



Town Planning Management Engineering

Peaceful Bay Normalisation Pre Feasibility Report



town planning
management
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environmental

13071
June 2013

Research, Design & Delivery of Sustainable Development



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18.06.2013

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1.0 EXECUTIVE SUMMARY

For a number of years there has been a community and Council discussion around the possibility of leasehold lots at Peaceful Bay being converted to freehold either as green title or strata title. Council wishes to determine the merits of this process of normalisation at a pre feasibility level to determine if there are any fatal flaws in the concept, identify the major costs to Council and to determine the level of community support so that it can ultimately make a decision if it is worthwhile investing further resources into the project.

The study area for the proposal refers to the portion of Reserve 24510 which is situated within the access loop road and contains the existing leases; caravan park site and some undeveloped land at the entry to the settlement.

The term normalisation has been used in this Pre Feasibility Study to define a process and outcome whereby the existing leasehold properties within the reserve are converted to freehold, either as green title or strata title, and servicing infrastructure open space and foreshore areas are protected by way of Crown Reserves in a manner similar to that which would apply in a modern, contemporary urban settlement.

Investigations suggest that there is an appetite within government to explore the normalisation process but that this will entail: changing the “A” class classification of Reserve 24510; issuing a Crown Title for the subject land; and, subsequently proceeding through the subdivision process. Changing the “A” class classification will require approval of the two Houses of Parliament.

It is too early in the process to determine if a green title or a strata title process should be pursued however it is highly likely that in order to fund the project, and achieve a suitable demand for lots, current land use controls which prevent permanent occupancy will need to be lifted. This action is consistent with Council’s Local Planning Strategy which identifies Peaceful Bay as a future long term growth settlement area.

Modifications to Council’s Town Planning Scheme will be required to remove the existing “Parks and Recreation” reservation and incorporate the area within a “Special Use” zone and subsequently develop a Detailed Area Plan for the site which will control subdivision, land use, building setbacks and built form.

Existing Council Heritage Policy may need to be altered such that the existing dwellings can be renovated or replaced to overcome inherent structural problems and the abundant use of asbestos. It is important however that the built form character of the existing leasehold settlement be retained with suitable land use controls.

Servicing investigations suggest that there are servicing solutions to the site. Telecommunications and power are currently adequate. Further research is required to detail an integrated water supply and effluent disposal solution and this will need to be based upon preparation of an Urban Water Management Strategy.

The integrated water supply and effluent disposal solution may require establishment of an effluent treatment plant which will allow treated water to be recirculated into the community as a non-potable supply.



Approval from Health WA and the Economic Regulator will be required in respect to establishing the size of water tanks used to collect potable water, the possible establishment of a reticulated potable supply and the possibility of onsite effluent disposal utilising aerobic treatment units as an interim effluent solution.

The process of normalisation and a move towards increasing permanent occupancy in Peaceful Bay suggests a requirement for improved community facilities and it is appropriate that Council produce a Development Contributions for Infrastructure Policy to determine an appropriate level of contribution.

Community support both from leaseholders and the wider communities of Peaceful Bay, Denmark and visitors from further afield will be essential to the success of the project. A comprehensive community consultation strategy needs to be established to ensure accurate information is provided to the community and that the community has ample opportunity for input to the process.

Preliminary investigations into staging and costs suggests that it will take in the order of 5 years before Council could be in a position to commence construction and costs in the order of \$1,000,000 will be required to develop a Business Plan, obtain statutory approvals and be in a position to commence construction. Funding this work constitutes a substantial investment and risk for Council. This risk may be offset by applying a specified area rate to the leasehold area over the 5 years leading up to the statutory approvals being gained.

A further expenditure in the order of \$26,390,000 is likely to be required to fund construction of 203 lots. It is considered important that Council does not commence construction until such time as it has sufficient pre-sales to achieve this level of expenditure.

Additional costs which will ultimately need to be met by Council include land purchase, holding costs and interest, an allowance for profit and risk, an appropriate contribution to community facilities and establishing an endowment fund to offset the current income stream from leases.

Initial investigations suggest there is little appetite amongst government agencies to manage the normalisation process and that the current level of risk means that it will be largely unattractive to private developers. In this context it is likely that Council will need to manage the project until a time when the major risks are resolved.

The interests of existing leaseholders are paramount. The existing leases give landowners rights and these must be respected regardless of the normalisation process progressing.

There is recognition that the existing leaseholders at Peaceful Bay have individually and as a community made substantive commitments to the settlement and contribute to its heritage value. Through this commitment, and by virtue of holding a lease, leaseholders should be given the first right of refusal in respect to purchase of lots created.

Lot values should be established through an independent valuation exercise. It needs to be clearly understood that governance would ordinarily prohibit any land purchase by existing leaseholders to be subsidised.

The study team concludes that there is merit investigating the normalisation of the freehold lots at Peaceful Bay subject to there being adequate community support after advertising this Pre Feasibility Study.



2.0 STUDY OBJECTIVE

For a number of years there has been a community and Council discussion around the possibility of leasehold lots at Peaceful Bay being converted to a freehold title as either a green title or strata title. Council wishes to determine the merits of such a proposal at a pre feasibility level to determine if there are any fatal flaws in the concept, identify the major costs to Council and help define a process which could be followed to achieve the desired outcome.

The Pre Feasibility Study will be used by Council to determine if it is worthwhile investing further resources into the project.



Figure 1 - Location Plan



3.0 OVERVIEW

Peaceful Bay is a seaside settlement situated in the Shire of Denmark, approximately midway between Denmark and Walpole as shown in *Figure 1 – Location Plan*. The settlement is occupied by several full time residents but is primarily populated for short periods during seasonal holidays.

The settlement enjoys a special and unique character being that of a relaxed, informal and low key holiday destination with a predominantly 1960's aesthetic. The character of the settlement is derived from its location immediately behind the primary dune system, the remnant vegetation which has been retained within the settlement, being surrounded by National Park, minimal fencing and an extremely strong sense of community refreshed each holiday season.

Historically the town developed as a leasehold settlement of approximately 205 lots and a 130 site caravan and camping area. Subsequently 49 freehold lots have been created and structure planning provides for an additional 410 dwellings which are yet to be developed.

Tenure of the leasehold lots is secured through Reserve 24510 which has a Management Order in favour of the Shire of Denmark and power to lease. Leases are issued by the Shire for a term of 21 years. Council renewed leases in July 2010 for a further 21 years expiring in 2031.

Servicing of the existing settlement consists of individual potable water supplies provided by rooftop catchment, supplemented by a limited non-potable reticulated water supply which is operated by and licensed to the Shire of Denmark by the Economic Regulatory Authority (ERA).

Effluent disposal is by way of septic tanks which are, in places, of questionable suitability given high water tables. Power is provided by Western Power but has little expansion capacity. Roads and drainage of various standards are provided varying from gravel with informal drainage to contemporary sealed, curbed and drained roads.

Striking a balance between adequate servicing of the settlement and retaining the existing unique character is a key consideration.

Approved structure planning for the settlement specifically states that further zoning, subdivision and development of the settlement needs to be linked to the provision and upgrading of adequate urban services.

The isolation of Peaceful Bay, the challenge of providing an acceptable level of servicing, the seasonal occupation of the settlement and character combine to create a unique set of circumstances which need to be addressed if Council is to be in a position to make a rational decision in respect to proceeding with free holding of the current leasehold lots.



4.0 STUDY AREA, CONTEXT AND THE CONCEPT OF NORMALISATION

Study Area

The study area for this Pre Feasibility Study extends to that portion of Reserve 24510 which is subject to a Management Order in favour of the Shire of Denmark. The extent of this Reserve is shown in *Figure 2 – Study Area* however it needs to be acknowledged that comment will be provided on the wider aspects of the Peaceful Bay Settlement in order to provide a suitable context.

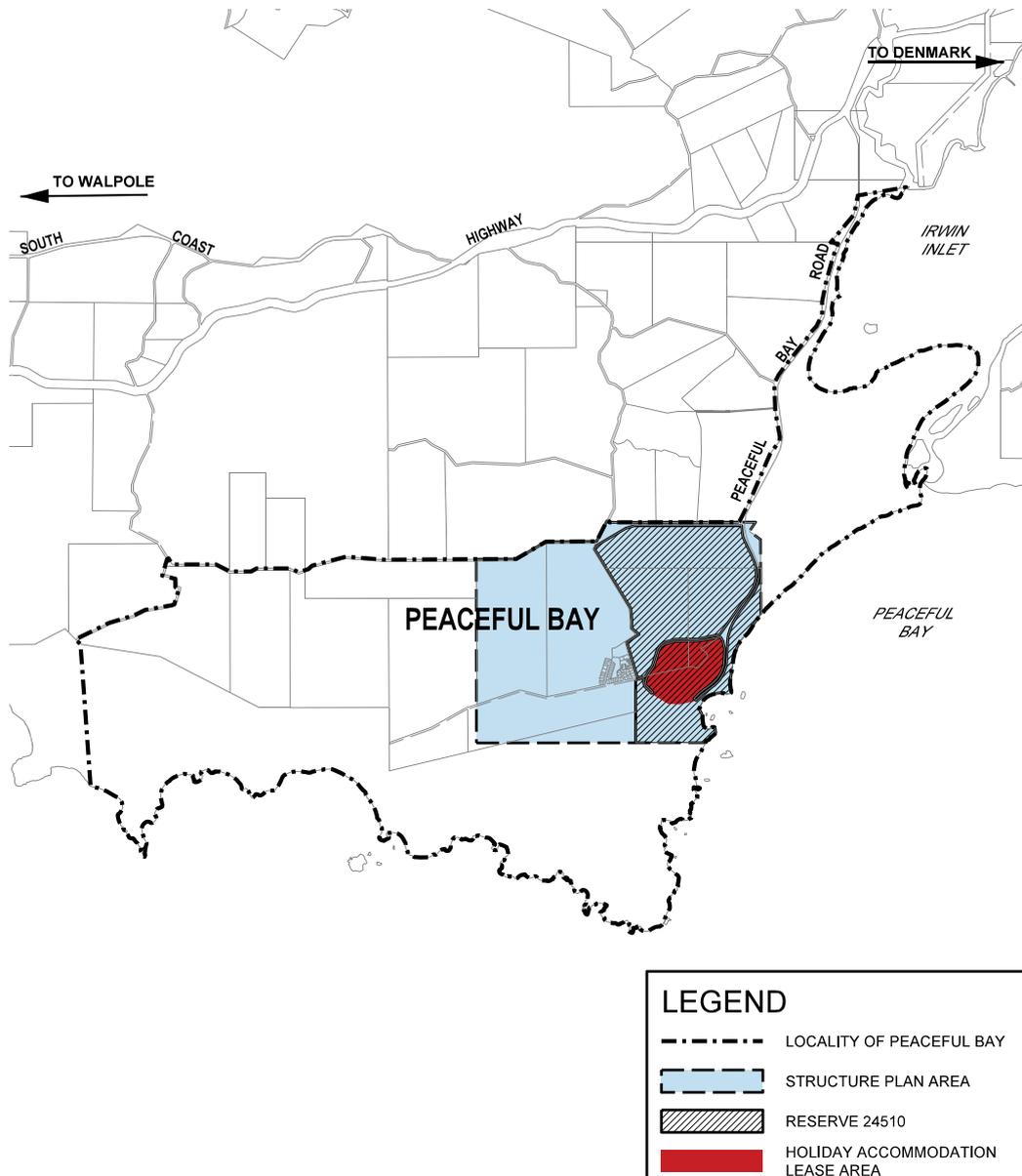


Figure 2 - Study Area



Land Use Context

Figure 3 – Land Use Context provides an overview of the Peaceful Bay Settlement, the major land uses, roads and future development areas.

The Concept of Normalisation

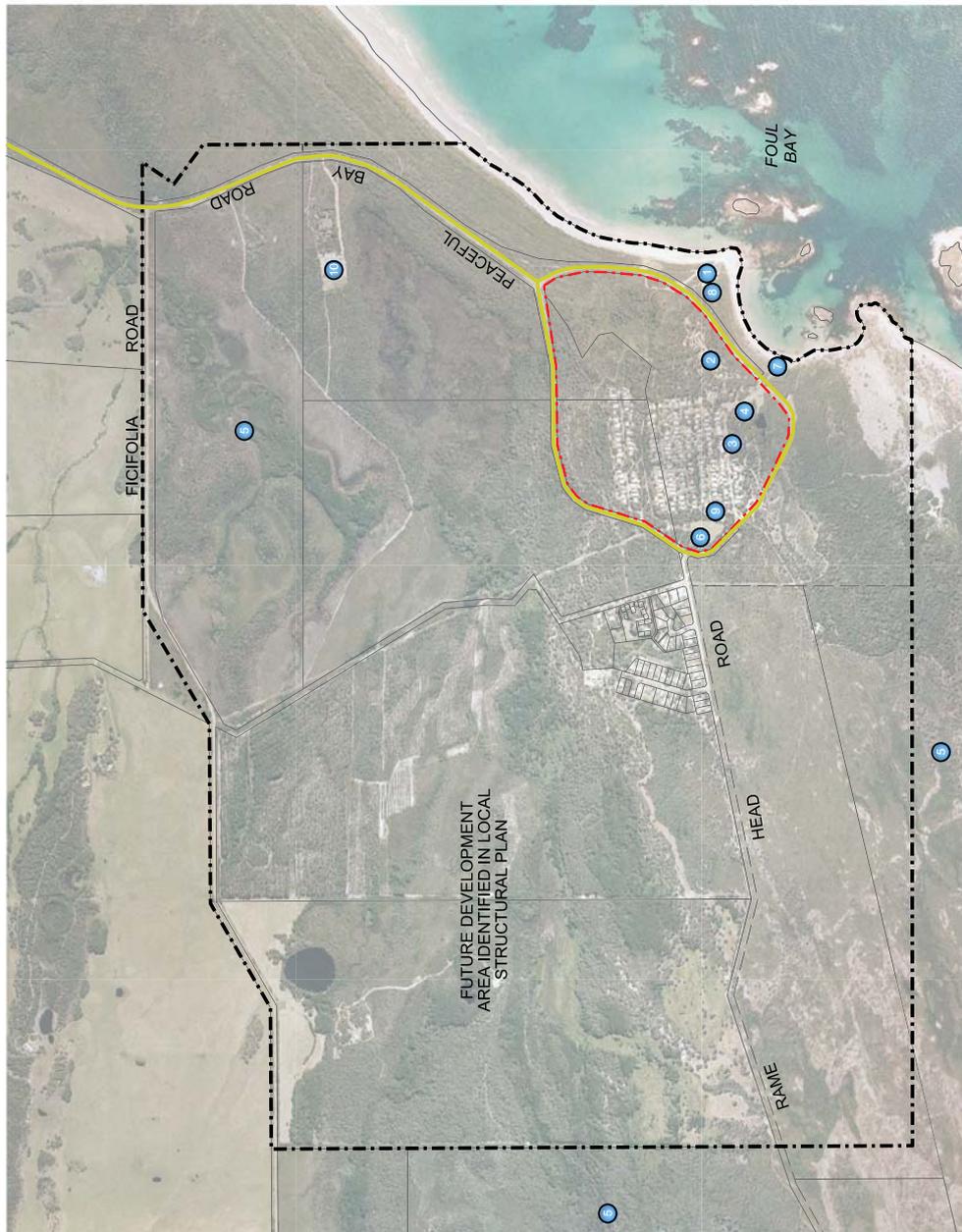
The term *Normalisation* has been applied in the case of this Pre Feasibility Study to a process and outcome whereby the existing leasehold properties within Reserve 24510 are converted to freehold, either as green title or strata title, and servicing infrastructure, open space and foreshore areas are protected by way of Crown Reserves in a manner similar to that which would apply in a modern, contemporary urban settlement.

The result of normalisation will allow property owners to obtain secure tenure, use property as collateral for borrowings and trade in their assets as they see fit.

Normalisation also implies obligations on lot owners to contribute: to community facilities through general rates and specified area rates which may be applied; to State government revenue streams through land tax, stamp duty; and, comply with statutory obligations under Council's Town Planning Scheme and instruments pursuing bush fire mitigation.

Centenary Oval





LEGEND

- EXISTING CADASTRE
- STRUCTURE PLAN AREA
- STUDY AREA (LEASE LOTS)
- TOWNSITE ACCESS ROAD

EXISTING LAND USES

- BOAT RAMP
- CARAVAN PARK
- COMMUNITY HALL / PROGRESS ASSOCIATION
- GENERAL STORE
- NATIONAL PARK
- CENTENARY OVAL
- SWIMMING BEACH
- SEA RESCUE GROUP
- VOLUNTEER BUSHFIRE BIRGADE FACILITIES
- WASTE TRANSFER STATION



Figure 3 - Land Use Context



Permanent Occupancy

The pursuit of normalisation at Peaceful Bay raises a fundamental issue in respect to occupancy. At the present time there are limitations on the occupancy of leasehold properties such that residences can only be used a limited period in any year. If these lots move to freehold and they can be purchased, then there will be a growing expectation that the short stay limitations be lifted and dwellings can be occupied in a manner consistent with residential areas.

This matter is further discussed in the context of Local Planning Strategy and the provision of community services later in this report however the move towards permanent occupancy will overcome an issue whereby financial institutions are reluctant to lend money for the purchase of short stay premises thereby significantly limiting the number of potential purchases for freehold lots.

Conclusion 1

Council should embrace the move towards permanent occupancy of lots at Peaceful Bay as part of the move towards normalisation, subject to the provision of adequate infrastructure and community services.



*Progress Association Hall
on 2nd Avenue*

*Sea Rescue Group
at Launch Ramp*





5.0 LAND TENURE

Existing Tenure

The leasehold precinct is a small part of Crown Reserve 24510 which is an “A” class reserve contained on Crowned Title Volume 3122 Folio 555. The Leasehold precinct straddles 3 lots within this Crown Reserve being lots 1423, 1424 and 2229.

Management Order

The current purpose of Reserve 24510 is recreation, camping, caravan park and holiday cottages. A Management Order in favour of the Shire of Denmark has been issued through Document L325837. The Management Order provides a power to lease for any term not exceeding 21 years subject to the consent of the Minister for Lands.

Leases

Each of the lease properties within the leasehold precinct is subject to a separate lease between the Shire of Denmark and the Lessee.

Key aspects of the lease are:

- Each lease needs to be approved by the Minister for Lands;
- Each lessee shall maintain a storage tank of at least 4640 litres of rain water;
- Any transfer of the lease needs to be approved by the Minister for Lands;
- Fixtures and fittings on any lease can only remain on the lease at its termination with the approval of the Lessor;
- The lease contains no options for renewal;
- If a reticulated water supply or sewerage service becomes available to a lease lot then there is an obligation upon the lessee to connect to that service;
- All of the leases expire on midnight on the 30th Day of June 2031;
- A rental fee is paid for the lease annually in advance; and,
- The lease limits the period during any year in which a lease can be occupied to a consecutive period of 3 months or combined lesser periods totalling 6 months in any one rental year unless consent is given by the lessor.

The existing leases therefore facilitate the installation of services which may be required as part of any normalisation process.

It is noted that the leases relate specifically to Reserve 24510 and that creation of a Crown Title to facilitate normalisation will require that existing leases be modified to reflect the new tenure.

It is important that the interests of the lessees be maintained throughout this process.

Conclusion 2

The existing leases in Peaceful Bay convey certain rights on leaseholders which should be protected.



The leases in Peaceful Bay also have constraints including:

- *The right to occupy sites could be limited if servicing issues arise such as health matters associated with water supply and sewerage disposal;*
- *Any requirement to upgrade services to meet regulatory standards will need to be met by leaseholders;*
- *The rights of leaseholders are limited to the term of the lease and there is no security of extension;*
- *Reserve 24510 is an “A” class reserve and the Management Order issued to Council could be rescinded at any time.*

Alienation Process

Alienation is the process by which land transfers from the Crown to private ownership. *Figure 4 – Land Alienation Process* depicts the basic steps required to achieve a superlot in private ownership which can be subsequently subdivided.

The key to the process is recognition that an “A” class reserve requires parliamentary approval to be dealt on. In order to support this application to parliament it will be necessary to have a Business Plan showing how the land is to be used with particular attention given to protecting the rights of existing leaseholders and ensuring that environmental qualities are not prejudiced. It would be appropriate that the business plan incorporate a full feasibility analysis of the normalisation concept, define the land area which will ultimately be subject of this process and demonstrate community support for the proposal.

Once parliamentary approval has been given to alter the “A” class reserve classification, it will be necessary to proceed to survey and creation of a separate Crown Title for the leasehold precinct. This step will also involve various regulatory tasks one of which will involve modifying the existing leases such that they relate to the new title and continue to protect the interests of the leaseholders.

Once a separate title is issued for the leasehold precinct this can be transferred to Council or a third party at a predetermined time nominated in the Business Plan.

It should be noted that the parliamentary approval to removal of the “A” class classification is likely to be subject to a range of conditions which may facilitate Council progressing subdivision, subdivision works with ultimate transfer of the land to Council only occurring when the proposed freehold lots are to be created.

Conclusion 3

Preparation of a Business Plan to support an application to parliament to remove the “A” Class Reserve classification over that portion of Reserve 24510 which will ultimately be subject to the normalisation process is required.

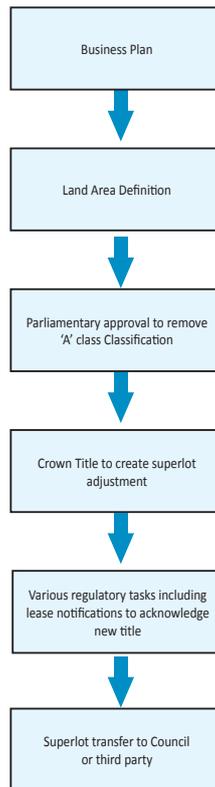


Figure 4 - Land Alienation Process

Subdivision

With the creation of a Crown Title an application to the Western Australian Planning Commission for subdivision to create freehold lots, either green title or strata title can be lodged and processed to a point where approvals are issued. It will not be necessary for the land to be transferred to Council in order for this application to be made.

The Western Australian Planning Commission will then issue a subdivision approval subject to various conditions which would need to be fulfilled prior to lodgement of the Deposited Plan which created the new lots.



Green Title option vs. Strata Title

Figure 5 – Green Title vs. Strata Title provides an overview of the key arguments towards best option for and against both green title and strata titling tenure options for the leasehold precinct.

It is clearly the case that green title is a simpler, better understood and easier to manage tenure option however strata titling facilitates a lesser standard of servicing that may save significant funds that may ultimately make the normalisation objective affordable. It is unlikely that adequate, accurate information to resolve this issue will be available until such time as a full feasibility study is done and detailed costing of the Strata Title and Green Title options is prepared.

It can be stated that a Green Title option is the most appropriate if it is affordable.

Conclusion 4

The relative cost of Green Title V's Strata Title needs to be established by way of a full feasibility study to provide information necessary to assist in determining the most appropriate form of tenure.

	GreenTitle	Strata Title
Advantages	More likely to achieve Higher Value for lots	Allows internal servicing to be to a lesser standard
	Simpler better understood as a form of ownership	Builds a sense of communal ownership
Disadvantages	Servicing is likely to be more expensive in the first instance	Requires a large number of strata owners to agree to any changes to Strata Company
	Council will have management of internal roads and drainage.	Requires Strata Company to manage all internal roads and services
		Is likely to raise ongoing political issues for Council Will be a large, unique Strata scheme requiring professional management

Figure 5 - Green Title vs. Strata Title



6.0 PLANNING

Local Planning Strategy

The Shire of Denmark Local Planning Strategy modified to meet WAPC requirements and dated June 2012 clearly provides a context for local planning at Peaceful Bay.

The objective for the Peaceful Bay, Nornalup, Bow Bridge and Kenton Settlements states:

“Support Peaceful Bay, Nornalup and Bow Bridge as future long term growth settlement areas and have regard to protecting landscape and natural resource values and the recommendations of the 1999 Rural Settlement Strategy.”

Furthermore Strategy “d” established to meet this objective clearly states:

“To support the development of the rural nodal settlements in the following order of priority; Peaceful Bay, Nornalup and Bow Bridge.”

Implementation statements in the strategy which specifically relate to Peaceful Bay are as follows:

“6. Council review the adopted Peaceful Bay Structure Plan (2000) to identify the ‘rural nodal settlement area’ for Peaceful Bay taking into account the findings of the Peaceful Bay Infrastructure Servicing Study such that non-standard servicing requirements can be provided for.”

“7. Council consider the need to engage the services of a Project Manager to prepare a project delivery plan and indicative project budget for the delivery of infrastructure services at Peaceful Bay. The scope of project services should encompass but not necessarily be limited to:

- a. Determining a fair process for the possibility of privatising the leasehold lots;*
- b. Entering into negotiations to deliver an integrated waste water collection, treatment and distribution system in a manner consistent with the recommendations of the Peaceful Bay Pre Feasibility Servicing Report;*
- c. Investigating the level of government’s assistance which may be available to assist in the project;*
- d. Progressing the necessary statutory rezoning and subdivisions needed to facilitate implementation of the Peaceful Bay Structure Plan and the recommendations of the adopted Peaceful Bay Pre Feasibility Servicing Report;*
- e. Preparing a full Feasibility Analysis for the project and identify staging which will allow the project to occur in a economically and environmentally responsible manner; and,*
- f. Establishing the extent of cost share items which all subdividers and developers will need to contribute to and report on a mechanism which will allow this to occur.”*



“8. Council implement the ‘green solutions’ and Water Sensitive Urban Design measures as contained in the adopted Peaceful Bay Pre Feasibility Servicing Report and actively seek the support of the relevant servicing agencies.”

Conclusion 5

The Shire of Denmark Local Planning Strategy clearly facilitates normalisation of Peaceful Bay.

Town Planning Scheme

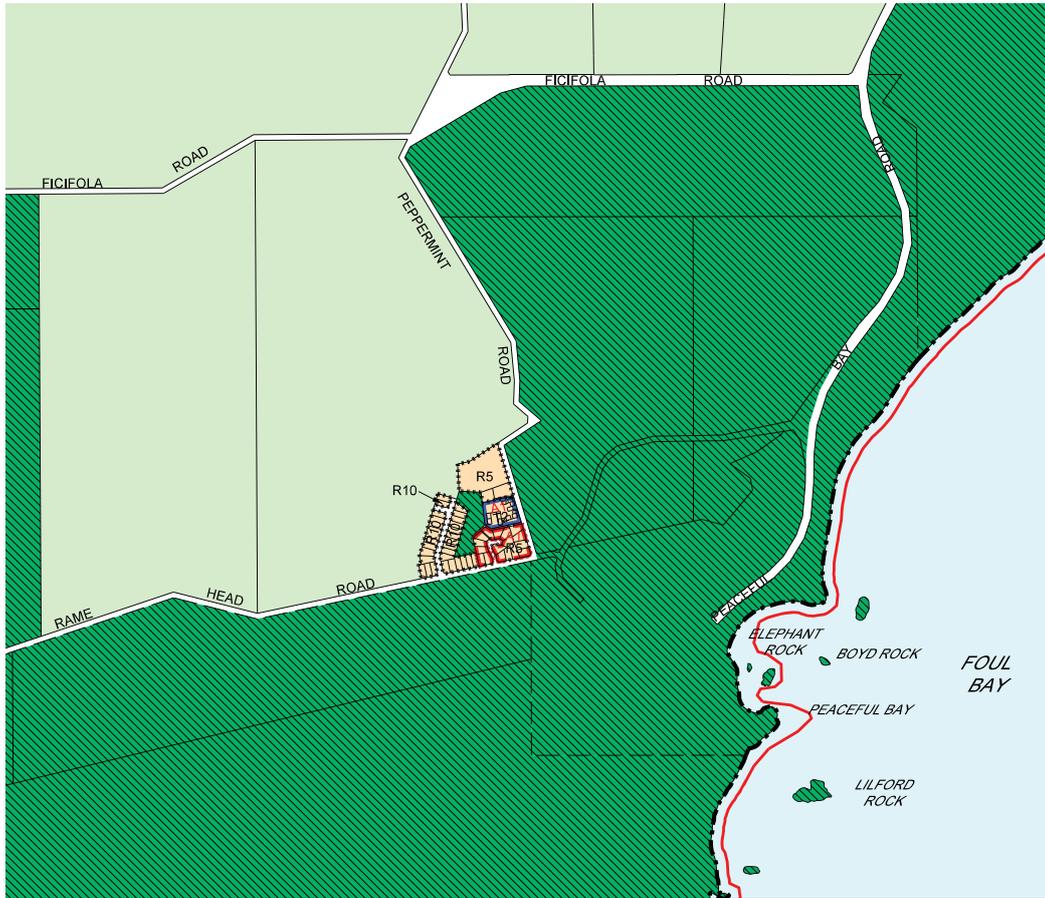
Figure 6 - Shire of Denmark Town Planning Scheme No. 3 reserves all of the subject land as parks and recreation. The current use of the land for predominantly recreation/holiday purposes under a leasehold arrangement is consistent with the scheme however any move to freehold this land would necessitate an amendment to the Town Planning Scheme to incorporate the land within an appropriate zone.

In most urban areas a residential zoning with an appropriate ‘R’ Code would be used however, in the case of the existing leasehold settlement at Peaceful Bay there is a need for specific land use controls recognise variations from standard provisions and protect the heritage values of the site. In this instance a Special Use Zone (or similar) would normally be used allowing site specific controls to be put in place.

The Shire of Denmark Town Planning Scheme No. 3 does not have a Special Use Zone. We therefore believe that an amendment should be initiated to create a Special Use Zone within the Scheme and facilitate the specific land use controls required.

Conclusion 6

To achieve normalisation modification to the Shire of Denmark Town Planning Scheme No. 3, or proposed Scheme No. 4 as the case may be, is required by way of inclusion of a Special Use Zone (or similar) and applying the Special Use Zone with specific land use controls to the subject land.



SHIRE OF DENMARK
TOWN PLANNING SCHEME NO. 3
(DISTRICT SCHEME)

LOCAL SCHEME RESERVE		ZONES		OTHER	
	DRAINAGE AND WATERBODIES		RESIDENTIAL		R CODES
	PARKS AND RECREATION		TOURIST		ADDITIONAL USES
			RURAL		SCHEME BOUNDARY
					LOCAL GOVERNMENT BOUNDARY
					NO ZONE

Figure 6 - Shire of Denmark Town Planning Scheme No. 3



Structure Plan

The Peaceful Bay Local Structure Plan was adopted by Council in August 2000 and the Western Australian Planning Commission in June 2001. See *Figure 7 – Peaceful Bay Local Structure Plan*.

The approved structure plan specifically states that further zoning, subdivision and development of the settlement needs to be linked to the provision and upgrading of adequate urban services. Section 21.0 Implementation, of the Peaceful Bay Local Structure Plan reads:

“as a condition of subdivision or strata titling full provision of services will be required”.

The Shire of Denmark is currently giving consideration to a review of the Peaceful Bay Structure Plan with a view to preparing a more comprehensive document which addresses a wider range of issues and gives clearer guidance in respect to the ultimate size of the Peaceful Bay settlement, the provision of services and the provision of community facilities and taking into account current day planning requirements and the opportunity to consider non-standard infrastructure servicing arrangements such as those demonstrated in the Peaceful Bay Pre Feasibility Servicing Report, prepared by TME for the Council in 2010.

Preparation of a comprehensive structure plan for Peaceful Bay will be a complex expensive exercise which will take a number of years to bring to fruition.

The existing structure plan clearly envisages a range of servicing issues being resolved prior to any further development occurring. As subdivision is included in the definition of development any move toward normalisation of the leasehold area of Peaceful Bay could be seen to be in breach of the structure plan.

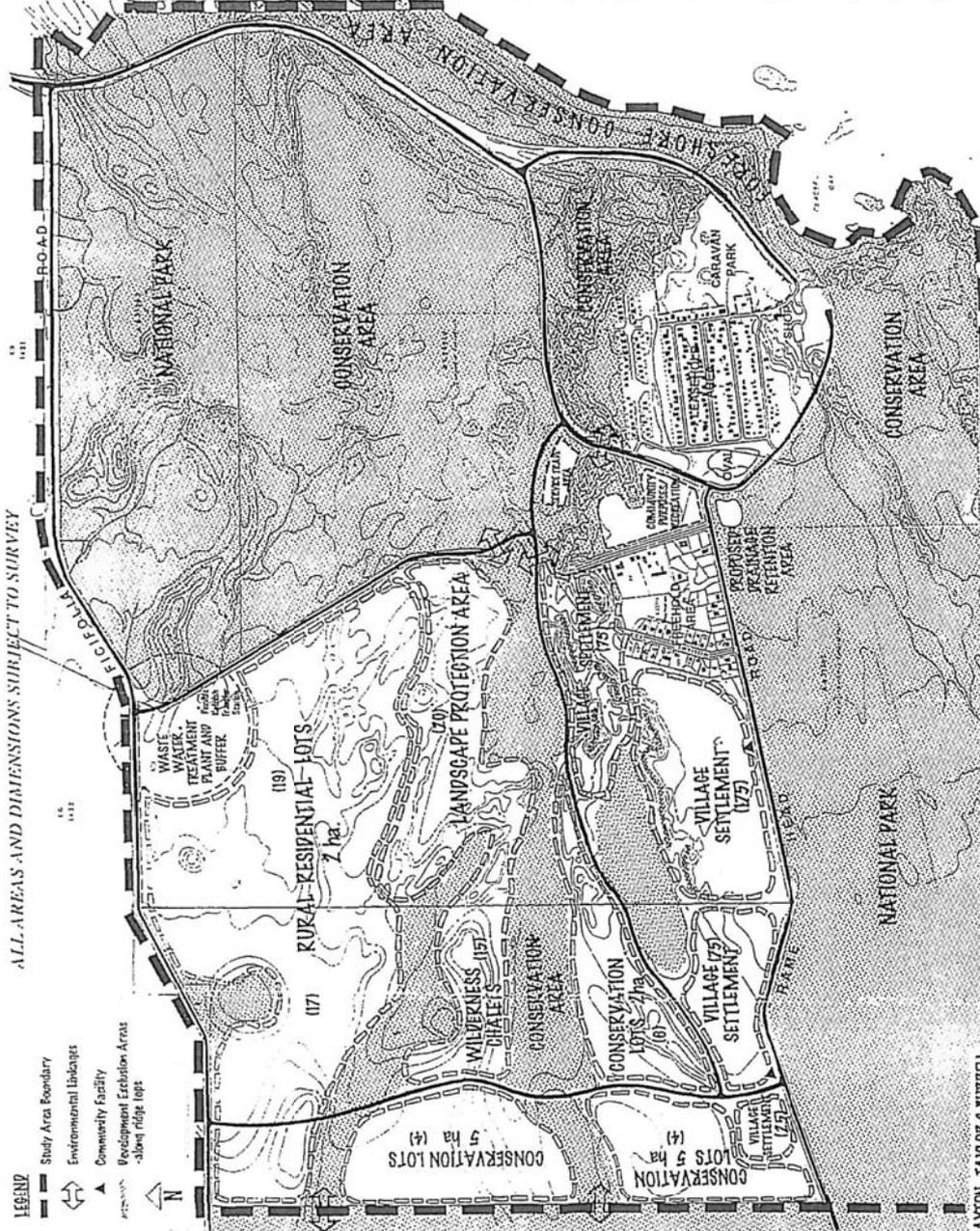
There is an opportunity to stage the fulfilment of structure plan requirements by precincts, allowing servicing issues and the provision of community facilities to be addressed in a staged manner alleviating the financial and administrative burden of producing a structure plan over the whole settlement at the one time. This approach would need to be carefully thought through to ensure the resolution of settlement wide issues are not prejudiced by precinct based actions.

Conclusion 7

The Peaceful Bay Local Structure Plan should be modified to allow nominated precincts within the structure plan area to progress to detailed design and development in a staged manner subject to it being clearly demonstrated that each precinct can adequately address servicing issues and make a proportional contribution to community facilities.



- VILLAGE SETTLEMENT AREAS**
- General Area set aside for fully serviced residential development.
 - Form of development to be based on fine grained character of existing landscape area and provide a low sprawl effect of landscaped residential development.
 - Detailed design to take into account potential visual impact, poorly drained areas, potential erosion of dune ridge tops and integration with proposed conservation area.
 - All drainage to be retained on site and directed to the proposed water treatment plant. Erosion control measures to be installed to overcome existing problems in landscape area.
 - Development to be staged over study period.
 - Appropriate for potential shown in brackets and is subject to detailed assessment at roadway / subdivision stage of development.
- EXISTING LEASHELD AREA**
- Reallocated potable water supply and deep sewerage to be provided to landscape area.
 - Provision of services to landscape area including streets lighting or a combination of landscape streets lighting and landscape area lighting and landscape area.
 - Existing character of landscape area to be retained by retaining vegetation and narrow road widths.
 - Council to consider improving existing drainage system by operation with further drainage to be provided to landscape area.
 - Council to address existing pedestrian / vehicular conflict at crossing point between the caravan park and beach.
- CONSERVATION AREAS**
- Integrate and link proposed conservation area with existing parks and recreation areas.
 - Provide for a range of conservation areas on private property to public access.
 - Allow for walk ways and public access.
- CONSERVATION LOTS**
- Large lots with conservation covenants ensuring no clearing and appropriate management to retain environmental qualities.
- LANDSCAPE PROTECTION AREA**
- Low key development, subordinate to environmental constraints. May include wilderness shelter and sheltered special residential development.
- RURAL RESIDENTIAL LOTS**
- Large lots on land which has largely been cleared and requires ongoing management.
 - Provide for low density development around the proposed waste water treatment plant.
- SEWER TREATMENT AREA**
- Provide area for high density residential development such as storage, billiard yard, plant nursery etc.
 - Area to be landscaped and screened from access roads.
- COMMUNITY FACILITY**
- Provide for a local shop, village green / playground.



PEACEFUL BAY LOCAL STRUCTURE PLAN

AYTON, TAYLOR & BURRELL
 Consultants in Town Planning & Civil Design
 11 Park Street, Albany, W.A. 6330
 Phone 08 9414 2304 Fax 08 9414 1940

Figure 7 - Peaceful Bay Local Structure Plan





Detailed Area Plan

The application of 'R' Code standards to the leasehold precinct would ultimately prejudice the character, amenity and heritage of the precinct.

A special design code is therefore required for the precinct. The code should be in the form of a Detailed Area Plan adopted for the site under the Special Use zoning proposed.

The Detailed Area Plan should address development standards including:

- Land use;
- Building setbacks;
- Car parking;
- Landscaping;
- Building height; and,
- Heritage design principles.

Conclusion 8

Normalisation will require a Detailed Area Plan to be prepared for the precinct introducing the necessary land use and development controls required to preserve the essential character, amenity and heritage of the precinct.

Subdivision Design

Definition of the various lots which will ultimately be created, in addition to road reserves, areas of public open space and other reserves required for servicing purposes or community facilities, will be identified on a subdivision design ultimately used for submission to the Western Australian Planning Commission for approval.

The subdivision design will need to be based on an "As Constructed" survey of the precinct which will allow the existing lease boundaries to be reconciled against the buildings, services and community facilities which have been constructed.

In most circumstances a subdivision design is one of the last stages in the planning process. In this instance, the complication of existing development and the vested interests of the leaseholders will require the subdivision design to be undertaken earlier.

It is likely that preparation of the subdivision design will require extensive and iterative refinement in conjunction with developing the Detailed Area Plan, resolving servicing issues and establishing final lot boundaries. Preparation of the plan will most likely require extended negotiation with existing leaseholders.

An indicative value of costs to undertake the "As Constructed" survey is detailed in *Figure 11 - Project Staging and Indicative Costs*.

Conclusion 9

Preparation of a subdivision design for the precinct based on a detailed "As Constructed" Survey should be undertaken early in the normalisation process and be used as a basis for negotiation with leaseholders, establishment of the ultimate lot and reserve boundaries and submission to the Western Australian Planning Commission for subdivision approval.



7.0 HERITAGE AND CHARACTER

Heritage Planning and Policy

The cultural heritage of Peaceful Bay lies in the minimal and simple elements. The built form elements are:

- Small simple houses;
- Lawned areas surrounding the house;
- Large number of mature peppermints; and,
- Narrow gravel roads (with the exception of 1st Avenue).

The cultural elements include:

- Historic use of the settlement for holiday purposes;
- The strong sense of community amongst holiday makers;
- A desire to protect the unique qualities of the settlement; and,
- The self help ethic which has developed many of the community facilities.

These qualities are recognised in the Peaceful Bay Heritage Precinct Conservation Plan prepared by David Heaver and Associates Architects and adopted by the Shire of Denmark on the 27th May 2003. The conservation plan contains a range of short, medium and long term policies aimed at protecting the essential values of the settlement.

Subsequently Council adopted an Enabling Policy No. 35 at its meeting on the 27th April 2004 expanding on the implementation strategies and standards to be applied.



1st Avenue

Typical Street Character





Buildings or Built Form?

A question arises in respect to the heritage and character of the settlement which is not directly related to the normalisation process but bears upon it.

The heritage policy clearly tries to retain buildings conflicting with existing leases which require buildings to be removed at the end of lease period, unless Council agrees to their retention. If Council agrees to the retention of buildings, it is ultimately accepting ongoing responsibility for retaining and managing the buildings.

Retention of the existing building has its problems with some reaching the end of their structure life and others requiring the removal of asbestos sheeting.

This issue may be resolved by answering the question if it is the structures themselves, or the character their built form contributes to the settlement, that is the true heritage value.

There appears to be a general consensus that the heritage values of Peaceful Bay is linked to built form rather than the buildings themselves and therefore redevelopment of the leasehold houses with similar built form and materials will not unduly compromise these values.

Conclusion 10

The Detailed Area Plan should recognise that over time existing buildings could be replaced and there is a need to ensure that any renovations or replacement of existing dwellings should maintain the built form character of the leasehold precinct. This will require modification to Planning Policy LPP 35.



Typical Built Form

*Low Key
Pedestrian Character*





Leasehold to Freehold

Perhaps the only significant heritage issue is the fundamental change from leasehold to private ownership which in itself is a change to the essential character of the settlement. Community support for this change needs to be tested and it is appropriate that this occur in a staged manner as part of the various statutory processes necessary to achieve normalisation.

Conclusion 11

Council should utilise the Pre Feasibility Study to gauge in principle community support for free holding of the superlot to enable either the free holding or strata titling of the individual leasehold lots.

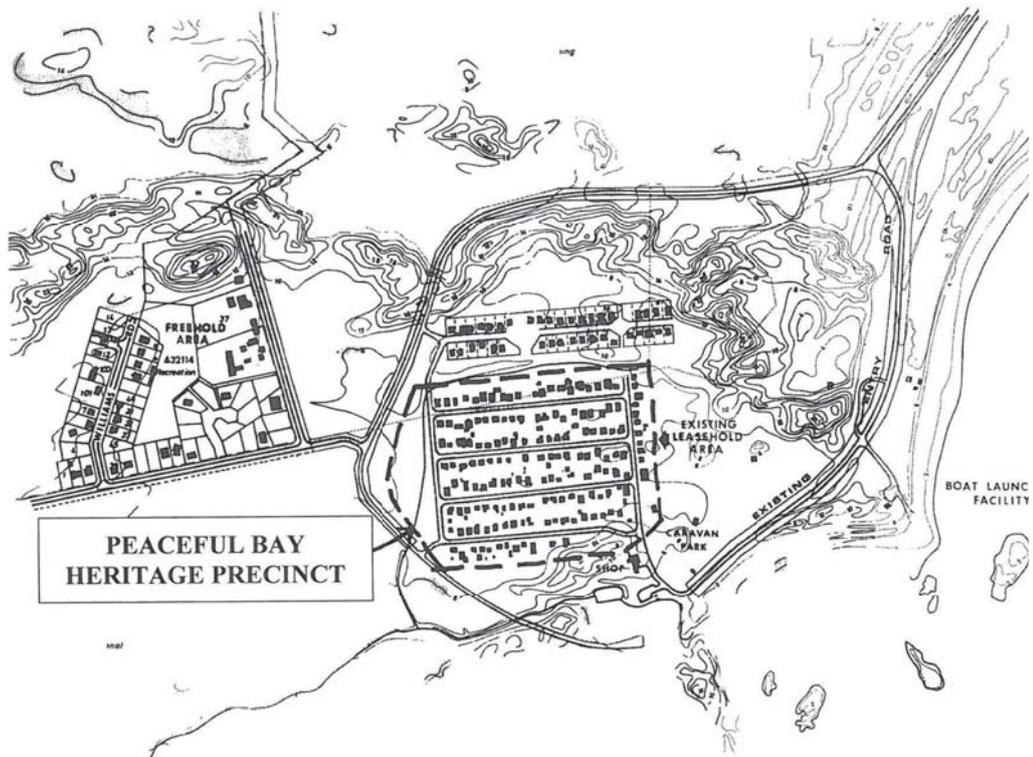
It should be noted that Peaceful Bay Heritage Precinct does not incorporate all of the leasehold properties as it excludes lots situated either side of Fifth Avenue which is the most northern road in the leasehold area and the last to be developed. The extent of the heritage precinct is shown in *Figure 8 – Peaceful Bay Heritage Precinct*.

The current statutory heritage obligations in respect to the heritage area are contained in the Shire of Denmark's Town Planning Scheme No. 3 where the area is listed as a "Place of heritage value" and any alterations to the precinct are required to be approved by the Shire of Denmark. The heritage precinct is also listed in the Shire of Denmark Municipal Heritage Inventory which of itself has no statutory powers or obligations but encourages the preservation of heritage places.

In the event that the normalisation process facilitates the creation of any additional lots in and adjacent to the heritage precinct, it is appropriate that Council explore the opportunity for resulting developments be of a similar character and aesthetic in order to maintain the overall the heritage values of the precinct.

Conclusion 13

The Peaceful Bay Heritage Precinct Conservation Plan and enabling Policy No.35 should be implemented through the normalisation process and particularly taken into account when developing the Detailed Area Plan for the control of subdivision, land use and development within the precinct.



SOURCE: PEACEFUL BAY HERITAGE PRECINCT - CONSERVATION PLAN, DECEMBER 2003, FIGURE 3

Figure 8 - Peaceful Bay Heritage Precinct



8.0 SERVICING

A Peaceful Bay Pre Feasibility Servicing Report was prepared by TME in May 2010. This report makes clear statements about a preferred servicing solution for Peaceful Bay. The servicing study investigated servicing options for the ultimate development of the settlement and highlighted areas which required further investigation to resolve potentially substantive issues.

Integrated Water Supply and Effluent Disposal

A state of the art integrated water supply and effluent disposal system is proposed for Peaceful Bay which incorporates the following:

- Rain water tanks to each lot to provide potable supply;
- Water efficient devices in each home;
- Sewer effluent collected from each lot conveyed to a treatment plant;
- Effluent treated to a fit for purpose standard;
- Treated effluent being returned to each lot for non-potable uses including flushing and garden watering; and,
- An operator being identified and licensed to operate sewer and non-potable systems.

Figure 9 - Integrated Water Supply and Effluent Disposal pictorially shows the ultimate system.

The report also acknowledged that introduction of a waste water treatment plant may not be possible in the first instance and the interim use of aerobic treatment units (ATU's) on each property may be an acceptable interim solution provided they can be demonstrated to work satisfactorily.

This is particularly likely if staging of development at Peaceful Bay requires that a threshold of occupation be reached before a comprehensive sewerage recycling plant will work. In this instance, onsite effluent disposal is appropriate until this threshold is reached. Health WA is likely to take an interest if onsite disposal is proposed as an interim or permanent solution.

The establishment of a suitably large potable water tank on each lot without prejudicing the character of the precinct is essential. Preliminary discussions with locals suggest that a 20,000 litre tank should fit this criteria but this will need to be approved by Health WA.

There may also be an option to upgrade the non-potable supply to potable. This needs to be explored further as part of the full feasibility study.

Conclusion 13

Implementation of an integrated water supply and effluent disposal scheme will require:

- *Ground water monitoring and preparation of a Local Water Management Strategy to determine if aerobic treatment units can be used as an interim solution for effluent disposal;*
- *Health Department approval to the use of aerobic treatment units as an interim solution;*



- Health Department approval to an appropriate potable water supply tank size and roof catchment area;
- An operator being identified and licensed to operate sewer and non-potable systems;
- Approval from the Economic Regulator to the current non-potable water supply and possible sewer treatment system being continued after the normalisation process;
- Determining the extent of any upgrades required to the non-potable water supply and establishment of the possible sewer treatment system.

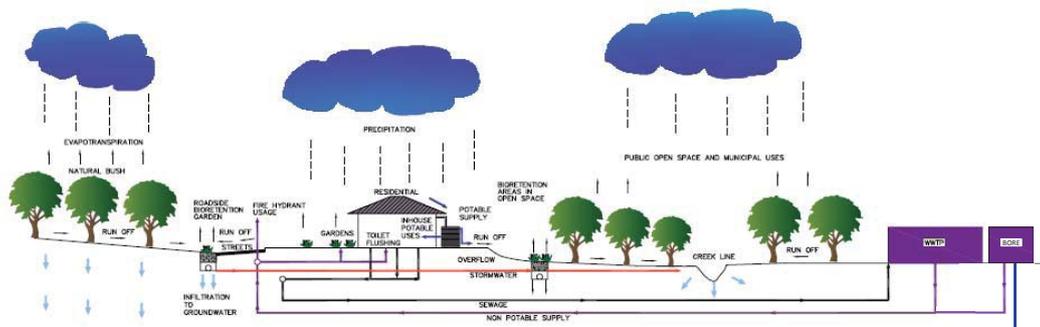


Figure 9 - Integrated Water Supply and Effluent Disposal

Drainage

There is evidence that drainage of the leasehold precinct does not work satisfactorily at times however this has been of limited concern given the seasonal use of accommodation.

The move towards normalisation and the prospect of increasing permanent occupancy necessitates that a comprehensive drainage solution be found for the precinct and that this be integrated with road upgrading, possible onsite effluent disposal through utilisation of ATU's and integrated into a Local Water Management Strategy.

Conclusion 14

A Local Water Management Strategy is integral to understanding drainage and effluent disposal solution options and ultimately establishing development costs if normalisation is to be pursued. Preparation of this document will need to occur early in the normalisation process.



Power Supply

The 2010 Pre Feasibility Servicing Report by TME suggests that the power supply to Peaceful Bay has capacity to service normalisation of the leasehold area and an increased level of permanent occupancy in these dwellings.

The introduction of underground power to the leasehold precinct is likely to be a statutory requirement and it is consistent with the recommendation of the Peaceful Bay Heritage Precinct Conservation Plan.

The Peaceful Bay Pre Feasibility Servicing Report recommends that as part of the normalisation process roads within the leasehold area be paved with flush kerbs and that the seal have a width of 6m or less.

Conclusion 15

Power to Peaceful Bay is likely to be adequate for the normalisation process but should be monitored as it is an edge of grid supply and capacity could alter.

Telecommunications

Peaceful Bay currently enjoys telephone communications including ADSL and digital television. It is unlikely that this level of service will be improved until such time as the National Broadband Network expands to encompass the settlement.

The level of service is considered adequate to accommodate the normalisation process.

Conclusion 16

There is adequate telecommunications including ADSL, telephone and digital television to accommodate the additional demand which is likely to be generated by normalisation.



9.0 COMMUNITY FACILITIES

There is a wider issue associated with normalisation of the leasehold precinct. The change to freehold tenure will place pressure for a fundamental change in land use from holiday accommodation to residential. The result is likely to be an increasing number of permanent residents within the precinct. This increasing number of permanent residents needs to be considered in conjunction with other areas within the settlement set aside for future urban development and an assessment made of the demand for community facilities which will result over time from these developments.

It is not the role of the normalisation process to establish the ultimate community services and facilities required for the settlement however it is appropriate that the normalisation process make a proportional contribution to the establishment of these services and facilities and where appropriate set aside land parcels for these uses.

Processes for establishing the facilities and service demands and establishing a proportional contribution to these are outlined in State Planning Policy 3.6 – Development Contributions for Infrastructure.

The contribution made by the leasehold precinct may be a per lot financial contribution to planned facilities or alternatively provision of specific facilities or services deemed appropriate by the plan.

Conclusion 17

Development proposals for the normalisation of the leasehold precinct at Peaceful Bay should acknowledge the requirement to contribute to the community facilities ultimately required to service increased numbers of permanent residents and the longer term development potential of the settlement. Council may choose to establish a suitable level of contribution through preparation of a Development Contribution Plan consistent with State Planning Policy 3.6.



10.0 COMMUNITY ASPIRATIONS

There is ample evidence that historically leaseholders at Peaceful Bay have had mixed feelings about pursuing normalisation of the settlement. The reasons for this are not clear but it is reasonable to assume that at least some of those showing reluctance to pursue this outcome may feel there was insufficient information to make an informed decision and commencing a process where the outcome is not known may well result in their interest in Peaceful Bay being disenfranchised.

Engagement with the leasehold community is an essential part of evaluating the merits of a normalisation process. The statutory approvals which will be required provide an avenue for this to occur. It is particularly important to understand that without widespread community support the parliamentary approval required to modify the “A” class reserve is unlikely to be successful.

Throughout the discussion of normalisation and any subsequent process, it is important that the interests of existing leaseholders are protected and there is a clear process for consultation and that those wishing to enjoy the benefits of the existing lease under the current terms and conditions can do so without undue interference.

It needs to be recognised that there are wider Peaceful Bay communities which must be considered in addition to the leaseholders. These communities include other landowners within Peaceful Bay, the wider community of Denmark and the more extensive community consisting of the family, friends and visitors to Peaceful Bay who over the years have developed affection for the settlement and feel that it is part of their life experience.

The interests of these wider communities are recognised in the planning process whereby modifications to structure plans, town planning schemes and development of a Detailed Area Plan all require statutory advertising and community comment.

Figure 10 – Community Consultation Strategy outlines the key principles behind community consultation.



Peaceful Bay General Store



Playground adjacent to oval



Conclusion 18

- *That Council through a formal consultation plan advertise this Pre Feasibility Study with a view to establishing if there is in principle support from the local Peaceful Bay community to progress more detailed investigations into the opportunities for normalisation.*
- *That Council adopt the principle of ongoing consultation with Peaceful Bay leaseholders and establish a formal consultation plan in the event that it proceeds to preparation of a Business Plan for the normalisation process.*
- *That Council accept the principle that any actions taken towards normalisation should not prejudice the rights currently enjoyed by leaseholders under the current lease.*
- *That the wider communities of Peaceful Bay consisting of landowners outside of the leasehold area, the wider community of Denmark and the family, friends and visitors to Peaceful Bay be given the opportunity to comment on proposals through the established planning processes.*

Stage	Objectives	Consultation Groups	Strategy
Prefeasibility	<p>Identification of the process to achieve normalisation</p> <p>Identification of potential fatal flaws that may prevent normalisation</p> <p>Provide information which can be made available to leaseholders and determine the level of in principle support for normalisation</p> <p>Provide information on which Council can make a decision if it wishes to proceed with normalisation</p>	Existing Leaseholders	Advertise the Pre-feasibility report for leaseholder comment, invite submissions and determine the level of leaseholder support
Business Plan	To provide a full analysis of the normalisation concept including costs, risks and returns which can be used to: determine the level of community support; inform Council decisions; help fulfill obligations under the Local Government Act; support an application to parliament to change the "A" class reserve classification; and be used as a basis to identify and create a separate lot containing the leasehold precinct.	Existing Leaseholders, Peaceful Bay Landowners, Shire of Denmark Residents & Friends, Family and Visitors	Liaison with the wider Peaceful Bay community to determine the level of support for the normalisation process and level of risk to be worn by Council. Document lease holder support for the servicing solutions, subdivision concept and lot pricing.
Parliamentary Approval	<p>To gain parliamentary approval to changing the "A" class reserve classification.</p> <p>To gain approval to the creation of superlot containing the leasehold area.</p> <p>To gain approval to the transfer of the superlot to Council at a predetermined stage of the normalisation process at a predetermined price.</p>	Existing Leaseholders, Peaceful Bay Landowners, Shire of Denmark Residents & Friends, Family and Visitors	Provide regular updates on statutory approval processes
Statutory Approvals	To gain the statutory approvals to facilitate normalisation.	Existing Leaseholders, Peaceful Bay Landowners, Shire of Denmark Residents & Friends, Family and Visitors	To proceed through the various planning, land tenure, servicing and environmental approval processes ensuring adequate information is provided to the wider community to allow informed comment during statutory advertising periods.
Feasibility Review	To review the feasibility of the project and make a final decision to proceed	Existing Leaseholders, Peaceful Bay Landowners, Shire of Denmark Residents & Friends, Family and Visitors	Provide regular updates to the wider community to ensure adequate information is available for informed discussion and debate as background to Council decisions.
Construction	To deliver lot titles and secure settlements	Existing Leaseholders, Peaceful Bay Landowners, Shire of Denmark Residents & Friends, Family and Visitors	Ensure the local community is informed of construction timetable and potential impacts and provide opportunity for the lease hold community to have input to construction scheduling.

Figure 10 - Community Consultation Strategy



11.0 PROJECT STAGING AND INDICATIVE COSTS

Figure 11 – Project Staging and Indicative Costs suggests a breakdown of how the normalisation process could occur in a logical manner.

The staging has been focused around key milestones, giving the community the opportunity to re-evaluate proposals and manage the level of risk that Council and leaseholders may be exposed to.

Business Plan Phase

Of particular note is the Business Plan phase which will require that key issues are resolved prior to the Feasibility Analysis and the Business Plan being finalised. The key concerns are the linked issues of groundwater levels, suitability for onsite effluent disposal and drainage.

In addition, it will be necessary to undertake an “As Constructed” survey of the settlement to support a detailed subdivision concept for the community to sign off on and produce accurate plans for submission to parliament as part of the modification to the “A” class reserve.

Indicative Cost Estimates

The cost estimates must be considered as very preliminary and will need to be the subject of more detailed scrutiny as the project progresses.

The final construction development costs are based on \$130,000 per lot which has been derived from similar projects which are currently progressing and need to address similar levels of complexity in respect to servicing and drainage.

It is important to note that this is a construction cost and does not incorporate:

- The cost of purchasing the leasehold superlot that will be ultimately subdivided, any on cost associated with creating and transferring this lot;
- Holding costs for the project and meeting interest payments for borrowings;
- Incorporating a margin to account for profit and risk;
- Making a contribution to the provision of community services and facilities generated by the wider Peaceful Bay Settlement; and,
- The establishment of an endowment fund to offset the lease income currently enjoyed by Council.

Indicative Time Frames

Indicative time frames have also been identified for each stage with construction unlikely to commence before June 2018. The time frames are variable but represent an achievable outcome if there is a will to proceed.

Stage	Objectives	Tasks	Indicative Costs	Indicative Timeframe
Prefeasibility	Identification of the process to achieve normalisation	Prefeasibility Report Preparation	\$20,000	6 Months Completed December 2013
	Identification of potential fatal flaws that may prevent normalisation	Community Consultation		
	Provide information which can be made available to leaseholders and determine the level of in principle support for normalisation	Council Consideration		
	Provide information on which Council can make a decision if it wishes to proceed with normalisation			
Business Plan	To provide a full analysis of the normalisation concept including costs, risks and returns which can be used to: determine the level of community support; inform Council decisions; help fulfill obligations under the Local Government Act; support an application to parliament to change the "A" class reserve classification; and be used as a basis to identify and create a separate lot containing the leasehold precinct.	Project Management	\$370,000	12 Months Completed December 2014
		Local Water Management Strategy		
		Superlot identification		
		Subdivision Concept and As Con survey (\$100,000)		
		Servicing plans (roads, drainage, water, sewerage, power, telecommunications)		
		Feasibility		
		Cash Flow		
		Risk Assessment		
		Funding Strategy		
		Community Consultation		
Council Adoption				
Parliamentary Approval	To gain parliamentary approval to changing the "A" class reserve classification. To gain approval to the creation of superlot containing the leasehold area. To gain approval to the transfer of the superlot to Council at a predetermined stage of the normalisation process at a predetermined price.	Project Management	\$20,000	12 Months Completed December 2015
		Parliamentary application preparation		
		Negotiation of superlot creation and conditions of transfer		
Statutory Approvals	To gain the statutory approvals to facilitate normalisation.	Project Management	\$380,000	2 Years Completed December 2017
		Modifications to the Peaceful Bay Local Structure Plan		
		Rezoning approval		
		Subdivision approval		
		Detailed Area Plan approval		
		Servicing approvals from Department of Health		
		Servicing approvals from Economic Regulator		
		Servicing approvals from Council		
		Servicing approvals from Western Power		
		Community contributions strategy approval		
Engineering design approvals				
Local Water Management Strategy approval				
Bushfire Management Plan approval				
Feasibility Review	To review the feasibility of the project and make a final decision to proceed	Project Management	\$165,000	6 Months Completed June 2018
		Tender project		
		Finalise presale prices and marketing Strategy		
		Commence conditional presales		
		Revise Business Plan		
Final Decision to proceed				
Construction	To deliver lot titles and secure settlements	Construction works	\$26,390,000	6 Months Completed December 2018
		Subdivision clearances	Based on \$130,000/lot and 203 Lots	
		Titles issued		
		Settlements		
Total Indicative Development Costs			\$27,345,000	
Indicative Cost per Lot			\$134,704	
Note Indicative Development Costs Exclude: Superlot Land Purchase Holding Costs and Interest Profit and Risk Community Contributions Endowment Fund				

Figure 11 - Project Staging and Indicative Costs



12.0 SALES AND PRICING OF LOTS

Pricing

A cursory exploration of potential values for freehold lots within the leasehold precinct suggests that lot prices between \$150,000 and \$250,000 are achievable.

Leaseholder Options to Purchase

One of the biggest issues faced by developers is meeting the substantive headworks costs which are often encountered in the early stages of subdivision.

In this instance the extent of existing development and the existence of leaseholders suggest that there is a potential market in place which could assist in overcoming this constraint.

It also needs to be recognised that the existing leaseholders enjoy certain rights by way of the existing leases and that these rights need to be protected.

Conditions therefore need to be established in respect to lot sales which:

- Protect the ongoing rights of existing leaseholders;
- Encourage leaseholders to purchase their lease lot as soon as possible after the lots are created; and,
- Ensure that Council, as the developer, is not left with a substantial, ongoing overdraft after funding the development.

With the above considerations in mind the model shown in *Figure 12 - Principles Behind Lot Sales* is suggested for the purposes of discussion with leaseholders.

- 1 Each leaseholder should have an exclusive right to purchase land, subject to an existing lease, for a period of 12 months from the date at which lots are created.
- 2 The value of lots is to be established by independent evaluation however Council may choose to nominate a minimum lot price to ensure viability of the project.
- 3 At the expiry of the exclusive purchase period, Council may choose to deal in any lots not sold subject to the rights of any existing leaseholders being maintained under the terms and conditions of the existing lease.

Figure 12 - Principles Behind Lot Sales



13.0 DEVELOPMENT MODEL

There are 4 basic developer options for progressing the normalisation process at Peaceful Bay. These are:

- Council;
- A State government agency;
- A Private Developer; or,
- A joint venture whereby Council or a State government agency works in conjunction with a private developer.

Investigations have suggested that State government agencies have explored the opportunity of progressing the normalisation of Peaceful Bay but have chosen not pursue this opportunity. It can generally be concluded therefore that there is not an appetite for a State government agency to undertake this project at the present time.

The introduction of a private developer into the development mix either as a joint venture partner or a sole developer raises three key issues:

- There is insufficient progress toward approvals for a developer to assess the project risks and therefore interest is likely to be limited until the project is better defined;
- Maintaining existing leases and protecting the ongoing interests of the existing leaseholders when these dealings may be arm's length from Council; and,
- Introduction of a private developer suggests a commercial profit margin which will need to be reflected in the purchase price of the leasehold superlot and ultimately the purchase price of the lots created.

The introduction of a private developer or a State government agency taking on the development will however shift the project risk from Council.

Conclusion 19

In the absence of State government agency interest in progressing the normalisation process or the project having progressed sufficiently far that a private developer can scope the project and identify potential profit and risk, it is likely that Council will need to progress the normalisation process at least as far as a Business Plan; parliamentary approval to changing the "A" class reserve status; and creation of a superlot.



14.0 FUNDING MODEL

Costs and Risks

Figure 11 – Project Staging and Indicative Costs suggests staging for the normalisation project based on key milestones and identifies costs which are likely to be incurred in order to reach those milestones.

It should be noted that all costs up until construction constitute a substantive risk to the developer as the project may not proceed. However with each milestone being reached and a decision made to progress, this risk does reduce.

Ultimately, the developer is likely to incur costs in the order of \$1,000,000 reaching a point where statutory and engineering approvals are in place and there is leaseholder commitment to the purchase of lots. It is at this point that construction would commence.

Funding these preliminary stages of development is a fundamental issue for Council given that the project may not proceed.

In order to justify this expenditure Council will need to:

- Have increasing confidence that the project will progress as each milestone is reached;
- Ensure that its rate payer base is supportive of the project;
- Ensure it has sufficient funding to undertake the work;
- Ensure that risks it undertakes are rewarded as part of the project; and,
- Be confident that the project will progress and have a satisfactory outcome to all stakeholders.

Mechanisms to Fund Approvals

There are various options for funding the feasibility stage of the project. Council could allocate funds from its general revenue stream which may be off-set by recouping the funds expended at such time as the sale of lots occurs.

It is also appropriate that Council seek government grants to fund the feasibility stage and subsequent design and approvals.

Carefully staging the feasibility assessment and determining which tasks may be able to be undertaken in-house is also warranted.

As an alternative Council may choose to apply a specified area rate over the proposed leasehold superlot and raise portion of the funds required for approvals over the anticipated 5 year time frame leading up to construction.

If this option is pursued it is important that in any subsequent pricing of lots, the contribution made by leaseholders to the approval process be recognised.



Conclusion 20

There are substantial costs in the order of \$1,000,000 expected to be incurred leading up to a point that Council can be sure the project will progress and be profitable.

Council should explore the opportunity to stage and fund this work by:

- *Reviewing the likely “order of costs” associated with the feasibility study prior to going to the leasehold community;*
- *Applying for government grants to facilitate completing the feasibility review;*
- *Committing a portion of the funds required for the approvals stage “up front” with a view to recouping that cost from future returns over and above that which Council currently enjoys from the leasehold lease payments; and,*
- *Applying a specified area rate over the expected 5 year time frame leading up to a time where construction can occur. This option should recognise the contribution of leaseholders to the approval process in any subsequent lot price established.*

The Funding method for the project should be established in a Business Plan adopted by Council and which clearly provides for Council to recoup any expenditure required to undertake feasibility studies, achieve normalisation, undertake subdivision works and ultimately achieve lot sales.

Council Loss of Income and Endowment Fund

The Shire of Denmark, Council and residents currently enjoy an income stream from the lease fees collected from Peaceful Bay. These fees currently total approximately \$221,000 annually. It would be appropriate that any financial outcome from the freehold of Peaceful Bay recognise this wider interest in the settlement by either a profit share in the project or establishment of an endowment fund of a prescribed sum which when invested will yield a similar benefit for the wider community.

Conclusion 21

That the financial model for normalisation factor in establishment of an endowment fund to offset the loss of lease income to the Shire if the subject land is established as freehold.



Purchase Price of Superlot and Land Acquisition

The cursory feasibility analysis undertaken to support this report suggests that: the substantive development costs; timeframe for approvals; high risks; isolated location; and, limited demand for lots, there is likely to be a limited profit in the project.

Given this situation it is likely that the land value of the Superlot to be subdivided will be relatively low.

Regardless of the purchase price of the land, it would be unwise for Council to acquire this land and pay its value until such time as it was clear that the project will proceed. Any land acquisition negotiations with the Department of Lands should be predicated on this premise.

Conclusion 22

Any negotiations with the Department of Lands for purchase of portion of Reserve 24510 for subdivision and freehold sale should be predicated on transfer of the land and payment only occurring when a formal commitment is made to progress with subdivision and sale of the subsequent lots.

Funding Development Costs

Figure 11 – *Project Staging and Indicative Costs* suggests that the indicative development costs for construction are likely to be in the order of \$26,390,000 or approximately \$130,000 per lot. These costs do not include:

- The superlot land purchase;
- Holding costs and interests;
- Profit and risk;
- Community contributions; and,
- Endowment fund.

The total indicative development costs do however represent funding that must be met in order for the lots to be created and therefore we believe Council should not progress the project until such time it is clear that this funding can be met through lot sales.

Figure 13 – *Lot Price and Sales Rates* provides an analysis of the number of lots which must be sold and at what price to achieve this objective. Without this approach we believe Council will be entertaining a level of risk over and above that which would be reasonable for it to assume.

The other costs to be met including land purchase, profit and risk, community contributions, holding costs and interests and the establishment of an endowment fund can occur over subsequent years as additional lots are sold.

Conclusion 23

Council progressing with normalisation of Peaceful Bay after the feasibility stage should be predicated upon the principle of sufficient presales being achieved to fund the immediate development costs of construction identified in the Feasibility Study and Business Plan.



No. of Lot Sales	Lot Price				
	\$150,000	\$175,000	\$200,000	\$225,000	\$250,000
50	\$7,500,000	\$8,750,000	\$10,000,000	\$11,250,000	\$12,500,000
60	\$9,000,000	\$10,500,000	\$12,000,000	\$13,500,000	\$15,000,000
70	\$10,500,000	\$12,250,000	\$14,000,000	\$15,750,000	\$17,500,000
80	\$12,000,000	\$14,000,000	\$16,000,000	\$18,000,000	\$20,000,000
90	\$13,500,000	\$15,750,000	\$18,000,000	\$20,250,000	\$22,500,000
100	\$15,000,000	\$17,500,000	\$20,000,000	\$22,500,000	\$25,000,000
110	\$16,500,000	\$19,250,000	\$22,000,000	\$24,750,000	\$27,500,000
120	\$18,000,000	\$21,000,000	\$24,000,000	\$27,000,000	\$30,000,000
130	\$19,500,000	\$22,750,000	\$26,000,000	\$29,250,000	\$32,500,000
140	\$21,000,000	\$24,500,000	\$28,000,000	\$31,500,000	\$35,000,000
150	\$22,500,000	\$26,250,000	\$30,000,000	\$33,750,000	\$37,500,000
160	\$24,000,000	\$28,000,000	\$32,000,000	\$36,000,000	\$40,000,000
170	\$25,500,000	\$29,750,000	\$34,000,000	\$38,250,000	\$42,500,000
180	\$27,000,000	\$31,500,000	\$36,000,000	\$40,500,000	\$45,000,000
190	\$28,500,000	\$33,250,000	\$38,000,000	\$42,750,000	\$47,500,000
200	\$30,000,000	\$35,000,000	\$40,000,000	\$45,000,000	\$50,000,000

Figure 13 - Lot Price and Sales Rates



Leaseholder Option to Purchase

There is recognition that the existing leaseholders at Peaceful Bay have individually and as a community made substantive commitments to the settlement and contribute to its heritage value.

With this in mind we believe there is an argument that existing leaseholders through this commitment and by virtue of holding a lease should be given the first right of refusal in respect to purchase of lots created.

Conclusion 24

Subject to the provisions of the Local Government Act 1995, Section 3.58 and 3.59, each leaseholder should have a right to purchase land subject of an existing lease for a period of 12 months from the date at which lots are created.

Where a leaseholder does not wish to purchase a lot during the 12 months option period, Council may sell the property to a third party conditional upon the lease remaining in place under the same terms and conditions currently enjoyed by the leaseholder.

The value of lots is to be established by independent valuation which shall be the minimum value of lots however Council may choose to nominate higher lot prices to ensure viability of the project.

Council commit to ensuring that any excess funds generated by lots being sold at prices greater than that established by independent valuation, be placed in a Reserve Fund for the sole purpose of facilitating community infrastructure projects in the Peaceful Bay locality.



15.0 POTENTIAL FATAL FLAWS

This preliminary feasibility study has identified a number of potential fatal flaws with respect to progressing normalisation of the leasehold precinct at Peaceful Bay. These flaws are as follows.

Community Support

Fundamental to the project is achieving substantive leaseholder support. Without this support it is unlikely that Council will have an appetite for the project, parliamentary approval will not be issued for changing the existing "A" Class Reserve and the statutory planning approvals required will be difficult to achieve.

This report outlines prescriptive stages for normalisation and suggests the level of community support which should be attained at each of these level stages. Preparation of a Consultation Strategy has been recommended and an outline of the level of consultation at each stage has been outlined in *Figure 10 – Community Consultation Strategy*.

Integrated Water Supply and Effluent Disposal Scheme

Various investigations have occurred into possible servicing solutions for water, effluent and drainage systems. Technical aspects of these solutions need to be finalised and final costs established to determine if they are truly viable. Professional advice suggests that there is a solution to these issues, however this needs to be tested further through technical studies and feasibility analysis and might ultimately lead to excessive costs or a lack of regulatory support effectively stopping the project.

These complex interrelated issues need to be addressed in the Business Plan to give both Government and the community the confidence to proceed with the project.



16.0 SUMMARY OF CONCLUSIONS

The report page relating to the conclusions is referenced following each summary.

Permanent Occupancy

1. *Council should embrace the move towards permanent occupancy of lots at Peaceful Bay as part of the move towards normalisation, subject to the provision of adequate infrastructure and community services. (pg. 8)*

Leases

2. *The existing leases in Peaceful Bay convey certain rights on leaseholders which should be protected.*

The leases in Peaceful Bay also have constraints including:

- *The right to occupy sites could be limited if servicing issues arise such as health matters associated with water supply and sewerage disposal;*
- *Any requirement to upgrade services to meet regulatory standards will need to be met by leaseholders;*
- *The rights of leaseholders are limited to the term of the lease and there is no security of extension;*
- *Reserve 24510 is an "A" Class Reserve and the Management Order issued to Council could be rescinded at any time. (pg. 9)*

Alienation Process

3. *Preparation of a Business Plan to support an application to parliament to remove the "A" Class Reserve classification over that portion of Reserve 24510 which will ultimately be subject to the normalisation process is required. (pg. 10)*

Green Title option vs. Strata Title

4. *The relative cost of Green Title V's Strata Title needs to be established by way of a full feasibility study to provide information necessary to assist in determining the most appropriate form of tenure. (pg. 12)*

Local Planning Strategy

5. *The Shire of Denmark Local Planning Strategy clearly facilitates normalisation of Peaceful Bay. (pg. 13)*

Town Planning Scheme

6. *To achieve normalisation modification to the Shire of Denmark Town Planning Scheme No. 3, or proposed Scheme No. 4 as the case may be, is required by way of inclusion of a Special Use Zone and applying the Special Use Zone with specific land use controls to the subject land. (pg. 14)*



Structure Plan

7. *The Peaceful Bay Local Structure Plan should be modified to allow nominated precincts within the structure plan area to progress to detailed design and development in a staged manner subject to it being clearly demonstrated that each precinct can adequately address servicing issues and make a proportional contribution to community facilities. (pg. 16)*

Detailed Area Plan

8. *Normalisation will require a Detailed Area Plan to be prepared for the precinct introducing the necessary land use and development controls required to preserve the essential character, amenity and heritage of the precinct. (pg. 18)*

Subdivision Design

9. *Preparation of a subdivision design for the precinct based on a detailed "As Constructed" Survey should be undertaken early in the normalisation process and be used as a basis for negotiation with leaseholders, establishment of the ultimate lot and reserve boundaries and submission to the Western Australian Planning Commission for subdivision approval. (pg. 18)*

Buildings or Built Form?

10. *The Detailed Area Plan should recognise that over time existing buildings could be replaced and there is a need to ensure that any renovations or replacement of existing dwellings should maintain the built form character of the leasehold precinct. This will require modification to Planning Policy LPP 35. (pg. 20)*

Leasehold to Freehold

11. *Council should utilise the Pre Feasibility Study to gauge in principle community support for free holding of the superlot to enable either the free holding or strata titling of the individual leasehold lots. (pg. 21)*

Integrated Water Supply and Effluent Disposal

13. *Implementation of an Integrated Water Supply and Effluent Disposal Scheme will require:*
 - *Ground water monitoring and preparation of a Local Water Management Strategy to determine if aerobic treatment units can be used as an interim solution for effluent disposal;*
 - *Health Department approval to the use of aerobic treatment units as an interim solution;*
 - *Health Department approval to an appropriate potable water supply tank size and roof catchment area;*
 - *An operator being identified and licensed to operate sewer and non-potable systems;*



- *Approval from the Economic Regulator to the current non-potable water supply and possible sewer treatment system being continued after the normalisation process;*
- *Determining the extent of any upgrades required to the non-potable water supply and establishment of the possible sewer treatment system. (pg. 23)*

Drainage

14. *A Local Water Management Strategy is integral to understanding drainage and effluent disposal solution options and ultimately establishing development costs if normalisation is to be pursued. Preparation of this document will need to occur early in the normalisation process. (pg. 24)*

Power Supply

15. *Power to Peaceful Bay is likely to be adequate for the normalisation process but should be monitored as it is an edge of grid supply and capacity could alter. (pg. 25)*

Telecommunications

16. *There is adequate telecommunications including ADSL, telephone and digital television to accommodate the additional demand which is likely to be generated by normalisation. (pg. 25)*

Community Facilities

17. *Development proposals for the normalisation of the leasehold precinct at Peaceful Bay should acknowledge the requirement to contribute to the community facilities ultimately required to service increased numbers of permanent residents and the longer term development potential of the settlement. Council may choose to establish a suitable level of contribution through preparation of a Development Contribution Plan consistent with State Planning Policy 3.6. (pg. 26)*

Community Aspirations

18. *That Council through a formal consultation plan advertise this Pre Feasibility Study with a view to establishing if there is in principle support from the local Peaceful Bay community to progress more detailed investigations into the opportunities for normalisation.*

That Council adopt the principle of ongoing consultation with Peaceful Bay leaseholders and establish a formal consultation plan in the event that it proceeds to preparation of a Business Plan for the normalisation process.

That Council accept the principle that any actions taken towards normalisation should not prejudice the rights currently enjoyed by leaseholders under the current lease.

That the wider communities of Peaceful Bay consisting of landowners outside of the leasehold area, the wider community of Denmark and the family, friends and visitors to Peaceful Bay be given the opportunity to comment on proposals through the established planning processes. (pg. 27)



Development Model

19. *In the absence of State government agency interest in progressing the normalisation process or the project having progressed sufficiently far that a private developer can scope the project and identify potential profit and risk, it is likely that Council will need to progress the normalisation process at least as far as a Business Plan; parliamentary approval to changing the "A" Class Reserve status; and creation of a superlot. (pg. 33)*

Mechanisms to Fund Approvals

20. *There are substantial costs in the order of \$1,000,000 expected to be incurred leading up to a point that Council can be sure the project will progress and be profitable.*

Council should explore the opportunity to stage and fund this work by:

- *Reviewing the likely "order of costs" associated with the Feasibility Study prior to going to the leasehold community;*
- *Applying for government grants to facilitate completing the feasibility review;*
- *Committing a portion of the funds required for the approvals stage "up front" with a view to recouping that cost from future returns over and above that which Council currently enjoys from the leasehold lease payments; and,*
- *Applying a specified area rate over the expected 5 year timeframe leading up to a time where construction can occur. This option should recognise the contribution of leaseholders to the approval process in any subsequent lot price established.*

The Funding method for the project should be established in a Business Plan adopted by Council and which clearly provides for Council to recoup any expenditure required to undertake feasibility studies, achieve normalisation, undertake subdivision works and ultimately achieve lot sales. (pg. 34)

Council Loss of Income and Endowment Fund

21. *That the financial model for normalisation factor in establishment of an endowment fund to offset the loss of lease income to the Shire if the subject land is established as freehold. (pg. 35)*

Purchase Price of Superlot and Land Acquisition

22. *Any negotiations with the Department of Lands for purchase of portion of Reserve 24510 for subdivision and freehold sale should be predicated on transfer of the land and payment only occurring when a formal commitment is made to progress with subdivision and sale of the subsequent lots. (pg. 36)*

Funding Development Costs

23. *Council progressing with normalisation of Peaceful Bay after the feasibility stage should be predicated upon the principle of sufficient presales being achieved to fund the immediate development costs of construction identified in the Feasibility Study and Business Plan. (pg. 36)*



Leaseholder Option to Purchase

24. *Subject to the provisions of the Local Government Act 1995, Section 3.58 and 3.59, each leaseholder should have a right to purchase land subject of an existing lease for a period of 12 months from the date at which lots are created.*

Where a leaseholder does not wish to purchase a lot during the 12 months option period, Council may sell the property to a third party conditional upon the lease remaining in place under the same terms and conditions currently enjoyed by the leaseholder.

The value of lots is to be established by independent valuation which shall be the minimum value of lots however Council may choose to nominate higher lot prices to ensure viability of the project.

Council commit to ensuring that any excess funds generated by lots being sold at prices greater than that established by independent valuation, be placed in a Reserve Fund for the sole purpose of facilitating community infrastructure projects in the Peaceful Bay locality. (pg. 38)

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AIMS

- *To protect and enhance the unique special character of the Peaceful Bay original leasehold settlement as a relaxed, informal, low key holiday location.*
- *To provide guidance to both Council and leaseholders as to appropriate forms of development to ensure the character is maintained.*

OBJECTIVES

To ensure that any future development is in keeping with the heritage value of the precinct. Development includes any alteration or addition to any of the existing buildings.

Peaceful Bay Heritage Precinct is classified in the Shire of Denmark Town Planning Scheme as a “Place of Heritage Value”. These guidelines are intended as a planning tool to control inappropriate development or alteration of the elements within the precinct. The Shire of Denmark is responsible for managing alteration and development within the precinct, and is committed to adopting a commonsense approach to meeting the requirements of individual owners who wish to maintain and upgrade their houses.

This document is not intended to control any internal works unless they impact on the external fabric.

APPLICATION

- *All leasehold lots in the original Peaceful Bay leasehold settlement consisting of First Avenue to Fourth Avenue and from East Avenue to West Avenue.*
- *First, Second, Third, Fourth, East, Central and West Avenues roadways.*

1.0 INTRODUCTION

- 1.1 The small settlement of Peaceful Bay is located behind the primary sand dunes of Peaceful Bay on the south coast of Western Australia. The Peaceful Bay Heritage Precinct is the original leasehold subdivision of the settlement of Peaceful Bay.
- 1.2 The precinct consists of 163 houses constructed on small lots along four parallel roads- First, Second, Third and Fourth Avenues. These avenues are connected by East, Central and West Avenues.
- 1.3 Most of the houses were erected between 1959 and 1965. Some were relocated from the mill towns around the Shannon, and are small, simple gable cottages clad in jarrah weatherboards. Others were constructed on site and are reflective of the architectural styles of the 1950s and 1960s in Western Australia, having shallow pitched skillion roofs and clad in flat fibre cement sheeting.
- 1.4 The precinct has its own special character, which is that of a relaxed, informal, low-key holiday location. The elements are simple and minimal. Roads are single lane and paved with gravel (with the exception of First Avenue which has been bitumenised and partially kerbed). They often weave around pre-existing peppermints. The houses are simple rectangular structures, lacking in ornamentation. The materials and method of construction is homogenous. Most of the houses are timber framed and clad in either cement sheeting or jarrah weatherboards, or a mix of both. Roofs are either low pitched skillions or medium pitched gables and the roof sheeting is usually galvanised corrugated sheeting.
- 1.5 The houses are located informally on the blocks, with a wide variety of setbacks to all boundaries. There are very few fences. The predominant landscape elements are lawned areas which run between the houses and a large number of mature peppermints. There are a few areas where landscaped areas of exotic species have been planted.
- 1.6 A large proportion of the leases remain with the original leaseholders of their families, and this has created a strong sense of community within the Peaceful Bay Heritage Precinct. This community has a strong desire to retain the existing character and the heritage value of the Peaceful Bay Heritage Precinct.
- 1.7 For full details of this area the “Peaceful Bay Heritage Precinct Conservation Plan” (December, 2003) should be referred to.

2.0 THE HERITAGE VALUE OF THE PEACEFUL BAY HERITAGE PRECINCT

- 2.1 The heritage values of the Peaceful Bay Heritage Precinct are recognised by the community of the precinct and by the wider community.

- 2.2 The precinct is listed as a “Place of Heritage Value” on the Shire of Denmark Town Planning Scheme, and is also listed on the Shire of Denmark Municipal Heritage Inventory, category C.

3.0 THE USE OF THE PEACEFUL BAY HERITAGE PRECINCT

- 3.1 At the present time the precinct is zoned for “Parks and Recreation” in the Shire of Denmark Town Planning Scheme No. 3 and is used for holiday accommodation. There appear to be a number of permanent residents. This is a compatible use although care has to be taken that it does not introduce elements to the precinct that are inappropriate or alter elements that are significant. There also appear to be a number of home occupations operating in the precinct. Home occupations could be allowed in the precinct but need to be assessed by the Shire of Denmark according to their Town Planning Scheme. Home occupations which are noisy, disruptive, or which generate visitor traffic would not be allowed.

4.0 THE BUILDINGS

- 4.1 The buildings consist of 163 houses; one per lot, and three community buildings: the Progress Association Hall and the Sea Rescue Building on First Avenue and the Fire Brigade Building on West Avenue.
- 4.2 The houses are small, simple, structures. The form and materials are homogenous. The buildings are rectangular in shape and single storey.
- 4.3 The houses are all timber framed and walls are clad in either flat cement sheeting or jarrah weatherboards, or a mix of both. In some instances original jarrah board cladding has been replaced with flat cement sheeting. In other instances cladding has been replaced with an inappropriate cement board profile, e.g. hardiplank. In a few instances houses have recently been reclad in colorbonded corrugated steel. One house, no. 79, has been constructed in brick, although the scale and form of this house match the scale and form of the other houses in the precinct.
- 4.4 Roofs are usually either medium pitched gables or shallow pitched skillions and are clad in galvanised corrugated iron. There are a few roofs which are hipped or are shallow pitched front facing gables, and a few roofs have been clad in decromastic or concrete tiles or colorbonded corrugated steel.
- 4.5 A number of houses retain their original form and materials. Many have had skillion additions constructed to the rear. A number have had skillion additions constructed to the front. Recently a number of simple skillion verandahs have been constructed to the front of the houses.

4.5.1 Retention

Most of the houses have been classified in the Peaceful Bay Conservation Plan as having some cultural heritage significance, apart from no. 79, which is constructed of brick.

There should be no demolition or removal of any of the original sections of buildings that are classified as having some cultural heritage significance.

4.5.2 **Conservation and Maintenance**

The buildings which are classified as having considerable or some heritage value should be conserved and maintained.

4.5.3 **Reinstatement of Original Materials**

Wherever possible original finishes should be reinstated i.e. timber windows, galvanised iron roof sheeting, jarrah weatherboards, where these were known to exist.

4.5.4 **Intrusive Elements**

Elements that are considered intrusive should be removed or replaced when the opportunity arises. These include:

- decromastic and concrete roof tiles
- brickwork
- cement board cladding e.g. hardiplank
- colorbonded corrugated steel wall cladding
- colorbonded roof sheeting
- non corrugated profile water tanks
- over height antennae

4.5.5 **Front Additions and Setbacks**

There should be no addition to the front of the buildings, apart from small verandah additions, and houses which are set at the rear of the lots. This will conserve the variety of setbacks that contribute to the informal atmosphere of the precinct.

4.5.6 **Scale, Form and Materials for New Work**

Alteration and addition to the existing buildings will be permitted providing it is in a scale form and material which is similar to the authentic form, scale and materials; i.e.

- small,
- single storey,
- lightweight construction,
- simple rectangular form,
- medium pitched gable and/or low pitched skillion roof,
- corrugated profile roof sheeting,
- wall sheeting to be flat cement sheet and/or jarrah weatherboards,
- no brick, concrete, stone, or other ‘solid’ wall construction,
- no two storey construction,
- no decorative elements.

It is recognised that a small number of authentic buildings vary from the above, and in these instances the elements should reflect the authentic elements of the building in question, e.g. hipped roofs.

4.5.7 **New Verandahs and Balustrading**

The addition of small simple verandahs is permitted, but care should be taken not to introduce balustrading unless required by the BCA or for other reasons of safety, in which case it should be simple and unobtrusive.

4.5.8 **Services to the Building**

Services should be provided to the building with as little damage to significant fabric of the building as possible. Introduced elements should have minimal visual intrusion. Service elements that may be required to the buildings include plumbing and vent pipes, electricity supply lines, air conditioning, water heaters including solar water heaters and satellite dishes. These elements should be installed with minimal visual intrusion, at the rear of the houses. Antennae and other service elements should ideally not be visible from the street or other important viewing corridors.

4.5.9 **Colours**

It is recognised that colours are an individual choice and contribute to the charm of the precinct. However, the leaseholders are also encouraged to investigate original paint colours by means of wet and dry paint scrapes, and reinstate them.

4.5.10 **Size of Buildings**

Most of the houses are small, and this is an important characteristic which enables the informal character of the place to be retained by allowing the space between the houses for the large areas of lawn and mature peppermints which also contribute to the character of the place.

It is recommended that the size of the houses be limited to a plot ratio of .3 of the lots. The lots are 456 m²; a plot ratio of .3 limits the house size to 137 m².

Limit the sizes of the outbuildings to .2 of the lots. This enables outbuildings of 91.2 m² to be constructed.

4.5.11 **Maintenance**

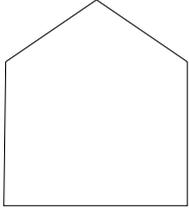
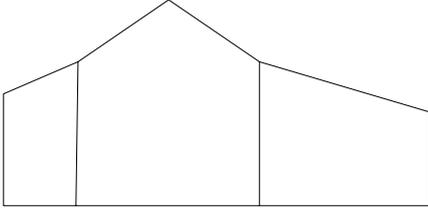
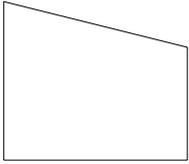
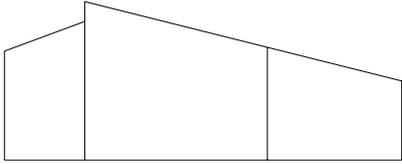
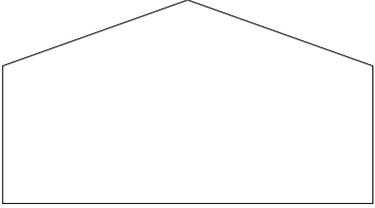
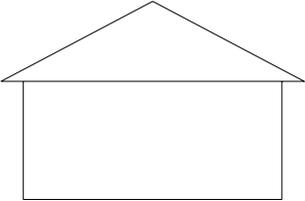
The houses should be maintained and repaired regularly in order that significant fabric is not lost. Unpainted jarrah weatherboards and other timber should be oiled. The buildings should be inspected regularly for termite infestation. Some buildings are in a poor state of repair and the lease condition of maintenance should be complied with to maintain the houses in a good state of repair.

4.5.12 **Other Buildings**

Should the opportunity arise, consideration should be give to refurbishing the Progress Association Hall and the Sea Rescue Building in a style that is more appropriate to the cultural heritage significance of the precinct, without mimicking any historicist style.

The Fire Brigade Building is also an industrial style building not in character with the rest of the precinct. It is proposed to relocate the fire equipment to another building outside the precinct. When this occurs, it would be preferable to remove the present building. If the community wishes to retain the building, the present cleared areas of gravel could be replanted with indigenous planting to lessen the impact of the scale of the building.

THE FORM OF THE HOUSES

 <p>Gable(Side View)</p>	 <p>Gable with Skillion Verandah And Rear Extension</p>
 <p>Skillion (Side View)</p>	 <p>Skillion with Front Verandah And Rear Extension</p>
 <p>Front Facing Gable</p>	
 <p>Hip</p>	

5.0 THE LOTS

5.1 Garages and Sheds

There should be no large garages and sheds at the front of the lots. Any existing garages and sheds at the front of the lots should be relocated when the opportunity arises.

5.2 Fencing

Fencing should be discouraged and the retention of the continuous large areas of lawn should be encouraged.

Super six fences and other solid fences including solid pickets should not be allowed. Any super six or solid fencing that exists should be removed or replaced when the opportunity arises.

Any new fencing should have low visual intrusion to a maximum of 900mm high and should reflect the predominant fencing which is small section post and rail with galvanised cyclone mesh or chicken mesh infill.

5.3 Amalgamation of Lots

The amalgamation of lots will not be permitted.

5.4 Density

One house per lot will be permitted.

5.5 Setbacks

Setbacks vary widely, some houses are built within two metres of the boundary, others are well set back on the lots. Side setbacks also vary widely. This adds to the informal character of the place, and in where the setbacks are more uniform, such as Fourth Avenue, the character is more formal and less intimate.

The variety of setbacks will be maintained by limiting additions to the front of the houses to small simple verandah additions.

There are a few houses which are set back close to the rear boundary, and this policy will need to be relaxed in these cases.

5.6 Service Elements

If required, service elements such as water meters and electrical mini pillars should be introduced to the lots with minimal visual intrusion, being mindful of the areas of lawn which are an important element of the precinct.

5.7 Driveways and Paths

There are very few driveways and paths in the precinct. These elements should be discouraged. Any driveways that are introduced to the lots should have minimal visual intrusion and should be appropriate to the precinct, e.g. red gravel with no hard edges would reflect the surface of the adjacent roadways.

6.0 LANDSCAPE

- 6.1 The landscaping elements that are predominant in the precinct and should be preserved are the large number of mature peppermint trees that provide a canopy of shade within the precinct, and the large areas of lawn with very few areas of other exotic planting. The lawned verges merge into the yards surrounding the properties to create an open flowing space around the houses.
- 6.2 There are some small pockets of indigenous plants other than peppermint trees and these should be conserved.
- 6.3 The precinct is surrounded by areas of native vegetation, in the adjacent caravan park to the east, the sand dunes to the south, the buffer zone between Fifth Avenue to the north and between the oval to the west. These areas should be preserved, maintained and reinstated where necessary.
- 6.4 All landscaping should be mindful of the Bush Fires Act and FESA requirements and
- a) Encourage the retention and replacement of peppermint trees. Appropriate methods of pruning the peppermints should be established according to specialist advice to maintain the canopy of shade that is an important characteristic of the place. The lopping of peppermint back to stumps should be prohibited.
 - b) Encourage the retention and maintenance of lawned verges and yards.
 - c) The planting of species that are exotic to the precinct in the front yards and visible side setbacks should be discouraged.
 - d) Retain the small pockets of indigenous plants that remain on the verges.
 - e) The areas of native vegetation that surround the precinct should be conserved and reinstated where possible.

7.0 STREETSCAPE

- 7.1 Important elements in the streetscape are:
- the single lane unsealed roadways that often curve around the peppermints,
 - the variety of set backs, to front, sides and rear, creating an informality to the streetscape,
 - the small plot ratio of most of the buildings which leave plenty of space between buildings,
 - the absence of driveways and paths,
 - the absence of kerbs and stormwater drains,
 - the absence of visually intrusive service elements such as sewer manholes, pits and meters,

- the minimal presence of other elements such as letter boxes,
- the absence of street lights,
- the absence of signs other than street signs although house names are often mounted on houses,
- the minimal use of fencing; any fences that do exist are usually of low visual impact. Often rear and side boundaries are not fenced.

7.2 **Roads**

Retain the form of the single lane road width and create a curved form of road plan in the streets where the roadway is not curved. Retain the gravel surface of the roads and if through traffic is discouraged from First Avenue, consider reinstating First avenue roadway to match the other roads in the precinct.

7.3 **Intrusive Elements**

Elements that have been identified as intrusive should be removed or replaced if the opportunity arises. These include the power poles, super six fences, large garages and sheds to the front of the lots, decromastic and concrete roof tiles, brickwork and over height antennae.

7.4 **Service Elements**

The installation of visually intrusive service elements such as sewer manholes and drains should be discouraged.

7.5 **Other Elements**

Other elements such as kerbs, and letter boxes should be discouraged.

7.6 **Signs**

The erection of signs other than street names should not be allowed. (House names mounted on the front walls of the houses are a feature of the precinct and it is recommended that these be permitted.)

7.7 **Fencing**

There are very few fences, particularly front fences, and this allows the verges and front lawns to sweep between the houses, giving a feeling of space and a relaxed atmosphere. Discourage the erection of fences. There should be no solid fences. Do not allow fences to be constructed in front of the dwellings. Any fencing should be set back from the front facades by one metre. Any fencing that is constructed should be “open” mesh type fences similar to the predominant style of fences existing in the precinct.

7.8 **Paving**

(See 5.7)

7.9 **Stormwater Drainage.**

Ensure that stormwater is directed away from the precinct with minimal visual intrusion to the precinct.

7.10 **Vehicular Access and Car Parking**

Most of the roads in the precinct are single lane gravel roads. These appear to be adequate and should be retained. There are very few driveways. Cars park in carports where these have been constructed, on the grassed lawns on the lots, and on the front verge. This works reasonably well. If the houses are to be occupied permanently, the provision of driveways may become a requirement, and if so, a surface that is appropriate should be used. Suggestions of appropriate surfaces include red gravel to match the existing roads, limestone gravel or other appropriate surface. Brick paving or grey/black bitumen is not considered appropriate.

7.11 **Power Supply**

The current electricity supply comes from overhead power lines that are supported on timber poles, and concrete poles. This is considered intrusive to the precinct, and should be replaced with underground power. Replace the present overhead power lines and poles and introduce underground power.

7.12 **Other Services**

It is likely that reticulated water and sewage will be introduced to the precinct. Services should be provided to the precinct with as little damage to significant fabric as possible. Care should be taken that introduced elements such as service pits and manholes etc are installed with minimal visual intrusion. The placement of the sewer should be given consideration whether to have the intrusive elements of the manholes in the road reserve where they will have maximum visual impact, or to set the sewer at the rear of the lots where significant fabric may be lost to enable the sewer line to be set in place.

7.13 **Electronic Equipment**

There are a number of over height antennae to the houses which are visually intrusive elements. A recently erected TV receiver means these over height TV antennae are no longer be required. The smaller antennae will still be required, however in the long term if technology allows for a system where TV antennae are no longer required, it would be preferable to remove the smaller antennae.

Radio antennae will still be required in the short term until technology is introduced that makes radio antennae obsolete.

If the community perceive the need for a mobile phone transmitting tower, this should also be located outside the precinct.

If satellite dishes are to be introduced to the precinct, this should also be done in a way that minimises visual intrusion.

7.14 **Street Lighting to the Precinct**

There is no street lighting in the precinct, and the community is keen that it not be introduced to the precinct. If street lighting becomes a requirement, it should be introduced to the precinct in a way that is appropriate to the cultural heritage significance of the precinct.

7.16 Carpark and Shop

The carpark to the north of the shop is part of the “entrance” to the precinct. Enhance the carpark and area around the shop to be more appropriate to the heritage value of the precinct.

8.0 DEVELOPMENT APPLICATIONS

8.1 All proposals to alter or renovate buildings/structures or erect new structures within the area covered by this Policy will require the submission of an application for planning consent as is the normal practice.

8.2 Applications in this area will need to show these development guidelines are being adhered to.

Adopted on 27th April, 2004 in accordance with clause 8.2 of Town Planning Scheme No. 3.



8.5.2 PEACEFUL BAY LEASEHOLD – LEGAL ADVICE

File Ref:	A3104
Applicant / Proponent:	Various
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	7 December 2011
Author:	Dale Stewart, Chief Executive Officer
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	<p>8.5.2 a) - August 2012 – report to Council including Attachments</p> <ul style="list-style-type: none"> • Extract from Council Minutes 28 June 2011 • Letter to McLeods dated 7 July 2011 • Standard 'blank' Lease to 30 June 2031 • Advice from McLeods dated 30 May 2012 <p>8.5.2 b) - Letter sent to Leaseholders dated 28 August 2012</p> <p>8.5.2 c) - Submissions received</p> <p>8.5.2 d) – File Note dated 24 October 2012 and Attachments</p> <ul style="list-style-type: none"> • Advice from Talbot Olivier Lawyers • Letter from Shire of Denmark dated 3 April 2003 • Standard 'blank' Lease to 30 June 2010 <p>8.5.2 e) – Local Planning Policy No. 35</p> <p>8.5.2 f) – Extract from the Municipal Heritage Inventory</p>

Summary:

This report considers submissions received from an advertising process in relation to legal matters pertaining to the Leaseholders at Peaceful Bay.

Background:

In August 2012 Council considered a report relating to legal advice which had been received from Council's Solicitors (refer Attachment 8.5.2 a). The legal advice pertained to a number of complex issues surrounding the leasehold area at Peaceful Bay and in particular the obligations of the lessees and the lessor (Council) and particularly regarding the 'demised premises' compared to the 'fixtures' or 'landlords fixtures' and who owned those.

On the 14 August 2012 Council resolved the following;

Resolution No. 040812

"That Council with respect to the leasehold properties at Peaceful Bay provide a copy of the legal advice to all leaseholders and the Peaceful Bay Progress Association Inc. for information as to the responsibilities of lessees to ensure that properties are maintained in reasonable condition noting that lessees are liable for any injury or damage caused by any failure of the lessee to maintain the premises in a reasonable and safe condition."

Resolution No. 050812

"That Council with respect to the leasehold properties at Peaceful Bay create the following new Council Policy that states that "That as well as considering the intent of the Peaceful Bay Heritage Precinct Conservation Planning Policy, it considers the advice of its solicitors dated 30 May 2012 regarding;

- *Criteria that might guide Council in supporting or refusing applications for demolition of a Peaceful Bay leasehold property; and*
- *The requirement to inspect all properties for maintenance in preserving the integrity and safety of the properties prior to consideration of a renewal of lease or request for consideration of full-time occupancy, together with the introduction of an inspection fee".*

The above Policy has been included in Council's Policy Manual – refer Policy P100610.

Resolution No. 070812

“That Council with respect to the leasehold properties at Peaceful Bay advise the Peaceful Bay Progress Association Inc. and lessees that it intends to create a new Council Policy that states that “Prior to obtaining the approval of the owner (the Council as lessor), to proposed significant improvements to a Peaceful Bay Holiday Cottage leasehold property and/or the construction of a new dwelling on that leasehold property, the lessee must provide written confirmation that they agree that the improvements / new building proposed to be the subject of a planning consent application, remains the property of the Shire at the end of the lease.” and seek comment from interested persons to the proposed policy, closing on the 30 September 2012.”

Resolution No. 080812

“That Council with respect to the leasehold properties at Peaceful Bay Council not undertake annual inspections of leasehold properties at this time due to financial constraints and rely on inspection of such properties on assignment or request for consideration of full-time occupancy pursuant to existing Council Policy or when undertaking other required inspections (eg. final inspections in relation to building permits).”

Letters were sent to the all Peaceful Bay Leaseholders and the Peaceful Bay Progress Association on 28 August 2012 particularly with respect to resolution 070812 – the draft policy that purports to advise new & current lessees that undertake renovation that the building improvements become the property of the Council.

Public Notices were published in the Walpole Weekly, in the Denmark Bulletin, on Council's Notice Boards and Council's website.

Comment:

The closing date for submissions was initially 30 September 2012 however following a number of requests, the closing date was extended to 30 November 2012, to provide submitters enough time to review the resolutions and, some, to seek their own legal advice (namely the Peaceful Bay Progress Association on behalf of its members).

42 submissions were received and are attached at Attachment 8.5.2 c) (including four requests for an extension to the closing date submissions).

They all essentially refer to the belief that they all signed the leases as per the expectation that the buildings remained with the lessee, and should remain so, despite the wording of the current lease. Many other questions are asked in the submissions including whether the Council will pick up 'maintenance', insurance etc.. if the Council was the owner of the building. The submitters will all be answered individually with their questions, but the inherent request in all of them is to revert to the effect of the previous lease (expiry date 30 June 2010) clause that inferred the building was the property of the lessee (and should be removed at the end of term).

Some of the questions included;

Question: Does the rent of the land include the buildings?

Answer: No – the valuation of the demised premises specifically only values the use of the land.

Question: Does that mean that the insurance and maintenance now falls on the Council?

Answer: No – the lease specifically places this obligation onto the lessee who has 'enjoyment' and use of the cottage.

In essence, the difference (with respect to the deemed ownership of the demised property today compared to the expectations and views of the lessees) can be best summarised by the wording in the lease that applied to all of the properties expiring on 30 June 2010 compared to that which exists now, expiring on 30 June 2031.

The current lease states in clause 14.02, that;

“14.02 Lessee's Obligation to Remove Fittings

The Lessee shall within FOURTEEN (14) days after the expiration of the Term or immediately prior thereto remove from the Demised Premises all the Lessee's fixtures and fittings and improvements which are erected or installed on the Demised Premises unless consent for such fixture fittings or improvements to remain on the Demised Premises is obtained from the Lessor and the Lessee shall make good to the satisfaction of the Lessor all damage caused to the Demised Premises by the removal.”

Whereas the immediately preceding lease stated at clause (y);

“At the expiry or sooner determination of the term peaceable and quietly to deliver up possession of the demised premises and to remove any buildings constructed by the lessee and any tenants fixtures and fittings belonging thereto and shall make good any damage caused to the demised premises in doing so.”

Clearly the former referred to removing any buildings erected by the lessee whereas the latter refers to lessees fixtures and fittings, to which the Council's, and Progress Association's lawyers have both concurred, is that courts would probably hold that this would not include removal of the dwelling (building), which can be purported (claimed) to be the Council's.

Certainly it can be readily stated that the leaseholders, up to 2010 at least, believed that they had to remove the buildings of the demises premises were ever 'yielded up'.

Statutory Obligations:

The legal advice from both Council's solicitors (McLeod's) and that of the Peaceful bay Progress Association (Talbot Olivier) are attached as appendices (refer Attachment 8.5.2 a) and Attachment 8.5.2 d) and supports the same advice – that is that the cottages are considered to be the property of the Shire pursuant to the lease.

The advice from the Progress Association also suggests that the Shire should be asked to resolve that, notwithstanding the advice that at law the buildings could be claimed to the property of the Council, the Council should acknowledge that the cottages are the tenant's property and seek an amendment to each lease in this regard, particularly that the rental assessment should be on the basis of the land and not the buildings.

Policy Implications:

All leasehold properties in the original Peaceful Bay leasehold settlement consisting of First Avenue to Fourth Avenue and from East Avenue to West Avenue are covered by the Shire of Denmark Local Planning Policy (LPP) Number 35, Peaceful Bay Conservation Plan Development Guidelines, adopted by Council on 27 April 2004 following the normal advertising process.

The aims of the Guideline are to;

- *To protect and enhance the unique special character of the Peaceful Bay original leasehold settlement as a relaxed, informal, low key holiday location.*
- *To provide guidance to both Council and leaseholders as to appropriate forms of development to ensure the character is maintained.*

The objectives of the Guidelines are to;

“To ensure that any future development is in keeping with the heritage value of the precinct. Development includes any alteration or addition to any of the existing buildings.

Peaceful Bay Heritage Precinct is classified in the Shire of Denmark town Planning Scheme as a “Place of Heritage Value”. These guidelines are intended as a planning tool to control inappropriate development or alteration of the elements within the precinct. The Shire of Denmark is responsible for managing alteration and development within the precinct, and is committed to adopting a commonsense approach to meeting the requirements of individual owners who wish to maintain and upgrade their houses.

This document is not intended to control any internal works unless they impact on the external fabric.”

The subject land comprises some 163 houses constructed mostly between 1959 and 1965.

The Heritage values of the precinct are recognised by the community and wider community and indeed the State Heritage Council has the site on its interim State Heritage register (it has done so since at least 2007).

The precinct is listed as a “Place of Heritage Value” on the Shire of Denmark Town Planning Scheme No. 3 and also in the Council’s Municipal Heritage Inventory, category “exceptional” (refer Attachment 8.5.2 f)).

“The place should be retained and conserved unless there is no feasible and prudent alternative to doing so”. “Any alterations or extensions should reinforce the significance of the place, and be in accordance with a Conservation Plan (if one exists for the place)”.

Clause 4.5.1 of the LPP states “Retention – Most of the houses have been classified in the Peaceful Bay Conservation Plan as having some cultural heritage significance, apart from No. 79, which is constructed of brick. There should be no demolition or removal of any of the original sections of buildings that are classified as having some cultural heritage significance.”

Council on 27 May 2003 resolved to adopt the Peaceful Bay Heritage Precinct Conservation Plan (as amended) (refer Attachment 8.5.2 e)) and at the same time resolved to request staff to start preparing a draft Local Planning Policy with respect to Heritage Guidelines as recommended by the Conservation Plan.

Nothing in the strategic implications section of the report at the time, nor in the actual Conservation Plan itself, highlighted the inconsistency of the lease clause requiring removal of the cottage by the lessees at the end of term (lease) however there is a reference to a policy that says; “*Any new lease or transfer of title should incorporate the policies of this Conservation Plan*”. In effect that is what has happened, albeit perhaps without conscious effort (?) by the new lease removing reference to removing the buildings at the end of the term.

Interestingly, the Progress Association and submitters at the time, supported the effect and aims of the Conservation Plan – noting that there was no reference to any inconsistency within the lease to the aims of the Plan (which in the authors view there should have been in hindsight).

Budget / Financial Implications:

Were Council to require the amendment of the leases for all 203 properties (by 4 copies), there would be a significant administrative task and an estimated \$2,000 in government costs involved.

Strategic Implications:

The Peaceful Bay Heritage Precinct Conservation Plan states the entire Peaceful Bay Heritage Precinct is considered to be a zone of considerable significance, with the intention being to protect and enhance the unique special character of the Peaceful Bay original leasehold settlement as a relaxed, informal, low key holiday location.

The strategic question here is does the lease give the absolute right of the lessee to remove the buildings (the cottage - being the improvements) at the end of term as the 'owner' of the improvements? If the answer is yes – then does it call into question the intent of the Conservation Plan and Local Planning Policy that purports to ensure the continuity of the Peaceful Bay Conservation Heritage Precinct that has a presumption against demolition in favour of preservation and thus is there the potential for conflict between the intents of these two 'planning documents' and the rights of the lessee to remove the improvements?

From our solicitor's response, the simple answer is no – as the demised premises includes the buildings. So, the problem lies in that the new lease clause purports to uphold the intent of the conservation of the precinct – the buildings can be purported to be the property of the Council and lie with the landowner (the Council on behalf of the State). The problem is not that documents are in conflict (they are not) it lies in the belief of many of the leaseholders that the demised premises was the land and not the cottage (buildings).

The dilemma is, does or will the Council acknowledge that the leases were signed (203) in error by any, if not all, of the signatories (lessees) and concede and offer a letter of variation to attach to the lease to this effect? or does it stand by the adopted Conservation Plan and Local Planning Policy and Municipal Heritage Inventory (Council's Strategic guiding documents with to the leasehold property) that acknowledges the heritage value of the buildings intrinsically forming the character of the 'place'?

Arguably to concur with the former (changing the lease) calls into question the Council's and community's valuing of the heritage of the precinct and suggests that the Council does not believe that there is any heritage of value and that the guiding document should be repealed. The hypothetical question is; will the leases ever change status? Will in 10, 15 or 30 years' time they be 'terminated' by the Council and or the Government, whether it be due to climate change and rising sea levels, or health or infrastructure issues? The essence of the planning documents suggests that the buildings will retain their character and be 'maintained' in their current style. As long as the Council continues to 'lease' to the current lessee, the argument of value of the ownership of the building should not be an issue? Unless of course the Council resolved to attempt to convert to freehold or strata holder (with Government approval) and the properties are offered for sale with 'first rights' to the current lessee? Is the land sold with or without the buildings?

It is widely acknowledged that the Council and Lessees have a risk of the Government of the day (in 2031) not agreeing to another extension of lease for various reasons such as sea level rise, asbestos, government's view of the use of recreation land or indeed environmental or public health concerns (water & ground water).

It is generally acknowledged that a long term solution would indeed be to seek conversion of the leasehold to a more secure form of tenure such as strata or freehold. To achieve this would require investment in infrastructure such as effluent disposal, water, power and roads.

A potential officer recommendation could be;

That the Council defer further consideration of the issues associated with the implications of the lease documents purporting to place ownership of the buildings in the Shire until such time as the Council has considered a discussion paper on the merits of converting the leasehold properties to strata or freehold which is to be prepared in conjunction with representatives of the Peaceful Bay Progress Association as a Working Group.

It should be noted that any conversion to a more secure form of tenure for the leaseholders would probably require the following elements to be addressed;

- An in perpetuity dividend to ratepayers;
- Transition issues associated with finance of the infrastructure as well as the acquisition by leaseholders;
- A dividend to the environment (infrastructure);
- A dividend to the lessees (tenure, health and occupancy, permanency rights);
- A dividend to the community (civic infrastructure such as a community hall); and;
- A dividend to the State (acquisition price and improved management of the reserve in its new tenure).

The question of who owned the buildings under that scenario would be a moot point – they would be owned the landowner (the former lessee) and be bound by the Council's adopted heritage guidelines and local planning policies.

Sustainability Implications:

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation.

➤ **Economic:**

The heritage values of the Peaceful Bay Heritage Precinct contribute to the reasons why residents and holiday makers live or visit the seaside community.

➤ **Social:**

The heritage values of the Peaceful Bay Heritage Precinct are recognised by the community of the precinct and by the wider community. The effect any decision will be echoed by the majority if not all of the leaseholders (203).

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.5.2

That with respect to the Peaceful Bay Holiday Cottages on Reserve 24510, Peaceful Bay, Council defer further consideration of the issues associated with the implications of the lease documents purporting to place ownership of the buildings in the Shire until such time as the Council has considered a discussion paper on the merits of converting the leasehold properties to strata or freehold which is to be prepared in conjunction with representatives of the Peaceful Bay Progress Association as a Working Group.

COUNCIL RESOLUTION

ITEM 8.5.2

MOVED: CR SEENEY

SECONDED: CR MARSHALL

That with respect to the Peaceful Bay Holiday Cottages on Reserve 24510, Peaceful Bay, Council;

1. Defer further consideration of the issues associated with the implications of the lease documents placing ownership of the buildings with the Shire until such time as the Council has considered a discussion paper on the merits of converting the leasehold properties to strata or freehold which is to be prepared in conjunction with representatives of the Peaceful Bay Progress Association as a Working Group;
2. Request that the Discussion Paper be referred back to Council by end of July 2013;
3. Appoint Cr Gillies, Cr Seeney, as Council's delegates, and the Chief Executive Officer to the Working Group once it is formed.

CARRIED: 10/2

Res: 110113

Cr Morrell requested that his vote against the motion be recorded.

REASONS FOR CHANGE

Council added parts 2 & 3 to clarify the establishment of the Working Group, appoint Council representatives and provide a timeframe for such.