

12.2 Final Consideration of Scheme Amendment No. 88 to Town Planning Scheme No. 1 and Associated Draft Amended and New Local Planning Policy - Residential Character Study Area

Location	Burswood East Victoria Park Victoria Park
Reporting officer	Coordinator Urban Planning
Responsible officer	Manager Development Services
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none"> 1. Schedule of Submissions Amendment 88 [12.2.1 - 21 pages] 2. Schedule of Modifications [12.2.2 - 9 pages] 3. Scheme Amendment No. 88 - Scheme Amendment Report (Advertised Version) [12.2.3 - 38 pages] 4. Draft New Local Planning Policy - Character Retention Guidelines (Advertised Version) [12.2.4 - 23 pages] 5. Draft Amended Local Planning Policy 32 (Advertised Version) [12.2.5 - 24 pages] 6. Planning Consultant's Recommendations Report [12.2.6 - 93 pages] 7. Extract from Minutes of September 2020 Ordinary Council Meeting [12.2.7 - 25 pages] 8. Extract from Minutes of September 2022 Ordinary Council Meeting [12.2.8 - 20 pages]

Landowner	Multiple private landowners
Applicant	Not applicable
Application date	Not applicable
Town or WAPC reference	Town ref: PLA/7/88 and WAPC ref: TPS/2701
MRS zoning	Urban
TPS zoning	The land is predominantly zoned Residential
R-Code density	Ranging from R30 to R80
TPS precinct	Land within the subject area is within the following four precincts: Precinct 5 – Raphael Precinct 6 – Victoria Park Precinct 10 – Shepperton (Sheet A) Precinct 12 – East Victoria Park (Sheets A and B)
Use class	Predominantly single houses and grouped dwellings

Use permissibility	Varies depending on the subject precinct and development proposal
Lot area	Various
Right-of-way (ROW)	Many lots have front to rights-of-way and a primary street
Local heritage survey	Various places within the subject site are included in the Town's Local Heritage Survey and listed on the Town's Heritage List
Residential character study area/weatherboard precinct	Residential Character Study Area, Weatherboard Precinct and Raphael Precinct
Surrounding development	Predominantly residential

Recommendation

That Council:

1. Notes the submissions received in respect to Amendment 88 to the Town of Victoria Park Town Planning Scheme No. 1 as contained in the Schedule of Submissions at Attachment 1, in accordance with Regulation 41(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Resolves not to support Amendment 88 to the Town of Victoria Park Town Planning Scheme No. 1 in accordance with Regulation 41(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, in view of:
 - (a) Advice from the Department of Planning, Lands and Heritage that Amendment 88 is unlikely to be supported by the Western Australian Planning Commission for reasons including:
 - (i) Amendment 88 is considered to be a hybrid approach which mixes both retention of dwellings (which is heritage) and streetscape outcomes (which is character).
 - (ii) A heritage area or heritage list is the appropriate planning mechanism to use if the Town seeks to retain character dwellings.
 - (iii) A policy is the appropriate planning mechanism to use if the Town is seeking a certain character appearance.
 - (iv) The development approval provisions for the proposed Special Control Area are inconsistent with the provisions of the Regulations in relation to exemptions from development approval.
 - (b) The community feedback received.
3. Notes the submissions received in respect to draft amendments to Local Planning Policy 32 'Exemptions from Development Approval' and draft new Local Planning Policy 'Character Retention Guidelines' as contained in the Schedule of Submissions at Attachment 1, in accordance with subclause 4(3)(a) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
4. Resolves not to proceed with draft amendments to Local Planning Policy 32 'Exemptions from Development Approval' in accordance with subclause 4(3)(b) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, on the basis that due to part 2 above the amended policy provisions are no longer required.
5. Request the Chief Executive Officer to present future reports to Council by no later than the June 2023 Ordinary Council Meeting which further consider:

- (a) Modifying draft Local Planning Policy 'Character Retention Guidelines;
- (b) Investigating the designation of heritage areas, in accordance with clause 9 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
- (c) Investigating the development of incentives and development bonuses to encourage the retention and maintenance of character dwellings.

Purpose

The purpose of this report is to obtain Council resolution to:

- not proceed with Amendment 88 to the Town of Victoria Park Town Planning Scheme No. 1; and
- undertake other actions including further review of the draft Local Planning Policy – Character Retention Guidelines, investigating possible heritage areas, and incentives for character dwelling retention.

In brief

- At the 15 September 2020 Ordinary Council Meeting, Council resolved to initiate proposed changes to the planning framework that applies to the Town's RCSA, including:
- The draft planning framework was advertised to the community and relevant statutory authorities from 11 November 2021 to 18 January 2022. As a result of the advertising the Town received 79 responses from the community comprising 47 objections, 28 in support and four undecided submissions. In addition, the Town received no objection or no comment responses from several external authorities.
- In March 2022 the Town's Officers met with officers from the DPLH Land Use Planning and Heritage Services to discuss the outcome of the community consultation process and to further consider the suitability of the proposed changes to the planning framework. At this meeting, the DPLH Officers advised that Amendment 88 is unlikely to be supported by the Western Australian Planning Commission.
- At the 20 September 2022 Ordinary Council Meeting, Council resolved to defer consideration of Amendment 88 and the draft amended and new policies to the February 2023 Ordinary Council Meeting to enable further consideration of potential for heritage areas or possible modifications to Amendment 88 to address the issues raised by public submissions and the DPLH.
- In December 2022 the item was presented to a Concept Forum. Further information has been incorporated into this report to address questions raised at the Concept Forum.
- In line with the DPLH advice, it is recommended that Council not support Amendment 88 and that other options be investigated further in relation to character retention.

Background

1998 to 2003

1. Between 1998 and 2003 the Town's local planning policies sought to preserve residential character throughout the Town. Provisions in the Town's Scheme of the time required development/planning approval to be obtained for most forms of development across the Town, including demolition of a dwelling, construction of a new dwelling and additions to dwellings.

2003 to 2015

2. Provisions for the Residential Character Study Area ('RCSA') were first implemented by the Town in 2003 following the completion of a Residential Character Study Report which identified that 'original dwellings', generally those constructed prior to 1946, contributed to a unique and identifiable character that should be protected and maintained.
3. New policy requirements were implemented specifically for the RCSA to guide the built form design outcomes within the area (now contained in the Town's Local Planning Policy 25 'Streetscape').
4. In October 2015, the State Government gazetted the Planning and Development (Local Planning Schemes) Regulations 2015 ('Regulations 2015') which introduced deemed provisions for all local planning schemes. The deemed provisions removed the need to obtain development approval to demolish single houses and/or for new development works, where the works are compliant with the deemed-to-comply requirements of State Planning Policy 7.3 Residential Design Codes ('R-Codes') and relevant local planning policies.

Scheme Amendment 73

5. In June 2016, Council initiated Amendment 73 to the Town's Scheme to designate the RCSA as a Special Control Area ('SCA'), with provisions requiring development approval to be obtained for demolition and/or development within the area. The intent was to reintroduce controls to provide a greater level of protection for the original dwellings in the area and ensure that new development was compatible with the existing character of the area.
6. At its meeting in September 2017, the Council considered the public submissions received on Amendment 73 and resolved to modify Amendment 73 in a manner not consistent with that recommended by Officers, namely the removal of planning controls to implement the proposed objectives. This resulted in Amendment 73 being significantly modified from that originally proposed and advertised.
7. In 2018 the Minister subsequently refused Amendment 73 on the basis that:
 - (a) The amendment does not include any planning controls to implement the objectives that were proposed to be inserted into the Scheme Text;
 - (b) Local planning policies are considered the appropriate planning mechanism to control streetscape design to protect local character; and
 - (c) The Regulations 2015 provide appropriate heritage controls.

Community Engagement Project

8. At the September 2017 Ordinary Council Meeting, the Council also resolved to seek expressions of interest for an independent consultant(s) to undertake a community engagement project, review of Local Planning Policy 25 – Streetscape ('Streetscape Policy') and evaluate and recommend potential mechanisms for the retention of original dwellings and the protection of character streetscapes within the RCSA.
9. Council subsequently appointed Element to undertake the project. The work undertaken by Element included consultation with the community on their views and aspirations for the RCSA. The overwhelming response was a supportive position of measures to protect and retain the character prevalent in the RCSA.

10. Based on the community sentiment, Element prepared a Recommendations Report and draft Character Retention Guidelines, which was acknowledged by Council at its 19 May 2020 Ordinary Council Meeting. A copy of the Recommendations Report is attached to this report (refer to Attachment 6).
11. The status of the final recommendations and next steps details in the Recommendations Report recommended that the Town undertake a Scheme Amendment to designate the RCSA as a SCA, now being Scheme Amendment 88, as well as providing a draft Local Planning Policy 'Character Retention Guidelines' for the Town's consideration.
12. With respect to each of the recommendations contained in the Recommendations Report, the following information is provided:

Recommendation	Status
Introduce a Special Control Area over the RCSA requiring development approval for demolition of original dwellings, and development visible from the street	This was to be addressed through Scheme Amendment 88. For the reasons outlined in this report, this recommendation is no longer recommended to be progressed.
Revoke existing LPP25 'Streetscape' and adopt new Character Retention Guidelines applicable to development within the SCA	It is proposed that the draft Character Retention Guidelines be further reviewed and amended where necessary, prior to Council considering their formal adoption at a future meeting.
Further investigate and facilitate a discussion regarding community nominated heritage areas	In lieu of a Special Control Area, the investigation of heritage areas is proposed. This may be a combination of both Town identification and community nomination.
Consider implementing incentives to encourage the retention of original dwellings	This recommendation is to be progressed further.
Invest in public domain improvements to enhance the natural beauty and character of the area	This is a matter for consideration by the Street Operations and Place Planning teams.

Scheme Amendment 88

13. Accordingly, the Council resolved at its September 2020 meeting to initiate Scheme Amendment 88, to advertise the draft Local Planning Policy 'Character Retention Guidelines' and to advertise consequential amendments to Local Planning Policy 32 'Exemptions from Development Approval'. An extract of the Council meeting minutes is attached to this report (refer to Attachment 7) and provides further background material and reasoning for the Amendment.
14. In March 2021 the Western Australian Planning Commission (WAPC) confirmed that, subject to a minor modification to the Scheme Report, the Complex Scheme Amendment was suitable for advertising purposes, in accordance with Regulation 37(2) of the Regulations 2015. It is important to note that Regulation 37(2) provides for the WAPC to check whether the amendment documentation meets the procedural requirements of the Regulations and is in a manner and form required by WAPC. No assessment was undertaken by the WAPC at this stage on the merits of the proposal, as to do so may be perceived to pre-empt any future consideration and/or decision on the amendment before it is

advertised for public submissions and considered by the Council. In addition, in April 2021 the Environmental Protection Authority confirmed that Amendment 88 did not require assessment under Part IV of the Environmental Protection Act 1986.

15. On 1 July 2021 the State Government gazetted an amendment to the Regulations 2015. This included various changes to clause reference numbers and contents of relevant deemed provisions that were referenced in Amendment 88 and the draft local planning policy.
16. Amendment 88 and the draft local planning policy was subsequently modified in accordance with the conditions of the WAPC's consent to advertise and the amended deemed provisions. These modifications are detailed in the attached Schedule of Modifications (refer to Attachment 2).
17. The modified Amendment 88 and draft local planning policies were advertised for public comment from 11 November 2021 to 18 January 2022, in accordance with the advertising requirement for a Complex Scheme Amendment as specified in the Regulations 2015. A summary of the feedback received is provided in the Engagement section below.

18. At the 20 September 2022 Ordinary Council Meeting, Council resolved to defer consideration of Amendment 88 to the February 2023 Ordinary Council Meeting, to enable further consideration of potential alternative options relating to heritage areas and modifications to Amendment 88 to address the issues raised by public submissions and the DPLH. An extract of the Council meeting minutes is attached to this report (refer to Attachment 8).

19. The item was subsequently presented to a Concept Forum in December 2023, where questions were raised in relation to the general size of a heritage area and whether heritage areas were an option in 2017. These questions are addressed below:

- (a) Question - What would be the general size of a heritage area, for example would it be a few houses, a street or several streets?

Answer – The extent of heritage area may include only a few houses, but typically includes a single street or several street blocks. For example, the City of Subiaco heritage areas map shows a total of nine heritage areas, with some of those areas including only a single street and others extending along several streets. The Town's RCSA is too large and of varied character to be a heritage area. Smaller heritage areas covering the highest quality areas may be identified through the study of mapping of heritage places using the Town's local heritage survey, which was endorsed by Council at the June 2021 Ordinary Council Meeting. The extent and concentration of original dwellings suggests that there are a number of potential heritage areas within the Town, some of substantial size.

- (b) Was it open to Council to have heritage areas in 2017 (when Council considered amendment 73)?

Answer – A report discussing the available planning mechanisms, including heritage areas, was considered by Council at its Ordinary Council Meeting in September 2017. At that time, the State Heritage Office advised that whilst it did not oppose Amendment 73, the proposed use of a Special Control Area to achieve retention of original dwellings for heritage and/or character conservation purposes was not its preferred approach. Following this meeting, as noted in the above Community Engagement Project sub-section, the Town engaged a consultant to evaluate and recommend potential mechanisms for the retention of original dwellings and the protection of character streetscapes within the RCSA. The resultant Recommendation Report was presented to Council at its September 2020 Ordinary Council Meeting (refer to Attachments 6 and 7). At that time, the SCA was recommended as the preferred mechanism on the basis that it was less costly, timelier and

provided protection over a larger singular area rather than the process to designate and administer numerous separate smaller heritage areas.

20. Character Retention Guidelines – To ensure the maintenance of the character of the area, the draft Character Retention Guidelines need to be further reviewed including refining the contemporary development provisions for new dwellings and additions to character dwellings. This would provide landowners with clarity regarding the Town’s development requirements within the designated heritage areas, and provide the greater flexibility called for by some.

Local Heritage Survey and Heritage List

21. Separately to Amendment 88, following the introduction of the Heritage Act 2018 the Town prioritised a review of the Town’s heritage framework and in particular the lack of protection for places with significant cultural heritage value as part of the Town’s Corporate Business Plan.
22. In response to the legislative requirements, the Town engaged an independent heritage consultancy to review the Town’s previous Municipal Heritage Inventory and develop a Local Heritage Survey. A Local Heritage Survey is an important collation and identification of heritages places and is used, among other functions, to inform the preparation of a heritage list. However, the survey itself has no specific planning or legal weight. A Local Heritage Survey was endorsed by Council at the June 2021 Ordinary Council Meeting.
23. Following adoption of the Local Heritage Survey the Town prepared a Heritage List. In contrast to the Local Heritage Survey, a Heritage List is an instrument that is afforded powers under the Planning and Development Act 2005 and therefore carries statutory weight when determining planning outcomes for heritage places. In accordance with the deemed provisions of the Regulations 2015, the Town established a Heritage List which contains those places of highest and/or most significant cultural significance and are worthy of built heritage conservation. The Town’s Heritage List was approved by Council at the June 2022 Ordinary Council Meeting.
24. It is important to note that the inclusion of a place on a heritage list gives the place recognition and protection under the local planning scheme. Where a place is included on a heritage list it is then afforded statutory protection under the local planning scheme by way of the requirement for development approval to be obtained for works which may otherwise be exempt.
25. For reference purposes, the following 49 ‘original dwellings’ within the RSCA are included on the Town’s Heritage List:
 - 86 Mackie Street Victoria Park
 - Kate Street Reserve and Surrounding Houses – 14 & 16 Kate Street, 9, 13, 15, 21 & 23 Lake View Street, 226 Shepperton Road, and 10, 12, 14, 16, 18, 20, 24, 26 & 28 Norseman Street, East Victoria Park.
 - 105 Berwick Street, Victoria Park.
 - 31, 33 and 57 Cargill Street, Victoria Park.
 - 27 Duncan Street, Victoria Park.
 - 48 and 56 Geddes Street, Victoria Park.
 - 55 Gloucester Street, Victoria Park.
 - 33 Hampton Street, Victoria Park.
 - 18/20, 51, 52/54 and 91 Mackie Street, Victoria Park.
 - 45, 49, 51 and 59 Sunbury Road, Victoria Park.
 - 48 Teague Street, Victoria Park.
 - Washington Street Precinct – 28, 30, 32, 34, 36 and 38 Washington Street, Victoria Park.

26. The inclusion of a significant number of dwellings on the heritage list is possible, but is practically not likely, as it would require a heritage assessment for each place to determine its level of cultural heritage significance. This would require the engagement of heritage consultants and would be at significant cost to the Town. Furthermore, noting that the value of many of the dwellings in the Residential Character Area is their collective contribution to form a streetscape character that is unique and identifiable, rather than their individual heritage significance, it would be expected that many of the dwellings would not meet the threshold to be included on the heritage list.

Details

27. Amendment 88 proposes to amend the Town of Victoria Park Town Planning Scheme No. 1 by:

- Designating the Residential Character Study Area as a Special Control Area;
- Modifying Precinct Plans P5, P6, P10 and P12 to identify the location of the Special Control Area; and
- Including provisions applying to the Special Control Area, including the need for:
 - Development approval to demolish a single house constructed prior to 1946;
 - Development approval for building works visible from the street inclusive of a single house, additions to a single house, and other associated structures; and
 - Development to comply with the provisions of a Local Planning Policy adopted for the Residential Character Special Control Area.

28. With respect to the new draft Local Planning Policy – Character Retention Guidelines:

- The purpose of the draft new policy is to provide design and development standards that will apply to land within the proposed SCA.
- Notable elements of the draft policy include:
 - The policy is proposed to apply to development that is ‘visible from the street’. Development that is not visible from the street will not be subject to the policy and therefore can be more contemporary in appearance.
 - The policy is proposed to replace in part the Town’s existing Streetscape Policy.
 - The policy seeks to retain existing residential character, whilst providing flexibility to incorporate contemporary design in appropriate circumstances.
 - The policy contains a performance-based approach to assessments rather than prescriptive requirements.

29. In relation to the draft Amended Local Planning Policy 32 – Exemptions from Development Approval, the draft amended Exemptions Policy will ensure consistency with proposed Amendment 88 and provide clarity on the types of works that may be exempt from development approval within the SCA.

Relevant planning framework

Legislation	Planning and Development Act 2005 (WA) Planning and Development (Local Planning Schemes) Regulations 2015 (WA) Town of Victoria Park Town Planning Scheme No. 1
State Government policies, bulletins or guidelines	State Planning Policy 7.3 – Residential Design Codes Volume 1 State Planning Policy 7.3 – Residential Design Codes Volume 2 State Planning Policy 3.5 – Historic Heritage Conservation
Local planning policies	Local Planning Policy 25 – Streetscape

[Local Planning Policy 32 – Exemptions from Development Approval](#)
[Local Planning Policy – Heritage List](#)

Other

[Town of Victoria Park Local Planning Strategy](#)

General matters to be considered

TPS precinct plan statements

The following statements of intent contained within the precinct plan are relevant to consideration of the amendment.

- [Precinct Plan P5 – Raphael Precinct](#)
- The Raphael Precinct shall remain as a residential precinct containing many fine examples of houses from past eras.
- Infill development and redevelopment of corner lots may be appropriate, although not to the detriment of the existing character of the area and of the existing quality housing stock.
- The precinct should remain a visually attractive area and have a pleasant atmosphere characterized by low to medium scale architecture, buildings facing the street in the traditional manner and set in landscaped surrounds. The retention of structurally sound original houses and healthy mature trees will be a priority in order to maintain the existing residential character and streetscape.
- [Precinct Plan P6 – Victoria Park Precinct](#)
- The Victoria Park Precinct will remain as attractive and essentially a low to medium scale residential area set on some of the highest land within the locality.
- The retention and rejuvenation of existing housing, particularly dwellings indicative of the era in which the locality was developed, and selective sensitivity designed 'infill' housing is the most favoured form of development and will be encouraged.
- The precinct should remain a visually attractive area and the preservation of trees and the generous landscape planning of properties upon redevelopment will be required.
- [Precinct Plan 10 – Shepperton Precinct](#)
- The Shepperton Precinct should remain a pleasant, low scale, medium density housing area.
- The retention of structurally sound houses and healthy, mature trees is an important aim for the precinct. Selective infill and the development of grouped dwellings is also encouraged. New development is to enhance the existing character of the area and have regard for remaining quality housing stock.
- [Precinct Plan 12 – East Victoria Park](#)
- The retention of existing structurally sound housing, which generally contributes to the character of the area, and the selective redevelopment of other sites will be encouraged. The character of the precinct between Canterbury Terrace and Balmoral Streets, which consists of small cottages on small lots, should be preserved. Any redevelopment in this locality should adhere 93 of 258 to strict design constraints governed by the

existing scale and character of housing.

Strategic alignment

Environment	
Community priority	Intended public value outcome or impact
EN3 - Enhancing and enabling liveability through planning, urban design and development.	Community consultation undertaken as part of this amendment has demonstrated a mix of views but primarily concern about the proposed Special Control Area.

Engagement

Internal engagement

Stakeholder	Comments
Place Planning	<p>In March 2021, the WAPC confirmed that the amendment was <i>"suitable for advertising subject to section 3.0 of the scheme amendment document relating to the town's draft local planning strategy being modified to be consistent with the approach in the draft local planning strategy that was certified for advertising by WAPC on 25 February 2021."</i></p> <p>Subsequently, the Scheme Report was amended to include updated information from Place Planning in relation to the Town's draft Local Planning Strategy.</p> <p>The Local Planning Strategy includes a Housing and Neighbourhoods Objective 2.2 <i>"To ensure development protects and enhances the desired character and amenity of neighbourhoods and streets, including the recognised significance of streetscapes in the Residential Character Area"</i>. The Strategy designates the Residential Character Area as a neighbourhood with objectives <i>"CA.1 To encourage the conservation and retention of original dwellings and streetscapes. CA.2 To enhance the streetscape character that is attributed to the presence of original dwellings and the sympathetic character of new development. CA.3 To ensure that special and particular elements of streetscape character are considered in all land use and development proposals"</i>.</p> <p>The recommendation to not proceed with a Special Control Area but to pursue a range of alternative planning approaches to protect character while allowing sympathetic new development such as heritage areas, design guides and incentives, is consistent with the objectives of the Strategy and fully supported.</p>

External engagement	
Stakeholders	Town of Victoria Park land owners and occupiers and external authorities.
Period of engagement	11 November 2021 to 18 January 2022
Level of engagement	2. Consult
Methods of engagement	Written submissions and Your Thoughts webpage (the Town's online engagement tool). Two community information sessions.
Advertising	In accordance with the Communications and Engagement Plan and the Complex Scheme Amendment requirements of the Regulations 2015, advertising included: <ul style="list-style-type: none"> • Public notice and electronic copy of the documents on the Town's online engagement hub 'Your Thoughts'; • Public notice and hardcopy of the amendment documents available at the Town's Administrative Offices and Library. • Public notices in the PerthNow newspaper; • Direct correspondence with relevant external authorities; • Direct correspondence to all owners and occupiers within the proposed Special Control Area; • Direct correspondence to all Amendment 73 submitters and submitters on the RCSA Survey; • Two community information sessions; and • Social media (Facebook) post/s.
Submission summary	A total of 79 responses were received, comprising 47 objections, 28 support and four undecided submissions have been received by the Town. A summary of the responses is provided in the attached Schedule of Submissions (refer to Attachment 1).
Key findings	The feedback is outlined in the Analysis section below.

Other engagement	
Stakeholder	Comments
Department of Planning, Lands and Heritage	In March 2022 the Town's officers met the Town's Officers met with officers from the DPLH Land Use Planning and Heritage Services teams to discuss the outcome of the community consultation process and further consider the suitability of the proposed changes to the planning framework. At this meeting, the DPLH Officers advised that Amendment 88 is unlikely to be supported by the Western Australian Planning Commission.

Risk management considerations

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	The Town has outlaid expenditure on developing Scheme Amendment 88.	Moderate	Likely	High	Low	Treat: Inform all those who made submissions of the reason for the Council resolution.
Environmental	Flexibility to provide contemporary additions and sustainable renovations to dwellings will be delayed.	Moderate	Likely	High	Medium	Treat: Investigate modification of the draft new Character Retention Guidelines to incorporate relevant contemporary development for relevant development proposals and encourage the retention of character dwellings. In the interim, delegated Town Officers will exercise discretion in determining applications for development approval.
Health and safety	Not applicable.					
Infrastructure/ ICT systems/ utilities	Not applicable.					
Legislative compliance	Not applicable.					
Reputation	Not supporting Scheme Amendment 88 would result in the ongoing absence of protection for	Moderate	Likely	High	Low	Treat: Investigate the identification of heritage areas and investigate the development of an incentives

	character dwellings and a business as usual approach for the assessment of new dwellings.					and development bonus policy to encourage the retention and maintenance of character dwellings.
Service delivery	Not supporting Scheme Amendment 88 will result in a continuation of current service delivery and practice	Moderate	Almost certain	High	Medium	Treat: Refer to the treatments for the Environment and Reputation risks above.

Financial implications

Current budget impact	Sufficient funds exist within the annual budget to address the recommendations.
Future budget impact	Should Council decide at a future time to progress with designating areas as heritage areas then this will require funding in future budgets to engage consultants to complete heritage assessments in accordance with clause 11 of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015

Analysis

Community Consultation

30. Community consultation resulted in the receipt of a total of 79 responses comprising 49 objections, 26 in support and four undecided submissions. In addition to the community responses, the Town received no objection or no comment responses from the Department of Biodiversity, Conservation and Attractions, the Heritage Services from the Department of Planning, Lands and Heritage authorities/agencies are summarised in the attached Schedule of Submissions (refer to Attachment 1).
31. The majority (62 per cent) of community responses objected to the proposed changes to the planning framework. Key objection reasons/comments included:
- Impedes property owner's rights to redevelop.
 - Negative impact on property values.
 - Retention of dwellings should be encouraged rather than mandated.
 - Incentives to retain older dwellings should be provided by the Town.
 - The provisions are contrary to the deemed provisions intent of reducing red tape.
 - There is a significant financial cost to maintain older dwellings.
 - Older houses are not energy efficient or sustainable.
 - Character can be maintained through quality new builds.
 - The proposed provisions are too late as the character of the area has been reduced through demolition and redevelopment since the deemed provisions were implemented in 2015.

Engagement with the Department of Planning, Lands and Heritage (DPLH)

32. In March 2022 the Town's Officers met with Officers from the DPLH Land Use Planning and Heritage Services to discuss the community consultation outcomes and further consider the suitability of the proposed changes to the planning framework. At this meeting, the DPLH Officers advised that Amendment 88 is unlikely to be supported by the Western Australian Planning Commission for the following key reasons:
- (a) The previous reasons for refusal of Scheme Amendment 73 are still present in Amendment 88.
 - (b) A SCA over such a large area circumvents the provisions of the Regulations in relation to exemptions from development approval.
 - (c) Amendment 88 is considered to be a hybrid approach as it mixes both retention of dwellings (which is heritage) and streetscape outcomes (which is character).
 - (d) Provisions aimed at retaining a dwelling are about heritage outcomes. A heritage area or heritage list is the appropriate planning mechanism to use if the Town would like to retain character dwellings, however, heritage areas are not suitable for a 'blanket approach' over the whole RCSA.
 - (e) Provisions relating to the design or appearance of a dwelling are about built form character outcomes. A local planning policy or design guidelines is the appropriate planning mechanism to use if the Town would like an area to have a certain character appearance.
33. The difference between a SCA and a heritage area is briefly explained as follows:
- (a) A SCA is an area identified as requiring additional special development requirements to address constraints and/or achieve certain development outcomes. SCAs are marked on the Scheme Map and provisions are included in the Scheme Text. These provisions would typically target a single issue or related set of issues often overlapping zone and reserve boundaries. These provisions set out the purpose and objectives of the SCA, any specific development requirements, the process for referring applications to relevant agencies and matters to be considered in determining development proposals.
 - (b) The Town currently has two SCAs included in Schedule E of the Town's Scheme as Area No. 'DA1' relating to the Belmont Park Racecourse Structure Plan area and Area No. 'BD1' relating to Lot 905 Burswood Road (known as the Sands & McDougall site). Both of these SCAs contain special provisions or refers to a Structure Plan that contains special provisions guiding the coordinated redevelopment of the subject area, such as density/plot ratio, built form design, carparking and provision of public open space.
 - (c) A heritage area is an area which, in the opinion of the local government, requires special planning control to conserve and enhance the cultural heritage significant cultural heritage and character and is designated under clause 9 of the deemed provisions. Once an area is designated as a 'heritage area', special planning controls take effect in order to conserve and enhance the significant cultural heritage and character of the area.
 - (d) The Town's Heritage List, adopted by Council at its June 2022 Ordinary Council Meeting in accordance with Part 3 of the deemed provisions, includes a number of properties that are of cultural heritage significance and worthy of built heritage conservation. Of note, the Heritage List includes the Kate Street Reserve and Surrounding Houses which is an example of an area that could be further refined and designated as a heritage area.
 - (e) There is a key difference in the legislative approval requirements to establish a SCA as opposed to the designation of a heritage area. The establishment of a SCA requires an amendment to the Town's Scheme Text and Scheme Map to be approved by the Minister for Planning. The designation of a heritage area only requires a resolution of the local government.

- (f) The designation of heritage areas will require the Town to undertake the following actions:
- (i) engage a heritage consultant to undertake assessment in accordance with the relevant legislation.
 - (ii) develop a local planning policy that contains a map of the heritage area boundaries, a statement about the heritage significance of the area, and a record of places of heritage significance in the heritage area.
 - (iii) consult with the community by providing notice to each owner of land affected by the proposed designation, publication of a public notice, erecting signs in the area(s) affected by the designation, and any other consultation means considered appropriate by the local government.
 - (iv) present a report to Council to review submissions from the community and make a decision whether to adopt or not adopt the designation of a heritage area.
 - (v) if Council designates an area as a heritage area the Town must then give notice to the Heritage Council of Western Australia and each owner of land affected by the designation.

34. The concerns over Amendment 88 expressed by a number of landowners are noted. While some concerns were valid, others were either unfounded or not able to be sustained, or alternatively could be addressed through modifications to Amendment 88 from that advertised.

35. However, the advice provided by Officers of DPLH was very clear that there is little prospect of obtaining their support, for Amendment 88 to be approved.

36. In the circumstances, it is considered that the best course of action is for Council to resolve not to proceed any further with Amendment 88, and for Council to instead consider other measures to preserve and enhance residential character. While it is open to Council to either proceed with Amendment 88 either as advertised or in a modified form, this is not recommended in view of the advice from DPLH Officers, as to do so would expend more time and energy on the matter with little prospect of success, when Officers could instead be investigating alternatives.

Options for Consideration by Council

37. In accordance with Regulations 41(2) and (3) of the Regulations 2015, Council is required to consider the submissions received on Amendment 88 and pass a resolution:

- (a) to support the amendment without modification;
- (b) to support the amendment with proposed modification to address issues raised in the submissions;
or
- (c) not to support the amendment.

38. In accordance with clause 4 of Schedule 2 of the Regulations 2015, Council is required to consider the submissions received on the draft local planning policies and pass a resolution:

- (a) to proceed with the policy without modification; or
- (b) to proceed with the policy with modification; or
- (c) not to proceed with the policy.

39. In line with the DPLH advice, it is recommended that the Council resolve not to support Amendment 88 and to further review draft Local Planning Policy 'Character Retention Guidelines' prior to presenting to Council for formal consideration.

Alternative Approach to Retain and Enhance Residential Character

40. As an alternative to the SCA, it is recommended that the Town investigate the following alternatives:
- (a) Incentives and development bonuses;
 - (b) Designation of heritage areas; and
 - (c) Modification of the draft Local Planning Policy 'Character Retention Guidelines'.
41. Incentives and development bonuses - Instead of a regulatory approach to protect and retain 'original dwellings' the Town may consider an 'encouragement' approach. This would require the investigation of incentives and development bonuses to encourage the retention and maintenance of original dwellings, and the allocation of a suitable budget to support implementation of some of the incentives. Examples of possible incentives and/or development bonuses may include:
- (a) Provision of free advice to the community regarding how to maintain or redevelop their property.
 - (b) Waiving or reducing development application fees.
 - (c) Ensuring that development requirements do not require payment of additional costs, such as the requirement to engage a heritage consultant.
 - (d) Establishing an annual grants program to award funds for retention and maintenance of an original dwelling or heritage place.
 - (e) Bonus density or plot ratio - awarding additional density or plot ratio to what is permitted in the scheme, in return for the protection of a heritage place.
 - (f) Transfer of density or plot ratio - the transfer of unused density or plot ratio from one site to another.
42. Designation of heritage areas – Separate from the Heritage List for individual places, it is open to Council to consider identifying particular areas of the Town as heritage areas, which would also provide properties within these areas with a level of statutory protection. As advised by the DPLH in March 2022, the Town would not be able to designate the whole RCSA as a heritage area. It is understood that this comment is made on the basis that the RCSA is a very large area, with differing residential characters and precincts within it. Therefore, the Town should consider multiple heritage areas based on streets or street blocks with the best areas within the Town and Council would need to accept that demolition will be permitted in other areas.
43. The Town would need to consider which areas should realistically be designated as heritage areas. This will still require the input of a heritage consultant to determine the significance of an area, and the preparation of a local planning policy for that heritage area but is less onerous than that required for properties on the heritage list (being an assessment of each dwelling). The identification of such areas could be Town led and/or nominated by the community. Further engagement with the community in each area will be required to determine what they support or want and discuss what the impact may be if there are no controls in place.
44. Character Retention Guidelines – To ensure the maintenance of the character of the area, the draft Character Retention Guidelines need to be further reviewed including refining the contemporary development provisions for new dwellings and additions to character dwellings. This would provide landowners with clarity regarding the Town's development requirements within the designated heritage areas, and provide the greater flexibility called for by some.
45. The investigation of incentives and development bonuses and modification of the Character Retention Guidelines is unlikely to impact on the Town's annual budget as this work can be undertaken by the Town's officers. The investigation of potential heritage areas will not have any current budget impact, but should Council wish to formally proceed with designating areas as heritage areas at a future time

then this will require the engagement of suitably qualified heritage consultant(s) to undertake heritage assessments which will require allocation of sufficient funds, as outlined in the Financial Implications section above.

46. It is recommended that the abovementioned alternatives be further investigated and reported to Council which potentially:

- (a) Addresses key concerns raised by the Town's community;
- (b) Addresses the Council's objectives to retain and enhance the contribution made by original dwellings towards streetscape character; and
- (c) Aligns with advice provided by the DPLH.

Relevant documents

Not applicable.

Due to a financial interest, Cr Luana Lisandro left the meeting at 8:22pm.

COUNCIL RESOLUTION (17/2023):

Moved: Mayor Karen Vernon

Seconded: Cr Jesvin Karimi

That Council:

1. Notes the submissions received in respect to Amendment 88 to the Town of Victoria Park Town Planning Scheme No. 1 as contained in the Schedule of Submissions at Attachment 1, in accordance with Regulation 41(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Resolves not to support Amendment 88 to the Town of Victoria Park Town Planning Scheme No. 1 in accordance with Regulation 41(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, in view of:
 - (a) Advice from the Department of Planning, Lands and Heritage that Amendment 88 is unlikely to be supported by the Western Australian Planning Commission for reasons including:
 - (i) Amendment 88 is considered to be a hybrid approach which mixes both retention of dwellings (which is heritage) and streetscape outcomes (which is character).
 - (ii) A heritage area or heritage list is the appropriate planning mechanism to use if the Town seeks to retain character dwellings.
 - (iii) A policy is the appropriate planning mechanism to use if the Town is seeking a certain character appearance.
 - (iv) The development approval provisions for the proposed Special Control Area are inconsistent with the provisions of the Regulations in relation to exemptions from development approval.
 - (b) The community feedback received.
3. Notes the submissions received in respect to draft amendments to Local Planning Policy 32 'Exemptions from Development Approval' and draft new Local Planning Policy 'Character Retention Guidelines' as contained in the Schedule of Submissions at Attachment 1, in accordance with subclause 4(3)(a) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
4. Resolves not to proceed with draft amendments to Local Planning Policy 32 'Exemptions from Development Approval' in accordance with subclause 4(3)(b) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, on the basis that due to part 2 above the amended policy provisions are no longer required.
5. Request the Chief Executive Officer to present future reports to Council by no later than the June 2023 Ordinary Council Meeting which further consider:
 - (a) Modifying draft Local Planning Policy 'Character Retention Guidelines';
 - (b) Investigating the designation of heritage areas, in accordance with clause 9 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
 - (c) Investigating the development of incentives and development bonuses to encourage the retention and maintenance of character dwellings.

Carried (7 - 0)

For: Mayor Karen Vernon, Deputy Mayor Claire Anderson, Cr Peter Devereux, Cr Jesvin Karimi, Cr Jesse Hamer, Cr Vicki Potter and Cr Wilfred Hendriks

Against: Nil

Cr Luana Lisandro returned to the meeting at 8:28pm

PROCEDURAL MOTION

Moved: Mayor Karen Vernon

Seconded: Cr Peter Devereux

That the meeting be adjourned for 10 minutes at 8.29pm.

Carried (8 - 0)

For: Mayor Karen Vernon, Deputy Mayor Claire Anderson, Cr Luana Lisandro, Cr Peter Devereux, Cr Jesvin Karimi, Cr Jesse Hamer, Cr Vicki Potter and Cr Wilfred Hendriks

Against: Nil

The meeting adjourned at 8.29pm.

The meeting reconvened at 8.42pm.