

FINAL DECISION
EG CUSTODIAN SERVICES PTY LTD v TOWN OF VICTORIA PARK
(DR 480 OF 2009)

JOHN DAY
MINISTER FOR PLANNING
JUNE 2011

**EG CUSTODIAN SERVICES PTY LTD v TOWN OF VICTORIA PARK
(DR 480 OF 2009)
REASONS FOR DECISION OF THE MINISTER FOR PLANNING**

INTRODUCTION

1. EG Custodian Services Pty Ltd (“**the Applicant**”) applied to the Town of Victoria Park (“**the Town**”) for approval of a variation (“**the Variation**”) to the Burswood Lakes Structure Plan (“**the Structure Plan**”).
2. The Structure Plan applies to land which originally comprised 26 superlots, including superlots 9 and 25. Those two superlots are now described as Lots 9 and 9525 on Deposited Plan 53689 and comprise the Applicant’s land (“**the subject land**”).
3. Lot 9 has an area of 6,441 square metres and is located on the western side of Victoria Park Drive. It has a street frontage to Bow River Crescent on its northern boundary and is adjoined to the west by the Burswood Dome.
4. Lot 9525 has an area of 3,013 square metres¹ and is located on the eastern side of Victoria Park Drive. It abuts the Perth to Armadale railway line on its eastern boundary and the Burswood Railway Station (“**the Station**”) is located directly to its south.
5. The constraints imposed by the Structure Plan would be amended by the Variation as follows.

| LOT 9 | Currently | As proposed by the Variation |
|-------------------------|---------------------|------------------------------|
| Maximum dwellings | 60 | 224 |
| Maximum storeys | 6 | 17 |
| Maximum building height | 21.0 metres | 59.0 metres |
| Plot ratio | 1.36:1 | 3.22:1 |
| LOT 9525 | Currently | As proposed by the Variation |
| Maximum dwellings | 5 | 127 |
| Maximum storeys | 5 | 15 |
| Maximum building height | 17.5 metres | 52.0 metres |
| Plot ratio | 0.91:1 ² | 2.73:1 |

¹ I note that in the Variation request, the Applicant’s submissions and the witness statement of Mr Casselton, the expert planner engaged by the Applicant (and responsible for preparing the Variation request), the area of Lot 9525 is stated to be 5,013 square metres. I also note that superlot 25 (which corresponds to Lot 9525) is described in Figure 30 of the Structure Plan as having an area of 4,976 square metres. However, this is not the position taken by the parties in their statements of issues, facts and contentions or by Mr Casselton or his counterpart, Ms Lavery in their joint witness statement of expert planning witnesses. As my determination does not turn on area or plot ratio calculations, I have assumed that the correct area is 3,013 square metres and the figures given elsewhere do not affect the plot ratio calculations.

² This plot ratio is based on a notional residential portion of lot 9525 that has an area of 1,500 square metres. The plot ratio over the entire site is 0.27:1.

6. These amendments differ from those first proposed by the Applicant in order to comply with the PAN-OPS maximum height requirements. I also note that the Variation contemplates other variations which appear in Tables 6A and 6B to the Variation request. Those variations have not been focussed upon by the parties and it is unnecessary for me to specifically refer to them in my reasons.
7. On 24 November 2009, the Town refused to approve the Variation. The Applicant applied to the State Administrative Tribunal (“**the Tribunal**”) for review of the Town’s decision. I directed the President of the Tribunal to refer the application to me for determination pursuant to section 246(2)(a) of the *Planning and Development Act 2005* (WA) (“**the Act**”). These are my reasons for determining that the application for the Variation should be refused.

THE RELEVANT PLANNING FRAMEWORK

8. The parties agree that the subject land is:
 - (a) zoned Urban under the *Metropolitan Region Scheme* (“**the MRS**”);
 - (b) located within the Burswood Precinct under the *Town of Victoria Park Town Planning Scheme No 1* (“**TPS 1**”);
 - (c) by virtue of being within the Burswood Precinct, subject to Precinct Plan P2 (“**the Precinct Plan**”) which:
 - (i) places the subject land within the Special Use Zone; and
 - (ii) requires that development within the Special Use Zone be generally consistent with an approved structure plan and that subdivision and development of land within the Special Use Zone be generally in accordance with the approved structure plan; and
 - (d) subject to the Structure Plan which is the approved structure plan for the purposes of the Precinct Plan.
9. The parties’ expert planning witnesses agree that the planning documents relevant to considering the Variation are as follows:
 - (a) TPS 1;
 - (b) the Precinct Plan;
 - (c) the Structure Plan;
 - (d) the Town’s *Draft Burswood Station Precinct Development Review, August 2005* (“**the Review**”);

- (e) the *Burswood Peninsula Draft District Framework* (May 2010) (“**the draft Framework**”);
- (f) the MRS;
- (g) the Commission’s *Development Control Policy DC 1.6 – Planning to Support Transit Use and Transit Oriented Development* (January 2006) (“**DC 1.6**”);
- (h) *State Planning Policy 3 – Urban Growth and Settlement* (March 2006) (“**SPP 3**”);
- (i) *State Planning Policy 3.1 – Residential Design Codes (Variation 1)* (April 2008) (“**the R Codes**”);
- (j) *State Planning Policy 3.6 – Development Contributions for Infrastructure* (November 2009) (“**SPP 3.6**”);
- (k) the draft *State Planning Policy Network City* (“**Network City**”); and
- (l) *Directions 2031: Draft Spatial Framework for Perth and Peel* (“**Directions 2031**”)³.

TPS 1

10. Clause 11(1) of TPS 1 provides for the area governed by TPS 1 (“**the Scheme Area**”) to be divided into 13 precincts. The subject land falls within precinct “P2 Burswood”. Clause 11(2) states that “[f]or each precinct, there is a precinct plan/or plans”. Under clause 3(1), each precinct plan forms part of TPS 1.
11. Clause 12(1) of TPS 1 provides that land within the Scheme Area which is not reserved is classified into one of 9 zones. Clause 12(2) provides for the classification of land to be shown on the precinct plan relevant to the land.
12. Pursuant to clause 15 of TPS 1 (and subject to any exceptions which may apply under clauses 16 to 18), the use of unreserved land within the Scheme Area is regulated by its zoning and the Scheme Zoning Table. With one irrelevant exception, all uses in Special Use zones are regulated by the relevant precinct plan rather than the specific provisions of the Table.
13. Unless otherwise consistent with a planning approval, clause 20 of TPS 1 also requires that development be in accordance with the standards and requirements contained in, amongst other documents, the relevant precinct plan.⁴

³ Which was finalised in August 2010 as *Directions 2031 and beyond: metropolitan planning beyond the horizon*. Unless otherwise stated or referring to the evidence or submissions relied upon by the parties, references to “Directions 2031” in this document are to the August 2010 document.

⁴ However, clause 38 of TPS 1 provides scope for departing from those standards and requirements.

The Precinct Plan

14. The Precinct Plan comprises two sheets, Sheet A and Sheet B. Only Sheet B is relevant to the subject land.
15. Sheet B depicts the subject land as falling within both a Special Use zone and the Burswood Lakes Environmental and Geotechnical Special Control Area. It is unnecessary for present purposes to address the consequences of being included in the special control area, which is concerned with applications for planning approval involving excavation.
16. The Precinct Plan includes a statement of intent which applies to the whole Burswood Precinct and, together with statements applicable to specific areas within the precinct, summarises the kind of future that is identified by the Precinct Plan as being appropriate for the precinct. The statement of intent is in the following terms:

“The Burswood Precinct should be redeveloped primarily as an area of mixed office and residential uses east of the railway and for residential uses with integrated mixed use development west of the railway.

Redevelopment in the Precinct should acknowledge the prominence of Burswood Peninsula. In keeping with the location of the Precinct, buildings and surrounding landscaping should be of a high visual standard to complement a key entry route to the city, and contribute to reducing the visual impact of the Graham Farmer Freeway.

Development adjacent to the Burswood Resort Complex should have regard for the proximity of this area to the Complex, and acknowledge the importance of the Precinct as a backdrop to the river setting and views of the Peninsula from various vantage points. New development will contribute to the development of a well integrated pedestrian network, through site layout and building design, which would encompass links to the adjoining Burswood Peninsula Precinct. Public places such as parks, reserves and streets will be used, maintained and enhanced so that they contribute to a pleasant environment in the Precinct.”

17. The Precinct Plan also relevantly provides in relation to structure planning that:

“Development within the Special Use Zone shall be generally consistent with the provisions of a Structure Plan approved and amended from time to time by the Council and the Western Australian Planning Commission. The Structure Plan would indicate broad land use options for the development and subdivision and provide a policy framework for future subdivision and development. The approved Structure Plan will form the basis of Council’s determination of applications for subdivision and development of land within the Precinct. In considering a structure plan for the Special Use Area Council shall notify adjoining/nearby landowners and occupiers of the proposed structure plan and provide a minimum period of 28 days within which to lodge submissions on the structure plan. The Structure Plan must include the following information in plan and where appropriate in written text form:

[There follows a list of the information which must be included, such as a statement of objectives and explanation of the rationale for the proposals contained in the structure plan; information about the road and pedestrian network; and the relationship of the land to surrounding facilities, land uses and the road and pedestrian network]....

Any subdivision or other development of land within the Special Use Zone shall be generally in accordance with the Structure Plan. Any significant departure from or alteration to the approved Structure Plan may, subject to the approval of the Western Australian Planning Commission, be permitted by the Council if the Council considers that the proposed departure or alteration will not prejudice progressive development of the area, the subject of the Structure Plan.

In considering any departure from or alteration of the approved structure plan the Council shall notify adjoining/nearby landowners and occupiers it considers are affected by the proposed departure from or alteration to the plan and shall invite each owner to make a submission to the Council regarding the proposal within 28 days.”

18. The Precinct Plan regulates the uses which can be pursued within the Special Use zone. It also requires that land included within an approved structure plan be subject to certain specified development standards in relation to the Residential Design Codes, setbacks, plot ratio, minimum site areas per dwelling, dwelling density, maximum building heights, open space and landscaping, parking, overshadowing and wind. However, the Precinct Plan provides for some of those requirements to be determined by the structure plan and for the variation, in certain circumstances, of any development standard or requirement in TPS 1, the Precinct Plan or a planning policy.
19. Before turning to the Structure Plan, it is appropriate to note that the current form of the Precinct Plan reflects amendments called for in the Structure Plan and made by Amendment No 28 to TPS 1, gazetted on 23 April 2003.

The Structure Plan

20. The Structure Plan comprises Part B of a document entitled *Burswood Lakes Structure Plan & Precinct Plan Amendment*. The document was prepared by Mirvac Fini in 2002 and is concerned with essentially the same area (including the subject land) as the Special Use zone identified by the Precinct Plan (“**the Structure Plan Area**”). The Structure Plan’s purpose is to guide the future subdivision and development of the Structure Plan Area.
21. The Structure Plan depicts 26 superlots, as well as roads, easements and public open space. A significant amount of development has already occurred within the Structure Plan Area on superlots 4, 5, 6, 7, 8, 11, 12, 13, 14, 18, 19, 20, 23

and 24. Various standards and controls are imposed by the Structure Plan in respect of each of the superlots.

22. The subject land is designated as superlots 9 and 25 (corresponding to lots 9 and 9525 respectively) and comprises the southeast precinct of the Structure Plan Area.⁵ I have already referred to the standards imposed by the Structure Plan on those lots which the Applicant wishes to change by way of the Variation. It is unnecessary for present purposes to address the other standards imposed by the Structure Plan.

The Review

23. The Review was undertaken as a joint study for the Town, the Public Transport Authority (“**the PTA**”) and the then Department for Planning and Infrastructure. It explored the potential for redevelopment on approximately 20 hectares of land around the Burswood Entertainment Complex and the Station. The study area, which included the subject land, was bounded by the railway line, the Graham Farmer Freeway and the Burswood Dome and carpark.

24. In its executive summary, the Review states that its purpose is:

“to outline the findings of a development, planning and urban design review of the Burswood Station Precinct. It provides some planning certainty regarding the potential scale, mix, density, form and development programme for the precinct and potential links to adjacent redevelopment areas.”⁶

The Review identifies some draft development principles which “have been prepared to act as a guide for future development of the area if a decision is made to remove the Burswood Dome, and as the basis for development and design guidelines in this event.”⁷ The Review also sets out a preferred development option in the form of a preliminary concept plan, which creates “a vision for the precinct and a framework within which development principles and criteria can be assessed as proposals are prepared and submitted.”⁸

⁵ *Burswood Lakes Structure Plan & Precinct Plan Amendment*, p. 14. I have already noted the discrepancy between the area of Lot 9525 agreed by the parties and the area given for the lot in the Structure Plan. I also note that Figure 19 of the Structure Plan gives an area of 6,296 square metres for superlot 9, which corresponds with Lot 9. The parties agree that Lot 9 has an area of 6,441 square metres. Consistently with the approach I stated earlier, I have assumed that the figures agreed upon by the parties are correct and that nothing turns upon the discrepancies.

⁶ The Review, *Draft Final Report*, p. i.

⁷ The Review, *Draft Final Report*, p. ii. Although the pages of the main body of the Review report setting out the principles do not refer to the fate of the Burswood Dome (see the Review, *Draft Final Report*, p. 21), in substance the Review is predicated upon the removal of the Dome as I discuss further below.

⁸ The Review, *Draft Final Report*, p. iv.

25. The preliminary concept plan reflects the Review's emphasis upon increasing the study area's residential development potential in order to activate the precinct and provide for population growth appropriate for its strategic location, with increasing density towards the Station. It identifies three development areas: Area A comprises the Burswood Dome and Carpark site, Area B the PTA site and Area C the Goodwood Precinct. As Lot 9 falls within Area A and Lot 9525 falls within Area B, those areas are most relevant for present purposes.
26. At least in so far as it affects:
- (a) Lot 9, Area A is identified as having a notional building height limit of 15 to 20 storeys; and
 - (b) Lot 9525, Area B is identified as having a notional building height limit of 8 to 12 storeys.⁹

However, the Review report states that these notional heights are indicative only and would require further investigation and justification.¹⁰

27. The Review addresses the question of how the preliminary concept plan would be implemented¹¹ and provides preliminary estimates of costs for common infrastructure works (although those costs do not include the costs associated with upgrading the Station).¹² I note in this context that the discussion about Area A is focused upon interaction between Burswood Nominees Ltd and the Town and does not contemplate a third party landowner. Similarly, the discussion about Area B is focused upon the PTA and does not contemplate another landowner.
28. The implementation tasks which the Review identifies as flowing from the discussion of implementation include defining development outcomes via a detailed masterplan and establishing an appropriate planning scheme for both Area A and Area B.¹³ Common infrastructure works are also identified as being required.¹⁴ In the case of Area A, the Review also states that the area "should be developed as one project, or at least with a very high level of coordination between the two landowners."¹⁵ In the case of Area B, undertaking upgrade works for the Station is also identified as an implementation task.¹⁶

⁹ The Review, *Draft Final Report*, Figure 19 on p. 26.

¹⁰ The Review, *Draft Final Report*, p. 26.

¹¹ See the Review, *Draft Final Report*, pp. vi to viii and 32 to 35.

¹² The Review, *Draft Final Report*, pp. 33 to 34.

¹³ The Review, *Draft Final Report*, pp. vii and 34. See also Mr Malcolm Mackay's statement at [8.5].

¹⁴ The Review, *Draft Final Report*, pp. vii and 32 to 35.

¹⁵ The Review, *Draft Final Report*, pp. vi and 33.

¹⁶ The Review, *Draft Final Report*, pp. vii and 34.

29. The Review also contains information about the physical context of the study area which identifies a number of actions that would be required to implement the preliminary concept plan.¹⁷ However, I note that the investigations were limited in a number of respects and the Review states that a number of additional investigations and assessments are required.¹⁸
30. On 16 August 2005, the Town's Council resolved to endorse in principle the concept outlined in the Review. However, I note that Council's more recent resolution refusing to approve the Variation relevantly stated:
- “The Council deems as flawed the decision of August 2005 which endorsed in principle the ‘Burswood Station Precinct Development Review Draft Final Report’ as the reports presented to Council failed to outline in the textual material that this review impacted on the Burswood Lakes Structure Plan to the amount of over 5,000m².”
31. Underlying the preliminary concept plan and the Review more generally is the assumption that the Burswood Dome and surrounds are no longer used for resort purposes and are therefore available for redevelopment.¹⁹ However, the fate of the Burswood Dome remains uncertain. In his witness statement Mr Ducie, the General Manager of Strategy and Development for the Burswood Entertainment Complex, states that “Burswood Nominees Ltd has no immediate plans for redevelopment of the Burswood Dome site and will only do so in consultation with the State Government.”²⁰

The draft Framework

32. The draft Framework was advertised for a period from May to July 2010. It has not yet been released in its final form.
33. The draft Framework's purpose is:
- “to provide a cohesive vision and context within which the planning and development of these new neighbourhoods can proceed. The framework is not a statutory instrument, rather it establishes the overarching principles and settings that will be used to inform the preparation and assessment of structure plans and subsequent development applications”.²¹
34. It “envisions the creation of two high density and high activity transit oriented urban centres focused on Burswood and Belmont Park railway stations”.²²

¹⁷ The Review, *Draft Final Report*, pp. 2 to 11 and 37 to 41.

¹⁸ See the Review, *Draft Final Report*, pp. 11 and 41.

¹⁹ See the Review, *Draft Final Report*, pp. vi and 32.

²⁰ Statement of Mr Ducie at [13].

²¹ The draft Framework, p. 2.

²² The draft Framework, p. 2.

For present purposes, it is sufficient to focus on the regional context and the Burswood Station Precinct identified by the draft Framework, about which the draft Framework states:

“The Burswood Station area is already the subject of significant planning and development activity. Planning for the Springs redevelopment is well advanced and The Peninsula is in its seventh year of construction. The preparation of a detailed structure plan for the areas immediately east and west of Burswood Station has been identified as the next key task to achieve an integrated transit oriented centre. This will include planning for the upgrade of Burswood Station and the redevelopment of Burswood Dome”.²³

35. In its discussion of the regional context, the draft Framework emphasises the regional importance of the Burswood Peninsula and of the Burswood Entertainment Complex:

“Burswood Peninsula currently performs a regional tourism, entertainment and recreation function. Research undertaken for Tourism WA in 2007, identified Burswood as having one of the highest concentrations of hotel accommodation outside of the Perth central business district. Offering a total of 707 hotel rooms within an integrated resort and entertainment setting and in close proximity to the city and the airport, the Burswood Entertainment Complex is considered one of Perth and Western Australia’s most important elements of tourism infrastructure.

Burswood Entertainment Complex is also one of the largest private sector employers in the state. It is therefore important that any future planning for the peninsula recognises and reinforces the strategic tourism and employment role that the area performs.

In 2009, the State Government released Directions 2031 – Draft Spatial Framework for Perth and Peel, to guide growth of the city over the next 20 to 25 years. Directions 2031 anticipates that Burswood will evolve into a mixed use regional town centre, that offers significant opportunities to build on its existing tourism, entertainment and recreation base...²⁴

36. In relation to Directions 2031, the draft Framework also observes that “more emphasis will be placed on improving the efficiency of transport infrastructure and making more appropriate use of high amenity urban land to increase housing diversity.”²⁵
37. In its discussion of the Burswood Station Precinct, the draft Framework relevantly states:

“Burswood Station Precinct refers to the area surrounding Burswood railway station. It is envisaged that the area will become a highly active mixed use centre, building on the Burswood Entertainment Complex as a key tourism destination and providing opportunities for a diverse range of housing, employment, entertainment and recreation. The Burswood Station Precinct incorporates:

²³ The draft Framework, p. 2.

²⁴ The draft Framework, p. 3.

²⁵ The draft Framework, p. 5.

[reference is then made to The Peninsula and The Springs developments]

Burswood Station east and west

Detailed structure planning of the areas east and west of Burswood station will facilitate the development of a mixed use urban centre integrating commercial, retail, hospitality, tourism, entertainment, residential and civic and community uses with an upgraded Burswood Station. It is estimated that these areas could provide an additional 100,000 m² of office and commercial floorspace, and house a population of up to 3,500 residents. This scenario explores the option of redeveloping the Burswood Dome.²⁶

38. More specifically, in relation to Burswood station west, within which the subject land falls,²⁷ the draft Framework provides a concept plan with the proviso that it “is indicative only to give a sense of possible development. The ultimate layout of roads, buildings and open space will be determined at the structure planning stage.”²⁸ A four point summary is also provided, which refers to “[a] significant new urban centre offering a mix of commercial, retail, tourism, entertainment and residential uses”; “[a]pproximately 1,200 residents and 95,000 m² of office, commercial and retail floorspace”; “[p]roposes comprehensive redevelopment of Burswood station, Burswood Dome and surrounding car park”; and “[p]rovides a safer, more legible and accessible public environment for locals and visitors”.²⁹
39. The key features of Burswood station west are then identified by reference to precinct character, land use and built form, yields, planning and governance and key matters for consideration as part of the structure planning process. Amongst those key features are the following:

“Precinct character

A mixed use urban centre integrating commercial, retail, hospitality, tourism, entertainment, residential and civic and community uses with an upgraded Burswood station.

A regional destination that has a comprehensively redeveloped urban railway station at its core, and is strongly connected to surrounding neighbourhoods and activities via a network of safe, legible and comfortable vehicle, pedestrian and cycle linkages....

The indicative development concept assumes ultimate removal and redevelopment of the dome and surrounding at-grade car park. Under this scenario it is proposed that two levels of basement parking be provided in this area as part of the redevelopment, lifting the ‘ground plane’ to a level comparable with surrounding roads and land uses.

²⁶ The draft Framework, p. 6.

²⁷ The Department of Planning’s advice of 8 March 2010 (“the Department’s advice”) at [17].

²⁸ The draft Framework, p. 14.

²⁹ The draft Framework, p. 14.

....

Planning and governance

....

The redevelopment of the Burswood Station Precinct could occur under the Town of Victoria Park planning scheme, with necessary amendments to incorporate planning and development controls and development contribution provisions. However, the Burswood Station Precinct more than any other precinct within the district framework area, will require a high degree of coordination and certainty in terms of land use, built form and development timing to ensure the potential of the area is maximised. A redevelopment authority could provide the necessary resources and expertise with regard to the coordination of land use and built form; however, control over development timing requires an ability to release land and development to the market. It is therefore recommended that all land currently under government control be retained by government for the purpose of carrying out the redevelopment.

Key matters for consideration as part of the structure planning process

Comprehensive review of the dome to confirm what future use, if any, the facility might be put to as part of an integrated redevelopment of the site.

Detailed engineering, geotechnical, environmental, transport, heritage and ethnographic investigations to more accurately understand the implications of redeveloping the site for intensive urban use.

Detailed planning, urban design and architectural assessment to determine the most appropriate structure, layout and form of development, and the location of key community facilities.

Comprehensive movement and circulation assessment to ensure the area is well connected with other parts of the peninsula, including a detailed engineering study of the proposed east-west road connection beneath the railway line to confirm its viability....

Comprehensive parking strategy to ensure adequate servicing and access for existing and future land uses.”³⁰

40. In relation to Burswood station east, the draft Framework also provides a concept plan that is subject to the same proviso as the one applicable to Burswood station west’s concept plan. Once again, a four point summary is provided: “[a] medium to high density residential neighbourhood designed on transit oriented development principles”; “[f]ocused around an integrated redevelopment of Burswood Railway station”; “[s]tronger linkages across the railway and Graham Farmer Freeway reserves, improving pedestrian connectivity”; and “[u]pgraded commercial frontage to Great Eastern Highway”.³¹

³⁰ The draft Framework, p. 15.

³¹ The draft Framework, p. 16.

41. The key features of Burswood station east are identified by reference to the same categories as Burswood station west and include:

“Precinct character

Regeneration of an isolated pocket of aging commercial and service industrial land into a new mixed use neighbourhood integrated with surrounding urban and residential areas.

A medium to high density residential neighbourhood capitalising on close proximity to high order public transport services (train and bus) and regional road connections.

....

Land use and built form

Predominantly high density residential apartment development in the northern part of the site, maximising existing site elevation and the opportunity it affords for views.

....

Planning and governance

Like Burswood station west, detailed structure planning and redevelopment could occur under the Town of Victoria Park local planning scheme, with necessary amendments to incorporate planning and development controls and development contribution provisions.

However, the combination of general infrastructure upgrades (roads and services), comprehensive redevelopment of state rail infrastructure, and fragmented land ownership will increase the level of development complexity, and may therefore require the focus and resources of a redevelopment authority.

Consideration should therefore be given to the establishment of a combined redevelopment authority with the responsibility for planning and development oversight of the Burswood Station Precinct.

Key matters for consideration as part of the structure planning process

Detailed infrastructure assessment to determine the scope of major works, including new road links, undergrounding of high voltage power lines, and general services upgrades.

Comprehensive redevelopment strategy for Burswood station and the land immediately surrounding it, including provision for a road link beneath the rail corridor if it is deemed viable.

Detailed urban design and architectural assessment to determine the most appropriate lot size and configuration for redevelopment (assuming some amalgamation of small holdings may be required to achieve optimum built form outcomes).”³²

42. In terms of staging, the draft Framework relevantly states:

³² The draft Framework, p. 17.

“Burswood Station East (2-12 years)

The Burswood Station East precinct will play a critical role in ‘stitching together’ the south-eastern corner of the Burswood Peninsula, and maximising transit oriented development opportunities within the walkable catchment of the Burswood station. It is therefore recommended that detailed structure planning for the precinct be progressed as a priority to ensure that redevelopment east of and including Burswood station occurs in a coordinated manner and significant staging delays are avoided....

Burswood Station West (5-15 years)

Redevelopment of Burswood station west is considered critical to achieving a high density, transit oriented urban centre surrounding Burswood station. It is effectively the ‘missing piece of the puzzle’ that is necessary to integrate the disparate land uses and activities west of the station, and establish clear, comfortable and safe pedestrian links with the station itself. However, there are a number of matters to be resolved prior to development including the status of the Burswood Dome, governance arrangements, and detailed structure planning”³³

43. As the quotations from the draft Framework demonstrate, great emphasis is placed by the draft Framework upon both the strategic importance of the Burswood Peninsula and the Burswood Station Precinct and the need for further investigations and comprehensive structure planning in relation to Burswood station west and east.

Regional planning documents

44. As I have already observed, the parties’ expert planning witnesses have identified several regional planning documents as being relevant to my consideration of the Variation. However, in the material provided to me the focus has been upon DC 1.6, SPP 3, Network City, Directions 2031 and, to a lesser extent, SPP 1 and SPP 3.6. I confine my discussion of the regional planning documents to those six documents.

DC 1.6

45. The background notes to DC 1.6 provide a helpful introduction to the document and relevantly state:

“Within existing developed areas, there are clear opportunities to intensify existing activities and to promote new uses that will make better use of transit facilities and services. As the public transport system is further refined and extended, there will be emerging opportunities for new development that is focused upon, and maximises the benefits derived from significant new investments in transit infrastructure.

³³ The draft Framework, p. 20.

There are obvious benefits of a planning policy that encourages the integration of land use and transit facilities. Higher residential densities and mixed use developments in the walkable catchments of transit facilities have the potential to reduce car dependence; to increase accessibility for those without access to private cars; to reduce congestion on the road network and the demand for new road space; to reduce fuel consumption and air pollution; and to provide quality diverse and affordable forms of housing and development. These benefits combine to produce an attractive and viable alternative to car-based suburban and urban fringe development.

....

This policy seeks to maximise the benefits to the community of an effective and well used public transit system by promoting planning and development outcomes that will support and sustain public transport use, and which will achieve the more effective integration of land use and public transport infrastructure.

This policy is an integral part of a range of policies directed towards greater urban sustainability, in accordance with the State Planning Strategy and Statement of Planning Policy 3 Urban Growth and Settlements (SPP3). The following policy measures from SPP3 are particularly relevant to this policy:

- (i) Supporting higher residential densities in and around neighbourhood centres, high frequency public transport nodes and interchanges.
- (ii) Clustering retail, employment, recreational and other activities which attract large numbers of people in activity centres around major public transport nodes so as to reduce the need to travel, encourage non-car modes and create attractive, high amenity mixed-use urban centres.
- (iii) Providing access for all to employment, health, education, shops, leisure and community facilities by locating new development so as to be accessible by foot, bicycle or public transport rather than having to depend on access by car.”³⁴

46. To these ends, DC 1.6 sets out a number of policy objectives and measures which it is unnecessary to set out here.³⁵

47. DC 1.6 takes a generalised approach which:

“places much of the emphasis for the detailed delivery of transit related development outcomes upon local government planning processes, through the preparation and consistent application of appropriate provisions within [local] planning schemes, and associated planning policies and design controls, developed and applied under the guidance provided by this WAPC policy. Achieving the policy’s objectives will therefore require a collaborative approach between the WAPC and local governments.”³⁶

48. DC 1.6 also includes precinct planning amongst its policy measures, noting that:

³⁴ DC 1.6, p. 2.

³⁵ DC 1.6, pp. 4 to 8. See especially clauses 4.2.1, 4.2.2, 4.2.4, 4.3.1, 4.3.2, 4.4.1, 4.4.2, 4.4.3 and 4.6, which the Department of Planning identified in Attachment F to its report as being “particularly relevant to the proposed variation to the Structure Plan.” I quote from clause 4.6 of DC 1.6, which is concerned with precinct planning, below.

³⁶ DC 1.6, p. 3.

“in order to maximise the potential of transit oriented precincts to support and engender increased use of transit services, they will typically require comprehensive planning, which has regard to community values.... In the case of already-developed areas, it may be through the preparation of a precinct plan, either on an individual basis or as part of the process of developing a local planning strategy, and leading to inclusion of appropriate provisions within the local planning scheme. Liaison with the Public Transport Authority is highly desirable at this stage.”³⁷

49. Similarly, DC 1.6 includes the consideration of structure plans for the redevelopment of existing urban areas amongst the ways in which DC 1.6 will be implemented.³⁸

SPP 3

50. SPP 3 sets out the principles and considerations which apply to planning for urban growth and settlement in Western Australia.³⁹

51. The relevant objectives of SPP 3 are:

“To build on existing communities with established local and regional economies, concentrate investment in the improvement of services and infrastructure and enhance the quality of life in those communities.

To manage the growth and development of urban areas in response to the social and economic needs of the community and in recognition of relevant climatic, environmental, heritage and community values and constraints.

To promote the development of a sustainable and liveable neighbourhood form which reduces energy, water and travel demand whilst ensuring safe and convenient access to employment and services by all modes, provides choice and affordability of housing and creates an identifiable sense of place for each community.”⁴⁰

52. In the context of those objectives, SPP 3 identifies a number of policy measures, including:

- (a) in the context of creating sustainable communities:

“making the most efficient use of land in existing urban areas through the use of vacant and under-utilised land and buildings, and higher densities where these can be achieved without detriment to neighbourhood character and heritage values; the cost-effective use of urban land and buildings, ... infrastructure systems and established neighbourhoods; and promoting and encouraging urban development that is consistent with the efficient use of energy;

directing urban expansion into designated growth areas which are, or will be, well serviced by employment and public transport;

³⁷ DC 1.6, p. 8.

³⁸ DC 1.6, p. 8.

³⁹ SPP 3, clause 2.

⁴⁰ SPP 3, clause 4.

supporting higher residential densities in the most accessible locations, such as, in and around town and neighbourhood centres, high frequency public transport nodes and interchanges, ... and adjacent to high amenity areas such as foreshores and parks;...

access for all to employment, health, education, shops, leisure and community facilities by locating new development so as to be accessible by foot, bicycle or public transport rather than having to depend on access by car...”;⁴¹

(b) in the context of managing urban growth in Metropolitan Perth:

“giving priority to infill development in existing areas and directing urban expansion into the designated growth areas which are, or will be, well serviced by employment and public transport;

locating higher residential densities in locations accessible to transport and services, such as in and around the CBD...”;⁴²

53. The policy measures identified for managing urban growth in SPP 3 reflect the approach of Network City, under which future urban growth was to be planned and managed.⁴³ Network City has been superseded by Directions 2031,⁴⁴ to which I now turn.

Directions 2031

54. Directions 2031 is a high level spatial framework and strategic plan that establishes a vision for future growth of the metropolitan Perth and Peel regions and provides a framework to guide the detailed planning and delivery of housing, infrastructure and services necessary to accommodate a range of growth scenarios. It provides direction on, amongst other things, where development should be focused and what patterns of land use and transport will best support this development pattern.⁴⁵
55. Directions 2031 identifies the connected city model as the preferred medium-density future growth scenario for the metropolitan Perth and Peel region. A connected city pattern of urban growth is characterised by, amongst other features, promoting a better balance between greenfield and infill development and planning and developing key public transport corridors, urban corridors and transit oriented developments to accommodate increased housing needs and encourage reduced vehicle use.⁴⁶

⁴¹ SPP 3, clause 5.1.

⁴² SPP 3, clause 5.3.

⁴³ SPP 3, clause 5.3.

⁴⁴ See Network City, p. 1.

⁴⁵ Directions 2031, p. 1.

⁴⁶ Directions 2031, p. 4. See also, for example, pp. 46, 52, 55, 62.

56. With a view to achieving a connected city pattern of growth, Directions 2031 has set two targets as medium to long-term aspirations and to ensure that the city's growth can be sustained beyond 2031:
- (a) a 50 per cent improvement on current infill residential development trends of 30 and 35 per cent, with a target of 47 per cent or 154,000 of the required 328,000 dwellings as infill development; and
 - (b) a 50 per cent increase in the current average residential density of 10 dwellings per gross urban zoned hectare, with a target of 15 dwellings per gross urban zoned hectare of land in new development areas.⁴⁷
57. Under Directions 2031, six sub-regional planning areas will form the basis of future planning and policy development, with each sub-region presenting a unique set of challenges which must be planned accordingly.⁴⁸ The subject land and its locality fall within the Central sub-region, which exhibits a more mature urban form, particularly in relation to land use type and intensity and infrastructure characteristics. One of the two sub-regional strategies contemplated by Directions 2031 will be prepared to inform the preparation, consideration and approval of various planning instruments, including structure plans, for the Central sub-region.⁴⁹
58. Within the Central sub-region, Burswood is identified as a district centre and a metropolitan attractor. As to being a metropolitan attractor, Directions 2031 states that:
- “The Burswood Entertainment Complex includes Burswood Casino, Western Australia’s only licensed casino; the Burswood Theatre and Dome venues for theatrical and sporting events; nightclubs; restaurants and bars. Outside the entertainment complex is the Burswood Park Public Golf Course, State Tennis Centre and Belmont Racecourse. Burswood Peninsula is located nearby, and is a node of high density living.”⁵⁰
59. In the draft Directions 2031 document, the Burswood Peninsula was identified as a planned urban growth area within the Central sub-region. While Directions 2031, as finalised, does not identify planned urban growth areas, they will be identified in the metropolitan sub-regional strategies.⁵¹

⁴⁷ Directions 2031, p. 4.

⁴⁸ Directions 2031, p. 28. See also p. 19 for its description of the policy framework of which Directions 2031 and other planning instruments, such as local structure plans, form a part.

⁴⁹ Directions 2031, p. 28.

⁵⁰ Directions 2031, p. 79.

⁵¹ See *What was said about directions 2031 draft spatial framework for Perth and Peel* (August 2010), p. 8.

60. In this regard, I note that the draft *Central Metropolitan Perth Sub-regional Strategy* was advertised for public comment from August to December 2010 and identifies Burswood transit oriented developments for Burswood Station and the Peninsula as major growth areas that are expected to yield more than 400 dwellings by 2031.⁵² The draft also specifically addresses the Burswood transit oriented development as a planned urban growth area and refers, amongst other things, to:
- (a) constraints such as lack of car parking and uncertainty about the future of the Burswood Dome and surrounding land;
 - (b) progress and implementation actions such as undertaking detailed structure planning for Burswood Station East and West Precincts and introducing scheme provisions for developer contributions for those precincts.
61. I am conscious that the parties have not had the opportunity to make submissions about the draft *Central Metropolitan Perth Sub-regional Strategy* or Directions 2031 in its finalised form. However, they reflect and do not materially depart from what was set out in the draft Framework and the draft of Directions 2031, upon which the parties have had the opportunity to make submissions.

SPP 1

62. SPP 1 brings together existing State and regional policies and plans which apply to land use and development in Western Australia into a State Planning Framework. This framework, which will be amended from time to time, provides a context for decision-making on land use and development in Western Australia and informs those involved in the planning process about the aspects of State level planning policy which are to be taken into account, and given effect, in order to ensure integrated decision-making across all spheres of planning.⁵³
63. Part A of SPP 1 sets out general principles for land use planning and development, which relevantly include the principle that “[p]lanning should recognise the need for and, as far as practicable, contribute towards more sustainable communities by ... integrating land use and transport planning and

⁵² See the draft *Central Metropolitan Perth Sub-regional Strategy*, pp. 78 to 81, 119 and 148 to 149).

⁵³ SPP 1, clauses 2.3 to 2.5.

promoting patterns of land use which reduce the need for transport, promote the use of public transport and reduce the dependence on private cars”.⁵⁴

SPP 3.6

64. SPP 3.6 sets out the principles and considerations that apply to development contributions for the provision of infrastructure in new and established urban areas.⁵⁵ It is unnecessary for present purposes to do more than note that the key principle underlying SPP 3.6 is that the beneficiary pays⁵⁶ and that SPP 3.6’s objectives are:

“to promote the efficient and effective provision of public infrastructure and facilities to meet the demands arising from new growth and development;

to ensure that development contributions are necessary and relevant to the development to be permitted and are charged equitably among those benefiting from the infrastructure and facilities to be provided;

to ensure consistency and transparency in the system for apportioning, collecting and spending development contributions;

to ensure the social well-being of communities arising from, or affected by, development.”

Some observations about the Station

65. Before I turn to the issues, it is convenient that I make some observations about the Station given the importance attached to it by the relevant planning framework.
66. The Station is an all stops station which is proposed to be upgraded by the Public Transport Authority to provide a convenient and optimum transit service suitable for transit oriented developments planned for the area of which the subject land forms a part.⁵⁷ The Station requires an upgrade to bring its standard up to current all stop station standards, including in relation to accessibility improvements, parking and security.⁵⁸
67. The extent and timing of any upgrade by the Public Transport Authority is currently unknown.⁵⁹ However a preliminary masterplan for the Station upgrade was provided by the Public Transport Authority in late 2009 which, like the

⁵⁴ SPP 1, Part A, clause 3(A2)(iii).

⁵⁵ SPP 3.6, clause 2.

⁵⁶ SPP 3.6, clause 2.

⁵⁷ See the Joint Statement of Messrs Bordbar, Vuleta and Veal at [6(iv)] and Mr Mackay’s statement at [9.2].

⁵⁸ Statement of Mr Vuleta at [29].

⁵⁹ As Mr Vuleta observes in his witness statement at [40].

Review and the draft Framework, assumes that the Burswood Dome will be demolished.⁶⁰

68. The Public Transport Authority was invited to comment on the Variation request. It did so by a letter dated 11 March 2009 which was in the following terms:

“The PTA has no objections to the variations to the structure plan which essentially deal with density, plot ratio, site area, car parking and building height. These variations have limited, if any, impact on the operational aspects of the railway. It is anticipated that the Transport section of DPI will provide comment on the parking provisions, in the context of transit oriented development principles.

The proposed development application for [the subject land] would, however, have a bearing on future development of [the Station]. The PTA has identified a general station arrangement for the station redevelopment. The current proposal is broadly consistent with the required station footprint.

Access to the station western forecourt under the PTA’s preferred option will require access via ... Lot 9525. The proposed development application has been based on no development of Lot 9525 on the land required for the station western forecourt, but a land exchange process needs to be put in place for the transfer of the subject land to the PTA. The PTA would also seek a condition that would limit the use of the forecourt for pedestrian uses only and no vehicle access.

The PTA would also like to raise the following issues relevant to the proposal, noting that many of the issues will be considered at development application stage:

1. Noise and vibration impacts from railway operations will need to be ameliorated. There are a number of options which can be used to limit the impact of noise and vibration on adjacent residential developments, and many of these have been considered by [the Applicant]. The PTA will require an early agreement on the type and funding of treatments to be used, and how noise and vibration is identified on titles.
2. Developer contributions are critical to the redevelopment/upgrading of the station. The PTA would seek developer contributions towards the station upgrade, though it is understood that a developer contributions model for the Burswood area remains to be finalised.
3. The PTA would also like to raise the issue relating to the safety and design of the precinct. The area is extremely close to Burswood station and PTA would require the principles of Crime Prevention through Environmental Design implemented in the development.

Overall the proposal submitted by [the Applicant] is consistent with PTA’s requirements for a station footprint. The concerns mentioned in this letter must be resolved before PTA will give final approval to the development proposed by [the Applicant] if they decide to formally proceed with the development application.”

⁶⁰ The Department’s advice at [13], [28] and Attachment H.

THE ISSUES

The relevant planning framework and the issues

69. It should be apparent from the above that the planning constraints imposed on the subject land by TPS 1, the Precinct Plan and the Structure Plan are out of step with the planning trends identified by relevant planning documents including the Review and the draft Framework. The Review and the draft Framework emphasise the strategic significance of the land identified by the draft Framework as the Burswood Station Precinct including Burswood station west, of which the subject land forms a part.⁶¹ That significance arises from a number of factors which become apparent when regard is had to the Applicant's helpful description of the subject land's locality in the Applicant's statement of issues, facts and contentions:

"The [subject land] is located within close proximity to:

- (a) the Burswood Peninsula comprising:
 - (i) substantial existing residential development, including two-storey townhouses and a number of high-rise residential towers located within the Burswood Lakes development;
 - (ii) a number of community and other facilities, including:
 - (A) [the Station];
 - (B) Burswood Peninsula foreshore;
 - (C) Burswood Entertainment Complex (Casino, Convention Centre and Hotels) including restaurants and other public eating facilities;
 - (D) Burswood Park Golf Course;
 - (E) State Tennis Centre (Tennis West);
 - (F) Belmont Racecourse; and
 - (G) Burswood Water Sports Centre.
 - (iii) significant other future development sites, including:
 - (A) the Springs development located to the north-east of the Graham Farmer Freeway, the plans for which propose high residential densities ranging from Residential R100 to Residential R160. In particular, the site located on the corner of Great Eastern Highway and Graham Farmer Freeway is proposed to be developed at Residential R250 (mixed commercial and residential), with some towers being 24 storeys in height; and
 - (B) Belmont Racecourse, which is a significant landholding on the Burswood Peninsula, and is currently used for

⁶¹ See also the Department's advice at [16], which notes that in the context of Directions 2031, SPP 1, SPP 3 and DC 1.6, the subject land is deemed to be of strategic significance, particularly on account of its close proximity to the Station.

recreational purposes. The development of this strategic site has been under consideration for some time, and it is understood that a current concept is being advanced that allows for significant residential and other forms of development;

- (b) existing public bus services along Great Eastern Highway;
- (c) the Perth CBD, the Swan River, Graham Farmer Freeway and Great Eastern Highway;
- (d) the Belmont regional centre, the district centres of Victoria Park, East Victoria Park and Bentley and neighbourhood centres including those in Archer Street, Lathlain Place, Orrong Road/Archer Street, Carlisle and Tuckett/Oats Street; and
- (e) four major industrial/commercial areas that provide significant employment opportunities, including the areas of Welshpool/Carlisle, Belmont, the Burswood Road Commercial Area and an area east of the [subject land] located between Goodwood Parade and the Graham Farmer Freeway.

The [subject land] is also located directly adjacent to Lot 50 Victoria Park Drive owned by the Public Transport Authority (PTA Land). The PTA Land is effectively 'landlocked' with it having no street frontage to Victoria Park Drive.⁶²

- 70. The subject land's proximity to the Station acquires particular significance in light of the emphasis in regional planning documents upon transit oriented development, which is picked up by the Review's and the draft Framework's emphasis upon the Station.
- 71. However, the Review and the draft Framework both identify the need for further structure planning and investigations, relevantly focused upon the Station and the land surrounding it. The regional planning documents also assume that appropriate planning will take place to give effect to the policy directions they set.⁶³
- 72. Until recently, there was minimal progress in the necessary structure planning. This has led the Applicant to express the views that, amongst others:
 - (a) the established local planning framework, including the Precinct Plan and the Structure Plan, are outdated and severely limit the development potential of the subject land for appropriate high-density residential and mixed-use development that maximises the opportunities associated with their locations;⁶⁴

⁶² The Applicant's statement of issues, facts and contentions ("SIFC") at [3] to [4].

⁶³ See the Department's advice at [17] to [18].

⁶⁴ The Variation request, p. iv.

- (b) the delays in structure planning and the uncertainty about the fate of the Burswood Dome cannot justify imposing a moratorium upon, or hold up indefinitely, the development of strategic sites such as the subject land;⁶⁵
 - (c) the Variation provides for a level of development that is considered more appropriate for the subject land's strategic location and in light of current planning directions.⁶⁶
73. I have already accepted that the established local planning framework is out of step with current planning trends, at least in so far as it affects the subject land. I am also sympathetic to the proposition that delays in structure planning or uncertainty about the fate of the Burswood Dome should not be permitted to create a *de facto* development moratorium or delay indefinitely the development of the subject land. Moreover, I accept that the level of development identified by the Variation is more consistent with regional and local planning trends than that currently permitted under TPS 1, the Precinct Plan and the Structure Plan.
74. However, it does not follow that the Variation should be approved. The Applicant seeks approval of the Variation, which affects part of a strategically significant area and is itself an exercise in structure planning,⁶⁷ before the comprehensive structure planning and investigations identified by the relevant planning documents as necessary has been completed.
75. Moreover, the necessary structure planning and investigations are now underway. Given the lack of progress and the emphasis which the relevant documents placed upon that work, late last year I requested the Department of Planning ("**the Department**") to make the work a priority, with the aim of preparing a consolidated structure plan for the Burswood Station Precinct by December 2011. The Department and the Town are now conducting the necessary planning and investigations.
76. Having made those observations, I now turn to the issues identified by the parties in their SIFCs.

⁶⁵ The Variation request, pp. 6 and 16. See also, e.g., the Applicant's responsive submissions at [20], [22] and [42].

⁶⁶ The Variation request, p. iv.

⁶⁷ As Mr Mackay correctly observes in his statement at [8.5.1].

The issues identified by the parties in their SIFCs

77. In their SIFCs, the parties identified the following issues as bearing upon the determination of this matter.
- (a) Whether systematic observance of planning procedures and steps is consistent with orderly and proper planning.
 - (b) Whether the strategic planning issues for the relevant area have been resolved.
 - (c) Whether approval of the Variation is presently consistent with orderly and proper planning.
 - (d) Whether I, acting in the public interest, should approve significant variations to the Structure Plan which were the subject of heavy public objections, before the public has had the opportunity to consider and comment upon the draft Framework.
 - (e) Given that the approval of the Variation at this time would facilitate the early approval and carrying out of the developments proposed by the Applicant, whether the present condition of the Station is appropriate to accommodate that development.
 - (f) Whether approval of the Variation at this time is consistent with the achievement of transit orientated design objectives.
 - (g) Whether there is justification in the public interest to fast track the Applicant's development intentions by approving significant variations to the Structure Plan before strategic planning issues in the area have been resolved.
 - (h) Whether approval of the Variation at this time is premature.
78. Based on the material I have received, issues (a) and (b) are not in dispute.
- (a) Both of the expert planning witnesses agreed that the systematic observance of planning procedures and steps is consistent with orderly and proper planning,⁶⁸ as it plainly must be. Consequently, issue (a) must be answered in the affirmative. However, as the differences between the experts illustrate,⁶⁹ that does not take the matter very far.
 - (b) Both of the expert planning witnesses also agreed that:

⁶⁸ Joint Witness Statement of Expert Planning Witnesses at [8.9.1] and [8.9.4].

⁶⁹ Ms Lavery emphasised the need for resolution of the strategic planning issues and detailed structure planning for the area, while Mr Casselton referred to the steps involved in seeking formal variations of the Structure Plan: see the Joint Witness Statement of Expert Planning Witnesses at [8.9.1] and [8.9.4].

“the strategic planning of the broader Burswood Peninsula area is presently incomplete including the area immediately around the Land. These strategic planning processes are likely to result in alterations to planning requirements and allowances in the area around the Burswood Train Station including the [subject land].”⁷⁰

Consequently, issue (b) must be answered in the negative.

79. Issue (d) has fallen away because submissions have been sought from the public on the draft Framework.
80. The other issues are really concerned with timing – that is, whether the Variation should be approved while the strategic planning issues for the relevant area remain unresolved. Indeed, the Town in its responsive submissions has said as much:

“A dominant theme that runs through the Applicant’s Submissions is emphasis upon the merits of the Applicant’s indicative development proposal. The indicative development proposal in that context is presented as if it was an application for development approval. However, the matter does not involve an application for development approval, and it is not the Respondent’s case that the Applicant’s proposal lacks merit on that basis. It is simply inappropriate to deal with the indicative development proposal as if it was a development proposal requiring approval, and it is simply too early to make an evaluation at this time as to whether or not the development has merit in the broader strategic planning context. That is the gist of the Respondent’s case, and it is a point deeply rooted in the requirements of orderly and proper planning.”⁷¹

81. Without necessarily accepting the Town’s characterisation of the Applicant’s case, the Town’s position is clearly that it is impossible to assess the Variation’s merit until the broader strategic planning context has been settled. Consequently, the Town’s focus is upon what it says is the prematurity of the Variation and the inconsistency which it says exists between orderly and proper planning and approving the Variation before the broader strategic planning context has been settled.

The issues identified by the expert planning witnesses

82. The expert planning witnesses took a slightly different approach to the issues, which the Applicant essentially followed in its primary submissions. The issues were identified by the expert planning witnesses as follows:
- (a) whether the approval of the Variation at this time is premature;
 - (b) further investigations and planning required;
 - (c) maintenance of views and view corridors;
 - (d) built form;

⁷⁰ Joint Witness Statement of Expert Planning Witnesses at [6.6].

⁷¹ The Town’s responsive submissions at [1.1].

- (e) inequity in dealing with other proposals;
 - (f) prejudicing consideration of other nearby and adjacent proposals;
 - (g) prejudice to the potential of transit oriented development;
 - (h) developer contributions; and
 - (i) orderly and proper planning.
83. Once again, the notion of prematurity features, both expressly and implicitly, in the issues which have been identified. However, these issues extend beyond the question of whether the Variation is premature to the separate question of whether, if approval of the Variation would not be premature, it would otherwise be appropriate to approve the Variation.

My approach to the issues

84. I have before me the Variation request, which as a proposed amendment to the Structure Plan is itself an exercise in structure planning. I must consider the application while structure planning and further investigations identified as necessary by the Review and more particularly the draft Framework are currently underway. If I approve the Variation, in effect I will be permitting structure planning for the subject land to be completed independently of the structure planning for the area of which it forms a part, albeit that the Variation has been prepared having regard to anticipated outcomes flowing from the Review. If I refuse to approve the Variation, development on the subject land will either be sub-optimal or have to await completion of the planning contemplated by the Review and the draft Framework.
85. Given the above, I address the issues under the following headings.
- (a) Whether approval of the Variation would be premature having regard to:
 - (i) the commencement but non-completion of the structure planning and investigations identified as necessary by the Review and, more particularly, by the draft Framework; and
 - (ii) the planning and investigations underlying the Variation request, including work done for earlier planning documents.
 - (b) Assuming that approval of the Variation would not be premature, whether the Variation should otherwise be approved.

Would approval of the Variation be premature?

86. On the face of the relevant planning documents, approval of the Variation would be premature. I have set out above the statements in both the Review and the draft Framework to the effect that further planning and investigations are required for the land around the Station of which the subject land is a part. I have also noted the expectation in the relevant regional planning documents that appropriate planning will occur to give effect to the directions they set.
87. The required planning and investigations are underway, but not yet completed. Why wouldn't it be premature to approve the Variation in light of those facts? The Applicant makes several submissions which address this question and essentially advance the following propositions, based upon the evidence of their expert witnesses.⁷²
- (a) The subject land is capable of being developed sub-optimally under the Structure Plan in its current form.⁷³
 - (b) The Variation is consistent with relevant regional planning documents, the Review and the draft Framework, particularly in relation to the encouragement of transit oriented developments, and would lead to several desirable outcomes.⁷⁴
 - (c) The Structure Plan, the Review, the draft Framework and the Variation request collectively provide an adequate and sufficient overview and consideration of the matters required to be contained and addressed in a structure plan, pursuant to clause 29AB of TPS 1.⁷⁵
 - (d) The Variation provides the detail required for a structure plan, including in relation to development standards and controls and the effect of development authorised by the Variation on the progressive development of the locality, so that:

⁷² In particular, in the context of prematurity, the evidence of the Applicant's expert planning witness, Mr Casselton. Examples of where Mr Casselton's evidence can be found in the Joint Witness Statement of Expert Planning Witnesses are provided in footnotes to my summary of the submissions in this paragraph of my reasons. Of course, his evidence also appears in his witness statement and reference is made in my consideration of the submissions to other evidence and material as necessary. The omission of reference to some part of any witness's evidence should not be taken to mean that I have not read or considered that evidence.

⁷³ The Applicant's primary submissions at [1], [46] and [67]. See also the Applicant's responsive submissions at [13], [25] and [32(a)(i)] and the Joint Witness Statement of Expert Planning Witnesses at [8.1.7], [8.1.8], [8.4.5], [8.6.2] and [8.9.7].

⁷⁴ The Applicant's primary submissions at [3] to [7], [64] to [66] and [68]. See also the Applicant's responsive submissions at [8] to [9], [12], [17(b)] and [38] and the Joint Witness Statement of Expert Planning Witnesses at [8.1.5], [8.7.2] and [8.9.8].

⁷⁵ The Applicant's primary submissions at [8] and [9]. See also the Applicant's responsive submissions at [33] and the Joint Witness Statement of Expert Planning Witnesses at [8.2.3] and [8.2.5].

- (i) the Variation will provide the necessary guidance and certainty in respect of the development to occur on the subject land;
 - (ii) approval of the Variation would not prejudice progressive development of the locality; and
 - (iii) the process under TPS 1 and the Precinct Plan for amending the Structure Plan in accordance with the Variation is appropriate.⁷⁶
- (e) The Precinct Plan expressly contemplates amendments and alterations to, and significant departures from, the Structure Plan.⁷⁷
- (f) The subject land is distinguishable from other land in the locality in a way which favours its development in advance of other land in the vicinity and prior to the completion of the structure planning and investigations identified by the Review and the draft Framework because:
- (i) the current planning framework allows for significant alterations to the Structure Plan;
 - (ii) the subject land is in close proximity to the Station;
 - (iii) the subject land has a unique locational relationship with the central area of developed land in the Structure Plan Area;
 - (iv) the subject land comprises a relatively isolated development node because it is located adjacent to:
 - A. the Burswood Lakes development but separated from it by Bow River Crescent and the Burswood Entertainment Centre by the Burswood Dome site, in respect of Lot 9 and on the western side of Victoria Park Drive; and
 - B. the Station site and the Perth to Armadale railway line in respect of Lot 9525 and on the eastern side of Victoria Park Drive;
 - (v) there is already an established road network servicing the subject land and the immediate locality that is unlikely to be changed by the diversion, or otherwise, of those roads;
 - (vi) sufficient planning for the upgrade of the Station has been undertaken to satisfy the Western Australian Planning Commission

⁷⁶ The Applicant's primary submissions at [12] to [14] (and, by reference, the paragraphs of the Applicant's primary submissions referred to at [14]) and the Joint Witness Statement of Expert Planning Witnesses at [8.1.5], [8.1.6] and [8.2.3] to [8.2.6].

⁷⁷ The Applicant's primary submissions at [2] and [11] and the Joint Witness Statement of Expert Planning Witnesses at [8.1.4].

(“the Commission”) and the Department that the Variation is unlikely to prejudice the future upgrade of the Station;

(vii) it does not impact on the connectivity and access points between the development sites as depicted in the draft Framework, which are entirely unaffected.⁷⁸

(g) The Town approved development within the Goodwood Parade area to a higher density and building height than contemplated by the Precinct Plan or the Structure Plan, even though the structure planning and investigations identified as necessary by the Review and the draft Framework had not been done, by relying upon the discretionary provisions of clause 38 of TPS 1 and the relevant precinct plan.⁷⁹

(h) The Commission and the Department support approval of the Variation.⁸⁰

88. I address each of these propositions in turn.

Sub-optimal development

89. I accept that development of the subject land consistently with the constraints currently imposed by the Structure Plan would result in a sub-optimal development, when viewed against the direction set by the regional planning documents, the Review and the draft Framework. However, there appears to be no serious suggestion that a development application will be made along these lines.⁸¹ Moreover, if such a development application was made, approval may not be given, despite consistency with the Structure Plan as it currently stands, in light of the direction set by the regional planning documents, the Review and the draft Framework and the fact that structure planning is underway.⁸²

90. Consequently, I do not accept that the possibility of sub-optimal development taking place advances the case for approving (or indeed refusing to approve) the Variation.

⁷⁸ The Applicant’s primary submissions at [41]. See also the Applicant’s responsive submissions at [15(a)] and the Joint Witness Statement of Expert Planning Witnesses at [8.1.5], [8.5.3] and [8.6.2].

⁷⁹ The Applicant’s primary submissions at [10] and the Joint Witness Statement of Expert Planning Witnesses at [8.1.4], [8.1.6] and [8.9.5].

⁸⁰ See for example the Applicant’s responsive submissions at [45(a)(ii)(H)].

⁸¹ I do not take the Applicant’s responsive submissions at [25] to be such a suggestion and no evidence has been led on behalf of the Applicant to the effect that the Applicant intends to make such an application if the Variation is refused.

⁸² See for example *Nicholls v Western Australian Planning Commission* (2005) 149 LGERA 117; [2005] WASAT 40.

The Variation is consistent with regional and recent local planning documents and would lead to desirable outcomes

91. As I have noted above, I accept that the development which the Variation would authorise is more consistent with current planning trends than the development which the Structure Plan currently authorises. It follows that the development which the Variation would authorise could lead to some desirable outcomes, such as in relation to transit oriented development.⁸³ There is unanimous agreement about the desirability of transit oriented development and I have noted the evidence of Professor Peter Newman that the Variation significantly enhances the ability to deliver a meaningful transit oriented development because it increases residential density in the area closest to the Station. I have also noted the evidence of Mr Malcolm Mackay that the Variation corresponds well to the characteristic of transit oriented development and his view that the Variation will not prejudice the ability to deliver a transit oriented development outcome. However, the structure planning and investigations which are currently underway are identified by the draft Framework as being a necessary part of ensuring that the potential of the area is maximised.
92. Given the strategic significance of the area, it would be contrary to the public interest to approve the Variation before the completion of the structure planning and investigations which are underway. I take this view even though the Variation is more consistent with the regional planning documents, the Review and the draft Framework than the Structure Plan and may thereby lead to some desirable outcomes. Refusal to approve the Variation will not mean that those desirable outcomes can never be attained. On the contrary, those desirable outcomes can be secured at a later date, but with the greater coordination and certainty which the ongoing structure planning and investigations will provide and the increased prospect that the potential of the area will be maximised. It is therefore appropriate to await the outcome of the structure planning and investigations and the subject land's potential for transit oriented development will not be compromised by so doing.

⁸³ Provided, amongst other things, that the Station is upgraded. I note in this regard the difference of opinion between Mr Casselton, who emphasises the need to increase population density near the Station to justify the upgrade, and Ms Lavery who is concerned that inserting a significant residential population near the Station without any commitment about the fact or timing of an upgrade may result in the new residents developing the habit of relying on cars which could be hard to break.

Adequacy of investigations

93. The Applicant submits that the Structure Plan, the Review, the draft Framework and the Variation request collectively provide an appropriate and sufficient overview and consideration of the matters required to be contained and addressed in a structure plan. The Applicant also emphasises the fact that the Variation request was accompanied by a geotechnical investigation, a feasibility analysis and a traffic analysis.
94. This submission reflects the evidence of Mr Casselton, the Applicant's expert planning witness. Mr Casselton's evidence is relevantly that:
- (a) the existing planning instruments and strategic planning studies provide a detailed overview and consideration of servicing requirements and other matters relevant to the subject land;⁸⁴
 - (b) while not being determinative in isolation, the increased existing services capacity due to the likely underdevelopment of the remainder of the Structure Plan Area provides an increased degree of comfort that the future development of the subject land which the Variation would authorise can be readily serviced;⁸⁵
 - (c) to the extent that the previous studies may be outdated, this has been addressed through the level of detailed information supplied with the Variation request;⁸⁶ and
 - (d) servicing issues associated with other future development sites within proximity to the subject land and the wider Burswood Peninsula area is a matter that will need to be considered and accounted for in due course but should not be used as an excuse to hold up the development of land which is already the subject of the Structure Plan.⁸⁷
95. The evidence of Ms Lavery, the Town's expert planning witness, is to the contrary. Ms Lavery considers that further investigations are required because the submission is based on outdated information and does not deal with the cumulative effect of intensifying other similar lots in proximity to the Station.⁸⁸ Ms Lavery also disagrees that comfort can be drawn from the likely underdevelopment of the remainder of the Structure Plan Area and does not

⁸⁴ Joint Statement of Expert Planning Witnesses at [8.2.3].

⁸⁵ Joint Statement of Expert Planning Witnesses at [8.2.4].

⁸⁶ Joint Statement of Expert Planning Witnesses at [8.2.5].

⁸⁷ Joint Statement of Expert Planning Witnesses at [8.2.6].

⁸⁸ Joint Statement of Expert Planning Witnesses at [8.2.1].

accept that the subject land is unique so that it would not set a precedent for the balance of the Station transit oriented development area.⁸⁹

96. I do not accept that the Applicant can rely upon the work done in connection with the Structure Plan, the Review or the draft Framework to establish that sufficient investigation has occurred to support approval of the Variation. The work for the Structure Plan was done, at least for the most part, in 2002⁹⁰ and was directed to a different proposal, particularly in relation to the subject land. The investigations for the Review were limited and a number of additional investigations and assessments were identified in the Review as being required. Similarly, the draft Framework expressly contemplates further investigations being undertaken to more accurately understand the implications of redeveloping Burswood station west for intensive urban use as well as in relation to Burswood station east.
97. It might be said that this is to take too broad a view of the investigations that are required, either because the further investigations identified by the Review and the draft Framework do not bear upon whether the Variation should be approved or because the scope of investigation should be determined by reference to clause 29AB(6) of TPS 1. However, it is important to bear in mind that the Variation proposes an amendment to the Structure Plan and is itself an exercise in structure planning.
98. As I have already observed, the structure planning and further investigations identified as necessary by the draft Framework are currently underway. Moreover, the focus of strategic planning in relation to the subject land has shifted from the Structure Plan Area to the Burswood Station Precinct and especially, for present purposes, Burswood station west. The investigations which must be done in order to support approval of the Variation should reflect that shift in focus and not be determined in isolation from it. When viewed in proper context, the work that has been done in connection with the Structure Plan, the Review and the draft Framework is insufficient to support approval of the Variation. Moreover, the work that has been done in connection with the Variation request itself is insufficient when viewed in that context.
99. I do not accept that reliance should be placed upon the underdevelopment of the remainder of the Structure Plan Area. It remains to be seen what effect, if any,

⁸⁹ Joint Statement of Expert Planning Witnesses at [8.2.1] and [8.2.2]. I will discuss the extent to which the subject land is unique below.

⁹⁰ *Burswood Lakes Structure Plan & Precinct Plan Amendment*, p. 17.

the findings of the ongoing structure planning and investigations will have upon that land. Further, there is always the risk, to which the Applicant has pointed in respect of the subject land, that underdeveloped land in the remainder of the Structure Plan Area will be developed to the level contemplated by the Structure Plan.

100. I also do not accept the proposition that reference to servicing issues associated with other future development sites near the subject land or in the wider Burswood Peninsula area should be characterised as an excuse to hold up the development of land which is already the subject of the Structure Plan. To accept that proposition would be inconsistent with the shift in focus of strategic planning to which I have referred. Moreover, the Applicant relies heavily upon the subject land's proximity to the Station, and the planning consequences which may be expected to flow from that proximity, to support the Variation. Yet the Station does not fall within the Structure Plan Area. Nor do many other sites which are close to the Station and are identified as falling within Burswood station west and east by the draft Framework. It is inconsistent to rely on the one hand upon proximity to the Station (which thereby makes relevant the subject land's inclusion within Burswood station west) to support the Variation while asserting on the other, in effect, that many of the servicing issues which will be associated with redevelopment in Burswood station west and east should be considered and accounted for "in due course" but without holding up development of land in the Structure Plan Area.
101. As to the work which has been done specifically for the Variation request, I note that the Variation request was accompanied by, amongst other reports, a feasibility analysis by Wood and Grieve Engineers, a geotechnical investigation by Golder Associates and a traffic analysis by Transcore. However, the work is concerned solely with the subject land or the impact which the development the Variation authorises could have, without reference to the cumulative effect of that development and other development in the area.⁹¹ As I have noted above, that is insufficient given that the Variation is an exercise in structure planning which the Applicant wishes to have approved in advance of the other structure planning currently being undertaken which is concerned with the subject land and its area.

⁹¹ See the Variation request at Appendices K to P. See also the statements of Mr Vuleta at [38] to [53] and of Mr Veal at [36] and [51] to [54].

102. The focus upon the subject land in the work done specifically for the Variation request is reflected, to take the example of traffic and parking issues, in the witness statements and joint statement of Messrs Bordbar, Vuleta and Veal. The witnesses are unanimously of the view that:
- (a) more work is needed to demonstrate whether or not the proposed level of parking supply for the subject land is adequate and would not negatively impact on the surrounding areas;
 - (b) the details of other future developments in the area including the redevelopment of the Burswood Dome site is unknown at this stage as are the potential traffic and parking impacts on the Burswood Peninsula; and
 - (c) the forecast volume of traffic from the proposed development as presented in the Transcore report would not present major capacity issues on Victoria Park Drive *in isolation*.⁹²
103. There is plainly uncertainty about whether the level of parking contemplated by the Variation request will be sufficient even if the potential for other development in the area is not taken into account. This uncertainty is undesirable given the known parking problems in the area. But even if that issue should be left to be dealt with at the development application stage (and I do not accept that it should), it would not be in the public interest to approve the Variation when it could authorise development whose impact upon future development and infrastructure which might be supported by the structure planning and investigations contemplated by the draft Framework is unknown. That observation is applicable to traffic and parking issues and to wider concerns.

*The Variation provides the required detail and
the necessary guidance and certainty in respect of development*

104. It is unnecessary for me to determine whether the variation provides the detail required for a structure plan under TPS 1 and the Precinct Plan or whether the revisions to figures 24, 25, 27 and 29 are consistent with the style and level of information in the Structure Plan. As I have said above, the Variation must be assessed in light of the current state and focus of strategic planning.
105. I can accept the Applicant's submission that, if approved, the Variation will provide the necessary guidance and certainty in respect of development on the

⁹² Joint Statement of Messrs Bordbar, Vuleta and Veal at [6(viii) and (x)].

subject land. However, I cannot be satisfied that the guidance and certainty which the Variation would provide would be appropriate while strategic planning issues for the area remain unresolved. The Variation request itself acknowledges that it “is premised on the [Review] ... recommendations and *anticipated outcomes* of the DPI Burswood Peninsula Project.”⁹³ It is better to await than anticipate the outcomes of the current structure planning and investigations, which flow from the Review and the draft Framework.

Approval of the Variation would not prejudice progressive development of the locality and the process under TPS 1 and the Precinct Plan is appropriate

106. As I have noted above, the Precinct Plan requires that subdivision or other development be generally in accordance with the Structure Plan, but permits approval of a significant departure from or alteration to the Structure Plan if the proposed departure or alteration will not prejudice progressive development of *the area, the subject of the Structure Plan*. There is some ambiguity about whether this provision is concerned with formal amendments to the Structure Plan,⁹⁴ but I assume for the sake of addressing the submission that it is.
107. As I have noted above, the focus of structure planning as it touches the subject land has shifted from the Structure Plan Area to the Burswood Station Precinct and, most relevantly for the subject land, Burswood station west. In light of this shift, when I consider the Variation, which as I have observed is an exercise in structure planning, it is important to consider the effect of the Variation on more than just the Structure Plan Area. Consequently, the Precinct Plan requirement in relation to prejudice to progressive development is too narrow.
108. I do not take the Applicant to have adopted so narrow an approach and I note that its submissions have not been confined to the effect of approving the Variation on the Structure Plan Area.⁹⁵ However, the narrowness of the Precinct Plan requirement reflects a broader difficulty in accepting the Applicant’s submission that the process under TPS 1 and the Precinct Plan for amending the Structure Plan in accordance with the Variation is appropriate.
109. That submission is based upon the premises which are set out in the Applicant’s primary submissions at paragraph 14(a) to (j). As to those premises:

⁹³ The Variation request, p. 80.

⁹⁴ An ambiguity noted in the Variation request, p. 38.

⁹⁵ See for example the Applicant’s primary submissions at [14(j)].

- (a) I have already addressed paragraph 14(a),⁹⁶ (c),⁹⁷ (e)⁹⁸ and (g)⁹⁹ above;
- (b) in relation to the premises which are based upon or derive from the indicative development concepts (at paragraph 14(b), (d), (h) and (i)):
 - (i) it is common ground between the relevant experts that they are indicative and that development authorised by the Variation may be different;¹⁰⁰
 - (ii) it is also common ground between the experts that development which could be authorised by the Variation but not conform to the indicative development concepts may have some detrimental outcomes, although they differed about the nature and extent of those detrimental outcomes;¹⁰¹
 - (iii) to the extent that they are concerned with the interaction of development on the subject land with other land and development in the area, they must be based upon the anticipated rather than the actual outcomes of the ongoing structure planning and investigations for the area and, to a considerable extent, the anticipated rather than actual development in that area; and
 - (iv) while they may provide a level of comfort that appropriate outcomes can be achieved if the subject land is developed in accordance with the indicative development concepts and the assumptions about future development in the area are correct, they can be taken no higher than that;
- (c) the appropriate level of developer contributions (paragraph 14(f)) cannot be known until structure planning and investigations are complete and it is desirable to await the outcomes of the structure planning and investigations rather than to adopt the narrower approach to developer contributions adopted by the Applicant¹⁰² (as to which I make some further observations below); and
- (d) I accept that clause 38 of TPS 1 would continue to apply to areas surrounding the subject land (paragraph 14(j)), but:

⁹⁶ Consistency with future planning outcomes for the area.

⁹⁷ The developments standards and controls are prescribed.

⁹⁸ Transit oriented development.

⁹⁹ Traffic and parking.

¹⁰⁰ See in this regard the Built Form and Urban Design Experts Joint Statement at [4]. See also the Department's advice at [44].

¹⁰¹ See the Built Form and Urban Design Experts Joint Statement at [5] to [8].

¹⁰² See the Applicant's primary submissions at [50].

- (i) that merely goes to the Town's power to approve certain non-complying applications rather than to any other effects of the Variation; and
 - (ii) addresses sites individually rather than in the coordinated way which should be fostered by structure planning.
110. Both the Station and the fate of the Burswood Dome are important elements in structure planning for the area of which the subject land forms a part. I am troubled by the notion that an amendment process for a Structure Plan that does not even include the Station or the Burswood Dome within the Structure Plan Area is the appropriate vehicle for addressing all relevant issues, particularly when the most recent planning documents (and especially the Review and the draft Framework) specifically contemplate structure planning for a precinct which includes the Station, the Burswood Dome and the Burswood Entertainment Complex.
111. The appropriate vehicle for finalising strategic planning in relation to the Burswood Station Precinct and, most relevantly, Burswood station west is not an amendment to the Structure Plan, but the completion of the structure planning and investigations contemplated by the draft Framework. While the outcome of that work may identify a need to amend the Structure Plan, amendments to the Structure Plan should not operate as a substitute for the ongoing structure planning and investigations which are directed to Burswood station west and east.

The Precinct Plan expressly contemplates amendments and alterations to, and significant departures from the Structure Plan

112. The fact that the Precinct Plan expressly contemplates amendments and alterations to, and significant departures from the Structure Plan does not advance the case for approving (or indeed for refusing to approve) the Variation. Moreover, for the reasons set out above, amendments to the Structure Plan (which is primarily concerned with the Structure Plan Area) are not the appropriate vehicle for finalising strategic planning in relation to the Burswood Station Precinct and, most relevantly, Burswood station west. While the outcome of the ongoing structure planning and investigations may identify a need to amend the Structure Plan, the most appropriate vehicle is the structure planning identified as being required by the draft Framework.

The subject land is distinguishable from other land in a way which favours its development in advance of other land and the required planning and investigations

113. I do not accept the Applicant's submission that the subject land is distinguishable from other land in a way which favours its development in advance of other land and the ongoing structure planning and investigations.
114. Neither the fact that the current planning framework allows for significant alterations to the Structure Plan nor the subject land's proximity to the Station support the submission. The focus upon the Station, which does not fall within the Structure Plan Area, only serves to emphasise the importance of the current structure planning process for the Burswood Station Precinct in comparison to the Structure Plan when it comes to engaging in the strategic planning that will affect the subject land and the rest of the Burswood Station Precinct (and especially, in relation to the subject land, Burswood station west).
115. I take the Applicant's submission that the subject land has a unique locational relationship with the central area of developed land in the Structure Plan Area to be a reference to the Department's advice that "the subject lots have a unique locational relationship with the central area of developed land in the ... Structure Plan as they are located in the southern extremity of the [Structure Plan Area] and almost appear as an appendage to it."¹⁰³ The Department makes this observation to support its view that approving the Variation is unlikely to create an undesirable precedent for other alterations to structure plans for other undeveloped lots in the locality.¹⁰⁴ Whether or not this is the case, I consider that the focus should properly be upon the Burswood Station Precinct rather than the Structure Plan Area for the reasons I have given above.
116. I do not accept that the subject land comprises a relatively isolated development node. It has not been identified or treated in that way by the Review and the draft Framework and it is adjacent to the Burswood Dome site and the Station, which are critical sites for the purpose of strategic planning for the area.
117. The established road network is common to more than the subject land and whether any change to the network will be required should become clear once structure planning has been completed (as contemplated by the draft Framework).¹⁰⁵ The connectivity and access points depicted in the draft

¹⁰³ The Department's advice at [112].

¹⁰⁴ The Department's advice at [112].

¹⁰⁵ The draft Framework, p. 14. The effect of uncertainty about the treatment of the road network is reflected in the evidence, to take one example, of Mr Bordbar who is of the view that Victoria Park

Framework should also be assessed in light of the outcome of structure planning.

118. As to the views of the Commission and the Department, I will address them below. However, I note that only limited support for the Variation can be drawn from the Public Transport Authority's comments on the Variation. Those comments note that the Variation would have limited, if any, impact on the operational aspects of the railway. However, they do not extend to broader planning matters, except to identify matters that would need to be addressed before the Authority would support the development contemplated by the Variation. Those matters include the issue of developer contributions, about which I make some observations below. Moreover, the relevant planning framework identifies the need for additional structure planning, including in relation to the Station.

The Town's development approvals in the Goodwood Parade area

119. I accept that development has been approved in the Goodwood Parade area which did not comply with relevant planning standards but was supported by reference to the Review. Ms Lavery's evidence is that those approvals are distinguishable from the development which the Variation would authorise because they did not exceed the applicable plot ratio provisions.¹⁰⁶ Mr Casselton does not dispute that the Goodwood Parade approvals did not exceed plot ratio provisions, but says that this is not determinative because plot ratio is an extremely crude planning instrument in terms of guiding built form bulk and scale and is readily manipulated.¹⁰⁷
120. The Applicant relies upon the development approvals in the Goodwood Parade area to question the Town's position that the detailed structure planning and investigations which are now underway should be completed before the Variation is approved.¹⁰⁸ I am not persuaded that the existence of a power to

Drive could accommodate traffic from the subject land developed in accordance with the Variation as well as any future traffic generated by developments within the Peninsula if it is a dual divided carriageway, but its capacity to accommodate traffic as a single divided carriageway would depend upon the nature of other developments within the Peninsula: see Mr Bordbar's statement at [4.1] to [4.3]. The Variation contemplates that Victoria Park Drive will be narrowed down to a single lane in each direction in the vicinity of the subject land: see the Variation request, Appendix K, p. 7, Mr Vuleta's statement at [36] and Mr Veal's statement at [30] and [44] to [46].

¹⁰⁶ Joint Witness Statement of Expert Planning Witnesses at [8.1.2].

¹⁰⁷ Joint Witness Statement of Expert Planning Witnesses at [8.1.6].

¹⁰⁸ See for example the Applicant's primary submissions at [10] and the Joint Witness Statement of Expert Planning Witnesses at [8.1.4].

depart from applicable standards or requirements, or the approvals of development applications in Goodwood Parade (as against strategic planning documents such as the Variation), provide sufficient reason to support the Variation as an exercise in structure planning in advance of the other structure planning currently being undertaken which is concerned with the subject land and its area.

The Commission and the Department's approval of the Variation

121. The Commission has addressed the Variation in a series of resolutions. The first of these resolutions was made on 31 March 2009 after the Applicant sought in principle approval to vary the Structure Plan and resolved to:

- “1. Advise that the proposed variation to the Burswood Lakes Structure Plan is not supported at this time. The variation is considered to be major. Any such major variation should be supported by finalisation of the Burswood Peninsula District Framework.
2. Note the strategic importance of the subject sites and advise that higher density, transit oriented development would be supported through the preparation of detailed planning for the Burswood Central Area in accordance with the principles outlined in the Burswood Peninsula Draft District Framework. It is the Commission's expectation that such detailed planning will address the integration of all land parcels within the Burswood Central area in association with detailed traffic planning and urban design (such as, built form and view maximisation) and should include, but not be limited to, a developer contribution scheme and the incorporation of other uses to support a residential population.
3. Advise that the Commission encourages and supports the timely preparation of local strategic and structure planning for the Burswood peninsula in order to advance the development of the subject sites.”

122. On 25 August 2009, after the Variation request had been formally submitted, the Commission resolved to advise the Town and the Applicant that the Variation was supported but that the following issues required resolution and finalisation:

- (a) my approval of the draft Framework proceeding to exhibition;
- (b) the finalisation of a concept plan for the redevelopment of the Station, including linkages and connectivity;
- (c) establishment of an overall movement network that establishes appropriate pedestrian connections to the Station;
- (d) flexibility being designed into the use of the ground floor and podium levels to accommodate mixed uses;

- (e) review of the traffic report provided by the Applicant to determine whether the Variation would impact upon the overall movement network of the Structure Plan Area; and
 - (f) preparation of a developer contribution framework to guide any scheme amendment to establish developer contribution areas and associated developer contribution plans.
123. On 13 October 2009, the Commission reconsidered the Variation request in light of further information and resolved to:
- “1. Reiterate its support to [the Variation]; and
 - 2. Advise the Town ... and [the Applicant] of its modified resolutions as follows:
 - (a) The WAPC has requested the Minister’s consent to advertise the draft ... Framework. In this regard, the WAPC anticipates that the 60 day public advertisement period will commence towards the end of this year. The WAPC notes that the [draft Framework] does not support further development of the Burswood Station West Precinct until such time as a Structure Plan has been adopted for the Precinct, however, it is acknowledged that there are unique factors relating to [the subject land] that may favour its development in advance of a Structure Plan being adopted over the Burswood Station West Precinct.
 - (b) Sufficient planning for the upgrade of [the Station] has been undertaken to satisfy the WAPC that the proposed variation to the ... Structure Plan is unlikely to prejudice the further station upgrade. Given the above, the WAPC supports [the Variation] subject to [the Applicant] entering into a suitable arrangement with the Public Transport Authority to provide long term pedestrian access to the [S]tation via Lot 9525....
 - (c) [The Variation] should accommodate suitable linkages to [the Station] (as identified on the Concept Plan prepared by the Public Transport Authority for the upgrade of [the Station]) in addition to appropriate traffic management measures along Victoria Park Drive. Should traffic management involve the provision of an at grade pedestrian crossing, it should be acknowledged that the crossing may ultimately be relocated or removed as a result [of] detailed structure planning for the broader Burswood Station West Precinct.
 - (d) Should the proposal proceed to the development application stage, the WAPC advises the Town that it strongly supports the incorporation of employment generating land uses that front and activate the area between [the Station] and Victoria Park Drive.
 - (e) In the event that the Town approves [the Variation], the Town should undertake appropriate investigations to determine whether [the subject land] should be required to pay a developer contribution at the Development Approval stage. Should the Town decide a developer contribution is required,

appropriate statutory mechanisms should be put into place to facilitate the levying of a developer contribution.”

124. As directed, the Department provided its advice to me about the Variation. The advice was also provided to the parties and they have had an opportunity to comment upon it.
125. The Department’s advice is helpfully summarised in its conclusion, which is as follows.

“Issues raised by the WAPC and the Town respectively concerning the [Variation] have been considered against the relevant State and local planning framework and general planning principles. The proposed variation provides for additional residential dwellings and mixed uses on [the subject land] and is generally consistent with State planning policies that promote higher density mixed use development around public transport facilities.

Given the significant scale and nature of [the Variation] and the location of [the subject land] on the edge of [the Structure Plan Area], it would be ideal for the precincts surrounding the subject lots to have structure plans in place, as such plans would constitute important additional elements to the planning framework and [the Variation] and the development scenarios for [the subject land] could be evaluated against them, and they could be of assistance in addressing matters to do with parking, traffic, building heights and views of the Burswood peninsula from various vantage points.

Approval of [the Variation] will have a significant influence on the development of adjoining land, and it could have significant impact on options for development of such land (for example Lot 50 and the area of Burswood Dome site that is adjacent to Lot 9).

However, the proposal is generally consistent with the intent for future planning outcomes for the area as articulated in the ... Review and [the draft Framework], pending favourable consideration by the decision-maker of additional information and modifications to be provided by [the Applicant]....

[The Variation] constitutes a significant alteration to the ... Structure Plan and is at significant variance from the development standards in [the Precinct Plan]. [The Precinct Plan] provides for alterations to the ... Structure Plan, provided the alterations will not prejudice progressive development of the area, the subject of the Structure Plan. It is concluded that approval of [the Variation] would be unlikely to prejudice progressive development of [the Structure Plan Area], pending favourable consideration by the decision maker of additional information and modifications to be provided by [the Applicant]....

Notwithstanding this, any alteration made to the ... Structure Plan to incorporate [the Variation] would be at variance with development standards in [the Precinct Plan] and any alteration raises the need for a Scheme amendment pursuant to clause 47 of TPS 1.

If no subsequent amendment is made to [the Precinct Plan], difficulties may arise at the development approval stage if an application to commence development is made that is consistent with the approved altered Structure Plan, but inconsistent with the development standards provided in the Precinct Plan.”¹⁰⁹

¹⁰⁹ The Department’s advice at [115] to [121].

126. I pause to note that this conclusion does not constitute unqualified support for the Variation. Indeed, the advice notes that it would be ideal for the relevant structure planning to be completed.
127. The Department's conclusion also reflects various concerns expressed in the Department's advice. In this regard and in addition to the matters set out in its conclusion, the Department advises that:
- (a) planning has not reached the stage where it can inform a development contributions scheme and in the absence of structure planning it is not possible to determine the actual proportion of future infrastructure requirements generated by the Variation, but points to some contributions which could be required;¹¹⁰
 - (b) infrastructure contributions are required in respect of future planning of the area around the Station as the dwellings which the Variation would authorise would benefit from future infrastructure upgrades;¹¹¹
 - (c) a definitive answer cannot be given to whether the community and recreational facilities and open space provision in the Structure Plan Area has the capacity or capability to cater for the additional dwellings which the Variation would authorise without further investigation;¹¹²
 - (d) the Applicant's assertion by way of its traffic impact statement that the existing road system should be sufficient to cater for the increased number of residents needs to be properly verified through a comprehensive traffic study by the Applicant which includes the development potential of lots not yet developed within the Structure Plan Area and also the entirety of future development proposals within the Burswood peninsula, without which the submitted traffic impact statement is not considered entirely adequate;¹¹³

¹¹⁰ The Department's advice at [32] to [34].

¹¹¹ The Department's advice at [83] to [85].

¹¹² The Department's advice at [70(b)]. I note that this advice assumes that the development which the Variation would authorise would increase the number of dwellings in the Structure Plan Area from the planned for 1250 to 1540. In his statement at [6.2.19], Mr Casselton asserts that the Town endorsed and accepted a reduction in the maximum density for the Peninsula Development from 1250 to 998 dwellings in February 2009, so that the increased development which the Variation would authorise over the planned for 1250 dwellings is only 38 dwellings overall. If this is correct, then this concern would be much less pressing. However, that would not be enough to change the view I have come to that approval of the Variation would be premature in light of the other matters I have addressed in these reasons.

¹¹³ The Department's advice at [70(c)], [87], [94] and [95].

- (e) the parking issues arising from the Variation need properly to be addressed as an issue in the structure plan making process and have not been so addressed;¹¹⁴
 - (f) based on information presently available, it is not possible to properly determine what effect building development on the subject land which the Variation would authorise might have on the potential view corridors of future high rise building established in the southern portion of the Goodwood precinct, and the absence of structure planning for the area to the east and west of the Station renders it difficult to make a fully considered and informed assessment of the impact that such development might have on potential view corridors;¹¹⁵
 - (g) the existence of a more detailed or finalised master plan for Area B (as identified in the Review) would assist in achieving the best fit between what occurs on Lot 9525 and on other parts of the immediate area of the Station, particularly that on Lot 50, and in ensuring that potential outcomes are not closed out and that best outcomes are achieved in the quest for coordinated and harmonious development.¹¹⁶
128. The additional information and modifications referred to in the Department's conclusion are set out in Attachments K and L to the Department's advice. Of greatest relevance are the requests for a supplementary traffic analysis and clarification on voluntary arrangements for contributions.
129. In relation to the request for a supplementary traffic analysis, the Applicant has submitted that this is more appropriately provided at the development application stage.¹¹⁷ For the reasons I have already given in relation to traffic (and indeed parking), I do not accept that submission. Traffic and parking are important considerations which have not been adequately addressed in the Variation request.
130. In relation to the request for clarification on voluntary arrangements for contributions, the Applicant has submitted that:¹¹⁸

¹¹⁴ The Department's advice at [76] to [79] and [87].

¹¹⁵ The Department's advice at [90] to [93].

¹¹⁶ The Department's advice at [108].

¹¹⁷ The Applicant's primary submissions at [38], [39], [51] to [56] and [62].

¹¹⁸ See also the Joint Witness Statement of Expert Planning Witnesses at [8.8.2] to [8.8.5] which records Mr Casselton's views, which also appear in his statement at [6.8].

- (a) the impact of the level of development proposed by the Variation would require the establishment and implementation of an appropriate and fair developer contribution scheme based on the principles of need, nexus and equity articulated in SPP 3.6;¹¹⁹
- (b) there are barriers to the development and implementation of an equitable and appropriate developer contribution scheme for the primary reason that contributions for the future development of the Station and social and community infrastructure needs cannot be extracted in respect of developments that have already occurred or been approved;¹²⁰
- (c) any developer contribution scheme would need to be all encompassing and not apply to selective sites, areas and developers and if a scheme did not achieve this then the result would be clearly inequitable;¹²¹
- (d) in the absence of a comprehensive, equitable and appropriate developer contribution scheme, the Applicant accepts that the ceding of part of Lot 9525 on the granting of development approval and the making of certain contributions directly associated with the future development of the subject land at the time of development approval would be appropriate and justifiable.¹²²

131. In my view, the formulation and implementation of an appropriate developer contribution scheme is an important element in developing the area of which the subject land forms a part to its maximum potential. The relevant planning documents and the opinion of the Public Transport Authority are to that effect. Approving the structure planning represented by the Variation independently of the wider structure planning for the area will only serve to exacerbate the difficulties in formulating such a scheme.

132. Having regard to the Department's advice and while noting the Commission's position which has evolved over time, I consider that neither the Department's advice nor the Commission's position are sufficient to justify approving the Variation in advance of the completion of the structure planning for the area.

¹¹⁹ The Applicant's primary submissions at [47].

¹²⁰ The Applicant's primary submissions at [48].

¹²¹ The Applicant's primary submissions at [49].

¹²² The Applicant's primary submissions at [50].

Conclusion

133. The Variation is an exercise in structure planning. It falls for consideration at a time when the comprehensive structure planning and further investigations identified as necessary by the Review and the draft Framework are underway. That work is directed to an area of which the subject land forms a part. That area is of strategic significance, as is the subject land itself.
134. As I have noted above, if I approve the Variation I will be permitting structure planning for the subject land to be completed independently of the structure planning for the area of which it forms a part. If I refuse to approve the Variation, development on the subject land will either be sub-optimal or have to await completion of the planning contemplated by the Review and the draft Framework.
135. I have carefully considered the submissions and evidence advanced by the Applicant to support its contention that it would be appropriate to approve the Variation before the completion of the structure planning and investigations contemplated by the Review and the draft Framework. However, I am not persuaded by the Applicant's submissions and evidence, whether taken individually or collectively, that it would be appropriate to approve the Variation.
136. The relevant planning documents and, in particular, the Review and the draft Framework have emphasised the important role that comprehensive structure planning will play in maximising the area's potential, both in relation to transit oriented development and more generally. They have also emphasised the importance of adopting a coordinated approach. Approving the Variation would be inconsistent with those approaches.
137. Moreover, a number of deficiencies have been identified in the information provided to support the Variation, such as in relation to traffic and parking, which flow from their focus upon the subject land and the effect of the Variation when taken in isolation. Even where a more comprehensive approach has been taken, that approach is undermined by the uncertainty about how the area will be developed. The ongoing structure planning and investigations should remove that uncertainty.
138. I accept, as I have said earlier, that what the Variation proposes is more consistent with local and regional planning trends than what the Structure Plan currently permits. However, the desirable outcomes which the Variation would

foster will not become unattainable because I refuse to approve it. They will be attained in the context of the greater certainty and coordination which the ongoing structure planning and investigations should bring.

139. In light of the above, I consider that approval of the Variation would be premature.

Should the Variation otherwise be approved?

140. Given my conclusion that approval of the Variation would be premature, it is unnecessary for me to address this issue.

DETERMINATION

141. For the reasons set out above, I determine that the application for approval of the Variation should be refused.



JOHN DAY
MINISTER FOR PLANNING

20 June 2011.