17.0, which has been derived using a site survey plan submitted by the applicant and drawn by a licensed surveyor.

The maximum permitted wall height is 6m (RL: 23.0) and the maximum permitted ridge height is 8.5m (RL: 25.5).

The proposed wall height to the upper floor is 6.77m in height above the determined NGL (RL: 23.77) and therefore a variation of 0.77m is sought. Notwithstanding this, the actual wall height above the existing ground floor level of the unit below will be only approximately 5.73m and therefore would otherwise be compliant with TPS2 and the RDC. The proposed ridge height will be only 7.77m (RL: 24.77) above the NGL and is therefore compliant, and is significantly less than the 8.5m maximum.

As a general guide to consideration of variations to the height provisions of TPS2 the relevant performance criteria of the RDC (Clause 6.7.1) may be considered, which state:

Building height consistent with the desired height of buildings in the locality, and to recognise the need to protect the amenities of adjoining properties, including, where appropriate:

- *adequate direct sun to buildings and appurtenant open spaces;*
- *adequate daylight to major openings to habitable rooms; and*
- *access to views of significance*

There are a variety of housing types in the locality including single-storey and two-storey houses and therefore the proposed addition will not appear out-of-keeping with the existing streetscape, especially as the topography of the lot has a gradual slope down away from the street. Adequate direct sun and daylight will also be maintained to the adjoining properties and views of significance will not be adversely affected by the proposal. On this basis, the proposed height variation can be supported.

The proposed upper floor has also been designed with a ceiling height of only 2.4m which is the minimum height permitted under the BCA and it is therefore not possible to lower it further. The proposed design will match the wall and ridge height of the existing front strata unit and will appear of similar height of other existing buildings in the locality.

In terms of solar access to the adjoining property to the south this is always potentially a problem when east-west lots are developed to two-storeys, especially when an adjoining lot has a rear strata development built on it. However, in this case, the total overshadowing of the adjoining lot to the south will be approximately 20%, which is well below the acceptable development standard of the RDC which permits up to 25% overshadowing, without regard to any building on it. Furthermore, the plans have been amended to further reduce any effect on the adjoining neighbour's outdoor living area, while the shadow diagram submitted by the applicant shows that the proposed first floor will only potentially affect the rear north-facing recessed portion of the adjoining dwelling and a portion of courtyard which is predominantly overshadowed by the existing single storey dwelling and parapet wall on the common boundary.

Setbacks

Setback to Portico:

The proposed portico has a 0.515m setback from the southern boundary, in lieu of 1m required under the acceptable development standards of the RDC. However, it is replacing an existing portico with the same setback from the boundary and can be considered under performance criteria, which state:

Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

- make effective use of space; or*
- enhance privacy; or*
- otherwise enhance the amenity of the development; and*
- not have any significant adverse effect on the amenity of the adjoining property; and*
- ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.*

The main change between the existing and proposed porticos is that a pitched roof is proposed to replace an existing skillion roof and the width of the proposed structure will be reduced from 3.2m to 2.2m.

Its location makes effective use of space and it cannot be repositioned further from the boundary due to the location of the existing entry. Furthermore, as it is of similar

height and scale to the existing portico it will have a negligible increased effect on the amenity of the adjoining property.

Setback to Eaves and to internal strata boundary:

A reduced setback of 0.7m is proposed from the eaves of the upper floor stairway to the southern boundary, in lieu of 0.75m required under the acceptable development standards of the RDC, and a reduced setback of 1.5m is proposed from the upper floor bedroom and retreat to the internal strata boundary, in lieu of 1.7m required under the RDC.

Both of these setback variations are relatively minor and can be considered under performance criteria of the Codes, which state:

Buildings set back from boundaries other than street boundaries so as to:

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide adequate direct sun to the building and appurtenant open spaces;*
- *assist with protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *assist in protecting privacy between adjoining properties.*

The variation to the eave setback is only for a 2m wide section of roof and is necessary to ensure that it matches the remainder of the roof eave which is setback approximately 1.98m from the southern boundary. The setback variation is only 0.05m which will have a negligible impact on the adjoining property and is compliant with the BCA.

The setback variation sought to the western internal strata boundary is 0.2m and affects the recessed portion of the upper floor. However, this is a relatively small variation that will not have a significant effect on the adjoining strata property, which has its first-floor windows and balcony predominantly orientated towards Broome Street rather than towards the rear strata property. As such, any potential loss of direct sun, ventilation or privacy will be minimal. The setback variation is also partially due to the requirement of the Codes to take the nearest higher value of all immediate height and length values, rather than extrapolating a more exact setback calculation. The proposed window in the west-facing gable shall have a minimum 1.6m sill height to prevent overlooking and comply with the visual privacy requirements of the RDC.

In addition to the above, the owner has an obligation under the Strata Titles Act to obtain any necessary consent from the adjoining strata owner before commencing any works on site. This is separate from the planning approval process and will be included as an advice note on the approval letter.

CONCLUSION

The proposed first-floor extension and new portico can be supported with the variations sought under the relevant performance criteria of the Residential Design Codes. Furthermore, although Council's discretion is required for the proposed wall height, issues such as privacy, views and general amenity have all been satisfactorily

addressed and the proposed ridge height of the first-floor addition is only 7.77m above the NGL which is 0.73m below the ridge height permitted under TPS2.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee was supportive of the proposal subject to a preference to obscure the upper-floor south-facing highlight window, to which the applicant indicated acceptance.

OFFICER RECOMMENDATION

That Council

1. GRANT its Approval to Commence Development for the proposed first-floor addition and portico at No. 238A (Strata Lot 1) Broome Street, Cottesloe, in accordance with the plans submitted on 6 may 2009, subject to the following conditions:
 - (a) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
 - (b) Gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings submitted for a building licence.
 - (c) The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.

Advice Note:

The applicant/owner is reminded of their obligation under the Strata Titles Act which may require the consent from the adjoining strata owner and/or strata company before commencing any works on site. This is separate from the planning approval process.

2. Advise submitters of this decision.

AMENDMENT

Moved Cr Dawkins, seconded Cr Walsh

That the highlight window on the southern elevation have obscure glass.

Carried 5/0

COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Boland

That Council:

1. **GRANT its Approval to Commence Development for the proposed first-floor addition and portico at No. 238A (Strata Lot 1) Broome Street, Cottesloe, in accordance with the plans submitted on 6 may 2009, subject to the following conditions:**
 - (a) **All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**
 - (b) **Gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings submitted for a building licence.**
 - (c) **The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.**
 - (d) **The highlight window to the second storey on the southern elevation (Retreat) shall be obscure-glazed.**

Advice Note:

The applicant/owner is reminded of their obligation under the Strata Titles Act which may require the consent from the adjoining strata owner and/or strata company before commencing any works on site. This is separate from the planning approval process.

2. **Advise submitters of this decision.**

The Substantive Motion was put:

Carried 5/0

10.1.3 No. 459 STIRLING HWY – PROPOSED SECOND-STOREY ADDITION TO EXTEND PROFESSIONAL OFFICE USE

File No: 1619
Responsible Officer: Carl Askew
Chief Executive Officer
Author: William Schaefer
Planning Officer
Property Owner: Lanobelle Corporation
Applicant: Icon Group Management
Zoning: Metropolitan Regional Scheme Reserve –
Primary Regional Road (R30/60)
Use: Professional Office
Lot Area: 880m2

Proposed Meeting Date: 15-Jun-2009
Author Disclosure of Interest: Nil

SUMMARY

The application is for a second-storey addition to extend an existing professional office.

This report presents detail on the following items, all of which have been significant factors in the determination of the application:

- As the land is wholly reserved under the Metropolitan Region Scheme (MRS) for Stirling Highway, a single planning determination under that scheme is required, in this case by Council acting under delegation from the Western Australian Planning Commission (WAPC).
 - Due to the MRS, Council's TPS2 is not directly applicable to the land. However, TPS 2 may be considered a framework for the consideration of local planning issues.
 - The land use strategy for the area is of particular significance. Fundamentally, the key issues are the impact that the proposal is likely have on the surrounding area and the intensification of a non-residential use (professional office) in what is essentially a residential area.
- * Under TPS2 the use class of professional office is classified as "AA", being one which is not permitted unless special approval is granted by Council at its discretion – that is, the presumption is against such a use unless Council is satisfied that the circumstances, merits and ramifications warrant support as a special instance. Approval was granted to the professional office in 2003 and the present proposal is to expand it.
- Significantly, Council refused the introduction of non-residential land uses at No. 463 Stirling Highway in 1995 and 2007. The latter decision was upheld in an appeal to the State Administrative Tribunal in December 2007.
-

Given the assessment that has been undertaken, the recommendation is to refuse the application.

PROPOSAL

It is proposed to construct a second-storey addition comprising offices, a boardroom, kitchen, deck and toilets to the existing professional office building. No change to the footprint of the building is intended and it is not proposed to extend the business trading hours or hire extra staff (although presumably additional staff could be accommodated in the future or a new owner/tenant could occur).

The property is located on the western side of Stirling Highway, two lots south of the intersection with Eric Street. The existing building was originally purpose-constructed as a medical consulting facility which operated from the 1950s. This building is single storey, of domestic scale, and retains the appearance of a modest structure. As mentioned, the change of use to professional office was approved in 2003.

Land use in the vicinity is predominantly residential, though the neighbouring lot to the north is a combined residence and dentist's surgery (No. 121 Eric Street).

The lot abuts Stirling Highway but is accessed exclusively from the right-of-way at the rear. There is sufficient parking on the lot to meet Council's normal requirements.

STATUTORY ENVIRONMENT

- * Metropolitan Region Scheme (MRS)
- * Town Planning Scheme No. 2 (TPS2)

PROPOSED LOCAL PLANNING SCHEME NO. 3

No changes to the surrounding local zoning or the density coding are proposed in LPS3, which reinforces the land use strategy for the area as residential.

POLICY IMPLICATIONS

Home Occupation and Professional Offices in the Residential Zone.

HERITAGE LISTING

N/A

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

It should be noted that the advice from the DPI on behalf of the WAPC is focussed on the PRR reservation and any road widening requirement or other aspect related to it (such as vehicular access, were that proposed). Beyond that, the interests of the WAPC include ensuring appropriate urban land usage. As no advice in that respect or advice regarding regional planning has been forthcoming from the WAPC, the consideration of detailed land use and development control has been delegated to Council for assessment at a local planning level. Any such assessment will have regard to local area strategic planning as guided by relevant local planning strategies, schemes, policies and studies.

The proposal was assessed under the RDC as a guide to the potential impact of the development. The aspects of “non-compliance” that emerged were the setback of the north wall (1.5m in lieu of 3.0m) and building height (up to 7.63m in lieu of 7.0m). No objections to these aspects were received and justification has been submitted by the applicant (refer attached letter), but it is not intended to focus on these issues as the RDC are technically inapplicable to the lot, which is a commercial building and use.

With regard to TPS2, it should be noted that 11 parking bays are required and 14 parking bays are provided. Whilst the individual parking bays do not meet the dimensions prescribed by the Scheme’s Appendix II, the total number of parking bays is sufficient.

CONSULTATION

As the development is proposed for land reserved as a Category 3 Primary Regional Road under the MRS, the DPI was forwarded a copy of the application. The DPI has informed Council that it has no objection to the proposal.

Adjoining landowners were informed of the application by letter and invited to comment. One written objection to the proposal has been received and is summarised along with the applicant’s response in the table below:

<i>Objection from Mr & Mrs Rivalland, 121 Eric Street</i>	<i>Response from Mr P Webb, Planning Consultant, on behalf of Applicant</i>
Privacy 1 – North wall screen at eastern end acceptable only if slats point upwards.	i) Cones of vision shown on plans demonstrate that proposal already complies with privacy section of R-Codes; ii) Metal louvres will be detailed to prevent loss of privacy to neighbours’ upper floor windows and backyard; iii) Neighbours’ upper floor window sills are 2200mm higher than sills of proposed upper floor.
Privacy 2 – Request for north wall glass to be obscured to 1600mm in addition to screening	i) Proposal complies with necessary codes, request therefore unnecessary.
Privacy 3 – Metal cladding may generate glare	i) Finish of cladding intended to be non-reflective satin or matt.
Privacy 4 – Balcony directly overlooks pool and entertaining area	i) Deck already screened.
Parking 1 – Insufficient spaces proposed	i) Applicant has provided sufficient bays on site.
Parking 2 – Parking occurs in ROW, addition will result in more obstructions	i) Neighbours’ dental patients regularly park in ROW and on applicant’s lot; ii) Traffic occurs during business hours and is low-volume; iii) Applicant intends to mark bays to ensure clarity.

Parking 3 – Council Approval of proposal would result in need to exercise easement rights & install chains/bollards where appropriate	i) Bollards and chains would create more problems for the neighbours and legitimate ROW users than for the applicant.
Parking 4 – Suggestion to control traffic through ROW with “one-way” designation	i) Level of congestion not established as significant; ii) One-way designation unnecessary.
Lighting 1 – Lighting will potentially be left on outside business hours	i) Applicant intends to turn lights off after business hours, unlike for a residential property.
Lighting 2 – Lighting will attract anti-social behaviour	i) Studies suggest that lighting reduces anti-social behaviour rather than attracts it.
Amenity – Land use should be compatible with its setting	i) The above demonstrates that amenity of neighbouring properties will not be diminished by car-parking, traffic, lighting or privacy issues.

As previously mentioned, the RDC do not technically apply to the consideration of the alterations and additions, which in any case have been justified by the applicant and are determined as largely compliant.

STRATEGIC LAND USE IMPLICATIONS

Background

- The property is located on the western side of Stirling Highway, two lots south of the intersection with Eric Street. The existing building was originally purpose-constructed as a medical consulting facility which operated from the 1950s. As mentioned, the change of use to professional office was approved in 2003.
- Land use in the vicinity is predominantly residential, though the neighbouring lot to the north is a combined residence and dentist’s surgery (No. 121 Eric Street).
- Alterations and additions to the fabric of a building used for non-residential purposes within a residential area would be contrary to the zoning intent and amenity expectations of residents.

MRS

- The land falls completely within the MRS Primary Regional Road reservation for Stirling Highway, rather than being zoned under TPS2.
- The DPI has advised that it has no objection to the proposal in relation to the regional road reservation, which remains under review and is expected to require no more than a 5m road widening if and when that may be sought to be implemented.

Local Planning Strategy

- It should be noted that non-residential development requirements are not contemplated in Residential Zones by TPS2. However, certain general provisions of TPS2 apply to non-residential development in the district, including building height, privacy, appearance of buildings, the Development Guide Map, parking, signage and other “matters to have regard to”. These form a framework of assessment of the development proposal in the context of surrounding residential land use and amenity.
- Council therefore can determine land use and development proposals from a local planning perspective having regard to TPS2 and proposed LPS3.
- In this connection both TPS2 and proposed LPS3 provide a residential density coding of R30/60 over the subject section of Stirling Highway, which supports medium density residential development of the area.

TPS2

- Because the application is for determination under the MRS, TPS2 does not apply directly to the land in terms of zoning, however, as explained it provides a framework for consideration of the local land use implications of the proposal.
- As such TPS2 and related policies are relevant considerations with respect to orderly and proper planning and the preservation of amenity, and in Council exercising delegation on behalf of the WAPC.
- The following land use guidance is provided by TPS2 in terms of the intent of zoning and land use / development controls.

3.4 Zone Provisions

3.4.1 Residential Zone

- (a) *The purpose and intent of the Residential Zone is to promote a residential environment in any particular locality compatible with the maximum residential density permissible in that locality and with the desire of the inhabitants for Cottesloe to retain its quiet residential character. Development will be guided and controlled by the Development Guide Map, the Residential Planning Codes and the variations thereto as well as the amenity provisions contained in Part V - General Provisions of the Scheme.*

5.1.2 Council shall have regard to:

- (k) *the impact on the general quiet of the locality, including the times of activity, traffic generation, access and parking, and air conditioning, plant rooms and machinery, in relation to neighbouring properties. In order to preserve the quiet of residential areas, Council may impose conditions on development approvals restricting the hours of work on a development site.*
- The tenor of these Scheme provisions is a common theme of promoting residential amenity, character and quietude for the wellbeing of residents and to ensure that any proposals are consistent with this purpose.

Proposed LPS3

- Proposed LPS3 is modelled on TPS2 and reflects the land use intent and development control regime relating to this area. It strengthens the importance of zoning regulation, land use control and development requirements/standards, including the residential density coding as mentioned above.
- In other words, proposed LPS 3 supports the continuation of residential use and development in the vicinity and the location of non-residential uses in other appropriate zones or centres. Additionally, LPS3 aims at securing and strengthening the character and amenity of established residential neighbourhoods.

Local Planning Policies

- While there is no local planning policy which deals specifically with the Stirling Highway MRS reservation, Council's *Policy TPSP 007: Home Occupations & Professional Offices* provides a reference for considering non-residential uses in Residential zones.

- This Policy states that it is Council's basic policy to restrict professional offices use to zones in which they are appropriately suited, but that Council may grant special approval where it is satisfied that the use will not prejudicially affect the amenity of the neighbourhood.

- The Policy's assessment criteria for these types of applications include:

- *No more than 3 staff members shall operate from the business at any one time.*
- *Trading hours are to be restricted to 9-5pm weekdays only.*
- *No more than 10 vehicle trips per day shall be generated by the business.*
- *The number of clientele shall not exceed 4 persons at any one time.*
- *Parking shall be provided at the rate of 1 car space to every 40m2 of gross floor area.*

- The thrust of this Policy is to preserve the integrity of residential areas and to contemplate only those low-impact, non-residential professional office uses that are compatible with the preservation of residential amenity. It is apparent that the present professional office, while previously approved, exceeds these policy parameters.

Residential Development Trend

- It is evident that the overriding land use trend in the area has been for residential development and that this trend as provided for by TPS2 has been facilitated by Council approvals.
- The dentist's property nearby is approved to be subdivided to enable a second dwelling to be built, premised on the dental practice ceasing, and more restricted access via the lane.
- The former Council sump site on Eric Street has been sold and developed with a dwelling.

- A second dwelling has been built on the north-west corner of Eric St and Stirling Highway.
- Fourteen townhouses have been developed on the former National Measurement Institute site at Clive Road / McNamara Way to the north.
- This trend occurs in accordance with TPS2 and regional planning objectives for more inner-urban housing.
- The trend also demonstrates the demand for more housing in Cottesloe, as the suburb is established and comparatively few opportunities for new residential properties occur.

Previous Refusals

- Council refused change of use proposals for No. 463 Stirling Highway in 1995 (chiropractic consulting rooms) and 2007 (psychiatry consulting rooms). The refusals were based on concerns regarding amenity and traffic, as well as the undesirable potential for the residence to the north (No. 461 Stirling Highway) to also be proposed to become non-residential (with little parking space available for such).
- At the time, Council flagged that the land use future of the area could be looked at under the scheme review, however, the scheme review has not subsequently identified or supported this area as moving towards expanded non-residential use or development – indeed, as explained above, proposed LPS3 and the residential development trend are encouraging continued residential zoning and intensification.

Land Use Strategy

- The proposal for alterations and additions to a building used for a non-residential purpose is assessed as difficult to justify in the context of the strategic land use direction of Council's local planning and development control. The overall intent is for the retention of residential use rather than the introduction or expansion of non-residential uses in the locality.
- With the exception of the property at No. 459 Stirling Highway (which is a legacy of the past), the properties in the vicinity are all used for residential purposes – even the dentist's surgery on the corner of Eric Street has a traditional residential land use component.
- The Town Centre, Local Centre and Business zone areas are where commercial activities are directed to locate and this policy has proven successful for the protection of residential amenity and the management of activity centres in Cottesloe.

STAFF COMMENT

While the existing professional office was previously approved as a change of use, the approval was specific to the nature and extent of that particular application and does not necessarily extend to approval for further development of the site. In other words, although the principle of the use is established, the physical nature and practical consequences of any proposed expansions are such that separate planning

applications and approvals are required. Therefore, the proposed extension or intensification of the use warrants assessment and determination.

There are two issues before Council. The first is the likely effect of the proposal on the amenity of neighbouring properties. In this respect the basic assessment of the proposal is that the physical impact of the development would not be unduly adverse, apart from potential future parking congestion; although the objection from the northern neighbour is noted.

The second issue relates to the strategic planning implications of the application and the history of recent Council decisions that have discouraged non-residential land use along Stirling Highway. Of key significance is Council's February 2007 decision to refuse an application for consulting rooms at No. 463 Stirling Highway, and the subsequent appeal to the State Administrative Tribunal, in which Council's decision was upheld. Several key points emerge from the Tribunal decision.

Firstly, it is clear that the proposed building and its perceived impact on neighbours' amenity were not the major issue.

Secondly, the Tribunal upheld that the major issue was that non-residential land uses within the precinct are contrary to orderly and proper planning. The Tribunal also noted that approving them would be inconsistent with Council's previous decisions. The exact text of the Tribunal's conclusion is below:

The Tribunal has concluded, after much reflection, that the Town's decision is right in principle and ought not to be set aside. The Town's position upholds the underlying residential nature of the area, avoids non-residential over-concentration in this immediate precinct, is consistent with previous decisions, and promotes orderly and proper planning in terms of land use in the Town. That is a fundamental value of town planning and ought not to be lightly departed from – except for a strong case argued in terms of planning law or principle. Such a case had not been presented here, nor, it appears, could it ever be on the type of material currently available to the Tribunal in the circumstances of the case.

It should be noted that the chief difference between the proposal for No. 459 and No. 463 Stirling Hwy is that the applicant for No. 463 Stirling Highway sought a change of use from residential to non-residential, whereas the current application seeks to intensify an existing non-residential land use.

On this basis it could be suggested that as the non-residential land use is existing, and the proposal may have limited impact on the amenity of the area, approval should be considered.

Nevertheless the Tribunal's decision makes it clear that the Town should be inclined to preserve the residential character of the precinct. Approving alterations and additions to a non-residential building would be inconsistent with the principles of orderly and proper planning for the locality, regardless of how well the proposal is expected to function in terms of amenity. Approval would also be inconsistent with the principles of orderly and proper planning for the entire Town, as it would set a precedent for the possible intensification of existing non-residential uses.

CONCLUSION

In this case the overriding determinant is the need to preserve the residential use, character and amenity of the locality by following the principles of orderly and proper planning. As an approval would make it difficult for Council to be consistent and achieve this important strategic planning intent, it is recommended that the application can really only be refused. This is particularly so where Council has taken a consistent approach to the matter over recent years and where the SAT has confirmed the appropriateness of that. Therefore, the reasons for refusal are along the similar lines to the previous nearby refusal.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee expressed some support for the proposal given that the professional office was in existence / previous approved and on balance, while appreciating the land use rationale in the officer report, considered that the extension could be allowed, subject to appropriate conditions to manage the use.

OFFICER RECOMMENDATION

Moved Cr Boland, seconded Cr Walsh

That Council:

1. **REFUSE to grant its approval to commence development for the proposed second-storey addition to extend the professional office use at No. 459 (Lot 100) Stirling Highway, Cottesloe, in accordance with the plans submitted on 27 November 2008, for the following reasons:**
 - (a) **The proposal is contrary to the orderly and proper planning and the preservation of the amenity of the locality.**
 - (b) **The proposal would result in the proliferation of non-residential uses in the residential area, contrary to the intent of the local town planning for the area and the related strategic land use direction.**
 - (c) **Council is not prepared to apply its discretion to support the proposed extension or intensification of the non-residential professional office use, which is classified as an "AA" use (ie, one that is not permitted unless granted special approval by Council) under the local town planning scheme.**
 - (d) **An objection from neighbouring residents has been received expressing concerns about the nature of the proposal and its impact on their residential amenity.**

Both Council and the State Administrative Tribunal have previously and recently refused earlier proposals for non-residential land use and development in the locality, in upholding the local area planning land use strategy, the intent of which is in favour of residential land use and which has a presumption against non-residential land use.

(e) All of the above are considered relevant to determination of the proposal under the Metropolitan Region Scheme having regard to the local area planning implications and impacts.

2. Advise the submitters of Council's decision.

Lost 2/3

ALTERNATIVE MOTION

Moved Cr Dawkins, seconded Cr Woodhill

That the application be approved and that officers research and provide suitable wording and conditions for determination by Council.

The Alternative Motion was put:

Carried 4/1

10.1.4 NO. 64 MARINE PARADE – ALTERATIONS AND ADDITIONS (REFURBISHMENT) OF EXISTING UNITS 1 & 2

File No: 1687
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Ed Drewett
Senior Planning Officer
Property Owner: Mrs J Coleman
Applicant: Rodrigues Bodycoat Architects
Zoning: Residential R30
Use: P - A use that is permitted under this Scheme
Lot Area: 891m²

Proposed Meeting Date: 15 June 2009
Author Disclosure of Interest: Nil

SUMMARY

This application is seeking the following variations to Town Planning Scheme No. 2 (TPS 2), Council's Policies and/or the Residential Design Codes (RDC):

- Building height;
- Front setback;
- Setback to southern boundary; and
- Visual privacy

Each of these issues is discussed in this report and refers to plans received 28 March 2009.

Given the assessment that has been undertaken, the recommendation is to conditionally approve the application.

PROPOSAL

This application is for alterations and additions to Units 1 & 2 fronting Marine Parade comprising:

Unit 1 (ground floor unit):

- Extension to NW corner of existing ground floor living area; and
- Enclosure of existing terrace area and construction of a new covered terrace to the north and west elevations.

Unit 2 (upper-floor unit):

- Enclosure of existing balcony/terrace areas;
 - Addition of a partially enclosed and covered balcony to the north and west elevations;
 - Additions to all existing elevations; and
-

- Replacement of existing roof.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No. 2
- Residential Design Codes

POLICY IMPLICATIONS

- Building heights

HERITAGE LISTING

The existing dwelling is not subject to any heritage listing.

DRAFT LOCAL PLANNING SCHEME No.3

No changes are proposed to the zoning or density of the lot.

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town Planning Scheme Policy

Policy	Required	Proposed
Streetscape	6m (Council's resolution 28/10/02)	4.15m to ground floor terrace and 4m to balcony (complies with RDC)
Height	6m wall height; 8.5m ridge height; 7m to concealed (flat) roof under RDC	Building height – 8.7m above average NGL (6.75m above existing FFL)

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
6.3 – Boundary setback	2.1m from upper floor to southern boundary;	1.4m to western boundary	Clause 6.2.3 – P1
6.8 – Visual Privacy	4.5m from bedrooms	2.4m from upper floor rear bedroom window	Clause 6.8.1 – P1

ADVERTISING OF PROPOSAL

The application was advertised as per Town Planning Scheme No.2. The advertising consisted of a letter to 5 adjoining property owners. No submissions were received.

APPLICANT'S JUSTIFICATION

The applicant has submitted information in support of the proposal addressing various statutory requirements (see attachment). A summary of the main points are as follows:

- The proposal is to refurbish the existing units retaining the basement and as much of the existing concrete slab and brickwork ground and upper floor construction as possible;
- The breakdown of the masonry elements of the building is required to be arrested to justify any significant expenditure on refurbishment;
- The proposed refurbishment proposed is to clad the whole of the building envelope to Units 1 & 2 so as to effectively seal the existing construction from the deleterious effects of salt-laden air;
- New openings in the envelope will be framed with commercial-grade aluminium window and door systems having glazing and weather ratings which comply with the BCA;
- The proposed refurbishment includes the removal of the pitched section of roof and the glazed skylight and the construction of a new flat roof structure with cladding over the extent of the building;
- The existing upstand masonry balustrade and balustrade glass does not comply with BCA. A new stainless steel and glass balustrade complying with the BCA will be installed to all new balcony areas;
- The upper floor apartment in its existing form has limited outdoor living area. The existing areas face west and suffer from hot afternoon sun in summer. The balcony areas are largely unusable as a result of the seabreeze in summer and the wind and rain associated with winter;
- The proposal includes a balcony to the north where sunny winter disposition can be enjoyed and a west facing balcony with operable shade enclosures to protect outdoor living spaces from solar gain and storm effects. As such, the balconies represent a significant increase in amenity for the occupants;
- The establishment of a streetscape in the context of Marine Parade is largely independent of issues of setback and building height. It has much to do with the architectural quality of the buildings which form the street. It relies also on the quality of the public domain – its road and paving surfaces, fence structures, street lighting, street furniture and landscaping;
- The condition of the property is, for all and intents and purposes, that of a benched site. Under the RDC the level of benched sites may be treated as the ground plane and setbacks and heights determined in relation to the retained level;
- A concession is requested in relation to building height under the terms of the permitted variations because the proposal is a refurbishment of an existing building where existing underground structures are to be retained and existing suspended floor structures are in place;

- An investigation of the streetscape in Marine Parade demonstrates the negligible role played by setback, building height and bulk. Any reasonable assessment of issues pertaining to streetscape in relation to Marine Parade would conclude that the best outcome that could be realised would result from the promotion of buildings of architectural merit;
- Other issues relevant to setbacks including access to light and ventilation and loss of views have no relevance in the context of Marine Parade;
- The proposed reduced setback to the southern boundary has no measurable impact on the amenity of the adjoining owner with limited effect on privacy or the degree of overshadowing;
- The proposed minor openings on the southern elevation are to be glazed with obscure glass;
- The privacy of adjoining owners is not unduly affected by the proposal;
- The west, north and south elevations of the building will feature a screen of metal louvers which control the degree of solar gain and sun penetration and assist in protecting the envelope of the building from the effects of severe winter storms. The roof of the balcony to the north is an operable louver which allows protection from sun and rain;
- The percentage of overshadowing is only around 15%; and
- The proposal includes off-form concrete surfaces for retaining, screen and planter walls, self-weathered timber claddings to the building envelope, natural anodised aluminium window and door joinery, aluminium roof claddings, stainless steel downpipes and balustrades with glass infill, fixed and operable aluminium roof and wall sun shading screens and self-weathering timber decking.

STAFF COMMENT

The following comments are made regarding the application and plans received on 28 March 2009.

The proposed development complies with Town Planning Scheme No. 2, relevant Council Policies and the Residential Design Codes (RDC) with the exception of the following:

- Building height;
- Front setback;
- Setback to southern boundary; and
- Visual privacy.

Each of these issues is discussed below:

Building Height

The calculation of building height stems from Council's determination of natural ground level (NGL). Clause 5.5.1 of the Council's Town Planning Scheme No. 2 expresses policy in relation to building height and paragraph (c) provides a basic formula in relation to measurement of such height.

Provision is made for Council to depart from the formula where the natural ground forms indicate that a variation is warranted provided that the amenity of the area is not unreasonably diminished, and also in the case of extensions to existing buildings.

The NGL in this case has been determined to be RL: 10.2, which has been derived using a site survey plan submitted by the applicant and drawn by a licensed surveyor.

The maximum permitted wall height is 6m (RL:16.2) and the maximum permitted ridge height is 8.5m (RL:18.7). However, where a concealed (flat) roof is proposed Council has generally allowed a maximum permitted wall height up to 7m (RL:17.2) in accordance with the acceptable development standards of the RD Codes, as the Scheme is silent on this type of roof; while proposed LPS 3 does provide for it in the same manner as the Codes.

The proposed new flat roof to the upper floor unit is 8.7m in height above the determined NGL (RL: 18.992) and therefore a variation of 1.7m is sought. Notwithstanding this, the actual height of the proposed new roof above the existing ground floor level of the unit below will be only approximately 6.75m and therefore would otherwise be compliant with the RD Codes.

On balance, the proposed variation to the building height appears warranted taking account the existing raised level of the site (it is substantially retained along its western and southern boundaries), the existing ground floor levels and recognising that this proposal is for renovations to two existing units rather than a comprehensive redevelopment of the site. Furthermore, the proposed roof height will be approximately 0.7m below the existing flat roof so will have less impact on the amenity of the area and can be approved under the Building Height provisions of Town Planning Scheme No. 2 as an extension to an existing building.

Front Setback

The ground floor unit will retain a front setback of 7.67m, whereas the upper floor unit will retain a 7.65m front setback, albeit with some additions to the existing front elevation, which is consistent with Council's preference for a minimum 6m front setback (Council resolution 28/10/02).

However, a (3.5m wide x 13.65m long) terrace is proposed to the west of the ground floor unit with a (3.65m wide by 13.65m long), partially enclosed and covered balcony above which wraps around to the northern elevation. This proposed addition has a front setback of only 4.15m at ground floor level and 4m on the upper floor fronting Marine Parade, and has a 1.5m setback to Salvado Street.

Under the acceptable development standards of the RD Codes a 4m minimum front setback is required, although this may be further reduced by up to 50% provided that the area of any building, including a carport or garage, intruding into the setback area is compensated for by at least an equal area of contiguous open space between the setback line and line drawn parallel to it at twice the setback distance.

In this case, the proposed balcony and terrace has a minimum 4m front setback and a 1.5m setback from Salvado Street and therefore complies with the acceptable development standards of the RD Codes.

However, proposed Local Planning Scheme No. 3 states:

Despite anything contained in the Residential Design Codes to the contrary, in the case of areas with a residential density code of R30, the local government may require an R20 front setback of 6m to be applied, for the preservation of streetscape, view corridors and amenity.

It is considered that the requirements of the proposed Scheme may be seriously entertained when considering development proposals, with the exception of proposed density changes, particularly as this clause is consistent with Council's resolution of 28 October 2002 regarding front setbacks.

Although, as stated by the applicant, this section of Marine Parade has an amalgam of buildings of different types, sizes and architectural styles, the subject units are nevertheless situated on a prominent corner which is significantly raised above the Marine Parade level and is therefore particularly visible. The units are also located opposite Le Fanu House, which is listed both in Schedule 1 of TPS2 and on the State Register of Heritage Places, and so the design of any proposed additions are of particular importance. The application has been referred to the Heritage Council of WA who has advised of no objection in that regard.

Furthermore, the majority of residential properties along this section of Marine Parade have 6m or greater front setbacks. Examples include:

Address	Front setback
66 Marine Parade (Approved 1999)	8.3m – to ground floor; 6m – to upper floor balcony
2 Salvado Street (Le Fanu - listed at Local and State level)	14.8m (approx) to main facade; 12.2m (approx) to front verandah
62 Marine Parade	8.5m (approx) to main façade
60 & 60A Marine Parade	6m to front balcony

The size and design of the proposed terrace and balcony additions in the front setback area will be visually detrimental to the existing streetscape, non-compliant with Council's preferred 6m front setback requirement, contrary to the proposed front setback provision in proposed Local Planning Scheme No. 3 and could set an undesirable precedent for similar type development protruding into the front setback in this locality. Therefore, the proposed reduced front setback is not supported.

Side Setback

The proposed upper floor addition has a 1.4m setback from the southern boundary, in lieu of 2.1m required under the RDC. This setback will align the upper floor with the existing ground floor and will allow for an extension to the existing ensuites, WIR, laundry and bedroom. The setback variation sought is 0.7m and can be considered under performance criteria, which state:

Buildings set back from boundaries other than street boundaries so as to:

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide adequate direct sun to the building and appurtenant open spaces;*
- *assist with protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *assist in protecting privacy between adjoining properties.*

The proposed reduced setback will not impact on direct sun and ventilation to the existing units as they will retain significant north and west facing frontages for maximum solar access. Furthermore, the proposed reduced setback will have a negligible impact on the adjoining property to the south as these flats are already overshadowed by the existing building and currently receive most light and ventilation from the west. The adjoining flats to the south are also well setback from the common boundary and will not be overlooked by the proposed upper floor windows on the southern elevation as these will be fixed and obscure glazed to 1.6m above first floor level.

Visual Privacy

The proposed upper floor rear window to bedroom 2 does not comply with the acceptable development standards of the RDC for visual privacy and therefore needs to be assessed under performance criteria.

The relevant performance criteria (Clause 6.8.1) state:

Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.

Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.

Where they are used, they should be integrated with the building design and have minimal impact on residents' or neighbours' amenity.

Where opposite windows are offset from the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.

Any potential overlooking of the adjoining property to the south from the upper floor rear bedroom 2 window will generally be restricted to a rear parking area, a portion of communal garden and a drying area. However, there will be no significant

overlooking of active habitable spaces, outdoor living areas or habitable rooms, while the location of existing trees and landscaping along the common boundary will further prevent any potential loss of visual privacy to the adjoining residents. In addition, no submissions were received from the adjoining owners.

CONCLUSION

The applicant has attempted to address Town Planning Scheme No. 2 and the RD Codes and, on balance, the proposed alterations, additions and refurbishment of the existing units has merit. However, the main issue is the proposed location of the ground floor terrace to Unit 1 and covered balcony to Unit 2 as these additions will significantly intrude into Council's preferred 6m front setback and be contrary to the front setback provisions in draft Local Planning Scheme No. 3, as well as be visually detrimental to the streetscape along Marine Parade and may set an undesirable precedent for similar development along this section of coastline.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee considered that the renovation would be a welcome improvement to the property and streetscape and that the ground floor terrace and upper floor balcony as proposed are acceptable in relation to the front setback given the corner location and need for protected outdoor living areas, as well as the design aesthetic (including in harmony with the southern adjacent building). The existing height was being reduced and the boundary wall was already approved and largely a retaining structure.

OFFICER RECOMMENDATION

That Council:

GRANT its Approval to Commence Development for the proposed alterations, additions and renovations to Units 1 & 2, No. 64 (strata lots 1 & 2) Marine Parade, Cottesloe, in accordance with the plans submitted on 28 March 2009, subject to the following conditions including required revision of the design as specified in (d):

- (a) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
- (b) Gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings submitted for a building licence.
- (c) The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (d) Revised plans shall be submitted, to the satisfaction of the Manager Development Services, showing the deletion of the proposed ground-floor terrace and upper-floor balcony from the 6m front setback area, prior to issue of a Building Licence.

- (e) The upper-floor window to bedroom 2 on the southern elevation shall be screened to a minimum height of 1.6m above the finished floor level, to the satisfaction of the Manager Development Services, and this detail shall be shown on the plans submitted for a Building Licence.

Advice Note:

The applicant/owner is reminded of their obligation under the strata titles act which may require the consent from the adjoining strata owner and/or strata company before commencing any works on site. This is separate from the planning approval process.

AMENDMENT

Moved Cr Dawkins, seconded Cr Birnbrauer

That condition (d) is removed from the officer recommendation.

Carried 4/1

COMMITTEE RECOMMENDATION

Moved Cr Birnbrauer, seconded Cr Strzina

That Council:

GRANT its Approval to Commence Development for the proposed alterations, additions and renovations to Units 1 & 2, No. 64 (strata lots 1 & 2) Marine Parade, Cottesloe, in accordance with the plans submitted on 28 March 2009, subject to the following conditions including required revision of the design as specified in (d):

- a) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
- b) Gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings submitted for a building licence.
- c) The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- d) The upper-floor window to bedroom 2 on the southern elevation shall be screened to a minimum height of 1.6m above the finished floor level, to the satisfaction of the Manager Development Services, and this detail shall be shown on the plans submitted for a Building Licence.

ADVICE NOTE:

The applicant/owner is reminded of their obligation under the strata titles act which may require the consent from the adjoining strata owner and/or strata company before commencing any

works on site. This is separate from the planning approval process.

The Substantive Motion was put:

Carried 5/0

10.1.5 No. 9 ATHELSTAN STREET – TWO-STOREY RESIDENCE WITH SWIMMING POOL

File No: 1671
Responsible Officer: Carl Askew
Chief Executive Officer
Author: William Schaefer
Planning Officer
Property Owner: Ms Anna Sudlow
Applicant: Chindarsi Architects
Zoning: Residential R20
Use: P – A use that is permitted under the Scheme

Proposed Meeting Date: 15-Jun-2009
Author Disclosure of Interest: Nil

SUMMARY

The application is for a two-storey residence with a swimming pool.

One concession is sought with regard to a section of wall on the western elevation. No other concessions to the Scheme, Residential Design Codes (RDC) or Council's Policies are being sought.

One written objection to the proposal has been received. The objection refers to the plans dated 12 March 2009 and is the focus of this report.

Given the assessment that has been undertaken, the recommendation is to approve the application.

PROPOSAL

This application is for a two-storey residence with a swimming pool. The second storey section of the residence comprises a master bedroom, WIR and bathroom, and is considered relatively small.

The lot essentially comprises two land levels, with the rear half of the lot being sunk approximately 500mm below the level of the front half.

STATUTORY ENVIRONMENT

Town of Cottesloe Town Planning Scheme No. 2
Residential Design Codes

POLICY IMPLICATIONS

None

HERITAGE LISTING

Nil

DRAFT LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning or density of the lot.

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE**

A setback concession for a section of wall on the western elevation is being sought.

Wall	Required Setback	Proposed Setback
West Ground (Kitchen/Living/Bed1/Bath/Laundry/Bed2)	Up to 2.5m	1.5m

The design complies with the Scheme height requirements, having a wall height of only 5.4m and a ridge height of only 6.0m. The privacy setback, fill, parking, open space, outdoor living area and overshadowing requirements of the RDC have all been satisfied by the proposal.

ADVERTISING OF PROPOSAL

The proposal was advertised in April 2009 as per TPS2. The advertising comprised letters to the 3 adjoining property owners. One submission has been received.

The submission may be summarised as follows:

Mr C and Mrs S Turle, 9 Henry Street

- * Objection to overshadowing and loss of amenity.

The applicant has responded as follows:

Mr Bartek Klimczak, Chindarsi Architects Pty Ltd

- * Original calculations of overshadowing established a figure of 14%;
- * Revised calculations incorporate actual neighbouring ground levels and provide an adjusted overshadowing figure of 15%, which is well below the RDC acceptable development maximum of 25%;
- * Existing boundary wall is 2.3m high on Athelstan Street side and already overshadows 10% of neighbours' lot along entire length and 7.5% of neighbouring lot along the width of the lot at 9 Athelstan Street;
- * Proposed development will therefore only increase overshadowing by 5% to 7.5%;
- * Southern elevation of proposal is fully compliant with Scheme and RDC regarding setbacks, privacy and height.

STAFF COMMENT

The following comments are made with regard to this application:

Objection of neighbour to overshadowing and loss of amenity

Acceptable development provision 6.9.1 A1 of the RDC specifies that properties coded R25 or lower shall not be overshadowed more than 25%. The proposal for No. 9 Athelstan St overshadows the property at No. 9 Henry Street by 15%. This is the worst-case scenario at the Winter Solstice, so otherwise the shadow effect will be less.

Verbal advice received from the submitters has indicated that the shadow is likely to fall on the swimming pool/outdoor living area of their property. The submitters have also verbally expressed concern over the potential for each of the three lots abutting the northern boundary of their property to simultaneously exploit the right to overshadow by up to 25% and therefore deny solar access to 75% of the lot.

With regard to the first of the submitters' points, it should be noted that the south wall of the proposed residence is set back from the boundary in accordance with the acceptable development standards of the RDC. The height of this wall is 5.8m above ground level immediately beneath it, and 5.4m above the NGL at the centre of the site as determined by Council. Both figures for the height of the wall are therefore well within the 6.0m limit prescribed by Council, and comparatively low.

The applicant has supplied figures that indicate the proposal will add no more than 7.5% to the total area of lot that is already overshadowed. This is because the second-storey extension is relatively modest and more than compliant.

Thus, whilst the shadow cast by the proposed wall may well fall on the swimming pool/outdoor living area of the neighbour, the proposal more than complies with TPS2, the RDC and Council's Policies and it is considered that, in meeting these, the owner has fulfilled the necessary planning obligations.

In view of such circumstances it should be noted that Clause 2.5.4 of the RDC states:

A council shall not refuse to grant approval to an application in respect of any matter where the application complies with the relevant acceptable development provision and the relevant provision of the council's planning scheme or a local planning policy.

With regard to the submitters' second point, it is considered that as the current proposal will only increase the total of the overshadowed area by 7.5%, it is unlikely that any proposal for any of the three lots that abut the northern boundary of No. 9 Henry Street would be close to shading 25% of the property. A design that would overshadow more of the Henry Street lot than the current proposal would be likely to require concessions from the Council for wall height and setbacks, which would not necessarily be supported even in the absence of objections. It should also be noted that in the event of future proposals, the submitters will be contacted as a matter of course and afforded the opportunity to comment.

Setback to western boundary

It is proposed to construct a wall with a reduced setback from the western boundary of the lot. Determining the setback requirement is complicated due to the irregular

profile of the wall and it should be noted that the setback requirement varies according to height. The wall in fact complies with the acceptable development standards for 16.2m of its 27.7m length and it is only for the remainder of wall that the performance criterion is required to be addressed.

Wall	Required Setback	Proposed Setback
West Ground (Kitchen/Living/Bed1/Bath/Laundry/Bed2)	Up to 2.5m	1.5m

Where the acceptable development standards for buildings set back from boundaries under the RDC cannot be met the application must be determined under the performance criterion as follows:

Buildings set back from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties;*
and
- *Assist in protecting privacy between adjoining properties*

The applicant has justified the reduced setback as follows:

- There are no openings classed as 'major openings' (with a floor level 500mm above NGL) to the western neighbouring building and as such privacy is maintained for both residences;
- The windows facing the courtyard, high level roof and wall windows to the north provide additional summer and winter sun as well as good cross ventilation to the proposed building throughout;
- The passage of both summer and winter light to the adjoining western property is not affected as the reduced setback is proposed to occur to the east of the neighbouring residence, while the sunlight is captured from the north;
- The western neighbour (Pat Elder at #7 Athelstan Road) was approached and made familiar with the proposal and has noted no objection to the above.
- Utilisation of a 3.2m courtyard results in an additional courtyard to the rear which increases open space, light and ventilation to the rear ground floor of the building;
- The building is generally a one-storey structure that suits the existing terraced contours of the site, with high ceiling spaces to increase the internal quality of the spaces. Wall heights are offset by the shallow singular pitched roofs, which result in reduced building mass. There is a second-storey component which is restrained in relation to what is allowable under the site's plot ratio and zoning setbacks.

Furthermore, the location of a 1.8m high, brick boundary fence between the two properties is regarded as likely to ameliorate the effects of the reduced setback on the adjoining properties.

It is considered that the above justification satisfies the relevant performance criterion. In the absence of adverse written comments from the neighbour, the proposed reduced setbacks can be supported.

CONCLUSION

The applicant has submitted a design that seeks one minor concession. It is considered that the proposal will not have a significant adverse effect on neighbouring properties and as such can be supported.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the question of the rear setback in relation to overshadowing, noting the compliance on the one hand and the unusual situation of three lots abutting the southern neighbour, and took advice from the Manager Development Services that to impose an arbitrary condition would be problematic, so ideally more information could be provided to Council for determination, having regard to the RDC and further liaison with the applicant, architect and southern neighbour. Committee agreed to this approach and requested staff to attend to the matter accordingly, while supporting the recommendation as is at this stage.

OFFICER RECOMMENDATION

Moved Cr Walsh, seconded Cr Woodhill

That Council:

1. **GRANT its Approval to Commence Development for the proposed Two-Storey Residence with Swimming Pool on Lot 12 (No. 9) Athelstan Street, Cottesloe, in accordance with the plans submitted on 12 March 2009, subject to the following conditions:**
 - (a) **All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction sites.**
 - (b) **The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.**
 - (c) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights-of-way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings submitted for a building licence.**

- (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
- (e) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined specified in the Environment Protection (Noise) Regulations 1997.
- (f) The finish and colour of the boundary wall facing the neighbour shall be to the satisfaction of the Manager Development Services.
- (g) The fencing in the front setback area shall be of "open-aspect" design in accordance with Council's Fencing Local Law.
- (h) The applicant complying with the Town of Cottesloe – Policies and Procedures for Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.
- (i) The pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment in satisfactorily minimized to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- (j) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.
- (k) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8metres away from any building or boundary.
- (l) Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- (m) At building licence stage revised plans to the satisfaction of the Manager Development Services shall be submitted, showing the second-storey master bedroom having a perpendicular and permanent fixed screen, being a minimum of 1.6m high above the finished floor level, and extending a sufficient distance outwards from the wall, in order to prevent overlooking of the adjacent property in accordance with the privacy provisions of the Residential Design Codes.

- 2. ADVISE the submitters of this decision.**

Carried 5/0

10.1.6 Nos. 238-240 MARINE PARADE – TWO-STOREY RESIDENCE WITH UNDERCROFT AND SWIMMING POOL

File No: 1631
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services
Property Owner: Terrex Seismic
Applicant: Hartree and Associates
Zoning: Residential
Use: P – A use that is permitted under the Scheme
Density: R20
Lot Area: 728m2

Proposed Meeting Date: 15-Jun-2009
Author Disclosure of Interest: Nil

SUMMARY

The application is for a two-storey residence with an undercroft and swimming pool at the above address which comprises two lots.

The proposal is a revision of the design which was deferred at Council's meeting in April 2009 to review particular aspects:

That Council, due to the proposed variations sought with respect to building height, overshadowing and the front and side setbacks to the pool, and to allow further consideration in relation to the natural ground level, defers determination of the application in order to allow the architects and owner to review the assessment contained in this report and to liaise with officers towards a redesign which satisfactorily addresses the issues.

The revised design has been made following liaison with the Town's planning staff in addressing these aspects. This report presents the technical assessment of the proposal and recommends approval subject to conditions.

REVISED PROPOSAL

The initial consideration and comment by the Development Services Committee gave direction to Council's resolution to defer the original proposal:

Committee discussed the proposal at length, having regard to the report, model, presentations and additional material from the architect, including discussion with the officers and the attendees when requested. Committee was mindful of the quality of the design in itself, even though it did not readily comply with the planning parameters. Committee did not see the overshadowing as such an issue, although it was recognised that this could be increased, and indicated support for the reduced setback to the pool. Discussion ensued in relation to the site topography, building heights and design appreciation. Options for a recommendation to Council were also

discussed, including conditional approval. In this respect the MDS cautioned against setting arbitrary height or other standards which the architects may not be able to practically design to. On balance, Committee agreed to support a deferral to facilitate consideration of a redesign to achieve greater compliance and generate fewer concerns.

The revised proposal is similar in concept and layout to the previous design, a detailed description of which may be found in the initial report (attached). Overall, the revised proposal achieves greater compliance and reduced impacts.

As previously discussed, the up to four-metre high mound in the north-eastern quadrant of the lot has influenced the design of the proposal in terms of building form and height. In response to this landform feature the main improvement of the revision is the introduction of a curved roof above to the rear portion of the building, whereby the floor levels and wall heights have been reduced.

Other improvements mean that concessions for boundary setbacks are no longer being sought, except for the swimming pool at the front. Also, the lowering of the slab levels has removed the need for fill of more than 500mm to the northern boundary, hence a concession in this regard is no longer being sought. The question of whether the previous proposal effectively had a three-storey core (stairwell) has also been addressed in the redesign, with no more than two storeys proposed.

These improvements are considered significant both individually and collectively, amounting to a fair degree of refinement overall whilst preserving the basic design concept, so are worthwhile revisions. Notwithstanding, some particular concessions are still sought for the following aspects:

- * Wall heights
- * Overshadowing
- * Privacy
- * Front Setback.

STATUTORY ENVIRONMENT

- * Town Planning Scheme No. 2
- * Residential Design Codes

PROPOSED LOCAL PLANNING SCHEME NO. 3

It is proposed to recode the subject lots from R20 to R25. The proposal would not be affected by this change.

POLICY IMPLICATIONS

Building height.

HERITAGE LISTING

N/A

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE**

TPS2 – Building height variation – see further below.

RESIDENTIAL DESIGN CODES

Design Element	Provision or Acceptable Development Standard	Provided	Performance Criteria Clause
Building Height	7.0m (parapet wall); 6.0m (wall beneath vaulted roof)	8.048m; 7.5m	6.7.1 – P1 Scheme Clause 5.1.1 (c)
Front Setback	6.0m	5.0m (swimming pool only)	6.2.2 – P2
Visual Privacy	7.5m from terrace to northern boundary	2.4m	6.8.1 – P1
Solar Access for Adjoining Sites	25% max	52.2%	6.9.1 – P1

CONSULTATION

As reported, neighbours to the north and south of the site were notified by the applicant and given the opportunity to comment on the previous proposal. As both neighbours expressed written support for the previous, larger proposal they have not been consulted with regard to the revised plans.

The Town informed the owners to the rear (No. 61 Margaret Street) of the revised plans, who have lodged an additional written objection reflecting their initial submission and summarised as follows:

Mr M & Mrs L Owen, 61 Margaret Street

- The R-Code setbacks (front and side) are to be adhered to, as are the Scheme limits on storeys and height;
- The level of overshadowing will still affect the amenity of No. 61 Margaret Street;
- The effects of the mound at the rear of the subject lot are still being ignored despite the effects on neighbours' amenity. Original land contours should be the basis for determination of height; and
- The comment in the previous officer's report to Council regarding the property at No. 61 Margaret Street being a possible candidate for redevelopment belittles the concerns of the owners.

In this regard, Council is referred to the previous submissions by these neighbouring owners, as well as to responses from the applicant and comments by officers. The Owens have also attended Committee and Council to express their concerns.

With respect to this input, the R-Codes make it clear that while such consultation is important, it:

- serves to inform about the proposal and Council's decision-making process;
- is not meant to shift the "say" on an application from Council to those consulted;
- does not replace technical assessment and professional advice by Council officers; and
- the applicant has an opportunity to respond.

In other words, neighbour comment may be taken into account, but together with the applicant's rights, merits of the proposal, officer assessment/advice and Council deliberation leading to its decision as the responsible authority. It is also desirable for all parties that applications are resolved without becoming too drawn-out.

In this instance the subject neighbours have participated actively in the process, been accorded time to absorb the original and revised proposals, and their comments have been considered by officers, the applicant and Council.

Ultimately, it is the nature of town planning and development control that Council's decision needs to consider all inputs for a reasonable outcome in the circumstances, but this may not necessarily balance all aspects or satisfy all points of view, and there is usually some measure of compromise or tolerance involved in allowing acceptable proposals without undue impacts.

This report deals with the key points raised again by the rear owners and in the context of the overall technical factors and assessment concludes that approval of the revised design is in order as a satisfactory outcome.

APPLICANT'S JUSTIFICATION

The applicant has provided additional information in support of the revised proposal and addressing various requirements, to supplement the material provided with the original application, summarised as follows:

- * Roof and wall heights have been influenced by the presence of the mound in the corner of the site;
- * The height of the proposal is consistent with the height of existing buildings and fits in well with the Marine Parade and Margaret Street streetscapes;
- * The report to Council in April suggested that Council could support a maximum wall height of 7.5m above the datum;
- * The wall heights of sections of the building above the mound have been lowered, and a vaulted roof form with transparent gable ends has been added to address the height issue;
- * The south facing parapet wall has been lowered to reduce the level of overshadowing on the southern neighbour from 61% to 52.2% and the eastern property is now overshadowed by only 3.6%;
- * The living level floor slab has been lowered to reduce need for site works along the northern boundary; and

- * Respect has been accorded to No. 61 Margaret Street in the form of significantly greater-than-required building setbacks and control of overlooking.

STAFF COMMENT

Building Height

The revised proposal retains the 13.8m NGL datum as the basis for establishing building height, which incorporates the effect of the mound on an otherwise flat site.

Clause 5.1.1(c) of TPS2 contemplates an 8.5m maximum building height to the crown of the roof and a maximum wall height of 6.0m. The traditional method of assessing concealed or flat roof designs in Cottesloe has been to refer to the Residential Design Codes, which provide for a maximum wall height of 7.0m.

It is proposed to construct the following:

- * A curved, gabled-ended roof with a maximum height of 8.5m above NGL;
- * Walls beneath the gable with maximum heights of 7.5m above NGL; and
- * A concealed flat roof of 8.048m in height above NGL.

The assessment of this building height arrangement is as follows:

- * The height of the curved roof complies with the Scheme.
- * A section of the flat roof forming part of the southern elevation is intended to be 8.048m above NGL, which is 1.048m above the 7.0m maximum given by the RDC and 0.548m above the 7.5m suggested in the April report as a practical alternative.
- * Clause 5.1.1(c) of the Scheme provides for variation of wall heights “... *in particular cases where natural ground forms indicate that a variation is warranted proved that the amenity of neighbouring area is not unreasonably diminished.*”
- * The owners of No. 61 Margaret Street lodged an objection to the height of the previous proposal and have reiterated their concerns. Under the revised design the overshadowing impact on that property is now only 3.6% and the building-bulk impact of the gabled roof is an improvement over the concealed roof previously proposed.

It is noted that views would not really be improved by reducing the wall height to comply with the 6.0m standard as the outlook from the No. 61 Margaret Street residence is blocked more by horizontal rather than vertical development, and as in any case the view from No. 61 Margaret Street is already interrupted by the proposed roof ridge height which complies with Scheme.

Therefore, it is reasonable to conclude that the neighbouring eastern lot would be affected by the addition of any building to the subject lot, regardless of how compliant it may be. As assessed, the effect of a design that seeks

concessions for wall heights but not ridge height is not necessarily so much greater and in this instance the proposal could be supported.

Furthermore, it was suggested in the previous report that a reduction in wall heights would lead to a more acceptable degree of overshadowing, and this has been achieved (refer below).

- * In summary, the height of the curved roof as a solution is considered acceptable under the Scheme and the reduced wall heights proposed are an improvement in terms of the impact of the revised design on neighbouring properties.

Overshadowing

The east-west orientation of the subject lot and the narrow frontage of the neighbouring lot have made an above-standard shadow impact inevitable. In such circumstances the only method of minimising shadow is to develop single-storey residences with generous setbacks, which renders the prospect of developing such lots to their full potential infeasible.

The proposed dwelling overshadows the lot adjoining to the south by 52.2%, which is a worthwhile improvement over the 61% proposed previously. Whilst the acceptable development standards of the RDC specify a maximum of 25%, the performance criterion 6.9.1 P1 allows for:

Development designed to protect solar access for neighbouring properties taking account of the potential to overshadow:

- * *outdoor living areas;*
- * *major openings to habitable rooms;*
- * *solar collectors; or*
- * *balconies and verandahs.*

The southern neighbour signed approval to the proposal that overshadowed 61%. An assessment of the site and examination of aerial photographs has confirmed that much of the shadow falls on the roofs of the adjoining dwelling, garage and shed; however, there is a verandah at the rear of the dwelling that remains overshadowed. Nonetheless, as the verandah is situated close to the centre of the lot it would be overshadowed by almost any two-storey building. In these circumstances it is considered that the reduced overshadowing can be supported.

Front Setback

It is proposed to have a setback of 5.0 metres from the Marine Parade boundary for the cantilevered swimming pool at the front of the dwelling. By resolution, Council prefers front setbacks of 6.0m. Under the R20 density coding the R-Codes provide for a minimum setback of 6.0 metres from the street boundary except where it can be shown that the following Performance Criteria are met:

Setback of buildings generally

Buildings set back from street boundaries an appropriate distance to ensure they:

- * *Contribute to the desired streetscape;*
- * *Provide adequate privacy and open space for dwellings; and*

- * *Allow safety clearances for easements for essential service corridors.*

At 1.4m in depth (ie thickness) and 6.0m wide, the glass-ended swimming pool is not expected to appear unduly bulky when viewed from the street. The effects of bulk are likely to be ameliorated by the pool being raised above the level of the driveway by some 3.3m. When considering the pool in the context of the overall design, it is noted that the top of the western-most wall of the dwelling has a front setback a minimum of 7.15m with the base setback 9.0m, while the rest of the building is setback at increasing distances into the site. It is therefore considered that the proposal contributes acceptably to the streetscape.

The pool does not impact on the privacy of adjoining dwellings behind their setback lines or affect open space to dwellings, and it allows for safety clearances for easements for essential service corridors.

While this projecting, raised pool in the front setback area is an unusual feature of the design, it is well-conceived as integral to the dwelling and would physically and visually float in the air in the same manner as a balcony, canopy eave or so on. The variation to 5.0m is effectively compensated for by the more-than-6.0m front setbacks to other parts of the dwelling, and the L-shaped front portion in the design whereby most of the pool is located behind the 6.0m line and generally in line with the setbacks along this section of the street. Although in some other cases Council has been concerned about frontal or raised pools having bulk and privacy impacts, in this instance the pool is an elegant architectural feature and less of a privacy concern. Front yards can be used in diverse ways and because Marine Parade is an exposed public beachfront environment with more activity and noise, there are generally lower expectations of seclusion or privacy.

The proposed open aspect of the front yard to the driveway ramp half of the property, as well as to the fenced half (ie of only medium height and with full-height rails) assists in the consideration of these setbacks by not exacerbating the sense of building bulk in the manner of solid walls.

On the basis of the above assessment, the pool as proposed may be supported. Alternatively, it could be setback one more metre to reduce its total structural length into the site of approximately 7.5m, although that would limit the useable length of the pool to a little over 4m. This modification would not ruin the design and would increase compliance. In conclusion, it is considered that the pool arrangement as proposed is acceptable given the overall design and streetscape character, and that it would read as an integral component of the dwelling in response to the site and setting.

Visual Privacy

The proposed development complies with the visual privacy requirements of the RDC in all respects except for overlooking to the north-west and north-east from the terrace, which is setback 2.4m in lieu of the 7.5m required by the Acceptable Development Standards. The R-Codes allow the Acceptable Development Standards to be varied where the Performance Criteria 6.8.1 P1 can be met, which state that:

Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.

Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.

Where these are used, they should be integrated with the building design and have minimal negative effect on residents' or neighbours' amenity.

The applicant has supplied justification for the variation, indicating that the cones of vision overlook the roof of the adjoining property. A site inspection and the attached photographs have confirmed that overlooking would occur onto wall and roof, with no active habitable spaces affected. The neighbour has signed consent to the proposal.

CONCLUSION

The applicant has provided a revised design which manages to retain the basic concept and is a significant improvement upon the height and overshadowing aspects previously flagged as problematic, albeit still not wholly compliant so seeking some variation. The design suits the context of the site and locality and apart from these variations is compliant and essentially in scale with the surrounding development. It is difficult to see that the present concept could be adapted much more without being an architectural compromise, and the owner/applicant do not intend to go back to the drawing board. While the rear owners have raised certain concerns, these may be taken into account up to a point, and have been responded to by both Council and the revised proposal, after which Council's task is to determine the proposal.

VOTING

Simple Majority

Moved Cr Walsh, seconded Cr Dawkins

COMMITTEE COMMENT

Committee discussed the height aspect at length, including in relation to the rear, eastern property and the site topography and, while noting the design approach and site constraints, overall considered the height variations still sought to be excessive. At the same time it was recognised that even a height-compliant development would impact significantly on views and amenity (eg overshadowing due to lot orientation) whereby a degree of relaxation could be contemplated; and it was noted that the rear eastern neighbouring dwelling was itself not necessarily wholly compliant. While acknowledging the design improvements Committee favoured further revisions.

OFFICER RECOMMENDATION

Moved Cr Birnbrauer, seconded Cr Dawkins

That Council:

1. GRANT its Approval to Commence Development for the proposed Two-Storey Residence with Undercroft and Swimming Pool on Lots 4 & 5 (Nos. 238 & 240) Marine Parade, Cottesloe, in accordance with the revised plans submitted on 8 May 2009, subject to the following conditions:
 - (a) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction sites.
 - (b) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
 - (c) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights-of-way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings submitted for a building licence.
 - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
 - (e) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined specified in the Environment Protection (Noise) Regulations 1997.
 - (f) Details of all site boundary wall design, construction, materials finishes and colours shall be included in the building licence plans and documentation, to the satisfaction of the Manager Development Services.
 - (g) The fencing in the front setback area shall be of "open-aspect" design in accordance with Council's Fencing Local Law, and this shall be shown in revised plans submitted for a building licence, to the satisfaction of the Manager Development Services. Alternatively, the fencing in the front setback area may be the subject of a separate application for planning approval.

- (h) The existing redundant crossover in Marine Parade to be removed, and the verge, kerb and all surfaces made good at the applicant's expense, to the satisfaction of the Manager Engineering Services.
- (i) The applicant complying with the Town of Cottesloe – Policies and Procedures for Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.
- (j) The pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimized to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- (k) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.
- (l) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8metres away from any building or boundary.
- (m) Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- (n) The two lots shall be amalgamated into one lot prior to the issue of a building licence.
- (o) The privacy screen along the north face of the terrace shall be a minimum height of 1650mm above the finished floor level.

2. ADVISE the submitters of this decision.

AMENDMENT

Moved Cr Walsh, seconded Cr Woodhill

That a condition be added requiring that the design be modified so that the wall and roof heights comply with the provisions of Town Planning Scheme No. 2 and the Residential Design Codes (ie the 7m standard for a concealed roof) as applicable, to be shown in the building licence plans to the satisfaction of the Manager Development Services.

Carried 3/2

Cr Dawkins requested that the dissenting voters be recorded, being herself and Cr Birbrauer.

COMMITTEE RECOMMENDATION**That Council:**

1. **GRANT its Approval to Commence Development for the proposed Two-Storey Residence with Undercroft and Swimming Pool on Lots 4 & 5 (Nos. 238 & 240) Marine Parade, Cottesloe, in accordance with the revised plans submitted on 8 May 2009, subject to the following conditions:**
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 - (c) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve, rights-of-way or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings submitted for a building licence.**
 - (d) **The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
 - (e) **Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined specified in the Environment Protection (Noise) Regulations 1997.**
 - (f) **Details of all site boundary wall design, construction, materials finishes and colours shall be included in the building licence plans and documentation, to the satisfaction of the Manager Development Services.**
 - (g) **The fencing in the front setback area shall be of "open-aspect" design in accordance with Council's Fencing Local Law, and this shall be shown in revised plans submitted for a building licence, to the satisfaction of the Manager Development Services. Alternatively, the fencing in the front setback area may be the subject of a separate application for planning approval.**

- (h) The existing redundant crossover in Marine Parade to be removed, and the verge, kerb and all surfaces made good at the applicant's expense, to the satisfaction of the Manager Engineering Services.
- (i) The applicant complying with the Town of Cottesloe – Policies and Procedures for Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.
- (j) The pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimized to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- (k) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.
- (l) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8metres away from any building or boundary.
- (m) Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- (n) The two lots shall be amalgamated into one lot prior to the issue of a building licence.
- (o) The privacy screen along the north face of the terrace shall be a minimum height of 1650mm above the finished floor level.
- (p) The design shall be modified so that the wall and roof heights comply with the provisions of Town Planning Scheme No. 2 and the Residential Design Codes (ie the 7m standard for a concealed roof) as applicable, with the details to be shown in the building licence plans to the satisfaction of the Manager Development Services.

2. ADVISE the submitters of this decision.

The Substantive Motion was put:

Carried 5/0

11 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING

Nil

13 MEETING CLOSURE

The Presiding Member announced the closure of the meeting at 8:00 PM.

CONFIRMED: PRESIDING MEMBER _____ *DATE: .../.../...*