

**ATTACHMENT E**  
**AMENDMENT 50 TO LOCAL PLANNING SCHEME 21**  
**SCHEDULE OF MODIFICATIONS**

<b>No.</b>	<b>Proposed Modification</b>	<b>Reason</b>
1.	That the Amendment be modified to include Lots 139 and 140 (23-25) Lorna Street.	<p>The alternative courses of action by the Council regarding the progress of the Amendment in terms of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, are to support the Amendment without modification, to support the Amendment with proposed modifications or not to support the Amendment.</p> <p>The R60 coding if approved in this locality would reduce the prospect of development above three storeys on the remaining foreshore lots. This coding is not in conflict with the broad urban consolidation objective for the Dunsborough Townsite and continues to reflect the strategic direction for mixed use and higher residential development in this locality. This would reflect the majority of views in submissions and signal the concern about the potential impact of the current R80 coding in this sensitive locality within the current planning framework. Given the constraints associated with developing the remaining lots and the progression of the PSP process this is unlikely to create any negative impact for landowners in the short term. It is recommended therefore that the Council resolve to seek final adoption of the Amendment.</p> <p>The shortcomings of a blanket density code in this sensitive foreshore locality without supporting design guidance have been outlined above and it is recommended that the issue of more detailed analysis of potential development outcomes on the remaining lots be given priority as part of the PSP process or its recommendations for further action.</p> <p>The proposed designation of the R60 coding on Lots 115 and 116 (26-28) Geographe Bay Road, whilst retaining the R80 coding on Lots 139 and 140 (23-25) Lorna Street, is potentially confusing given that</p>

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		<p>the lots are being amalgamated to form one development site, with development approval for one building. In order to reflect a uniform coding over this development site, a modification to the Amendment to R80 or R60 should be required.</p> <p>An R80 coding over the site would indicate the density approved for the apartment development. It would also represent an exception for this significant lot on the Dunsborough foreshore as Lots 81 and Strata Lots 1-9 across Dunn Bay Road and Lots 117- 127 Geographe Bay Road would remain coded R60. It is acknowledged that the site has some unique advantages for the design of a landmark commercial and residential development but a similar case could be argued for redevelopment of the site on the opposite corner of Dunn Bay Road.</p> <p>If the R60 coding proceeds within this amendment, it will not affect the validity of the approval already issued. The development approval remains valid (notwithstanding any down-coding) unless the approval lapses and the development has not been substantially commenced. However, the development approval is the subject of an application for judicial review in the Supreme Court (unrelated to the proposed down-coding) and, depending on the outcome, this may impact on the validity of the approval.</p> <p>Notwithstanding the concerns raised by the owner, it is recommended that the Amendment be modified to include Lots 139 and 140 in the R60 coding to reflect the overarching intention to down-code lots on the Dunsborough foreshore . It is envisaged that the PSP process will provide specific provisions and clearer guidance aimed at protecting the future of this unique foreshore location and this may prompt future amendments to the local planning scheme</p>
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<p>2.</p>	<p>That the Amendment be modified so that clause 4.3.2 of the Scheme is amended to state:</p> <p><i>Building height provisions as specified under –</i></p> <p><i>(a) Table 3 <del>and Table 4</del>, and Deemed-to-Comply provision 5.1.6 C6 <del>and 6.1.2 C2</del> of Volume 1 of the R-Codes (as amended), and</i></p> <p><i>(b) Table 2.1, and Acceptable Outcome A2.2.1 of Volume 2 of the R-Codes (as amended);</i></p> <p><i>do not apply, except for on land coded R-AC3, R80 or R60. In all other areas, maximum building height requirements are required to comply with the provisions of clause 4.8 of the Scheme.</i></p>	<ul style="list-style-type: none"> <li>• Update references to the R-Codes, to reflect amendments to Volume 1 and the introduction of Volume 2.</li> <li>• Clarify that the clause should be read in accordance with amended versions of the R-Codes.</li> <li>• Include reference to residential density codings R80 and R60, to clarify that building proposals exceeding two or three storeys, as the case may be, are permitted under the relevant provisions of the R-Codes.</li> <li>• Support the policy aim of the Amendment to allow R60 coded buildings, with a three storey height control, to be proposed and considered within the Amendment area.</li> <li>• Remove inconsistencies between clause 4.3.2, clause 4.8 and building height controls through the R-Codes, to ensure the intent of the Amendment is reflected in the Scheme. In regard to providing direct reference in this clause to the ‘Deemed-to-Comply’ and ‘Acceptable Outcome’ provisions of Volumes 1 or 2 of the R-Codes, Parts 2.4 and 2.5 (Volume 1) and page IV (Volume 2) of the R-Codes explicitly allow for the standards in each policy to be applied with a degree of flexibility, and the exercise of judgement on the contextual merit of individual proposals. While direct reference is made in this clause to ‘Deemed-to-Comply’ and ‘Acceptable Outcome’, a proposal could still be assessed on ‘Design Principles’ and ‘Element Objectives’ of Volumes 1 or 2 of the R-Codes, as proposed in modification 4 below to clause 4.8.3.</li> </ul>
<p>3.</p>	<p>That the Amendment be modified so that clause 4.8.1 of the Scheme is amended to state:</p> <p><i>Except where otherwise provided for in the Scheme, Aa person must not erect any building that –</i></p>	<ul style="list-style-type: none"> <li>• Clarify that the wording “except where otherwise provided for in the Scheme” applies to both parts (a) and (b) of the clause.</li> </ul>

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	<p>(a) contains more than two storeys or exceeds a height of 9 metres <i>above natural ground level</i>, where land is within 150 metres of the mean high water mark; or</p> <p>(b) contains more than three storeys or exceeds a height of 12 metres <i>above natural ground level</i>, where land is within 150 metres of the mean high water mark, <del>except where otherwise provided for in the Scheme.</del></p>	<ul style="list-style-type: none"> <li>Remove inconsistencies between clause 4.8 and other building height controls through the R-Codes, to ensure the intent of the Amendment is reflected in the Scheme.</li> <li>Clarify that building height is measured from natural ground level. For proposals where a residential density coding has been designated, they would be measured consistently with 'Figure Series 7 – Building Height' of the Volume 1 of the R-Codes, or in accordance with '2.2 Building height' in Volume 2 of the R-Codes. For non-residential proposals, this also clarifies that building height would be measured from natural ground level.</li> </ul>
4.	<p>That the Amendment be modified so that clause 4.8.3 of the Scheme is amended to state:</p> <p><i>In respect to clauses 4.8.1 and 4.8.2 above, the local government, upon receipt of an application for development approval, may approve building heights which exceed those maximum height limitations as specified, subject to the local government being satisfied that the building height is consistent with the relevant assessment criteria specified under clause 67 of the Deemed Provisions <del>and performance criteria specified under 5.1.6 (P6) and 6.1.2 (P2) of the R-Codes.</del> For a building that is proposed on land where a residential coding has been designated, the local government must also be satisfied that the building height is consistent with –</i></p> <p><i>(a) the Design Principles specified under 5.1.6 P6 of Volume 1 of the R-Codes (as amended); or</i></p> <p><i>(b) the Element Objectives specified under O2.2.1-O2.2.4 of Volume 2 of the R-Codes (as amended).</i></p>	<ul style="list-style-type: none"> <li>Clarify that only buildings proposed on land where a residential density coding has been designated, are to be consistent with the relevant provisions of the R-Codes.</li> <li>Update references to the R-Codes, to reflect amendments to Volume 1 and the introduction of Volume 2.</li> <li>Clarify that the clause should be read in accordance with amended versions of the R-Codes.</li> <li>Remove inconsistencies between clause 4.8 and other building height controls through the R-Codes, to ensure the intent of the Amendment is reflected in the Scheme.</li> </ul>