

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**SPECIAL MEETING OF COUNCIL
HELD IN THE
COUNCIL CHAMBERS, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
7.00 PM, MONDAY, 06 FEBRUARY, 2006**

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7.00pm.

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)**Elected Members**

Mayor Kevin Morgan
Cr Arthur Furlong
Cr Peter Jeanes
Cr Bryan Miller
Cr Patricia Carmichael
Cr Jo Dawkins
Cr Jack Walsh
Cr John Utting
Cr Victor Strzina

Officers

Mr Stephen Tindale	Chief Executive Officer
Ms Georgina Cooper	Planning Services Secretary
Mr Andrew Jackson	Manager Development Services

Apologies

Cr Ian Woodhill
Cr Daniel Cunningham

3 PUBLIC QUESTION TIME**Tim Moore, 9 Clarendon Street – Council Depot Site**

Has concerns regarding the community consultation process and the comments raised in Estill report. The main issues raised by concerned ratepayers over this matter were density and building height. Requests that Council retain the R20 zoning.

Mayor advised Mr Moore that Council is looking at the concerns raised by the neighbours and will endeavour to take them on board.

Katrina Burton, 3 Nailsworth Street – Council Depot Site

Optimistic that the site can be developed. If the quarry is filled to the original unexcavated level why can't the height limit of the residences be limited to 8.5m?

The Manager, Development Services advised that Council should retain discretion over the determination of the finished level of the site as an arbitrary

decision now could severely limit a good development outcome. This matter needs further investigation. Two storey height limits will apply to all residences and the depot is no exception.

Graham Dowland, 11 Clarendon Street – Council Depot Site

Why isn't Council retaining R20 zoning until all the levels of the site are created and proper consultation of the adjoining neighbours before an increase in density is carried out?

Mayor advised that a proper structure planning process will apply and Council may decide to retain the R20 density coding and after consultation with the public go down the path of a town planning scheme amendment process.

4 APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

5 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

5.1 Suspension of Standing Order 12.1

Moved Mayor Morgan, seconded Cr Strzina

That Council dispense with Standing Order 12.1 which requires that Councillors addressing the meeting are required to stand.

Carried by Absolute Majority 9/0

6 PUBLIC STATEMENT TIME

Mr Peter Utting, 28 John Street – John Street Café

If the café is changed from a non-conforming use to a restricted use will it benefit the owners of the café?

The Mayor responded by saying that while the existence of the café is seen as enhancing the overall amenity of the town, Council does appreciate the impact of the café on neighbours. Nonetheless Council's preference is to formalise non-conforming uses.

Mr David Prosser, 32 John Street – John Street Café

If the café was to gain a liquor licence and expand the hours of operation this would cause major problems to adjoining neighbours and decrease the value of surrounding properties. There are continuing problems with parking at the café and the owners should be made to comply with Council's parking requirements.

Pamela O'Reilly, 31 John Street – John Street Café

The only time residents have peace and quiet is in the evening when the café is not open and requests that this remain.

7 PETITIONS/DEPUTATIONS/PRESENTATIONS**7.1 COUNCIL DEPOT SITE PETITION****SUMMARY**

In response to a petition received by Council on the 30th January 2006, it is recommended that the petitioners be thanked for their input and advised of the position adopted by Council with respect to the depot site.

BACKGROUND

At the Special Council meeting held on 30th January 2006, Councillor Jack Walsh presented a petition bearing the names of 87 ratepayers/residents/members of the community. A copy of the petition is attached.

The petition requests an amendment to the draft scheme in respect of the Council depot site namely that;

- The housing density be no greater than R20;
- Existing natural ground levels to be used as a basis of calculation of building height; and
- A maximum building height of 8.5 metres.

At the Special Council meeting held on 30th January 2006 it was resolved;

That the petition be accepted and dealt with by the full Council.

CONSULTATION

N/A.

STAFF COMMENT

The matter of the depot site is to be the subject of further consideration at this meeting and/or the Special Council meeting planned for the 21st February 2006.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

VOTING

Absolute Majority

7.1 OFFICER & COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Carmichael

That the petitioners be thanked for their input and advised of the position adopted by Council with respect to the depot site.

Carried by Absolute Majority 8/1

Cr Utting is recorded as having voted against the motion.

8 REPORTS OF COMMITTEES AND OFFICERS**8.1 CHIEF EXECUTIVE OFFICER****8.1.1 LOCAL GOVERNMENT ADVISORY BOARD - SURVEY DOCUMENT**

File No: X11.9
Author: Mr Stephen Tindale
Author Disclosure of Interest: Nil
Report Date: 23 January, 2006
Senior Officer: Mr Stephen Tindale

SUMMARY

In early December 2005 the Local Government Advisory Board (LGAB) sent a survey document to the Town of Cottesloe seeking a response to the survey by the 23rd December 2005.

The CEO advised the LGAB that the survey had arrived too late for consideration at the December round of meetings and sought an extension of time for a response to the survey.

An extension has been granted and Council is now asked to consider a draft response to the survey.

BACKGROUND

The following documents are attached to this agenda:

1. LGAB's covering letter to the survey document.
2. CEO's response of 8th December 2005.
3. LGAB's response granting an extension of time.
4. A draft survey response.
5. Correspondence from WALGA dated 21st December 2005.

CONSULTATION

N/A.

STAFF COMMENT

By his public utterances, the former Minister for Local Government (John Bowler) has made it quite plain that he can see no compelling argument for the continuation of existing local governments in the Western Suburbs. On that basis and given the very short time frame for the review, one could speculate that the outcomes of the review have already been predetermined.

Regardless of this, the time set aside for the review is impossibly short and it would seem that the LGAB is now desperately trying to make the best of a bad situation by way of an eleventh-hour request for more information.

Further evidence of LGAB's ad hoc and poorly timed approach to the review is recent advice (dated 10th January 2006) from the LGAB advising that it has commissioned Mr Ron Back to provide an analysis of the financial position of local governments in WA and seeking the cooperation of local government staff in this regard.

As elected members will recall, the need for such an analysis was stressed in Council's earlier submission to the LGAB.

Given the very short time for reporting to the Minister, the financial analysis is bound to be somewhat superficial and open to challenge given significant differences between local governments in the way assets are accounted for.

Council's position is confirmed by correspondence from WALGA (see attachments) that confirms that "...there is a compelling need for a more sophisticated research study to be commissioned in Western Australia to inform government on the adequacy of Local Government resources and practices ..."

Insofar as the current request for a response to the LGAB survey is concerned, it can be seen by the accompanying documentation that the LGAB has provided very little context for the survey. Naturally the Town of Cottesloe should be sceptical of the survey and the use to which the Town of Cottesloe's response will be put.

Nonetheless the LGAB has been given a task by the State Government to report on the structural and electoral reform of local government. It would be churlish of the Town of Cottesloe not to respond notwithstanding the failings of the current review.

Of all the questions in the survey, Q17 is the most subjective. Council feedback on the draft survey response in general, and Q17 in particular, is requested.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

VOTING

Absolute Majority

8.1.1 OFFICER & COUNCIL RESOLUTION

Moved Cr Strzina, seconded Cr Dawkins

That Council submit the draft survey response to the Local Government Advisory Board as amended.

Carried by Absolute Majority 9/0

8.2 MANAGER DEVELOPMENT SERVICES

8.2.1 DRAFT TOWN PLANNING SCHEME NO. 3 – CHANGES TO SCHEME TEXT

File No: D2.5.3
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 2 February 2006
Senior Officer: Mr Stephen Tindale

INTRODUCTION

This report presents changes to the scheme text for draft Town Planning Scheme No. 3 (TPS3). It follows consideration by officers and Councillors of comments received on the scheme proposals from the community, legal advisors, Department for Planning & Infrastructure (DPI) officers and other inputs.

It builds on decision-making at the Special Council Meeting of 30 January 2006 which focussed on scheme map changes and gave direction to scheme text changes. The schedule of submissions, comments and recommendations for that meeting should be referred to as background.

The recommendations are articulated in tables at the end of this report.

All aspects of the draft scheme text not commented on in feedback or otherwise raised have been adopted by Council and will continue for the purpose of lodgement and statutory advertising.

For convenience an updated copy of the Scheme Map following the last special council meeting on the scheme is also attached.

CONSULTATION

This report relates to consultation with the community, legal advisors and the DPI in formulating draft TPS3.

PRELIMINARY ADVICE FROM DPI

- The draft scheme as adopted by Council in December 2005 was provided to DPI officers for informal feedback, to facilitate formulation of the final draft and its assessment after lodgement.
- Their comments included:
 - The draft scheme text, in reflecting the format of the Model Scheme Text (MST), is by-and-large acceptable, however, all departures should be explained / justified and the wording should wherever possible follow the MST.
 - They have provided a marked-up copy of the draft scheme text to assist in vetting it against the MST and identifying where the rationale for the scheme proposals / MST departures is required, plus where technical refinement is suggested and editorial corrections are identified.
 - Residential densities will need to be explained in terms of changes from the current scheme, consistency with lot sizes, any minor down-coding

- (eg Clive Rd), split-coding), and opportunities for increased density in accordance with *Network City* planning objectives.
- The height regime and provisions are considered acceptable in principle, subject to the approach and variation from the MST being explained.
 - The legalistic and technical aspects of a number of provisions have been raised for improvement (with some parallels with the advice from the Town's solicitors).
 - The Local Planning Strategy (LPS) will be useful background to the draft scheme when it is assessed.
 - The WAPC and Minister will have limited interest in local planning policies or design guidelines for the purpose of assessing the draft scheme, unless of strategic significance or dealing with key aspects.
- Note that the DPI officers provide technical advice only and that it is the *Western Australian Planning Commission* and *Minister for Planning & Infrastructure* who have decision-making authority on the form and content of town planning schemes.

Legal Advice

- The draft scheme as adopted by Council in December 2005 was also provided to solicitors for the Town for legal examination and advice, again to facilitate formulation and assessment of the final draft. They have provided a marked-up version of the draft scheme text to convey suggested changes.
- The task for the Town's Planners has been to examine and incorporate this advice in the same manner as the feedback from the DPI.
- In summary the advice includes:
 - "Physical development" and "use" terminology – this aspect of the draft scheme text needs to be tidied-up (as also identified by the DPI).
 - Local reserves and compensation – this aspect requires further legal input to address the matter.
 - Objectives of Hotel Zone – these require streamlining and tightening.
 - Permitted changes of use – this aspect requires streamlining and tightening (as also identified by the DPI).
 - Uses not listed – this aspect requires streamlining and tightening.
 - Non-conforming uses – this aspect requires streamlining and tightening (as also identified by the DPI).
 - R-Code density standard clause – a technical query is mentioned (which has been resolved).
 - Special application of R-Codes – improvements are suggested to better fit with other components of the scheme text.
 - Variations to development requirements – improvement of these provisions is required to ensure the scheme operates effectively and does not have unforeseen implications (as similarly supported by the DPI).
 - Building height – likewise, improvement of these provisions is required to ensure the scheme operates effectively and does not have unforeseen implications (as similarly supported by the DPI).

- Other development standards relating to the beachfront hotel sites – it is noted that changes from Town Planning Scheme No. 2 (TPS2) may be of consequence here.
 - Variations for heritage – it is noted that changes from TPS2 and these provisions generally may be of consequence regarding decisions on heritage-related proposals (the DPI has also commented on this section of the draft scheme text).
 - Development not requiring approval – the solicitors have noted that some departures from the MST are proposed (as has the DPI).
 - Revoking an approval – the advice supports the departure from the MST (which the DPI also supports subject to explanation).
 - Unauthorised existing developments – improvement over the MST is suggested.
 - Advertising of applications – technical improvement suggested.
 - Matters to be considered – structural improvement suggested.
 - Clauses cross-referencing – suggested to be checked.
- The task for the Town's Planners has been to review all of the above feedback to:
 - Make minor technical improvements to the format, wording and editing of the scheme text to assist the smooth passage of the draft scheme when lodged.
 - Recommend any changes of substance to Council.
 - Document and justify the final draft scheme.

DISCUSSION

The attached draft scheme text to date includes the marked-up changes as suggested by the solicitors so far, together with refinements from the DPI feedback and officer input. This includes some fine-tuning of the Zoning Table. Further changes to include Council determinations, additional legal advice adopted and technical improvements will be made. All other components will otherwise remain.

The objective is to submit a scheme that is in acceptable shape to Council, and which, subject to WAPC and Ministerial consideration, as well as ongoing deliberations by Council, may undergo additional modifications both prior to the statutory advertising period and subsequently in response to submissions.

Decisions on the content of the final draft scheme for lodgement are now required in order to complete the documentation.

It is necessary to first adopt changes to be made and later the final draft scheme as a whole.

POLICY IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

VOTING

Absolute Majority

OFFICER RECOMMENDATION

That Council notes this report on improvements to the draft scheme text and adopts the recommendations set out in the following tables as well as the other changes indicated in draft scheme text document produced to date.

TPS3 – RECOMMENDED CHANGES TO SCHEME TEXT – 6 FEB 06**Note:**

- *This schedule is based on those previously provided listing scheme map and text changes.*
- *The accepted scheme map and text items have been deleted, but the rows (now blank) and numbering have been retained, so that the remaining items have their previous numbers for ease of reference.*
- *This schedule now specifies as far as possible the actual content for these recommended changes to the scheme text (and scheme map where related).*

SUBJECT	RECOMMENDATIONS
Zones	
1. <u>Council Depot site – change to Special Development Zone B with a residential density of R30/40.</u>	<p>Recommendation:</p> <p>That the following aspects be specified as provisions in the scheme text to more closely guide this special development zone:</p> <p><u>Structure planning</u> – include a provision for structure plans to undergo a consultation procedure as set out in the scheme for making policies.</p> <p><u>Land use</u> – in undertaking structure planning for Special Development Zone B, the local government shall include consideration of the potential for aged persons housing and local open space.</p> <p><u>Density</u> – the granting of development approval by the local government at a residential density greater than R30 but not greater than R40, shall be subject to the local government being satisfied that the proposal meets the objectives for the special development zone, is consistent with the adopted structure plan for the special development zone, and is compatible with the functioning, character and amenity of the site and surrounding locality.</p> <p><u>Height</u> – in applying the height provisions of the scheme to Special Development Zone B, the local government shall as part of the structure planning process determine a finished ground level for development of the site which shall be taken as the natural ground level.</p> <p><u>Access, circulation and parking</u> – in undertaking structure planning for Special Development Zone B, the</p>

		<i>local government shall include consideration of all modes of access, circulation and parking having regard to the functioning, character and amenity of the site and surrounding locality.</i>
2.	-	-
3.	-	-
4.	Old Fire Station, corner Stirling Highway and Congdon Street – change from Residential R60 to Residential Office R60.	<u>Recommendation:</u> That instead of a Residential Office R60 zoning, a Residential R60 zoning with an Additional Use: Office classification be applied to this land, as indicated in the attached extract of Schedule 2 – Additional Uses.
5.	Tukurua and Le Fanu sites, corner Rosendo and Salvado Streets and Marine Parade – add Special Control Area boundary.	<u>Recommendations:</u> 1. That in Part 6 – Special control areas, the reference to “existing heritage buildings” be clarified by inclusion of the following: <i>In this Part “existing heritage buildings” means those buildings or structures contained within any heritage-listed place included within the special control area.</i> 2. That the reference to taking into account any advice from the HCWA remains as a relevant consideration and mechanism.
6.	Additional Use sites – provide for the following Additional Use sites: a) Corner North and Elizabeth Streets (shop). b) Corner Grant and Marmion Streets (shop and office). c) Corner Burt and Railway Streets (liquor store). d) 37 John Street (café). e) Corner Forrest and Marmion Streets (florist).	<u>Recommendations:</u> 1. That the office adjacent to the liquor store on the corner of Burt and Railway Streets, and the office approved on the corner of Curtin Avenue and Florence Street, be included in Schedule 2 – Additional Uses, as indicated in the attached extract. 2. That for 37 John Street (John Street Café) the conditions in Schedule 2 – Additional Uses be one of the two options as indicated in the attached extract (Council to determine).
Reserves		
7.	-	-
8.	-	-
9.	-	-
10.	-	-
Residential Density		
11.	-	-
12.	-	-
13.	-	-
14.	Foreshore Centre Zone, Marine Parade – add R60/100.	<u>Recommendation:</u> That Council notes that “comprehensive planning” as referred in the scheme text relies on its ordinary meaning in the planning sense.

15.	-	-
16.	Clive Road development area – <u>change from R60 to R50.</u>	<p><u>Recommendation:</u></p> <p>That the details of adopted TPS2 Amendment 39 be included in TPS3 as appropriate to reflect the following:</p> <p><i>Reclassifying Lots 10 and 120 Clive Road, Cottesloe, from “Public Purposes” to “Residential R50” zoning, specifically by:</i></p> <p>(1) <i>Amending the Scheme Map to transfer Lots 10 and 120 Clive Road, Cottesloe, from the Public Purposes: Commonwealth Government Reserve to the Residential Zone with a density coding of R50.</i></p> <p>(2) <i>Amending Clause 5.2.2(e) of the Scheme Text to read:</i></p> <p><i>With respect to development in any of the zones listed under Clause 3.4 of the Scheme, specific exemptions/concessions or prescribed development requirements may apply to the sites listed in Schedule 5 of the Scheme.</i></p> <p>(3) <i>Amending Schedule 5: Special Provisions of the Scheme Test to provide for not only existing Column 2: Exemptions / Concessions that May be Granted by Council, but also a new Column 3: Prescribed Development Requirements that sets out particulars to be achieved by a development proposal.</i></p> <p>(4) <i>Amending Schedule 5 by listing the subject land in Column 1 and in new Column 3 listing the following prescribed development requirements:</i></p> <p>(a) <i>The maximum number of dwellings permitted shall be 14 (representing a built density of R42).</i></p> <p>(b) <i>The dwellings shall comply with the height controls of the Scheme.</i></p> <p>(c) <i>The development shall be in accordance with the concept plans numbered A01 to A05 (all Revision E) submitted with the amendment, subject to any modification in a development approval by Council.</i></p>
17.	-	-
	Specific locations:	
18-24	-	-

Other		
25.	Height – general.	<p><u>Recommendation:</u></p> <p>That the improved structure and expression of the height provisions of the scheme be adopted, subject to any further refinements provided by legal advice presented in the final version of the scheme text.</p>
26.	Town Centre.	<p><u>Recommendation</u></p> <p>That in Table 2 – Development Requirements:</p> <ol style="list-style-type: none"> 1. The plot ratio figure for c) Remaining land, be amended from 1.0:1 to 1.15:1. 2. The height specification for b) Land with frontage to Napoleon Street, reads: <p><i>2 storey, provided that the second storey to the northern side of the street is set back to the satisfaction of the Council sufficient to avoid overshadowing of the footpath or alfresco areas on the southern side of the street.</i></p>
27.	-	-
28.	-	-
29.	Cottesloe Beach Chalets and Seapines.	Refer to 35. Serviced Units below.
30	-	-
31.	Local Centre Zone – Eric Street and Swanbourne.	<p><u>Recommendation:</u></p> <p>That in Table 2 – Development Requirements:</p> <ol style="list-style-type: none"> 1. The plot ratio specification be amended to read: <p><i>0.5, or as determined by Council up to 0.8, subject to appropriate upper floor setbacks, building design and landscaping.</i></p> 2. The site cover to read: <p><i>As determined by Council.</i></p> 3. The setbacks specification to read: <p><i>Nil to street frontages for first storey of premises and as determined by Council for all other setbacks at any level.</i></p>
32.	-	-
33.	-	-

34.	Setbacks.	<p><u>Recommendation:</u></p> <p>That the clause relating to R20 front setbacks in R30 areas includes criteria for the exercise of the discretion, as follows:</p> <p><i>Despite anything contained in the Residential Design Codes to the contrary, in the case of areas with a residential density code of R30, the local government may require an R20 front setback of 6m to be applied, for the preservation of streetscapes, view corridors and amenity.</i></p>
35.	Serviced Units.	<p><u>Recommendation:</u></p> <p>1. That in the scheme text a note be added explaining that commercial accommodation is excluded from residential density, as follows:</p> <p><i>Note: The Residential Design Codes density and development provisions do not apply to commercial accommodation (being for holiday or other non-residential purposes), including hotel, motel, serviced units or other types of commercial accommodation use, which is not contained within a dwelling.</i></p> <p>2. That the definition of “serviced units” reads as follows:</p> <p><i>“serviced units” means a building that is used or provided for holiday purposes or other short-stay accommodation and is available to the public at large, but does not include a dwelling, hotel, motel or residential building.</i></p>
36.	-	-
37.	-	-
38.	Parking.	<p><u>Recommendation:</u></p> <p>That for the use Motor Vehicle Repair and Service Station, the number of spaces required for each working bay be amended from 4 to 2.</p>
39.	-	-

<p>40.</p>	<p>Place of Public Assembly zone, corner of Edward and Gordon Streets.</p>	<p>Recommendation:</p> <p>That the details of TPS2 approved Amendment 40 be included in TPS3 as appropriate to reflect the following:</p> <p>(a) <i>Zoning No. 14 (Lots 50 & 51) Edward Street as Residential with a density coding of R20 and R25; and</i></p> <p>(b) <i>Including the following particulars relating to the site into an appropriate schedule of the scheme text:</i></p> <table border="1" data-bbox="815 602 1426 1426"> <thead> <tr> <th data-bbox="815 602 1023 725"> <p>Column 1 Particulars Of Land</p> </th> <th data-bbox="1023 602 1426 725"> <p>Column 2 Exemptions/Concessions That May Be Granted By The Council</p> </th> </tr> </thead> <tbody> <tr> <td data-bbox="815 725 1023 1426"> <p><i>No. 14 (Lots 50 & 51) Edward Street</i></p> </td> <td data-bbox="1023 725 1426 1426"> <p><i>Council will support subdivision of the property into three lots subject to:</i></p> <p><i>i. Subdivision of the land being generally consistent with the Concept Plan approved 'in principle' by the Council at its November 2005 meeting;</i></p> <p><i>ii. Retention and restoration of the main church building and that building being used for purposes consistent with Residential Zone.</i></p> </td> </tr> </tbody> </table>	<p>Column 1 Particulars Of Land</p>	<p>Column 2 Exemptions/Concessions That May Be Granted By The Council</p>	<p><i>No. 14 (Lots 50 & 51) Edward Street</i></p>	<p><i>Council will support subdivision of the property into three lots subject to:</i></p> <p><i>i. Subdivision of the land being generally consistent with the Concept Plan approved 'in principle' by the Council at its November 2005 meeting;</i></p> <p><i>ii. Retention and restoration of the main church building and that building being used for purposes consistent with Residential Zone.</i></p>
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<p><i>No. 14 (Lots 50 & 51) Edward Street</i></p>	<p><i>Council will support subdivision of the property into three lots subject to:</i></p> <p><i>i. Subdivision of the land being generally consistent with the Concept Plan approved 'in principle' by the Council at its November 2005 meeting;</i></p> <p><i>ii. Retention and restoration of the main church building and that building being used for purposes consistent with Residential Zone.</i></p>					

TPS3 – ADDITIONAL USES – RECOMMENDED CHANGES – 6 FEB 06

Note:

- *This extract of Schedule 2: Additional Uses shows the details for those additional uses to be altered or included.*

No.	Description of land	Additional use	Conditions
A1	37 John Street [Option 1]	Café	<p>1. Hours of operation</p> <p>Monday to Sunday 7.00am to 7.00pm.</p> <p>2. Size of premises</p> <p>Floor area for commercial use shall not exceed 220m² without the prior approval of the local government.</p> <p>3. Number of patrons</p> <p>No more than 30 patrons shall be provided for within the building, and 20 patrons within the outdoor eating area, without the prior approval of the local government.</p> <p>4. Amenity</p> <p>The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p>
A1	37 John Street [Option 2]	Café	<p>1. Hours of operation</p> <p>Monday to Sunday 7:00am to 7:00pm.</p> <p>2. Size of premises</p> <p>Floor area for commercial use shall not exceed 275m² without the prior approval of the local government.</p> <p>3. Number of patrons</p> <p>No more than 50 patrons shall be provided for within the building, and 30 patrons within the outdoor eating area, without the prior approval of the local government.</p> <p>4. Amenity</p> <p>The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p>

No.	Description of land	Additional use	Conditions
A5	259 Curtin Avenue	Office	<p>1. Hours of operation</p> <p>Monday to Friday 9.00am to 5.00pm.</p> <p>2. Size of premises</p> <p>Floor area for commercial use shall not exceed 187m2 without the prior approval of the local government.</p> <p>3. Permitted Number of employees:</p> <p>The number of persons involved in the operation of the business on these premises to be restricted to 4 persons.</p> <p>4. Amenity</p> <p>The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p>
A6	24 Railway Street	Shop and Office	<p>1. Size of premises</p> <p>Floor area for commercial use shall not exceed 265m2 without the prior approval of the local government.</p> <p>2. Loading facility</p> <p>a) Deliveries to the Liquor store are to be carried out in the loading bay located off Burt St.</p> <p>b) The loading bay and service area shall be kept free of any plant equipment, storage of goods or rubbish.</p> <p>3. Amenity</p> <p>The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p>
A7	441 Stirling Highway	Office	<p>1. Size of premises</p> <p>Floor area for office use shall not exceed 1050m2 without the prior approval of the local government.</p> <p>2. Amenity</p> <p>The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p>

The following items from the above table were withdrawn by elected members at the meeting for debate or the declaration of financial interests.

SUBJECT		OFFICER RECOMMENDATIONS
Zones		
6.	<p>Additional Use sites – provide for the following Additional Use sites:</p> <p>a) Corner North and Elizabeth Streets (shop).</p> <p>b) Corner Grant and Marmion Streets (shop and office).</p> <p>c) Corner Burt and Railway Streets (liquor store).</p> <p>d) 37 John Street (café).</p> <p>e) Corner Forrest and Marmion Streets (florist).</p>	<p>Recommendations:</p> <p>1. That the office adjacent to the liquor store on the corner of Burt and Railway Streets, and the office approved on the corner of Curtin Avenue and Florence Street, be included in Schedule 2 – Additional Uses, as indicated in the attached extract.</p> <p>2. That for 37 John Street (John Street Café) the conditions in Schedule 2 – Additional Uses be one of the two options as indicated in the attached extract (Council to determine).</p>
Residential Density		
14.	<p>Foreshore Centre Zone, Marine Parade – add R60/100.</p>	<p>Recommendation:</p> <p>That Council notes that “comprehensive planning” as referred in the scheme text relies on its ordinary meaning in the planning sense.</p>
Other		
34.	<p>Setbacks.</p>	<p>Recommendation:</p> <p>That the clause relating to R20 front setbacks in R30 areas includes criteria for the exercise of the discretion, as follows:</p> <p><i>Despite anything contained in the Residential Design Codes to the contrary, in the case of areas with a residential density code of R30, the local government may require an R20 front setback of 6m to be applied, for the preservation of streetscapes, view corridors and amenity.</i></p>

ITEM 6 – RECOMMENDATION 2**8.2.1.1 OFFICER RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Dawkins

That for 37 John Street (John Street Café) the conditions in *Schedule 2 – Additional Uses* be as follows:

1. Hours of operation

Monday to Sunday 7:00am to 7:00pm.

2. Size of premises

Floor area for commercial use shall not exceed 275m² without the prior approval of the local government.

3. Number of patrons

No more than 50 patrons shall be provided for within the building, and 30 patrons within the outdoor eating area, without the prior approval of the local government.

4. Amenity

The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.

Carried by Absolute Majority 8/1

Cr Utting is recorded as having voted against the motion.

ITEM 6 – RECOMMENDATION 1**8.2.1.2 OFFICER RECOMMENDATION & COUNCIL RESOLUTION**

Moved Cr Furlong, seconded Cr Dawkins

That the office adjacent to the liquor store on the corner of Burt and Railway Streets, and the office approved on the corner of Curtin Avenue and Florence Street, be included in *Schedule 2 – Additional Uses*.

Carried by Absolute Majority 8/1

Cr Utting is recorded as having voted against the motion.

ITEM 14***Declaration of Interest***

Cr Furlong and Cr Carmichael declared a financial interest in the matter as the owners of property within the proposed Foreshore Centre Zone and left the meeting at 8.15.

8.2.1.3 OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Strzina, seconded Cr Jeanes

That Council notes that “comprehensive planning” as referred to in the scheme text relies on its ordinary meaning in the planning sense.

Carried by Absolute Majority 6/1

Cr Walsh is recorded as having voted against the motion.

Crs Furlong and Carmichael returned to the meeting at 8.22

ITEM 34***Declaration of Interest***

Mayor Morgan, Cr Dawkins and Cr Strzina declared a financial interest as the owners of property within the R30 residential zone. The extent of the interest was of little or no value. Mayor Morgan, Cr Dawkins and Cr Strzina left the meeting at 8.28pm.

8.2.1.4 COUNCIL RESOLUTION

Moved Cr Furlong, seconded Cr Walsh

That Mayor Morgan, Cr Dawkins and Cr Strzina be allowed to participate in the debate and vote on the matter on the grounds that the matter is common to a significant number of electors or ratepayers.

Carried by Absolute Majority 6/0

Mayor Morgan, Cr Dawkins and Cr Strzina returned to the meeting at 8.29pm.

Amendment

Moved Cr Walsh, seconded Cr Carmichael

That the word ‘may’ be replaced by the word ‘shall’ in the recommendation.

Lost 3/6

The voting was recorded:

For: Mayor Morgan, Cr Furlong, Cr Jeanes, Cr Miller, Cr Dawkins, Cr Strzina
Against: Cr Walsh, Cr Utting, Cr Carmichael

8.2.1.5 OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Strzina, seconded Cr Jeanes

That the clause relating to R20 front setbacks in R30 areas includes criteria for the exercise of the discretion, as follows:

Despite anything contained in the Residential Design Codes to the contrary, in the case of areas with a residential density code of R30, the local government may require an R20 front setback of 6m to be applied, for the preservation of streetscapes, view corridors and amenity.

Carried by Absolute Majority 6/3

Amenity Provisions

MOTION

Moved Cr Utting, seconded Cr Walsh

That the amenity provisions of Town Planning Scheme No.2 be inserted into the scheme text.

After some discussion, the motion was withdrawn by the mover and seconder.

8.2.1.6 OFFICER RECOMMENDATION & EN BLOC COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That the Officer Recommendation for all remaining items not previously the subject of a Council resolution in this meeting be adopted.

Carried by Absolute Majority 9/0

8.2.2 DRAFT TOWN PLANNING SCHEME NO. 3 - ADDITIONAL REPORT

File No: D2.5.3
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil
Report Date: 6 February, 2006
Senior Officer: Mr Stephen Tindale

INTRODUCTION

- Additional legal advice just received on the scheme text includes recommendations for further refinements as set out below.
- These comprise essentially technical or operational matters that it would be beneficial to improve.
- Several aspects are identified and the suggested changes are shown together with explanation paraphrased from the legal advice.
- A copy of the full legal advice is attached and is *confidential*.
- It contains advice not acted on here of a more strategic nature in relation to the provisions of the scheme, which as previously indicated Council may wish to consider for direction on the content of the scheme in those respects.

OBJECTIVES OF THE HOTEL ZONE – CLAUSE 4.2.6

Clarification is suggested as follows:

4.2.6 *The objectives of the Hotel Zone are to —*

- ensure that the hotel, recreational, entertainment, accommodation and service uses are compatible with the amenity of the surrounding locality;*
- ensure that the built form of any development does not unduly adversely affect the amenity of the adjoining and surrounding properties or locality, including by reason of height, site coverage, bulk, overshadowing or other relevant aspects; and*
- support the heritage provisions of the Scheme applicable to any land or buildings in the zone.*

BUILDING HEIGHT PROVISIONS – CLAUSE 5.7A

Further consideration of the definitions of “Building Height” and “Wall Height” to ensure that as far as possible they accord with those in the Residential Design Codes suggests the following:

“Building Height” means the difference between –

- the level of the natural ground level at the centre of the site, as determined by the local government; and*

(b) *the level of the uppermost part of the building (roof ridge, parapet or wall).*

“Wall Height” means the difference between –

(a) the level of the natural ground level at the centre of the site, as determined by the local government; and

(b) the level of the roof or parapet at any point in accordance with Figures 2A, 2B and 2C of the Residential Design Codes.

The amendment to the definition of Building Height is merely to reflect the definition in the Residential Design Codes.

The definition of Wall Height also reflects as closely as possible the definition in the Residential Design Codes. Figures 2A, 2B and 2C deal specifically with skillion, curved or irregularly shaped roofs situated above walls.

VARIATIONS TO DEVELOPMENT REQUIREMENTS – CLAUSE 5.5

As to the requirements for the exercise of the discretion, it is suggested that cl.5.5.2 be amended to require all applications involving the exercise of the discretion to vary a standard or requirement to be advertised under cl.9.4, identifying the variation or variations sought, as follows:

5.5.1A An application for planning approval requiring the exercise of the discretion under cl.5.5.1 above is to be advertised in accordance with cl.9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.

5.5.2 In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under cl.9.4.

VARIATIONS TO SCHEME PROVISIONS FOR HERITAGE PLACES OR HERITAGE AREAS – CLAUSE 7.5

It is advised that the discretion in cl.7.5 extends to include density coding under the Residential Design Codes. (In contrast, note that the general discretion to vary development standards or requirements in cl.5.5 expressly does not apply to residential development and is limited to variation of development standards or requirements prescribed by the Scheme). In terms of heritage variations and limiting the circumstances in which the discretion may be applied, the following is suggested:

7.5.1 The local government may grant, by way of planning approval, a variation to any development standard or requirement specified in the Scheme or the Residential Design Codes if, in the opinion of the local government, the variation is necessary in order to –

- (a) *conserve a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the Heritage List under clause 7.1.1; or*
- (b) *enhance or preserve heritage values in a heritage area designated under clause 7.2.1,*

which is the subject of the proposed development.

7.5.2 *An application for planning approval requiring the exercise of the discretion under cl.7.5.1 above is to be advertised in accordance with cl.9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.*

7.5.3 In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under cl.9.4.

MATTERS TO BE CONSIDERED IN DETERMINING AN APPLICATION FOR APPROVAL – CLAUSE 10.2

As to the suggested splitting of the list of matters in cl.10.2 into a list of core matters that the Local Government (and therefore the SAT on appeal) is required to consider, and a list of further matters that the Local Government is to have due regard to if relevant to the use or development the subject of the application, the following is suggested:

10.2.1 *In considering an application for planning approval the local government is to have due regard to the following matters –*

[paragraphs (a), (b), (c), (d), (e), (f), (g), (j), (o), (z) and (za) of the current clause 10.2]

10.2.2 *In addition to the matters referred to in cl.10.2.1 above, the local government is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application –*

[paragraphs (h), (i), (k), (l), (m), (n), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (zb) and (zc) of the current clause 10.2]

CASH IN LIEU AND VALUE OF PARKING SPACES – CLAUSE 5.8.5 (A)

This aspect has been raised between Council and officers and could be improved.

Clause 5.8.5 provides for cash in lieu of parking and in (a) for determining the value of a space, but does not include any flexibility in setting the value; although the note at the bottom of Table 3 Development Requirements refers to possible policy in this regard.

While other clauses provided for some Council discretion in determining the number of parking spaces required, to avoid the cash in lieu valuation being too rigid, the following wording could be added (underlined) to allow for variation:

- (a) the cash in lieu payment shall not be less than the estimated cost to the applicant of providing and constructing the parking spaces required by the Scheme plus the value as estimated by the local government of that area of the land which would have been occupied by the parking spaces, but at the discretion of the local government the cash in lieu payment may be reduced in accordance with a local planning policy made under this scheme for that purpose; and

VOTING

Absolute Majority

OFFICER RECOMMENDATION

That Council:

1. Adopts the above suggested further changes to the draft scheme text.
2. Notes the additional legal advice for consideration of any more strategic changes to the scheme text.

8.2.2.1 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Walsh

That clause 7.5.1 be adopted subject to the insertion of the words “, with the exception of any height requirement,” immediately after the word “Codes”.

Carried by Absolute Majority 7/2

8.2.2.2 COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Dawkins

That no changes be made to clause 5.7A relating to building and wall heights and that the Manager of Development Services present a further report on the implications of the recommended changes to clause 5.7A.

Carried by Absolute Majority 9/0

Part 7 - Heritage Protection

Cr Jeanes circulated a document with suggested amendments to Part 7 of the scheme text.

MOTION

Moved Cr Jeanes, seconded Cr Strzina

That changes be made to the scheme text as per the circulated document.

After some discussion, the motion was withdrawn by the mover and seconder.

The Manager of Development Services is to give further consideration to:

1. the inclusion of an appeal mechanism – possibly the State Administrative Tribunal – by which owners of affected land may contest the inclusion of a place on the Heritage List;
2. the inclusion of heritage conservation incentives for those places in a heritage area; and
3. the extension of heritage conservation incentives to those places on the Heritage List.

8.2.2.3 EN BLOC COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Dawkins

That with the exception of clauses 7.5.1 and 5.7A which have been dealt with above, Council:

- 1. Adopts the above suggested further changes to the draft scheme text; and**
- 2. Notes the additional legal advice for consideration of any more strategic changes to the scheme text.**

Carried by Absolute Majority 8/1

9 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

10 MEETING CLOSURE

The Mayor announced the closure of the meeting at 9.45pm.