

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 18 AUGUST 2014

CARL ASKEW
Chief Executive Officer

20 August 2014

DISCLAIMER

No responsibility whatsoever is implied or accepted by the Town for any act, omission, statement or intimation occurring during council meetings.

The Town of Cottesloe disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation occurring during council meetings.

Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a council meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any member or officer of the Town of Cottesloe during the course of any meeting is not intended to be and is not taken as notice of approval from the Town.

The Town of Cottesloe wishes to advise that any plans or documents contained within the agenda or minutes may be subject to copyright law provisions (*Copyright Act 1968*, as amended) and that the express permission of the copyright owner(s) should be sought prior to their reproduction.

Members of the public should note that no action should be taken on any application or item discussed at a council meeting prior to written advice on the resolution of council being received.

Agenda and minutes are available on the Town's website www.cottesloe.wa.gov.au

DEVELOPMENT SERVICES COMMITTEE

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS.....	3
2	DISCLAIMER	3
3	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION	3
4	PUBLIC QUESTION TIME	3
	4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	3
	4.2 PUBLIC QUESTIONS	3
5	PUBLIC STATEMENT TIME.....	3
6	ATTENDANCE	3
	6.1 APOLOGIES	4
	6.2 APPROVED LEAVE OF ABSENCE	4
	6.3 APPLICATIONS FOR LEAVE OF ABSENCE	4
7	DECLARATION OF INTERESTS.....	4
8	CONFIRMATION OF MINUTES.....	4
9	PRESENTATIONS	4
	9.1 PETITIONS.....	4
	9.2 PRESENTATIONS	4
	9.3 DEPUTATIONS	4
10	REPORTS	5
	10.1 PLANNING	5
	10.1.1 NO. 108 BROOME STREET - PATIOS & BALCONIES	5
	10.1.2 REQUEST FOR CLOSURE OF PORTION OF RIGHT OF WAY NO. 32 (WESTERN, NORTH-SOUTH SPUR TO JOHN STREET)	13
	10.1.3 JOHN BLACK DUNE PARK DRAFT CONCEPT PLAN	20
11	ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	23
12	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:.....	23

	12.1	ELECTED MEMBERS.....	23
	12.2	OFFICERS	23
13		MEETING CLOSED TO PUBLIC	23
	13.1	MATTERS FOR WHICH THE MEETING MAY BE CLOSED	23
	13.2	PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC.....	23
14		MEETING CLOSURE.....	23

1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

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

2 DISCLAIMER

The Presiding Member drew attention to the Town's disclaimer.

3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil.

4 PUBLIC QUESTION TIME**4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

4.2 PUBLIC QUESTIONS

Nil.

5 PUBLIC STATEMENT TIME

Ms Ruth Greble, 47 John Street Cottesloe, re Item 10.1.2 – Request to Close ROW 32

Ms Greble spoke in support of the officer recommendation and appreciated the detailed report. She referred to emailed comments and elaborated upon them, including the lane's importance for pedestrian usage, vehicle circulation and emergency vehicle access. Ms Greble took the opportunity to draw attention to the poor state of the main laneway due to construction traffic (photos tabled) and the need for repairs.

Ms Deborah Escott, 6 Riversea View, Mosman Park, re Item 10.1.1 – No. 108 Broome Street

On behalf of the owners of the property Ms Escott summarised the benefits of the proposal and was grateful for the support in-principle outlined in the report. She explained that the proposal had taken a long time to get to this point amongst the strata owners and expressed concern about delay in approval being made possible under the new Scheme. She indicated limiting the scope of the project in anticipation that it could be progressed, such as important repairs and improvements.

6 ATTENDANCE**Present**

Cr Peter Jeanes
Mayor Jo Dawkins

Presiding Member

Cr Philip Angers
Cr Jack Walsh
Cr Katrina Downes

Officers Present

Mr Carl Askew	Chief Executive Officer
Mr Andrew Jackson	Manager Development Services
Mr Ed Drewett	Senior Planning Officer
Mrs Liz Yates	Development Services Administration Officer

6.1 APOLOGIES

Cr Helen Burke

Officer Apologies

Mr Ronald Boswell

6.2 APPROVED LEAVE OF ABSENCE

Nil.

6.3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

7 DECLARATION OF INTERESTS

Nil.

8 CONFIRMATION OF MINUTES

Moved Mayor Dawkins, seconded Cr Walsh

[Minutes July 21 2014 Development Services Committee.docx](#)

The Minutes of the Ordinary meeting of the Development Services Committee, held on 21 July 2014 be confirmed.

Carried 5/0

9 PRESENTATIONS

9.1 PETITIONS

Nil.

9.2 PRESENTATIONS

Nil.

9.3 DEPUTATIONS

Nil.

10 REPORTS

10.1 PLANNING

10.1.1 NO. 108 BROOME STREET - PATIOS & BALCONIES

File Ref: 2959
Attachments: [108 Broome Street Aerial](#)
[108 Broome Street Plans](#)
[108 Broome Street Property Photo](#)
[Concept Image](#)

Responsible Officer: Carl Askew
Chief Executive Officer

Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 18 August 2014

Author Disclosure of Interest: Nil

Property Owner: S Murphy; Rallim Nominees Pty Ltd;
L & B Williams; T Lattimore; L Williams &
K Tucker; and D Escott

Applicant: Owners as above

Date of Application: 19 June 2014

Zoning: Residential R20

Lot Area: 1399m²

SUMMARY

The proposal is to add a patios/balconies structure to the front of an existing apartment complex facing Broome Street, in order to improve the building's condition, amenity and aesthetics. The details are shown on the attached plans and the 3D image illustrates how the building would be transformed.

The proposal is assessed as having merit, but is found to be restricted by the height provisions of LPS3, which has wider implications for the district. Therefore, the recommendation at this stage is to defer determination of the application pending consideration of a Scheme amendment to address the overall question of managed discretion in the height provisions.

BACKGROUND

108 Broome Street is a three-storey block of 18 units on the corner of Loma Street and was built in about 1970. It is a rudimentary design of the times constructed of salmon brick and concrete with a low-pitched hipped roof. The building is prominent yet plain and sits relatively comfortably in the elevated landscape with other large buildings nearby, including the Civic Centre. The property is well-maintained and the two street frontages are unfenced, whereby the lawns, garden and grassed verges provide substantial physical and visual setbacks.

The proposal is to add a structure comprising patios to the two ground floor units and balconies to each of the two second and third storey units on the Broome Street

western frontage. This is in order to create private outdoor spaces for those units and to improve the appearance of the building, including rendering that façade.

The application is made by the six unit owners involved and supported by the strata company. The owners' spokesperson has liaised with the Town, together with the designer, to evolve the proposal. The initial design was for a larger, bulkier and busier structure, but the Town encouraged revised plans for a smaller footprint and simpler structure with a lightweight presence and streamlined aesthetic. The slender pole structure, clear glass balustrades, absence of screens and reverse-pitched roof are intended to minimise physical and visual impact. Combined with conversion of the windows to sliding doors and the rendered wall, this would present a fresh face to Broome Street and be compatible with the form and style of the building.

The strata company is to manage the amenity of the patios/balconies through by-laws requiring uniform outdoor furniture and preventing use of the private open spaces for bicycles, storage, laundry drying or noisy activities.

STRATEGIC IMPLICATIONS

Nil.

POLICY IMPLICATIONS

Nil.

STATUTORY ENVIRONMENT

LPS3 and RDC.

FINANCIAL IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Nil.

CONSULTATION

The proposal was advertised to the two closest neighbouring properties, being the two-storey dwelling adjoining to the south and the two-storey dwelling across Loma Street to the north. The owners to the north have viewed the plans, expressed support for enhancement of the building and provided an email raising no objection. No submission has been received from the neighbouring owners to the south, who have been contacted and have verbally indicated no objection.

PLANNING ASSESSMENT

In Cottesloe there is a trend for older housing stock to be upgraded, improving and maintaining existing buildings in established streetscapes, including numerous grouped dwellings (townhouses) or multiple dwellings (units/apartments) usually in strata ownership. For example, a similar three-storey block of units on the corner of Broome and Napier Streets has been rendered and otherwise upgraded, while in other locales townhouses have been extended with reduced setbacks, added balconies and other features.

The subject units are two-bedroom and small at 50sqm and lack outdoor courtyards or balconies. They are orientated due west with no protection from the sun, rain and wind – weather protection of the wall and windows is one reason for the proposal. The proposed patios/balconies are each 6.9m wide by 3.5m deep, equating to some 24sqm of private open space (ie, half the internal floor-space), and would be accessible from the main bedrooms and living rooms. This is a comparatively generous size, although the dimensions are for shelter/shade and sufficient depth is for outdoor furniture. As occupancy of the units is typically one or two persons, use of the patios/balconies would mostly be limited likewise.

A technical assessment of the proposal follows.

Height

The existing building predates the height regimes of former TPS2 and new LPS3. It is a relatively squat three storeys with a roof ridge height of approximately 8.7m towards Broome Street; ie, not much more than the 8.5m maximum building height standard for two storey dwellings and significantly less than the 11.5m measure for three storey buildings under LPS3.

The proposal matches the roof ridge of the existing building and measured at the ground level immediately below the highest point of the additional roof represents a building height of 9.1m; ie some 0.6m above the LPS3 8.5m standard. Although the proposed structure is not enclosed, the effective wall plane height to the underside of the roof extension is approximately 8.8m.

Under LPS3 – which governs height rather than the RDC – building height is prescribed by Table 2, which for residential development in the Residential zone is limited to two storeys. The Scheme contains reduced discretion to vary the height provisions in respect of residential or other development. Previous TPS2 height discretion on the bases of topography, extensions to existing buildings and heritage buildings has not been carried-over into LPS3, which is a marked change that constrains the design and consideration of proposals.

There is, however, specific discretion for Council to consider a third storey in the roof space of a dwelling, in the same manner as under former TPS2, but that does not apply to this proposal. There is also specific discretion for Council to consider a third storey in the case of the redevelopment of existing grouped or multiple dwellings, in clause 5.3.5 which reads:

Despite anything contained in the Residential Design Codes and notwithstanding the density codes shown on the Scheme Map, existing grouped dwellings or multiple dwellings that exceed a density code shown on the Scheme Map at the Gazettal date of the Scheme can, with the approval of the local government, be redeveloped at a density higher than that shown on the Scheme Map, equal to, but not exceeding the existing built density, subject to the proposed development —

- a) *complementing the character of the streetscape;*
- b) *not detrimentally increasing the mass, scale or surface area of the development relative to existing development on surrounding properties;*

- c) *resulting in improved landscaping of the land;*
- d) *providing adequate and safe means of vehicular and pedestrian access to the land; and*
- e) *providing an adequate number of car parking spaces on the land.*

Furthermore, and notwithstanding any other clause in this Scheme, the proposed development may be considered for additional building height (maximum one additional storey) over the prevailing permissible building height for the locality where, in the opinion of the local government, the original number of dwellings (and their replacement plot ratio) cannot be appropriately accommodated on the lot without an increase in height.

This provision is premised on accommodating pre-existing density and to achieve that may permit reproducing, or introducing, a third storey, subject to the satisfaction of criteria which are reflective of matters discussed in assessing this proposal. Underlying the provision is:

- Recognition of the existence of over-density and over-height residential buildings in the district – about a third of all housing stock is non-single dwellings and numerous properties are three storeys or more.
- Recognition that those buildings, which are typically in multiple strata ownership, may generate redevelopment proposals seeking retention of the number of units and a degree of building height.

Yet it is observed that due to multiple ownership and redevelopment costs/logistics, upgrading of and extensions to these dwellings is more likely than demolition and redevelopment – the former would retain existing heights over two-storey and preserve the longevity of the buildings whilst improving lifestyle amenity and asset values.

This provision may be open to interpretation insofar as whether “redevelopment” implies complete or partial development, because proposals to partially upgrade/extend existing grouped or multiple dwellings will continue to be received, for changes to some or all of the dwellings (eg, adding en suites, storerooms, balconies). A conservative interpretation would be construction of a whole new building(s).

Also under LPS3 the consideration of building height is more broadly guided by matters for Council to have due regard to in assessing proposals, which in relation to this application and height include:

- *The relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal.*
- *The effect of the proposal on the maintenance and enhancement of important views to and from public places, including views to the public domain and views of the coastal and inland landscapes, and the need to control the position, height, setback and design of the proposal in the interest of important views to and from public places.*
- *The compatibility of a use or development with its setting.*

- *The preservation of the amenity of the locality.*

In these and related respects the proposal may be considered acceptable in terms of the physical height in itself, albeit not compliant with the two-storey restriction under LPS3.

In summary, while LPS3 is not explicit in how to approach the situation it is apparent that:

- In the absence of express prescription to deal with the proposal, and with the framework of planning principles and assessment criteria set out, there is difficulty in applying LPS3 and in dealing with the proposal or similar ones.
- Not having the capacity to entertain and determine such proposals seems unduly restrictive.
- The spirit of clause 5.3.5 contemplates proposals for existing over-density and over-height buildings, but appears focussed on wholesale redevelopment.
- Taking that Council is unable to approve the proposed height under LPS3, but that the design concept and RDC elements of the proposal are assessed as reasonable, the application ought to be deferred rather than refused, and amendment of the Scheme considered to address appropriate discretion in the height provisions.

Open space (site cover)

The site has ample open space and the proposed addition does not compromise the RDC R20 single dwelling standard of 50%.

Setbacks

The existing building has setbacks of over 7.8m from Broome Street and 7.6m from Loma Street, which are greater than the 6m setback standard associated with R20 areas. Although the property's address is Broome Street, functionally the building's main entrances and letterboxes are to Loma Street, with none to Broome Street, whereby the western façade is actually a side wall.

On this basis Loma Street satisfies the 6m setback standard for a primary street and Broome Street may be assessed as the secondary street with a lesser setback standard. The RDC R20 standard for a secondary street setback for a single dwelling, or for a multiple dwelling in a medium density-coded area, is 1.5m – albeit considered inappropriate in this context.

The proposal is to occupy less than half of the setback from the Broome Street property boundary with the open-aspect patios/balconies structure, resulting in a setback of almost 4.4m. This complies with the above standard. Nonetheless, the RDC design principles below, albeit not invoked, may be had regard to in appreciating the street setback.

5.1.2 Street setback

P2.1 Buildings set back from street boundaries an appropriate distance to ensure they:

- *contribute to and are consistent with an established streetscape;*
- *provide adequate privacy and open space for dwellings; and*
- *accommodate site planning requirements such as parking, landscape and utilities.*

P2.2 Building mass and form that:

- *uses design features to affect the size and scale of the building; and*
- *positively contributes to the prevailing development context and streetscape.*

To Broome Street the proposal would retain the landscaping along the footpath and coupled with the wide, grassed verge sloping away from the property would still afford a sense of separation and relief between the proposed addition and the street. To Loma Street the greater setback would remain and the shrubs/trees on site plus the verge trees opposite would screen the northern elevation from view. The southern adjacent property contains private open space with the dwelling some distance removed, and no submission has been received from those neighbours.

It would be possible to reduce the depth of the patios/balconies by 0.5m to 3m for a little more separation from the footpath, but that would be the minimum for usability of the patios/balconies and only a marginally discernible difference visually. On balance, while the existing more-than-compliant Broome Street setback would be decreased, it is assessed that the topography, streetscape characteristics and built form mean that the proposal would be absorbed by this setting, reading as a logical design and development. This is reflected by the large scale of the Civic Centre and the forward extensions (including an upper-level balcony) to the two dwellings opposite.

Privacy/overlooking

The block of units has overlooked the southern adjacent property for many years, which comprises a disused tennis court lot immediately adjacent then another lot with the dwelling. As such the overlooking is not directly into the dwelling or its individual lot and the units are separated from it by more than the 7.5m privacy threshold.

Technically, however, as the proposed patios/balconies on their southern side are setback just over three metres from the southern boundary, the RDC design-principles below are invoked to assess privacy.

5.4.1 Visual privacy

P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:

- *building layout and location;*

- *design of major openings;*
- *landscape screening of outdoor active habitable spaces; and/or*
- *location of screening devices.*

P1.2 Maximum visual privacy to side and rear boundaries through measures such as:

- *setting back the first floor from the side boundary; and/or*
- *screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).*

In this respect the privacy interrelationship may be supported given: the existing overlooking arrangement; that screening is provided at ground-floor level by the dividing fence and above that level by mature trees; and that the desire-lines for views are to the ocean and sunsets to the west and along the street in both directions rather than into the neighbouring property – the balconies would look-over or beyond rather than overlook. It would, nonetheless, be possible to setback this side of the proposal by another metre, although it is considered that would not make a great deal of difference to the outlook.

Furthermore, the patios/balconies are deliberately unscreened in order to afford views, light, sunshine and air flow, minimise mass and soften streetscape appearance, wherein the structure would be visually permeable to passers-by and from nearby properties. Also, no submission has been received from the southern neighbours.

Overshadowing

Overshadowing by the entire building including the proposed addition is calculated at 42% of the southern adjacent property. This exceeds the RDC deemed-to-comply standard of 25% for an R20 area assuming a single dwelling, and is due to the three-storey scale of the building as well as the lower level of the adjacent property. However, the bulk of this overshadowing is inevitably caused by the existing building, while the proposed roof creates only 31sqm of additional shadow. Hence the RDC design principles below are invoked to assess the overshadowing.

5.4.2 Solar access for adjoining sites

P2.2 Development designed to protect solar access for neighbouring properties taking account the potential to overshadow existing:

- *outdoor living areas;*
- *north-facing major openings to habitable rooms, within 15 degrees of north in each direction; or*
- *roof-mounted solar collectors.*

In this respect, because the southern property is essentially a tennis court site, the overshadowing avoids directly affecting the dwelling and can be allowed. Also, the shadow from the addition falls as a narrow band within the 6m front setback of that

site, rather than the inward portion available for a possible future dwelling and private open space. Again, no submission has been received from the southern neighbours.

CONCLUSION

The concept of providing private open spaces, protecting the building and improving its appearance has merit. Upgrading ageing housing stock is supported in-principle for neighbourhood amenity and attractive streetscapes. This almost always entails a degree of discretion to bring about the benefits whilst achieving an acceptable outcome.

Fundamentally, the suitability of the proposal is its open-aspect form and effect, compared to a solid wall building extension, and the manner in which it would improve the streetscape. In supporting the proposed addition and setbacks, further development in the Broome Street frontage or future fencing to the street frontages may not be favoured.

Despite the above, it is concluded that the LPS3 height provisions proscribe Council's ability to deal with proposals of this type. Deferring the application and addressing discretion in the Scheme is recommended as the preferred response.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the proposal and the Scheme provisions at some length and the Manager Development Services explained how the new Scheme worked compared to the previous one. Committee was generally supportive of the proposal in-principle, while also considering that the front setback could perhaps be increased and that screening on the northern elevation would appear desirable. In discussing the recommendation of a Scheme Amendment to address the situation, Committee indicated that it should not lift the basic two storey height limit for residential development.

OFFICER & COMMITTEE RECOMMENDATION

Moved Mayor Dawkins, seconded Cr Downes

THAT Council:

- 1. Note the officer advice in the report and in the circumstances DEFER determination of the application for the proposed patios and balconies addition at 108 Broome Street, Cottesloe, as shown in the revised plans received on 22 July 2014.**
- 2. Request staff to report to Council on a potential amendment to Local Planning Scheme No. 3 to incorporate a reasonable degree of carefully-guided discretion into the height provisions for residential and other development, including existing buildings.**
- 3. Advise the applicants accordingly.**

Carried 5/0

**10.1.2 REQUEST FOR CLOSURE OF PORTION OF RIGHT OF WAY NO. 32
(WESTERN, NORTH-SOUTH SPUR TO JOHN STREET)**

File Ref: SUB/272
Attachments: [Request for Closure](#)
[ROW 32 Lot View](#)
[Checklist](#)
[ROW 32 Photos](#)
Responsible Officer: Andrew Jackson
Manager Development Services
Author: Ed Drewett
Senior Planning Officer
Proposed Meeting Date: 18 August 2014
Author Disclosure of Interest: Nil

SUMMARY

A request has been made by TPG Consultants on behalf of the owners of Nos. 96-98 and 100 Broome Street and 41 John Street to initiate the closure of the western, north-south spur of ROW 32. It is understood that the adjoining owners are all related to each other making agreement for purchase and amalgamation easier.

This section of ROW is relatively short and narrow but is trafficable and provides an alternative access route for vehicles and pedestrians, particularly to and from the rear of properties using the main east-west ROW 32 located at its southern end.

It is considered that insufficient justification has been provided by the applicant to warrant the permanent closure of this section of ROW and an initial assessment by the Town indicates that Council does not have sufficient reason to depart from its general presumption to keep laneways open, or have enough evidence to produce a suitable *Information Report* required for public advertising, or to provide to the Department of Lands (DoL), the Western Australian Planning Commission (WAPC) and the Minister for Lands sufficient justification for closure.

POLICY IMPLICATIONS

- Rights of Way/Laneways Policy adopted May 2014.

This Policy advises:

As a general rule it is Council policy to keep laneways open, even if unconstructed.

FINANCIAL IMPLICATIONS

- Administrative cost to Council – owner could be asked to pay.

STATUTORY ENVIRONMENT

The ROW was transferred by the Town to the Crown in September 2010.

PROCEDURE

The *Crown Land Administration and Registration Practice Manual* (July 2013) advises that an abutting landowner wishing to seek the permanent closure of a public road or laneway initially is required to approach the local government to enquire as to whether or not it is prepared to undertake road closure. The process must be in accordance with Section 58 of the *Land Administration Act* (LAA), Closure of Roads.

In general terms, a closure of a ROW should not proceed without the council and DoL taking into consideration matters including, but not limited to, the following:

- consideration of equity of access, particularly with regard to disability and age;
- agreement being reached for either acquisition and inclusion of the subject land in adjoining properties, or for other acceptable land management arrangements;
- evidence that arrangements have been made to protect or relocate any public utility services located within the ROW;
- evidence that reasonable objections to the closure raised by adjacent property owners and owners and residents of properties served by the ROW have been addressed; and
- evidence that relevant transport and planning considerations have been taken into account and issues raised by DoL and other relevant government departments has been properly considered.

Subject to the LAA requirements being complied with and there being no impediment to closure, Council is then required to resolve whether or not to proceed with permanent road closure and advise DoL in writing. However, if Council wishes to not proceed with this format because it does not support the requested closure, then the matter stops with that resolution.

Council must not resolve to close a ROW until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution and it has considered any objections made to it within that period concerning the proposals set out in that notice.

A resolution of Council recommending closure of a ROW is required prior to the Minister for Land's consideration of the proposal, and the DoL will only recommend closure of a ROW to the Minister where it has been requested by Council and is submitted with all relevant documents set out in the attached checklist (See Table B).

Where Council receives a request to close a ROW it can charge an administrative fee to cover its costs. Such administrative fee may be supported under Subdivision 2 of Division 5 of Part 6 of the *Local Government Act 1995* as a fee imposed for the supply of a service at the request of a person. Where Council proposes to apply a fee it should comply with the provisions set out in Division 5 of Part 6 of that Act.

As Council does not receive many ROW closure requests it does not have a fixed fee applicable to this type of application. However, all administrative costs associated with closure could be passed on to the applicant.

ASSESSMENT REQUIREMENTS

An initial assessment following the request to close a ROW should include the following actions:

- consideration of the impact of closure of the accessway on local pedestrian/cycle connectivity, that is, the additional distance required to be travelled to get from one end of the ROW to the other after closure, as well as the impact on traffic and activity on remaining ROWs;
- consideration of the impact of closure of the ROW on safe access to neighbourhood and district facilities, including:
 - schools and other educational facilities,
 - shopping facilities,
 - parks and recreation facilities,
 - community facilities,
 - employment,
 - public transport services, including bus stops and train stations, and
 - aged person and disabled facilities;
- preparing documentation on the impact of closure by a walkable assessment (“ped-shed”) analysis, notionally for all affected areas within 400m of neighbourhood facilities (listed above) and bus stops, and for all affected areas within 800 metres of a town centre, railway station, arterial bus route, high/technical school and district open space;
- consideration of the role of the ROW as part of a wider pedestrian/cycle network or continuous access routes, as reflected in any local access plan or in any Local Planning Strategy;
- consideration of the length of alternative routes and their safety, extent of surveillance, amenity, usability, gradient and convenience of use, especially for the disabled and elderly;
- consideration of the crime/social difficulties being experienced by the adjoining landowners should be documented and supporting evidence provided;
- taking into account the views of the adjoining landowners to the ROW closure and obtaining a general commitment to purchase the land following the closure of the ROW – the application will not proceed unless the whole of the land the subject of the ROW can be sold or reserved;
- have some idea of the valuation of the land comprising the ROW to identify an estimated or conditional purchase price;

- consideration of the alternatives to ROW closure, including but without limiting the following:
 - temporary closure, where practical;
 - improvements to safety and security, for example, lighting, active graffiti removal where funding is available;
 - longer term redevelopment opportunities through local planning reviews to allow up-coding of lots adjacent to essential ROW, conditional on widening of ROW to laneways and new frontage development;
 - more effective barriers (for example, higher fencing and prickly plantings which discourage access) separating private properties from adjacent ROW; and
 - gates, open during daylight hours and locked at nights.

If Council resolves to proceed with the closure request it is required to prepare a summary report for DoL including:

- an *Information Report* prepared for public advertising that outlines the impact of the closure on walkability to facilities, alternative access paths, if the ROW does/does not form part of a necessary continuous access system;
- consideration of alternatives to closure;
- details of the consultation process;
- the number of objections and support, plus comments;
- documentation of the anti-social behaviour and crime being experienced;
- DoL and WAPC approval to the closure request and other relevant government agencies' comments;
- copies of letters from the adjoining landowners concerning the land-sharing arrangement;
- concept sketch-plan of land allocation to adjoining owners. The sketch-plan will need to identify the easements required under section 27A of the PDA or section 144 of the LAA;
- copies of all letters from service agencies including advice regarding any easements required by the local government for drainage, etc; confirmation that the local government has resolved to recommend ROW closure.

In addition to the above, Council should advise the adjoining landowners of its recommendation on closure to the DoL by letter, and any objectors should be advised of Council's recommendation and the reasons for it.

ASSESSMENT

The ROW spur requested for closure is approximately 39.5m long and 2.7m wide and forms one of two north-south orientated spurs located on the southern side of

John Street. Both these spurs currently provide vehicle access to and from the east-west orientated ROW 32 which is located at the rear of the properties between John Street and Forrest Street. The western end of ROW 32 also has vehicle access to Broome Street, although its width remains relatively narrow at just 2.7m. A third north-south spur exists off the eastern end of ROW 32 but this does not physically connect with the east-west ROW and so cannot be used by vehicles. Furthermore, ROW 32 becomes steep and unsealed at its eastern end and does not allow direct vehicle access to Marmion Street from its western end as traffic is diverted back on to John Street. Vehicle access using the western part of ROW 32 is therefore restricted to either John Street via the two spur sections or onto Broome Street.

Closure of either of these access points could result in difficulties for existing users as many properties use the main east-west section of ROW 32, as their primary vehicular access, especially those fronting Forrest Street which do not have alternative street access available. In addition, a new double garage is currently under construction at the rear of 52 Forrest Street which is almost directly opposite the southern end of the ROW spur that is proposed to be closed. The closure would therefore necessitate that property's vehicles to either enter or leave via Broome Street or John Street via the eastern spur which would be less convenient.

Current planning approvals also exist for additions to 48 Forrest Street which extend up to a portion of the east-west section of ROW 32; and to 96-98 Broome Street which proposes new vehicle access to/from this part of the ROW, thereby removing existing garages from the western spur proposed to be closed but intensifying the use of the western section of ROW 32.

Other points required for consideration by Council are summarized as follows:

- Reduced accessibility to the east-west section of ROW 32 from John Street could create difficulty for vehicle users, especially for the elderly or disabled.
- Traffic and activity on the remaining ROW and eastern spur section is likely to increase due to fewer alternative access points being available to adjoining owners.
- Access along ROW 32 to the eastern spur is relatively narrow and steep and necessitates vehicles making a sharp angled turn to get in or out, which may be awkward for drivers. This contrasts with the western spur which is located directly off a sealed section of ROW 32 and is flat with a loose gravel surface making it a suitable alternative for vehicles and pedestrians.
- The applicant has advised that increased foot traffic through the area has resulted in the owners adjoining the western spur experiencing an increase in petty criminal activity. However, there is no documented and supporting evidence provided and the fact that there is an increase in people using the ROW spur further suggests that its closure may well impact on the public.
- No estimated purchase price for the ROW spur has been provided by the applicant and therefore this would need to be undertaken by Council were closure to proceed and this would then need to be accepted by the adjoining

owners who are required to purchase it and amalgamate it into the adjoining lots.

- No alternatives to the ROW closure appear to have been considered by the applicant, such as security lighting along the ROW, anti-graffiti coating of walls if necessary, increased fencing heights or planting to discourage entry to the adjoining lots from the ROW.
- Closure of the ROW would remove vehicle access to the existing garages located at the rear of Pine Court at 96-98 Broome Street and could leave the property without any alternative on-site parking if the recently approved additions on the lots are not carried out, as has happened recently at 48 Forrest Street, directly opposite on the main ROW.
- The applicant has advised that the existing ROW is unkempt and primarily used by pedestrians as a means to get to the Cottesloe foreshore from the train station. However, as previously mentioned, the ROW spur actually appears in reasonably good condition, is fairly level, with a loose gravel base and is suitable for vehicles to use, with a well-constructed concrete crossover located onto John Street. It is also difficult to understand why it would be attracting a large amount of foot traffic from the train station to the foreshore as ROW 32 is not the most direct route for pedestrians to take and the new Forrest Street dual-use path is the more likely route for beach-going pedestrians to use. No specific evidence has been provided by the applicant to verify this statement.
- The applicant has also advised that the western spur only provides access to Lots 700, 703 and 44 Broome Street and Lot 41 John Street and its closure would not inconvenience other land owners. This statement does not appear correct as the garage currently under construction at the rear of 52 Forrest Street would presumably have direct access from it, and others using the east-west section of ROW 32 could equally use it and it may be a preferred route if the proposed developments adjoining the western section near Broome Street were to commence, possibly creating a need for temporary closure of the ROW. Recent demolition and excavation works at the rear of 48 Forrest Street also may have undermined the strength of the western section of ROW 32 and this could potentially fail if it were subject to increased traffic movements.
- The western spur continues on the northern side of John Street and forms part of an overall network of adjoining ROWs on both sides of the street giving alternative vehicle access to owners of adjoining lots. Although some of these may currently not be well used that is not to say that future development and/or subdivision in the area would not take advantage of this existing system of laneways.
- A preliminary assessment of services within the relevant section of the ROW does not reveal any impediment to closure, but comments from relevant service providers would still be necessary were closure initiated.

CONCLUSION

The proposed permanent closure of the western, north-south orientated spur of ROW 32 has not been adequately justified by the applicant and does not appear appropriate based on the information provided and the initial assessment that has been undertaken by the Town. Furthermore, for the reasons outlined in this report it is unlikely that the DoL, the WAPC or the Minister for Lands would be supportive of the proposal as submitted and it is anticipated that objections are likely from affected owners/residents and the public were it advertised. The proposal could also set an undesirable precedent for similar requests for ROW closures, which would conflict with the intent of Council's ROWs/Laneways policy.

Should Council decide that the proposed ROW closure has merit then an *Information Report* is required to be prepared for public inspection during the advertising period which summarises the relevance of the accessway, the impacts of the closure on access to facilities, including a 'ped-shed'/walkability analysis, alternative routes and their safety, and social/crime problems being experienced.

Notification signs would also have to be placed at each end of the ROW stating that closure is being considered and that an *Information Report* outlining issues relating to closure is available for public inspection. This is in addition to an advertisement being placed in a community newspaper, an advisory letter-drop to residents within the affected area as indicated by the 'ped-shed' analysis, notification to public utility service providers, referral to the DoL and WAPC, a sketch-plan showing proposed land allocation to adjoining owners following closure, and a valuation being obtained to establish the cost of purchasing the land by the adjoining owners and agreement by them to purchase and amalgamate it into their lots. Council would then be required to consider all the submissions received and resolve whether the ROW should still be recommended for closure. However, the Minister for Lands retains final statutory discretion on the disposition of the ROW under the powers contained in the LAA.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee agreed with the assessment that the section of lane should not be closed. Committee also requested that staff pursue repair of the main lane and examine whether its eastern end could be engineered/upgraded to be trafficable.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Walsh, seconded Cr Angers

THAT Council not support the request for permanent closure of the western, north-south spur of ROW 32.

Carried 5/0

10.1.3 JOHN BLACK DUNE PARK DRAFT CONCEPT PLAN

File Ref: SUB/1804
Attachments: [Draft Concept Plan](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 18 August 2014
Author Disclosure of Interest: Nil

SUMMARY

This report presents the draft concept plan for John Black Dune Park (JBDP) and recommends the Town undertake the community consultation. The plan is an attachment.

BACKGROUND

The impetus for a concept plan for JBDP stems from the Foreshore Redevelopment Plan and Council's support for the Tennis Club expansion proposal (recently approved by the WAPC). In considering such in November 2013 Council resolved to: *Reaffirm its commitment to maintain as much of John Black Dune Park as possible as a reserve for community use, as expressed in the Natural Areas Management Plan.*

The initiative has subsequently been addressed by staff and a specialist environmental/landscape design consultancy. Preparation of the draft concept plan has entailed consultation with Coastcare and the Tennis Club. The draft plan has also been presented to the Foreshore Working Group, with Coastcare attending, as well as circulated to Elected Members for information and any preliminary comment. These forums have provided useful feedback to date and indicated overall support to progress the project to community consultation and potential implementation through the use of funds from the sale of the depot.

It is emphasised that:

- The draft plan is based on botanical and other information provided by Coastcare, together with the consultant's research, expertise and experience, and takes into account the Tennis Club expansion.
- The draft plan represents value for money and has deliberately illustrated a notional end-state plan in order to gain constructive comments, rather than be conceptually vague and insufficient to convey a vision.
- The draft plan nonetheless remains entirely open to revision and evolution having regard to submissions and other considerations in finalising a proposal.

STRATEGIC IMPLICATIONS

Relates to Council's long-term planning for the district, particularly the foreshore and beachfront area.

POLICY IMPLICATIONS

Relates to Council's policy framework for the provision and management of public open space.

STATUTORY ENVIRONMENT

Metropolitan Region Scheme.

FINANCIAL IMPLICATIONS

Currently, the costs of consultants and consultation.

In future, the costs of detailed design and implementation involving consultants, contractors, materials and works.

STAFFING IMPLICATIONS

Project management, consultation, administration and Council reporting.

SUSTAINABILITY IMPLICATIONS

Relates to a range of environmental sustainability measures.

PROPOSED CONSULTATION

In addition to the specialised consultation carried out so far, it is now proposed to undertake community consultation on the draft concept plan, comprising:

- Coverage in *The Post* – display advertisements inviting submissions, *Cottesloe Council News* page article.
- Website display, with the ability to submit comments on-line.
- Civic Centre Notice Board display.
- Letters to adjoining properties along Napier Street, Bryan Way and Gadsdon Street.
- Letters to Coastcare, the Tennis Club and SOS.

This is in accordance with Council's consultation policy whereby the draft concept plan is a combination of an area improvement and strategic matter. The consultation phase is to be instigated as soon as practicable for a period of four weeks. The advertising will communicate that the draft concept plan is just that and the next steps in achieving a final plan for Council's consideration of adoption and implementation.

Submissions received will be assessed and considered by staff and the consultant, for further reporting to Council towards a proposed final plan and implementation strategy.

Amongst other matters, design details to be considered will include: the balance of active and passive recreational space and vegetation; the nature, degree and distribution of formal landscaping features and structures; etc. Project aspects to be considered will include: planning and building approvals; the cost, funding and timing/staging of works (as well as any tenders etc required); ongoing management and maintenance, with the involvement of community groups; and so on.

Advancing the plan in this manner will assist in timely coordination and integration with the intended Tennis Club expansion.

VOTING

Simple Majority

COMMITTEE COMMENT

Committee discussed the concept plan proposal at some length including the balance of active versus natural areas, public facilities, potential costs and maintenance/irrigation, as well as the plan information/notations which could be streamlined. The Manager Development Services explained the background of the Natural Areas Management Plan and consultation with Coastcare in preparing the draft plan. It was concluded that Committee members' comments would be gathered and reflected in an amended recommendation prepared for Council describing revisions to the plan desired prior to community consultation.

OFFICER RECOMMENDATION

Moved Cr Walsh, seconded Cr Angers

THAT Council notes this progress report on preparation of a draft concept plan for John Black Dune Park and endorses the Town undertaking a community consultation phase as described.

AMENDMENT

Moved Cr Jeanes, seconded Mayor Dawkins

That the following wording be added at the end of the recommendation: ". . . subject to any prior revision of the draft plan as agreed by Council."

Carried 4/1

COMMITTEE RECOMMENDATION

Moved Cr Jeanes, seconded Mayor Dawkins

THAT Council notes this progress report on preparation of a draft concept plan for John Black Dune Park and endorses the Town undertaking a community consultation phase as described, subject to any prior revision of the draft plan as agreed by Council.

AMENDED SUBSTANTIVE MOTION WAS PUT

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:

12.1 ELECTED MEMBERS

Nil.

12.2 OFFICERS

Nil.

13 MEETING CLOSED TO PUBLIC

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 7:10 PM.

CONFIRMED MINUTES OF 18 August 2014 PAGES 1 – 23 INCLUSIVE.

PRESIDING MEMBER:
POSITION:

.....

DATE: / /