

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 17 SEPTEMBER 2012

CARL ASKEW
Chief Executive Officer

14 October 2012

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DEVELOPMENT SERVICES COMMITTEE

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member announced the meeting opened at 6:00 PM.

2 DISCLAIMER

Nil

3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil

4 PUBLIC QUESTION TIME

Nil

4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4.2 PUBLIC QUESTIONS

Nil

5 PUBLIC STATEMENT TIMEMr Murray Slavin re item 10.1.1 No. 2 Deane Street

Mr Slavin tabled a document with various diagrams and statements which he spoke to. His firm represents the western owners and had met and liaised with officers on the matter. He emphasised that he believes the proposal does not satisfy the Scheme provision for a third storey in the roof space, commenting in respect of wall height, setbacks and the percentage area of the upper level as reported.

Mr Stuart Neal re item 10.1.1 No 2 Deane Street

Mr Neal echoed the observations made by Mr Slavin.

Mr David Barr re item 10.1.2 No 1C Warton Street

Mr Barr as architect outlined the design in terms of the recent subdivision and smaller lots, with a desire for appropriate setbacks to achieve effective use of space and take advantage of the view towards the ocean.

Mr Michael Pugh re item 10.1.2 No 1C Warton Street

Mr Pugh introduced himself and his wife as the owners and having worked with the architect and officers looked forward to approval of their proposed dwelling.

6 ATTENDANCEPresent

Cr Jack Walsh
Cr Katrina Downes

Presiding Member

Cr Greg Boland
Cr Peter Jeanes
Cr Yvonne Hart

Officers Present

Mr Carl Askew
Mr Andrew Jackson
Mr Ed Drewett
Mrs Julie Ryan

Chief Executive Officer
Manager Development Services
Senior Planning Officer
Development Services Secretary

6.1 APOLOGIES

Cr Vic Strzina

Officer Apologies

6.2 APPROVED LEAVE OF ABSENCE

Nil

6.3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 DECLARATION OF INTERESTS

Cr Walsh and Cr Boland each declared an impartiality interest in item 10.1.1, No. 2 Deane Street, in being acquaintances of the owners, when dealing with this item.

8 CONFIRMATION OF MINUTES

Moved Cr Boland, seconded Cr Hart

[Minutes August 20 2012 Development Services Committee.doc](#)

The Minutes of the Ordinary meeting of the Development Services Committee, held on 20 August 2012 be confirmed.

Carried 5/0

9 PRESENTATIONS

Nil

9.1 PETITIONS

Nil

9.2 PRESENTATIONS

Nil

9.3 DEPUTATIONS

Nil

10 REPORTS**10.1 PLANNING****10.1.1 NO. 2 DEANE STREET – TWO-STOREY DWELLING WITH UNDERCROFT GARAGE, ROOF-SPACE LEVEL AND ELEVATED POOL**

File No:	2437
Attachments:	Aerial Photos 2 Deane Street
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Ed Drewett Senior Planning Officer
Proposed Meeting Date:	17 September 2012
Author Disclosure of Interest:	Nil
Property Owner:	H Stewart
Applicant:	Russell Stewart
Date of Application:	19 June 2012
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Lot Area:	569.9m²
M.R.S. Reservation:	Not applicable

SUMMARY

This application has been “called-in” following its inclusion on the weekly delegation list. It was also briefly presented to the Development Services Committee in August as a precursor to this report.

The applicant has liaised extensively with the Town and neighbours over a lengthy period, and responded constructively with a series of plan revisions to address the planning parameters and comments of neighbours, in order to achieve an acceptable proposal which still contains the design ingredients desired for the dwelling as the applicant’s residence.

The proposal satisfies the general provisions of Town Planning Scheme No. 2 (TPS 2) and complies with the Acceptable Development standards of the Residential Design Codes (RDC) with the exception of the following:

- Boundary setback
- Visual privacy
- Removal of street tree
- Fencing

Each of these aspects is discussed in this report and refers to amended plans received 31 August 2012. The proposed building height and form is also discussed regarding the interpretation of TPS 2 in respect to use of roof space.

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

PROPOSAL

This application is for a two-storey dwelling with an undercroft garage (in addition to a ground level garage), a roof-space level and an elevated pool.

The dwelling comprises of 5 bedrooms, 1 shared bathroom, 2 WCs, 3 ensuites, family/games room, laundry, lift, cellar, TV room, games/dining/family area, kitchen, WIR, bar, parents retreat, front and rear balconies, elevated lap pool and retention of existing pool at ground level.

STATUTORY ENVIRONMENT

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

PROPOSED LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning of this lot.

APPLICATION ASSESSMENT

AREAS OF NON-COMPLIANCE

Residential Design Codes:

<i>Design Element</i>	<i>Permitted</i>	<i>Provided</i>	<i>Performance Criteria</i>
6.3 – Boundary Setbacks	2.8m from 1 st floor kitchen/pantry/robe from eastern boundary.	1.7m	Clause 6.3.1 - P1
6.8 – Visual Privacy	4.5m cone of vision to bedrooms; 6m cone of vision from habitable rooms other than bedrooms and studies;	Bedrooms - compliant with RDC 4.8m cone-of-vision from 1 st floor (west-facing) dining room; 5.2m cone-of-vision from 1 st floor (north & south-facing) bar windows; 5.2m cone-of-vision from loft (west-facing) parents retreat.	N/A Clause 6.8.1 - P1

	7.5m from unenclosed outdoor active habitable space.	4m cone-of-vision from 1 st floor (west-facing) front/side balcony; 2.5m cone-of-vision from 1 st floor (north-facing) balcony; 5.45m cone-of-vision from loft (west-facing) rear balcony; 3.4m cone-of-vision from elevated pool.	
6.5 – Vehicular access	Driveways located so as to avoid street trees, or where this is unavoidable, the street tree being replaced by Council at the applicant's expense.	Removal of street tree to allow for additional crossover.	Clause 6.5.4 – P4

Local Law:

	<i>Required</i>	<i>Provided</i>
Fencing Local Law	Open-aspect fencing above 0.9m; Dividing fence to 1.8m high.	Solid wall, partially within front setback; Up to 2.2m high solid wall along western boundary.

ADVERTISING OF PROPOSAL

The application was advertised in accordance with TPS 2. Advertising consisted of a letter to 4 adjoining property owners (Body Corporate for flats at rear). Four submissions were received (3 from/on behalf of same owner). The neighbour on the eastern side signed plans stating no objection to the development.

Copies of the submissions were forwarded to the applicant and various amendments were made to the plans to address concerns raised. The Town also met with Slavin Architects who were representing Mr Lalor (western objector), and amended plans received 14 August 2012 responding to their concerns were shown to them for information and comment.

The applicant has since made additional amendments to the plans (see plans - 31/8/12) to address comments received from Slavin Architects in their submission of 23 August 2012.

The main comments raised are summarised below:

Stephen & Carol Wall, 84B Marine Parade

- Concerned about damage to western ROW that had occurred during demolition of dwelling;
- Objects to use of ROW for access and parking and to proposed roof-pool for various reasons, including privacy/nuisance.

Slavin Architects (on behalf of Peter Lalor, 82 Marine Parade) in response to plans received 14/8/12 (now superseded). NB: Original comments are included as attachments.

Applicant's response shown in italics:

- Drawings not dated and don't contain revision notes;

Dates and versions have been placed on current drawings (received by TOC 31/8/12).

- Survey drawing from a Licensed Surveyor showing relative levels of the proposal and 82 Marine Parade has not been provided;

Survey plan has been submitted to TOC.

- The section drawings don't show line of sight from clear-glazed games room window on level 2 into rear window and courtyard areas at 82 Marine Parade;

Windows to games room have been amended to have minimum 1.65m sill heights to avoid overlooking.

- The ground floor level has been lowered requiring in excess of 0.5m to be retained against the ROW. The drawings do not show how temporary support to the ROW will be provided whilst new boundary retaining wall is to be constructed (also applies to basement);

Sheet piling will be provided in the first instance to basement and rear yard to avoid any erosion of ROW while construction is undertaken (Note: this is a building licence matter)

- The 3rd floor roof has been notated as metal-deck and has no fall. It requires a fall to be weatherproof. Any fall in the roof will reduce head height of the level 3 rooms to less than the 2.4m minimum for habitable rooms;

This minor alteration would have been dealt with at building licence stage. As per the BCA you need to have 2/3 of ceiling height at 2.4m. The floor has been lowered by 60mm to achieve fall needed for roof sheeting;

- The amended drawings still do not show a roof on the west side of the building. The dotted line that simulates a roof form is disingenuous and contrary to the intent of TPS 2;

This portion was always intended as roof (refer current plans). The roof area has been increased significantly and in turn habitable area reduced.

- The top of the wall that forms the edge of the pool is 6.65m above the site datum of 10.75 – this exceeds the 6m maximum wall height. The maximum wall height noted on the drawing has been measured to the pool water collection channel on the outside of the building – that is not the external wall.

The external wall is at 6m and meets planning guidelines. In any event, this wall to the side of the pool acts as a major privacy screen for the neighbours (Note: This is discussed in more detail below).

- The steps from the rear northern balcony into the pool allow overlooking into the rear of 82 Marine Parade. Also a person cannot physically step from the terrace into the pool without hitting their head on the soffit of the roof;

The steps have been moved to address concerns and the size of the rear balcony has been reduced.

- The front setback of the 3rd floor has not been changed and the building still presents as 3-storeys from Deane Street;

The front setback to the loft has now been increased to 7m so it will not be visible from Deane Street.

- The shutters on the 3rd level are still noted as ‘automatic’ although previously it was agreed that these would be fixed to prevent overlooking of the Marine Parade properties. The shutters also overhang the lap pool resulting in potential impact for swimmers and have not been shown on the floor plan;

The west-facing shutters were placed to alleviate late western sun and help comply with energy efficiency. They are not required to be fixed as there will be no overlooking and they will not impact on swimmers as the shutters will be setback 120mm.

- Noise from the pool and associated equipment will be reflected from the soffit of the roof overhang on the 3rd level and directed towards the properties to the west.

Pool equipment will be housed with a sound-proof lid. This will not have any noise issues to neighbours, but if a problem arises then it will be dealt with.

- The side setbacks to the west boundary do not comply with the setback requirements of the RDC;

The RDC state that ½ the ROW can be included as setback, so it does comply with setback requirements.

- The walls to major openings on the 2nd level do not comply with the RDC. A setback of 2.8m is required from the western boundary. Also the wall on the boundary does not comply with the setback requirements.

The RDC state that ½ the ROW can be included as setback, so it does comply with setback requirements.

- The setback to major openings from the side boundary is not shown;

Dimensions have been added.

- A 1.65m high brick wall to the rear northern balcony on the 3rd floor creates an inaccessible area and its use has not been identified;

The inaccessible area shown as paving has been removed.

- The line of sight into the window of 80A Marine Parade shown on Section AA does not show the correct overlooking from a position against the wall at the end of the kitchenette on the 3rd level;

The bench has been extended to address concerns of overlooking.

- The revised double garage on level 1 does not provide the necessary clearance for vehicles to access and egress the eastern carbay;

The proposed garaging suits its purpose and will be in addition to basement parking.

- Windows to bathrooms and bedroom 3 do not comply with minimum distances from boundaries for fire protection;

This is not a planning issue. The building surveyor has advised it is compliant.

- The cone of vision to the games room on the 2nd level does not comply with the RDC;

Windows to the games room have been altered to a 1.65m sill height to comply with the RDC.

- There is no cone of vision shown on the floor plan from major openings to habitable rooms on the 3rd level;

As NGL has not been built up over 0.5m there is no necessity to show cone of vision. The ground level has been lowered to remove privacy concerns.

It is noted that a number of the comments made are about technical design or plan detail aspects, rather than planning matters, and which have been readily addressed.

APPLICANT'S JUSTIFICATION

In addition to the above comments (shown in italics), the applicant has also submitted the following comments with the latest drawings:

- The original plans have been changed considerably to achieve a dwelling that complies with the RDC and TPS 2.
- The top floor has been reduced to 67% by significantly increasing setbacks from the front and rear roof space giving the dwelling more of a 2-storey appearance.
- The plans have been altered many times to address concerns raised by Council staff and the neighbour and I have offered to discuss and rectify any situations that may be an issue to Peter Lalor or his wife. This offer still stands.
- Peter Lalor has had independent architects assess the proposal in detail and items raised, even where they may have been compliant, have been addressed to alleviate the neighbour's concerns.

PLANNING CONSIDERATIONS

The following assessment is made in respect to this application and refers to amended plans received 31 August 2012.

Side setback to eastern boundary

The proposed setback to the 1st floor recessed area (kitchen/pantry/robe) will be 1.7m from the eastern boundary, in lieu of 2.8m required under the Acceptable Development standards of the RDC.

This setback concession can be considered under Performance Criteria, which state:

Buildings set back from boundaries other than street boundaries so as to:

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide adequate direct sun to the building and appurtenant open spaces;*
- *assist with protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *assist in protecting privacy between adjoining properties.*

The reduced setback will still provide adequate direct sun and ventilation to the proposed dwelling and adjoining property due to the lot's north-south orientation which ensures that winter sun will not be unduly disrupted and south-westerly breezes will still prevail. The recess in the wall will also assist in ameliorating building bulk and as it has no major openings it won't impact on visual privacy. The adjoining

owner at 4 Deane Street has signed plans stating no objection to the proposed reduced setback.

Visual privacy

The proposed (west-facing) windows to the 1st floor dining room and (north & south-facing) windows to the bar have a 4.8m and 5.2m cone of vision respectively, and the proposed (west-facing) window to the parents retreat has a 5.2m cone of vision, all in lieu of 6m required under the Acceptable Development standards of the RDC. Also the proposed 1st floor (west-facing) front/side balcony, (north-facing) rear balcony, (west-facing) rear balcony and the lap pool at loft level have a 4m, 2.5m, 5.45m and 3.4m cone of vision respectively, in lieu of 7.5m required under the Acceptable Development standards of the RDC.

These setback concessions can be considered under Performance Criteria, which state:

- *Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.*
- *Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.*
- *Where they are used, they should be integrated with the building design and have minimal impact on residents' or neighbours' amenity.*
- *Where opposite windows are offset from the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.*

Each of the concessions sought are addressed below:

1st floor: (west-facing) windows to dining room, (west-facing) front/side balcony & (north-facing) window to bar.

These windows and balcony potentially overlook the rear courtyard and 1st floor bedroom window of 80A Marine Parade, which fronts Deane Street. However, the applicant proposes to have a 1m high solid screen along the western boundary at 1st floor level adjoining these major openings which, due to the setback of the openings to the screen, will significantly assist in reducing direct overlooking of the adjoining property's outdoor living area. The adjoining courtyard is also located on the other side of the ROW and is covered by a large pergola thereby further restricting potential loss of privacy. The proposed screening will be integrated with the building design.

The neighbouring first floor window is approximately 10.5m from the proposed west-facing dining-room windows and whilst has potential to be overlooked it is only 1m in depth and forms part of a corner window that faces north-east so is not likely to be significantly affected by the proposal.

1st floor: (south-facing) window to bar.

This window will be 1.44m² (0.6m x 2.4m) and could result in some overlooking of the rear outdoor living area of 82 Marine Parade. Although this rear area does not appear well used and the dwelling has its frontage to Marine Parade rather than to the rear ROW, the window has been conditioned to be fixed and obscure glazed to a height of 1.6m to avoid overlooking.

Loft: (west-facing) windows to parents retreat.

Direct overlooking of major openings and outdoor active habitable spaces at 80A Marine Parade (opposite) from this window will be prevented due to its 2.2m setback from the western boundary, angle of glazing, and the proximity of the edge of the proposed lap pool that will prevent overlooking of these areas based on a vertical cone of vision measured from standard eye level (refer drawing No. 5 of 11 - Section AA).

1st floor: (north-facing) rear balcony.

There will be no direct overlooking of major openings and outdoor active habitable spaces from the proposed rear balcony as, although there will be some overlooking over the rear of the eastern lot, the side of the balcony nearest the boundary will be screened to 1.65m, and overlooking will be restricted to the roof of an existing garage on the neighbour's property.

Loft: (west-facing) rear balcony.

Direct overlooking of major openings and outdoor active habitable spaces at 82 Marine Parade (opposite) from this balcony will be prevented due to its 2.45m setback from the western boundary and the proximity of the edge of the proposed lap pool that will prevent overlooking of these areas based on a vertical cone of vision measured from standard eye level (refer drawing No. 5 of 11 - Section BB).

Roof-top pool

The proposed roof-top pool has been modified since the original plans were submitted. In particular, it has been increased in depth to 1.4m and no longer has an infinity edge, except for a 6.5m portion along the western edge (southern end) and a 4.5m section at the front of the proposed dwelling.

The increased depth and proposed 0.4m wide edge along its western side will significantly reduce the likelihood of any direct overlooking of major openings or outdoor active habitable spaces on adjoining western properties based on a vertical cone of vision measured from standard eye level (refer drawing No. 5 of 11 - Section AA & BB).

The Town's Principal Building Surveyor has advised that pool fencing is not required along the western side on top of the proposed edge providing the outer edge remains inaccessible. Details will be required to be submitted at building licence stage.

Vehicular access

The original submitted plans showed access to a double garage from the adjoining western ROW, in addition to an undercroft garage with access from Deane Street. However, the ROW is privately owned and the applicant was unable to obtain approval from the owner to use it for access. As a result, the plans were amended to accommodate a double garage at ground floor level with access from Deane Street, requiring an additional crossover to the lot.

The crossover on the eastern side that will provide access to the undercroft area will necessitate the removal of a street tree. However, this has been supported by the Town's Works Department as the species is not of significance and should be replaced with a Norfolk Island pine. This has been conditioned accordingly.

Side fencing

A small portion of proposed fencing within the front setback area along the western boundary does not comply with Council's Fencing Local law as it is solid and exceeds a height of 0.9m above NGL. It is therefore required to be amended for approximately 0.8m of its length to comply with the Local Law. The remainder of the proposed fence (brick wall) along the western ROW should also be amended where necessary so as to not exceed a height of 1.8m.

Building height and built form

The calculation of building height stems from Council's determination of natural ground level (NGL). Clause 5.5.1 of TPS 2 expresses policy in relation to building height and paragraph (c) provides a basic formula in relation to measurement of such height.

Provision is made for Council to depart from the formula where the natural ground forms indicate that a variation is warranted provided that the amenity of the area is not unreasonably diminished. Such a height variation is not sought in this case.

The NGL at the centre of this lot has been determined to be RL: 10.75, based on a site survey plan submitted by the applicant and drawn by a licensed surveyor.

Given this NGL the maximum permitted external wall height is 6m (RL: 16.75) and the maximum permitted ridge height is 8.5m (RL: 19.25). The proposed development complies with these height requirements; although the proposed, centrally-located, 0.25m high lift shaft has not been included in this calculation as in accordance with the RDC it is considered a minor projection, similar to a chimney or the like.

TPS 2 describes that the maximum building height in the Residential zone shall be two storeys except that Council may permit a third storey to be located within the roof space of a dwelling provided that the development complies with the maximum wall and roof height provisions stipulated in the Scheme and also provided that, in Council's opinion, the dwelling will retain the appearance of a two-storey dwelling and will not adversely affect local amenity.

In this case, the enclosed habitable area of the proposed third storey in the roof form/space will be 128.39m², which represents only 40% of the total roof area. If the area of the balconies and elevated pool is included then that equates to 66.5% of the roof

area (refer to calculations on drawing 3 of 11), albeit that these elements are unroofed and do not create enclosed form or bulk.

The setback of the enclosed habitable area of the proposed third storey is 12.7m from the front boundary, which is more than thrice the 4m setback generally required in an R30 density-coded area under the RDC and more than twice Council's preferred 6m front setback. From the rear northern boundary the third level enclosure has a generous 13.3m setback. It also has a 2.2m setback from the western boundary (1.6m to roof) and a 2.6m setback from the eastern boundary (hidden by sloping roof).

The intent of these setbacks is to minimise the visual impression of the third storey within the roof form/space, while utilising an area which would otherwise be roofed. When viewed from the adjacent footpath, or from surrounding properties or in moving along the street, the effect of such setbacks is depending on the vantage point to either conceal the upper level or present it as a recessive element that echoes the form of a two-storey dwelling while ameliorating the sense of bulk and scale. At the same time the design and visual impression can be read as logical and respectful, with proportions in keeping with other two-storey dwellings in the streetscape.

It also demonstrates that a dwelling with a traditional pitched roof (especially one with gabled ends) or a flat roof, may have a greater visual presence to the streetscape and sense of bulk in relation to adjacent dwellings than that proposal (refer to drawings 9, 10 & 11).

Well-designed use of roof form/space as a third storey is not uncommon within the Town and Council has approved both covered and uncovered roof decks, some with elevated pools, such as at 1A Geraldine Street and 10 Grant Street, while a dwelling at 3 Torrens Court has a partially-covered roof deck and elevated pool. There are various other examples of curved or angled roof designs approved to permit a third level within that space, effectively disguising the third storey as an integral part of the building while fostering quality architecture.

This has evolved as architects have experimented with various sites and designs for reasons of space, views, aesthetics and so on, which in turn has invited Council to interpret the essentially broad Scheme provisions to enable acceptable outcomes. As in this instance, usually the initial concepts are refined to achieve a reasonable balance between the design objectives and planning requirements, and where the final proposal complies or performs satisfactorily there is limited basis to not support it as suitable.

The main difference between these designs and the proposal is the extent of usable habitable roof space, but as the total usable area will be less than 70% of the roof area and 37% of the lot area, it is considered satisfactory in terms of the Scheme requirements.

In one instance, the State Administrative Tribunal advised in its decision of 1 December 2006 regarding a proposed two-storey dwelling with roof-top pool and outdoor area at 17 John Street, that:

There is no planning principle why an upper deck level and pool could not be approved on site if appropriately designed.

CONCLUSION

The proposal is compliant with the main height parameters and consistent with the use of partially enclosed roof spaces, while elevated pools are able to be accommodated in designs.

The contemporary design of the dwelling is considered to be in scale and harmony with the streetscape and the approach to privacy variations satisfies the Performance Criteria of the RDC.

The western side setbacks are compliant, taking account of half the width of the western ROW as permitted under the RDC Acceptable Development standards.

Only the western neighbours have raised concerns, including the ROW, privacy and amenity, all of which have been addressed by the applicant.

Overall, the proposal is reflective of similar designs and developments found the district and the revised plans can be supported.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the proposal focusing on the third storey in the roof space and expressed mixed considerations regarding how the design performed in relation to the Scheme provisions. It was acknowledged that the proposal had been scrutinized and privacy concerns addressed. Committee also noted that a raised pool could be contemplated as supported elsewhere by the SAT.

It was queried whether intended LPS3 had a similar provision for a third storey in the roof space, which the MDS confirmed. The MDS elaborated on the approach to design and interpretation of the current Scheme provision in relation to the proposal and other similar applications approved by Council. He pointed-out that there had been no opportunity to examine the written material tabled by the objecting architects although it was apparent that privacy was no longer being raised as a concern for the western neighbour.

There was brief discussion about whether the subject property needed a truncation to the lane; however, as the front fencing is to be open-aspect, as the lane is private with restricted access, and as the property on the western side has no truncation, that is not assessed as necessary.

In a refusal being foreshadowed the MDS advised Committee that he could draft a form of words premised on its consideration of the proposal in the context of the Scheme provision for a third storey in the roof space; but that it would be difficult to sustain overlooking as a ground for non-support as that was capable of being addressed by design.

OFFICER RECOMMENDATION**Moved Cr Jeanes, seconded Cr Downes**

THAT COUNCIL grant its approval to commence development for the proposed two-storey dwelling with undercroft garage, roof-top space and elevated pool at No. 2 (Lot 25) Deane Street, Cottesloe, in accordance with the plans revised on 31 August 2012 (Drawing Nos 1-11 inclusive) subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.
- (2) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (3) Stormwater runoff from the driveway or any other paved portion of the site not being discharged onto the street reserve or adjoining properties and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the building licence plans.
- (4) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.
- (5) The proposed fencing within the front setback area being modified to provide an open-aspect design in accordance with the Town's Fencing Local Law and the remainder of the fence along the western boundary being no higher than 1.8m, with the details to be submitted at building licence stage to the satisfaction of the Manager Development Services.
- (6) The applicant applying to the Town of Cottesloe for approval to construct the two new crossovers, in accordance with the Town's specifications, as approved by the Manager Engineering Services or an authorised officer.
- (7) The existing redundant crossover is to be removed and the verge, kerb and all surfaces made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
- (8) The proposed pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- (9) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pools are located and disposed of into adequate soakwells.

- (10) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8metres away from any building or boundary.
- (11) Wastewater or backwash water shall not be disposed of into the Town's street drainage system or the Water Corporation's sewer.
- (12) The proposed first-floor, south-facing window to the bar shall be fixed and obscure-glazed to a minimum height of 1.6m above floor level to the satisfaction of the Manager Development Services.
- (13) The existing street tree shall be removed and replaced with a Norfolk Island pine tree to the satisfaction of the Town's Works Supervisor, at the applicant's cost.

Advice Note:

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

Lost 2/3

NEW MOTION & COMMITTEE RECOMMENDATION

Moved Cr Boland, seconded Cr Hart

THAT COUNCIL REFUSE to grant its approval to commence development for the proposed two-storey dwelling with undercroft garage, roof-top space and elevated pool at No. 2 (Lot 25) Deane Street, Cottesloe, in accordance with the plans revised on 31 August 2012 (Drawing Nos 1-11 inclusive), for the following reason:

- **It is considered that the proposal does not sufficiently satisfy the provisions of the Scheme in relation to a third storey within the roof space of a dwelling.**

Carried 3/2

10.1.2 NO. 1C WARTON STREET – NEW TWO-STOREY DWELLING

File No:	2486
Attachments:	Aerial Photo 1C Warton Street
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Will Schaefer, Planning Officer Andrew Jackson, Manager Development Services
Proposed Meeting Date:	17 September 2012
Author Disclosure of Interest:	Nil
Property Owner:	Colleen Pugh
Applicant:	David Barr, architect
Date of Application:	10 August 2012
Zoning:	Residential R30
Use:	Permitted
Lot Area:	270m²
MRS Reservation:	N/A

SUMMARY

This report presents a development application for a modern single residence within a recent small-lot subdivision at the corner of Marine Parade and Warton Street in south Cottesloe. The subject lot faces Warton Street and as each dwelling is designed it adapts to the lot configuration and adjacent designs.

In liaison with the Town revised plans have been lodged to satisfy compliance and achieve an effective design taking into account the building orientation, interfaces and streetscape.

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

PROPOSAL

The proposal is for a new, architect-designed two-storey dwelling with undercroft garage and storerooms. The ground and upper floors each contain a mixture of living spaces, bedrooms and service rooms. The living areas front the street for a northern aspect, outlooks (ocean vistas) and a streetscape presence.

Owing to the lot constraints boundary walls (ie reduced setbacks) are utilised, which is common in small lot estates. Less than 6m front setbacks are also sought, to form a staggered arrangement whereby successive lots may gain a view corridor. These parameters are assessed below.

A three-dimensional model clearly depicts how the proposed design functions in relation to the context of the site and surrounding lots, and will be displayed at the Development Services Committee meeting.

STATUTORY ENVIRONMENT

Town Planning Scheme No. 2 and Residential Design Codes.

PROPOSED LOCAL PLANNING SCHEME NO. 3

No change is proposed to the zoning or density coding of the lot.

APPLICATION ASSESSMENT

The proposal is compliant in several key respects, including overall building height, privacy, open space, shadowing (minimal), fill (none), parking, garage door width (basement), driveway gradient and various design details. The street pine trees are to be retained by the crossover design.

The design variations entailing discretion are confined to the treatments of setbacks as set out below.

Variations

<i>Design Feature</i>	<i>Permitted</i>	<i>Proposed</i>
Front Setback	6m under Council Resolution TP128a; but 1.5m to balcony and 2.5m to dwelling under Residential Design Codes.	2.5m to balcony and 3.6m to dwelling (ie exceeds RDC).
Walls on boundary	One wall for two-thirds of a single boundary length behind the front setback line and up to 3.5m high.	Three walls along three boundaries, one up to 7m high (two-storey).
Wall setback from boundary	2.5m under RDC.	1.77m

ADVERTISING OF PROPOSAL

The original proposal was first shown to neighbours by the applicant in order to address any concerns raised and to gain indications of support. The owners of the lots to the east and south have raised no objection to the design.

The owners of 38A&B Marine Parade to the west were notified by letter from the Town. Prior to the application they had initially expressed concern about a possible boundary wall or overlooking. In response the architect has excluded any boundary wall abutting their lots and has fully-obscured all western windows at both levels to provide the desired privacy, hence there is no objection.

The owner of 38C Marine Parade has agreed to a boundary wall and emphasised the need for careful construction techniques. A planning approval advice note and the building licence can cover this.

The owners of 1 Warton Street, an established dwelling one lot removed from the subject lot, have expressed concern that the front setbacks may set a precedent for

similar setbacks to the vacant Lot 6 between their property and the subject lot, depriving them of their ocean view. It is assessed, however, that the main view of all dwellings is a sharing of the street vista rather than across or into other properties.

APPLICANT'S JUSTIFICATION

The architect's explanatory justification for the design is attached and addresses the design variations discussed below in the officer technical assessment.

Front setback

It is proposed to have a front setback of 2.5m for the upper-floor balcony, 3.6m for the upper-floor wall and 4.6m for the remainder of the dwelling; whereas by Resolution TP128a Council generally prefers front setbacks of 6m with no averaging, although has allowed some lesser setbacks in R30 areas.

The subject lot was created by subdivision of a large site previously developed with units into seven single residential sites, as supported by Council in February 2010. The RDC recognise that small lot infill subdivision may cause unattractive voids in the streetscape, hence Acceptable Development Standard 6.2.1 A1.1(ii) allows for setbacks down to 2.5m:

Buildings other than carports and garages set back from the primary street in accordance with Table 1; but in areas coded R15 or higher, where a single house results from subdivision of an original corner lot and has its frontage to the original secondary street, the street setback may be reduced to 2.5m, or 1.5m to a porch, verandah, balcony or the equivalent.

The RDC explanatory guidelines elaborate:

Different streetscapes usually occur on secondary or side streets, with the street alignments formed by the long side boundaries of corner lots. These are characterised by side fences or walls rather than open gardens, and a small setback to the dwelling.

In many cases these streetscapes are being altered by subdivision of corner lots, creating new frontages to the side street. Where this happens, similar consideration to those for setbacks to frontage streets apply, but with a reduced setback, for practical and streetscape reasons.

The proposed setbacks are premised on this design approach and appear preferable to the standard setback of 6m. They would result in a stepped transition from the 1.5m secondary street (Warton Street) setback for the new corner dwelling at 38C Marine Parade to future setbacks determined for the vacant lot at 1B Warton Street. In this respect the architect's plans include a view corridor diagram to demonstrate that the proposed setbacks would not significantly affect views from 1B and 1 Warton Street, with those primary vistas being along the street corridor rather than looking directly upon the new dwellings, which is not the desired outlook in any case. In this location views also extend over the open space of the Wearne Hostel site on the opposite side of the street.

Design-wise, the ground floor is set back an average of 5m and the upper floor an average of 4m. The balcony with frameless glass balustrade would have a lightweight, floating appearance, while the sense of bulk would be ameliorated by the extensive windows facing the street. The fencing for the setback area is entirely open-aspect. On this basis it is considered that the proposal would perform acceptably.

Council has approved a number of lesser front setbacks where corner lots have been subdivided and frontages to secondary streets created; eg 2A Reginald Street, 1 Princes Street, 13 Florence Street, 43 Hawkstone Street, 18 Grant Street, 22 Grant Street, 48 & 50 North Street and 7 Knowles Street.

Technically the proposed setbacks satisfy the Acceptable Development Standards of the RDC, which were formulated to address such situations.

The alternative of Council's 6m typical R20 setback would in this instance reduce the developable area of the site, place the dwelling in an alcove flanked by a two-storey wall to the west and generate a disjointed streetscape.

Boundary walls

It is proposed to construct three walls on three separate boundaries as follow:

1. A two-storey wall abutting the existing two-storey wall on the western boundary, which is permitted as-of-right under the RDC Acceptable Development Standards.
2. A two-storey wall on the eastern boundary.
3. A single-storey wall on the southern boundary.

It is anticipated that dwellings in this subdivision will seek to maximise walls on boundaries; however, to begin with the RDC contemplate one boundary wall in R30 areas. Therefore it is necessary to consider the additional boundary walls under RDC Performance Criterion 6.3.2 P2, which provides:

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

Eastern boundary wall

The wall is up to 7m high (ie two-storey) and is 18m long, whereas RDC Acceptable Development Standard 6.3.2 A2(ii) contemplates walls up to 3.5m high for up to two-thirds of the boundary length behind the front setback line, or 12m in this instance.

As the adjacent lot is vacant, the Performance Criterion is not wholly assessable. The applicant advises that the RDC have been addressed via consultation with neighbours leading to the design, with construction of this boundary wall enabling the neighbours to follow suit, assisting privacy and avoiding dead space.

The eastern lot owner is the owner of the former unit site, who also owns the southern adjoining vacant lot, and intends to develop each with a dwelling in due course. That owner has viewed the plans and it is understood that the proposal is compatible with a concept design prepared for the eastern lot.

Southern boundary wall

The wall is single-storey up to 3.3 high and some 7.5m long; with the upper-floor being setback. In itself this wall is considered acceptable, however, the cumulative effect with the eastern boundary wall requires assessment under RDC Performance Criterion 6.3.2 P2.

The impact of this wall is likely to be small, effectively forming a dividing wall with the southern lot. Midwinter overshadowing of the southern lot by both storeys is just 12% compared to the permissible maximum of 35%.

While due to the adjacent lot being vacant and it is not possible to wholly assess this wall against the Performance Criterion, as outlined above that owner is supportive of the proposal.

Wall setback from boundary

The balance of the eastern upper wall is to be setback 1.77m in lieu of 2.5m under RDC Acceptable Development Standard 6.3.1 A1(i), whereby it is necessary to assess the wall under Performance Criterion 6.3.1 P1, which provides:

Buildings set back from boundaries other than street boundaries so as to:

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide adequate direct sun to the building and appurtenant open spaces;*
- *assist with protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; a*
- *assist in protecting privacy between adjoining properties.*

As noted the adjoining lot is vacant and the owner is in support of the proposal. It is assessed that as only a 3.7m long section of the wall would be visible amenity would not be significantly affected.

CONCLUSION

The lot size and shape as part of the overall subdivision constrains dwelling design and invites performance variations. The boundary walls and front setbacks arrangement are assessed as appropriate in order to produce a practical design with adequate spaces as well as presentation to the street.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed some aspects of the proposal and overall was supportive of the design. It was considered that the front setbacks are acceptable given the side street setback to the new corner dwelling and taking into account the shared views diagram.

The MDS confirmed that all surrounding subdivision lot owners had been consulted. In He also explained how the boundary walls were assessed as suitable in relation to the design of dwellings for small lots and the performance criteria of the RDC, whereby it was common for dwellings to interface in that fashion.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Downes, seconded Cr Walsh

THAT COUNCIL grant its approval to commence development for the proposed two-storey dwelling with undercroft at 1C Warton Street, Cottesloe, in accordance with the revised plans received on 16 August 2012, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.
- (2) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of the Town of Cottesloe.
- (3) The applicant applying to the Town of Cottesloe for approval to construct a crossover, to the specification and satisfaction of the Town, paying particular attention to the design and construction in order to protect the existing pine trees in the verge, as approved by the Manager Engineering Services or an authorised officer.
- (4) The applicant providing adequate storage disposal on-site to contain site stormwater in accordance with the requirements of the Town of Cottesloe, whereby stormwater runoff from the driveway or any other paved portion of the site shall not be discharged onto the street reserve or adjoining properties and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included in the building licence plans.
- (5) The applicant complying with the Town of Cottesloe Policies and Procedures for Street Trees, where the development may require the protection, pruning, removal or replacement of street trees.
- (6) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.
- (7) The fencing within the front setback area shall be of an open-aspect design as proposed in accordance with the Town's Fencing Local Law to the satisfaction of the Manager Development Services.

Advice Note:

The applicant/owner is responsible for ensure that all lot boundaries shown on the approved plans are correct and that the proposed development is constructed entirely within the owner's property.

The applicant/builder is responsible for ensuring that pursuant to the building licence any excavation, retaining or underpinning is undertaken in accordance with proper building practices and structural engineering advice.

Carried 4/1

10.1.3 NO.7 HAINING AVENUE – RAISED PATIO AT REAR, EXTENSION TO MASTER SUITE, REPLACEMENT OF PORTION OF FRONT DECK, TIMBER SCREEN, DOUBLE CARPORT, POOL AND CHANGES TO EXTERNAL DOORS AND WINDOWS

File No:	2483
Attachment:	Aerial photo 7 Haining Ave
Responsible Officer:	Carl Askew Chief Executive Officer
Author:	Ed Drewett Senior Planning Officer
Proposed Meeting Date:	17 September 2012
Author Disclosure of Interest:	Nil
Property Owner:	Mr S C Scott & Ms T J Jerrat
Applicant:	As above
Date of Application:	9 August 2012
Zoning:	Residential
Use:	P - A use that is permitted under this Scheme
Lot Area:	814m²
M.R.S. Reservation:	Not applicable

SUMMARY

This application has been “called-in” by Councillors’ following its inclusion on the weekly delegation list.

The proposal satisfies the general provisions of Town Planning Scheme No.2 (TPS 2) and complies with the Acceptable Development standards of the Residential Design Codes (RDC). The location of the proposed double carport in the front setback requires assessment under Council’s Policy - *Garages and Carports in Front Setback Area* (TPSP 003).

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

PROPOSAL

The application is for a rear patio, extension to the master suite, replacement of a portion of front deck, a double carport in the front setback area, a pool in the south-west corner of the lot, changes to external doors and windows, and a timber screen to the front entry.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No. 2
- Residential Design Codes
- Garages and Carports in Front Setback Area

PROPOSED LOCAL PLANNING SCHEME NO. 3

No changes are proposed to the zoning of this lot.

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE****Town Planning Scheme No. 2 - Policy requirements:**

	Permitted	Provided
Garages & Carports in Front Setback	6m (may be reduced to zero where relevant criteria are satisfied).	2m front setback to carport.

ADVERTISING OF PROPOSAL

The application was not required to be advertised under TPS 2; however, the applicant had obtained the written support of the western neighbour for the proposed carport location.

APPLICANT'S JUSTIFICATION

A detailed submission in support of the proposed carport and addressing Council's Policy - *Garages and Carports in Front Setback Area* was submitted by Algeri Planning & Appeals on behalf of the applicant. The main points made are summarised below:

- The carport will have access from an existing crossover on the western side of the lot. Another crossover exists on the eastern side which provides access to the dwelling's single undercroft garage;
- The carport will be constructed using thin steel columns with a skillion 'solarspan' roof to give it a light-weight appearance that is consistent with contemporary-style carports and in-keeping with the existing house design;
- No issue has been raised by the western neighbour in respect to the proposed location of the carport and it will not affect existing view lines;
- Vehicles will reverse at right-angles to the street across an extensive road reserve of approximately 7.5m. This is considered safe and adequate;
- Parking of vehicles in the front setback area occurs at many residential properties including others within the street. The proposed carport provides cover for the parking of these vehicles and will have no adverse amenity impact on the neighbouring property;
- The current and future use of the area is for low density residential properties. There is no indication that there will be a different range of uses or greater density development occurring in the future that may be effected by this proposal;

- Due to the significant amount of street trees and the use of existing design features the proposed carport will have a restricted presence and only a minor impact on the streetscape.

STAFF COMMENT

The following comments are made in respect to this application.

Rear patio

A 30m² patio is proposed at the rear of the dwelling in an existing recessed area. The deck will be raised approximately 1m above natural ground level to align it with the floor level of the existing dwelling and it is compliant with TPS 2 and the RDC.

Bedroom extension

A 5.1m² single-storey extension is proposed on the western side of the existing master-suite with a new sliding door providing access to the proposed patio. The bedroom extension is located above an existing basement storage area and is compliant with TPS 2 and the RDC.

Front deck

The proposed alterations to the front deck will replace an existing portion of deck with a new suspended concrete slab, roof support, timber/steel balustrade, screen and steps to complement the existing dwelling. It will result in no additional loss of privacy to the eastern neighbour and is compliant with TPS 2 and the RDC.

Pool

A below-ground pool is proposed in the south-west corner of the lot at the rear of the existing dwelling. The pool will be setback approximately 1m from the side boundaries and is compliant with TPS 2.

External windows and doors

Various exterior windows and doors are proposed to enhance the visual appearance of the dwelling and improve its functionality. These changes are compliant with TPS 2 and the RDC.

Setback to garage

A 33m² free-standing, open-sided, double carport is proposed in the front setback area of the existing dwelling. It will have a 2m front setback and 1.37m side setback from the western boundary and has been assessed in accordance with Council's Policy - *Garages and Carports in Front Setback Area*.

Policy requirements:

Council's Policy - *Garages & Carports In Front Setback Area* states that all parking structures should generally be setback 6.0m from the street frontage. However

Council may, in a particular case, permit a lesser setback if the following criteria are satisfied:

“The materials of construction, design and appearance of a carport or garage erected within the front setback area shall be in character with the residence upon the site and be in harmony with the surrounding streetscape.

Further, the location of the building:

- (a) shall not significantly affect view lines of adjacent properties, and*
- (b) shall maintain adequate manoeuvre space for the safe ingress and egress of motor vehicles.*

In consideration of variations to setback, Council shall also have regard to:

- (a) the objectives set out in the Residential Codes;*
- (b) the effect of such variation on the amenity of any adjoining lot;*
- (c) the existing and potential future use and development of any adjoining lots; and*
- (d) existing setbacks from the street alignment in the immediate locality, in the case of the setback from the principal street alignment.”*

Each of the above criteria is discussed below:

Materials, design and appearance

The proposed carport has been designed as a simple, light-weight structure to harmonise with the existing dwelling and have minimal visual impact on the streetscape or adjoining properties. It will have a skillion ‘solarspan’ roof that will be pitched at 3° and supported on four 75mm diameter steel columns which range in height from 2.55m at the front to 2.25m at the rear.

View lines

The property on the western side of the lot was approved in 2010 and has recently been completed. It is well setback from the street and has its driveway adjoining the eastern boundary. The proposed carport will not adversely affect view lines from this property and the adjoining owner has consented to its location.

Manoeuvring space for safe ingress and egress of vehicles.

There is an existing crossover on the western side of the lot that is currently used by vehicles and is proposed to be modified slightly to allow access to the proposed carport without impacting on the existing street tree. The minor modification to the crossover and driveway required for the proposed carport will not affect the safe ingress and egress of vehicles and is supported by the Manager Engineering Services.

Objectives of the RDC

The Acceptable Development standards of the RDC under Clause 6.2.3 – *Setback of Garages and Carports* permits:

Carports within the street setback area provided that the width of the carport does not exceed 50% of the frontage at the building line and the construction allows unobstructed views between the dwelling and the street or right-of-way.

The proposed carport complies with the above Acceptable Development standard as it will not exceed 26% of the 23.13m wide lot frontage and will be open-sided to allow unobstructed views between the dwelling and the street.

Effect of proposed setback variation on amenity of any adjoining lot

The proposed location of the carport 1.37m from the western boundary will assist in reducing the visual impact of the structure on the amenity of adjoining lots as it will be partially hidden behind an existing mature street tree and will utilise an existing crossover. It will also be 15.7m from the eastern lot boundary and the adjoining western neighbour has consented to its location within the front setback area.

Existing and potential future use and development of adjoining lots

In December 2008, Council approved two grouped dwellings at 8 Haining Avenue, (opposite the site) with a reduced setback of 3m to one of the proposed garages which will be positioned parallel to the street alignment and 4.5m to a proposed garage perpendicular to the street. This is a greater front setback than the minimum 1.5m allowable under Council's Policy for carports and garages where they are positioned parallel to the street and satisfy the relevant criteria. It was considered that this arrangement would satisfy Council Policy as well as the Acceptable Development standards of the RDC without compromising the visual amenity of the locality. The application was subsequently re-approved under delegation on 27 April 2012 whereby a building licence application can be submitted.

Existing setbacks from the street alignment in the locality

Currently, there are no other garages or carports located in the front setback to Haining Avenue and most newer garages are integrated into the dwellings with an upper floor extending over the full width of the garage which reduces the visual impact of the garages on the streetscape. The garage pertaining to 12 Haining Avenue does have a reduced setback although this is to its secondary street boundary as the dwelling is a corner property and is orientated towards Charles Street.

Notwithstanding this, carports are not uncommon in front setback areas, as with increasing affluence car ownership rates have increased, as has the desire to provide a roof over the vehicles on older properties where such structures did not previously exist. In this case, there is no suitable alternative location for a double carport on the lot outside the front setback area and the existing single covered carbay that is located under the front deck is considered too small and low to accommodate a modern vehicle.

The proposed carport will be accessed via an existing crossover and will be partially hidden by a mature street tree. It will also be open-sided and of lightweight design to ensure that there remains a clear view between the street and the dwelling and its visual impact is kept to a minimum.

CONCLUSION

The proposed development, including the location and design of the carport in the front setback area, complies with TPS 2 and the Acceptable Development standards of the RDC, and may be supported under Council's Policy - *Garages and Carports in the Front Setback Area* as no suitable alternative location exists for the double carport behind the front setback area.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed that the proposal could be supported given its compliance with Council's Policy as an open-aspect carport rather than an enclosed garage, whilst noting approval of some forward garages in the vicinity.

OFFICER RECOMMENDATION

Moved Cr Downes, seconded Cr Walsh

THAT Council GRANT its approval to Commence Development for the proposed alterations and additions, including a double carport in the front setback, at 7 Haining Avenue, Cottesloe in accordance with the plans received 9 August 2012, subject to the following conditions:

- (1) All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.
- (2) The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (3) The applicant applying to the Town of Cottesloe for approval to modify the existing crossover in accordance with the Town's specifications, keeping a minimum distance of 1.5m from the base of the existing street tree, as approved by the Manager Engineering Services or an authorised officer.
- (4) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.
- (5) The pool pump and filter shall be located closer to the existing dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.

- (6) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.
- (7) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.
- (8) Wastewater or backwash water shall not be disposed of into the Town's street drainage system or the Water Corporation's sewer.

Advice Note:

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

AMENDMENT

Moved Cr Boland, seconded Cr Hart

That the recommendation be amended in line two by substituting the word "including" with "excluding" and by deleting condition (3).

Lost 2/3

COMMITTEE RECOMMENDATION

Moved Cr Downes, seconded Cr Walsh

THAT Council GRANT its approval to Commence Development for the proposed alterations and additions, including a double carport in the front setback, at 7 Haining Avenue, Cottesloe in accordance with the plans received 9 August 2012, subject to the following conditions:

All construction work being carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13: Construction sites.

The external profile of the development as shown on the approved plans not being changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.

The applicant applying to the Town of Cottesloe for approval to modify the existing crossover in accordance with the Town's specifications, keeping a minimum distance of 1.5m from the base of the existing street tree, as approved by the Manager Engineering Services or an authorised officer.

Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted do not exceed those specified in the Environment Protection (Noise) Regulations 1997.

The pool pump and filter shall be located closer to the existing dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.

Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property on which the swimming pool is located and disposed of into adequate soakwells.

A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.

Wastewater or backwash water shall not be disposed of into the Town's street drainage system or the Water Corporation's sewer.

Advice Note:

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

Carried 3/2

10.1.4 INDIANA RESTAURANT – PROPOSED TAVERN RESTRICTED LIQUOR LICENCE

File No: PUB/11
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 17 September 2012
Author Disclosure of Interest: Nil

SUMMARY

Indiana Tea House (“Indiana”) wishes to change its liquor licence from a Restaurant Licence to a Tavern Restricted Licence (TRL) and, following initial liaison with the Town, seeks Council’s preliminary support prior to making an application to the Department of Racing, Gaming and Liquor (DRGL).

Council’s role in this regard is threefold:

1. Pursuant to the Town’s lease of the premises to Indiana the agreement of Council as landlord is required to a change of liquor licence.
2. Council has adopted a Liquor (Licensed Premises) Policy to guide proposals and assessments.
3. The DRGL application process includes obtaining Section 39 (health compliance) and Section 40 (planning compliance) certificates from the Town.

This report presents the proposal for Council’s consideration and recommends in-principle support.

BACKGROUND

In recent years changes to the Liquor Control Act have introduced Small Bars and other reforms diversifying the styles of licensed premises whilst providing improved social amenity measures. For example, Cottesloe has attracted a specialist wine bar/tapas restaurant (Lamonts in Station Street), a small bar (Elba in Napoleon Street), and remodeling of the Cottesloe Beach Hotel (CBH) former beer garden to become a more sophisticated drinking environment with an emphasis on food service and functions.

Indiana currently operates under a Restaurant Licence as its primary purpose, together with an Extended Trading Permit (ETP) which provides for a proportion of patrons to be served liquor without food. The ETP has worked well since 2003 for a 20% designated area with a maximum of 48 patrons. Consideration in 2010 to make the ETP for 100% of the patron area was conditionally supported by Council but not pursued by Indiana.

ETPs provide flexibility for restaurants to serve just liquor as a lesser proportion of their trade and are in keeping with the recreational/tourism focus of the Cottesloe beachfront. Nearby restaurants with ETPs are Il Lido (open all day with a tapas menu) and Blue Waters (a la carte menu with occasional food/wine nights), and this

style of trading has not caused problems or complaints. The constraints of ETPs entail:

- Table-only service of liquor (no bar service) and consumption only while seated (no standing).
- Restricted area and/or number of patrons.
- The restaurant being the main activity, with drinking-only being the lesser activity.

This is an aspect of liquor licensing that has been criticised by the industry and consumers, as the complicated rules can be difficult to explain to potential clients, especially overseas visitors unfamiliar with such restrictions. Moreover, in reality, these rules may not always be adhered to, usually with little if any effect.

The original planning approval to create the Indiana teahouse building provides for a maximum number of 240 seated patrons covering the restaurant, kiosk and outdoor areas. The lease from the Town limits the restaurant portion to 170 patrons. In 2009 Council approved renovations at Indiana since undertaken that created both casual and formal dining areas, including alfresco, with no change to patron numbers.

PROPOSAL

Indiana is an up-market restaurant offering both casual and formal dining, with a high quality fit-out, professional staff and senior management. It caters to local, regional and tourist clientele, as well as functions, and has seasonal patronage patterns. The restaurant operates as a scenic beachside bistro, being part of a company group of renowned food venues comprising Frasers at Kings Park, The Old Brewery on Mounts Bay Road and Bluewater Grill in Applecross.

In essence the proposal is to continue the restaurant as a higher-end food-based establishment but to overcome the liquor service restrictions inherent in a Restaurant Licence, for flexibility in the use and enjoyment of the facilities for dining, drinking without a meal and functions. There is certainly a demand for what is sought, from both proprietors and clients, and the DRGL has advised Indiana that a TRL would be the most appropriate licence for the desired mode of operation.

A TRL permits drinking without a meal and excludes the sale of liquor to take away. This would provide for people to stand or sit to drink, with bar as well as table service, and where food is not mandatory. It would also allow patrons freedom of movement at functions, to go to the alfresco area or to take in the view.

As a comparison, Lamonts Wine Store in Station Street is a small food-based wine bar operating under a full Tavern Licence, in order to permit the sale of wine to take away (including Lamonts brand). Hence a Tavern Licence or a TRL is sometimes adapted to accommodate hybrid restaurants/bars which by definition are not quite Small Bars or not really Taverns but do not fit another specific licence category.

Indiana has advised as follows:

- No other changes are proposed, whereby the maximum number of patrons, hours of operation and entertainment arrangements will remain the same.

- As a quality establishment which occupies premises well setback from the street it is a low-key and low-risk licenced restaurant and food-orientated functions venue.
- The average number of customers per day is approximately 100.
- No great trend of drinking-only before noon is anticipated.
- It has an adopted Code of Conduct, House Management Policy and Harm Minimisation Plan, addressing the responsible service of alcohol, staff training, complaints-handling and duty managers.
- It understands and accepts the conditions likely to be imposed on a RTL, including the balance between food and liquor sales, having the kitchen open for food service at all times, having the restaurant set up at all times, etc.

ASSESSMENT

Council can be confident that applying a TRL to the premises is appropriate in terms of the Liquor Control Act and administration by the DRGL and Director of Liquor Licensing.

The change of licence type is to a tavern by name rather than to a tavern by nature, given that Indiana intends to continue operating as-is with the benefit of relaxed liquor-only service and consumption rules. This will free-up trading practices as a subtle evolution from the current ETP arrangement. While it may also attract increased patronage, this would be:

- Confined to the current patron limits, being much less than a typical tavern.
- Spread out during the day/week.
- Based on a well-run food and beverage establishment offering a range of eating and/or drinking opportunities.
- Responding to the enhanced attraction of the premises and the precinct, including the renovated CBH with a similar although more casual style of food and beverage service.
- Suited to the location and design of the premises as a spacious and well-appointed stand-alone ocean-front facility forming part of the foreshore entertainment precinct.

On this basis parking demand would not be significantly increased and the profile of patronage would be manageable and consistent with amenity.

The application process to the DRGL is detailed and includes forms, fees, advertising, public interest assessment, licensee integrity checks, training and management plans, and so on. As mentioned this includes obtaining from the Town a S39 Certificate for health compliance (sufficient toilets, kitchen facilities, etc) and a S40 Certificate for planning compliance (use permitted, buildings approved, etc).

Council's Liquor (Licenced Premises) Policy echoes the assessment framework of the DRGL application process, with an emphasis on amenity, safety, operational implications and where relevant parking requirements. The policy is a reference when considering planning applications for licensed premises and dealing with liquor licence applications. Its objectives are to:

- *Provide for facilities and services which are compatible with the aspirations of the Cottesloe residential and business community.*
- *Provide a framework to assist Council with the assessment of liquor licence applications, including when issuing Section 39 and 40 certificates under the Liquor Control Act 1988.*
- *Make liquor licence applicants aware of Council's considerations when dealing with liquor licence applications.*
- *Assist Council in the consideration of applications for planning approval of development which may involve a liquor licence.*
- *Foster an appropriate type and number of licensed premises that will enhance the activity and atmosphere of commercial localities and contribute to an integrated and positive sense of community;*
- *Protect the character and amenity of adjacent residential localities.*
- *Support the objectives of the Community Safety and Crime Prevention Committee.*

Overall, the Town assesses that the proposed TRL satisfies the policy parameters and would be unlikely to be detrimental to the public interest or the amenity of the locality.

Any future change to the liquor licence, such as number of patrons or hours of opening, would require a further application to the DRGL and to Council under the lease, as well as possible planning approval by the Town. Any future land use or development changes proposed would also require planning, building and health approvals by the Town.

Upon receipt of a detailed liquor licence application referred from the DRGL the Town will be able to undertake a comprehensive assessment in order for Council to make formal comments and determinations.

STRATEGIC IMPLICATIONS

Consistent with beachfront activity and development incorporating controlled liquor practices.

POLICY IMPLICATIONS

Correlates with Council's Liquor (Licenced Premises) Policy.

STATUTORY ENVIRONMENT

Liquor Control Act and Regulations 1988.

FINANCIAL IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Nil.

CONSULTATION

Community consultation by the Town additional to the DRGL liquor licensing advertising procedure is not considered necessary.

VOTING

Simple Majority.

COMMITTEE COMMENT

Committee was supportive of the proposal as suitable for the style of the establishment, and sought clarification on some aspects. The MDS confirmed that a Tavern Restricted Licence excludes the sale of take-away liquor and explained that under the lease from the Town agreement to the liquor licence change was required. He also advised that the earlier proposal for a crepe-making business in the northern kiosk was no longer proceeding.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Jeanes, seconded Cr Walsh

THAT COUNCIL:

Advise Indiana that it is supportive in-principle of the proposed Tavern Restricted Licence, subject to:

- 1. Consideration by Council of a formal application referral from the Department of Racing, Gaming and Liquor.**
- 2. Consideration by the Town of the associated Liquor Control Act Sections 39 and 40 Certificates.**
- 3. That application process including adequate public consultation in accordance with the Department's requirements.**
- 4. Appropriate conditions being imposed on the licence in relation to the service of liquor and the availability of food, liquor management strategies and any other relevant aspect.**
- 5. Consideration by Council of any consequential amendment to the Lease between the Town and Indiana, which is to be made to the satisfaction of the Town at the full cost of Indiana, within an agreed timeframe.**

Carried 5/0

10.1.5 RENEWAL OF ENTRY TO PREMISES UNDER TOWN PLANNING SCHEME NO. 2

File No: SUB/653
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 17 September 2012
Author Disclosure of Interest: Nil

SUMMARY

The purpose of this report is to refresh Council's general authorisation for officers to enter premises in relation to Town Planning Scheme No. 2 (TPS2).

BACKGROUND

Clause 7.5 of TPS2 is a standard type clause found in schemes whereby officers are empowered to enter premises by virtue of authorisation from Council, and reads as below:

ENTRY TO PREMISES

An officer of the Council, authorised by the Council for the purpose, may at all reasonable times enter any building or land for the purpose of ascertaining whether the provisions of the Scheme are being observed.

This administrative power functions as follows:

- The authorisation is in perpetuity and as written does not require annual renewal.
- It applies to all instances that may arise over time, rather than requiring authorisation case-by-case, which would clearly be impractical given the Town's daily town planning activities (although if ever necessary a specific authorisation could be made in a particular case).
- It applies to relevant officer positions, rather than individual persons.
- Any building or land means a subject site or adjacent properties, including lanes and institutional or public properties.
- On most occasions entry and inspection is readily gained cooperatively from property owners/occupiers or neighbours involved in a planning matter; however, the power exists as a back-up to cover situations such as an absentee owner or unwilling occupant.
- A Council resolution is an appropriate form of authorisation.

Effectively, officers are to be authorised to make planning inspections in general and on an ongoing basis, rather than having to go to Council periodically. Inspections are undertaken for a range of purposes, including assessment of planning proposals; advice on land use, development, design or heritage matters; compliance management; and so on.

In practice, local government officers tend to continue routine planning inspections on the presumption of past authorisations. In this regard it is uncertain when the last time was that Cottesloe Council granted its authority in this respect.

Therefore, as Council has recently dealt with its annual delegation of various powers to officers, to avoid any doubt it would be prudent to refresh this authorisation. It would also be sensible to consider renewal of the authorisation annually anyway, or under clause 7.10 of the Scheme to delegate the power of authorisation to the CEO for administrative efficiency.

While mostly planning officers attend to inspections, occasionally building, health or other relevant officers (eg, sustainability, works) may have a role in assessing or assisting a town planning matter, so for convenience the authorisation should also cover such positions.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee enquired whether intended LPS3 also has a power of entry provision and the MDS confirmed that it does.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Walsh, seconded Cr Boland

THAT COUNCIL:

- 1. In accordance with clause 7.5 of Town Planning Scheme No. 2, authorise its town planning, building, health or other relevant officers to at all reasonable times enter any building or land for the purpose of ascertaining whether the provisions of the Scheme are being observed. Officer positions in this respect include, but are not limited to, the Chief Executive Officer, Manager Development Services, Senior Planning Officer, Planning Officer, Manager Engineering Services, Principal Building Surveyor, Principal Environmental Health Officer, Sustainability Officer and Works Supervisor.**
- 2. Include renewal of this authorisation at the time of undertaking its annual delegation of powers to officers, which may entail delegating the power of authorisation to the Chief Executive Officer for administrative efficiency, pursuant to clause 7.10 of the Scheme enabling such delegation.**

Carried 5/0

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

Nil

12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:

Nil

12.1 ELECTED MEMBERS

Nil

12.2 OFFICERS

Nil

13 MEETING CLOSED TO PUBLIC

Nil

13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

13.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC

Nil

14 MEETING CLOSURE

The Presiding Member announced the closure of the meeting at 7:24pm.

CONFIRMED: PRESIDING MEMBER _____ DATE: _____