

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

**PETITION NO 35 —
METRO CENTRAL JOINT DEVELOPMENT ASSESSMENT PANEL**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 15 OCTOBER 2014**

SESSION TWO

Members

**Hon Simon O'Brien (Chairman)
Hon Stephen Dawson (Deputy Chairman)
Hon Brian Ellis
Hon Paul Brown
Hon Samantha Rowe**

Hearing commenced at 11.29 am**Dr SHAYNE SILCOX****Chief Executive Officer, City of Melville, examined:****Mrs AMANDA LEITH****Planning Services Coordinator, City of Melville, examined:****Mr STEPHEN COPE****Director, Urban Planning, City of Melville, examined:****Mr LOUIS HITCHCOCK****Executive Manager, Legal Services, City of Melville, examined:**

The CHAIRMAN: On behalf of the standing committee, I would like to welcome witnesses to the meeting. Witnesses, you will have signed a document entitled “Information for Witnesses”. Did you all read and understand that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, I ask if you could please quote the full title of any document that you might refer to for the record. I remind you that your transcript will become a matter for the public record and if for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may mean that the material published or disclosed is not subject to parliamentary privilege.

I would also, by way of introduction, like to note that the inquiries that we are currently undertaking are in connection with a petition that we received containing 3 619 signatures concerning the development decisions which have been made in respect of a planning application for a site at 94 Kitchener Road, Alfred Cove, specifically, and more generally expressing a concern that other proposals dealt with in the same processes may lead to what, in the petitioners’ view, would be undesirable results. For the committee to examine this matter, we were hoping that you, as the relevant local government, might be able to assist us in working through what appears at face value to be an incongruous set of decisions. Dr Silcox, could I perhaps ask you if you have got any opening remarks you might make to the committee about this matter?

Dr Silcox: Thank you, Mr Chair and committee members. Just as way of introduction, I will talk about the process that followed. We are actually unsure whether you are asking us about DAP, Kitchener Road or multiunit housing. We are happy to talk about all three. We are unsure what exactly you want to target in on. So, we are a little unprepared on the basis we are not 100 per cent sure. We have read the petition.

I have brought the legal adviser who helps us in SAT decisions. I have my director and my chief planner and the manager involved in the application—I am not a planner, so if you need detailed information. The source of information that you require should be available to you.

I also add that any comment of opinion made by myself or any of my officers may not be the opinion of council. I am just addressing you as the CEO. However, we can talk to the policies and

the like, but if you are asking for an opinion on DAP or multiunit housing, obviously, I can only give you my opinion and that is not necessarily what my council has resolved.

I am reading here “94 Kitchener Road: Summary of Main Points” as an opening introduction and from that maybe we will move forward —

Scheme Amendment

- The City received an application in March 2011 to amend CPS5 to change the R-Coding applicable to 94 Kitchener Road from ‘Living Area R20’ to ‘Living Area R60180’.
- The surrounding properties are all zoned ‘Living Area R20’.
- Council, in December 2011 resolved to initiate the Amendment for ‘Living Area R40’.
- The Amendment was advertised and no submissions were received.
- An indicative only concept for development of the site with 2 and 3 storey grouped dwellings was submitted with the application.
- In May 2012, Council resolved to support the Amendment.
- The Minister for Planning approved the Amendment in October 2012.

Original Application

- In February 2013, the City received a DAP planning application for a four storey multiple dwelling development comprising 90 multiple dwellings for 94 Kitchener Road.
 - This application was assessed against the requirements of CPS5, the R-Codes and Council Policy and a number of meetings were held between City Officers and the Applicant to negotiate a good outcome.
 - The application was the subject of two public consultation periods. The first phase (based upon the plans as originally submitted) generated 64 submissions. The second phase (based upon the plans considered by the JDAP on 9 September 2014) generated 51 submissions. The main themes raised were:
 - Plot ratio / height
 - Density
 - Traffic and Parking
 - Overshadowing
 - Privacy
 - Noise
 - Anti-social behaviour
 - Removal of trees
 - A petition signed by 533 people in opposition to the proposed development was lodged with the City on 15 July 2013 as part of the second submission period.
 - An additional petition was also submitted requesting a Special Electors Meeting on the subject application. This meeting was held on 5 August 2013.
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- The development proposed the exercise of judgement in relation to the following matters:

Development Required	Deemed to Comply / CPS5 Provision	Proposed
Building Height	9m	13.6m
Plot Ratio	0.6 (3631m ²)	1.359 (8229m ²)

- The City submitted its RAR (Responsible Authority Report) to the JDAP on 30 August 2013 recommending that the four storey development comprising 87 multiple dwellings be refused for the following reasons:
 - The proposed development is not considered to fully satisfy the requirements of Clause 4.2 (d) (i) and 4.2 (d) (ii) and is not considered to satisfy the requirements of Clause 7.8 of Community Planning Scheme 5;*
 - The proposed development is not considered to satisfy the Design Principles of Clause 6.1.1 and is not considered to fully satisfy the Design Principles of Clause 6.1.2 of the Residential Design Codes.*
- The RAR recommendation was endorsed by Council at the Special Meeting held 28 August 2013.
- On 9 September 2013, the Metro Central JDAP resolved unanimously to refuse planning approval for the abovementioned reasons.
- The Conclusion to the RAR outlined 11 points that the City wished to have addressed to ensure that the development could achieve an appropriate standard of amenity for potential future occupants of the development and to ensure the development is consistent with the current and future amenity of the surrounding area. These related to:
 - Reduce height to two storey with the upper floor setback so it is not visible from the Kitchener Road footpath.*
 - Same for Cotrill Street.*
 - Provide further information as to the proposed external materials, colours and finishes to better delineate floors and reduce the perceived height.*
 - Improve the ground floor level frontage along Cotrill Street to break up the bulk of this wall.*
 - Delete the parking bay located closest to Cotrill Street along the southern boundary to enable landscape screening to the parking area.*
 - Delete the middle units on the first and second floor levels facing Cotrill Street.*
 - Further consider the front setbacks.*
 - Provide more detail of proposed landscaping.*
 - Consider alternatives to the use of obscure glass for windows in bedrooms and living rooms.*
 - Consider window treatments for the rooms that have no external outlook.*
 - Bicycle parking to be provided.*

[11.40 am]

Appeal to State Administrative Tribunal (SAT)

- The Applicant appealed the JDAP decision to the SAT.
- Mediation was initiated by SAT between representatives of the Metro Central JDAP with the City of Melville being requested to attend to assist JDAP.
- Following these mediation sessions, revised plans were submitted by the Applicant.
- On the basis of the amended plans, the JDAP agreed to reconsider its previous decision, pursuant to Section 31 of the State Administrative Tribunal Act 2004.
- Prior to the JDAP reconsidering its decision, the City of Melville was ordered to submit a new RAR report to the JDAP on the basis of the revised plans.

Amended Application

- The revised plans depicted a three storey residential development with basement level, consisting of 84 multiple dwellings.
- The revised plans differed from the plans which were previously refused by the JDAP as

Change	Previous	Proposed
Decreased number of dwellings	87	84
Decreased Plot Ratio	1.359	1.28
Decreased Building Height	Four storey 13.6m	Three storey + basement 11.1m
Increased On-Site Car Parking	140 Bays	169 Bays
Decreased Retaining/ Fill along the Southern Boundary	0.44m	Nil
Decreased Open Space	51.8%	46.51%
Decreased Overshadowing	1 Mullings: 20.3%	1 Mullings: 8.2%
	3 Mullings: 19.47%	3 Mullings: 7.6%
	5 Mullings: 23.7%	5 Mullings: 10.3%
	7 Mullings: 24.27%	7 Mullings: 11.4%
	9 Mullings: 24.85%	9 Mullings: 12.3%
	11 Mullings: 14.24%	11 Mullings: 9.7%

I think the allowable amount is 25 per cent overshadowing roughly with some discretions —

- The revised development proposed the exercise of judgement in relation to the following matters:

Development Required	Deemed to Comply / CPS5 Provision	Proposal
Building Height	9m	10.05 – 11.1m
Plot Ratio	0.6 (3631m ²)	1.28 (7756.5sqm ²)

- The amended plans were not the subject of further advertising.
- The City prepared a new RAR which recommended that the proposed refused for the following reasons:

- a) *The proposed development is not considered to fully satisfy the requirements of Clause 4.2 (d) ('3 and 4.2 (d) (10 and Clause 7,8 of the Community Planning Scheme No.5;*
- b) *The proposed development is not considered to fully satisfy Pad 6.1 of the R Codes including the Design Principles of Clause 6.1.1*
- The above RAR recommendation was endorsed by Council at the Special Meeting held 24 February 2014.
- Prior to the JDAP meeting, the Presiding Member of the JDAP requested that the City prepare an alternative recommendation to approval including conditions of planning approval.
- At the JDAP meeting held on 10 March 2014, the JDAP approved the application (4 votes to 1).

That is an outline of the key phases in this process.

The CHAIRMAN: Thank you for that opening statement which actually delivers very concisely the key information that we were looking for in the first instance. In response to an observation that you made earlier, we are looking specifically at the matters raised in the petition which are specific to 94 Kitchener Road but also then contemplate what might happen if the same standards are applied globally. It is partly about the specific example that we are using as a model and it is partly about what might then flow from that. We appreciate your assistance in those matters.

A couple of questions arising from that: the SAT mediation session that you assisted with as council, is that conducted behind closed doors as a matter of course?

Mr Cope: Mr Chairman, yes, it is. It is confidential. To answer your question—yes.

The CHAIRMAN: We understand that that has then led to concerns expressed by your community that the process is not open and transparent. Have you heard that feedback?

Mr Cope: We have heard that feedback on other occasions. It is a matter of state legislation.

Mr Hitchcock: If I may add to that, chair: what SAT does, it has the two litigant parties, so in this particular case it would have been applicant and JDAP which are the litigant parties. SAT would invite whoever they deemed necessary to assist with the process, whether it be members of the community or officers.

The CHAIRMAN: It is just a matter of clarifying for the record that is the requirement laid down in law. In querying the matter, this committee offers no view as to whether that is appropriate or otherwise, though we acknowledge that the law is the law.

If I can take you back to the second occasion the applicant submitted plans which were referred to council for comment. The revised plans involving 84 dwellings and other elements that you enumerated earlier, did that meet the requirements? I think there were 11 requirements you enumerated from the first application. Did the second revised plan meet council's concerns?

Dr Silcox: I will refer to the planning officers on this. I might just state, though, that in some ways the way that they were achieved was not something foreseen by officers—to go from four storeys to three. We did not think that they would sink it and put in a basement and still have four storeys. I will let the officers work through the 11 points.

The CHAIRMAN: That would be good.

Mr Cope: Thanks, Mr Chairman. The question that you are raising was covered in the conclusion of the second responsible authority report dated 20 February.

The CHAIRMAN: Are you referring there to a bundle of documents? I think that is —

Dr Silcox: We have handed these in, yes.

[11.50 am]

The CHAIRMAN: There is a quantity of documents that you wish to table. I understand you have provided a set for each of us. I better identify these for the record. We will accept as tabled the bundle of documents provided by the City of Melville: the “State Administrative Tribunal Reconsideration, Responsible Authority Report”; the floor plan, proposed development for lot 10 Kitchener Road, Alfred Cove; a letter dated 16 July 2013 by Dynamic Planning and Developments; a site and landscape plan for the property; minutes of the special meeting of council held on Wednesday, 28 August 2013; minutes of the special meeting of council held on 24 February 2014; minutes of the special meeting of electors held in the conference room, Melville Civic Centre, at 6.30 on Monday, 5 August 2013; a further site and landscape plan for the site; a copy of a PowerPoint presentation from the City of Melville special electors meeting; a presentation by Striker Balance Community Action Group on 5 August 2013; a transport impact assessment for proposed development revised final report V2 dated June 2013; a responsible authority report for the four-storey residential development comprising 25 pages; and finally, two artists’ impressions of the proposed development.

Dr Silcox: It shows here the amount of work the officers do. I apologise, Mr Chair. What I will do is submit my summary, which might help the committee. I actually thought that was part of the pack, but I will submit my summary to you.

The CHAIRMAN: If you could; thank you. All those documents are tabled and identified for the record. Now if I could ask our witness to go back to his answer, please.

Mr Cope: Thanks, Mr Chairman. The conclusion to the responsible authority report dated 20 February 2014 stated that the original responsible authority report dated 30 August 2013 identified a number of modifications to the design of the proposed development which were considered necessary before it could be considered to achieve an appropriate standard of amenity for potential future occupants and to maintain the amenity of the locality.

The CHAIRMAN: They are summarised, I think, on page 4 of that document.

Mr Cope: Correct. They are certainly summarised in the responsible authority report, yes.

The modifications which have been made to the proposed design were considered to have significantly improved the design of the proposal—that is the amended plans. Variations to plot ratio and height can be considered where all potential amenity impacts are adequately mitigated under community planning scheme 5 and the design principles of the R codes. As outlined within the report, the design measures proposed were considered to mitigate a number of potential amenity impacts in relation to the streetscapes of Kitchener Road and Cotrill Street, and also to some extent upon the adjoining residential properties. It is considered, however, that the height proposed contributes to an amenity impact on the surrounding locality and it was considered that the overall effect of the discretion sought on height together with the discretion sought on plot ratio would be a building scale which is out of character with the surrounding locality. On that basis, the second responsible authority report recommended refusal.

The CHAIRMAN: That seems perfectly clear. The council’s officers, in formulating their recommendation, had the view that some of the first application’s deficiencies had been redressed, at least to some extent, but there still remained certain flaws, and that those flaws collectively were sufficient that council as the responsible authority did not agree with the application. Is that a fair summary?

Dr Silcox: Yes, Mr Chair. Essentially, Mr Chair, what you have is planning policy 3.1 —

Mr Cope: Yes.

Dr Silcox: It is about multiunit housing, which had been brought in by the Department of Planning. It is a newish policy—2011, from memory—which allowed developments significantly beyond

what was in the planning schemes, obviously trying to address affordable housing density issues and the like. The problem that I believe the city has—all make it my opinion, because I will not speak on behalf of council—is that the multiunit housing code is in any area that is R30 designated within your scheme. Much of that is residential, and we would suggest that activity corridors and activity centres would be the appropriate place for these developments, or indeed a requirement from the department in the review of planning schemes to have cities designate areas for this rather than have it as an opportunistic opportunity for someone to find a large site in a residential area and put in multiunit housing, because it is just out of character with the area. Part of the problem is that there is this new policy. It has hit a number of councils. Melville is one of those, and Stirling, Vincent and a number of others are having problems in relation to this. We have a notice of motion which was resolved by council very recently, within the last meeting or so, asking that the officers come forward with a report that requires that multiunit housing be in anything above R40 and in activity corridors and activity centres. If that gets up, it has to go back to Council with a report and a scheme change. We do not know whether the department would actually accept the scheme change like that, more so where the department is also doing a review of the multiunit housing code because of problems it has generated. We have this policy that has come out that allows much higher density in residential areas than what the town planning schemes would generally allow.

The CHAIRMAN: I think this is the source of the incongruities that I referred to in my earlier remarks that are reflected in community submissions that you have received and that we have received. During Mr Cope's remarks just now, there is reference to variations to requirements being acceptable within certain parameters, and if certain conditions were complied with. I think the substance, though, of this petition is that the variation that is being applied here is so massive that the question would be: is this what is contemplated by the current regime, or has something gone wrong? Do you have any observations about that?

Dr Silcox: I do, and I will also defer to my planning officers. There is a massive disconnect between the community and any delegated planning authority, like a local government. What I mean by that is that the community generally does not understand planning principles and what has to be applied. They have a view about what is acceptable and what is not acceptable, but officers have to assess planning applications based on planning grounds. Many of those are in policy, and also from legal advice or from SAT decisions. A SAT decision will have an influence on what officers will deem to be acceptable in discretions, because of what SAT has accepted in the past. There is a lot of precedent; there is legal advice and the like. The community does not see all that, but the officers live that on a daily basis. There is a massive disconnect between what the community understands and what officers have to apply in planning. That disconnect also goes in relation to councillors and the officers. Some councillors will have a view, whether politics or popularity is brought in, some have views of customer service functions; all those things are not planning requirements. The officers can only put forward decisions or discretions based on planning grounds, based on precedent or previous decisions. Where there is a discretionary situation and we are not sure, we go and seek legal advice, and that is generally what we present in our reports to council. Australia is in a transition to higher density with traffic issues and the like, and this is the community pushing back in relation to higher density, and saying we do not want it in residential areas. The City of Melville would agree with that; we do not want it in residential areas; we want it in activity corridors and in activity centres. I do not know whether the officers wish to give you better advice in relation to planning matters.

[12 noon]

Mr Cope: Thank you, Mr Chairman. In answer to your question, where an applicant seeks significant exercise of judgement on plot ratio height or other prescriptive requirements of the city's community planning scheme 5 or the residential design codes, the decision maker is obliged to give that due consideration. I am referring here to the R-codes, which is "State Planning Policy 3.1 Residential Design Codes". Clause 7.8 of community planning scheme 5 sets out matters to which

council must have due regard. Council must also consider state planning policies. I mentioned the R-codes, SPP 3.1. The proposed development must satisfactorily address the R-codes' objectives and design principles. The R-codes expressly state that where the decision maker is assessing the proposal that addresses the design principles the decision maker should not apply the deemed-to-comply provisions or the prescriptive requirements, and that is stated in clause 2.5 of the R-codes. Essentially, the R-codes require that where a proposed development does not meet a deemed-to-comply provision or a prescriptive requirement, the decision maker is obliged to consider the DA on its planning merits, having regard to all relevant factors, and exercise its judgement to determine the proposal. There is a reference to that in clause 2.4 of the R-codes.

The CHAIRMAN: If you will allow me, on behalf of the committee, to create a presumption of ignorance, the density of the scheme and the effective locality was increased from R20 to R40 in a process that you described, Dr Silcox, in your opening remarks. What does R20 or R40 mean?

Mr Cope: Okay, well, R20 means 20 dwellings per hectare, as expressed in the R-codes. R40, certainly prior to the introduction of the multiunit housing code, had the same meaning.

The CHAIRMAN: And that would be 40 homes per hectare, so an average block size of 500 square metres?

Mr Cope: Yes, but I did say prior to the introduction of the multiunit housing codes. The introduction of the multiunit housing codes, which was initially part 7 and is now part 6 of the R-codes, removed the minimum area of site per unit from the relevant tables. Further, the later revision of the R-codes in 2013 removed wording referring to low, medium and high density from table 4 of the R-codes, so density control was effectively removed from codings of R30 and above.

The CHAIRMAN: What do they now mean?

Mr Cope: It means that the decision-maker is required to assess the development under the objectives and design principles. More dense, intensive development may potentially have greater impact on certain things such as local character, traffic or amenity. It is these impacts that the R-codes require the decision-maker to assess under the objectives and the design principles.

The CHAIRMAN: At face value, what would be the R-coding of the proposed development that has now been approved, roughly?

Mr Cope: We cannot give you a definitive answer to that question because the density is not expressed in the same way as it would be for a development in an area coded less than R30.

The CHAIRMAN: For lay people such as myself, you are speaking in a language that ceased to exist a year or two ago. Is that about the strength of it? I feel awfully old.

Mr Cope: Mr Chairman, would you like me to keep going with this?

The CHAIRMAN: Please do, Mr Cope.

Mr Cope: I will ask Amanda Leith, our planning coordinator, if she would like to explain this. Essentially, there is a difference in density control between development in areas coded less than R30 and in areas coded above R30.

The CHAIRMAN: What page are you referring to in the R-codes?

Mr Cope: I am referring to table 1 and table 4 on page 58.

Mrs Leith: If a development were for a single house or a group dwelling, so an R40, the same as the site, you would have to have a minimum site area of 180 square metres and an average of 220 square metres to subdivide your property. You can see in table 1, you have got "minimum site area per dwelling", which is column 3. When we move awards assessing multiple dwellings, such as this application under table 4, which is on page 60, you will see that that same column has been removed from the R-codes for these types of dwellings so there is now no minimum site area per dwelling applied for apartment-type developments. Instead, you rely on the other built form

parameters, such as the plot ratio, being the bulk, height, setbacks and the like. That is the fundamental difference. We often get asked that same question about what is the actual R-coding of the development but it is not an assessment criteria that we assess or can adequately give an answer to because they have removed “minimum site area”.

The CHAIRMAN: That is why it might appear incongruous to people who are uninitiated in these matters but, in fact, the 84-unit development that has been approved actually would comply with these R-codes, putting aside other concerns. Is that the case—that it would comply with this?

[12.10 pm]

Dr Silcox: It would comply if you reduce the height and the plot ratio, as I alluded to. If you brought it back to nine metres, it would deem to comply and, yes, it would go ahead.

The CHAIRMAN: What is wrong with this? It is still too high. This is in the responsible authority’s view. It is still too high and —

Dr Silcox: Essentially, it is bulk.

The CHAIRMAN: It is too bulky.

Dr Silcox: The height and plot ratio delivers what we believe is a bulky development in a residential area.

The CHAIRMAN: Is it possible for council to measure its concern or is it more subjective than that in assessing bulk?

Mr Cope: Mr Chairman, it is subjective in that the R-codes require exercise of judgement by the officers preparing the responsible authority report and also by the decision-maker.

Dr Silcox: It is a grey area, Mr Chair. You can have the officers exercise judgement. Councillors might have a different view of that judgement. The DAP might have a different view of that judgement. SAT might have a different view of that judgement. It is all about judgement.

Hon PAUL BROWN: Effectively, just pretend I am ignorant, the original R40 living area zone that 94 Kitchener Road had, which effectively allows you to have 40 dwellings per hectare and given that this is a 6 000 square metre block, which is less than a hectare—0.6 of a hectare, in fact—that would indicate that effectively you could have 30 dwellings on that block regardless of what size they are. How do we then get to 84 dwellings plus car park on an R40 block given that it is not even a hectare? Looking at all the paperwork that you put in front of me, that is quite significant. I have waded through a little bit of it. I cannot see the logical pathway here to even propose an 87 or an 84-dwelling structure given that we are not even talking about a hectare; we are talking about 0.6 of a hectare and the proposal is well outside, and an increase in height as well. I am struggling to find a pathway to a reasonable conclusion here.

Mr Hitchcock: As a layman, may I try to explain that as I understand it. Before the multiunit housing code came into being, an R-code, without all those tables that restrict the size of an individual dwelling, could result, let us assume, in a block of a certain shape and size. The multiunit housing code allows no more than that but what goes into the block is what has changed. What went into the block before the multiunit housing codes came in could only be X number of dwellings. After the multiunit housing code came into being, it is X plus one. That is what the multiunit housing code did. Where the discretion comes in is that you have got what are called the intercomply provisions. If a building comes and it can tick all the boxes on those provisions of design criteria, you have no choice but to allow it to go ahead without except, of course, certain design elements like face walls and things like that that can be articulated but you have to approve it.

The R-code says there are other things that you have to take into consideration, like how does the building perform? If overlooking is within the parameters, it does not matter if it is higher. If it does

not overshadow, it does not matter if it is close. Things like that are then taken into consideration by planners. How does the building perform? If it performs as per certain guidelines, then you have to approve it because then the discretion has gone to a certain extent.

But to answer your question on how many dwellings, it has to still be contained in the same apartment block. That is how I understand it. That is pretty much the effect of the multiunit housing provisions.

The CHAIRMAN: The Minister for Planning has made the observation, no doubt on departmental or commission advice, that the solution to this individual situation was actually contained within your—that is, Melville’s—own town planning scheme, or some deficiency or lacking there. Is that, in your view, true; and, if so, is it fair?

Dr Silcox: It is true. The problem is that the multi-unit housing code was brought in without discussion with local government, so they could not prepare for it, so we are trying to address those issues now.

The CHAIRMAN: And that is a symptom of the problem that you referred to, not only yourselves but also Stirling and other local authorities.

Dr Silcox: Yes. Even with the JDAP, there have been issues with that process, and guidelines were put on the website without any discussion with the city, so essentially you have to trawl their website to see what goes up. There is no advice that this guideline has now come out. Obviously, from my personal perspective, the state government is trying to look at how we get increased density. We know the issues; I think it is about \$100 000 per property on the outskirts of Perth. It costs the community \$100 000 in infrastructure—over that now, I think—for every additional property on the outskirts. Putting properties in developed areas, obviously the infrastructure is there, so you reduce those costs to the community. There are also issues about alternative housing stock, so stock for younger people to be able to go into these suburbs and for retirees to be able to downsize and go into a different type of stock. We know that those are issues for our community, but, really, local government is not seen as an equal partner in this area. Our planning powers are delegated and, in my view, the views of local government are not brought in enough. There is nothing in place to really have these types of discussions where we know what is coming, we can prepare for it, and we can put those things in place. We react to policy decisions that are made by the state, in general terms. That would be my observation.

The CHAIRMAN: Just noting the time, we are probably at the point where we need to draw things to a close, but I have a question just for the record, specifically in relation to Kitchener Road. When the JDAP made their decision of refusal on 9 September 2013, was that a surprise decision, or was it what was expected?

Dr Silcox: From my personal perspective, I would say it was a surprise. There are inherent problems though, Mr Chair, with the JDAP process. If I may, for a very short period of time —

The CHAIRMAN: Just to clarify my question, I am going back to the first time the application went to JDAP, and they accepted your advice and refused the application.

Dr Silcox: Was that a surprise? No; sorry.

The CHAIRMAN: Yes; so that was not a surprise. I am phrasing this as a question: was there nothing extraordinary about that outcome?

[12.20 pm]

Dr Silcox: No. I might add that this whole application caused a lot of concern in my planning department, and the chief planner had to take a lead role in trying to resolve these issues, working through. This was not something that was an application that came through and it was just normal processes; there were a lot of problems working through the planning department—what was acceptable and what was not, what we should do. The chief planner, my director, had to personally

get involved in this process to try to resolve the issue through my own planning department in relation to this, so there is a hell of a lot of work gone into getting it to that point. In terms of the refusal, as CEO, I was comfortable, on the information that I had—and I am a layman in these areas, which is why I have the team here to tell you all the technical stuff—that it seemed a reasonable outcome to me. It was a very bulky development in a residential area, out of what you would consider to be the normal type of housing in that area. The refusal seemed along the lines that we were correct in our assumption, so that, to me, was affirmation that the views and the position my chief planner had taken were correct.

The CHAIRMAN: It will not surprise you that I now want to go to the second application, or the second deliberation by JDAP after the matter had been to SAT and been referred back to JDAP after mediation. You then provided a responsible authority report on the amended parameters. Were you then surprised that JDAP actually approved the application?

Dr Silcox: The process of any planning application that comes in is that—I am not talking about this particular one, but any that come into the city—generally speaking, a developer will put in an application. It can be just a normal resident house owner, as opposed to a developer, like Satterley or something like that. They put in a planning application, and there generally are issues with it. It is the ones that do not conform and cannot go straight through to the keeper, they are the ones that have something different they are asking for—height, setbacks, overlooking; whatever it might be. The officers then sit and try to get a better outcome for all parties, and then a report goes to council and a decision is made. JDAP have done the same thing in their mediation. There are 11 points that councillors articulate as being the issue. If the applicant addresses those 11 points, you would generally say that you would not be surprised if you got a different decision. The issue here, from my perspective—the planners might have a different one—is that we did not think that the 11 items had been addressed the way we thought they would. So, yes, I was a little surprised in that process. I do not know what the officers' view would be on that.

Mr Cope: The 11 items were not exhaustive in the sense that any application has to be proven to be acceptable, but those 11 items were recommended in the first place because, of course, JDAP may have had a different view to the officers preparing the initial responsible authority report, and it was seen to be appropriate to give some guidance on the matters that needed to be approved. In the final analysis, with the amended plans, certainly the applicant made a lot of improvements, bringing it a lot closer to an acceptable outcome, but in the final analysis, it was concluded that it was still an impact on the locality.

Dr Silcox: When we talk about “acceptable outcome”, that is as per the policies. That might not be a community view; a person in the community might say that any outcome along these lines is unacceptable. So when an officer talks about “acceptable”, it is about meeting the requirements of the planning act and the like policies.

Mr Hitchcock: If I may, also as a layman again, explain: for me, also having been present at that DAP decision, it was not surprising that they approved it, because what is not taken into consideration with the multi-unit housing code is the locality, as opposed to the particular address. That is what council is trying to achieve now with this proposed scheme amendment, which still has to go to WAPC. The multi-unit housing code, as it is framed, fits in certain localities and not others. Yes, sitting at that decision-making process, I personally was not surprised they approved it because it ticked certain boxes, but it is the boxes that it does not tick that have less impact on the decision which should have an impact on the decision, like the locality.

The CHAIRMAN: Which brings us all the way back to the current local controversy that is raging in the community. I think altogether that your advice has helped clarify the nature of the problem for the committee.

Hon PAUL BROWN: I am sorry if I am going across ground that has already been covered while I was reading. This question might be more for you, Mr Cope. What was the applicant's reasoning

when he made the appeal to SAT? What was the basis of his appeal, or their appeal, to SAT? Obviously, there was the JDAP refusal, and then they appealed to SAT. What was the basis of the appeal? They have to have had a reason.

Mr Cope: The city was not privy to the reasons.

Dr Silcox: They would disagree with the interpretation of the officers and articulate why they disagree. I cannot tell you what they are.

Mr Cope: The city was only advising in the appeal process because DAP was the party.

Hon PAUL BROWN: So even the reasoning behind their appeal is confidential?

Dr Silcox: We are unsure. That might be a question for DAP.

Hon PAUL BROWN: Can we make that a supplementary?

The CHAIRMAN: I am not sure that we are putting it to the right party. The appellant is appealing against the decision of JDAP.

Hon PAUL BROWN: I agree; I was just trying to expedite it.

The CHAIRMAN: Perhaps we need to ask that in another quarter.

Dr Silcox: As I understand it, Mr Chair, JDAP is coming here as well. That would be a question for JDAP.

If I may Mr Chair, I hear in your voice that you are getting close to summing up. What has not been discussed is the JDAP process as well, and I think that is problematic for a couple of reasons. One is that, essentially, again I would imagine that the state has decided that certain value planning decisions need to be taken out of councillors hands because they are not getting certain decisions made. It would seem, from my perspective, that the development industry has far more input into many of the things as opposed to the community, because essentially council represents, generally speaking, the views of the community—not always, but generally the thrust of it—with the caveats of the planning requirements. The JDAP process has become very problematic in the sense that we have a fairly short period of time in which to write the report. There is no requirement; no-one has said, “Do council get involved in this or not?” When we go and seek advice, you know, “It’s entirely up to you.” Then a guideline comes out that you have to find yourself; it is not published on JDAP. My councillors chose to bring the reports to them. It is an additional step and more work for officers in that step. In that process, a decision is made. The decision has no bearing on JDAP; all it does, in my view, is create expectations in the community that we cannot manage. A community might think that council said no, it is okay, where that decision of council actually has no bearing on the process moving forward.

The second part of that is that there are two councillors and three independent parties that sit on JDAP and it conflicts the two councillors. In this particular case, one councillor did not attend the council meeting in relation to this matter because they felt they were conflicted by what council was resolving because they had to sit independently to this and another councillor actually sat through council. So, there is a conflict there. The issue for me is that if the problem is councillors being popular or making popular decisions or not making planning decisions, then either mandate that it is DAP and council are not involved or train councillors appropriately to make those decisions. The process at the moment to me is neither here nor there; it is a bit of both, and all it does is cause conflict and it causes community expectations that as officers you try to manage. You have all those documents and you can find how complex this is. How do you sit down and describe this to a community who is saying that it just does not make sense? It is very hard to talk through this level of detail and what we have to do as professional officers in moving this forward. It is hard enough having that discussion with council and then again moving that into the community.

[12.30 pm]

So, the JDAP process needs to be resolved. The state either takes those powers and deals with those issues cleanly or it should train up councillors so that they have the confidence that they will make planning decisions, not popular decisions, if that is the issue, because it has never been expressed what the issue is—why JDAP actually had to come in. It has never been expressed to me what that is trying to resolve. I do not know that the mechanism that has been brought in actually resolves the issue. I wanted to table that as well, Mr Chair. Additionally, even in the JDAP process, there was no protection for my councillors in this issue when that went forward. From what I understand, it was quite an unpleasant meeting and there was no protection for my councillors in that meeting. Again, that concerns me. I have raised with the department that I expect that there are some controls put in place and protection, because people will make unpopular decisions and it can get quite ugly at a council meeting. I know that you would know what I am talking about, Mr Chair—I do not know the background of the others—it can get quite ugly at a council meeting and it can get quite ugly at a JDAP meeting. In council we have processes and systems in place to address that; in JDAP, I am not convinced that that was the case. Whether it is because it was new when it happened and they were not ready for it, but there was no access out of the building. You were on a different floor. You really had a very complex situation. Some people, in my view, were not handling themselves in what I consider to be a professional manner and that should have been dealt with through this process. There are a number of issues with JDAP that I think need to be resolved and in some part form part of this trail of problem that we are now sitting here in front of you trying to resolve.

The CHAIRMAN: I will give you an undertaking that your comments just now have been recorded and, obviously, we will have regard for them when we deliberate. You have also raised some other issues that point to some further review of the system, and this committee might be able to contribute to that direction.

Hon PAUL BROWN: Mr Silcox, given that you just made comments about JDAP, and I have sympathy your comments, there are two things that I agree with; the process delivers to your councillor a belief that there will be an outcome that the council supports, which may not actually be achieved because also your council vote is non-binding on your two members —

Dr Silcox: And less, then, the independent party.

Hon PAUL BROWN: My question to you is in regard to the council decision versus the JDAP decision purely on a dollar sum. Are you of the belief that your councillors, in full knowledge of the information they are provided, can provide a reasonable decision free of encumbrances of popularity on a decision, regardless of the price?

Dr Silcox: Council? Yes. Some councillors I think have issues, but council, when you are talking about the group, the group will make from what I can see sensible and right decisions.

The CHAIRMAN: Again, thank you very much for your assistance in helping us understand the issue and the processes that have led us to where we are at. We look forward to further correspondence with you as necessary, but for now, I would like to thank you one and all and bid you a good day.

Hearing concluded at 12.34 pm
