

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 15 AUGUST 2011

CARL ASKEW
Chief Executive Officer

19 August 2011

DEVELOPMENT SERVICES COMMITTEE

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member announced the meeting opened at 6:02PM.

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

Cr Jack Walsh	Presiding Member
Cr Jo Dawkins	
Cr Davina Goldthorpe	
Cr Victor Strzina	
Cr Jay Birnbrauer	
Cr Patricia Carmichael	
Cr Greg Boland	Deputising

Officers Present

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

Apologies

Cr Ian Woodhill

Officer Apologies

Nil

Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 PUBLIC STATEMENT TIME

Mr Alan Ross re Item 10.1.3 – 104 Marine Parade (Cottesloe Beach Hotel) proposal

Mr Ross spoke for the Architects and emphasised that the proposal involved no change of use but rather was to significantly improve the rear courtyard as a food-based operation catering to friends, families and functions.

Mr Tony Dichiera re Item 10.1.3 – 104 Marine Parade (Cottesloe Beach Hotel) proposal

Mr Dichiera outlined the objective of a family-friendly facility as the right approach to the use and upgrading of the courtyard in accordance with community and Council preferences for an improved environment and well-managed operation; and he looked forward to support for the detailed design.

6 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Strzina, seconded Cr Dawkins

[Minutes July 18 2011 Development Services Committee.doc](#)

The Minutes of the Ordinary meeting of the Development Services Committee held on 18 July 2011 be confirmed.

Carried 7/0

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

For the benefit of the members of public present and based upon the advice of the applicant for item 10.1.1 that he may be late to Committee, the Presiding Member determined to deal with the agenda reports in the following order;

- 10.1.3 No.104 Marine Parade (Cottesloe Beach Hotel) – Alterations and Additions to Existing Beer Garden
- 10.1.2 No. 459 Stirling Highway – Re-Application for Proposed Second-Storey Addition to Extend Professional Office Use
- 10.1.1 No.56 Railway Street – Change of Use of Consulting Rooms/Professional Office with Residential Use

10 REPORTS OF COMMITTEES AND OFFICERS

10.1 PLANNING

10.1.1 NO. 56 RAILWAY STREET - CHANGE OF USE TO CONSULTING ROOMS/PROFESSIONAL OFFICE WITH RESIDENTIAL USE

File No:	2247
Attachments:	56 Railway Street.pdf
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Ed Drewett Senior Planning Officer
Proposed Meeting Date:	15 August 2011
Author Disclosure of Interest	Nil
Property Owner	Mr D Gulland & Ms C Clark
Applicant	Dr John Salmon
Date of Application	4 July 2011
Zoning:	Residential R20
Use:	AA - A use that is not permitted unless special approval is granted by the Council
Lot Area:	466m²
M.R.S. Reservation:	Not applicable

SUMMARY

This report discusses the statutory provisions and assessment criteria relevant to this change of use proposal and refers to plans received on 5 July 2011, as well as to the applicant's and neighbours' submissions.

A similar proposal was previously submitted by the applicant for 68 Railway Street (approximately 120m north of the current proposal) and that was refused by Council in July 2010. Following mediation and an amendment by the applicant to include a residential tenancy the proposal was subsequently dismissed on review by the State Administrative Tribunal in January this year.

Given the assessment that has been undertaken of the current proposal, the recommendation is to refuse the application as it is contrary to the strategic intent and specific requirements of Council's Scheme and related Policy.

PROPOSAL

This application is seeking consideration of a change of use of the northern portion of the existing dwelling at 56 Railway Street to Consulting Rooms/Professional Offices for the treatment of chronic pain by the applicant. The southern portion of the building is proposed to be utilised as single bedroom accommodation for possible occupancy by members of the applicant's family.

No significant internal alterations are proposed. Externally a rear pergola would be removed and the rear garden would be partially paved to accommodate 3 car bays

(two in tandem) for patients and staff. A 4th car bay would be provided below an existing carport/ pergola located on the northern side of the premises (ie: total of 4 bays proposed for the non-residential use).

An existing crossover in Wentworth Street is proposed to be widened to 4.5m to provide access to the non-residential parking areas and a new crossover is proposed on Railway Street (adjoining the southern boundary) to provide access to two car bays associated with the proposed residential use. The existing crossover located on Railway Street at the northern side of the lot is proposed to be removed.

The existing solid fencing along both street frontages is proposed to remain except where required to be modified to allow for the new vehicle access points.

POLICY IMPLICATIONS

Professional Offices in a Residential Zone.

FINANCIAL IMPLICATIONS

No financial resource impact.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes (RDC)
- Proposed Local Planning Scheme No. 3 (LPS3)

MUNICIPAL INVENTORY

Not applicable.

CONSULTATION

The application was advertised in accordance with TPS 2. The advertising consisted of letters to four adjoining property owners. All four adjoining owners have objected to the proposal. The submissions are summarised below:

Max Redapple, 1 Wentworth Street

- Does not want the residential status of the property to be changed or amended in any way to allow mixed use now or in the future;
- The proposed use will impinge on the congestion in Railway Street which is a speedway at times;
- Visitors to the premises will be searching for an access on Railway Street and will use the laneway behind Wentworth Street as an extra access point although this is primarily for the occupiers of Wentworth and Perth Streets accessing their rear garages;
- The proposed alterations will have a down-market effect and do nothing to improve the suburb;
- The area is well served by the medical fraternity and there is no obvious gain to the community or the area;

- The estimated 40 patients per week will at least increase street traffic by 40 per week in and out of the property and that amounts to additional disturbance to the area; and
- The applicant stated in his letter that I had no objections to the alterations. This is incorrect as I advised him that I needed to think of the impact of the change and would not give a decision on the spot.

Kaye A. Barrow, 2 Wentworth Street

- The proposed access in Wentworth Street is almost directly opposite my front door and entry;
- The applicant's comment about Wentworth Street is incorrect as properties on both sides use the road with regular traffic flow;
- Visitors would be unaware of the laneway at the rear of the lots for access from the eastern end of the street and so are unlikely to use it. Also the surface of the laneway is already breaking up and runoff during rains carries surface material onto the footpath along Railway Street. Additional traffic will exacerbate the situation;
- Traffic in Railway Street is heavy and at peak times is backed up to south of Wentworth Street. Children and the elderly regularly cross Wentworth Street;
- Existing on-street parking along Wentworth Street already impedes traffic flow and this can only be exacerbated by the proposed increased traffic flow;
- The property will be and look like a commercial property;
- There can be no guarantee that the premises will be returned to residential use after 10 years and if this does happen then it undermines the contention that the use will provide a valuable service to the Cottesloe community;
- The community is already well-served by medical facilities which are within walking distance of Wentworth Street;
- Inability to afford the purchase, as opposed to lease, of premises from which to conduct a business has never been a sound reason for allowing a business in a residential area;
- The neighbour on the eastern side of the property has not stated he has no objection so this statement by the applicant is incorrect; and
- Whilst there may be some undeniable benefit to the community by the establishment of a medical practice in Wentworth Street, this proposal is in essence a property investment and does not warrant the granting of a change of use from residential to commercial.

Jonathon Rocchi, 54 Railway Street

- The proposed use will result in a significant increase in the number of vehicles and people entering the premises which is unacceptable for a residential zoned area.

Dr David Flynn, 3 Wentworth Street

- Creating a mixed residential/business environment along Railway Street is something most people in the precinct would object to as it is a quiet residential area;
- The existing small businesses along Railway Street have been there for many years and are unobtrusive;
- The proposal would set a precedent which could irretrievably alter the nature of the precinct;
- The proposed use would increase traffic in Wentworth Street;
- Greenery on the block would be lost as it would be replaced by car bays; and
- Land values would be diminished.

APPLICANT'S JUSTIFICATION

The applicant has submitted a covering letter with the application outlining the proposal. This is summarised below:

- The property lends itself to simple reconfiguration which will allow it to be used for my medical consulting rooms as well as providing a single bedroom residential use for a family member;
- Six on-site car bays are proposed which will be adequate for the proposal;
- The alterations required will be relatively modest;
- Cars will be able to enter and exit the rear of the site in forward gear;
- The streetscape will be substantially the same or improved following part removal and tidying up of the fence bordering Wentworth Street. Parked cars will be substantially concealed from the street by most of the existing fencing;
- The submitted plans show the possible addition of a living room-kitchen to the residential south side of the property but this would be a separate application;
- The medical practice will be as described in my previous application for 68 Railway Street;
- There will only be one medical practitioner, myself, practising pain medicine until my retirement in about 10 years time. The property will then be returned to residential;
- There will be one receptionist working 9-5 weekdays;
- Patient flow will be the same as in my current practice established for over 15 years;
- On Tuesdays and Thursdays 8-10 patients will be seen between 11.30am and 5pm (one hour for a new patient, half an hour for a follow-up). There should be only 1-3 patients there at a time;
- On other days of the week patients seen for half this period either mornings or afternoons depending on operating list commitments;
- A total of 30-40 patients are seen a week between 11.30am and 5pm weekdays;
- No drugs will be kept on the property;
- My medical practice provides a valuable service to the Cottesloe community which may be lost if I am unable to obtain a suitable location;
- I cannot afford to purchase a property in the commercial areas of Cottesloe;
- The car parking arrangements provide for up to 5 patient/staff vehicles to use the Wentworth Street access in forward gear;

- Wentworth Street is a quiet side street servicing a relatively small number of properties and also provided with a laneway circuit for one-way traffic exiting to Railway Street, if necessary. This arrangement should not constitute any significant disruption of neighbours or the neighbourhood and there should be no safety concerns because of the very low traffic flow in Wentworth Street; and
- My neighbour on the east side of the property has stated that he has no objections to my plans. My only other neighbour on the south side of the property has the property rented and I have been unable to contact the tenant or the owner.

COMMITTEE COMMENT

This residential property is located on the south-west corner of Wentworth Street and Railway Street and is currently for sale. The applicant is considering purchasing it for the purposes of converting it to medical consulting rooms and for single bedroom residential use.

On-site parking (4 bays) for staff and patients would be provided at the rear and on the northern side of the existing property and accessed via a modified and widened crossover on Wentworth Street. On-site parking (2 bays) for the residential use would be provided at the front of the property and accessed via a new crossover on Railway Street adjoining the southern boundary. The existing crossover on Railway Street would be closed.

Pedestrian entry to the consulting rooms would be via the existing front entrance and a new rear doorway, while access to the residential side would be via a door on the southern side.

The strategic and statutory considerations for this proposal are very similar to the previous 68 Railway Street proposal and are discussed below:

Land Use

Land use in the locality is predominantly residential, although there is a liquor store at 24 Railway Street and a Naturopath at 10 Railway Street. These are both long established uses occupying corner sites located closer to the Town Centre and have been limited in terms of scale of operation and parking.

Under TPS2 Consulting Rooms and Professional Offices are 'AA' uses in the zoning table for the Residential Zone; that is, uses which are *not permitted* unless special permission is granted by Council and following advertising. The presumption is not in favour of the use; however, Council may exercise discretion to allow it, subject to consideration of submissions and having regard to its Scheme and Policy provisions.

Statutory Provisions

Certain general provisions of TPS2 apply to non-residential development in the district, including parking, signage and other "matters to have regard to". These also form part of the framework for assessment of the development proposal in the context of surrounding residential land use and amenity.

Council should therefore determine the proposed change of use from a local planning perspective having regard to TPS2 and proposed LPS3, which both support low density residential development in the area, albeit with a modest change to Residential R35 under proposed LPS3.

TPS2

The following land use guidance is provided by TPS2 in terms of the intent of the zoning and land use / development controls:

3.4 Zone Provisions

3.4.1 Residential Zone

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

5.1.2 Council shall have regard to:

- (k) *the impact on the general quiet of the locality, including the times of activity, traffic generation, access and parking, and air conditioning, plant rooms and machinery, in relation to neighbouring properties. In order to preserve the quiet of residential areas, Council may impose conditions on development approvals restricting the hours of work on a development site.*

The tenor of these Scheme provisions is a common theme of promoting residential amenity for the wellbeing of residents and to ensure that any proposals are consistent with this purpose. The Scheme does not involve any express provisions to facilitate the location of non-residential uses in residential areas, nor to manage the development of premises or conversion of dwellings for the purpose.

Proposed LPS3

Proposed LPS3 is modelled on TPS2 and echoes the land use intent and development control regime relating to this area. It strengthens the importance of zoning regulation, land use control and development requirements/standards, including residential amenity.

In other words, LPS3 supports the continuation of residential use and development in the vicinity and the proper location of non-residential uses in other appropriate zones or centres (ie business / commercial areas). Additionally, LPS3 is aimed at securing and strengthening the character and amenity of established residential neighbourhoods.

LPS3 has advanced to the final approval phase whereby it can be had regard to by Council as a seriously entertained planning proposal in ascertaining the planning intent and outlook for a locality.

Local Planning Policies

There is no local planning policy which deals specifically with consulting rooms; however, Council's *Home Occupations & Professional Offices Policy* provides a guide to considering and regulating non-residential uses in the Residential zone.

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

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

- No more than 3 staff members shall operate from the business at any one time;
- Trading hours are to be restricted to 9-5pm weekdays only, excluding public holidays;
- No more than 10 vehicle trips per day shall be generated by the business;
- The number of clientele shall not exceed 4 persons at any one time;
- Parking shall be provided at the rate of 1 car space to every 40m² of gross floor area with a minimum of 4 spaces; and
- Planning consent will only be granted for a maximum period of 12 months at which time the applicant is required to make a renewal application.

The thrust of this Policy is to preserve the integrity of residential areas and to contemplate only those low-impact, non-residential Professional Office uses that are compatible with the preservation of residential amenity.

Although the proposed use may generally meet these assessment criteria it is nevertheless proposed to be for a permanent change of use (for at least 10 years), rather than one that could otherwise be reviewed by the Town on an annual basis, and it is doubtful that such a proposal would not prejudicially affect the amenity of the neighbourhood due to the increased number of cars and visitors that would frequent the site, an issue that has also been highlighted by the adjoining residents.

The proposed single-bedroom residential component may also result in a potential conflict of land uses on the site as it is not proposed to be occupied by the applicant or directly associated with the non-residential use and it generates the need for additional parking on-site and a separate crossover on Railway Street.

Previous Decisions

For many years TPS2 had been successful in coordinating development to separate residential and incompatible non-residential uses, by directing commercial and professional activities to defined business centres and suitable premises, where urban amenity aspects such as transport, vehicular access and parking, hours of

operation, plant/equipment noise, light-spill and signage can be addressed. The town centre, adjacent offices area and two local centres have performed well in this respect and have attracted dedicated medical and professional office-based buildings to satisfy the demand for local services and businesses. This approach also fosters commercial activity centres by directing and concentrating businesses and services used there.

As a measure of this planning strategy, Stirling Highway and the distributor roads in the district have not suffered encroachment and impacts by non-residential uses to erode residential use, character and amenity. For example, Council in consistently applying the Scheme refused change of use proposals for 463 Stirling Highway in both 1995 (chiropractic consulting rooms) and 2007 (psychiatry consulting rooms); and the latter was likewise refused by the SAT. Council also refused a similar proposal for Professional Offices (Natural Therapy Clinic) at 10 Railway Street. These refusals were essentially based on concerns regarding the amenity and traffic implications of land use changes and their associated physical development affecting established residential areas intended to be preserved and protected.

Part of Council's reasoning for this approach is that non-residential uses in residential areas can tend to get out of hand in terms of parking, hours of operation, intensity of activity and all the associated impacts, which can lead to complaints from residents whose amenity is compromised. Sometimes uses can also further change without approval so become compliance matters.

Council decision and the State Administrative Tribunal's (SAT) review of a change of use proposal at 68 Railway Street.

An application, submitted by the current applicant, for a similar change of use of a residential property to Consulting Rooms/Professional Offices at 68 Railway Street was refused by Council on 26 July 2010 for the following reasons:

- a) *the proposal is contrary to the orderly and proper planning and the preservation of the amenity of the locality;*
- b) *the proposal is contrary to the intent of Council's current and proposed Local Planning Schemes for the Residential Zone;*
- c) *the district provides a town centre, adjacent office area and two local centres as established locations appropriately zoned and developed to accommodate consulting rooms, professional offices and other businesses in defined, accessible and serviced hubs with public parking and associated facilities, without causing undue adverse amenity impacts on residential areas;*
- d) *the degree of alteration required to adapt the premises and property from a dwelling to consulting rooms/professional offices demonstrates that it is not well-suited for the purpose and will lose its existing residential character and amenity;*
- e) *the proposed traffic generation, vehicular access, parking and movement arrangements are unsatisfactory in terms of convenience, safety and amenity;*
and

- f) *the proposal would adversely impact directly on the amenity of the adjoining dwellings, the occupants all of whom have objected to such.*

The applicant lodged a review with the SAT against Council's decision and subsequently modified the proposal to include some residential accommodation, in an attempt to make it more acceptable in the residential area prior to it being referred to a Tribunal Hearing on 6 December 2010.

The review was dismissed by the SAT and it affirmed the Council's refusal of the proposed change of use. Various reasons for the decision were given, some of which are summarised below:

- *the proposed use would be inconsistent with the intent of the residential zoning in the Town Planning Scheme;*
- *the size of the lot required that the rear yard of the site be open space for residents and parking for consulting rooms;*
- *the proposed consulting room was not an amenity that served the residential locality in which it would be located as required under the town planning scheme;*
- *it was undesirable to attract non-local traffic to a specific site located close to a busy intersection; and*
- *the internal driveway and the rear parking on the site would have an undesirable impact on the amenity of the abutting residential properties.*

In addition, the SAT noted that the applicant provides a specialised service for a particular segment of the community; that is those with chronic pain. The service provided is not one for the community at large to make use of on a regular basis and it is not particularly related to the residential locality in which it would be situated. The proposed use would therefore not be consistent with the objective of both TPS2 and proposed LPS3 of a professional office contributing to the amenity of the residential locality within which it would be located.

The proposed service also does not warrant the 'special approval' required for an 'AA' use under TPS2 and would not be consistent with the purpose of the residential zoning under TPS2 and proposed LPS3. It would therefore not be consistent with orderly and proper planning.

Parking and Access

The current application has been reviewed by the Manager Engineering Services (MES) who has not raised any specific issues with the new crossovers or internal parking layout. However, the following comment was made by the MES in response to the concerns raised by adjoining residents:

The rear laneway behind 56 Railway Street is both narrow and in poor condition. It is only used by locals or builders because of it being hard to find, in poor condition and being narrow.

Wentworth Street is in good condition but narrow. Vehicles parked on both kerb lines would block the street. The street is a dead end/turnaround at the east end but connects to the east end of the rear laneway. If builders are working in the street or laneway and this is added to the normal traffic generation, the street could become busy at various times.

Railway Street is busy and will probably continue to get busier with traffic building up at the Eric Street roundabout early in the morning and late in the afternoon.

From a planning viewpoint, it is considered that traffic safety concerns would increase with non-residential visitors unfamiliar with the locality being attracted to the proposed consulting rooms on the site compared to movements by local residents. This was also a viewpoint shared by the SAT in respect of the proposal at 68 Railway Street.

The location of the proposed new access in Wentworth Street would be only approximately 15m from Railway Street which is a relatively short distance. A vehicle entering Wentworth Street from Railway Street would need to make a sharp turn right to enter the proposed on-site parking area and therefore if another vehicle is following behind it may have to brake suddenly to avoid the turning vehicle, especially if the visitor is unfamiliar with the entrance to the consulting rooms. This would therefore increase the traffic safety hazard for visitors and residents alike.

The proposed new crossover on Railway Street and two resident car bays proposed at the front of the property is also of concern from a traffic safety viewpoint. Whilst the location of the crossover may be preferable to the existing crossover as it further away from the intersection of Wentworth and Railway Streets, vehicles would still have to slow on Railway Street before having to make a difficult tight angled turn especially if entering from the north. The retention of the existing solid front wall combined with the proposed narrow 3m width for the proposed crossover would result in inadequate vehicle sightlines being provided and for traffic and pedestrian safety concerns being exacerbated, especially as a public footpath is also adjoining the lot.

Amenity Issues

Traffic movement and manoeuvring in the rear garden associated with the proposed use would have potential to impact unacceptably on the amenity of the neighbours, especially for the occupiers of the property to the east of the site which has its main outdoor living area on the northern side immediately adjoining the proposed new entrance.

The location of the new entrance almost directly opposite the front door of 2 Wentworth Street is also likely to result in an increased loss of amenity to the occupier of that property due to the increased frequency of vehicles accessing the proposed consulting rooms.

The likelihood of increased traffic along Wentworth Street, and possibly the rear laneway, as a result of the proposed use will also affect other residents' amenity in the locality due to additional noise and general activity associated with the non-residential use.

Concerns of residents

The applicant advised the planning department that the neighbour on the eastern side of the site had no objection to the proposed use and that he was not aware of any other concerns of residents in the area. However, advertising of the application has revealed that in fact all the owners of the properties notified which are immediately neighbouring the site have objected to the proposed use. Their reasons given are well-articulated and considered to have merit, as discussed in this report.

CONCLUSION

The proposed change of use is not supported from a planning viewpoint given that:

- the proposed use is contrary to the intent of Council's current and proposed Schemes, which promote residential amenity, character and quietude for the well-being of residents in the Residential zone;
- various amenity impacts are likely to arise;
- vehicular parking, manoeuvring and safety are unsatisfactory;
- there are objections from all surrounding neighbours;
- the town centre and local centre zones areas are where commercial activities are directed to locate and this policy has proven successful for the protection of residential amenity and the management of activity centres in Cottesloe; and
- the proposed residential component would not be occupied by the applicant and may result in a potential conflict of land uses on the site.

VOTING

Simple Majority.

COMMITTEE COMMENT

Committee commented on a sound report and noted the similarities with the previous proposal, in moving to refuse the current application.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Strzina seconded Cr Goldthorpe

THAT COUNCIL:

1. **REFUSE the proposed Consulting Rooms/Professional Office and Residential use at 56 Railway Street, Cottesloe based on the applicant's submission and as shown on the plans submitted on 5 July 2011, for the following reasons:**

- a) the proposal is contrary to the orderly and proper planning and the preservation of the amenity of the locality;
- b) the proposal is contrary to the intent of Council's current and proposed Local Planning Schemes for the Residential Zone;
- c) the district provides a town centre, adjacent office area and two local centres as established locations appropriately zoned and developed to accommodate consulting rooms, professional offices and other businesses in defined, accessible and serviced hubs with public parking and associated facilities, without causing undue adverse amenity impacts on residential areas;
- d) the proposed traffic generation, vehicular access, parking and movement arrangements are unsatisfactory in terms of convenience, safety and amenity; and
- e) the proposal would adversely impact directly on the amenity of the adjoining dwellings, the occupants all of whom have objected to such.

2. Advise the submitters of this decision.

Carried 7/0

10.1.2 NO. 459 STIRLING HIGHWAY – RE-APPLICATION FOR PROPOSED SECOND-STOREY ADDITION TO EXTEND PROFESSIONAL OFFICE USE

File No: 1976
Attachments: [Plans459Stirling.pdf](#)
[AerialandSitePhotos459Stirling.pdf](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 15 August 2011

Author Disclosure of Interest: Nil
Property Owner: Lanobelle Corporation
Applicant: Icon Group Management
Date of Application: 11 June 2010
Zoning: N/A
M.R.S. Reservation: Primary Regional Road Reserve
Lot Area: 880m²

SUMMARY

Re-application for approval for a second-storey addition to extend a professional office use, which was previously granted by Council on 22 June 2009. The re-application was submitted on 11 June 2010 and the proposed development is identical to that as before.

Initially as the property was vacated and marketed for sale, the Town queried whether a further approval was still sought or relevant. The application has not been determined in the meantime pending a prospective sale and an extended dialogue in this connection. Ultimately the property has not sold and the owner seeks a further approval in order to keep its options open in respect of its future intentions for the property.

Recommended for re-approval subject to conditions.

PROPOSAL

It is proposed to add a second storey to the existing professional office building. No changes to staff numbers are proposed. More detail is provided in the original report, which is re-presented herein.

POLICY IMPLICATIONS

- Home Occupations and Professional Offices in the Residential Zone.

STATUTORY ENVIRONMENT

- Metropolitan Region Scheme.
- Town Planning Scheme No. 2.

CONSULTATION

Neighbours were again consulted by letter from the Town and invited to view the plans in Council's offices. Any liaison or submissions in response to the advertising will be reported at Committee for consideration and inclusion in the item to Council.

One submission was received at the end of the advertising period, from Daniel and Virginia Rivalland of 121 Eric Street immediately north of the subject site. The submission reiterates their previous objection to the original proposal that was approved. The points made include: the proposal being contrary to the Town's planning principles; the fact of their previous objections; a preference for adherence to the residential zone; that officers did not recommend support to the first application; their subdivision and other neighbours' renovations foster residential usage; and the subject property had been marketed with the previous approval.

As the subject lot occurs within the Stirling Highway Primary Regional Road Reserve of the Metropolitan Region Scheme, the application was also forwarded for comment to the Department of Transport (DoT). The previous DPI advice raised no objection to the proposal. A response from DoT is being followed-up for reporting at Committee for consideration and inclusion in the item to Council. This is expected to address both the MRS reservation and the Stirling Highway Activity Corridor Study (SHACS).

PROPOSED LOCAL PLANNING SCHEME NO. 3

The previous report section refers. In addition, LPS3 has passed through two advertising phases and is well-advanced towards finalisation, whereby it qualifies as a seriously entertained planning proposal and should be considered.

HERITAGE LISTING

N/A.

VARIATIONS

The previous report section details the land use planning and physical development matters to be taken into account in considering the proposal.

APPLICANT'S JUSTIFICATION

The previous report contains the original justification provided by the applicant.

PREVIOUS REPORT FROM COUNCIL MINUTES 22 JUNE 2009

The previous report is presented in full below, together with Council's deliberations, as it contains all of the background information and consideration involved leading to the initial approval. This is shown in *Italics* (except the headings).

ITEM 10.1.3 – NO. 459 STIRLING HWY – PROPOSED SECOND-STOREY ADDITION TO EXTEND PROFESSIONAL OFFICE USE**SUMMARY**

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

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

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

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

PROPOSAL

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

The property is located on the western side of Stirling Highway, two lots south of the intersection with Eric Street. The existing building was originally purpose-constructed as a medical consulting facility which operated from the 1950s. This building is single-

storey, of domestic scale, and retains the appearance of a modest structure. As mentioned, the change of use to professional office was approved in 2003.

Land use in the vicinity is predominantly residential, though the neighbouring lot to the north is a combined residence and dentist's surgery (No. 121 Eric Street). The lot abuts Stirling Highway but is accessed exclusively from the right-of-way at the rear. There is sufficient parking on the lot to meet Council's normal requirements.

STATUTORY ENVIRONMENT

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

PROPOSED LOCAL PLANNING SCHEME NO. 3

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

POLICY IMPLICATIONS

Home Occupation and Professional Offices in the Residential Zone.

HERITAGE LISTING

N/A.

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

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

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

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

CONSULTATION

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

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

Objection from Mr & Mrs Rivalland, 121 Eric Street	Response from Mr P Webb, Planning Consultant, on behalf of Applicant
<i>Privacy 1 – North wall screen at eastern end acceptable only if slats point upwards.</i>	<i>i) Cones of vision shown on plans demonstrate that proposal already complies with privacy section of R-Codes; ii) Metal louvres will be detailed to prevent loss of privacy to neighbours' upper floor windows and backyard; iii) Neighbours' upper floor window sills are 2200mm higher than sills of proposed upper floor.</i>
<i>Privacy 2 – Request for north wall glass to be obscured to 1600mm in addition to screening</i>	<i>i) Proposal complies with necessary codes, request therefore unnecessary.</i>
<i>Privacy 3 – Metal cladding may generate glare</i>	<i>i) Finish of cladding intended to be non-reflective satin or matt.</i>
<i>Privacy 4 – Balcony directly overlooks pool and entertaining area</i>	<i>i) Deck already screened.</i>
<i>Parking 1 – Insufficient spaces proposed</i>	<i>i) Applicant has provided sufficient bays on site.</i>
<i>Parking 2 – Parking occurs in ROW, addition will result in more obstructions</i>	<i>i) Neighbours' dental patients regularly park in ROW and on applicant's lot; ii) Traffic occurs during business hours and is low-volume; iii) Applicant intends to mark bays to ensure clarity.</i>
<i>Parking 3 – Council Approval of proposal would result in need to exercise easement rights & install chains/bollards where appropriate</i>	<i>i) Bollards and chains would create more problems for the neighbours and legitimate ROW users than for the applicant.</i>
<i>Parking 4 – Suggestion to control traffic through ROW with "one-way" designation</i>	<i>i) Level of congestion not established as significant; ii) One-way designation unnecessary.</i>
<i>Lighting 1 – Lighting will potentially be left on outside business hours</i>	<i>i) Applicant intends to turn lights off after business hours, unlike for a residential property.</i>

<i>Lighting 2 – Lighting will attract anti-social behaviour</i>	<i>i) Studies suggest that lighting reduces anti-social behaviour rather than attracts it.</i>
<i>Amenity – Land use should be compatible with its setting</i>	<i>i) The above demonstrates that amenity of neighbouring properties will not be diminished by car-parking, traffic, lighting or privacy issues.</i>

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

STRATEGIC LAND USE IMPLICATIONS

BACKGROUND

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

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

Alterations and additions to the fabric of a building used for non-residential purposes within a residential area would be contrary to the zoning intent and amenity expectations of residents.

MRS

The land falls completely within the MRS Primary Regional Road reservation for Stirling Highway, rather than being zoned under TPS2.

The DPI has advised that it has no objection to the proposal in relation to the regional road reservation, which remains under review and is expected to require no more than a 5m road widening if and when that may be sought to be implemented.

LOCAL PLANNING STRATEGY

It should be noted that non-residential development requirements are not contemplated in Residential Zones by TPS2. However, certain general provisions of TPS2 apply to non-residential development in the district, including building height, privacy, appearance of buildings, the Development Guide Map, parking, signage and other "matters to have regard to". These form a framework of assessment of the development proposal in the context of surrounding residential land use and amenity.

- Council therefore can determine land use and development proposals from a local planning perspective having regard to TPS2 and proposed LPS3.*
- In this connection both TPS2 and proposed LPS3 provide a residential density coding of R30/60 over the subject section of Stirling Highway, which supports medium density residential development of the area.*

TPS2

Because the application is for determination under the MRS, TPS2 does not apply directly to the land in terms of zoning, however, as explained it provides a framework for consideration of the local land use implications of the proposal.

As such TPS2 and related policies are relevant considerations with respect to orderly and proper planning and the preservation of amenity, and in Council exercising delegation on behalf of the WAPC.

The following land use guidance is provided by TPS2 in terms of the intent of zoning and land use / development controls.

3.4 Zone Provisions

3.4.1 Residential Zone

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

5.1.2 Council shall have regard to:

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

PROPOSED LPS3

Proposed LPS3 is modelled on TPS2 and reflects the land use intent and development control regime relating to this area. It strengthens the importance of zoning regulation, land use control and development requirements/standards, including the residential density coding as mentioned above.

In other words, proposed LPS 3 supports the continuation of residential use and development in the vicinity and the location of non-residential uses in other appropriate zones or centres. Additionally, LPS3 aims at securing and strengthening the character and amenity of established residential neighbourhoods.

LOCAL PLANNING POLICIES

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

This Policy states that it is Council's basic policy to restrict professional offices use to zones in which they are appropriately suited, but that Council may grant special

approval where it is satisfied that the use will not prejudicially affect the amenity of the neighbourhood.

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

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

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

RESIDENTIAL DEVELOPMENT TREND

It is evident that the overriding land use trend in the area has been for residential development and that this trend as provided for by TPS2 has been facilitated by Council approvals.

- The dentist's property nearby is approved to be subdivided to enable a second dwelling to be built, premised on the dental practice ceasing, and more restricted access via the lane.*
- The former Council sump site on Eric Street has been sold and developed with a dwelling.*
- A second dwelling has been built on the north-west corner of Eric St and Stirling Highway.*
- Fourteen townhouses have been developed on the former National Measurement Institute site at Clive Road / McNamara Way to the north.*

This trend occurs in accordance with TPS2 and regional planning objectives for more inner-urban housing.

The trend also demonstrates the demand for more housing in Cottesloe, as the suburb is established and comparatively few opportunities for new residential properties occur.

PREVIOUS REFUSALS

Council refused change of use proposals for No. 463 Stirling Highway in 1995 (chiropractic consulting rooms) and 2007 (psychiatry consulting rooms). The refusals were based on concerns regarding amenity and traffic, as well as the undesirable potential for the residence to the north (No. 461 Stirling Highway) to also be proposed to become non-residential (with little parking space available for such).

At the time, Council flagged that the land use future of the area could be looked at under the scheme review, however, the scheme review has not subsequently identified or supported this area as moving towards expanded non-residential use or

development – indeed, as explained above, proposed LPS3 and the residential development trend are encouraging continued residential zoning and intensification.

LAND USE STRATEGY

The proposal for alterations and additions to a building used for a non-residential purpose is assessed as difficult to justify in the context of the strategic land use direction of Council's local planning and development control. The overall intent is for the retention of residential use rather than the introduction or expansion of non-residential uses in the locality.

With the exception of the property at No. 459 Stirling Highway (which is a legacy of the past), the properties in the vicinity are all used for residential purposes – even the dentist's surgery on the corner of Eric Street has a traditional residential land use component.

The Town Centre, Local Centre and Business zone areas are where commercial activities are directed to locate and this policy has proven successful for the protection of residential amenity and the management of activity centres in Cottesloe.

STAFF COMMENT

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

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

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

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

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

The Tribunal has concluded, after much reflection, that the Town's decision is right in principle and ought not to be set aside. The Town's position upholds the underlying residential nature of the area,

avoids non-residential over-concentration in this immediate precinct, is consistent with previous decisions, and promotes orderly and proper planning in terms of land use in the Town. That is a fundamental value of town planning and ought not to be lightly departed from – except for a strong case argued in terms of planning law or principle. Such a case had not been presented here, nor, it appears, could it ever be on the type of material currently available to the Tribunal in the circumstances of the case.

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

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

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

CONCLUSION

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

VOTING

Simple Majority

COMMITTEE COMMENT

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

OFFICER RECOMMENDATION

Moved Cr Boland, seconded Cr Walsh

That Council:

- 1. REFUSE to grant its approval to commence development for the proposed second-storey addition to extend the professional office use at No. 459 (Lot*

100) *Stirling Highway, Cottesloe, in accordance with the plans submitted on 27 November 2008, for the following reasons:*

- (a) *The proposal is contrary to the orderly and proper planning and the preservation of the amenity of the locality.*
- (b) *The proposal would result in the proliferation of non-residential uses in the residential area, contrary to the intent of the local town planning for the area and the related strategic land use direction.*
- (c) *Council is not prepared to apply its discretion to support the proposed extension or intensification of the non-residential professional office use, which is classified as an "AA" use (ie, one that is not permitted unless granted special approval by Council) under the local town planning scheme.*
- (d) *An objection from neighbouring residents has been received expressing concerns about the nature of the proposal and its impact on their residential amenity.*
- (e) *Both Council and the State Administrative Tribunal have previously and recently refused earlier proposals for non-residential land use and development in the locality, in upholding the local area planning land use strategy, the intent of which is in favour of residential land use and which has a presumption against non-residential land use.*
- (f) *All of the above are considered relevant to determination of the proposal under the Metropolitan Region Scheme having regard to the local area planning implications and impacts.*

2. *Advise the submitters of Council's decision.*

Lost 2/3

ALTERNATIVE MOTION

Moved Cr Dawkins, seconded Cr Woodhill

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

The Alternative Motion was put:

Carried 4/1

AMENDMENT

Moved Cr Boland, seconded Cr Utting

That the Committee Recommendation be not adopted and revert back to the original Officer's Recommendation presented in the Development Services Committee Meeting Agenda of the 15 June 2009.

Lost 3/7

AMENDMENT

Moved Cr Walsh, seconded Cr Dawkins

That the Council adopt the recommendation as provided by the officers and requested by the Development Services Committee:

That Council:

1. *GRANT approval to commence development pursuant to the Metropolitan Region Scheme for the proposed second-storey addition to extend the professional office use at No. 459 (Lot 100) Stirling Highway, Cottesloe, in accordance with the plans submitted on 27 November 2008, subject to the following conditions:*
 - (a) *The continued Professional Office use shall be for a maximum of 8 staff and 4 clients or other visitors at any time, and shall not operate outside the hours of 8am to 6pm Monday to Friday. Any proposed intensification or expansion of the use, additional use, change of use, or physical change proposed in the future shall require a further application for planning determination.*
 - (b) *The parking bays as indicated on the plans shall be marked-up (including the disabled bay) to the satisfaction of the Town of Cottesloe.*
 - (c) *All stormwater runoff from the development shall be contained on-site and not discharged externally, to the satisfaction of the Town of Cottesloe and the details shall be shown in the building licence plans.*
 - (d) *No goods or materials shall be stored either temporarily or permanently in the parking area or laneway. Any goods or materials associated with the professional office use are shall be stored within the building.*
 - (e) *The building licence plans and supporting documentation shall be to the satisfaction of the Town of Cottesloe and shall include:*
 - i. *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.*
 - ii. *Full details of all screening and glazing to the northern elevation demonstrating adequate protection of privacy for the adjacent dwelling building.*
 - iii. *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.*
 - iv. *A comprehensive lighting strategy to manage amenity in relation to the building and surrounds without undue impacts.*
 - v. *All disabled access, energy efficiency and fire management requirements in accordance with the BCA, Australian Standards and other relevant regulations.*
 - vi. *A comprehensive Construction Management Plan. All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.*
2. *Advise the submitters of Council's decision.*

Carried 10/0

AMENDMENT

Moved Cr Boland, seconded Cr Strzina

After the words “(including the disabled bays)” in part 1.(b) add the words “and signage should be erected to ensure parking occurs only in marked bays and not in the Right of Way”.

Carried 10/0

AMENDMENT

Moved Cr Carmichael, seconded Cr Woodhill

That under point 1.(e) v after the word “access” add “(incorporating universal access design principles)”.

Carried 10/0

COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Dawkins

That Council:

1. GRANT approval to commence development pursuant to the Metropolitan Region Scheme for the proposed second-storey addition to extend the professional office use at No. 459 (Lot 100) Stirling Highway, Cottesloe, in accordance with the plans submitted on 27 November 2008, subject to the following conditions:
 - (a) The continued Professional Office use shall be for a maximum of 8 staff and 4 clients or other visitors at any time, and shall not operate outside the hours of 8am to 6pm Monday to Friday. Any proposed intensification or expansion of the use, additional use, change of use, or physical change proposed in the future shall require a further application for planning determination.
 - (b) The parking bays as indicated on the plans shall be marked-up (including the disabled bay) and signage should be erected to ensure parking occurs only in marked bays and not in Right of Ways to the satisfaction of the Town of Cottesloe.
 - (c) All stormwater runoff from the development shall be contained on-site and not discharged externally, to the satisfaction of the Town of Cottesloe and the details shall be shown in the building licence plans.
 - (d) No goods or materials shall be stored either temporarily or permanently in the parking area or laneway. Any goods or materials associated with the professional office use are shall be stored within the building.
 - (e) The building licence plans and supporting documentation shall be to the satisfaction of the Town of Cottesloe and shall include:
 - i. 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.

- ii. *Full details of all screening and glazing to the northern elevation demonstrating adequate protection of privacy for the adjacent dwelling building.*
- iii. *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.*
- iv. *A comprehensive lighting strategy to manage amenity in relation to the building and surrounds without undue impacts.*
- v. *All disabled access (incorporating universal access design principles), energy efficiency and fire management requirements in accordance with the BCA, Australian Standards and other relevant regulations.*
- vi. *A comprehensive Construction Management Plan. All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.*

2. *Advise the submitters of Council's decision.*

THE SUBSTANTIVE MOTION WAS PUT

Carried 8/2

PLANNING COMMENT

The previous report above outlines the assessment framework leading to the original officer recommendation to not support the proposal, followed by the Committee and Council deliberations resulting in a conditional approval. The regional and local strategic and statutory planning controls remain in place. Both the SHACS and Scheme 3 are further advanced as able to be had regard for.

The background of the approach to be taken to land use control remains an important consideration for the Town in this locality and throughout the district. For example, in recent months the proposed use of 68 Railway Street within the vicinity for a non-residential professional office use was refused by Council. Upon an appeal the State Administrative Tribunal upheld the refusal bearing in mind the principle of non-residential uses being better situated in zones specially created or adapted for such purposes.

It is noted that the Railway Street proposal was for the introduction of a new non-residential use into the residential area, while the subject proposal is for the substantial enlargement of a building already approved for professional office use. As there are few properties in the district similar to 459 Stirling Highway any flow-on effect of approval to the extension with specific conditions is likely to be limited.

The overriding residential use and character of the locality has continued and been reinforced, including subdivision approval for residential purposes of the property immediately to the north of the subject property, and renovations/extensions to the two residential properties immediately to the south of the subject property, as well as

other residential upgrades/developments in the vicinity, consistent with the overall residential amenity.

CONCLUSION

Ordinarily an application for re-approval is able to be consented to within a reasonable timeframe of an initial approval expiring. In this instance there has been a period of delay, although the application remains identical and the planning circumstances are essentially the same.

To date officers have discerned that the historical non-residential use approval continues to apply rather than a non-conforming use scenario. In terms of the current application under the MRS the elapsed time apparently means that it is deemed refused, however, that does not prevent consideration of the application as if it were afresh, which would be fair to the applicant. It is understood that the applicant's options would include extending and re-occupying the premises, extending and leasing them within the approval limitations or possibly disposing of the property with the approval as conditioned.

While officers previously concluded that the planning assessment of the proposal predicated refusal, Council took the view that conditional approval was acceptable. With other proposals in the general locality officers, Council and the SAT have tended to not support the encroachment of non-residential uses into the residential area.

In the case of this renewal application, a recommendation of approval consistent with Council's previous determination is provided; however, should Council now be of a different view then refusal as previously recommended would be in order.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee queried whether the premises were currently being used and recalled that it had some concern initially regarding the proposal, while noting the approval. The MDS advised that the applicant now had premises elsewhere as its principal office. Committee expressed a mixture of support or otherwise for the proposal yet saw sufficient reason to renew the original approval.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Dawkins, seconded Cr Goldthorpe

THAT COUNCIL:

1. GRANT approval to commence development pursuant to the Metropolitan Region Scheme for the proposed second-storey addition to extend the professional office use at No. 459 (Lot 100) Stirling Highway, Cottesloe, in accordance with the plans submitted on 11 June 2010, subject to the following conditions:

- (a) The continued Professional Office use shall be for a maximum of 8 staff and 4 clients or other visitors at any time, and shall not operate outside the hours of 8am to 6pm Monday to Friday. Any proposed intensification**

or expansion of the use, additional use, change of use, or physical change proposed in the future shall require a further application for planning determination.

- (b) The parking bays as indicated on the plans shall be marked-up (including the disabled bay) and signage should be erected to ensure parking occurs only in marked bays and not in Right of Ways to the satisfaction of the Town of Cottesloe.
- (c) All stormwater runoff from the development shall be contained on-site and not discharged externally, to the satisfaction of the Town of Cottesloe and the details shall be shown in the building licence plans.
- (d) No goods or materials shall be stored either temporarily or permanently in the parking area or laneway. Any goods or materials associated with the professional office use are shall be stored within the building.
- (e) The building licence plans and supporting documentation shall be to the satisfaction of the Town of Cottesloe and shall include:
 - i. 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.
 - ii. Full details of all screening and glazing to the northern elevation demonstrating adequate protection of privacy for the adjacent dwelling building.
 - iii. 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.
 - iv. A comprehensive lighting strategy to manage amenity in relation to the building and surrounds without undue impacts.
 - v. All disabled access (incorporating universal access design principles), energy efficiency and fire management requirements in accordance with the BCA, Australian Standards and other relevant regulations.
 - vi. A comprehensive Construction Management Plan. All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.

2. Advise the submitters of Council's decision.

Carried 5/2

**10.1.3 NO. 104 MARINE PARADE (COTTESLOE BEACH HOTEL) -
ALTERATIONS AND ADDITIONS TO EXISTING BEER GARDEN**

File No:	2259
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Ed Drewett Senior Planning Officer
Proposed Meeting Date:	15 August 2011
Author Disclosure of Interest	Nil
Property Owners	Garrett Hotels 2010 Pty Ltd ATF Cottesloe Hotel Trust & Richmond Management Ltd ATF Richmond Equity Fund
Applicant	Prendiville Group
Date of Application	21 July 2011
Zoning:	Hotel
Use:	P - A use that is permitted under this Scheme
Lot Area:	3337.9m²
M.R.S. Reservation:	Not applicable.

SUMMARY

This application has been "called-in" by Councillors Walsh and Carmichael following its inclusion on the weekly Delegation List.

The proposal is for the redevelopment of the existing beer garden at the rear of the hotel to provide a variety of different spaces and levels with an emphasis on the delivery of fast, quality food and drinks for seated families and patrons. The southern courtyard area will be used for corporate or family functions and as an overflow in summer months.

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

PROPOSAL

The applicant has detailed the proposed works in a covering letter dated 13 July 2011 (attached). This is summarised as follows:

- Demolish the existing toilet and relocate services, refrigeration plant and bin removal to an internal service court off John Street;
- Provide a tiered step-up terrace from the Warnham Road frontage connecting the street and hotel to the refurbished courtyard;
- Build a covered area to the east of the existing hotel building (along Warnham Road) to allow a smaller area of courtyard to be used in the shoulder seasons of spring and autumn;

- Relocate the bar and toilets to the north to allow the existing bar structure (extended) to be annexed to the kitchen for food delivery and service; and
- Replace the existing covered pergola to the south facing John Street with a new steel-framed and shade-sail covered area.

A second stage of development is also shown on the submitted plans (Drawing No: A104a) and is proposed to be finalised on completion of construction of the abovementioned works. This latter stage would predominantly involve internal works which the applicant has advised will allow better integration between the hotel and the courtyard/new bar area. It does not, however, form part of this current application and will be subject to a separate application and assessment by the Town and the Heritage Council of Western Australia (HCWA).

FINANCIAL IMPLICATIONS

No financial resource impact.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No. 2
- Proposed Local Planning Scheme No. 3
- Heritage Act of WA

PROPOSED LOCAL PLANNING SCHEME NO. 3

This lot is proposed as a 'Special Control Area'. The objectives of this area are to:

- (a) ensure that development is compatible with the beachfront location, surrounding development and amenity of the locality; and
- (b) ensure that Building Design Controls are formulated to guide and manage built form, bulk and scale, streetscape character, amenity impacts and other considerations accordingly.

The proposed upgrade of the existing beer garden will assist to facilitate Council's proposed objectives being satisfactorily addressed for the rear of this site.

HERITAGE LISTING

- State Register of Heritage Places
- TPS 2 - Schedule 1
- Municipal Inventory (façade only) - Category1
- National Trust - Classified

APPLICANT'S JUSTIFICATION

Following pre-application liaison with Senior Officers the applicant has submitted a letter dated 13 July 2011 that outlines the proposed development. A copy of that letter is attached for information.

ADVERTISING

The application has been advertised in accordance with TPS 2. Letters were sent to the owners of 11 neighbouring lots. No submissions have been received at the time of writing this report. If any submissions are received they will be tabled at the DSC meeting for consideration and reported on to Council.

PLANNING COMMENT

Strategic considerations

Council has three strategic documents broadly relating to this proposal. These are

- Beachfront Development Policy;
- Future Plan (2006-2010); and
- Draft Beachfront Policy & Guidelines.

Statements from each of these documents particularly relevant to this development are summarised below:

The objectives of Council's Beachfront Development Policy include:

- *To encourage the use of the foreshore by improving the amenity of the area and the range of facilities available there;*
- *To encourage al fresco areas for commercial uses on Marine Parade;*
- *To retain pub/tavern uses, probably of a smaller scale and more frequent;*
- *To require that new development shall respond sympathetically to adjoining existing development and shall limit overshadowing.*

Council's Future Plan contains various strategies including:

- *Reduce beachfront hotel numbers to a sustainable level;*
- *Develop café/restaurant alternatives to the large hotels;*
- *To identify increased opportunities to use existing facilities and provide new venues for formal communal activities.*

The proposed LPS 3 Beachfront Policy includes:

- *Ensure that development adjacent to Marine Parade adds to the high aesthetic appeal, relaxed atmosphere and lifestyle quality of the beachfront environment;*
- *Development should be designed to contribute positively to streetscapes in terms of scale and form of buildings including roof shapes, visual integration (cohesiveness, harmony), and overall beachfront urban appearance; and*
- *Contemporary architecture is favoured over mock-historic styles, and design that reflects modern Australian architecture and the Cottesloe vernacular is encouraged.*

The current application for alterations and additions to the existing beer garden has been assessed with regard to the abovementioned strategic documents and is

considered to satisfy the intent of these policies. It represents a significant improvement to the premises and better interfaces with the side streets, as well as provides an enhanced leisure facility as part of the beachfront precinct.

Town Planning Scheme No.2 (TPS 2)

Under Clause 3.4.5 of TPS 2 - 'Hotel Zone', Council shall have regard to the following:

- a) *the preservation of the foreshore as a primary marine recreation and tourist attraction where the land within the zone is adjacent to the foreshore.*

Comment:

The proposed redevelopment of the beer garden will not affect the main use of the premises as a hotel or the foreshore as a primary recreation and tourist attraction and should assist in enhancing the general amenity of the foreshore area due to the proposed reduction in patron numbers and the removal of the existing poorly-maintained structures in the courtyard.

- b) *the social consequences of the effect of the size of bars, the number of patrons, the type of entertainment, the hours of operation, the effect of car parking and other related matters on the adjacent area that is essentially of a quiet residential nature.*

Comment:

The proposed addition to the existing bar in the courtyard is approximately 42m² in area and represents an approximate 42% increase to that existing. However, it will become predominantly a food servery area with only a limited bar area. The other proposed covered areas will be generally for seated eating areas. The proposal will effectively remove the beer garden and numbers attending the various eating areas are likely to be significantly less than would otherwise be expected at a 'Sunday session'. The applicant has advised that it is their intent to remove much of the noise/amenity issues that have previously occurred on the premises.

The Town's Principal Environmental Health Officer has reviewed the application and has advised that the maximum number of patrons that will be permitted in the upgraded courtyard area will be approximately 877, which is significantly less than the 1199 patrons that are currently permitted in the beer garden under the existing liquor licence.

- c) *the integration of parking areas and vehicular access thereto, with total land usage so as to secure the most convenient, safe and efficient use of land.*

Comment:

The existing parking arrangement will remain unchanged. However, it is proposed to remove 1 on-street car bay from John Street and construct a new crossover to enable bin pick-up to occur on this side and ultimately for all deliveries to be made from here. The existing bin pick-up area off Warnham

Road will be closed and, following completion of the 2nd stage of development (subject to separate approval), once the delivery area is relocated to John Street, an additional car bay will be located in Warnham Road.

The Manager Engineering Services has no objection to the proposal, including the proposed new delivery access off John Street.

- d) *the impact of traffic of any development.*

Comment

The anticipated reduction in patrons to the upgraded courtyard, especially on Sundays during the summer, will likely result in a reduced demand for parking. The hotel currently has no on-site car bays and all parking is on the surrounding streets and in Council car parks. The Manager Engineering Services has advised that he has no objection to the proposal as it does not result in any loss of existing car bays.

- e) *the preservation of privacy, views and quiet in nearby residential developments and areas.*

Comment:

The existing boundary walls are to remain, albeit they will be rendered, painted and modified to accommodate the new access arrangements. This will ensure that privacy is maintained. The proposed new covered areas are mostly of lightweight construction with the exception of the new bar servery and toilets adjoining Warnham Road which are single-storey and will comprise painted weatherboard cladding and a tiled roof. The design and location of these structures are unlikely to significantly impact on views from adjoining properties and, being partially enclosed, should assist in reducing noise.

- f) *the effect of shadow on the foreshore and neighbouring properties.*

Comment:

As the proposed structures are single-storey and will be located behind the existing boundary walls there will not be any further impact of overshadowing on neighbouring properties or the foreshore.

- g) *the effect of development to impede or accelerate air flows.*

It is unlikely that the proposed additional structures will significantly impact on air flows.

- e) *the amenity provisions and policies contained in Part V – General Provisions – of the Scheme.*

The proposed redevelopment of the existing beer garden adequately satisfies Part V of TPS 2.

Other comments:

The following additional comments address specific statutory provisions under TPS 2 for the proposed development:

Open Space:

The modest increase to the existing external bar area and the proposed new toilets and servery will be offset by the structures proposed to be demolished. The other new covered areas will generally be open-sided or have translucent blinds and therefore are not considered to reduce open space provision.

Car parking:

Under Table 2 in TPS 2, the existing beer garden requires parking to be calculated on the basis of 1 space per 2m² of ground area open to the public for consumption of liquor. Where these areas are solely for seated customers and/or for function areas then the ratio may be reduced to 1 space per 4m² of ground area.

The proposed redevelopment of the beer garden is to accommodate food and drinks for seated families, patrons and corporate/family functions, and therefore the parking ratio will be less than that required for the existing beer garden area which does not predominantly accommodate seating.

Setbacks:

The proposed new structures along the northern and southern boundaries are permitted under TPS 2 as the maximum height of the structures do not exceed 6m above the main existing courtyard level which is considered as the NGL for this purpose.

Height

The proposed structures are all single-storey and satisfy the permitted height requirements under TPS 2. The proposed heights vary between approximately 3.2m and 5.3m (to top of main proposed shade-sail roof). This is much lower than the 10.8m roof ridge height of the main building.

Schedule 1 of TPS 2

The façade of the hotel is included in Schedule 1 of TPS 2, which is the heritage listing available in terms of local government heritage control, as a scheme has the force and effect of law, ie: affording heritage protection.

The Schedule lists the property as follows:

- *Façade, Cottesloe Beach Hotel, Two-storey rendered façade constructed circa 1937.*

This invokes Part 6 of the Scheme: *Conservation and Preservation of Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest*, requiring Council's written consent to proposals in addition to a planning approval

under Part 7.

Broadly, Part 6 requires virtually any change to such a place to receive Council's consent, and in practice the making of a development application enables that step to be addressed.

Part 6 states that:

The Council considers that the places of natural beauty, and historic buildings, and objects of historic or scientific interest in Schedule 1 should be conserved and preserved.

The matters covered requiring Council consent include :

- a) *clear, excavate or fill any land;*
- b) *fell, remove, kill or irreparably damage any tree;*
- c) *erect any fence;*
- d) *commence or carry out any renovation, modification, refitting, decoration or demolition of any building; and*
- e) *alter or remove any building or object or any part thereof.*

It is considered that the proposal satisfactorily fulfils the heritage requirements under TPS 2 as the façade of the hotel is unaffected by the proposed development and the upgraded courtyard area will complement the historic building.

Heritage Council of Western Australia (HCWA)

The application was referred to the HCWA on 22 July 2011 as the proposed works are within the curtilage of the hotel and the property has a permanent entry on the State Register of Heritage Places. The support of the HCWA is required before planning approval may be granted by Council and its advice is anticipated shortly for consideration at the DSC and/or reporting to Council.

CONCLUSION

The proposed alterations and additions to the existing beer garden at the rear of the hotel have merit and are supported from a planning viewpoint.

The development should result in a significant visual improvement to streetscape as well as assist in addressing the noise and amenity issues that have been associated with the existing use for many years, besides providing a more attractive and family friendly food and beverage environment for residents and visitors.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee was supportive of the proposal as a worthwhile improvement to the premises as well as enhancing the ambience of the locality. There was brief discussion about the intended use of patron access via the side streets having regard to any pre-existing liquor licence requirements in relation to crowd control. Officers

advised that this operational aspect required clarification and although not part of the application per se, suggested an additional condition as an amendment in order to capture any physical design changes involved. Officers also undertook to check and advise the applicant and Council about the liquor licence patron access arrangements in any case, should any review be contemplated.

OFFICER RECOMMENDATION

Moved Cr Strzina, Seconded Cr Dawkins

That, subject to support from the Heritage Council of Western Australia, Council GRANT its Written Consent and Approval to Commence Development for the alterations and additions to the existing beer garden at No. 104 (Lot 39) Marine Parade, Cottesloe, as shown on the plans received 21 July and 11 August 2011, subject to the following conditions:

- (1) The external profile of the proposed 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 the Council and any approvals as required under the relevant heritage classification.**
- (2) The Building Licence plans and supporting documentation shall be formulated to the satisfaction of the Manager Development Services and referred by the Town to the HCWA, if required, for review and advice prior to issue, in order to ensure that all works proposed are in accordance with the heritage requirements.**
- (3) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction sites.**
- (4) Any works affecting the public domain, including the proposed new crossover, shall be to the specification and satisfaction of the Town and prior-approved as required, and provided at the applicant's cost.**

Advice Notes:

- (1) This approval is for 'Stage 1' works only as indicated on the approved plans. All future proposals for the property are subject to further applications, approvals and consents as required by the Town of Cottesloe Town Planning Scheme and any heritage classifications of the property.**
- (2) The applicant / owner is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development occurs entirely within the owner's property.**

AMENDMENT

Moved Cr Strzina, seconded Cr Carmichael

That the following condition (5) be added:

At building licence stage full details of all proposed external materials, finishes and colours, including any wall panelling, balustrades, shade sails and other details indicated on the Courtyard Landscape Concept Plan, shall be formulated to the satisfaction of the Manager Development Services, and the HCWA if required.

Carried 7/0

COMMITTEE RECOMMENDATION

That, subject to support from the Heritage Council of Western Australia, Council GRANT its Written Consent and Approval to Commence Development for the alterations and additions to the existing beer garden at No. 104 (Lot 39) Marine Parade, Cottesloe, as shown on the plans received 21 July and 11 August 2011, subject to the following conditions:

- (1) The external profile of the proposed 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 the Council and any approvals as required under the relevant heritage classification.
- (2) The Building Licence plans and supporting documentation shall be formulated to the satisfaction of the Manager Development Services and referred by the Town to the HCWA, if required, for review and advice prior to issue, in order to ensure that all works proposed are in accordance with the heritage requirements.
- (3) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction sites.
- (4) Any works affecting the public domain, including the proposed new crossover, shall be to the specification and satisfaction of the Town and prior-approved as required, and provided at the applicant's cost.
- (5) At building licence stage full details of all proposed external materials, finishes and colours, including any wall panelling, balustrades, shade sails and other details indicated on the Courtyard Landscape Concept Plan shall, be formulated to the satisfaction of the Manager Development Services, and the HCWA if required.

Advice Notes:

- (1) This approval is for 'Stage 1' works only as indicated on the approved plans. All future proposals for the property are subject to further applications, approvals and consents as required by the Town of

Cottesloe Town Planning Scheme and any heritage classifications of the property.

- (2) The applicant / owner is responsible for ensuring that all lot boundaries shown on the approved plans are correct and that the proposed development occurs entirely within the owner's property.**

Carried 7/0

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

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

13 MEETING CLOSURE

The Presiding Member announced the closure of the meeting at 6.27pm.

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