

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE

MINUTES

**MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 21 JULY 2008**

DEVELOPMENT SERVICES COMMITTEE

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DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Officer announced the meeting opened at 6.05pm.

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

Present

Cr Jack Walsh
Cr Jay Birnbrauer
Cr Greg Boland
Cr Jo Dawkins
Cr Victor Strzina
Cr Ian Woodhill

Mr Andrew Jackson	Manager Planning & Development Services
Mr Ed Drewett	Senior Planning Officer
Ms Georgina Cooper	Planning Services Secretary

Apologies

Nil

Leave of Absence (previously approved)

Nil

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

PUBLIC QUESTION TIME

Nil.

APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Strzina, seconded Cr Dawkins

The Minutes of the Ordinary Meeting of the Development Services Committee held on Monday, 16 June 2008 be confirmed.

Carried 6/0

ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil.

PUBLIC STATEMENT TIME

Item 1.1 – Mrs Clarke – 67 Napier Street, Cottesloe

Mrs Clarke raised concerns about the overshadowing the additions may have on her property. She advised that the roller shutters installed around the property are there for security reasons due to an ongoing problem with noise and unruly behaviour from patrons leaving the hotels.

PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil.

REPORTS OF COMMITTEES AND OFFICERS**1 PLANNING****1.1 NO. 69 (LOT 13) NAPIER STREET – ADDITIONS TO AN EXISTING DWELLING LISTED ON THE TOWN'S MUNICIPAL HERITAGE INVENTORY (CATEGORY 2)**

File No:	1477
Author:	Ed Drewett
Author Disclosure of Interest:	Nil
Attachments:	Location plan Photos Plans
Report Date:	15 July 2008
Senior Officer:	Mr Andrew Jackson
Property Owner:	Mr and Mrs B Girdwood
Applicant:	Mr C Henly (Co-Praxis Architects)
Date of Application:	5 June 2008 (Amended 15 July 2008)
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	809m²
M.R.S. Reservation:	N/A

SUMMARY

This application has been assessed specifically in the context of the property's heritage significance in addition to the relevant provisions of Town planning Scheme No. 2 and the Residential Design Codes.

The current plans have evolved following detailed discussions between the applicant, the Town's staff and on advice from the Town's Heritage Advisor, to ensure that the design and extent of works are appropriate for a property of local heritage significance and which addresses all development requirements.

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

PROPOSAL

To consider a two-storey contemporary addition to an existing single-storey house listed on the Town's Municipal Inventory (Category 2), with a small gazebo in the rear garden.

A double carport is proposed to be demolished and replaced with a double garage, store and foyer at ground level, with two bedrooms, a balcony, library/retreat and ensuite above. A sloped angled 'box' structure is also proposed at the rear of the new

addition to act as a skylight, together with an open-aspect fence and gate along the front boundary.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

Proposed heritage incentives policy under draft LPS3.

HERITAGE LISTING

- | | |
|--------------------------------------|------------|
| • State Register of Heritage Places | N/A |
| • TPS No. 2 | N/A |
| • Town Planning Scheme Policy No .12 | N/A |
| • Municipal Inventory | Category 2 |
| • National Trust | N/A |

STRATEGIC IMPLICATIONS

Heritage is recognised as a cornerstone of the character and amenity of Cottesloe which Council aims to foster through the planning process and related measures.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

Internal

- Building – has no concern.
- Engineering – recommends standard conditions.

External

N/A.

Advertising

The application was advertised in accordance with TP2, which consisted of six letters to adjoining property owners. One submission was received.

Mrs MP & AM Clark, 67 Napier Street

- *The proposal will impact on the northern side of our home where there are two adult-occupied bedrooms, one of which is for a senior citizen who receives great enjoyment from the morning sun shining into her room.*
- *At the time our building plans were submitted we were not allowed to build any closer than 7.5m although our original plans were for a 5m frontage. As we were required to amend our design in-keeping with Council's requirements, we consider that all Cottesloe residents should be treated equally.*
- *The proposed 5m frontage next door will impact 2.5m onto the light that currently falls on the northern side of our home.*

- *We removed trees from this side of our property because it was blocking the light into our front rooms and also lowered the front vegetation to allow maximum sunshine on that face of our home.*
- *During construction of the common boundary brick fence in co-operation with the then owners of the next door property, the height of the fence was set at 9m to the rear of the block in consideration of the neighbours wanting to build a two-storey addition that would not have impacted on our northern side.*
- *We wish Council to reconsider the proposed boundary setbacks.*

Comment on submission

As assessed below, while the neighbours' comments can be appreciated, the proposal actually complies with the RDC in terms of permitted overshadowing, which means that shadow cast can't be relied upon as a basis to not support the proposal or to alter the design. Also, it is observed that the neighbours' dwelling is characterised by eaves, an awning structure to the side and roller shutters to the front, all of which shade their dwelling in any case.

The consideration of setbacks is set out below and again, while the neighbours' comments are acknowledged, the historical 7.5m setback no longer applies and the proposal is assessed as performing acceptably in relation to the existing dwelling and streetscape.

Municipal Heritage Inventory

This property is classified in the MHI as Category 2, which is defined as:

High level of protection appropriate: provide maximum encouragement to the owner under the Town Planning Scheme to conserve the significance of the place. Photographically record the place prior to any major redevelopment or demolition.

The MHI description of the place is:

An early cottage which contributes to the streetscape. Old well on property.

DRAFT LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning of this lot, while the proposed LPS3 continues and strengthens Council's heritage approach.

APPLICANT'S JUSTIFICATION

The applicant has provided a letter in support of the application and the main points are summarised below:

- *The proposal takes into account the existing streetscape so as to maintain the amenity of the area;*
- *The proposed extension will improve the current building and make it more suitable for modern family living. In this way we foresee we have increased the longevity of the current streetscape.*

- *The variations are negligible and mainly due to non-compliance of the existing building. Where at all possible new work exceeds the standards required today.*
- *The extension will have minimal impact on both the streetscape and adjacent blocks and will contribute positively to the ongoing renewal of the area.*

ASSESSMENT

Following an initial assessment the applicant was requested to submit revised plans to address heritage considerations and the requirements of the Residential Design Codes more fully, and agreed to this.

Orientation

The existing dwelling is located on a desirable north-south orientated lot between Bird Street and Curtin Avenue. Single-storey houses abut the lot, although a two-storey development has recently been built opposite.

Setbacks

The side and rear setbacks are in accordance with the Residential Design Codes.

The length of the proposed 2-storey addition along the western elevation has been reduced to 9m requiring only a 1.1m setback from the western boundary under the RD Codes, whereas a 1.372m setback is proposed on the ground floor and a 1.1m to 1.372m curved setback is proposed on the upper floor. The relatively low height of the proposed addition together with the proposed setbacks will reduce any significant impact on the adjoining property.

Furthermore, the eastern elevation of the adjoining property has only one bedroom window facing the boundary as the other windows are pertaining to two bathrooms and a WC and all these windows are currently shaded by a permanent awning structure to the dwelling on that lot.

The applicant is seeking a variation to Council's requirement for a 6m front setback (Council Resolution 28/10/02), as a 5.35m setback is proposed to the new double garage (wings), and setbacks of 5.03m and 5.25m are proposed to the upper-floor bedroom 2 and balcony respectively.

However, the existing dwelling has a minimum front setback of 4.73m and this portion of the building will therefore sit proud of the proposed addition projecting 0.625m in front of the proposed garage and 0.305m in front of the upper-floor bedroom.

In this respect it is observed that a number of other older properties in the vicinity also have reduced front setbacks and Napier Street itself has a particularly wide verge, which further reduces the visual impact of the proposed addition on the existing streetscape.

In this overall context the proposed setbacks are assessed as acceptable.

Heritage Considerations

The proposed addition, whilst modern in design, does not affect the structural integrity of the existing dwelling and generally meets Council's heritage objectives to conserve and preserve buildings of historic interest.

The Town's Heritage Advisor has commented that the bulk and mass of the addition has been suitably reduced from the initial plans, hence is now more sympathetic to the original cottage while presenting a contemporary face to the street.

The Architects have been responsive to making these heritage improvements without unduly compromising the design objectives and a balanced result has been achieved by this liaison.

Height

The proposed addition complies with the height requirements of TPS2.

The average natural ground level for the lot has been determined at RL 100.35 (based on the average of four corners method of calculation due to the proximity of the existing dwelling at the centre of the lot).

The maximum permitted height for the proposed flat roof is RL: 107.35, whereas the proposed flat roof portion of the addition has a maximum RL of 106.14 (1.21m below that permitted).

Furthermore, the proposed skylight structure which projects above the flat roof has an RL of 107.05 which is well below the maximum RL of 108.35 permitted to the top of a pitched roof.

The impact of the proposed addition on the adjoining property to the west is also reduced due to the difference in existing ground levels between the two properties.

The height of the two-storey wall at the centre of the proposed western elevation will be only 4.967m above the neighbour's existing ground level at this point.

Fencing

A relatively low and open-aspect fence and gate is proposed along the front boundary of the lot which complies with Council's Fencing Local Law. The side portions of the existing fence remain unchanged.

Residential Design Codes requirements

The proposed additions comply in all other aspects with the Residential Design Codes.

In particular, it should be noted that although the adjoining owner has expressed concern regarding possible loss of light to north-facing bedroom windows on their lot, an overshadowing diagram submitted by the applicant demonstrates that the

proposal is fully compliant with the RD Codes and that the proposed addition will not restrict the northern light.

CONCLUSION

Various additions to the existing dwelling, including a modest-sized rear extension and double carport have previously been approved and constructed on this lot and so the existing dwelling does not remain entirely intact.

The proposed additions are supported by the Town's Heritage Advisor and the less than 6m front setback is considered to have a negligible impact on the streetscape or the integrity of the existing dwelling and can be supported in the circumstances.

Overall, the proposal is well-designed and predominantly complies, especially in terms of height.

The process of liaison with the Heritage Advisor has succeeded in an enhanced outcome and design which would otherwise be readily supportable. Only standard conditions of approval are required.

VOTING

Simple Majority

COMMITTEE COMMENT

Cr Greg Boland declared a proximity interest in Item 1.1 due to residing directly across the road and left the meeting at 6.22pm.

Committee supported the retention of the heritage house and the contemporary additions in the context of the streetscape. Committee also noted that the shadow situation complied with the RDC as acceptable and due to this as well as the northern orientation there was not a basis for concern.

There was some discussion regarding the front setback of the additions which overall was supported given that it was greater than the existing residence, had already been increased and would not directly affect the neighbour or streetscape.

There was also some discussion regarding the balcony and bin store which Committee was content to be referred to in an advice note for more detailed design. This is because the balcony is only a small amenity balcony to a private bedroom and faces to the front yard/street, and the bin store is intentionally integrated into the complying front fencing design.

1.1 OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Strzina, seconded Cr Dawkins

That Council GRANT its Approval to Commence Development for the proposed additions at No. 69 (Lot 13) Napier Street, Cottesloe, in accordance with the plans submitted on 18 July 2008, 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) Stormwater runoff from the driveway or any other paved portion of the site shall not be discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings 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 applicant applying to the Town of Cottesloe for approval from the Manager Engineering Services to modify the existing crossover or to construct any new crossover in accordance with the relevant local law.
- (e) The applicant complying with the Town of Cottesloe Policies and procedures for Street Trees (February 2005) where the development requires the protection or pruning of existing street trees.

Advice Note:

At Building Licence stage the architect is requested to provide adequate details to the satisfaction of the Manager Development Services regarding the design of the bin store area and any screening treatment to the balcony,

Carried 4/1

Cr Boland returned to the meeting at 6.35pm.

1.2 SEXUAL SERVICES ACT – CONSIDERATION OF PLANNING CONTROLS

File No: Sub/683
Author: Ms Delia Neglie / Mr Andrew Jackson
Author Disclosure of Interest: Nil
Attachments: WAPC draft Policy

Report Date: 2 July 2008
Senior Officer: Mr Andrew Jackson

SUMMARY

- The Prostitution Amendment Act 2008 was recently passed by State Parliament to update the existing Prostitution Act 2000 and create the Sexual Services Act. It is expected to be proclaimed later this year.
- The updated legislation will decriminalise the keeping of brothels, to be referred to as *sexual service businesses*. It will provide a structured system of control that was not previously possible, including certification of businesses, control over the health and welfare of prostitutes (*sex workers*), police powers and planning. The planning control of *sexual service businesses* is to be undertaken by local government through local planning schemes.
- The Act designates a *sexual service business* as a use not listed in a local planning scheme zoning table until the scheme is amended to include appropriate provisions. Scheme amendments are intended under the guidance of State Government policy. In this regard the Western Australian Planning Commission (WAPC) has prepared a draft policy which is currently being advertised for local government and stakeholder comment.
- Council's Town Planning Scheme No. 2 (TPS2) and draft Local Planning Scheme No. 3 (LPS3) do not at present specifically address *sexual service businesses*. Until the Schemes are amended, there is discretion to allow such uses if consistent with zone objectives.
- It is appropriate that Council considers its position on the matter before the legislation and WAPC policy become effective.

STATUTORY ENVIRONMENT

- The Prostitution Amendment Act 2008 (No. 13 of 2008) was assented to on 14 April 2008. This Amendment Act updates and renames the original legislation (Prostitution Act 2000) as the *Sexual Service Act 2008* (and updates other Acts as a result, eg the Liquor Control Act). While the Act has been passed, it will not come into operation until it is proclaimed, at a date yet to be determined but anticipated in late 2008.
- The amended Act requires the location of brothels to be regulated by local Council's through the planning system. TPS2 and LPS3 may be amended to address the matter.

POLICY IMPLICATIONS

State Policy

- The WAPC has prepared a draft planning policy to guide councils in the administration of the Act and in amending local planning schemes.
- The Policy is open for comment by local government and stakeholders until 15 August 2008.
- It is intended that finalisation of the policy will coincide with proclamation of the Act.

Local Policy

- Council may wish to consider a local planning scheme policy in relation to the use classes *sexual service business*, *individual sex workers* and *small owner-operated businesses*, as an interim measure pending amendment of the scheme(s) and/or to supplement the scheme(s) if necessary.

STRATEGIC IMPLICATIONS

- None of the Town's strategic planning instruments deal directly with this matter.
- Incorporation into TPS2 or LPS3 may give rise to some strategic expression in the scheme or related local planning policy.

FINANCIAL IMPLICATIONS

- There are no particular financial implications for the Town stemming from the legislation or WAPC policy.

DISCUSSION

Prostitution Amendment Act

- The Prostitution Law Reform Working Group was established in 2006 to identify and report on the *broad principles upon which prostitution reform should be based* in WA. The Working Group's findings were published in January 2007 and recommended a *minimalist decriminalised model* based on the New Zealand Act. The key recommendations covered issues relating to:
 - Certification;
 - Planning;
 - Health Safety and Working Conditions;
 - Police Powers; and
 - Proposed Legislation.
- The Prostitution Amendment Act is based on the Working Group's recommendations. The Act seeks to regulate brothels (which involves earning from others).
- The term prostitution is removed from the legislation and replaced with *sex worker*. A brothel is referred to as a *sexual service business*, which requires certification by the Department of Racing Gaming and Liquor (DRGL). A *sexual service business* means *the business of providing, or arranging the provision of, a commercial sexual act*.

- The Act does not require certification for sexual service businesses comprising one or two independently-operating workers, referred to as an *individual sex worker* and a *small owner-operated business* respectively.
- Local Government schemes will be required to regulate the use and development of land for *sexual service businesses*, which will require planning approval. Section 21X and 21Y of the Bill relate specifically to planning matters.
- Section 21X enables well-run premises existing prior to September 2006 to receive planning approval from the CEO of the DRGL, to enable their continued operation. This would not apply to Cottesloe as there are no known existing premises within the district.
- Section 21Y(1) requires that until councils have amended their local schemes, they *must* consider development applications for *the purpose of a sexual service business* –
 - (a) *as if that purpose is a use that is not permitted unless the responsible authority has exercised its discretion by granting planning approval; and*
 - (b) *in exercising its discretion, also have regard to whether the business –*
 - (i) *is likely to cause a nuisance to ordinary members of the public using the area in which the land is situated; and*
 - (ii) *is incompatible with the existing character or use of the area in which the land is situated.*
- The purpose of sub-clause (b) is to ensure that councils base planning decisions on proper planning considerations rather than moral attitudes and ... *seek only to reasonably regulate rather than prohibit such businesses from operating* (Working Group report p22).
- Once a planning scheme has been amended to include *sexual service businesses*, the above provision will cease to have effect (as per Section 21Y (2)).
- Also, the operation of an individual sex worker or a small owner-operated business in a residence would in planning terms be subject to approval as a home occupation; which is currently the case, as prostitution itself is not illegal.

General Correspondence

- Council has received correspondence from Colin Barnett MLA for Cottesloe and various family-focused community groups urging not to accept the new legislation. The *Festival of Light Australia* suggests that local government authorities *work together to influence any proposed planning scheme to ensure that they retain maximum freedom* to refuse development applications. They have recently circulated to local governments their submission on the draft WAPC policy.

Approaches of Other Councils

- Various councils, including the Cities of Wanneroo, Nedlands and Subiaco, have resolved not to permit the uses in their local authority area.
- The City of Subiaco, for example, is proposing a scheme amendment to include *sexual service businesses* as a use class whereby it is not considered consistent with the objectives of any of the zones, which all include a residential component and it is therefore proposed to be not permitted throughout the City.
- The City of Melville scheme already addresses such businesses, which are able to be approved at Council's discretion in Industrial Precincts, but not permitted in other zones. The City proposes an amendment to the home occupation

provisions of its scheme to prevent individual sex workers or small businesses from operating as home occupations.

WAPC Draft Policy

- The draft Policy proposes that *sexual service businesses* will be:
 - prohibited in residential or similar zones, including mixed use areas, in respect of business required to be certified;
 - where such businesses are not required to be certified, Council will *determine the application*;
 - permitted in light, service or general industrial zones; and
 - discretionary in other zones and should be advertised for public comment prior to determination.
- Those premises not required to be certified are *individual sex workers* and *small owner-operated businesses*. In residential zones, these could operate as home occupations. The policy implies this, but does not elaborate with any policy provisions or guidance for Councils.
- The act defines an *individual sex worker* as *a person who solely owns and carries on a sexual service business* —
 - (a) *involving the provision of a commercial sexual act by that person only; and*
 - (b) *where that person has full control over his or her individual earnings from taking part in commercial sexual acts;*

Whereas a *small owner-operated business* means a *sexual service business* –

- (a) *in which not more than two sex workers work; and*
 - (b) *where each of those sex workers has full control over his or her individual earnings from taking part in commercial sexual acts.*
- The draft Policy also proposes that local government should have regard to a number of matters in assessing an application for planning approval for a *sexual service business*, including:
 - *proximity to sensitive uses ...e.g. schools, child care;*
 - *adequacy of parking for staff and clients;*
 - *adequacy of access and egress to and from the premises;*
 - *appropriate hours of operation compatible with the locality;*
 - *the provision of a waiting room or reception facilities to remove the need for clients to wait outside the premises;*
 - *the nature of signage proposed;*
 - *the degree to which the premises are well lit or lighting is provided to give security to staff and clients;*
 - *proximity to compatible uses, for example, with similar hours of operation, or noise or traffic impacts; and*
 - *privacy in relation to other uses overlooking the premises.*

TPS2 & LPS3

- TPS2 does not define *sexual service businesses* or any similar use. At present, any such business would be regarded as a *use not listed* in the same manner as required by the legislation, and subject to clause 3.3 of TPS2. This states that if a use *... is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the use classes, the Council may –*

- (a) *determine that the use is not consistent with the objectives and purpose of the particular zone and is, therefore, not permitted, or*
 - (b) *determine by absolute majority that the proposed use may be consistent with the objectives and purpose of the zone and thereafter follow the advertising procedures of Clauses 7.1.4 to 7.1.6 in considering an application for approval to commence development.*
- Council therefore has discretion to decide whether or where such an unlisted use may be permitted, and must advertise a development application before determining the proposal. A discretionary decision (i.e. refusal or approval with conditions) would be open to review (appeal).
- Proposed LPS3 follows the Model Scheme Text which at present also has no use corresponding to *sexual service businesses*. Uses not listed, or which *cannot reasonably be determined as falling within the type, class or genus of activity of any other use class*, would be subject to Clause 4.4.3, which states that Council may
 - (a) *determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*
 - (b) *determine that the use may be consistent with the objectives of the particular zone and thereafter follow the notice procedures of clause 9.4 in considering an application for planning approval; or*
 - (c) *determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.*
- Proposed LPS3 does include the standard use class *restricted premises*, which relates to sex shop-type premises rather than sexual services, and is defined as:
premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of —
 - (a) *publications that are classified as restricted under the Censorship Act 1996;*
 - (b) *materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity.*

STAFF COMMENT

WAPC Policy

- The Policy is open for comment by local government and stakeholders until 15 August 2008.
- There is no basic objection to the policy in terms of the relevant planning considerations necessary due to the legislation which has been passed. It is considered, however, that comment is warranted regarding a number of matters.
- While the policy indicates that sexual service businesses would not be permitted in residential and mixed use zones, it appears to ignore other zones in which residential uses may be allowed. For example, under TPS2, whilst the Business zone is neither a mixed use nor a residential zone, residential uses are possible at Council's discretion. Also, under LPS3 for example, the objectives of the Foreshore Centre zone includes reference to mixed uses but it is not necessarily a mixed use zone. It is unclear whether this would be considered a mixed use zone in the context of the Policy. If the policy was more specific in this regard,

perhaps referring to zones in which mixed use is the intention would remove any doubts.

- Another consideration is the permissibility of *individual sex workers* and *small owner-operated businesses* in residential zones. As mentioned above, the policy requires that for such proposals, Council *will determine the application*.
- This implies that they could be permitted as home occupations. The Working Group paper on which the legislation is based supports this. It states (page 19) that *it will always be difficult to regulate individual sex workers, particularly those working from private residences and not working with others as part of an established business. ...The Working Group notes that such premises would still be subject to council controls, such as requirements for approval to operate a business from home.*
- The policy does not, however, go on to provide guidance to councils on the possible means of regulating *individual sex workers* and *small owner-operated businesses* either as home occupations or otherwise.
- In addition, the Working Group paper indicated that the WAPC had committed to amending the Model Scheme Text (MST) to provide councils with further guidance in amending its local planning schemes. The Policy does not, however, make mention of the MST.
- It is considered that Council should make a submission to the WAPC regarding these matters.

Implications of Legislation and WAPC Policy for Schemes

- From a planning point of view the legislation would make it easier for Council to regulate a *sexual service business* should one locate in Cottesloe. At present it can be extremely complicated to initiate compliance action against an alleged brothel given its illegal status.
- Until Council's Scheme is amended, Council would be required to consider any application it received for a *sexual service business* as an unlisted use in accordance with the Act and the WAPC policy, as outlined above; i.e. exercise discretion.
- It is unclear whether Section 21Y (1) of the Act or the clause relating to unlisted uses in the Scheme would prevail. The difference is significant, as TPS2 and LPS3 allow Council to consider a use to be not permitted if it is not in accordance with zone objectives, whereas the Act provision is not so specific. A legal opinion on the matter would be useful when/if Council was to receive an application for planning approval.
- Relying on Section 21Y (1) for any length of time could leave Council open to appeals to the State Administrative Tribunal, although the WAPC policy would assist a council's position.
- Council therefore needs to consider whether to amend TPS2 and/or LPS3. The life of TPS2 is limited but the expected time before gazettal of LPS3 is not definite and some 12 months away. Unless Council would like to retain the flexibility of Section 21Y (1), it may be appropriate to initiate amendments to both Schemes given that Council's decisions would be open to appeal. An amendment to LPS3 may be effected as a modification when submitting it for final approval.

- Another factor to consider is whether to initiate the amendments to the Schemes prior to the finalisation of the WAPC Policy. Either way, it is likely that the WAPC would hold any amendments in abeyance until the Policy is gazetted. Pre-empting the Policy could, however, ensure that Council's amendment is one of the first "in-line" to be considered.
- Council may wish to address home occupations with regard to an *individual sex worker* or a *small owner-operated business*. Both TPS2 and LPS3 include provisions for home occupations within a definition. The two types of uncertified sexual service businesses may be able to be considered a home occupation by complying with certain provisions, such as no employees, no signage and restricted area. The one provision that may require attention is that requiring no increase in traffic.
- It needs to be considered whether Council wishes to exclude these uses from the definition of home occupations, as the City of Melville is proposing, or control them in some other way. Other means would include defining them separately and including them in the zoning table separately from the generic *sexual service business* definition.
- A consideration is that because certification is not required; such applications are unlikely to be received by Council. The value in regulating is for compliance purposes should an unauthorised home occupation cause nuisance.
- Any Scheme amendment could cover the following:
 - include *sexual services* as a defined use class in the zoning table;
 - may include appropriate provisions relating to any of those matters to which Council is required to have regard to by the Policy, such as operating hours and parking; and
 - may include definitions for *individual sex worker* and *small owner-operated business* and regulate these through the zoning table and/or through other provisions such as the home occupation provisions if considered necessary.
- Any amendment would need to be based on planning principles rather than on moral grounds, to be accepted by the WAPC.
- A number of zones under TPS2 are neither residential nor mixed use zones, including the Town Centre, Foreshore Centre and Hotel zones. Residential uses are, however, allowable with Council's discretion in each of these zones, except the Hotel zone. The draft WAPC policy indicates that in these zones, sexual service businesses would be at Council's discretion. As mention above in the discussion about the WAPC policy, this matter is unclear. On planning grounds, it may be possible to exclude sexual service businesses from all the TPS2 zones, except the Hotel zone, on the basis that they allow residential uses.

Overall Conclusions

- A submission to the WAPC regarding draft Planning Bulletin No. 90 is warranted given a number of shortcomings, including a need for more specific reference to the intent of zones, in order to remove any doubt as to which zone may be considered to be mixed use; guidance regarding uncertified uses and home occupations; and reference to the MST.
- Council ought to consider whether it wishes to amend TPS2 at this stage or whether to only modify LPS3 and rely on the Act in the meantime. Relying on the

Act will open Council decisions up for appeal. It should be kept in mind; however, that the WAPC may have a glut of such Scheme Amendments to deal with, whereby there may be a period after the Act is proclaimed during which an amendment would not have been finalised.

- The content of any amendment is indefinite without more guidance from the WAPC policy and given the above proposed submission on the draft Policy. There is a danger that an amendment granted final approval may be against the intent of the Policy. It was the intent of the Prostitution Reform Working Group that the WAPC would oversee the process to ensure that any amendments are based on planning grounds.
- Guidance from Council is requested regarding whether to prepare an amendment to TPS2 or whether to await the finalisation of the WAPC Policy.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the matter generally and considered that the exclusion of sexual services via the town planning scheme would be appropriate for the further report.

Hence Committee saw that the officer recommendation could be streamlined by and expanding point (2) and deleting point (3), subject to appropriate wording, which the Manager Development Services provided.

Moved Cr Strzina, seconded Cr Dawkins

- (1) **Authorise staff to make a submission on the WAPC draft Planning Bulletin No. 90 indicating support the proposed policy subject to it:**
- (2) **removing any doubt as to which zone may be considered a mixed- use zone, by reference to the intent of zones;**
- (3) **providing guidance regarding uncertified businesses in residential areas as home occupations or otherwise; and**
- (4) **including reference to amendment of the Model Scheme Text to reflect the legislation and policy.**
- (5) **Support a further report from staff regarding amendment options and details for Town Planning Scheme No. 2 or Local Planning Scheme No. 3, following finalisation of the WAPC Policy, with a view to excluding sexual services altogether (including home occupation type operations) and having regard to any relevant information form WALGA on the matter.**

OFFICER RECOMMENDATION

That Council:

- (6) Authorise staff to make a submission on the WAPC draft Planning Bulletin No. 90 indicating support the proposed policy subject to it:
- (7) removing any doubt as to which zone may be considered a mixed- use zone, by reference to the intent of zones;
- (8) providing guidance regarding uncertified businesses in residential areas as home occupations or otherwise; and
- (9) including reference to amendment of the Model Scheme Text to reflect the legislation and policy.
- (10) Support a further report from staff regarding amendment options and details for Town Planning Scheme No. 2 or Local Planning Scheme No. 3, following finalisation of the WAPC Policy.
- (11) Indicate to staff the extent and direction of planning control which Council considers appropriate to regulate the town planning dimension of sexual services in accordance with the legislation and WAPC policy.

1.2 COMMITTEE RECOMMENDATION

Moved Cr Strzina, seconded Cr Dawkins

That Council:

- (12) Authorise staff to make a submission on the WAPC draft Planning Bulletin No. 90 indicating support the proposed policy subject to it:
- (13) removing any doubt as to which zone may be considered a mixed- use zone, by reference to the intent of zones;
- (14) providing guidance regarding uncertified businesses in residential areas as home occupations or otherwise; and
- (15) including reference to amendment of the Model Scheme Text to reflect the legislation and policy.
- (16) Support a further report from staff regarding amendment options and details for Town Planning Scheme No. 2 or Local Planning Scheme No. 3, following finalisation of the WAPC Policy, with a view to excluding sexual services altogether (including home occupation type operations) and having regard to any relevant information from WALGA on the matter.

Carried 6/0

1.3 LPS3 ENQUIRY BY DESIGN – REPORT ON COST IMPLICATIONS TO COUNCIL

File No: Sub/719 & Sub/720
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 14 July 2008
Senior Officer: Mr Stephen Tindale

INTRODUCTION

- This report is to inform Council and gain any necessary direction regarding the cost implications of the intended Enquiry by Design (EbD) consultation exercise under proposed Local Planning Scheme No. 3 (LPS3).
- Pursuant to LPS3 Council is committed to undertaking, jointly with the Department for Planning and Infrastructure (DPI), an EbD to examine particular aspects of the beachfront and railway land areas in the context of their settings.
- The EbD is an important initiative to address the outstanding matters for resolution in LPS3 so that it can be finalised.

STATUTORY ENVIRONMENT

The EbD is pivotal to the successful finalisation of LPS3.

STRATEGIC IMPLICATIONS

The EbD is an important community consultation initiative about key issues facing the Town as identified in Council's Future Plan.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

As herein.

DISCUSSION

Funding Sources

- The EbD is being funded primarily by the DPI from the *Local Government Assistance Programme* which has set-aside an amount in the order of \$100,000.
 - This reflects the complex scope and resource-intensive nature of an EbD exercise, with heavy reliance on consultants, a great deal of prior preparation and all the associated organisational costs.
 - The Town has not budgeted specifically for the EbD but is contributing substantial staff time and administrative resources absorbed into operational budgets.
 - However, the Town is also assembling a team of support consultants to assist the EbD as part of its task.
 - In addition, the Town is considering commissioning visual material to feed into the process.
 - These inputs have significant cost implications for the Planning Department's budget or as may be supplemented by Council.
-

- Council may wish to set limits on expenditure or direct the re-allocation of funds should the current budget capacity be exceeded.

Current Budget

- The 2008-2009 Town Planning Budget provides for the following expenditure:

<i>Item</i>	<i>\$</i>
Contractors & Consultants	168,000
Scheme Review	50,000
<i>Total</i>	<i>218,000</i>

- An earlier budget estimate indicated that over time, the implementation of LPS3 and related matters in terms of studies, structure planning, concept plans, design guidelines and policies could easily cost another \$100,000 or more.
- Some of this was linked with the intended EbD, although not dedicated to that distinct activity.

Consultants & Costs

- The core urban design consultants and their co-consultants are to be funded from the DPI budget, which is anticipated to consume most of that amount.
- Some of the administrative costs and materials costs (eg mapping) may also be funded from this budget or within DPI operations.
- The additional support consultants and preparation costs contemplated by the Town include and could generate costs as follows:

<i>Input</i>	<i>Est. \$K</i>
Project Advisor	45
Town Planner/Urban Designer	15
Communications & Consultation	25
Specialist Consultants x 6	30
3D modelling	15
Venue, catering, consumables	5
<i>Total</i>	<i>135</i>

- This estimate is conservative and likely to be exceeded due to the typical drawn-out completion phase of EbD exercises and determination of the outcomes – ie \$150K would not be unrealistic, depending on the circumstances.
- On the other hand, some savings may be possible, but at the expense of a best-practice process and strong representation of Council's points of view on the various planning aspects to be examined.

Financial Implications

- Whilst LPS3 and the EbD are top priorities for Council, they demand most of the present planning activities budget.

- Depending on a range of variables this may impact on the ability to fund other desirable planning activities, project staff and consultants and hence curtail those endeavours.
- As the EbD deals with the beachfront/foreshore area as well as the railway land/Curtin Ave/Town Centre area. It will cover, at a preliminary level, a large proportion of the potential implementation costs forecast for LPS3.
- Also, as given the statutory timeline LPS3 is likely to receive final approval closer to the end of this financial year, the need ongoing expenditure on implementation (eg structure planning of other Development Zones) may not arise until the next financial year or longer.

Conclusion

- The EbD is a vital exercise to engage stakeholders, resolve outstanding planning matters and advance the creation of LPS3.
- An EbD is typically a costly exercise by way of funding, resources, time and materials, and is a consultancy-driven activity.
- Hence the major expenditure involved for the LPS3 EbD is justified, and can be largely accommodated by the current Planning budget.
- This will, however, constrain the budget for other purposes and require monitoring to see if any supplementary funding is required.
- At this stage it is not recommended that the detailed arrangements for the EbD be compromised, and economies may be able to be achieved as the program is put into place.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee supported the report and that it was part of the practical arrangements for the Enquiry by Design, for noting by Council at this stage, as the detailed arrangements for the EBD are presently being finalised and Council will be updated in that regard when everything is confirmed,

1.3 OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Strzina, seconded Cr Dawkins

That Council:

- (17) **Note this advice about the cost of mounting the EbD and the funding from both the DPI programme and the Town's budget, and support continuation of the arrangements accordingly at this stage.**
- (18) **Support in-principle the possible need to consider supplementing the Planning budget for the current or future financial years in the interest of the finalisation and implementation of LPS3.**

Carried 6/0

ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

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

Mr Jackson announced that Ms Georgina Cooper had resigned as Development Services Secretary and took the opportunity on behalf of Committee and Council to sincerely thank Georgina for her dedicated and excellent service for some six years at the Town of Cottesloe, and Committee wholeheartedly joined in thanking Georgina for a job well done.

MEETING CLOSURE

The Presiding Officer announced the closure of the meeting at 7.28pm.

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