

# agenda

Special Meeting of Council



To: His Worship the Mayor and Councillors

Please be advised that a **Special Meeting of Council** will be held at **6:00pm** on **Tuesday 3 April 2018** in the **Council Chambers**, Administration Centre at 99 Shepperton Road, Victoria Park.

A handwritten signature in black ink, appearing to read "A. Vuleta".

**MR ANTHONY VULETA**  
**CHIEF EXECUTIVE OFFICER**

29 March 2018

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## **1 OPENING**

Almighty God, under whose providence we hold responsibility for this Town, grant us wisdom to understand its present needs, foresight to anticipate its future growth and grace to serve our fellow citizens with integrity and selfless devotion.

And to Thee, be all blessing and glory forever.

AMEN

### Acknowledgement of Country (by Mayor)

I acknowledge the traditional custodians of this land the Noongar people and pay my respects to the Elders both past, present and future for they hold the memories, the traditions, the culture and hopes of Indigenous Australians.

## **2 ANNOUNCEMENTS FROM THE PRESIDING MEMBER**

### **2.1 Recording of Proceedings**

In accordance with clause 5.14 of the Town of Victoria Park Standing Orders Local Law 2011, as the Presiding Member, I hereby give my permission for the Administration to record proceedings of this meeting.

### **2.2 Public Question & Public Statement Time**

There are guidelines that need to be adhered to in our Council meetings and during question and statement time people speaking are not to personalise any questions, or statements about Elected Members, or staff or use any possible defamatory remarks.

### **2.3 No Adverse Reflection**

Both Elected Members and the public when speaking are not to reflect adversely on the character or actions of Elected Members or employees

### **2.4 Town of Victoria Park Standing Orders Local Law 2011**

All meetings of the Council, committees and the electors are to be conducted in accordance with the Act, the Regulations and the *Town of Victoria Park Standing Orders Local Law 2011*.

### 3 ATTENDANCE

<b>Mayor:</b>	Mr T (Trevor) Vaughan
<b>Banksia Ward:</b>	Cr C (Claire) Anderson Cr J (Julian) Jacobs Cr R (Ronhda) Potter Cr K (Karen) Vernon
<b>Jarraah Ward:</b>	Cr J (Jennifer) Ammons Noble Cr B (Bronwyn) Ife Cr B (Brian) Oliver Cr V (Vicki) Potter (Deputy Mayor)
<b>Chief Executive Officer:</b>	Mr A (Anthony) Vuleta
<b>Chief Operations Officer:</b>	Mr B (Ben) Killigrew
<b>Chief Financial Officer:</b>	Mr N (Nathan) Cain
<b>Chief Community Planner:</b>	Ms N (Natalie) Martin Goode
<b>Manager Development Services</b>	Mr R (Robert) Cruickshank
<b>Secretary:</b>	Mrs A (Alison) Podmore
<b>Public:</b>	

#### 3.1 Apologies

#### 3.2 Approved Leave of Absence

### 4 DECLARATIONS OF INTEREST

Declarations of interest are to be made in writing prior to the commencement of the Meeting, (a form to assist Elected Members and Staff is attached at the end of this Agenda).

#### **Declaration of Financial Interests**

A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration. An employee is required to disclose their financial interest and if required to do so by the Council must disclose the extent of the interest. Employees are required to disclose their financial interests where they are required to present verbal or written reports to the Council. Employees are able to continue to provide advice to the Council in the decision making process if they have disclosed their interest.

Name/Position	
Item No/Subject	
Nature of Interest	
Extent of Interest	

**Declaration of Proximity Interest**

Elected members (in accordance with Regulation 11 of the *Local Government [Rules of Conduct] Regulations 2007*) and employees (in accordance with the Code of Conduct) are to declare an interest in a matter if the matter concerns: a) a proposed change to a planning scheme affecting land that adjoins the person’s land; b) a proposed change to the zoning or use of land that adjoins the person’s land; or c) a proposed development (as defined in section 5.63(5)) of land that adjoins the persons’ land.

Land, the proposed land adjoins a person’s land if: a) the proposal land, not being a thoroughfare, has a common boundary with the person’s land; b) the proposal land, or any part of it, is directly across a thoroughfare from, the person’s land; or c) the proposal land is that part of a thoroughfare that has a common boundary with the person’s land. A person’s land is a reference to any land owned by the person or in which the person has any estate or interest.

Name/Position	
Item No/Subject	
Nature of Interest	
Extent of Interest	

**Declaration of Interest affecting impartiality**

Elected Members (in accordance with Regulation 11 of the *Local Government [Rules of Conduct] Regulations 2007*) and employees (in accordance with the Code of Conduct) are required to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making process. The Elected Member/employee is also encouraged to disclose the nature of the interest.

Name/Position	
Item No/Subject	
Nature of Interest	
Extent of Interest	

**5 PUBLIC QUESTION TIME (ITEMS RELATING TO THE AGENDA ONLY)**

**6 PUBLIC STATEMENT TIME (ITEMS RELATING TO THE AGENDA ONLY)**

## 7 REPORTS

### 7.1 No. 232 (Lot 310) Orrong Road, Carlisle – Application for Convenience Store, Fast Food Outlet and Signs – Section 31 reconsideration

<b>File Reference:</b>	PR19788
<b>Appendices:</b>	Yes
<b>Attachments:</b>	Yes
<b>Landowner:</b>	Universal Enterprises Pty Ltd
<b>Applicant:</b>	Peter Webb and Associates
<b>Application Date:</b>	14 December 2016
<b>DA/BA or WAPC Ref:</b>	DA 5.2016.495.1
<b>MRS Zoning:</b>	Urban
<b>TPS Zoning:</b>	Local Centre
<b>TPS Precinct:</b>	Precinct P8 'Carlisle'
<b>Use Class:</b>	Convenience Store; Fast Food Outlet
<b>Use Permissibility:</b>	'AA' (discretionary) use; 'P' (permitted) use

<b>Date:</b>	29 March 2018
<b>Reporting Officer:</b>	R. Cruickshank
<b>Responsible Officer:</b>	R. Cruickshank
<b>Voting Requirement:</b>	Simple Majority

#### Executive Summary:

**Recommendation – That Council supports the recommendation contained in the Officer's draft Responsible Authority Report dated 29 March 2018 that the Metropolitan Central Joint Development Assessment Panel (JDAP) reconsider its decision of 18 May 2017 and resolve to refuse the application.**

- At its meeting on 18 May 2017 the JDAP refused an application for the redevelopment of the site with a Convenience Store, Fast Food Outlet and Signage.
- An application for review of the JDAP's decision was subsequently lodged with the State Administrative Tribunal (SAT).
- A number of SAT mediation sessions have been held between the parties.
- In view of the applicant preparing amended plans and additional technical documentation and reports, the SAT has issued an order pursuant to Section 31 of the *State Administrative Tribunal Act*, for the JDAP to reconsider its decision.
- Council's role is to make a recommendation to the JDAP.
- A draft report has been prepared by Council Officers which recommends to the JDAP that the application be refused. In accordance with the Development Assessment Panel Regulations, the report that will be presented to the JDAP will be that of the Council's professional staff.
- Council is requested to review the draft Officer's report and form its own view on the application. The JDAP will be informed of the Council's resolution, notwithstanding that the recommendation that will be presented to the JDAP for consideration is the Officer's recommendation.

#### TABLED ITEMS:

Nil

**BACKGROUND:**

Refer to the 'Background' section in the draft Responsible Authority Report attached to and forming part of this report.

**DETAILS:**

Refer to the 'Details: outline of development application' section in the draft Responsible Authority Report.

**Legal Compliance:**

Relevant General Provisions of Town Planning Scheme No. 1

Compliance with Development Requirements

Refer to the 'Legislation and policy' section in the draft Responsible Authority Report.

**Submissions:**

Community Consultation:

Refer to the 'Consultation – Public Consultation' section in the draft Responsible Authority Report.

**Policy Implications:**

Nil

**Strategic Plan Implications:**

Environment

En1 – Land use planning that puts people first in urban design, allows for different housing options for people with different housing needs and enhances the Town's character.

**Risk management considerations:**

<b>Risk &amp; Consequence</b>	<b>Consequence Rating</b>	<b>Likelihood Rating</b>	<b>Overall Risk Analysis</b>	<b>Mitigation Actions /</b>
In this instance, Council provides a recommendation only, and the JDAP is the responsible decision-maker.  Should the JDAP resolve to reaffirm its decision to refuse the application, or approve the application with conditions that are unsatisfactory to the applicant, the matter has been listed by the SAT for a further Directions Hearing, which is likely to lead to a Full Hearing.	Moderate	Likely	High	Ensure that Council and the JDAP is provided with information to make a sound recommendation based upon relevant planning considerations including the Scheme and applicable Local Planning Policies.



**Sustainability Assessment:**External Economic Implications:Social Issues:Cultural Issues:Environmental Issues:

Refer to the applicable sections in the draft Responsible Authority Report.

**COMMENT:**

Refer to the 'Comment' section in the draft Responsible Authority Report.

**CONCLUSION:**

Refer to the 'Conclusion' section in the draft Responsible Authority Report.

**RECOMMENDATION/S:**

1. That Council notes the Officer's draft Responsible Authority Report dated 29 March 2018 attached to and forming part of this report, prepared for the Metro Central Joint Development Assessment Panel regarding the reconsideration of the application for a Convenience Store, Fast Food Outlet and Signs at No. 232 (Lot 310) Orrong Road, Carlisle.
2. That Council advises the Metro Central Joint Development Assessment Panel (JDAP) that it supports the recommendation contained in the Officer's draft Responsible Authority Report dated 29 March 2018, that the JDAP reconsiders its decision of 18 May 2017 and resolve to refuse the application.

## State Administrative Tribunal Reconsideration

### Responsible Authority Report

(Regulation 12)

DRAFT RESPONSIBLE AUTHORITY REPORT DATED 29 MARCH 2018

<b>Property Location:</b>	No. 232 (Lot 310) Orrong Road, Carlisle
<b>Development Description:</b>	Proposed Convenience Store, Fast Food Outlet and Signage
<b>DAP Name:</b>	Metro Central Joint Development Assessment Panel (JDAP)
<b>Applicant:</b>	Peter Webb and Associates
<b>Owner:</b>	Universal Enterprises Pty Ltd
<b>Value of Development:</b>	\$4.13 million
<b>LG Reference:</b>	DA 5.2016.495.1
<b>Responsible Authority:</b>	Town of Victoria Park
<b>Authorising Officer:</b>	Robert Cruickshank Manager Development Services
<b>DAP No:</b>	DAP/16/01157
<b>Report Date:</b>	29 March 2018
<b>Application Received Date:</b>	14 December 2016
<b>Application Process Days:</b>	N/A – processing timeframes established by the State Administrative Tribunal orders
<b>Attachment(s):</b>	<ol style="list-style-type: none"> <li>1. Aerial and streetscape photos.</li> <li>2. Planning refusal and refused drawings dated 18 May 2017.</li> <li>3. Responsible Authority Report dated 9 May 2017 presented to JDAP Meeting on 18 May 2017.</li> <li>4. Amended development application drawings dated received 19 February 2018.</li> <li>5. Applicant's amended Planning Report dated 6 September 2017 (received 19 February 2018).</li> <li>6. Revised Transport Impact Assessment dated January 2018 (received 19 February 2018).</li> <li>7. Transcore Technical Note dated 11/1/2018 titled 'Paramics Microsimulation Modelling – January 2018 (received 19 February 2018).</li> <li>8. Fuel Circulation Line Path drawing dated 22 January 2018 (received 19 February 2018).</li> <li>9. Revised Acoustic Report by Resonate Acoustics dated 28 July 2017 (received 19 February 2018).</li> <li>10. Technical Memos by Resonate dated 20 September 2017, 13 November 2017, 20 November 2017 and 2 February 2018.</li> </ol>

	<ol style="list-style-type: none"> <li>11. Information from United Air Specialists relating to Smoke Hog Systems (received 19 February 2018).</li> <li>12. Inspection Report prepared by Dunbar Services dated 25 February 2016 (received 19 February 2018).</li> <li>13. Hungry Jacks Odour Management Plan (received 19 February 2018).</li> <li>14. Dangerous Good Licensing Assessment prepared by RAV DG Services dated 5 September 2017 (received 19 February 2018).</li> <li>15. Letter from Mackay Urban Design dated 5 July 2017 regarding signage (received 19 February 2018).</li> <li>16. Strategen Ecologist's Report dated 23 March 2017 (received 19 February 2018).</li> <li>17. Tree Report and Risk Assessment by CPD Trees Arborists (received 19 February 2018)</li> <li>18. Transcore Technical Note dated 26 July 2017 titled Traffic Management Plan (received 15 March 2018).</li> <li>19. Main Roads WA comments dated received 5 February 2018.</li> <li>20. Transcore's response dated received 7 February 2018 to Main Roads comments of 5 February 2018.</li> <li>21. Summary of submissions received dated 26 March 2018.</li> <li>22. Cardno Technical Memorandum dated 27 March 2018 – Independent SIDRA Analysis</li> </ol>
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#### Officer Recommendation:

That the Metro Central Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 184 of 2017, resolves to:

**Reconsider** its decision dated 18 May 2017 and **refuse** DAP Application reference DAP/16/01157 and amended plans dated received 19 February 2018 (Attachment 4) in accordance with Clause 68 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the Metropolitan Region Scheme and the provisions of the Town of Victoria Park Town Planning Scheme No. 1, for the following reasons:

#### Reasons

1. The proposed development would have an adverse impact upon the amenity of the locality in relation to noise generation (also refer reasons 6 and 7), odour emissions (also refer reason 8) and traffic impact (also refer reasons 9 and 10).

2. The proposed development is considered to not satisfy the following matters identified in Schedule 2, Clause 67 “Matters to be considered by local government” of the *Planning and Development (Local Planning Schemes) Regulations 2015*:
  - a. Sub-clause (b) – the requirements of orderly and proper planning;
  - b. Sub-clause (g) - any local planning policy for the Scheme area;
  - c. Sub-clause (m) - the compatibility of the development with its setting including the relationship of the proposed development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
  - d. Sub-clause (n) - the amenity of the locality including: environmental impacts of the development; the character of the locality; and social impacts of the development;
  - e. Sub-clause (s) – the adequacy of (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;
  - f. Sub-clause (t) - the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;
  - g. Sub-clause (y) - any submissions received on the application;
  - h. Sub-clause (za) - the comments or submissions received from any authority consulted under clause 66;
  - i. Sub-clause (zb) - any other planning consideration the local government considers appropriate
3. Having regard to reason 1, the proposed development conflicts with Precinct Plan P8 ‘Carlisle’ in relation to the statement that *“careful control will be exercised over the nature of any new proposed uses and their design to ensure minimal impact on adjacent residential areas”*.
4. Having regard to reason 1, the proposed development conflicts with Local Planning Policy 3 ‘Non-Residential Uses in or Adjacent to Residential Areas’ with respect to :
  - a. The aim *“To ensure non-residential uses in or adjacent to residential areas are compatible with existing nearby dwellings”*; and
  - b. Provision a) that *“Non-residential development on land which abuts land which is or may be used for residential purposes shall only be permitted where the nature of the non-residential use will not cause undue conflict through the generation of traffic and parking or the emission of noise or any other form of pollution which may be undesirable in residential areas.”*
5. The proposed acoustic screen wall to be located along the north-west boundary, due to its height and length, will have an overpowering and visually dominant impact upon the amenity of the adjacent residential properties – refer reason 2 c.
6. On the basis of the acoustic information provided and unresolved matters, the JDAP is not satisfied that noise impacts resulting from the development can or will comply with the requirements of the *Environmental Protection (Noise) Regulations 1997*.
7. The noise impact of the proposed development is considered to unreasonably impact upon the amenity of the adjacent residential properties particularly given the proposed 24 hour operation of the proposed Convenience Store and the likely noise generating activities – refer reasons 2 a, b and d.

- 8. The application does not demonstrate that odours emitted from the proposed development will be within an acceptable level or not impact on the amenity of the surrounding area - refer reasons 2 a, b and d.
- 9. In relation to the traffic impact of the proposed development, as the assessment and modelling undertaken by the applicant’s consultant is not consistent with the inputs agreed by the Town and Main Roads WA and provided to the applicant, there is concern regarding the validity of the assessment, modelling and conclusions that have been arrived at by the applicant’s consultant, and that the information provided may not be truly representative of the impact of the development on the surrounding road network.
- 10. The development will exacerbate the traffic problems of a road environment that is already operating beyond capacity – refer reasons 2 a, b, d and f.
- 11. Given the adverse noise and traffic impacts associated with the proposed Convenience Store particularly based upon a 24 hour operation, the JDAP is of the view that it is not appropriate to exercise discretion to approve the Convenience Store use.

**Details: outline of development application**

Zoning	MRS:	Urban
	TPS:	Local Centre
Use Class:		Convenience Store – “AA” (discretionary) use; and Fast Food Outlet – “P” (permitted) use.
Strategy Policy:		<ol style="list-style-type: none"> <li>1. Precinct Plan P8 “Carlisle”.</li> <li>2. Local Planning Policy 3 “Non-Residential Uses in or adjacent to Residential Areas”.</li> <li>3. Local Planning Policy 23 “Parking”.</li> <li>4. Local Planning Policy 24 “Loading &amp; Unloading”.</li> <li>5. Signs Local Law 2006.</li> </ol>
Development Scheme:		Town of Victoria Park Town Planning Scheme No. 1
Lot Size:		3686m <sup>2</sup>
Existing Land Use:		Shop (an IGA Supermarket); Fast Food Outlet (a Muzz Buzz drive-thru coffee shop); and Telecommunications Facility

A development application was submitted to the Town in December 2016 proposing demolition of the existing buildings and associated improvements on the land, and the redevelopment of the land with a convenience store and fuel station (noted as being a 7-Eleven store), a fast food outlet (noted as being a Hungry Jacks store) and associated car parking, signage and improvements.

The existing telecommunications facility will be temporarily housed on-site during construction. The application originally proposed to permanently relocate these facilities next to the proposed Fast Food Outlet, however this has now been removed from forming part of this development proposal, and hence has not been assessed. It is anticipated that a separate application will be submitted in this regard.

The main components of the development as described in the original Responsible Authority Report dated 9 May 2017 are :

- A single storey building to be used as a Convenience Store, situated along the south-eastern property boundary adjacent to the Archer Street alignment towards the corner with Orrong Road. This includes the building being designed to have windows providing surveillance and activation to the Archer Street frontage.
- A freestanding façade treatment along a portion of the Archer Street frontage between the Convenience Store building and the Archer Street crossover.
- An awning/canopy to the building elements along the Archer Street frontage.
- An area to the west of the Convenience Store building, in the centre of the site, for the fuelling of vehicles (8 bowsers), with a canopy above.
- A single storey building to be used as a Fast Food Outlet in the southern-corner of the site, adjacent to both Satellite Place (to the south-west) and residential development to the north-west. The Fast Food Outlet includes a drive-through facility which commences near the access point off Archer Street, continues between the building and the Satellite Place alignment, and then runs between the building and the north-western boundary. The ordering, cashier and pick-up areas are to be roofed and enclosed.
- The operation of the Convenience Store and fuel service component 24 hours a day, 7 days per week
- The application originally proposed that the proposed Fast Food Outlet would also operate 24 hours per day (with only the drive-through being open after 10pm). In further correspondence dated 10 April 2017, the applicant advised that the Fast Food Outlet will reduce their operating hours to 6am to 10pm (7 days a week) for the Restaurant component, while the drive-through facility will operate 6am to 11pm Sunday to Thursday, and 6am to 12 midnight on Fridays and Saturdays.
- Removal of two (2) mature trees adjacent to the boundary with Satellite Place.
- Fuel deliveries by 19.0m fuel tankers no more than twice per week, with tankers entering off of Archer Street and exiting onto Orrong Road.
- The retention of one (1) crossover onto Orrong Road (currently two (2)) being the northernmost crossover.
- One (1) crossover to Archer Street (currently two (2)), being a modified crossover to the southernmost end of the Archer Street frontage.
- 25 marked on-site car bays, supplemented by eight (8) fuel bowser bays, one (1) air/water bay, 12 drive-through stacking bays and one (1) drive-through waiting bay.
- On-site landscaping, principally adjacent to lot boundaries.
- Pedestrian access in and around the site.
- A 2.7m high wall along the entire length of the north-western boundary adjacent to residential properties, described as an “acoustic screen wall”.
- A number of signage elements, including pylon signs to both street frontages, awning signs, wall signs and directional signs.
- Ancillary facilities such as bin storage areas, service areas, lighting etc.

The development plans depicted the building being setback from the current boundary to Archer Street so as to make provision for possible future widening of Archer Street adjacent to the site from 2 lanes to 3 lanes including a designated left hand turn lane on Archer Street into Orrong Road (this would comprise 2 right turn lanes and 1 left turn lane). This matter is discussed further below in this report under the heading of ‘Traffic Impact’.

The application of December 2016 was considered at a Joint Development Assessment Panel (JDAP) meeting on 18 May 2017, with the JDAP resolving to refuse the application for a number of reasons (see below and see Attachment 2).

Following the JDAP's refusal of the application, the applicant applied to the State Administrative Tribunal (SAT), seeking a review of the JDAP's decision. A series of mediation sessions have been held attended by representatives and consultants of both the respondent (the JDAP) and the applicant. This has resulted in the SAT issuing orders requiring the JDAP to reconsider its decision pursuant to section 31(1) of the *State Administrative Tribunal Act 2004*.

In support of their application, the applicant has now submitted amended plans and a number of amended supporting documents and/or further information, which are contained as Attachments 4 to 18.

The amendments that have been made to the amended proposal from that previously refused by the JDAP include:

- Retention of the two (2) existing crossovers onto Orrong Road in their current location and configuration (ie. no modifications proposed).
- The proposed construction of a median within Archer Street, and an island within the crossover, preventing right-hand turns out of the site onto Archer Street;
- Redesign of the drive-through facility to allow for both drive-through lanes to be accessed from the crossover off Archer Street;
- An increase in the setback of the 7-Eleven building and façade from the Archer Street boundary by a further 1.0m;
- A reduction in the setbacks of the canopy and fuel bowers from the north-western boundary (previously 17.8m and 21.0m respectively; now 12.2m and 15.5m respectively);
- An increase in the height of the acoustic wall along the north-western boundary to 2.9m (previously 2.7m high) to account for the change to night time fuel deliveries.
- Housing the existing Telstra facility off-site during construction.
- Fuel tanker deliveries are to now occur generally two (2) to maximum three (3) times per week, between 7.00pm and 5.00am so as to be outside Orrong Road peak periods.
- Reduction in size of fuel tankers to a maximum of 17.2m.
- Some minor internal changes to improve the movement of fuel tankers through the site;
- A reduction in height of the proposed 7-Eleven blade sign to a maximum height of 8.0m (previously 10.0m);
- Increased setback of 5.0m (previously 1.0m) for the Hungry Jacks pylon sign along the Orrong Road frontage.
- Relocation of 7-Eleven price board on Archer Street.
- Inclusion of details of menu boards within drive-through lanes.

Other aspects of the development remain the same as that proposed as part of the previously refused application.

## **Background:**

### Site description

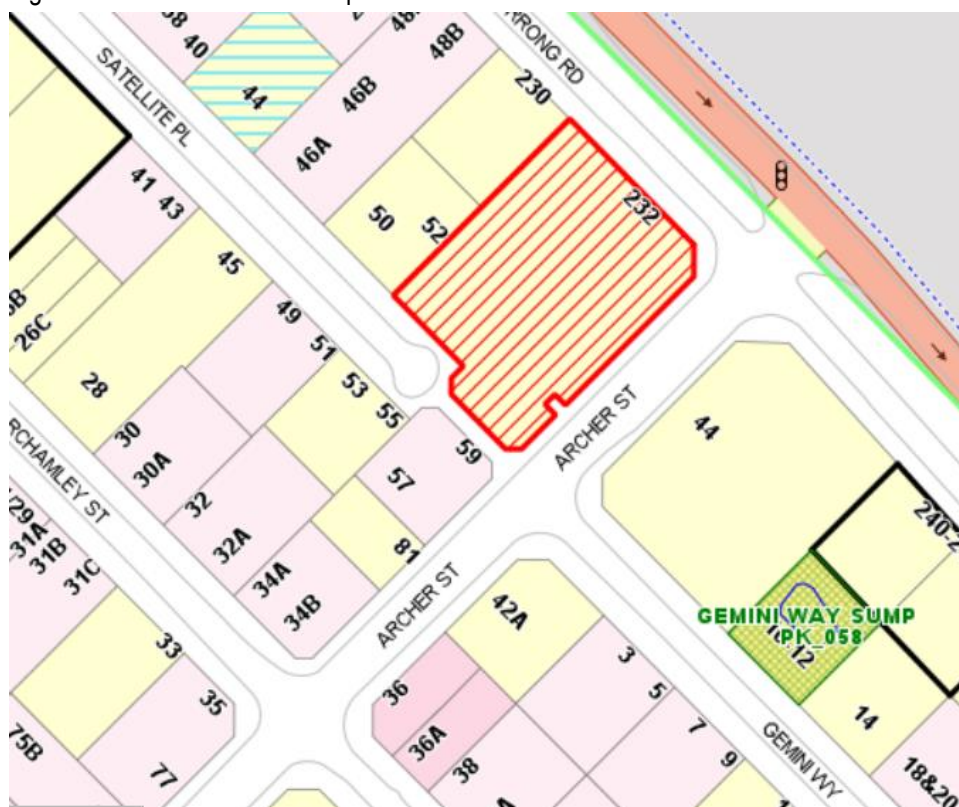
The subject site is occupied by a building, principally used as a supermarket, which continues to operate from the site. A portion of the building is currently vacant and has planning approval for use as a restaurant. There is also a drive through coffee outlet located within the external car parking that services all of the existing uses on the site.

The development site has frontage to Orrong Road along its north-eastern boundary and to Archer Street along its south-eastern boundary. The site is adjoined on its south-western boundary by a portion of Satellite Place (cul-de-sac head) and a pedestrian accessway linking Satellite Place with Archer Street.

The site is situated on the western corner of the T-junction intersection of Archer Street and Orrong Road. An existing BP Fuel Station is situated opposite, on the other side of Archer Street. The surrounding locality to the south-west of Orrong Road is residential development within the suburb of Carlisle (in the Town of Victoria Park), as depicted in Figure 1 below. The area that is north-east of Orrong Road is within the City of Belmont.

Access to the subject land is via Orrong Road and Archer Street. No access is gained via Satellite Place. Presently there are two driveways onto Orrong Road comprising one left in (southernmost) and one left out (northernmost) driveway. Similarly there are two existing driveways onto Archer Street, one for left and right turn out movements and the other for left and right turn in movements.

Figure 1: Location of the development site



#### Previous planning decisions

In 2011 Council received an application for the site which proposed to use all of the existing building as a Liquor Store, which at that time was classified under Town Planning Scheme No. 1 as a Shop, and to undertake additions/alterations to the building. The proposal also involved removal of the existing drive-through coffee shop.

At its meeting on 8 May 2012, the Council considered the application and resolved to refuse the application for a number of reasons, principally relating to the traffic impact of the development on the surrounding roads, particularly Archer Street (see Attachment 3 for further details).



The owners/applicant subsequently applied to the State Administrative Tribunal (the Tribunal) for a review of the Town of Victoria Park's decision. Following consideration of the evidence presented in relation to this matter of *Universal Enterprises Pty Ltd and Town of Victoria Park [2013] WASAT 62*, the Tribunal affirmed the Town's decision to refuse the application.

The principle reason for the Tribunal dismissing the appeal was the matter of traffic impact. Further details of the Tribunal's decision are detailed below under the heading of 'Traffic Impact' and are also contained in the Responsible Authority Report dated 9 May 2017 (see Attachment 3).

A new application for development approval was submitted to the Town in December 2016, being the application that is now the subject of the SAT review. The application was considered by the Metro Central JDAP at its meeting on 18 May 2017, with the JDAP resolving to refuse the application for the following reasons:

1. *The proposed development would have an adverse impact upon the amenity of the locality in relation to noise generation (also refer reason 9), odour emissions (also refer reason 10), lighting, tree removal (also refer reason 8) and traffic impact (also refer reasons 11, 12 and 14).*
2. *Having regard to reason 1, the proposed development is considered to be non-compliant with the following matters identified in Clause 67 "Matters to be considered by local government" of the Deemed Provisions of the Planning & Development (LPS) Regulations 2015:*
  - a. *Sub-clause (b) – the requirements of orderly and proper planning;*
  - b. *Sub-clause (g) - any local planning policy for the Scheme area;*
  - c. *Sub-clause (m) - the compatibility of the development with its setting including the relationship of the proposed development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
  - d. *Sub-clause (n) - the amenity of the locality including: environmental impacts of the development; the character of the locality; and social impacts of the development;*
  - e. *Sub-clause (p) – whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;*
  - f. *Sub-clause (s) – the adequacy of (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;*
  - g. *Sub-clause (t) - the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
  - h. *Sub-clause (y) - any submissions received on the application;*
  - i. *Sub-clause (za) - the comments or submissions received from any authority consulted under clause 66;*
  - j. *Sub-clause (zb) - any other planning consideration the local government considers appropriate*
3. *Having regard to reason 1, the proposed development conflicts with Precinct Plan P8 "Carlisle" in relation to the statement that "careful control will be exercised over the nature of any new proposed uses and their design to ensure minimal impact on adjacent residential areas".*

4. *Having regard to reason 1, the proposed development conflicts with Local Planning Policy 3 'Non-Residential Uses in or Adjacent to Residential Areas' with respect to :*
  - a. *The aim "To ensure non-residential uses in or adjacent to residential areas are compatible with existing nearby dwellings."; and*
  - b. *Provision a) that "Non-residential development on land which abuts land which is or may be used for residential purposes shall only be permitted where the nature of the non-residential use will not cause undue conflict through the generation of traffic and parking or the emission of noise or any other form of pollution which may be undesirable in residential areas."*
5. *The proposed development conflicts with the Local Planning Policy 24 'Loading & Unloading', specifically: the drawings not providing adequate information showing the link / path for delivery goods from the loading / unloading bays into the two buildings; or the location of the loading and unloading bay(s) for the Convenience Store; thus not demonstrating design and location of loading/unloading areas such that these are an integral part of the overall design and development of the subject site.*
6. *The proposed development being non-compliant with Clause 39A of Town Planning Scheme No. 1 in respect to the two (2) pylon signs along Orrong Road, which due to their height are considered to negatively impact on the quality of the streetscape.*
7. *The proposed acoustic screen wall to be located along the north-west boundary, due to its height and length, having an overpowering and visually dominant impact upon the amenity of the adjacent residential properties – refer reason 2 c.*
8. *In the absence of an arborist assessment reviewing the proposal and determining that retention of the two (2) on-site trees is not feasible or that the trees are unlikely to survive the impacts of construction, the proposed removal of two (2) mature on-site trees is not supported as they contribute to the aesthetic value of the street, and their removal will be a loss to the existing landscape – refer reason 2 e..*
9. *The noise resulting from the development having an unreasonable impact upon adjacent residential properties particularly given the proposed operating hours of the facilities – refer reasons 2 a, b, c and d.*
10. *The emission of odours from the development having an unreasonable impact upon the surrounding residential area particularly given the proposed operating hours of the facilities – refer reasons 2 a, b, c and d.*
11. *The additional traffic generated by the development will exacerbate the traffic problems of a road environment that is already operating beyond capacity – refer reasons 2 a, b, d and g.*
12. *The arrangements for the ingress, unloading, manoeuvring and parking of the fuel tanker is inadequate and will result in vehicular conflicts on the site which may then impact on the external roads. – refer reasons 2 a, b and f.*
13. *The items of concern identified by Main Roads WA dated 8 March 2017, with the exception of the recommendation that access to/from Orrong Road is not supported.*

14. *The information provided by the applicant in relation to the traffic impact of the proposed development not adequately addressing a number of matters raised by Council Officers, Main Roads WA and the Town's independent traffic consultant.*
15. *Non-compliance with Council's Local Planning Policy 23 'Parking Policy' with respect to the width of landscape planting between parking areas and the north-western boundary being 1.0m in lieu of a minimum of 1.5m. – refer reasons 2 a, b and e.*
16. *Given the adverse amenity impacts resulting from the operation of the Convenience Store, particularly on a 24 hour basis, as well as the inadequate measures for the movement and parking of fuel tankers, the JDAP is of the view that it is not appropriate to exercise discretion to approve the Convenience Store use.*

### **Legislation & policy:**

#### Legislation

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015; Schedule 2, Clause 67;*
- *State Administrative Tribunal Act 2004;*
- *Town Planning Scheme No. 1 (TPS1);*
- *TPS 1 Precinct Plan P8 – Carlisle; and*
- *Metropolitan Region Scheme Text Clause 30.*

#### State Government Policies

- *Development Control Policy 5.1 'Regional Roads (Vehicular Access)'*
- *WAPC Instrument of Delegation DEL 2015/02 – 'Powers of Local Governments and Department of Transport (MRS)' (18 December 2015)*

#### Local Policies

- *Local Planning Policy 3 "Non-Residential Uses in or adjacent to Residential Areas"*
- *Local Planning Policy 23 "Parking"*
- *Local Planning Policy 24 "Loading & Unloading"*

#### Local Laws

- *Signs Local Law 2006*

Specific reference is made to the following:

Town of Victoria Park Town Planning Scheme No. 1

The Town Planning Scheme No. 1 (TPS 1) defines the proposed uses as follows:

**“convenience store”** means land and buildings used for the retail sale of convenience goods being those goods commonly sold in supermarkets, delicatessens and newsagents but including the sale of petrol and operated during hours which may include, but which may extend beyond normal trading hours and provide associated parking. The buildings associated with a convenience store shall not exceed 300m<sup>2</sup> gross leasable area;

**“fast food outlet”** means premises where food is prepared and sold -

(a) to be taken away; or

(b) for consumption on those or adjacent premises - if the operation of the premises is likely to attract considerable vehicular traffic to those premises for short periods;

With reference to the definition of a Service Station in TPS 1:

**“service station”** means any land or buildings used for the retail sale of petroleum products and motor vehicle accessories and for carrying out greasing, tyre repairs, minor mechanical repairs to motor vehicles but does not include a transport depot, panel beating, spray painting, major repairs or wrecking;

The Town observes that the proposed use does not constitute a service station as the proposal does not involve the components of “...motor vehicle accessories and for carrying out greasing, tyre repairs, minor mechanical repairs to motor vehicles ...” in addition to the sale of petrol.

Therefore, the classification of the use, comprising both the sale of petrol and convenience goods, is a “Convenience Store”.

Under TPS 1 the subject land is zoned ‘Local Centre’ and is located within the planning precinct known as Precinct P8 ‘Carlisle’. The Precinct Plan for Precinct P8 ‘Carlisle’ contains a Statement of intent for the Precinct as a whole including the following :

*“Existing appropriate retail and commercial uses will be permitted to continue in their current locations. A limited number of non-residential uses, to serve the immediate needs of the locality, will be permitted throughout the precinct. In the longer term, uses considered incompatible with residential uses will be encouraged to relocate.”*

More specifically, the Precinct Plan contains the following statements in respect to the Local Centre zone:

*“Local Centres will contain shops and services that cater for the day-to-day needs of local residents. Expansion of these centres is not appropriate.”*

Additionally:

*“The existing range of local shopping and service facilities serving the day-to-day needs of local residents is to be consolidated.*

*Any new development should be of a height and scale similar to existing buildings. Buildings shall be constructed with no set back from the street and be provided with continuous shop fronts and weather protection over the footpath.*

*Careful control will be exercised over the nature of any proposed new uses and their design and their layout to ensure minimal impact on adjacent residential areas.”*

Under TPS 1 the proposed land uses of Convenience Store and Fast Food Outlet are respectively classified as an ‘AA’ (discretionary) use and a ‘P’ (permitted) use.

Deemed Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (“the LPS Regulations”)

Schedule 2, Clause 67 of the LPS Regulations details the matters to be considered by the local government in determining a development application. In terms of this application the following matters are of relevance:

- “(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving;*
- (c) any approved State planning policy;*
- (e) any policy of the Commission;*
- (f) any policy of the State;*
- (g) any local planning policy for the Scheme area;*
- (h) any structure plan, activity centre plan or local development plan that relates to the development;*
- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- (n) the amenity of the locality including the following —*
  - (i) environmental impacts of the development;*
  - (ii) the character of the locality; and*
  - (iii) social impacts of the development;*
- (p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;*
- (r) the suitability of the land for the development taking into account the possible risk to human health or safety;*
- (s) the adequacy of —*
  - (i) the proposed means of access to and egress from the site; and*
  - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;*
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*

- (u) *the availability and adequacy for the development of the following —*
- (i) *public transport services;*
  - (ii) *public utility services;*
  - (iii) *storage, management and collection of waste;*
  - (iv) *access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities); and*
  - (v) *access by older people and people with disability;*
- (y) *any submission received on the application;*
- (za) *the comments or submissions received from any authority consulted under clause 66; and;*
- (zb) *any other planning consideration the local government considers appropriate.”*

#### State Administrative Tribunal Act 2004

Section 31(1) of the *State Administrative Tribunal Act 2004* provides for the Tribunal to invite the decision-maker to reconsider their decision. More specifically, the JDAP can:

- a. Affirm its decision;
- b. Vary its decision; or
- c. Set aside its decision and substitute it with a new decision.

#### WAPC Development Control Policy 5.1 – Regional Roads (Vehicular Access)

Policy objectives include the following:

- To ensure that vehicle access to regional roads and the type of abutting developments is controlled and conforms with sound town planning principles.
- To improve traffic flow and safety on all regional roads, either new or existing, by minimising the number of junctions or driveways.

The following relevant statements are contained in the Policy :

- *“As regional roads are principally for traffic movement, ideally there should be no vehicular access to or from abutting properties.*
- *With the continued growth of traffic in metropolitan regions it is clear that the provisions of access is not compatible with the requirements of vehicular movement for the following reasons:*
  - *Turning traffic (both entering and leaving the road) causes conflict and is thereby a contributory cause of accidents. The accident rate increases as the number of access points along the road increases.*
  - *Junctions and driveways contribute to delays and congestion, as turning vehicles and congestion, as turning vehicles both slow and interrupt the free flow of traffic. Where commercial development abuts the road, these effects are greater because commercial developments generate more turning traffic than residential developments.*
- *The capacity of regional roads to carry traffic, the safety of that traffic, and the free flow of traffic are all related to access and the fewer number of driveways and junctions, the smoother the traffic flow and the safer the road.*
- *In considering applications for access on regional roads, the effects of the proposals on traffic flow and road safety will be the primary consideration. The more important the regional road, the greater the importance attached to these factors. In general, the Commission will seek to minimise the creation of new driveways on regional roads and rationalise existing access arrangements.”*

EPA Guidance Statement for Separation Distances between Industrial and Sensitive Land Uses No. 3 June 2005

The EPA Guidance Statement for *Separation Distances between Industrial and Sensitive Land Uses* No. 3 June 2005 provides generic separation distances between a number of land uses which generate emissions and those classified as sensitive land uses. The following separation distances applied are shown in the below except of the EPA Guidance Statement:

Industry	Description of industry	Impacts					Buffer distance (m)
		Gaseous	Noise	Dust	Odour	Risk	
Service station Involving vehicle cleaning / detailing facilities and the retailing of spare parts and foodstuffs	All other 24 hour operations	✓	✓		✓	✓	200

Table 1 – Excerpt from EPA Guideline Statement Appendix 1

The proposed development is located adjacent to residential development which is considered to be a sensitive land use. The original application did not provide any information addressing the separation distances from sensitive land uses. In support of the amended proposal, additional information has now been provided (see Attachment 14).

**Planning assessment:**

<p><b>TPS 1 Precinct Plan P8: Development Standards:</b></p> <p><b><u>Plot Ratio</u></b></p> <p>Buildings to have a maximum plot ratio of 0.5</p>	<p><b>The proposal complies with this requirement.</b></p> <p>The proposed plot ratio area is approximately 423 sq. metres (213 sq. metres for the Convenience Store and 210 sq. metres for the Fast Food Outlet). The proposed plot ratio of 0.12 is well within the permissible plot ratio of 0.5.</p>
<p><b>TPS 1 Precinct Plan P8: Development Standards:</b></p> <p><b><u>Setbacks</u></b></p> <p>Buildings shall have a nil set back to the street. Where applicable, development shall have regard for the scheme policy relating to non-residential development adjacent to residential land.</p>	<p><b>The proposal is non-compliant with this requirement.</b></p> <p>The proposed development is set back 3.0m from the current Archer Street boundary. This is a result of the applicant setting back the building from the current boundary to Archer Street so as to make provision for possible future widening of Archer Street adjacent to the site. The building is proposed at a nil setback to the potential new boundary to Archer Street should such widening occur in the future. This variation is considered acceptable in this instance</p>

	<p>The development is primarily setback 6.7m from the boundary to Satellite Place (1.6m to an ordering booth) and primarily 4.7m to the north-western boundary (0.66m to an ordering booth) adjoining a residential development. However it is also noted that canopies along the drive-through lane as well as their support walls extend to the property boundaries in order to minimise the noise impact on the adjoining residential developments by containing the noise generated at the order points along this drive-through lane.</p> <p>These setbacks demonstrate compatibility with the existing nearby dwellings, as required by LPP3 “Non-Residential Uses in or adjacent to Residential Areas”.</p>
<p><b>TPS 1 Precinct Plan P8: Development Standards:</b> <b><u>Pedestrian Amenity</u></b> Buildings shall be provided with awnings or verandahs over the footpath. Where practicable, this shelter should be continuous and consistent with adjoining sites.</p>	<p><b>The proposal is non-compliant with this requirement.</b></p> <p>An awning (1.5 metres wide) is provided along the Archer Street frontage although located over a landscaped area. Given the setback of the building from Archer Street the awning will not provide weather protection over the existing footpath, but potentially may do so if the widening of Archer Street and relocation of the footpath are to occur. As a result of the building setback required from the boundary along Orrong Road due to a Western Power easement, an awning over the footpath does not run along the corner truncation of Archer Street and Orrong Road, or along Orrong Road.</p>
<p><b>Local Planning Policy 3 ‘Non-Residential Uses in or adjacent to Residential Areas’ (LPP3) :</b> <b><u>Policy requirement a)</u></b> Non-residential development on land which abuts land which is or may be used for residential purposes shall only be permitted where the nature of the non-residential use will not cause undue conflict through the generation of traffic and parking or the emission of noise or any other form of pollution which may be undesirable in residential areas.</p>	<p>This is discussed further in the Comments section.</p>



<p><b>Local Planning Policy 3 ‘Non-Residential Uses in or adjacent to Residential Areas’ (LPP3):</b>  <u>Policy requirement b)</u>                  Non-residential development in residential areas is required to comply with the setback and plot ratio development standards for grouped dwellings of the relevant R-Code. For the purposes of this policy a major opening is a window, door or other opening which can affect privacy of nearby residences or future residences.                  For the purposes of this policy a plot ratio of 0.5:1 shall apply in the R20, 30 and 40 coded areas. Twenty five per cent (25%) of the site area shall be landscaped. Front setback areas shall be landscaped.</p>	<p><b>This development requirement does not apply to this proposal.</b></p> <p>A number of submissions expressed concern with regards to the proposed development not complying with this provision.</p> <p>This requirement applies to non-residential development in residential areas, meaning on land that is zoned “Residential”. The proposed non-residential development is on land that is zoned “Local Centre”, and not on land zoned “Residential”.</p> <p>A development “in residential areas” excludes reference to development “abutting land that is used for residential purposes”.</p> <p>Having said the above, compliance with setbacks is discussed elsewhere in this table.</p> <p>Separately, the development proposes landscaping within the street setback areas and along the north-western boundary abutting residential development.</p>
<p><b>Local Planning Policy 23 ‘Parking’ (LPP23):</b>  <u>No. of parking bays required:</u>  <u>Convenience Store :</u>                  No prescribed requirement, therefore at Council’s discretion. Having regard to the nature of this use which is comparable to a Shop, the parking requirement for a Shop has been applied as a guide (1 bay per 10 sq. metres of retail floor area). Accordingly, 112m<sup>2</sup> of retail floor area requires 11 bays.                  As per the definition of “Convenience Store” land use, it includes the sale of petrol. Hence, the fuel service component is observed to be a part of the Convenience Store.  <u>Fast Food Outlet :</u>                  1 bay required for every 4.5 square metres of sit down dining area, plus 1 for every 4 square metres of counter / queuing area, other than dining area. Accordingly, 14 bays are required.</p>	<p><b>The proposal complies with this requirement.</b></p> <p>In addition to the 25 marked bays, 8 fuel bowser bays, 1 waiting bay and space within the drive-thru for queuing of approximately 10 cars have been provided.</p> <p>It is considered that this is a sufficient number of car bays, acknowledging that there is likely to be some reciprocity of use between the different land use components.</p>

<p>Based upon the above requirements, a minimum of 25 bays are required for the development.</p>	
<p><b>Local Planning Policy 23 ‘Parking’ (LPP23):</b>  <b><u>Additional parking requirements:</u></b></p> <ol style="list-style-type: none"> <li>1. All non-residential parking areas should contain shade trees (species to be approved by the Council) generally at a rate of one tree for every four bays. (on landscaping plan)</li> <li>2. The perimeter of all parking areas should be landscaped by a planting strip of at least 1.5 metres in width.</li> <li>3. A traffic/environmental impact statement may be required where proposed parking facilities are likely to have a significant impact on the surrounding street system and uses.</li> </ol>	<p><b>The proposal generally complies with this requirement.</b></p> <p>In the event of development approval, a condition is recommended requiring submission of a detailed landscaping plan for approval by the Council showing relevant information including the location of shade trees, soft and hard landscaped areas, type of vegetation, plant species, visual truncations and sightlines.</p> <p>The perimeter of parking areas are proposed to be landscaped by planting strips of widths: 1.0m along the north-western boundary adjoining a residential development; 2.5m along Satellite Street; 4.0m along the pedestrian / footpath link between Archer Street and Satellite Place; 1.5m along Orrong Road; and 3.0-4.5m for a portion along Archer Street. Based upon the proposed site planning, proposed landscaping generally complies with the requirement.</p> <p>A Transport Impact Assessment report and technical memos have been prepared by consultants engaged by the owners / applicant (see Attachments 6, 7, 8 and 18), and have been submitted for the JDAP’s reconsideration. These matters are covered elsewhere in this report.</p>
<p><b>Local Planning Policy 24 ‘Loading &amp; Unloading’ (LPP24):</b></p> <ol style="list-style-type: none"> <li>1. The design and location of loading/unloading areas shall be an integral part of the overall design and development of a site.</li> <li>2. The placement of signs indicating the location of and access to loading/unloading facilities.</li> <li>3. On-site areas for the loading/unloading of vehicles carrying goods or commodities to or from premises shall be provided and maintained in accordance with the approved development for the site.</li> </ol>	<p><b>The proposal complies with these requirements.</b></p> <p>Separate loading and unloading areas are provided for the two components of the development. The areas have been designed and located so as to be screened from view from the streets.</p> <p>Loading and unloading areas being signposted and maintained in accordance with approved drawings can be addressed as conditions of any approval.</p>

<p><b>Clause 30A of TPS 1 ‘Determination of Application for Advertisement’</b></p> <p>(1) In considering an application for or involving an advertisement, the Council is to have regard to the matters listed in clause 36(5) and -</p> <ul style="list-style-type: none"> <li>(a) the impact of the sign on the quality of the streetscape where it is to be displayed and more generally of the district;</li> <li>(b) whether the size of the sign appropriately relates to the architectural style, design and size of a building on which the sign is to be displayed, and in measuring the size of a sign a polygon shall be taken immediately around the text, graphics or image of the sign and not the entire background, except where the finish or colour of the background differs substantially from the background against which the sign is to be displayed.</li> <li>(c) whether the colour scheme and materials of the sign are compatible with the architectural style and design of a building on which the sign is to be displayed;</li> <li>(d) whether the colour scheme and materials of the sign are compatible with the overall architectural style and design of the area or precinct in which the sign is to be displayed; and</li> <li>(e) how many signs are on the land where the sign will be displayed.</li> </ul> <p>(2) Council may refuse to approve an application, where –</p> <ul style="list-style-type: none"> <li>(a) the sign may obstruct the sight lines of a person driving or riding a vehicle or a pedestrian;</li> <li>(b) the sign may unreasonably distract persons driving or riding vehicles;</li> <li>(c) the sign may detract from the quality of the streetscape or area where it is to be displayed;</li> </ul>	<p><b>The proposal is considered to satisfy these requirements.</b></p> <p>This is discussed further in the Comments section.</p>
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<p>(d) the size of the sign does not appropriately relate to the architectural style, design and size of a building on which the sign is to be displayed;</p> <p>(e) the colour scheme and materials of the sign are not compatible with the architectural style and design of a building on which the sign is to be displayed;</p> <p>(f) the colour scheme and materials of the sign are not compatible with the overall architectural style and design of the area or precinct in which the sign is to be displayed; or</p> <p>(g) the sign will be additional to other signs on the land where it will be displayed.</p>	
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### Consultation:

The original application was the subject of community consultation in February 2017, attracting 181 submissions. Further details on this consultation and outcomes are contained in the Responsible Authority Report dated 9 May 2017 (see Attachment 3 to this report and Attachment 14 to the report dated 9 May 2017).

Following the SAT mediation process and the submission of amended drawings and documentation by the applicant, the Town has re-advertised the amended proposal for public comments. Consultation occurred for a period of 14 days concluding on 7 March 2018, by way of letters to owners and occupiers of properties within a 200m radius of the subject site as well as notice on the Town's website and social media channels.

In response a total of 59 individual submissions have been received on the amended proposal, with 3 being in support, 6 providing general comments only and the remainder being opposed to the development.

In addition, a petition containing over 3000 signatories has been received stating the following:

*"We the undersigned residents are opposed to the application to allow the IGA supermarket located at 232 Orrong Road, Carlisle 6101 (Crn Archer Street) to be replaced with a service station with convenience store and a fast food outlet."*

In summary, the objecting submissions received during advertising of both the original application and the revised application can be summarised as follows:

1. Conflict with the Strategic Intent for Carlisle Precinct
2. Concerns relating to the removal of the existing IGA Supermarket which is a community hub and provides a much needed service to local residents

3. There is no need for a proposed Fuel Station opposite an existing Fuel Station.
4. Concerns in relation to the proposed Fast Food Outlet (Hungry Jacks) particularly in terms of odours and the health impact of fast food outlets.
5. Concerns relating to the removal of significant and mature on-site trees
6. Traffic Impact on the locality, particularly expressing views that the development will add to existing congestion on the surrounding roads and intersection and create further delays and accidents.
7. Concerns relating to on-site parking and overflow into surrounding streets
8. Social and Community Impacts
9. Impacts resulting from Noise and Air Pollution

The supporting submissions generally express the view that the site and existing building is an eyesore, with redevelopment of the site being much needed.

#### Consultation with other Agencies or Consultants

Responses from external agencies were received as part of the assessment of the original application and are described in the Responsible Authority Report dated 9 May 2017 (see Attachment 3).

In particular Main Roads WA expressed a number of concerns regarding the development as originally proposed, and as such recommended that the application be refused. Further details of Main Roads WA concerns are contained in the Responsible Authority Report dated 9 May 2017 (see Attachment 3 to this report, and see Attachment 12 to the report dated 9 May 2017).

Main Roads WA have participated in the SAT mediation process and still have a number of reservations regarding the proposed development, as detailed further in Attachment 19. Also see the applicant's response to these concerns in Attachment 20.

The concerns expressed by Main Roads WA to the current proposal are described further below in this report under the heading of 'Traffic Impact'.

#### **Officer Comments**

There are a wide range of matters that require consideration as part of this reconsideration report. A number of these issues have already been addressed in the previous Responsible Authority Report dated 9 May 2017 (see Attachment 3), or in previous sections of this report. A more detailed response is provided below to the more significant matters that require consideration, in particular those matters that formed reasons for refusal of the original application.

#### **Land Use and consistency with intent of Local Centre zone**

The public submissions received on both the refused development, and the amended proposal, both express strong community sentiment regarding the value of the existing IGA store to the community and the inconvenience that would result from no longer having a local supermarket. In addition, a number of submitters contend that the use of the land for the purposes of a Convenience Store and Fast Food Outlet is not consistent with the Local Centre zoning of the site.

The following comments were made by Council Officers in the Responsible Authority Report dated 9 May 2017, and still remain the Officers view:

*“The proposed uses of Convenience Store and Fast Food Outlet are respectively classified as an “AA” (discretionary) use and a “P” (permitted) use. This being the case, while it is open to the JDAP to exercise its discretion to determine the appropriateness of the Convenience Store from a land use perspective, the Fast Food Outlet use is a permitted use. While potential amenity impacts associated with the Fast Food Outlet are relevant considerations, the Fast Food Outlet cannot be rejected on the basis that the use itself is not appropriate.*

*There has been a significant degree of community sentiment received expressing concern regarding the loss of the existing IGA supermarket, which provides a conveniently located service to many nearby residents. These concerns are understood. The applicant submits that the lease of the current tenant is long expired and that the owner now seeks to redevelop the site regardless of the outcome of this application, as well as the significant improvements that would be required to the building to bring it up to necessary standards.*

*There is no planning basis to require the landowner to continue the use of the site as an IGA supermarket. It is acknowledged that the removal of the IGA supermarket will result in many nearby residents having to travel a greater distance to another supermarket to undertake their domestic shopping needs, which will not be a good outcome for some. However the landowner has the right to consider alternative development options and uses for the site within the terms of what TPS 1 allows.”*

Furthermore, the applicant in their report dated 6 September 2017 (see Attachment 5) acknowledges the opposition of many within the Carlisle community to the loss of the IGA, but comments that *“in the context of increased competition in the supermarket space from Coles, Woolworths and Aldi, retention of the IGA supermarket in any redevelopment of the site is not envisaged nor is it a planning requirement.”*

With respect to the proposed use of the land and consistency with the Local Centre zoning, the following comments were made by Council Officers to this matter in the Responsible Authority Report dated 9 May 2017 :

*As noted in Precinct Plan P8 ‘Carlisle’ there are statements outlining relevant planning and land use expectations including the permissibility of non-residential uses which “serve the immediate needs of the locality” and reference to “local shopping and service facilities which serve the day-to-day needs of local residents”.*

*The applicant makes various submissions including: the Convenience Store provides a wide range of shopping items for the convenience of local residents, with extended hours to further improve convenience; the applicant provides a list of the goods and services provided; and the proposed Fast Food Outlet would serve the needs of not only the local community but also passing through trade.*

*It is recognised that the scale of the proposed Convenience Store (approximately 216m<sup>2</sup> footprint) is significantly smaller than the currently operating supermarket (approximately 600m<sup>2</sup> footprint). Additionally, the range and / or quantities of goods and products for sale at the proposed Convenience Store will most likely be significantly lesser than those currently sold at the existing supermarket, and will likely be sold in quantities sufficient for consumption over a day or two rather than being sold in quantities that satisfy the local community’s weekly shopping needs. Furthermore based upon observations of like stores it would be reasonable to expect the sale of such goods at a greater price.*

*In relation to the meaning of the term “day-to-day needs” used in TPS 1, this has previously been considered by the Tribunal, in both the previous appeal for the subject site (Universal Enterprises and Town of Victoria Park) and O’Connor and Town of Victoria Park. The Tribunal in these cases has relevantly commented that :*

- *The term implies uses which service daily material needs.*
- *In serving the day-to-day needs, the Tribunal considers that this does not require purchase on a daily basis but, rather, to be a product that is used daily, or at least several times a week, by many people.*
- *The fact that trade is not restricted to the local community does not necessarily mean that the proposed development is inconsistent with the intent of the Local Centre zone and fatal to the application.*
- *In the case of the previous application for a Liquor Store on the site the Tribunal concluded that this use was consistent with the intent of the Local Centre zone.*

*If a Liquor Store is considered to serve the day-to-day needs of local residents, through the sale of alcohol only, then it follows that a Convenience Store selling a wider range of products used on a similar or more frequent basis, would more than meet this requirement.*

*Having regard to the range of goods provided within the Convenience Store and previous Tribunal decisions, it is concluded that the proposal satisfies the requirement to serve the day-to-day needs of local residents, in which case the proposal meets the intent of the Local Centre zone.”*

A number of submissions also suggested that the site should be redeveloped with a gourmet style IGA offering a wide range of quality, fresh food. While noted and it is accepted that such a use would be a good outcome for the local community, this is a decision for the landowner, and in any event, the JDAP is required to consider the current application on its merits rather than having regard to whether a different development on the site would be preferable.

In terms of the proposed Convenience Store which is a discretionary land use, and for the reasons outlined elsewhere in this report relating to amenity and traffic impacts, it is considered that this proposed use is not an appropriate use of the site, in which case the JDAP should not exercise its discretion to approve this land use.

### **Amenity impacts – Noise, odours and lighting**

Local Planning Policy 3 applies to non-residential uses of land adjacent to residential areas. In this case the development site shares a boundary with two (2) residential dwellings to the north-west, as well as there being adjacent residential dwellings to the south of the pedestrian accessway and on Satellite Place. As described above, LPP 3 contains an objective to ensure that non-residential uses are compatible with nearby dwellings and a provision that development should not cause undue conflict through the generation of traffic, parking, noise or other impact that may be undesirable in residential areas. Additionally, Precinct Plan P8 includes a statement that *“Careful control will be exercised over the nature of any proposed new uses and their design and their layout to ensure minimal impact on adjacent residential areas.”*

Specifically it should be noted that the drive-through facility to the Fast Food Outlet will be partly sited only 1.0m from the north-west boundary shared with residential dwellings, as well as the pick-up point/canopy and lighting being in close proximity to this boundary. Additionally, also along this boundary, 1.0m from the boundary with residential dwellings, is nine (9) parking bays. It should be

noted that there was previously proposed to be a pylon sign located 1.0m from the boundary, however the pylon sign has now been relocated to a setback of approximately 5.0m.

With respect to the matter of traffic, this is assessed further below. In relation to parking, the number of on-site car bays provided as part of the development complies with the Town's parking standards as described above.

In relation to potential noise impacts, the applicant engaged the services of an Acoustic Consultant (Resonate) and submitted an Acoustic Report in support of the original application as described in the Responsible Authority Report dated 9 May 2017 (see Attachment 3 to this report and Attachment 6 to the previous report).

In support of the amended proposal, a revised Acoustic Report has been prepared by the applicant's consultant (see Attachment 9). In response to questions pertaining to the revised Acoustic Report, the report has been supplemented by technical memos (see Attachment 10).

Both the original report and the revised report model potential noise emissions from the proposed use against the *Environmental Protection (Noise) Regulations 1997*. The Regulations prescribe acceptable levels of noise emissions at particular times. The reports acknowledge potential sources of noise being the car park and customer vehicle activity; the drive-through facility, customer interaction and vehicle movement; delivery and supply tanker trucks; and mechanical services. It is identified that the most affected location will be the dwellings to the north-west, known as 230 Orrong Road and 52 Satellite Place.

The noise modelling undertaken as part of the original application proposed an acoustic wall (of up to 2.7m maximum height) along the full length of the north-western boundary adjoining the residential properties, as well as the ordering, cashier and collection tunnels to the drive-through facility being acoustically lined. Additional mitigation measures were also recommended to be implemented.

As part of the amended proposal, the design incorporates the following measures:

- an acoustic wall (of up to 2.9m maximum height) along the full length of the north-western boundary adjoining the residential properties. Note an increased height of 2.9m is proposed taking into consideration the change to night-time fuel deliveries and the lesser level of noise emissions permitted at this time. Additionally the revised Acoustic Report details the recommended specifications for the acoustic wall, which will be of a colorbond skin.
- the ordering, cashier and collection tunnels to the drive-through facility being acoustically lined.
- installation of a noise barrier of up to 1.5m height on a portion of the south-west boundary.

In addition to these design measures, the revised Acoustic Report recommends that the following additional measures be implemented:

- *"It is preferred that other delivery vehicles is limited to daytime hours where possible.*
- *Waste collection to be carried out preferably during the day, with the equipment selected, and practices implemented which are to be the quietest reasonable and practicable available.*
- *Beepers and other alert devices on site shall be selected so as to minimise their noise emission. Some devices which have high beeper/alert levels, e.g. some tyre air refill stations,*



*may not be able to be operated during the night. Such an assessment should be conducted at the detailed design stage of this project.*

- *All grilles, manhole covers, petrol tank covers or storm water grates are to be installed so as to be tight fitting. Where there is a potential for vehicles to drive over such grates/covers, noise from loose fitting grates is to be avoided. Where there is the potential for such noise sources, hard rubber or other durable materials are to be used for cushioning such grates/covers.*
- *Signs be posted around the carpark reminding patrons to conduct themselves in a quiet manner, especially at night for the comfort of their neighbours. A management plan be developed for recalcitrant patrons or repeat offenders. Such a plan may involve warnings and ultimate refusal of service.*
- *The following treatments are recommended for Mechanical services:*
  - *A maximum of 1.0m high shielding (i.e. equal to the top of the AC unit, barrier to be no more than 1.0m from units) is required for outdoor package condenser units on the roof. Minimum buffer distance from units is 17m to boundary.*
  - *Mechanical services should have no direct line-of-sight to nearby residences.*
  - *Mechanical services selections should be made on the basis of quiet operation.*
  - *The combined maximum noise generated by the outdoor plant not to exceed  $L_{A10} 88$  dB.”*

The revised Acoustic Report states that *“ambient noise already impacts the surrounding residences including:*

- *Significant traffic noise generated from Orrong Road and Archer Street.*
- *Existing noise generated from the Muzz Buzz coffee drive through and IGA supermarket and the carparking activity from their respective clientele.*
- *Current open nature of the site between Orrong Road and residences on Satellite Place.”*

The report acknowledges that if a 2.7m high acoustic wall were to be built along the north-western boundary, and assuming that fuel tanker deliveries were to occur during the day, that based upon the modelling there would be a 1dB exceedance of the noise criteria under the relevant Noise Regulations being from the start-up of vehicles in the car park at night, which the applicant contends is not significant.

However based upon the proposed 2.9m high acoustic wall and other measures to be implemented, the report concludes that any noise emissions are acceptable and can comply with the requirements of the *Environmental Protection (Noise) Regulations 1997*.

Furthermore the report comments that *“given the design of the subject site together with recommended noise-reducing elements and operational procedures, the surrounding residences experience the following:*

- *Residences positioned on Satellite Place have a quieter ambient noise environment.*
- *Residences adjoining the site to the north-west have a similar or quieter ambient noise environment.”*

The Town has engaged Talis Consultants to undertake a review of the submitted acoustic information supplied by the applicant. As part of their review, Talis sought clarification from the applicant's consultant on a number of matters, and subsequently undertook their own noise modelling based upon the available information contained in the report of the applicant's consultant, noting that some assumptions had to be made. The most recent advice provided by Talis to the Town is as follows:

*“Conclusion*

- *A realistic LA10 scenario has been modelled using data provided in Resonate’s report.*
- *Our predicted levels are up to 6 dB higher than those predicted by Resonate.*
- *The predicted levels are up to 3 dB higher than the regulatory assigned level.*
- *This indicates that the proposed noise control may not be adequate.*

**Note:** *There have been a number of assumptions made that need to be confirmed in order to verify the correctness of the model. If the assumptions are correct then additional remediation should be considered for the proposed development.*

*Next Steps*

- *That it be verified that our interpretation of the data provided in Resonate’s report is correct.*
- *If correct that additional noise control be considered.*
- *If not correct then our model be updated with the new information in order to verify if noise controls are adequate”*

In their technical memo dated 2 February 2018 (see Attachment 10) Resonate have responded. This further response from Resonate has been reviewed by Talis who have provided the following advice to the Town :

*“Our modelling was based on information in the Resonate report. As the Resonate report is missing a lot of important detail we had to make certain assumptions to fill the gaps.*

*They have responded pointing out that some of the assumptions we made are incorrect. Unfortunately they have not provided any further detail so we cannot evaluate whether their assertions are correct.*

*If they provide more detail then we can evaluate the effect that this information will have on the noise levels in our model.”*

The applicant was provided with this further response from Talis, but the applicant has not provided any further information or responses.

Therefore at this time, there are a number of matters that remain unresolved in relation to the matter of noise impact. In the absence of further information, both Council Officers and Talis are not satisfied that the development is capable of complying with the noise criteria prescribed in the *Environmental Protection (Noise) Regulations 1997*.

In consideration of the original application, Council Officers made the following comments in the Responsible Authority Report dated 9 May 2017 (see Attachment 3):

*“While the applicant’s endeavours to implement measures to minimise the noise impact are noted, it is considered that imposing a 2.7m high wall onto adjoining residential properties so as to control noise generated by the development is not an acceptable solution. The construction of a permanent wall of such height and length is considered to be excessive and would be visually imposing upon the adjoining properties and affect the enjoyment of this property. It is unreasonable that a residential neighbour should be expected to live with the consequences of this design solution. Instead an alternative design solution should have been explored which gave greater weight to maintaining the amenity of the adjoining residential property.*

*It is considered that the proposed 2.7m high acoustic screen wall along the north-west boundary is not an acceptable outcome for the adjoining residential properties. Furthermore Council Officers are not satisfied that the construction of a 2.7m high colorbond fence is acceptable, as no evidence has been provided from the acoustic consultant confirming that such a fencing material will mitigate noise generated by the development. Mitigation measures to ensure compliance with the relevant Noise Regulations should involve measures that still preserve the amenity of the adjoining residential properties.”*

As described above, the applicant’s consultant has now clarified in the revised Acoustic Report that the acoustic wall will have a colorbond skin but with noise mitigating qualities.

Additionally, as part of the amended proposal, the acoustic wall has been increased from a 2.7m maximum height to a maximum height of 2.9m. This has resulted from the proposed change of fuel delivery times to night-time periods rather than day-time deliveries. The change of delivery times has been proposed by the applicant to minimise the risk of potential traffic conflict and associated ingress/egress issues that may have occurred between fuel tankers and other vehicles in and around the site, where the risk of such conflict would have been greater during the day.

However as a consequence of the change to night-time fuel deliveries and due to the lower acceptable noise emissions during the night-time, an increase in the wall height is proposed. In other words, based upon the proposed change to night-time fuel deliveries, compliance with the Noise Regulations would not be achieved at night with a 2.7m high acoustic wall, whereas the applicant’s consultant contends that compliance can be achieved with a 2.9m high acoustic wall.

Council Officers still have concern that the construction of an acoustic wall, now of 2.9m height, along the north-western boundary has an unreasonable and negative impact upon the adjoining properties in terms of its visually imposing height, and considerable length. While accepting that the level of visual amenity currently enjoyed by these residential properties is relatively low and is compromised by the existence of vegetation, a caravan located adjacent to the boundary and lattice fencing added to the top of an existing fence, this does not provide justification for further eroding the level of visual amenity for the adjoining properties through the construction of the proposed acoustic wall.

Notwithstanding the existing site circumstances and level of visual amenity of the adjoining properties, the proposed development should be seeking to improve the outcomes for the adjoining properties, or at least maintain the current level of amenity. The construction of a 2.9m high wall (of 55m length) along the north-west boundary is not considered to be an acceptable outcome for the adjoining residential properties, particularly noting that the need for a wall of such height is dictated by the proposed hours and operational practices of the proposed uses and the consequent Noise Regulations that apply.

Council Officers note the applicant’s submission that a residential development on the subject site could otherwise construct a wall on the north-western boundary of up to a 3.5m maximum height and an average height not exceeding 3.0m. While it is correct that such wall heights would be permitted “as-of-right” under the R-Codes for a residential development, the “as-of-right” acceptable length is 2/3 of the boundary, being a maximum length of 39.8m (55m proposed). In this particular instance the applicant seeks for the JDAP to exercise discretion including having regard to the impact of non-residential uses on adjacent residential properties as per LPP3, as well as the JDAP needing

to consider those matters outlined in deemed clause 67 including the relationship with adjoining development. The view of Council Officers is that the construction of a wall of the height and length permitted under the R-Codes for a residential development, although compliant, would not be an acceptable outcome for the adjacent residential properties, let alone a wall which considerably exceeds the allowable length if the development was residential.

Notwithstanding the matter of noise impact and compliance with the Noise Regulations being unresolved at this time, it should be noted that compliance with the Noise Regulations does not necessarily mean that the noise does not constitute an adverse impact on the existing amenity of the locality in a planning sense. Therefore the JDAP is still required to determine whether the level of noise emissions resulting from the proposed development would have an adverse impact upon the amenity of nearby residential properties regardless of whether the proposal satisfies the Noise Regulations.

Noting the intended operating hours of the Convenience Store and the Fast Food Outlet, and notwithstanding a reduction in the operating hours of the Fast Food Outlet, there will be activities occurring within the proposed buildings and the external areas both in the late evening periods, and potentially during the early am morning period in the case of the Convenience Store and associated fuel component, which is still to operate 24 hours a day. Such activities will generate noise, including vehicle movements, the starting of vehicles, opening and closing of car doors, car radios, people speaking, mechanical noise, audible speakers for the drive-through facility, PA system for fuel bowsers etc.

While the level of noise emissions associated with such activities may be able to comply with the Noise Regulations with the implementation of mitigation measures, this does not mean that the level of emissions is acceptable from a planning and amenity perspective.

Having regard to the potential noise emissions and the hours at which such noise may be occurring, it is concluded that the development will generate noise at times when nearby residential properties have a reasonable expectation for the quiet enjoyment of their property. In particular, it is expected that there would be unplanned high level noise events that occur at short durations, albeit potentially occurring frequently over the course of a late night or early morning, particularly in the open air, associated with the Convenience Store and filling of cars at these times. Such events could include things such as the shutting of car doors, loud voices of patrons, loud car radios, beeping of car horns etc. It is considered that the occurrence of such events is real and is not an exaggerated scenario. It is unclear from the revised Acoustic Report prepared by the applicant's consultant as to what level of consideration, if any, has been given to such events (other than a vehicle door slam), and to what extent the proposed acoustic wall may mitigate such noise impact.

Notwithstanding that noise generated by the development may be able to comply with prescriptive standards in the relevant Noise Regulations (although still unresolved at this time), Council Officers are of the view that the noise generated by the development at particular times of the day, has the potential to adversely affect the amenity of nearby dwellings and be of a level that is undesirable in residential areas. This is contrary to the objectives and Policy provisions contained in Local Planning Policy 3 and relevant provisions in deemed clause 67.

In relation to the matter of odours, the applicant has submitted further information.

With respect to potential odours associated with the Convenience Store and fuel pumps, a Dangerous Good Assessment (see Attachment 14) has been submitted. Noting the handling of fuel is highly regulated and the commentary provided by the consultant in relation to the vapour recovery system when fuel is transferred from the tankers to the underground tanks, and the low level and

extent of odours emitted when general vehicles are filled up, Council Officers are satisfied that the level of odour emissions associated with the fuel pumps will not be detrimental to the amenity of surrounding properties.

In relation to potential odours associated with the Fast Food Outlet, the information submitted by the applicant includes an Odour Management Plan (see Attachment 13), details of the proposed Smoke Hog filtration system to be installed (see Attachment 11) and a report relating to the exhaust system installed at the Hungry Jacks store in Mt Lawley (see Attachment 12).

In the applicant's planning report (see Attachment 5) the applicant comments that :

- *“with the use of a Smoke Hog, virtually no emissions will be present in the exhaust air to atmosphere.*
- *The proposed Smoke Hog system has been successfully implemented in two (2) other Hungry Jacks stores, being Ellenbrook and Mt Lawley; and*
- *Based on the measures set out in the Odour Management Plan, it is not anticipated that any adverse odour management issues will result with respect to the subject site.”*

In the submitted Odour Management Plan it is stated that *“in specific locations such as Carlisle, in addition to the standard filtration, a Smoke Hog Filtration system will be installed which removes 98.7% to 99.3% of pollutants.”*

While the information submitted by the applicant describes the equipment and filtration that will be employed to manage odours, and indicates that the extent of pollutants will be minimal, what is not clear is whether the extent of odours that will actually be emitted is discernible and/or whether this constitutes a nuisance and whether or not that may comply with the Town's *Health Local Law 2003* (section 55) as well as not adversely impact upon the amenity of the surrounding residential properties from a planning perspective.

Therefore at this time, Council Officers are of the view that the applicant has not sufficiently demonstrated that the odour impacts of the proposed Fast Food Outlet will not have an undue impact on the amenity of nearby residential dwellings as required by LPP3 and relevant considerations in deemed clause 67.

With respect to the matter of lighting, the development plans depict at least two (2) 9.0m high light poles adjacent to the north-western boundary, as well as a series of “light blades” throughout the drive-through lane. Additionally there will be external lighting to buildings and illuminated signs. Given the proposed operating hours of the intended land uses, much of the lighting will be switched on during evening and early morning periods, and therefore having the potential to impact upon nearby residential properties. This matter can be addressed through potential conditions of any approval, requiring the applicant to provide light spill diagrams displaying the level of light emissions generated by the development, and compliance with the relevant Australian Standards.

In terms of the above statements, it is concluded that approval of the development would be contrary to orderly and proper planning and the preservation of the amenity of the locality, as well as relevant provisions and objectives of Council's Local Planning Policy 3, in view of the likely noise and odour emissions.

## Trees

Two (2) trees exist on-site adjacent to the boundary with Satellite Place. The trees are identified as Marri trees. The development plans illustrate one (1) of the two (2) proposed drive-through lanes to the Fast Food Outlet being in close proximity to the trees, and hence the trees are noted as 'to be removed'.

Public submissions were received objecting to the proposed removal of the trees in terms of their aesthetic and environmental contribution, as well as commentary that the trees are a nesting place for Red Tailed Black and Carnaby Cockatoos.

Reason 8 of the JDAP's refusal of 18 May 2017 was as follows :

8. *In the absence of an arborist assessment reviewing the proposal and determining that retention of the two (2) on-site trees is not feasible or that the trees are unlikely to survive the impacts of construction, the proposed removal of two (2) mature on-site trees is not supported as they contribute to the aesthetic value of the street, and their removal will be a loss to the existing landscape – refer reason 2 e..*

In support of the amended proposal the applicant has submitted an Ecologist's Report (see Attachment 16) and a Tree Report and Risk Assessment prepared by an Arborist (see Attachment 17).

In terms of the Ecologist's Report, it is commented that the trees are used for foraging by cockatoos (but not roosting or nesting) and concludes that *"the proposed removal of two Marri trees is unlikely to have a significant impact on black cockatoos and no Commonwealth approvals are likely to be required."*

The report prepared by the Arborist comments that the two (2) trees represent a low level of risk to people and vehicles, but makes recommendations to reduce the likelihood of damage or injury.

The applicant contends in their report (Attachment 5) that retention of the trees presents unacceptable risks to the extent that the risks outweigh the landscaping and aesthetic benefits. The stated risks are as follows :

- a. *The tree root system is likely to be impacted upon by earthworks associated with the redevelopment of the site;*
- b. *The falling nuts from the trees are likely to cause liability issues associated with the operation of the site;*
- c. *The trees have unbalanced foliage cover, particularly due to the trimming of trees by Western Power, and may be at risk of falling;*
- d. *The trees have been identified as not being nesting trees for red-tailed black cockatoos, but have been described as foraging trees, examples of which are numerous in this immediate locality;*
- e. *The trees' foliage impacts upon directly adjacent power lines;*
- f. *CPD Tree's Tree Report & Risk Assessment is valid for only 12 months, and does not assess for longer term risk;*
- g. *Both arborists have identified that the species of trees is susceptible to disease, and the upper section of the trees have the pathogen;*
- h. *There is significant risk of limb failure with additional weight during fruiting season (honky nuts);"*

It is considered that the arguments put forward by the applicant are fairly weak, particularly when the Arborist concludes that the level of risk is low and suggests measures to be implemented to further reduce the likelihood of damage.

Council does not have any relevant planning policies or provisions that require the retention of trees on private properties, however deemed clause 67 (p) does outline that consideration be given to whether any trees on the site should be preserved. It should be noted that an Urban Forest Strategy is currently being prepared for the Town (yet to be presented to Council in a draft form) and one of the objectives of the Town's Strategic Community Plan is "increased vegetation and tree canopy" which is yet to be incorporated into the Town's planning framework.

While the trees do have aesthetic value, in the absence of specific planning policies or controls requiring tree retention, it is considered on balance that there is currently not a sufficiently strong basis for the JDAP to require the retention of the trees.

### **EPA Separation Distances**

The EPA Guidance Statement for *Separation Distances between Industrial and Sensitive Land Uses* No. 3 June 2005 provides generic separation distances between a number of land uses which generate emissions and those classified as sensitive land uses. In lieu of there being a 200m separation distance, the proposed development is located adjacent to residential development which is considered to be a sensitive land use. The original application did not provide any information addressing the separation distances from sensitive land uses.

The EPA Guidelines outline that where a lesser separation distance is proposed than the generic distance, then specific information must be submitted to demonstrate that a lesser distance will not result in unacceptable impacts.

In support of the amended proposal, additional information has now been provided being a Dangerous Goods Licensing Preliminary Assessment (see Attachment 14). This concludes that the proposed development will meet the requirements of the WA *Dangerous Goods Act 2004* and the *Dangerous Goods (Non-Explosives) Regulations 2007* for licensing purposes, noting that to achieve these licences, there is to be no harm to people, property or the environment, and the facility is constructed to a level where the risk is as low as reasonable practicable.

Council Officers are satisfied that having regard to the preliminary assessment, the setbacks of the proposed fuel bowsers from the residential boundary, conditions of approval that can be applied, and the licensing regime that will apply, that the proposed development is acceptable from a buffer/separation perspective.

### **Signs**

As part of the original application, approval was sought for a number of signs including pylon signs on both street frontages, awning signs, signposts, wall signs, height bars and directional signs. Council Officers had no objection to the signs with the exception of a proposed 10m high 7-Eleven sign along Orrong Road, and an 8.0m high pylon sign for Hungry Jacks also along Orrong Road.

In the previous Responsible Authority Report (see Attachment 3) dated 9 May 2017, Council Officers note the following :

- *“Under the Town’s Signs Local Law, the normal accepted height for pylon signs in the Town is 6.0 metres. In order to assess these pylon signs along Orrong Road and Archer Street, reference was made to the existing pylon signs at No. 44 Orrong Road (BP Station site) across Archer Street. No. 44 Orrong Road has two pylon signs: one along Orrong Road (7.0m high) and the other along Archer Street (approximately 5.0m high).”*

- *Council Officers remain of the view that the two (2) proposed pylon signs are of an excessive height which results in the signs being out of scale with surrounding development and being visually dominant within the Orrong Road streetscape, therefore not satisfying relevant provisions outlined in Clause 39A of TPS 1.”*

Reason 6 of the JDAP's previous refusal included the following :

7. *The proposed development being non-compliant with Clause 39A of Town Planning Scheme No. 1 in respect to the two (2) pylon signs along Orrong Road, which due to their height are considered to negatively impact on the quality of the streetscape.*

The amended proposal, now includes a reduction in the height of the aforementioned 7-Eleven sign to a maximum of 8.0m. The proposed Hungry Jacks sign remains at a height of 8.0m, with the setback of the sign from the north-western boundary being increased to 5.0m (previously 1.0m).

The applicant addresses the matter in correspondence from an urban designer (see Attachment 15) and in their planning report, including the following points :

- *The tower element of the proposed 7-Eleven building on the corner of Orrong Road and Archer Street is an important urban design element that follows a long-standing urban design tradition of accentuating and celebrating corners to create built landmarks that assist with navigation around the built environment.*
- *Given the need for signage as an operational requirement, it is a better urban design outcome for signage to be integrated into the feature corner tower rather than being reliant on a separate signage pylon. In this respect, the proposed approach is to integrate all of the 7-Eleven signage requirements for Orrong Road into a single signage component on the corner tower in order to remove the need for an additional pylon sign that would visually clutter the streetscape.*
- *Because of the continuous pedestrian canopy (an essential urban design feature), the signs need to be placed a little higher up than would otherwise occur with a conventional stand-alone pylon sign in order to be clearly seen.*
- *In summary, the signage strategy for the proposed development seeks to maintain the operational requirements of 7-Eleven and Hungry Jack's, whilst integrating signage with the building and other boundary structures, establishing a built form presence on the street corner, providing shade and shelter for pedestrians, and effectively reducing the signage clutter associated with the conventional stand-alone signage approach of facilities such as the adjacent BP service station.*

While the proposed signs remain at a height exceeding those on the adjacent BP Service Station site, having further regard to the surrounding streetscape character, the integration of the 7-Eleven sign into the building, and the increased setback of the Hungry Jacks pylon sign, it is concluded that approval of the signs would not detract from the streetscape character, and therefore the signs are now supported in their amended form.

### **Design of buildings**

The design of the proposed buildings and presentation to streets is considered to be of a high quality and makes a positive contribution to the streets. In relation to the proposed façade treatment to Archer Street, the Convenience Store building has been purposely designed to have windows facing Archer Street so as to promote surveillance and activation rather than just face the internal car park and turn its back onto Archer Street. Additionally, so as to maintain the perception of a building façade to Archer Street, the design solution of an architectural façade treatment between the Convenience Store building and the crossover to Archer Street make a positive contribution to the Archer Street elevation.



Overall it is considered that in terms of streetscape outcomes, the proposed buildings make a much more positive contribution to their streetscapes as compared to the existing building on the site.

### **Traffic Impact**

#### Relevant previous planning decisions

As described above, the matter of traffic impact was a pivotal consideration in the Tribunal's decision to refuse the previous application for a Liquor Store on the site. The Tribunal, based upon the evidence provided at that time (in 2012) commented that :

- *The evidence clearly demonstrates that Orrong Road, Archer Street, and the signalised intersection of Orrong Road/Archer Street are operating beyond capacity, with high levels of congestion and with considerable issues with respect to road safety.*
- *The additional traffic will exacerbate the traffic problems of a road environment that is already operating beyond capacity. The evidence identifies a number of traffic issues that arise from the proposed development and include :*
  - *The magnitude of the level of risk on Orrong Road associated with the left in movement will increase;*
  - *Queue lengths for the left out movement onto Orrong Road will increase resulting in longer delays within the site, consequently impacting on the operation of the carpark;*
  - *Queue lengths for traffic on Archer Street turning left and right into Orrong Road will increase, which will undoubtedly impact on the performance of the Archer Street driveway resulting in further delays and impacting on the operation of the carpark; and*
  - *The level of risk to road users will increase as exposure is increased. Although under the proposed development scenario for Archer Street, the level of risk is considered to be a 'low' level of risk by the traffic experts, the unacceptably high level of risk that currently exists will be worsened.*
- *The fact that the existing situation is unacceptable does not provide justification for approving a new development that will have an equally bad or worse outcome.*
- *Although the level of additional traffic generated by the proposed development was estimated to be relatively small in number, the evidence showed that both the level of congestion and level of risk would increase and result in a worse situation.*
- *Due to the traffic and safety issues discussed, approval of the application would, therefore, be contrary to the orderly and proper planning of the locality and the preservation of the amenities of the locality. Consequently, the proposed development warrants refusal.”*

Additionally, the matter of traffic was a major reason for the JDAP's decision to refuse the application that is now the subject of this SAT review, with the reasons for refusal including the following :

11. *The additional traffic generated by the development will exacerbate the traffic problems of a road environment that is already operating beyond capacity – refer reasons 2 a, b, d and g.*

12. *The arrangements for the ingress, unloading, manoeuvring and parking of the fuel tanker is inadequate and will result in vehicular conflicts on the site which may then impact on the external roads. – refer reasons 2 a, b and f.*
13. *The items of concern identified by Main Roads WA dated 8 March 2017, with the exception of the recommendation that access to/from Orrong Road is not supported.*
14. *The information provided by the applicant in relation to the traffic impact of the proposed development not adequately addressing a number of matters raised by Council Officers, Main Roads WA and the Town's independent traffic consultant.*

#### Application for Blackspot funding

In the previous Responsible Authority Report dated 9 May 2017 (see Attachment 3), the following statements are made by Council Officers :

- *“Council's Street Life Business Unit advised the applicant's project team of the Town's future intent to upgrade the Archer Street/Orrong Road intersection to improve turn movements onto Orrong Road. More specifically, the intent is to upgrade the section of Archer Street adjacent to the development site from 2 lanes to 3 lanes including a designated left hand turn lane on Archer Street into Orrong Road (this would comprise 2 right turn lanes and 1 left turn lane). The applicant was advised of the Town's intent to apply for Blackspot funding to undertake this project. It was accepted that the implementation of such works would improve traffic conditions adjacent to the site.*
- *During the Officer's assessment of the application, advice was received from Main Roads WA that the Town's application for Blackspot funding to construct a 3<sup>rd</sup> lane on Archer Street onto Orrong Road had not been successful for the 2017/18 financial year.*
- *The submitted Transport Impact Assessment cannot be accepted as it is based on the 3<sup>rd</sup> lane on Archer Street being constructed for which there is no commitment or funding allocated to. Until such time as there is a commitment to fund and construct a 3<sup>rd</sup> lane on Archer Street, this cannot be relied upon for the purposes of a traffic assessment. Therefore for the purposes of assessing the current development application, the only modelling or traffic analysis that can be undertaken is involving the status quo remaining in Archer Street plus the MRWA improvement works being constructed in Orrong Road.”*

Subsequent to this, the applicant's traffic consultant then prepared revised traffic modelling based upon the existing intersection configuration.

No further applications have been made by the Town for Blackspot funding.

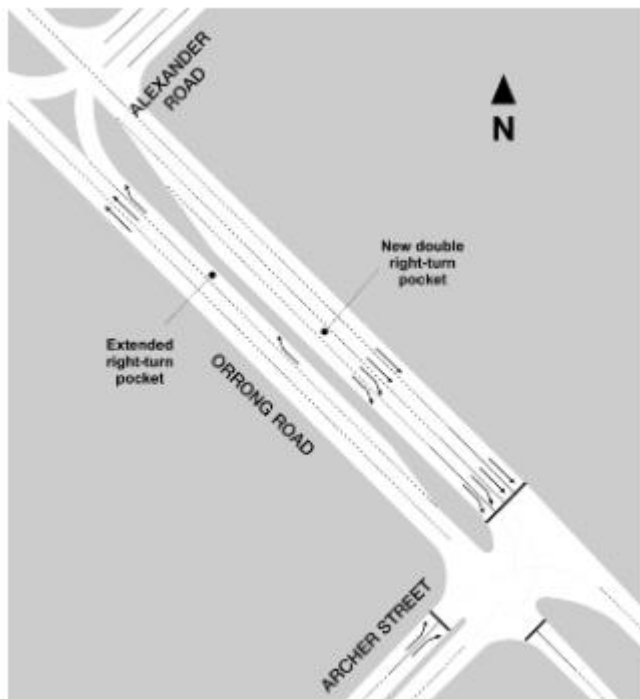
As part of this amended proposal, the applicant has set the building 3m back from the current boundary to Archer Street to still allow for the potential widening of Archer Street and the construction of a 3<sup>rd</sup> lane if the Town were to receive future funding for this. Furthermore the applicant proposes to cede the land to the Town free of cost.

The applicant, in their planning report states:

*“The Applicant submits that the current DA incorporating a proposal to cede land free of cost to facilitate the road widening necessary to accommodate an additional turn left lane from Archer Street into Orrong Road paves the way for a resolution of the long standing congestion at the Orrong Road / Archer Street intersection rather than exacerbating it. This situation applies whether or not the project receives MRWA Black Spot funding.”*

Intersection improvement works undertaken by Main Roads WA

In mid to late 2017, Main Roads WA implemented road improvement works in the vicinity of the subject site, with these works being largely improvements along Orrong Road (widening Orrong Road southbound from three lanes to four lanes to provide a double right-turn into Archer Street westbound; and extend the right-turn pocket from Orrong Road northbound into Alexander Road eastbound). The works are illustrated in the image below:



The amended proposal

A number of amendments have either been to the plans that were previously refused, or are proposed to be implemented, to address the previous traffic concerns. These include:

- Retention of the two (2) existing crossovers onto Orrong Road in their current location and configuration (ie. no modifications proposed).
- The proposed construction of a median within Archer Street preventing right-hand turns out of the site onto Archer Street (note does not effect existing access to/from the BP service station);
- Redesign of the drive-through facility to allow for both drive-through lanes to be accessed from the crossover off Archer Street;
- An increase in the set back of the 7-Eleven building and façade from the Archer Street boundary by a further 1.0m;

- Fuel tanker deliveries are to now occur generally two (2) to maximum three (3) times per week, between 7.00pm and 5.00am so as to be outside Orrong Road peak periods.
- Reduction in size of fuel tankers to a maximum of 17.2m.
- Some minor internal changes to improve the movement of fuel tankers through the site.

In support of the amended proposal, the applicant has submitted a Revised Transport Impact Assessment dated January 2018 (see Attachment 6), a Transcore Technical Note dated 11/1/2018 titled 'Paramics Microsimulation Modelling – January 2018 (see Attachment 7), a Fuel Circulation Line Path drawing dated 22 January 2018 (see Attachment 8) and a Traffic Management Plan (see Attachment 18).

In relation to the revised Transport Impact Assessment (see Attachment 6), the following statements are contained in the report prepared by Transcore:

- *The proposed development will result in a net reduction of site traffic on Orrong Road and Archer Street during the critical road network AM and PM peak hour periods.*
- *The majority of the traffic generation of the proposed development is from passing traffic along Orrong Road and Archer Street and as such the proposed development will not generate significant numbers of additional traffic on the surrounding road network.*
- *The proposed development will result in better traffic operations on the surrounding road.*
- *The proposed access and egress arrangements for the proposed development can satisfactorily accommodate all service vehicles associated with the development including fuel tankers.*
- *The existing trip generations of the subject site are as follows:*
  - *Morning AM peak hour: Total of 195vph (99vph in/ 96vph out);*
  - *Afternoon PM peak hour: Total of 202vph (95vph in and 107vph out); and,*
  - *Total daily traffic generation: is estimated to be approximately 2,613vpd.*
- *The total post development trip generation to and from the site is estimated to be 2,764 vpd with 140vph during morning peak period and 200vph during afternoon peak period. Factoring in passing trade, the proposed development is estimated to generate about **+845vpd** with **+34vph** and **+62vph** during AM and PM peak periods, respectively.*
- *Accounting for the existing traffic generation of the site (IGA, Muzz Buzz and approved restaurant) the net change in site traffic generation as a result of the proposed development is estimated to result in a reduction of 55vph (140-195=**-55vph**) during the AM peak hour and a reduction of 2vph (200-202= **-2vph**) during the PM peak hour*
- *It is evident from the SIDRA Network results that as a result of the proposed development, the signalised intersection of Orrong Road/ Archer Street will operate at a similar level of service compared to the existing situation during the post development AM and PM peak hours.*
- *The SIDRA analysis indicate that the Archer Street crossover will operate at good level of services with low delays for each movements during AM and PM peak hour periods.*
- *The Orrong Road crossovers are proposed to be maintained with the same configuration as the existing situation and therefore it is anticipated that these crossovers would operate similar to the existing situation and without any issues in the post development stage.*

- *The results of the turn path analysis confirm that the Archer Street and the existing Orrong Road northern crossover geometries and the site layout can accommodate the movements of a 17.2m fuel tanker.*
  - *The queue analysis undertaken for Hungry Jack's drive through facility confirms that during typical peak period and Saturday lunchtime, queues from the ordering points will be contained within the subject site.*

The following additional statements are contained within the Traffic Management Plan prepared by Transcore (see Attachment 18):

- *Based on the information provided to Transcore, fuel tankers will be 17.2m in length. The fuel tankers will turn left from the proposed Archer Street crossover to enter the site, circulate within the site to access the fill point and exit the site via a left turn from the existing northern crossover on Orrong Road.*
- *Transcore has also been advised that the fuel tankers will access the site generally 2 to maximum 3 times per week between 7.00pm and 5.00am so that the fuel delivery and tanker movements occur outside Orrong Road peak periods. The fuel delivery would only take about 20 minutes.*
- *Considering the frequency and timing of the fuel delivery no traffic conflict between customers, employees and fuel tankers are expected as well as any impact on Orrong Road and Archer Street.*

#### Main Roads WA comments

As the development site adjoins Orrong Road which is an Important Regional Road under the MRS, and as the development proposes modified access onto Orrong Road, the original application was referred to both the Department of Planning and Main Roads WA for their assessment and comments. Their comments and recommendations are outlined in the previous Responsible Authority Report (see Attachment 3). Of particular note is Main Roads objection to the development on the basis that it retains vehicular access onto Orrong Road which is inconsistent with the WAPC's Development Control Policy 5.1 'Regional Roads (Vehicular Access)'.

Main Roads WA have been in attendance during the SAT mediation sessions and have reviewed the revised documentation submitted by the applicant.

Main Roads WA have reviewed the revised Transport Impact Statement and Paramics modelling undertaken by the applicant's consultant, and have provided a technical response (see Attachment 19) expressing concerns in relation to a number of matters. The applicant's traffic consultant has in turn provide a response to this (see Attachment 20).

By way of an email to the Town dated 27 February 2018, Main Roads WA have summarised their comments as follows :

*"In its simplest, Main Roads does not support the proposal as presented for the following reasons:*

- *No access to and from Orrong Road. This is due to safety grounds including but not limited to:*
  - *The road network is at saturation. It cannot facilitate any further disruption or efficiency to the road network. In another words the road network is at capacity.*
  - *The Town of Victoria Park is responsible for the maintenance of the Orrong Road footpath and kerb work. The current outdated crossover design is based on 1977/2002 design vehicles and it is not adequate to accommodate in bound and out*

*bound vehicle movements of the 2014 design vehicles. A road safety audit previously undertaken with participants by the Town of Victoria Park staff identified the trip hazards associated with the broken kerb lines etc. This maintenance and is heighten with the semi tanker. Please note video survey undertaken by Main Roads demonstrated light vehicles cannot make the turn into the existing crossovers without light vehicles mounting the kerb. This also permits a conflict with pedestrians and light vehicles.*

- *The semi tanker cannot see oncoming traffic as demonstrated in the video survey by Transcore (tanker pulled out into an oncoming vehicle forcing a car on Orrong Road to brake - tanker failed to give way and likely due to the crossover not complying with safe intersection sight distance).*
- *Geometry modification to Archer St must be approved by Main Roads.*
- *Archer St utilises the current layout as a rat run to Orrong Road. Closure of the Orrong Road crossover removes this safety conflict entirely.*
- *The previously presented word document highlights all the items that need to be resolved prior to Main Roads providing any further support for this development application.*
- *The proposal utilises RAV vehicles (semi tanker is included as a RAV ) and Archer Street and Orrong Road is not approved for such vehicles.*

*The above comments are also in line with the Austroads Guide to Road Design Part 4 section 7.2 - Property Access - Access Spacing and Proximity of Driveways to Intersections - Functional Area of an intersection."*

Council's Officers note the concerns expressed by Main Roads WA. However Council Officers do not agree with Main Roads recommendation that there should be no vehicle access to and from Orrong Road. Council Officers are strongly of the view that having no access onto Orrong Road will negatively impact Archer Street and cause further congestion near the signalised intersection as the distribution of traffic will be concentrated at the single entry/exit point in Archer Street. From the applicant's perspective, it is understood that the development would not be viable without access to Orrong Road given the reliance upon passing trade and there would be no ability for a fuel tanker to enter from Archer Street, then turn on-site to exit on Archer Street. If there is to be no vehicle access onto Orrong Road then the traffic implications on Archer Street would be significantly affected and additional safety issues would arise. Limiting access to Archer Street only would exacerbate the traffic and congestion issues that already exist on Archer Street.

As this aspect of Main Roads WA advice is considered unreasonable and is not supported by Council Officers, if the JDAP are of a view to approve the application (against the Officer's recommendation in this report) with access to/from Orrong Road then in accordance with the Instrument of Delegation from the WAPC to Local Governments, there will be a need for the matter to be referred to the WAPC for separate consideration and determination under the MRS, as this would be contrary to the recommendation of Main Roads WA.

In terms of the concerns regarding an RAV (Restricted Access Vehicle) using Archer Street, Cardno has received verbal advice from Main Roads WA Heavy Vehicle Services that the applicant's nominated fuel tanker is a RAV only when operating under Concessional Loading permit, and subject to the operator obtaining the normal permits, the tanker would be permitted to travel on RAV Network 1. Archer Street and Orrong Road are both available for use by RAV Network 1 vehicles, as per Main Roads WA 'Tandem Drive Network 1' table dated 21/08/2017. The Town is satisfied that the site can be serviced by a fuel tanker subject to the vehicle meeting the relevant regulations and compliance imposed by Main Roads HVS. If load limits exceed the required maximum tonnage or length limits for the fuel tanker servicing the development, other options will need to be considered by the operator.

The Town notes the comments from Main Roads regarding vehicles traversing the kerbing adjacent to the crossovers and would prefer the applicant to upgrade the crossovers to current standards. However, as Main Roads has indicated its refusal to approve such an upgrade, the Town is prepared to accept retaining the crossovers in their current form, subject to the responsibility and cost of maintaining and repairing the crossovers being the responsibility of the applicant.

Comments on Transport Impact Statement, traffic modelling and traffic management

Noting the considerable public interest in this application and the detailed traffic evidence involved in the previous Tribunal matter for the site, Council Officers determined it appropriate to engage an independent traffic consultant to provide the Town with expert advice. Cardno were engaged to undertake this work for the Town. Cardno were engaged to review the original development application, and have continued their involvement through the SAT process.

Council Officers and Cardno have reviewed the additional documentation submitted by the applicant, and have identified a number of concerns with the assessment and modelling undertaken by the applicant's traffic consultant (detailed further below).

It should be noted that Council's Officers requested agreement from the applicant for additional time to undertake further assessment and modelling of the proposed traffic implications so as to clarify and/or resolve some of the outstanding items, however the applicant refused this request.

In terms of the Town's concerns, it was agreed that the Town (in consultation with Cardno and Main Roads WA) would provide the applicant with a list of inputs that the traffic assessment and modelling should be based upon, in order to ensure that the work undertaken by the applicant's traffic consultants would meet the needs of the Town and Main Roads WA. While this information was provided by the Town, the applicant's traffic consultant has not incorporated the following inputs as requested :

- Peak hour trip generation – 7-Eleven store was to incorporate 80 transactions to determine a trip generation – instead the applicant's consultant has applied 64 transactions.
- Traffic Distribution – Trip origins were requested to be as per the existing traffic pattern for BP (i.e. 55% Orrong Road westbound, 20% Orrong Road eastbound, 25% Archer Street), with trip destinations adjusted to suit the 7-Eleven & Hungry Jacks site (i.e. no access to Archer Street exiting right from the site) – the applicant's consultant did not apply the requested trip origin information.
- Heavy Vehicle classifications modelled as per breakdown in Orrong Road classification counts – not done.
- Volume Summaries - The applicant was requested to provide net change in traffic volume scenarios for each individual movement, however this was not provided.
- Modelling Scenarios – A number of modelling scenarios were requested as per WAPC requirements, with the following scenarios not being provided:
  - > Opening Year + 10 Years with development (2028)
  - > Opening Year + 10 Years without development (2028)
- To provide an accurate representation of the interface between Archer Street, the development crossover and the drive-through, it was requested that the Paramics network be set up and modelled as one (1) zone to represent the development – instead the modelling was undertaken based upon two (2) zones.

The consequence of not employing the agreed inputs in the traffic assessment and modelling is outlined below in detail in the key result areas; However in general terms, as the assessment and modelling undertaken by the applicant is not consistent with the agreed inputs, the Town has concerns regarding the validity of the assumptions and conclusions that have been arrived at by the applicant's traffic consultant, and believe that the information provided may not be truly representative of the impact of the development on the surrounding road network.

The assessment and modelling undertaken by the applicant's consultant is premised upon the construction of a median in Archer Street adjacent to the proposed crossover and an island within the crossover that prevent vehicles from making a right-hand turn out of the site onto Archer Street. The location and design of the median limits vehicle movements from the subject site only, and does not restrict existing vehicles access to and from the BP Service Station site, or Gemini Way. From a traffic safety perspective, both Council Engineering Officers and Cardno support this proposed traffic calming measure management measure as it will eliminate the highest risk movement which currently occurs on Archer Street (being right turn movements out of the site) and reduce the overall number of conflicting movements on Archer Street, without unduly impacting access to other properties.

Cardno's advice to the Town, based upon the material provided by the applicant and their own SIDRA analysis (see Attachment 22) can be summarised as follows :

- There are existing congestion and safety issues associated with the road network surrounding the development site.
- The Applicant has not provided traffic analysis fully in accordance with the Assessment Parameters (dated 14 December 2017) agreed by the Town and Main Roads WA, and provided to the Applicant. The main departures from the Assessment Parameters relate to:
  - Traffic generation for the service station component
  - The distribution of traffic generated by the development
  - Heavy Vehicle classifications in SIDRA
  - Opening + 10-year modelling scenarios were not provided
- Cardno undertook an independent SIDRA analysis of the proposed development, utilising the agreed Assessment Parameters.
- For the existing scenario, Cardno's assessment indicated that the intersection currently operates worse than was shown in the Applicant's assessment, primarily due to the Applicant's model not including the staged pedestrian crossing across Orrong Road, and the adjustments to heavy vehicle classification parameters.
- Cardno's SIDRA assessment of the proposed development indicated that the left turn from Archer Street into Orrong Road would operate worse than existing, primarily due to an increase of 29 vehicles in the AM Peak and 18 vehicles in the PM Peak making this movement. This is because the agreed Assessment Parameters reduce the number of trips diverted into the site from Archer Street compared to the Applicant's assessment.
- As the intersection of Orrong Road and Archer Street is operating at or near capacity, small changes in volumes for movements out of Archer Street result in disproportionate worsening of Level of Service and increases in Average Delay. It is estimated that there will be increased time delays for vehicles turning left from Archer Street into Orrong Road, potentially up to an additional 89 seconds in the PM peak. Additionally queue lengths in Archer Street are likely to increase (up to an additional 103m in the PM peak). However, as Cardno's SIDRA model is uncalibrated (due to observation data – e.g. queue lengths – not being available), these results should be treated as preliminary only. Additionally It is acknowledged that these results indicate disproportionate increases in delays and queue lengths, and cannot be fully relied upon due to the intersection already operating at or near capacity, however the results do indicate that in a best case scenario there is likely to be some increase in delays and queue lengths as a result of the proposed development.



- Cardno's assessment included the Orrong Road crossovers which were not modelled by the Applicant (in SIDRA). Both these crossovers, and the Archer Street crossover, were shown by SIDRA to operate at high levels of service, however this does not reflect the reality of the situation due to limitations of the SIDRA software. In reality, there are delays exiting the site commensurate with the level of congestion existing on the road network.
- Cardno's assessment indicates that the delays to through traffic as a result of additional vehicles entering the site from Orrong Road are minimal, although it is considered that SIDRA's ability to adequately account for this type of delay is limited.
- Cardno considers that if more accurate modelling results are required, a Main Roads WA-supported microsimulation package should be used (e.g. AIMSUN), supported by calibration data (e.g. queue lengths, saturation flows). The Applicant did provide PARAMICS microsimulation modelling however it was not in accordance with the agreed Assessment Parameters and there was insufficient time for Cardno to complete an independent modelling exercise using this software.
- The Orrong Road crossovers are essential to the function of the site and should be retained. It is desirable that the crossovers be upgraded to meet current standards however it is understood that Main Roads WA objects to this. In the absence of the crossovers being upgraded, the Town should ensure that repairing of any damage to the crossovers, kerbs of verge should be at the cost of the Applicant.
- The Archer Street crossover as proposed by the Applicant is considered suitable and will be an improvement on the existing situation as a result of removing the right turn out of the site. In the medium-to-long term, the Town should consider widening Archer Street to create a painted median which would allow vehicles turning right into the site to store clear of through vehicles.
- The fuel tanker and other service vehicle arrangements entering, exiting and within the site are considered satisfactory. It is recommended that the Town impose a development condition requiring the fuel tanker to be no longer than the dimensions shown on the swept path plans.
- Cardno has not been provided with swept path plans indicating that the fuel tanker can negotiate the roundabouts on Archer Street. The ToVP should satisfy itself that the mountable aprons are of sufficient standard to accommodate concessional loading vehicles or consider a condition of approval which places to responsibility for maintenance or rectification of damage with the Applicant.

Council's Engineering Officers have also reviewed the information submitted by the applicant, and the advice provided by Cardno. Council's Engineering Officers comments are as follows :

#### *Traffic Generation*

Based on factual information provided by BP, the Town is of the opinion that 80 transactions in the morning and afternoon peak was appropriate for the application of the proposed Convenience Store (including the fuel component), particularly noting that two (2) service stations in very close proximity to each other will be a catalyst to introduce more competition, hence attracting more vehicle trips to the area.

The revised Transport Assessment dated January 2018 indicates that the 7-Eleven fuel station generates 112 trips in the AM and 124 in the PM Peak periods. In accordance with the requested 80 transactions, if adopted by the applicant's traffic consultant, would result in 152 trips in both the AM and PM peaks. These figures include the notion that 95% of transactions result in two (2) vehicle trips. The remaining 5% are assumed to be walk in or multiple transactions of one vehicle. The net difference is that the applicant's figures underestimate the vehicle trips by 40 in the AM and 28 in the PM peaks.

According to the applicant's traffic consultants report, the combined effect when considering both the 7-Eleven fuel station and Hungry Jacks, is a total of 140 trips in the AM Peak and 200 in the PM Peak. This is deemed to generate less traffic than the existing IGA/Muzz Buzz which shows that the existing site generates 195 vehicle trips in the AM Peak and 202 in the PM Peak.

Under the Town's preferred (and requested) scenario of using 80 transactions, equating to 152 vehicle trips in the morning and afternoon peaks from the 7-Eleven Fuel Station and also factoring Hungry Jacks vehicle trips as per Transcore's numbers (HJ's AM = 28 Vehicle trips per day and PM = 76 Vehicle trips per day) this would result in 180 vehicle trips in the AM peak hour and 228 vehicle trips in the PM Peak hour.

When comparing the Town's preferred traffic generation to the existing site traffic (AM peak hour 195 trips, PM peak hour 202 trips) there is a net reduction of 15 trips in the AM peak ( $180 - 195 = -15$ ), and in the afternoon PM peak there is a net increase of 26 vehicles ( $228 - 202 = 26$ ). The report tabled by Transcore describes a significant net decrease in the AM peak hour and a minor decrease in the PM Peak for which the Town does not agree.

As the PM peak is considered the worst case scenario in terms of vehicle generation numbers and levels of service, according to the SIDRA analysis undertaken by Transcore a net increase of 26 vehicles equates to an approximate queue length of 180m. It is understood that depending on traffic distribution not all 26 vehicles will be originating from one road, however it could increase delays onto the immediate road network.

#### *Trip Distribution and Assignment*

In relation to trip distribution, the updated TIA by Transcore depicts the bulk of traffic using Archer Street to access the site rather than Orrong Road. This does not seem reasonable given the proportion of traffic on Orrong Road vs Archer Street is roughly 80%/20%. Higher proportions of traffic being directed to Orrong Road crossovers could negatively impact traffic queues on the northbound approach to the existing signals on Orrong Road. SIDRA analysis undertaken by Transcore shows queues on Orrong Road, with the southern leg being in excess of 500m which is consistent with PM peak observations. An increased proportion of motorists using the Orrong Road crossovers could exacerbate the delays for through vehicles who must slow down immediately proceeding the signals which will in effect cause further congestion in the kerbside lane.

#### *Heavy Vehicle Classification*

Accepted modelling practises generally requires a detailed classification of the vehicles using the particular road, so as to differentiate heavy vehicles from light vehicles. Traffic count information provided by the Local Governments or Main Roads Western Australia can provide a detailed breakdown to give a better understanding of proportions. The SIDRA analysis undertaken by Transcore shows percentages were applied to all lanes in the form of Heavy Vehicle Flows (%). In particular, of interest to the Town was the application of 2% heavies on the Archer Street leg. On review of the Town's traffic count files for Archer Street, the applicant should have applied a minimum of 6% in the PM Peak and 9% in the AM Peak. These percentages only include the Archer Street approach. No data was available for Orrong Road that could be filtered to give an accurate classification breakdown. As a result queue lengths are likely to be understated and the performance of the intersection is likely to be overstated due to longer vehicles and slower acceleration.

#### *SIDRA analysis*

It should be noted that SIDRA software has some difficulties reflecting "real life" traffic operations and ultimately the traffic consultant needs to convey these issues and implications in the assessment. The main concern is queuing from adjacent intersections is not adequately considered by the model in assessing the LOS (Level of Service) for other intersections ie. queuing on Archer

Street back from Orrong Road is not captured in the calculation of delays for vehicles exiting the Archer Street crossover. This is indicated by the minor delays incurred when reviewing the modelled crossover results separately. Furthermore, levels of service are showing as “A” meaning free flowing conditions with no operational issues. It is understood that motorists who are already in the queue on Archer Street may give-way to vehicles entering the traffic from the site crossover, however this can also cause further delays on approach to the signals.

### *Modelling Scenarios*

As part of WAPC requirements the following modelling scenarios were requested.

1. Existing (2017)
2. Opening Year(2018)
3. Opening Year + 10 Years with Development (2028)
4. Opening Year + 10 Years with Development (2028)

Information has not been provided by Transcore in relation to items 3 and 4. It is important to note Main Roads undertook their own 10 year horizon assessment prior to installing double right turn lanes on Orrong Road and therefore already have information to determine future traffic needs. The only disadvantage is that at the time Main Roads WA did their assessment the future of the current development site was still in the planning phase. Nonetheless, the developer has indicated their intent to cede land free of cost to accommodate a left turn lane on Archer Street, approaching the existing signals at Orrong Road.

### *Paramics Modelling Software Concerns*

Council Officers have a number of detailed concerns regarding the Paramics modelling as follows :

- To provide an accurate representation of the interface between Archer Street, development crossover/drive-through and Orrong Road crossover, the Town requested that one zone should be modelled to represent the whole development. The development parcel was modelled as two individual zones with no internal road connections. The two zone arrangement will not represent a true reflection of the internal road network where the drive through queuing from Orrong Road will impact Archer Street drive through queue and vice versa.
- Archer Street departure lanes were modelled by Transcore to be 70m long (confirmed in a Road Safety Audit) which was modelled 40m longer than existing length which added additional capacity and not a true representation of site geometry and constraints
- The Archer Street approach south of the existing crossover is modelled as a two lane road with 7m width (currently one lane of 5m width) however Archer Street may not have the modelled capacity of two lanes during the entire peak periods. i.e. the capacity may be reduced due to bus stops or excessive right turn queue on Archer Street reducing the width and blocking the left lane.
- The Paramics Calibration and Validation document states “*Only 20% and 40% of traffic entering via this crossover accesses the drive-through during the road network AM and PM peak hours*”. The total traffic entering Archer Street crossover is 53 and 73 vehicles in AM and PM peaks respectively. This equates to 11 and 29 drive-through vehicles accessing Archer Street in AM and PM peak periods respectively.

The TIA document (page 23) states “*Accordingly, the average total weekday traffic generation of the Hungry Jack’s is expected to be in order of 974 vpd with 28vph between 7:30am – 8:30am and 76vph during 4:00pm – 5:00pm (total inbound and outbound trips).*”

	AM	PM
Traffic volume		
Archer Street crossover entry volumes (vph)	53	73
Percentage drive-through traffic from Archer Street crossover (vph)	11 (20% of 53)	29 (40% of 73)
Total traffic generation by HJ (in/out)	28 (14 in / 14 out)	76 (38 in / 38 out)
Total traffic to HJ drive-through (vph)	9 (65% of 14)	25 (65% of 38)
Traffic to HJ drive-through from Orrong Road crossover (vph)	-2 (9 - 11)	-4 (25 - 29)

The above table depicts that -2 and -4 vehicular trips are associated to Hungry Jack's drive-through in the AM peak from Orrong Road crossover which appears to be unrealistic.

- The average ordering time (of 9 seconds and 18 seconds) at the Hungry Jacks drive through ordering booth for both peak periods also seems unrealistic as it is believed that general ordering times (excluding any delay incurred waiting in the queue) is higher than 9 seconds and 18 seconds in AM and PM peaks respectively.
- Adopted heavy vehicle percentages in Paramics (AM and PM) models are lower than that of observed classified count data for Archer Street approach on a weekday in peak periods
- Public Transport buses (representing a bus route) and stops have not been modelled in the network. Bus stops are in merge/diverge areas on Archer Street (eastbound and westbound) and shall have some level of impact on the calibration process. The bus stops 14422 have daily boarding numbers of 10 and alightings 24, while bus stop 14423 has boarding numbers 25 and alightings 6.
- Orrong Road departure (southbound) has signals installed to replicate Wright Road signalised intersection, however, the northbound do not appear to have any signals installed to reproduce the traffic platooning (grouping vehicles into platoons) effect which will assist in determining the delay and risk associated with potential rear end crashes at Orrong Road crossover.

#### *Calibration and Validation:*

- The Road Traffic Code 2000 states:

*111. (1) "A driver shall not enter upon, or attempt to cross, an intersection, whether or not it is controlled by a traffic-control signal, if the intersection or the carriageway beyond it is blocked."*

However, this Regulation 111 does not apply to domestic or commercial driveways and it is acknowledged that motorists on occasions leave gaps for driveway traffic as 'courtesy'.

The documents state “*drivers were more likely to leave a gap*” and the model was coded for this junction to leave a gap on a full time basis. Coding the model with such an arrangement reflects lower queues/delays.

- No evidence on the number of traffic datasets used to calibrate the model was provided.
- No evidence on the methodology used to observe 95% queues were calculated e.g. Queue starting from the end of green phase or other techniques.
- No evidence of validating motorist travel time and/or delay was provided in the report.
- No evidence of validating public transport travel time and/or delay was provided in the report.

#### *Feedback on SIDRA models (Post Development)*

- Crossover/s on Orrong Road have not been modelled.
- Adopted heavy vehicle percentages in SIDRA (AM and PM) models are lower than the observed classified count data for Archer Street approach on weekday peak periods.
- Right turn lanes’ length on Orrong Road is not representative of the actual lengths (including taper length).
- SIDRA model demonstrated a conflict between pedestrian movement (crossing Orrong Road north leg) and left turning traffic from Archer Street onto Orrong Road.

#### *Road Safety*

From a traffic safety perspective, both Council Engineering Officers and Cardno support the proposed measure to restrict right turns out from the existing crossover on Archer Street as this will eliminate conflict between the right turn movements out versus the right turns in which could result in right angle type incidents. Furthermore, two (2) existing crossovers onto Archer Street have been consolidated into one (1) which is anticipated to improve legibility for motorists accessing the site.

While Transcore have extracted crash data for the intersection of Archer Street and Orrong Road, they have not addressed mid-block crashes which involve driveway accidents. This information is required to determine future treatments that the Town would need to consider and any potential issues for development access arrangement. In total, apart from the 122 intersection crashes at the signalised intersection a further 36 midblock crashes have been recorded in the section between Orrong Road and Gemini Way in the last 5 years. Of the 36 crashes, 30 accidents were related to driveway crashes with the majority occurring at the existing IGA crossovers.

As previously mentioned, Main Roads WA in the last 2 years have undertaken improvements to the existing signalised intersection at Orrong Road/Archer Street. The modifications were focused on safety enhancements along Orrong Road and signal phasing with minimal changes on the Archer Street leg. In order to improve safety on Archer Street the Town intends to resubmit its Blackspot nomination for the 2019/2020 financial year in the hope of a successful outcome. Without the necessary changes, traffic will continue to worsen which can also result in traffic being displaced and seeking alternate routes to access Orrong Road via residential streets.

#### *Fuel tanker movements*

To enter the site from Archer Street, the fuel tanker requires use of the full width of the driveway crossover and internal circulation roadway. This is impractical during peak periods and for most of the day, where there is likely to be continuous vehicle movements in/out of the site. Accordingly, it

is recommended that fuel deliveries be restricted to between 9pm and 6am, to minimise the potential for conflict with other vehicles. Additionally, even during such times there will be a need for regulated management of fuel tanker deliveries by staff.

The position of the tanker will result in one bowser being blocked, however there is sufficient room for light vehicles to manoeuvre around the tanker in both directions while fuelling is in progress. The tanker position is also located a sufficient distance from both the Archer Street and Orrong Road crossovers to avoid any impact on the adjacent roads, subject to the restricted delivery times noted above.

The Town is satisfied with the swept path analysis and video footage provided by the Applicant that the fuel tanker will be able to egress the site safely.

### *Summary*

Council's Engineering Officers have reviewed the information submitted by the applicant, and the advice provided by Cardno. Council's Engineering Officers are not satisfied with some of the findings put forth by the applicant's traffic consultant. In summary, some of the critical concerns have not been addressed in a satisfactory manner and therefore the application should not be supported, these include the following;

- Traffic generation figures are believed to be understated, thus impacting on actual delays in peak periods and the performance of signal operations.
- The traffic consultant has not applied some of the parameters compiled by staff at the Town and Cardno to inform the revised modelling, and this in turn affects the validity of the results.
- The modelling does not provide Council Officers with the confidence nor accuracy that it is a true representation of the interface between Archer Street, the development crossover and the drive-through operations.
- Traffic distributions do not seem realistic. This includes the Applicant's distribution being based on a majority of traffic entering the site from Archer Street whereas 80% of the traffic passing the site is on Orrong Road and only 20% is on Archer Street. Based on the Assessment Parameters agreed by the Town and Main Roads WA, the proposed development would result in an increase of 17 vehicles per hour entering the site via Orrong Road in the AM Peak and 21 vehicles per hour in the PM Peak, compared to the existing traffic volumes.
- The applicant's traffic consultant suggests a net reduction of traffic in both AM and PM will result from the proposed development which is not agreed. Based on the Assessment Parameters agreed by the Town and Main Roads WA, the proposed development will result in a net reduction of 9 trips in the AM Peak Hour and a net increase of 40 trips in the PM Peak Hour.
- The status quo relating to the fact that the existing situation is unacceptable does not provide justification for approving a new development that will have an equally bad or worse outcome.
- Overall traffic on a daily average is greater than the existing IGA/Muzz Buzz – Proposed development will produce an average daily traffic of 2764 vpd vs 2500 vpd for the existing. This has amenity implications for nearby residents in terms of increased traffic circulation around the site and surrounding streets, increased noise etc.
- Traffic generation is greater than 100 vehicle trips in both AM & PM peak hour therefore the development is considered 'High Impact' in accordance with WAPC guidelines 'Transport Impact Assessment Guidelines, Volume 4 – Individual Development'. Irrelevant of passing trade assumptions which downscale the level of new trips being generated on the existing network, technical staff believe that the assessment does not address all the issues and lacks detail in areas such as road safety and impact on neighbouring areas.

**Options/Alternatives:**

No alternative recommendation has been prepared by Council Officers.

**Council Recommendation:**

In response to the level of community interest in the proposed development, the application was “called-in” for consideration at a Special Council Meeting on 3 April 2018. At this meeting the Council considered the draft Responsible Authority Report dated 29 March 2018, containing an Officer recommendation for refusal.

The Council’s resolution will be inserted here following the Special Council Meeting.

**Conclusion:**

The application was previously refused by the JDAP in May 2017. Through the SAT mediation process, and following consideration of the revised documentation now submitted by the applicant, some of the previous reasons for refusal have now been adequately addressed for the reasons outlined above in this report.

However Council Officers still have concerns regarding the impact of the proposed development upon the surrounding locality generally and specifically the adjoining residential properties in relation to the matters of noise, odours and traffic.

The additional information provided by the applicant as part of the reconsideration has not satisfactorily addressed the Officers concerns in relation to these matters.

With particular reference to the matter of traffic, this has been a determinative matter in the previous SAT review relating to the subject site and was a principle reason for refusal of this application by the JDAP in May 2017. As the applicant’s traffic consultant has not undertaken the traffic assessment and modelling in accordance with the agreed inputs, there is concern regarding the validity of the assumptions and conclusions that have been arrived at by the applicant’s consultant, and that the information provided may not be truly representative of the impact of the development on the surrounding road network.

The Town and its own appointed traffic consultant have undertaken their own assessments based upon the available information and have concluded that the development will increase traffic in the PM peak and is likely to increase delays and queue lengths. Such impacts are contrary to orderly and proper planning, and were determined by the SAT in the previous application to be a basis for refusal of the application. While it is accepted that there have been changes to the surrounding road network since this time, and the current application is a different proposal, a number of the previous reasons cited by the SAT still remain applicable to the current proposal and warrant refusal.

In view of the above, Council Officers recommend to the JDAP that it reconsiders its decision of 18 May 2017 and refuse the revised proposal.

**8 PUBLIC QUESTION TIME (ITEMS RELATING TO THE AGENDA ONLY)**

**9 PUBLIC STATEMENT TIME (ITEMS RELATING TO THE AGENDA ONLY)**

**10 MEETING CLOSED TO PUBLIC**

**10.1 Matters for Which the Meeting May be Closed**

Nil

**10.2 Public Reading of Resolutions That May be Made Public**

N/A

**11 CLOSURE**





**DECLARATION OF  
FINANCIAL INTEREST / INTEREST THAT MAY AFFECT IMPARTIALITY**

**TO: CHIEF EXECUTIVE OFFICER  
TOWN OF VICTORIA PARK**

<b>Name &amp; Position</b>	
<b>Meeting Date</b>	
<b>Item No/Subject</b>	
<b>Nature of Interest</b>	Financial Interest* <span style="float: right;"><i>(*Delete where not applicable)</i></span> Interest that may affect impartiality*
<b>Extent of Interest</b>	
<b>Signature</b>	
<b>Date</b>	

Section 5.65(1) of the Local Government Act 1995 states that:

“A member who has an interest in any matter to be discussed at a Council or Committee meeting that will be attended by that member must disclose the nature of the interest:

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the meeting immediately before the matter is discussed”.

ALTERNATE MOTION / AMENDMENT SUBMISSION



To: HIS WORSHIP THE MAYOR:

Please be advised that I wish to move an ALTERNATE MOTION / AMENDMENT

Name of Elected Member:

Signature:

Date of Submission:

Council Meeting Date:

Item Number:

Item Title:

Alternate Motion / Amendment: *(strike out which is not applicable)*

**Note: Motions to Stand Alone**

All decisions of the council must be in the form of motions that are clear in their intent and enable a person to understand what has been decided without reference to another motion or information contained in the body of a report.

**Reason:**

**Note: Explanation for changes to Recommendations**

Administration Regulation 11 requires the minutes to include written reasons for each decision that is significantly different from the written recommendation. Members must therefore provide a written reason in the space provided above.