

17 June 2008

MINUTES

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ON TUESDAY, 17 JUNE 2008 COMMENCING AT 6.30PM.**

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MINUTES OF A COUNCIL MEETING, HELD IN THE COUNCIL CHAMBERS, ON TUESDAY, 17 JUNE 2008 COMMENCING AT 6.30PM.

154. DECLARATION OF OPENING OF MEETING

The Mayor (Presiding Member) declared the meeting open.

154.1 Present

Mayor A Ferris	Presiding Member
Cr D Arnold	
Cr C Collinson	
Cr S Dobro	
Cr D Nardi	
Cr R Olson	
Cr M Rico	
Cr A Wilson	
Mr S Wearne	Chief Executive Officer
Mr C Warrener	Town Planner (To 7.55pm)
Ms J May	Minute Secretary

155. ACKNOWLEDGEMENT OF COUNTRY

Mayor Ferris 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."

156. WELCOME TO GALLERY AND INTRODUCTION OF ELECTED MEMBERS AND STAFF

The Mayor welcomed nine members of the public in the gallery and introduced Council members and staff.

157. RECORD OF APPROVED LEAVE OF ABSENCE

Cr B de Jong.

158. RECORD OF APOLOGIES

Nil.

159. PRESENTATIONS/DEPUTATIONS/PETITIONS/SUBMISSIONS

Nil.

160. PUBLIC QUESTION TIME

Nil.

161. APPLICATIONS FOR LEAVE OF ABSENCE

161.1 Cr Rico

Cr Rico sought leave of absence for the Council Meeting of 15 July 2008.

Cr Wilson – Cr Dobro

That leave of absence be granted to Cr Rico for the Council Meeting on 15 July 2008.

CARRIED

161.2 Mayor Ferris

Mayor Ferris sought leave of absence for the Council Meeting of 1 July 2008.

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Cr Wilson – Cr Dobro

That leave of absence be granted to Mayor Ferris for the Council Meeting on 1 July 2008. CARRIED

162. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

162.1 *Council Meeting – 3 June 2008*

Cr Collinson – Cr Nardi

That the Minutes of the Council Meeting held on 3 June 2008 be confirmed.

CARRIED

163. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

164. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)

164.1 *View Terrace No 16 (Lot 5)*

Greg Rowe & Associates: Advising that the owners of 16 View Terrace wish the development proposal pertaining to 16 View Terrace withdrawn from tonight's agenda and placed on the agenda of the Council Meeting scheduled for 1 July 2008.

The basis of the request was to allow time for the author of the owner's legal opinion on the application to meet with the author of a legal opinion previously submitted to Council by Mr Travis French.

Cr Rico – Cr Dobro

That the development proposal for 16 View Terrace be withdrawn from tonight's agenda, as per the applicant's request, and placed on the agenda of the Council Meeting on 1 July 2008. CARRIED

165. ORDER OF BUSINESS

Cr Rico – Cr Olson

That the order of business be changed to allow members of the gallery to speak to town planning applications. CARRIED

166. TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN)

166.1 *T52.4 Walter Street No 3 (Lot 1)*

Mr Baldwin (owner) advised the meeting that he supported the Committee's recommendation.

Cr Dobro – Cr Wilson

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

That, pursuant to Town Planning Scheme No 3, clause 8.4, Council grant approval for unauthorised works comprising the enclosure of a carport incorporating a wall along the north side boundary at No. 3 (Lot 1) Walter Street, East Fremantle in accordance with the plans date stamp received on 4 March 2008 subject to the following conditions:

1. 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.
2. the unauthorised works require approval from building; an acknowledgement for existing structures must be obtained from Council's Principal Building Surveyor.

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3. the proposed carport enclosure is not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. 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 licence.
5. 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.
6. 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) *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).*
- (c) *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.*
- (d) *in relation to Condition 2 the applicant/owner is advised to contact Council's Principal Building Surveyor Mr Paul Busby on 9339 9319.*

CARRIED

Cr Wilson made the following impartiality declaration in the matter of 67 Petra Street: "As a consequence of my son attending the same school and being in the same class as the applicant's child, 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."

166.2 T52.5 Petra Street No 67 (Lot 365)

Mrs Lomma addressed the meeting in support of her proposal.

Cr Dobro – Cr Arnold

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

That pursuant to oral advice from the Town Planner on the matter of No. 67 (Lot 365) Petra Street, East Fremantle the application to initiate an amendment to Town Planning Scheme No. 3 by re-coding the subject lot from R12.5 to R20 be deferred pending a further report including a review of plans approved on 6 November 2007.

CARRIED

166.3 T52.6 Preston Point Road No 58A (Lot 11)

Mr Wilkie (applicant) addressed the meeting in support of this proposal and submitted sample colours for the external walls of the proposed development.

167. ADJOURNMENT

Cr Dobro – Mayor Ferris

That the meeting be adjourned for a short break at 7.00pm to further consider this matter.

CARRIED

168. RESUMPTION

Cr Wilson – Cr Olson

That the meeting be resumed at 7.10pm with all those present prior to the adjournment, in attendance.

CARRIED

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**169. TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN)
(CONTINUED)****169.1 T52.6 Preston Point Road No 58A (Lot 11) (Continued)****Cr Dobro – Cr Wilson**

That Council exercise its discretion in granting approval for a variation to height in the southwest portion pursuant to Local Planning Policy 142 from 6.5m to 6.7m for the redevelopment of No. 58A (Lot 11) Preston Point Road, East Fremantle by demolishing the gable roofed 6 multiple dwellings and replacing them with a flat/concealed roof over 6 new multiple dwellings comprising a basement parking area, 3 units on the first floor each with 2 bedrooms, living, dining, kitchen and study, and 3 units on the second floor each with 2 bedrooms, living, dining, kitchen and study in accordance with the plans date stamp received on 5 June 2008 subject to the following conditions:

1. external finishes and landscaping plan to be provided and be to the satisfaction of the Chief Executive Officer.
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed multiple dwellings are 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.
5. 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.
6. 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.
7. 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.
8. any new crossovers which are constructed under this approval to be a maximum width of 6.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
9. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
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:

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- (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) *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 owner.*
- (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) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

Mayor Ferris made the following impartiality declaration in the matter of 82 Hubble Street: "As a consequence of the applicant being known to me due to my having worked with him for a number of years, 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 Nardi made the following impartiality declaration in the matter of 82 Hubble Street: "As a consequence of having a friendship with the owner of 82 Hubble Street, 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 Arnold made the following impartiality declaration in the matter of 82 Hubble Street: "As a consequence of residing in close proximity to the subject lot, 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.

169.2 T52.9 Hubble Street No 82 (Lot 280)

Mr Francis (builder) addressed the meeting in support of this proposal.

Mayor Ferris – Cr Dobro

That the application be held over pending the arrangement of a site visit for elected members to view the existing residence. CARRIED

Cr Dobro left the meeting at 7.40pm, returning at 7.42pm.

Cr Dobro made the following impartiality declaration in the matter of 85 King Street: "As a consequence of my friendship with both the applicant and affected adjoining neighbour, 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.

169.3 T52.3 King Street No. 85 (Lot 337)**Cr Dobro – Cr Wilson**

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

That Council grant approval, pursuant to Town Planning Scheme No. 3 Clause 8.4, for the unauthorised existing development comprising a 10.6m long x 1.7m wide x 2.5m high verandah fixed to the rear (west side) of the single storey house at No. 85 (Lot 337) King Street, East Fremantle subject to the following:

1. fixed visually impermeable screening being fitted to the south side of the verandah to the satisfaction of the CEO in consultation with relevant Council officers;

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2. the applicant/owner is to apply for a retrospective acknowledgement from Council's Building Surveyor for the unauthorised existing development.
3. the proposed verandah is not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. the issue of whether legal action be taken in respect of the unauthorised development be delegated to the Chief Executive Officer.
5. 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.
6. 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 other 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 retrospective acknowledgement is to conform with the approved plans unless otherwise approved by Council.*
- (c) *the verandah may not be enclosed without the prior written consent of Council.*

CARRIED

169.4 Town Planning & Building (Private Domain) Committee – 10 June 2008 - Adoption

Cr Dobro – Cr Wilson

That the recommendations contained in the Minutes of the Town Planning & Building (Private Domain) Committee meeting held on 10 June 2008 be adopted except for the recommendations pertaining to the following, which have already been dealt with:

T52.3	MB Ref 169.3	King Street No 85 (Lot 337)
T52.4	MB Ref 166.1	Walter Street No 3 (Lot 1)
T52.5	MB Ref 166.2	Petra Street No 67 (Lot 365)
T52.6	MB Ref 166.3	Preston Point Road No 58A (Lot 11)
	& 169.1	
T52.9	MB Ref 169.2	Hubble Street No 82 (Lot 280)

CARRIED

170. REPORTS OF CHIEF EXECUTIVE OFFICER

170.1 Amendment to Delegation D18 Authorisation to Commence, Alter or Cease Legal Action

By Stuart Wearne, Chief Executive Officer, on 13 June 2008

BACKGROUND

Council at its meeting on 20 November 2007 reaffirmed the following delegation:

Delegation	Statutory References	Function	Conditions
D18 Authorisation to Commence, Alter or Cease Legal Action	Section 5.42 LGA	To commence, conduct, alter, settle or cease legal proceedings in respect of: any breach of the LGA 1995 and all regulations, local laws, notices and orders made thereunder; proceedings before the State Administrative Tribunal; any breach of the Building Regulations 1989 including notices and orders made thereunder; proceedings in relation to claims being dealt with by Council's insurers; proceedings in relation to lease disputes; proceedings in relation to any legal action	Nil

		being taken against the Council, elected members and Council officers.	
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REPORT

Recently this delegation was reviewed with respect to an issue involving a deemed breach of Council's Town Planning Scheme 3.

In writing to the owner involved about the possibility of breach action the Chief Executive Officer noted that Delegation D18 does not specifically refer to breaches of the Town Planning Scheme.

The oversight is thought to have occurred because the delegations are normally Local Government Act based (given the power of delegation is in itself a provision of the Local Government Act) and this has led to almost all of the Chief Executive Officer's current delegations referring to various provisions of the Local Government Act.

To rectify this omission it is proposed that D18 be modified as follows (amendment in bold):

Delegation	Statutory References	Function	Conditions
D18 Authorisation to Commence, Alter or Cease Legal Action	Section 5.42 LGA Town Planning & Development Act 2005 via TPS 3 Part 11	To commence, conduct, alter, settle or cease legal proceedings in respect of: any breach of the LGA 1995 and all regulations, local laws, notices and orders made thereunder; proceedings before the State Administrative Tribunal; any breach of the Building Regulations 1989 including notices and orders made thereunder; proceedings in relation to claims being dealt with by Council's insurers; proceedings in relation to lease disputes; proceedings in relation to any legal action being taken against the Council, elected members and Council officers; proceedings in relation to Part 11 TPS 3.	Nil

Part 11 of Town Planning Scheme 3 refers to "Administration & Enforcement" and entails:

- land dealings (11.1.1)
- entering property (11.1.2)
- removing or repairing advertisements (11.2)
- delegation of functions (11.3)
- breaches of Scheme (11.4)
- compensation and related purchase or taking of land (11.5) (11.6)
- notice for removal of buildings (11.7).

CONCLUSION

For the sake of consistency and completeness with respect to existing delegations; in the interests of customer service; and in order to reduce the time spent by Council in considering matters of an administrative and enforcement nature; the recommended amendment, which seeks to rectify an existing anomaly, which appears to have arisen through an oversight, is recommended.

RECOMMENDATION

That delegation D18 relating to authorisation to commence, alter or cease legal action be amended as follows:

Delegation	Statutory References	Function	Conditions
D18 Authorisation to Commence, Alter or Cease Legal Action	Section 5.42 LGA Town Planning & Development Act 2005 via TPS 3 Part 11	To commence, conduct, alter, settle or cease legal proceedings in respect of: any breach of the LGA 1995 and all regulations, local laws, notices and orders made thereunder; proceedings before the State Administrative Tribunal; any breach of the Building Regulations 1989 including notices and orders made thereunder; proceedings in relation to claims being dealt with by Council's insurers; proceedings in relation to lease disputes; proceedings in relation to any legal action being taken against the Council, elected members and Council officers; proceedings in relation to Part 11 TPS 3.	Nil

Absolute Majority Resolution Required

Cr Dobro – Cr Wilson

That delegation D18 relating to authorisation to commence, alter or cease legal action be amended as follows:

Delegation	Statutory References	Function	Conditions
D18 Authorisation to Commence, Alter or Cease Legal Action	Section 5.42 LGA Town Planning & Development Act 2005 via TPS 3 Part 11	To commence, conduct, alter, settle or cease legal proceedings in respect of: any breach of the LGA 1995 and all regulations, local laws, notices and orders made thereunder; proceedings before the State Administrative Tribunal; any breach of the Building Regulations 1989 including notices and orders made thereunder; proceedings in relation to claims being dealt with by Council's insurers; proceedings in relation to lease disputes; proceedings in relation to any legal action being taken against the Council, elected members and Council officers; proceedings in relation to Part 11 TPS 3.	Nil

CARRIED
ABSOLUTE MAJORITY

The Town Planner left the meeting at 7.55pm.

170.2 South West Group – Signing of Memorandum of Understanding

The Chief Executive Officer tabled a press release noting that the Memorandum of Understanding for the South West Group had been signed by the five Mayors and CEO's of the Group at the South West Group meeting held at the Town of East Fremantle on Monday, 9 June 2008.

170.3 East Fremantle Yacht Club Lease

The Chief Executive Officer advised that the East Fremantle Yacht Club lease had recently been agreed to by the Minister and at the Club's request an informal signing ceremony would be held shortly to allow for a photographic record for the Club.

170.4 Fremantle Soccer Club – Use of Wauhop Park

The Chief Executive Officer advised that he had prepared an Agreement between Council and the Fremantle Soccer Club for the use of Wauhop Park for the remainder of the 2008 season and the Club representative had endorsed this document – although it was still awaiting signing by the Club.

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170.5 East Fremantle Oval Precinct Masterplan

The Chief Executive Officer tabled a confidential memo regarding this matter.

CONFIDENTIAL ATTACHMENT

The Chief Executive Officer advised that the Steering Committee had considered the Report yesterday and all members were happy with the contents of the Report, although the WAFC and DSR representatives indicated they proposed to make some brief written comments.

With regard to the Draft Final Report, which had been provided to elected members at the Council Meeting held on June 3 with a minuted request for feedback, the Chief Executive Officer advised no responses had been received.

The Chief Executive Officer advised that on the assumption, from this outcome, that elected members were satisfied with the Draft Report, at least for the purposes of debate, he was foreshadowing the following motion for the July 1 meeting of Council:

“Council receive the Report and adopt the Master Plan as a guide to future development of the East Fremantle Oval Precinct and authorise the CEO to take the necessary action to seek the return of that portion of the current reserve bounded by Marmion Street and extending on the Moss Street and Allen Street boundaries to a depth in the order of 70m from the Marmion Street frontage.”

With respect to the above, the Chief Executive Officer also requested advice on whether elected members wished the consultant(s) to be in attendance at that meeting, should the item be considered at that meeting.

Cr Arnold advised he had not been aware feedback had been expected and wished to debate the matter. The Chief Executive Officer advised the purpose of the proposed listing the matter for the July 1 meeting was to provide an opportunity for debate on the Draft Report.

Elected members requested that the Report be placed on the agenda of the Informal Briefing to be held on 24 June 2008.

There was no decision regards the July 1 meeting or the consultants' attendance.

170.6 East Fremantle Cricket Club

The Chief Executive Officer advised that the East Fremantle Cricket Club had requested a \$9,000 grant from the Council towards new practice nets and associated infrastructure and that he hoped to present a report on this request to the July 1 meeting of Council.

170.7 Darryl Schorer

The Chief Executive Officer advised he had received advice that Darryl Schorer, an officer of the Department of Local Government, had reached a 50 year milestone with the Public Service, 40 years of which had been in local government. The Chief Executive Officer spoke of Mr Schorer's attributes and suggested an appropriate resolution.

Mayor Ferris – Cr Rico

That the Town of East Fremantle warmly congratulates Darryl Schorer on completing 50 years with the WA Public Service, in particular noting 40 years of which have been with the Department of Local Government. The Town acknowledges the valuable assistance Mr Schorer has provided to local governments throughout the State in the course of those 40 years of service, particularly with respect to his advisory role and notes that in this regard the Town of East Fremantle has always found Mr Schorer to be very accessible and greatly benefited from Mr Schorer's considerable knowledge and experience. Council

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requested the CEO to ensure the Town's sentiments were appropriately conveyed to Mr Schorer. CARRIED

170.8 East Fremantle Lawn Tennis Club

The Chief Executive Officer advised that he had been approached by the East Fremantle Lawn Tennis Club executive with a request for the Club to address elected members regarding a development proposal involving replacing the existing clubrooms. It was planned this would occur shortly.

170.9 Cr de Jong – Town Planning 'White Paper' (MB Ref T53.1 & T53.2 refers)

In response to a query from the CEO regarding the expectation of elected members regarding when a report on this issue was expected, given there was some ambiguity with respect to the two resolutions, elected members advised that it was expected the matter be dealt with firstly after the Town Planner had completed his investigations into models/3D plans and secondly subject to the CEO's competing tasks.

171. CONFIDENTIAL BUSINESS**171.1 Left Bank, 15 Riverside Road**

Cr Olson – Cr Dobro

That this matter be dealt with on a confidential basis, in accordance with Section 5.23(2)(d). CARRIED

The Chief Executive Officer updated elected members on the current situation with regard to this legal matter.

171.2 Royal George

Cr Olson – Cr Dobro

That this matter be dealt with on a confidential basis, in accordance with Section 5.23(2)(e). CARRIED

The Chief Executive Officer updated elected members regarding proposed developments with respect to the Royal George.

172. OPENING OF MEETING TO PUBLIC

Cr Rico – Cr Wilson

That the meeting be reopened to members of the public. CARRIED

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

Nil.

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

Nil.

175. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION (CONTINUED)**175.1 Newly elected President – Cottesloe Surf Club**

Mayor Ferris announced that Cr Richard Olson had recently been elected as the President of the Cottesloe Surf Club and extended Council's congratulations on his appointment.

176. CLOSURE OF MEETING

There being no further business, the meeting closed at 8.40pm

*I hereby certify that the Minutes of the meeting of the **Council** of the Town of East Fremantle, held on **17 June 2008**, Minute Book reference **154. to 176.** were confirmed at the meeting of the Council on*

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Presiding Member