

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE

MINUTES

**MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 18 OCTOBER 2010**

CARL ASKEW
Chief Executive Officer

22 October 2010

DEVELOPMENT SERVICES COMMITTEE

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Officer announced the meeting opened at 6:04 PM.

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

Cr Jack Walsh	Presiding Member
Cr Jo Dawkins	
Cr Ian Woodhill	
Cr Jay Birnbrauer	
Cr Victor Strzina (6:15pm)	
Cr Davina Goldthorpe	
Cr Greg Boland	Deputising for Cr Carmichael

Officers Present

Mr Carl Askew	Chief Executive Officer
Mr Andrew Jackson	Manager of Development Services
Mr Ed Drewett	Senior Planning Officer
Mr Will Schaefer	Planning Officer
Mrs Julie Ryan	Development Services Secretary

Apologies

Nil

Officer Apologies

Cr Patricia Carmichael

Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 PUBLIC STATEMENT TIME

Mr Bradley Goodlet re item 10.1.1. No. 2 & 4 Athelstan Street

Mr Goodlet briefly reiterated his concerns in relation to the proposed development in terms of its adverse impacts on the locality.

Mr Greg Chatfield re item 10.1.1. No. 2 & 4 Athelstan Street

Mr Chatfield represented the group-letter submitted and emphasised this was the third occasion he had attended to speak against the continuing proposal. He referred to the RDC requirements and expressed concern about increased density, setting an undesirable precedent, compromising the town planning scheme and the devaluing property values.

Mr Tom Loh re item 10.1.1 No. 2 & 4 Athelstan Street

Mr Loh advised that the proponents remained enthusiastic about the proposal and the market support for such accommodation. He also referred to the alternative of three single dwellings as having potentially greater bulk, the reductions on plot ratio made, the relocation of one crossover/garage to the side street, and to compliance of the internal design with this type of housing.

Mr Laurie Scanlan re item 10.1.1 No. 2 & 4 Athelstan Street

Mr Scanlan (the architect) hoped the modifications made would render the proposal acceptable. In relation to bulk and scale he commented that the RDC 100sqm limit was unrealistic and not followed elsewhere in the Western Suburbs, where the market demand is for larger such dwellings to allow aging in-place. He referred to the perspectives plus showed a streetscape profile and saw the proposal as having less impact than three single dwellings.

Mr Jack Walsh re item 10.2.1. Rights of Way / Laneways Policy Clarifications

Before speaking, Cr Walsh declared his proximity interest in this matter, vacated the Chair and passed it to Cr Birnbrauer as Deputy Chair of Committee.

Mr Walsh spoke as a resident in this regard. He referred to the history and the previous letters advising of Council's handling of the matter, which had mentioned no upgrading of ROW14 yet not said that the new policy procedure would need to be gone through to consider exemption. He expressed concern at the suggestion that the original signatures had no weight and the expectation was that the lane did not need to be upgraded, as the landowner support for that was obvious, and that it should be considered exempt. He requested that Committee reaffirm that position.

After speaking, Mr Walsh resumed his role as Chair of Committee.

Dr John Salmon re item 68 Railway Street – SAT appeal mediation

Dr Salmon outlined his revised proposal combining residential and commercial components, which he felt addressed the core land use issue and saw as suitable. He referred to liaison with officers and had done his best to address the concerns raised. He therefore hoped that a compromise for Council to support the application could be reached.

6 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Strzina, seconded Cr Dawkins

[Minutes September 20 2010 Development Services Committee.doc](#)

The Minutes of the Ordinary meeting of the Development Services Committee held on 20 September 2010 be confirmed.

Carried 7/0

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

10 REPORTS OF COMMITTEES AND OFFICERS

10.1 PLANNING

10.1.1 NO. 2 & 4 ATHELSTAN STREET - FIVE AGED PERSONS DWELLINGS - FURTHER REPORT

File No:	2035
Attachments:	2 4 Athelstan.pdf
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Ed Drewett Senior Planning Officer
Proposed Meeting Date:	18 October 2010
Author Disclosure of Interest Property Owner	Nil M J Hansen, Regalstar Investments P/L, Lohsum P/L, T Loh, D L Court, M Cooley, Action Engineering P/L
Applicant Date of Application	Lawrence Scanlan & Associates Pty Ltd 25 August 2010 (Amended 16/9/10 & 13/10/10)
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Lot Area:	1667m²
M.R.S. Reservation:	Not applicable

BACKGROUND

On 28 September 2010 Council resolved:

That at the request of the applicant the item is deferred to the October Council meeting to enable further consideration of the latest revised plans by submitters, officers and elected members.

This report refers to plans received 16 September 2010 and also to plans received 13 October 2010 which were submitted to address a minor drawing inconsistency in respect to the proposed setback from Unit 1 to the secondary street boundary. These plans therefore supersede those received 25 August 2010 referred to in the previous report to Council and the proposal has been re-advertised to submitters.

The latest plans, covering letter from the architect, associated email and artist's impressions all conveying the proposal are attached, together with two signed petitions received during advertising.

A synopsis of the changes is provided, together with a copy of the previous report contained herein which should be referred to for a fuller appreciation of the proposal.

ADDITIONAL COMMENTS FROM APPLICANT

- Since the August submission, the upstairs family rooms to Units 1 & 5 have been deleted to reduce the size of the units;
- The Units now average 215m² each, which represents an average reduction of 46m² per unit since the earlier submission in 2009;
- The ground floor to all the units conform to disabled access requirements. This has necessarily increased the overall size in the habitable areas for this type of development; and
- The proposed pergola along the western boundary to the ground floor living areas of Unit 1 has been deleted.

ADDITIONAL PLANNING COMMENTS

The amended plans show an increased plot ratio to all the proposed units, with the exception of Unit 1, as detailed in the table below.

PLOT RATIO			
Unit No.	Plans submitted 25 August 2010	Plans submitted 16 September 2010	Difference in Plot Ratio
1	215m ²	206.44m ²	- 8.56m ²
2	211m ²	221.19m ²	+ 10.19m ²
3	202m ²	212.66m ²	+ 10.66m ²
4	211m ²	220.93m ²	+ 9.93m ²
5	214m ²	215.83m ²	+ 1.83m ²

All of the units are still more than double the maximum plot ratio area of 100m² permitted under the acceptable development standards of the RDC, and the fact that they may be smaller than that shown in the applicant's original proposal of 2009 (as detailed in the previous report), is not considered sufficient justification in itself for allowing the proposed development where a density concession is sought.

Furthermore, although the applicant has stated that it has been necessary for the overall size in the habitable areas to be increased to conform with disabled access requirements, this is also not considered to be significant justification for allowing the increased plot ratio, as the Residential Design Codes require developments with a compliant plot ratio of 100m² to accommodate wheelchair access in any event, and the applicant should therefore have factored this into the design prior to submitting the applications.

The Explanatory Guidelines in the Codes state:

The design of aged and dependent persons' dwellings must incorporate or allow for future incorporation of features that are required to serve the special needs of aged and dependent persons such as ramps and wider doorways and passageways to accommodate wheelchairs and handrails in bathrooms and toilets.

Two petitions, signed by a total of 22 residents, have been received following re-advertising. Any further submissions received will be tabled at the DSC and reported

to Council. Clearly, from the comments received there is still strong opposition to the proposal from local residents and the issues raised remain very similar to those received during the previous advertising period. Council will be familiar with the concerns of neighbours and residents in the locality from the previous reports, submissions and speakers on the matter.

Despite the latest revised plans and justifications provided by the applicant, as addressed in the previous reports and discussions on the proposal, the fundamental considerations relating to aged persons dwellings as guided by the RDC are assessed as having not been met, and indeed are significantly exceeded, in terms of the approach to the control of density, plot ratio and scale of development for this specialised type of housing.

The recommendation is to refuse the application, as provided below. However, should Council decide to approve the application as outlined, then condition (m) of the original conditions should be deleted as it is no longer applicable and the date of the plans for approval should be amended to reflect the current version. This is marked-up in the previous recommendation at the end of this report.

PREVIOUS REPORT TO COUNCIL

A copy of the previous report to Council in September 2010 is reproduced below for information:

SUMMARY

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

- Plot Ratio (affecting density bonus sought under RDC)
- Walls on boundaries; and
- Retaining/fill in front setback.

Each of these aspects is discussed in this report and refers to plans received on 25 August 2010.

Following an assessment of the application it is recommended that the application be refused for the same reasons given by Council in its previous decision of 22 February 2010 for a similar proposal on these lots.

Notwithstanding this, an alternative recommendation is also provided so Council can consider its options when reviewing the application.

PROPOSAL

This application is for the demolition of two single dwellings and construction of 5 two-storey aged persons dwellings.

The proposed dwellings are attached and comprise:

Ground floor

- Master bedroom;
- Ensuite;
- Study;
- Kitchen/living/dining area;
- Laundry;
- WIR (Units 2, 3 & 4);
- Powder room;
- Store; and
- Double garage.

Upper floor

- 2 bedrooms with ensuite(s) (Units 1, 3 & 5)
- One guest bedroom with ensuite and Carer's Suite including separate bedroom and ensuite (Units 2 & 4);
- Family room (Unit 1 only);
- Upper floor (garden) terraces.

The dwellings are all of contemporary design, two with pitched roofs, two with skillion roofs and one with a flat roof.

BACKGROUND

A summary of recent planning applications previously considered by Council for this site is as follows:

25 May 2009

Council considered an application for 5 Aged Persons Dwellings and resolved:

The item be referred back to administration at the request of the applicant for further consideration for a future meeting of Council to address the issues raised in the Officer's report and for revised plans to be provided.

22 February 2010

Council considered a re-submission of the application for 5 Aged Persons Dwellings and resolved to refuse the application for the following reasons:

- The proposed dwellings do not represent small-scale, specialised housing that satisfies the requirements of the Residential Design Codes for a density concession to be considered for aged or dependent persons accommodation; and*
- The proposed excessive plot ratio and density concession could set an undesirable precedent for similar-sized aged or dependent persons accommodation being sought that is inconsistent with the low-density residential zoning of the locality.*

STATUTORY ENVIRONMENT

- Town Planning Scheme No 2
- Residential Design Codes

PROPOSED LOCAL PLANNING SCHEME NO 3

No change is proposed to the zoning or density of these lots.

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE****Residential Design Codes**

Design Element	Acceptable Standards	Proposed Plot Ratio (based on applicant's calculations)	Performance Criteria Clause
7.1 – Special purpose dwellings	Maximum plot ratio for single houses and grouped dwellings – 100m ²	Unit 1 – 215m ² ; Unit 2 – 211m ² ; Unit 3 – 202m ² ; Unit 4 – 211m ² ; Unit 5 – 214m ²	Clause 7.1.2 – P2

Design Element	Acceptable Standards	Proposed	Performance Criteria Clause
6.3 – Buildings on Boundaries	Walls not higher than 3m with an average of 2.7m up to 9m in length to one side boundary	Eastern wall to Unit 5 has a length of 10.7m; Northern wall to Unit 1 has max. height of 3.7m, averaging 3.45m	Clause 6.3.2 – P2
6.6 – Site works	Excavation or filling between the street alignment and building, or within 3m, whichever is the lesser, not exceeding 0.5m, except where necessary to provide access for pedestrians or vehicles, or natural light for a dwelling	Up to 1m fill to Unit 1	Clause 6.6.1 – P1

CONSULTATION

The Application was advertised as per Town Planning Scheme No 2 and the Residential Design Codes. The advertising consisted of a letter to 11 adjoining property owners (same as previously advertised). Five submissions were received, including a letter headed from the 'Residents of Athelstan Road' and signed by 9 adjoining property owners. The submissions are summarised below:

Letter signed by: B. Moore, 1 Athelstan St; N Cruickshank, 3 Athelstan St; J Wade, 5 Athelstan St; D Pope, 6 Athelstan St; P Elder, 7 Athelstan St; K Purich, 8 Athelstan St; A. Sudlow, 9 Athelstan St; S Foulds, 10 Athelstan St; E Birchmore, 15 Athelstan St.

- Has a sense of déjà vu as proposal does not appear to differ significantly from the previous proposal that was rejected;
- Whilst some 'small' changes and/or concessions have been made there is basically nothing that would change our view that the proposal as it stands should not be approved by Council;
- Is in full agreement with the views expressed by other residents of the street as stated in a letter dated 13 September 2010;
- If there was a demand for this type of housing it would have been included in Local Planning Strategy No 3;
- There is a significant amount of accommodation that provides for this housing configuration without being zoned as over 55s;
- The issue here is the abuse of the Codes by a developer to achieve these outcomes. If the proposal met the requirements of the Codes it is unlikely the residents would be raising an issue;
- Other similar density housing such as in the Flour Mill development is on the other side of the cul-de-sac so has less impact to residents and is located on R30 zoned land;
- The concessions provided under the Aged and Dependent Persons requirements are not being adhered to and the reductions in size and bulk proposed by the developer are largely immaterial changes;
- This proposal is for 5 units of approximately 211m² when the Codes stipulate a maximum 100m² for each dwelling. This is still a 111% increase over the stipulated size. The proposed reduction in size is not a significant modification and is still a long way from meeting the Codes;
- These are all still double-storey, 3-bed, 3-bath dwellings, some with two living areas or a second kitchen, when these dwellings are typically single-storey and designed for one/two residents. At 211m² these are nearly as large as a family home and could feasibly each accommodate 6 individuals;
- The proposal could set a precedent in the area for aged persons dwellings well outside the Codes and could be used to justify other developments, impacting on other residents;
- Noise could be generated from the upper floor terraces fronting the street particularly with the proposed increased density;

- The west-end of Athelstan Street currently has 13 dwellings and houses approximately 35 people. The proposed development would significantly change the demographic of the street;
- The street will change from a low density, quiet, family-orientated street to one where there is significantly higher density and traffic;
- The proposed density is more appropriate in Subi Centro rather than a quiet street in Cottesloe; and
- The development will devalue properties in the street.

D Dures, 1 Haining Avenue

- Objects to five buildings on the lots as they will be too obtrusive as a group.

B & M Goodlet, 3 Haining Avenue

- Objects to proposal;
- There will be a loss of privacy and value to property due to proposed rear balconies – need clarification that proposed 1.6m high screening will be from the top of slab;
- If balconies are removed, it is requested that they be replaced by windows at sufficient height and/or of a material that doesn't overlook our yard;
- A minimum 1.8m high boundary fence/wall above our ground level is required along the rear boundary to avoid privacy concern from the ground floor;
- Roofing materials should be non-reflective; and
- The proposed living areas appear significantly higher than that recommended for the over 55s concession that the developer is requesting.

APPLICANT'S JUSTIFICATION

The applicant has submitted a detailed submission with the application in support of the proposal (refer attached). Although principally the same as that previously submitted, albeit updated to reflect the current application, additional comments have also been made specific to this proposal. These are summarised below:

- The proposed units have been substantially reduced in size since the previous submission;
-
- The development complies with all the planning guidelines save for the size of the individual units. However, if a standard three house development was constructed, over 1667m² of plot ratio is allowed, and the over 55s scheme as presented only uses a total of 1053m² – 63% of what is allowable;
- The overall massing as presented to the street is substantially less overbearing than a 3-house design and the external modelling of the façade together with the eclectic palette of materials selected will ensure that the dwellings will sit comfortably within the streetscape;

- The garage to Unit 1 is proposed on the north-west corner of the site off the slip road which makes for a gentler, domestic character to the development at the point of maximum visual exposure;
- Units 2, 3, 4 and 5 have had their first floor areas reduced with 2 and 4 completely redesigned;
- The principle of deep setbacks to the upper floors is maintained and increased with the reduction or elimination of some family rooms;
- Total area of units were reduced initially by 317m² and in this submission reduced by a further 114m². This equates to an average reduction of 63m² per unit;
- At first floor level the front street terraces will be screened by 1.6m high hedges;
- First floor accommodation is designed for guests, grandchildren or live-in carers; and
- The current proposal is lower and has less impact on adjoining properties with any issues previously raised having been addressed.

PLANNING COMMENT

The main planning issues have not significantly changed since the previous submission, although the proposal has been have modified and the plot ratio reduced.

The proposed development complies with TPS 2, relevant Council Policies and the RDC for aged and dependent persons, with the exception of the following:

- Plot Ratio;
- Walls on boundaries; and
- Retaining/fill in the front setback.

Each of these issues is discussed below:

Plot Ratio

Under Town Planning Scheme No. 2 the lot is zoned Residential R20. This would permit a maximum of 3 single or grouped dwellings on the amalgamated lots. However, Clause 6.1.3 of the RDC states:

For the purposes of an aged or dependent persons' dwelling, the minimum site area may be reduced by up to one third, in accordance with part 7.1.2 and 7.1.3.

If the 1/3 reduction is applied then the average and minimum lot area may be reduced as shown below:

Single house or grouped dwellings (without reduction)	Aged or dependent persons' dwelling (with reduction)
Min. 440m ² Ave. 500m ²	Min. 293.34m ² Ave. 333.34m ²

On this basis, the amalgamated lots would accommodate 5 aged or dependent persons' dwellings.

The proposed minimum lot areas range from 329.25m² to 330.64m² which are all in excess of the minimum lot area permissible. In this respect, the issue with the proposed development arises over the proposed plot ratio for each dwelling.

Under Clause 7.1.2 of the RDC the Acceptable Development Standards for aged and dependent persons' dwellings state, inter alia:

A maximum plot ratio area of:

- *In the case of single houses or grouped dwellings – 100m²*

Plot ratio is defined as:

The ratio of the gross total of all floors of buildings on a site to the area of land in the site boundaries. For this purpose, such areas shall include the area of any walls but not include the areas of any lift shafts, stairs or stair landings common to two or more dwellings, machinery, air conditioning and equipment rooms, non-habitable space that is wholly below natural ground level, areas used exclusively for the parking of wheeled vehicles at or below natural ground level, lobbies or amenities areas common to more than one dwelling, or balconies or verandahs open on at least two sides.

The proposed plot ratio for each of the proposed dwellings compared to the previous application is as follows:

Unit	Proposed Plot Ratio (based on applicant's calculations)	Plot Ratio (previous applications)	
Unit 1 (western end)	215m ²	266.86m ²	243m ²
Unit 2	211m ²	265.52m ²	237m ²
Unit 3	202m ²	264.68m ²	223m ²
Unit 4	211m ²	260.84m ²	235m ²
Unit 5	214m ²	247.03m ²	229m ²

All of the proposed units are still more than double the maximum permitted plot ratio area permitted under the acceptable development standards of the RDC.

Furthermore, an assessment of the submitted plans revealed that the proposed dwellings actually exceed the individual plot ratios stated by the applicant and therefore revised plans have been requested to accurately show the correct floor

layouts that are reflective of the figures provided based on the RDC definition; ie: for smaller dwellings than shown on the plans.

The relevant performance criteria of the RDC to consider a variation state:

Dwellings that accommodate the special needs of aged or dependent persons and which:

- *Are designed to meet the needs of aged or dependent persons;*
- *Are located in proximity to public transport and convenience shopping;*
- *Have due regard to the topography of the locality in which the site is located; and*
- *Satisfy a demand for aged or dependent persons' accommodation.*

The proposed development has been designed to take account of existing topography and will have reasonable access to public transport and shops (approx. 330m to the nearest bus stop and approx. 360m to the Eric Street shops based on a GIS assessment). This is walkable for the able-bodied.

The applicant has advised that the ground floor of the units will be designed to meet the needs of aged and dependent persons and the petition previously submitted by the applicant signed by local residents indicates that there may be demand for this type of housing.

Notwithstanding this, the plot ratio of each dwelling is still of concern, especially as the applicant has advised that the first floor accommodation is for guests and/or grandchildren, rather than being specifically designed to meet the needs of aged or dependent persons, albeit that a Carer's Suite is now included for Units 2 & 4.

The explanatory guidelines of the RDC further discuss the special purpose dwelling requirements and state:

The intention of this provision is to encourage the development of small-scale specialised housing in local communities, as an alternative to larger scale, relatively segregated complexes.

Because aged or dependent persons' dwellings are generally smaller than conventional dwellings, and the occupants do not usually have a high car ownership ratio, the codes under acceptable development provision 6.1.3 allow the reduction of the site area by one-third of that provided for by the code applying to the site, together with reduced car parking standards.

To prevent these concessions from being abused, for example as a back-door way of increasing density for standard housing without re-coding an area, the concessions are subject to four constraints:

- *There is a limit on the size of such dwellings;*
- *They must be purpose-designed;*
- *There is a minimum of five dwellings in a single development; and*
- *They are subject to a legal agreement to restrict occupancy.*

The guidelines also state:

It is important that dwellings designated aged or dependent persons are designed to allow for aging-in-place whereby dwellings cater for an individual to remain in their chosen place of residence even though their physical and sensory abilities may change over their lifespan, with certain minimum standards, as set out in appropriate Australian Standards, that are part of construction or can be introduced with relative ease. In particular, this would include designs with minimal use of levels or stairs, adequate passageways and door widths, roofed car parking spaces, accessible utilities and slip-resistant floors for kitchens, laundries, bathrooms and toilets as described in the AS 4299-1995 Adaptable housing. This would result in such dwellings being more flexible to accommodate the changing needs of older people.

Although the applicant's supporting documentation may be taken into consideration, the proposed two-storey dwellings nevertheless do not represent small-scale specialised housing that meet the specific requirements of the Codes intended for a reduction in site area to be applied under the acceptable developments standards of the RDC.

This number of new two-storey dwellings would equate to an approximate density of R30, rather than the existing R20 code, and would have a greater visual impact on the existing streetscape than if the site were developed for 2 or 3 dwellings, albeit that the scale of such dwellings could potentially be larger than that proposed - although with greater separation and less continuous massing.

There is no objection to supporting 3 aged persons accommodation units on these lots with the proposed plot ratio (or larger) as this would satisfy the demand for providing this type of accommodation without compromising the existing R-Code density allocated to this area.

Alternatively, Council could approve the 5 aged persons dwellings as proposed under the relevant performance criteria of the RDC, or consider initiating a Town Planning Scheme Amendment to rezone the lots to Residential R30, which would permit the proposed density development 'as-of-right', rather than having to obtain a significant planning concession under the R-Codes. However, such a Scheme Amendment is likely to attract objections from residents and would generally be contrary to the existing R20 zoning proposed to remain under LPS 3 as recommended in the adopted Local Planning Strategy.

Building on Boundary

Unit 5 (eastern end) has a wall on the boundary that has a height varying between 2.1m and 3m, averaging 2.5m, which is allowable under the RDC, however, its proposed length is 10.7m which exceeds the maximum length permitted under the acceptable development standards of the RDC by 1.7m. Also, the height of the garage and store to Unit 1 along the northern boundary has a height up to 3.7m, averaging 3.45m, and so exceeds the maximum and average heights permitted under the acceptable development standards of the RDC, while its length is only 8.7m and therefore is otherwise compliant.

It is necessary to consider these walls on boundaries under the performance criteria of the RDC which state:

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

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

The proposed wall to Unit 5 will be setback behind the 6m front setback area and makes effective use of space considering that the proposed lot will be only 9.34m wide (less than the 10m width usually required for an R20 zone). It will also provide additional screening to the proposed wheelchair access ramp at the front of the unit without having a significant adverse effect on the amenity of the adjoining property.

The proposed garage/store to Unit 1 along the northern boundary makes effective use of space and is necessary to allow sufficient minimum headroom for vehicles entering or exiting the property, whilst also avoiding too steep a driveway gradient for seniors to use. The proposed wall should enhance privacy to the neighbour to the north and would be partially screened by existing trees and other vegetation to reduce its visual impact. No objection has been received from the adjoining property owner.

Retaining/fill in front setback

Fill and retaining up to 1m above NGL is proposed for the front of Unit 1 to provide a usable (flat) front garden area for the occupants with similar levels to the proposed finished floor level. This variation appears reasonable and can be considered under the performance criteria of the RDC which state:

Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property.

It would have little visual impact on the streetscape due to the existing topography along this section of Athelstan Street and it is a practical measure to provide good accessibility to this area for elderly persons and can be supported.

Additional Comments

Street Tree

The submitted plans show the removal of a street tree in front of Unit 1. However, the applicant has since confirmed that this was an error as the crossover to this Unit no longer necessitates its removal.

Building Height

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

The Council's Policy in relation to Building Heights states:

Provided that it is satisfied that the amenity of the neighbouring area will not be adversely affected, the Council will...measure building height for attached houses and grouped dwellings from NGL as determined by Council at the centre of the area contained within the external walls of each individual house.

On this basis, the NGL at the centre of each proposed dwelling has been determined to be as shown in the table below, which has been derived using a site survey plan submitted by the applicant and drawn by a licensed surveyor.

ANGL (RL)	Unit 1 – 11.60
	Unit 2 – 11.30
	Unit 3 – 10.50
	Unit 4 – 9.75
	Unit 5 – 9.50

Based on this NGL the permitted and proposed heights (RL) are as follows:

Height parameter	Unit	Permitted	Proposed	Proposed (previous application)
ANGL +6m	Unit 1	17.60	17.60	17.60
+8.5m		20.10	18.80	18.85
	Unit 3	16.50	15.80	14.11
+8.5m		19.00	17.00	
	Unit 4	15.75	15.40	16.02
+8.5m		18.25	16.70	
ANGL +7m	Unit 2	18.30	17.50	18.16
	Unit 5	16.50	15.50	15.27

On this basis, all the proposed dwellings comply with Council's Building height requirements and are generally well below the maximum permitted building heights.

CONCLUSION

The latest proposal is effectively a variation on a theme, yet is a relatively modest improvement over the previous application. The revised plans attempt to address some of the concerns raised before; eg the entries and ground floors will now meet the standards for aged and disabled persons accommodation required under the RDC. Plot ratio is still a substantial fundamental departure from the normal standard specified for this type of housing.

Neighbour objections have again been received, albeit fewer individual submissions were received at this time.

Should Council remain concerned about the proposed increased density on the lots, the proposed plot ratio for each of the aged persons dwellings, and the objections raised during advertising, then the applicant should be advised that the application is not supported.

Alternatively, should Council consider that the proposal has now has adequate merit and sufficient satisfies the relevant performance criteria of the RDC, then a recommendation of approval is outlined.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the prospect of a deferral and took advice from the Manager Development Services that, although the latest revised plans were quite similar to the initial plans and the basic issues were well-known whereby the proposal was capable of being determined, deferral would afford the benefits of additional advertising, liaison and reporting before a final, more considered decision by Council. Committee concluded in favour of allowing more time.

OFFICER RECOMMENDATION

Moved Cr Walsh, seconded Cr Dawkins

1. That Council REFUSE the proposed five aged persons dwellings at Nos. 2 & 4 Athelstan Street, Cottesloe, as shown on the plans submitted on 25 August 2010, for the following reasons:
 - (i) The proposed dwellings do not represent small-scale, specialised housing that satisfies the requirements of the Residential Design Codes for a density concession to be considered for aged or dependent persons accommodation; and
 - (ii) The proposed excessive plot ratio and density concession could set an undesirable precedent for similar-sized aged or dependent persons accommodation being sought that is inconsistent with the low-density residential zoning of the locality.

OR:

2. That Council GRANT its Approval to Commence Development of the proposed five aged persons dwellings at Nos. 2 & 4 Athelstan Street, Cottesloe, as shown on the plans submitted on ~~25 August 2010~~ 16 September & 13 October 2010, subject to the following conditions:
 - (a) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 – Construction Sites.
 - (b) Stormwater runoff from the driveways or any other paved portion of the site shall not be discharged onto the street reserve/s, and right-of-way or adjoining properties, and the gutters and downpipes used for the

- disposal of stormwater runoff from roofed areas shall be included within the working drawings submitted for a building licence.
- (c) The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
 - (d) The applicant applying to the Town of Cottesloe for approval to construct the proposed crossovers in accordance with Council specifications, as approved by the Manager Engineering Services or an authorised officer.
 - (e) The existing redundant crossovers being removed and the verge, kerb and all surfaces being made good at the applicant's expense to the specification and satisfaction of the Manager Engineering Services.
 - (f) Air-conditioning plant and equipment shall be located closer to the proposed dwellings 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 finish and colour of the boundary walls facing the northern and eastern neighbours shall be to the satisfaction of the Manager Development Services, with details being submitted as part of the building licence application.
 - (h) The proposed development shall comply with the Acceptable Development Standards of the Residential Design Codes specific to Aged or Dependent Persons Dwellings, Clause 7.1.2 - A2 (iii) & (iv).
 - (i) At least one occupant of each dwelling must be disabled, a physically-dependent person, aged over 55, or the surviving spouse of such a person, and prior to issue of a Building Licence the owners shall enter into a legal agreement with the Town of Cottesloe binding the owners, their heirs and successors in title requiring that this provision be maintained. All prospective purchasers shall be advised by the owner/developer or agent of this requirement, which shall also be included as a notification on all titles by the owner/developer.
 - (j) The amalgamation of Lots 20 and 21 being finalised by the Western Australian Planning Commission before the commencement of development.
 - (k) No verge trees adjoining the site are to be removed and the trees shall be protected at all times during demolition and construction, to the satisfaction of the Manager Engineering Services.
 - (l) The owner(s) shall treat the roof surfaces to reduce glare if, in the opinion of Council, the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
 - ~~(m) The design of the dwellings shall be modified to have plot ratios (in accordance with the definition of Plot Ratio in the Residential Design Codes) consistent with the plot ratios intended by the applicant as specified in the plans received on 25 August 2010. This shall be~~

~~accurately shown on the detailed plans submitted for a Building Licence, to the satisfaction of and for approval by the Manager Development Services~~

3. Advise the submitters of the decision.

COMMITTEE COMMENT

Committee recognised the general demand for aged and dependent persons housing, of which it is supportive in-principle, yet it also saw the issues associated with the proposal.

There were mixed views about the size of the dwellings: on one hand those located in up-market areas may be expected to be larger, but on the other hand the plot ratios proposed could not be reconciled with the RDC parameters. The design and modifications were seen as essentially reasonable in themselves, albeit for an increased number of dwellings and at excessive dwelling sizes.

In response to the discussion Mr Jackson advised that the proposal equated to an R30 density in an R20 area. He also advised that the RDC-based mechanism to ensure compliance with this specialised type of housing was usually imposed as a condition – draft condition (i) refers – however, in practice this approach was sometimes problematic.

Overall, the majority of Committee members agreed that the fundamental aspects of density control and dwelling size as guided by the RDC, plus avoiding setting undesirable precedents, meant that refusal of the proposal is the appropriate outcome.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Boland, seconded Cr Birnbrauer

1. **That Council REFUSE the proposed five aged persons dwellings at Nos. 2 & 4 Athelstan Street, Cottesloe, as shown on the plans submitted on 16 September and 13 October 2010, for the following reasons:**
 - (i) **The proposed dwellings do not represent small-scale, specialised housing that satisfies the requirements of the Residential Design Codes for a density concession to be considered for aged or dependent persons accommodation; and**
 - (ii) **The proposed excessive plot ratio and density concession could set an undesirable precedent for similar-sized aged or dependent persons accommodation being sought that is inconsistent with the low-density residential zoning of the locality.**
2. **Advise the submitters of the decision.**

Carried 5/2

10.2 GENERAL

Cr Walsh declared his proximity interest in this matter, vacated the Chair and passed it to Cr Birnbrauer as Deputy Chair of Committee, and left the meeting at 6:52 PM

10.2.1 RIGHTS OF WAY / LANEWAYS POLICY CLARIFICATIONS

File No: E13.1
Attachments: [Rights of Way Laneway.pdf](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 18 October 2010
Author Disclosure of Interest Nil

INTRODUCTION

The purpose of this report is four-fold, being to:

1. Clarify certain provisions of the ROW Policy which have come into question.
2. Remove any doubt as to whether ROW 14 has been exempted from upgrading.
3. Determine if the development at No. 41 Grant Street must contribute to the upgrading of ROW 14 as required by condition 7 of its approval.
4. Recommend how the Policy could be improved in this regard.

As this matter relates to both planning and engineering strategies the item is submitted via the Development Services Committee; however, it is also of relevance to the Works & Corporate Services Committee, for a holistic approach by Council.

BACKGROUND

Council's *Rights of Way / Laneways Policy* (copy attached) has been in place for several years, with the overarching aim of making all lanes public and their progressive upgrading (paving and drainage), including by developer contributions. The policy principles recognise the positives of laneway access, streetscape improvements, community benefits and streamlined maintenance.

A recent development approval for a two-storey dwelling at 41 Grant St, featuring a rear double garage to ROW 14 as its sole vehicular access, has raised queries in connection with the upgrading requirement. This has prompted an internal review of the situation and a written request (copy attached) from the architect to waive the laneway upgrading condition.

The matter is now drawn to Council's attention for further consideration of how the Policy is intended to function in general, as well as in relation to ROW 14 and 41 Grant St in particular – clarification is required to assess and condition future development applications abutting this laneway.

POLICY FOCUS

The thrust of the Policy favours securing laneways for constructed vehicular access and funding arrangements for upgrading works in the public interest. This is elaborated upon in the *Objectives, Principles, Issues and Policy* sections of the instrument.

This framework and direction was introduced after a period of community consultation and adoption of the Policy by Council in December 2004. Recently Council has reinforced this strategic vision in resolving that a five-year program be created for the progressive upgrading of laneways throughout the district, which the Manager Engineering Services is preparing for Council adoption later this year.

POLICY MODIFICATION

In 2005 the policy was modified as a result of the desire expressed by landowners abutting ROW 14 to exempt it from upgrading. The Town received a letter on 29 June 2005 accompanied by informal survey slips from properties abutting the laneway, with nine against upgrading and two for it.

Clauses 14-16 were added only as generic provisions to address this option, as there is no reference to ROW 14 or any other laneway as an exemption. By this means the Policy allows for individual waivers to be entertained on a case-by-case basis. The additional clauses are quoted below, with key points underlined:

- 14. Where a development or subdivision approval includes a condition requiring the sealing and drainage of a portion of ROW / laneway to allow rear vehicle access, and the developer believes there is a substantial negative attitude from other affected landowners for such ROW / laneway improvements, it is up to the developer to demonstrate to Council that attitude.*
- 15. Where no application for a development has been received relating to the drainage and sealing of a laneway, and one or more landowner wishes to prevent the sealing and drainage of a laneway, then the concerned landowner(s) would undertake the requirements of clause 16 to present Council with the case to prevent such sealing and drainage.*
- 16. The demonstration of a local landowner attitude against the drainage and sealing of a laneway to meet a development condition must include the signatures of at least 2/3rds of all landowners affected by the proposal supporting the 'no sealing and drainage' case and accepting that any future request to Council from any affected landowner to upgrade or seal that laneway must include an acceptance of two thirds of those owners for a differential rating payment system for those properties to fund such improvement works*

The modification was undertaken in accordance with the standard procedure to alter policy, comprising:

1. Initial report to Council on 25 July 2005, which led to a resolution that officers devise a policy modification for laneway upgrading exemption. A letter dated 27 July 2005 advised the survey submitter of this action.

2. Report back to Council on 27 September 2005 that obtained approval to advertise the proposed policy modification. A letter dated 4 October 2005 advised the survey submitter of this progress.
3. Final report to Council on 28 November 2005, where the policy modification was adopted.

Copies of these reports are attached. They convey the sequence of events, factors involved and scope of Council's ultimate decision.

It is apparent that the draft modification was accepted, advertised and adopted without change. It can be seen that a couple of amendments were moved but lost. The resolutions for instigation and advertising were unanimous, while the concluding vote was divided.

The modification was effected and has existed thereafter, although as far as officers are aware has not been utilised since inception.

OPERATION OF CLAUSES

It can be deduced from the reports that the clauses are intended to operate as follows:

1. In view of the spirit of the Policy, exemption from laneway upgrading is the exception rather than the rule, as landowners may be canvassed to gauge attitudes.
2. The onus is on a developer or subdivider to evidence the support of landowners to no upgrading, and it is noted that the Policy does not guide the form of signatures gathered or their verification.
3. The agreement of other landowners to no upgrading is contingent on them also (ie, at the same time) accepting to incur a differential rate if and when in future they agree to upgrading. In practice this double agreement may prove difficult to achieve. It is detected that clause 16 if not read carefully is a little ambiguous here. To be clear, it definitely links the signatories against upgrading to concurrent acceptance of those signatories to differential rating if and when an upgrading proposition arises and they agree to it in future. It is then the minimum two-thirds landowners opting for upgrading who would pay, whether previously opposed, other landowners from before or more recent landowners. The emphasis in the Policy is that there must be *prior* acceptance to that should it eventuate. This is borne-out in the reports to Council in discussing maintenance implications and cost responsibilities, and the Manager Engineering Services has advised that this was always the intent.
4. Council is to sanction the outcome in each instance, rather than officers under delegation. It is discerned that obtaining the threshold support is the first step and Council's consent is the second. Council's decision each time is important, as circumstances might necessitate upgrading; eg, drainage problems, increased density, extensive subdivision or significant redevelopment.

In summary, the Policy provides a process to test the prospect of exemption sufficient for Council to evaluate a request, together with any additional considerations.

CRITIQUE OF CLAUSES

The motivation for the exemption clauses as a mechanism to enable the prevention of upgrading is acknowledged. Nonetheless, closer analysis has identified that the provisions could be improved, in that:

1. They are potentially inconsistent with the gist of the Policy for upgraded laneways, albeit that Council has agreed to them.
2. They vary conventional planning advice (ie, as reflected in the Residential Design Codes, etc) to take advantage of laneways for a range of gains including: streetscape and urban design; traffic management and safety; access, convenience and security; high standards of infrastructure and amenity; efficient use of space; and adding value to properties. This was mentioned in the earlier reports to Council.
3. Exemption is potentially inequitable and doesn't cater for changing needs or aspirations over time; eg, properties selling, owners redeveloping, evolving planning rules, design innovations, and so on. In this regard, under the Policy as worded an exemption would be indefinite unless there is a move to upgrade; however, it may be better that the Policy prescribe a time limit, such as five yearly intervals for review and fresh decisions
4. How the landowners are surveyed and recorded, and how those in support of exemption are held to a differential rate if upgrading is reverted to, is not stipulated. Preferably Council should provide a standard process and format. Deeds of agreement, notifications or caveats on title, all of which would be cumbersome and costly to whoever is deemed to pay, are required to secure the commitments to differential rating and avoid disputation. Realistically, it would be better to not get too complicated, provided that the survey adequately communicates the prospective differential rating and Council is satisfied with the probity of the responses.
5. Any laneways exempted should be listed in the Policy as a publicly-available record and for officers to know which ones won't have constructed access hence

Notwithstanding this assessment of the efficacy of the clauses, they do prevail unless Council wishes to revisit this aspect of the Policy.

These observations suggest that a few minor technical enhancements to the wording of the clauses for accuracy and consistency are warranted, which could be made administratively without affecting the fundamentals (ie, instead of a substantial modification entailing advertising and adoption).

COUNCIL RESOLUTION

Council's original resolution towards modifying the Policy is cited hereunder and is quite straightforward, yet there is some confusion about the status of ROW 14 from these past deliberations. Current Elected Members then present may recall the discussion and Council's outlook on the matter.

That Council:

- (1) *Inform the owners of properties fronting Right of Way No. 14 who have made comment on the possible sealing of Right of Way No. 14 that:*

- (a) *Council has no long term plans to fund the sealing of all laneways in the Town of Cottesloe;*
 - (b) *There are no plans or budget allocations for the sealing of ROW No. 14;*
 - (c) *48% of all Town of Cottesloe laneways are already sealed, brick paved or concreted, with this percentage increasing due to development conditions;*
 - (d) *Current development conditions requiring the sealing of laneways have been in place for many years and only apply if a landowner wishes to get vehicle access to a new development or sub-division via the laneway;*
 - (e) *There are no plans to conduct surveys of landowners regarding sealed laneways;*
- (2) *Thank the provider of the survey details for the provided information regarding Right of Way No. 14; and*
- (3) *Request staff to develop a policy modification which will:*
- (a) *Allow laneways to remain unsealed subject to the support of two-thirds of adjoining owners; and*
 - (b) *Make it clear that any future request to seal these affected laneways will only be funded by differential rating subject to the support of two-thirds of adjoining owners or not proceed at all.*

Although the historical concern amongst some landowners along this laneway to prevent its upgrading was addressed and Council modified the Policy, nothing has been discovered to show that in so doing Council explicitly exempted ROW 14 pursuant to its decision. Indeed, the tenor of the resolution is interpreted to advise the subject landowners that, while Council was prepared to modify the Policy for an alternative scenario, it did not wish to promote exemptions and did not specifically endorse ROW 14 (or any other) as exempt; however, the wording reassured those landowners that ROW 14 was not flagged to be upgraded.

In hindsight Council ought to have consciously dealt with ROW 14 at that stage, or subsequently commencing the process to formalise the exemption request. On the other hand, as mentioned Council may have been of a mind that while willing to support the principle of the modification it did not want to endorse any particular exemption at that juncture but to await developers / landowners to invoke the clauses.

The perhaps understandable belief from those landowners is that Council in modifying the Policy implicitly gave consent to the exemption of ROW 14. However, strictly-speaking an exemption couldn't be granted until after the Policy modification was confirmed and the full procedure carried-out, which was not done.

ARCHITECT'S REQUEST

The architect for the approved development presumes previous exemption of ROW 14 from upgrading, whereby signatures and agreement to a possible future differential rate do not have to be attended to on this occasion. In this respect the architect's statement that Council has not demonstrated prior acceptance of landowners to a differential rating to fund upgrading is misplaced, given that:

1. The Policy invites this evidence from an applicant.
2. The absence of such information for ROW 14 indicates that laneway has not undergone the Policy requirements to seek exemption.

Therefore, taking into account the analysis offered in this report, this claim to waive the upgrading condition cannot be sustained.

The Manager Engineering Services has assisted the architect with the extent, standard and estimated cost of upgrading. The MES also advises that ROW 14 has suffered from sand runoff / erosion leading to drainage issues. As mentioned, constructed laneway access represents an asset both physically and financially.

CONCLUSION

The confusion surrounding the Policy in connection with ROW 14 can be appreciated, despite that fact that the Policy is silent regarding any exemption. The research and review performed to clarify this matter has been essential, due to the wider implications for implementation of the Policy and how laneways are managed, as well as to facilitate the approved development at 41 Grant St and future developments.

As to ROW 14, in 2005 the landowner sentiment was to leave the laneway in a non-upgraded state; however, the prerequisite of also signifying future differential rating should upgrading become desired was not dealt with then or once the Policy modification was completed.

It is concluded that Council is faced with a choice to either: (i) accept ROW 14 as exempt; or (ii) ascertain that ROW 14 is not exempt as the Policy process has not been followed. If Council determines the latter then it is up to the landowners or the architect to act on clauses 14-16 should they still want to. Therefore, the options for a Council decision are:

1. Regarding ROW 14, determine whether or not Council is satisfied that, in previously modifying the Policy by adding clauses 14-16 to allow laneways to be exempted from upgrading, ROW 14 may be considered as exempt.
2. Regarding No. 41 Grant Street, depending on the outcome of point 1 above, advise the architect for the approved development that:
 - a) condition 7 requiring upgrading of the laneway is still required to be fulfilled, because ROW 14 is not considered as exempted from upgrading under the Policy, as exemption can only occur in accordance with the process described in clauses 14-16 of the Policy; or
 - b) condition 7 requiring upgrading of the laneway is not required to be fulfilled, because ROW is considered as exempted from upgrading under the Policy.

On balance, as it is found that due process for Council to exempt ROW 14 in accordance with the Policy modification has not been undertaken, the

recommendation must be to advise the architect in the negative. Supporting recommendations are made to further inform the architect and to improve the Policy document and its operation.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed this matter in some detail. It was considered that clauses 14-16 were unclear and could be improved as recommended. It was also appreciated that the situation in relation to ROW 14 appeared untidy and a response regarding 41 Grant St is required. In that respect the extent of upgrading by No. 41 was queried and Mr Jackson reminded Committee how this is guided by the Policy in the established manner, ie a connection to the nearest sealed section of the laneway is to be provided by the developer for continuity of upgraded access. The requirement was not under review by this item, only the subject aspect of the policy.

Discussion ensued regarding whether ROW 14 should be allowed as exempt in the circumstances (noting that it is relatively short and a dead-end), but that exemptions should then not be continued with. In this respect clauses 14-16 were seen as unwieldy and the differential rating requirement as difficult to administer. Mr Jackson explained how it is necessary to report to Council for determination each time a lane is proposed to be exempted. It was suggested that it may be better to delete the exemption provisions altogether.

Mr Jackson commented that the finding regarding ROW 14 would understandably most likely be disappointing to those adjacent landowners still in favour of no upgrading, however, given the strategic outlook of the Policy and its district-wide application, the matter was important to be clarified for all concerned. He cautioned against automatic removal of clauses 14-16 without further consideration and proper process including community consultation. Committee made an amendment to add to the recommendation accordingly, whilst preserving the other points to address the particular needs and Policy improvements at this stage.

OFFICER RECOMMENDATION

Moved Cr Boland, seconded Cr Dawkins

That Council:

1. Notes this report about the situation and operation pertaining to Council's *Rights of Way / Laneways Policy*.
2. Advises the architect for the approved development at 41 Grant Street that condition 7 requiring upgrading of the laneway is still required to be fulfilled, because ROW 14 is not considered by Council as exempted from upgrading under the Policy, as exemption can only occur in accordance with the process described in clauses 14-16 of the Policy.
3. Reminds the architect that condition 8 of the approval requiring removal of the existing crossover from Grant Street is required to be met.

4. For all exempted ROW / laneways, affirms the requirement for differential rating in the event of a future upgrading proposal pursuant to clause 16 of the Policy.
5. Directs that any exemptions are listed in a table attached to the Policy as follows:

TABLE OF ROW / LANEWAYS FOR WHICH COUNCIL HAS GRANTED EXEMPTION FROM UPGRADING PURSUANT TO CLAUSES 14-16 OF THIS POLICY

<i>ROW / Laneway</i>	<i>Date of Council decision</i>

6. Authorises officers to make the following technical improvements to the wording of clauses 14-16 of the Policy as an administrative step for the sake of clarity:

Deletions shown struck-out and additions shown underlined:

14. *Where a development or subdivision approval includes a condition requiring the sealing and drainage of a portion of ROW / laneway to allow rear vehicular access, and the developer or subdivider believes there is a substantial negative attitude from other affected landowners for such ROW / laneway improvements, it is up to the developer or subdivider to demonstrate to Council that attitude.*
15. *Where no application for a development or subdivision has been received relating to the ~~drainage and sealing~~ and drainage of a ROW / laneway, and one or more landowner wishes to prevent the sealing and drainage of a ROW / laneway, then the concerned landowner(s) ~~would~~ may undertake the requirements of clause 16 to present Council with the case to prevent such sealing and drainage.*
16. *The demonstration of a local landowner attitude against the ~~drainage and sealing~~ and drainage of a ROW / laneway to meet a development or subdivision condition must include the signatures of at least two-thirds of all landowners affected by the proposal supporting the 'no sealing and drainage' case, and at the same time accepting that any future request to Council from any affected (ie previous or subsequent) landowner to upgrade ~~or seal~~ that ROW / laneway must include an acceptance of at least two-thirds of those landowners for a differential rating payment system for those properties whose landowners support upgrading to fund such improvement works.*

AMENDMENT

Moved Cr Dawkins, seconded Cr Strzina

That a point 7 be added to the decision as follows: *Requests officers to report-back to Council on the prospect of and process for considering the possible deletion of clauses 14-16 from the Policy.*

Carried 6/0

COMMITTEE RECOMMENDATION

That Council:

1. Notes this report about the situation and operation pertaining to Council's *Rights of Way / Laneways Policy*.
2. Advises the architect for the approved development at 41 Grant Street that condition 7 requiring upgrading of the laneway is still required to be fulfilled, because ROW 14 is not considered by Council as exempted from upgrading under the Policy, as exemption can only occur in accordance with the process described in clauses 14-16 of the Policy.
3. Reminds the architect that condition 8 of the approval requiring removal of the existing crossover from Grant Street is required to be met.
4. For all exempted ROW / laneways, affirms the requirement for differential rating in the event of a future upgrading proposal pursuant to clause 16 of the Policy.
5. Directs that any exemptions are listed in a table attached to the Policy as follows:

- a. TABLE OF ROW / LANEWAYS FOR WHICH COUNCIL HAS GRANTED EXEMPTION FROM UPGRADING PURSUANT TO CLAUSES 14-16 OF THIS POLICY

<i>ROW / Laneway</i>	<i>Date of Council decision</i>

6. Authorises officers to make the following technical improvements to the wording of clauses 14-16 of the Policy as an administrative step for the sake of clarity:

Deletions shown struck-out and additions shown underlined:

14. Where a development or subdivision approval includes a condition requiring the sealing and drainage of a portion of ROW / laneway to allow rear vehicular access, and the developer or subdivider believes there is a substantial negative attitude from other affected landowners for such ROW / laneway improvements, it is up to the developer or subdivider to demonstrate to Council that attitude.

15. Where no application for a development or subdivision has been received relating to the ~~drainage and sealing and drainage~~ of a ROW / laneway,

and one or more landowner wishes to prevent the sealing and drainage of a ROW / laneway, then the concerned landowner(s) ~~would~~ may undertake the requirements of clause 16 to present Council with the case to prevent such sealing and drainage.

16. The demonstration of a local landowner attitude against the ~~drainage and sealing and drainage~~ of a ROW / laneway to meet a development or subdivision condition must include the signatures of at least two-thirds of all landowners affected by the proposal supporting the 'no sealing and drainage' case, and at the same time accepting that any future request to Council from any affected (ie previous or subsequent) landowner to upgrade ~~or seal~~ that ROW / laneway must include an acceptance of at least two-thirds of those landowners for a differential rating payment system for those properties whose landowners support upgrading to fund such improvement works.

- 7. Requests officers to report-back to Council on the prospect of and process for considering the possible deletion of clauses 14-16 from the Policy.**

The amended substantive motion was put.

Carried 6/0

Cr Walsh returned to the meeting at 7:20 PM

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

Nil

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

Mr Jackson tabled a late item regarding 68 Railway Street, being a revised proposal in relation to the State Administrative Tribunal (SAT) review of Council's refusal of the original proposal. He requested consideration of the matter by Committee and Council to assist the current SAT mediation process and time-line. He also requested that the discussion be held in-camera, given the confidentiality associated with SAT mediation proceedings.

MOTION TO MEET BEHIND CLOSED DOORS

Moved Cr Boland, seconded Cr Dawkins

In accordance with Standing Order 15.10 "*That the Council meets behind closed doors – Effect of Motion*" (LG Act s5.23) that Committee discuss late item 12.1.1: No. 68 Railway Street – Change of Use from Residential to include Consulting Room / Professional Office – Appeal Matter, and that it be dealt with behind closed doors.

Carried 7/0

12.1 CONFIDENTIAL BUSINESS**12.1.1 NO. 68 RAILWAY STREET – CHANGE OF USE FROM RESIDENTIAL TO INCLUDE CONSULTING ROOM / PROFESSIONAL OFFICE – APPEAL MATTER**

File No: 1978
Attachments: [Confidential Report and attachments](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services



CONFIDENTIAL REPORT NOT INCLUDED

COMMITTEE RECOMMENDATION

Moved Cr Boland, seconded Cr Dawkins

That Council determines its position on the revised proposal, having regard to the recommendation contained in the officer report, in order to advise the State Administrative Tribunal and the applicant at the next mediation conference in this matter.

Carried 7/0

MOTION TO PROCEED WITH OPEN DOORS

Moved Cr Boland, seconded Cr Dawkins

In accordance with Standing Order 15.10 “*That the Council meets behind closed doors – Effect of Motion*” (LG Act s5.23) that Committee re-open the meeting to the public.

Carried 7/0

The public were invited back into the room in order for the Chair to read aloud the Committee recommendation.

13 MEETING CLOSURE

The Presiding Member announced the closure of the meeting at 7:47 pm.

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