

ATTACHMENTS

Part 3 of 3

Attachments to the Ordinary Council Meeting

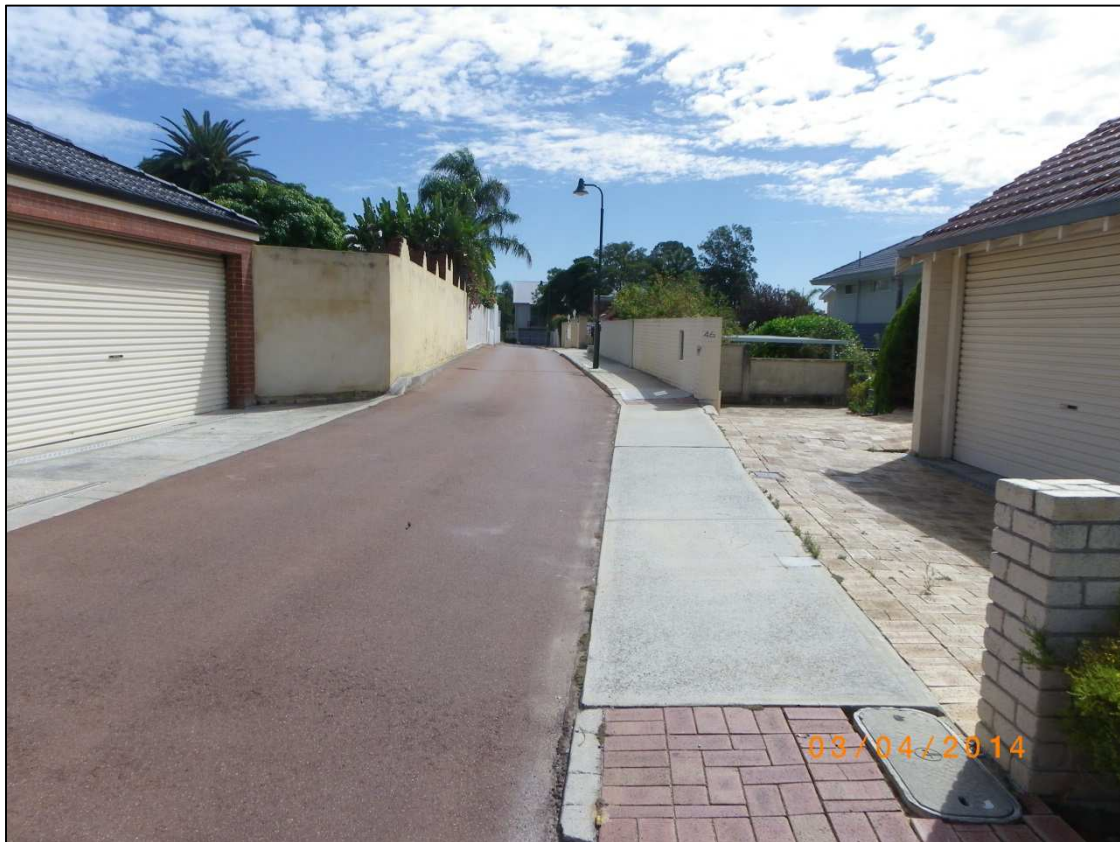
9 December 2014



- View from River Way facing South



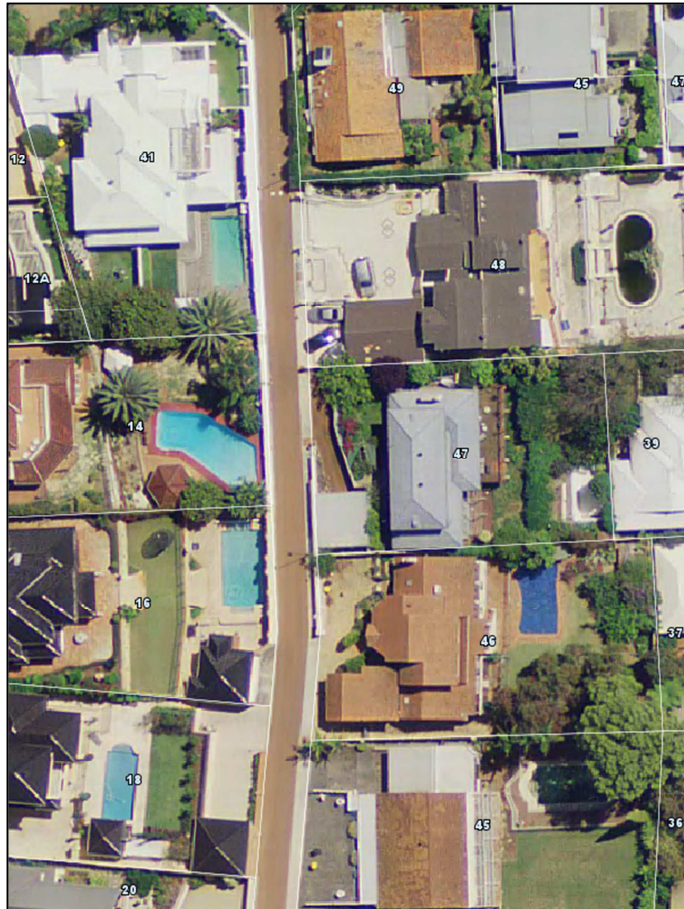
- View from River Way facing East



- View from River Way facing North



- View from River Way facing South



PERTH
SYDNEY

Your Ref: JU1/6 11 2013.650.1
SAT Ref: DR 201/2014
Our Ref: 714-356

10 November 2014

Chief Executive Officer
City of South Perth
Civic Centre
Cnr Sandgate Street and South Terrace
SOUTH PERTH WA 6151



Attention: Mr Mark Scarfone, Senior Planning Officer, Development Services

Dear Mark,

STATE ADMINISTRATIVE TRIBUNAL APPLICATION FOR REVIEW – FORD AND ORS V CITY OF SOUTH PERTH – NO. 2 (LOT 6) JUBILEE STREET, SOUTH PERTH

Further to the State Administrative Tribunal (SAT) Mediation Hearing of 22 October 2014 and subsequent Orders for the above matter, TPG Town Planning, Urban Design and Heritage (TPG) on behalf of the applicant, Zuideveld Marchant Hur Architects provides the following advice in regards to the revised plans submitted to the City of South Perth on 31 October 2014.

As outlined in the plans the Living Room walls to both the Ford and Carter Residences have been setback from their adjacent lot boundaries by a minimum of 1.0 metre to each boundary. As there is no longer the ability for the walls to hip down to the boundary, the height of the relevant walls have had to increase slightly and whereas they were considered acceptable as boundary walls, the required height means that a 1.1m setback is now required rather than the 1m provided.

Whilst this is now therefore a variation under the Deemed to Comply provisions of the R-Codes the following points need to be noted:

1. The setback of the parapet wall to the eastern side did not constitute a reason for refusal. This setback has been volunteered so that the development has a lesser impact on the amenity of this adjoining property as requested by the affected neighbour;
2. The setback to the western side is on the side owned by the applicant, who obviously does not object to the reduced setback and the revised proposal has considerably less impact than the previous proposal supported by Council officers;
3. The setback variation proposed is extremely minor and will be virtually undetectable once constructed; and
4. The setbacks comply with the Design Principles specified in Clause 5.1.3 of the R-Codes in that setbacks to the walls reduce the impact of bulk on the adjoining neighbours, provide greater direct sunlight and ventilation and, as there are no windows to these walls, they have no adverse impact on privacy.

Given the above and that it was clearly evident on site that these were the only issues needing further resolution we trust the above information and revised plans are sufficient to address the issues raised and we look forward to the City's favourable reconsideration at the next Council Meeting.

PERTH OFFICE

Level 7, 182 St Georges Tce
Perth Western Australia 6000

PO Box 7375 Cloisters Square
Perth Western Australia 6850

Telephone +61 8 9289 8300
Facsimile +61 8 9321 4786
www.tpgwa.com.au

The Planning Group WA Pty Ltd
ABN 36 097 273 222

Mark Scarfone
City of South Perth

STATE ADMINISTRATIVE TRIBUNAL APPLICATION FOR REVIEW – FORD AND ORS V CITY OF SOUTH PERTH – NO. 2 (LOT 6)
JUBILEE STREET, SOUTH PERTH

In the meantime should you wish to discuss further any matters, please do not hesitate to contact the undersigned on 9289 8300.

Yours sincerely

TPG TOWN PLANNING, URBAN DESIGN AND HERITAGE


 David Read
Director

Cc Amanda Butterworth, Associate – Allerding and Associates



CARTER & FORD RESIDENCES

LOT 2 (No 6) JUBILEE STREET, SOUTH PERTH

PHOTOMONTAGE - VIEW FROM PARK

Ordinary Council Meeting - 9 December 2014

REV	DATE	DESCRIPTION	DWN	APPR	ZUIDVELD MARCHANT HUR ARCHITECTURE PLANNING INTERIOR DESIGN 64 Fitzgerald Street, Northbridge, Western Australia 6003. T 61 8 9227 0900. F 61 8 9227 0600	DRAWN	MB	DATE	30.10.14	SCALE	NTS	
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PROJECT TITLE / CLIENT
FORD RESIDENCE PLANNING APPROVAL APPLICATION
 LOT 2 (No 6) JUBILEE STREET, SOUTH PERTH

DRAWING TITLE
 Ordinary Council Meeting - 9 December 2014
NORTH VIEW (RIVER VIEW)

REV	DATE	DESCRIPTION	DWN	APPR
-	30/10/14	ISSUED FOR PLANNING		

ZUIDEVELD MARCHANT HUR

ARCHITECTURE PLANNING INTERIOR DESIGN

64 Fitzgerald Street Northbridge Western Australia 6003 T 61 8 9227 0900 F 61 8 9227 0600

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Paul and Sonia Sutherland
3c Alston Ave
Como WA 6152

13 June 2014

Planning
City of South Perth
Cnr Sandgate St and South Tce
South Perth WA 6151

Dear Planning,

The owners of 1/89 Ley St Como WA 6152, Paul Gilbert Sutherland and Sonia Sutherland, request planning approval for change of use of the land from 'Residential' to 'Child Day Care Centre' in accordance with the Town Planning Scheme 6, and Planning Policy P380 Family Day Care and Child Day Care Centres, adhering to the Childcare Services National Act 2012.

The owners intend to operate an Out of School Hours (OSH) Care and Child Care service once planning has been approved by council and relevant regulatory authorities. The owners are the Directors of Elite Learning (www.elitelearning.com.au) at 247 Canning Hwy Como and 3c Alston Ave Como.

The letter outlines the justification for variations from normal requirements, along with plans of the site and form application to enable the council to provide discretionary approval for the application.

The proposed site is situated next to schools, off major roadways, has sufficient parking, and we believe highly suitable to provide this needed service to the community.

Local school principals have advised their support for the planned proposal, and feel it will benefit their schools and the community. Due to the proximity to schools out of school care will be serviced by foot, reducing traffic.

The local area currently has a deficiency in Child Day Care Services in the vicinity, with the closest centre being approximately 2.5km drive away, as depicted in figure 1.

The service is planned to operate two forms of care, OSH and Child Care. Operating hours being:

- Before School Care – 7.00am to 9.00am,
- After School Care – 2.30pm to 6.00pm and
- School Holiday Care – 7.00am to 6.00pm.
- Child Care - 7:00 am to 6:00pm.
- Pre-Kindergarten and Kindergarten 9:00 am – 2:30PM

The service will provide a quality education that is interactive, individually crafted and group based. The programs are designed to develop children's true potential, through targeted individual

learning, group learning, engaged teacher student interaction, language development and cultural understanding. Our Values are delivered through our staff, community interaction, local school cooperation, learning and parental communication and understanding, these being:

- Respect – each other with dignity and understanding
- Family – requires work, play, and love
- Trust – one another
- Diversity – each culture has its own characteristics

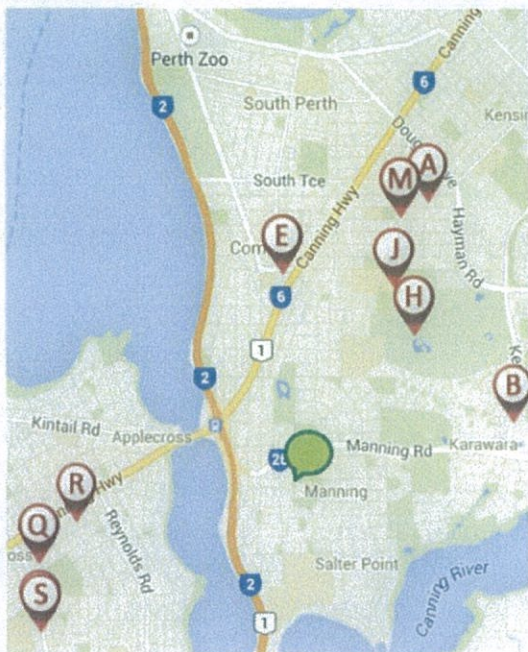


Figure 1 – Map of local Child Day Care Services, and proposed location (Reference MyChild.gov.au)

Section 1.1 provides relevant information regarding Policy P380, and section 1.2 regarding Town Planning Scheme 6. Appendices 1-5 provide the required drawings and details associated with the application, along with a letter from the St Pius Principal.

We hope you find our application acceptable, if any further information is required, please contact us on ph: 0488095387 email: paul.sutherland.mail@gmail.com or mail.

Yours Sincerely

Paul and Sonia Sutherland

1.1 Policy P380

With reference to Policy P380 Family and Child Day Care Centres

(i) Car parking and access

Requirement

The applicant must demonstrate that there are adequate vehicle access areas on site for parents dropping off and picking up children.

The drawings submitted in support of an application for planning approval of a Child Day Care Centre must demonstrate that all car parking bays are screened to the satisfaction of the City. The screening is to ensure that the bays are not visually dominant when viewed from the street and do not detract from the harmony of the streetscape. This screening is to be in the form of landscaping and may also include a screen wall.

Response

Car park and access is from existing street and primary school parking, due to the nature of care provided, times of pick up and drop off generally don't interfere with the primary school car park and access times, allowing for suitable car park and access facilities for the proposed change of use. Staff parking is available on site (2 bays) which is not visible from the road. Due to the proximity to schools before and after school care will be serviced by foot, reducing traffic, access and parking requirements.

(ii) External playing spaces

Requirement

(A) External playing spaces must be

- (i) arranged so as to minimise noise penetration onto adjacent properties; and
- (ii) completely enclosed to maintain a sufficient standard of security for the children and privacy for adjoining residents. External playing spaces must be enclosed by a 1.8 metre high fence constructed of:
 - (a) brick;
 - (b) timber of a design satisfactory to the City;
 - (c) corrugated fibre-cement sheeting; or
 - (d) other material approved by the City.

Outdoor playing spaces must not be enclosed by open picket fences.

Response

External play spaced will be enclosed by 1.8 m Colour bond fencing or 1.8m brick wall with pillars and aluminium slats. There will be sufficient setbacks with landscaping to reduce noise penetration.

Requirement

- (B) Outdoor playing spaces adjacent to a street must be enclosed by a 1.8 metre high brick fence set back from the street boundary. The setback area is to accommodate sufficient landscaping, in the City's opinion, to ensure that the fence is not visually dominant when viewed from the street and that it does not detract from the harmony of the streetscape.

Response

Adjacent to street a 1.8m brick wall with pillars and aluminium slats will be installed, the bricks will be of similar colour to existing brick, the aluminium slats will be of similar colour to the gutters and fascia. There will be a setback to ensure landscaping can be provided to break up the view from the street (see appendix 1)

(iii) Internal playing spaces

Requirement

The applicant must demonstrate that the internal layout of a Day Care Centre is arranged to minimise noise penetration on neighbouring dwellings. In deciding whether an applicant has satisfied this requirement, officers may have regards to:

- (i) the location of internal playing spaces;
- (ii) the setback of internal playing spaces from the property boundaries; and
- (iii) the location and orientation of any major openings.

Response

Internal playing spaces will be within the confines of the existing dwelling. The house is made from double brick, providing excellent sound insulation. Most internal playing spaces are setback within Town Planning Scheme 6 requirements from the boundaries. The major opening will be central to the front of the premises, where the farthest setback from adjacent properties applies. (see 1.2 and appendix 1)

1.2 TPS 6 Child Day Care Restrictions

With reference to TOWN PLANNING SCHEME NO. 6 Child Day Care Restrictions

1.2.1 Setbacks

With reference to TOWN PLANNING SCHEME NO. 6 Minimum Setbacks from Lot Boundaries for Childcare Service

Setback Type	Requirement	Actual	Comments
Street	6.0m	8.9m	Met
Rear	6.0m	Mostly 4.1	Not Met
Side	Not specified	N/A	Met

1.2.1 Landscaping

Requirement

Minimum Landscaped Area Required 40%

Response

Landscaped Area is 63% higher than the required

1.2.2 Other Development Requirement

Requirement	Response
1. Minimum lot area: 900 square metres and of regular shape.	The space available meets the Childcare Service National Act 2012 and is adequate for 38 children.
2. Minimum lot frontage: 20 metres.	Frontage is 20m excluding drive way, and 23 meters including.
3. Maximum number of children: 30 unless otherwise approved by the Council.	Requesting a limit of 38 children aligned to Education and Care Services National Regulations 2012 meeting required practical outdoor and indoor space. Indoor space of 125sqm and outdoor space of 270sqm, meeting the ratio of requirements for indoor 1 child to 3.25m of space and Outdoor 1 child to 7m of space.
4. Image and external appearance: To be in keeping with existing residential character of the street.	Required fencing will be brick wall with brick pillars of similar colour to existing house, with aluminum slats of similar colour to the gutters and fascia, there are no other external modifications required.
5. Car parking : Refer to clause 6.3 and Table 6. Table 6 Minimum Required Parking Bays 1 per required employee; plus 1 per 10 children permitted to receive care.	Sufficient car parking is available on the street and primary school overflow parking areas located adjacent to the premises (22 bays street parking). 2 Bays are available onsite for Staff parking.

Requirement	Response
<p>7. Corner sites: The Child Day Care Centre shall be designed to address the primary street. When considering any application involving a corner site Council's assessment will place strong emphasis on the effect of the increased traffic and parking.</p>	<p>The site is not on a corner</p>
<p>8. Canning Highway: Child Day Care Centres will generally not be permitted on sites having frontage to Canning Highway unless:</p> <ul style="list-style-type: none"> (a) the proposed development is situated on a corner site; (b) vehicular access is confined to a street other than Canning Highway; and (c) the intersection is not controlled by traffic lights. 	<p>The site is not on Canning Hwy</p>
<p>9. Suitable Premises: Converted Single House or purpose built building.</p>	<p>The proposed premise will be a converted house</p>
<p>10. Minimum indoor and outdoor playing space:</p>	<p>The site has minimum indoor and outdoor playing space as per the Regulations made under the Education and Care Services National Regulations 2012 for the proposed quantities of children.</p>
<p>11. Signs: No sign advertising a Child Day Care Centre is permitted other than one sign not more than 700mm wide and 500mm high attached to the front screen wall of the centre may be permitted. Signs for a Child Day Care Centre located on a corner site will only be permitted on the frontage which faces the designated road.</p>	<p>One sign of 500mm x 300mm will be attached to the front fence next to the pedestrian entrance.</p>

**ST. PIUS X CATHOLIC
PRIMARY SCHOOL**



**CORNER LEY ST. AND GLOISTER AVE.
MANNING, W.A. 6152
TELEPHONE: (08) 9450 2797
FACSIMILE: (08) 9313 2317
EMAIL: admin@stpiusx.wa.edu.au
WEBSITE: www.stpiusx.wa.edu.au**

11th June 2014

To Whom It May Concern:

This letter confirms our school support for the opening and operation of an Out of School Care Premises on Ley Street in Manning.

There is a substantial need for this service within our area and our parents will support this service. It is one we have tried to address in the past with facility constraints, meaning we could not pursue this further.

In regards to convenience, if offered to both Manning Primary School and St Pius X Catholic Primary School children, they will be able to walk to and from school supervised by the staff of the centre. This may also allow traffic congestion to free up around this area due to children being dropped off and picked up outside our normal peak periods.

I am more than happy to discuss this further if needed and can be contacted at St Pius X during school hours.

Kind Regards

Daine Burnett
Principal

Valerie Gillum

From: Paul Sutherland <paul.sutherland.mail@gmail.com>
Sent: Thursday, 20 November 2014 4:58 PM
To: enquiries
Cc: paul.sutherland.mail@gmail.com
Subject: Change of Use application 1/89 Ley St South Perth

Hi Val,

As discussed a few items of clarification have been requested regarding the application for change of use to 1/89 Ley St Como WA 6152, relating to the quantity of children. Based on Traffic/Parking assessment and acoustic concerns, we will modify the requested quantity of children allowed on the premises at any one time to 22. This has the following ramifications/modifications to our application.

1. Required unencumbered indoor space as per legislation modified to 35.75m² (estimated unencumbered indoor space 79m²)
2. Required unencumbered outdoor space as per legislation modified to 154m² (estimated unencumbered outdoor space 180m²)
3. Modification of the northern outdoor side as a designated outdoor play area, to an area not to be utilized as a child play/learning area.
4. Modification of the central out door area from a designated outdoor play area, to an area not to be utilized as a child play/learning area.
5. Limiting staff onsite at any one time to 2, meaning onsite car park sufficient for staff (2) with parents car parking requirements being only 2 drop off spaces at any one time (as per report).

Thanks for your time on the phone, and looking forward to a favourable outcome,

Regards,

Paul Sutherland



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Subject Site at 89 Ley Street



Units to the North at 87 Ley Street



St Pius Primary School at 91 Ley Street



Manning Primary School on Ley Street East of the Development Site

Our ref: 18470-1-14216

30 October 2014

Elite Learning
3C Alston Avenue
COMO WA 6052

Attention : Paul Sutherland
Email : paul@elitelearning.com.au

Dear Paul,

**PROPOSED CHILD CARE CENTRE
UNIT 1 / 89 LEY STREET, COMO
ACOUSTICAL ASSESSMENT**

As requested, an acoustic assessment of children playing outside for the above proposed child care centre has been conducted with respect to the *Environmental Protection (Noise) Regulations 1997*. This report assesses noise emissions from children playing in the outdoor area. Comment is also made with regards to noise breakout from the internal spaces.

SUMMARY

The proposed child care centre would operate between 0700 and 1830 hours, Monday to Friday and we understand would only cater for up to 22 children. Thus, in accordance with the *Environmental Protection (Noise) Regulations 1997* the relevant assigned noise levels at noise sensitive premises to the north of the proposed centre is the day period L_{A10} noise level of 47 dB(A).

Based on our assessment, the predicted noise level at the worst case location, from children playing outside and with 1.8m high solid side boundary fences as required under the City's policy, noise emissions from the child care centre would comply with the requirements of the *Environmental Protection (Noise) Regulations 1997* for the proposed hours of operation. We note that open type fencing the frontage facing the road does not affect the noise that would be received at the neighbouring premises.

Analysis of noise breakout from the internal spaces, indicate that noise emissions from these spaces would also comply with the requirements of the *Environmental Protection (Noise) Regulations 1997*, even if the windows remained open.

CRITERIA

The criteria used are in accordance with the *Environmental Protection (Noise) Regulations 1997*. These regulations stipulate maximum allowable external noise levels determined by the calculation of an influencing factor, which is then added to the base levels shown in Table 1. The influencing factor is calculated for the usage of land within the two circles, having radii of 100m and 450m from the premises of concern.

TABLE 1 - BASELINE ASSIGNED OUTDOOR NOISE LEVEL

Premises Receiving Noise	Time of Day	Assigned Level (dB)		
		L _{A10}	L _{A1}	L _{Amax}
Residential	0700 – 1900 hours Monday to Saturday	45+IF	55+IF	65+IF
	0900 - 1900 hours Sunday and Public Holidays	40+IF	50+IF	65+IF
	1900 – 2200 hours all days	40+IF	50+IF	55+IF
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and Public Holidays	35+IF	45+IF	55+IF
Commercial	All Hours	60	75	80

Notes:

L_{A10} is the noise level exceeded for 10% of the time.

L_{A1} is the noise level exceeded for 1% of the time.

L_{Amax} is the maximum noise level.

IF is the influencing factor.

It is a requirement that noise from the mechanical plant, at another premises, be free of annoying characteristics (tonality, modulation and impulsiveness), defined below as per Regulation 9.

“impulsiveness” means a variation in the emission of a noise where the difference between L_{Apeak} and L_{Amax Slow} is more than 15dB when determined for a single representative event;

“modulation” means a variation in the emission of noise that –

- (a) is more than 3dB L_{A Fast} or is more than 3dB L_{A Fast} in any one-third octave band;
- (b) is present for more at least 10% of the representative assessment period; and
- (c) is regular, cyclic and audible;

“tonality” means the presence in the noise emission of tonal characteristics where the difference between –

- (a) the A-weighted sound pressure level in any one-third octave band; and
- (b) the arithmetic average of the A-weighted sound pressure levels in the 2 adjacent one-third octave bands,

is greater than 3 dB when the sound pressure levels are determined as L_{Aeq,T} levels where the time period T is greater than 10% of the representative assessment period, or greater than 8 dB at any time when the sound pressure levels are determined as L_{A Slow} levels.

If the above characteristics exist and cannot be practicably removed then any measured level is adjusted according to Table 2 below.

TABLE 2 - ADJUSTMENTS TO MEASURED LEVELS

Where tonality is present	Where modulation is present	Where impulsiveness is present
+5 dB(A)	+5 dB(A)	+10 dB(A)

Note: These adjustments are cumulative to a maximum of 15 dB.

At the neighbouring residence, the IF has been assessed as 2 (with Manning Road being within 450 metres of the proposed development) with the assigned noise levels for the proposed hours of operation are as listed in Table 3.

TABLE 3 - ASSIGNED OUTDOOR NOISE LEVEL FOR OPERATING HOURS

Premises Receiving Noise	Time of Day	Assigned Level (dB)		
		L _{A10}	L _{A1}	L _{Amax}
Residential	0700 – 1900 hours Monday to Saturday	47	57	67
	0900 – 1900 hours Sunday and Public Holidays	42	52	67
	1900 – 2200 hours all days	42	52	57
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and Public Holidays	37	47	57

Notes:

L_{A10} is the noise level exceeded for 10% of the time.

L_{A1} is the noise level exceeded for 1% of the time.

L_{Amax} is the maximum noise level.

We note that noise emissions from vehicles on public roads are exempt from the Regulations, as outlined in Regulation 3(a).

PROPOSAL

The building used for this development is an existing residence, being a standard brick and tile construction.

From information supplied, we understand that the centre normal hours of operations are between 0700 and 1830 hours, Monday to Friday. It is understood that the proposed childcare centre will cater for a maximum 22 children aged between 3 and 7 years old. We also understand that the outdoor play would be controlled, however, given the size of the centre it is likely that all children could be playing outdoors at the one time. Hence the assessment has been undertaken for 22 children within the outdoor play area at the one time.

For information, a plan of the child care centre and an aerial photo (from the City of South Perth’s – Intramaps) indicating the neighbouring residence are shown on Figure 1 below.



FIGURE 1 - AERIAL

METHODOLOGY

Noise modelling has been undertaken to determine and assess the noise received at the neighbouring residential premises from children using the outdoor play area. Modelling was undertaken in accordance with the *EPA Draft Guidance for Assessment of Environmental Factors No. 8 – Environmental Noise*, including worst case down wind conditions as shown in Table 4.

TABLE 4 – EPA METEOROLOGICAL CONDITIONS

Type	Day Time
Temperature (°C)	20
Humidity (%)	50
Wind Speed (m/s)	4
Wind Direction	Downwind
Temperature Inversion	Pasquil Stability Factor E

Calculations were based on 22 children playing outside in the outdoor play area. To model noise emissions these children were divided into 2 groups of 11 children, with each group having a sound power level of 84 dB(A). We also note that the modelling was undertaken with the side fencing being a 1.8m high solid fence.

An assessment of noise received at the neighbouring residential premises was also undertaken for noise breakout from the internal classrooms. The proposed layout of the centre is attached for information.

ASSESSMENT

Given the periods that children will be allowed to play outside, noise emissions from the child care centre due to children playing outside when received at the neighbouring residence needs to comply with the assigned L_{A10} day period noise level of 47 dB.

Acoustic modelling of child play noise was made on the basis of 22 children playing in the outdoor play area at the one time, at the neighbouring residence to the north, was calculated at 44 dBA).

With regards to noise emissions internal activities, we note that any activity (possibly singing) would be at a relatively low level (i.e. around 75 dB(A)) to allow the carer to speak over the activity to provide instructions. Thus even with windows open, noise received at the neighbouring residence has been determined to be 36 dB(A). Thus, internal activities would comply with the assigned day period L_{A10} noise level.

From previous measurements, noise emissions from children playing is a broadband noise and does not contain any annoying characteristics in accordance with the *Environmental Protection (Noise) Regulations 1997*. Thus, Table 5 summarises the applicable Assigned Noise Levels, and assessable noise level emissions for each identified noise.

TABLE 5 – ASSESSMENT OF CHILDREN PLAYING

Source	Assessable Noise Level, dB(A)	Applicable Assigned Noise Level (dB(A))	Exceedance to Assigned Noise Level
Children Playing Outdoors	44	47	Complies
Internal Noise Breakout	36	47	Complies

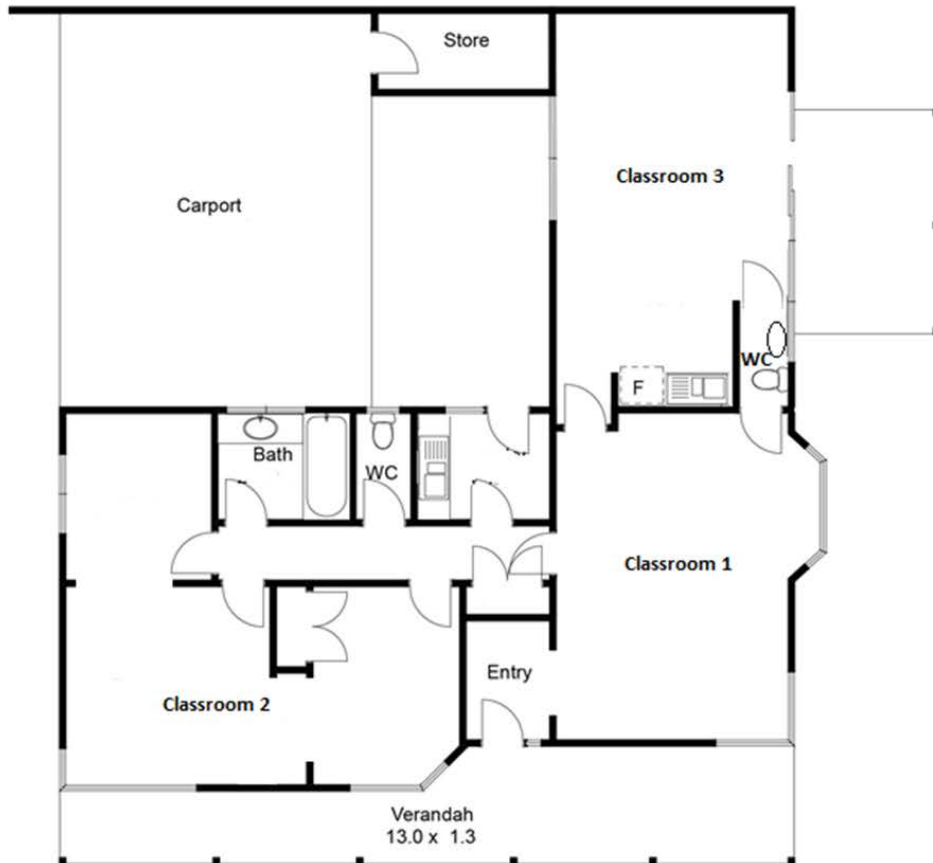
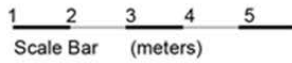
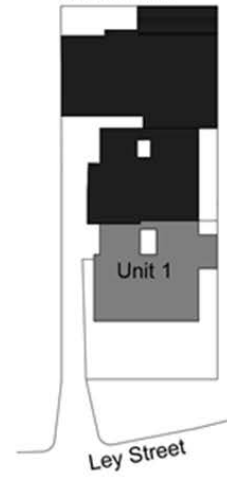
We note that even with assessable noise levels for both the outdoor and indoor areas combined, compliance with the assigned noise level would still be achieved. Based on the above assessment, noise emissions from the childcare centre would be deemed to comply with Regulatory requirements.

Yours faithfully,
For **HERRING STORER ACOUSTICS**

Tim Reynolds

Att.

SITE PLAN



Approximate Areas

Internal	115.4 m ²
Carport/Store	26.9 m ²
Alfresco/Verandah	33.9 m ²
Total Area	176.2 m²



Unit 1, 89 Ley Street
Como



PROPOSED CHILD CARE CENTRE

Unit 1, 89 Ley Street, Como

Traffic Impact Assessment Report

Prepared for: Elite Learning

A1413929W (Version 1a)

September 2014

IBM Building, Level 3, 1060 Hay Street, West Perth WA 6005

Telephone: 08 6467 7558
perth@mltraffic.com.au

Facsimile: 1300 739 523
www.mltraffic.com.au

1. INTRODUCTION

ML Traffic Engineers was commissioned by Elite Learning to prepare a traffic impact assessment report for a proposed child care centre at Unit 1, 89 Ley Street, Como.

In the course of preparing this report, the subject property and its surroundings have been inspected, plans of the development examined, and all relevant traffic data collected and analysed.

2. BACKGROUND AND EXISTING CONDITIONS

2.1 Location and Land Use

The subject site is located on the west side of Ley Street and is an existing residential unit. Nearby land uses includes schools (Manning Primary School and St Pius X Catholic School), place of worship (St Pius X Catholic Church), recreational facilities (James Miller Oval) and residential.

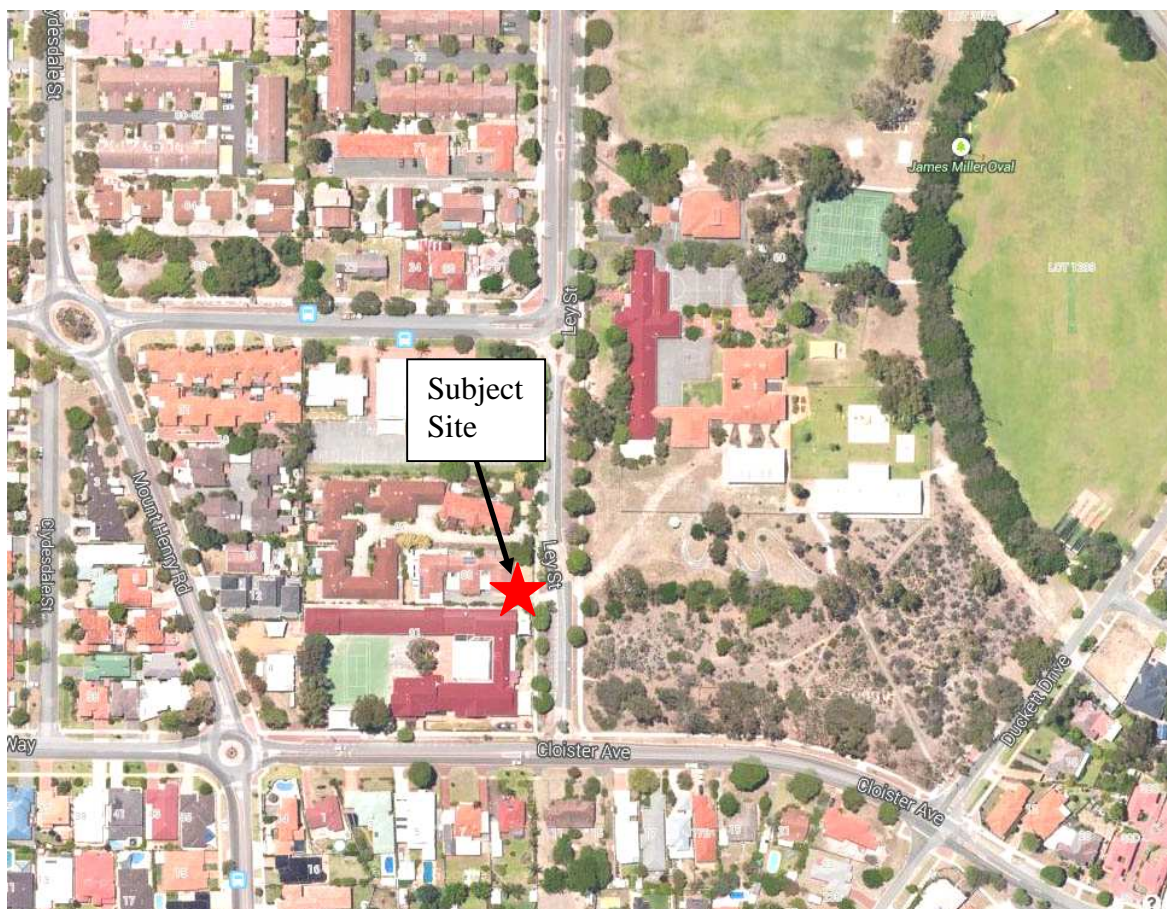


Figure 1: Subject Site

2.2 Street Network and Kerbside Parking

Ley Street is a north-south orientated local access street, with a school access function – specifically drop-off zone and on-street parking that are used by parents of Manning Primary School and on-street parking that are used by parents of St Pius X Catholic School. 40km/h speed limit applies between 7.30am and 9am, and between 2.30pm and 4pm on school days.

On-street 90-degree spaces along the west side of Ley Street between Cloister Avenue and the subject site and parallel spaces on the north side of Cloister Avenue (which St Pius X Catholic School fronts onto) between Clydesdale Street and Ley Street have a 2 hour parking restriction between 8am and 4pm. The drop-off zone in front of Manning Primary School on the east side of Ley Street has a no parking restriction between 7.30am and 9am and between 2.30pm and 4pm on school days. On-street parallel parking spaces on the east side of Ley Street between Cloister Avenue and the subject site are unrestricted.



Figure 3: Ley Street – looking towards the North

2.3 Existing Traffic in the Vicinity of the Subject Site

Traffic counts were undertaken Ley Street / Paterson Street and Ley Street / Cloister Avenue in the vicinity of the subject site on Wednesday, 20th August 2014.







Time of Day	Paterson Street West		Ley Street North		Site Access Road	
						
7.30am to 8am	87	4	21	29	6	25
8am to 8.30am	106	6	24	53	16	45
8.30am to 9am	102	8	27	78	20	62
4pm to 4.30pm	33	1	16	23	0	17
4.30pm to 5pm	39	2	17	21	0	16
5pm to 5.30pm	30	0	14	28	1	15

Table 1: No Development Traffic Volumes – Ley Street / Paterson Street







Time of Day	Cloister Avenue West		Cloister Avenue East		Site Access Road	
						
7.30am to 8am	19	12	37	21	13	12
8am to 8.30am	33	30	42	43	18	32
8.30am to 9am	46	43	53	50	24	41
4pm to 4.30pm	28	12	14	13	12	16
4.30pm to 5pm	31	10	15	10	9	20
5pm to 5.30pm	32	7	16	6	13	15

Table 2: No Development Traffic Volumes – Ley Street / Cloister Avenue

2.4 On-Street Parking Availability the Vicinity of the Subject Site

Parking supply and utilisation surveys were undertaken along sections of Ley Street, Cloister Avenue and Paterson Street within reasonable proximity to the subject site on Wednesday, 20th August 2014. There is generally significant availability of on-street parking spaces (in excess of 45 vacant spaces) except for the peak morning drop-off window between 8.25am and 8.55am, where the available on-street spaces are restricted to the section of Cloister Avenue to the east of Lay Street and along Paterson Avenue between Clydesdale Street and Ley Street.

Location	Restriction	Capacity	Number of Vacant Spaces			
			7.50am	8.10am	8.30am	8.55am
Ley Street – West Side 90-degree Spaces	2P 8am to 4pm	13	13	10	0	2
Ley Street – East Side Parallel Spaces	None	6	6	3	0	1
Cloister Avenue – North side between Clydesdale Street and Ley Street	2P 8am to 4pm	9	9	7	1	5
Cloister Avenue - North side between Ley Street and Duckett Drive	None	19	19	19	7	12
Paterson Avenue – North side between Clydesdale Street and Ley Street	None	4	4	4	3	4
Paterson Avenue – South side between Clydesdale Street and Ley Street	None	3	3	3	3	3
Ley Street – West Side Parallel Spaces, between Paterson Avenue and the pedestrian crossing outside 71 Ley Street	None	6	6	5	2	4
Ley Street – East Side Parallel Spaces, between Paterson Avenue and the pedestrian crossing outside 71 Ley Street	None	6	5	5	1	3
Total		66	65	56	17	34

Table 3: Vacant On-Street Parking Spaces – Morning Drop-off Period

Location	Restriction	Capacity	Number of Vacant Spaces			
			4pm	4.30pm	5pm	5.30pm
Ley Street – West Side 90-degree Spaces	2P 8am to 4pm	13	10	13	13	13
Ley Street – East Side Parallel Spaces	None	6	5	5	5	6
Cloister Avenue – North side between Clydesdale Street and Ley Street	2P 8am to 4pm	9	8	8	8	7
Cloister Avenue - North side between Ley Street and Duckett Drive	None	19	19	19	19	19
Paterson Avenue – North side between Clydesdale Street and Ley Street	None	4	4	4	4	4
Paterson Avenue – South side between Clydesdale Street and Ley Street	None	3	3	3	3	3
Ley Street – West Side Parallel Spaces, between Paterson Avenue and the pedestrian crossing outside 71 Ley Street	None	6	6	6	6	6
Ley Street – East Side Parallel Spaces, between Paterson Avenue and the pedestrian crossing outside 71 Ley Street	None	6	3	4	6	6
Total		66	48	62	64	65

Table 4: Vacant On-Street Parking Spaces – Afternoon Pick-up Period

3. PROPOSAL

The proposal is to change the use from residential to a child care centre with 2 staff and 22 children. There are 2 on-site parking spaces under cover, which will be used by staff.

4. CAR PARKING AND ACCESS CONSIDERATIONS

4.1 Car Parking Provision

The car parking requirements for the proposed use are contained within City of South Perth Town Planning Scheme No. 6 Clause 6.3, Table 6 and Schedule 5. The Planning Scheme's parking requirement for a child care centre is one bay per staff member plus 1 bay per 10 children

The proposed centre with 22 children and employing 2 staff requires 4 spaces, i.e. 2 spaces for parents and 2 spaces for staff. The 2 spaces provided on-site for staff, the short-fall of 2 drop-off / pick-up spaces will need to be accommodated in the surrounding streets.

Note that the 4 space parking requirement concurs with WAPC Planning Bulletin 72/2009 – Child Care Centres (Section 3.5) which has a rate of 1 space (staff and drop-off/pick-up) per 5 children.

4.2 Adequacy of Parking Provision

During peak drop-off times between 7am and 8.15am, there is adequate number of vacant on-street spaces on Ley Street (i.e. the 90-degree spaces fronting St Piux X Primary School on the west side) and the parallel spaces on the east side to accommodate the 2 space drop-off requirement. During peak drop-off period of St Piux X Catholic School and Manning Primary School) between 8.15am and 9am, on-street parking opportunities within Ley Street are considerably lower (particularly around 8.25am to 8.45am). On the odd occasion, parents may be required to park on Paterson Avenue or the section of Cloister Street to the east of Ley Street. See Table 3 of Section 2.4.

During afternoon pick-up times between 4pm and 6pm, there is adequate number of vacant on-street spaces on Ley Street. The 90-degree spaces fronting St Piux Primary School on the west side of Ley Street and the parallel spaces on the east side of Ley Street are mostly unoccupied. See Table 4 of Section 2.4.

5. TRAFFIC IMPACT CONSIDERATIONS

5.1 Traffic Generation

Table 3.6 of the RTA Guide to Traffic Generating Developments Version 2.2 states traffic generation rates of 0.8 vehicle trip per child per hour between 7am and 9am and 0.7 vehicle trip between 4pm and 6pm. A 22-children centre will generate 18 trips per hour (9 in and 9 out) in the morning drop-off period and 16 trips per hour (14 in and 14 out) in the afternoon pick-up period.

At other times of the day, traffic movements are expected to be minimal (1 or 2 trips every 2 to 3 hours). Traffic generation over a 24-hour period would be around 60 to 64 trips.

The existing residential use would generate between 1 to 2 trips per hour during morning and afternoon commuter peak periods and between 6 to 8 trips over a 24 hour period.

5.2 Traffic Distribution

Traffic will be distributed evenly to the north, south, east and west. Tables 5 and 6 present the turning traffic volumes associated with the proposed child care centre, with each row representing a half-hour period. Traffic conditions in the morning are considerably busier compared to the afternoon, noting that school drop-off activity occurs between 8.15am and 9am, with a significant peak between 8.25am and 8.45am.







Time of Day	Paterson Street West		Ley Street North		Site Access Road	
						
7.30am to 8am	87	4	21	29 + 4	6 + 1	2 + 4
8am to 8.30am	106	6	24	53 + 4	16 + 1	45 + 4
8.30am to 9am	102	8	27	78 + 4	20 + 1	62 + 4
4pm to 4.30pm	33	1	16	23 + 4	0	17 + 4
4.30pm to 5pm	39	2	17	21 + 4	0 + 1	16 + 4
5pm to 5.30pm	30	0	14	28 + 4	1 + 1	15 + 4

Table 5: With Child Care Centre Traffic Volumes – Ley Street / Paterson Street







Time of Day	Cloister Avenue West		Cloister Avenue East		Site Access Road	
						
7.30am to 8am	19	12 + 2	37	21 + 3	13 + 1	12 + 3
8am to 8.30am	33	30 + 2	42	43 + 3	18 + 1	32 + 3
8.30am to 9am	46	43 + 2	53	50 + 3	24 + 1	41 + 3
4pm to 4.30pm	28	12 + 2	14	13 + 3	12 + 1	16 + 3
4.30pm to 5pm	31	10 + 2	15	10 + 3	9 + 1	20 + 3
5pm to 5.30pm	32	7 + 2	16	6 + 3	13 + 1	15 + 3

Table 6: With Child Care Centre Traffic Volumes – Ley Street / Cloister Avenue

5.3 SIDRA Analyses of Intersection Operation

SIDRA analyses of intersection operation were carried out for the peak ½ hour period between 8.30am and 9am (see traffic volumes **IN RED** in Tables 5 and 6), with traffic from the child care centre included. Traffic volumes in the afternoon pick-up period are considerably lower than during the morning pick-up period due to school pick-up occurring an hour prior to the child-care centre pick-up period.

SIDRA analyses indicate no operational issues under the worst case morning drop-off period when peak drop-off occurs at the nearby 2 schools between 8.30am and 9am – with Level of Service A for all movements and approaches.

MOVEMENT SUMMARY

Site: Paterson_Ley_0830to0900_WithChildCare

New Site
Giveway / Yield (Two-Way)

Movement Performance - Vehicles												
Mov ID	OD Mov	Demand Total veh/h	Flows HV %	Deg. Satn v/c	Average Delay sec	Level of Service	95% Back of Queue Vehicles veh	Queue Distance m	Prop. Queued	Effective Stop Rate per veh	Average Speed km/h	
South: Ley Street (South)												
1	L2	42	0.0	0.169	9.4	LOS A	0.6	4.3	0.22	0.69	47.4	
3	R2	132	0.0	0.169	9.7	LOS A	0.6	4.3	0.22	0.69	47.4	
Approach		174	0.0	0.169	9.6	LOS A	0.6	4.3	0.22	0.69	47.4	
East: Ley Street (North)												
4	L2	164	0.0	0.116	8.2	LOS A	0.0	0.0	0.00	0.55	51.2	
5	T1	54	2.0	0.116	0.0	LOS A	0.0	0.0	0.00	0.55	51.2	
Approach		218	0.5	0.116	6.2	NA	0.0	0.0	0.00	0.55	51.2	
West: Paterson Street (West)												
11	T1	204	2.0	0.117	0.8	LOS A	0.7	5.0	0.34	0.07	53.3	
12	R2	16	0.0	0.117	9.2	LOS A	0.7	5.0	0.34	0.07	53.3	
Approach		220	1.9	0.117	1.4	NA	0.7	5.0	0.34	0.07	53.3	
All Vehicles		612	0.8	0.169	5.4	NA	0.7	5.0	0.18	0.42	50.8	

Level of Service (LOS) Method: Delay (HCM 2000).

Vehicle movement LOS values are based on average delay per movement

Minor Road Approach LOS values are based on average delay for all vehicle movements.

NA: Intersection LOS and Major Road Approach LOS values are Not Applicable for two-way sign control since the average delay is not a good LOS measure due to zero delays associated with major road movements.

SIDRA Standard Delay Model is used. Control Delay includes Geometric Delay.

Gap-Acceptance Capacity: SIDRA Standard (Akçelik M3D).

HV (%) values are calculated for All Movement Classes of All Heavy Vehicle Model Designation.

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SIDRA INTERSECTION 6.0.17.4466

Project: Not Saved

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**SIDRA
INTERSECTION 6**

Table 7: With Child Care Centre Intersection Performance – Ley Street / Paterson Street during the Busiest Half Hour Period (8.30am to 9am)

MOVEMENT SUMMARY

Site: Cloister_Ley_0830to0900_WithChildCare

New Site
Giveaway / Yield (Two-Way)

Movement Performance - Vehicles											
Mov ID	OD Mov	Demand Total veh/h	Flows HV %	Deg. Satn v/c	Average Delay sec	Level of Service	95% Back of Queue Vehicles veh	Distance m	Prop. Queued	Effective Stop Rate per veh	Average Speed km/h
East: Cloister Avenue (East)											
5	T1	106	1.0	0.125	0.6	LOS A	0.7	4.7	0.31	0.39	50.6
6	R2	106	0.0	0.125	9.1	LOS A	0.7	4.7	0.31	0.39	50.6
Approach		212	0.5	0.125	4.8	NA	0.7	4.7	0.31	0.39	50.6
North: Ley Street (North)											
7	L2	88	0.0	0.111	8.9	LOS A	0.4	3.0	0.20	0.65	48.0
9	R2	50	0.0	0.111	9.2	LOS A	0.4	3.0	0.20	0.65	48.0
Approach		138	0.0	0.111	9.0	LOS A	0.4	3.0	0.20	0.65	48.0
West: Cloister Avenue (West)											
10	L2	90	0.0	0.096	8.2	LOS A	0.0	0.0	0.00	0.41	53.9
11	T1	92	1.0	0.096	0.0	LOS A	0.0	0.0	0.00	0.41	53.9
Approach		182	0.5	0.096	4.1	NA	0.0	0.0	0.00	0.41	53.9
All Vehicles		532	0.4	0.125	5.7	NA	0.7	4.7	0.17	0.46	51.0

Level of Service (LOS) Method: Delay (HCM 2000).

Vehicle movement LOS values are based on average delay per movement

Minor Road Approach LOS values are based on average delay for all vehicle movements.

NA: Intersection LOS and Major Road Approach LOS values are Not Applicable for two-way sign control since the average delay is not a good LOS measure due to zero delays associated with major road movements.

SIDRA Standard Delay Model is used. Control Delay includes Geometric Delay.

Gap-Acceptance Capacity: SIDRA Standard (Akçelik M3D).

HV (%) values are calculated for All Movement Classes of All Heavy Vehicle Model Designation.

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 Project: P:\Australia\WA\A1413929W Child Care Unit 1, 89 Ley Street South Perth\SIDRA
 \U1_89LeySt_ChildCare.sip6
 8000983, ML TRAFFIC ENGINEERS PTY LTD, PLUS / 1PC

**SIDRA
INTERSECTION 6**

Table 8: With Child Care Centre Intersection Performance – Ley Street / Cloister Avenue during the Busiest Half Hour Period (8.30am to 9am)

6. CONCLUSIONS

Based on the considerations presented in this report:

- There is ample on-street parking capacity to accommodate the 2 space short-fall (being parent drop-off and pick-up) parking demand.
- There will be no adverse impacts on the operation of 2 nearby local street intersections (Ley Street / Paterson Street and Ley Street / Cloister Avenue) during morning drop-off and afternoon pick-up peak periods.
- SIDRA analyses indicate no operational issues under the worst case morning drop-off period when peak drop-off occurs at the nearby 2 schools between 8.30am and 9am – with Level of Service A for all movements and approaches.
- There are no traffic engineering reasons why a child care centre should not be approved at Unit 1, 89 Ley Street, Como.

City of South Perth
Town Planning Scheme No. 6

Amendment No. 48

Car bay sizes



Civic Centre
Cnr Sandgate Street and South Terrace
SOUTH PERTH WA 6151

Monday to Friday:	8.30am to 5.00pm
Enquiries:	Cameron Howell, Planning Officer
Telephone:	9474 0777
Facsimile:	9474 2425
Email:	enquiries@southperth.wa.gov.au
Web:	www.southperth.wa.gov.au



Proposal to Amend a Town Planning Scheme

1. **Local Authority:** City of South Perth
2. **Description of Town Planning Scheme:** Town Planning Scheme No. 6
3. **Type of Scheme:** District Zoning Scheme
4. **Serial No. of Amendment:** Amendment No. 48
5. **Proposal:** To amend the Scheme to remove reference to Schedule 5 'Minimum Dimensions of Car Parking Bays and Accessways' to allow car parking and access to be provided on site in accordance with the relevant Australian Standard.



RESOLUTION DECIDING TO AMEND
CITY OF SOUTH PERTH
TOWN PLANNING SCHEME NO. 6

PLANNING AND DEVELOPMENT ACT 2005



**Resolution Deciding to Amend
City of South Perth
Town Planning Scheme No. 6**

Amendment No. 48

RESOLVED ...

That the Council of the City of South Perth, in pursuance of Section 75 of the *Planning and Development Act 2005*, amend the City of South Perth Town Planning Scheme No. 6 to remove reference to Schedule 5 'Minimum Dimensions of Car Parking Bays and Accessways' to allow car parking and access to be provided on site in accordance with the relevant Australian Standards.

A C FREWING
CHIEF EXECUTIVE OFFICER

Minutes of Council Meeting dated: 9 December 2014



AMENDMENT REPORT



Report on Amendment No. 43 to Town Planning Scheme No. 6

INTRODUCTION

The City of South Perth Town Planning Scheme No. 6 (TPS6) became operative on 29 April 2003. At a meeting held on 9 December 2014, the Council resolved to amend the Scheme in the manner described in this Report, and at the same meeting, the Council endorsed the draft Amendment for advertising purposes. The Council resolution to amend the Scheme and the text of the draft Amendment are included as part of these Amendment documents.

The proposal is to amend TPS No. 6 to remove reference to Schedule 5 'Minimum Dimensions of Car Parking Bays and Accessways' to allow car parking and access to be provided on site in accordance with the relevant Australian Standards.

BACKGROUND TO AMENDMENT NO. 48

Clause 6.3(8) and Schedule 5 of TPS No. 6, have the effect of requiring the provision of car parking bays and access aisles which are larger than that required by the relevant Australian Standard. This conflict between the requirements of the TPS No. 6 and the Australian Standard often leads to tension between City officers and applicants, who question why the City enforces different standards to other Local Governments. The situation also results in conflicts in advice to the applicant from City departments, with the City' Engineering Infrastructure Services supporting bays which meet the minimum size stated in the Australian Standard while Development Services staff are requesting the bay width be increased to meet the standards in TPS No. 6. On at least one occasion, the Joint Central Development Assessment Panel have approved car bays of a smaller size than required by TPS No. 6 on the basis that they meet the minimum required in the Australian Standard.

Overall it is considered that the conflict between the two standards leads to inconsistent decision making and as such Amendment 48 is proposed to rectify the situation.

EXISTING SCHEME PROVISIONS

The existing TPS6 provisions relating to the dimension of parking bays are summarised as follows:

Clauses 4.3(1)

Requires residential car parking bays to be as prescribed in Schedule 5;

Clauses 6.3(8) and 6.3(9)

Car parking bays and accessways to be no smaller than prescribed in Schedule 5. Bay width and accessways to be increased in size where obstructions such as walls, columns or pier may reduce manoeuvrability;

Clause 6.11

Permits the Council to exercise discretion with respect to car parking and related matters;

Clause 7.8(1)

Permits the Council to exercise discretion with respect to car parking and related matters;

Schedule 5

Figure 1 of this Schedule outlines car parking bay dimensions and access way width based on the angle of bays. Figure 2 is based on a figure contained in the Australian Standards and outlines the required design solution to deal with obstructions close to or within the parking bay.

PROPOSED CHANGES

4.3 (1) Special Application of Residential Design Codes - Variations

(Deleted)

NOTE ON Clause 4.3.1(i):

Amended by Amendment No. ... (GG)

[Note added]

6.3 Car Parking

(8) The design and dimensions of car parking bays and associated accessways shall be as prescribed in Australian Standard AS2890.1 (as amended).

NOTE ON CLAUSE 6.3 (8) :

Amended by Amendment No. ... (GG)

[Note added]

(9) (Deleted)

NOTE ON CLAUSE 6.3 (9) :

Deleted by Amendment No. ... (GG)

[Note added]

6.11 Heritage Places

(8) (a) ...

(iv) minimum number of car parking bays;

...

NOTE ON CLAUSE 6.11 (8)(a)(iv) :

Amended by Amendment No. ... (GG)

[Note added]

7.8 Discretion to Permit Variations from Scheme Provisions

- (1) (a) ...
(v) minimum number of car parking bays;
...

**NOTE ON
CLAUSE 7.8 (1)(a)(v) :**
Amended by
Amendment No. ...
(GG)
[Note added]

Schedule 5 - Minimum Dimensions of Car Parking Bays and Accessways

(Deleted)

NOTE ON SCHEDULE 5:

Figure 1 'Dimensions according to angle of bays' and Figure 2 'Design envelope for car bay with side obstruction' deleted by Amendment No. ... (GG)

[Note added]

CONCLUSION

The proposed Amendment No. 48 will clarify the City's expectations with regard to the design and layout of car parking bays on residential and non-residential sites. This will assist applicants in the preparation of drawings and assist City officers in their assessment of proposals. The proposed modifications will ensure decision making in this regard is consistent.

The Council now requests that the Western Australian Planning Commission and the Minister for Planning favourably consider the proposals contained in Amendment No. 43.

Report prepared by:

Mark Scarfone
Senior Strategic Projects Planner

Council meeting dated: 9 December 2014



AMENDING DOCUMENTS

Endorsed by Council for community advertising
Council Meeting: 9 December 2014



Town Planning Scheme No. 6 Amendment No. 48

Endorsed by Council for community advertising
Council Meeting : 9 December 2014

The Council of the City of South Perth under the powers conferred upon it by the *Planning and Development Act 2005*, hereby amends the above local planning scheme as follows:

1. Delete sub clause (i) Clause 4.3 (1) Special Application of Residential Design Codes - Variations and add applicable note.

(Deleted)

NOTE ON Clause 4.3.1(i):
Amended by Amendment No. ... (GG)
[Note added]

2. Modify Clause 6.3(8) and delete clause 6.3(9) as per the table below.

6.3 Car Parking

- (8) The design and dimensions of car parking bays and associated accessways shall be as prescribed in Australian Standard AS2890.1 (as amended).

**NOTE ON
CLAUSE 6.3 (8) :**

*Amended by
Amendment No. ...
(GG)*

[Note added]

- (9) (Deleted)

**NOTE ON
CLAUSE 6.3 (9) :**

*Deleted by Amendment
No. ... (GG)*
[Note added]

3. Modify Clause 6.11 as per the table below.

6.11 Heritage Places

- (8) (a) ...
(iv) minimum number of car parking bays;

**NOTE ON
CLAUSE 6.11
(8)(a)(iv) :**

*Amended by
Amendment No. ...*

...

(GG)
[Note added]

4. Modify Clause 7.8 as per the table below.

7.8 Discretion to Permit Variations from Scheme Provisions

- (1) (a) ...
(v) **minimum number of** car parking **bays**;
...

**NOTE ON
CLAUSE 7.8 (1)(a)(v) :**
Amended by
Amendment No. ...
(GG)
[Note added]

5. Delete Schedule 5 - Minimum Dimensions of Car Parking Bays and Accessways and add applicable note.

(Deleted)

NOTE ON SCHEDULE 5:

Figure 1 'Dimensions according to angle of bays' and Figure 2 'Design envelope for car bay with side obstruction' deleted by Amendment No. ... (GG)

[Note added]

Adoption

ADOPTED by resolution of the Council of the City of South Perth at the Ordinary Council Meeting held on 23 July 2013.

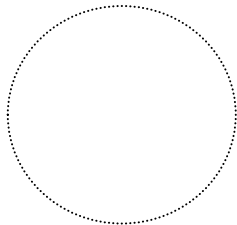
SUE DOHERTY
MAYOR

A C FREWING
CHIEF EXECUTIVE OFFICER

Final Approval

ADOPTED by resolution of the Council of the City of South Perth at the Ordinary Meeting of the Council held on 2013 and the Seal of the City was hereunto affixed by the authority of a resolution of the Council in the presence of:

CITY OF SOUTH PERTH
SEAL



SUE DOHERTY
MAYOR

A C FREWING
CHIEF EXECUTIVE OFFICER

RECOMMENDED / SUBMITTED FOR FINAL APPROVAL:

Delegated under S.16 of the PD Act 2005

Dated _____

FINAL APPROVAL GRANTED

JOHN DAY
MINISTER FOR PLANNING

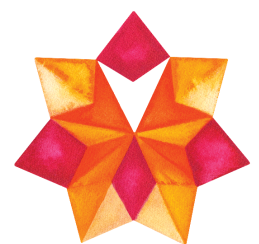
Dated _____

ENGAGED COMMUNITIES INSPIRED PLACES INNOVATIVE SOCIAL SOLUTIONS



**MANNING COMMUNITY HUB OUTDOOR PUBLIC PLACE:
Place Co-Creation Plan**

6 November 2014



SOCIAL **FABRIC**

Page 54



PROPOSAL DETAILS

Prepared for:	City of South Perth
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Contact	Danielle Cattalini, Stakeholder Engagement Coordinator
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Address	Cnr Sandgate Street and South Terrace South Perth WA 6151
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Phone	9474 0771
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Prepared by:	Social Fabric – Community Development and Place Making
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Contact	Anne Goodall, Managing Director
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Address	PO Box 295 Maylands WA 6929
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Phone	0407 441 822
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ABN	79 677 455 954
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1 Introduction

The City of South Perth is delivering the Manning Community Hub, a \$14 million civic project that aims to provide the local community with a vibrant, connected and attractive precinct integrating community, commercial and social activities.

A significant new outdoor public place will be constructed at the heart of the development and has the potential to become one of the area's truly great places. The City is interested in employing a **place making approach** to the design and activation of this space, to ensure that its full potential is realised for the benefit of the local community.

To assist in planning and facilitating community participation in place making efforts in relation to the outdoor public place, Social Fabric was engaged by the City to develop a high-level place co-creation plan that outlines how and when community and internal stakeholders will be engaged in the design and activation of the outdoor public place.

Place Co-Creation

Place co-creation is about creating opportunities for place users to work alongside place managers and multi-disciplinary professionals in the 'co-creation' of public places. Place co-creation ensures that a place meet the needs and aspirations of users, helps to unlock additional resources (volunteer time, expertise, assets, and funds) that can be focused towards making a place great, builds a network of people who feel a sense of shared ownership of a place and hence who are more likely to use it, invest in it, and act as champions and stewards for the place over the longer term. Importantly, place co-creation also builds individual, community and organisational capacity that can be channelled towards the achievement of other goals.

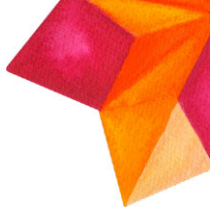
2 How to Make a Great Place

2.1 7 Key Strategies for Making a Great Place

Place making is a multifaceted and coordinated approach to creating and sustaining great places. The diagram and table below summarise the different elements that will need to come together in order for the new outdoor public place at the heart of the Manning Community Hub to be a great place that is well-used and much-loved by the local community.

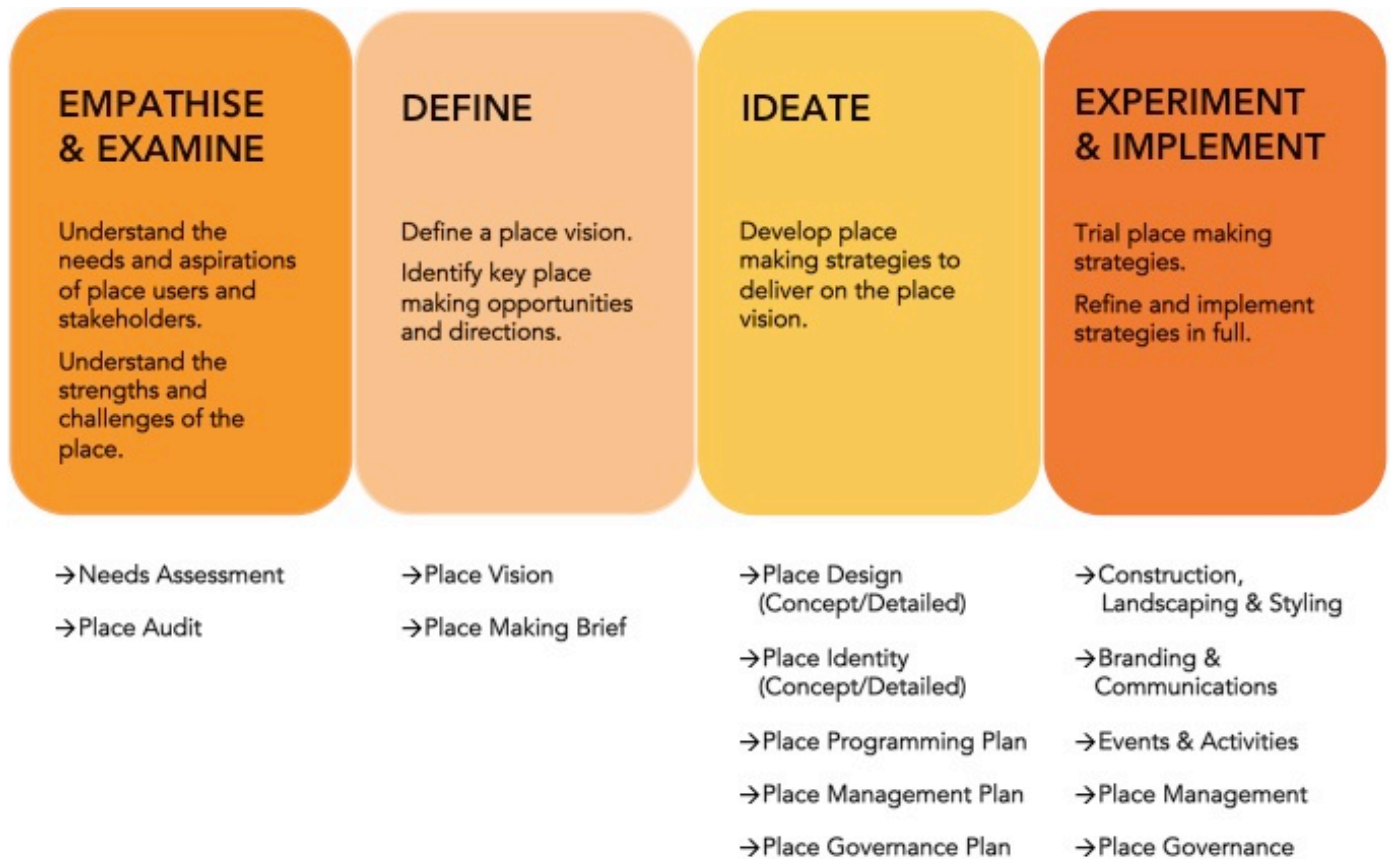


PLACE CO-CREATION	Community & stakeholder engagement, place visioning
PLACE GOVERNANCE	Shared decision-making, high-level planning, fundraising
PLACE MANAGEMENT	Day-to-day operations including: security, cleaning, maintenance, bookings, licensing, hosting
PLACE PROGRAMMING	Events & activities
PLACE DESIGN	Built form, landscape, artwork
PLACE IDENTITY	Naming, branding, communications & marketing
PLACE SUSTAINABILITY	Budgeting, building social capital, environmental management



2.2 Place Co-creation Process

The diagram below outlines the four broad stages of the place co-creation process. The new outdoor public place will be most successful if place users and stakeholders are involved in each stage of the process to the degree that is feasible and appropriate.



3 Place Users and Stakeholders

Who Needs to Participate in Place Co-Creation?

- ✓ Who are the people who live, work, and play in and around the Manning Community Hub?
- ✓ Who are the groups that have a stake in what happens at the Manning Community Hub?
- ✓ Which City of South Perth business units have a role to play in place making?

Local Residents

- Nearby residents
- Young people
- Other Manning residents

Manning Hub User Groups

- Library users
- Hall users
- Early years users
- Child health clinic users
- Moorditj Keila
- Manning Rippers Football Club

Manning Hub Neighbours

- Welwyn Avenue Traders Association
- Manning Primary School

Manning Organisations / Groups

- Manning Community Association
- Manning Senior Citizens Club
- Southcare
- South Perth Lions Club
- Church of Christ Youth Centre

City of South Perth

- Elected Members
- Manning Hub Project Team
- Staff from relevant business units e.g. libraries, public art, parks/landscape, events, community development, marketing
- Oval Team

4 Place Co-Creation Plan

The table overleaf outlines the co-creation activities that have been identified for the new outdoor public place.

Place Making Strategy Areas		MANNING HUB PROJECT STAGE						
		DESIGN	PROCUREMENT		CONSTRUCTION		OPENING	MANAGEMENT
		Nov-Dec 2014	Jan-Mar 2015	April 2015	May-Oct 2015	Nov 2015-Apr 2016	Apr-Aug 2016	Aug 2016
PLACE DESIGN								
Furniture – Fixed Styles, location/s	Community input to brief for design Provisional amount in project budget		Community engagement (PM)	Place vision (PM)	Detailed design (BDG)		Construction (Builder)	
Furniture – Semi-Fixed Styles, location/s	Modular style furniture that can be reconfigured if needed Community input to brief for design Provisional amount in project budget		Community engagement (PM)	Place vision (PM)	Detailed design (BDG)		Construction (Builder)	
Furniture – Loose Styles, location/s	Community input to brief for design Provisional amount in project budget		Community engagement (PM)	Place vision (PM)	Detailed design (BDG)		Construction (Builder)	
Walls Colour, materials, finishes	Designed by BDG Fully costed in project budget Scope to affix artwork etc to walls after community input	Detailed design (BDG)	Community engagement (PM)	Place vision (PM)	Construction (Builder)		Affixing extra features (CoSP / Artist)	
Floors Colour, materials, finishes	Designed by BDG Fully costed in project budget Scope to make a variation before builder purchases materials	Detailed design (BDG)	Community engagement (PM)	Place vision (PM)	Detailed design (BDG)		Construction (Builder)	
Canopy – Functional Colour, materials, finishes	4 weather protection canopies Designed by BDG Fully costed in project budget	Detailed design (BDG)			Construction (Builder)			
Canopy – Decorative Colour, materials, finishes	1 decorative canopy Community input to brief for design Listed as separate item in project budget so a variation is possible	Detailed design (BDG)	Community engagement (PM)	Place vision (PM)	Detailed design (BDG/Artist)		Construction (Builder/Artist)	
Lighting – Overhead Style, location/s	Designed by BDG Fully costed in project budget	Detailed design (BDG)			Construction (Builder)			
Lighting – Feature Style, location/s	Locations chosen by BDG Community input to brief for style Provisional amount in project budget		Community engagement (PM)	Place vision (PM)	Detailed design (BDG)		Construction (Builder)	
Public art Artistic medium, location/s	Community input to design development &/or construction Provisional amount in project budget	Community engagement (CoSP/ Public Art Consultant)	Artist brief (CoSP/Public Art Consultant)		Detailed design (Artist)		Construction (Artist/ Community)	

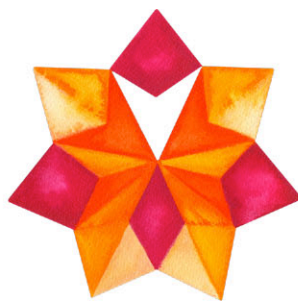
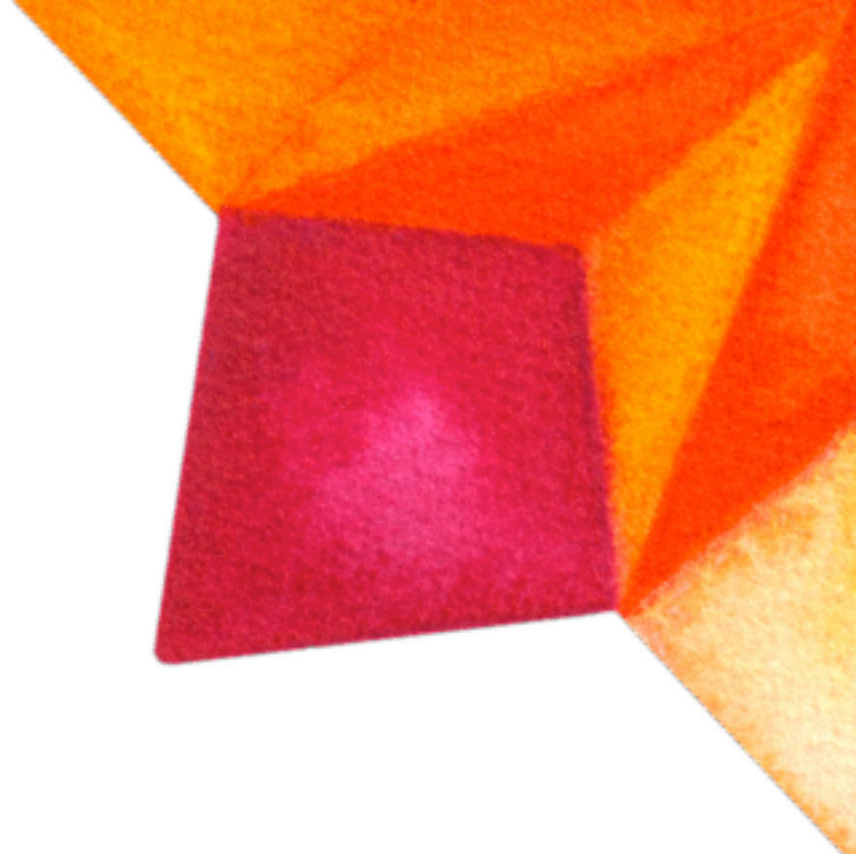
Place Making Strategy Areas		MANNING HUB PROJECT STAGE						
		DESIGN	PROCUREMENT		CONSTRUCTION		OPENING	MANAGEMENT
		Nov-Dec 2014	Jan-Mar 2015	April 2015	May-Oct 2015	Nov 2015-Apr 2016	Apr-Aug 2016	Aug 2016
PLACE DESIGN								
Landscape Plant choices, locations/s	Modular style landscaping that can be reconfigured if needed Community input to design development &/or construction Provisional amount in project budget		Community engagement (PM)	Place vision (PM)	Detailed design (CoSP)	Construction of some elements to be temporarily located near shops (Builder/CoSP/Community)	Construction of remaining elements (Builder/CoSP/Community)	
Wayfinding Style, location/s	Community input to design development &/or construction Provisional amount in project budget		Community engagement (PM)	Place vision (PM)	Detailed design (CoSP)		Construction (Builder/CoSP)	
Services Locations	Locations chosen by BDG	Detailed design (BDG)			Construction (Builder)			
PLACE IDENTITY								
Naming Branding Communications	Community input to brief for place identity and potentially to naming the place		Community engagement (PM)	Place vision (PM)	Place naming/visual brand (Branding consultant / Community)	Launch place brand / communications (CoSP)	Ongoing communications (CoSP/Community)	
PLACE PROGRAMMING								
Events Activities	Community input to programming &/or delivery of events & activities		Community engagement (PM)	Place vision (PM)			Place programming plan (CoSP & Community)	Opening event (CoSP & Community) Various events / activities (CoSP/Community)
PLACE MANAGEMENT								
Bookings Host Security Cleaning Maintenance	Explore possibilities for community input to some place management functions e.g. maintaining gardens, volunteer 'hosts'		Community engagement (PM)	Place vision (PM)	Decide on operational structures for place (CoSP)	Convene operational group to coordinate day-to-day operations of the place e.g. cross-organisational working group (CoSP)		Key management functions (CoSP) Volunteer gardeners/hosts (Community)
PLACE GOVERNANCE								
Planning Fundraising	Explore possibilities for community input to ongoing planning and fundraising for place		Community engagement (PM)	Place vision (PM)	Decide on governance structures for place (CoSP)	Convene governance group to oversee broad directions/plans for place and to secure funding e.g. community reference group (CoSP/Community)		

Stages of the Place Co-Creation Process

Empathise & Examine
Define
Ideate
Experiment & Implement

Abbreviations

PM	Place Maker
BDG	Bollig Design Group
CoSP	City of South Perth



SOCIAL **FABRIC**

PO BOX 295 MAYLANDS WA 6931
ABN 79 677 455 954

ENGAGED COMMUNITIES
INSPIRED PLACES
INNOVATIVE SOCIAL SOLUTIONS

hello@social-fabric.com.au
social-fabric.com.au

SUMMARY

Construction Estimate		\$ 13,700,000
Contingency 5%		680,000
Professional Fees 6%		860,000
Public Art		290,000
Furniture & Equipment		
▪ Sporting, community	\$ 220,000	
▪ Library, hall	<u>450,000</u>	
		670,000
TOTAL EXCLUDING GST		<u><u>\$ 16,200,000</u></u>

PROJECT ESTIMATE RANGE EXPECTED **\$15.7m to \$16.3m**

Our current estimate range is based on very competitive tender results currently being received.

Exclusions

- Demolition
- Services upgrades to site
- Work to oval and existing roadway/carpark
- Bad ground, contamination
- Escalation
- GST

RECONCILIATION

High Level Reconciliation

Previous estimate	\$ 14,450,000
Deduct demolition	(100,000)
Add escalation to start (2.75 years) from previous estimate	<u>950,000</u>
Previous estimate adjusted	\$ 15,300,000

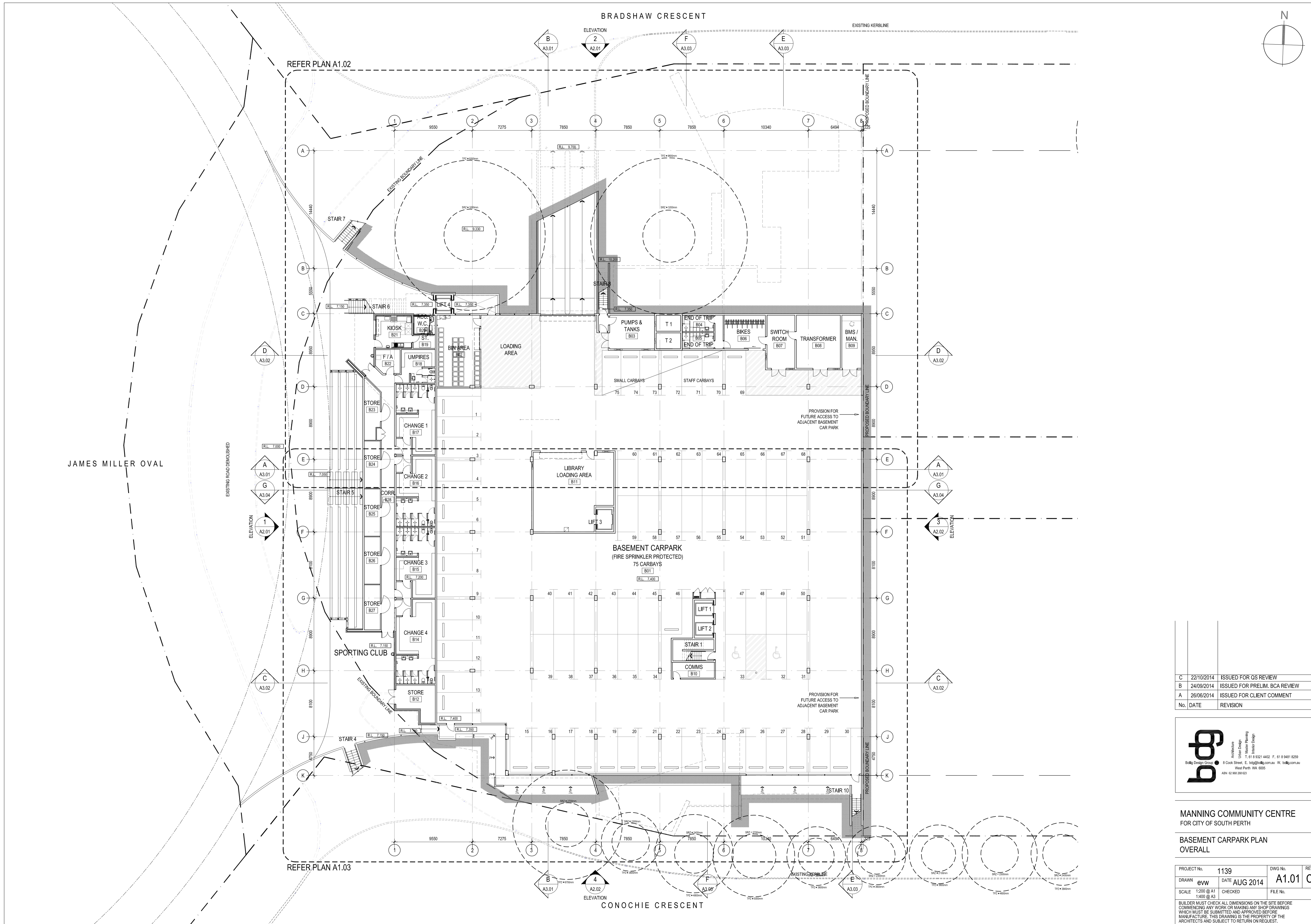
Add scope changes

▪ seats to plats	\$ 52,000	
▪ photo voltaics	100,000	
▪ tensile shade structure over seating	100,000	
▪ auto sunscreens to library west elevation	60,000	
▪ public art allowance increase	<u>190,000</u>	
		502,000

Total excluding GST	<u><u>\$ 15,802,000</u></u>
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Current Estimate excluding GST	<u><u>\$ 16,200,000</u></u>
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Current Estimate Range excluding GST	\$15.7m to \$16.3m
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C	22/10/2014	ISSUED FOR QS REVIEW
B	24/09/2014	ISSUED FOR PRELIM. BCA REVIEW
A	26/06/2014	ISSUED FOR CLIENT COMMENT
No.	DATE	REVISION

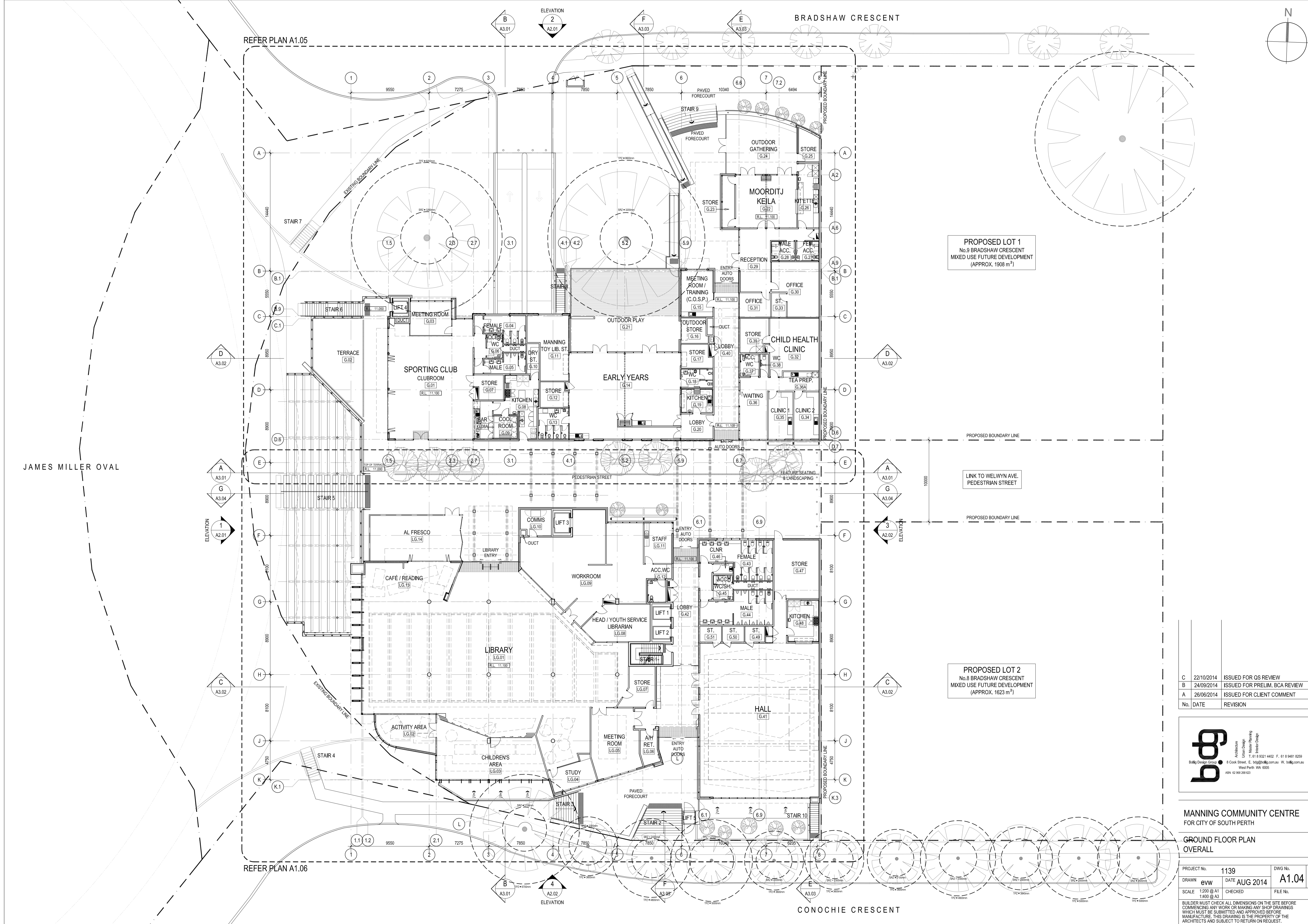
bdg
 Architecture
 Urban Design
 Master Planning
 Interior Design

bdg Design Group
 T: 91 8321 4402 F: 61 8 9481 8259
 8 Cook Street, E. bldg@bdg.com.au W: bdg.com.au
 West Perth WA 6005
 ABN 42 968 268 623

MANNING COMMUNITY CENTRE
 FOR CITY OF SOUTH PERTH

BASEMENT CARPARK PLAN
 OVERALL

PROJECT No.	1139	DWG No.	REV
DRAWN	evw	DATE	AUG 2014
SCALE	1:200 @ A1	CHECKED	FILE No.
BUILDER MUST CHECK ALL DIMENSIONS ON THE SITE BEFORE COMMENCING ANY WORK OR MAKING ANY SHOP DRAWINGS WHICH MUST BE SUBMITTED AND APPROVED BEFORE MANUFACTURE. THIS DRAWING IS THE PROPERTY OF THE ARCHITECTS AND SUBJECT TO RETURN ON REQUEST.			



PROPOSED LOT 1
 No.9 BRADSHAW CRESCENT
 MIXED USE FUTURE DEVELOPMENT
 (APPROX. 1908 m²)

PROPOSED LOT 2
 No.8 BRADSHAW CRESCENT
 MIXED USE FUTURE DEVELOPMENT
 (APPROX. 1623 m²)

C	22/10/2014	ISSUED FOR QS REVIEW
B	24/09/2014	ISSUED FOR PRELIM. BCA REVIEW
A	26/06/2014	ISSUED FOR CLIENT COMMENT
No.	DATE	REVISION

bdg
 Architecture
 Urban Design
 Master Planning
 Interior Design

8 Cook Street, E. bdg@bdg.com.au W. bdg.com.au
 West Perth WA 6005
 ABN 42 968 268 623

MANNING COMMUNITY CENTRE
 FOR CITY OF SOUTH PERTH

GROUND FLOOR PLAN
OVERALL

PROJECT No.	1139	DWG No.	REV
DRAWN	eww	DATE	AUG 2014
SCALE	1:200 @ A1	CHECKED	FILE No.
BUILDER MUST CHECK ALL DIMENSIONS ON THE SITE BEFORE COMMENCING ANY WORK OR MAKING ANY SHOP DRAWINGS WHICH MUST BE SUBMITTED AND APPROVED BEFORE MANUFACTURE. THIS DRAWING IS THE PROPERTY OF THE ARCHITECTS AND SUBJECT TO RETURN ON REQUEST.			

WORKING TOGETHER

DRAFT

Land Asset Management Plan & Property Assessment

OUR MISSION

WORKING TOGETHER TO
CREATE A CITY FOR EVERYONE

OUR VISION

“WE BELONG TO AN ENGAGED AND COHESIVE COMMUNITY THAT IS LINKED BY VIBRANT LOCAL CENTRES AND SHARED SPACES. WE LIVE AND TRAVEL IN WAYS THAT NURTURE OUR ENVIRONMENT; AND OUR HOUSING AND AMENITIES MEET THE DIVERSE NEEDS OF A CHANGING SOCIETY”

VALUES

TRUST

Honesty and integrity

RESPECT

Acceptance and tolerance

UNDERSTANDING

Caring and empathy

TEAMWORK

Leadership and commitment

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Council Adoption

The Land Asset Management Plan was adopted by Council at the <<MONTH>> Ordinary Council Meeting.

To view the minutes of this meeting visit the City's website.

www.southperth.wa.gov.au/Our-Council/Minutes-and-Agendas

Further Information

Land and Project Officer
City of South Perth Civic Centre
Cnr Sandgate St and South Tce
South Perth WA 6151

(08) 9474 0777

enquiries@southperth.wa.gov.au

INTRODUCTION

The City of South Perth is located on the southern side of the Swan River adjacent to the Perth CBD. Covering an area of 19.9 square kilometres, South Perth has over the last few decades developed into a major local government that is a desirable location of choice for living, working and recreation.

The City is known for its scenic Swan River foreshore, the Perth Zoo, the many sporting and recreation fields, as well as its commercial and retail precincts that showcase many of its cafes and restaurants.

With a population of approximately 45,000 and predicted to continue to rise over the next 15 years, local governments like South Perth will be presented with major challenges in managing this projected growth, services and economic activities. These challenges will continue to exist whether or not the proposed local government mergers eventuate. This will particularly place pressure on the City in planning and managing its property resources efficiently. This Land Asset Management Plan (LAMP) will therefore play an important role in the future decision making of the City.

This LAMP has the potential to raise long term income for the City that will assist it in providing services to the community. This LAMP has been born out of the City's [Economic Development Strategy](#) adopted in April 2013 and is integrated with the City's [Strategic Plan 2013-2023](#).

Property and Local Government

In contemporary times, local government is expected to provide for the well-being of the local community in social, economic and cultural terms while being able to anticipate and manage new challenges.

Just as it is right and proper to own property for the purpose of delivering a high standard road or park, it is equally appropriate to own property to the extent that it enables the Council to deliver on these new functions, such as achieving high quality urban design, accessible town centres, economic growth, cultural diversity, etc.

However, public ownership of property inevitably involves competing with private owners and users. It is therefore important that there be a well-understood set of principles to define the Council's involvement in the property market, to ensure that its' regulatory and property ownership functions are clearly delineated.

Furthermore, because it deals in public money and resources, the Council must ensure that its property decisions:

- are transparent and accountable;
- are an efficient use of public money and assets; and
- are aligned with its published strategies and policies

The private property sector is overwhelmingly driven by a single bottom line – financial efficiency. However, Council has a duty to provide for the social, economic, environmental and cultural wellbeing of its community. This means, among other things, ensuring that developments contribute to the betterment of the community. In some cases, the only way to achieve this is through strategic ownership.

Why the City of South Perth needs a Land Asset Management Plan

Over a period of several decades the City has acquired a major property portfolio in excess of 300 freehold properties that are all documented and many have clearly defined purposes. Some are extremely valuable due to their location and commercial potential.

Like many other local authorities, there are a small number of freehold properties that are used for community purposes that should ideally be located on crown reserve land. This can create a major impediment to using the freehold properties effectively in creating passive income streams through astute developments, land swaps, acquiring strategic and disposal of surplus land assets. Part of the future strategy will be to gradually relocate some services on freehold land to Crown reserves.

The majority of freehold properties have little or no commercial value as they are zoned public open space, parks and recreation and are rightfully protected from any development. Although these properties have limited commercial value, they are extremely valuable to the community and to replace them would be an exorbitant financial cost.

In addition to the freehold properties, the City is also responsible for the care, control and management of in excess of a further 120 properties “vested” in the City by the Crown. Whilst not owned by the City, many community services are provided through these vested properties.

Buying and managing property is an integral part of the functions of local government, and involves a large allocation of money and resources. Therefore, a coherent property management plan is needed to manage this vital work. This involves not only freehold land, but also crown reserves that can be better utilised to deliver community services.

With stewardship of public money involved, there is a particular responsibility on local government to approach property dealings in a more strategic manner, involving the following elements:

- Buying property – identifying what property is needed so that the right purchase decisions are made at the right time, and so that the necessary resources (including lifecycle costs) can be planned in advance.
- Owning property – knowing what property is owned and why it is owned.
- Management of Crown reserves - identifying potential land swaps and rationalisations for better community use. Joint ventures with State government on developable Crown land and securing freehold title in some cases.
- Investing in property – capturing the benefits of growth for the community.
- Releasing property – making informed choices about when and why to dispose of property that has no further purpose in Council ownership.
- Good stewardship – are the properties being managed effectively?
- Achieving the City’s Vision – how does property support its strategic goals.

A good LAMP provides an integrated framework for Council to answer these questions on an on-going basis, and thereby enables it to know that it is managing the public’s resources effectively and efficiently, and provides it with a tool for achieving its strategic vision.

The Development a Land Asset Management Plan

During the latter part of 2013, City Officers conducted a comprehensive review of all Council owned and managed properties.

The outcome of this work has resulted in the following:

- Established a strategic multi disciplined team to centralise property management and decision making.
- Inspected and classified all City owned and managed properties.
- Developed property management criteria and a decision making framework for disposing, purchasing and retaining property.
- Identified land holdings with development potential and generating income for the community.
- Developed a model to measure values and financial performance.

The LAMP sets out the role of property in achieving Council's objectives across all programs and provides a framework for matching property decisions to these objectives.

Multi-Disciplined Decision Making Team

Of utmost importance was to firstly appoint an internal Strategic Task Team to oversee, evaluate and manage property matters. The Team include Directors, Managers, a Land Officer and other officers with diverse disciplines deemed necessary to contribute to the decision making process.

This management structure will centralise all property matters and Council will be readily informed of issues that arise. It is an on-going process with the team meeting regularly to look at ways to better manage the communities' assets.

Land Asset Classification

The City's property portfolio has been acquired through a wide range of systems and processes during the history of the locality. This has led to a portfolio of properties that is as varied as the organisation of the City itself.

Some properties are used to provide direct services through public open space or other community facilities. Other properties have been acquired through redevelopment, road widening or to facilitate redevelopment or capacity building within the City. Other properties have been acquired for functional purposes such as drainage.

Due to the complexity of the services provided by the City and the range of property types within the portfolio was considered imperative that an appropriate system of categorisation be developed. This system has been designed to identify similar types of properties and differentiate those properties from which key services are provided from those that provide neither service nor a sustainable income source to the City.

The property classification categories recommended to be used in the City's Property Plan are listed and described here in the table below.

Table 1: Land Asset Classifications

Classification	Description
Surplus	<ul style="list-style-type: none"> No services are provided from the property. The property is not let to a third party. The property has no capacity to influence or support any other desired planning outcome or redevelopment project.
Investment	<ul style="list-style-type: none"> No services are provided from the property. The property may be let to a third party through a lease arrangement based upon market valuation as determined by an independent valuer. The property is considered to have the capacity to influence or support other desired planning outcomes or redevelopment projects.
Civic	<ul style="list-style-type: none"> Properties from which key services of the City are provided. Portions of the property may be let to a third party.
Commercial	<ul style="list-style-type: none"> Properties from which independent commercial activities are or can be conducted. The property may be let to a third party.
Residential	<ul style="list-style-type: none"> Properties which are primarily used to provide residential accommodation. Properties may be jointly owned by the City, Government Departments or the private sector.
Community	<ul style="list-style-type: none"> Properties from which community support activities or services are provided on behalf of the City. The property may be Crown Land vested in the City. Portions of the property may be let to a third party.
Utilities	<ul style="list-style-type: none"> Properties used by the City for the provision of essential infrastructure, e.g. water management, road reserves, parking, telecommunications, public access, etc. The property may be Crown Land vested in the City. Portions of the property may be let or sold to a third party.
Public Open Space and Other Reserves	<ul style="list-style-type: none"> Property held by the City for the purpose of providing parks and nature reserves or some other community purpose. The property may be Crown Land vested in the City. Portions of the property may be let or sold to a third party.

Property Asset Management Principles

In order to determine the strategic objectives of properties identified within the plan, principles are required by which the management of the Council's property portfolio will be guided. These are listed here:

- Property assets should only be held when they support program delivery or achieve strategic objectives, including forming part of a long term investment strategy. The only other properties that the Council should retain non-regulatory control over are those that are necessary for the efficient and effective performance of its functions, those that the Council are otherwise legally required to control or those that fit defined strategic or investment criteria.
- All properties should be managed and maintained so as to deliver acceptable and affordable levels of service or return.
- Asset management decisions should be integrated with strategic planning and form part of the overall framework of decision-making for the Council. This framework should provide opportunities to identify methods of improving asset performance, to alter the mix of assets used and to explore non-asset solutions.

Within these principles a property management framework, based on a series of criteria, will be used to support an objective approach to the management of individual land assets within each category of properties. These criteria are listed here (Table 2) for each asset classification.

Table 2: Property Asset Management Criteria

Classification	Management Criteria
Surplus	<ul style="list-style-type: none"> • Properties should be unable to be utilised for service provision, or only able to provide services that the Council has determined to be non-essential. • Properties should be unable to be used to create a sustainable income generation, or the ability of the property to generate financial returns should be less than that obtainable from other investments. • Properties identified for disposal should be able to provide the maximum return to Council on sale.
Investment	<ul style="list-style-type: none"> • Each property should be carefully evaluated to ensure that it satisfies the criteria for inclusion in this category. • Properties should be assessed on the basis of asset diversification and the potential to generate financial returns superior to that obtainable from other investments. Any decision to hold property assets for investment purposes must address the potential for conflict of interest between Council's different roles, and the total economic cost of ownership. • Analysis of the cost of ownership should be undertaken for each investment property, including maintenance costs and holding costs. • Condition assessments and asset management plans should be prepared for each property. • Consideration should be given to the investment of additional funds into such properties where such investment would subsequently return a higher total property value. • Exit strategies in the short, medium and long term should be developed so as to provide a clear framework for evaluating the benefits of ownership.

Classification	Management Criteria
Civic Commercial Residential Community	<ul style="list-style-type: none"> • The placement of facilities should have primary regard to the preferred location on functional grounds, rather than to assume that Council-owned property represents the best choice of location. • Opportunities should be sought to generate ancillary commercial activities where possible to help defray the cost of facilities. • Wherever possible, the use of facilities should be maximised through multiple user agreements. • The property may be let to a third party through a lease arrangement that is either: <ul style="list-style-type: none"> ○ for community support services and through a lease arrangement as determined by Council, which may include peppercorn or basic cost recovery rental rates, and predicated upon the effective delivery of desired services; ○ for services provided on behalf of Council and through a lease arrangement based upon market valuation as determined by an independent valuer. ○ for commercial activities and not less than an optimal use market valuation as determined by an independent valuer and is established through a competitive, best return basis. • Analysis of the cost of ownership should be undertaken for each property, including maintenance costs and holding costs. • Condition assessments and asset management plans should be prepared for each property.
Utilities	<ul style="list-style-type: none"> • Each property should be carefully evaluated to ensure that it satisfies the criteria for inclusion in this category. • Opportunities should be sought to generate ancillary commercial activities where possible to help defray the cost of maintenance. • The property may be let or sold to a third party through a lease or sale arrangement based upon market valuation as determined by an independent valuer as long as this lease does not detract from the original purpose of the essential infrastructure. • Alternatives to Council ownership should be considered where this is practicable without compromising ongoing function or amenity.
Public Open Space	<ul style="list-style-type: none"> • Opportunities should be sought to generate ancillary commercial activities where possible to help defray the cost of maintenance. • Portions of the property may be let or sold to a third party for the provision of commercial activities, community facilities or services/utilities through an arrangement as determined by Council, which may include full market value, basic cost recovery or peppercorn rental rates. • Condition assessments and asset management plans should be prepared for each property. • All proposals for acquisition of land for public open space should have regard to alternative choices for resource allocation within the Council's Parks Strategy and be prioritised accordingly.

Property Asset Management Decision Framework

The process of deciding whether the City should dispose of or acquire any individual property should be guided by a decision framework. This framework ensures that all decisions are made from a consistent perspective and within a formalised structure. The elements of the decision framework are illustrated in Table 3.

Table 3: Land Asset Management Decision Framework

Asset classification	A description of the property based on the Asset Classifications used in this Strategy - (Table 1)	
Management Criteria	A summary of the relevant management criteria that apply to this property - (Table 2)	
Zoning/Location	Description Identification of the key locational issues associated with the property	Ranking 1: Significant potential to influence or guide positive local commercial or residential development. Should be acquired, held for further capital growth, or developed and disposed.
		3: Moderate capacity to influence local commercial or residential development. Normal capital growth potential. Should be held in the short term and only acquired in exceptional circumstances
		5: Little to no capacity to influence local commercial or residential development. Should be disposed.
Valuation/Description	Description Summary of any formal or informal valuation of the property, including a description of key aspects or features	Ranking 1: Significant potential for capital growth or significant development potential. Should be acquired, held for further capital growth, or developed and disposed.
		3: Moderate potential for capital growth or development outcomes. Little potential for further investment to influence outcomes.
		5: Normal capital growth potential or less. No potential for further investment to influence outcomes. Should be disposed.
Life-cycle costing	A determination of the sum of all the costs associated with the property or part thereof, including acquisition, installation, operation, maintenance, refurbishment and disposal costs.	
Estimated return / expenditure	An estimate of the return to the City from the disposal of the property or the estimated expenditure associated with the acquisition of the property.	
Recommended Action	Recommendation to Council based on an analysis of the issues identified and described in this table.	

A key component of the successful development of a property plan is the ability for the plan to recognise both the larger strategic needs of the organisation as determined by Council whilst also ensuring that the organisation's operational needs are both understood and considered in both the development of the plan and in initiating acquisition and disposals as a consequence of the plan.

It is imperative that such organisational needs are understood to protect against situations where property is disposed of, only to realise some time later that this very property would have suited the specific operational needs of a department of the City.

Cost effectiveness

The primary level of service associated with the City's Land Asset Management Plan is the financial return on the Council's property portfolio. This return must be greater than the normal capital return that could be expected from simply "sitting" on Council's current property holdings. Land usually appreciates in value simply through market forces. To ensure that the City maintains a sustainable income stream through its property portfolio, there must be an ongoing focus on maintaining a prudent balance between holding, acquiring, developing and disposing of Council property.

The elements to be considered when calculating the cost effectiveness of the Council's property portfolio are:

- | | |
|---|--|
| A | The value of the total property portfolio at the end of the financial year |
| B | The change in property value from the end of the previous financial year |
| C | The proceeds of all property disposals during the financial year |
| D | Income from leases of Council property during the financial year |
| E | Expenditure associated with the management and maintenance of the Council property portfolio during the financial year |
| F | Expenditure associated with the acquisition of property during the financial year |

The calculation of cost effectiveness will be based on the equation

$$\text{Return} = [(B+C+D) - (E+F)]/A$$

Based on this formula, the annual cost effectiveness of the Council's property portfolio can be clearly assessed.

Property Asset Strategy Objectives

The City is a major land owner in its own right. It owns a significant number of freehold titles with significant development potential and of great value to the community to drainage reserves of minimal value.

Effective land asset management has as much to do with the strategic acquisition of investment property as it does with the disposal of surplus property.

Within this context the objectives of the City's Land Asset Management Plan are:

- To pursue a prudent policy of property disposal/acquisition, management and/or development to generate low-risk investment wealth and income for the benefit of the current and future citizens of the City;
- To act as necessary to acquire, develop and/or facilitate the development by others of appropriately located property for economic, social and/or community support infrastructure; and
- To undertake a proactive program of providing essential community services from properties which are vested in the City rather than from properties which are owned freehold and zoned for urban uses.
- To explore opportunities for land swaps and rationalisations of crown reserves including acquiring freehold title in a number of cases that will clearly benefit the community.

Development of a Landbank

Generally, fixed assets in Local Government are managed through the use of the principle 'replace an asset with an asset', which acts to ensure the continuation or expansion of individual activity areas.

Property based assets have the potential to realise a strong annual return to the Council whilst also providing the opportunity to achieve broader strategic philosophies and sustainable developments within the district. A fundamental purpose of the Property Strategy is to provide for the long term security of the City's property portfolio as well as providing for a secure sustainable annual return on these properties.

A major element of the Property Strategy is the acquisition and retention of a Landbank of properties that can provide secure long-term income as well as presenting opportunities for future redevelopment in a way that contributes to the development of the City as a community.

The City should selectively acquire or retain sufficient interest in property to support the development of the necessary service, social and community infrastructure as well as property seen as strategically vital to the achievement of good urban design outcomes. The City should also explore the creation of effective partnerships to achieve these objectives. Objectives underpinning such acquisitions will be defined in each case in terms of:

- The ability to influence the pace, scale and style of development in the City
- Economic, social and environmental benefits to the City and its community that might be obtained through a medium-term strategy of holding property as an appreciating investment; and
- Utilisation of the Council's land ownership to encourage appropriate private sector investment or development

Conclusion

The City has a clear focus on ensuring long term sustainability for its community. It is recognised and acknowledged that the pressing needs of social advancement and environmental protection cannot be achieved without a solid and sustainable financial underpinning. It is clear that the effective management of the City's land asset base is an essential element in maintaining Council's financial base.

Property management within the City should not be targeted towards speculative, fast profit outcomes. The overt intent is to pursue a prudent policy of property disposal, management, acquisition and/or development to generate low-risk investment wealth and income for the benefit of the current and future community of the City of South Perth.

Through a policy of on-going review and a focus on transparency, within a framework of necessary commercial confidentiality, the City will need to act to ensure that Property Asset Management provides a solid platform for the future that all stakeholders can benefit from.

PROPERTY ASSET ASSESSMENT

Overview

The City's property portfolio comprises in excess of 320 parcels of freehold properties and approximately 120 vested crown reserves. These properties are located across all suburbs of the City and are detailed in the Freehold Property and the Crown Reserve lists that are attached.

All of the properties have been physically inspected and evaluated by the Task Team as to their uses, land zonings, future potential and accordingly have been allocated a suitable Land Classification as detailed in the property listing (pages 29 onwards)

The majority of properties are being used in an effective way to provide direct services to the community. The properties are very diverse – ranging from small drainage sumps to landholdings with development potential. The majority of the City's reserves are owned in freehold title rather than being crown reserves vested in the City. This is unusual but does not present any operational difficulties.

Although many of the properties have very limited commercial opportunities because of their zonings and uses (eg parks, drainage sumps, right of ways, road verges etc), the City fortunately owns a number of properties that have the potential to raise significant income and improved amenity for the community.

The properties identified with economic potential within the short to longer term have been highlighted in the Property Assessment (pages 16 onwards).

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Crown Reserves

By far the majority of crown reserves are being used for the purpose for which they were vested in the City and will remain as such.

Recently, the City acquired in freehold title land located behind the Manning Hub Shopping Centre that was previously a crown reserve. This was acquired for 5% of the market value and any proceeds from a sale will be used for community purposes on the adjoining land. The community supported this action and should the Manning Library be relocated to this site, the present library site may provide in the future a further opportunity for consideration. Crown reserves will also be monitored on an on-going basis to ensure the community receives the best planning outcomes and amenity. In the future, there may be situations where the community would be better served where some badly designed or located reserves should be exchanged for land that is more suitable.

Right of Ways and Drainage Sumps

The City owns several right of ways and drainage sumps as can be seen from the freehold property list.

Most of the right of ways are being used by adjoining owners for access and egress from their properties which is their right. However, there are some right of ways that do not appear to be used at all and because of their run down state can attract unsociable behaviour. Although not a high priority, compared to other land holdings – these parcels of land will be assessed in more detail in the future, with the intent that unused right of ways be sold to adjoining owners, if possible.

The drainage sumps, likewise over the next few years, need to be assessed to see whether all are still required and whether there are alternative engineering solutions in some cases. Because of the high value of land within close proximity to the Perth CBD, a number of local governments have already released surplus drainage sumps and converted them to residential lots.

Conclusion

The City has assembled a significant land portfolio since its inception and now has the opportunity to use this portfolio to deliver long term outcomes for the community and to exert some influence on the style and speed at which the area will develop. This Land Asset Assessment provides the opportunity for the City to take a proactive role in respect to its land assets – in the delivery of property for sale, the development of potential recurrent income streams and in the realisation of the value of land.

The findings of this report will enable the City to facilitate the development of a number of properties throughout the district for wide range of purposes which will provide greater financial security and deliver better services for the community.

PROPERTY ASSESSMENT

Economic Potential

The City has an opportunity with respect to its property portfolio to deliver long term financial sustainability to its community, provide rationalisation of some properties to provide greater community benefit and service delivery and to manage its land in an appropriate manner so as to realise maximum return for these assets.

These properties are worth tens of millions of dollars and as can be seen from the individual assessments, most are still being evaluated as to their highest and best use. Any recommendations will follow the guidelines of the Land Asset Management Plan and will require Council endorsement.

Some the likely actions will include:

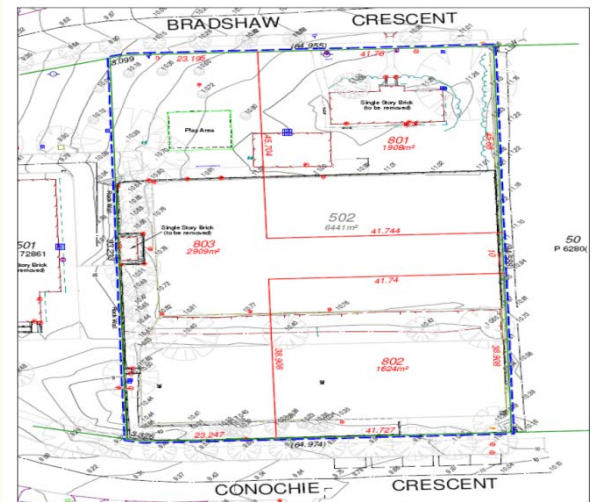
- Outright sale (e.g. to revitalise a precinct).
- Relocating a community purpose activity from freehold land to crown reserve land.
- Land exchange to achieve better community and planning outcome.
- Hold land as future Land Bank (investment).
- Develop passive income stream from property (commercial activity).

The Property Management Team will monitor, assess and recommend actions on these properties on an on-going basis.

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Manning Hub



Property ID	290-291	Description	Manning Tennis Courts & ROW 129	Lot No/s	801 & 802
Street No		Street	Conochie/Bradshaw Crs	Reserve	NA
Suburb	South Perth	Freehold	Yes	Title Details	2806/480
Area	801: 1,908m ² 802: 1,623m ²	Zoning	Neighbourhood Centre Commercial (R20)		
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental

Social

Community

Economic

Valuation / Appraisal

Confidential

Rezoning development potential Yes / No

Comments

This site was originally a crown reserve which Council acquired for 5% of its value from the State Government. After community consultation the site is ready for development of both Civic and Commercial uses.

Governance

LGA

Reserve vesting / Management orders

Yes / No

Council Policy

Title obtained

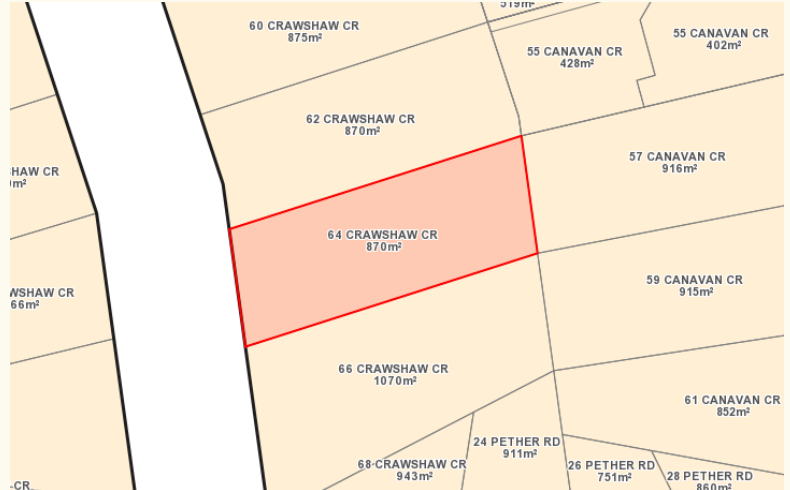
Yes / No

Comments

Recommendations

- The City has conditional approval for the subdivision of the site. Lots 801 and 802 are proposed to be disposed of in 2014/2015.

Crawshaw Crescent – Sump 57



Property ID	282	Description	Sump 57	Lot No/s	269
Street No	64	Street	Crawshaw Crescent	Reserve	NA
Suburb	South Perth	Freehold	Yes	Title Details	1185/286
Area	871m ²	Zoning	Residential		
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	N/A
Social	
Community	

Economic

Valuation / Appraisal	Confidential	Rezoning development potential	Yes
Comments	The land is fairly flat and part of it is used for drainage purposes.		

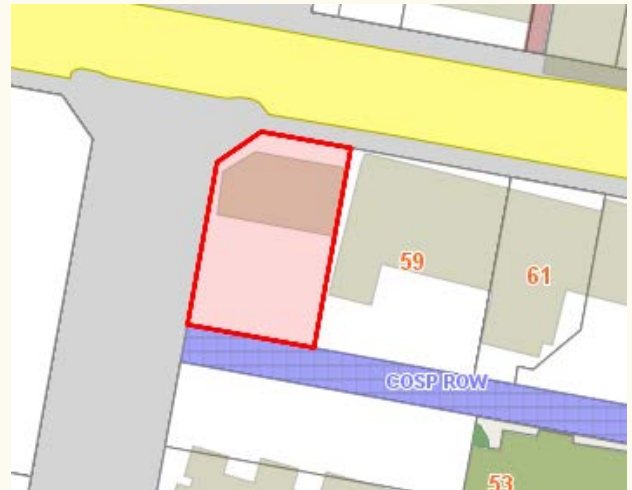
Governance

LGA	Comply	Council Policy	
Reserve vesting / Management orders	Yes / No	Title obtained	Yes / No
Comments			

Recommendations

- The land should be further investigated to determine whether all or part of it can be developed for residential purposes.

57 Angelo Street (RSL)



Property ID	32	Description	RSL Hall	Lot No/s	747, 67,101
Street No		Street	Angelo/Coode Street	Reserve	NA
Suburb	South Perth	Freehold	Yes	Title Details	
Area	640 m ²	Zoning	Neighbourhood Centre Commercial (R50)		
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	
Social	
Community	

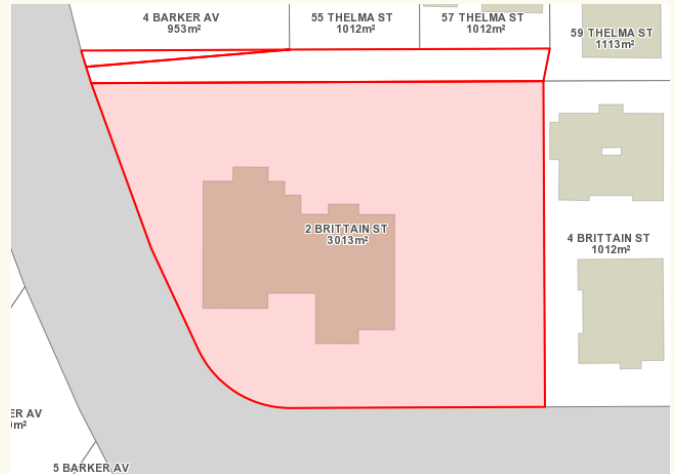
Economic			
Valuation / Appraisal	Confidential	Rezoning development potential	Yes
Comments	The land is situated in a key commercial precinct.		

Governance			
LGA	Comply	Council Policy	
Reserve vesting / Management orders	Yes / No	Title obtained	Yes / No
Comments	The RSL Hall is listed in the City's Local Heritage Inventory with a Category D – a low classification which does not require the building to be retained. The building is to be photographically recorded prior to major redevelopment or demolition.		

Recommendations

1. This is valuable commercial land that should be reviewed and investigated as to its future best use.
2. Subject to Ernst Johnson Oval Master Plan completion.

South Perth Bridge Club



Property ID	246-247	Description	South Perth Bridge Club	Lot No/s	100
Street No	2	Street/s	Brittain Street		
Suburb	Como	Freehold	Yes	Reserve	NA
Area	3013m ²	Zoning	Highway Commercial (R80)	Title Details	1756/254
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	n/a
Social	Being used by Members of Bridge Club
Community	

Economic

Valuation / Appraisal	Confidential	Rezoning development potential	Yes
Comments	The property is currently occupied by the Bridge Club and the infrastructure although aged is in reasonable condition. This is a classic example of where it would have been more prudent to locate the Bridge Club onto crown reserve land. The land is already zoned Commercial R80 and should be giving a financial return.		

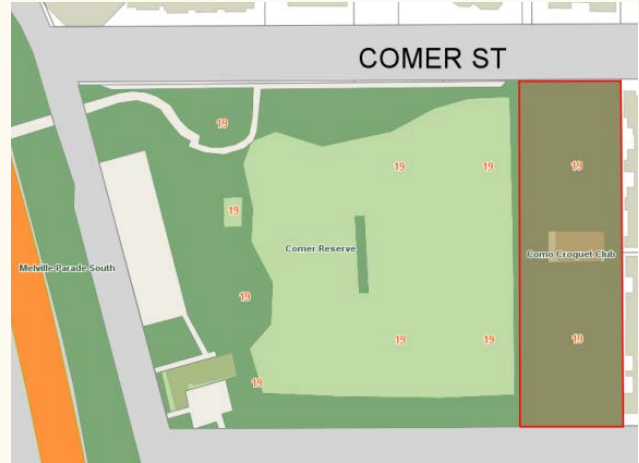
Governance

LGA		Council Policy	
Reserve vesting / Management orders	Yes / No	Title obtained	Yes / No
Comments			

Recommendations

- The City should actively look at relocating the Bridge Club to a more suitable site so this commercial land can be released for its purpose and develop an income stream for Council.

Como Croquet Club



Property ID	216, 219	Description	Como Croquet Club	Lot No/s	38 & 46
Street No		Street/s			
Suburb	Como	Freehold	Yes	Reserve	NA
Area	4,041m ²	Zoning	Parks & Recreation	Title Details	484/159
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	n/a
Social	Well used recreation reserve
Community	

Economic

Valuation / Appraisal	Confidential	Rezoning development potential	Yes
Comments	The Croquet Club occupies portion of the reserve (highlighted) and should the Club be relocated in the future to the Ernest Johnson Precinct, the City should investigate the possibility of redeveloping that port of land for other purposes. Should that part of the land be rezoned in the future it would become an extremely valuable development site.		

Governance

LGA		Council Policy	
Reserve vesting / Management orders	Yes	Title obtained	Yes / No
Comments			

Recommendations

- I. The City is presently preparing the EJ Oval Master Plan and this will be considered at the completion of the Master Plan.

Ernest Johnson Oval car park



Property ID	42	Description	Carpark 19 (Ernest Johnson Oval)	Lot No/s	61
Street No	20	Street	Pilgrim Street		
Suburb	South Perth	Freehold	Yes	Reserve	NA
Area	4497 m ²	Zoning	Local Parks and Recreation Reserve; and Local Public Purposes Reserve (Car park)	Title Details	2730/154
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental

Social

Community

Economic

Valuation / Appraisal

Confidential

Rezoning development potential

Yes

Comments

This property is being partly used by the adjoining hospital and also for parking by the general community. It is part of a large sporting ground precinct over which a master plan is being developed.

Governance

LGA

Council Policy

Reserve vesting / Management orders

Yes / No

Title obtained

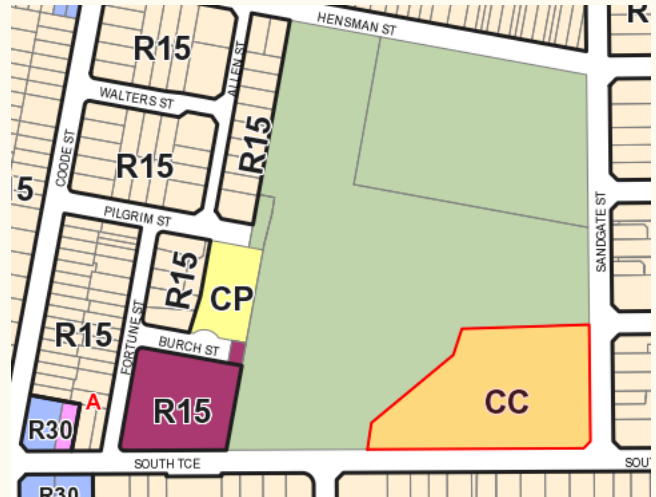
Comments

The South Perth Hospital legally relies on the use of this car park – the Council has approved expansions on the condition that the Hospital pays for the reconfiguration and enlargement of this car park for use by its visitors. Public use of the car park needs to be retained in some form.

Recommendations

- The land should be further investigated to determine its highest and best use within the context of an acceptable Master Plan over the precinct.

Civic Centre, Hall and Library



Property ID	43/44	Description	Civic centre, hall & library	Lot No/s	3
Street No		Street	Sandgate Street/South Tce	Reserve	NA
Suburb	South Perth	Freehold	Yes	Title Details	1748/108
Area	16,422m ²	Zoning	Local Public Purposes Reserve (Civic Centre)		
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	
Social	
Community	

Economic

Valuation / Appraisal	Confidential	Rezoning development potential	Yes
Comments	This is prime land for Civic and possible future high density residential development		

Governance

LGA	Comply	Council Policy	
Reserve vesting / Management orders	Yes / No	Title obtained	Yes / No
Comments			

Recommendations

- I. Further investigate rezoning & redevelopment potential should Council relocate its administration offices.
* Pending amalgamation with the Town of Victoria Park.

Collins Street Hall



Property ID	78-81	Description	Collins St Hall	Lot No/s	11-14
Street No		Street/s	Shaftesbury/Broome Streets		
Suburb	South Perth	Freehold	Yes	Reserve	NA
Area	2059m ²	Zoning	Local Parks and Recreation Reserve	Title Details	11-14/576
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	
Social	
Community	Hall and community use.

Economic

Valuation / Appraisal	Confidential	Rezoning development potential	Yes
Comments	This site comprises of aged infrastructure. The current use does not comply with its zoning.		

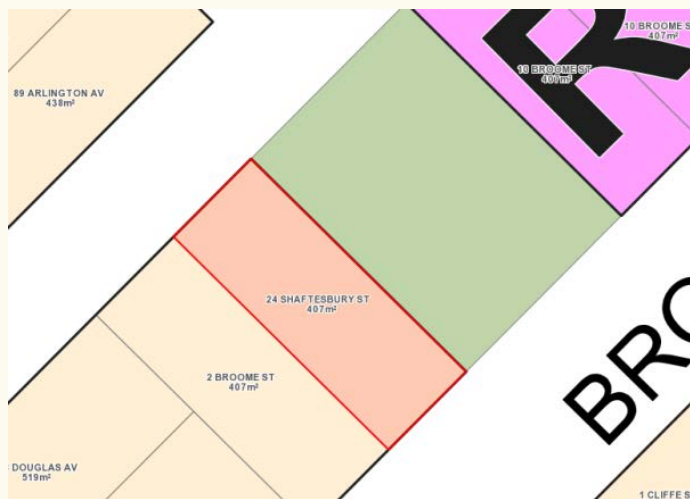
Governance

LGA		Council Policy	
Reserve vesting / Management orders	Yes / No	Title obtained	Yes / No
Comments			

Recommendations

- I. This site should be regularly monitored and further investigated as to its highest and best use for the community.

Shaftesbury Street – Sump 5



Property ID	85	Description	Sump 5	Lot No/s	24
Street No	24	Street/s	Shaftesbury Street	Reserve	NA
Suburb	South Perth	Freehold	Yes	Title	2227/130
Area	407m ²	Zoning	Residential (R15)	Details	
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental

Social

Community

Play equipment located on site

Economic

Valuation / Appraisal

Confidential

Rezoning development potential

Yes

Comments

Currently being used as a small playground – not a sump. Possible relocation of playground to reserve land situated within a few hundred metres on same street and then disposed of. Alternatively, the land could be used to swap with other reserve land, which would mean it would remain a playground but release some reserve land.

Governance

LGA

Council Policy

Reserve vesting / Management orders

Yes / No

Title obtained

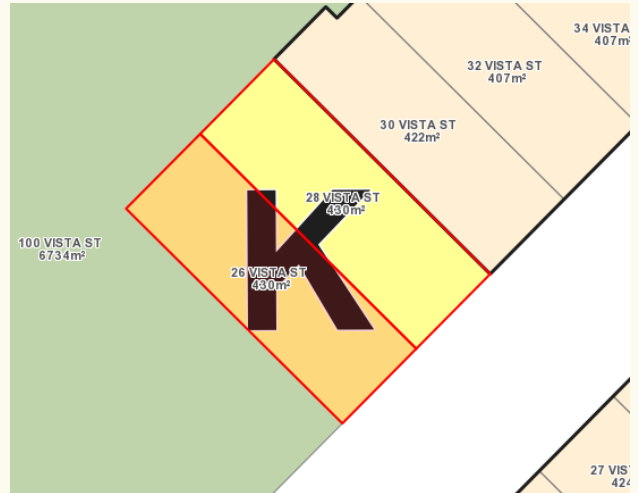
Yes / No

Comments

Recommendations

1. Further planning work needs to be done on this precinct to achieve the best outcome for the community.

Kensington Kindergarten



Property ID	101-102	Description	Kensington Kindergarten	Lot No/s	228-229
Street No	28	Street	Vista Street		
Suburb	South Perth	Freehold	Yes	Reserve	NA
Area	860m ²	Zoning	Local Public Purposes Reserve (kindergarten)	Title Details	2031/497 2031/498
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	
Social	
Community	Being used as Community Kindergarten

Economic

Valuation / Appraisal	Confidential	Rezoning development potential
Comments		

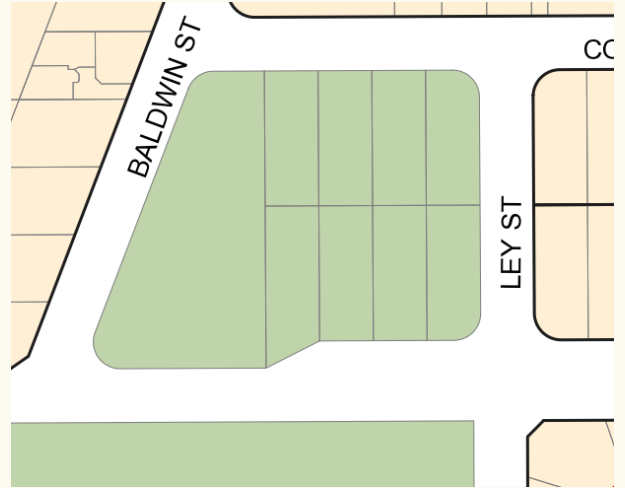
Governance

LGA		Council Policy	
Reserve vesting / Management orders	Yes / No	Title obtained	Yes / No
Comments			

Recommendations

- I. Negotiations should be entered into with the Education Department to determine their future plans and the likely lifespan of the kindergarten.

Coolidge Reserve



Property ID	265-273	Description	Coolidge Reserve	Lot No/s	
Street No		Street/s	Henley/Baldwin/Coolidge Streets		
Suburb	Como	Freehold	Yes	Reserve	NA
Area	13,435m ²	Zoning	Local Parks and Recreation Reserve	Title Details	1030/723
Council Strategies / Policies					
Officer Comments					

Assessment Comments

Environmental	
Social	
Community	Used for limited passive recreation.

Economic

Valuation / Appraisal	Confidential	Rezoning development potential	Yes
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Comments	This site is located opposite the large (8.5 ha) McDougall Park which receives a high degree of usage from the community. Because of the abundance of public open space in the area, Coolidge Reserve appears to have little usage. The site is very valuable (in excess of \$13M if zoned urban) and if community support was received it could be developed for a more efficient community use (possible aged units?)
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Governance

LGA	Comply	Council Policy	
Reserve vesting / Management orders	Yes / No	Title obtained	Yes / No
Comments			

Recommendations

1. This site should be further investigated and the community be engaged in and future planning.
2. Based on the community reaction when draft TPS6 was advertised for community comment in the 1990's, future development or disposal of this land could be highly controversial.

Freehold Land Register

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
Property									
44	Public Purposes	1748	108	3	14563		16,405m ²	Civic	Civic Centre, Community Hall and Library
81	Parks and Recreation	688	77	14	576	Swan Location 39	565m ²	Community	Collins Street Hall
80	Parks and Recreation	166	195	13	576	Swan Location 39	679m ²	Community	Collins Street Hall
79	Parks and Recreation	1054	538	12	576	Swan Location 39	408m ²	Community	Collins Street Hall
78	Parks and Recreation	193	137	11	576	Swan Location 39	408m ²	Community	Collins Street Hall
10	Civic and Cultural (MRSR)	574	69	429			1,012m ²	Community	Old Mill Theatre
247	Highway Commercial (Regional Road)	1756	254	100	70162	Swan Location 41	3,012m ²	Commercial	South Perth Bridge Club
34	Neighbourhood Centre Commercial	1730	188	101 (354)	69919		1,638m ²	Community	South Perth Senior Citizens Centre
32	Neighbourhood Centre Commercial	1905	63	747			640m ²	Community	South Perth RSL Club
101	Public Purposes	2031	497	228 (8)	576	Swan Location 39	430m ²	Community	Kensington Kindy (Vista Street)
102	Public Purposes	2031	498	229 (9)	576	Swan Location 39	430m ²	Community	Kensington Kindy (Vista Street)
Parks and Recreation									
56	Parks and Recreation	1053	491	300	5230	Swan Location 37	1,607m ²	POS	Swanview Terrace Reserve

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
100	Parks and Recreation	1635	377	100	64043	Swan Location 39	6,734m ²	POS	David Vincent Park
1	Parks and Recreation	1632	544	11 (78)	63592		1,318m ²	POS	Park: 19 Stone Street
43	Parks and Recreation	1748	107	2 (383, 385, 386, 387)	14563		59,298m ²	POS	Ernest Johnson Oval
277	Parks and Recreation	1782	114	100	71837	Canning Location 37	83,739m ²	POS	Neil McDougall Park
253	Parks and Recreation	1065	998	361	4740	Swan Location 41	2,163m ²	POS	Axford/Barker Reserve
265	Parks and Recreation	1030	723	277	4852	Swan Location 42	995m ²	POS	Coolidge Reserve, Como
266	Parks and Recreation	1030	723	276	4852	Swan Location 42	1,017m ²	POS	Coolidge Reserve, Como
267	Parks and Recreation	1030	723	275	4852	Swan Location 42	1,017m ²	POS	Coolidge Reserve, Como
268	Parks and Recreation	1030	723	278	4852	Swan Location 42	1,017m ²	POS	Coolidge Reserve, Como
269	Parks and Recreation	1030	723	260	4852	Swan Location 42	523m ²	POS	Coolidge Reserve, Como
270	Parks and Recreation	1030	723	271	4852	Swan Location 42	1,118m ²	POS	Coolidge Reserve, Como
271	Parks and Recreation	1030	723	274	4852	Swan Location 42	1,017m ²	POS	Coolidge Reserve, Como
272	Parks and Recreation	1030	723	273	4852	Swan Location 42	1,017m ²	POS	Coolidge Reserve, Como
273	Parks and Recreation	1030	723	272	4852	Swan Location 42	995m ²	POS	Coolidge Reserve, Como

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
211	Parks and Recreation	484	159	35	280	Swan Location 40	2,755m ²	POS	Comer Reserve
212	Parks and Recreation	484	159	49	280	Swan Location 40	2,498m ²	POS	Comer Reserve
213	Parks and Recreation	484	159	50	280	Swan Location 40	2,245m ²	POS	Comer Reserve
214	Parks and Recreation	484	159	36	280	Swan Location 40	2,021m ²	POS	Comer Reserve
215	Parks and Recreation	484	159	37	280	Swan Location 40	2,021m ²	POS	Comer Reserve
216	Parks and Recreation	484	159	38	280	Swan Location 40	2,021m ²	POS	Comer Reserve
217	Parks and Recreation	484	159	48	280	Swan Location 40	2,021m ²	POS	Comer Reserve
218	Parks and Recreation	484	159	47	280	Swan Location 40	2,021m ²	POS	Comer Reserve
219	Parks and Recreation	484	159	46	280	Swan Location 40	2,021m ²	POS	Comer Reserve
210	Parks and Recreation	445	62	34	2800	Swan Location 40	3,008m ²	POS	Comer Reserve
88	Parks and Recreation	1033	904	265	4908	Swan Location 37	1,099m ²	POS	Mackie Street Reserve
89	Parks and Recreation	1033	904	264	4908	Swan Location 37	1,095m ²	POS	Mackie Street Reserve
87	Parks and Recreation	1089	544	11	8248	Swan Location 37	1,362m ²	POS	Mackie Street Reserve
182	Parks and Recreation	887	149	688	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
204	Parks and Recreation	920	107	766	4528	Swan Location 40	1,075m ²	POS	Ryrie Street Reserve
205	Parks and Recreation	920	107	767	4528	Swan Location 40	1,075m ²	POS	Ryrie Street Reserve
181	Parks and Recreation	887	151	687	4528	Swan Location 40	990m ²	POS	Ryrie Street Reserve
194	Parks and Recreation	918	143	700	4528	Swan Location 40	990m ²	POS	Ryrie Street Reserve

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
195	Parks and Recreation	918	143	757	4528	Swan Location 40	1,049m ²	POS	Ryrie Street Reserve
183	Parks and Recreation	1003	910	689	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
184	Parks and Recreation	1003	910	690	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
185	Parks and Recreation	1003	910	691	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
186	Parks and Recreation	1003	910	692	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
187	Parks and Recreation	1003	910	693	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
188	Parks and Recreation	1003	910	694	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
189	Parks and Recreation	1003	910	695	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
190	Parks and Recreation	1003	910	696	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
191	Parks and Recreation	1003	910	697	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
197	Parks and Recreation	1003	910	759	4528	Swan Location 40	1,072m ²	POS	Ryrie Street Reserve
198	Parks and Recreation	1003	910	760	4528	Swan Location 40	1,072m ²	POS	Ryrie Street Reserve
199	Parks and Recreation	1003	910	761	4528	Swan Location 40	1,072m ²	POS	Ryrie Street Reserve
200	Parks and Recreation	1003	910	762	4528	Swan Location 40	1,073m ²	POS	Ryrie Street Reserve
201	Parks and Recreation	1003	910	763	4528	Swan Location 40	1,073m ²	POS	Ryrie Street Reserve
202	Parks and Recreation	1107	981	4589	161407	Swan Location 4589	1,074m ²	POS	Ryrie Street Reserve
192	Parks and Recreation	1178	977	698	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
193	Parks and Recreation	1178	977	699	4528	Swan Location 40	1,012m ²	POS	Ryrie Street Reserve
196	Parks and Recreation	1178	977	758	4528	Swan Location 40	1,071m ²	POS	Ryrie Street Reserve

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
206	Parks and Recreation	1028	437	768	4528	Swan Location 40	1,076m ²	POS	Ryrie Street Reserve
203	Parks and Recreation	1000	264	765	4528	Swan Location 40	1,074m ²	POS	Ryrie Street Reserve
207	Parks and Recreation	1000	264	769	4528	Swan Location 40	1,076m ²	POS	Ryrie Street Reserve
208	Parks and Recreation	1000	264	770	4528	Swan Location 40	1,055m ²	POS	Ryrie Street Reserve
236	Parks and Recreation	2227	505	172	3458	Swan Location 42	1,011m ²	POS	Olives Reserve
237	Parks and Recreation	2227	505	171	3458	Swan Location 42	1,011m ²	POS	Olives Reserve
238	Parks and Recreation	2227	505	170	3458	Swan Location 42	1,011m ²	POS	Olives Reserve
234	Parks and Recreation	2227	507	173	3458	Swan Location 42	1,012m ²	POS	Olives Reserve
239	Parks and Recreation	2671	956	505	40981		3m ²	POS	Olives Reserve
240	Parks and Recreation	2671	956	504	40981		741m ²	POS	Olives Reserve
241	Parks and Recreation	2671	956	506	40981		1,280m ²	POS	Olives Reserve
242	Parks and Recreation	2671	956	507	40981		1,259m ²	POS	Olives Reserve
243	Parks and Recreation	2671	956	508	40981		1,413m ²	POS	Olives Reserve
235	Parks and Recreation	2671	956	520	58083		1,036m ²	POS	Olives Reserve
231	Parks and Recreation	1241	515	198	3458	Swan Location 42	650m ²	POS	Olives Reserve
233	Parks and Recreation	2227	508	502	40981	Swan Location 42	663m ²	POS	Olives Reserve
232	Parks and Recreation	2227	509	501	40981	Swan Location 42	874m ²	POS	Olives Reserve
60	Parks and Recreation (MRSR)	1871	585	1	3285	Swan Location 42	963m ²	POS	Clydesdale Park
61	Parks and Recreation (MRSR)	1871	585	2	3285	Swan Location 42	607m ²	POS	Clydesdale Park

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
62	Parks and Recreation (MRSR)	1871	585	3	3285	Swan Location 42	606m ²	POS	Clydesdale Park
63	Parks and Recreation (MRSR)	1871	585	4	3285	Swan Location 42	607m ²	POS	Clydesdale Park
64	Parks and Recreation (MRSR)	1871	585	5	3285	Swan Location 42	606m ²	POS	Clydesdale Park
65	Parks and Recreation (MRSR)	1871	585	6	3285	Swan Location 42	606m ²	POS	Clydesdale Park
66	Parks and Recreation (MRSR)	1871	585	7	3285	Swan Location 42	607m ²	POS	Clydesdale Park
67	Parks and Recreation (MRSR)	1871	585	8	3285	Swan Location 42	617m ²	POS	Clydesdale Park
68	Parks and Recreation (MRSR)	1871	585	9	3285	Swan Location 42	606m ²	POS	Clydesdale Park
69	Parks and Recreation (MRSR)	1871	585	13	3285	Swan Location 42	878m ²	POS	Clydesdale Park
70	Parks and Recreation (MRSR)	1871	585	14	3285	Swan Location 42	890m ²	POS	Clydesdale Park
71	Parks and Recreation (MRSR)	1871	585	15	3285	Swan Location 42	1,166m ²	POS	Clydesdale Park
72	Parks and Recreation (MRSR)	1871	585	16	3285	Swan Location 42	11,487m ²	POS	Clydesdale Park
73	Parks and Recreation (MRSR)	618	138	17 (47)	3285	Swan Location 308	568m ²	POS	Clydesdale Park
52	Parks and Recreation	1018	299	101	6894	Swan Location 38	25,060m ²	POS	Sir James Mitchell Park
53	Parks and Recreation	1031	443	100	5947 (3218)	Swan Location 38	29,804m ²	POS	Sir James Mitchell Park

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
21	Parks and Recreation	967	45	206 (56)	5950 (7015)		1,599m ²	POS	Sir James Mitchell Park
20	Parks and Recreation	1009	495	205 (59)	5950 (3384)		4,235m ²	POS	Sir James Mitchell Park
19	Parks and Recreation	838	69	204 (54)	5950 (6250)		2,071m ²	POS	Sir James Mitchell Park
18	Parks and Recreation	838	68	203 (53)	5950 (6249)		1,940m ²	POS	Sir James Mitchell Park
16	Parks and Recreation	674	31	201 (2, 49, 50)	5950		1,816m ²	POS	Sir James Mitchell Park
15	Parks and Recreation	1049	802	200 (2, 8)	5950 (1775)		3,011m ²	POS	Sir James Mitchell Park
22	Parks and Recreation	925	70	207 (57)	5950 (7015)		1,624m ²	POS	Sir James Mitchell Park
23	Parks and Recreation	674	32	208	5950		2,317m ²	POS	Sir James Mitchell Park
24	Parks and Recreation	295	47	209 (3, 49)	5950 (1900)		2,317m ²	POS	Sir James Mitchell Park
17	Parks and Recreation	838	67	202(52)	5950(6248)		1,849m ²	POS	Sir James Mitchell Park
49	Parks and Recreation	668	38	104 (200)	5947 (560)	Swan Location 39	13,620m ²	POS	Sir James Mitchell Park
48	Parks and Recreation	1026	30	105 (12)	5947 (8416)	Swan Location 39	915m ²	POS	Sir James Mitchell Park
50	Parks and Recreation	602	82	103 (201)	5947 (560)	Swan Location 39	5,782m ²	POS	Sir James Mitchell Park
51	Parks and Recreation	188	81	102 (202)	5947 (560)	Swan Location 39	5,039m ²	POS	Sir James Mitchell Park

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
25	Parks and Recreation	995	38	210 (6)	5950		49,230m ²	POS	Sir James Mitchell Park
54	Parks and Recreation	1907	357	51	9634	Swan Location 37	56,844m ²	POS	Sir James Mitchell Park
55	Parks and Recreation	1907	357	52	9633	Swan Location 37	52,576m ²	POS	Sir James Mitchell Park
26	Parks and Recreation	11	391	211	5950		6,866m ²	POS	Sir James Mitchell Park
28	Parks and Recreation	41	34	213 (8, 9)	5950		30,873m ²	POS	Sir James Mitchell Park
27	Parks and Recreation	14	304	212	5950		6,827m ²	POS	Sir James Mitchell Park
29	Parks and Recreation	247	132	214 (10, 11)	5950		30,850m ²	POS	Sir James Mitchell Park
46	Parks and Recreation	1012	281	198	1620	Swan Location 39	33,860m ²	POS	Sir James Mitchell Park
47	Parks and Recreation	1012	281	199	1620	Swan Location 39	8,786m ²	POS	Sir James Mitchell Park
119	Parks and Recreation	1049	589	623	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
120	Parks and Recreation	1049	589	625	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
131	Parks and Recreation	1017	430	66	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
132	Parks and Recreation	1017	430	67	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
142	Parks and Recreation	759	17	725 (25)	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
121	Parks and Recreation	574	178	625 (26)	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
160	Parks and Recreation	1077	757	711 (11)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
138	Parks and Recreation	227	64	729	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
139	Parks and Recreation	227	64	728	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
140	Parks and Recreation	569	96	727 (27)	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
141	Parks and Recreation	194	9	726 (26)	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
143	Parks and Recreation	238	94	724 (24)	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
145	Parks and Recreation	566	38	722 (22)	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
146	Parks and Recreation	1076	492	721	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
147	Parks and Recreation	1076	492	720	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
157	Parks and Recreation	45	360	78	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
158	Parks and Recreation	45	360	79	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
159	Parks and Recreation	45	360	710	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
153	Parks and Recreation	147	9	74	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
154	Parks and Recreation	147	9	75	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
155	Parks and Recreation	147	9	76	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
156	Parks and Recreation	147	9	77	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
151	Parks and Recreation	1011	978	72	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
152	Parks and Recreation	1011	978	73	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
127	Parks and Recreation	166	195	62	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
126	Parks and Recreation	553	33	61 (1)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
134	Parks and Recreation	1058	200	69 (9)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
133	Parks and Recreation	1058	351	68 (8)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
136	Parks and Recreation	428	125	611 (11)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
137	Parks and Recreation	1060	696	612 (12)	576	Swan Location 39	531m ²	POS	Morris Mundy Reserve
144	Parks and Recreation	1066	363	723	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
149	Parks and Recreation	1066	363	718	576	Swan Location 39	573m ²	POS	Morris Mundy Reserve
148	Parks and Recreation	1049	644	719 (19)	576	Swan Location 39	493m ²	POS	Morris Mundy Reserve

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
117	Parks and Recreation	160	74	621	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
118	Parks and Recreation	160	74	622	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
115	Parks and Recreation	762	188	619	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
116	Parks and Recreation	762	188	620	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
114	Parks and Recreation	829	2	618 (18)	576	Swan Location 39	589m ²	POS	Morris Mundy Reserve
128	Parks and Recreation	1058	198	63	576	Swan Location 39	589m ²	POS	Morris Mundy Reserve
129	Parks and Recreation	1058	198	64	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
135	Parks and Recreation	1058	199	610 (10)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
111	Parks and Recreation	1064	202	510	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
112	Parks and Recreation	1064	202	511	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
113	Parks and Recreation	1064	202	512	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
109	Parks and Recreation	66	84	58	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
110	Parks and Recreation	66	84	59	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
107	Parks and Recreation	283	71	56	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
108	Parks and Recreation	283	71	57	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
105	Parks and Recreation	163	43	54	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
106	Parks and Recreation	163	43	55	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
104	Parks and Recreation	1041	747	52 (2)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
123	Parks and Recreation	171	23	627	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
124	Parks and Recreation	171	23	628	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
125	Parks and Recreation	171	23	629	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
122	Parks and Recreation	1006	685	626 (26)	576	Swan Location 39	453m ²	POS	Morris Mundy Reserve
130	Parks and Recreation	1049	646	65 (5)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
103	Parks and Recreation	161	85	51 (1)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
150	Parks and Recreation	1011	633	71 (1)	576	Swan Location 39	408m ²	POS	Morris Mundy Reserve
Carparks									
12	Mends Street Centre Commercial	2781	179	800	71336		1,157m ²	Comm/Utility	Carpark (Windsor Hotel)
42	Parks and Recreation	2730	154	61	62646		4,492m ²	Utility	Carpark (Ernest Johnson Oval)
293	Highway Commercial	1377	252	50	8648	Canning Location	294m ²	Utility	Carpark (Manning

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
						37			and Ley Street Shopping Complex)
288	Parks and Recreation (MRSR)	1377	71	4	46524	Canning Location 37	7,025m ²	POS	Carpak (George Burnett Park)
45	Local Commercial	855	50	191	2833		1,102m ²	Utility	Carpark (Coode Street and South Terrace)
246	Highway Commercial (Regional Road)	2092	55	102	21806	Swan Location 41	317m ²	Commercial	Carpark (South Perth Bridge Club)
Verges									
221	Local Roads	831	159	101	6020	Swan Location 40	23m ²	Utility	Verge (Preston Street and Labouchere Road)
220	Local Roads	757	25	77	5274	Swan Location 40	5m ²	Utility	Verge (Comer Street and Labouchere Road)
318	Local Roads	2744	899	68	7926		22m ²	Utility	Verge (River Way)
292	Local Roads	2769	560	1000	3383		24,521m ²	Utility	Verge (Hope Avenue)
314	Local Roads	1133	608	55 (253)	7926 (5137)	Canning Location 37	18m ²	Utility	Verge (River Way)
308	Local Roads	1163	268	51 (239)	11353 (5137)	Canning Location 37	30m ²	Utility	Verge (River Way)
305	Local Roads	387	135A	50	33728	Canning Location 37	31m ²	Utility	Verge (River Way)
320	Local Roads	1018	192	67 (256)	7926 (5137)	Canning Location 37	22m ²	Utility	Verge (River Way)

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
309	Local Roads	1175	244	73 (250)	7926 (5137)	Canning Location 37	22m ²	Utility	Verge (River Way)
306	Local Roads	1172	414	50 (248)	7926 (5137)	Canning Location 37	18m ²	Utility	Verge (River Way)
311	Local Roads	1051	641	50 (237)	11353 (5137)	Canning Location 37	29m ²	Utility	Verge (River Way)
313	Local Roads	1051	640	84 (236)	7926 (5137)	Canning Location 37	29m ²	Utility	Verge (River Way)
310	Local Roads	1157	327	53 (251)	7926 (5137)	Canning Location 37	18m ²	Utility	Verge (River Way)
317	Local Roads	1133	495	82 (234)	7926 (5137)	Canning Location 37	24m ²	Utility	Verge (River Way)
302	Local Roads	1163	269	66 (243)	11353 (5137)	Canning Location 37	33m ²	Utility	Verge (River Way)
304	Local Roads	1171	699	85 (247)	7926 (5137)	Canning Location 37	18m ²	Utility	Verge (River Way)
322	Local Roads	1227	20	56 (257)	7926 (5137)	Canning Location 37	22m ²	Utility	Verge (River Way)
315	Local Roads	1131	692	59 (235)	7926 (5137)	Canning Location 37	29m ²	Utility	Verge (River Way)
301	Local Roads	1111	623	67 (244)	11353 (5137)	Canning Location 37	30m ²	Utility	Verge (River Way)
307	Local Roads	1018	711	74 (249)	7926 (5137)	Canning Location 37	22m ²	Utility	Verge (River Way)
312	Local Roads	1175	248	54 (252)	7926 (5137)	Canning Location 37	18m ²	Utility	Verge (River Way)
300	Local Roads	1043	717	78 (245)	7926 (5137)	Canning Location 37	29m ²	Utility	Verge (River Way)

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
321	Local Roads	1024	515	80 (232)	7926 (5137)	Canning Location 37	28m ²	Utility	Verge (River Way)
324	Local Roads	2653	867	340	5137		1,527m ²	Utility	Verge (River Way)
298	Local Roads	2653	867	341	5137		1,127m ²	Utility	Verge (River Way)
303	Local Roads	1065	741	52 (246)	7926 (5137)	Canning Location 37	18m ²	Utility	Verge (River Way)
316	Local Roads	1127	334	51 (254)	7926 (5137)	Canning Location 37	23m ²	Utility	Verge (River Way)
323	Local Roads	1163	270	57 (258)	7926 (5137)	Canning Location 37	28m ²	Utility	Verge (River Way)
319	Local Roads	1121	240	58 (233)	7926 (5137)	Canning Location 37	29m ²	Utility	Verge (River Way)
Roadways									
11	Mends Street Centre Commercial	1337	181	50 (53)	12048		109m ²	Utility	Roadway (Mends Street behind the Windsor)
299	Local Roads	1255	661	55	27140	Canning Location 37	686m ²	Utility	Roadway (Redmond Street and Riverway)
59	Local Roads	2059	125	28	1800	Swan Location 39	618m ²	Utility	Roadway (Jubilee Street and Weston Street)
Right of Ways									
14	Mends Street Centre Commercial	2781	181	802	71336		152m ²	Utility	ROW 8 (South Perth Esplanade)
13	Mends Street Centre Commercial	1639	741	66 (245)	40415		144m ²	Utility	ROW 8 (South Perth Esplanade)

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
33	Neighbourhood Centre Commercial	35	270	67 (354)	441		492m ²	Utility	ROW 17 (Anstey Street/Coode Street)
36	Residential	1772	584	66	3146		741m ²	Utility	ROWS 21, 22 (Wattle Street/Sandgate Street)
37	Residential	1772	584	66	3146		157m ²	Utility	ROWS 21, 22 (Wattle Street/Sandgate Street)
35	Residential	1689	80	66	441		1,469m ²	Utility	ROW 24 (Coode Street)
38	Residential	1355	797	66	1865		546m ²	Utility	ROW 25 (Sandgate Street/ Hensman Street/ Carr Street)
41	Residential	1355	796	33	1169		1m ²	Utility	ROW 29 (Pilgrim Street)
58	Residential	1823	678	166	6038	Swan Location 38a	424m ²	Utility	ROW 34 (Darlot Crescent/ Ranelagh Crescent)
75	Residential	1810	241	166	143	Swan Location 38a	166m ²	Utility	ROWS 36, 38, 39
76	Residential	1810	241	166	143	Swan Location 38a	245m ²	Utility	ROWS 36, 38, 39
77	Residential	1810	241	166	143	Swan Location 38a	256m ²	Utility	ROWS 36, 38, 39
86	Residential	2227	130	101	29453		356m ²	Utility	ROW 44 (Broome Street/ Canning Highway)
99	Residential	2227	132	103	29453		95m ²	Utility	ROW 47 (Canning Highway/ Collins

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
									Street)
164	Residential	2227	137	108	29453		103m ²	Utility	ROW 54 (Oxford Street/ Collins Street)
166	Residential	2227	134	105	29453		103m ²	Utility	ROW 58 (Vista Street/ Douglas Avenue)
161	Residential	2227	133	104	29453		103m ²	Utility	ROW 59 (Vista Street/ Collins Street)
167	Highway Commercial (Regional Road)	2227	131	102	29453		134m ²	Utility	ROW 60 (Canning Highway/ Douglas Avenue)
94	Residential	1825	205	166	2427	Swan Location 38b	1,462m ²	Utility	ROW 64 (Banksia Terrace/ Third Avenue/ Hovia Terrace)
168	Residential	1355	799	0	1528	Swan Locaton 308	38m ²	Utility	ROW 67 (Mabel Street/Douglas Avenue/ Bland Street)
171	Local Roads	1407	131	0	6097	Swan Location 5344	767m ²	Utility	ROW 68 (Moresby Street)
222	Residential	2625	963	400	45969		809m ²	Utility	ROW 73 (Thelma Street/ Alston Avenue)
223	Residential	2625	966	403	45972		809m ²	Utility	ROW 74 (Thelma Street/ Alston Avenue)

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
224	Residential	2625	970	407	45976		1,384m ²	Utility	ROWs 75, 76 'Azalea Lane' and 'Orchid Lane' (Thelma Street/Canning Highway/ Alston Avenue)
225	Residential	2625	968	405	45974		210m ²	Utility	ROW 77 (Alston Avenue)
226	Residential	2625	967	404	45973		303m ²	Utility	ROW 78 (Greenock Avenue)
228	Residential	2625	965	402	45971		765m ²	Utility	ROW 79 (Greenock Avenue/ Saudners Road)
227	Residential	2635	577	5	51196		505m ²	Utility	ROW 79 (Greenock Avenue/ Robert Street)
230	Residential	2625	969	406	45975		765m ²	Utility	ROW 82 (Saunders Street/Greenock Avenue)
249	Residential	2671	943	101	943		779m ²	Utility	ROW 86 (Canning Highway/ Alston Avenue)
252	Residential	2671	949	107	54463		293m ²	Utility	ROW 92 (Talbot Avenue)
251	Residential	2178	707	605	98873	Swan Location 41	252m ²	Utility	ROW 92 (Alston Avenue)
255	Residential	2671	944	102	54463		754m ²	Utility	ROW 93 (Alston Avenue/Greenock

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
									Avenue)
256	Residential	2671	945	103	54463		715m ²	Utility	ROW 94 'Iris Lane' (Greenock Avenue/ Saunders Street)
257	Residential	2671	946	104	54463		557m ²	Utility	ROW 95 (Saunders Street/Park Street/Gerald Street)
258	Residential	2671	947	105	54463		129m ²	Utility	ROW 96 (Talbot Avenue)
260	Residential	2159	608	601	97541	Swan Location 41	111m ²	Utility	ROW 99 (Axford Street/ Saunders Street)
	Local Roads	1418	856	0	3383	Canning Location 38	3,849m ²	Utility	ROWS 109-114, 117, 120-124 (Mount Henry)
244	Residential	2769	549	600	3486		1,053m ²	Utility	ROW 109 'Lily Lane' (Henley Street/Cassey Street)
245	Residential	2769	551	602	3486		153m ²	Utility	ROW 110 (Henley Street)
274	Regional Road (Residential)	2769	552	603	3486		337m ²	Utility	ROW 111 (McDougall Street/ Canning Highway)
275	Residential	2769	553	604	3486		1,052m ²	Utility	ROW 113 (Henley Street/ McDougall Road)

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
276	Residential	2769	554	605	3486		202m ²	Utility	ROW 114 (McDougall Street)
280	Residential	2769	550	601	3486		614m ²	Utility	ROW 117 (Davilak Street/ Canning Highway)
284	Residential	2769	555	606	3486		303m ²	Utility	ROW 120 (Wooltana Road)
281	Residential	2769	556	607	3486		404m ²	Utility	ROW 121 (Davilak Street)
285	Residential	2769	557	608	3487		842m ²	Utility	ROW 122 (Wooltana Street/ Roberts Street)
286	Local Roads	2769	558	609	3487		1,250m ²	Utility	ROW 123 'Tulip Lane' (Wooltana Street/ Manning Road)
287	Residential	2769	559	610	3487		976m ²	Utility	ROW 124 (Wooltana Street/ Manning Road)
291	Neighbourhood Centre Commercial	1551	411	50	6280		475m ²	Utility	ROW 129 (Bradshaw Road/ Conochie Crescent)
289	Residential	1407	128	51	6280		849m ²	Utility	ROW 130 (Manning Road/ Downey Drive)
296	Residential	1407	125	166	6846		441m ²	Utility	ROW 137 (Pepler Avenue/ Letchworth Centre Avenue)

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
Drainage Sumps									
31	Neighbourhood Centre Commercial	635	114	2 (353)	3575		989m ²	Utility	Sump 2 & Parking Station 2 (49 Angelo Street)
30	Neighbourhood Centre Commercial	638	16	1 (353)	3575		989m ²	Utility	Sump 2 & Parking Station 2 (51 Angelo Street)
85	Residential	190	15	24	576	Swan Location 39	408m ²	Utility	Sump 5 (Shaftesbury Street)
82	Parks and Recreation	788	194	15	576	Swan Location 39	566m ²	Utility	Sump 5 & Parkland (Shaftesbury and Collins Street)
83	Parks and Recreation	1051	709	16	576	Swan Location 39	680m ²	Utility	Sump 5 & Parkland (Broome and Collins Street)
84	Parks and Recreation	515	194	17	576	Swan Location 39	408m ²	Utility	Sump 5 & Parkland (Shaftesbury and Broome Street)
95	Residential	349	155	57	2427	Swan Location 38b	484m ²	Utility	Sump 7 (49-51 Banksia Terrace)
96	Residential	349	155	58	2427	Swan Location 38b	484m ²	Utility	Sump 7 (49-51 Banksia Terrace)
97	Residential	1005	586	195	4755	Swan Location 38b	787m ²	Utility	Sump 9 (72 Banksia Terrace)
93	Residential	1172	13	105	6057	Swan Location 5352	765m ²	Utility	Sump 10 (19 Kennard Street)
90	Parks and Recreation	1081	6	4	14179	Swan Location 37	3,152m ²	Utility	Sump 11 (George Street and

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
									Gwenyfred Road)
91	Residential	806	60	220 (100)	4665	Swan Location 37	1,875m ²	Utility	Sump 12 (Gwenyfred Road)
92	Residential	1172	11	73	6092	Swan Location 5353	841m ²	Utility	Sump 13 (154 Landsdowne Road)
98	Residential	1172	12	77	6057	Swan Location 5352	766m ²	Utility	Sump 14 (14 Anketell Street)
165	Residential	1075	524	449	576	Swan Location 39	408m ²	Utility	Sump 16 (1 King Street, Kensington)
39	Highway Commercial (Regional Road)	1058	932	50	11763	Swan Location 308	245m ²	Utility	Sump 22 (Renwick Street)
40	Highway Commercial (Regional Road)	1058	932	3	11763	Swan Location 308	178m ²	Utility	Sump 22 (Renwick Street)
169	Residential	1172	16	138	6097	Swan Location 5344	731m ²	Utility	Sump 23 (Hensman Street)
172	Residential	1172	17	174	6097	Swan Location 5344	837m ²	Utility	Sump 24 (5 Warrego Street)
162	Residential	1172	14	38	6085	Swan Location 5348	800m ²	Utility	Sump 25 (11 Pitt Street)
163	Residential	1172	15	69	6085	Swan Location 5348	769m ²	Utility	Sump 26 (95 Collins Street)
209	Residential	570	150	123 (145)	15025	Swan Location 40	757m ²	Utility	Sump 27 (Gardner Street)
174	Residential	1020	918	164	4528	Swan Location 40	1,012m ²	Utility	Sump 28 (Hobbs Avenue)
175	Residential	1172	18	223	4528	Swan Location 40	1,011m ²	Utility	Sump 29 (75 Hobbs Avenue)
177	Residential	1915	937	353	4528	Swan Location 40	1,012m ²	Utility	Sump 31 (106-108

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
									Bessel Avenue)
176	Residential	1190	5	313	4528	Swan Location 40	1,012m ²	Utility	Sump 32 (39 Monash Avenue)
179	Residential	1216	475	3	8758	Swan Location 40	620m ²	Utility	Sump 35 (58 Thelma Street)
180	Residential	1103	657	776	4528	Swan Location 40	1,080m ²	Utility	Sump 36 (Ryrie Avenue and Thelma Street)
178	Residential	1190	6	4582	161408	Swan Location 4582	1,011m ²	Utility	Sump 38 (49 Todd Avenue)
248	Residential	1108	597	278	4740	Swan Location 41	1,011m ²	Utility	Sump 41 (36 Brittain Street)
254	Residential	2171	459	403	98607	Swan Location 41	1,234m ²	Utility	Sump 42 (Eleanor Street)
259	Residential	1188	725	4609	4740	Swan Location 4609	1,011m ²	Utility	Sump 43 (7 Lawrence Street)
250	Residential	1172	22	409	4740	Swan Location 41	1,010m ²	Utility	Sump 44 (34 Alston Avenue)
229	Residential	1071	28	155	11001	Swan Location 41	1,011m ²	Utility	Sump 46 (241 Labouchere Road)
263	Residential	1079	357	374	4857	Swan Location 42	1,011m ²	Utility	Sump 50 & 51 (Talbot Avenue)
261	Residential	1079	357	466	4852	Swan Location 42	994m ²	Utility	Sump 50 & 51 (Saunders Street/ Bruce Street)
262	Residential	1172	23	422	4852	Swan Location 42	1,011m ²	Utility	Sump 52 (36 Axford Street, Como)
264	Residential	1955	855	449	4852	Swan Location 42	991m ²	Utility	Sump 53 (35 Bruce

ID No.	Zoning	Volume Number	Folio Number	Lot Number	Deposited Plan Number	Location Number	Area	Classification	Property Use
									Street, Como)
279	Residential	2140	454	83	6384	Canning Location 37	903m ²	Utility	Sump 54 (Godwin Avenue)
278	Residential	1166	802	46	6384	Canning Location 37	939m ²	Utility	Sump 55 (11 Canavan Crescent, Manning)
282	Residential	1185	286	269	6385	Canning Location 37	871m ²	Utility	Sump 57 (64 Crawshaw Crescent, Manning)
283	Residential	1166	801	339	6385	Canning Location 37	819m ²	Utility	Sump 58 (15 Pether Road, Manning)
297	Residential	1227	94	190	5137	Canning Location 37	1,011m ²	Utility	Sump 62 (28 Klem Avenue, South Perth)
Others									
56	Residential	1933	322	2	82638	Swan Location 37	120m ²	POS	Swanview Terrace
74	Residential	763	163	70	28706	Swan Location 386	129m ²	Utility	ROW (Banksia Terrace)

Crown Reserve List

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
1022		A	Current		Recreation Ground	Vest: City Of South Perth W.P.L. Approval of Minister Required (21yrs)	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years
3616		C	Current		For the Purposes of the <i>School Education Act 1999</i>	Management Order Minister for Education	Education Department of WA	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
3617		A	Current		Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
3618		A	Current		Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	With power to lease for any term, subject to the consent of the Minister for Lands.
4325		C	Cancelled		Police		Police Department	
45636		C	Current		Communications Site	Management Order Conservation and Land Management Executive Body	Department of Environment and Conservation	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
5574		A	Current		Public Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
8581	23/01/1903	A	Cancelled		Zoological Gardens	Management Order Zoological Gardens Board	Zoological Gardens Board	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
10250		C	Current		Public Recreation	Vest: City of South Perth Wpl (50) yrs Ministers for Lands consent required (J106947)	Department for Planning and Infrastructure	With power to lease for any term not exceeding 50 years, subject to the consent of the Minister for Lands.
19429	4/02/1927	A	Current		Parking	Vest: City Of South Perth	Department For Planning And Infrastructure	
20804	5/02/1932	C	Current		Public Recreation	Vest: City of South Perth Wpl 21yrs Ministers consent required	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
21288	28/09/1934	A	Current		Parklands		Department for Planning and Infrastructure	
21483	17/01/1936	C	Current		Park & Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
22099	1/12/1939	C	Current		Infant Health Clinic	Management Order City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
22503	14/12/1945	A	Current		Zoological Gardens	Management Order Zoological Gardens Board	Zoological Gardens Board	
23800	24/07/1953	A	Current	Bill Mcgrath Reserve	Recreation	Vest City of South Perth	Department of Regional Development and Lands (Slisd)	
23967	25/06/1954	C	Current	Sandon Park	Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
24112	24/12/1954	C	Current		Recreation Boat Shed	Vest City of South Perth W P L 21yrs	Department of Regional Development and Lands (Slisd)	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
24213	15/07/1955	C	Current		Recreation Park	Vest City of South Perth	Department for Planning and Infrastructure	
24327	25/11/1955	A	Current		Recreation & Park	Vest City of South Perth	Department for Planning and Infrastructure	
24328	25/11/1955	A	Current		Recreation & Park	Vest City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
24329	25/11/1955	A	Current	Bradshaw Conochie Reserve	Recreation & Park	Management Order City of South Perth	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
24330	25/11/1955	A	Current		Recreation & Park	Management Order City of South Perth	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
24331	25/11/1955	A	Cancelled		Hall Site Community Health Centre & Recreation Act 11 - 1978		Department for Planning and Infrastructure	
24332	25/11/1955	A	Current	Canavan Reserve	Kindergarten Infant Health Clinic & Recreation	Vest: City Of South Perth W P L (5 Yrs) Ministers consent required	Department for Planning and Infrastructure	With power to lease for any term not exceeding 5 years, subject to the consent of the Minister for Lands.

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
24333	25/11/1955	A	Current		Kindergarten & Recreation	Vest: City of South Perth W P L (5yrs) Ministers consent required	Department for Planning and Infrastructure	With power to lease for any term not exceeding 5 years, subject to the consent of the Minister for Lands.
24727	21/06/1957	C	Current		For The Purpose of Biosecurity and <i>Agricultural Management Act 2007</i>	Management Order Western Australian Agriculture Authority	Agriculture Department of WA	With power to lease for any term not exceeding 35 years
24893	10/01/1958	C	Current		Park	Vest City of South Perth	Department of Regional Development and Lands (Slisd)	
25250	20/02/1959	C	Current		Childrens Playground	Vest City of South Perth	Department of Regional Development And Lands (Slisd)	
25439	25/09/1959	C	Current		Health (Dental Services)	Vest:Minister for Health - W.P.L. (any term)	Health Department of Western Australia	With power to lease for any term
25744	4/11/1960	C	Current		School Site Manning		Education Department of Wa	
26085	6/10/1961	C	Current		Hall Site Boy Scouts		Department for Planning and Infrastructure	
26086	6/10/1961	C	Current		Use of Boy Scouts Assoc & for Pedestrian Access		Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
26533	2/11/1962	C	Current		Footway		Department for Planning and Infrastructure	
26622	25/01/1963	C	Current		Recreation & Drainage	Vest City of South Perth	Department for Planning and Infrastructure	
26820	19/07/1963	C	Current	Collier Reserve	Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
26916	19/07/1963	C	Current		Operations Centre	Vest:Executive Director of the Department of Conservation and Land Management	Executive Director of the Department of Conservation & Land Management	
26917	19/07/1963	C	Current		Municipal Depot Site	Vest: City of South Perth	Department for Planning and Infrastructure	
27448	19/03/1965	C	Current		Drainage	Vest Minister for Water Resources	Water Corporation	
27449	19/03/1965	C	Current		Drainage	Vest Minister for Water Resources	Water Corporation	
28021	18/03/1966	C	Current		Municipal Endowment	Vest City of South Perth W P L 21yrs	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
28057	22/04/1966	C	Current		School Site		Department of Education and Training	
28514	14/04/1967	C	Current		Ejector Station Site	Vest Minister for Water Resources	Water Corporation	
28747	22/09/1967	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
28778	6/10/1967	C	Current		Parking	Vest City of South Perth	Department for Planning and Infrastructure	
28779	6/10/1967	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
29198	7/06/1968	C	Current		High School Site		Education Department of WA	
29338	27/09/1968	C	Current		Park & Pedestrian Access Way	Vest City of South Perth	Department for Planning and Infrastructure	
30009	17/10/1969	C	Current		Public Recreation	Vest City of South Perth	Department of Regional Development and Lands (Slsd)	
30010	17/10/1969	C	Current		Drainage	Vest City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
32241	17/08/1973	C	Current		Pumping Station	Vest Minister for Water Resources	Water Corporation	
32937	6/12/1974	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
33484	11/07/1975	C	Current		Sewerage Pumping Station	Management Order Metropolitan Water Authority	Water Corporation	
33639	17/10/1975	C	Current		Library	Vest City of South Perth	Department of Regional Development and Lands (Slisd)	
33803	31/12/1975	A	Current	Milyu Nature Reserve	Conservation of Flora and Fauna	Management Order National Parks and Nature Conservation Authority	Executive Director of the Department of Conservation & Land Management	
33804	31/12/1975	C	Current		Recreation	Vest: City of South Perth	Department for Planning and Infrastructure	
33835	23/01/1976	C	Current		Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
34112	23/07/1976	C	Cancelled		Pedestrian Access Way	Vest City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
34184	20/08/1976	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
34239	17/09/1976	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
34240	17/09/1976	C	Current		Public Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	
34241	17/09/1976	C	Current		Public Recreation	Vest: City of South Perth	Department for Planning and Infrastructure	
34565	1/04/1977	C	Current		Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
34691	17/06/1977	C	Current		Public Recreation	Vest City of South Perth	Department of Regional Development and Lands (Slisd)	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
35265	19/05/1978	C	Current		Senior Citizens Centre	Vest City of South Perth W.P.L. 21 years	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
35297	19/05/1978	C	Current		Sports Pavillion & Club Premises	Vest City of South Perth W P L 21yrs	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
36123	6/07/1979	C	Current		Sewerage Pumping Station	Vest: Water Corporation	Water Corporation	
36380	21/12/1979	C	Current		Sewage Pumping Station Site	Vest:Water Corporation	Water Corporation	
36435	21/12/1979	C	Current		Parks & Recreation	Vest City of South Perth W P L 21yrs	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
36665	16/05/1980	C	Current		Residential College Site	Management Order Western Australian Institute of Technology	Curtin University of Technology	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
36666	16/05/1980	C	Current		Student Housing	Vest: Curtin University of Technology	Curtin University of Technology	
36791	7/11/1980	C	Current		Public Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	
37640	19/03/1982	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
37647	21/05/1982	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
37648	21/05/1982	C	Current		Public Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	
37593	5/02/1982	C	Current		Park & Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
37594	5/02/1982	C	Current		Park & Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
37595	5/02/1982	C	Current		Pedestrian Access Way	Vest City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
37705	21/05/1982	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
37712	21/05/1982	C	Current	Andrew Thomson Conservation Reserve	Public Recreation and Conservation	Vest:City of South Perth	Department for Planning and Infrastructure	
37723	18/06/1982	C	Current		Water Supply	Vest:Water Corporation	Water Corporation	
37828	30/07/1982	C	Current		Park & Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
38152	4/02/1983	C	Current		School Site		Education Department of WA	
38202	25/02/1983	C	Current		School Site		Education Department of WA	
38241	31/03/1983	C	Current		School Site		Education Department of WA	
38314	15/07/1983	C	Current		Pedestrian Access Way	Vest City of South Perth	Department of Regional Development and Lands (Sisd)	
38315	10/06/1983	C	Current		Housing W A Institute of Technology	Management Order Western Australian Institute of Technology	Curtin University of Technology	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
38794	15/06/1984	C	Current		Recreation Golf Course	Vest: City of South Perth, W.P.L.(21yrs) Approval of Minister required.	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years
38665	2/03/1984	C	Current		Aged Persons Homes	Vest:City of South Perth W.P.L. Approval of Minister Required (40yrs).	Department for Planning and Infrastructure	With power to lease for any term not exceeding 40 years, subject to the consent of the Minister for Lands.
38670	30/03/1984	C	Current		Pedestrian Access Way	Vest City of South Perth	Department for Planning and Infrastructure	
38732	22/06/1984	C	Current		Public Recreation	Vest City of South Perth	Department for Planning and Infrastructure	
39297	22/11/1985	C	Current		Sewerage Pumping Station	Vest:Water Corporation	Water Corporation	
39321	6/12/1985	C	Current		Sewerage Pumping Station	Vest:Water Corporation	Water Corporation	
39506	11/07/1986	C	Current		Rubbish Transfer Site	City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
39783	30/01/1987	C	Current		Public Recreation	City of South Perth	Department of Regional Development and Lands (Sisd)	
40205	5/02/1988	C	Cancelled		Zoological Purposes		Zoological Gardens Board	
40240	20/11/1987	C	Current		Recreation	Vest City of South Perth W.P.L. 21 years approval of Minister	Department for Planning and Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
40623	9/09/1988	C	Current		Sewage Pumping Station	Vest:Water Corporation	Water Corporation	
40958	23/06/1989	C	Current		Public Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	
41339	4/05/1990	C	Current		Pedestrian Accessway	Vest City of South Perth	Department for Planning and Infrastructure	
41997	6/03/1992	C	Current		School Site	Vest Wesley College	Department for Planning and Infrastructure	
42768	30/07/1993	C	Current		Public Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
43421	27/06/1995	C	Current		Public Recreation	Vest:City of South Perth	Department for Planning and Infrastructure	
43422	27/06/1995	C	Current		Public Recreation	Vest:City of South Perth	Department for Planning and Infrastructure	
43437	27/06/1995	C	Current		Public Recreation	Vest:City of South Perth	Department for Planning and Infrastructure	
43696	25/07/1995	C	Cancelled		Public Recreation	Vest; City of South Perth	Department for Planning and Infrastructure	
45066	16/09/1997	C	Current		Recreation & Foreshore Management	Management Order City of South Perth	Department for Planning and Infrastructure	
45209	6/01/1998	C	Current		Public Recreation	Vest: City of South Perth	Department for Planning and Infrastructure	
46230		C	Current		Western Australian Herbarium	Vest: Executive Director Department of Conservation and Land Management	Executive Director of the Department of Conservation & Land Management	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
46340		C	Current		Public Recreation	Vest: City of South Perth	Department for Planning and Infrastructure	
46527		C	Current		Public Recreation	Vest: City of South Perth	Department for Planning and Infrastructure	
46565		C	Current		Recreation	Vest: City of South Perth W.P.L. (21) Years	Department For Planning And Infrastructure	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
46615		C	Current		Recreation and Drainage	Vest: City of South Perth	Department for Planning and Infrastructure	
46956		C	Current		Public Recreation	Vest: City of South Perth (567782)	Department for Planning and Infrastructure	
46989		C	Current		Public Recreation	City of South Perth	Department for Planning and Infrastructure	
47895		C	Current		Drainage (J067151)	Management Order City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
48521		C	Current		Park and Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	
48522		C	Current		Park and Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	
48523		C	Current		Park And Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	
48530		C	Current		Public Recreation.	Management Order City of South Perth	Department for Planning and Infrastructure	
48573		C	Current		Public Utilities	Management Order Public Transport Authority of Western Australia	Public Transport Authority of WA	
49156		C	Current		Parkland	Management Order City of South Perth	Department for Planning and Infrastructure	
49158		C	Current		Parkland	Management Order City of South Perth	Department for Planning and Infrastructure	
49235		C	Current		Recreation	Management Order City of South Perth	Department for Planning and Infrastructure	

Reserve Number	Original Gazettal Date	Reserve Class	Status	Reserve Name	Land Use	Vesting	Responsibility	Notes
51431		C	Current		Public Recreation	Management Order City of South Perth	Department Of Regional Development and Lands (Sisd)	
51462		C	Current		Community Purposes	Management Order City of South Perth	Department of Regional Development and Lands (Sisd)	With power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.

DRAFT

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THE SUPREME COURT OF

WESTERN AUSTRALIA

CIV 1923 of 2014

CIV 2527 of 2014

THE SHIRE OF SERPENTINE JARRAHDALÉ

and

THE CITY OF SUBIACO

and

THE CITY OF SOUTH PERTH

and

IAN KER

and

THE LOCAL GOVERNMENT ADVISORY BOARD

and

ANTHONY JAMES SIMPSON MLA

MARTIN CJ

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 25 NOVEMBER 2014, AT 10.31 AM

MR C.P. SHANAHAN SC, with him MR N.J. LANDIS, appeared for the applicants.

MR C.S. BYDDER appeared for the respondents.

THE ASSOCIATE: In the Supreme Court of Western Australia: CIV 1923/2014, The City of Subiaco v the Minister for Local Government; and CIV 2527/2014, The City of South Perth v the Minister for Local Government.

MARTIN CJ: Mr Shanahan.

C.P. SHANAHAN SC, MR: May it please the court. I appear for the applicants with my friend MR LANDIS.

MARTIN CJ: Thank you, Mr Shanahan. Mr Bydder.

C.S. BYDDER, MR: May it please the court. I appear for the first respondent in both matters. And the second respondent has filed a submitting appearance in both matters.

MARTIN CJ: Yes. Thank you, Mr Bydder. Counsel, you will have noticed that there are cameras in court. That has been permitted because there is, of course, some public interest in these proceedings. My preference would have been to webcast these proceedings live as other courts around the country do, but, unfortunately, we continue to be denied the modest resources required to enable us to do that. We will, however, do the best we can with the resources that we have to make these proceedings accessible to the public, including by recording them audio-visually and we will place them on the court's website within the next day or so in chunks that are consistent with the capacity of that website. We will also place the transcript of these proceedings on the website, again, within the next day or so, so they will be publicly accessible. So those are the arrangements that we will be making in that respect. Mr Shanahan.

SHANAHAN, MR: Thank you, your Honour. Your Honour, the applicants challenge the process by which the Minister and the advisory board have sought to implement abolitions, amalgamations and changes to boundaries of metropolitan local governments. Such changes, as your Honour will be aware, require orders under section 2.1 of the Local Government Act 1995. And I will refer to that as "the Act". There are now two actions before your Honour as we've heard: 1923 of 2014; and the second, 2527 of 2014. Your Honour has directed that with the consent of all the parties that they be heard together today. I would like to start with a brief description of those actions, just so it's clear what they're about, before taking your Honour to the grounds.

And in dealing with each of the actions, I would like to tender some of the relevant evidence that will be before the court. In 1923 - and I will refer to the action as 1923. In the first matter, there are four grounds. The first is that the artificial decision, as the applicants characterise it, by the Minister to split the government plan for amalgamation into 12 pieces in order to avoid giving affected local governments or affected electors access to the binding poll provisions at clause 8 of schedule 2.1 of the Act. Your Honour, there's a description of the government plan in the heading on the application which I will take your Honour to in due course.

MARTIN CJ: Yes.

SHANAHAN, MR: The second ground - what I - what the applicants might characterise as a content ground, relates to the Minister's implementation of that decision by purporting to make 12 proposals to the Advisory Board in circumstances where the applicants contend that those proposals didn't satisfy the content requirements of clause 2, sub (2) of schedule 2.1 of the Act. The third ground is an important matter, and that is the applicants' contention, that properly construed, any attempt to obtain orders under section 2.1 of the Act must begin in the first instance with a lawful ministerial proposal.

Without which, the applicants say the Advisory Board has no power to make recommendations to the Minister for orders under section 2.1 of the Act. If the applicants succeed on ground 3, your Honour, you would have no need to deal with 1, 2 and 4. Ground 4, the last matter in the applicants' case in 1923 is the conflict of interest ground. I don't think I need to describe it with more specificity than that. In 1923, your Honour, the evidence is, essentially, the trial bundle and a statement of agreed facts. Can I make some amendments to the statement of agreed facts before tendering it.

MARTIN CJ: Yes.

SHANAHAN, MR: There are two areas that need amendment: paragraph 7 and paragraph 9. If I can take your Honour to paragraph 7 in the first instance.

MARTIN CJ: Yes.

SHANAHAN, MR: What has to happen at 7 is simply that the subparagraphs be renumbered. 7.1, 7.2 - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - et sequens.

MARTIN CJ: Yes.

SHANAHAN, MR: And in relation to paragraph 9, it's the same problem. It's the same vice. And 9.1 through 9.4.

MARTIN CJ: Right.

SHANAHAN, MR: Your Honour, I tender the statement of agreed facts.

MARTIN CJ: No objection, Mr Bydder?

BYDDER, MR: No, your Honour.

MARTIN CJ: The statement of agreed facts will be received as exhibit 1 in both proceedings, Mr Shanahan.

EXHIBIT 1 Applicants
 Statement of agreed facts in both
 proceedings

SHANAHAN, MR: Thank you.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour, the next matter is the trial bundle. It's in three lever arch files, numbered 1, 2 and 3. I hope that your copy is now properly tabbed - - -

MARTIN CJ: Yes, it is. Thank you.

SHANAHAN, MR: - - - and that the index records all pagination. I would tender the trial bundle.

MARTIN CJ: Yes. The trial bundle will be received as exhibits in - as a single exhibit in both proceedings.

EXHIBIT 2 Applicants
 Trial bundle in both proceedings

SHANAHAN, MR: Thank you.

BYDDER, MR: I should just say - - -

MARTIN CJ: Yes.

BYDDER, MR: I'm sorry to interrupt my friend. I should just say, in respect of that, your Honour, your Honour may have noted there are some objections - - -

MARTIN CJ: Yes. They're subject to relevance.

BYDDER, MR: Indeed, your Honour.

MARTIN CJ: Yes.

BYDDER, MR: May it please.

MARTIN CJ: Yes.

SHANAHAN, MR: Thank you, your Honour. In the second matter, 2527, there's a single issue, and that is whether the Minister's decision to accept and reject recommendations made by the advisory board in its report before the board gave any notice under clause 8(1) was an attempt to accept or reject those proposals without power.

MARTIN CJ: Well, whether or not there's an issue - single issue or two issues, rather, depends upon whether the issue about the operation of clause 8 is dealt with in 1923 or
- - -

SHANAHAN, MR: 2527.

MARTIN CJ: - - - this 2007. It seems more consistent with convention to deal with it in the second proceedings because, arguably, in the first proceedings it's premature because they are commenced in June before there was any recommendation by the board.

SHANAHAN, MR: Indeed. Your Honour, what I was proposing to do with 2527 is to deal with it as I move through the grounds in the first action, so that the context of 2527 is set out in the submissions, and then just take your Honour directly to that second action so we don't waste time.

MARTIN CJ: Yes. Yes. All right.

SHANAHAN, MR: Thank you. The evidence in 2527 is a collection of affidavits. There are four.

MARTIN CJ: Yes.

SHANAHAN, MR: There are two that are tendered by the applicants. They are the two affidavits sworn by Mr Stephen Tindale, the Chief Executive Officer of the City of Subiaco. And your Honour will see that there are two; the first dated 4 November 2014.

MARTIN CJ: Sorry. The - - -

SHANAHAN, MR: This is the affidavit of Mr Stephen Tindale, sworn 4 November 2014.

MARTIN CJ: All right. You're in the most recent matter now, are you?

SHANAHAN, MR: I'm sorry. I'm still in 252 - yes. 2527. Yes.

MARTIN CJ: 2527. Yes. All right. I'm not sure that I've got that, but, anyway, we will just check that we've got that.

SHANAHAN, MR: Filed on 5 November, your Honour. Certainly you won't need it immediately, your Honour, if somebody else can find it for you.

MARTIN CJ: I don't seem to have the affidavits in relation to the second matter up here. Yes. All right. (indistinct). All right. Well, we will need to find that affidavit. Are they not on the file?

SHANAHAN, MR: Your Honour, I've got some copies here. Perhaps that's the quickest thing. They are the two affidavits that the applicant seeks to tender, your Honour. And I think my friend also added in the affidavit of Mr Misso, which I will come to in a moment.

MARTIN CJ: Yes.

SHANAHAN, MR: If we could just deal with the applicant's affidavits first.

MARTIN CJ: All right. You tender the affidavit sworn 4 and 20 November?

SHANAHAN, MR: Yes. Yes, your Honour.

MARTIN CJ: Yes. All right. Well, they will be - no objection, Mr Bydder?

BYDDER, MR: None, your Honour.

MARTIN CJ: Those affidavits will be taken as read and received as evidence in matter 2527 of 2014.

SHANAHAN, MR: Thank you. And my friends seek to rely upon two affidavits; one by Julian Marcel Misso, sworn 18 November 2014, and a second affidavit of Emma Dickinson, sworn 11 November 2014, and I would invite my friend, if he wishes to, to tender those documents now.

MARTIN CJ: Yes. Mr Bydder, you rely on those affidavits?

BYDDER, MR: I do, and with the case of Ms Dickinson in 1923 and in the case of Mr Misso in 2527. But it may be convenient to have them dealt with in both.

MARTIN CJ: Yes. All right. Well, those affidavits will be read and received as evidence in both actions.

BYDDER, MR: Please your Honour.

MARTIN CJ: Yes. Mr Shanahan.

SHANAHAN, MR: Thank you, your Honour. Before commencing to deal with the grounds in 1923, I just want to make sure that your Honour has all the paper.

MARTIN CJ: Yes.

SHANAHAN, MR: So, in 1923, your Honour should have a minute of proposed amended substituted grounds - - -

MARTIN CJ: I do.

SHANAHAN, MR: - - - in support of the application, the applicant's submissions, dated 17 November.

MARTIN CJ: Yes.

SHANAHAN, MR: The first respondent's outline of submissions, dated 21 November.

MARTIN CJ: Yes.

SHANAHAN, MR: And the applicant's submissions in reply, dated 24 November.

MARTIN CJ: Yes.

SHANAHAN, MR: And then a minute of final relief sought, dated 24 November.

MARTIN CJ: Yes. I have that, thank you.

SHANAHAN, MR: And in 2527, your Honour, it's a similar list.

MARTIN CJ: Yes.

SHANAHAN, MR: The application dated 5 November. This is the application itself. Probably have a spare copy of that as well, your Honour.

MARTIN CJ: Well (indistinct) all papers I've got relating to that second matter have gone missing.

SHANAHAN, MR: Can I hand this up then. This is a copy of the application. I think my junior has a (indistinct) for double-sided photocopying, so - - -

MARTIN CJ: All right. Thank you.

SHANAHAN, MR: That's the application dated 5 November. Then you should have the applicant's submissions in 2527, dated 19 November.

MARTIN CJ: Yes.

SHANAHAN, MR: The first respondent's outline of submissions, dated 21 November.

MARTIN CJ: Yes.

SHANAHAN, MR: The applicant's submissions in reply, dated yesterday, 24 November.

MARTIN CJ: Yes.

SHANAHAN, MR: And the minute of final relief sought, dated 24 November.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour, that concludes the preliminary matters. I wish to start - sorry.

MARTIN CJ: Yes.

SHANAHAN, MR: I thought it might be useful just to sketch out what I propose to do.

MARTIN CJ: Yes.

SHANAHAN, MR: I would like to start with ground 3 and then move through the balance of 1923. So 3, 1, 2, 4.

MARTIN CJ: Yes.

SHANAHAN, MR: I envisage that the applicant's case will take two hours, depending upon your Honour's questions.

MARTIN CJ: Yes.

SHANAHAN, MR: So perhaps then we could turn to the construction of the Act. That seems to be the foundation of part of these proceedings. In Western Australia, your Honour, the abolition of a district, changing the boundaries of a district or declaring new districts requires an order by the Governor on the recommendation of the Minister for Local Government, pursuant to section 2.1 of the Act. Thus, any State Government plan - that's any State Government plan for the reduction in the number of Local Government districts requires orders pursuant to section 2.1. So what this case is about is essentially the process by which those orders are obtained.

MARTIN CJ: Yes.

SHANAHAN, MR: A large part of 1923 is concerned with process, and that's the process by which these orders are made. This is a case about process and the checks and balances that protect it. It's not about the merits of the State Government's policy, position on Local Government, amalgamation, nor is it about the reduction of the number of metropolitan local councils. The government's power to make orders under section 2.1 of the Act is expressly conditioned by the Minister's prior recommendation to the Governor, and your Honour will find that at section 2.1, sub (1). No orders can be made until first recommended to the Governor by the Minister. Section 2.1(1), a recommendation by the Minister to the Governor that such an order be made is, in turn, conditioned by the requirement that the Minister first receive a recommendation from the advisory board. So we're working backwards from the making of the order.

MARTIN CJ: Excuse me. Yes. Sorry, Mr Shanahan.

SHANAHAN, MR: That's okay. The advisory board can make such a recommendation to the Minister only if the advisory board has complied with the provisions of schedule 2.1 of the Act. And your Honour is going to be taken at some length to schedule 2.1 of the Act because that's where the heart of the process lies. What is required to comply with schedule 2.1 is at the heart of grounds 1, 2 and 3 in the action 1923. So if I can take your Honour to schedule 2.1 directly - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - of the Act. The Minister's power to make a recommendation to the Governor appears at clause 10,

so, again, we're working backwards. And your Honour will see at clause 10, page 339 of my Act, that clause 10 has three subclauses.

MARTIN CJ: Yes.

SHANAHAN, MR: And the important thing to note immediately is that the power that the Minister has under clause 1 to accept or reject a recommendation of the advisory board made under schedule 2.1 is subject to clause 2 - subclause (2). Your Honour can see that. And then, at subclause (2), this is where the provisions of 8 and 10 intersect; in other words, that the power of the Minister to accept or reject a proposal is subject to the holding of a poll, if a poll is required - if a poll is required under clause 8(1).

And then, at 10(3), if the recommendation is that an order be made and it is accepted, the Minister can make an appropriate recommendation to the Governor under section 2.1. So here we have, working backwards from the Governor actually making the order, we have the Minister with the power to make a recommendation that an order be made. That power to make a recommendation that an order be made is subject, where required, to a poll under clause 8(1) and clause 9, and there's some argument about whether that relates both to acceptance or rejection under clause 10(1), which I will take your Honour to in due course.

The Minister's power is conditioned by clause 10(2), as I've pointed out, which means that the Minister's power to accept or reject a recommendation is subject to the conduct of a poll under clause 8(1) where access to such a poll is granted by that provision. And perhaps whilst I'm doing it, it's worth taking your Honour to that provision because that's really at the heart of the debate around binding polls. Your Honour will see, at 8(1), that:

Where the advisory board recommends to the Minister the making of an order to abolish two or more districts and amalgamate them into more or more districts, the board is to give notice to affected local governments, affected electors and other electors of districts directly affected by the recommendation about the recommendation.

I have a bit more to say about that provision as we go on. If such a poll was held and held and rejects the advisory board's recommendation to the Minister, then the Minister is bound by that rejection. That's the effect of the provision at clause 10(1). Thus, access by affected electors to a binding poll under clause 8 is an important

and we would say significant check or balance to the exercise of the Minister's power under clause 10 to make a recommendation for an order under section 2.1 to the Governor. I'm sorry, your Honour, but that's got a lot of different parts in it.

MARTIN CJ: No. I understand the - I understand the process.

SHANAHAN, MR: It's the nature of the process. Another important check and balance to the Minister's power is the independence of the Advisory Board inquiring into proposals that are made to it. There seems to be some argument in the papers about whether or not - or what the status of the Advisory Board is in terms of independence. What the applicants say about that is were the Advisory Board not independent effectively where the Minister makes a proposal, then it may well end up with the Minister advising the Minister on the Minister's proposal as to the Minister's recommendation to the Governor. In the applicant's respectful submission, the role of the Advisory Board is clearly independent and must be seen as such.

MARTIN CJ: But there are degrees of separation, aren't there, Mr Shanahan?

SHANAHAN, MR: Indeed, your Honour. And no doubt those nuances will be teased out in the course of these proceedings. Certainly what the applicants don't do is rely upon Professor Saunder's paper for the proposition that the board is independent. The applicants say that that proposition emerges from the statute itself. But to the extent that the Advisory Board is for particular type, the applicants say that the comments by Professor Saunders in her paper, which is at paragraph 14 of the submissions, is apposite.

I return to the issue of the independence of the board, both in terms of grounds 1 and 4, because obviously they're interrelated. It's contended that the composition of the Advisory Board as legislated for at schedule 2.5 of the Act should be understood through the prism of Professor Saunders' observations in that were the board, as I say, not independent, then the system that's envisaged under schedule 2.1 in the applicant's submission wouldn't work. And I want to demonstrate that to your Honour as we move through.

We say that the Advisory Board is an independent advisory body to provide the Minister with impartial advice

and that the composition of the board which is set out in schedule 2.1 reflects that in the sense that it's - it draws from both the Department, from a chief - someone with experience of being a chief executive officer in local government, and it draws from experience within the local government area. In other words, it creates a body of expertise which is there to advise the Minister in relation to proposals.

So returning, then, to the process legislated for at schedule 2.1, the - the applicants say that the process starts with the making of a proposal, and this is where we start to move into ground three. The schedule provides that only certain people can make a proposal. And if I can take your Honour to that provision, you will find it at clause 2.1.

MARTIN CJ: Yes.

SHANAHAN, MR: Now, this is highly significant, the applicants say, for this reason. That if you look at that provision in paragraphs (a) through (d), there are - there are four situations in which a proposal can be made. One is the Minister, (b) and (c) relate to affected local governments, and (d) relates to affected electors. No one else can make a proposal. The board has got some limited powers under clause 6.1 and 6.2. I will take your Honour to those in due course, but effectively what - those powers can't be exercised by the board unless it already has a proposal before it. And perhaps I can take your Honour to that just whilst we're there.

MARTIN CJ: Yes.

SHANAHAN, MR: Did your Honour - your Honour has seen that?

MARTIN CJ: Yes. They're the provisions whereby if the board wants to modify the proposal - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - it has to give notice?

SHANAHAN, MR: That's so. But it has to be a proposal before the board already. So in terms of where the process begins, which is what I'm trying to establish - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - it has to be one of the entities that are described at 2.1 (a) to (d). Now, the important thing that the applicants point out in ground 3 is that of those parties or entities, however you wish to describe them, only one is not qualified by the expression affected. The only party that can make a proposal not qualified by the expression "affected" is the Minister.

MARTIN CJ: Well, you wouldn't expect him to be qualified in that way. He's responsible for the entire state.

SHANAHAN, MR: Absolutely not.

MARTIN CJ: The administration of the Act in the entire state.

SHANAHAN, MR: Absolutely not, your Honour. And that goes to the heart of the applicant's position. The applicant would absolutely accept what your Honour has just said. And I want to demonstrate why that must be so.

MARTIN CJ: Well, then no inference can be drawn from the failure to adjectively describe him as affected, because
- - -

SHANAHAN, MR: Well - - -

MARTIN CJ: - - - it would be a nonsense.

SHANAHAN, MR: - - - that would be so, your Honour, if there weren't definitions within the - within schedule 2.1 which would explain what "affected" is intended to mean, which is where I'm going to take you.

MARTIN CJ: (indistinct)

SHANAHAN, MR: And your Honour will see that that's at clause 1. So affected electors are described at paragraphs (a) and (b) in the definition. At paragraph (a):

Electors whose eligibility as electors comes from residence, or ownership or occupation of property, in the area directly affected by the proposal

So what's said by the applicants is that there must be a proposal before the board that must have been an antecedent proposal before the board, made to the board, received by the board, if you like, in writing, that identifies those affected electors.

MARTIN CJ: Why can't the affectation derive from the proposal itself being advanced by the electors?

SHANAHAN, MR: Because - - -

MARTIN CJ: That would be the obvious meaning of the clause, wouldn't it?

SHANAHAN, MR: Well, your Honour, the reason the applicants say that can't be so is that if you - if you look at several clauses - now I need to take your Honour to a couple of clauses to make the point. If affected electors could constitute themselves affected by making their own proposal, then that would have to assume that the proposal referred to in the paragraph (a) is made. It can't be made until it's provided to the board.

MARTIN CJ: But the word "affected" is an adjectival description of the relationship between the local government or the electors who are making the proposal and the subject matter of the proposal. That is, going back to the definition, they have to be either a local government or electors within an area directly affected by the proposal, so the - I would have thought the purpose of those provisions is clear, and that is that people making proposals to the board other than the Minister have to be affected by the proposals which they are making, so that you can't have a local government body in Kalgoorlie making a proposal about the metropolitan area of Perth.

SHANAHAN, MR: Well, the applicants say that's not right, your Honour, for this reason: that if that was so, then anybody of affected electors could qualify for making a proposal despite the provisions at 2.1(d)(i) and (ii) simply by the manner in which they constructed the proposal that they make.

MARTIN CJ: Well, they've got to make a proposal about an area in which they reside.

SHANAHAN, MR: Well, the point is this, your Honour: you will see that at 2.1(d)(i) and (ii) there are limits as to who can make a proposal. There have to be 250 affected electors or you have to be 10 per cent of the total number of affected electors.

MARTIN CJ: Yes.

SHANAHAN, MR: Well, if the affected electors are drafting the proposal they can make themselves 10 per cent of anything. It means nothing then.

MARTIN CJ: Well, you look at the area covered by the proposal - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - and then you say how many electors are within that area - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - and then you work out what 10 per cent is.

SHANAHAN, MR: And the problem with that, your Honour, is who sets the area that the proposal affects. It's the authors of the proposal.

MARTIN CJ: Yes.

SHANAHAN, MR: So the point that I'm - the point that the applicants are advancing is that it's self-referrable. In other words, it doesn't matter. The provision at clause 2.1(d)(ii) becomes meaningless.

MARTIN CJ: But it requires a connection between the electors who are advancing the proposal and their interests. That's its obvious purpose.

SHANAHAN, MR: Absolutely, your Honour. There's no doubt that "affected" has that meaning, that it does require a direct affectation affecting the electors or local government described at clause 1. The applicants don't resist that. What we say, though, is that the primary proposal is made by the Minister, which gives the Minister control of what proposals are made to the board, so that the definition of "affected" local government refers to a local government that is affected by the ministerial proposal.

In other words, the proposal that's referred to in the definition of affected local government is a prior proposal made by the Minister. Because the Minister is not qualified by the use of the term "affected", it has the point of giving the Minister control of initiatives to change the local government system in this state. Just as your Honour put to me at the start, that the position of the Minister is such that he has oversight - or he or she has oversight - - -

MARTIN CJ: Has responsibility for the administration
- - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - of the Act throughout the state, but that is a very different thing - - -

SHANAHAN, MR: That's so.

MARTIN CJ: - - - to saying that there can't be any boundary changes unless they are initiated by the Minister.

SHANAHAN, MR: No. That's not what - - -

MARTIN CJ: On the face of it - well, your construction of clause 2 - - -

SHANAHAN, MR: No.

MARTIN CJ: - - - would mean that unless and until the Minister initiates a boundary change by providing a proposal to the board, there is no capacity - - -

SHANAHAN, MR: No, your Honour.

MARTIN CJ: - - - on an affected local government - well - - -

SHANAHAN, MR: No.

MARTIN CJ: - - - why am I wrong, then?

SHANAHAN, MR: Well, let me explain.

MARTIN CJ: Yes.

SHANAHAN, MR: The applicants say that's wrong, your Honour, because if the Minister makes a - let's say the Minister makes a proposal for the City of Subiaco.

MARTIN CJ: Yes.

SHANAHAN, MR: And the proposal is for either boundary changes or for abolitions and - and/or amalgamations. As long as there's a proposal that's referable to the area in which an affected elector lives or, alternatively, the City of Subiaco, they can then advance their own proposal - - -

MARTIN CJ: But that's what I was just saying, Mr Shanahan. Unless - and on your argument, unless and until the Minister initiates a proposal for change in relation to an area, there is no capacity either for affected electors

or for affected local governments to initiate such a change.

SHANAHAN, MR: That's so. That's so.

MARTIN CJ: Well, why would you construe the Act that way?

SHANAHAN, MR: Because it gives - - -

MARTIN CJ: It places a very severe constraint upon the capacity of local governments to initiate change.

SHANAHAN, MR: Because it gives the Minister control of the number of inquiries that go to the board. It gives the Minister control of the amount of resources that are required by the board to conduct its business, and it's supported by clause 4 of the schedule 2.1. And if I can take your Honour to clause 4. You will see that, at 4.1:

Where a formal inquiry is required, the Advisory Board is to give (a) notice to affected local governments, affected electors and the other electors of districts directly affected by the proposal -

now, if the scenario advanced by your Honour was correct, what that would mean would be that an affected elector, making a proposal to the board would then receive notice under this provision from the board telling the affected elector that they were an affected elector.

MARTIN CJ: No. What it means is, that inquiry can be initiated by 250 affected electors and there might be 10,000 others - - -

SHANAHAN, MR: Indeed.

MARTIN CJ: So they have to be told.

SHANAHAN, MR: Indeed. But that doesn't mean that the persons advancing - the persons advancing the proposal must be affected electors on your Honour's scenario, because, otherwise, they wouldn't have the power to make the proposal.

MARTIN CJ: Of course, but all that clause 4 is identifying, in the interest of procedural fairness, is the parties who are to give - be given notice of an inquiry. And the ambit of affected electors for the purpose of clause 4 might be quite different to the ambit of the affected electors who have initiated the inquiry under

clause 2. So you can't use clause 4 to construe clause 2, can you?

SHANAHAN, MR: Well, with great respect, your Honour, if the effect of clause 4 is that the authors of a proposal, being affected electors, have to be notified by the board that they are affected electors, then it doesn't make sense. And to deal with your Honour's more - - -

MARTIN CJ: But they're different categories of people. The group under subclause (2) will, by definition, be much smaller than the group under clause 4, because it will be either over - everybody over and above 250 or it will be 90 per cent of the electorate.

SHANAHAN, MR: Your Honour, if that was the intention of the Parliament, the applicants say that clause 4 would say that, and it doesn't. But dealing with your Honour's more primary proposition, which I think is the important one, there's nothing to stop local governments or electors going to the Minister and seeking that the Minister put forward a proposal. The idea that you can have a situation where electors and local government seek to change the system of their own back, the applicants say it doesn't fit within the nature of the way in which local governments have developed or the way in which the Minister exercises his control in that regard. And I have an example for you, just to demonstrate the proposition. If I can use a local example.

If we were talking about electors who lived next door to Patersons oval, but they lived across a district line - so there's a local government district boundary that separates them from Patersons oval. And, say, five or six streets of people - because they followed the football team that is at Patersons and they were on the other side of a regional road - wanted to move the boundary to encompass the oval, then on your Honour's scenario, they could apply, under the Act, as affected electors, based on their own description of their proposal, in circumstances where the board, on the applicants' case, would have to notify them that they were affected electors and the board would be required to inquire into that proposal, because it's not a minor proposal - - -

MARTIN CJ: Well, if there were 250 of them, yes.

SHANAHAN, MR: Well - - -

MARTIN CJ: That's right. And it accords with the Act. And the 10 per cent would be the affected electors. So the

affected electors would be all the residents of the district from which the land was to be excised.

SHANAHAN, MR: Well, your - - -

MARTIN CJ: So the Act works perfectly logically. If you've got 250 people who want change, then they can put a proposal. Or if you've got 10 per cent of the district affected by the change, so that if you're going to take it out of Subiaco and put it into some other district - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - it would be 10 per cent of the electors of Subiaco, or 250, whichever is the lesser.

SHANAHAN, MR: The only problem with your Honour's scenario there is that it's not with the access. Because if you go to the definition of "affected electors", what you will see at paragraph (a) is not a reference to districts. It's a reference to the - - -

MARTIN CJ: The area directly (indistinct) - - -

SHANAHAN, MR: - - - area directly affected.

MARTIN CJ: - - - by the proposal.

SHANAHAN, MR: Indeed.

MARTIN CJ: If you're going to take six streets out of Subiaco, the area affected by the proposal is Subiaco.

SHANAHAN, MR: Indeed. I understand what your Honour says, but what the applicants are suggesting to your Honour is that the area affected by a proposal may be a district, may be part of a district, may be a combination of districts.

MARTIN CJ: Well, if you're interfering with the boundary of district, you're affecting the district.

SHANAHAN, MR: Well, that's a matter for argument regarding what - - -

MARTIN CJ: Why? What's contentious about that? Plainly, if you're proposing an alteration of the boundary of a local government district, you're affecting the entire district.

SHANAHAN, MR: Well, on one view, your Honour, if you're moving Patersons Stadium from one local government district into another, given its consequences, perhaps in terms of its management, you might be affecting football followers throughout the state. You might be affecting all sorts of interests that cross local government district boundaries. "Affected" is not a concept that is - lends itself to a simple account, as your Honour puts, in the sense that that's - well, that's why the applicants say the words "area directly affected by the proposal" were used, not "districts affected by the proposal", which is clearly an option that the draftsman had in relation to this clause. The structure and contents of the proposal made to the Advisory Board shape and limit the Advisory Board's powers. I think your Honour has seized of our argument in relation to the definition of "affected governments" and "affected local" - "affected electors".

MARTIN CJ: Yes.

SHANAHAN, MR: The structure and contents of the proposal is determined on the applicants' case by the Minister in the first instance. The making of a proposal is - or the receipt of a written proposal by the Advisory Board is therefore a jurisdictional fact which conditions the exercise by the board of the powers conferred at schedule 2.1 of the Act.

MARTIN CJ: So your proposition is that "affected" in clauses 2(b), (c) and (d) means people who are affected by a proposal made by the Minister, not necessarily people who are affected by the proposal which they are themselves advancing?

SHANAHAN, MR: Only in the first instance, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: So what's imagined is like - it's like a synergy, if you like. There's a primary proposal by the Minister. That affects local governments and it affects electors. The notice by the board under clause 4 identifies those individuals or entities. And they then have the right, if they fall within the description at clause 2(1)(d) to make their own proposals. So - - -

MARTIN CJ: Whether or not they're affected by their own proposals, because "affected" means - - -

SHANAHAN, MR: They're affected by the key proposal by the Minister.

MARTIN CJ: So once - to use your example, once they've received notice of a change in Subiaco, they could propose changes to Joondalup?

SHANAHAN, MR: No. No, your Honour. No.

MARTIN CJ: Well, then you say - - -

SHANAHAN, MR: No.

MARTIN CJ: - - - what "affected" means relates to their own proposal as well?

SHANAHAN, MR: No, no. I think your Honour is conflating two propositions that I'm putting. One - - -

MARTIN CJ: I'm just trying to work out what you - - -

SHANAHAN, MR: No, no.

MARTIN CJ: - - - say "affected" relates to.

SHANAHAN, MR: I appreciate that, your Honour. When your Honour said to me that "affected" must mean having a direct relation to the proposal, the area that's affected - the district - the place - that must be the case. The applicants don't resist that at all. All - - -

MARTIN CJ: So "affected" applies to two things then.

SHANAHAN, MR: Yes.

MARTIN CJ: It applies not only to the proposal which the local government or the electors advance, but it applies also to the previous proposal advanced by the Minister.

SHANAHAN, MR: The proposal - I think we're at cross-purposes. Can I just try and tease it out.

MARTIN CJ: Well, I'm just trying to work out what you say "affected" applies to.

SHANAHAN, MR: No, I understand that, your Honour. And I'm trying to explain it.

MARTIN CJ: Yes.

SHANAHAN, MR: The - there are two elements to the word "affected". What we say is that the ministerial proposal was put first. That means that there will be some electors and some local governments or government affected by that

proposal. They fall within the definition of clause 1. They then have the right to make their own proposal if they wish. When they make a proposal, that proposal has to relate to the manner in which they are affected, which

- - -

MARTIN CJ: Right. So "affected" - I was right then. You say "affects" relates to two things. First of all, the proposal lodged by the Minister which then authorises electors or local governments to lodge a proposal which has to be affected - they have to - in relation to which they have to be affected. That's right then?

SHANAHAN, MR: Yes. Thank you, your Honour. I misunderstood - - -

MARTIN CJ: All right. Well, if you've got - if - - -

SHANAHAN, MR: I misunderstood your Honour - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - when you said "affected" in the context of the Minister's proposal.

MARTIN CJ: Well, if "affected" has the second meaning, why does it have to have the first - - -

SHANAHAN, MR: Because if it - - -

MARTIN CJ: - - - when the - Parliament hasn't said that?

SHANAHAN, MR: Your Honour, my learned friend junior points out that if an affected local government was to make a proposal after the ministerial proposal which didn't relate to what the Minister had advanced in the proposal, it would be a frivolous proposal or it would be something that's not in the interests of good government and would all - - -

MARTIN CJ: Well, sorry. Does that mean you're saying then that affected doesn't - that the proposal made by the Local Government doesn't have to be affected in the terms used by the Act?

SHANAHAN, MR: The applicants say it does.

MARTIN CJ: All right. Well then, what - - -

SHANAHAN, MR: The applicants say it does. Yes.

MARTIN CJ: Well then, what you just said doesn't matter.

SHANAHAN, MR: Well, your Honour, the applicants say that "affected" has two meanings. One is that it locates the right of affected local governments and affected electors to make a proposal following a ministerial proposal, and it also locates the nature of the proposal that those affected electors or affected local governments can make.

MARTIN CJ: Yes. All right.

SHANAHAN, MR: Yes. Can I just make an observation about that argument before I leave it behind. Schedule 2.2 has a similar mechanism in it. Schedule 2.2 deals with changes to wards, but it also uses a definition of "affected elector". And, I think, in the submissions in reply that we filed in 1923, your Honour, you will see that, at one of the paragraphs, I've set out the two definitions side by side. And the point of doing that was to demonstrate to your Honour that they are essentially the same. That's at paragraph 66 on page 15. And your Honour will see, when you put those two paragraph - paragraph 66 on page 15.

MARTIN CJ: Yes. Yes, I have it.

SHANAHAN, MR: Your Honour will see, when you put those two - I've put the definition of "affected electors" at schedule 2.1, clause 1 and 2.1, clause 1 together. The only difference between them is that, in the first instance, clause - sorry - schedule 2.1, the definition relates to proposals but, in the second, it relates to a submission. Now, the point of that is - well, you might say, "Well, so what?" And the point is is that schedule 2.2 employs the same technique as the draftsman has employed in schedule 2.1. But where the draftsman in schedule 2.2 wishes to confer an independent power on Local Government to make submissions, it's done expressly at clause 5. And your Honour will note that that's in respect of what are described as proposed ward changes or minor proposals.

MARTIN CJ: But the structure of schedule 2.2 is rather different, because the affected electors in the first instance make a submission to the Local Government with respect to ward changes.

SHANAHAN, MR: It's about different things, your Honour; that's entirely true. The point - - -

MARTIN CJ: But the structure is different, so that's why you would anticipate a different drafting structure. So,

in other words, it starts with the electors, then goes to the Local Government and then on from there.

SHANAHAN, MR: Well - - -

MARTIN CJ: Whereas, under 2.1, the structure starts either with the Minister or with the Local Government or with two or more local governments or with the requisite number of electors.

SHANAHAN, MR: And so what your Honour's scenario at 2.1 envisages is that the affected electors and the affected local governments have an independent right to make proposals completely independent of the Minister. Where the draftsman - where the Parliament has conferred a right to make submissions at schedule 2.2, they've done it expressly, and the applicant draws from that that, had they intended to do so at schedule 2.1, they also would have conferred that power directly rather than to rely upon the web of definitions - - -

MARTIN CJ: Perhaps I didn't - - -

SHANAHAN, MR: - - - that I've taken your Honour to.

MARTIN CJ: Perhaps I didn't make my point clear enough. The explanation for clause 5 in schedule 2.2 is that the first step in the process is maybe the submission of a proposal for ward change by affected electors to the Local Government. The purpose of clause 5 is to make clear that the capacity of Local Government to itself propose ward changes is not dependent upon the receipt of that submission. There is no scope for a similar provision in clause 2.1 because there is no process by which electors can initiate change with the Local Government. Electors go straight to the advisory board.

SHANAHAN, MR: I understand what your Honour says, but the point - - -

MARTIN CJ: Well, there's just - you can't use clause 5 then of schedule 2.2, can you?

SHANAHAN, MR: Well, there's two points there, your Honour. The first is that, as I understand your Honour's scenario on schedule 2.1, it's said that the electors do have the right to advance a proposal of their own.

MARTIN CJ: Straight to the board.

SHANAHAN, MR: Yes. Straight to the board. The fact that schedule 2.2 is about the relationship between electors and local governments in the appellant's - applicant's submission is to no point. The proposition that's being put to your Honour is that, had the Parliament intended to confer on affected electors and effected local governments an independent power to make proposals to the board, it would have done so expressly, and where it - where the legislature has conferred a power to make minor proposals, as your Honour will see in the heading at clause 5 in schedule 2.2, that express mechanism has been employed.

And what the applicants say about that is that the statutory construction in relation to the provisions of schedule 2.1 has to be understood in the terms of the provisions of the Act as a whole. I won't take your Honour to the principles of statutory construction or anything like that; I'm sure you're very familiar with them. And the applicants say that it's the mechanism - the mechanism by which the independent power is conferred. It's not a question of trying to say that schedule 2.2 and 2.1 do the same things; plainly they don't. But when the Parliament came to confer an express - sorry - came to confer a power to make independent submissions on the Local Government, they did it in express terms.

What the applicants say about that is it seems illogical for the parliamentary draftsman to confer an express power in local governments to make minor proposals and then leave the position of local governments in relation to major proposals, if I can draw a distinction between clause 2.2 and 2.1, at large by reference to a web of ambiguous definitions. That just seems to be illogical in the applicant's very respectful submission. So, moving on. Because the proposals start the process, they have a significant impact on whether any ultimate recommendations by the board will satisfy clause 8(1).

So what I'm painting for your Honour is the picture that a proposal has been made - we will put aside who made it - a proposal has been made and that the structure of that proposal will have a significant impact on the nature of the orders that can be recommended by the board; the reason for that being that the board has limited powers at clause 6, as we've already identified, to make any changes. Thus, absent the board acting on an intermediary proposal in the applicant's submission - so what the applicant is envisaging, as I've pointed out, is a ministerial proposal and then intermediate proposals by affected local governments or affected electors.

So what's being said now is that, absent the board acting on one of those intermediate proposals by an affected Local Government or an affected elector, then the board will be faced with - squarely with dealing with the ministerial proposal, and the Minister would know that. What's said about that is that that means that the Minister has to take care in relation to the manner in which the proposal is made because, as I've said, it will limit the powers of the board going forward.

The applicants say that the Minister is in a different position from affected local governments or affected electors, in the sense that they represent sectoral interests, as your Honour has pointed out. We might have a small pocket of affected electors on the applicant's case making a proposal in relation to a ministerial proposal, or an affected Local Government representing its interests under - in relation to its district.

But the Minister's interest in relation to a proposal that's made by the Minister to the board is a far broader thing, because what it encompasses is an expression by executive government as to its intentions in relation to the development of the Local Government system in Western Australia and, with great respect, your Honour, that much must be obvious from the process that we've enjoyed over the last 12 to 24 months. The Minister's powers to make proposals under clause 2(1)(a) of schedule 2 is conditioned by the objects of the Act in the applicant's respectful submission.

Now, I know, your Honour, that this is a proposition that appears in the - appears in the authorities and it appears with some force in the authorities, but as Blow J, as he then was, said in the Tasmanian case that's cited in the papers, there seems to be some dearth of authority in relation to the extent of that proposition. So what I would like to do is just take your Honour through the basis for the applicant's submissions in that regard.

MARTIN CJ: Yes.

SHANAHAN, MR: I will be as quick as I can. The primary case that the applicants rely upon is the Woollahra Municipal Council v The Minister for Environment. And your Honour will find that these submissions begin at page 20 of the applicant's outline.

MARTIN CJ: Yes. Yes.

SHANAHAN, MR: In that case, your Honour, it was an appeal to the New South Wales Court of Appeal concerning a decision by the Director of National Parks and Wildlife Service to authorise the use of land at South Head, being part of the Sydney National Park, for the purpose of a school of business administration for a four period. Pursuant to the state environmental legislation, the director in respect of the relevant land had a statutory power to grant any development approval that might be granted by a local authority and, in this instance, permitted uses included any purpose authorised by the National Parks and Wildlife Act.

The Minister granted the school a license to use relevant land and buildings under a provision of the NPW Act, and the director granted the school a license to carry on its business pursuant to another provision of that Act. The question in that case was whether the use of the land as a school of business administration was a purpose authorised by the Act. Gleeson CJ stated, at 715A to B - this is at paragraph 89 of the submissions, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: Do you have that?

MARTIN CJ: I've got the case.

SHANAHAN, MR: Excellent. So this is at pages 715A to B.

MARTIN CJ: Yes.

SHANAHAN, MR: The question is not the same as but is closely linked to the question of whether the Minister and director acted within power in granting the licenses under the two provisions of the relevant Act. His Honour the Chief Justice summarised arguments put for both parties from page 715D and his Honour noted that the respondents contended that the licensing powers conferred by the relevant provisions were unconfined at that provided they were exercised in good faith, the only sanction for an inappropriate exercise of power is political.

In short, that the relevant powers were plenary. That's the applicant's submission, not part of the case. This position is not unlike, the applicant contends, the Minister's position in these proceedings in which the Minister rejects the contention that his power to make a proposal was conditioned by the objects of the Act. In

- - -

MARTIN CJ: Well, no. I don't think he - I don't think that's the Minister's position.

SHANAHAN, MR: Well, certainly the Minister resists the applicant's position that the exercise of the Minister's statutory powers under the Act are conditioned by the objects.

MARTIN CJ: Well, as you construe them.

SHANAHAN, MR: Indeed.

MARTIN CJ: Yes.

SHANAHAN, MR: And I'm happy to take your Honour to those in due course, but - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - if there's no argument - - -

MARTIN CJ: I don't - I don't understand - - -

SHANAHAN, MR: If there's no argument about - - -

MARTIN CJ: The Minister - the Minister - you accept that the Minister's powers are constrained by such constraints as can be inferred from the objects of the Act, don't you, Mr Bydder?

BYDDER, MR: We do, your Honour, and I believe that's said rather shortly pungently in our written submissions.

MARTIN CJ: Yes. So I think you're pushing on an open door on the general principle.

SHANAHAN, MR: I like pushing on open doors, your Honour.

MARTIN CJ: Which of course goes back to Mason J in Peko-Wallsend.

SHANAHAN, MR: Indeed. Indeed. And also to Dixon J in - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - Swan Corporation - - -

MARTIN CJ: Yes.

SHANAHAN, MR: Swan Hill Corporation v Bradbury. Thank you. Well, that's happy, so we move on. So then the question becomes whether, if the Minister's powers are conditioned by the objects of the Act, that means that the Minister need necessarily have regard to access to the binding poll provisions under clause 8.1 when the Minister makes the proposal to the board. That's the heart of these proceedings.

MARTIN CJ: Yes.

SHANAHAN, MR: And what the applicant says is yes. The Minister should have regard to that. Not to the degree, I think, that appears in my - our friend's submissions, that he's bound to make - to give access to the binding poll provisions under clause 8.1, but that he give consideration to it and that all things being equal and there being no lawful reason not to, that he should ensure that, to the extent possible, proposals do.

MARTIN CJ: Have we shifted to ground 1 now? Away from ground - - -

SHANAHAN, MR: I think that we're definitely in ground 1 now. Yes, your Honour.

MARTIN CJ: Yes. All right. All right.

SHANAHAN, MR: I'm sorry.

MARTIN CJ: I understand that. Well - - -

SHANAHAN, MR: When I stopped making submissions regarding the definitions of affected local governments and affected electors and clause - - -

MARTIN CJ: So - - -

SHANAHAN, MR: And schedule 2.2 - - -

MARTIN CJ: So now we're into ground 1. Just in - clarify for me that ground 1 only relates to proposals made by the Minister, doesn't it?

SHANAHAN, MR: Bear with me, your Honour.

MARTIN CJ: The only challenge in ground 1 is the - to the validity - - -

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: - - - of proposals made by the Minister.

SHANAHAN, MR: Yes.

MARTIN CJ: Now, just as a matter of fact, how many of those proposals - he made 12.

SHANAHAN, MR: 12.

MARTIN CJ: How many of those were accepted by the board?

SHANAHAN, MR: 1.

MARTIN CJ: And which - which proposal was that?

SHANAHAN, MR: That was the City of Swan, your Honour, and the number for that was 05 2013.

MARTIN CJ: So that's the City of Swan 05.

SHANAHAN, MR: Yes.

MARTIN CJ: And your clients aren't affected by that proposal, are they?

SHANAHAN, MR: No. That's so.

MARTIN CJ: So how does ground 1 have any continued relevance to your clients?

SHANAHAN, MR: Well, your Honour, the applicant's position is that the status of the ministerial proposal for the purpose of this process has been influential in terms of the outcome arrived at by the Advisory Board. Now, I'm not making ground 4 yet, but what we say in the submissions in reply - bear with me, your Honour. Well, perhaps before I do that, can I just take your Honour to the submissions in reply at page 20. Your Honour will see under the - under the legend "City of South Perth", "City of Subiaco" what the situation was in relation to the different proposals affecting the applicants in these proceedings.

MARTIN CJ: Yes. So there were before the board proposals made by local authorities which you say under ground 3 were invalid because there was no antecedent proposal by the Minister, but assuming that ground fails - - -

SHANAHAN, MR: Yes. Yes.

MARTIN CJ: - - - there are valid proposals before the board which - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - which the board was required to inquire into, then along came the Minister - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - with his other proposals - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - all of which the board rejected.

SHANAHAN, MR: Yes.

MARTIN CJ: So what does it matter - - -

SHANAHAN, MR: So - - -

MARTIN CJ: - - - what the Minister's proposals were?

SHANAHAN, MR: So the proposition - I've just been trying to find the passage in the submissions in reply. Could your Honour just give me a moment. Your Honour, the point is that in relation to the Shire of Serpentine Jarrahdale, for example - well, let me start with a first proposition. The board's recommendations were made during the course of these proceedings. In other words, these proceedings were on foot. The attack by the applicants on the - on the ministerial proposals was known to the board at the time that the board produced its recommendations in relation to these matters. That's the first point.

MARTIN CJ: What does that point go to? It's just irrelevant.

SHANAHAN, MR: Well - - -

MARTIN CJ: The question is whether there is any legal significance in the Minister's proposal remaining, because if there isn't, then you know as well as I do that I can't grant any relief in relation to it.

SHANAHAN, MR: Your Honour, if I can take you to paragraph 16 of the submissions in reply.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour, we accept that if the ministerial proposal - the ministerial proposals are out, we can't get any relief in relation to those matters in

relation to the applicants, but what is being said is that your Honour has to appreciate the way in which this process has developed. And this may be more relevant to the other grounds in the sense that during the course of these proceedings the - it's - the board's deliberations in relation to its inquiry were conducted during the course of these proceedings. The attack by the applicants on the ministerial proposals has seen almost all of the ministerial proposals rejected by the board, but that doesn't mean that the outcomes haven't been influenced by the ministerial proposals.

MARTIN CJ: Well, how - well, in the sense that the board took them into account as it was obliged to do, but it rejected them.

SHANAHAN, MR: Well - - -

MARTIN CJ: So why does the validity of the Minister's proposal - why would my ruling on the validity of the proposals that the board has rejected have any significance to anybody?

SHANAHAN, MR: I'm not going to that now, your Honour. I'm talking about the manner in which the board's process worked.

MARTIN CJ: Well, ground 1 seeks declarations of invalidity of the Minister's proposals.

SHANAHAN, MR: No. I accept that, your Honour. I've just accepted that.

MARTIN CJ: So why does - why would - why on earth would a court do that when they've been rejected?

SHANAHAN, MR: Well, I've just accepted that, your Honour. I don't - I don't press that.

MARTIN CJ: All right. So we don't need to worry about ground 1?

SHANAHAN, MR: Well, ground 1 has a number of different elements, your Honour.

MARTIN CJ: But they're all directed at the invalidity of the Minister's proposals.

SHANAHAN, MR: They are.

MARTIN CJ: So why are we bothering with it?

SHANAHAN, MR: I don't press it, your Honour.

MARTIN CJ: All right. The same goes for ground 2, doesn't it?

SHANAHAN, MR: Well, I think the - I think the issue in relation - well, let me say this: in relation to - can I just go back to ground 1 very briefly and say this: the fact of the decision to make those proposals is a fact. The fact that the Advisory Board didn't rely - ultimately accept them or rely upon them doesn't mean that a declaration in relation to the making of those proposals is otiose, because - - -

MARTIN CJ: Well, do you abandon ground 1 or not, Mr Shanahan?

SHANAHAN, MR: I've abandoned ground 1, your Honour.

MARTIN CJ: All right. Well, then - - -

SHANAHAN, MR: I don't - I don't - I withdraw that.

MARTIN CJ: I'm sorry. You?

SHANAHAN, MR: Just withdraw that last bit.

MARTIN CJ: You don't abandon ground 1?

SHANAHAN, MR: I just said I withdraw the last submission, your Honour.

MARTIN CJ: All right. Thank you.

SHANAHAN, MR: I think that - - -

MARTIN CJ: Well, ground 2 must fall too, mustn't it?

SHANAHAN, MR: Well, again what the - well, the applicant will say in relation to ground 2 that the contents of a proposal is a matter of significant public interest and that the nature of the submissions - sorry - the nature of the proposals made by the Minister in that regard is a matter of fact. Those proposals - - -

MARTIN CJ: But whether or not - the only effect of my accepting ground 2 would be to declare the proposals invalid because they didn't comply with the requirements of clause 2.2 - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - of schedule 2.1

SHANAHAN, MR: Yes. And that's not without - - -

MARTIN CJ: And that - that would serve no purpose at all because the proposals - all proposals relevant to your clients have been rejected. So why would - why would the court do that just because somebody is interested in knowing whether or not the proposals were valid at the time they were made.

SHANAHAN, MR: Well, given the - given the proposals to extend this process into other parts of Western Australia, your Honour, I think that there is a significant public interest in those matters.

MARTIN CJ: Well, you know that the law - the law - we don't decide things just because the public is interested in them - - -

SHANAHAN, MR: No.

MARTIN CJ: - - - Mr Shanahan.

SHANAHAN, MR: No, your Honour. I appreciate that.

MARTIN CJ: Well, do you press ground 2 or not?

SHANAHAN, MR: No.

MARTIN CJ: All right. So that's abandoned?

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: Yes. All right. Where do we go now?

SHANAHAN, MR: Ground - well, I think perhaps we could deal with 2527.

MARTIN CJ: Yes. Well, what about ground 4; do you want to say anything about ground 4?

SHANAHAN, MR: Well, I do, but that seems to be a separate - of a separate nature - - -

MARTIN CJ: All right.

SHANAHAN, MR: - - - to 2527. I'm happy to do ground 4 now if your Honour wishes.

MARTIN CJ: No. No. Whichever - I don't - you choose the sequence.

SHANAHAN, MR: Thank you. 2527.

MARTIN CJ: Yes.

SHANAHAN, MR: If your Honour would just give me moment to locate my place. Thank you, your Honour. 2527.

MARTIN CJ: Yes.

SHANAHAN, MR: If your Honour will just give me a moment to locate my place. The - your Honour, the point in 2527 is that the board made a report under schedule 2.1 to the Minister.

MARTIN CJ: Yes.

SHANAHAN, MR: The Minister upon receiving that report then purported to accept or reject recommendations by the board, and he did so in a public statement. I don't know if your Honour has had a chance to read that.

MARTIN CJ: Yes. I have.

SHANAHAN, MR: The Minister's power to accept or reject recommendations by the Advisory Board is - we've covered it. It's at clause. I've taken your Honour through those provisions.

MARTIN CJ: Well, the Minister has now said in the case of South Perth that whatever he said should be construed as being subject to the clause 8 procedure, which he accepts has to be followed.

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: And so there's no remaining issue in relation to South Perth, is there?

SHANAHAN, MR: Other than the fact that the Minister's - the Minister's expression of intent is still there. It hasn't been - - -

MARTIN CJ: Well, except he comes to this court through counsel and says "I accept that the procedure mandated by clause 8 must be followed in relation to South Perth and Victoria Park and this if clause 10.2 is satisfied in the sense that 50 per cent of the electors in those districts

vote and a majority of - one or more of them says no, then I can't accept the recommendation."

SHANAHAN, MR: I appreciate that, your Honour, but - - -

MARTIN CJ: So he accepts all the propositions - he's telling the court through counsel that he accepts all the propositions you put, so there's no remaining live issue in relation to South Perth, is there?

SHANAHAN, MR: The - well, a remaining live issue, your Honour, is the conduct of any poll that might be requested and the significance of the Minister's statement in the context of that poll, and the relief that the applicants seek in relation to that is simply that the Minister publish statements in the same manner in which he published his acceptance or rejection, making the point that your Honour has just made to me. And that that is necessary so that the conduct of the poll under schedule 2.1, clause 8(1), if it's requested and if it's held, is conducted appropriately.

MARTIN CJ: Some kind of argument in aid of electoral regularity, is it? It's difficult to see, but - - -

SHANAHAN, MR: Well, your Honour, fairness.

MARTIN CJ: The pleadings as formulated seek a declaration that a poll has to be held in relation to South Perth. Well, the Minister concedes that.

SHANAHAN, MR: Well, your Honour, the point is that the Minister needs to withdraw his acceptance prior to a poll being conducted, otherwise the nature of the poll is not being conducted in the context which is envisaged by schedule 2.1.

MARTIN CJ: I don't sit to tell the Minister how he should perform his duties, Mr Shanahan. I sit to determine the validity or otherwise of his actions.

SHANAHAN, MR: I appreciate that.

MARTIN CJ: And that's all that was raised by the proceedings.

SHANAHAN, MR: I appreciate that, your Honour. I'm certainly not putting any other proposition. I'm simply putting the proposition that the Minister has acted prematurely, he has come out and made public statements about these recommendations which he should have, and he

needs to remedy that, not only by advice to you through counsel in these proceedings, but by advice to the people that have read the public statements that he has made in the context of a poll that might be required under clause 8(1). That's the point.

MARTIN CJ: Yes.

SHANAHAN, MR: In relation to the other applicants, your Honour, the position of the Shire of Serpentine Jarrahdale and the position of the City of Subiaco rests on the position in relation to 1923 as to whether or not they are entitled under clause 8(1) to a poll.

MARTIN CJ: Yes.

SHANAHAN, MR: And I put that to one side for a moment.

MARTIN CJ: Well, that goes to the - your - that's something you haven't - in oral argument you've advanced argument in support of ground 3 - - -

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: - - - in 1923, which is to the effect that the proposals that were ultimately accepted by the board were invalid because they were initiated by local governments at a time prior to - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - the Minister's proposal.

SHANAHAN, MR: And now - - -

MARTIN CJ: And now you haven't developed argument in relation to the construction which you would place on clause 8(1), but you - are you content to rely on your written - - -

SHANAHAN, MR: That's what - that's what - that's what I intend to do now, your Honour.

MARTIN CJ: All right.

SHANAHAN, MR: If your Honour - - -

MARTIN CJ: All right. Good.

SHANAHAN, MR: - - - is happy with that.

MARTIN CJ: Yes.

SHANAHAN, MR: If I can take you to page 10 of the applicant's statement. I don't know if your Honour still has a copy of the statement of facts, legal propositions, submissions in support of the substituted application which the applicants - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - filed, but that's where - I didn't include it in the applicant's submissions, because I didn't want to repeat it. Page 10, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: Paragraph 1.26.

MARTIN CJ: Yes. This is essentially the proposition that where one local authority is abolished and amalgamated into another, the second is effectively abolished.

SHANAHAN, MR: Yes. So - - -

MARTIN CJ: And so there are two or more.

SHANAHAN, MR: Yes. If I could put it this way, your Honour, A and B are adjacent districts. What happens is that there is a proposal accepted by the board which moves the boundary from - of A, it does away with that boundary and moves it to the outer marker of, say, the south of B, so effectively encompassing all of B. B is abolished and there's a boundary change, and that's what the proposal says. What the applicants say about that is that what has happened is that both A and B have been abolished because you're left with A plus B. Even where A plus B is renamed in the same name that was used by either A or B prior to the abolition.

MARTIN CJ: Well, the problem with that is the language of the clause, isn't it, because clause 8 requires that there be two or more districts abolished.

SHANAHAN, MR: Yes.

MARTIN CJ: Now, of course, the Parliament could have said abolish one or more district and amalgamate it into one or more districts - - -

SHANAHAN, MR: It could.

MARTIN CJ: - - - and every time a district is abolished, unless that district is going to be - cease to be part of local government, because the population has left or something of that sort, it will necessarily be amalgamated into one or more other districts, won't it, when it's abolished?

SHANAHAN, MR: Yes.

MARTIN CJ: So Parliament could have said the making of an order to abolish one district and amalgamate it into one or more districts will entitle the electors to a poll, and if it had, then that would correspond exactly to what you say, wouldn't it?

SHANAHAN, MR: Well, if they chose to - - -

MARTIN CJ: But it - - -

SHANAHAN, MR: - - - put it in those terms, yes, your Honour. But that doesn't - - -

MARTIN CJ: It didn't. Parliament said there has to be two or more districts abolished and both of those districts have to be amalgamated - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - into one or more.

SHANAHAN, MR: Which is effectively what I just described by - and if I could put it again so that your Honour can see what is being put. A adjacent to B.

MARTIN CJ: Yes.

SHANAHAN, MR: B is abolished. The boundary - the boundary is then moved to encompass all of A plus B.

MARTIN CJ: Yes.

SHANAHAN, MR: B no longer exists. What we're talking about is a constructive abolition for the purpose of avoiding the binding poll provisions under clause A.

MARTIN CJ: That would - that scenario would be the case every time a district is abolished, necessarily, there will be a change in the boundaries of the districts into which that district is amalgamated.

SHANAHAN, MR: Not unless there's - - -

MARTIN CJ: So - - -

SHANAHAN, MR: Not - I'm sorry, your Honour.

MARTIN CJ: So on your view of the - the word - the number 2 has no work to do at all.

SHANAHAN, MR: Well, unfortunately, your Honour, I think that that factual scenario you just put to me must be wrong, because on occasion there will be a - there will be a district which is divided between three other districts.

MARTIN CJ: Yes.

SHANAHAN, MR: It won't - - -

MARTIN CJ: It's amalgamated into one or more other districts.

SHANAHAN, MR: Yes.

MARTIN CJ: So part of whatever it is goes to - to use your analogy - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - part goes to - - -

SHANAHAN, MR: B, C or D.

MARTIN CJ: - - - B, part goes to C, part goes to D. So the second limb is satisfied. It is amalgamated into one or more other districts.

SHANAHAN, MR: There's no doubt in the proposition that I just put to your Honour that A and B are amalgamated. Can we agree on that. A and B are definitely amalgamated. B is definitely - - -

MARTIN CJ: Well, B has been amalgamated into A.

SHANAHAN, MR: Well, let's just start with the basic proposition and that is that A and B are amalgamated. And we can say that B is abolished because that is the language of the proposal. So we can't argue about that. We've got one abolition and an amalgamation. The question that the applicant is asking the court to consider is whether the combination of A plus B is effectively to abolish A, and we say that that must be so because A plus B can be renamed anything.

The simple fact that the author of the proposal chooses to call A plus B what A was called prior to the boundary change is really, in the applicant's submission, irrelevant. Because what is different is that the district is different. A no longer exists. And it the effect of that, your Honour, is that any proposal for an amalgamation would give rise to a poll, then the applicant says that's entirely consistent with the objects and the intent of the Act, because that's what section 1.3(2)(b) says. I haven't taken your Honour to that, and I don't know if your Honour wishes me to take you to that, but this is the - - -

MARTIN CJ: Well, that was - - -

SHANAHAN, MR: This is - - -

MARTIN CJ: Yes. I understand that. But I think in - well - - -

SHANAHAN, MR: Well, can I take you to it, please?

MARTIN CJ: Yes. By all means.

SHANAHAN, MR: 1.3(2)(b):

This act is intended to result in ... greater community participation in the decisions and affairs of local governments

And what the applicants take from that - - -

MARTIN CJ: All right. Well, read - you need to read all of those provisions as a whole - - -

SHANAHAN, MR: I'm happy to do that, your Honour.

MARTIN CJ: - - - and you need to read them in the context of subsection (1). Subsection (1) provides for a system of local governments.

SHANAHAN, MR: Which includes polls.

MARTIN CJ: And subsection (2) has four limbs. They are:

better decision-making by local governments

That is, the entities created by the Act.

SHANAHAN, MR: Yes.

MARTIN CJ: (c) is - we will skip over (c) and come back.

Greater accountability of local governments to their communities.

SHANAHAN, MR: Yes.

MARTIN CJ: So that's relationship between the - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - government and the governed. And (d) is:

More efficient and effective Local Government.

SHANAHAN, MR: Yes.

MARTIN CJ: So all of those objectives are related to the performance of Local Government vis-à-vis the governed, and (b) surely is the same. It's:

Greater community participation in the decisions and affairs of Local Government.

So that is governing the relationship between a Local Government and the citizens affected - - -

SHANAHAN, MR: No, your Honour.

MARTIN CJ: - - - by the activities of that Local Government. It's a very different thing to the constitution of the boundaries and districts of the Act
- - -

SHANAHAN, MR: I - - -

MARTIN CJ: - - - which is governed by clause - schedule 2.1.

SHANAHAN, MR: I understand your Honour's point. But what the applicants say is is that the reference to the affairs of local governments clearly involves polls and elections of the type included at schedule 2.1 and - - -

MARTIN CJ: No, it doesn't. Why would you say that?

SHANAHAN, MR: Well, if - your Honour, if I could just develop the submission.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour has the ultimate power in this matter, and I'm sure if - - -

MARTIN CJ: Well, clause 8 - - -

SHANAHAN, MR: - - - I can't convince you, we will find out about it.

MARTIN CJ: Clause 8, the participation of the community within the process mandated by schedule 2.1 is identified in two material respects. It's first through the opportunity to participate in any inquiry conducted by the board, the obligation of the board to give notice to effective electors and to invite submissions, and then the second opportunity for public engagement is through the operation of clause 8. But clause 8 only applies in defined circumstances, and so how does clause 1.3(2)(b) shed any light on the proper construction of clause 8, because it's clear that the purpose of the parliament in enacting clause 8 was to restrict the circumstances in which electors were entitled to demand a poll.

SHANAHAN, MR: It does so by conditioning the exercise by the Minister of statutory power under the Act, and if I could just take your Honour to a passage out of Gerlach, Kirby J. Bear with me for a moment. At paragraph 93, your Honour, on page 22 of the applicant's outline.

MARTIN CJ: Yes. Well, I've got the case, so which - - -

SHANAHAN, MR: At 725G.

MARTIN CJ: Gerlach?

SHANAHAN, MR: Yes. I'm sorry. I'm sorry.

MARTIN CJ: (indistinct) that Commonwealth - - -

SHANAHAN, MR: I'm in Woollahra Municipal Council.

MARTIN CJ: Woollahra. All right.

SHANAHAN, MR: Yes. 725G.

MARTIN CJ: I had it a minute ago. Anyway, read me the passage then, Mr Shanahan.

SHANAHAN, MR: Continuing:

It is true that, by section 31 of the Act, the director is given, in wide terms, the care, control and

management of, relevantly, national parks. But this power is not uncontrolled. As with any power or discretion conferred by Parliament, it is not granted to the director to be exercised at his whim or for purposes, however worthy, which are not properly characterised as being for the attainment of the objects for which the power has been conferred.

MARTIN CJ: Now, what has this got to do with ground - the ground - - -

SHANAHAN, MR: Just - - -

MARTIN CJ: - - - relating to the proper construction of clause 8? That's a passage directed at the constraints upon the Minister's purpose.

SHANAHAN, MR: Yes.

MARTIN CJ: So - - -

SHANAHAN, MR: And I'm just - - -

MARTIN CJ: I thought the argument we were dealing with now involved the question of whether clause 8 applies to the abolition of one district by its joinder to another.

SHANAHAN, MR: Well, your Honour, perhaps then if I can just backtrack a little and say this: that the basis for the applicant's argument that the amalgamation of (a) and (b) in the manner that I've described to you is a constructive abolition of one Local Government district and the express abolition of another whilst effecting an amalgamation is based on the proposition that the Act is intended to further the intentions that are set out explicitly, which is the next passage from - Kirby J talks about where these intentions are expressly set out, which is what I wanted to take your Honour to, but - - -

MARTIN CJ: Well, the bit you just read to me was all about the purpose of a decision maker.

SHANAHAN, MR: Well, I wanted to put it in context, your Honour.

MARTIN CJ: But we're in the area of statutory construction, aren't we?

SHANAHAN, MR: Yes.

MARTIN CJ: So is the proposition that the objects of the Act inform the construction to be given to its provisions?

SHANAHAN, MR: Well, the basic proposition is easily put, your Honour. It's like this. If the Minister, in order to avoid the binding poll provisions, manipulates - well, I will use - - -

MARTIN CJ: That's ground 1.

SHANAHAN, MR: - - - a different word.

MARTIN CJ: That's ground 1. We're talking now about the proper construction of clause 8, aren't we?

SHANAHAN, MR: Yes.

MARTIN CJ: Well, you've abandoned ground 1, so - - -

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: So why are we talking about the Minister's purpose?

SHANAHAN, MR: Because I'm trying to give your Honour an example of why the construction that's contended for must be accepted.

MARTIN CJ: All right.

SHANAHAN, MR: If it was possible for the Minister to avoid the poll provisions simply by describing an abolition as a boundary change, then if executive government wanted to avoid the binding poll provisions under clause 8, that's all it need do.

MARTIN CJ: But the proper construction of clause 8 will turn upon the question of whether a district is being abolished, not the nomenclature used by the parties.

SHANAHAN, MR: That's the point.

MARTIN CJ: So - - -

SHANAHAN, MR: Exactly the point, your Honour.

MARTIN CJ: Well, I agree with that, with respect.

SHANAHAN, MR: Yes.

MARTIN CJ: The question remains does there have to be one district abolished or two?

SHANAHAN, MR: There has to be two, your Honour. That much is self evident - - -

MARTIN CJ: But then - - -

SHANAHAN, MR: - - - by the terms of clause 8(1).

MARTIN CJ: But then, if one district is abolished and amalgamated into another, as contemplated by the clause, that's not the abolition of two.

SHANAHAN, MR: The problem with your Honour's scenario, the very last part, and that's what I've been trying to engage, is not that it's the same district. Your Honour keeps talking - - -

MARTIN CJ: Well, I understand that. But the problem that I think you're not confronting is that, every time a district is abolished, by definition it will be amalgamated into other districts. Therefore, if the scenario you posit triggers a poll then number (2) in clause 8 has no work to do.

SHANAHAN, MR: And that's why I was taking your Honour to the objects of the Act, to demonstrate that, in the applicant's contention, that the Act is designed to give that type of access to affected electors, and that such a construction of the Act is entirely consistent with the objects and gives the maximum amount of community participation in Local Government affairs, which includes such polls. That's the point.

MARTIN CJ: All right. Well, I understand the point.

SHANAHAN, MR: Thank you, your Honour. Sorry, your Honour. We will go to ground 4, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: The applicant's submissions begin at page 32 of the outline.

MARTIN CJ: Yes.

SHANAHAN, MR: I don't seek to try your Honour by running through accepted principle, which is the - - -

MARTIN CJ: Well, let's just deal with the ground first. You move to amend - you filed a minute of proposed amendments. You haven't spoken of the amendments, and I assume we don't need to trouble with the amendments to ground 1 because that has been abandoned.

SHANAHAN, MR: That's so, your Honour.

MARTIN CJ: And the same with - but there is an amendment to ground 4.

SHANAHAN, MR: Just bear with me, your Honour. Your Honour will recall that, when these proceedings began, the applicants were agitating a matter in relation to ground 1, which related to an inferred intention.

MARTIN CJ: Yes.

SHANAHAN, MR: And, since then, the Minister has agreed the facts at the statement of agreed facts 24.

MARTIN CJ: Yes.

SHANAHAN, MR: And that statement acknowledged to a particular meeting of the Swan division of the Liberal Party the reasons - well, reasons that he stated as to why he had adopted the process that's before the court today.

MARTIN CJ: Yes.

SHANAHAN, MR: And what the applicant seeks to do in relation to those matters is to pick that up. I'm sorry.

MARTIN CJ: Well, what's the Minister's purpose got to do with anything now that you've abandoned ground 1? Ground 4 is concerned with the validity of the actions by the board members.

SHANAHAN, MR: That's so, your Honour.

MARTIN CJ: So then the Minister's purpose is irrelevant, isn't it?

SHANAHAN, MR: Yes.

MARTIN CJ: So you don't press the amendment to ground 4?

SHANAHAN, MR: Your Honour, the amendment at 4.3 goes to whether or not the board acted independently, not the Minister's purpose.

MARTIN CJ: Well, why did you talk - why did you raise the Minister's purpose with me?

SHANAHAN, MR: I'm sorry, your Honour. I'm sorry, your Honour. I was at a tangent. I apologise.

MARTIN CJ: All right. Well, what is the proposition that you seek to advance under the amendment?

SHANAHAN, MR: That, by reason of the matters set out at paragraphs 4.1 or, alternatively, on the basis that the board did not act independently of the Minister in discharging its obligations under schedule - - -

MARTIN CJ: Well - - -

SHANAHAN, MR: - - - 2.1 of the Act, the rest follows.

MARTIN CJ: Well, the problem with that is that it doesn't say why the board didn't act independently, because it's not by reason of the matter set out in paragraph 4.1 - 4.2 the amendment would allow you to introduce, at the last minute, an extremely broad allegation of acting under - effectively acting under direction, which is not substantiated by any particulars.

SHANAHAN, MR: Did your Honour - - -

MARTIN CJ: Why would I allow that at this stage?

SHANAHAN, MR: Did your Honour see the particulars that were provided in the submissions in reply?

MARTIN CJ: Well, it's a very late stage of the proceedings. They were provided yesterday?

SHANAHAN, MR: Yes.

MARTIN CJ: The submissions in reply?

SHANAHAN, MR: Yes, your Honour. Well, we got - - -

MARTIN CJ: Well, why I would allow you to introduce - what is the assertion that you wish to make? You want to say that - - -

SHANAHAN, MR: Well, the particulars - - -

MARTIN CJ: - - - the board acted under dictation, do you?

SHANAHAN, MR: The particulars are set out, your Honour.
Paragraph 53 of - - -

MARTIN CJ: All right. Well, perhaps you had better take them to me.

SHANAHAN, MR: Of the submissions in reply.

MARTIN CJ: Yes.

SHANAHAN, MR: It's certainly not an - - -

MARTIN CJ: Paragraph?

SHANAHAN, MR: 53. Page 12, your Honour.

MARTIN CJ: So the amendment - will these particulars be introduced as part of the amendment?

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: All right. Well, that's not the amendment though. That's a claim of reasonable apprehension of bias.

SHANAHAN, MR: That's the basis on which it's advanced, your Honour.

MARTIN CJ: Well, that's not what 4.3 says. 4.3 says lack of independence. That's an assertion that the board was acting under dictation, whereas the particulars involve an allegation that the communications gave rise to a perception of bias. They're quite different things.

SHANAHAN, MR: Well, perhaps that could be cured be the addition of the words in the amendment at paragraph 4.3, "herein, alternatively, on the basis that the board could be apprehended by" - "could be apprehended - - -"

MARTIN CJ: So it's not an "acting under direction" argument.

SHANAHAN, MR: No.

MARTIN CJ: It's a "perception of bias" - - -

SHANAHAN, MR: Bias.

MARTIN CJ: - - - argument.

SHANAHAN, MR: It's a reasonable apprehension of bias point, your Honour.

MARTIN CJ: All right.

SHANAHAN, MR: That's in - - -

MARTIN CJ: Well, that's not - - -

SHANAHAN, MR: It's in the particulars.

MARTIN CJ: But that's - all right. Well, do you want to formulate the amendment?

SHANAHAN, MR: Yes, your Honour:

Alternatively, on the basis that the board could be apprehended as not acting impartially in the discharge of its obligations under schedule 2.1 of the Act.

MARTIN CJ: So just read me that again, "Alternatively, on the basis that the board - - -"

SHANAHAN, MR:

...that the board could be apprehended as not acting impartially in discharging its obligations under schedule 2.1 of the Act.

The LG Act.

MARTIN CJ: Right. And the particulars then would be - instead of being particulars of lack of independence, they would be particulars of apprehended bias.

SHANAHAN, MR: Apprehension. Indeed, your Honour.

MARTIN CJ: Particulars of apprehended bias.

SHANAHAN, MR: Apprehended bias. Yes. And, your Honour, perhaps I should formally move that as an amendment at this stage.

MARTIN CJ: Yes. All right. Well, I think it would be useful if you provide a minute in due course, but I will hear what Mr Bydder has to say about it.

SHANAHAN, MR: Thank you, your Honour.

MARTIN CJ: Mr Bydder.

BYDDER, MR: Your Honour, the difficulty with that formulation is that it still appears to be suggesting, in fact, actual bias (indistinct) bias not apprehended bias.

It speaks (indistinct) may be apprehended as not acting impartially. It is also a very late amendment in the day. But, your Honour, we're prepared - - -

MARTIN CJ: Well - - -

BYDDER, MR: I'm sorry. I don't mean to cut off your Honour off.

MARTIN CJ: Yes. No. Sorry.

BYDDER, MR: We're prepared to deal with a reasonable apprehension of bias proposition despite the lateness.

MARTIN CJ: Well, as I understand it, it is limited to the fact that there were discussions between the Minister and - - -

BYDDER, MR: And certain persons.

MARTIN CJ: Certain persons.

BYDDER, MR: Well, whatever may be made of that. What I say about it, your Honour, is that that's something that we can deal with today if your Honour is minded to grant leave.

MARTIN CJ: But it is - but provided it's confined to apprehended bias - - -

BYDDER, MR: Indeed, your Honour.

MARTIN CJ: - - - rather than actual bias.

BYDDER, MR: And, of course, in relation to the three proposals in which - in respect of which the applicants are standing. The other observation - and this is simply by way of suggestion - is that if it's proposed to deal with it by leave to amend, I wonder if perhaps, in an endeavour to be helpful - and I hope not presumptuous - is to suggest that instead of those words that appear in paragraph 53 under the heading Particulars of Lack of Independence being particulars, they simply find their place as - or ground 4.2(a), and then 4.3 could be by reason of the matter set out in paragraphs 4.1, 4.2 and 4.2(a). Herein - omit the insertion and the rest follows. And I say that simply because I am concerned, your Honour, there is some - - -

MARTIN CJ: Yes.

BYDDER, MR: - - - flavour of actual bias in what has been offered by the applicants. If it please.

MARTIN CJ: Yes. Well, Mr Shanahan, that would be neat, wouldn't it?

SHANAHAN, MR: Happy with that, your Honour.

MARTIN CJ: So we would amend four point - we would amend clause 4 to put in 4.2(a), which would be - there would be no heading to it. It would just be the facts asserted in your - - -

SHANAHAN, MR: Particulars.

MARTIN CJ: Your paragraph 53.

SHANAHAN, MR: Yes.

MARTIN CJ: And then - - -

SHANAHAN, MR: In the particulars in paragraph 53.

MARTIN CJ: And then 4.3 would simply read - you would add in 4.2(a).

SHANAHAN, MR: Yes.

MARTIN CJ: And it's clear that that's an apprehended bias point.

SHANAHAN, MR: Yes.

MARTIN CJ: All right. Well, leave will be granted in those terms.

SHANAHAN, MR: Thank you, your Honour. And, your Honour, we will prepare a minute.

MARTIN CJ: And if you could produce a minute - - -

SHANAHAN, MR: We will produce a minute.

MARTIN CJ: - - - in due course, that would be helpful.

SHANAHAN, MR: Thank you.

MARTIN CJ: Thank you.

SHANAHAN, MR: Your Honour, before I start on ground 4, can I say this, that the applicants don't seek to cast any

aspersions on any member of the board or deputies of the board in making this application. It's made on the basis of a reasonable apprehension of bias. So coming back to where I was, your Honour, I don't want to recite the principles that your Honour is familiar with and that are readily accepted, but in order to build the applicants' ground, perhaps it's worth doing some of that. At page 32 of the applicants' outline, paragraph 148 - - -

MARTIN CJ: Yes.

SHANAHAN, MR: The applicants make the proposition that compliance with the principles of procedural fairness is a condition on the valid exercise of statutory power. At 149:

The failure by a decision-maker to comply with the principles of procedural fairness means that the decision-maker is taken outside jurisdiction.

150:

One aspect of the duty to accord procedural fairness requires a decision-maker to be free of actual or the appearance of disqualifying bias.

And here the ground is put on the basis of - on the appearance of disqualifying bias. At 151:

A test for apprehended bias set out in *Ebner* is whether a fair-minded observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the decision-making process.

One - - -

MARTIN CJ: Well, that's not quite what the Court of Appeal said in *Re MacTiernan*, is it? In relation - *Ebner* was about judicial bias.

SHANAHAN, MR: Indeed.

MARTIN CJ: And the principles with respect to administrative bias are a little different, aren't they?

SHANAHAN, MR: Thank you, your Honour.

MARTIN CJ: And they've been enunciated in this state in *Re MacTiernan*; *ex parte Coogee Coastal Action Coalition*, haven't they? You don't disagree with anything said in

- - -

SHANAHAN, MR: No, your Honour.

MARTIN CJ: All right.

SHANAHAN, MR:

The strictness with the test applied will depend on the functions imposed by statute on the decision-maker. The test does not require a conclusion about what factors actually influence the outcome.

So there's no reference here to what actually happened. It's a question of whether or not there's a reasonable apprehension of bias.

MARTIN CJ: Yes.

SHANAHAN, MR: And I note that in my friend's submissions, there seem to be some concern with the actual outcome of the process and the applicants say that's entirely irrelevant:

The application of a test requires a consideration of all the circumstances -

so that includes the statutory context and decision-making structure which I think we've now been over in some detail -

the task committed to the decision-maker -

in this case, the board under the Act, which, again, I think we've been over in some detail:

the objective facts which are material to the allegation of apprehended bias -

which is the bit that I haven't taken your Honour to, and I take you to those passages and documents as we move through. And your Honour will see that that emerges from *Re MacTiernan*; *ex parte* - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - Coogee Coastal Action Coalition:

Where the apprehension of bias is applicable to only some members of a multi-member body -

your Honour pointed out that nice questions can arise in relation to whether a disqualification of a person so

taints a group where the group makes up the decision-maker. What the applicants advance in this matter is the contention at 156, that:

Once bias of one or members of a multi-member body is established, such bias taints the others.

And your Honour will see that there's a collection of authority for that proposition there.

The applicants contend that the decision of the Advisory Board are tainted by conflicts of interest on three bases. One, that the Advisory Board misapprehended its independent role, and the applicants say that emerges from its contact with the Minister and the department during the process of its inquiry under schedule 2.1. And I will take your Honour to the evidence in a moment.

MARTIN CJ: Well, that paragraph of your submission is not about apprehended bias, is it. That's about actual bias. You say the Advisory Board misapprehended its role.

SHANAHAN, MR: Well, can I rephrase that submission, then. What is being put is this: is that a reasonable - reasonably minded observer being made aware of the contact between the Minister and the board during the course of the board's inquiry could reasonably apprehend bias against the relevant test. That's the point, and I'm sorry if I've put that inelegantly.

MARTIN CJ: So any contact at all?

SHANAHAN, MR: I don't think it's any contact at all, your Honour. That seems to be a proposal that we can reject immediately. But the - - -

MARTIN CJ: All right. Well, you will take me in due course to the evidence about the nature of the communications, will you?

SHANAHAN, MR: Yes. Yes. I will, your Honour. It has to be something material that gives rise to an apprehension of bias.

MARTIN CJ: It has got to be something that a fair-minded - - -

SHANAHAN, MR: Indeed.

MARTIN CJ: - - - observer would conclude would result in the members of the board - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - not bringing an impartial mind to bear on the issues which they have to determine.

SHANAHAN, MR: One would imagine that the Minister might socialise with members of the board from time to time. That type of contact would have been entirely unremarkable. At 2, the participation in the Advisory Board's deliberations by departmental officers. And can I say this, that the point that the applicant makes about this is this: under the Act the structure - maybe I should take your Honour to those provisions.

MARTIN CJ: I'm aware of it.

SHANAHAN, MR: You're familiar with them.

MARTIN CJ: The departmental officer is a member of the board?

SHANAHAN, MR: An ex officio, effectively.

MARTIN CJ: An ex officio member of the board. And must be - if the person appointed by the Minister is not present, the departmental officer has to be present to comprise a quorum - - -

SHANAHAN, MR: And can preside.

MARTIN CJ: - - - and in the absence of the chairman appointed by the Minister, the departmental officer chairs the board.

SHANAHAN, MR: Yes. Yes.

MARTIN CJ: So the departmental officer has a significant role to play - - -

SHANAHAN, MR: Indeed.

MARTIN CJ: - - - in the work of the board. So the mere fact that he's a member of the - he or she is a member of the Department cannot - - -

SHANAHAN, MR: No.

MARTIN CJ: - - - give rise to a perception of bias.

SHANAHAN, MR: No. No. No.

MARTIN CJ: So there has to be more to it than that.

SHANAHAN, MR: Indeed. There has to - there has to be something material, if I can just use that word again, which links the nature of the departmental officer's role in - within the department to the conduct of that person whilst on the board that gives to the apprehension that I've spoken of.

MARTIN CJ: Yes.

SHANAHAN, MR: And the ministerial order seeking to cure a perceived conflict of interest under clause 7.8 of schedule 2.5 was made after the inquiry had commenced and after a lengthy period of deliberations had already expired. And I will take your Honour to that in a moment. So I won't take your Honour to the provisions regarding the structure of the board if your Honour is satisfied - - -

MARTIN CJ: I'm familiar with them.

SHANAHAN, MR: If - perhaps if I could start generally and then work to the particular. If the board - if the advisory board was unable to discharge its statutory - the advisory board is unable to discharge its statutory functions according to law, in the applicant's submission, unless it is independent, and that means that a reasonable apprehension of bias becomes quite a significant matter in relation to a body such as the board with the powers that it has, particularly in relation to the process that we're dealing with today.

I've talked - I've already made submissions around Professor Saunders' paper in relation to independence. Shortly after the announcement of the government plan, Counsellor Congerton, who is the chair of the Advisory Board, expressed - well, in the - if I can take your Honour to trial bundle document page - document 5. Sorry.

MARTIN CJ: Page?

SHANAHAN, MR: Bear with me, your Honour. Page 16.

MARTIN CJ: Thank you.

SHANAHAN, MR: If your Honour could just bear with me for a moment, please.

MARTIN CJ: Yes. Yes. There's two documents, your Honour. The first one is page 5 and the second is at tab 5. So if we could start with page 5.

SHANAHAN, MR: Page 5.

SHANAHAN, MR: Volume 1.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour will see, as per the applicant's submissions, that Counsellor Congerton expressed his support for the government plan to the Minister. That's in the latter - in the email at the bottom of the page.

MARTIN CJ: Sorry.

SHANAHAN, MR:

Let the Minister know from me that he is doing a great job in the trenches. In the words of Churchill, we will prevail.

MARTIN CJ: Well, what do you ask me to infer from that?

SHANAHAN, MR: We ask your Honour to infer from that that a reasonable person looking at that might apprehend that the chair of the Advisory Board supports the government plan for the reduction of local government councils - districts in the metropolitan area.

MARTIN CJ: Well, this was in July 2013.

SHANAHAN, MR: Yes. At the - - -

MARTIN CJ: The Minister's proposals hadn't been lodged then.

SHANAHAN, MR: No. That's so. But this is - but this government - - -

MARTIN CJ: So when you say - you can't therefore be referring to the government plan as that term is defined in the proceedings, because that didn't emerge until the Minister - you say that was reflected in the Minister's 12 proposals.

SHANAHAN, MR: Well, your Honour, the applicants would say that the beginning of the government plan was when the Minister distributed plans, maps, to local governments

setting out what the - what the government's plan was for the metropolitan area and encouraged those local governments to make their own proposals, and that that process began a long time before the Minister made proposals and that the Minister has made statements to local government saying if you don't make a proposal consistent with the government's maps, government plan, that the Minister would make his own proposals. And that material is in the papers. I don't have those references
- - -

MARTIN CJ: Yes. No. I've seen it. I've seen it.

SHANAHAN, MR: - - - but I would be happy to take you to it.

MARTIN CJ: No. I've seen it.

SHANAHAN, MR: But that's the basis on which I make that submission.

MARTIN CJ: All right.

SHANAHAN, MR: And, your Honour, if I could take you then to tab 5 at page 16. Does your Honour have that? There's a heading Commissioners; does your Honour see that?

MARTIN CJ: Yes. Yes.

SHANAHAN, MR: And there's a proposition put by the chairman of the board to Joanne Webber, who I think it's common ground is the Minister's chief of staff, that:

It was very remiss of me not to throw in my CV (previously provided) into the pot for a position as a commissioner should - - -

MARTIN CJ: Well, yes. Where does - where does this fit into your grounds? Can you explain that - - -

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: - - - to me. Because the ground itself relates to - there are two things within the ground. It relates to a local government of which a member or deputy was members, employees or electors, and the second aspect of it is the - all the departmental officials.

SHANAHAN, MR: Can I take you to the new paragraph 4.2A
- - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - which now sits at paragraph 53, page 12 of the submissions in reply.

MARTIN CJ: Yes.

SHANAHAN, MR:

The board, through the board's chairman, held discussions with the Minister and/or his Department -

and "Minister" should be read as the Minister or his - including his office.

MARTIN CJ: Yes.

SHANAHAN, MR:

...regarding the Minister's views concerning metropolitan local government amalgamation in circumstances which gave rise to a reasonable apprehension of bias.

MARTIN CJ: Well, that's my question. What has this got - how has that got anything to do with that?

SHANAHAN, MR: Well - - -

MARTIN CJ: That has not got anything to do with the Minister's views concerning metropolitan local government amalgamation, has it?

SHANAHAN, MR: Well, we say it does, your Honour. 5 - page 5 effectively says that the - the chairman of the advisory board is in total - in agreement with the Minister - - -

MARTIN CJ: No. No. No. I'm talking about the - the page we're on now is page 16.

SHANAHAN, MR: I'm so sorry. I'm so sorry.

MARTIN CJ: At page 16 - - -

SHANAHAN, MR: Well, these - this is part of - - -

MARTIN CJ: - - - he says he is putting in his CV for - - -

SHANAHAN, MR: This is - - -

MARTIN CJ: - - - should a commissioner be (indistinct).
What has that got to do with any pleaded ground?

SHANAHAN, MR: It's part of the circumstances, your
Honour, that might give reason to a reasonable apprehension
of bias if - - -

MARTIN CJ: Well, it's not pleaded. It's not - what is
it, that there's some improper relationship between the
- - -

SHANAHAN, MR: That there's a reasonable - there may -
there may be a reasonable apprehension that the - that the
chairman of the board may have had expectations in relation
to - - -

MARTIN CJ: Where is that pleaded?

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: It's not, is it?

SHANAHAN, MR: I don't press it.

MARTIN CJ: All right. So we can forget about page 16,
then?

SHANAHAN, MR: We can.

MARTIN CJ: Yes.

SHANAHAN, MR: If I can take you to trial bundle volume 1
at tab 10.

MARTIN CJ: Yes.

SHANAHAN, MR: Page 25.

MARTIN CJ: Yes.

SHANAHAN, MR: Below point 5.

MARTIN CJ: Yes.

SHANAHAN, MR: Does your Honour have that?

MARTIN CJ: Yes.

SHANAHAN, MR:

Mr Congerton advised members that the Minister wished to meet the board on Thursday, 31 October to discuss policy issues associated with the reform. The time and venue for the meeting is yet to be confirmed.

MARTIN CJ: Yes.

SHANAHAN, MR: So that's the only meeting of the Advisory Board in the relevant period where no minutes were taken.

MARTIN CJ: Yes.

SHANAHAN, MR: The Minister - - -

MARTIN CJ: So we don't know what was said.

SHANAHAN, MR: No. No. We don't.

MARTIN CJ: All right.

SHANAHAN, MR: And what we say - what we say by that, your Honour, is that's one of the circumstances that may give rise to a reasonable apprehension of bias, because in the event that there's a contact between the Minister who is the author of 12 proposals, as we've agreed, in relation to a government plan which is trying to effect major changes to the metropolitan area of Perth, that where you have un-minuted meetings with members of the Advisory Board who are going to make recommendations to him under schedule 2.1, that may give rise to a reasonable apprehension of bias in a fair-minded observer.

And your Honour will find at the statement of agreed facts - if I could take you to that, at paragraphs 19.2 and 20.

MARTIN CJ: So we're finished with - all right (indistinct).

SHANAHAN, MR: I think we're going to be going back to the bundles. I'm sorry. Some of the material that's in the agreed facts has been drawn directly from the minutes.

MARTIN CJ: Yes.

SHANAHAN, MR: If I could just ask your Honour to read paragraph 19.2 of the statement of agreed facts.

MARTIN CJ: I've just got to find it. 19.2.

SHANAHAN, MR: Page 6, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: So what's put there is that this is direct contact between the department and the board. And it anticipates direct contact between the Minister and the board in relation to the Minister's proposals.

MARTIN CJ: The Minister could have put a submission before the board, couldn't he?

SHANAHAN, MR: There's no reason why the Minister couldn't put a submission before the board if he wished to, your Honour, but that would be public. That's the point.

MARTIN CJ: So the complaint is that the Minister has done something in private that he could have done in public. That's said to give rise to the fair-minded lay observer's perception of bias.

SHANAHAN, MR: No, your Honour. That's not the proposition. The proposition is we don't know what the Minister did in private. He could - your Honour asked me a question, "Could he have made a submission?" Obviously, yes, the Minister could have made a submission. The question is, what did he do - sorry. Start again. The submission is, there's a reasonable apprehension of bias because we don't know what he did do. And it would have been easy to remedy that either by the course your Honour has just suggested or by minuting meetings.

MARTIN CJ: So the proposition then is the apprehension of bias arises from the failure to keep a record of his communications with the board. Is that - - -

SHANAHAN, MR: That's - - -

MARTIN CJ: Is that the proposition?

SHANAHAN, MR: That's part of it. And the other part of the proposition, I think, must be that to the extent - we - it's unknown. Yes. I think that's the extent of it. Yes.

MARTIN CJ: Yes. All right. So if he had met with the board and kept a record of what was said, you wouldn't haven't any complaint.

SHANAHAN, MR: As long as what he said to the board was appropriate, your Honour, yes, and lawful. But we don't know. That's the point.

MARTIN CJ: Well, you can't ask me to infer that anything inappropriate was said from a vacuum, can you?

SHANAHAN, MR: What we can ask your Honour to consider is whether a fair-minded observer, looking at that, might be concerned that there is direct unminuted contact between the Minister and the very board that is to determine the outcome and recommendations in relation to the whole plan for alteration of boundaries and local government districts and metropolitan Perth.

MARTIN CJ: Yes. All right.

SHANAHAN, MR: And, at 20 - I've taken your Honour to that proposition. This is the board meeting on 31 October, which wasn't minuted.

MARTIN CJ: Yes.

SHANAHAN, MR: Then at 163 of the submissions, your Honour will see that subsequent to that meeting on 31 October 2013, Councillor Congerton met regularly with the Minister to update him on the Advisory Board's deliberations and how the Advisory Board intended to proceed on some matters. And your Honour will find that statement of agreed facts at 26. It's at the bottom of that page.

MARTIN CJ: Yes.

SHANAHAN, MR: And that references documents in the trial bundle that your Honour will be able to cross-reference. I don't want to take you to all the material, but if you - if your Honour flips over the page, onto page 8 - - -

MARTIN CJ: Yes.

SHANAHAN, MR: Does your Honour see subparagraphs 26.1 through to 26.8?

MARTIN CJ: Yes.

SHANAHAN, MR: What the applicants sought to do there is to find for - find all of the circumstances in which it's said that there has been this contact - direct contact between the Minister and the board, or - - -

MARTIN CJ: Well, one member of the board, isn't it?

SHANAHAN, MR: Or one member of the board. The chairman
- - -

MARTIN CJ: There's only contact with the entire board on one occasion; is that right?

SHANAHAN, MR: 31 October. Yes, your Honour.

MARTIN CJ: Yes. And all the other meetings were with Mr Congerton.

SHANAHAN, MR: No, your Honour. Can I take you to an example of what I'm saying. Can I take you to trial bundle document 12.

MARTIN CJ: Yes.

SHANAHAN, MR: Volume 1. More specifically, at page 34. Under the heading 5, halfway the page, does your Honour see Chair's Report?

MARTIN CJ: Yes.

SHANAHAN, MR: And the second paragraph:

Mr Congerton advised that he and R. Earnshaw, on behalf of the board - - -

MARTIN CJ: Yes.

SHANAHAN, MR:

- - - met with T. Fowler.

Now, Mr Fowler is a deputy member of the Advisory Board, but Mr Congerton - - -

MARTIN CJ: But he wasn't meeting in that capacity, was he?

SHANAHAN, MR: Well, this is the point, your Honour.

MARTIN CJ: He's probably meeting as a departmental officer. Who's Mr Earnshaw?

SHANAHAN, MR: The executive officer of the Advisory board, your Honour.

MARTIN CJ: Right. Thank you.

SHANAHAN, MR: The point that has been made here is that Mr Fowler was first appointed as the deputy of the board in 2011, and subsequently reappointed on 7 October 2013. And here we have a deputy member of the board, meeting with the

board, under the guide of being a - in his - in the context of him being a departmental officer. And the proposition that's put is that that represents an obvious conflict of interest where he has an interest on both sides of the advantage line within the meeting.

MARTIN CJ: But his interest as a departmental officer is him providing impartial and reasonable advice to his Minister, isn't it?

SHANAHAN, MR: As it is as an Advisory Board member, your Honour.

MARTIN CJ: Well, exactly. So where's the conflict?

SHANAHAN, MR: The conflict is that if the departmental officers that were appointed to the Advisory Board had no role to play in metropolitan and local government amalgamations, then they could have no conflict of interest in relation to sitting on matters - - -

MARTIN CJ: Well - - -

SHANAHAN, MR: - - - dealing - - -

MARTIN CJ: That doesn't address my point, Mr Shanahan.

SHANAHAN, MR: I was building up to it, your Honour.

MARTIN CJ: My point is that his obligation to the Minister is to provide him with reasonable and appropriate professional advice. He has the same obligation to - in his role in his participation as a member of the board. So where's the conflict?

SHANAHAN, MR: Because in his role in the board, he can't be bound by his departmental obligations, and - - -

MARTIN CJ: But nobody has - has anybody suggest he was?

SHANAHAN, MR: What has been - - -

MARTIN CJ: Where's - - -

SHANAHAN, MR: - - - said, your Honour, is that a fair-minded observer, seeing that a member of the board was acting on behalf of the department, in the context of the very issues that the board was seeking to decide, could form the view - could have a reasonable apprehension of bias - - -

MARTIN CJ: Right.

SHANAHAN, MR: - - - because there's an obvious conflict of interest, the applicants contend, where Mr Fowler, as your Honour has just pointed out, fairly, has obligations to the Minister. But the obligations that Mr Fowler has as a member of the Advisory Board are conditioned by the statutory obligations of a member of the advisory board, not his obligations to the department, and it's clear that, where the ministerial proposals might be being put up to be considered, if they are authored through the department, then that is an issue. And can I just take your Honour to Mr Fowler's job description, which appears in volume 3 of the bundle, so your Honour will have to swap files. Document 73. It's the - right at the back. In fact, it's the last document in that bundle.

MARTIN CJ: Yes.

SHANAHAN, MR: Can your Honour - sorry - page 1229.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour can see the job description form and the key work description. I will let your Honour read that.

MARTIN CJ: Yes. No. I've read it before, Mr Shanahan.

SHANAHAN, MR: And then a work description on the following page.

MARTIN CJ: Yes. And what's significant - this is 1231. Which parts would you intend me to focus on on 1231?

SHANAHAN, MR: Well, "shape and manage strategy", your Honour. There's a lot of strategy involved in the process by which the proposals were developed for Local Government amalgamation in the metropolitan area.

MARTIN CJ: Well, if you go to 1230, the whole focus of his job was to provide advice to the Director-General and through the Director-General to the Minister - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - with respect to Local Government reform.

SHANAHAN, MR: Indeed.

MARTIN CJ: And that was his same obligation to the board.

SHANAHAN, MR: Well, with great respect, your Honour, it must be different because the department, in advising the Minister on Local Government reform, advises the proposer of the changes.

MARTIN CJ: Yes.

SHANAHAN, MR: (indistinct) the context of acting on the board, Mr Fowler then acts as the inquirer and recommender, for want of a better word, in relation to those proposals. Your Honour might recall that, when I started my submissions today, I said that, you know, if the board is not independent then, ultimately, you end up with the Minister advising the Minister and - - -

MARTIN CJ: Did Mr Fowler participate in the assessment of the Minister's proposals?

SHANAHAN, MR: Yes.

MARTIN CJ: Well, you will take me to where he did in due course.

SHANAHAN, MR: Yes, your Honour. My learned junior points out that he participated in all of the board's deliberations, except to the extent that he was an elector in relation to particular districts that might be before the board. But perhaps, your Honour, the best way to deal with that is to give your Honour a list of where your Honour can find those occasions in - - -

MARTIN CJ: Well, he was only a deputy member of the board, so he was only - - -

SHANAHAN, MR: He was.

MARTIN CJ: - - - he could only act when Ms Adam wasn't available.

SHANAHAN, MR: Or when Ms Adam was chairing the board in the absence of Councillor Congerton, or there are several - this is why I wanted to take your Honour to the provisions at schedule 2.5, because there are a number of circumstances in which a deputy can act. Perhaps if I can just briefly take you there.

MARTIN CJ: Yes.

SHANAHAN, MR: That's at - it's at subclause 3(4) of schedule 2.5. Does your Honour have that?

MARTIN CJ: Yes. So it's in the absence of a member - yes.

SHANAHAN, MR: Where the member (indistinct) - - -

MARTIN CJ: So if Ms Adam was chairing, he could attend.

SHANAHAN, MR: Yes.

MARTIN CJ: Yes.

SHANAHAN, MR: Ms Adam disqualifies herself. Or if Ms Adam had retired from the office before the period - her period of appointment was complete.

MARTIN CJ: I see. Thank you.

SHANAHAN, MR: So we say the fact that Mr Fowler is meeting with the board in his separate role is very significant and provides a basis for the apprehension that we argue for and contend for. Taking your Honour to page 35 of the outline, so we're moving through it, paragraph 166.

MARTIN CJ: Yes.

SHANAHAN, MR: Page 35, 166.

MARTIN CJ: Yes.

SHANAHAN, MR: The applicants contend that, whilst clause 2 of schedule 2.5 requires the Minister to nominate a departmental officer, that doesn't abrogate the rule of - rule against bias or apprehended bias. On its proper construction, the Act is not quarantined from the application of bias - the bias for all members of the advisory board, including those members whose departmental roles include advising the Minister on any proposals he makes under schedule 2.1 of the government plan and who then participate in the exercise of the board's powers in relation to those proposals. And I would like to just say a little about Ms Adam now, if I might. Your Honour will see at 168 that Ms Adam's job description appears in volume 3. I'm sorry to have your Honour pulling the volumes out, but - - -

MARTIN CJ: I've read it before.

SHANAHAN, MR: Okay. Volume 3, 1225.

MARTIN CJ: Do we need to go to it, do we? All right.

SHANAHAN, MR: The significance of that, which appears at 72 in volume 3 - so it's the second document from the back.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour will see that the description of her job is:

Director of legal and legislative services in the Department of Local Government in the division of governance and legislation and in the branch of legislation.

Down the bottom there is a description of her key responsibilities, which are:

To provide leadership and management for the legislation branch, including the review of legislation and being the point of liaison with the State Solicitors Office, provide high level legal and policy legal advice to the Minister, Director-General and senior executive. As a member of the divisional management team, to contribute to departmental and divisional strategic and business planning, policy and development processes.

And the applicants say that that clearly would include, on the departmental side of Ms Adam's obligations, involvement with the program for - I haven't finished with that document, your Honour - with Local Government amalgamation. And your Honour will see that that's teased out on the following page at 1226:

Providing high level legal and policy advice to the Minister, Director-General and senior executive -

that's at point 5 in the list of details.

MARTIN CJ: Yes.

SHANAHAN, MR: And then, at point 8:

Liaising with the State Solicitor's Office to obtain advice on specific legal matters -

and then, at 10:

Liaising and negotiating with relevant stakeholders -

which, in the Local Government space, in the context of Local Government amalgamation, must include affected local governments in respect of the proposals then before the board, or at least a reasonable apprehension that it might be possibly the better way of putting it. So, in the ordinary course of her duties, the applicant contends that Ms Adam advised or was the conduit of advice for the Minister on the formulation of the government plan and the purported proposals during the course of the advisory board's inquiry on at least 11 June. And we have several documents that are noted there which are emails that show that advice is passing between various people. If I can take your Honour to the trial bundle volume 1 behind tab 53.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour will see this is a document that's almost entirely redacted.

MARTIN CJ: Yes.

SHANAHAN, MR: And essentially what's being said is that it's an email in the first instance from Mary Adam - at the bottom, your Honour will see that - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - to various people, including the Minister's chief of staff, Ms Webber, and that the details appear to relate to structural reform, which the applicant contends - and I'm now reading from the attachments at the top of the page in respect of the second email in the chain. Does your Honour see that?

MARTIN CJ: Well, I see an email chain. It starts with Ms Adam sending emails to various people on 11 June at 9.17.

SHANAHAN, MR: Yes. Including the Minister's chief of staff.

MARTIN CJ: And then there's another one from Ms Adam to Mr Earnshaw an hour later. I assume she has just forwarded the email to him.

SHANAHAN, MR: Indeed. And the attachments include structural reform, which the applicant says there's a reasonable apprehension relate to the process of Local Government change - Local Government amalgamation.

MARTIN CJ: Well, Ms Adam was a member of the board.

SHANAHAN, MR: Yes. But she's also a departmental officer, your Honour, with the same problems that Mr Fowler has. That's the point.

MARTIN CJ: Well, as a member of the board, she had to discuss structural reform in that capacity.

SHANAHAN, MR: Well - - -

MARTIN CJ: So what does this add?

SHANAHAN, MR: Well, that's so, your Honour. But - just bear with me for a second. Yes, your Honour will see that the chain starts with her signing as Director Legal and Legislative Services, Department of Local Government on page 351.

MARTIN CJ: Well, that's the standard finish to her email.

SHANAHAN, MR: Well, with great respect, the applicants contend that that suggests that this email is an email that has been provided by her to Mr Congerton, as your Honour will see at the top of 350 in the context of her role as a departmental officer, not as a member of the board.

MARTIN CJ: But wouldn't I infer that every email she sent on her computer that she used at her place of work would automatically finish that way? It's in a different font. It would be the standard finisher on her email. It tells you nothing about its contents, just that she's used a departmental email.

SHANAHAN, MR: Well, your Honour, what the applicants would say is that it would be inappropriate for somebody in Ms Adams' position in acting on behalf of the board in the context of her role as a member to employ departmental details in relation to who she is, because ultimately that would create the sort of apprehension that's the subject of this application.

MARTIN CJ: She had to be a departmental officer to be qualified for appointment.

SHANAHAN, MR: No, I accept that. I accept that, your Honour. But there's an issue here as to what context she is acting in at the time. We all have different obligations, and when it comes to how we exercise those obligations, we may have to think about how we present

ourselves. And I think what I'm being offered is a note that was forwarded to the board after originally being advice within the department. So perhaps your Honour might like to consider that.

MARTIN CJ: How do we know that? How do we know that?

SHANAHAN, MR: I think that that's advanced on the basis of the addressees to the first email. Well, we know, your Honour, that Ms Matthews is a departmental officer. We know that - I think Mr Hollingworth is a departmental officer.

MARTIN CJ: Well, the secretary of the board is a departmental officer.

SHANAHAN, MR: Indeed.

MARTIN CJ: So communications between the department and the board are not novel.

SHANAHAN, MR: As my learned junior points out, your Honour, the executive director is not a addressee of this particular email.

MARTIN CJ: But my point is, communications between the department and the board - - -

SHANAHAN, MR: I have it.

MARTIN CJ: - - - are contemplated by the structure of the board and the Act, which requires the secretary of the board to be a departmental officer.

SHANAHAN, MR: The applicants don't resist that proposition. But - - -

MARTIN CJ: Well, what is it about this communication that - - -

SHANAHAN, MR: I'm coming to it, your Honour. But what is put is that if Ms Adam, as a departmental member, departmental officer, with responsibility associated with metropolitan local government is providing advice regarding structural reform to Congerton, to the chairman, counsellor Congerton, then that represents a conflict of interest, because effectively what's happening is that Ms Adam is fulfilling obligations on both sides of the same process. It's not the fact that she is a departmental officer that is the vice. The problem is is that she has an active

interest on the departmental side in amalgamation of local government on behalf of the minister.

You can't reconcile, the applicant says, the interest as a departmental officer supporting the minister, as your Honour has pointed out, the obligation to provide advice to the minister of an appropriate - in an appropriate way with the role of the same person on the other side as a member of the Advisory Board. The two just don't go together, because once they go together, what you have is someone who is a primary adviser of the proposer becoming part of the inquirer and decision-maker.

And that's the vice that the applicant points to. And that's the vice that the applicant says gives rise to a reasonable apprehension that Ms Adam could not independently and impartially discharge her duty as a member of the Advisory Board in circumstances which were referable to the government plan. So Ms Adam may well be an appropriate board member in relation to a proposal regarding matters that she has had nothing to do with. Although I must say it's hard to imagine someone that senior in the local government department not having anything to do with ministerial proposals for change in local government. We're in the final straight, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: 171, on page 36. The contention is put that Mr Fowler's role within the department was special adviser legislation and reform. His role included providing strategic and expert advice to the director general of the department on matters of local government structural reform and assistance to the minister with the passage of reform legislation through the parliament. And your Honour will find that at volume 3 - I won't take your Honour back to the documents that we've already traversed, but that's the document that I took you to earlier. Further, he is one of five officers within the department for local government who is responsible for the metropolitan local government reform. How do we know that? I take your Honour to the statement of agreed facts at paragraph 11. Does your Honour see that?

MARTIN CJ: Yes, I do.

SHANAHAN, MR: If you don't mind, I will just read it quickly:

In August 2013, the Department of Local Government and Communities published an information kit for metropolitan local government reform which identified Mr Fowler as one of the departmental contacts who could provide information or assistance to local governments in implementing the government's reform model.

That really crystallises the vice that I have tried to describe earlier by pointing out that if Mr Fowler has this primary role in relation to the implementation of the government plan as a departmental officer, then that puts him in an impossible position as a deputy member of the board. At the Advisory Board meeting on 6 August 2013, Mr Fowler correctly identified that his role at the department would create a conflict of interest with his participation in the Advisory Board's deliberations on proposals for the Perth metropolitan area.

And your Honour will find that again in the statement of agreed facts at 13. Your Honour will see that during the course of that meeting, it was minuted that Counsellor Congerton suggested that T. Fowler now had a conflict of interest moving forward with the metropolitan reform process as he is providing advice and assistance to the metro review team, which the applicants understand as a reference to the departmental metropolitan review team. T. Fowler agreed and said that the new departmental member to be appointed in September 2013 would alleviate this problem. But that didn't happen.

MARTIN CJ: That was a reference to Ms Adam.

SHANAHAN, MR: I'm sorry, your Honour?

MARTIN CJ: That was a reference to Ms Adam. Ms Adam was appointed in October 2013. Isn't it - - -

SHANAHAN, MR: Well, as I pointed out to your Honour, all we know is that Mr Fowler was reappointed in late 2013, so to the extent that he had a conflict of interest, that continued to apply to the determinations of the board in which he participated.

MARTIN CJ: Yes, but I think - well, perhaps Mr Bydder will tell me if I'm wrong. But that was a reference, I think, to Ms Adams, pending appointment.

SHANAHAN, MR: Well, your Honour - - -

MARTIN CJ: Is that right, Mr Bydder?

BYDDER, MR: You do, your Honour. And, indeed, paragraph 7.2 of the statement of agreed facts, the date of appointment of Ms Adam is stated as 7 October - I should say, the commencement of her term was 7 October 2013.

MARTIN CJ: Yes, 7 October. Yes, thank you.

SHANAHAN, MR: It really doesn't make any difference to the applicant's contention though, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: I have already taken your Honour to the meeting between Mr Fowler and - as a departmental officer, and Counsellor Congerton as chair of the board. I'm not going to do that again. But the applicants contend that those matters taken together give rise to the reasonable apprehension that's contended for. And perhaps I should draw your Honour's attention to paragraph 176 of the outline at page 37.

MARTIN CJ: Yes.

SHANAHAN, MR: Does your Honour see that his Honour Gibbs J in *S'roffery v Greyhound Racing Control Board* (1972) 128 CLR 509 at 527 observed that:

The very presence of a person who has brought forward a complaint may even unconsciously inhibit the discussion and affect the deliberations of other members of the tribunal.

The reason for including that in that context is the suggestion that if you have departmental officers who are primarily responsible, as Mr Fowler apparently was, for local government reform sitting in the bowels of the Advisory Board during the course of its inquiry, that can have implications and occasion outcomes that are simply not manageable because of other people's perceptions about whether or not Mr Fowler is speaking with the voice of the minister or not. That's the point. At section 5.3 - this is the last section on ground 4 - this relates to the order made by the minister under clause 7(8) of schedule 2.5. Your Honour will be familiar with that?

MARTIN CJ: Yes.

SHANAHAN, MR: Yes. The point of the first paragraph is simply to point out that this order was made after the inquiry had had a significant travel.

MARTIN CJ: Well, the effect of the order is to exclude the application of clause 7(7).

SHANAHAN, MR: Yes.

MARTIN CJ: Were there any breaches of clause 7(7) prior to the order being made on the evidence?

SHANAHAN, MR: We say there were, your Honour. If I could take you to the - it's in the submissions in reply, your Honour, to - - -

MARTIN CJ: Well, this is the occasions upon which you say that members of the board excused themselves for discussion about districts of which they were a member, elector or employee - - -

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: - - - but returned to discuss adjacent districts?

SHANAHAN, MR: I'm sorry. Could you repeat that?

MARTIN CJ: Returned to discuss districts adjacent to the district of which they were a member, elector or employee.

SHANAHAN, MR: We say they shouldn't have participated. Yes, your Honour.

MARTIN CJ: But that's not a breach of 7(7), is it?

SHANAHAN, MR: Just bear with me, your Honour. Your Honour, the applicants contend that where there's a discussion in relation to districts adjacent to - as your Honour has pointed out to the applicants several times today through the course of submissions, adjacent districts are, essentially, engaged by changes to - - -

MARTIN CJ: Well, only if there was a proposal to change the boundary between the two districts.

SHANAHAN, MR: Well, if there are proposals that affect the adjacent district, so the boundary, the names. There might be a number of different ways in which that could occur.

MARTIN CJ: Well, there would have to be some way in which the proposal to the adjacent district bore upon the district of which the board member was a member - - -

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: - - - under clause 7(7). And you can't infer that merely from the fact that the district was adjacent.

SHANAHAN, MR: Just bear with me, your Honour. I think the point is made, your Honour, in relation to the minutes of the meeting that appear at - behind tab 39 in volume 1.

MARTIN CJ: Volume 1. Yes.

SHANAHAN, MR: At page 223.

MARTIN CJ: So whereabouts on that page do we go to?

SHANAHAN, MR: Page 223.

MARTIN CJ: Yes.

SHANAHAN, MR: At point 6, at the bottom of the page, your Honour.

MARTIN CJ: Yes. City of Bayswater.

SHANAHAN, MR: That's the proposal.

MARTIN CJ: All right. Now, who do you say had an interest in this, who shouldn't have been there?

SHANAHAN, MR: Councillor Congerton, because he declared an interest as a member and elector of the City of Swan.

MARTIN CJ: But he wasn't at the meeting, was he?

SHANAHAN, MR: Yes, your Honour.

MARTIN CJ: Go back to page 220.

SHANAHAN, MR: I'm sorry. Bear with me. I'm sorry, your Honour. Could I just have a minute.

MARTIN CJ: Yes.

SHANAHAN, MR: We don't press paragraph 106.1, your Honour.

MARTIN CJ: Thank you. Well, can you point me to any instance in which there was a breach of clause 7(7) - - -

SHANAHAN, MR: I'm - - -

MARTIN CJ: - - - prior to the ministerial declaration?

SHANAHAN, MR: I'm coming to that, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: Can I say, we don't press 106.3 or 4 either.

MARTIN CJ: All right. Let me just - - -

SHANAHAN, MR: So that only leaves us 106.2.

MARTIN CJ: All right. Let me just - hang on. 106, you're referring to - - -

SHANAHAN, MR: 106.2 on page 21. No. I'm talking about the applicants' submissions, your Honour. Can I take you back to that?

MARTIN CJ: Page 21 of the applicants' submissions.

SHANAHAN, MR: Applicants' submissions.

MARTIN CJ: Yes.

SHANAHAN, MR: Does your Honour see paragraph 106?

MARTIN CJ: The applicants' submissions on page 21.

SHANAHAN, MR: Yes.

MARTIN CJ: I've got 90 and 91.

SHANAHAN, MR: I'm sorry. The submissions in reply.

MARTIN CJ: Submissions in reply.

SHANAHAN, MR: I'm sorry about - - -

MARTIN CJ: Right. So we can forget about 106.1?

SHANAHAN, MR: Yes. 106.3.

MARTIN CJ: 106.3. Yes.

SHANAHAN, MR: And 106.4.

MARTIN CJ: And 106.4.

SHANAHAN, MR: Which takes us back to 106.2.

MARTIN CJ: Right.

SHANAHAN, MR: And if your Honour will just give me a moment.

MARTIN CJ: Yes. Well, this concerns discussion about the proposal relating to the City of Vincent.

SHANAHAN, MR: Yes.

MARTIN CJ: It has got nothing to do with your clients, has it?

SHANAHAN, MR: No longer. So I think we're obliged to
- - -

MARTIN CJ: So we can forget about - - -

SHANAHAN, MR: 106.2 as well, your Honour.

MARTIN CJ: And that means that there is no basis - - -

SHANAHAN, MR: We - - -

MARTIN CJ: - - - for a submission that 707 - - -

SHANAHAN, MR: We move away from - - -

MARTIN CJ: Clause 7(7) was breached prior to the ministerial declaration.

SHANAHAN, MR: We move away from that. Yes. We don't press that.

MARTIN CJ: Yes. All right. Thank you.

SHANAHAN, MR: I'm told, your Honour, that that particular - perhaps if we could go back to 106.2. I'm being told that that particular meeting discussed proposal 17 which engages the City of Subiaco.

MARTIN CJ: All right.

SHANAHAN, MR: It's just that it's not teased out in that paragraph of the submissions. If your Honour will just give me a couple of minutes, I will just try and sort that out and then I will give you a response.

MARTIN CJ: Yes.

SHANAHAN, MR: I'm sorry, your Honour. Can I say this is the last point before the lunch, so - - -

MARTIN CJ: All right. So there is no submission that there was a breach of 7(7).

SHANAHAN, MR: I'm still trying to work that out, your Honour.

MARTIN CJ: All right.

SHANAHAN, MR: If you just give me a moment.

MARTIN CJ: Yes. All right.

SHANAHAN, MR: Your Honour, we maintain the contention at paragraph 106.2 in relation to 7(7) - - -

MARTIN CJ: All right.

SHANAHAN, MR: - - - on the basis that - and we're now in the submissions in reply at page 21.

MARTIN CJ: Yes.

SHANAHAN, MR: We're maintaining 1062 on the basis that at that meeting on 19 May the board discussed proposal 17, which affected the City of Subiaco, so whilst that's not teased out in that particular - - -

MARTIN CJ: All right. Well - - -

SHANAHAN, MR: - - - paragraph - - -

MARTIN CJ: - - - can you take me - can you take me to the minutes and explain the submission.

SHANAHAN, MR: Yes. Could I take your Honour to tab 43 in volume 1.

MARTIN CJ: Yes.

SHANAHAN, MR: I will take you to page 265.

MARTIN CJ: I'm sorry. Could I have that page number again, Mr - - -

SHANAHAN, MR: 265, your Honour.

MARTIN CJ: Thank you.

SHANAHAN, MR: It's behind tab 43.

MARTIN CJ: Yes.

SHANAHAN, MR: Although it is some way in. And perhaps it's better if I start right behind tab 43, just so your Honour is clear about what we're talking about.

MARTIN CJ: Yes.

SHANAHAN, MR: You will see that these are the minutes of the meeting of the board, the Advisory Board - - -

MARTIN CJ: 19 May. Yes.

SHANAHAN, MR: - - - held on Monday, 19 May 2014. And there were no apologies. The leaves of absence related to Ms Mary Adams, and there were no declarations of interest. That's on page 1.

MARTIN CJ: Yes.

SHANAHAN, MR: But - and those who attended included those who are set out under the heading Present or Attendee.

MARTIN CJ: Yes.

SHANAHAN, MR: And if I can take your Honour to - now to page 265, you will see that the board considered a proposal 17, which is titled the Town of Cambridge.

MARTIN CJ: Yes.

SHANAHAN, MR: That proposal affects the City of Subiaco.

MARTIN CJ: All right. And why do you say - who do you say was precluded from participation by 17(7) and why?

SHANAHAN, MR: We say Counsellor Dullard, because - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - she participated in the deliberations in circumstances in which she was an elector of the City of Vincent - - -

MARTIN CJ: All right.

SHANAHAN, MR: - - - and - - -

MARTIN CJ: So does proposal 17 relate to the City of Vincent?

SHANAHAN, MR: Yes.

MARTIN CJ: All right. Well, can you show me where - - -

SHANAHAN, MR: Can I take you to the map.

MARTIN CJ: Where that's demonstrated.

SHANAHAN, MR: The map is probably the easiest way to show your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: And that's at volume 3.

MARTIN CJ: Yes.

SHANAHAN, MR: I'm sorry to do that to you. Volume 3. Behind tab - well, behind tab 7, which is most of the volume, at page 1126.

MARTIN CJ: Sorry. Page?

SHANAHAN, MR: Page 1126.

MARTIN CJ: 1126. All right.

SHANAHAN, MR: Does your Honour see it's 2.17 at the top?

MARTIN CJ: Yes.

SHANAHAN, MR: Proposal 17, Town of Cambridge.

MARTIN CJ: Yes.

SHANAHAN, MR: And can your Honour see that the boundary of the proposal has a boundary shared with the City of Vincent - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - and the proposal includes the City of Subiaco.

MARTIN CJ: But Counsellor Dullard is an elector - I'm sorry. Ms Dullard is an elector in Vincent.

SHANAHAN, MR: In Vincent.

MARTIN CJ: The proposal doesn't include the City of Vincent. It's adjacent to it.

SHANAHAN, MR: It impacts on the boundary with the City of Vincent.

MARTIN CJ: But as I read that map, that is the boundary of the City of Vincent. There is no suggestion that it be varied.

SHANAHAN, MR: We don't press it, your Honour. We don't press it.

MARTIN CJ: All right. So we get back to the point where there is no submission that there was a breach of - - -

SHANAHAN, MR: We do. That's so.

MARTIN CJ: - - - 7(7). All right.

SHANAHAN, MR: And that's - - -

MARTIN CJ: All right.

SHANAHAN, MR: And that concludes the applicant's submissions in relation to ground 4.

MARTIN CJ: Yes.

SHANAHAN, MR: And in relation to both actions, with the exception of some procedural matters - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - that I wanted to raise with your Honour, but perhaps that's best done at the end of the proceedings today.

MARTIN CJ: Well, what are the procedural matters?

SHANAHAN, MR: Well, your Honour would then have had an opportunity at the end of the proceedings today to have heard argument from both sides as to the merits of the - of the applicant's contentions, and we've foreshadowed that we would seek interlocutory injunction in - - -

MARTIN CJ: Well, I haven't heard all the argument yet, Mr Shanahan, but it's my - - -

SHANAHAN, MR: That's so.

MARTIN CJ: - - - present intention to give my decision today.

SHANAHAN, MR: Thank you, your Honour.

MARTIN CJ: Yes. Mr Bydder, do you want to use the five minutes before lunch?

BYDDER, MR: Your Honour, I wonder if it would be better if we simply start at 2.

MARTIN CJ: Yes.

BYDDER, MR: Although I can say - - -

MARTIN CJ: How long do you think you will be, Mr Bydder?

BYDDER, MR: I was about to say to your Honour I would hope to be no more than an hour, on the basis that we've provided detailed written submissions and, with respect, your Honour has plainly read them.

MARTIN CJ: Yes.

BYDDER, MR: I simply propose to supplement them as much as necessary and then - - -

MARTIN CJ: Yes. Well, as I say, I would like to give my decision today, and that may take a little time. Counsel, would it be stretching your digestion to return at 1.45?

SHANAHAN, MR: No, your Honour.

MARTIN CJ: Mr Bydder?

BYDDER, MR: No, your Honour.

MARTIN CJ: All right. We will resume at 1.45, then. The court will now adjourn.

(LUNCHEON ADJOURNMENT)

MARTIN CJ: Yes, Mr Shanahan.

SHANAHAN, MR: Your Honour, I have the minute that I promised.

MARTIN CJ: Yes. Thank you very much. That's very helpful.

SHANAHAN, MR: There's four copies there.

MARTIN CJ: Thank you. And while you're on your feet, Mr Shanahan, there's one question that I would like to ask you. Shortly before the adjournment you effectively abandoned that aspect of ground 4 which relates to contravention of clause 7(7), leaving only, as I understand it, two aspects of ground 4, that is, the involvement of the departmental officers, Ms Adam and Mr Fowler, and the communications between the Minister and the board through - sometimes directly through the board and sometimes through Mr Congerton. And the proposition, as I apprehend, underpinning both of those discrete areas of the ground is that a fair minded lay observer would perceive that the board was not bringing an impartial mind to bear upon the assessment of the proposals because it was being unduly influenced by the Minister. Is that right?

SHANAHAN, MR: Yes.

MARTIN CJ: Now, the fair minded lay observer might apprehend that that would impede the board's impartial assessment of the Minister's proposals, but why would the fair minded lay observer consider that that would have any impact upon the board's assessment of the other proposals considered by the board. And, of course, I raise that question in the context that you've conceded that the board's recommendations with respect to the Minister's proposals had had no impact upon your clients.

SHANAHAN, MR: Because, your Honour, as I tried to explain during my submissions in-chief, the fact of this litigation has been ongoing throughout the course of the board's inquiry, and it would be - we say that - well, the applicant contends that the manner in which the board has produced its recommendations with an absence of reliance on ministerial proposals is a direct product of that, and that the influence of the Minister in relation to how the board has gone about the - about its recommendations is not limited to endorsing the elements of the ministerial proposals.

MARTIN CJ: Well - - -

SHANAHAN, MR: But I just need to give you - I just need to give you one example of that, and that is in relation to Serpentine-Jarrahdale, where the board ultimately made recommendations on the basis of a proposal advanced by the City of Armadale, that that proposal, the form of it was almost identical - identical to the ministerial proposal. And - - -

MARTIN CJ: Well, is there any other evidence to sustain the proposition that the board shaped its recommendations because of these proceedings?

SHANAHAN, MR: We say - well, now your Honour is putting it in a slightly different context. What I'm advancing on behalf of the applicants is this proposition. The evidence shows that, to a fair minded lay observer, there was contact between the Minister and the board throughout the process of its inquiry which led to its recommendations. On an account of the evidence - and I tried to take your Honour to it in-chief - there is a congruence between the ministerial proposals and the outcomes in relation to our clients, particularly in relation to Serpentine-Jarrahdale and South Perth.

Particularly in Serpentine-Jarrahdale it can be demonstrated. So what's being advanced is that the connection between the Minister, through departmental officers or communications or otherwise, meant that the Minister continued to have influence in relation to the recommendations, because the Minister - I think this is the point. A fair minded lay observer would know that the Minister had a crucial interest in the recommendations made by the board, and what's being put is that the - that the conclusions by the board, particularly in relation to Serpentine-Jarrahdale - and I would have to develop it in relation to the other applicants - was such that it was congruent with the ministerial proposal and, therefore, your Honour's suggestion to the applicants that that precludes the conflict of interest ground, we would reject that and say that it doesn't.

MARTIN CJ: All right. Thank you, Mr Shanahan. Mr Bydder.

SHANAHAN, MR: Your Honour - sorry. I'm sorry.

MARTIN CJ: Yes.

SHANAHAN, MR: If I could just give you the references in the papers - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - to the relevant proposals that I'm taking your Honour to in relation to Serpentine-Jarrahdale - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - with a view to providing you with more detail around the congruence that I'm talking about, as it may relate to our other clients.

MARTIN CJ: Well, I've seen them and the board expressly acknowledged the similarity between the - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - Armadale proposal and the Minister's proposal.

SHANAHAN, MR: Indeed, your Honour, and you might recall - I would take you to them - the minutes of the board - if I could. There is a passage in one of the board meetings where what the board says is that they don't need to assess the Armadale proposal because it's exactly the same as 11/2013, which was the ministerial proposal. That's the point.

MARTIN CJ: All right.

SHANAHAN, MR: Thank you.

MARTIN CJ: Thank you, Mr Shanahan. Mr Bydder.

BYDDER, MR: May it please the court. Your Honour, I propose to address five matters orally.

MARTIN CJ: Yes.

BYDDER, MR: Before I do that, I adopt our written submissions - - -

MARTIN CJ: Yes. Thank you.

BYDDER, MR: - - - in both matters. The matters I propose to address orally, your Honour, are, firstly, grounds 3.2 and 3.3, which go to the question of who can make a proposal.

MARTIN CJ: Yes.

BYDDER, MR: The second and third matters that I propose to address, your Honour, go to clause 8 - sorry - the second, third and fourth - and that is the entitlement to request a poll under clause 8.

MARTIN CJ: Yes.

BYDDER, MR: Whether the Minister can reject a recommendation to which clause 8 would otherwise apply without waiting for that process to unfold.

MARTIN CJ: That's what I might call the Peppermint Grove point. Yes.

BYDDER, MR: Very apt, your Honour, with respect. And, finally, in respect of clause 8, whether proposals 5 and 17 fall within clause 8 - - -

MARTIN CJ: Yes.

BYDDER, MR: - - - the boundary adjustment versus abolition point.

MARTIN CJ: Yes. Thank you.

BYDDER, MR: I finally then propose to deal with the question of conflict of interest, your Honour. What I don't propose to do, unless it would assist your Honour, is to address the question of relief - - -

MARTIN CJ: No.

BYDDER, MR: - - - given that your Honour has - - -

MARTIN CJ: No. There's no need to address me on that. I will give my reasons this afternoon, hopefully, and we can - - -

BYDDER, MR: And then it will follow.

MARTIN CJ: - - - worry about relief after that.

BYDDER, MR: As your Honour pleases. So if I can then go to grounds 3.2 and 3.3 and who can make a proposal, your Honour. The starting point is necessarily clause 2, subclause (1) of schedule 2.1, because clause 2 is the clause which expressly confers power on three categories of person - - -

MARTIN CJ: Yes.

BYDDER, MR: - - - to make a proposal. Those are the Minister, an affected Local Government or two affected local governments jointly, or the requisite number of affected electors. And it's necessary, your Honour, to have regard to the relevant definitions hear, bearing in mind the well settled principle of statutory interpretation

that you don't construe the definition in the (indistinct); you construe them in the context of the provision - - -

MARTIN CJ: Yes.

BYDDER, MR: - - - as they are an aid to construe operative provisions. The definition, your Honour, of "proposal" is in clause 1:

A proposal made under clause 2 that an order be made as to any or all of the matters referred to in section 2.1
-

and, relevantly, for these proceedings, those are either a boundary adjustment or the abolition of a district. The definitions of "affected Local Government" and "affected electors" also appear in clause 1, your Honour, and those are respectively:

A Local Government directly affected by a proposal -
and, in the case of "affected electors":

Electors whose eligibility as electors comes from residence, or ownership or occupation of property in the area directly affected by the proposal.

But what's common to both of those definitions, your Honour, is a requirement that they be affected either by (a), in the case of a Local Government, or (indistinct) in the case of elector's proposal. And where the parties differ, as your Honour is aware, on whether they need to be affected by their own proposal or by someone else's. And our submission, your Honour, is that they need to be affected by their own proposal. The reason we make that submission - the reasons we make that submission are these, your Honour. Firstly, when one looks at - when one reads into the operative provisions in clause 2(1), the definitions of "affected elector" and "affected Local Government", it sits very comfortably in the provision dealing with "affected electors", because it reads:

A proposal made under clause 2 that an order be made as to any or all of the matters referred to in section 2.1 may be made to the advisory board by electors in the area directly affected by the proposal.

The use of the definite article would refer to the earlier reference to the proposal that they had made.

MARTIN CJ: And the indefinite article might be explained by the possible application of the definition in clauses 6 and 8 - - -

BYDDER, MR: Indeed, your Honour.

MARTIN CJ: - - - prior to some proposal by somebody else.

BYDDER, MR: That's right, your Honour.

MARTIN CJ: Yes.

BYDDER, MR: And what we've also observed in our written submissions, your Honour, is that, while we accept that the indefinite article in respect of affected local governments sits less comfortably with our construction. It's not a strong textual indicator for the reason that your Honour has outlined, and also because it is unlikely in the extreme that parliament would have intended that the requirements for making a proposal in respect of electors is that they be affected by their own proposal but, in respect of local governments, it would be something else.

And also that where - the definition of "affected Local Government" is used elsewhere in schedule 2.1, in fact, the definite article would be more apt in any event. So it's similarly not a strong textual indication against our construction. The strongest point in our favour, your Honour, though, in my respectful submission, is simply that the construction for which we contend imposes a limitation upon the ability of local governments and electors to make proposals that is logical and not unduly restrictive.

On our construction, your Honour, local governments and electors would directly - they could only propose the making of orders under section 2.1 if those orders would directly affect their districts, in the case of a Local Government, and their area in the case of affected electors, whereas the Minister can propose the making of orders under section 2.1 that could affect any district or area. And, as your Honour observed, with respect, that's entirely in keeping with his role as the person to whom the administration of the Act has been entrusted by the governor.

The applicants, as your Honour is aware, contend that local governments or electors must be directly affected by someone else's proposal and, more specifically, I think they say the Minister's proposal. And we say that that construction shouldn't be accepted for these reasons, your Honour. Firstly, we have the obverse of the submission I

made in respect of our construction. It doesn't sit comfortably at all with affected electors. And while it sits somewhat more comfortably with affected local government, it's not a strong textual indicator either way.

The second point is that the definition of proposal when it is read into the operative provisions cannot be taken to be referring to some other proposal than the proposal that is actually being made by the affected electors or affected local governments, because when the definition is read in to the provision, then the opening words of clause 2(1) are:

A proposal made under clause 2 that an order may be made as to any or all of the matters referred to in section 2.1 may be made to the Advisory Board by -

And then it continues. So the reference there to a proposal made has to be a reference to the proposal actually being made by the persons in clause 2.1 entitled to make it. And adopting a narrower approach in the subclauses of clause 2.1 similarly doesn't - would be inconsistent with what those opening words mean in their natural sense. And there's no warrant in the text, we would say, for taking a narrower approach. There are certain other issues that count against the applicant's construction in my respectful submission, your Honour. The first is that their construction creates the result that there is really - once a minister's proposal, someone else's proposal has been made, there is no other constraint.

MARTIN CJ: Well, Mr Shanahan - he doesn't accept that. He says that the word "affected" has two operative effects. First of all, there must have been a prior proposal by the minister. And also, the proposal from the local government or electors must be a proposal by which they are affected.

BYDDER, MR: Yes.

MARTIN CJ: So he says it has got two jobs to do, I think.

BYDDER, MR: Yes. Yes, your Honour. I accept that. But the construction that was proposed then means that there is a - the natural meaning of the words, in our respectful submission, which is the ones which we contend, and then there is an additional amount of work that it said those words to for which there is, with respect, no warrant in the text and which imposes a constraint which doesn't appear to fit within the policy of the Act at all. That

is, there is no clear reason why a local government or a group of electors should not be able to make a proposal.

That's all it is, a proposal for the board's consideration without first having the minister's sanction in the form of a proposal that is made by them - that is made in respect of their district or area. And the point we would make, your Honour, is that the requirement that a local government or electors be affected isn't a requirement that is intended to qualify them to make a proposal. What it does is impose a constraint on the kind of proposals that any local government or any requisite number of electors can make, and that's all that it does.

And that's the only, with respect, the only logical constraint we would submit that the provisions impose on the power - or, I should say, the entitlement of local governments and electors to make proposals. Can I deal briefly, your Honour, with the other aspects that are put for the applicants in favour of their construction. The first is the provisions of schedule 2.2, and we say that those don't assist the applicants, first because it's a separate schedule dealing with different subject matters and with a different arrangement beginning with the making of a submission by electors. That's clause 3.

And contrary to the applicant's written submissions, clause 3 is an opportunity for electors to make submissions that an order ought to be made, not simply responding by way of submissions to something the local government is proposing to do. And clause 5 is a separate power which might be triggered by submissions under clause 3, but can also be acted upon independently. The other point that is raised is that in clause 5, a specific and clear power is given to local governments to make proposals, and it's said that in clause - schedule 2.1, the power is not similarly clear.

In our respectful submission, that isn't so. But the power is clear properly construed. But, in any event, the reason why schedule 2.5 didn't need to employ words like "affected" is that when one looks at schedule 2.2, schedule 2.2 is concerned with a specific local government, not local governments generally. There's simply no requirement to adopt the same drafting approach as was required in respect of schedule 2.1.

It is also put against us, your Honour, in written submissions by the applicant that on the minister's construction, the requirement the affected electors be at least 250 in number or 10 per cent of the total number has

no work to do. Now, with respect, it plainly has work to do. It identifies the number of electors required to be able to make a proposal, and nothing in the minister's submission detracts from that. The applicants also rely upon the second reading speech - his is at paragraph 65 of their original submissions - for the proposition that - - -

MARTIN CJ: That's the second reading speech of another bill?

BYDDER, MR: I think it was the second reading speech, if I'm not mistaken, your Honour, of the local government bill itself, if I remember, or it might have been an amending one.

MARTIN CJ: I thought it was the bill that went to the parliament last year.

BYDDER, MR: I didn't understand that to be so, your Honour, but I may be wrong.

MARTIN CJ: Well, I might be - well, sorry, perhaps - - -

BYDDER, MR: I'm sorry. If your Honour goes to paragraph 65 of my friend's submissions.

MARTIN CJ: All right.

BYDDER, MR: Your Honour will see it's a 1985 - - -

MARTIN CJ: Yes. No, no. You're quite right. Yes, I have misread that. Thank you.

BYDDER, MR: But it's convenient that your Honour has that open, because if your Honour quickly reads the extract from the second reading speech on which the applicants rely.

MARTIN CJ: Yes.

BYDDER, MR: And then above that, what they say is it specifically confirms that the new provisions were to allow the minister to initiate change by making proposals, and that affected electors would be able to initiate a review thereof. Now, if your Honour looks at what the second reading speech says, it doesn't say that.

MARTIN CJ: Yes.

BYDDER, MR: What it says is simply that the minister will be able to initiate change under the bill which is not currently the case. That is, under the old provisions, the

minister couldn't make a proposal. Now the minister will be able to make a proposal. And then it goes on.

MARTIN CJ: Yes.

BYDDER, MR: And that the number of electors required to initiate a review will be standardised for all circumstances. And that's not referring to a review of the proposal, with respect, it's plainly simply a somewhat inaccurate reference to initiating a proposal.

MARTIN CJ: Yes.

BYDDER, MR: But the object is to standardise the numbers so that you don't have different numbers depending upon what you're doing.

MARTIN CJ: Yes.

BYDDER, MR: So the second reading speech, in our submission, simply doesn't say what the applicants say it does. Now, the applicants also expressed some concerns about the operation of the system, if there are not (indistinct) for which they contend. One of them is - one of the concerns that has been expressed is a resourcing concern. That is, that there might be a plethora of proposals if any local government or any group of electors could make proposals. Now, there are a couple of answers to that.

The first is really that doesn't bear on the construction of the provision. But it also ignores the provisions of clause 3 which is the provision that deals with the initial consideration by the board of a proposal that is made to it. And what clause 3 does is it provides a mechanism for the board to separate the wheat from the chuff, if I can put it that way, because what schedule 2.1, clause 3 observes is that at subclause 2, paragraph (b), is that:

The board may in a written report to the minister recommend that the minister reject a proposal, if in the board's opinion, the proposal is frivolous or otherwise not in the interests of good government.

And with respect, if a proposal is neither frivolous nor otherwise not in the interests of good government, there is no reason why the proposal ought not to be made and considered in the usual way.

MARTIN CJ: Yes.

BYDDER, MR: Another concern that's expressed in the same vein, your Honour, is a concern that the Minister would have no input into the design, nature or effect of proposals by local governments or electors, but, with respect, that concern is misplaced, because the Minister is entitled to make his own proposals and no order proposed by a local government or the requisite group of electors will be made unless the Minister accepts the recommendation that the order be made.

So the matter - the proposal that is put up by a local government or a group of electors, it will not result in change unless the Minister agrees with it, assuming, of course, the prior requirements are met. Now, the - the submission that's made about the primacy of Ministers' proposals is also, in our respectful submission, misplaced, because it assumes that the requirement - that they be affected is a requirement - that they be affected by a Minister's proposal, not someone else's proposal, but there's nothing in the statutory language that requires that outcome.

It speaks simply of directly affected by a proposal. There's nothing to suggest by whom that proposal would be made. It's for those reasons we would submit, your Honour, that on a proper construction of clause 2.1, the persons who can make a proposal are the Minister, and that is unconstrained, or by a local government or two local governments jointly if the proposal affects their district, or by the requisite number of electors if the proposal affects their area, and that will then have flow on effects potentially in terms of notice about who was directly affected or otherwise affected for the purposes of giving notice to electors of other districts and so on. But that's the submission, your Honour, we make on that point.

Turning to the question of the entitlement to make a poll - to request a poll, I should say, under clause 8. If one looks at clause 8, your Honour, it's only engaged on its terms if the board recommends to the Minister the making of an order to first - and I will wait for your Honour to - - -

MARTIN CJ: Yes. I have it. Thanks.

BYDDER, MR: That provision under clause 8(1) is only engaged if what is proposed, or, I should say, what is recommended is the making of an order to abolish two or more districts and amalgamate them into one or more districts. And your Honour had some exchanges with my

learned friend about the fact that the Parliament has identified two or more districts and, with respect, we would adopt what your Honour has said. That every amalgamation, if you like, is going to involve a boundary change of some description, whether it's one or more, and therefore the designation of two or more must be significant and it's a requirement that there be two or more.

And the - and those who will be entitled to request a poll in respect of it, your Honour, are to be identified beginning with clause 8, subclause (3). Because clause 8(3) identifies a class of electors whose requests for a poll will impose a duty on the Minister to require the board's recommendation to be put to a poll. That's quite a confined class. It's the electors of one of the districts, and your Honour will find that the districts - that expression of the districts is used only four times in the Local Government Act.

The first occasion on which it is used is in section 3.53, and that's an entirely unrelated provision dealing with the control and management of certain unvested facilities, and so that doesn't bear on the construction of the term in clause 8. The second use, however, is in clause 8(1), which opens with the words:

Where the advisory board recommends to the Minister the making of an order to abolish two or more districts (the districts)

And then the provision goes on. Now, it may be observed once your Honour that there was no need to include in parenthesis the words "the districts" unless that expression was intended to bear the same meaning somewhere else in the Act. And what we find is that its next use in the Act is in fact in the same clause, in subclause 8(3), to which I have already taken your Honour. And its final use, your Honour, is in clause 10(2)(a), which relevantly provides:

If at a poll held as required by clause 8:

(a) at least 50 per cent of the electors of one of the districts vote -

and then it goes on. So all of the uses - with the exception of that anomalous one earlier one, all of the uses of the term "the districts" in schedule 2.1 necessarily, we would say, have to be the districts as defined in clause 8(1), and that is the two or more

districts that are recommended for abolition. It cannot be anything else. And so it would have to follow, in my submission, that the only electors entitled to request a poll are the electors of those districts and not some other districts - electors of some other districts which might be affected.

And the possibility that there may be electors of districts who are affected by a recommendation but will not be abolished is expressly contemplated in clause 8(1) where your Honour will see the reference to affected - the requirement to give notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation about the recommendation. Those other districts may well be other districts which are affected by boundary adjustment proposals.

MARTIN CJ: So the district or districts into which the abolished districts are being amalgamated.

BYDDER, MR: Yes. Indeed. Quite possibly, your Honour. Yes.

MARTIN CJ: Because they would be the only districts directly affected.

BYDDER, MR: That would be what one would expect. Yes, your Honour. And really that's a very short point. That's why we say that the entitlement to request a poll is so confined. Now, the third point is that of whether the Minister can reject a recommendation to which clause 8 applies, and that falls squarely within 2527 of 2014.

MARTIN CJ: Yes.

BYDDER, MR: And in our respectful submissions, he can, although we accept that the construction task here for the court is a little bit more difficult than we would say has been presented earlier. The starting point again has to be the source of the power to accept or reject a recommendation, and that's clause 10. And your Honour will see that clause 10(1) empowers the Minister, subject to subclause (2), to accept or reject a recommendation of the Advisory Board made under clause 3, and that's the frivolous sort of category and some others, or clause 6, which is what we're dealing with here.

And subclause (2), your Honour - if your Honour reads it for a moment, what your Honour will find, in my respectful submission, is that it doesn't impose any

limitation on the Minister's power to reject a recommendation. All it expressly does is require the Minister to reject a recommendation in certain circumstances, from which it may follow that therefore the Minister cannot accept a recommendation in the circumstances of that kind. But there's nothing in there that expressly prohibits the Minister from rejecting a recommendation, notwithstanding that clause 8 applies to it.

We also accept, your Honour, that clause 8 taken literally would require a poll or, I should say, notice to be given of the opportunity for a poll and, indeed, if requested, a poll to be conducted, even if the Minister has rejected that recommendation. And I think it may be common ground that that can't have been the legislative intention, so it's necessary to resolve the inconsistency between the two clauses and to determine whether the Minister is free to reject a recommendation without the need for the clause 8 process, which is the position for which we contend, or the Minister can neither accept nor reject the recommendation to which that process applies until the process is complete, as the applicants contend.

MARTIN CJ: Yes.

BYDDER, MR: Now, your Honour, in our submission, the proper construction is that the Minister is free to reject a recommendation without the need for the clause 8 process, because firstly that construction sits comfortably with the language of clause 10, and clause 10 is the power which - is the clause, I should say, which confers power on the Minister to accept or reject a recommendation. That is the source of the power. That's the primary provision, we would say. If the Minister, your Honour, considers that he would be assisted in making his decision by a poll of electors - and that's dealt with not by clause 8, but by clause 7. Clause 7 provides:

In order to assist in deciding whether or not to accept a recommendation of the Advisory Board made under clause 6, the Minister may require that the board's recommendation be put to a poll of the electors of districts directly affected by the recommendation.

If your Honour looks at clause 8, subclause (4), your Honour will see that clause 8 does not limit the Minister's power under clause 7 to require a recommendation to be put to a poll in any case.

MARTIN CJ: Yes.

BYDDER, MR: And the proper inference to be drawn from that for the purposes of construing the provisions is that the purpose of clause 8 poll is not to inform the Minister's decision-making process. That's what a clause 7 poll is for. The purpose of a clause 8 poll is give affected electors, within the meaning of that clause, the opportunity to require a poll that will prevent the Minister from accepting a recommendation, irrespective of what the Minister is minded to do.

We would say that no further purpose is discernable for clause 8 from the statutory scheme. It would follow from that, your Honour, that if the Minister rejects the recommendation, then the purpose of clause 8, at least in relation to the right of a poll has been fulfilled. And a poll that was conducted under clause 8(3) would serve no relevant statutory purpose or no purpose that's referable to the text or the structure of the Act. And your Honour would - may note that clause 8(1) is concerned with a recommendation to the Minister that - made an order abolishing two or more districts. The reality is, if the recommendation is rejected, that's not going to happen.

And so clause 8, even though it's not the literal construction, the concern of clause 8 falls away if the Minister simply rejects the proposal - the recommendation, I should say. For those reasons, we say clause 8 should be construed in such a way as - or shouldn't be construed in a way that affords an opportunity for a poll in circumstances where the Minister has rejected the recommendation. Now, the applicants suggest that clause 10(2) doesn't qualify the Minister's power to approve or reject - or accept or reject the recommendation, but that it instead establishes a jurisdictional fact which enlivens the Minister's powers under clause 10(1).

Now, in our respectful submission, that's simply not what it does. It does nothing more than impose a limitation on the capacity to accept a recommendation. It's also submitted that - by the applicants in their written submissions at paragraph 16, that it's tolerably clear that the process envisioned under schedule 2.1 is for electors to have their say on an Advisory Board recommendation, uninfluenced by the Minister as to whether he or she will accept or reject such a recommendation. Now, that submission, your Honour, ought not to be accepted: first, because there's nothing in the statutory language which supports a restriction on the Minister expressing a view.

And clear words would be required to impose a restriction on the Minister to express a view on a subject of that kind. And, finally, a Minister's indication that he intends to accept a recommendation is, one would have thought, exactly the sort of indication that might galvanise electors to request a poll. Given the purpose of clause 8 is to give electors who are qualified an opportunity to request a poll for the purpose of, ultimately, preventing the Minister from accepting it - if the Minister signals that that's what he's minded to do, the purpose of clause 8 is subverted by the Minister expressing a view on that ahead of time.

So in those circumstances, your Honour, we submit that clauses 8 and 10(2) do not require the giving of notice to affected electors - in this case, Peppermint Grove - pursuant to clause 8(1) or require the Minister to put the board's recommendation in relation to proposal 24 to a poll or preclude the Minister from exercising his power to reject the board's recommendation as he did with respect to proposal 24. The final point dealing with clause 8, your Honour, is the question of whether the recommendations relating to proposals 5 and 17 fall within the terms of clause 8.

And we come back to the observation, the clause doesn't apply unless the board recommends the making of an order to abolish two or more districts and amalgamate them into one or more districts. And that requires attention to be paid to what the meaning of the word "abolish" is in clause 8, subclause (1). In our submission, the meaning of the word is to be derived from the context provided by the statute as a whole. And the subclause is predicated upon a recommendation having been made by the board to the Minister, that an order be made under section 2.1. And if your Honour turns up section 2.1 - - -

MARTIN CJ: Yes. Yes

BYDDER, MR: Your Honour will see that the orders that can be made under section 2.1 are orders declaring an area of the state to be a district, or changing the boundaries of a district or abolishing a district or as to a combination of any of those matters. And, importantly, abolition is not the same thing as changing the boundaries of a district. Now, given that's the wording in section 2.1, and clause 8 is concerned with a recommendation, to make an order under section 2.1, the word "abolish" must have the same meaning in both provisions.

And as a consequence, we would say, therefore, that unless there is a recommended - an order to abolish two or more districts instead of simply extending a boundary, being clause 8, simply isn't engaged on the ordinary meaning of the language. And in that regard, we also - I don't need to take your Honour to it in detail, but at paragraphs 24 through to 26 of our submissions, we also refer to clause 11, subclause (1)(f) of schedule 2.1, which - it's part of the same schedule, and is concerned with the effect of the orders made rather than (indistinct) if clause 8 was intended to have the same effect.

And one would have thought the draft order adopted the same approach, so a provision in the same schedule. So for those reasons, your Honour, we would say the recommendations relating to proposals 5 and 17 do not fall within the terms of clause 8. That then leaves the question of conflict of interest, your Honour. In relation to conflict of interest, we've set out the relevant principles at paragraph 72. I don't think I need to take your Honour to them save to emphasise the importance of construing the statute to - as a precursor to applying the test.

MARTIN CJ: Yes.

BYDDER, MR: And, also, dealing with the question of the relevant of the decision of the board to issues of reasonable apprehension of bias - because it's put against us that, on the authority of the High Court's decision in Michael Wilson & Partners Limited v Nicholls (2011) HCA 48 reported in volume 244 of the Commonwealth Law Reports at 427, the decision that was made by the board in respect of these proposals is simply irrelevant to assessing the question of reasonable apprehension of bias, and we take issue with that. Can I hand up to your Honour an extract from the fifth edition of Aronson and Groves on Judicial Review of Administrative Action.

MARTIN CJ: Thank you.

BYDDER, MR: And this extract, your Honour, in my respectful submission, provides a very helpful analysis of the use that may be made of reasons in assessing apprehension of bias, including - it was after Michael Wilson & Partners. If your Honour goes to the bottom of page 624, that's the first page of the extract. Your Honour will see there that the learned authors observed that:

There are reasons why the statement of a decision maker could be useful to the hypothetical observer, just as the conduct of decision makers may create a bias claim, it can also dispel it. Decision makers sometimes ameliorate initial statements and conduct so as to lessen an apprehension of bias. If the conduct in the statements of decision makers can dispel a bias claim, it would be odd not to consider reasons delivered in response to a bias claim. And I invite your Honour to read the balance of that paragraph.

MARTIN CJ: Yes.

BYDDER, MR: And your Honour will see there that the learned authors observed that the point was muddled by Michael Wilson & partners Limited v Nicholls, and they give a convenient account of the case. But if I can invite your Honour then to turn to the last page, page 626 of the extract, your Honour will see there that the authors observe that:

Whether an apprehension arises depends on the circumstances of each case, particularly whether issues decided by the judge in the earlier case are relevant to the later one and the tenor of any such earlier findings. It follows that the mere making by a judge or adverse or erroneous orders cannot be of great value in determining whether a reasonable apprehension of bias might arise in the circumstances, but it is surely possible that the circumstances or tenor in which such orders are made can be of value.

In my submission, the decisions that were made by the board, both generally and in respect of the three specific proposals, which are the only proposals, in our submission, that the applicants have standing to challenge, will necessarily inform the question of whether or not there would have been a reasonable apprehension of bias. And can I mention two of them specifically, your Honour. The first is the general, and the second relating to the proposals that were dealt with by the - that concerned the applicants. The general one is the matter that's the subject of the press release that is appended to Mr Tindale's affidavit in the later proceedings where the minister expresses his view and the government's view about why they rejected proposals for Riversea and for Perth.

And one of the things that concerned the government was that the board had not accepted their proposal to include the University of Western Australia and the Queen

Elizabeth II Medical Centre within the boundaries of the City of Perth. Now, those are matters where, contrary to what my friend says - and we accept what he says about Armadale, Serpentine Jarrahdale, but that's not the whole story. The board has also looked at proposals including that one and has come to a view sufficiently different from what the minister had proposed and what government wanted that the minister has rejected both the Perth proposal that was recommended by the board and the Riversea proposal.

And then if one can turn to a proposal that concerns the applicant's directly, in this case, the applicant is South Perth, the proposal in relation to South Perth and Victoria Park proposed by the minister suggested the excision of the Burswood Peninsula from Victoria Park and its inclusion within the boundaries of the City of Perth. That isn't something that found favour with the board and was not recommended by the board. Now, the minister has accepted that. My friends invite your Honour to draw an inference, and that's because that's what he wanted all along.

With respect, that inference simply isn't available. But that's another example of the board doing something which, if they were there doing the bidding of the minister, or unduly influenced by the ministers, they simply wouldn't have done. And that must be relevant to your Honour's assessment of apprehension of bias. Now, I have set out in our written submissions the relevant statutory provisions in order to hopefully assist your Honour in the construction of the statute. Can I draw out a couple of aspects of that before turning to the specific allegations that are made against - - -

MARTIN CJ: Yes.

BYDDER, MR: Allegations of apprehended bias that are made. The first is that it's clear that parliament envisage that ministerial appointees - I don't propose to take your Honour to the provisions, I think your Honour knows them.

MARTIN CJ: All right, yes.

BYDDER, MR: But I will if it would assist.

MARTIN CJ: No.

BYDDER, MR: But parliament plainly envisaged that ministerial appointees, including departmental officers would necessarily be involved in deliberating on

ministerial proposals. That follows from the how the minister make a proposal and the requirements for the involvement of the departmental member, if I can put it that way, either to preside or to be present for the purposes of meetings. A fair minded and informed lay observer - and it's important to use the word "informed" as well - a fair minded and informed lay observer would be aware of that, and would also - and would interpret what that person saw or heard in light of that fact and some others.

The observer would be aware that departmental officers are public servants, and as a consequence, they provide apolitical, impartial and responsible advice to their ministers, and relevantly as with respect your Honour observed to my friend, in the context of the board there's no conflict there between them. Not only that, but they perform the tasks that are entrusted to them by government as far as they are able to in accordance with the law.

And the responsibilities of a board member such as a member of the local government advisory board have been set out in the seminal case of Bennetts to which we refer in our written submissions, where it's very clear that those board members, when they are acting in that capacity, must not - if I can put it this way - subordinate their responsibilities to the board, their responsibilities to the minister. They have to achieve the requisite balance, and that's something that a properly informed lay observer, as well as a fair minded lay observer, would have in mind in assessing the conduct that is complained of in this circumstance. It also, given the membership of the board, could hardly be suggested that members of the board need to be quarantined, if I can put it that way, from the Minister, because of the role of departmental officials, or indeed for other local governments, given that you have one representative who has experience as a chief executive officer and, as is the case, is one, and you have two persons who have experience as members of the council and, in this case, are councillors.

So there can be no suggestion of quarantining. All of that needs to be brought into mind in assessing what's complained of in the applicant's case. If I can then turn, your Honour, to the specific allegations that are made, beginning at paragraph 158 of their primary written submissions. And, in fact, if I can begin with paragraph 558, your Honour - it's at page 34.

MARTIN CJ: Yes. Thank you.

BYDDER, MR: Before I come to the specific allegations, the difficulty we have with the applicant's reference to the board being independent is the danger in construing a statute, and that's the exercise which your Honour has to undertake by reference to a non-statutory label and then reasoning from it. It's not orthodox to say, "Well, the board is independent and, therefore, these conclusions follow." You have to go to the statutory provisions and then identify what the obligation of impartiality is in light of those provisions, and that's where we cavil with the applicant's use of the word "independent" and only in that sense.

MARTIN CJ: Well, it begs the question of what degrees of separation are mandated by the particular statutory provision and the circumstances of the case. That's the problem with it, isn't it?

BYDDER, MR: It does, your Honour. Yes. That's exactly right, with respect. Now, your Honour, the allegations that are made are that - beginning at paragraph 160 - shortly after the announcement of the government plan, Councillor Congerton expressed his support of the government - for the government plan to the Minister's chief of staff. The second part we don't need to be troubled about, because that has been abandoned.

MARTIN CJ: Yes.

BYDDER, MR: Now, I won't take your Honour back to page 5 of the trial bundle, but, with respect, there's not a lot there. It's - - -

MARTIN CJ: Well, you could infer that Mr Congerton was generally supportive of the Minister's effort to generate Local Government reform. That's about as far as you could take it, isn't it?

BYDDER, MR: Yes, your Honour. That would be as far - - -

MARTIN CJ: Yes.

BYDDER, MR: - - - as it could be taken.

MARTIN CJ: Yes.

BYDDER, MR: And that, as your Honour pointed out in July, some months before ministerial proposals had been made or anything else of that kind.

MARTIN CJ: Yes.

BYDDER, MR: It's also said that, prior to (indistinct) proposals being made to the advisory board, Councillor Congerton knew their substance. Our respectful submission, really nothing flows from that. The member of a - or the chair of a board that advises the Minister may well be aware, generally, of what the Minister is going to propose, but that doesn't, in any way, in my respectful submission, give rise in a fair minded and informed lay observer of any apprehension of bias. The next point that's made is at a meeting on 31 October. The Minister met with the advisory board and briefed the advisory board on the Minister's proposals. And, in that respect, I do need to take your Honour to volume 1 of the trial bundle, because my friend observed and it's in the agreed facts that there's no record of what was said - - -

MARTIN CJ: Yes.

BYDDER, MR: - - - at that meeting. But if your Honour turns up page 26.

MARTIN CJ: Yes.

BYDDER, MR: And this is a meeting of the board that was held on 24 October, the week before - one week before.

MARTIN CJ: Yes.

BYDDER, MR: Your Honour will see, on the second paragraph of page 26, about four lines down, that:

Director-General Matthews advised that the Minister planned to meet with the board as soon as possible in order to brief members on the development of his proposals, timeframes and to discuss the government's policy position.

That's what was to be discussed, and that, I would invite your Honour to infer, was what was discussed. There's nothing untoward in that, in my respectful submission. The Minister could have made submissions to that effect.

MARTIN CJ: And, of course, before ground 2 was abandoned, the complaint was that the Minister hadn't complied with the obligation under the Act to explain his proposals fully.

BYDDER, MR: Indeed, your Honour.

MARTIN CJ: So, under the Act, he has got to explain his proposals fully.

BYDDER, MR: Yes.

MARTIN CJ: Where's the harm in him communicating that to the board?

BYDDER, MR: With respect, that's so, your Honour, and it certainly couldn't cause a fair minded observer, particularly an informed fair minded observer, to form any reasonable apprehension of bias. It's also observed against us that, separately from the meetings with the Minister, Councillor Congerton met with Mr Fowler, apparently in his role as a departmental officer, to consider the policy advice received from the Minister on 31 October 2013.

This goes to the role of Mr Fowler and the position, as we would submit, as, with respect, your Honour has observed, that there is no distinction between the task of Mr Fowler, in terms of what he says - what advice he gives as a departmental officer to a Minister and as a deputy to the board. It's to give reasonable and - (indistinct) use the word unbiased - impartial advice, and there could be no - again, no apprehension of bias arising from that change. So, in my submission, the matters that are raised by the applicants under the banner of independence don't, in any way, give rise to a reasonable apprehension of bias.

The other matters that are raised by the applicants relate to the participation in the advisory board's deliberations of the departmental officers, and they refer firstly to the job description form of Ms Adam. Now, your Honour has seen that. In my respectful submission, it just doesn't take you anywhere. She gives advice. Well, there's nothing that would cause a reasonable apprehension of bias in that regard. The proposition is then put at paragraph 169 that:

In the ordinary course of her duties, Ms Adam advised or was the conduit of advice for the Minister on the formulation of the government plan and his proposals during the course of the advisory board's inquiry and was a conduit of information to the board from the Minister, including legal advice.

Well, again, the board has to receive its legal advice in some way. The fact that Ms Adam may have been the conduit of it - may have passed it on could not, on any view, give rise to a reasonable apprehension of bias, much less - and it certainly couldn't, as the applicants contend, cause any fair minded and informed observer, knowing what public servants do, to apprehend that Ms Adam couldn't

independently and impartially discharge her duty as a member of the board.

Now, Mr Fowler's role is dealt with beginning at paragraph 171 of the applicant's written submissions, and, again, we have a job description form that is raised and, similarly to Ms Adam, in my respectful submission, that job description form cannot in any way give rise to a reasonable apprehension of bias. The next point that's made by the applicants is that Mr Fowler was one of five officers within the Department for the Local Government who was responsible for metropolitan Local Government reform. Now, if one has a look at, firstly, paragraph 11 of the statement of agreed facts, that's not what the agreed facts says. Paragraph 11 of the statement of agreed facts reads:

In August 2013, the Department of Local Government and Communities published an information kit for metropolitan Local Government reform which identified Mr Fowler as one of the departmental contacts who could provide information or assistance to local governments in implementing the government's reform model.

And that is indeed, if you were to go to tab 3 in volume 1 - and I don't invite your Honour to do so - that is indeed what that page, which appears there, says. That is not the same thing as one of the five officers - the elite group of five within the department who is responsible for metropolitan Local Government reform. So that agreed fact doesn't, with respect, go anywhere in terms of reasonable apprehension of bias. The meeting on 6 August 2013, where Mr Fowler identified his role in the department as creating a conflict of interest, doesn't, in fact, go to the question whether, on the facts, a fair minded lay observer, properly informed, would hold that view.

MARTIN CJ: Well, if he thought he did, isn't that an indicator that other people might have as well?

BYDDER, MR: Well, in my respectful submission, it isn't, your Honour. One has to have a look at the entirety of the facts. And when one has a look at the entirety of the facts, that observation isn't enough to, in effect, substitute his observation on that day for the observation that the fair minded lay observer, properly informed, would make.

MARTIN CJ: Having made that observation, he did, in fact, participate, didn't he?

BYDDER, MR: In August 2013? Yes. That's so.

MARTIN CJ: Well, later.

BYDDER, MR: That's right, which would suggest that that wasn't his view later on, in my submission.

MARTIN CJ: But you don't dispute the fact that he did participate in the board's deliberations.

BYDDER, MR: Where the minutes record that he was there, yes. And, of course, attention needs to be focused, your Honour, on which proposals we're dealing with here, and there are only three that are involved here. But, in any event, that feature, in my submission, isn't enough to form a reasonable apprehension of bias. When one has a look at the entire range of circumstances, all of the other matters not identifying a reasonable apprehension of bias, and the decisions of - that the board took which, for the reasons identified in and Dyer, are relevant, the assessment of reasonable apprehension of bias again would suggest that there was no apprehension of bias to be formed in the sense of a concern that Mr Fowler would be diverted from the impartial exercise of power.

MARTIN CJ: Yes.

BYDDER, MR: The next allegation is again the meeting on 7 November, or, I should say, the minutes of that meeting recording that Counsellor Congerton and Mr Earnshaw met with Mr Fowler and Mr Hollingsworth to consider the policy advice receive from the Minister. That comes again to the point that whether one is acting in the capacity of a public servant or as a member of the board, the role in providing advice and providing views is essentially the same, or there will be no difference in outcome in that regard. So for those reasons, your Honour, we would say that there is no basis upon which it could be said on the grounds that are advanced by the applicants for a reasonable apprehension of bias.

One other observation I should make in respect of that, your Honour, is that if your Honour was to find that there was a base on which a fair-minded and informed observer could have formed the relevant apprehension, that is, one - two members involved - and the law is not that it necessarily follows that therefore the decision of the board is invalid. And your Honour in the Wilderness Society decision, of course, made the observation that the law in respect of that is somewhat unsettled.

MARTIN CJ: Well, we didn't have to address it in that case, because there was a clear majority who were conflicted.

BYDDER, MR: There was indeed, your Honour, but that's not so here. And the law not being settled in that regard, your Honour, I would simply refer your Honour to the summary of Pritchard J in *Aloi v Bertola (No 2) (2013) WASC 214*, which your Honour may well be aware of - - -

MARTIN CJ: Yes.

BYDDER, MR: - - - which summarises the law in relation to that. And we would say that on the state of the law, even if there was a reasonable apprehension of bias in respect of one or two of the members, it does not invalidate the decisions that were - or the recommendations, I should say, that were ultimately made by the board that are in issue in this case. Bearing in mind that they are all - find their origin in proposals by local governments and not by the Minister. And the reasonable apprehension of bias grounds are very much directed at the relationship between the members of the board and the Minister. If it please, your Honour, those are the submissions for the first respondent.

MARTIN CJ: Thank you, Mr Bydder. Mr Shanahan, submissions in reply?

SHANAHAN, MR: Yes, your Honour. Your Honour, before I commence my submission in reply, your Honour asked me some questions before - when I first rose to my feet. Can I just respond to those briefly before I start in reply?

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour asked me where in the papers there was discussion by the board in relation to these proceedings, and it occurred in three different meetings and I can just show your Honour where they are.

MARTIN CJ: Yes.

SHANAHAN, MR: The first is at volume 1 of the trial bundle.

MARTIN CJ: Yes.

SHANAHAN, MR: Behind tab 65.

MARTIN CJ: Tab 65?

SHANAHAN, MR: That's so. From page 401. Your Honour will see that this is a meeting of the board on 25 July
- - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - 2014. Can I take you now to page 403 at point 6.1. Does your Honour see "MLGDI legal proceedings"?

MARTIN CJ: Yes.

SHANAHAN, MR: And the redaction. The reason why we can't tell your Honour what the board said about the proceedings is we don't know. That they did discuss them is obvious, but all of that material has been redacted. Can I take your Honour to the next meeting.

MARTIN CJ: Well, I mean, I would expect the board would have considered the fact that they had been sued. Where does that take us?

SHANAHAN, MR: Well, your Honour asked me and - and - - -

MARTIN CJ: No. What I asked you - - -

SHANAHAN, MR: - - - I'm just trying to respond to that.

MARTIN CJ: - - - was for evidence that the board had shaped its recommendations in order to avoid the prospect of an adverse finding in these proceedings.

SHANAHAN, MR: And the best we can do is to point your Honour to what we have, and that's what I'm taking you to now, which is where the board definitely discussed this in detail over a period of three meetings and we're not privy to those details.

MARTIN CJ: Yes.

SHANAHAN, MR: The next - although there are some details in relation to some of these meetings, and I will take your Honour to those in due course. At volume 2 of the trial bundle, behind tab 67.

MARTIN CJ: Yes.

SHANAHAN, MR: The meeting of 5 August 2014. From page 409, your Honour.

MARTIN CJ: Yes.

SHANAHAN, MR: Does your Honour see that? If you turn the - flip the page to, again it's the same number, 6.1 - - -

MARTIN CJ: Yes.

SHANAHAN, MR: - - - your Honour will see that there was an update to the board on the status of the legal proceedings. Ms Adams advised that the next directions hearing was scheduled for Friday, 5 September. She said that the Chief Justice advised the applicants that they have until 19 August 2014 to resubmit their case. So you can see that Ms Adams is providing advice to the board in relation to these proceedings. Member Silcox asked Ms Adam to identify the main concerns of the applicants, and then she then went on to do that and set those out, and then there's a portion that's redacted.

Ms Adams then informed the board that the redacted minutes from all the board's meetings were - MLGDI proposals had been considered. Only revealed headings and conflict of interest declared. Then if I could take your Honour to the last of the meetings.

MARTIN CJ: Yes.

SHANAHAN, MR: This is behind tab 69 in the same volume that your Honour has open.

MARTIN CJ: Yes.

SHANAHAN, MR: Tab 69, page four - from page 432.

MARTIN CJ: Yes.

SHANAHAN, MR: It's a meeting of the board on 9 September 2014. And again if I can take your Honour to 6.1 on page 433. Again, it's another update on the status of the proceedings, and then again we have the redactions.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour - I'm now making submissions in reply.

MARTIN CJ: Yes.

SHANAHAN, MR: Your Honour, sometimes we feel like we live in parallel universes when we hear discussions around the concept of a conflict of interest, and I've been privileged to have one of those moments myself this afternoon when your Honour put to my friend, well, isn't the fact that Mr

Fowler admitted that he had a conflict of interest of relevance to an apprehension by a fair-minded lay person. Now, there can't be - there can't be anything more concerning for a fair-minded lay person than where somebody in Mr Fowler's position accepts that he has a conflict of interest, and the applicants say that there can be.

You know. In circumstances such as this where it's so hard to get evidence in relation to what actually occurs in government, and being a part-time public servant myself at the moment, it's quite clear that getting this sort of information is almost impossible.

MARTIN CJ: Well, in your part-time role you've got quite significant powers to gather information, Mr Shanahan.

SHANAHAN, MR: Indeed, your Honour. And perhaps in another place, in another time, where conflict of interest meant something other than it does now, I might have used them. That's my point. My friend took your Honour to the applicant's case regarding Adam and Fowler and said that the job descriptions don't take us any further. With great respect to him, it must be the case that officers, public sector officers, with the responsibilities that are clearly outlined in those descriptions, have a role in the Department in relation to local government metropolitan reform.

The question that your Honour put to my friend is the question the applicant says is the question to answer. What level of separation does there have to be between the Department on one hand, in terms of the - these officers' role, the departmental role, and the board's role. The answer to that is clear, in the applicant's submission. It's so that the board can do its job. It's as simple as that. To do its job. And if one goes to schedule 2.1, one can see what its job is. It's to give impartial advice to the Minister in respect of proposals that are put to it.

And the applicant says there's a reasonable apprehension of bias in relation to the roles of Fowler and Adam because the appointments made of departmental officers under schedule 2.5 could easily have appointed officers who had nothing at all to do with metropolitan local government reform. That's the point.

And what your Honour is faced with is this, were your Honour to resist the applicant's case in this regard then fair-minded lay observers tomorrow reading the newspaper will see that on one hand you have senior

departmental officers participating in the board's decision making with obligations on the departmental side both in terms of their obligation, as your Honour pointed out to me in-chief, of giving impartial advice to the Minister, but also the obligation to apply government policy. That's the reality of a senior public servant.

So you have a senior public servant on one side of the advantage line with those obligations, assisting the Minister to prepare proposals, and then on the other side of the advantage line being part of the body that assesses them. The applicants say that's not the appropriate level of separation.

The fact that the chairman had advance notice of the Minister's proposals is significant because to a reasonable person, to a fair-minded lay observer, it indicates that Councillor Congerton had contact with the Minister in relation to this issue, in a non-public setting, in a non-public way, before the process gathered significant momentum. And your Honour made the observation to my friend in relation to that, well, look at what the applicants were putting when they put ground 2. They were actually saying that the Minister had to give more details.

But the difference is this, if the Minister had given what the applicant says are the appropriate details pursuant to clause 2(2) of schedule 2.1, they would have been public.

MARTIN CJ: But there's no evidence to the effect that the Minister said anything in his communications with anybody that wasn't ultimately public.

SHANAHAN, MR: There's no evidence of actual bias. The applicant doesn't make a case for actual bias. What the applicant - - -

MARTIN CJ: There's no evidence that the communications were inappropriate in any way in the sense that would give rise to a perception on the part of the fair-minded lay observer.

SHANAHAN, MR: To the extent that they show a course of conduct over a period of unminuted non-public contact between the Minister and the chairman of the board, they provide evidence that will support a proposition of apprehended bias if there is other evidence to suggest it. And we say in this case there is. That's the point.

Your Honour, my friend made some points about the City of South Perth and was suggesting that the board has actually brought in a proposal - sorry, brought in recommendations that are contrary to the government's proposal and therefore it's not the same situation as I think we identified for your Honour in-chief in relation to the City - sorry, the Shire of Serpentine Jarrahdale. Could I just take your Honour to the second Tindale affidavit in 2527. This is the affidavit sworn 20 November.

Your Honour will see that the primary function of the affidavit was to adduce evidence of a statement - I'm sorry. A statement made by the Premier to mayors and chief executive officers at Dumas House on 22 October.

MARTIN CJ: Yes.

SHANAHAN, MR: The relevant part that I take your Honour to is at page 5, which is the last page of the affidavit.

MARTIN CJ: Yes.

SHANAHAN, MR: And there you will see that the Premier points out that what the Local Government Advisory Board's position is in relation to the boundary is one that the government accepts.

MARTIN CJ: But it wasn't their idea.

SHANAHAN, MR: I'm not suggesting that, your Honour. I'm simply saying that by the time the board came to make its recommendation - this is - what I'm trying to put to your Honour is that the process of the inquiry has got a temporal dimension. That it's not an inquiry on a particular day, it's a process that goes on over a lengthy period and, as that period moves forward, then people tailor their cloth to fit the circumstances and what they can achieve.

My friend relies heavily on the commentary made by Aronson and Groves, and all the applicants would say is we continue to rely on Michael Wilson. There is another decision that I was going to provide to your Honour. That was the case of Phillips, which is a decision by a single judge in the Federal Court, Wilcox J.

MARTIN CJ: Thank you.

SHANAHAN, MR: And I was going to take your Honour to page 78. I'm sorry; not 78 - to 76 at line (d). And your Honour will see that one of the propositions put to Wilcox J suggested that the outcome of the process which had been allegedly tainted with actual bias was said to be relevant to the question of apprehended bias, and Wilcox J points out that the outcome that - to do that is to confuse the test for apprehended bias with actual bias, and this is a case, as I've hopefully pointed out, that relates to apprehended bias, not actual bias. The other thing that I might take your Honour to, whilst we have Phillips open, is on page 78.

MARTIN CJ: Yes.

SHANAHAN, MR: At line (b), where Wilcox J observed:

The realisation that a leader's unspoken wish can influence a subordinate's action is at least as old as the murderous and Thomas Becket in 1170. Readers will recall the legend that, on news being brought to him in France of Becket's last provocative act, King Henry II muttered and irritated the rhetorical, "Who will rid me of this turbulent priest?"

Now, the relevance of that to this case, your Honour, is if there are un-minuted non-public meetings between the Minister and the chairman of the board, we don't know what request the Minister may or may not have made in respect of whether or not the board would rid him of turbulent affected electors or turbulent affected local governments.

MARTIN CJ: I wonder if the Minister would be flattered by your comparison to Henry II.

SHANAHAN, MR: I wouldn't like to speculate, your Honour. Now, this is a very important point, so I need to just take your Honour back to my example of two adjacent districts, A and B. It would be easier if I had a diagram, but I think we can all imagine a square, divided in the middle, where the district at the top is A and the district at the bottom is B. Where B is abolished and the boundary is said to move to the limits of B, there is, in effect, no change in the boundaries of the government districts. The boundaries of the government districts don't actually change; all that happens is that they're united.

So it's not an order of the type that my friend put to the court in relation to section 2.1(1) - bear with me - 2.1(1)(b). It's, in effect, an order that achieves an abolition of a district under section 2.1(1)(c), and I've

got support for that submission in the text of schedule 2.1, if I could take your Honour to clause 11. It's called the Transitional Arrangements for Orders About Districts. Does your Honour see, at 11(1)(f) - - -

MARTIN CJ: Yes. Yes.

SHANAHAN, MR: Continuing:

If the effect of an order under section 2.1 is to unite two or more districts -

well, here we now have another term, "unite". What the applicant says is that the approach adopted by the Minister in using one abolition with a notional boundary change was to misunderstand, effectively, what he was attempting.

MARTIN CJ: Well, because Mr Bydder relies upon this provision as supporting the view that there is a difference between the effect of an order, to which reference is made in that provision, and the abolition of two districts, to which reference is made in clause 8.

SHANAHAN, MR: I understand. And I - the applicants would say this: that the effect of an amalgamation must be unification. You can't have an amalgamation without a unification. And what's happening in a proposal where we have A and B, B is abolished and the intermediary boundary is removed so that the two bodies come together, is that we have a unification and no change of the boundary. The boundary that ran around A and B remains the same. That's the point, your Honour. That's the point I was trying to make to you in-chief.

My friend made a series of submissions about clause 10. The applicants say that the plain meaning of clause 10 and clause 11 must be this: that the power that the Minister has at clause 10(1) to accept or reject a recommendation by the advisory board made under schedule 2.1 must be subject to the process under clause 8 where it applies. That's the effect of the words "subject to subclause (2)", because, were it not the case, the Minister would be exercising the power at 10(1) without knowing whether or not there was going to be a poll. That's the point. And until that one month period under 8(1) expires, the Minister can't know whether there's going to be a poll or not.

MARTIN CJ: But if he has decided to reject the recommendation, whatever the poll says, why would he have to wait?

SHANAHAN, MR: Because that's what the Act says. The Act says he must wait - - -

MARTIN CJ: Well, it doesn't say it in so many words, does it?

SHANAHAN, MR: Well, with great respect, your Honour, that's the story of this case. We're dealing with a series of provisions that are not drafted with particularity. But can I say this to your Honour: that, if that were the case, then no one would ever have a poll if the Minister decided that he didn't want them. He would simply reject them on a - could reject them on an arbitrary basis.

MARTIN CJ: Well then, the purpose of the poll is achieved; there can be no proposal that falls within clause 8 unless a poll is provided so the rate payers of the districts affected are not prejudiced.

SHANAHAN, MR: The obligation of the advisory board to give the notice under 8(1), which initiates the process of a poll, is not within the control of the Minister. That obligation arises in the board irrespective of the Minister's attitude to the recommendations. That's the difference. And, as my learned junior hands me a note, what happens if the poll accepts the recommendation? That would then put the Minister in the position of having to decide what clause 10 means in that regard, and I don't think that's straightforward, your Honour.

MARTIN CJ: Well, it's pretty straightforward, isn't it? And that is that the only way in which it's - - -

SHANAHAN, MR: I thought you might say that.

MARTIN CJ: - - - bound by the outcome of a poll is if the requirements of 10(2) are met.

SHANAHAN, MR: If they reject it.

MARTIN CJ: Yes.

SHANAHAN, MR: Yes. So if the - I think now we come back to the prospect that perhaps the check or balance on the Minister is political, so that, if there is a poll that's held which is accepted but the Minister doesn't want it and rejects it, the Minister then has to explain to those who have voted in the poll why the Minister is taking the course that he has, so that there's a political check rather than a legal check in that regard. But that

explains the construction of those clauses that the applicant contends for.

In the applicant's respectful submission, the Minister can't accept or reject a recommendation prior to either the time limited under clause 8(1) expiring, which is a month, or the holding of the poll. My friend made a series of submissions around the definitions of "affected electors" and "affected local governments". I don't want to repeat myself about those things, your Honour, but the applicants see that there's a whole series of reasons why the construction that they argue for in ground 3 should be accepted rather than the propositions contended for by my friend.

The first of those is that it makes sense that executive government control the way in which Local Government develops. The problem with my friend's submissions is that it imagines that Local Government development in Western Australia can occur simply because a group of people get together and have a bright idea. Now, yes, there are provisions about frivolous proposals and there are provisions about proposals not in the interests of good government, but that doesn't deal with the example that I gave your Honour in-chief - simply doesn't engage it.

There may be proposals that are put forward by sectoral grounds for all sorts of reasons that the Minister simply doesn't want to go to the advisory board. The Minister is in a position where he can be moved by affected electors of affected local governments to put proposals. I don't want to develop that any more. So what are some of the reasons why we say that the definitions of "affected electors" and "affected local governments" must be as the applicant contends.

One is that the effect of it, as I put to your Honour in-chief, at clause 4 would be the ridiculous situation where authors of proposals are being told by the board, having made the proposal, that they are affected electors or affected local governments. The other nonsensical aspect to it is that, in order to identify the proposal that affects affected electors or affected local governments, one has to have regard to what they have authored. The applicants say that simply can't be right, that self-referable process.

MARTIN CJ: But you say it is right in relation to the second step of the process. You accept that any proposal that comes from an affected Local Government or affected

elector must satisfy the requirement. That's what you told me earlier.

SHANAHAN, MR: What I told you earlier, your Honour, was that - I think - well, I'm not sure if we're at odds about this at all. What I'm saying is this - I think I said to your Honour the proposal is by the Minister.

MARTIN CJ: Yes.

SHANAHAN, MR: Then you work out the affected Local Government and affected electors by reference to that.

MARTIN CJ: Yes.

SHANAHAN, MR: They make their proposal and, if their proposal affects other local governments or other electors, then they are entitled to make their own proposals as well.

MARTIN CJ: But they must be affected. You told me that they must - that the word "affected" applies at that second stage. The proposal which they advance must - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - fall within the degree of affectation that brings it within the definition.

SHANAHAN, MR: I understand that, your Honour, but I'm wondering if we're - I'm just not sure that we're ad idem about what I'm saying and what your Honour is putting to me.

MARTIN CJ: What you're saying - I thought we clarified this before lunch, but you told me that the word "affected" has two jobs to do.

SHANAHAN, MR: Yes. Yes. One is - - -

MARTIN CJ: One is in relation to the relationship between electors and Local Government arising from a Minister's antecedent proposals - - -

SHANAHAN, MR: Yes.

MARTIN CJ: - - - and the other is in relation to the proposal which they, themselves, advance.

SHANAHAN, MR: Yes. No. That - - -

MARTIN CJ: All right. Well - - -

SHANAHAN, MR: That's so.

MARTIN CJ: Yes. All right.

SHANAHAN, MR: That's so. And that, the applicant says, explains how it works.

MARTIN CJ: Yes.

SHANAHAN, MR: Thank you, your Honour. They are the applicant's submissions.

MARTIN CJ: Right. Well, I will give the reasons for the views to which I've come.

(Judgment Delivered)

MARTIN CJ: So for those reasons, I would dismiss both sets of proceedings. Mr Bydder.

BYDDER, MR: If it please the court, I move in each proceeding for orders that the application be dismissed and the applicants pay the first respondent's costs to be taxed if not agreed.

MARTIN CJ: Mr Shanahan?

SHANAHAN, MR: I have nothing to say about that, your Honour.

MARTIN CJ: Very well. There will be orders in those terms. The court will now adjourn.

AT 4.27 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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