



# MINUTES

## Special Council Meeting

---

### Wednesday, 7 August 2019 at 6.36pm

#### **Disclaimer**

Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a member or officer, or on the content of any discussion occurring, during the course of the meeting.

Persons should be aware that the provisions of the Local Government Act 1995 (section 5.25 I) establish procedures for revocation or rescission of a Council decision. No person should rely on the decisions made by Council until formal advice of the Council decision is received by that person.

The Town of East Fremantle expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any resolution of Council, or any advice or information provided by a member or officer, or the content of any discussion occurring, during the course of the Council meeting.

#### **Copyright**

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

## CONTENTS

1.	OFFICIAL OPENING	1
2.	ACKNOWLEDGEMENT OF COUNTRY	1
3.	RECORD OF ATTENDANCE	1
3.1	Attendance	1
3.2	Apologies	1
3.3	Approved	1
4.	DISCLOSURES OF INTEREST	1
4.1	Financial	1
4.2	Proximity	1
4.3	Impartiality	1
5.	PUBLIC QUESTION TIME	2
5.1	Public Question Time	2
6.	PRESENTATIONS/DEPUTATIONS	3
6.1	Deputations	3
7.	REPORT	5
7.1	Complex Amendment No. 15 to Local Planning Scheme No. 3 to Supplement Special Zone - Royal George Hotel Provisions – Consideration of Schedule of Modifications (as directed by Minister for Planning) and Schedule of Submissions	5
8.	CLOSURE	36

---

---

**MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBER, 135  
CANNING HIGHWAY EAST FREMANTLE ON WEDNESDAY, 7 AUGUST 2019.**

**1. OFFICIAL OPENING**

The Presiding Member opened the meeting at 6.36pm

**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	From 6.40pm
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 C Catchpole	Senior Town Planner
Ms J May	Minute Secretary

There were 27 members of the public in attendance.

**3.2 Apologies**

Cr J Harrington  
Cr D Nardi

**3.3 Approved**

Nil.

**4. DISCLOSURES OF INTEREST**

**4.1 Financial**

Nil.

**4.2 Proximity**

Nil.

**4.3 Impartiality**

Nil.

---

**5. PUBLIC QUESTION TIME**

**5.1 Public Question Time**

**5.1 R Renton, 26 Irwin Street**

*I understand as part of the purchase of the Royal George, the developers have an obligation to restore the building within a certain timeframe. When is this deadline and have the developers made any attempt to honour this commitment?*

*Cr Natale entered the meeting at 6.40pm.*

The Mayor advised that the developers had three years from the date of sale (June 2017) to restore the building. As far as Council is aware, no significant restoration works have commenced.

**5.2 K Findlater, 37 Duke Street**

*We are already experiencing huge problems with parking in Duke Street, what will be the parking requirements for the developer under Council's proposal?*

The Senior Town Planner advised that the Minister's schedule of modifications had removed parking controls for residential parking, so Council's recommendation was to reintroduce residential parking controls as per the R-Codes so that the same rules that applied for other residential development in WA applied to this site. Also, the Minister's modifications had removed specific controls for commercial parking. Council's recommendation also proposed to reintroduce the planning scheme rules for commercial parking as well as to limit the extent of the concessions for reciprocal parking proposals. In effect, the Town is proposing that controls be reintroduced to the Amendment so that the same rules that apply to other sites in the Town will also apply to this site.

At the request of the Mayor, the Executive Manager Regulatory Services provided information on the process, following Council's decision on Amendment 15 at tonight's meeting.

**5.3 Mr R Turner, 91 Canning Highway**

*I consider there are a number of errors, omissions and inaccuracies in the officer's report being considered at tonight's meeting. Was there a rigorous check of the information contained within the report prior to it being released?*

The Mayor advised that the contents of the report had been verified by other officers and he was satisfied with its accuracy.

**5.4 Mr P Unsworth, 36 Duke Street**

*(i) To what extent did Council engage with members of Government, local members of parliament etc. to explain the issues with the site and the Plympton area in relation to any proposed development?*

Mayor O'Neill advised that a number of meetings were held with Federal and State members of Parliament, both in the upper and lower house. Council had done everything it could to support its position in relation to the scheme amendment, and raised its concerns with some of the proposed modifications made by the Minister.

Cr M McPhail added that there had been personal phone calls to Members and Council had also engaged a lobbyist to assist in this regard – it could not have done anymore.

(ii) *Did they come and inspect the site?*

Mayor O'Neill advised that the State members were very familiar with the site. The Minister for Planning had visited the site and was well across the issues relating to the site and the Plympton area.

(iii) *Has Council gained a feeling from these Members of any support?*

Mayor O'Neill advised that there had been no indication of support or otherwise.

#### **5.5 G Hawks, 85 Duke Street**

Has the Minister for Heritage come to the site?

Mayor O'Neill advised that Council had requested a meeting with the Minister for Heritage on a number of occasions, without success.

### **6. PRESENTATIONS/DEPUTATIONS**

#### **6.1 Deputations**

##### **6.1.1 Mr J Dowson, 12 Mouat Street Fremantle (Fremantle Society)**

Mr Dowson congratulated Council on the manner in which this issue had been dealt with. Although the Fremantle Society acknowledged that Council had been forced to review its initial stance regarding this site, the Society could not support any new development that compromised the sense of place associated with this significant heritage landmark. The Society also considered the stables located at the rear of the property to be one of the most significant and unique examples within the State.

Mr Dowson stated that the National Hotel in Fremantle and the Guildford and York hotels had all been restored to their former glory without the requirement of major development to ensure their viability.

He considered the controversial sale of the property should be investigated.

##### **6.1.2 Mr R Turner, 91 Canning Highway**

Mr Turner stated that a building any higher than the dome would block any view of the northern aspect of the building so why was Council concerned with a building of greater height. This view of the building would be lost in any redevelopment at the rear, he considered it achieved nothing for Council to be insisting on limiting the building to 6 or 7 storeys when the developer was seeking 9 storeys.

Mr Turner questioned the integrity and balance of the officer's report which he considered was biased towards Council's view.

He advised that if Council's requirements made the development unviable, the developers would walk away and there was an extreme risk of nothing happening for another considerable period. A plot ratio of 1.5:1 would not provide a viable option. Mr

Turner made the claim that Council had refused to work with the developers and he couldn't understand why the red carpet had not been rolled out when they had proposed spending \$4-6million to restore the building.

Mayor O'Neill responded that Council had delayed the process for 6 months at the developers' request to allow them to prepare their proposal and conduct further public consultation. Council did make a good attempt to work with the owners of the site.

**6.1.3 Mr P Unsworth, 36 Duke Street**

Mr Unsworth pointed out that developer had been categorical about the requirement for 20-22 storeys for the development to be viable. He commented on the tragedy that Council must have known the property was being offered for sale and had missed an opportunity to buy the property at a very cheap price. Mr Unsworth suggested Council approach the developer to purchase the property and believed there would be supporters within the community willing to assist in this regard.

**6.1.4 J England, 34 May Street**

Ms England raised the following issues in regard to the development of this site:

- The loss of the iconic view of the Royal George
- The impact on the local community
- The loss of the heritage value of the site (many European cities have 5-7 storey height limits to preserve heritage buildings and maintain their appeal and attractiveness to visitors)
- The effects on infrastructure
- The impact of overflow parking and increased parking demand on residential streets
- Access difficulties – a flow on effect to other streets in the Town
- The effect of traffic noise bouncing off buildings

**6.1.5 G Hawks, 85 Duke Street**

Ms Hawks advised the issue of the sale price had been raised in Parliament, and the response provided stated the property was sold to the developer as they had the necessary finances to restore the building in accordance with the Restoration Plan.

## 7. REPORT

### 7.1 Complex Amendment No. 15 to Local Planning Scheme No. 3 to Supplement Special Zone - Royal George Hotel Provisions – Consideration of Schedule of Modifications (as directed by Minister for Planning) and Schedule of Submissions

<b>Owner</b>	34 Duke Street P/L (Saracen Properties)
<b>Applicant</b>	Town of East Fremantle
<b>File ref</b>	TPS3A15; P/DUK34
<b>Prepared by</b>	Christine Catchpole, Senior Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting Date:</b>	7 August 2019
<b>Voting requirements:</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Location Plan</li><li>2. Amendment No. 15 – Schedule of Modifications</li><li>3. Schedule of Submissions</li><li>4. Proposed Modifications to Schedule of Modifications (tracked changes)</li><li>5. Amendment No. 15 - Timeline of Events</li><li>6. Summary of Key Planning Issues resulting from the Schedule of Modifications</li></ol>

#### **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 readvertising) for complex Amendment No. 15 – Royal George Hotel site at No. 34 Duke Street, East Fremantle.

#### **Executive Summary**

In 2017 the State Government, subject to a Heritage Agreement, sold the Royal George Hotel site to a private land owner, Saracen Properties Pty Ltd (Saracens). At the time the Town was advised that the *Conservation Management Strategy* (Annexure to the Heritage Agreement) and the contract of sale would not contain development controls for the vacant rear portion of the site.

In June 2017, Council initiated Amendment No. 15 to Local Planning Scheme No. 3 (LPS 3) to include additional development standards for this important site. In June 2018 the Council resolved to support the Amendment with modifications. The Amendment considered the site's location and physical development constraints, its heritage value and context, and the character and amenity of the surrounding area. In summary, it limited redevelopment to a non-variable maximum height which equated to 6 storeys (including basement car parking), applied non-variable setbacks, ensured restoration of the Hotel, considered traffic and parking implications, residential development standards and protected residential amenity.

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 to the Special Zone objectives, building height and setbacks, plot ratio, residential development requirements, parking requirements and heritage controls. These changes were then endorsed by the WAPC and forwarded to the Minister for Planning who directed that the Amendment be further modified and 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. 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 233 submissions were received of which 216 submitters overwhelmingly rejected the Schedule of Modifications (as modified by the Minister) and were in support of the Council's Amendment (6 storey height limit). Sixteen (16) submissions supported the Minister's modifications. The majority of submissions expressed concern that no Hotel restoration work had been commenced and the Legal Agreement to date had not been honoured.

Although there are concerns with a number of the modifications, the Town is predominantly concerned with the seven storey building height provision. The Town understood the Minister's modifications to be in response to the Council's and community's concerns with the proposed 21 storey apartment tower and its negative impact on heritage, amenity and orderly and proper planning. However, on closer examination of the drafting of the clause, in conjunction with the application of the new State Planning Policy 7.3 - R-Codes – Volume 2 - Apartments, it is clear that the clause specifying height (and referring to natural ground level) can be varied by a decision-maker, thereby enabling building height to exceed what the community would reasonably expect to be aligned with seven storeys but also, and more significantly, for the 7 storey limit to be exceeded. If the Minister were to support the modifications in their current form the potential impact of a building height exceeding seven storeys would not become apparent until a development approval application was lodged. Given the current wording of the building height and other clauses, the Town has reached the conclusion that it cannot support the modified Amendment in its current form. The aim of Council's Amendment was to incorporate built form development standards that would define a building envelope which would provide certainty and clarity to all stakeholders. In the Town's opinion this cannot be balanced with the flexibility of the wording of the current provisions.

It is therefore recommended the Council supports the Schedule of Modifications (as advertised) subject to the further modifications outlined in the Officer's Report and in Attachment 4. The Minister's modifications are considered supportable on the basis that further amendments are made to the building height clause that will ensure the scale and height of the development is not open to variation and addresses the heritage and planning considerations. It is recommended that a maximum height control be introduced which reflects the Minister's wish to cap the height at seven storeys but still allows for generous four metre floor to ceiling heights (i.e. 43.0m AHD). This allows for a building of seven levels, including parking level(s) which will be approximately 1.0m higher than the top of the spire of the Hotel (~AHD 42.04m).

It is also recommended that the significant concerns Council has with the specific provisions as discussed in the body of the Report be forwarded to the Department of Planning, the WAPC and the Minister so they are fully informed of the Council's concerns prior to the Amendment being finalised. In particular, and of foremost concern, is that consideration be given to a specific maximum non-variable building height limit, so that the height of a building is fixed in relation to the Hotel and cannot be changed by any provision of the Planning Scheme or any other mechanism. Other provisions relating to plot ratio, building setbacks, vehicle parking, residential development, Special Zone objectives and heritage are also recommended to be amended or reintroduced. 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.

### **Background**

The following is a summary of the background in relation to Amendment No. 15. Full background details are available in the Council Minutes dated 7 June 2017 (SPCM Minutes 070617) and 6 June 2018 (SPCM Minutes 06072018).

The Royal George Hotel site is a 1,499m<sup>2</sup> triangular shaped lot located within the Town's historic Plympton Precinct (refer to Attachment 1). The Hotel site is on the State Heritage Register and was sold by the State of WA in June 2017 to 34 Duke Street P/L (Saracen Properties P/L). The sale of the land was subject to a *Heritage Agreement* and a *Conservation Management Strategy* which are part of the contract of sale. The *Heritage Agreement* is available for public viewing on the *inHerit* website. The Agreement is a binding legal document between the Heritage Council of WA and the owner. It specifies that restoration works undertaken on the Hotel are to be completed within three years of the effective date (i.e. June 2020) with some of the more urgent works requiring completion before then. The Hotel is to be restored before any development at the rear of the site can be subdivided. A caveat on the title prevents strata titling and subsequent selling of any apartments until the State lifts the caveat.

A detailed timeline of events can be read in Attachment 5.

### **Details**

#### Schedule of Modifications

Following Council adoption of Amendment No. 15 in June 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;
- Members of State and Federal Parliament;
- Chair of the Heritage Council;
- CEO of the State Heritage Office and heritage officers;
- Director General of the Department of Planning; Lands and Heritage;
- Senior State Planning staff ;
- Chair of the Western Australian Planning Commission;
- Senior advisors to the Minister for Planning; and
- Chief Planning Advisor to the Director General of Planning.

The aim of the meetings was to outline the basis and importance of the Scheme Amendment in relation to orderly and proper planning for the site and to seek support for the Amendment in the form adopted by Council. The Town has also liaised with community members and organisations who expressed an interest in voicing their support for the Council's Amendment.

Amendment No. 15 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 depositions 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, the Minister accepted the Schedule of Modifications (as proposed by the Department of Planning) and then directed further modifications be made in consultation with Department of Planning Officers and her advisors.

The Town believes that the Minister's modifications significantly increased the redevelopment potential of the site which is contrary to the objective of the Council endorsed Amendment. The Minister's modifications provide the leeway for the built form outcome of the site to be greater than the Council endorsed development controls. This is primarily because the building height and plot ratio clauses, as adopted by Council, have been significantly changed. It was for this reason and because many of the Council's provisions were deleted that the Amendment was readvertised. The principal reason being that the Minister had made a public announcement that *'the maximum height of development within the zone is not permitted to exceed seven storeys above natural ground level measured at the lowest point of the Lot 303 boundary fronting Duke Street'*. In particular, the Minister and the Department of Planning staff wanted to seek community feedback on the changes to the building height clause.

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 and the community considered appropriate for the site. The development capacity of the site is extremely constrained and overdevelopment of the site will have implications for the orderly and proper planning of the Hotel and wider heritage area. Any increase in building height and scale and the consequent increase in traffic and parking will have immediate negative heritage, visual and amenity impacts that cannot be mitigated. Secondly, the Town is of the view that changes to the clauses allowing greater discretionary powers and scope to vary provisions will give rise to concerns because the community has no certainty in regard to the development potential of the site and because they are misleading; the intent being to provide the decision maker with the power to approve a building of greater than seven storeys. The end result being the potential for the site to be developed for more dwellings and to a greater height and bulk than the Council had advocated on behalf of the community and that which was committed to by the Minister in her press release.

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) which replaced Part 6 of the R-Codes (multiple dwellings) and 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 being developed at the rear of the Hotel.

The application of the new R-Codes for apartments allows for 'natural ground level' to be altered. This combined with no definitive height in metres being assigned to a seven storey building (as per the Minister's modifications) means there is no absolute way of determining the overall maximum height of a building in and of itself, or in relation to the Hotel. The overriding concern, however is that the modified building height clause does not dis-apply the 'variations to site and development standards and requirements' clause (i.e. cl. 5.6.1) in the Town's Planning Scheme, as is the case with cl. 5.9.7.3 in regard to plot ratio. 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. The point that natural ground level can be altered is contrary to correspondence from Department of Planning staff (email dated 30 November 2018) that confirmed that natural ground level was to be taken from the lowest point on the Duke Street boundary.

In addition, a number of words which are not defined in the current R-Codes are now defined under the new apartment R-Codes. The following words and expressions: basement; mezzanine; loft; mansard roof and natural ground level have relevance in respect to the provisions in the modifications. 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 consequence of this will be discussed later in this Report when clauses related to height and additional height are discussed.

### **Consultation**

In December 2018 the WAPC advised that it had considered Amendment No. 15 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 involving the required statutory advertising notices, a number of conventional and social media forums, the Town's website and eNews, signs on the site, as well as individual correspondence being sent to all landowners in the Town which included 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 they were provided with the modifications for 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 233 submissions have been received in response to advertising the Schedule of Modifications. Overall 216 objections to the modifications were received, with 16 in support (4 conditional support and 1 unrelated submission). Twenty one (21) submissions were joint submissions, listing two names but made on the one submission form. This accounts for a further 17 people objecting and 4 supporting the modifications.

The submissions objecting can be classified as follows:

- 129 objecting to modifications and supporting Council's Amendment without qualification.
- 87 conditional objection to modifications. The conditions covering a variety of factors related to maximum building height, amenity and parking.
- 76 of the conditional objection submissions supported Council's Amendment and were categorised as conditional because they did not object to the 7 storeys building height cap (Minister's modification). However, in all other respects the submissions supported the

remainder of the Council's planning controls and noted they should be reinstated. The submissions also stated that:

- building height to be capped and specified in metres above AHD;
- the Royal George Hotel to be restored without further delay; and
- the Heritage Agreement conservation requirements to be enforced.

**Note:** the submitters who supported the Minister's modification to seven storeys were not aware of the new SPP 7.3 - R-Codes – Apartments document and the interpretation of seven storeys, in terms of overall height, under the provisions of the new R-Codes. It is fair to say that their likely interpretation of seven storeys was 3.5 metres/storey (i.e. ~1 storey higher than the 6 storeys capped height measured in metres above AHD (sea level), as proposed by Council. The Town did not have the information to hand before the commencement of the advertising period and therefore could not provide the information to the community so the broader implications of the new R-Codes could be understood. This will be discussed in more detail in the 'Comment' section of this Report but suffice to say that it is likely there would have been less support for the Minister's proposal of seven storeys if the full impact of the new R-Codes was understood.

It must also be noted that a small number of the submissions did not support the Council's endorsed Amendment as a lower height building was considered more appropriate. These submissions have been included in the overall total of submissions not in support of the Minister's modifications. The following comments were made:

- Only a lower scale building of less than 6 storeys should be developed; and/or
- No development should occur at the rear of the Hotel. This area of land should remain vacant.

The 16 submissions in support of the modifications were primarily based on:

- achieving urban infill which will contribute to the Town's dwelling targets and decreases the rate of urban sprawl;
- additional development on the site will address sustainability and environmental issues;
- a taller building is a more acceptable design/architectural outcome;
- redevelopment as proposed provides economic incentive for Hotel restoration work; and
- satisfaction with the Minister's decision.

#### Heritage Council

The Heritage Council of WA made the following comments:

*"The Heritage Council resolved to advise the Town of East Fremantle that the proposed scheme amendment has been considered in the context of the Royal George Hotel and the following advice is given:*

#### **Findings**

1. *The Royal George Hotel is a notable landmark and an important townscape element, particularly in the George Street historic precinct.*
2. *The proposed revised amendment responds well to the recommendations contained in the Heritage Council's previous advice of July 2017.*

#### **Advice**

*The revised proposed Scheme Amendment No. 15 for the Royal George Hotel site is supported; however, the Heritage Council would like to advise that while there is no specific*

---

*objection to stating a building height limit of seven storeys, it will consider any development proposal for its overall impact on heritage values of the Royal George Hotel, with building height being just one of the factors that will be assessed.”*

Service Authority comments

Most service authorities requested for their comments have responded. Generally there are 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.

Submission – Themes

The submissions received overwhelmingly reject the Minister’s modifications. A large majority of submissions (93%) clearly support the Town’s Amendment as adopted in June 2018. Even those submissions that favoured the Minister’s seven storey proposal did so on the basis that the six storeys proposed by Council was to be replaced by a seven storey height control with the height cap remaining in place and the height of the storey being that of a conventional 3.5 metres.

The community also noted that restoration of the Hotel should not come at any cost and certainly not at the cost of significant loss of amenity to the area resulting from over development of the site with intensified activity and more so a detrimental impact on the heritage elements of the precinct. Development controls for the rear of the site have to be determined with the outcome being fair and equitable for the surrounding residents.

Hand in hand with these concerns is the degree to which the unique heritage value and intactness of the precinct is held in very high regard. By far the majority of residents do not want the encroachment of a multi-storey apartment building in the precinct or the Town. They have very clearly expressed the concern that the physical scale of any building above the height of the Hotel is not compatible with the Precinct or the Town Centre and will not enhance or protect the elements that contribute to its historic and architectural significance. These sentiments are very clear in the majority of the submissions.

The other overwhelming concern expressed in the submissions is the lack of progress in relation to restoration of the Hotel. The submissions make it very clear the community is aware that the terms of the Heritage Agreement required works to be completed by June 2020 and that priority restoration items and building works noted in the *Conservation Management Plan* which were required to be completed within certain timeframes have not been commenced.

Response to Submissions

Each submission (Form 4) has been reviewed and entered in the Schedule of Submissions (below). The Recommendation in response to each submission is classified as either supported in part, supported, 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 below.

Four basic responses to the submissions have been provided. Three responses provide a general response to the issues and comments noted in the submissions and one other notes or acknowledges submissions that are not relevant to the planning considerations of the Amendment. 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. 15.

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 and heritage conservation. 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 modified development controls. The height of seven storeys (variable and no maximum upper height limit) and plot ratio of 2.0:1 was not supported, neither was the deletion of other planning controls. The support for the Council's Amendment indicates community support for a capped building height with no power to vary the height control. In response the proposed modifications focus on introducing a capped building height control, reducing plot ratio and reinstating provisions relating to vehicle parking, residential development and heritage conservation with some minor wording changes to the Special Zone objectives. This is discussed in detail in the 'Comment' section of the Report.

#### **Statutory Environment**

*Planning and Development Act 2005*

*Heritage Act 2018*

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

*Local Planning Scheme No. 3 (LPS No. 3)*

*State Heritage List – Permanent Entry (30.10.1998)*

*Classified by the National Trust (5.12.2005)*

*LPS No. 3 – Heritage List – Category A*

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

#### **Policy Implications**

*Draft Local Planning Strategy 2016*

*Municipal Inventory 2015 – Category A*

#### **Financial Implications**

Nil

#### **Strategic Implications**

The Council's adopted Amendment (Council meeting resolution 6 June 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 important heritage site with additional dwellings and commercial floor space commensurate with a mixed use area. This will contribute to the economic development of the George Street mixed use area 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)	COMPLIANCE Non-compliance results in litigation, criminal charges or significant damages or penalties	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	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 - 2017/18.

#### 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.

#### Comments

A summary of the key planning issues resulting from the Schedule of Modifications is provided in Attachment 6.

Amendment No. 15 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 further modified 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 Minister's modifications it was the Town's understanding that the changes to the Amendment were a direct response to the Council's and community's concerns with the proposed 21 storey apartment tower which was publicly advertised by Saracen throughout the Amendment process. However, 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 the clause specifying height (and referring to natural ground level) can be varied by a

decision maker, thereby enabling building height to exceed what the community would reasonably expect to be aligned with seven storeys but also, and more significantly, for the seven storey limit to be exceeded because a plot ratio of 2.0:1 is capable of being approved.

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 wrote to Minister Saffioti on 3 May 2019 requesting she clarify her position as to why a non-variable maximum height limit was not applied and why a decision-maker would have wide-ranging scope in terms of ability to vary building height beyond seven storeys. The Town then met with Minister Saffioti on 11 June 2019. The outcome of the meeting was not clear and the Minister has not provided a formal written response to the Town's concerns. However, the Minister indicated she is considering the issues and will take into account the submissions and the advice of the Town and the WAPC in respect to building height in her final considerations.

The Town's view is that the Minister's standpoint is fundamental to informing the Council's decision making process and recommendations in respect to the modifications and on that point it requested the Minister provide a formal response to matters raised in the correspondence of 3 May 2019 as the modifications directed by the Minister seemingly do not reflect her public announcement about capping the building height at seven storeys. At the time of writing the Report no response has been received.

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 seven storeys would not become apparent until a development approval application was lodged. 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.

More recently the Town has been granted an extension of time in which the Council has to make a resolution regarding the Schedule of Modifications and the submissions. Due to the complexities in the technical drafting of the Amendment provisions and the issues that have emerged regarding the Minister's response to height control the amended deadline was extended until 9 August 2019.

#### Schedule of Modifications

The Town's primary concerns with the Minister's modifications relate to the ambiguous and open-ended nature of the building height clause and related clauses. The clause, as it is currently drafted, simply does not provide any certainty that a building will be capped at seven storeys. There are also a number of other clauses relating to plot ratio, vehicle parking and residential development which would perhaps leave the Amendment open to misinterpretation or misuse in respect to those planning controls for the vacant land and the site as a whole. It is the Town's view that the Amendment in this form will lead to a development outcome that is not aligned with the community's expectations or understanding of the redevelopment outcome for the site. Neither is it aligned with the Minister's statement that she has responded to the community's concern regarding the owner's plans for development of the site. The Town believes that the

---

Schedule of Modifications will not result in orderly and proper planning and will have undesirable heritage, amenity and streetscape outcomes.

The specific concerns regarding the modifications are supported by the large majority of submissions which demonstrate collective support for the Council endorsed Amendment. However, it is important to acknowledge 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 the building height clause and is further complicated by 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.

The building height and plot ratio clauses are the primary focus of concern because the modified plot ratio, albeit controlled with a non-variable upper limit, is considered too substantial given building height as it currently stands is not capped. Based on the owner's detailed plans (multi-storey tower on car park podium), with height unimpeded and a plot ratio of 2.0:1 development of the site has the potential to reach a height of ~16 storeys. At a plot ratio of 1.5:1 a building has the potential to reach a height of ~9 storeys. There is one other modified clause and two deleted clauses which also give rise to concerns; these are the vehicle parking, residential development and heritage clauses. The Town is also concerned with the wording of some of the general development control clauses and the Special Zone objectives. This involves minor changes to the text in respect to the language used but will result in a different interpretation and application of the clause, providing more clarity and strength in terms of the intent. These matters are discussed in detail in the 'Comment' section of the Report.

The majority of the submissions received in respect to the advertised modifications have not altered from the views expressed in the original advertising period. These views align with the Town's concerns regarding controlling height and scale for the purpose of preserving the significant heritage values of the Hotel and its status as a landmark building in this historic precinct. The two issues go hand in hand on this very constrained site and this point is further elaborated in the discussion on heritage and orderly and proper planning considerations to follow.

The modifications to the Amendment as directed by the Minister do not address these issues satisfactorily and the 217 submissions which have objected to the modifications have reinforced the Town's concerns. Therefore, it is not recommended the Council support the Schedule of Modifications (as advertised) by the Minister but that the Council endorse further modifications as outlined in Schedule 4 and discussed in the 'Comment' section of the Report.

#### Heritage Considerations

The heritage elements of the Plympton Precinct have been fundamental in the formulation of development controls for the Royal George Hotel site. An overview of the important elements and characteristics which define the precinct and the Hotel site is provided below. It forms the basis of the reasoning underpinning the Town's argument for requiring further modifications to reintroduce a non-variable capped building height and respecting the heritage streetscape.

George Street is central to the Plympton Precinct area and effectively reflects the surrounding streets in both character and scale. It also provides an attractive streetscape with good public amenity. Both the workers' cottages which surround George Street and the small scale and modest commercial buildings are features which contribute towards creating a very intimate

relationship with this street. The corner buildings are particularly important to George Street. They act as mediation between the commercial strip and the historic residential streets and provide a connectivity for residents and visitors to the area and a link to a past way of life.

The eastern end of the George Street is well defined by the Stirling Highway reservation and two prominent buildings on the north and south corners of Duke Street, these being the Royal George Hotel and the newly restored and developed Brush Factory site. The Royal George Hotel is a notable landmark in the Town and Fremantle region and a very important townscape element in the heritage precinct. It is a significant and representative example of a Western Australian gold boom hotel with much of its original form and fabric intact. The tower and cupola structure is an increasingly rare example of a landmark element still in its original form and in itself forms an important landmark element visible from many parts of the Town and on approach to the Town Centre.

The now completed refurbishment of the four level Brush Factory is an integral part of the George Street heritage area with exceptional aesthetic value as a good restrained example of the Federation Free Classical style commercial building. It was part of the suburban residential development associated with the expansion of East Fremantle during the Goldrush period of the 1880s and 1890s and of the Town Centre, so its importance in reflecting the past and in representing a period in WA's history and development cannot be overstated.

Buildings and places between the west and east end landmarks of the George Street heritage area predominantly comprise of a mix of one and two storey commercial, residential and mixed use buildings together with a small local park and the odd three storey development. Overall the George Street streetscape possesses a high level of visual coherence as do the residential streets running perpendicular to George Street.

The most significant part of George Street extends from Hubble Street to Duke Street. This location is, in effect, the beginning and main arrival point, of that part of the street and, therefore, is the first point at which the character of the George Street precinct is fully apparent. The view shed from this point is particularly important in experiencing the perception and identity of the area as a remnant example of a previous era.

For over 100 years the perception of the Town and the locality as a historic suburb within a well-vegetated suburban backdrop has been maintained. Views and vistas from many vantage points are very important to the overall heritage character of the locality and should not be diminished, neither should the Royal George Hotel as an important building and place in its own right.

A building height control as proposed would allow a multi-storey building to become the central element of the vista, relegating the heritage buildings to a secondary role in the vista and diminishing their value as contributors to East Fremantle's unique sense of place. A development which dominates the skyline would be completely out of context with any of its surroundings.

#### Orderly and Proper Planning Considerations

A building which would exceed the height of the Hotel on such a small building footprint (less than 750m<sup>2</sup> of land area in a triangle shape) is considered to be of a height and scale that is irreconcilable with its context and location and not justifiable other than to provide an increased number of apartments with views that cannot be obtained from a building of a lesser height.

Any further development of the site should result in a total and integrated redevelopment which complements and respects the Royal George Hotel and does not detract from the building or the surrounding area. Development on the site must integrate as seamlessly as possible (in all aspects of operation, parking and land use) with the surrounding established residential area and be able to adequately address the considerable constraints pertaining to this site. It is therefore considered imperative that the decision maker does not have the discretion to approve a development which does not meet the high standards of planning and design required by the Town and expected by the community for a development outcome suitable to this site, the heritage building and the historic Plympton Precinct. The character and appeal of the area that has been preserved by the Town must be maintained, especially as it relates to this landmark building. Overdevelopment which would result in excessive traffic and parking with access and servicing issues will not be contained to the site but has the potential to greatly impact the remainder of the precinct because of the limited vehicular access to this neighbourhood.

It has been argued by some that the rear of the site should not be redeveloped but should be made available for parking for use by the Hotel tenants. In previous Officer reports it has been stated that a more realistic approach is to reach an acceptable compromise between: a building height that achieves the restoration of the Hotel; the activation of the eastern end of George Street; the community's expectations for redevelopment; an opportunity to provide some additional dwellings in the Town with a built form outcome that is not incompatible with the location and is not simply a set of planning controls for the site alone which stand in isolation from the planning issues and the controls which apply to the surrounding area.

The argument that a slender tall building of substantial height is a better design outcome is not considered to be a convincing argument in that a building of any significant height above the Hotel is viewed as being out of character and scale with all that surrounds it. The Town does not have any large scale industrial or commercial buildings and does not have an Activity Centre that overtime might be developed with buildings of any substantial height. It is the Town's view there is no rational argument that would support development controls which would permit a building to well exceed the height of the Hotel and any other building in the Fremantle region.

There is no precedence for a multi-storey building of the height that could be achieved with a plot ratio of 2:1 anywhere in the metropolitan area that is not within 5kms of the CBD and also within walking distance of a major transport interchange. The height, density and building form proposed with the modifications is out of context in relation to the State Planning Framework (*Perth and Perth @3.5M*). This site is not located in a station precinct, Metronet Station or Activity Centre. It is not even classified as a neighbourhood centre which is the classification given to the East Fremantle Town Centre. Implementation Action - Table 3 of the *Central Sub-regional Planning Framework* states: *'Ensure that attractive character and heritage values within the suburbs are retained and minimise changes to the existing urban fabric'* – a multi-storey building would be totally out of character with the most precious heritage area of the Town and arguably a heritage area unique in the Perth metropolitan area which is immediately adjacent to the site.

The proposed modifications to the Schedule of Modifications in restricting building height and lowering plot ratio and thereby the development potential are considered to align with the built form and residential scale of development. The negative impact that a development which has the potential to introduce significantly more activity, vehicles and traffic to the area would be contrary to the orderly and proper planning of the locality. The Town supports the residents' viewpoint that refurbishment of the Hotel should not come at the cost of significant loss of amenity resulting from the development of a high-rise building with intensified activity.

Therefore the argument that additional apartments are justified and required to fund the restoration of the Hotel is not considered valid.

In light of the above discussion the following proposed changes to the Schedule of Modifications is recommended.

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

The proposed changes to various clauses are discussed below under the relevant sub-headings. The Minister's modifications are noted in italics and the recommended modifications to the Minister's modified Amendment are indicated in bold italics with changes to the text or additional text highlighted in red following discussion on the reasons for the modifications.

Special Zone – Royal George Hotel Objectives

The Town is supportive of the approach taken in introducing a set of specific objectives which apply to the Special Zone in addition to those already included in the Scheme Text objectives for the Royal George Hotel site. However, the link between the plot ratio permitted and satisfaction of the objectives is not considered legally strong in the Town's opinion. It is therefore considered necessary to recommend changes to various clauses that are linked to satisfying the objectives to ensure that *all* objectives are considered and given equal consideration in the assessment of plot ratio allocation.

Clause 4.2 of LPS 3 - Additional points below existing zone objectives

*"A mixed use development on the northern portion of the site together with the restoration of the existing Royal George Hotel building is considered an appropriate use of the site."*

Due to concerns relating to overdevelopment of the site a purely residential development rather than a mixed use development is likely to be preferred by the Town, particularly if this reduces the car parking, traffic and access burden on the site overall and more so if the Hotel is to be used for a variety of other purposes. However, the Minister's additional objective for the Special Zone specifies a mixed use development. What is more, clause 5.9.7.4 provides that the maximum plot ratio of 2.0:1 is only available where all zone objectives are satisfied. Since one of the zone objectives would become the requirement for a mixed use development on the northern portion of the site, the ability to access the maximum 2.0:1 plot ratio would be dependent on the northern portion of the site being proposed for mixed use if the decision maker were to strictly adhere to the wording of the clause.

Following on from the above point the requirement to achieve satisfaction of all zoning objectives, is considered a 'standard or requirement' that is capable of being relaxed under LPS 3 cl. 5.6 or Deemed Provision clause 12. The working position of the Town with regard to the possible relaxation of the 'mixed use' objective, would be that a decision maker would require a very strong argument that the objective should be disregarded or varied. This is a point which may not be in the best interests of the overall and long term planning for the site. In this case it is likely a purely residential development will be considered more desirable, so from the Town's perspective the mixed-use objective should be amended, particularly if the Minister determines that the other development standards remain variable and that results in further development potential.

It is therefore recommended that this additional point under the zone objectives should be modified to allow for solely residential development to occur on the northern portion of the site. The recommended modified wording is stated below:

**Special Zone – Royal George Hotel Objectives**

***A mixed use development on the ~~northern portion of the~~ site (Lot 303) together with the restoration of the existing Royal George Hotel building is considered an appropriate use of the site.***

A number of other changes to wording are minor in nature in regarding changes to the text but are significant in terms of interpretation and intent in respect to the intent of the Amendment as a whole. The following changes are recommended to be made to the Special Zone objectives.

The first is to objective (a) to include the words Plympton Precinct and George Street designated heritage area to encompass the wider local precinct area and the George Street heritage area as listed in LPS 3. These areas and heritage places must be considered in the consideration of architecture and urban design not just the Hotel in isolation of the Plympton neighbourhood and the ‘main street’ of the Precinct.

***(i) Provide high quality, contemporary architecture and urban design that responds to and enhances the heritage value of the existing Royal George Hotel and the wider Plympton Precinct and George Street designated heritage area, in interpreting rather than replicating existing features.***

The change to cl. 5.9.3 is to introduce the word “all” to emphasize that no objective is to be disregarded in the consideration of design or plot ratio.

***Cl. 5.9.3***

***In assessing any application for development within the zone, the decision maker and State Design Review Panel shall have due regard to **all** the zone objectives provided in Section 4.2 of the scheme.***

The change to cl. 5.9.2 is to correct a typographical error.

***5.9.4***

***When considering **with** a development application on which advice has been provided by the State Design Review Panel the decision-maker shall have due regard to that advice.***

**Plot Ratio – cl. 5.9.7.4**

***“Development up to the maximum plot ratio permitted on the site shall only be approved where the decision maker, having due regard to the advice of the State Design Review Panel, is satisfied the development meets all the objectives of the Special Zone - Royal George Hotel.”***

Although a plot ratio of greater than 2.0:1 is incapable of being approved (see cl. 5.9.7.1 and cl. 5.9.7.3) the requirement to satisfy all zone objectives, before the maximum can be approved, is arguably capable of being relaxed. This was identified as a concern in the Town’s initial response to the modifications in September 2018 before the matter was considered by the SPC but it was not addressed in the Minister’s modifications. Neither was the issue of a base starting point for determining plot ratio. Cl. 5.9.7.4 refers only to a maximum and does not provide a base plot ratio if only some and not all of the objectives are considered to be satisfied. In theory, if none of the objectives were satisfied then how is the plot ratio determined. A base starting point has not been determined.

With the current wording of the plot ratio provision, the maximum plot ratio would be capable of

being approved even where not all the zone objectives are fulfilled; that outcome being achieved through the use of the variation of standards cl. 5.6 or Deemed Provision 12. Cl. 5.6 can be applied to vary any 'standard or requirement' imposed by the Planning Scheme. It is therefore considered necessary to introduce a clause stating that *no* zone objective is to be varied and that *all* zone objectives are to be satisfied to achieve the maximum plot ratio as it is highly likely that a developer will not seek anything lower than a plot ratio of 2:1.

Notwithstanding the above comments related to a 2:1 plot ratio it is also considered necessary to propose to reduce the maximum plot ratio from 2:1 to 1.5:1. The plot ratio proposed can only be developed at the rear of the site on approximately 750m<sup>2</sup> of vacant land. However, the plot ratio is to be calculated based on the total land area of 1,499m<sup>2</sup> and does not include the floor space of the Hotel, therefore the developable floor space is ~3,000m<sup>2</sup> over a 750m<sup>2</sup> site. Without a capped building height provision a maximum plot ratio of 2:1 provides enough floor space to allow for the construction of approximately 16 storeys where as a plot ratio of 1.5:1 will allow for the construction of an approximately 9 storey building (based on the developer's plans and drawings for a multi-storey tower which is proposed for the site). The owner's architect has reinforced this concern by stating in his submission that *"the maximum height of 7 storeys doesn't permit a development of anything near the maximum plot ratio of 2.0:1. Taking account of the mandatory onsite parking provisions, the maximum achievable plot ratio within the building envelope is 0.95:1. There is a mismatch between the perceived development potential (PR) and the limited height permitted on a very small triangular site."* The reduction of plot ratio is considered a necessary safeguard against the scenario of the WAPC and the Minister not being in agreement with the Town in capping building height and disapplying cl. 5.6 which allows a decision maker to vary the height. Whilst a nine storey building is not endorsed this amount of plot ratio would enable a development more aligned within the height parameters preferred by the Town and intended by the Minister. The relevant clause is therefore proposed to be amended accordingly.

Further to the above point the Town holds the view that a number of the objectives will not be achievable if a maximum plot ratio of 2:1 was approved for the site and there was no maximum height cap. Objectives which aim to mitigate visual impact, not obstruct views of the cupola, maintain primary views of the Hotel and locate car parking to minimise negative impacts to the public realm are not considered achievable with the potential for the site to be developed with minimal setbacks and a plot ratio of 2:1 (i.e. ~16 storeys). The amount of developable floor space resulting from a 2:1 plot ratio (with no height cap) would allow for the development of a multi-storey building with a much larger number of apartments and car bays. In that scenario a multi-storey building, would need to incorporate a podium car park and an overall development that is well beyond what would reasonably be expected to resemble a seven storey building. This is in sharp contrast to the Council's Amendment which clearly defined a building envelope which could not be varied by the decision maker and could accommodate an appropriate number of car bays for the site and restrained traffic into the area. Under the Council's Amendment a plot ratio control was not required as the developable floor space was controlled by the maximum height and building setbacks.

The following modifications to the plot ratio provisions (new text in red) are therefore recommended.

### Plot Ratio

#### 5.9.7.1

***The maximum plot ratio of development within the zone is not permitted to exceed ~~2.0:1~~ 1.5:1.***

**5.9.7.2**

***The maximum plot ratio excludes the floor space of the existing Royal George Hotel Building.***

**5.9.7.3**

***Development up to the maximum plot ratio permitted on the site shall only be approved where the decision maker, having due regard to the advice of the State Design Review Panel, is satisfied the development meets all the objectives, as stated in clause 4.2, of the Special Zone - Royal George Hotel.***

**5.9.7.4**

***Clause 4.2 (Special Zone – Royal George Hotel), clause 5.9.3, clause 5.9.7.1 and clause 5.9.7.3 are not open to any variation through any provision of this scheme or any other mechanism.***

***Building Height – cl. 5.9.7.5***

It appears from the Minister's public announcement in November 2018 that it was her intent to apply a maximum height of seven storeys. However, as noted above, on closer examination of the clause and in light of the release of SPP 7.3 – R-Codes – Apartments the Town is concerned about the degree of flexibility in relation to the development controls, both in the new R-Codes and the modified Amendment, and ultimately the greater degree of discretion available to the decision maker to vary height.

The overriding concern is that the modified building height clause does not dis-apply the 'variations to site and development standards and requirements' clause (i.e. cl. 5.6.1) in the Town's Planning Scheme, as is the case with cl. 5.9.7.3 in regard to plot ratio (refer to Attachment 2). In that clause it is specified that plot ratio is *not open to any variation under the Scheme or any other mechanism*.

The Town wrote to the Minister seeking clarification as to why the building height clause was modified enabling a decision maker to approve of a building greater than seven storeys; beyond what the community would reasonably expect to be seven storeys (including basement levels) and therefore exceed the height of the Hotel spire. If it was the Minister's intention to cap the height at seven storeys it is not clear to the Town why the same clause as applied to plot ratio was not applied or why it was not specified that building height (equivalent to seven storeys) not exceed a specified number of metres above AHD.

It appears the majority of the community hold the same view and have expressed the same uncertainty and concerns, based on the Ministerial announcement, that development would be limited to seven storeys. From the outset of the statutory advertising period, the community have understood the seven storey height provision to be the *maximum* height limit of a building. If the Minister were to support the modifications in their current form the potential impact of a building height exceeding seven storeys would be probable and significant and not become apparent until a development approval application was lodged and advertised to the community. This issue remains of concern from a community awareness and expectation perspective.

Given the current wording of the building height and other interconnected clauses which have an impact on building height the Town has reached the conclusion that it cannot support the modified Amendment in its current form. The purpose of the Council endorsed building height clause was to incorporate built form provisions into the Scheme that would define a building envelope to provide certainty and clarity to all stakeholders and in the Town's opinion this cannot be balanced with the flexibility and scope for building height to be increased in the current

drafting of the clause as proposed by the Minister. The reasoning behind the Council endorsed building height provisions has been discussed at length in previous reports and reiterated above.

The Amendment has been modified to allow for a building height that is not only higher than that endorsed by Council but which cannot be specified in metres. Therefore it cannot be determined how high a building on the vacant portion of the site might be in comparison to the Hotel. This is because building height, as specified in storeys is not adequately fixed at a given height or because other provisions in the Amendment and in LPS 3 allow for a decision maker to vary the development controls. An exact capped maximum height of a development is not specified.

The Town has identified significant issues that it believes calls for further examination and consideration by the Department of Planning and the Minister prior to reaching a final decision on the Amendment, particularly given the Minister's undertaking to cap the height at a maximum of seven storeys in response to the community's concerns.

The Council endorsed building height and setback clause was substantially modified to remove the Council's *Building Height and Setback Table* which specified specific building heights for each level of a building which corresponded to building setbacks for each level. The Minister's modified clause reads as follows and the Town's issues with the modified provisions are discussed below.

*"The maximum height of development within the zone is not permitted to exceed seven storeys above natural ground level measured at the lowest point of the Lot 303 boundary fronting Duke Street."*

In the Town's view the wording of this clause, in conjunction with other Scheme Text provisions (cl. 5.6 and Deemed Provision 12) and the SPP 7.3 – R-Codes – Apartments will give rise to the following matters which cannot be disregarded and which will influence the built form outcome of development of the rear of the site.

The matters are technical in nature but relevant to the assessment of a development approval application for a multi-storey building behind the Hotel which would be subject to assessment under the R-Codes. The following aspects of an R-Code based assessment will impact on the overall building height outcome.

Natural ground level – will be open to be approved by planning decision makers as being post site-works. In summary, site works can change the natural ground level and this change can be approved by a decision maker. It is therefore not a foregone conclusion that the natural ground level as it is today will be the starting point from which building height will be calculated. It is noted that this is contrary to correspondence from Department of Planning staff (email dated 30 November 2018) that confirmed that natural ground level was to be taken from the lowest point on the Duke Street boundary.

Basements – will not constitute a storey in their own right. In so far as they protrude above ground level, the counting of storeys will only commence for levels of the building above the basement.

The new SPP 7.3 R-Codes – Apartments defines 'storey' as *the portion of a building which is situated between the top of any floor and the top of the floor next above it and if there is no floor above it, that portion between the top of the floor and the ceiling above it but does not include:*

- a basement
- a space that contains only a lift shaft, stairway or meter room
- a mezzanine
- a loft

*Double height floors greater than 5m floor to ceiling are counted as two floors.*

*The definite exclusion of 'basement' from counting storeys is critical to the calculation of the overall height of a building. The new R-Codes definition of 'basement' is a building floor level in which 50% or more of its volume is below natural ground level. It is noted that the definition is based on 'volume' not on the basement protruding above ground level more than a stipulated height (as it was in the Council's Amendment). It is therefore plausible that part of a basement could be an indefinite height above natural ground level provided there is always a compensatory 50% of the volume below natural ground level. Basements do not have to contain parking, they may be used for other purposes such as storage. When this scenario is combined with the understanding that 'natural ground level' does not always mean the current levels of the site, the effective starting point for counting storeys could be an indefinite height or level.*

Storey – Individual storeys could be built, each up to five metres high. Therefore a developer who chooses to build a series of storeys with especially high ceilings, could produce a building of a height significantly in excess of what might normally be associated with a seven storey concept. If only for this reason, the clause is likely to produce a building of indefinite height. Only when a storey exceeds 5 metres is it counted as if it comprises two floors.

Mezzanine and loft levels – will not be counted as a separate storey. The fact that mezzanine levels are not counted as separate storeys in their own right is clear from the new R-Codes 'definition of 'storey' quoted above. 'Mezzanine' is defined as '*an intermediate floor between main floors of a building*'. It is easy to envisage various forms of mezzanine which might not be regarded as 'storeys' in their own right, particularly if there is a void to the room below, which is very common with mezzanine levels. Similarly, many forms of design for areas within or above a roof would not be counted as storeys. As emphasized by the Department of Planning the new R-Codes are designed to encourage imaginative and productive use of the area on top of roofs of apartment buildings. Furthermore, a 'loft' is excluded from being a 'storey' by the definition of 'storey'. A 'loft' is defined in the new R-Codes as '*Loft - a room or space within the roof space of a building.*' There is even a new design element introduced into the new R-Codes, Part 4.11 entitled 'Roof Design'. One of the 'Element Objectives' for Part 4.11 is:

*'Where possible, roof spaces are utilised to add open space, amenity, solar energy generation or other benefits to the development. With the 'design guidance' section of Part 4.11, 'concealed roofs' are encouraged, as are provision of private or communal open space, rooftop garden beds, landscaping, green moves, photovoltaic collector panels and other sustainability infrastructure.'*

Disputes about interpretation could conceivably arise as to whether a proposed space in a building comprises a 'loft' or whether it should be considered as a 'storey'. With regard to features within the roof structure or on top of the roof, again there is a range of variations, and it can be essentially a subjective and debatable matter as to whether a particular feature is a separate storey. Roof structures and their interpretation is another design element to which the above argument would apply. A mansard roof of up to 2.4 metres in height would not count as a storey in its own right.

With the new R-Codes the base building height almost solely refers to the concept of 'storey' rather than absolute heights in metres. The provisions relating to height are qualitative and open textured and refer to 'indicative' overall heights matching with number of storeys. If a proposal does not comply with the number of storeys then it is still capable of being approved with discretion if it complies with the more qualitative, open-textured 'Element Objectives' for building height. The new R-Codes provide 'planning guidance' for local governments in the 'Building Height' section which includes the following:

*"Building heights should typically be expressed in storeys to allow flexibility of design solutions at ground and roof levels, promote generous floor to ceiling heights and provide for future building adaptability."*

*This provides a relevant contextual background to the likely thinking underpinning the Minister's modifications and one that has been reiterated by the Minister's advisors in discussions with the Town's Planning Officers. The above demonstrates that the philosophy of the new R-Codes actually encourages flexibility of design, promotes generous floor to ceiling heights and promotes rooftop articulation. It is the Town's viewpoint that it is not unreasonable to say that the approach to height and assessment of compliance with building height under the new R-Codes may result in the maximum possible limit of building height being sought in this circumstance given the owner's desire to develop substantially more apartments on the site than the Town and the community believe is acceptable.*

These are important considerations in regard to the potential for building height to be varied and addresses the Town's initial concerns with the change to this provision and the greater degree of scope and power to vary the building height clause despite the reference to a cap of a maximum of seven storeys.

The Minister's modifications to the building height clause are therefore only considered supportable on the basis that further amendments are made to the clause that will ensure the scale and height of the development is not open to variation addresses the heritage and planning considerations discussed earlier in the Report.

The argument that flexibility with regard to building height will result in a better design outcome because a taller slender tall building will be the best design outcome is not considered to be a convincing or compelling argument for no maximum upper limit control over height. There are many fine examples of smaller buildings of three and four storeys that are of outstanding architectural merit and complement heritage buildings and streetscapes in terms of scale and design. A tall slender building would only seem to serve the purpose of allowing greater development potential for the site. Once a building exceeds the height of the Hotel then the importance of the Hotel as a landmark has been compromised.

It is therefore recommended that a maximum height control be introduced which reflects the Minister's wish to cap the height at seven storeys but still allows for generous four metre floor to ceiling heights (i.e. 43.0m AHD). This allows for a building of seven levels, including parking level(s) which will be approximately 1.0m higher than the top of the spire of the Hotel (~AHD 42.04m). It is also proposed that all rooftop structures and services will be required to be contained within this height limit so they do not dominate the skyline at or above the height of the Hotel cupola and spire. It is considered the building height must be non-variable to protect the important heritage and built form elements of this important landmark corner site and the Precinct. This is considered a significant compromise as this is a 7.0m height increase on Council's

height control and does not support the majority of the submitters who wanted the height control to remain capped at 36.0 metres AHD (top of the cupola is 36.13m AHD). To ensure the building height cap is not capable of variation by a decision maker it is considered necessary to introduce a clause which disallows cl. 5.6 of LPS 3 or any other mechanism of the Scheme or otherwise as a separate provision to be reinstated in the Amendment. Due to the impacts of the new R-Codes it is also considered necessary to specify in the Scheme Text a starting point for the calculation of building height. This is confirming in words in the Scheme Text the Minister's intent for the building height to be calculated from the lowest point of the Duke Street lot boundary.

As a consequence of the above comments and to address the above issues and the concerns raised by the majority of submitters the following recommended modifications to building height and setbacks (amendments highlighted in red text) are deemed necessary by the Town.

**Building Height and Setbacks**

**Cl. 5.9.7.5**

*(i) The maximum height of development within the zone is not permitted to exceed seven storeys above natural ground level measured at the lowest point of the Lot 303 boundary fronting Duke Street and in any event shall not be permitted to exceed 43.0 metres AHD or seven storeys whichever is the lesser.*

*(ii) No part of the building, any external services, solar collectors, air conditioning units, mechanical plant rooms, lift overruns, antennae and communication masts or the like shall exceed the maximum heights specified in 5.9.7.5 (i). These fixtures must be screened from public view to the satisfaction of the decision maker.*

**Cl. 5.9.7.6**

*Clause 5.9.7.5 (i) and (ii) are not open to any variation through any provision of this Scheme or any other mechanism.*

*Note: For the purpose of clause 5.9.7.5 the lowest point on Duke Street is recorded as 15.0 metres AHD. This AHD level is to be used for the purpose of calculating the height of a building regardless of any approved or unapproved change to the natural ground level on the site.*

**Cl. 5.9.7.7**

*Development up to the eaves height of the existing Royal George Hotel building may have a nil setback to all boundaries.*

**Cl. 5.9.7.8**

*Notwithstanding Clause ~~5.9.7.6~~ 5.9.7.7 development shall be sufficiently setback from the existing Royal George Hotel building to the satisfaction of the decision maker in consultation with the Heritage Council of WA and having regard to the advice of the State Design Review Panel.*

**Cl. 5.9.7.9**

*Development, including balconies and other projections above the eaves height of the existing Royal George Hotel building is to be set back from the Duke Street boundary and the Royal George Hotel building, and located to maintain primary views from the immediate and surrounding locality to the Royal George Hotel building, including its cupola.*

**Cl. 5.9.7.10**

***In considering the height and setbacks of proposed development, the decision maker shall have due regard to the advice of the State Design Review Panel and all the objectives of the Special Zone – Royal George Hotel.***

**Vehicle parking – cl. 5.9.7.10 and cl. 5.9.7.11**

*The Schedule of Modifications resulted in a number of clauses regarding vehicle parking being deleted from the Council endorsed Amendment. As far as the Town is concerned this is not satisfactory as parking is one of, if not the most significant issue in this precinct and there should be no ambiguity in regard to the controls which apply to parking for various uses or in their interpretation. As the wording of the clauses now stand the Town considers this not to be the case.*

The Minister's wording of cl. 5.9.7.10 would impose the Planning Scheme's 'Commercial Zone' parking requirements in respect of non-residential development and cl. 5.9.7.11 provides that the decision maker may consider reducing car parking requirements otherwise applicable, by a maximum of 20% where certain criteria are satisfied.

There is no proposed clause under the Minister's modifications, which specifically applies any particular parking standards to the residential component of development in the Special Zone. The Town's Amendment, on the other hand, provided in cl. 5.9.9.5 (iii) *that parking for residential development shall be provided in accordance with State Planning Policy 3.1 - Residential Design Codes*. It seems likely that the Minister's modifications, assumed that the new R-Codes would apply to the residential development within the Special Zone, and that this did not need to be overtly stated in the provisions. However, in SPP 7.3 the clause entitled '*Application of Volume 2 of the Residential Design Codes*', reads as follows:

'Volume 2 of State Planning Policy 7.3 Residential Design Codes - Apartments applies to the development of multiple dwellings in areas coded R40 and above (including the dwelling components of mixed use development and activity centres).

For multiple dwelling developments in areas coded below R40, refer to Volume 1 of the R-Codes.'

In the Town's opinion the 'Special Zone - Royal George Hotel' is not classified as an area coded R40 or above. The site does not have an R-Code density designation and is not zoned residential. Therefore, a developer could argue that the planning provisions of the Amendment do not address any vehicle parking requirements applicable to the residential component of development within the Special Zone. It is the Town's view that parking for the residential component of any development should be provided in accordance with the R-Codes as was the case with the Council endorsed Amendment. A site inspection will demonstrate there are no other easily accessible or appropriate options for accommodating residential and residential visitor parking in this area. It is therefore recommended that a clause be reinstated in the Amendment so the R-Code vehicle parking provisions apply to residential development.

In addition, the new R-Codes provide 'Acceptable Outcomes' which go a long way to demonstrating compliance with the 'Element Objectives', but are not strictly speaking 'deemed-to-comply', in so far as they provide any specific number. It is in Table 3.9 which is adopted by cl. A3.9.2. If an applicant proposes low parking bay numbers in reliance upon the qualitative, open-textured 'Element Objectives' rather than the requirement in Table 3.9 of the new R-Codes, then

it could be argued that does not readily come within the concept of '*reducing the requirement for car parking spaces*', to use the language of cl. 5.9.7.11. This site is no different to any other development site and due to the heavy site constraints which are applicable it could be argued that firmer controls are warranted.

Assuming that the new R-Codes requirements as to vehicle parking will apply it is also questionable whether parking for the combined residential and non-residential components can in any event be reduced below 20%. The point is highly ambiguous. On one hand, the Minister's cl. 5.9.7.11 refers to reducing LPS 3 *Schedule 10* requirements by a maximum of 20%. In that regard, Schedule 10 has provisions referring to both residential and non-residential components. That is one factor which could support the view that cl. 5.9.7.11 applies collectively to the residential and non-residential components. Another factor leaning towards that interpretation is a reference to shared parking arrangements and peak demand for parking not occurring at the same time. Typically, that applies to the interrelationship between residential and commercial parking. However reciprocal parking arrangements need not be absolutely confined to the commercial/residential use relationship. Moreover, with regard to cl. 5.9.7.11's reference to Schedule 10, whilst it is true that Schedule 10 includes reference to residential parking standards, the reference to Schedule 10 does not conclusively demonstrate that the power to reduce parking by 20% applies collectively to both residential and non-residential components. This is because Minister's cl. 5.9.7.10 only provides parking standards for non-residential/commercial development. Nonetheless it is not beyond question as to whether the concession would *only* apply to non-residential development so it is recommended that clauses clearly dealing with vehicle parking requirements for residential development and possible parking concessions are reinstated.

*In light of the above comments the following modifications to the vehicle parking provisions of the Amendment are recommended and are listed below (highlighted in red text).*

These provisions still provide flexibility in regard to the commercial parking for the Hotel but require residential parking to be provided on the site and in accordance with the R-Codes. However, there would still be a discretionary power within LPS 3 for a decision maker to vary these provisions if other valid parking solutions with no amenity considerations emerge and are considered reasonable by a decision maker.

The Council's vehicle parking clauses were drafted with the intent of reducing any ambiguity as to what controls applied. The proposed wording is considered more legally sound and stronger in regard to ensuring compliance and less open to misinterpretation and misuse, even though variation of standards is possible.

#### Vehicle Parking

**~~Cl. 5.9.7.11 Parking for non-residential development within the Special Zone—Royal George Hotel shall be in accordance with the requirements provided for Commercial Zones in Clause 5.8 of the scheme.~~**

***“Notwithstanding any other provision of this Scheme or of the Residential Design Codes Volume 1 and Volume 2 the following applies:***

- (i) 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;*
- (ii) Clauses 5.8.5, 5.8.6, 5.8.7 and 5.8.8 of the Scheme also apply to development within 'Special Zone – Royal George Hotel';*
- (iii) Parking for residential development shall be provided in accordance with State Planning Policy 7.3 - Residential Design Codes – Volume 1 and Volume 2 as applicable to the type of dwelling proposed;*
- (iv) 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 decision maker; and*
- (v) To the extent that vehicle parking is required for the residential component 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 decision maker's satisfaction, being submitted and approved at Development Approval application stage.*

**Cl. 5.9.7.12.**

*Should the decision maker determine that demand for **commercial and non-residential parking only** parking may be lessened due to alternative modes of transport, reciprocal or shared parking arrangements, it may consider reducing the requirement for car parking spaces by a maximum of 20% of the requirements of Schedule 10 of the Scheme where it can be demonstrated to its satisfaction that:*

- (i) The peak demand for parking by two or more uses will not occur at the same time;*
- (ii) The combined supply of car parking is sufficient to meet the estimated peak combined demand;*
- (iii) The arrangements are secured and that any future change will not result in a shortfall; and*
- (iv) Parking arrangements are detailed in a Parking Management Plan.*

**Cl.5.9.7.13**

***Clause 5.9.7.12 is not open to any variation through any provision of the Scheme or any other mechanism.***

Residential Development

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

*“With exception of building height and building setbacks residential development shall be in accordance with State Planning Policy 3.1 - Residential Design Codes - Part 6 for multiple dwellings and Part 5 for grouped and aged and dependent persons' dwellings (dependent on the form of dwelling type for aged and dependent persons' dwellings Part 6 may be applied).”*

This clause was deleted by Department of Planning officers and was also not included in the Minister's modifications. The planning control issues in this regard have been outlined above in the vehicle parking section of the Report. 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 – Apartments will apply to residential development.

### ***Residential Development***

#### ***Cl. 5.9.7.14***

***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).***

### ***Heritage Conservation***

There are no heritage provisions in the Schedule of Modifications endorsed by the Minister. These provisions were removed by the Department of Planning Officers and not reinstated on the basis that a Heritage Agreement was in place, which in their view was considered adequate in terms of protecting the heritage of the Hotel and ensuring restoration.

The Town's cl. 5.9.5 provided that development would not be supported unless the Royal George Hotel building has already been restored to the satisfaction of Council or the development was staged in such a manner as to achieve the restoration of the Hotel before commencement of occupation of any other areas of the land. The removal of this clause has raised concerns for the Town because the owner of the site has not commenced the restoration works and two years have now passed since the Heritage Agreement was signed.

A three year time frame was set down in the Agreement as the deadline for the most pressing conservation works to be completed and since the commencement of the Agreement it appears the owner has done nothing to meet the obligations under the Agreement. It appears substantial works identified in the Agreement as requiring "*Immediate Attention: To be carried out within 6-12 months*" (see Heritage Agreement Annexure A) have not commenced two years after the Agreement was signed. The three-year deadline for completion of the entire restoration expires in less than a year (see Heritage Agreement attached). Nothing has been done and the Hotel is in a poor state.

This matter has been raised in a large number of submissions. The community is very aware that the owner, despite being sold the site at what could reasonably be argued was a less than market value price, given land values in the area, appears to have not honoured the Agreement in that specific works were required to be completed within the first, second and third years. The Town and the community have raised these concerns a number of times with the Heritage Council, the Minister for Planning and the Minister for Heritage. It is the Town's understanding that no action

by the Heritage Council or the Minister for Heritage has been taken in regard to why the works have not commenced or instructing the owner to undertake the works that were required to be completed in the first year.

Given the above concerns and the strong sentiment expressed in the submissions it is recommended that the clause related to heritage conservation be partly reinstated in the Amendment and read as follows:

**Heritage Conservation**

**CI 5.9.7.15**

***Development of any part of the land will not be supported unless:***

- i) The Royal George Hotel has already been restored to the satisfaction of the Local Government;***
- or***
- ii) The development is staged in such a manner as to secure, by staging conditions and/or by appropriate legal agreement with the Town of East Fremantle, legally enforceable means to the satisfaction of the Local Government for achieving the restoration of the Royal George Hotel before commencement of occupation of the use(s) approved for any other areas of the land.***

**Conclusions**

*From the outset the overriding concern with this site, based on the owner's redevelopment concept, was that it will be overdeveloped and that development to the rear would be of a scale that is disproportionate to the surrounding area in terms of historical context and setting resulting in a detrimental impact on the Town's heritage precinct. Overdevelopment would also result in significant amenity, access and operational impacts for the surrounding area. The Council's Amendment was adopted to ensure that development was at a level that would have minimal impact on the precinct. Development provisions that permit anything much greater than the Council endorsed Amendment which allowed for approximately 19 dwellings is considered will result in adverse consequences for the orderly and proper planning of the precinct.*

*The focus of concern with the Minister's modified development controls for the site is that they do not provide any certainty for the community in respect to the potential height and scale of a building that could be developed. In fact, the flexibility that is currently available in terms of the building height provision and the corresponding plot ratio, in the Council's view, will potentially result in just the opposite eventuating with the potential for a building of much greater height than what is conventionally understood to be seven storeys being constructed.*

*The ambiguity in respect to a number of provisions in the Schedule of Modifications means it has been very difficult to convey the implications of the modifications to the community. This is mainly because the technical and literal interpretations of planning provisions are difficult to communicate to the community who do not have the technical knowledge of the operational aspects of planning schemes. It could reasonably be argued that the community has not been fully informed or been adequately provided with all the information in respect to making a submission on the advertised modifications during the advertising period. The Town certainly holds the view that if the community had been more fully informed then there may not have been the level of support for the Minister's seven storey proposal and there may have potentially been further objections to the Schedule of Modifications.*

The Town's position in respect to its reasoning for the development controls proposed in the Council endorsed Amendment has not changed and the submissions received during advertising demonstrates the ongoing degree of community objection to the modifications given that 93% of the submissions requested Council's Amendment be reinstated. Keeping in mind also that in excess of 2,200 signatures on a petition were presented to Parliament in support of the Council's Amendment. Therefore the Town can only support the Minister's Schedule of Modifications on the basis that further amendments are made which address the areas of concern outlined in the body of this Report.

The owner of the site has continued to raise the issue of needing to develop a particular number of apartments for the refurbishment of the Hotel to be a financially viable venture, arguing they that they cannot afford to restore the hotel unless they build a multi-storey building with a significantly larger number of apartments. When the owner's purchased the Hotel in 2017 they were given no commitment by the State government that any development behind the Hotel was guaranteed and they were made aware in writing that the sale of the property was separate to planning approval processes. It is understood the owner's bid for the Hotel was given exclusive consideration by the State government on the basis of accepting the owner's commitment that it had funds available to undertake the project, and that its plans were "economically viable" and compliant with heritage constraints on the site. So from the perspective of orderly and proper planning this argument that the development controls are restricting the financial viability of the project is not considered to warrant any consideration whatsoever. However, that being said it is considered the Town's provisions provide for a viable proposal.

The cost of the Hotel's building restoration works, as approved by the Heritage Council, must be viewed separately to the further works required to fit-out the Hotel for other commercial purposes specific to the intended occupants which would impact on the overall financial costs. This should not be factored into the restoration costs nor on whether the project will be economically viable. The Town's advice in this regard has indicated that the number of apartments possible under the Council's Amendment will facilitate a viable option for the owner. In any case it is not considered the Town's responsibility to have to demonstrate that the planning controls present an economically feasible option or the State government's role to facilitate development that it considers might be economically viable for one particular owner. It is quite feasible that ownership of the site could change hands presenting a different set of economic circumstances. The Council's role is to preserve the heritage and amenity of the area through orderly and proper planning.

Based on the vast majority of submissions requesting that the Town's Amendment be reinstated to ensure a height cap that cannot be varied and restricting the height of a building to within the same height parameters as the Hotel it is hoped the Minister will honour the commitment made to the community to cap the height of a building at the rear of the Hotel to seven storeys. Whilst the Town's recommended modifications to the Amendment do not completely address the submissions the intent to restrict the building height is the objective and this aligns with community sentiment whilst respecting the Minister's decision to cap the height at a maximum of seven storeys.

It is therefore recommended that Council resolve to support Amendment No. 15 subject to the proposed modifications to the Schedule of Modifications (as advertised) and as outlined below in the Officer Recommendation and in Attachment 4. It is also recommended that Council receives the submissions and notifies those who made a submission of the outcome of Council's decision.

A further recommendation is that Council forward to the WAPC 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 and requests that the Town be directly involved in drafting of provisions if the Council's proposed amendments to the Schedule of Modifications are not supported or there are any further modifications to the Amendment by the WAPC or the Hon. Minister for Planning.

#### **7.1 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 010819**

**Moved Cr Collinson, seconded Cr M McPhail**

**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) Amend point (i) by deleting the words "northern portion of the" from the first paragraph;**
  - b) Amend point (i) (a) by inserting the words "and the wider Plympton Precinct and George Street designated heritage area" after the word "Hotel";**
  - c) Amend clause 5.9.3 by inserting the word "all" before the words "the zone objectives";**
  - d) Amend clause 5.9.4 by deleting the word "with" after the words "When considering";**
  - e) Amend the "Maximum Plot Ratio" provision by modifying:**
    - i) clause 5.9.7.1 by deleting the ratio "2.0:1" and replacing it with "1.5:1"; and**
    - ii) clause 5.9.7.3 by adding the words "Clause 4.2 (Special Zone – Royal George Hotel)" at the beginning of the clause and deleting the word "is" after "5.9.7.1" and inserting the following words "and clause 5.9.7.4 are not open to any";**
    - iii) clause 5.9.7.4 by inserting the word ", as stated in clause 4.2" after the word "objectives"; and**
    - iv) reverse the numbering order of clause 5.9.7.3 and clause 5.9.7.4;**
  - f) Amend the "Building Height and Setbacks" provisions and renumber subsequent clauses accordingly by:**
    - (i) modifying clause 5.9.7.5 by inserting the following modified clauses:**
      - "(i) The maximum height of development within the zone is not permitted to exceed seven storeys above natural ground level measured at the lowest point of the Lot 303 boundary fronting Duke Street and in any event shall not be permitted to exceed 43.0 metres AHD or seven storeys whichever is the lesser" after the words "Duke Street";**
      - (ii) No part of the building, any external services, solar collectors, air conditioning units, mechanical plant rooms, lift overruns, antennae and**



communication masts or the like shall exceed the maximum heights specified in 5.9.7.5 (i). These fixtures must be screened from public view to the satisfaction of the decision maker.”

**Note:** For the purpose of clause 5.9.7.5 the lowest point on Duke Street is recorded as 15.0m AHD. This AHD level is to be used for the purpose of calculating the height of a building regardless of any approved or unapproved change to natural ground level on the site.”;

- (ii) introducing new clause 5.9.7.6 to follow clause 5.9.7.5 and to read as follows:

“5.9.7.6 Clause 5.9.7.5 (i) and (ii) is not open to any variation through any provision of this scheme or any other mechanism.”

- (iii) modifying clause 5.9.7.8 by inserting after the word “Development” the words “, including balconies and other projections”;

- g) Amend clause 5.9.7.9 by inserting the words “all” before the words “the objectives” and replacing the word “zone” with “Special Zone – Royal George Hotel”;

- h) Amend the “Vehicle Parking” provision by:

- i) deleting clause 5.9.7.10 and inserting the following clauses and adjusting the subsequent numbering of clauses accordingly:

“Notwithstanding any other provision of this Scheme or of the Residential Design Codes Volume 1 and Volume 2 the following applies:

- (i) 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;

- (ii) Clauses 5.8.5, 5.8.6, 5.8.7 and 5.8.8 of the Scheme also apply to development within ‘Special Zone – Royal George Hotel’;

- (iii) Parking for residential development shall be provided in accordance with State Planning Policy 7.3 - Residential Design Codes – Volume 1 and Volume 2 as applicable to the type of dwelling proposed;

- (iv) 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 decision maker; and

- (v) To the extent that vehicle parking is required for the residential component 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 decision maker’s satisfaction, being submitted and approved at Development Approval application stage.”;

- ii) amending clause 5.9.7.11 by inserting the words “commercial and non-residential parking only” after the words “demand for”; and

- iii) inserting clause 5.9.7.12 after clause 5.9.7.11 (d) to read as follows:



“Clause 5.9.7.11 is not open to variation through any provision of this scheme or any other mechanism.”;

i) Insert the additional provision “Residential Development” after the clause 5.9.7.12;

j) Insert an additional clause under the heading “Residential Development” to read as follows:

“5.9.7.13 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).”

k) Insert the additional provision “Heritage Conservation” after Clause 5.9.7.13 and insert the following clause under that provision:

“5.9.7.14 Development of any part of the land will not be supported unless:

(i) The Royal George Hotel has already been restored to the satisfaction of the Local Government; or

(ii) The development is staged in such a manner as to secure, by staging conditions and/or by appropriate legal agreement with the Town of East Fremantle, legally enforceable means to the satisfaction of the Local Government for achieving the restoration of the Royal George Hotel before commencement of occupation of the use(s) approved for any other areas of the land.”; 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

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 amendments; and

(ii) Requests that the Town be directly involved in drafting of provisions if the Council’s proposed amendments 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/or the Hon Minister for Planning.

(CARRIED UNANIMOUSLY)



8. CLOSURE

There being no further business, the Presiding Member declared the meeting closed at 7.49pm.

*I hereby certify that the Minutes of the special meeting of the Council of the Town of East Fremantle, held on 7 August 2019, Minute Book reference 1. to 8. were confirmed at the meeting of the Council on*

20 AUGUST 2019

A handwritten signature in black ink, appearing to be 'D. Lee', written over a horizontal line.

*Presiding Member*