

# TOWN OF COTTESLOE



## FULL COUNCIL MEETING MINUTES

**SPECIAL MEETING OF COUNCIL  
HELD IN THE  
War Memorial Hall, Cottesloe Civic Centre  
109 Broome Street, Cottesloe  
6.15PM, Tuesday, 20 September 2016**

**Purpose of Meeting:**

**For Council to:**

- further consider proposed Local Planning Scheme No. 3 Amendment No. 5, and Local Development Plan No.1; and
- consider making comment to the Joint Metro West Development Assessment Panel on a development application for 220 Marine Parade, Cottesloe.

**Mat Humfrey  
Chief Executive Officer**

4 October 2016

## DISCLAIMER

No responsibility whatsoever is implied or accepted by the Town for any act, omission, statement or intimation occurring during council meetings.

The Town of Cottesloe disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation occurring during council meetings.

Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a council meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any member or officer of the Town of Cottesloe during the course of any meeting is not intended to be and is not taken as notice of approval from the Town.

The Town of Cottesloe wishes to advise that any plans or documents contained within the agenda or minutes may be subject to copyright law provisions (*Copyright Act 1968*, as amended) and that the express permission of the copyright owner(s) should be sought prior to their reproduction.

Members of the public should note that no action should be taken on any application or item discussed at a council meeting prior to written advice on the resolution of council being received.

Agenda and minutes are available on the Town's website

[www.cottesloe.wa.gov.au](http://www.cottesloe.wa.gov.au)

## TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS.....	3
2	DISCLAIMER .....	3
3	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION .....	3
4	PUBLIC QUESTION TIME .....	3
	4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	3
	4.2 PUBLIC QUESTIONS .....	7
5	PUBLIC STATEMENT TIME.....	10
6	ATTENDANCE.....	10
	6.1 APOLOGIES .....	12
7	DECLARATION OF INTERESTS .....	12
8	PRESENTATIONS .....	12
	8.1 PETITIONS.....	12
	8.2 PRESENTATIONS .....	12
	8.3 DEPUTATIONS.....	13
9	REPORTS OF OFFICERS .....	14
	9.1.1 LOCAL PLANNING SCHEME NO. 3 – AMENDMENT NO. 5 AND LOCAL DEVELOPMENT PLAN NO.1 – REPORT FOLLOWING SUBMISSIONS	14
	9.1.2 RESPONSIBLE AUTHORITY REPORT – 220 MARINE PARADE, COTTESLOE	43
10	ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN .....	49
11	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING .....	49
	11.1 ELECTED MEMBERS .....	49
	11.2 OFFICERS .....	49
12	MEETING CLOSED TO PUBLIC .....	49
	12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED ....	49
	12.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC.....	49
13	MEETING CLOSURE.....	49



**1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

The Mayor announced the meeting opened at 6:17 PM.

**2 DISCLAIMER**

The Presiding Member drew attention to the Town's disclaimer.

**3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

The Mayor announced that the meeting is being recorded, solely for the purpose of confirming the correctness of the Minutes.

The Mayor announced that Standing Orders would be implemented with regard to allocating 15 minutes for Public Statement Time. The main reason is due to the vast coverage this amendment proposal has already received. In fairness to this proposal and anyone who wishes to speak to it there will be two speakers for and two against. The Mayor thanked everyone in advance for nominating those speakers, which has been enormously helpful.

**4 PUBLIC QUESTION TIME****4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE****QUESTIONS TAKEN ON NOTICE FROM CR BOULTER – EMAILED 16 SEPTEMBER 2016**Scheme Amendment 5

Q1: Who is the applicant for Scheme Amendment No 5?

A1: The landowner, Wise Earth Pty Ltd.

Q2: Has the TOC administration satisfied itself that the applicant/proponent for this scheme amendment is the owner of the affected land? If yes, how? And where and how is that reported to Council who must also be so satisfied?

A2: Yes, by a search of the Certificate of Title.

Q3: Is this scheme amendment consistent with the TOC Local Planning Strategy?

A3: It is not inconsistent given that the Local Planning Strategy is an earlier background document, is not absolute and does not prevent evolving change or consideration of innovative proposals; while the statutory scheme amendment process exists for this purpose.

- Q4: Is this scheme amendment of a scale that will have a significant impact on the locality and having regard to the precedent it will set? If so, how? If not, why not?
- A4: The proposal seeks to create a multiple dwellings development that integrates with the site and surrounds, which is of relatively modest scale, does not have undue impacts and serves as a good example of sustainable housing.
- Q5: Why is this scheme amendment classified as a standard scheme amendment having regard to the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*?
- A5: The nature and limited extent of the proposal is seen as a standard rather than a complex type of amendment.
- Q6: What additional and different procedures and information are required under a complex scheme amendment that are not required for a standard scheme amendment?
- A6: The nature and limited extent of the proposal is seen as a standard rather than a complex type of amendment.
- Q7: Have any concessions been granted for the proponent's Local Development Plan on the basis that the proposed dwellings are for Aged and Dependent Persons? If so, what specific concessions have been granted? If so, how will the requirements for the dwellings to be used for Aged and Dependent Persons be enforced?
- A7: The Plan does not propose Aged or Dependent Persons' dwellings specifically; however, the sizes and design of the dwellings provides for such persons.
- Q8: Does the TOC planning officer accept the applicant's suggestion that the subject land could somehow part of Swanbourne Village or the TOC policy position that there is no discernible interaction between the land and the Swanbourne Village?
- A8: As reported there is a rationale that the land can be considered along the lines proposed.
- Q9: In respect of this proposal and the TOC Local Planning Strategy (TOC LPS):
- a) What is/are the strategic planning ground(s) for departing from the TOC LPS policy that only undeveloped Government land should be considered for higher density development in TOC?
  - b) What is/are the strategic planning ground(s) for departing from the TOC LPS policy that the two storey height limit should be predominantly retained in residential areas?

- c) What is/are the strategic planning ground(s) for departing from the TOC LPS policy that transit orientated development should take place only around the Cottesloe Village?
- d) What is/are the strategic planning ground(s) for departing from the TOC LPS policy that transit orientated development should address east-west connectivity?
- e) What is/are the strategic planning ground(s) for departing from the TOC LPS policy that there should be retention of the remaining extensive residential areas of R20 and R30 code density?
- f) What is/are the strategic planning ground(s) for departing from the TOC LPS policy that the residential amenity, character and streetscape quality of residential precincts is protected and enhanced?

A9: The proposal retains the Residential zoning and increases density in proximity to the Local Centre and railway station to supply housing based on sustainable design principles. The Strategy does not confine transit orientated development to the Town Centre railway lands

Q10: What other strategic planning grounds for the officer recommendation that the protections afforded by the TOC LPS and TOC LPS3 for this site to remain R20 are overcome and departed from?

A10: State Government planning directions, positive initiatives by other local governments, innovation by the development industry and growing public support for appropriate urban regeneration encourage consideration of such proposals.

#### 220 Marine Parade – Responsible Authority Report

Q1: Having regard to LPS3 in general and in particular, clauses 4.12.1 and 4.13, what is the impact of demolition of the flats on the 220 Marine Parade site on any non-conforming use rights that might be said to apply to the development application before Council?

A1: The planning application is to demolish the existing building and develop new buildings, which if approved would replace the existing non-conforming use with approved uses.

Q2: Having regard to LPS3 in general and in particular clauses, 4.12.1 and 4.13, does any non-conforming use right that might exist run with the building or the land? What is the basis for the answer to the preceding question?

A2: A non-conforming use by definition runs with the land, which may involve buildings.

- Q3: What is the date of the JDAP hearing for the 220 Marine Parade DA? If the JDAP hearing date has not been set, when do you anticipate it will be set?
- A3: The date for the Metro West Joint Development Assessment Panel meeting is scheduled for Thursday 29 September 2016.

**QUESTIONS TAKEN ON NOTICE FROM CR PYVIS – EMAILED  
16 SEPTEMBER 2016**Scheme Amendment 5 and Local Development Plan 1

- Q1: Having regard to the applicant's assertion that the proposed Scheme Amendment supports State infill objectives in a transport corridor, what work has the TOC undertaken to demonstrate a clear shortage of housing needs to fulfil the State's objectives over and above that already provided for in the Local Planning Strategy and the LPS3?
- A1: Over the years Council has received a range of reports and undertaken several studies relating to more intensive urban development in the district involving housing supply, including the Enquiry by Design, development zones, surplus lands, former depot site, Directions 2031, Town Centre, railway lands, etc.
- Q2: What cost and time would be involved in preparing a TOC Local Housing Strategy?
- A2: This would depend on how detailed the project is, but a rough estimate is six months and if consultants are used \$50,000 to \$100,000.
- Q3: If this Scheme Amendment is granted, what precedent value will it set when assessing the merits of a future Scheme Amendment proposal for a neighbouring residential property currently zoned R20?
- A3: If a future neighbouring proposal is similar or interrelated, it may be seen as a precedent to some extent.
- Q4: Given the applicant has added the maximum variation of 25% for density on the basis of Bulletin 113/2015, please specify the exact variations that have been included in the Local Development Plan 1 that justify the variation.
- A4: The proposed density increase is to enable the envisaged development of 13 dwellings at up to three storeys, with on-site parking, office, communal recreation and private open spaces, some zero lot lines, and incorporating sustainable design.



Q5: Given the applicant has added the maximum variation of 25% for density on the basis of Bulletin 113/2015, please list the sustainable design principles included in the Local Development Plan 1 that justify the variation.

A5: The Local Development Plan document identifies Sustainable Development Criteria and Sustainable Building Composition aspects including building design and quality, varied dwelling size and type, dwelling adaptability for demographics (hence affordability) and universal access, energy efficiency features, communal facilities, open space and rooftop gardens.

#### 220 Marine Parade – Responsible Authority Report

Q1: What date was TOC Administration first approached by proponents of 220 Marine Parade?

A1: On 17 February 2015 the building designer floated initial concept plans with officers.

Q2: What date was TOC Administration first advised in writing of the proposed development 220 Marine Parade and by whom?

A2: On 14 April 2016 planning consultant Peter Webb advised in writing of the current intended application.

## **4.2 PUBLIC QUESTIONS**

### Rosalin Sadler, 2/134 Marine Parade, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

Q1: Is the Town of Cottesloe Planning Department aware of the Department of Transport plans to close multiple lighter-used railway stations on the Fremantle line?

Q2: Is Council aware that the Department of Transport will therefore close stations where they are considered to be underused in relation to major railway stations such as Claremont railway station?

Q3: Is Council aware of the scale of major and ongoing infill infrastructure adjacent to Claremont railway station?

Q4: Is Council aware that Swanbourne railway station is closer to Claremont railway station and Cottesloe railway station and by comparison is underused and will be closed given the Department of Transport analysis and logic?

- Q5: Is Council aware that Loch Street railway station will be closed given the Department of Transport analysis and logic when considering its proximity to Claremont station?
- Q6: Has the Town of Cottesloe yet been consulted by the Department of Transport and/or the Baverstock development group about the forthcoming railway station closures on the Fremantle line?
- Q7: Has the Town of Cottesloe sought consultation with anyone, including the Department of Transport and/or the proponents of the Baverstock Swanbourne Village Trust and its other associated companies, regarding the closure of the Swanbourne railway station?
- Q8: Will the Town of Cottesloe provide outcomes of any meetings held with anyone about all Fremantle line closures to come?

The Mayor referred to the Chief Executive Officer to answer in general at this point, and that the specific questions would be taken on notice.

- A: The Town is aware that the Public Transport Authority has started a consultation process around the future of some train stations. At this stage we are not aware of any formal plans or discussions to close any specific railway stations either within the town or immediately adjacent to the town.

Subsequent advice is that the Town has not received any approach or information about such from the Public Transport Authority. However, the Public Transport Authority has been quoted in the Western Suburbs Weekly newspaper as stating that whilst it is examining stations generally and safety at level crossings, including Salvado Street in Cottesloe, there were no plans to close stations on the Fremantle line.

Cathy Campbell, 12 Kathleen Street, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- Q: When is the cut-off date for submissions for this process?
- A: The local government can consider submissions received up to when it makes its decision on these proposals.

Rowena Lee, 18 Congdon Street, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- Q: Has the Council conducted a study to identify what land is available for future development to meet the Town's density targets. If not, how can they justify supporting this spot-zoning proposal.

- A: Over the years Council has received several reports regarding the potential for housing development in the district. It is correct that the railway land adjacent to the Town Centre is a prime focus, while other opportunities that arise such as this proposal are able to be considered, in a similar way that the former depot site was.

Grant Gibson, 39 Congdon Street, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- Q: Is Council aware that if this rezoning goes through of the likely creep of zones that this will cause in the local area in terms of neighbours along the street who will look to rezone and increase the density?

- A: The proposal may have an effect on surrounding properties. If other sites are sought to be changed they will have to go through a similar process. Each proposal is considered on merit and in relation to how it fits in with the locality.

Siobhan Beilin, 29 Congdon Street, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- Q: If the development itself is unviable, for example, due to cost because the high voltage power lines are to be dealt with; or, if there are objections to the development because of overshadowing as such, does this amendment become null and void or does the rezoning still carry through as being R60 which means, as Mr Baverstock stated at the last meeting, that we can be up for much worse?

- A: The density is tied to the development concept that's written into the official documents. So, if for some reason, it wasn't able to proceed then to do something different with the land would require variation of the Local Development Plan which is a public process and possibly require another scheme amendment, also a public process.

Paul Callander, 22 Margaret Street, Cottesloe – Re. item 9.1.2 – 220 Marine Parade

- Q: What is the best way for the community and Council to jointly approach the Metro West Joint Development Assessment Panel at the meeting to ensure this project does not get approval.

- A: Pursuant to Council's resolution on this matter the Mayor is to make a presentation to the Panel meeting. The Town has by letter previously advised all submitters that they may also apply to the Panel to make a presentation and may attend the meeting to observe.

Jack Walsh, 35 Grant Street, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

Q: Is seeking an answer to his question of 16 August: are the Town's officers aware that there was a fatality on this corner some years ago?

A: There was one report of an accident and the information we received ourselves and from the traffic consultant is that the person was hospitalised. We are not aware if that led to a fatality.

## 5 PUBLIC STATEMENT TIME

Ms Yvonne Hart for Cottesloe Residents and Ratepayers – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- Council recently received a request for rezoning along Curtin Avenue which was not supported by Council and the Town of Cambridge Amendment No. 35 was not supported by the Minister for Planning.
- The proposed modifications appear confusing.
- This development will require spot-rezoning to allow mixed use in an R20 residential zone.
- Under Local Planning Scheme No. 3, spot-rezoning in Cottesloe is unnecessary and unjustified – areas suitable for higher density are clearly designated in LPS3 to allow Cottesloe to meet housing targets outlined by the State Government.
- Extensive community consultation for LPS3 clearly resulted in Claremont Hill to stay as R20 with no mixed use or commercial activity.
- The proposal is excessive and contrary to the Town's own planning strategy.
- Ad hoc planning is unlikely to be supported by the Minister.
- Amendments should be strategically planned rather than ad hoc.

Ms Katina Law on behalf of Nicole Osborne, 124 Railway Street, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- Infill needs good planning and the subject land is not highlighted for rezoning or infill in the current town planning scheme.
- Solid R20 land should remain as such and Council should not support rezoning outside the current planning scheme.
- There is a lack of transition zones proposed which are crucial to good planning.
- The Claremont Hill precinct is valued for its attractive streetscape with gardens, heritage homes and setbacks, whereas the proposal is for three storeys with outdoor entertaining roofs, which is a contradiction of the current streetscape, and the proposal has zero setbacks.

- No housing strategy or activity centre plan has been prepared for this proposal.

Ms Anne-Marie Mallon, 35 Congdon Street, Cottesloe – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- Supports the concept of the proposal and believes the design to be of high quality and in the right place ideally located close to a transport hub.
- Council is showing leadership in looking to the future and embracing our changing ways of living – for younger families, single occupants, and the ageing population alike, whereby Cottesloe can influence other areas of Perth similarly.
- Concerns such as neighbours' privacy and traffic can be carefully navigated at the planning stage.

Mr Ian Brashaw, 19 Norfolk Street, Fremantle for Garry Baverstock, owner of the land – Re. item 9.1.1 – Scheme Amendment 5 and Local Development Plan 1

- There is no statutory or a strategic reason to modify the proposal.
- Increasing densities around transport hubs is beneficial to people rather than being in peak hour traffic and properties close to railway stations increase in value. The State Government encourages such transit-orientated development.
- The proposal encourages alternative housing forms and considers the present aesthetics and amenity of the locality, while enabling non-residential land uses if compatible.
- A local development plan has been included to support the amendment, to enable a high quality proposed development by an award-winning local architect.

Mr Peter Webb, York Street, Subiaco for the applicant, Berrimel Pty Ltd, of proposed development – Re. item 9.1.2 – 220 Marine Parade

- It is acknowledged that the application is presented at this meeting for Council's information only. As a Metro West Joint Development Assessment Panel application, it will be considered at a forthcoming meeting of that body, following submission of the Town's Responsible Authority Report.
- The applicant has addressed almost all of the objective concerns of the proposal, whilst legal advice has informed the applicant of the possibility for the proposal to be considered as a change of non-conforming use.
- The proposal improves amenity by increasing side and front setbacks, providing higher-quality built form, landscaping opportunities including vertical gardens, and reduced traffic due to a reduced number of dwellings.

- The perceived height is much the same as what currently exists as the existing building is setback only 2.5 metres from the front boundary.
- The café is a walk-in style, opening for morning coffee and lunch and likely to close mid-afternoon when patronage reduces.

## 6 ATTENDANCE

### Present

Mayor Jo Dawkins  
Cr Jay Birnbrauer  
Cr Philip Angers  
Cr Sandra Boulter  
Cr Rob Thomas  
Cr Mark Rodda  
Cr Katrina Downes  
Cr Sally Pyvis

### Officers Present

Mr Mat Humfrey	Chief Executive Officer
Mr Garry Bird	Manager Corporate and Community Services
Mr Robert Willis	A/Manager Engineering Services
Mr Andrew Jackson	Manager Development Services
Mr Ed Drewett	Senior Planning Officer
Mrs Elizabeth Yates	Development Services Administration Officer

## 6.1 APOLOGIES

Cr Helen Burke

### Officer Apologies

Nil.

## 7 DECLARATION OF INTERESTS

Cr Downes declared an impartiality interest in item 9.1.1 due to her children attending school with families of objectors of the proposed development at 126-128 Railway Street.

## 8 PRESENTATIONS

### 8.1 PETITIONS

Nil.

### 8.2 PRESENTATIONS

Nil.

**8.3 DEPUTATIONS**

Nil.

*Cr Downes declared an impartiality interest in item 9.1.1 due to her children attending school with families of objectors of the proposed development. She stated that as a consequence there may be a perception that her impartiality may be affected and declared that she would consider the matter on its merits and vote accordingly.*

## **9 REPORTS OF OFFICERS**

### **9.1.1 LOCAL PLANNING SCHEME NO. 3 – AMENDMENT NO. 5 AND LOCAL DEVELOPMENT PLAN NO.1 – REPORT FOLLOWING SUBMISSIONS**

**File Ref:** SUB/2066  
**Attachments:** [Further submissions – after Council Meeting 23.8.2016 - Support](#)  
[Further submissions – after Council Meeting 23.8.2016 – Objection](#)  
[Demonstration of modifications](#)  
**Responsible Officer:** **Mat Humfrey**  
**Chief Executive Officer**  
**Author:** **Andrew Jackson**  
**Manager Development Services**  
**Proposed Meeting Date:** **20 September 2016**  
**Author Disclosure of Interest:** **Nil**

---

## **INTRODUCTION**

This report was first considered by Council at its 23 August 2016 meeting, where it resolved to revoke its decision of 26 April 2016 to initiate this Scheme Amendment and Local Development Plan proposal. Subsequently Council has been advised that the resolution is invalid as it was not by absolute majority as required. Council has also been advised it is considered that a revocation decision would not halt the Scheme Amendment process, and of the statutory timeframe for forwarding the Amendment with Council's recommendation on the proposal and the submissions to the Western Australian Planning Commission.

Therefore, this report re-presents the matter to Council for further consideration and decisions in respect of the Scheme Amendment and Local Development Plan. The original recommendation included modifications to these instruments for advertising for submissions on those changes. The opportunity is taken to add to the modifications to provide some additional detail, as discussed towards the end of the report.

## **SUMMARY**

On 26 April 2016 Council received a report on this proposal and resolved to adopt the Amendment and associated Local Development Plan for the purpose of advertising and to undertake the statutory procedures accordingly. A copy of the previous report is attached.

Advertising has been completed and 89 submissions were received. Council is now required to make a recommendation to the Western Australian Planning Commission

---



on the outcome of the Amendment as well as to decide upon the Local Development Plan, which this report addresses.

### **BACKGROUND**

The initial report presented the development concept and the draft Scheme Amendment and Local Development Plan to facilitate the proposal. The Amendment and Plan documents explained the applicant's rationale for and the details of the proposal.

Council has supported the Amendment and Plan in-principle in order to gauge public comment on the proposal for a density increase for the multiple dwellings development envisaged.

### **STRATEGIC IMPLICATIONS**

Relates to the administration of Local Planning Scheme No. 3 and mechanisms to facilitate urban redevelopment.

### **POLICY IMPLICATIONS**

The proposal does not require any new policy, while the proposed Local Development Plan is effectively a planning policy guiding development.

### **STATUTORY ENVIRONMENT**

- *Planning & Development Act 2005*
- *Planning & Development (Local Planning Schemes) Regulations 2015*
- *Local Planning Scheme No. 3*
- Residential Design Codes

### **FINANCIAL IMPLICATIONS**

Fees are charged to cover the administrative costs of Scheme Amendments and Local Development Plans.

### **STAFFING IMPLICATIONS**

Assessment and administration of proposals.

### **SUSTAINABILITY IMPLICATIONS**

The proposal relates to sustainability in terms of urban redevelopment, transportation, demographics / housing demands and environmentally-sensitive building design.

### **CONSULTATION**

Following environmental clearance, the Amendment and the Local Development Plan were advertised for public comment for a period of 42 days by:

- Letters to owners/occupiers of 39 residential and commercial properties in Railway and Congdon Streets and Seaview Terrace.
- Notices in the Post newspaper, on the Town's noticeboard/s and website, and at the Library;
- Copies of the proposed Amendment and Local Development Plan on display at the Town's office, on the Town's website and at the Library;

- Two on-site signs; and
- Notifying relevant public authorities – in this case Western Power, Water Corporation and Public Transport Authority.

Dissemination and debate about the proposal has also occurred informally via the proponent's website and community-informing activities, local newspaper coverage, emails sent to the Town and Councillors, letterbox leaflets and the Cottesloe Residents and Ratepayers Association; indicating views both for and against the proposal.

## SUBMISSIONS

The submissions received were to the interrelated Amendment and Local Development Plan so are taken as one and the same. Persons who wrote to the Town earlier also made formal submissions. Despite the overall number of submissions, enquiry/discussion with officers was relatively low. Receipt of each submission was acknowledged in writing, also advising of the next reporting cycle.

### Statistical overview

Geographically the submissions broadly originated as follows:

	<b>Support</b>	<b>Objection</b>
<b>Inside Cottesloe</b>	21	54
<b>Outside Cottesloe</b>	13	1
<i>Totals</i>	34	55

This shows that the majority of submissions of support are from within Cottesloe, together with several from outside Cottesloe; while almost all of the submissions of objection are from within Cottesloe.

The submissions comprise the follows groups and numbers:

	<b>Support</b>	<b>Objection</b>	<i>Totals</i>
<b>Cottesloe residential owner/occupier</b>	13	51	64
<b>Cottesloe business</b>	8	2	10
<b>Cottesloe Residents and Ratepayers Association</b>		1	1
<b>Citizen outside Cottesloe</b>	9	1	10
<b>Business outside Cottesloe</b>	1		1
<b>Public authority</b>	3		3
<i>Totals</i>	34	55	89

This shows that most of the submissions were from Cottesloe residential owners/occupiers, with several from Cottesloe businesses, several from citizens and a business outside Cottesloe, and a few from public authorities. Support was expressed by several of the Cottesloe owners/occupiers, most of the Cottesloe businesses, almost all of the citizens outside Cottesloe and the business outside Cottesloe, as well as by the public authorities (subject to their technical advice). Objection was registered by mainly Cottesloe owners/occupiers, some Cottesloe businesses, the Residents and Ratepayers Association and an external citizen. Support accounted for 38% and objection for 62% of the submissions. More specifically the street origins are as follows:

	<b>Street and suburb</b>	<b>Frequency</b>	<i>Totals</i>
<b>Support</b>	Alumni Tce, Churchlands	1	
	Anstey St, Claremont	1	
	Barnfield Rd, Claremont	1	
	Brighton St, Cottesloe	1	
	Claremont Cres, Swanbourne	1	
	Congdon St, Cottesloe	5	
	Coolgardie St, Subiaco	1	
	Greenville St, Swanbourne	1	
	Jarrad St, Cottesloe	1	
	Kathleen St, Cottesloe	1	
	Lyons St, Cottesloe	2	
	Loma St, Cottesloe	1	
	Macarthur St, Cottesloe	1	
	Mann St, Cottesloe	1	
	Narla Rd, Swanbourne	1	
	Ozone Pde, Cottesloe	1	
	Railway St, Cottesloe	8	
	Rosalie St, Shenton Park	1	
	Windsor St, Claremont	1	
	Public authorities	3	34
<b>Objection</b>	Alexandra Ave, Cottesloe	1	
	Broome St, Cottesloe	3	
	Chamberlain St, Cottesloe	1	
	Congdon St, Claremont	1	
	Congdon St, Cottesloe	10	
	Congdon St, Swanbourne	1	
	Eric Street, Cottesloe	1	
	Grant St, Cottesloe	4	
	Hawkstone St, Cottesloe	1	
	Hillside Ave, Cottesloe	3	
	Kathleen St, Cottesloe	3	
	Lyons St, Cottesloe	1	
	Mann St, Cottesloe	2	
	Marine Pde, Cottesloe	1	
	Ozone Pde, Cottesloe	1	
	Parry St, Claremont	2	
	Parry St, Cottesloe	6	
	Railway St, Cottesloe	5	
	Seaview Tce, Cottesloe	1	

	Shenton Rd, Swanbourne	1	
	Stanhope St, Cottesloe	1	
	Sydney St, Cottesloe	2	
	Windsor St, Cottesloe	1	
	William St, Cottesloe	1	
	Cottesloe Resident	1	55
	<i>Total</i>		89

This shows that the submissions of support originated from across a range of streets/localities, with the main concentrations from Congdon Street (5) and Railway Street (8). The submissions of objection also originated from a range of streets/localities, with the main concentrations from Congdon Street (12), Railway Street (6), Grant Street (4) and Seaview Terrace (5).

### Submissions of support – overview

The submissions of support are from a mixture of mainly Cottesloe residents and business people, including in the vicinity of the site or from elsewhere in Cottesloe and some other suburbs, plus from the public authorities consulted (see further below). It is acknowledged that some of the supporters have a direct or indirect interest in the proposal; however, they are at liberty to make their points in favour of the proposal.

The thrust of these submissions entails:

- Strong awareness of and support for urban infill, increased density, transit-oriented development, housing diversity, local activity centres/community hubs and neighbourhood safety, sustainable design and appropriate built form.
- Recognition of the attributes of the site for the proposal – location, street frontages, topography, northern orientation, walkability – as an improvement over the previous vacant, dilapidated dwellings.
- Appreciation of the design dispersed dwellings amongst open space and gardens.
- Suggestion to improve the verges – ie footpaths, trees, parking.
- A demand and desire for more appropriate and sophisticated forms of residential development to suit demographic and lifestyle trends.

This feedback echoes the rationale for the proposal contained in the proponent's report in relation to current planning directions and the development concept.

### Submissions of objection – issues raised

The submissions of objection comment on a variety of matters, ranging from details to broad aspects, from which several themes emerged. A few of the submissions were identical. The main issues common to these submissions are summarised as follows:

#### Development aim

The view that the proposal is opportunistic at the expense of the neighbourhood; being development-driven for economic feasibility and commercial gain. Risk of the proponent on-selling the site and another development proposal eventuating.

### Planning approach

Disagreement with the planning approach of “spot rezoning” [re-coding] and concern that it would set a precedent to circumvent proper process. The position that such change should be considered as part of a broader review of the new Scheme or overall planning for the locality rather than on an ad-hoc basis. The Local Planning Strategy, zone objectives and Residential Design Codes should be adhered to. Concern that the Western Australian Planning Commission and Minister for Planning could expand the density re-coding. Urge Council to no longer support the Amendment and to recommend its refusal. Confusion that the Local Development Plan promotes a development concept contrary to the planning rules.

### Consultation

See the process as flawed, in the proponent initially presenting to Council and the absence of consultation prior to formal consideration. Question as to governance and suggestion of conducting a survey. Advocate Council adopts a policy of pre-consultation for such proposals.

### Land use

Not in favour of the proposed office component, as it is a non-residential use and likely to affect traffic and parking. Concern also that the private recreation space could be used by non-residents.

### Density

Opinion that the proposed density in terms of the number of dwellings and the actual coding sought is too great, which translates into the scale of the buildings being seen as overdevelopment and incompatible. Concern to avoid town centre higher density, comparison with the Local Centre density coding of R50, and reference to the notion of transitional densities to buffer developments. Comment that a lesser coding for multiple dwellings on the site would be more acceptable and that some of the dwellings may be too small to suit occupants.

### Built form

Comment that the built form of the clustered dwellings with street frontages, three storeys and roof gardens would be comparatively excessive and incongruous.

### Character

Opinion generally about the proposed built form in relation to the streetscapes, interfaces with the adjoining residential properties, integration into the neighbourhood, and the potential impacts. Reference to the heritage of the area as spacious and leafy with substantial character residences.

### Amenity

The sense of amenity and community identity of the locality would be affected by the proposal, which is not the expectation and appears to depart from the Residential zone objectives; and that this would be to the detriment of the suburb and devalue properties. Concern as to likely increase in activity, noise and loss of privacy.

### Traffic and parking

Concern about the experience of traffic generally in the locality: congestion (especially the bridge), added vehicles, safety aspects (including school children),

parking shortfall, noise, access, sightlines; as well as points about the implications of the proposal and its design in these respects. Mistaking the Congdon Street median strip as proposed for visitor parking [note: the verge adjacent to the site is intended for that]. The need is seen for a traffic management report/plan to deal with the proposal in relation to the residential streets and wider area.

#### Infrastructure

Query as to who would be responsible for the upgrading of road and verge infrastructure brought about by the proposal. Desire for greenery.

#### Detailed design

Concern about design parameters including plot ratio, open space, setbacks, boundary walls, height, overshadowing, overlooking, etc.

#### Western owners

The owners of the western adjacent residence lodged lengthy submissions critiquing the Amendment and Local Development Plan proposal, including the following main points:

- Opposed to the proposal, as it is not in accordance with Council's existing planning controls and zone objectives or in keeping with the precinct, and does not provide a transition to the residential area. It is a spot re-zoning [coding] rather than forming part of a strategic plan, and is contrary to the Local Centre Design Guidelines [in comparison] and Western Australian Planning Commission guidance for calculating and allocating density.
- Considers the proposed density coding as excessive compared to the Local Centre Zone at R50 and in not tapering to the R20 area.
- Concern about the non-residential office use and caution about the private recreation space.
- Concern about traffic and parking impacts, referring to congestion, accidents and the proposed access and verge bays, in relation to sightlines, school children and hazards; all of which need to be comprehensively considered.
- Concern about loss of amenity.
- Does not support the Local Development Plan as-is, which seems to predetermine the development and may negate advertising of an application. Also that it lacks detail or clarity, citing setbacks, boundary walls, building envelopes, shadow, privacy and whether plot ratio should be included at this stage rather than in the development application.
- Encourages a lower density-coding, reasonable setbacks and redrafting of the Plan to show more detail.
- Concern that the site could be on-sold when up-coded and another development could occur.

These points echo the comments found in the other submissions of objection, highlighting aspects to be addressed by the proponent by way of design revisions and considered by Council by way of prospective modifications to the Amendment and Local Development Plan.

#### **Public authorities**

---

Water Corporation

Water and sewer are available. Advises of sewer line and possible easement, requirement for approval and works being at cost of developer. That is, no objection raised.

Western Power

No objection to Amendment. Regarding the Local Development Plan, advises of transition line safety clearances influencing design, for consideration.

Public Transport Authority

*The Public Transport Authority supports high density development which would be brought about by the R-code Amendment relating to Lots 24 and 25. It is noted that Lots 24 and 25 are located within close walking distances to both Swanbourne Station and bus routes operating along Stirling Highway and therefore benefit from existing public transport links. Given the nature of the development that would occur following the proposed revision to the R-code and the provisions of Local Development Plan No.1 there is no foreseeable impact upon public transport that the Public Transport Authority would wish addressed [ie meaning that the demand from the proposal would be catered for by existing public transport services].*

**Information from proponent**

Given the submissions, more information was sought from the proponent for consideration, including:

- Consultation with the public authorities to clarify technical requirements – see below.
- A report from a traffic consultant – see further below.

The proponent has since liaised with the Water Corporation and clarified that the amalgamation of the lots and hydraulic design of the development will be able to satisfy sewerage connection requirements.

The proponent has since liaised with Western Power and has applied for the overhead power line on Railway Street to be undergrounded (at the proponent's cost). This has several advantages: it would improve the power line in terms of supply, safety, maintenance and longevity; remove the traffic hazard and visual obstruction of the two power poles; improve the convenience and safety of the footpath for pedestrians and cyclists; and improve the visual amenity of the street and the outlook from the development.

**PROCEDURE****Scheme Amendment**

The *Planning and Development (Local Planning Scheme) Regulations 2015* apply. In this respect the Amendment is assessed to be a "standard" type amendment (rather than "basic" or "complex") which was advertised, and the remaining steps are:

- Council considers the submissions and resolves whether to:
  - support the Amendment without modification; or
  - support the Amendment with proposed modifications to address issues raised in submissions; or

- not support the amendment.
- Council may decide to advertise modifications to the Amendment where it:
  - proposes the modifications to address issues raised in submissions; and
  - is of the opinion that the proposed modifications to the amendment are significant. Minor modifications can be made without advertising.
- If modifications are advertised Council then considers and recommends upon any submissions received.
- Afterwards the Town is required to forward the advertised Amendment to the Western Australian Planning Commission together with: a summary of the submissions; Council's response in respect of the submissions; details of any advertised modifications, submissions thereto and Council's recommendations on them; Council's resolution and, if to not support the Amendment, its reasons; and any administrative information or supporting material.
- The Commission assesses the amendment proposal and submissions and provides its recommendation to the Minister for Planning.
- The Minister determines the outcome, ie to approve, modify, further advertise or refuse the Amendment. A direction to further modify and/or advertise the Amendment is required to be carried out by the Town.
- If approved, the Amendment documents are formally endorsed by the Commission and Minister then published in the Government Gazette, whence it becomes effective. The Town then places a notice of the approval in a local newspaper.

### **Local Development Plan**

The *Planning and Development (Local Planning Scheme) Regulations 2015* also apply. In this instance the Local Development Plan has been prepared and advertised in conjunction with the Amendment. The remaining steps are:

Council considers the submissions in relation to the Local Development Plan and having due regard to relevant planning considerations and resolves to:

- Approve the Plan as-is, and publish it; or
- Require modification and resubmission of the Plan, for approval and publication; or
- Refuse the Plan.

The Town notifies the applicant of its decision. If the Local development Plan is refused the applicant can appeal to the State Administrative Tribunal. An approved Plan is published on the Town's website and is to be given due regard in the determination of development applications. A Local Development Plan may be amended by the local government following a similar procedure to making a Plan.

Note that the process places the decision on a Local Development Plan with the local government, ie it does not proceed to the Commission and Minister for determination in itself. However, in this instance as the Plan is tied to the Amendment, whilst its content is determined by Council, it is dependent upon approval of the Amendment to have effect.



## **Future Development Application**

Subject to the Amendment and Local Development Plan being finalised, the future development will require the further process of a planning application and approval. This will be required to be in accordance with the Local Development Plan and the application will be advertised for submissions (ie in relation to detailed design). Due to the number of multiple dwellings involved and the estimated cost of the development the application would fall to be determined by the Metro West Joint Development Assessment Panel; which is required to make its decision within the established planning framework (ie it does not change the rules).

## **PLANNING ANALYSIS**

### **Regional planning perspective**

The thrust of the strategic direction set by regional planning that the proposal connects with entails: population growth and demographic profile; housing supply, diversity and infill targets; urban consolidation and built form; activity centres; transit-oriented development; liveable neighbourhoods; and sustainable development.

### **Local planning perspective**

From a local planning perspective the proposal represents suburban change as older housing stock becomes redundant and sites become available for redevelopment. Cottesloe is undergoing continual change, with new single dwellings being larger and two-storey, the addition of ancillary dwellings (granny flats), subdivision of larger lots to create smaller lots (including the former depot site), redevelopment of sites in proximity to the beachfront with higher density dwellings, sites granted a density bonus for aged/dependent persons dwellings, and redevelopment of older grouped/multiple dwellings with density and height bonuses.

In addition, the Development Zones on Gibney Street (the Wearne Hostel and former Deaf Education sites) and west of the Town Centre (the railway lands) are in time anticipated to undergo structure planning for comprehensive residential/mixed-use development. These would be much more substantial exercises than the proposed density increase and Local Development Plan for the intended development on a corner site.

There is the opportunity on each occasion to innovate in the delivery of housing diversity, built form and sustainable design. Other local governments are leading in this field, including Claremont, Fremantle and Subiaco.

The proponent has provided the rationale for the Amendment in relation to the "Swanbourne Village" Local Centre on each side of the railway line in the Towns of Cottesloe and Claremont. It is observed that adjacent to the Claremont Local Centre on its western side the former Swanbourne Hotel site has been redeveloped into the Beaumont retirement dwellings at a higher density and three-storey scale. The subject proposal is made in a similar vein, in being a denser residential development, providing for aging-in-place and located adjacent to a local centre in a walkable precinct served by the train and buses.

### Understanding density

Density as a planning control has evolved over the decades. Cottesloe has several extant multi-storey residential buildings approved under the old General Residential Codes, when plot ratio was translated into taller buildings without height limits. The subsequent Residential Design Codes have applied a more complex method to density control in relation to dwelling type, site area, plot ratio, opens space, etc; and have been periodically revised. This aims to achieve suitable built forms and streetscapes in the context of sites and their surrounds.

The Explanatory Guidelines of the Residential Design Codes advise that: *A development outcome, particularly in higher density and mixed use environments, is site-specific and will often not rely on a standard approach or measure.*

Cottesloe contains a range of density codes as follows:

- North of Pearse Street, predominantly R20 for the core residential area, with some R25, R30, R35 and R40 areas.
- South of Pearse Street, all R30.
- In the Stirling Highway vicinity, some R25, R30, R30/6, R40, R50 and R60 areas. This includes the large three-storey block of flats at the southern end of Congdon Street between Grant Street and Stirling Highway.
- In the beachfront vicinity, R50 and R60 areas, plus five-eight storeys permitted in the Special Control Area.
- R50 for the Local Centres and R100 for the Town Centre.

Attached are photos and illustrations of residential developments in a range of density-coded areas around the district. They demonstrate that the design response to a location and setting significantly influence the quality of development rather than simply the technical density. That is, lower density developments can appear overbearing and unsympathetic whilst higher density developments can be of compatible scale and attractiveness. Even at R20 density the subdivision of larger lots into narrow lots results in long two-storey dwellings with boundary walls and a strong streetscape presence.

In this respect, the proposed development, whilst at increased density and three-storey, is designed to have a residential character, with the dwellings clustered around the private open space and a street-front presence in keeping with the adjacent Local Centre. As can be seen, this does not appear that much different to the examples of large single dwellings built wall-to-wall in R30 areas or to the scale and mass of R40-R60 developments. It is also a compatible form of development compared to various older blocks of flats of three-or more-storeys found throughout the district located amongst single residential dwellings (although it is interesting that established flats in prime locations are sought-after and undergo upgrading renovations). Architectural design and materials also contribute to built form and streetscape. In this respect the proposed development is Mediterranean in style using materials that harmonise with the Cottesloe coastal vernacular and character of the locality, rather than introducing a contrasting modern building.

At the gist of the current debate about density developments in Perth is built form and its affects. The apartment boom and changes to the Residential Design Codes have resulted in unpopular outcomes impacting on numerous suburbs. Many market-

---

driven developments have created standard apartment boxes/towers of excessive height, bulk and scale to the detriment of established localities, often with parking shortfalls and other amenity implications.

In contrast, smarter developers are undertaking urban infill with niche developments designed to integrate into their sites and surrounds to produce compatible and attractive buildings or mixed-use complexes incorporating sustainability and providing amenity. This is occurring in the inner city, traditional local centres and older suburbs where housing stock is ageing and sites are becoming available. Notwithstanding the concerns raised in submissions, the proposal falls into this preferable type of product.

### **Local Planning Scheme No. 2 Amendment No. 39**

Also by way of comparison with the proposal, in 2005 Council supported a similar type of Amendment (No. 39) to former Town Planning Scheme No. 2. That Amendment rezoned the former National Measurement Institute site of two lots in Clive Road/McNamara Way to Residential R50 to accommodate redevelopment comprising fourteen townhouses, which has occurred. This recognised other higher density codings in the locality and the proximity to public transport on Stirling Highway. The Amendment included similar provisions specifying the number of dwellings, building height, designated vehicle access and development in accordance with a concept plan.

### **Traffic**

The Manager Engineering Services has advised that a 2015 weekday traffic count for Railway Street averaged 2142 vehicles per day, while the last Congdon Street count was several years ago so a new one should be done. To assist consideration of the proposal the Town has undertaken recent traffic counts adjacent to the site for Railway and Congdon Streets in both directions. This indicates as follows:

- Average weekly vehicles per day of 3848 for Railway Street and 1336 for Congdon Street.
- The main traffic flow on Railway Street is westbound and on Congdon Street is northbound.
- Traffic speeds were mostly and on average at or less than the limit, with Congdon Street having slower traffic.
- Almost all of the traffic was light vehicles, with only a small percentage of heavy vehicles.

This does not necessarily show significant growth in traffic as there are variables in data collected, such as count location and duration, the season and weather conditions, and so on; however, it outlines the general profile and pattern of traffic in the locality.

There has been only one reported accident in the past five years at this intersection, which involved failing to give way to a cyclist on Railway Street when turning from Congdon Street. Note that as it is now legal in Western Australia to cycle on footpaths, that type of accident may be ameliorated.

The traffic generated by the proposal is anticipated to be well within the capacity of the roads and would not have any significant impact in terms of volume, frequency and movements. Railway and Congdon Streets are classified as local distributor roads and have 50km/h speed limits.

As to the proposed vehicle access point, it is in the same position as the crossover to No. 126 Railway Street previously. A short distance to the west is the crossover to No. 124 Railway Street serving its double garage positioned close to the front boundary, and further along No. 122 Railway Street has a front crossover. No. 128 Railway Street had its main crossover on Congdon Street close to the corner, with a second crossover on Congdon Street at the southern end of the lot, adjacent to the crossover to 41 Congdon Street.

Were each lot developed with a new dwelling, No. 128 Railway Street would have a crossover in a similar position or elsewhere on its frontage and No. 126 Railway Street might also seek a crossover to Railway Street. Were the site subdivided into three lots at R20 (logically facing Railway Street for suitable size and shape), then at least two and possibly three crossovers to Railway Street would occur.

For the subject proposal, a crossover from Congdon Street would be less feasible in relation to a basement, the slope of the street and its one-way direction. Railway Street is two-way and has the advantage of only one-sided development with no crossovers opposite, while the intersection, median strip and speed plateau eastwards all control traffic.

Prior to demolition of the former dwellings the overgrown gardens affected sightlines. The site has an 8.5m long diagonal corner truncation and the street tree on Congdon Street nearest the corner does not unduly affect sightlines.

Given that traffic was raised in the submissions as a concern, the Town suggested that to assist Council's consideration the proponent should provide a report from a traffic consultant at this juncture, rather than to await the development application to submit such information. The attached Transport Impact Statement for the proposal has been received from Donald Veal Consultants. In summary, its findings and recommendations are:

- Traffic generated by the proposal is within the capacity of these local distributor roads, amounting to only a small percentage increase.
- Parking supplied by the proposal satisfies requirements.
- The proposed vehicle access would function satisfactorily, subject to some traffic management devices – one more speed plateau and a mirror are recommended.
- The traffic environment is moderate speed and has a low rate of reported crashes
- Therefore the proposal would operate within appropriate safety parameters.

This confirms the Town's analysis.

## CONCLUSION

Urban areas change incrementally and the scheme amendment process allows for individual proposals to be considered as they arise. In this case special provisions, a local development plan and the future development application phase all serve to control the outcome.

Statutory advertising of the Amendment and Local Development Plan has attracted a good number and range of submissions which have provided useful comments analysing the proposal and identifying issues of concern. The objections are not surprising and can be appreciated in relation to the prospect of change and a new type of development. They identify aspects for the proponent to respond to and for Council to consider in dealing with the proposal at this stage.

The proponent's vision for the site can be seen as genuine and innovative, but also somewhat ambitious. The development concept is consistent with metropolitan planning directions for evolving denser urban areas and mixed-use activity centres taking advantage of public transport.

The proposal is based on the particular location, context and characteristics of the site. It retains the underlying Residential zoning as the primary land use and seeks to include some low-key office and residents' recreation space. In terms of density it experiments with dwelling type, size, distribution and built form to create a unique residential environment, interspersed with open space and incorporating sustainability features.

As such the proposal is a hybrid between conventional residential and built-up "urban" development, whilst avoiding the apartment block impact typical of higher density projects. The purpose of the proposal is fundamentally residential, which the detailed design is focussed on, whilst being cognisant of its relationship to the local centre. Planning-wise the question is about an acceptable balance and built form.

That aside, the nature and degree of change represented by the proposal is the core theme of the submissions of objection. This is not unexpected and has identified several issues to be considered. Some of these can be addressed directly by the proposal. Others such as traffic extend beyond the proposal for wider examination.

The submissions of support are positive about the proposal and the supply of sophisticated sustainable housing.

As to the outcome of considering all of the submissions, Council has the following choices:

1. continue to support the Amendment and approve the Local Development Plan, without modification; or
2. not support the Amendment and refuse the Local Development Plan, citing its reasons; or
3. support the Amendment and Local Development Plan subject to modifications to address issues raised in submissions and require advertising of the modifications (only) for any further submissions.

The third option is recommended, by way of modifications as described below.

---

**MODIFICATIONS**

Reduction in the number of dwellings is not seen as critical; however, removal of the office floorspace from the proposal is seen as beneficial in several respects:

- Avoiding non-residential use spreading into the residential area, whereby the development would be solely residential, consistent with the zone.
- Eliminating traffic generated by that use.
- Eliminating parking required for that use, whereby the verge bays would be available for residential visitors.
- Reducing the footprint of the development, whereby the arrangement and articulation of the buildings can be modified to enhance the interfaces with the adjoining properties and the streets, including more green space.
- Refining the built form for solely residential design with a softer street-front presence.

The vehicle access is acceptable subject to suitable traffic management devices; hence it would be beneficial to incorporate that requirement into the Amendment and Local Development Plan.

Changes to road reserve infrastructure and verge improvements occasioned by the development should be to the Town's satisfaction at the cost of the proponent; hence it would be beneficial to incorporate these requirements into the Amendment and Local Development Plan for elaboration and certainty.

The Local Development Plan would benefit by showing indicative building envelopes and incorporating the Concept Design Plans to indicate the detail of the intended development.

**ADDITIONAL INFORMATION AFTER 16 AUGUST 2016 BRIEFING SESSION**

A late submission of objection was received, which has been added to the tables and a copy is provided.

A correction has been made to account for the submissions from Kathleen Street received and are included in the Attachments, as the data was one short.

Copies of the responses from the public authorities are provided.

**ADDITIONAL INFORMATION AFTER 23 AUGUST 2016 COUNCIL MEETING****Submissions**

The submissions reported to Council on 23 August 2016 were those received in time for the Agenda production, including some received after the advertising period.

After the Agenda was produced but before the Council meeting some further submissions were received, which were copied and tabled for Council's information; including the withdrawal of one earlier submission of support.

Since the Council meeting a few further submissions were received.

In summary, subsequent to the previous Agenda report, nine additional submissions of support and 20 additional submissions of objection were received. The origins of the further submissions of support comprise three from within Cottesloe, two from outside and four unknown. The origins of the further submissions of objection comprise 13 from within Cottesloe and seven from outside.

Overall, the submissions now comprise and tally as follows:

<b>SUBMISSIONS</b>	<b>Support</b>	<b>Objection</b>	<b>Public Authorities</b>	<i>Totals</i>
<b>Reported to Council 23<sup>rd</sup> August</b>	31 -1 withdrawn	55	3	88
<b>Later ones tabled at Council 23<sup>rd</sup> August</b>	7	16	-	22
<b>Received since Council 23<sup>rd</sup> August</b>	2	4	-	5
<i>Totals</i>	39	75	3	116

Public authority submissions aside, 79 submissions (28 of support and 51 of objection) or 70% were received during the advertising period, whilst 34 submissions (11 of support and 23 of objection) or 30% were received after the advertising period. The Regulations provide that submissions received after the close of advertising may be considered at Council's discretion, which would be reasonable in this case. The additional submissions of support and objection appear to have been stimulated by community debate and press coverage about the proposal. Public authority submissions aside, the apportionment of all the submissions is one third supporting and two-thirds objecting.

The bearing of submissions is not merely their number, categorisation or proportion, but also the weight to be given to the comments made in relation to a proposal and the framework for evaluation. Typically as in this instance submissions occupy a spectrum of qualified comments from wholly in favour to wholly not in favour and for a variety of reasons, rather than being simply for or against. Initially officers discerned a middle category of submissions containing both positive and negative comments; however, it was decided to group all submissions containing any objection together to distinguish them from those wholly in support, although that basic distinction skews the statistics towards the objections.

### **Further advice**

The following advice is provided on particular aspects raised regarding the proposal.

#### Overshadow of southern adjacent property

Concern has been expressed that overshadow of the southern adjacent property by the development envisaged would be excessive. However, larger-scale detailed plans of the proposal demonstrate that, as previously advised, the development

would overshadow that property by 25%, which satisfies the current deemed-to-comply requirement of the Residential Design Codes. By way of comparison, a 1.8m high dividing fence along the common boundary would overshadow the southern property by some 14%; whilst that property has a garage wall built on the boundary which prevents solar access.

For certainty in this respect, an additional provision based on the Residential Design Codes is recommended as elaborated below.

#### Vehicle access routes

Concern has been expressed that the existing median strip in Railway Street could be extended westward in front of the development site for traffic management. Although that was identified in the traffic consultant's report as a potential option, it is not recommended by that report nor as part of the Scheme Amendment or Local Development Plan. Rather, flexibility for vehicle movements to and from the site is preferred in order to avoid limited movements and "rat-run" routes. Specific traffic measures would be selected at the development application stage after more detailed design and consideration.

#### Western Power infrastructure

Concern has been expressed that addressing the existing Western Power line could result in undesirable infrastructure. As advised, the proponent is liaising with Western Power in this respect, to examine the options of undergrounding or relocation to the other side of the road. Feedback so far is that both options are feasible and new poles would not be the large-diameter type used at some major intersections, as footpath space and aesthetics are considerations. Detailed design to alter the existing power line and resident consultation would occur at the development stage.

#### **Further modifications**

Having regard to aspects raised, the opportunity is taken to propose some further modifications, both technical and by way of development provisions, as summarised below and set out in full in the amended officer recommendation.

#### Amendment No. 5

Overshadow – adding a special provision to ensure that the development satisfies the extent of overshadow as governed by the Residential Design Codes. Note that the intended development is capable of satisfying the current overshadow standard of 25% for the southern adjacent lot.

Land use – for clarity, adding a definition for the term *communal recreation* that is contained in the documentation.

#### Local Development Plan No. 1

Concept Design Plans – refining the wording of the description under that heading.



Site Plan – elaborating on adjustment of the development footprint to satisfy solar access (which correlates with the overshadow provision) and privacy measures; and refinement of reference to the building envelopes.

### **Demonstration of modifications**

For ease of understanding, attached are demonstrations of the Scheme Amendment document and the Local Development Plan document showing the modifications recommended in the previous report and the further modifications recommended in this report.

### **Statutory decisions**

As outlined above, Council is required to decide whether to support and maybe modify (and if so whether to advertise the modifications) or to not support the Scheme Amendment proposal; and to approve, require modification of or refuse the Local Development Plan proposal.

Whatever Council resolves, under the Regulations it is required to then forward the Scheme Amendment proposal, including its consideration of the submissions, to the Western Australian Planning Commission for review and advice to the Minister for Planning, who determines the future of the Amendment.

### **VOTING**

Simple Majority

### **PREVIOUS OFFICER RECOMMENDATION**

THAT Council, having regard to the proposal, its justification material, the submissions and the officer reports, resolves to:

#### Amendment No. 5

Support the Amendment with the following proposed modifications to address issues raised in submissions:

Modify Schedule 12 as follows:

1. In the Land Use column, delete “office” as a permissible use.
2. In the Special Provisions column in point 1, add reference to the Concept Design Plans incorporated into Development Plan No. 1 (as shown underlined) and make minor technical refinements (as shown struck-through), as follows:

*The development shall generally be in accordance with Local Development Plan No. 1 annexed to this Scheme Amendment and the Concept Design Plans attached thereto, subject to any modification in a development approval ~~by the local government~~.*

3. In the Special Provisions column, delete point 3, thereby excluding “office” use; and renumber points 4 and 5 as 3 and 4.
4. In the Special Provisions column, add a new point 5 as follows:

*Creation of the proposed vehicle access for the development via Railway Street shall include devices to assist with traffic safety for vehicles, pedestrians and cyclists, such as a speed plateau, pavement treatments, a mirror, lighting, signs, etc; at the cost of the developer and all to the satisfaction of the Town.*

5. In the Special Provisions column, add a new point 6 as follows:

*The developer shall bear the cost of any changes to infrastructure within the road reserves (comprising the carriageways and verges adjacent or in proximity to the land) necessitated by the proposed development, including but not limited to: infrastructure relocation and replacement, road treatments, traffic management devices and signage, and verge parking; all to the satisfaction of the Town.*

6. In the Special Provisions column, add a new point 7 as follows:

*The developer shall bear the cost of upgrading and beautifying the verges adjacent to the land, including footpaths, trees, water-wise plants and other landscaping treatments; all to the satisfaction of the Town.*

Form the opinion that the proposed modifications are relatively significant changes warranting readvertising for public information and any submissions on them.

#### Local Development Plan No. 1

Require modification and resubmission of the Local Development Plan forming part of the Amendment, as follows:

Modify the Plan text as follows:

1. Under the heading Land Use, delete reference to office use.
2. In the Development Standard section, add new headings and text as follows:

- a. Vehicle Access

*Creation of the proposed vehicle access for the development via Railway Street shall include devices to assist with traffic safety for vehicles, pedestrians and cyclists, such as a speed plateau, pavement treatments, a mirror, lighting, signs, etc; at the cost of the developer and all to the satisfaction of the Town.*

- b. Road Reserve Infrastructure Changes

*The developer shall bear the cost of any changes to infrastructure within the road reserves (comprising the carriageways and verges adjacent or in proximity to the land) necessitated by the proposed development, including but not limited to: infrastructure relocation and replacement, road treatments, traffic management devices and signage, and verge parking; all to the satisfaction of the Town.*

- c. Verge Upgrading and Beautification

---

*The developer shall bear the cost of upgrading and beautifying the verges adjacent to the land, including footpaths, trees, water-wise plants and other landscaping treatments; all to the satisfaction of the Town.*

d. Concept Design Plans

*The attached Concept Design Plans indicate the development proposed pursuant to this Local Development Plan and to the requirements for the use and development of the land contained in Schedule 12 - Special Provisions of Local Planning Scheme No. 3. The proposed development is subject to a fully-detailed planning application and approval.*

Modify the Site Plan as follows:

1. Adjust the footprint of the development in terms of the arrangement of setbacks, boundary walls and open space to enhance the interfaces with the adjoining properties and the streets.
2. Show the finalised building envelopes of the dwellings on the Plan.

Attach the revised Concept Design Plans to indicate the detail of the intended development.

Traffic and parking

Having regard to concerns raised in submissions in relation to traffic and parking in the area generally, as a separate matter in its own right, undertake a review of traffic and parking management in the locality.

**VOTING**

Simple Majority

**AMENDED OFFICER RECOMMENDATION**

**Moved Cr Rodda, seconded Cr Angers**

THAT Council, having regard to the proposal, its justification material, the submissions and the officer reports, resolves to:

Amendment No. 5

Support the Amendment with the following proposed modifications to address issues raised in submissions:

Modify Schedule 12 as follows:

1. In the Land Use column, delete "office" as a permissible use.

2. In the Special Provisions column in point 1, add reference to the Concept Design Plans incorporated into Development Plan No. 1 (as shown underlined) and make minor technical refinements (as shown struck-through), as follows:

*The development shall generally be in accordance with Local Development Plan No. 1 annexed to this Scheme ~~Amendment~~ and the Concept Design Plans attached thereto, subject to any modification in a development approval ~~by the local government~~.*

3. In the Special Provisions column, delete point 3, thereby excluding “office” use; and renumber points 4 and 5 as 3 and 4.

4. In the Special Provisions column, add a new point 5 as follows:

*Creation of the proposed vehicle access for the development via Railway Street shall include devices to assist with traffic safety for vehicles, pedestrians and cyclists, such as a speed plateau, pavement treatments, a mirror, lighting, signs, etc; at the cost of the developer and all to the satisfaction of the Town.*

5. In the Special Provisions column, add a new point 6 as follows:

*The developer shall bear the cost of any changes to infrastructure within the road reserves (comprising the carriageways and verges adjacent or in proximity to the land) necessitated by the proposed development, including but not limited to: infrastructure relocation and replacement, road treatments, traffic management devices and signage, and verge parking; all to the satisfaction of the Town.*

6. In the Special Provisions column, add a new point 7 as follows:

*The developer shall bear the cost of upgrading and beautifying the verges adjacent to the land, including footpaths, trees, water-wise plants and other landscaping treatments; all to the satisfaction of the Town.*

7. In the Special Provisions column, add a new point 8 as follows:

*The development shall be designed so that its shadow cast at midday on 21 June onto any adjoining property does not exceed the percentage of that site’s area as specified in the deemed-to-comply requirements of the Residential Design Codes for the R-code of that property.*

Add to Schedule 1 of the Scheme the following Land Use Definition:

*“communal recreation” means building space for recreational use by the occupiers of a grouped or multiple dwellings development and their guests, excluding unrelated use by any external person or business.*

Form the opinion that the proposed modifications are relatively significant changes warranting readvertising for public information and any submissions on them.

Local Development Plan No. 1

---

Require modification and resubmission of the Local Development Plan forming part of the Amendment, as follows:

Modify the Plan text as follows:

1. Under the heading Land Use, delete reference to office use.
2. In the Development Standards section, add new headings and text as follows:

- a. Vehicle Access

*Creation of the proposed vehicle access for the development via Railway Street shall include devices to assist with traffic safety for vehicles, pedestrians and cyclists, such as a speed plateau, pavement treatments, a mirror, lighting, signs, etc; at the cost of the developer and all to the satisfaction of the Town.*

- b. Road Reserve Infrastructure Changes

*The developer shall bear the cost of any changes to infrastructure within the road reserves (comprising the carriageways and verges adjacent or in proximity to the land) necessitated by the proposed development, including but not limited to: infrastructure relocation and replacement, road treatments, traffic management devices and signage, and verge parking; all to the satisfaction of the Town.*

- c. Verge Upgrading and Beautification

*The developer shall bear the cost of upgrading and beautifying the verges adjacent to the land, including footpaths, trees, water-wise plants and other landscaping treatments; all to the satisfaction of the Town.*

- d. Concept Design Plans

*The attached Concept Design Plans indicate the development proposed pursuant to this Local Development Plan and to be in accordance with the requirements for the use and development of the land contained in Schedule 12 - Special Provisions of Local Planning Scheme No. 3. The proposed development is subject to a fully-detailed planning application and approval.*

Modify the Site Plan as follows:

1. Adjust the footprint of the proposed development in terms of the arrangement of setbacks, boundary walls and open space to enhance the interfaces with the adjoining properties and the streets, to satisfy the requirements of the Residential Design Codes for solar access and privacy.

2. Show the ~~finalised~~ proposed building envelopes of the dwellings on the Site Plan, reflecting point 1 above.

Attach the revised Concept Design Plans to indicate the detail of the intended development.

#### Traffic and parking

Having regard to concerns raised in submissions in relation to traffic and parking in the area generally, as a separate matter in its own right, undertake a review of traffic and parking management in the locality.

### **FORESHADOWED COUNCILLOR MOTION**

Cr Boulter foreshadowed a revocation motion, submitted today to the Town's administration, should the officer recommendation be lost.

### **AMENDMENT**

**Moved Cr Boulter, seconded Cr Pyvis**

**That the word 'generally' be deleted in point two (2) of the amended officer recommendation for Amendment No. 5, in order to provide the minimum amount of discretion should the amendment be passed and to contain it to that which is anticipated and currently is appropriate.**

Carried 8/0

### **COUNCIL RESOLUTION**

**THAT Council, having regard to the proposal, its justification material, the submissions and the officer reports, resolves to:**

#### **Amendment No. 5**

**Support the Amendment with the following proposed modifications to address issues raised in submissions:**

**Modify Schedule 12 as follows:**

1. In the Land Use column, delete "office" as a permissible use.
2. In the Special Provisions column in point 1, add reference to the Concept Design Plans incorporated into Development Plan No. 1 (as shown underlined) and make minor technical refinements (as shown struck-through), as follows:

***The development shall be in accordance with Local Development Plan No. 1 annexed to this Scheme Amendment and the Concept Design Plans attached thereto, subject to any modification in a development approval ~~by the local government.~~***

3. In the Special Provisions column, delete point 3, thereby excluding “office” use; and renumber points 4 and 5 as 3 and 4.

4. In the Special Provisions column, add a new point 5 as follows:

*Creation of the proposed vehicle access for the development via Railway Street shall include devices to assist with traffic safety for vehicles, pedestrians and cyclists, such as a speed plateau, pavement treatments, a mirror, lighting, signs, etc; at the cost of the developer and all to the satisfaction of the Town.*

5. In the Special Provisions column, add a new point 6 as follows:

*The developer shall bear the cost of any changes to infrastructure within the road reserves (comprising the carriageways and verges adjacent or in proximity to the land) necessitated by the proposed development, including but not limited to: infrastructure relocation and replacement, road treatments, traffic management devices and signage, and verge parking; all to the satisfaction of the Town.*

6. In the Special Provisions column, add a new point 7 as follows:

*The developer shall bear the cost of upgrading and beautifying the verges adjacent to the land, including footpaths, trees, water-wise plants and other landscaping treatments; all to the satisfaction of the Town.*

7. In the Special Provisions column, add a new point 8 as follows:

*The development shall be designed so that its shadow cast at midday on 21 June onto any adjoining property does not exceed the percentage of that site’s area as specified in the deemed-to-comply requirements of the Residential Design Codes for the R-code of that property.*

Add to Schedule 1 of the Scheme the following Land Use Definition:

*“communal recreation” means building space for recreational use by the occupiers of a grouped or multiple dwellings development and their guests, excluding unrelated use by any external person or business.*

Form the opinion that the proposed modifications are relatively significant changes warranting readvertising for public information and any submissions on them.

#### Local Development Plan No. 1

Require modification and resubmission of the Local Development Plan forming part of the Amendment, as follows:

Modify the Plan text as follows:

1. Under the heading Land Use, delete reference to office use.
-

2. In the Development Standards section, add new headings and text as follows:

a. **Vehicle Access**

*Creation of the proposed vehicle access for the development via Railway Street shall include devices to assist with traffic safety for vehicles, pedestrians and cyclists, such as a speed plateau, pavement treatments, a mirror, lighting, signs, etc; at the cost of the developer and all to the satisfaction of the Town.*

b. **Road Reserve Infrastructure Changes**

*The developer shall bear the cost of any changes to infrastructure within the road reserves (comprising the carriageways and verges adjacent or in proximity to the land) necessitated by the proposed development, including but not limited to: infrastructure relocation and replacement, road treatments, traffic management devices and signage, and verge parking; all to the satisfaction of the Town.*

c. **Verge Upgrading and Beautification**

*The developer shall bear the cost of upgrading and beautifying the verges adjacent to the land, including footpaths, trees, water-wise plants and other landscaping treatments; all to the satisfaction of the Town.*

d. **Concept Design Plans**

*The attached Concept Design Plans indicate the development proposed pursuant to this Local Development Plan and to in accordance with the requirements for the use and development of the land contained in Schedule 12 - Special Provisions of Local Planning Scheme No. 3. The proposed development is subject to a fully-detailed planning application and approval.*

Modify the Site Plan as follows:

1. Adjust the footprint of the proposed development in terms of the arrangement of setbacks, boundary walls and open space to enhance the interfaces with the adjoining properties and the streets, to satisfy the requirements of the Residential Design Codes for solar access and privacy.
2. Show the finalised proposed building envelopes of the dwellings on the Site Plan, reflecting point 1 above.

Attach the revised Concept Design Plans to indicate the detail of the intended development.



**Traffic and parking**

Having regard to concerns raised in submissions in relation to traffic and parking in the area generally, as a separate matter in its own right, undertake a review of traffic and parking management in the locality.

Lost: 3/5

For: Mayor Dawkins, Crs Rodda and Angers

Against: Crs Boulter, Birnbrauer, Thomas, Downes and Pyvis

**VOTING**

Absolute Majority

**COUNCILLOR MOTION ONE**

Moved Cr Boulter, seconded Cr Pyvis

Cr Boulter proposes the following revocation motion:

Having regard to submissions revealing overwhelming:

- numbers of Cottesloe community objections to the proposed Scheme Amendment No. 5; and
- support of the Cottesloe community for the objectives of Town of Cottesloe Strategic Community Plan 2016; the Town of Cottesloe Local Planning Strategy (2008) and the TOC Local Planning Scheme No. 3 (2014), that Council revokes its decision 26 April 2016:

*THAT Council, in pursuance of the Planning and Development Act 2005 and the Planning and Development (Local Planning Schemes) Regulations 2015, hereby resolves to:*

*Proposed Amendment No. 5*

1. *Amend the Town of Cottesloe Local Planning Scheme No. 3 to introduce particular development controls for Lots 24 and 25 Railway Street on the corner of Congdon Street, Cottesloe, by:*
  - a) *amending the Scheme Map to change the residential density code from R20 to R60; and*
  - b) *amending the Scheme Text to insert in Schedule 12: Special Provisions a description of the subject land, a description of land use, and special provisions including reference to Development Plan No. 1 and specification of the maximum number of multiple dwellings, the uses and the building height permitted.*

Rationale:

The decision:

---

- is inconsistent with the recommended approach to redevelopment pressures articulated in the Town of Cottesloe Strategic Community Plan 2016;
- is inconsistent with the R20 protection afforded to the affected land by the TOC Local Planning Strategy (LPS) and the Local Planning Scheme 3 (LPS3);
- ignores the provision for significant infill opportunities on the Cottesloe Transport Corridor already provided under LPS and LPS3 around the Cottesloe Village and on unallocated railway reserve land;
- is without any rationale strategic foundation or planning policy based reason provided by the proponent or TOC administration for departure from the Cottesloe Strategic Community Plan, the LPS or the LPS3;
- ignores the infill proposal for unused Railway Lands in South Cottesloe currently before Council, which is consistent with TOC strategic and policy direction adopted for infill in the Cottesloe locality (McCall Centre lands); and
- ignores the lack of certainty around the ongoing use of the Swanbourne Railway Station, given the WA state government announced intentions to close some railway stations, with Loch Street station recently announced for closure.

Notes to Rationale: TOC Strategic Plan does not support the Scheme Amendment No. 5 for the following reasons:

- The primary TOC strategy document is the Town of Cottesloe Strategic Community Plan 2013-2023 (the Strategy), which was advertised to the community in 2016 and was re-adopted in 2016 (with some amendments) by Council, in response to community submissions.
- The Mission Statement for the TOC Strategy is, "To preserve and improve Cottesloe's natural and built environment and beach lifestyle by using sustainable strategies. Members of the community will continue to be engaged to shape the future of Cottesloe and strengthen Council's leadership".
- Sustainable Strategies are articulated in the Strategy to have four interconnected principles of sustainability, with the first principle being Sustainable development: To embrace and integrate sustainable development principles including social, economic, environmental and cultural aspects when planning for the district.
- And then the Strategy provides that to ensure sustainable principles are incorporated into major strategies, Council will use its policy making role to set out criteria that will assist the Council to make decisions...
- The Strategy's Priority Area 2 notes that properly planned redevelopment will result in greater connectivity between east and west Cottesloe. In particular, the road and rail cutoffs between the beach... and the town centre [ie the Napoleon/Station Sts Cottesloe Village] and notes that ... the town centre could benefit from mixed use development, new housing, local open space and general improvement to the overall railway precinct.
- The Strategy's Priority Area 4 : Managing Development provides that ... care must be taken that the pressure for denser development does not destroy the ... green leafy neighbourhoods and unduly affect the amenity and ambience enjoyed by residents...
- Cottesloe's further direction is stated at page 16 ... to be committed to using a policy driven approach to manage development pressures.

Accordingly, the Strategy does not support the proposed Scheme Amendment No. 5.

Notes to Rationale: TOC Policy does not support the Scheme Amendment No. 5 for the following reasons:

- Council had adopted important planning policies to guide the TOC strategic direction to be used for the policy driven approach to development pressures, as anticipated by the Strategy.
- Council has adopted a Local Planning Strategy and Local Planning Policy Design Guidelines for the Railway Street Local Centre, which are planning policies as anticipated by the TOC Strategic Community Plan 2013-2023 to be relied on;
- the Local Planning Strategy (LPS) at page 2 sets the strategic outlook for [Cottesloe]... the rationale for scheme proposals; and which include at page 12, cl.4.5 Consider undeveloped Government owned land for higher density development provided there is both public support and benefit for the Cottesloe community; and cl 4.6 to Retain the predominantly two-storey height limit of existing residential areas; and at page 14 Transit orientated development on ... railway lands associated with the Town Centre [ie the Napoleon/Station Sts Town Centre]...that addresses transport efficiency, east-west connectivity, housing supply density, built form and urban amenity; and at page 15 Residential zone ...retention of extensive areas of R20 and R30 code density; and finally at the map on page 24 and LPS strategies and action ...recommended to be addressed at page 39, the recommended strategy ... to, protect and enhance the residential amenity, character and streetscape quality of residential precincts;
- the TOC Local Planning Policy Design Guidelines at page 14 for the Railway Street Local Centre provides that, These two areas [Dawson and Commercial sites] have no particular relation to one another and can be treated independently, both of each other and of the Swanbourne Centre on the opposite side of the railway line, with which there is no discernible interaction;
- diminishing the R20 amenity in Cottesloe is inconsistent with the TOC strategies and planning policies;
- the importance of the R20 precincts are articulated in the Strategy and the LPS (and implemented in LPS3);
- nothing I have read or seen yet gives me any reason to depart from these carefully set out TOC planning strategies and policies, which include protection of the remaining Cottesloe R20 precincts;
- this amendment will set an undesirable precedent that could lead to a significant reduction in the percentage of remaining R20 precincts in Cottesloe (especially in the precinct referred to by some as “Claremont Hill”);
- the Local Planning Scheme No 3 (LPS3) implements the statutory protection of the R20 precincts and identifies the places for infill (not this residential precinct) as articulated in the strategic direction of and planning policies for Cottesloe, and requires Council at clause 1.6 to:
  - *facilitate implementation of the State Planning Strategy*, which the TOC Local Planning Strategy clearly does in relation to protection of the remaining R20 areas and promotion of infill development on transport corridors (being clearly articulated to be have been decided on State Planning Policy grounds should be around the Cottesloe Village); and

- *promote the Local Planning Strategy; and*
- while, technically it is not under LPS3 that a scheme amendment is made, LPS3 does statutorily implement the strategic expectations of the community as articulated in Town of Cottesloe Strategic Community Plan 2013-2023 and the TOC Local Planning Strategy;

Notes to Rationale: No grounds for departure from TOC Strategic Direction and TOC Planning Policies

Consideration of the secondary question of whether or not this proposal represents a good example of infill development should follow the primary question, which is: "Is the right site for it?", which so far in Council's opinion has not been demonstrated, because no sound strategic or policy planning ground(s) has/have been articulated to support such a radical departure from the TOC strategic planning policy documents so recently re-endorsed by the Cottesloe community.

Crs Sandra Boulter, Rob Thomas and Sally Pyvis

**Carried: 5/3**

**For: Crs Boulter, Birnbrauer, Thomas, Downes and Pyvis**

**Against: Mayor Dawkins, Crs Rodda and Angers**

## **COUNCIL RESOLUTION**

**Moved Cr Boulter, seconded Cr Pyvis**

**THAT Council REVOKES its decision 26 April 2016:**

**THAT Council, in pursuance of the Planning and Development Act 2005 and the Planning and Development (Local Planning Schemes) Regulations 2015, hereby resolves to:**

### **Proposed Amendment No. 5**

- 1. Amend the Town of Cottesloe Local Planning Scheme No. 3 to introduce particular development controls for Lots 24 and 25 Railway Street on the corner of Congdon Street, Cottesloe, by:**
  - a) amending the Scheme Map to change the residential density code from R20 to R60; and**
  - b) amending the Scheme Text to insert in Schedule 12: Special Provisions a description of the subject land, a description of land use, and special provisions including reference to Development Plan No. 1 and specification of the maximum number of multiple dwellings, the uses and the building height permitted.**

Crs Sandra Boulter, Rob Thomas and Sally Pyvis

**Carried: 5/3**

**For: Crs Boulter, Birnbrauer, Thomas, Downes and Pyvis**

**Against: Mayor Dawkins, Crs Rodda and Angers**

*The Mayor adjourned the meeting at 7:41 PM for three minutes.*

---

*The Mayor resumed the meeting at 7:43 pm.*

### **9.1.2 RESPONSIBLE AUTHORITY REPORT – 220 MARINE PARADE, COTTESLOE**

**File Ref:** 3408  
**Attachments:** [Responsible Authority Report](#)  
[Aerial](#)  
[Applicant submissions](#)  
[Bushfire Attack Level certificate](#)  
[Schedule of Submissions](#)  
[Map of nearby submitters](#)  
[Public submissions](#)  
[Plans and Images](#)

**Responsible Officer:** Mat Humfrey, Chief Executive Officer  
**Author:** Mat Humfrey, Chief Executive Officer  
**Proposed Meeting Date:** 20 September 2016  
**Author Disclosure of Interest:** Nil

---

### **SUMMARY**

The Town has received an application for planning approval for 220 Marine Parade Cottesloe. The application will be determined by the Metro West Joint Development Assessment Panel and as such, the Town is required to submit a Responsible Authority Report to the Metro West Joint Development Assessment Panel to assist in its deliberations. The Responsible Authority Report is being presented for Council's consideration and possible comment.

### **BACKGROUND**

The Development Assessment Panels were established by the State Government to hear and determine certain applications for planning approval. The Development Assessment Panels sit in place of the Council for the area they represent.

The Metro West Joint Development Assessment Panel covers an area that includes the Town of Cottesloe. It consists of five members, two of whom are representatives of the local government to which an application applies.

In any application before the Metro West Joint Development Assessment Panel that involves a property within the Town of Cottesloe, the Town becomes the Responsible Authority. As such, the Town's Officers are then required to produce a Responsible Authority Report for the Metro West Joint Development Assessment Panel to consider in their determination of the application.

Until recently, the Council's direct involvement in the Development Assessment Panel process was somewhat limited. As officers were required to prepare and submit the Responsible Authority Report, this could create difficulties, particularly for the officers involved preparing reports on applications that they would have known were not necessarily supported by the community. Even in instances where officers were recommending refusal, they could be caught up in the negative publicity that surrounded such applications or be implicated in any decision that the Metro West

---

Joint Development Assessment Panel has made. This situation is not unique to the Town of Cottesloe.

More recently, techniques have been developed that allow the Council to make comments and have more input into the Development Assessment Panel decision making process. This report provides one way in which the Council can be involved in the process, without necessarily prejudicing any decision by the Metro West Joint Development Assessment Panel if the decision is to refuse the application.

### **STRATEGIC IMPLICATIONS**

Priority Area 1 – Protecting and Enhancing the wellbeing of residents and visitors  
Strategy 1.4 – Continue to improve community engagement.

Procedures have been reviewed to provide affected residents and submitters with information on the Metro West Joint Development Assessment Panel process and how they can be involved.

Priority Area 6 – Providing open and accountable local governance.  
Strategy 6.2 – Continue to deliver high quality governance, administration, resource management and professional development.

As above, the relevant Regulations have been reviewed to find a meaningful way for the Council, representing the community, to be involved in decisions made by the Metro West Joint Development Assessment Panel. This involvement is designed not to create any appeal rights in the event the Metro West Joint Development Assessment Panel resolves to refuse development approval in any particular instance.

### **POLICY IMPLICATIONS**

Nil at this stage.

Council may wish to consider implementing a policy that guides how Responsible Authority Reports are provided to Council to allow the Council to make comment to the Metro West Joint Development Assessment Panel.

### **STATUTORY ENVIRONMENT**

*Local Government Act 1995*

*Planning and Development Act 2005*

*Planning and Development (Local Planning Schemes) Regulations 2015*

Town of Cottesloe Local Planning Scheme No. 3

### **FINANCIAL IMPLICATIONS**

Nil. The costs associated with the preparation of Responsible Authority Reports and this report are met with current operating budgets.

### **STAFFING IMPLICATIONS**

The development of Responsible Authority Reports requires staff resources to be allocated to this task. However, these resources are available and are normally allocated to assessing planning applications.

**SUSTAINABILITY IMPLICATIONS**

There are no sustainability implications directly associated with this report.

**CONSULTATION**

The Town undertook extensive public consultation on the application it received. The results of this consultation have been summarised in the Responsible Authority Report attached and have been included in full as an attachment to that report.

The Town has consulted with its solicitors on aspects of this application and whether or not it is capable of being approved under the Town of Cottesloe Local Planning Scheme No. 3. This advice has been provided as a confidential attachment, as it is legal advice. The advice is referenced in the Responsible Authority Report.

**STAFF COMMENT**

When the Town is asked to make a decision on any application, the process that is generally followed sees the Town's administration making a technical assessment of the application that is then presented to the Council for consideration. When the Council determines the application, it takes the technical information (and recommendation) provided by the officers and considers that against the community's expectations and then makes its decision.

In the case of an application determined under the Development Assessment Panel process, the technical information is still provided by the officers, but it is supplied directly to the Development Assessment Panel. Until now it has been incumbent on the two Council representatives on the Development Assessment Panel to represent the whole community's perspective on the application – which can be a difficult task, given the often wide range of views that can be present. These representatives also face the challenge of being in the minority of members on the Development Assessment Panel.

When Officers reassessed this process following Council's resolution at the August 2016 Council meeting, much thought and discussion was had as to how the Council could be involved in a Development Assessment Panel process, without prejudicing the technical assessment provided by staff. As many of the Development Assessment Panel decisions are on controversial applications, it is considered vital that the Town is participating in the process as required, to ensure that no grounds for appeal are generated in the event the Development Assessment Panel refuses an application.

On the Department of Planning website, under the frequently asked questions on Development Assessment Panels, the following question is put:

*Q: Can a local government in Council alter the r.12 responsible authority report as prepared by the relevant professional planner?*

The answer provided states:

As stated in the publication 'Making Good Planning Decisions' at clause 4.5.3(b):

*“It should be noted that a DAP application report is NOT a resolution of the relevant local government’s council – it is the professional opinion of the local government’s planning officer who assessed the application. It is improper for Councillors of a local government to influence the planning officer’s report in any way. If the local government wishes to make a statement regarding an application before a DAP, it should do so by making a submission.”*

This creates a unique situation where the Council, who lead the organisation are supposedly not meant to be able to provide any guidance to their administration in the preparation of a report to an external authority. There are no other instances that officers can recall where a similar process is in place. However, as these are the guidelines provided, there would be an element of risk associated with a situation where the Council sets aside or amends a planning officer’s report, in that any change could provide grounds for an appeal, given the current guidance from the DAP secretariat and the available information.

It’s also worth noting the example provided in paragraph 17 of Practice Note 9. This example deals with the situation where a Council does not endorse the Responsible Authority Report provided by the local government’s planning officers. In this example it is stated that:

*“The issue became pertinently identified during the development application over James Price Point, which was later subject to a Supreme Court challenge in *Hunter v Minister for Planning* [2012] WASC 247. In that matter, the Shire resolved not to endorse the Responsible Authority Report as prepared by its planning staff. On 17 February 2012, the Kimberly Joint Development Assessment Panel proceeded to determine the application, noting it had a copy of the planning officer’s unendorsed Responsible Authority Report, which arguably contained sufficient technical planning information necessary to take into account all relevant considerations, even though the Shire’s Council resolved not to endorse the report formally or give it to the presiding member.”*

The Practice Note provides further at paragraph 21 *“a Council’s view is something the DAP is entitled to consider, but is not otherwise bound to consider, when reaching its decision.”*

Having regard for the respective roles of the administration and Council in decision making, the issue with the current Development Assessment Panel process is that there is no avenue for all of the elected representatives of the community to have a bearing on the decision made. So while the technical assessment is made, there is no mechanism for the community perspective to be applied, aside a minority position within the Development Assessment Panel itself. While this reflects a process design issue, the Town needs to deal with the issue within the current Regulations to provide community representation.

The recommendation below is considered the appropriate way in which this matter can proceed. It notes that the technical assessment of the application is contained within the Responsible Authority Report (Responsible Authority Report) and that this should pass to the Development Assessment Panel for their consideration. However, it also provides a mechanism in which Council can forward its position on the application to the Development Assessment Panel.



By providing to the Council the technical assessment (contained within the Responsible Authority Report) and the feedback received so far, Council is able to make an informed statement to the Development Assessment Panel. The statement provided can outline to the Panel any concerns the Council has and may even go so far as to suggest conditions in the event approval may be granted.

Unlike a normal Council determination though, the Council is not required to make a decision, merely a recommendation. This allows Council considerably more freedom to present the community's views, free of the requirement to consider technical aspects of the application.

While the Council's views can be represented at the Metro West Joint Development Assessment Panel meeting, it is still important that members of the public are made aware of any upcoming Metro West Joint Development Assessment Panel meeting and their ability to request the opportunity to make an individual presentation to that meeting. As such, all submitters will be informed of the time and location of the Metro West Joint Development Assessment Panel meeting, in addition to the meeting details being available through the normal places at the Town of Cottesloe.

### **VOTING**

Simple Majority

### **OFFICER RECOMMENDATION**

**Moved Cr Thomas, seconded Cr Rodda**

THAT Council:

1. Note the Responsible Authority Report on the application for development at 220 Marine Parade, Cottesloe; and
2. Authorise the Mayor to make a presentation to the Metro West Joint Development Assessment Panel meeting, outlining the Council's concerns with the application, including:
  - a. The application does not appear capable of approval under the Town of Cottesloe Local Planning Scheme No.3;
  - b. The application represents a development of a bulk and scale that is not suitable to the site in question;
  - c. The application would have a detrimental impact on community amenity; and
  - d. All of the submissions received during the advertising period objected to the application.

### **AMENDMENT**

**Moved Cr Boulter, seconded Cr Pyvis**

**That the first word 'Note' in point one (1) be replaced with 'Support', and that the words 'concerns with' in point two (2) be replaced with 'opposition to' to provide stronger emphasis on Council's stance.**

**Carried 8/0**

---

**COUNCIL RESOLUTION**

**THAT Council:**

- 1. Support the Responsible Authority Report on the application for development at 220 Marine Parade, Cottesloe; and**
- 2. Authorise the Mayor to make a presentation to the Metro West Joint Development Assessment Panel meeting, outlining the Council's opposition to the application, including:**
  - a. The application does not appear capable of approval under the Town of Cottesloe Local Planning Scheme No.3;**
  - b. The application represents a development of a bulk and scale that is not suitable to the site in question;**
  - c. The application would have a detrimental impact on community amenity; and**
  - d. All of the submissions received during the advertising period objected to the application.**

**THE AMENDED SUBSTANTIVE MOTION WAS PUT**

**Carried 8/0**

**10 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil.

**11 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING**

**11.1 ELECTED MEMBERS**

Nil.

**11.2 OFFICERS**

Nil.

**12 MEETING CLOSED TO PUBLIC**

**12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

Nil.

**12.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC**

Nil.

**13 MEETING CLOSURE**

The Mayor announced the closure of the meeting at 7:27 PM.

CONFIRMED MINUTES OF 20 SEPTEMBER 2016 PAGES 1 – 49 INCLUSIVE.

PRESIDING MEMBER:

POSITION:

.....

DATE: ..... / ..... / .....