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ORDINARY COUNCIL MEETING

**Minutes of the Ordinary Meeting of the City of South Perth Council
held in the Council Chamber, Sandgate Street, South Perth
Tuesday 22 July 2008 at 7.00pm**

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Mayor opened the meeting at 7.00pm and welcomed everyone in attendance. He then paid respect to the Noongar people, custodians of the land we are meeting on and acknowledged their deep feeling of attachment to country.

2. DISCLAIMER

The Mayor read aloud the City's Disclaimer.

3. ANNOUNCEMENTS FROM THE PRESIDING MEMBER

3.1 Activities Report Mayor Best

The Mayor advised his Activities Report for the month of June is attached to the back of the Agenda paper.

3.2 Audio Recording of Council Meeting

The Mayor reported that the meeting is being audio recorded in accordance with Council Policy P517 "Audio Recording of Council Meetings" and Clause 6.1.6 of the Standing Orders Local Law which states: "*A person is not to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council without the permission of the Presiding Member*" and stated that as Presiding Member he gave his permission for the Administration to record proceedings of the Council meeting.

3.3 Speak with Confidence Awards

The Mayor made a statement regarding this matter at Item 8.2.3 'Presentations'

4. ATTENDANCE

Present:

Mayor J Best

Councillors:

G W Gleeson	Civic Ward
I Hasleby	Civic Ward
P Best	Como Beach Ward
B Hearne	Como Beach Ward
L P Ozsdolay	Manning Ward
R Wells, JP	McDougall
R Grayden	Mill Point Ward
D Smith	Mill Point Ward
S Doherty	Moresby Ward
K R Trent, RFD	Moresby Ward

Officers:

Mr C Frewing	Chief Executive Officer
Mr S Bell	Director Infrastructure Services
Mr S Cope	Director Development and Community Services
Mr M Kent	Director Financial and Information Services
Ms D Gray	Manager Financial Services
Mr S Camillo	Manager Environmental Health (until 8.05pm)
Mr R Kapur	Acting Manager Development Assessment
Mr N Kegie	Manager Community Culture and Recreation (until 8.20pm)
Mr M Taylor	Manager City Environment
Mr R Bercov	Strategic Urban Planning Adviser
Mr S McLaughlin	Legal and Governance Officer
Miss J Jumayao	Legal and Governance Research/Project Officer
Ms R Mulcahy	City Communications Officer
Mr O Hightower	Planning Officer
Mrs K Russell	Minute Secretary

Gallery There were 12 members of the public and 1 member of the press present

4.1 Apologies

Nil

4.2 Approved Leave of Absence

Cr T Burrows Manning Ward
Cr C Cala McDougall Ward

5. DECLARATION OF INTEREST

The Mayor reported Declarations of Interest had been received from Mayor Best and Crs Ozsdolay, Smith and Trent in relation to Agenda Item 10.2.1 and from the CEO in relation to Agenda Item 15.1.1. He further stated that in accordance with Local Government (Rules of Conduct) Regulations 2007 that the Declarations would be read out immediately before the Items in questions were discussed.

6. PUBLIC QUESTION TIME

6.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

At the Council meeting held 24 June 2008 the following questions were taken on notice:

6.1.1. Mr Barrie Drake, 2 Scenic Crescent, South Perth

Summary of Questions

1. What is the finished floor level of the building at No. 11 Heppingstone Street, South Perth relative to the bridge nail in the bitumen road adjacent to the building which is shown on the 'as constructed drawings' as "TBM RL 3.01 BRIDGE NAIL IN BITUMEN?"
2. I refer to Condition 9 of the Grant of Planning Consent for the same building at No. 11 Heppingstone Street, that: *The south-western facing terraces on Levels 2 and 3 shall be set back 3.0 metres from the lot boundary as shown marked in red on the approved plan.* What is the 'as constructed' setbacks of those terraces from the lot boundary?
3. If landowners choose not to comply with the conditions on the Grant of Planning Consent form, who has the discretionary power to accept this non-compliance by the landowners. Please state specifically who ie the CEO, Elected Members, officers etc. Who has the discretionary power?

Summary of Responses

A response was provided by the Chief Executive Officer, by letter dated 2 July 2008, a summary of which is as follows:

1. As advised in the City's letter dated 11 June 2008, RM Surveys, Licensed Surveyors have confirmed that, relative to the bridge nail in the bitumen road adjacent to the building which is shown on the 'as constructed drawings' as "TBM RL 3.01 bridge nail in bitumen", the Finished Floor Level (FFL) of Level 1 is 4.07 metres and the FFL of Level 4 is 13.51 metres.
2. The City is not able to confirm the 'as constructed' setbacks of the south-western facing terraces on Levels 2 and 3 as these setbacks have not been measured by City officers. To accurately confirm the 'as constructed' setbacks, it would be necessary to engage a licensed surveyor.

If the setbacks of the terraces do not comply with the condition of planning consent, the City's decision on whether to implement enforcement action, would be made according to the City's best interests. Unless the non-compliance resulted in adverse effect on the amenity of neighbouring properties, enforcement action would be unlikely. Inspection of the terraces from the street shows that they do not adversely affect neighbourhood amenity and therefore the engagement of a licensed surveyor to accurately measure the 'as constructed' setbacks could not be justified.

3. As advised in the City's letter dated 11 June 2008, where a building is not constructed in accordance with the building licence drawings and specifications, the discretionary decision as to whether or not to implement enforcement action is made by the City. Under Delegations DC342 and DM342, the City officers authorised to make these decisions are the Chief Executive Officer, the Director, Development and Community Services; the Manager, Development Assessment; and the Strategic Urban Planning Adviser.

6.1.2. Mr Geoff Defrenne, 24 Kennard Street, Kensington

Summary of Questions

1. At last month's meeting, Council adopted the officer recommendation relating to No. 93 South Perth Esplanade. When this development is Strata Titled, what will the size of the parent lot be?
2. Is the Council aware that the only landmark regarding Hovia Terrace was that it was probably the only time a building was assessed completely and correctly and that assessment was by the residents of Kensington?
3. If it is legal to gain plot ratio area on adjoining lease land, will the Council consider leasing part of its street verge to adjoining landowners to add to the permitted plot ratio of the associated development?
4. Will the Council consider a proposal where neighbours of adjoining properties can lease 'surplus' plot ratio to their neighbour? Given that plot ratios are likely to be increased over the years this surplus plot ratio will be absorbed with these changes so that the extra plot ratio will not longer be required?

Summary of Responses

A response was provided by the Chief Executive Officer, by letter dated 2 July 2008, a summary of which is as follows: -

1. The development site comprises Lot 29 (No. 93) South Perth Esplanade, together with the portion of the sewer reserve which traverses that lot. Both the developer and the Water Corporation signed the application form and a portion of the development will be situated over the sewer reserve. The total area of the development site is 1638 sq. metres.
2. It is understood that the question relates to the proposed Canning Mews development on the corner of Canning Highway and Hovia Terrace. The proposition inherent in the question is not correct.
3. Only land owned by the applicant or applicants is able to comprise a development site. Land within a street verge never comprises part of a development site and consequently such land cannot be used for the purpose of plot ratio calculations for any development, other than a corner truncation up to a maximum of 20 sq. metres in accordance with Clause 6.1.2 A2(i) of the Residential Design Codes 2008.
4. The Residential Design Codes do not contain provisions which would enable the Council to approve "surplus" plot ratio for a proposed development, on the basis of leasing a portion of the adjoining property's plot ratio entitlement. The second part of question (4) is hypothetical and therefore a response cannot be provided.

6.2 PUBLIC QUESTION TIME : 22.7.2008

The Mayor advised that Public Question Time would be limited to 15 minutes, that questions, not statements, must relate to the area of Council's responsibility and requested that speakers state their name and residential address. The Mayor then opened Public Question Time at 7:09pm.

6.2.1. Mr Barrie Drake, 2 Scenic Crescent, South Perth

Summary of Question

At the Council Agenda Briefing held on 15 July a question was asked in relation to 11 Heppingstone Street: How many complaints were there about this building? The answer given was: *There were no others.* Why then, did I receive a different answer to the same question when asked at the Council Meeting of 25 May 2004?

Summary of Response

The CEO responded that the answer given at the Agenda Briefing on 15 July 2008 was a qualified response pending further investigation. That investigation has now occurred in anticipation of this question being raised. At the May 2004 Council meeting the answer was given... *that we had received nine items of correspondence in relation to 11 Heppingstone Street.* The majority of those items of correspondence came from yourself, agents or a Lorna Drake of Pemberton with a property interest in Heppingstone Street. Two pieces of correspondence in the form of routine submissions were received following an invitation to comment on the original 2000 development application which is part of the normal process and were more related to a query. We are therefore standing by the response provided that there is certainly no more than one piece of correspondence described as a 'complaint'.

Summary of Question

Therefore, the answer provided at the July Briefing was incorrect?

Summary of Response

The CEO said no, the answer provided was a qualified indication pending further checking.

Summary of Questions

1. Does the building at 11 Heppingstone Street, South Perth comply with Condition (6) of the 8 January 2001 Grant of Planning Consent. Yes or No.
2. Does the building at 11 Heppingstone Street, South Perth comply with Condition (9) of the 8 January 2001 Grant of Planning Consent. Yes or No.
2. Does the building at 11 Heppingstone Street, South Perth comply with Condition (13) of the 8 January 2001 Grant of Planning Consent. Yes or No.

Summary of Response

The CEO responded that the questions were taken on notice

6.2.2. Mr John Stewart, 7 Keaney Gardens, Waterford

Summary of Question

In relation to Item 12 on the Agenda "Use of Council Members Lounge" - What provisions will be made for ratepayers to meet with Councillors in a confidential area.

Summary of Response

The Mayor stated that ratepayers wishing to meet with Councillors would still be able to use the Council Lounge as operational procedures were in place for the staff member temporarily using this area to leave.

6.2.3. Mr Robert Simper, 32 Sandgate Street, South Perth

Summary of Question

I refer to a previously raised issue regarding Council Members \$5,000 discretionary funds and the suggestion that where the money has been spent be made public. What stage are we at with spending that money - where is it going?

Summary of Response

The Mayor advised that as the 2007/08 financial year was now ended that he would be happy to make public, perhaps in the form of a press release, a list of the various projects Councillors have undertaken using their discretionary funds.

6.2.4. Mr Geoff Defrenne, 24 Kennard Street, Kensington

Summary of Question

In accordance with the 2008 R Codes what is the definition of a development site?

Summary of Response

The Strategic Urban Planning Adviser stated that the R Codes do not contain a definition of 'development site'. He further stated that in relation to the proposal at 93 South Perth Esplanade that the Council sought legal advice on what constitutes a development site.

Summary of Question

In accordance with the 2008 R Codes what is the definition of a lot?

Summary of Response

The Strategic Urban Planning Adviser read aloud the definition of 'lot' from the R Codes.

Summary of Question

Does the Council know the definition of a 'lot' as defined in the *Planning and Development Act 2005*?

Summary of Response

The Strategic Urban Planning Adviser stated that there is a long definition in the *Planning and Development Act* which basically mirrors the R Codes however the definition in the Act is more comprehensive and describes other situations not dealt with by the R-Codes definition.

Summary of Question

As the proposed development at 93 South Perth Esplanade is a Grouped Dwelling will the land owned by the Water Corporation be part of the 'parent lot' when or if this development is strata titled?

Summary of Response

The CEO stated that the question was taken on notice.

Note: Cr Hasleby left the Council Chamber at 7.18pm

Summary of Question

In relation to the proposal tonight to amend the Parking Local Law to take into account the Red Bull Air Race, if there are any breaches of the parking local law over that weekend, will Council actively seek breaches of the parking law? Or will Council only act if there is a complaint in respect to a breach of the Parking Local Law?

Summary of Response

The Manager Environmental Health Services responded yes and stated that Rangers would be enforcing the Special Events - Parking Local Law during the Red Bull Air Race.

Summary of Question

How will Council enforce any breaches of the Parking Local Law?

Summary of Response

The Manager Environmental Health Services said officers on patrol during the Red Bull event will issue Infringements Notices for any breaches.

Summary of Question

If Council issues an Infringement Notice for a breach of the Parking Local Laws and the infringement is not complied with, will Council pursue through the Courts if not paid?

Summary of Response

The Manager Environmental Health Services responded yes.

Note: Cr Hasleby returned to the Council Chamber at 7.20pm

Public Question Time

There being no further questions the Mayor closed public question time at 7.20pm.

7. CONFIRMATION OF MINUTES / BRIEFINGS

7.1 MINUTES

7.1.1 Ordinary Council Meeting Held: 24.6.2008

7.1.3 Special Council Meeting Held: 8.7.2008

COUNCIL DECISION ITEM 7.1.1 AND 7.1.3
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Moved Cr Trent, Sec Cr Gleeson

That the Minutes of the Ordinary Council Meeting held 24 June 2008 and the Minutes of the Special Council Meeting Held 8 July 2008 be taken as read and confirmed as a true and correct record.

CARRIED (11/0)

7.1.2 CEO Evaluation Committee Meeting Held: 1.7.2008

COUNCIL DECISION ITEM 7.1.2

Moved Cr Doherty, Sec Cr Hasleby

That the Minutes of the CEO Evaluation Committee Meeting held 1 July 2008 be received.

CARRIED (11/0)

7.2 BRIEFINGS

The following Briefings which have taken place since the last Ordinary Council meeting, are in line with the 'Best Practice' approach to Council Policy P516 "Agenda Briefings, Concept Forums and Workshops", and document to the public the subject of each Briefing. The practice of listing and commenting on briefing sessions, not open to the public, is recommended by the Department of Local Government and Regional Development's "Council Forums Paper" as a way of advising the public and being on public record.

Note: As per Council Resolution 11.1 of the Ordinary Council Meeting held 21 December 2004 Council Agenda Briefings, with the exception of *Confidential* items, are now open to the public.

As per Council Resolution 10.5.6 of the Ordinary Council Meeting held 26 June 2007:

- the "Work in Progress" *draft* Agenda to be made available to members of the public at the same time the Agenda is made available to Members of the Council; and
- applicants and other persons affected who wish to make Deputations on planning matters be invited to make their Deputations to the Agenda Briefing.

As per Council resolution 10.5.3(c) of the May 2008 Council meeting: *for a 6 month trial period Major Development Concept Forums be open to members of the public following which this practice be reviewed at the February 2009 Council meeting.*

7.2.1 Agenda Briefing - June Ordinary Council Meeting Held: 17.6.2008

Officers of the City presented background information and answered questions on items identified from the June Council Agenda.

Notes from the Agenda Briefing are included as **Attachment 7.2.1.**

7.2.2 Concept Forum: Swan and Canning River Foreshore -Meeting Held: 18 June 2008

Officer of the City provided an update on condition of the river walls in light of further Swan River Trust funding opportunities due to commence in July 2008.

Notes from the Concept Briefing are included as **Attachment 7.2.2.**

7.2.3 Concept Forum: Bentley Technology Precinct -Meeting Held: 25 June 2008

Officers of the City and representatives from the BTP Project Team provided an update on the Technology Park Precinct and responded to questions raised by Members.

Notes from the Concept Briefing are included as **Attachment 7.2.3**.

7.2.4 Concept Forum: Major Developments Meeting Held: 2 July 2008

Officers of the City together with applicants provided an overview of proposed major developments at No. 152B Mill Point Road and No. 6 Hardy Street and responded to questions raised by Members.

Notes from the Concept Briefing are included as **Attachment 7.2.4**.

COUNCIL DECISION ITEMS 7.2.1 TO 7.2.4 INCLUSIVE
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Moved Cr Trent, Sec Cr Grayden

That the comments and attached Notes under Items 7.2.1 to 7.2.4 inclusive on Council Agenda Briefings held since the last Ordinary Meeting of Council on 24 June 2008 be noted.

CARRIED (11/0)

8. PRESENTATIONS

8.1 PETITIONS

A process where members of the community present a written request to Council

Nil

8.2 PRESENTATIONS

Occasions where Awards/Gifts may be Accepted by Council on behalf of the Community.

8.2.1 Building the Perth to Mandurah Railway - "48 Months, 48 Minutes"

The Mayor presented the book "48 MONTHS, 48 MINUTES" - Building the Perth to Mandurah Railway to the City from the CEO of the Public Transport Authority.

8.2.2 Como Crochet Club 80th Anniversary

The Mayor presented a trophy to the City from the Como Crochet Club in recognition of the Club's 80 Year Anniversary.

8.2.3 Speak with Confidence Awards

The Mayor stated that he wished to acknowledge and commend *Master Kasey Nicholas* from Wesley College on being the winner of the 'Speak with Confidence Awards' held on 20 June 2008. He further advised that Kasey had been invited to present his winning speech to Members tonight but unfortunately he was unable to attend the Council Meeting.

8.3 DEPUTATIONS

A process where members of the community may, **with prior permission**, address the Council on Agenda items where they have a **direct** interest in the Agenda item.

Note: Deputations in relation to Agenda Items 10.3.1, 10.3.2 and 10.3.3 were heard at the July Council Agenda Briefing held on 15 July 2008.

Opening of Deputations

The Mayor opened Deputations at 7.29pm and advised that speakers would be permitted 10 minutes each to address the Members.

8.3.1. Mr Barrie Drake, 2 Scenic Crescent, South Perth - Agenda Item 10.3.1

Mr Drake spoke against the officer recommendation on the following points:

- Direction given to property owner of 11 Heppingstone Street by CoSP
- CoSP was to comply with an Order from the Minister
- Minister recommended masonry wall be demolished
- feasibility of removing masonry wall - refer page 33 Item 105 of WASAT report 271
- Council are trying to interfere with Direction issued from Minister
- legal advice provided *that it would be dangerous for Council to interfere with Direction*
- Council Briefing asked for this legal advice in writing - not able to provide in writing
- issue raised of time taken to get to this stage - suggestion the time has now past - reiterate I have been pursuing this matter since before the slab was layed
- not good governance for Council to change Order
- vote tonight goes back to SAT for a decision
- to change Order in any way/shape or form could result in legal problems for Council

8.3.2. Mr Kotsoglo, Planning Solutions, representing applicants - Agenda Item 10.3.1

Mr Kotsoglo spoke in favour of the officer recommendation on the following topics:

- Tribunal Decision / Remedial Works
- Remedial works can be done
- agree matter will go to SAT for a decision
- ask Councillors to take a practical perspective in light of time past - 8 years of existing development - modifications proposed would result in substantial costs
- feasibility of modifications to verandah
- suggest that a structural engineer needs to make comment / take cost into account
- issue re number of objections - unaware there were 9 objections understood perhaps 2/3
- modifications / impact on neighbours / streetscape
- neighbours most affected opposed to modifications proposed
- evidence provided by Planning Solutions accepted by SAT
- Kott Gunning Report referred to at July Agenda Briefing believe not relevant
- seek a practical outcome - support proposed mediation / variation sought

**8.3.2. Ms Miranda Logie, Minter Ellison Lawyers, representing applicants
Agenda Item 10.3.1**

Ms Logie spoke in favour of the officer recommendation on the following points:

- issues raised at July Council Briefing - Response letter tabled on the following:
 - Kott Gunning Report June 2007
 - Directions Hearing Transcript
 - Plot Ratio
 - Objections to Development
 - Legal Advice
 - Effect of Remedial Works
- SAT decision - in particular structural engineer's advice
- structural compliance not an issue at the time
- plot ratio - Tribunal findings

- excess in equipment store/lobby
- discretionary power of Tribunal /compliance issues explored as requested by Minister to reach a negotiated outcome
- office recommendation - Tribunal has final say
- history of issues should not impact on client - not a case of developer trying to break the rules
- support partial compliance - avoid a full hearing

Note: Manager Environmental Health retired from the Meeting at 8.05pm

8.3.3. Mr Kotsoglo, Planning Solutions, representing applicants - Agenda Item 10.3.2

Note: As Planning Solutions were not listed to make a Deputation on Item 10.3.2 Mr Kotsoglo sought the approval of the Mayor to make a brief statement on Agenda Item 10.3.2 . The Mayor approved Mr Kotsoglo's request.

Mr Kotsoglo spoke in favour of the officer recommendation as follows:

- request officer recommendation be supported
- support recommendation on basis process has not yet been finalised
- final Certificate of Classification not finalised - trying to avoid a lengthy process
- ask Councillors support officer recommendation.

Close of Deputations

The Mayor thanked the presenters for their comments and closed Deputations at 8.12 pm.

8.4 COUNCIL DELEGATES

Delegate's reports to be submitted to the Minute Secretary prior to **4 July 2008** for inclusion in the Council Agenda.

8.4.1. Council Delegate: Rivers Regional Council Ord. Meeting: 19 June 2008

A report from Mayor Best and Cr Trent summarising their attendance at the Rivers Regional Council Meeting held 19 June 2008 is at **Attachment 8.4.1.**

8.4.2. Council Delegate: WALGA South East Metropolitan Zone: 28 May 2008

A report from Mayor Best and Cr Trent summarising their attendance at the WALGA South East Metropolitan Zone Meeting held 28 May 2008 is at **Attachment 8.4.2.**

8.4.3. Council Delegate: South East District Planning Commission 28 May 2008

A report from Cr Cala summarising his attendance at the South East District Planning Commission Meeting held 28 May 2008 is at **Attachment 8.4.3.**

RECOMMENDATION

That the Delegates Reports in relation to:

- Rivers Regional Council Meeting held 19 June 2008
 - WALGA South East Metropolitan Zone Meeting held 28 May 2008; and
 - South East District Planning Commission Meeting held 28 May 2008
- be received.

COUNCIL DECISION ITEM 8.4.1 TO 8.4.3 INCLUSIVE

Moved Cr Trent, Sec Cr Best

That the Delegates Reports in relation to:

- Rivers Regional Council Meeting held 19 June 2008
 - WALGA South East Metropolitan Zone Meeting held 28 May 2008; and
 - South East District Planning Commission Meeting held 28 May 2008
- be received.

CARRIED (11/0)

8.5 CONFERENCE DELEGATES Delegate's reports to be submitted to Minute Secretary prior to 4 July 2008 for inclusion in the Council Agenda.

8.5.1. Conference Delegate: Planning Institute of Australia National Congress : Sydney : 13 - 16 April 2008

A report from Cr Doherty summarising her attendance at the Planning Institute of Australia National Congress 2008 held in Sydney between 13 and 16 April is at **Attachment 8.5.1.**

RECOMMENDATION

That the Delegate's Report in relation to Cr Doherty's attendance at the Planning Institute of Australia National Congress 2008 held in Sydney between 13 and 16 April be received.

COUNCIL DECISION ITEM 8.5.1

Moved Cr Trent, Sec Cr Grayden

That the Delegate's Report in relation to Cr Doherty's attendance at the Planning Institute of Australia National Congress 2008 held in Sydney between 13 and 16 April be received.

CARRIED (11/0)

9. METHOD OF DEALING WITH AGENDA BUSINESS

The Mayor advised the meeting of the en bloc method of dealing with the items on the Agenda. He then sought confirmation from the Chief Executive Officer that all the en bloc items had been discussed at the Agenda Briefing held on 15 July 2008.

The Chief Executive Officer confirmed that this was correct.

COUNCIL DECISION ITEM 9.0 - EN BLOC RESOLUTION

Moved Cr Trent, Sec Cr Ozsdolay

That the officer recommendations in relation to Agenda Items 10.0.1, 10.3.3, 10.5.1, 10.5.2, 10.5.3, 10.5.4, 10.5.5, 10.6.1, 10.6.2 and 10.6.3. be carried en bloc.

CARRIED (11/0)

10. REPORTS

10.0 MATTERS REFERRED FROM PREVIOUS COUNCIL MEETINGS

10.0.1 Proposed Closure of Right-of-Way 99 contained within the block bounded by Lawrence, Morrison, Saunders and Axford Streets, Como (Item 9.3.11 November 2006 Council meeting)

Location:	Right-of-Way 99, Como
Applicant:	Council
File Ref:	ROW 99
Date:	4 July 2008
Author:	Laurence Mathewson, Trainee Planning Officer
Reporting Officer:	Steve Cope, Director Development and Community Services

Summary

The Council needs to assess the submissions on the proposed closure of ROW 99 and make a recommendation to the Minister for Land Information. The recommendation is to recommend closure of Right-of-Way 99 to the extent shown in **Attachment 10.0.1(a).**

Background

This report includes the following attachments:

Attachment 10.0.1(a) Right-of-Way No. 99 Proposed Closure Plan January 2008.

Attachment 10.0.1(b) Right-of-Way No. 99 Proposed Closure Plan March 1996.

(a) Location

Right-of-Way 99 is contained within the block bounded by Lawrence, Morrison, Saunders and Axford Streets, Como as shown on the map below.



(b) November 1997 Resolution

November 1997: In response to requests from neighbours, the Council reconsidered the closure of ROW No. 99 and resolved “to retain the portion of the right-of-way adjoining Lots 345, 346 and 360”. Part of the resolution further stated:

“The owners of Lots 345 and 346 Axford Street and Lot 360 Saunders Street be notified that it is Council’s current intention to pursue closure of the remainder of the right-of-way adjoining their properties when the owners of Lot 360 Saunders Street no longer require that portion of the right-of-way access and/or storage of their caravan - whether as a result of sale, alternative storage, or discontinued use of the caravan - with the full width of the right-of-way being allocated to Lots 345 and 346 Axford Street.”

(c) February 2002 Resolution

February 2002: As part of a review of the Right-of-Way Policy, submissions were received in relation to ROW 99. The Council’s resolution confirmed the November 1997 resolution. There was also a resolution relating to the installation of a gate.

“Subject to the Council’s receipt of written evidence of unanimous agreement from the owners of Lots 345, 346, 360 and 4607 (No. 3 Lawrence Street), the Council will consider the installation of lockable gates, at the cost of affected owners, at the Saunders Street end of the lane whilst it remains open, to alleviate security concerns of surrounding residents.”

(d) Condition and usage

As advised in the November 2006 report to Council on this matter, the remaining portion of Right-of-Way No. 99 is largely an unfinished surface with weeds, while the verge area and the first part of the right of way are grassed, including a kept garden at the side. The right of way appears to have been recently used as of late October 2006 with there clearly being tyre tracks across the grass. Resident’s security concerns resulted in the erection of a locked gate at the entrance of the right of way at the cost of Mervyn Thompson (owner of 28 Axford St) and with Council approval (November 2006). A subsequent site visit has shown that the gate has been erected on the entrance to the right of way.

(e) Previous closure plans

At its December 1994 meeting, Council resolved to proceed with the full closure of Right-of-Way No. 99. It was later discovered that the sewer manholes adjacent to Lots 345 and 346 on the proposed closure plan were actually located in the middle of the right-of-way. This placed the proposed central boundary in that portion of the right-of-way directly over the manholes, necessitating further modifications to the closure plan. Consequently a new plan was approved in March 1996, this plan subdivided the land using diagonal boundaries, refer **Attachment 10.0.1(b)**.

Comment

In June 2008 Mr Mervyn Thompson informed the City that Lot 230 (No. 50) Saunders Street had been sold and requested that the Council now proceed with the closure as per the Council’s February 2002 resolution.

(a) The proposal

The proposal is to close the remaining portion of Right-of-Way No. 99. The allocation of the land is proposed to be as per the February 2002 Council resolution, which allocates the full width of the right of way to the properties to the western side of the right of way. This report includes a summary of submissions received during the period of advertisement.

(b) Future process

Should the Council resolve as recommended, the City will then finalise the documentation necessary to request the Minister for Land Information close the Right-of-Way. This will conclude the Council’s part of the closure process. The Department for Land Information will then assess the request and make a recommendation to the Minister for Lands. Following the Minister’s decision, the finalisation of the closure will be implemented by the Department for Land Information.

Consultation

Consultation has been undertaken in accordance with the requirements of Section 52(3) of the *Land Administration Act* (as amended). Section 52(3) requires that the owner of the ROW, owners of land adjoining the ROW and the public utilities be given notice of the proposal.

(a) **Owner of the ROW**

The owner of the ROW is to be consulted according to section 52(3)(i) of the *Land Administration Act* (as amended), except if the local government owns the land. The City of South Perth is the owner of the subject land, therefore, no notification was required in this regard.

(b) **Service authorities**

The service authorities have been notified of the proposed closure plan as per section 52(3)(iii) of the *Land Administration Act* (as amended). The only objection received was from the Water Corporation. The Water Corporation's objection was resolved by modification of the 1994 Closure Plan to an irregular boundary to avoid manhole covers as outlined in the 1996 Closure Plan at **Attachment 10.0.1(b)**, however, due to an objection by the previous owner of Lot 606 (No. 50) Saunders Street, a neighbour a partial closure was undertaken and Closure Plan 1996 is no longer appropriate. The current closure plan at **Attachment 10.0.1(a)** maintains the distance from the manhole covers that was specified in Closure Plan 1996, and therefore the current closure plan would resolve the Water Corporation's objections.

There were no other requirements from any of the other service authorities that need to be addressed.

(c) **Adjoining landowners**

All landowners adjoining the ROW were notified of the proposal by direct mail on 11 January 2008 for a minimum of 30 days in accordance with 52(3)(ii) of the *Land Administration Act* (as amended). The City's Policy P104 'Neighbour and Community Consultation in Town Planning Processes' requires that owners of all properties abutting the entire length of the ROW be consulted, whether the ROW is to be partially or fully closed. Landowners were provided with a copy of the proposed closure plan [copy shown at **Attachment 10.0.1(a)**] and information about the costs and process of the closure. This plan had been modified from previous plan, to allocate the full width of the right of way to the properties to the western side of the right of way. The responses are summarised as follows:

- The owners of Lot 346 (No. 48) Saunders Street and Lot 345 (No. 26B) Axford Street would like to have the ROW closed and would like to purchase land.
- One owner did not respond.

The owner who did not respond is the owner of a property that received a land allocation under the previous closure plan.

Policy and Legislative Implications

Comments in relation to relevant legislation have been provided elsewhere in this report.

Financial Implications

The closure of this right of way will reduce maintenance costs to the City.

Strategic Implications

This matter relates to Goal 3 "Environmental Management" identified within the Council's Strategic Plan. Goal 3 is expressed in the following terms: *To effectively manage, enhance and maintain the City's unique natural and built environment.*

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.0.1
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That ...

- (a) pursuant to Section 52 of the *Land Administration Act 1997* (as amended) Council resolves to request the Minister for Land Information to close the remnant portion of Right-of-Way 99 contained within the block bounded by Lawrence, Morrison, Saunders and Axford Streets, Como, indicated on the plan comprising **Attachment 10.0.1(a)**, and following the closure, the land be allocated in the manner indicated on that plan.
- (b) the Strategic Urban Planning Adviser be authorised to make minor adjustments to boundaries if necessary, to allow an appropriate distance from manholes to be maintained;
- (c) the affected property owners be advised that, in conjunction with the transfer of land to their properties, the Water Corporation of Western Australia will require them to agree to an easement to protect existing infrastructure; and
- (d) all affected owners of land be advised of Council's resolution.

CARRIED EN BLOC RESOLUTION

10.1 GOAL 1 : CUSTOMER FOCUS

10.2 GOAL 2: COMMUNITY ENRICHMENT

DECLARATIONS OF INTEREST : ITEM 10.2.1

The Mayor read aloud the following Declarations of Interest received in relation to Item 10.2.1:

Mayor Best

I wish to declare a Proximity Interest in Agenda Item 10.2.1 - 'Community Funding Program Round One' - on the Council Agenda for the meeting to be held 22 July 2008. My children attend Kensington Primary School. Kensington Primary School's P & C is a proposed recipient of the funding program, however as I am not a member of the P & C I will not leave the Council Chamber at the Agenda Briefing on 15 July or at the Ordinary Council Meeting on 22 July 2008 while Item 10.2.1 is discussed.

Cr Ozsdolay

I wish to declare a Conflict of Interest in Agenda Item 10.2.1 - 'Community Funding Program Round One' - on the Council Agenda for the meeting to be held 22 July 2008. I disclose that I am Chairman of the Carson Street School Council and also in their employ. The Carson Street School is a proposed recipient of the Community Funding Program and in view of this I will leave the Council Chamber at the Agenda Briefing on 15 July and at the Ordinary Council Meeting on 22 July 2008 while Item 10.2.1 is discussed.

Cr Smith

I wish to declare a Conflict of Interest in Agenda Item 10.2.1 - 'Community Funding Program Round One' on the Council Agenda for the meeting to be held 22 July 2008. As a Member of the Board of the Manning Senior Citizens, a proposed recipient of the funding program, I will leave the Council Chamber at the Agenda Briefing on 15 July and at the Ordinary Council Meeting on 22 July 2008 while Item 10.2.1 is discussed.

Cr Trent

I wish to declare a Conflict of Interest in Agenda Item 10.2.1 - 'Community Funding Program Round One' on the Council Agenda for the meeting to be held 22 July 2008.

As:

- *Chair of YouthcareWA - Kent Street District High School*
 - *A Board Member of the South Perth Senior Citizens; and*
 - *A Member of the Kensington Primary School P & C*
- proposed recipients of the funding program, I will leave the Council Chamber at the Agenda Briefing on 15 July and the Council Meeting on 22 July while Item 10.2.1 is discussed.*

DECLARATION OF INTEREST : ITEM 10.2.1 : CR GRAYDEN

Cr Grayden reported verbally to the meeting of the following interest:

I wish to declare a Proximity Interest in Agenda Item 10.2.1 - 'Community Funding Program Round One' on the Council Agenda for the meeting to be held 22 July 2008. My father is the President of the South Perth Senior Citizens. I am not a member of the South Perth Senior Citizens and as such I do not believe that the extent of my interest requires me to leave the Council Chamber.

Note: Crs Ozsdolay, Smith and Trent left the Council Chamber at 8.18pm

10.2.1 Funding Assistance - Round One
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Location:	City of South Perth
Applicant:	Council.
File Ref:	GS/103
Date:	4 July 2008
Author:	Neil Kegie, Manager Community Culture and Recreation
Reporting Officer:	Steve Cope, Director Development and Community Services

Summary

This report relates to applications in the Community Development category of the Funding Assistance Program - Round One - 2008/2009.

Background

In June 2001 the City implemented a Funding Assistance Program to enable the City to equitably distribute funding to community organisations and individuals to encourage community and personal development, and foster community services and projects.

The Funding Assistance Program incorporates a number of levels and categories in response to identified areas of need, these are:

Community Partnerships - with identified organisations that provide a major benefit to the City of South Perth community.

Community Development Funding

- Community Development Category - project funding for incorporated not for profit groups, these are considered by council in 2 rounds annually.
- Individual Development Category - financial assistance for individuals attending interstate or international sporting, cultural or academic activities.

Community Grants - smaller grants up to \$1,000 for groups proposing projects that do not fit within the Community Development program.

Submissions in the Community Development Funding category which is the subject of this report are assessed against the following criteria:

1. The demonstrated community need for the project (priority is given to projects that do not duplicate existing projects or services already existing within the City)
2. The proposed benefits for the participants involved as well as for the wider City of South Perth community.
3. The expected number of number of participants who are residents of the City of South Perth.
4. Demonstrated need for financial assistance from the City of South Perth (priority is given to projects that can demonstrate that other potential sources of funding have been exhausted or are not available), or partnering opportunities with other organisations have been explored.
5. The level of cash or in kind support committed to the project.
6. The sustainability of the project and / or the organisation.
7. The level of exposure given to the City in the promotion of the project. (recipients are required to promote the City's support of the project.)

Full details of the funding program can be found on the City's website where information is available about program guidelines, eligibility and selection criteria, acquittal information along with resources to assist with grant seeking and the development of grant submissions.

Comment

Nine applications were received in this round requesting a total of \$48,880. Details of all submissions are included in the submission summaries. Refer **Attachment 10.2.1**. All applications comply with the requirements of the program and cover a range of community service, cultural and recreational projects. These applications were submitted by;

- Carson Street School P&C
- YouthcareWA - Como District Council
- Churches Commission on Education - Kent St District Council
- Manning Seniors Citizens
- South Perth Seniors Citizens
- VIP Plus @ Communicare inc (Get up & Go!)
- Kensington Primary School P&C
- West Australian Music Industry Association
- Southside Penrhos Wesley Swimming Club

This report recommends that six of the nine submissions are fully supported and that the remaining three are supported in part for reasons outlined in the attached submission summaries. The total recommended funding amount is \$42,100.

Consultation

This funding round was advertised in the Southern Gazette, the Peninsula Newsletter, the City's Community Information Directory and on the City's website. The funding round was also promoted directly to past applicants and at the two networking forums coordinated by the City - SPARKYS (South Perth and Vic Park Youth Services) which focuses on Youth services, and the Community Services Forum which has a more general brief across all demographics.

In addition, City officers are pro active in discussing projects with applicants with and assisting with the development of submissions.

Policy Implications

This report refers to the Funding Assistance Policy P202

Financial Implications

A total amount of \$175,000 is allocated in the 2008/2009 budget for the Community Development, Individual Development, Community Grants and Community Partnership categories of the Funding Assistance program. The recommendation of this report is within budgetary parameters.

Strategic Implications

This report is complimentary to Goal Two, Community Enrichment, and directly relates to Strategy 2.3.

'Implement the Community Funding Program to equitably distribute funding between community organisations to encourage and foster community development services and projects.'

Sustainability Implications

Through the City's Funding Assistance program a range of community services and initiatives, many of which are run by volunteers are fostered and supported whereas it would not be sustainable for the City or other government level organisations to deliver these programs.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.2.1
--

Moved Cr Hearne, Sec Cr Doherty

That \$42,100 be distributed to nine organisations from City funds for Round One of the Community Development category of the Funding Assistance Program as detailed in **Attachment 10.2.1**.

CARRIED (8/0)

Note: Crs Ozsdolay, Smith and Trent returned to the Council Chamber at 8.20pm

Manager Community Culture and Recreation retired from the meeting at 8.20pm)

10.3 GOAL 3: ENVIRONMENTAL MANAGEMENT

10.3.1 SAT Application for Review - 11 Heppingstone Street, South Perth
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Location:	City of South Perth
Applicant:	Ms Benita Panizza
File Ref:	HE5/11
Date:	4 July 2008
Author:	Sean McLaughlin, Legal and Governance Officer
Reporting Officer:	Cliff Frewing, Chief Executive Officer

Summary

On 30 January 2008, the Minister for Planning and Infrastructure, the Hon Alannah MacTiernan, issued an order to the City, to give a direction to Ms Panizza (the Direction), the registered proprietor of 11 Heppingstone Street to undertake specified works on the property. The Direction was issued by the City on 15 February 2008.

On 14 March 2008, Ms Panizza lodged an application with the State Administrative Tribunal seeking a review of the decision to give the Direction and seeking orders that the Direction be set aside or varied. The matter was directed into mediation by the Tribunal in order to discuss the implications of compliance and associated planning issues. The mediation has now been adjourned by the Tribunal to allow Council the opportunity to consider a submission presented by Ms Panizza as part of the mediation process, which suggests certain variations to the Direction.

Once Council has considered the submission, the matter will return to the Tribunal for final determination.

Background

Early History - 2001 to 2004

Planning approval was granted in January 2001 in accordance with the provisions of TPS 5. A copy of the Officers' Report to Council and copy of the Planning Approval is at **Attachment 10.3.1(a)**.

A building licence was issued in February 2002.

The building was completed in October 2003.

In March 2004, the City's Planning Officers presented a comprehensive report to Council which responded to a report from Mr Ken Adam, a planning consultant retained by a neighbour, Mr Barrie Drake, which raised questions about compliance with particular conditions of the planning approval granted in January 2001. Upon being satisfied with the Officers' response to the matters raised in Mr Adam's report, Council resolved to take no further action in the matter. A copy of the March 2004 report to Council is at **Attachment 10.3.1(b)**.

Later in 2004, Mr Drake made representations to the Minister for Planning & Infrastructure under section 18(2) of the *Town Planning and Development Act 1928* claiming that the completed building did not comply with certain conditions of planning approval; and in December 2004, in accordance with the Act, the Minister referred the representations to the State Administrative Tribunal to report and make recommendations.

2005

The Tribunal reported to the Minister in October 2005, finding that the building was in breach of Condition 6 of the planning approval which concerned plot ratio. A copy of the Tribunal's decision is at **Attachment 10.3.1(c)**.

Condition 6 permitted a plot ratio of 0.66, whereas the actual plot ratio of the building as determined by the Tribunal was 0.78 - an excess of approximately 18%. As summarised in the Tribunal's decision [at page 26], this excess came about as follows:

- 'lobby' areas on levels 2 and 3 = 24.8 sq. m.;
- 'equipment store' on level 4 = 21.5 sq. m.;
- Terrace 12 on level 2 = 41.2 sq. m.; and
- Mezzanine bookshelf area on level 3 = 4.9 sq. m.

The Tribunal noted [at page 9] that approximately 48% of the breaching floor area was comprised of a so-called 'equipment store' and 'lobby' areas which were excluded by the City from the calculation of gross floor area for plot ratio purposes in accordance with 'an established but mistaken practice' which the City had adopted in its assessment made in January 2001. The Tribunal further noted that 42% of the breaching floor area was comprised of the terrace on level 2 which had been excluded from plot ratio calculations by the City because it was characterised as a 'private open balcony' - a characterisation which the Tribunal did not share. This terrace level was shown on the planning and building plans and was constructed in accordance with the building licence issued by the City in 2002.

In its October 2005 report, the Tribunal recommended that the Minister order the City to give a direction to the property owner that alterations be made to certain aspects of the building in order to bring it into line with the permitted plot ratio set out in Condition 6 of the planning approval as required under TPS 5. The Tribunal's recommendations were made in relation to the areas of excess described above.

2006

Following upon the Tribunal's delivery of its report, under the provisions of the *Planning & Development Act 2005* (which replaced the *Town Planning & Development Act 1928*), the Minister was obliged to make a decision as to whether or not to adopt the recommendations of the report and order the City to take appropriate steps to enforce compliance. Under the Act, the Minister is expressed to be not bound by a report from the Tribunal or its recommendations.

In January 2006 the Minister received submissions from the City with respect to the report and recommendations which were consistent with submissions previously made before the Tribunal. In essence, the submission stated that the City generally endorsed the views of the Tribunal as expressed in its report and recommendations. However the City's submission indicated that it did not support the recommendation concerning the demolition of the masonry wall which partially enclosed the terrace on level 2. The City's submission noted that although it was open to the Tribunal to find that the area was not a private open balcony, a contrary view was also open - three of the four planning witnesses who gave evidence in the SAT hearing expressed the opinion that the terrace is a private open balcony. In light of this, the City submitted that it did not seem appropriate to require the owner of the building to modify the terrace on level 2 of the building in the manner recommended.

The City's submission concluded that, "in the final analysis, even if terrace 12 on level 2 contributes to excess plot ratio, the reason it does so is predicated on a subjective determination on the 'openness' of the balcony structure. That very same 'openness' was considered by Council [in December 2000], and on the advice of the Planning Officers and the Design Advisory Consultants (DAC), was determined to be acceptable in the context of its impact amenity through its effect on the streetscape, and bulk and scale impact."

A copy of the City's January 2006 submission is at **Attachment 10.3.1(d)**.

In June 2006, the Minister invited the parties to join in "a without prejudice round table discussion to assist her in finding an outcome and an agreed position on how to conclude the matter." Unfortunately the meeting did not lead to an agreed position or reach an outcome.

Subsequently the Minister invited the parties to make whatever further submissions they may wish to make. The City did so by letter dated 22 August 2006 in which it expressed the view that due to the changes to planning law brought about by new Residential Design Codes in October 2002, and the adoption of TPS No. 6 in April 2003 which replaced TPS No. 5, there was no longer any issue with respect to the plot ratio of the building. On the

basis of this result, the City suggested to the Minister that it would be appropriate for her to take no further action in the matter as allowed under the *Planning & Development Act*. A copy of the City's letter dated 22 August 2006 is at **Attachment 10.3.1(e)**.

There the matter rested until 30 January 2008.

Recent History

The Minister for Planning and Infrastructure, the Hon Alannah MacTiernan, on 30 January 2008, made an order pursuant to section 18(2) of the *Town Planning and Development Act 1928* and section 211(4) of the *Planning and Development Act 2005*, that the City give a direction to Ms Panizza, the registered proprietor of the property, in the following terms:

- (A) Demolish the curved masonry wall section on the south-west of terrace 12 on level 2 of the building erected at No 11 Heppingstone Street, South Perth (building referred to as "masonry wall rendered & painted as spec" on drawing no. A202 issue 6, dated January 2001, drawn by Colliere Menkins Pickwell Architects, printed 27 July 2005 (plan), from a height of 1.1 metres above the floor level of terrace 12 on level 2 up to the level of the ceiling of terrace 12 on level 2; and
- (B) Alter the building as follows:
 - (i) install an obscure glazed privacy screen up to a maximum height of 1.65 metres above the floor of terrace 12 on level 2 continuing from the existing privacy screen in the existing westernmost southern opening from that terrace for a distance of up to 2.0 metres to the west;
 - (ii) remove the window in the 'equipment store' on level 4 and brick in, render and paint in the window space so as to match existing walls of the building;
 - (iii) erect a false ceiling in the 'equipment store' on level 4 which reduces the floor-to-ceiling height to a maximum of 1.8 metres; and
 - (iv) erect floor-to-ceiling glass partitions and doors which are fire-rated and able to be locked appropriately for the entrance door to an apartment in an apartment building on the western edge of the 'lobby' on each of levels 2 and 3 in the position of the glass partitions and doors as shown on the plan.

On 14 March 2008, Ms Panizza lodged an application with the State Administrative Tribunal seeking a review of the decision to give the direction and seeking orders that the direction be set aside or varied. A copy of the application for review is at **Attachment 10.3.1(f)**.

The matter was directed into mediation by the Tribunal in order to allow discussion on the implications of compliance and associated planning issues. The mediation has now been adjourned by the Tribunal to 25 July 2008 to allow Council the opportunity to consider a submission prepared on behalf of Ms Panizza, which seeks a variation of the Direction issued by the City. A copy of the Submission is at **Attachment 10.3.1(g)**.

Comment

In essence, Ms Panizza is seeking the agreement of Council to her application for an order from the Tribunal to vary the Direction by deleting Part (A) - demolition of the masonry wall on Terrace 12 of level 2; and Part (B)(i) - installation of a glazed privacy screen. Ms Panizza agrees to undertake the modifications set out in Part (B) (ii) and (iii) - relating to closing off the 'equipment store' on level 4; and to Part (B) (iv) relating to the erection of glass partitions in the lobby areas on levels 2 and 3.

In support of her application to delete those parts of the Direction concerning modification of the terrace masonry wall, Ms Panizza's Submission provides an estimate of the cost of the work - between \$60,000 and \$80,000 - and also provides building and engineering advice indicating that modification would raise serious structural integrity issues for the balcony. In addition, the Submission contains expressions of support for the existing building from neighbouring property owners who would be affected by the modification.

Consideration of the Five Factors in exercising a discretion to enforce a planning scheme

Consideration of the new information contained in the Submission is made in the context of a local planning authority's obligation to enforce compliance with its Town Planning Scheme.

City Officers endorse those parts of the Submission which canvass the application of the five factors or principles which are relevant to the exercise of the discretion conferred on a local authority as to whether or not to give a direction to the owner of land who undertook development in contravention of a town planning scheme.

The Five Factors were determined by the SAT in its October 2005 report and are discussed at pages 30 and 31 of that report - see **Attachment 10.3.1(c)**.

1. Is it in the public interest of the proper and orderly development and use of land that planning law should generally be complied with?
2. What is the impact of the contravention of the Scheme on the affected locality and environment?
3. What are the factual circumstances in which the contravention of the Scheme took place?
4. What time has elapsed since the development was undertaken in contravention of the Scheme?
5. What expense and inconvenience would be involved in remedying the contravention of the Scheme?

It is significant that the views of the neighbouring property owners and the material now provided by Ms Panizza concerning issues of structural integrity and the cost of modifying the terrace masonry wall were not before the Tribunal when it made its recommendations to the Minister in October 2005.

Cost, in particular, is one of the five factors identified by the Tribunal as relevant to determining whether or not to give a direction. There was no specific evidence as to the cost of the various proposed works when the Tribunal made its recommendation to the Minister in October 2005, so the Tribunal was not able to consider this factor. The Tribunal did infer, however, that the cost of some of the proposed works (eg. the demolition of discrete portions of the building) would be "significant" and this was a principle reason why the Tribunal declined to recommend to the Minister that those works be carried out. Evidence has now been provided of the cost of carrying out the modifications to the terrace masonry wall.

City Officers have reviewed the Submission and on the basis of the new information concerning cost and amenity impact, support the proposed variation to the Direction as sought by Ms Panizza.

City Officers also support the variation on the basis of the reasoning set out in the City's submission to the Minister in January 2006 at **Attachment 10.3.1(d)** which was consistent with the City's original grant of planning approval in December 2000 and consistent with the Officers' Report to Council of March 2004. City Officers also support the variation on the basis of the reasoning set out in the City's letter of 22 August 2006 at **Attachment 10.3.1(e)**. Namely, that under the provisions of the current Scheme (TPS6), there is no longer any plot ratio requirement for the building.

Procedural matters

Due to the unusual statutory interrelationship between the procedures which arise under the *Planning & Development Act 2005* (which replaced the former *Town Planning & Development Act 1928*) and the review provisions of the *State Administrative Act*, the Tribunal has not formally requested that the City reconsider its decision to issue the Direction, under section 31 of the *State Administrative Tribunal Act*.

Neither is the Council being asked to actually consent to Orders being made by the State Administrative Tribunal to vary the Direction.

Rather, Council is being asked to indicate whether or not it would oppose Orders being made by the State Administrative Tribunal to vary the Direction, if the Tribunal determines that the variation sought by Mrs Panizza is appropriate, having regard to the Five Factors referred to above and the additional evidence and information being raised by Mrs Panizza. An indication by Council of its position in relation to the proposed variation will assist the Tribunal in reaching a determination.

It is likely that if Council resolves to adopt the Officers' recommendation, that upon its return to the Tribunal the matter can be determined 'on the papers' - that is, the Tribunal would invite each party to lodge final written submissions and then determine the matter without the need to go to a formal hearing.

If Council indicates that it does not support the proposed variation, then the matter will of necessity proceed to a full hearing in the Tribunal.

In addition to the reasoning set out above in support of the proposed variation, a further consideration concerns the extra cost to the City of participating in a full hearing in the Tribunal if the matter is not able to be expeditiously determined 'on the papers'.

Conclusion

The City's approach to the Submission is consistent with the position that the City has adopted throughout all previous consideration of the matter; it is therefore strongly recommended that Council indicate its support for the proposed variation by adopting the Officers' recommendation.

Consultation

Julius Skinner, Jackson McDonald Lawyers, has advised on and been consulted in the preparation of this report.

Legislative and Policy Implications

The legislative and policy implications of any matters arising are discussed in the report.

Financial Implications

Costs of participating in a full hearing of the matter in the SAT which occupied up to 2 days would approximate \$15,000 to \$20,000.

Strategic Implications

The content of the report is consistent with the City's Strategic Plan 2004-2008: **Goal 3 - Environmental Management - *To sustainably manage, enhance and maintain the City's unique natural and built environment.***

Sustainability Implications

The implications arising out of any matters discussed in the report are consistent with the City's Sustainability Strategy 2006-2008.

OFFICER RECOMMENDATION ITEM 10.3.1

That the City inform the State Administrative Tribunal at the Directions Hearing to be held in this matter on 25 July 2008 that:

- (a) having considered the proposal made by Ms Panizza during the course of mediation in the Tribunal proceedings for the variation of the Direction issued by the City; and
- (b) having had regard to the provisions of the *Planning and Development Act* in circumstances where the City has been ordered by the Minister for Planning to issue the Direction in the terms stated by the Minister,

the Council:

- (c) does not agree to the proposal for the purposes of a Minute of Consent Orders to determine the application for review before the Tribunal, on the basis that the Council does not consider such a course is appropriate in all the circumstances of the matter; but
- (d) seeks to have the application for review determined "on the papers"; and
- (e) will not oppose the variations as sought by the proposal, provided:
 - (i) the application for review seeks only the variations contained in the proposal; and
 - (ii) the Tribunal is satisfied on the submissions and evidence lodged by Ms Panizza that those variations are acceptable.

MOTION

Cr Hasleby moved the officer recommendation. Sec Cr Gleeson

MEMBER COMMENTS FOR / AGAINST MOTION - POINTS OF CLARIFICATION

Cr Hasleby Opening for the Motion

- motion before us quite decisive as set out - goes to the point
- Tribunal has requested the City provide a position
- have been provided with legal advice covering all issues raised and some not raised
- believe we should move towards a remedy on this matter - it has been an Achilles heel for some time
- refer to legal advice from Minter Ellison lawyers 'tabled' - in particular that Mr Drake has received legal advice re contempt of court
- Mr Drake undertook to provide this legal advice in writing - however in Minter Ellison's view... *any such advice would be clearly incorrect as a matter of plain law...*
- our legal officer went to great lengths to deal with objections raised on a legal basis
- Cr Hasleby read aloud from correspondence dated 22.7.08 from Minter Ellison Lawyers *...the Minister would support the proposed mediation outcome*
- it is now time to bring this matter to a conclusion
- issue is not about democracy - but about getting something back in return
- support officer recommendation

Cr Gleeson for the Motion

- support and endorse Cr Hasleby's comments for officer recommendation
- approval granted in 2001 in accordance with TPS5
- building licence issued in 2001 - building completed in 2003
- one would think you could move into your 'dream home' without a neighbour pursuing issues that the building should not have been approved - but it was under TPS5

Cr Gleeson point of clarification - are height and setbacks being considered tonight?

Strategic Urban Planning Adviser said no, height and setbacks are not being considered.

Cr Gleeson point of clarification - will the changes to the verandah have any meaningful impact on the bulk and scale of this development?

Strategic Urban Planning Adviser - said that in the officers' view, no.

Cr Gleeson point of clarification - given the landowners next door, who are in full view, have raised concerns that the modification proposed will impact on their privacy, is it your opinion that these works would in fact impact on the neighbour's amenity?

Strategic Urban Planning Adviser - said that as the building stands now it protects the neighbours' privacy / amenity.

- Ms Panizza will adhere to Direction modifications proposed
- to pursue this in a full hearing of SAT will cost ratepayers over \$25,000
- informal discussions to reach an agreement between two parties will cost a lot less
- plot ratio - Cr Gleeson read aloud from the Tribunal Report - *the building shall be modified to comply with the maximum plot ratio described by Table 1 of the R Codes for the type of development concerned.*

Cr Smith point of Order- not a matter in relation to plot ratio

Mayor Best upheld the point of order and requested Cr Gleeson keep to the Motion under debate.

- bulk of building in question - if all areas included under TPS6 it does not qualify
- if Council chooses to play the role of Pontius Pilate, in not allowing the applicants to conform with the officer recommendation, they are washing their hands of the matter and asking SAT to make the decision.

Cr Smith point of Order- object to the reference to Pontius Pilate

Mayor Best did not uphold the point of order stating it was a rhetorical statement by Cr Gleeson

Cr Smith against the Motion

- for months this has come before Council - told repeatedly by CEO the building complied with the No. 5 and No. 6 Schemes until we heard issues raised from Mr Drake
- we went to Mr Samec of Kott Gunning to get an independent expert assessment
- Mr Samec's evaluation was that it did not comply with the No. 5 and No. 6 Schemes and the Hurlingham qualifications - have every confidence in Mr Samec and his findings
- following Mr Samec's assessment I moved to support Mr Drake
- believe Mr Drake was right even before building was started
- Mr Drake said, with the experienced backing of Ken Adam, the building did not comply
- Mr Drake provided the same information to the architects and Commissioners of the CoSP and they decided contrary and the building went ahead
- Ms Panizza gets a building and Mr Drake was disadvantaged
- Minister has now asked for mediation - Mr Drake will not - what he does is up to him - I would be looking at re-dress from this Council

Chief Executive Officer Point of Clarification

With respect to the building complying with TPS5 the CEO stated that the building when approved complied with the way in which the City was assessing buildings in relation to the plot ratio requirements - the City did not know at the time that SAT would determine otherwise. He further stated that with respect to TPS6 that the City has never said it complied because it cannot and that has been acknowledged by Council officers, Minter Ellison Lawyers and Ernie Samec.

Cr Ozsdolay for the Motion

- endorse comments from Crs Hasleby and Gleeson
- this is not about building / development application in total
- debating whether we knock down a wall on terrace 12, level 2
- why are we here?
- because we have been invited to adopt a position with respect to a mediation process
- Minister issued the Order on recommendation of SAT
- SAT is now reviewing and asked for our opinion
- being asked to give an opinion is definitely not interfering just responding to a request
- reason development approved - we used an established practice to calculate plot ratio
- objections - we have 1 neighbour objecting to officer recommendation and another that objects to any change to the building as it currently enhances amenity of area - they do not want the wall removed
- in representing all ratepayers some times have to base decisions on their merit
- being asked - should we go to Tribunal or to officer recommendation "on the papers"
- ask Members support officer recommendation

Cr Grayden against the Motion

- agree with Cr Hasleby's comments - sick of dealing with this issue
- agree with concerns in relation to costs
- if Council is committed to orderly and proper planning we cannot take the easy road
- acknowledge affect on particular individuals - opportunity for us to represent all ratepayers of the City - to show our colours
- believe that if we are committed to orderly and proper planning then have to take the opportunity to put our view to SAT
- oppose officer recommendation

FORESHADOWED MOTION CR GRAYDEN

Cr Grayden stated that if the current Motion is lost he would be moving and alternative.

Cr Hasleby closing for the Motion

- Cr Grayden is correct in saying Council should show its colours
- agree that this matter has been going on too long
- now have invitation from Tribunal to provide a position on this matter
- we have a clear succinct position in the officer recommendation on what should happen next
- Minter Ellison advice is *that the Minister would likely support the proposed mediation outcome*
- in considering other parties to this action nothing has been said about the stress/cost over the years to Ms Panizza and how much more it will cost if we do not follow officer recommendation
- in summary - will take advice from Minter Ellison - *Mr Drake has made it clear that he is not prepared to let this matter rest even if the ordered remedial works are undertaken. He has stated that the remedial works listed in the City's Direction Notice will not address his complaints. ...by not agreeing to the proposed mediation outcome, the Council would not serve any greater public interest, but rather, could be seen to be encouraging Mr Drake in his ongoing mission, encouraging and supporting him to continue this matter into the courts thereby attracting more negative publicity for the City and incurring further cost for all parties including the City.....*
- time to be decisive - follow legal advice - do not fly in the face of officer recommendation
- urge Members to support officer recommendation

The Mayor put the Motion.

LOST (4/7)

MOTION

Moved Cr Grayden, Sec Cr Doherty

That...

- (a) the officer recommendation not be adopted;
- (b) in respect to the development at No.11 (lot 38) Heppingstone Street, South Perth the City inform the State Administrative Tribunal at the Directions Hearing to be held in this matter on 25 July 2008 that:
 - (i) having considered the proposal made by Ms Panizza during the course of mediation in the Tribunal proceedings for the variation of the Direction issued by the City; and
 - (ii) having regard to the provisions of the *Planning and Development Act* in circumstances where the City has been ordered by the Minister for Planning (the "Minister") to issue the Direction in the terms stated by the Minister;
 - (iii) the Council supports the Minister's order and compliance with the subsequent Direction issued by the City.

MEMBER COMMENTS FOR / AGAINST MOTION - POINTS OF CLARIFICATION

Cr Grayden Opening for the Motion

- issue important for future planning of the City
- much has been said about Barrie Drake
- not concerned about suggestion Council would be at risk of dismissal
- concerned about ratepayers of South Perth
- sympathise with applicants / costs in ongoing dispute for over 5 years
- decision of SAT carefully considered - development departed significantly
- structural integrity part of cost burden
- neighbours support should be taken into account on overall amenity / streetscape of area
- wrong to pick and choose which aspects of which Scheme disadvantages applicant
- if City committed to orderly / proper planning no alternative other than to comply with TPS of the day
- ask Members support alternative Motion

Cr Doherty for the Motion

- 11 Heppingstone Street first brought to Council 2002
- topic ongoing for some time - Councillors have lengthy knowledge of issues relating to plot ratio - development control put in place to put a limit on building bulk.
- what was approved and what was built are significantly different
- building completed 2003 constitutes a significant departure from planning approval granted under TPS5 in that it is substantially overbuilt
- have a TPS to ensure orderly and proper planning in the City - a statutory requirement
- what is the purpose of having a TPS unless there are consequences/deterrents to non-compliances of its requirements
- need to apply our corporate mind in decision making processes otherwise we risk sending a message to the community that says we encourage and even reward non compliance because there will be no consequences and/or enforcement as a result
- in 2004 Council endorsed Mr Ken Adam's report which was commissioned by a local resident on the issues of compliance at 11 Heppingstone Street
- officer recommendations endorsed by Council were that... *"with respect to the matter of plot ratio, the Council was satisfied that the building has been assessed correctly, and that the building complies with the maximum allowable plot ratio"* and *"the Council does not intend to further pursue the matters raised regarding the property at No. 11 Heppingstone Street, South Perth."*
- tonight is the first time since 2004 matter has come to Council for debate / decision
- May / September 2004 representation made to Minister for Planning and Infrastructure
- December 2004 Minister referred these representations to the SAT
- October 2005 SAT determined building in breach re plot ratio = an excess of 18%
- as a consequence Tribunal found *"the building is intrusive and detrimental to the amenity of the locality.....it presents with considerable bulk and scale...."*
- SAT reported the building in breach of Condition 6 of planning approval in relation to plot ratio and recommended the Minister order the City give a Direction to the property owner to make alterations to the building to bring it into line with the permitted plot ratio
- SAT reported the City did not proceed with an order for the owners to remedy the breach and as a consequence the City failed to enforce the observance of the TPS

EXTENSION OF TIME : CR DOHERTY

Moved Cr Trent, Sec Cr Smith - That Cr Doherty be granted an extension of time of 5 minutes to conclude her debate.

CARRIED (9/2)

- January 2006 Minister invited all parties to make submissions
- City's submission indicated it did not support the recommendation concerning the demolition of the masonry wall which partially enclosed the terrace on level 2
- August 2006 City expressed the view that due to changes to planning laws brought about by the new Residential Design Codes in October 2002 and adoption of TPS6 in April 2003, which replaced TPS5 any conflict regarding plot ratio of 11 Heppingstone Street was no longer an issue and requested the Minister take no further action
- the link the City has drawn re their submission to the Minister in August 2006 is both irrelevant and not a mitigating factor because under TPS6 a multiple dwelling would not be approved on 11 Heppingstone Street
- April 2007 Minister again sought submissions from all parties

- the City advised it saw no merit in responding further
- officer report - troubled by comments regarding significance of neighbour's comments - if they were to be considered relevant they would only form one part of our considerations
- costs = one of 5 factors determined in SAT's 2005 report - matters of costs do not come into town planning matters - can only make decisions based on merits
- SAT is an independent forum - they determined remedial work needed to be undertaken
- Minister has also considered the City's early attempts to mitigate this matter and the view the remedial work needs to be undertaken
- agree with Minister's Order - it has taken 2 years to reach this point
- Council committed to orderly / proper planning to ensure principles of TPS of the day are complied with
- unfortunate property owners have been the subject of this matter
- thank SAT for acknowledging the role of Council in this matter
- support Motion

Cr Ozsdolay point of clarification - heard Cr Doherty stated that the building was completed in excess of that which was approved.

The CEO responded that 11 Heppingstone Street was built in accordance with established practices of the time in calculating the plot ratio. He referred Members to page 26 of the SAT decision relating to the four contentious items in question and read aloud:

The Tribunal, therefore, considers that the following "contentious areas, which were not included in the calculation of gross floor area by the City, are required to be included for the purposes of condition 6 under the definition "plot ratio" in the R Codes:

- the 'lobby' areas on levels 2 and 3	24.8 sq.metres
- terrace 12 on level 2	41.2 sq.metres
- 'equipment' store on level 4	21.5 sq.metres
- mezzanine bookshelf area on level 3	4.9 sq metres
Total :	92.4 sq.metres = 18%

While acknowledging the Tribunal's findings regarding the City's method of calculating plot ratio at that time, the CEO said that the plot ratio floor area of the completed building, including the areas detailed above, were in accordance with the plans approved by the City apart from a minor variance to the extent of 3.5 sq. metres which is not significant

Cr Gleeson point of clarification - given plot ratio was mentioned by Cr Doherty - TPS5 stated plot ratio does not include lift shafts / private open balconies etc. Were those areas, under TPS5 of the day excluded?

Strategic Urban Planning Adviser - responded that the four areas mentioned were excluded by the City in calculating plot ratio, however the Tribunal found that they should have been included.

MOTION

Moved Cr Smith, Sec Cr Ozsdolay - That the Motion under debate be Put.

CARRIED (8/3)

COUNCIL DECISION ITEM 10.3.1

The Mayor Put the Motion

That...

- (a) the officer recommendation not be adopted;
- (b) in respect to the development at No.11 (lot 38) Heppingstone Street, South Perth the City inform the State Administrative Tribunal at the Directions Hearing to be held in this matter on 25 July 2008 that:
 - (i) having considered the proposal made by Ms Panizza during the course of mediation in the Tribunal proceedings for the variation of the Direction issued by the City; and
 - (ii) having regard to the provisions of the *Planning and Development Act* in circumstances where the City has been ordered by the Minister for Planning (the "Minister") to issue the Direction in the terms stated by the Minister;
 - (iii) the Council supports the Minister's order and compliance with the subsequent Direction issued by the City.

CARRIED (8/3)

Reason for change

1. The completed building constitutes a significant departure from the planning requirements of TPS5.
2. The plot ratio requirements under TPS6 are not relevant in this reconsideration in as much that multiple dwellings could not be approved under the current scheme.
3. Despite some neighbour support for the variations and the cost of remedial work required for compliance, the City is of the view that the Minister's direction should not be altered.
4. The City is committed to proper and orderly planning and believes that the principles of the TPS of the day must be complied with.

Note: Cr Gleeson left the Council Chamber at 9.12pm

10.3.2 Retrospective Application for Planning Approval : Alterations to a Mixed Development comprising Office and Two Multiple Dwellings - Lot 301 (No. 26) Hardy Street, South Perth

Location:	Lot 301 (No. 26) Hardy Street, South Perth (formerly 43 Labouchere Road)
Applicant:	Planning Solutions
File Ref:	11.2008.239 HA3/26
Date of Lodgement:	30 May 2008
Date:	26 June 2008
Author:	Owen Hightower, Planning Officer
Reporting Officer:	Steve Cope, Director, Development and Community Services

Summary

The City has received an application for retrospective approval for alterations to a 'Mixed Development' comprising two levels of Offices and two Multiple Dwellings upon lot 301 (No. 26) Hardy Street, South Perth. The development has been fully constructed. During a site inspection undertaken by Council officers to clear an application for a strata certificate, significant departures from the approved building licence and planning approval drawings were identified.

The applicants have now lodged an application seeking retrospective approval for those changes. Under Clause 7.12 of TPS6, Council has the power to grant retrospective planning approval for developments irrespective of when the development was commenced or completed, provided it complies with all relevant provisions of the Scheme, with or without the exercise of discretion. The significant departures from the approved drawings have resulted in increased plot ratio, reduced side setbacks, additional parking requirements and an increase above the permitted building height.

The proposal has been assessed against the provisions of the City’s TPS6 and for reasons explained in the report, it is considered that Council should exercise its discretionary power and grant retrospective approval.

Background

The development site details are as follows:

Zoning	Mixed Use Commercial
Density coding	R60/80
Lot area	1143 sq. metres
Building height limit	17.5 metres
Plot Ratio	Mixed Development- 0.75 Residential -1.0

This report includes the following attachments:

- Confidential Attachment 10.3.2(a)** Plans of the proposal.
- Confidential Attachment 10.3.2(b)** Letter and plans from the applicants, dated **9 July 2008**.
- Attachment 10.3.2(c)** Photos of the as constructed development.
- Attachment 10.3.2(d)** Photo of parking in Hardy Street setback area.
- Attachment 10.3.2(e)** Photos of dormer windows.
- Attachment 10.3.2(f)** Letter of no objection from adjoining landowner.

The subject property is located on the south-west corner of Labouchere Road and Hardy Street in South Perth. It directly adjoins office developments to the south and west.



In accordance with Council Delegation DC342, the proposal is referred to a Council meeting because it falls within the following categories described in the delegation:

4. *Matters previously considered by the Council*

Matters previously considered by Council, where drawings supporting a current application have been significantly modified from those previously considered by the Council at an earlier stage of the development process, including at an earlier rezoning stage, or as a previous application for planning approval.

Comment

(a) Description of the proposal

The City originally granted planning approval for a development on the site at its June 2001 Ordinary Council Meeting. This approval permitted the development of three Multiple Dwellings and two levels of Office, serviced by seventeen (17) car parking bays. This approval was later renewed under delegated authority in April 2002. Both of the above approvals were granted under the City's TPS5.

At the April 2004 Ordinary Council Meeting, Council again considered a modified development for this site. The new proposal was similar to those previously approved; the main difference being only two multiple dwellings were proposed, rather than the previously approved three. This application was again approved having regard to the provisions of the recently gazetted TPS6.

Council officers undertook a site inspection of the property on 23 April 2008 after an application for a Strata Certificate was lodged with the City. The inspection identified significant departures from the building licence plans and also from the planning approval. The most significant departures include:

Reconfiguration of the office space

The reconfiguration has resulted in a greater amount of office floor space and as result, has implications relating to plot ratio and also parking.

Relocation of the lift shaft

The relocation of the lift shaft has resulted in slight increases to the floor area of the Multiple Dwellings affecting plot ratio. The relocation of the lift shaft has also resulted in the development exceeding the permissible building height of 17.5 metres and a larger external wall requiring a greater setback from the southern boundary. The applicant has advised this change was necessary to comply with Building Code of Australia and FESA requirements. The applicants have provided a letter from a qualified building surveyor to this effect; refer **Confidential Attachment 10.3.2(b)**.

The applicant has 'as constructed' drawings; refer **Confidential Attachment 10.3.2(a)**. Photos of the as constructed building are also attached; refer **Attachment 10.3.2(c)**. The applicant has also provided written justification addressing the major planning issues that have resulted from changes; refer **Confidential Attachment 10.3.2(b)**. This includes overlay elevation drawings showing the approved development in comparison to the 'as constructed' development. The applicant has requested that discretion be exercised by Council for a number of issues.

Before the Council exercises discretion under the Scheme, Clause 7.8 requires Council to be satisfied that:

- (i) approval would be consistent with orderly and proper planning;
- (ii) the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality; and
- (iii) the development meets the objectives for the City.

Comments are provided below to assist Council in deciding whether discretion should be exercised. The issues requiring the exercise of discretion include plot ratio, parking, setbacks and building height.

(b) Plot ratio

The site is zoned 'Mixed Use Commercial' under TPS6, having an applicable density of R60/80, has a lot area of 1143 sq. metres. In accordance with clause 6.1.2 of the R-Codes and Clause 4.3 (1)(h) of TPS6, in case of a lot with a corner truncation, such as the subject lot, an additional area of 18 sq. metres has been added to the area of the lot for the purposes of determining the maximum permissible plot ratio. Therefore, the lot area for this purpose has been taken as 1161 sq. metres. The maximum plot ratio for a 'Mixed Development' as prescribed under TPS6 is 0.75. The 'as constructed' development has a total plot ratio of 0.814, being 74.5 sq. metres above the permissible plot ratio area.

The dual density coding of this property permits residential development to a density of R80 provided that four (4) of eight (8) performance criteria are met. The subject site has the ability to meet the required number of criteria (i), (vi), (vii) and (viii) to allow development of a density of R80. Under the R-Codes, a residential development with a density of R80 has a permitted plot ratio of 1.0.

TPS6 was formulated having regard to the 1991 R-Codes which listed a maximum Plot Ratio of 0.75 for Residential Development at a density of R80.

It has always been the intention of the City to ensure that development, either Residential or Mixed Development would have equivalent plot ratio requirements. However, this intention is not reflected currently because events have overtaken the original intention, resulting in an unintended disparity. Due to the 1991 R-Codes being replaced by the 2002 R-Codes, there is now a lack of parity between TPS6 and the current R-Codes in relation to the plot ratio requirements for Residential development and Mixed-Development in the 'Mixed Use Commercial' zone. This resulted from the 2002 R-Codes increasing the plot ratio requirement for Multiple Dwellings with a density coding of R80 from 0.75 (as in the 1991 R-Codes) to 1.0.

The City's response to this change has been to list a Scheme Amendment on its 'Strategic Planning task list'. The Amendment would increase the plot ratio for Mixed Development to the equivalent plot ratio of the applicable density coding of a property under the R-Codes. Whilst that Amendment has not yet proceeded, there is a reasonable probability that TPS 6 (or the next District Planning Scheme) will lift the plot ratio for Mixed Development in the 'Mixed Use/ Commercial' zone by 33% to 1.0.

Under Clause 7.8 of the Scheme, the City may approve a variation from the maximum permissible plot ratio of a 'Mixed Development'. The objective of plot ratio is to control building bulk and scale. Although the 'as built' plot ratio of ~~0.83~~ 0.814 exceeds the maximum prescribed by TPS No. 6 for a 'Mixed Development', it is far less than would otherwise be allowable if the site were to be developed solely for residential purposes (i.e. 1.0). Therefore, taking into account that the bulk and scale of the development is less than the maximum allowable for residential development, the variation is considered to be acceptable.

The plans do show a large lunch room on the 1st floor mezzanine level serving one of the office tenancies. Lunchrooms are excluded from 'plot ratio'. The floor area of lunch area is considered excessive and in order to ensure it does not become a useable office space, it is recommended a solid and permanent partition, such as a masonry wall, be placed between the office and lunch area.

(c) **Parking**

The City granted the last approval pursuant of the provisions to TPS6 with a total of 17 car parking bays being provided. The changes have increased the total office floor area and therefore a greater number of parking bays are required to service the office component of the development.

The parking requirement for the office component is determined at a rate of 1 car bay for every 25 sq. metres of gross floor area. The modifications to the building have increased the total gross floor area of the building by 40 sq. metres. Based on this figure, an additional 2 car parking bays are required to be provided, to make a total of nineteen car bays.

The applicants are proposing to slightly modify the previously approved parking layout in order to accommodate eighteen (18) car bays. A minimum of five visitor parking bays is required to be provided to service the office component. These bays have been provided and are located outside of the security barrier.

The nineteenth (19th) bay has been provided in the Hardy Street setback area. This bay is intended to act as a visitor bay (i.e. courier pick up / drop off bay) and is considered an appropriate bay by officers on this basis. Furthermore, the bay presents to the street as a component of the landscaping and therefore does not detract from the streetscape; refer **Attachment 10.3.2(d)**.

The modifications and additional bays provided result in the development having the required number of car bays. Some bays do not meet the minimum dimensions as prescribed in Schedule 5 of the Scheme. Subject to some slight modifications, it is possible for all bays to comply with the minimum requirements of the Scheme.

The parking layout was assessed against the City's TPS6 and Policy P350(1.3), and also referred to the City's Infrastructure Services for comments. As a result of the assessment, all bays meet these requirements excluding two bays located in the south-western corner, one on each level, directly adjoining a wall. These bays require the manoeuvring aisle to be 700mm longer to allow ease of manoeuvring. To counteract this deficiency in length, the width of the accessway provided behind these bays is 7.0 metres instead of the required 6.0 metres. The additional width will assist in achieving better manoeuvring of vehicles.

As advised by the City's Infrastructure Services, parking layouts exist within the City where the additional aisle length is not available, and these layouts continue to function with a slight amount of difficulty. Infrastructure Services supports the proposed parking layout subject to the applicant and owner providing a letter to the City acknowledging difficulty in manoeuvring that will result from this deficiency in the parking layout.

The above issues have been discussed with the applicant who is willing to undertake the required modifications and provide the letter. Therefore, subject to compliance with appropriate conditions of planning approval, the recommendation to the Council is to approve the parking layout.

(d) **Setbacks**

In order to accommodate the relocation of the lift shaft, an external wall of the building has been modified. This has created a wall 10 metres in length and 17 metres in height. In accordance with Table 3 of the Scheme, a Mixed Development is required to have setbacks as prescribed by the R-Codes. The R-Codes prescribe a 4.2 metres setback for the wall.

The wall is set back 1.0 metre from the southern property boundary and therefore, the applicants have requested that the set back be assessed against the performance criteria of the R-Codes pertaining to setbacks.

The performance criteria relating to setbacks are expressed as follows:

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

1. *Provide adequate direct sun and ventilation to the building;*
2. *Ensure adequate direct sun and ventilation being available to adjoining properties;*
3. *Provide adequate direct sun to the building and appurtenant open spaces;*
4. *Assist with protection of access to direct sun for adjoining properties;*
5. *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
6. *Assist in protecting privacy between adjoining properties.*

The 'as built' development conforms to Points 1, 3 and 6 as the development has been designed to provide direct sun and ventilation to the building. This has been achieved by focusing all major openings in order to maximise access to the northern sun. The increased wall height adjacent to the southern boundary will also provide privacy between the dwellings and the adjoining site by mitigating the opportunity for overlooking.

The 'as built' setback also complies with Points 2 and 4 as the southern wall of the building does not impact significantly on access to sun light and ventilation of the adjoining office building. The additional shadow affects the office car park, as shown in **Confidential Attachment 10.3.2(b)**, and therefore would act beneficially to mediate the impact of weather conditions on the adjoining occupier's vehicles.

In regards to Point 5, the changes do increase the overall bulk of the building as viewed from the adjoining property. It is important to recognise at this point that, the performance criteria of the R-Codes are designed to protect residential amenity. As the development is in Mixed Use / Commercial Zone, the application of these performance criteria requires a greater flexibility than in a purely residential context. The increased bulk brought about by the reduced setback will have no direct impact on any lunch or outdoor living area of the offices used next door. The actual impact of the reduced setback will only be felt by users / visitors of the adjoining property when travelling to and from their car. This impact is negligible and common to other office developments. On this basis, the reduced setback is considered not to result in any significant impact on the occupiers of the adjoining property.

The southern wall and the reduced setback are also noticeable from the street and its potential impact on the users and occupiers of Labouchere Road and the Mill Point Precinct requires consideration in accordance with Clause 7.8 of the Scheme. The subject wall is set back some 24.5 metres from the property boundary fronting Labouchere Road, from which the wall is visible; refer **Attachment 10.3.2(c)**. The setback distance from the street is significant and therefore, the changes to the external

appearance of the development are not so imposing as to affect the pedestrians or drivers travelling along Labouchere Road. As such, there is considered to be no impact on the occupiers and users of the Mill Point Precinct.

Based on the above, the reduced setback of the southern wall is considered acceptable.

(e) **Building height**

The Scheme prescribes a building height limit of 17.5 metres for the site. The 'as built' development remains wholly within this height limit with the exception of a 1.45 metres projection resulting from the relocation of the lift shaft.

The originally approved building would have actually extended to a greater height however, it was contained within the allowable height provisions of the Scheme. The relocation of the lift shaft from the centre, to the perimeter of the building results in the lift shaft protruding from the permitted 25 degree notional roof pitch, whereas it was previously contained within the prescribed envelope; refer **Confidential Attachment 10.3.2(b)**.

The Scheme permits:

"minor projections which extend outside the space referred to in subparagraph (v)(A) (i.e. the 25 degree notional roof pitch), including, but without in any way restricting the generality of this provision, such structures as vertical glass planes within the roof structure, dormer and saw-toothed windows, and chimneys."

As the clause specifically states that 'minor projections' are not limited only to the "vertical glass planes within the roof structure, dormer and saw-toothed windows, and chimneys", consideration can be given to the question as to whether the lift shaft is a minor projection. To determine the validity of the lift shaft as a minor projection, the size of the protrusion must be considered relative to the examples listed in the Scheme. Comparing the lift shaft protrusion in proportion to the overall development would also provide an ideal way to measure whether it is 'minor' in the context of the whole development. Finally, its overall impact on the surroundings must be considered.

The applicant has submitted that a dormer window is a structure that extends horizontally and vertically from a standard roof line, and is commonly 1.4 - 2 metres wide and extending vertically to the top of the ridge line of the main roof. To substantiate this, the applicant has submitted numerous photos showing dormer windows similar to that described; refer **Attachment 10.3.2(e)**.

As shown in **Attachment 10.3.2(e)**, the dormer windows described and shown are similar in size and scale to the portion of the lift shaft extending above the height limit. On this basis the lift shaft could be considered a minor projection.

In regards to its size relative to the whole development, the applicant has submitted that the portion of the lift shaft extending above the height limit equates to 1.4% of the total roof area of the building. Also, the visible surface of the shaft extending above the height limit is a total of 2.1 sq. metres.

The applicant has made a further submission that a projection contained wholly within the allowable 25 degree notional roof could have extending to a height of 19.0 metres, being 0.1 metres higher than subject projection. Furthermore, it could have had a surface area visible from the street more than double the actual of the protrusion .

Based on the above, it is reasonable to conclude that the projection is only minor in nature. Not only does the projection represent a very small portion of the overall roof, but a permissible development, similar to that previously approved, could have been much larger in scale and height.

Finally, the overall impact as visible from surrounding properties and the street requires consideration. The portion protruding above the height limit is well set back from Labouchere Road and only obscures a portion of the sky from view; refer **Attachment 10.3.2(c)**. This is considered to have no adverse impact on either adjoining properties or users of Labouchere Road. The overshadowing that results from the projection is minimal and only acts to overshadow a parking area. As discussed previously, this will not impact the amenity of the adjoining property and could be seen to provide additional protection for cars parked on the adjoining site.

The potentially affected neighbour has been consulted and has expressed no concern in regards to any of the issues raised by the changes. Also, no complaints or concerns relating from the protrusion have been received by the City.

On the basis of all of the above, the 1.45 metres projection above the building height limit is considered to be a minor projection and therefore should be approved.

(f) Scheme Objectives: Clause 1.6 of No. 6 Town Planning Scheme

Scheme Objectives are listed in Clause 1.6 of TPS6. The proposal has been assessed under, and has been found to meet, the following relevant general objectives listed in Clause 1.6(2):

Objective (e) Ensure community aspirations and concerns are addressed through Scheme controls.

(g) Other Matters to be Considered by Council: Clause 7.5 of No. 6 Town Planning Scheme

In addition to the issues relating to technical compliance of the project under TPS6, as discussed above, in considering an application for planning approval, the Council is required to have due regard to, and may impose conditions with respect to, other matters listed in Clause 7.5 of TPS6 which are, in the opinion of the Council, relevant to the proposed development. Of the 24 listed matters, the following are particularly relevant to the current application and require careful consideration:

- (a) the objectives and provisions of this Scheme, including the objectives and provisions of a Precinct Plan and the Metropolitan Region Scheme;*
- (b) the requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment which has been granted consent for public submissions to be sought;*
- (c) the provisions of the Residential Design Codes and any other approved Statement of Planning Policy of the Commission prepared under Section 5AA of the Act;*
- (i) the preservation of the amenity of the locality;*
- (j) all aspects of design of any proposed development, including but not limited to, height, bulk, orientation, construction materials and general appearance;*
- (k) the potential adverse visual impact of exposed plumbing fittings in a conspicuous location on any external face of a building;*

- (n) *the extent to which a proposed building is visually in harmony with neighbouring existing buildings within the focus area, in terms of its scale, form or shape, rhythm, colour, construction materials, orientation, setbacks from the street and side boundaries, landscaping visible from the street, and architectural details;*
- (s) *whether the proposed access and egress to and from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvre and parking of vehicles on the site;*
- (t) *the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- (x) *any other planning considerations which the Council considers relevant.*

Officer Comment

The proposal is considered to be satisfactory in relation to all of these matters.

Consultation

(a) Design Advisory Consultants' comments

The design of the proposal was considered by the City's Design Advisory Consultants at their meeting held on 9 June 2008. Comments provided by the DAC are as follows:

- (i) *The Architects expressed concern about the following matters:*
 - (1) *Reduced setback from the side boundary;*
 - (2) *The building height exceeding the permissible limit; and*
 - (3) *The increased plot ratio.*
- (ii) *The Architects also stated that if the development with the as-built variations is approved, it will open doors to other builders who may potentially seek retrospective approvals for similar overbuilt developments.*
- (iii) *Removal of the lift enclosure from the top level, and relocation of toilets away from the boundary was seen to be an appropriate modification in order to address the setback variation.*
- (iv) *The City should consider cash in lieu of the shortfall of car parking bays required for the development.*
- (v) *The manner in which the developers have gone about bending the rules should not be supported by the Council.*
- (vi) *Masonry walls should be built around the extra floor space which has been added to the development, in order to prevent it from being used.*

Points (i), (iii) and (vi) raised by the DAC architects relating to setbacks, height limit and plot ratio were all similarly concerns of the officers initially. However, after undertaking a full assessment, it has been demonstrated that there is a valid case for Council to exercise discretion in relation to these issues.

In regards to the comment relating to parking (iv), the initial submission showed that the development would be short of a number of car bays due to the parking configuration. A revised plan was submitted rectifying this issue. The development now provides the required number of parking bays.

Points (ii) and (v) are points that officers also agree with, however, this is not relevant in determining whether the application complies with the provisions and objectives of the Scheme. Should the application not have been found to be suitable for approval relying on Council exercising discretion, officers would have recommended the application be refused and appropriate action be pursued to ensure the building was brought into conformity with the building licence plans.

(b) **Neighbour consultation**

The potentially affected neighbour located to the south of the subject site has provided a submission expressing no objection to any of the modifications; refer **Attachment 10.3.2(f)**. This has been duly considered, as discussed above, above when assessing the proposed variations.

(c) **City Departments**

The Strata inspection undertaken by the City included officers from the City's Planning, Health and Building Services departments.

Building Services have advised that the changes have no effect on any building requirements and upon submission of amended plans, final approval for the 'as constructed' building could be granted. Environmental Health Services have advised that the changes to the building have no adverse impact on any health requirements. Comments sought from Infrastructure Services regarding the proposed parking layout have been discussed in the body of the report.

Policy and Legislative Implications

Comments in relation to various relevant provisions of the No. 6 Town Planning Scheme and the R-Codes and Council policies have been provided elsewhere in this report.

Financial Implications

Should the application be refused, financial implications for the City could result from an appeal by the applicant to the State Administrative Tribunal

Strategic Implications

This matter relates to Goal 3 "Environmental Management" identified within the Council's Strategic Plan. Goal 3 is expressed in the following terms: *To effectively manage, enhance and maintain the City's unique natural and built environment.*

Sustainability Implications

The proposed additions will not have any sustainability impact on the subject development or on the adjoining properties.

Conclusion

Council officers inspected the subject site upon application for a strata certificate. This inspection identified significant departures from the building licence approval and planning approval. These changes had implications affecting plot ratio, parking, setbacks and height.

The applicant has submitted justification requesting Council to exercise its discretion in regards to the resulting areas of prescriptive non-compliance. The changes have been assessed against the provisions of the Scheme and the requirements for exercising discretion.

When exercising discretion, the following must be considered:

- (i) In exercising discretion it must be clearly shown that approval would be consistent with orderly and proper planning;
- (ii) Council must be satisfied that the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the precinct; and
- (iii) Council must be satisfied that the development meets the objectives for the City.

The sequence of events that have taken place in this circumstance is not normal. Council does have the power to approve existing development under the Scheme. In this instance the modifications, whilst having been undertaken without approval, are capable of being approved through the exercise of discretion by Council. For these reasons, it is appropriate and proper that the variations be approved. It is appropriate and proper to approve the variations. Refusing the application on the basis that the due process has not been carried out in this case, is not in the interests of orderly and proper planning and further should not be cited as a reason for refusal.

The changes to the development and the resulting non-compliance have been shown to have no adverse impact on the occupiers and users of the Mill Point Precinct. Furthermore the neighbours have submitted that they consider the changes to have no adverse impact on their property.

Finally, the development meets the relevant objectives of the Scheme. The City has undertaken a full assessment against the provisions of the Scheme, and has shown that the proposal is within the boundaries of the Scheme controls.

As such, it is recommended the application be approved subject to conditions.

Note: Cr Gleeson returned to the Council Chamber at 9.12pm

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.3.2
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Moved Cr Ozsdolay, Sec Cr Trent

That pursuant to the provisions of the City of South Perth Town Planning Scheme No. 6 and the Metropolitan Region Scheme, this application for planning approval to be issued retrospectively for alterations to a Mixed Development on Lot 103 (No. 26) Hardy Street, South Perth **be approved**, subject to:

(a) **Standard Conditions**

353 (Marking of visitor bays), 349 (Bays complying with dimensions of the Scheme), 660 (24 months), 664 (Building not to be occupied until inspection by officers).

Footnote A full list of Standard Conditions and Important Notes is available for inspection at the Council Offices during normal business hours.

(b) **Specific Conditions:**

Revised drawings shall be submitted, and such drawings shall incorporate the following:

- (i) A solid and permanent partition clearly separating the lunch room on the first floor mezzanine from the approved office space.
- (ii) The proposed parking bay layout does not fully comply with AS2890.1. The parking layout is acceptable if a letter is received from the property owner which acknowledges responsibility for any difficulties that may arise while manoeuvring out of the bays, without any future recourse to the City of South Perth.

(c) **Standard Important Footnotes**

648, 651.

Footnote A full list of Standard Conditions and Important Notes is available for inspection at the Council Offices during normal business hours.

CARRIED (7/4)

10.3.3 Proposed Addition (Garage and Loft) to Single House - Lot 100 (No. 74) Ryrie Avenue, Como

Location: Lot 100 (No. 74) Ryrie Avenue, Como
 Applicant: R & J Jordan
 Lodgement Date: 5 February 2008
 File Ref: 11.2008.42.2 RY1/74
 Date: 4 July 2008
 Author: Matt Stuart, Senior Planning Officer
 Reporting Officer: Steve Cope, Director, Development and Community Services

Summary

To consider a proposed amendment to a delegated planning approval for additions (proposed loft above an approved garage) to a single-storey Single House Lot 100 (No. 74) Ryrie Avenue, Como. The proposal conflicts with the City's Town Planning Scheme No. 6 and the 2008 R-Codes, which respectively require:

- 7.5(n) *the extent to which a proposed building is visually in harmony with neighbouring existing buildings within the focus area, in terms of its scale, form or shape, rhythm, colour, construction materials, orientation, setbacks from the street and side boundaries, landscaping visible from the street, and architectural details.*
- 6.2.1.A1.1(i) *Building set back from the primary street in accordance with Table 1; or corresponding to the average of the setback of existing dwellings on each side fronting the same street; or in accordance with figure 1a, reduced by up to 50 per cent ...*

It is recommended that the proposed amendment to the approved drawings be **refused**, thereby upholding the planning approval with conditions (dated 8 May 2008) for a garage without a loft.

Background

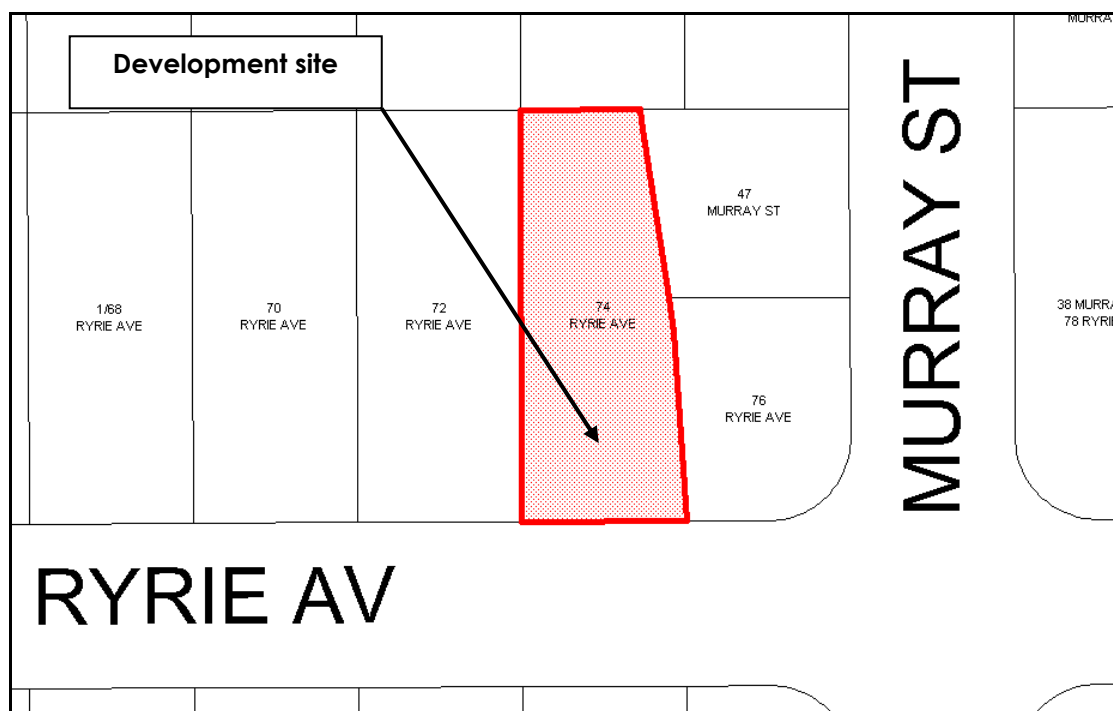
The development site details are as follows:

Zoning	Residential
Density coding	R15
Lot area	902 sq. metres
Building height limit	7.0 metres
Development potential	Single House
Plot ratio	Not applicable

This report includes the following attachments:

- Attachment 10.3.3(a)** Plans of the proposal.
- Attachment 10.3.3(b)** Site photographs.
- Attachment 10.3.3(c)** Planning approval (Ref. 11.2008.42.1).
- Attachment 10.3.3(d)** Applicant's supporting letter.

The location of the development site is shown below:



In accordance with Council Delegation DC342, the proposal is referred to a Council meeting because it falls within the following categories described in the Delegation:

3. ***The exercise of a discretionary power***
 - (i) *Proposals involving the exercise of a discretionary power which, in the opinion of the delegated officer, should be refused. In this instance, the reason for refusal would be a significant departure from the Scheme, relevant Planning Policies or Local Laws;*

6. ***Amenity impact***

In considering any application, the delegated officers shall take into consideration the impact of the proposal on the general amenity of the area. If any significant doubt exists, the proposal shall be referred to a Council meeting for determination.

In relation to item 6 above, the extent of amenity impact arising from the proposal is considered unacceptable (see comments below).

Comment

(a) **Description of the proposal**

The subject site is currently developed with a Single House, as depicted in the site photographs of **Attachment 10.3.3(b)**.

The proposal involves the construction of a loft above an approved garage, as depicted in the submitted plans of **Attachment 10.3.3(a)**.

The proposal conflicts with the objectives of the Scheme and matters to be considered by Council, as outlined in more detail below.

The proposal complies with Town Planning Scheme No. 6 (TPS6), the *Residential Design Codes of WA 2008 (R-Codes)* and relevant Council Policies with the exception of the non-complying variations discussed in more detail below.

(b) **Streetscape**

The proposed loft above the garage is within the front setback of the property, highly visible from the street. Furthermore, a 1½ to 2 storey construction in the front setback area will result in a significant building bulk with a 3.0 metre setback from the street alignment.

The existing character of the streetscape is wide and open, as seen in **Attachment 10.3.3(b)**, without other examples of garages with lofts in front of the dwelling, and a large park on the other side of the entire street. Therefore the proposed structure does not enhance the desired streetscape character.

The proposed loft structure clearly does not comply with the objectives of the Scheme and matters to be considered by Council in relation to amenity and the existing / desired streetscape (see Sections (p) and (q) below in **bold**).

It should also be noted that the area of the site is a considerable 902 sq. metres, with ample opportunity to build storage structures to the sides or rear of the property, rather than in the front setback area, which affects the streetscape and general amenity of the area. Clause 3 “Streetscape Character” of Policy P370_T “General Design Guidelines for Residential Development” requires all residential development to be designed in a manner that will preserve or enhance desired streetscape character.

(c) **Plot ratio**

There is no plot ratio control for this site, being coded R15.

(d) **Open space**

The minimum open space permitted is 50 percent (451 sq. metres), whereas the proposed open space is approximately 65 percent (586 sq. metres), therefore, the proposed development complies with the open space element of the R-Codes.

(e) **Building height**

The permissible building height limit is 7.0 metres; the proposed building height is 3.5 metres; therefore, the proposed development complies with Clause 6.2 "Maximum Building Height Limit" of the Town Planning Scheme No. 6.

(f) **Street setback**

The street setback for the approved garage complies, however the loft within the front setback is not acceptable noting the conflict with the existing streetscape character.

(g) **Wall setback - West**

The required wall setback to the west is 1.0 metre, with the proposed setback at 1.0 metre, therefore the wall setback complies.

(k) **Visual privacy setbacks**

There are no visual privacy implications to this application, with or without a loft, as a loft is not a habitable room. If the room were used for habitable purposes, there would still be no visual privacy implications, as there are no major openings overlooking the adjoining properties.

(l) **Solar access for adjoining sites**

There are no overshadowing implications for this proposal, as the overshadow affects only the road to the south.

- (m) **Finished ground and floor levels- minimum**
There are no minimum ground or floor level implications due to the high ground levels of the locality.
- (n) **Finished ground and floor levels- maximum**
There are no maximum ground or floor level implications as the loft is proposed above the garage.
- (o) **Car parking**
There are no issues relating to the location, size or number of car bays previously approved, therefore, the proposed development complies with the car parking element of the R-Codes.
- (p) **Scheme Objectives: Clause 1.6 of No. 6 Town Planning Scheme**
Having regard to the preceding comments, in terms of the general objectives listed within Clause 1.6 of TPS6, the proposal is considered not to meet the following objectives, set out in bold print:
- (a) *Maintain the City's predominantly **residential character and amenity**;*
 - (c) *Facilitate a diversity of dwelling styles and densities in appropriate locations on the basis of achieving performance-based objectives which **retain the desired streetscape character and, in the older areas of the district, the existing built form character**;*
 - (d) *Establish a community identity and 'sense of community' both at a City and precinct level and to encourage more community consultation in the decision-making process;*
 - (e) *Ensure community aspirations and concerns are addressed through Scheme controls; and*
 - (f) *Safeguard and enhance the amenity of residential areas and ensure that new development is in harmony with the character and scale of existing residential development.*
- (q) **Other Matters to be Considered by Council: Clause 7.5 of No. 6 Town Planning Scheme**
In considering the application, the Council is required to have due regard to, and may impose conditions with respect to, matters listed in Clause 7.5 of TPS6 which are, in the opinion of the Council, relevant to the proposed development. Of the 24 listed matters, the following are particularly relevant to the current application and require careful consideration:
- (a) *the objectives and provisions of this Scheme, including the objectives and provisions of a Precinct Plan and the Metropolitan Region Scheme;*
 - (b) *the requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment which has been granted consent for public submissions to be sought;*
 - (c) *the provisions of the Residential Design Codes and any other approved Statement of Planning Policy of the Commission prepared under Section 5AA of the Act;*
 - (i) ***the preservation of the amenity of the locality;***
 - (j) ***all aspects of design of any proposed development, including but not limited to, height, bulk, orientation, construction materials and general appearance;***
 - (n) ***the extent to which a proposed building is visually in harmony with neighbouring existing buildings within the focus area, in terms of its scale, form or shape, rhythm, colour, construction materials, orientation, setbacks from the street and side boundaries, landscaping visible from the street, and architectural details;***

- (s) *whether the proposed access and egress to and from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvre and parking of vehicles on the site;*
- (v) *whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;*
- (w) *any relevant submissions received on the application, including those received from any authority or committee consulted under Clause 7.4; and*
- (x) *any other planning considerations which the Council considers relevant.*

Officer Comment

The proposal is considered to be satisfactory in relation to all of these matters with the exception of Items (i), (j) and (n) identified in **bold** above .

Consultation

(a) Design Advisory Consultants’ comments

The opinion of the City’s Design Advisory Consultants was not sought in this regard. The design and form of the proposed development is seen to be satisfactory in terms of compatibility to the existing streetscape character.

(b) Neighbour consultation

Neighbour Consultation has been undertaken for this proposal to the extent and in the manner required by Policy P104 ‘Neighbour and Community Consultation in Town Planning Processes’. The owners of property at No 72 Ryrie Avenue were invited to inspect the application and to submit comments during a 14-day period. During the advertising period, one submission was received, which was against the proposal. The comments of the submitters, together with officer responses are summarised as follows:

Submitter’s Comment	Officer Response
Public safety risk due to reduced visibility and being on a bus route.	Visual sightlines comply with the R-Codes. The comment is NOT UPHELD .
Negative streetscape, no other examples in the street, restricting views from the adjoining property.	Agreed, as per above sections. The comment is UPHELD .
Setbacks do not comply with the R-Codes.	Agreed, as per above sections. The comment is UPHELD .
Protection of landscaping expected.	Landscaping on adjoining property not proposed to be altered. The comment is NOT UPHELD .
Activities in the proposed garage will be noisy.	Noise issues are covered by EPA (Noise) Act, and will be assessed if noise complains result in the future. The comment is NOTED .
Proposed structure will look ugly.	Subjective comment. The comment is NOTED .
Driveway is on other side, garage could go there.	Subjective comment. The comment is NOTED .
Such construction is not necessary due to the amount of open space on the lot.	Agreed, as per above sections. The comment is UPHELD .
The City should uphold its planning guidelines	Standard procedure. The comment is NOT UPHELD .

Policy and Legislative Implications

Comments in relation to various relevant provisions of the No. 6 Town Planning Scheme, the R-Codes and Council policies have been provided elsewhere in this report.

Financial Implications

This issue has no impact on this area as the required planning fee has been paid by the applicant.

Strategic Implications

This matter relates to Goal 3 “Environmental Management” identified within the Council’s Strategic Plan. Goal 3 is expressed in the following terms: *To effectively manage, enhance and maintain the City’s unique natural and built environment.*

Sustainability Implications

There are no sustainability issues relating to this proposal.

Conclusion

The proposal will have a detrimental impact on adjoining residential neighbours and the streetscape, and does not meet all of the relevant Scheme objectives. Accordingly, it is recommended that amended proposal be **refused**, thereby reverting to the planning approval with conditions (dated 8th May 2008) for a garage addition without the loft.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.3.3
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That pursuant to the provisions of the City of South Perth Town Planning Scheme No. 6 and the Metropolitan Region Scheme, this application for planning approval for a proposed loft above an approved garage on Lot 100 (No. 74) Ryrie Avenue, Como be **refused** for the following reasons:

- (a) The proposed development conflicts with the existing streetscape character, and the visual harmony of the adjoining western property.
- (b) The proposed loft above the garage in the front setback area does not comply with the Clause 1.6(a), (c), (d), (e) and (f) of the City of South Perth Town Planning Scheme No. 6.
- (c) The proposed loft to garage in the front setback area does not comply with the Clause 7.5(i), (j) and (n) of the City of South Perth Town Planning Scheme No. 6.

Standard Advice Notes

- If you are aggrieved by aspects of the decision where discretion has been exercised, you may lodge an appeal with the State Administrative Tribunal within 28 days of the Determination Date recorded on this Notice.
- There are no rights of appeal in relation to aspects of the decision where the Council cannot exercise discretion.

CARRIED EN BLOC RESOLUTION

10.3.4 Proposed Four × Two Storey Grouped Dwellings to Replace Four Existing Single Storey Grouped Dwellings - Lot 51 (No. 81) Comer Street, Como
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Location:	Lot 51 (No. 81) Comer Street, Como.
Applicant:	RJ Knott, PT Ker & Associates
File Ref:	11.2008.78. CO3/81
Date of lodgement:	21 February 2008
Date:	4 July 2008
Author:	Lloyd Anderson, Planning Officer
Reporting Officer:	Steve Cope, Director, Development and Community Services

Summary

To consider an application for planning approval for four x two storey Grouped Dwellings. It is proposed to replace four existing single storey Grouped Dwellings on the lot under the provisions of Clause 6.1 'Replacement of Existing Buildings not Complying with Density, Plot Ratio, Use or Height Limits' of Town Planning Scheme No. 6. The recommendation is for **approval** subject to standard and special conditions.

Background

The development site details are as follows:

Zoning	Residential
Density coding	R30/R40
Lot area	1022 sq. metres
Building height limit	7.0 metres
Development potential	Three Grouped Dwellings (in accordance with Table 1 of the Residential Design Codes); or Four Grouped Dwellings (in accordance with Clause 6.1 of Town Planning Scheme No. 6).
Plot ratio	Not applicable

This report includes the following attachments:

- Confidential Attachment 10.3.4(a)** Plans of the proposal.
- Attachment 10.3.4(b)** Letter from designer, dated 21 February 2008.

In accordance with Council Delegation DC342, the proposal is referred to a Council meeting because it falls within the following categories described in the delegation:

- 3. **The exercise of a discretionary power**
 - (iv) *Proposals involving the exercise of discretion under Clauses 6.1 or 6.11 of the No. 6 Town Planning Scheme.*

The location of the development site in Como is shown below:



Comment

(a) Description of the proposal

The proposal incorporates four, two storey Grouped Dwellings. The subject site is adjoined by predominantly two storey Grouped Dwellings of a medium density nature.

(b) Town Planning Scheme No. 6 provisions: Clause 6.1

The proposal involves removal of the existing four single storey Grouped Dwellings and replacement with four x two storey Grouped Dwellings in accordance with the provisions of Clause 6.1 'Replacement of Existing Buildings not complying with Density, Plot Ratio, Use or Height Limits' of Town Planning Scheme No. 6 (TPS6). Sub-clause (1) states that:

- “(1) Notwithstanding the provisions of the Codes but subject to the provisions of sub-clause (3), if, on the date of gazettal of the Scheme a site contained a residential development that exceeded:*
- (a) the density coding indicated on the Scheme Maps; or*
 - (b) the Building Height Limit; or*
 - (c) both the density coding and the Building Height Limit;*
the Council may approve redevelopment of that site:
 - (i) to the same density or height or both, and with the same use as those of the development which existed on the site on the date of gazettal of the Scheme; and*
 - (ii) with a plot ratio exceeding the maximum prescribed by the Residential Design Codes.”*

Sub-clause (2) applies to sites containing a non-residential development, and therefore is not applicable to the current proposal. Sub-clause (3) states:

- “(3) The power conferred by sub-clauses (1) and (2) may only be exercised if:*
- (a) in the opinion of the Council, the proposed development will contribute more positively to the scale and character of the streetscape, the preservation or improvement of the amenity of the area, and the objectives for the precinct than the building which existed on the site on the date of gazettal of the Scheme; and*
 - (b) except where proposed development comprises minor alterations to the existing development which, in the opinion of the Council, do not have a significant adverse effect on the amenity of adjoining land, advertising of the proposed development has been undertaken in accordance with the provisions of Clause 7.3.”*

(c) Streetscape - Design, scale and character of the dwellings

The existing streetscape within the relevant focus area predominantly comprises two storey Grouped Dwellings of a medium density nature. Furthermore it should be noted buildings within the immediate surrounds of the proposed development are of a comparable scale, form and design. The lot immediately south (No. 47 McDonald) contains four two storey dwellings in a similar configuration. The northern lots (Nos. 28-39 Comer Street) contain Grouped Dwellings. The only lots within the immediate area which do not contain four or more Grouped Dwellings are to the east of the subject property. Two storey Single Houses exist on the immediate eastern side of McDonald Street, due to the lower density coding.

The applicant's letter, refer **Attachment 10.3.4(b)**, dated 21 February describe the site's existing characteristics and presents explanation in support of the proposal.

After several modifications to the design required by Officers regarding the building bulk, general form and design of the proposed dwellings, the proposal is now seen to be compatible with the existing streetscape. The perceived visual magnitude of the building is considered to contribute positively to neighbouring buildings within the focus area as Clause 6.1 of TPS6 requires. It is relevant to note the proposed development has the following characteristics

- Fits within the prescribed 7.0 metre building height limit;
- Complies with all boundary setback requirements; and
- Each residence features a pitched roof.

The development is seen to be compatible in height, shape and layout to the existing streetscape character.

(d) Buildings set back from the boundary

The proposal complies with relevant setback provisions of the R-Codes.

(e) Boundary walls

The application proposes a boundary wall on the southern side of the development site. Although the proposed wall is higher than would ordinarily be supported by the City, it is recommended that the wall in question be approved, having regard to the relevant amenity considerations in Policy P376_T ‘Residential Boundary Walls’.

Boundary	Length	Height	Location
Southern side	5.105 metres	3 - 4.2 metres	Alongside a car parking area associated with the adjoining building (see plans).

The proposed boundary wall will not impact the streetscape character as it is well set back from the front boundary of the site. It will not impact on winter sunshine being admitted to an area of private open space due its location alongside the car parking area associated with the adjoining building. The boundary wall is supported as proposed.

(f) Open space and outdoor living areas

Using the R30 density code and site area of 1022 sq.metres, a total of 45% of open space is required. Calculations show that the required open space has been met for all dwellings with exception of Unit 4 which only has 43.6%, an additional 3.5 sq. metres of the lot is required to be open space. It is recommended a condition of approval be imposed requiring the applicant to demonstrate compliance with the 45% requirement for Unit 4, prior to the issue of a building licence.

(g) Overshadowing

The proposal does not comply with the Acceptable Development provisions of the R-Codes, which restrict overshadowing to a maximum of 35% of the adjoining property. Given the size of the adjoining site of 309 sq. metres, it has been difficult for the applicant to achieve compliance with the Acceptable Development requirement. As a result the applicant has requested that the development be assess against the relevant Performance Criteria contained within Clause 6.9.1 of the Codes as the development proposes 36.7% of overshadowing. This Clause contains the following provisions:

“Development designed to protect solar access for neighbouring properties taking account the potential to overshadow:

- *Outdoor living areas;*
- *Major openings to habitable rooms;*
- *Solar collectors; or*
- *Balconies or verandahs”.*

The proponent has provided the following comments in support of their submission:

- Overshadowing will be over that part of the building with the parapet wall of the garage and the driveway so there is no loss of amenity to the adjoining property.
- The shadow casted by the 1800 high fence on the common boundary already casts a substantial shadow over the courtyard area, there is not additional overshadowing.

The additional shadow (1.7%) is not affecting any sensitive areas and adjustments have been made to ensure the amenity of the adjoining courtyard is considered, therefore the minor variation is supported in accordance with the Performance Criteria of the R-Codes.

(h) Visual privacy

The proposal complies with relevant visual privacy provisions of the R-Codes based on amendments made by the applicant. Details of the privacy screens will be required at the building licence stage. A condition of approval has been placed to this effect.

(i) Building height limits

TPS6 prescribes a building height limit of 7 metres to the site. The proposal complies with this height restriction.

(j) Car parking

The proposal complies with the car parking required by Clause 6.3 “Car Parking” of TPS6 and R-Code requirements.

(k) Finished floor levels

The proposal complies with the maximum floor levels required by Clause 6.10 “Maximum Ground and Floor Levels” of TPS6.

(l) Storerooms

The storeroom dimensions comply with the R-Code requirements.

(m) Scheme Objectives: Clause 1.6 of No. 6 Town Planning Scheme

Scheme Objectives are listed in Clause 1.6 of TPS6. The proposal has been assessed according to the listed Scheme Objectives, as follows:

- (1) The overriding objective of the Scheme is to require and encourage performance-based development in each of the 14 precincts of the City in a manner which retains and enhances the attributes of the City and recognises individual precinct objectives and desired future character as specified in the Precinct Plan for each precinct.*

The proposed development is considered to meet this overriding objective having regard to the following precinct objective/s: The proposal has also been assessed under, and has been found to meet, the following relevant objectives listed in Clause 1.6(2) of TPS6:

- Objective (a)** *Maintain the City's predominantly residential character and amenity;*
Objective (c) *Facilitate a diversity of dwelling styles and densities in appropriate locations on the basis of achieving performance-based objectives which retain the desired streetscape character and, in the older areas of the district, the existing built form character;*
Objective (f) *Safeguard and enhance the amenity of residential areas and ensure that new development is in harmony with the character and scale of existing residential development;*

(n) Other Matters to be Considered by Council: Clause 7.5 of No. 6 Town Planning Scheme

In addition to the issues relating to technical compliance of the project under TPS6, as discussed above, in considering an application for planning approval, the Council is required to have due regard to, and may impose conditions with respect to, other matters listed in Clause 7.5 of TPS6 which are, in the opinion of the Council, relevant to the proposed development. Of the 24 listed matters, the following are particularly relevant to the current application and require careful consideration:

- (i) the preservation of the amenity of the locality;*
- (j) all aspects of design of any proposed development, including but not limited to, height, bulk, orientation, construction materials and general appearance;*
- (n) the extent to which a proposed building is visually in harmony with neighbouring existing buildings within the focus area, in terms of its scale, form or shape, rhythm, colour, construction materials, orientation, setbacks from the street and side boundaries, landscaping visible from the street, and architectural details.*

The proposal is considered to be satisfactory in relation to all of these matters.

Consultation

(a) Design Advisory Consultants' comments

The application was referred to the City's Design Advisory Consultants for comment in relation to the form and design of the proposed development and its compatibility with the streetscape. Their comments are as follows:

- *The proposed built form was observed to be acceptable as well as compatible to the streetscape.*
- *With respect to the bulk and scale of the proposed development, the Architects asked the Assessing Officer to carefully assess the development against the provisions of Clause 6.1 of TPS6 including sub-clause (3)(a) which states "the proposed development will contribute more positively to the scale and character of the streetscape, the preservation or improvement of the amenity of the area, and the objectives for the precinct than the building which existed on the site on the date of gazettal of the Scheme; and ..."*
- *The Architects observed that the proposed boundary walls on the southern boundary will have an adverse amenity impact on the adjoining outdoor living area on the southern side property, hence conflict with the policy.*
- *To assess compliance with the R-Codes provisions relating to solar access for adjoining sites, the applicant is to provide a shadow diagram.*
- *Visual privacy cones of vision have been incorrectly drawn on the drawings.*

In response to the comments of the Advisory Architects, the applicant has submitted revised drawings appropriately addressing the abovementioned points.

(b) Neighbour consultation

Neighbour Consultation has been undertaken for this proposal to the extent and in the manner required by Policy P104 'Neighbour and Community Consultation in Town Planning Processes'. During the advertising period no written submissions were received.

(d) Other City Departments

Comments have also been invited from the City's Parks and Environment department. The following minimum clearances need to be maintained between the existing street trees and proposed crossovers:

- 3 metres between Agonis and the proposed crossover for Unit 1
 - 2.5 metres between Camphor Laurel and the proposed crossover for Unit 1
 - 3 metres between Agonis and the proposed crossover for Unit 2
 - 2 metres between Agonis WA Peppermint tree and the proposed crossover for Unit 3
- These clearances have been met by the applicant.

Policy and Legislative Implications

Comments in relation to various relevant provisions of the No. 6 Town Planning Scheme, the R-Codes and Council policies have been provided elsewhere in this report.

Financial Implications

The issue has no impact on this particular area.

Strategic Implications

This matter relates to Goal 3 "Environmental Management" identified within the Council's Strategic Plan. Goal 3 is expressed in the following terms:

To effectively manage, enhance and maintain the City's unique natural and built environment.

Sustainability Implications

This proposed development has balconies facing north which will have access to northern sun, designed keeping in mind the sustainable design principles in accordance with the R-Codes and Council Policy.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.3.4
--

Moved Cr Ozsdolay, Sec Cr Trent

That pursuant to the provisions of the City of South Perth Town Planning Scheme No. 6 and the Metropolitan Region Scheme, this application for planning approval for four, two storey Grouped Dwellings on Lot 51 (No. 81) Comer Street, Como **be approved**, subject to:

(a) Standard Conditions

340 (Southern boundary wall), 375 (Clothes drying), 377 (Clothes drying), 390 (Crossover), 416 (Street trees), 427 (Design), 455 (Side and rear fencing), 456 (Fencing), 470 (Filling and retaining), 471 (Filling and retaining - timing), 508 (Landscaping), 550 (Plumbing), 660 (Validity), 663 (New units inspection).

Footnote A full list of Standard Conditions and Important Notes is available for inspection at the Council Offices during normal business hours.

(b) Specific Conditions:

- (i) Revised drawings shall be submitted, and such drawings shall incorporate the following:
 - (A) An increase in the open space of Unit 4 by 3.5 sq. metres.
- (ii) All screening required on the approved plans shall remain in place permanently, in order to comply with the Visual Privacy requirements of the Residential Design Codes, unless otherwise approved by the City. Details of the privacy screens are to be included in the working drawings submitted with the Building Licence application.
- (iii) As advised by the City's Parks and Environment department, the following minimum clearances shall be maintained between the existing street trees and proposed crossovers:
 - (A) 3 metres between Agonis and the proposed crossover for Unit 1.
 - (B) 2.5 metres between Camphor Laurel and the proposed crossover for Unit 1.
 - (C) 3 metres between Agonis and the proposed crossover for Unit 2.
 - (D) 2 metres between Agonis WA Peppermint tree and the proposed crossover for Unit 3.

(c) Standard Important Footnotes

647 (Revised drawings), 646 (Landscape), 648 (Not a building licence), 651 (SAT).

Footnote A full list of Standard Conditions and Important Notes is available for inspection at the Council Offices during normal business hours.

CARRIED (11/0)

10.4 GOAL 4: INFRASTRUCTURE
Nil

10.5 GOAL 5: ORGANISATIONAL EFFECTIVENESS

10.5.1 Applications for Planning Approval Determined Under Delegated Authority.
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Location:	City of South Perth
Applicant:	Council
Date:	3 July 2008
Author:	Rajiv Kapur, Acting Manager, Development Assessment
Reporting Officer:	Steve Cope, Director Development & Community Services

Summary

The purpose of this report is to advise Council of applications for planning approval determined under delegated authority during the month of June 2008.

Background

At the Council meeting held on 24 October 2006, Council resolved as follows:

“That Council receive a monthly report as part of the Agenda, commencing at the November 2006 meeting, on the exercise of Delegated Authority from Development Services under Town Planning Scheme No. 6, as currently provided in the Councillor’s Bulletin.”

The great majority (over 90%) of applications for planning approval are processed by the Planning Officers and determined under delegated authority rather than at Council meetings. This report provides information relating to the applications dealt with under delegated authority.

Comment

Council Delegation DC342 “Town Planning Scheme No. 6” identifies the extent of delegated authority conferred upon City Officers in relation to applications for planning approval. Delegation DC342 guides the administrative process regarding referral of applications to Council meetings or determination under delegated authority.

Consultation

During the month of June 2008, forty (40) development applications were determined under delegated authority. Refer **Attachment 10.5.1**.

Policy and Legislative Implications

The issue has no impact on this particular area.

Financial Implications

The issue has no impact on this particular area.

Strategic Implications

The report is aligned to Goal 5 “Organisational Effectiveness” within the Council’s Strategic Plan. Goal 5 is expressed in the following terms: *To be a professional, effective and efficient organisation.*

Sustainability Implications

Reporting of Applications for Planning Approval Determined Under Delegated Authority contributes to the City’s sustainability by promoting effective communication.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.5.1
--

That the report and **Attachments 10.5.1** relating to delegated determination of applications for planning approval during the month of June 2008, be received.

CARRIED EN BLOC RESOLUTION

10.5.2 Use of the Common Seal

Location:	City of South Perth
Applicant:	Council
File Ref:	GO/106
Date:	4 July 2008
Author:	Sean McLaughlin, Legal and Governance Officer
Reporting Officer:	Cliff Frewing, Chief Executive Officer

Summary

To provide a report to Council on the use of the Common Seal.

Background

At the October 2006 Ordinary Council Meeting the following resolution was adopted:

That Council receive a monthly report as part of the Agenda, commencing at the November 2006 meeting, on the use of the Common Seal, listing seal number; date sealed; department; meeting date / item number and reason for use.

Comment

Clause 21.1 of the City’s Standing Orders Local Law 2007 provides that the CEO is responsible for the safe custody and proper use of the common seal.

In addition, clause 21.1 requires the CEO to record in a register:

- (i) the date on which the common seal was affixed to a document;
- (ii) the nature of the document; and
- (iii) the parties described in the document to which the common seal was affixed.

Register

Extracts from the Register for the month of June 2008 appear below.

Nature of document	Parties	Date Seal Affixed
Surrender of CPV Lease	CoSP & Irene Bertoli	16 June 2008
Deed of Agreement to enter CPV Lease	CoSP & Geoffrey & Avis Simmonds	16 June 2008
CPV Lease	CoSP & Geoffrey & Avis Simmonds	16 June 2008
Registration of CPV Lease	CoSP & Geoffrey & Avis Simmonds	16 June 2008
Deed of Variation to CPV Lease	CoSP & Mary Birch	16 June 2008

Note: The register is maintained on an electronic data base and is available for inspection.

Consultation

Not applicable.

Policy and Legislative Implications

Clause 21 of the City’s Standing Orders Local Law 2007 describes the requirements for the safe custody and proper use of the common seal.

Financial Implications

Nil.

Strategic Implications

The report aligns to Goal 5 “Organisational Effectiveness” within the Council’s Strategic Plan. Goal 5 is expressed in the following terms: *To be a professional, effective and efficient organisation.*

Sustainability Implications

Reporting of the use of the Common Seal contributes to the City’s sustainability by promoting effective communication.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.5.2
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That the report on the use of the Common Seal for the month of June 2008 be received.

CARRIED EN BLOC RESOLUTION

10.5.3 Boatshed Cafe Lease

Location:	City of South Perth
Applicant:	Millar Holdings PL (Graeme Millar)
File Ref:	CP/608/4
Date:	10 July 2008
Author:	Sean McLaughlin, Legal and Governance Officer
Reporting Officer:	Cliff Frewing, Chief Executive Officer

Summary

Discussions have been ongoing for a number of years with respect to reviewing the leasing arrangements for the Boatshed Cafe. However in April 2007 Graeme Millar, Principal of Millar Holdings PL and current lessee of the Boatshed Cafe, presented the City with a solid proposal for an extension of the lease, together with an application for building improvements and a liquor licence. The Cafe is located on Sir James Mitchell Park.

At its June 2007 meeting, Council gave in-principle agreement to this proposal and endorsed administrative action to:

- (i) initiate all necessary statutory procedures to obtain appropriate tenure arrangements;
- (ii) commission an independent valuer/property analyst to provide advice on the commercial implications of the proposal;
- (iii) prepare necessary documentation in relation to varying the current lease; and
- (iv) consent to an application from Millar Holdings PL for a liquor licence at the premises.

Since that time the administrative steps outlined above have been actively pursued and are now largely concluded and a new draft lease is presented to Council for its consideration and endorsement.

Where a local government proposes to dispose of land it owns or manages by way of a lease, it must initiate the public consultation procedure set out in section 3.58 of the *Local Government Act* inviting public submissions on the proposed disposal. Once this consultation procedure is concluded, the local government must consider any submissions received and may then resolve to enter the lease.

Background

The current lease, which was entered into in November 1994 for a term of 21 years, provided for the construction and operation of the Boatshed Cafe by the current lessee. It is due to expire in November 2015, leaving a little over seven years to run.

Features of the current lease, a copy of which is at **Attachment 10.5.3(a)**, include:

- Rent is presently \$50,000.00 pa; indexed annually in accordance with the CPI for the remainder of the term;
- Profit Bonus payable in the 11th year if the gross profit of the business exceeds \$150,000; and
- The Cafe is located on a reserve for public recreation which is managed by the City under a management order issued pursuant to the *Land Administration Act*;
- At the expiry of the term, ownership of the premises would revert to the City.

The Proposal

In his April 2007 proposal, Mr Millar sought to extend the term to the current maximum permissible under the terms of the management order, which is 21 years. In support of his Proposal, Mr Millar noted that since 1994 when the lease commenced, public attitudes and entertainment needs have changed considerably and this has prompted the need to review the existing facilities and operations at the Cafe to make it more relevant to modern business practice and the needs of both the lessee and the City. A copy of the April 2007 Proposal is at **Attachment 10.5.3(b)**.

In addition, because of concerns raised by the Department of Planning and Infrastructure (DPI) about a commercial operation being conducted on land reserved for public recreation, it was considered desirable to revise the current tenure arrangements and negotiate a new lease to accommodate the DPI concerns.

In conjunction with new leasing arrangements, Mr Millar, also proposes to make significant improvements to the existing building to incorporate:

- major refurbishment of the existing building, public toilets and kiosk;
- provision of a store room;
- construction of an enclosed rubbish bin area;
- construction of a 'smokers' gazebo;
- upgrade the main electricity supply.

In anticipation of new leasing arrangements, Mr Millar advises that painting of the building is in progress and that he has recently completed restoration of the timber decking for the kiosk, installed new floors in the restaurant and installed a new cool room - at a combined cost of \$148,000.

Comment

Revised Tenure Arrangements

Because the current lease is located on a public reserve managed by the City under the terms of a management order issued by the Minister responsible for administering the *Land Administration Act*, currently the Minister for Planning & Infrastructure, the Hon. Alannah MacTiernan, any change to current arrangements must be approved by the Minister or her delegate.

Consultation has been ongoing with the DPI in relation to excising the lease area from the reserve and leasing the area to the City. Upon Council's endorsement of the new leasing arrangements and at the conclusion of the section 3.58 procedure, the DPI can proceed to implement the revised tenure arrangements.

State Government policy on commercial use of reserves

In recent years the State government has adopted new guidelines concerning the commercial use of reserves and has determined that a nominal % share (usually 25%) of the rental return received by a local government from commercial activities on reserve land that it manages, should be paid to the State unless the local government can present a compelling case to the Minister as to why the share should be waived.

The City wrote to the Minister in December 2007 requesting a waiver of the State's share on the basis of the high cost of maintaining the reserve surrounding the Cafe in and around Sir James Mitchell Park. The Minister has since written to the City agreeing to waive the State's 25% share of the rental return and has agreed to excise an area from the reserve and lease it to the City for a term of 21 years for the specific purpose of operating a cafe/restaurant.

New Rental Agreement

The City has been engaged in negotiations with Mr Millar with respect to new lease and rental arrangements and both parties appointed property valuation consultants to assist in determining an appropriate rental for a new lease. The City commissioned DTZ to conduct an indicative rental assessment and Mr Millar engaged Christie Whyte Moore Property Valuers. The DTZ review of rental arrangements with similar commercial establishments in the Perth metro area provided an indicative rental assessment in the range \$57,650 to \$67,250 per annum for the current lease area of 961 sq. m. This equates to \$60 to \$70 per sq. m.

The valuation from Christie Whyte Moore suggested that the rental rate applicable to the circumstances of the Boatshed Cafe lay in the vicinity of \$50 per sq. m.

Enlarged lease area

A complicating factor arose upon a proposal from the DPI to adopt an enlarged lease area (which had already been surveyed), for the purposes of excising the lease area from the reserve. The DPI proposed that an enlarged lease area be created to include existing access pathways on the eastern and foreshore boundaries of the existing building, together with a road access and parking area beyond the boundary of the current lease area at the rear of the premises. Mr Millar agreed in principle to this proposal to include this enlarged area in a new lease as he acknowledged that the area at the rear of the existing building at least indirectly supports the operation of the Cafe and having access to this area would enable him to construct a new enclosed bin storage area.

The enlarged lease area, as surveyed by DPI, is 1,574 sq. m. - an increase of 613 sq. m. on the existing lease area of 961 sq. m.

Mr Millar has agreed to use the enlarged area as the basis for the calculation of a new rent and consistently with the report from Christie Whyte Moore has proposed to pay \$50 per square metre for the enlarged lease area. This would result in an annual rent to the City of \$78,700 (exclusive of GST), which is significantly higher than the \$50,000 per annum which the City currently receives. A copy of the Christie Whyte Moore Report is at **Attachment 10.5.3(c)**.

City Officers acknowledge the fact that much of the increase in the leased area is not essential to and does not directly support the operation of the Cafe. DTZ assessed the proposed rate of \$50 per sq. m. and although adopting a slightly different methodology consider that a discounted rate of 50% is reasonable in these circumstances. A copy of the DTZ Report is at **Attachment 10.5.3(d)**.

In addition, Mr Millar has agreed to a triennial market review of the rent - a provision which is absent from the current lease. DTZ advises, and City Officers agree, that the combination of higher rent and regular market review are more favourable and practical mechanisms to ensure a satisfactory return to the City than the current arrangement which included a profit bonus clause which was acknowledged by all parties to be unworkable.

In summary, the proposed rent of \$78,700 is significantly higher than the \$50,000 p.a. currently received and which, apart from CPI increases, is the maximum the City would receive for the remaining 7 years of the current lease.

Features of New Lease

In anticipation of DPI satisfactorily implementing the revised tenure arrangements, a new lease has been prepared for the consideration and endorsement of Council. A copy is at **Attachment 10.5.(e)**.

The new lease is in similar terms to the current lease with the following changes:

- Rent of \$78,700 p.a. plus GST, adjusted annually in accordance with the CPI for Perth;
- Market rent review every three years;
- Term of 21 years;
- Permitted use of premises includes use as a restaurant to provide meals for patrons, for the purpose of a kiosk and food servery to provide and serve take-away food and beverages and to take table bookings or reservations;
- The sale and supply of liquor to patrons of the premises for consumption is permitted in accordance with the *Liquor Control Act*; and
- At the expiry of the term, ownership of the premises will revert to the City.

In consideration of the significantly higher rental return, triennial market review, and the substantial improvements which Mr Millar has made and proposes to make to the existing premises, City Officers recommend to Council that it accepts the new rental arrangements and endorses the new lease agreement. A review of comparative agreements for similar commercial operations in other favourable local government areas in metro Perth indicate that this would be a very good outcome for the City.

Section 3.58 public notice procedure

Where a local government proposes to dispose of land it owns (or manages under a management order) by lease, it must initiate the public consultation procedure set out in section 3.58 of the *Local Government Act*.

Once the section 3.58 consultation procedure is concluded and any submissions received are considered, the matter will return to Council with a further report so that the City may then enter the lease.

Consultation

The Department of Planning and Infrastructure has been consulted in relation to tenure issues. DTZ has been consulted in relation to property valuation and commercial issues.

Policy and Legislative Implications

Any policy and legislative implications are described in the report.

Financial Implications

Any financial implications are described in the report.

Strategic Implications

The strategic implications of the report are consistent with the City's Strategic Plan 2004-2008: **Goal 5 - Organisational Effectiveness** - *To be a professional, effective and efficient organisation.*

Sustainability Implications

Any sustainability implications arising out of matters discussed in the report are consistent with the City's Sustainability Strategy 2006-2008.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.5.3
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That Council...

- (a) endorses the new draft lease at **Attachment 10.5.3(e)**;
- (b) authorises the Chief Executive Officer to:
 - (i) initiate the consultation procedure required under section 3.58 of the *Local Government Act* ;
 - (ii) request the DPI to proceed with the excision of the lease area from the reserve and the granting of a new lease to the City for a term of 21 years; and
 - (iii) prepare a further report to Council to enable it to consider any submissions received under the section 3.58 procedure prior to resolving to enter the new lease.

CARRIED EN BLOC RESOLUTION

10.5.4 Amendment of Parking Local Law and Penalty Units Local Law
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Location:	City of South Perth
Applicant:	Council
Date:	10 July 2008
Author:	Sean McLaughlin, Legal and Governance Officer
Reporting Officer:	Cliff Frewing, Chief Executive Officer

Summary

To enable the City to regulate car parking during the staging of the 2008 Red Bull Air Race, it is necessary to amend the City's Parking Local Law to provide for the establishment of General No Parking Areas in specified locations at specified times. It is necessary to amend the Penalty Units Local Law in order to double the penalty which will apply for infringement of those parking restrictions during the specified times.

The *Local Government Act* (the Act) sets out the procedural requirements for the making of a local law. The process is initiated by Council resolving to give State-wide public notice of the proposed local law; and subsequently, by Council considering any submissions received before proceeding to make the local law.

Background

At its June 2008 meeting Council endorsed the holding of the 2008 Red Bull Air Race on Sir James Mitchell Park which included the imposition of road closures and parking restrictions on Saturday 1 November and Sunday 2 November.

In order to implement the parking restrictions, amendments are required to the Parking Local Law to provide for the establishment of a General No Parking Zone and to the Penalty Units Local Law to increase the penalty applicable during the weekend of the Red Bull Air Race.

Clause 7.4 of the Parking Local Law enables the City to establish General No Parking Zones for specified areas at specified times, by prescribing the time and area in a Schedule to the local law.

The Penalty Units Local Law enables the City to prescribe modified penalties for the infringement of parking restrictions imposed for special events such as Red Bull Air Race. A modified penalty is expressed in 'penalty units' and the value of a penalty unit is normally \$10.00. It is proposed to increase the value of the penalty unit to \$20.00 for parking infringements occurring during the Red Bull Air Race. This is consistent with the practice adopted for Sky Show.

Comment

Procedural Requirements - Purpose and effect

The Act requires the person presiding at a Council meeting to give notice of the purpose and effect of the proposed local law by ensuring that the purpose and effect is included in the agenda for the meeting and that the minutes of the meeting include the purpose and effect of the proposed local law.

Parking Local Law

The purpose of the proposed amendment to the Parking Local Law is to provide for the establishment of a General No Parking Zone for the times and locations set out in the Schedule to the Parking Local Law.

The effect of the proposed amendment to the Parking Local Law is to impose car parking restrictions during the times and at the locations prescribed.

Penalty Units Local Law

The purpose of the proposed amendment to the Penalty Units Local Law is to provide for an increase to the value of a penalty unit at the locations and during the times specified in the Schedule to the local law.

The effect of the proposed amendment to the Penalty Units Local Law is to double the penalty for committing any of the offences prescribed in the Schedule to the local law.

The text of the proposed amendment local law is at **Attachment 10.5.4**

Public consultation

Section 3.12(3) of the Act requires the local government to give State-wide public notice stating that the local government proposes to make a local law the purpose and effect of which is summarized in the notice.

Submissions about the proposed local law may be made to the local government for a period of not less than 6 weeks after the notice is given. After the last day for submissions, the local government is to consider any submissions made and may make the local law as proposed or make a local law that is not significantly different from what was proposed.

Once the public consultation process is concluded, a further report will be presented to Council to enable it to consider any submissions received and to make the local law.

Policy and Legislative Implications

Section 3.12 of the *Local Government Act* and regulation 3 of the *Local Government (Functions & General) Regulations* set out the procedural requirements for the making of a local law.

Financial Implications

Nil.

Strategic Implications

The proposal is consistent with Strategic Goal 5: *“To be a professional, effective and efficient organisation.”*

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.5.4
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That....

- (a) Council resolves to adopt the proposed Amendment (Parking and Penalty Units Local Laws) Local Law 2008, **Attachment 10.5.4**, for the purposes of public advertising and consultation as required by section 3.12 of the *Local Government Act*; and
- (b) a further report be presented to Council after the expiry of the submission period to enable the Amendment Local Law to be made.

CARRIED EN BLOC RESOLUTION

10.5.5	2008 IPWEA National Conference on Climate Change Response
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Location:	City of South Perth
Applicant:	Council
File Ref:	PE/501
Date:	9 July 2008
Author:	Cliff Frewing, Chief Executive Officer

Summary

The 2008 IPWEA National Conference on Climate Change Response will be held in Coffs Harbour NSW from 3-5 August 2008. The CEO has approved for the Manager City Environment, Mark Taylor to attend the IPWEA Conference in accordance with normal practice and the purpose of this report is to seek consent for the Mayor to also attend the conference.

Background

The program has been received and a copy is included with the Agenda at **Attachment 10.5.5**.

One of the key issues for coastal and tidal councils is the impact of sea level rise over the long term, and more immediately the impact of the combination of storm surges and high tides on a Local Government's coastal and river infrastructure.

This conference focuses on coastal and tidal council engineering staff and consultants who have been involved in the development of coastal and estuarine management response to sea level rise.

Comment

The conference will provide the opportunity to bring together people who are facing the same climate change challenges. The aim is to share ideas and to learn how other council staff and consultants are innovating and developing adaptation responses to sea level rise.

The Congress also provides the opportunity of meeting and sharing experiences with local government personnel - both appointed and elected from around Australia.

The program covers the following topic areas:

- Extent
- Impacts
- Risk
- Adaptation
- Strategies
- Response
- Land Use Planning
- Storm Tides
- Community
- Engagement
- Emergency Management

There is also an opportunity to undertake a post conference tour of relevant facilities during the remaining two days of the week. These facilities may be locally based or in the Gold Coast such as 'multi-level' driving range facilities on golf courses or night golf courses. It is proposed that the trip extend to take into account opportunities that may arise when finalising the journey.

Consultation

Program previously circulated to elected members for expression of interest in attending. The Mayor James Best has expressed an interest in attending.

Policy and Legislative Implications

This item is submitted in accordance with Policy P513.

Financial Implications

Total estimated cost of the Mayor’s attendance at the 2008 IPWEA National Conference on Climate Change Response and post conference tour is approximately \$3 670. A breakdown of the cost is as follows:

	Cost \$
Airfares (Economy) *	\$900
Registration - 2008 IPWEA National Conference on Climate Change Response	\$1 370
Accommodation (5 nights) [Includes post conference tour]	\$800
Expenses (Approximate Cost)	\$600
TOTAL	\$3 670

Funding is available in the 2008/09 Budget.

- * Exact method of travel yet to be determined. Return flight may be from Gold Coast. Vehicle hire may be involved

Strategic Implications

In line with Goal 5 - Organisational Effectiveness. *“To be a professional, effective and efficient organisation.”*

Note: A Business Case from Mayor Best in support of his attendance at 2008 IPWEA National Conference was circulated to Members prior to the meeting.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.5.5

That Council approves the attendance of Mayor James Best, at the 2008 IPWEA National Conference on Climate Change Response from 3-5 August 2008 at an estimated cost of \$3 670.

CARRIED EN BLOC RESOLUTION

10.6 GOAL 6: FINANCIAL VIABILITY

10.6.1 Monthly Financial Management Accounts - June 2008

Location: City of South Perth
 Applicant: Council
 File Ref: FM/301
 Date: 8 July 2008
 Author / Reporting Officer: Michael J Kent, Director Financial and Information Services

Summary

Monthly management account summaries compiled according to the major functional classifications compare actual performance against budget expectations. These are presented to Council with comment provided on the significant financial variances disclosed in those reports.

Background

Local Government (Financial Management) Regulation 34 requires the City to present monthly financial reports to Council in a format reflecting relevant accounting principles. A management account format, reflecting the organisational structure, reporting lines and accountability mechanisms inherent within that structure is considered the most suitable

format to monitor progress against the budget. The information provided to Council is a summary of the detailed line-by-line information supplied to the City's departmental managers to enable them to monitor the financial performance of the areas of the City's operations under their control. This also reflects the structure of the budget information provided to Council and published in the Annual Budget.

Combining the Summary of Operating Revenues and Expenditures with the Summary of Capital Items gives a consolidated view of all operations under Council's control. It also measures actual financial performance against budget expectations. Regulation 35 of the Local Government (Financial Management) Regulations requires significant variances between budgeted and actual results to be identified and comment provided on those identified variances. The City has adopted a definition of 'significant variances' of \$5,000 or 5% of the project or line item value - whichever is the greater. Whilst this is the statutory requirement, the City provides comment on a number of lesser variances where it believes this assists in discharging accountability.

To be an effective management tool, the 'budget' against which actual performance is compared is phased throughout the year to reflect the cyclical pattern of cash collections and expenditures during the year rather than simply being a proportional (number of expired months) share of the annual budget. The annual budget has been phased throughout the year based on anticipated project commencement dates and expected cash usage patterns. This provides more meaningful comparison between actual and budgeted figures at various stages of the year. It also permits more effective management and control over the resources that Council has at its disposal.

The local government budget is a dynamic document and is necessarily progressively amended throughout the year to take advantage of changed circumstances and new opportunities. This is consistent with principles of responsible financial cash management. Whilst the original adopted budget is relevant at July when rates are struck, it should, and indeed is required to, be regularly monitored and reviewed throughout the year. Thus the Adopted Budget evolves into the Amended Budget via the regular (quarterly) Budget Reviews.

A summary of budgeted revenues and expenditures (grouped by department and directorate) is also provided each month. This schedule reflects a reconciliation of movements between the 2007/2008 Adopted Budget and the 2007/2008 Amended Budget - including the introduction of the capital expenditure items carried forward from the previous year. A monthly Balance Sheet detailing the City's assets and liabilities and giving a comparison of the value of those assets and liabilities with the relevant values for the equivalent time in the previous year is also tabled. Presenting the Balance Sheet on a monthly, rather than annual, basis provides greater financial accountability to the community and provides the opportunity for more timely intervention and corrective action by management where required.

Comment

Whilst acknowledging the very important need for Council and the community to be provided with a 'final' year-end accounting of the City's operating performance and financial position; the year end financial accounts for the City are yet to be completed - in either a statutory or management account format. This is because the City is still awaiting supplier's invoices and other year end accounting adjustments before finalising its annual accounts ready for statutory audit. It is considered imprudent to provide a set of 30 June Management Accounts at this time when it is known that the financial position disclosed therein would not be final - and would be subject to significant change before the accounts are closed off for the year.

It is proposed that a complete set of Statutory Accounts and a set of Management Accounts as at year end would be presented to Council at the first available meeting of Council after their completion - ideally the 26 August 2008 meeting if possible. Such action is entirely consistent with Local Government Financial Management Regulation 34(2)(b), responsible financial management practice - and the practice of this City in previous years.

Consultation

This financial report is prepared to provide financial information to Council and to evidence the soundness of the administration's financial management. It also provides information about corrective strategies being employed and discharges accountability to the City's ratepayers.

Policy and Legislative Implications

In accordance with the requirements of the Section 6.4 of the *Local Government Act* and Local Government Financial Management Regulations 34 and 35.

Financial Implications

The attachments to this report compare actual financial performance to budgeted financial performance for the period.

Strategic Implications

This report deals with matters of financial management which directly relate to the key result area of Financial Viability identified in the City's Strategic Plan - '*To provide responsible and sustainable management of the City's financial resources*'. Such actions are necessary to ensure the City's financial sustainability.

Sustainability Implications

This report primarily addresses the 'Financial' dimension of sustainability. It achieves this on two levels. Firstly, it promotes accountability for resource use through a historical reporting of performance - emphasising pro-active identification and response to apparent financial variances. Secondly, through the City exercising disciplined financial management practices and responsible forward financial planning, we can ensure that the consequences of our financial decisions are sustainable into the future.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.6.1
--

That the monthly Statement of Financial Position, Financial Summaries, Schedule of Budget Movements and Schedule of Significant Variances for the month of June 2008 be presented to the 26 August 2008 meeting of Council in order to allow the final year end position to be accurately and completely disclosed.

CARRIED EN BLOC RESOLUTION

10.6.2 Monthly Statement of Funds, Investments and Debtors at 30 June 2008

Location:	City of South Perth
Applicant:	Council
File Ref:	FM/301
Date:	7 July 2008
Authors:	Michael J Kent and Deborah M Gray
Reporting Officer:	Michael J Kent, Director Financial and Information Services

Summary

This report presents to Council a statement summarising the effectiveness of treasury management for the month including:

- The level of controlled Municipal, Trust and Reserve funds at month end.
- An analysis of the City's investments in suitable money market instruments to demonstrate the diversification strategy across financial institutions.
- Statistical information regarding the level of outstanding Rates and General Debtors.

Background

Effective cash management is an integral part of proper business management. Responsibility for management and investment of the City's cash resources has been delegated to the City's Director Financial & Information Services and Manager Financial Services - who also have responsibility for the management of the City's Debtor function and oversight of collection of outstanding debts.

In order to discharge accountability for the exercise of these delegations, a monthly report is presented detailing the levels of cash holdings on behalf of the Municipal and Trust Funds as well as the funds held in "cash backed" Reserves. Significant holdings of money market instruments are involved so an analysis of cash holdings showing the relative levels of investment with each financial institution is also provided. Statistics on the spread of investments to diversify risk provide an effective tool by which Council can monitor the prudence and effectiveness with which the delegations are being exercised.

Finally, a comparative analysis of the levels of outstanding rates and general debtors relative to the equivalent stage of the previous year is provided to monitor the effectiveness of cash collections.

Comment

(a) Cash Holdings

Total funds at month end of \$27.45M compare very favourably to \$24.366M at the equivalent stage of last year. Reserve funds are some \$6M higher than at the equivalent stage last year - due to higher holdings of quarantined reserves and the accumulation of the Futures Fund. Municipal Funds are however lower by some \$2.5M due to the significantly reduced level of outstanding creditors at year end and a slightly higher level of outstanding debtors. It should be acknowledged that these numbers are not yet the 'final' year end balances - and are subject to further change until the final year end accounting adjustments are completed in August. The free cash position has again been favourably impacted by excellent rates collections - with collections within 0.17% of last year's best ever result. Our customer friendly payment methods, prompt and pro-active debt collection actions and the Rates Early Payment Incentive Prize have all contributed positively to this very pleasing result.

Monies brought into the year (and our subsequent cash collections) have been invested in secure financial instruments to generate interest until those monies were required to fund operations and projects later in the year. The astute selection of appropriate financial investments has meant that the City does not have any exposure to higher risk investment instruments such as CDOs (the sub prime mortgage market).

Excluding the 'restricted cash' relating to cash-backed Reserves and monies held in Trust on behalf of third parties; the cash available for Municipal use currently sits at \$3.74M (compared to \$6.23M in 2006/2007). **Attachment 10.6.2(1)**.

Considering cash demands and year end adjustments yet to be made both for capital and operating expenditure, the City anticipates finishing the year slightly ahead of the budgeted cash position (after allowing for quarantined / committed funds for carry forward works). This situation is being re-assessed on an ongoing basis as the year end accounting processes continue.

(b) Investments

Total investment in money market instruments at month end is \$27.01M compared to \$23.99M at the same time last year. Although the split between Municipal & Reserve Funds has changed, the overall positive difference still relates to good cash collections, higher reserve cash holdings and delayed outflows for capital projects.

The portfolio currently comprises at-call cash, term deposits and bank bills. Analysis of the composition of the investment portfolio shows that 81.3% of the funds are invested in securities having a S&P rating of A1 (short term) or better. The remainder are invested in BBB+ rated securities. The City's investment policy requires that at least 80% of investments are held in securities having a S&P rating of A1.

Monitoring credit quality is important to ensure that investment actions are in accordance with Policy P603 and the Dept of Local Government Operational guidelines for investments. All investments currently have a term to maturity of less than 1 year - which is considered prudent in times of rising interest rates as it allows greater flexibility to respond to future positive changes in rates.

Invested funds are responsibly spread across various approved financial institutions to diversify counterparty risk. Holdings with each financial institution are within the 25% maximum limit prescribed in Policy P603. The counter-party mix across the portfolio is shown in **Attachment 10.6.2(2)**.

Interest revenues (received and accrued) for the year total 2.26M - significantly up from \$1.84M at this time last year. This result is attributable to higher cash holdings, rising interest rates and timely, effective treasury management. During the year it has been necessary to balance between short and longer term investments to ensure that the City can responsibly meet its operational cash flow needs. The City actively manages its treasury funds to pursue responsible, low risk investment opportunities that generate additional interest revenue to supplement our rates income whilst ensuring that capital is preserved.

The average rate of return on financial instruments for the year was 7.24% - although this was weighed down by lower rates at the beginning of the year. Anticipated yield on investments yet to mature is currently at 7.93%. These results reflect careful selection of investments to meet our immediate cash needs. At-call cash deposits used to balance daily operational cash needs have been providing a return of 6.50% since November 2007 and 7.0% since early March.

(c) Major Debtor Classifications

(i) Rates

The level of outstanding rates relative to the same time last year is shown in **Attachment 10.6.2(3)**. Rates collections to the end of June 2008 represent 97.25% of total rates levied compared to 97.42% at the equivalent stage of the previous year. This suggests that collections have again been very strong - being within 0.17% of last year's best ever collection result. This provides convincing evidence that the rating and communication strategies used for the 2007/2008 rates strike established a good foundation for successful rates collections during the year.

The range of appropriate, convenient and user friendly payment methods offered by the City, combined with the early payment incentive scheme (generously sponsored by local businesses) supported by timely and efficient follow up actions by the City's Rates Officer in relation to outstanding debts, have been extremely successful in achieving excellent rates collections for the year.

(ii) General Debtors

General debtors stand at \$1.16M at month end excluding UGP debtors (although this balance will be subject to further year end adjustments as the financial statements are prepared). This compares to \$0.79M at the same time last year.

This 'difference' is attributable to an additional \$0.15M in refundable GST and invoices for grants funds (\$0.11M), recoverable works (\$0.10M) and vehicle trade-in proceeds (\$0.05M) that have not yet been paid. However, these amounts are regarded as entirely collectible debts and represent only a timing difference.

(iii) Underground Power

Of the \$6.78M billed for UGP in May 2008, some \$2.64M was collected by 30 June with approximately 38% of those in the affected area electing to pay in full and a further 40% opting to pay the first instalment. The remaining 22% have yet to make a payment and will be the subject of follow up collection actions. The unpaid UGP debtors are currently accruing interest on the outstanding balances as advised on the initial UGP notice.

Consultation

This financial report is prepared provide evidence of the soundness of financial management being employed whilst discharging our accountability to our ratepayers.

Policy and Legislative Implications

Consistent with the requirements of Policy P603 - Investment of Surplus Funds and Delegation DC603. Local Government (Financial Management) Regulation 19, 28 & 49 are also relevant to this report as is The DOLG Operational Guideline 19.

Financial Implications

The financial implications of this report are as noted in part (a) to (c) of the Comment section of the report. Overall, the conclusion can be drawn that appropriate and responsible measures are in place to protect the City's financial assets and to ensure the collectibility of debts.

Strategic Implications

This report deals with matters of financial management which directly relate to the key result area of Financial Viability identified in the Strategic Plan - *'To provide responsible and sustainable management of the City' financial resources'*.

Sustainability Implications

This report addresses the 'Financial' dimension of sustainability by ensuring that the City exercises prudent but dynamic treasury management to effectively manage and grow our cash resources and convert debt into cash in a timely manner.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.6.2

That Council receives the 30 June 2008 Statement of Funds, Investment & Debtors comprising:

- Summary of All Council Funds as per **Attachment 10.6.2(1)**
- Summary of Cash Investments as per **Attachment 10.6.2(2)**
- Statement of Major Debtor Categories as per **Attachment 10.6.2(3)**

CARRIED EN BLOC RESOLUTION

10.6.3 Warrant of Payments Listing

Location:	City of South Perth
Applicant:	Council
File Ref:	FM/301
Date:	8 July 2008
Authors:	Michael J Kent and Deborah M Gray
Reporting Officer:	Michael J Kent, Director Financial and Information Services

Summary

A list of accounts paid under delegated authority (Delegation DC602) between 1 June 2008 and 30 June 2008 is presented to Council for information.

Background

Local Government Financial Management Regulation 11 requires a local government to develop procedures to ensure the proper approval and authorisation of accounts for payment. These controls relate to the organisational purchasing and invoice approval procedures documented in the City's Policy P605 - Purchasing and Invoice Approval.

They are supported by Delegation DM605 which sets the authorised purchasing approval limits for individual officers. These processes and their application are subjected to detailed scrutiny by the City's Auditors each year during the conduct of the annual audit.

After an invoice is approved for payment by an authorised officer, payment to the relevant party must be made from either the Municipal Fund or the Trust Fund and the transaction recorded in the City's financial records.

Comment

A list of payments made since the last list was presented is prepared and is presented to the next ordinary meeting of Council and recorded in the minutes of that meeting. It is important to acknowledge that the presentation of this list (Warrant of Payments) is for information purposes only as part of the responsible discharge of accountability. Payments made under this delegation can not be individually debated or withdrawn.

Consultation

This financial report is prepared to provide financial information to Council and the administration and to provide evidence of the soundness of financial management being employed. It also provides information and discharges financial accountability to the City's ratepayers.

Policy and Legislative Implications

Consistent with Policy P605 - Purchasing and Invoice Approval and Delegation DM605.

Financial Implications

Payment of authorised amounts within existing budget provisions.

Strategic Implications

This report deals with matters of financial management which directly relate to the key result area of Financial Viability identified in the City's Strategic Plan - *'To provide responsible and sustainable management of the City's financial resources'*.

Sustainability Implications

This report contributes to the City's financial sustainability by promoting accountability for the use of the City's financial resources.

OFFICER RECOMMENDATION AND COUNCIL DECISION ITEM 10.6.3
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That the Warrant of Payments for the month of June 2008 as detailed in the Report of the Director Financial and Information Services, **Attachment 10.6.3**, be received.

CARRIED EN BLOC RESOLUTION

11. APPLICATIONS FOR LEAVE OF ABSENCE

11.1 Request for Leave of Absence : Cr C Cala 21 - 22 July 2008 inc
--

Moved Cr Trent, Sec Cr Grayden

The Cr Cala be granted leave of absence for meeting held 21 to 22 July 2008 inclusive.

CARRIED (11/0)

12. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

12.1 Use of Council Members Lounge - Cr Wells 16.7.2008
--

I hereby give notice that I intend to move the following Motion at the Council Meeting to be held on 22 July 2008.

MOTION

To determine if the Mayor has sole responsibility and authority to relocate staff to the Councillors' Lounge for work purposes.

MEMBER COMMENTS

The Councillors' Lounge is a designated recreation area set aside for the sole purpose of leisure and any business pertaining to Council which Councillors wish to carry out with residents/ratepayers.

That being so, if at any time it is necessary to use the Councillors' Lounge for any other purpose it should be, from a democratic view, the responsibility of ALL Elected Members to make that judgement.

COMMENT CEO

In accordance with Clause 5.3(4)(d) of Standing Orders Local Law 2007 the Chief Executive Officer comments as follows:

The office was established so that the Mayor's secretary could be located near to the Mayor's office for operational efficiency reasons as there are a lack of suitable workstations close to the Mayor's office. The situation is anticipated to be for a period of approximately 18 months to two years pending completion of the next phase of the building modifications.

MOTION

Moved Cr Wells, Sec Cr Hasleby

To determine if the Mayor has sole responsibility and authority to relocate staff to the Councillors' Lounge for work purposes.

MEMBER COMMENTS FOR / AGAINST MOTION - POINTS OF CLARIFICATION

Cr Wells opening for the Motion

- issue not about relocating staff or holding meetings in Councillors' Lounge
- issue is about who has the right to make the decision
- if Council approve a staff work station being there - no problem
- needs to be a Council decision - that is democracy at work

Cr Hasleby for the Motion

- Cr Wells has raised issues in relation to actual use of Members Lounge
- point raised is who actually gives authority
- Councillors were of the belief they should have 'sole' use of that particular lounge
- Civic Ward Members recently had a meeting where the staff member in question remained in the room which caused angst - we understood the room would be vacated by the staff member in question
- where did the authority come from that a particular space for Councillors' business could be given over to staff
- why does this particular officer need to be accommodated in the Members Lounge - why not in the Mayor's Office
- support inquiry into this matter
- not sure if Motion is for review of use or clarity as to where authority of use comes from
- who determines who meets in the Council Lounge?

AMENDMENT

Cr Ozsdolay suggested that the Motion be amended to delete the word *has* and replace with the words *does not have*

To determine if the Mayor **does not have** sole responsibility and authority to relocate staff to the Councillors' Lounge for work purposes.

Cr Hearne question - who determines how any of the City's space is used - Motion as is has no direction.

Chief Executive Officer - said that ordinarily the CEO determines where staff are located within the building and ordinarily the CEO would not locate staff to a Councillors' Lounge, however for reasons expressed in *CEO comments* under Item 12.1 in the Agenda paper the Mayor raised the issue of relocating the Mayor's PA in order for that person to be closer to his office for operational efficiency reasons. We discussed the issue, following which it was decided to locate the Mayor's secretary in the Councillors' Lounge for a temporary period pending building extensions. On the basis that there did not seem to be any other suitable location near the Mayor's office and having regard for the temporary period involved I approved the re-location of the officer to that area.

Cr Hearne against the Motion

- heard CEO's comments
- clearly the CEO made the decision - there may well be other solutions
- do not believe Motion proposed will solve the problem
- against the Motion

Cr Smith point of clarification - in relation to the recent meeting of Civic Ward Members in the Council Lounge I asked Cr Gleeson if the Mayor's secretary was asked to leave during this meeting. Cr Gleeson said no. It was our understanding that the officer in question would withdraw from the Council Lounge when Members were meeting?

Mayor Best stated that if it was a confidential matter and the officer was asked to leave she would do so. The officer is more than happy to leave if requested to do so, however Margaret Shorter was not asked to leave on the occasion referred to and therefore she stayed.

Cr Wells point of clarification - issue raised was not about a staff member using the Council Lounge as a work station but who determines a staff member can use the Council Lounge as a work station. Councillors do not ask to use staff offices.

Mayor Best referred Members to Council Policy P501 "Use of Council Facilities" which he said had been taken into account in the decision to relocate the officer to the Council Lounge as a temporary measure. He further stated that he was uncertain about the purpose of the Motion and believed others were as well.

Cr Grayden against the Motion

- Motion as worded will not help resolve issue
- heard CEO made the decision
- unless there is a Motion as to who has responsibility - do not believe Motion proposed does that
- against the Motion

Cr Best against the Motion

- believe agree that neither the Mayor or Councillors may direct the CEO in this area
- issue Cr Wells raised is valid in that Members were not part of the decision
- perhaps an alternative would be to withdraw the Motion and give an undertaking to improve communication / include that the officer will vacate the Council Lounge if requested

REQUEST TO WITHDRAW MOTION ITEM 12.1

Mayor Best asked Cr Wells if he would consider withdrawing his Motion at Item 12.1. Cr Wells responded no, that having heard the concerns raised that he would revise his Motion.

Chief Executive Officer referred Members to Policy P501 "Use of Council Facilities" and suggested the following alternative Motion may resolve the issue, if Cr Wells agrees to withdraw his Motion as proposed at Item 12.1 on the Agenda.

"That Policy P501 "Use of Council Facilities" be reviewed, particularly in relation to the use of the Council Lounge, and a report for consideration be submitted to the August 2008 meeting of Council."

MOTION WITHDRAWN ITEM 12.1

Moved Cr Wells, Sec Cr Hearne

That the Motion proposed by Cr Wells at Item 12.1 on the July Council Agenda be Withdrawn.

CARRIED (11/0)

COUNCIL DECISION ITEM 12.1

Moved Cr Hearne, Sec Cr Trent

That Policy P501 "Use of Council Facilities" be reviewed, particularly in relation to the use of the Council Lounge, and a report be submitted for consideration to the August 2008 meeting of Council.

CARRIED (11/0)

13. QUESTIONS FROM MEMBERS WITHOUT NOTICE

13.1. RESPONSE TO PREVIOUS QUESTIONS FROM MEMBERS WITHOUT NOTICE

Nil

13.2 QUESTIONS FROM MEMBERS WITHOUT NOTICE 22.7.08

13.2 Street Trees and Threatened Bird Species ...Cr P Best

Summary of Question

To what extent does the City of South Perth takes into account the nutritional, nesting and other needs of threatened bird species such as the Black Cockatoos (both Baudin's and Carnaby's Black Cockatoos) when deciding upon street trees and in management of public spaces in the City?

Summary of Response

The CEO advised that the City has two overarching documents which compliment each other and are utilised for the management of vegetation within its road reserves, parks and streetscapes. They are the Street Tree Management Plan and the Green Plan.

The Green Plan seeks to conserve existing bushland and rehabilitate native plantings within the context of an inner urban setting. Street Tree Management Plan aims to provide an overall strategy to guide the future greening of streets throughout the City and both are partly designed to attract local native fauna such as the Black Cockatoos.

14. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING
Nil

15. MEETING CLOSED TO PUBLIC

15.1 Matters for which the Meeting May be Closed.

Note: The Mayor sought an indication from Members as to whether they wished to further discuss *Confidential* Item 15.1.1. As there was no debate proposed by Members the meeting was not closed to the public at 10.00pm

DECLARATION OF INTEREST : ITEM 15.1.1 : CEO

The following Declaration of Interest was tabled from the CEO.

I wish to declare a Financial / Conflict Interest in Agenda Item 15.1.1 "Recommendations from CEO Evaluation Committee Meeting 1.7.08" on the Agenda for the Ordinary Council Meeting to be held 22 July 2008. As I am the subject of the report in question I will leave the Council Chamber while this item is being debated.

Note: As there was no discussion in relation to *Confidential* Item 15.1.1 the CEO did not leave the Council Chamber.

15.1.1 Recommendations from CEO Evaluation Committee Meeting Held 1 July 2008 <i>CONFIDENTIAL Not to be Disclosed REPORT</i>

Item 12.1 referred July 2008 Council

Location: City of South Perth
Applicant: Council
Date: 2 July 2008
Author: Kay Russell, Executive Support Officer
Reporting Officer: Cliff Frewing, Chief Executive Officer

Confidential

This report has been designated as ***Confidential*** under the *Local Government Act* Sections 5.23(2)(a) relates to a matter affecting an employee.

Note: *Confidential* Report circulated separately.

COUNCIL DECISION ITEM 15.1.1

Moved Cr Doherty, Sec Cr Ozsdolay

That the recommendations from the CEO Evaluation Committee Meeting held on 1 July 2008 contained in *Confidential* report Item 15.1.1 be adopted subject to part (g) being amended as follows:

- (g) The KPIs for the 2008/2009 CEO review period be adopted with the second dot point of KPI 6 being amended to read:
- Review and implement improvements to current complaint system and identify how it can integrate into the customer feedback loop.

15.2 Public Reading of Resolutions that may be made Public.

For the benefit of the remaining members of the public gallery the Council Resolution for Item 15.1.1 was read aloud by the Minute Secretary.

16. CLOSURE

The Mayor thanked everyone for their attendance and closed the meeting at 10.05pm.

DISCLAIMER

The minutes of meetings of the Council of the City of South Perth include a dot point summary of comments made by and attributed to individuals during discussion or debate on some items considered by the Council.

The City advises that comments recorded represent the views of the person making them and should not in any way be interpreted as representing the views of Council. The minutes are a confirmation as to the nature of comments made and provide no endorsement of such comments. Most importantly, the comments included as dot points are not purported to be a complete record of all comments made during the course of debate. Persons relying on the minutes are expressly advised that the summary of comments provided in those minutes do not reflect and should not be taken to reflect the view of the Council. The City makes no warranty as to the veracity or accuracy of the individual opinions expressed and recorded therein.

These Minutes were confirmed at a meeting on 26 August 2008

Signed _____
Chairperson at the meeting at which the Minutes were confirmed.

17. RECORD OF VOTING

22/07/2008 7:19:09 PM

Item 7.1.1 & Item 7.1.3 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 7:19:33 PM

Item 7.1.2 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 7:20:13 PM

Item 7.2.1 to Item 7.2.4 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 8:10:02 PM

Item 8.4.1 to Item 8.4.3 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 8:10:44 PM

Item 8.5.1 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 8:13:03 PM

En Bloc Items (All) - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 8:17:57 PM

Item 10.2.1 - Motion Passed 8/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Susanne Doherty, Cr Rob Grayden, Cr Roy Wells

No: Abstain: Cr Travis Burrows, Cr Les Ozsdolay, Cr Kevin Trent, Cr David Smith, Cr Colin Cala, Casting Vote

22/07/2008 8:46:08 PM

Item 10.3.1 (Officer Recommendation) - Motion Not Passed 4/7

Yes: Cr Bill Gleeson, Cr Ian Hasleby, Cr Les Ozsdolay, Cr Roy Wells

No: Mayor James Best, Cr Brian Hearne, Cr Peter Best, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden

Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 8:58:17 PM

Item 10.3.1 (Procedural - Extension of Time for Speaker) - Motion Passed 9/2

Yes: Mayor James Best, Cr Bill Gleeson, Cr Brian Hearne, Cr Peter Best, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells

No: Cr Ian Hasleby, Cr Les Ozsdolay

Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:08:27 PM

Item 10.3.1 - (Procedual Motion - That the Motion be Put) - Motion Passed 8/3

Yes: Mayor James Best, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells

No: Cr Bill Gleeson, Cr Ian Hasleby, Cr Kevin Trent

Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:09:08 PM

Item 10.3.1 - Motion Passed 8/3

Yes: Mayor James Best, Cr Brian Hearne, Cr Peter Best, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells

No: Cr Bill Gleeson, Cr Ian Hasleby, Cr Les Ozsdolay

Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:25:07 PM

Item 10.3.2 - Motion Passed 7/4

Yes: Cr Bill Gleeson, Cr Ian Hasleby, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr Rob Grayden

No: Mayor James Best, Cr Brian Hearne, Cr David Smith, Cr Roy Wells

Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:28:27 PM

Item 10.3.4 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:28:49 PM

Item 11.1 - Leave of Absence (Cr Cala) Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:48:48 PM

Item 12.1 - (Procedural Motion - Withdraw the Motion) - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:50:05 PM

Item 12.1 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote

22/07/2008 9:59:35 PM

Item 15.1.1 - Motion Passed 11/0

Yes: Mayor James Best, Cr Bill Gleeson, Cr Ian Hasleby, Cr Brian Hearne, Cr Peter Best, Cr Les Ozsdolay, Cr Kevin Trent, Cr Susanne Doherty, Cr David Smith, Cr Rob Grayden, Cr Roy Wells
No: Abstain: Cr Travis Burrows, Cr Colin Cala, Casting Vote