

12.2 Residential Character Study Area Scheme Amendment

Location	Town-wide
Reporting officer	Michael Hancock
Responsible officer	Robert Cruickshank
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none"> 1. Ordinary Council Meeting May 2020 [12.2.1 - 15 pages] 2. Ordinary Council Meeting Minutes Extract June 2016 [12.2.2 - 10 pages] 3. Ordinary Council Meeting Minutes Extract September 2017 [12.2.3 - 36 pages] 4. Minister Refusal [12.2.4 - 25 pages] 5. Original Proposed Residential Character Study Area [12.2.5 - 1 page] 6. Recommendations Report [12.2.6 - 93 pages] 7. Draft Character Retention Guidelines [12.2.7 - 22 pages] 8. Modified Proposed Residential Character Study Area [12.2.8 - 1 page] 9. Current Local Planning Policy 32 - Exemptions from Development Approval [12.2.9 - 8 pages] 10. Proposed Local Planning Policy 32 - Exemption from Development Approval [12.2.10 - 10 pages]

Recommendation

That Council:

1. Resolves, pursuant to Regulation 37 of the Planning and Development (Local Planning Schemes) Regulations 2015, to not proceed to advertise Amendment 87 to the Town of Victoria Park Town Planning Scheme No. 1.
2. Resolves, pursuant to Section 75 of the *Planning and Development Act 2005*, to initiate Amendment 88 to the Town of Victoria Park Town Planning Scheme No. 1 as follows :

2.1 Including a new sub-clause 25A(1)(c) within the Scheme Text as follows:

- c) Character Retention Area shown on the Precinct Plans as CRA with a number (1) and included in Schedule E.

2.2 Inserting a new clause 25AC within the Scheme Text as follows:

25AC. Character Retention Area

(1) The purpose of the Character Retention Area is to:

- a. Retain and enhance the contribution made by original dwellings towards streetscape character; and
- b. To facilitate the consideration of streetscape character in development proposals.

(2) Schedule E sets out the specific objectives and additional provisions that apply to the Character Retention Area.

2.3 Including the Character Retention Area within Schedule E of the Scheme Text as follows:

Area No	Land Description	Purpose and Particular Requirements
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		Purpose
		<ol style="list-style-type: none"> 1. Retain and enhance the contribution made by original dwellings towards streetscape character; and 2. To facilitate the consideration of streetscape character in development proposals.
		Particular requirements
CRA1	Land generally extending between the railway line and to around Berwick Street and Canning Highway to around Oats Street, and more specifically identified in the Precinct Plans with the designation 'CRA 1'.	<ol style="list-style-type: none"> 1. Notwithstanding clause 61(1)(c), (d) and (e) of the deemed provisions, development approval is required for the following works : <ol style="list-style-type: none"> a) the erection or extension of a single house on a lot, where visible from the street; b) the erection or extension of an ancillary dwelling, outbuilding, external fixture, front fence, patio, verandah, garage or carport on the same lot as a single house or grouped dwelling, where visible from the street; or c) the demolition of a single house constructed prior to 1 January 1946. <p>unless those works are specified as being exempt from development approval under a local planning policy referred to in deemed clause 61(1)(i).</p> <p>For the purposes of this clause :</p> <ol style="list-style-type: none"> i. "visible from the street" only applies to a dwelling which has a frontage to a street. ii. "visible from the street" means development which if implemented is either : <ul style="list-style-type: none"> • Situated wholly or partially within 12m of the street boundary; or • Wholly located greater than 12m from the street boundary and exceeding a height of 5m above the natural ground level at the street boundary. iii. "Street" means a public street, whether a primary or secondary

		<p>frontage to a site, but does not include a right-of-way (or a public street which was formerly a right-of-way), or a communal street.</p> <p>iv. Clause 60 of the deemed provisions continue to apply in relation to other works that require development approval.</p> <p>2. All development for which development approval is required (including by virtue of this Schedule E) shall be designed with due regard for any relevant local planning policy adopted for the Character Retention Area.</p>
<p>2.4 Amend Precinct Plans P5, P6, P10 – Sheet A and P12 – Sheets A and B by including in the legend a heading ‘Land Use and Development Controls’ and then underneath a black border and number CRA1 within the boundaries of the border described as ‘Character Retention Area – refer to clause 25AC and Schedule E of the Scheme Text’.</p> <p>2.5 Amend Precinct Plans P5, P6, P10 – Sheet A and P12 – Sheets A and B by delineating the Character Retention Area using a blue border and the number CRA1 within the boundaries of the border.</p> <p>3. Determines, in accordance with Regulation 35(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, that Amendment 88 to the Town of Victoria Park Town Planning Scheme is a complex amendment for the following reasons:</p> <p>a) The amendment is not addressed by any Local Planning Strategy; and</p> <p>b) The amendment has the potential to result in significant environmental, social, economic or governance impacts on land in the scheme area.</p> <p>4. Resolves in accordance with Regulation 37 of the Planning and Development (Local Planning Schemes) Regulations 2015 to proceed to advertise Amendment 88 in accordance with Regulation 38 and Local Planning Policy 37, subject to the Western Australian Planning Commission’s advice that it considers the amendment suitable for advertising and the EPA determining that an environmental review is not required.</p> <p>5. Consent to public advertising of the draft amended Local Planning Policy 32 ‘Exemptions from Development Approval’, as contained at Attachment 10, in accordance with deemed clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015, with consultation being undertaken concurrently with advertising of Scheme Amendment 88 and the draft Local Planning Policy - Character Retention Guidelines.</p>		

Purpose

For Council to not proceed with advertising of Scheme Amendment 87 and instead initiate a new Amendment (Amendment 88), to introduce a Special Control Area and requirements for development within the Residential Character Area.

In brief

- In June 2016, Council initiated Amendment 73 to Town Planning Scheme No. 1 (TPS 1) to designate the Residential Character Study Area as a Special Control Area, with provisions requiring development approval to be obtained for demolition and/or development within the area (see Attachment 2). The intent was to reintroduce controls to provide a greater level of protection for the original dwellings in the area and ensure that new development was compatible with the existing character of the area.
- At its meeting in September 2017, the Council considered the public submissions received on Amendment 73 and resolved to modify Amendment 73 (see Attachment 3).
- The Minister subsequently refused the Scheme Amendment in 2018 (see Attachment 4)
- At the September 2017 Ordinary Council Meeting, the Council also resolved to seek expressions of interest for an independent consultant(s) to undertake a community engagement project, review of Local Planning Policy 25 – Streetscape, and evaluate and recommend potential mechanisms for the retention of original dwellings and the protection of character streetscapes within the Residential Character Study Area.
- Council subsequently appointed Element to undertake the project. The work undertaken by Element included consultation with the community on their views and aspirations for the Residential Character Study Area. The overwhelming response was a supportive position of measures to protect and retain the character prevalent in the Residential Character Study Area.
- Based on the community sentiment, Element prepared a Recommendations Report and draft Local Planning Policy – Character Retention Guidelines, which was acknowledged by Council at its 19 May 2020 Ordinary Council Meeting.
- The Recommendations Report recommends that the Town undertake a Scheme Amendment to designate the Residential Character Study Area as a Special Control Area. Attachment 5 contains a map showing the area of the Town over which a Special Control Area is proposed.
- Accordingly, the Council resolved at its July 2020 meeting to initiate Scheme Amendment 87. As part of the preparation of the associated draft Local Planning Policy - Character Retention Guidelines, it has been identified that the wording of Amendment 87 in general requires improvement, and in particular the term “visible from the street” requires modification for greater clarity and objectivity.
- Consistent with advice received from Officers of the Department of Planning, Lands and Heritage, this report seeks for Council to resolve to not proceed to advertise Amendment 87, and for Council to initiate a new Amendment (Amendment 88).
- In addition, it is necessary to amend Local Planning Policy 32 – Exemption from Development Approval (LPP 32) to provide clarity as to those exemptions to development approval that apply to the Special Control Area (SCA). Accordingly, the recommendation now includes a part for advertising of an amended LPP32.

Background

1. The Town first implemented the Residential Character Study Area (RCSA) in 2003 following a study being undertaken. The study recommended that the Town *“give priority to, and actively encourage, the retention and conservation of residential character for the longer-term benefit of the community and the owners of properties”*.
2. The RCSA identified that the ‘original dwellings’ within the area (dwellings generally constructed before 1945) form a unique and identifiable character worthy of retention.

3. Prior to 2015 all development relating to a single house or grouped dwelling, including demolition of single house, required development approval from the Town.
4. In 2015 the State Government introduced the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) which removed the need to obtain development approval to demolish single houses (including 'original dwellings') and development approval for new works where compliant with the requirements of the Residential Design Codes.
5. As a result of the Regulations, the level of protection for 'original dwellings' and maintenance of residential character was eroded.
6. Prior to the adoption of the Regulations the Town would often refuse applications that sought to demolish an identified 'original dwelling', on the basis that demolition of the dwelling would have a negative impact on the streetscape character.
7. The Town drafted Scheme Amendment 73 to TPS1, which sought to reinstate many of the provisions removed by the adoption of the Regulations through the designation of the RCSA as an SCA.
8. Consultation on Scheme Amendment 73 resulted in a total of 69 submissions during the consultation period.
9. Council ultimately resolved to modify Amendment 73 by removing the proposed planning controls.
10. Ultimately, Scheme Amendment 73 was refused by the Minister for Planning for the following reasons:
 - a. The amendment does not include any planning controls to implement the objectives proposed to be inserted;
 - b. Local planning policies are considered the appropriate planning mechanism to control streetscape design to protect local character; and
 - c. The Regulations provide appropriate heritage controls.
11. The Town engaged Element to undertake an independent review of the RCSA in September 2018.
12. At the 19 May 2020 Ordinary Council Meeting (Attachment 1), Council resolved to acknowledge and receive the Review of Residential Character Study Area and Local Planning Policy 25 'Streetscape' Stage 4: Final Conclusions and Recommendations Report and receive a future report for consideration of a Scheme Amendment as outlined in the Recommendations Report.
13. At its July 2020 meeting the Council resolved to initiate Amendment 87. It has been identified that the wording of Amendment 87 in general requires improvement, and in particular the term "visible from the street" requires modification for greater clarity and objectivity.
14. The Town has engaged in further discussions with the project consultant (Element) and has prepared alternate wording for the Amendment.
15. Advice received from Officers of the Department of Planning, Lands and Heritage is that to proceed with a modified Amendment, Council should resolve to not proceed to advertise Amendment 87, and should initiate a new Amendment (Amendment 88).

Relevant planning framework

Legislation	<ul style="list-style-type: none"> • <i>Planning and Development Act 2005</i> • <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> • <i>Town Planning Scheme No.1 (TPS1)</i>
State Government policies, bulletins or	<ul style="list-style-type: none"> • State Planning Policy 7.3 – Residential Design Codes Volume 1 • State Planning Policy 7.3 – Residential Design Codes Volume 2

guidelines	<ul style="list-style-type: none"> • State Planning Policy 3.5 – Historic Heritage Conservation
Local planning policies	<ul style="list-style-type: none"> • Local Planning Policy 25 – Streetscape (LPP 25 – Streetscape)
Other	Nil

General matters to be considered

TPS precinct plan statements	<p>The following statements of intent contained within the Precinct Plans are relevant to consideration of the application.</p> <p>Precinct Plan P5 – Raphael Precinct</p> <ul style="list-style-type: none"> • <i>The Raphael Precinct shall remain as a residential precinct containing many fine examples of houses from past eras.</i> • <i>Infill development and redevelopment of corner lots may be appropriate, although not to the detriment of the existing character of the area and of the existing quality housing stock.</i> • <i>The precinct should remain a visually attractive area and have a pleasant atmosphere characterized by low to medium scale architecture, buildings facing the street in the traditional manner and set in landscaped surrounds. The retention of structurally sound original houses and healthy mature trees will be a priority in order to maintain the existing residential character and streetscape.</i> <p>Precinct Plan P6 – Victoria Park Precinct</p> <ul style="list-style-type: none"> • <i>The Victoria Park Precinct will remain as attractive and essentially low to medium scale residential area set on some of the highest land within the locality.</i> • <i>The retention and rejuvenation of existing housing, particularly dwellings indicative of the era in which the locality was developed, and selective sensitivity designed 'infill' housing is the most favoured form of development and will be encouraged.</i> • <i>The precinct should remain a visually attractive area and the preservation of trees and the generous landscape planning of properties upon redevelopment will be required.</i> <p>Precinct Plan 10 – Shepperton Precinct</p> <ul style="list-style-type: none"> • <i>The Shepperton Precinct should remain a pleasant, low scale, medium density housing area.</i> • <i>The retention of structurally sound houses and healthy, mature trees is an important aim for the precinct. Selective infill and the development of grouped dwellings is also encouraged. New development is to enhance the existing character of the area and have regard for remaining quality housing stock.</i> <p>Precinct Plan 12 – East Victoria Park</p> <p><i>The retention of existing structurally sound housing which generally contributes to the character of the area, and the selective redevelopment of other sites will be encouraged. The character of the precinct between Canterbury Terrace and Balmoral Streets, which consists of small cottages on small lots, should be preserved. Any redevelopment in this locality should adhere</i></p>
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to strict design constraints governed by the existing scale and character of housing.

Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL2 - A community that is authentically engaged and informed in a timely manner.	The Town and Element undertook significant community consultation as part of the project. The community was engaged with a view to understand the built form priorities of the community and its attitude toward heritage and built form preservation. Further consultation was undertaken to ascertain if the community's aspirations had been adequately captured in draft recommendations prepared by Element.
CL3 - Well thought out and managed projects that are delivered successfully.	The level of engagement will assist in delivering a well considered project that reflects the aspirations of the community.

Social	
Strategic outcome	Intended public value outcome or impact
S4 - A place where all people have an awareness and appreciation of arts, culture, education and heritage.	The preservation and retention of the Town's built environment is highly valued by the community, as the results of consultation delivered. The proposed policy and Scheme Amendment will seek to further recognise the culture and heritage of the district.

Environment	
Strategic outcome	Intended public value outcome or impact
EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	Community consultation undertaken through this project has demonstrated a desire to retain and improve the built form of the Residential Character Study Area. The proposed recommendation will enhance the Town's distinct character.

Engagement

16. Formal engagement specifically in relation to the proposed Scheme Amendment will occur in accordance with the Regulations and Local Planning Policy 37 – Community Consultation on Planning Proposals in the event the proposed Scheme Amendment is initiated by Council.
17. Consultation to applicable external agencies will occur should the proposed Scheme Amendment be initiated by Council.
18. The following consultation occurred and was considered in developing the Recommendations Report completed by Element. It is important to note the consultation outcomes informed the content of the

recommendations report and does not necessarily reflect the community's opinion on the proposed Scheme Amendment.

External engagement	
Stakeholders	Town of Victoria Park residents
Period of engagement	<p>First period of consultation conducted between 22 October 2018 and 19 November 2018. A total of 5,524 letters were sent inviting people to participate in a survey.</p> <p>Second period of consultation conducted between 28 August 2019 and 25 September 2019. On this occasion, consultation was undertaken with those persons who responded during the first consultation phase.</p>
Level of engagement	Consult; Involve
Methods of engagement	<ul style="list-style-type: none"> • The Town's 'Your Thoughts' online engagement hub, • Southern Gazette Newspaper notice, • Direct correspondence to all Amendment 73 submitters, • Town's 'Life in the Park' eNewsletter; and • Social media posts.
Advertising	As above.
Submission summary	<p>A total of 357 responses were received in the first period of consultation.</p> <p>A total of 12 submissions were received in the second period of consultation.</p>
Key findings	The feedback is summarised as outlined below.

19. Community consultation was undertaken in a two-part process. Element, sought to engage with the community at the commencement of the project to gain the community's view on residential character and the importance of it to them. Element conducted a survey of owners and occupiers within the RCSA receiving over 350 public submissions. The Recommendations Report produced by Element (see Attachment 6) includes the Stage 1 community consultation outcomes, however the below summary captures the general sentiment of the consultation:

- *Streetscape character is seen to play an important role in telling the story of the Victoria Park area;*
- *While there are pockets of 'intact' streetscapes, the overwhelming description respondents used for the character of the area they live in is 'mixed';*
- *The majority of respondents recognised that the character of the area deserves protection;*
- *There is a clear desire from respondents to retain original dwellings;*
- *There is no clear perception of either positive or negative change in character over time;*
- *A flexible approach to policy administration is desired to encourage the retention of original dwellings as well as new development within character, rather than enforcing it; and*
- *There is seen to be a need for an equal effort in protecting and enhancing the natural beauty of the area.*

20. Following their consideration of the initial public comments, Element prepared a series of draft recommendations which were the subject of further consultation to determine if the community's comments were accurately captured. One of these recommendations was to amend the Scheme to introduce a Special Control Area over the RCSA. A total of 12 submissions were received, with eight generally supportive and four providing comment or concern.

Other engagement

Elected Members

On 10 December 2019 at an Elected Members Concept Forum, representatives of Element provided Elected Members with a presentation on the Recommendations Report and background on the draft Local Planning Policy – Character Retention Guidelines.

Risk management considerations

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	The Town has outlaid expenditure on developing Scheme Amendment 88.	Moderate	Likely	High	Low	Treat: adoption of the recommendation which would proceed the Scheme Amendment 88 to consultation.
Environmental	Flexibility to provide contemporary additions and sustainable renovations to dwellings will be delayed.	Moderate	Likely	High	Medium	Treat: adoption of recommendation would progress a flexible planning framework for providing improved environmental outcomes.
Health and safety	Not applicable.				Low	
Infrastructure/ ICT systems/ utilities	Not applicable.				Medium	
Legislative compliance	Not applicable.				Low	
Reputation	Not adopting the	Moderate	Likely	High	Low	Treat: adoption of

	recommendation would result in the ongoing absence of protection for character dwellings and a business as usual approach for the assessment of new dwellings.					the recommendation which would mean advertising of the draft Scheme Amendment 88.
Service delivery	Not proceeding with Scheme Amendment 88 will result in a continuation of current service delivery and practice	Moderate	Almost certain	High	Medium	Treat: adoption of the recommendation which would mean advertising of the draft Scheme Amendment 88.

Financial implications

Current budget impact	Nil.
Future budget impact	Nil.

Analysis

Scheme Amendment 73

21. As outlined above, the previous mechanisms for maintaining the essence of the RCSA has been significantly impacted with the introduction of the Regulations in 2015. The changes to the Regulations prompted the Town to propose Scheme Amendment 73.
22. As indicated above, Scheme Amendment 73 was ultimately refused by the Minister for Planning.
23. In brief, Scheme Amendment 73 proposed:
- a. Introducing the need for development approval for:
 - i. Demolition of 'original dwellings'
 - ii. All forms of development, other than those listed as exempt under a local planning policy.
 - b. Requiring development to conform with:
 - i. The objectives of the RCSA
 - ii. The future Local Planning Policy specific to the RCSA
 - iii. Requirements for demolition, namely that demolition of dwellings not being permitted except where:
 1. The dwelling is determined by Council to be structurally unsound; or
 2. The dwelling is wholly clad in fibro or asbestos wall cladding; or
 3. Council considers that the dwelling does not make a positive contribution to the character of the area as a result of it having had significant external alterations.

- c. Powers for the Town to issue a Conservation Notice requiring a landowner to undertake repairs/improvements to a property if it is considered by the Town that the property is not being properly maintained.
24. The Town undertook community consultation on the proposed Scheme Amendment, distributing over 5,000 letters to affected properties.
25. Scheme Amendment 73 received a total of 69 submissions during the community consultation process, which was a proportionately small number given that around 5000 letters were sent inviting the public to comment on the Amendment. The submissions received consisted of the following :
- 51 objections (74% of submissions);
 - 12 supporting submissions (17% of submissions);
 - 3 submissions of partial support (4% of submissions);
 - 2 submissions without a stated position (3% of submissions); and
 - 1 submission requesting a halt to any decision (1% of submissions).
26. The Scheme provisions relating to conservation notices generated a degree of community concern, with the majority of objections specifically citing this as a concern.
27. The following relevant comments were contained in the Council report:

The community consultation carried out for Amendment 73, despite exceeding relevant statutory requirements, has not been able to identify whether there is a broad level of support or opposition to the proposal within the community given the very low response rate. What it has identified, is that there are some highly concerned affected residents and property owners who are strongly opposed to the Amendment. In particular, the written submissions and verbal statements made by attendees at the community information sessions were strongly opposed to the 'demolition by neglect' provisions, namely the proposed ability of Council to serve conservation notices to property owners to carry out remedial works in the event of extreme negligence or damage to the architectural integrity of an original dwelling due to unauthorised works.

Community Expectations for Increased Engagement and Participation

There is a growing desire and increasing demand by residents and community members to be involved in the decision-making process, and to be provided with the opportunity to provide input and feedback into the development and implementation of government led strategies and projects of all kinds, at all levels.

Council-led community engagement projects such as the Evolve Project, 'Have Your Say' and other programs have also raised expectations in the community that exceed standard statutory consultation requirements and adopted policies of the Council, particularly with respect to Council-led town planning scheme or policy initiatives.

Whilst the submissions received during the community consultation process were overwhelmingly opposed to the Amendment, Council Officers are of the view that a 1.4% response rate does not give any clear direction as to whether or not the Amendment is supported by the community. The community consultation process, which was completed in excess of relevant statutory requirements, has not been able to identify whether a broad level of support (or opposition) exists for the measures proposed by Amendment 73.

A simple approach would be to either dismiss the proportionately small number of objections, given the very low 1.4% response rate, and continue pursuing the Amendment in its current form, or to give the objections greater weight as they represented the majority of submissions received, by no longer pursuing the Amendment at all or any other potential measures to protect or incentivise retention of original dwellings. However, either approach is not considered in keeping with good policymaking principles or to respect the opinions and aspirations of the community members whom will be affected by either of these options.

Community Engagement Opportunity

It is recommended that the Council utilise the outcomes of the consultation undertaken for proposed Amendment 73 as an opportunity to engage with the community on the desired outcomes for the area, including whether the Town's traditional residential areas should be protected and managed. Accordingly, it would then be proposed to prepare an appropriate statutory or policy solution that builds on this community input, which is then subject to further feedback and consultation with community members, and consideration by Council.

In view of the very low response rate, it is considered appropriate that Council consider carrying out an independent community engagement project to engage with the community and obtain a clear, broad understanding of the community's desires with respect to the retention and demolition of original dwellings and of the extent and type of development controls that should be applied to development within the Residential Character Study Area.

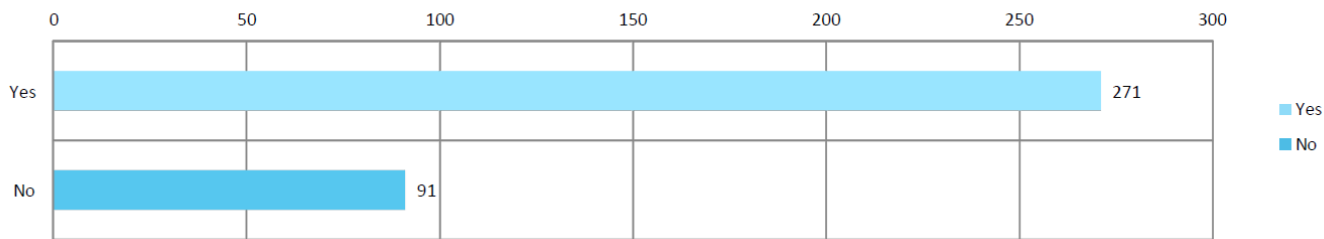
28. At the September 2017 Ordinary Council Meeting, Scheme Amendment 73 was modified by Council, to remove the need for development approval for demolition of original dwellings and new works, and removing the ability to issue conservation notices. This was against the Officer's recommendation. This left the Amendment as containing some general objectives for the area, but without any mechanism to ensure development met these objectives.
29. As part of the September 2017 Council resolution, Council requested Town Officers to further review the Town's statutory planning process in regard to the RCSA. The resolution specifically required the following:
 - a. Identify and measure the wishes of the community with respect to the retention of original dwellings within the Residential Character Study Area;
 - b. Identify potential town planning scheme and local planning policy measures to promote, incentivise or require the retention of original dwellings and the protection of character streetscapes within the Residential Character Study Area;

- c. Undertake a review of the original dwellings within the Residential Character Study Area to identify those dwellings or groups of dwellings worthy of formal heritage protection either individually or collectively; and
 - d. Review and provide a list of recommendations to the Council to amend Town Planning Scheme No. 1 and/or amend Local Planning Policy 25 'Streetscape', having regard to the outcomes of the community engagement process, and arriving at a recommended series of statutory and/or policy framework measures that is:
 - i. aligned with the values of the community and the Council;
 - ii. can be easily understood by the community;
 - iii. is relatively simple to administer; and
 - iv. minimises the need to impose additional levels of regulation contrary to the intent of the Planning and Development (Local Planning Schemes) Regulations 2015.
30. Ultimately the Scheme Amendment was refused by the Minister for Planning on the basis that:
- a. The amendment does not include any planning controls to implement the objectives proposed to be inserted;
 - b. Local planning policies are considered the appropriate planning mechanism to control streetscape design to protect local character; and
 - c. The Regulations provide appropriate heritage controls.

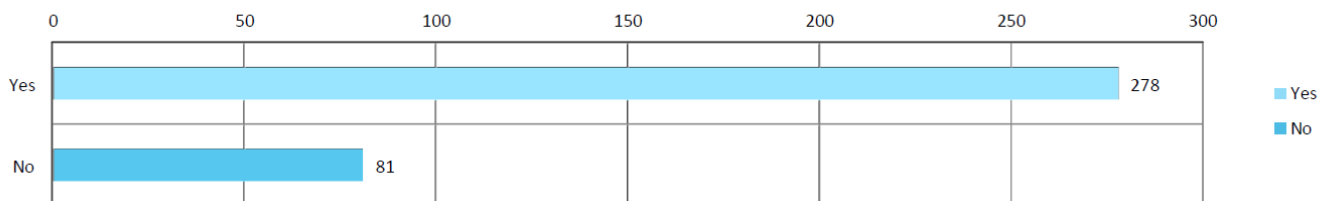
Proposed new Scheme Amendment

31. Consistent with the September 2017 Council resolution, the Town engaged Element to undertake an independent review of the Town's planning framework for the RCSA and engage the community. The Stage 1 consultation comprised a survey seeking feedback of residents' attitudes towards residential character, which attracted 357 submissions. As noted above at paragraph 19 the majority of respondents recognised that the character of the area deserves protection, and there is a clear desire from respondents to retain original dwellings.
32. The following graphs provide a summary of the responses to some key questions :

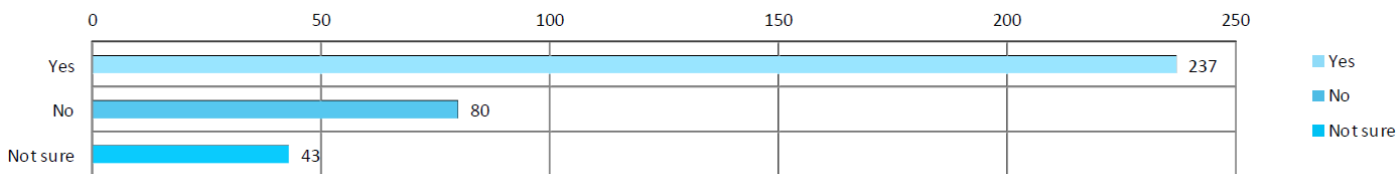
Do you believe the character within the area that you live deserves protection?



Should the Council play a role in regulating or encouraging the retention of 'original dwellings'?



Do you support Council having Local Planning Policies that restrict the design and appearance of new development in your neighbourhood? (i.e. roof pitches, colours and materials, window shapes, etc)



33. Based on the community feedback received, the Recommendations Report (Attachment 6) determined a Scheme Amendment to establish a Special Control Area (SCA) over the RCSA remains the most desirable option for character retention. The objectives of the SCA will be supported by a new Local Planning Policy – Character Retention Guidelines (guidelines) (Attachment 7).
34. Recognising the previous community concerns relating to the inclusion of Scheme provisions providing power to issue Conservation Notices, no such provision is proposed as part of the current Scheme Amendment.
35. As described in the original RCSA report, the area contains a significant number of 'original dwellings', which are defined as:

"The first dwelling to be constructed on the site that's considered to make a positive contribution to the streetscape due to its period of construction, architectural style and inherent character."
36. The presence of "original dwellings" located within the older established areas of the Town (located generally between Berwick Street and the railway line) contribute to a unique, identifiable streetscape character that should be protected and maintained. A large proportion of submissions indicated character retention to be important.
37. It is proposed that development in the SCA will require development approval in the circumstances described in part 2.3 of the recommendation. The need to obtain development approval gives the Town the ability to assess the merits of a proposal, and approve development that will not negatively impact upon the streetscape character. Without the introduction of such provisions, there will be no power for the Town to receive an application in some instances, and importantly assess whether or not a proposed development is acceptable within its streetscape context. In such a situation, demolition of original dwellings will be permitted regardless of the streetscape outcome and incompatible

development that does not respect the streetscape could occur as the development may otherwise be exempt from needing development approval.

38. In considering development applications within the SCA, regard needs to be given to the proposed Character Retention Area Guidelines (see Attachment 7). These Guidelines are proposed to apply to development within the RCSA instead of the Town’s Local Planning Policy 25 ‘Streetscape’.
39. Acknowledging the community feedback on the current Local Planning Policy ‘Streetscape’, the draft Character Retention Guidelines have been written to be more performance based and less prescriptive. This is intended to provide scope for innovative and creative design solutions, and sustainable and contemporary developments where appropriate.
40. Development that is not “visible from the street”, as this term is defined, will not be subject to the draft Character Retention Guidelines, therefore giving landowners complete freedom to deliver innovative, contemporary designs in these situations.
41. The draft Character Retention Area Guidelines are provided at Attachment 7 and are discussed in this report in order to inform Elected Members of the greater design flexibility that is proposed for developments within the RCSA in the future, and to allay any concerns that initiation of the Scheme Amendment will unreasonably restrict development within the area. Formal consideration and adoption of the guidelines for the purposes of community consultation is the subject of a separate report on the agenda for September Ordinary Council Meeting.
42. It should be noted that upon review of the map prepared by Element (see Attachment 5) indicating the land to be part of the Special Control Area, it has been determined that there are some areas which are not considered to have a significant concentration of ‘original dwellings’ so as to warrant being retained within the Residential Character Area. This particularly relates to parts of the Town with a density coding of R40 or greater within which Multiple Dwellings (apartments) can be constructed. Multiple Dwellings are of a distinctly different appearance from ‘original dwellings’ due to their form, height and scale. In this regard it is considered unreasonable to include properties within the Residential Character Area which are able to be developed with Multiple Dwellings, where there is not a strong presence of ‘original dwellings’. Furthermore to retain such properties within the Residential Character Area would require the development of sites in these areas with Multiple Dwellings to be assessed against the Character Retention Guidelines, which would be unreasonable given their differing form and scale. Accordingly, an amended map appears at Attachment 8 showing the proposed modified boundaries for the Residential Character Area and Special Control Area.

Addressing Ministers Refusal

43. Noting that Amendment 73 previously proposed the creation of a SCA over the same area, and that this was refused by the Minister, it would be reasonable to question why the current Amendment again proposes the creation of a SCA and why this has any greater prospect of being approved. The below table outlines the differences between the refused SCA and the SCA the subject of this Report.

Ministers reason for refusal of Amendment 73	Scheme Amendment 88 context
The amendment does not include any planning controls to implement the objectives proposed to be inserted.	Proposed Scheme Amendment 88 stipulates planning controls within the SCA. These are: <div style="border: 1px solid black; padding: 5px;"> <ol style="list-style-type: none"> 1. Notwithstanding clause 61(1)(c), (d) and (e) of the deemed provisions, development approval is required for the </div>

following works :

- a) the erection or extension of a single house on a lot, where visible from the street;
- b) the erection or extension of an ancillary dwelling, outbuilding, external fixture, front fence, patio, verandah, garage or carport on the same lot as a single house or grouped dwelling, where visible from the street;
- c) the demolition of a single house constructed prior to 1 January 1946.

unless those works are specified as being exempt from development approval under a local planning policy referred to in deemed clause 61(1)(i).

For the purposes of this clause:

- i. "visible from the street" only applies to a dwelling which has a frontage to a street.
- ii. "visible from the street" means development which if implemented is either:
 - Situated wholly or partially within 12m of the street boundary; or
 - Wholly located greater than 12m from the street boundary and exceeding a height of 5m above the natural ground level at the street boundary.
- iii. "Street" means a public street, whether a primary or secondary frontage to a site, but does not include a right-of-way (or a public street which was formerly a right-of-way), or a communal street.
- iv. Clause 60 of the deemed provisions continue to apply in relation to other works that require development approval.

The planning controls are considered to be effective in delivering the objectives of the proposed SCA and providing for character retention.

It is considered that the previously stated reason for refusal has now been addressed as part of Amendment 88.

<p>Local planning policies are considered the appropriate planning mechanism to control streetscape design to protect local character.</p>	<p>The draft Character Retention Guidelines have been developed to be a local planning policy which relates to design and streetscape character. A separate report to Council is presented to introduce the guidelines to Council for consideration (Attachment 7).</p> <p>It is considered that the previously stated reason for refusal has now been addressed by the Town.</p>
<p>The Regulations provide appropriate heritage controls.</p>	<p>It is agreed that the Regulations have scope to provide heritage protection through the introduction of a statutory Heritage List or an identified Heritage Area. In this respect the Town has commenced work on an updated Municipal Heritage Inventory, now known as a Local Heritage Survey, which will then inform the preparation of a Heritage List.</p> <p>However, in this case, the issue is one of character, not heritage. The majority of dwellings in the RCSA do not individual heritage significance in their own right, but collectively they form a distinct and identifiable character.</p> <p>It is considered that the previously stated reason for refusal has been and will be further addressed by the Town.</p>

Contemporary Design and Planning

44. During the community consultation process a clear desire for a flexible approach to design emerged. The guidelines have been developed in response to this feedback, with a focus on performance outcomes.
45. It is noted the SCA itself does not specify design standards, instead Schedule E identifies a Local Planning Policy to outline the design standards.
46. The benefits of containing development standards within a policy as opposed to being contained as Scheme provisions is to ensure flexibility in the application and efficiency in reviewing and updating the guidelines.
47. The guidelines reflect a modern planning approach to character retention and orderly and proper planning for the character retention area.
48. Whilst the guidelines maintain provisions relating to maintaining character by way of local housing objectives, the prescriptive nature of Local Planning Policy 25 – Streetscape has been significantly reduced.

49. The local housing objectives are performance based and should be given due regard when determining the acceptability of a proposed development. As the local housing objectives are not deemed-to-comply there is flexibility when considering contemporary applications.
50. Where variations to the guidelines are proposed a performance based approach is applicable. The variations are considered against the overall objectives of the guidelines, similarly this is the approach being implemented by the State Government in the Design WA suite of documents.
51. The guidelines focus on the preservation of critical streetscape matters, with in built flexibility, allowing the policy to respond to the unique nature of each streetscape on an individual application basis.
52. Regarding additions to original dwellings, the guidelines permit appropriate contemporary additions where appropriate. The guidelines state:

“Additions to original dwellings may be more contemporary in nature, while ensuring they are designed to respect the materiality, scale and form of the original dwelling and not overwhelm the streetscape presence of that dwelling.”

53. The updated proposed definition of “visible from the street” ensures further inbuilt flexibility for development occurring outside the “visible from the street” zone to be of an entirely contemporary nature.

Contemporary Environmental Considerations

54. The guidelines give some regard to environmental outcomes within the district.
55. A key component of the SCA is upon retaining the original dwellings that make a positive contribution to the streetscape character. Retaining a dwelling represents a significant amount of carbon stored within the existing structure and reduces waste.
56. The guidelines do not prevent the upgrade of original dwellings to modern environmental standards, where works undertaken are either internal, not “visible from the street” or still respect elements of the streetscape character.
57. Sustainable outcomes are a high priority for the Town, with several measures in the local planning framework specifically implemented to address environmental considerations such as LPP 39 – Tree Planting and Retention and LPP 36 – Climate Control (Energy Efficiency).
58. The guidelines will allow for developments with a sustainable design focus to be considered on their merits in appropriate situations.

Requirement for development approval

59. Deemed clause 60 of the Planning and Development (Local Planning Schemes) Regulations 2015 provides that any works on, or use of land in the Scheme area requires development approval, unless exempt from approval under deemed clause 61.
60. Under deemed clause 61(1) there are a range of works that are exempt from development approval, notably the following:
 - Sub-clause (1)(c) – a new single house, or additions to a single house, if compliant with the R-Codes; or
 - Sub-clause (1)(d) - the erection or extension of an ancillary dwelling, outbuilding, external fixture, boundary wall or fence, patio, pergola, verandah, garage or carport on the same lot as a single house or grouped dwelling if compliant with the R-Codes.
 - Sub-clause (1)(e) - the demolition of a single house;

- Sub-clause (1)(i) - works specified in a local planning policy as works that do not require development approval.

Note – the exemptions under sub-clause (c), (d) and (e) do not apply to a heritage protected place. Furthermore, the reference to being compliant with the R-Codes also refers to a deemed-to-comply standard of the R-Codes amended or replaced by a local planning policy.

61. Consistent with sub-clause (1)(i), the Town’s Local Planning Policy 32 ‘Exemptions from Development Approval’ (LPP32) identifies types of works that are exempt from development approval. These are generally works of a more minor nature, and in some cases are subject to conditions eg. air conditioning units; decking; maintenance and repair works; solar collectors etc.

62. The combined effect of deemed clause 60, 61 and LPP32 is that many works already require development approval within the proposed Special Control Area and the Town more generally, most notably:

- A new Grouped Dwelling – in all instances;
- Additions to a Grouped Dwelling – in all instances;
- A new Single House or additions to a Single House, where not compliant with the R-Codes; and
- The erection or extension of an ancillary dwelling, outbuilding, patio, garage or carport where not compliant with the R-Codes.

63. Sub-clause (3) of deemed clause 61 states *“Despite sub-clause (1) development approval may be required for certain works carried out in a special control area.”*

64. As contained in the recommendations report prepared by Element, it was recommended that development approval be required for the following works in the Special Control Area:

- The demolition of a single house constructed prior to 1 January 1946; or
- Any development visible from the street, with the term “visible from the street being defined as:
“Being situated within 12m of a primary street boundary and/or exceeding 5m above the nature ground level of the street boundary as determined by the local government.”

65. Following review of the proposed definition by both Urban Planning staff and the Town’s solicitors, the following alternative wording to that prepared by Element was prepared and presented to the July 2020 OCM as part of Amendment 87:

1. *“In accordance with clause 61(3) of the deemed provisions, development approval is required for the following works, even if they would otherwise be exempt under clause 61(1) of the deemed provisions:*

a) *The demolition of a dwelling constructed prior to 1 January 1946; or*

b) *Works that:*

(i) *require development approval under deemed clause 60, unless specified as being exempt from development approval under a local planning policy referred to in deemed clause 61(1)(i); or*

(ii) *are of a kind identified in deemed clause 61(1)(c) or (d) of the deemed provisions, that are not specified as being exempt from development approval under a local planning policy referred to in deemed clause 61(1)(i), and which if implemented could be wholly or partially seen from a street and is either:*

- *Situated wholly or partially within 12m of the subject lot’s boundary to the street; or*

- *Wholly located greater than 12m from the street boundary and exceeding a height of 5m above the natural ground level at the street boundary but does not include single storey works.*

For the purposes of this clause:

1. *In ascertaining whether a development, if implemented, could be wholly or partially seen from a street:*
 - i. *Account is not to be taken of existing or proposed fencing, landscaping or other impediments to visibility; but*
 - ii. *Account may be taken of existing (pre-implementation of the proposed development) heights within of the site, provided that the development is not proposed to change the existing topography in a way that would render the development visible.*
2. *“Street” means a public street, whether a primary or secondary frontage to a site, but does not include a right-of-way (or a public street which was formerly a right-of-way), or a communal street.”*

66. Amendment 87 was adopted on the basis of the above wording.

67. Following the initiation of Amendment 87, as part of the preparation of the associated draft Local Planning Policy - Character Retention Guidelines, and in response to matters raised at the August 2020 Agenda Briefing Forum, it was identified that the wording of Amendment 87 in general requires improvement, and in particular the term “visible from the street” requires modification for greater clarity and objectivity.

68. On reflection, it is considered that the wording of Amendment 87 as initiated requires improvement in respect to:

- Being simpler and clearer generally. It is considered that the wording of the adopted definition would result in uncertainty for the community, but also could result in different interpretations within the Town over time.
- The circumstances where development approval is required or not required, including the relationship with LPP32.
- Removing any subjectivity in the definition.
- Exempting new dwellings at the rear of an existing dwelling, or additions to a rear dwelling from requiring development approval if visible from the street and satisfying other normal exemption requirements, as well as ensuring that the Character Retention Guidelines do not apply to such works. Discussions with Element have confirmed that their intent was that works visible from a street including a rear dwelling and additions thereto, would require development approval. Urban Planning staff consider that works to a dwelling that does not front a street should not necessarily be the subject of development approval if visible from the street, given their significant setback from the street and the limited streetscape contribution. Instead such works should only require development approval in the normal circumstances under deemed clause 60 and 61.

69. On this basis it is proposed to modify the relevant parts of the Scheme Amendment to the following:

1. Notwithstanding clause 61(1)(c), (d) and (e) of the deemed provisions, development approval is required for the following works:
 - a. the erection or extension of a single house on a lot, where visible from the street;

- b. the erection or extension of an ancillary dwelling, outbuilding, external fixture, front fence, patio, verandah, garage or carport on the same lot as a single house or grouped dwelling, where visible from the street;
- c. the demolition of a dwelling constructed prior to 1 January 1946.
unless those works are specified as being exempt from development approval under a local planning policy referred to in deemed clause 61(1)(i).

For the purposes of this clause:

- i. "visible from the street" only applies to a dwelling which has a frontage to a street.
- ii. "visible from the street" means development which if implemented is either:
 - Situated wholly or partially within 12m of the street boundary; or
 - Wholly located greater than 12m from the street boundary and exceeding a height of 5m above the natural ground level at the street boundary.
- iii. "Street" means a public street, whether a primary or secondary frontage to a site, but does not include a right-of-way (or a public street which was formerly a right-of-way), or a communal street.
- iv. Clause 60 of the deemed provisions continue to apply in relation to other works that require development approval.

70. The proposed amended wording:

- removes ambiguity as to what is "visible from the street" and considering the need for an application for development approval.
- is clearer in its application, specifically excluding rear developments from development approval for reasons of visibility from the street and the need for such development to be assessed against the guidelines.

71. Further, any rear extension to a street frontage dwelling which is wholly situated greater than 12m behind the street boundary and less than 5m high will not be required to address the guidelines.

72. Benefits of the proposed definition include negating the need for development approval for reasons of visibility from the street, and improving the ability for rear dwellings and rear extensions to existing dwellings to be more contemporary in nature.

73. Development which does not fall within the area identified as being "visible from the street" will be assessed against the provisions of the Residential Design Codes – Volume 1.

74. So, having regard to the modified wording of the Amendment, the following works which currently do not require development approval will now require development approval:

- A new single house, or additions to a single house, where visible from the street, regardless of compliance with the R-Codes.
- the erection or extension of an ancillary dwelling, outbuilding, external fixture, front fence, patio, verandah, garage or carport on the same lot as a single house or grouped dwelling, where visible from the street, regardless of compliance with the R-Codes.
- the demolition of a dwelling constructed prior to 1 January 1946.

75. Other forms of development which currently require development approval will continue to do so. Other forms of development which are currently exempt from development approval will continue to be exempt.

76.

Impacts on other Local Planning Policies

77. The proposed changes to the SCA necessitate a review of the existing Local Planning Policy 32 - Exemptions from Development Approval (LPP 32) (see Attachment 9).

78. To ensure unintended exemptions do not apply to development identified as requiring a development approval under the provisions of the SCA an updated LPP 32 has been prepared (see Attachment 10 with changes highlighted in yellow).

79. It is intended the proposed SCA, guidelines and LPP 32 will be consulted concurrently to outline the full range of planning requirements proposed.

Relevant documents

- [Local Planning Policy 25 – Streetscape](#)
- [Local Planning Policy 32 – Exemption From Development Approval](#)
- [Town of Victoria Park Town Planning Scheme No.1](#)
- [State Planning Policy 7.3 – Residential Design Codes Volume 1](#)
- [State Planning Policy 7.3 – Residential Design Codes Volume 2](#)

Cr Vicki Potter left the meeting at 9.33pm.

Cr Luana Lisandro left the meeting at 9.33pm.

COUNCIL RESOLUTION (502/2020):

Moved: Cr Brian Oliver

Seconded: Cr Ronnhda Potter

That Council:

1. Resolves, pursuant to Regulation 37 of the Planning and Development (Local Planning Schemes) Regulations 2015, to not proceed to advertise Amendment 87 to the Town of Victoria Park Town Planning Scheme No. 1.

2. Resolves, pursuant to Section 75 of the *Planning and Development Act 2005*, to initiate Amendment 88 to the Town of Victoria Park Town Planning Scheme No. 1 as follows :

2.1 Including a new sub-clause 25A(1)(c) within the Scheme Text as follows:

c) Character Retention Area shown on the Precinct Plans as CRA with a number (1) and included in Schedule E.

2.2 Inserting a new clause 25AC within the Scheme Text as follows:

25AC. Character Retention Area

(1) The purpose of the Character Retention Area is to:

- a. Retain and enhance the contribution made by original dwellings towards streetscape character; and
- b. To facilitate the consideration of streetscape character in development proposals.

(2) Schedule E sets out the specific objectives and additional provisions that apply to the Character Retention Area.

2.3 Including the Character Retention Area within Schedule E of the Scheme Text as follows:

Area No	Land Description	Purpose and Particular Requirements
		Purpose
		<ol style="list-style-type: none"> 1. Retain and enhance the contribution made by original dwellings towards streetscape character; and 2. To facilitate the consideration of streetscape character in development proposals.
		Particular requirements
CRA1	Land generally extending between the railway line and to around Berwick Street and Canning Highway to around Oats Street, and more specifically identified in the Precinct Plans with the designation 'CRA 1'.	<ol style="list-style-type: none"> 1. Notwithstanding clause 61(1)(c), (d) and (e) of the deemed provisions, development approval is required for the following works : <ol style="list-style-type: none"> a) the erection or extension of a single house on a lot, where visible from the street; b) the erection or extension of an ancillary dwelling, outbuilding, external fixture, front fence, patio, verandah, garage or carport on the same lot as a single house or grouped dwelling, where visible from the street; or c) the demolition of a single house constructed prior to 1 January 1946. <p>unless those works are specified as being exempt from development approval under a local planning policy referred to in deemed clause 61(1)(i).</p> <p>For the purposes of this clause :</p> <ol style="list-style-type: none"> i. "visible from the street" only applies to a dwelling which has a frontage to a street. ii. "visible from the street" means development which if implemented is either : <ul style="list-style-type: none"> • Situated wholly or partially within 12m of the street boundary; or

		<ul style="list-style-type: none"> • Wholly located greater than 12m from the street boundary and exceeding a height of 5m above the natural ground level at the street boundary. <p>iii. "Street" means a public street, whether a primary or secondary frontage to a site, but does not include a right-of-way (or a public street which was formerly a right-of-way), or a communal street.</p> <p>iv. Clause 60 of the deemed provisions continue to apply in relation to other works that require development approval.</p> <p>2. All development for which development approval is required (including by virtue of this Schedule E) shall be designed with due regard for any relevant local planning policy adopted for the Character Retention Area.</p>
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2.4 Amend Precinct Plans P5, P6, P10 – Sheet A and P12 – Sheets A and B by including in the legend a heading 'Land Use and Development Controls' and then underneath a black border and number CRA1 within the boundaries of the border described as 'Character Retention Area – refer to clause 25AC and Schedule E of the Scheme Text'.

2.5 Amend Precinct Plans P5, P6, P10 – Sheet A and P12 – Sheets A and B by delineating the Character Retention Area using a blue border and the number CRA1 within the boundaries of the border.

3. Determines, in accordance with Regulation 35(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, that Amendment 88 to the Town of Victoria Park Town Planning Scheme is a complex amendment for the following reasons:

- a) The amendment is not addressed by any Local Planning Strategy; and
- b) The amendment has the potential to result in significant environmental, social, economic or governance impacts on land in the scheme area.

4. Resolves in accordance with Regulation 37 of the Planning and Development (Local Planning Schemes) Regulations 2015 to proceed to advertise Amendment 88 in accordance with Regulation 38 and Local Planning Policy 37, subject to the Western Australian Planning Commission's advice that it considers the amendment suitable for advertising and the EPA determining that an environmental review is not required.

5. Consent to public advertising of the draft amended Local Planning Policy 32 'Exemptions from Development Approval', as contained at Attachment 10, in accordance with deemed clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015, with consultation being undertaken concurrently with advertising of Scheme Amendment 88 and the draft Local Planning Policy - Character Retention Guidelines.

CARRIED (6 - 0)

For: Mayor Karen Vernon, Cr Ronhhda Potter, Cr Brian Oliver, Cr Wilfred Hendriks, Cr Bronwyn Ife, Cr Jesvin Karimi

Against: nil