



MINUTES

Council Meeting

Tuesday, 20 August 2019 at 6.35pm

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**MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBER, 135
CANNING HIGHWAY EAST FREMANTLE ON TUESDAY 20 AUGUST 2019.**

1. OFFICIAL OPENING

The Presiding Member opened the meeting at 6.35pm

2. ACKNOWLEDGEMENT OF COUNTRY

"On behalf of the Council I would like to acknowledge the Whadjuk Nyoongar people as the traditional custodians of the land on which this meeting is taking place and pay my respects to Elders past, present and emerging."

3. RECORD OF ATTENDANCE

3.1 Attendance

The following members were in attendance:

Mayor J O'Neill	Presiding Member
Cr C Collinson	
Cr A McPhail	
Cr M McPhail	
Cr A Natale	
Cr D Nardi	
Cr J Harrington	(from 6:49pm)
Cr A Watkins	
Cr A White	

The following staff were in attendance:

Mr G Tuffin	Chief Executive Officer
Mr A Malone	Executive Manager Regulatory Services
Mr P Kocian	Executive Manager Corporate Services
Ms W Cooke	Minute Secretary

There were 14 members of the public in attendance.

3.2 Apologies

Nil.

3.3 Approved

Nil.

4. DISCLOSURES OF INTEREST

4.1 Financial

4.1.1 Cr Natale - Item 12.3.1 Southern Metropolitan Regional Council Withdrawal Arrangements for a Project Participant (City of Cockburn).

Cr Natale declared an indirect financial interest (Closely Associated Person s5.62(1)(b)) as the City of Cockburn was his employer.

4.1.2 Chief Executive Officer (Gary Tuffin) – 17.1 Chief Executive Officer Performance Review

Pursuant to section 5.70 of the *Local Government Act 1995* the Chief Executive Officer (CEO) declared an interest in the report.

4.2 Proximity

Nil.

4.3 Impartiality

4.3.1 Cr M McPhail – 12.3.2 AUSPIRE Membership – Community Citizen of the Year Awards

Cr M McPhail declared an interest as a in this item as a Director of AUSPIRE.

5. PUBLIC QUESTION TIME

5.1 Responses to previous questions from members of the public taken on notice

Nil.

5.2 Public Question Time

5.2.1 Mr Robert Turner, 91-95 Canning Highway, East Fremantle – SA 14 applicant and part landowner of the related properties

“Can the Mayor confirm that the Agenda document (p.141 to 297) being considered tonight by Council has been checked for errors, is not misleading in any way and is a fair and balanced view of the outcome of the Community Consultation process held in Feb this year in response to the request by the Minister for Planning WA?”

Mayor O’Neill advised that to the best of his knowledge the report was correct.

6. PRESENTATIONS/DEPUTATIONS

6.1 Presentations

Nil.

6.2 Deputations

Nil.

7. APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

8. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

8.1 Meeting of Council (16 July 2019)

8.1 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 020819

Moved Cr Nardi, seconded Cr White

That the minutes of the Ordinary meeting of Council held on Tuesday, 16 July 2019 be confirmed as a true and correct record of proceedings.

(CARRIED UNANIMOUSLY)

8.2 Special Meeting of Council (7 August 2019)

8.2 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 030819

Moved Cr Natale, seconded Cr A McPhail

That the minutes of the Ordinary meeting of Council held on Wednesday, 7 August 2019 be confirmed as a true and correct record of proceedings.

(CARRIED UNANIMOUSLY)

9. ANNOUNCEMENTS BY THE PRESIDING MEMBER
Nil.

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS
Nil.

11. REPORTS AND RECOMMENDATIONS OF COMMITTEES

11.1 Town Planning Committee Meeting (6 August 2019)

File ref	C/MTP1
Prepared by	Andrew Malone, Executive Manager Regulatory Services
Meeting Date:	20 August 2019
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Town Planning Committee Minutes

Purpose

To submit the minutes and delegated decisions of the Town Planning Committee for receipt by Council.

Executive Summary

The Committee, at its meeting on 6 August 2019, exercised its delegation in eight statutory matters where at least four members voted in favour of the Reporting Officer's recommendations.

There is no further action other than to receive the minutes, including delegated decisions, of that meeting.

Consultation

Town Planning Committee.

Statutory Environment

Nil.

Policy Implications

Nil.

Strategic Implications

Nil.

Site Inspection

Not applicable.

Comment

The unconfirmed minutes of the Town Planning Committee meeting are now presented to Council to be received.

11.1 COMMITTEE RECOMMENDATION/COUNCIL RESOLUTION 040819

Moved Cr Collinson, Seconded Cr Nardi

That the unconfirmed Minutes of the Town Planning Committee Meeting held on 6 August 2019 be received.

(CARRIED UNANIMOUSLY)

12. REPORTS

12.1 PLANNING

Cr Harrington entered the meeting at 6.49pm

12.1.1 Complex Amendment No. 14 to Local Planning Scheme No. 3 to Introduce Special Control Area 1: No. 91 – 93 Canning Highway, East Fremantle – Consideration of Schedule of Modifications (as directed by Minister for Planning) and Schedule of Submissions

File ref	TPS3A14; P/CAN91; P/CAN93
Owner	S T Melville & R H Turner
Applicant	Creative Design + Planning on behalf of Built Form Projects
Prepared by	Christine Catchpole, Senior Planning Officer
Supervised by	Andrew Malone, Executive Manager Regulatory Services
Meeting Date:	20 August 2019
Voting requirements:	Simple Majority
Documents tabled	Nil
Attachments	<ol style="list-style-type: none">1. Location Plan2. Schedule of Modifications3. Schedule of Submissions4. Proposed Modifications to Schedule of Modifications (tracked changes)5. Amendment No. 14 – Timeline of Events6. Summary of Key Planning Issues resulting from the Schedule of Modifications

Purpose

The purpose of this report is for Council to consider and make a resolution in regard to the Schedule of Modifications (as directed by the Minister for Planning) and the Schedule of Submissions (outcome of advertising) for complex Amendment No. 14 at No. 91 – 93 Canning Highway, East Fremantle.

Executive Summary

In 2017 the Council considered a proposal by the land owners of the Roofing 2000 site to amend Local Planning Scheme No. 3 (LPS 3). Amendment No. 14 proposed to introduce Special Control Area No. 1 (SCA 1) for the site which comprises of four lots. The Scheme Amendment was intended to formulate a planning framework to guide the redevelopment of the subject site for high density mixed use purposes. The Amendment comprised Scheme provisions and development controls relevant only to the SCA which overlaid the existing Mixed Use zone.

At its meeting of 18 April 2017 the Council resolved to amend LPS 3 and to proceed to advertise the Amendment. Consent to advertise was granted by the WAPC in June 2017 and the 60 day statutory advertising period concluded in August 2017. Nearly all submissions objected to the Amendment and in particular the proposed building heights and setbacks which were aligned with the owner's proposed building envelope allowing for the development of building(s) up to approximately nine storeys in height.

Following advertising the Town engaged an urban design consultant to undertake a detailed study of the advertised building envelope and various other built form scenarios, primarily in regard to building height and setbacks which also addressed the wider built form and height of the area. This work resulted in modifications which addressed issues raised in the submissions by reducing the overall height, scale and bulk of the building (lower maximum building heights of seven to eight storeys) and incorporated car parking and other development controls. In April 2018 the Council resolved to support Amendment No. 14 with proposed modifications based on the community feedback and further consideration of the amendment and no further advertising.

The Amendment was subsequently forwarded to the WA Planning Commission (WAPC) for its consideration. The Department of Planning made substantial changes to the Amendment most notably impacting building height, setbacks and the overall potential scale and bulk by substantially reinstating the original building envelope and providing an option for even greater building height on a smaller portion of the site. These changes were then endorsed by the WAPC and forwarded to the Minister for Planning who directed that the Amendment be advertised for public comment. The Schedule of Modifications was advertised for a period of 28 days from 29 January to 25 February 2019. The modifications were advertised through various print and electronic means and copies of the document were available at the Town. Signs were erected on the site and a number of newspaper advertisements were placed in local papers and on the Town's website. This satisfied the statutory advertising requirements and additional advertising measures the Town thought appropriate were also undertaken. This included letters inviting comment on the modifications being sent to all land owners. A total of 281 submissions were received of which 219 submitters rejected the Schedule of Modifications (as directed by the Minister) and were in support of the Council's Amendment, with the inclusion of open space. Sixty (60) submissions conditionally supported the Minister's modifications.

Although there are significant concerns with a number of the modifications and the drafting of the Amendment, the Town is predominantly concerned with the 'additional height' provisions and the option for the provision of public open space. It is also concerned with the reinstatement of the original building envelope because the current wording allows for the decision maker to vary the envelope and permit a taller building to be approved under either the 'additional height' or building envelope options. Given the current wording of the Amendment and the introduction of clauses that permit a building potentially twice the height of the Council endorsed Amendment, the Town has reached the conclusion that it cannot support the modified Amendment in its current form based on the submissions received, so further modifications are proposed, amongst other things, which would cap building height to the overall development and reduce building height at the St Peters Road frontage.

This is considered to be the only way to provide some degree of certainty and clarity to all stakeholders. In the Town's opinion this cannot be balanced with the conflicting wording of the current provisions and the uncertainty in respect to maximum building height which could be achieved especially in relation to the high rise option. The only option which the Town finds acceptable is the reinstatement of the original building envelope with clauses inserted which exempt the building envelope from any height variation and reduce the building height on the St Peters Road frontage from ten metres to eight metres and the 'additional height' clauses deleted from the Amendment.

It is therefore recommended the Council supports the Schedule of Modifications (as advertised) subject to the further modifications as outlined in the Officer's Report and in Attachment 4. The Minister's modifications are considered supportable on the basis that further modifications are

made to the building height and setbacks clause that will ensure the scale and height of the development is capped within a modified Figure 1 and 2.

Further modifications to the development controls related to land use, residential development, vehicle parking, noise and access are also recommended so the Amendment more closely aligns with the Council endorsed Amendment. This approach supports the comments made by the majority of submitters and addresses their concerns raised.

It is also recommended that the significant concerns the Town has with the drafting of the provisions be forwarded to the Department of Planning, the WAPC and the Minister so they are fully informed of the concerns prior to the Amendment being finalised. In particular, and of foremost concern, is that consideration be given to the concerns raised with the degree of discretion and variation in regard to all development controls. It is also recommended that the Council resolves that the submissions made in regard to the advertised Schedule of Modifications be received and that the recommendation in respect to each submission be noted and those who made a submission be notified of the Council's decision.

The Town also requests that it be involved in any further drafting of the Amendment if the WAPC and/or the Minister determines to make further changes to the Amendment.

Background

In early 2016 the owners proposed a Scheme Amendment because prior to the gazettal of Scheme Amendment No. 10 multiple dwellings (apartments) were classified as a 'X' use (i.e. not permitted) in a Mixed use zone. Whilst Amendment No. 10 (gazetted October 2016) allowed for the development of multiple dwellings in this zone the current Scheme provisions for the site did not change. These provisions are restrictive in respect to the scale and type of development envisioned by the owners, only permitting a plot ratio of 0.5:1 and a maximum building height of 8 metres.

The Amendment encompasses four lots of land comprising 3,841m² in total and after current road widening requirements 3,681m² (as determined by Main Roads WA) on the south west corner of Stirling and Canning Highway. The site is within the historic Plympton Precinct, adjacent to Residential R20 zoned land and opposite the Tradewinds Hotel on the corner of Sewell Street and Canning Highway.

A number of sewer easements traverse the site and the developer will eventually be responsible for diversion of the pipes if required by the Water Corporation. There is a manhole to one of the sewer pipes which cannot be built over. The site is also impacted by a Primary Regional Road reservation under the Metropolitan Region Scheme (MRS) and the applicant has been in discussion with Main Roads WA because of the previous implications of the Roe 8/Freight Link proposals and future intersection improvements at the junction of Canning and Stirling Highway. All these factors present constraints to development on the site.

Full background details are available in the Council Minutes dated 18 April 2017 (SPCM Minutes 180417) and 17 April 2018 (SPCM Minutes 17042018) and a detailed timeline of events in respect to Amendment No. 14 is outlined in Attachment 5.

Details

After the initial advertising period and the submissions received objecting to the Amendment, the Town took the decision to reconsider the building height and setback development controls and look at alternate building envelopes and corresponding development controls.

An experienced urban design consultant was engaged to provide detailed advice on alternate urban design outcomes, in particular overall building height and building setbacks focusing on the submissions, the surrounding suburban context, heritage considerations, and the proximity of the Town Centre and river foreshore. The outcome of that work and the original objections received resulted in a reduction in the overall height, scale and bulk of the potential building envelope. These revisions were discussed with the owners' representatives and in the main there was agreement between the Town's Officers and the owners' planning consultants as to the content of the Amendment as it was to be presented to Council.

Schedule of Modifications

Following Council adoption of Amendment No. 14 in April 2018 and the Town receiving advice from the Department of Planning that modifications to the Amendment were intended, Elected Members and the Town's Officers met with the following people:

- Minister for Planning;
- Minister for Planning staff;
- Members of State and Federal Parliament;
- Director General of the Department of Planning; Lands and Heritage;
- Senior State Planning staff ;
- Chair of the Western Australian Planning Commission;
- Chief Planning Advisor to the Director General of Planning; and
- Applicant and owner of the property.

The aim of the meetings was to outline the basis and importance of the Amendment in relation to orderly and proper planning and to seek support for the Amendment in the form adopted by Council. The Minister's modifications were quite significant and were not subject to detailed discussions with the Town's Planning Officers. The Town was not in support of the modifications and the proposed changes had significant consequences for development of the site because the potential height of a building was in effect more than doubled in respect to the number of storeys that could possibly be approved and this in turn potentially impacted the number of apartments and parking bays that could be developed. The outcome of the modifications being that the built form outcome was significantly increased beyond what the Council and the community believed was appropriate and had been indicated by the developer throughout the Amendment process. The modifications were also in a form that were very difficult for the community to comprehend in terms of understanding a built form result. In effect, two options were proposed one which discussed a 'trade-off' for increased building height if public 'open space' was ceded to the Town or communal open space provided for occupants of the development only and existing trees retained on the site. A number of other prerequisites were also required to be satisfied to achieve the additional height which were not onerous and did not provide any 'community benefit'. The degree of complexity and variation possible in the wording of the controls may have made it difficult for the community to understand and therefore make informed submissions.

Amendment No. 14 was then considered by the Statutory Planning Committee (SPC - a sub-committee of the Western Australian Planning Commission WAPC) on 23 October 2018. At the meeting the SPC considered a report by Officers of the Department of Planning which did not support the Council's Amendment. The SPC reports are confidential so the recommendation by State Planning Department Officers to the SPC was not available to the Town.

The Mayor, Deputy Mayor and Officers from the Town, as well as many community members, the land owners/developers and their representatives made deputations to the SPC to speak both in

support of and against the Town's Amendments. Notwithstanding the Town's arguments in support of the Council endorsed Amendment, it is understood that the Minister accepted the Schedule of Modifications (as proposed by the Department of Planning) and then directed the modifications be advertised.

The Town believes the modifications significantly increased the building envelope and therefore the scale and bulk of the building which is contrary to the objective of the Council endorsed Amendment. This is primarily because the building height and setback clauses, as adopted by Council, have been removed and replaced with the owner's proposed building envelope. This allows for greater height (across the site) and lesser setbacks (i.e. nil setbacks from lot boundaries with the exception of St Peters Road). A developer can also opt for an 'additional height' option and use the plot ratio, calculated on the total land area, to be concentrated on the northern portion of the site. It was for this reason and because many of the Council's provisions were deleted creating an amendment substantially different from the amendment the Council endorsed that the Amendment was re-advertised. In particular, the Minister and the Department of Planning staff wanted to seek community feedback on the changes to the 'additional height' clause which allowed for a much taller building to be approved over half the site. The Minister's modifications significantly impact the built form outcome of the site, allowing, in the Town's view for greater development potential. The modifications are considered to have significant amenity impact for the surrounding locality. This is contrary to the Town Centre Redevelopment Guidelines and the urban design advice received from the consultant.

Since initially advised of the modifications, the Town has expressed its dissatisfaction with the manner in which the Department of Planning has assessed and responded to the Council's Amendment and remains significantly concerned with the changes. These concerns are twofold. Firstly, in the Town's assessment of the modifications, the new provisions are considered to allow for development potential beyond what Council considered appropriate for the site. There are significant constraints to development on the site and overdevelopment will have implications for the orderly and proper planning of the surrounding heritage area, including traffic and access implications for the surrounding streets. Any increase in building height and scale and the consequent increase in traffic and parking will have immediate negative heritage, visual and amenity impacts. Traffic can only exit the area by a left hand turn onto Canning Highway. If vehicles want to travel north, south or east then the only means to do this is by travelling through the surrounding residential area and the Town Centre. In the Town's view the development controls in the modified Amendment do not address amenity issues.

Secondly, and of equal concern the Town is of the view that changes to the structure of the Amendment and the manner in which it is drafted for inclusion in LPS 3 allows far greater discretionary powers than was ever intended by Council. The scope to vary provisions will result in community concerns and dissatisfaction with the Amendment and planning process. The community has no certainty in regard to the development potential of the site. However, it is highly likely that the 'additional height' option will be considered more favourable by a developer given the development benefits gained, including the views that will be available from the site from a higher building form. The difference in the development outcome being the possible development of a 15 to 18 storey high rise building as compared to a seven to eight storey building, with the form of the buildings and the uses that would interface with St Peters Road and Sewell Street being uncertain as well. The potential for a high rise building to block existing views and impact amenity, will also present a community issue because this has been a factor of the Amendment that has not been made clear given an upper height limit does not exist under the current wording.

In the Town's assessment the impact of the Schedule of Modifications can be summarised as follows:

- The potential for a much taller and larger scale building than the Council endorsed Amendment would permit without the 'trade-off' or 'community benefit' for public open space being a mandatory requirement (nonetheless Council sees no value in public open space in this location);
- No maximum cap on building height under the 'additional height' provisions (potential 15- 18 storeys with a plot ratio of 3:1);
- Ability of a decision-maker to vary the 'additional height' provisions (which, amongst other matters, includes reference to overshadowing, land uses and a tree management plan);
- Increased development potential in regard to the potential number of apartments and vehicle parking numbers;
- A requirement for a tree management plan which only specifies identification of trees and their protection during construction, not their retention and protection in perpetuity, or their replacement should they perish as a result of construction works;
- No mandatory requirement for public open space to be provided as a 'community benefit' for 'additional height';
- Ability to vary the land use provisions which could impact adjoining residential uses;
- Deletion of the mandatory requirement that 60% of the development floor space be for residential dwellings;
- Inclusion of vehicle parking concessions by deletion of specific vehicle parking controls; and
- The inclusion of a clause which permits a decision-maker to approve of a non-complying development thereby allowing variations from the controls without any upper limits on the degree of variation.

State Planning Policy 7.3 (SPP 7.3): R-Codes – Volume 2 - Apartments

Toward the end of the advertising period SPP 7.3 was launched (18 February 2019) replacing Part 6 of the R-Codes (multiple dwellings) and the document was gazetted on 24 May 2019. This new set of rules for apartment developments has direct application to the development controls which would be applied to apartments on the site.

The application of the new R-Codes for apartments allows for 'natural ground level' to be altered. This combined with no definitive height cap on either of the building height controls (as per the Minister's modifications) means there is no way of determining the overall maximum height of a building. Therefore, all design elements (e.g. basements, height of a storey, roof structures, lofts and mezzanines) and controls in relation to determining building height under the Scheme and the R-Codes are discretionary and open to variation by a decision maker. This is also reinforced by the Scheme provisions. As mentioned previously because the new R-Codes were not available until near the close of advertising, the Town did not have time to undertake a full analysis and provide the information to the community. The new R-Codes are considered to further complicate the Minister's modifications and will cause amenity impacts to the community and surrounding area.

A number of submissions have also raised the issue of the new R-Codes in respect to the retention of trees and deep soil zones; querying why a developer should be awarded a 'development bonus' of additional building height for retention of trees when this is now an 'Element Objective' of the new R-Codes which states *"provision of quality communal open space that enhances resident*

amenity and provides opportunities for landscaping, tree retention and deep soil areas.” Also, landscape quality as it is incorporated in the design of apartments is considered one of the ten principles of good design under the new R-Codes. It is an expectation that these design principles will underpin the architecture, function and assessment of all new apartment developments in WA.

Consultation

In December 2018 the WAPC advised that it had considered Amendment No. 14 and submitted its recommendation to the Minister for Planning. The Minister directed that the Amendment be modified in accordance with the Schedule of Modifications and also determined that the recommended modifications were significant. The Town was directed to advertise the modifications for 28 days and follow the procedures required for advertising under the *Local Planning Schemes Regulations 2015*. The advertising was undertaken from 29 January to 25 February 2019. A comprehensive advertising program was undertaken including the required statutory notices, signs on the site, advertisements in a number of print and social media forums, the Town’s website and eNews and a letter was sent to each land owner in the Town which provided the owner with a submission form and reply paid envelope.

All relevant public authorities including the Heritage Council and EPA were notified in writing of the requirement for the Town to advertise the modifications to the Amendment and provided with the modifications for their comment.

The advertising process followed formal statutory processes in accordance with the requirements of the WAPC and the *Local Planning Schemes Regulations 2015* as outlined in the WAPC letter received in December 2018.

Community submissions

A total of 281 submissions have been received in response to advertising the Schedule of Modifications. Overall 219 objections to the modifications were received (~78%), with 60 in support (8 conditional support) and 2 unrelated submissions. Twenty two (22) submissions were joint submissions, listing two names but made on the one submission form. This accounts for a further 22 people making a comment; an additional 5 people supporting the modifications and 17 people objecting to the modifications. The submissions objecting can be classified as follows:

One hundred and fourteen (114) submissions supported Council’s Amendment as adopted and 105 supported the Council’s Amendment on the stipulation that an area of publicly accessible open space was to be provided and trees retained in addition to the development controls proposed by Council. Thirty one (31) submissions supported Council’s Amendment but preferred a lower building height. Many of the submissions made additional comments regarding reducing traffic and parking.

One of the land owners also made a detailed submission in full support of the modifications. This was based primarily on redevelopment of the site needing to be commercially viable, wanting to achieve the best architectural outcome, creating public open space and providing for 200 residents. The land owner’s submission is repeated in full in the Schedule of Submissions (submission #244).

Support for modifications (52):

- retirement housing options provided;
- desire to relocate to East Fremantle;

- taller building with trees/open space is better outcome than shorter bulkier building;
- taller building OK if providing trees and open space;
- shortage of open space in the area – increase is beneficial;
- location of apartments close to good facilities/amenities and good views with taller building;
- taller landmark building warranted in this location;
- urban infill - dwelling numbers increased – supports sustainability principles for wider Perth;
- site long overdue for redevelopment – an eyesore; and
- increase value of surrounding commercial businesses.

Approximately 40 submissions essentially comprised of various combinations of the statements listed above. Many of these submissions mention retention of trees and the provision of publicly accessible open space. They also include reference to maintaining access to the dual use path and qualify their support by stating that the architecture of a taller building must be outstanding to compensate for the additional height.

Conditional support for modifications (8):

- urban infill – contributes to LGA dwelling targets;
- a ‘progressive’ development and potential for landmark building;
- appropriate location – if activated corner and good architecture;
- addresses environmental issues and sustainability;
- retention of trees is good ‘trade-off’ for additional height;
- additional height acceptable for provision of more open space; and
- open space cannot be for private use only.

Owner’s Information Day

The owners of the site conducted their own community information open days on the site on 9 February 2019 during the statutory advertising period. This was organised by the owner’s representatives who produced a pamphlet which was circulated to local residents and made available on the day. In the Town’s view the pamphlet contained selective information relating to the Amendment and the Minister’s modifications but did not provide a full analysis of all the Amendment details and differences between the Council’s Amendment and the Minister’s modified Amendment. Some community members advised the Town that they found the information presented at the Information Day to be misleading and created confusion. Two options for redevelopment were presented in the pamphlet (development of the entire site with a lower scale building and development of part of the site with a tall building and open space/trees). The pamphlet was entitled “*Support Trees and Open Space*”. It was not clear to some community members, after reading the information and speaking with the owner’s representatives, whether the Council or the owner had endorsed the Information Day and who was responsible for producing the information and endorsing the two development concepts. The concerns were conveyed to the Town and as a result the Town held a community information meeting before the close of advertising on 20 February 2019 to provide further clarification and information in respect to the Minister’s modifications.

Service Authority comments

A number of service authorities responded to the request for comments. Generally there were no objections to the modifications, however Fremantle Ports and Main Roads WA have specified that development must be in compliance with relevant State Planning Policies.

The Water Corporation requested its comments be forwarded to the applicant and owner regarding the vehicle access to the manhole on the main sewer for maintenance purposes. This access would be from St Peters Road over the existing sewer entering the manhole from the south. It requires that access to the existing easement (to the sky) be maintained, so this would prevent building over it.

Main Roads has had the opportunity to review the modifications and has no objection although would like to note the following:

- Access
 - No vehicle access will be permitted within 30m of the truncation of Canning Highway and Sewell Street.
- Transport Noise
 - As this site abuts two major freight transport corridors any proposed development must implement measures to ameliorate the impact of transport noise and must comply with WAPC *State Planning Policy 5.4 "Road and Rail Transport Noise and Freight Considerations in Land Use Planning"*.

Main Roads have also stated that should the Town of East Fremantle disagree with, or resolve not to include these comments as part of this Amendment, then it requests an opportunity to meet and discuss the proposal further, prior to final determination being made. These matters have been addressed in the Town's proposed modifications to the Schedule of Modifications.

Submission – Themes

The submissions strongly rejected the Amendment (as advertised). A large number of submissions (~78%) clearly support the Town's Amendment as adopted in April 2018. Of the 78%, 105 of the 219 submissions expressed objection to the Minister's modifications but also expressed the need for the trees and access to public open space to be retained. Thirty one (31) submissions supported Council's Amendment but preferred a lower building height. The outcome being that by far the majority of submissions expressed a desire for a building height of 7 to 8 storeys or lower.

It is the Town's opinion that the issue of the retention of trees and publicly accessible open space in lieu of additional building height as expressed in the modified Amendment was not fully understood by the community because the provisions in the Amendment were difficult to understand and ambiguous due to the technical complexities of planning scheme provisions. The literal interpretation of the provisions did not require retention of the trees in perpetuity nor public access to open space on the site. The developer could still gain an 'additional height' bonus even if the retained trees were on open space that was for the private use of the occupants of the site. The Town believes the wording of the amendment caused confusion for the community because in the information distributed by the owners' representatives it was indicated trees were to be retained if a building of 'additional height' was granted approval.

From the Town's perspective the submissions in support appeared to be based on acceptance of increased height and building envelope subject to architectural design being exemplary, provision of public open space and increased housing opportunities in East Fremantle. Sustainability/environmental benefits and the reduction of urban sprawl through the construction of apartments was also frequently mentioned. Most of these submissions were from

people who live outside the Town. The matters they raised related to broader more regional planning issues and personal lifestyle choices, rather than the orderly and proper planning of the site and for the surrounding area.

Response to Submissions

Each submission (Form 4) has been reviewed and entered in the Schedule of Submissions (refer to Attachment 3). The Recommendation in response to each submission is classified as either supported in part, not supported or noted. A response number which corresponds with the Recommendation has also been entered in the Recommendation column. This number then corresponds with a general response which is provided at the beginning of the Schedule.

Three basic responses to the submissions have been provided. The three responses provide a general response to the issues and comments noted in the submissions. Further detail regarding submission responses is contained in the Officer's Report where the Town's response to the Schedule of Modifications is discussed in more detail than can be provided in the Schedule of Submissions. Reference should also be made to the Officer's Report and Recommendation for the detailed Council Resolution in respect to the Schedule of Modifications to Amendment No. 14.

This broad approach in addressing the major issues is required due to the high number of submissions. Whilst this approach may not address every individual issue, it is considered a reasonable method of responding given the overriding community concerns relate to building height controls, access, vehicle parking and through traffic, increased traffic, residential amenity impacts and to a lesser extent heritage. Reference should be made to the Officer's Report and Recommendation for the detailed response to the planning issues and recommended modifications to the Schedule of Modifications.

The outcome of the consideration of submissions is that there be further modifications to the Schedule of Modifications in response to the majority of the submissions not supporting the modifications. The additional height (not capped and subject to variation by a decision maker) is not supported and neither is the deletion of other planning controls that were contained in the Council endorsed Amendment. There is strong support for the Council's Amendment. The community have clearly expressed support for a maximum capped building height with no power to vary the height control. The submissions also firmly object to the option of a high-rise building.

In response the proposed modifications focus on introducing a capped building height control and reinstating provisions relating to land use, mandatory residential floor space of 60%, vehicle parking, residential development standards, noise and access.

In the main it is considered that the Town has addressed the concerns raised in the majority of the submissions objecting to the modifications. Although a large number of the submissions request that Council reinstate its endorsed Amendment, or supported a lower height limit, this is not the stance that the Town is recommending. The building height supported in the Council endorsed version of the Amendment will not align with the proposed changes to the Schedule of Modifications as the building height recommended will allow for an additional storey to that previously supported by Council. However, the community's request that the building height be clearly defined and non-variable will be satisfied through the recommendation that additional provisions be introduced which will not give a decision maker the power to vary the building envelope. This will also limit development potential and bulk and scale, as well as prevent overshadowing.

Statutory Environment

Planning and Development Act 2005

Heritage Act 2018

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No. 3 (LPS 3)

MRS - the site abuts a Primary Regional Road and Other Regional Road reservation under the MRS.

Policy Implications

Draft Local Planning Strategy 2016

Municipal Inventory 2015 – Category C (both properties)

Fremantle Port Buffer Zone – Area 2

Financial Implications

Nil

Strategic Implications

The Council's adopted Amendment (Council meeting resolution 17 April 2018) is considered to be in line with the recommendations of the State strategic planning policies such as *Directions 2031 and Beyond* and *Perth and Peel @3.5Million* and would ultimately facilitate the development of this site with additional dwellings and commercial floor space commensurate with a Mixed Use zone. This will contribute to the economic development of the Town and the Town's dwelling target under State urban infill strategies.

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

Built Environment

Accessible, well planned built landscapes which are in balance with the Town's unique heritage and open spaces.

3.1 Facilitate sustainable growth with housing options to meet future community needs.

3.1.1 Advocate for a desirable planning and community outcome for all major strategic development sites.

3.1.2 Plan for a mix of inclusive diversified housing options.

3.2 Maintaining and enhancing the Town's character.

3.2.1 Ensure appropriate planning policies to protect the Town's existing built form.

3.3 Plan and maintain the Town's assets to ensure they are accessible, inviting and well connected.

3.3.1 Continue to improve asset management practices.

3.3.2 Optimal management of assets within resource capabilities.

3.3.3 Plan and advocate for improved access and connectivity.

Natural Environment

Maintaining and enhancing our River foreshore and other green, open spaces with a focus on environmental sustainability and community amenity.

4.1 Conserve, maintain and enhance the Town's open spaces.

4.1.1 Partner with Stakeholders to actively protect, conserve and maintain the Swan River foreshore.

4.1.2 Plan for improved streetscapes parks and reserves.

4.2 Enhance environmental values and sustainable natural resource use.

4.2.1 Reduce waste through sustainable waste management practices.

4.3 Acknowledge the change in our climate and understand the impact of those changes.

4.3.1 Improve systems and infrastructure standards to assist with mitigating climate change impacts.

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not endorse the Report Recommendation	Unlikely (2)	Moderate (3)	Moderate (5-9)	REPUTATIONAL Substantiated, public embarrassment, high impact, high news profile, third party actions	Accept Officer Recommendation

Risk Matrix

Consequence		Insignificant	Minor	Moderate	Major	Extreme
Likelihood		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	6
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Site Inspection

Various 2017 - 2019

Environmental Implications

There are no known significant environmental implications associated with this proposal. The Schedule of Modifications was referred to the EPA in February 2019. No further comments from the EPA were received.

Heritage Council Comments

The Heritage Council made the following comments when the Amendment was initially advertised in 2017.

“There is no objection to the proposal.

- 1. Our records indicate there are two places contained within the Town of East Fremantle's Municipal Inventory within the Subject area; Former Residence, 93 Canning Highway (P19086), and Warehouse/Workshop (P19085). It is noted that the proposed amendment allows for the demolition of these buildings. The Town may wish to consider the potential impact of future development on the local heritage values of these places, and how this may be addressed.*
- 2. The subject site is adjacent to the State Registered Public Buildings, East Fremantle (P789). Any development proposals which may affect this place will need to be carefully considered to ensure that the heritage significance of the State Registered place is retained.”*

Comment

A summary of the key planning issues is provided in Attachment 6.

Amendment No. 14 has progressed to completion of advertising the Schedule of Modifications as directed by the Minister. The advertising was deemed necessary after substantial changes were made to the Town's Amendment by the Department of Planning, subsequently endorsed by the WAPC and then directed for advertising by the Minister for Planning. When the Town initially indicated to the Department of Planning that the modifications were not supported in September 2018 there were no further discussions with the Town about the modifications before the Department of Planning Officer's report was progressed to consideration by the Statutory Planning Committee (a sub-committee of the WAPC) or before the WAPC recommendation was forwarded to the Minister, which was only one month later.

In respect to the modifications directed to be advertised by the Minister, it was the Town's understanding that the major changes were in direct response to Department of Planning Officers discussing the ceding of land to the Town for the purpose of public open space with the owners. This involved a portion of the land that contained some trees that Department Officers thought worthy of being retained. In exchange the building height development potential would be increased as a plot ratio of 3.0:1, based on the total land area being applicable but apportioned over approximately half the land area on the northern portion of the site. A plot ratio of 3:1 could potentially result in a building of between 15 to 18 storeys, depending on the distribution of floor space across the site. Also, the amount of land to be ceded/open space was only required to be similar in area to the two smaller lots on the site containing the trees, so the exact amount of open space, potentially accessible by the public or the occupants of a building was not specifically indicated and could not be guaranteed as being provided because the prerequisites were also open to variation by the decision maker.

The Town's and community's concerns with the modifications were significant as the majority of the submissions have indicated. The modifications proposed a development outcome that was

completely at odds with the development outcome the Town had negotiated with the owners' representatives over a two year period and with the Town's and the community's expectations following Council endorsement of the Amendment after the initial advertising period. On closer examination of the drafting of the modified Amendment provisions, in conjunction with the application of the new SPP 7.3 - R-Codes, it was clear that there were significant problems with the manner in which the Amendment was drafted in relation to the legal soundness of the provisions. In fact the provisions, as they are drafted will not deliver the intended outcome of the Council's Amendment or what the Town believes was the Minister's intention and could be misused and misinterpreted leading to even greater development potential and building height being granted.

During and after the advertising phase discussions regarding the drafting of the modified provisions and planning issues were undertaken with the Chairman of the WAPC, the Chief Planning Advisor, Minister's staff and State Planning Officers to underline the Town's significant concerns with the drafting of the new clauses and the likely implications and development outcomes. At these meetings State Planning Officers advised the Town that if it believed the issues to be of such significance then it should undertake its own detailed review and redraft exercise of the Amendment.

The Town is also of the opinion that if the Minister were to support the modifications in their current form the potential impact of a building height exceeding 15 storeys with a significantly greater number of apartments than has been indicated by the applicant is a possibility and would not become apparent until a development approval application was lodged. Furthermore, the scope of discretion to vary and power to approve a greater building height would also not become apparent until a development approval was issued. This does not give the community a legitimate informed understanding of the potential outcomes and in turn limits their ability to make informed deputations and further comments on the Amendment if they so wish.

The Town was granted an extension of time in which the Council is required to make a resolution regarding the Schedule of Modifications and the Schedule of Submissions. Due to the errors in the drafting of the Amendment provisions and the issues which have emerged the WAPC extended the deadline until 20 August 2019.

Orderly and Proper Planning Considerations

The planning intent and development controls have been significantly modified to the degree that very little to none of the Council's planning provisions controlling development on the site remain in the modified Amendment. This is of serious concern to the Town as the planning provisions adopted by Council were considered to provide the Town with the planning framework to achieve a high quality mixed use redevelopment of the site and to address the community's concerns as expressed through submissions on the Amendment.

The Town engaged at length and collaboratively with the owner's representative regarding appropriate development controls and devoted in excess of two years to discussions, workshops and detailed urban design work to arrive at detailed development and site controls. This involved detailed modelling of the site and consideration of various design and built form scenarios which provided the foundation for formulating the Amendment provisions.

The 'additional height' modifications have little regard for the extensive work involved in engaging with the community and the applicant to achieve a suitable outcome for all parties. The proposed Amendment significantly modifies Council's detailed work to date and Amendment for minimal

to no 'community benefit'. The modifications are considered to have little regard for the community's concerns as expressed through Amendment submissions and do not provide the community with any certainty about the form and degree of intensity future redevelopment of the site might take and are believed to result in undermining the community's confidence and support for the Amendment and future planning processes.

The approach to formulating a planning framework for the site that does not take into account specific local planning circumstances, site constraints, heritage issues and relevant planning matters that are believed contrary to the orderly and proper planning of the area and undermines the planning process in which the Council, the applicant/ owners' of the site and the community have engaged.

The building envelope as adopted by Council was considered to be of a physical scale appropriate to the site and adjacent heritage precinct and in keeping with the prescribed building height hierarchy of the Town Centre Redevelopment Guidelines 2012. It is considered the proposed 'additional height' provisions will not result in the orderly and proper planning of the area nor are they based on sound planning principles or in line with the new R-Code design provisions for apartments. The schedule of modifications (as advertised) is not supported by the Town and can only be supported in a modified form. The proposed modifications to the Schedule of Modifications and justification for the proposed changes and the comments made in this section of the report are discussed in more detail below.

Schedule of Modifications

The Minister has proposed two development scenarios for the site. One is the 'additional height' (facilitating a high-rise tower on the northern portion of the site) and the other is the lower building envelope (facilitating coverage of the entire site – allowing nil setbacks) that was proposed by the owner in the original Amendment (refer to Figure 1 and 2 of the Amendment). The latter scenario allowed for a 9 storey building with services and other occupant amenities on the roof top which more than likely would result in the equivalent of a 10 storey building on the northern portion of the site, stepping down to lesser storeys on the southern portion of the site and three storeys on St Peters Road. The Council endorsed Amendment revised the building envelope to seven storeys with the option of an eighth storey for non-habitable resident amenities.

The specific concerns regarding the Minister's modifications are not supported by the large majority of submissions either, which demonstrate collective support for the Council endorsed Amendment of eight storeys or nominate a lower building height. The Minister's modifications have reinstated the original building envelope which is approximately one storey higher than the potential height that could have been approved with the Council endorsed building envelope.

This is considered to be a partial step to acknowledging the Council's preferred height control for the site on the basis that there are no exceptions to the building envelope being exceeded by any services, lift shafts or any other occupant amenities or being increased in number of storeys under discretionary clauses. If this is enforced through additional development controls and a reduction in the building envelope height at the southern end of the site then the scale of a building(s) covering the lots will not be significantly dissimilar from the building envelope endorsed by Council. Several additional provisions and rewording of other clauses controlling variation of Schedule 13 and to the building height and setback provisions is required to achieve this. These changes are highlighted in red text in Attachment 4.

Notwithstanding the above comments it is important to acknowledge at this point the context that has led the Town to arrive at the point at which it cannot support the Schedule of Modifications (as advertised) and is recommending further modifications. This is based primarily on the degree of discretion that has been applied to building height clauses. In some respects the remainder of the technical errors in the drafting of the Amendment are redundant as far as the Town is concerned because the 'additional height' clause is not supported by the Town and therefore the technical inaccuracies that relate to this clause are irrelevant because it is not supported and is recommended to be deleted.

However, the issues, as they relate to 'additional height' will be discussed in the 'Comment' section of the report to highlight the issues as identified by the Town, should the WAPC and the Minister choose to proceed with the Amendment in its current form. Also, the gazettal of the new R-Codes which apply a modified set of development controls in respect to apartments and an increased degree of flexibility regarding building height and other development controls further complicates the issues the Town has identified with the modifications. These matters are discussed further below.

Proposed modifications to Schedule of Modifications (as directed to be advertised by Minister)

The proposed changes to various clauses are discussed below under the relevant sub-headings as per the Schedule of Modifications. The Minister's modified Amendment is indicated in plain black text with changes to the text being indicated as deleted (line through black text) or additional text proposed by the Town indicated in red text following justification for the proposed modifications.

As previously discussed the Schedule of Modifications has resulted in significant changes to the Council's Amendment and accordingly to the height, scale and bulk of a building that could potentially be developed on the site and the uses for which the site could be developed. The increased potential for a greater building envelope to be approved would permit a greater number of apartments to be developed on the site and therefore a greater number of parking bays for both residential and commercial uses would be required to service the development. This could potentially occur by way of scope to vary height and a clause which allows for non-complying development to be approved. It is also noted that there is no mandatory requirement to provide a certain percentage of residential floor space. As the modified Amendment is currently worded a development on the site could comprise wholly commercial floor space or serviced apartments. This presents significant concerns with regard to the orderly and proper planning for the site which directly interfaces with a residential neighbourhood of significant heritage value. The constraints of limited road access to and from Canning Highway and the potential for through traffic, street parking and congested access points to significantly impact on the Plympton and Town Centre Precincts is greatly increased by the modifications.

Notwithstanding the above comments, since the Town was advised of the modifications endorsed by the WAPC and then the Minister for Planning, it has continued to maintain significant concerns with the drafting of the provisions and the planning mechanisms by which the development controls have been inserted in the Scheme Text. This concern was increased when the Minister directed modifications altered and then further complicated the planning controls by introducing the 'additional height' clauses. This created ambiguity which could potentially lead to misinterpretation and misuse of the provisions and did not address the concerns of the community. In fact, the introduction of these clauses was contrary to the community's preference for lower scale development on the site and confused the matter in regard to retention of trees and public access to open space.

State Planning Policy 7.3 – R-Codes – Volume 2 – Apartments

The Schedule of Modifications was also contrary to the new R-Codes. The intent of the new R-Codes as stated in explanatory material that:

“This Policy will prepare our urban areas for apartments that are well designed, for residents and neighbours. It improves guidance for siting and orienting buildings into existing and emerging neighbourhoods. It also offers support to design practitioners and decision-makers who proposed alternative and better design process.”

With the Policy objectives for multiple dwellings listed as:

- *To provide residential development of an appropriate design for intended residential purpose, land tenure, density, place context and scheme objectives;*
- *To encourage design consideration of the social, environmental, and economic opportunities possible from new housing, and an appropriate response to local context;*
- *Encourage design that considers and respects local heritage and culture; and*
- *To facilitate residential development that offers future residents the opportunities for better living choices and affordability when seeking a home, as well as reduced operational costs and security of investment in the long term.*

From the Town’s perspective the proposed modifications will not produce a development that will align with these stated objectives or the more specific element objectives and acceptable outcomes in relation to all the primary controls of SPP 7.3. The specific matters that are contrary to the development controls being applied under the modified Amendment are underlined.

The specific issues of concern raised in the submissions and in the Town’s assessment of the Schedule of Modifications are discussed below and explain why the Town cannot support the modifications and is requesting further modifications be made to the Schedule of Modifications in relation to the development controls but also the clauses which give effect to the development controls (outlined in Schedule 13).

Change from ‘Special Control Area’ to ‘Additional Site and Development Requirements’
Schedule 13

In the following discussion reference is made to specific clauses in the Schedule of Modifications. For full details of the Schedule refer to Attachment 2.

Amendment 14, in the form initiated by the Town, proposed to superimpose a *Special Control Area* over the Amendment area. The Minister’s modifications proposed that the site be the subject of *Additional Site and Development Requirements*. The modifications proposed to introduce new clauses 5.10 and 5.11 into LPS No. 3 which would give effect to a new Schedule 13, also inserted into LPS No. 3, entitled ‘*Additional Site and Development Requirements*’. Schedule 13 comprises a table with the first entry being the land the subject of this Amendment. This planning mechanism would, however, permit other properties being added into the Schedule by later Scheme Amendments, each with their own respective sets of ‘*Additional Site and Development Requirements*’.

This set of planning provisions is prepared basically using the structure and provisions of the Model Scheme Text. Notwithstanding, the Model Scheme Text makes provision both for ‘*Special Control Areas*’, and for ‘*Additional Site and Development Requirements*’ applicable to specifically

identified parcels of land. The Department of Planning, have required that local planning scheme amendments should also reflect, as closely as reasonably possible, the structure and terms of the Model Scheme Text. LPS 3 was gazetted long before the current Model Scheme Text was in existence and LPS 3's structure does not readily follow the Model Scheme Text.

Within the 'master' clauses contained in the Model Scheme Text, there is:

- a clause which gives effect to the table of *Additional Site and Development Requirements*, contemplating different requirements for each separate land parcel contained in the table; and
- a clause which empowers the local government to approve an application that does not comply with an additional site and development requirement.

In the Minister's modifications, the template summarised above has been followed. This wording is reflected in the Minister's clauses 5.10.1 and 5.11.2 respectively.

Conflicting clauses in the Schedule of Modifications

The first '*Additional Site and Development*' provision set out in the proposed new Schedule 13 reads as follows:

*"The height, setback, plot ratio and overshadowing provisions of this Schedule **are not open to variation through any provision of this Scheme or any other mechanism** with the exception of additional height provisions below."*

In the Town's opinion a direct conflict between clause 5.11.2, and the first proposed clause within Schedule 13 is evident. It was important to the Town in regard to this site that certain standards and requirements were only to be capable of being varied in very limited circumstances, if at all. This clause has been carried over into the Minister's modifications for the proposed Schedule 13, but without consideration being given to the fact that the clauses which give effect to Schedule 13 are drawn directly from the Model Scheme Text and explicitly permit variation of the '*Additional Site and Development Requirements*'.

If Amendment No. 14 remains in the form as proposed under the Minister's modifications then in the Town's view the first sub-clause of Schedule 13 would be ineffective because clause 5.11.2 is one of the two clauses (the other being clause 5.10.1) which gives effect to Schedule 13. None of the provisions within Schedule 13 could have any effect unless clauses 5.10.1 and 5.11.2 give effect to them. In that sense, the Town believes that clause 5.11.2 would prevail over any specific clause within Schedule 13 where there might be a conflict. Conflict between clauses have been identified in regard to a number of clauses. Although some of these clauses are not of as greater concern to the Town as they pertain to 'additional height' clauses which the Town does not support and is recommending be deleted from the modified Amendment. They are of course very relevant and of concern if the WAPC and the Minister and inclined to support the modifications to the Amendment as currently drafted.

The conflict between these two clauses impacts a number of development control provisions in the '*Additional Site and Development Requirements*' Schedule. The various provisions that are included in the Minister's modifications are impacted in that they can be varied by a decision maker. Then there are the provisions that were amended or deleted by the Minister's

modifications. In order for this to be rectified clause 5.11.2 has to be modified as does the wording of other clauses in Schedule 13. These matters are discussed below for each of the recommended modifications to the Schedule of Modifications.

Proposed modifications to Schedule of Modifications (as directed to be advertised by Minister)

The Schedule of Modifications as directed to be advertised by the Minister was prefaced with *'replace Council's resolution with the following'*. The specific details of the Council's Amendment will not be discussed in this report. For full details in regard to the Council endorsed Amendment refer to the Council Minutes of 17 April 2018. The recommended changes to the Minister's modifications, in the first instance are based on the concerns the Town has with conflicting clauses as discussed above which the Department of Planning Officers requested the Town address in this report to Council. This issue can be resolved in part by changes to the wording of the 'master' clause and then to clauses in Schedule 13.

The remaining recommended modifications to Schedule 13 are based on removing any potential for conflict between the 'master' clauses and the development controls in the Schedule and reintroducing the clauses deleted from the Council's Amendment. The Town believes reinstatement of these clauses is required to address the matters raised in the submissions which objected to the modifications.

The proposed changes to various clauses are discussed below under the relevant sub-headings used in the Schedule of Modifications. The reasons for the changes are noted first and then the black strike-through text indicates the recommended deletions to the modified version of the Amendment. The Town's recommended modifications are indicated in red text. Only those clauses to which changes are proposed are discussed. The full Schedule of Modifications (as directed to be advertised by the Minister) including the changes proposed by the Town are provided in Attachment 4.

5.11 Variations to Site and Development Requirements

In cl. 5.11.1 'additional site and development requirements' means requirements set out in Schedule 13. Cl. 5.11.2 is a clause that gives effect to Schedule 13. None of the provisions within Schedule 13 could have any effect unless clauses 5.10.1 and 5.11.2 give effect to them. In the Town's opinion cl. 5.11.2 would prevail over any specific clause if there were any conflict. For this to be resolved the Minister's clause below has to be replaced with the clause in red text. It is therefore recommended that the following modification be made to the Schedule of Modifications.

5.11.2

~~The local government may approve an application for a development approval that does not comply with an additional site and development requirement.~~

Except to the extent that a provision within Schedule 13 states that the provision is not open to variation, the local government may approve an application for a development approval that does not comply with an additional site and development requirement.

Schedule 13: Additional Site and Development Requirements (Clause 5.10)

Schedule 13's first clause entitled '*Exemption from Variations*' refers to height, setback, plot ratio and overshadowing. It does not refer to land use or density the other development controls the Town did not wish to be varied. The Town believes it is likely that land use is therefore capable of being varied. The relevant 'land use' provision within Schedule 13 is the provision entitled

'Land Use and Density'. It provides that only residential developments shall front St Peters Road and also provides for restrictions in terms of the use of the setback area for landscaping and not vehicle parking. Because of the current wording of clause 5.11.2, land use is a requirement that is capable of being varied unless land use is included in the exemption from variation clause, because it is not exempted from being varied by the first clause of Schedule 13 or by any other clause.

With respect to the reference to *'density'* there are other aspects of design which indirectly bear upon density, in the sense that the density of any given development is partly the function of a combination of its height, setback and plot ratio. However, these are aspects of design which are covered by separate provisions and will be discussed under separate headings. Density in this case also refers to the clause that disapplies clause 5.3.2 of LPS 3. There is no proposal to vary or delete this clause. This is included under *'Land Use and Density'*.

The planning controls that the Town does not want to see varied are therefore included in the first clause of Schedule 13 (being exempt from variation). These matters are highlighted in red below. The section of this clause referring to *'additional height'* provisions has been removed because it is not supported by the Town. It is noted that *'setback'* has been included in the non-variable provisions. This is because the building envelope proposed in the Minister's modifications indicates a nil setback for all lot boundaries with the exception of St Peters Road. The Department Officers in reinstating the original building envelope have included setbacks in the list of non-variable development control elements. This has technically required that a nil setback be designed for all boundaries with the exception of St Peters Road. It may, depending on the building(s), be more desirable for greater setbacks to be incorporated in the building design and for this element to be variable, provided the building envelope is not exceeded in respect to height. By deleting *'setbacks'* from the non-variable list the option of variable setbacks will be provided. This is more in line with Council's Amendment which specified that different setbacks were to apply to each storey.

The reference to overshadowing has been proposed to be deleted because there are no specific overshadowing provisions in the current wording of the Amendment. The Town's view is that overshadowing is only referenced in respect to the provision in the R-Codes and this is a variable development control. With the Council endorsed Amendment there would be no overshadowing of residential land. However, with the current wording of the Amendment and the ability for a decision maker to vary building height in regard to Figure 1 and 2, and no maximum height limit in regard to the *'additional height'* provisions in Schedule 13, there is the potential for overshadowing of adjoining residential properties to occur.

The Department of Planning envisage the *'overshadowing control'* in the clause below will act as a height control, however the overshadowing provisions can be varied (as per the R-Codes) under the current wording. For this reason it is considered necessary to remove the reference to overshadowing from the Schedule under *'Exemptions from Variation'* and to amend the cl. 5.11.2 and the first entry in Schedule 13. This will prevent the building envelope in Figure 1 and 2 from being varied by a decision maker. The Town believes this is the only means of ensuring the adjacent residential properties are not overshadowed at any time of the year.

It is therefore recommended that the following modification be made to the 'Exemption from Variation' section of the Schedule. The reference to residential development, vehicle parking, access and noise are discussed further below.

Schedule 13 – Exemption from Variations

No.	Description of Land	Requirement
1	Lots 418 and 419 Canning Highway, Lot 81 St Peters Road and Lot 423 King Street Exemption from Variations	<u>Exemption from Variations</u> 1. The building height, plot ratio, land use, residential development provisions, vehicle parking, access and noise overshadowing provisions of this schedule and Figures 1 and 2 are not open to variation through any provision of this scheme or any other mechanism with the exception of additional height provisions below.

Schedule 13 – Design Objectives

The Council endorsed Amendment listed a number of objectives which applied specifically to the SCA. These were deleted under the Minister's modifications. The following design objectives (in black text below) were introduced to the Minister's modifications. The Town believes it would be worthwhile to add to the design objectives by including two of the SCA objectives which it considers are relevant to the Mixed Use zone. The two additional design objectives are points iii) and iv) in red text below. It is therefore recommended that the following modification be made to the Schedule of Modifications.

1. Development must achieve urban design and architecture that is exemplary with respect to mixed-use and multi-residential design. The design of any new development must:
 - i) Ensure height, built form and façade design considers and makes a positive contribution to vistas toward the site from the surrounding locality;
 - ii) Demonstrate careful arrangement of building massing and height to minimise negative impacts to the amenity of adjacent properties;
 - iii) **Encourage a site responsive and well integrated development, which suitably interfaces with the surrounding established residential area; and**
 - iv) **Ensure the provision of parking and management of traffic takes into account the proximity of the established residential area and results in a safe and secure movement system that minimises any conflict with the surrounding uses, pedestrians and cyclists.**

Schedule 13 – Land Use and Density

The Minister's modifications appear to try to simplify the controls in relation to land use and density. However, the Town is of the view that this has weakened the controls and it is considered necessary to reinstate the Council endorsed provisions in Schedule 13 and to include land use in the first clause of Schedule 13 to ensure that it is 'exempt from variation'. If these modifications are made the Town considers the amenity of the adjoining residential area will be better protected and the interface between the commercial and the residential uses will be more suitable as the land uses permitted in the Mixed Use zone will apply and 60% of the floor space will be required to be residential. The following change also addresses the amenity, traffic and parking issues raised in the submissions. The following changes are therefore recommended to be made to the Schedule of Modifications.

~~1) Only residential development shall front St Peters Road. Commercial development and vehicle parking are not permitted to front St Peters Road.~~

~~2) Vehicle parking is not permitted to front Canning Highway.~~

~~3) Clause 5.3.4 of the Scheme does not apply to development on this site.~~

1. Land use permissibility shall be as designated for the Mixed Use zone in the Zoning Table of the Scheme.
2. Notwithstanding 1. above, only residential development shall front St Peters Road. Commercial development and vehicle parking is not permitted to front St Peters Road.
3. Vehicle parking is not permitted to front Canning Highway.
4. The setback area on St Peters Road is only to be used for the purposes of landscaping and/or private open space.
5. Development of the site shall not be solely for commercial purposes. A residential component is mandatory and developments shall incorporate a minimum of 60% net lettable area of residential floor space.
6. Clause 5.3.4 of the Scheme does not apply to development on this site."

Schedule 13 – Plot Ratio

A plot ratio of 3:1 was proposed to match the plot ratio considered appropriate for development in the Town Centre Canning Highway Precinct under the Town Centre Redevelopment Guidelines. This amount of floor space was considered to result in a built form that would be reflective of a strategic location along a major transport corridor; providing a reasonable transition between larger scale development in the Town Centre and the domestic scale of adjacent residential development.

This combined with modulating and stepping the building mass, with appropriate setbacks as was proposed in the Council endorsed building height and setback table, was considered to result in a building with visual interest and perceived reduced scale and physical prominence. So provided the building height and setback limits now proposed as modifications are adopted by the WAPC and the Minister it is considered the plot ratio of 3.0:1 is still appropriate for the site.

The Schedule of Modifications did not change the plot ratio recommended for the site.

1. The maximum plot ratio of development within the site is 3.0:1.

Schedule 13 – Building Height and Setback

The building height and setback provisions in the Minister's modifications (i.e. as proposed in Figures 1 and 2) are not acceptable to the Town in their current form with the exception of the 4 metre setback from St Peters Road and the setback allowances for road widening under the

Metropolitan Region Scheme as required by Main Roads WA (it is a statutory obligation for the developer to comply with this setback).

Since initiation of the Amendment and following consideration of submissions after the initial advertising period the Town reconsidered the building envelope as originally proposed by the applicant. The Town's preferred built form provisions enabled the development of a mixed use building(s) between two and seven storeys in height, with the potential for the decision maker to consider a small eighth storey (~450m²) as an architectural feature or building/tenant amenities area (non-habitable floor space). The modified built form provisions were considered to better respond to the differing nature of the surrounding streets with an urban form that would achieve what is considered an optimal development yield, rather than a maximum development yield. In effect, the Council's preferred built form scenario reflected the most amount of development that was considered appropriate for the site and further minimised the amenity impacts for residents adjacent or in the vicinity of the site.

In more detail the outcome of the Council endorsed Amendment would be a two storey residential building with frontage to St Peters Road, and a seven to eight storey mixed-use address to Canning Highway, with heights that transition between the northern and southern ends of the site along Sewell Street and Stirling Highway. A potential building would 'step' back along Sewell Street and Stirling Highway increasing in height as the distance increased from the residential area; the highest section of the building being on Canning Highway. Vehicle parking would be contained within a basement or a decked car park, or both. The parking would be 'sleeved' or screened from the surrounding streets by active uses which would front the roadways.

Increasing the distance between the highest sections of a building from the existing nearby residents, results in reducing the visual presence and the prominence of a building in this context. The additional building height initially considered was believed to be too much of a departure from the existing local planning framework. The preferred built form envelope was defined by a set of building heights and building setbacks from lot boundaries as expressed in a table. This was intended to allow for a degree of flexibility in the architectural design of any building on the site. Particular elements of the rationale behind the formulation of the table of setback and heights was follows:

- A 4 metre (landscaped) setback to St Peters Road as a response to the suburban character of the existing predominantly single storey heritage listed dwellings to the south.
- A street interface with St Peters Road with a domestic residential two storey scale, with subsequent floors set further back from the street to reduce the visual presence of the additional floors on St Peters Road.
- A three storey street interface to the remainder of the built form, with floors above set back by 3 metres to reduce the perceived scale and bulk of the taller parts of a building.
- A built form that avoids overshadowing of the residential lots to the south at 12pm in mid-winter.
- A stepping-up of the built form from the domestic residential scale of St Peters Road to the more urban mixed use scale on Canning Highway.
- An additional partial eighth floor most likely positioned on the corner of Canning Highway and Sewell Street to provide architectural emphasis to the street corner. This floor of the building could also provide amenities for the tenants.

- An allowance for the basement level to project 1 metre above the ground level to enable some natural ventilation to the basement and to raise ground floor apartments above the adjacent footpath.

The Department of Planning took the view that the applicant's built form envelope (i.e. Figure 1 and 2 as per the Minister's modifications) was not significantly different to that of the Council endorsed building envelope. This is now a matter for the Council to consider. The Town is of the opinion that the Department's view needs to be considered in light of the Council's resolution regarding the capped building height for the Royal George Hotel site (i.e. Amendment No. 15). In that circumstance the Council determined that a capped height of 7 storeys (43.0m ADH) was acceptable. The original building envelope (Figure 1 and 2 as reinstated by the Minister) proposes a height of 45.0m AHD. The difference between the two finished building heights at 43.0 and 45.0m AHD is not considered too dissimilar. Although this would permit a nine storey, rather than an eight storey building potentially on the northern half of the site, as long as all the roof top services/structures and occupant amenities were contained within this envelope the difference in height is not considered too great.

This is on the proviso that clauses are introduced which prevent the variation of the building envelope and that the upper height limit is reduced from 10m to 8m at the St Peters Road frontage. If these restrictions were to be applied potentially only one additional storey to the number of storeys endorsed by Council could be approved for the site. This is considered acceptable as long as the current wording of the Amendment is changed to prevent any variation to Figure 1 and 2. If it is not a significantly taller and bulkier building in respect to its height and its impact on the lower scale residential streets than the Council endorsed height and setback controls for the site will potentially result. The similarity between the two building height controls is only considered an acceptable argument if there is no power for a decision maker to vary the height limits of the building envelope. This also means the recession plane (preventing overshadowing) would also be non-variable. The prevention of any form of overshadowing of adjacent properties is a design element that both the owner and the Town wish to ensure. Under the current wording overshadowing could occur if the building envelope was varied. The other proviso is that the 'Additional Height' provisions are deleted. This is discussed further in the report.

The question also arises in regard to Schedule 13's 'Exemption from Variations' clause in respect to how it is reconciled with Schedule 13's height provisions concerning non-habitable resident amenities, solar collectors etc. The concern is with the 'Exemption from Variations' clause. It provides that '*the height ... provisions of this schedule are not open to variation ... with the exemption of additional height provisions below*'. However, under the heading 'Building Height and Setback', non-habitable resident amenities and solar collectors etc. can be above the maximum building envelopes depicted in Figures 1 and 2. It would appear that these are exceptions to the exemption from variation. However, the Town's interpretation is that they are not exceptions to the 'exception from variation'. Sub-clauses (2) and (3) under the heading 'Building Height and Setback', should be read together with sub-clause (1) under that heading because sub-clause (1) gives effect to the maximum building envelope depicted in Figures 1 and 2. It is not possible to get to the point of considering a variation until sub-clause (1), (2) and (3) have been considered collectively. Therefore, sub-clause (2) or (3) are not considered as being a variation to (1) for the purposes of the 'Exemption from Variations' clause.

Regardless of the above drafting and interpretation issues the Town does not believe that there should be any projection above the building envelope as defined in Figure 1 and 2 if the Council is to consider Figure 1 and 2 as proposed by the Minister as being a height control. So the following modifications to the Schedule are proposed in respect to sub-clauses (1) to (3). It is also considered necessary that point (4) is included so the setbacks from the residential interface are maintained to reduce building bulk and overlooking concerns. The proposed changes to the Minister's modifications are highlighted in red text below and are recommended to ensure that development of the site is respectful of the amenity of the adjacent residential and short term accommodation uses in the Tradewinds Hotel. The following changes are also considered to partially address the building height concerns expressed in the majority of the submissions. It is therefore recommended that the following modifications be made to the Schedule of Modifications.

1. Development is to be **entirely** contained within the maximum building envelopes shown in Figures 1 and 2 of this Schedule **in respect to building height.**
2. Non-habitable resident amenities such as roof terraces, gardens and shade structures **must be entirely contained within and are not to exceed** ~~may project above~~ the maximum building envelope **in respect to building height and are to be** ~~where~~ suitably integrated with the architecture of the development.
3. Solar collectors, air conditioning units, mechanical plant rooms and lift overruns setback within a 45 degree plane taken from the edge of the building ~~may project above~~ **are to be entirely contained within** the maximum building envelope **and must be** ~~where~~ suitably screened from view and integrated with the architecture of the development.
4. **Balconies shall not protrude forward of the building setback line.**

Note: *The building envelope boundary on Canning Highway/Stirling Highway is based on a proposed future amendment to the Metropolitan Region Scheme (MRS) which defines the proposed Primary Regional Road reserve under the MRS. This setback has been determined by Main Roads WA and agreed to by the Department of Planning.*

**Figure 1 and 2 and Section A, B and C to be amended to indicate a reduction in height at the St Peters Road frontage from 10m to 8m.*

Schedule 13 - Additional Height

The Town does not support the 'additional height' provision for the reasons outlined below and because it has serious reservations in regard to the practical implementation of the provision and satisfying the prerequisites, as well the long term outcome of the criteria to be satisfied.

The images previously forwarded to the Department of Planning on 1 August 2018 provide a comparison of the potential built form outcome of the Council's adopted Amendment and the Amendment provisions proposed by the Department of Planning and subsequently endorsed by the WAPC and the Minister for Planning. The Department's modifications would facilitate a greater development potential in respect to building height (potentially up to 18 storeys as per the 'additional height' provision), scale and intensity of use. Furthermore, the 'additional height' control has implications for the intensity of residential and commercial activity on the site if a greater number of apartments than that proposed by the owners' representative were to eventuate, keeping in mind there is no density control on the site, so the number of apartments will vary depending on the floor space of each apartment. Related issues in respect to the

required parking bays, access and traffic issues cannot be discounted in respect to the impact on residential amenity if this was to occur.

The images provided clearly illustrate the reasons why the Town believes non-variable height limit controls, more aligned with the Council endorsed Amendment, are appropriate for the site and why any additional height is inappropriate in this context and for this prominent site. What immediately becomes apparent is the stark contrast between a building of the scale proposed with Council's Amendment controls and those in the images which depict a high-rise apartment/office building. In the Town's opinion there is no sound planning basis for facilitating a greater development potential on the site which would be the result if the proposed modifications are endorsed. The Town's viewpoint can be summarised as follows:

- The 'additional height' scale of development (15 – 20 storeys) is unjustified and not necessary in the Town.
- The Leeuwin Barracks site will provide the potential for significant additional dwellings to be constructed.
- No need to provide apartments at this scale or to increase dwelling numbers. It is expected the Town's targets will be reached without this scale of development.
- This is not a recognised 'Activity Centre' under the *State Sub-regional Planning Framework* where it would be acceptable for additional dwellings to be constructed at this density.
- The public transport options are limited to buses. This is not a TOD location.
- There appears to be an inequitable outcome between the owner and community, with the owner being provided much wider development opportunities (more than originally requested) and the benefits to the Town and the East Fremantle community appear negligible. There is no justification for the resultant loss of amenity and impact on character of the area. Also, the Town will incur costs in the longer term if the ceding of land results in public open space of marginal value and high maintenance costs.
- There is no justification for the additional height. Community submissions strongly support the Council endorsed Amendment which only permits seven to eight storey development.
- The building height hierarchy of the Town or the Fremantle region is not respected in the modified provisions. The Town is opposed to providing the decision-maker with discretion to approve of potentially greater than 18 storeys.
- The surrounding suburban scale commercial developments along Canning Highway, extending into Fremantle and in the Town Centre are intermingled with low scale State heritage listed buildings (i.e. Town Hall, old police station and post office).
- The suburban scale of development is endorsed in the Town Centre Redevelopment Guidelines and this recommended built form is expected to continue to be the preferred development outcome.

It is questioned why additional height is being encouraged when the community submissions and Council has determined it is not warranted or appropriate, especially considering the Town can achieve the *Perth and Peel @3.5 Million* density targets with the future redevelopment of the Leeuwin Barracks site. The owner did not make a formal submission requesting additional height concessions to the degree being facilitated by the Department of Planning nor did they seek the ability to obtain concessions.

The Department's initial justification for the introduction of the '*additional height*' provision is based on the concept of maintaining public open space, trees and access to the dual use pathway.

The vacant disused part of the site that the Department views as public open space has never been used by the community for this purpose and the community have never requested the Town formalise the area for this purpose. As far as the Town is concerned the community do not view this land as being a valuable open space. Also, the following points are noted:

- The pathway is not on private land and will be 'protected' in any event.
- Interface with any new building(s) on the site would be subject to negotiation with the Town.
- Conditions of development approval would be aimed at enhancing access to the path from the site, as well as improving amenity and surveillance for the community.
- Connection of the public pathway in respect to establishing connections with the site and through the site to Canning Highway, as well as safety, amenity, lighting and landscaping issues would be discussed at development approval application stage. This would be an expectation under the new R-Codes for apartments.

Further modifications to the Amendment introduced the concept of providing communal open space combined with retaining trees. Given the objectives of the new R-Codes it would seem that this would be an essential element of any JDAP application and not the subject of a development provision that would entitle the owner to a development benefit.

In light of the above the Town does not support the 'additional height' concept or the provisions proposed in the Minister's modifications. It is recommended that the provision in the Schedule be deleted.

Wording and interpretation of 'Additional Height' clauses

Further, to the above if the WAPC and the Minister were to proceed with the '*additional height*' provisions the Town considers there would be significant issues with the manner in which the provisions have been drafted and the final built form outcome may result in a building that is well beyond the community's expectation of the scale and height of a building that might be developed on this site. The reasoning for these concerns is outlined below.

The Town is of the opinion that because Schedule 13's '*Additional Height*' provisions are not included in Schedule 13's 'Exemption from Variations' clause that Schedule 13's 'Exemption from Variations' clause would basically be ineffective in regard to '*additional height*'. That is to say that '*additional height*' is **not** exempt from variation because aside from the first sub-clause under the '*Additional Height*' clause (referring to the section of the site where height cannot exceed Figure 1 and 2, that is the area of the site labelled '45.0m AHD') unless the '*Additional Height*' sub-clauses are satisfied, the remaining sub-clauses could potentially be capable of variation or waiver.

These sub-clauses do not give a defined limit to the extent by which the height could be exceeded; rather they, set out criteria which are only indirectly related to height; criteria which are intended to be pre-conditions to the exercise of the discretion to allow the height to be exceeded. These clauses could be described as incentives to good design, in return for which an applicant might secure a discretionary height 'bonus'. They are matters to be satisfied before the Council can exercise its discretion in a certain way. However, if challenged in regard to a legal interpretation they could be considered to meet the description of a '*site and development requirement*' for purposes of clause 5.11.2.

If the WAPC and the Minister determine to proceed with the '*Additional Height*' provisions then it is suggested that the WAPC and the Minister introduce a clause that immediately follows sub-

clause (vii) of Schedule 13's clause (1) under the heading '*Additional Height*'. This clause should read as follows:

'An exceedance of height shall not be permitted unless all of the matters set out in (i) and (vii) are satisfied.'

Interpretation of Schedule 13's 'Additional Height' clause (1) (i) reference to 45.0m AHD

This provision is confusing. The first stipulation for the discretionary exceedance of the Figure 1 and Figure 2 height is expressed as applying '*where ... the maximum building envelope permits development to a height of 45.0m AHD*'. On a superficial first reading, it seems that this means that height anywhere on the site could not in any circumstances be approved in excess of 45.0m AHD. This was also the interpretation by some members of the community.

On closer examination, it becomes apparent that what the clause actually means is that the only part of the site where a height exceedance is permissible under discretion, is the portion of the site for which the building height reflected in Figures 1 and 2, equates to 45.0m AHD. It should be noted that '45.0m AHD' is not a dimension which appears at all on Figures 1 or 2. It only appears on Section 1, 2, and 3 (which are presumed to be part of the Amendment documentation but not specifically referenced). The height dimensions on Figures 1 and 2 are heights expressed in metres above ground level, however the portion of the site for which Figure 1's maximum building height equates with 45.0m AHD, is that portion of the site where the maximum building height is specified in Figure 1 as 31.5m.

The correct reading of sub-clause (1), therefore, is that it is only for that portion of the site that height is capable of being varied. However, of greatest concern is that there is no upper limit to the extent of that relaxation, it is indefinite. This gives rise to two distinct issues: firstly, the question of planning merit as to whether it is a good thing or not that there should be no upper limit to height for this portion of the site; and secondly whether the true meaning of sub-clause (i) is appropriately clear and transparent to developers. As to the second issue that sub-clause is obscure in its meaning, and it requires reference to other information which are not to be found within LPS 3 and, which are not readily ascertainable by a lay person. One thing which would go some way to addressing this would be to modify Figures 1 and 2 to include (where relevant) heights expressed parenthetically in AHD as well as height from ground level. Or perhaps only in AHD, noting that this would additionally avoid problems with ground level or natural ground level, the expression not always being confined to the pre-development ground levels.

In respect to sub-clause (ii) to the '*Additional Height*' clause: public or communal open space, the applicant will have the choice to propose either ceding of land for public open space, or retaining the land as part of the development as communal open space for occupants of the development. In the latter case, the presumption would be that public access would not be permitted as of right. The latter option is considered to have no planning merit. The Council is of the understanding that the extent of the deliberations on the part of the Planning Officers at the Department of Planning have centred around the idea that there should be a kind of 'trade-off' of bonus height in return for public access, that objective is extremely unlikely to be achieved under the terms of the Amendment as modified by the Minister.

The other important issue for the Town in regard to '*additional height*' is the whether the Town can refuse to accept care, control and management of land if ceded by the applicant/owner as public open space. As has been expressed on a number of occasions with the Department of Planning Officers and the Minister, the Town is not interested in receiving this encumbered land

for the provision of public open space. It is considered to have no value in that regard to the Town or the community. The Swan River foreshore is only a few hundred metres away and it is inconceivable that the community would use this land for recreation given its unpleasant location on the corner of Canning and Stirling Highway. This was also a matter raised in submissions. If the applicant chooses the option of public open space, and this is approved by the relevant decision maker, then the mechanism for achieving this would normally be via section 152 of the *Planning and Development Act 2005*. The requirement to cede the land would normally be imposed as a condition of subdivision. Then, when the relevant deposited plan or strata plan is to be registered at issue of new titles stage that is the point in time when the land would formally cede to the Crown. It would normally be followed immediately by the making of a management order by the Minister for Lands in favour of the Town of East Fremantle. The Town would not be able to refuse to accept a management order. This sub-clause in the Minister's modifications is therefore not acceptable.

Ceding of the land for Public Open Space

The modified provision states that the building envelope may be exceeded where a number of criteria are satisfied, with the primary criteria for gaining additional height relating to the ceding of land to the Town for public open space. Aside from the legal and administrative issues regarding ceding of land in this situation, the Town is not supportive of the use of this land for POS for the following planning reasons.

- If the intent is simply to retain some trees in public open space of marginal value, then other factors which would more than likely impact the longevity of the trees must be considered. Matters such as:
 - the requirement or granting of a parking easement under the land;
 - an adjacent high-rise development may change the micro-climate and groundwater conditions to the point that the trees die even if the easement is not supported or a tree management plan is in place. A tree management plan cannot guarantee survival and does not address replacement of the trees if they perish;
 - the trees will perish through the construction process and cannot be replaced by vegetation of the same maturity and height; and
 - who will be responsible for the costs associated with ceding the land and the tree management and tree protection phase during construction?
- The lands is not valuable as public open space/parkland, especially considering its location adjoining the river and several parks, (undesirable features in regard to the location, use and may result in security, social and vandalism problems for the Town (under-utilised and may result in on-going costs for the Town).
- Isolated and unlikely to be used because of low amenity value being at the intersection of two major transport routes and visually unappealing, noisy and polluted.
- Not a desirable recreation area when the Swan River foreshore and cycle paths are less than 200m away.
- Sewer easements and below ground infrastructure - diversion and upgrading works will likely be required at the developer's cost. Ceding this land to the Town will obviate the responsibility for this from the developer.

- The retention of a very small amount of vegetation on private land is not considered a 'community benefit' that would compensate for the development of a 15 – 18 storey tower – no solid planning arguments have been put forth as justification for additional height potential.
- Replacement of vegetation – 'Apartment Design' (multiple dwelling requirements under the R-Codes) requires deep soil zones to be provided on redevelopment of the land to enable the planting and growth of mature trees. So the opportunity to replace trees removed on the site will not be lost in the longer term.

Tree Management Plan

Sub-clause (iv) refers to the '*Tree Management Plan*'. The Town's concern with regard to sub-clause (iv) is that the '*Tree Management Plan*' only needs to provide for retention of trees '*through the construction process*', but not beyond that point. What is required in order to achieve what should have been the intent of the sub-clause, is an amendment as follows:

*' ... protected through the construction process **and retained and maintained in good condition thereafter as part of the open space amenity** is provided... '.*

Sub -clause (v) of the '*additional height*' clause relates to overshadowing. It is the Town's view that this is also capable of being varied in the same manner as the other sub-clauses can be varied. Also, the terminology 'deemed to comply' as used in sub-paragraph (v) will shortly become out-of-date. Under the new R-Codes, the relevant terminology will be 'Acceptable Outcomes', so reference to 'deemed to comply' should be changed to 'Acceptable Outcome'. It should be noted that under the new R-Codes the 'Acceptable Outcomes' will not technically be 'deemed to comply'. A change to 'Acceptable Outcome' is more than just a change of terminology it is a necessary change of substance in this planning provision. It therefore follows that a clause should be introduced that states that additional height should not be permitted unless all of the matters set out in sub-clauses (i) to (vii) are satisfied.

Sub-clause (vi) refers to the incorporation of certain features at ground level. This sub-clause does not require that dwellings be provided at ground level. What needs to be provided at ground level is either residential dwellings, private open space or communal open space. This pre-condition is arguably capable of being waived, unless an amendment such as that referred to above is made.

Sub-clause (vii) refers to the consistency with the site's design objectives. The relevant 'consistency' is expressed as being '*in the opinion of the local government, having regard to the advice of its nominated design review panel*'. The actual decision maker is likely to be a Development Assessment Panel. Accordingly, whose opinion is ultimately relevant? The relevant opinion would be that of the decision maker, most probably a Development Assessment Panel. The reference to 'local government' should be read as if it were a reference to the decision maker. Furthermore, in a SAT review context, it would be read as if it were a reference to the SAT. The decision maker is only obliged to 'have regard to' the advice of the design review panel, and is not bound by that advice.

Public or Communal Open Space

Finally, under the current wording public or communal space area shall be considered to be part of the site for plot ratio calculation purposes (additional height provision clause 2). This clauses

makes reference to the '*Additional Height*' provision clause 1 (ii) and the necessity for an area to be given over to public or communal open space '*consistent with*' that clause. Clause 1 (ii) provides for Lot 81 and Lot 423 to be treated in the manner specified in that clause, or alternatively, an area of '*similar size and location*'. '*Similar*' is a matter of degree and judgement for the decision maker and under the current wording of the provisions a decision maker has the power to vary the land area set aside for communal open space therefore the result of this provision could be an area less than Lot 81 and Lot 423. On the other hand if a greater area is allocated for this purpose and the same plot ratio is applied, without any building height cap, the overall height of the building is unknown and could exceed 18 storeys.

Schedule 13 – Vehicle Parking

The Department is of the view that, where warranted, the decision-maker should have the power to vary car parking requirements. This is now applicable to the site under the provisions of the Town Centre Redevelopment Guidelines. This was not the intention of the Council as discussed above. The fact that the provisions relating to parking are contained elsewhere in LPS 3 is not a satisfactory alternative as far as the Amendment is concerned and does not address submission concerns relating to the negative impact of spill-over parking and parking and traffic pressure on residential streets.

Furthermore, the requirement for a traffic management plan to be submitted with a development application was in order to identify potential planning, parking and traffic issues ahead of a development approval and to solve potential problems at the design stage rather than have to solve problems post completion of the development. This is often the case with development sites that interface with residential areas where conditions of planning approval cannot be adequately satisfied and the result is a substantial impact on residential amenity. To not require a traffic and parking management plan prior to development approval for this site is considered to have a lack of foresight impacting on the orderly planning of the area and will likely make it very difficult for the Town to enforce in the longer term.

The overall implications for modifying this clause in conjunction with other 'relaxation of standards' clauses is considered to result in a failure to provide adequate parking requirements and, the potential for shortfalls of parking to cause traffic issues, amenity effects on adjoining properties, and issues of safety for pedestrians and motorists. The adjoining streets of Canning Highway, Sewell Street and St Peters Road do not offer the option of generous on-street parking due to proximity to the Highway, road safety, manoeuvrability and existing land uses, therefore it is considered necessary to ensure sufficient car parking is provided on-site. A variation to the vehicle parking standards could result in detrimental traffic and parking issues.

The demand for parking generated by a development which is not met by on-site parking being provided is difficult to deal with through conditions of planning approval. The Department's modifications appear to rely heavily on this assumption. The reality of the situation is likely to be that there will be inadequate parking provided on-site under the proposed provisions. The alternative to limiting the number of visitors to the site or the number of people patronising businesses is not possible and in reality cannot be enforced. Similarly, reciprocal parking arrangements are also very difficult to enforce and require legal agreements and added costs and resources for the Town.

The other eventuality is that a commercial development on the site could monopolise any nearby parking (namely street parking or publicly accessible private parking) this would cause problems for the Town and would undermine other commercial uses in the locality to access the same

opportunities to use this parking. Congestion, issues of safety to pedestrians, and effects on local amenity were other reasons which influenced the Council's decision to specify that parking standards must be satisfied and provided on the site, with no concessions possible.

The Town's specific concerns are noted below.

- Parking concessions are viewed as warranted by the Department and the specific vehicle parking provisions of the Council's Amendment which required car parking requirements for all proposed uses to be met and provided on-site so as not to exacerbate the already difficult parking, access and traffic issues of the adjoining heritage areas, including the Town Centre, George Street and residential surrounds are considered weakened with the proposed modifications.
- Access to this site because of its location is problematic. Increased intensity of use on-site as a result of increased development potential will undoubtedly impact traffic flow and traffic management issues in the surrounding residential area.
- Basement parking was indicated as being provided across the extent of the site (applicant's development proposal forming the basis for the Amendment). This is unlikely to be achieved if the land was ceded to the Town. The result being an inability to provide the required parking bays on site and implications for surrounding residential streets.
- Screening of parking from the street and 'sleeving' behind street front tenancies on Sewell Street and Canning Highway may be more problematic because the developable lot area is reduced through potential ceding of land. An example of parking being screened in this manner is demonstrated in the Richmond Quarter development in the Town Centre.

The proposed modification is not supported and the following amendments to the modifications are proposed to address the concerns raised in the submissions and outlined above.

1. Vehicle parking for commercial and other non-residential uses shall be provided in accordance with the provisions of the Scheme and the standards set out in Schedule 10 of the Scheme and the specifications in Schedule 11 of the Scheme.
2. Vehicle parking for residential development shall be provided in accordance with State Planning Policy 7.3 - Residential Design Codes Volume 1 or Volume 2 depending on the type of dwelling proposed.
3. Vehicle parking shall be located either behind street front tenancies or dwellings, below ground level when viewed from the street, or otherwise suitably screened from view from the street to the satisfaction of the local government.
4. All vehicle parking for the residential component of the development shall be provided on-site in accordance with a traffic and parking management plan, to the local government's satisfaction, being submitted and approved at development approval application stage.
5. No vehicle parking is permitted within a building setback area to St Peters Road, Sewell Street or Canning Highway.

Schedule 13 – Residential Development

The Council endorsed Amendment contained a clause regarding residential development which read as follows:

“With exception of the Additional Provisions contained within this Schedule, residential development shall be in accordance with State Planning Policy 3.1 – Residential Design Codes.”

This clause was deleted from the Minister’s modifications. The Town believes it is necessary for this clause to be reinstated so there is no ambiguity as to what controls apply to residential development and that residential development, in whatever form is subject to the same development controls and standards as for all other residential development in WA.

The following additional clause is therefore recommended to be reinstated in the Amendment provisions so it is clear that the SPP 7.3 – R-Codes – Volume 2 - Apartments will apply to residential development. The format of the clause varies slightly from the Council endorsed Amendment as changes have been made to reflect the gazettal of Volume 2 – Apartments of the R-Codes.

With exception of building height, plot ratio and building setbacks residential development shall be in accordance with State Planning Policy 7.3 - Residential Design Codes – Volume 2 – Apartments for multiple dwellings and Volume 1 for grouped and aged and dependent persons’ dwellings (dependent on the form of dwelling type for aged and dependent persons’ dwellings Volume 2 may be applied).

Schedule 13 – Noise and Schedule 13 – Access

The Department did not consider these provisions necessary as these matters are, in its opinion, best considered resolved at the development approval application stage. As discussed above in regard to parking, a noise management plan submitted with a development approval application was in order to identify potential issues ahead of a development approval and to solve potential problems at the design stage rather than have to deal with problems post completion of the development. This is often the case with development sites that interface with major transport routes. This was considered particularly important given the site directly abuts the freight link to the Port. To not require a noise management plan prior to development approval for this site is considered lacking for the reasons outlined above and referral to Fremantle Ports would likely raise the question as to why a plan had not be prepared. There would be considerations in regard to the design of the building both in respect to SPP 5.4 and the *Fremantle Inner Harbour Buffer Study*.

This ‘Noise’ provision has not been modified from the Council endorsed Amendment version.

1. In considering a development approval application for the lots the subject of Schedule 13, the local government shall have regard to the direct interface of any development with Canning Highway and Stirling Highway. The developer shall submit to the local government a Noise Management Plan for approval as an additional detail of a Development Approval application. The approved Noise Management Plan shall be implemented to the satisfaction of the Local Government, having regard to any advice from relevant State government authorities.

2. All development is to comply with WAPC State Planning Policy 5.4 'Road and Rail Transport Noise and Freight Considerations in Land Use Planning' and its implementation guidelines.

Note: The Local Government may consider requiring notifications on Certificates of Title as per Draft State Planning Policy 5.4 – Road and Rail Noise.

This 'Access' provision has not been modified from the Council endorsed Amendment version.

1. No vehicular access is permitted to or from Canning Highway and/or Stirling Highway.
2. No vehicular access is permitted to or from Sewell Street within 30 metres of the truncation of Canning Highway and Sewell Street, unless otherwise approved by the local government in consultation with Main Roads Western Australia.
3. Only one vehicular access is permitted to or from St Peters Road, unless otherwise approved by the local government.

Schedule 13 – General

Under the *Local Planning Schemes Regulations 2015* matters for a local government to consider in determining development approval applications are listed in clause 67 of the Deemed Provisions. These matters refer to the broader policy objectives of the Town, State planning matters and numerous other factors which have the potential to impact the orderly and proper planning of a site. The following provision is therefore recommended for inclusion in Schedule 13 so the decision maker has the capacity to comprehensively apply sound site specific and regional planning principles and objectives in its consideration and assessment of a development approval application for the site.

This provision has not been modified from the Council endorsed Amendment version.

General

In addition to the matters referred to in Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015 the Local Government shall have regard to the objectives set out in the preceding column when:

1. determining an application for planning approval; or
2. making a recommendation on an application for subdivision approval in relation to land within SCA 1.

Concluding Comments

From the outset the Town has had serious concerns with regard to the likely built form outcomes, planning, amenity, traffic, access, parking and heritage impacts that will result if the modifications proposed by the Department of Planning were supported by the WAPC and the Minister. It is the Town's viewpoint that the Minister's modifications would leave the Council unprotected in respect to adequate planning provisions for the site and criticism from the community as a result of on-going amenity and operational issues if the site is overdeveloped or if the Town was forced to accept land which later became the object of a management order for public open space.

The Town and community have very clearly identified planning issues relevant to the site and its expectation that the Minister and the WAPC will address these issues. These have been reiterated in the many submissions received objecting to the modifications to the Amendment. It may also face criticism from the wider community if redevelopment of the site results in a building(s) which is considered inappropriate for the Fremantle region. This is a site which requires good urban

design and in particular careful consideration as to how the building(s) will function as well as the appearance and scale of the buildings from numerous vantage and approach points and also how the site will interface with the residential area. This should not come at the cost of enabling a greater development potential on the site through unchecked increased building height options.

The development controls proposed by the Council in Amendment No. 14, particularly the building height and setback provisions were believed paramount to the orderly and proper planning for the site. The building envelope as endorsed by Council would have resulted in a development that is considered to be of a physical scale appropriate to the site and surrounding heritage precinct. The amount of commercial and residential development is also constrained by the development controls of the Council's Amendment and this also addressed the community's concerns regarding the pressures on residential amenity as it would be impacted by additional parking demand and traffic.

The current height modifications and building envelope proposed by the Minister both under Figure 1 and 2 and the '*additional height*' option is not considered the ideal built form outcome. The only acceptable compromise in this situation is based on the modification of Figure 1 and 2 (Minister's modifications) which resulted in increased setbacks from Canning Highway and St Peters Road. However, the Town is only prepared to recommend support for this revised building envelope on the basis that the WAPC and the Minister introduce clauses to the Amendment which prevent the envelope from being varied in regard to building height and the height limit at the St Peters Road frontage is reduced from 10m to 8m. It is also considered necessary for all roof top services and/or occupant amenities to be contained within the building envelope if it is to be comparable and therefore acceptable in respect to the seven to eight storey building height control adopted by the Council and accepted by the majority of the community members who made submissions on the Amendment supporting a seven to eight storey or lesser building height limit.

Notwithstanding the Town's position to accept the Minister's modification to allow an additional storey on the northern section of the site it is noted that a considerable number of the submissions have referred to the new R-Codes for apartments. The point has been made that a developer should not be receiving development potential 'benefits' or 'advantages' through the Amendment process when the retention of trees and high landscape quality is a fundamental objective of the new R-Codes for apartments.

It is recommended that the changes to the Minister's modifications as proposed by the Town be adopted and recommended to the WAPC. Should the WAPC and the Minister determine to proceed with the modified Amendment that the drafting errors identified by the Town and outlined in the report be reviewed to ensure that there is no ambiguity or lack of clarity particularly in regard to the maximum building heights for Figure 1 and 2 and the '*Additional Height*' provisions. The Town is firmly of the view that redrafting is required to ensure that the power a decision maker currently has to allow either the building envelope to be exceeded and the '*additional height*' provisions to not specify a maximum height is removed and that the power to vary other provisions which were not intended to be varied by the Town or perhaps by the Minister also be reviewed and further modified as outlined in this report. The full suite of the recommended modifications is outlined in Attachment 4.

It is also requested that the Town be directly involved in drafting of provisions if the Council's proposed modifications to the Schedule of Modifications are not supported or if there are any

further modifications to the Amendment provisions by the WAPC and the Minister for Planning following consideration of this report.

12.1. 1 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 050819

Moved Cr Collinson, seconded Cr Nardi

That Council:

A. (i) Pursuant to Section 75 of the Planning and Development Act 2005 and Regulation 41(3) (c) of the Planning and Development (Local Planning Schemes) Regulations 2015 resolves to support complex Amendment No. 15 to Local Planning Scheme No. 3 subject to the modifications to the Schedule of Modifications (as advertised) as outlined below and in Attachment 4;

a) Modify clause 5.11.2 by replacing the clause with the following modified clause to read as follows:

"1.The building height, plot ratio, land use, density, residential development, vehicle parking, access, noise provisions of this schedule and Figures 1 and 2 are not open to variation through any provision of this scheme or any other mechanism.";

b) Modify Schedule 13 'Exemption from Variation' clause by making the following changes to the wording of the clause:

- Insert the word 'building' before the word 'height';
- Insert the words 'land use, residential development provisions, vehicle parking, access and noise' after the word 'plot ratio';
- Insert the words 'Figures 1 and 2' after the word 'and'; and
- Delete the words 'with the exception of the additional height provisions below.';

c) Modify Schedule 13 'Design Objectives' by inserting two additional design objectives numbered iii) and iv) to read as follows:

"iii)Encourage a site responsive and well integrated development, which suitably interfaces with the surrounding established residential area; and

iv) Ensure the provision of parking and management of traffic takes into account the proximity of the established residential area and results in a safe and secure movement system that minimises any conflict with the surrounding uses, pedestrians and cyclists.";

d) Modify Schedule 13 'Land Use and Density' by deleting clauses 1), 2) and 3) in their entirety and replacing with the following clauses to read as follows:

- 1. "Land use permissibility shall be as designated for the Mixed Use zone in the Zoning Table of the Scheme.**
- 2. Notwithstanding 1. above, only residential development shall front St Peters Road. Commercial development and vehicle parking is not permitted to front St Peters Road.**
- 3. Vehicle parking is not permitted to front Canning Highway.**
- 4. The setback area on St Peters Road is only to be used for the purposes of landscaping and/or private open space.**
- 5. Development of the site shall not be solely for commercial purposes. A residential component is mandatory and developments shall incorporate a minimum of 60% net lettable area of residential floor space.**
- 6. Clause 5.3.4 of the Scheme does not apply to development on this site.";**

- e) **Modify Schedule 13 'Building Height and Setback' by making the following changes to the wording of the clause:**

- Insert the word 'entirely' after the word 'be' ;
- Insert the words 'in respect to building height' after the word 'schedule';
- Insert the words 'must be contained within and are not to exceed' after the word 'structures';
- Delete the words 'may project above' in clause 2);
- Delete the word 'where' after the word 'envelope' in clause 2) and insert the words 'and must be';
- Insert a new clause 4) which states '4) Balconies shall not protrude forward of the building setback line; and
- Insert an additional note to this provision which follows point 4) and reads as follows:

'Note: The building envelope boundary on Canning Highway/Stirling Highway is based on a proposed future amendment to the Metropolitan Region Scheme (MRS) which defines the proposed Primary Regional Road reserve under the MRS. This setback has been determined by Main Roads WA and agreed to by the Department of Planning.'

- f) **Modify Schedule 13 by inserting an additional clause to read as follows:**

'Vehicle Parking

1. Vehicle parking for commercial and other non-residential uses shall be provided in accordance with the provisions of the Scheme and the standards set out in Schedule 10 of the Scheme and the specifications in Schedule 11 of the Scheme.
2. Vehicle parking for residential development shall be provided in accordance with State Planning Policy 7.3 - Residential Design Codes Volume 1 or Volume 2 depending on the type of dwelling proposed.
3. Vehicle parking shall be located either behind street front tenancies or dwellings, below ground level when viewed from the street, or otherwise suitably screened from view from the street to the satisfaction of the local government.
4. All vehicle parking for the residential component of the development shall be provided on-site in accordance with a traffic and parking management plan, to the local government's satisfaction, being submitted and approved at development approval application stage.
5. No vehicle parking is permitted within a building setback area to St Peters Road, Sewell Street or Canning Highway.';

- g) **Modify Schedule 13 by inserting an additional clause following 'Vehicle Parking' to read as follows:**

'Residential Development

With exception of building height, plot ratio and building setbacks residential development shall be in accordance with State Planning Policy 7.3 - Residential Design Codes – Volume 2 – Apartments for multiple dwellings and Volume 1 for grouped and aged and dependent persons' dwellings (dependent on the form of dwelling type for aged and dependent persons' dwellings Volume 2 may be applied).';

- h) **Modify Schedule 13 by inserting an additional clause following 'Residential Development' to read as follows:**

'Noise

1. In considering a development approval application for the lots the subject of Schedule 13 the local government shall have regard to the direct interface of any development with Canning Highway and Stirling Highway. The developer shall submit to the local government a Noise Management Plan for approval as an additional detail of a Development Approval application. The approved Noise Management Plan shall be implemented to the satisfaction of the Local Government, having regard to any advice from relevant State government authorities.

2. All development is to comply with WAPC State Planning Policy 5.4 'Road and Rail Transport Noise and Freight Considerations in Land Use Planning' and its implementation guidelines.

Note: The local government may consider requiring notifications on Certificates of Title as per Draft State Planning Policy 5.4 – Road and Rail Noise.';

i) Modify Schedule 13 by inserting an additional clause following 'Noise' to read as follows:

'Access

1. No vehicular access is permitted to or from Canning Highway and/or Stirling Highway.

2. No vehicular access is permitted to or from Sewell Street within 30 metres of the truncation of Canning Highway and Sewell Street, unless otherwise approved by the Local Government in consultation with Main Roads Western Australia.

3. Only one vehicular access is permitted to or from St Peters Road, unless otherwise approved by the local government.'; and

j) Modify Schedule 13 by inserting an additional clause following 'Access' to read as follows:

'General

In addition to the matters referred to in Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015 the Local Government shall have regard to the objectives set out in the preceding column when:

1. determining an application for planning approval; or

2. making a recommendation on an application for subdivision approval in relation to land within SCA 1.';

k) Modify Schedule 13 by deleting the Schedule 13 'Additional Height' provisions in entirety; and

l) Modifying Schedule 13 'Figure 1 and 2' and 'Section A, B and C' by modifying the building height as indicated in the Figures and Sections for the St Peters Road frontage from 10m to 8m; and

(ii) resolves that the submissions made in regard to the advertised Schedule of Modifications be received, Council's recommendation in respect to each submission noted and those who made a submission be notified of this decision; and

(iii) resolves that the Scheme Map be amended accordingly; and



- B. (i) Forwards to the Western Australian Planning Commission and the Hon. Minister for Planning the reasons outlined in the Officer's Report for Council's non-support of specific provisions in the Schedule of Modifications and for Council's proposed modifications to the Schedule of Modifications; and**
- (ii) Requests that the Town be directly involved in drafting of provisions if the Council's proposed modifications to the Schedule of Modifications are not supported or there are any further modifications to the Amendment provisions by the Western Australian Planning Commission and the Hon. Minister for Planning.**

(CARRIED UNANIMOUSLY)

12.2 FINANCE

12.2.1 Monthly Financial Report (Containing the Statement of Financial Activity) – June 2019

Applicant	Not Applicable
File ref	F/FNS2
Prepared by	Peter Kocian, Executive Manager Corporate Services
Supervised by	Gary Tuffin, Chief Executive Officer
Meeting Date:	20 August 2019
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Monthly Financial Report for the Period Ended 30 June 2019

Purpose

The purpose of this report is to present to Council the Monthly Financial Report (containing the Statement of Financial Activity) for the month ended 30 June 2019.

Executive Summary

The attached Monthly Financial Reports are prepared in accordance with the amended *Local Government (Financial Management) Regulations 1996*; together with supporting material to provide Council with easy to understand financial information covering activities undertaken during the financial year.

Background

The Town of East Fremantle financial activity reports use a materiality threshold to measure, monitor and report on financial performance and position of the Town.

As part of the adopted 2018/19 Budget, Council adopted the following thresholds as levels of material variances for financial reporting.

In accordance with regulation 34 (5) of the Local Government (Financial Management) Regulations 1996, and AASB 1031 Materiality, the level to be used in statements of financial activity in 2018/19 for reporting material variances shall be:

- (a) 10% of the amended budget; or*
- (b) \$10,000 of the amended budget.*

whichever is greater. In addition, that the material variance limit be applied to total revenue and expenditure for each Nature and Type classification and capital income and expenditure in the Statement of Financial Activity.

Consultation

Nil.

Statutory Environment

Section 6.4 of the *Local Government Act 1995* and Regulation 34 of the *Local Government (Financial Management) Regulations 1996* detail the form and manner in which a local government is to prepare its Statement of Financial Activity.

Expenditure from the municipal fund not included in the annual budget must be authorised in advance by an absolute majority decision of Council pursuant to section 6.8 of the *Local Government Act 1995*.

Fees and charges are imposed under section 6.16 of the *Local Government Act 1995*. If fees and charges are imposed after the annual budget has been adopted, local public notice must be provided before introducing the fees or charges pursuant to section 6.19 of the *Local Government Act 1995*.

Policy Implications

Significant Accounting Policies are adopted by Council on an annual basis. These policies are used in the preparation of the statutory reports submitted to Council.

Financial Implications

Material variances are disclosed in the Statement of Financial Activity.

The statement of financial activity is to be supported by such information as is considered relevant by the local government containing:

- an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; and
- an explanation of each of the material variances; and
- supporting information as is considered relevant by the local government.

Strategic Implications

The monthly financial report is the key reporting mechanism to Council, to provide oversight of the financial management of the local government.

The Strategic Community Plan 2017-2027 states as follows:

Strategic Priority 5 – Leadership and Governance

A proactive, approachable Council which values community consultation, transparency and accountability

5.1 Strengthen organisational accountability and transparency

5.3 Strive for excellence in leadership and governance

Site Inspection

Not applicable.

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not endorse the financial statements	Rare (1)	Moderate (3)	Low (1-4)	COMPLIANCE Minor regulatory or statutory impact	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	3
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Comment

Council, at its July Meeting, resolved to defer the presentation of the June 2019 Monthly Financial Report to the August Ordinary Meeting.

A significant amount of work is still required to finalise the end of year accounts (accruals, reconciliation of reserves, reconciliation of leave provisions, reconciliation of fixed assets, and fair value assessment of property, plant and equipment). The Town is required to submit a final trial balance and draft Annual Financial Report to its auditors by the 13 September.

The attached Monthly Financial Report contains the primary financial statements from the Annual Financial Report, and these statements have been fully mapped to the chart of accounts, and are populated automatically. The underlying account details have therefore been provided to Council for full detail. This also includes a variance analysis against each general ledger account, as the Auditors have requested an explanation of all variances over \$50k.

The stated surplus of \$25k in the Rate Setting Statement as at 30 June is an unadjusted figure and differs to the opening position of \$758k in the Town's 2019/20 Budget. This variance can be explained by \$778k in accrued expenses against which invoices have been largely received and processed. These amounts will need to be reversed out of the accounts.

There was also an error in the 2019/20 Budget with an incorrect plant item identified for disposal. The Asset Disposal Schedule listed P4075 Toro Z Master Skid Steer Mower for disposal, with a replacement purchase price of \$28,820 and a sale price of \$7,700. The plant item should have been P4087 Toro Groundmaster 360, with a replacement purchase price of \$44,000 and a sale price of \$12,000. A budget variation is therefore required.

A budget variation is also required to progress depot refurbishment works. A budget of \$45,385 was allocated against account E14604 being the estimated unspent amount from the 2018/19

budget. Quotes have now been received for the building works for the renovation and upgrade of the ablutions and kitchen, including plumbing and electrical works, with a firm cost of \$72k ex GST. A budget variation of \$27k is requested.

12.2.1 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 060819

Moved Cr A McPhail, seconded Cr Harrington

That Council:

- 1. receives the Monthly Financial Report for the month ended 30 June 2019.**
- 2. note that the unaudited Annual Financial Report for the year ended 30 June 2019 will be presented to the September Council Meeting, along with the July 2019 Monthly Financial Report.**
- 3. pursuant to section 6.8 of the *Local Government Act 1995*, approve the following variations to the 2019/20 Budget, resulting in a reduction in net current assets of (\$37,780) as at 30 June 2020.**

Account No.	Description	19/20 Original Budget	19/20 Amended Budget	Change in Net Current Assets
E11707	Plant Purchases – Parks and Ovals	(\$122,320)	(\$137,500)	(\$15,180)
	Proceeds from Disposal of Assets	\$37,700	\$42,000	\$4,300
E14604	Depot Admin Building and Surrounds	(\$45,385)	(\$72,385)	(\$27,000)
				(\$37,880)

(CARRIED UNANIMOUSLY)

12.2.2 Accounts for Payment – July 2019

File ref	F/FNS2
Prepared by	Peter Kocian, Executive Manager, Corporate Service
Supervised by	Peter Kocian, Executive Manager, Corporate Services
Meeting Date	20 August 2019
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Monthly List of Payments – July 2019

Purpose

For Council to receive the monthly list of accounts paid.

Executive Summary

To endorse the list of payments made under delegated authority for the month of July 2019.

It is therefore recommended that Council receives the Lists of Accounts paid for the period 1 July to 31 July 2019, as per the summary table.

Background

The Chief Executive Officer has delegated authority to make payments from the Municipal and Trust Accounts in accordance with budget allocations.

The Town provides payments to suppliers by electronic funds transfer, cheque or credit card. Attached is an itemised list of all payments made under delegated authority during the said period.

Consultation

Nil.

Statutory Environment

Regulation 13: *Local Government (Financial Management) Regulations 1996 (as amended)*

Policy Implications

Policy 2.1.3 Purchasing

Financial Implications

Accounts for Payment are sourced from budget allocations.

All amounts quoted in this report are inclusive of GST.

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not accept the list of payments	Rare (1)	Moderate (3)	Low (1-4)	COMPLIANCE Minor regulatory or statutory impact	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	3
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Strategic Implications

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

STRATEGIC PRIORITY 5: Leadership and Governance

A proactive, approachable Council which values community consultation, transparency and accountability

5.1 Strengthen organisational accountability and transparency

5.3 Strive for excellence in leadership and governance

Site Inspection

Not applicable.

Comment

The attached itemised list of payments is prepared in accordance with Regulation 13 of the amended *Local Government (Financial Management) Regulations 1996*.



6.2.2 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 070819

Moved Cr A McPhail, seconded Cr M McPhail

That the list of accounts paid for the period 1 to 31 July 2019 be received, as per the following summary table:

JULY 2019		
Voucher No	Account	Amount
5234 –5237	Municipal (Cheques)	\$227,027.85
EFT27984– EFT 28127	Municipal (EFT)	\$884,686.19
Payroll	Municipal (EFT)	\$390,637.09
Credit Card/Superannuation	Municipal (Direct Debit)	\$357.20
	Total Payments	\$1,502,708.33

(CARRIED UNANIMOUSLY)

12.2.3 Trial Community Led Initiatives Program for small events & projects

File ref	A/CLIP
Prepared by	Karen Dore, Coordinator Capacity Building
Supervised by	Peter Kocian, Executive Manager Corporate Services
Meeting Date	20 August 2019
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	<ol style="list-style-type: none">1. Trial Community Led Initiatives Project Plan2. Community Led Initiatives Program Guidelines3. Community Led Initiatives Program Request Form

Purpose

Council is requested to consider endorsing the Community Led Initiatives Program, which aims to provide a simple avenue of support for the community in their endeavours to undertake small localised projects, including neighbourhood events.

Executive Summary

Supported by its small size the Town of East Fremantle is in the perfect position to offer residents a more personalised community-building experience.

Smaller events / projects, involving from 10 to 50 participants, submitted by community members will be considered for financial support of up to \$500.

The Town of East Fremantle will initiate a trial program to offer support to community members (including local community groups, sporting clubs and businesses) for hosting neighbourhood events or undertaking small localised improvement projects in order to strengthen their local connections.

During the 12-month trial period the Town will actively promote the program to those proactive community members who have approached the Town with initiatives during the past 12 months.

Background

The suggestion that the Town of East Fremantle financially support community led initiatives for small localised projects and neighbourhood events, rather than continuing to host two movie nights and two comedy nights per year, was raised following review of the outcomes of Town run community events, including;

- Food Truck Trial (February 2018)
- Movie Nights (March 2018)
- Comedy Nights (July 2018)

Research ensued into what has, and hasn't worked, for other Local Governments in this space.

Consultation

External

Community, through consultation for the Community Strategic Plan and MARKYT Community Scorecard, and through casual conversations with proactive community members.

Internal

Council (Events Committee)
Executive Manager Corporate Services
Executive Management Team

Council (Forum)

Statutory Environment

Not applicable.

Policy Implications

Not applicable.

Financial Implications

An amount of \$13,000 has been allocated to this Program in the adopted 2019-2020 budget.

Strategic Implications

“Town of East Fremantle Strategic Community Plan 2017-2027”

Strategic Priority 1 – Social – A socially connected, inclusive and safe community

1.1 Facilitate appropriate local services for the health and wellbeing of the community

1.1.2 Strengthen the sense of place and belonging through inclusive community interaction and participation

1.2 Inviting open spaces, meeting places and recreational facilities

1.2.2 Activate inviting open spaces that encourage social connection

1.3 Strong community connection within a safe and vibrant lifestyle

1.3.2 Facilitate opportunities for people to people to develop community connections and foster local pride

1.3.3 Enrich identity, culture and heritage through programs, events and celebrations

Strategic Priority 2 – Economic – Sustainable, locally focused and easy to do business with

2.1 Actively support new business activity and existing local businesses

2.1.1 Facilitate opportunities for business and community groups

“MARKYT Community Scorecard”

The Town to focus on areas that are below the industry average or have room for improvement, including;

Informing the community about local events, including hosting smaller street fests and community events:-

Town = 62 / Standard = 61 / High = 83 – room for improvement

“Town of East Fremantle Public Health Plan 2018-2022”

Public Health Action Plan

- Deliver and support facilities and programs that encourage the uptake of physically active lifestyles.
- Conduct and support festivals and events throughout the Town that promote active living.
- Support low alcohol and no alcohol events and activities both internally and in conjunction with event organisers.
- Provide safe, healthy, good quality and culturally unique food at unique locations
- Support and promote the establishment of community gardens.
- Support local food festivals, trails and recipe books that promote the local area, cultural heritage and tourism precincts.
- Encourage active, sociable, meaningful lives to promote positive mental health and wellbeing.
- Facilitate programs and services for young people that promote inclusiveness, participation and recognition within the community.

- Foster a diverse and family friendly inner Town environment and in particular the night time economy.
- Facilitate an Act-Belong-Commit Partnership (partnership agreement signed, with supporting actions underway)
 - ACT: keep mentally, physically, spiritually and socially active:- read a book, take a walk, meditate, say hi to a neighbour...
 - BELONG: join a community group, and participate in community activities:- join a book club, take a cooking class, be more involved in groups you are already a member of...
 - COMMIT: do things that provide meaning and purpose in life:- take up a cause, help a neighbour, learn something new, set yourself a challenge, volunteer...

Site Inspection

Not applicable.

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not endorse the Community Led Initiatives Program Project Plan.	Unlikely (2)	Minor (2)	Low (1-4)	REPUTATIONAL Substantiated, public embarrassment, moderate impact, moderate news profile	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	4
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Comment

Local Governments' role within the community development space is as an enabler.

This program will enable the Town to focus on building the capacity of the community (ratepayers, residents, businesses, employees, community groups and sporting clubs), through community led development as opposed to community, or local government, driven development.

With the limited resources available to the Town, and as a small metropolitan Local Government, it is of the utmost importance to place emphasis on assisting the community to realise their visions and provide their own solutions.

12.2.3 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 080819

Moved Cr White, seconded Cr Harrington

That Council endorses the trial Community Led Initiatives Program Project Plan and accompanying public documents – Community Led Initiatives Program Guidelines and Community Led Initiatives Program Request Form.

(CARRIED UNANIMOUSLY)

12.2.4 Infringement Write-offs

File ref	F/ACC1
Prepared by	Jessica Melia, Rates Officer John Mordini, Acting Manager Finance and Administration
Supervised by	Peter Kocian, Executive Manager Corporate and Community Service
Meeting Date	20 August 2019
Voting requirements	Absolute Majority
Documents tabled	Nil
Attachments	1. Infringement Debt Management Policy 2.1.10 – Amended 2. Parking Infringement Appeals Policy 2.1.9 – Amended 3. Infringement Debtors Listing

Purpose

The purpose of this report is for Council to consider writing off bad debts, in accordance with section 6.12 (1) of the *Local Government Act 1995*, attributable to unpaid Parking and Dog Infringement Notices that have been outstanding for more than three (3) years.

Executive Summary

Council is requested to note that there is a significant amount of infringements that are being reported as outstanding in the IT Vision Infringements Module, however, these are specified as inactive and given their age, will not be pursued for recovery.

Australian Accounting Standards, and the provisions of the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996*, require ongoing assessment of the likelihood that debts recognised in the accounts will be collected.

While all reasonable efforts are made to recover aged debts, there are some, which for practical purposes will have to be written off.

Section 6.12 (1) of the Act allows for debts to be written off by Council, and the Infringement Debt Management Policy gives delegated authority to the Chief Executive Officer to write off any uncollectable bad debts and advise Council accordingly.

Ranger Services issue infringement notices for contraventions of various Local Laws (i.e. Parking Local Laws) as well as the *Dog Act 1976* and the *Litter Act 1979*.

Parking Infringement Notices not paid are sent to the Fines Enforcement Registry for collection in accordance with the recently adopted Infringement Debt Management Policy. Unpaid fines are kept on the registry for 8 years, however, Council has the discretion to withdraw fines before the 8 year period. We consider that a period of three years is sufficient for these debts to be actively pursued for collection after which it is proposed that unpaid fines will be written off by the Chief Executive Officer under delegated authority.

Background

Fines Enforcement Registry (FER)

Where no payment has been made for an infringement notice the Town issues a Final Demand Notice 28 days after issuing the initial infringement notice, and should payment still not be made by a specific due date (14 days from the date of issue of the final notice) the matter is then

referred to the Fines Enforcement Registry, at the Department of the Attorney General. FER specifically deals with unpaid fines from both State and Local Governments.

When an overdue infringement notice is lodged with FER, additional administrative fees are imposed. Offenders are then notified by FER that failure to make payment, may result in loss of their Drivers or Vehicle Licence.

In many cases, an individual may have not updated their ownership details with the Department of Transport and therefore, not able to be contacted.

If an individual with an unpaid infringement renews their Drivers Licence, they will need to pay for their infringement before their driver's licence will be renewed.

There are circumstances where FER is unable to collect the infringement and withdraws the notices. The most common being insufficient information on the vehicle ownership file. Other reasons include the individual is deceased, it is uneconomical to enforce, or the corporation/business is no longer operational. In all these circumstances, the Registry recommends that the relevant Local Governments write-off the penalties as unrecoverable.

Writing off Infringements - Infringement Debtors Ledger

An analysis of the Infringements Debtors (subsidiary) Ledger in SynergySoft has identified 3,476 Parking and Dog Infringement Notices that total \$287,609.81, as at 30th June 2019. Of this amount, 2216 infringements, totalling, \$148,883.50 have a status of 'Old Ticket Issued' and for all intents and purposes are not recoverable due to the age of these infringements (they all pre-date 30 June 2007). The outstanding amount of \$287,609.81 in the Infringement Module varies substantially when compared to the General Ledger Account Balance for Parking Debtors of \$95,206.96, in the Financial Management System (SynergySoft). The balance outstanding at the Fines Enforcement Registry is \$63,224.70, as at 30 June 2019

Infringement Debtors Listing (Attachment 3) shows all outstanding infringements as at 30th June 2019, including those that have a status of 'Old Ticket Issued'.

The break-down of the value of these infringements, within the Infringements Module, by age is as follows:

Age Analysis	No.	(\$) Amount	No. with FER	(\$)Amount with FER
Parking Infringements				
0-3 years	617	\$84,236.22	162	\$33,185.09
4-6 years	105	\$12,268.34	77	\$10,741.65
7-9 years	47	\$5,523.75	30	\$3,893.75
10-12 years	25	\$2,561.00	5	\$640.00
13-15 years	2576	\$172,723.50	3	\$381.00
16-18 years	3	\$196.00	0	\$0.00
Total	3373	\$277,508.81	277	\$48,841.49

Dog Infringements				
7-14 years	103	\$10,101.00		
Total Infringements	3373	\$287,609.81	277	\$48,841.49

NB. There is a discrepancy in the FER amounts between the Infringements Module and the FER listing due to the additional fees and charges applied by FER.

A bulk update of infringements will need to be performed to remove either cancel or withdraw infringements to change the status of those infringements more than 3 years old both in the Infringement Debtors Ledger and with the Fines Enforcement Registry, to identify that these infringements are no longer active and have been de-registered with FER. This would leave a balance in the Infringement Debtors Ledger of \$84,236.22, of which \$33,185.09 have been referred to the Fines Enforcement Registry.

Consultation

Internal

Executive Manager Corporate and Community Service

Senior Ranger

External

WA Fines Enforcement Register

Statutory Environment

Sections 6.12 (1 (Power to defer, grant discounts, waive or write off debts) and 5.42 (Delegation of some powers and duties to CEO) of the *Local Government Act 1995* apply.

Policy Implications

Council has recently adopted an Infringement Debt Management Policy that deals with debt management for infringement notices. The Policy was specifically developed to outline the process for collection of infringements, referral to the Fines Enforcement Registry and the process to write off debt for overdue infringements.

The current policy has been amended to allow for the efficient management of outstanding infringements. The amendment to the policy proposes, where infringement notices remain outstanding, that an annual financial report to the Audit Committee will be presented, detailing a note of all outstanding infringement numbers and the total amount of debt against the current financial year.

The outstanding infringement report will be referred to Council for information advising of the total amount outstanding between 0-3 years, and the amount outstanding over 3 years that has been written off by the Chief Executive Officer under delegation.

Council also has a Parking Infringements Appeals policy which is required to be aligned with the Infringement Debt Management Policy for consistency of application.

The Chief Executive Officer is delegated the power to waive, grant concessions or write off any amount of money owed to the Town, pursuant to the *Local Government Act 1995*, Section 6.12(1).

Under Council's Delegated Authority Register (DA62), the CEO is conferred the power to withdraw, amend and pursue infringement notices. A sub-delegation is provided to the Executive Manager Corporate Services.

Financial Implications

Infringement debtors raised before 1st July 2016 to be assigned a status of inactive and de-registered with FER (no impact on Statement of Comprehensive Income) -

Parking	\$193,272.59
Dogs	<u>\$10,101.00</u>
Total	\$203,373.59

Infringement debtors outstanding 1st July 2016 to 30th June 2019 (active) \$84,236.22

General Ledger – Debtors Parking Account Balance as at 30th June 2019
\$95,206.96

Total amount of write-off affecting the Statement of Comprehensive Income **\$10,970.74**

Strategic Implications

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

STRATEGIC PRIORITY 5: Leadership and Governance

A proactive, approachable Council which values community consultation, transparency and accountability

5.1 Strengthen organisational accountability and transparency

5.3 Strive for excellence in leadership and governance

Site Inspection

N/A

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not approve the write-off of infringements	Rare (1)	Moderate (3)	Low (1-4)	COMPLIANCE Minor regulatory or statutory impact	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	3
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Comment

1. To improve financial internal controls, an itemised listing from the infringements module will be produced monthly and reconciled to the parking debtors balance sheet account. A manual monthly balancing journal will be required to be prepared.
2. On an annual basis FER debts over 3 years old will be written-off, with a report to be provided to the Audit Committee.

12.2.4 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 090819

Moved Cr M McPhail, seconded Cr Watkins

That Council :

1. approve the write-off of Debtors Parking \$10,970.74, by absolute majority pursuant to Section 6.12 (1) of the *Local Government Act 1995*, which will impact the Statement of Comprehensive Income for the year ending 30 June 2019.
2. note that 2216 infringements totalling \$148,683.50 are flagged as inactive within the Infringements Module due to the age of these infringements (no financial statement impact), and that any infringements raised before 1 July 2016 and still active with the Fines Enforcement Registry will be deregistered.
3. approve the amended Infringement Debt Management policy which provides for all infringements outstanding more than 3 years to be written off under delegated authority and reported to the Audit Committee, as per the tracked changes in the attached document.
4. approve the amended Parking Infringement Appeals policy to align with the amendments made to the Infringement Debt Management policy, as per the tracked changes in the attached document.

(CARRIED UNANIMOUSLY)

12.3 GOVERNANCE

Cr Natale declared an indirect financial interest (Closely Associated Person s5.62(1)(b)) in the following item as the City of Cockburn is his employer and left the chamber at 7:12pm.

12.3.1 Southern Metropolitan Regional Council Withdrawal Arrangements for a Project Participant (City of Cockburn)

File ref	H/HRW3
Prepared by	Gary Tuffin, Chief Executive Officer
Supervised by	Gary Tuffin, Chief Executive Officer
Meeting Date	29 August 2019
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	<ol style="list-style-type: none">1. Office Accommodation Project Amended Business Plan2. Draft letter to WATC & SMRC

Purpose

In accordance with the Establishment Agreement and Project Agreements of the Southern Metropolitan Regional Council (SMRC), an Amended Business Plan for the Office Accommodation Project has been prepared following the withdrawal of the City of Cockburn effective from 30 June 2019.

Executive Summary

To consent to the City of Cockburn being retired from its obligations under the \$2 million secured lending facility (known as the Office Project Loan) from 30 June 2019.

The impact of the City of Cockburn's withdrawal is to change the proportion of annual participant contributions and spreads the City's contribution across the remaining Project Participants proportionately.

This will result in the Town's;

- annual project contribution increasing from \$1,565 (30/06/19) to \$2,485 (30/06/20).
- loan liability increasing from 2.68% (\$48,164) to 4.25% (\$76,458).

Background

The Town of East Fremantle is a participant in the SMRC which is a statutory local government authority for providing environmentally sustainable waste management solutions for the communities of East Fremantle, Fremantle, Kwinana and Melville.

In May 2003, the Regional Council adopted the Office Project Business Plan for the purposes of purchasing office accommodation. All its Member Councils entered into a Project Participants Agreement as a joint investment venture.

In 2004, the SMRC purchased freehold land and building situated at 9 Aldous Place, Booragoon, Western Australia for its administration office. The property was purchased with an Interest only loan facility of \$2,000,000, of which only \$1,800,000 was drawn down.

The City of Cockburn gave notice of its intention to withdraw from the SMRC on 10 May 2018, resulting in an effective withdrawal date of 30 June 2019.

As a result of the notice of withdrawal of a Project Participant, in accordance with clause 2.6 of the Office Project Participants' Agreement, the SMRC prepared an Amended Business Plan for that project.

In addition to the above, in accordance with Clause 2.7, the SMRC has determined the amount equal to the value of all assets of the Office Project less the amount of all borrowings and other liabilities with respect to the Office Project. The proportional entitlement of the withdrawing project participant is then to be applied to this amount. Following quantification of the proportional entitlement, SMRC is to distribute to or collect from the withdrawing project participant the relevant amount.

Consultation

Southern Metropolitan Regional Council (SMRC)
Executive staff of the Cities of Fremantle and Melville and Town of Kwinana.

Statutory Environment

Nil.

Policy Implications

Nil.

Financial Implications

Annual Contribution

The impact of the City of Cockburn's withdrawal is to change the proportion of annual participant contributions and spread the City's contribution across the remaining Project Participants proportionately.

The following table indicates the change in annual member contribution proportions to 31 December 2020 assuming the building is sold and the loans fully repaid on 31 December 2020:

Project Expenses	01 Jul 18 30 June 19	1 July 19 29 June 20	30 June 20 29 June 21
Loan Interest Payment	58,500	58,500	29,250
Participants' Contribution			
Cockburn	22,037		
East Fremantle	1,565	2,485	1,216
Fremantle	6,156	9,767	4,902
Kwinana	8,389	13,591	7,019
Melville	20,353	32,656	16,114
Total Income	58,500	58,500	29,250

If the loans are re-financed on 31 Dec 2020 the participants' contribution will be based on the prevailing interest rates applicable for the term of the loan.

Loan Capital Contribution

The change in contingent liability in FY20 for the remaining Project Participants (percentage and dollar changes) is provided in the following table:

Impact of Cockburn's withdrawal on loan liability proportionments				
	FY 19		FY20	
	%	\$	%	\$
Cockburn	37.67	678,052	0.00	-
East Fremantle	2.68	48,164	4.25	76,458
Fremantle	10.52	189,402	16.70	300,529
Kwinana	14.34	258,132	23.23	418,199
Melville	34.79	626,250	55.82	1,004,814
Total	100.00	1,800,000	100.00	1,800,000

A recent (09/04/19) market valuation of the property was undertaken which valued the property at \$1,600,000.

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not agree.	Rare (1)	Minor (2)	Low (1-4)	REPUTATIONAL Unsubstantiated, low impact, low profile or 'no news' item	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	2
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Strategic Implications

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

Strategic Priority 4 – Natural Environment

Maintaining and enhancing our River foreshore and other green, open spaces with a focus on environmental sustainability and community amenity

4.2 Enhance environmental values and sustainable natural resource use

4.2.1 Reduce waste through sustainable waste management practices

Strategic Priority 5: Leadership and Governance

A proactive, approachable Council which values community consultation, transparency and accountability.

5.1 Strengthen organisational accountability and transparency

5.1.1 Strengthen governance, risk management and compliance

5.1.3 Improve the efficiency and effectiveness of services.

5.2 Proactively collaborate with the community and other stakeholders

5.2.1 Foster and promote strategic collaborative relationships with neighbouring LGAs, State and Federal government representatives and agencies, NGOs

Site Inspection

Not applicable.

Comment

The SMRC has now completed the final calculations and has reported that the City of Cockburn's liability based on proportional entitlement or liability for the Office Project is as follows:

2019 Market Valuation		1,600,000
Office Reserve		250,000
Less winding up costs		-110,000
Less Loan		-1,800,000
Balance		-60,000
Participants' Share based on past contributions		
Cockburn	35.42%	-21,252
East Fremantle	2.84%	-1,704
Fremantle	10.98%	-6,588
Kwinana	11.81%	-7,086
Melville	38.95%	-23,370
Total Income	100.00%	-60,000

The details are contained in the Amended Business Plan attached.

In accordance with Clause 2.7, the SMRC has determined the amount as a deficit of \$60,000. The proportional liability of the withdrawing project participant is \$21,252 and the SMRC is to collect from the withdrawing project participant the relevant amount.

The office project has a loan with the Western Australian Treasury Corporation (WATC). The loan agreement requires continuing participants to give consent to allow withdrawing participants to retire from their obligations to pay the debt.

As there is no longer an obligation for the City of Cockburn to pay any further loan repayments under the Project Agreement, it is recommended that the Town of East Fremantle resolve to consent and instruct the SMRC to issue a new share percentage to the WATC as part of the withdrawal process.

The SMRC is to notify the WATC of the percentages by furnishing a new Exhibit 'B' certificate with the following revised percentage shares.

Southern Metropolitan Regional Council hereby certifies that as at the date hereof, the Share of the Facility (expressed as a percent) owed by each Participant is as follows:

Name of Participant	Old Share	New Share
City of Cockburn	37.70%	
City of Fremantle	10.50%	16.70%
City of Melville	34.80%	55.82%
Town of East Fremantle	2.70%	4.25%
City of Kwinana	14.30%	23.23%
TOTAL	100.00%	100.00%

The proportional share in the asset investment will also increase by these new percentages.

Authority is now sought from Council for the Chief Executive Officer to sign the letter in Attachment 2, which has been prepared by the WATC as a requirement for the consent to retire the City of Cockburn from the lending facility for the SMRC Office project.

12.3.1 OFFICER RECOMMENDATION/ COUNCIL RESOLUTION 100819

Moved Cr Collinson, seconded Cr M McPhail

That:

- 1. Council consents that the City of Cockburn be retired from its obligations under the \$2 million secured lending facility (known as the Office Project Loan) between the Western Australian Treasury Corporation, the Participants and the Southern Metropolitan Regional Council from 30 June 2019.**
- 2. Council authorises the Chief Executive Officer to sign the Western Australian Treasury Corporation (WATC) & South Metropolitan Regional Council (SMRC) letter provided in Attachment 2.**
- 3. the Southern Metropolitan Regional Council be requested to submit a revised Exhibit B Certificate to the Western Australian Treasury Corporation as required under the terms and conditions of the Loan Agreements specified in (1) above indicating the new percentages of the debt being apportioned to the remaining participants following the withdrawal of the City of Cockburn effective 30 June 2019.**

(CARRIED UNANIMOUSLY)

Cr Natale returned to the Chamber at 7:14pm and it was noted he did not speak or vote on the previous matter.

Cr M McPhail declared an interest in the following item as a Director of AUSPIRE and left the chamber at 7:14pm

12.3.2 AUSPIRE Membership – Community Citizen of the Year Awards

File ref	A/CMS1
Prepared by	Janine May, EA to CEO
Supervised by	Gary Tuffin, Chief Executive Officer
Meeting Date	20 August 2019
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	Nil

Purpose

For Council to consider obtaining gold membership of AUSPIRE and consider committing to participating in the 2019 Community Citizen of the Year Awards.

Executive Summary

Auspire is an independent, not-for-profit organization founded in 1977 and is part of the Australia Day Council National Network. Auspire work for individuals, schools and communities to promote, support and build capacity for social and cultural inclusion.

Auspire manages and delivers a number of recognition programs with the objective of profiling leading citizens who are role models and who inspire through their achievements and challenge others to make a contribution to creating a better Australia.

These include the Australian of the Year Awards at a State and National level, Community Citizens of the Year at a local community level and Aussie of the Month in our primary schools.

Background

The topic relating to the Town of East Fremantle 'citizenship awards' was raised by Deputy Mayor Cr Michael McPhail at the April 2018 Council Concept Forum. He also advised that he was a Board Member of Auspire, which was the new branding for the *Australia Day Council*.

Following discussion about membership, awards and the possibility of Council participation, it was requested that staff prepare a discussion paper for a Council Forum outlining membership details, process and timing of the awards.

A Discussion Paper was prepared for the September 2018 Concept Forum and elected members generally agreed to trial the project.

At the Concept Forum in April 2019, Ms Morgen Lewis (CEO Auspire) presented an overview of a number of AUSPIRE programs including the community Citizen of the Year Awards and the Auspire Ambassadors program.

The Town of East Fremantle previously participated in their own Citizen of the Year awards program, however this ceased in mid 1980's due mainly to a lack of interest by the community in providing nominations.

Auspire - Australia Day Council WA (ADCWA) is an independent, non-profit, membership based association, founded in 1977. Auspire is part of the 'national family' of eight State and Territory Australia Day Councils and their peak body is the National Australia Day Council.

The role of Auspire-ADCWA is to promote what it means to be Australian and encourage all Australians living in Western Australia to embrace active citizenship and Australian values, to feel pride and a sense of belonging, and most importantly, a desire to contribute to a better Australia.

Consultation

Nil.

Statutory Environment

Nil.

Policy Implications

Nil.

Financial Implications

Gold Membership of AUSPIRE is currently \$540 + GST for 12 months.
Staff resource to oversee the program.

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not support membership to AUSPIRE	Unlikely (2)	Insignificant (1)	Low (1-4)	SERVICE INTERRUPTION No material service interruption	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is

provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	2
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Strategic Implications

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

Strategic Priority 1: Social

- 1.1.2 *Strengthen the sense of place and belonging through inclusive community interaction and participation.*
- 1.3.2 *Facilitate opportunities for people to develop community connections and foster local pride.*
- 1.3.3 *Enrich identity, culture and heritage through programs, events and celebrations.*

Site Inspection

Not applicable.

Comment

Should Council decide to join as a Gold Member (\$540 + GST), the following benefits are included:

- Participation in Community Citizen of the Year Awards*
- Access to Ambassadors for Australia Day celebrations**
- Invitation to the State presentation Australian of the Year Awards
- Logo recognition on Citizen of the Year website
- Access to Australian of the Year Alumni for events
- Cultural Competency Training and recognition
- Civics and Citizenship forums at subsidised prices#
- Access to the Event Organiser's Toolkit
- Network and engage with industry leaders
- Member discounts on merchandise
- Invitations to exclusive functions and events
- Member discounts to ticketed events
- Voting rights at the AGM
- Invitations to attend cultural experiences and tours
- Opportunity to present Aussie of the Month awards to schools within local government area
- Opportunity for Council projects to be profiled on Auspire website.

**Community Citizens of the Year awards include media kits nominations advertising campaign, online nominations portal, gold foil award certificates and medallions across four categories.*

***Ambassador Program administration is included, however cost recovery for out-of-pocket expenses such as travel and/or accommodation may be necessary and will be discussed at time of booking.*

#Civics and Citizenship Forums non-member price is \$3,850. Member price \$2,800 (for up to 60 people).

Cultural Awareness and Reconciliation Initiatives

Auspire continued to strengthen their strategic alliance with Reconciliation WA with ongoing support for reconciliation and cultural initiatives throughout the year.

A breakfast event, partnered with City of Perth and Reconciliation WA was attended by over 200 guests to raise awareness of our diversity and champion cultural acceptance. A number of Auspire ambassadors shared stories of cultural diversity and social inclusion.

Reconciliation Week is an important time in the Auspire calendar of events working towards promoting reconciliation and harmony whilst reducing conflict and discrimination. Events include the Annual Reconciliation Banners project with Auspire Banners featuring at Elizabeth Quay as well as the Reconciliation Breakfast and Terrace Walk for Reconciliation.

Registered participating councils receive access to a marketing toolkit to promote the program within the community, their logo on this website, a set of gold medallions to engrave, a set of gold foiled personalised certificates and this fully-automated nominations website to capture the information about all their community heroes.

Citizen of the Year Awards for Local Government

The following information has been obtained from the Auspire Citizenship Awards web pages.

How it works:

Auspire – The Australia Day Council WA and participating local councils call for nominations from community groups and individuals. Nominations are submitted to Australia Day WA online via the website or using the form provided by the local participating Council. At present, the Town of East Fremantle is not a participating local government.

All nominations received before the close-off date are provided to the relevant local council for consideration and selection.

At the participating council's discretion a committee, comprised of people from community organisations and citizens, is appointed to manage the process as well as encourage and promote nominations. The committee may also make nominations based on local knowledge and experience.

Nominations received after the closing date are ineligible for the awards.

Awards are presented by local councils, usually as part of their Australia Day celebrations and all finalists are notified by participating local councils directly.

All finalists and winners are also eligible to be submitted by councils or the original nominator to Auspire – The Australia Day Council WA for consideration in the Australian of the Year Awards the following year.

Criteria

Selection Guidelines

In choosing the recipients of the Australia Day Council WA Community Citizen of the Year Awards, regard is given to the nominee's achievements in the year immediately prior to receiving the award, as well as their past achievements and ongoing contribution to the community. A nominee need only be nominated once to be considered. The number of nominations received per nominee bears no weight in their selection.

Recipients will have been judged to have shown:

- Significant contribution to the local community.
- Demonstrated leadership on a community issue resulting in the enhancement of community life.
- A significant initiative which has brought about positive change and added value to community life.
- Inspiring qualities as a role model for the community.

Eligibility Criteria

- Nominees should reside or work principally within the local authority making the award.
- Awards may be granted posthumously in recognition of recent achievements.
- Groups of people or couples will not normally be eligible except when meeting the criteria for a community group.
- A person may receive an award on more than one occasion in recognition of their particularly outstanding community contribution or involvement in an alternative initiative.
- Unsuccessful nominees may be nominated in future years.
- Nominations must be apolitical in their nature and should not in any way bring the awards program or local government area into disrepute.
- Sitting members of State, Federal and Local Government are not eligible.

The Patron of Australia Day WA is the Governor of Western Australia who is a signatory of the program certificates.

Community champions can be recognised in four categories:

- Community Citizen of the Year
- Young Community Citizen of the Year (under 25yrs)
- Senior Community Citizen of the Year (over 65 years)
- Active Citizenship – Group or Event

Each recipient will receive a gold foiled certificate, signed by the Governor, together with a 'Community Citizen of the Year' medal.

These are provided in plenty of time to personalise them by engraving recipients' names, and Town's name on the reverse if we wish to do so. The Town will receive one medal for each category and additional medals can be purchased, at a small cost, where required (ie if your Group/Event recipients require more than one medal).

The process is as follows:

Step 1 – Register for the awards program, providing contact details for the program coordinator so they are kept informed of every stage of the process.

Step 2 – Once registered, provide the Town's logo to feature on the AUSPIRE website.

Step 3 – When a nomination is submitted for the Town, the coordinator will receive an automated notification and be able to download the nomination to circulate electronically with the selection committee. If the Town has not registered to participate, advice is provided to the nominator accordingly.

Marketing campaign to call for nominations - The Town of East Fremantle information (and logo) will be included on the Citizen of the Year website.

Channel 9 Perth, 6PR and the Community Newspaper Group have engaged as media partners for this program. Advertisements will appear on TV, on radio and in community newspapers, sending people to the website to nominate. Google and Facebook campaigns will also be provided as additional promotion.

Once registered, the Town will receive access to *call for nominations* banners and other artwork to use on the website, social media platforms, electronic newsletters and emails.

Call for nominations is underway – what happens next? The Town's nominated contact person will automatically receive the Town's nominations by email as they are submitted. Council can then consider all nominees after the 31 October closing date and make the selections.

If there aren't many nominations from the public, it is possible for Council to nominate people based on their local knowledge of who has been making an outstanding contribution to the community (individual or groups).

You've made your selections – what now? Provide selected recipients in each category **by Friday, 6 December 2019** via email to coty@auspire.org.au to enable the production of the certificates which are then mailed to the Town together with the medals.

Information about why they were chosen is also required, with a few key points of how your community has benefited from their contribution - good quality photographs of your presentation ceremony are also appreciated for promotional purposes and to recognise the community champions in future publicity campaigns.

Key Dates

- **1 July – 1 September:** Sign up / register your intention to participate
- **1 September:** Nominations Open
- **31 October:** Nominations Close
- **1 November – 5 December:** Shortlisting and Selections (by Councils)
- **6 December :** Final date to advise Auspire – The Australia Day Council WA of your winners
- **16 January:** Councils will receive printed certificates & medals
- **26 January:** Presentation of awards at your local events
(*Whilst AUSPIRE would prefer Awards be presented on Australia Day it is not essential.*)

The Town of East Fremantle currently does not participate in, or organise any official Australia Day event.

Should Council elect to participate in the Awards program, it will be necessary to set a date for the presentation of the Awards.

Staff Resources:

It is envisaged that one (1) member of staff would be required to be nominated as the primary contact person and to provide administrative support to the selection committee.

Selection Committee

Shortlisting and selection is the responsibility of the Council – a selection committee would need to be established to make a recommendation to Council.

12.3.2 OFFICER RECOMMENDATION

That Council:

1. join AUSPIRE as a Gold Member.
2. register interest in participating in the Community Citizen of the Year program.
3. nominate _____ as the date for the presentation of the Community Citizen of the Year award.

Moved Cr White, seconded Cr Natale

The adoption of the Officer's recommendation.

Amendment

Moved Cr Collinson, seconded Cr A McPhail

That part 3 of the recommendation be deleted.

(CARRIED UNANIMOUSLY)

The substantive motion, as amended, was put.

12.3.2 SUBSTANTIVE MOTION/COUNCIL RESOLUTION 110819

Moved Cr White, seconded Cr Natale

That Council:

1. join AUSPIRE as a Gold Member.
2. register interest in participating in the Community Citizen of the Year program commencing in 2020.

(CARRIED 5:3)

Reason for Varying Officer's Recommendation:

Point 3 was deleted to provide Council with more time to consider an appropriate date to hold the Community Citizen of the Year Award presentations.

Cr McPhail returned to the Chamber at 7:23pm and it was noted he did not speak or vote on the previous matter.

12.3.3 Draft Workforce Plan 2019/2020

File ref	C/STP1
Prepared by	Linda McNab, HR Coordinator
Supervised by	Gary Tuffin, CEO
Meeting Date	20 August 2019
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	Workforce Plan 2019

Purpose

Council is requested to consider endorsing the Workforce Plan for 2019/2020.

Executive Summary

The Workforce Plan fosters a resilient, connected organisation culture which continues to attract and retain talented staff.

The Workforce Plan:

- profiles the current Town of East Fremantle workforce;
- assesses the impact of the external workforce on the Town of East Fremantle's current and future workforce;
- identifies the workforce implications the Strategic Community Plan has on the Town;
- outlines strategies for addressing these implications; and
- sets out how the delivery of this Workforce Plan will be monitored.

Background

The Workforce Plan is a core information strategy identifying the human resources and skills required to deliver on the medium to long-term strategic direction, as outlined in the Town's Strategic Community Plan and outlines the strategies to be implemented to ensure the appropriate resources are in place, now and into the future.

As part of the review process for the Workforce Plan, another organisational Staff Capacity and Capability assessment was undertaken. This assessment identified a number of gaps in capacity and capability, in Regulatory Services (short term) and Corporate Services.

These gaps have been impacted by:

- the planned retirement of some long term staff;
- the Customer Service Improvement Project, which has provided a more personalised service, and resulted in 39 performance measure improvements since the Town's last community scorecard (Perception) Survey. The Town is now the 2nd top performing local government in this index (Markyt).
- significant changes in the use of SynergySoft (Business enterprise system).
- gaps in capability and capacity to meet changing community expectations to our customer service delivery.
- Additional strategic projects in Regulatory Services; such as Amendment 14 and 15, Leeuwin Barracks, Urban Streetscape & Public Realm Style Guide, Integrated Traffic Management & Movement Plan, new Local Planning Strategy, Local Commercial Centre Strategy and reviewing various existing Local Planning policies.

- The increased need for additional governance measures due to the Office of the Auditor General's expectations.

Consultation

Elected Member briefing 30th August 2019

All staff via Staff Survey and Workforce Capacity and Capability Assessment

Regular staff briefings by the CEO

Statutory Environment

Part 5 Division 4 of the *Local Government Act 1995* deals with Local Government Employees. Specifically, the following provisions apply:

Section 5.36 (1) (b) – A local government is to employ such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.

Section 5.36 (3) (a) (b) – A person is not to be employed by a local government in any other position unless the CEO believes that person is suitably qualified for the position and is satisfied with the proposed arrangements relating to the persons employment.

Section 5.37 (1) – A local government may designate employees or persons belonging to a class of employee to be senior employees.

Section 5.40 – The following principles apply to a local government in respect of its employees –

- (a) Employees are to be selected and promoted in accordance with the principles of merit and equity;
- (b) No power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage;
- (c) Employees are to be treated fairly and consistently.

Section 5.41 – The CEO's functions are to –

- (d) Manage the day to day operations of the local government;
- (g) Be responsible for the employment, management supervision, direction and dismissal of other employees.

Policy Implications

There are no policy implications.

Financial Implications

The proposal for two positions, one fixed term (12 month contract) and one continuous will have a financial impact of \$131,100 exclusive of on-costs.

Strategic Implications

The Town of East Fremantle **Strategic Community Plan 217 – 2020** states:-

Strategic Priority 5 – Leadership and Governance – A proactive, approachable Council which values community consultation, transparency and accountability

5.1 Strengthen organisational accountability and transparency

5.1.1 Strengthen governance, risk management and compliance

5.1.2 Ensure an effective engagement process is undertaken with community and stakeholders.

5.1.3 Improve the efficiency and effectiveness of services

5.2 Proactively collaborate with the community and other stakeholders

5.2.1 Foster and promote strategic collaborative relationships with neighbouring LGAs, State and Federal government representatives and agencies, NGOs

5.3 Strive for excellence in leadership and governance

5.3.1 Deliver community outcomes through sustainable finance and human resource management.

5.3.2 Improve organisational systems with a focus on innovation

5.3.3 Increased focus on strengthening and fostering a positive customer service experience.

Site Inspection

Not applicable

Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
The current workforce is inadequate to meet the strategic objectives of the Town.	Possible (3)	Moderate (3)	Moderate (5-9)	SERVICE INTERRUPTION Prolonged interruption of services - additional resources; performance affected < 1 month	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

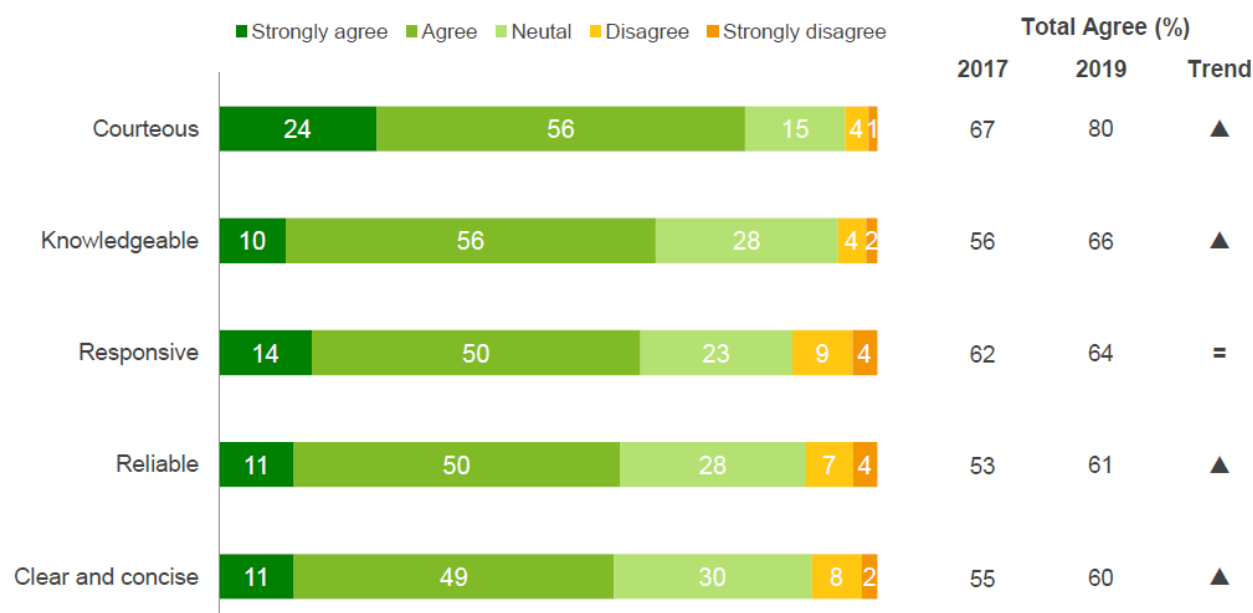
A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	9
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

Comment

Significant increases in customer service levels and resident satisfaction has been achieved over the last 2 years since the Town's last community scorecard in 2017. This can be seen from the table below that has been taken from the 2019 Community Scorecard results.

Customer Service Performance (2019)



To ensure we continue to improve in the delivery of our services, an organisational Staff Capacity and Capability assessment was undertaken for the Office of CEO, Corporate & Community, Ranger and Regulatory Services, which identified gaps requiring additional support.

Office of CEO

Fulltime Staff - 2 x CEO & EA to CEO.

Part-time staff - 2 x Project Coordinator and HR Coordinator (4 days per week).

Overall the workforce and capabilities assessments indicated there is enough capability and capacity in the CEO's office to deliver the strategic objectives of the Town. Therefore, no additional positions were identified.

Corporate & Community, Ranger Services

Fulltime staff – 10 (EMCS, MAF, FO, Corp SO, CSO, RO, CBC, CHSPC, SR, R)

Part-time staff – 2 (4 days per week) Rates Officer & CSO

Part-time staff – 6 (2-4 days per week) CHSP

The Office of Corporate Services has undergone a significant amount of change over the 2018/2019 period, and will continue to do so in line with the four year Long Term Business Improvement Proposal.

In addition, the new Corporate Business Plan contains 80 activities of which 72 are included for delivery in the 2019/20 financial year. All of the Executive Team will require capacity to support delivery of the activities as outlined in the plan.

One new fulltime position was identified being, Executive Assistant Corporate & Community Services. This position will provide general administrative, customer service (internal and external), project support to Corporate, Community and Ranger services, and relief for other positions where required.

In addition to the Capability and Capacity Assessment, the proposed position was subjected to a position justification process and endorsement of the Position Description (PD).

Regulatory Services

Fulltime staff - 5 (EMRS, Senior Town Planner, Planning Coordinator, Admin Support, Waste Education Officer)

Part-time – 2 (Urban Planner & Environmental Health Officer)

Additional workloads have been identified beyond our current capacity in relation to a number of strategic regulatory projects. After considering the options available to address these additional needs a 12 month contract position was identified as the most suitable solution.

The major projects include Amendment 14 and 15, Leeuwin Barracks, Urban Streetscape & Public Realm Style Guide, Integrated Traffic Management & Movement Plan, new Local Planning Strategy, Local Commercial Centre Strategy and review of various existing Local Planning policies.

One (1) 12 month contract has been identified to provide additional support for statutory planning services.

Operations

Fulltime staff – 15 (Operations Manager, Admin support officer, Supervisor and 12 Operational staff)

Increased community expectations has placed pressure on Operations staff to deliver a stronger customer services, which has led to the decision to undertake an external review of the operations of the Depot before the end of 2019. Therefore, no additional changes or additions have been identified at this time.

Staff levels

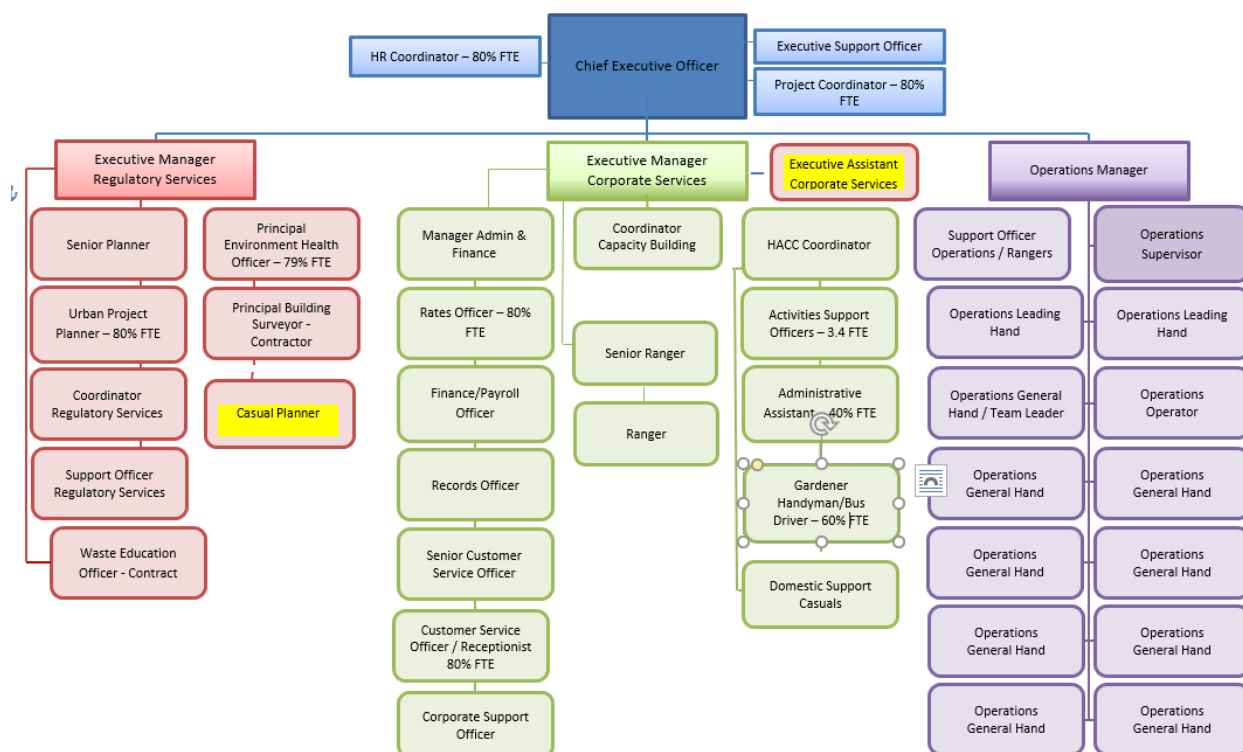
To get a sense of staffing levels, reference was made to “*The Australasian LG Performance Excellence Program FY 17*” as one of the only known recent sources of benchmarking information in local government in relation to staffing numbers.

The purpose of the program is to assist councils better communicate, control and manage their internal business performance with their stakeholders through the use of comparative data analytics. During the program, PwC collects data from participating councils and then transforms this data into key metrics, identifying trends and observations that focus on operational and management excellence...

Proposed Total Full time Employee (FTE) count 41.19.

Town of East Fremantle – Proposed Organisation Structure

Town of East Fremantle – Proposed Organisation Structure – 2019 / 2020



12.3.3 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 120819

Moved Cr White, seconded Cr Harrington

That Council

- 1. endorse the 2019/2020 Workforce Plan as presented.**
- 2. pursuant to section 2.7(2)(a) of the *Local Government Act 1995*, approve the proposed organisational chart as attached, which is fully funded in the adopted 2019/20 Annual Budget.**

CARRIED UNANIMOUSLY

13. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN
Nil.
14. NOTICE OF MOTION FOR CONSIDERATION AT THE NEXT MEETING
Nil.
15. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN
Nil.
16. NEW BUSINESS OF AN URGENT NATURE
Nil.
17. MATTERS BEHIND CLOSED DOORS

17. PROCEDURAL MOTION

Moved Cr Collinson, seconded Cr White

That Council resolve the meeting be closed to the public at 7.34pm to discuss item 17.1 under the terms of the *Local Government Act 1995, Section 5.23(2)(a)*.

CARRIED UNANIMOUSLY

All staff left the Chambers, excluding the Chief Executive Officer at the request of Council.

17.1 Chief Executive Officer's Performance Review
(Confidential Attachment)

17.1 CONSULTANT'S RECOMMENDATION/COUNCIL RESOLUTION 130819

Moved Mayor O'Neill, seconded Cr M McPhail

That Council resolve to:

1. advise the CEO that he had met or exceeded the Key Result Areas (KRAs) set by Council for the previous 12 months.
2. adopt the recommendation of the CEO Performance Review.

CARRIED UNANIMOUSLY

17. PROCEDURAL MOTION

Moved Cr M McPhail, seconded Cr Natale

That the meeting be opened to the public.

(CARRIED UNANIMOUSLY)

All staff returned to the Chambers at 7:45pm



18. CLOSURE

There being no further business, the Presiding Member declared the meeting closed at 7.52pm.

*I hereby certify that the Minutes of the ordinary meeting of the **Council** of the Town of East Fremantle, held on **20 August 2019**, Minute Book reference **1. to 18.** were confirmed at the meeting of the Council on*

17 SEPTEMBER 2019

[Signature]
Presiding Member