

City of Fremantle

MINUTES

Planning Services Committee

Wednesday, 21 January 2009
6.00 pm

COMMITTEE MEMBERS

Mayor Peter Tagliaferri

Cr Les Lauder
Cr Jon Strachan
Cr John Dowson
Cr Bill Massie
Cr John Alberti
Cr Robert Fittock

City Ward
South Ward
East Ward
Hilton Ward
Beaconsfield Ward
North Ward

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	CLOSURE OF MEETING	

PLANNING SERVICES COMMITTEE

Minutes of the Planning Services Committee
held in the Council Chambers, Fremantle City Council
on 21 January 2009 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open at **6.00 pm**.

NYOONGAR ACKNOWLEDGEMENT STATEMENT

"We acknowledge this land that we meet on today is part of the traditional lands of the Nyoongar people and that we respect their spiritual relationship with their country. We also acknowledge the Nyoongar people as the custodians of the greater Fremantle/Walyalup area and that their cultural and heritage beliefs are still important to the living Nyoongar people today."

IN ATTENDANCE

Peter Tagliaferri	Mayor / Presiding Member
Cr Robert Fittock	Deputy Presiding Member / North Ward
Cr Jon Strachan	South Ward
Cr Brad Pettitt	East Ward (<i>Entered at 6:01pm</i>)
Cr Bill Massie	Hilton Ward
Cr John Alberti	Beaconsfield Ward
Mr Philip St John	Director Planning and Development Services
Mr Paul Garbett	Manager Planning Projects and Policy
Mr Steven Sullivan	Coordinator Statutory Planning
Ms Vanessa Collins	Heritage Planning Officer
Mr Ian James	Strategic Urban Designer
Ms Bridie Howe	Strategic Planning Officer
Ms Tina Hume	Minute Secretary (Administration Officer)

There were approximately 11 members of the public and 1 member/s of the press in attendance.

APOLOGIES

Cr Les Lauder	City Ward
Cr Donna Haney	City Ward

LEAVE OF ABSENCE

Cr John Dowson	East Ward
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RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

PUBLIC QUESTION TIME

Nil

DEPUTATIONS / PRESENTATIONS

**The following member/s of the public spoke in favour of item PSC0812-333:
Ms Janine Pittaway**

**The following member/s of the public spoke against item PSC0901-01:
Mr John Kelly**

**The following member/s of the public spoke in favour of item PSC0901-2:
Ms Anita Zuvela**

**The following member/s of the public spoke in favour of item PSC0901-7:
Mr Les Booker**

**The following member/s of the public spoke in favour of item PSC0901-9:
Mr Michael Willicombe**

**The following member/s of the public spoke in favour of item PSC0901-11:
Mr Michael Willicombe**

DISCLOSURES OF INTEREST BY MEMBERS

Nil

LATE ITEMS NOTED

Nil

CONFIRMATION OF MINUTES

MOVED: Mayor, Peter Tagliaferri

That the Minutes of the Planning Services Committee dated 7 January 2009 as listed in the Council Agenda dated 28 January 2009 be confirmed.

CARRIED: 5/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Bill Massie Cr Jon Strachan	

Cr B Pettitt arrived at 6.01 pm.

TABLED DOCUMENTS

Nil

ITEMS DEFERRED FROM PREVIOUS MEETINGS (COUNCIL DECISION)

The following items are subject to clause 1.1 and 2.1 of the City of Fremantle Delegated Authority Register

PSC0812-333FORREST STREET, NO. 19/B (LOT 10) FREMANTLE - TWO STOREY SINGLE HOUSE (AT DA144/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Amended development plans received 30 October 2008
 Petition
 Applicant's request for deferral
Date Received: Application received 31 March 2008
Owner Name: K Barrett & M Larsen
Submitted by: As above
Scheme: Residential – R25
Heritage Listing: Nil
Existing Landuse: Vacant
Use Class: Single House
Use Permissibility: P

FORREST ST



EXECUTIVE SUMMARY

It was resolved at the Ordinary Meeting of Council on 17 December 2008 to defer this application to the next Planning Services Committee meeting to allow the Elected Members time to read the report (as the item was left off the agenda) and to consider the petition received on the night. This resolution of Council did not provide the Planning Services Committee with delegation to determine the application.

Following this meeting, the applicant has requested that the application be deferred until the April round of meetings in a letter received by the City on 31 December 2008 and attached as Attachment 3 to this report.

It is recommended that the application be deferred.

BACKGROUND

Development Approval is sought to construct a two storey single house and detached garage and guest area on the subject site. The application has been designed in accordance with Vedic knowledge and design principles.

The subject site is located at No. 19B Forrest Street, Fremantle and is zoned Residential – R25 under Local Planning Scheme No. 4 (LPS4). Historically, earthworks have been undertaken on the subject site leveling the site to create a tennis court as part of the original parent lot. The site has frontage on to Amherst Street and Forrest Street.

The application was discussed at the Planning Services Committee meeting on 3 September 2008. The resolution of the Committee was to defer the application to allow the applicant the opportunity to consider modifications to the original application's design namely:

- A reduction in the overall height of the dwelling;
- A reduction in fence height and/or a change to visually permeable material; and
- The deletion or alteration of the proposed balcony along the Amherst Street elevation of the dwelling.

The applicant submitted amended plans on 30 October 2008 as well as a letter of explanation. This letter is attached as Attachment 4 to this report. The letter requests that the Planning Services Committee consider both the original development plans and the new amended development plans. As the Planning Services Committee has already considered the previous plans, this report is based upon the amended plans received 30 October 2008. The previous development plans are available upon request.

This report was considered at the Planning Services Committee meeting on 3 December 2008 and at the Ordinary Meeting of Council on 17 December 2008. The resolution of the Council meeting was to defer the item to the next Planning Services Committee to allow Elected Members time to read the item as it was omitted from the agenda papers and to consider to the petition tabled that night.

STATUTORY AND POLICY ASSESSMENT

Residential Design Codes

The amended development plans have been assessed against the Acceptable Development criteria set out within the Residential Design Codes. The proposed development is considered to satisfy all of the relevant Acceptable Development criteria with the exception of Element 6.2 – Streetscape, Element 6.3 – Boundary Setbacks, Element 6.4 – Open Space, Element 6.7 – Building Height and Element 6.10 – Incidental Development. Consequently, a performance based assessment is required for these elements of the development.

The previous development plans also required a performance based assessment for Element 6.2 – Streetscape however the amended plans now satisfy the Acceptable Development criteria for this element.

Council Policies

City of Fremantle's policies *D.B.H1: Urban Design and Streetscape Guidelines* and *L.P.P2.8: Fences Policy* are of relevance to the subject development.

CONSULTATION

The application was required to be advertised under the now rescinded City of Fremantle *D.A5: Advertising and Notification of Development Applications* policy. At the conclusion of the advertising period, being 18 April 2008, the City had received two submissions. The following issues were raised:

Height

One submitter states that the total height of the development may be too high. The other submitter states that the roof pitch appears '*extremely sharp and high*' and wants to ensure that the developments meets Council regulations so as to not dominate the roof lines of existing houses.

Accommodation above Garage

One submitter states that the accommodation over the garage on the southern boundary is of concern.

Fences

One submitter outlines concerns relating to the proposed fence heights along the street boundaries of the site and the red colour proposed. The submitter notes that front fences in the area are of low height and open construction and seeks that the proposed fencing comply with the City of Fremantle height regulations.

Visual Privacy

Overlooking into the property to the west is outlined as a concern by one of the submitters and screening is sought to prevent any intrusion of privacy.

The amended development plans have not been re-advertised on the basis that the amended development results in a less impact upon the neighboring properties than that previously advertised.

A petition was tabled at the Ordinary Meeting of Council on 17 December 2008 which states that the 14 signatories do not support the development planned for 19B Forrest Street, Fremantle '*due to the mass and scale and being out of character with established houses on these streets*'.

PLANNING COMMENT

Residential Design Codes

As stated above, the proposed development does not satisfy the Acceptable Development criteria with respect to Element 6.2 – Streetscape, Element 6.3 – Boundary Setbacks, Element 6.4 – Open Space, Element 6.7 – Building Height and Element 6.10 – Incidental Development. These elements of the application will be assessed against the relevant Performance Criteria below.

Streetscape

The proposed patio is located within the 6m front setback distance required by the Acceptable Development criteria of the Residential Design Codes.

The Performance Criteria for the setback of buildings in the streetscape states:

Buildings setback from street boundaries an appropriate distance to ensure they:

- *Contribute to the desired streetscape,*
- *Provide adequate privacy and open space for dwellings; and*
- *Allow safety clearances for easements for essential service corridors.*

The proposed patio is to be of open construction and low height, additionally it is to sit behind the solid fence proposed for the Forrest Street boundary. As a result no significant impact upon the desired streetscape is anticipated.

The patio is proposed as part of the open space provision for the site ancillary to the proposed swimming pool and as the solid fence is proposed along this boundary, adequate privacy will be maintained to this area.

There is no indication that the proposed patio would impede access to easements or safety clearances.

As a result of the above assessment, the proposed development is considered to satisfy the above Performance Criteria.

Boundary Setbacks

Boundary walls are proposed for the southern and western boundaries of the subject site. The City adopted policy *L.P.P2.4: Boundary Walls* (L.P.P2.4) on 22 October 2008 which contains provisions replacing the Acceptable Development criteria of the Residential Design Codes for the assessment of boundary walls. The report on the previous development plans for the subject site were not assessed against this policy however as this policy has now been adopted the amended plans must be assessed against its provisions.

The proposed development does not satisfy the Acceptable Development criteria outlined within this policy as two boundary walls are proposed on an R25 site. As a result, the proposed development has to be assessed against the Performance Criteria set out within the Residential Design Codes in addition to any comments made by owners / occupiers of adjoining properties. L.P.P2.4 states that Council will only consider these Performance Criteria met where it is satisfied that no adverse impacts on the amenity of the neighboring property will occur.

The Performance Criteria for boundary walls states:

Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

- *Make effective use of space; or*
- *Enhance privacy; or*
- *Otherwise enhance the amenity of the development;*
- *Not have any significant adverse effect on the amenity of the adjoining property; and*
- *Ensure that direct sun to major openings to habitable rooms and outdoor living areas or adjoining properties is not restricted.*

The applicant has provided the following justification of the proposed western boundary wall:

The western boundary wall is a second boundary wall element and therefore must necessarily comply with the relevant Performance Criteria. This wall is required to provide an external store in an area that would otherwise be a dead zone likely used for storage anyway (with potentially more visual or other impacts on the neighbour if left 'uncovered'). It is wholly below the existing dividing fence, where the proposed garage structure is partially excavated and where the neighbouring premises is considerably elevated. The wall therefore has no visual or user amenity on the neighbour and as a result clearly meets all the requirements of Cl.6.3.2P2.

Were it considered 'vital' however, the rear wall of the garage could be pulled in 1.5m from the boundary, removing this boundary wall element. This would appear both pointless and even counter-productive in both applicant and neighbour amenity terms however.

The applicant's assessment of the western boundary wall is supported as boundary walls do make effective use of space on a site.

The potential impacts on the amenity of the adjoining property to the west as a result of the proposed boundary wall are considered to be mitigated through the elevated topography of the adjoining site and the wall's reduced length and height. Additionally, due to the site's orientation and lower topography, it is anticipated that there would be little impact in terms of solar access to the adjoining site to the west.

The adjoining property to the south is currently vacant. Consequently, the potential impact upon the amenity of this site and the overshadowing of major openings and outdoor living areas cannot be readily assessed.

However it is noted that the development does satisfy the Acceptable Development criteria with regards to solar access. Future construction on this adjacent site will take into account any development on the subject site in its design and due to the size of this allotment, it is anticipated that boundary walls may also be proposed for this site.

None of the submissions received outlined concerns about the two proposed boundary walls. Overall, the proposed development is considered to satisfy the Performance Criteria for boundary walls.

Open Space

The level of open space provided by the proposed development is approximately 48%. The Acceptable Development criteria requires 50% open space. The applicant contends that as the site is truncated at the Forrest Street – Amherst Street intersection, this truncated land should be taken into account. The Residential Design Codes do not state whether truncated land should be taken into account for the assessment of open space. However as the truncated land is not part of the subject site, it has not been assessed as part of the site area.

The Performance Criteria for open space states:

Sufficient open space around buildings

- *To complement the building;*
- *To allow attractive streetscapes;*
- *To suit the future needs of residents, having regard to the type and density of the dwelling.*

The main outdoor living area for the proposed development is to the north of the dwelling however open space is provided around all sides of the proposed dwelling. The shortfall in open space area of approximately 2% is not anticipated to be readily identifiable from outside the subject site. The development is considered to provide sufficient open space to complement the building, to allow an attractive streetscape and provide for the needs of residents. Consequently, the proposed development is considered to satisfy the Performance Criteria for open space.

The Acceptable Development criteria for Residential – R25 properties require at least 30m² of outdoor living area to be provided behind the street setback area. The proposed outdoor living area for the development is to the north of the dwelling adjacent to Forrest Street. However Forrest Street is considered to be the primary street for the proposed development (with the exception of the assessment of the proposed front walls).

The Performance Criteria for outdoor living space states:

An outdoor living area capable of use in conjunction with a habitable room of the dwelling, and if possible, open to winter sun.

An outdoor area that takes the best advantage of the northern aspect of the site.

The proposed outdoor living area is located on the north side of the dwelling and will be able to be used in conjunction with the living room and resting room. The proposed development satisfies the Performance Criteria with regards to outdoor living areas.

Building Height

As per the previous resolution of the Planning Services Committee, the applicant has reduced the proposed height of the dwelling by 0.9m through *'the removal of the clerestory to the lantern light roof to achieve an overall height of 10.4m above both the site datum and the calculated natural ground level at the point immediately under the ridge peak point'*.

As outlined within the previous report, a maximum ridge height of 10.5m can be applied as the Acceptable Development criteria for the proposed development on the subject site in accordance with the following notes to Table 3 of the Residential Design Codes:

- (ii) Applies to ridges greater than 6m long. Short ridges: add 0.5m height for each 2m reduction in length.*
- (iii) Applies to roof pitches up to 25 degrees. In some localities steeper pitches may be required and greater height permitted in accordance with the provisions of the scheme or local planning policies.*

The Acceptable Development criteria for external wall height is as per Category B of Table 3 being 6m above natural ground level.

Notwithstanding the findings in the previous planning report, the applicant has continued to measure height from the extrapolated natural ground level (as the site is anticipated prior to the earthworks undertaken for the construction of the tennis court). The applicant has stated *'We reiterate our belief that the RD Codes explicitly require this determination of natural ground level and that it is completely appropriate to the intent of the RD Codes having regard to consideration of building height responding generally to natural topography.'*

Whilst this assessment is considered in practical terms to have some merit, the Residential Design Codes require height to be determined from 'natural ground level' as defined within the Codes:

The levels on a site which precede the proposed development, excluding any site works unless approved by the council or established as part of subdivision of the land preceding development.

A review of the City's files has found that the subdivision of No. 19 Forrest Street was approved by the WAPC in October 2006 and this subdivision created the subject allotment. The subdivision plan submitted to the WAPC for assessment included a survey plan which indicated the existing ground levels of the three allotments and show the subject site as being predominantly flat and including a number of retaining walls. Accordingly, officers are of the view that the site levels depicted on the subdivision plan are now the 'natural ground level' of the subject site. Consequently, the proposed extrapolation of the previous ground levels should not be utilised as the measure of 'natural ground level'.

As the amended development plans do not provide any indication of cut or fill heights nor show the 'natural ground level' as indicated on the survey plan approved by the WAPC, the assessment of height set out below is taken from the bottom of the 'plinth' level.

Consequently, this is taken as the 'natural ground level' of the site for the purpose of measuring height. Should approval be granted by the City, a condition is recommended to require the applicant to submit plans detailing the heights of the proposed development from AHD.

As outlined above, the Acceptable Development criteria with respect to height for the proposed development on the subject site is 6m external wall height and 10.5m ridge height.

Measuring the proposed development height from below the plinth level to the apex of the roof gives a maximum roof height of approximately 11.3m. The proposed external wall height is approximately 6.4m. Accordingly, a performance based assessment is required. The Performance Criteria for building height states:

Building height consistent with the desired height of buildings in the locality, and to recognise the need to protect the amenities of adjoining properties, including, where appropriate:

- *Adequate direct sun to buildings and appurtenant open spaces;*
- *Adequate daylight to major openings to habitable rooms; and*
- *Access to views of significance.*

There are no local area policies which specify height provisions for the subject site. Consequently, in determining whether the height of the proposed development is consistent with the 'desired height' of buildings in the locality, particular regard is given to the height of buildings in the specific streetscape context. It is noted that existing development along Forrest Street and Amherst Street is predominantly single storey development, However there are a number of newer two storied dwellings in the vicinity.

The proposed development is for a two storey dwelling with an increased wall and ridge height. The subject site has been excavated in the past and no longer reflects the original topography of the site, particularly when compared to the topography of the adjoining properties and road. Although not considered relevant in terms of the calculation of 'natural ground level', it is considered that the height of the proposed development will be mitigated through the lower site level and topography. When viewing the proposed development from the surrounding roads, it is anticipated that the development will present a height similar to other two storey dwellings in the area.

With regards to the potential impacts on the amenity of the adjoining properties and access to views of significance, it is considered that these potential impacts are reduced due to the lower 'natural ground level' of the proposed dwelling and sloping topography of the area.

No significant impacts in terms of access to daylight and views of significance are anticipated as the bulk of the dwelling is well set back from the southern boundary and is of lower topography than the site to the west. Additionally, the site is bound by roads to the north and east. It should be noted that the proposed development satisfies Element 6.9 with respect to overshadowing.

Overall due to the lower site levels of the subject site and the sloping topography of the area, the proposed development is considered to satisfy the Performance Criteria as the height.

Council Policies

L.P.P2.8: Fences Policy

Policy *L.L.P2.8: Fences Policy* was adopted by the City of Fremantle on 22 October 2008 replacing *D.B.H2: Front Fences and Side Rear Fences (Draft)* under which the previous development plans were assessed.

This policy provides the following criteria against which to assess applications for front and secondary street fences:

Fences and retaining walls within primary and secondary street setback areas as viewed from the street, and side fences abutting public open space reserves shall be visually permeable above 1.2m to a maximum height of 1.8m, with piers not higher than 2.0m.

The front fence along Amherst Street satisfies this provision, however the secondary street fence along Forrest Street does not as parts of the fence (excluding piers) are above 1.8m due to the sloping nature of the land at the boundary. However, the policy allows for minor variations to fence heights which are made necessary by virtue of a sloping site. Therefore, the minor variations to the proposed fence height along Forrest Street are supportable under this policy.

D.B.H1: Urban Design and Streetscape Guidelines

City of Fremantle policy *D.B.H1: Urban Design and Streetscape Guidelines* provides additional guidelines to those prescribed within the Residential Design Codes for the assessment of new developments including building alignment and orientation. The amended development plans have addressed the concerns outlined in the previous Planning Services Committee report relating to building bulk, balcony intrusion and fence heights. Accordingly, it is considered to satisfy the relevant provisions within this report.

Submissions

The concerns outlined within the submissions are addressed below.

Height

The proposed height of the dwelling has been assessed in detail above.

Accommodation above Garage

The proposed accommodation over the garage satisfies the Residential Design Codes as it is not to be self-contained and therefore has no implications on density.

Fences

The proposed boundary fencing has been assessed in detail above.

Visual Privacy

The proposed development satisfies the Acceptable Development criteria of the Residential Design Codes for visual privacy.

ADDITIONAL PLANNING COMMENT

As outlined above, this item was deferred at the Ordinary Meeting of Council on 17 December 2008 to the next Planning Services Committee meeting to allow the Elected Members time to read the report (as the item was left off the agenda) and to consider the petition received on the night. This resolution of Council did not provide the Planning Services Committee with delegation to determine the application.

Following this meeting, the applicant has requested that the application be deferred until the April round of meetings in a letter received by the City on 31 December 2008 and attached as Attachment 3 to this report.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

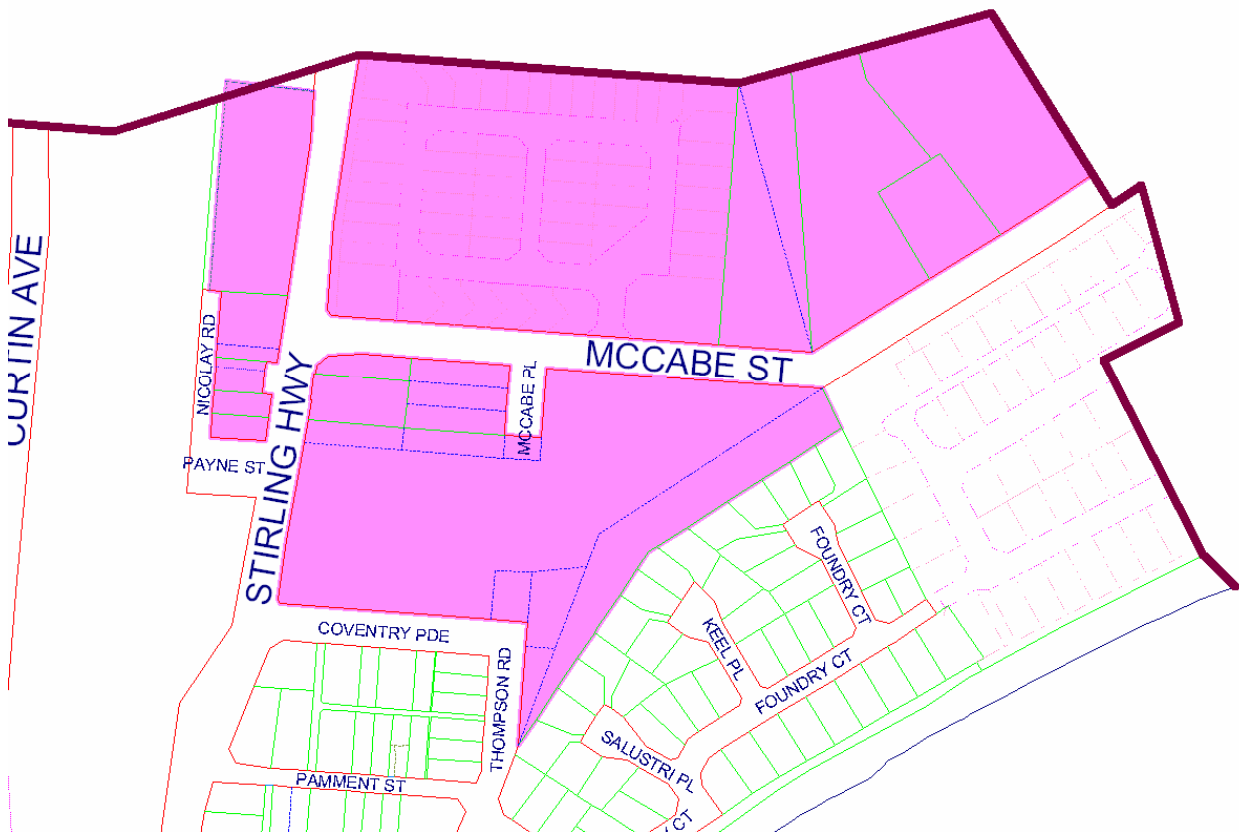
That the application be DEFERRED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Storey Single House at No. 19B (Lot 10) Forrest Street, Fremantle at the applicant's request until the April round of meetings.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

**PSC0901-1 LOCAL PLANNING POLICY LPP 3.11 - MCCABE STREET AREA,
NORTH FREMANTLE - HEIGHT OF NEW BUILDINGS**

DataWorks Reference: 117/034
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Manager Planning Projects
Decision Making Level: Council
Previous Item Number/s: PSC0812-342, PSC0809-260, PSC0807-195
Attachments: Previous Item PSC0812-342



EXECUTIVE SUMMARY

At its Ordinary Meeting on 17 December 2008 Council considered a report recommending the final adoption of draft Local Planning Policy LPP 3.11 – McCabe Street Area, North Fremantle – Height of New Buildings. Council resolved to defer the item to the Planning Services Committee on 21 January 2009 for further consideration of the proposals, particularly in reflection to Zone F.

In order to give full consideration to the issues associated with this matter, including further submissions received from the owner of the land to which Zone F as proposed under the policy relates, officers consider that further time is required to complete the analysis of possible additional modifications to the policy. Consequently it is recommended that the matter be further deferred until the February 2009 cycle of Planning Services Committee and Council meetings.

BACKGROUND

At its Ordinary Meeting on 17 December 2008 Council considered a report recommending the final adoption of draft Local Planning Policy LPP 3.11 – McCabe Street Area, North Fremantle – Height of New Buildings. Council resolved to defer the item to the Planning Services Committee on 21 January 2009 for further consideration of the proposals, particularly in reflection to Zone F (refer Minute No. PSC0812-342 – see Attachment 1).

The preparation of the draft policy followed earlier resolutions of Council in June and July 2008 in relation to consideration of a height study of the area, and an instruction to officers to prepare a draft local planning policy based on principles arising from the height study.

Subsequent to circulation of the Agenda for the Ordinary Council meeting on 17 December 2008, a further submission including site survey information was received from the owner of No. 130 Stirling Highway (the Matilda Bay Brewery site). The submission requested Council to consider two further modifications to the draft policy as follows:

1. To allow for filling of the existing site level within the area known as Zone F under the policy to match the level of previously filled adjoining land to the south-east (now part of the Foundry Court residential development).
2. Amend Zone G under the policy to allow a maximum building height of 19m instead of 16m having regard to the roof ridge height of the existing building on the site which is included on the Heritage List under the City's Local Planning Scheme No. 4 and is currently being considered by the Heritage Council of WA for possible inclusion on the State Register.

PLANNING COMMENT

In order to enable full consideration to be given to possible further modifications to the policy, having regard to particular aspects of the policy highlighted by elected members during previous consideration of the matter and the further submissions received, it is recommended that the matter be further deferred until the February 2009 cycle of Planning Services Committee and Council meetings.

This would enable officers to undertake further analysis of relevant issues, including obtaining further advice from the City's heritage officers on issues associated with the relationship between the existing heritage listed Matilda Bay Brewery building and maximum building heights on adjoining land proposed under the policy.

It is also likely that by the beginning of February 2009 the State Administrative Tribunal will have issued its final decisions in relation to proceedings concerning two structure plans relating to land at 140 Stirling Highway and 9-15 McCabe Street. In both cases the height of proposed new development was a key issue in the proceedings, and it may be helpful for Council to have the benefit of the Tribunal's conclusions on these matters before making a final decision on adoption of the policy.

OFFICER'S RECOMMENDATION/COMMITTEE RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

That further consideration of final adoption of Local Planning Policy LPP 3.11 – McCabe Street Area, North Fremantle – Height of New Buildings be deferred until the February 2009 cycle of Planning Services Committee and Council meetings to enable officers to undertake further analysis of relevant issues.

CARRIED: 6/0

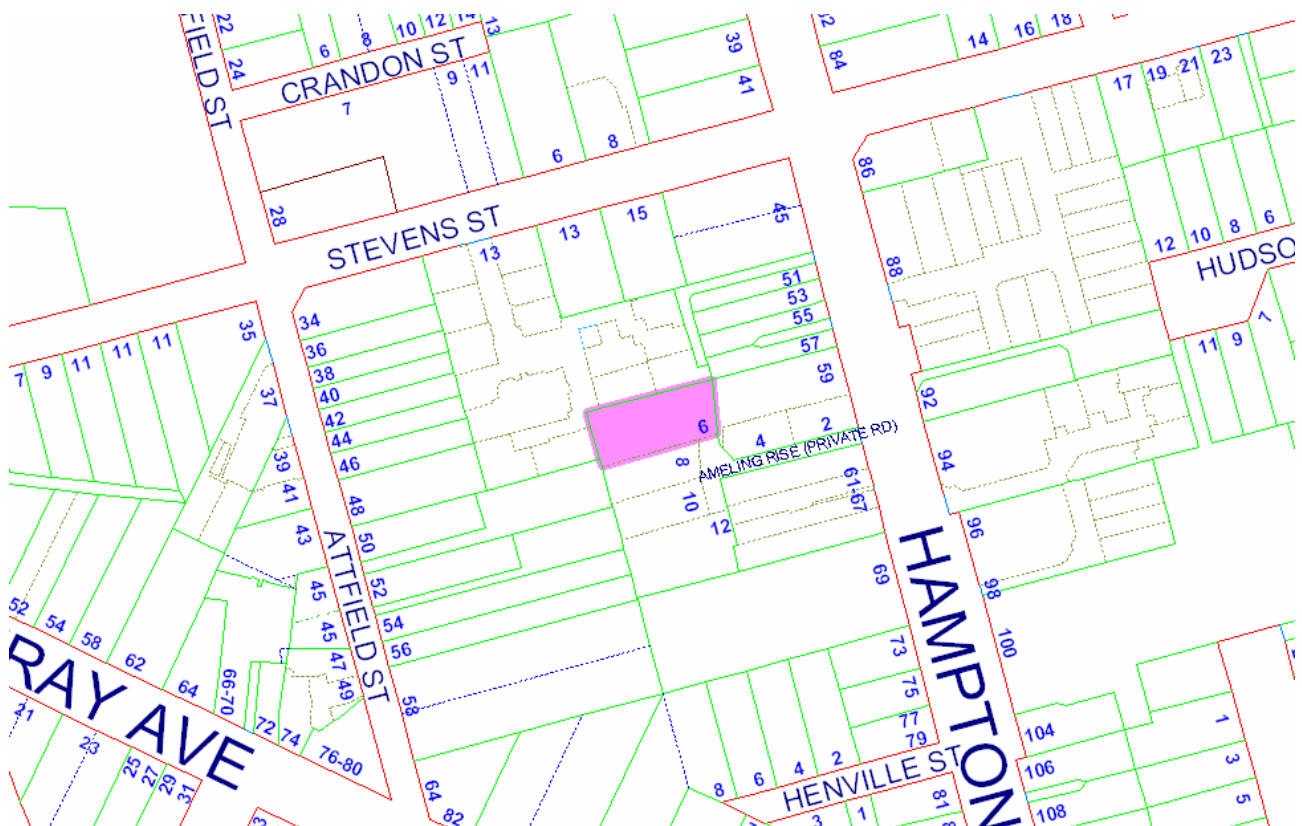
For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

REPORTS BY OFFICERS (COMMITTEE DELEGATION)

The following items are subject to clause 1.1 and 2.1 of the City of Fremantle Delegated Authority Register

PSC0901-2 AMELING RISE NO. 6 (LOT 1) FREMANTLE - RETAINING WALL AND EXTERNAL STAIRCASE ADDITIONS TO EXISTING SINGLE HOUSE - (JL DA141/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0701-03 (DA566/06)
Attachments: Development Plans
Date Received: 28 March 2008
Owner Name: Jerko and Anita Zuvela
Submitted by: As Above
Scheme: Residential R30 (Sub Area 4.3.4)
Heritage Listing: N/A
Existing Landuse: Single house
Use Class: Single house
Use Permissibility: P



EXECUTIVE SUMMARY

The City is in receipt of a planning application seeking retrospective approval for three external staircases and retaining wall additions to the existing Single House at No.6 Ameling Rise, Fremantle (the 'subject site').

The application has been assessed against the requirements of City of Fremantle's Local Planning Scheme No.4 (LPS4), the Residential Design Codes (R-Codes) and Council's Local Planning Policies. The proposed development requires a performance based assessment with respect to the setback of retaining walls and approval for the unauthorised works.

The application is presented before Planning Services Committee due to the number of submissions received regarding the unauthorised development.

Overall, the development is considered to satisfy all of the requirements set out within LPS4, the R-Codes and Council's Local Planning Policies. Consequently, the application is recommended for conditional approval.

BACKGROUND

The subject site is zoned 'Residential' under the provisions of LPS4 and has a density coding of R30. The site is not listed on the City's Heritage List but is located within the South Fremantle Heritage Precinct. The site is also located within the South Fremantle Local Planning Area Sub Area 4.3.4 of LPS4. There is an existing two storey limestone dwelling located on site. The subject site has a private road (Ameling Rise) entering from Hampton Road, Fremantle. The site is located on top of a limestone crop and the properties located to the north, west and east of the subject site are approximately 3 metres lower in topography than the existing dwelling on site. The adjoining southern site has a similar topography to the subject site.

On 17 January 2007 the City granted its Planning Approval for a two storey single house (refer DA566/06) to be constructed on the subject site. Forming part of this planning application several retaining wall additions and other site works were also approved in order to facilitate a level site for the development's footprint.

On 17 March 2008 the City received a complaint regarding retaining walls being constructed without planning approval. Subsequently the City's Officers conducted a site inspection to investigate the allegation. It was found that several unauthorised retaining walls and external staircase additions had been erected without planning approval. The owner was contacted regarding these matters and consequently a retrospective development application was submitted to the City on 28 March 2008.

On 5 May 2008 the City contacted the applicant and requested further information in relation to the retrospective development application. The applicant submitted additional information and amended plans on 26 May 2008. A site inspection was conducted and it was found that numerous other site works had been undertaken without planning approval. The applicant was contacted regarding these issues and submitted further amended plans and additional information on 14 October 2008.

On 16 October 2008 the applicant requested that the proposed cantilever deck addition to the northern boundary retaining wall be removed from this planning application. As a result of the applicant's request amended plans were submitted on 4 November 2008 showing the removal of this deck addition.

DETAILS

The unauthorised development consists of retaining wall additions and three external staircase additions to the existing two storey Single House on site. The unauthorised retaining wall additions are located on the northern, eastern and southern boundaries.

The northern retaining wall addition consists of two sections. One portion is located in the middle of the northern common boundary (See Attachment 2 - Photo A) which extends 1 metre (west direction) from the existing approved northern retaining wall. This portion of retaining wall is 2.5 metres high and abuts an existing boundary wall located on the north/eastern adjoining property. The other portion of unauthorised northern retaining wall is located in the north eastern corner of the site (See Attachment 2 - Photo B). This section of retaining wall extends on from the existing approved retaining wall in an eastern direction. This portion of wall is 7.6 metres long and ranges in height from 500mm to 2 metres.

The eastern retaining wall addition also consists of two sections. One portion is located inside the existing approved retaining wall located on the eastern north corner of the site (See Attachment 2 - Photo C). This section of retaining wall extends 4.6 metres (south direction) behind the existing approved eastern retaining wall and is 2.5 metres high. The other portion of the northern retaining wall is located in the north/eastern corner of the site (See Attachment 2 - Photo D). This section of retaining wall extends (eastern direction) from the existing approved retaining wall and is 7.6 metres long and ranges in height from 500mm to 2 metres.

The southern retaining wall addition abuts the existing boundary wall located on the adjoining southern property in the south western corner of the site (See Attachment 2 - Photo E). This retaining wall is 12 metre long and 1.4 metres high.

There are also two small retaining wall additions located in the south/ eastern corner of the subject site (See Attachment 2 - Photo F). These two retaining walls are approximately 3 metres in length and 1.5 metres in height.

The three external staircase additions are located on both the northern and southern side of the two storey dwelling on site. The northern external staircase is 2.47 metres high and is setback 1.5 metres from the northern boundary (See Attachment 2 - Photo G). One of the southern external staircases is located on the south/western section of the dwelling (See Attachment 2 - Photo H) and is 2.8 metres high and is setback 1.3 metres from the southern boundary. The other southern external staircase is located within the front setback area and is setback 250mm from the southern common boundary (See Attachment 2 - Photo I).

STATUTORY AND POLICY ASSESSMENT

The application has been assessed against the provisions of the City's LPS4, R-Codes and Council's D.B.H3 – Development levels (extent of cut and fill) policy.

LPS4

In accordance with Clause 8.1 of LPS4,

'all development on land zoned and reserved under the Scheme requires the prior approval of the Council.'

Clause 8.4.1 states that,

'The Council may grant planning approval to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme'.

Clause 8.2 (g) states that retaining walls that are below 500mm in height are classified as permitted development and do not require Planning Approval. The unauthorised retaining wall additions exceed 500mm in height and therefore the development requires Planning Approval under the provisions of LPS4.

Residential Design Codes 2008

The development has been assessed against and complies with the relevant 'Acceptable Development' criteria of the R-Codes with the exception of design element 6.3 Boundary setback requirements.

6.3.3 – Setback of retaining walls

The R-Codes state that retaining walls setback from common boundaries, in accordance with the setback requirements of Table 1, Tables 2a and 2b and Figure 3, are deemed to be 'Acceptable Development'. As mentioned previously the applicant has constructed retaining walls on the northern, eastern and southern common boundaries. The R-Code setback requirement for the northern, southern and eastern retaining wall additions is 1.5 metres. The unauthorised northern, southern and eastern retaining wall additions have a nil setback to the respective common boundaries and therefore are considered to not meet the 'Acceptable Development' criteria. Therefore the development needs to be assessed against the relevant 'Performance Criteria' of the R-Codes which states as follows:

P1 Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property.

Council Policies

D.B.H3 - Cut and Fill

The City's policy states that retaining walls within residential development need to be assessed against the provision set out in the R-Codes.

CONSULTATION

Community

The application was required to be advertised in accordance with Council's *L.P.P1.3 – Public Notification of Planning Proposals* policy, as the application requires several performance based assessments against the development criteria of the R-Codes. At the conclusion of the advertising period, being 7 May 2008, the City had received eight (8) submissions. A summary of the concerns raised are as follows:

- Overlooking of the western and northern adjoining site's from the proposed deck addition,
- Noise being generated from the sites outdoor living area,
- Safety issues relating to the retaining wall additions and no balustrade provided,
- Structural integrity of the unauthorised retaining walls,
- The development devaluing the adjoining properties,
- Aesthetic appearance of the northern retaining wall additions,
- The reduced northern setback for the retaining wall additions, and
- Overlooking of the northern adjoining dwelling's outdoor living area from the adjoining northern dwelling's upper floor bedroom and living room area.

PLANNING COMMENT

In considering this application, Council is required to have regard to the following key points:

Retaining Walls

The nil setbacks of these retaining wall additions are considered appropriate as they all abut existing boundary walls which are located on the adjoining northern, eastern and southern adjoining properties. With regards to the middle northern retaining wall addition, it is noted that it does exceed the height of the adjoining north/ eastern property's boundary wall and it abuts the property's existing rear outdoor living area. However this property's outdoor living area has a roof enclosure which is considered to prevent any visual impacts created from this retaining wall addition. It is acknowledged that apart from the middle northern retaining wall addition, all of the unauthorised retaining wall additions merely retain existing approved natural ground levels associated with the previous development application (refer DA566/06).

As mentioned previously the subject site is located on top of an existing limestone outcrop and therefore it is considered that these retaining wall additions help retain the visual impression of the subject site as seen from the street (Ameling Rise) and adjoining properties.

External Staircases

Due to the unusual topography of the subject site the three external staircase additions are considered appropriate as they allow adequate pedestrian access and movement over the subject site and its approved varying floor levels. Therefore as the external staircases are sufficiently setback in accordance with the R-Codes the development is supported.

Community Comments

As the applicant has altered the existing ground level by more than 500mm for the middle northern section of retaining wall, it is recommended that a condition be included requiring screening to a height of 1.6 metres to be provided to the northern elevation of the retaining wall in order to prevent direct overlooking of the adjoining north western adjoining property's existing rear outdoor living area. It should also be noted that the City's previous Planning Approval for the existing two storey Single House on site (refer DA566/06) included a condition requiring a 1.6 metre high screening to be erected on top of the northern retaining wall (See Attachment 2 – Photo J). Therefore it is considered appropriate to recommend a condition requiring screening to erect to 1.6 metres in height on top of the unauthorised middle northern retaining wall addition. This screening condition is considered to ameliorate any overlooking and safety concerns relating to the adjoining northern properties.

A submitter has raised a concern regarding noise being generated from future activity on site. As this planning application only involves unauthorised external staircase and retaining wall additions it is considered that these works are not considered to create any amenity concerns relating to noise issues. However, it is noted that any activity on a site would need to comply with the *Environmental Protection (Noise) Regulations 1997*.

Due to the retrospective nature of this application, the applicant has been required to provide development plans that have been signed by a structural engineer certifying the structural integrity of the unauthorised additions. Additionally, it must also be noted that the devaluation of property is also not considered to be a relevant planning concern.

A site inspection established that the existing approved (refer DA556/06) northern retaining wall has been constructed of reconstituted limestone blocks which have two different colours (Limestone and cement). The aesthetic appearance of this retaining wall has been raised as a concern by a submitter, however it must be noted that the assessment of this application only applies to the above mentioned unauthorised additions. Any other compliance issue associated with previous development applications should be dealt with by the City's Compliance Department.

For the reasons outlined above the reduced setbacks of the retaining wall additions have been supported as they are considered to help retain the visual impression of the natural level of the site, as seen from adjoining properties.

CONCLUSION

Overall, the proposed development is considered to satisfy the relevant provisions within LPS4, the R-Codes and Council's D.B.H3 – Development Levels policy.

For the reasons outlined above, the application is recommended for approval, subject to appropriate conditions.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Mayor, Peter Tagliaferri**

That the application be **APPROVED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the retrospective Planning Approval for retaining walls and external staircase additions at No. 6 (Lot 1) Ameling Rise, Fremantle, as shown in the plans dated 4 November 2008, subject to the following condition(s):

1. Privacy screening to a height of 1.6m is required to be erected on top of the retaining wall on the northern boundary of the property. Details of the proposed screening shall be submitted for approval by the Chief Executive Officer, City of Fremantle.

Advisory Note(s)

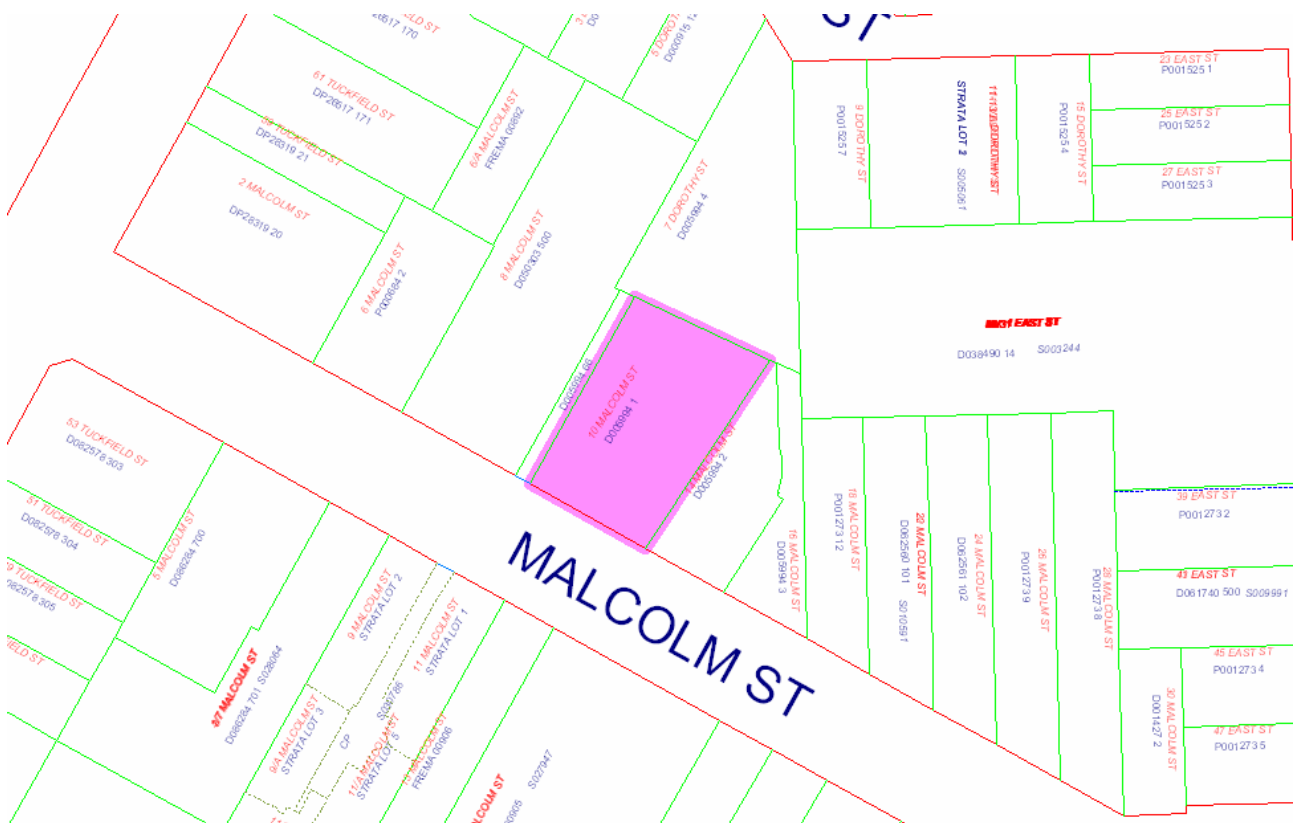
The applicant is advised that additional information may be required by the Building Department of City of Fremantle due the Development Applications retrospective nature. Please contact Building Services on 9432 9778.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

**PSC0901-3 MALCOLM STREET, NO. 12 (LOT 2) FREMANTLE -
RETROSPECTIVE ALTERATIONS TO HEIGHT OF GROUPED
DWELLING (AT DA608/08)**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0811-301
Attachments: 1 Development plans
 2 Applicant's letter
Date Received: 10 November 2008
Owner Name: M Lee, M Lee & R Lee
Submitted by: Gerard McCann Architect
Scheme: Residential – R25
Heritage Listing: Nil
Existing Landuse: Grouped Dwelling



EXECUTIVE SUMMARY

The application has been referred to the Planning Services Committee for determination as the City is presently initiating legal action against the owners of the property due to non-compliance with the approved development plans.

This non-compliance was previously considered by the Planning Services Committee and Ordinary Meeting of Council in which it was resolved to acknowledge the increased building height and authorise the Chief Executive Officer to initiate legal action.

Retrospective Planning Approval is now sought for a 200mm increase in building height to that which was previously approved by the City on 17 May 2008 (refer DA156/06).

The increased building height satisfies the relevant Acceptable Development criteria contained within the Residential Design Codes.

The application is recommended for approval.

BACKGROUND

On 17 May 2006, Planning Approval was granted to construct a single storey Grouped dwelling at No. 10 Malcolm Street, Fremantle (refer DA156/06). This new grouped dwelling is now referred to as No. 12 Malcolm Street, Fremantle.

A query was received by the City on 5 September 2008 relating to whether the now completed grouped dwelling on the subject site has been constructed in accordance with the approved development plans in terms of height.

The City's Officers have investigated the alleged non-compliance and found that the development does not strictly comply with the planning approval dated 17 May 2006. Specifically, the overall height of the dwelling has been confirmed as being approximately 200mm higher than what was indicated on the approved plans. This height discrepancy was verified by the City's Principal Building Surveyor and the architect acting on behalf of the property owner. The architect has stated that this increased height is due to an increase in the ground level.

A report on this alleged non-compliance relating to height was included on the Planning Services Committee agenda for the meeting held 5 November 2008 and was referred to the Ordinary Meeting of Council held 26 November 2008 (refer PSC0811-301). The resolution of the Council meeting was as follows:

That Council:

- 1. Acknowledge the increase in building height of 200mm of the grouped dwelling at No. 12 (Lot 2 on D5994) Malcolm Street, Fremantle, and resolve to allow the development to remain as constructed.*
- 2. Authorise the Chief Executive Officer to initiate legal action against the owner of No. 12 (Lot 2 on D5994) Malcolm Street, Fremantle, for failing to comply with the requirements of the City of Fremantle Town Planning Scheme No. 4 and not*

building in accordance with the planning approval dated 17 May 2006 (DA156/06).

As resolved above, the City's Compliance department is currently undertaking legal action against the owner of the site.

The Western Australian Planning Commission endorsed a subdivision plan on 1 September 2008 for a two lot survey strata of No. 10 Malcolm Street. The subject grouped dwelling is now located on No. 12 (Lot 2) Malcolm Street, Fremantle.

DETAILS

Retrospective planning approval is sought for the 200mm increase in building height to that which was previously approved on 17 May 2008 (refer DA156/06).

The applicant has submitted a letter with the application which outlines the height discrepancy and how this occurred during the construction phase. This letter is attached to this report as Attachment 2.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Clause 8.4 of Local Planning Scheme No. 4 (LPS4) states that the Council may grant planning approval to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms with the provisions of LPS4.

Residential Design Codes

The increased building height has been assessed against the relevant Acceptable Development criteria set out within the Residential Design Codes and is consistent with these criteria.

With respect to building height, the height requirements for residential development in Malcolm Street are as per the Residential Design Codes, which specify a maximum wall height of 6m and roof ridge height of 9m. The dwelling that has been constructed on the site has a wall height of approximately 3m and ridge height of approximately 7.3m and is therefore consistent with the Acceptable Development criteria of the Residential Design Codes.

CONSULTATION

The application was not required to be advertised under the provisions of LPS4 or the City's *L.P.P1.3: Public Notification of Planning Approvals* as the application does not involve a significant discretion of Council under the provisions of LPS4, the Residential Design Codes or Council policies.

PLANNING COMMENT

Planning Approval is sought to rectify the existing non-compliance with planning approval DA156/06.

As outlined above, the proposed increase in building height satisfies the Acceptable Development criteria set out within the Residential Design Codes. No other relevant assessment criteria is provided for the assessment of the application within LPS4 or Council policies.

With respect to the legal action that is presently being initiated by Council, the granting of this retrospective development application will not impede the Council’s ability to seek prosecution.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

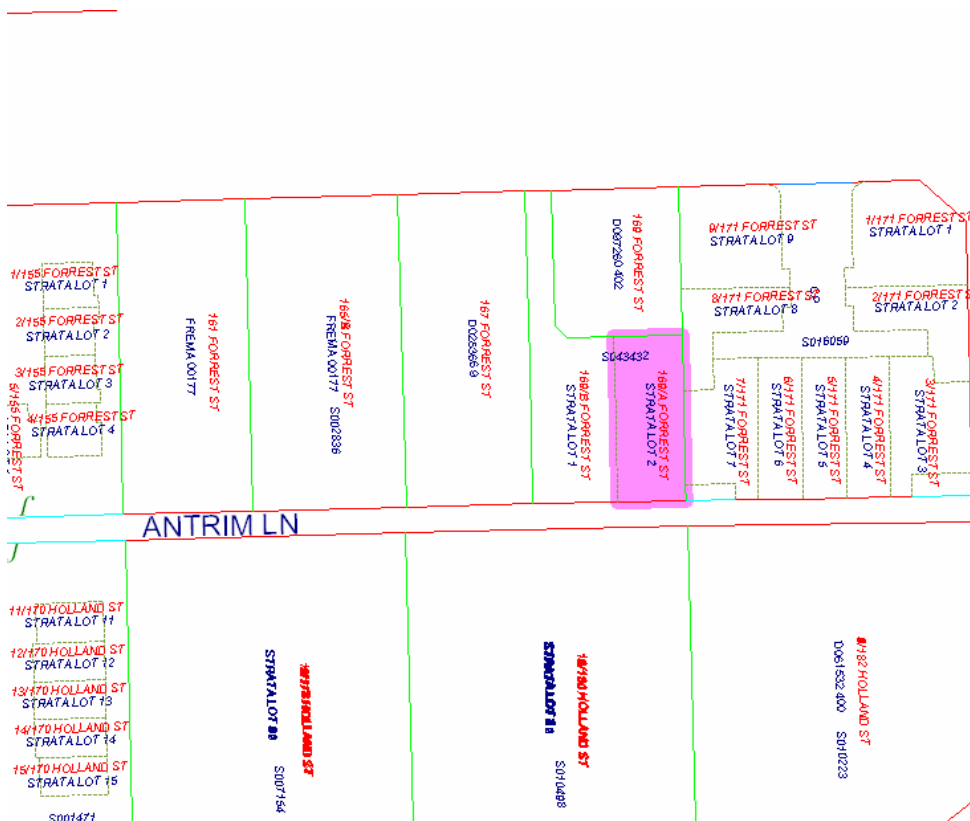
That the application for Retrospective Approval be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the unauthorised alterations to the height of the Grouped Dwelling at No. 12 (Lot 2) Malcolm Street, Fremantle as outlined in the plans dated 10 November 2008.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901-4 FORREST STREET, NO. 169A (LOT 2) FREMANTLE - HOME OCCUPATION (AT DA587/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Development plans
Date Received: 3 November 2008
Owner Name: S.V Blake
Submitted by: As above
Scheme: Residential – R30
Heritage Listing: Nil
Existing Landuse: Grouped dwelling
Use Class: Home occupation
Use Permissibility: D



RINGTONT ST

EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee for determination as a submission has been received which outlines concerns which cannot be addressed via conditions of approval.

Planning Approval is sought for a Home Occupation to undertake counselling. One operator who is also the owner and occupier of the dwelling is to undertake the sessions. No more than one client will be on-site at any one time and the sessions are to be undertaken from a bedroom within the dwelling. The sessions are to operate two days per week, within business hours.

The proposed Home Occupation is considered to satisfy the objectives of the Residential zone due to the business only operating two days a week within the existing dwelling and only having one client on-site at any one time. Due to the scale of the proposed counselling business, no significant impact upon the amenity and character of the surrounding area is anticipated.

As no car parking provision is prescribed for Home Occupations within LPS4, the Council is to determine the appropriate requirement. No additional car parking can be provided on the subject site however one of the parking bays within the garage will be available during business hours.

The proposed Home Occupation is recommended for approval.

BACKGROUND

The subject site is zoned Residential – R30 under Local Planning Scheme No. 4 (LPS4) and is within the Fremantle Local Planning Area. The site is not listed on the City's Heritage List.

A two storey grouped dwelling is constructed on the site which has frontage to Antrim Lane to the south however access is also provided to the site via a pedestrian access way easement located over the driveway to 169 Forrest Street.

DETAILS

Planning Approval is sought for a home occupation to undertake counselling. One operator who is also the owner and occupier of the dwelling is to undertake the sessions. No more than one client will be on-site at any one time and the sessions are to be undertaken from Bedroom 3 noted on the development plans. The sessions are to operate two days per week, within business hours.

STATUTORY AND POLICY ASSESSMENT

Use

The objectives of the Residential zone are outlined within Clause 4.2 of LPS4, these state:

Development within the residential zone shall –

- (i) provide for residential uses at a range of densities with a variety of housing forms to meet the needs of different household types, while recognising the limitations on development necessary to protect local character,
- (ii) safeguard and enhance the amenity of residential areas and ensure that development, including alterations and additions, are sympathetic with the character of the area,
- (iii) encourage high standards of innovative design which recognise the need for privacy, energy efficient design and bulk and scale compatible with adjoining sites,
- (iv) recognise the importance of traditional streetscape elements to existing and new development,
- (v) conserve and enhance places of heritage significance the subject of or affected by the development, and
- (vi) safeguard and enhance the amenity of residential areas by ensuring that land use is compatible with the character of the area.

Home Occupations are defined under LPS4 as follows:

Means an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which –

- (a) does not employ any person not a member of the occupier's household,
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood,
- (c) does not occupy an area greater than 30 square metres,
- (d) does not display a sign exceeding 0.2 square metres,
- (e) does not involve the retail sale, display or hire of goods of any nature.
- (f) In relation to vehicles and parking, does not result in the requirement for a greater number of parking facilities than normally required for a single dwelling or an increase in traffic volume in the neighbourhood does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight, and does not include provision for the fuelling, repair, or maintenance of motor vehicles, and
- (g) Does not involve the use of an essential service of greater capacity than normally required in the zone.

Within the Residential zone, Home Occupations are a 'D' activity which means that the use is not permitted unless the Council has exercised its discretion by granting planning approval.

Car Parking

With respect to car parking requirements, LPS4 refers the reader to Council policy, however the City's *D.C.7 – Home Occupation* policy was revoked in March 2008. Accordingly, under Clause 5.7.1(c) the car parking requirement for the Home Occupation land use is to be determined by the Council.

CONSULTATION

The application was required to be advertised under the City's *L.P.P1.3: Public Notification of Planning Proposals* policy to the adjacent owners and occupiers.

At the conclusion of the advertising period being 20 November 2008, one submission had been received. This submission outlined the following concerns relating to the development application:

Privacy and Security

Clients will pass by the submitters double carport, courtyard, front door and main bedroom windows which will impact upon the submitter's privacy and security.

Access

There is already confusion from visitors trying to access 169A's entrance and going up the submitter's driveway. The applicant only has pedestrian access from Forrest Street and this is not a common area.

Car Parking

The applicant already has two boarders who often have vehicles parked on the verge of Forrest Street.

PLANNING COMMENT

Use

The proposed counselling business will not employ anyone other than the owner of the property, will not occupy more than 30m² and no retail sale or display and hire of goods is proposed. In addition, no signage is proposed.

The proposed counselling service will not involve the use of an essential service which is of greater capacity than normally required in the Residential zone.

Little impact upon the amenity of the surrounding neighbourhood is anticipated due to the sessions all being held within the dwelling and the activity generally being of a quiet nature. Furthermore the sessions are to only run two days per week during normal business hours and there will only be one client on site at any one time. This scale of business is considered to be of a low intensity and as such, will safeguard the amenity of the neighbourhood through being compatible with the character of the area.

In relation to vehicles and parking, a double garage is located to the rear of the site accessing Antrim Lane. This is consistent with the residential use of the land. Given that the business is to only operate two days a week, no significant increase in traffic volume is anticipated. Additionally no delivery vehicles of more than 2 tonnes tare weight are anticipated and fuelling, repair or maintenance of motor vehicles is not proposed.

Overall the proposed counselling business due to it only operating two days a week and with only one client at a time is considered to be consistent with the Home Occupation definition and the objectives of the Residential zone.

Car Parking

LPS4 refers the reader to Councils policy for the car parking requirements for Home Occupations however the applicable policy has been revoked. As a result, Clause 5.7.1(c) requires vehicle parking provisions not prescribed for a particular use to be determined by the Council.

The Residential Design Codes require two on-site parking bays for a grouped dwelling. The subject site contains a double garage accessed off Antrim Lane. No additional car parking space is available for the proposed Home Occupation use. However the applicant has noted that only one of the car bays contained within the double garage is utilised during the day and clients will be able to utilise the other vacant space. As a result, a condition is recommended requiring the applicant to install signage to direct clients.

Submission

The submission received outlined three concerns relating to the proposed development application. These will be addressed below:

Privacy and Security

The submitter is concerned about clients accessing the subject site via the pedestrian access way easement which goes past the existing house on a neighbouring property. Decreased privacy and security of the adjacent property is considered to be a relevant concern however as the pedestrian access way easement was created at the time of subdivision, the owner of No. 169 Forrest Street has legal access to the property which both visitors and potential clients can utilise.

Access

The access arrangements to the subject site are outlined above. It is acknowledged that the vehicular access to the rear lane only and pedestrian access from Forrest Street could be a confusing situation for new visitors to the site. A condition is therefore recommended to require the applicant to install signage to direct clients.

Car Parking

The car parking requirements and assessment is set out in detail above.

CONCLUSION

The proposed Home Occupation is considered to satisfy the objectives of the Residential zone due to the business only operating two days a week within the existing dwelling and only having one client on site at any one time. Due to the scale of the proposed counselling business, no significant impact upon the amenity and character of the surrounding area is anticipated.

As no car parking provision is prescribed for Home Occupations within LPS4, the Council is to determine the appropriate requirement. No additional car parking can be provided on the subject site however one of the parking bays within the garage will be available during business hours.

The proposed Home Occupation is recommended for approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Home Occupation at No. 169A (Lot 2) Forrest Street, Fremantle, subject to the following condition(s):

- 1. The use hereby permitted shall take place in accordance with the approved plans dated 3 November 2008.**
- 2. The Home Occupation hereby permitted shall not operate more than two days per week and will have hours of operation that do not exceed normal trading hours, (8am to 6pm Monday to Friday).**
- 3. The Home Occupation hereby permitted shall not involve the retail sale, hire or display of goods.**
- 4. This approval allows the Home Occupation hereby permitted to be conducted by Sharon Vivian Blake. If Sharon Vivian Blake ceases to operate the Home Occupation hereby permitted or occupy the subject site, this approval will expire.**
- 5. The Home Occupation hereby permitted shall not occupy an area of greater than 30m².**
- 6. The Home Occupation hereby permitted shall not employ any person who is not a member of the occupier's household.**
- 7. Prior to the operation of the Home Occupation, signage shall be erected on site detailing the access arrangements to and from the site to the satisfaction of the Chief Executive Officer of the City of Fremantle.**

Advisory Note

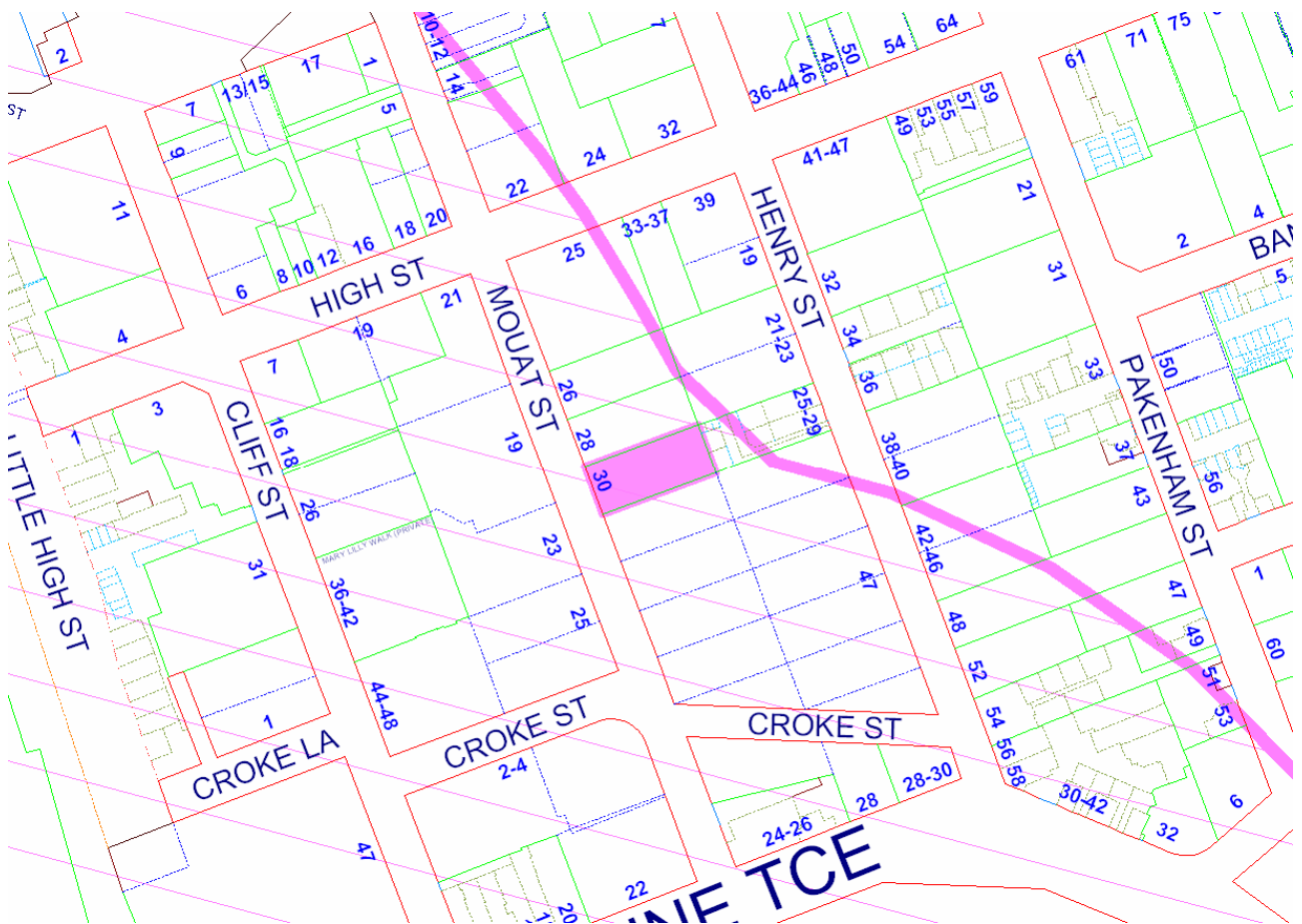
- a. The Home Occupation hereby permitted shall not erect any signage at the site that exceeds 0.2m² in area without Planning Approval from the City of Fremantle.**

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 5 MOUAT STREET, NO. 30/A (STERLITZ BUILDING), FREMANTLE - RESTORATION OF FRONT FACADE (KJ DA614/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: None
Attachments: Development plans
 Photograph c. 1925
Date Received: 13 November 2008
Owner Name: William Kerry Hill & Christina Ruth Hill
Submitted by: Kelsall Binet Architects
Scheme: City Centre
Heritage Listing: Level 1A on MHI, Heritage List, State Heritage Register
Existing Landuse: Commercial & Residential
Use Class: Commercial & Residential
Use Permissibility: D & P



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee because the building is included on the Heritage Council of Western Australia's Register of Heritage Places.

This application is for the restoration of the front façade of the Strelitz Building (No. 30/A Mouat Street, Fremantle).

The application is supported by the Heritage Council of Western Australia and the City's Heritage Officer. The proposed works are consistent with the provisions within the relevant City of Fremantle policies. Therefore, the application is recommended for approval.

BACKGROUND

The application site is located on the eastern side of Mouat Street within the City Centre zone. The site lies within sub area 1 (West End) of the City Centre Local Planning Area.

The site is included on the Heritage Council of Western Australia's Register of Heritage Places, is listed on the City of Fremantle's Heritage List and has a management category Level 1A on the Municipal Heritage Inventory. The site is also included within the West End Conservation Area. The place is considered by the City of Fremantle to be of exceptional significance to the City and its conservation is required.

The City's MHI states that the Strelitz Buildings has cultural heritage significance for the following reasons:

- The place contributes to the physical character of Fremantle's West End and its identity as the State's principal shipping and commercial centre at the beginning of the 20th century;
- The unusual display of Free Classical details gives Strelitz Buildings a distinctive character, which contributes to the visual richness of the West End; and,
- The place has strong association with the Strelitz brothers, Paul and Richard, and, through them, with the development of commercial and local government activities in Perth and Fremantle.

DETAILS

The application proposes conservation works to the façade of the building including:

- removal of the render to expose the original brickwork,
- rectifying the structural stability of the pediments by reconstruction of the roof form,
- reconstruction of the crowns to the pediments and the masonry balustrades,
- replacement of render where required and
- recladding of the roof.

STATUTORY AND POLICY ASSESSMENT

Council Policies

City of Fremantle policies *D.B.H13 Impact of Developments on Heritage Places Policy*, *D.G.F14 Fremantle West End Conservation Area Policy* and *LPP2.5 External Treatment of Buildings* are of relevance to the subject application.

CONSULTATION

Community

The application was not required to be advertised under Clause 9.4 of Local Planning Scheme No. 4 (LPS4) or City of Fremantle policy *L.P.P1.3: Public Notification of Planning Approvals*.

Heritage

Heritage Council of Western Australia:

The application was referred to HCWA. The following comment was provided:

“A Conservation Officer, with delegated authority from the Heritage Council, has assessed the development referral in the context of the identified heritage significance of the place. We can confirm that the proposed works are supported.”

City’s Heritage Officer:

The City’s Heritage Officer reviewed the application and provided the following comment:

“A site inspection was undertaken to assess the proposed works with the heritage significance of the place. It can be noted that the building is in need of urgent conservation works. Documentary evidence has been provided which establishes that the roof pitch has been altered and that the removal of the pediment crowns and the balustrading has also occurred since the c1925 photograph. It is noted that it is intended to remove the render and restore the original brickwork to the face of the building. The proposal to reconstruct and restore as original is appropriate and will be beneficial for the integrity and longevity of the building. It is also intended to repair damaged elements of the façade such as replacement of render. This is also appropriate providing materials used are matched and consistent with the original fabric. Overall, the works are in accordance with the principles of the Burra Charter as adopted by Council as a guiding document for the conservation of heritage places.

It is considered that the proposed conservation works are appropriate and commendable and therefore can be supported on heritage grounds.”

PLANNING COMMENT*D.B.H13 Impact of Developments of Heritage Places Policy*

As outlined by the City's Heritage Officer, the existing building is in urgent need of conversation. The proposed alterations to the front façade of the building are appropriate in terms of the heritage listing of the property and it is commendable that the proposal aims to reconstruct and restore the building as original. A condition is recommended on any planning approval granted ensuring that the materials to be used in the repair of the damaged elements of the façade are matched and consistent with the original fabric. It is considered that the proposal is consistent with Policy D.B.H13.

D.G.F14 Fremantle West End Conservation Area Policy

For the reasons outlined above, it is considered that the proposal will represent an improvement to the appearance of the building when viewed as an element of the West End Conservation Area and will contribute to the enhancement of the Conservation Area as a whole. Therefore the proposal is consistent with Policy D.G.F14.

LPP2.5 External Treatment of Buildings

With respect to the external finish of the building, much of the render is proposed to be removed to expose the original brickwork of the building. There will be a limited amount of re-rendering and repainting and provided that these match the existing or original colour of the building, unless otherwise agreed in writing by the City of Fremantle, it is considered that the objectives of this policy will be met. Such a condition is therefore recommended.

CONCLUSION

The application is supported by the Heritage Council of Western Australia and the City's Heritage Officer. The proposed works are consistent with the provisions within the relevant City of Fremantle policies. Therefore, the application is recommended for approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Mayor, Peter Tagliaferri**

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Restoration of Front Façade at No. 30/A (Strelitz Building) Mouat Street, Fremantle, subject to the following condition(s):

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 13 November 2008.**
- 2. Prior to commencement of development, a schedule of materials to be used in the development, including paint colours, shall be submitted to and approved in writing by the City of Fremantle.**
- 3. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should be works subsequently be removed, any damage shall be rectified to the satisfaction of the City of Fremantle.**

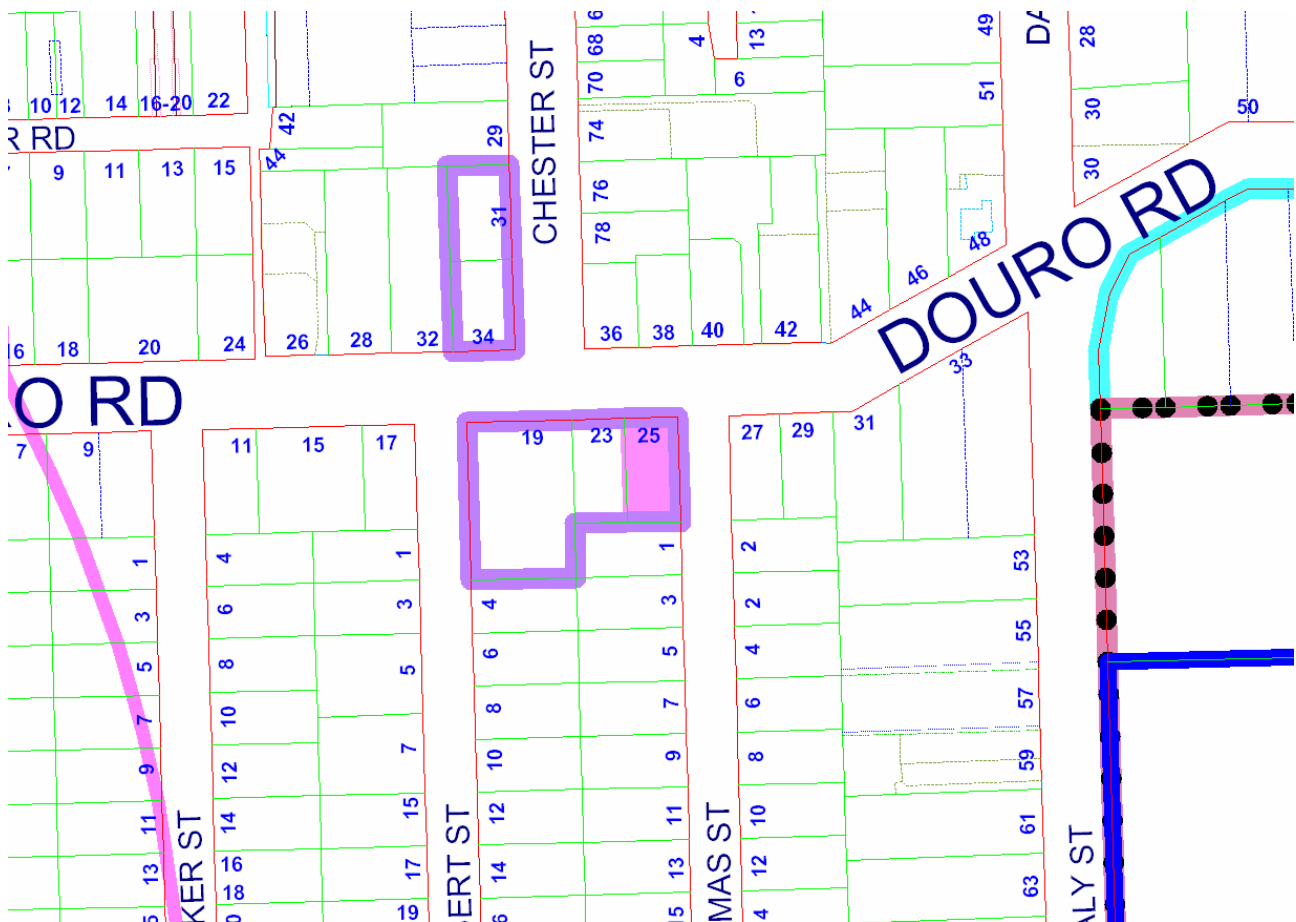
CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 6 DOURO ROAD NO.25 (LOT 95) SOUTH FREMANTLE - REQUESTED REPORT ON RESTAURANT LAND USE HISTORY - (BC)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0811-309
Attachments: Tabled Document Relating to PSC0811-309
 Letter to Landowner – 6 February 2006
 Letter to Landowner – 16 March 2006

Date Received: n/a
Owner Name: n/a
Submitted by: n/a
Scheme: Neighbourhood Centre
Heritage Listing: Management Category Level 3
Existing Landuse: Restaurant
Use Class: Restaurant
Use Permissibility: A



EXECUTIVE SUMMARY

This informative item is submitted to the Planning Services Committee (PSC) in response to questions and concerns raised by an attendee at the PSC meeting held on 19 November 2008.

The purpose of the report is to clarify the status of the existing restaurant use on No. 25 (Lot 95) Douro Road, South Fremantle.

It is recommended that Council notes the land use history of No. 25 (Lot 95) Douro Road, South Fremantle which allows for the continued use of the site for restaurant purposes as a conforming use.

BACKGROUND

The subject site is zoned Neighbourhood Centre under Local Planning Scheme No. 4 (LPS4) and is located within the South Fremantle Local Planning Area as described in Schedule 12 of the LPS4. The site is listed on the City's Municipal Heritage Inventory as a Management Category Level 3 due to the property's contribution to the streetscape, local area and Fremantle as a collective whole.

The City of Fremantle Town Planning Scheme No.2 (TPS2) was gazetted on 20 August 1970.

The site was zoned Single Residential under TPS2. A restaurant use was classified as a Public Amusement land use under TPS2. Public Amusement was defined as follows:

" means the use of land or building as a theatre, a cinema, a dance hall, a skating rink, swimming pool, gymnasium, indoor games, café, nightclub or restaurant."

A Public Amusement was classed as an 'AA' use within a Single Residential zone, meaning that the *'use is not permitted unless approval is granted by the Council.'*

The City received an application for Planning Approval for the use of the subject site as a restaurant under TPS2. The Council issued its Planning Approval on 19 March 1986 for a "Restaurant" use at the subject site (DA2/86).

The City of Fremantle Town Planning Scheme No. 3 (TPS3) was gazetted on 18 December 1987. TPS3 revoked the provisions of TPS2 on that date.

The zoning of the subject site was changed from Single Residential under TPS2 to Residence R25 under TPS3. A Restaurant land use was classed as an 'AA' use within a Residence zone, meaning that the use is not permitted unless consent is granted by the Council.

A "Restaurant" use was a use that was capable of approval with the exercise of Council's discretion within the Residence zone under TPS3. Consequently, the approved use of the site for a "Restaurant" under TPS2, was a conforming land use under TPS3 and not a "non-conforming use". That is, TPS3 did not prohibit the development of a restaurant on the subject site.

A letter was sent to Ms O'Brien of No.3 Thomas Street, South Fremantle (see Attachment 1) on 1 February 2006 from the City regarding the use of No.25 Douro Road, South Fremantle as a Restaurant. This letter stated that:

'the restaurant that previously operated in this location did so as a non-conforming use...'

Furthermore the letter stated that:

'given the use of these premises as a restaurant has ended more than three months ago, the owners of the property have been advised that should they wish to use the building for any purpose other than residential, they will need to make an application to the City of Fremantle for a change of use.'

A follow up letter was sent to Ms O'Brien of No.3 Thomas Street, South Fremantle on 6 February 2006 correcting aspects of the content of the letter sent on the 1 February 2006. In particular, the letter (see Attachment 2) stated that:

'upon further investigation it has been found that although the restaurant at this location has been closed for renovations, there has essentially been no change of use. Subsequently the City of Fremantle has advised the owner of the property that provided the building continues to be used as a restaurant, no application for a change of use is required.'

Another letter was sent to Ms O'Brien on 16 March 2006 reiterating that the restaurant use was not a 'non-conforming use' (see Attachment 3). The letter stated that:

'a new application for a change of use would only be required if the restaurant was a 'non-conforming use' that had been closed for a period of greater than three months or where there had been a discontinuance of the existing land use.'

The letter further states that:

'with respect to the first point above, it is important to clarify that under TPS3, the operation of a restaurant in a residential area is not a 'non-conforming use' or 'X' use.'

Planning approval was granted on 23 May 2006 for the Replacement/Restoration of Windows and Awning, Disabled Access, Internal Refurbishment at the subject site (DA192/06). The applicant also proposed additional dining floor space within the rear outdoor courtyard. The courtyard dining was refused on the basis that the applicant had not suitably demonstrated the provision of the required number of additional car parking bays.

The City of Fremantle Local Planning Scheme No. 4 (LPS4) was gazetted on 8 March 2007. LPS4 revoked TPS3 on that date.

The zoning of the subject site changed from "Residence R25" under TPS3 to a "Neighbourhood Centre Zone" under LPS4.

A "Restaurant" use is classed as an 'A' use within a Neighbourhood Centre zone under LPS4. An 'A' classification means that:

'the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice in accordance with clause 9.4.'

Therefore, the zoning of the subject site is such that a "Restaurant" use is not prohibited within this zone. As such, the existing restaurant use would be a conforming use under LPS4 and not a "non-conforming use".

Schedule 1 of LPS4 defines a 'non-conforming use' as *'having the same meaning as it has in Section 172 of the Planning and Development Act.'*

Section 172 of the Planning and Development Act 2005 (PD Act) defines a 'non conforming use' as:

'a use of land which, though lawful immediately before the coming into operation of a planning scheme or amendment to a planning scheme, is not in conformity with a provision of that scheme which deals with a matter specified in Schedule 7 clause 6 or 7.'

Clauses 6 and 7 of Schedule 7 of the PD Act concern-

- zoning of the scheme area for appropriate purposes;
- designation of uses in zones as permitted, prohibited or requiring approval; and
- controls for land or site management for matters to which the PD Act relates.

A "Restaurant" use is not a prohibited ("X") land use within the Neighbourhood Centre zone. As such, the use of the subject site as a restaurant under LPS4 is a conforming use.

Clause 4.10.1 of LPS4 deals with the discontinuance of a "non-conforming land use. The clause states that:

'where a non-conforming use of any land or building has been discontinued for a period of six months such land or buildings shall not thereafter be used otherwise than in conformity with the provisions of the Scheme.'

The restaurant land use is not a 'non-conforming use' and is therefore not subject to clause 4.10.1 of LPS4.

PLANNING SERVICES COMMITTEE MEETING – 19 NOVEMBER 2008

Council's Planning Approval was refused on 26 November 2008 for Alterations to Restaurant and Signage (DA337/08, PSC0811-309). The application was refused on the basis that the proposed outdoor dining area will adversely impact on the amenity of the adjoining and surrounding residential properties.

An attendee at the PSC meeting held on 19 November 2008 addressed the Committee contending that the restaurant land use was a 'non-conforming use' under TPS3.

The attendee was also of the opinion that the discontinuance clause in the City's Town Planning Scheme No.3 (TPS3) applies to all land uses rather than only 'non-conforming' land uses. A copy of a letter sent by the City of Fremantle dated 1 February 2006 was tabled by the attendee that appeared to support these opinions.

The PSC requested that the City's Development Services Department prepare a report to be presented to the PSC, responding to the attendees concerns.

DETAILS

This informative item is presented to the PSC in response to the concerns and questions raised at the PSC meeting held on 19 November 2008 regarding the historical use of No.25 Douro Road, South Fremantle as a restaurant. There is no decision required to be made in relation to this matter as this is an informative item and not a report dealing with an application for Planning Approval.

STATUTORY AND POLICY ASSESSMENT

Land Use

The research that led to the development of the Background Section to this report confirmed that the use of the subject site as a "restaurant" was a conforming land use under the City's TPS2, TPS3 and LPS4, even with the change in zonings or terminology used between the different Planning Schemes. The research did not identify any time when a restaurant was a prohibited or "X" land use in the different Planning Schemes and as such, subject to the non-conforming use provisions of those Planning Schemes.

The first letter from the City in early 2006 to Ms O'Brien raised the prospect that the restaurant use on the subject site was subject to the non-conforming land use provisions of TPS3. However, two subsequent letters within 6 weeks of the first letter sought to clarify the error in the first letter.

Discontinuance

A conforming land use can cease to operate for an extended period of time, and still be allowed to continue or re-commence operations, unless the site is subject to the non-conforming use provisions of a Planning Scheme. In that situation, the discontinuance provisions of a Planning Scheme become enforceable.

The research undertaken for the subject site established that the restaurant use was not a non-conforming use under the last three Planning Schemes. Consequently, the discontinuance provisions of the Planning Scheme are not relevant or applicable in this situation.

Conclusion

Planning approval was granted for a restaurant at No.25 Douro Road, South Fremantle on 19 March 1986 under TPS2. A restaurant use was a discretionary land use under TPS2 and TPS3 and is a discretionary land use under the current LPS4. Being a discretionary land use under the last three Planning Schemes, the existing land use is not subject to the non-conforming provisions of those Planning Schemes.

Having regard to the findings of the research that has been undertaken on this matter, it is recommended that Council:

- a) notes the research findings and
- b) advise the owner and the submitters of the City's findings by providing a copy of this report to them.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

That Council:

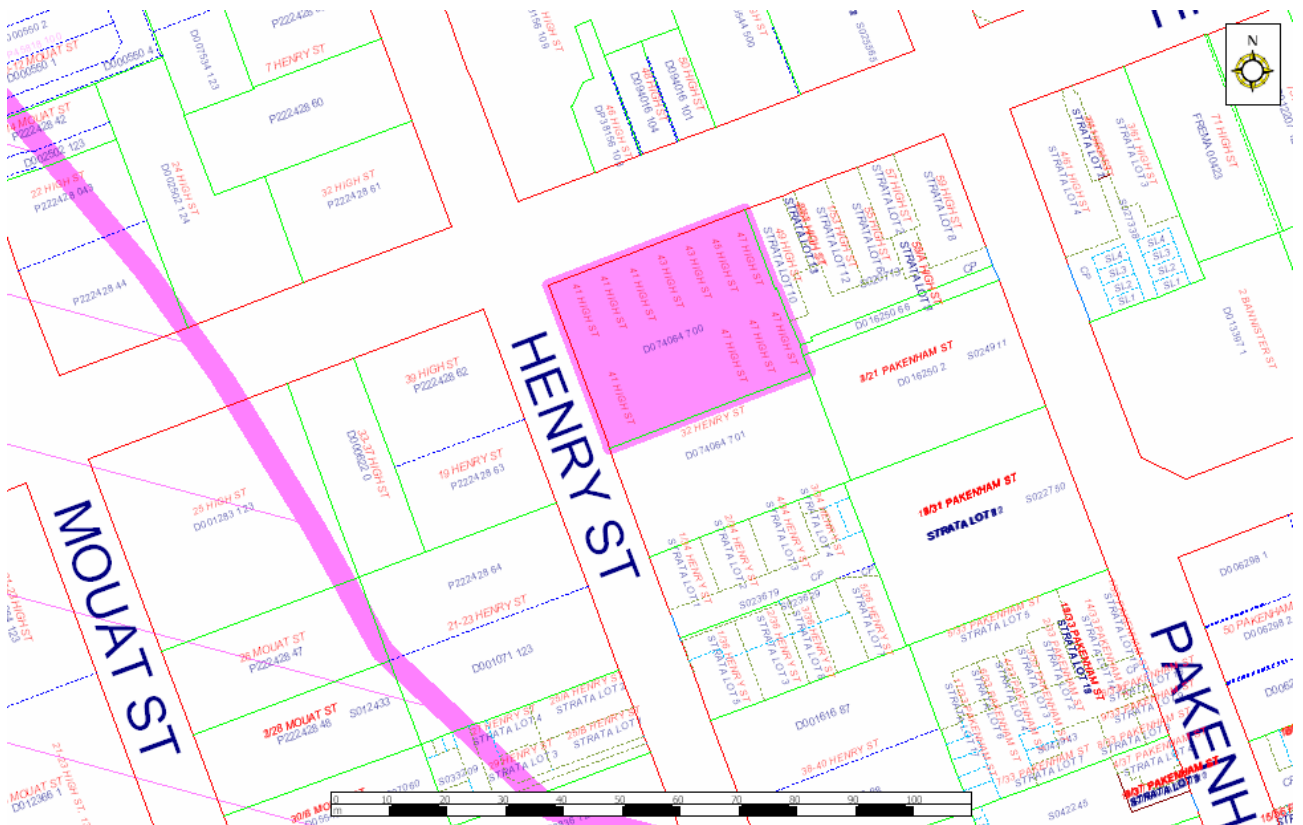
- 1) **Notes the research findings that the existing restaurant use on No. 25 Douro Road South Fremantle was a conforming land use under Town Planning Scheme No's 2 and 3 and Local Planning Scheme No. 4 and not a "non-conforming" land use;**
- 2) **Advise the owner and the submitters of the City's findings by providing them with a copy of the City's report item on this matter.**

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 7 HIGH STREET NO.43 (LOT 700) FREMANTLE - TWO AIR CONDITIONER UNITS TO EXISTING BUILDING - (BC DA482/08)

DataWorks Reference: 482/08
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0812-336
Attachments: Revised Development Plans 19 December 2008
 PSC0812-336
Date Received: 16 September 2008
Building Owner: City of Fremantle
Submitted by: Brooker Furniture P/L
Scheme: City Centre
Heritage Listing: 1A
Existing Landuse: Furniture Shop
Use Class: Shop
Use Permissibility: P



EXECUTIVE SUMMARY

The application for two air conditioner units at No. 43 (Lot 700) Fremantle was presented before the Planning Services Committee (PSC) on 3 December 2008. The Committee resolved to *'defer the application to the next appropriate Planning Services Committee to allow the applicant to investigate an appropriate type and location for the air conditioners.'*

Revised plans were received in relation to the location of the proposed two air conditioner units, which has now satisfies the City's concerns. The revised location complies with the Permitted Development requirements contained in Schedule 15 of LPS4 and as such, Planning Approval is not required for the proposed development.

It is recommended that Council support the proposed location of the two air conditioner units.

BACKGROUND

The Union Stores building at 43 High Street, Fremantle, is owned by the City of Fremantle. Brooker Fine Art and Furniture Gallery takes up 176m² of the Union Stores building.

The site is zoned City Centre under the provisions of LPS4 and is located within sub area 1 of the West End Conservation Area. The site is listed on the City's Heritage List and has a management category level 1A on the City's Municipal Heritage Inventory.

On 16 September 2008 the City received an application for the installation of two air conditioner units at 43 High Street (Union Stores building). The units were to be located at the rear of the building, 3.25m above ground floor level, above the windows on either side of the double doors. The air conditioner units were 0.9 metres in width and 0.85 metres in height.

On 3 December 2008 the Planning Services Committee resolved to defer the application to the next appropriate Planning Services Committee to *'allow the applicant to investigate an appropriate type and location for the air conditioners'* (PSC0812-336 – see Attachment 2).

On 19 December 2008 the applicant provided the City with revised plans for the proposed air conditioner units in response to the 3 December 2008 resolution of the Planning Services Committee (see Attachment 1). The units are to be located at the rear of the building on the ground floor level verandah. The units are 0.9 metres wide and 0.85 metre high. The units are located 1.15 metres above ground level. The principal difference between the original and revised plans is that the units are now to be located on the ground floor verandah of the building rather than the first floor verandah.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4

Clause 8.1 of the City's LPS4 states that subject to clause 8.2, all development on land zoned and reserved under the Scheme requires the prior approval of the Council. Development includes the installation of air conditioner units.

Clause 8.2 describes development that is permitted without the Planning Approval of Council. Subclause (l) of clause 8.2 refers to '*minor development as listed in Schedule 15*'.

Schedule 15 of LPS4 allows air conditioner units to be installed on a property on the heritage list without the planning approval of Council where the unit:

- '1) *not exceeding 1.8m in height and fixed to a wall of a building which faces a side boundary (excluding walls facing secondary streets); or*
- 2) *fixed to a wall or roof plane of a building which faces the rear boundary at a height not exceeding the highest part of the existing roof at any point.'*

PLANNING COMMENT

The amended plans showing the relocation of the proposed air conditioner units satisfies the intent of the Planning Services Committees resolution of 3 December 2008. Further, the amended plans comply with the Permitted Development requirements of Schedule 15 of LPS4. As such, the amended plans are supported.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

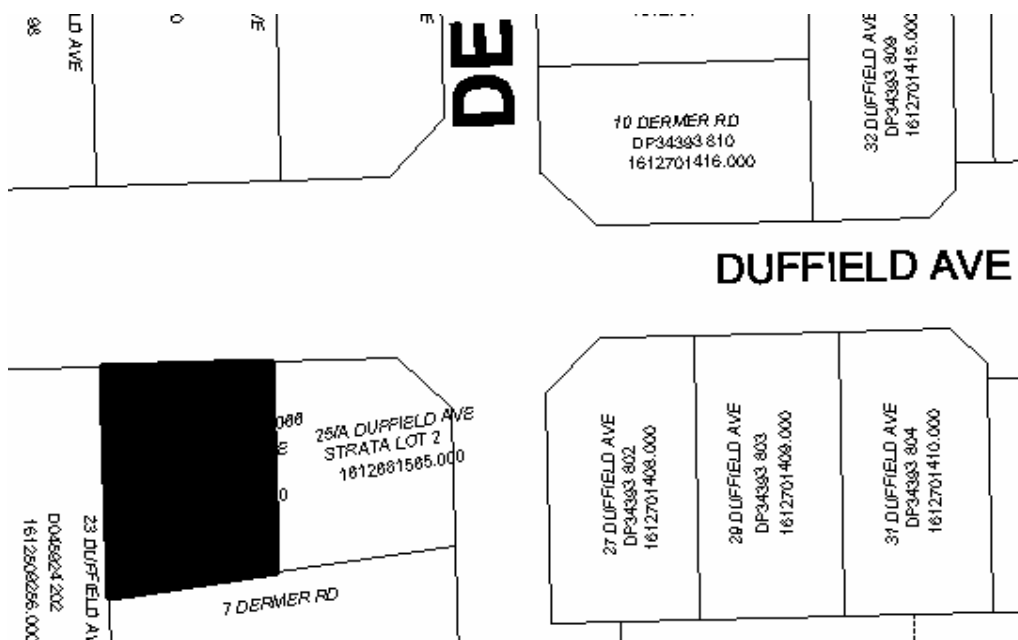
That the applicant be advised that the Planning Services Committee supports the proposed location of the two air conditioning units at No. 43 (Lot 700) High Street, Fremantle, as detailed on plans dated 19 December 2008.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

**PSC0901-8 DUFFIELD AVENUE NO. 25 (LOT 1) BEACONSFIELD -
OUTBUILDING SHED & REAR BOUNDARY WALL (GS C 08/1103 P)**

DataWorks Reference: 059/002
Disclosure of Interest: NIL
Previous Item: DA305/07
Responsible Officer: Manager Development Services
Actioning Officer: Development Compliance Officer
Decision Making Authority: Planning Services Committee
Agenda Attachments: Digital Photographs



EXECUTIVE SUMMARY

This purpose of this report is to inform the Planning Services Committee the outcome of action taken against the owners of 25 Duffield Avenue, Beaconsfield in relation to unauthorised works to an outbuilding.

Since mid 2005, the owners of 25 Duffield Avenue, Beaconsfield have undertaken alterations to their property, including construction works without the prior Planning Approval of the Council. Council resolved on 24 September 2008 to proceed with legal action against the applicant for contravening the Local Planning Scheme No.4 (LPS4).

The City commenced action against the owners and the owners have now rectified the works to accord with the original planning approval. Therefore, it is recommended that no further action be taken in relation to this matter.

BACKGROUND

The City received an application for Planning Approval on 6 May 2005 from the owners of 25 Duffield Avenue, Beaconsfield for the construction of an outbuilding to the rear of the existing dwelling.

In September 2005, the owners were requested to lodge an application for the unauthorised:

- a) increase in height of the parapet wall that extended for the entire length of the rear wall of the storage shed; and
- b) enclosure of a verandah attached to the shed to form a garage.

In December 2005, a Direction Notice was issued to the owners requiring them to reduce the overall height of the rear wall from 2.3m to 1.8m which was not shown on the approved plans dated 7 June 2005. No response to the Direction Notice was received by the City.

In March 2006, the owners lodged a retrospective application for a front fence but were issued a refusal as the proposed fence did not meet the relevant Performance criteria of the Residential Design Codes.

In March 2006 a letter was sent to McLeod's Solicitors advising them that the owners of 25 Duffield Avenue, Beaconsfield were issued with a Direction Notice in December 2005 seeking removal of the unauthorised additions. An inspection there after revealed that the additions had not been removed.

Since that time letters have been back and forth regarding the unauthorised additions and the owners have still not taken any action to correct the issues.

A further letter was sent on 11 July 2008 requesting that the owner comply with the City's previous requests and either lodge a retrospective application for Planning Approval for the unauthorised works or to remove the unauthorised additions within 28 days and advising that failure to do so would result in the City considering further action with regard to the breaches of the Scheme.

COMMENT

After a considerable amount of correspondence back and forth, the owners of 25 Duffield Avenue, Beaconsfield have undertaken the required rectification works required.

A site inspection on 23 October 2008 confirmed that the works required by the City have now been complied with and therefore, it is recommended that the City take no further action in this matter.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Mayor, Peter Tagliaferri**

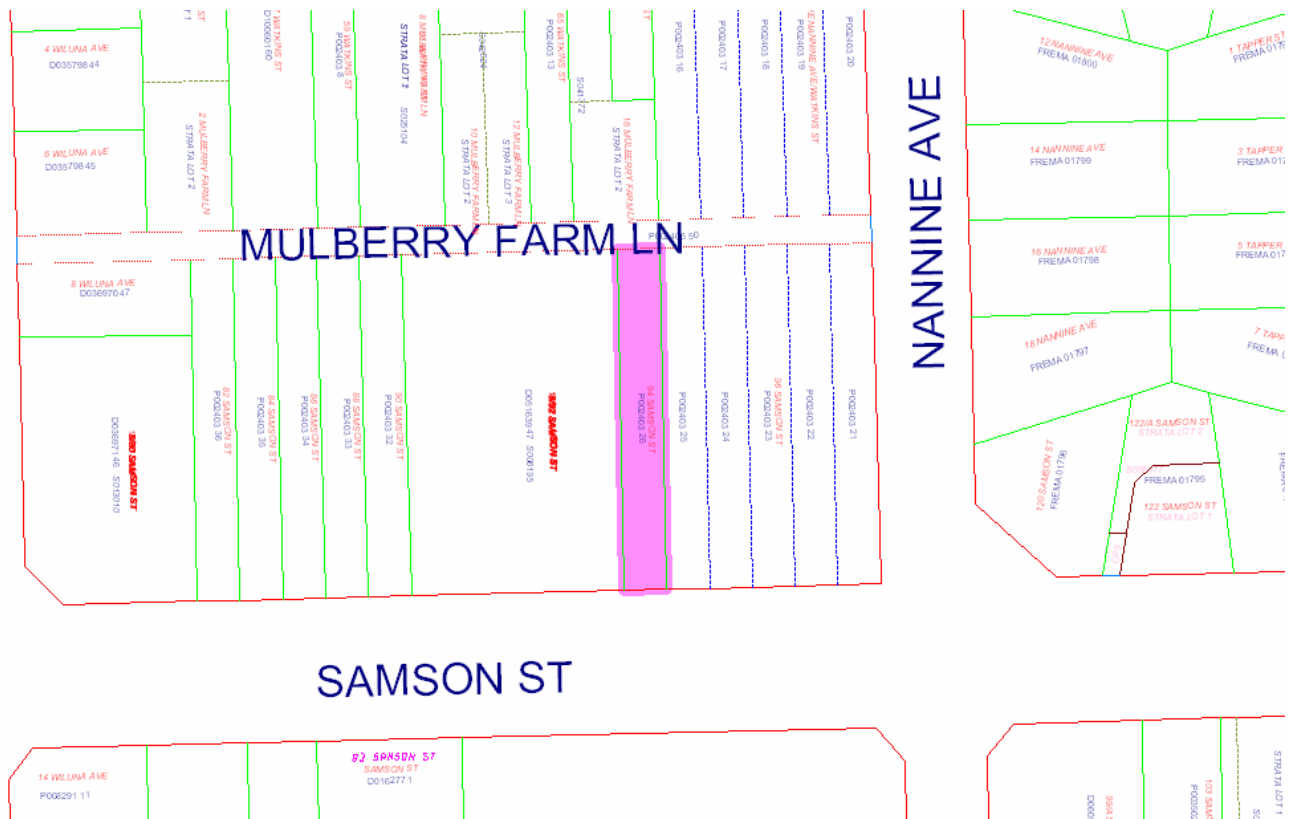
That Council resolves to take no further action against the owners Mr & Mrs Callan of 25 Duffield Avenue, Beaconsfield with regard to the rear wall and shed enclosure that have now been modified to comply with the approved plans dated 6 May 2005.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 9 SAMSON STREET, NO. 94 (LOT 26) WHITE GUM VALLEY - CONVERSION OF ANCILLARY ACCOMMODATION TO A SINGLE BEDROOM DWELLING, ADDITIONS TO THE SINGLE BEDROOM DWELLING AND COSNTRUCTION OF A CARPORT (AT DA581/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Development plans
 Applicant's justification letters (2)
Date Received: 3 November 2008
Owner Name: A & V.J Blake
Submitted by: M Willicombe
Scheme: Residential – R20/R25
Heritage Listing: Nil
Existing Landuse: Grouped Dwellings
Use Class: Grouped Dwellings (1 Single Bedroom Dwelling)
Use Permissibility: D



EXECUTIVE SUMMARY

This application is referred to the Planning Services Committee for determination as a number of variations to the City's Energy Efficiency and Sustainability Schedule are sought.

Planning Approval is sought to convert the existing Ancillary Accommodation dwelling and Single House at No. 94 Samson Street, White Gum Valley into a Single Bedroom Dwelling and Grouped Dwelling respectively. To enable these conversions, the applicant proposes to utilise the R25 density based upon compliance with the City's *Energy Efficiency and Sustainability Schedule*.

Approval is also sought to undertake additions to the proposed Single Bedroom Dwelling and the construction of a new detached single carport to the rear of the site to replace the existing carport.

The primary points of consideration for the subject application are with respect to the discretionary decisions sought relating to the increased size of the Single Bedroom Dwelling, conformity with the Energy Efficiency and Sustainability Schedule, boundary setbacks, open space and access.

The performance based assessments against the Residential Design Codes relating to boundary setbacks, open space and access are supported. Additionally the proposed variations to the City's *D.C2: Special Purpose Dwellings and Energy Efficiency and Sustainability Schedule* are also supported.

The application is consequently recommended for approval subject to conditions.

BACKGROUND

The subject site is located at No. 94 Samson Street, White Gum Valley and has an area of 655m². The site is of narrow configuration being only 9m wide and 66m in length with frontage to both Samson Street and Mulberry Lane.

The existing improvements to the site include one single storey Single House which has frontage to Samson Street and one single storey Ancillary Accommodation dwelling (described within the application as a 'Granny Flat') which has frontage to Mulberry Lane.

Under the provisions of Local Planning Scheme No. 4 (LPS4), the subject site is zoned Residential – R20/R25 and is within the White Gum Valley local planning area.

DETAILS

Planning Approval is sought to convert the existing Ancillary Accommodation dwelling and Single House at No. 94 Samson Street, White Gum Valley into a Single Bedroom Dwelling and Grouped Dwelling respectively, to allow for the future subdivision of the site. To enable this conversion, the applicant proposes to utilise the R25 density based upon compliance with the City's *Energy Efficiency and Sustainability Schedule*.

Approval is also sought to undertake additions to the proposed Single Bedroom Dwelling, including a rear addition to encompass a new bathroom, a new verandah addition to the front of the dwelling and the construction of a new detached single carport to the rear of the site to replace the existing carport.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4

Clause 5.3.4 of LPS4 states that where a site is identified as having a split density coding and is connected to reticulated sewerage, the higher code may only be applied where one or more of the criteria (a) – (d) are addressed to the satisfaction of Council.

The application has been made on the basis of compliance with sub-clause (c) of Clause 5.3.4 which requires building be designed in accordance with Council's Energy Efficiency and Sustainability Schedule. This schedule is contained within City of Fremantle policy *L.P.P2.2: Split Density Codes*.

Residential Design Codes

The development application has been assessed against the relevant Acceptable Development criteria contained within the Residential Design Codes. The development satisfies all of the Acceptable Development criteria with the exception of Design Elements 6.3 – Boundary Setbacks, 6.4 – Open Space and 6.5 – Access and Parking.

Council Policies

D.C2: Special Purpose Dwellings

This policy increases the allowable plot ratio area of single bedroom dwellings permitted under the Acceptable Development criteria of the Residential Design Codes from 60m² to 75m². This policy also allows an additional ancillary room that may not be used as an additional bedroom provided it does not exceed 2m in any direction.

The existing 'Granny Flat' including the 9m² mezzanine area and the proposed bathroom addition exceeds the 75m² floor area specified. In addition, the mezzanine exceeds 2m in both length and width.

L.P.P2.2: Split Density Codes

The conversion of the existing Ancillary Accommodation into a Single Bedroom Dwelling and the existing Single House into a Grouped Dwelling, relies upon the higher R25 density. The applicant has specified that the R25 density is applied for on the basis of compliance with the City's Energy Efficiency and Sustainability Schedule (the Schedule) contained within this policy. A number of variations to the requirements of the Schedule are proposed.

D.C6: Carports/Garages in Front of Dwellings

This policy states that when an existing house has access from a rear lane such as Mulberry Lane then priority should be given to the location of the carport to the rear of the site. The proposed carport location satisfies the criteria contained within this policy.

CONSULTATION

Community

The application was not required to be advertised in under Clause 9.4 of LPS4 or *L.P.P1.3: Public Notification of Planning Approvals*.

City's Technical Services Department

The application was referred to the City's Technical Services department due to the proposed amended crossover on to Mulberry Lane. Upon review of the development plans and a site visit, the City's Technical Services staff has stated that they have no objection to the location of the crossover on to Mulberry Lane.

PLANNING COMMENT

The discretionary decisions sought by the applicant are with respect to the size of the Single Bedroom Dwelling, boundary setbacks, open space, access and compliance with the Energy Efficiency and Sustainability Schedule.

Single Bedroom Dwelling

As outlined above, the 60m² maximum floor area for Single Bedroom Dwellings allowed by the Acceptable Development criteria of the Residential Design Codes is increased to 75m² by the City's *D.C2: Special Purpose Dwellings* policy where a dwelling provides limited accommodation, suitable for one or two persons. The proposed single bedroom dwelling including the existing 9m² mezzanine area and proposed bathroom extension (approximately 8.5m²) is to have a gross floor area of 79m².

This policy also allows a single bedroom dwelling to contain an additional ancillary room that may not be used as an additional bedroom but may be used for the purposes of a home office, storage, study, nursery or walk in robe and shall not exceed 2m in any direction. The existing mezzanine is approximately 3m x 3m in size however the applicant notes that this area *'is largely of reduced ceiling height and is unusable as a bedroom, only really viable as a small study area.'*

With respect to the variations to the policy requirements, the applicant has noted that the dwelling was constructed prior to policies on Single Bedroom Dwellings being developed and that as the existing dwelling does not contain a laundry it is not a self-contained dwelling at present. In solution to the variations sought, the applicant has stated that the existing mezzanine area could be converted into a laundry or *'walled up'*, however notes that these solutions would be *'nonsensical, purely to chase an arbitrary floor area cap, at the expense of any logical sense of use and practicality'*.

Both the Residential Design Codes and the City's *D.C2: Special Purpose Dwellings* policy prescribe maximum floor areas and limits on the number of bedrooms to promote the development of smaller dwellings for one or two persons only, which provides a diversified housing stock. A condition could be imposed requiring the boarding up of the mezzanine roof area, however as outlined by the applicant, it is considered that this would serve little benefit.

The existing dwelling including the mezzanine area and the proposed bathroom addition is considered to only result in a Single Bedroom Dwelling of limited size capable of only being comfortably occupied by no more than one or two persons. As a result, the proposed variation to *D.C2: Special Purpose Dwellings* is supported.

Boundary Setbacks

The proposed carport is required under the Acceptable Development criteria to be setback 1m from the eastern boundary however a setback of only 0.8m is provided. The Performance Criteria for boundary setbacks state:

Building setback from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *Assist in protecting privacy between adjoining properties.*

The proposed carport is of open sided construction and of low height (2.5m wall height and 3.5m ridge height) and only 6.5m in length. As a result, no significant impact upon solar access, ventilation, building bulk and privacy to the adjoining properties or the subject site is anticipated.

Open Space

The outdoor living area associated with the Single Bedroom Dwelling satisfies the Acceptable Development criteria with respect to the minimum area required (30m²) however this area is to be situated in front of the dwelling and consequently within the street setback area. The Performance Criteria for outdoor living areas states:

An outdoor living area capable of use in conjunction with a habitable room of the dwelling, and if possible, open to winter sun.

An outdoor area that takes the best advantage of the northern aspect of the site.

The outdoor living area associated with the Single Bedroom Dwelling is located to the north of the subject site therefore making best advantage of the northern aspect of the site. Additionally this area will be capable of use in conjunction with the living room. As a result, the proposed development is considered to satisfy the Performance Criteria.

Access and Parking

The proposed new crossover to the Single Bedroom Dwelling does not satisfy the Acceptable Development criteria as it is to occupy more than 40% of the site frontage and is to be located closer than 6m to the point at which the road carriageway of Mulberry Farm Lane begins to deviate. The Performance Criteria for vehicle access states:

Vehicular access provided so as to minimise the number of crossovers, avoid street trees, to be safe in use and not detract from the streetscape.

Both dwellings on the site are to be provided with a crossover. The existing crossover to the Single Bedroom Dwelling will replace the existing crossover off Mulberry Farm Lane. In addition, the dwelling to the front of site has an existing crossover to Samson Street. As a result, the number of crossovers will correspond to the number of dwellings and are therefore considered to be satisfactory.

No street trees will be required to be removed for the upgrade of the crossovers and as both crossovers already exist, the upgrade will not detract from the streetscape.

The City's Technical Services department have reviewed the proposed crossover location and width and have stated that it will be safe in use. Consequently, the proposed development is considered to satisfy the Performance Criteria relating to vehicular access.

Energy Efficiency and Sustainability Schedule

The applicant has applied to utilise the R25 density based upon compliance with the City's Energy Efficiency and Sustainability Schedule (the Schedule). The existing Single House and Single Bedroom Dwelling have been assessed against the requirements of the Schedule and only those criteria not considered being met by the application are discussed below.

Orientation to the true north with the home's living space located on the north side of the building

The configuration of the existing dwelling facing Samson Street has the laundry and a bedroom along the northern elevation. The policy states that a home's living space does not include bedrooms or laundries consequently the existing house does not satisfy this requirement. Notwithstanding this, it is noted that there is an existing glass conservatory along the northern elevation which provides a living space of approximately 14m². As a result, the intent of this criterion is considered to be met through the provision of this conservatory.

All east and west windows should be tinted or shaded

The applicant has stated that adjustable blinds are proposed to be installed which can be manipulated to allow heat gains in winter and shut in the summer. These blinds are shown on the development plans for the major openings along the eastern and western elevations of the house fronting Samson Street however not on the Single Bedroom Dwelling. As a result a condition of approval is recommended requiring compliance with this requirement.

No black or dark grey coloured roofs. East and west external walls are not to be dark coloured.

The applicant has stated that the roof of the house fronting Samson Street is to be painted a light colour and roof vents are to be installed. The painting of this roof is recommended as a condition of approval.

Eaves with a minimum horizontal distance from the walls of 500mm.

According to the development plans, the eaves of the single bedroom dwelling are approximately 400mm. The applicant has provided the following justification:

This is not actually a sensible requirement for east and west facing windows where you are using adjustable external blinds. We are seeking an alternative design solution to this "dumbed down" approach.

As a condition is recommended requiring all east and west facing windows to be tinted or shaded, the extension of the eaves of the Single Bedroom Dwelling by 100mm would not substantially increase the energy efficiency or sustainability of this dwelling. As a result, the proposed variation to this requirement is supported.

Insulation (minimum R4 roof insulation and minimum R2.5 wall insulation) shall be installed and maintained thereafter.

The Schedule requires the above as a condition of approval. The applicant however requests a variation to this requirement for the insulation of the roof of the Single Bedroom Dwelling. This variation is sought as the dwelling is already lined with expensive timber boarding making upgrading an expensive and a messy exercise. Consequently, the applicant has provided the following justification:

The existing anticon insulation and timber boarding lining equates to an R value of approx. R3 and given the small size of the dwelling and the extent of tree overhanging this equates to a good standard overall. The tree shade in summer reduces heat gain dramatically and in winter the still thick peppermint tree will reduce wind based heat loss significantly as well. The walls in the single bedroom dwelling can be similarly filled to exceed the R2.5 standard.

Given the small size of the Single Bedroom Dwelling having a footprint of approximately 66m² and the existing shade cover provided by the existing vegetation on the subject site and on the adjacent City of Fremantle park, the reduction in roof insulation is supported.

Ventilators in the roof void (above the insulation layer) shall be installed and maintained thereafter. Ventilators should be capable of being closed during winter conditions.

The Schedule requires the above criteria to be imposed as a condition of approval. However a variation to this requirement for the Single Bedroom Dwelling is requested by the applicant as the existing high-level opening windows vent out any residual heat in summer and can be closed in winter. As a result of the roof shape of this dwelling, the applicant proposes to install two large diameter downdraught fans for winter heating conditions. The installation of these fans is recommended as a condition of approval.

An approved grey-water reuse system that collects grey water from the laundry and bathroom and re-directs it for garden irrigation/ground water recharge is to be installed and maintained thereafter.

A variation to this criterion is requested as the grey water can be diverted from all six sinks and washing machines of the two dwellings but not the baths and showers due to the existing nature of the development. This grey water supply shortfall is however considered to be re-charged by the connection of the kitchen sinks in addition to the sinks in the bathroom and laundry which the Schedule does not expressly require. As a result, this variation is supported.

CONCLUSION

The primary points of consideration for the subject application are with respect to the discretionary decisions sought relating to the increased size of the Single Bedroom Dwelling, conformity with the Energy Efficiency and Sustainability Schedule, boundary setbacks, open space and access.

The performance based assessments against the Residential Design Codes relating to boundary setbacks, open space and access are supported. Additionally the proposed variations to the City's *D.C2: Special Purpose Dwellings* and *Energy Efficiency and Sustainability Schedule* are also supported.

The application is consequently recommended for approval subject to conditions.

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Conversion of Ancillary Accommodation to a Single Bedroom Dwelling and a Single House to a Grouped Dwelling, Additions to the Single Bedroom Dwelling and Construction of a Carport at No. 94 (Lot 26) Samson Street, White Gum Valley, subject to the following condition(s):

1. The development and hereby permitted shall take place in accordance with the approved plans dated 3 November 2008 and 16 December 2008.
2. Prior to the use of the dwellings as Grouped Dwellings, pursuant to section 129BA of the *Transfer of Land Act 1893* a restrictive covenant is to be placed on the Certificate of Title of the lot to the effect that unless otherwise approved by the City of Fremantle, the building with frontage to Mulberry Farm Lane shall be required to comply with the Single Bedroom Dwellings requirements set out within the Residential Design Codes and the City of Fremantle *D.C6: Special Purpose Dwellings* policy.
3. Prior to the use of the dwellings as Grouped Dwellings, pursuant to section 129BA of the *Transfer of Land Act 1893* a restrictive covenant is to be placed on the certificate of title of the two lots to the effect that unless otherwise approved by the City of Fremantle, no new building on the lots shall take place unless it is designed in accordance with the City's energy efficiency and sustainability schedule. Notice of the requirement for the restrictive covenant shall be included on the deposited plan. The restrictive covenant is to state as follows:

"No new development is to take place which is not designed in accordance with the City of Fremantle Energy Efficiency and Sustainability Schedule, unless otherwise approved by the local government."

Energy

4. Prior to the use of the dwellings as Grouped Dwellings, details of the proposed sun shades for the eastern and western facing windows of both dwellings shall be submitted for the approval of the Chief Executive Officer of the City of Fremantle.
5. The sun shades approved under Condition 4 shall be installed on both dwellings prior to the use of the dwellings as Grouped Dwellings to the satisfaction of the Chief Executive Officer of the City of Fremantle.
6. The roof of the dwelling facing Samson Street shall be painted a light colour prior to the use of the dwellings as Grouped Dwellings to the satisfaction of the Chief Executive Officer of the City of Fremantle.
7. Prior to the use of the dwellings as Grouped Dwellings, insulation (minimum R4 roof insulation and minimum R2.5 wall insulation) shall be installed to the Samson Street dwelling and maintained thereafter.
8. Prior to the use of the dwellings as Grouped Dwellings, insulation (minimum R2.5 wall insulation) shall be installed in the Single Bedroom Dwelling and maintained thereafter.
9. Prior to the use of the dwellings as Grouped Dwellings, a gas boosted solar hot water system shall be installed in both dwellings and maintained thereafter.
10. Prior to the use of the dwellings as Grouped Dwellings, ventilators in the roof void (above the insulation layer) shall be installed within the Samson Street dwelling and maintained thereafter. Ventilators should be capable of being closed during winter conditions
11. Prior to the use of the dwellings as Grouped Dwellings, two downdraught fans shall be installed within the Single Bedroom Dwelling and maintained thereafter.

Water

12. Prior to the use of the dwellings as Grouped Dwellings, an approved grey-water reuse system that collects grey water from the kitchen, laundry and bathroom sinks and washing machines and re-directs it for garden irrigation/ground water recharge is to be installed and maintained thereafter.
13. Prior to the use of the dwellings as Grouped Dwellings, water-efficient fixtures shall be installed in both dwellings, including 3A-5A rated taps, toilets and showerheads.

Cr B Pettitt MOVED an amendment to the Officer's Recommendation to change the wording of condition 12 to read as follows:

12. Prior to the use of the dwellings as Grouped Dwellings, an approved grey-water reuse system that collects grey water from the *shower and bath*, laundry and bathroom sinks and washing machines and re-directs it for garden irrigation/ground water recharge is to be installed *to the satisfaction of the CEO, and thereafter maintained.*

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

The Committee considered it appropriate that grey water be collected from the shower and bath.

COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

That the application be **APPROVED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Conversion of Ancillary Accommodation to a Single Bedroom Dwelling and a Single House to a Grouped Dwelling, Additions to the Single Bedroom Dwelling and Construction of a Carport at No. 94 (Lot 26) Samson Street, White Gum Valley, subject to the following condition(s):

1. The development and hereby permitted shall take place in accordance with the approved plans dated 3 November 2008 and 16 December 2008.
2. Prior to the use of the dwellings as Grouped Dwellings, pursuant to section 129BA of the *Transfer of Land Act 1893* a restrictive covenant is to be placed on the Certificate of Title of the lot to the effect that unless otherwise approved by the City of Fremantle, the building with frontage to Mulberry Farm Lane shall be required to comply with the Single Bedroom Dwellings requirements set out within the Residential Design Codes and the City of Fremantle *D.C6: Special Purpose Dwellings* policy.
3. Prior to the use of the dwellings as Grouped Dwellings, pursuant to section 129BA of the *Transfer of Land Act 1893* a restrictive covenant is to be placed on the certificate of title of the two lots to the effect that unless otherwise approved by the City of Fremantle, no new building on the lots shall take place unless it is designed in accordance with the City's energy efficiency and sustainability schedule. Notice of the requirement for the restrictive covenant shall be included on the deposited plan. The restrictive covenant is to state as follows:

"No new development is to take place which is not designed in accordance with the City of Fremantle Energy Efficiency and Sustainability Schedule, unless otherwise approved by the local government."

Energy

4. Prior to the use of the dwellings as Grouped Dwellings, details of the proposed sun shades for the eastern and western facing windows of both dwellings shall be submitted for the approval of the Chief Executive Officer of the City of Fremantle.
5. The sun shades approved under Condition 4 shall be installed on both dwellings prior to the use of the dwellings as Grouped Dwellings to the satisfaction of the Chief Executive Officer of the City of Fremantle.
6. The roof of the dwelling facing Samson Street shall be painted a light colour prior to the use of the dwellings as Grouped Dwellings to the satisfaction of the Chief Executive Officer of the City of Fremantle.
7. Prior to the use of the dwellings as Grouped Dwellings, insulation (minimum R4 roof insulation and minimum R2.5 wall insulation) shall be installed to the Samson Street dwelling and maintained thereafter.
8. Prior to the use of the dwellings as Grouped Dwellings, insulation (minimum R2.5 wall insulation) shall be installed in the Single Bedroom Dwelling and maintained thereafter.
9. Prior to the use of the dwellings as Grouped Dwellings, a gas boosted solar hot water system shall be installed in both dwellings and maintained thereafter.
10. Prior to the use of the dwellings as Grouped Dwellings, ventilators in the roof void (above the insulation layer) shall be installed within the Samson Street dwelling and maintained thereafter. Ventilators should be capable of being closed during winter conditions
11. Prior to the use of the dwellings as Grouped Dwellings, two downdraught fans shall be installed within the Single Bedroom Dwelling and maintained thereafter.

Water

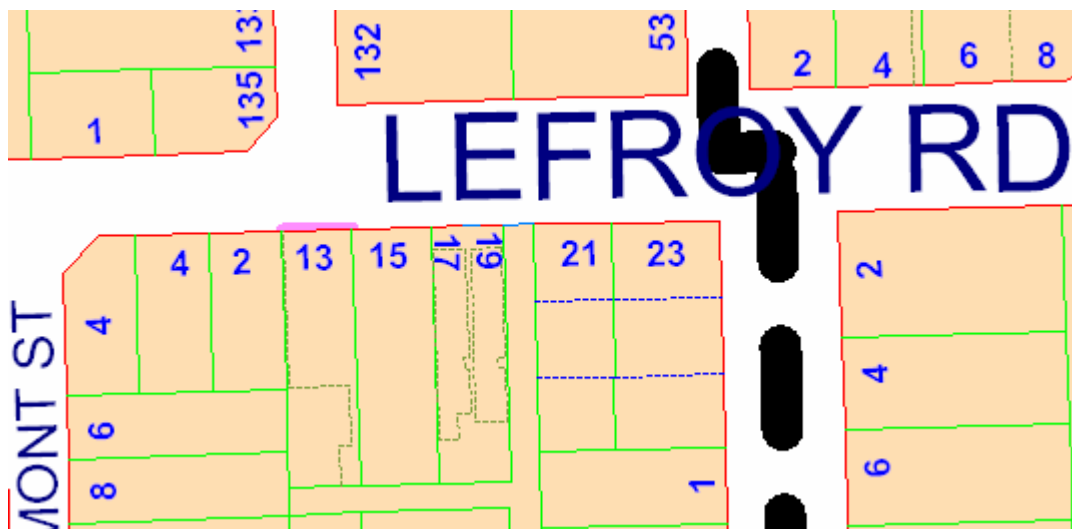
12. Prior to the use of the dwellings as Grouped Dwellings, an approved grey-water reuse system that collects grey water from the *shower and bath*, laundry and bathroom sinks and washing machines and re-directs it for garden irrigation/ground water recharge is *to be installed to the satisfaction of the CEO, and thereafter maintained.*
13. Prior to the use of the dwellings as Grouped Dwellings, water-efficient fixtures shall be installed in both dwellings, including 3A-5A rated taps, toilets and showerheads.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 10 LEFROY ROAD NO 13/A (LOT 1) SOUTH FREMANTLE - UNAUTHORISED USE - C 08/1509 P

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services Manager Planning Projects
Director Planning and Development
Actioning Officer: Coordinator Development Compliance
Decision Making Level: Planning Services Committee Council
Previous Item Number/s: PSC0702-58; PSC0703-120; C0705-4
Attachments: Nil
Owner Name: Mr and Mrs Wyatt
M.R.S.: Urban
L.P.S No. 4: Residential R30
Heritage Listing: MHI Level 3
Approved Landuse: Residential
Use Permissibility: X



EXECUTIVE SUMMARY

In February 2007, the Planning Services Committee resolved to recommend that full Council refuse an application for planning consent for a change of use to 'Residence – Other' (short stay accommodation) at 13A Lefroy Road under Town Planning Scheme No. 3 ("LPS 3"). The applicant (who is the property owner) subsequently withdrew the application prior to consideration by Council. The City has recently received correspondence indicating that the use was continuing to operate albeit without approval. Local Planning Scheme 4 ("LPS 4") gazetted in March 2007 prohibits 'Tourist Accommodation' (which includes short stay self contained accommodation) within the Residential zone. Council resolved on 23 May 2007 to amend LPS4 to specifically define a short stay dwelling, amend the definition of 'Tourist Accommodation' to exclude short stay dwellings and include the use of a single house, grouped dwelling or multiple dwelling as a short stay dwelling under clause 8.2 of the Scheme as development permitted without the need to obtain planning approval. However, this is a lengthy statutory process and direction is required in the interim on how Council wishes to manage these accommodation activities currently occurring where they are not able to be approved.

In June 2007 the Planning Services Committee acting under authority delegated by the Council, in relation to the Tourist Accommodation (short stay accommodation) use at 13/A (Lot 1) Lefroy Road, Beaconsfield require the short stay accommodation use to cease immediately as it is a prohibited use under LPS4 and take appropriate legal action in accordance with the Scheme if the use does not cease. After the resolution the owners of the subject property changed the use to long term accommodation and no further action was required. The owners however changed the use back to tourist accommodation which would be a use not permitted under LPS 4 at the moment but might change with the new proposed Local Law and LPS 4 amendment. Officers are therefore seeking the direction of Council in order to progress this matter.

BACKGROUND

November 2004 - complaint regarding noise and parking problems at 13A Lefroy Road was investigated by the City (Environmental Health Department) and the owner was advised of the legislative requirements relating to noise. August 2006 - complaint regarding noise and parking problems at 13A Lefroy Road was investigated and the use of the property for short stay accommodation was identified. September 2006 - the owners were advised that complaints had been received relating to noise and parking and that planning approval was required for the property to be used for short stay accommodation. The owners were advised that a retrospective application for planning approval of the short stay accommodation use could be lodged as Council had discretionary powers to approve the use under Town Planning Scheme 3. November 2006 - a petition relating to noise and parking problems at 13A Lefroy Road signed by seven neighbouring owners was received. 24 November 2006 - retrospective application for planning approval of the short stay accommodation use received. 21 February 2007 – Planning Services Committee resolved to refuse planning consent for the short stay accommodation use and to refer the item to full Council. 28 February 2007 – planning application withdrawn by the owner of 13A Lefroy Road, South Fremantle.

8 March 2007 – Local Planning Scheme 4 gazetted making ‘Tourist Accommodation’ (encompassing short stay dwellings) a prohibited use in the Residential zone. 12 March 2007 – complaint received raising concerns that the short stay accommodation use continued to operate at 13A Lefroy Road. 18 April 2007 – Planning Services Committee resolved to refer the matter to full Council with a recommendation that the short stay accommodation use cease immediately as it is a prohibited use under LPS4 and that Council take appropriate legal action in accordance with the Scheme if the use does not cease. 26 April 2007 – Council resolved to defer consideration of the item pending a response to legal advice submitted by the Chamber of Commerce. 23 May 2007 – Council resolved to initiate an amendment to its Local Planning Scheme in relation to short stay dwellings. 23 May 2007 - Council received the response to the Chamber of Commerce’s legal advice and resolved to defer the item to the next Planning Services Committee with delegation to make a decision.

6 June 2007 - Planning Services Committee resolved to take Legal action should the Short Stay accommodation not cease. The short stay accommodation ceased after the aforementioned resolution and changed to long term leases only. On 29 September 2008 it came to the City’s attention that 13/A Lefroy Road, South Fremantle were using the property for Tourist accommodation which is still a use not permitted under LPS 4. Officers have investigated the allegation and found that the owners are conducting an illegal Tourist Accommodation use on the property.

The matter is capable of successful enforcement for the following reasons;

- 1.) The owners chose to withdraw their application for ‘Residence–Other’ under LPS 3 for 13/A Lefroy;
- 2.) The owners were advised that Tourist accommodation is a use not permitted under LPS 4;
- 3.) The owners have experience with the applicable legislation due to the Tourist accommodation unit at 39 Scott Street, South Fremantle, approved as ‘Residence–Other’ under LPS 3;
- 4.) Evidence gathered by the neighbours and compliance team showed that a Tourist accommodation use is being conducted on the subject property without the City’s approval.

COMMENT

Town Planning Scheme 3 utilised broad land use classifications where this type of accommodation was most appropriately classified as ‘Residence – Other’. This was an “AA” (not permitted unless Council granted approval) use under TPS3. However, LPS 4 incorporates short stay accommodation under the ‘Tourist Accommodation’ definition and this is an “X” use (a use that is not permitted by the Scheme) in a Residential zone. From the gazettal of LPS 4 on 8 March 2007, the Council is no longer able to approve any activity falling within the ‘Tourist Accommodation’ definition in a Residential zone. The PSC previously resolved to recommend to Council that the use could not be approved due to issues relating to residential amenity outlined in the submissions received and taking into consideration the provisions of the then draft LPS4 which was considered a seriously entertained planning proposal at the time of consideration of the planning application. From the gazettal of LPS4, Council is no longer required to exercise discretion as the Scheme prohibits this use in a Residential zone.

In February 2007, Council recognised the broader issues relating to this type of accommodation, the restrictive environment created particularly within the tourist industry and the uncertainty as to whether the prohibition of this type of short stay accommodation in the Residential zone was intentional or merely as a result of inclusion within the wider 'Tourist Accommodation' definition. Council subsequently resolved on 23 May 2007 to amend its Local Planning Scheme to define a short stay dwelling, exclude short stay dwellings from the 'Tourist Accommodation' definition and include this use under clause 8.2 as development permitted without the need to obtain planning approval.

It is necessary for Council to set a direction in dealing with this type of use until the proposed scheme amendment is finalised. The Scheme is very clear in that this use cannot currently be approved in a Residential zone.

The owners of the subject property chose not to comply with legislation under Council's administration by using the subject property to conduct Tourist Accommodation.

STRATEGIC AND POLICY IMPLICATIONS

All development is required to comply with the requirements and provisions of the Scheme.

BUDGET IMPLICATIONS

The costs involved in such a prosecution can be covered within the existing budget.

LEGISLATIVE AND LEGAL CONSIDERATIONS

The development that has occurred is not exempt from the requirement to obtain a planning approval under Clause 8.2 of Local Planning Scheme No. 4. The Scheme requires that a person must not commence or carry out development without first having applied for and obtained the planning approval of the Council.

PRECINCTS AND OTHER COMMITTEES RECOMMENDATIONS PLUS OTHER CONSULTATION

Not required for the purposes of this report.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Mayor, Peter Tagliaferri**

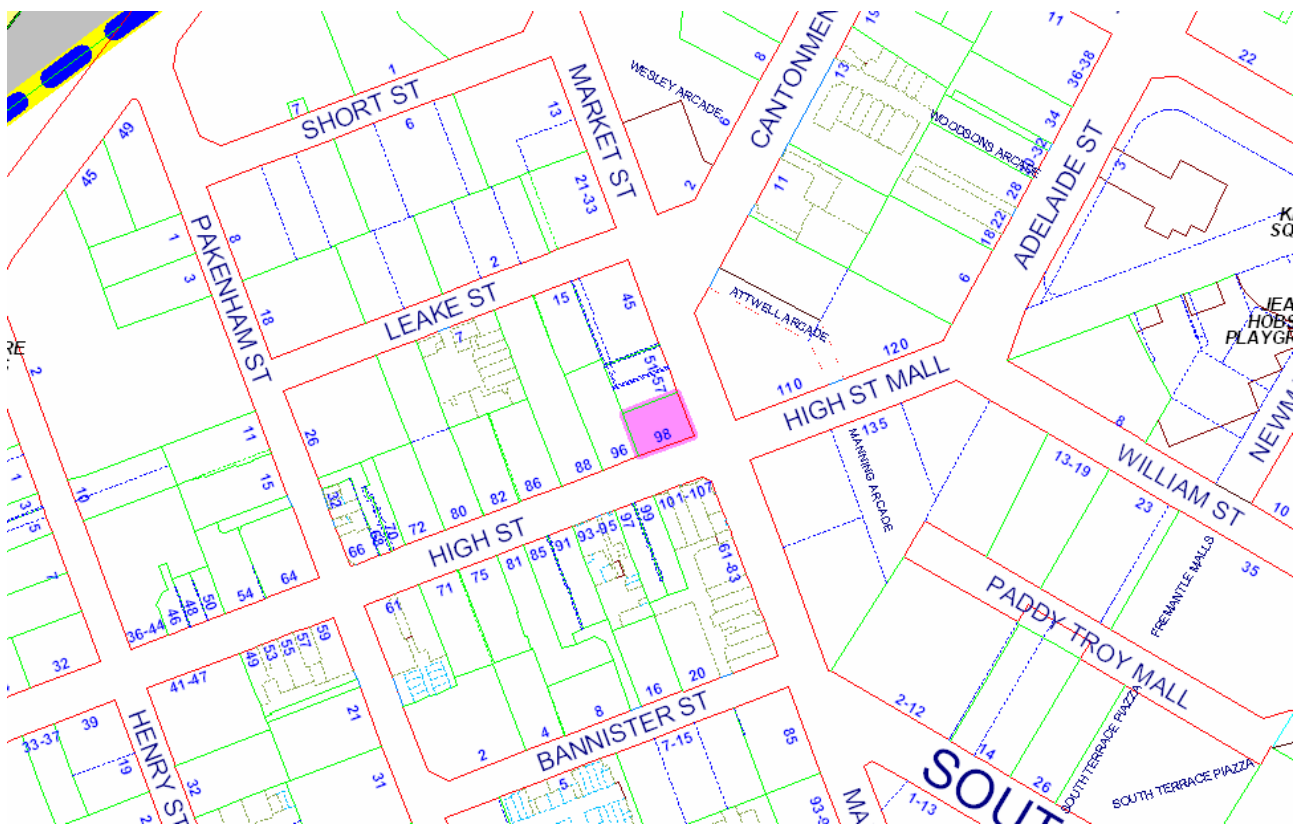
That Council authorise the Chief Executive Officer to institute legal action, against the owners (Mr Nicholas Clive Wyatt & Mrs Lourdes Mary Wyatt of number 13/A Lefroy Road, South Fremantle for contravening the provisions of the City's Local Planning Scheme No. 4 by undertaking a development on land zoned under the Scheme without first having applied for and obtained the Planning Approval of the Council under the Scheme.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 11 HIGH STREET NO.98 (LOT 123), FREMANTLE - REPAIR, RESTORATION, ALTERATIONS AND ADDITIONS TO A HOTEL (JL & AT DA382/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: DA471/04
Attachments 1: Development Plans
Attachment 2: Archival and Site Photos
Attachment 3: Heritage Assessment
Date Received: 21 July 2008
Owner Name: Admiral Hotel Property Pty Ltd & B. R Benari
Submitted by: As above
Scheme: City Centre
Heritage Listing: Heritage Listed – MHI Level 1B – West End Conservation Area
Existing Landuse: Hotel
Use Class: Hotel
Use Permissibility: A



EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee for determination as the application involves works proposed for a site listed on the City's Heritage List and on the Municipal Heritage Inventory as a management category Level 1B.

Planning Approval is sought for the repair, restoration, alterations and additions to the existing Hotel building located at No.98 High Street, Fremantle which was damaged by a fire in 2007.

The proposed development has been assessed against the requirements of the City of Fremantle Local Planning Scheme No.4 (LPS4) and Local Planning Policies. The primary points of consideration with respect to this application are related to the proposed nil onsite car parking provision, the building height of the development and the conservation of the cultural heritage values of the site and surrounding area.

It is recommended that Council support the variations to the onsite car parking and building height of the proposed development. Furthermore the proposed conservation works will positively contribute to the cultural heritage significance of the site and West End Conservation Area of Fremantle.

The proposed development is recommended for approval subject to conditions.

BACKGROUND

The development site is located at No. 98 High Street, Fremantle within the street block bounded by Market Street, High Street, Pakenham Street and Leake Street. The site is zoned City Centre under the LPS4.

The subject site is listed on the City's Heritage List and Municipal Heritage Inventory (MHI) as a management category Level 1B. The site is also located within the Fremantle West End Conservation Area which is included as a Heritage Area under the provisions of LPS4.

The site is currently occupied by a four storey hotel with a partially constructed two storey balcony along both High Street and Market Street. The site currently has no onsite car parking spaces. The existing building on site has nil setbacks to all boundaries.

The adjoining western property is improved by a two storey building which is occupied by the National Australian Bank. The adjoining northern property is improved by a two storey building. The adjacent southern property also has a two storey building and this is utilised as shops and offices. The adjacent eastern property is a single storey shopping complex.

The original building on this site was modified into a Hotel in the late 1890's. Over the past 130 years the building has undergone numerous additions and alterations. Such works include increasing the building height from two to four storeys and the construction and removal of a two storey balcony to the High and Market Street façade.

In recent times, the City granted its Planning Approval on 10 February 2005 for the restoration and alterations to the existing hotel (refer DA471/04). Forming part of these approved alterations was a two storey balcony addition to the façade of building along High Street and Market Street, a bar canopy addition to the roof space and the restoration of the observation deck area on the existing roof space. This approval was issued without the requirement for any additional car parking. This approval was required to be commenced within two years and completed within three years of the date of approval under the provisions of the City's now superseded Town Planning Scheme No.3. These approved works including the balcony additions were commenced however were not completed due to a fire which occurred on site in March 2007.

In March 2007 a fire severely damaged the existing hotel. The roof and internal floors were completely lost, however the majority of the external walls remained intact.

Correspondence was received by the City from the applicant mid 2008 which detailed urgent works that were required to make the site safe. On 18 July 2008, the City issued a letter to the applicant stating that the following repair works were considered permitted development under Clause 8.2(k) of LPS4:

- 1 Repair of loose and cracked masonry to re-instate the structural integrity of the fabric of the building*
- 2.Reinstatement of floors and roof to provide a permanent bracing system to the structure*

These works are currently underway on site.

On 21 July 2008 the City received a development application proposing restoration, alterations and additions to the existing hotel building (DA382/08). The City requested amended plans on 8 September 2008 and 10 November 2008 as the original submitted plans lacked detailed information and the elevation and floor plans were not consistent with each other. Amended plans were submitted to the City on 26 December 2008, however the new amended plans included a roof top bar addition and a two storey northern balcony addition which did not form part of the original application.

A site inspection conducted by the City found that some unauthorised works had begun on site. These works consisted of the frame work for three dormer window additions on the third floor and the framework for the turret roof addition. The amended development plans indicate two dormer window additions (proposed bedroom 19) on the third floor western elevation which have been partially constructed. A third unauthorised partially constructed dormer window exists on the third floor northern elevation (proposed ensuite 14), but this addition has not been shown on the development plans.

A meeting was held between Council officers and the applicant on 30 December 2008 to discuss the development plans the subject of this report. At this meeting it was verbally agreed that the proposed roof top bar addition would be the subject of a separate development application. However, it must be noted that the City did not receive any written confirmation of the agreement to withdraw this element of the proposal from this development application. The matter of the roof top bar will be discussed in the 'Planning Comment' section of this report.

DETAILS

Planning Approval is sought to undertake restoration, alterations and additions to the existing hotel building. These works are detailed on the proposed development plans included in Attachment 1 to this report.

A review of previous approved development plans indicates that the original building layout included cool rooms and storage area in the basement floor area, public bar space and kitchen area to the ground floor, dining and living room area on the first floor and hotel accommodation (consisting of 17 rooms) on the second and third floors.

The proposed internal floor layout for the hotel is consistent with the original building layout. The basement area will consist of the cool room and storage area. The ground floor area will consist of public bar space, café area, hotel reception and main kitchen area. The first floor area will include a second kitchen, restaurant dining and function area. The second and third floor areas will include hotel accommodation (consisting of 14 bedrooms).

The proposed reconstruction of the two balcony additions will result in the balcony posts encroaching 2.5 metres into both the High Street and Market Street road reserve. The proposed first floor balcony addition provides a headway height of 3.5 metre above the respective footpaths.

STATUTORY AND POLICY ASSESSMENT

The proposed development has been assessed against the provisions of the City's LPS4 and Council's Local Planning Policies.

Local Planning Scheme No.4

In addition to being zoned 'City Centre', the site falls within the 'Local Planning Area 1 – City Centre - Sub Area 1.3 – West End' of the City's Scheme.

Building Height

Sub Area 1.3 -- West End states:

Despite the general height requirements outline in 1.1 above, building height shall be limited to a maximum height of three storeys (maximum external wall height of 11 metres as measured from ground level with a maximum roof plain pitch of 33 degrees).*

Council may consent to an additional storey subject to –

- (a) the upper floor being sufficiently setback from the street so as to not be visible from the street(s) adjoining the subject site,*
- (b) maximum external wall height of 14* metres, and*
- (c) compliance with clause 1.2 above.*

**inclusive of parapet and spacing between floors*

Heritage

Pursuant to clause 7.5, Council may vary Scheme provisions for a heritage place or heritage area where it is considered desirable to:

- (a) *facilitate the conservation of a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the Heritage List under clause 7.1.1; or*
- (b) *enhance or preserve heritage values in a heritage area designated under clause 7.2.1, the Council may vary any site or development requirement specified in the Scheme or the Residential Design Codes by following the procedures set out in clause 5.5.2.*

Car Parking

Clause 5.7.1 and 'Table 3 – Vehicle Parking' of LPS4 outline the required on-site car parking for proposed development. Under LSP4, the car parking requirement for the existing 'Hotel' use is 1 car parking space per 2.5m² of public bar area, 1 car parking space per 5m² of lounge/ garden area and 1 car parking space per bedroom.

Clause 5.7.3 – Relaxation of Parking Requirements – states that Council may waive or reduce the standard parking requirements specified in table 3 subject to the applicant satisfactorily justifying a reduction due to one or more of the following reasons:

- (i) *the availability of car parking in the locality including street parking,*
- (ii) *the availability of public transport in the locality,*
- (iii) *any reduction in car parking demand due to the sharing of car spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces,*
- (iv) *any car parking deficiency or surplus associated with the existing use of the land,*
- (v) *legal arrangements have been made in accordance with clause 5.7.4 for the carparking or shared use of parking areas which are in the opinion of the Council satisfactory,*
- (vi) *any credit which should be allowed for a car parking demand deemed to have been provided in association with a use that existed before the change of parking requirement,*
- (vii) *the proposal involves the restoration of a heritage building or retention of a tree worthy of preservation,*
- (viii) *any other relevant consideration.*

Clause 5.7.4 of LPS4 allows the City to request cash payment in lieu of any car parking shortfall.

Unauthorised Works

The matter of unauthorised works is covered in Clause 8.4.1 of LPS4, which states the following:

'The Council may grant planning approval to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme'.

Council's Local Planning Policies

The following Local Planning Policies are of relevance to the assessment of this application:

- *D.B.H11 - Verandahs over footpaths,*
- *D.B.H13 - Impact of Development on Heritage Buildings,*
- *D.G.F14 - Fremantle West End Conservation Area Policy,*
- *D.G.F15 - High Street Conservation Area, and*
- *L.P.P2.3 - Fremantle Port Buffer Area Development Guidelines.*

Encroachment into airspace over roads

The *Local Government (Miscellaneous Provisions) Act 1960* (LGA 1960) and the *Local Government (Uniform Local Provisions) Regulations 1996* permit development on, over and under public thoroughfares, subject to the applicant indemnifying local government of any liability.

Additionally, Landgate (previously DOLA and DLI) has advised local governments through a Government Land Bulletin issued in July 2001, that approvals should not be given pursuant to the LGA 1960 or the *Local Government Act 1995* to encroachments over Crown land without the developer being required to also seek consent from the Minister for Lands and appropriate tenure under the Land Administration Act. When giving approval for building encroachments, local governments are required to advise applicants of the need to obtain Landgate's consent.

CONSULTATION

Community

The application was required to be advertised in accordance with Council's *L.P.P1.3 Public Notification of Planning Proposals* policy. The proposal was advertised with a sign on site. The advertising period commenced 1 August 2008 and at the conclusion of the advertising period being 18 August 2008, the City had not received any submissions.

Heritage Comments

Heritage and Special Places Advisory Committee (H&SPAC)

The application was presented to the H&SPAC meeting held 5 August 2008. At this meeting the Committee resolved to recommend to Council that the proposed external reconstruction and the internal adaptive works to the National Hotel are supported on heritage grounds with the following recommendations:

- *That all ground floor windows be retained in their original form;*
- *That detailed drawings of restoration works are provided for planning application to show how the elements such as the roof dome, the stained glass windows and the verandah and associated balustrades be reconstructed to match the original design and materials, and*

- *The applicant provides a commitment to involve a conservation architect in preparation of the detailed drawings and supervision of the subsequent conservation works.*

Apart from one window located on the ground floor level of the High Street elevation, the applicant has since amended the development plans (dated 22 December 2008) which addresses the above point relating to the retention of the ground floor windows in their current form. The applicant has agreed to provide the information required by the second point above as a condition of approval and in addition, the applicant has commissioned a conservation architect to supervise the works to satisfy point 3 above.

Heritage Council of Western Australia (HCWA)

The development application was referred to the HCWA as the subject site is located within the West End Conservation Area which is on the Heritage Council's Assessment Program. However as the subject site is not registered on the State Register of Heritage Places, the following comments raised by HCWA are not statutory requirements and are provided as advice only. Upon assessment of the development referral, a Conservation Officer of HCWA provided the following comments:

1. *It is acknowledged that the overall approach to reconstruction is based on available documentary and physical evidence. We understand that the City of Fremantle and the National Hotel owner have consulted with a Heritage Architect to provide advice in relation to the proposal reconstruction.*
2. *The adaptation of several windows into door openings is acceptable, as it is considered that the impact of this work will be minimal if the original configuration is retained.*
3. *The lowering of the window sill heights is acceptable, as it is considered that the reconstruction of the verandah will mitigate any negative impact this may otherwise have on the original visual impact.*
4. *The use of glazing in the ground floor doors is acceptable as the original doors were destroyed by the fire. We suggest that the design of these glazed doors incorporate some interpretive elements of the original doors.*
5. *The design and construction of the new balcony on the second and third levels of the north elevation should be clearly distinguishable yet sympathetic to the overall architectural design and the original re-instated balconies.*
6. *New window openings should be visible from the street and have no impact on the existing streetscape.*
7. *Opportunities for interpretation that reveal the extant original fabric of the building should be encouraged. We note that this approach has been taken in the ground to basement floor stairs, and that interpretation is also proposed for the ground floor bar and restaurant areas.*

Fremantle Port Authority (FPA)

The subject site is within the Fremantle Ports Referral Area 2. City of Fremantle policy *L.P.P2.3: Fremantle Port Buffer Area Development Guidelines* states that the potential risk and amenity impacts from the Port in Area 2 are not as great as in Area 1 however all applications for developments having the potential to accommodate 20 or more persons on a full or part-time basis shall be referred to the FPA for comment.

The development has the potential to accommodate more than 20 people and therefore the application was referred to FPA for comment. The FPA responded on 6 January 2009 stating that they did not have any objection to the proposed development; however conditions relating to the built form requirements for Area 2 of the City's Fremantle Port Buffer policy were recommended.

PLANNING COMMENT

The existing heritage listed hotel building does not comply with various provisions of LPS4. As a consequence of a fire in 2005, the building now requires significant works to be carried out in order to restore the heritage significant building. However some of these works required to restore the building to original form require several discretionary decisions of Council.

Upon assessment of this application, the key issues requiring Council's consideration relate to heritage, onsite car parking and building height. These, along with other relevant issues, will be discussed below.

Roof Top Bar Addition and Northern Elevation Two Storey Balconies

As mentioned previously, a meeting was conducted between Council officers and the applicant on 30 December 2008 to discuss the development plans the subject of this report. At this meeting it was agreed that the proposed roof top bar addition would be the subject of a separate development application although the City did not receive any written confirmation of this agreement.

Notwithstanding the above, the applicant has not clearly stated the proposed external and internal finishes and materials for the roof top bar, therefore it is considered appropriate to require the applicant to submit a separate development application for this addition, as further information is required for a thorough assessment of its compatibility with the heritage significance of the building and the area as a whole. However it is important to note that the City has permitted the applicant to reinstate the original roof prior to the fire in its letter dated 18 July 2008 and these works are currently underway.

As mentioned previously, the proposed northern elevation balcony additions also did not form part of the original development plans and only appeared on the amended plans submitted 26 September 2008. Again, the applicant has not clearly stated on the development plans the proposed materials, colours and finishes for these balcony additions. Furthermore, heritage advice states that the proposed design of these balconies should be clearly distinguishable from the original balconies that are proposed to be reinstated to the façade of the building and in their current form this is not considered to be achieved.

Therefore it is considered appropriate to require the applicant to submit a separate development application for these additions, as further information and a more compatible design is required.

Therefore an appropriate condition has been included in the 'Officers Recommendation' section below.

Use

The uses detailed on the proposed development plans are generally consistent with those uses which previously existed on site, which included a second floor restaurant and function area and two levels of accommodation above. The only minor change to the land uses shown on the plans is the inclusion of a café within the ground floor bar area which originally was denoted only as a bar. This café use is considered to be incidental to the operation of the hotel which is the predominant use on the site. Accordingly, under Clause 4.4.3 of LPS4 which states '*unless otherwise exempted, a use includes all ancillary activities normally necessary to the proper functioning of the predominant use*' it is considered that no additional approval is required for this minor change.

Heritage

The subject site is included on the City of Fremantle's Heritage List. In addition, the site has a management category Level 1B on the City's MHI, and should be considered for entry in the Heritage Council of Western Australia's Register of Heritage Places, as it is considered to be of exceptional significance to the City and its conservation should be supported. The place is also situated within the West End Conservation Area and also included on the Register of the National Estate as classified by the National Trust of Australia (WA).

Overall, the applicant has endeavored to match the original details as close as possible to those originally constructed while proposing adaptations to facilitate the building's ongoing use in accordance with City's statutory regulations and the principles of the Burra Charter. The recommendations by the H&SPAC have been carried out; as the applicant has provided amended drawings showing the original openings on the ground floor being retained, with the exception of one, and has been liaising with a heritage architect.

The City's officers have undertaken a detailed heritage impact assessment of the site and the proposed works and the full detail of this assessment is included in attachment 3 of this report. As mentioned previously the application was also referred to and supported by HCWA. The advice provided by HCWA was also consistent with the advice provided by H&SPAC and City's officers.

It is anticipated that the completed and proposed works will restore the landmark qualities of this gold boom building and result in a vital and positive contribution to the heritage significance of the place and the West End Conservation Area. Therefore in reviewing the proposed plans, the proposed reconstruction/restoration, alteration and adaptation of the building can be supported in principle. As a result of the heritage advice received, the following recommendations have been made:

- 1) Any re-pointing of the brickwork and stone foundations should be undertaken using only traditional lime mortars and methods to match original.

- 2) The proposed balconies to the northern elevation should be designed to be sympathetic while identifiable as new work from the façade balconies to the satisfaction of the Chief Executive Officer (CEO).
- 3) A more detailed schedule of the colours and finishes are provided and are approved to the satisfaction of the CEO.
- 4) Any original fabric which has been retained (either in situ or in storage) which are intact, for example timber work such as architraves or stained glass, even pieces should be retained or reused and incorporated with the replacement materials.
- 5) A detailed plan showing interpretation of the place should be provided to the satisfaction of the CEO.
- 6) The applicant continues to involve a heritage architect until the works are completed.

In summary of these recommendations above No's 1, 2, 3, 4 and 5 have been addressed via recommended planning conditions and recommendation No.6 has been included as an advisory note.

Building Height

The original building as currently exists already exceeds the height provisions within the City's LPS4. The existing building is four storeys and has an external wall height of 16.1 metres, which exceeds the 11 metre maximum height provision prescribed in Schedule 12 City Centre Local Planning Area Sub area 1.3 of LPS4. As the applicant is proposing to reinstate the turret to the south/eastern corner of the roof, the external wall height of the building will increase to 18.3 metres. Therefore the applicant is requesting a discretionary decision of Council under Clause 7.5 of LPS4 in relation to the proposed building height of the development.

As mentioned previously, Clause 7.5 allows Council to vary provisions of LPS4 for a heritage place where it is considered desirable to facilitate the conservation of that place. The applicant is proposing to restore the exterior of the National Hotel to its original form which includes the reinstatement of the turret addition which existed prior to the fire of 2007 and is shown in the photos dated 1912 -1914 included in Attachment 2 to this report. The reinstatement of the turret, in addition to the other proposed restoration works are therefore considered to facilitate the conservation of the cultural heritage significance of the place. Consequently, the proposed building height variation is supported pursuant to Clause 7.5 of LPS4.

Car parking

The proposed internal floor area, internal layout and uses are all considered to be consistent with the uses contained within the building prior to the fire. It should also be noted that there were no onsite car parking spaces prior to the fire. As the roof top bar addition is being recommended to be deleted from this approval, this additional floor space has consequently not been taken into account for the calculation of car parking for the site and will be subject of a future Development Application. Notwithstanding this, the two proposed balcony additions will increase the total floor area of the existing building and therefore will be assessed below.

The proposed first floor balcony provides an additional 82m² floor area and will be used in conjunction with dining area of the establishment. In accordance with the car parking

provisions of LPS4, the proposed first floor balcony will increase the onsite car parking requirement by a further 17 car bays.

The proposed second floor balcony also consists of an additional 82m² floor area but this area is to be used in conjunction with the hotel accommodation rooms and therefore is not subject to an additional onsite car parking requirement under LPS4.

The site currently provides nil onsite car parking bays. As the applicant is proposing to restore a building of cultural heritage significance, Council under Clause 5.7.3 of LPS4 may waive or vary the requirement to provide an additional 17 car bays. It is important to note that Council has previously approved alterations to this Hotel in 2005 (including the balcony additions) without requiring additional car parking to be provided (refer DA471/04).

It should be acknowledged that the existing Hotel use has relied upon public transport services, other public car parking and street parking facilities to transport its patrons for the last century. Taking into consideration all of the above, the proposed car parking variation is supported as the development is considered to satisfy the criteria of Clause 5.7.3 of LPS4.

As the site is located within the City Centre, Council has the option to request a cash in lieu payment for car parking. However as Council previously approved the same sized balconies in 2005 (refer DA471/04) which also increased the car parking demand for this site without cash in lieu and the applicant is proposing to restore a heritage significance building, it is recommended that Council waive the cash in lieu requirement.

Encroachment into airspace over roads

Part of the proposal involves completing the partially constructed two storey balconies which currently encroach 2.5 metres over the road reserve of both High Street and Market Street. As mentioned previously, although the balcony additions are partially constructed, the City's previous Planning Approval DA471/04 has lapsed and therefore the applicant requires the City's approval to finish the construction of these additions.

It is considered appropriate to support the encroaching balconies as they are appropriately located so as to not obstruct vehicle or pedestrian movement, or provision of essential services. Furthermore, the applicant is proposing to replicate the original balconies which will assist in contributing to the revitalization of the West End Conservation Area whilst providing some articulation to the Market Street and High Street façade of the building.

According to the City's records the Minister of Department of Housing and Works granted approval, prior to the fire in 2005, for these balconies. It is unsure to whether the applicant is required to gain further approval under section 400 of the *Local Government Act 1960*. However the applicant will be advised of the possible need to obtain re-approval from the Minister pursuant to this Act via an advice note. The applicant will also be advised of the requirement to indemnify the local government against any claim for damages which may arise in, or out of, the balcony construction, maintenance or use.

Fremantle Ports

The subject site is within Area 2 of the Fremantle Port Buffer area. City of Fremantle policy *L.P.P2.3: Fremantle Port Buffer Area Development Guidelines* prescribes built form requirements including minimum standards for glazing, air conditioning systems and insulation. These built form requirements are recommended as conditions of approval.

The policy also recommends a notification be included on the Certificate of Title for the property where additional sensitive uses are proposed. However as the uses denoted on the development plans are consistent with the existing Hotel use, this is not considered necessary in this instance.

Unauthorised Development

It is acknowledged that the applicant has partially constructed the framework for the replacement of the destroyed roof turret and the framework for three dormer windows on the third floor level which did not form part of the original building prior to the fire in 2005. The roof turret and two of the unauthorised dormer windows located on the western elevation are shown on the development plans and will be dealt with as part of this application. However the dormer window on the northern elevation is not indicated on the development plans. Therefore it is recommended that this unauthorised addition be removed or alternatively a retrospective development application be submitted.

CONCLUSION

For the reasons outlined above, the proposed restoration, alterations and additions to the existing hotel building are supported. However it is recommended that the proposed roof top bar addition be deleted from the application, to be considered as a separate application at a later date.

In conclusion, it is considered that the proposed redevelopment of the National Hotel will contribute positively to the streetscape amenity and the cultural heritage significance of the subject site and Fremantle West End Conservation Area. For the reasons outlined above, the proposed development is recommended for approval subject to appropriate conditions.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Mayor, Peter Tagliaferri****That Council:**

- 1. Invite the applicant to submit amended plans, incorporating the following changes and additional information:**
 - a. The deletion of the Roof Top Bar addition above the fourth floor,**
 - b. The detailed design of the two storey balconies, located on the northern elevation, is to be modified to be clearly distinguishable yet sympathetic to the overall architectural design and the original reconstructed balconies,**
 - c. The unauthorised northern elevation third floor dormer window be included in the amended plans,**
 - d. Submission of a detailed schedule of external and internal colours, materials and finishes,**
 - e. Interpretation of the place which shall include details of any:**
 - i. Internal wall(s) removal on the ground and first floor levels, and**
 - ii. Original internal staircase location.**
- 2. Upon receipt of the amended application as stated in 'i.' above, delegate authority to the Chief Executive Officer of the City of Fremantle to determine the amended application, and impose additional conditions that may arise from the submission of part 'i.' above, and subject to the following conditions:**
 - a) The development and use hereby permitted shall take place in accordance with the approved plans dated [date to be inserted]**
 - b) Prior to occupation, the design and materials of the development shall adhere to the requirements set out within City of Fremantle policy *D.B.M10: Fremantle Port Buffer Area Development Guidelines* for properties contained within Area 2. Specifically, the development shall provide the following:**
 - i. Glazing to windows and other openings shall be laminated safety glass of minimum thickness of 6mm or "double glazed" utilising laminated or toughened safety glass of a minimum thickness of 3mm.**
 - ii. Air conditioners if provided, shall incorporate internal centrally located 'shut down' points and associated procedures for emergency use.**
 - iii. Roof insulation shall be provided in accordance with the Building Code of Australia.**

Advice Note(s):

- A)** In accordance with Section 400 of the *Local Government (Miscellaneous Provisions) Act 1960*, approval may be required from the relevant Minister for certain structures erected on or over the road reserve.
- B)** Regulation 17 of the *Local Government (Uniform Local Provisions) Regulations 1996*, requires that an insurance policy, in the joint names of the local government and the person, indemnifying the local government against any claim for damages which may arise in, or out of, the balcony construction, maintenance or use is required to be obtained by those persons constructing anything within the road reserve.
- C)** The applicant is advised to continue to consult with a heritage architect in relation to the approved development.

Any damage that occurs during construction to the kerb / footpath shall be rectified at the cost of the applicant to the satisfaction of the Chief Executive Officer, City of Fremantle prior to occupancy.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901-12 SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

Acting under authority delegated by the Council the Manager Development Services determined, in some cases subject to conditions, each of the applications listed in the Attachments and relating to the places and proposal listed.

OFFICERS RECOMMENDATION/COMMITTEE DECISION

That the information is noted.

MOVED: Mayor, Peter Tagliaferri

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

REPORTS BY OFFICERS (COUNCIL DECISION)**PSC0901-13 REVIEW OF STATUTORY PROVISIONS RELATING TO THE CONTROL OF ADVERTISING SIGNAGE**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Director Planning and Development
Actioning Officer: Coordinator Planning Projects
Decision Making Level: Council
Previous Item Number/s: N/A

EXECUTIVE SUMMARY

The purpose of this report is to establish key principles for the review of the City's statutory provisions relating to the control and regulation of advertising signage.

It is recommended that the Council resolve to prepare an amendment to the Local Planning Scheme to exempt certain types of advertising signs from requiring planning approval, and to clarify the provisions around the control of advertising signs that do require planning approval.

In addition, it is recommended that the Council resolve to prepare a local law to replace the City's current 'Signs Hoardings and Bill Posting Local Law', and to enable the control of moveable signs, as well as other such signs not easily controlled through the statutory planning system. It is intended that the local law will regulate most of those signs that are exempted from planning approval, thereby ensuring that there are adequate statutory controls over the majority of advertising signs in Fremantle, both fixed and moveable, and on public and private land.

This report sets out the principles of Council's intent only, with the final wording of the amendment and local law being subject to legal advice.

BACKGROUND

The City of Fremantle Local Planning Scheme No.4 (LPS4) was gazetted in March 2007, and replaced the former City of Fremantle Town Planning Scheme No.3 (TPS3).

The current planning controls around advertising signs in the City of Fremantle are often uncertain and contradictory, leading to difficulties in assessing planning applications, granting sign licences, and successful enforcement of advertising signs that have been erected without appropriate approvals. This report proposes a way forward in addressing these difficulties, by clarifying Scheme provisions, and preparing a local law to administer certain advertising signs that are temporary in nature.

STATUTORY AND POLICY PROVISIONS

The term 'development' is defined under the City's Local Planning Scheme (No. 4), by way of the *Planning and Development Act 2005* as:

Development means the development or use of any land, including;

- (a) any demolition, erection, construction, alterations of, or addition to any building or structure on the land;*
- (b) the carrying out of the land of any excavation or other works;*
- (c) in the case of a place to which a Conservation Order made under Section 59 of the Heritage of Western Australia Act 1990 applies, any act or thing that –*
 - (i) is likely to change the character of that place or the external appearance of any building; or,*
 - (ii) would constitute an irreversible alteration to the fabric of any building;*

Under the Local Planning Scheme (No. 4), development of land (as defined above), including the erection of advertising signs generally requires the planning approval of the Council, although Section 8.2 of the City's Scheme does refer to a list of exemptions contained within Schedule 5 of the Scheme. This format is generally based on the provisions of the Model Scheme Text (MST) by way of the *Town Planning Regulation 1967*. The MST however, does not specify the types of signs that shall be exempt, with that discretion left to the discretion of the local government.

The guidelines accompanying the MST do make it clear that individual Councils may add to the list of exempted development and it is in this context that the proposed scheme amendment in this report has been framed.

PLANNING COMMENT

Any advertising sign that is not specifically listed within Section 8.2 or Schedule 5 of the City's Local Planning Scheme (No.4) as being permitted is technically required to obtain planning approval. This includes signs of a temporary nature, and signs that are not permanently attached to a building, structure or land.

The key principles of this statutory review are:

1. To remove temporary signs and signs not permanently attached to a building, structure or land from control under the planning scheme, and create a local law to administer those signs instead. This will provide a more effective means of administering and controlling these types of signs, allowing for the power to issue infringements, and confiscate where necessary.
2. To amend the Scheme to clarify that the City will not regulate the content of a sign, and rather, is only concerned with the size, location, number of signs, and other such matters.

These two principles are discussed in more detail in the paragraphs below.

PROPOSED AMENDMENT

It is recommended that the proposed amendment be based on the following principles:

- Exemption of all signs not permanently attached to a building, structure or land, and all signs for the purpose of public information and/or safety on land reserved for roads or recreation where vested in or owned by the City of Fremantle.

- Clarification of definitions contained within the Scheme, including a definition for 'permanently attached'.
- Clarification of the principle that the scheme provisions will not regulate the content of advertising signs.

These key principles are discussed below.

I Exempt Signs

As part of this amendment, LPS4 will be amended to exempt certain advertising signs that are not permanently attached to a building, structure or land. These types of signs are traditionally difficult to control and enforce under planning law, given the entirely temporary nature of the signs. By exempting these types of signs from the need to obtain planning approval, and instead shifting that control to a local law, the City will be able to control and regulate these types of signs more effectively and with greater certainty.

In addition, it is proposed to exempt all signs erected for the purpose of public information or safety on land reserved for the purpose of roads or recreation where owned by or vested in the City of Fremantle. Given that the City is the owner of the land, the City may control and remove any unauthorised sign as required, acting in the capacity of land owner rather than governing authority.

Where a particular form of advertisement is exempt from planning approval, it would either:

- a) be administered under a revised Local Law whereby a sign is granted a licence subject to satisfying certain conditions contained within that licence, or
- b) simply be deemed to fall outside the Council's planning jurisdiction in the event that a subsequent complaint was made in relation to that matter.

Following on from this principle outlined above, it would be possible to classify all advertising signs into one of the following three categories:

1. Advertising signs that require planning approval.
2. Advertising signs that are exempt from planning approval but require a licence under the City's Local Law.
3. Advertising signs that are exempt from both planning approval and the need to obtain a sign licence under the local law and therefore fall outside of the City's jurisdiction.

II. Definitions

The clarification of certain definitions contained within the Scheme will allow greater certainty in determining the manner in which an advertisement or sign is controlled. For example, by adding a definition for "permanently attached" officers will be able to easily determine whether an advertising sign is to be administered under the Scheme, or a local law. These definitions will be revised in consultation with the City's solicitors before the amendment is brought before Council for further deliberation, though the key principle in relation to the term 'permanently attached' would be whether removal of a sign would require the use of a tool – as opposed to being able to remove it by hand.

III. Content of Signs

It is recommended that Council resolve to clarify the Scheme text to create certainty that the Scheme will regulate those matters relating to advertising signs that have planning implications such as:

- Location of signs
- Size of signs
- Number of signs
- Whether signs are illuminated
- Heritage issues (including how signs are attached, colour and style of signs),

but will not attempt to regulate the content of the signs with respect to the message that the sign portrays.

Clarifying this explicitly within the Scheme will provide a greater level of certainty in what has traditionally been a grey area of planning law. The key principle is that once a sign is lawfully erected, its content is not discretionary. If the content of the sign is deemed to be inappropriate or offensive in any manner there are other mechanisms for dealing with the content of the signs.

PROPOSED LOCAL LAW

In addition to reviewing the Scheme provisions relating to the control of advertising signs, it is also proposed to prepare a local law to regulate and administer those signs that do not require planning approval. It is intended that the local law will 'dovetail' with the planning scheme, rather than overlapping, with the local law administering those advertising signs that the Scheme does not.

Advertisements that are not permanently affixed to land or buildings, such as A Frame signs, tethered balloons, bunting, and banners are difficult to regulate through the planning system due to the temporary nature of these types of advertisements the fact that these signs can be put up and taken down at will means that successful prosecution for a breach of the Scheme would be difficult to achieve. A local law on the other hand would provide the City with a wider range of powers including;

- The power to issue infringement notices on the spot
- The power to confiscate unlicensed signs
- The power to require public indemnity insurance for signs on public land

This Local Law would result in an applicant being able to erect temporary signage on private or public land subject to obtaining a licence, and subject to compliance with a number of absolute conditions. This licence approval would not be addressed through ordinary planning controls of the City. It is recommended that this Local Law, be based on the following principles:

- As a requisite of a licence being issued for signs on public land, there is an absolute requirement for the applicant to have an appropriate level of indemnity insurance in relation to the advertising.

- Any sign issued a licence under this Local Law must be kept clean and free from unsightly matter and shall be maintained in good order free of dilapidation.
- In event of an offence being committed under the Local Law, Council may enter private land and confiscate any unlawful advertisement, remove any unlawful advertisement from public land, revoke any license issued and/or enforce a penalty as prescribed within the Local Law.

The final form of the Local Law would be subject to advice from the City’s Solicitors prior to further consideration and adoption by Council.

The adoption of such a local law will ensure that there is a clear mechanism for regulating and controlling signage that would otherwise fall outside of the control of the planning system. Furthermore, the inclusion of a requirement for public indemnity will ensure that the City is protected against any liability claims from any incidents relating to signs on public land.

CONCLUSION

The principles outlined in this report, if endorsed by Council, will result in a more effective and certain position in relation to the administration and enforcement of advertising signs under the statutory mechanisms available to local government. As previously stated, if Council does endorse this approach, it would be possible to classify all advertising signs into one of the following three categories:

1. Advertising signs that require planning approval.
2. Advertising signs that are exempt from planning approval but require a licence under the City’s Local Law.
3. Advertising signs that are exempt from both planning approval and the need to obtain a sign licence under the local law and therefore fall outside of the City’s jurisdiction.

This can be demonstrated in the table below:

Advertising signs that require planning approval	Advertising signs that are exempt from planning approval but require a licence under the City’s Local Law.	Advertising signs that are exempt from both planning approval and the need to obtain a sign licence under the local law and therefore fall outside of the City’s jurisdiction.
All signs permanently attached to a building, structure, or land unless specifically exempt under Schedule 5 of the Scheme.	All signs temporary in nature and not permanently attached to a building, structure or land. <ul style="list-style-type: none"> ▪ Balloons ▪ Blimps ▪ Banners 	<ul style="list-style-type: none"> ▪ Signs located within MRS reserved land that require the planning approval of the WAPC ▪ any sign that is located wholly inside a building; ▪ any sign that is fixed

	<ul style="list-style-type: none"> ▪ A Frames ▪ Bunting ▪ Signs advertising upcoming events ▪ Trailer/vehicle signs ▪ 	<ul style="list-style-type: none"> to a moving vehicle; ▪ any sign that is placed by a public authority, or on its behalf, for the purpose of public safety and/or the direction and control of people, animal or vehicles. ▪ Signs located within road reserves for traffic safety where owned by or vested in the City ▪ Signs located within recreation reserves for public information or safety (where owned by or vested in the City)
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The recommended Scheme amendment and proposed Local Law are intended to strike a reasonable balance between facilitating the lawful erection and placement of advertising signs on public and private land, as well as retaining an appropriate degree of statutory control over such advertisements and their management, in the interests of the amenities of the City. In addition, the local law will allow more effective control over signs that are temporary in nature and/or not permanently attached to buildings, structures or land.

The officer's recommendation below sets out those key principles for the scheme amendment and local law. Should Council resolve to adopt these key principles, officers will liaise with the City's solicitors to prepare both the amendment and local law, and report back to Council before progressing to public consultation.

OFFICER'S RECOMMENDATION/COMMITTEE RECOMMENDATION**MOVED: Mayor, Peter Tagliaferri****That Council endorse preparation of:**

- a) an amendment to the Local Planning Scheme, and**
- b) a draft Local Law,**

to clarify the statutory provisions surrounding advertising signs, based on the following principles:

- 1. Subject to review by the City's solicitors, the Local Planning Scheme being amended to exempt from the need to obtain planning approval all signs not permanently attached to a building, structure, or land, and all signs on land reserved for the purpose of roads or recreation where owned by or vested in the City of Fremantle.**
- 2. The definition of 'permanently attached' be based on the principle of whether removal of a sign would require the use of a tool – as opposed to being able to remove it by hand.**
- 3. The Local Law will control and regulate any sign that is not permanently attached to a building, structure or land, including, but not limited to the following:**
 - Banners, balloons, blimps, bunting (where not permanently attached)**
 - A-Frame signs, other moveable signs**
 - Temporary signs advertising upcoming events**
 - Signs on public land not erected by a public authority**
- 4. The Local Law will exempt the following signs:**
 - Signs located within land that is reserved under the Metropolitan Regional Scheme that require the planning approval of the WAPC**
 - Signs that require planning approval under LPS4**
 - any sign that is located wholly inside a building;**
 - any sign that is located wholly within a sporting reserve;**
 - any sign that is fixed to a moving vehicle; or**
 - any sign that is placed by a public authority, or on its behalf, for the purpose of public safety or information and/or the direction and control of people, animal or vehicles.**
- 5. Clarification of the Scheme text and definitions to create certainty that the Scheme will regulate those matters relating to advertising signs that have planning implications such as:**
 - Location of signs**
 - Size of signs**
 - Number of signs**
 - Whether signs are illuminated**

- **Heritage issues (including how signs are attached, colour and style of signs)**

But will not attempt to regulate the content of the signs with respect to the message that the sign portrays.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 14 PROPOSED AMENDMENT NO.22 TO LOCAL PLANNING SCHEME NO.4 - SUSTAINBLE BUILDING DESIGN - INITIATION OF AMENDMENT

DataWorks Reference: 218/026
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Strategic Planning Officer
Decision Making Level: Council

EXECUTIVE SUMMARY

The purpose of this report is to present for Councils preliminary consideration the principles of a proposed scheme amendment to incorporate statutory sustainable building design requirements into Local Planning Scheme No 4. The proposed amendment strengthens the City of Fremantle's commitment to delivering sustainable places and urban form.

This report outlines the mechanisms to be utilised to implement sustainable building design practices. Development covered by the amendment (excluding single and grouped dwellings and industrial) will be required to obtain a minimum Green Star Rating of 4 which is 'best practice'. The amendment proposes the relevant requirements of sustainable building design:

- **Minimum 4 star Green Star rating for development;**
- **Stipulates development which is excluded from the provisions within the Scheme;**
- **Ongoing monitoring of buildings to ensure compliance every 5 years; and,**
- **The extension of planning approvals to 4 years for developments required to obtain the Green Star ratings due to the timeframes involved to gain certification.**

It is recommended that Council support the principles of such a scheme amendment and authorise the drafting of the appropriate provisions to be integrated into Local Planning Scheme No.4.

BACKGROUND

The City of Fremantle has a strong commitment to sustainability which is reflected within the City of Fremantle's Strategic Plan 2006-2010 and Environmental Action Plan 2008-2012.

The City of Fremantle's Strategic Plan 2006-2010 outlines the City of Fremantle's commitment to become "a leader in sustainability issues and programs with a strong track record in environmental management". This is further strengthened throughout the 'sustainability' and 'a beautiful and accessible place' sections which outline key initiatives to be implemented by the City such as:

- "having a global perspective and ensuring out actions minimise the impact on the environment and the resources available for future generations"

- “continue to ensure all structure plans and scheme amendments include relevant environmental assessment information”

The Environmental Action Plan 2008 – 2012 as adopted by Council in August 2008 includes an action to implement sustainable building design requirements beyond the scope currently provided within the Building Code of Australia as it does not adequately deal with commercial premises and therefore requires strengthening at the local level.

Public awareness of climate change and sustainable practices has also resulted in the property industry quickly coming to understand the fundamental importance of developing sustainable building practices in tackling climate change.

The Green Building Council of Australia (GBCA) was founded in 2002 and was a joint response by industry and government, developing a not-for-profit organisation providing an integrative framework and a national environmental rating system for sustainable building design, referred to as Green Star Certification. The GBCA is part of the World Green Building Council launched in 1998.

The Green Star rating tool incorporates design, construction and operational practices that significantly reduce or eliminate the negative impact of buildings on the environment and occupants with strategies for addressing:

- Energy efficiency
- Greenhouse gas emission abatement
- Water conservation
- Waste avoidance, reuse and recycling
- Pollution prevention – noise, water, air, soil and light
- Enhanced biodiversity
- Reduced natural resource consumption
- Productive and healthier environments
- Useable buildings
- Social amenity
- Transparent reporting

Buildings considered by the Green Star rating tool are required to achieve Green Star Certification which assesses the way a building is constructed and operated, contributing to the reduction of the buildings impact on the environment and occupants.

Green Star Certification process has three standards of Green Star ratings available:

- 4 Star Green Star Certified Rating (score 45-59) signifies ‘Best Practice’
- 5 Star Green Star Certified Rating (score 60-74) signifies ‘Australian Excellence’
- 6 Star Green Star Certified Rating (score 75-100) signifies ‘World Leadership’

In order for a development to achieve a Green Star Certified Rating the development must be assessed by an Assessment Panel commissioned by the Green Building Council of Australia which requires a project to use a Green Star rating tool to guide the design or construction process.

Documentation of compliance is required to be submitted and assessed. The Green Building Council of Australia will commission a panel of third party Certified Assessors to validate the documentation.

The process of accreditation is two phased and lengthy-often assessment and accreditation takes up to 26 weeks. During the Certification process applicants are able to receive assistance with their projects through workshops, credit interpretation requests and technical clarification.

PLANNING COMMENT

“Commercial and residential building occupants account for around 23 per cent of Australia’s total greenhouse gas emissions.”

(The Dollars and Sense of Green Buildings 2008, Green Building Council Australia).

It is considered there is a need for the City of Fremantle to strengthen its commitment to sustainable building design through the implementation of statutory provisions into Local Planning Scheme No.4 utilising the Green Building Council of Australia standards.

How to apply Sustainable Building Design requirements to development in City of Fremantle

The implementation of sustainable building design requirements in the City of Fremantle needs to balance the potential environmental benefits of such requirements against the resource impacts for the development industry and the City in administering such requirements.

It is for this reason that it is recommended that the assessment of future development applications comply with the Green Building Council of Australia’s (GBCA) Green Star Accreditation.

The GBCA is an internationally recognised assessment tool for sustainable building design. The use of this program has two key benefits associated.

The first relates to the use of trained GBCA Accredited Assessors reviewing the development which although a lengthy process does ensure that the timeframe associated with Development Applications will not be impacted upon. It is recommended that when applications affected by the proposed scheme amendment are submitted a ‘preliminary Green GBCA accreditation’ document be submitted as well. This ensure that the applicant is aware of the impacts and design requirements associated with a Green Star rating whilst ensuring City officers need not undertake further assessment of the development in addition to current requirements.

Furthermore due to the GBCA being an internationally recognised program there are a number of marketing benefits associated with Green Star Accreditation as well as the long term savings associated with sustainable building designs for future occupants of such developments.

Implementation in Local Planning Scheme No.4

Implementation of sustainable building design requirements is recommended to occur through Local Planning Scheme No.4. Although sustainable building design requirements could have been implemented through a local planning policy or left to be implemented through the Building Code of Australia, it was considered that these mechanisms did not have sufficient statutory effect or demand the level of sustainable building design desired.

By placing the sustainable building design requirements into the Local Planning Scheme it has greater statutory effect and strengthens the mandatory nature of sustainable building design requirements ensuring they will be applied to all development within the City of Fremantle with the only exclusions being those set out in the Local Planning Scheme. The exclusions proposed are outlined later in the report.

Minimum Level of Green Star Rating Required

The City of Fremantle would be the first local government in Western Australia to implement the mandatory requirement (with predetermined exemptions) for development to comply with Best Practice sustainable buildings design of a minimum of 4 Green Star rating tool implemented by the GBCA. The use of such tools is recognised nationally and internationally and slowly being incorporated into developments and local government requirements.

For instance a similar approach has been implemented by the City of Melbourne whereby a minimum 4 Star Green Star requirement has been applied to office development through the Town Planning Scheme.

The City of Sydney is currently developing an Environmentally Sustainable Development Control Plan which utilises the Green Star rating tool developed by the Green Building Council of Australia to form the basis of performance criteria rather than developing different objectives and performance criteria.

It is recommended that a balanced approach be implemented for sustainable building design in accordance with the Green Star program to ensure a suitable outcome for the environment, government and the development industry. Already the Perth development industry has begun to embrace sustainable building design with 6 projects receiving accreditation through the Green Building Council of Australia (GBCA):

- 167 Westralia Plaza, Perth:
4 Star Green Star – Office Design v2 (Best Practice) (First WA project to gain Green Star Certification).
- 140 William Street, Perth:
5 Star Green Star – Office Design v2 (Australian Excellence)
- 130 Stirling Street, Perth:
4 Star Green Star – Office Design v2 (Best Practice)
- Perth GPO Building Refurbishment:
4 Star Green Star – Office Design v2 (Best Practice)
- 100 St George's Terrace, Perth:
4 Star Green Star – Office Design v2 (Best Practice)
- Bishops See Stage 1, Perth:

5 Star Green Star – Office Design v2 (Australian Excellence)

(Sourced Green Building Council website – www.gbca.org.au)

Process of Certification by Green Building Council of Australia

The process of Certification of a project by the Green Building Council of Australia requires a formal assessment of a project by a panel of third-party Certified Assessors commissioned by the Green Building Council of Australia. Projects must use a Green Star rating tool to guide the design or construction process with credits claimed through adherence to the Compliance Requirements as outlined in the Technical manual that accompanies each rating tool. Projects are required to provide a documentation-based submission collated as proof of compliance which is then validated by the panel.

The process which is followed is clearly set out by the Green Building Council of Australia and is lengthy often taking up to 26 weeks for assessment and accreditation to be completed.

It is for this reason that it is recommended that development affected by this scheme amendment and requirement for sustainable building design be granted a 4 year approval period to allow for the 26 week timeframe often associated with accreditation by the Green Building Council of Australia.

The scheme amendment also recognises the fact that development can be accredited prior to construction or after construction. It is considered that the scheme amendment require development to achieve accreditation one year after completion of the development. This recommendation is made due to the fact that the occupants of the buildings need be aware of the potential sustainable building design aspects which can be utilised.

Furthermore it is considered that sustainable building design must not be a once off certification process as modifications to buildings can occur over years and it is paramount the sustainable nature of buildings is maintained. Therefore it is recommended that there be a process of on going monitoring of a buildings performance which ensures that tenants are use appropriately. It is considered that this should occur every five years with the owner of the property submitting a certificate of certification issued by the Green Building Council of Australia certified assessor for development impacted upon by this scheme amendment every 5 years to council.

Furthermore a memorial should be placed on the title for development complying with the sustainable building design requirements set out in Local Planning Scheme No.4 to ensure owners and tenants are aware of their legal requirements.

Additional Costs associated with Green Star Certification and Exemptions

Although sustainable building design is utilised more and more frequently often there is a cost burn associated with obtaining Green Star Certification if not through the use of alternative building materials and design specifications then as a result of the timeframe associated with obtaining certification through the Green Building Council of Australia.

The Green Building Council of Australia's recent publication *The Dollars and Sense of Green Buildings 2008* states that "time delays in development approvals can add 15 per cent to total development costs".

This is an important consideration when considering what types of development the sustainable building design requirements should apply to and raises the issue of what development will be required to comply with the requirements of this scheme amendment and which will be exempt.

Other exemptions which are considered appropriate are:

- single and grouped residential,
- industrial,
- development for which a Green Building Council of Australia rating tool or pilot rating tool has not yet been developed
- development with a floor area of less than 1000 sq m
- refurbishments of buildings over 1000m² existing floor space not involving substantial structural or internal alterations and all refurbishments to buildings over 1000m²;

It was considered that the cost implications associated with achieving a 4 Star Green Star rating would be too onerous for developments under 1000 square metres and such a requirement would generally make this style of development unviable in the City of Fremantle.

Single residential and grouped developments are not recommended to be included within the scheme amendment as they are currently covered by the Building Code of Australia requirements. Furthermore it is understood that the Building Code of Australia will be increasing its energy efficiency ratings during 2010 which will ensure a higher standard of sustainable building design will apply on a national scale and therefore is no need for this scheme amendment to apply.

Heritage

Although this scheme amendment is seeking to strengthen the City of Fremantle's commitment to sustainable building design, by applying mandatory compliance with the exemption of predetermined developments, it does not intend to erode the heritage fabric of the City.

In this sense it is recommended that the scheme amendment have regard to this important aspect of development in the City and provide discretionary ability for the Council to waive the requirements in relation to the refurbishment of a building on the Heritage List where, in the opinion of the Council, adherence to these requirements would determinately impact on the heritage values of the building;

Removal of Clause 5.4.5 'Energy Efficiency'

Clause 5.4.5 'Energy Efficiency' applies to residential development and requires:

- 5.4.5.1 "Council shall prepare an energy efficiency policy for all classes of residential development. All residential development shall have regard to the minimum energy efficiency rating specified in the policy.

- 5.4.5.2 The energy efficiency policy shall be prepared and amended in accordance with the provisions contained in clause 2.5 – local planning policy framework.”

It is considered that this clause will no longer be necessary as proposed scheme amendment for sustainable building design will have a greater statutory weight than a local planning policy. Furthermore the Building Code of Australia sufficiently deals with energy efficiency in residential development and is currently proposing to increase the minimum energy efficiency requirements by 2010.

OFFICER'S RECOMMENDATION

That Council endorse preparation of an amendment to LPS4 for further consideration by Council based on the following principles;

1. Mandate a requirement to design and construct buildings to achieve a minimum Green Building Council of Australia Green Star certified rating of 4 for all development excepting;
 - (a) single and grouped residential,
 - (b) industrial,
 - (c) development for which a Green Building Council of Australia rating tool or pilot rating tool has not yet been developed
 - (d) development with a floor area of less than 1000 sq m
 - (e) refurbishments of buildings over 1000m² existing floor space not involving substantial structural or internal alterations and all refurbishments to buildings over 1000m²;
2. Provide a discretionary ability for the Council to waive the requirements in relation to the refurbishment of a building on the Heritage List where, in the opinion of the Council, adherence to these requirements would determinately impact on the heritage values of the building;
3. Require submission to the Council by a suitably accredited assessor of:
 - (a) as part of every planning application where required, a preliminary certification of compliance with the prescribed standard,
 - (b) within 12 months of practical completion, a certification of compliance with the prescribed standard,
 - (c) every 5 years thereafter, a certification of compliance with the prescribed standard;
4. Include a requirement to, prior to the commencement of the development, place a memorial on the relevant property title for the life of the development notifying owners or these ongoing requirements of the scheme; and,
5. Prescribe a standard 4 years term for planning approvals which are subject to the requirements set out in clause 10.5.

Mayor, Peter Tagliaferri moved an amendment to the Officer's Recommendation to change the following wording:

6. (e) refurbishments of buildings over 1000m² existing floor space not involving substantial structural or internal alterations and all refurbishments to buildings *under* 1000m²;
7. Provide a discretionary ability for the Council to waive the requirements in relation to the refurbishment of a building on the Heritage List where, in the opinion of the Council, adherence to these requirements would *detrimentally* impact on the heritage values of the building;
9. Include a requirement to, prior to the commencement of the development, place a memorial on the relevant property title for the life of the development notifying owners of these ongoing requirements of the scheme;

OFFICER'S RECOMMENDATION/COMMITTEE RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

That Council endorse preparation of an amendment to LPS4 for further consideration by Council based on the following principles;

1. **Mandate a requirement to design and construct buildings to achieve a minimum Green Building Council of Australia Green Star certified rating of 4 for all development excepting;**
 - (a) single and grouped residential,
 - (b) industrial,
 - (c) development for which a Green Building Council of Australia rating tool or pilot rating tool has not yet been developed
 - (d) development with a floor area of less than 1000 sq m
 - (e) refurbishments of buildings over 1000m² existing floor space not involving substantial structural or internal alterations and all refurbishments to buildings *under* 1000m²;
2. **Provide a discretionary ability for the Council to waive the requirements in relation to the refurbishment of a building on the Heritage List where, in the opinion of the Council, adherence to these requirements would *detrimentally* impact on the heritage values of the building;**
3. **Require submission to the Council by a suitably accredited assessor of:**
 - (a) as part of every planning application where required, a preliminary certification of compliance with the prescribed standard,
 - (b) within 12 months of practical completion, a certification of compliance with the prescribed standard,
 - (c) every 5 years thereafter, a certification of compliance with the prescribed standard;

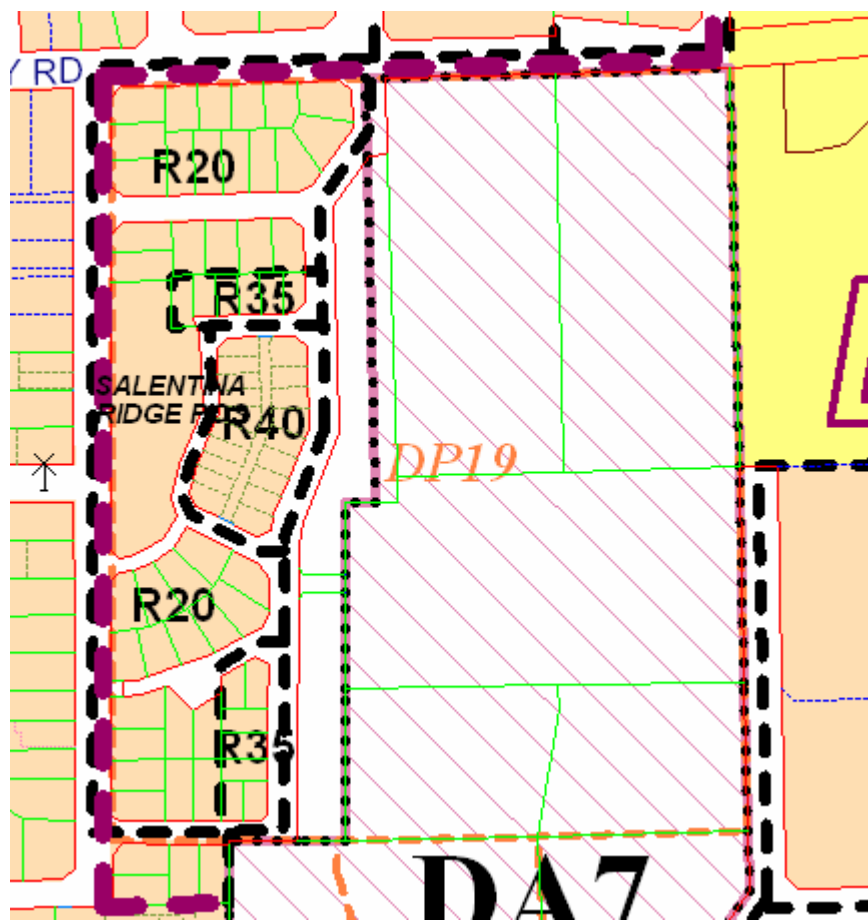
- 4. Include a requirement to, prior to the commencement of the development, place a memorial on the relevant property title for the life of the development notifying owners of these ongoing requirements of the scheme; and,**
- 5. Prescribe a standard 4 years term for planning approvals which are subject to the requirements set out in clause 10.5**

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901-15 LEFROY ROAD QUARRY AND SALENTINA RIDGE EMBANKMENT WORKS (LOTS 18, 19, 20, 252, 254 AND 255), BEACONSFIELD

DataWorks Reference: 115/032 & 115/075
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Manager Planning Projects
Decision Making Level: Council
Previous Item Number/s: PSC0805-136
Attachments: Previous Item PSC0805-136



EXECUTIVE SUMMARY

This report presents for Council's consideration a construction specification and management plan for regrading works to an embankment between the Salentina Ridge residential development undertaken by the Moltoni Corporation and the Lefroy Road Quarry site owned by the City, the Western Australian Planning Commission and Main Roads WA. The preparation of this document is in response to a previous resolution of Council in May 2008 which forms part of a series of actions seeking to resolve a long standing issue concerning this embankment.

BACKGROUND

In May 2008 Council considered a report relating to resolution of a number of outstanding issues associated with an embankment between a residential subdivision undertaken by the Moltoni Corporation (known as Salentina Ridge) and the former Lefroy Road Quarry site owned by the City of Fremantle, the Western Australian Planning Commission and Main Roads WA (Lots 18, 19, 20, 252, 254 and 255), Beaconsfield.

This previous report (see Attachment 1) sought Council's direction in relation to three key issues as follows:

- The scope of physical works to be undertaken to the embankment;
- Arrangements to manage the implementation of works to the embankment; and
- The circumstances under which Council would agree to withdraw a caveat over land owned by Moltoni Corporation.

After consideration of the report on 28 May 2008 Council resolved as follows:

1. *That Council advise Moltoni Corporation of the following in response to the proposal set out in section 2 of Moltoni Corporation's letter to the City of Fremantle dated 21 February 2008:*
 - (a) *Subject to (b) – (d) below, Council is in principle prepared to adopt a specification based upon the specification document titled 'Draft Specification and Scope of Work for Rehabilitation of Eastern Fill Batter Salentina Ridge Beaconsfield' that forms an annexure to the letter and position and proposal paper from Moltoni No. 1 Pty Ltd dated 21 February 2008, as Council's Specification for the regrading of the existing embankment pursuant to clause 1 of the Deed dated 26 November 2004;*
 - (b) *Any absolute acceptance by Council of that Specification for the purposes of the Deed is dependent on the preparation and assessment of fully detailed engineering specifications and drawings being submitted to and approved by Council as part of a planning application;*
 - (c) *Any absolute acceptance by Council of that Specification for the purposes of the Deed is dependent on obtaining all necessary landfill licence approvals;*
 - (d) *Council does not support the content of the document titled 'Management Plan for Land Fill and Embankment Modification at Lots 18, 19, 20, 252, 254, 255 Fremantle' in its current form and a revised Management Plan covering all aspects of the implementation of regrading works to the embankment should be prepared by Moltoni in collaboration with City officers for Council's further consideration;*

- (e) Council considers that no good and beneficial reason has been put forward by Moltoni Corporation for the City to agree to waiving the requirement under the deed executed between the City of Fremantle and Moltoni Corporation dated 26th November 2004 that Moltoni is not to apply for titles within Stage 2 of its subdivision at Salentina Ridge until completion of embankment regrading works to the City's satisfaction.
2. That the Chief Executive Officer be authorised to negotiate with Moltoni Corporation to prepare a revised Management Plan detailing the methodology for implementation of regrading works to the embankment in the event of such works being approved by Council.

During the second half of 2008 fully detailed drawings and engineering specifications and a revised management plan for regrading works to the embankment were prepared by specialist geotechnical and environmental consultants in consultation with City officers and representatives of Moltoni Corporation, in accordance with the relevant parts of the above resolution of Council. The completed documentation, titled 'Salentina Ridge Eastern Batter Rehabilitation – Construction Specification and Management Plan' prepared by Golder Associates Pty Ltd, was submitted to the City in December 2008. Due to the size and format of the documentation a copy has not been attached to this report, but a copy will be displayed for inspection at the Committee meeting.

PLANNING COMMENT

The completed construction specification and management plan for the embankment works has been reviewed in detail by the City's technical services, environmental health and planning officers and is considered to provide a satisfactory basis for the implementation of regrading works to the embankment. The document contains greater detail of the specification of fill material, compaction methods and processes for monitoring construction quality control and dealing with potential causes of nuisance to local residents (such as dust, noise and traffic movements) than the previous draft documentation.

Council is therefore recommended to adopt the management plan as the methodology to be followed in implementing regrading works to the embankment in accordance with the construction specification, and to give consent on behalf of the City of Fremantle as landowner for an application for planning approval for the regrading works to be lodged. It will also be necessary for the other owners of areas of land affected by the regrading works (Moltoni Corporation, the Western Australian Planning Commission, and Main Roads WA) to agree to the lodging of the application for planning approval for the subject works.

Notwithstanding the recommendation in this report that Council should support the technical specification and management plan for implementation of the proposed works to the embankment, it will be necessary to put in place an appropriate legal mechanism between the City and Moltoni Corporation to deal with implementation of the works before any of the works are carried out.

It should also be noted that Moltoni Corporation are still requesting that the City agree to waive the requirement under the deed executed between the City of Fremantle and Moltoni Corporation dated 26th November 2004 that Moltoni is not to apply for titles within Stage 2 of its subdivision at Salentina Ridge until completion of embankment regrading works to the City’s satisfaction. Further legal advice to the City on these issues has been sought and the issues will be the subject of a further report to Council when the advice is received.

OFFICER'S RECOMMENDATION/COMMITTEE RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

1. That subject to (2) below, Council supports the contents of the document titled ‘Salentina Ridge Eastern Batter Rehabilitation – Construction Specification and Management Plan’ dated December 2008 prepared by Golder Associates Pty Ltd as Council’s specification for the regrading of the existing embankment pursuant to clause 1 of the Deed executed between the City of Fremantle and Moltoni Corporation dated 26th November 2004;
2. Any absolute acceptance by Council of that specification for the purposes of the Deed is dependent upon the granting of planning approval for regrading works to the embankment and the granting of any necessary approvals for modifications to the landfill licence held by the City in relation to the subject land; and
3. That the Chief Executive Officer on behalf of the City of Fremantle as landowner of part of the subject land be authorised to give landowner’s consent to the submission of a planning application for the regrading works to the embankment and to seek the similar consent of other relevant landowners.

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901- 16 EAST END PLANNING & URBAN DESIGN STUDY - CONSULTANT'S REPORT

DataWorks Reference: 203/007
Disclosure of Interest: Nil
Previous Item: PSC0710-288
Responsible Officer: Manager Planning Projects
Actioning Officer: Strategic Urban Designer
Decision Making Authority: Council
Agenda Attachments: Fremantle East End Planning and Urban Design Study prepared by Hassell Ltd, dated January 2009, provided as a separate hard copy document in colour.

PURPOSE

To note the consultant's report and to agree to seek preliminary comment on the study's outcomes before giving consideration to the study's recommendations at a future meeting.

EXECUTIVE SUMMARY

The East End Planning and Urban Design Study has applied best practice planning, environmental and urban design principles to identify the area's potential to create a vibrant, attractive and sustainable mixed use urban neighbourhood.

The consultant's report has now been completed and recommends a range of initiatives that are needed to realise this potential. These actions include upgrading of the precinct's public domain as a safe, attractive and comfortable pedestrian friendly environment and carrying out amendments to LPS4 to encourage appropriate redevelopment of private properties to accommodate an increased residential and business population as well as improving the quality, appearance and environmental performance of buildings in the area.

This report recommends that the Council note the consultant's report and agree to invite preliminary feedback on the study's outcomes from key stakeholders to assist the Council when giving consideration to the study's recommendations at a future meeting.

BACKGROUND

At the meeting held on 17 October 2007 the Council resolved to:

1. *Approve the Consultants Brief for the proposed Fremantle East End Planning & Urban Design Study, dated 14 September 2007 and attached to this report.*
2. *Authorise the Chief Executive Officer to select and engage a suitable consultant to carry out the study in accordance with the selection criteria in the proposed Consultants Brief.*

Submissions from interested consultants were invited via advertising in the 'West Australian' on 20 October 2007, and a consultant team comprising Hassell Ltd (planning, architecture and urban design), Palassis Architects (heritage) and Pracsys (economic analysis) were subsequently engaged to carry out the study.

The study substantially commenced in early 2008 with collection of relevant data, contextual and detailed analysis, consultation with key stakeholders, identification of opportunities and constraints, consideration of built form scenarios and preparation of draft recommendations. The draft recommendations were reviewed following a workshop with elected members in August 2008 and the consultant's final report was completed in December 2008.

The report's executive summary provides an outline of the study and its recommendations, as follows.

The East End of Fremantle has been identified for a planning and urban design study by the City of Fremantle in recognition of its importance to the city centre and surrounding areas. The purpose of the study is to investigate and identify the redevelopment potential of the study area to create a vibrant, attractive and sustainable mixed use neighbourhood.

The East End forms a key entrance to Fremantle and this precinct has the potential to better function as a living and employment node, consistent with the objectives set out in the Network City policy document. The prevailing view of the City of Fremantle Council is that the precinct should complement and not compete with the function of the city centre.

A series of objectives were established for the precinct. These are intended to be balanced against economic, environmental and social considerations. The objectives are as follows:

- *Reinforce Fremantle's status as a 'Network City' Activity Centre*
- *Lead to an increase in the neighbourhood's business and residential population*
- *Integrate successfully with its physical, social, environmental and cultural heritage context*
- *Generally satisfy the objectives of the City of Fremantle Strategic Plan 2006-2010*
- *Improve the entry impression of Fremantle*
- *Enhance the pedestrian experience and minimise vehicle/pedestrian conflicts*
- *Build upon local character*
- *Improve the general quality of the area, including buildings and public space*
- *Promote investment into the area and the broader Fremantle context.*

A study of the precinct has been undertaken to consider its important elements, areas for improvements, constraints to achieving the objectives and potential for development. As part of this, Local Planning Scheme No. 4 has been analysed with regard to its ability to achieve the stated objectives. Furthermore, a layer of economic analysis was undertaken to assess the potential commerciality of various development scenarios.

From the consultation process with land owners, government agencies and Council advisory committees, as well as from the precinct analysis, it is clear that the precinct is in dire need of change. The precinct, whilst having some buildings of good character, also contains:

- buildings that do not contribute to the intended character or amenity of the area
- a weak streetscape with buildings of differing scale and setback
- a vehicle dominated environment with very little pedestrian amenity
- a lack of local needs retail to service the surrounding areas
- poor surveillance and minimal promotion of walking as an alternative to car use
- a lack of intensity to take advantage of the precinct's location to public transport and the city centre.

In response to these issues, a development concept has been prepared that also incorporates changes to the public realm and the outcomes of the economic information relating to the study area. A more balanced approach to vehicle and pedestrian movement is promoted through strong definition of the streetscape, activation at ground level, surveillance of the public realm and improvement of pedestrian links to key areas. Vehicle movements would be calmed through on street parking, street tree planting, medians and wider footpaths.

An intensification of the built form is promoted in recognition of the precinct's access to public transport, the city centre and its role in cementing Fremantle as an activity centre. The height of new development is guided by important historic buildings such as the former Woolstores, being 5 levels along Queen Victoria Street, 7 levels along Beach Street and generally three levels along Quarry Street. Higher buildings can be considered where impact is low or nodes are to be reinforced. This greater intensity of development can promote a higher population (both in terms of residents and employees) as well as encourage architecture responding to the historic and port aesthetic that can provide a strong character for Fremantle East End.

In order to provide for this rejuvenation, Local Planning Scheme No. 4 will need to be amended. Development standards and land use requirements need to be changed to achieve the set objectives. Particularly, the existing density provisions, exclusion of local needs retail, car parking standards and height provisions prohibit development that would be more appropriate for the precinct.

The East End is important to the wider area and its existing character and amenity contributes little to one's enjoyment of Fremantle. Its improvement will create a better entry impression to the city centre and provide for a more liveable area for the city. It will promote the viability of the city centre, local services and Fremantle's position as an Activity Centre. The East End is important to Fremantle and deserves greater design attention for the benefit of the community and future prosperity for the city.

A list of the recommendations from the study is provided in an abridged form in the following table.

Schedule 12 of LPS4	Schedule 12 of LPS 4 is to be amended in order to provide development standards and objectives over the East End sub area. The sub area identified in Schedule 12 is to be modified to include all of the East End study area. The amendment is to address height, land uses, car parking, setback, energy efficiency and plot ratio standards.
Height	Modify height provisions as per the desired built form model to generally be between 3 levels – 11m

	<p>(fronting Quarry St), 5 levels – 18m (Queen Victoria St) and 7 levels - 24.5m (fronting Beach St) .</p> <p>Higher mid block structures (up to 8 levels above Queen Victoria St and 10 levels above Beach St) could also be accommodated if setback and not visible from the adjacent street. A building of up to 10 levels (35 metres) is appropriate at the entry to the precinct as a landmark and to enable a view line across the site to the port from Burt St.</p>
View Lines	<p>Ensure any development or public realm improvements allow sight lines to the following:</p> <p>from Burt Street to Fremantle Port along James Street to Fremantle Port along James Street to Fremantle Art Centre along Queen Victoria Street to Princess May Park</p>
Activities	<p>The precinct should remain a mixed use area. Some local retail and commercial (office) uses should be encouraged. A significantly greater amount of residential dwellings are encouraged to promote a higher population.</p>
Car Parking	<p>Reduce car parking provisions to be consistent with Transit Oriented Development and sustainability principles. A maximum requirement should be applied, rather than a minimum. A maximum of 1 bay per dwelling and 1 bay per 100 square metres of office space is recommended.</p>
Residential Design Codes	<p>Remove the requirement for development to comply with the provisions of the Residential Design Codes. Schedule 12 of LPS4 will stipulate building envelope and height requirements, within which floor space and dwelling numbers can be accommodated.</p>
Public Realm	<p>Improve pedestrian amenity and slow vehicular traffic. Improve crossing opportunities and intersection safety consistent with the public realm concept. Provide street trees for pedestrian comfort and to improve the character of the precinct.</p> <p>Narrow Beach Street to provide more useable lot areas at its northern extent.</p>
Energy Efficiency	<p>Require development via Schedule 12 to provide for 5 star energy efficiency rating as measured by an ABCB recognised rating system.</p>
Pedestrian Link	<p>Allow for a pedestrian link through the existing</p>

	<p><i>Toyota site aligned with Shuffrey Street to connect Queen Victoria and Quarry Streets. A minimum width of 6 metres is required to provide suitable passive surveillance opportunities. Ensure floor area lost from the site is compensated with equal floor area on upper floors.</i></p>
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COMMENT

The vision for the study area as outlined in the consultant's report could result in a potential increase in population of the study area of more than 3,400 residents and workers. This is in addition to the current population of approximately 200 residents and 500 workers and the approximately 375 residents in the recently approved Fort Knox redevelopment. Such an increase in population will have a positive affect on the vitality of the public domain and public safety, sense of community, viability of businesses and community facilities, new investment and employment opportunities, and residential diversity and affordability as outlined in the triple bottom line implications later in this report.

The proposed built form scenario to accommodate this population increase is still generally in keeping with the traditional warehouse scale that fronted the port for many years. The proposed façade heights relative to streets within the study area would also achieve a height to width ratio of approximately 1:1 which is considered to create a comfortable and attractive urban space. The proposed built form on the Quarry St edge of the study area would not change from the current LPS4 requirements to ensure that it remains compatible with the existing residential area to the east.

There are, however, some issues that will need to be addressed in more detail as part of the next stage of the project and preparation of a scheme amendment. These include:

- Specific built form controls may be required for certain sensitive sites, in particular those at the southern end of the Queen Victoria St / Beach St street block, south of the Fort Knox building, the landmark site at the northern entry to the precinct and the sites adjacent to the Queen Victoria St / James St intersection.
- Mix of uses, for example should there be a maximum amount of commercial floorspace permitted to ensure that the area is predominantly residential and does not compete with the city centre's commercial focus.
- Requirements for a mix of residential unit sizes to encourage diversity and affordability.
- Controls on the possible local retail uses, particularly with regard to size and location.
- Implications of the requirement for a 5 star energy efficiency rating.
- Implications of the significant reduction in permitted off-street parking.
- Possible controls on vehicle access to properties to minimise pedestrian / vehicle conflict on key streets, including minimising number of crossovers and restricting access to particular streets.

Further commentary from Council officers on these issues, and a more detailed response to the consultant's recommendations generally, will be provided to the Council following the proposed stakeholder comment period.

CONCLUSION

Before the Council considers the recommendations from the study it is recommended that a preliminary response to the study be invited from the study area's key stakeholders.

STRATEGIC AND POLICY IMPLICATIONS

The study's recommendations address a number of strategies in the Fremantle Strategic Plan, particularly to reinforce the City's status as a 'Network City' activity centre and pursuing opportunities to encourage and support appropriate mixed use development.

TRIPLE BOTTOM LINE IMPLICATIONS

Economic

- Expenditure by the area's potential residential and business population will provide significant support to existing and new businesses within both the east end and in the city centre.
- The enhanced public domain will attract more people to visit the area and to stay longer and therefore to benefit local business operators.
- Improved streetscapes and buildings at this major entry to Fremantle will enhance the city's image as a desirable place to visit, live, work and/or invest.

Environmental

- Increased residential densities close to established 'activity centres' will reduce demand for continued expansion of the metropolitan area and associated infrastructure and resources.
- Proposed requirement for new buildings to meet Australian best practice of 5 star energy efficiency.
- Increased opportunities for walking, cycling and use of public transport will reduce use of private vehicles.
- Increased street planting will enhance local microclimates.

Social

- Increased local population will improve personal safety through increased on-street activity and passive surveillance of public spaces.
- Enhanced public domain through provision of improved pedestrian routes and spaces, street trees, street furniture and lighting will encourage walking and exercise.
- The city's sense of place enhanced through framing and reinforcement of views to Fremantle Harbour, Arts Centre, Princess May Park and former Army Barracks.
- Increase in potential users of the nearby Leisure Centre and Arts Centre will increase their viability and possibly attract additional community facilities and services.
- The possible local shop(s) will also benefit existing residents within the broader East End area.
- Increased development opportunities for more diversity and affordability of residential accommodation.
- Integration of commercial and residential uses and improved public spaces, including spaces for al fresco dining, will encourage a more active and interesting public domain.

BUDGET IMPLICATIONS

Nil at this stage.

Future capital works funding by the Council would be required if the study's recommendations to upgrade the public domain of the East End are implemented. It is also anticipated that the City's rates income would increase if significant redevelopment takes place within the East End as envisaged by the study.

LEGISLATIVE AND LEGAL CONSIDERATIONS

Nil at this stage.

PRECINCTS AND OTHER COMMITTEES RECOMMENDATIONS PLUS OTHER CONSULTATION

Input from key stakeholders and relevant advisory committees consulted during the study is provided in the consultant's report. It is now recommended that preliminary comment on the consultant's recommendations be sought from key stakeholders before the Council considers whether to proceed with an amendment to LPS4 which would include more extensive consultation with the wider community.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority required.

OFFICER'S RECOMMENDATION/COMMITTEE RECOMMENDATION**MOVED: Mayor, Peter Tagliaferri****That the Council:**

- 1. Note the report of the East End Planning and Urban Design Study prepared by Hassell Ltd dated January 2009.**
- 2. Agree to invite preliminary comment during February 2009 on the study's recommendations from**
 - a) Property owners, occupants and residents within the study area**
 - b) Relevant local residents groups**
 - c) Urban Development Advisory Committee**
 - d) Heritage and Special Places Advisory Committee**
- 3. Agree that following the preliminary comment period a report be prepared for the Council addressing the input received, providing response from officers to the consultant's recommendations, and outlining the next phase of the project, which is anticipated, will include drafting of an amendment to LPS4.**

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

PSC0901-17 TWELVE PROPOSED ADDITIONS TO THE CITY OF FREMANTLE'S RESERVED ROAD NAMES REGISTER - (KSW)

DataWorks Reference: 164/001
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Land Administrator
Decision Making Level: Council
Previous Item Number/s: Nil
Attachments: Background Research

EXECUTIVE SUMMARY

The City of Fremantle Reserved Road Names Register (the Register) is currently depleted and Council approval is required for the addition of appropriate names to the register. Research carried out by the Corporate Information Services Archivist has identified twelve names that would be suitable for inclusion in the City's Road Names Register.

It is therefore recommended that the twelve names be added to the Register subject to the approval of the Geographic Names Committee (GNC).

BACKGROUND

Landgate is responsible for road naming and is guided by the Geographic Names Committee (GNC). The GNC provide guidelines with respect to street or road name selection. A copy of the GNC guidelines is available upon request.

The Register provides a list of names approved by the Council and the GNC for the use within the Local Authority for future road names. Over the last 18 months, road names from the Register were required for upgraded Rights of Way and various developments where new roads were created. A further 5 names listed on the Register are reserved for the Leighton Beach Development and the naming of Public Open Space associated with the subdivision of Lot 102 Mather Road Beaconsfield. The addition of proposed new names to the Register will continue as an ongoing process.

COMMENT

The following proposed twelve road names are submitted for Council approval (subject to GNC approval) for inclusion in the Register. A short background history for each of the proposed road names is listed below (see attachment 1 for further detail):

1. **Spratley** - John Charles Spratley settled in Fremantle from England and fought in World War 1. He died in Egypt on the 29 March 1915 after a short illness and was the first Fremantle person to die while on active service with the Australian Imperial Force (AIF) during the First World War.
2. **Wragg** - Albert Wragg - born in Fremantle. He served with the AIF in World War 1 and was killed in action on the 6 April 1917.
3. **Loveday** - Arthur Loveday was born in Fremantle. He served with the AIF in World War 1 and died from his wounds on the 12 August 1918.

4. **Comben** - Charles Thomas Comben moved to Fremantle from Victoria at an early age. He served with the 44th Battalion in World War 1 and was killed in action on the 4 July 1918.
5. **Podger** - Samuel Podger was born in Victoria and moved to Fremantle with his family. He served with the 51st Battalion in World War 1 and was killed in action on the 13 February 1917.
6. **Rochfort** - Frank Rochfort, from Queen Street Fremantle. He served in the AIF in World War 1 and returned to Fremantle after being wounded at Gallipoli. He became Commodore of Fremantle Yacht Club and was a fishery inspector during the depression. Frank Rochford died of a stroke in November 1936.
7. **Hunter** - Ralph Hunter served in the World War 1 with the 1st Division Signal Company. He was discharged from the AIF in 1918 and resumed his work with Fremantle Tramways. He died in June 1957.
8. **Grainger** - William Grainger, a labourer of Wesley Street Fremantle, served in the First World War with the 48th Battalion AIF. He was wounded twice in the war and arrived back in Fremantle in October 1919. He died in July 1940 after being struck by a taxi in Fremantle.
9. **Howell** - Arthur Howell, a Clerk from Mary Street Fremantle, served in the Australian Artillery in the First World War, the Volunteer Defence Corps in 1942 and the Australian Army in 1943. He died of a heart attack in July 1949.
10. **Aberle** - Ernie Aberle was a Bakers assistant from Alexandra Road South Fremantle when he enlisted into the AIF in World War 1. He returned home to Fremantle at the end of the war. His brothers also served in the war. In World War II, Ernie's two sons served in the Royal Australian Air Force. Ernie Aberle died in April 1977.
11. **Mouquet** - Mouquet Farm is a small farm in France. In 1916 during World War 1 Mouquet Farm became a battleground. The Western Australian 51st and 52nd Battalions attempted to capture the farm on 3 September 1916. Unfortunately casualties were severe and it was the worst day for Fremantle in World War 1 with 23 men from Fremantle being killed.
12. **Ypres** - This is the region in Belgium where in 1917 Australian troops died in great numbers during the Third Battle of Ypres. Over 150 soldiers from Fremantle died in this area during a 4 month period.

All twelve proposed road names are from research on Fremantle in World War 1. The research information is referenced from the Australian War Memorial, National Archive of Australia, The Fremantle Library's Local History Collection and details from families of the soldiers.

CONCLUSION

The twelve names submitted would meet the requirements of Landgate and the GNC as suitable road names. It is recommended that the Register be amended to include the twelve names as detailed above subject to the approval of the GNC.

OFFICER'S RECOMMENDATION/COMMITTEE RECOMMENDATION**MOVED: Mayor, Peter Tagliaferri**

That Council, subject to the approval of the Landgate Geographic Names Committee, amend the City of Fremantle's Reserved Road Names Register to include the twelve names listed below;

- 1. Spratley**
- 2. Wragg**
- 3. Loveday**
- 4. Comben**
- 5. Podger**
- 6. Rochfort**
- 7. Hunter**
- 8. Grainger**
- 9. Howell**
- 10. Aberle**
- 11. Mouquet**
- 12. Ypres**

CARRIED: 6/0

For	Against
Mayor, Peter Tagliaferri Cr Robert Fittock Cr John Alberti Cr Brad Pettitt Cr Bill Massie Cr Jon Strachan	

CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

THE PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 6:50 PM.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

The Council adopted a Participation Policy in August 2001 to give effect to its commitment to involving citizens in its decision-making processes.

The City values citizen participation and recognises the benefits that can flow to the quality of decision-making and the level of community satisfaction.

Effective participation requires total clarity so that Elected Members, Council officers and citizens fully understand their respective rights and responsibilities as well as the limits of their involvement in relation to any decision to be made by the City.

How consultative processes work at the City of Fremantle	
The City's decision makers	1. The Council, comprised of Elected Members, makes policy, budgetary and key strategic decisions while the CEO, sometimes via on-delegation to other City officers, makes operational decisions.
Various participation opportunities	2. The City provides opportunities for participation in the decision-making process by citizens via its Advisory Committees and Task Forces, its Community Precinct System, and targeted consultation processes in relation to specific issues or decisions.
Objective processes also used	3. The City also seeks to understand the needs and views of the community via scientific and objective processes such as its annual Community Survey.
All decisions are made by Council or the CEO	4. These opportunities afforded to citizens to participate in the decision-making process do not include the capacity to make the decision. Decisions are ultimately always made by Council or the CEO (or his/her delegated nominee).
Precinct focus is primarily local, but also city-wide	5. The Community Precinct System establishes units of geographic community of interest, but provides for input in relation to individual geographic areas as well as on city-wide issues.
All input is of equal value	6. No source of advice or input is more valuable or given more weight by the decision-makers than any other. The relevance and rationality of the advice counts in influencing the views of decision-makers.
Decisions will not necessarily reflect the majority view received	7. Local Government in WA is a representative democracy. Elected Members and the CEO are charged under the Local Government Act with the responsibility to make decisions based on fact and the merits of the issue without fear or favour and are accountable for their actions and decisions under law. Elected Members are accountable to the people via periodic elections. As it is a representative democracy, decisions may not be made in favour of the majority view expressed via consultative processes. Decisions must also be made in accordance with any statute that applies or within the

How consultative processes work at the City of Fremantle	
	parameters of budgetary considerations. All consultations will clearly outline from the outset any constraints or limitations associated with the issue.
Decisions made for the overall good of Fremantle	8. The Local Government Act requires decision-makers to make decisions in the interests of "the good Government of the district". This means that decision-makers must exercise their judgment about the best interests of Fremantle as a whole as well as about the interests of the immediately affected neighbourhood. This responsibility from time to time puts decision-makers at odds with the expressed views of citizens from the local neighbourhood who may understandably take a narrower view of considerations at hand.
Diversity of view on most issues	9. The City is wary of claiming to speak for the 'community' and wary of those who claim to do so. The City recognises how difficult it is to understand what such a diverse community with such a variety of stakeholders thinks about an issue. The City recognises that, on most significant issues, diverse views exist that need to be respected and taken into account by the decision-makers.
City officers must be impartial	10. City officers are charged with the responsibility of being objective, non-political and unbiased. It is the responsibility of the management of the City to ensure that this is the case. It is also recognised that City Officers can find themselves unfairly accused of bias or incompetence by protagonists on certain issues and in these cases it is the responsibility of the City's management to defend those City officers.
City officers must follow procedures	11. The City's consultative processes must be clear, transparent, efficient and timely. City officers must ensure that policies and procedures are fully complied with so that citizens are not deprived of their rights to be heard.
Consultation processes have cut-off dates that will be adhered to.	12. As City officers have the responsibility to provide objective, professional advice to decision-makers, they are entitled to an appropriate period of time and resource base to undertake the analysis required and to prepare reports. As a consequence, consultative processes need to have defined and rigorously observed cut-off dates, after which date officers will not include 'late' input in their analysis. In such circumstances, the existence of 'late' input will be made known to decision-makers. In most cases where citizen input is involved, the Council is the decision-maker and this affords citizens the opportunity to make input after the cut-off date via personal representations to individual Elected Members and via

How consultative processes work at the City of Fremantle	
	presentations to Committee and Council Meetings.
Citizens need to check for any changes to decision making arrangements made	13. The City will take initial responsibility, via 'Consultation Process notifications', for making citizens aware of expected time-frames and decision making processes, including dates of Standing Committee and Council Meetings if relevant. However, as these details can change, it is the citizens responsibility to check for any changes by visiting www.freofocus.com/projects/html/default.cfm , checking the Port City Column in the Fremantle Herald or inquiring at the Service and Information Desk by phone or in-person.
Citizens are entitled to know how their input has been assessed	14. In reporting to decision-makers, City officers will in all cases produce a Schedule of Input received that summarises comment and recommends whether it should be taken on board, with reasons.
Reasons for decisions must be transparent	15. Decision-makers must provide the reasons for their decisions.
Decisions posted on www.freofocus.com/projects/html/default.cfm	16. Decisions of the City need to be transparent and easily accessed. For reasons of cost, citizens making input on an issue will not be individually notified of the outcome, but can access the decision at www.freofocus.com/projects/html/default.cfm or at the City Library or Service and Information counter.

ISSUES THAT COUNCIL MAY TREAT AS CONFIDENTIAL

Section 5.23 of the new Local Government Act 1995, Meetings generally open to the public, states:

1. Subject to subsection (2), the following are to be open to members of the public -
 - a) all council meetings; and
 - b) all meetings of any committee to which a local government power or duty has been delegated.
2. If a meeting is being held by a council or by a committee referred to in subsection (1) (b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following:
 - a) a matter affecting an employee or employees;
 - b) the personal affairs of any person;
 - c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;
 - d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
 - e) a matter that if disclosed, would reveal –
 - i) a trade secret;
 - ii) information that has a commercial value to a person; or
 - iii) information about the business, professional, commercial or financial affairs of a person.
Where the trade secret or information is held by, or is about, a person other than the local government.
 - f) a matter that if disclosed, could be reasonably expected to -
 - i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
 - ii) endanger the security of the local government's property; or
 - iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety.
 - g) information which is the subject of a direction given under section 23 (1a) of the Parliamentary Commissioner Act 1971; and
 - h) such other matters as may be prescribed.
3. A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

