

# TOWN OF COTTESLOE



## DEVELOPMENT SERVICES COMMITTEE

# MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE  
109 BROOME STREET, COTTESLOE  
6.00 PM, MONDAY, 20 JULY 2009

**CARL ASKEW**  
Chief Executive Officer

22 July 2009



## DEVELOPMENT SERVICES COMMITTEE

## TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS .....	1
2	RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED) .....	1
3	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE .....	1
4	PUBLIC QUESTION TIME .....	1
5	PUBLIC STATEMENT TIME .....	1
6	APPLICATIONS FOR LEAVE OF ABSENCE.....	2
7	CONFIRMATION OF MINUTES OF PREVIOUS MEETING .....	2
8	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION.....	2
9	PETITIONS/DEPUTATIONS/PRESENTATIONS.....	2
10	REPORTS OF COMMITTEES AND OFFICERS.....	3
10.1	PLANNING .....	3
10.1.1	NO. 44 OZONE PARADE – TWO-STOREY RESIDENCE WITH SWIMMING POOL	3
10.1.2	TOWN PLANNING SCHEME No. 2 – AMENDMENT No. 44 – UNZONED LAND SOUTH OF JARRAD STREET – SUBMISSIONS ON ADVERTISED MODIFICATIONS – FOR CONSIDERATION TOWARDS FINAL APPROVAL	12
11	ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN .....	23
12	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING.....	23
13	MEETING CLOSURE.....	23



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

The Presiding Member announced the meeting opened at 6.05pm.

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

Cr Jack Walsh	Presiding Member
Cr Jo Dawkins	
Cr Ian Woodhill	
Cr Jay Birnbrauer	
Cr Greg Boland	
Cr Victor Strzina	Arrived at 6:08pm

**Officers Present**

Mr Carl Askew	Chief Executive Officer
Mr Andrew Jackson	Manager, Development Services
Mr Will Schaefer	Planning Officer
Ms Pauline Dyer	Personal Assistant, Development Services

**Apologies**

Nil

**Officer Apologies**

Mr Ed Drewett	Senior Planning Officer
---------------	-------------------------

**Leave of Absence (previously approved)**

Nil

**3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**4 PUBLIC QUESTION TIME**

Nil

**5 PUBLIC STATEMENT TIME**

Nil

**6 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

**7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

Moved Cr Boland, seconded Cr Birnbrauer

[Minutes June 15 2009 Development Services Committee.doc](#)

**The Minutes of the Ordinary meeting of the Development Services Committee, held on 15 June 2009 be confirmed.**

Carried 5/0

**8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

Nil

**9 PETITIONS/DEPUTATIONS/PRESENTATIONS**

Nil

**10 REPORTS OF COMMITTEES AND OFFICERS****10.1 PLANNING****10.1.1 No. 44 OZONE PARADE – TWO-STOREY RESIDENCE WITH SWIMMING POOL**

**File No:** 1658  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** William Schaefer  
Planning Officer  
**Property Owner:** Mrs Rachel Torre  
**Applicant:** Lyons Architects  
**Zoning:** Residential R20  
**Use:** P – A use that is permitted under this Scheme  
**Lot Area:** 718 sq m

**Proposed Meeting Date:** 20-Jul-2009  
**Author Disclosure of Interest** Nil

---

**SUMMARY**

This application is seeking the following variations to Town Planning Scheme No. 2 (TPS2), the Residential Design Codes (RDC) and Council's Local Laws or Resolutions:

- \* Building height (minor projection, centrally located)
- \* Gatehouse and sunscreen in front setback
- \* Portions of solid wall fencing in front setback.

Each of these aspects is discussed in this report and refers to revised plans received 13 July 2009 following liaison with the applicant. The dwelling is otherwise compliant in accordance with acceptable and performance standards and design-wise presents aesthetically to the streetscape.

Given the assessment that has been undertaken, the recommendation is to conditionally approve the application.

**PROPOSAL**

This application is for a two-storey residence with swimming pool. It is intended to gain vehicular access the residence from the right-of-way that abuts the entire length of the western boundary of the property. A proposed gatehouse and sunscreen impinge upon the traditional 6m front setback area as guided by the RDC and Council's Resolution.

**STATUTORY ENVIRONMENT**

- \* Town of Cottesloe Town Planning Scheme No. 2
- \* Residential Design Codes
- \* Fencing Local Law

**POLICY IMPLICATIONS**

- \* Building height (as per TPS2)

**HERITAGE LISTING**

The existing dwelling is not heritage listed.

**PROPOSED LOCAL PLANNING SCHEME No. 3**

No changes are intended to the zoning or density coding of the lot.

**APPLICATION ASSESSMENT****AREAS OF NON-COMPLIANCE****Town Planning Scheme No. 2**

<b>Policy</b>	<b>Required</b>	<b>Proposed</b>
Height	7.0m building height (flat roof).	7.25m height to top of sun screens and top of vertical masonry fenestrations above stairwell.

**Council Resolutions and Local Laws**

<b>Design Element</b>	<b>Prescription</b>	<b>Proposed</b>
Gatehouse in Front Setback Area	RDC and Council Resolution: preferences for no gatehouses in front setback areas.	Gatehouse within front setback area, setback 4.45m from front boundary.
Front Fencing	Local Law: open-aspect with piers to be no wider than 600mm in main fence alignment.	Solid corners of fence 1400mm wide along street frontage.

**CONSULTATION**

Neighbours were consulted via registered mail by the applicant when the proposal was first submitted in September 2008. A statement of support for the proposal was submitted on behalf of the owners of 50A Margaret Street. No other written statements were received.

This application was withdrawn then re-submitted in February 2009. As it was confirmed that the design had not been altered and that the owners of the affected neighbouring properties had not changed, the proposal was not re-advertised.



**BACKGROUND**

Following assessments by Council's planning officer and requests for the applicant to amend the plans and provide further supporting information, revised plans were submitted in May 2009 and July 2009.

The plans currently before Council are those dated 13 July 2009. These plans more closely resemble the February 2009 submission than the May 2009 submission and are regarded as less compliant, however, the variations sought are not insurmountable, as discussed below.

**APPLICANT'S JUSTIFICATION**

The applicant has submitted information in support of the proposal addressing various statutory requirements. A summary of the main points relevant to this assessment are as follows:

- \* The proposed height of the building walls above NGL is 6.95m, which is below the permitted maximum height of 7.0m, for most of the dwelling.
- \* The over-height portions of the building are classified as non-solid, minor architectural features that articulate the roof profile.
- \* The proposed gatehouse is setback 4.45m from the street. The gatehouse enables the owners to leave their front door open and capture sea breezes in summer as well as protect visitors from the elements. The gatehouse roof is of minor proportions and does not affect view lines. In addition, the gatehouse is expected to have less impact on the streetscape than a carport.
- \* The sections of solid fencing in the front setback are small and offset by the overwhelmingly compliant stretch of remaining open-aspect fencing.

**STAFF COMMENT**

The following comments are made regarding the revised plans received on July 13 2009.

Building Height

The vertical fenestrations above the stairwell are proposed to be 0.25m above the permitted maximum building height for flat roof designs. Being spaced with sections of glass, the fenestrations present little in the way of building bulk and are considered in sum to be more of a minor projection than a section of over height residence.

It should be noted that the fenestrated stairwell is a major architectural feature of the dwelling which permits the penetration of natural light into significant areas of the building and reduces dependence on artificial light (i.e. sustainability). Furthermore, the stairwell is located almost centrally on the lot and the fenestrations are not proposed to form a profile of greater than 5.0m (lot length is 47.43m) in length in any direction. The setback of the fenestrations is proposed to be no less than 6.1m to the nearest common boundary.

The sun screens located on the west and south of the residence are intended to reduce the level of artificial cooling required to keep the building habitable in summer (i.e. sustainability). The screens are visually permeable and as such are not expected to present as solid objects such as walls.

No written objections to either the fenestrations or the screens have been received from the neighbouring landowners.

In general, the above features represent environmentally-conscious building design and are considered unlikely to have an impact on the amenity of neighbouring properties.

Council has previously supported minor projections to building height where of no consequence to streetscape, shadow or amenity, such as centrally-located and low skylights, typically up to half a metre above the roof height. The proposed 0.25m height projection is insignificant.

#### Gatehouse in Front Setback

The thrusts of the RDC and Fencing Local Law are to achieve open-aspect front yards in the interests of streetscape and amenity. While the RDC do contemplate some incursions into setbacks, such as porticos and eaves, this is restrained. A gatehouse as proposed set against the dwelling forms part of the parent structure and adds to the impression of bulk and scale.

The gatehouse is proposed to have solid walls to a height of 2.1m and a setback of 4.45m from the primary street frontage. Whilst the applicant has supplied written justification for the gatehouse on the basis of the needs for security and protection from the elements, and has attached a list/photos of Cottesloe addresses in which gatehouses have been constructed at various times, it is considered that the proposal should not be supported. Many such gatehouses pre-date the Fencing Local Law and Council's predominant decision-making has been to disfavour gatehouses, notably in this locality in recent years.

Firstly, access to the residence is primarily through the garage facing the right-of-way, rather than from a path that links a car-parking area from Ozone Parade to the dwelling. The argument that the gatehouse is necessary for the protection of visitors from the elements does not appear supported by the proposed relationship of the dwelling to the parking areas.

Secondly, whilst the owner may wish to maintain security when the front door has been opened to permit the flow of sea breezes into the residence, it is considered that a well-designed screen door could provide a similar level of security. Moreover, as the gatehouse is offset from the front door the breezeway benefit appears dubious (and the sunscreen would block some airflow; and as the front yard appears open to the front door the security consideration appears dubious – leaving a front door open when the living areas are remote at the rear of the dwelling would be a security risk.

Thirdly, the solid walls proposed for the gatehouse are 2.1m in height and are therefore not allowable under Council's Fencing Local Law.

Notwithstanding the above, the gatehouse is proposed to be set back 4.45m from the primary street. The impact of this gatehouse on the streetscape is therefore likely to be significantly less than the impact of a gatehouse built along the primary street boundary.

Provided that its walls are constructed to comply with Council's Fencing Local Law, the gatehouse could be permitted. Imposing such a condition would ensure that the gatehouse could still offer security and permit airflow, thus satisfying these design criteria, and not impact significantly on the streetscape.

The alternatives are to push back the gatehouse to achieve the 6m setback, which the (currently four-car) garage space could accommodate, or to delete it altogether.

#### Fencing in Front Setback

It is proposed to construct sections of the front fence to dimensions that are wider than the 600mm allowable for piers under the Fencing Local Law. The applicant has submitted written justification for the sections of solid fencing, stating that the vast majority of the fence complies with the Fencing Local Law. It is further submitted that while under Council's Fencing Local Law a total of five 600mm piers would be permitted along the street frontage proposed to be fenced, the proposal before Council seeks only two. It has been calculated that the five allowable piers would present 3.0m of 1800mm high solid fencing to the street, whilst the proposed fencing presents only 2.4m.

It is a common design approach to have some solid panels to front fencing, such as the proposed corner elements, which are compensated for by the predominant open-aspect section, and to house a letterbox (as in this case) or meter-boxes. The side-return gate (fencing) into the setback area is to be open-aspect consistent with the Fencing Local Law. The overall design of the front fencing is streamlined and open-aspect. On this basis the proposed fence could be deemed allowable.

#### Sunscreen in Front Setback

A 6.6m wide by 7.25m high permeable sunscreen ("Venetian shading device") is proposed to sit just forward of the dwelling within the front setback. Fitted in a 300mm deep steel frame this would read as part of the dwelling when viewed from the street and appear lightweight. Proportionally and stylistically it is consistent with the planar form and in rhythm with the design-lines and structural composition of the building. The screen would also provide an added degree of security as a physical and psychological layer, as well as a privacy filter to the extensive front glazing (including to the upper-floor master bedroom).

While another desirable environmental device and attractive architectural feature, the screen would still occupy part of the front setback area, however, compared to the front fencing and gatehouse, it is well setback and effectively absorbed by the dwelling. Experience with similar screens or skins to houses and commercial or institutional buildings shows that they are attractive rather than offensive and tend to soften and articulate the look of a development to the public realm and neighbours.

On balance, the sunscreen is considered to be a supportable variation. The alternatives are to relocate it against the face of the dwelling, setback it and the dwelling to comply, or delete it.

### **CONCLUSION**

Overall the dwelling is well-designed and basically compliant. Whilst each of the three variations discussed above in relation to the front setback area may be seen as desirable from a design-perspective, their combined impact constitutes a considerable amount of encroachment or accumulation or mass eroding the sense of openness. Clearly the gatehouse is the main contributor to this, as the sunscreen is transparent and the fencing is largely open-aspect and both are assessed as acceptable. Redesign of the gatehouse component is therefore concluded as necessary.

### **VOTING**

Simple Majority

### **OFFICER RECOMMENDATION**

That Council:

1. GRANT its approval to commence development for the proposed two storey residence with swimming pool at No. 44 Ozone Parade, Cottesloe, in accordance with the plans submitted on 13 July 2009, subject to the following conditions:
  - a) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - b) Stormwater runoff from the driveway or any other paved portion of the site shall not be discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings for a building licence.
  - c) The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
  - d) The applicant complying with the Town of Cottesloe Policies and procedures for Street Trees (February 2005) where the development requires the protection or pruning of existing street trees.
  - e) The existing redundant crossover on Ozone Parade being removed and the verge, kerb and all surfaces made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
  - f) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.

- g) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
- h) The finish and colour of the boundary walls shall be to the satisfaction of the Manager Development Services.
- i) The pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- j) Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property and disposed of into adequate soak wells.
- k) A soak well system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.
- l) Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- m) Revised plans being submitted at Building Licence stage to the satisfaction of the Manager Development Services, showing redesign of the entry gatehouse/courtyard feature within the front setback area to be open-aspect in accordance with Council's Fencing Local Law. Alternatively, this feature may be deleted or setback at least 6m from the front boundary by redesign of that section of the dwelling.

**Advice Note:**

The owner/applicant is advised that at Building Licence stage compliance with the BCA will be required to be demonstrated in relation to the boundary wall with any opening to the right-of-way.

2. ADVISE the submitter of this decision.

**COMMITTEE COMMENT**

Committee was supportive of the proposal subject to the inclusion of a condition which allows for the upgrade of the ROW. After some discussion in relation to increasing the openness of the front fencing, a second amendment was proposed.

**AMENDMENT**

Moved Cr Dawkins, seconded Cr Boland

That a standard ROW upgrading condition be added to the Committee recommendation.

Carried 6/0

**AMENDMENT**

Moved Cr Woodhill, seconded Cr Boland

That a condition be added to maximise the open-aspect design of the front fencing and to minimise its solid portions, to the satisfaction of the Manager Development Services.

Carried 6/0

**COMMITTEE RECOMMENDATION**

Moved Cr Dawkins, seconded Cr Boland

**That Council:**

1. **GRANT** its approval to commence development for the proposed two storey residence with swimming pool at No. 44 Ozone Parade, Cottesloe, in accordance with the plans submitted on 13 July 2009, subject to the following conditions:
  - a. All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
  - b. Stormwater runoff from the driveway or any other paved portion of the site shall not be discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings for a building licence.
  - c. The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
  - d. The applicant complying with the Town of Cottesloe Policies and procedures for Street Trees (February 2005) where the development requires the protection or pruning of existing street trees.
  - e. The existing redundant crossover on Ozone Parade being removed and the verge, kerb and all surfaces made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
  - f. The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
  - g. Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
  - h. The finish and colour of the boundary walls shall be to the satisfaction of the Manager Development Services.

- i. The pool pump and filter shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- j. Wastewater or backwash water from swimming pool filtration systems shall be contained within the boundary of the property and disposed of into adequate soakwells.
- k. A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum of 1.8 metres away from any building or boundary.
- l. Wastewater or backwash water shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- m. Revised plans being submitted at Building Licence stage to the satisfaction of the Manager Development Services, showing redesign of the entry gatehouse/courtyard feature within the front setback area to be open-aspect in accordance with Council's Fencing Local Law. Alternatively, this feature may be deleted or setback at least 6m from the front boundary by redesign of that section of the dwelling.
- n. Revised plans being submitted at Building Licence stage to the satisfaction of the Manager Development Services, showing redesign of the fencing within the front setback area to minimise the widths of the solid corner sections and maximise the width of the open-aspect sections in accordance with Council's Fencing Local Law.
- o. The right-of-way located adjacent to the property shall be paved and drained at the expense of the landowner and in accordance with Council's guidelines, to the satisfaction of the Manager Engineering Services. Details of the proposed works shall be submitted to and approved by the Town prior to the commencement of those works, and the works shall be completed as part of the development prior to occupation of the dwelling.

**Advice Note:**

The owner/applicant is advised that at Building Licence stage compliance with the BCA will be required to be demonstrated in relation to the boundary wall with any opening to the right-of-way.

- 2. **ADVISE** the submitter of this decision.

Carried 6/0

**10.1.2 TOWN PLANNING SCHEME NO. 2 – AMENDMENT NO. 44 – UNZONED LAND SOUTH OF JARRAD STREET – SUBMISSIONS ON ADVERTISED MODIFICATIONS – FOR CONSIDERATION TOWARDS FINAL APPROVAL**

**File No:** SUB/653  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Andrew Jackson  
Manager Development Services  
**Proposed Meeting Date:** 20-July-2009  
**Author Disclosure of Interest** Nil

---

**SUMMARY**

This report presents re-advertised Amendment No. 44 for a recommendation regarding final approval.

The advertised modifications have drawn objections which question the intended planning controls.

Council's task is to respond to the Western Australian Planning Commission (WAPC) on the matter for consideration then determination by the Minister for Planning.

**STATUTORY REQUIREMENTS**

Under the Town Planning Regulations, Council is required to consider any submissions and respond on an advertised amendment within three months, which this reporting timeframe achieves.

**STRATEGIC IMPLICATIONS**

The modified amendment aims to implement regional planning strategy ahead of the Stirling Highway Activity Corridor Study (SHACS) and to bypass the normal Metropolitan Region Scheme (MRS) Amendment process of a regional road widening reservation and land acquisition.

The proposal has a potential bearing on the content of yet-to-be-finalised LPS3.

**POLICY IMPLICATIONS**

Nil.

**SUSTAINABILITY IMPLICATIONS**

Nil.

**FINANCIAL IMPLICATIONS**

Nil.

---



**BACKGROUND**

On 23 March 2009 Council considered a report on the Minister's directive that proposed Amendment No. 44 be modified and re-advertised, and resolved as follows:

*That Council:*

- *Agrees to modify proposed Amendment No. 44 for the purpose of re-advertising in order to gauge landowner and community comment for further consideration by Council towards finalisation of the amendment.*
- *Supports a Town Centre Zone instead of a Special Use Zone and otherwise agrees in-principle to the other modifications for the purpose of re-advertising, subject to examination of the differences between TPS2 and LPS3, as well as the specifics of the new provisions.*
- *Requests that staff prior to advertising circulate the draft modified amendment to Councillors for endorsement and any refinements arising from feedback, and further report to Council on the detailed provisions as may be necessary when reporting on any submissions received and finalisation of the amendment.*

The required modifications were advertised from 31 March to 28 April 2009 and four submissions were received.

This report presents the submissions and addresses the aspects covered in Council's resolution, in order to give further consideration to the suitability of the modifications, towards finalisation of the Amendment.

The previous report and original Amendment are attached and should be read for the background to the Amendment and the required modifications.

**RE-ADVERTISING**

The modifications were drafted by staff and circulated to Councillors, with no objection being raised, then advertised as follows:

- Letters were sent to the affected property owners, including individual strata owners.
- A public notice was placed in The Post newspaper twice.
- The Amendment was available for inspection at the Civic Centre and the Library.

**DETAILS & IMPLICATIONS OF MODIFICATIONS**

The modifications were drafted based on the Minister's directive (WAPC letter 22 January 2009) and subsequent clarification and agreement in-principle with the Department for Planning & Infrastructure (DPI) as to the details.

**Specifics of new provisions**

The modifications required are shown attached as advertised.

These were devised by officers following the dialogue with the DPI and are a straightforward expression of the requirements without embellishment.

In other words, while satisfying the stipulated requirement, if the premise of the modification is seen to be flawed (i.e. land forced to be ceded without compensation) then, while the wording may be correct, the effect is open to question.

### Differences between TPS2 & LPS3

In drafting the normal development requirements in accordance with Local Planning Scheme No. 3 (LPS3) they were compared to those in Town Planning Scheme No. 2 (TPS2) and the differences are:

- Maximum site cover – TPS2 has none, however, the 100% standard under LPS3 is acceptable and is influenced by setbacks and other design factors anyway.
- Minimum building setbacks – the reliance on design guidelines is a departure from TPS2 yet is acceptable, however, they remain to be devised for LPS3 so would need to be devised in due course to facilitate the Amendment.
- Maximum building height – the LPS3 height requirements are reflective of TPS2 but more prescriptive in having a test of amenity and being subject to design guidelines – which also remain to be devised for LPS3 so would need to be devised in due course to facilitate the Amendment.
- Plot ratio – TPS2 and LPS3 are already the same so there is no change.

Overall, from the Town's perspective the early introduction of these intended LPS3 provisions is acceptable.

It is noted, however, that only the core development requirements have been introduced, because to incorporate the bulk of LPS3 into TPS2 in terms of all the operational provisions would be impractical.

### SUBMISSIONS

Four submissions were received, from various parties, and copies are attached. The table below summarises the submitters, content and officer comment.

<b>Submitter details</b>	<b>Summary</b>	<b>Comment</b>
MRWA	Supports in-principle the modifications, i.e. for an overall plan, road widening, controlled access and the development requirements, and qualifies that the land- take remains to be determined pursuant to the Stirling Highway Activity Corridor Study (SHACS).	MRWA being responsible for the operation of the highway is naturally supportive of planning measures to improve it, albeit subject to the study. The submission should be noted.
Diana Lalor re 11 Brixton St – owner & business occupier.	Requests confirmation and advice about the basis and detail of the modifications. Particularly objects to ceding land free and advocates compensation.	The concerns and objection are understandable in the unusual circumstances and reflect the aspects raised in Council's

<b>Submitter details</b>	<b>Summary</b>	<b>Comment</b>
	Sees effect of modifications as far-reaching, severely restricting development and having negative outcomes given the serious lack of commercial space.	consideration of the matter. This should be emphasised to the WAPC and Minister.
Wayne S Dodd & Assoc. for Nomet P/L re Strata lots 1 & 24, 589 Stirling Hwy – owner & business occupier.	<p>Objects and will pursue the inequitable imposition.</p> <p>DAP: unnecessary and unreasonable; obliges each landowner to prepare, which is costly and time-consuming; landowners may differ and be defensive; Town Centre zoning and development requirements should suffice over a DAP.</p> <p>5m setback: the DPI under the SHACS has effectively imposed a 5m reservation and the proposed ceding free of cost appears ultra vires to the normal process of acquisition; this is injurious affection which is tantamount to an encumbrance or caveat affecting property dealings; thereby a burden with no right of recourse. The SHACS is unlikely to be completed for a year or more.</p> <p>Vehicular access: only three properties have highway access and only one (No. 573-575) has sole highway access, which should not be denied.</p>	As above.
Greg Rowe & Assoc. planning consultants re 573-575 Stirling Hwy (the subject of the recent SAT appeal) – for landowner.	Strongly objects on the basis of the modifications being unreasonable, unworkable, inequitable and inconsistent, as elaborated upon, including to the Detailed Area Plan (DAP), road widening, access control and LPS3 provisions.	As above.

### Main aspects raised

The main aspects raised in the objections echo those discussed in the previous report so are not repeated here, however, the following further points are identified for consideration.

### Detailed Area Plan

The DAP would not be single-purpose for access control only as contended by Greg Rowe & Associates, but multi-purpose to comprehensively plan for the area.

The absence of DAP provisions in TPS2 does not prevent Council from preparing one guided by the Model Scheme Text and LPS3.

Council would be expected to take a lead in producing the DAP, with the involvement of landowners and possibly consultants.

The questions of timing and funding are valid – in the regional interest the DPI may be expected/invited to contribute expertise, resources and funding.

### Road Widening

There *is* a rationale for this, being the regional planning framework and instruments, including the Metropolitan Region Scheme (MRS) and SHACS.

The concerns of due process and compensation are valid.

### Access Control

There *is* a rationale for this, being the regional planning framework and instruments, including the MRS, SHACS, regional road planning practice and development control.

Sole legal road access cannot be denied, but can be managed and improved or replaced over time.

### Development Requirements

The contentions regarding building height and plot ratio appear to misinterpret the intent and application of these controls under TPS2 and LPS3.

The consultant argues that greater height and plot ratio ought to be allowed, but is not specific as to what.

It is considered that there is insufficient basis to depart from the proposed development requirements by way of this Amendment.

### **Officer Comment**

Although not a large number of submissions have been received, they nonetheless raise several significant points to be taken into consideration.

The main objective of the Amendment is to zone the land Town Centre, which is important to be achieved.

The associated normal development requirements, such as building height and plot ratio, are sound in being consistent with proposed LPS3.

The special requirements of the Minister are unusual and significant in their consequences, and whilst offering some planning benefits, remain open to question in terms of process, implementation and equity.

There is a need to formulate Design Guidelines in any case, which could occur pursuant to the relevant modifications being finally-approved.

### **Further Liaison with DPI/WAPC**

The Town has liaised again with the DPI (renamed *Department of Planning* since 1 July 2009) to ascertain the progress of the SHACS and the Department's attitude about the modifications and objections to Amendment No. 44.

The second phase of the SHACS is underway and does not alter the outlook in terms of the basic concept, principles and objectives causing the consideration of planning controls including road widening, access restrictions, detailed planning and so on.

Phase 2 is more specific and focussed on technical design solutions, which in time will be more definitive as to land-take, design parameters, development requirements, etc.

Other scheme amendment / development proposals in Mosman Park and North Fremantle have similarly been affected by the SHACS, and together with Cottesloe are shaping the approach being taken, however, the Department has not moved away from the intended measures in Amendment No 44.

DPI's outline advice of the status of the SHACS is as follows:

*The SHACS is being prepared to guide and improve bus, cycle and pedestrian movements and access along Stirling Highway whilst promoting opportunities to improve amenity. This will result in a technically-based and consistent carriageway plan for Stirling Highway to accommodate future users and infrastructure. With the support of the Project Working Group, the carriageway plan will eventually form the basis of an amendment to the Metropolitan Region Scheme Stirling Highway "Primary Regional Roads" reservation, which is basically obsolete. Stemming from this is the opportunity to improve amenity through the preparation of form-based codes to guide future built form and land uses in a way that makes the most of the character of the various precincts that make up Stirling Highway.*

It is anticipated that the Department and WAPC will continue to be pro-SHACS and promote the modifications as they recommended to the Minister.

### **State Administrative Tribunal**

Amendment No. 44 and the proposed modifications were a consideration at the State Administrative Tribunal (SAT) review (appeal) hearing in April-May 2009 for the proposed four-storey office development at 573-575 Stirling Highway refused by Council.

The Town's case conveyed how the intended modified amendment affected planning for the land south of Jarrad Street and would constrain development proposals there.

While the SAT review decision has not yet been handed-down, and the Minister's final approval to the amendment is an independent determination, it is appropriate to appreciate the views of the SAT in this matter as a key planning authority extensively experienced in dealing with such issues and the overall planning system.

The President of the SAT, Justice Chaney, made a number of comments about the modifications to Amendment No. 44 and returned to the subject several times during the course of the hearing. He expressed particular concern in relation to the modified paragraph (iii) regarding the mandatory setback of 5m from the boundary to Stirling Highway and the apparent automatic ceding of land within that setback area to the Crown, without compensation, upon the gazettal of the amendment. He also expressed concern in relation to the requirements of the modified paragraph (iv) dealing with vehicular ingress and egress via Stirling Highway.

The views of the SAT and the planning experts at the hearing are valid considerations in this matter.

#### **CONCLUSION**

The Amendment is important to zone the area Town Centre as soon as possible.

The proposed normal development requirements consistent with LPS3 are reasonable (and necessary) and LPS3 now lodged for final approval has progressed to be a *seriously entertained planning proposal*.

Because the Minister's special modifications are contentious and problematic, they could be separated from the Amendment and dealt with by way of a future amendment (to TPS2 or LPS3), modifications to LPS3, or implementation of the SHACS, all subject to more detailed consideration, including review and liaison with the Department/WAPC, careful drafting and additional advertising.

Alternatively, they could be abandoned altogether as premature to the outcomes of the SHACS being adopted and implemented, whereby the Amendment would revert to the original purpose of applying the Town Centre zone and relying on the current TPS2 development requirements.

The implications of not supporting the modifications wholly or in part are that the State authorities will have to be persuaded to this view, and that is likely to involve quite some time, which would stall the Amendment including zoning the land and applying normal development controls.

#### **VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

That Council:

1. Supports the finalisation of Amendment No. 44 in order to apply the Town Centre zone and associated normal development requirements to the area.
2. Notes the submissions and draws the objections to the attention of the WAPC and Minister.
3. Notes the comments of the SAT and draws them to the attention of the WAPC and Minister.
4. Advises the WAPC and Minister that it is considered premature to apply the SHACS ahead of the study being completed and adopted, including any stakeholder/public consultation processes.
5. Recommends the proper process for regional road planning of MRS classification, acquisition of land for widening requirements and determination of setbacks for development, rather than imposing such measures via a local planning scheme without the usual rights.
6. Recommends that the objections be supported to the extent that the modifications are revised in relation to the Detailed Area Plan and future road widening/development setback requirements, as set-out below.
7. Requests Department of Planning participation in and WAPC funding for the preparation of the Detailed Area Plan.
8. Recommends that, alternatively, the original Amendment be reverted to, to simply zone the land Town Centre R100.

Scheme Amendment Text – Recommended Revisions

[Note: The Scheme is to contain the following provisions, as revised as shown as struck-through or in Italics underlined.]

Amending the Scheme Map to zone land currently un-zoned within the area bounded by Jarrad Street, Stirling Highway and Brixton Street as Town Centre Zone, with a residential density of R100.

Amending clause 3.4.2 Town Centre Zone by adding (d) as follows:

For land bounded by Jarrad Street, Stirling Highway and Brixton Street, notwithstanding anything else in the Scheme, the following development requirements shall apply:

- (i) Maximum site cover – 100%.
- (ii) Minimum boundary setbacks – in accordance with Design Guidelines.

- (iii) Maximum height – 3 storey and 11.5m, subject to no undue adverse impact on amenity and to design guidelines.

[Note: existing 3.4.2(b), regarding a plot ratio of 1:1.15 can remain, as that is in accordance with proposed LPS3, which is now required to be applied in relation to this area.]

~~No Future development, subdivision or strata subdivision shall be approved within the subject area prior to the adoption by the Council of~~ shall be in accordance with a Detailed Area Plan for the overall street block to be prepared under Council's guidance in consultation with relevant stakeholders and adopted by Council.

All development within the subject area shall be setback a minimum of 5m from the boundary to Stirling Highway and all land contained within the setback area (or such lesser area as may be determined by the Stirling Highway Activity Corridor Study) shall be identified to be ceded ~~acquired~~ for road widening ~~to~~ by the Crown by due process of Metropolitan Region Scheme classification then purchase or resumption/compensation. ~~free of cost, and prior to ceding such land shall be made level with the existing verge at the expense of the owner to the satisfaction of the Council.~~

The Detailed Area Plan shall provide for ultimately no permitted vehicular ingress or egress via Stirling Highway and for provision of overall coordinated vehicular access for the street block via other perimeter roads and internal routes. Where at present land has vehicular access solely via Stirling Highway, existing crossovers may be used or rationalised, and new crossovers may be approved, but only as a temporary arrangement until alternative vehicular access is provided; and any new development shall be designed and constructed to use the alternative vehicular access once provided, whereupon all existing access via Stirling Highway shall cease and all crossovers shall be closed and the verge shall be made good to the satisfaction of the Council at the expense of the landowner.

#### COMMITTEE COMMENT

Committee discussed the matter broadly and agreed to Cr Walsh's suggestion of reorientating the Scheme Amendment text in relation to road widening under the MRS, as set out below.

#### AMENDMENT

Moved Cr Walsh, seconded Cr Woodhill

That the paragraph expressing the proposed modification referring to the 5m road widening be amended to read: *If and when the Stirling Highway Activity Corridor Study determines that land within the subject area is required for road widening by the Crown, and following all due process of the Metropolitan Region Scheme classification leading to purchase or resumption and compensation, then all development shall be setback a minimum of 5m from the boundary to Stirling Highway.*

Carried 5/1



**AMENDMENT**

Moved Cr Birnbrauer

That in the proposed modifications, in the last paragraph, the requirement that landowners close redundant crossovers and make good the verge is deleted, by ending with the word "provided" and deleting the words thereafter.

Lapsed for want of a seconder

**COMMITTEE RECOMMENDATION**

Moved Cr Woodhill, seconded Cr Walsh

**That Council:**

1. **Supports the finalisation of Amendment No. 44 in order to apply the Town Centre zone and associated normal development requirements to the area.**
2. **Notes the submissions and draws the objections to the attention of the WAPC and Minister.**
3. **Notes the comments of the SAT and draws them to the attention of the WAPC and Minister.**
4. **Advises the WAPC and Minister that it is considered premature to apply the SHACS ahead of the study being completed and adopted, including any stakeholder/public consultation processes.**
5. **Recommends the proper process for regional road planning of MRS classification, acquisition of land for widening requirements and determination of setbacks for development, rather than imposing such measures via a local planning scheme without the usual rights.**
6. **Recommends that the objections be supported to the extent that the modifications are revised in relation to the Detailed Area Plan and future road widening/development setback requirements, as set-out below.**
7. **Requests Department of Planning participation in, and WAPC funding for, the preparation of the Detailed Area Plan.**
8. **Recommends that, alternatively, the original Amendment be reverted to, to simply zone the land Town Centre R100.**

**Scheme Amendment Text – Recommended Revisions**

[Note: The Scheme is to contain the following provisions.]

Amending the Scheme Map to zone land currently un-zoned within the area bounded by Jarrad Street, Stirling Highway and Brixton Street as Town Centre Zone, with a residential density of R100.

Amending clause 3.4.2 Town Centre Zone by adding (d) as follows:

For land bounded by Jarrad Street, Stirling Highway and Brixton Street, notwithstanding anything else in the Scheme, the following development requirements shall apply:

- (i) Maximum site cover – 100%.
- (ii) Minimum boundary setbacks – in accordance with Design Guidelines.
- (iii) Maximum height – 3 storey and 11.5m, subject to no undue adverse impact on amenity and to design guidelines.

[Note: existing 3.4.2(b), regarding a plot ratio of 1:1.15 can remain, as that is in accordance with proposed LPS3, which is now required to be applied in relation to this area.]

Future development, subdivision or strata subdivision within the subject area shall be in accordance with a Detailed Area Plan for the overall street block to be prepared under Council's guidance in consultation with relevant stakeholders and adopted by Council.

If and when the Stirling Highway Activity Corridor Study determines that land within the subject area is required for road widening by the Crown, and following all due process of the Metropolitan Region Scheme classification leading to purchase or resumption and compensation, then all development shall be setback a minimum of 5m from the boundary to Stirling Highway.

The Detailed Area Plan shall provide for ultimately no permitted vehicular ingress or egress via Stirling Highway and for provision of overall coordinated vehicular access for the street block via other perimeter roads and internal routes. Where at present land has vehicular access solely via Stirling Highway, existing crossovers may be used or rationalised, and new crossovers may be approved, but only as a temporary arrangement until alternative vehicular access is provided; and any new development shall be designed and constructed to use the alternative vehicular access once provided, whereupon all existing access via Stirling Highway shall cease and all crossovers shall be closed and the verge shall be made good to the satisfaction of the Council at the expense of the landowner.

Carried 5/1

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

Nil

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

Nil

**13 MEETING CLOSURE**

The Presiding Member announced the closure of the meeting at 6.57pm.

*CONFIRMED: PRESIDING MEMBER* \_\_\_\_\_ *DATE: .../.../...*