

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE

MINUTES

**MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 19 MAY 2008**

DEVELOPMENT SERVICES COMMITTEE

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS	1
	RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	1
	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	1
	PUBLIC QUESTION TIME	1
	APPLICATIONS FOR LEAVE OF ABSENCE	1
	CONFIRMATION OF MINUTES OF PREVIOUS MEETING	1
	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION	2
	PUBLIC STATEMENT TIME.....	2
	PETITIONS/DEPUTATIONS/PRESENTATIONS.....	3
	REPORTS OF COMMITTEES AND OFFICERS.....	5
1	PLANNING	5
1.1	NO. 36 (LOT 50) ERIC STREET – MIXED USE DEVELOPMENT (SHOPS, CAFÉ AND RESIDENTIAL).....	5
1.2	NO.8 (LOT 8) NAILSWORTH STREET - TWO SINGLE DWELLINGS – FURTHER REPORT.....	28
1.3	NO 36 (LOT 123) JOHN STREET - ADDITIONS AND ALTERATIONS TO A THREE STOREY RESIDENCE.....	35
1.4	NO. 43 (LOT 100) MARGARET STREET – TWO-STOREY RESIDENCE WITH UNDERCROFT AND POOL	44
1.5	NO. 5 (LOT 42) FLORENCE STREET – OPERABLE PERGOLA	56
1.6	NO. 85 (LOT 94) GRANT STREET – PART SOLID FRONT AND SIDE BOUNDARY FENCING AND ENTRY GATE	62
1.7	TOWN CENTRE PUBLIC DOMAIN INFRASTRUCTURE IMPROVEMENT PLAN – CONSULTANT STUDY – APPROACH AND OUTLINE BRIEF FOR SELECTION.....	68
1.8	CONFIDENTIAL ITEM - NO. 42 JOHN STREET – PROTECTION OF PINE TREES – UPDATE REPORT	75
	ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN.....	80
	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING	80
	MEETING CLOSURE.....	80

DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Officer announced the meeting opened at 6.02pm.

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

Present

Cr Jay Birnbrauer
Cr Greg Boland
Cr Jo Dawkins
Cr Patricia Carmichael

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

Apologies

Nil

Leave of Absence (previously approved)

Cr Jack Walsh
Cr Victor Strzina
Cr Ian Woodhill

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 Birnbrauer, seconded Cr Boland

The Minutes of the Ordinary Meeting of the Development Services Committee held on Monday, 21 April 2008 be confirmed.

Carried 4/0

ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil.

PUBLIC STATEMENT TIMEItem 1.1 – Mr Cliff Tarry – 1/152 Broome Street, Cottesloe

Mr Tarry lives directly west of the shopping centre. The previous development application addressed the overlooking from the second storey apartments with screening and highlight windows, however, this new application doesn't address the overlooking into the outdoor entertaining areas and living room of our property. Requests that the windows on the upper level western elevation be obscure glazing or the sill heights are raised from 1.65m to 1.8m. Councillors, Council staff and the applicants are welcome to carry out a site inspection from our property.

Item 1.1 – Mr Murray Etherington – 575 Stirling Highway, Cottesloe

Representing the owner on this development application. In response to Mr Tarry's concerns the matter has been addressed by a condition in the officer's recommendation. The recommendation from Council staff is a positive one. This project has been evolved over two years and the latest design is much improved from the previous concept.

The number of units has been reduced to eight, parking has been addressed and improved from a vehicle and pedestrian aspect. The loading and service lane is improved with a 3m space being landscaped to separate the neighbouring property in Chamberlain Street. Considers that the internal breezeway areas should not affect the plot ratio.

Two parking bays have been substituted for a bicycle facility, which reduces the number of parking bays to 45, a shortfall of only two, and the client would prefer to not pay cash-in-lieu, however, Council needs to determine the parking outcome. A traffic management plan will be produced at building licence stage to further refine all aspects. Would like to thank all the Council's staff involved in the project and seeks support for the proposal.

Item 1.2 – Mr Ken Adam – 183 Broome Street, Cottesloe

The aspects raised by Committee and Cr Boland have been addressed by the designer as explained in the attached correspondence. The plans have been amended to increase the setback to the rear of the site. The building is not three stories but may appear like this only due to the sloping of the site, as it will have an undercroft with two stories above. The contour information is in fact accurate as clarified.

There has been a lot of effort put into the design to reduce the height and limit the bulk and the designer is proposing to use a range of materials / finishes which will also assist the streetscape presentation. The aspect of blocking views to nearby residences is not addressed in the Residential Design Codes, however, it should be noted that the existing residence is higher than the proposed residence. Screening and opaque windows have been provided to prevent overlooking.

Access to the site during construction will be predominantly from the right of way instead of the main street. The builders will be made aware of this and has been reflected in a condition of planning approval.

The overall development is in compliance and is consistent with the recently approved proposal at No. 6 Nailsworth Street.

Item 1.4 – Ms Sarah Lowe – 2/54 Yilgarn Street, Daglish

Requests a concession to the overall height of the building due to the need for undercroft parking on the site and the small size of the lot. There is no room for parking on site without the undercroft, however, the basement has been reduced as much as possible without impacting on the ceiling heights required. They will do a dilapidation report and the adjoining neighbours did not object to the height of the building.

Item 1.5 – Ms Fiona Hogg – 191 Scarborough Beach Road, Mt Hawthorn

Did not have time to formally address the officer's recommendation of refusal. Have drawn up some amended plans which significantly reduce the pergola structure and relocating the posts at the rear of the pool, which is 4.7m from the front boundary. The bulk and size of the pergola is reduced from 70sqm to 34sqm and complies with the Residential Design Codes.

The shade element of the structure is translucent and is a retractable system which can be withdrawn into the rear of the structure towards the residence. The shade is for the pool when the children are playing and to reduce water evaporation in summer. The pool is to be located in the front yard to make use of the northern aspect and the main living areas are located to the front with views out whereby the children will be able to be monitored when in the pool.

The proposed changes will reduce the impact on the streetscape and be more like a carport structure, which is in keeping with the Council's Outbuildings Policy. There are similar structures in Florence Street in the front setback including a garage at No. 4 which has only a 2m front setback. Requests Council to reconsider the officer's recommendation.

Item 1.6 – Mr Angus Kennedy-Perkins – 85 Grant Street, Cottesloe

The front fence proposed with the part solid portions is for the proposed pool in the front yard, and they wanted to get the fence approved prior to applying for approval for the pool. The fence has only two solid panels on the corner of Birkbeck and Grant Streets and this is for compliance with the pool fencing requirements and to reduce the impact of lights from vehicles.

The front yard has the northern aspect which makes it more suitable to have it as the outdoor recreation area, and at the rear of the property there is less space with a garage from one side to the other – there is not enough room for the size of pool intended and later down the track additions to the existing residence may be proposed and the rear.

PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil.

REPORTS OF COMMITTEES AND OFFICERS**1 PLANNING****1.1 NO. 36 (LOT 50) ERIC STREET – MIXED USE DEVELOPMENT (SHOPS, CAFÉ AND RESIDENTIAL)**

File No:	1440
Author:	Mr Ed Drewett
Author Disclosure of Interest:	Nil
Attachments:	Location plan Photos Plans
Report Date:	9 May 2008
Senior Officer:	Mr Andrew Jackson
Property Owner:	Greenplace Investments
Applicant:	Greenplace Investments
Date of Application:	7 April, 2008 (Amended 1 May 2008)
Zoning:	Business
Use:	Retail: Permitted Multiple dwellings: AA - A use that is not permitted unless special approval is granted by the Council
Density:	R60 (as per R-Codes)
Lot Area:	2023m²
M.R.S. Reservation:	N/A

SUMMARY

The Eric Street shopping centre on the corner of Chamberlain Street is an established local centre serving the needs of the neighbourhood and greater Cottesloe. While well-used, the centre dates from the 1970's and is ageing, poorly-designed and lacking in amenity by today's standards in terms of practicality, aesthetics and serving the community and visitors.

The concept for upgrading and developing the shopping centre has evolved in consultation with the Town, including the Design Advisory Panel and a Scheme Amendment to define planning parameters. Within this framework the applicant is now proposing to demolish the existing centre and redevelop it to meet modern expectations, including the creation of upper-level apartments.

Given the assessment that has been undertaken, the recommendation is to Approve the Application.

PROPOSAL

This application is for the redevelopment of the Eric Street shopping centre. The proposal includes basement parking, 9 retail (shop) tenancies on the ground floor,

including a supermarket and café and 7 three-bed units and 1 two-bed unit on the first floor.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Residential Design Codes
- Scheme Amendment No 43

POLICY IMPLICATIONS

None

HERITAGE LISTING

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

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

Clause	Required	Provided
3.4.3	Minimum 3m setback to northern boundary	1.5m to proposed balconies and 2.3m to protruding features.
3.4.3	Maximum height 2 storeys and 9.0 metres (Max RL: 30.9)	Proposed height: RL: 30.91
3.4.3	Retail: 1 car bay per 30m ² (i.e: 47 on-site shopper bays required)	45 on-site shopper bays proposed

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
Element 6.8 – Visual Privacy	Screening to a minimum 1.65m above floor level	Screening to 1.6m above floor level	Clause 6.8.1 – P1
Element 6.8 – Visual Privacy	7.5m cone of vision to balcony	4.7m cone of vision to SW balcony	Clause 6.8.1 – P1
Element 7.2 – Mixed use development	Max. plot ratio 0.70	Plot ratio 0.80 for residential units	Clause 7.2.1 – P1

STRATEGIC IMPLICATIONS

In terms of modern planning, the principles of mixed-use, liveable neighbourhoods, walkable local centres, good urban design, housing choice and residential amenity are all consistent with the proposed redevelopment and it is also in-keeping with regional planning strategies for diverse and sustainable urban development.

FINANCIAL IMPLICATIONS

The proposed development may include improvements to the public domain such as footpaths, verge landscaping and road works by the developer at no cost to Council.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering
- Health

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2 and Residential Design Codes.

The advertising consisted of a Letter to Surrounding Property Owners.

Submissions

Five submissions have been received:

C & J Tarry, 1/152 Broome Street

- All our outdoor living area (swimming pool, garden) is in the area between the laneway and the eastern side of our house, the complete side of which is floor to ceiling windows.
- Our concern is that should the proposed building have balconies or windows which could allow viewing over our 1.8m high fence into either external or internal areas, day or night, we would be seriously affected and the value of our property compromised.
- Currently we have trees along the rear boundary which help block out the impact of the rather ugly building, but trees don't last forever and therefore cannot be considered a permanent solution.
- We therefore require that there be no ability for people of any height in the NW unit of any proposed development to be able to look directly west into our living areas.

Rebecca Moore, 7 Chamberlain Street

- The proposed balconies to the north will create issues of noise, overlooking and building bulk (these balconies encroach 1.5m into the already reduced side setback of 3m);
- Noise issues in general (specifically with regard to the location of air conditioning equipment and the ventilation in the basement);
- Overlooking generally (especially with regard to balconies, the internal staircase, and particularly the balcony to the NE corner which overlooks the private open space of No. 7 Chamberlain Street.
- We support the removal of the existing delivery driveway and the relocation of the bin stores.

L & B Armstrong, 8a Chamberlain Street

- The existing two large Peppermint trees that are outside the centre on Chamberlain Street are not only aesthetically brilliant but they provide huge privacy for residents and must be retained, untouched, and should be shown on the plans. We have just completed building our own new house and was told under no circumstances were we allowed to touch, trim or shift the large Peppermint tree that is outside our house in the verge;
- We also strongly object to the development having an entrance that opens out onto Chamberlain Street. The traffic and complete abuse of the parking rules and facilities and speed of motorists on Chamberlain Street is an accident or fatality waiting to happen. I am surprised the Council would even consider an entrance on Chamberlain Street especially on the weekend and after hours eg: 5pm to 7.30pm any day of the week.

S & R Freeth, 1 Florence Street

- Raise no objection to the proposal and believe that it will be an improvement on the existing buildings and use. However, the following issues should be addressed.
- *Retail (short-term) parking:* The proposal appears to make reasonable provision in Eric Street for parking for retail shoppers. Our concern is to make sure that the primary access is from Eric Street and in particular that access to underground parking is made obvious and easy, so that shopping patrons use it in preference to parking in Chamberlain Street. It needs to be significantly easier than currently exists.
- *Chamberlain Street Traffic:* Redevelopment of the shopping centre provides an excellent opportunity to consider improving amenity of the surrounding residential area by reducing traffic and parking, especially in Chamberlain Street;

- *Delivery vehicles:* We strongly recommend that Council use this opportunity to eliminate service vehicles using Chamberlain Street. We note and support the proposals provision of delivery facilities at the west end of the building. However, during the day two or three delivery vehicles are present at the same time. Currently they park in Chamberlain Street, occasionally parking on Eric Street so they can use trolleys to move deliveries into retail shops. The single delivery bay shown on the plans may be insufficient, and we would not like to see deliveries continue in Chamberlain Street.
- *Evening Noise:* We have no objection to the possibility of a café in the new building. However, we would wish to make it a condition that it does not become a restaurant with closing hours in the evening. Our concern is that Chamberlain Street is a residential area, and we would not want noisy restaurant patrons departing late in the evening.

Dr & Mrs Kerr, 13 Chamberlain Street

- *Loading zones on the corner of Chamberlain and Eric Streets:* The loading bays are in heavy demand at particular times of the day, eg. 7.00am to 9.00am. Large trucks queue to use the bays and frequently also occupy the adjacent 'time limited' general bays and Acrod bay. The trucks are a major traffic and safety hazard when they use the loading bays. They obstruct the vision of car drivers using Chamberlain Street;
- *No standing "yellow" line on the western side of Chamberlain Street:* The continued prohibition of parking on the western side of Chamberlain Street is essential to prevent the almost total gridlock in that street at certain times of the day eg. 4.00pm to 6.00pm. Infringement notices to those who ignore the 'No standing' yellow line and signs would be helpful. The 'no-standing' sign is now barely visible and needs to be refreshed;
- *Proposed new unloading/loading area:* An obvious challenge for the developers and Council is the proposal to have trucks, unit residents and shopping centre customers use the ROW to enter the underground parking area and the designated unloading area. Currently customers show a reluctance to park in the basement parking area, preferring to fill the Eric Street bays, park on the footpath, or turn into Chamberlain Street and then circle around to seek parking in that street or on street verges. Parking for the Centre is a serious issue that needs a careful analysis of traffic flows, at peak demand times of the day.

BACKGROUND

On 29 June 2006 Amendment No 43 was gazetted which amended Clause 3.4.3 of Town Planning Scheme No 2 to include specific development standards for the Eric Street local centre. These standards were based on indicative plans for the refurbishment of the existing centre submitted with the amendment application.

The applicant has now advised that a preferred option is to demolish the existing building and construct a new shopping centre with residential units above.

The current application was presented to the Design Advisory Panel and the plans were then subsequently amended by the applicant to take account of comments made.

Design Advisory Panel

On 9 April 2008 the application was presented to the Panel members and Councillors for discussion.

The overall design of the proposed development was supported and there was specific mention regarding the good articulation to the facades which would enhance its appearance on the streetscape.

Other comments made by the Panel included:

- Concerns regarding parking and manoeuvring areas within the basement parking area due to the lack of circulation and reversing areas;
- Ensure that the front façade to the basement parking area was 'see-through' as this would present better to the street;
- Consideration be given to location of delivery truck area;
- Suggestion that the width of the stairway from the basement parking area be increased to better facilitate shoppers;
- Security and lighting important in basement parking area.

The Panel had been involved in the previous proposal and saw the latest design as an overall improvement.

Applicant's Justification

The applicant has submitted the following comments with the amended plans received 1 May 2008 in response with the initial concerns raised by the Town's officers and Panel members:

- The proposed service area has been relocated from the northern boundary. Its revised central position off the right of way will ensure that noise associated with this facility will not affect the neighbouring residences. Its central position also provides a dedicated receipt and distribution point for all tenants. This will eliminate the requirement for deliveries to be made from loading bays in adjoining streets;
- The service area has been designed with adequate turning circles and vehicle clearances to accommodate service vehicles;
- A 3-metre landscape buffer between the retail and the neighbouring residence has been designed in the northern setback. This has been made possible with the removal of the northern service lane;
- The circulation zone from the car park to the retail level has been redesigned to include a glass lift with open stairs. This design enhancement will provide a well lit and user friendly connection for shoppers from the car park;

- The residential apartments have been designed to provide usable northern living spaces, courtyards and balconies. All apartments have been designed to maximise passive solar heating with natural breezeways for crossflow ventilation;
- The revised design provides one less apartment than provided for under the Scheme amendment, which enables more innovative residential planning of the residential apartments.
- In summary, the design meets all of the planning requirements as required by the Scheme amendment whilst delivering an innovative and well-considered eclectic mixed use development for Cottesloe.

STAFF COMMENT

The proposed development is of a modern, contemporary design and provides for a mix of uses combining shops (including a café) with residential which are considered appropriate for the Business zone, although the zoning table lists the proposed residential use as an 'AA' use requiring the special approval of Council (as for many uses under the Scheme).

Specific reference is made in the Scheme for the Eric Street local centre following the gazettal of Amendment 43. The following development standards are therefore applicable, subject to Council approval:

Maximum plot ratio	Ground Floor: 0.7:1 First Floor Residential: As per the Residential Design Codes
Maximum site cover	92%
Maximum boundary setbacks	Western boundary: Nil Northern setback: 3m
Maximum height	2 storey and 9.0 metres
Required Car Parking	Retail: 1 bay per 30m ² GLA Multiple dwellings: As per the Residential Design Codes

With respect to Town Planning Scheme No 2 and the abovementioned Scheme Amendment the following comments are made:

Land Use

The mix of shops with a residential use will provide enhanced security through extended hours of activity and occupation, for both residential and commercial components and for the streets on which they are located. Strong encouragement is also given to mixed use development by Liveable Neighbourhoods.

Although multiple dwellings are a discretionary 'AA' use under TPS 2, a residential component on the first floor of the building was previously considered by Council as it

was included in the original concept plan for the site which was submitted with Scheme Amendment No 43.

Density

The Scheme does not contain a specific residential density coding for this commercial site, however, the R-Codes provide that for mixed use developments a density coding of R60 applies to the residential component.

On this basis the site could qualify for up to 12 multiple dwellings, while 8 are proposed which is one less than that originally proposed with the Scheme Amendment and represents a density of approximately R40. The proposal therefore complies in terms of residential density.

TPS 3 proposes to rezone the lot to 'Local Centre' with a Residential R50 density coding. The proposed development is consistent with the proposed Scheme.

Plot Ratio

A maximum plot ratio of 0.7:1 is permitted for the ground and first floors.

Based on the TPS 2 definition for plot ratio the ground floor has been calculated to have a floor space of 1415.36m² which equates to a plot ratio of 0.69, and the first floor has been calculated to have a floor space of 1622.49m² (based on the submitted area schedule) which equates to a plot ratio of 0.8 (206m² over that permitted under the Scheme).

The proposed residential units on the first floor should therefore be adjusted to reduce their plot ratio. It should be noted that the proposed internal terraces have been included in this calculation as they are not each common to more than one dwelling and the balconies have been included where they are not open on at least two sides. This is in accordance with the definition of Plot Ratio stated in the R-Codes. Reduction of the northern balconies as discussed later would serve to reduce the residential plot ratio without unduly sacrificing floorspace or the number of units.

Site Cover

A maximum site cover of 92% is permitted which equates to 1861.16m².

The proposed ground floor has an area of 1824m² which equates to 90% site cover and is therefore permitted.

Extensive site cover is common to commercial development, which typically builds to street frontages or other boundaries with access and service areas from the side or rear, as in this case.

Setbacks

The proposed nil setbacks to the commercial development fronting Eric Street, Chamberlain Street and the ROW on the western side are permitted under TPS 2. This reflects the existing setbacks as built.

Under the Codes street setbacks of nil are also allowed for the residential component whereas other boundary setbacks are usually assessed under the acceptable and performance standards. In this respect the driveway is an established setback and the ROW is recognised as providing separation distance.

The Scheme amendment observed these existing boundary setbacks and effectively waived the normal R-Code setback requirements to the residential units. As such, the proposed nil setback to the western boundary is acceptable under TPS 2, however, a 3m setback is required to be maintained to the northern boundary.

The applicant is proposing a nil setback to the basement parking area (which is acceptable) and a partially reduced setback at the upper level of 1.5m to four balconies to the northern boundary together with 0.7m protruding frame-like structures around the bedroom windows and void area.

The extended basement parking area would provide better internal circulation for the development but it will also necessitate a new wall on the northern boundary (with landscaping above) increasing from approximately 0.8m to 3m in height above NGL, with the highest section being in the NW corner. However, as this wall will be abutting an existing parapet wall at 7 Chamberlain Street it is not considered that it would have any significant impact on the adjoining residential property and therefore can be supported. Furthermore, although a ventilation slot is proposed in the roof of this extended area the Town's Principal Environment Officer has advised that any noise or smells from this area can be adequately controlled under existing Health legislation.

The adjoining residential dwelling on the northern side has a 2-storey parapet wall alongside a portion of the existing laneway, although to the front and rear of the dwelling there is only a single storey wall. Furthermore, there is a small bedroom window to the front of the house on the laneway side and a significant portion of the outdoor living area is located in the front setback area.

It is considered that in view of the 3m setback permitted to the first floor under TPS 2 (normally a 5.3m setback would be required), no further reduced setback is appropriate or necessary to the northern boundary. Furthermore, the overall bulk and scale of the proposed development would be perceived to be more dominant and imposing on the adjoining residential property than that existing and potential noise from the projecting balconies may be greater than if they were further setback.

The original plans submitted with the Scheme Amendment showed that the residential units (including balconies) would be setback 3m from this boundary. There appears little or no justification for allowing any further reduction to the balconies or a need for any projection into the 3m setback area. Although the Residential Design Codes do allow for certain protrusions into setbacks areas, in this instance there are privacy concerns in addition to the built form.

Height

The Town's records indicate that the existing building height is 8.1m above NGL. Amendment 43 permits a height of 2 storeys and 9m.

The natural ground level has been previously determined by Council to be at RL: 21.9. The maximum permitted height is therefore RL: 30.9. The proposed development has a maximum height of RL: 30.91 and therefore this should be reduced to comply with the TPS 2, and should be easy to achieve.

Council has previously accepted that the basement parking area would not be included as a storey as it is below the determined NGL for the site. This is consistent with Clause 5.1.1 of TPS 2.

Parking

The Town's records indicate that the existing shopping centre has a total of 80 shopper bays comprising basement (65), Eric Street frontage (7) and on-street in front of the adjacent flats, although not strictly belonging to the shopping centre (8).

The proposed parking comprises 45 basement bays for shoppers, 16 basement bays exclusively for residents/visitors, 12 Eric Street frontage bays and 3 Chamberlain street frontage bays, totalling 76 bays.

Based on TPS 2 requirements the proposed ground floor will have a gross leaseable area (GLA) of 1415.36m² which requires 47 bays, based on 1 bay per 30m² GLA. This results in a shortfall of 2 on-site bays for the non-residential use. It is therefore suggested that the GLA should be reduced by 60m² to ensure compliance with the Scheme. Alternatively, cash-in-lieu of parking could be considered for the 2 bay shortfall. Whichever, the 2 bay shortfall would not make the parking dysfunctional.

The first floor residential units require a minimum of 16 car bays plus 2 visitor bays. A total of 16 exclusive car bays are proposed but there is no provision of additional visitor bays. Nevertheless, the R-Codes allow the car parking requirement to be reduced to only one car bay per residential unit (plus 2 visitor bays) where on-site parking required for other users is available outside normal business hours. It is therefore suggested that this should be conditioned accordingly to ensure adequate availability of on-site parking.

A detailed traffic survey by SMEC was submitted by the owners with the original amendment proposal to look at access and parking arrangements for the site, including the allocation of general parking spaces to residents.

The survey concluded that the proposed parking re-arrangements would not be expected to create traffic conditions that adversely impacted upon the amenity of the shopping centre traffic pattern and it would improve access arrangements by attracting more vehicles to use the basement car park. The report also assessed pedestrian and motorcycle use.

Whilst the proposed parking configuration in the road reserves of Eric and Chamberlain Streets appear the same as previously considered in the report, there are a number of changes to the basement parking area including the relocation of the loading dock and bin area for the non-residential uses and reorientation of car bays, together with in/out access being proposed to both public entrances off the ROW and the introduction of end of trip bicycle facilities near one of the vehicle entrances.

There were also a number of recommendations made in the original traffic report to improve the traffic circulation and make changes to signage and the median in Eric Street. It is therefore considered that further details are required to reflect the current proposal, with specific reference to the design and functionality of the proposed basement parking area and access from the laneway. This can be conditioned accordingly on the planning approval.

The comments received about traffic and parking on Chamberlain Street are acknowledged. The current application is certainly an opportunity to improve the situation. At the same time the local centre is well-established and zoned accordingly, whereby the expectation must be for a greater degree of activity and a mixed-use amenity environment. To deny a few convenient short-term customer car-parking bays on Chamberlain Street would be impractical, however, designing-out deliveries from there would be reasonable. Complimentary parking controls by the Town such as timed parking for the relevant sections of Eric and Chamberlain Streets should be considered. This approach is reflected in the conditions.

Visual Privacy

The applicant is proposing to screen the bedrooms and balconies along the northern and western elevations to a minimum height of 1.6m to avoid issues of visual privacy, with the exception of the balcony on the SW corner which has a small return facing the ROW that is not screened. However, this balcony will not directly overlook any active habitable spaces or outdoor living areas of the adjoining units and can be supported as complying with the Performance criteria of the Codes.

The Town normally considers that screening should be a minimum 1.65m above floor level to provide adequate privacy based on the R-Code requirements, and therefore it is recommended that this be applied in this case and again is easy to achieve (in addition to requiring the balconies on the northern elevation to have a minimum 3m setback to the boundary). Furthermore, it may be preferable to also screen the proposed large window to the stairs on the northern elevation serving the proposed residential lobby as although this area is technically not classed as a habitable room it nevertheless may be frequently used by residents and could result in some loss of privacy to the neighbour.

Loading area

It is proposed to locate the loading dock midway along the western elevation of the proposed building with access off the existing ROW. The proposed dock area has a length of 8m, width of 5.3m and a height of 2.9m. Based on the size of the supermarket proposed which is similar to that existing, it is doubtful whether this will

be of adequate size to accommodate a suitable sized truck without either obstructing the ROW or necessitating trucks to park on Chamberlain or Eric Streets.

It is therefore suggested that this matter be further addressed by the applicant and if necessary revised plans be submitted to the satisfaction of the Manager, Development Services prior to the issue of a Building Licence. It is also considered appropriate to condition this approval prohibiting trucks from loading/unloading from the adjoining streets.

CONCLUSION

On balance, the proposal has merit subject to a number of changes being made to satisfy TPS 2 and R-Code requirements.

The existing pedestrian access to Chamberlain Street was shown to be retained as part of the previous proposal considered by Council and a similar access is proposed for the current development. The main issue that this raises is regarding traffic flow and parking congestion on Chamberlain Street due to shoppers and other vehicles using the existing on-street bays for short term parking. However, this is largely a traffic engineering matter and should principally be addressed by the Manager Engineering Services in the first instance. As such, copies of the relevant submissions have been forwarded accordingly for consideration.

No trees in the verge are proposed to be removed. However, it is appropriate to condition this accordingly.

This is an exciting development which will provide an attractive and functional local centre for the community, as well as introducing a café fronting Eric and Chamberlain streets. It should be noted that a restaurant use would not be permitted under this approval as such a use does not fall within the definition of a shop.

Although a few submissions were received expressing some concerns, many residents have verbally advised the Town's staff that they are very supportive of the redevelopment proposal. The majority of concerns raised can be adequately addressed by appropriate conditions on the planning approval.

Full details of the proposed changes to the parking areas and landscaping in the road reserves are required to be submitted by the applicant providing an excellent opportunity for improvements within the public domain at no cost to Council.

VOTING

Simple Majority

COMMITTEE COMMENT

The Manager Development Services presented the following additional information via a memo and discussed the points covered, explaining that the proposal was largely compliant and an improvement over the previous concept, having taken into account a range of aspects raised by the DAP, officers and neighbours, and could be further refined / conditioned as required:

Additional Information:

- *The architects and officers have had further discussions regarding the technical details of the proposal in relation to the applicable planning provisions and how the design can best satisfy them whilst still meeting project feasibilities and operational requirements.*
- *Within the basic planning parameters there is some scope for managed flexibility as outlined below, within which the design can respond depending on a number of variables in the detailed design process.*
- *This suggests that certain conditions would benefit from clarification to guide their fulfillment, so that the detailed design can adapt to them as well as the functional requirements (eg depending on the nature of retail tenancies and on the range of health compliance regulations, etc).*

Officer Comment:

The aspects identified are covered broadly by conditions 7 to 10 as follows:

7. Plot Ratio – *there are choices in the ways to approach this whilst preserving the scheme standard of 0.7:1 and the architects wish to review the assessment without losing the advantages of the design – hence the condition can stand subject to refinement of the detail.*
8. Natural ground level – *there may be a fractional disparity (ie only 1cm) in the appreciation of this, which is of negligible consequence and can be factored-into the final design – this is a virtual technicality to be addressed by mirror rewording of the condition and verification in the working drawings.*
9. Parking provision – *the assessed two-bay shortfall on-site is due to the architects responding to the desire for better basement layout and bicycle parking as suggested by the DAP. As the architects would prefer no cash-in-lieu, the solution would be to either restore the two bays, waive the CIL or accept the on-street parking as supplementary – an amended condition is proposed.*
10. Loading/unloading points – *the intent of the condition was to ensure that the trafficable carriageways of Eric and Chamberlain Streets are not interrupted by indiscriminate delivery vehicle parking and activity. However, it has become apparent that the dedicated parking area immediately in front of the shops to Eric Street may of necessity be required to facilitate occasional larger trucks. This would not be an unusual situation (such as a loading/unloading bay up until a certain time each morning) and would avoid the lane becoming congested, but any arrangement should be formalised as part of the detailed design – hence an amended condition which is also expanded to require a traffic management plan.*

Recommendation:

That Committee supports the subject conditions being refined as follows:

- (8) *The proposed development having a maximum height of 9m above natural ground level as determined by Council.*
- (9) *The applicant providing an additional two parking spaces on-site.*

- (10) *No parking of delivery vehicles and loading / unloading shall be permitted in the Eric or Chamberlain Street road carriageways. Any requirement for supplementary delivery vehicle parking and loading / unloading in the dedicated parking area to the Eric Street frontage shall be included in the detailed plans submitted for a building licence and supported by a comprehensive operational traffic management plan for the shopping centre, to the satisfaction of the Manager Development Services. This shall include clearly defining the location, nature and times of use of any special delivery vehicle parking and loading / unloading space, and suitable line-markings, sign-posting, operational procedures and management measures to ensure appropriate standards of convenience, safety and amenity,*

In relation to plot ratio Mr Jackson advised that the special design of the central breezeway, which is a desirable feature, did not fit neatly into the interpretations of plot ratio but this combination of common access areas and private courtyard-type space should not be calculated to the detriment of the development. The reduced balconies to the north to achieve the 3m setback should also assist in meeting the plot ratio standard without unduly compromising the design. In relation to parking and loading areas Mr Jackson advised that the proposal would be functional and improved, but the details could still be refined as conditioned.

Committee expressed basic support for the proposal and appreciated the consultative process followed. Committee also raised matters of detail including traffic circulation for the basement parking; the two-bay shortfall being replaced by bicycle parking is supported; the new loading dock is much better; and the arrangements for rubbish bin collection. It was noted that the detailed conditions, with some refinement, would address these and the whole range of technical considerations.

Committee moved the amended officer recommendation as per the memo for condition (8), and condition (9) was amended to refer to the option of cash-in-lieu, as follows:

Moved Cr Boland, seconded Cr Birnbrauer

- (8) The proposed development having a maximum height of 9m above natural ground level as determined by Council.
- (9) The applicant providing an additional two parking spaces on-site or providing cash-in-lieu as determined by Council.

Carried 3/1

Condition (10) was amended as per the officer recommendation.

Moved Cr Boland, seconded Cr Birnbrauer

- (10) No parking of delivery vehicles and loading / unloading shall be permitted in the Eric or Chamberlain Street road carriageways. Any requirement for supplementary delivery vehicle parking and loading / unloading in the dedicated parking area to the Eric Street frontage shall be included in the detailed plans submitted for a building licence and supported by a

comprehensive operational traffic management plan for the shopping centre, to the satisfaction of the Manager Development Services. This shall include clearly defining the location, nature and times of use of any special delivery vehicle parking and loading / unloading space, and suitable line-markings, sign-posting, operational procedures and management measures to ensure appropriate standards of convenience, safety and amenity,

Carried 4/0

Condition also requested that at for clarity condition (14)(h) to be amended to quote the Australian Standard/s and that condition (14)(m) to be amended to refer disabled access. The Manager Development Services undertook to fine-tune the wording for condition (13) in relation to the notifications on title.

A technical advice note is also added regarding incidental building protrusions.

Subsequent advice re overlooking to west

In addition, the applicants and officers each offered to meet the Mr and Mrs Tarry at their property to discuss the privacy aspect and that has occurred. The architects took photos and measurements in order to consider the detailed design. The officers took photos and assessed the cones-of-vision. The overall privacy situation and approach to the standards was discussed.

Council has consistently applied 1.65m sill or screen heights as a universal standard for privacy (which is actually slightly higher than the RDC specification of 1.6m). This standard reflects the eye-height of an average person and recognises that when standing back from a window or screen (which is usually the case) an overlooking line of sight is not readily achieved. It also affords light and air into habitable spaces so that they aren't hemmed-in. The prescription of higher sill or screen levels is rare although not prevented, and would be based on the Scheme's consideration of amenity rather than the RDC provisions. The separation distance of the lane may also be taken into account.

Standards aside, it can be the perception of overlooking which affects a sense of privacy, and in this respect the presence of the shopping centre/apartments building probably has a greater impact, given the scale of such a development compared to a typical two-storey dwelling. On the other hand it could be held that the introduction of any new residential development should only have to meet the normal standard which is generally proven and accepted. If on balance Council is inclined towards enhanced privacy protection for the Tarry's property then condition 5 could be amended as follows:

The upper-floor balconies and terraces along the western elevation, and a 0.5m-wide return on the northern elevation of the corner balcony to the north-western unit, shall be screened to a minimum height of 1.8m above the finished floor level; and the remaining upper-floor balconies and windows to the western and northern elevations shall be screened to a minimum height of 1.65m above the finished floor level (with the exception of the south-western balcony, which is not required to be screened); all to the satisfaction of the Manager Development Services.

That Council GRANT its Approval to Commence Development for the Mixed-Use Development (incorporating shops, a café and residential uses) at No. 36 Eric Street (Lot 50), Cottesloe, in accordance with the revised plans submitted on 1 May 2008, subject to the following conditions:

- (1) This approval is to the land use classes 'Shops and 'Multiple Dwelling' under the Scheme only. 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) 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, 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.
- (3) All off-street parking associated with the non-residential use shall be available on-site during business hours for all staff and customers, 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 residential visitors or service vehicles outside normal business hours.
- (4) No goods or materials shall be stored, either temporarily or permanently, in the parking areas or laneway. All goods and materials are to be stored elsewhere within the building.
- (5) All upper floor windows and balconies along the northern and western elevations shall be screened to a minimum height 1.65m above the finished floor level (with the exception of the south-west balcony), to the satisfaction of the Manager Development Services.
- (6) A minimum 3m setback being provided from the upper (first) floor to the northern boundary.
- (7) The proposed residential units having a total plot ratio no greater than 0.7:1.
- (8) The proposed development having a maximum height of RL: 30.9 above natural ground level as determined by Council.
- (9) The applicant paying cash-in-lieu for two parking spaces, prior to occupation, at a value to the satisfaction of Council determined in the normal manner, which cost shall be borne by the applicant.
- (10) No loading or unloading shall be permitted in the Eric or Chamberlain Street road reserves.
- (11) No verge trees in Eric or Chamberlain Streets adjoining the site are to be removed and shall be protected at all times during construction.
- (12) An acoustic consultant's report assessing noise impact within the development and on adjoining properties is to be provided to and approved by the Environmental Health Officer prior to issue of a building licence. The development is to be designed and constructed in accordance with any

- measures outlined in the report to the satisfaction of the Manager Development Services. On completion of construction the acoustic consultant is to provide a final report confirming that the development is in compliance with the recommendations and noise from external and internal sources that potentially impact on the development are successfully attenuated.
- (13) The applicant is to advise purchasers of the residential units within the development that their property is in close proximity to established commercial premises. It is therefore subject to noise not associated with a typical residential environment and that in selecting to reside in this locality, purchasers must recognise and accept the noise, traffic (including service vehicles) and other factors that constitute normal commercial activity. This requirement shall be met by the landowner and/or real estate agent specifically advising intended purchasers in writing accordingly and by a specific notification on each title worded accordingly.
- (14) 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 addressing the design and functionality of the proposed parking areas, with specific reference to the basement parking configuration, loading dock/bin area, access from the laneway and parking to Eric and Chamberlain Streets; in consultation with Town of Cottesloe.
 - (c) 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); in consultation with Town of Cottesloe.
 - (d) 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.
 - (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, and 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 vehicular access in relation to the public footpaths, laneway and Eric and Chamberlain Streets.
- (j) A comprehensive Construction Management Plan and all construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13, Construction Sites.
- (k) No restaurant use or other future change of use shall be permitted on the lot without the submission of a separate application to and approval by the Council.
- (l) Preliminary plans of the commercial food premises showing the following detail are required to be submitted and approved by Council's Environmental Health Officer:
 - (i) the structural finishes of all floors, walls and ceilings;
 - (ii) the position, type and construction of all fixtures, fittings and equipment. (including cross-sectional drawings of benches, shelving, cupboards, stoves, tables, cabinets, counters, display refrigeration, freezers etc) in storage, preparation and coolrooms; and
 - (iii) all kitchen exhaust hoods and mechanical ventilating systems over cooking ranges, sanitary conveniences, exhaust ventilation systems, mechanical services, hydraulic services, drains, grease traps and provisions for waste disposal.
- (m) A food premises seating 30 or more patrons internally and externally will require sanitary facilities for patrons to be accessible during opening hours.
- (n) Both residential and commercial bin storage areas require direct access to a street, are to be accessible, and in the case of residential bins, can be placed out on the kerbside for weekly collection. The location of the bin areas is to be to the satisfaction of the Principal Environmental Health Officer.
- (o) The enclosures for the storage and cleaning of rubbish receptacles are to be provided with:
 - (i) A tap connected to an adequate supply of water;
 - (ii) A floor area to the satisfaction of the Environmental Health Officer to accommodate all containers used on the premises, in any event have a floor area of not less than 5 square metres;
 - (iii) Smooth and impervious walls constructed of approved material not less than 1.8 metres in height;
 - (iv) An access way not less than 1.2 metres in width fitted with a self closing gate;
 - (v) Smooth impervious floor of not less than 75mm thickness, evenly graded and adequately drained to sewer; and

- (vi) Easy access to allow residents, contractors and commercial tenants to enter storage area.
- (p) Noise levels from plant and equipment, measured at the property boundary, shall not exceed permissible levels as outlined in the Environmental Protection (Noise) Regulations 1997.
- (q) The premises is to be ventilated in accordance with Australian Standard AS1668 Part 2 2002 - "Mechanical Ventilation for Acceptable Air Quality".
- (r) Drawings are to be submitted to the Council's Environmental Health prior to commencement of development or installation, detailing:
 - (i) Air Conditioning location;
 - (ii) Toilet and Bathroom Ventilation;
 - (iii) Car Park Ventilation.
- (s) On-site testing results of the mechanical ventilation systems is to be carried out on completion of construction.
- (t) Ensuite doors to residential units opening directly from bedrooms to be fitted with an approved self-closing device.

Advice Note:

The proposed development is subject to compliance with the Health Act 1911, the Food Hygiene Regulations 1993 and all other relevant legislation.

1.1 COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Birnbrauer

That Council GRANT its Approval to Commence Development for the Mixed-Use Development (incorporating shops, a café and residential uses) at No. 36 Eric Street (Lot 50), Cottesloe, in accordance with the revised plans submitted on 1 May 2008, subject to the following conditions:

- (1) This approval is to the land use classes 'Shops and 'Multiple Dwelling' under the Scheme only. 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) 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, 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.**
- (3) All off-street parking associated with the non-residential use shall be available on-site during business hours for all staff and customers, 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 residential visitors or service vehicles outside normal business hours.
- (4) No goods or materials shall be stored, either temporarily or permanently, in the parking areas or laneway. All goods and materials are to be stored elsewhere within the building.
 - (5) All upper floor windows and balconies along the northern and western elevations shall be screened to a minimum height 1.65m above the finished floor level (with the exception of the south-west balcony), to the satisfaction of the Manager Development Services.
 - (6) A minimum 3m setback being provided from the upper (first) floor to the northern boundary.
 - (7) The proposed residential units having a total plot ratio no greater than 0.7:1.
 - (8) The proposed development having a maximum height of 9m above natural ground level as determined by Council.
 - (9) The applicant providing an additional two parking spaces on-site or providing cash-in-lieu as determined by Council.
 - (10) No parking of delivery vehicles and loading / unloading shall be permitted in the Eric or Chamberlain Street road carriageways. Any requirement for supplementary delivery vehicle parking and loading / unloading in the dedicated parking area to the Eric Street frontage shall be included in the detailed plans submitted for a building licence and supported by a comprehensive operational traffic management plan for the shopping centre, to the satisfaction of the Manager Development Services. This shall include clearly defining the location, nature and times of use of any special delivery vehicle parking and loading / unloading space, and suitable line-markings, sign-posting, operational procedures and management measures to ensure appropriate standards of convenience, safety and amenity,
 - (11) No verge trees in Eric or Chamberlain Streets adjoining the site are to be removed and shall be protected at all times during construction.
 - (12) An acoustic consultant's report assessing noise impact within the development and on adjoining properties is to be provided to and approved by the Environmental Health Officer prior to issue of a building licence. The development is to be designed and constructed in accordance with any measures outlined in the report to the satisfaction of the Manager Development Services. On completion of construction the acoustic consultant is to provide a final report confirming that the development is in compliance with the recommendations and noise from external and internal sources that potentially impact on the development are successfully attenuated.
 - (13) The applicant is to advise purchasers of the residential units within the development that their property is in close proximity to established commercial premises. It is therefore subject to noise not associated with a typical residential environment and that in selecting to reside in this locality, purchasers must recognise and accept the noise, traffic (including

- service vehicles) and other factors that constitute normal commercial activity. This requirement shall be met by the landowner and/or real estate agent specifically advising intended purchasers in writing accordingly and by a specific formal notification being placed on each title worded accordingly to the satisfaction of the Town of Cottesloe.
- (14) 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 addressing the design and functionality of the proposed parking areas, with specific reference to the basement parking configuration, loading dock/bin area, access from the laneway and parking to Eric and Chamberlain Streets; in consultation with Town of Cottesloe.
 - (c) 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); in consultation with Town of Cottesloe.
 - (d) 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.
 - (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, and 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 to comply with AS1428.1. Energy efficiency and fire management requirements are to be 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 vehicular access in relation to the public footpaths, laneway and Eric and Chamberlain Streets.
 - (j) A comprehensive Construction Management Plan and all construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13, Construction Sites.
-

- (k) No restaurant use or other future change of use shall be permitted on the lot without the submission of a separate application to and approval by the Council.
- (l) Preliminary plans of the commercial food premises showing the following detail are required to be submitted and approved by Council's Environmental Health Officer:

 - (i) the structural finishes of all floors, walls and ceilings;
 - (ii) the position, type and construction of all fixtures, fittings and equipment. (including cross-sectional drawings of benches, shelving, cupboards, stoves, tables, cabinets, counters, display refrigeration, freezers etc) in storage, preparation and coolrooms; and
 - (iii) all kitchen exhaust hoods and mechanical ventilating systems over cooking ranges, sanitary conveniences, exhaust ventilation systems, mechanical services, hydraulic services, drains, grease traps and provisions for waste disposal.
- (m) A food premises seating 30 or more patrons internally and externally will require sanitary facilities for patrons, including disabled access, to be accessible during opening hours.
- (n) Both residential and commercial bin storage areas require direct access to a street, are to be accessible, and in the case of residential bins, can be placed out on the kerbside for weekly collection. The location of the bin areas is to be to the satisfaction of the Principal Environmental Health Officer.
- (o) The enclosures for the storage and cleaning of rubbish receptacles are to be provided with:

 - (i) A tap connected to an adequate supply of water;
 - (ii) A floor area to the satisfaction of the Environmental Health Officer to accommodate all containers used on the premises, in any event have a floor area of not less than 5 square metres;
 - (iii) Smooth and impervious walls constructed of approved material not less than 1.8 metres in height;
 - (iv) An access way not less than 1.2 metres in width fitted with a self closing gate;
 - (v) Smooth impervious floor of not less than 75mm thickness, evenly graded and adequately drained to sewer; and
 - (vi) Easy access to allow residents, contractors and commercial tenants to enter storage area.
- (p) Noise levels from plant and equipment, measured at the property boundary, shall not exceed permissible levels as outlined in the Environmental Protection (Noise) Regulations 1997.

- (q) The premises is to be ventilated in accordance with Australian Standard AS1668 Part 2 2002 - Mechanical Ventilation for Acceptable Air Quality.
- (r) Drawings are to be submitted to the Council's Environmental Health prior to commencement of development or installation, detailing:
 - (i) Air Conditioning location;
 - (ii) Toilet and Bathroom Ventilation;
 - (iii) Car Park Ventilation.
- (s) On-site testing results of the mechanical ventilation systems are to be carried out on completion of construction.
- (t) Ensuite doors to residential units opening directly from bedrooms to be fitted with an approved self-closing device.

Advice Notes:

The proposed development is subject to compliance with the Health Act 1911, the Food Hygiene Regulations 1993 and all other relevant legislation.

Any minor incursions of architectural feature overhangs into the laneway airspace shall require adequate clearances in consultation with and at the discretion of the Town of Cottesloe.

Carried 4/0

1.2 NO.8 (LOT 8) NAILSWORTH STREET – TWO SINGLE DWELLINGS – FURTHER REPORT

File No: 1377
Author: Ed Drewett
Author Disclosure of Interest: Nil
Attachments: Location plan
Copy of Previous Report to Council – April 08 Plans
Report Date: 13 May, 2008
Senior Officer: Mr Andrew Jackson

Property Owner: J M & K B Kyrwood and Redback Holdings Pty Ltd

Applicant: J M Kyrwood
Date of Application: 24 January 2008 (Last amended 13 May, 2008)

Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R20
Lot Area: 1113m²
M.R.S. Reservation: N/A

BACKGROUND

This application was originally considered by Council on 28 April 2008 which resolved:

That this item be referred back to the Development Services Committee for further consideration.

A copy of the previous report detailing the original proposal is attached for information and should be read for a fuller appreciation.

The Development Services Committee had previously expressed some support for the proposal, subject to additional privacy screening to one area. At the same time Committee also expressed several concerns about the proposal in terms of bulk, scale and visual prominence; the design approach to the site (including vehicular access, streetscape and boundary walls); neighbour amenity and privacy treatment; apparent number of storeys; and potential precedent; while noting the similarities to No. 6 as approved by Council.

Officers responded in relation to how the design had been improved and made more compliant; that rear lane access would be very difficult; that under the RDC boundary walls could be allowed virtually as-of-right; and that the proposal qualified as a two-storey development.

Committee considered whether the item ought to be deferred for possible revision of the proposal and further consideration, however, after discussion with the application and advice from the Manager Development Services, it was agreed to refer the item

to Council for determination; including that a new condition be added requiring privacy screening to the boundary wall of the front lawn area on the north-west elevation for dwelling one.

Following subsequent liaison between the Town's officers, the applicant and concerned Councillors, amended plans were submitted on 7 May 2008 which incorporated the following changes:

- The proposed roof height of Dwelling 2 has been lowered to RL 43.508;
- The original proposed side boundary walls to the ground floor lawn areas of both dwellings have been setback 1.201m from the lot boundaries;
- The minimum rear setback to Dwelling 1 from the ROW has been increased from zero to 1.094m and 1.138m on the ground and upper floor respectively,
- Walls on the side boundaries are to be reduced so as not to exceed a height of 2.6m above NGL.

Given the assessment that has been undertaken, the recommendation is to Approve the amended plans.

PROPOSAL

The proposal is for two, two storey dwellings with concealed (flat) roofs built over three levels, which are mirror images of each other, albeit with different floor levels.

STAFF COMMENT

In response to concerns raised by Council the applicant has submitted revised plans addressing the following issues:

Height

By way of clarification on a query raised at Council, the contours shown on the revised plans are based on a site survey plan submitted by the licensed surveyors and reflect natural ground levels on the lot, excluding the existing dwelling footprint, driveway and outbuildings. They have been verified as reliable and consistent with the determination of natural ground level for the purposes of this planning application.

The roof height to Dwelling 2 has been lowered 514mm to RL: 43.508 giving it an overall height of 6.48m above natural ground level (RL: 37.022), as determined by Council.

The height of Dwelling 1 remains unchanged at RL: 43.250 giving it an overall height of 6.99m above natural ground level (36.255), as determined by Council. However, due to the topography of the lot with its highest section being on the eastern side the overall roof height of Dwelling 2 will be 0.25m higher than Dwelling 1.

As further background to this matter the following comments were presented in a memo to Council dated 28 April 2008 regarding this specific issue of height:

Streetscape Context

- The proposal follows a similar design approach to No 6 Nailsworth Street as approved;
- The dwellings would actually be some 3m lower than the ridgeline of that existing and lower than the dwellings on either side;
- The proposal involves a combination of cut and fill to create developable sites;
- Whilst the undercroft garage level would present to the street, that is typical of such steep sites in Cottesloe, as for the dwellings on either side;

Height Approach

- Due to the extreme topography the natural ground level at the centre of the site would distort and penalise a design, hence under TPS 2 Council can consider a variation to allow practical development;
- In this case, as for No 6 next door, the predominantly developable land lies at the upper rear and the pattern of dwellings is generally at this vantage point;
- The original proposal has already been reduced in height following discussions with officers;
- The undercrofts are pushed well back and qualify as not higher than the calculated natural ground levels;

Setbacks

The setbacks to the proposed ground floor lawn areas have been modified from zero (i.e: walls on boundaries) to 1.201m to both side boundaries of the lot. The NW side of the lawn area for Dwelling 1 is also now proposed to be screened with a 1.714m high brick wall to avoid potential visual privacy issues with the neighbour. This will also be matched for Dwelling 2.

The proposed minimum rear setback to Dwelling 1 has been increased from zero to 1.094m and 1.138m on the ground and upper floors respectively, to reduce its visual impact from the property behind and the ROW. Dwelling 2 remains as proposed which already had a minimum rear setback of 1.2m and 1.0m on the ground and upper floors respectively, in compliance with the R-Codes. It should be appreciated that these closer rear setbacks are for only a portion of each dwelling and that the remainder of the dwellings at the rear have greater setbacks in excess of the minimum requirements.

Retaining wall heights

The proposed side retaining walls adjoining the front alfresco areas for both dwellings are proposed to be reduced as follows:

Dwelling 1 (NW boundary)

Maximum height of retaining wall on boundary – Reduced from RL: 36.651 to RL: 35.964 (i.e.: proposed max. height of retaining on boundary = 0.93m).

Dwelling 2 (SE boundary)

Maximum height of retaining wall on boundary – Reduced from RL: 37.422 to RL: 36.907 (i.e.: proposed maximum height of retaining on boundary = 1.06m).

Allowing for a standard 1.8m dividing fence above, this will result in an overall height of walls on the side boundaries of 2.73m for Dwelling 1 and 2.86m for Dwelling 2.

The applicant has, however, subsequently agreed to further reduce the height of the retaining walls on the boundaries for Dwellings 1 and 2 to RL: 35.834 and RL: 36.648 respectively to ensure that the overall height of the walls, including a 1.8m high dividing fence above, does not exceed 2.6m above the NGL. This will be conditioned accordingly on the planning approval.

CONCLUSION

The applicant has genuinely attempted to address the concerns raised by Council on this difficult site and, on balance, it is considered that the amended plans have merit and should be supported. In addition, a letter from the owner of No. 6 Nailsworth Street was received on 6 May 2008 in support of the amended proposal.

The further design revisions are significant improvements which will noticeably limit the bulk and scale of the dwellings, improve visual privacy to adjoining properties, reduce potential impact on views from the rear, and enhance the amenity of the surrounds and streetscape.

The previous report to Council is attached and should be referred to when considering this application as it detailed the other variations sought to the Town Planning Scheme and Residential Design Codes.

VOTING

Simple Majority

COMMITTEE COMMENT

The Manager Development Services provided the following additional information on this application via a memo:

Additional Information:

- *The designer has provided the attached letter to elaborate on the liaison undertaken with officers and the design improvements made.*
- *This addresses aspects raised in the Committee / Council discussion which have been responded to.*

Officer Comment:

- *It can be seen that the proposal has undergone significant revision to respond to these matters and now entails greater compliance and less impact.*
- *It is assessed that this design evolution addresses Councillor and neighbour comments satisfactorily and that the proposal can be supported.*

Recommendation:

That the revised plans as recommended be supported.

Committee considered that the aspects previously raised had been adequately addressed to produce a better overall design. Committee would like to see the right-of-way used as the main access point during construction and moved an additional condition (1)(i) for upgrading of the right-of-way to the rear of the site.

OFFICER RECOMMENDATION

That Council:

- (1) GRANT its Approval to Commence Development for two single dwellings at No. 8 (Lot 8) Nailsworth Street, Cottesloe, in accordance with the plans submitted on 7 May 2008, 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) Stormwater runoff from the driveway or any other paved portion of the site, not being discharged onto the street reserve, right-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 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 by the Manager Engineering Services to construct the new crossovers, where required, in accordance with the relevant local law.
 - (e) A comprehensive construction management plan shall be submitted at Building Licence stage, to the satisfaction of the Town, including details on the effect on any services outside the property or to adjacent properties, the protection and repair of any damage caused to fencing or adjacent properties, the dilapidation report and assessment process, and construction vehicle access and parking taking into account the street, land and site.
 - (f) Finalisation of the approved subdivision is required prior to occupation of the new dwellings, and shall be evidenced to the Town.

- (g) The applicant complying with the Town of Cottesloe Policy for Street Trees, February 2005, where development requires the removal, replacement, protection or pruning of street trees.
 - (h) The maximum height of the proposed retaining wall on the north-west boundary for Dwelling 1 shall be reduced from RL 35.964 to RL 35.834, and the maximum height of the proposed retaining wall on the south-east boundary for Dwelling 2 shall be reduced from RL 36.907 to RL 36.648.
- (2) Advise the submitters of this decision.

1.2 COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Birnbrauer

That Council:

- (1) **GRANT its Approval to Commence Development for two single dwellings at No. 8 (Lot 8) Nailsworth Street, Cottesloe, in accordance with the plans submitted on 7 May 2008, 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) **Stormwater runoff from the driveway or any other paved portion of the site, not being discharged onto the street reserve, right-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 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 by the Manager Engineering Services to construct the new crossovers, where required, in accordance with the relevant local law.**
 - (e) **A comprehensive construction management plan shall be submitted at Building Licence stage, to the satisfaction of the Town, including details on the effect on any services outside the property or to adjacent properties, the protection and repair of any damage caused to fencing or adjacent properties, the dilapidation report and assessment process, and construction vehicle access and parking taking into account the street, land and site.**
 - (f) **Finalisation of the approved subdivision is required prior to occupation of the new dwellings, and shall be evidenced to the Town.**
 - (g) **The applicant complying with the Town of Cottesloe Policy for Street Trees, February 2005, where development requires the removal, replacement, protection or pruning of street trees.**

- (h) The maximum height of the proposed retaining wall on the north-west boundary for Dwelling 1 shall be reduced from RL 35.964 to RL 35.834, and the maximum height of the proposed retaining wall on the south-east boundary for Dwelling 2 shall be reduced from RL 36.907 to RL 36.648.
 - (i) To facilitate use of the rear right-of-way for access to the site for construction of the development, the right-of-way shall be upgraded as required to the satisfaction of the Manager Development Services.
- (2) Advise the submitters of this decision.

Carried 4/0

1.3 NO. 36 (LOT 123) JOHN STREET – ADDITIONS AND ALTERATIONS TO A THREE STOREY RESIDENCE

File No:	1413
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Attachments:	Location plan Submission from owner Photos Plans
Report Date:	19 April, 2008
Senior Officer:	Mr Andrew Jackson
Property Owner:	Paul Overall
Applicant:	Paul Overall
Date of Application:	12 March 2008
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	658m²
M.R.S. Reservation:	N/A

SUMMARY

Alterations and additions are proposed to a three storey residence.

Given the assessment that has been undertaken, the recommendation is to Approve the Application.

PROPOSAL

Within the undercroft storey, a new double garage is proposed. The existing single garage is being extended. A store room and a new entry area are proposed.

On the second storey there are substantial internal alterations and minor additions. The existing bedroom, living room, porch and alfresco will be complimented by a new foyer, kitchen, bathroom, laundry, lounge and dining. A new small balcony opens out from the living room.

On the third storey there are substantial internal alterations as well as additions. The existing three bedrooms, bathroom and rear balcony will be complimented by a new Master Bedroom, ensuite, WC, 2 WIRs, 2 Juliette balconies and void area.

Internal staircases link the three storeys. The existing external spiral staircase from the rear third storey balcony to the second storey alfresco and the staircase from the external eastern portico and central balconies on the front elevation are being removed as part of the application.

The roof will change from tiles to Colorbond at the same roof pitch.

The proposal will retain the same concept of being three storeys to John Street and two storeys to the rear.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

- Building Heights Policy No 005

HERITAGE LISTING

- State Register of Heritage Places N/A
- TPS No 2 N/A
- Town Planning Scheme Policy No 12 N/A
- Draft Heritage Strategy Report N/A
- Municipal Inventory N/A
- National Trust N/A

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

Clause	Required	Provided
5.1.1 Building Height	Maximum 6m wall height, 8.5m building height, however 3 storey height limits could be applied of 9m wall and 11.5m roof	8.17m wall height, 10.67m roof height, however proposal complies with 3 storey height limits

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
Boundary Setbacks	Third storey east wall – 2.7m	2m	Clause 6.3.1 – P1
Privacy	Master Bedroom - 4.5m cone of vision setback	4m	Clause 6.8.1 – P1

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2 and Residential Design Codes.

The advertising consisted of a Letter to Adjoining Property Owners.

Submissions

There were 4 letters sent out. There were no submissions received. The owners of 38 John Street signed the plans in support of the application.

BACKGROUND

An existing three storey character “mansion style” house is found on the lot. A swimming pool and rear additions were approved in 1981. A solid front fence has also been added. It is understood the residence previously was two flats.

The residence was assessed by the Heritage Council of Western Australia in 2004 for listing the property on the Register of Heritage Places. The Heritage Council did not warrant further assessment for entry to the Register for this property at that time.

The landowner has advised that there is a restrictive covenant on 36 John Street that restricts the setback to the southern boundary to 14.02 metres (70 links) while the proposal includes a setback of 12.6 metres.

Given the character of the dwelling and the streetscape, the application was referred to the Design Advisory Panel and their comments are provided later in this report. The applicant has responded to the Panels’ concerns and amended the look of the proposal to be more sympathetic than previously.

STAFF COMMENTNatural Ground Level

An existing three storey house is found on the centre of the site. The site survey using a 4 corner average provided an RL of 26.94. The Council’s GIS data indicates the centre of the site is closer to the contour of RL 28 than 27, so a RL of 27.6 was used. An average of the two methods was used to calculate natural ground level which produced a centre of the site level of RL 27.27.

It is noted there is a substantial slope on the site. There is a 2.5m slope from the rear down to the front of the site.

Storeys

The residence is currently classified as a three storey residence and this proposal does not change this. This is because the “undercroft” is not wholly below natural ground level at the centre of the site. The ceiling of this storey is 1.42m above natural ground level.

Effectively, this amounts to two and a half storeys, which is ameliorated by the topography and setting amongst other stately buildings.

The alterations to this storey which include removing and replacing the garage doors do not change this classification.

Wall and building height

The wall height does not meet Town Planning Scheme No. 2 for two storey dwellings. The proposal is for an 8.17m (or RL 35.44) wall height whereas 6m is the maximum permitted. The proposed building height is 10.67m (or RL 37.94) whereas 8.5m is the maximum permitted under Clause 5.1.1 as shown below.

The maximum building height shall be measured from the natural ground level at the centre of the site as determined by Council to the crown of the roof and shall be -

<i>Single Storey</i>	<i>- Roof Height: 6.0 metres</i>
<i>Two Storey</i>	<i>- Wall Height 6.0 metres - Roof Height: 8.5 metres</i>
<i>Subsequent Storeys</i>	<i>- Wall Height: 6.0 metres plus; 3.0 metres per storey - Roof Height: 8.5 metres plus; 3.0 metres per storey</i>

Variations may be permitted in the case of extension to existing buildings.

However, it could be considered that as the property currently has three storeys, a three storey height limit of 9m wall and 11.5m roof height could be applied. The proposed additions easily meet these height requirements.

Alternatively, if a two storey height limit were applied, a variation is warranted as the existing residence has these heights already. This proposal extends these wall and roof over a larger portion of the site. The size of the third storey addition is for the master suite which is 5.8x5.7m or 33m². The two new Juliette balconies are 3m² each.

Furthermore, the location of the third storey addition (except for the small Juliette balconies) is at the rear of the site and will result in the second and third storeys having the same footprint. From the north (rear) elevation the proposal will continue to look like a two storey residence. The rear addition is not visible from the street.

A 6.9m wall height is proposed above natural ground level at this location of the master bedroom (and not at the centre of the site). This has the same maximum wall height of RL 35.44 as the remainder of the third storey. The roof ridge for the master bedroom addition is not as high as the roof above the remainder of the third storey. The roof height above natural ground level in this location is 8.4m or (RL 36.94).

It should be noted that there have been no objections to this and there is no direct impact or loss of amenity to the neighbours, due to the largely compliant side setbacks.

Streetscape

The proposed alterations to the front of the property will have minimal impact to the streetscape in planning terms. This is because it is currently setback 14m. The portico element will be setback a minimum 12.6m setback to the street with the remainder up to 15m from the front boundary. This is still much greater than the standard 6m setback in a R20 coded area.

The residence is not heritage listed.

Design Advisory Panel

The Panel provided valuable advice on how best to approach the desired improvements to the dwelling, especially regarding the presentation to the street. It was recognised that the building had been adapted and modified in the past, and while not heritage-listed it has a distinctive character as part of the street. A softer, more sympathetic facade aesthetic reflective of the existing art deco references was advocated, which in turn would help to reduce the sense of bulk and scale by providing better balance and less contrast. The rear extensions were seen as practical and not problematic. As discussed in this report, the Panels guidance has been taken-up by the landowner for a revised design.

Design Response

From receiving the input of the Design Advisory Panel the applicant responded with a revised development concept. The main aesthetic changes can be found on the front (southern elevation). The changes include:

- Lowering the height of the portico awning and curving its roof,
- Adding two curved Juliette balconies to the front of the residence on the third storey
- Changing the balustrade of the Juliette Balconies as well as the second storey balcony from glass to concrete render
- Reducing the height of central staircase/landing area and replacing the bulky flat roof with a wall height and traditional pitched roof above
- Reducing the size of the central staircase windows
- Changing the roof to a slate style roof from the previously proposed Colorbond to be similar to what is currently provided

The result is a more traditional design in sympathy with the existing art-deco style compared to the previous design. The design will also provide the living areas the applicant desires.

Heritage Advice

The Town's Heritage Advisor has reviewed the revised plans and advised that the design can now be supported as a worthwhile improvement.

Restrictive Covenant

The existing title has a covenant which does not allow development within 70 links or approximately 14.02m of the front boundary. The proposed awning to the portico is setback 12.6m from the front boundary.

The affected eastern neighbour has signed the plans in support of this proposal. It is understood that the covenant was drawn to protect the eastern neighbours' ocean

views in 1911. However, residences to the west have redeveloped and are setback closer to the front boundary. This proposal will not adversely affect westerly views of the eastern neighbour due to the alignment of residences closer to the ocean as well as existing vegetation.

In allowing a variation to restrictive covenants it should be noted that, they are legal documents between particular parties (Council is not a party in this case). Whilst Council is not responsible to enforce the covenant, town planning scheme (or RDC) provisions do not override any restriction unless it is specified under the scheme. This is not the case in Town Planning Scheme No 2 (although it is proposed in draft Local Planning Scheme No 3).

Therefore it may be presumptive to approve the proposal, even if it complies with the RDC until the restrictive covenant restriction or the covenant is removed or altered by agreement between the parties. In this circumstance a condition is proposed to remove this legal anomaly.

Boundary Setbacks

The following side boundary setback of the proposal doesn't readily comply with the Acceptable Development standard of the RDC. Therefore, they are required to be assessed under the Performance Criteria of Clause 6.3.1 (P1) of the RDC, which are also below:

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Actual Setback
Third Storey East Wall	All	8.8m maximum	18m	No	2.7m setback	2m setback

3.3.1 – Buildings Set back from the Boundary

P1 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 an appurtenant open spaces;*
- *Assist with the 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 third storey east wall has a boundary setback of 2m, where 2.7m is usually required. The setback provides adequate sun and ventilation to the building and adjoining property and open spaces. The proposal is part of the eastern elevation which is being extended to build the new master bedroom. A majority of this length of wall exists at this 2m setback and is not considered to be a bulk and scale issue. The wall is not considered to be a privacy issue. This setback is supported.

In regards to the garage wall on the eastern boundary, this meets the Acceptable Development standard of the RDC.

Privacy

The following privacy (cone of vision) setback of the proposal seeks variation from the Acceptable Development standard of the RDC and therefore is required to be assessed under the Performance Criteria of Clause 6.8.1 (P1) of the RDC, which are also below:

Window of room	Required	Provided
Master Bedroom (most easterly window on northern elevation)	4.5m setback from window	4m setback looking north east

Avoid direct overlooking between active habitable spaces and outdoor living areas of the development site and the habitable rooms and outdoor living areas within adjoining residential properties taking account of:

- *The positioning of windows to habitable rooms on the development site and the adjoining property.*
- *The provision of effective screening.*
- *The lesser need to prevent overlooking of extensive back gardens, front gardens or*
- *Areas visible from the street.*

The proposal asks for a variation to the master bedroom's cone of vision setback. The proposal complies with the Performance Criteria of the RDC. Any overlooking is restricted to being on an acute angle to the eastern neighbour from the north facing window and the variation is to a very small area. It is noted the eastern neighbour did not object to this overlooking and the window is recommended for approval.

In regards to the proposed Juliette Balconies from Bedroom 2 and Bedroom 3, these are not subject to privacy controls. The RDC do not require balconies less than 3m² in area to be subjected to controls. The new doors to the Juliette Balconies replace large windows.

In relation to the new balcony from the living room, this is larger than 3m², being 3.8m², however, this balcony as such is not considered for privacy. To be considered an active habitable space it has to be wider than 1m². The balcony is 1m² x 3.8m². The new doors to this balcony replace large windows. In circumstances like this the overlooking is assessed from the glass doors of the existing living room rather than the balcony itself.

CONCLUSION

The proposal is for contemporary alterations and additions to the existing character residence. These additions are now more sympathetic and the residence is not heritage listed.

In regards to the building height, the rear addition complies with an addition to a three storey residence and in this regards the Scheme allows for variations to the existing building. This is acceptable here as the proposed wall and roof heights do not exceed the heights currently on site. The proposal is not considered to create any new amenity issue to any adjoining neighbour. The application is recommended for approval subject to conditions.

VOTING

Simple Majority

COMMITTEE COMMENT

The Committee considered that the design refinements were well-worthwhile and complemented the owner for responding to the DAP process. The effect of the covenant was queried and the Manager Development Services clarified that the condition allowed for it to be addressed by mutual agreement between the owner and neighbour who are discussion the matter amicably, whereby it is not an impediment to approval.

1.3 OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Birnbrauer

That Council:

- (1) GRANT its Approval to Commence Development for alterations and additions for a three storey residence at No. 36 (Lot 123) John Street, Cottesloe, in accordance with the revised plans dated 7 May 2008 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) 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.**
 - (c) 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.**
 - (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) The finish and colour of the boundary wall facing the neighbours being to the satisfaction of the Manager Development Services.**
 - (f) 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.**
 - (g) 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 in the Environmental Protection (Noise) Regulations 1997.**

- (h) Prior to the issue of a building licence, the landowner shall evidence to the Town that the restrictive covenant has been altered, waived or extinguished sufficient to allow the reduced front setback to the portico awning. Alternatively, the front setback shall be modified to be in accordance with the restrictive covenant, which shall be shown in the building licence plans to the satisfaction of the Manager Development Services.
- (2) Advise submitters of the decision.

Carried 4/0

1.4 NO. 43 (LOT 100) MARGARET STREET – TWO-STOREY RESIDENCE WITH UNDERCROFT AND POOL

File No:	1410
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Attachments:	Location plan Submissions (2) Photos Plans
Report Date:	30 April, 2008
Senior Officer:	Mr Andrew Jackson
Property Owner:	Peter Wright
Applicant:	Don Taylor Design Associates
Date of Application:	30 April, 2008
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	364m²
M.R.S. Reservation:	N/A

SUMMARY

The existing two storey residence is being demolished to make way for a new two storey residence with an undercroft for car parking and rear swimming pool.

Given the assessment that has been undertaken, the recommendation is to Approve the Application.

PROPOSAL

In the undercroft, a two car garage, store and small cellar is proposed. On the ground floor, a lounge room, study, powder, kitchen, family room and laundry are proposed. Externally a verandah, pond and pool are also proposed.

On the upper floor, 2 bedrooms and a master bedroom, walk in robes room, deck, reading room, bathroom and ensuite are proposed. Staircases link the three levels.

The existing solid limestone wall on the front boundary will be removed as part of this proposal.

STATUTORY ENVIRONMENT

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

POLICY IMPLICATIONS

- Building Heights Policy No 005

HERITAGE LISTING

- State Register of Heritage Places N/A
- TPS No 2 N/A

- Town Planning Scheme Policy No 12 N/A
- Draft Heritage Strategy Report N/A
- Municipal Inventory N/A
- National Trust N/A

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Town Planning Scheme No 2 - Text

Clause	Required	Provided
5.1.1 Building Height	6m maximum wall height 8.5m maximum building height	7.38m skillion-style roof inclusive of maximum wall height

Residential Design Codes

Design Element	Acceptable Standards	Provided	Performance Criteria Clause
Boundary setbacks	Basement north wall - 1.5m	0.6-0.9m	Clause 6.3.1 – P1
Boundary setbacks	Ground north wall – 1.1m	0.9m	Clause 6.3.1 – P1
Boundary setbacks	Ground south wall – 3.8m	Nil-0.3m	Clause 6.3.2 – P2
Boundary setbacks	Ground south wall – 1.5m	Nil	Clause 6.3.2 – P2
Boundary setbacks	Upper north wall – 2.5m	1.7m	Clause 6.3.1 – P1
Boundary setbacks	Upper south wall – 2.6m	Nil-3.5m	Clause 6.3.2 – P2
Privacy	Verandah 7.5m	1.5m, 2.8m or 5.8m in different directions	Clause 6.8.1 – P1
Privacy	Deck 7.5m	4m	Clause 6.8.1 – P1
Design for Climate	Maximum 25% overshadowing	57% overshadowing (current house has 52%)	Clause 6.9.1 – P1

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

The Application was advertised as per Town of Cottesloe Town Planning Scheme No 2 and Residential Design Codes.

The advertising consisted of a Letter to Adjoining Property Owners.

Submissions

There were 4 letters sent out. There were 2 submissions received, of which none were objections.

Terry and Ann Sweet of 216 Marine Parade

- *No objections to increase in height*
- *However this is conditional on that pool pumps are not placed near or against their rear fence due to the noise from the pumps*

Sally- Ann Jones of 41 Margaret Street

- *Do not oppose neighbours' redevelopment*
- *Requests a dilapidation report before any demolition occurs*
- *Shares a long common wall with the applicant*
- *Says her property is in excellent condition and does not want it to be damaged*

BACKGROUND

An existing contemporary two storey residence and carport is found on the property. The existing residence shares a long common wall with the southern neighbouring property. The residence will be demolished and is located on a street undergoing significant changes.

STAFF COMMENT**Natural Ground Level**

The natural ground level at the centre of the site is determined to be RL 11.82. This was determined from using a 4 corner average of the site. This appears to be a fair level and the site survey confirms this.

Building Height

The wall heights do not automatically conform to the TPS2 basic requirement of a 6m wall height for a traditional pitched-roof dwelling. The roof in this proposal is partially concealed with a parapet wall on the southern boundary and the roof lines slope gently downward to the centre of the building. A box gutter in the low point removes

rainwater. Technically, the roof is an inverted skillion or butterfly shape. It is an elegant yet restrained design and it has a flat, edge to street and rear. In this way it has the effect of streamlining the streetscape appearance and reflects the horizontal elements of the dwellings either side, forming a simple statement between them and affording a sense of proportion and rhythm.

As dwellings with concealed roofs are not considered directly in TPS2, the RDC are relied upon to as a guide. The RDC allow a 7m wall height with concealed roofs. It is assessed that this proposal is closer to a concealed roof than a traditional pitched roof, so that standard should apply.

The proposal has varied building heights with three differing roof elements. The front of the dwelling has roof heights between 7.1m and 7.38m. On the upper floor, this extends from the front bedrooms sloping downwards to the reading room

The rear roof element extends from the deck downwards to the ensuite on the upper floor. The roof heights in this section range from 6.72 to 7.12m. A parapet wall on the southern elevation conceals the roof from this view.

The third roof element is a skylight. This would provide natural light to the ensuite. The ensuite does not have windows so the skylight assists the solar efficiency of the dwelling, which is very important to confined dwellings on smaller lots. The proposed skylight is hidden and not visible from street and is a desirable solar feature.

The skylight footprint measures 2.5m x1m wide (2.5sqm). It is setback 2.2m from the southern boundary and is assessed to not have any amenity impact on neighbours. The maximum height of the skylight is the same as the maximum roof height at the front of the residence, being 7.38m.

This wall/roof situation is a design approach rather than being brought about by topography or some other basis for the specific exercise of discretion under the Scheme, but on a performance-based assessment under the RDC it may be considered sufficient to support such a variation as meritorious. The form of the subject part of the dwelling is consistent with other similar dwellings approved taking into account the use of flat or skillion roofs and their interrelationship with wall heights. Furthermore, this particular proposal is similar to the existing built envelope which already shares a two storey parapet wall on the southern boundary.

No objections were made regarding the overall height or built form. The applicant requests this height due to the unusual shape and small size of the lot. The garage gradient is already at a maximum of the Australian Standards and cannot be increased. Increasing the front setback is also not recommended as this would detract from the street appeal and would reduce the amount of useable space in the backyard of the small lot. The floor to ceiling space of each level ranges from 2.4m to 2.9m and these are slightly less than the Cottesloe average.

Therefore, it is recommended that the maximum height of 7.38m (RL 19.2) could be supported. It is assessed that this variation is only at two points and the maximum portion of the roof slopes below the 7m concealed roof standard for the central part of

the residence. To change the roof pitch by 0.38m would make a discernable change to the liveability of a residence without generous floor to ceiling levels.

Boundary Setbacks

The following side boundary setbacks of the proposed dwelling do not meet the Acceptable Development standards of the RDC:

Wall ID	Wall Name	Wall Height	Wall Length	Major Openings	Required Setback	Actual Setback
Basement north	All	1.5m	18m	No	1.5m	0.6-0.9m
Ground north	Passageway to kitchen and stair	4m	4.8m	No	1.1m	0.9m
Ground south	All except laundry	4.5	18.5	No	1.7m	Nil-0.3m
Ground south	Laundry	3.5m	2.4m	No	1.5m	Nil
Upper north	All	7m	21m	No	2.5m	1.8m
Upper south	All	7.5m	21m	No	2.6m	Nil to 3.5m

Hence they are required to be assessed under the Performance Criteria of Clause 6.3.1 (P1) & 6.3.2 (P2) of the RDC, which are:

6.3.1 – Buildings Set back from the Boundary

P1 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 an appurtenant open spaces;*
- *Assist with the 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.*

P2 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 RDC do also allow as per Clause 6.3.2 A2ii: *In areas coded R30 and higher, walls not higher than 35m with an average of 3m for two thirds the length of the balance of the boundary behind the front setback, to one side boundary.* However in this instance the southern boundary wall is proposed up to two storeys or 7.7m in height.

Basement

The proposal has a 0.6m to 0.9m setback to the side boundary for the basement north wall. This wall would normally be required to be setback 1.5m. However, it is assessed that the design meets the performance criteria of the RDC as it makes effective use of space. It is also considered that the wall does not have an adverse effect on the amenity of the adjoining property as it is largely below ground.

Ground Floor

On the ground floor north wall, the proposal has a 0.9m setback to the side boundary. This wall would normally be required to be setback 1.1m. However, it is assessed that the design meets the performance criteria of the RDC as there is no adverse effect on the amenity of the adjoining property. The neighbouring property has a similar setback to its side boundary in this section. The proposal does not provide for overlooking and the neighbour does not object.

The proposal has a nil setback for a bedroom and a 0m to 0.3m setback to the side boundary for the ground floor south wall. This wall would normally be required to be setback 1.5m from the boundary. The setback meets some of the performance criteria of the RDC as it makes effective use of space and there is no privacy concern. However, the setback does not *“ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted”*. This variation may be allowed on the basis of the unusual shape of the lot and that the proposal is similar to what already occurs on the lot, albeit for a longer length. The southern neighbour did not object to this variation.

Similarly, the laundry is built adjacent to two side boundaries. This laundry is considered to be a separate wall as it is lower than the remainder of the southern ground floor wall. The laundry meets the same criteria as the rest of the ground floor southern wall but also does not meet the sunlight criterion. This variation may be allowed on the basis of the unusual shape of the lot and the height has been lowered in this section. The southern neighbour did not object to this variation.

Upper floor

The proposal has a 1.8m setback for the upper north wall. This would normally be required to be setback 2.5m from the boundary, but that would be impractical to the relatively narrow lot. All the larger windows on this elevation are made of obscured glass.

This wall meets the performance criteria of the RDC as it makes effective use of space. It is considered that the wall does not have an adverse effect on the amenity of the adjoining property, and because it is to the south it does not affect their sunlight. The setback will maintain adequate ventilation this property and the neighbouring property. The slanting roof and variety of windows mitigate the impact of bulk. The variation is recommended for approval.

A minor variation is proposed for the upper south wall. This is setback nil to 3.5m and would usually be required to be setback 2.6m. It is considered that this wall does not automatically meet the performance criteria of the RDC, as although the design makes effective use of space and there is no privacy concern, the wall does overshadow somewhat. However, the architect has responded to this by lowering the

height of the wall whilst retaining the proposed upper floor on the southern boundary as a key element of the design. The revised parapet wall height is being slightly increased from what is presently on site. This will now cast a shadow onto the neighbouring roof only. The small increase in its length will slightly increase shadow to the front lawn only. The southern neighbour did not object to the proposal and the improvement is supported. Hence this variation is recommended for approval.

Privacy

Overall, the proposal performs well in terms of privacy and was not a cause of concern to neighbours.

The following privacy (cone of vision) setback of the proposed residence don't comply with the Acceptable Development standards of the RDC:

Room	Required	Provided
Deck	7.5m setback	4m setback facing northwest
Verandah	7.5m setback	2.8m setback to south, 5.8m to west, 1.5m to north

Hence it is required to be assessed under the Performance Criteria of Clause 6.8.1 (P1) of the RDC, which are:

Avoid direct overlooking between active habitable spaces and outdoor living areas of the development site and the habitable rooms and outdoor living areas within adjoining residential properties taking account of:

- *the positioning of windows to habitable rooms on the development site and the adjoining property;*
- *the provision of effective screening; and*
- *the lesser need to prevent overlooking of extensive back gardens, front gardens or areas visible from the street.*

The proposal asks for a variation to the deck cone of vision setback. The proposal complies with the performance criteria of the RDC. The variation for overlooking is to the northern neighbour in a north-westerly direction. Screening is proposed to the northern and southern faces of the deck and the setback to the south is adequate. The north-westerly view is to a passive open passageway and a house with no major openings in these sections. These areas are not considered to be sensitive for privacy.

The verandah on the ground floor is another overlooking element. It is assessed for overlooking as it is raised in excess of 500mm above natural ground level. To the north overlooking is to a passive open passageway with no major openings to habitable rooms behind. These areas are not considered to be sensitive for privacy.

To the west, a carpark to a block of flats is overlooked. This is not a sensitive area for privacy. This property also shares a common boundary with a residence to the south west at 216 Marine Parade for a length of 2m. The potential for overlooking is removed by the existing high screen wall and proposed pool store. The setback to

this property from the edge of the verandah is 7m, screening to this property is not recommended.

To the south, the verandah is setback 2.8m from the southern neighbour. Overlooking is partially mitigated by a 2m high boundary wall however it is assessed the verandah does not meet the performance criteria in this location. The existing screen wall will not wholly prevent overlooking to the neighbouring rear garden.

Due to the angle of the line of sight and that a person on the deck would be standing a minimum of 2.8m setback from the southern boundary, it is recommended the existing boundary wall for the length of the pool on the southern boundary be raised to RL 13.665 at the applicants' expense. This height is 1.5m higher than the proposed finished floor level of the verandah taking into account for this angle.

Overshadowing

The overshadowing to the southern neighbour is 207sqm or 57% of the southern lot which is also 364m². The proposal does not satisfy the Acceptable Development standard of the RDC for design for climate (overshadowing) which allows a maximum of 25% to the adjoining property.

While this is a large variation, it is noted the existing situation provides for 52% overshadowing to this neighbour whom also comprises of a two storey house with parapet wall. A large portion of this overshadowing falls on the roof of the neighbour and there is a small increase to the shadow in the front and back yards. The southern neighbour did not object to this and due to the lot and design constraints. It is not possible to reduce overshadowing without a significant reduction to the proposed size of the residence. It is not recommended to require a re-design of the residence.

Pond Feature

The feature pond (not a pool) form part of the plans but does not need a planning assessment. There appears to be no direct access into the pond and its construction standard will be governed by the BCA.

Earthworks

The proposed cut required to allow for the new residence and the below ground garage will require substantial earthworks. The southern neighbour has concerns regarding the possible removal of the existing boundary wall.

In this regard, a dilapidation report and other normal construction requirements would be involved in the building licence process to address these aspects. It is also expected that all costs will be borne by the applicant.

Pool Enclosure

The applicant is aware of the neighbour concerns regarding the noise from the proposed pool equipment. The applicant requests to leave the pool equipment in this location due to the site constraints but offers to enclose it in a 1.8m high pool room.

This is recommended in a condition of approval. Plans of the pool enclosure can be provided at the building licence stage.

Open Space

The proposal complies with the Acceptable Development standards for open space. The proposed pool enclosure room does not affect the remainder of the proposal meeting this requirement.

CONCLUSION

The proposed removal of the existing two storey house will allow for a modern two storey residence with undercroft and pool. The proposed residence is higher to allow for the gradient into the garage (undercroft) and is slightly longer to allow for larger living spaces. The applicant is also doing this to improve the street presence of the property. The existing residence is setback further from the front boundary than the two side neighbours of which the southern neighbour is two storeys high on the side boundary.

The effective wall heights to the sides are closer to the RDC concealed roof standard of 7m for two-storeys and the relatively marginal variation causes no large impacts to neighbours due to their existing built envelopes. The site is undersized for an R20 coded lot which does not assist any proposal for redevelopment on the site. It should be noted that there were no objections to the proposal and it meets the performance criteria of a majority of the design elements of the Residential Design Codes. The application is recommended for approval subject to conditions.

VOTING

Simple Majority

COMMITTEE COMMENT

Some Committee members felt that the overall height of the building should be made to comply more fully with the relevant requirements, as it was felt that the building was bulky to the street. After discussion of the design approach and merits, including in the context of the character of the area, an amendment to impose the 7m concealed roof building height standard was lost 3/2 on the Chairperson's casting vote.

The architect was invited to comment and advised that the ceiling height is required for the installation of air-conditioning and that only a section of the building seeks a height variation, with the roof form enhancing the appearance of the building.

Mr Jackson elaborated that the design was subtle and streamlined to minimise the sense of bulk and scale, which the roof form assists when viewing the dwelling in

three dimensions. He pointed-out that the smaller lots in the locality are undergoing redevelopment and that design is constrained by their size and orientation, but that the proposal represented a comparatively good example of how to fit in with the older cottage-style dwellings.

Moved Cr Boland, seconded Cr Carmichael

- (o) The building height shall comply with the 7.0m standard for concealed roof buildings.

Lost 3/2

1.4 OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Birnbraeur

That Council:

- (1) **GRANT its Approval to Commence Development of a two-storey dwelling, undercroft and pool at No. 43 (Lot 100) Margaret Street, Cottesloe, in accordance with the revised plans received on 9 May 2008, 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) **Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserves, 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 for a building licence.**
 - (c) **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.**
 - (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) **Any walls or fencing to the front setback area shall be of an open-aspect design in accordance with the Town of Cottesloe Fencing Local Law, and the proposed wall adjacent to the driveway ramp on the northern side shall be open-aspect to the satisfaction of the Manager Development Services, including a glass or metal rung balustrade if deemed necessary.**
 - (f) **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 in the Environmental Protection (Noise) Regulations 1997.**

- (g) The applicant applying to the Town of Cottesloe for approval to construct a crossover, in accordance with Council specifications, as approved by the Manager Engineering Services or an authorised officer.
- (h) The finish and colour of the boundary walls facing the southern neighbouring property being to the satisfaction of the Manager Development Services.
- (i) The pool pump and filter shall be 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 minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997. The details of this shall be submitted as part of the building licence application.
- (j) Wastewater or backwash water from swimming pool filtration system shall be contained within the boundary of the property 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 1.8 metres 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) The existing redundant crossover in Margaret Street being removed, and the verge, kerb and all surfaces made good at the applicant's expense, to the satisfaction of the Manager Engineering Services.
- (n) Revised plans being submitted for approval by the Manager, Development Services at the Building Licence stage, showing:
 - (i) The existing boundary wall between 41 and 43 Margaret Street for the length of the proposed pool being increased in height to RL 13.665.
 - (ii) The proposed pool enclosure room being to a maximum height of 1.8m above its finished floor level as shown on the plans and not exceeding 5sqm in size.

Advice Note:

Construction (and demolition) of any earthworks, basement, retaining walls, boundary walls, dwelling and in-ground services will be required to follow all necessary building applications, approvals and procedures, including before-and-after dilapidation reports as appropriate, in order to ensure structural integrity and protect the interests of adjacent properties.

- (2) Advise submitters of the decision.

Carried 3/1

1.5 NO. 5 (LOT 42) FLORENCE STREET – OPERABLE PERGOLA

File No:	1444
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Attachments:	Location plan Correspondence from applicant Plans
Report Date:	28 April, 2008
Senior Officer:	Mr Andrew Jackson
Property Owner:	Sarah Hope
Applicant:	Paradigm Architects
Date of Application:	24 April, 2008
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	796m²
M.R.S. Reservation:	N/A

SUMMARY

An operable pergola is proposed in the front setback area to provide shade to a previously approved swimming pool.

Given the assessment that has been undertaken, the recommendation is to Refuse the Application.

PROPOSAL

The operable pergola is proposed to cover the entire pool. The pergola is 2.4m high, 15.5m long and 3.85m wide. It has a size of 59.7m². The pergola is located 1.2m from the front setback and is parallel for the length of 15.5m.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Residential Design Codes
- TPS2 Outbuildings Policy 004

POLICY IMPLICATIONS

- Garages and Carports in the Front Setback Area Policy No 003

HERITAGE LISTING

- State Register of Heritage Places N/A
- TPS No 2 N/A
- Town Planning Scheme Policy No 12 N/A
- Draft Heritage Strategy Report N/A
- Municipal Inventory N/A
- National Trust N/A

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Council Resolution

Resolution	Required	Provided
TP128a – October 2002	6m front setback for residential development in the district which does not include averaging:	Operable pergola at 1.2m from front boundary

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building
- Engineering

External

N/A.

ADVERTISING OF PROPOSAL

The application was not required to be advertised.

BACKGROUND

Currently a contemporary single storey house is found on the property. A two storey residence, rear garage and studio, front fence and pool in the front setback were approved at an Ordinary Council Meeting in February 2008. Subsequently an application for a revised open aspect front fence was approved in April 2008 under delegated authority.

STAFF COMMENTStructure in the front setback

The proposal asks for a variation to the front setback requirements. Council requests a 6m front setback as per the Council Resolution from October 2002, whilst the Residential Design Codes require a 6m averaged setback for a dwelling in an R20 zone.

This proposal has a minimum setback of 1.2m from the front boundary for the pergola. The proposed and approved residence behind the pergola is setback a minimum of 10.2m from the front boundary. There's a separation distance of a minimum of 4m between the pergola and the front of the residence which includes

the deck and a second pergola previously approved. This proposal does not meet a 6m averaged setback from the front boundary which is the RDC requirement, nor meet the Council Resolution.

The applicant has designed the pergola with a light-weight aspect and the pergola does not interrupt the view of the ground floor of the residence to the street. The proposal will also provide persons in the pool protection from the Australian sun. However, there are several reasons that front boundary setback variation for the pergola cannot be supported. The pergola is a very wide structure of 15.5m and this width is only setback 1.2m to the front boundary.

Properly the pergola should have been proposed and considered as part of the original and overall development application, rather than put forward as a later addition and virtual afterthought. This is because the approved dwelling already includes frontal structures / elements and has a built-up and unusual form, hence a presence of bulk and scale. However, it is considered unlikely that the proposal would have been then supported.

Comparison to other structures

When compared to other structures proposed in the front setback there is no direct comparison. Buildings in the front setback area are only seldom supported.

This proposal may be likened to a carport, which is also an open yet roofed structure and are occasionally approved in the front setback area. Carports would be requested to be setback a minimum of 4.5m as per Council's *Carports and Garages in the Front Setback Policy*. A standard carport would only be a maximum of 6m wide and be between 30 and 36m² in size. In comparison, this proposal is more than double the width and is almost double the size of a carport.

Furthermore, the front setback in an R20 coded area is considered to be the front 6m of the property. At a setback of 4.5m a carport would be allowed to intrude by only a lesser portion of its total area into the front setback area, whereas this proposal has a pergola totally within the front setback and is a bulk and scale issue.

It should be noted that if a carport is proposed requesting a front setback concession, this generally may only be supported if there is an existing residence and no other location could be considered due to the location of the house's envelope. This proposal coincides with a recently approved new residence. It is also argued the property has sufficient space in the rear yard if a pool and associated shade structure were proposed.

Streetscape

Other setbacks of residences within the immediate vicinity can be considered. To the west the neighbouring property, 1 Florence Street, faces Chamberlain Street and has a secondary street setback to Florence Street. A R.O.W separates the two properties and the setback to Florence Street is between 5m and 7m.

To the east, the neighbouring property at 7 Florence Street has recently indicated they may redevelop their property. The current front setback of the residence is approximately 10m. 9 Florence Street is setback 4m to the garage and 11m to the

main residence whilst 11 Florence Street has recently being given approval for two grouped dwellings with front setbacks between 6 and 7m respectively. On the basis of streetscape there is no precedent to allow for such a reduction of the front setback requirement for the pergola.

Furthermore, the Residential Design Codes require for the setback of buildings generally, '*Buildings setback from street boundaries an appropriate distance to ensure they:*

- *Contribute to the desired streetscape*
- *Provide adequate privacy and open space for dwellings*
- *Allow safety clearances for easements for essential service corridors*

The proposal does not meet the first criterion due to the large projection of the pergola into the front setback area and the much larger setbacks of neighbouring properties. It also compromises the other two criteria.

Outbuildings Policy

The Town Of Cottesloe Outbuildings Policy states:

PROHIBITION FROM STREET SETBACK AREAS

With the exception of carports when permitted by Council in accordance with Policy No. TPSP 003 and such pergolas and similar structures associated with landscaping development of the property as the Council may permit, the Council will not permit an outbuilding to be erected between the building line or setback line and the street alignment to which it relates

The Policy goes on to provide that roofed structures are to be excluded from open space calculation and should not exceed 60sqm; ie be too large – which the proposal nearly equals.

This clause does not allow for free-standing pergolas within the front setback area, obviously on the basis that such structures intervening in the setback area between a street and dwelling defeat the purpose of a setback and impact on the streetscape. This policy provides another strong reason for refusing this application.

Bulk and scale

The proposed pergola is operable and when the shade cloth is not in use it can be concealed in a tube. However, the posts and the shade cloth when in use are considered to be of significant bulk and scale. This is combined with the approved retaining wall and the front fence within the front setback area.

The proposal occupies 15.5m of the 20.12m frontage. This is 77% of the street frontage. As a comparison only, the Residential Design Codes allow a maximum of 50% of the frontage to be allowed for a garage, which would also require a larger front setback than this proposal. In terms of bulk and scale the proposal does not meet any criteria.

Side Setbacks

The proposal complies with the Acceptable Development standards of the Residential Design Codes for side setback. The side setback to the east is 1.2m and to the west it is 3.34m to the Right of Way.

CONCLUSION

The pergola will dominate the front setback area due to its size and lack of setback. There is no precedent in an R20 coded area to allow for such as large setback concession. The Town's Outbuildings policy does not support pergolas in the front setback area. Structures in the front setback in residential areas within the Town such as carports are only approved in rare circumstances and are significantly smaller in size than this proposal. The proposal does not meet any criteria to allow for a variation.

Furthermore, the proposal will interrupt the streetscape which currently enjoys generous front setbacks. This proposed pergola is 15.5m long and is only 1.2m from the front boundary. The proposed operable pergola is not recommended for approval on the basis of the bulk and scale of the structure so close to the front boundary.

VOTING

Simple Majority

COMMITTEE COMMENT

The Manager Development Services provided the following additional information on this proposal via a memo:

Additional Information:

- *The architects have responded with the attached letter and amended sketch plans received today.*
- *This contends that a pergola structure in the front setback would not be detrimental and proposes a reduced revised design as indicated on the sketch plans.*

Officer Comment:

- *In the limited time available, a quick technical assessment suggests that amended proposal would ---*
- *Fundamentally, however, as a building in the front setback it remains at odds with the planning controls.*
- *The rationale and revised design are not considered sufficient to warrant approval.*

Recommendation:

That Committee not supports the original or revised plans.

OR

That Committee recommends deferral of the application to next month's round of meetings to enable full assessment and consideration of the revised proposal.

In light of this and the architect's comments Committee considered that officers to should assess the revised plans and report back on the proposal. It was noted that the retractable shade cover over the pool represents a sustainable design. It was also clarified that the approved fencing will be open-aspect.

OFFICER RECOMMENDATION

That Council REFUSE the Development Application for the Operable Pergola at No. 5 (Lot 42) Florence Street, Cottesloe, in accordance with the plans submitted on 12 April 2007, 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) A pergola in the front setback area is contrary to the Streetscape principles of the Residential Design Codes, as it would have a detrimental physical and visual impact on the streetscape.
- (c) The proposal is contrary to Council's Town Planning Scheme No. 2 Outbuildings Policy 004, which does not support pergolas in the front setback area.
- (d) The proposal is considered excessive and unnecessary in the context of the design of the approved dwelling and its private open space, as it would create extra bulk and scale and be an obtrusive structure.
- (e) Approval to the proposal would set an undesirable precedent for the approval and proliferation of similar or other structures in front setback areas in this street, the locality and the Town generally.

1.5 COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Birnbrauer

That the application be DEFERRED to enable officers to assess and report on the revised plans.

Carried 4/0

1.6 NO. 85 (LOT 94) GRANT STREET – PART SOLID FRONT AND SIDE BOUNDARY FENCING AND ENTRY GATE

File No:	1427
Author:	Mr Lance Collison
Author Disclosure of Interest:	Nil
Attachments:	Location plan Correspondence from owner Photos Plans
Report Date:	22 April, 2008
Senior Officer:	Mr Andrew Jackson
Property Owner:	A & R Kennedy-Perkins
Applicant:	A & R Kennedy-Perkins
Date of Application:	31 March, 2008
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Density:	R20
Lot Area:	604m²
M.R.S. Reservation:	N/A

SUMMARY

Part solid front and side boundary fencing and an entry gate are proposed in connection with an intended swimming pool.

Given the assessment that has been undertaken, the recommendation is to Approve the Application with slight modification to the fencing.

PROPOSAL

The proposed front fence to Grant Street comprises of 2 solid panels to 1800mm high. The remainder of the front fence which also comprises of 2 panels is solid to 1250mm and open aspect to 1800mm. The side entry gate is open aspect.

On the Birkbeck Street (secondary) elevation, 2 solid panels are proposed which are solid to 1250mm and solid to 1800mm within the front setback area. Behind the front setback area an open aspect gate and solid walls to 1800mm high are proposed.

The fencing is proposed to be made of limestone and the open aspect section will feature white painted timber pickets.

The swimming pool within the front setback area is not part of this application but the applicant says this is forthcoming.

The existing picket fence facing Grant and Birkbeck Streets will be removed.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Residential Design Codes
- Fencing Local Law

POLICY IMPLICATIONS

N/A.

HERITAGE LISTING

- State Register of Heritage Places N/A
- TPS No 2 N/A
- Town Planning Scheme Policy No 12 N/A
- Draft Heritage Strategy Report N/A
- Municipal Inventory N/A
- National Trust N/A

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Town of Cottesloe Local Law

Local Law	Required	Provided
Fencing Local Law	Solid fencing to a maximum height of 900mm and open aspect to 1800mm within front setback area.	Solid fencing to 1250mm in height within front setback area. Sections with solid fence to 1250mm in height are open aspect to 1800mm.

STRATEGIC IMPLICATIONS

N/A.

FINANCIAL IMPLICATIONS

N/A.

CONSULTATION

REFERRAL

Internal

- Building

External

N/A.

ADVERTISING OF PROPOSAL

The application was not required to be advertised.

BACKGROUND

A well established residence is found on the property. A rear carport and studio was added later.

STAFF COMMENTFront Fence

In regards to the fence, the solid sections do not meet the open aspect requirements of the Fencing Local Law where the solid component of the fence cannot exceed 900mm in height. The fencing is a mix of solid and open style. The proposed solid sections are 1800mm in height while the open aspect sections begin at 1250mm in height above natural ground level up to 1800mm.

As the application does not comply with the Fencing Local Law, the standards may be varied if the following criteria are met.

“The Fencing Local Law states that variation may be allowed having regard to whether the fence will:

- a) the safe or convenient use of land:*
- b) the safety or convenience of any person and:*
- c) the impact of the fence on the streetscape”*

The proposed fence may assist the safe use of land and persons because it will provide a barrier against unwanted visitors. The applicant says this side of Grant Street is popular with pedestrian traffic as it is a link between the beach and Grant Street Train Station and this fence will provide a physical and visual barrier. It is noted that the residence is in close proximity to this station and Grant Street is a link to the beach. However, an open aspect fence is considered to provide better security due to better surveillance.

Also, it is assessed that the streetscape will not be enhanced as the non-complying front fence will add additional bulk to the front setback area. The streetscape in the area is a mix of open gardens and solid front fences. To the west 81 Grant Street has low front fencing while 83 Grant Street has no front fencing. To the east and across the other side of Birkbeck Avenue at 87 Grant Street, a solid front fence to approximately 1500mm in height is found.

Further along Grant Street, a mix of properties of open front gardens, some with open aspect fencing and some with solid front fences. Generally, the solid front fences further along Grant Street appear to be approved before the Fencing Local Law came into being and solid front fences are not a current objective.

In regards to the RDC requirements, the objective is for:

Front walls and fences to promote surveillance and enhance the streetscape, taking into account of:

- the need to provide protection from the noise and headlight glare where roads as Primary or District Distributors or Investigator Arterials; or,*
- the need to provide screening where there is no alternative outdoor living area to the front setback*

The proposal does not meet these requirements. As mentioned previously the proposal allows for minimal surveillance of the street and Grant Street is not considered a primary or district distributor or investigator arterial. The applicant claims there are many cars turning illegally past the property with lights beaming into the front rooms of the house is noted but it alone does not warrant a solid front fence. Also, there is an alternative outdoor living area to the front setback, which is a rear garden of considerable size and could house a pool.

The RDC also require, *“walls and fences truncated or reduced to no higher than 0.75m within 1.5m of where walls and fences adjoin vehicle access points where a driveway meets a public street and where two streets intersect”*. The proposal does not meet the Acceptable Development Standard of the RDC. However, it could be argued that the following performance criterion, *“walls and fences to primary or secondary streets, rights-of-way or communal streets so that adequate sightlines are provided at vehicle access points,”* is satisfied. This section of Grant Street is one way and persons driving north along Birkbeck Street would not look through this property. However, as the fence does not meet a majority of the criteria to allow variations, alternatives should be explored.

Possible proposed pool and fencing requirement

The applicants' argument of providing privacy for the pool area is of merit as people generally want privacy when around a pool. The pool in the front setback will also gain access to northern sun. It is also noted that if a solid front fence were not granted, there is an area of 8x13m in the rear yard which could accommodate a swimming pool.

Approving a solid front fence because a pool is proposed also in the front setback could set an undesirable precedent. The pool has not been applied for with Council at the time of writing this report. It is noted the owner has purchased a pool with Sapphire Pools.

At the same time, requiring the fence to be a maximum solid height of up to 900mm above ground level (which is the Fencing Local Law standard) may not adhere to the standards for swimming pool barriers (Australian Standard 1926.1.) This requires a fence of 1200mm height with no gap exceeding 100mm vertically or horizontally.

It is recommended that if the applicant wants to proceed with a pool in the front setback then the fence be amended for greater compliance. The fence shall be amended to show all solid portions within the front setback area to both Grant Street and Birkbeck Avenue elevations to a maximum height of 1200mm with the portion above to 1800mm height being open-aspect. This fence will also comply with the Swimming Pool standard AS 1926.1. This condition of approval would ensure that the fence partially meets the open-aspect requirement of the Fencing Local Law whilst providing a sufficient barrier to control entrance to the swimming pool.

It is also noted the dividing fence between 83 and 85 Grant Street will remain as existing.

Gate

The proposed gate is to be located parallel to the front boundary where the driveway is proposed. This is to be open-aspect and in compliance with the Town of Cottesloe Fencing Local Law.

CONCLUSION

The proposed front fencing should not be supported in its current form as the streetscape is not enhanced due to the excessive bulk of the fence. The future proposed swimming pool being located in the front setback area is not seen as a

reason for largely solid front fencing in order to provide the owners of the property additional privacy. It is recommended that the front fencing be approved subject to conditions which reduce its solid profile. The 1200mm recommended solid height is a variation to the Fencing Local Law (which allows solid fencing to 900mm) but meets the Australian Standards for pool barrier fencing.

It is appropriate that conditions manage the interrelationship between the fencing and swimming pool as a basis for the discretion to increase the height of the solid infill sections. The 1200mm high sections should not occur unless and until the pool is implemented.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee queried why the pool was in the front yard and considered the open-aspect requirement to be important regardless. Committee amended the recommendation to make the proposal comply with Council's Fencing Local Law, and hence deleted condition (c) as redundant. Also, conditions (a) and (b) were amended to remove reference to pickets as the open-style may be metal rungs or timber slats.

OFFICER RECOMMENDATION

That Council GRANT its Approval to Commence Development for the proposed front and side boundary fencing and entry gate at No. 85 (Lot 94) Grant Street, Cottesloe, in accordance with the plans submitted on 31 March 2008, subject to the following conditions:

- (a) At Building Licence stage, revised plans shall be submitted to the satisfaction of the Manager Development Services, showing the entire length of the new fencing to Grant and Birkbeck Streets having solid sections to a maximum height of 1200mm above the adjacent ground level (not 1250mm high as indicated on the plans submitted), with open-aspect picket infill above.
- (b) The infill pickets shall have a minimum space of 50mm between each picket and a minimum open-aspect of 50%, in accordance with Council's Fencing Local Law.
- (c) The fencing shall only be constructed with 1200mm high solid sections if and when planning approval is obtained for the associated swimming pool. This is also subject to the necessary building licences being obtained for the fencing and swimming pool. It is also provided that the swimming pool is actually built and at the same time as the fencing. If the swimming pool is for whatever reason not proceeded with, then these solid sections shall be a maximum height of 900mm above the adjacent ground level, in accordance with Council's Fencing Local Law.
- (d) 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.
- (e) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.

Advice Note:

The owner is responsible to ensure that the fencing also complies with Australian Standard 1926.1 for swimming pool barriers.

1.6 COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Carmichael

That Council GRANT its Approval to Commence Development for the proposed front and side boundary fencing and entry gate at No. 85 (Lot 94) Grant Street, Cottesloe, in accordance with the plans submitted on 31 March 2008, subject to the following conditions:

- (a) **At Building Licence stage, revised plans shall be submitted to the satisfaction of the Manager Development Services, showing the entire length of the new fencing to Grant and Birkbeck Streets having solid sections to a maximum height of 900mm above the adjacent ground level with open-aspect infill above.**
- (b) **The infill shall have a minimum space of 50mm between each paling and a minimum open-aspect of 50%, in accordance with Council's Fencing Local Law.**
- (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) **All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.**

Advice Note:

The owner is responsible to ensure that the fencing also complies with Australian Standard 1926.1 for swimming pool barriers.

Carried 4/0

1.7 TOWN CENTRE PUBLIC DOMAIN INFRASTRUCTURE IMPROVEMENT PLAN – CONSULTANT STUDY – APPROACH AND OUTLINE BRIEF FOR SELECTION

File No: Sub/347
Author: Ms Delia Neglie / Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 12 May 2008
Senior Officer: Mr Andrew Jackson

SUMMARY

Council on 28 May 2007 resolved to:

- (1) *Request staff to prepare a report and recommendation to be provided to the June round of meetings on the immediate commissioning of a suitably qualified planning group to move forward on an integrated plan to improve all aspects of the infrastructure of the town centre to be funded by the Town of Cottesloe.*
- (2) *Ensure that all planned works and infrastructure to the town be designed to meet with the needs, of people with disabilities to the fullest extent possible.*

This is potentially a wide-ranging exercise and warrants definition of what is required and why. Action on this matter has been pending progress on other Town Centre matters including in relation to parking, Local Planning Scheme No. 3 (LPS3), Curtin Avenue and Station Street. These matters have now advanced to give added direction to the intended infrastructure study and to gain greater benefit from it, for a more coordinated approach.

Over the years there have been several initiatives to guide public domain infrastructure. Such tools typically tend to come and go, with only limited implementation, due to changing circumstances, priorities, funding and so on. This report recommends engaging consultants to take a fresh look at the provision of public domain infrastructure for the Town Centre and environs having regard to current planning for the area. It focuses on the why and what of the need for a study, as a basis for the selection who is to be engaged.

STATUTORY ENVIRONMENT

- Metropolitan Region Scheme – Stirling Highway and Curtin Avenue.
- Town Planning Scheme No. 2 (and advertised LPS3) – zoning and provisions.
- Local Government Act – administrative procedures.

POLICY IMPLICATIONS**Streetscape Policy**

In July 1999 Council adopted as policy the current Streetscape Policy and Manual. It was prepared for the district by Sally Malone and Ian James and is due for review this year, hence the present proposed study is timely. The Policy and Manual were formulated *as a guide to the selection, installation and maintenance of street furniture and paving in the Town's public open spaces – streets, parks and beachfront.*

The Policy sets out the *objective and criteria for the selection and location of the various items of street furniture and paving and identifies the different character areas of the Town for which different ranges of items should be used.* The Town Centre is identified as one of these character areas.

The Manual provides *information on those items of street furniture and paving placed in the Town's public open spaces that can be standardised.*

STRATEGIC IMPLICATIONS

Objective 5 of Council's Future Plan is to *maintain infrastructure and Council buildings in a sustainable way.* Strategy 5.3 of this objective and one of the priority strategies for 2007/8 year is to:

Develop an integrated Town Centre plan to improve all aspects of the infrastructure of the Town Centre.

FINANCIAL IMPLICATIONS

Purchasing Policy

Section 1.6 of Council's Purchasing Policy provides guidance on procedures for appointing consultants:

Where the value of procurement (excluding GST) for the value of the contract over the full contract period (including options to extend) is, or is expected to be:-

<i>Amount of Purchase</i>	<i>Model Policy</i>
<i>Up to \$3,000</i>	<i>Direct purchase from suppliers requiring only two verbal quotations.</i>
<i>\$3,001 - \$19,999</i>	<i>Obtain at least three verbal or written quotations.</i>
<i>\$20,000 - \$39,999</i>	<i>Obtain at least three written quotations</i>
<i>\$40,000 - \$99,999</i>	<i>Obtain at least three written quotations containing price and specification of goods and services (with procurement decision based on all value for money considerations).</i>
<i>\$100,000 and above</i>	<i>Conduct a public tender process.</i>

In the 2007/08 budget an amount of \$40,000 is set aside for town planning consultant expenses for this purpose, which remains to be taken up. It is estimated that a suitably-framed first-phase infrastructure study would require in the order of \$30-40,000.

BACKGROUND

Previous Town Centre Urban Design Studies

Council has considered the urban design of the Town Centre in the past, including:

- Cottesloe Village Design Development Report – prepared in 1985 by Donaldson & Smith and Odden, Coulter, Etherington & Jones. This focused on streetscape design.

- Draft Cottesloe Town Centre Guidelines – prepared in 1998 by Sheryl Chaffer in relation to the Scheme Review. This comprised proposed guidelines for the development of private property.

These earlier studies are useful references but tend to be outmoded and have been overtaken by more recent events.

Style Guide

In 2006, Key 2 Design prepared a Style Guide (on a modest budget of \$5,000) for the style and colours of street furniture and public signage in the district, including the Town Centre. The Style Guide was considered by the Design Advisory Panel. On 18 December 2006 Council resolved to *provide the Foreshore Vision Working Group with the draft Style Guide and the comments of the Design Advisory Panel for consideration and comments back to Council.*

The Foreshore Vision Working Group agreed with a district-wide style guide but considered that a concept plan for the foreshore was required before a style guide could be developed further. In May 2007 Council subsequently resolved to an Enquiry-by-Design (EbD) *for the further preparation of a Foreshore (public domain) Concept Plan* for Cottesloe in collaboration with DPI. The EbD has been expanded in relation to LPS3 to incorporate aspects of the foreshore, beachfront and Town Centre, which is discussed further below.

ProCott

The CEO and MDS attended a meeting of the ProCott Board on 23 October 2007. Council's initiatives regarding the Town Centre were discussed, including parking and general infrastructure. The CEO *requested assistance from ProCott to support Council in addressing concerns and to specify what is expected from Council.*

ProCott has since prepared a draft brief which includes reference to the following:

- The strategy is to *build a commercially sustainable and dynamic environment for business and community founded on the branding and social capital concept of 'Village'.*
- To include *landscape and built environment branding concept* – which would include *style guide and signage.*
- *Unique precinct design and maintenance plan and implementation.*
- Ideas for consideration were noted as including:
 - *Create a design membrane through plantings and textured paving and precinct boundary wall treatments to draw together disparate architectural styles.*
 - *Ensure the sensitive integration of a contemporary design interface with existing heritage.*
 - *Utilise high quality design aesthetic and materials consistent with the unique quality of the precinct.*

Procott is keen to have such suggestions supported and explored by the Town.

Station Street Working Group

In 2007 Council reviewed future development of its Station Street car park and sump sites. In response to Council resolutions in October and November 2007, the Station Street Redevelopment Working Group was formed, including representatives from ProCott and Council. In April 2008 Council resolved to appoint Coda Design, architecture and urban design consultants, to undertake the first three of the following four identified tasks for the proposed redevelopment of these Station Street sites:

Task 1: Pre-design: Brief, Site Assessment/Analysis, Review of TPS.

Task 2: Design and Development of Site-specific Projects.

Task 3: Presentation and Review to Working Group.

Task 4: Conversion of Design Investigation into Design Guidelines.

This renewed exercise is providing valuable insights into ways to tackle planning parameters and urban design guidelines to improve the public domain and integrate the fabric of the Town Centre. This includes an appreciation of the urban context and examination of themes such as active laneways to knit-together the locality and enhance the experience of place.

The Station Street study has an eye to the wider Town Centre, whereby those consultants may be requested to examine other parts or the complete Town Centre in due course, or at least that work will be fed into planning for the rest of the Town Centre.

Curtin Avenue

In April 2008 Council considered a report on detailed consideration of options for Curtin Avenue, which consolidated its outlook regarding the future realignment and form of this regional route. Council's preference is for the combined sinking of the road and railway to maximise local connectivity, foster transit-oriented development and use of the railway lands and improve the Town Centre. Council identified the urban design impacts of transport infrastructure on the Town Centre for careful consideration.

Although Curtin Avenue is a longer-term matter with significant uncertainty, consideration of public domain infrastructure should be cognisant of the urban design implications of the built form of Curtin Avenue and the railway and of the prospective expansion of the Town Centre.

Enquiry-by-Design

Council in its consideration of Curtin Avenue resolved to *pursue the EbD process with the DPI as guided by LPS3 to deliver a far-sighted and sustainable structure plan for the area*. This is being addressed as part of a single EbD for the beachfront hotel sites in conjunction with the foreshore area, as well as: the vacant railway land adjacent to the Town Centre; east-west connectivity between the two activity centres; and the realignment and design of Curtin Ave and/or the railway.

The EbD is expected to be fairly broad-brush for the Town Centre aspects rather than at a level of detail such as public domain infrastructure, however, some urban design principles and infrastructure considerations may emerge.

OFFICER ADVICE

Approach to Study

The Town Centre has remained essentially healthy although comparatively static over recent years, with some gradual site-specific developments of relatively modest scale. However, the locality is actually in a constant state of flux and is poised to undergo more substantial redevelopment in the short to medium term. This will:

- Increase traffic and parking pressures.

- Alter the complexion and amenity of the area.
- Create demand for public spaces and facilities.
- Invoke robust yet attractive design solutions.
- Offer opportunities for developer contributions.

It is apparent that there are a number of past and present studies and planning matters influencing the quality of the public domain in the Town Centre. These can be drawn upon in undertaking the anticipated study. While there are too many unknowns to pursue a global, end-state vision for the greater Town Centre – the stop the world as we plan method – a staged design analysis can lead to incremental improvements which collectively achieve the desired outcome, as well as allow for the evolution of ideas and techniques. In this way public domain infrastructure can still become a unifying glue for the identity and character of the Town Centre (although there can be variety in this cohesion) and can be tested and refined as it is rolled-out.

Outline of Brief

Based on an appreciation of what Council and Procott wish to address an outline brief is suggested as follows. This may be refined by Council and the chosen consultant.

Purpose

- *To prepare a Town Centre Public Domain Infrastructure Improvement Plan, with a view to practical ongoing implementation.*

Objectives

- *To significantly raise the standard of infrastructure in the public domain to lift the image and amenity of the Town Centre.*
- *To facilitate integration and cohesion yet allow for diversity and stimulation.*

Product

- *A two-dimensional plan of the Town Centre area and street-based precincts studied.*
- *A concise report on: (i) the review and examination undertaken of the existing situation. and (ii) precinct-based recommendations for improvements.*
- *A schedule of priority areas and works (for consideration of staging / funding).*
- *Guidelines for infrastructure design, materials and finishes to assist ongoing implementation – this is to be a thematic typology of urban design rather than a detailed style guide.*

Study Area

- *From Forrest Street as the northern edge of the Town Centre to the triangle of the Town Centre south of Jarrad Street (bordered by Brixton Street); and from the Stirling Highway frontage as the eastern edge to Railway Street and the railway line as the present western edge; then west to include the vacant government lands and the Western Power sub-station to existing Curtin Avenue.*

Scope

- *Review previous and present public domain infrastructure studies and guides for the Town Centre.*
- *Understand the current planning matters affecting the future of the Town Centre.*

- *Identify each street-based public domain precinct, including the interconnecting lanes and walkways, for consideration of infrastructure improvements.*
- *Describe the existing character and condition of infrastructure, then make recommendations for its retention, upgrade / enhancement or replacement, including priorities and materials.*
- *Propose design criteria to guide the ongoing implementation of infrastructure works, outdoor furniture, landscaping treatments and so on.*
- *Concentrate on the existing developed Town Centre in more detail, with only a broad indication of how the yet-to-be-planned areas west of the railway line may be addressed in the context of the Town Centre..*

Planning Principles to Consider

- *Integration and sense of place.*
- *Attractiveness, connectivity, convenience and safety.*
- *Accessibility – walking, cycling, disabled.*
- *Solar access as well as weather protection (sun, wind, rain).*
- *Relationship / orientation to railway station and future development of western land.*

Infrastructure Aspects to Examine (including but not limited to)

- *Streetscape character, including entries and vistas.*
- *Spaces, linkages and interfaces.*
- *The relationship to the railway station and railway lands parking areas, plus the undeveloped land to the west.*
- *Capitalise on lanes and walkways – active arcades and public piazzas.*
- *Legibility and directional / information signage (not advertising).*
- *Hard and soft treatments – pavements, street trees, verges and landscaping.*
- *Alfresco areas on public thoroughfares – positioning, barriers, planters, table and chairs, umbrellas.*
- *Rest / social interaction areas – seating, shade, drinking fountains.*
- *Public art and celebration – community involvement, plaques, banners.*
- *Road crossings and traffic management / calming treatments.*
- *Bus shelters, bike racks.*
- *Lighting, bins, bollards.*
- *Sustainability, water-wise, durability / maintenance, designing-out crime.*
- *Contemporary (timeless) design aesthetic.*

Process

- *Inception meeting with Town of Cottesloe and Procott representatives.*
- *Information gathering and base-mapping.*
- *Field work and documentation.*
- *Preliminary presentation of findings to Councillors, Officers, Design Advisory Panel and Procott representatives.*
- *Revision, completion and final documentation and presentation.*

Timing

- *June-September 2008.*

Commissioning

Subject to Council being satisfied with the approach and brief, it is intended to target up to four planning / urban design consultancies to submit expressions of interest in

response to the brief and budget. Officers would then choose a preferred consultant for appointment and commencement of the study.

VOTING

Simple Majority

COMMITTEE COMMENT

As part of the study brief section *Infrastructure Aspects to Examine* Committee would like to include public toilets to be considered. Committee also suggested that consultation and reporting to Council processes could be outlined in the brief. The Manager Development Services agreed that all of these aspects can be included and the Committee recommendation should reflect this.

OFFICER RECOMMENDATION

That Council notes this report on the approach to a Town Centre Public Domain Infrastructure Improvement Plan, supports the outline brief and agrees to officers following-through to commission consultants accordingly.

1.7 COMMITTEE RECOMMENDATION

Moved Cr Birnbrauer, seconded Cr Dawkins

That Council notes this report on the approach to a Town Centre Public Domain Infrastructure Improvement Plan, supports the outline brief subject to adding appropriate reference to public toilets, consultation and reporting, and agrees to officers following-through to commission consultants accordingly.

Carried 4/0

COMMITTEE MEETING CLOSED TO THE PUBLIC TO DISCUSS ITEM 1.8.

Moved Cr Boland, seconded Cr Dawkins

That the meeting be closed to the public to address item 1.8.

Carried 4/0

1.8 CONFIDENTIAL ITEM - NO. 42 JOHN STREET – PROTECTION OF PINE TREES – UPDATE REPORT

File No: PRO/1939 - 42 John Street
Author: Ms Delia Neglie / Mr Andrew Jackson
Author Disclosure of Interest: Nil
Attachments: Legal advice

Report Date: 14 May 2008
Senior Officer: Mr Andrew Jackson

SUMMARY

This report is regarding settling an outstanding Council resolution, which despite officer efforts has not been able to be satisfied. In perspective, it concerns an important yet relatively minor matter which was effectively addressed previously, save for the suggestion of a legal agreement as a back-up. However, as that is not essential, the situation is revisited for Council to determine its position.

In 2005 Council resolved to request (not require) the owners of 42 John Street to enter into a deed of agreement with Council to abide by Scheme requirements, following the unauthorised removal of pine trees on their heritage listed property.

After no response on the matter from the owners, the Town instructed Woodhouse Legal to prepare the deed; however, a response was received from Woodhouse Legal that a deed would serve no useful purpose and that the Scheme provides adequate and significant protection.

It is thus recommended that Council reviews its previous decision and advise the landowners of their obligations under the Scheme.

STATUTORY ENVIRONMENT

- Heritage Act of WA:
 - Property is on the State Heritage Register and on the Register of the National Estate.
- Planning and Development Act 2005:
 - Development is defined under the Act to mean *the development or use of any land, including —*
 - (a) *any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
 - (b) *the carrying out on the land of any excavation or other works;*
 - (c) *in the case of a place to which a Conservation Order made under section 59 of the Heritage of Western Australia Act 1990 applies, any act or thing that —*
 - (i) *is likely to change the character of that place or the external appearance of any building; or*
 - (ii) *would constitute an irreversible alteration of the fabric of any building;*

- Requires an application for planning approval for any development concerning a place on the State Heritage register.
- Allows for retrospective approval of development already commenced or carried out.
- Confirms local government enforcement powers.
- Town Planning Scheme No 2:
 - Property is listed in Schedule 1 of the Scheme.
 - Part 6 of the Scheme is specifically designed to deal with conservation and preservation of places, trees, etc and requires the written consent of Council for any development on properties in Schedule 1 of the Scheme. Schedule 1 provides that places listed therein have the force and effect of the Scheme, over and above the Municipal Inventory and Council Policy 012.
 - Part 7 of the Scheme requires approval of development.

POLICY IMPLICATIONS

In addition to the above statutory measures, the property is listed in Council's Municipal Inventory, which is a significant policy instrument.

STRATEGIC IMPLICATIONS

The matter relates to the protection of heritage places as classified by Council or other authorities, as well as the administration of TPS2.

FINANCIAL IMPLICATIONS

Any further legal advice would incur additional cost.

BACKGROUND

- In June 2005 the owner commenced the removal of two Pine trees on this heritage-listed property. The Town was alerted and intervened, whereby the partial removal ceased by agreement with the owner. The Town then wrote to the owner advising that the unauthorised removal was in contravention of the Scheme, and pointing out that a similar breach had occurred in 2000 when the owner was also advised of the statutory situation.
- In July 2005 Council considered a status report on the matter and resolved that *Council*:
 1. *Note this status report and defer a decision on any remedial or prosecution action, pending receipt of an arboricultural report from the owner, advice from the Heritage Council, and/or a further officer report on the matter at the August round of meetings.*
 2. *Authorise the administration to write to the owner:*
 - (i) *advising of this interim decision;*
 - (ii) *reiterating that no continued or additional tree removal should occur without the written consent of Council;*
 - (iii) *inviting the owner to suggest suitable rectification of the matter; and*

- (iv) *inviting the owner to enter into a deed of agreement with Council to abide by the Scheme requirements for Council consents and approvals.*
- The arboricultural report indicated that the health and safety of the trees was compromised, which may have warranted removal in any case. The report assessed this as a reasonable basis on which to decide the fate of the trees, and had the advice been provided before the event, would most likely have been relied upon, weighed against the overall amenity and heritage considerations. It concluded that the subject two trees should be removed and that a subject third tree should remain, with which the owner agreed.
 - Council then resolved on 22 August 2005 that *Council authorise the administration to write to the owner:*
 - (1) *Consenting to completion of the removal of the subject second Pine tree;*
 - (2) *Confirming that the subject third Pine tree is to be retained intact;*
 - (3) *Reinforcing that no further tree removal now or in the future should occur without the written consent of Council; and*
 - (4) *As an alternative to prosecution, requesting the owner to enter into a deed of agreement with Council to abide by the Scheme requirements for Council consents and approvals, with the applicant bearing the cost of the deed being drafted by Council's solicitors and registered.*

STAFF COMMENT

- The Town has written to the owners on a number of occasions requesting acknowledgment of Council's decision. Upon no responses being received, the Town last wrote to the owners in November 2007 and advised that *we now intend to have the deed prepared and forward it to you for completion, including payment of the costs of preparation and execution.*
- Woodhouse Legal was asked to prepare a Deed of Agreement for the purpose. Woodhouse Legal has however advised that:

... such a deed would serve no useful purpose.

The council's resolution refers to a deed to the effect that the owner is required to abide by the scheme. However, if the owner were to breach a provision of the scheme then it would be open to the Town to take prosecution action or some other step available under the Planning and Development Act. The fact that the owner had acted contrary to the deed would not afford the Town any additional remedies. The town would not have suffered any contractual damages and no action could be taken in the civil courts.

Perhaps it is for this reason that the Town has received no reply from the Forrests.

- In the report on the matter to Council in August 2005, the following options were put forward:
 - *As mentioned previously, the question arises as to what, if any, alternative remedy might be considered:*
 - *Tree replacement may be an option (of suitable species and location).*
 - *Further control over trees on the property by way of a restrictive covenant may be an option.*

- *Further control over trees on the property by way of a deed of agreement with the owner may be an option, together with a notification on title – clause 6.4 of the Scheme provides for such agreements in respect of such heritage matters.*
 - o *Tree replacement in the same locations would be problematic and there is no easy or quick way to replicate the character of Pine trees.*
 - o *While the Scheme provisions should stand to protect the place, including trees, given the two successive incidents of non-compliance, some reinforcing mechanism appears warranted.*
 - o *Prosecution would be consistent with the Scheme provisions - and may encourage future compliance, but would seem heavy-handed given the current awareness and cooperation of the owner.*
- Given the legal advice, it would appear to not be worth pursuing Council's resolution regarding a deed or similar legal document. It would seem unlikely that the owners would enter into a deed that was not supported by legal advice, and there is no actual compulsion for them to do so in any case.
- The Scheme makes itself clear that it must be complied with and the provisions in Part 6 are plainly prescriptive and proscriptive. Pine trees and trees generally are an important component of the character of Cottesloe and where they form part of a heritage-listed place are protected by the Scheme or other conservation classifications. The Scheme is also supported by the Planning and Development Act.
- Prosecution could have been a choice for Council in 2005 but given the passage of time would no longer be an option. Also, prosecution is usually a last resort and if a matter is satisfactorily resolved, prosecution is rarely effected. The resolution is considered to have been reasonable; the arboricultural report supported the felling of the pine tree and the owners agreed to retain the third tree.
- The Town has made the requirements of the Scheme clear in earlier advice to the owners and there have been no further breaches of the Scheme concerning trees or any other matter. The owners should now be well aware of the Scheme requirements. They have in the past shown appreciation for the heritage significance of the property, by the sensitive extensions and improvements to the property guided by heritage advice, and have responded to the Town's intervention in past contraventions.
- It is thus considered that the matter could be laid to rest.
- Should the Council wish to pursue the matter, a second legal opinion could be sought.

CONCLUSION

It is concluded that although the trees were initially removed without authorisation, the subsequent arboricultural report supported the action. The owners of 42 John Street responded to Council's intervention at the time, and a reasonable outcome was achieved. They were in a sense reprimanded and the message about the Scheme and heritage controls was reinforced.

The Scheme provides protection and authority to Council should any further breaches of the Scheme occur. It had been thought that a deed of agreement would

lend further weight to that, but given the legal opinion to the contrary, it would be reasonable for Council to be satisfied with the outcome.

Alternatively, a second legal opinion could be sought but given the simple nature of the issue, it is considered unlikely that other legal opinion would differ and there is no guarantee that the landowners would participate.

The Scheme is in itself a significant legal instrument, supported by State Acts and the landowners could be reminded of Scheme requirements and their obligations for Council approval in lieu of a deed of agreement.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the matter broadly and appreciated the situation as outlined in the officer report. It could be seen that the matter had been addressed at the start and that there had been no further problem. It was agreed that given the legal advice and the scheme and heritage provisions available to address non-compliance, a deed of agreement is not really workable and in the circumstances not essential.

1.8 OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Birnbrauer

- (1) **THAT in accordance with Section 5.23(2) of the Local Government Act 1995 the meeting is closed to members of the public, with the following aspect(s) of the Act being applicable to this matter:**
 - **Legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.**
- (2) **THAT Council advise the landowners of 42 John Street that Council will no longer require a deed of agreement, but that they are reminded of the obligations of all landowners under the Scheme, particularly the requirements of Part 6, in relation to heritage places including in this case the Norfolk Island Pine trees.**

Carried 4/0

ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

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

MEETING CLOSURE

The Presiding Officer announced the closure of the meeting at 9.05.

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