

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**SPECIAL MEETING OF COUNCIL
HELD IN THE
COUNCIL CHAMBERS, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, TUESDAY, 21 FEBRUARY, 2006**

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 6.02pm.

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

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

Officers in Attendance

Mr Stephen Tindale	Chief Executive Officer
Mr Andrew Jackson	Manager Development Services
Delia Neglie	Planning Assistant
Ms Jodie Peers	Executive Assistant

Apologies

Nil

Leave of Absence (previously approved)

Nil

3 PUBLIC QUESTION TIME

Nil

4 APPLICATIONS FOR LEAVE OF ABSENCE

Moved Mayor Morgan, seconded Cr Walsh

That Cr Strzina's application for a leave of absence for 14 - 31 March, 2006 be granted.

Carried 11/0

Moved Mayor Morgan, seconded Cr Woodhill

That Cr Utting's application for a leave of absence for the Council meeting on 27 March, 2006 be granted.

Carried 10/0

5 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

The Mayor advised the members and ratepayers in attendance that the meeting will be kept to a strict timeline. Speakers were requested to keep their statements brief and to avoid repetition.

6 PUBLIC STATEMENT TIME

All public statements were made in relation to the Council depot site.

Mr M Kitchin, 48 Napier Street

Mr Kitchen opened the discussion with a brief history of the depot site. As a previous quarry this site is unique and an important part of Cottesloe's history and therefore should be preserved. He also noted that the quarry walls should be preserved.

Mr T Moore, 9 Clarendon Street

The number of special development zones should be limited to three not four. Density zoning and height are the contentious issues for this site. Residents want the R20 residential zone and 8.5m height limit to remain.

J Birnbrauer, 64 Napier Street

SOS Cottesloe emailed a letter and statement to Councillors today in relation to their position on the issue. Mr Birnbrauer stated appreciation in the amount of work that has been undertaken on TPS No. 3 and upon reviewing the draft SOS only provide comment on the depot site. Speaking for the ratepayers, he requested that the site be R20, with no concessions provided and that a carefully prepared plan for the site be provided for community consultation.

Ms B Sampson, 46 Napier Street

Ms Sampson reiterated the heritage and zoning comments of previous speakers.

Mr G Rondoni, 36 Napier Street

Mr Rondoni appreciates the need to develop and for changes to be made, however he doesn't want to see an increase in densities which will bring an increase of people and vehicles to the site. Mr Rondoni requested that community consultation be undertaken in relation to the site development.

Mr J Bell, 250 Marmion Street

Mr Bower had provided Councillors with a letter in relation to the matter. He spoke in relation to access into the site, being via three rights of way. Access via rights of way is not suitable for heavy car and truck usage and would also cause problems for pedestrians using the rights of way. A traffic management system needs to be in place.

Mr T Lemmon, 54 Napier Street

Mr Lemmon re-emphasised the problems relating to access into the site, it is seen as a serious issue to surrounding residents. He stated that R20 zoning is sufficient and there is no need to increase to R40.

7 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

8 REPORTS OF COMMITTEES AND OFFICERS

8.1 MANAGER DEVELOPMENT SERVICES

8.1.1 DRAFT TOWN PLANNING SCHEME NO. 3 – FINAL PROPOSED CHANGES BEFORE LODGEMENT FOR CONSENT TO ADVERTISE

File No: D2.5.3
Author: Mr Andrew Jackson
Author Disclosure of Interest: Nil.
Report Date: 17 February, 2006
Senior Officer: Mr Stephen Tindale

INTRODUCTION

- Council has progressed finalising the content of draft Town Planning Scheme No. 3 (TPS3).
- The scheme map has been completed, save for any change arising from this report.
- A number of scheme text matters remain for determination, which this report presents, so that the proposed scheme can be lodged by the end of February for consent to advertise. These comprise:
 1. Notices of Motion.
 2. Matters previously identified for further consideration.
 3. Additional legal and officer advice.
 4. Further matters identified by officers.
- These matters are presented in turn below.

The Notices of Motion at Part 9 of the agenda were brought on for earlier consideration.

NOTICES OF MOTION

Special Development Zone 'B' – Depot Site

On a show of hands, Crs Walsh, Utting, Carmichael & Strzina presented the following commentary and notice of motion to change a Council decision passed at the Special meeting of Council held on 30th January 2006.

Commentary

Rationale:

- *Council has a policy of community consultation. This carries with it a responsibility to listen and respond. Here we were told loudly and clearly by the residents that they wanted R20 retained.*
- *The depot site falls well outside the 'walkable catchments' area and has poor vehicle access for drivers 55 years and older, the likely inhabitants of the area. The area sits in an area of large blocks totally different to the R30/40 currently proposed.*

- *Building height should be set at 8.5 metres as with the rest of Cottesloe R20 residential. The excavated levels should be set as the natural ground level (NGL) for this site. To do otherwise is to send conflicting messages as to what is allowed for this site. Town of Cottesloe practice to determine levels where excavation/filling has occurred is to use Water Board plans or the unaltered four corners of the site to determine the NGL. Here we are not talking minor variations to the NGL but variations that can accommodate two to four storeys below the NGL. This would be totally at odds with the surrounding housing.*
- *A depth minimum of 22 metres AHD for the site will allow for some cut or fill operations to level out any awkward bumps.*

Notice of Motion:

That in respect to the Council Depot site:

- 1. No change be made to the current R20 Residential zoning for this site; and*
- 2. The building height be set at 8.5 metres above the existing ground level subject to a minimum ground level of 22 metres AHD.*

Officer CommentZoning & Density:

- Based on the draft scheme as formulated and adopted to date by Council, the depot site has been identified as a Special Development zone with a proposed residential density coding of R30/40. Special provisions, including objectives and structure planning, have been devised to guide development, which in this report are recommended for refinement as set out below.
- It is noted that the subject land is within walkable catchments of 320m to the Eric Street shopping centre, 625m to the beach and 750m to the town centre and railway station.
- As referred to in the councillor rationale above, debate has focussed on the density coding. The recommendation above, however, also suggests that the actual zoning be Residential.
- As there is a need for special planning of the site for residential development at any density, the Special Development zoning and provisions should apply, even if the density is amended to R20. Otherwise, these special controls will fall away.

Development height:

- Height control for the site is clarified in the refined provisions below and applies the standard 8.5m building height maximum as referred to in the councillor motion above.
- As to setting a level/s for development, this is to be addressed by structure planning, including community consultation and determination by Council, to establish level/s suited to the site and surrounds, rather than restrict options to development at the base of the quarry only.

OFFICER RECOMMENDATION:

If Council supports the councillor recommendation of R20, the officer recommendation is that the Special Development zoning and provisions remain (except for modification in respect of density).

OFFICER RECOMMENDATION:

If Council supports the councillor recommendation of developing at a level close to the bottom of the quarry, the officer recommendation is that the reference to *minimum* ground level is meant to be *maximum* ground level.

8.1.1.1 COUNCIL RESOLUTION

Moved Cr Walsh, Seconded Crs Utting, Carmichael & Strzina

That in respect to the Council Depot site no change be made to the current R20 Residential zoning for this site.

Carried by Absolute Majority 9/2

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Mayor Morgan</i>	<i>Cr Cunningham</i>
<i>Cr Carmichael</i>	<i>Cr Miller</i>
<i>Cr Dawkins</i>	
<i>Cr Furlong</i>	
<i>Cr Jeanes</i>	
<i>Cr Strzina</i>	
<i>Cr Utting</i>	
<i>Cr Walsh</i>	
<i>Cr Woodhill</i>	

8.1.1.2 COUNCIL RESOLUTION

Moved Cr Walsh, Seconded Crs Utting, Carmichael & Strzina

That in respect to the Council Depot site the building height be set at 8.5 metres above the existing ground level subject to a maximum ground level of 22 metres AHD.

Carried by Absolute Majority 7/4

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Carmichael</i>	<i>Mayor Morgan</i>
<i>Cr Dawkins</i>	<i>Cr Cunningham</i>
<i>Cr Jeanes</i>	<i>Cr Furlong</i>
<i>Cr Utting</i>	<i>Cr Strzina</i>
<i>Cr Walsh</i>	
<i>Cr Woodhill</i>	

8.1.1.3 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Crs Miller, Furlong & Woodhill

That the Special Development zoning and provisions remain except for modification in respect of density and height (as above).

Carried by Absolute Majority 8/3

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Mayor Morgan</i>	<i>Cr Carmichael</i>
<i>Cr Cunningham</i>	<i>Cr Utting</i>
<i>Cr Dawkins</i>	<i>Cr Walsh</i>
<i>Cr Furlong</i>	
<i>Cr Jeanes</i>	
<i>Cr Miller</i>	
<i>Cr Strzina</i>	
<i>Cr Woodhill</i>	

Aims of the Scheme

Notice of Motion:

Moved Cr Carmichael, seconded Cr Walsh

That the following new clauses (a) and (b) be added to 1.6, The Aims of the Scheme, and the existing clauses be renumbered accordingly:

- (a) ensure that development and the use of land within the district complies with accepted standards and practices for public amenity and convenience;*
- (b) Ensure that the future development and use of land within the district occurs in an orderly and proper way so that the quality of life enjoyed by its inhabitants is not jeopardised by poor planning, unacceptable development and the incompatible use of land;*

Officer Comment

- These aims are derived from another town planning scheme.
- They reflect the typically motherhood-type statement of aims found in schemes and embody established planning principles such as orderly and proper planning and the preservation of amenity. It should be appreciated that aims in a scheme are broad-brush expressions of intent which give direction to a scheme rather than have the force and effect of provisions, so that while the sentiments and wording are useful, they do not imply strict adherence in terms of decision-making.
- The suggested additional aims, while generally echoed in draft TPS3 in the aims and elsewhere, are not duplicated in the current aims as written. As such they could be considered to enhance the scheme.
- On this basis the additional aims may be supported for inclusion in TPS3

OFFICER RECOMMENDATION:

That the additional aims be included, subject to appropriate overall ordering of the aims.

8.1.1.4 COUNCIL RESOLUTION

Moved Cr Carmichael, seconded Cr Walsh

That the following new clause (a) be added to 1.6, The Aims of the Scheme, and the existing clauses be renumbered accordingly:

- (a) **Ensure that development and the use of land within the district complies with accepted standards and practices for public amenity and convenience.**

Carried by Absolute Majority 10/1

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Mayor Morgan</i>	<i>Cr Miller</i>
<i>Cr Cunningham</i>	
<i>Cr Carmichael</i>	
<i>Cr Dawkins</i>	
<i>Cr Furlong</i>	
<i>Cr Jeanes</i>	
<i>Cr Strzina</i>	
<i>Cr Utting</i>	
<i>Cr Walsh</i>	
<i>Cr Woodhill</i>	

MOTION

Moved Cr Carmichael, seconded Cr Walsh

That the following new clause (b) be added to 1.6, The Aims of the Scheme, and the existing clauses be renumbered accordingly:

- (b) Ensure that the future development and use of land within the district occurs in an orderly and proper way so that the quality of life enjoyed by its inhabitants is not jeopardised by poor planning, unacceptable development and the incompatible use of land;

Lost 4/7

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Carmichael</i>	<i>Mayor Morgan</i>
<i>Cr Cunningham</i>	<i>Cr Dawkins</i>
<i>Cr Utting</i>	<i>Cr Furlong</i>
<i>Cr Walsh</i>	<i>Cr Jeanes</i>
	<i>Cr Strzina</i>
	<i>Cr Woodhill</i>

Matters to be Considered by Local Government**Notice of Motion:**

Moved Cr Carmichael, seconded Cr Walsh

That the following clauses be added to clause 10.2, Matters to be Considered by Local Government:

- (1) *The need for limitation of height or location of buildings to preserve or enhance views;*
- (2) *The location and orientation of a building or buildings on a lot in order to achieve higher standards of day lighting, sunshine or privacy or to avoid visual monotony in the street scene as a whole;*
- (3) *The effect of a development to impede or accelerate air flows;*
- (4) *In respect of privacy, the impact of verandahs, balconies and of large viewing windows above ground floor level;*
- (5) *In respect of overshadowing, the impact on the utilisation of solar energy by neighbouring properties.*

Officer Comment

- These aspects have been derived from the general amenity provisions of cl 5.1.2 of TPS2.
- They apply to all development, and for residential development are reinforced by the RD Codes as a suite of amenity controls.
- Due to their specificity they amplify rather than duplicate the “have regard to” criteria in draft TPS3, although correlate with (p): *the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of height, bulk, scale, orientation and appearance of the proposal.* As such they could be considered to embellish the scheme.
- On this basis the additional matters may be supported for inclusion in TPS3.

OFFICER RECOMMENDATION: That the additional matters be included, subject to appropriate overall ordering of clause 10.2.

MOTION

Moved Cr Carmichael, seconded Cr Walsh

That the following clauses be added to clause 10.2 Matters to be considered by local government:

- (1) The need for limitation of height or location of buildings to preserve or enhance views.

Lost 4/7

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Cr Carmichael</i>	<i>Mayor Morgan</i>
<i>Cr Strzina</i>	<i>Cr Cunningham</i>
<i>Cr Utting</i>	<i>Cr Dawkins</i>
<i>Cr Walsh</i>	<i>Cr Furlong</i>

*Cr Jeanes
Cr Miller
Cr Woodhill*

MOTION

Moved Cr Carmichael, seconded Cr Walsh

That the following clauses be added to clause 10.2 Matters to be considered by local government:

- (1) The location and orientation of a building or buildings on a lot in order to achieve higher standards of day lighting, sunshine or privacy or to avoid visual monotony in the street scene as a whole;
- (2) The effect of a development to impede or accelerate air flows;
- (3) In respect of privacy, the impact of verandahs, balconies and of large viewing windows above ground floor level;
- (4) In respect of overshadowing, the impact on the utilisation of solar energy by neighbouring properties.

Lost 5/6

MATTERS PREVIOUSLY IDENTIFIED

Special Development Zone ‘B’ – Depot Site – Improved Provisions

- The table below outlines previously suggested elaboration of provisions for the depot site to address aspects raised by Council and the community.

1.	<p>Council Depot site – <u>change to Special Development Zone B with a residential density of R30/40.</u></p>	<p><u>Previous Recommendation:</u></p> <p>That the following aspects be specified as provisions in the scheme text to more closely guide this special development zone:</p> <p><i><u>Structure planning</u> – include a provision for structure plans to undergo a consultation procedure as set out in the scheme for making policies.</i></p> <p><i><u>Land use</u> – in undertaking structure planning for Special Development Zone B, the local government shall include consideration of the potential for aged persons housing and local open space.</i></p> <p><i><u>Density</u> – the granting of development approval by the local government at a residential density greater than R30 but not greater than R40, shall be subject to the local government being satisfied that the proposal meets the objectives for the special development zone, is consistent with the adopted structure plan for the special development zone, and is compatible with the functioning, character and amenity of the site and surrounding locality.</i></p> <p><i><u>Height</u> – in applying the height provisions of the scheme</i></p>
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		<p><i>to Special Development Zone B, the local government shall as part of the structure planning process determine a finished ground level for development of the site which shall be taken as the natural ground level.</i></p> <p><u><i>Access, circulation and parking</i></u> – in undertaking structure planning for Special Development Zone B, the local government shall include consideration of all modes of access, circulation and parking having regard to the functioning, character and amenity of the site and surrounding locality.</p>
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- These have been articulated in relation to the provisions that mention the Special Development zone, to incorporate refinements in respect of the depot site.
- The relevant scheme text sections are quoted with the recommended changes shaded, together with some explanatory comments.

4.2.1. The **objectives of the Special Development zone** are to —

- (a) provide for detailed planning to guide the use and development of land or buildings that are of a size, location, nature, character or significance warranting a comprehensive, coordinated and integrated approach to planning and design;
- (b) ensure that land use and development within the zone is compatible with the amenity of the surrounding locality;
- (c) ensure that any development does not unduly adversely affect the amenity of the adjoining and surrounding properties or locality, including by reason of height, built form, overshadowing, traffic, parking or other relevant aspects;
- (d) support the heritage provisions of the Scheme applicable to any land or buildings in the zone; and
- (e) allow for land use and development to contribute to the provision or enhancement of community facilities and services and to the public domain.

- Note: These objectives apply to all special development zone sites including the depot site and guide the development outcome, with particular attention to overall planning and amenity. No addition is necessary.

5.3.9 (new) Development in Special Development Zone ‘B’

For Special Development Zone ‘B’, any granting of development approval by the local government at a residential density greater than R30 but not greater than R40, shall be subject to the local government being satisfied that the proposal meets the general objectives for the Special Development zone set out in clause 4.2.1, is consistent with any adopted structure plan for this particular special

development zone, and is compatible with the functioning, character and amenity of the site and surrounding locality.

- Note: This new clause clarifies the situation in relation to residential density.

5.6.1 In the Town Centre, Foreshore Centre, Restricted Foreshore Centre, Hotel or **Special Development zones**, except for residential development, the local government may approve development without the required number of parking spaces being provided on the land, subject to the applicant making arrangements satisfactory to the local government for the provision of off-street parking in the vicinity; and in this regard the local government may accept cash in lieu of parking spaces on the land, subject to the following —

- (a) the cash in lieu payment shall not be less than the estimated cost to the applicant of providing and constructing the parking spaces required by the Scheme plus the value as estimated by the local government of that area of the land which would have been occupied by the parking spaces; and
- (b) payments made under this clause shall be paid into a special fund to be used to provide public parking stations or for the provision of public transportation, in order to alleviate parking demand in the Scheme area.

- Note: This qualification was previously adopted by Council. The parking concessions were conceived for non-residential development, and for residential development the RD Codes parking requirements should apply (subject to any discretion therein). In any case *Table 3 – Vehicle Parking Requirements* applies the RD Codes to all residential development. In this way the normal provision of residential parking is required for the depot site.

5.12.1 The **function of the Special Development zone** is to —

- (a) facilitate appropriate use and development of land by providing guidance on the intentions and requirements for the land in the formulation and consideration of development proposals; and
- (b) provide mechanisms to ensure comprehensive and detailed planning and design for the use and development of the land.

5.12.2 The local government may require the preparation and adoption of a **structure plan for land within the Special Development zone**, to assist the consideration of any subdivision, use or development proposals. A structure plan prepared pursuant to this clause shall contain any or all of the following matters that the local government determines to be appropriate —

- (a) where subdivision is proposed, indicative lot patterns and road layout;

- (b) general land use structure;
- (c) residential densities;
- (d) urban design;
- (e) building envelopes, including indicative building setbacks and building heights;
- (f) indicative built forms, including relationship to street frontages and surrounding development;
- (g) main pedestrian linkages;
- (h) main vehicular access;
- (i) provision for parking and loading of vehicles;
- (j) provision for open space and landscaped areas;
- (k) indicative sequence of development; and
- (l) other matters as the local government determines relevant.

5.12.3 In making or amending a structure plan the local government shall follow the procedures for local planning policies prescribed in clause 2.4 of the scheme, and the local government may revoke a structure plan by following the procedure for local planning policies prescribed in clause 2.5 of the scheme.

5.12.4 Where a structure plan has been approved by the local government pursuant to clause 5.12.2, the local government shall not approve development within the Special Development zone unless it is in accordance with that structure plan and the objectives specified in clause 4.2.8.

5.12.5 In undertaking structure planning for Special Development Zone B, the local government shall include consideration of:

- (a) the potential for aged persons housing and local open space; and
- (b) all modes of access, circulation and parking having regard to the functioning, character and amenity of the site and surrounding locality.

- Note: These additions strengthen the structure planning process akin to a policy and also indicate aspects for the depot site that Council is to consider.

TABLE 2 – DEVELOPMENT REQUIREMENTS

ZONE	MAXIMUM PLOT RATIO	MAXIMUM SITE COVER	MINIMUM BOUNDARY SETBACKS	MAXIMUM HEIGHT
'B' Council Depot site	In accordance with Residential Design Codes	In accordance with Residential Design Codes	In accordance with Residential Design Codes and any Design Guidelines	The height provisions of the scheme apply to this Special Development zone site in the normal manner, except that the local government shall, as part of the structure planning process and having regard to maintaining the amenity of the locality, determine the finished ground level/s for development of the site, which shall be taken as the natural ground level/s.

- Note: The standard height controls for residential development will apply to the depot site, including the basic two storey limit. There is an additional provision for Council to through structure planning set the level/s at which development is to sit, given the former quarry and need for detailed planning, rather than assign any arbitrary level. It is *not* intended that height be measured from the original natural ground level so as to allow multi-storey dwellings rising from the existing excavated level.

OFFICER RECOMMENDATION:

That Council adopts the above improvements to the provisions for the Special Development zones including for the depot site.

8.1.1.5 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council adopts the above improvements to the provisions for the Special Development zones including for the depot site subject to modification of the height provisions in Table 2 in line with the resolution made earlier in the meeting.

Carried by Absolute Majority 8/3

The vote was recorded:

For: Mayor Morgan Against: Cr Carmichael

Cr Cunningham Cr Utting
 Cr Dawkins Cr Walsh
 Cr Furlong
 Cr Jeanes
 Cr Miller
 Cr Strzina
 Cr Woodhill

ADDITIONAL LEGAL & OFFICER ADVICE

- Council has agreed to consider additional legal and officer advice on some remaining matters.
- Advice has been received and reviewed and where further changes are proposed is summarised here with officer comment and recommendation.
- A full copy is provided to councillors and should be read for a complete understanding.
- Much of the advice relates to matters not germane to the scheme in terms of the Model Scheme Text and obtaining consent to advertise. Some matters are found to no longer necessitate changes or may be handled by policy.

Height provisions

- Council has previously resolved as follows:

	<i>Description</i>	<i>Officer Recommendation</i>
25.	Height – general.	<p><u>Recommendation:</u></p> <p>That the improved structure and expression of the height provisions of the scheme be adopted, subject to any further refinements provided by legal advice presented in the final version of the scheme text.</p>
<p>That [at this stage] no changes be made to clause 5.7A relating to building and wall heights [pending] a further report on the implications of the recommended changes to clause 5.7A.</p>		

- The legal advice has reviewed several facets of the height control provisions to add clarity and certainty, including relative to all types of development and parapet walls/flat roofs. The advice explains the mechanics of the height provisions and suggests further changes as follow:

5.7A.1 *In this clause –*

“Building Height” means the difference between –

- (a) *the level of the natural ground level at the centre of the site, as determined by the local government; and*
- (b) *the level of the uppermost part of the building.*

“storey” means ...

“Wall Height” means the difference between –

- (a) the level of the natural ground level at the centre of the site, as determined by the local government; and
- (b) the level of the roof or the top of a parapet at any point in accordance with Figures 1, 2, 3 or 4 in Schedule 4B.

5.7A.2 All buildings shall comply with each of the following maximum heights, as applicable to the building –

Number of storeys	Maximum height
1	Building Height – 6.0 metres Wall Height (to level of roof) – 3.0 metres Wall Height (to top of a parapet) – 4.0 metres
2	Building Height – 8.5 metres Wall Height (to level of roof) – 6.0 metres Wall Height (to top of a parapet) – 7.0 metres
More than 2	Building Height – 8.5 metres, plus 3.0 metres for each storey more than 2 Wall Height (to level of roof) – 6.0 metres, plus 3.0 metres for each storey more than 2 Wall Height (to top of a parapet) – 3.0 metres for each storey up to the highest storey, plus 4.0 metres for the highest storey.

In Table 2 insert a reference to cl.5.7A in the heading row in the “HEIGHT” column.

OFFICER RECOMMENDATION:

That Council adopts the above further improvements to the height provisions.

8.1.1.6 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council adopts the above further improvements to the height provisions.

Carried by Absolute Majority 10/1

The vote was recorded:

For:	Against:
Mayor Morgan	Cr Utting
Cr Carmichael	
Cr Cunningham	
Cr Dawkins	
Cr Furlong	
Cr Jeanes	
Cr Miller	

Cr Strzina
Cr Walsh
Cr Woodhill

Appeal provisions generally

Q: Whether the standard appeal provisions of TPS3 extend to any discretionary provision exercised by Council (ie density bonuses, heritage variations etc).

A: *The appeal provisions of cl.10.10 and the provisions of the Town Planning and Development Act 1928 both give a right of appeal against any exercise of discretionary power under TPS3. As such, the appeal provisions will extend to give a right of appeal in relation to matters such as density bonuses, heritage variations etc, provided there is a discretion that has been exercised by Council, or that Council has refused to exercise. A good example is the heritage variation provisions of cl.7.5 – there would be a right of appeal against a refusal by Council to vary, say, the setback requirements of TPS3 or the car parking requirements (there being a discretion to vary either of these), but there would be no appeal against a refusal by Council to vary a height requirement (because cl.7.5 expressly states there is no discretion to vary this under cl.7.5).*

Officer Comment

This advice clarifies the understanding of how TPS3 will work in respect of the normal appeal provisions. No change is necessary.

Appeal provisions re heritage list

Q: Whether there is any right of review in relation to the making or amending of the heritage list under TPS3, either under TPS3 or the heritage legislation.

A: *The right of review under cl.10.10 of TPS3 is only a right given to “an applicant”. An “applicant” is not defined anywhere in TPS3, but the common and ordinary definition would refer to a person who has applied for something. The provisions of Part 7 of TPS3 dealing with making and amendment of the heritage list do not contemplate either an “application” or an “applicant”. As such, in our view the provisions of cl.10.10 will not give a right of review in relation to the making or amending of the heritage list. A recommended cl.7.6 as follows would deal with this:*

7.6 Right of review

7.6.1 An owner of a place included on the Heritage List may apply to the State Administrative Tribunal for a review of a decision of the local government to –

- (a) include the place on the Heritage List;
- (b) modify the entry of the plan on the Heritage List; or
- (c) remove the plan from the Heritage List,

in accordance with Part V of the Town Planning and Development Act.

7.6.2 An owner of land within an area designated as a heritage area may apply to the State Administrative Tribunal for a review of a decision of the local government to –

- (a) designate the area as a heritage area;
- (b) modify the designation of the area as a heritage area; or
- (c) remove the designation of the area as a heritage area,

in accordance with Part V of the Town Planning and Development Act.

Officer Comment

- Whether a local government wishes to have a dedicated appeal right in respect of heritage provisions depends on its philosophical outlook to conservation and striking a balance between the carrot and stick spectrum.
- In terms of process, such rights of review could be seen to potentially frustrate the operation of a scheme for heritage purposes and erode heritage protection
- On the other hand, they could be supported as consistent with a consultative and equitable approach to the exercise of discretion for this dimension of planning.
- Evaluation by the WAPC and Minister will have a bearing of this proposal, but it is worth advancing the idea for consideration for consent to advertise the scheme.

OFFICER RECOMMENDATION:

That Council adopts the suggested new clause 7.6 to introduce appeal rights in relation to the operation of *Part 7 – Heritage Protection* of the scheme.

8.1.1.7 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That Council adopts the suggested new clause 7.6 to introduce appeal rights in relation to the operation of *Part 7 – Heritage Protection* of the scheme.

Carried by Absolute Majority 10/1

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Mayor Morgan</i>	<i>Cr Utting</i>
<i>Cr Carmichael</i>	
<i>Cr Cunningham</i>	
<i>Cr Dawkins</i>	
<i>Cr Furlong</i>	
<i>Cr Jeanes</i>	
<i>Cr Miller</i>	
<i>Cr Strzina</i>	
<i>Cr Walsh</i>	
<i>Cr Woodhill</i>	

Heritage provisions

- Some suggestions made for changes have been examined and legal feedback obtained, entailing an appeal right against inclusion on the heritage list (as above), and incentives for places on the heritage list or in a heritage area.
- As to councillor suggested amendments to the heritage provisions, the legal advice is that these would largely be better managed as policy and that approach is advocated whereby all aspects of how Council wishes to implement the scheme heritage provisions could be addressed – this connects to the scheme provisions for heritage areas which require a policy for each one.
- In terms of the opportunity to provide for the concept of heritage incentives this can be readily incorporated into the clauses relating to the heritage areas and list by additions shown as follow:

7.2.2(iii) objectives, incentives and guidelines for the conservation of the heritage area;

7.6 (new) Heritage incentives

In applying the provisions of the Scheme to the operation of the heritage list, including any related Local Planning Policy, the local government shall give consideration to incentives for heritage conservation.

OFFICER RECOMMENDATION:

That Council adopts the above clauses 7.2.2(iii) and 7.6.

8.1.1.8 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council adopts the above clauses 7.2.2(iii) and 7.6.

Carried by Absolute Majority 10/1

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Mayor Morgan</i>	<i>Cr Utting</i>
<i>Cr Carmichael</i>	
<i>Cr Cunningham</i>	
<i>Cr Dawkins</i>	
<i>Cr Furlong</i>	
<i>Cr Jeanes</i>	
<i>Cr Miller</i>	
<i>Cr Strzina</i>	
<i>Cr Walsh</i>	
<i>Cr Woodhill</i>	

Local Reserves & compensation – clause 3.4

- The legal advice has explored this and is inconclusive as the matter is really tied to case law.
- Should the DPI raise the matter then it may be given further consideration and it is a technicality not important for the purpose of public advertising.
- Hence no change to the scheme is recommended at this stage.

Permitted changes of use – clause 4.9

- The legal advice has explored this and suggested that cl.4.9(b) and cl.4.9(c) be deleted to clarify the matter.

RECOMMENDATION:

That clauses 4.9(b) and 4.9(c) be deleted.

8.1.1.9 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Furlong

That clauses 4.9(b) and 4.9(c) be deleted.

Carried by Absolute Majority 10/1

The vote was recorded:

<i>For:</i>	<i>Against:</i>
<i>Mayor Morgan</i>	<i>Cr Utting</i>
<i>Cr Carmichael</i>	
<i>Cr Cunningham</i>	
<i>Cr Dawkins</i>	
<i>Cr Furlong</i>	
<i>Cr Jeanes</i>	
<i>Cr Miller</i>	
<i>Cr Strzina</i>	
<i>Cr Walsh</i>	
<i>Cr Woodhill</i>	

Discontinuance of non-conforming use – clause 4A.3.1

- The legal advice has explored this and suggested a possible change to clarify the matter, however, has noted that there may be implications.
- Hence no change to the scheme is recommended at this stage.

FURTHER MATTERS IDENTIFIED**“Serviced units” definition**

- This matter has been given further consideration by officers, including some additional feedback from a submitter.
- An examination of other schemes has revealed a variety of approaches to tourist, holiday or short-stay accommodation, with a range of differing definitions, permissibilities, development controls and provisions, addressing a diversity of aspects.
- It is important to distinguish the use from others as defined and to minimise ambiguity. A concise definition is preferable. The discerning factors are that the purpose of stay is short-term, the form of the accommodation is self-

contained (whether or not it is serviced), and the nature of the accommodation is not the same as other accommodation or residential uses.

- By being excluded from the meanings of residential accommodation and other short-stay accommodation uses, and by being assigned permissibilities in the zoning table, short-stay accommodation is controlled.
- On this basis an improved definition below is proposed (and the name of this use will need to be listed in the zoning table).

RECOMMENDATION:

That Council adopts the following new definition to replace the definition of *Serviced units*:

Short-stay accommodation means a building/s or part thereof which has self-contained living facilities and is used or provided for holiday or other temporary accommodation purposes, but does not include any permanent residential use or other type of short-term accommodation.

8.1.1.10 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council adopts the following new definition to replace the definition of *Serviced units*:

Short-stay accommodation means a building/s or part thereof which has self-contained living facilities and is used or provided for holiday or other temporary accommodation purposes, but does not include any permanent residential use or other type of short-term accommodation.

Carried by Absolute Majority 10/1

The vote was recorded:

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

Table 1 – Zoning Table

- The zoning table columns have been rearranged for a more logical sequence of zones, together with some minor refinement of permissibilities in response to feedback from the submissions, DPI, solicitors and councillors and further review by officers. Council has previously agreed to such improvements being made.
- This it to be incorporated into the draft scheme text as shown attached and is supported for adoption by Council for the purpose of the scheme being advertised.

OFFICER RECOMMENDATION:

That Council adopts the updated *Table 1 – Zoning Table*.

8.1.1.11 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Woodhill

That Council adopts the updated *Table 1 - Zoning Table*.

Carried by Absolute Majority 11/0

Table 3 – Vehicle Parking Requirements

- In response to feedback in submissions and from the DPI, officers have reviewed the parking table to fine-tune some standards and terminology, including for consistency with the findings of the parking study, such as the floor space measure. Council has previously agreed to such improvements being made.
- This is to be incorporated into the draft scheme text as shown attached and is supported for adoption by Council for the purpose of the scheme being advertised.

OFFICER RECOMMENDATION:

That Council adopts the updated *Table 3 – Vehicle Parking Requirements*.

8.1.1.12 COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

That Council adopts the updated *Table 3 – Vehicle Parking Requirements*.

Carried by Absolute Majority 11/0

Adoption of Draft Scheme Text and Scheme Map for Lodgement**SUMMARY**

- An updated scheme text is to be consolidated including all changes agreed so far plus those recommended in this report.
- The scheme map as adopted remains unchanged.
- Subject to these final determinations the scheme documents will be completed accordingly and lodged with the WAPC.
- The process from here provides for consideration by the WAPC and Minister and a dialogue with Council on the proposed scheme, which may undergo additional modifications both prior to the statutory advertising period and subsequently as a result of submissions.

VOTING

Absolute Majority

DECLARATIONS OF INTEREST

Mayor Morgan made declarations of interest in relation to:

- (1) a proximity interest to the multiple dwelling at No 86 Marine Parade and proposed changes to the planning provisions relating to multiple dwellings;
- (2) his property at 1 Pearse Street being part of a grouped dwelling and proposed changes to the planning provisions relating to grouped dwellings; and
- (3) his property at 1 Pearse Street being within the R30 residential zone and proposed changes to the planning provisions relating to setbacks within the zone.

Mayor Morgan left the meeting at 7.25pm.

Cr Strzina made declarations of interest in relation to:

- (1) a proximity interest to a grouped dwelling on the corner of Marine Parade and Deane Street and proposed changes to the planning provisions relating to grouped dwellings; and
- (2) ownership of property within the R30 residential zone and proposed changes to the planning provisions relating to setbacks within the zone.

Cr Strzina left the meeting at 7.25pm.

Cr Furlong made declarations of interest in relation to:

- (1) the ownership of property within the proposed Foreshore Centre Zone;
- (2) a proximity interest to Special Development Zone A (OBH site); and
- (3) a proximity interest to an adjoining property in Eileen Street and a proposal to increase its density from R50 to R60.

Cr Furlong left the meeting at 7.26pm.

Cr Carmichael made a declaration of interest in relation to the ownership of property within the proposed Foreshore Centre Zone.

Cr Carmichael left the meeting at 7.26pm.

Cr Dawkins made a declaration of interest in relation to the ownership of property within the R30 residential zone and proposed changes to the planning provisions relating to setbacks within the zone. The extent of the interest was of little or no value.

Cr Dawkins left the meeting at 7.26pm.

In the absence of Mayor Morgan, Deputy Mayor Cr Miller chaired the meeting.

8.1.1.13 COUNCIL RESOLUTION

Moved Cr Walsh, seconded Cr Woodhill

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

Carried by Absolute Majority 6/0

Cr Dawkins returned to the meeting at 7.28pm.

OFFICER RECOMMENDATION

That Council adopts the Scheme Map and Scheme Text for draft Town Planning Scheme No. 3 as previously resolved and including any changes determined on the remainder matters in this report, for lodgement of the proposed scheme with the Western Australian Planning Commission for consent to advertise.

8.1.1.14 COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Woodhill

That Council adopts the Scheme Map and Scheme Text for draft Town Planning Scheme No. 3 as previously resolved and including any changes determined on the remainder matters in this report, for lodgement of the proposed scheme with the Western Australian Planning Commission for consent to advertise.

Carried by Absolute Majority 6/1

Mayor Morgan and Councillors Strzina, Furlong and Carmichael returned to the meeting at 7.29pm.

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

The following notices of motion were dealt with earlier in the meeting.

9.1 SPECIAL DEVELOPMENT ZONE 'B' – DEPOT SITE

Proposed by Cr Walsh with the signed support of Crs Utting, Carmichael & Strzina.

Rationale:

- *Council has a policy of community consultation. This carries with it a responsibility to listen and respond. Here we were told loudly and clearly by the residents that they wanted R20 retained.*
- *The depot site falls well outside the 'walkable catchments' area and has poor vehicle access for drivers 55 years and older, the likely inhabitants of the area. The area sits in an area of large blocks totally different to the R30/40 currently proposed.*
- *Building height should be set at 8.5 metres as with the rest of Cottesloe R20 residential. The excavated levels should be set as the natural ground level (NGL) for this site. To do otherwise is to send conflicting messages as to what is allowed for this site. Town of Cottesloe practice to determine levels where excavation/filling has occurred is to use Water Board plans or the unaltered four corners of the site to determine the NGL. Here we are not talking minor variations to the NGL but variations that can accommodate two to four storeys below the NGL. This would be totally at odds with the surrounding housing.*
- *A depth minimum of 22 metres AHD for the site will allow for some cut or fill operations to level out any awkward bumps.*

Notice of Motion:

That in respect to the Council Depot site:

- (1) *No change be made to the current R20 Residential zoning for this site; and*
- (2) *The building height be set at 8.5 metres above the existing ground level subject to a minimum ground level of 22 metres AHD.*

9.2 AIMS OF THE SCHEME

Proposed by Cr Carmichael and endorsed by Cr Walsh.

Notice of Motion:

That the following new clauses (a) and (b) be added to 1.6 The aims of the Scheme and the existing clauses be renumbered accordingly:

- (a) *ensure that development and the use of land within the district complies with accepted standards and practices for public amenity and convenience;*
- (b) *Ensure that the future development and use of land within the district occurs in an orderly and proper way so that the quality of life enjoyed by its inhabitants is not jeopardised by poor planning, unacceptable development and the incompatible use of land;*

9.3 MATTERS TO BE CONSIDERED BY LOCAL GOVERNMENT

Proposed by Cr Carmichael and endorsed by Cr Walsh.

Notice of Motion:

That the following clauses be added to clause 10.2 Matters to be considered by local government:

- (1) *The need for limitation of height or location of buildings to preserve or enhance views;*
- (2) *The location and orientation of a building or buildings on a lot in order to achieve higher standards of day lighting, sunshine or privacy or to avoid visual monotony in the street scene as a whole;*
- (3) *The effect of a development to impede or accelerate air flows;*
- (4) *In respect of privacy, the impact of verandahs, balconies and of large viewing windows above ground floor level;*
- (5) *In respect of overshadowing, the impact on the utilisation of solar energy by neighbouring properties.*

10 MEETING CLOSURE

The Mayor announced the closure of the meeting at 7.29pm.

CONFIRMED: MAYOR DATE:/...../.....