

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**SPECIAL MEETING OF COUNCIL
HELD IN THE
COUNCIL CHAMBER, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, MONDAY, 01 AUGUST, 2005**

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.02pm.

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

Elected Members

Mayor Kevin Morgan
Cr Daniel Cunningham
Cr Arthur Furlong
Cr Peter Jeanes
Cr Bryan Miller
Cr Ian Woodhill
Cr Patricia Carmichael
Cr Jo Dawkins
Cr Jack Walsh
Cr John Utting

Officers

| | |
|--------------------|------------------------------|
| Mr Stephen Tindale | Chief Executive Officer |
| Mr Andrew Jackson | Manager Development Services |

Apologies

Cr Victor Strzina

3 PUBLIC QUESTION TIME

Nil

4 REPORT OF OFFICER

4.1 SCHEME REVIEW – REPORT FOR DISCUSSION ON NOTICE FROM MINISTER

File No: Review of TPS2
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 28 July 2005
Senior Officer: Mr Stephen Tindale

INTRODUCTION

- This report deals with the recent letter to Council from the Minister for Planning and Infrastructure requiring the Scheme Review to be submitted for consent to advertise by (Saturday) 17 December this year.
- The letter and a press item were circulated to Council on Friday 22 July 2005.
- This report covers:
 - Letter from Minister.
 - Legal advice on the letter.
 - Update on Government's coastal planning initiatives.
 - Advice on Minister's suggestion of community consultation exercise.
 - Options for Council's response.
 - Indicative timetable and processes to progress the Scheme Review.
 - Officer comment on these items.
- As the special meeting relates to legal advice and sensitive matters, it is considered that the agenda should be treated as confidential and the meeting should be held *in camera*.

ATTACHMENTS

- Letter from Minister.
- Newspaper articles.
- Legal advice.

LETTER FROM MINISTER

The Minister has:

- Referred to coastal pressures, land use variety (recreational and entertainment), catering for the broader community, under-performance of the (central) foreshore and benefit of appropriately-scaled development as reasons to expedite the Scheme Review.
- Summarised certain past steps in the administration of the Scheme Review and served official notice on the Town to expedite the process.
- Suggested a joint community consultation forum later this year to explore attitudes to building heights for the foreshore, to inform the Scheme Review.
- Requested a meeting with Council in mid-August to progress planning of the forum.

Officer Comment:

- *As the Scheme Review is about much more than the beachfront, Council would wish to be satisfied that all the other aspects are also adequately dealt with.*
- *There are a number of ways that beachfront issues could be tackled, both in relation to the Scheme Review and apart from it – see section on coastal initiatives below.*
- *In recent times considerable community consultation and study has been put into planning for the beachfront, so another exercise could be considered unnecessary or excessive.*

LEGAL ADVICE

The legal advice:

- Summarises relevant steps in the Scheme Review so far.
- Verifies the notice from the Minister.
- Outlines the powers of the Minister to cause a scheme review and to include provisions in a new scheme.
- Identifies that it could be argued that the Minister's notice is too late.
- Recommends that Council decide if it wishes to seek more time on that basis.

Officer Comment:

- *The Minister has substantial powers to influence the progress and content of a scheme review.*
 - *Yet it is understood that the power to hurry-up or have-made a scheme has rarely, if ever, been used, and it is noted that many councils take a long time to prepare schemes.*
 - *The time taken in scheme reviews is due to, among other things, the increasing complexity of planning, the requirements of the Model Scheme Text, Town Planning Regulations and Western Australian Planning Commission (WAPC) Policies, the studies and documentation involved, the requirements of other State Government agencies to be taken into account, and the emphasis on community consultation.*
 - *It is not uncommon for the progress of a scheme and the content to become contentious between a council and the WAPC or Minister, in terms of the positions taken over local versus regional aspects, particular provisions, handling of public submissions and so on.*
 - *To avoid the Minister's powers being invoked, a council, in order to maintain control of a scheme review on behalf of the community, should ideally adopt a cooperative / collaborative approach rather than a combative approach.*
 - *Nonetheless, for the Town's Scheme Review it is considered appropriate to heed the legal advice and point out to the Minister the timing situation of the notice, with the objective of reaching agreement on more time for this phase of the Scheme Review to be properly addressed.*
 - *Note that in addition to the beachfront, the Minister is likely to be concerned to have a say about key zonings, residential densities, heritage provisions and perhaps parking provisions in the new scheme, in any case, while the Town Centre is another area of potential State Government interest.*
 - *Hence it would be wise of Council to establish a dialogue with the Minister to ensure reasonable processes, timeframes and outcomes for the Scheme Review, not only for this phase, but also for the complete process to final approval.*
-

COASTAL PLANNING INITIATIVES

- For the previous meeting with the Minister in June, Council was provided with briefing notes on the beachfront and OBH site height controls, which should be referred to for background information.
- The WAPC is preparing a *Perth Coastal Planning Strategy*, which is anticipated to include a section on built form, height limits, etc.
- It is advised that the WAPC is planning a major community and local government consultation exercise on the Strategy around October-November this year.
- It is understood that the WAPC is also considering how planning measures and development controls for built form, height limits, etc may be implemented through amendment to its existing *Statement of Planning Policy No. 2.6: State Coastal Policy*,
- Note that this initiative may be expected to include local government and public consultation, although apparently that is not a given, whereby controls could be introduced directly.
- It is further possible that the Minister or WAPC could consider other statutory or policy means to manage coastal matters and beachfront development, such as the Metropolitan Region Scheme provisions and approval processes, which has been applied to the Ocean Beach Hotel site.
- The Federal Government has just announced its interest to become more involved in coastal matters, although no detail has been articulated and this will probably be strongly opposed by state and local governments.
- Apparently the Minister is meeting with the WAPC in early August to discuss the above items, which is shortly before when the Minister is seeking a meeting with Council; that is, the Minister may have a firmed position as a result.

Officer Comment:

- *With all the work on coastal and beachfront issues in recent times by the various parties, a wealth of information exists with which to deliberate on matters such as activity nodes, land use, built form, height limits and so on.*
- *From Council's side alone, this includes the Scheme Review to date, Council-adopted Beachfront Development Objectives, Precinct Forums, current Site Investigations and Design Guidelines Study, current Parking Strategy study, Cottesloe Beach Hotel and Ocean Beach Hotel redevelopment and scheme amendment proposals, the associated studies/survey by the proponent, and the extensive community petitions.*
- *Other councils have taken a similar pro-active approach, often leading the way, working with the community and paying attention to a degree of local planning detail that the State planning agencies do not necessarily appreciate or address.*
- *The problem now is that, as in the 1980s, a number of property owners and developers are seeking to capitalise on medium to high-rise projects as isolated proposals, without cognisance of the setting, surrounds, impacts or even the local planning controls.*
- *At the previous meeting with Council, the Minister expressed the need for a planning framework for decision-making for beachfront areas and development in order to resolve impasses and guide good outcomes.*
- *With respect to the Minister, it could be seen that any lack is not so much at the local government level than at the state government level, where coming to terms*

with height and other controls has been drawn out and indecisive, although the current WAPC initiatives are aimed at finally addressing this.

COMMUNITY CONSULTATION

- Council is committed to community consultation in the Scheme Review and envisaged another round of consultation, on the consolidated draft scheme, before considering modifications and adopting it for submission for consent to advertise.
- The Minister and Government share this philosophy of extensive community consultation.
- Such consultation can help to educate, achieve consensus and inform, often generating better and more accepted outcomes.

Officer Comment:

- *With scheme reviews, the trend is for councils to undertake a great deal of up-front, informal community consultation in preparing the draft for the formal advertising period of three months (minimum).*
- *While this has a number of advantages, it prolongs the process, which does not fit within the statutory timelines, and can create unrealistic expectations in the community, as well as complicate council's decision-making capacity.*
- *There is an argument to rely on the statutory advertising period, during which a council is able to supplement the basic advertising requirements with as many consultation methods and forums as it sees fit.*
- *With the Town's Scheme Review, in terms of timelines, the combination of a deliberative forum for the beachfront and the overall consultation for the draft scheme, as well delivering a draft scheme to the WAPC, would be difficult to achieve sensibly and meaningfully this year.*

INDICATIVE TIMETABLE

- Were Council to aim for the timeline required by the Minister, an indicative timetable would be as follows:

| Month | Main Steps | Tentative Dates | Study Topics |
|--------------|--|--|--|
| Aug | <ul style="list-style-type: none"> • Meet with Minister. • Commence DSC & Council special meetings on scheme studies and draft scheme content. | Thurs 11 th onwards. <i>See table below.</i> | Depot site Precincts Forums Parking Strategy Heritage Review Other? |
| Sept | <ul style="list-style-type: none"> • Continue DSC & Council special meetings on scheme studies and draft scheme content. | <i>See table below.</i> | Site Investigations & Design Guidelines OBH site Hotel Zone Foreshore Centre Zone residential density Town Centre Study Other? |
| Oct | <ul style="list-style-type: none"> • Council's one-month | Sat 1 st – Mon 31 st | |

| | | | |
|------------|--|---|--|
| | informal community consultation on overall draft scheme. ❖ Includes possible deliberative forum on height. | <i>Saturday 8th, 15th or 22nd</i> | |
| Nov | • DSC & Council consider community comment and modify / finalise draft. | 21 st & 28 th , = scheduled ordinary meetings. | |
| Dec | • Council formally adopts final draft. • Compile final draft documentation. • Submit draft scheme for advertising consent. | 12 th , = scheduled ordinary meeting. Friday 16 th | |

MEETINGS SCHEDULE:

| Month | DSC | Works | Council | Strategic | TPS Specials – available days |
|--------------|------------|--------------|----------------|------------------|---|
| Aug | 15 | 16 | 22 | 29 | M1-Th5, M8-Th12, W17-Th19, Tu23-Th26, Tu30-Th2 (= 16 days) |
| Sept | 19 | 20 | 27(Tue) | - | M5-Th9, M12-Th16, W21-Th23, W28-Th30 (= 12 days) |
| Oct | 17 | 18 | 24 | 31 | M3-Th7, M10-Th14, W19-Th21, Tu25-Th28, Tu1-Th4 (= 16 days) |
| Nov | 21 | 22 | 28 | - | M7-Th11, M14-Th18, W23-Th25, Tu29-Th2 (= 13 days) |
| Dec | 5 | 6 | 12 | - | W7-Th10, Tu13-Th16 (= 5 days) |

CONCLUSION

- Council's commitments to current studies (and the associated consultancy arrangements), as well as to further informal community consultation prior to consolidating a draft scheme for adoption and submission for advertising consent – and Council's past resolutions in this regard – is sound reasoning to seek or negotiate an extension of time for completion of the draft scheme.
- An option would be to simply "crash-through" the Scheme Review for the draft, by Council making decisions on all of the issues and proposals, with no more community consultation at this stage, then "crunching-out" the documents and submitting them to the WAPC.

- The risk here is that the product may be wanting, the responsibility of sorting it all out would transfer to the Department for Planning and Infrastructure, and the WAPC and Minister may assume control over the Scheme Review.
- Note, however, that the formal advertising period would provide for the community and Council to scrutinise the proposed Scheme and make submissions and representations to have it modified.
- Another option would be to allow the draft scheme to proceed to advertising, subject to any unresolved key issues being further addressed through additional actions as part of the advertising period, then considered by Council and in turn the WAPC and Minister in finalising the Scheme.
- This approach was taken with the City of Melville's previous scheme review, when an impasse between the then Minister and the Council occurred regarding some 16 items, but it was agreed that advertising should proceed and those items be afforded further consideration/justification.
- While there would seem to be little to be gained from being publicly in conflict with the Minister on a path forward, it is considered that Council should assert a preference for more time and the importance of getting the Scheme Review right.
- Entering into a deliberative forum would help to settle the height issue, taking into account both the local and regional perspectives, and keep Council's hand in this – the alternative being that control could be taken off Council or provisions could be forced in the Scheme against Council's will.
- Meeting with the Minister to discuss these issues and options would be prudent, as an opportunity for Council to elaborate on its positions regarding the beachfront and the Scheme Review, and to reach agreement on a program of action.

Options for more time:

| | |
|----------|--|
| 1 | <u>12 months from date of fresh notice</u> for new scheme review, to <i>end August 2006</i> , if Minister acts accordingly following letter from and meeting with Council. |
| 2 | <u>An additional 6 months to the current notice</u> from the Minister, which has a similar effect as above, to <i>end June 2006</i> . |
| 3 | <u>A compromise splitting of the difference</u> between the current notice and option 2, for an additional 3 months, to <i>end March 2006</i> . <i>(Note: summer holidays and Council's January recess would affect this.)</i> |

- Based on the above analysis the following provisional recommendation has been devised.
- Council will no doubt wish to discuss this whole matter and may wish to frame an alternative resolution.

PROVISIONAL RECOMMENDATION

That Council:

- (1) Agree to meet with the Minister in mid-August, to further discuss the beachfront planning issues as well as the Scheme Review situation.

- (2) Write to the Minister accordingly and advising that:
- (a) Council has received legal advice suggesting that the notice to expedite the Scheme Review may be ineffective.
 - (b) A deliberative forum for the beachfront would seem excessive, given all the work done and being done on this subject matter by both Council and the State Government.
 - (c) Town planning schemes are vital instruments for detailed local area planning, that should be properly constructed and involve appropriate community consultation.
 - (d) Given Council's range of completed and current studies towards the Scheme Review, including the Beachfront Development Objectives, Site Investigations and Design Guidelines, Hotel Zone review, Parking Strategy, Precinct Community Forums, and the Town Centre Study, Council requires more time to properly consolidate the draft scheme ready for consent to advertise, and a period to *[INSERT]* is requested for this purpose.

OFFICER RECOMMENDATION

After discussion with the Mayor prior to the meeting, the following alternative officer recommendation was drafted and presented for Council's consideration.

That Council:

- (1) Agree to meet with the Minister in mid-August, to further discuss the beachfront planning issues as well as the Scheme Review situation.
- (2) Write to the Minister accordingly and advising that:
 - (a) Council has received legal advice suggesting that the notice to expedite the Scheme Review may be ineffective.
 - (b) Council would be willing to conduct a deliberative forum, in conjunction with the Department for Planning and Infrastructure, that examines the planning issues facing the Cottesloe beachfront, towards addressing those issues in proposed Town Planning Scheme No. 3.
 - (c) Town planning schemes are vital instruments for detailed local area planning, that should be properly constructed and involve appropriate community consultation.
 - (d) Given Council's range of completed and current studies towards the Scheme Review, including the Beachfront Development Objectives, Site Investigations and Design Guidelines, Hotel Zone review, Parking Strategy, Precinct Community Forums, and the Town Centre Study, Council requires more time to properly consolidate the draft scheme

ready for consent to advertise, and a period to *[INSERT]* is requested for this purpose.

- (3) Should Council decide to abide by the timeline set by the Minister for Planning and Infrastructure to submit proposed Town Planning Scheme No. 3 by 17 December 2005 for consent to advertise, request the Administration to, as a priority, report back to Council on the budget, resource, meeting and other requirements necessary to achieve that target.
- (4) Agree to the need for a series of special meetings to achieve the above timeline, and agree that these be special meetings of full Council to consider the proposed Scheme, that is, to not require both Development Services Committee and Council special meetings.

4.1 COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Furlong

That the meeting be closed to the public while legal advice on the matter is considered.

Carried 10/0

The only member of the public in attendance, Mr Gareth Parker, left the meeting at 7.05pm while legal advice on the matter was considered.

4.2 COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Woodhill

That the meeting be opened to the public.

Carried 10/0

Mr Gareth Parker returned to the meeting at 7.23pm.

4.3 AMENDMENT

Moved Mayor Morgan, seconded Cr Utting

That part 2 (b) of the Officer Recommendation be amended to read:

Council will, subject to having sufficient time to do so, conduct a local community deliberative forum with advice from the Department for Planning and Infrastructure, that examines the planning issues facing the Cottesloe beachfront, towards addressing those issues in proposed Town Planning Scheme No. 3.

Carried 10/0

4.4 AMENDMENT

Moved Mayor Morgan, seconded Cr Furlong

That part 3 of the Officer Recommendation be amended to read:

Should Council have to abide by the timeline set by the Minister for Planning and Infrastructure to submit proposed Town Planning Scheme No. 3 by 17 December 2005 for consent to advertise, request the Administration to report back to the August 2005 meeting of Council on the budget, resource, meeting and other requirements necessary to achieve that target.

Carried 10/0

4.5 AMENDMENT

Moved Mayor Morgan, seconded Cr Dawkins

That part 4 of the Officer Recommendation be amended to read:

Agree to the need for a series of special meetings to achieve the above timeline, and agree that these be special meetings of full Council to consider the proposed Scheme.

Carried 10/0

4.6 AMENDMENT

Moved Cr Jeanes, seconded Mayor Morgan

That part (2) (a) of the Officer Recommendation be amended to read:

Council has received legal advice suggesting that the notice to expedite the Scheme Review may be ineffective at law.

Carried 10/0

4.7 AMENDMENT

Moved Cr Jeanes, seconded Mayor Morgan

That part 2(d) of the Officer Recommendation be amended to read:

Given Council's range of completed and current studies towards the Scheme Review, including the Beachfront Development Objectives, Site Investigations and Design Guidelines, Hotel Zone review, Parking Strategy, Precinct Community Forums, the proposed Local Deliberative Community Forum and the Town Centre Study, Council requires more time to properly consolidate the draft scheme ready for consent to advertise, and a period to the end of March 2006 is requested for this purpose.

Carried 10/0

4.8 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

- (1) Agree to meet with the Minister in mid-August, to further discuss the beachfront planning issues as well as the Scheme Review situation.**

- (2) Write to the Minister accordingly and advising that:
- (a) Council has received legal advice suggesting that the notice to expedite the Scheme Review may be ineffective at law.
 - (b) Council will, subject to having sufficient time to do so, conduct a local community deliberative forum with advice from the Department for Planning and Infrastructure, that examines the planning issues facing the Cottesloe beachfront, towards addressing those issues in proposed Town Planning Scheme No. 3.
 - (c) Town planning schemes are vital instruments for detailed local area planning, that should be properly constructed and involve appropriate community consultation.
 - (d) Given Council's range of completed and current studies towards the Scheme Review, including the Beachfront Development Objectives, Site Investigations and Design Guidelines, Hotel Zone review, Parking Strategy, Precinct Community Forums, the proposed Local Deliberative Community Forum and the Town Centre Study, Council requires more time to properly consolidate the draft scheme ready for consent to advertise, and a period to the end of March 2006 is requested for this purpose.
- (3) Should Council have to abide by the timeline set by the Minister for Planning and Infrastructure to submit proposed Town Planning Scheme No. 3 by 17 December 2005 for consent to advertise, request the Administration to report back to the August 2005 meeting of Council on the budget, resource, meeting and other requirements necessary to achieve that target.
- (4) Agree to the need for a series of special meetings to achieve the above timeline, and agree that these be special meetings of full Council to consider the proposed Scheme.

Carried 10/0

5 MEETING CLOSURE

The Mayor announced the closure of the meeting at 8.27pm.

CONFIRMED: MAYOR DATE:/...../.....
