



# Council Meeting 10 December 2013

# MINUTES

**MINUTES OF A COUNCIL MEETING, HELD IN THE COUNCIL CHAMBERS, ON TUESDAY, 10 DECEMBER 2013 COMMENCING AT 6.40PM.**

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*Owner: F & C Lupis*  
*Application No. P134/13*

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*Application No. P38/13*

**318.3** *T149.5 Hillside Road No. 6 (Lot 11)*  
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*Owner: C & A Stonehouse*  
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**318.5** *The Wine Store, 48 George Street*

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**321. TOWN PLANNING & BUILDING COMMITTEE (CONTINUED)**

**321.1** *T148.1 Consultation Strategy for the Review of the Municipal Inventory, Creation of Heritage Areas & Listing of Individual Properties on Council's Heritage List*

**321.2** *T150.1 Review of TPS No 3 and Local Planning Strategy*

**321.3** *T150.2 Budget Allocation for valuation update of the development parcel contained in the 2008 Draft Masterplan*

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- (i) *W7.1 Progress of Footpath, road and kerb replacement. In particular footpath order of priority and progress across the 4 wards. Types of footpaths, cost, longevity, construction time*



- (ii) *W7.2 Revision of crossover policy in relation to materials, second crossover, width*
- (iii) *W7.5 Locke Park and replacement of peppermint trees*
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**MINUTES OF A COUNCIL MEETING, HELD IN THE COUNCIL CHAMBER, ON TUESDAY, 10 DECEMBER 2013 COMMENCING AT 6.40PM.**

**304. DECLARATION OF OPENING OF MEETING**

The Mayor (Presiding Member) declared the meeting open.

**304.1 Present**

Mayor J O'Neill	Presiding Member
Cr C Collinson	
Cr I Cope	
Cr B de Jong	
Cr S Martin	
Cr M McPhail	
Cr M Rico	
Cr E Watkins	
Mr S Wearne	Chief Executive Officer
Mr L Mainwaring	Executive Manager Finance & Administration
Mr J Douglas	Manager Planning Services (To 10.10pm)
Ms J May	Minute Secretary

**305. ACKNOWLEDGEMENT OF COUNTRY**

The Presiding Member made the following acknowledgement:

*"On behalf of the Council I would like to acknowledge the Nyoongar people as the traditional custodians of the land on which this meeting is taking place."*

**306. WELCOME TO GALLERY AND INTRODUCTION OF ELECTED MEMBERS AND STAFF**

There were 22 members of the public in the gallery at the commencement of the meeting.

The Presiding Member introduced elected members and staff.

**307. RECORD OF APPROVED LEAVE OF ABSENCE**

Cr Harrington.

**308. RECORD OF APOLOGIES**

Nil.

**309. PRESENTATIONS/DEPUTATIONS/PETITIONS/SUBMISSIONS**

Nil.

**310. PUBLIC QUESTION TIME**

**310.1 Judy Semple – The Wine Store**

*"Can we please have details about the evidence used by the Council officer in coming to his recommendation that there would be no negative affect from the noise emitted from the Wine Store premises if bifold windows were open onto Hubble Street."*

Mayor O'Neill advised Ms Semple that, as the relevant officer was not present at the meeting, this question would be taken on notice.

**310.2 Jono Farmer – Glyde-In Community Group (Volunteer)**

The following response had been forwarded to Mr Farmer in respect to the question (see below) which had been taken on notice at the November Council Meeting:

*"Will the Council advise when the matter of the requested lease for the Glyde In Community and Learning Centre will be resolved? This lease was requested by Glyde-In over nine months ago and representatives from Glyde-In spoke to the request at the June meeting of Council. As yet we do not know whether we will*

have a lease signed and if it is likely to happen there is some degree of urgency as the Local Government review board is likely to make their announcement in June 2014.”

*Dear Jono*

*I write in response to your Public Question, which the Mayor took on notice, at Council's Meeting of 19 November.*

*It is not possible to advise when the requested lease will be resolved as this will depend on when elected members make a final determination on the matter, noting this will be subject to an officer's substantive report, which elected members are yet to receive.*

*I am not clear what the reference to “over nine months ago” refers to – possibly some form of informal contact. The first correspondence on the matter Council received was in May and representatives of Glyde-In were subsequently invited to address Council at the June 18 Council meeting.*

*At that point, despite Glyde-In's request being entirely predicated on concerns regarding a possible amalgamation, there had been no announcement from the Minister regarding proposed amalgamations, which did not occur until late July.*

*Even when that announcement was made, it was clear the earliest an amalgamation could occur was July 2015 – over two years away at that point, hence it is difficult to understand the urgency to deal with this issue, which Glyde-In keeps referring to.*

*I wrote to Glyde-In on the issue in July, however received no response (see below).*

*I commenced leave in August, giving rise to a staff resource issue in respect of dealing with this matter.*

*Whilst I was on leave Council passed a motion which in effect required the Executive Manager Finance & Administration to prepare a report for the November meeting.*

*Also relevant is the fact that when I returned, in September, Council at the same meeting had also passed a motion to sign an amalgamation related MOU with the Cities of Fremantle, Melville and Canning the effect of which would have been, that if Council did enter into a long term lease with Glyde-In at this time, this would have been contrary to the provisions of the MOU (which I subsequently recommended not be signed).*

*As you are aware, an officer's report was prepared for the Council's November meeting, however on reviewing that report I felt it needed amending, however there was not time to effect this before the agenda went out.*

*At the November meeting, Council accepted that the “short month” (ie the short period between the November and December Council meetings), combined with the need to attend to numerous other issues, may have made the provision of a final report difficult.*

*This has proved to be correct.*

*For the December Council Meeting, at the time of writing this response, a report has not been prepared, however I hope to provide some form of brief report to this meeting if possible.*

*Meanwhile, in the event it is of any reassurance, I have confirmed that there is, currently, no known reason as to why you should regard June 2014 as the critical date.*

*The understanding which some elected members appear to have had, that come June 2014, the Council would go into “caretaker mode”, is incorrect.*

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*On the advice I have received, unless the Government were to introduce some form of relevant legislation, Council could enter into a lease with Glyde-In on June 30 2015 even if Council were to cease to exist the next day.*

*It is my intention to further progress this issue during the "January recess" period, when, theoretically, there is slightly less pressure with respect to competing tasks and provide a report to Council at the February meeting.*

*To that end I would be grateful if Glyde-In could respond to a letter which I sent in July 2013 in the course of preparing information for a report. To date no acknowledgement, let alone a response, has been received.*

*In the event it would be of assistance, I attach a copy.*

*I trust this letter helps clarify the current situation.*

*Yours sincerely*

*Stuart Wearne  
Chief Executive Officer*

**311. APPLICATIONS FOR LEAVE OF ABSENCE**

Nil.

**312. CONFIRMATION OF MINUTES OF PREVIOUS MEETING****312.1 Council Meeting – 19 November 2013**

**Cr Collinson – Cr Rico**

**That the Minutes of the Council Meeting held on 19 November 2013 be confirmed.**

CARRIED

**313. ANNOUNCEMENTS BY MAYOR WITHOUT DISCUSSION**

Nil.

**314. QUESTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN WITHOUT DISCUSSION BY COUNCIL MEMBERS**

Nil.

**315. MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN BY COUNCIL MEMBERS****315.1 Cr McPhail**

*That:*

1. *the CEO in consultation with relevant officers present a draft lease for the Glyde-In Community Centre, for consideration by Council, at the next Council meeting.*
2. *the CEO be requested to expedite a report on outstanding leases within the Town, and provide recommendations, for consideration at the next Council Meeting.*
3. *the CEO inform prospective tenants of Council's intent to prepare a report into the issue.*

Cr McPhail advised that he no longer wished to move the motion.

**316. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)****316.1 George Street No 48 (Lot 300)**

**Cr Harrington:** Seeking to clarify reasons for seeking a revocation of part of the motion carried at the Council Meeting on 15 November 2013, as she would not be in attendance at tonight's meeting.

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**Cr de Jong – Cr Rico**

**That the correspondence from Cr Harrington be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 318.5).** CARRIED

**316.2 George Street No 48 (Lot 300)**

**C Innes:** Objecting to the reconsideration of the request to have windows opening to the Hubble Street side of the Wine Store and advising that customers were still smoking outside her home. Ms Innes stated that they have accommodated the parking issue without great complaint and also the outside tables but enough is enough.

**Cr de Jong – Cr Rico**

**That the correspondence from Ms Innes be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 318.5).** CARRIED

**316.3 George Street No 48 (Lot 300)**

**W Dwyer:** Refuting the claim of 'lack of clarity' by elected members at the last Council Meeting as grounds to have the Wine Store application reconsidered and requesting that as many residents are unable to attend the Council Meeting, this matter be adjourned until the next Council Meeting scheduled for 2014.

**Cr de Jong – Cr Rico**

**That the correspondence from W Dwyer be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 318.5).** CARRIED

**316.4 George Street No 48 (Lot 300)**

**J Back:** Advising that in relation to the reconsideration of the Wine Store proposal, he objected to bifold doors in Hubble Street, had no problem with the A frame signage provided there was no obstruction to pedestrians and supported the revocation of the 12 month trial. Mr Back requested Council investigate permit parking prior to further changes to the Wine Store as Hubble Street cannot cope with added pressure on infrastructure.

**Cr de Jong – Cr Rico**

**That the correspondence from J Back be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 318.5).** CARRIED

**316.5 George Street No 48 (Lot 300)**

**J Machin:** Strongly objecting to the reconsideration of the issue of bifold windows to Hubble Street frontage at the Wine Store.

**Cr de Jong – Cr Rico**

**That the correspondence from J Machin be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 318.5).** CARRIED

**316.6 T149.6 George Street No 65 (Pt 3/SP16096)**

**Woods Bagot:** Outlining a collection of statements from Tony Jones & Anne-Marie Medcalf (site owners), Andres Lopez (architect Woods Bagot), William Naylor (urban planner Planning Solutions) and Philip Griffiths (heritage consultant Griffiths Architects) in support of the proposal at 65 George Street.

**Cr de Jong – Cr Rico**

**That the correspondence from Woods Bagot be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 318.4).** CARRIED



**317. ORDER OF BUSINESS****Cr Martin – Cr Collinson**

That the order of business be changed to allow members of the gallery to address agenda items. CARRIED

**318. TOWN PLANNING & BUILDING COMMITTEE****318.1 T149.7 View Terrace No. 62 (Lot 85)****Applicant: John Chisholm Design****Owner: F & C Lupis****Application No. P134/13**

Mrs Radaich (adjoining owner) addressed the meeting requesting Council give consideration to reducing the height and length of the proposed garage given its impact on her residence and circulated a diagram indicating the perceived impact of the height of the proposal on her residence and information on dimensions of limousines from other companies she had downloaded from the web which indicated a smaller garage may be sufficient. Ms Radaich queried the use of a domestic garage for a commercial use.

Mr Chisholm (applicant) addressed the meeting advising that his client was prepared to reduce the height of the garage by 400mm by dropping the ground level and reducing the height of the garage door. He advised he could again discuss the reduction of the length of the garage with his client, but believed the proposed length was required to house his limousine.

The Manager Planning Services advised that the storage of the limousine in the garage did not constitute a change of use for the property and Council had no statutory basis to require a smaller garage.

**Cr Martin – Cr Rico****That Council exercise its discretion in granting approval for the following:**

- (a) element 5.3.7 Site Works of the Residential Design Codes;**
  - (b) variation to the setback requirements of the side setback (western elevation) – required setback 1.7 metres. Proposed setback is 1.5 metres;**
  - (c) element 3.7.8 of the Residential Design Guidelines: Roof pitch;**
  - (d) element 3.7.17 of the Residential Design Guidelines: Building Height**
- for additions and alterations to an existing dwelling at 62 (Lot 85) View Terrace, East Fremantle, in accordance with the plans date stamp received on 16 & 18 October 2013, subject to the following conditions:**

- 1. The setback to the proposed garage be increased to 1.5m from the eastern boundary and the garage be reduced in height to a maximum of 2.8m above natural ground level.**
- 2. The highlight windows on the eastern boundary be opaque and non opening.**
- 3. Crossover width to remain as existing. No alterations to the crossover are permitted unless prior approval has been granted by Council.**
- 4. All proposed screening to be a minimum height of 1.65 metres and to comply with the R-Code Explanatory Guidelines with regard to Section 7.1 Visual Privacy**
- 5. Where this development requires that any facility or service within a street verge trees to be removed, modified or relocated then such works must be approved by Council and to the satisfaction of the Chief Executive Officer.**
- 6. Prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to be lodged and approved to the satisfaction of the Chief Executive Officer. (refer footnote (i) below)**
- 7. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**

8. The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
9. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
10. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
11. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
12. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
13. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
14. This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

*The following are not conditions but notes of advice to the applicant/owner:*

- (a) *retaining walls should be extended so as to contain runoff on site.*
- (b) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (c) *a copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (d) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (e) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (f) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (g) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face*

**penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air Conditioner Noise".**

**CARRIED**

Reason for Varying Officer's Recommendation

The applicant's willingness to:

- increase eastern setback
- reduce the height of the garage
- modify the highlight windows
- rectify existing retaining problems to satisfy adjoining owners' concerns.

The Manager Planning Services supported the amendments to the officer's recommendation.

*Cr de Jong declared a financial interest in the following item as he is the owner of the subject property and left the meeting at 7.06pm*

*Cr Martin made the following impartiality declaration in the matter of 126 Preston Point Road: "As a consequence of the owner being known to me, as a fellow elected member, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

*Cr Rico made the following impartiality declaration in the matter of 126 Preston Point Road: "As a consequence of the owner being known to me, as a fellow elected member, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

*Cr Watkins made the following impartiality declaration in the matter of 126 Preston Point Road: "As a consequence of the owner being known to me, as a fellow elected member, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

*Cr Cope made the following impartiality declaration in the matter of 126 Preston Point Road: "As a consequence of the owner being known to me, as a fellow elected member, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

*Cr Collinson made the following impartiality declaration in the matter of 126 Preston Point Road: "As a consequence of the owner being known to me, as a fellow elected member, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

*Cr McPhail made the following impartiality declaration in the matter of 126 Preston Point Road: "As a consequence of the owner being known to me, as a fellow elected member, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

*Mayor O'Neill made the following impartiality declaration in the matter of 126 Preston Point Road: "As a consequence of the owner being known to me, as a fellow elected member, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

**318.2 T149.2 Preston Point Road No. 126 (Lot 4959)**

**Applicant: Shayne Le Roy Design**

**Owner: B De Jong**

**Application No. P38/13**

Mr Le Roy (applicant) addressed the meeting in support of the proposal.

**Cr Martin – Cr Rico**

The adoption of the Committee's recommendation which is as follows:

That Council approve of the development application for demolition of an existing dwelling and the construction of a two storey single dwelling at 126 (Lot 4959) Preston Point Road, East Fremantle, in accordance with the plans date stamp received on 26 November 2013 subject to the following conditions:

1. Crossover width to be a maximum width of 3.0 metres.
2. All parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
3. Prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to be lodged and approved to the satisfaction of the Chief Executive Officer. *(refer footnote (i) below)*
4. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
5. The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
6. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
7. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
8. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
9. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
10. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
11. This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

*The following are not conditions but notes of advice to the applicant/owner:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*

- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (h) *Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air Conditioner Noise".*

CARRIED

*Cr de Jong returned to the meeting at 7.10pm and it was noted he neither spoke nor voted on the previous motion.*

**318.3**      **T149.5 Hillside Road No. 6 (Lot 11)**  
**Applicant: Ariane Prevost Architect**  
**Owner: C & A Stonehouse**  
**Application No. P133/13**

Mr Stonehouse (owner) addressed the meeting in support of the Committee's recommendation and thanked Council for its diligence in determining this application.

**Cr Martin – Cr de Jong**

**That Council exercise its discretion in granting approval for the following:**

- (a) variation to Element 5.4.1 of the Residential Design Codes Visual Privacy
  - (b) variation to the setback requirements of the side setback (kitchen western elevation) – required setback 4.3metres. Proposed setback is 3.3 metres;
  - (c) variation to the setback requirements of the side setback (living room western elevation) –required setback 4.8 metres. Proposed setback is 4.1 metres;
  - (d) element 3.7.8 of the Residential Design Guidelines: Roof pitch;
  - (e) element 3.7.18 of the Residential Design Guidelines: Building Height
- for additions and alterations to an existing dwelling at 6 (Lot 11) Hillside Road, East Fremantle, in accordance with the plans date stamp received on 24 September 2013, subject to the following conditions:
1. New doors to loggia to be designed to prevent overlooking into the neighbour's property to the satisfaction of the CEO.
  2. Proposed planting identified on drawing A05 external to the living area outside of the area identified in the cone of vision to be so designed as to remain non habitable and non accessible.
  3. The three windows at the existing Gazebo to be designed to prevent overlooking into the neighbour's property to the satisfaction of the CEO.
  4. The 1.65 metre screen to the front terrace on the western boundary to be designed to comply with the 'Deemed to Comply' provisions of the R-Codes element 5.4.1 (Explanatory Guidelines with regard to Section 7.1 Visual Privacy).
  5. Prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to

- be lodged and approved to the satisfaction of the Chief Executive Officer. *(refer footnote (i) below)*
6. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
  7. The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  8. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
  9. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
  10. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
  11. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
  12. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
  13. Crossover to remain as existing. Should the crossover be proposed to be modified a separate application is required to be submitted to Council.
  14. This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

*The following are not conditions but notes of advice to the applicant/owner:*

- (a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) a copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (c) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*

- (f) matters relating to dividing fences are subject to the Dividing Fences Act 1961.
- (g) Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document–“An Installers Guide to Air Conditioner Noise”.
- CARRIED

**318.4 T149.6 George Street No. 65 (Pt 3/ SP16096)**

**Applicants: Woods Bagot**

**Owner: A Jones & A M Medcalf**

**Application No: P148/13**

The letter from Woods Bagot, referred from Correspondence (MB Ref 316.6) was tabled.

Ms Chaney addressed the meeting in opposition to the proposed development outlining the large number of discretions relating to setbacks, car parking, plot ratio, height and overshadowing and requesting Council require the applicants to revise the proposal to comply with Council's Town Planning Scheme requirements. Ms Chaney circulated a shadow diagram indicating the impact of the development on her property.

Mr Jones (owner) and Mr Lopez (architect) addressed the meeting in support of the proposal outlining the Mr Tony's long standing association with George Street and the extensive portfolio of work prepared by the architect to demonstrate how the proposal will fit positively into the streetscape. Mr Lopez displayed design development drawings and a 3D model.

**Cr Martin – Cr de Jong**

The adoption of the Committee's recommendation which is as follows:

That Council exercise its discretion in granting approval for the following:

- (a) variation to the provision of on-site parking pursuant to Town Planning Scheme No 3;
- (b) variation to building height under Town Planning Scheme No 3 (required 5.5 wall, 8.0 metres overall : proposed 8.27 metres concealed roof)
- (c) variation to plot ratio of Town Planning Scheme No 3 from 0.5:1 to 1.2:1 (0.8:1 for the overall parent lot);

for two storey over existing car parking development located at 65 (Pt 3/ SP16096) George Street, East Fremantle, in accordance with the plans date stamp received on 17 October 2013 subject to the following conditions:

1. Prior to the applicant submitting an application for a Building Permit, the development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer as detailed in the Local Planning Policy – Element 3.7.16.4.3 Fremantle Port Buffer of the Residential Design Guidelines.
2. The landowner shall lodge a section 70A notification pursuant to the transfer of Land Act on the Certificate of Title(s) of the development site, prior to the issue of a Building Permit. This notification shall be sufficient to alert prospective landowners that the dwellings are located within Area 2 of the Fremantle Port Buffer and the proposed built form of the development within the precinct is to be adhered to. The wording of the memorial shall be placed on all strata titles as follows;  
*The subject lot (strata) is located within proximity to the Fremantle Port. From time to time the location may experience noise, odour, light spill and other factors that arise from the normal operations of a 24 hour working Port'.*
3. The landowner shall lodge a section 70A notification pursuant to the transfer of Land Act on the Certificate of Title(s) of the development site, prior to the issue of a Building Permit. This notification shall be sufficient to alert prospective landowners that the dwellings are located within the commercial zone of George Street. The wording of the memorial shall be placed on all strata titles as follows;

*The subject lot (strata) is located within proximity to George Street commercial zone. From time to time the location may experience noise, odour, light spill and other factors that arise from the normal operations of a commercial area.*

4. The ground floor car parking at 65 George Street is to be a minimum of 4 spaces, clearly assigned a minimum of 1 on-site car parking spaces allocated for the specific use of 44 Hubble Street residential and 1 space each for Units 1 and 2, 65 George Street and 1 space for the proposal.
5. A Site and Traffic Management Plans for trades persons and delivery vehicles to be approved by the Chief Executive Officer in consultation with relevant officers, to be lodged with the Building Licence application.
6. The works to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
7. The proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
8. The proposed development is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
9. All stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
10. All parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
11. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
12. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
13. This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

*The following are not conditions but notes of advice to the applicant/owner:*

- (a) *this decision of Council does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*

**CARRIED**



Under s.5.21(4)(b) of the Local Government Act 1995, Cr Rico requested that the voting of Council members be recorded.

Crs Martin, Cope, McPhail, de Jong and the Mayor voted in favour of the recommendation with Crs Watkins, Rico and Collinson having voted against the motion.

*Cr Collinson made the following impartiality declaration in the matter of 48 George Street: "As a consequence of Cynthia Innes being a personal friend and Jan Machin being known to me through our association with Glyde-In, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

**318.5      *The Wine Store, 48 George Street***  
*By Stuart Wearne CEO on 6 December 2013*

**BACKGROUND**

Council at its meeting held on the 19 November 2013 resolved as follows:

*That Council approve planning permission for 10 outdoor seats, frameless sliding glass or bi-fold windows and a formalisation of trading hours at 48 (Lot 300) George Street, in accordance with the plans date stamp received on 16 August and 1 November 2013, subject to the following conditions:*

- 1. The subject lot including associated outdoor seating not to exceed 100 patrons at any one time on the premises.*
- 2. Applicant to ensure that at all times the location of the proposed tables and chairs to be situated on George Street and Hubble Street are in accordance with the plan date stamped 1 November 2013 and do not block or obstruct the street and footpath.*
- 3. Applicant to ensure all times the tables are suitably staffed, and the proposed outdoor area to be table service only.*
- 4. No smoking is permitted within or surrounding the alfresco area.*
- 5. A maximum of 2 customers per table at any one time.*
- 6. The proposed outdoor seating and tables to be removed from the street by 8.00pm.*
- 7. Frameless sliding glass windows or frameless bi-fold windows to the satisfaction of the CEO to be installed on George Street only, with no opening windows on Hubble Street.*
- 8. The abovementioned windows to be shut after 8.00pm.*
- 9. No portable 'A' frame signage is approved as part of this application. The applicant to remove all 'A' frame signs, including the current large 'A' frame signage board located on George Street. No 'A' frame signage is to be located on George Street or Hubble Street.*
- 10. The blackboard to be a maximum height of 1 metres and a maximum width of 1 metres. The blackboard to be affixed to the building so as not detract from the heritage value of the building, or impact upon the structural integrity of the building, or materially alter the appearance or condition of the buildings structure once removed from that structure.*
- 11. The building shall be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours.*
- 12. The pavement associated with the outdoor seating shall be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.*
- 13. The hours of operation for the business to be:*
  - Monday 7am – 10pm*
  - Tuesday 7am – 10pm*
  - Wednesday 7am – 12am*
  - Thursday 7am – 12am*
  - Friday 7am – 12am*
  - Saturday 7am – 12am*
  - Sunday 7am – 10pm*

14. *The proposed frameless sliding glass windows or frameless bi-fold windows are to be constructed in conformity with the drawings date stamped and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.*
15. *The proposed works are not to be commenced until Council has received an application for a building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.*
16. *With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.*
17. *The proposed works are not to be commenced until Council has received an application for, and issued, a permit under Division 3 of the Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.*
18. *Applicant to ensure at all times the use of the outdoor tables and chairs and related service complies with Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.*
19. *The facility is to be conducted with and as an extension of food premises which are registered in accordance with the Health Act 1911.*
20. *Users of the facility shall have access to proper and sufficient sanitary conveniences.*
21. *The eating area is to be kept in a clean and tidy condition at all times.*
22. *The tables, chairs and other structures in the eating area are to be in a good, clean and serviceable condition at all times.*
23. *At least 1.8 metres of clear footpath is required in order to ensure sufficient pedestrian access. An area adjoining the proposed alfresco area is to be clearly demarcated at the expense of the applicant, to ensure at all times patrons stay within the alfresco area. This is to be undertaken to the satisfaction of the Chief Executive Officer.*
24. *Arrangements being made in respect of public liability insurance of not less than \$10,000,000 to the satisfaction of the Chief Executive Officer.*
25. *Applicant is required to pay an initial application fee of \$259.00 and an additional annual fee of \$27 per m<sup>2</sup> for the use of the alfresco area.*
26. *The approval for the outdoor seating and frameless sliding glass windows or frameless bi-fold windows is for a trial period of 12 months.*

Footnote:

*The following are not conditions but notes of advice to the applicant/owner:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*

Following that decision, the CEO and Manager Planning Services received queries from a number of elected members regarding whether the decision could be revoked and the matter reheard.

The consistent reason given for the request was that a number of elected members were confused during the meeting about exactly what they were voting on.

Particular references were made to a report from the CEO being referred to as "the officer's recommendation" when in fact it was actually advice from the CEO which sought to clarify the *Committee's* recommendation, which varied from the planning officer's recommendation.

There were also concerns raised with respect to whether proper meeting procedure had occurred.

In a letter dated 21 November 2013 to elected members and the CEO (attached) the applicant has also claimed there was confusion and procedural concerns and foreshadowed a SAT appeal and a complaint to the Minister, not that this has had any bearing on this outcome.

Elected members are advised it is *their* responsibility to take all possible steps to ensure they understand what they are voting on and should seek clarification from the Presiding Member if they are unsure.

It is nevertheless concluded a number of elected members *were* unclear about what they were voting on at stages during the meeting, or did not have a proper understanding of what the officer's recommendation was, or both.

In itself that situation would not normally have affected Council officers simply proceeding to implement Council's decision, as per their responsibility to do so. However in this case the CEO's first responsibility was to respond to elected members' questions regarding what options there were, if any, for the matter to be reconsidered.

Accordingly, the CEO undertook to clarify whether:

(i) pursuant to the relevant legislation, and the specific circumstances of this matter, whether the decision was lawfully able to be revoked, being mindful of the fact planning decisions and other such exercises of a quasi-judicial power are particularly problematic in this regard.

(and if not)

(ii) in the event the applicant wished to seek a new planning decision via a new application, under what circumstances could this happen.

Following a review of previous legal advice and relevant provisions of the Town Planning Scheme, the Local Government Act, the Local Government (Administration) Regulations 1996 and Council's Standing Orders; the CEO formed the view that, pursuant to the relevant legislative provisions and the specific circumstances of this matter, that the decision in this case *could* be reconsidered by elected members subject to certain requirements being met.

This conclusion is supported by legal advice.

## REPORT

In terms of statutory requirements and proper process, it is the CEO's view that in order to give effect to the reconsideration request, the following actions needed to occur:

(i) The owner of the land in question needed to make a written request to elected members for the planning approval in question to be amended. This has occurred (see attached).

(ii) At least three elected members needed to sign a Notice of Motion to change the decision in question. This has occurred (see attached)

(iii) In response to the Notice of Motion, at the 10 December meeting, the Presiding Member should call for an elected member to move the first foreshadowed revocation motion from the floor as follows:

That Condition 7 of the resolution of the Council Minute Book reference 291.3 of the Council meeting held on 19 November 2013, and which is as follows, be revoked:

7. *Frameless sliding glass windows or frameless bi-fold windows to the satisfaction of the CEO to be installed on George Street only, with no opening windows on Hubble Street.*

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- (iv) if that is carried by an absolute majority the motion which should then be moved is the foreshadowed "replacement" motion ie
7. *Frameless sliding glass windows or frameless bi-fold windows to the satisfaction of the CEO permitted to be installed on George Street and Hubble Street."*
- (v) Note at this point the motion is open to amendment.
- (vi) a similar process is then followed for the other foreshadowed motions, initially as follows:
- That Condition 8 of the resolution of the Council Minute Book reference 291.3 of the Council meeting held on 19 November 2013, and which is as follows, be revoked:
8. *The abovementioned windows to be shut after 8.00pm.*
- (vii) If that is carried by an absolute majority the motion which should then be moved is the foreshadowed motion ie
8. *The abovementioned windows on Hubble Street to be shut after 5pm and the abovementioned windows on George Street to be shut after 8pm."*
- (viii) That Condition 9 of the resolution of the Council Minute Book reference 291.3 of the Council meeting held on 19 November 2013, and which is as follows, be revoked:
9. *No portable 'A' frame signage is approved as part of this application. The applicant to remove all 'A' frames signs, including the current large 'A' frame signage board located on George Street. No 'A' frame signage is to be located on George Street or Hubble Street.*
- (ix) If that is carried by an absolute majority the motion which should then be moved is the foreshadowed motion ie
9. *No portable 'A' frame signage is approved as part of this application. Any 'A' frame signage, whether existing or new signage, is to be approved by the CEO.*
- (x) That Condition 26 of the resolution of the Council Minute Book reference 291.3 of the Council meeting held on 19 November 2013, and which is as follows, be revoked:
26. *The approval for the outdoor seating and frameless sliding glass windows or frameless bi-fold windows is for a trial period of 12 months."*

Note that if the final outcome differs from the officer's advice, reasons should be given for this.

In terms of the Manager Planning Services' advice on the abovementioned issues, this is as follows:

- With respect to the proposed amendment of Condition 7, the Manager Planning Services has no objection.
- With respect to the proposed amendment of Condition 8, the Manager Planning Services has no objection.

It is noted that with respect to potential amenity issues:

- (i) Noise abatement legislation will still apply
- (ii) Liquor licensing controls exist

- With respect to the proposed amendment of Condition 9, the Manager Planning Services has no objection.
- With respect to the revoking of Condition 26, the Manager Planning Services was never in support of this condition in the first place.

The CEO also notes that with respect to the outdoor tables, this will be subject to the Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.

Note also that the previous objectors have been advised by letter of the situation and have been invited to attend the Council Meeting.

### RECOMMENDATION

The recommended actions, in relation to the reconsideration request, as outlined in this report under "Report", be carried out and elected members make their determination on that basis.

The letters/emails from Cr Harrington, C Innes, W Dwyer, J Back and J Machin referred from Correspondence (MB Ref 316.1, 316.2, 316.3, 316.4 & 316.5) were tabled.

The Mayor drew attention to a reference in Cr Harrington's correspondence where she stated that in an email dated 21 November from the Mayor there was a comment stating "there was confusion on this item". The Mayor read from his email of this date where he referred to confusion at this meeting, however advised he was not specifically referring to the Wine Store item.

The CEO responded to a question from Ms Semple (Hubble Street resident) regarding how aspects of the proposal came to be reconsidered.

Ms McCallum, Mr Ritson and Ms A Machin (Hubble Street residents) addressed the meeting regarding the proposal and stated the only revocation motion which they opposed was regarding the bifold windows to Hubble Street and urged Council to consider the amenity of residents of the street.

Ms Usher (applicant) addressed the meeting detailing the problems raised by the 12 month trial condition imposed in Council's earlier approval and assuring Council that the Wine Store would always be mindful of residents' amenity in any approval granted.

Ms Payne (Hubble Street resident) addressed the meeting also urging Council to not revoke the condition regarding the bifold window to Hubble Street on amenity grounds.

Mr Connelly (King Street resident) addressed the meeting supporting the proposal to revoke planning conditions relating to the bifold window in Hubble Street, signage and the 12 month trial.

Ms Semple (Hubble Street resident) addressed the meeting strongly urging Council to retain the planning condition restricting bifold windows to George Street only, to limit the impact of The Wine Store operations on Hubble Street residents.

*Cr Martin made the following impartiality declaration in the matter of 48 George Street: "As a consequence of one of the respondents Martin Connelly being a former work colleague, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

Cr Martin sought clarification from the Manager Planning Services as to whether he would be supportive of Council retaining the planning condition to not allow frameless or bifold windows to the Hubble Street frontage. The Manager Planning Services advised that he would support this decision.

- (A) Cr de Jong – Cr Cope  
That Condition 7 of the resolution of the Council Minute Book reference 291.3 of the Council meeting held on 19 November 2013, and which is as follows, be revoked:

*7. Frameless sliding glass windows or frameless bi-fold windows to the satisfaction of the CEO to be installed on George Street only, with no opening windows on Hubble Street.* LOST

Under s.5.21(4)(b) of the Local Government Act 1995, Cr de Jong requested that the voting of Council members be recorded.

Crs Watkins, Rico, Martin, Collinson, McPhail, and the Mayor voted in favour of the recommendation with Crs de Jong and Cope having voted against the motion.

- (B) Cr McPhail – Cr Martin  
That Condition 9 of the resolution of the Council Minute Book reference 291.3 of the Council meeting held on 19 November 2013, and which is as follows, be revoked:

*9. No portable 'A' frame signage is approved as part of this application. The applicant to remove all 'A' frames signs, including the current large 'A' frame signage board located on George Street. No 'A' frame signage is to be located on George Street or Hubble Street* CARRIED

ABSOLUTE MAJORITY.

- (C) Cr Martin – Cr Collinson  
The following become Condition 9 of the Council Minute Book reference 291.3 of the Council Meeting held on 19 November 2013, and which is as follows:

*9. No portable 'A' frame signage is approved as part of this application. Any 'A' frame signage, whether existing or new signage, is to be approved by the CEO.* CARRIED

- (D) Cr Martin – Cr McPhail  
That Condition 26 of the resolution of the Council Minute Book reference 291.3 of the Council meeting held on 19 November 2013, and which is as follows, be revoked:

*26. The approval for the outdoor seating and frameless sliding glass windows or frameless bi-fold windows is for a trial period of 12 months."* CARRIED

ABSOLUTE MAJORITY

### 319. ADJOURNMENT

Cr Martin – Cr Collinson

That the meeting be adjourned at 9.40pm for a five minute break.

CARRIED

### 320. RESUMPTION

Cr Martin – Cr McPhail

That the meeting be resumed at 9.45pm with all those present prior to the adjournment, in attendance.

### 321. TOWN PLANNING & BUILDING COMMITTEE (CONTINUED)

#### 321.1 *T148.1 Consultation Strategy for the Review of the Municipal Inventory, Creation of Heritage Areas & Listing of Individual Properties on Council's Heritage List*

Cr Martin - Cr de Jong

The adoption of the Committee's recommendation which is as follows:

That Council endorse the proposed Consultation Strategy submitted by Griffiths Architects in respect to the review of the Municipal Inventory and the creation of Heritage Areas and listing of properties on the Heritage List. CARRIED

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*Cr Martin made the following impartiality declaration in the matter of Review of TPS No 3 and Local Planning Strategy: "As a consequence of one of the submitters Marie Mills of Mills Wilson, being a friend there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

*Cr McPhail made the following impartiality declaration in the matter of Review of TPS No 3 and Local Planning Strategy: "As a consequence of one of the submitters, Warren Giddens being known to me professionally, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".*

**321.2 T150.1 Review of TPS No 3 and Local Planning Strategy****Cr Martin – Cr de Jong****The adoption of the Committee's recommendation which is as follows:**

**That the Community Engagement Program proposed by "consult wg" to explain the draft Revised Local Planning Strategy and proposed Scheme Amendment 10, be endorsed.**

**CARRIED**

*Mayor O'Neill declared a financial interest in the following item Budget Allocation for valuation update of the development parcel contained in the 2008 Draft Masterplan and left the meeting at 9.50pm.*

**Cr McPhail – Cr Collinson****That in the absence of the Deputy Mayor, Cr Martin be elected Presiding Member.****CARRIED**

Cr Martin assumed the Chair.

**321.3 T150.2 Budget Allocation for valuation update of the development parcel contained in the 2008 Draft Masterplan****Cr Rico – Cr McPhail****The adoption of the Committee's recommendation which is as follows:**

**That Council authorise expenditure of up to \$10,000 for a valuation of the development parcel contained in the 2008 Draft Masterplan, as per the Community Reference Group's request.**

**CARRIED**

*Mayor O'Neill returned to the meeting at 10.03pm and it was noted he neither spoke nor voted on the previous motion.*

The Mayor resumed the Chair.

**321.4 Delegation to CEO**

The Mayor noted that this item had been withdrawn by the CEO, in a written memo.

*The Manager Planning Services left the meeting at 10.10pm.***322. FINANCE****322.1 Monthly Financial Activity Statement for Period Ending 30 November 2013***By Les Mainwaring Executive Manager Finance & Administration on 5 December 2013***PURPOSE**

To provide timely financial information to Elected Members including a regular review of the current forecast. This statement compares actual performance against budget estimates, and summarises operating and capital results in accordance with statutory requirements.

**BACKGROUND**

The report comprises the financial results from the month ending November 2013, with commentary focusing on comparisons to the year to date budget position.

The monthly Financial Activity Statement for the period ending 30 November 2013 is appended and includes the following:

- Financial Activity Statement
- Notes to the Financial Activity Statement including schedules of investments, rating information and debts written off.
- Capital expenditure Report

**ATTACHMENT**

The attached Financial Activity Statements are prepared in accordance with the amended Local Government (Financial Management) Regulations 1996; together with supporting material to provide Council with easy to understand financial information on Council activities undertaken during the financial year.

**REPORT**

**Introduction/Comments**

The following is a summary of information on the attached financial reports:

Revised Budget Forecast

The current budget forecast for the 30<sup>th</sup> June 2014 indicates a surplus of \$23,000, noting that this was the position adopted as at the Ordinary Council Meeting (OCM) 19 November 2013.

The history of the budget forecast is as follows;  
Original Budget adopted with a projected surplus of \$0

At the OCM 17 September 2013 amendments resulted in an increase in closing funds of \$8,000.

At the OCM 19 November 2013 amendments resulted in an increase in closing funds of \$15,000.

At the time of considering this report there will be recognition of an increase in 30 June 2013 closing funds from the Annual Financial Report, by \$127,620, which will increase the revised budget forecast for 30 June 2014 from a surplus of \$23,000 to a surplus of \$150,620.

Operating YTD Actuals (compared to the YTD Budget)

Operating Revenue 101%; is \$50,000 more than the YTD budget. (Favourable)

Operating Expenditure 94%; is \$198,000 less than the YTD budget. (Favourable)  
After non-cash adjustments, the total operating cash position is \$285,000 more than the YTD budget (Favourable).

Operating Revenue is 1% favourable to year to date budget.

The most favourable variances have come from building activity in the form of permit income and collections for BCITF and BSL. Another significant favourable income area is the early grant payment of the Home and Community Care program. The significant unfavourable variance within operating revenue is the transfer of the contribution for the Plympton Parking project which is yet to commence.

Operating Expenditure is now 6% favourable to year to date budget.

The main area of favourable variation is community amenities which includes the timing of invoices from refuse activities and town planning projects such as the municipal inventory and TPS3. Also recreation and culture has favourable variances



in parks and gardens maintenance, the East Fremantle Oval Master Plan and timing of building demolition.

All capital activities have been set forward in the budget so that they can be easily monitored in terms of progress; hence revenues aligned with capital projects have also been set forward which presents timing differences until projects are completed.

Many of the current year's capitals works programmes are in the project development and quotation stage at reporting date, whereas payments will flow when projects are completed or substantially in progress.

Other details can be found in the attached notes to the financial activity statement.

#### Capital Programs YTD Progress Summaries

Annual Timeline 42% of year elapsed

Land & Buildings 0% expended

Infrastructure Assets 5% expended

Plant & Equipment 23% expended

Furniture & Equipment 35% expended

Capital expenditure is \$3,256,000 less than the YTD budget (Favourable) which represents the value of capital programs to be completed. The report provides details on individual capital works in progress as at 30 November 2013.

#### **Statutory Requirements**

Local Government Act 1995 (As amended)

Local Government (Financial Management) Regulations 1996 (As amended)

#### **Relevant Council Policies**

Significant accounting policies are adopted by Council on an annual basis. These policies are used in the preparation of the statutory reports submitted to Council.

#### **Strategic Plan Implications**

Nil

#### **Financial/Resource/Budget Implications**

The November 2013 Financial Activity Statement shows variances in income and expenditure when compared with year to date budget estimates.

#### **Conclusion**

The attached Financial Activity Statement for the period 1 July 2013 to 30 November 2013 is presented to the Council for timely information, and includes the current annual forecast of \$23,000 which is confirmed by these accounts in conjunction with further analytical analysis undertaken at officer level.

Recognition of an increase in 30 June 2013 closing funds from the Annual Financial Report, by \$127,620, which will increase the revised budget forecast for 30 June 2014 from a surplus of \$23,000 to a surplus of \$150,620.

#### **RECOMMENDATION**

That Council receives the Financial Activity Statement for the period ending 30 November 2013.

**Cr McPhail – Cr Rico**

**That Council receives the Financial Activity Statement for the period ending 30 November 2013.** CARRIED

**322.2**

***Accounts for Payment – November 2013***

*By Les Mainwaring, Executive Manager Finance & Administration on 4 December 2013*

**PURPOSE**

To endorse the list of payments made under delegated authority for the period 1 November to 30 November 2013.

**BACKGROUND**

The Chief Executive Officer has delegated authority to make payments from the Municipal and Trust Accounts in accordance with budget allocations.

The Town provides payments to suppliers by; electronic funds transfer, cheque or credit card. Attached is a list of all payments made under delegated authority during the said month. **ATTACHMENT**

**REPORT**

**STATUTORY REQUIREMENTS**

Local Government (Financial Management) Regulations 1996 – Regulation 13

**Comments/Discussion**

The List of Accounts paid for the period beginning 1 November and ending 30 November 2013 requires endorsement by the Council.

**RECOMMENDATION TO COUNCIL**

That the List of Accounts paid for the period beginning 1 November and ending 30 November 2013 be received, as per the following summary table:

<i>November 2013</i>		
Voucher Nos	Account	Amount
4635 – 4647	Municipal (Cheques)	\$93,442.83
EFT 18287 – EFT 18448	Electronic Transfer Funds	\$726,898.01
Payroll	Electronic Transfer Funds	\$175,067.51
	<b>Municipal Total Payments</b>	<b>\$995,408.35</b>

**Cr de Jong – Cr Collinson**

**That the List of Accounts paid for the period beginning 1 November and ending 30 November 2013 be received.** CARRIED

**322.3**

***Minutes of Audit Committee Meeting – 4 December 2013***

**(i) *A20.1 Interim Audit Management Review Report 2012-2013***

**Cr McPhail – Cr de Jong**

**The adoption of the Committee's recommendation which is as follows:**

**That Council:**

- 1 receives the Interim Audit Management Letter 2012-2013**
- 2 endorses the Management Responses to the recommendations as provided in the report.** CARRIED

- (ii) **A20.2 Annual Financial Audit Report 2012-2013**
- (A) Cr de Jong – Cr McPhail  
The adoption of the Committee's recommendation which is as follows:  
That local government benchmark ratios be included in the annual report to provide context for the financial report. CARRIED
- (B) Mayor O'Neill – Cr de Jong  
That the CEO, in consultation with relevant officer, prepare a report for the next Finance Committee meeting regarding annual leave liability as outlined in the Auditor's Management Letter dated 29 November 2013. CARRIED
- (C) Cr de Jong – Cr Rico  
The adoption of the Committee's recommendation which is as follows:  
That Council:
1. receives the CEO's Report relating to the 2012-2013 annual financial audit.
  2. receives the annual financial audit report and management report dated 29 November 2013.
  3. accepts the annual financial report. CARRIED
- ABSOLUTE MAJORITY

### 323. WORKS & RESERVES

#### 323.1 *Minutes of Special Works & Reserves Committee Meeting – 27 November 2013 – En Bloc*

Cr de Jong – Cr Martin

That Council adopts en bloc the following recommendations of the Special Works & Reserves Committee Meeting of 27 November 2013 in respect to Items MB Ref W7.1, W7.2, W7.5, W7.6 & W7.7. CARRIED

- (i) ***W7.1 Progress of Footpath, road and kerb replacement. In particular footpath order of priority and progress across the 4 wards. Types of footpaths, cost, longevity, construction time***  
That a report be provided to the March 2014 meeting on a footpath replacement program comparing different materials of footpath construction ie concrete, laterite, liquid limestone including skinning and total replacement longevity. Factors to include cost, replacement time, longevity and other related matters such as disabled access across paths to roads, tactile surfaces for vision impaired and the amount spent on the four wards on replacement so far in this year's budget.
- (ii) ***W7.2 Revision of crossover policy in relation to materials, second crossover, width***  
That a report be prepared on crossover materials on offer and their suitability for the different wards, in particular insitu limestone in Preston Point Road.
- (iii) ***W7.5 Locke Park and replacement of peppermint trees***
- (a) That Council remove the dead trees, as well as an additional six trees located within the middle of the planting area, so as to facilitate a more usable and welcoming space and a more random pattern of plantings.
  - (b) That Council
    - not remove the three Peppermint trees that are currently in poor condition
    - relocates the existing public bench seats currently located under those Peppermint trees to other appropriate shade trees within Locke Park
    - continues to monitor the health of the Peppermint trees and
    - considers any future replacement of the Peppermint trees within the context of a larger Locke Park landscape design.

- (iv) **W7.6 George Street traffic plan. Cross walk, reduction of vehicle speeds**  
That traffic counts be undertaken along George Street (between Duke and East Street) to support an approach to Main Roads WA for consideration of a reduction in speed limits within the George Street Precinct of 40km/hr.
- (v) **W7.7 Bus Timetables at bus stops along Canning Highway and Marmion Street**  
That Council write to Transperth to request they investigate the possibility of placing bus timetables in strategic positions at bus stops along Canning Highway and Marmion Street East Fremantle.

### 324. REPORTS OF ELECTED MEMBERS

Nil.

### 325. REPORTS OF CHIEF EXECUTIVE OFFICER

#### 325.1 **Swan River Foreshore Erosion Control** *By Stuart Wearne CEO on 6 December 2013*

#### **BACKGROUND**

Council at its meeting held on 15 November 2013 resolved that:

*That:*

- 1. the CEO undertake in conjunction with the Swan River Trust and, if deemed necessary, other relevant agencies to implement immediate foreshore work from approximately the southern end of the Zephyr Café northwards to the Swan Yacht Club. The purpose of these works is to restore the shoreline already eroded and minimise further degradation of the vegetation along this section of foreshore.*
- 2. Council officers engage immediately with the Swan River Trust in the production of a consultant's brief/scope of works in relation to the commissioning of a foreshore and adjacent areas management plan and seek funding for the implementation of the plan in the next RiverBank funding round.*

#### **REPORT**

Whilst the CEO has a number of serious reservations regarding the first resolution and the circumstances under which it was moved, it is not proposed these are canvassed in this report.

The CEO has acted on the resolution to the extent of having met with the Swan River Trust on site shortly afterwards and also met with consultants who had provided previous advice to the Council regards foreshore erosion.

Based on those meetings the CEO concluded funds of approximately \$300,000 (say \$330,000 with a 10% contingency) will be required to carry out the "immediate" works referred to in the Council resolution.

As the CEO has pointed out at the meeting, no funds had been allocated for those proposed works.

(Accordingly, pursuant to relevant provisions of the Local Government Act if the CEO had proceeded to immediately carry out the works ie "implement immediate foreshore works" without obtaining authorised funds, he would have incurred unauthorised expenditure by Council and thus committed a breach of the Local Government Act in the process.)

Accordingly it is now necessary for Council to allocate the necessary funds.

On advice from the Manager Finance & Administration the two most appropriate sources of the funds are:

- (i) Funds from the abolition of the Town of East Fremantle Trust Fund (the former Tramway funds) (\$205,000)

- (ii) The additional carried forward funds from the results of the previous financial year (\$125,000)

#### Statutory Requirements

Local Government Act 1995 (As amended)

Local Government (Financial Management) Regulations 1996 (As amended)

#### Financial/Resource/Budget Implications

The following budget amendments are recommended for funding of the additional capital works on the Swan River Foreshore that were not adopted in the original budget:

\$330,000 E11687 Inf - Foreshore Erosion Control - CapEx

\$330,000 341 Transfer From Infrastructure Reserve.

\$330,000 224 Transfer To Infrastructure Reserve

\$205,000 I11177 Contribution Income Swan River Erosion Control from the Town of East Fremantle Trust Fund

\$125,000 Allocation of closing funds from 30 June 2013

Note: Reserve transfers are included in the process for all capital works transactions.

#### RECOMMENDATION

That Council adopts the following budget amendments:

\$330,000 E11687 Inf - Foreshore Erosion Control - CapEx.

\$330,000 341 Transfer From Infrastructure Reserve.

\$330,000 224 Transfer To Infrastructure Reserve

\$205,000 I11177 Contribution Income Swan River Erosion Control from the Town of East Fremantle Trust Fund

\$125,000 Allocation of closing funds from 30 June 2013

#### Absolute Majority Resolution Required

In reply to queries from the Mayor and various Councillors the CEO responded:

- The unspecified works which Council, at the last meeting and contrary to the CEO's advice, had resolved be carried out immediately, would not be eligible for funding support from the Swan River Trust because, as the CEO had pointed out at that meeting, the RiverBank funding round, being the only funding round the Swan River Trust conducts, does not open until mid February (closing April and decisions made in July) and elected members had clearly indicated the works were required to be carried out before then.
- The CEO's recommendation, in contrast, had involved the production of a foreshore and adjacent areas management plan by next February, which the CEO had pointed out to the meeting dovetailed with the RiverBank funding round.
- The CEO rejected suggestions that, in endorsing the Mayor's motion at the last meeting, elected members had only intended sand renourishment be carried out, noting sand renourishment had not been mentioned by the Mayor or any other elected member.
- The CEO further noted even if sand renourishment had been intended, despite not being mentioned:
  - such works could not be carried out without Swan River Trust approval
  - the Swan River Trust would not approve such works without an expert assessment of erosion control options having taken place and an optimal design regarding immediate works being proposed which was to the satisfaction of the Trust, yet the motion was not subject to any such plan.
  - as the necessary research had not been carried out it was not even known whether such a treatment would be appropriate for the areas in question, or, if feasible, under what circumstances.
- No design for the "immediate" works had been put before this Council meeting because:
  - (i) there was no point in commissioning such a plan unless it was known funding would be allocated to carry out such a plan.

- (ii) there would not have been time for a plan to be commissioned and produced between 19 November and 10 December in any event.
- (iii) Council’s motion regarding the immediate works had not required the CEO to put such details before Council – rather the effect of the motion was to grant the CEO a delegated authority to carry out the works, which Council expected to be done as soon as possible, and this was what the CEO had been attempting to implement.

The Mayor stated he could not agree to the allocation of \$330,000 for the foreshore works without more details of those works and therefore wished the matter deferred.

The CEO noted that the effect of this deferral, if carried, was that Council’s motion regarding the carrying out of immediate works could not be implemented.

**Mayor O’Neill – Cr McPhail**

**That: the matter be held over until February pending receipt of specifications of the detailed works with budget items including commencement and completion times.**

CARRIED

**325.2 Works & Reserves Committee**

*By Stuart Wearne CEO on 6 December 2013*

Currently all elected members except for Cr Rico are members of this Committee.

Cr Rico has recently requested to join the Committee.

There is no statutory issue with this. Such appointment would simply entail the following resolution which would need to be passed by an absolute majority.

*“That Cr Rico be appointed to the Works & Reserves Committee”.*

If this appointment occurs, the Committee will then comprise all members of Council.

This is a very unusual situation nevertheless it gives rise to the issue of whether the Committee should have delegated powers.

It is noted elected members have previously granted considerable delegated powers, subject to conditions, to the Town Planning & Building Committee, notwithstanding the membership of that Committee is, currently, only six of Council’s nine members.

In the CEO’s view there is considerable logic in the Works & Reserves Committee, if it is to include all members of the Council, having a full delegated authority. The alternative is that matters considered by all elected members at Committee will then, shortly afterwards be considered by all elected members at Council.

Section 5.17(a) of the Local Government Act provides that, in this case,

- “(1) A local government can delegate —
  - (a) to a committee comprising council members only, any of the council’s powers or duties under this Act except —
    - (i) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government; and
    - (ii) any other power or duty that is prescribed.”

In other words, if a full delegation were implemented, the Committee could determine all matters other than those requiring 75% or absolute majority.

**CONCLUSION**

From the point of view of increased efficiency the CEO recommends the delegation be granted. No quorum type conditions such as apply to the Town Planning Committee are necessary because if all members of Council were members of the Committee, the same quorum as would apply at a Council Meeting would exist.

It would be open to Council at any time to revoke the delegation if that was Council's wish.

**RECOMMENDATION**

That:

1. Cr Rico be appointed to the Works & Reserves Committee
2. pursuant to s5.17(a) of the Local Government Act, Council delegates decision making powers to the Works & Reserves Committee subject to the matters being considered by the Works & Reserves Committee being consistent with the designated role of that Committee. **Absolute Majority Resolution Required**

**Cr de Jong – Cr McPhail**

That:

1. Cr Rico be appointed to the Works & Reserves Committee
2. pursuant to s5.17(a) of the Local Government Act, Council delegates decision making powers to the Works & Reserves Committee subject to the matters being considered by the Works & Reserves Committee being consistent with the designated role of that Committee.

CARRIED  
ABSOLUTE MAJORITY

**325.3*****Friends of the East Fremantle Foreshore***

*By Stuart Wearne CEO on 6 December 2013*

**REPORT**

The Friends of the East Fremantle Foreshore was formed in June or July this year, taking the name of a previous organisation of the same name, now defunct albeit still registered as an incorporated body.

Whilst there is no question regarding the good intent of the organisation, some of their communications and other actions (some involving other parties) have caused some concern and it is the view of the CEO that, given there will be ongoing involvement, the situation may benefit from an appointed Council representative whose responsibility would be to liaise with and otherwise assist with communication with the group.

This would not preclude representatives of the group having direct contact with Council officers, and vice versa, or representatives of the group having contact with any other elected member, whether individually or as a body.

Nevertheless, just as the CEO feels it would be helpful if he were dealing with one representative of the group, as opposed to different members who may have varying points of view (an issue he has taken up with the President, who has agreed), the CEO feels the situation could benefit by having an appointed elected member representative who would generally be the first point of contact for officers (if required) and other elected members.

In related discussions with the two Preston Point Ward representatives, Cr de Jong and Cr McPhail, the CEO raised the suggestion and both supported the proposal, with Cr McPhail further indicating a ready willingness to take on this role.

It is entirely up to elected members regarding their choice however the CEO does acknowledge Cr McPhail's keen interest in foreshore related issues.

**RECOMMENDATION**

Council appoint an elected member representative whose primary role will be to serve as a first point of contact with the Friends of the East Fremantle Foreshore.

**Cr Martin – Cr Rico**

**That Council appoint Cr McPhail and Cr Collinson (as his deputy) as Council's representatives whose primary role will be to serve as a first point of contact with the Friends of the East Fremantle Foreshore.** CARRIED

**325.4 Annual Report 2012/13 – Annual Electors' Meeting**

*By Stuart Wearne, Chief Executive Officer, on 3 December 2013*

Under s5.54 of the Local Government Act, the annual report for a financial year is to be accepted by the local government no later than 31 December after that financial year.

**ATTACHED SEPARATELY**

The Electors' Meeting must be held no more than 56 days after Council accepts the annual report for the previous financial year. It is proposed that this meeting be held on Monday, 3 February 2014.

**RECOMMENDATION**

That Council:

1. accept the 2012/2013 Annual Report
2. hold the Annual Electors' Meeting on Monday, 3 February 2014 at 6.30pm.

**Absolute Majority Resolution Required**

**Cr Collinson – Cr Watkins**

**That Council:**

1. accept the 2012/2013 Annual Report
2. hold the Annual Electors' Meeting on Monday, 3 February 2014 at 6.30pm.

CARRIED

ABSOLUTE MAJORITY

**325.5 Status Report**

**ATTACHMENT**

**Cr de Jong – Mayor O'Neill**

**That the following two items on the Status Report be designated as closed:**

**Minute Ref T92.2 & 193.3 George Street Access and Parking Management Plan**

**Minute Ref 257.4 Assessment of Submissions – Review of Municipal Inventory.**

CARRIED

**326. CONFIDENTIAL BUSINESS****326.1 Glyde-In Lease**

**Cr de Jong - Cr Rico**

**That the following matter be dealt with on a confidential basis, in accordance with Section 5.23(2)(c) of the Local Government Act, which involves confidentiality provisions in relation to contracts.** CARRIED

Elected members considered the confidential report prepared by the CEO.

**CONFIDENTIAL ATTACHMENT**

**Mayor O'Neill – Cr Cope**

**That:**

1. the CEO's report be received
2. the CEO be requested to prepare a draft standard lease/template for the next Finance Committee meeting in February 2014. The report to include the status of other leases in the Town as to their expiration date and related matters.

CARRIED



**327. NOTICES OF MOTION BY ELECTED MEMBERS FOR CONSIDERATION AT THE FOLLOWING MEETING**

**327.1 Mayor O'Neill**

*"The CEO be asked to prepare a report on the feasibility of the Town Planning and Council agendas being made available to Councillors on the Wednesday prior to the relevant meeting. Report to include but not limited to the necessary changes to timelines, staff workload and impact on the town planning applications."*

**327.2 Cr Collinson**

*The CEO be asked to prepare a report on the status of the Royal George Hotel."*

**328. MOTIONS WITHOUT NOTICE OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING**

Nil.

**329. CLOSURE OF MEETING**

There being no further business, the meeting closed at 11.05pm.

*I hereby certify that the Minutes of the meeting of the **Council** of the Town of East Fremantle, held on **10 December 2013**, Minute Book reference **304. to 329.** were confirmed at the meeting of the Council on*

.....

\_\_\_\_\_  
*Presiding Member*