

City of Fremantle

MINUTES

Planning Services Committee

Wednesday, 18 February 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 18 February 2009 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Deputy 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 Les Lauder	City Ward (<i>entered 6.01</i>)
Cr Jon Strachan	South Ward
Cr Bill Massie	Hilton Ward
Cr John Alberti	Beaconsfield Ward
Ms Kathy Bonus	Manager Development Services
Mr Paul Garbett	Manager Planning Projects and Policy
Mr Steve Sullivan	Statutory Planning Coordinator
Mrs Tanya Toon-Poynton	Minute Secretary

There were approximately 10 members of the public and 1 member/s of the press in attendance.

APOLOGIES

Cr John Dowson

LEAVE OF ABSENCE

Cr Robert Fittock announced he will request a leave of absence from 7- 24 April 2009

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

PUBLIC QUESTION TIME

Nil

DEPUTATIONS / PRESENTATIONS

The following member of the public spoke in favour of item PSC0902-21:

Ken Dobinson

The following member of the public spoke in favour of item PSC0901-1:

Colin Percival

The following member of the public spoke against item PSC0901-1:

John Kelly

The following member of the public spoke against item PSC0902-29:

Michael Mondello

The following member of the public spoke in favour of item PSC0902-30:

Tayne Evershed

The following member of the public spoke in favour of item PSC0902-33:

Michael Glenny

The following member/s of the public spoke against item PSC0902-33:

Mark Heap

DISCLOSURES OF INTEREST BY MEMBERS

Mayor, Peter Tagliaferri declared a financial interest in item number PSC0902-30.

LATE ITEMS NOTED

Nil

CONFIRMATION OF MINUTES

MOVED: Cr R Fittock

That the Minutes of the Planning Services Committee dated 4 February 2009 as listed in the Council Agenda dated 25 February 2009 be confirmed as a true and accurate record.

CARRIED: 6/0

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

TABLED DOCUMENTS

The following documents were tabled at the meeting and are attached to the Minutes:

1. Submission from Michael Mondello relating to PSC0902-29.
2. Submission from Mark Heap relating to PSC0902-33.

DEFERRED ITEMS (COMMITTEE DELEGATION)

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

PSC0902-21 SOLOMON STREET, NO. 134 (LOT 9) BEACONSFIELD - TWO LOT SUBDIVISION (AT/MB DA139044)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer / Trainee Planner
Decision Making Level: Planning Services Committee
Previous Item Number/s: DA118/06
Attachments: Subdivision plan
Date Received: 15 December 2008
Owner Name: K Dobinson
Submitted by: JBA Surveys
Scheme: Residential – R25
Heritage Listing: Heritage List, State Heritage Register, Level 1A on MHI
Existing Landuse: Seven grouped dwellings



EXECUTIVE SUMMARY

This application was considered at the Planning Services Committee meeting on 4 February 2009. The resolution at this meeting was to defer the item to the Planning Services Committee meeting of 18 February 2009 to allow the City's officers time to obtain further information regarding an appropriate restrictive covenant condition to be recommended to the Western Australian Planning Commission.

The City's officers have liaised with both the City's solicitors and the Heritage Council of Western Australia regarding the recommended restrictive covenant condition.

As per the resolution of the last Planning Services Committee meeting, the application is recommended to be referred to the Western Australian Planning Commission for approval subject to conditions.

BACKGROUND

This application was considered at the Planning Services Committee meeting of 4 February 2009 in which it was resolved to defer the item to the next Planning Services Committee meeting with a recommendation to approve due to the Committee considering *'that the recommendation of approval for this subdivision application will not result in any further visual changes to the streetscape in Trafford Street as development has already been approved on the portion of land fronting Trafford Street'*.

The reason outlined in the Planning Services Committee minutes for the deferral was to allow the City's officers the time to obtain further information regarding an appropriate condition for a restrictive covenant to be imposed on the proposed Lot 800 relating to future subdivision.

DETAILS

The previous planning report on the application is attached as Attachment 2 to this report.

PLANNING COMMENT

As per the resolution of the Planning Services Committee meeting of 4 February 2009, the City's officers have liaised with the City's solicitors regarding the appropriate wording of a restrictive covenant condition pertaining to the prevention of future subdivision of the proposed Lot 800. This condition is included within the recommendation below.

The City's officers have also liaised with the Heritage Council of Western Australia (HCWA) to investigate whether they will also recommend such a restrictive covenant condition protecting the proposed Lot 800 from future subdivision. The HCWA officer consulted confirmed that their primary objective is to ensure the conservation of the building on Lot 800 and that they would not be recommending a restrictive covenant condition such as that being recommended by the City.

CONCLUSION

As per the previous resolution of the Planning Services Committee on 4 February 2009, the application is recommended to be referred to the WAPC with a recommendation to approve subject to conditions.

OFFICER'S AND COMMITTEE RECOMMENDATION

MOVED: Cr R Fittock

That the application be REFERRED to the Western Australian Planning Commission with a recommendation for APPROVAL under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Lot Subdivision at Solomon Street, No. 134 (Lot 9), Beaconsfield, subject to the following conditions:

- 1. The subdivision being in accordance with the approved plan, date stamped by the WAPC on 5 December 2008, including any amendments placed thereon, other than any modifications that may be required by the conditions that follow.**
- 2. All buildings and effluent disposal systems, having the necessary clearances from the new boundaries as required under the relevant legislation.**
- 3. Suitable arrangements being made with the local government for the provision of vehicular crossover(s) to service the lot(s) shown on the approved plan of subdivision.**
- 4. A Restrictive Covenant, pursuant to section 129BA of the Transfer of Land Act 1893 (as amended) is to be placed on the Certificate of Title of proposed Lot 800 ("the Lot") for the benefit of the City of Fremantle which prevents the further subdivision of the Lot and/or the carrying out of any development on the Lot which would result in the existence of more than one dwelling on the Lot. Notice of this restriction is to be endorsed on the Deposited Plan.**

LOST: 4/3

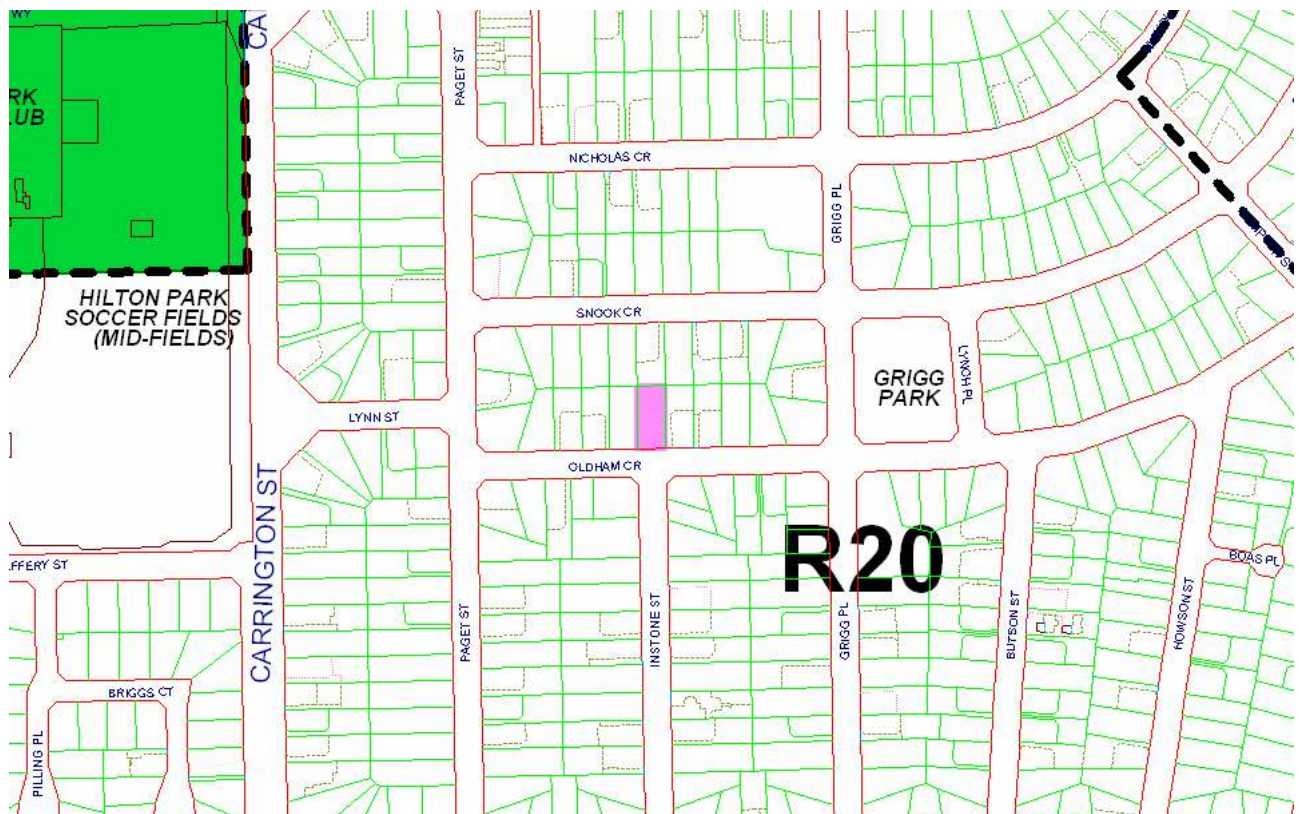
Cr R Fittock used his casting vote AGAINST the recommendation resulting in it being LOST.

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

The above item is referred to the Ordinary Meeting of Council for determination in accordance with 1.1 or 2.1 of the City of Fremantle Delegated Authority Register which requires that at least 5 members of the committee vote in favour of the Committee Recommendation in order to exercise its delegation.

PSC0902-23 OLDHAM CRESCENT NO.12/A (LOT 2), TWO STOREY GROUPED DWELLING (JL DA575/08)

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: PSC0902-23
Attachment 1: Previous report to PSC
Attachment 2: Development Plans
Date Received: 27 October 2008
Owner Name: L. Bass & Simon Pollitt
Submitted by: Daly and Shaw Buildings Pty Ltd
Scheme: Residential – R20
Heritage Listing: Hilton Garden Heritage Precinct
Existing Landuse: Grouped dwelling
Use Class: Grouped dwelling
Use Permissibility: D



EXECUTIVE SUMMARY

This application was considered at the Planning Services Committee meeting on 4 February 2009. The resolution at this meeting was to defer the item to the Planning Services Committee meeting of 18 February 2009, to allow officers to prepare a recommendation for approval with appropriate conditions.

As per the resolution of the last Planning Services Committee meeting, a recommendation for approval with appropriate conditions has been prepared.

BACKGROUND

This application was presented to the Planning Services Committee meeting of 4 February 2009 with the recommendation for refusal, due to the proposal being inconsistent with the objectives of the City of Fremantle’s Planning Policy D.G.H3: Hilton Local Area Planning Policy and the pattern of development within the locality. The Planning Service Committee resolved to defer the item to the next Planning Services Committee meeting in order for officers to prepare an alternative recommendation for approval.

PLANNING COMMENT

As per the Planning Services Committee resolution dated 4 February 2009, an alternative recommendation for approval with appropriate conditions has been provided.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr R Fittock

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Storey Grouped dwelling at No. 12/A (Lot 2) Oldham Crescent, Hilton, subject to the following condition(s):

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 8 December 2008.**
- 2. The external face of the western boundary wall shall be finished in either two coat sand render or face brick finish to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 3. All storm water discharge shall be contained and disposed of on-site.**

CARRIED: 6/0

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

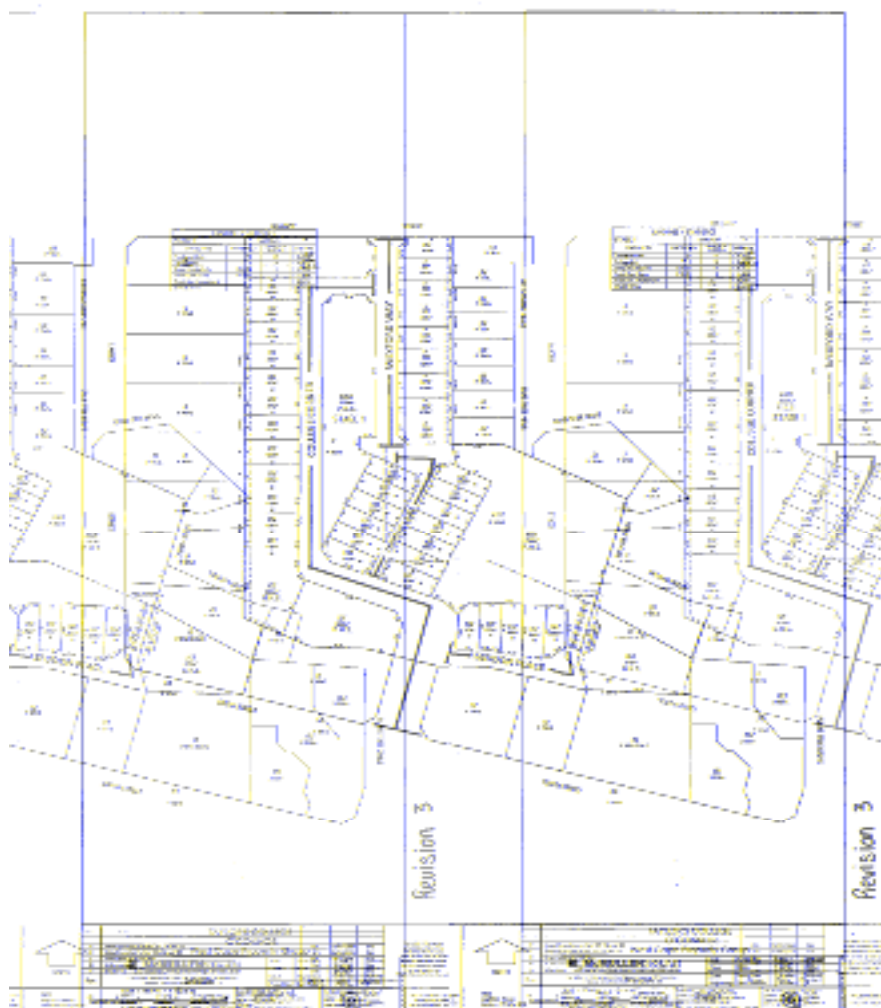
DEFERRED ITEMS (COUNCIL DELEGATION)

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

PSC0811-321 PROPOSED ROAD NAMES - NO. 390 SOUTH STREET, O'CONNOR - (KSW)

DataWorks Reference: 164/001, 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Land Administrator
Decision Making Level: Council
Previous Item Number/s: PSC0604-61, PSC0710/289, DA 137016, PSC0811-321
Attachments: Nil

The proposed road names are shown on the map (titled Revision 3) below.



EXECUTIVE SUMMARY

McMullen Nolan and Partners Surveyors Pty Ltd (the applicant) has requested that names be allocated to the roads to be created by the subdivision at No. 390 South Street, O'Connor (see Dataworks reference No. 1058697). The applicant has requested clarification of the road names in order to facilitate subdivision clearance.

The previous item PSC0811-321 (Ordinary Council meeting on 25 November 2008) dealing with the above road naming was referred back to the Planning Services Committee in order to select alternative road names from the City of Fremantle's Approved Road Names Register (the Register). The applicant has submitted a revised application (see dataworks reference No. 1108230) indicating the following alternate names;

1. Seddon Place
2. Wexford Way
3. Terrene Lane

The additional name of "Delrosso" is identified by the applicant as a replacement name should Council require an alternative to any of the three names listed above.

The applicant has requested that College Place be re-named College Corner to correctly reflect the extension of the road from a cul-de-sac to a through road. The GNC have supported this proposal.

It is recommended that Council approve the proposed road names as requested or alternatively replace one of the names with the reserved name of "Delrosso".

BACKGROUND

The subject site was granted conditional approval for subdivision by the Western Australian Planning Commission (WAPC) on 27 March 2008. Road names are required by the WAPC and Landgate to facilitate the clearance of the subdivision.

The previous item PSC0811-321 dealing with the above road naming was referred back to the Planning Services Committee in order to select alternative road names from the City of Fremantle's Approved Road Names Register (the Register).

The applicant has also requested that College Place be re-named College Corner to correctly reflect the extension of the road from a cul-de-sac to a through road. The GNC have supported this proposal.

EXTERNAL SUBMISSIONS

Neighbour Notification: Nil. Consultation is only required by GNC when naming Ovals, Pavilions and the like; the naming or renaming of parks and reserves; or the naming of Town and Localities. Consultation is required if the re-naming of a road affects the street addresses of adjoining properties which it does not in this case.

COMMENT

After discussions with the applicant the proposed road names of "Seddon" and "Wexford" are submitted from the Register. The GNC have recommended combining the suffixes of "Place" and "Way" with the names of "Seddon" and "Wexford" respectively. Other suffix combinations such as Seddon Way and Wexford Place are currently in use as road names and may not be duplicated.

The proposed name of Terrene Lane has received conditional approval from the GNC and is not currently listed on the City's register. The 3 proposed road names are listed below:

- Seddon Place
- Wexford Way
- Terrene Lane

A fourth name of "Delrosso" was selected by the applicant to provide an extra name from the Register should it be required.

CONCLUSION

The proposed names for the unnamed public roads within the subdivision of Number 390 South Street O'Connor ("Seddon Place", "Wexford Way" and "Terrene Lane") and the re-naming of "College Place" to "College Corner: are supported by the GNC.

The road names are required for addressing purposes in accordance with the GNC Road Naming Guidelines.

Should the proposed name of "Terrene" be found unacceptable to Council then the extra name of "Delrosso" can be substituted in the resolution below (item 2).

OFFICER'S RECOMMENDATION

That Council:

1. APPROVE the name "Terrene" to be included into the City of Fremantle Reserved Road names Register subject to the approval of the Geographic Names Committee.
2. ADVISE the Geographic Names Committee that it has selected "Seddon Place", "Wexford Way" and "Terrene Lane" as the new road names to be applied to the public roads located within the subdivision of the former Taylor's College site (390 South Street O'Connor).
3. ADVISE the Geographic Names Committee that it supports the re-naming of College Place to College Corner located within the subdivision of the former Taylor's College site (390 South St O'Connor).

Cr J Strachan MOVED an amendment to the Officer's Recommendation to change Seddon Place to Delrosso Place.

CARRIED: 6/0

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

COMMITTEE RECOMMENDATION

MOVED: Cr Robert Fittock

That Council:

1. **APPROVE** the name "Terrene" to be included into the City of Fremantle Reserved Road names Register subject to the approval of the Geographic Names Committee.
2. **ADVISE** the Geographic Names Committee that it has selected "*Delrosso Place*", "Wexford Way" and "Terrene Lane" as the new road names to be applied to the public roads located within the subdivision of the former Taylor's College site (390 South Street O'Connor).
3. **ADVISE** the Geographic Names Committee that it supports the re-naming of College Place to College Corner located within the subdivision of the former Taylor's College site (390 South St O'Connor).

CARRIED: 6/0

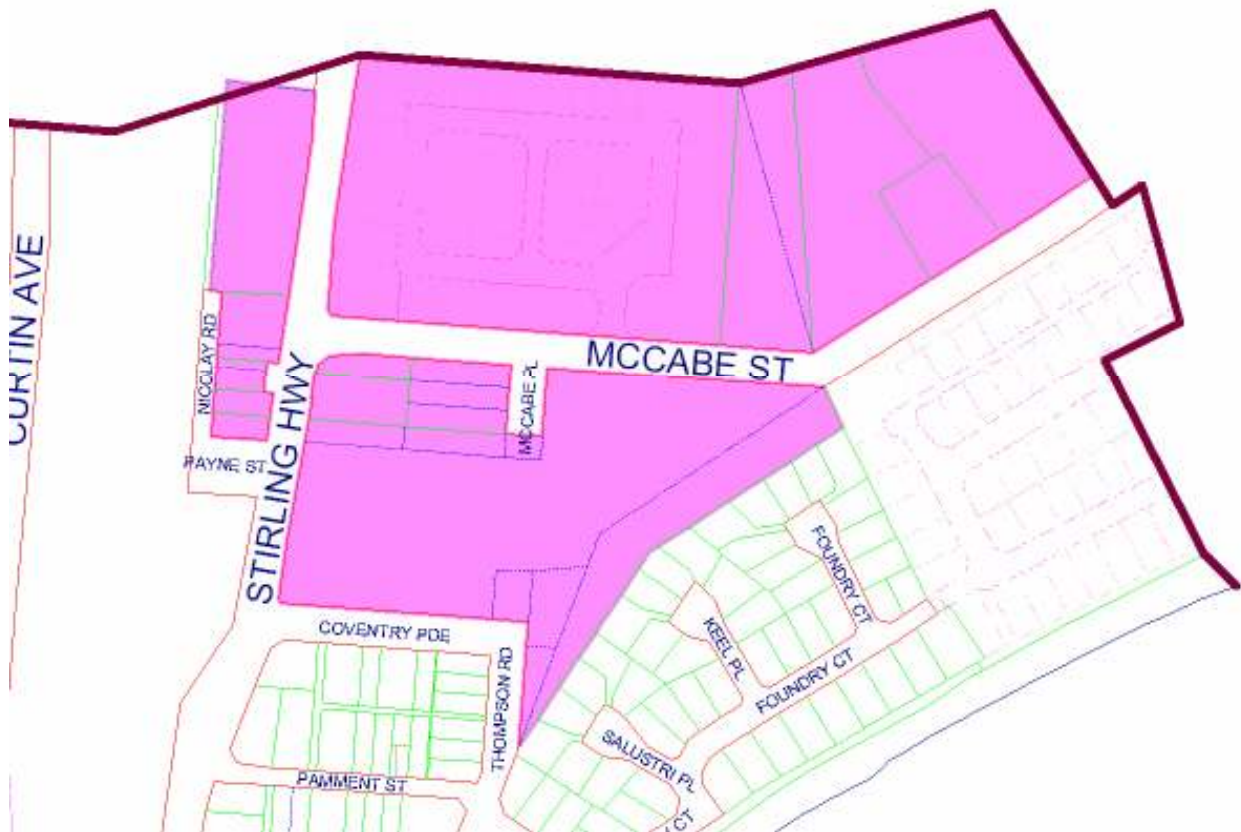
For	Against
Mayor, Peter Tagliaferri Cr John Alberti Cr Robert Fittock Cr Les Lauder Cr Bill Massie Cr Jon Strachan	

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

Committee is of the view the development is not in an appropriate area for Mr Seddon to be remembered.

**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: PSC0901-1, PSC0812-342, PSC0809-260, PSC0807-195
Attachments:
1. Copies of further submissions from landowners and local residents.
2. Previous item PSC0812-342



EXECUTIVE SUMMARY

This report presents for Council's further consideration and final adoption Local Planning Policy 3.11 – McCabe Street Area, North Fremantle – Height of New Buildings, following deferral of the item by Council in December 2008 and January 2009.

The policy as recommended for final adoption incorporates a number of further modifications compared to the version of the policy presented to Council in December 2008. These modifications are intended to address a number of issues which have been the subject of further analysis by officers, including matters raised in submissions from local residents and landowners.

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.

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.

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 2). On 21 January officers presented a report recommending that the matter be further deferred to the February cycle of Planning Services Committee and Council meetings to enable officers to undertake further analysis of relevant issues. A resident of Foundry Court addressed the Planning Services Committee on 21 January, and subsequently provided a further written submission requesting that any modifications to the original proposals be rejected (see Attachment 1).

Council on 28 January 2009 resolved that further consideration of final adoption of policy LPP 3.11 be deferred to the February cycle of Planning Services Committee and Council meetings to enable officers to undertake further analysis of relevant issues (Minute No. PSC0901-1).

STATUTORY AND POLICY ASSESSMENT

Clause 2.2.1 of the City's Local Planning Scheme No. 4 (LPS4) states that the Council may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area. Clause 2.4 of LPS4 specifies the procedures Council must follow in preparing and adopting a local planning policy, which include advertising the draft policy for public comment for a period of not less than 28 days.

A local planning policy is not part of the Scheme and does not bind the Council in respect of any application for planning approval, but the Council is to have due regard to the provisions and objectives of a policy in making a determination on an application.

Clause 5.3 of the Residential Design Codes (R-Codes) specifies which acceptable development provisions of the R-Codes may be varied by a local planning policy, allowing variations to vary height limits (design element 6.7 A1), but do not permit the variation of boundary setbacks (design element 6.3.1 A1).

CONSULTATION

Details of consultation carried out on the draft policy and responses received are contained in previous item PSC0812-342 (Attachment 2).

PLANNING COMMENT

Further analysis of various elements of the proposed policy has been undertaken by officers. This has taken into account matters raised in submissions, and previous Council resolutions on the item.

Key Issues for Further Consideration

Maximum height of development in Zone F relative to Foundry Court

The draft policy as advertised proposed a maximum building height of 10m, on the basis of allowing for development of comparable height to dwellings in Foundry Court which adjoin Zone F to the south-east. LPS4 prescribes a maximum height of 7m external wall/10m roof ridge for development in Foundry Court.

However, the existing ground level in part of Zone F is up to 3m lower than the ground level of houses in Foundry Court, apparently as a result of filling carried out when Foundry Court was developed. The further submission from the owner of the Matilda Bay Brewery site which includes all of Zone F highlights this difference, and requests that the policy be amended to allow a 10m maximum building height from a level equivalent to the ground level in Foundry Court.

Conversely, a further submission from the owner of No. 41 Foundry Court (who addressed Planning Services Committee on 21 January) opposes any change to Zone F, and requests that the height limit of 10m from existing ground level be maintained, and that the depth of the zone be reinstated to approximately 40m rather than 35m as recommended by officers for final adoption in the item deferred on 17 December 2008.

Officer Comment:

The arguments put forward by submitters for measuring the height of new buildings from existing ground level, or from an elevated level equivalent to ground level of houses in Foundry Court, both have some merit. Applying the height limit from existing ground level would mitigate the impact of new development, particularly in terms of potential overshadowing, upon Foundry Court properties which are located south-east of Zone F. However new development built from current ground level, particularly at the northern end of Zone F where the difference in ground levels is greatest, would have a poor south-facing outlook onto blank retaining walls and fences from the ground floor accommodation. In any event, any new proposal for residential development on the Matilda Bay site would be required to comply with the R-Codes including overshadowing and visual privacy requirements at the planning application stage.

On balance, officers consider that a reasonable compromise in response to these issues would be to increase the maximum permitted building height in the northern part of Zone F only (where the level difference is greatest) by 3m, but to state that the increased height is inclusive of any fill up to a maximum depth of 3m. In the southern part of Zone F, where level differences between the site and Foundry Court are 1m or less, the currently proposed height limit could remain. This approach could be illustrated on the plan in the policy by splitting the current Zone F into two zones, with the northern one having a maximum height limit 3m greater than the southern part.

Officers consider there is no justification for increasing the depth of Zone F from 35 to 40m in terms of overshadowing or overlooking impact on Foundry Court. Even if higher development in the adjoining Zone E was built to the maximum permitted height right on the boundary with Zone F it would still be 35m from the boundary with properties in Foundry Court and at this distance away any shadow cast by the higher building (even in midwinter) would fall short of the Foundry Court boundary. At 35m away, any windows in development in Zone E would substantially exceed the minimum setbacks for visual privacy requirements specified in the R-Codes.

Relationship between heritage listed Matilda Bay Brewing Company building and its curtilage, and recommended building heights in Zones G and H

The footprint of the Matilda Bay Brewing Company building spans across Zone G and Zone H as proposed in the draft policy. The policy does not imply that a redevelopment of any part of the site of the heritage listed building (irrespective of proposed height) would be supported. Paragraph 4.2.2 of the draft policy states that any development will be assessed in terms of its impact on the listed place, and consideration will be given to the extent to which proposed new development helps to conserve and reveal the significance of the place.

The heights of various parts of the existing heritage listed building measured from current ground level are as follows:

Façade to Stirling Highway of main factory space - 16m to apex of gable.

Façade to Stirling Highway of administration wing – approx 7m to top of parapet.

Pitched roof over main factory space (southern part, behind gabled façade) – 15.7m to ridge line.

Saw-toothed roof over main factory space (northern part, behind administration wing) - 10m to ridge line.

The further submission from the site owner requests an increase in the maximum height of development in Zone G from 16m to 19m, on the basis that the roof ridge height of the heritage listed building is already 16m, and a new building at the rear of the listed building 19m high would appear insignificant and would be able to have views westward over the roof of the listed building.

Officer Comment:

Officers consider that the currently proposed height limit in Zone G, which limits any new development to approximately the same height as the highest part of the heritage listed building, is appropriate. The roof over the part of the factory space behind the administration wing (which represents approx 65% of the entire roof area of the listed building) is approx 6-7m lower than the roof over the highest part of the building (behind the large gabled façade facing Stirling Highway) and consequently already allows the opportunity for a substantial part of any new development behind the retained listed building to have views from its upper floors over the roof of the listed building towards the ocean, without any additional increase in height. The boundary between Zones G and H is set back approximately 50m from the main façade of the heritage listed building facing Stirling Highway.

Potential for taller 'point' building on northern corner of Stirling Highway and McCabe Street

The draft policy as advertised included reference to a possible variation to the 16m height limit in this location to allow for development up to 25m/8 storeys high, subject to certain criteria being met. State Planning Policy 2.6: State Coastal Planning Policy states that development within 300m of the coast (which this location is) should generally not exceed 21m/5 storeys, although higher structures up to 32m/8 storeys may be permitted where certain criteria are met, including broad community support for higher buildings following a process of full consultation.

In the report to Council in December 2008, officers recommended deletion of the provision in the draft policy for possible development of a building exceeding 16m, on the basis that community consultation on the policy had resulted in 6 out of a total of 22 submissions objecting to this aspect of the policy, and a further 2 submissions suggested a reduction in maximum height to 20m. Officers considered that this consultation response could not be interpreted as unequivocal 'broad community support'.

Officer Comment:

State Planning Policy 2.6 does not define or provide criteria for measuring 'broad community support', so existence or otherwise of such support is a matter of judgment. Officers have reviewed the submissions, and in particular noted that the submission from the Town of Mosman Park raised no objections to the draft policy as advertised, inclusive of the above mentioned variation to the general height limits. On the basis that the consultation responses on this issue (other than the 6 that explicitly object) are open to a degree of interpretation, on balance officers consider that there are reasonable grounds for retaining this element of the policy should Council wish to do so.

However, if Council does wish to retain this element of the draft policy, it is possible that the policy would require the approval of the Western Australian Planning Commission in addition to final adoption by Council due to the height control provisions within State Planning Policy 2.6: State Coastal Planning Policy. If Council does resolve to adopt the policy including this provision, it is recommended that the policy be referred to the WAPC with a request that the Commission determines whether or not its approval of the policy is required.

Relevance of assumed floor-to-floor dimensions to maximum building heights

Development of the draft policy was based upon certain principles resolved by Council after consideration of an earlier report on 23 July 2008 (Minute No. PSC0807-195). These principles were:

- (a) The key view corridors and building heights as modelled in Scenario 3 of the McCabe Street Area Height Study shall be used as the basis for preparation of the draft local planning policy;
- (b) New development adjacent to existing residential development in Buckland Hill, Foundry Court and Minim Cove should be no higher than 3 storeys (or equivalent height in metres) from existing ground level;
- (c) New development within the key view corridors identified in the Study should be no higher than 4 storeys (or equivalent height in metres) from existing ground level;
- (d) Notwithstanding (c) above, new development on the site of 133 – 141 Stirling Highway should be no higher than 3 storeys (or equivalent height in metres) from existing ground level;
- (e) New development on land in parts of the Height Study Area not included within areas defined under (b) to (d) above should be no higher than 5 storeys (or equivalent height in metres) from existing ground level.

The draft policy as subsequently adopted by Council for the purposes of advertising on 24 September 2008 translated numbers of storeys into building heights in metres based on the following assumptions regarding floor-to-floor dimensions in new buildings:

Ground floor – 4m (allowing sufficient ceiling height to accommodate potential commercial uses).

Upper floors – 3m for each floor (based on assumed residential use).

No additional height allowance was made for the main roof structure, although the draft policy does allow for minor projections of up to 3m above the highest part of the main building structure to accommodate structures such as air conditioning units and lift overrun rooms.

Submissions on the draft policy on behalf of developers and evidence given by architectural and urban design expert witnesses on behalf of the applicants in the State Administrative Tribunal (SAT) proceedings in respect of 140 Stirling Highway and 9-15 McCabe Street in December 2008 were critical of the assumed floor-to-floor heights outlined above. Statements were made that these heights are unrealistically conservative and do not reflect contemporary best practice construction standards and the provision of good standards of amenity for occupants.

Submissions and evidence given in the SAT contend that more appropriate floor-to-floor heights upon which to base the policy would be as follows:

Ground floor – 4.5m (to allow for possible natural ventilation of any semi-basement parking)

Upper floors – 3.2m

Additionally, some allowance should be made to accommodate the main roof structure to allow for possible pitched roof designs.

Research into planning approvals for new apartment-type residential or mixed use developments in Fremantle over the past 2-3 years indicate that although some submitted plans proposed 3m floor-to-floor heights (e.g. 4 Bannister Street and the new build section of the Fort Knox development, both approved in 2008), the majority (including the various lots at Leighton Beach) are 3.2m.

Officer Comment:

On balance, there would appear to be grounds to reconsider the floor-to-floor height assumptions underpinning the maximum building heights proposed in the draft policy, having regard to contemporary design and construction trends.

If floor-to-floor heights of 4.5m at ground floor and 3.2m at upper floor levels were to be utilised instead of 4m and 3m, the maximum building heights in each of the height zones in the draft policy would change as follows (allowing for rounding up or down to the nearest whole metre):

Zones A, B and F – 11m instead of 10m

Zones C and H – 14m instead of 13m

Zones D and G – 17m instead of 16m

Zone E – 20m instead of 19m

This would make no additional allowance for the height of a pitched roof structure, however if a developer particularly wanted to incorporate a pitched roof there would be more flexibility to reduce floor-to-floor heights (particularly the ground floor 4.5m height) and use the 'saved' height to accommodate a pitched roof within the overall maximum permitted building height envelope.

An increase of 1m in maximum building height across all zones is not considered likely to have any material impact upon key view corridors as established through the McCabe Street Area Height Study, and which have informed the development of the draft policy.

CONCLUSION – RECOMMENDED FURTHER MODIFICATIONS TO POLICY

After further consideration of the above issues and taking into account the additional submissions received (see Attachment 1), officers consider that the following modifications to the policy as previously recommended to Council for adoption in December 2008 would be appropriate.

1. General revisions to maximum building heights in all zones as a result of revised assumptions regarding floor-to-floor heights.

It is recommended that the maximum heights be amended as follows:

Zones A, B and F – 11m instead of 10m
Zones C and H – 14m instead of 13m
Zones D and G – 17m instead of 16m
Zone E – 20m instead of 19m

2. Maximum height of development in Zone F relative to Foundry Court

It is recommended that Zone F as shown in the draft policy be split into two sections – F1 and F2. Zone F1 would be the northern most section where the difference between existing ground level on the Matilda Bay site and the ground level of properties in Foundry Court is greatest – the Foundry Court properties are approximately 3m higher. In this zone it is recommended that the maximum permitted height be increased by 3m to allow the option for a future developer to fill ground levels to the same level as Foundry Court, i.e. any filling would have to be accommodated within the overall height limit. To clarify the intent of the policy that the maximum height limits must accommodate any proposed raising of ground levels as well as the height of a new building, a modification to paragraph 4.1.3 of the draft policy is recommended as a separate item below (see 3).

Zone F2 is recommended to remain unchanged in respect of ground levels, since there is 1m or less difference in levels between the Matilda Bay site and Foundry Court in this area. However, due to the general 1m increase in permitted building heights referred to in (1) above, the recommended height in this zone would become 11m instead of 10m.

3. Revised wording of paragraph 4.1.3 regarding interpretation of ground levels and allowance for fill.

The intent of the policy has always been that ground level should be interpreted as the existing level on the relevant site prior to the proposed development, and that any proposal to raise levels should form part of the same development application as for a new building and the raised levels should be accommodated within the maximum height limits under the policy. It is considered that this intent could be expressed more clearly if paragraph 4.1.3 of the draft policy was reworded.

It would also be appropriate for reasons of consistency to introduce a cross-reference to existing provisions within Local Planning Scheme No. 4 (part of clause 5.8.1 dealing with variations to height requirements) which refer to Council's discretionary ability to increase applicable height limits by up to 0.5m where there is a variation in ground level over a development footprint of more than 1m.

It is therefore recommended that paragraph 4.1.3 be reworded as follows:

For the purpose of measuring building height above ground level, the meaning of ground level is the level which existed prior to the proposed development. Any site works associated with the proposed development which involve alterations to existing ground level must be included within the same application for planning approval. If any such site works involve filling above existing ground level, the depth of proposed fill as well as the height of the proposed new building(s) must be accommodated within the maximum height of development specified in this policy. The contents of this policy do not preclude Council from exercising its discretionary ability under clause 5.8.1 of Local Planning Scheme No. 4 to increase the standard applicable height limit by up to 0.5 metres where there is a variation in ground level over a development footprint of greater than 1 metre.

4. Retention of provision within paragraph 4.1.5 of policy to allow Council the discretionary ability to approve a planning proposal on the corner of Stirling Highway and McCabe Street (part of site of 140 Stirling Highway) involving a variation of the height limit within Zone D, subject to compliance with certain performance criteria.

Retention of the existing wording within paragraph 4.1.5 (third dot point) of the draft policy as advertised is recommended.

OFFICER’S RECOMMENDATION

- 1. That Council adopt Local Planning Policy 3.11 – McCabe Street Area, North Fremantle – Height of New Buildings in accordance with procedures set out in clause 2.4 of the City of Fremantle Local Planning Scheme No. 4 incorporating modifications as shown below:

CITY OF FREMANTLE

LOCAL PLANNING POLICY 3.11

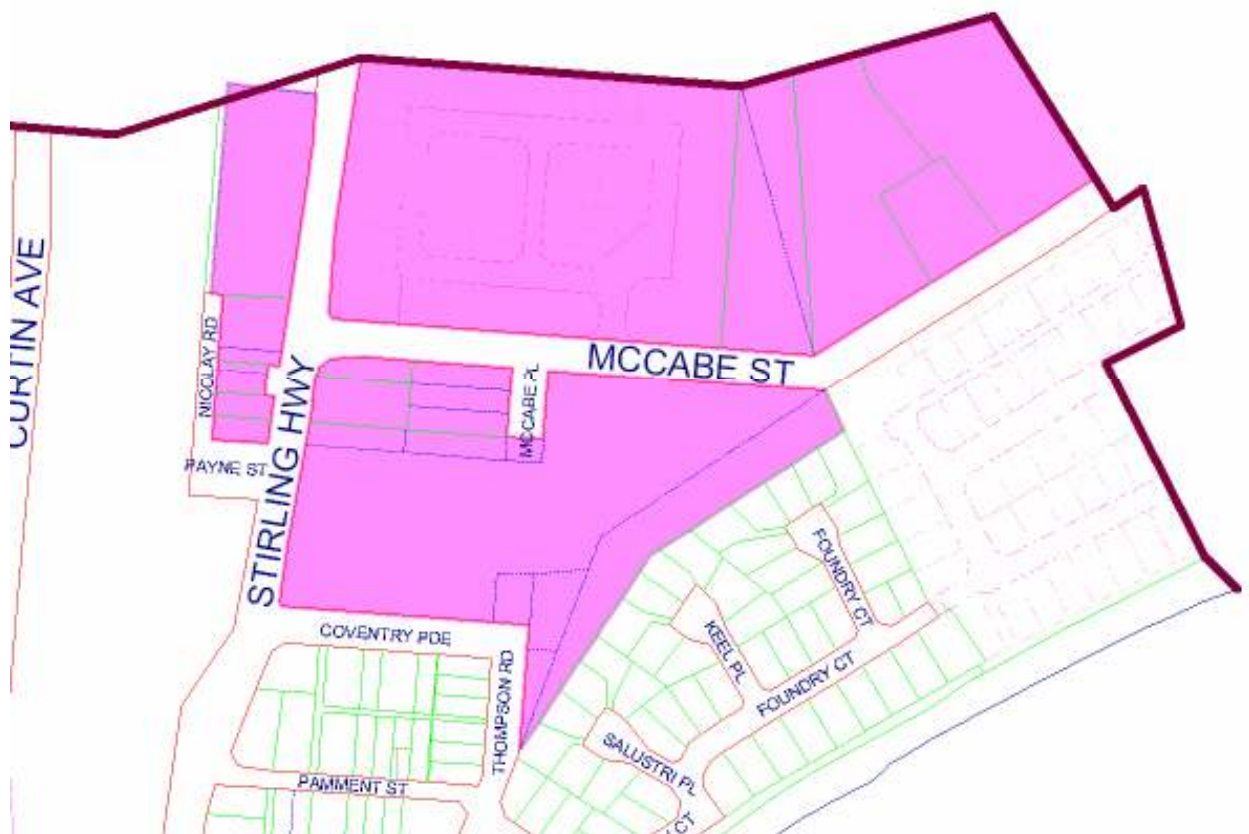
MCCABE STREET AREA, NORTH FREMANTLE – HEIGHT OF NEW BUILDINGS

ADOPTION DATE: TBA

AUTHORITY: LOCAL PLANNING SCHEME NO. 4

1. PURPOSE

- 1.1 The purpose of the policy is to identify limitations on the maximum heights of new buildings that Council will apply in assessing planning proposals relating to land adjacent to McCabe Street, North Fremantle as defined by the shaded area on the plan below:



- 1.2 The policy is intended to help ensure that new buildings developed in the area defined on Plan No. 1 above do not adversely affect the visual amenity of the locality in general or the amenity of occupiers of nearby residential properties. In particular, the policy is intended to help safeguard important views from publicly accessible viewpoints towards and over the Indian Ocean and the Swan River and the setting of existing buildings and landscape features of cultural heritage significance.

2. APPLICATION OF POLICY

- 2.1 The policy applies to all land within the area defined on Plan No. 1 that is zoned under Local Planning Scheme No. 4 (LPS4), unless any such land is subject to specific or general height controls under the provisions of Clause 12.12 Schedule 12 – Local Planning Areas (Height Requirements) of LPS4, in which case the provisions of the Scheme shall prevail.
- 2.2 Council will apply the policy in determining applications for planning approval to undertake development under Part 8 of LPS4, and in determining structure plans and detailed area plans under Part 6 of LPS4 in cases where such plans include information regarding proposed building heights. The policy applies to development proposals involving both residential and non-residential land uses.

3. STATUTORY BACKGROUND

- 3.1 This policy has been prepared in accordance with the provisions of LPS4 relating to the preparation and adoption on local planning policies.
- 3.2 Clause 5.2.2 of LPS4 states that unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the Residential Design Codes is to conform to the provisions of the Codes.
- 3.3 Section 5.3.1 of the Residential Design Codes states that local planning policies may contain provisions that vary or replace acceptable development provisions set out in the codes in relation to various design elements including building height. This local planning policy replaces the acceptable development provisions relating to building height set out in design element 6.7 A1 of the codes.

4. POLICY

4.1 General

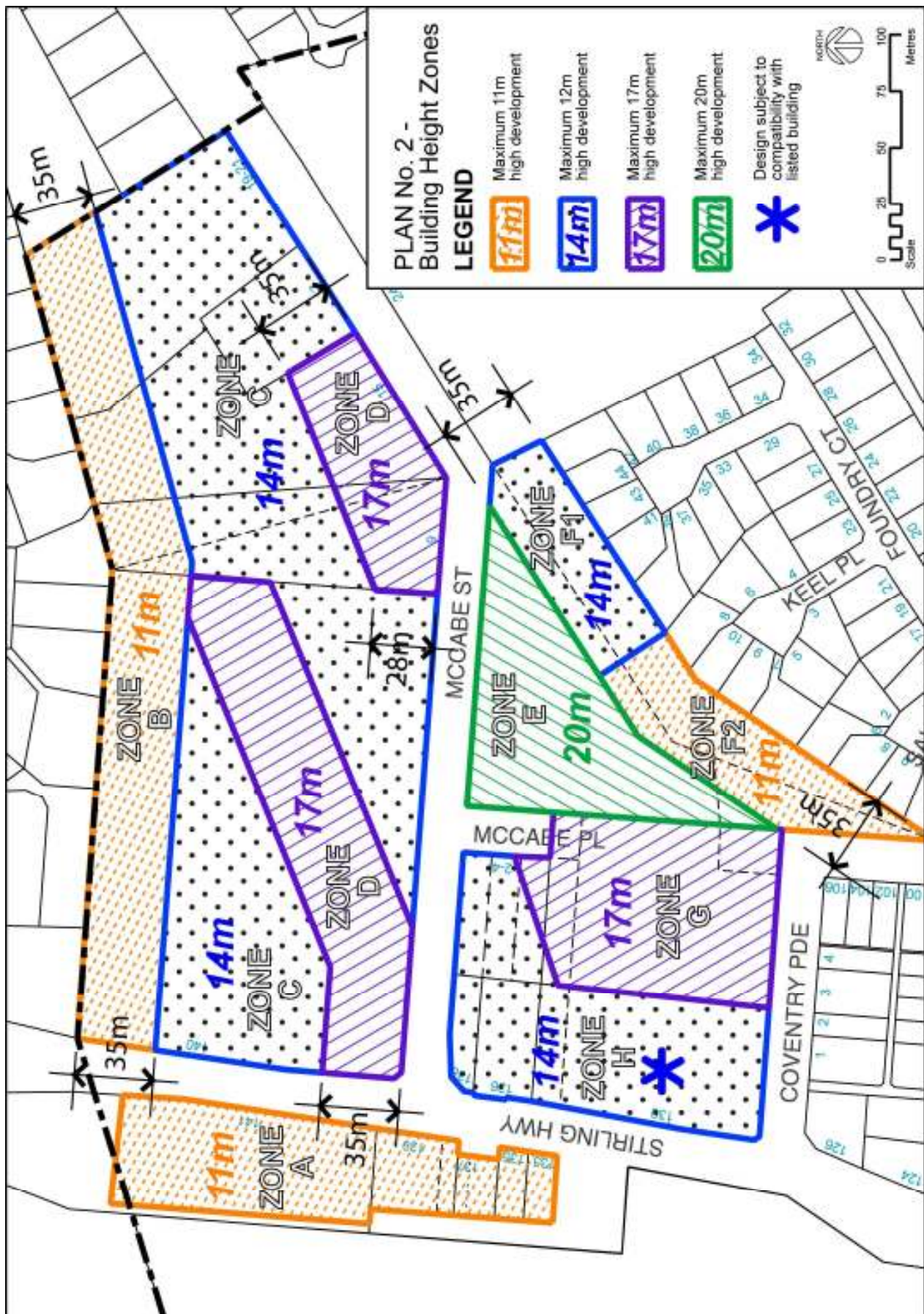
- 4.1.1 Plan No. 2 defines a series of building height zones within the area covered by this policy. The maximum height of any new building shall not exceed the height above ground level prescribed in the height zone applying to the location of the proposed new building, except for any variations as specified in 4.1.5 below.
- 4.1.2 Maximum building height will be measured as the vertical distance in metres from ground level to the highest part of the main building structure, irrespective of whether that part of the structure is a wall, parapet or roof.

- 4.1.3 For the purpose of measuring building height above ground level, the meaning of ground level is the level which existed prior to the proposed development. Any site works associated with the proposed development which involve alterations to existing ground level must be included within the same application for planning approval. If any such site works involve filling above existing ground level, the depth of proposed fill as well as the height of the proposed new building(s) must be accommodated within the maximum height of development specified in this policy. The contents of this policy do not preclude Council from exercising its discretionary ability under clause 5.8.1 of Local Planning Scheme No. 4 to increase the standard applicable height limit by up to 0.5 metres where there is a variation in ground level over a development footprint of greater than 1 metre.
- 4.1.4 Where the main structure of a building is located in more than one height zone as shown on Plan No. 2, the part of the building in each height zone must comply with the maximum height requirement for that zone.
- 4.1.5 Council may approve planning proposals involving variations to the maximum building heights prescribed on Plan No. 2 in the following circumstances:
- Minor projections above the highest part of the main building structure, in cases where the highest part of the minor projection is no more than 3m above the highest part of the main building structure and the area of the minor projection is no more than 10% of the total roof area of the building. Minor projections will be interpreted as including plant and equipment such as air conditioning units, lift overrun rooms, flagpoles, aerials and decorative architectural features, but not rooms or other facilities intended for regular human use such as rooftop decks or swimming pools.
 - Minor projections out from the side of a main building structure over land within an adjoining height zone where a lower maximum building height requirement applies, in cases where no part of the projection is more than 3m away from the main building structure and the total area of all projections is no more than 10% of the ground floor area of the building. Minor projections will be interpreted as including plant and equipment, canopies, awnings, verandahs and balconies, including balconies intended for regular human use.
 - In the part of Zone D that is within 60 metres of the eastern boundary of the Stirling Highway road reserve on the north side of McCabe Street, a building of a maximum height of 25 metres may be approved by Council at its discretion subject to the proposed development demonstrating that it complies with all of the following criteria:
 - (a) The development must achieve a 'green design' (Green Star system) rating equivalent to at least 5 star, incorporating low energy and water use, on-site energy generation, natural cross ventilation, recycling, etc;
 - (b) The development must incorporate non-residential ground floor uses that contribute to the function of the locality as an activity and/or tourist node consistent with the requirements of State Planning Policy 2.6: State Coastal Planning Policy;

- (c) Notwithstanding its maximum height, the development must not contain more than 8 storeys, based on the definition of “storey” contained in section 7 of State Planning Policy 2.6: State Coastal Planning Policy;
- (d) The design of the development must perform the urban design function of an ‘entry statement’ into the City of Fremantle, including design qualities that convey a contemporary coastal aesthetic informed by the local context of North Fremantle and the Indian Ocean foreshore; and
- (e) The development must not encroach upon view corridors as defined in the “McCabe Street Height Study” dated May 2008, prepared by Scenic Spectrums Pty Ltd on behalf of the City of Fremantle.

4.2 Specific Requirements Additional to General Policy Provisions

- 4.2.1 Height Zone A – 133 -141 Stirling Highway. Notwithstanding the general maximum building height of 11 metres permitted under this policy, the built form of any new development in this zone must incorporate at least two significant gaps between buildings down to ground level of sufficient width to provide views of the Indian Ocean from ground level on Stirling Highway. One of these gaps must approximately align with the axis of McCabe Street at its intersection with Stirling Highway.
- 4.2.2 Height Zones G and H – new development will be assessed in terms of its impact upon the Matilda Bay Brewing Company building (former Ford Motor Company assembly plant) which is included on the Heritage List under the provisions of clause 7.1 of LPS4. Consideration will be given to the extent to which proposed new development helps to conserve and reveal the significance of the heritage place, including its identified significant attributes and features, through the siting and design of new buildings including their massing, bulk, relationship to street frontages and degree of separation from the heritage place in order to give prominence in the streetscape to the heritage place.



LOCAL PLANNING POLICY 3.11 - McCabe Street Area, North Fremantle
 HEIGHT OF NEW BUILDINGS

2. That the policy be referred to the Western Australian Planning Commission and the Commission be requested to determine whether its formal approval of the policy is required having regard to the provisions of State Planning Policy 2.6: State Coastal Planning Policy (paragraph 5.3 – Building Height Limits).

Cr B Massie MOVED the following deferral:

That the finalisation of the policy be deferred to the first available PSC after the decisions of the State Administrative Tribunal on the 140 Stirling Highway and 9/15 McCabe Street developments is known.

LOST: 2/3

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

COMMITTEE AND OFFICER’S RECOMMENDATION

MOVED: Cr R Fittock

1. That Council adopt Local Planning Policy 3.11 – McCabe Street Area, North Fremantle – Height of New Buildings in accordance with procedures set out in clause 2.4 of the City of Fremantle Local Planning Scheme No. 4 incorporating modifications as shown below:

CITY OF FREMANTLE

LOCAL PLANNING POLICY 3.11

MCCABE STREET AREA, NORTH FREMANTLE – HEIGHT OF NEW BUILDINGS

ADOPTION DATE: TBA

AUTHORITY: LOCAL PLANNING SCHEME NO. 4

1. PURPOSE

- 1.1 The purpose of the policy is to identify limitations on the maximum heights of new buildings that Council will apply in assessing planning proposals relating to land adjacent to McCabe Street, North Fremantle as defined by the shaded area on the plan below:



- 1.2 The policy is intended to help ensure that new buildings developed in the area defined on Plan No. 1 above do not adversely affect the visual amenity of the locality in general or the amenity of occupiers of nearby residential properties. In particular, the policy is intended to help safeguard important views from publicly accessible viewpoints towards and over the Indian Ocean and the Swan River and the setting of existing buildings and landscape features of cultural heritage significance.

2. APPLICATION OF POLICY

- 2.1 The policy applies to all land within the area defined on Plan No. 1 that is zoned under Local Planning Scheme No. 4 (LPS4), unless any such land is subject to specific or general height controls under the provisions of Clause 12.12 Schedule 12 – Local Planning Areas (Height Requirements) of LPS4, in which case the provisions of the Scheme shall prevail.

2.2 Council will apply the policy in determining applications for planning approval to undertake development under Part 8 of LPS4, and in determining structure plans and detailed area plans under Part 6 of LPS4 in cases where such plans include information regarding proposed building heights. The policy applies to development proposals involving both residential and non-residential land uses.

3. STATUTORY BACKGROUND

3.1 This policy has been prepared in accordance with the provisions of LPS4 relating to the preparation and adoption on local planning policies.

3.2 Clause 5.2.2 of LPS4 states that unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the Residential Design Codes is to conform to the provisions of the Codes.

3.3 Section 5.3.1 of the Residential Design Codes states that local planning policies may contain provisions that vary or replace acceptable development provisions set out in the codes in relation to various design elements including building height. This local planning policy replaces the acceptable development provisions relating to building height set out in design element 6.7 A1 of the codes.

4. POLICY

4.1 General

4.1.1 Plan No. 2 defines a series of building height zones within the area covered by this policy. The maximum height of any new building shall not exceed the height above ground level prescribed in the height zone applying to the location of the proposed new building, except for any variations as specified in 4.1.5 below.

4.1.2 Maximum building height will be measured as the vertical distance in metres from ground level to the highest part of the main building structure, irrespective of whether that part of the structure is a wall, parapet or roof.

4.1.3 For the purpose of measuring building height above ground level, the meaning of ground level is the level which existed prior to the proposed development. Any site works associated with the proposed development which involve alterations to existing ground level must be included within the same application for planning approval. If any such site works involve filling above existing ground level, the depth of proposed fill as well as the height of the proposed new building(s) must be accommodated within the maximum height of development specified in this policy. The contents of this policy do not preclude Council from exercising its discretionary ability under clause 5.8.1 of Local Planning Scheme No. 4 to increase the standard applicable height limit by up to 0.5 metres where there is a variation in ground level over a development footprint of greater than 1 metre.

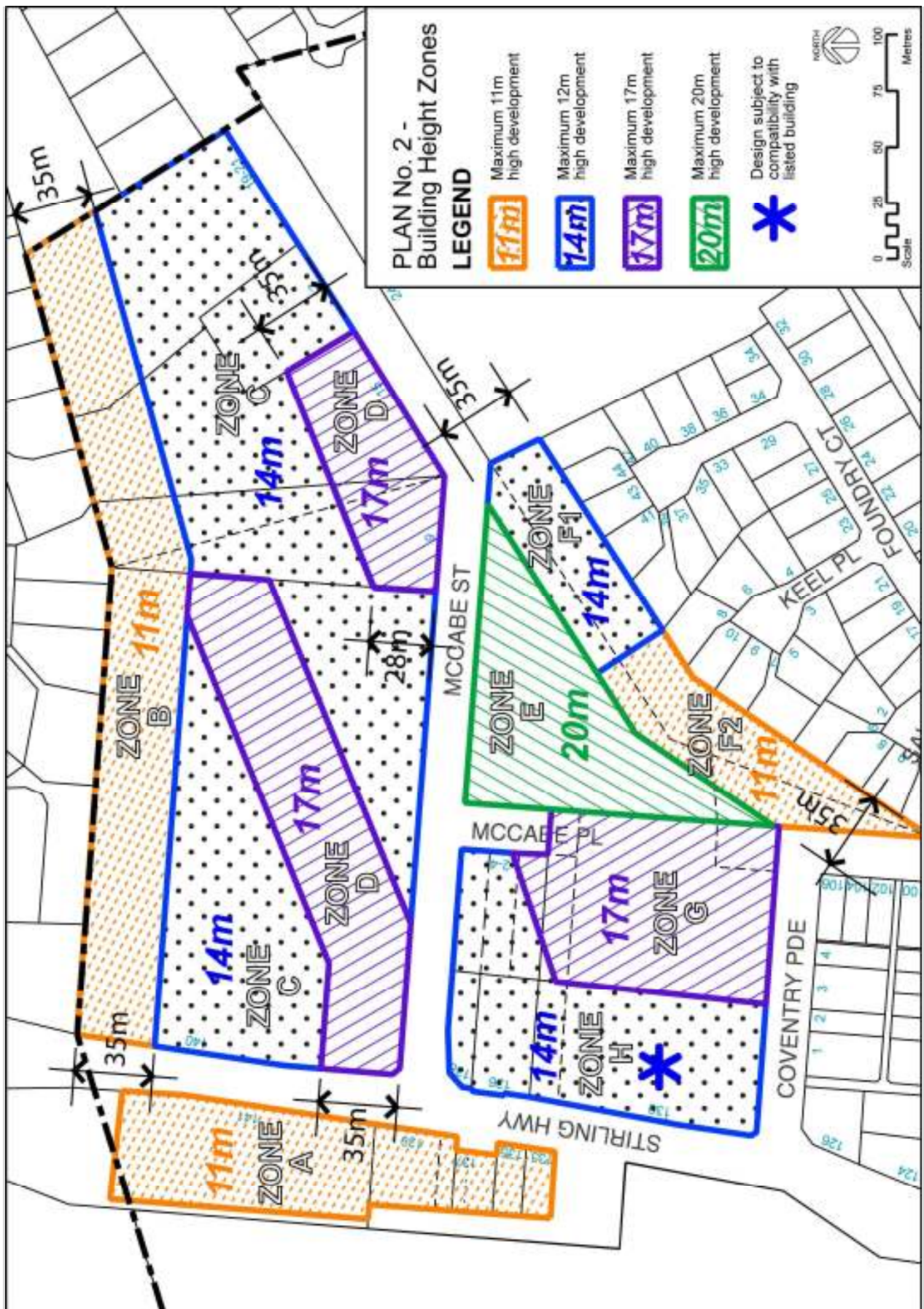
4.1.4 Where the main structure of a building is located in more than one height zone as shown on Plan No. 2, the part of the building in each height zone must comply with the maximum height requirement for that zone.

4.1.5 Council may approve planning proposals involving variations to the maximum building heights prescribed on Plan No. 2 in the following circumstances:

- Minor projections above the highest part of the main building structure, in cases where the highest part of the minor projection is no more than 3m above the highest part of the main building structure and the area of the minor projection is no more than 10% of the total roof area of the building. Minor projections will be interpreted as including plant and equipment such as air conditioning units, lift overrun rooms, flagpoles, aerials and decorative architectural features, but not rooms or other facilities intended for regular human use such as rooftop decks or swimming pools.
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- In the part of Zone D that is within 60 metres of the eastern boundary of the Stirling Highway road reserve on the north side of McCabe Street, a building of a maximum height of 25 metres may be approved by Council at its discretion subject to the proposed development demonstrating that it complies with all of the following criteria:
 - (a) The development must achieve a 'green design' (Green Star system) rating equivalent to at least 5 star, incorporating low energy and water use, on-site energy generation, natural cross ventilation, recycling, etc;
 - (b) The development must incorporate non-residential ground floor uses that contribute to the function of the locality as an activity and/or tourist node consistent with the requirements of State Planning Policy 2.6: State Coastal Planning Policy;
 - (c) Notwithstanding its maximum height, the development must not contain more than 8 storeys, based on the definition of "storey" contained in section 7 of State Planning Policy 2.6: State Coastal Planning Policy;
 - (d) The design of the development must perform the urban design function of an 'entry statement' into the City of Fremantle, including design qualities that convey a contemporary coastal aesthetic informed by the local context of North Fremantle and the Indian Ocean foreshore; and
 - (e) The development must not encroach upon view corridors as defined in the "McCabe Street Height Study" dated May 2008, prepared by Scenic Spectrums Pty Ltd on behalf of the City of Fremantle.

4.2 Specific Requirements Additional to General Policy Provisions

- 4.2.1 Height Zone A – 133 -141 Stirling Highway. Notwithstanding the general maximum building height of 11 metres permitted under this policy, the built form of any new development in this zone must incorporate at least two significant gaps between buildings down to ground level of sufficient width to provide views of the Indian Ocean from ground level on Stirling Highway. One of these gaps must approximately align with the axis of McCabe Street at its intersection with Stirling Highway.
- 4.2.2 Height Zones G and H – new development will be assessed in terms of its impact upon the Matilda Bay Brewing Company building (former Ford Motor Company assembly plant) which is included on the Heritage List under the provisions of clause 7.1 of LPS4. Consideration will be given to the extent to which proposed new development helps to conserve and reveal the significance of the heritage place, including its identified significant attributes and features, through the siting and design of new buildings including their massing, bulk, relationship to street frontages and degree of separation from the heritage place in order to give prominence in the streetscape to the heritage place.



LOCAL PLANNING POLICY 3.11 - McCabe Street Area, North Fremantle
 HEIGHT OF NEW BUILDINGS

2. That the policy be referred to the Western Australian Planning Commission and the Commission be requested to determine whether its formal approval of the policy is required having regard to the provisions of State Planning Policy 2.6: State Coastal Planning Policy (paragraph 5.3 – Building Height Limits).

CARRIED: 5/1

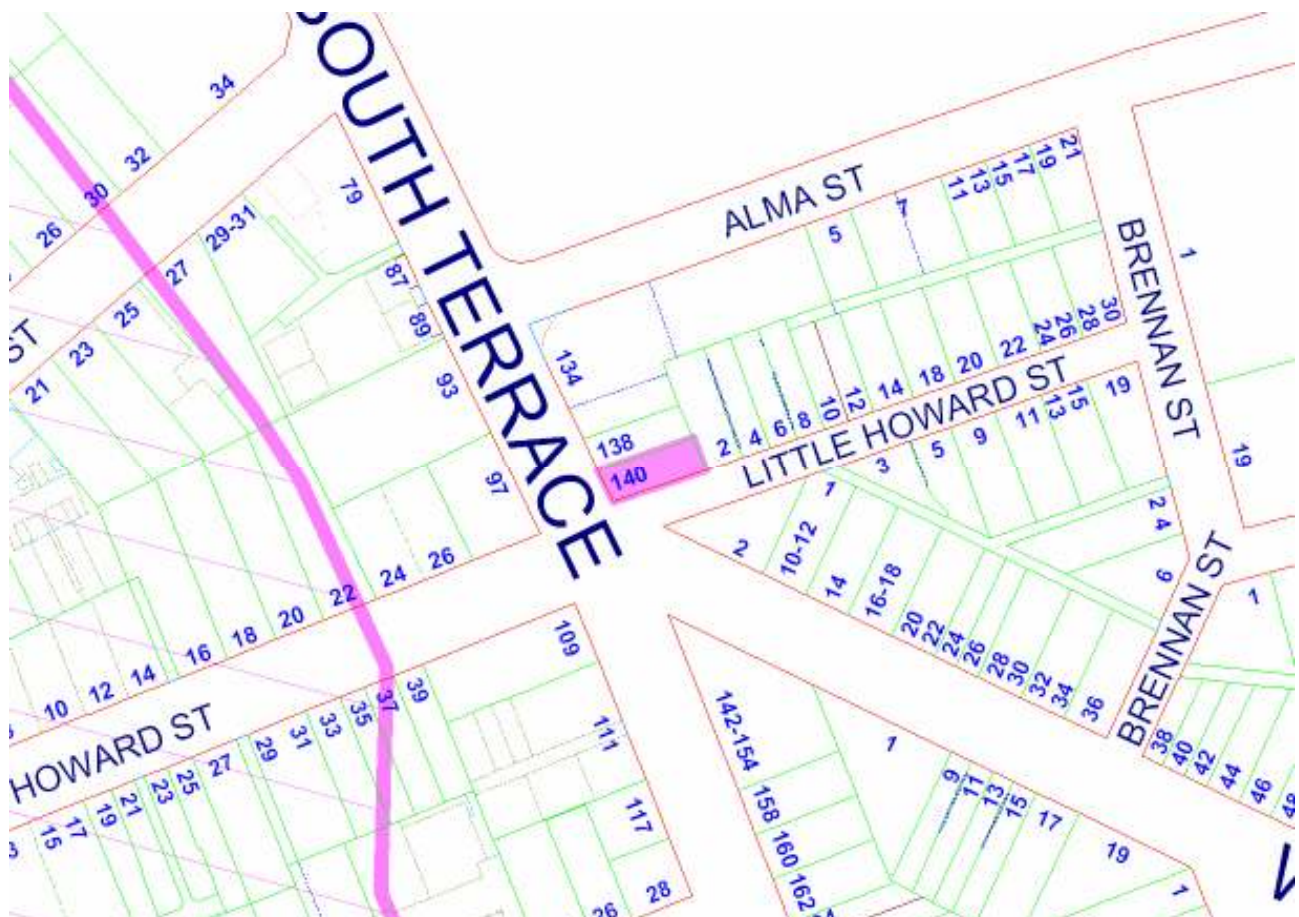
For	Against
Mayor, Peter Tagliaferri Cr John Alberti Cr Robert Fittock Cr Les Lauder Cr Jon Strachan	Cr Bill Massie

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

PSC0902-29 SOUTH TERRACE NO. 140 (LOT 123) FREMANTLE - ADDITIONS AND ALTERATIONS AND RETROSPECTIVE PLANNING APPROVAL FOR ADDITIONS AND ALTERATIONS TO BUILDING - (BC DA222/08)

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: Nil
Attachments: Development Plans
Date Received: 7 May 2008, Revised plans 8 October 2008
Owner Name: Caveen Pty Ltd (Trustee: Michael Mondello)
Submitted by: Caveen Pty Ltd (Trustee: Michael Mondello)
Scheme: Local Centre
Heritage Listing: Municipal Heritage Inventory Level 3
Existing Landuse: Shop / Residential
Use Class: Shop / Residential
Use Permissibility: D / A



EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee meeting as the application is for modifications to a development that was previously determined by the Planning Services Committee.

The applicant is seeking Council's Planning Approval for proposed additions and alterations to the original building and retrospective approval for other works at No. 140 South Terrace, South Fremantle.

The property is listed on the City's Heritage List and Municipal Heritage Inventory (MHI) as a management category Level 3.

Overall the proposed and constructed additions and alterations satisfy the relevant requirements of LPS4 and local planning policies, with the exception of the glass screening behind the parapet façade of the building.

The application is recommended for conditional approval.

BACKGROUND

The subject site is approximately 293m² and is located on the corner of South Terrace and Little Howard Street, South Fremantle. The site is orientated in an east-west direction and slopes downwards from east to west by approximately 1.6 metres.

The site is zoned Residential R30 and is located within Sub Area 4.3.4 of the South Fremantle Local Planning Area under Local Planning Scheme No.4 (LPS4).

The Commercial Building, 140 South Terrace, is included on the Heritage List and has a management category of Level 3 and as such, the City of Fremantle has identified this place as being of cultural heritage significance for its contribution to the streetscape, local area and Fremantle as a collective whole. The existing building should be conserved in accordance with the principles of the Burra Charter (The Australia ICOMOS for the conservation of places of cultural significance) which has been accepted by Council as the guiding document for the conservation of places of cultural heritage significance. The dwelling located on the upper level is a new addition.

Planning Approval was granted on 22 November 2005 under the City's Town Planning Scheme No. 3 (TPS3) for a second storey single bedroom Residential dwelling above the existing Commercial premises (DA181/05). The development included a first floor outdoor decking area facing onto South Terrace, but screened from view by the parapet of the existing ground floor commercial building.

DETAILS

The applicant is seeking planning approval for proposed additions and alterations to the building. The application is also seeking retrospective planning approval for internal and external additions and alterations to the building.

New Development

The proposed new development consists of:

- Clear glass screening around the western and southern elevations of the first floor balcony. The screening is 1.5 metre high above the first floor deck and is attached to stainless steel posts that are fixed to the inside of the building facade. The height of the screening above the façade is 0.5 to 0.6 metres. The height of the stainless steel posts above the façade is 0.4 metres. A handrail will be attached to the inside of the screening at a height of 1.0 metre above the deck.
- Installation of two double windows and door entrance on the ground floor level facing Little Howard Street.

Existing Development (Retrospective Approval)

The additions consist of:

- The relocation of a mural from the ground floor southern elevation of the building to the first floor elevation of the dwelling. The proposed windows and door are to be installed in this location.

The alterations consist of:

- The parapet wall on the northern boundary has been altered from what was previously granted planning approval (DA181/05). The approved parapet wall had a total length of 10.5 metres and varied in height from 6.0 metres to 7.1 metres above the natural ground level. The constructed parapet wall is 9.6 metres in length and varies in height from 6.9 metres to 7.4 metres above the natural ground level.
- The internal floor space of the dwelling has been increased to accommodate for bathroom and laundry facilities. The above mentioned boundary wall forms part of this alteration. The internal floor space has increased by approximately 12.7m² from 79.6m² to 92.3m². The outdoor living area for the dwelling remains the same as 68.6m².
- The tri-fold doors to the meal room, shown on the west elevation, have been replaced with bi-fold doors.
- Painting the exterior of the entire building.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4

Development Requires Approval of Council

In accordance with Clause 8.1 of City of Fremantle Local Planning Scheme No.4 (LPS4):

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

Furthermore, development includes *'any demolition, erection, construction, alteration of or addition to any building or structure, which includes the erection, placement and display of any advertisements.'*

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'.

Development Requirements

The subject site is located within Sub Area 4.3.4 of Local Planning Area 4 – South Fremantle as described in Schedule 12 of LPS4. Schedule 12 requires that building height shall be limited to a maximum external wall height of 7 metres within a Local Centre. Schedule 12 also outlines the matters to be considered by Council in applying the specific and general height requirements.

Clause 5.8.1 of LPS4 enables Council to vary the site and development standards and requirements contained within the Scheme subject to the development meeting specified criteria.

The constructed boundary wall on the northern boundary is 7.4 metres high, thus exceeding the maximum external wall height permitted under Schedule 12 of LPS4. The applicant is seeking that Council vary the development standard in accordance with clause 5.8.1 of LPS4.

Residential Design Codes 2008

The alterations to the dwelling (both proposed and constructed) satisfy the relevant Acceptable Development requirements of the Residential Design Codes 2008 (R-Codes) regarding mixed use development.

Council Policies

The following local planning policies are of relevance to the current development application:

- *D.B.H1 Urban Design and Streetscape Guidelines*
- *D.B.H6 Signs and Hoardings Policy*
- *D.B.H13 Impact of Development on Heritage Places Policy*

CONSULTATION

Community

The application was not required to be advertised in accordance with Clause 9.4 of the LPS4 and the City's now rescinded *D.A.5 Advertising and Notification of Development Applications* policy.

PLANNING COMMENT

The following matters are considered relevant to the determination of this application:

Building Height

Schedule 12 of LPS4 prescribes a maximum external wall height for development within a Local Centre zone of 7 metres. The previously approved boundary wall on the northern boundary had a maximum external wall height of 7.1 metres (DA181/05). The constructed wall on the northern boundary has a maximum external wall height of 7.4 metres, thus exceeding the approved height by 0.3 metres.

Clause 5.8.1 – “Variation to Height Requirements”, states:

‘Where there is a variation in ground level over a development footprint of greater than one metre, Council may increase the standard applicable height limit by up to 0.5 metres subject to giving notice in accordance with clause 9.4.’

The boundary wall was constructed as part of the first floor residential addition. The development footprint of this addition extended from the front lot boundary to the rear lot boundary. The natural ground level of this development footprint varies in height by 1.6 metres. Accordingly Council may increase the maximum external wall height to 7.5 metres in accordance with clause 5.8.1. The maximum height of the boundary wall is 7.4 metres.

Schedule 12 of LPS4 states that:

‘In granting consent to the maximum heights prescribed Council shall be satisfied in regard to all of the following –

- (a) that the proposal is consistent with predominant height patterns of adjoining properties and the locality generally,*

The height of building within the immediate locality of the subject site varies quite considerably. The site on the corner of Wray Avenue and South Terrace is a four storey mixed use development with an external wall height of approximately 12 metres. This development is approximately 40 metres from the subject site. The Fremantle Hospital is approximately 70 metres to the north of the subject site and is 8 storeys high. There are some residential properties to the east along Little Howard Street and Alma Street that are two storeys in height with a roof height of approximately 9 metres. However there are also a number of historic shops fronting South Terrace that are only single storey with a maximum façade height of approximately 6 metres. As such it is difficult to definitively determine a predominant height pattern for the adjoining properties of the locality. However, given the varying building heights within the locality, it is considered that the 7.4 metre high parapet wall is not inconsistent with the heights of surrounding buildings.

- (b) the proposal would not be detrimental to the amenity of the area,*

The parapet wall is not anticipated to impact on the amenity of the area. The wall is northern facing and therefore will only shadow the subject site. The wall does not restrict views from any surrounding properties and does not dominate the streetscape.

- (c) *the proposal would be consistent, if applicable, with conservation objectives for the site and locality generally, and*

The South Fremantle locality has been recognised as a Heritage Area under LPS4. Furthermore the subject property is listed on the City's MHI for its contribution to the streetscape and locality in general. The first floor residential addition was considered an appropriate and sympathetic addition to the heritage listed property and regarded as suitable for the South Fremantle Heritage Area. The wall does not affect this evaluation of the overall development and is therefore regarded as consistent with the conservation objectives for the site and locality in general.

- (d) *any other relevant matter outlined in Council's local planning policies.'*

The boundary wall is not considered to impact significantly on the streetscape characteristics of South Terrace or the South Fremantle locality in general. The development is considered consistent with the objectives of the relevant City local planning policies, in particular *Urban Design and Streetscape Guidelines* and *Impact of Development on Heritage Places Policy*.

The constructed wall on the northern lot boundary is 0.3 metres higher than what was previously approved by Council under TPS3 on 22 November 2005. Overall the constructed northern boundary wall is not inconsistent with the existing height of adjoining properties and the locality in general. The wall does not pose a significant adverse impact on the amenity of the surrounding properties and is not considered to dominate or impose on the streetscape. The development is consistent with conservation objectives for the site and locality in general and consistent with the objectives of the relevant City local planning policies.

In conclusion, it is considered that the development satisfies the matters to be considered by Council in applying the specific height requirements for the Mixed Use zone within the South Fremantle LPA. Furthermore as the ground level of the development footprint varies by more than 1 metre, it is recommended that Council increase the permitted maximum external wall height by 0.5 metres to 7.5 metres in accordance with clause 5.8.1 of LPS4. The constructed boundary wall at 7.4 metres, is therefore recommended for retrospective planning approval.

Installation of Double Door and Two Windows

The applicant is proposing to reinstate a double door and create two window openings to the southern elevation using materials from the building.

Where details of the original door and window openings are apparent through documentary or physical evidence, it is appropriate to reinstate using the original and compatible materials as shown on the plans.

The proposed installation of a double door and two windows to the southern facing ground level wall of the existing building is considered to enhance the existing streetscape and building and will promote surveillance of the surrounds. The southern facing ground level wall is currently a painted brick wall. The proposed door and window additions will interrupt the monotone appearance of the brick wall and will enhance the aesthetic character of the building.

The proposed addition of a double door and two windows is therefore considered to satisfy the objectives of the City's *Urban Design and Streetscape Guidelines and Impact of Development on Heritage Places Policy*.

Glass Panelling and Stainless Steel Posts

This part of the application is for the construction of balustrades with steel posts and glass screens at a height of 1.5m to the corner of the building and 1.0m over the cantilevered walkway.

It is noted that the cantilevered walkway is not original and that the balustrading to this portion of the proposal is acceptable. However, in relation to the original building, it is proposed to attach the steel posts onto the pilasters of the parapet. This would have a negative impact on the heritage significance of the place as outlined below:

- a) The parapet is currently of a simple form as derived from the Free Classical style of the building and the visibility of the proposed attached steel posts which are not sympathetic with the original fabric of the building would distort the aesthetic values of the place. This is not in accordance with the principles of the Burra Charter which states *"New work such as additions to the place may be acceptable where it does not distort or obscure the cultural significance of the place, or detract from its interpretation and appreciation."*
- b) The original fabric of the parapet would be irreversibly damaged due to the attachment of the steel posts which would require fixings into the original masonry and render. Also, the weight of the balustrading would place undue pressure on the parapet and this has the potential to cause further loss of significant fabric in the future. As noted in the Burra Charter, conservation of existing fabric requires a cautious approach of changing as much as necessary but as little as possible.

While it is understood that balustrading would be required for use of the upper deck, consideration should be given to alternative design. For instance, the contemporary design of the balustrading would be more appropriate and would not distort the significance of the parapet if it was situated approximately 1 metre behind the original parapet. The new decking and structural support frames between the parapet and the balustrading could be used for structural purposes rather than attaching to the original fabric.

The proposed balustrading to be installed to the western and southern facing façade of the building is not acceptable and is not supported on heritage grounds.

Mural

The relocation of the painted mural from the southern facing ground level wall to the northern facing upper level wall is regarded as development under LPS4 and thus requires the planning approval of Council.

The mural is 3.4 metres long and 2 metres high and has been installed approximately 4.4 metres above the natural ground level. The mural is a modern interpretation and appreciation of the Fremantle city centre built form and lifestyle.

The depiction is considered appropriate to its location in that the mural is an aesthetic contribution to the Local Centre. The mural does not detract from the visual amenity, aesthetic, heritage significance and character of the locality or detract from the appearance of buildings and places. The mural is considered to satisfy the objectives of the City's *Signs and Hoardings Policy* and recommended for approval.

Conclusion

The application is for new alterations and additions to the building. The door and windows alterations are considered to satisfy the relevant requirements of LPS4 and the City's local planning policies. The glass screening addition along the rear southern elevation of the first floor addition and along the northern elevation of the first floor addition is considered to satisfy the relevant planning requirements of the Scheme and local planning policies. These elements of the proposed development are recommended for approval.

The proposed glass screening addition behind the parapet façade of the building is not considered sympathetic to the original fabric of the building and will distort the aesthetic values of the place. The glass screening addition behind the parapet façade of the building is recommended to be deleted from this planning approval.

The application for retrospective planning approval for alterations and additions to the residential dwelling is considered to satisfy the relevant requirements of LPS4 and the City's local planning policies. In particular, the constructed northern boundary wall is considered to satisfy the requirements of clause 5.8.1 of LPS4. These constructed additions and alterations are recommended for approval.

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Addition and Alterations and Retrospective Planning Approval for Additions and Alterations to the Building at No. 140 (Lot 123) South Terrace, South Fremantle, subject to the following condition(s):

1. The development hereby permitted shall take place in accordance with the approved plans dated 8 October 2008.
2. The proposed glass screening and stainless steel posts to be installed to the original parapet façade of the building, as detailed on the plans dated 8 October 2008, are hereby deleted from this planning approval.
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 the works subsequently be removed, any damage shall be rectified to the satisfaction of the Chief Executive Officer, City of Fremantle.

Advisory Notes:

- (i) This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.

- (ii) The proposed development is to comply with the provisions of the Building Code of Australia.

Cr J Strachan MOVED the following alternative recommendation:

COMMITTEE DECISION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Addition and Alterations and Retrospective Planning Approval for Additions and Alterations to the Building at No. 140 (Lot 123) South Terrace, South Fremantle, subject to the following condition(s):

- 1 The development hereby permitted shall take place in accordance with the approved plans dated 8 October 2008.***
- 2 The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the Chief Executive Officer, City of Fremantle.***

Advisory Notes:

- (i) This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.***
- (ii) The proposed development is to comply with the provisions of the Building Code of Australia.***

CARRIED: 6/0

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

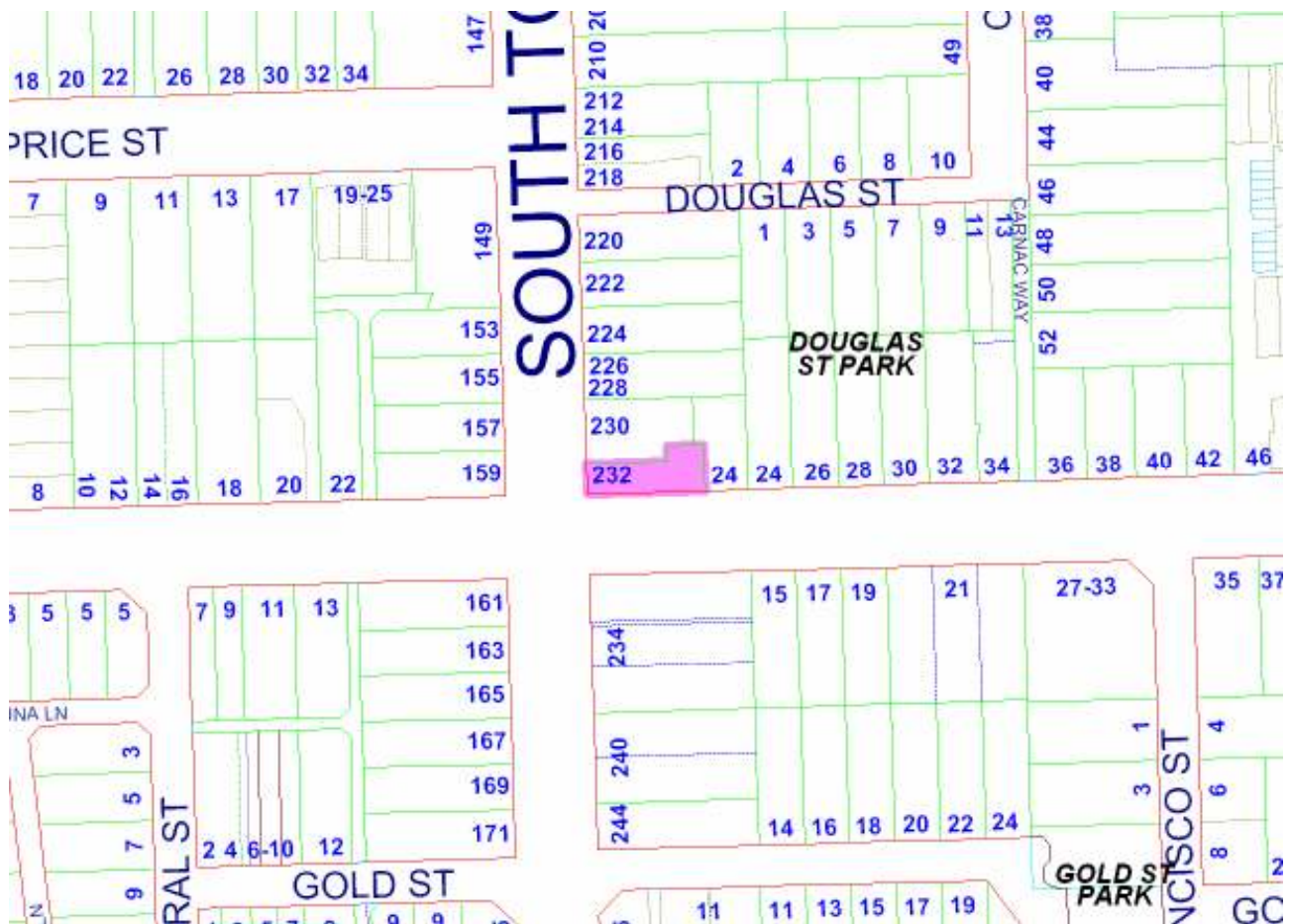
REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

The building must comply with the Building Codes of Australia, however any damage caused by works must be rectified.

At 6.45 pm Mayor, Peter Tagliaferri declared a financial interest in item number PSC0902-30 and was absent during discussion and voting of this item.

PSC0902-30 SOUTH TERRACE NO 232 (LOT1341) SOUTH FREMANTLE - COMPLIANCE ISSUES REGARDING TWO BILLBOARD SIGNS- (CH - C08/2011P)

DataWorks Reference: 122/009
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Development Compliance
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Owner Name: David Gregory Cooper
M.R.S.: Urban
L.P.S. No 4: Residential R30
Heritage Listing: Heritage List; MHI Category 3
Approved Land use: Office



EXECUTIVE SUMMARY

Council's direction is sought in the enforcement of the City of Fremantle's Local Planning Scheme No. 4 (LPS4) and the Signs, Hoardings & Bill Posting Local Law in relation to the billboards erected at 232, South Terrace, South Fremantle.

The billboards were brought to the City's attention in late 2008 and, after reasonable investigation, it is uncertain as to whether a planning approval exists for the billboards. Therefore, the matter is presented to Council in accordance with clause 2.3 of the City's LPP1.5 'Planning, Building and Environmental Health Compliance Policy'.

BACKGROUND

The City received a query regarding approval of the two billboard signs located on the building at 232 South Terrace, South Fremantle. A search of the City's historical records did not reveal any evidence of Council's approval specifically for the two billboard signs. However the records did contain photographs showing that the billboards were evident in both 1980 and 1987. It appears that the billboards were originally installed by Australian Posters Pty Ltd which now forms part of APN Outdoor.

In 1986 Council resolved to take legal action against the owners of 232 South Terrace for an illegal double sided floodlit "Swan Lager" roof sign without mention of the billboards. The two billboard signs did not form part of this action. In May 1999 an investigation into signage on the subject property was undertaken resulting in the owners submitting an application for seven signs, however, the billboard signs were not part of this application and they remained on the building.

In 2001, the City approved a front facade restoration (DA 516/01) where the approved/stamped plans clearly indicate the existence of the two billboards. The application also included photographs showing the billboards which have been stamped and approved as part of the approval. In 2006 the City approved a change in signage (DA 140/06) with the billboard on the southern side of the building clearly visible on the photograph accompanying the application and the approved plans.

COMMENT

It is clear that the City has been aware of the billboards since 1980 and this may be taken to mean that the billboards were either previously approved or was of the type of development which did not require approval under the Scheme of the day. The investigation into the matter has been unable to clearly determine whether or not a planning approval for the billboards has previously been granted.

In considering the most appropriate manner in which to progress this matter, Council should have regard to the criteria set out in Clause 2.3 and 2.5 of LPP1.5 'Planning, Building and Environmental Health Compliance Policy':

*2.3 Uncertainty of Planning or Building Compliance
Where, after reasonable investigation,*

1. *It is uncertain that a matter is compliant with planning or building requirements, or*
2. *It is uncertain whether it is capable of enforcement owing to:*
 - (a) *a lack of precision in the plans / documents of any relevant approval, or*
 - (b) *a lack of certainty at the time of development as to the legal status of the development or the requirement to obtain approval.*

The Council may, having regard to any legal or technical advice received on the matter, determine that compliance procedures will not be proceeded with. In all other cases compliance action will proceed in accordance with this policy and without further referral to Council.

2.5 Discretionary Criteria

In considering matters relating to either 2.3 or 2.4 above, Council shall have regard to the following criteria:

- (a) *Whether it is in the public interest of the proper and orderly development and use of land that planning law should generally be complied with;*
- (b) *whether the impact of the contravention of the Scheme on the effected locality and environment. This includes a consideration of whether the breach complained of is purely technical in nature which is unnoticeable other than to a person well vested in the relevant law;*
- (c) *those factual circumstances in which the contravention of the Scheme took place;*
- (d) *the time which has elapsed since development was undertaken in contravention of the Scheme, and*
- (e) *the expense and inconvenience which would be involved in remedying the contravention of the Scheme.*

In considering the nature of the approved plans, photographs and information contained on the City's files with regard to the billboards at 232 South Terrace, it is considered that the City may be unlikely to be successful should it proceed to take further action against the owner. It is clear that the City would not approve such development should it receive a similar application today as this is inconsistent with the current Scheme and Local laws. However, it has not been possible to establish clearly the status and approval requirements for these billboards at the time they were erected.

Council does have the option of pursuing this matter in accordance with LPP1.5 and commencing prosecution action. However, given the lack of certainty surrounding the approval of the billboards and the fact that the information contained in the City's files is unclear, it is recommended that Council note that the billboards exist and resolve to take no further action in relation to this matter.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr R Fittock

That Council, under the Metropolitan Region Scheme and Local Planning Scheme No. 4 with regard to the billboards at No. 232 (Lot 1341) South Terrace, South Fremantle:

- 1. NOTE that one billboard exists on each of the northern and southern elevations of the building; and**
- 2. RESOLVE to take no further action with regard to these two billboards due to the lack of certainty as to the legal status of the development or the requirement to obtain approval.**

CARRIED: 5/0

For	Against
Cr John Alberti Cr Robert Fittock Cr Les Lauder Cr Bill Massie Cr Jon Strachan	

Mayor, Peter Tagliaferri returned to the meeting at 6.47 pm.

PSC0902-32 QUARRY STREET NO. 1 (LOT 4), FREMANTLE - SIGNAGE AND EXTERNAL FIXTURES TO A SHOWROOM (SM DA580/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Attachments: Development Plans
Date Received: 3 November 2008
Owner Name: Jerant Ply Ltd
Submitted by: Klopper and Davis Architects
Scheme: Mixed Use
Heritage Listing: Nil
Existing Landuse: Showroom
Lot Area: 400m²
Use Class: Showroom
Use Permissibility: A



EXECUTIVE SUMMARY

The applicant is seeking planning approval for the installation of signage and solar panels to a showroom at 1 Quarry Street, Fremantle.

The application is presented before the Planning Services Committee as the solar panels do not meet what is permitted without approval in the Local Planning Scheme No.4 (LPS4) as the solar panels are visible from a primary street.

The proposed development satisfies the relevant requirements of the City's LPS4 *Energy Efficiency in Building Design* and *Signs and Hoardings* policy and other key documents.

Accordingly the application is recommended for conditional approval.

BACKGROUND

The subject site is 400m² and zoned Mixed Use R25 under the provisions of Local Planning Scheme No.4 (LPS4). The site is in the Fremantle Local Planning Area as described in Schedule 12 of the City's LPS4 and the site does not have a heritage listing.

A review of the property file found two planning approvals on site:

- Planning approval 19 November 1985 to construct a Showroom at the subject site under Town Planning Scheme No.2.
- Planning approval 18 November 1991 to use the existing building for wholesale and retailing under Town Planning Scheme No.3.

DETAILS

The applicant is seeking consent for signage and solar panels on a Showroom ('Austral Sun') at 1 Quarry Street, Fremantle.

Austral Solar Panels are to be erected as an awning on the existing fascia. There are to be 11 solar panels each 1m x 0.9m in size. The solar panels are made up from the company's solar panel product. The solar panels will be used to run all the power requirements of the Austral Sun showroom. This has been aided through the selection of low energy consumption LED downlights and other electrical fittings within the showroom.

The proposed signage is to be erected on an existing street front wall. The signage is to be 2m high, 3.6m wide and 0.1m in depth and say: "Austral Sun - Harness Nature's Energy." Existing 'S.O.S' signage, of similar size, is to be removed from the wall. The signage is to be sign makers acrylic and be illuminated with steady 200 volt lighting.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4

Sustainability

1.6 The aims of the Scheme

(k) ensure urban form and development contribute to sustainability (environmental, social/cultural and economic).

Solar Panels

Under LPS4 solar panels are 'External Fixtures'. External fixtures are minor development permitted without planning approval under Schedule 15 of the LPS4 where:

- 1) not exceeding 1.8m in height and fixed to a wall which faces the rear or side boundary (excluding walls facing secondary streets), Or*
- 2) fixed to a plane of the roof of a building which faces the rear or a side boundary (excluding roof planes facing secondary streets), or to a flat roof, and projecting no more than 1m above the highest part of the existing roof at any point and no greater than 2m wide.*

Signage

Signage constitutes 'development' under Section 8.1 of the Local Planning Scheme No.4 and therefore require planning approval from Council.

City of Fremantle Strategic Plan 2006-2010

The City of Fremantle Strategic Plan 2006-2010 states:

Our Mission

To enable the achievement of our vision, the city of Fremantle (the organisation) is an efficient and progressive local government, providing leadership and valued services to the community and is known as:

- A leader in sustainability issues and programs with a strong track record in environmental management.*

Our Core Principles

Sustainability

Having a global perspective and ensuring our actions minimise the impact on the environment and the resources available for future generations.

Council Policies

DBH12 Energy Efficiency in Building Design

This policy relates to any new development and extensions to existing buildings of all land use types and states:

Buildings and the resources that are utilized to maintain working and living conditions, significantly contribute to the use and waste of resources, that have a negative affect on the environment. Simple measures can be implemented to improve energy use to enable the City to contribute to creating a more sustainable environment.

The intent of energy efficient building design is to reduce the need for energy consumption (electricity, natural gas, etc) for heating, cooling and lighting. Energy efficient buildings provide the benefit of:

- reduced energy costs for dwellings and commercial buildings*
- greater natural comfort and amenity level to building occupants, and*
- by virtue of reduced energy; reduced emissions of carbon dioxide and other greenhouse gases, and thereby impact on the natural environment (this will also assist in achieving Fremantle's 20% greenhouse gas reduction goal).*

D.B.H6 Signs and Hoardings

The objective of this policy is to:

- '(i) ensure that signs erected or displayed in the City of Fremantle are appropriate to their location and function and do not diminish the visual amenity, aesthetic, heritage significance and character of the locality or detract from the appearance of buildings and places.'*

Under part 1.6 of the policy:

'The council will endeavour to avoid the impairment of the amenity of the locality which may be caused where:

- (i) A sign of such scale, prominence, obtrusiveness or character as to be incongruous with the surrounding land uses;*
- (ii) The sign adds to the danger of the driver distraction;*
- (iii) The sign adds to the visual clutter of the locality;*
- (iv) Numerous other signs exist on the site;*
- (v) The sign when viewed from a position where the sign would be legible, would obscure existing signs information, sight lines or architectural features, or would itself be obscured.'*

Scheme Amendment 22

On 21 January 2009 Planning Services Committee endorsed the preparation of an amendment that will incorporate statutory sustainable building design requirements into LPS4 for further consideration by Council.

Local Government (Miscellaneous Provisions) Act 1960

Section 400 of the *Local Government (Miscellaneous Provisions) Act 1960* empowers local governments to regulate and allow buildings to encroach over streets, ways or other public spaces. With respect to an awning or verandah a minimum clearance of 2.75m above street level is required.

CONSULTATION

Community

The application was not required to be advertised in accordance with Clause 9.4 of the Local Planning Scheme No.4 (LPS4) and the City's *LPP1.3 Public Notification of Planning Approvals Policy*.

PLANNING COMMENT

Solar Panels

The application proposes eleven solar panels, 1m in height as the awning on the Showroom facing Quarry Street. While the height is within what is permitted without planning approval under 'External Fixtures' in schedule 12 of LPS4, the solar panels do not fully meet the requirements of schedule as they are located on the front of the building, facing a primary street. Consequently approval is required.

There are no provisions in LPS4 for which to assess solar panels against, however the City is generally supportive of the use of solar panels for sustainability and energy efficiency purposes and where they do not detract from the streetscape or the visual amenity of residents and neighbouring properties. And while it is acknowledged that it is not desirable for the City to set a precedence of unsightly solar panels, this is considered to be a unique case as the solar panels arguably enhance the amenity of the area and showcase energy efficiency in Fremantle.

The solar panels are one of the Austral Sun products and form part of the design or 'look' of the showroom. They will be working solar panels, providing the energy needs of the showroom and presenting an example of utilising renewable resources to power a building. Their purpose, appealing aesthetic and the fact that they are visible to a primary street (Quarry Street) will not only create a point of interest for the showroom, but will also help advertise and create an awareness of energy efficient design options for buildings in Fremantle. This, in turn, will showcase energy efficiency and sustainability, which are key principles of many of the City's key documents, including the Local Planning Scheme No. 4 and the City of Fremantle Strategic Plan 2006-2010. In addition the solar panels are consistent *the City's Energy Efficiency in Building Design* policy which advocates reducing energy needs, energy cost and green house gas emissions. They are also consistent with the City's commitment to delivering sustainable places and urban form through supporting the principles and subsequent drafting of scheme amendment 22.

Accordingly, the development is considered to be inline with the City's stance on sustainability and energy efficiency and an appropriate example of energy efficiency design that does not diminish the visual amenity of the area. For these reasons, it is considered such a development should be supported or even encouraged in the Fremantle area and the solar panels are recommended for approval.

However the solar panels as an awning are contestable. Section 400 of the *Local Government (Miscellaneous Provisions) Act 1960* (LGA 1960) empowers local governments to regulate and allow buildings to encroach over streets, ways or other public spaces. With respect to an awning or verandah a minimum clearance of 2.75m above street level is required. The proposed solar panel awning will reach 0.9m over the footpath and have a minimum clearance of 2.87m. However, it is uncertain as to whether the solar panels are appropriate as an awning. Accordingly a condition of consent is recommended so that the solar panels do not protrude over the footpath.

Signage

The proposed sign satisfies the requirements of the City's *Signs and Hoardings* policy in that the sign displays and identifies the name and nature of the business, is attached to the premises from which the business operates, does not add to driver distraction or visual clutter and does not obscure any other signage in the area. The signage is appropriate to the location and function and it is considered to not diminish the visual amenity, aesthetic and character of the locality or detract from the appearance of buildings and places. The proposed signage is to be located where previous signage was located and is to be of similar size to the previously existing signage. Accordingly the proposed signage complies with the relevant requirements of the City's *D.B.H.6 Signs and Hoardings* policy.

The proposed signage also satisfies the requirements of Clause 5.10 of LPS4 with regards to advertising signs in that the proposed signs do not protrude above the height of the wall of the building and that the signs are attached to the property to which they relate.

CONCLUSION

The proposed signage complies with the City's LPS4 and *Signs and Hoardings* policy. The external fixtures (solar panels) are considered to enhance the public's awareness of energy efficient design and sustainability of buildings. However the solar panels are considered as being in-appropriate as an awning. Accordingly the application is recommended for conditional approval.

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for Signage and External Fixtures for a Showroom at No. 1 (Lot 4) Quarry Street, Fremantle, subject to the following conditions:

1. The development hereby permitted shall take place in accordance with the approved plans dated 3 November 2008.
2. The sign hereby permitted shall not contain any flashing or moving light at any time.
3. The solar panels should be contained within the building footprint and no part of the solar panels and associated instalment materials shall protrude over the footpath.
4. The solar panels are to be located and designed so that they do not create the potential for glare that may potentially contribute or cause any traffic accidents.

Cr J Strachan MOVED the following alternative recommendation:

COMMITTEE DECISION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for Signage and External Fixtures for a Showroom at No. 1 (Lot 4) Quarry Street, Fremantle, subject to the following conditions:

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 3 November 2008.***
- 2. The sign hereby permitted shall not contain any flashing or moving light at any time.***
- 3. The solar panels shall not create any glare that would contribute or cause any potential traffic impacts.***

Advisory notes:

- (i) This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.***
- (ii) A sign licence is required prior to the installation of signage. Please contact the City's Building Staff.***
- (iii) 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.***
- (iv) 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 solar panel awning construction, maintenance or use is required to be obtained by those persons constructing anything within the road reserve.***
- (v) Any damage that occurs during construction of the solar panel awning 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 John Alberti Cr Robert Fittock Cr Les Lauder Cr Bill Massie Cr Jon Strachan	

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

To allow the Solar Panel structure over the footpath with conditions.

PSC0902-33 SOLOMON STREET NO. 74 (LOT 5) FREMANTLE - REAR ADDITION TO SINGLE HOUSE - (BC DA236/08)

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: Nil
Attachments: Development Plans
 Site photos
Date Received: 9 May 2008, Revised plans 11 February 2009
Owner Name: Dale & Michael Glenny
Submitted by: John Chisholm
Scheme: Residential R30
Heritage Listing: MHI Level 3
Existing Landuse: Single House
Use Class: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

The application is presented before the Planning Services Committee as the City received submissions during the consultation period concerning various aspects of the development which cannot be resolved via conditions of planning approval.

The applicant is seeking planning approval for a rear single storey addition to a Single House at No. 74 (Lot 5) Solomon Street, Fremantle.

The proposed development satisfies the relevant requirements of the City's Local Planning Scheme No. 4 (LPS4) and the Residential Design Codes (R-Codes), including the replacement Acceptable Development provisions of the City's *LPP2.4 Boundary Walls in Residential Development* policy pertaining to buildings on boundaries. The development also satisfies the objectives of the City's *Impact of Development on Heritage Places* and *Solomon Street Local Area* policies.

The application is recommended for conditional approval.

BACKGROUND

The subject lot is approximately 607m² in area and is located on the eastern side of Solomon Street, Fremantle. The site is orientated in an east-west direction. The site slopes downwards from rear to front by approximately 2.5 metres and has a crossfall from south to north of approximately 0.2 metres.

The site is zoned Residential R30 and is located within the South Fremantle Local Planning Area (South Fremantle LPA) under LPS4. The site is listed on the City's Heritage List and Municipal Heritage Inventory (MHI) due to the existence of limestone features.

Planning approval was granted on 3 July 2007 for a rear bathroom addition to Single House at the southern adjoining property (No. 76 Solomon Street, Fremantle DA246/07). The addition was to be constructed along the common lot boundary. There also exists an old brick toilet on the adjoining property that is located 0.47 metres from the common lot boundary. The rear addition has been constructed up to the toilet, effectively resulting in a combined boundary wall. This combined wall is 7.4 metres long and ranges in height from 3.75 metres high to 4.3 metres high above the subject lot's ground level and is adjacent to the proposed boundary wall of the current development application.

DETAILS

The applicant is seeking planning approval for rear single storey additions to a Single House. The application includes the demolition of an existing rear addition to facilitate the proposed rear addition.

The application also includes a wall to be constructed along the southern lot boundary. The proposed boundary wall is 8.2 metres long and 3.7 metres high. The wall is to be setback from the lot boundary 300mm however is still considered a boundary wall as per the definition of boundary wall in the City's *Boundary Walls in Residential Development* policy.

The applicant submitted revised plans to the City on 12 January 2009 addressing the retention of stormwater on the subject property. The applicant also provided a surveyed site plan showing the exact location of the south lot boundary and structure built along and over the boundary.

The applicant further submitted revised plans to the City on 11 February 2009 increasing the setback of the southern boundary wall from the boundary from 200mm to 300mm. The applicant stated that the increased setback was to reduce potential impacts on the amenity of the neighbouring property caused by the proposed boundary wall.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

The subject site is located within Local Planning Area 4 – South Fremantle as described in Schedule 12 of LPS4. Schedule 12 requires Residential development is to comply with the building height requirements of the R-Codes.

Residential Design Codes 2008

The proposed rear single storey addition to the existing dwelling complies with the Acceptable Development requirements of the R-Codes pertaining to boundary setbacks, open space, building height, design for climate and incidental development.

The City's local planning policy *LPP2.4 Boundary Walls in Residential Development* replaces the Acceptable Development requirements of the R-Codes. A boundary wall is defined as a wall built up to, or within 750mm of, a boundary behind the front setback line. A proposed boundary wall meets the Acceptable Development requirements of the policy '*where the wall is proposed to abut an existing or simultaneously constructed boundary wall of similar or greater dimensions*'. The proposed southern boundary wall is considered to satisfy this Acceptable Development provision of the policy. Further discussion regarding this point is contained in the 'Planning Comment' section of this report.

Council Policies

The proposed development has been assessed against the objectives of the following City of Fremantle local planning policies:

- *LPP2.4 Boundary Walls in Residential Development*,
- *D.B.H13 Impact of Development on Heritage Places*, and
- *D.G.F24 Solomon Street Local Area*

CONSULTATION

Community

The application was submitted to the City on 9 May 2008. The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and the City's now rescinded *D.A5 Advertising and Notification of Development Applications* policy, as the development proposes a boundary wall along the southern boundary.

At the conclusion of the advertising period, being 30 May 2008, the City had received one submission. The following issues were raised:

- Obstruction of direct light into northern window of bathroom addition.
- Obstruction of access for maintenance of wooden weatherboard external wall.
- Submitted plans are unclear regarding the retention of storm water.
- Potential glare into bathroom window due to zincalume roof material.

PLANNING COMMENT

Residential Design Codes 2008

Boundary Setbacks

6.3.2 Buildings on Boundary

As previously mentioned, the City's local planning policy *LPP2.4 Boundary Walls in Residential Development* replaces the Acceptable Development requirements of the R-Codes. A boundary wall is defined as a wall built up to, or within 750mm of, a boundary behind the front setback line.

Under the policy, a proposed building up to the boundary is considered to meet the Acceptable Development provisions where the wall abuts an existing or simultaneously constructed wall of similar or greater dimension.

There is a rear bathroom weatherboard addition to the Single House on the adjoining property. The bathroom addition is built up to the lot boundary. The ground level of the adjoining lot is elevated between 1.2 and 1.4 metres higher than the ground level of the subject site (see Attachment 2). The addition is 5.7 metres long, is 4.3 metres high above the subject lot's ground level at the front of the addition and 3.75 metres high above the subject lot's ground level at the rear of the addition.

There also exists an old brick toilet on the adjoining property. The toilet is located 0.47 metres from the lot boundary. Under the *Boundary Walls in Residential Development* policy, the northern toilet wall constitutes a boundary wall as it is located within 750mm of the boundary. The toilet wall is 1.7 metres long and 3.75 metres high from the subject lot's ground level.

The rear weatherboard addition and old toilet are abutting one another resulting in a continuous wall along the boundary of the adjoining lot, as per the definition of boundary walls in the policy. Therefore the combined length of the walls is 7.4 metres long and ranges in height from 4.3 metres high to 3.75 metres high above the subject lot's ground level.

The proposed rear addition is 8.2 metres long and 3.7 metres high above the subject lot's ground level and is located adjacent to the existing boundary walls on the adjoining property. The proposed boundary wall extends 800mm past the forward line of the existing boundary wall.

As previously mentioned, a proposed boundary wall satisfies the Acceptable Development requirements of the *Boundary Walls in Residential Development* policy 'where the wall is proposed to abut an existing or simultaneously constructed boundary wall of similar or greater dimensions.' The proposed boundary wall is considered to be of similar length to those boundary walls existing on the adjacent lot - albeit with an 800 mm difference in length. The height of the proposed boundary wall is less in height above the subject lot's ground level than the existing boundary wall. Accordingly it is considered that the proposed boundary wall satisfies the Acceptable Development requirements of the *Boundary Walls in Residential Development* policy as the proposed boundary wall abuts an existing boundary wall of similar dimensions.

Council Policies

D.B.H13 Impact of Development on Heritage Places

The subject property is listed on the City's Heritage List and MHI due to the existence of limestone walls. A site inspection confirmed that limestone retaining walls have been constructed on the northern, eastern and southern lot boundaries. The proposed rear addition is to be constructed adjacent to the southern limestone retaining wall. The limestone wall is located approximately 250mm within the subject property's southern lot boundary at the location of the proposed addition. The retaining wall is slightly wider at the base than at the top. The proposed boundary wall of the addition (defined as boundary wall as per *Boundary Walls in Residential Development* policy) is to be constructed at the base of the limestone retaining wall. As the proposed wall increases in height, the distance from the retaining wall to the proposed wall increases due to the slight slope of the wall. Consequently the proposed rear addition is able to be constructed without altering to the limestone retaining wall. Furthermore the provided gap between the proposed addition and limestone wall is considered sufficient to ensure adequate ventilation to the limestone, thereby alleviating potential erosion issues associated with retained moisture and limestone walls.

Overall the proposed rear addition is not anticipated to impact on the preservation of the existing limestone walls that have been identified as of heritage significance on the subject site. Accordingly the proposed development is considered to satisfy the objectives of the City's *Impact of Development on Heritage Places* policy.

D.G.F24 Solomon Street Local Area

The *Solomon Street Local Area* policy aims to 'maintain and enhance the character of the existing street whilst allowing the street to develop in harmony with current trends, that is, large, attractive single residences of diversified styles.'

The proposed development satisfies the objective of this policy as the rear addition is sympathetic to the existing house in terms of building materials, orientation and design and does not impact on the streetscape characteristics of Solomon Street.

Submissions

- Obstruction of direct light into northern window of bathroom addition.

The proposed rear addition satisfies the Acceptable Development requirements of the R-Codes including the replacement Acceptable Development requirements of the City's local planning policy *LPP2.4 Boundary Walls in Residential Development*.

The southern adjoining property is elevated approximately 1.4 metres higher than the ground level on the subject property. There exists a weatherboard bathroom addition built up to the boundary on the adjoining property that is adjacent to the proposed boundary wall. The development plans show the proposed boundary wall to be constructed 300 millimetres from the lot boundary. However a site survey of the subject site and the existing structures along the lot boundary shows that the adjacent weatherboard addition has been constructed 160 millimetres over the lot boundary onto the subject lot. As a result the proposed boundary wall will be constructed 140 millimetres from the adjacent weatherboard wall.

The adjacent weatherboard addition has a fire rated bathroom window installed in the boundary wall with a sill height of 1.7 metres from the adjoining property's ground level, or 3.1 metres from the subject property's ground level. The top of the window is 2.3 metres from the adjoining property's ground level or 3.7 metres from the subject property's ground level.

The proposed boundary wall will impact on the amenity of the adjoining property in that the wall will inevitably block some sunlight to this bathroom window. However this impact is considered to be exacerbated by the fact that the adjacent window and wall have been constructed over the lot boundary. Should the adjacent addition have been constructed on the lot boundary, rather than over the boundary, the gap between the building would be 300 millimetres which would reduce the impact the proposed wall would have on the adjoining property. Although permitted by the Building Code of Australia (BCA), it is somewhat unusual that the adjoining property owner would install a window into a boundary wall given that the owner would have no control over what could potentially be built on the adjoining property.

The proposed boundary wall is not considered to be excessive in terms of size and scale. Furthermore the boundary wall will not restrict sunlight to major openings to habitable rooms (a bathroom is a not habitable room as defined by the R-Codes) or outdoor living areas. The provision of light and ventilation to the bathroom will still be available from an existing skylight opening in the bathroom roof. The boundary wall will impact on the amenity of the adjoining property in that the wall will restrict some sunlight to the bathroom. However, the construction of the bathroom addition over the lot boundary is considered to contribute to this impact. Overall the impact of the proposed boundary wall on the provision of sunlight is considered acceptable, in light of the existing skylight and the constructed wall over the boundary.

- Obstruction of access for maintenance of wooden weatherboard external wall.

As previously discussed, the development on the adjoining lot breaches the common lot boundary. Even if the development was constructed entirely on the lot boundary, the owner of the adjoining property has assumed an on-going ability to access the adjoining property to maintain the addition, which would require an agreement between the two property owners. Whilst the proposed boundary wall will restrict the ability of the adjoining property owner to access the external wall of the bathroom addition, this is not considered a valid reason to restrict the development potential of the subject lot.

- Submitted plans are unclear regarding the retention of storm water.

The applicant submitted revised plans to the City on 12 January 2009 addressing the concerns regarding the retention of storm water on the subject site. Nevertheless a standard condition of planning approval is recommended to be included ensuring that all storm water is contained and disposed of on-site.

- Potential glare into bathroom window due to zincalume roof material.

The roof of the proposed addition is approximately at the same level as the top of the bathroom window on the adjoining property. Therefore the possibility of glare from the proposed zincalume roof into the adjacent bathroom window is considered negligible.

Conclusion

The proposed rear addition satisfies the relevant requirements of LPS4 and the R-Codes, including the replacement Acceptable Development provisions of the City's *Boundary Walls in Residential Development* policy pertaining to buildings on boundaries. Furthermore the development satisfies the City's *Impact of Development on Heritage Places* and *Solomon Street Local Area* policies.

Accordingly the application is recommended for conditional approval.

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Rear Addition to Single House at No. 74 (Lot 5) Solomon Street, Fremantle subject to the following condition(s):

1. The development hereby permitted shall take place in accordance with the approved plans dated 12 January 2009.
2. All storm water discharge shall be contained and disposed of on-site.
3. The proposed structures shall be wholly contained within the subject lot and shall not encroach over the lot boundary.

Advisory Notes:

- (i) This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.

Cr R Fittock MOVED to correct the date in condition 1 of the Officer's Recommendation to 11 February 2009

Cr J Strachan MOVED the following advisory note:

- (ii) The works should be undertaken in a manner which does not damage the heritage listed limestone retaining wall.**

CARRIED: 6/0

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

Cr R Fittock MOVED an amendment to the Officer's Recommendation to change the wording of condition 3 as follows:

- 3. Prior to the lodgement of a building licence the applicant shall submit for approval by the Chief Executive Officer City of Fremantle, amended plans showing the:**
 - a) location and width of the existing limestone wall located on the southern lot boundary**
 - b) proposed southern boundary wall located clear from the toe of the existing limestone wall on the southern lot boundary, to allow for adequate ventilation, for the conservation of the existing limestone wall**

CARRIED: 6/0

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

COMMITTEE DECISION

MOVED: Cr Robert Fittock

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Rear Addition to Single House at No. 74 (Lot 5) Solomon Street, Fremantle subject to the following condition(s):

- 1 The development hereby permitted shall take place in accordance with the revised plans dated 11 February 2009.**
- 2 All storm water discharge shall be contained and disposed of on-site.**
- 3. Prior to the lodgement of a Building Licence, the applicant shall submit for approval by the Chief Executive Officer City of Fremantle, amended plans showing the:**
 - a) location and width of the existing limestone wall located on the southern lot boundary, and**
 - b) proposed southern boundary wall located clear from the toe of the existing limestone wall on the southern lot boundary, to allow for adequate ventilation, for the conservation of the existing limestone wall.**

Advisory Notes:

- (i) This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.**
- (i) The works should be undertaken in a manner which does not damage the heritage listed limestone retaining wall.**

CARRIED: 6/0

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

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

Committee was of the view the heritage listed limestone retaining wall should be protected.

Cr R Fittock MOVED en bloc recommendations numbered PSC0902-26, PSC0902-27, PSC0902-28, PSC0902-31, and PSC0902-34.

**PSC0902-26 STEVENS STREET, NO. 53/A (STRATA LOT 2), WHITE GUM VALLEY
- TWO STOREY GROUPED DWELLING (KJ DA626/08)**

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: 1. Development Plans
Date Received: 24 November 2008; amended 9 January 2009
Owner Name: G Wong & E Leano
Submitted by: Right Homes Pty Ltd
Scheme: Residential – R25
Heritage Listing: Not listed
Existing Landuse: Vacant residential
Use Class: Grouped Dwelling
Use Permissibility: D



EXECUTIVE SUMMARY

This application is being presented to the Planning Services Committee because the applicant is requesting a performance based assessment in relation to the setback of the first floor of the western elevation, the boundary wall of the proposed garage, the setback of a retaining wall from the common boundaries, the level of excavation required for the proposed swimming pool within the front setback area and building height. Submissions have been received from neighbouring occupants in relation to a range of issues.

The application is for a two storey grouped dwelling to be located on a rear survey strata lot.

It is recommended that the application be approved subject to conditions.

BACKGROUND

The application site has an area of approximately 350m² and is located on the southern side of Stevens Street. The site is orientated in a north-south direction and slopes up across the site from the west to east by approximately 1 metre.

The site is zoned Residential under the provisions of the City's Local Planning Scheme No. 4 (LPS4), has a density coding of R25 and is located within the White Gum Valley Local Planning Area as described in Schedule 12 of LPS4. The site is not listed on the City's Heritage List.

Conditional approval was granted for a two lot survey strata subdivision by the WAPC, with the deposited plan endorsed by the WAPC on 16 April 2007. At present the whole site is vacant. The application site comprises the rear survey strata lot.

DETAILS

The applicant is seeking planning consent for a two storey grouped dwelling to be sited on the rear survey strata lot known as No. 53/A. The proposal includes a swimming pool to the front of the house.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Schedule 15 of Local Planning Scheme No. 4 (LPS4) sets out when private swimming pools are considered to constitute minor development permitted without planning approval. Given that the proposed swimming pool is partly located within the front setback area of the proposed dwelling, planning approval is required.

Schedule 15 of LPS4 also outlines when fencing is considered to constitute minor development that is permitted without planning approval. With respect to the proposed screening for the swimming pool, because the proposed fences are not within a primary or secondary street setback area, they do not require consent since they are a maximum height of 1.8 metres.

Residential Design Codes (2008)

The development plans have been assessed against the Acceptable Development criteria set out within the Residential Design Codes (R-Codes). The proposed development is considered to satisfy all of the relevant Acceptable Development criteria with the exception of Element 6.3 – Boundary Setback Requirements, Element 6.6 – Site Works Requirements and Element 6.7 – Building Height Requirements. Consequently, a performance based assessment is required for these elements of the development.

Council Policies

Council Policy *D.B.H1 – Urban Design and Streetscape Guidelines* is of relevance to the application.

CONSULTATION

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 because of the proposed variations to the Acceptable Development provisions of the R-Codes. At the conclusion of the advertising period, being 11 December 2008, the City had received two submissions. The following issues were raised:

- Request for the upper floor windows on the western side (Bed 3, WC and Bath) to be obscurely glazed.
- Query regarding the proposed wall height on the western side.
- Impact of development on winter sun received by neighbouring property.
- Do not support relaxation of R-Codes.
- Southern elevation should be set at least 1.5 metres from the boundary.
- Overlooking of Bed 4 to neighbouring property – suggest high level obscurely glazed window.

PLANNING COMMENT

Residential Design Codes (2008)

As stated above a performance based assessment is required for Element 6.3 – Boundary Setback Requirements, Element 6.6 – Site Works Requirements and Element 6.7 – Building Height Requirements.

Buildings setback from the boundary

The Acceptable Development provisions of part 6.3.1 of the R-Codes require the first floor of the western elevation to have a setback of 1.8 metres. A setback of 1.5 metres is proposed.

The Performance Criteria of part 6.3.1 of the R-Codes state:

- Buildings 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 reduced setback of the first floor of the western elevation is the only reduced setback being requested throughout the development. In light of the western elevation being adjacent to the rear garden of No. 34 Wood Street, it is considered that there is sufficient space between the building proposed on the application site and that at No. 34 Wood Street to allow for sufficient direct sun and ventilation to the application property and the neighbouring property. It is considered that the proposed western elevation will not have any greater impact in terms of building bulk on the occupants of No. 34 Wood Street than if the elevation were set a further 0.3 metres from the boundary. There are no major openings proposed in the western elevation and therefore privacy between the application property and the adjoining property will be protected. Therefore, it is considered that the Performance Criteria of part 6.3.1 are met.

Buildings on boundary

The proposed boundary wall comprising the western elevation of the garage of the proposed dwelling does not meet the Acceptable Development provisions of part 6.3.2 of the R-Codes (as replaced by LPP2.4 – *Boundary Walls in Residential Development*) because:

- the wall is not specifically permitted by LPS4 or any other Local Planning Policy;
- the wall will not abut an existing or simultaneously constructed wall of similar or greater dimensions;
- the wall will not abut a property used for non-residential purposes and
- the lot has a street frontage with a width more than 10 metres.

With respect to the Performance Criteria, LPP2.4 states that in considering any application under the Performance Criteria of part 6.3.2 of the R-Codes, the Council will have particular regard to comments made by neighbouring owners/occupiers of adjoining properties and will only consider these criteria to be met where it is satisfied that no adverse impacts on the amenity of the neighbouring property will occur.

The Performance Criteria of part 6.3.2 of the R-Codes state:

'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 of adjoining properties is not restricted.'*

The proposed boundary wall to the garage makes effective use of space on the application site. The proposed boundary wall is 6.2 metres long, has a maximum height of 3.65 metres and is sited up to the rear boundary of the adjoining property No. 34 Wood Street. As such, the proposed boundary wall will be visible to the occupants of No. 34 Wood Street when utilising their garden, but it is a sufficient distance (approximately 11 metres) from the rear habitable rooms of this adjoining property such that it will not adversely affect the occupants when utilising these rooms. Given that the wall is relatively limited in size, will occupy less than a third of the rear boundary of No. 34 Wood Street and is located to the east of the adjoining property, it is considered that the proposed boundary wall will not adversely affect the amenities of the neighbouring occupants or restrict direct sun to the property. Furthermore, no objections have been received from the neighbouring occupants. As such, it is considered that the Performance Criteria of part 6.3.2 have been met.

Setback of retaining wall

The retaining wall adjacent to the east and south boundaries of the site exceeds 500mm in height and therefore requires assessment under the R-Codes. The retaining wall is required to be set back between 1 and 1.5 metres at different points to meet the Acceptable Development provisions.

The Performance Criteria of part 6.3.3 of the R-Codes state:

'Retaining walls designed or setback to minimise the impact on adjoining properties'

The slope of the site necessitates cut and fill, and associated retaining walls, if a dwelling is to be constructed at one level. The proposed retaining walls are limited in height with most falling under 500mm. At its highest point, the retaining wall running parallel to the eastern and southern boundaries is 650mm and is sited adjacent to the rear of the back gardens of No. 55 Stevens Street and No. 22/A Hope Street. By virtue of its limited height, it is considered that it will not have an adverse impact on the amenities of the adjoining occupants. The Performance Criteria of 6.3.3 of the R-Codes are considered to be met.

Excavation or fill

The site works for the proposed dwelling meet the Acceptable Development provisions of part 6.6.1 with the exception of the excavation required for the proposed swimming pool, which is within 3 metres of the street alignment.

The Performance Criteria of part 6.6.1 of the R-Codes state:

'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'

The proposed swimming pool will not alter the visual impression of the natural level of the site and is a common place feature within residential properties. As such, it is considered that the Performance Criteria of part 6.6.1 of the R-Codes are met.

Building height

The maximum external wall height for buildings within a Category B Area as described in Table 3 of the R-Codes is 6 metres. The development proposes a maximum external wall height of 6.4 metres for the central element of the dwelling house. The eastern and western elevations meet the Acceptable Development provisions, having a height of 6.0 metres.

The Performance Criteria of part 6.7.1 of the R-Codes state:

'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.'*

The portion of wall of the proposed dwelling exceeding the height of 6.0 metres is very limited and is restricted to the central element of the building. By virtue of the location of the wall in question, i.e. running through the middle of the dwelling, and its maximum height of 6.4 metres, it is not considered that the proposed building will affect the amenities of neighbouring occupants in terms of direct sun, daylight or views. Furthermore, it is noted that if the proposed dwelling were of more traditional style, it could have a roof with a height of 9.0 metres with a ridge running through the centre of the building in a similar manner to the proposed wall, which would be considered Acceptable Development. As such, it is considered that the Performance Criteria of part 6.7.1 are met.

Council Policies

D.B.H1 – Urban Design and Streetscape Guidelines

The proposed development satisfies the provisions of the City's *Urban Design and Streetscape Guidelines Policy* in terms of building alignment, orientation, front setbacks, scale and mass.

Submissions

Request for the upper floor windows on the western side (Bed 3, WC and Bath) to be obscurely glazed

The window serving Bed 3 is high level, i.e. its sill height is more than 1.6 metres above floor level, and therefore there is no need for this window to be obscurely glazed. Furthermore, there are no provisions within the R-Codes to require other non-major openings, such as those serving the WC and Bath, to be obscurely glazed.

Query regarding the proposed wall height on the western side

The wall height on the western side is 6.0 metres and therefore meets the Acceptable Development provisions of the R-Codes.

Impact of development on winter sun received by neighbouring property

An overshadowing calculation shows that the proposed development meets the Acceptable Development provisions of the R-Codes.

Do not support relaxation of R-Codes

The Acceptable Development provisions illustrate one way of meeting the associated Performance Criteria. Failure to meet the Acceptable Development provisions does not automatically mean an application should be refused, but rather that a performance based assessment in accordance with the relevant Performance Criteria is required. As previously outlined, the Performance Criteria of parts 6.3.1, 6.3.2, 6.3.3, 6.6.1 and 6.7.1 are considered to be met.

Southern elevation should be set at least 1.5 metres from the boundary.

The setback of the proposed southern elevation meets the Acceptable Development provisions of the R-Codes. The kitchen wall has no major openings, has a wall height of less than 3.5 metres and a wall length of 3.9 metres. Figure 2d of the R-Codes explains that this can be assessed independently of the rest of the wall and therefore requires a setback of 1.0 metre. The rest of the wall is set back the requisite 1.5 metres.

Overlooking of Bed 4 to neighbouring property – suggest high level obscurely glazed window

The cone of vision from Bedroom 4 does not fall on neighbouring properties and therefore is not required to be high level or obscurely glazed.

It is not considered that any of the submissions affect the performance based assessments or warrant any conditions being imposed on a planning approval.

CONCLUSION

It is considered that the proposed two storey grouped dwelling complies with the requirements of LPS4, the R-Codes and the City's *Urban Design and Streetscape Guidelines* policy. The proposed development is therefore recommended for conditional approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr R Fittock

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Storey Grouped Dwelling at No. 53/A (Lot 2) Stevens Street, White Gum Valley, subject to the following condition(s):

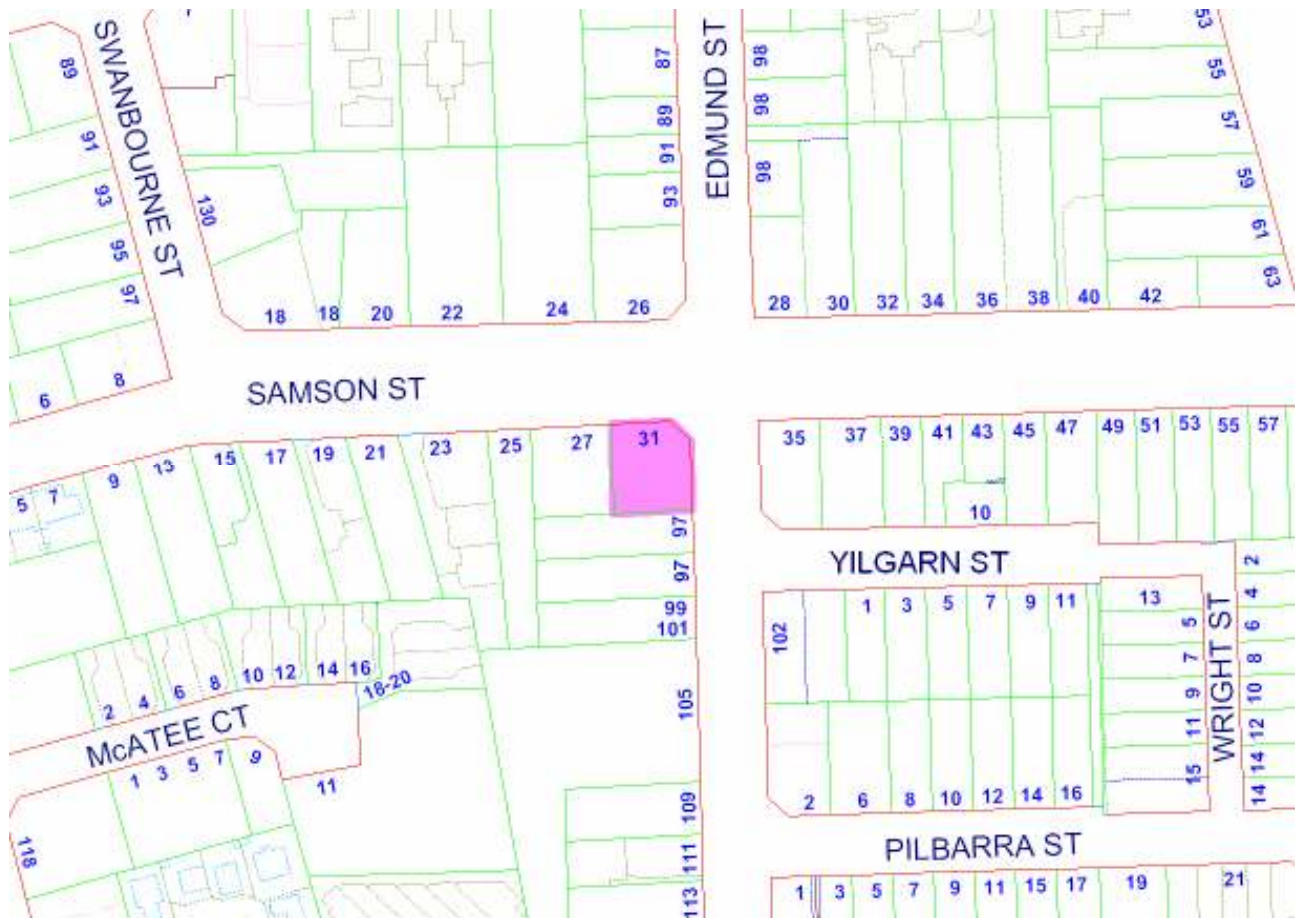
- 1. The development hereby permitted shall take place in accordance with the approved plans dated 9 January 2009.**
- 2. All storm water discharge shall be contained and disposed of on-site.**

CARRIED: 6/0

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

PSC0902-27 SAMSON STREET, NO. 31 (LOT 25), FREMANTLE - CHANGE OF USE TO HOME STORE, INSERTION OF WINDOW AND SIGNAGE (KJ DA625/08)

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: Nil
Attachments: 1. Development Plans
 2. Applicant's Covering Letter dated 20 January 2009
Date Received: 24 November 2008
Owner Name: Christiane Bannasch
Submitted by: Christiane Bannasch
Scheme: Residential – R25
Heritage Listing: Not listed
Existing Landuse: Single house
Use Class: Home store
Use Permissibility: D



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee because the application proposes a Home Store, which requires Council to exercise discretion by granting planning approval, and because there is a car parking shortfall of two spaces.

The application is recommended for conditional approval.

BACKGROUND

The application site is located on the southwest corner of the junction of Samson Street and Edmund Street, Fremantle. The site is located within the South Fremantle Local Planning Area and is zoned Residential – R25 under the Local Planning Scheme No. 4 (LPS4).

The site contains a Single House and a former shop. The site has one parking bay, which is utilised by the residence.

Whilst the site is not listed on the City's Heritage List, the Municipal Heritage Inventory notes:

“Aesthetically significant as an example of Fremantle's vernacular architecture. Typical local shop and attached residence dating from the first decades of the twentieth century. Historically significant as a representation of commercial activity in the Fremantle area. Has undergone significant alterations but original form remains intact.”

In recent years, the shop appears to have been used as a delicatessen. However, the unit has not been used as such since the current owner acquired the property in December 2007.

The original application was submitted on 24 November 2008. The applicant submitted additional information on 20 January 2009 in response to officers' enquiries regarding the exact proposed use of the site

DETAILS

The application proposes a Home Store with a total floor area of 65m² (net lettable area of 39m²) within the former shop. The applicant intends to sell jewellery, textiles, books, relaxation CDs and aromatherapy products. Further to discussions with officers regarding the specific use of the site and concerns regarding the sale of restricted premises goods and relationship counselling being carried out from the premises, the applicant has confirmed that the premises will be purely used for retail purposes:

“No adult products will be sold at the store. The owner does not intend consulting from the premises.”

Three signs are proposed – two wall signs and one projecting sign. The projecting sign will be on the Samson Street frontage and will measure 0.8 metres by 0.8 metres.

The wall signs will both be on the Edmund Street frontage and will measure 0.96 metres by 1.25 metres and 1.65 metres by 1.82 metres respectively.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4

Use

LPS4 lists a 'Home Store' as a 'D' use within a Residential zone meaning that the use is not permitted unless the Council has exercised its discretion by granting planning approval.

Definition of a 'Home Store'

Although LPS4 lists a 'Home Store' within the Zoning Table, it does not define what a 'Home Store' is. Based on the provisions of LPS4, the definition of a 'Home Store' cited in the Model Scheme Text is to be used.

In accordance with the Model Scheme Text, a 'Home Store' means *"any shop with a net lettable area not exceeding 100 square metres attached to a dwelling and which is operated by a person resident in the dwelling."*

Parking

Clause 5.7.2 of LPS4 requires one parking bay per 20m² of nett floor area (minimum of two bays) for a 'Shop with Dwelling.' As such, the proposed Home Store requires two spaces.

Clause 5.7.3 of LPS4 allows the Council to waive or reduce the standard parking requirements subject to the applicant satisfactorily justifying a reduction due to one or more of the following –

- (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 parking or shared use of parking areas which are in the opinion of the Council satisfactory,*
- (vi) any credit which should be allowed for a carparking 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 or trees worthy of preservation,*
- (viii) any other relevant considerations.*

Painting

The submitted signage plans also indicate the painting of the premises and the existing awnings. Given that the site is not listed on the City's Heritage List, the proposed painting does not require planning approval in accordance with clause 8.2 of Local Planning Scheme No. 4.

Council Policies

D.B.H6 – Signs & Hoardings

The City's *D.B.H6 Signs and Hoardings Policy* is the applicable local planning policy pertaining to signage within the City of Fremantle and states:

'The Council will endeavour to avoid the impairment of the amenity of the locality which may be caused where:

- (i) A sign of such scale, prominence, obtrusiveness or character as to be incongruous with the surrounding land uses;*
- (ii) The sign adds to the danger of driver distraction;*
- (iii) The sign adds to the visual clutter of the locality;*
- (iv) Numerous other signs exist on the site;*
- (v) The sign, when viewed from a position where the sign would be legible, would obscure existing signs, information, sight lines or architectural features, or would itself be obscured.*

CONSULTATION

Community

Whilst the shortfall in parking is acknowledged, it was considered that the application did not require advertising under the City's *L.P.P1.3: Public Notification of Planning Approvals* policy because the application does not involve a significant exercise of discretion in that there has been a shop on site for much of the last 90 years with no allocated off-street parking.

PLANNING COMMENT

Use

The site has been used as a shop and a dwelling in the past. The proposed application is for a Home Store, which is distinct from the previous use since a Home Store must be operated by a person resident in the dwelling.

The proposed retail business meets the previously stated definition of a Home Store as the unit has a net lettable area of 39m², is attached to the dwelling and will be operated by a person resident in the dwelling, i.e. the owner. A Home Store is classed as a 'D' use within a Local Centre zone under Table 2 – Zoning of LPS4. The proposed retail element is small in size and a substantial family home will remain.

The size of the retail unit is such that it is unlikely to attract a vast number of customers at any one time and therefore it is not considered that the use will detract from the amenity of neighbouring residential properties. Furthermore, a shop has operated from this site for much of the last 90 years and the dual use of the site has been recognised by the Council as being historically significant to the Fremantle area. It is noted that the applicant has indicated that a part time shop assistant may be required from time to time. However, this is not excluded by the definition of a Home Store use and is unlikely to result in a greater number of journeys by the employee than the previous shop use.

Overall, it is considered that the proposed Home Store is appropriate in this location. However, in light of officer's discussions with the applicant during the course of the application, it is recommended that conditions are imposed on any planning approval granted ensuring the sale of restricted premises goods is prevented and that no consulting takes place from the premises.

Parking

With respect to the lack of parking (a shortfall of two spaces) for the proposed home store, there is ample street parking within the vicinity of the site along both Samson Street and Edmund Street. Furthermore, there has been a shop operating from this site for much of the last 90 years without the benefit of any on-site parking. These two factors are considered to constitute acceptable justification under points (i) and (viii) of Clause 5.7.3 and therefore it is recommended that the proposed variation to the Council's parking standards is supported in this instance.

Structural alterations

The application proposes the insertion of an additional window in the east elevation of the building. The applicant has advised that this blank wall is often graffitied and it is hoped that the additional window will make the wall less of a target. The proposed window will also allow light into a currently unlit store room. It is considered that the proposed window will break up the east elevation from a design point of view, contributing to a more aesthetically pleasing elevation within the streetscape. Furthermore, the proposed window will increase surveillance from the property onto the street, thus contributing to the concept of designing out crime.

Signage

The proposed signage is relatively small in size and does not dominate either frontage. Whilst three signs for one home store may be argued to be a little excessive, it is not considered objectionable in light of the applicant's need to address two street frontages and it is considered that this has been done in a relatively simple manner. It is considered that the objectives of Policy D.B.H6 have been met.

CONCLUSION

It is considered that the proposed change of use to a Home Store, additional window and signage are consistent with the requirements of LPS4 and relevant Council policies. Therefore the application is recommended for approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Cr R Fittock**

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Change of Use to Home Store, Insertion of Window and Signage at No. 31 (Lot 25) Samson Street, Fremantle, subject to the following condition(s):

- 1. The development and use hereby permitted shall take place in accordance with the approved plans dated 24 November 2008 (home store and window details), 13 January 2009 (signage) and 20 January 2009 (detailed internal layout), and the letter dated 20 January 2009.**
- 2. The Home Store hereby permitted shall have hours of operation that do not exceed normal trading hours, i.e. 8:00am to 6:00pm on Monday, Tuesday, Wednesday and Friday; 8:00am to 9:00pm on Thursday; and 8:00am to 5:00pm on Saturday.**
- 3. The shop floor of the Home Store hereby permitted shall be limited to the area marked 'Existing Shop' on the approved Shop Fitout plan dated 20 January 2009, with the ancillary uses of store, tearoom and toilet being laid out as proposed on the same plan.**
- 4. The Home Store hereby permitted shall only be operated by a person resident in the attached dwelling known as No. 31 Samson Street.**
- 5. The signage hereby permitted shall not contain any flashing or moving light at any time.**
- 6. The Home Store hereby permitted shall not sell any goods classified under the definition of a "restricted premises" within the Model Scheme Text.**
- 7. The Home Store hereby permitted shall be used for retail purposes only and shall not be used for the purpose of consulting or counselling.**

Advisory notes:

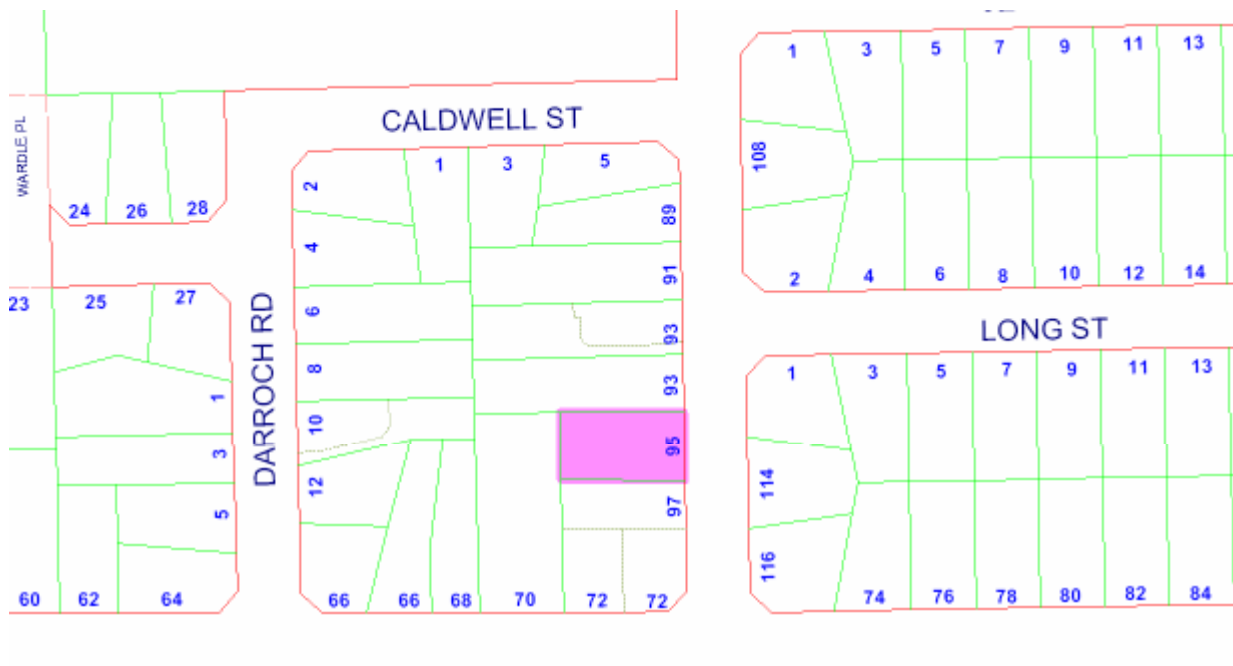
- (i) A sign licence is required prior to the installation of signage. Please contact the City’s Building staff.
- (ii) This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.
- (iii) In relation to Condition 6, the definition of a “restricted premises” means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of –
 - a. publications that are classified as restricted under the *Censorship Act 1996*;
 - b. materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity.

CARRIED: 6/0

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

PSC0902-28 YORK STREET, NO. 95 (LOT 62), BEACONSFIELD - SINGLE STOREY GROUPED DWELLING (KJ DA448/08)

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: Nil
Attachments: 1. Development Plans
 2. Letter from applicant dated 19 November 2008
Date Received: 25 August 2008 – amended plans received 20 October 2008 (Landscape Plan), 20 November 2008 (Floor Plan) and 11 December 2008 (Site Plan and Elevations)
Owner Name: G Boot
Submitted by: Highbury Homes
Scheme: Residential – R20/R25
Heritage Listing: Not listed
Existing Landuse: Single House
Use Class: Grouped Dwelling
Use Permissibility: D



EXECUTIVE SUMMARY

This application is being presented to the Planning Services Committee because the applicant is requesting a performance based assessment in relation to the setback of a retaining wall from the common boundaries and submissions have been received from neighbouring occupants in relation to this.

The application is for a single storey grouped dwelling to be located to the rear of an existing single storey single house.

It is recommended that the application be approved subject to conditions.

BACKGROUND

The application site has an area of approximately 817m² and is located on the western side of Stevens Street. The site is orientated in an east-west direction and slopes down across the site from the north-east corner to the south-west corner by approximately 1.5 metres.

The site is zoned Residential under the provisions of the City's Local Planning Scheme No. 4 (LPS4), has a split density coding of R20/R25 and is located within the Beaconsfield Local Planning Area as described in Schedule 12 of LPS4. The site is not listed on the City's Heritage List.

The existing site contains a single storey single house with a carport to the southern side.

The original application was submitted to the Council on 25 August 2008. Following this a Landscape Plan was received on 20 October 2008 and amended plans were received on 20 November 2008 (Floor Plan) and 11 December 2008 (Site Plans and Elevations).

DETAILS

The applicant is seeking planning approval for a single storey grouped dwelling to be sited to the rear of the existing house. The applicant is applying for the application to be assessed under the higher density coding R25 pursuant to the City's *Split Density Codes and Energy Efficiency and Sustainability Schedule*. The site is to be filled and excavated to provide one level on which to construct the building. The proposal includes a boundary wall for the garage with a height above natural ground level of 2.5 metres and a retaining wall sited up the south and west boundaries with a maximum height of 700mm. A proposed swing gate is shown on the submitted plans at the end of the access leg to the proposed dwelling, however, no indication of its height is given.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Split Density Codes

Clause 5.3.4 of Local Planning Scheme No. 4 (LPS4) states:

'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 following specific requirements are addressed to the satisfaction of Council-

- a) a building of cultural heritage significance is retained on the lot,*
- b) provision of "low income housing",*
- c) buildings designed in accordance with Council's energy efficiency and sustainability schedule, and*
- d) removal of a non-conforming use.'*

LPS4 grants Council the discretion to apply the higher density coding where a split density coding is applicable. The site has a split density coding of R20/R25 and the application has been made based on the higher density coding. Subclause (c) relating to the City's Energy Efficiency and Sustainability Schedule applies given that the other subclauses, (a) (b) and (d), are not applicable.

Fences

Schedule 15 of LPS4 outlines when fencing is considered to constitute minor development that is permitted without planning approval.

Residential Design Codes (2008)

The subject site has a split density of R20/R25. The development plans have been assessed against the Acceptable Development provisions set out within the Residential Design Codes (R-Codes) pursuant to the higher density coding R25. The proposed development is considered to satisfy all of the relevant Acceptable Development criteria with the exception of Element 6.3 – Boundary Setback Requirements and Element 6.6 – Site Works Requirements. Consequently, a performance based assessment is required for these elements of the development. It should be noted that the proposed boundary wall variation under Element 6.3 will be assessed under *LPP2.4 – Boundary Walls in Residential Development*.

Council Policies

Council Policies *D.B.H1 – Urban Design and Streetscape Guidelines*, *LPP2.2 Split Density Codes and Energy Efficiency and Sustainability Schedule* and *LPP3.5 Local Planning Area 5 - Beaconsfield* are of relevance to the application.

CONSULTATION

The application was required to be advertised in accordance with Council's policy *LPP1.3 Public Notification of Planning Proposals* because of the variation to the Acceptable Development provisions of the R-Codes in relation to the setback of the proposed retaining walls. At the conclusion of the advertising period, being 16 January 2009, the City had received two submissions. The following issues were raised:

- Any damage done to the common fence must be repaired/replaced at the developer's expense.
- The fact that the retaining wall is only present for a portion of the rear boundary is a concern.
- The fact that the dwelling can be built closer to the boundary because of the retaining wall is a concern as it will affect the future development of the neighbouring property.

PLANNING COMMENT

Local Planning Scheme No. 4

With respect to the proposed swing gate, whilst no details of its height have been provided, it will not require consent if it has a maximum height of 1.8 metres since it is not within a primary or secondary street setback area. A condition is recommended ensuring the proposed gate does not exceed 1.8 metres in height.

Residential Design Codes (2008)

A performance based assessment is required in relation to the boundary wall of the proposed garage, the retaining walls and the level of fill.

Buildings on boundary

The proposed boundary wall comprising the east elevation of the garage of the proposed dwelling does not meet the Acceptable Development provisions of part 6.3.2 of the R-Codes (as replaced by LPP2.4 – *Boundary Walls in Residential Development*) because:

- the wall is not specifically permitted by LPS4 or any other Local Planning Policy;
- the wall will not abut an existing or simultaneously constructed wall of similar or greater dimensions;
- the wall will not abut a property used for non-residential purposes and
- the lot has a street frontage with a width more than 10 metres.

With respect to the Performance Criteria, LPP2.4 states that in considering any application under the Performance Criteria of part 6.3.2 of the R-Codes, the Council will have particular regard to comments made by neighbouring owners/occupiers of adjoining properties and will only consider these criteria to be met where it is satisfied that no adverse impacts on the amenity of the neighbouring property will occur.

The Performance Criteria of part 6.3.2 of the R-Codes state:

'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 of adjoining properties is not restricted.'*

The proposed boundary wall for the garage makes effective use of the space for the proposed property and enhances privacy for both the proposed dwelling and existing dwelling. The proposed boundary wall is 8.6 metres in length and has a maximum height of 2.6 metres. It is therefore unlikely to appear unduly overbearing to the occupants of the existing house on the lot. Furthermore, the boundary wall is located to the west of the existing property and therefore will not cause overshadowing at midday on the winter solstice. Therefore it is considered that the Performance Criteria of part 6.3.2 are met.

Setback of retaining walls

The retaining wall adjacent to the south and west boundaries of the site exceeds 500mm in height and therefore requires assessment. The retaining wall is required to be set back 1 metre to meet the Acceptable Development provisions as prescribed in table 2a of the R-Codes.

The Performance Criteria of part 6.3.3 of the R-Codes state:

'Retaining walls designed or setback to minimise the impact on adjoining properties'.

The slope of the site necessitates cut and fill and an associated retaining wall if a dwelling is to be constructed at one level as has been proposed. The proposed retaining wall is limited in height at 700mm and is sited adjacent to the rear of the back gardens of No. 97 York Street and No. 70 Jean Street. By virtue of its limited height, it is not considered that it will have an adverse impact on the amenities of the adjoining occupants. The Performance Criteria of 6.3.3 of the R-Codes are considered to be met.

With respect to the submissions received in this respect, the issue of the common fence is a civil matter and cannot be addressed by the planning system. Given the slope of the land, the retaining wall is not required across the whole of the rear boundary because of the site levels. Further, the proposed dwelling on top of this fill meets the setback requirements of the R-Codes (using the height above natural ground level) and therefore is deemed acceptable. Therefore it is not considered that any of the submissions in relation to the proposed retaining walls affect the performance based assessment for the retaining walls or warrant any conditions being imposed on a planning approval.

Excavation or fill

The site works for the proposed dwelling do not meet the Acceptable Development provisions of part 6.6.1 because there is fill exceeding 0.5 metres above natural ground level behind the street setback line and within 1 metre of a common boundary.

The Performance Criteria of part 6.6.1 of the R-Codes state:

‘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’.

The maximum height of proposed fill is 700mm. The slope of the site necessitates cut and fill and an associated retaining wall if a dwelling is to be constructed at one level as proposed. It is considered that 700mm of fill, which is 200mm above what can be carried out without planning permission, will retain the visual impression of the natural level of the site when viewed from the neighbouring properties. Therefore the Performance Criteria of part 6.6.1 are considered to be satisfied.

Council Policies

D.B.H1 – Urban Design and Streetscape Guidelines

The proposed development satisfies the provisions of the City’s *Urban Design and Streetscape Guidelines Policy* in terms of building alignment, orientation, front setbacks, scale and mass.

LPP2.2 - Split Density Codes and Energy Efficiency and Sustainability Schedule

The primary indoor and outdoor living areas of the proposed grouped dwelling are to be north facing and the external wall of the proposed dwelling is setback 4 metres from the northern boundary. The eastern and western facing windows are to be fitted with grey ‘Comfortone’ glass. The blend of proposed roof tiles will result in a mid to light coloured roof and limestone bricks are to be used for the walls, thus meeting the policy requirement of no black or dark grey roofs and no dark coloured east and west external walls. The proposed eaves have a minimum horizontal distance of 500mm over the north external wall and the laundry but no eaves are provided to the other external walls. Thus a variation to LPP2.2 is proposed. An area of outdoor living area greater than 30m² is provided that will have direct solar access at the winter solstice. With respect to water, two rainwater tanks are indicated on the proposed plan with a capacity of 1500 litres each, thus meeting the requirement of at least 3000 litres. An appropriate landscaping plan has been submitted that meets the water requirements of the policy.

With respect to the proposed variation to the eaves height, the applicant has submitted the following:

“Eaves have not been included to the Master Suite and Ensuite due to the requirement of eaves being 750mm minimum from the boundary. The house has been placed on the site close to the boundaries to obtain the maximum amount of living area for our client due to the restrictive nature of the land. We are installing Pilkington Comfortone Grey glass to the affected windows.

We also ask that the Council consider our request to not include eaves to the front elevation (Master Suite, Porch and Bedroom 3). We feel this would detract from the overall look of the elevation. We are installing Pilkington Comfortone Grey glass to Master Suite and Bedroom 3 windows to assist with sun protection.”

The requirement of the eaves to be 750mm from the boundary is accepted and this requirement only affects the southern elevation of the Master Suite/Ensuite and western elevation of the Ensuite. In light of the proposed solar panels, which are not required to be installed by LPP2.2, and that the omission of 500mm eaves is mainly to the southern elevation, it is considered that this small variation to the 500mm eaves requirement of LPP2.2 is acceptable. However, the submission that 500mm eaves to the front elevation will appear unattractive is not supported. There seems to be no legitimate basis to state that 500mm eaves are unattractive and they are necessary to achieve the sustainability merits that the dwelling requires in order to be approved under the higher density coding. Furthermore, no justification has been submitted in relation to the lack of eaves to the western elevation of Bed 2 and Bed 4. Therefore, a condition is recommended requiring the provision of 500mm eaves to the western elevation of Bed 2 and Bed 4 and the eastern elevation of the Master Suite.

LPP3.5 - Local Planning Area 5 - Beaconsfield

The proposed development meets the requirements of the R-Codes, as required by clause 1.0 of LPP3.5. The area-specific development requirements of clause 2.0 are not applicable to this site.

CONCLUSION

It is considered that the proposed single storey grouped dwelling complies with the requirements of LPS4, the R-Codes and the City's *Urban Design and Streetscape Guidelines, Split Density Codes and Energy Efficiency and Sustainability Schedule* and *Local Planning Area 5 - Beaconsfield* policies. The proposed development is therefore recommended for conditional approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Cr R Fittock**

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Single Storey Grouped Dwelling at No. 95 (Lot 62) York Street, Beaconsfield, subject to the following condition(s):

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 20 October 2008 (Landscape Plan), 20 November 2008 (Floor Plan) and 11 December 2008 (Site Plan and Elevations).**
- 2. All storm water discharge shall be contained and disposed of on-site.**
- 3. The 'swing gate' marked on the approved plans shall have a maximum height of 1.8 metres.**
- 4. Eaves with a minimum horizontal distance from the walls of 500mm shall be provided to the western elevation of Bed 2 and Bed 4 and the eastern elevation of the Mastersuite.**

Energy

- 5. Prior to occupation insulation (minimum R4 roof insulation and minimum R2.5 wall insulation) shall be installed and maintained thereafter.**
- 6. Prior to occupation a gas boosted solar hot water system shall be installed and maintained thereafter.**
- 7. Prior to occupation ventilators in the roof void (above the insulation layer) shall be installed and maintained thereafter.**
- 8. Prior to occupation ventilators should be capable of being closed during winter conditions.**

Water

- 9. Prior to occupation 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.**
- 10. Prior to occupation installation of water-efficient fixtures, including 3A-5A rated taps, toilets and showerheads.**

Advisory Notes:

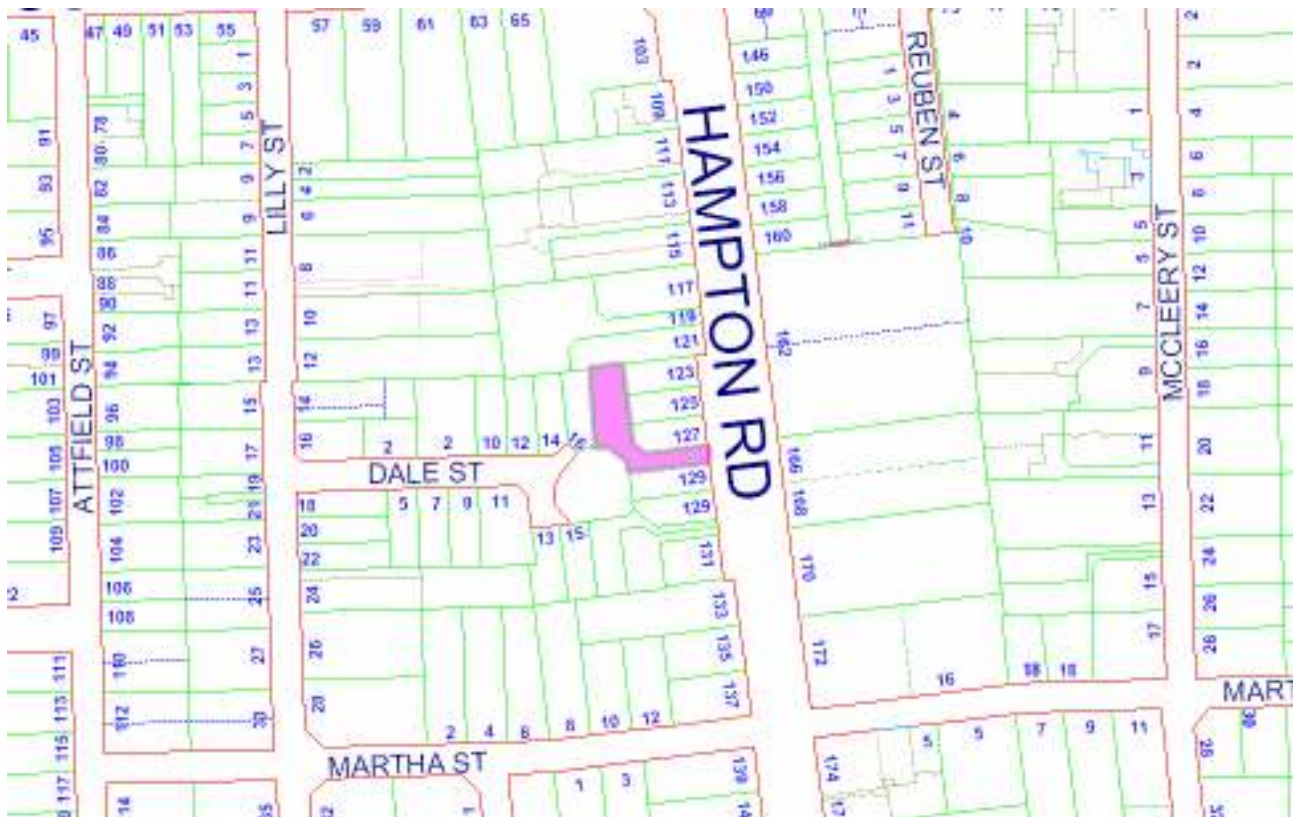
- (i) **This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.**

CARRIED: 6/0

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

PSC0902-31 HAMPTON ROAD NO. 127/A (LOT 105) SOUTH FREMANTLE - TWO STOREY ADDITION AND CARPORT ADDITION TO SINGLE HOUSE (MB DA620/08)

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: Nil
Attachments: Development Plans
 Site Visit Photo's
Date Received: 19 November 2008
 Revised Plans Received 8 January 2009
Owner Name: Kevin & Marilyn Hart
Submitted by: Allguard Pty Ltd
Scheme: Residential R25
Heritage Listing: Not Listed
Existing Landuse: Single House
Use Class: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

The application is presented before the Planning Services Committee for determination as the City received submissions during the consultation period concerning various aspects of the development which cannot be resolved via conditions of planning approval.

The applicant is seeking planning approval for a front single carport and two storey rear additions to an existing single house at No. 127/A Hampton Road (site), South Fremantle.

The proposed development satisfies the relevant requirements of the City's Local Planning Scheme No. 4 (LPS4), the City's relevant policies and the Residential Design Codes 2008 (R-Codes), including the performance criteria pertaining to boundary setbacks.

The proposed front carport, single and two storey additions are considered to satisfy the Performance Criteria of the Residential Design Codes 2008, and as such is recommended for approval.

BACKGROUND

The subject site is a battle-axe lot which is located to the rear of No's 123-127 Hampton Road, South Fremantle. The site contains an existing single storey house and is accessible from Hampton road, between No.s 127 and 129 Hampton Street. The site is zoned Residential R25 and is located within Sub Area 4.3.4 of the South Fremantle Local Planning Area as described in Schedule 12 of the City's Local Planning Scheme No.4 (LPS4). The site is orientated in a north-south direction. The site is not listed on the City's Heritage List or Municipal Heritage Inventory (MHI).

A development application for a single storey single house at the subject site was received by the City, 19 November 2008 (DA 613/08). Amended plans were requested 24 December 2008, and received 8 January 2009. The revised plans amended the first floor north facing balcony and first floor eastern facing windows to bedroom 3 to comply with the visual privacy requirements of the Residential Design Codes 2008.

The subject site is located within the Lilly Dale Park Estate subdivision. Plan 18312 indicates a 'right of carriageway' easement that is located partially over the subject lot. This easement benefits the adjoining lots 106 (No. 123 Hampton Road), 107 (No. 125 Hampton Rd) and 108 (No. 127 Hampton Rd). The lots are also burdened with easements associated with this right of carriageway in favour of the subject site. The carriageway has been sealed and is the primary vehicular access for the aforementioned lots. The rears of the aforementioned lots are located to back onto the easement and the subject site.

The existing single house is built along the border of the easement. The owner of the subject site has made the City aware of an alleged prior incident of a vehicle reversing from Lot 106 (No. 123 Hampton Road) and colliding with a fence pillar on the subject site. The City subsequently investigated the parking arrangements on Lot 106 and found that the provided car parking is as per the approved plans for this site.

The on-going use, maintenance and access of this right of carriageway are the responsibility of those interested parties and are considered to be a civil matter.

DETAILS

The applicant is seeking planning consent for a two storey rear addition to an existing single house at the subject site. The proposed ground floor addition will extend the rear of the existing house to maximize living space and incorporate a new kitchen, meals and living room. The proposed first floor addition will create an additional bedroom, ensuite and sitting room. The proposed additions are to extend 3.5 metres towards the rear boundary of the site. The proposed additions are to be constructed along the border of the right of way carriageway easement but will not encroach into the easement.

The applicant is also proposing a single carport to be located at the front of the dwelling to cover the single parking space available for the site. The carport is located directly adjacent to the Dale Street Reserve.

A letter has been submitted with the original application providing written justification for the proposed boundary setback and building height variations from the Acceptable Development requirements of the R-Codes.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4

The subject site is located within Sub Area 4.3.4 of South Fremantle Local Planning Area as described in Schedule 12 of LPS4. Schedule 12 – Sub Area 4.3.4 states that *'despite the general height requirements, development on land zoned residential shall be limited to 2 storeys.'* The proposed two storey rear addition satisfies this requirement.

Residential Design Codes 2008 (R-Codes)

The proposed development satisfies the Acceptable Development requirements of the R-Codes with the exception of an upper floor setback to the western boundary and the setback of the carport from the western boundary.

The Acceptable Development provisions require the proposed rear addition (first floor) to be setback 2.3m from the western boundary; the proposed setback is 0.85 m representing a 1.45m variation. The proposed carport has a boundary setback of 0.85 metres from the western boundary. The required setback for the carport is 1.5 metres.

It should be noted that not meeting any Acceptable Development criteria, in and of itself, is not a sound basis on which to refuse or require modifications to a proposal. Instead, the proposal must be considered in the context of the relevant Performance Criteria. The development requires performance based assessments with regards to boundary setbacks.

Council Policies

The proposed development has been assessed against the objectives for the City's *D.B.H1 Urban Design and Streetscape Guidelines* and *D.G.S3 South and Attfield Streets, Hampton and Lefroy Roads Local Area*.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and the City's *LPP1.3 Public Notification of Planning Proposals Policy*, as the development proposed variations from the Acceptable Development requirements of the R-Codes. At the conclusion of the advertising period, being 8 December 2008, the City had received 2 submissions. The following issues were raised:

- *Reduced eastern boundary setbacks*
 - Potential overshadowing of adjoining property to the east.
 - Unfavourable increase in building bulk.
- *Visual Privacy*
 - Overlooking into adjoining properties

The concerns outlined within the submissions will be discussed below.

Amended plans were submitted which addressed the visual privacy, boundary setback to the east concerns as outlined in the submissions. The amended plans were not required to be re-advertised as per *L.P.P1.3*.

PLANNING COMMENT

Boundary Setbacks

The proposed rear addition and carport do not comply with the Acceptable Development criteria of the R-Codes regarding boundary setbacks and therefore is required to be assessed against the Performance Criteria objectives for Clause 6.3.1 *Buildings setback from boundary* as follows: -

6.3.1 Buildings setback from boundary Performance Criteria

P1 Buildings setback from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building;*
- *Ensure adequate sun and ventilation being made available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with the 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.*

Rear Addition

The applicant is seeking a setback variation from 2.3m to 0.85m (a variation of 1.45m) to the western (side) boundary for the first floor of the rear addition.

The proposed development is adjacent to an existing two storey dwelling located on the adjoining western boundary. The setback of the adjacent dwelling is approximately 0.70 metres from the lot boundary, thus making the distance between buildings 1.55 metres. This distance is considered sufficient to allow for adequate ventilation between the adjoining properties. The proposed setback is considered sufficient to provide for adequate sunlight access to the subject and adjoining site given the site's north-south orientation. The proposed addition is also noted to have considerable sunlight access provided by the major openings located to the northern elevation.

The adjoining western property's outdoor living area is located on the northern side of the subject site and will not be significantly affected by overshadowing for the majority of daylight hours as a result of the proposed addition. Whilst it is acknowledged that the adjoining dwelling will be subject to some overshadowing in the morning hours, it is considered that this impact is acceptable under the R-Codes - Acceptable Development requirements for clause 6.9.1 - *Solar access for adjoining sites*.

The eastern elevation of the adjoining property to the west is approximately 4.10 m high. The wall of the proposed addition is to be 4.53 m high. The height of the proposed addition is considered acceptable under the height requirement provisions of the R-Codes. The impacts of building bulk are considered to be minimal due to the similar scale between the development on the subject site and the existing building on the western adjoining property.

The proposed western elevation does not contain any major openings that face towards the western adjoining property. The west facing window for the sitting room is a highlight window which will not enable inhabitants to access views to the adjoining property. It is also noted that the adjoining property to the west has no upper floor windows on their eastern elevation. Therefore no impact on the adjoining properties privacy is anticipated.

Overall the proposed reduced setback for the rear addition of 0.85m from 2.3m from the western boundary is considered to satisfy the Performance Criteria of the R-Codes in regards to boundary setbacks.

Carport

The proposed single carport is to be located at the front of the existing dwelling. The reduced western setback pertaining to the proposed carport is located to the south side (front) of the existing dwelling.

No detrimental impacts to sunlight access, ventilation, open space and privacy to the subject site or adjoining properties are perceived due to the nature and location of the development and the site orientation. Consequentially the proposed carport is considered to satisfy the Performance Criteria relating to boundary setbacks.

Council Policies

D.B.H1 Urban Design and Streetscape Guidelines

The proposed development satisfies the general objectives of the City's *Urban Design and Streetscape* guidelines in terms of building alignment, orientation and mass.

The proposed single and second storey additions will not significantly impact upon the streetscape, given that the proposed development is located to the rear of the lot. The front carport is considered acceptable due to the irregular nature of the lot shape and location. Furthermore the front carport as previously stated is located directly adjacent the Dale Street Reserve therefore no detrimental impacts to the streetscape are perceived.

D.G.S3 South and Attfield Streets, Hampton and Lefroy Roads Local Area

The proposed development satisfies the policy requirements of the City's *South and Attfield Streets, Hampton and Lefroy Roads Local Area* guidelines in terms of building density and form. The policy furthermore states sufficient and adequate parking facilities for existing and additional residences will be required to be provided on site. The proposed carport is considered to satisfy this requirement.

Overall the proposed development is considered to adhere to the objectives of the City's Guidelines.

Submissions

Eastern boundary setbacks

Concerns regarding the impact of the proposed eastern boundary setback in regards to overshadowing and direct sun access to the adjoining eastern property were raised by a submitter. While it is acknowledged that the proposed development will result in some impact on access to direct sun to the rear garden areas of the adjoining eastern properties, the eastern boundary setback is compliant with the Acceptable Development requirements of the R-Codes regarding design for climate requirements. Furthermore the overshadowing created is minimized through site orientation of the subject and eastern adjoining properties.

It is also noted that although the initial submitted plans demonstrated a reduced eastern boundary setback, the applicant removed the major openings to the east side of the addition in the revised plans (8 January 2009) to reduce the required setback to 1.1m. Therefore as the proposed eastern boundary setback in the revised plans is 1.8m, the proposed eastern setback of the addition satisfies the Acceptable Development criteria of the R-Codes.

With regards to the submitter's concerns regarding loss of access to views and an increase in building bulk, it is acknowledged that the development may impact on the adjoining property's views of significance, however the development satisfies the requirements of the R-Codes with the exception of the reduced boundary setback to the west which is not anticipated to impact access and views. Therefore the proposed development's potential impact is considered acceptable.

Visual Privacy

Concerns regarding overlooking and impacts on visual privacy to the adjoining properties to the north and east have been resolved by the applicant in the amended plans dated 8 January 2009. Screening (lattice screening to 1.65m high) to all side of the veranda (west, north, east) and windows to the east are proposed to prevent visual access to adjoining properties.

The proposed development thus complies with the Acceptable Development requirements of the R-Codes pertaining to visual privacy.

CONCLUSION

The proposed first and second storey addition to the existing single house satisfies the relevant requirements of the City's LPS4 and R-Codes, including the performance criteria regarding boundary setbacks. Furthermore the development satisfies the objectives of the City's relevant policies.

Therefore the application is recommended for conditional approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Cr R Fittock**

That the application be **APPROVED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Storey Addition and Carport Addition to Single House at No. 127/A (Lot 105) Hampton Road, South Fremantle, subject to the following condition(s):

1. The development hereby permitted shall take place in accordance with the approved amended plans dated 24 November 2008.
2. All storm water discharge shall be contained and disposed of on-site

Advisory note(s):

- (i) The proposed development is to comply with the provisions of the Building Code of Australia.
- (ii) This approval does not authorise the commencement of any building works. A building licence must be obtained prior to the commencement of construction works.
- (iii) Any existing easement or Right of Carriageway shall be protected and remain fully accessible at all times.

CARRIED: 6/0

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

PSC0902-34 SCHEDULE OF APPLICATIONS 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.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr R Fittock

That the information is noted.

CARRIED: 6/0

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

REPORTS BY OFFICERS (COUNCIL DECISION)**PSC0902-35 DRAFT LOCAL PLANNING POLICY LPP 1.6 - 'PREPARATION OF HERITAGE ASSESSMENTS' FINAL ADOPTION, AND REVOCATION OF PLANNING POLICIES DBH10 AND DBH13**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Director Planning Services
Actioning Officer: Coordinator Planning Projects
Decision Making Level: Council
Attachments: DBH10 – Preservation of Historic Buildings
DBH13 – Impact of Developments on Heritage Places

EXECUTIVE SUMMARY

This report seeks Council approval to adopt draft Local Planning Policy (LPP1.6) and to revoke two planning policies which will be superseded should this policy be adopted.

The purpose of this policy is to address the following matters relating to the seeking of expert heritage advice.

- What information should the heritage assessment provide?
- When is a heritage assessment required?
- Who should prepare the heritage assessment?

This policy statement does not attempt to provide guidance on how the Heritage Assessment should be utilised or interpreted in the assessment of development proposals. Rather it will clarify the process and evaluation criteria and will enable a consistent and detailed level of heritage evidence to be documented. This in turn will ensure that the City's information database is informative and continually added to so as to become completed over time, and that heritage impacts are assessed adequately and objectively as part of planning applications.

The draft policy has been advertised in accordance with the requirements of LPS4, with five submissions received. The submissions raise a number of valid comments, which are discussed in detail below.

It is recommended that the draft Planning Policy be adopted with modifications in accordance with clause 2.4 of Local Planning Scheme No. 4. Furthermore, it is recommended that Council revoke current planning policies DBH10, and DBH13.

BACKGROUND

At the ordinary Council meeting of 16 November 2008, Council resolved to adopt draft planning policy LPP 1.6 “Obtaining Expert Heritage Advice” for the purpose of advertising (refer PSC 0811-316). Furthermore, Council, as part of that resolution, acknowledged that current planning policies DBH10, and DBH13 would be revoked upon final adoption of LPP1.6.

STATUTORY IMPLICATIONS

It is proposed to adopt a Local Planning Policy in accordance with Part 2 of LPS4. A Local Planning Policy does not form part of the Scheme and can not bind the Council in respect of any application for planning approval. The Council, is however, required to have due regard to the provisions and objectives of such in making a determination on a planning matter.

CONSULTATION

Community Consultation

The draft policy was advertised in accordance with Clause 2.4 of the Scheme. As part of the advertising process, letters were sent to more than fifty practicing planning consultants, architects, and heritage professionals, as well as the Heritage Council of WA, and the Department of Housing and Works. At the end of the advertising period, being 21 January 2009, four submissions had been received. Two additional submissions were received after the closure of the advertising period and have been considered in the preparation of this report. One submission received lodged no objections to the draft policy. The content of the remaining five submissions is summarised in the table below. Full copies of submissions are available to elected members on request.

Submitter	Submission Comment
Heritage Council of Western Australia	Title of policy implies that the policy is about obtaining expert advice from external sources.
	Section 3.2 implies that in all cases the City will commission and pay for the expert advice, as opposed to requiring an applicant to produce an assessment.
	Use of the term ‘Heritage Assessment’ is confusing and is too generic.
	Section 3.1.2 – Table 1 is confusing. The left hand column does not contain the “recognised” value headings of Aesthetic, Historic, Social, and research/Scientific.
	Heritage Council’s “Guide to heritage Impact Statements” is modelled on common practise around Australia and would be easier to administer than this approach.
	Section 3.1.4 – Intent is not clear. If it is intended that the expert prepare a ‘mini conservation plan’ then that should be spelt out in the policy. Too much “specialist terminology” has made this clause confusing.
	Section 3.2 – ambitious to expect all three elements to be prepared in response to a planning application given timeframes for determining

	<p>applications.</p> <p>Section 3.2 – A new statement of significance should not be required when a planning application is submitted to a (state) registered place, as this analysis already exists in HCWA documentation.</p> <p>Table 3 - The use of a separate column for Demolition is incongruous with the remainder of the table.</p> <p>Table 3 – the header row should probably refer to the heritage list rather than management categories in the MHI.</p> <p>Definition of minor development seems fairly narrow and may leave a range of straightforward works being subject to a full assessment.</p>
Ron Bodycoat – Heritage Architect	<p>The assessment of cultural heritage significance is a highly specialised and subjective process, and a matter of personal opinion. It is therefore essential that the decision to seek heritage advice (either in house or external consultant) should be made by an appropriately qualified City Heritage Architect on an unbiased basis – not by a heritage planner or Manager Development Services, as their expertise is unlikely to qualify them in best practise in heritage matters.</p>
Kelsall Binet Architects – Alan Kelsall	<p>Does not think it is necessary for the policy to mimic the HCWA <i>Documentation of Places for Entry into the Register of Heritage Places</i>.</p> <p>Concerned that the process outlined in the draft policy will add cost and time to processing of planning applications and thinks this may become an excuse for undertaking fewer assessments.</p> <p>Believes that the content of Heritage Assessments should be more flexible to allow for the different types of scenarios in which an assessment may be required. Also states that a consultant should be allowed to decide on the structure and scope of an assessment once he or she has established an understanding of the place.</p> <p>Concerned that the ‘Degree of Significance’ section could be used as leverage to get places removed from the heritage list, or as an excuse to allow places to become derelict and neglected.</p> <p>Believes that it should be sufficient information if it can be demonstrated that a place complies with the Burra Charter definition of cultural significance within the context of Fremantle.</p> <p>Suggests that the terms <i>Condition, Integrity, and Authenticity</i> should be removed from the statement of significance as they are not consistent with Burra Charter definition of cultural significance.</p> <p>Need to demonstrate that to leave a building in poor condition is a bad thing, rather than its condition being seen as a reason for removing it from the heritage inventory.</p>
Annabel Wills Conservation Architect	<p>A conservation plan should be considered valid for 5 years, not two as prescribed in the draft policy</p> <p>Statement of significance should follow the accepted and widely used format as utilised by HCWA</p> <p>Is the grading of significance to be limited to the overall place? A place may be of considerable significance but contain elements that are intrusive. This section should also follow the generally accepted format.</p> <p>Statement of Heritage Impact should be reflective of HCWA Heritage Impact Assessment guidelines</p> <p>Preparation of a statement of conservation is likely to be very costly.</p> <p>In order to formulate a statement of significance a basic understanding</p>

	<p>of the history of the place and of the physical fabric of the place would be required. The city should determine the level of information required. ie – streetscape survey only / external building and site only / internal survey. Whether a historian is to be engaged to determine the history or if the level of historical information contained in the MHI entry is sufficient.</p> <p>These issues will all impact on the cost of the document.</p>
	<p>It may be useful to discuss with some conservation practitioners how much these reports would be likely to cost as some of the items could have a high impact on the cost of the work.</p>
Private Submitter	<p>Any move to adopt more open, accountable decision-making and internal operations is to be applauded.</p>
	<p>Any formal process that offers transparency to the functions of the closed committees and their minutes would be appreciated.</p>
	<p>Heritage assessments commissioned by the City may not be impartial or independent. The policy should allow applicants to provide their own assessment.</p>
	<p>Concerns that the term ‘compatibility’ will prevent creative adaptation of heritage buildings.</p>
	<p>Conservation statements may result in too many restrictions on heritage buildings and affect market value of properties.</p>
	<p>Heritage listings need to be clarified to identify those parts of a building that are most significant.</p>

PLANNING COMMENT

LPP 1.6 – Preparation of Heritage Assessments

Having considered the submissions received from industry and community members, the following amendments to the draft policy are recommended.

- The title of the policy has been changed from “*Obtaining Expert Heritage Advice*” to “*Preparation of Heritage Assessments*”. This title change is intended to clarify the purpose of the policy.
- Reference has been made to Clause 7.4 of the Scheme, which empowers the Council to require a heritage assessment as part of a planning application.
- Clause 3.1.2 has been amended to allow consideration of conservation plans prepared within the last 5 years. The draft policy specified 2 years. This has been increased to 5 years to reflect the industry standard.
- The format and content of the ‘Statement of Significance’ has been modified to clarify the difference between heritage values, and heritage attributes, and the context in which both values and attributes should be considered. This has been modified as a result of the submissions received from both HCWA and Kelsall Binet Architects.
- The Statement of Heritage Impact criteria have been modified slightly to be more consistent with the HCWA guide for preparation of Heritage Impact Statements.
- Clause 3.1.4 has been modified to clarify the content and purpose of the Statement of Conservation.
- Clause 3.2 Table 4 has been simplified to better clarify the situations where the different levels of assessment are required.

- Clause 3.2 has been modified to include some discretionary criteria to consider when determining the level and detail of the heritage assessment. This will allow for the detail of the assessment to vary based on the significance of the place and the scope of the development proposal.

The adoption of this policy in its modified form will achieve the following key objectives:

- Greater consistency and objectivity in the assessment of heritage impacts relating to planning applications;
- The compilation over time of a detailed record of heritage evidence and evolving values of all listed places thus establishing a database which will become a readily available community resource to easily verify the significance and assist in tracking the evolution of places included on the City's heritage list;
- Identification of the scope and standards for the essential conservation of buildings on the heritage list;
- Clear guidance for officers without heritage expertise in assessing planning applications involving places on the heritage list; and
- A clear guide to the community and developers as to the criteria on which a heritage impact assessment is based.

It is considered that the three 'statements' required by the policy will allow the reader of the heritage assessment to clearly understand the significance of the place, the impact of the development on the place, and the essential conservation works required to preserve and improve the place. This understanding can then be used by officers to provide make an informed decision on planning applications, whilst contributing to the City's database of heritage places, and advising the property owners of the essential works for conserving their property.

DBH13 – Impact of Developments on Heritage Places Policy

DBH13 was adopted by Council in November 2002, and was prepared with the intention of setting out a procedure for preparation of heritage impact statements in planning development assessments. LPP 1.6 serves a similar purpose, albeit in a more succinct and prescriptive manner, by clearly specifying the three 'statements' as discussed above.

It is therefore considered appropriate that LPP 1.6 replace DBH13 as the recognised procedure for obtaining expert heritage advice.

DHB10 – Preservation of Historic Buildings

DBH10 was adopted by Council in April 1971, and was most recently reviewed in April 1999.

It appears as though this policy were prepared more as a strategic document to guide the preparation of strategies and development control policies, as well as to assist in the interpretation of the (former) TPS3.

The stated objectives of this policy are to:

- a) *Define the scope and nature of the cultural heritage and its conservation;*
- b) *Guide the interpretation of the purposes and provisions of the Town Planning Scheme in matters relating to the conservation of the cultural heritage; in conservation of those places, objects and things that are, or that have the propensity to become, of cultural heritage significance, as that term is defined herein;*
- c) *Guide in the identification of classes of places and development proposals with respect to which the City will use its discretionary powers to vary ordinary standards, and with respect to which the City will support similar departures by other approving authorities, for the purposes of heritage conservation;*
- d) *Where the City has a statutory obligation to assist, refer to, or seek advice from another approving or advisory heritage authority (whether in relation to a development proposal or not, and especially where the triggering of such action involves a judgment of significance by Council and not the other authority), to guide in the identification of relevant cases of cultural heritage significance;*
- e) *To provide a common terminology to serve the Town Planning Scheme and other strategic conservation and cultural development measures (not necessarily encompassed by the TPS) that are made with the objectives of good local government in the municipality.*

Whilst the stated objectives of this policy are quite different from the objectives of LPP 1.6, it is noted that a number of these policy provisions have become redundant with the adoption of the Municipal Heritage Inventory in October 2000, the gazettal of LPS4 in March 2007 and subsequent adoption of the Heritage List, and various other local planning policies that have heritage specific provisions. Therefore as part of the City's continuing policy review program, it is recommended that planning policy DBH10 be revoked upon adoption of LPP 1.6.

STRATEGIC AND POLICY IMPLICATIONS

Planning policies must be consistent with the Local Planning Scheme and the Scheme will prevail to the extent of any inconsistencies (clause 2.3.1). The review of this policy represents further progress in the City's policy review.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority required.

LEGISLATIVE AND LEGAL CONSIDERATIONS

A Local Planning Policy does not form part of the Scheme and cannot bind the Council in respect of any application for planning approval. However, Council is required to have due regard to the provisions and objectives of the policy in making a determination on a planning matter.

CONCLUSION

The amended policy has been formulated to address current issues surrounding the consistency and interpretation of heritage reports and, as part of Council's on-going policy review, to ensure that all Council policies are consistent with the Scheme and other legislative requirements. It is recommended that the modified policy be adopted as printed below. It is recommended that the superseded policies discussed above be revoked in accordance with the Scheme upon final adoption of this policy.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Cr R Fittock

That Council:

- 1. Adopt draft Local Planning Policy LPP 1.6 'Obtaining Expert Heritage Advice' as printed below:**

CITY OF FREMANTLE

LOCAL PLANNING POLICY 1.6

PREPARATION OF HERITAGE ASSESSMENTS

ADOPTION DATE: TBA

AUTHORITY: LOCAL PLANNING SCHEME NO.4

STATUTORY BACKGROUND

Clause 10.2.1 of the Scheme prescribes the matters to which the Council is required to afford due regard in considering a proposal. Included amongst these matters are any potential impacts that a proposal may have on the heritage values of an existing place and its context including the streetscape and/or heritage area.

Clause 7.4 of the Scheme prescribes that the Council may require a heritage assessment to be carried out prior to the approval of any development proposed in a heritage area or in respect of a heritage place listed on the Heritage List.

In order to meet its obligations to assess various statutory planning proposals the Council will from time to time include specific expert advice on heritage matters as part of the planning assessment. In this policy, the term 'proposals' includes planning applications, Structure Plans, Detailed Area Plans and Town Planning Scheme amendment proposals.

PURPOSE

The purpose of this policy is to address the following matters relating to the seeking of expert heritage advice.

- What information should the heritage assessment provide?
- When is a heritage assessment required?
- Who should prepare the heritage assessment?

This policy statement does not attempt to provide guidance on how the Heritage Assessment should be utilised or interpreted in the assessment of development proposals.

Any Heritage Assessment provided or obtained in accordance with this policy will be considered a public document for the purpose of the assessment of planning applications.

All terms and definitions related to heritage used in this policy are based on the terms used in *"The Burra Charter 1999 – the Australia ICOMOS Charter for Places of Cultural Significance"*.

POLICY

3.1 Content of Heritage Assessment

3.1.1 A Heritage Assessment may consist of the following components:

1. Statement of Significance
2. Statement of Heritage Impact
3. Statement of Conservation

Each of the three statements shall be provided as required in Table 4 of this policy.

3.1.2 Statement of Significance

A statement of significance should define the heritage values embodied in a place. It should be prepared by investigation of the place and of the records associated with it and include assessment of the aesthetic, historic, scientific and social/spiritual values for past, present and future generations.

Where a heritage place has a conservation management plan or similar that has been endorsed by Council within the previous five calendar years, the statement of significance shall have due regard to the conservation management plan.

As a minimum requirement, the consultant shall undertake the following research in the preparation of the statement of significance:

- Research of historical documents (such as rates books, archives etc)
- Site inspection

Additional research may be required at the discretion of the Council's Heritage Planner, or City Heritage Architect.

The Statement of significance shall be prepared in the following format:

1. Description of the Place

2. Heritage Values

Heritage values and attributes should be considered in the context of the following:

- Fabric
- Setting
- Use
- Associations
- Meaning

Table 1

Heritage values	
Aesthetic	
Historic	
Social	
Scientific	
Heritage Attributes	
Rarity	
Representativeness	
Integrity	
Authenticity	

3. Heritage Significance

Table 2

Significance			
Exceptional	Considerable	Some	Limited or none
<p>Comments:</p> <p><i>The consultant shall identify the overall significance of the place using the above categories, and identify zones of significance within the place itself, and within a local context.</i></p>			

3.1.3 Statement of Heritage Impact

The Statement of Heritage Impact examines the impact of the proposed development on the heritage significance of the place, and includes a discretionary value judgment concerning the impact of the proposal on the identified heritage values of the place.

The Statement of Heritage Impact shall be prepared in the following format:

Table 3

How does the proposed development impact on the heritage significance of the place with regard to the following criteria:	
Degree of change (positive and negative) on the place in light of its heritage significance.	
Degree of permanent impact (irreversible loss of value) that the proposal is likely to have on the heritage significance of the place	
Compatibility with heritage building in terms of scale, bulk, height – the degree to which the proposal dominates, is integrated with, or is subservient to a heritage place	
Compatibility with the streetscape and/or heritage area in terms of the siting, local architectural patterns, and the degree of harmonised integration of old and new.	
Compatibility with heritage building in terms of the design solutions and architectural language such as refinement and finesse of detailing, texture, materials, finishes and quality of craftsmanship.	
Degree of impact on the important public views, vistas, landmarks, landscape features	

3.1.4 Statement of Conservation

Statement of *conservation* should define all essential processes of looking after a place (*preservation, restoration, reconstruction, adaptation, maintenance and interpretation of a place*) so as to retain its *cultural significance*.

This part of the assessment is not based on the proposed development, but identifies the conservation works required, and guides future fabric retention, adaptation and reuse.

The Statement of Conservation shall contain the following elements:

1. A condition analysis
2. Identification of conservation works required
3. Recommendations as to the future fabric retention, adaptation and reuse.

The recommendations arising from the Statement of Conservation are to be used for future reference, and to advise and guide the property owners in the appropriate development of the place in the future. The statement of conservation does not necessarily inform the determination of the proposal, unless upgrade or restoration of the existing heritage place forms part of the application.

3.2 Circumstances where a Heritage Assessment will be undertaken

Unless previously obtained on another relevant proposal within two calendar years of the date of application, the Council will undertake heritage assessment in accordance with Table 4 below.

Where a proposal falls within two columns under this table the higher level of assessment shall be undertaken.

Table 4

	State Register of Heritage Places or Heritage List or Category 1 on MHI	Heritage List (Category 2 and 3 on MHI)	Within or adjacent to West End Conservation Area	Where not on Heritage List
Statement of significance	Required unless existing	Always required unless minor development	Always required unless minor development	Demolition of a primary structure only
Statement of heritage impact	Required	Always required unless minor development	Always required unless minor development	Demolition of a primary structure only
Statement of conservation	Required	Required where on Level 2 only	Not required	Not required

3.2.1 Notwithstanding the above, a heritage assessment may be carried out where, in the opinion of the Council, a proposal has the potential to significantly alter a place of heritage significance that is not listed on the Heritage List.

3.2.2 For the purposes of this policy, minor development means–

- (i) Small scale *new* structures on the subject site which are not attached to the building (such as sheds or outbuildings) which are located out of the front setback area.
- (ii) Ancillary lightweight structures added to buildings (such as timber patios, sails, pergolas) which are located out of the front setback area.
- (iii) Fixtures to buildings (such as antennae, aerials, air conditioning units, solar panels, signs), which do not face the street and do not involve any significant structural alteration to the building (i.e. – are simply fixed to the structure by bolts or nails)
- (iv) non structural internal changes.

3.3 Who does the Heritage Assessment?

3.3.1 A Heritage Assessment may be undertaken either:

- 1. In house - A suitably qualified employee of the Council (i.e. Heritage Planner, City Heritage Architect); or
- 2. Independent - A suitably qualified expert heritage consultant engaged by the City specifically to undertake the heritage assessment. The heritage consultant shall be selected from the City’s endorsed panel of heritage experts.

3.3.2 The decision to request an independent heritage assessment is at the discretion of the Council’s Heritage Planner, City Heritage Architect, or Manager Development Services.

2. In accordance with Clause 2.5 of the City’s Local Planning Scheme No.4, revoke the following planning policies:

- **DBH10 – *Preservation of Historic Buildings, and***
- **DBH13 – *Impact of Developments on Heritage Places Policy***

CARRIED: 6/0

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

CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

THE DEPUTY PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 7.11 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.

How consultative processes work at the City of Fremantle	
	Decisions must also be made in accordance with any statute that applies or within the 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.

How consultative processes work at the City of Fremantle	
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 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.

City of Fremantle

MINUTES ATTACHMENTS

Planning Services Committee

Wednesday, 18 February 2009



ATTACHMENT 1
Submission from Michael Mondello relating to PSC0902-29

Additions & Alterations at 140 South Terrace (Lot 123) PSC 0902-29

Hello Mr Mayor & committee members,

In the agenda for Wed night you will see the officer's recommendation (2) Page 54 being that my proposed glass screening be refused. I ask the committee to allow the screens for the following reasons:-

1. A railing to 1000 above deck must be fitted to pass the Australian Building Code requirements. Attached is a picture showing how low the wall is. As you can see it is just too dangerous the way it is now; people can easily fall over. The screens would act as a wind break.
2. Putting a railing/screen 1000 back from the wall fixed to the deck would be difficult as the structure would still need to be braced back to the parapet.
3. The proposed glass screens & railing have been engineer designed & certified. The parapet is strong enough to take screens higher than that proposed. They will not damage original fabric of the building.
4. The Burra Charter states in article 15.2 that alterations may be made to a building when such alterations can be reversed. The screens & rail are bolted on and can be removed without damage to the parapet.
5. I feel that the best material to be used would be glass because you can see right through. It will not have a top rail so it won't block anything. From the south the building has the hospital behind it. The railing & screening will be lost in the glass & brick of the hospital façade. The ability of a viewer to appreciate the cultural significance & the original architecture will not be diminished. Note: the Madonna's building has had its fabric extensively destroyed and the Metropolis building has an unsympathetic balcony added which hides the original gable. My proposal will have nothing like the negative impact of either of those two.

I would really appreciate it if you could move that the officers recommendation for refusal of the screens & railing be deleted and the wording altered to allow my proposal.



Sincerely,
Michael Mondello Ph 0411 401 700

ATTACHMENT 2**Submission from Mark Heap relating to PSC0902-33**

PSC0902-33 Solomon Street No. 74 (Lot 5) Fremantle – Rear Addition to Single House – (BC A236/08)

Attention Brett Cammell

I am writing in response to our discussions on Friday 13th February 2009. I have now also had the opportunity to read the document, “AGENDA – Planning Services Committee, 18th February 2009”.

Executive Summary

I accept that the proposed development at 74 Solomon Street has met many of the City of Fremantle Planning and Design conditions. My intention is not to be obstructive but I do feel that some serious issues need to be considered.

There are four main issues that need to be addressed:

- Inappropriate application of Residential Design Clause 6.3.2 A2
- Impact of Development on Heritage Places. As planned, the proposal will require significant excavation at the toe of a limestone wall of “heritage significance”. The proposed wall needs to be setback from the surveyed boundary by a very minimum of 480mm to avoid contact with the limestone wall in question. I requested a 600mm setback in my original submission.
- Reduction in light entering habitable room.
- Geotechnical risk. If the toe of the wall is undermined at all, there is a risk that destabilisation and cracking of the slab supporting the bathroom at 76 Solomon Street will occur. A geotechnical investigation needs to be undertaken.

I feel that the best approach is to address each of the issues raised in sequence under the appropriate headings.

Page 75, Planning Comment, Residential Design Codes, Boundary Setbacks, 6.3.2. Buildings on Boundary.

The policy states, “where the wall is proposed to abut an existing or simultaneously constructed **boundary wall** of similar or greater dimensions”.

I do not believe the intention of the Policy is for the sum of the dimensions of the structures to be considered. Clearly, the 76 Solomon Street boundary structures are three separate entities: the bathroom addition, the existing brick toilet and the limestone wall. The brick toilet is a separate structure. It is set back further from the boundary it is of differing height and is separated by about 10cm.

Photo 1



It is inappropriate to link this to the bathroom addition and the limestone wall. The true comparison should be comparing the rear weatherboard construction with the proposed structure.

Weatherboard Structure	5.7m long 3.0m high
Weatherboard Structure and wall	5.7m long 4.3m high
Proposed Structure	8.2m long 3.7m high

Clearly, the proposed structure is considerably larger and is ineligible to be assessed using the amended policy. It should be assessed using the provisions in clause 6.3.2 A2. Previously, due to the height and length ratio of the subject wall, this proposed development was rejected.

Further, the final paragraph of the revised policy, "Application of Performance Criteria" clearly states. " In considering any application under the performance criteria in clause 6.3.2 P2 of the Residential Design Codes, the Council **will have particular regard to comments made by neighbouring owners/occupiers of adjoining properties, and will only consider these criteria to be met where it is satisfied that no adverse impacts on the amenity of the neighbouring property will occur.**"

Page 76 Council Policies, DBH13 Impact of Development on Heritage Places

The three paragraphs below have been taken from the "AGENDA-Planning Services Committee, 18th February 2009" document:

"The proposed boundary wall of the addition (defined as boundary wall as per Boundary Walls in Residential Development policy) is to be constructed at the base of the limestone retaining wall."

"Consequently the proposed rear addition is able to be constructed without altering the limestone retaining wall."

“Overall the proposed rear addition is not anticipated to impact on the preservation of the existing limestone walls that have been identified as of heritage significance on the subject site.”

The above three paragraphs are fundamentally incorrect. These comments have been written without scrutiny of the survey commissioned by the residents of 74 Solomon Street.

The survey was undertaken by McMullennolan Pty Ltd, licensed surveyors on 19/6/08. Please refer to Figure 1.

Figure 1 shows an enlarged portion of the survey plan. The plan was originally drawn at 1:150 scale. The critical measurements have been taken from the original A3 document. The enlarged plan shows the toe of the slope and boundary. To the west of the weatherboard building, the survey clearly shows that there is in excess of 480mm of limestone wall. If the building were constructed as proposed in excess of 180mm of the heritage wall would have to be excavated.

To further confirm this a further, more detailed survey and plan has been completed. Please refer to Figure 2.

This accurate survey further confirms the findings of the survey undertaken by the licensed surveyor.

As further evidence, it is clear from the attached photograph that the slope steps out considerably towards the toe, particularly to the west of the wall.

Please refer to Photo 2

Photo 2



The wall cannot be constructed as proposed without considerable excavation and removal of the limestone heritage wall. This can not be avoided and must be addressed.

Page 76, Submissions, Obstruction of Direct Light into Northern Window of Bathroom Addition.

I do not accept the survey in the first instance. My own measurements from the survey pegs located from a survey undertaken on the purchase of the property indicates that the eastern most corner of my recent bathroom addition encroaches on the boundary by 90mm and not 160mm. To put this in relative context my north eastern boundary is encroached by Lot 8 by 1555mm (1.555 metres)!

I want it to be clear that I did have discussions with the residents of 74 Solomon Street prior to installing the fire rated window at a cost of \$4500. They mentioned their proposed construction. At that stage the wall was not going to be as high, although higher than I originally thought. As a consequence of my discussions I elevated the height of the window by approximately 400mm. Evidence of the repositioning of this window can be seen in the photo below.

Photo 3



The residents of 74 Solomon St were unclear about what was to be constructed. There was mention that the proposed roof line would continue along the existing gutter line with a "hip" in the alignment. This "hip" I assumed, would bring the gutter line below my bathroom window. Nothing was mentioned as the newly positioned window was put in place.

It also needs to be noted that, for at least 50 years, a construction has existed in the exact place of my new bathroom addition. I have used the same footprint in my recent construction.

It is obvious that the proposed development will severely impact on light entering the northern fire rated window in the bathroom. This seems to be justified to some extent as it is not considered to be a "habitable room" as defined by the R-Codes.

The impact of light entering my living room has not been considered. Obviously, this is a habitable room. A lot of northern light enters the living room through a glass paned wooden door with window above. Please see Photo 4.

Photo 4



Due to the height and close proximity of the proposed boundary wall some the quality of light will be reduced at some times of the day. The room is already quite dark.

Page 77, Submissions, Obstruction of Access for Maintenance of Wooden Weatherboard External Wall.

Perhaps it should be prohibited to construct boundary walls of materials that require maintenance. As has been mentioned, construction in this manner is permitted by the BCA. The construction was approved by FCC Planning and Building Departments. This potential problem was not noticed by myself or any of the Planning professionals at FCC. I simply and diligently went through the Planning and Building Licence process expecting there to be no future problems.

The proposed development will not only “restrict” access and maintenance to the weatherboard wall but **prevent** it. It will also prevent access and maintenance to the fire rated window. Even if 300mm gap were maintained for the full length of the wall it would still be too narrow to allow replacement of weatherboards.

Geotechnical Considerations

As well as the discussion on the heritage nature of the subject boundary wall, I have grave concerns on the stability of the limestone wall should the toe of the slope be excavated.

I am aware of this issue as I work as a geotechnical engineer for a major group of international geotechnical consultants based in Perth. My earlier career was concerned with civil investigations, although latterly, I have become more involved in mine site issues. I feel certain that no geotechnical practitioner would advocate excavation at the toe of such a slope. The main risk is destabilising the limestone wall and the risk of major wedge or block failure defined by inherent structures in the base of the wall. If undermining of the wall were allowed it could lead to failure of the slab supporting my renovated bathroom.

The wall is constructed of in situ as well as cemented limestone debris. A full geotechnical investigation needs to be undertaken if it is intended to remove any limestone at the toe of this boundary wall.

Background and Discussion

Last year, throughout my construction works, I kept the neighbours informed, including the construction of the fire rated window. The height and dimensions were obvious as it was installed.

When the planning submission was made from the residents of 74 Solomon Street, I was very surprised at how close they wanted to build.

Towards the end of last year, I spoke with the architect employed by the residents of 74 Solomon Street. I was assured that the plans were going to be revised so that the proposed roof line would fall below the sill height of my newly installed fire rated window. This revised design did not appear. Instead, a new design with very little compromise has been submitted.

Figure 1

Reduction in size of this plan has been necessary for inclusion in this report. As a result, scale measurements from this plan will not be accurate.

Survey of Heritage Limestone Wall between 76 and 74 Solomon Street
PLAN VIEW

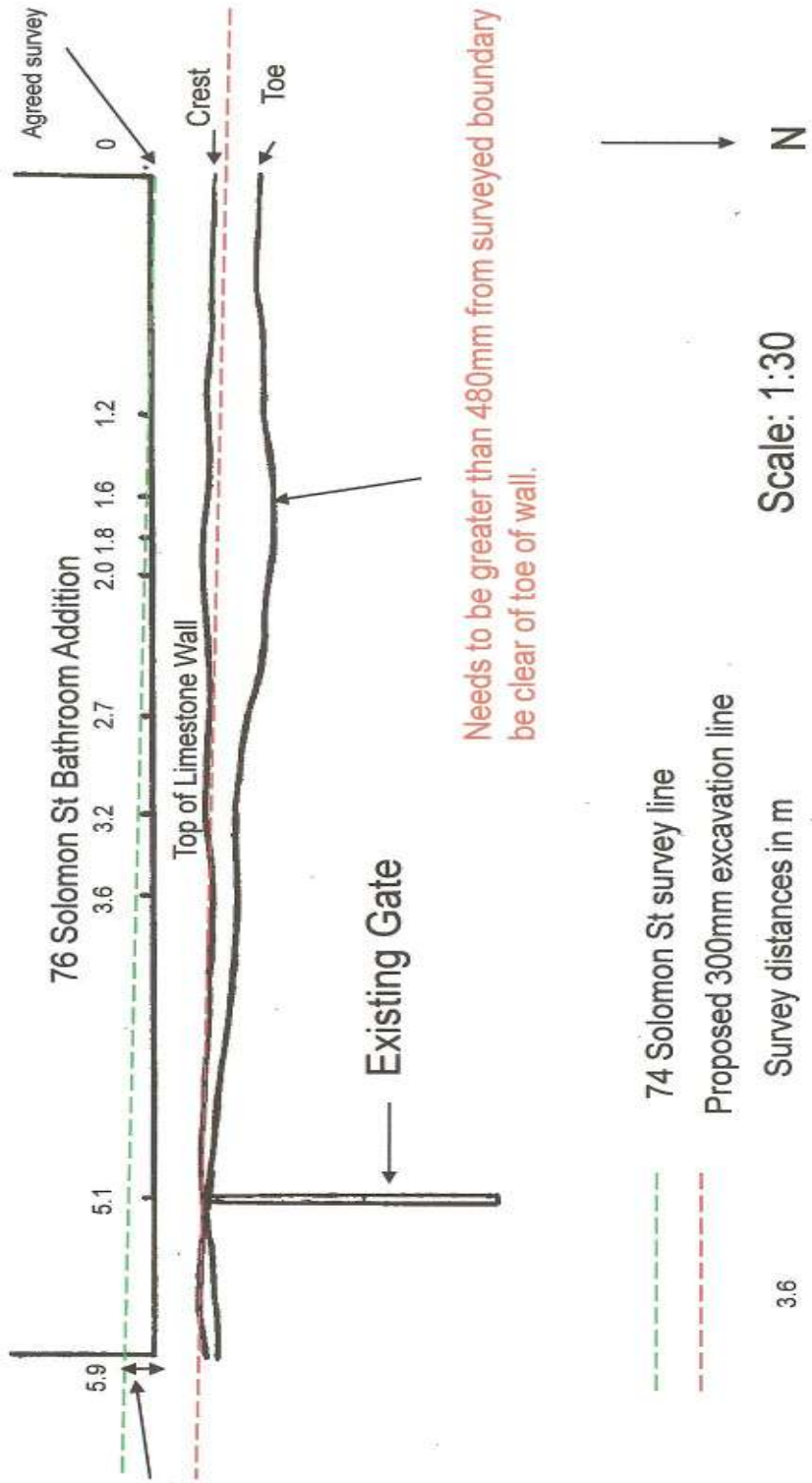
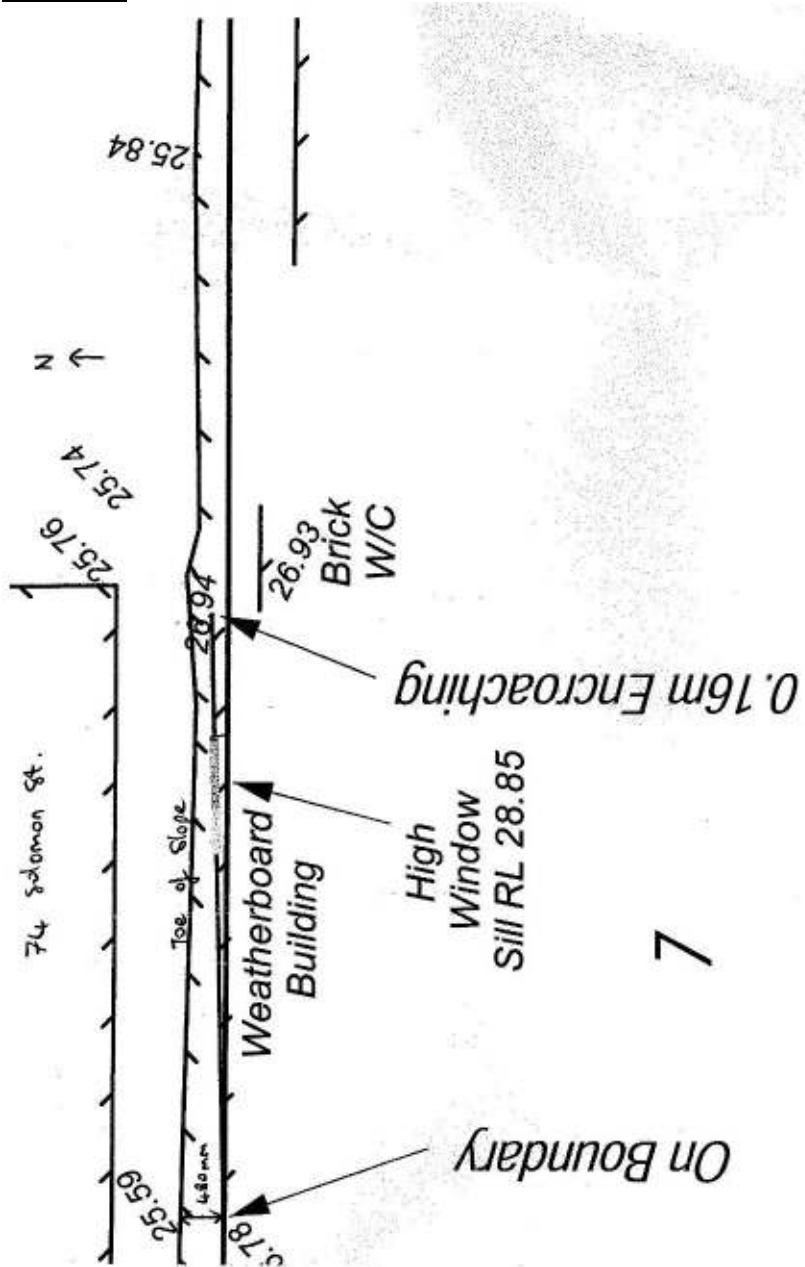


Figure 2



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