



TOWN OF VINCENT

"Enhancing and celebrating our diverse community"

MINUTES

26 MAY 2009

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Minutes of the Ordinary Meeting of Council of the Town of Vincent held at the Administration and Civic Centre, 244 Vincent Street, Leederville, on Tuesday 26 May 2009, commencing at 6.00pm.

1. DECLARATION OF OPENING

The Presiding Member, Mayor Nick Catania, declared the meeting open at 6.05pm.

2. APOLOGIES/MEMBERS ON APPROVED LEAVE OF ABSENCE

(a) Apologies:

Cr Steed Farrell – apologies due to being unwell.

Cr Helen Doran-Wu – apologies – arriving late due to work commitments.

Cr Izzi Messina – apologies – arriving late due to work commitments.

(b) Present:

Mayor Nick Catania, JP	Presiding Member
Cr Anka Burns	South Ward
Cr Helen Doran-Wu	North Ward (from 6.07pm)
Cr Ian Ker	South Ward
Cr Sally Lake	South Ward
Cr Dudley Maier	North Ward
Cr Izzi Messina	South Ward (from 6.07pm)
Cr Youngman	North Ward
John Giorgi, JP	Chief Executive Officer
Rob Boardman	Director Development Services
Rick Lotznicker	Director Technical Services
Mike Rootsey	Director Corporate Services
Anita Radici	Executive Assistant (Minutes Secretary)

Approximately 18 Members of the Public

(c) Members on Approved Leave of Absence:

Nil.

3. (a) PUBLIC QUESTION TIME & RECEIVING OF PUBLIC SUBMISSIONS

The following submissions were made by persons in the Public Gallery:

1. John Waddingham of 23 Anzac Road, Leederville – Item 9.2.3. Stated he has lived in Anzac Road since 1985, when it was the “quiet end” of Anzac Road. Advised that traffic just over 1,000 cars a day – less than a local access road would be rated to carry and would love to keep it that way as residents have a desire to “*keep things quiet*”. Stated they have generally been very successful in achieving this and believe Council have done a good job of keeping traffic quiet in their street. Believed the numbers that appear in the Report suggest, and the Town Officers believe, that there is no problem on this street. Advised from daily observations, there is a problem of some sort as there are many little children and many cars speed beyond what seems to be a safe speed. Referred to the petition in favour of closure of the Anzac/Loftus intersection which he was a signatory, but of which he was not totally in favour, but thought that it was worth discussion and therefore was very pleased to have the meeting with the LATM recently where the current proposal was put forward, i.e. to narrow the intersection. Stated he is unsure what to make of this proposal and asked whether it would have an impact? Grateful of any action that keeps control of what happens in the street, however wants to be convinced that ratepayers’ money is being effectively spent.

Cr Doran-Wu and Cr Messina entered the Chamber at 6.07pm.

2. Andrew Del Marco of 91 Forrest Street, North Perth – Item 9.1.5, part of Sacred Heart Parish. Stated he is a parishioner and gives his apologies for Fr. Peter who is attending a School Board Meeting. Supports the Officer Recommendation. Stated that they have tried their best to address the heritage matters, which has been the major issue, due to the attempt to fit a 2-storey building onto the site, and the Heritage Council's concerns about the scale of the façade on the eastern side. Stated the Parish Office is being included in this development on the back of the existing front heritage building, the rear 1980's addition is being demolished and they are putting in a new more contemporary design. Advised that it was a condition of the demolition of the meeting place on the Harold Street frontage that they provide plans to Council within 6 months of demolition. Advised the presented the plans to Council and it has taken 6 months to get to where they are today. Advised that he consulted with parishioners in November/December 2008 and they are generally happy with what they have seen, only concern is re-funding. Stated they have no concerns regarding design. Stated they have attempted to choose materials sensitively and the architect has tried to reflect what is in the church (**not** copy it). Stated it will be dynamic, interesting and contemporary but not imposing. Advised sandstone is being used which is reflective to what is in the church. Urged Council to support the application.

Cr Messina departed the Chamber at 6.10pm.

3. Dennis Moore of 14 Edith Street, Perth – Item 9.1.6. Stated Edith Street is a short narrow street consisting mainly of modern medium-density terraced housing on the north side – quiet residential street and should remain that way. Stated in the middle of this street there is a nearly completed building with a large dominant sign that reads “Adras Building 2008”, which was erected without planning approval and, as far as he is aware, did not appear in any documents submitted for planning approval or building licence, therefore is currently illegal. Stated it is unclear from Report if this matter is being treated as signage for home occupation, in which case the signage is far in excess of this area .2m² maximum permitted on a dwelling house for the purposes of home occupation. Stated there is no reference in the Report to any policy, or policy umbrella, in which this matter is to be treated. Believed it is an advertisement for a property development company located at 40 Ruth Street and from their website it appears to be a substantial operation. Advised that as of 11 February 2009 there are a number of references on the website (which have since been removed) to the construction of an office building by the Adras Property Development Company to the rear of 40 Ruth Street. Quoted “*after more than a year of planning design revisions and consultations with members of the Town of Vincent, Adras Property is pleased to announce the construction in final in October 2008 to extend historic Adras House so as to improve our office facilities*”. Believed this statement is in the public domain that is Adras Property, not the owners of 40 Ruth Street are constructing the building and signage reflects that. Believed to state there is no business called Adras Building and hence the signage is not associated with Adras Property Development Company is difficult to understand. Stated that it is equivalent to saying that the AMP building is not associated with AMP Ltd. Stated the sign is not small, it is greater than what is attached to the Agenda and fits in a box of 3.5m², more than 17 times the limit. Advised that the 4 residents directly opposite the sign are opposed to it and 2 other residents have sent emails opposing it. Stated a newsletter of the Adras Property's website (dated today) calls attention to the building of its new offices with links to photos of the Edith Street building under construction and that clients of Adras Property will be attracted to Edith Street rather than Ruth Street, exacerbating parking. Stated the points raised are three-fold 1) it is merely a building name – which is clearly false; 2) the sign is aesthetically pleasing; and 3) the sign can be easily painted over. Asked, why the sign was so important to the aesthetics of the building, why was it not included in the original building submission and why anyone would want to paint over it, except for

the new owner to advertise the incoming home occupation with a large sign. Stated that it is setting a very poor precedent in the Town.

Cr Messina returned to the Chamber at 6.12pm.

4. Antonio Sita of 40 Ruth Street, Perth – Item 9.1.6. Submitted photographs. Stated he and his partner are the owners of this turn-of-the-century residence which they purchased in early 2005 when it was disused and derelict. Stated rather than being applauded for their efforts to retain and provide the West Australian history and architectural heritage of the area, they've been victim of objections, delays, threats and complaints primarily from the rear neighbours on Edith St. Stated council time and resources have been taken up with dealing with these complaints over the years. Grateful that on all these occasions the Town has dealt with these matters objectively and applied due process. Believed the current signage issue is merely a continuation of harassment and is based on unfounded and erroneous matters which he believed to be irrelevant. Stated the practice of naming and date-stamping buildings is a very common in the Town and the greater Perth Metropolitan area, and that there are thousands of buildings both old and modern that employ the tradition of naming a structure and sometimes stamping it with the date of construction. Believed it a tradition worth maintaining and promoting as it not only provides interest and diversity for the community, but also the history for current and future generations. Stated it would appear from the paperwork that the primary opposition to the sign is the mistaken belief that it is advertising for a business which in turn will bring unnecessary traffic and parking hazards to the locations and he rejected this claim completely. Stated "Adras" is a "made-up" word coming from their initials, and although admits that they own a private company, it is not called "Adras Building". Stated they do not conduct any major or minor business activities from the residence in breach of the Town's Home Occupation and Minor Nature Development Policies, nor do they illicit passing street trade. Stated since Edith Street is primarily at the rear of their home it is the location of a two car garage which is intended to provide off-street parking for their cars. Rejected claims that they will be receiving unsolicited visitors at the rear of their property. Believed that the Officer's Recommendation is fair and reasonable and hopes the council will endorse it.

The Presiding Member, Mayor Nick Catania queried who lives in the house.

Mr Sita advised he lives in the house with his partner.

5. Harold Schooland of 150 Joel Terrace, Mt Lawley – Item 9.1.4. Stated he and his wife have 4 children and have lived in the home for 17 years and his eldest daughter, aged 29, has cerebral palsy, is in a wheelchair and is totally dependent on her parents who care for her at home and when he attends business trips, goes in to respite care with the Cerebral Palsy Association. Stated it is a large block and thought it ideal if he could provide a facility for his daughter, close to home, and employ 2 carers to live with her on the property. Stated there have been objections including setback. Stated their property is R60 and therefore 11 units could be built on it and they just want to have 2 houses. Stated the property next door has 22 units and a 3m setback. Explained the reason they require their setback so far forward is so they can drive a car under the back of the house and have a lift and if that fails they can access the house via a footpath to enter the house at that level. Stated they have designed the house with energy and water saving technologies and believed it was a good looking place. Advised that he intends to save as many trees as they can and transplant them.
6. Mike Enslin of 10/38 Fielder Street, East Perth – Item 14.1. Stated he has worked with the Town's Officers since the last meeting and thanked Rob Boardman and his team, and especially Helen Smith, as he is now at a stage where items are being supported. Appealed to Councillors to support the recommendation that although does deal with 10-20mm encroachments of the building, they are considered minor and the Officer's support the recommendation that the encroachments are approved. As the item is being discussed without the public present, asked when Council

considers the items and conditions that are being suggested are not too onerous. Stated payments are being suggested, insurance requirements, perhaps in excess of what would normally be required. Appealed to Council to be pragmatic and to bear in mind that the encroachments are behind existing awnings, power lines and trees. Believed that most concerns voiced are covered in the Strata Titles Act and should not provide too much of an issue.

Cr Burns departed the Chamber at 6.27pm.

7. Theo Kailis of 13 Litchendale Street, Floreat – Item 9.1.7. Stated he had sent an email submission to the Mayor and Councillors on this Item. Stated it is difficult to try to communicate to everyone from Friday past to today to get across some very relevant points with regard to a submission which is nearly 3 years old. Advised he is being asked to sacrifice \$500,000 worth of land (125m²) in lieu of a Council desire to have better access at the rear of the land and this is considered unreasonable. To sustain all costs in relation to that sacrifice and as a separate issue, the Water Corporation Freehold Land easement, between their property, Oxford Street and Funky Bunches, they have been asked to enter into an Agreement, which they have no need to and which would setback their property so that they have no public access directly from there, albeit that they accept that would be a desirable outcome. Stated he is being asked to absorb not only 50% of the capital costs to upgrade the area but also go into an ongoing lease arrangement with the Water Corporation, which they have estimated at \$25,000 per annum. Hoped the letter the Council received today gives more of an insight as to their concerns. Advised that he does not accept some of the conditions in the agenda report and has grave concerns about the viability of their development.

Cr Burns returned to the Chamber at 6.28pm.

8. Rob Mollett, Silver Thomas Hanley Architects, PO Box 191 West Perth – Item 9.1.7, Director and Project Architect for this development. Advised that they consider a number of recommendations unreasonable and, if adopted could put at risk what they consider a landmark development and a catalyst for the ongoing development of the Leederville precinct. Stated that the design team has made every effort to ensure the proposal fits within the objectives of the draft Masterplan and has liaised closely with the Town throughout a protracted design process and upon their recommendation, the building has been setback along the western boundary to facilitate the eventual ceding of land of the Town for extension of the Lane, despite the negative impact of that setback on the parking decks and loss of bays. Stated they have also put considerable effort into the design of the extension of the Lane and its relationship with the existing Lane, existing olive trees and entry to the site. Stated the proposal has championed the upgrading of the Water Corporation easement to provide quality urban space, safe and visually attractive access to the existing Council carpark and the future development sites. Stated that it was not in promoting that outcome that they were suggesting that their client be responsible for any of the 50% cost or upgrading the easement, but was done in the public interest and given the long and short-term benefits to the Town and future developers of the sites behind them. Stated they consider the condition to be manifestly unfair. Believed that the public art contribution is somewhat onerous and given the tightness of the site, consider the degree of artwork will be built into the development and considering that the building itself will be a work of art. Stated he has no issue with the other recommendations and assures that they will continue to work closely to develop an outcome that all in the Town can be justly proud.
9. Dr Lucy Kilshore of 12 Buxton Street, Mt Hawthorn – Item 9.1.2. Advised that she does not want to fight with her neighbours and only opposes the design setback to the south of their house, (northern boundary of Dr Kilshore's house). Stated the neighbours have proposed a zero setback by building a double-garage wall directly on the shared boundary, it has remote-control motorised doors and

sits entirely along the length of their main bedroom and encroaches on their lounge. Stated there is only 64cm between her house and the joint boundary and she would not be able to access their gutters and the services that run down that border of her house. Stated that she is also concerned about the noise of the cars in the garage, which is 2 feet from where their bedroom. Stated the wall will also overshadow the light coming into her lounge room window. Advised that she does not object to any other recommendations.

10. Gail D'Souza of 14 Buxton Street, Mt Hawthorn – Item 9.1.2. Stated that she is happy to work with her neighbour (the previous speaker) regarding the setback to accommodate the requirements that she has stipulated. Stated that her main concern is the non-support of the front setback by the Planning Officers – does not understand the reasons why. Advised that she has met Rob Boardman and Helen Smith to discuss the reasons behind the lack of support. Stated that the setback at the moment is recommended at 7m (the average for the street) as per the Residential Design Elements Policy. Stated that in her meeting with Rob Boardman she demonstrated that, in her instance, as they are at the end of street and are on a right of way, their setback does not upset those in the street at all. Hoped to appeal to the discretion of the Council in this instance.

There being no further speakers, public question time was closed at approx. 6.30pm.

(b) RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

4. APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

5. THE RECEIVING OF PETITIONS, DEPUTATIONS AND PRESENTATIONS

Nil.

6. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Minutes of the Ordinary Meeting of Council held on 12 May 2009.

Moved Cr Messina, Seconded Cr Ker

That the Minutes of the Ordinary Meeting of Council held 12 May 2009 be confirmed as a true and correct record.

CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

7. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

7.1 Late Items

I have approved of two Late Items, which are considered Urgent, to be placed on tonight's Agenda, as follows:

- Item 9.4.5 - 2009 National General Assembly of Local Government; and

- Confidential Item 14.3 - Nos. 154-156 (Lot 780) Newcastle Street, Corner Beaufort Street and Lindsay Street, Perth - Proposed Strata Form 7 Certificate of Local Government to Previously Approved Construction of Four (4) Storey Mixed Use Development Comprising Residential Car Park, Storerooms on Basement Level; Car Park, Specialty Shops, Supermarket on Ground Level; and Eighty (80) Multiple Dwellings on Upper Three Levels – Building Encroachments.

The reasons of urgency for Confidential Item 14.3 are for the Council to determine its position with regards to the building encroachments. If approved, it will allow the Builder to request the relevant Government Minister to approve of the encroachments into public land.

7.2 Carers Luncheon 15 May 2009

I attended the Carers Lunch on 15 May 2009 at Da Vinci Restaurant. The lunch was to acknowledge the carers within the Town of Vincent and the fantastic job they do for the people they care for.

Congratulations to the team in Community Development for a great job in organising a most successful function.

8. DECLARATIONS OF INTERESTS

- 8.1 Mayor Catania declared a Financial interest in Item 9.3.1 – Investment Report. The extent of his interest being that he is the chairperson of the North Perth Community Bank in which the Town has shares.
- 8.2 Cr Messina declared a Financial interest in Item 9.3.1 – Investment Report. The extent of his interest being that he is a director and shareholder of the North Perth Community Bendigo Bank in which the Town has shares.
- 8.3 Cr Burns declared a Financial interest in Item 9.3.1 – Investment Report. The extent of her interest being that she is a shareholder and her father is a director in the North Perth Community Bank in which the Town has investment shares.

9. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION)

Nil.

10. REPORTS

The Presiding Member, Mayor Nick Catania, requested that the Chief Executive Officer advise the meeting of:

10.1 Items which are the subject of a question or comment from Members of the Public and the following was advised:

Items 9.2.3, 9.1.5, 9.1.6, 9.1.4, 14.1, 9.1.7 and 9.1.2.

10.2 Items which require an Absolute Majority which have not already been the subject of a public question/comment and the following was advised:

Items 9.2.1 and 9.4.2.

10.3 **Items which Council Members/Officers have declared a financial or proximity interest and the following was advised:**

Item 9.3.1.

Presiding Member, Mayor Nick Catania, requested Council Members to indicate:

10.4 **Items which Council Members wish to discuss which have not already been the subject of a public question/comment or require an absolute majority decision and the following was advised:**

Cr Messina	Item 9.4.4.
Cr Youngman	Items 9.1.11 and 9.4.3.
Cr Ker	Nil.
Cr Doran-Wu	Nil.
Cr Lake	Nil.
Cr Burns	Nil.
Cr Maier	Items 9.1.3 and 9.2.4.
Mayor Catania	Nil.

The Presiding Member, Mayor Nick Catania, requested that the Chief Executive Officer advise the meeting of:

10.5 **Unopposed items which will be moved "En Bloc" and the following was advised:**

Items 9.1.1, 9.1.8, 9.1.9, 9.1.10, 9.2.2, 9.2.5, 9.3.2, 9.3.3, 9.4.1.

10.6 **Confidential Reports which will be considered behind closed doors and the following was advised:**

Items 14.1, 14.2 and 14.3.

The Chief Executive Officer advised the meeting of the **New Order** of business, of which items will be considered, as follows:

(a) **Unopposed items moved en bloc;**

Items 9.1.1, 9.1.8, 9.1.9, 9.1.10, 9.2.2, 9.2.5, 9.3.2, 9.3.3 and 9.4.1.

(b) **Those being the subject of a question and/or comment by members of the public during "Question Time";**

Items 9.2.3, 9.1.5, 9.1.6, 9.1.4, 9.1.7 and 9.1.2.

The remaining Items identified for discussion were considered in numerical order in which they appeared in the Agenda.

Moved Cr Ker, Seconded Cr Messina

That the following unopposed items be approved "En Bloc", as recommended;

Items 9.1.1, 9.1.8, 9.1.9, 9.1.10, 9.2.2, 9.2.5, 9.3.2, 9.3.3 and 9.4.1.

CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

9.1.1 No. 27 (Lot: 801 D/P: 47714) Kadina Street, North Perth - Proposed Three-Storey Single House

Ward:	North	Date:	15 May 2009
Precinct:	Charles Centre; P7	File Ref:	PRO2082; 5.2009.76.1
Attachments:	001		
Reporting Officer(s):	D Bothwell		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by A Roberts on behalf of the owner A & L Roberts for proposed Three-Storey Single House, at No. 27 (Lot: 801 D/P: 47714) Kadina Street, North Perth, and as shown on plans stamp-dated 11 March 2009 , subject to:

- (i) *all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), are designed integrally with the building, and be located so as not to be visually obtrusive;*
- (ii) *prior to the issue of a Building Licence, revised plans shall be submitted and approved demonstrating any new street/front wall, fence and gate within the Kadina Street setback area, including along the side boundaries within this street setback area, complying with the following:*
 - (a) *the maximum height being 1.8 metres above the adjacent footpath level;*
 - (b) *the maximum height of piers with decorative capping being 2.0 metres above the adjacent footpath level;*
 - (c) *the maximum height of the solid portion of the wall being 1.2 metres above the adjacent footpath level, and a minimum of fifty percent visually permeable above 1.2 metres;*
 - (d) *the piers having a maximum width of 355 millimetres and a maximum diameter of 500 millimetres;*
 - (e) *the distance between piers should not be less than the height of the piers except where pedestrian gates are proposed; and*
 - (f) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level.*

The revised plans shall not result in any further variations to the Town's Policies or the Residential Design Codes;

- (iii) *prior to the issue of a Building Licence revised plans shall be submitted and approved demonstrating the windows to the bedroom on the first floor on the southern elevation and the windows to the living room on the second floor on southern elevation within the respective 4.5 metre (bedroom) and 6 metre (living room) cone of vision, being screened with a permanent obscure material and be non-openable to a minimum of 1.6 metres above the respective finished floor level. A permanent obscure material does not include a self-adhesive material or other material that is easily removed. The whole windows can be top hinged and the obscure portion of the windows openable to a maximum of 20 degrees; OR prior to the issue of a Building Licence revised plans shall be submitted and approved demonstrating the subject windows not exceeding one square metre in aggregate in the respective subject walls, so that they are not considered to be major openings as defined in the Residential Design Codes 2008. Alternatively, prior to the issue of a Building Licence, these revised plans are not required if the Town receives written consent from the owners of No. 27A Kadina Street, stating no objections to the respective proposed privacy encroachment. The revised plans shall not result in any greater variation to the requirements of the Residential Design Codes and the Town's Policies.*

The revised plans shall not result in any further variations to the Town's Policies or the Residential Design Codes;

- (iv) *a detailed schedule of external finishes (including materials and colour schemes and details) that complies with the Town's 'The Village - North Perth (Lots 43-45 Kadina Street) Residential Site Design Guidelines' shall be submitted and approved prior to the issue of a Building Licence. Dark tinted or reflective glass shall not be permitted;*
- (v) *first obtaining the consent of the owners of Nos. 25A and 27A Kadina Street, North Perth for entry onto their land the owners of the subject land shall finish and maintain the surface of the boundary (parapet) walls facing east and west where applicable in a good and clean condition; and*
- (vi) *prior to the occupation of the development, light(s) shall be provided to the rear right of way which is to comply with relevant standards and is to be illuminated during times of darkness and is to be maintained by the property owners. Details of the lighting onto the rear right of way shall be submitted to and approved prior to the issue of a Building Licence.*

COUNCIL DECISION ITEM 9.1.1

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED "EN BLOC" (8-0)

(Cr Farrell was an apology for the meeting.)

Landowner:	A & L Roberts
Applicant:	A Roberts
Zoning:	Metropolitan Region Scheme: (MRS) Urban Town Planning Scheme No. 1 (TPS 1): Residential/Commercial R80
Existing Land Use:	Vacant
Use Class:	Single House
Use Classification:	"P"
Lot Area:	181 square metres
Access to Right of Way	South side, 3.0 metres wide, privately owned.

BACKGROUND:

On 7 August 2002, an application for two (2) three-storey dwellings was conditionally approved for the site under delegated authority.

On 12 September 2006, the Council at its Ordinary Meeting resolved to conditionally approve an identical application for two (2) three-storey grouped dwellings.

DETAILS:

The proposal involves the construction of a three-storey single house.

The applicant's submission is *Laid on the Table*.

ASSESSMENT:

Non-Compliant Requirements			
Requirements	Required	Proposed *	Officer Comments Pursuant to Clause 38(5) of TPS 1
Density	N/A	N/A	-
Plot Ratio	N/A	N/A	-
Front Setbacks:	Upper floor to be setback a minimum of 2 metres behind the ground floor.	Main building line of the upper floor is in line with the ground floor.	Supported – no undue impact on neighbouring property or surrounding amenity, the proposed upper floor setback is consistent with adjoining dwellings and is compliant with the provisions of ‘The Village – North Perth Residential Site Design Guidelines’.
Privacy Setbacks: Windows to Bedroom – First Floor	4.5 metres	1.3 metres	Not supported – undue impact on neighbouring property and condition applied for compliant screening to be provided.
Windows to Living Room- Second Floor	6.0 metres	1.3 metres	Supported – as above.
Consultation Submissions			
Support	Nil		Noted.
Objection(1)	Lofts – stating that proposed loft should be assessed as a third storey.		Supported – proposed lofts do not comply with the loft requirements in the Town's Residential Design Elements Policy (RDE's) and are considered as a third storey.

	<p>Height – stating that the proposed building height does not comply with the requirements of the Town’s RDE’s and is out of character with the area.</p> <p>Overshadowing – concern that proposed development will overshadow their courtyard.</p> <p>Privacy – concern that the proposed development will overlook their courtyard.</p> <p>Non-compliance with Charles Centre Precinct Policy relating to the Residential/Commercial area.</p>	<p>Not supported – although the proposed development is non-compliant with the height requirements of the RDE’s, it is compliant with the requirements of ‘The Village – North Perth Residential Site Design Guidelines’, which allows for 3 Storey Buildings of up to 10 metres.</p> <p>Not supported – proposal complies with the overshadowing requirements of the Residential Design Codes.</p> <p>Not supported – the only variations to the privacy requirements of the Residential Design Codes are the windows to the bedroom and living rooms on the first and second floor respectively, with overlooking into the western adjoining property.</p> <p>Not supported – the subject property is governed by ‘The Village – North Perth Residential Site Design Guidelines’.</p>
Other Implications		
Legal/Policy	TPS 1 and associated Policies, and Residential Design Codes (R Codes).	
Strategic Implications	Nil	
Sustainability Implications	Nil	
Financial/Budget Implications	Nil	

- * The representative R Coding and density bonus calculations are provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.
- * The plot ratio calculation is provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

COMMENTS:

A very similar proposal was approved under delegated authority from the Council on 7 August 2002 with an identical application approved by the Council at its Ordinary Meeting on 12 September 2006. The applicant has not acted upon the previous Planning Approvals for personal reasons. The original lot has since been subdivided into No. 27 (Lot: 801 D/P: 477141) and No. 27A (Lot: 800 D/P: 47714) Kadina Street. The main difference between the current application and those previously approved by the Town, is that the current application is for a three (3) storey single house on the eastern lot (801) and the previous proposals have been for two (2) three (3) storey grouped dwellings on the original Lot 43.

The subject property is governed by the 'The Village – North Perth (Lots 43 – 45 Kadina Street) Residential Site Design Guidelines'. The Guidelines aim to achieve a more generously scaled development for the select few properties that fall within the Guidelines perimeter. The Guidelines allow for nil side setbacks, a 10 metre/3 storey building height envelope, development within 7 metres of the rear boundary limited to 6 metres in height and a reduced front setback requirement of 2 metres. The proposal is compliant with the above mentioned provisions and the overall objectives of the Guidelines, and is considered to complement the adjoining dwellings and contribute to the amenity of the Kadina Street streetscape.

Summary

In light of the above, the proposal is recommended for approval subject to standard and appropriate conditions to address the above matters.

9.1.8 Western Australia Local Government Association (WALGA) - Survey of Local Government Dealings with the State Administrative Tribunal

Ward:	Both	Date:	18 May 2009
Precinct:	All	File Ref:	ORG0018
Attachments:	-		
Reporting Officer(s):	R Rasiah, R Narroo		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

- (i) *RECEIVES the report relating to the “Survey of Local Government dealings with the State Administrative Tribunal”; and*
- (ii) *ADVISES the Western Australia Local Government Association (WALGA) of the following:*
 - (a) *The Town's Officers have not experienced any negative bias by the State Administrative Tribunal against the Town at review matters; and*
 - (b) *The Town's Officers are of the view that the State Administrative Tribunal Members and decisions are considered mostly fair and just on behalf of the Town.*

COUNCIL DECISION ITEM 9.1.8

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED “EN BLOC” (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to submit feedback to the Western Australia Local Government Association with regard to the Town's dealings with the State Administrative Tribunal (SAT).

BACKGROUND:

Nil.

DETAILS:

The Town has received correspondence from WALGA stating the following:

“A number of Local Governments have had dealings with the State Administrative Tribunal; and the anecdotal evidence is that there is a perceived negative bias against Local Government. The aim of this survey is to ascertain your Local Government’s experience with SAT so that an experience based picture of how SAT decisions have impacted local decision making.”

CONSULTATION/ADVERTISING:

Nil.

LEGAL/POLICY:

- State Administrative Tribunal Act 2004.
- State Administrative Tribunal Regulations 2004.
- State Administrative Tribunal Rules 2004.

STRATEGIC IMPLICATIONS:

Nil.

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

Increased financial and staff cost, including costs associated with engaging industry consultants to defend Town decisions as a result of applicant's/owners not complying with relevant legislation.

COMMENTS:

From July 2008 to-date, the Town has had nineteen (19) reviews/appeals lodged with the SAT in relation to the Town's planning determinations. Of these nineteen (19) appeals, five (5) appeals are yet to be determined.

From the fourteen (14) determined appeals, twelve (12) reviews were dismissed by the SAT (in favour of the Town), an 85.6% success rate, and only two (2) reviews were upheld (in favour of the applicant).

The feedback received from the Town's Officers attending the SAT is as follows:

- Officers have not experienced any negative bias by the State Administrative Tribunal Members against the Town in review matters;
- Officers have observed that the State Administrative Tribunal members are fair to both parties, offering clarification and advice in an equitable manner to both applicant and respondent when required ; and
- In terms of outcomes/decisions by the SAT, in an instance where there was a breach of the Local Government (Miscellaneous Provisions) Act 1960 by the Applicants, the remedies offered to the respondent (Town) in these matters unanimously exclude adequate apologies, rectification, and financial compensation/or penalty to deter future breaches. In certain circumstances, the cost of enforcement is a drain on the Town's limited and scarce staff and financial resources. As a result, there is a deficiency in cost recovery for local governments. As such, consideration should be given to applying different penalty levels to different classes of unauthorised development, to deter re-occurrences.

Generally, the Town Officers are satisfied with their dealings and outcomes at the SAT at this point in time.

9.1.9 Hawthorn House, Nos. 14 – 16 Woodstock Street, Mount Hawthorn – Updated Clinical Service Plan

Ward:	North	Date:	19 May 2009
Precinct:	Mount Hawthorn; P1	File Ref:	PRO3321
Attachments:	-		
Reporting Officer(s):	A Giles, R Rasiah		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

(i) **NOTES:**

- (a) *the correspondence received from the North Metropolitan Health Service regarding the updated clinical service plan for Hawthorn House, located at Nos. 14 – 16 Woodstock Street, Mount Hawthorn;*
- (b) *the correspondence received from the Director General, Department of Health, confirming the Hawthorn House clinical use will cease by 30 November 2009; and*
- (c) *that the Hawthorn House Community Advisory Committee will discuss the change in operation proposed by the Department of Health;*

(ii) (a) ADVISES the Western Australian Planning Commission that the Town has no objection to the proposed minor changes; and

- (b) REFERS the above change in the clinical services plan use to the Western Australian Planning Commission for further determination under the current approved use as an "Institutional Building", with the above use to cease as of 30 November 2009, in conjunction with the current approved use issued by the WAPC on 22 March 2006.

***Note: The above Officer Recommendation was corrected and distributed prior to the meeting. Changes are indicated by strike through and underline.**

COUNCIL DECISION ITEM 9.1.9

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED “EN BLOC” (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to advise the Council that Hawthorn House has reviewed its Clinical Service Plan, and confirms that the premises will cease operation by 30 November 2009.

BACKGROUND:

Hawthorn House has been operational since 4 December 2006, and has operated successfully, and with minimal impact on the community. Planning approval for the site was for a period of three years only, from the date of commencement of use, and subsequently the Unit is anticipated to cease operation by 30 November 2009.

A replacement 22-bed facility is being planned for the Joondalup Health Campus, with construction expected to commence in July 2009. Mental Health Services are making alternative arrangements for patients during the transition period between decommissioning of Hawthorn House and the completion of the new Unit at Joondalup. The future non-clinical use of Hawthorn House by the Mental Health Services is currently under review, and the Director General, Department of Health has advised that the Town will be notified of this in due course.

DETAILS:

Hawthorn House will remain a 24-hour residential rehabilitation unit until its closure (late November 2009). A phased reduction in long term care, staffing and bed numbers will be adopted in the coming months. Due to a need to focus on individuals with shorter term needs, Hawthorn House proposes to offer services to both inpatients and community based clients. Referrals from In-patient units will remain its core function with some short term low risk community individuals. Currently, Hawthorn House has less than 10 residents as referrals from in-patient units.

Planning Services Comments

The approved use at the above site is for an "Institutional Building" (Step down Intermediate Care Facility) approved by the Western Australian Planning Commission (WAPC) on 22 March 2006 for a period of 3 years only from the date of commencement of use. The Department of Health has advised the Town in a letter dated 26 March 2009 (attached), that the above facility commenced operation in mid-December 2006, and will cease operations by 30 November 2009, and that a replacement 22-bed facility is planned for the Joondalup Health Campus, with construction expected to commence in July 2009.

The proposed change in the operation of Hawthorn House from accepting referrals from hospitals to that of receipt of patients from community services is as a result of this transition period in decommissioning the above facility. In essence, the current service will not be altered, as individuals will still continue to stay overnight if required.

The above change in operation is considered minor from a planning perspective, and is still considered to be within the use class category of an "Institutional Building" under Town of Vincent Town Planning Scheme No. 1 and acceptable. However, it is recommended that the Department for Health obtain written approval from the Western Australian Planning Commission that the proposed change still is within the scope of approved use by the WAPC dated 22 March 2006.

CONSULTATION/ADVERTISING:

Dr Sandy Tait, Consultant in Rehabilitation, Head of Service at Hawthorn House, has effectively communicated any changes at the facility that may have an impact on the community. Dr Tait has provided an update on the clinical service plan in correspondence received by the Town on 31 March 2009.

In correspondence dated 26 March 2009, the Director General, Department of Health has advised that: "... the Hawthorn Interim Intermediate Care Unit opened mid December 2006. In accordance with the Mental Health Services clinical planning, it is anticipated that the Unit will cease operation by 30 November 2009... The future non-clinical use of Hawthorn House by the Mental Health Services is currently under review. You will be notified once our plans are definite."

It is recommended that the Hawthorn House Community Advisory Committee be reconvened to raise awareness of the proposed changes to the referrals, and discuss any issues that may arise from this.

LEGAL POLICY:

Nil.

STRATEGIC IMPLICATIONS:

Town of Vincent Strategic Plan 2009 – 2014:

"Community Development

3.1 Enhance and Promote Community Development and Wellbeing".

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

The proposed minor alteration to the clinical service plan for Hawthorn House is expected to have minimal impact on the community. As detailed in the report above, it is recommended that the Hawthorn House Community Advisory Committee discusses the proposed changes, and that the proposal is forwarded to the Western Australian Planning Commission for their confirmation that the proposed change still is within the scope of approved use by the WAPC dated 22 March 2006.

9.1.10 Substandard Buildings – Progress Report No. 2/2009

Ward:	Both	Date:	19 May 2009
Precinct:	All	File Ref:	ENS0084
Attachments:	-		
Reporting Officer(s):	A Giles, S Teymant		
Checked/Endorsed by:	R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

(i) *RECEIVES Progress Report No. 2, detailing the compliance status of Notices recently issued to the owners of substandard buildings located within the Town as at 19 May 2009;*

(ii) *NOTES that the Chief Executive Officer has taken the following action under Delegated Authority:*

(a) *the owners of the following properties have been served 'Take Down and Remove' Notices in accordance with sections 137 and 138 of the Health Act 1911 (as amended):*

1. *No. 1 Irene Street, Perth (owner: T P Nguyen & Q T To);*
2. *No. 58 Joel Terrace, East Perth (owner: FDS Enterprises Pty Ltd);*
3. *No. 116 Broome Street, Highgate (owner: Benjamin & Co Pty Ltd);*
4. *No. 388 William Street, Perth (owner: Lim & Lim Holdings Pty Ltd);*
5. *No. 441 William Street, Perth (owner: CS & JS Lau & MK De Almeida);*
6. *No. 36 Summers Street, Perth (owner: EG Custodian Services Pty Ltd);*
7. *No. 38 Summers Street, Perth (owner: EG Custodian Services Pty Ltd);*
8. *No. 137 Walcott Street, Mount Lawley (owner: Skybridge Holdings Pty Ltd);*
9. *No. 20 Monmouth Street, Mount Lawley (owner: Skybridge Holdings Pty Ltd);*
10. *Nos. 152 – 158 Fitzgerald Street, West Perth (owner: North Perth Developments Pty Ltd);*
11. *No. 325 Charles Street, North Perth (owner: Codesign Pty Ltd);*
12. *No. 332 Charles Street, North Perth (owner: A Vujasin);*
13. *No. 288 Lord Street, Perth (pending consideration detailed in this report) (owner: JNI Developments Pty Ltd & Others); and*
14. *No. 134 Alma Road, North Perth (owner: VV Dong & TT Dinh);*

(b) *the owners of the following properties have been served 'Renovation' Notices in accordance with section 409 of the Local Government (Miscellaneous Provisions) Act 1960;*

1. *No. 103 Harold Street, Highgate (Pacific Motel) (owner: GR Pennells & RJ Begley);*
2. *No. 125 Joel Terrace, Mount Lawley (owner: KD & RR Sharpe); and*
3. *No. 46 Joel Terrace, East Perth (owner: LJ & MR Hichliffe); and*

- (c) *the owners of the following properties have been served 'House Unfit for Habitation' Notices in accordance with sections 135, 136, 137 and 139 of the Health Act 1911 (as amended) and as appropriate;*
1. *No. 103 Harold Street, Highgate (Pacific Motel) (owner: GR Pennells & RJ Begley);*
 2. *No. 147 Chelmsford Road, North Perth (owner: D Gorenstein); and*
 3. *No. 471 Beaufort Street, Highgate (owner: A Yozzi);*
- (iii) *NOTES that the dwellings at the following properties have been, or are in, the process of being demolished:*
1. *No. 386 William Street, Perth (owner: Lim & Lim Holdings Pty Ltd);*
 2. *No. 86 Grosvenor Road, Mount Lawley (owner: Estate of the Late N Cloonan-Hall);*
 3. *Nos. 208-212 Beaufort Street, Perth (owner: Major Holdings Pty Ltd & G T Gunning); and*
 4. *Nos. 204 – 228 East Parade, Mount Lawley (owner: Department of Planning and Infrastructure properties, WA Planning Commission);*
- (iv) *NOTES that demolition licence applications have recently been received in relation to the following properties:*
1. *No. 1 Irene Street, Perth;*
 2. *Nos. 36 and 38 Summers Street, Perth;*
 3. *No. 134 Alma Road, North Perth; and*
 4. *No. 116 Broome Street, Mount Lawley; and*
- (v) *NOTES that monitoring of the following properties will be undertaken in accordance with compliance timeframes set-out in Notices issued:*
1. *No. 58 Joel Terrace, East Perth;*
 2. *No. 388 William Street, Perth;*
 3. *No. 441 William Street, Perth;*
 4. *No. 137 Walcott Street, Mount Lawley;*
 5. *No. 20 Monmouth Street, Mount Lawley;*
 6. *Nos. 152 – 158 Fitzgerald Street, West Perth;*
 7. *No. 325 Charles Street, North Perth;*
 8. *No. 332 Charles Street, North Perth;*
 9. *No. 103 Harold Street, Highgate (Pacific Motel);*
 10. *No. 46 Joel Terrace, East Perth;*
 11. *No. 147 Chelmsford Road, North Perth; and*
 12. *No. 471 Beaufort Street, Highgate).*

COUNCIL DECISION ITEM 9.1.10

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED "EN BLOC" (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

To provide information relating to the progress and status of compliance action taken, in relation to statutory notices recently issued to the owners of substandard and dilapidated buildings, within the Town.

BACKGROUND:

The Council decision from the Ordinary Meeting of Council held on 24 March 2009, relating to Item 9.1.10 is detailed as follows:

“That the Council;

- (i) *RECEIVES the report regarding the substandard buildings Progress Report as at 23 March 2009 within the Town that are resulting in ongoing nuisance and community safety concerns;*
- (ii) *NOTES that the Chief Executive Officer will take the following action under Delegated Authority:*
 - (a) *the owners of the following properties will be served ‘Take Down and Remove’ Notices in accordance with sections 137 and 138 of the Health Act 1911 (as amended):*
 - 1. *No. 1 Irene Street, Perth (owner: T P Nguyen & Q T To);*
 - 2. *No. 58 Joel Terrace, East Perth (owner: FDS Enterprises Pty Ltd);*
 - 3. *No. 116 Broome Street, Highgate (pending consideration detailed in this report) (owner: Benjamin & Co Pty Ltd);*
 - 4. *No. 388 William Street, Perth (owner: Lim & Lim Holdings Pty Ltd);*
 - 5. *No. 441 William Street, Perth (owner: CS & JS Lau & MK De Almeida);*
 - 6. *No. 36 Summers Street, Perth (owner: EG Custodian Services Pty Ltd);*
 - 7. *No. 38 Summers Street, Perth (owner: EG Custodian Services Pty Ltd);*
 - 8. *No. 137 Walcott Street, Mount Lawley (owner: Skybridge Holdings Pty Ltd);*
 - 9. *No. 20 Monmouth Street, Mount Lawley (owner: Skybridge Holdings Pty Ltd);*
 - 10. *Nos. 152 – 158 Fitzgerald Street, West Perth (owner: North Perth Developments Pty Ltd);*
 - 11. *No. 325 Charles Street, North Perth (owner: Codesign Pty Ltd);*
 - 12. *No. 332 Charles Street, North Perth (pending consideration detailed in this report) (owner: A Vujasin);*
 - 13. *No. 288 Lord Street, Perth (pending consideration detailed in this report) (owner: JNI Developments Pty Ltd & Others); and*
 - 14. *No. 134 Alma Road, North Perth (owner: VV Dong & TT Dinh);*
 - (b) *the owners of the following properties will be served a ‘Renovation Notice’ in accordance with section 409 of the Local Government (Miscellaneous Provisions) Act 1960;*
 - 1. *No. 103 Harold Street, Highgate (Pacific Motel) (owner: GR Pennells & RJ Begley);*
 - 2. *No. 125 Joel Terrace, Mount Lawley (owner: KD & RR Sharpe); and*
 - 3. *No. 46 Joel Terrace, East Perth (owner: LJ & MR Hichliffe);*

- (c) *the owners of the following properties will be served 'House Unfit for Habitation' Notices in accordance with sections 135, 136, 137 and 139 of the Health Act 1911 (as amended) and as appropriate;*
1. *No. 103 Harold Street, Highgate (Pacific Motel) (owner: GR Pennells & RJ Begley);*
 2. *No. 147 Chelmsford Road, North Perth (owner: D Gorenstein); and*
 3. *No. 471 Beaufort Street, Highgate (owner: A Yozzi); and*
- (d) *Town's Officers will closely monitor the progress of the following properties:*
1. *No. 386 William Street, Perth (owner: Lim & Lim Holdings Pty Ltd);*
 2. *No. 86 Grosvenor Road, Mount Lawley (owner: Estate of the Late N Cloonan-Hall);*
 3. *No. 30 Flinders Street, Mount Hawthorn (owner: MV Pham);*
 4. *Nos. 208-212 Beaufort Street, Perth (owner: Major Holdings Pty Ltd & G T Gunning);*
 5. *No. 42 Guilford Road, Mount Lawley (owner: Department of Planning and Infrastructure properties, WA Planning Commission), and*
 6. *Nos. 204 – 228 East Parade, Mount Lawley (owner: Department of Planning and Infrastructure properties, WA Planning Commission)."*

DETAILS:

All *Health Act 1911* Notices were issued during the period 2-6 April 2009. The timeframes for compliance specified in the Notices ranged from 30-60 days, subject to the degree of dilapidation, risk to the community, and reasonable expectation of property owners being able to complete the required works within a stipulated time period.

Of the twelve (12) properties to have not yet reached the compliance timeframe expiration date, positive discussion with the owners of seven (7) of the following properties has occurred:

1. No. 388 William Street, Perth;
2. No. 441 William Street, Perth;
3. No. 137 Walcott Street, Mount Lawley;
4. No. 20 Monmouth Street, Mount Lawley;
5. No. 332 Charles Street, North Perth;
6. No. 147 Chelmsford Road, North Perth; and
7. No. 471 Beaufort Street, Highgate.

None of the three (3) *Local Government (Miscellaneous Provisions) Act 1960* Notices issued on 6 April 2009 have been complied with within the timeframes specified:

1. **No. 103 Harold Street, Highgate** – The owners' representative has indicated in a letter dated 15 May 2009 that they seek abeyance with respect to the Town's Notice dated 6 April 2009, pending the outcome of their Development Application currently being processed by the Town's Planning, Building and Heritage Services. The letter also outlines that works to secure the site and to seal doors and windows has been scheduled.
2. **No. 125 Joel Terrace, Mount Lawley** – The owner's of the property appealed the Notice to the State Administrative Tribunal. A Directions Hearing took place on 14 May 2009 at which time the owners advised that they where intending to submit an application for demolition of the property. At the Directions Hearing the owners requested that the notice be held in 'abeyance' until such time as the application for demolition had been considered by the Town. Mediation has been scheduled for 26 May 2009 to further discuss this.
3. **No. 46 Joel Terrace, Mount Lawley** – The Town received a letter from the property owner on 1 May 2009 advising of his intention to redevelop the property, and requesting information be provided to assist with the proposed development application.

CONSULTATION/ADVERTISING:

Nil required.

LEGAL POLICY:

Health Act 1911 (as amended); *The Local Government (Miscellaneous Provisions) Act 1960*; and Draft Amended Council Policy 3.8.5 – ‘*Substandard Buildings and Vacant Land*’.

STRATEGIC IMPLICATIONS:

Town of Vincent Strategic Plan 2009 – 2014:

“Improve and Maintain the Environment and Infrastructure:

1.1.4 - Minimise negative impacts on the community and environment.

(h) Continue to improve aesthetics and amenity and encourage regeneration of degraded buildings, and vacant land.

Community Development:

3.1.2 Provide and develop a range of community programs and community safety initiatives.

(e) Investigate how the Town can improve and enhance the safety of residents, visitors and property.

Leadership, Governance and Management

4.1.2 – Manage the Organisation in a responsible, efficient and accountable manner.

(c) Adopt Strategies for improving and enhancing the quality of services, procedures and processes.”

SUSTAINABILITY IMPLICATIONS:

By eliminating the large number of uninhabitable dilapidated buildings within the Town, amenity and safety of the area will be significantly improved. It is envisaged that this will have a flow-on effect, encouraging surrounding property owners to regenerate existing properties and/or to maximise their development potential.

FINANCIAL/BUDGET IMPLICATIONS:

In the instance of an owner not complying with either of the three (3) Notice types issued under the *Health Act 1911* (two types), and *Local Government (Miscellaneous Provisions) Act 1960* (one type), the Town may act in default and recover all costs from the property owner.

Demolition works are likely to cost between \$10,000 for cottage sized dwellings and up to \$16,000 for larger dwellings. Renovation works required under section 409 of the *Local Government (Miscellaneous Provisions) Act 1960* are likely to cost between \$5,000-\$20,000, with renovation works required under the Sections 135, 136, 137 and 139 of the *Health Act 1911* likely to cost between \$20,000-\$100,000.

It should be noted that the Town will only carry out demolition or essential repairs as a last resort and only where danger to the community is evident.

COMMENTS:

Further progress reports will be presented to the Council in the future.

9.2.2 Proposed 5 Minute Pick Up and Set Down Bay – Lake Street, Perth

Ward:	South	Date:	11 May 2009
Precinct:	Hyde Park (P12)	File Ref:	PKG0007
Attachments:	001		
Reporting Officer(s):	T Blankenburg		
Checked/Endorsed by:	A Munyard, R Lotznicker	Amended by:	

OFFICER RECOMMENDATION:

That the Council;

- (i) **RECEIVES** the report on the introduction of a five (5) minute parking bay in Lake Street; in front of the Northbridge Hotel;
- (ii) **APPROVES** the introduction of the five (5) minute parking bay to be in place at all times, as illustrated on attached Plan 2652-PP-1;
- (iii) **PLACES** a moratorium on issuing infringement notices for a period of two (2) weeks from the installation of the new parking restriction signs; and
- (iv) **INFORMS** the applicant of the Council's decision.

COUNCIL DECISION ITEM 9.2.2

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED "EN BLOC" (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to inform the Council of a request received from the Manager of the Hotel Northbridge requesting the Town to investigate a way to facilitate the dropping off and picking up of patrons of the hotel in a safe and orderly manner.

BACKGROUND:

The Town received correspondence from the Manager of the Hotel Northbridge with a request to convert the parking in the hotel's Lake Street frontage into a taxi zone.

DETAILS:

The Town's Officers consulted with the management of the Hotel Northbridge about their requirements. Their concern was taxis and other vehicles stopping in the street to drop off or pick up hotel patrons. As the existing parking bays were often in use, drivers are required to stop in the roadway and block traffic. One option to address this issue was to provide a short term (5 minute) parking bay in front of the hotel, for the express purpose of picking up and setting down passengers. It was considered that this option, while not exclusively for taxis, would cater for the variety of vehicles likely to require the use of the facility in front of the hotel.

CONSULTATION/ADVERTISING:

No consultation was carried out as the applicant is the one who is likely to be impacted most by the modification to this parking bay.

LEGAL/POLICY:

There is no legal consequence of the recommendation.

STRATEGIC IMPLICATIONS:

In accordance with the objective of Strategic Plan 2009-2014 – 1.1.6 Enhance and maintain the Town's infrastructure to provide a safe, healthy, sustainable and functional environment. *“(a) implement adopted annual infrastructure upgrade programs, including streetscape enhancements, footpaths, rights of way, car parking and roads.”*

SUSTAINABILITY IMPLICATIONS:

N/A

FINANCIAL/BUDGET IMPLICATIONS:

Implementing parking restrictions in Lake Street will require the manufacture and installation of two (2) new signs and will cost approximately \$200.00.

COMMENTS:

The proposed bay will provide a facility where people can stop to pick up and drop off passengers. While predominantly of benefit to the Hotel Northbridge, it will also provide a benefit to nearby businesses as it will provide a place where customers can be dropped off to access the area.

9.2.5 Further Report - Acquisition and Vesting of Rights of Way Legs Providing Access to 394-398 Newcastle Street, Perth

Ward:	South	Date:	20 May 2009
Precinct:	Beaufort P13	File Ref:	TES3657
Attachments:	001		
Reporting Officer(s):	A Munyard, R Lotznicker		
Checked/Endorsed by:	-	Amended by:	

OFFICER RECOMMENDATION:

That the Council

- (i) *RECEIVES the further report on the acquisition and vesting of right of way legs which are accessible to 394-398 Newcastle Street, Perth;*
- (ii) *NOTES that the matter was advertised in accordance with the requirements of the Land Administration Act and the responses received are discussed in the report;*
- (iii) *APPROVES the acceptance of a vesting order over the rights of way for the reasons as outlined in the report; and*
- (iv) *ADVISES the applicant, his consultants and the respondents of its decision.*

COUNCIL DECISION ITEM 9.2.5

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED "EN BLOC" (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to advise the Council of the outcome of advertising and consultation regarding the acquisition by the Crown of two (2) right of way (ROW) legs which are accessible to 394-398 Newcastle Street, Perth.

BACKGROUND:

At its Ordinary Meeting held on 27 May 2008, the Council approved a development at 394-398 Newcastle Street, Perth subject to a number of conditions. Two of these conditions related to the applicant securing legal access over the adjacent ROW, and ceding land to widen the ROW to a satisfactory width.

The following decision was made (in part):

- "(xix) prior to the issue of a Building Licence, a legal right of access through the adjacent private right of way must be established and endorsed on the title of the development lot, to the satisfaction of the Town;*
- (xx)(d) the right-of-way being widened by a minimum of 1.5 metres, a 1.5 metres by 1.5metres truncation being provided at the intersection of the right of way and Newcastle Street, and such land ceded to the Town at the applicant's/owner's expense."*

The Council further decided that:

"(xxiii) vehicular access from Newcastle Street shall be restricted to left in, left out only, and that the existing medium island on Newcastle Street shall be extended to facilitate this restriction to the satisfaction of the Town's Technical Services, at the developer's/owner's expense."

At its Ordinary Meeting held on 22 July 2008, the Council approved the acquisition and vesting of the two (2) ROW legs as shown on attached Plan No D4069, P1080, P1479 subject to the outcome of the statutory advertising and consultation with other stakeholders.

DETAILS:

Overview:

The ROW legs in question are privately owned, and at present the adjacent property located at 394-398 Newcastle Street does not have a legal right to their use. A large commercial development is proposed for 394-398 Newcastle Street with access to car parking proposed from the ROW off Newcastle Street, which the developer proposes to widen by ceding 1.5m of the development site. The access issue can be resolved by the ROWs being acquired by the Crown for the purpose of "reserve for access".

The developer of 394-398 Newcastle Street has agreed to cover all costs associated with the process and has appointed a consultant to assist in achieving all the statutory requirements.

Advertising of the Proposal:

In order to achieve this outcome, the Town was required to follow the following processes:

- Write to all adjacent property owners who have an implied or expressed right of access through the ROW legs.
- Write to all service authorities who may have infrastructure which may be affected by the change in status of the ROW
- Advertise the proposal in a newspaper circulating the State seeking public comment.

Separate letters were written to those with rights of access through each ROW (known as Lot 66 and Lot 67).

During the consultation period, two (2) responses were received from the adjacent property owners of Lot 66, both posing "No Objection" and one (1) joint response was received from the owners of the two properties adjacent to Lot 67, the smaller leg which gives out onto Fitzgerald Street.

In the joint response, the property owners expressed concerns regarding a potential increase in the number of vehicles using the ROW which runs between their buildings which are built at a nil setback regarding noise and potential damage to their buildings.

Responses were also received from all affected service authorities (i.e. Water Corporation, Western Power, Telstra and WestNet Energy) all posing "No Objection".

No responses were received from the separate newspaper advertisements which were placed in the West Australian on 10 September 2008.

Officers Comments:

As a condition of development approval for the Newcastle Street development, vehicular access from Newcastle Street was to be restricted to left in, left out only by extending the existing medium Island on Newcastle Street to facilitate the restriction.

This condition raised the possible acquisition of the existing privately owned 'sealed and drained' ROW which runs (perpendicular) between the existing ROW legs adjacent 394-398 Newcastle Street to Fitzgerald Street.

While an objection was received from the two commercial property owners who have a legal right to use this ROW leg, regarding a potential increase in the number of vehicles, noise and potential damage to their buildings, it is considered that this ROW link is required from a traffic management viewpoint given the proposed left in left out restriction at the Newcastle Street ROW egress/access.

As has been previously implemented in other similar instances, bollards can be strategically placed adjacent the building/s to minimise potential property damage and speed humps installed to manage traffic speeds in the ROW.

It is therefore recommended that the ROW leg which runs (perpendicular) between the existing ROW leg adjacent 394-398 Newcastle Street to Fitzgerald Street also be acquired by the Crown for the purpose of "reserve for access" to facilitate the development. The developer of 394-398 Newcastle Street will be required to pay for any improvements to this ROW leg e.g. bollards, speed humps, signage etc.

CONSULTATION/ADVERTISING:

The proposal was advertised in accordance with statutory requirements.

LEGAL/POLICY:

Once the ROWs are rendered public ways, and their care and control vested in the Town, their maintenance will become the Town's responsibility. The developer of the adjacent Newcastle Street property is required to cede 1.5 m of his Lot to widen the ROW opening onto Newcastle Street (Lot 66). The developer is also required to upgrade the widened ROW to the satisfaction of the Town.

STRATEGIC IMPLICATIONS:

In accordance with the objective of Strategic Plan 2009-2014 – 1.1.6 Enhance and maintain the Town's infrastructure to provide a safe, healthy, sustainable and functional environment. *"(a) implement adopted annual infrastructure upgrade programs, including streetscape enhancements, footpaths, rights of way, car parking and roads."*

FINANCIAL/BUDGET IMPLICATIONS:

The developer is required to meet all costs associated with the acquisition of the ROWs. The developer is also required to upgrade the ROW to the satisfaction of the Town and pay for any improvements, e.g. bollards, speed humps, signage etc.

COMMENTS:

The Council has approved the development proposed for the site, 394-398 Newcastle Street. The development cannot proceed until legal access has been obtained through the adjacent ROW. The Crown's acquisition of the ROWs and subsequent vesting with the Town will render them public accessways, and will enable a high standard of development of the adjacent properties. It is recommended that the Council approve accepting the vesting of the ROWs.

9.3.2 Authorisation of Expenditure for the Period 1 – 30 April 2009

Ward:	Both	Date:	7 May 2009
Precinct:	All	File Ref:	FIN0009
Attachments:	001		
Reporting Officer(s):	Kara Ball		
Checked/Endorsed by:	Bee Choo Tan	Amended by:	

OFFICER RECOMMENDATION:

That the Council CONFIRMS the;

- (i) *Schedule of Accounts for the period 1 April – 30 April 2009 and the list of payments;*
- (ii) *direct lodgement of payroll payments to the personal bank account of employees;*
- (iii) *direct lodgement of PAYG taxes to the Australian Taxation Office;*
- (iv) *direct lodgement of Child Support to the Australian Taxation Office;*
- (v) *direct lodgement of creditors payments to the individual bank accounts of creditors; and*
- (vi) *direct lodgement of Superannuation to Local Government and City of Perth superannuation plans.*

as shown in Appendix 9.32.

COUNCIL DECISION ITEM 9.3.2

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED “EN BLOC” (8-0)

(Cr Farrell was an apology for the meeting.)

DECLARATION OF INTEREST

Members/Officers	Voucher	Extent of Interest
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Nil.

PURPOSE OF REPORT:

To seek authorisation of expenditure for the period 1 – 30 April 2009.

BACKGROUND:

The Local Government Act provides for all payments to be approved by the Council. In addition the attached Schedules are submitted in accordance with Item 13 of the Local Government (Finance Management) Regulations 1996.

DETAILS:

The Schedule of Accounts to be passed for payment, cover the following:

FUND	CHEQUE NUMBERS/ PAY PERIOD	AMOUNT
Municipal Account		
Town of Vincent Advance Account	EFT	\$1,021,612.30
Total Municipal Account		\$1,021,612.30
Advance Account		
Automatic Cheques	65649-66050	\$395,947.45
EFT Batch		\$0.00
Municipal Account		
Transfer of Creditors by EFT Batch	907-908, 910-912, 914	\$1,487,087.86
Transfer of PAYG Tax by EFT	April 2009	\$294,035.17
Transfer of GST by EFT	April 2009	\$0.00
Transfer of Child Support by EFT	April 2009	\$1,127.13
Transfer of Superannuation by EFT:		
• City of Perth	April 2009	\$78,134.14
• Local Government	April 2009	\$265,764.29
Total		\$2,522,096.04
Bank Charges & Other Direct Debits		
Bank Charges – CBA		\$5,696.72
Lease Fees		\$19,571.18
Corporate Master Cards		\$9,962.04
Folding Machine Lease Equipment		\$0.00
Trace Fees – Audit Certificate		
Loan Repayment		\$59,208.28
Rejection Fees		\$12.50
System Disk Fee		\$0.00
Beatty Park - miscellaneous deposit		\$0.00
Total Bank Charges & Other Direct Debits		\$94,450.72
Less GST effect on Advance Account		-\$34,469.00
Total Payments		\$3,603,690.06

STRATEGIC IMPLICATIONS:

Strategic Plan 2009-2014 – Key Result Area 4.1.2 – Governance and Management

“Manage the organisation in a responsible, efficient and accountable manner.”

ADVERTISING/CONSULTATION:

Nil.

COMMENT:

Vouchers, supporting invoices and other relevant documentation are available for inspection by Councillors at any time following the date of payment and are laid on the table.

9.3.3 Financial Statements as at 30 April 2009

Ward:	Both	Date:	5 May 2009
Precinct:	All	File Ref:	FIN0026
Attachments:	001 ; 002		
Reporting Officer(s):	B Tan		
Checked/Endorsed by:	M Rootsey	Amended by:	

OFFICER RECOMMENDATION:

That the Council RECEIVES the Financial Statements for the month ended 30 April 2009 as shown in Appendix 9.3.3.

COUNCIL DECISION ITEM 9.3.3

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED “EN BLOC” (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to present the financial statements for the month ended 30 April 2009.

BACKGROUND:

Regulation 34(1) of the Local Government (Financial Management) Regulations 1996 requires a local government to prepare each month a statement of financial activity reporting on the sources and applications of funds, as set out in the budget.

A financial activity statements report is to be in a form that sets out:

- the annual budget estimates;
- budget estimates to the end of the month to which the statement relates;
- actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;
- material variances between the year-to-date income and expenditure and totals and the relevant annual budget provisions for those totals from 1 July to the end of the period;
- includes such other supporting notes and other information as the local government considers will assist in the interpretation of the report.

A statement of financial activity and any accompanying documents are to be presented to the Council at the next Ordinary Meeting of the Council following the end of the month to which the statement relates, or to the next ordinary meeting of council after that meeting.

In addition to the above, under Regulation 34(5) of the Local Government (Financial Management) Regulations 1996, each financial year a local government is to adopt a percentage of value, calculated in accordance with AAS 5, to be used in statements of financial activity for reporting material variances.

DETAILS:

The following documents represent the Statement of Financial Activity for the period ending 30 April 2009:

- Income Statement;
- Summary of Programmes/Activities (pages 1-17);
- Income Statement by Nature & Type Report (page 18)
- Capital Works Schedule (pages 19-25);
- Balance Sheet and Statement of Changes in Equity (pages 26-27);
- Reserve Schedule (page 28);
- Debtor Report (page 29);
- Rate Report (page 30);
- Statement of Financial Activity (page 31);
- Net Current Asset Position (page 32);
- Beatty Park Report – Financial Position (page 33);
- Variance Comment Report (page 34-37).

Comments on the financial performance are set out below:

Income Statement and Detailed Summary of Programmes/Activities

Operating Result

The operating result is Operating Revenue – Operating Expenses

YTD Actual	-	\$5.0
YTD Budget	-	\$3.3
Variance	-	\$1.7
Full Year Budget	-	\$4.9

Summary Comments:

The current favourable variance is due to increase revenue received as outlined below.

Operating Revenue

YTD Actual	-	\$31.5
YTD Budget	-	\$31.3
YTD Variance	-	\$0.2
Full Year Budget	-	\$32.8

Summary Comments:

The total operating revenue is currently on budget.

Major variances are to be found in the following programmes:

Governance - 26% over budget;

Education and Welfare - 41% under budget;

Other Property & Services - 31% over budget;

Administration General -148% under budget;

More details variance comments are included on the page 34 – 37 of this report.

Operating Expenditure

YTD Actual	-	\$27.6
YTD Budget	-	\$28.8
YTD Variance	-	-\$1.2
Full Year Budget	-	\$33.7

Summary Comments:

The operating expenditure is currently operating at 3% under the year to date budget.

The major variance for expenditure is located in the following programmes:

Law Order and Public Safety- 12% below budget;

Education & Welfare – 14% below budget;

Community Amenities – 12% below budget;

Transport – 12% below budget

Other Property & Services – 18% over budget;

Detailed variance comments are included on the page 34 – 37 of this report.

Income Statement by Nature and Type Report

This income statement shows operating revenue and expenditure are classified by nature and type.

Capital Expenditure Summary

The Capital Expenditure summary details projects included in the 2008/09 budget and reports the original budget and compares actual expenditure to date against these.

Capital Works shows total expenditure including commitment for year to date at the 30 April 2009 of \$6,068,092 which represents 49 % of the revised budget of \$12,418,263.

	Budget	Revised Budget	Actual to Date (Include commitment)	%
Furniture & Equipment	163,850	213,687	125,966	59%
Plant & Equipment	1,520,700	974,345	335,702	34%
Land & Building	3,952,834	2,954,564	1,596,587	54%
Infrastructure	8,502,612	8,275,667	4,009,837	48%
Total	14,139,996	12,418,263	6,068,092	49%

Balance Sheet and Statement of Changes in Equity

The statement shows the current assets of \$16,087,807 and non current assets of \$142,179,901 for total assets of \$158,267,708.

The current liabilities amount to \$6,604,604 and non current liabilities of \$13,111,449 for the total liabilities of \$19,716,053. The net asset of the Town or Equity is \$138,551,655.

Restricted Cash Reserves

The Restricted Cash Reserves schedule details movements in the reserves including transfers, interest earned and funds used, comparing actual results with the annual budget.

The balance as at 30 April 2009 is \$8.0m. The balance as at 30 June 2008 was \$6.8m.

General Debtors

Other Sundry Debtors are raised from time to time as services are provided or debts incurred. Late payment interest of 11% per annum may be charged on overdue accounts. Sundry Debtors of \$348,586 is outstanding at the end of April 2009.

Of the total debt \$142,307 (40%) relates to debts outstanding for over 60 days, of which \$122,643 is related to Cash in lieu Parking.

The Debtor Report identifies significant balances that are well overdue.

Finance has been following up outstanding items with debt recovery by issuing reminders when it is overdue and formal debt collection if reminders are ignored.

Rate Debtors

The notices for rates and charges levied for 2008/09 were issued on the 6 August 2008.

The Local Government Act 1995 provides for ratepayers to pay rates by four instalments.

The due dates for each instalment are:

First Instalment	25 August 2008
Second Instalment	27 October 2008
Third Instalment	5 January 2009
Fourth Instalment	3 March 2009

To cover the costs involved in providing the instalment programme the following charge and interest rates apply:

Instalment Administration Charge	\$5.00
(to apply to second, third, and fourth instalment)	
Instalment Interest Rate	5.5% per annum
Late Payment Penalty Interest	11% per annum

Pensioners registered with the Town for rate concessions do not incur the above interest or charge.

Rates outstanding as at 30 April 2009 was \$511,244 which represents 2.75% of the outstanding collectable income compared to 3.5% at the same time last year.

Summary Comments:

The reduced percentage amount of outstanding rates in comparison to last year is due to the fact that the Rates Notices were distributed approximately one (1) month earlier than last year and a more efficient debt collection process.

The minimum rates are under budget due to increased valuations following the revaluation which has reduced the number of minimum rates assessments and resulted in the increased number of general rates.

The Interim rates are under budget due to significant refunds of contested valuation with the Valuer General Office.

Statement of Financial Activity

The closing surplus carry forward for the year to date 30 April 2009 was \$2,348,146.

Net Current Asset Position

The net current asset position \$2,348,146.

Beatty Park – Financial Position Report

As at 30 April 2009 the operating deficit for the Centre was \$224,951 in comparison to the annual budgeted deficit of \$522,615.

The cash position showed a current cash surplus of \$135,204 in comparison annual budget estimate of a cash deficit of \$63,586. The cash position is calculated by adding back depreciation to the operating position.

Variance Comment Report

The comments will be for the favourable or unfavourable variance of greater than 10% of the year to date budgeted.

9.4.1 Leederville Oval (Medibank Stadium) Ground Management Committee - Receiving of Unconfirmed Minutes - 14 May 2009

Ward:	South	Date:	18 May 2009
Precinct:	Oxford Centre, P4	File Ref:	RES0078
Attachments:	001		
Reporting Officer(s):	M McKahey, John Giorgi		
Checked/Endorsed by:	-	Amended by:	-

OFFICER RECOMMENDATION:

That the Council RECEIVES the Unconfirmed Minutes of the Leederville Oval (Medibank Stadium) Ground Management Committee Meeting held on 14 May 2009, as shown in Appendix 9.4.1.

COUNCIL DECISION ITEM 9.4.1

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

CARRIED "EN BLOC" (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of the report is for the Council to receive the Unconfirmed Minutes of the Leederville Oval (Medibank Stadium) Ground Management Committee meeting held on 14 May 2009.

BACKGROUND:

At the Ordinary Meeting of Council held on 26 October 2004, the Council considered the establishment of a Committee for the management of Leederville Oval (now known as "Medibank Stadium") and resolved inter alia as follows;

"That the Council APPROVES BY AN ABSOLUTE MAJORITY;

- (i) pursuant to Section 5.9(2)(c) of the Division 2, Part No. 5 of the Local Government Act 1995, to establish a Committee for the management of Leederville Oval ("Ground Management Committee");*
- (ii) in accordance with the lease between the Town and East Perth Football Club (EPFC) and Subiaco Football Club (SFC), to APPOINT the Chief Executive Officer to the Committee and invites EPFC and SFC to also nominate a representative;*
- (iii) to delegate the following functions to the Committee;*
 - (a) to determine the Clubs' rights (day-to-day) to use the facilities;*
 - (b) to consider and make representation to the Town for alternative training grounds;*

- (c) *to determine day-to-day operational issues, (including catering, advertising, sponsorship, turf maintenance, cleaning, security, ticketing, use of car park);*
 - (d) *to establish and review Key Performance Indicators (KPIs);*
 - (e) *to establish and review Risk Management Plans;*
 - (f) *to consider any request for temporary structures;*
 - (g) *to make recommendations for the maintenance of the common area;*
 - (h) *to make recommendations on Capital Improvements;*
 - (i) *to make recommendations on catering and formalise a catering policy; and*
 - (j) *to do other such things with respect to management of Leederville Oval; and*
- (iv) *the KPIs be referred back to Council for adoption."*

CONSULTATION/ADVERTISING:

N/A.

LEGAL/POLICY:

It is the Town's practice that Committee Meeting Minutes be reported to the Council.

STRATEGIC IMPLICATIONS:

This is in keeping with the Town's Strategic Plan 2009-2014 - "*Leadership, Governance and Management*", in particular, Objective 4.1.2 - "*Manage the Organisation in a responsible, efficient and accountable manner.*"

SUSTAINABILITY IMPLICATIONS:

Not applicable.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

The reporting of the Town's Committee Minutes to the Council Meeting is in keeping with the Local Government Act 1995 and its regulations.

9.2.3 Further Report, Traffic Management Matter referred to Local Area Traffic Management Advisory Group, Anzac Road Leederville/Mount Hawthorn

Ward:	North	Date:	19 May 2009
Precinct:	Mt Hawthorn P1 Mt Hawthorn Centre P2	File Ref:	TES0021 & TES0264
Attachments:	001		
Reporting Officer(s):	R Lotznicker, C Wilson		
Checked/Endorsed by:	-	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

- (i) *RECEIVES the further report on Traffic Management Matter referred to the Town's Local Area Traffic Management Advisory Group;*
- (ii) *NOTES the comments contained in the report on the outcome of the Local Area Traffic Management Advisory Group meeting of 19 March 2009 and the further information/investigations undertaken following the meeting;*
- (iii) *APPROVES IN PRINCIPLE the proposal to modify the intersection of Anzac Road/Loftus Street as shown on attached Plan No 2646-CP-01;*
- (iv) *CONSULTS with residents regarding the proposal in accordance with the Town's consultation Policy; and*
- (v) *RECEIVES a further report on the matter at the conclusion of the consultation period.*

COUNCIL DECISION ITEM 9.2.3

Moved Cr Messina, Seconded Cr Ker

That the recommendation be adopted.

Debate ensued.

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to seek the Council's in principle approval for improvements at the intersection of Anzac Road and Loftus Street.

BACKGROUND:

The LATM Advisory Group meets, as required, to consider requests received by the Town relating to Traffic and related safety issues. The Group considers these requests and, where warranted, the Group's recommendations are reported to the Council.

At its Ordinary Meeting held on 23 September 2008 the Council made the following decision (in part).

"That the Council;

(ii) REFERS "Anzac Road, Leederville/Mount Hawthorn & Marmion Street, North Perth" to the Town's Local Area Traffic Management Advisory Group for consideration; and

(iii) RECEIVES a further report on the matter following consideration by the Town's Local Area Traffic Management Advisory Group."

DETAILS:

The LATM Advisory Group Meeting -19 March 2009:

The LATM advisory group considered the Anzac Road matter at its meeting held on 19 March 2009, at which 19 members of the public were in attendance.

The group was advised that a petition had been received requesting that Anzac Road be blocked off at Loftus Street and that the matter had been referred to the Local Area Traffic Management (LATM) Group by the Council.

The group was further advised that in terms of both speed and volume, Anzac Road complied with its classification of a Local Distributor road, with data collected in February 2009 indicating an 85% speed of 50.4 and 51.8 respectively, with a traffic volume of 1,088 vehicles per day (consistent since 2002 and the traffic volume had dropped slightly).

The following discussion/s took place (in summary)

- Concerns regarding the 15% of vehicles that travel above 85% speed
- Visibility at Shakespeare/Anzac and concerns about crashes at this location
- More data required, i.e. directional speeds
- Perception that vehicles are speeding
- Concerns that closure at Anzac/Loftus would adversely affect Harrow Street
- Poor record of consultation with regard to altering calming measure
- Signatures to petition were passionate regarding the issues
- Classifiers should also be deployed in Salisbury Street
- Concerns raised regarding traffic in Harrow Street and small children
- Trial partial closure of Anzac/Loftus should be considered
- Previous measures not implemented
 - Approach islands to accommodate additional signage
 - Additional speed hump outside No. 43 Anzac
- Harrow Street difficult to access due to parked cars and essentially a single lane road
- Need to do a number plate survey
- Minutes of meeting to be included in Information Bulletin plus posted on website
- Suggest more testing - would the Town collect more data before decision?
- More specific data on accident/incident on Anzac/Shakespeare intersection
- Advanced warning signs for intersection Anzac/Shakespeare to be investigated
- Anything that increases traffic flow in Harrow Street is totally unacceptable

The group was further advised that the traffic speeds and volume on Harrow Street were very low and the parked cars acted as a speed regulating device and that both Anzac and Harrow were in an inner city location surrounded by higher order roads and, given this, speeds and traffic volumes on both roads would not justify any further intervention measures.

Conclusions/Actions:

The following conclusions resulted from the meeting:

1. Undertake a number plate survey.
2. Closure of the road is not supported as an option for the following reasons:
 - Local distributor status - contrary measure to road function
 - Motorists in the area will be forced to use "lower order" access road
 - Traffic volumes and speeds well within classification criteria, i.e. only 1,000+ vpd (maximum allowed 6,000) - no justification to close
 - Existing intersection restricted to left in left out currently
 - No accident history with current configuration
 - More difficult for emergency service vehicles to access area
 - Possible anti social behaviour and security in dead end street with reduced activation
3. The intersection of Loftus/Anzac be examined and a concept plan prepared for narrowing the approach to give the street a more residential feel.
4. Examine recorded crash data at the Shakespeare/Anzac intersection.
5. Look at more intervention options if justified in the future - Note
6. Further report to Council.
7. Consultation with residents.
8. Further report to Council with recommendations following consultation.

It was also advised:

1. Minutes of the meeting would be included in the Council Information Bulletin.
2. Minutes of the meeting would be posted on the Town's website.
3. Vehicle classifiers would be deployed in Marian and Salisbury Streets.

Origin and Destination Surveys:

Number plate surveys were undertaken over two days on Tuesday 5 May and Thursday 7 May 2009 (following the school holidays) during the morning peak (8.00am to 9.00am) period and the evening peak (16.00pm to 17.00pm) period to assess traffic movements within the area. The intersections accessed were as follows:

- Anzac/Loftus
- Anzac/Harrow
- Harrow/Scarborough Beach Road
- Shakespeare/Anzac
- Anzac/Oxford

The Town's officers were positioned at the above locations during these times and physically observed vehicle movements and recorded numberplates.

Anzac Road, Shakespeare and Harrow Streets are bounded by District Distributor Roads (Loftus/Scarborough Beach Road/Oxford Street). Given the very high traffic volumes on these higher order roads during the assessment period, it was surprising how relatively few vehicles used Anzac Road/Harrow and Shakespeare Streets, providing very little justification for the need for a road closure.

The results of the origin/destination survey undertaken is summarised as follows:

Morning (AM) Peak Hourly Flows:

Intersection	Movement	VPH 5 May 09	VPH 7 May 09	Average %
Loftus/Anzac	<i>Loftus left into Anzac</i>	28	29	51.5
	Anzac left into Loftus	25	23	43.5
	ROW left into Anzac	3	2	4.5
	Anzac left into ROW	-	1	0.5
Total		56	55	100
Anzac/Harrow	Anzac right into Harrow	-	1	4
	Anzac left into Harrow	6	2	31
	<i>Harrow right into Anzac</i>	8	5	50
	Harrow left into Anzac	2	2	15
Total		16	10	100
Harrow/Scarb Bch Rd	Harrow left into Scarborough Beach	2	7	19
	Scarborough Beach left into Harrow	6	7	30
	Harrow right into Scarborough Beach	3	1	10
	<i>Scarb Beach right into Harrow</i>	6	9	34
	Harrow to stop	2	1	7
Total		19	25	100
Anzac/Shakespeare	Anzac right into Shakespeare heading North	5	4	3
	<i>Anzac travelling West</i>	40	51	24.5
	Anzac left into Shakespeare heading North	6	9	4
	Anzac travelling East	25	30	15
	Shakespeare travelling South	25	33	15.5
	Shakespeare travelling North	33	32	18
	Shakespeare right into Anzac from North	13	17	8
	Shakespeare left into Anzac from North	-	2	0.5
	Shakespeare right into Anzac from South	-	3	1
	Shakespeare left into Anzac from South	-	24	5
	Anzac left into Shakespeare heading South	-	2	0.5
	Anzac rt into Shakespeare heading South	-	23	5
Total		147	230	100
Anzac/Oxford	<i>From Anzac onto Oxford roundabout</i>	87	95	60
	Into Anzac from Oxford roundabout	62	59	40
Total		149	154	100

As can be seen from the above data, the predominant AM Peak Traffic flows are as follows:

Intersection	Movement	VPH 5 May 09	VPH 7 May 09	Average VPH
Loftus/Anzac	Loftus left into Anzac	28	29	28.5
Anzac/Harrow	Harrow right into Anzac	8	5	6.5
Harrow/Scarb Bch	Scarb Beach right into Harrow	6	9	7.5
Anzac/Shakespeare	Anzac travelling West	40	51	45.5
Anzac/Oxford	From Anzac onto Oxford roundabout	87	95	91

Evening (PM) Peak Hourly Flows:

Intersection	Movement	VPH 5 May 09	VPH 7 May 09	Average %
Loftus/Anzac	<i>Loftus left into Anzac</i>	63	69	63
	Anzac left into Loftus	33	38	34.5
	ROW left into Anzac	4	-	2
	Anzac left into ROW	1	-	0.5
	Total	101	107	100

Anzac/Harrow	Anzac right into Harrow	12	8	36
	<i>Anzac left into Harrow</i>	12	12	43
	Harrow right into Anzac	6	3	16
	Harrow left into Anzac	1	2	5
	Total	31	25	100

Harrow/Scarb Bch Rd	<i>Harrow left into Scarb Beach Rd</i>	17	36	46.5
	Scarborough Beach Road left into Harrow	8	8	15.5
	Harrow right into Scarborough Beach Road	4	12	13.5
	Scarborough Beach Road right into Harrow	11	15	24.5
	Harrow to stop	-	-	-
Total	40	71	100	

Anzac/Shakespeare	Anzac right into Shakespeare heading North	7	4	3
	<i>Anzac travelling West</i>	61	70	32.5
	Anzac left into Shakespeare heading North	8	12	4.5
	Anzac travelling East	38	46	21
	Shakespeare travelling South	8	8	4
	Shakespeare travelling North	21	22	10.5
	Shakespeare right into Anzac from North	8	6	3.5
	Shakespeare left into Anzac from North	3	4	2
	Shakespeare right into Anzac from South	2	2	1.5
	Shakespeare left into Anzac from South	13	25	9.5
	Anzac left into Shakespeare heading South	1	4	1.5
	Anzac right into Shakespeare heading South	14	13	6.5
	Total	184	216	100

Anzac/Oxford	<i>From Anzac onto Oxford roundabout</i>	95	104	59
	Into Anzac from Oxford roundabout	66	72	41
Total	161	176	100	

As can be seen from the above data the predominant PM Peak flows are as follows:

Intersection	Movement	VPH 5 May 09	VPH 7 May 09	Average VPH
Loftus/Anzac	Loftus left into Anzac	63	69	66
Anzac/Harrow	Anzac left into Harrow	12	12	12
Harrow/Scarb Bch	Harrow left into Scarb Beach Road	17	36	26.5
Anzac/Shakespeare	Anzac travelling West	61	70	65.5
Anzac/Oxford	From Anzac onto Oxford roundabout	95	104	99.5

Officer's Comments:

As can be seen from the results, the predominant movements are east - west along Anzac Road with the PM hourly peak traffic flow recording a higher count than the AM peak flow. This can be attributed to the left in left out configuration at Anzac/Loftus and that the PM peak flow is predominantly out of the CBD (i.e. northbound along Loftus Street).

Rat running Anzac/Harrow/Scarab Bch Road to avoid the Loftus/Scarab Bch Road lights was negligible, however, it was noticed that a number of vehicles used the ROW to the north of Anzac Road between Loftus Street and Harrow Street to access Scarab Bch Road. It was also observed that several vehicles in the AM peak period travelling east along Anzac Road undertook a 'U - Turn' at the nose of the Loftus island to travel south along Loftus Street.

MRWA will be requested to install a no U turn sign at this location and additional speed humps will be installed in the ROW to deter rat runners.

Given the status of Anzac Road, as a local distributor and Harrow Street as an Access Road the data indicates that the traffic in these streets (given their geographic location in the road network) during both the AM and PM peak periods, falls well within, and in fact well below their classification. During the assessment, officers commented that there were long periods with no vehicles in both these street while the adjoining higher order roads had a steady and continuous heavy flow of traffic.

The intersection of Loftus/Anzac:

The group considered that the intersection of Loftus/Anzac be examined and a concept plan prepared for narrowing the approach to give the street a more residential feel. Concept plan 2646-CP-01 has been prepared and comprises the following:

- Reduced width egress/access lane widths to 3.55m wide
- Nibs to allow protected on road parking
- Approach/exit raised plateaux
- Landscaped nibs
- Realigned/Extended centre median island with tree plantings

Recorded crash data at the Shakespeare/Anzac intersection:

In April 2009 Main Roads WA released the annual five (5) year 'Black Spot' accident statistics for the period 1 January 2004 to 31 December 2008, upon which the State and National Black Spot programs are based. The criteria for an intersection to be included on the black spot list is a minimum of five (5) reported accidents within a five (5) year period. The intersection of Anzac Road and Shakespeare Street was not amongst the list of intersections within the Town that qualified.

Further Main Roads website's *Intersection Crash Ranking* Interactive Report lists the intersection as having a State Frequency Ranking of No. 3,432.

There were four (4) reported accidents for the period of which three (3) were considered minor in nature, usually vehicle damage only, while the fourth, involving a motorcycle, resulted in an unspecified injury being sustained

Other Miscellaneous matters discussed/raised

Concerns regarding the 15% of vehicles that travel above 85% speed

Anzac Road - Shakespeare to Harrow		
	West Bound	East Bound
Speed (Kph)	%	%
less than 20	1.2	1.1
20 - 30	4.0	3.3
30 - 40	24.3	19.9
40 - 50	50.2	52.0
50 - 60	17.9	21.6
60 - 70	2.3	2.0
70 - 80	0.1	0.1
80 - 90	-	-
<u>Total</u>	<u>100.0</u>	<u>100.0</u>

Anzac Road - Shakespeare to Harrow		
Volume (vph)		
am	38	37
pm	80	42
Volume (vpd)	583	494

Anzac Road - Harrow to Loftus		
	West Bound	East Bound
Speed (Kph)	%	%
less than 20	2.2	2.2
20 - 30	5.0	8.2
30 - 40	19.7	23.6
40 - 50	60.0	45.6
50 - 60	12.4	18.6
60 - 70	0.6	1.6
70 - 80	0.1	0.2
80 - 90	-	-
<u>Total</u>	<u>100.0</u>	<u>100.0</u>

Volume (vph)		
am	29	37
pm	77	41
Volume (vpd)	533	467

Harrow Street - Anzac to Scarb Bch Road		
	North Bound	South Bound
Speed (Kph)	%	%
less than 20	19.4	20.2
20 - 30	34.2	26.0
30 - 40	23.4	31.0
40 - 50	18.5	20.3
50 - 60	3.8	2.1
60 - 70	0.6	0.3

Harrow Street - Anzac to Scarb Bch Road (cont'd)		
	North Bound	South Bound
Speed (Kph)	%	%
70 - 80	0.1	0.1
80 - 90	-	-
<u>Total</u>	<u>100.0</u>	<u>100.0</u>
Volume (vph)		
am	11	12
pm	19	14
Volume (vpd)	139	152

The speed environment of a road is determined by the 85% speed. For Anzac Road the 85% speed is 51.8 kph (Shakespeare to Harrow) and 50.4 kph (Harrow to Loftus). For Harrow Street the 85% speed is 42.8 kph. As mentioned at the recent LATM Advisory Group meeting, every road in the Town (and the metropolitan area) would require extensive traffic calming in an attempt to address the very small percentage of motorists who travel in excess of 60 kph. This equates on average to less than 1.0% in Anzac road and to less than 0.3% in Harrow Street.

Classifiers should also be deployed in Salisbury Street

Classifiers will be deployed and the results reported to a future LATM Advisory Group meeting.

Previous measures not implemented (*Approach islands to accommodate additional signage/additional speed hump outside No. 43 Anzac*)

Approach Islands in Shakespeare Street

"Investigate measures to enhance the 'Stop' control in Shakespeare Street including pruning/removal of the adjacent street trees and the installation of approach median islands to accommodate additional signage."

The street trees either side of the intersection were pruned within a week of the meeting, including the removal of a significant branch from the street tree closest to the intersection on the south western truncation.

In respect of the installation of approach islands in Shakespeare Street, this was investigated by Technical Services officers. The carriageway width in Shakespeare Street is 6.2m while the Anzac Road carriageway is 12.1m wide. In order to install the minimum standard 1.5m wide islands in Shakespeare Street, the road would have had to be widened by 1.1m either side (allowing for the kerb) on both legs of the intersection, for a distance of approximately 20.0m plus tapers. This would have had significant impact upon the streetscape/verges including the loss of street trees and cost in excess of \$30,000.

Given that the intersection had already been modified to improve sight distances and reduce the speed of traffic in Anzac Road with the installation of speed humps either side of the intersection, there was little to be gained in installing approach islands in Shakespeare Street.

Additional Speed Hump outside No. 43 Anzac Road.

"Consider the installation of an additional mid-block speed hump (Oxford Street to Shakespeare Street) near No. 43 to reduce traffic speed when approaching the Shakespeare Street intersection east bound."

In order to consider the installation of an additional speed hump, a traffic classifier was deployed outside No. 43 Anzac Road. In short, the average speed was 43.6 kph while the 85% speed was 50.8 kph, both well within acceptable limits. Therefore, in light of the results the installation of an additional speed hump at this location was not considered warranted.

Advanced warning signs for intersection Anzac/Shakespeare to be investigated

Main Roads WA is responsible for all regulatory signage and therefore any advanced warning signs require their approval. In order to control the proliferation of signs Main Roads apply strict eligibility criteria and generally advanced warning signs are not erected on access roads. Therefore, while the Town can make application to Main Roads (for installation of advanced warning signs) the request is unlikely to succeed. Further, the request would be partly assessed on the number of accidents, as discussed elsewhere in the report, and considered a countermeasure if there were enough accidents to meet the criteria.

CONSULTATION/ADVERTISING:

It is recommended that residents be consulted regarding the proposal in accordance with the Town's consultation Policy.

LEGAL/POLICY:

N/A.

STRATEGIC IMPLICATIONS:

In accordance with the objective of Strategic Plan 2009-2014 – 1.1.6 Enhance and maintain the Town's infrastructure to provide a safe, healthy, sustainable and functional environment. *“(a) implement adopted annual infrastructure upgrade programs, including streetscape enhancements, footpaths, rights of way, car parking and roads.”*

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

The draft 2009/2010 budget includes \$25,000 for improvements at Anzac/Loftus

COMMENTS:

The Town receives many requests for Traffic Management from time to time. Most requests received are addressed by the officers as vehicle classifier results usually indicate that there is a perceived problem rather than an actual problem. Other matters are referred to the Police Services for enforcement of the legal speed limit.

Following consideration by the Town's LATM Advisory Group, a way forward was recommended which is the subject of this report. It is therefore recommended that the officer's recommendation be adopted.

9.1.5 No. 64 (Lot: 251 D/P: 302357 and Lot: 79 D/P: 672) Mary Street, Highgate - Proposed Partial Demolition of Existing Presbytery, Alterations and Additions to Parish Office and Construction of Two-Storey Presbytery

Ward:	South	Date:	15 May 2009
Precinct:	Hyde Park; P12	File Ref:	PRO2984; 5.2008.566.1
Attachments:	001_002		
Reporting Officer(s):	D Pirone, S Kendall		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by John Flower Architect Pty Ltd on behalf of the owner Roman Catholic Archbishop for proposed Partial Demolition of Existing Presbytery, Alterations and Additions to Parish Office and Construction of Two-Storey Presbytery, at No. 64 (Lot: 251 D/P: 302357 and Lot: 79 D/P: 672) Mary Street, Highgate, and as shown on plans stamp-dated 29 April 2009, subject to the following conditions:

- (i) a Demolition Licence shall be obtained from the Town prior to commencement of any demolition works on the site;*
- (ii) an archival documented record of the place(s) including photographs (internal, external and streetscape elevations), floor plans and elevations for the Town's Historical Archive Collection shall be submitted and approved prior to the issue of a Demolition Licence;*
- (iii) all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), are designed integrally with the building, and be located so as not to be visually obtrusive;*
- (iv) any new street/front wall, fence and gate within the Mary Street setback area including along the side boundaries within this street setback area, shall comply with the following:*
 - (a) the maximum height being 1.8 metres above the adjacent footpath level;*
 - (b) the maximum height of piers with decorative capping being 2.0 metres above the adjacent footpath level;*
 - (c) the maximum height of the solid portion of the wall being 1.2 metres above the adjacent footpath level, and a minimum of fifty percent visually permeable above 1.2 metres;*
 - (d) the piers having a maximum width of 355 millimetres and a maximum diameter of 500 millimetres;*
 - (e) the distance between piers should not be less than the height of the piers except where pedestrian gates are proposed; and*

- (f) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level;*
- (v) *prior to the issue of a Building Licence, revised plans shall be submitted and approved demonstrating the balcony to bedroom 2 on the northern elevation, being screened with a permanent obscure material and be non-openable to a minimum of 1.6 metres above the finished first floor level. A permanent obscure material does not include a self-adhesive material or other material that is easily removed. Alternatively, prior to the issue of a Building Licence, these revised plans are not required if the Town receives written consent from the owners of No. 68 Mary Street stating no objection to the respective proposed privacy encroachments.*
- The revised plans shall not result in any greater variation to the requirements of the Residential Design Codes and the Town's Policies;*
- (vi) *a detailed landscaping plan which complements the heritage property and screens the proposed car bay from the street, including a list of plants and the landscaping of the Mary Street verge adjacent to the subject property, shall be submitted and approved prior to the issue of a Building Licence. The landscaping of the verge shall include details of the proposed watering system to ensure the establishment of species and their survival during the hot, dry summer months. The Council encourages landscaping methods which do not rely on reticulation. Where reticulation is not used, the alternative method should be described. All such works shall be undertaken prior to the first occupation of the development, and maintained thereafter by the owner(s)/occupier(s);*
- (vii) *no street verge tree(s) shall be removed unless written approval has been received from the Town's Parks Services. Should such an approval be granted all cost associated with the removal and replacement shall be borne by the applicant/owner(s);*
- (viii) *prior to the issue of a Building Licence, the subject land shall be amalgamated into one lot on Certificate of Title; OR alternatively, prior to the issue of a Building Licence the owner(s) shall enter into a legal agreement with and lodge an appropriate assurance bond/bank guarantee to the satisfaction of the Town, which is secured by a caveat on the Certificate(s) of Title of the subject land, prepared by the Town's solicitors or other solicitors agreed upon by the Town, undertaking to amalgamate the subject land into one lot within 6 months of the issue of the subject Building Licence. All costs associated with this condition shall be borne by the applicant/owner(s); and*
- (ix) *the gross floor area of the office shall be limited to 108 square metres.*

COUNCIL DECISION ITEM 9.1.5

Moved Cr Ker, Seconded Cr Messina

That the recommendation be adopted.

Debate ensued.

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

Landowner:	Roman Catholic Archbishop
Applicant:	John Flower Architect Pty Ltd
Zoning:	Metropolitan Region Scheme: Urban Town Planning Scheme No. 1 (TPS 1): Residential R80
Existing Land Use:	Presbytery and Parish Office
Use Class:	Presbytery and Parish Office
Use Classification:	“AA”
Lot Area:	835 square metres
Access to Right of Way	East side, 3 metres wide, sealed, privately owned North side, 3 metres wide, sealed, privately owned

BACKGROUND:

No specific background directly relates to the proposal.

DETAILS:

The proposal involves the demolition of the existing presbytery and the construction of a two-storey presbytery, as well as minor alterations and additions to the parish office.

ASSESSMENT:

Non-Compliant Requirements			
Requirements	Required	Proposed *	Officer Comments Pursuant to Clause 38(5) of TPS 1
Density:	4.6 dwellings at R80	1 dwelling/Presbytery	Noted – no variation.
Plot Ratio:	N/A	N/A	Noted.
Building Height:	Maximum height of 7 metres for a concealed roof.	Maximum proposed height = 7.8 metres.	Supported – the variation in height exists at the point of the lift shaft only, which is considered an architectural design feature. Furthermore, the lift shaft portion of the proposed dwelling is located adjacent to the right of way and the church next door and will, therefore, not have an undue impact on the amenity of the neighbouring residential property and the streetscape. All other portions of the proposed dwelling are compliant with the height requirements of the R Codes.
Privacy Setbacks: -Balcony to Bedroom 2	7.5 metres	3.2 metres	Not supported – considered to have an undue impact on the neighbouring property. Condition applied for the balcony to be screened to a minimum of 1.6 metres.

Car Parking	
Car parking requirement (nearest whole number) - Office (108 square metres) – requires 2.16 car bays	= 2 car bays
Apply the adjustment factors. ▪ 0.85 (within 400 metres of a bus stop) ▪ 0.80 (contains a mix of at least 45 per cent residential)	(0.68) = 1.36 car bays
Minus the car parking provided on-site	1 car bay
Minus the most recently approved on-site car parking shortfall.	N/A
Resultant shortfall *The Town's Parking and Access Policy states that if the shortfall is equal to or less than 0.5, no car bays or cash-in-lieu is required.	0.36 car bays*
Consultation Submissions	
Support	Nil
Objection (2)	<ul style="list-style-type: none"> • Privacy • Supported – all major openings to habitable rooms are required to be setback or screened in accordance with the R Codes.
Other Implications	
Legal/Policy	TPS 1 and associated Policies, and Residential Design Codes (R Codes).
Strategic Implications	Nil
Financial/Budget Implications	Nil
Sustainability Implications	Nil

* The representative R Coding and density bonus calculations are provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

* The plot ratio calculation is provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

COMMENTS:

Heritage

The subject property at No. 64 Mary Street is listed on the Town's Municipal Heritage Inventory as a Management Category A – Conservation Essential, as part of the Sacred Heart Group comprising the subject place, the Church of the Sacred Heart and the Sacred Heart Convent and School.

Neither the subject building nor the adjacent Church of the Sacred Heart is included within the Heritage Council of Western Australia's (HCWA) State Register of Heritage Places curtilage for the Sacred Heart Convent and School. However, the Town has been verbally advised by HCWA that this registration may be updated to include other elements around the site in due course and that the subject application required referral to HCWA.

In light of the above, and in order to comply with the HCWA requirements, the subject application was referred to the HCWA for comment. On 27 February 2009, the Town received advice from HCWA stating that the Development Committee considered the matter on 17 February 2009 and that the Committee did not support the new build, for the following reasons:

1. *The new build is not sympathetic with the adjacent Sacred Heart Church and could have a negative impact on the place.*
2. *As per Policy 12.6 of the Conservation Plan, new buildings should not dominate the significant building and buildings over a one storey height limit are generally not appropriate. (It is to be noted that the Conservation Plan referenced was prepared for the Sacred Heart Church and relates to new buildings on the Sacred Heart Church site and not No. 64 Mary Street).*
3. *A two-storey build may be possible if it is sympathetic to the adjacent Sacred Heart Church.*

The Town's Officers and representatives from the HCWA met with the applicant on two occasions in order to address the Development Committee's concerns. Whilst the proposal did not change markedly, the applicant did reduce the material palette of the eastern elevation, which was identified by the HCWA representatives as the main area of concern. The matter was reconsidered at the Development Committee meeting on 21 April 2009 in which the Committee resolved that the proposed new build was still unsympathetic and requires a complete redesign.

The Town's Officers appreciate the HCWA Officers support and assistance in the progression of the application. However, the Town's Officers consider the proposed amended development acceptable as per the attached Heritage Impact Statement and consider it to comply with the Town's Policies relating to Heritage Management - Development Guidelines. Most notably the Town's Officers consider the eastern elevation and its refined material palette to provide interest to what is currently a bland and uninviting area, along the right of way, further unifying this cultural collection of buildings.

To ensure that such a contrary recommendation would not be breach of the requirements of *The Heritage of Western Australia Act 2004*, advice was sought from the HCWA legal advisor, who advised in an email received by the Town on 28 April 2009:

"Given the distance of the presbytery from the convent, and the lack of any apparent effect of the proposed additions on the heritage significance of the convent, we are hard-pressed to say that the proposal "may affect" a registered place, for the purpose of invoking s. 11 of the Heritage of Western Australia Act 1990 (the Heritage Act). Although an enlarged curtilage has been proposed that, if adopted, would possibly be affected by the proposed works on the presbytery, at the present time the curtilage has not been enlarged. Accordingly, the advice of the Heritage Council is not binding, although of course we would like to see the Town comply with our advice."

Overall, it is considered that the design of the new development will not detract from the prominence and character of the heritage building or undermine the existing spatial and visual characteristics of the adjacent Church and, as such, Heritage Services have no objection to the proposal.

Conclusion

In light of the above, it is recommended that Council approve the application subject to standard and appropriate conditions to address the above matters.

9.1.6 No. 40 (Lot: 32 D/P: 384) Ruth Street, Dual Frontage to Edith Street, Perth - Proposed Signage Addition to Existing Single House – Application for Retrospective Approval

Ward:	South	Date:	18 May 2009
Precinct:	Hyde Park; P12	File Ref:	PRO3176; 5.2009.84.1
Attachments:	001		
Reporting Officer(s):	D Pirone		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by the owner A D Roebuck & A Sita for proposed Signage Addition to Existing Single House – Application for Retrospective Approval, at No. 40 (Lot: 32 D/P: 384) Ruth Street, Dual Frontage to Edith Street, Perth, and as shown on plans stamp-dated 19 March 2009, subject to the following conditions:

- (i) *the signage shall not have flashing or intermittent lighting;*
- (ii) *all signage shall be kept in a good state of repair, safe, non-climbable, and free from graffiti for the duration of its display on-site; and*
- (iii) *all signage shall not extend beyond any lot boundary, therefore not protruding over Council property, including footpaths or a neighbour's property.*

COUNCIL DECISION ITEM 9.1.6

Moved Cr Doran-Wu, Seconded Cr Lake

That the recommendation be adopted.

Debate ensued.

MOTION PUT AND CARRIED (7-1)

For: Mayor Catania, Cr Burns, Cr Doran-Wu, Cr Ker, Cr Maier, Cr Messina, Cr Youngman

Against: Cr Lake

(Cr Farrell was an apology for the meeting.)

Landowner:	A D Roebuck & A Sita
Applicant:	A Sita
Zoning:	Metropolitan Region Scheme: Urban Town Planning Scheme No. 1 (TPS 1): Residential R80
Existing Land Use:	Single House
Use Class:	Single House
Use Classification:	"P"
Lot Area:	324 square metres
Access to Right of Way	N/A

BACKGROUND:

- 8 June 2005 The Town under delegated authority from the Council conditionally approved an application for additions, alterations and a front fence to the existing single house.
- 23 January 2006 The Town under delegated authority from the Council conditionally approved an application for the alterations and additions to the garage, carport and store of the existing single house.
- 31 March 2008 The Town under delegated authority from the Council conditionally approved an application for the partial demolition of existing garage, and garage, games room and study, including loft additions to existing single house.
- 2 September 2008 The Town issued a Building Licence for the partial demolition of existing garage, and garage, games room and study, including loft additions to existing single house.

DETAILS:

The proposal involves an application for retrospective approval for the wall sign located on the approved and constructed garage/studio fronting Edith Street.

The applicant's submission is "*Laid on the Table*" and summarised as follows:

- The new Edith Street façade to the property was architecturally designed to be in keeping with the original home's historic character, as well as incorporating some of the design features used in other buildings of the area both historical and modern.
- The colours used on the facade and the intended cedar garage door for the property, are similar to the colours and materials used in the apartments located at Nos. 16-26 Edith Street, Perth.
- The concrete rendered finish of the façade repeats the surface finish of many of the buildings on Edith Street.
- The curved architectural feature of the façade repeats the curves of the building located on the corner of Edith and Lake Streets, Perth.
- The distinct left and right sides to the façade, emulate the high density housing located on Edith Street.
- The signage on the façade repeats similar signage in the streets surrounding Ruth and Edith Streets, namely signage in Ruth Street, Lake Street, Bulwer Street, Brisbane Street and William Street.
- The unauthorised signage on the Edith Street façade is used as a design element of the building to break up the large expanse of wall forming the façade. Without the decoration, it is unlikely that the façade would have a human scale to passers by.
- The unauthorised signage is merely a building name and date stamp of construction. We are unaware of any company or business in Western Australia trading or known as ADRAS BUILDING.
- It should also be noted that the lettering on the Edith Street façade of our property is only a small fraction of the total area of the façade.
- The lettering of the signage is a light grey colour so that the lettering would blend further into the dark grey background colour and be less domineering on the façade to passers-by and our neighbours.
- The lettering on the façade is sign-written in paint rather than being made of raised lettering, not only to make it less domineering on the façade but to also allow any future owners of the property with the ability to easily remove the signage if they so wish.

In relation to the alleged unauthorised use, the applicant has advised the Town of the following:

“We make no secret that we the owners of 40 Ruth Street – PERTH are also the directors of a private company known as Adras Property Pty Ltd. We also confirm that we have a website for our private company located at www.adrasproperty.com.au. Further, we confirm that 40 Ruth Street, PERTH is the registered postal address for the private company.

As far as we are aware, there is nothing illegal or unauthorised in owning a private company, having a website or using that website to provide information to the public which may include documentation, images and wording pertaining not only to our business activities but also our private interests such as, renovating and restoring old buildings, travel and food. Further, it is not illegal or unauthorised to receive general postal correspondence for the company via a residential address... Adras Property Pty Ltd does not use the residential address of 40 Ruth Street, Perth to conduct any fixed or passing business trade and any minor home occupation activities that do occur from the residence, do not breach any of the rules and regulations held by the Town of Vincent, concerning such matters.”

ASSESSMENT:

Non-Compliant Requirements			
Requirements	Required	Proposed *	Officer Comments Pursuant to Clause 38(5) of TPS 1
Plot Ratio:	N/A	N/A	Noted – no variation.
Signs and Advertising Policy:	Wall sign on a residential building shall not exceed 0.2 square metre.	1.68 square metres	Supported – see “Comments”.
Consultation Submissions			
Support (4)	<ul style="list-style-type: none"> • Commendation to a substantial and sympathetic building. • Not prominent. • Adds interest and character to the building. • The signage is in keeping with the old-fashioned look of their house. 	<ul style="list-style-type: none"> • Noted. • Noted. • Noted. • Noted. 	
Objection (5)	<ul style="list-style-type: none"> • The building is being used as a home occupation in which is the signage is associated. • The non-conforming signage reinforces the impression that the building is commercial. • The signage is out of proportion to the streetscape and far in excess of a “house name”. • The proposed signage will encourage customers of No. 40 Ruth Street to use Edith Street as a car park. 	<ul style="list-style-type: none"> • Not supported – see “Comments”. 	

Other Implications	
Legal/Policy	TPS 1 and associated Policies, and Residential Design Codes (R Codes).
Strategic Implications	Nil
Sustainability Implications	Nil
Financial/Budget Implications	Nil

* The plot ratio calculation is provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

COMMENTS:

Signage

The proposed painted wall sign illustrates the name of the building, which is an incorporation of the names and letters of the two owners. The signage is written in a neat upper case font and states the following:

“The Adras Building 2008”.

The signage is not considered to have an undue impact on the Edith Street streetscape appearance, as the proposed signage covers 3.5 per cent of the total façade of the building fronting Edith Street and attempts to reduce the bulkiness of the 6 metre high gabled wall that was approved by the Town under delegated authority from the Council on 31 March 2009. The signage is innocuous in nature and is not dissimilar to other buildings which are ‘named’ in the Town.

Alleged Unauthorised Use of Premises

The Town received a written enquiry regarding the alleged unauthorised use of the property for business purposes. The Town has investigated the matter and subsequently received written confirmation from the owners that the home occupation operating from the property complies with all of the criteria of the Town’s Minor Nature Development Policy relating to home occupations, and is therefore not required to obtain Planning Approval from the Town.

Conclusion

In light of the above, it is recommended that Council approve the application for retrospective approval, subject to standard and appropriate conditions to address the above matters.

9.1.4 No. 150 (Lot 350 D/P: 2001) Joel Terrace, Mount Lawley - Proposed Additional Grouped Dwelling with Undercroft Garage to Existing Single House

Ward:	South	Date:	18 May 2009
Precinct:	Banks; P15	File Ref:	PRO3938; 5.2009.72.1
Attachments:	001		
Reporting Officer(s):	S Kendall		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by RM Davey & Associates on behalf of the owner H & D E Schoolland for proposed Additional Grouped Dwelling with Undercroft Garage to Existing Single House, at No. 150 (Lot 350 D/P: 2001) Joel Terrace, Mount Lawley, and as shown on plans stamp-dated 8 May 2009 , subject to the following conditions:

- (i) *all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), are designed integrally with the building, and be located so as not to be visually obtrusive;*
- (ii) *no street verge tree(s) shall be removed unless written approval has been received from the Town's Parks Services. Should such an approval be granted all cost associated with the removal and replacement shall be borne by the applicant/owner(s);*
- (iii) *first obtaining the consent of the owners of No. 152 Joel Terrace for entry onto their land, the owners of the subject land shall finish and maintain the surface of the boundary wall facing No. 152 Joel Terrace in a good and clean condition;*
- (iv) *prior to the issue of a Building Licence, revised plans shall be submitted and approved demonstrating:*
 - (a) *any new street/front wall, fence and gate within the Joel Terrace setback area, including along the side boundaries within this street setback area, complying with the following:*
 - (1) *the maximum height being 1.8 metres above the adjacent footpath level;*
 - (2) *the maximum height of piers with decorative capping being 2.0 metres above the adjacent footpath level;*
 - (3) *the maximum height of the solid portion of the wall being 1.2 metres above the adjacent footpath level, and a minimum of fifty percent visually permeable above 1.2 metres;*
 - (4) *the piers having a maximum width of 355 millimetres and a maximum diameter of 500 millimetres;*

- (5) *the distance between piers should not be less than the height of the piers except where pedestrian gates are proposed; and*
- (6) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level;*
- (b) *the portion of the northern property boundary wall commencing from the point of the kitchen to the proposed eastern strata boundary shall be a maximum height of 1.8 metres; and*
- (c) *the driveway being no closer than 0.5 metre to the southern side boundary.*

The revised plans shall not result in any greater variation to the requirements of the Residential Design Codes and the Town's Policies;

- (v) *no fill, building material, sediment, rubbish or any other deleterious matter shall be placed on the Parks and Recreation Reserve or allowed to enter the river as a result of vegetation clearing or development of the proposed residence;*
- (vi) *stormwater drainage shall be contained on the site, or connected to the local government stormwater drainage system; and*
- (vii) *the development shall be connected to the reticulated sewerage system prior to occupation.*

NOTE:

1. *The Swan River Trust have recommended that any native vegetation on the subject lot be maintained where possible and incorporated into landscaping.*

COUNCIL DECISION ITEM 9.1.4

Moved Cr Messina, Seconded Cr Maier

That the recommendation be adopted.

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

Landowner:	H & D E Schoolland
Applicant:	RM Davey & Associates
Zoning:	Metropolitan Region Scheme: Urban Town Planning Scheme No. 1 (TPS 1): Residential R60
Existing Land Use:	Single House
Use Class:	Grouped Dwelling
Use Classification:	"P"
Lot Area:	2119 square metres
Access to Right of Way	N/A

BACKGROUND:

No specific background directly relates to the proposal.

DETAILS:

The proposal involves the construction of an additional dwelling at the subject site, which comprises an existing single house.

In support of the application, the applicant has provided the following comments:

- *"The two properties to our immediate north are existing homes set well back... and will on all accounts be re-developed in the future.*
- *There is a large steady tree between the rear of the proposed residence and the existing garage, which the clients are anxious to retain.*
- *The location of the home on the site allows best access with minimal falls to enable wheelchair access to courtyards.*
- *The street has many other dwellings much closer than this home.*
- *The site is zoned R60 and the additional dwelling is well within the R Code requirements."*

ASSESSMENT:

Non-Compliant Requirements			
Requirements	Required	Proposed *	Officer Comments Pursuant to Clause 38(5) of TPS 1
Density	11 dwellings at R60	2 dwellings	Noted - no variation.
Plot Ratio	N/A	N/A	Noted.
Building Setbacks			
Primary Street (Joel Terrace)	In line with predominant street setback (17.23 metres)	Minimum 3 metres Average 4 metres	Supported - refer to Officer Comment section.
Building to northern boundary	6.1 metres	1.5 metres	Supported - not considered to have an undue impact on adjoining property or amenity of street. No objections were received during advertising.
Building to southern boundary	5.5 metres	4.8 - 5.2 metres	Supported - not considered to have an undue impact on adjoining property or amenity of street.

Side boundary wall/dividing fence	Maximum height 1.8 metres	<p>Maximum 3.5 for a small proportion of northern boundary to provide screening to living area.</p> <p>An average of 2 metres for balance of wall.</p>	<p>Supported - not considered to have an undue impact on adjoining property and as no objections were received during advertising. In this instance, the wall can be considered commensurate to building on boundary for which the property is able to have up to 75 metres in length and to a maximum height of 3.5 metres.</p> <p>Not supported - as determined by the Town of Vincent Fencing Local Law a sufficient fence is 1.8 metres. Conditioned to comply and as this additional over height portion is not serving a screening purpose.</p>
Retaining	Not to exceed 0.5 metre	Up to 1.8 metres retaining along a portion of northern boundary	Supported - the subject lot has a significant 3 metre slope from Joel Terrace down to the proposed eastern strata boundary and the retained portion, which is behind the street setback, provides an opportunity for a levelled courtyard area along the northern boundary. The location and extent of the retaining will have a minimal impact on the amenity of the adjoining property. No objections were received during advertising.
Building Height for concealed roof	Two storey - 7 metres	7.2 metres	Supported - the over height portion of roof is located in the centre of the block and is resultant from the significant 3 metre slope from Joel Terrace down to the proposed eastern strata boundary. The dwelling, which presents as a single storey dwelling, does not dominate the streetscape or result in overshadowing or privacy issues.

Roof form	Hipped roof pitches between 30 and 45 degrees encouraged.	A concealed roof	Supported - the RDE's Policy states that in some residential areas there may be more opportunity for innovative design and architectural styles and, in these instances, the Town may consider alternative roof forms to a pitch roof style. Whilst the majority of roof forms along Joel Terrace are of a hipped nature, it is considered that the lack of consistency in architectural style along the eastern side of the street creates an opportunity to encourage and support this innovative and contemporary design.
Building Articulation	Any portion of wall greater than 9 metres to incorporate horizontal or vertical articulation.	A portion of the northern elevation - 11.32 metres A portion of the southern elevation - 16 metres	Supported - the variation is minor and not considered to have an undue impact on the adjoining property or the amenity of the street. No objections were received during advertising. Supported - the applicant has provided articulation in the form of different material finishes, such as rendered brick work and cedar panels to reduce the impact of the elevation. This, coupled with the significant 5.3 metre setback, is considered sufficient in this instance.
Street Walls and Fences	Walls in front setback area, including along the side boundaries are to be solid to a maximum height of 1.2 metres.	Solid to 2 metres along side boundaries.	Not Supported - considered to impact on streetscape and conditioned to comply.
Driveways	No closer to 0.5 metre to a side boundary.	Abutting the southern boundary.	Not Supported - conditioned to comply.

Privacy			
Front Living Room to northern boundary.	6 metres or screening.	2.2 metres	Supported - there is a lesser need to prevent overlooking to areas which are visible from the street.
Consultation Submissions			
Support (3)	No comment provided.		Noted.
Objection (3)	<ul style="list-style-type: none"> - Loss of light and privacy in courtyard. - Excessive Heights compared to Council requirements. - This is a single residential block neighbouring a unit development. For single residential blocks, the setback is predominantly more. 		<p>Not Supported - the development complies with the R Code overshadowing and privacy requirements.</p> <p>Not supported - the height variation is minor and results from the significant slope of the block.</p> <p>Not supported - as noted in the above Officer Assessment Table, the subject site can accommodate 11 dwellings on site and is not a single residential block. The setback is consistent with those dwellings along its southern boundary.</p>
Other Implications			
Legal/Policy			TPS 1 and associated Policies, and Residential Design Codes (R Codes).
Strategic Implications			Nil
Sustainability Implications			Nil
Financial/Budget Implications			Nil

* The plot ratio calculation is provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

COMMENTS:

Swan River Trust

The subject property abuts the Swan River Trust Management Area and, therefore, the development application was referred to the Swan River Trust for comment. In a letter dated 3 April 2009, the Swan River Trust advised it had no objection to the proposal, subject to the following conditions and advice note, which have been incorporated into the Officer Recommendation:

1. *"No fill, building material, sediment, rubbish or any other deleterious matter shall be placed on the Parks and Recreation Reserve or allowed to enter the river as a result of vegetation clearing or development of the proposed residence.*

2. *Stormwater drainage shall be contained on the site, or connected to the local government stormwater drainage system.*
3. *The development shall be connected to the reticulated sewerage system prior to occupation.*

Advice to Applicant:

1. *The Trust recommends that any native vegetation on the subject lot be maintained where possible and incorporated into landscaping."*

Street Setbacks

Joel Terrace currently comprises an eclectic range of housing stock with original Federation Bungalows and more recent grouped dwelling and large multi-unit style developments. The original Federation Bungalows were built on large blocks with river frontages and significant street setbacks. One such dwelling in the immediate vicinity of the subject place has an approximate 84 metre street setback. Newer grouped dwellings and large multi-unit style developments have reduced setbacks ranging from 3 to 6 metres.

The Residential Design Elements Policy (RDE's) requires street setbacks to be determined by the '*average setback of the 5 adjoining properties on each side of the development*'. The average street setback required for this development is 17.2 metres. In this instance, such a significant street setback is not considered reasonable, nor will it result in a development which will positively contribute to the evolving Joel Terrace streetscape. Rather, the setback as proposed, which conforms to the street setback of the southern adjacent properties, is considered acceptable.

Summary

The application proposes variations to the acceptable development standards of the Residential Design Elements Policy; however, the proposal clearly satisfies the Performance Criteria for each of these variations. The development is not considered to compromise the streetscape but rather contribute to its emerging range of styles and built form. In light of the above, it is recommended that the Council approve the subject application, subject to standard and appropriate conditions to address the above matters.

9.1.7 Nos. 103–105 (Lot: 100 D/P: 75367) Oxford Street, Leederville - Proposed Demolition of Existing Temporary Car Park and Construction of Seven (7) Storey Commercial Development Comprising Four (4) Shops, Three (3) Offices and Associated Car Parking.

Ward:	South	Date:	20 May 2009
Precinct:	Oxford Centre; P04	File Ref:	PRO0452; 5.2008.580.1
Attachments:	001 ; 002 ; 003 ; 004		
Reporting Officer(s):	R Rasiah;		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by Silver Thomas Hanley on behalf of the owner GNTM Pty Ltd for proposed Demolition of Existing Temporary Car Park and Construction of Seven (7) Storey Commercial Development Comprising Four (4) Shops, Three (3) Offices and Associated Car Parking, at Nos. 103- 105 (Lot: 100 D/P: 75367) Oxford Street, Leederville, and as shown on amended plans stamp-dated 15 April 2009, subject to the following conditions:

- (i) *all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), and Water Corporation Freehold Land to the north, are designed integrally with the building, and be located so as not to be visually obtrusive;*
- (ii) *any proposed vehicular entry gates to the car parking area shall be a minimum 50 per cent visually permeable and shall be either open at all times or suitable management measures shall be implemented to ensure access is available for visitors for the commercial tenancies at all times. Details of the management measures shall be submitted to and approved by the Town prior to the first occupation of the development;*
- (iii) *within twenty-eight (28) days of the issue date of this ‘Approval to Commence Development,’ the owner(s), or the applicant on behalf of the owner(s), shall comply with the following requirements:*
 - (a) *pay a cash in lieu public art contribution of \$195,000 for the equivalent value of one per cent (1%) of the estimated total cost of the development (\$19,500,000); OR*
 - (b) *lodge an appropriate public art assurance bond/bank guarantee of a value of \$195,000 with the Town. The assurance bond/bank guarantee will only be released to the owner(s)/applicant in the following circumstances:*
 - (1) *designs for art work(s) valued at one per cent (1%) of the estimated total cost of the development (\$19,500,000) have been submitted to and approved by the Town. The art work(s) shall be in accordance with the Town’s Policy relating to Percent for Art Scheme and be developed in full consultation with the Town’s Community Development Services with reference to the Percent for Art Scheme Policy Guidelines for Developers. The art work(s) shall be installed prior to the first occupation of the development, and maintained thereafter by the owner(s)/occupier(s); or*

- (2) *a Statutory Declaration of the prescribed form endorsed by the owner(s)/applicant and stating that they will not proceed with the subject 'Approval to Commence Development,' have been submitted to and approved by the Town; or*
- (3) *the subject 'Approval to Commence Development' did not commence and subsequently expired.*

In the circumstance where the owner(s)/applicant has elected clause (b)(1) and there has been no submission or approval of the design for art work within six (6) months from the date of issue of the Building Licence, the Town may claim the monies assured to them in the above bond or bank guarantee without further notice to the owner(s)/applicant for the provisions of art works in the Town.

The Town's Chief Executive Officer has the discretion to extend the six (6) month deadline that applies to clause (b) (1) under this condition of approval if:

- (aa) *a formal request has been submitted to the Town in writing for such an extension before the date of the six (6) month deadline; and*
 - (bb) *the Town's Arts Officer is satisfied that significant negotiations have been entered into by the owner(s)/applicant to provide the art work;*
- (iv) *a detailed schedule of external finishes (including materials and colour schemes and details) shall be submitted and approved prior to the issue of a Building Licence;*
 - (v) *all signage that does not comply with the Town's Policy relating to Signs and Advertising shall be subject to a separate Planning Application, and all signage shall be subject to a separate Sign Licence application, being submitted and approved prior to the erection of the signage;*
 - (vi) *prior to the issue of a Building Licence, a Construction Management Plan and Traffic Management Plan prepared by an accredited Main Roads Traffic Code of Practice Company addressing noise, hours of construction, parking of trade person vehicles, footpath access, traffic and heavy vehicle access to the site, dust and any other appropriate matters (such as notifying all affected landowners/occupiers of the commencement of construction works), shall be submitted to and approved by the Town;*
 - (vii) *prior to the first occupation of the development, twenty one (21) class one or two and nine (9) class three bicycle parking facilities, shall be provided at a location convenient to the entrance and within the development or adequate bike facilities if the floor area were to be increased for the shop and office uses. Details of the design and layout of the bicycle parking facilities shall be submitted and approved prior to the installation of such facilities;*
 - (viii) *within six (6) months of the issue of a Building Licence, the applicant shall cede to the Town of Vincent, at no cost to the Town, a portion of land along the western boundary of the allotment, as indicatively shown hatched as "land sacrifice" on the approved plans ranging in width from 1.59 metres to 2.34 metres, to facilitate a future 6.0 metre wide public access way, being an extension of Macs Lane, between the land currently comprising The Avenue Car Park and Leederville Parade, with the final configuration and dimensions to be determined by the Town. The costs of the documentation required to effect the ceding as well as any associated registration fees and the Town's legal fees (if any) shall be paid by the applicant/owner;*

- (ix) *the doors, windows and adjacent floor areas for the ground floor offices/shops fronting Oxford Street and the Water Corporation Freehold land to the north of the subject site shall maintain an active and interactive relationship with the street and the reserve to the north;*
- (x) *continuous and complementary awnings being provided over the Oxford Street footpath frontage in accordance with the Town's Local Laws relating to Verandahs and Awnings over Streets, with the awnings being a minimum height of 2.75 metres from the footpath level to the underside of the awning and a minimum of 500 millimetres from the kerb line of Oxford Street;*
- (xi) *all car-parking bays shall be dimensioned on the Building Licence application working drawings and all car parking facilities shall comply with the minimum specifications and dimensions specified in the Town's Parking and Access Policy and Australian Standards AS2890.1, and AS2890.2 – "Off Street Parking";*
- (xii) *the car parking area(s) on the subject land shall be sealed, drained, paved and line marked in accordance with the approved plans prior to the first occupation of the development and maintained thereafter by the owner(s)/occupier(s) to the satisfaction of the Town;*
- (xiii) *all pedestrian access and vehicle driveway/crossover levels shall match into existing verge/footpath levels;*
- (xiv) *the car parking area shall be shown as 'common property' on any strata or survey strata subdivision plan for the property;*
- (xv) *any new street/front wall, fence and gate within the Oxford Street and Macs Lane setback areas, including along the side boundaries within these street setback areas, except the northern side, shall comply with the following:*
 - (a) *the maximum height being 1.8 metres above the adjacent footpath level;*
 - (b) *the maximum height of piers with decorative capping being 2.0 metres above the adjacent footpath level;*
 - (c) *the maximum height of the solid portion of the wall being 1.2 metres above the adjacent footpath level, and a minimum of fifty percent visually permeable above 1.2 metres;*
 - (d) *the piers having a maximum width of 355 millimetres and a maximum diameter of 500 millimetres;*
 - (e) *the distance between piers should not be less than the height of the piers except where pedestrian gates are proposed; and*
 - (f) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level;*
- (xvi) *the provision of underground power for the subject development site at the applicant's/owner's cost;*

- (xvii) *prior to the issue of a Building Licence, revised plans shall be submitted and approved demonstrating the provision of end of trip facilities for bicycle users in accordance with the Town's Policy relating to Parking and Access;*

The revised plans shall not result in any greater variation to the requirements of the Town's Policies;

- (xviii) *the car park shall be used only by employees, tenants, and visitors directly associated with the development;*

- (xix) *the applicant or any occupier of the development on the subject land is required to and shall have unimpeded access onto the adjoining Water Corporation Freehold Land to the north. The applicant shall enter into a legal agreement with the Water Corporation and the Town of Vincent setting out the terms of such access prior to the issue of a Building Licence, to the satisfaction of the Water Corporation and the Town. Any legal costs incurred by the Town in relation to such an agreement, shall be paid by the applicant prior to the issue of a Building Licence;*

- (xx) *subject to agreement with the Water Corporation, as a requirement of clause (xix) above, the applicant shall contribute 50% of the cost to upgrade the adjoining Water Corporation Freehold Land to the north, and shall submit a bond or bank guarantee to the Town for the sum of \$35,000 as part contribution for the upgrade works;*

- (xxi) *within twenty-eight (28) days of the issue date of this 'Approval to Commence Development,' the owner(s), or the applicant on behalf of the owner(s) shall comply with the following requirements:*

(a) *pay a cash-in-lieu contribution of \$8,428 for the equivalent value of 3.01 car parking spaces, based on the cost of \$2,800 per bay as set out in the Town's 2008/2009 Budget; OR*

(b) *lodge an appropriate assurance bond/bank guarantee of a value of \$8,428 to the satisfaction of the Town. This assurance bond/bank guarantee will only be released in the following circumstances:*

(1) *to the Town at the date of issue of the Building Licence for the development, or first occupation of the development, whichever occurs first; or*

(2) *to the owner(s)/applicant following receipt by the Town with a Statutory Declaration on the prescribed form endorsed by the owner(s)/applicant and stating that they will not proceed with the subject 'Approval to Commence Development,'; or*

(3) *to the owner(s)/applicant where the subject 'Approval to Commence Development,' did not commence and subsequently expired.*

The car parking shortfall and consequent cash-in-lieu contribution can be reduced as a result of a greater number of car bays being provided on-site and to reflect the new changes in the car parking requirements;

(xxii) *the maximum gross floor area of the development shall be limited as follows:*

(a) *office component to 3,534 square metres; and*

(b) *shop to 1,078 square metres;*

unless adequate car parking is provided for the increased floor areas; and

(xxiii) *the proposed development is to incorporate design features that comply with a minimum 4-star rating under the Green Code Building Council of Australia rating system.*

FOOTNOTES:

(1)* *The development will require Water Corporation Building Services approval prior to commencement of works. The Water Corporation may require payment of head works contributions and fees prior to its approval being issued.*

(2)* *The Town will not support the construction of any fence/or wall abutting the northern boundary of Nos. 103-105 (Lot: 100 D/P: 75367) Oxford Street, Leederville with the Water Corporation Freehold Land.*

(3)* *The development abuts onto Water Corporation land that is currently used by the Town under licence from the Water Corporation. Any proposed access by the applicant or any occupier of the development onto the Water Corporation land will need to be negotiated with the Water Corporation and the Town. The applicant may be required by the Water Corporation to undertake various works on that land and pay a fee as a condition of the Water Corporation's grant of access. As access by the applicant will affect the Town's rights under the licence, it will be necessary for a new access agreement to be negotiated between the Town, the Applicant and the Water Corporation. As a new Agreement will only be required because of the access requirements of the applicant, the Town will require all of its legal costs associated with the new agreement to be paid for by the Applicant, as a condition of the surrender of its current access rights.*

(4)* *The Town is making a new town planning scheme pursuant to which the Town will prepare a development contribution plan for the Leederville Masterplan Area. The Town is proposing to recover development contributions from owners of land in the Leederville Masterplan Area for the infrastructure works to be carried out in that Area. As the subject land is within the Leederville Masterplan Area, the owner of the subject land may become liable to pay a development contribution irrespective of whether any redevelopment or subdivision of the land occurs during the term of the development contribution plan.*

* *The Town's solicitors have recommended that "Footnotes" be included into the Officer Recommendation. Footnotes are not proper conditions and can be challenged before the State Administrative Tribunal (SAT).*

Moved Cr Messina, Seconded Cr Ker

That the recommendation be adopted.

Debate ensued.

AMENDMENT NO 1

Moved Cr Lake, Seconded Cr Messina

That clause (xxi) be deleted and the remaining clauses renumbered.

Debate ensued.

AMENDMENT NO 1 PUT AND CARRIED (5-3)

For: Mayor Catania, Cr Lake, Cr Maier, Cr Messina, Cr Youngman

Against: Cr Burns, Cr Doran-Wu, Cr Ker

(Cr Farrell was an apology for the meeting.)

Debate ensued.

AMENDMENT NO 2

Moved Cr Messina, Seconded Cr Maier

That clause (xix) be deleted and the remaining clauses renumbered.

Debate ensued.

AMENDMENT NO 2 PUT AND LOST (2-6)

For: Cr Maier, Cr Messina

Against: Mayor Catania, Cr Burns, Cr Doran-Wu, Cr Ker, Cr Lake, Cr Youngman

(Cr Farrell was an apology for the meeting.)

MOTION AS AMENDED PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

COUNCIL DECISION ITEM 9.1.7

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by Silver Thomas Hanley on behalf of the owner GNTM Pty Ltd for proposed Demolition of Existing Temporary Car Park and Construction of Seven (7) Storey Commercial Development Comprising Four (4) Shops, Three (3) Offices and Associated Car Parking, at Nos. 103- 105 (Lot: 100 D/P: 75367) Oxford Street, Leederville, and as shown on amended plans stamp-dated 15 April 2009, subject to the following conditions:

- (i) all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), and Water Corporation Freehold Land to the north, are designed integrally with the building, and be located so as not to be visually obtrusive;*
- (ii) any proposed vehicular entry gates to the car parking area shall be a minimum 50 per cent visually permeable and shall be either open at all times or suitable management measures shall be implemented to ensure access is available for visitors for the commercial tenancies at all times. Details of the management measures shall be submitted to and approved by the Town prior to the first occupation of the development;*

- (iii) *within twenty-eight (28) days of the issue date of this 'Approval to Commence Development,' the owner(s), or the applicant on behalf of the owner(s), shall comply with the following requirements:*
- (a) *pay a cash in lieu public art contribution of \$195,000 for the equivalent value of one per cent (1%) of the estimated total cost of the development (\$19,500,000); OR*
 - (b) *lodge an appropriate public art assurance bond/bank guarantee of a value of \$195,000 with the Town. The assurance bond/bank guarantee will only be released to the owner(s)/applicant in the following circumstances:*
 - (1) *designs for art work(s) valued at one per cent (1%) of the estimated total cost of the development (\$19,500,000) have been submitted to and approved by the Town. The art work(s) shall be in accordance with the Town's Policy relating to Percent for Art Scheme and be developed in full consultation with the Town's Community Development Services with reference to the Percent for Art Scheme Policy Guidelines for Developers. The art work(s) shall be installed prior to the first occupation of the development, and maintained thereafter by the owner(s)/occupier(s); or*
 - (2) *a Statutory Declaration of the prescribed form endorsed by the owner(s)/applicant and stating that they will not proceed with the subject 'Approval to Commence Development,' have been submitted to and approved by the Town; or*
 - (3) *the subject 'Approval to Commence Development' did not commence and subsequently expired.*

In the circumstance where the owner(s)/applicant has elected clause (b)(1) and there has been no submission or approval of the design for art work within six (6) months from the date of issue of the Building Licence, the Town may claim the monies assured to them in the above bond or bank guarantee without further notice to the owner(s)/applicant for the provisions of art works in the Town.

The Town's Chief Executive Officer has the discretion to extend the six (6) month deadline that applies to clause (b) (1) under this condition of approval if:

- (aa) *a formal request has been submitted to the Town in writing for such an extension before the date of the six (6) month deadline; and*
 - (bb) *the Town's Arts Officer is satisfied that significant negotiations have been entered into by the owner(s)/applicant to provide the art work;*
- (iv) *a detailed schedule of external finishes (including materials and colour schemes and details) shall be submitted and approved prior to the issue of a Building Licence;*
- (v) *all signage that does not comply with the Town's Policy relating to Signs and Advertising shall be subject to a separate Planning Application, and all signage shall be subject to a separate Sign Licence application, being submitted and approved prior to the erection of the signage;*

- (vi) *prior to the issue of a Building Licence, a Construction Management Plan and Traffic Management Plan prepared by an accredited Main Roads Traffic Code of Practice Company addressing noise, hours of construction, parking of trade person vehicles, footpath access, traffic and heavy vehicle access to the site, dust and any other appropriate matters (such as notifying all affected landowners/occupiers of the commencement of construction works), shall be submitted to and approved by the Town;*
- (vii) *prior to the first occupation of the development, twenty one (21) class one or two and nine (9) class three bicycle parking facilities, shall be provided at a location convenient to the entrance and within the development or adequate bike facilities if the floor area were to be increased for the shop and office uses. Details of the design and layout of the bicycle parking facilities shall be submitted and approved prior to the installation of such facilities;*
- (viii) *within six (6) months of the issue of a Building Licence, the applicant shall cede to the Town of Vincent, at no cost to the Town, a portion of land along the western boundary of the allotment, as indicatively shown hatched as "land sacrifice" on the approved plans ranging in width from 1.59 metres to 2.34 metres, to facilitate a future 6.0 metre wide public access way, being an extension of Macs Lane, between the land currently comprising The Avenue Car Park and Leederville Parade, with the final configuration and dimensions to be determined by the Town. The costs of the documentation required to effect the ceding as well as any associated registration fees and the Town's legal fees (if any) shall be paid by the applicant/owner;*
- (ix) *the doors, windows and adjacent floor areas for the ground floor offices/shops fronting Oxford Street and the Water Corporation Freehold land to the north of the subject site shall maintain an active and interactive relationship with the street and the reserve to the north;*
- (x) *continuous and complementary awnings being provided over the Oxford Street footpath frontage in accordance with the Town's Local Laws relating to Verandahs and Awnings over Streets, with the awnings being a minimum height of 2.75 metres from the footpath level to the underside of the awning and a minimum of 500 millimetres from the kerb line of Oxford Street;*
- (xi) *all car-parking bays shall be dimensioned on the Building Licence application working drawings and all car parking facilities shall comply with the minimum specifications and dimensions specified in the Town's Parking and Access Policy and Australian Standards AS2890.1, and AS2890.2 – "Off Street Parking";*
- (xii) *the car parking area(s) on the subject land shall be sealed, drained, paved and line marked in accordance with the approved plans prior to the first occupation of the development and maintained thereafter by the owner(s)/occupier(s) to the satisfaction of the Town;*
- (xiii) *all pedestrian access and vehicle driveway/crossover levels shall match into existing verge/footpath levels;*
- (xiv) *the car parking area shall be shown as 'common property' on any strata or survey strata subdivision plan for the property;*

- (xv) *any new street/front wall, fence and gate within the Oxford Street and Macs Lane setback areas, including along the side boundaries within these street setback areas, except the northern side, shall comply with the following:*
- (a) *the maximum height being 1.8 metres above the adjacent footpath level;*
 - (b) *the maximum height of piers with decorative capping being 2.0 metres above the adjacent footpath level;*
 - (c) *the maximum height of the solid portion of the wall being 1.2 metres above the adjacent footpath level, and a minimum of fifty percent visually permeable above 1.2 metres;*
 - (d) *the piers having a maximum width of 355 millimetres and a maximum diameter of 500 millimetres;*
 - (e) *the distance between piers should not be less than the height of the piers except where pedestrian gates are proposed; and*
 - (f) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level;*
- (xvi) *the provision of underground power for the subject development site at the applicant's/owner's cost;*
- (xvii) *prior to the issue of a Building Licence, revised plans shall be submitted and approved demonstrating the provision of end of trip facilities for bicycle users in accordance with the Town's Policy relating to Parking and Access;*
- The revised plans shall not result in any greater variation to the requirements of the Town's Policies;*
- (xviii) *the car park shall be used only by employees, tenants, and visitors directly associated with the development;*
- (xix) *the applicant or any occupier of the development on the subject land is required to and shall have unimpeded access onto the adjoining Water Corporation Freehold Land to the north. The applicant shall enter into a legal agreement with the Water Corporation and the Town of Vincent setting out the terms of such access prior to the issue of a Building Licence, to the satisfaction of the Water Corporation and the Town. Any legal costs incurred by the Town in relation to such an agreement, shall be paid by the applicant prior to the issue of a Building Licence;*
- (xx) *subject to agreement with the Water Corporation, as a requirement of clause (xix) above, the applicant shall contribute 50% of the cost to upgrade the adjoining Water Corporation Freehold Land to the north, and shall submit a bond or bank guarantee to the Town for the sum of \$35,000 as part contribution for the upgrade works;*
- (xxi) *the maximum gross floor area of the development shall be limited as follows:*
- (a) *office component to 3,534 square metres; and*
 - (b) *shop to 1,078 square metres;*
- unless adequate car parking is provided for the increased floor areas; and*

- (xxii) *the proposed development is to incorporate design features that comply with a minimum 4-star rating under the Green Code Building Council of Australia rating system.*

FOOTNOTES:

- (1)* *The development will require Water Corporation Building Services approval prior to commencement of works. The Water Corporation may require payment of head works contributions and fees prior to its approval being issued.*
- (2)* *The Town will not support the construction of any fence/or wall abutting the northern boundary of Nos. 103-105 (Lot: 100 D/P: 75367) Oxford Street, Leederville with the Water Corporation Freehold Land.*
- (3)* *The development abuts onto Water Corporation land that is currently used by the Town under licence from the Water Corporation. Any proposed access by the applicant or any occupier of the development onto the Water Corporation land will need to be negotiated with the Water Corporation and the Town. The applicant may be required by the Water Corporation to undertake various works on that land and pay a fee as a condition of the Water Corporation's grant of access. As access by the applicant will affect the Town's rights under the licence, it will be necessary for a new access agreement to be negotiated between the Town, the Applicant and the Water Corporation. As a new Agreement will only be required because of the access requirements of the applicant, the Town will require all of its legal costs associated with the new agreement to be paid for by the Applicant, as a condition of the surrender of its current access rights.*
- (4)* *The Town is making a new town planning scheme pursuant to which the Town will prepare a development contribution plan for the Leederville Masterplan Area. The Town is proposing to recover development contributions from owners of land in the Leederville Masterplan Area for the infrastructure works to be carried out in that Area. As the subject land is within the Leederville Masterplan Area, the owner of the subject land may become liable to pay a development contribution irrespective of whether any redevelopment or subdivision of the land occurs during the term of the development contribution plan.*

* <i>The Town's solicitors have recommended that "Footnotes" be included into the Officer Recommendation. Footnotes are not proper conditions and can be challenged before the State Administrative Tribunal (SAT).</i>

Landowner:	GNTM Pty Ltd
Applicant:	Silver Thomas Hanley
Zoning:	Metropolitan Region Scheme: Urban Town Planning Scheme No. 1 (TPS 1): District Centre
Existing Land Use:	Temporary Car Park
Use Class:	Shop and Office Building
Use Classification:	"P" and "P"
Lot Area:	1,771 square metres
Access to Right of Way	Not applicable

BACKGROUND:

The proposal involves the Demolition of an Existing Temporary Car Park and the Construction of a Seven (7) Storey Commercial Development Comprising Four (4) Shops, Three (3) Offices and Associated Car Parking.

The Town's Officers have previously provided the owners of the subject site 'draft' sketch plans indicating the proposed 6.0 metre wide under-width dedicated roadway, including a possible alignment of the paved carriageway adjacent to the western side of the subject site and the existing Macs Lane.

DETAILS:

The applicant's response in relation to the concerns raised in the advertising submissions is attached.

ASSESSMENT:

Non-Compliant Requirements			
Requirements	Required	Proposed *	Officer Comments Pursuant to Clause 38(5) of TPS 1
Plot Ratio	N/A	N/A	Noted.
Number of storeys	3 storeys	7 storeys	Supported- for the reasons stated in the "COMMENT" section.
Car parking- This variation was as a result of the revised plans submitted for the car parking area, for the reasons stated in the applicant's submission.	70.01 car bays	67 standard car bays. The 2 small car bays have been taken into account for car parking purposes, as they are compliant with the Australian Standards template for a standard car.	Supported - as the site is close to the train station and other transport facilities. The proposal is consistent with Transit Orientated Development (TOD) principles in terms of its proximity (within 800 metres) to major transport facilities. Furthermore, a management plan is required to be submitted to manage visitor and tenant parking on-site, and the provision of bicycle parking facilities. The Town's Parking Consultants (Luxmoore) have also supported the shortfall subject to the above conditions being imposed.
Street front opening	40 per cent of wall facing Oxford Street for the first and second storeys.	Openings to the ground floor only, as the second storey is a car parking area.	Supported- as the second floor is a car park. The applicant has submitted revised plans adding ventilation openings to provide a similar aesthetic to that of glazed panels.

Consultation Submissions		
Support (4)	<ul style="list-style-type: none"> Proposal is in line with the proposed Leederville Masterplan. Provide interesting tenancies and better use of the laneway. 	Noted.
Water Corporation WA	<ul style="list-style-type: none"> Water services are available; however, reticulation connections may need to be upgraded at the developer cost. Development will require Water Corporation Building Services approval, prior to commencement of works, and head works contributions and fees may be required to be paid prior to approval being issued. Development fronts onto the Water Corporation land that is currently licenced to the Town, and any access onto the Water Corporation land will require a new licence agreement. 	<p>Noted.</p> <p>Noted - a footnote has been recommended to address this requirement.</p> <p>Noted - a condition has been recommended to address this requirement. All costs associated with the new Licence Agreement shall be paid by the applicant/owner, prior to the issue of a Building Licence.</p>
Public Transport Authority	<ul style="list-style-type: none"> The requirement that a Section 70A notification be placed on the title, advising potential purchasers on any residential development at the above site that the site's proximity to rail may adversely impact on the use and enjoyment of land; that is, rail noise and vibration. 	Noted. The proposal is entirely commercial in nature, with no residential dwellings proposed.
Objection (4)	<ul style="list-style-type: none"> Vehicular access to car parking should not be from Oxford Street. 	Supported - all access is via the rear lane; there is no access proposed off Oxford Street.
	<ul style="list-style-type: none"> Building height not in keeping with character of existing surrounding buildings. Development should not be approved until the Masterplan which is still at the consultation stage is finalised. 	Not supported- for the reasons stated in the "COMMENT" Section.
	<ul style="list-style-type: none"> Building bulk and scale, as it will be a dominating and overpowering structure. 	Not supported- as above.
	<ul style="list-style-type: none"> Protection of the existing character and style of the Oxford Centre Precinct is its "<i>Village Feel</i>", which relies on its "<i>Human Streetscape</i>". Any development higher than 2 storeys along Oxford Street would severely affect the existing streetscape. 	Not supported- as above.
	<ul style="list-style-type: none"> A roof form does not add any visual interest to Oxford Street skyline. 	Not supported - as above.
	<ul style="list-style-type: none"> Building façade does not comply with the Town's Policy requirements for the area. No attempts made to incorporate rendered masonry, face brick or stone cladding. 	Not supported - as the proposal integrates with the surrounding buildings.

	<ul style="list-style-type: none"> Not an energy efficient design, as there are large expanses of glazing along the western and northern elevations. May cause reflective hazard to south-bound freeway traffic. 	Not supported - as the building will have to comply with the relevant energy efficiency requirements.
	<ul style="list-style-type: none"> No allowance is evident for the provision of landscaping, street furniture and public art contribution. These elements are essential in promoting and maintaining a sense of community within this precinct. 	Not supported - a condition requiring public art has been imposed for this development. Furthermore, the applicant has proposed landscaping on one of the upper floors, which is compliant with the required 10 per cent (177.1 square metres), as 18.74 per cent or 332 square metres have been proposed.
	<ul style="list-style-type: none"> Car parking supply. 	Not supported - for the reasons stated in the above "Assessment Table".
Other Implications		
Legal/Policy		TPS 1 and associated Policies, and the proposed Leederville Masterplan.
Strategic Implications		As stated in the below "COMMENT" section.
Sustainability Implications		The proposal will be required to satisfy the energy efficiency requirements of the Building Code of Australia at the Building Licence stage. The proposal would maximise the potential use of the land, taking into consideration its close proximity to the City and major transport routes. The Leederville Masterplan Built Form Guidelines requires the applicant to demonstrate a minimum 4-Star rating under the Green Building Council of Australia rating system.
Financial/Budget Implications		Nil

* The plot ratio calculation is provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

Car Parking- Commercial Component	
Car parking requirement (nearest whole number) Office: 1 car bay per 50 square metres gross office floor area (proposed 3534 square metres) = 70.68 car bays. Shop: 1 car bay per 15 square metres gross office floor area (proposed 1078 square metres) = 71.87 car bays. Total=142.55	143 car bays
Apply the adjustment factors. <ul style="list-style-type: none"> ▪ 0.80 (within 400 metres of a rail station) ▪ 0.85 (within 400 metres of a bus stop) ▪ 0.80 (within 50 metres of one or more public car parks in excess of 50 spaces) ▪ 0.90 (within District Centre Zone) 	(0.4896) 70.01 car bays
Minus the car parking provided on-site.	67 car bays
Minus the most recently approved on-site car parking shortfall	Not applicable as proposal is to redevelop site.
Resultant shortfall	3.01 car bays
Bicycle Parking Facilities	
Offices <ul style="list-style-type: none"> • 1 space per 200 (proposed 3534) square metres gross floor area (class 1 or 2) – 17.67 spaces. • 1 space per 750 (proposed 3534) square metres over 1000 square metres for visitors (class 3) – 3.38 spaces. Retail <ul style="list-style-type: none"> • 1 space per 300 (proposed 1078) square metres gross floor area (class 1 or 2) – 3.59 spaces. • 1 space per 200 (proposed 1078) square metres for visitors (class 3) – 5.39 spaces. 	Only Class 1 or 2 and end of trip bicycle facilities provided. Class 3 facilities need to be provided.

COMMENTS:

Strategic Planning Comments

Built Form Guidelines

The development is located within the Oxford Street South Precinct of the Leederville Masterplan Area. The Vision for this area as stated in the Built Form Guidelines is as follows:

- *To maintain and extend the continuous activated edge to Oxford Street;*
- *To increase the intensity of uses and activity on the street; and*
- *To maintain the scale and ambience of the Oxford Street café strip.*

The Built Form Guidelines were adopted at the Special Meeting of Council held on 16 March 2009. The Built Form Guidelines for the Oxford Street South Precinct state that the maximum height of buildings is to be three (3) storeys, two (2) storeys directly fronting Oxford Street, with floors above 2 storeys being setback 5 metres from the street edge. The purpose of the requirement is to protect the amenity and maintain the scale of the Oxford Street café strip.

It is considered that the development responds well to the Oxford Street frontage as a result of the articulation of the building through the setback pattern of the ground and first floor and the use of different materials on the Oxford Street frontage.

Green Building Council Code

Section 4 of the above document outlines a set of guidelines that are common to all new developments and are to be read in conjunction with the specific guidelines outlined in each of the precinct guidelines. As such, Section 4.2 relating to environmental sustainability sets out the Town of Vincent's commitment to ensuring that any new developments in Leederville meet best-practice standards for environmental sustainability, demonstrating equivalence with a minimum 4-star rating for the appropriate building under the Green Building Council of Australia rating system. This requires incorporating sustainable design into any new development and relates to addressing the following elements:

- energy efficiency;
- transport;
- water sensitive design and conservation;
- materials; and
- solar access.

A condition to satisfy the above requirements has been recommended accordingly.

The subject development is also located on a key 'bookend' site within the Masterplan Area directly adjacent to the Leederville Train Station, opposite the Frame Court Car Park and adjacent to the Avenue Car Park, which is proposed to be re-developed with iconic towers up to 16 storeys in height. The Leederville Masterplan espouses transit oriented development principles, which state that developments located within close proximity to train stations should be of a higher intensity.

In light of the above, the Town's Officers are of the opinion that the development integrates well with the surrounding development proposed as part of the Leederville Masterplan and provides an appropriate transition between the proposed icon towers and the Oxford Street café strip. The development achieves the high quality design that the Masterplan promotes and is considered to be appropriate for the site, with respect to its position within the Leederville Masterplan.

Developer Contribution to Infrastructure Upgrade

As part of the Leederville Masterplan, existing infrastructure will be required to be upgraded. The items which may attract a contribution have not yet been determined by the Council; however, these could relate to (but not be limited to) new infrastructure, the upgrading/extending or replacing of existing infrastructure, land for the infrastructure and other costs reasonably associated with the preparation, implementation and administration of the development contribution plan. A report detailing the above (Item 9.1.12) was '*Laid on the Table*' at the Ordinary Meeting of Council held on 28 April 2009.

The Town's legal advice is that the Town's Town Planning Scheme No. 1 does not provide for the imposition of an infrastructure contribution and given that there is no Policy in place, the Town does not have a legal basis to impose a developer infrastructure contribution. Accordingly, no developer contribution is being recommended for this proposal.

Technical Services

A future road widening strip on the western side of the subject site has been proposed as part of this development proposal and the Leederville Masterplan. The proposed new 6.0 metre road reserve will encroach into Lot 100 by approximately 1.2 metres at the northern end to approximately 2.4 metres at the southern end of Lot 100. The remaining portion of the road reserve will be contained with The Avenue Car park as part of the Leederville Masterplan redevelopment.

A condition, proposed to address access and future upgrading of the Water Corporation Freehold Land to the north of the subject site, has also been recommended. The Town is prepared to provide 50 per cent of the total upgrade cost of \$70,000 with the remaining 50 per cent being sought from the applicant/owner.

Water Corporation Reserve:

Water Corporation owns freehold land which extended through the Town's "The Avenue" Car Park, and currently extends through to Oxford Street and beyond. The Town entered into a Licence Agreement with Water Corporation, permitting the use of part of the Water Corporation land: linking "The Avenue" Car Park to Oxford Street, for the purpose of pedestrian access; and within the car park area for purpose of car park and pedestrian access.

The Licence Agreement commenced in 2001, and has duration of 99 years.

With the recent works undertaken by the Water Corporation to realign the Main Drainage pipe line (paid for by the Town) through The Avenue Car Park away from the land comprising the reserve, the existing Licence Agreement is currently being amended to reflect these changes.

As part of the Licence Agreement the portion of Water Corporation Reserve within The Avenue Car Park will be incorporated within the Town owned land comprising The Avenue Car Park and the licence will be amended to only include the portion of Water Corporation Reserve between The Avenue Car Park and Oxford Street (adjacent to Lot 100, Oxford Street).

In addition, Clause 6.7 of the Licence Agreement relates to access from this portion of Reserve and the adjoining Lot 100 and states:

“(a) At all times during the Term, the Licensee(the Town) is not to grant or permit and must ensure that no other person grants or permits, access by foot, vehicle or otherwise from:

- 1. Area A to Lot 100, or*
- 2. Lot 100 to Area A*

to the owners, occupiers, licensees or visitors of Lot 100, unless agreed upon by the Licensor and Licensee.

(b) The Licensee must, to the satisfaction of the Licensor, in the event that no wall or fence is provided along the boundary or portion of boundary of Lot 100:

- 1. erect a wall or fence within 1 month of the Redevelopment of Lot 100 along the boundary of Area A and Lot 100;*
- 2. maintain the wall or fence along the boundary of area A and Lot 100 in a good condition throughout the Term; and*
- 3. replace the wall or fence the boundary of Area A and Lot 100, in whole or part, as may be reasonably required by the Licensor.”*

Note:* Area A is the portion of Water Corporation Reserve which adjoins the northern boundary of Lot 100 Oxford Street

It is considered that the development should have unimpeded access onto the adjoining Water Corporation Reserve to the north and that the applicant is required to enter into a legal agreement with the Water Corporation setting out the terms of such access prior to the issue of a building licence. This should be for the duration of the development.

Subject to agreement with the Water Corporation, the Applicant shall contribute 50% of the cost to upgrade the adjoining Water Corporation land. As part of the Leederville Masterplan, it is considered reasonable that the Town would contribute the remaining 50% and undertake the upgrading works at an estimated cost of \$70,000.

The above matter has been the subject of numerous discussions with a Director of GNTM Pty Ltd (the Applicant) over previous years.

The Town is aware that discussions between the Water Corporation and GNTM Pty Ltd have not been finalised or agreed.

The Water Corporation have provided the Applicant with "Heads of Terms" and "the conditions of use" of the land.

Corporate Services

A valuation of land to be given up for the road widening purposes is estimated at between \$3,500 and \$4,000 per square metre. The approximate area of land stated on the development plans is 125 square metres, resulting in an approximate value of between \$437,500 and \$500,000.

Building Services

The applicant will be required to comply with the fire, exit, and the provision of facilities for people with disability requirements, in accordance with the Building Code of Australia.

The applicant has provided revised plans to address most of the above matters, which will be fully complied with as part of the Building Licence application.

Conclusion

The proposed development was presented to a Forum on 11 November 2008. At the Forum, Council Members provided their comments and feedback to the applicant, as follows;

- The Water Corporation easement is essential to the success of the development. Provision of awnings between development site, adjoining buildings and Water Corporation easement.
- A good building and impressive design, however varied discussion with respect to height. Concerns with Oxford Street frontage and use of easement to ensure usability.
- *Vincent Vision 2024* - keep scale of Oxford Street. Treatment of car park façade. Lost opportunity not to develop restaurant site, interface.
- Lack of residential component.

The Application is considered generally acceptable and would not result in any undue impact on the amenity of the surrounding area. This development, which will be the first in the area, is considered to positively contribute and be a catalyst for the future redevelopment of other similar sites within the Leederville Masterplan area. The application is therefore supported, subject to standard and appropriate conditions to address the above matters and the scale and nature of the development.

9.1.2 No. 14 (Lot: 47 D/P: 2848) Buxton Street, Mount Hawthorn - Proposed Demolition of Existing Single House and Construction of Single House

Ward:	North	Date:	18 May 2009
Precinct:	Mount Hawthorn; P01	File Ref:	PRO4677; 5.2009.59.1
Attachments:	001 002		
Reporting Officer(s):	A Reynolds, H Au		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by G V D'Souza for proposed Demolition of Existing Single House and Construction of Single House, at No. 14 (Lot: 47 D/P: 2848) Buxton Street, Mount Hawthorn, and as shown on plans stamp-dated 24 February 2009, subject to the following conditions:

- (i) *all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), are designed integrally with the building, and be located so as not to be visually obtrusive;*
- (ii) *any new street/front wall, fence and gate within the Buxton Street setback area, including along the side boundaries within this street setback area, shall comply with the following:*
 - (a) *the maximum height being 1.8 metres above the adjacent footpath level;*
 - (b) *the maximum height of piers with decorative capping being 2.0 metres above the adjacent footpath level;*
 - (c) *the maximum height of the solid portion of the wall being 1.2 metres above the adjacent footpath level, and a minimum of fifty percent visually permeable above 1.2 metres;*
 - (d) *the piers having a maximum width of 355 millimetres and a maximum diameter of 500 millimetres;*
 - (e) *the distance between piers should not be less than the height of the piers except where pedestrian gates are proposed;*
 - (f) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level;*
- (iii) *no street verge tree(s) shall be removed unless written approval has been received from the Town's Parks Services. Should such an approval be granted all cost associated with the removal and replacement shall be borne by the applicant/owner(s);*

- (iv) *first obtaining the consent of the owners of No. 12 Buxton Street, Mount Hawthorn for entry onto their land, the owners of the subject land shall finish and maintain the surface of the boundary (parapet) wall facing No. 12 Buxton Street, Mount Hawthorn in a good and clean condition; and*
- (v) *a Demolition Licence shall be obtained from the Town prior to commencement of any demolition works on the site.*
-

Cr Burns departed the Chamber at 7.41pm.

COUNCIL DECISION ITEM 9.1.2

Moved Cr Youngman, Seconded Cr Maier

That the recommendation be adopted.

Cr Messina departed the Chamber at 7.42pm.

Debate ensued.

Cr Burns returned to the Chamber at 7.43pm.

Debate ensued.

Cr Messina returned to the Chamber at 7.44pm.

Debate ensued.

PROCEDURAL MOTION

Moved Cr Youngman, Seconded Cr Maier

That the item be DEFERRED for reconsideration of the design.

PROCEDURAL MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

Landowner:	G V D'Souza
Applicant:	G V D'Souza
Zoning:	Metropolitan Region Scheme: Urban Town Planning Scheme No. 1 (TPS 1): Residential R30
Existing Land Use:	Single House
Use Class:	Single House
Use Classification:	"P"
Lot Area:	444 square metres
Access to Right of Way	Northern side, 5.0 metres wide, sealed, Town of Vincent owned

BACKGROUND:

No specific background directly relates to the proposal.

DETAILS:

The proposal involves Demolition of Existing Single House and Construction of Single House at No. 14 Buxton Street, Mount Hawthorn.

The applicant has prepared a submission in support of the application, which is partially summarised below and is *"Laid on the Table"*.

- *"The request to modify the setback of the master suite cannot be easily achieved with the current plan, and would require a complete redesign of the proposed development. My only other option is to shift the whole floor plan back 2m, but this impacts the planned alfresco/pool area at the rear of the property.*
- *... our property's position effectively "bookends" the street, and as such, would not upset the streetscape in terms of the alignment of setbacks in the rest of the street.*
- *The master suite was deliberately placed on the ROW side of the house so that it doesn't sit forward of no. 12's property and give them a blank wall to look at, and the house on the other side of the ROW has a garage that runs right to the footpath, so our setback doesn't look out of place with this either.*
- *The master suite is the only part of the proposal that is forward of the 7.18m requirement. The rest of the property, including front entry and garage are both setback over 7m. This complies with the points outlined in 6.2 Vincent Vision 2024 in the RDP –*
 - *Setbacks and scale are such that the height of the buildings do not dominate the street and retain a human scale and quality;*
 - *Car parking solutions are innovative and reduce the visual dominance and presence of cars in the environment.*
- *The RDE Policy talks about managing "residential development in a way that recognizes the needs of innovative design and contemporary lifestyles". There have been several redevelopments and renovations taking place in the streets surrounding me, and contemporary design would indicate that large front setbacks are being traded for better use of now smaller blocks and larger living areas. My plan meets these objectives and my design is intended to suit the lifestyles of Mt Hawthorn residents, many of whom are couple and families of my age group and living needs.*
- *The 2m difference we're debating is of minimal consequence and does not fail to meet the intentions of the RDP, which is to maintain the character and streetscape of the precinct".*

ASSESSMENT:

Non-Compliant Requirements			
Requirements	Required	Proposed *	Officer Comments Pursuant to Clause 38(5) of TPS 1
Density	1.48 dwellings	1 dwelling	No variation.
Plot Ratio	N/A	N/A	Noted.

Building Setbacks: Main Building -West (Primary Street Setback)	To reflect the predominant streetscape pattern of (minimum of 7.18 metres)	4.0 metres	Supported - refer to comments below.
-North	1.5 metres	1.013 – 1.016 – 1.52 – 2.0 – 1.538 – 1.0 metres	Supported – not considered to have an undue impact on adjoining property and amenity of street.
-South	1.5 metres	Nil – 1.767 – 1.253 – 1.75 metres	Supported – not considered to have an undue impact on adjoining property and amenity of street.
Minor incursion into Street Setback Area: -West (Primary Street)	A porch, balcony, verandah, chimney or the equivalent may project not more than one (1) metre into the street setback area or exceed 20 percent of the lot frontage	1.3 metres and 13.13 percent of the lot frontage	Supported – the proposed minor incursion will not adversely detract from the character of the streetscape, nor does the incursion dominate the appearance of the dwelling.
Consultation Submissions			
Support	Nil.		Noted.
Objection (1)	<ul style="list-style-type: none"> • Primary Street setback • Southern side setbacks 		<p>Not supported – refer to comments below.</p> <p>Not supported – as above.</p>
Other Implications			
Legal/Policy			TPS 1 and associated Policies, and Residential Design Codes (R Codes).
Strategic Implications			Nil.
Sustainability Implications			Nil.
Financial/Budget Implications			Nil.

* The representative R Coding and density bonus calculations are provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

* The plot ratio calculation is provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

COMMENTS:

Demolition

The subject dwelling at No. 14 Buxton Street, Mount Hawthorn is an example of brick and tile Inter-war Bungalow style of architecture constructed circa 1941. The house has a main hipped roof with dark tiles. There is a flat top chimney, with brick corbel, on the north of the roofline.

The Wise's Post Office Directories first listed William Charles as the resident in 1944. Since then the subject dwelling has been transferred several times to new owners and occupiers.

A full Heritage Assessment was undertaken for No. 14 Buxton Street, North Perth, which indicates that the place has little aesthetic, historic, scientific or social heritage significance. In accordance with the Town's Policy relating to Heritage Management – Assessment, the place does not meet the threshold for entry on the Town's Municipal Heritage Inventory.

In light of the above, there is no objection from Heritage Services to the proposed Demolition.

Street Setbacks

The subject street setback variation allows the proposed dwelling to effectively provide streetscape rhythm by incorporating staggered setbacks which contribute to, and allow for the integration of the dwellings oriented towards Anzac Road and the dwellings oriented towards Buxton Street.

The subject lot abuts a right of way and is located between lots with opposing orientations. The proposed dwelling therefore allows for an effective 'bookend' configuration, as it provides setback alignment and allows the continuity of the streetscape to be enhanced. The proposed reduced setback will therefore not visually dominate the streetscape, nor will it have a negative impact on the existing properties located along Buxton Street.

The street setback variation, in combination with the adequately setback garage, allows the proposed dwelling to achieve streetscape continuity, whilst maintaining the average street setback distance where the dwelling abuts the neighbouring property. The proposed setback also allows for an appropriately located northern private outdoor living area, facilitating the efficient use of the site.

Conclusion

In light of the above, it is recommended that the Council approve the subject application, subject to standard and appropriate conditions to address the above matters.

9.1.3 Nos. 102-104 (Lot: 1 D/P: 2251) Lincoln Street, corner Stirling Street, Highgate - Proposed Change of Hours of Operation of Existing Eating House (Take-Away Food Outlet)

Ward:	South	Date:	18 May 2009
Precinct:	Forrest Precinct; P14	File Ref:	PRO1655; 5.2009.52.1
Attachments:	001		
Reporting Officer(s):	C Roszak		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the Town of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by J Scotchford on behalf of the owner R & N Duric for proposed Change of Hours of Operation of Existing Eating House (Take-Away Food Outlet), at Nos. 102-104 (Lot: 1 D/P: 2251) Lincoln Street, corner Stirling Street, Highgate, and as shown on plans stamped 20 February 2009, subject to the following conditions:

- (i) *all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, solar panels, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), are designed integrally with the building, and be located so as not to be visually obtrusive;*
- (ii) *any new street/front wall, fence and gate within the Lincoln Street setback area, including along the side boundaries within this street setback area, shall comply with the following:*
 - (a) *the maximum height being 1.8 metres above the adjacent footpath level;*
 - (b) *the maximum height of piers with decorative capping being 2 metres above the adjacent footpath level;*
 - (c) *the maximum height of the solid portion of the wall being 1.2 metres above the adjacent footpath level, and a minimum of fifty percent visually permeable above 1.2 metres;*
 - (d) *the piers having a maximum width of 355 millimetres and a maximum diameter of 500 millimetres;*
 - (e) *the distance between piers should not be less than the height of the piers except where pedestrian gates are proposed; and*
 - (f) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level;*

- (g) *the solid portion adjacent to the Stirling Street boundary from the above truncation(s) can increase to a maximum height of 1.8 metres above adjacent footpath level provided that the wall or fence has at least two (2) significant appropriate design features (as determined by the Town of Vincent) to reduce the visual impact – for example, significant open structures, recesses and/or planters facing the street at regular intervals, and varying materials; and the incorporation of varying materials, finishes and/or colours are considered to be one (1) design feature. Details of these design features shall be submitted to and approved by the Town prior to the issue of a Building Licence;*
- (iii) *windows, doors and adjacent areas fronting Lincoln Street and Stirling Street shall maintain an active and interactive relationship with these streets;*
- (iv) *all signage shall be kept in a good state of repair, safe, non-climbable, and free from graffiti for the duration of its display on-site;*
- (v) *the seating and queuing area of the eating house (take-away food outlet) shall be limited to 20 square metres of seating area and 10 square metres of queuing area respectively. Any increase in floor space or change of use for the subject land shall require a separate Planning Approval to be applied to and obtained from the Town;*
- (vi) *the eating house (take-away food outlet) shall be limited to a permitted maximum of 20 customers; and*
- (vii) *the hours of operation for the eating house (take-away food outlet) shall be restricted to 7.30am to 5.00pm Monday to Sunday inclusive, excluding Thursday in which operation shall be between 7:30am to 11:00pm.*

***Note: The above Officer Recommendation was corrected and distributed prior to the meeting. Changes are indicated by strike through and underline.**

Cr Doran-Wu departed the Chamber at 7.45pm.

COUNCIL DECISION ITEM 9.1.3

Moved Cr Ker, Seconded Cr Burns

That the recommendation be adopted.

Debate ensued.

MOTION PUT AND CARRIED (6-1)

For: Mayor Catania, Cr Burns, Cr Ker, Cr Lake, Cr Messina, Cr Youngman

Against: Cr Maier

(Cr Farrell was an apology for the meeting. Cr Doran-Wu was absent from the Chamber and did not vote.)

Landowner:	R & N Duric
Applicant:	J Scotchford
Zoning:	Metropolitan Region Scheme: (Urban) Town Planning Scheme No. 1 (TPS 1): Residential R80
Existing Land Use:	Eating House (Take-Away Food Outlet)
Use Class:	Eating House (Take-Away Food Outlet)
Use Classification:	"SA"
Lot Area:	425 square metres
Access to Right of Way	North Side, 5 metres wide, Unsealed, Public

BACKGROUND:

12 February 2007 The Town under delegated authority from the Council approved an application for a Change of Use from Shop to Eating-House (Take-Away Food Outlet) and Associated Alterations and Signage, subject to standard and appropriate conditions including the following:

“(viii) the hours of operation for the eating house (take-away food outlet) shall be restricted to 7.30am to 5.00pm Monday to Sunday inclusive.”

6 March 2007 The Town issued a Building Licence for proposed signage to existing fascia/awning.

21 March 2007 The Town issued a Building Licence for the internal fit out to eating-house.

DETAILS:

The proposal involves Change of Hours of Operation of Existing Eating House (Take-Away Food Outlet). The application seeks to extend the hours of operation from the previously approved hours of 7:30am to 5:00pm, to 7:30am to 11:00pm on Thursdays only.

The applicant's submission is "Laid on the Table".

ASSESSMENT:

Non-Compliant Requirements			
Requirements	Required	Proposed *	Officer Comments Pursuant to Clause 38(5) of TPS 1
Plot Ratio	N/A	N/A	Noted – No variation.
Hours of operation:	The hours of operation for the approved eating house (take-away food outlet) shall be restricted to 7.30am to 5.00pm Monday to Sunday inclusive.	The hours of operation be extended as follows: Thursday 7:30am – 11:00pm.	Supported – see “Comments”.
Consultation Submissions			
Support	<ul style="list-style-type: none"> Nil 		<ul style="list-style-type: none"> Noted.
Objection (1)	<ul style="list-style-type: none"> The proposal will increase parking problems, in particular for residents in close proximity to the development. 		Not supported – as the original assessment of the proposal revealed the parking facilities provided are in accordance with the Town’s Parking and Access Policy. The proposal as it stands does not seek to reduce the provision for parking within the site.

	<ul style="list-style-type: none"> The proposal will disturb surrounding residence because of noise, lights and an increase in activity to a later period in the evening. 	Not supported – see “Comments”.
	<ul style="list-style-type: none"> The proposal will set precedent for commercial developments within a residential area. 	Not supported – The Town’s Officers do not base their decisions on precedence for future planning applications.
	<ul style="list-style-type: none"> Concerned the proposal will continue to apply for an extension of operational hours. 	Not supported – the application in no way indicates that further requests will be made for extended hours of operation.
	<ul style="list-style-type: none"> The proposal was not sufficiently advertised to the surrounding residents. 	Not supported – the proposal was advertised in accordance with the Town’s Community Consultation Policy.
Other Implications		
Legal/Policy		TPS 1 and associated Policies, and Residential Design Codes (R Codes).
Strategic Implications		Nil
Sustainability Implications		Nil
Financial/Budget Implications		Nil

* The representative R Coding and density bonus calculations are provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

* The plot ratio calculation is provided in accordance with the Notice of Motion (Item 11.1) resolved at the Ordinary Meeting of Council held on 23 March 2004.

COMMENTS:

The proposed extended hours of operation are not considered to have an undue impact on the surrounding area; the proposal does not seek any changes to the use of the approved eating-house, nor does it seek to increase the intensity of the existing use. Furthermore, the commercial activity of the approved eating-house is considered to be of a minor nature and therefore, is not considered to adversely affect the surrounding residential area.

In addition to the above, it should be noted that to further reduce the impact of the existing eating-house on the surrounding residential area, a condition restricting the maximum number of patrons has been applied to the Officer’s Recommendation, thus ensuring that the small scale commercial activity of the development is maintained.

In light of the above, it is recommended that the Council approve the application for extended operating hours, subject to standard and appropriate conditions to address the above matters.

9.1.11 Introduction of a Three Hour (3P) Parking Time Restriction to Morriston Street, Swimming Lane and Emmerson Street, North Perth

Ward:	South	Date:	18 May 2009
Precinct:	Smith's Lake; P6	File Ref:	TES0434
Attachments:	001 ; 002		
Reporting Officer(s):	J MacLean		
Checked/Endorsed by:	R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

- (i) **RECEIVES** the report on the public survey for Morriston Street, Swimming Lane and Emmerson Street, North Perth;
- (ii) **APPROVES:**
 - (a) the introduction of three hour (3P) parking time restrictions in Morriston Street, Swimming Lane and Emmerson Street, North Perth, operating from 8:00am to 10:00pm, Monday to Sunday inclusive, as shown in Drawing No. 2652-PP-1 as shown in Appendix 9.1.11; and
 - (b) the issuing of Cautions to offending vehicles for a period of two weeks and thereafter, the issuing of infringement notices; and
- (iii) **NOTES** that a further survey will be undertaken after a period of one year, to confirm that there has been an improvement in the parking situation, as a result of the introduction of restrictions.

Moved Cr Youngman, **Seconded** Cr Maier

That the recommendation be adopted.

Debate ensued.

AMENDMENT

Moved Cr Maier, **Seconded** Cr Ker

That subclause (ii)(a) be amended to read as follows:

- “(ii) **APPROVES:**
- (a) the introduction of three hour (3P) parking time restrictions in Morriston Street, Swimming Lane and Emmerson Street, North Perth, operating from 8:00am to ~~10~~ 6:00pm, Monday to Sunday inclusive, as shown in Drawing No. 2652-PP-1 as shown in Appendix 9.1.11; and”

Debate ensued.

Cr Burns suggested also changing the days in the proposed amendment by **Cr Maier**.

The Mover, Cr Maier advised that he wished to change his amendment as follows:

“(ii) **APPROVES:**

- (a) *the introduction of three hour (3P) parking time restrictions in Morriston Street, Swimming Lane and Emmerson Street, North Perth, operating from 8:00am to ~~10~~ 6:00pm, Monday to Friday ~~Sunday~~ inclusive, as shown in Drawing No. 2652-PP-1 as shown in Appendix 9.1.11; and”*

The Seconder, Cr Ker agreed.

Cr Doran-Wu returned to the Chamber at 7.52pm.

Debate ensued.

AMENDMENT PUT AND CARRIED (7-1)

For: Mayor Catania, Cr Burns, Cr Ker, Cr Lake, Cr Maier, Cr Messina, Cr Youngman
Against: Cr Doran-Wu

(Cr Farrell was an apology for the meeting.)

MOTION AS AMENDED PUT AND CARRIED (7-1)

For: Mayor Catania, Cr Burns, Cr Ker, Cr Lake, Cr Maier, Cr Messina, Cr Doran-Wu
Against: Cr Youngman

(Cr Farrell was an apology for the meeting.)

COUNCIL DECISION ITEM 9.1.11

That the Council;

- (i) *RECEIVES the report on the public survey for Morriston Street, Swimming Lane and Emmerson Street, North Perth;*
- (ii) **APPROVES:**
- (a) *the introduction of three hour (3P) parking time restrictions in Morriston Street, Swimming Lane and Emmerson Street, North Perth, operating from 8:00am to 6:00pm, Monday to Friday inclusive, as shown in Drawing No. 2652-PP-1 as shown in Appendix 9.1.11; and*
- (b) *the issuing of Cautions to offending vehicles for a period of two weeks and thereafter, the issuing of infringement notices; and*
- (iii) *NOTES that a further survey will be undertaken after a period of one year, to confirm that there has been an improvement in the parking situation, as a result of the introduction of restrictions.*

PURPOSE OF REPORT:

The purpose of this report is to seek the Council's ratification of their previous decision, with a slightly extended area, which was made at the Ordinary Meeting of Council held on 2 December 2008, concerning parking restrictions in streets near Beatty Park Leisure Centre.

BACKGROUND:

At the Ordinary Meeting of Council held on 2 December 2008, the Council approved a report to introduce parking time restrictions to Beatty Park Leisure Centre Car Park, Morriston Street, Swimming Lane and Emmerson Street, North Perth, on the proviso that the local residents were surveyed. The Council decision at Item 9.3.3 stated:

“That the Council;

- (i) APPROVES, the introduction of a four hours (4P) parking time restriction to the whole of the area of Beatty Park Leisure Centre Car Park that is currently unrestricted, as shown in Plan 2623-PP-01;*
- (ii) APPROVES IN PRINCIPLE, the introduction of a three hours (3P) parking time restriction to both sides of Morriston Street; between Vincent Street and Richmond Street, North Perth, as shown in Plan 2623-PP-02;*
- (iii) AUTHORIZES the Chief Executive Officer to advertise the proposal to introduce parking time restrictions, as indicated in (ii), above for a period of twenty one (21) days; and*
- (iv) NOTES:*
 - (a) that a report will be submitted to the Council, at the conclusion of the public consultation process; and*
 - (b) that Residential Parking Permits will be available to the residents in Morriston Street, North Perth.”*

DETAILS:

Because Beatty Park Leisure Centre is a Town owned and operated facility and the purpose of the restriction was to prevent all-day parking by commuters, the time restrictions have already been put in place. However, while the signage has been erected, enforcement by Rangers has not yet commenced. It is thought that, when Rangers commence enforcement of the parking time restrictions in Beatty Park Leisure Centre, there is likely to be a number of drivers who will move to the surrounding streets, to avoid an infringement notice. As a result, there is likely to be an increased pressure on Morriston Street, Emmerson Street and Swimming Lane. If the commencement of the enforcement in the BPLC Car Park coincides with the introduction of kerbside restriction in surrounding streets, congestion is likely to be avoided.

Following the Council decision, survey forms were delivered to all properties in Morriston Street, North Perth and, because of their proximity to Morriston Street, the corner houses in Swimming Lane and Emmerson Street also received forms. Subsequently, the Town received a number of telephone calls from residents in Emmerson Street and Swimming Lane, asking to be part of the survey, so forms were also distributed to residents in these streets. Letters were delivered to all fifteen (15) Morriston Street properties and twenty five (25) Emmerson Street properties. There are no properties, with a Swimming Lane address, because these Emmerson Street properties have their rear entries on this thoroughfare. A survey form was also delivered to No. 18 Farr Avenue, which has its side fence on Swimming Lane.

The following table shows a summary of the responses that were received.

Total No of respondents:	20
Respondents from Morriston Street	8
Respondents from Emmerson Street	7
Respondents from Swimming Lane	0
Respondents from unknown street	5
No of respondents who agreed with the proposal	12
No of respondents who disagreed with the proposal	8

Three of the people who agreed, suggested that restrictions should only operate from 8:00am to 5:00pm Monday to Friday. However, it is suggested that, because the proposed time restriction is for 3 hours parking, if the restriction finishes at 5:00pm, as has been suggested, a vehicle can park at 2:00pm and can then stay there till the following morning. As a result, it is suggested that the restriction should be in place till 10:00pm, so that if a vehicle parks before 7:00pm, it will need to be moved before 10:00pm.

Of the twenty (20) respondents, eighteen (18) indicated that they had on-site parking available to them, while the remaining two did not answer that question. Of the eight people who disagreed with the proposal, three required more parking than was available on-site and one did not provide details of parking available and needed. A further two people, who agreed with the proposal, indicated that they needed more parking than was available on-site, although one was a unit development, where two parking bays were already available and one lived on a corner, where the second street was unrestricted.

The eight people who disagreed provided the following comments:

Strongly disagree, have lived in street for 24 years with no problems	1
Concerned about Residential and Visitor Parking Permits	3
Prefer "No Stopping" stencilled outside gate	1
Concerned that proposal will relocate problem to another street	1
Did not provide any comments	2

Residential and Visitor Parking Permits will be available to eligible occupiers, in accordance with Council Policy 3.9.8. This Policy allows the Council to issue a maximum of two (2) Residential Parking Permits and two (2) Visitor Parking Permits to any single house, where parking can not be provided on-site. If an on-site parking place can be provided, the number of Residential Parking Permits that can be issued is reduced to one (1). Two Visitor Parking Permits are still provided, if requested.

For higher density Unit/Townhouse/Duplex developments, a maximum of one Residential Parking Permit can be issued where no on-site parking can be provided, and this reduces to no Permits if on-site parking is available. One Visitor Parking Permit is provided, if requested.

Clause 5 of the Town of Vincent Policy 3.9.8 allows the Chief Executive Officer to vary the number of issued permits, upwards by one permit. This clause states:

"5. **DISCRETIONARY AUTHORITY**

Notwithstanding any other provisions, which restrict the number of Residential and/or Visitor's Parking Permits that may be issued, the Chief Executive Officer may approve the issue of one (1) additional Residential Parking Permit or one (1) additional Visitor's Parking Permit, to any occupier, under such conditions as the Chief Executive Officer considers necessary".

CONSULTATION/ADVERTISING:

There will be a requirement to make residents and Beatty Park patrons aware of the restrictions and it is recommended that an advertisement be placed in a local newspaper. In addition, a letter-drop will ensure residents are aware and signage in Beatty Park Leisure Centre will make patrons aware of the restrictions. If Rangers issue Cautions for a period of two weeks, it should also make the all-day parkers aware.

LEGAL/POLICY:

There is no legal impediment to the introduction of these restrictions to Morriston Street, Emmerson Street and Swimming Lane. A two (2) week moratorium from infringement will be in place following the installation of the appropriate signage.

STRATEGIC IMPLICATIONS:

In accordance with the objective of Strategic Plan 2009-2014 – 1.1.6 Enhance and maintain the Town’s infrastructure to provide a safe, healthy, sustainable and functional environment.

SUSTAINABILITY IMPLICATIONS:

Not applicable.

FINANCIAL/BUDGET IMPLICATIONS:

The cost of the signage would be approximately \$3,000.00.

COMMENTS:

It has been established that parking in Morriston Street, Swimming Lane and Emmerson Street is likely to become extremely congested and, with the introduction of restrictions in Beatty Park Leisure Centre, there is a concern that drivers will make more use of kerbside bays in the area. By introducing parking time restrictions in these locations, it will prevent those who currently park in Beatty Park Leisure Centre and catch a bus into the City, from continuing to use the facilities, or from parking in local streets. The above report is recommended for approval.

9.2.1 Further Report - 2008/2009 Road Rehabilitation and Upgrade Program

Ward:	Both	Date:	20 May 2009
Precinct:	All	File Ref:	TES0174
Attachments:	-		
Reporting Officer(s):	R Lotznicker		
Checked/Endorsed by:	M Rootsey	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

- (i) **RECEIVES** the further report on the 2008/2009 Road Rehabilitation and Upgrade Program;
- (ii) **NOTES that:**
 - (a) *in accordance with the Local Government Act 1995, where a road forms a boundary road between two local governments, each local government is responsible for jointly funding improvements to the road;*
 - (b) *the City of Stirling advised the Town in March 2008 that it had received funding from the Metropolitan Regional Road Program to upgrade the section of Walcott Street, between Beaufort Street and Clotilde Street, in the 2008/2009 financial year and that the Town's contribution to the works would be \$50,000; and*
 - (c) *this allocation (\$50,000) was inadvertently omitted from the Town's 2008/2009 Road Rehabilitation and Upgrade program; and*
- (iii) **APPROVES BY AN ABSOLUTE MAJORITY** to re-allocate an amount of \$50,000 from the sources of funding in the 2008/2009 budget, as the Town's contribution for the Walcott Street project, as follows:
 - *Forrest Street Traffic Management* \$20,000
 - *Flinders Street Traffic Management* \$20,000
 - *Miscellaneous* \$10,000

COUNCIL DECISION ITEM 9.2.1

Moved Cr Maier, Seconded Cr Lake

That the recommendation be adopted.

MOTION PUT AND CARRIED
BY AN ABSOLUTE MAJORITY (8-0)

(Cr Farrell was an apology for the meeting.)

Additional Information:

The rehabilitation works in the section of Walcott Street between Beaufort Street and Clotilde Street were undertaken by the City of Stirling over the last few weekends with the bulk of the works being completed the weekend just past (Sunday 24 May 2009).

The works comprised milling out the existing old asphalt layer, and the application of two (2) new asphalt layers in separate operations.

This treatment has previously been progressively implemented by both the Town and the City of Stirling, by agreement, along Walcott Street between Wanneroo Road (Charles Street) and Beaufort Street, over the last few years.

The works recently undertaken by the City of Stirling have resulted in the entire section of Walcott Street now being rehabilitated.

PURPOSE OF REPORT:

The purpose of this report is to obtain the Council's approval for a reallocation of funds for the Town's share of the Walcott Street, Clotilde Street to Beaufort Street, Road Rehabilitation Project being undertaken by the City of Stirling.

BACKGROUND:

At its Ordinary meeting held on 24 June 2008, the Council was advised that in early 2008 Main Roads WA advised the Town of the approved Metropolitan Local Road Project Grants for 2008/2009. The following decision was subsequently adopted.

"That the Council;

- (i) RECEIVES the report on the Proposed 2008/2009 Road Rehabilitation and Upgrade Program;*
- (ii) ADOPTS the first year, 2008/2009, of the five (5) year (2008/2009 to 2012/2013) Road Rehabilitation and Upgrade Program as outlined in Attachment 10.2.3; and*
- (iii) NOTES that the remaining four (4) years (2009/2010 to 2012/2013) of the program is "preliminary only" and will be subject to change."*

DETAILS:

Following the Council decision, the following projects were included in the Town's 2008/2009 budget:

Road	Section	Grant	TOV contribution	Estimated Cost
Oxford St	Bourke St – Vincent St	\$96,333	\$43,667	\$140,000
Leederville Pde	Vincent St – Loftus St	\$97,000	\$53,000	\$150,000
Vincent St	Oxford St – Loftus St	\$133,333	\$66,667	\$200,000
Scarb Bch Rd	The Boulevard – Federation	\$180,000	\$90,000	\$270,000
Bulwer St	Brisbane St – Beaufort St	<u>\$83,333</u>	<u>\$41,667</u>	<u>\$125,000</u>
Total		\$589,999	\$295,001	\$885,000

Walcott Street:

The Town and the City of Stirling, by agreement, have progressively rehabilitated Walcott Street, between Wanneroo Road (Charles Street) and Beaufort Street, over the last few years. The only remaining section of the street to be upgraded is the section which is subject to this report (works currently in progress).

The City wrote to the Town on 20 March 2008 advising that it had received funding from the Metropolitan Regional Road Program to upgrade the section of Walcott Street between Beaufort Street and Clotilde Street in the 2008/2009 financial year and that the Town's contribution to the works would be \$50,000. Unfortunately this allocation (\$50,000) was inadvertently omitted from the Town's 2008/2009 Road Rehabilitation and Upgrade program.

A breakdown of the Cost of the project is as follows:

- Total Cost = \$300,000
- MRWA contribution = \$200,000
- City of Stirling Contribution = \$50,000
- Town of Vincent Contribution = \$50,000

Proposed funding sources:

The Town's Technical Services have almost completed the Roads Program for 2008/2009. Two (2) 2008/2009 projects are currently on hold, namely Forrest Street Traffic Management and Flinders Traffic Management as follows:

Forrest Street: (\$20,000)

In 2004, having received a petition from the residents of Forrest Street and which the Council subsequently referred to the Local Area Traffic Management (LATM) Advisory Group, the Town installed traffic calming measures in Forrest Street between William and Fitzgerald Streets, North Perth/Mt Lawley.

In July 2007 a second petition was received, suggesting that the original measures were insufficient and that additional traffic calming devices should be considered. The matter was again referred (by Council) to the LATM Advisory Group and new traffic data was duly collected. Further, in anticipation that additional works may be required, \$20,000 was included in the 2008/09 budget.

However, the new data (at the time) indicated that the traffic speeds and volumes were within acceptable limits and that further traffic calming was not warranted. The petitioners were invited to an LATM Advisory Group meeting to discuss the matter but elected not to attend. The Advisory Group subsequently agreed that no further action was necessary at this point in time.

Flinders Street: \$20,000

During the redevelopment of the Mt Hawthorn Plaza Shopping Centre in 2007, the Town received a number of complaints from residents in the immediate area in regard to the number of commercial vehicles, traffic movements, speed and volumes in Flinders Street in the vicinity of the centre. However, a majority of the complaints were directly related to construction activity and traffic, which at the completion of the centre would no longer be applicable.

However, the matter had been referred to the LATM Advisory Group by Council at its Ordinary Meeting of 25 September 2007. The Advisory Group requested new traffic data but took a "wait and see" approach to the matter on the basis that, as indicated above, once the building activity ceased, a majority of the issues would be resolved.

Further, as Flinders Street is classified as a Local Distributor under the Town's Functional Road Hierarchy, the new data (at the time) indicated that the traffic volumes, % commercial vehicles and speed were well within acceptable limits in accordance with the function of the road. In respect of the section of Flinders Street between the shopping centre carpark entrances and Scarborough Beach Road, the Town, in conjunction with the developers, initiated various improvements as part of the Mt Hawthorn Centre Precinct Upgrade Project.

Given that the more recent complaints have been related mainly to operational and compliance/enforcement matters, it is considered the \$20,000 budget allocation is no longer required.

Miscellaneous Traffic Management (\$21,000 remaining)

This had an allocation of \$35,000 and \$21,000 currently remains in this budget.

Officer's Comments:

It is recommended that the following reallocations be approved by the Council to fund the Town's share of the Walcott Street project:

- \$20,000 from Forrest Street traffic management
- \$20,000 from Flinders Street traffic management
- \$10,000 from Miscellaneous traffic management

CONSULTATION/ADVERTISING:

N/A.

LEGAL/POLICY

The Town is responsible for the care control and management of over 145km of roads, which include Primary Distributors, Local Distributors and Access Roads.

FINANCIAL/BUDGET IMPLICATIONS:

As mentioned above, a breakdown of the cost of the Walcott Street project is as follows:

- Total Cost = \$300,000
- MRWA contribution = \$200,000
- City of Stirling Contribution = \$50,000
- Town of Vincent Contribution = \$50,000

STRATEGIC IMPLICATIONS:

In accordance with the objective of Strategic Plan 2009-2014 – 1.1.6 Enhance and maintain the Town's infrastructure to provide a safe, healthy, sustainable and functional environment. *“(a) implement adopted annual infrastructure upgrade programs, including streetscape enhancements, footpaths, rights of way, car parking and roads.”*

COMMENTS:

Since its creation, the Town has expended a considerable amount on maintaining and upgrading the road infrastructure. The Town has also been very successful in securing State funding in the order of \$0.5m per annum from the Metropolitan Regional Roads Program.

In partnership with the City of Stirling, Walcott Street has been progressively upgraded through this funding program and the section of Walcott Street which is the subject to this report is the last section of street to be upgraded. It is therefore requested that the officer recommendation be adopted.

9.2.4 Further Report - Parking Congestion – Joel Terrace, Between Bramall and Westralia Streets, East Perth

Ward:	South	Date:	17 May 2009
Precinct:	Banks (P15)	File Ref:	PKG0074
Attachments:	001		
Reporting Officer(s):	T Blankenburg		
Checked/Endorsed by:	R Lotznicker	Amended by:	

FURTHER OFFICER RECOMMENDATION:

That the Council;

- (i) *RECEIVES the further report on the parking issues in Joel Terrace, between Bramall Street and Westralia Street;*
- (ii) *NOTES that interim measures to assist in alleviating parking problems in Joel Terrace, as outlined in the report, have or will be implemented;*
- (iii) *APPROVES the implementation of a two (2) hour parking restriction, to operate during the hours of 8.00am and 5.30pm Monday to Friday, in Joel Terrace between Bramall and Westralia Streets, as shown on attached Plan No. 2638-PP-1;*
- (iv) *PLACES a moratorium on issuing infringement notices for a period of two (2) weeks from the installation of the new parking restriction signs; and*
- (v) *ADVISES the respondents of its decision.*

COUNCIL DECISION ITEM 9.2.4

Moved Cr Messina, Seconded Cr Maier

That the recommendation be adopted.

Debate ensued.

AMENDMENT

Moved Cr Maier, Seconded Cr Messina

That clause (iii) be amended to read as follows:

“(iii) APPROVES the implementation of a two (2) hour parking restriction, to operate during the hours of 8.00am and 5.30pm Monday to Friday, adjacent to the residential properties in Joel Terrace between Bramall and Westralia Streets, as shown on attached Plan No. 2638-PP-1A;”

AMENDMENT PUT AND LOST ON THE CASTING VOTE OF THE PRESIDING MEMBER (4-5)

For: Cr Ker, Cr Lake, Cr Maier, Cr Messina

Against: Presiding Member, Mayor Nick Catania (two votes – deliberative and casting vote), Cr Burns, Cr Doran-Wu, Cr Youngman

(Cr Farrell was an apology for the meeting.)

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to inform the Council of the outcome of further consultation with residents of Joel Terrace to gauge the support for the introduction of a two (2) hour parking restriction on one side of the street between Bramall and Westralia Streets (as an interim measure to relieve parking congestion in the street) and inform the Council on additional measures undertaken to assist in alleviating the current parking congestion in the street.

BACKGROUND:

At its Ordinary Meeting held 10 February 2009, the Council received a report on the proposed introduction of two (2) hour parking in Joel Terrace, East Perth. The Council resolved to defer the decision pending additional consultation proposing restrictions be imposed on one side of Joel terrace only (between Bramall and Westralia Streets) and further investigation by the Town's Officers into other options for improvements to reduce parking stress in Joel Terrace. The following decision was made (in part):

"That the Council;

- (ii) DEFERS the introduction of the two (2) hour parking restriction to be in place between 8.00am and 5.30pm, Monday to Friday, as illustrated on attached Plan No. 2638-PP-1;*
- (iii) RE-EXAMINES the parking situation in Joel Terrace once Western Power has completed the construction of the proposed parking facility at their Joel Terrace facility;*
- (iv) WRITES to Western Power requesting a formal response stating the expected completion date of their proposed parking facility;"*

DETAILS:

Community Consultation

In accordance with the Council's decision, on 13 February 2009, twenty (20) letters were distributed to residents in the above section of Joel Terrace, requesting them to provide comments regarding a proposal to introduce a two (2) hour parking restriction from Monday to Friday inclusive between 8.00am and 5.30pm, on one side of the street only.

At the close of the consultation period eleven (11) responses were received. The responses to the proposal resulted in four (4) in favour of the proposal, three (3) partially in favour of the proposal and four (4) against the proposal. A summary of comments received is attached at Appendix 9.2.4.

The responses from the residents indicate that, while a two (2) hour parking restriction implemented on both sides of the road is generally supported, a restriction imposed on one side of the road only, received significantly less support.

Further investigation/Action from the Town's officers.

Meeting with Stakeholders

A meeting with key stakeholders, including the Town's Officers, Western Power, an advocate for residents in the street and the manager of a business potentially negatively impacted by the introduction of parking restrictions, was held. The meeting was presented with various options and requests from the various members present.

The representative from Western Power advised that the new parking facility would be completed at the end of 2009 and it was anticipated that it would cater for the majority of employee vehicles, reducing the requirement for street parking. Another initiative was to request Western Power employees to take advantage of the available parking in Summers Street adjacent to their facility, however, there was concern about specific details of parking in this street.

The representative of a nearby business stated that one of the main reasons he chose East Perth as a location for his business was the availability of unrestricted parking in the street. While doing his best to supply on-site parking for his employees as well as clients, there were times when his on-site parking was not fully adequate.

The representative of the ratepayers, Mr Ron Whitelaw, was of the opinion that as almost all of the parking in Joel Terrace, between Bramall and Westralia Street, was taken up during business hours by what appeared to be non-residents, this was an unacceptable loss of amenity for the residents of the street. This contention was backed up by a comparison of photos showing the parking situation at midday as compared to 5.30pm. The contention was that a two (2) hour restriction enforced during business hours would alleviate this situation.

Further Site Assessment

As a result of this meeting, officers from the Town carried out an investigation of the streets surrounding the site and came up with the following course of action to assist in alleviating some of the current problems.

Line Marking

It was noted that the current line marking delineating permissible parking places from prohibited parking spaces was faded and in a few instances closer to crossovers than the required distance. To rectify this, the Town's officers organised to have the line marking repainted and rectified.

Summers Street

Parking in Summers Street, east of Joel Terrace, is currently permitted on both sides of the road, however if vehicles are parked directly opposite each other, the travel lane is just over 3.0 metres wide, which means people are reluctant to park on both sides of the road. There is space to accommodate approximately 20 vehicles on Summers Street adjacent to the Western Power facility, if vehicles were parked on one side of the road only.

A redundant bus zone was identified on the northern side of Summers Street west of Joel Terrace. The space occupied by this bus zone was reclaimed to provide an additional three (3) parking spaces.

The section of verge in Summers Street, between Joel Terrace and East Parade adjacent to the Western Power facility on Summers Street, was identified as a potential site for additional verge parking. This section of verge is 'paved' with compacted gravel and has the potential to accommodate an additional 20 to 30 vehicles. There is the potential to temporarily mark parking at this location to optimise/encourage the use of this parking.

Further Site Meeting

A further meeting between officers of the Town and residents of Joel Terrace took place on 21 April 2009, where a number of issues were identified, which were passed on to the Town's Ranger and Community Safety Services section for action.

It was noted that there is little that can effectively be done to prevent some of this inconsiderate and/or unlawful driver behaviour, as the offending vehicles will most likely have departed by the time Rangers are able to attend.

Proposed Western Power Car Park

Development Approval for the new Western Power car park was issued in February 2008 and it can be expected that work will commence on the construction of the car park before the end of the year, although Western Power are unlikely to be expending funds on landscaping in the interim. The approved plans include terracing, landscaping and fencing, and are considered to provide a significant aesthetic improvement. While the current condition of the Lot does not constitute a hazard, the Town is unable to compel the owner to beautify the property.

The Manager of the Western Power facility on Joel Terrace has indicated that Western Power intends to proceed with the construction of the car park in the second half of this year, anticipating completion by the end of the year. The approved plans include terracing, landscaping and fencing, and are considered to provide a significant aesthetic improvement.

Comments/Conclusions

Matters directly within the scope of Technical Services were:

- Parking congestion in Joel Terrace, from Summers Street to Westralia Street
- Removal of the redundant bus stop in Summers Street, to allow vehicle parking
- Encouraging parking on the south side of the Summers Street road reserve

The bus stop and associated signage in Summers Street have been removed, and general vehicle parking restored in its place.

The Town will be carrying out some interim work on the Summers Street verge area to improve its amenity for vehicle parking, at the earliest opportunity. Traffic classifiers have been listed for deployment in this section of Joel Terrace for the near future and the traffic conditions will be assessed.

CONSULTATION/ADVERTISING:

Residents were consulted via a letter drop in relation to the proposed parking restrictions in Joel Terrace.

LEGAL/POLICY:

There is no legal consequence of the recommendation.

STRATEGIC IMPLICATIONS:

In accordance with the objective of Strategic Plan 2009-2014 – 1.1.6 Enhance and maintain the Town's infrastructure to provide a safe, healthy, sustainable and functional environment. *“(a) implement adopted annual infrastructure upgrade programs, including streetscape enhancements, footpaths, rights of way, car parking and roads.”*

SUSTAINABILITY IMPLICATIONS:

N/A.

FINANCIAL/BUDGET IMPLICATIONS:

Implementing parking restrictions in Joel Terrace will require the manufacture and installation of eight (8) new signs and will cost approximately \$800.00.

COMMENTS:

The response to the proposed restriction applying to one side of the road only has returned a more divided response than the original consultation.

If the parking problem in Joel terrace is primarily attributable to employees of Western Power parking in the street, these vehicles can be accommodated on the verge of Summers Street until the Western Power facility car park has been upgraded.

Introducing parking restrictions in Joel Terrace will be in accordance with the wishes of the majority of the residents in this section of Joel Terrace, as shown by the petition signed by the owner/occupier of seventeen (17) properties, representing 85% of the residents in this section of Joel Terrace.

It is recommended that the Officer's recommendation be adopted.

The Chief Executive Officer advised that Mayor Catania, Cr Burns and Cr Messina had declared a financial interest in Item 9.3.1. They departed the Chamber at 7.57pm. They did not speak or vote on this matter.

Cr Maier nominated Cr Ker to assume the Chair for this item, (as the Deputy Mayor was an apology for the Meeting). There were no other nominations.

Cr Ker assumed the chair at 7.57pm.

9.3.1 Investment Report as at 30 April 2009

Ward:	Both	Date:	4 May 2009
Precinct:	All	File Ref:	FIN0033
Attachments:	001 ; 002		
Reporting Officer(s):	B Wong		
Checked/Endorsed by:	B Tan	Amended by:	

OFFICER RECOMMENDATION:

That the Council RECEIVES the Investment Report for the month ended 30 April 2009 as detailed in Appendix 9.3.1.

COUNCIL DECISION ITEM 9.3.1

Moved Cr Maier, **Seconded** Cr Doran-Wu

That the recommendation be adopted.

MOTION PUT AND CARRIED (5-0)

(Cr Farrell was an apology for the meeting. (Mayor Catania, Cr Burns and Cr Messina were absent from the Chamber and did not vote on this matter.)

Mayor Catania, Cr Burns Cr Messina returned to the Chamber at 7.58pm. The Chief Executive Officer advised that the item was carried unanimously.

Mayor Catania, assumed the Chair.

PURPOSE OF REPORT:

The purpose of this report is to advise the Council of the level of funds available, the distribution of surplus funds in the short term money market and the interest earned to date.

BACKGROUND:

Interest from investments is a significant source of funds for the Town, where surplus funds are deposited in the short term money market for various terms. Details are attached in Appendix 9.3.1.

Council's Investment Portfolio is spread across several Financial Institutions in accordance with Policy Number 1.2.4.

DETAILS:

Total Investments for the period ended 30 April 2009 were \$12,482,547 compared with \$13,973,265 at 31 March 2009. At 30 April 2008, \$14,790,333 was invested.

Total accrued interest earned on Investments as at 30 April 2009:

	Budget	Actual	%
	\$	\$	
Municipal	650,000	451,796	69.51
Reserve	485,710	432,093	88.96

COMMENT:

As the Town performs only a custodial role in respect of monies held in Trust Fund Investments these monies cannot be used for Council purposes, and are excluded from the Financial Statements.

The report comprises of:

- Investment Report;
- Investment Fund Summary;
- Investment Earnings Performance;
- Percentage of Funds Invested; and
- Graphs.

9.4.2 Additional Delegated Authority 2008/09 - Encroachments

Ward:	Both	Date:	19 May 2009
Precinct:	All	File Ref:	ADM0018
Attachments:	-		
Reporting Officer(s):	Helen Smith		
Checked/Endorsed by:	R Boardman, J Giorgi	Amended by:	-

OFFICER RECOMMENDATION:

That pursuant to Section 5.42 of Division 4 of Part 5 of the Local Government Act 1995, the Council APPROVES BY AN ABSOLUTE MAJORITY the delegation of the exercise of its powers and duties to the Chief Executive Officer, the following to be included in the Delegation Register:

(i) *New Delegation No. 74.*

<i>No.</i>	<i>Area</i>	<i>Description of Council Function Delegated to the Chief Executive Officer from Council</i>	<i>Assignee(s)</i>	<i>Conditions</i>
<i>74</i>	<i>Planning, Building and Heritage Services</i>	<i>Authority to grant permission and recommendations to the relevant Minister to give approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for <u>existing</u> encroachments, such as footings, walls or the like.</i>	<i>CEO</i>	<p><i>(i) The retention of existing encroachment(s) in its existing state, in the opinion of the Chief Executive Officer, will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood;</i></p> <p><i>(ii) the Chief Executive Officer supports the encroachment;</i></p> <p><i>(iii) the Chief Executive Officer recommends and obtains the approval of the Minister before issuing a Certificate (Form 7); and</i></p> <p><i>(iv) prior to clearance of the Certificate of Local Government (Form 7), the Town is suitably indemnified against any claims for compensation for the encroachment(s) indicated on the relevant sheets of the (unapproved) Strata Plan, in any event requiring the removal of the encroachments, and stating that the use of and</i></p>

				<p><i>development on the land shall not be taken into consideration in determining any cost or compensation which may be payable by the Town. All costs associated with this condition shall be borne by the applicant/owner(s).</i></p>
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Moved Cr Doran-Wu, Seconded Cr Ker

That the recommendation be adopted.

Debate ensued.

AMENDMENT

Moved Cr Maier, Seconded Cr Ker

That clause (i), Description of Council Function Delegated to the Chief Executive Officer from Council be amended to read as follows:

“...Authority to grant permission and recommends to the relevant Minister to give approval, under the provisions of s400(~~4b~~) of the Local Government (Miscellaneous Provisions) Act 1960, for existing encroachments, such as footings, walls or the like...”

AMENDMENT PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

Debate ensued.

**MOTION AS AMENDED PUT AND CARRIED
BY AN ABSOLUTE MAJORITY (8-0)**

(Cr Farrell was an apology for the meeting.)

COUNCIL DECISION ITEM 9.4.2

That pursuant to Section 5.42 of Division 4 of Part 5 of the Local Government Act 1995, the Council APPROVES BY AN ABSOLUTE MAJORITY the delegation of the exercise of its powers and duties to the Chief Executive Officer, the following to be included in the Delegation Register:

(i) *New Delegation No. 74.*

<i>No.</i>	<i>Area</i>	<i>Description of Council Function Delegated to the Chief Executive Officer from Council</i>	<i>Assignee(s)</i>	<i>Conditions</i>
<i>74</i>	<i>Planning, Building and Heritage Services</i>	<i>Authority to grant permission and recommendations to the relevant Minister to give approval, under</i>	<i>CEO</i>	<i>(i) The retention of existing encroachment(s) in its existing state, in the opinion of the Chief Executive Officer, will not endanger public</i>

		<p><i>the provisions of s400 of the Local Government (Miscellaneous Provisions) Act 1960, for <u>existing</u> encroachments, such as footings, walls or the like.</i></p>		<p><i>safety or unreasonably interfere with the amenity of the neighbourhood;</i></p> <p><i>(ii) the Chief Executive Officer supports the encroachment;</i></p> <p><i>(iii) the Chief Executive Officer recommends and obtains the approval of the Minister before issuing a Certificate (Form 7); and</i></p> <p><i>(iv) prior to clearance of the Certificate of Local Government (Form 7), the Town is suitably indemnified against any claims for compensation for the encroachment(s) indicated on the relevant sheets of the (unapproved) Strata Plan, in any event requiring the removal of the encroachments, and stating that the use of and development on the land shall not be taken into consideration in determining any cost or compensation which may be payable by the Town. All costs associated with this condition shall be borne by the applicant/owner(s).</i></p>
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PURPOSE OF REPORT:

The purpose of this report is to seek the Council’s approval for an additional delegation to be included in the Delegations Register 2008-2009 as detailed in this report.

BACKGROUND:

The Local Government Act 1995, at Section 5.42, allows for a Council to delegate to the Chief Executive Officer its powers and functions.

The purpose of delegating authority to the Chief Executive Officer is to provide for the efficient and orderly administration of the day to day functions of the Local Government. The Chief Executive Officer exercises the delegated authority in accordance with the Council’s policies.

Additional Planning and Building Delegation

At the Ordinary Meeting of the Council held on 12 May 2009, the Council considered an Agenda Item (9.1.5) concerning a number of building encroachments and related matters to be resolved prior to issuing the Strata Form 7 Certificate of Local Government for the development at Nos. 59-61 Brewer Street (corners Thorley and Pier Streets), Perth.

The Council DEFERRED consideration of the report to allow Council Members sufficient time to consider the matter and understand the complexity of issues.

There have been rare occasions when balconies have been approved over the road reserve. In these cases, it has been the applicant's responsibility to obtain the necessary approvals from the relevant State Government agencies. The State agencies (DPI, WAPC, State Land Services and Minister for Lands) have indicated reluctance to support encroachments into road reserves. The Town takes the stance that all construction should be contained within the lot, except for awnings. String courses, cornices, copings, eaves or window sills, as defined in Section 400 (1a) of Local Government (Miscellaneous Provisions) Act 1960, with an encroachment of not more than 230 millimetres, would be considered and may be supported by the Town Officers. Approval for encroachments of this nature will not be required to be obtained from the relevant State Minister. Likewise, any other structures, such as balconies constructed of iron and cantilevered greater than 230 millimetres, will require approval to be obtained from the Minister for Lands.

In relation to the above, the Town's Technical Services will require assessment of any proposal against its streetscape plans for the roadway and possible changes to future road or intersection alignment. There are also issues relating to maintenance of encroaching structures and liability for damages both personal and real.

Previous advice from the Department of Housing and Works indicated that the Minister cannot approve existing encroachments, such as walls or the like, under the provisions of s.400 of the Local Government (Miscellaneous Provisions) Act 1960 except where the retention of the existing encroachment(s) in its existing state, in the opinion of the Local Government, will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood.

LEGAL/POLICY:

Section 5.42 of the Local Government Act 1995 gives power to a Council to delegate to the CEO the exercise of its powers and functions; prescribes those functions and powers which cannot be delegated; allows for a CEO to further delegate to an employee of the Town; and states that the CEO is to keep a register of delegations. The delegations are to be reviewed at least once each financial year by the Council and the person exercising a delegated power is to keep appropriate records.

Quarterly reports detailing the administration's use of delegations are reported to the Council as follows:

Period	Report to Council
1 January – 31 March	April
1 April – 30 June	July
1 July – 30 September	October
1 October – 31 December	February

STRATEGIC IMPLICATIONS:

The use of delegations is in keeping with the Council's Plan for the Future - Strategic Plan 2009 – 2014:

“Key Result Area 4.1.2 – Manage the organisation in a responsible and efficient manner.”

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

There is no provision in any legislation that allows the Minister's office to approve encroachments. Certain encroachments are permitted under Section 400 of the Act, some of which require the Minister's approval (section 400(1)(b)) or consent (section 400 (1b)) - in either case only the local government can petition the Minister for his/her approval or consent and only when the local government has resolved to permit the encroachment(s). The Town's Officers have consistently advised builders/developers that the Town takes a strict approach with respect to building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries. Awnings can be supported by the Town, provided that they are not part of a building structure.

Notwithstanding the above, the Town's Officers do not have delegated authority to consider encroachments of a building and this is evidenced by its direct absence in the Delegated Authority Register 2008-2009. The CEO does however, have delegated authority to issue a Notice to remove the unauthorised works. In order for the Town to consider building encroachments, which will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood, the approval of the Council is required. This avenue can in some instances result in delays to building certification and it is requested that delegation of the Council's power and function in this respect be considered with a view to maintaining statutory compliance and to ensure continuous improvement in the service delivery and management of the Town.

Accordingly, it is recommended that the additional Delegation No. 74 to be included in the Delegated Authority Register 2008-2009 be approved by the Council.

9.4.3 Safer Vincent Logo Competition

Ward:	Both	Date:	20 May 2009
Precinct:	All	File Ref:	ENS0095
Attachments:	001		
Reporting Officer:	M Wood, J MacLean		
Checked/Endorsed by:	R Boardman	Amended by:	-

That the Council;

- (i) *APPROVES the development of a Safer Vincent Logo, which will be used, in conjunction with the Town of Vincent Logo, to brand all Safer Vincent initiatives and promotional material;*
- (ii) *APPROVES a "Safer Vincent Logo Competition", as "Laid on the Table" and seeks the co-operation of local schools for their students to participate in the development of the Safer Vincent Logo;*
- (iii) *NOTES that:*
 - (a) *the winning design will be selected by the Safer Vincent Crime Prevention Partnership and, if necessary, will be further refined by a graphic artist; and*
 - (b) *the logo will be used, in conjunction with the Town of Vincent Logo (where appropriate), for all future Safer Vincent programmes and projects.*

Moved Cr Burns, Seconded Cr Youngman

That the recommendation be adopted.

Debate ensued.

AMENDMENT

Moved Cr Lake, Seconded Cr Maier

That clause (ii) be amended to read as follows:

- “(ii) APPROVES a "Safer Vincent Logo Competition", as "Laid on the Table" and seeks the co-operation of local schools for their students to participate in the development of the Safer Vincent Logo, including children of West Leederville Primary School;”*

AMENDMENT PUT AND CARRIED (6-2)

For: Cr Burns, Cr Doran-Wu, Cr Lake, Cr Maier, Cr Messina, Cr Youngman

Against: Mayor Catania, Cr Ker

(Cr Farrell was an apology for the meeting.)

Debate ensued.

MOTION AS AMENDED PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

COUNCIL DECISION ITEM 9.4.3

That the Council;

- (i) ***APPROVES the development of a Safer Vincent Logo, which will be used, in conjunction with the Town of Vincent Logo, to brand all Safer Vincent initiatives and promotional material;***
- (ii) ***APPROVES a "Safer Vincent Logo Competition", as "Laid on the Table" and seeks the co-operation of local schools for their students to participate in the development of the Safer Vincent Logo, including children of West Leederville Primary School;***
- (iii) ***NOTES that:***
 - (a) ***the winning design will be selected by the Safer Vincent Crime Prevention Partnership and, if necessary, will be further refined by a graphic artist; and***
 - (b) ***the logo will be used, in conjunction with the Town of Vincent Logo (where appropriate), for all future Safer Vincent programmes and projects.***

PURPOSE OF REPORT:

The purpose of the report is to gain approval from the Council for the development of a Safer Vincent Logo to be developed by local school children and subsequently for use to brand all Safer Vincent programmes, activities and paraphernalia.

BACKGROUND:

The Town has a well established Safer Vincent Programme, which was developed and adopted in 1998. In conjunction with the State Government Office of Crime Prevention, in 2006, the Town formally recognised community safety and crime prevention is not solely a Police or a Local Government role, but should encompass all agencies and the community working together.

For some time, the Safer Vincent Crime Prevention Partnership has proposed that a unique logo be developed, to more accurately reflect this partnership approach. As stated in the Town's Safety and Crime Prevention Plan 2007-2010 page 4 "*the cost of promoting community safety is low, when compared with the cost of ignoring crime and fear. Involving community organisations and creating safe environments are key elements in creating and maintaining a safer Town*". The development of a Safer Vincent Logo would form an important part in assisting further the positive perceptions of safety.

The Safer Vincent Logo was first raised at the Safer Vincent Crime Prevention Partnership Meeting on 6 June 2007, where the following discussion and subsequent decision to develop a logo was minuted:

"Broader Partnership and Communication Project

The Manager of Ranger and Community Safety Services (MRSCSS) stated that a logo had been suggested, around 2006, but because it was very similar to the Town of Vincent (TOV) logo, it was not presented to the council. A member suggested it would give a sense of autonomy to the work of the Partnership. Mayor Catania stated the SVCPP should sell the idea to the schools, with a competition for drawing up a suitable logo. It would take a little longer, but this was outweighed by the benefits. MRSCSS said the OCP had specific funding grants for Community Safety that may fund this initiative. It was considered important that 'Safer Vincent' is not seen as a Town of Vincent owned project, but rather reflective of the partnership approach to crime prevention within the Town. Mayor Catania stated the partnership seemed in agreement that they wanted a logo and this would raise SVCPP profile."

Recommendation: That the Partnership does not use the Safer Vincent logo, presented to the meeting, but rather develops, in close association with primary schools and community stakeholders, a unique Safer Vincent logo.

Action: Coordinator Safer Vincent to progress this project”.

Since this time, the Town has developed the Safety and Crime Prevention Plan 2007 – 2010 with an outlined communications project, which earmarks the development of a Safer Vincent Logo, with supporting funds provided by the State Government Office of Crime Prevention.

Due to other Safer Vincent Crime Prevention Partnership priorities, along with the need to align the project with school curricula, the development of the logo has been delayed. However, at the Safer Vincent Crime Prevention Partnership, on 1 April 2008, the members unanimously carried, the following motion:

“The SVCPP endorses the "Safer Vincent Logo Project", as per proposed guidelines (tabled prior to meeting), with a view to involving a youth demographic in the future (to be determined and as opportunity arises).”

DETAILS:

As part of the Town’s community safety crime prevention initiatives, coordinated through the Safer Vincent Crime Prevention Partnership (SVCPP), it is proposed that all children from Grades 4-7 in schools within the Town of Vincent are invited to participate in a ‘Safer Vincent Logo Competition’.

This will involve students from each participating school, designing a logo, depicting their visions of a safe community in the Town of Vincent (as per competition guidelines). Selected designs will be utilised as a basis for a professionally enhanced logo, which will become the flagship logo, used for all future Safer Vincent programmes, initiatives and activities.

This is an exciting project that, as well as offering a financial incentive to each school to participate (\$150.00 non-acquittable participation prize per school, for minimum of 20 entries received). It is aimed at engaging children within the Vincent areas, in learning about their local community and making an important contribution to community safety. Further, individual educational incentive prizes for students, will be offered and each entry will be displayed at the Town’s Library (date to be confirmed).

The ‘Safer Vincent Logo Competition’ has been designed according to education curriculum frameworks and is intended to be sufficiently flexible to enable teachers to implement and participate. How the project progresses will be at the discretion of each school. Guidelines have been attached to this report for the information of Council Members and include student worksheets.

There are some distinct advantages of branding the activities of Safer Vincent Crime Prevention Partnership, under one unified logo. The selected logo will seek to more accurately reflect the involvement and participation of the community stakeholders on the Safer Vincent Crime Prevention Partnership, which now includes extensive involvement of community representatives, Police and other agencies.

The selected logo, as stipulated in the competition guidelines, would seek to reflect positive elements of;

Safety, unity, harmony, diverse community, working together, partnerships between the community, police, Town and businesses, positive aspects of living within the Town of Vincent.

The proposed 'Safer Vincent Logo' may be enhanced by a graphic designer, to ensure that it is of a high quality. Some examples of safety logos that are already in place are provided below:



CONSULTATION/ADVERTISING:

Schools in the Town of Vincent will be consulted in implementing this project. Consultation with teachers has enabled the project to be structured around current education curriculum frameworks. Teachers have also provided advice that, because of the abstract nature anticipated in this project, it may be more appropriate to target Grades 4 to 7 in the development of the 'Safer Vincent Logo'.

The Safer Vincent Crime Prevention Partnership has provided in-principle support for the proposed strategy and will be actively involved in judging entries and in the selection of the winning logo. Council Members will be invited to present the prizes, to the winning participants.

LEGAL/POLICY:

No legal implications apply to this report.

STRATEGIC IMPLICATIONS:

The above is in keeping with the *Town of Vincent Strategic Plan 2009-2014* in the following areas:

"Economic Development

- 2.1.1 *Promote the Town of Vincent as a place for investment appropriate to the vision for the Town*
- 2.1.2 *Develop and promote partnerships and alliances with key stakeholders*
 - (a) *Establish public/private alliances and partnerships to attract external funding and investment to enhance the strategic direction of the Town.*
- 2.1.3 *Promote Business development*

Community Development

3.1 *Enhance community development and wellbeing*

(a) *Organize and promote community events and initiatives that engage the community and celebrate cultural and social diversity within the Town.*

3.1.2 *Provide and develop a range of community programs and community safety initiatives.*

(d) *Promote and implement the Safer Vincent Crime Prevention Plan 2006.*

4.1.1 *Develop leadership skills and behaviours that enhance the public image of the Town.*

FINANCIAL/BUDGET IMPLICATIONS:

There will be a need to provide some resources to the project, such as participation incentive prizes to students and schools (up to \$1000) and refining of the selected logo by a graphic designer (estimated to be up to a maximum of a further \$1000.00). However, these costs will be met by funding already received, for priority projects, by the State Government Office of Crime Prevention.

SUSTAINABILITY:

The logo once developed will support the Town's promotion of sustainable triple bottom line economic, social and environmental responsibility, in the programs.

COMMENTS:

The above initiative has been developed to engage local school children in reflecting their visions of a 'Safer Vincent'. The unification of all partnership and Safety and Crime Prevention actions, coordinated through the Town would have distinct advantages in branding the Town as a "Preferable Place to Live, Operate Businesses, Recreate and Invest". The report is recommended for approval by the Council.

9.4.4 Information Bulletin

Ward:	-	Date:	19 May 2009
Precinct:	-	File Ref:	-
Attachments:	001		
Reporting Officer(s):	A Radici		
Checked/Endorsed by:	John Giorgi	Amended by:	-

OFFICER RECOMMENDATION:

That the Information Bulletin dated 26 May 2009, as distributed with the Agenda, be received.

COUNCIL DECISION ITEM 9.4.4

Moved Cr Youngman, Seconded Cr Doran-Wu

That the recommendation be adopted.

Debate ensued.

Cr Youngman departed the Chamber at 8.14pm.

Debate ensued.

Cr Youngman returned to the Chamber at 8.17pm.

Debate ensued.

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

DETAILS:

The items included in the Information Bulletin dated 26 May 2009 are as follows:

ITEM	DESCRIPTION
IB01	Letter and Certificate of Appreciation from the Office of Crime Prevention regarding Antisocial behaviour Symposium to Michael Wood
IB02	Letter of Appreciation from the Department of Water regarding Completing a Water Conservation Plan
IB03	Letter of Appreciation from Sisters Catherine and Teresa regarding the Carers Lunch held on Friday 15 May 2009
IB04	Email of Appreciation from Lyn Oliver regarding Researching the History of Your House Workshops – Archive Form
IB05	Letter from the Minister for Environment; Youth regarding Changes to the Landfill Levy
IB06	Letter from the Deputy Premier of Western Australia Minister for Health; Indigenous Affairs regarding Appointment of Rob Boardman as a Member to the Local Health Authorities Analytical Committee
IB07	Safer Vincent Crime Prevention Partnership (SVCPP) Minutes of Meeting held on 1 April 2009
IB08	Report On Certified Practicing Accounts (CPA) 2009 International Public Sector Convention – Sydney New South Wales
IB09	Letter of Appreciation from Mrs P. Fraser regarding the Carers Lunch held on Friday 15 May 2009

9.4.5 LATE ITEM: 2009 National General Assembly of Local Government

Ward:	-	Date:	21 May 2009
Precinct:	-	File Ref:	ADM0031
Attachments:	001		
Reporting Officer(s):	John Giorgi		
Checked/Endorsed by:	-	Amended by:	-

OFFICER RECOMMENDATION:

That APPROVAL be granted for the Mayor and Chief Executive Officer to attend the 2009 National General Assembly, to be held in Canberra between Sunday 21 June 2009 and Wednesday 24 June 2009, at an estimated cost of \$2,739.00 each.

COUNCIL DECISION ITEM 9.4.5

Moved Cr Ker, Seconded Cr Youngman

That the recommendation be adopted.

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to obtain the Council's approval for the Mayor and Chief Executive Officer's attendance at the 2009 National General Assembly to be held at the National Convention Centre in Canberra between Sunday 21 June 2009 and Wednesday 24 June 2009.

BACKGROUND:

The National General Assembly is the major event on the annual local government events calendar and typically attracts more than 700 Mayors, Councillors and Senior Officers from Councils across Australia. The Australian Government has also confirmed that the next meeting of Mayors and Shire Presidents, as part of its Australian Council of Local Government, will be held to coincide with the Assembly.

DETAILS:

The theme for this year's Assembly is *"Rising to the Challenge - Infrastructure, Financing and Climate Change"*.

The National General Assembly provides Councils with an opportunity to contribute to the development of the national local government policy.

Three core themes will be discussed at the Assembly:

1. Efficient and sustainable local government including Revenue and Local, Government Financing;
2. Transport and Infrastructure; and
3. Climate Change.

Over recent years, Local Government has significantly increased its level of engagement with the Australian Government. With this has come an increased ability for Local Government to constructively influence Government policies and programs in the interests of our local communities.

The ALGA membership of the Council of Australian Governments and its involvement in another 13 Commonwealth-State Ministerial Councils underlies how Local Government is now seen as an equal partner in Australia's federal system of government.

The speakers include;

- Hon Anthony Albanese, MP - *Minister for Infrastructure, Transport and Regional Development, Local Government, Leader of the House*
- Hon Malcolm Turnbull, MP - *Leader of the Opposition*
- Stephen Alchin - *General Manager, Planning at Infrastructure Australia*
- Senator Bob Brown - *Leader of the Australian Greens*
- Hon Warren Truss, MP - *Leader of the Nationals, Shadow Minister for Trade, Transport, Regional Development and Local Government*

A copy of the Conference Registration Brochure is "*Laid on the Table*".

CONSULTATION/ADVERTISING:

Not applicable.

LEGAL POLICY:

Council's Policy 4.1.15 – "*Conferences & Training – Attendance, Representation, Travel and Accommodation Expenses and Related Matters*"- Clause 1.1 states that up to a maximum of one Council Member and one officer may attend conferences.

Previous Attendances

Clause 1.3 of the Policy requires details of previous attendances of the Conference to be included into the report.

<u>Chief Executive Officer's Comment:</u>	
<i>Previous attendance at the National General Assembly has been as follows;</i>	
<u>Year*</u>	<u>Attendees</u>
1998	<i>Chief Executive Officer, John Giorgi and former Mayor John Hyde (in his capacity as President of the Local Government Association)</i>
2002	<i>Mayor Nick Catania and Chief Executive Officer, John Giorgi</i>
2003	<i>Mayor Nick Catania, Chief Executive Officer, John Giorgi and Councillor Steed Farrell**</i>
2005	<i>Mayor Nick Catania (7-8/11/05 only) and Deputy Mayor, Cr Steed Farrell (7-10/11/05)</i>
2007	<i>Cr Helen Doran-Wu (representing Mayor Nick Catania) and Chief Executive Officer, John Giorgi</i>
2008	<i>Mayor Nick Catania and Chief Executive Officer, John Giorgi, attended the "Local Government Constitutional Summit - A Special National General Assembly of Local Government"</i>
*	<i>Nil attendance 1995, 1996, 1997, 1999, 2000, 2001, 2004 and 2006</i>
**	<i>Councillor Farrell was already in Canberra on work matters and therefore only a Day Registration for the Conference was paid (at a cost of \$400).</i>

STRATEGIC IMPLICATIONS:

In keeping with the Town's Strategic Plan 2006-2011 – Objective 4.2 - “Provide a positive and desirable workplace in particular 4.2.4 (b) “Enhance employee empowerment, professional development and job satisfaction and create a workplace that encourages and rewards innovation, implements best practice, and positions the Town as an Employer of Choice”.

SUSTAINABILITY IMPLIATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

	Costs
Registration (payment by 2 June 2009)	\$899.00
Accommodation (at \$240 per night x 3 nights)*	\$720.00
Airfare (economy class) - indicative cost	\$700.00
Expenses allowance (4 days @ \$105.20 per day)	\$420.00
	<hr/>
	\$2,739.00
	<hr/> <hr/>

* As per Council Policy No. 4.1.15

COMMENT:

It is requested that approval be granted for the Mayor and Chief Executive Officer to attend the 2009 National General Assembly in Canberra.

The Australian Government is increasingly looking to local government to play a role as a partner in tackling the major issues facing the nation and the Assembly is the opportunity to make sure that the Council's views are represented. The Assembly is also a great opportunity to hear from senior politicians and interesting key note speakers and is an unparalleled networking opportunity within the local government sector.

10. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

11. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil.

12. REPRESENTATION ON COMMITTEES AND PUBLIC BODIES

Nil.

13. URGENT BUSINESS

Nil.

PROCEDURAL MOTION

At 8.17pm Moved Cr Youngman, Seconded Cr Ker

That Council proceed "behind closed doors" to consider confidential items 14.1, 14.2 and 14.3 as these matters contain legal advice obtained or which may be obtained by the local government and which relates to a matter to be discussed at the meeting.

PROCEDURAL MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

No members of the public or journalists were present.

At 8.17pm the Council proceeded "Behind Closed Doors" to consider the follow items:

14. CONFIDENTIAL ITEMS/MATTERS FOR WHICH THE MEETING MAY BE CLOSED ("BEHIND CLOSED DOORS")

14.1	CONFIDENTIAL FURTHER REPORT – Nos. 59-61 (Lots 10, 16, 17, 18, 19 and 20) Brewer Street, Corner Pier Street and Thorley Street, Perth – Proposed Strata Form 7 Certificate of Local Government to Previously Approved Construction of Four (4) Storey Residential Building Comprising Forty (40) Multiple Dwellings and Basement Car Parking – Building Encroachments
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Ward:	South	Date:	25 May 2009
Precinct:	Beaufort; P13	File Ref:	PRO3797; 6.2009.168.1
Attachments:	-		
Reporting Officer(s):	B Tran, H Smith		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

FURTHER OFFICER RECOMMENDATION:

That the Council;

- (i) *RECEIVES the report regarding the Proposed Strata Form 7 Certificate of Local Government to Previously Approved Construction of Four (4) Storey Residential Building Comprising Forty (40) Multiple Dwellings and Basement Car Parking – Building Encroachments at Nos. 59-61 (Lots 10, 16, 17, 18, 19 and 20) Brewer Street, Corner Pier Street and Thorley Street, Perth; and;*

- (ii) **GRANTS ITS PERMISSION, and RECOMMENDS that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the encroachments 1 and 18, as follows:**
- **“Encroachment 1: Brewer Street: Column. At ground level, one corner of the concrete column encroaches 10mm into Brewer Street. The column encroaches to a maximum of 20mm on the first floor and second floor of the new building. The column rises then to form portion of a balcony wall on the third floor. As a result, one corner of this balcony wall on the third floor encroaches to a maximum of 20mm into Brewer Street. The height of this balcony wall is approximately 11000mm above ground level; and**
 - **Encroachment 18: Brewer Street: Balcony Wall. At 3700mm – 4900mm above ground level. The balcony wall encroaches a maximum of 10mm into Brewer Street;”**
- (iii) **prior to the issue of the Strata Form 7 Certificate of Local Government, the owners shall enter into a deed with the Town imposing legally enforceable obligations on the owners as follows:**
- (a) **on registration of the strata plan, the owners shall register additional by-laws, in terms previously approved in writing by the Town, as follows:**
- (1) **the strata company shall at its cost keep Encroachments 1 and 18 in good and serviceable repair, properly maintained and, where necessary, promptly renew and replace the Encroachments and every part of them, whether the damage or deterioration arises from fair wear and tear, inherent defect or otherwise;**
 - (2) **the strata company shall at its cost promptly comply with the Town's directions from time to time in relation to the repair and maintenance of the Encroachments pursuant to clause (iii) (a) (1);**
 - (3) **the strata company shall indemnify and keep indemnified the Town against any losses, damages, costs, claims, actions, liabilities or expenses for which the Town is held liable or incurs in connection with Encroachment 1 and/or Encroachment 18 however arising, including, without limitation, any claim against the Town for compensation or as a result of any injury to any person or loss or damage to any property arising out of Encroachments 1 and 18;**
 - (4) **whilst Encroachments 1 and 18 exist, the strata company shall effect and maintain insurance for any liability it may incur to the Town or any other party arising out of or in connection with the Encroachments, including any liability to the Town under the previous paragraph, for an amount of not less than \$50 million (or such higher amount as the Town may reasonably specify from time to time) which insurance shall note the interests of the Town of Vincent under the by-law, and the strata company shall produce evidence of the currency of that insurance promptly after receiving a request from the Town of Vincent to do so;**
 - (5) **the strata company shall not amend or repeal any of the by-laws set out in this condition without the written agreement of the Town of Vincent;**

- (6) *the strata company acknowledges that the Town of Vincent requires registration of a Notification pursuant to Section 70A of the Transfer of Land Act 1893 to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent pursuant to clause (iii) (a)(5) of this condition; and*
- (7) *the strata company shall enter into a deed prepared by the Town's solicitors on terms and conditions acceptable to the Town to give effect to the strata company's obligations pursuant to this condition (iii)(a);*
- (b) *the owners shall ensure that immediately after registration of the strata plan, the strata company enters into a deed with the Town as contemplated in clause (iii) (a) (7) of this condition;*
- (c) *the owners shall pay the Town's legal costs incurred in connection with the preparation, negotiation and execution of the deeds between the owners and the Town and the strata company and the Town referred to in this condition, the preparation of these conditions and all related legal advice and assistance. If required by the Town the owners shall pay the Town's solicitors estimate of this amount as a bond to the Town prior to the Town instructing its solicitors to commence work;*
- (d) *entitling the Town to lodge a Notification pursuant to Section 70A of the Transfer of Land Act 1893 simultaneously with the owners' application to register the strata plan to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent and the strata company pursuant to clause (iii) (a) (5) of this condition; and*
- (e) *charging the land in favour of the Town for the purpose of securing the due and punctual performance of the owner's obligations under the deed referred to in this condition, and authorising the Town to lodge an absolute caveat at Landgate against the certificate of title to the land in order to protect the rights and interests of the Town under that deed;*
- (iv) *NOTES the revised "Additional Matters to be resolved prior to clearance of Strata Form 7" as detailed in this report; and*
- (v) *EXPRESSES its strong concern to Psaros Builders with regard to building encroachments, as the Town has consistently taken a strict approach with respect to encroaching building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries, and that the Council's decision to support the subject building encroachments should not be viewed as a precedent for any future developments in the future.*

Cr Doran-Wu departed the Chamber at 8.17pm.

Moved Cr Youngman, Seconded Cr Lake

That the recommendation be adopted.

Debate ensued.

Cr Doran-Wu returned to the Chamber at 8.19pm.

Debate ensued.

AMENDMENT

Moved Cr Ker, Seconded Cr Burns

That a new clause (vi) be inserted as follows:

“(vi) REQUESTS the Chief Executive Officer to submit a further report to Council for further consideration of apparent damage and removal of existing street verge trees along the Brewer Street, Pier Street and Thorley Street frontages to the property.”

AMENDMENT PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

MOTION AS AMENDED PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

COUNCIL DECISION ITEM 14.1

That the Council;

(i) *RECEIVES the report regarding the Proposed Strata Form 7 Certificate of Local Government to Previously Approved Construction of Four (4) Storey Residential Building Comprising Forty (40) Multiple Dwellings and Basement Car Parking – Building Encroachments at Nos. 59-61 (Lots 10, 16, 17, 18, 19 and 20) Brewer Street, Corner Pier Street and Thorley Street, Perth; and;*

(ii) *GRANTS ITS PERMISSION, and RECOMMENDS that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the encroachments 1 and 18, as follows:*

- *“Encroachment 1: Brewer Street: Column. At ground level, one corner of the concrete column encroaches 10mm into Brewer Street. The column encroaches to a maximum of 20mm on the first floor and second floor of the new building. The column rises then to form portion of a balcony wall on the third floor. As a result, one corner of this balcony wall on the third floor encroaches to a maximum of 20mm into Brewer Street. The height of this balcony wall is approximately 11000mm above ground level; and*
- *Encroachment 18: Brewer Street: Balcony Wall. At 3700mm – 4900mm above ground level. The balcony wall encroaches a maximum of 10mm into Brewer Street;”*

(iii) *prior to the issue of the Strata Form 7 Certificate of Local Government, the owners shall enter into a deed with the Town imposing legally enforceable obligations on the owners as follows:*

(a) *on registration of the strata plan, the owners shall register additional by-laws, in terms previously approved in writing by the Town, as follows:*

- (1) *the strata company shall at its cost keep Encroachments 1 and 18 in good and serviceable repair, properly maintained and, where necessary, promptly renew and replace the Encroachments and every part of them, whether the damage or deterioration arises from fair wear and tear, inherent defect or otherwise;*

- (2) *the strata company shall at its cost promptly comply with the Town's directions from time to time in relation to the repair and maintenance of the Encroachments pursuant to clause (iii) (a) (1);*
 - (3) *the strata company shall indemnify and keep indemnified the Town against any losses, damages, costs, claims, actions, liabilities or expenses for which the Town is held liable or incurs in connection with Encroachment 1 and/or Encroachment 18 however arising, including, without limitation, any claim against the Town for compensation or as a result of any injury to any person or loss or damage to any property arising out of Encroachments 1 and 18;*
 - (4) *whilst Encroachments 1 and 18 exist, the strata company shall effect and maintain insurance for any liability it may incur to the Town or any other party arising out of or in connection with the Encroachments, including any liability to the Town under the previous paragraph, for an amount of not less than \$50 million (or such higher amount as the Town may reasonably specify from time to time) which insurance shall note the interests of the Town of Vincent under the by-law, and the strata company shall produce evidence of the currency of that insurance promptly after receiving a request from the Town of Vincent to do so;*
 - (5) *the strata company shall not amend or repeal any of the by-laws set out in this condition without the written agreement of the Town of Vincent;*
 - (6) *the strata company acknowledges that the Town of Vincent requires registration of a Notification pursuant to Section 70A of the Transfer of Land Act 1893 to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent pursuant to clause (iii) (a)(5) of this condition; and*
 - (7) *the strata company shall enter into a deed prepared by the Town's solicitors on terms and conditions acceptable to the Town to give effect to the strata company's obligations pursuant to this condition (iii)(a);*
- (b) *the owners shall ensure that immediately after registration of the strata plan, the strata company enters into a deed with the Town as contemplated in clause (iii) (a) (7) of this condition;*
 - (c) *the owners shall pay the Town's legal costs incurred in connection with the preparation, negotiation and execution of the deeds between the owners and the Town and the strata company and the Town referred to in this condition, the preparation of these conditions and all related legal advice and assistance. If required by the Town the owners shall pay the Town's solicitors estimate of this amount as a bond to the Town prior to the Town instructing its solicitors to commence work;*
 - (d) *entitling the Town to lodge a Notification pursuant to Section 70A of the Transfer of Land Act 1893 simultaneously with the owners' application to register the strata plan to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent and the strata company pursuant to clause (iii) (a) (5) of this condition; and*

- (e) *charging the land in favour of the Town for the purpose of securing the due and punctual performance of the owner's obligations under the deed referred to in this condition, and authorising the Town to lodge an absolute caveat at Landgate against the certificate of title to the land in order to protect the rights and interests of the Town under that deed;*
- (iv) *NOTES the revised "Additional Matters to be resolved prior to clearance of Strata Form 7" as detailed in this report;*
- (v) *EXPRESSES its strong concern to Psaros Builders with regard to building encroachments, as the Town has consistently taken a strict approach with respect to encroaching building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries, and that the Council's decision to support the subject building encroachments should not be viewed as a precedent for any future developments in the future; and*
- (vi) *REQUESTS the Chief Executive Officer to submit a further report to Council for further consideration of apparent damage and removal of existing street verge trees along the Brewer Street, Pier Street and Thorley Street frontages to the property.*

Note: The Chief Executive Officer determined that this report be released to the public as the Council has determined the matter.

FURTHER REPORT:

The Council at its Ordinary Meeting held on 12 May 2009 resolved to 'defer' the Late Item No. 9.1.5 for further consideration to allow Council Members sufficient time to consider the matter.

The Town's Officers have listened to the audio recording of the Ordinary Meeting of Council held on 12 May 2009 and have noted Council Members debate on the item. It is considered that the issues raised by the Councillors have been adequately addressed in the Officers' report and that the above deferral has enabled sufficient time for the Council Members to review the report and understand the complexity of issues.

Subsequent to the above deferral, the Town's Officers have responded to separate Council Member Requests and have sought legal advice in respect of dealing with building encroachments.

Furthermore, as requested by the CEO/Director of Psaros Builders, a meeting with held with the Town's Chief Executive Officer and Director Development Services, on 19 May 2009. During this meeting, the CEO/Director of Psaros Builders advised that the Encroachments 31 and 32 were shown on the approved drawings. A study of the approved plans, stamp dated 11 September 2009, of the "Third Floor Plan – Drawing No. 1662 A2.05 Revision 1 dated 15/08/07" revealed that the plans did not show any roof line encroachments. The "Brewer Street Elevation" and roof plan however, did show these two roof line encroachments. The actual dimensions were not shown however, the Town's Officers scale the encroachments at approximately 300 millimetres.

The Director of Developments of Psaros Builders has also raised an "immense concern" regarding clause (iv) the previous Officer Recommendation in respect of caveats/legal agreements/bonds. The Officers are of the view that this clause (iv) of the Officer Recommendation is appropriate and provides essential safeguard to any potential liability against the Town's interest relating to these unauthorised encroachments. Advice was also sought from the Town's lawyers.

In response to the above, the Town's Lawyers have detailed advice in respect of the building encroachments, the Town's position in this regard and re-drafted conditions to deal with the matter of the encroachments, insurance and liability, in a letter dated 25 May 2009 (as attached). A summary is outlined below:

"The Town has determined that due to the nature and extent of the Encroachments the Town wishes to ensure that it has the appropriate, legally enforceable obligations in place to ensure that the strata company must:

- 1. keep the Encroachments in good repair and properly maintained; and*
- 2. indemnify the Town against any loss, damage or liability the Town may incur arising out of the Encroachments.*

The developer has argued that the Town should not require an indemnity from the developer or the strata company in relation to loss or damage arising out of the Encroachments because the provisions of the Strata Titles Act 1985 already oblige the strata company to repair and maintain the Encroachments. The developer has also undertaken to register additional by-laws relating to maintenance and repair of the Encroachments.

Further, the developer argues that under the Strata Titles Act 1985 the strata company must insure the common property of the strata scheme, and since pursuant to the Strata Titles Act 1985 the Encroachments are to be treated as common property for the purposes of the Act, the strata company must therefore ensure it is insured against liability arising out of the Encroachments.

We do not disagree with these points made by the developer, but these obligations on the strata company under the Strata Titles Act 1985 do not achieve the Town's requirements. Without a legally enforceable agreement between the Town and the strata company requiring the strata company to repair and maintain the Encroachments, a failure to observe the maintenance and repair provisions of the Strata Titles Act 1985 does not entitle the Town to take legal action against the strata company to enforce its maintenance and repair obligations, or to sue the strata company for damages for loss and damage caused by a breach of these obligations.

Similarly, without a legally enforceable agreement between the Town and the strata company requiring the strata company to indemnify the Town against any loss, claim or damages arising out of the Encroachments, the Town would not necessarily have a right to be indemnified by the strata company for a claim made by a third party against the Town itself arising out of the Encroachments, or for any other loss and damage incurred by the Town arising out of the Encroachments."

In view of the above, appropriately worded conditions have been drafted and are included in the Officer Recommendation.

Additional Matters to be resolved prior to clearance of Strata Form 7

In relation to *additional matters to be resolved prior to clearance of Strata Form 7* items 1 -7 have not been fully resolved, particularly items 4 and 6, as follows:

- The provision of directional signs to indicate fire egress route ascending from Stair 4; and
- The provision of lighting to the right of way.

In the event that the Council supports the Further Officer Recommendation however, until approval is granted by the Minister's Office, the Strata Form 7 cannot be issued by the Town.

In light of the above, the Officer Recommendation has been amended to reflect recent developments to resolve the matter.

The following is a verbatim copy of the Minutes of the Item placed before the Council at its Ordinary Meeting held on 12 May 2009.

“OFFICER RECOMMENDATION:

That the Council;

- (i) *RECEIVES the report regarding the Proposed Strata Form 7 Certificate of Local Government to Previously Approved Construction of Four (4) Storey Residential Building Comprising Forty (40) Multiple Dwellings and Basement Car Parking – Building Encroachments;*
- (ii) *GRANTS ITS PERMISSION, and RECOMMENDS that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the encroachments 1, 18, 31 and 32 inclusive, as follows:*
 - *“Encroachment 1: Brewer Street: Column. At ground level, one corner of the concrete column encroaches 10mm into Brewer Street. The column encroaches to a maximum of 20mm on the first floor and second floor of the new building. The column rises then to form portion of a balcony wall on the third floor. As a result, one corner of this balcony wall on the third floor encroaches to a maximum of 20mm into Brewer Street. The height of this balcony wall is approximately 11000mm above ground level.*
 - *Encroachment 18: Brewer Street: Balcony Wall. At 3700mm – 4900mm above ground level. The balcony wall encroaches a maximum of 10mm into Brewer Street.*
 - *Encroachment 31: Thorley Street: Roof line. At 13900mm above ground level. Projecting out 140mm from Thorley Street boundary.*
 - *Encroachment 32: Pier Street: Roof line. At 14300mm above ground level. Projecting out 300mm from Pier Street boundary”;*
- (iii) *prior to the issue of the Strata Form 7 Certificate of Local Government, a Management Statement shall be submitted and approved, in accordance with section 5C of the Strata Titles Act 1985, to include the follow additions to the by-laws contained in Schedules 1 and 2 of the Strata Titles Act:*
 - (a) *the subject Strata Owners and/or Occupier/s, of the property situated at Nos. 59-61 Brewer Street, Perth (Lots 10, 16, 17, 18, 19 and 20), shall be responsible for all future maintenance of the subject building encroachments;*
 - (b) *the Town reserves the right to request the subject Strata Owner/s and/or Occupier/s, of the property Nos. 59-61 Brewer Street, Perth (Lots 10, 16, 17, 18, 19 and 20), to repair and/or make good the building encroachments at any time;*
 - (c) *the Town being indemnified by the subject Strata Owner/s and/or Occupier/s, of the Nos. 59-61 Brewer Street, Perth (Lots 10, 16, 17, 18, 19 and 20), against any damage, injury or loss, that may be sustained, to persons or property as a result of the building encroachments; and*
 - (d) *the subject Strata Owner/s and/or occupier/s, of the property Nos. 59-61 Brewer Street, Perth (Lots 10, 16, 17, 18, 19 and 20), shall not amend or repeal any of the above provisions without the agreement of the Town of Vincent;*

- (iv) *prior to clearance of the Certificate of Local Government (Form 7) under Section 23 of the Strata Title Act 1985, the owner(s) shall enter into a legal agreement with and lodge an appropriate assurance bond/bank guarantee to the satisfaction of the Town, which is secured by a caveat on the Certificate(s) of Title of the subject land, prepared by the Town's solicitors or other solicitors agreed upon by the Town, removing all liability to the Town of Vincent for any claims in compensation for the encroachments indicated on the relevant sheets of the (unapproved) Strata Plan 52828, in any event requiring the removal of the encroachments, and stating that the use of and development on the land shall not be taken into consideration in determining any cost or compensation which may be payable by the Town. All costs associated with this condition shall be borne by the applicant/owner(s);*
- (v) *NOTES the "Additional Matters to be resolved prior to clearance of Strata Form 7 as detailed in this report"; and*
- (vi) *EXPRESSES its strong concern to Psaros Builders with regard to building encroachments, as the Town has consistently taken a strict approach with respect to encroaching building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries, and that the Council's decision to support the subject building encroachments should not be viewed as a precedent for any future developments in the future.*

COUNCIL DECISION ITEM 9.1.5

Moved Cr Burns, Seconded Cr Maier

That the recommendation be adopted.

Debate ensued.

A number of Councillors expressed the view that the report was lengthy and they therefore had not had sufficient time to read the report in detail and therefore it should be deferred.

PROCEDURAL MOTION

Moved Cr Maier, Seconded Cr Ker

That the item be DEFERRED for further consideration and to allow Council Members sufficient time to consider the matter.

PROCEDURAL MOTION PUT AND CARRIED (8-0)

(Mayor Catania was an apology for the meeting.)

PURPOSE OF REPORT:

The purpose of this report is to inform the Council of building encroachments and related matters to be resolved prior to issuing the Strata Form 7 Certificate of Local Government for the development at Nos. 59-61 Brewer Street (corners Thorley and Pier Streets), Perth.

BACKGROUND:

19 September 2006 The above proposal was presented to an Elected Members Forum by the applicants.

24 October 2006 The Council at its Ordinary Meeting considered the matter relating to the sale of Lot 10 corner of Brewer and Pier Streets, Perth.

- 5 December 2006 *The Council at its Ordinary Meeting re-considered the matter relating to the sale of Lot 10 corner of Brewer and Pier Streets, Perth.*
- 27 February 2007 *The Council resolved to Defer the application.*
- 10 April 2007 *The Council at its Ordinary Meeting resolved to refuse an application for the Proposed Demolition of Existing Warehouse Buildings and Construction of Four (4) Storey Residential Building Comprising Forty (40) Multiple Dwellings and Basement Car Parking at Nos. 59-61 (Lots 10, 16, 17, 18, 19 and 20) Brewer Street, corner Pier Street and Thorley Street, Perth for the following reasons:*
- “1. Not consistent with the proper and orderly planning and the preservation of the amenity of the locality.*
 - 2. Non-compliance with the Residential Design Codes and the Town’s policies relating to density, bulk and scale, parking, plot ratio, building height and number of storeys.*
 - 3. Not in keeping with the development of the surrounding area.*
 - 4. Non compliance with the Beaufort Precinct Policy 3.1.13.”*
- 12 June 2007 *The Council approved the Demolition of Existing Warehouse Buildings and Construction of Four (4) Storey Residential Building Comprising Forty (40) Multiple Dwellings and Basement Car Parking at Nos. 59-61 (Lots 10, 16, 17, 18, 19 and 20) Brewer Street, corner Pier Street and Thorley Street, Perth and as shown on site survey stamp dated 2 November 2006, and site, basement, ground floor, first floor, second floor, third floor plans and roof elevation plans dated 17 May 2007 and sections dated 28 May 2007, subject to the following conditions:*
- “(i) all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, solar panels, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), are designed integrally with the building, and be located so as not to be visually obtrusive;*
 - (ii) an archival documented record of the place including photographs (internal, external and streetscape elevations), floor plans and elevations for the Town’s Historical Archive Collection shall be submitted and approved prior to the issue of a Demolition Licence;*
 - (iii) a Demolition Licence shall be obtained from the Town prior to commencement of any demolition works on site;*
 - (iv) in keeping with the Town’s practice for multiple dwellings, commercial, retail and similar developments, the footpaths adjacent to the subject land shall be upgraded, by the applicant, to a brick paved standard to the Town’s specification. A refundable footpath upgrading bond and/or bank guarantee of \$18,660 shall be lodged prior to the issue of a Building Licence and be held until all works have been completed and/or any damage to the existing facilities have been reinstated to the satisfaction of the Town’s Technical Services Division. An application to the Town for the refund of the upgrading bond must be made in writing;*

- (v) *prior to the issue of a Building Licence, the owner(s) shall agree in writing to a notification being lodged under section 70A of the Transfer of Land Act notifying proprietors and/or (prospective) purchasers of the property of the following:*
- (a) *the use or enjoyment of the property may be affected by noise, traffic, car parking and other impacts associated with nearby commercial, non-residential activities and adjacent stadium; and*
 - (b) *the Town of Vincent will not issue a visitor or residential car parking permit to any owner or occupier of the units. This is because at the time the planning application for the development was submitted to the Town, the developer claimed that the on-site parking provided would adequately meet the current and future parking demands of the development.*

This notification shall be lodged and registered in accordance with the Transfer of Land Act prior to the first occupation of the development;

- (vi) *any new street/front wall, fence and gate between the Brewer Street, Pier Street and Thorley Street boundaries and the main building, including along the side boundaries within this front setback area, shall comply with the following:*
- (a) *the maximum height of posts and piers being 1.8 metres above the adjacent footpath level;*
 - (b) *decorative capping on top of posts and piers may extend the total maximum height of the posts and piers to 2.0 metres above the adjacent footpath level;*
 - (c) *the maximum width, depth and diameter of posts and piers being 350 millimetres;*
 - (d) *the maximum height of the solid portion being 1.2 metres above the adjacent footpath level, and the section above this solid portion being visually permeable, with a minimum 50 per cent transparency; and*
 - (e) *the provision of a minimum 1.5 metres by 1.5 metres truncation where walls, fences and gates adjoin vehicle access points, or where a driveway meets a public street or right of way; and a minimum 3.0 metres by 3.0 metres truncation where two streets intersect. Walls, fences and gates may be located within this truncation area where the maximum height of the solid portion is 0.65 metre above the adjacent footpath level;*
- (vii) *a detailed schedule of external finishes (including materials and colour schemes and details) shall be submitted and approved prior to the issue of a Building Licence;*

- (viii) *all signage that does not comply with the Town's Policy relating to Signs and Advertising shall be subject to a separate Planning Application, and all signage shall be subject to a separate Sign Licence application, being submitted and approved prior to the erection of the signage;*
- (ix) *a detailed landscaping plan, including a list of plants and the landscaping and reticulation of the Brewer and Thorley Streets verges adjacent to the subject property, shall be submitted and approved prior to the issue of a Building Licence. All such works shall be undertaken prior to the first occupation of the development, and maintained thereafter by the owner(s)/occupier(s);*
- (x) *prior to the issue of a Building Licence, a Construction Management Plan addressing noise, hours of construction, traffic and heavy vehicle access, dust and any other appropriate matters, shall be submitted to and approved by the Town, and thereafter implemented and maintained;*
- (xi) *the car parking area(s) on the subject land shall be sealed, drained, paved and line marked in accordance with the approved plans prior to the first occupation of the development and maintained thereafter by the owner(s)/occupier(s) to the satisfaction of the Town. All tandem car bays are to be allocated for a specific multiple dwelling;*
- (xii) *the proposed vehicular gate for the basement car park being a minimum 50 percent visually permeable when viewed from rear right-of-way;*
- (xiii) *prior to the issue of a Building Licence, the subject land shall be amalgamated into one lot on Certificate of Title; OR alternatively, prior to the issue of a Building Licence the owner(s) shall enter into a legal agreement with and lodge an appropriate assurance bond/bank guarantee to the satisfaction of the Town, which is secured by a caveat on the Certificate(s) of Title of the subject land, prepared by the Town's solicitors or other solicitors agreed upon by the Town, undertaking to amalgamate the subject land into one lot within 6 months of the issue of the subject Building Licence. All costs associated with this condition shall be borne by the applicant/owner(s);*
- (xiv) *prior to the issue of a Building Licence, where vehicular access to the property is via a right of way and the right of way is not a public road, the applicant/owner(s) shall demonstrate (by submission of copies of the Certificate(s) of Title and Original Plan or Diagram of Survey or other documentation) that the owner(s) and occupier(s) of the property have a legal right to use the right of way, to the satisfaction of the Town;*

- (xv) *prior to the first occupation of the development, the full length and width of the rear right of way from Pier Street to Thorley Street abutting the subject land shall be resealed, to the specifications of and supervision under the Town, at the applicant's/owner(s)' full expense;*
- (xvi) *a bond and/or bank guarantee for \$9,720 for the full upgrade of the right-of-way shall be lodged prior to the issue of a Building Licence;*
- (xvii) *prior to the issue of a Building Licence, revised plans shall be submitted and approved demonstrating balconies of units 9, 19, 18, 17, 16, 20, 30, 29, 28, 27, 31, 40, 39, and 38, living room windows of units 9 and 20 and bedroom 2 windows of units 9 and 20 on the southern elevation facing the rear right-of-way on the first, second and third floors, being screened with a permanent obscure glazing and be non-openable to a minimum of 1.6 metres above the finished first floor level, OR alternatively the provision of on-site effective permanent horizontal screening or equivalent preventing direct sight within the cone of vision to ground level of adjoining properties. A permanent obscure material does not include a self-adhesive material or other material that is easily removed. The whole windows can be top hinged and the obscure portion of the windows openable to a maximum of 20 degrees; OR prior to the issue of a Building Licence revised plans shall be submitted and approved demonstrating the subject windows not exceeding one square metre in aggregate in the respective subject walls, so that they are not considered to be major openings as defined in the Residential Design Codes 2002. Alternatively, prior to the issue of a Building Licence, these revised plans are not required if the Town receives written consent from the affected owners of properties along Edward Street, respectively, stating no objections to the proposed privacy encroachment.*

The revised plans shall not result in any greater variation to the requirements of the Town's Policies and the Residential Design Codes; and

- (xviii) *the provision of underground power along the Brewer Street, Pier Street and Thorley Street frontages to the property including the installation of lighting on the southern elevation of the building facing the rear right of way (ROW), and all costs associated with the provision of this underground power and lighting on the southern elevation of the building facing the ROW shall be met by the owner(s)."*

As requested by Psaros Builders, the Town's Officers carried out site inspections and discussed with Psaros Builders matters relating to the subject Strata Form 7 for the new development at Nos. 59 – 61 Brewer Street, Perth.

In particular, at a separate on-site meeting held on 7 May 2009, the Town's Officers attended an inspection at the "Tyne Square", located on the corner of Newcastle and Beaufort Streets, Perth, in the presence of the CEO/Director of Psaros Builders and his representatives. In this instance, the Officers reported that they were verbally threatened by the CEO/Director of Psaros Builders during the course of carrying out their duties as Officers of the Town.

The Town's Officers note previous experiences of confrontation with the CEO/Director on the 'Eastgate' development and in this respect; the Town's Officers are very concerned about the personal nature of the threats. The Town's Officers should not be subjected to any threats and/or coercion. The matter has been reported to the WA Police for their appropriate action.

Building Encroachments at Nos. 59-61 Brewer Street

With regard to Psaros Builder's current application for Strata Form 7, there are thirty two (32) building encroachments onto public thoroughfares. The Town has been advised that the Psaros Builders' Licensed Land Surveyor is seeking Ministerial Approval for clearance of these encroachments. A copy of the Land Surveyor's letter is attached.

The Town has advised Psaros Builders that the Town has consistently taken a strict approach with respect to building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries. Awnings can be supported by the Town, provided that they are not part of a building structure.

The Town's Officers conveyed via an email attachment to Psaros Builders on 20 April 2009, the following in this respect:

- There have been rare occasions when balconies have been approved over the road reserve. In these cases, it is then the applicant's responsibility to obtain the necessary approvals from the relevant State Government agencies. The State agencies (DPI, WAPC, State Land Services and Minister for Lands) have indicated reluctance to support encroachments into road reserves. The Town would take the stance that all construction should be contained within the lot, except for awnings. String courses, cornices, copings, eaves or window sills, as defined in Section 400 (1a) of Local Government (Miscellaneous Provisions) Act 1960, with an encroachment of not more than 230 millimetres, would be considered and may be supported by the Town Officers. Approval for encroachments of this nature will not be required to be obtained from the relevant State Minister. Likewise, any other structures, such as balconies constructed of iron and cantilevered greater than 230 millimetres, will require approval to be obtained from the Minister for Lands.*
- The Town's Technical Services will require, prior to any future reconsideration of its current stance, to assess any proposal against its streetscape plans for the roadway and possible changes to future road or intersection alignment. There are also issues relating to maintenance of encroaching structures and liability for damages both personal and real.*
- Previous advice from the Department of Housing and Works indicates that the Minister cannot approve existing encroachments such as walls or the like under the provisions of s.400 of the Local Government (Miscellaneous Provisions) Act 1960. The intent of s.400 is not to allow encroachments other than in special circumstances, and only on proposed developments, not existing buildings. Therefore, on this basis, the Town will not support the Builders' request for Ministerial approval of existing encroachment into road reserves.*

On 8 May 2009, the Town wrote to Psaros Builders and advised that in this instance, the Town's Officers are of the opinion that the retention of the subject sunscreen canopies/awnings superficially attached to the building will have minimum effect to the public or unreasonably interfere with the general amenity. Therefore, the Town does not object to the existing sunscreen canopies/awnings, as identified in the Consultant's submission (Peter Driscoll & Associates Pty Ltd) dated 24 April 2009, as attached, to the Minister Office, as encroachments 2 to 17, and 19 to 30. The Town also advised that it did not support encroachments 1, 18, 31 and 32 inclusive, and as detailed in the attached plans, as follows:

- *“Encroachment 1: Brewer Street: Column. At ground level, one corner of the concrete column encroaches 10mm into Brewer Street. The column encroaches to a maximum of 20mm on the first floor and second floor of the new building. The column rises then to form portion of a balcony wall on the third floor. As a result, one corner of this balcony wall on the third floor encroaches to a maximum of 20mm into Brewer Street. The height of this balcony wall is approximately 11000mm above ground level.*
- *Encroachment 18: Brewer Street: Balcony Wall. At 3700mm – 4900mm above ground level. The balcony wall encroaches a maximum of 10mm into Brewer Street.*
- *Encroachment 31: Thorley Street: Roof line. At 13900mm above ground level. Projecting out 140mm from Thorley Street boundary.*
- *Encroachment 32: Pier Street: Roof line. At 14300mm above ground level. Projecting out 300mm from Pier Street boundary.”*

Accordingly, the above encroachments (1, 18, 31, and 32) are to be modified (cut back) and brought into compliance with the Local Government (Miscellaneous Provisions) Act 1960, unless otherwise approved by the Minister's Office.

Furthermore, on late evening of 8 May 2009, the Town received an advice letter, as attached, from the Executive Director – Building Industry Development – Department of Commerce advising the following key matters:

“Under the Act (the Strata Title Act 1985), if a local government is of the opinion that retention of the encroachments in its existing state will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood and if it does not object to the encroachment, the local government must obtain the approval of the Minister before issuing a Certificate (Form 7) that the local government has inspected the building and is satisfied that it is consistent with the approved building plans and specifications ...

If the local government objects to the encroachment(s) it should to take action, which may include requiring that the encroachment(s) be removed ...

Local government may permit encroachments under Section 400 of the Local Government (Miscellaneous Provisions) Act 1960, ...

The Department has examined the encroachments associated with this development on the face of it there would be no reason to advise the Minister not to approve a resolution by the local government to permit (i.e. not to object to) the encroachments.”

In an email dated Tuesday, 12 May 2009 11:41AM, Paul Scalzi, Senior Regulations Officer, Building Industry Development, Department of Commerce, Government of Western Australia advised, inter alia, that:

“There is no provision in any legislation that allows the Minister's office to approve encroachments. Certain encroachments are permitted under Section 400 of the Act, some of which require the Minister's approval (section 400(1)(b)) or consent (section 400(1b)) – in either case only the local government can petition the Minister for his/her approval or consent and only when the local government has resolved to permit the encroachment(s).”

The provisions of Section 400 of the Local Government (Miscellaneous Provisions) Act 1960 state: -

“400. Encroachment over, on, or under street

- 1. (a) Except to the extent permitted, and in the manner prescribed, by any regulations made under this Part, a person shall not, without the permission of the local government granted only with the approval of the Minister —*
 - (i) erect a building so as to encroach on, over, or under a street, way, or other public place, in its district;*
 - (ii) rebuild an existing building which encroaches on, over, or under a street, way, or other public place in the district, so as to encroach on, over, or under a street, way, or other public place in the district.*
 - (b) The local government shall not grant its permission and the Minister shall not give his approval unless each is of opinion that having regard to the size of the building, and the circumstances of the case it is necessary for the stability of the building that the permission should be granted and the approval should be given.*
 - (c) The local government with the approval of the Minister may grant the permission subject to such conditions as the local government and the Minister think fit.*
 - (d) A person who so erects or rebuilds a building in purported pursuance of permission so granted but does not observe the conditions, if any, on which it is granted, is to be regarded as having erected or rebuilt the building without the permission of the local government.*
- (1a) For the purposes of subsection (1), a building that has thereon string courses, cornices, copings, eaves or window sills that project not more than 230 millimetres on or over a street way or public place in a district, shall be held not to encroach on or over the street way or public place by reason of that fact only.*
- (1b) Where a local government is of opinion that for the purpose of making more effective use of any land within its district that is a pedestrian way, of not more than 10 metres in width, or in the interest of attractive development of the area where that land is situated, it is desirable so to do, the local government may, with the consent of the Minister, grant permission to a person to erect a building above or over that pedestrian way at such height as the local government may specify and upon and subject to such conditions as the local government may impose.*
- (2) Notwithstanding the provisions of subsection (1), a person with the permission of the local government and in accordance with plans and specifications settled and approved by the local government may —*
- (a) place in front of his building, an awning or verandah, at least 2.75 metres above the footpath in a street, way, or other public place, in its district, and unless prohibited from so doing by local laws of the local government, may use posts for the support of the awning or verandah provided the posts are placed in such positions close to the outer edge of the footpath as the local government directs;*

(b) *place in front of his building a balcony of cantilever type having a framework constructed of iron securely fixed with iron brackets or other supports to the satisfaction of the building surveyor of the local government, at least 2.75 metres above the footpath in a street, way, or other public place in its district and so that it does not encroach over the street, way, or public place to a greater distance than —*

(i) *750 millimetres if the street is in a city; or*

(ii) *the outer edge of the footpath or such lesser distance as is prescribed from time to time by local laws in operation in the district if the street is in a shire or a town;*

but permission granted under this subsection does not relieve a person from complying with local laws operating in the district and relating to awnings, verandahs, or balconies, generally or to their removal in particular.

(3) *If, within 35 days after written notice by the local government to remove a building or part of a building or an awning, verandah, or balcony which is not erected, rebuilt, placed, or provided in conformity with the requirements of this section, or to alter it so that as altered it will conform with those requirements, has been served on the owner or occupier of the building, it is not removed or so altered, the Magistrates Court may grant a warrant to the local government, authorising the local government forthwith to cause the building or the awning, verandah, or balcony, to the extent to which it so encroaches, to be taken down or altered to comply with those requirements and may make such order as to the costs of and incidental to the proceedings as the court thinks fit, and the local government, by its agents, servants and workmen may by authority of a warrant so granted lawfully enter the land on which it stands and take down, and remove it, accordingly at the expense of the owner or occupier, and the local government may recover the amount of the expense of doing so from the owner or occupier in a court of competent jurisdiction, and a warrant so granted or an order so made is not subject to appeal.*

(4) *An occupier of property upon whom, under the provisions of this section, a penalty is imposed, or who is put to the expense, may sue for and recover the amount of the penalty and expense and costs ordered against him in connection with the penalty or expense from the owner of the property in a court of competent jurisdiction but if the owner proves an agreement by the occupier to carry out the work in respect of which the penalty or expense has been incurred, the agreement is a good defence to the owner in the proceedings brought against him by the occupier.”*

Additional Matters to be revolved prior to clearance of Strata Form 7

The Town’s Officers are continuing to liaise with Psaros Builders to resolve the outstanding Building Code and compliance certificate matters as follows:

- 1. Condition 37: Notification on Strata Management Plan to specifically address the Fire Safety Design Requirements, as detailed in the FSER by L Saracini, and also to include a clause stating that “Amendment to or repeal of the above proviso cannot be affected without the agreement of the Town of Vincent”;*
- 2. Condition 22: Certification by an ABSA accredited assessor certifying that the required Energy Efficiency measures have been implemented and comply with BCA Part J;*
- 3. Certification for balustrades to be provided;*

4. *Stair 4: Barriers and signage "Ground Floor Exit to Outside" (25 mm word/size), as detailed on approved Drawing 1663 A5.01 dated 23/08/07;*
5. *The ceiling heights to the 'Gymnasium' and 'Lounge' must not be less than 2.4 metres (BCA Part F3.1);*
6. *Satisfaction of condition (xviii) of the Planning Approval relating to underground power and the provision of lighting to the Right of Way; and*
7. *FESA advised the Town on 1 May 2009 that there are concerns in relation to insufficient fire safety measures to the fire sliding doors and inadequate water flow/pressure to service the operational fire fighting to the development. It is not clear whether these matters have now been resolved to FESA's satisfaction.*

The applicant's submission to the Minister's Office and advice letter from the Executive Director – Building Industry Development – Department of Commerce forms an attachment to this report.

CONSULTATION/ADVERTISING:

Not required.

STRATEGIC IMPLICATIONS:

This matter is in keeping with the Town's Strategic Plan 2006 – 2011 Objective 4.1 – "Provide good strategic decision-making, governance, leadership and professional management", in particular:

- 4.1.2 Manage the organisation in a responsible and accountable manner.*
- 4.1.4 Deliver services in ways that accord with the expectations of the community, whilst maintaining statutory compliance".*

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

The Building Footnote 3 to the Building Licence dated 22 October 2007 for the above development issued by the Town states:

- "3. No part of the structure (including footings) is to project beyond site boundaries. It is recommended that a Licensed Surveyor confirm the location of lot boundaries."*

Of the thirty two (32) building encroachments onto public thoroughfares, the Town does not object to the subject sunscreen canopies/awnings given they are superficially attached to the building and will have minimum effect to the public or unreasonably interfere with the general amenity. Accordingly, the Town does not object to encroachments 2 to 17, and 19 to 30.

In regard to the building wall/column and balcony encroachments 1, 18, 31 and 32 inclusive, and these are constructed in conflict with the Building Licence and are non-compliant with the Local Government (Miscellaneous Provisions) Act 1960, as follows:

- *“Encroachment 1: Brewer Street: Column. At ground level, one corner of the concrete column encroaches 10mm into Brewer Street. The column encroaches to a maximum of 20mm on the first floor and second floor of the new building. The column rises then to form portion of a balcony wall on the third floor. As a result, one corner of this balcony wall on the third floor encroaches to a maximum of 20mm into Brewer Street. The height of this balcony wall is approximately 11000mm above ground level.*
- *Encroachment 18: Brewer Street: Balcony Wall. At 3700mm – 4900mm above ground level. The balcony wall encroaches a maximum of 10mm into Brewer Street.*
- *Encroachment 31: Thorley Street: Roof line. At 13900mm above ground level. Projecting out 140mm from Thorley Street boundary.*
- *Encroachment 32: Pier Street: Roof line. At 14300mm above ground level. Projecting out 300mm from Pier Street boundary.”*

Having regard to the size of the building, that the encroachments may be considered necessary for the stability of the building and considering the circumstances, the Town’s Officers are of the opinion that the retention of the above encroachments will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood. Accordingly, it is recommended that the Council grants its permission, and recommends that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the encroachments 1, 18, 31 and 32 inclusive.

However, it is recommended that the Council supports the applicant to obtain approval from the Minister’s Office for these building encroachments, and note that this support must not be used as precedent for future developments.

The Council should note that Section 401 of the Local Government (Miscellaneous Provisions) Act 1960 allows the Town to serve Notice of required alterations for the building work that contravenes this Act, or for building works that are not in compliance with, or have departed from the approved plans and specifications issued by the Town. The Notice, once issued by the Town, would be subject to review by the State Administrative Tribunal.

Accordingly, until the subject building encroachments, approval granted by the Minister’s Office, and outstanding Certifications are resolved, the Strata Form 7 cannot be issued by the Town.”

14.2 CONFIDENTIAL REPORT - No. 2 (Lot: 813 D/P: 39555) Pisconeri Street, Corner Newcastle Street, Perth - Proposed Strata Form 7 Certificate of Local Government to Previously Approved Three (3) Storey Mixed Use Development Consisting of Four (4) Office/Retail Tenancies, Associated Car Park on Ground Floor and Fourteen (14) Residential Units on the Upper Levels – Building Encroachments

Ward:	South	Date:	25 May 2009
Precinct:	EPRA P20	File Ref:	PRO4045; 363/08 6.2009.180.1
Attachments:	-		
Reporting Officer(s):	B Tran, H Smith		
Checked/Endorsed by:	R Boardman, J Giorgi	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

(i) *RECEIVES the report regarding the Proposed Strata Form 7 Certificate of Local Government to Previously Approved Three (3) Storey Mixed Use Development Consisting of Four (4) Office/Retail Tenancies, Associated Car Park on Ground Floor and Fourteen (14) Residential Units on the Upper Levels – Building Encroachments at No. 2 (Lot: 813 D/P: 39555) Pisconeri Street, Corner Newcastle Street, Perth;*

(ii) *GRANTS ITS PERMISSION, and RECOMMENDS that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the following encroachments:*

On the North-Western corner (adjacent to Lot 814):

- *Encroachment 1- 0.02 metres (1st & 2nd Floor Balcony);*

On the South-Western corner (corner of Pisconeri and Newcastle Street):

- *Encroachment 2- 0.02 metres ~~mm~~ (1st & 2nd Floor Building);*
- *Encroachment 3- 0.05 metres ~~mm~~ (1st & 2nd Floors Balcony); and*
- *Encroachment 4- 0.08 metres ~~mm~~ (1st & 2nd Floor Balcony);*

On the South-Eastern corner (along Newcastle Street):

- *Encroachment 5- 0.10 metres ~~mm~~ (1st Floor Building);*
- *Encroachment 6- 0.02 metres ~~mm~~ (2nd Floor Building);*
- *Encroachment 7- 0.11 metres ~~mm~~ (1st Floor Building); and*
- *Encroachment 8- 0.09 metres ~~mm~~ (2nd Floor Building);*

(iii) *prior to the issue of the Strata Form 7 Certificate of Local Government, the owners shall enter into a deed with the Town imposing legally enforceable obligations on the owners as follows:*

(a) *on registration of the strata plan, the owners shall register additional by-laws, in terms previously approved in writing by the Town, as follows:*

- (1) *the strata company shall at its cost keep Encroachments numbered 1-8 detailed in clause (ii) above, in good and serviceable repair, properly maintained and, where necessary, promptly renew and replace the Encroachments and every part of them, whether the damage or deterioration arises from fair wear and tear, inherent defect or otherwise;*

- (2) *the strata company shall at its cost promptly comply with the Town's directions from time to time in relation to the repair and maintenance of the Encroachments pursuant to clause (iii) (a)(1);*
 - (3) *the strata company shall indemnify and keep indemnified the Town against any losses, damages, costs, claims, actions, liabilities or expenses for which the Town is held liable or incurs in connection with Encroachments numbered 1-8 in clause (ii) however arising, including, without limitation, any claim against the Town for compensation or as a result of any injury to any person or loss or damage to any property arising out of Encroachments numbered 1-8 in clause (ii);*
 - (4) *whilst Encroachments ~~1~~ numbered 1-8 in clause (ii) exist, the strata company shall effect and maintain insurance for any liability it may incur to the Town or any other party arising out of or in connection with the Encroachments, including any liability to the Town under the previous clause, for an amount of not less than \$50 million (or such higher amount as the Town may reasonably specify from time to time) which insurance shall note the interests of the Town of Vincent under the by-law, and the strata company shall produce evidence of the currency of that insurance promptly after receiving a request from the Town of Vincent to do so;*
 - (5) *the strata company shall not amend or repeal any of the by-laws set out in this condition without the written agreement of the Town of Vincent;*
 - (6) *the strata company acknowledges that the Town of Vincent requires registration of a Notification pursuant to Section 70A of the Transfer of Land Act 1893 to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent pursuant to clause (iii)(a)(5) of this condition; and*
 - (7) *the strata company shall enter into a deed prepared by the Town's solicitors on terms and conditions acceptable to the Town to give effect to the strata company's obligations pursuant to this condition (iii)(a);*
- (b) *the owners shall ensure that immediately after registration of the strata plan, the strata company enters into a deed with the Town as contemplated in clause (iii) (a)(7) of this condition;*
 - (c) *the owners shall pay the Town's legal costs incurred in connection with the preparation, negotiation and execution of the deeds between the owners and the Town and the strata company and the Town referred to in this condition, the preparation of these conditions and all related legal advice and assistance. If required by the Town the owners shall pay the Town's solicitors estimate of this amount as a bond to the Town prior to the Town instructing its solicitors to commence work;*
 - (d) *entitling the Town to lodge a Notification pursuant to Section 70A of the Transfer of Land Act 1893 simultaneously with the owners' application to register the strata plan to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent and the strata company pursuant to paragraph (iii)(a)(5) of this condition; and*

- (e) *charging the land in favour of the Town for the purpose of securing the due and punctual performance of the owner's obligations under the deed referred to in this condition, and authorising the Town to lodge an absolute caveat at Landgate against the Certificate of Title to the land in order to protect the rights and interests of the Town under that deed;*
- (iv) *NOTES the "Additional Matters to be revolved prior to clearance of Strata Form 7" as detailed in this report; and*
- (v) *EXPRESSES its strong concern to Keytown Constructions with regard to building encroachments, as the Town has consistently taken a strict approach with respect to encroaching building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries, and that the Council's decision to support the subject building encroachments should not be viewed as a precedent for any future developments in the future.*

***Note: The above Officer Recommendation was corrected and distributed prior to the meeting. Changes are indicated by strike through and underline.**

Moved Cr Ker, Seconded Cr Youngman

That the recommendation be adopted.

Debate ensued.

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

COUNCIL DECISION ITEM 14.2

That the Council;

- (i) *RECEIVES the report regarding the Proposed Strata Form 7 Certificate of Local Government to Previously Approved Three (3) Storey Mixed Use Development Consisting of Four (4) Office/Retail Tenancies, Associated Car Park on Ground Floor and Fourteen (14) Residential Units on the Upper Levels – Building Encroachments at No. 2 (Lot: 813 D/P: 39555) Pisoneri Street, Corner Newcastle Street, Perth;*
- (ii) *GRANTS ITS PERMISSION, and RECOMMENDS that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the following encroachments:*

On the North-Western corner (adjacent to Lot 814):

- *Encroachment 1- 0.02 metres (1St & 2nd Floor Balcony);*

On the South-Western corner (corner of Pisoneri and Newcastle Street):

- *Encroachment 2- 0.02 metres (1St & 2nd Floor Building);*
- *Encroachment 3- 0.05 metres (1St & 2nd Floors Balcony); and*
- *Encroachment 4- 0.08 metres (1St & 2nd Floor Balcony);*

On the South-Eastern corner (along Newcastle Street):

- *Encroachment 5- 0.10 metres (1St Floor Building);*
- *Encroachment 6- 0.02 metres (2nd Floor Building);*
- *Encroachment 7- 0.11 metres (1St Floor Building); and*
- *Encroachment 8- 0.09 metres (2nd Floor Building);*

- (iii) *prior to the issue of the Strata Form 7 Certificate of Local Government, the owners shall enter into a deed with the Town imposing legally enforceable obligations on the owners as follows:*
- (a) *on registration of the strata plan, the owners shall register additional by-laws, in terms previously approved in writing by the Town, as follows:*
- (1) *the strata company shall at its cost keep Encroachments numbered 1-8 detailed in clause (ii) above, in good and serviceable repair, properly maintained and, where necessary, promptly renew and replace the Encroachments and every part of them, whether the damage or deterioration arises from fair wear and tear, inherent defect or otherwise;*
 - (2) *the strata company shall at its cost promptly comply with the Town's directions from time to time in relation to the repair and maintenance of the Encroachments pursuant to clause (iii) (a)(1);*
 - (3) *the strata company shall indemnify and keep indemnified the Town against any losses, damages, costs, claims, actions, liabilities or expenses for which the Town is held liable or incurs in connection with Encroachments numbered 1-8 in clause (ii) however arising, including, without limitation, any claim against the Town for compensation or as a result of any injury to any person or loss or damage to any property arising out of Encroachments numbered 1-8 in clause (ii);*
 - (4) *whilst Encroachments numbered 1-8 in clause (ii) exist, the strata company shall effect and maintain insurance for any liability it may incur to the Town or any other party arising out of or in connection with the Encroachments, including any liability to the Town under the previous clause, for an amount of not less than \$50 million (or such higher amount as the Town may reasonably specify from time to time) which insurance shall note the interests of the Town of Vincent under the by-law, and the strata company shall produce evidence of the currency of that insurance promptly after receiving a request from the Town of Vincent to do so;*
 - (5) *the strata company shall not amend or repeal any of the by-laws set out in this condition without the written agreement of the Town of Vincent;*
 - (6) *the strata company acknowledges that the Town of Vincent requires registration of a Notification pursuant to Section 70A of the Transfer of Land Act 1893 to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent pursuant to clause (iii)(a)(5) of this condition; and*
 - (7) *the strata company shall enter into a deed prepared by the Town's solicitors on terms and conditions acceptable to the Town to give effect to the strata company's obligations pursuant to this condition (iii)(a);*
- (b) *the owners shall ensure that immediately after registration of the strata plan, the strata company enters into a deed with the Town as contemplated in clause (iii) (a)(7) of this condition;*

- (c) *the owners shall pay the Town's legal costs incurred in connection with the preparation, negotiation and execution of the deeds between the owners and the Town and the strata company and the Town referred to in this condition, the preparation of these conditions and all related legal advice and assistance. If required by the Town the owners shall pay the Town's solicitors estimate of this amount as a bond to the Town prior to the Town instructing its solicitors to commence work;*
- (d) *entitling the Town to lodge a Notification pursuant to Section 70A of the Transfer of Land Act 1893 simultaneously with the owners' application to register the strata plan to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent and the strata company pursuant to paragraph (iii)(a)(5) of this condition; and*
- (e) *charging the land in favour of the Town for the purpose of securing the due and punctual performance of the owner's obligations under the deed referred to in this condition, and authorising the Town to lodge an absolute caveat at Landgate against the Certificate of Title to the land in order to protect the rights and interests of the Town under that deed;*
- (iv) *NOTES the "Additional Matters to be resolved prior to clearance of Strata Form 7" as detailed in this report; and*
- (v) *EXPRESSES its strong concern to Keytown Constructions with regard to building encroachments, as the Town has consistently taken a strict approach with respect to encroaching building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries, and that the Council's decision to support the subject building encroachments should not be viewed as a precedent for any future developments in the future.*

Note: The Chief Executive Officer determined that this report be released to the public as the Council has determined the matter.

PURPOSE OF REPORT:

The purpose of this report is to inform the Council of building encroachments and related matters to be resolved prior to issuing the Strata Form 7 Certificate of Local Government for the development at No. 2 Pisoneri Street (corner Newcastle Street), Perth.

BACKGROUND:

- | | |
|------------------|---|
| 15 July 2005 | The above proposal was conditionally approved by the East Perth Redevelopment Authority (EPRA), Reference No. EPRA – DA - 04-1100. |
| 24 November 2006 | A Building Licence (Licence No. 06/0141) was then conditionally granted by the City of Perth. |
| 1 July 2007 | In accordance with the provisions and powers under both the Local Government (Change of Districts Boundaries) Order 2007 and the Local Government (Constitution) Regulations 1998, allowing the Town of Vincent to, in effect, administer the City of Perth building control matters. |

24 December 2007 The Town received a Fire Safety Engineering Report, issued by Complete Fire Design, relating to the deletion of on-site pumps/tanks for the purpose of fire fighting at the development. The Town wrote to the Complete Fire Design, as summarised below:

“FIRE SAFETY ENGINEERING REPORT AND SUBSEQUENT ASSESSMENT BY FESA

... However, the Town may consider to support the FSES subject to the following requirements being imposed and agreed upon by the building owner:

- 1. The building owner(s) and building insurers are to be made aware that the building incorporates Fire Engineered Performance Based Alternative Building Solution, which is provided for by the Building Code of Australia (BCA). Alternative Building Solutions are solutions that do not comply with the BCA deemed-to-satisfy provisions and may not provide an equivalent level of fire protection.*
- 2. Prior to first occupation of the development, a certification from a fire engineer is to be provided to the Town stating that the “Fire Safety Objectives and Strategy”, as detailed in the Fire Safety Engineering Report dated 3 August 2007, Job No. 703006FSES, by Complete Fire Design, have been installed in accordance with the relevant Australian Standards, tested and are operating as intended, to the satisfaction of the Town of Vincent. All costs associated with this certification are to be borne by the building owner.*
- 3. If the development is to be strata titled, a Management Statement shall be prepared and submitted in accordance with section 5C of the Strata Titles Act 1985, to include the following additions to the by-laws contained in Schedules 1 and 2 of the Strata Titles Act:*
 - The owners of the strata lots are responsible for ensuring the “Fire Safety Objectives and Strategy”, “Essential Service Maintenance Requirements”, “Reporting Procedures” and “Non-Conformance Procedures”, as detailed in the Fire Safety Engineering Report dated 3 August 2007, Job No. 703006FSES, by Complete Fire Design are fully complied with at all times to the satisfaction of the Town of Vincent; and*
 - Amendment to or repeal of the above provision cannot be effected without the agreement of the Town of Vincent.*

Therefore, if the building owner(s) wishes the Town’s Building Services to support the proposed FSES, the property owner would need to accept, within 21 days from the date of this letter, to these three (3) conditions above by signing the enclosed Appendix.”

28 August 2008 A Strata Form 7 Certificate of Local Government was submitted to the Town. This Strata Form 7 application was not processed pending notification by the builder/owner to the Town when the construction is completed and the whole development is ready for inspection.

- 4 November 2008 As requested by the Project Manager of Keytown Constructions, the Town's Officers attended a site inspection. At the meeting, there were a number of non-compliant items identified and relevant certifications required. The outstanding issues were discussed in detail with the Project Manager. It was noted that the building was still under construction and many trades persons were present during the inspection.
- 13 November 2008 Following the site meeting on 4 November 2008, an email was then sent to the Project Manager detailing the required remedial works and relevant certifications prior to issuing the Certificate Strata Form 7.
- 15 December 2008 A follow-up site meeting was arranged. This meeting was also attended by the Developer's own appointed Private Practicing Building Surveyor. The purpose of this meeting was to discuss the list of outstanding items, as follows:

"Building Services:

1. *Ramp: gradient/circulation space/handrails/TGSI/kerb, etc. to be rectified in accordance with AS1428.1 and AS1428.4. see BL condition 27.*
2. *FESA: the booster as located is closer than 3.0m from adjacent openings, therefore openings are to be fire protected. Please discuss with FESA about this matter.*
3. *Exit doorways at car park level to be installed in accordance with BCA D2.19 and D2.20.*
4. *Services/Electrical Cables/Wirings, etc. within the passage leading to the required exits at car park level are to be enclosed in accordance with BCA D2.7.*
5. *Disabled WC: shelving is required; lip at entrance doorway to be rectified.*
6. *Openings between the communal balconies and the passage are to be fire protected to BCA C3.11.*
7. *EPRA and MRWA approval is required regarding the concrete balcony, in lieu of the approved light weight/metal roof.*
8. *Vertical separation of external openings to be fire protected as shown ('red note') on the approved plans (Elevations 1 & 2).*
9. *Some awning windows to be restricted not to open greater than 125 mm, as discussed.*
10. *Street awning along Pisoneri St must be not less than 2.750m above finished footpath level.*
11. *Certifications are required clearly stating the requirements of BL conditions 1; 2; 3; 5; 6; 7; 9; 10; 11; 13; 16; 17 (not all certifications under this cond. 17 have been submitted); 28.*
12. *BL condition 21: some "Study" rooms do not comply with this condition.*
13. *BL condition 24: please provide further drawn hydraulics details, as discussed with the Town's Technical Engineering Officer.*
14. *BL condition 32: exit travel distances from SOU do not comply with BCA D1.4.*
15. *FSEER by Complete Fire Design (Ref. 703006t001) dated 30/08/07 further information is required as detailed the attached FESA letter dated 7/12/07 and the Town's letter dated 24/12/07.*
16. *Offices on GF have not been inspected, as access was not made available. Further site inspection is required.*

Technical Engineering Services:

17. *Hydraulic/drainage requirements; refuse bin storage, car parking bay for people with disabilities are to be resolved as discussed with the Town's Technical Engineering Officer."*

14 January 2009 As requested by the Developer/Owner's representatives, a further inspection was carried out to assess the remedial building works.

20 January 2009 The Town's Building Surveyor telephoned to discuss and clarify with the City of Perth's Principal Building Surveyor relating to the non-compliant (less than 2750 millimetres above the public paved footpath) street awning, and the imposed building conditions. It was also noted that the other awnings were not built in accordance with EPRA conditions; these awnings were then removed and rebuilt to EPRA's satisfaction.

February and March 2009 The required remedial works, the necessary certifications, and non-compliant issues were gradually resolved by way of submitting the Alternative Building Solutions, in lieu of complying with the standard provisions of the Building Code of Australia.

22 April 2009 As requested by the Developer/Owner's representatives, a further inspection was carried out to assess the remedial building works.

It was noted that the rectified works have resulted in some allocated car parking bays not reflecting the actual access entitlement of the proposed Strata, particularly the designated car bay for use by people with disabilities; other previous non-compliant matters are still outstanding.

A Building Approval Certificate Application (Form 8) was submitted to the Town for the unauthorised concrete balcony. The Town is unable to approve this Form 8 Application, pending final approvals from both the EPRA and Main Roads WA.

5 May 2009 The Town wrote to advise the applicant the following:

"... Please be advised that the Town has contacted Martin Keen from EPRA who has advised that the Department of Main Roads WA, are still assessing the unauthorised works and may be some time before a final decision is made. However our assessment of the plans, as attached to the Form Eight (unauthorised building work), and further to the discussions at the last site meeting, have prompted the Town to bring to your attention the following:

... The Form Eight addresses the unauthorised works (being the balcony), however to ensure all the works have been satisfactorily addressed, Technical Service requirements have also been attached.

In the interim, your application has been suspended and will not be further processed until the above information, has been submitted to and received by the Town."

11 May 2009 A set of revised Strata Form 7 Plans were submitted. The applicant's letter notes that "*The amendments are made to show the new setback for the awning after its modification, Part Lot 1 car bay had been located, Part Lot 11 car bay had been amended and re- allocation of storerooms Part Lot.*"

13 May 2009 The Town wrote to the EPRA seeking its comments relating to the encroachments, as follows:

" ... Of the fourteen (14) building encroachments, there are six (6) awning encroachments.

Nevertheless, the Town's Officers are of the opinion that the retention of the subject canopies/awnings superficially attached to the building will have minimum effect to the public or unreasonably interfere with the general amenity. In this instance, the Town does not object to these existing sunscreen canopies/awnings.

However, before the Town considers support or otherwise of the other eight (8) building and balcony encroachments, the Town wishes to seek the EPRA's comments in regard to these building and balcony encroachments, as follows:

On the North-Western corner (adjacent to Lot 814):

- *0.02 Encr. (1st & 2nd Flrs Balc)*

On the South-Western corner (corner of Pisoneri and Newcastle Street):

- *0.02 Encr. (1st & 2nd Flrs Bld)*
- *0.05 Encr. (1st & 2nd Flrs Balc)*
- *0.08 Encr. (1st & 2nd Flrs Balc)*

On the South-Eastern corner (along Newcastle Street):

- *010 Enc. (1st Flrs Bld)*
- *0.02 Enc. (2nd Flrs Bld)*
- *011 Enc. (1st Flrs Bld)*
- *0.09 Enc. (2nd Flrs Bld)*

... Could you please advise if the below matter has been resolved to EPRA's satisfaction, as detailed below email from yourself to the Town dated 16 April 2009 2:29 PM.

"There are still a number of outstanding issues preventing EPRA from withdrawing the caveat on this development. I will let you know once they have been resolved and the caveat removed ..."

Building Encroachments at No. 2 Pisoneri Street

Of the fourteen (14) building encroachments, there are six (6) awning encroachments. Nevertheless, the Town's Officers are of the opinion that the retention of the subject canopies/awnings superficially attached to the building will have minimum effect to the public or unreasonably interfere with the general amenity. In this instance, the Town does not object to these existing sunscreen canopies/awnings.

However, before the Town considers support or otherwise of the other eight (8) building and balcony encroachments, the Town has sought the EPRA's comments in regard to these building and balcony encroachments.

The statutory complexity of building and balcony encroaching matters are comprehensively addressed in a previous Agenda Item No. 9.1.5 to the Ordinary Meeting of Council held on 12 May 2009, and the subsequent Further Report on the same matter on this Agenda.

In response to the above, the Town's Lawyers have detailed advice in respect of the building encroachments, the Town's position in this regard and re-drafted conditions to deal with the matter of the encroachments, insurance and liability, in a letter dated 25 May 2009 (as attached). A summary is outlined below:

"The Town has determined that due to the nature and extent of the Encroachments the Town wishes to ensure that it has the appropriate, legally enforceable obligations in place to ensure that the strata company must:

- 1. keep the Encroachments in good repair and properly maintained; and*
- 2. indemnify the Town against any loss, damage or liability the Town may incur arising out of the Encroachments.*

The developer has argued that the Town should not require an indemnity from the developer or the strata company in relation to loss or damage arising out of the Encroachments because the provisions of the Strata Titles Act 1985 already oblige the strata company to repair and maintain the Encroachments. The developer has also undertaken to register additional by-laws relating to maintenance and repair of the Encroachments.

Further, the developer argues that under the Strata Titles Act 1985 the strata company must insure the common property of the strata scheme, and since pursuant to the Strata Titles Act 1985 the Encroachments are to be treated as common property for the purposes of the Act, the strata company must therefore ensure it is insured against liability arising out of the Encroachments.

We do not disagree with these points made by the developer, but these obligations on the strata company under the Strata Titles Act 1985 do not achieve the Town's requirements. Without a legally enforceable agreement between the Town and the strata company requiring the strata company to repair and maintain the Encroachments, a failure to observe the maintenance and repair provisions of the Strata Titles Act 1985 does not entitle the Town to take legal action against the strata company to enforce its maintenance and repair obligations, or to sue the strata company for damages for loss and damage caused by a breach of these obligations.

Similarly, without a legally enforceable agreement between the Town and the strata company requiring the strata company to indemnify the Town against any loss, claim or damages arising out of the Encroachments, the Town would not necessarily have a right to be indemnified by the strata company for a claim made by a third party against the Town itself arising out of the Encroachments, or for any other loss and damage incurred by the Town arising out of the Encroachments."

In view of the above, appropriately worded conditions have been drafted and are included in the Officer Recommendation.

Additional Matters to be resolved prior to clearance of Strata Form 7

These outstanding matters are:

1. The Town's Officers are continuing to liaise with the Developer/Owner representatives to resolve the outstanding Building Code and compliance certificate matters, initially advised to the builder on 13 November 2008 and the subsequent issues detailed in the Town's letter dated 5 May 2009;

2. The Town is also awaiting comment from the EPRA in relation to the confirmation that the EPRA is satisfied with the matters identified in the Town's letter dated 13 May 2009; and
3. The final approval granted by the Minister's Office.

CONSULTATION/ADVERTISING:

Not required.

STRATEGIC IMPLICATIONS:

This matter is in keeping with the Town's Strategic Plan 2006 – 2011 Objective 4.1 –

“Provide good strategic decision-making, governance, leadership and professional management”, in particular:

4.1.2 Manage the organisation in a responsible and accountable manner.

4.1.4 Deliver services in ways that accord with the expectations of the community, whilst maintaining statutory compliance”.

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

It is acknowledged that the encroachments are constructed in conflict with the Building Licence and are non-compliant with the Local Government (Miscellaneous Provisions) Act 1960.

However, having regard to the size of the building, that the encroachments may be considered necessary for the stability of the building and considering the circumstances, the Town's Officers are of the opinion that the retention of the above encroachments will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood.

Accordingly, and subject to the EPRA's favourable comment to support these building and balcony encroachments, it is recommended that the Council grants its permission, and recommends that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the following encroachments:

On the North-Western corner (adjacent to Lot 814):

- 0.02 Encroachment (1St & 2nd Floor Balcony);

On the South-Western corner (corner of Pisoneri and Newcastle Street):

- 0.02 Encroachment (1St & 2nd Floor Building);
- 0.05 Encroachment (1St & 2nd Floors Balcony); and
- 0.08 Encroachment (1St & 2nd Floor Balcony);

On the South-Eastern corner (along Newcastle Street):

- 010 Encroachment (1st Floor Building);
- 0.02 Encroachment (2nd Floor Building);
- 011 Encroachment (1st Floor Building); and
- 0.09 Encroachment (2nd Floor Building).

Further, it is recommended that the Council supports the applicant obtaining approval from the Minister's Office for these building encroachments. This support should not be used as precedent for future developments.

It is noted that Section 401 of the Local Government (Miscellaneous Provisions) Act 1960 allows the Town to serve Notice of required alterations for the building work that contravenes this Act, or for building works that are not in compliance with, or have departed from the approved plans and specifications issued by the Town. The Notice, once issued by the Town, would be subject to review by the State Administrative Tribunal.

Having regard to the size of the building, that the encroachments may be considered necessary for the stability of the building and considering the circumstances, the Town's Officers are of the opinion that the retention of the above encroachments will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood. Accordingly, it is recommended that the Council grants its permission, and recommends that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the encroachments numbered 1-8 inclusive.

However, it is recommended that the Council supports the applicant to obtain approval from the Minister's Office for these building encroachments, and note that this support must not be used as precedent for future developments.

Accordingly, until the subject building encroachments, approval granted by the EPRA, and the Minister's Office, and outstanding Certifications are resolved, the Strata Form 7 cannot be issued by the Town.

14.3 CONFIDENTIAL REPORT – LATE ITEM – Nos. 154-156 (Lot 780) Newcastle Street, Corner Beaufort Street and Lindsay Street, Perth - Proposed Strata Form 7 Certificate of Local Government to Previously Approved Construction of Four (4) Storey Mixed Use Development Comprising Residential Car Park, Storerooms on Basement Level; Car Park, Specialty Shops, Supermarket on Ground Level; and Eighty (80) Multiple Dwellings on Upper Three Levels – Building Encroachments

Ward:	South	Date:	25 May 2009
Precinct:	EPRA P20	File Ref:	PRO4028; 6.2009.220.1
Attachments:	-		
Reporting Officer(s):	B Tran, H Smith		
Checked/Endorsed by:	H Smith, R Boardman	Amended by:	-

OFFICER RECOMMENDATION:

That the Council;

- (i) *RECEIVES the report regarding the Proposed Strata Form 7 Certificate of Local Government to Previously Approved Construction of Four (4) Storey Mixed Use Development Comprising Residential Car Park, Storerooms on Basement Level; Car Park, Specialty Shops, Supermarket on Ground Level; and Eighty (80) Multiple Dwellings on Upper Three Levels – Building Encroachments at Nos. 154- 156 (Lot 780) Newcastle Street, Corner Beaufort Street and Lindsay Street, Perth;*
- (ii) *GRANTS ITS PERMISSION, and RECOMMENDS that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the encroachments 12, 25 and 38, as follows:*
 - *Encroachment 12: Beaufort/Newcastle Street: Cladding. At 4000mm above ground level. Projecting out 80mm from boundary into the truncation of the road reserve and above the awning on the ground floor;*
 - *Encroachment 25: Beaufort/Newcastle Street: Cladding. At 7000mm above ground level. Projecting out 80mm from boundary into the truncation of the road; and*
 - *Encroachment 38: Beaufort/Newcastle Street: Cladding. At 9900mm above ground level. Projecting out 80mm from boundary into the truncation of the road reserve.*
- (iii) *prior to the issue of the Strata Form 7 Certificate of Local Government, the owners shall enter into a deed with the Town imposing legally enforceable obligations on the owners as follows:*
 - (a) *on registration of the strata plan, the owners shall register additional by-laws, in terms previously approved in writing by the Town, as follows:*
 - (1) *the strata company shall at its cost keep Encroachments 12, 25 and 38 in good and serviceable repair, properly maintained and, where necessary, promptly renew and replace the Encroachments and every part of them, whether the damage or deterioration arises from fair wear and tear, inherent defect or otherwise;*

- (2) *the strata company shall at its cost promptly comply with the Town's directions from time to time in relation to the repair and maintenance of the Encroachments pursuant to (iii) (a) (1);*
 - (3) *the strata company shall indemnify and keep indemnified the Town against any losses, damages, costs, claims, actions, liabilities or expenses for which the Town is held liable or incurs in connection with Encroachment 12 and/or Encroachment 25 and 38 however arising, including, without limitation, any claim against the Town for compensation or as a result of any injury to any person or loss or damage to any property arising out of Encroachments 12, 25 and 38;*
 - (4) *whilst Encroachments 12, 25 and 38 exist, the strata company shall effect and maintain insurance for any liability it may incur to the Town or any other party arising out of or in connection with the Encroachments, including any liability to the Town under the previous paragraph, for an amount of not less than \$50 million (or such higher amount as the Town may reasonably specify from time to time), which insurance shall note the interests of the Town of Vincent under the by-law, and the strata company shall produce evidence of the currency of that insurance promptly after receiving a request from the Town of Vincent to do so;*
 - (5) *the strata company shall not amend or repeal any of the by-laws set out in this condition without the written agreement of the Town of Vincent;*
 - (6) *the strata company acknowledges that the Town of Vincent requires registration of a Notification pursuant to Section 70A of the Transfer of Land Act 1893 to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent pursuant to clause (iii) (a) (5) of this condition; and*
 - (7) *the strata company shall enter into a deed prepared by the Town's solicitors on terms and conditions acceptable to the Town to give effect to the strata company's obligations pursuant to this condition (iii)(a);*
- (b) *the owners shall ensure that immediately after registration of the strata plan, the strata company enters into a deed with the Town as contemplated in clause (iii) (a) (7) of this condition;*
 - (c) *the owners shall pay the Town's legal costs incurred in connection with the preparation, negotiation and execution of the deeds between the owners and the Town and the strata company and the Town referred to in this condition, the preparation of these conditions and all related legal advice and assistance. If required by the Town the owners shall pay the Town's solicitors estimate of this amount as a bond to the Town prior to the Town instructing its solicitors to commence work;*

- (d) *entitling the Town to lodge a Notification pursuant to Section 70A of the Transfer of Land Act 1893 simultaneously with the owners' application to register the strata plan to notify proprietors and prospective proprietors of lots in the strata scheme of the existence of the deed entered into with the Town of Vincent and the strata company pursuant to clause (iii) (a) (5) of this condition; and*
- (e) *charging the land in favour of the Town for the purpose of securing the due and punctual performance of the owner's obligations under the deed referred to in this condition, and authorising the Town to lodge an absolute caveat at Landgate against the Certificate of Title to the land in order to protect the rights and interests of the Town under that deed;*
- (iv) *NOTES, the revised "Additional Matters to be resolved prior to clearance of Strata Form 7" as detailed in this report; and*
- (v) *EXPRESSES its strong concern to Psaros Builders with regard to building encroachments, as the Town has consistently taken a strict approach with respect to encroaching building structures, except for awnings, in that they are required to be contained solely within the subject lot boundaries, and that the Council's decision to support the subject building encroachments should not be viewed as a precedent for any future developments in the future.*

COUNCIL DECISION ITEM 14.3

Moved Cr Ker, Seconded Cr Burns

That the recommendation be adopted.

Debate ensued.

MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

Note: The Chief Executive Officer determined that this report be released to the public as the Council has determined the matter.

PURPOSE OF REPORT:

The purpose of this report is to inform the Council of building encroachments and related matters to be resolved prior to issuing the Strata Form 7 Certificate of Local Government for the development at Nos. 154-156 (Lot 780) Newcastle Street, Corner Beaufort Street and Lindsay Street, Perth, also known as "Tyne Square".

BACKGROUND:

In brief, the Development Approval was issued by the East Perth Redevelopment Authority (EPRA) and the subsequent staged Building Licences were submitted to and assessed by the City of Perth.

July 2007

Due to the municipal boundary changes which took place in July 2007 however, the Building Licence (Stage 2) was transferred to the Town for issuing. It is noted that the Town's Building Services did not reassess the building submission, rather, carried on with the issuing of the Building Licence based on the previous Building Code of Australia (BCA) assessment by the City of Perth's Approval Services. It is noted that the Development involved a number of

non-compliances with the standard deemed-to-satisfy provisions of the BCA. There were a number of Fire Engineered Performance Based Alternative Building Solutions involved in this Development. Alternative Building Solutions are solutions that do not comply with the BCA deemed-to-satisfy provisions and may not provide an equivalent level of fire protection.

28 August 2007

A Building Licence (6.2007.313.1) was issued by the Town for the construction of *“Mixed Use Development Comprising of Supermarket, Residential Units and Associated Car Parking.”*

During March and
April 2009

As requested by Psaros Builders, several site inspections were conducted between the Psaros Builders’ representatives and the Town’s Officers from various service sections.

As a result of the unauthorised variation by deleting, without obtaining the Town approval, the previously approved fire protection wall along the northern side boundary the external openings conflict with the standard provisions of the BCA and are exposed to fire source feature (side allotment boundary). The Town then received, on 26 March 2009, a further Fire Engineered Performance Based Alternative Building Solution Report for these unauthorised building variations.

As requested by Psaros Builders, and under Regulation 20(1)(b) of the Building Regulations 1989, a ‘partial’ Certificate of Building Classification was issued to permit the occupancy of the “Northbridge Pharmacy” tenancy and associated car parking bays of the development.

Until recently, The Town’s Officers from various service sections continue to liaise with and carry out on-going site inspections with Psaros Builders representatives. It is also noted that the necessary certifications, as imposed on the Building Licence conditions, the required remedial works, and non-compliant issues are slowly being submitted to the Town and resolved by the Psaros Builders’ Consultants.

Furthermore, a final certification/report of the “as constructed building works certifying that the Development has been substantially conformed with the applicable BCA provisions is to be submitted. These outstanding matters must be resolved prior to issuing the relevant Certificate of Classification/Occupancy and Strata Form 7 Certificate of Local Government. Again, it is pending the Council resolution of these subject unauthorised building encroachments.

15 May 2009

A Strata Form 7 Certificate of Local Government Application for the development at Nos. 154-156 (Lot 780) Newcastle Street, Corner Beaufort Street and Lindsay Street, Perth was submitted to the Town.

19 May 2009

At a meeting requested by the CEO/Director of Psaros Builders to discuss the matters of the “Pavilion” Development, the CEO/Director of Psaros Builders advised there are 44 identified building encroachments at the “Tyne Square” development. The Strata Scheme consists of a total of 87 Lots.

21 May 2009

In an email dated Thursday, 21 May 2009 12:15PM, Stuart Funnel, Project Manager for Cardno Buckland Engineer advised, inter alia, that:

“We can confirm that the 3 encroachments on the corner of Beaufort St and Newcastle St are certified as lightweight and do not form part of the structure.

We therefore certify that should the Alucabond require to be removed for whatever reason, it will not affect the structural integrity of the building.

Please do not remove any part of the main structure without first consulting us prior to any works, if needed, be carried out.”

Building Encroachments at Nos. 154-156 (Lot 780) Newcastle Street, Perth

The encroachments as listed below are evident on the Building Licence assessed by the City of Perth and issued by the Town of Vincent, with the exception of encroachments 12, 25 and 38. Encroachments relating to street awnings/canopies ('light weight') are not uncommon and are generally considered acceptable at Development Application stage.

Ground Floor

Encroachment 1: Beaufort Street: Awning. . At 3250mm above ground level. Projecting out 2650mm from boundary (Refer to highlighted area on attached plan).

Encroachment 2: Newcastle Street: Awning. At 2800mm above ground level. Projecting out 1950mm from boundary (Refer to highlighted area on attached plan).

Encroachment 3: Newcastle/Lindsay Street: Awning. At 3300mm above ground level. Projecting out 1980mm from boundary (Refer to highlighted area on attached plan).

Encroachment 4: Lindsay Street: Awning. At 3630mm above ground level. Projecting out 580mm from boundary (Refer to highlighted area on attached plan).

Encroachment 5: Lindsay Street: Awning. At 2800mm above ground level. Projecting out 1340mm from boundary (Refer to highlighted area on attached plan).

Encroachment 6 Lindsay Street: Awning. At 3100 above ground level. Projecting out 2610mm from boundary (Refer to highlighted area on attached plan).

First Floor

Encroachment 7: Beaufort Street: Awning. At 6100mm above ground level. Projecting out 320mm from boundary (Refer to highlighted area on attached plan).

Encroachment 8: Beaufort Street: Awning. At 6000mm above ground level. Projecting out 340mm from boundary (Refer to highlighted area on attached plan).

Encroachment 9: Beaufort Street: Awning. At 5500mm above ground level. Projecting out 350mm from boundary (Refer to highlighted area on attached plan).

Encroachment 10: Beaufort Street: Awning. At 5200mm above ground level. Projecting out 360mm from boundary (Refer to highlighted area on attached plan).

Encroachment 11: Beaufort Street: Awning. At 4900mm above ground level. Projecting out 530mm from boundary (Refer to highlighted area on attached plan).

Encroachment 12: Beaufort/Newcastle Street: Cladding. At 4000mm above ground level. Projecting out 80mm from boundary into the truncation of the road reserve and above the awning on the ground floor (Refer to highlighted area on attached plan).

Encroachment 13: Newcastle Street: Awning. At 6000mm above ground level. Projecting out 620mm from boundary (Refer to highlighted area on attached plan).

Encroachment 14: Newcastle Street: Awning. At 4300mm above ground level. Projecting out 380mm from boundary (Refer to highlighted area on attached plan).

Encroachment 15: Newcastle Street: Awning. At 5600mm above ground level. Projecting out 630mm from boundary (Refer to highlighted area on attached plan).

Encroachment 16: Newcastle Street: Awning. At 3500mm above ground level. Projecting out 470mm from boundary (Refer to highlighted area on attached plan).

Encroachment 17: Lindsay Street: Awning. At 4600mm above ground level. Projecting out 580mm from boundary (Refer to highlighted area on attached plan).

Encroachment 18: Lindsay Street: Awning. At 6700mm above ground level. Projecting out 590mm from boundary (Refer to highlighted area on attached plan).

Encroachment 19: Lindsay Street: Awning. At 7300mm above ground level. Projecting out 450mm from boundary (Refer to highlighted area on attached plan).

Encroachment 20: Lindsay Street: Awning. At 7900mm above ground level. Projecting out 480mm from boundary (Refer to highlighted area on attached plan).

Second Floor

Encroachment 21: Beaufort Street: Awning. At 8900mm above ground level. Projecting out 330mm from boundary (Refer to highlighted area on attached plan).

Encroachment 22: Beaufort Street: Awning. At 8200mm above ground level. Projecting out 340mm from boundary (Refer to highlighted area on attached plan).

Encroachment 23: Beaufort Street: Awning. At 8000mm above ground level. Projecting out 350mm from boundary (Refer to highlighted area on attached plan).

Encroachment 24: Beaufort Street: Awning. At 7800mm above ground level. Projecting out 520mm from boundary (Refer to highlighted area on attached plan).

Encroachment 25: Beaufort/Newcastle Street: Cladding. At 7000mm above ground level. Projecting out 80mm from boundary into the truncation of the road (Refer to highlighted area on attached plan).

Encroachment 26: Newcastle Street: Awning. At 8800mm above ground level. Projecting out 620mm from boundary (Refer to highlighted area on attached plan).

Encroachment 27: Newcastle Street: Awning. At 7100mm above ground level. Projecting out 370mm from boundary (Refer to highlighted area on attached plan).

Encroachment 28: Newcastle Street: Awning. At 8700mm above ground level. Projecting out 630mm from boundary (Refer to highlighted area on attached plan).

Encroachment 29: Newcastle Street: Awning. At 6500mm above ground level. Projecting out 480mm from boundary (Refer to highlighted area on attached plan).

Encroachment 30: Newcastle Street: Awning. At 6400mm above ground level. Projecting out 470mm from boundary (Refer to highlighted area on attached plan).

Encroachment 31: Newcastle Street: Awning. At 6300mm above ground level. Projecting out 610mm from boundary (Refer to highlighted area on attached plan).

Encroachment 32: Newcastle/Lindsay Street: Awning. At 6200mm above ground level. A corner projecting out 60mm from boundary (Refer to highlighted area on attached plan).

Encroachment 33: Lindsay Street: Awning. At 6800mm above ground level. Projecting out 580mm from boundary (Refer to highlighted area on attached plan).

Encroachment 34: Lindsay Street: Awning. At 7300mm above ground level. Projecting out 580mm from boundary (Refer to highlighted area on attached plan).

Encroachment 35: Lindsay Street: Awning. At 9500mm above ground level. Projecting out 590mm from boundary (Refer to highlighted area on attached plan).

Encroachment 36: Lindsay Street: Awning. At 10100mm above ground level. Projecting out 460mm from boundary (Refer to highlighted area on attached plan).

Encroachment 37: Lindsay Street: Awning. At 10800mm above ground level. Projecting out 470mm from boundary (Refer to highlighted area on attached plan).

Third Floor

Encroachment 38: Beaufort/Newcastle Street: Cladding. At 9900mm above ground level. Projecting out 80mm from boundary into the truncation of the road reserve (Refer to highlighted area on attached plan).

Encroachment 39: Newcastle Street: Awning. At 11700mm above ground level. Projecting out 620mm from boundary (Refer to highlighted area on attached plan).

Encroachment 40: Newcastle Street: Awning. At 9300mm above ground level. Projecting out 480mm from boundary (Refer to highlighted area on attached plan).

Encroachment 41: Newcastle Street: Awning. At 9200mm above ground level. Projecting out 480mm from boundary (Refer to highlighted area on attached plan).

Encroachment 42: Newcastle Street: Awning. At 9100mm above ground level. Projecting out 610mm from boundary (Refer to highlighted area on attached plan).

Encroachment 43: Newcastle/Lindsay Street: Awning. At 9100mm above ground level. A corner projecting out 60mm from boundary (Refer to highlighted area on attached plan).

Encroachment 44: Lindsay Street: Awning. At 9600mm above ground level. Projecting out 570mm from boundary (Refer to highlighted area on attached plan).

Encroachment 45: Lindsay Street: Awning. At 10200mm above ground level. Projecting out 580mm from boundary (Refer to highlighted area on attached plan).

Encroachment 46: Lindsay Street: Awning. At 12300mm above ground level. Projecting out 600mm from boundary (Refer to highlighted area on attached plan).

Encroachment 47: Lindsay Street: Awning. At 13000mm above ground level. Projecting out 450mm from boundary (Refer to highlighted area on attached plan).

The statutory complexity of building encroaching matters were comprehensively addressed in Late Item No. 9.1.5 to the Ordinary Meeting of Council held on 12 May 2009, and a subsequent Further Confidential Report of the same matter on this Agenda. The following interpretation provided by Paul Scalzi, Senior Regulations Officer, Building Industry Development, Department of Commerce advises, inter alia, that:

"There is no provision in any legislation that allows the Minister's office to approve encroachments. Certain encroachments are permitted under Section 400 of the Act, some of which require the Minister's approval (section 400(1)(b) or consent (section 400 (1b) - in either case only the local government can petition the Minister for his/her approval or consent and only when the local government has resolved to permit the encroachment(s)."

The Town's Officers do not have delegated authority to consider the listed encroachments and this is evidenced by its direct absence in the Delegated Authority Register 2008-2009. The CEO does however, have delegated authority to issue a Notice to remove the unauthorised works, nevertheless this avenue has not been pursued.

Thus, the encroachments numbered 12, 25 and 38 are presented to the Council for its consideration given the encroachments were not evident on the approved Building Licence plans and, as such, are considered unauthorised building works as defined in the Local Government (Miscellaneous Provisions) Act 1960.

In response to the above, the Town's Lawyers have detailed advice in respect of the building encroachments, the Town's position in this regard and re-drafted conditions to deal with the matter of the encroachments, insurance and liability, in a letter dated 25 May 2009 (as attached). A summary is outlined below:

"The Town has determined that due to the nature and extent of the Encroachments the Town wishes to ensure that it has the appropriate, legally enforceable obligations in place to ensure that the strata company must:

1. keep the Encroachments in good repair and properly maintained; and
2. indemnify the Town against any loss, damage or liability the Town may incur arising out of the Encroachments.

The developer has argued that the Town should not require an indemnity from the developer or the strata company in relation to loss or damage arising out of the Encroachments because the provisions of the Strata Titles Act 1985 already oblige the strata company to repair and maintain the Encroachments. The developer has also undertaken to register additional by-laws relating to maintenance and repair of the Encroachments.

Further, the developer argues that under the Strata Titles Act 1985 the strata company must insure the common property of the strata scheme, and since pursuant to the Strata Titles Act 1985 the Encroachments are to be treated as common property for the purposes of the Act, the strata company must therefore ensure it is insured against liability arising out of the Encroachments.

We do not disagree with these points made by the developer, but these obligations on the strata company under the Strata Titles Act 1985 do not achieve the Town's requirements. Without a legally enforceable agreement between the Town and the strata company requiring the strata company to repair and maintain the Encroachments, a failure to observe the maintenance and repair provisions of the Strata Titles Act 1985 does not entitle the Town to take legal action against the strata company to enforce its maintenance and repair obligations, or to sue the strata company for damages for loss and damage caused by a breach of these obligations.

Similarly, without a legally enforceable agreement between the Town and the strata company requiring the strata company to indemnify the Town against any loss, claim or damages arising out of the Encroachments, the Town would not necessarily have a right to be indemnified by the strata company for a claim made by a third party against the Town itself arising out of the Encroachments, or for any other loss and damage incurred by the Town arising out of the Encroachments."

In view of the above, appropriately worded conditions have been drafted and are included in the Officer Recommendation.

Additional Matters to be resolved prior to clearance of Strata Form 7

These outstanding matters are:

1. The Town's Officers are continuing to liaise with the Developer/Owner's representatives to resolve the outstanding Building Code and compliance certificate matters. A final certification/report of the "as constructed" building works certifying that the Devolvement has been substantially conformed to the applicable BCA provisions is to be submitted.
2. Written confirmation from the East Perth Redevelopment Authority that they are satisfied the requirements and conditions of the Planning Approval have been met.

CONSULTATION/ADVERTISING:

Not required.

STRATEGIC IMPLICATIONS:

This matter is in keeping with the Town's Strategic Plan 2006 – 2011 Objective 4.1 – "Provide good strategic decision-making, governance, leadership and professional management", in particular:

4.1.2 Manage the organisation in a responsible and accountable manner.

4.1.4 Deliver services in ways that accord with the expectations of the community, whilst maintaining statutory compliance".

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

It is acknowledged that the encroachments are constructed in conflict with the Building Licence and are non-compliant with the Local Government (Miscellaneous Provisions) Act 1960.

An email dated 21 May 2009 from the Project Manager/Engineer for Cardno Buckland Engineer advised, inter alia, that:

*“We can confirm that the 3 encroachments on the corner of Beaufort St and Newcastle St are certified as lightweight and do not form part of the structure.
We therefore certify that should the Alucabond require to be removed for whatever reason, it will not affect the structural integrity of the building.”*

Having regard to the size of the building, the email advice received above and the current circumstances, the Town’s Officers are of the opinion that the retention of the above encroachments will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood. Accordingly, it is recommended that the Council grants its permission, and recommends that the Minister for Local Government gives his approval, under the provisions of s400(1b) of the Local Government (Miscellaneous Provisions) Act 1960, for the encroachments 12, 25, and 38 inclusive.

However, it is recommended that the Council supports the applicant to obtain approval from the Minister’s Office for these building encroachments, and note that this support must not be used as precedent for future developments.

Importantly, until the subject building encroachments, approval granted by the EPRA, and the Minister’s Office, and outstanding Certifications are resolved, the Strata Form 7 cannot be issued by the Town.

PROCEDURAL MOTION

At 8.27pm **Moved Cr Ker, Seconded Cr Youngman**

That an “open meeting” be resumed.

PROCEDURAL MOTION PUT AND CARRIED (8-0)

(Cr Farrell was an apology for the meeting.)

15. CLOSURE

The Presiding Member, Mayor Nick Catania, declared the meeting closed at 8.28pm with the following persons present:

Mayor Nick Catania, JP	Presiding Member
Cr Anka Burns	South Ward
Cr Helen Doran-Wu	North Ward
Cr Ian Ker	South Ward
Cr Sally Lake	South Ward
Cr Dudley Maier	North Ward
Cr Izzi Messina	South Ward
Cr Youngman	North Ward
John Giorgi, JP	Chief Executive Officer
Rob Boardman	Director Development Services
Rick Lotznicker	Director Technical Services
Mike Rootsey	Director Corporate Services
Anita Radici	Executive Assistant (Minutes Secretary)

No Members of the Public or journalists present.

These Minutes were confirmed by the Council as a true and accurate record of the Ordinary Meeting of the Council held on 26 May 2009.

Signed:Presiding Member
Mayor Nick Catania

Dated this day of 2009