

11.2 Amendment to Town Planning Scheme No. 1 – Designation of Residential Character Study Area as a Special Control Area

File Reference:	PLA/7/73
Appendices:	No
MRS Zoning:	Urban
TPS Zoning:	Residential
TPS Precincts:	P5 – Raphael Precinct P6 – Victoria Park Precinct P10 – Shepperton Precinct P12 – East Victoria Park Precinct

Date:	26 May 2016
Reporting Officer:	T. Taylor
Responsible Officer:	R. Cruickshank
Voting Requirement:	Simple Majority

Executive Summary:
Recommendation – Council initiate an Amendment to Town Planning Scheme No. 1 to designate the Residential Character Study Area as a Special Control Area

- The introduction of the Planning and Development (Local Planning Schemes) Regulations 2015 (‘the Regulations’) has now exempted development approval for demolition and building works where compliant with the Residential Design Codes (‘the R-Codes’);
- This has implications for retention of the ‘original dwellings’ in the Town’s Residential Character Study Area, and potentially the ability for new development to not have to comply with the provisions of the Town’s Local Planning Policy ‘Streetscape’;
- The matter has been discussed at two Elected Members Workshops with general support being expressed for actions to be taken to preserve the character of the Residential Character Study Area;
- After investigation by Council Officers it has been identified that the preferred approach is a Town Planning Scheme Amendment be undertaken to classify the Residential Character Study Area as a Special Control Area under the Scheme and to specify criteria for development within the Special Control Area; and
- It is recommended that Council initiate Scheme Amendment No. 73 to designate the Residential Character Study Area as a Special Control Area.

TABLED ITEMS:

- Figure 8 of the Local Planning Policy – Streetscape, ‘Residential Character Study Area and Original Dwellings’;
- Proposed Town Planning Scheme No. 1 clauses; and
- Minutes of the Future Planning Committee meetings dated 20 April 2016 and 18 May 2016.

BACKGROUND:

The Town’s Residential Character Study Area was initially introduced in 2003 in response to concerns that the traditional residential character of the area was being eroded through increased development pressures. As residential character is broader than just built form,

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it was not considered suitable to use the Town's Municipal Heritage Inventory as a way of protecting the character of the Town, and so a study was undertaken to *"identify residential areas within the Town that have character of such significance as to warrant some level of protection and to recommend the forms of protection that may be appropriate for various areas."* Ultimately the study found that there was sufficient original fabric for traditional character to be sustained through the majority of the study area and that in the identified areas the Town should give priority to, and actively encourage, the retention and conservation of elements contributing to traditional residential character.

In 2005 Council adopted the Local Planning Policy – Streetscape in order to address historic problems of interpretations and uncertainty given that the provisions were contained previously within 12 individual Council documents. The Local Planning Policy – Streetscape was adopted under the Residential Design Codes 2002 and it varied certain elements of the Residential Design Codes as well as introduced building design requirements to ensure that development within the identified areas in the Residential Character Study Area sufficiently responded to, and enhanced the existing character of the streetscapes. The Local Planning Policy – Streetscape has continued to be used by the Urban Planning Business Unit and Council when determining applications throughout the Town, including developments located within the Residential Character Study Area.

The release of the strategic directions documents 'Directions 2031 and Beyond', 'Central Metropolitan Perth Sub-Regional Strategy' and 'Perth and Peel @ 3.5 Million' identified the Town of Victoria Park as having to accommodate an additional 19,400 dwellings by 2031 in order to accommodate the anticipated population of 3.5 million people. Even in 2010, Council were aware of the development pressures that this would bring and undertook a review of the Residential Character Study Area due to conflicts between residential densities and the intention to retain 'original dwellings'. The strategic position at the time of this review was:

- *Additional dwellings and high density development should be concentrated within areas where existing residential areas are unaffected or less affected. This would include the Burswood Peninsula, Causeway Precinct, Curtin / Bentley Technology Precinct, and along Albany Highway.*
- *Existing residential areas should be retained as predominantly low to medium density residential areas.*
- *Areas within the Town that have an identifiable and desirable character should be retained and strengthened where possible.*
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Through this review it was identified that major growth areas that can accommodate a large number of new dwellings are located away from established residential areas. The below table demonstrates where the projected dwelling numbers will be accommodated within the Town.

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Location	Housing Target (ultimate)
Burswood Peninsula Activity Centre	7,770
Bentley Curtin Activity Centre	6,290
Albany Highway Activity Centre	2,109
Causeway Precinct	851
Carlisle	1,443
Residential Character Study Area	1,325
	19,788

In relation to the target for the Residential Character Study Area, the additional dwelling numbers are achievable through infill development where 'original dwellings' can be retained with new dwellings to the rear. It is not necessary for the loss of 'original dwellings' to accommodate additional density in the existing residential character areas.

The Local Planning Policy – Streetscape contains provisions which outline a general presumption against the demolition of 'original dwellings' in the Residential Character Study Area, and contains prescriptive design requirements to ensure that new development is compatible with the existing streetscape. There have been a number of instances where Council has refused an application for demolition, or an application for a new dwelling or building works, owing to the property being within the Residential Character Study Area and the proposed development negatively impacting upon the character of the area.

The effectiveness of the Local Planning Policy – Streetscape in ensuring compatible building design and a maintenance of character largely depends on the need for all developments within the Town to obtain development approval (as required by Town Planning Scheme No. 1). On 19 October 2015 the Planning and Development (Local Planning Schemes) Regulations 2015 were introduced, which include a range of 'deemed provisions' which immediately applied to all Town Planning Schemes in Western Australia. The 'deemed provisions' in the Regulations now exempt the following from needing development approval:

- Demolition of a single dwelling; and
- A new single dwelling or additions to a single dwelling where compliant with the R-Codes or those aspects of the R-Codes varied by a Local Planning Policy.

Legal advice has been received which outlines that the changes to the Regulations have in some circumstances removed the ability for Council Officers to assess the proposed built form character of new developments within the Residential Character Study Area, or to prevent the demolition of 'original dwellings'. In response Council Officers have investigated the options available in relation to designating the Residential Character

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Study Area as a 'heritage area' under Deemed Provision 9 of the Regulations, or alternatively undertaking a Town Planning Scheme Amendment to designate the Residential Character Study Area as a Special Control Area under Clause 29 of the Scheme.

The matter has been discussed at both the April and May meetings of the Future Planning Committee, the minutes of which are included as tabled items for information.

At the Future Planning Committee meeting on the 18 May 2016 it was resolved as follows:

- 1. That Council Officers prepare the necessary documentation and reports to be presented to the June 2016 Ordinary Council Meeting to initiate a Scheme Amendment to designate the Residential Character Study Area as a Special Control Area under Schedule 7 of the Scheme.*
- 2. The Future Planning Committee is supportive of this direction and recommends Council proceed on this basis with provisions in accordance with the relevant provisions of the Local Planning Policy Streetscape and specifically requiring an application for approval for demolition of original dwellings.*

DETAILS:

The introduction of the deemed provisions in the Local Planning Schemes Regulations has implications for the Town in respect to the retention of dwellings and the quality of new developments in some instances. This is particularly concerning within the Town's Residential Character Study Area, for the 'original dwellings' that make a significant contribution to the traditional character of the area, and where new development may not need to comply with the design requirements of the Local Planning Policy – Streetscape.

One option that has been considered to resolve this issue has been to designate the Residential Character Study Area as a 'heritage area' in accordance with Deemed Clause 9 of the Regulations, noting that the exemptions from development approval for demolition and for new development do not apply in a heritage area.

Another option that has been identified is to amend the Scheme to identify the Residential Character Area as a Special Control Area, named the Residential Character Special Control Area, and to specify requirements that apply to development within the area. It is noted that the Special Control Area approach is one that has been taken by the City of Stirling to deal with their residential character areas such as Mount Lawley and Inglewood. This will require a Scheme Amendment to be initiated and for a formal Scheme Amendment process to be followed including:

- Council resolving to initiate an Amendment;
- Advertising the proposal for 42 days;
- Considering public submissions; and
- WAPC consideration and Ministerial determination.

While the Special Control Area path will be a longer process, Council Officers favour this approach as it will give the Residential Character Study Area greater standing, and eliminates any misunderstanding that the area or its individual properties are heritage

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listed. Initial discussions have been held with Officers of the Department of Planning who have indicated that a Special Control Area can be supported in this instance.

The intent of the Amendment is not to impose additional requirements upon the development of land or buildings. Instead the purpose is to ensure that those provisions that applied throughout the area prior to the introduction of the Regulations, namely the need for development approval for demolition, new dwellings and additions to dwellings, and the need to comply with the Local Planning Policy – Streetscape, continue to apply. The only new element to the proposed Scheme Amendment is the ability for Conservation Notices to be served to owners of ‘original dwellings’ who do not maintain their properties. This element of the Scheme Amendment will be discussed in further detail in the Comments section below.

Legal Compliance:

In accordance with the provisions of the *Planning and Development Act 2005*, an Amendment to Council’s Town Planning Scheme No. 1 is required to designate the Residential Character Study Area as a Special Control Area. Should Council resolve to initiate an Amendment, the statutory processes for a Standard Scheme Amendment would need to be followed including advertising of the proposal for public comments for a period of 42 days. The Hon. Minister for Planning will ultimately be responsible for determining the Scheme Amendment.

Sustainability Assessment:

External Economic Implications:

Nil

Social Issues:

Nil

Cultural Issues:

The protection of the established residential character in the Town needs to be a high priority of the Council and should be a key consideration in all future development of the Town.

Environmental Issues:

Nil

COMMENT:

Given the need to maintain and protect the character of the Town’s Residential Character Study Area, it is intended to initiate a Scheme Amendment to designate the Residential Character Study Area as a Special Control Area. This will allow Council to ensure that any development within the area is of an acceptable standard and ensure that ‘original dwellings’ are retained and maintained.

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The proposed new Scheme clauses in conjunction with Deemed Provision 61(3) will result in all developments located within the Special Control Area (with the exception of those minor developments identified as not requiring development approval) including demolition, new dwellings and additions to existing dwellings requiring development approval. This in turn also allows for the building design requirements currently contained within the Local Planning Policy - Streetscape to be applied to ensure that all development respects and enhances the existing residential character of the area.

Whilst the result of designating the Residential Character Study Area as a Special Control Area will largely be the same as it was prior to the introduction of the Regulations, it is also proposed to include clauses which will allow the Council to issue notices to owners of 'original dwellings' to order repairs to prevent further damage and deterioration should the need arise. This power was expressly granted to all local governments through the introduction of the Regulations for dwellings listed as 'Heritage Places', on the Municipal Heritage Inventory, or located within a 'Heritage Area'. There have been a number of instances where landowners appear to have deliberately neglected to maintain a dwelling as a means to justifying demolition of the dwelling. The introduction of powers to issue notices would allow Council to prevent this occurring.

The designation of the Special Control Area will require Council to adopt a Local Planning Policy that relates to the Residential Character Study Area. This policy will include a plan showing the location of 'original dwellings' as well as the requirements for development in the Residential Character Special Control Area. It is intended that a review of the 'original dwelling' stock will be undertaken as a part of this process to ensure that the Town has an up to date record of the 'original dwelling' stock.

CONCLUSION:

Since its adoption in 2003, the Town's Residential Character Study Area has played a key role in shaping new development within the Town, and protecting the traditional streetscape character. The introduction of the Local Planning Scheme Regulations has implications for the retention of dwellings in the area and the general maintenance of the character of the area and its streetscapes.

The proposed Scheme Amendment recognises the importance of the Residential Character Area, by continuing to apply previous provisions requiring approval for development in the area and requirements to ensure that the quality of development is in keeping with the character of the area. This is to be supplemented by a new provision to protect 'original dwellings' from demolition by neglect.

It is recommended that Council resolve to initiate Scheme Amendment No. 73 to designate the Residential Character Study Area as a Special Control Area under Town Planning Scheme No. 1. The process will include a 42 day consultation period which will include letters being sent to all landowners with properties located in the proposed Residential Character Special Control Area, newspaper advertisements and a notice on the Town's website.

RESOLVED:

Moved: Cr Maxwell

Seconded: Cr Potter

1. Council resolve pursuant to Section 75 of the *Planning and Development Act 2005* to initiate an Amendment (Amendment No. 73) to the Town of Victoria Park Town Planning Scheme No. 1 by amending the Town Planning Scheme Text as follows:

1.1. Amend Clause 29A (1) of the Scheme Text by including the following additional type of Special Control Area:

(c) Residential Character Areas shown on the Precinct Plans as RC with a number and included in Schedule 7.

1.2. Insert in to ‘Division 3 – Special Control Areas’ of the Scheme Text the following Clause:

29AC. RESIDENTIAL CHARACTER AREAS

Schedule 7 describes the Residential Character Areas in more detail and sets out the purpose and particular requirements that may apply to the Residential Character Areas.

1.3. Amend “SCHEDULE 7: SPECIAL CONTROL AREA” contained in the Scheme Text to include a new Special Control Area – RC 1 and to incorporate the following text:

Area No	Land Description	Purpose and Particular Requirements
RC 1	The whole of the area of land designated as RC1 on the Precinct Plans (known as the Residential Character Special Control Area).	<p>(1) Definitions</p> <p>In this section –</p> <ul style="list-style-type: none"> • ‘Conservation notice’ means a notice given under Clause 5, subclause (a); • ‘Original dwelling’ means a dwelling that has been identified as an original dwelling within a local planning policy adopted for the Residential Character Special Control Area; • ‘Properly maintained’, in relation to an ‘original dwelling’, means maintained in a way that ensures that there is no actual or imminent loss or deterioration of – <ul style="list-style-type: none"> (i) The structural integrity of the original dwelling; or

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		<p>(ii) An element of the ‘original dwelling’ that is integral to the character of the area in which it is located, as set out in a statement in a local planning policy adopted for the Residential Character Special Control Area.</p> <p>(2) Objectives</p> <p>The objectives for development and planning decision making within RC 1 are:</p> <p>(a) To ensure the conservation and retention of ‘original dwellings’ within the Residential Character Special Control Area where they are considered to contribute to the character of the area.</p> <p>(b) To ensure that new development, inclusive of alterations, additions to existing buildings, carports, garages, patios and front fences are in keeping with the character of the area, respect the scale and proportions of surrounding buildings, and are designed to fit into the existing streetscape.</p> <p>(3) Development approval</p> <p>Development approval is required for:</p> <p>(a) Demolition of ‘original dwellings’.</p> <p>(b) All forms of development involving works except those listed as being exempt under an approved local planning policy.</p> <p>(4) Development requirements</p> <p>All development shall conform with the following:</p> <p>(a) The objectives of the Residential Character Special Control Area.</p>
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		<p>(b) All relevant provisions of the Local Planning Policy adopted for the Residential Character Special Control Area.</p> <p>(c) Demolition of ‘original dwellings’ will not be permitted except where:</p> <ul style="list-style-type: none"> (i) The dwelling is determined by Council to be structurally unsound; or (ii) The dwelling is wholly clad in fibro or asbestos wall cladding; or (iii) 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. <p>(5) Conservation notice</p> <ul style="list-style-type: none"> (a) If the Town forms the view that an ‘original dwelling’ is not being properly maintained the Town may give to a person who is the owner or occupier of the ‘original dwelling’ a written notice requiring the person to carry out specified repairs to the ‘original dwelling’ by a specified time, being a time that is not less than 60 days after the day on which the notice is given. (b) If a person fails to comply with a conservation notice, the Town may enter the ‘original dwelling’ and carry out the repairs specified in the notice. (c) The expenses incurred by the Town in carrying out repairs under subclause (b) may be recovered as a debt due from the person to whom the notice was given in a court of competent jurisdiction.
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		<p>(d) The Town may –</p> <ul style="list-style-type: none"> (i) Vary a conservation notice to extend the time for carrying out the specified repairs; or (ii) Revoke a conservation notice. <p>(e) A person who is given a conservation notice may apply to the State Administrative Tribunal for a review, in accordance with Part 14 of the Act, of a decision –</p> <ul style="list-style-type: none"> (i) To give the notice; or (ii) To require repairs specified in the notice to be carried out; or (iii) To require repairs specified in the notice to be carried out by the time specified in the notice.
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1.4 Amend Precinct Plans P5, P6, P10 – Sheet A and P12 – Sheets A & B by including in the legend a heading “Land Use and Development Controls” and then underneath a black border and number RC 1 within the boundaries of the border described as Residential Character Area subject to Division 3 and Schedule 7 of the Town Planning Scheme Text.

1.5 Amend Precinct Plans P5, P6, P10 – Sheet A and P12 – Sheets A & B by delineating the Residential Character Special Control Area using a black border and the number RC1 within the boundaries of the border.

2. The Chief Executive Officer and Mayor be authorised to execute the Town Planning Scheme No. 1 Amendment No. 73 documents.
3. Amendment No. 73 be referred to the Department of Environment and Conservation prior to the commencement of advertising of the Amendment.
4. On receipt of advice from the Environmental Protection Authority under Section 48A of the Environmental Protection Act indicating that the Amendment need not be subject to an environmental assessment, the Amendment be advertised in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 for 42 days.

The Motion was Put and

CARRIED (8-0)

In favour of the Motion: Deputy Mayor, Cr Oliver; Cr Ammons Noble; Cr Anderson; Cr Hayes; Cr Jacobs; Cr Maxwell; Cr Potter and Cr Windram