

City of Fremantle

MINUTES

Planning Services Committee

Wednesday, 18 March 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 March 2009 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open at 6.01 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
Cr Jon Strachan	South Ward (<i>entered 6.28pm</i>)
Cr Bill Massie	Hilton Ward
Cr John Alberti	Beaconsfield Ward
Mr Philip St John	Director Planning and Development Services
Mr Paul Garbett	Manager Planning Projects and Policy
Mr Steve Sullivan	Statutory Planning Coordinator
Ms Agnieszka Kiera	Heritage Architect
Mrs Tanya Toon-Poynton	Minute Secretary

There were approximately 16 members of the public and 1 member of the press in attendance.

APOLOGIES

Cr Brad Pettitt

LEAVE OF ABSENCE

Cr John Dowson

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

PUBLIC QUESTION TIME

Nil

DEPUTATIONS / PRESENTATIONS

The following member of the public spoke against item PSC0903-46:

Sally Pearse

The following member of the public spoke in favour of item PSC0903-47:

Ian Scott

The following members of the public spoke against item PSC0903-47:

Karen Kirby

Andrew Dunnet

Tania Ferrier

Tim Darby

Chad Headley

Tony Calalesina

The following members of the public spoke in favour of item PSC0903-51:

Jonathan Richards

Rod Reid

The following member of the public spoke in favour of item PSC0903-51:

Darryl Black

The following member/s of the public spoke against item PSC0903-53:

Alex Gregg

DISCLOSURES OF INTEREST BY MEMBERS

Mayor, Peter Tagliaferri declared an impartiality interest in item number PSC0903-55 but stated that he will make an impartial decision on this matter.

LATE ITEMS NOTED

Nil

CONFIRMATION OF MINUTES

MOVED: Mayor, Peter Tagliaferri

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

CARRIED: 5/0

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

TABLED DOCUMENTS

Nil

DEFERRED ITEMS (COMMITTEE DELEGATION)

The following item is subject to clause 1.1 and 2.1 of the City of Fremantle Delegated Authority Register

PSC0903-46 HIGH STREET, NO. 186 (LOT 8) BEACONSFIELD - STATE ADMINISTRATIVE TRIBUNAL REQUEST TO CONSIDER FURTHER INFORMATION FOR ADDITIONS TO EXISTING GROUPED DWELLING (STUDIO) AND CARPORT (AT DA199/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Council
Previous Item Number/s: PSC0811-308
Attachments:
 1. Development plans
 2. Further information received.
Date Received: Further information received 20 February 2009
Owner Name: S Pearse
Submitted by: Kensington Design Australia Pty Ltd
Scheme: Residential – R25
Heritage Listing: State Heritage List, City’s Heritage List, Level 1A on MHI
Existing Landuse: Grouped Dwelling



EXECUTIVE SUMMARY

This application is presented to the Planning Services Committee as the State Administrative Tribunal has requested the City consider the additional information provided by the Applicant in support of the application for review of Condition 6 of Planning Approval DA199/08. The application requested Planning Approval to undertake additions to an existing Grouped Dwelling (Studio) and for the construction of a carport at No. 186 High Street, Fremantle. Condition 6 of this Planning Approval requires the retention of the existing Olive tree.

The additional information provided to the City by the Applicant includes an Arborist's report and an email to the Department and Planning and Infrastructure regarding the recommended conditions of subdivision for No. 186 High Street, Fremantle.

The Olive tree is not referenced within any heritage documentation relating to the City or the Heritage Council of Western Australia and the tree has not been required to be retained by the Heritage Council of Western Australia or via a condition of subdivision approval. The retention of the tree may adversely impact the energy efficiency values of the proposed additions and will shade the majority of the primary outdoor living area on the subject site. Additionally, the close proximity of the approved additions to the Olive tree trunk may have an impact upon the health of the tree.

It is recommended that Council resolve to refer the matter back to the State Administrative Tribunal with a recommendation to alter Condition 6 of Planning Approval DA199/08.

BACKGROUND

On 9 December 2008 the City granted approval for the construction of two storey additions to an existing grouped dwelling (studio) and carport at No. 186 High Street, Fremantle (this site is now legally known as 2A Ord Street, Fremantle). This approval included the following condition:

- 6 *That the existing olive tree and the majority of its canopy be retained in-situ and that all works on site be done in a manner which protects the olive tree.*

On 7 January 2009 the City received a copy of the application to the State Administrative Tribunal pursuant to Section 250(1) of the *Planning and Development Act 2005* for a review of the decision of Council to impose the above Condition 6. The applicant seeks that this condition be removed. The reasons for the application for review outlined within the appeal document include:

1. *The Olive tree is not listed on the State, Commonwealth or Community registers of heritage significance.*
2. *The City of Fremantle has not included the Olive tree on the Local Government Inventory or Municipal Inventory for Preservation.*
3. *The retention of the Olive tree was not a condition of the subdivision. The lot was created without any burden or encumbrances except for the 'R Codes'.*

4. *The Heritage Council of WA has approved the proposed development including the removal of the Olive tree.*
5. *The proposed additions have been designed with a north facing courtyard for solar access. The tree is not deciduous and covers the entire courtyard.*
6. *The tree is misshapen due to inappropriate pruning.*
7. *Six seedlings have been propagated from this tree to be planted in more appropriate positions.*
8. *Professor George Sedden, the Developer, was of the view the Olive tree would be removed to allow for successful development of the site.*

The City's Officers attended a Directions Hearing at the State Administrative Tribunal (SAT) on 28 January 2009. The following Orders were issued as a result of this hearing:

1. *The applicant is to provide any additional information and arguments in respect to condition 6 of the respondent's planning approval dated 9 December 2008 to the respondent by Wednesday, 18 February 2009.*
2. *The respondent is to consider the additional information and arguments at its meeting of 25 March 2009.*
3. *The matter is listed for directions hearing on Tuesday, 31 March 2009 at 11am.*

The applicant subsequently provided the following information:

1. *The approval from the Heritage Council of Western Australia,*
2. *The Heritage Impact Report by Heritage and Conservation Professionals,*
3. *An arboriculture Report by John Banks, and*
4. *Email to Department of Planning and Infrastructure objecting to City of Fremantle's recommended conditions of survey strata subdivision.*

These documents are all included within Attachment 2 to this report. In addition to this information, the Applicant has stated that the primary reason for the appeal of Condition 6 is due to:

The proposed additions have been designed to give the best solar access to the north facing outdoor living courtyard and all living areas. The outdoor living courtyard is a fundamental feature of the design and is positioned to afford protection from the south westerly winds while also affording privacy and sound protection from the busy traffic on Ord Street.

At the time of the original application, the City's records listed the subject site as No. 186 High Street, Fremantle, however since this time the City's records have been updated to correspond with the endorsed subdivision plan for this site and the subject site is now known as No. 2A Ord Street, Fremantle.

CONSULTATION

Community

The original planning application was advertised under the now rescinded policy D.A5: Notification and Advertising of Development Applications. At the conclusion of the advertising period, being 2 June 2008, no submission had been received.

However at the request of the Council on 22 October 2008 due to the WA Museum stating they did not receive the City's advertising letter, this party was given the opportunity to view the plans and provide comment.

The relevant comments received from the WA Museum relating to Condition 6 included a recommendation that the Olive tree be retained or alternatively the applicant be required to document the original plantings and propagate and plant new seedlings.

Heritage and Special Places Advisory Committee

The application for Planning Approval was considered at the Heritage and Special Places Advisory Committee meeting of 3 June 2008. The Committee resolved as follows:

The proposed additions to the studio should be redesigned and reduced in scale and the significant olive tree should be retained in situ within the existing raised garden bed.

Heritage Council of Western Australia

The application for Planning Approval was referred to the Heritage Council of WA (HCWA) as the subject site is listed on the State Heritage Register. HCWA resolved in a letter dated 24 September 2008 to advise that the development was supported subject to two conditions:

1. *A feature survey and photographic survey record of the garden is to be prepared by a qualified heritage professional prior to the commencement of works.*
2. *The preparation and submission of proposed colour scheme and material palette.*

This letter has been re-submitted by the Applicant as grounds to support the removal of Condition 6.

Applicant's Heritage Assessment

The Applicant obtained a report from the Heritage and Conservation Professionals in support of their application for Planning Approval. This document acknowledges that the proposed works '*will result in the loss of an early Olive tree. To compensate for this, the applicant has propagated some new trees from the existing tree to be used in future landscaping*'. This document has been re-submitted by the Applicant as grounds to support the removal of Condition 6.

Arborist's Report

The Applicant obtained a report from John Banks who is an Arboricultural Consultant regarding the impact the previous pruning of the tree has had on its form. The conclusion of this report is as follows:

The Olive naturally grows into a short, squat tree with heights varying from 8 – 15 metres with a stout, gnarled trunk and a broad domed canopy.

As a result of the lopping, the flowing lines of the branches of the subject tree have been suddenly interrupted and, instead, masses of dense water shoots now arise prolifically from the bollings and stubs.

Furthermore, larger water shoots grow vertically from the sub-leaders lower down and which have further served to compromise the 'architecture' (natural branch work) of the tree.

The lopping that was inflicted on the tree has conspicuously reduced its natural, broad domed form. Coincidentally, it has reduced its canopy diameter (spread). The tree has, however, subsequently 'addressed' its loss of height through the development of the tall growing water shoots.

It would be reasonable to state that a result of the lopping, the tree would appear appreciably less attractive than it did previously. It should be noted that an Olive tree can be pruned properly to change its natural form to any of a number of 'cultivated' forms and which will still appear attractive. The 'cultivated' form that has resulted from the lopping of the subject tree, however, is neither attractive nor aesthetically pleasing.

Whilst it would be possible to remove the large water shoots which grow from the sub-leaders, they would eventually grow back.

It would only be possible to remove the profusion of water shoots that have arisen from the bollings and stubs by again lopping the tree. If this was done, however, the tree would appear even less attractive than it does currently.

If the water shoots that grow from the sub-leaders were removed and the tree was again lopped to remove the water shoots that grow from the bollings and stubs, it would appear extremely unsightly and, effectively, not unlike a hat rack.

Department of Planning and Infrastructure

The Applicant submitted an email from Ralph Hoare on behalf of the previous owners of the subject site to the Department of Planning and Infrastructure (DPI) dated 19 October 2003 in which two of the City's recommended conditions to the DPI relating to the requirement to provide design guidelines for proposed strata lots 6 and 8 were objected to. Following this email the Western Australian Planning Commission (WAPC) conditionally approved the survey strata subdivision on 2 January 2007 and included the following advice note to the City:

The Commission considered the City's recommendation for the preparation of design guidelines and Management Statement pertaining to the guidelines. The requirements are not imposed given that the City and the Heritage Council of WA will be able to give full consideration to any future developments on the proposed lots in accordance with the local scheme and Heritage of Western Australia Act. The proposed lots will also be subject to a memorial that has been lodged by the Heritage Council of WA which will ensure that landowners are adequately notified of the heritage significance of the property.

PLANNING COMMENT

The SAT has the ability under Section 31 of the State Administrative Act 2004 to refer an application back to the City to reconsider a decision. However, in this case the SAT has not sent the application back under Section 31 instead requesting that the City '*consider the additional information and arguments*'.

As a result, the City is unable to reconsider its decision to approve the development the subject of the planning approval and is instead required to consider the additional information provided by the Applicant in relation to Condition 6 which requires the retention of the Olive tree.

The previous planning report provided the following assessment of the application with respect to the retention of the Olive tree:

The second bullet point of discussion included within the Heritage and Special Places Advisory Committee minutes was with regards to the retention of the olive tree. As outlined above, the retention of the existing olive tree has been discussed with the applicant who has stated that this may be possible if required, to retain the existing olive tree with a reduced canopy as part of the current development however the applicant would prefer to remove the tree. The applicant has also noted that she has been propagating seedlings from the existing tree to plant in other locations on the site should the tree be allowed to be removed.

It is acknowledged that the State heritage listing of the subject site does provide some protection of the vegetation on the site, however it should be noted that the Heritage Council's entry for the subject site does not list any of the vegetation as being of particular special significance and predominantly refers only to the buildings on the site. Furthermore, the Heritage Council have provided their conditional support to the development with no mention of the retention of the olive tree. Consequently, it is considered that the removal of the tree to enable development of the site would be supported.

In addition to the above, the applicant has also stated in the application for review to SAT that Condition 6 should be removed as the retention of the tree was not a condition of the subdivision of 186 High Street, the tree will block out the solar access to the north facing courtyard, the tree is misshapen due to inappropriate pruning and the developer of the site was aware that the tree would need to be removed. The Arborist's report has also stated that the tree is '*neither attractive nor aesthetically pleasing*'.

The Olive tree is not included on the City's Heritage List or referenced within the State Heritage listing documentation prepared by the HCWA. Furthermore the tree's retention was not required by HCWA or via condition of subdivision approval.

The provisions of clause 10.2.1(ze) of LPS4 requires Council, when considering an application for Planning Approval to have due regard to:

"whether adequate provision has been made for the landscaping of the land to which the planning application relates and whether any tree or other vegetation on the land should be preserved including adjacent verge trees;

When dealing with “living” matters such as trees, there will ultimately be a time when the tree:

- will die through natural causes;
- is required to be removed for safety reasons (failing health of the tree); or
- is required to be removed as a consequence of damage to structures through the root system of the tree or overhanging branches, etc.

It is noted that the proposed additions to the existing Studio building were approved in close proximity to the Olive tree trunk (approximately 1.3m), rather than requiring the addition to be modified to protect the root system or the rain line of the tree. This decision is likely to impact upon the root structure/tree canopy of the tree and possibly lead to its deterioration in health in the future.

Further, given the location of the non-deciduous tree within the northern facing courtyard, the retention of the tree will result in shading of the primary outdoor living area and major openings on the northern elevation, thereby compromising the energy efficiency of the dwelling.

There are reasons for both sides of the argument in terms of whether the tree should be retained or removed. Options would be to either:

1. permit the removal of the tree;
2. retain the tree; or
3. undertake measures that would seek to assist in the retention of the tree, however, acknowledging that the tree has a limited life (whatever that time is) and that building works have been permitted in close proximity to the base of the tree which could affect the health or life of the existing tree.

CONCLUSION

The Olive tree is not referenced within any heritage documentation relating to the City or the HCWA and the tree has not been required to be retained by the HCWA or via a condition of subdivision approval.

Approval has been granted to the proposed development with the approved additions being permitted to be in close proximity to the Olive tree trunk and root system. The works that are required to be undertaken may have an adverse impact upon the health of the tree.

Further, the retention of the tree may adversely impact the energy efficiency values of the proposed additions and will shade the majority of the primary outdoor living area on the subject site.

Based on the preceding information, it is recommended that Council resolve to refer the matter back to the State Administrative Tribunal with a recommendation to alter Condition 6 of Planning Approval DA199/08.

OFFICER'S RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

That Council REFER the matter to the State Administrative Tribunal with a recommendation to ALTER Condition 6 of Planning Approval DA199/08 to undertake Two Storey Additions to Existing Grouped Dwelling (Studio) and Carport to read as follows:

- 6 That the applicant undertakes measures to assist in the retention of the existing olive tree and the majority of its canopy in-situ. In the event that the works permitted by this approval which are in close proximity to the base of the tree affect the health or life of the existing tree are such that damage is irreparable, further application accompanied by detailed arboriculture report for the removal of the tree shall be made to the Chief Executive Officer.

Lost: 2/3

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

Cr Robert Fittock MOVED the following alternative recommendation:

COMMITTEE RECOMMENDATION

That Council refer the matter to the State Administrative Tribunal with a recommendation to delete condition 6 of the Planning Approval for DA199/08 dated 9 December 2008.

CARRIED: 3/2

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

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

The Committee decided that, after consideration of the additional information provided, the deletion of the condition is appropriate.

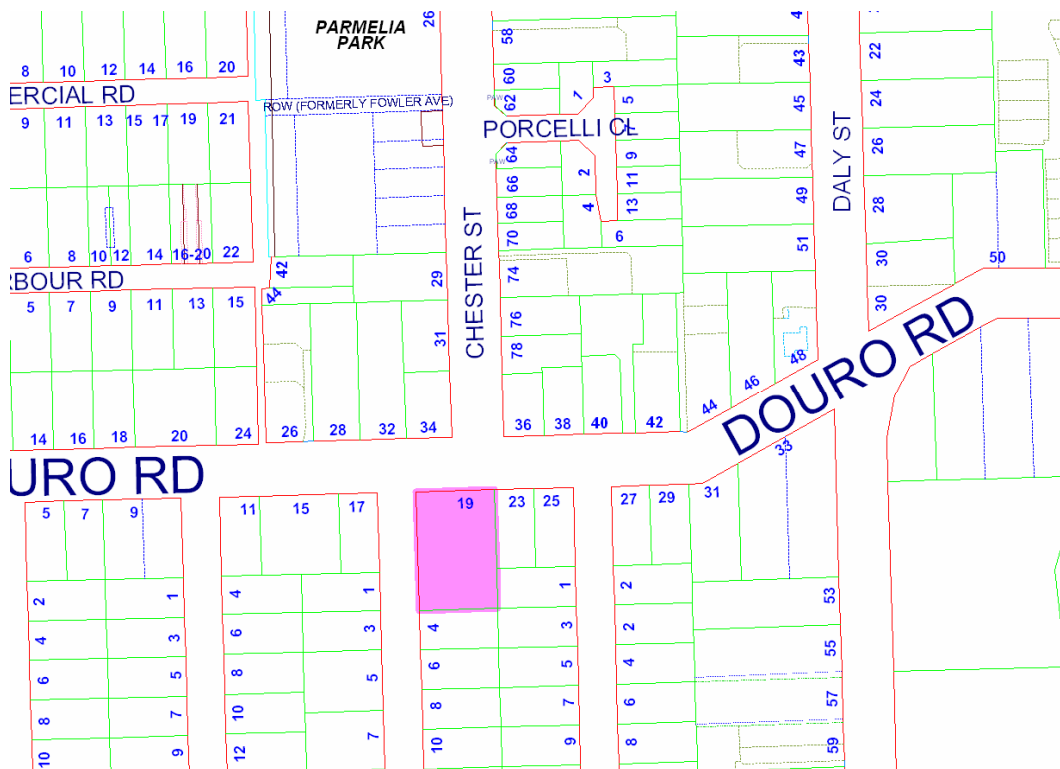
The above item is referred to the Ordinary Meeting of Council for determination in accordance with 1.1 or 2.1 of the City of Fremantle Delegated Authority Register which requires that at least 5 members of the committee vote in favour of the Committee Recommendation in order to exercise its delegation.

REPORTS BY OFFICERS (COMMITTEE DELEGATION)

The following item is subject to clause 1.1 and 2.1 of the City of Fremantle Delegated Authority Register

PSC0903-48 DOURO ROAD, NO. 19 (LOT 1), SOUTH FREMANTLE - REPORT ON COPY OF PETITION SENT TO MINISTER FOR PLANNING AND INFRASTRUCTURE BY LOCAL RESIDENTS

DataWorks Reference: 096/002
Disclosure of Interest: Nil
Responsible Officer: Director Planning and Development
Actioning Officer: Manager Development Services
Decision Making Level: Planning Services Committee
Attachments: Copy of Petition to Planning Minister, Hon. John Day
Date Received: 1 December 2008
Scheme: Neighbourhood Centre R25
Heritage Listing: nil
Existing Landuse: Liquor Store (vacant)
Proposed Use Class: Office, Shop and Multiple Dwelling
Use Permissibility: Office and Shop – D, Multiple Dwelling - A



EXECUTIVE SUMMARY

This report addresses a copy of a petition sent by residents in the vicinity of 19 Douro Road, South Fremantle to the Minister for Planning and Infrastructure. This petition is not addressed to the City and it has not been formally presented to Council. This report is for Elected Member's information.

BACKGROUND

On 1 December 2008, the City received a copy of a petition that had been sent to the Minister for Planning and Infrastructure, Hon John Day, by residents in the vicinity of 19 Douro Road, South Fremantle. The Petition requests that the Minister rezone the subject site to permit residential use only.

At the time of receipt of the petition, the City was also in receipt of a development application for the subject site proposing to demolish the existing liquor store and construct a mixed use development comprising six ground floor commercial tenancies and seven upper level multiple dwellings. This development is proposed to be contained in two separate buildings, one facing Douro Road and the other facing Hulbert Street. The assessment of this development application is dealt with elsewhere in this agenda.

DETAILS OF PETITION

The petition, containing 146 signatures, requests that the Minister rezone the subject land at 19 (Lot 1) Douro Road, South Fremantle from 'Neighbourhood Centre R25' to residential use only.

The petition rejects the proposal to construct six commercial tenancies at 19 Douro Road. It contends that the locality is already well serviced with two shopping centres in the vicinity which are open six and seven days per week respectively providing plenty of parking for their customers. The petition also contends that the proposal has insufficient parking spaces for customers and will exacerbate traffic problems by bringing more traffic onto Douro Road which is already heavily congested.

COMMENT

A request to amend the zoning of a local authority's town planning scheme is not one that can be dealt with directly by the Minister for Planning and Infrastructure. An amendment to a local authority's town planning scheme requires the resolution of Council to initiate the amendment which then proceeds in accordance with the requirements of the *Town Planning Regulations, 1967*.

The City is currently dealing with a development Application over the subject site which proposes uses that are able to be considered by Council under the provisions of the current zoning and it would not be appropriate to consider any amendment to rezone the land until the development application has been finalised.

It is appropriate that this application be dealt with on its planning merit and in accordance with the existing zoning and scheme provisions. Furthermore, owing to the time taken to amend the Scheme, no Scheme amendment could have a meaningful outcome on the determination of the current application. Should, from a strategic viewpoint, the Council wish to examine the zoning of the land in this locality in greater detail, a further report can be prepared to assess the planning issues and options associated with such a change.

The Office of the Minister for Planning; Culture and the Arts has advised that a response was sent to the petitioners on 6 January 2009 indicating that it was not possible for a town planning scheme to be amended without a resolution of Council to initiate this amendment and suggesting that the residents seek further consultation with the City of Fremantle with regard to the development application. The Office of the Minister for Planning; Culture and the Arts further advised that, in their opinion, this matter has now been finalised.

CONCLUSION

The petition sought to have the subject land zoned to permit residential uses only, a request that is not possible under Local Planning Scheme No. 4. The Office of the Minister for Planning; Culture and the Arts has dealt with the petition and has advised that a response has been provided to the petitioners. Should the Council wish, from a strategic viewpoint, to further consider the zoning of land in this locality in greater detail, a report can be prepared to assess the various options and associated planning merits. In consideration of the petition sent to the Minister for Planning and Infrastructure, however, it is recommended that Council note the information provided.

OFFICER'S RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

That the information be noted.

Cr L Lauder MOVED the following alternative recommendation:

COMMITTEE RECOMMENDATION

That the information be noted, and a further report be brought back to the next appropriate Planning Services Committee on the request to rezone the land.

CARRIED: 3/2

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

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

Committee was of the view a detailed report should be made on the resident's petition to the Minister for Planning and Infrastructure requesting rezoning the land.

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.

DEFERRED ITEMS (COMMITTEE DELEGATION)

The following item is subject to clause 1.1 and 2.1 of the City of Fremantle Delegated Authority Register

Cr J Strachan arrived at 6.28 pm prior to consideration of the following item.

PSC0903-47 DOURO ROAD, NO. 19 - DEMOLITION OF EXISTING BUILDING AND CONSTRUCTION OF A MIXED USE DEVELOPMENT (SHOPS, OFFICES AND MULTIPLE DWELLINGS) - REVISED PLANS (AT DA504/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Amended development plans
Date Received: Revised plans received 27 February 2009
Owner Name: Squirrel Super Fund and Little Dragons Trust
Submitted by: Scott Penn Hall Architects
Scheme: Neighbourhood Centre – R25
Heritage Listing: Nil
Existing Landuse: Liquor Store (vacant)
Use Class: Office, Shop and Multiple Dwellings
Use Permissibility: Office – D, Shop – D, Multiple Dwellings - A



EXECUTIVE SUMMARY

The application was considered at the Planning Services Committee meeting of 4 February 2009 in which the applicant sought that the application be deferred to the next appropriate Planning Services Committee meeting to allow time to address parking and other issues raised in the Council officer's report. As this resolution did not receive enough votes at the Planning Services Committee meeting, the item was referred to the Ordinary Meeting of Council on 25 February 2009 in which the resolution was to defer the item to the next appropriate Planning Services Committee meeting.

Amended development plans were provided on 27 February 2009 which depicts a reduced external wall height and additional car parking spaces to that originally proposed.

The proposed development requires Council's discretion for the approval of the proposed development due to variations to the provisions of Local Planning Scheme No. 4 relating to the proposed land uses and the shortfall in one on-site delivery bay. Additionally performance based assessments against the provisions of the Residential Design Codes relating to mixed use developments, visual privacy and overshadowing are required.

The revised proposed development plans are considered to have adequately addressed the previous reasons for refusal being the significant shortfall in on-site car parking and the removal of the third floor element.

The development is recommended for conditional approval.

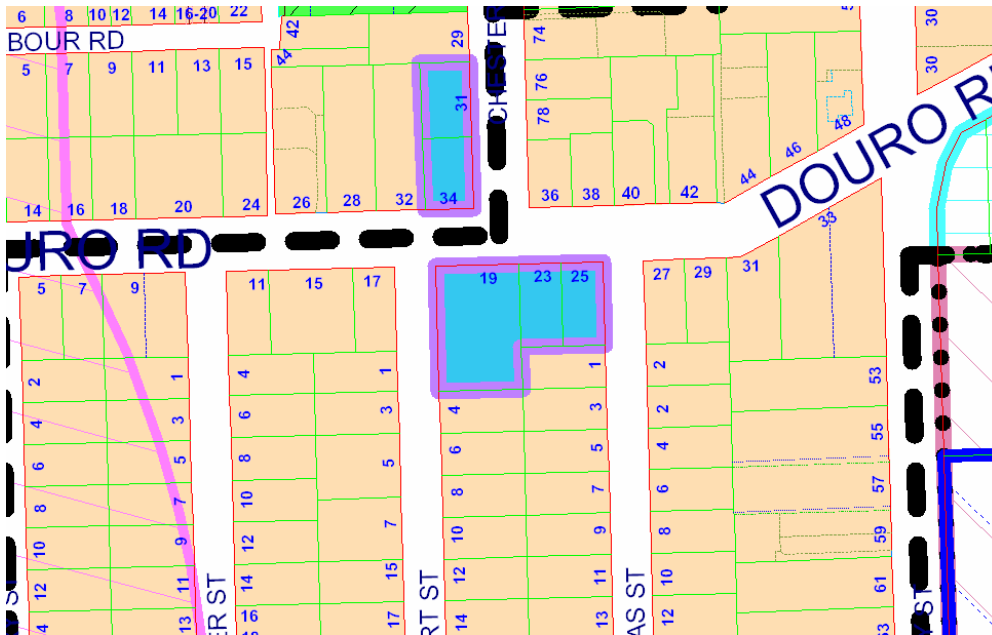
BACKGROUND

The application was considered at the Planning Services Committee meeting of 4 February 2009 in which the applicant sought that the application be deferred to the next appropriate Planning Services Committee meeting to allow him to address parking and the other issues raised in the report. As this resolution did not receive enough votes at the Planning Services Committee meeting the item was referred to the Ordinary Meeting of Council on 25 February 2009 in which the resolution was to defer the item to the next appropriate Planning Services Committee meeting. Amended development plans were provided on 27 February 2009.

The subject site is located at No. 19 Douro Road, South Fremantle, and contains a single storey commercial building in the north-western corner with hardstand parking covering the remainder of the site. The site area of the lot is 1364m².

Under the provisions of Local Planning Scheme No. 4 (LPS4), the subject site is zoned Neighbourhood Centre – R25 and is within the South Fremantle Local Planning Area. The site is not listed on the City's Heritage List or Municipal Heritage Inventory; however South Fremantle is a Heritage Area.

The Neighbourhood Centre zoning of the subject site also covers four other properties in the locality as shown in the zoning map below (in darker shading):



The site has frontage to both Douro Road and Hulbert Street. Hulbert Street is a cul-de-sac road which is accessed only via Douro Road.

A number of properties in the surrounding locality are currently operating as commercial properties including two restaurants (Nos. 25 and 34 Douro Road), a bed and breakfast (No. 15 Douro Road) and an electrical business (No. 17 Douro Road). In addition to this, the subject site is located approximately 150m from the established South Fremantle shopping centre (indicated to the right of the map above).

The properties with common boundaries to the subject site, being No. 23 Douro Road, No. 1 Thomas Street and No. 4 Hulbert Street, are all presently utilised for residential purposes.

On 3 May 2005, the City granted approval for the demolition of the existing building on the site (DA161/05). This approval allowed demolition to commence within three years of 3 May 2005. The demolition of this building has not occurred on site, therefore this approval is considered to have lapsed.

The Western Australian Planning Commission (WAPC) conditionally approved a four lot subdivision of the site on 22 July 2005 (DA128456). This proposed subdivision approval has also lapsed.

DETAILS

Planning Approval is sought to demolish the existing liquor store building and to construct a mixed use development comprising three Office tenancies and three Shop tenancies on the ground floor and seven Multiple Dwellings on the first floor.

The mixed use development is to be contained within two separate buildings, one facing Douro Road and the other facing Hulbert Street. The development plans state that the development is to be undertaken in two stages.

The gross floor area of the six commercial tenancies is as follows:

Tenancy 1	Office	57.65m ²
Tenancy 2	Office	120.14m ²
Tenancy 3	Office	60.19m ²
Tenancy 4	Shop	39.75m ²
Tenancy 5	Shop	36.68m ²
Tenancy 6	Shop	38.77m ²

The proposed multiple dwellings all contain two bedrooms with the exception of Unit 2, which is to contain three bedrooms. All of the multiple dwellings are to be located on the first floor level of the two buildings.

Twenty-three on-site parking bays are provided.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Objectives

The objectives of the Neighbourhood Centre zone are set out within Clause 4.2.1(d) of LPS4 which state:

Development within the neighbourhood centre zone shall –

- (i) provide for the daily and convenience retailing, shops, café, office, administration and residential uses (at upper levels) which serve the local community and are located within and compatible with residential areas,*
- (ii) ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality, and*
- (iii) conserve places of heritage significance the subject of or affected by the development.*

Use

Planning Approval is sought for a mixed use development encompassing Office, Shop and Multiple Dwelling uses.

Under the provisions of LPS4, 'Office' is defined as:

A premise used to sell goods by retail, hire goods, or provide services of a personal nature (including a hairdresser or beauty therapist) but does not include a showroom or fast food outlet.

The land use definition of 'Shop' within LPS4 is defined as follows:

A premises used to sell goods by retail, hire goods, or provide services of a personal nature (including a hairdresser or beauty therapist) but does not include a showroom or fast food outlet.

Both Offices and Shops are 'D' uses within the Neighbourhood Centre zone which means that the use is not permitted unless the Council has exercised its discretion by granting planning approval.

The proposed residential units are included within the definition of 'Multiple Dwelling' contained within the Residential Design Codes which states:

A dwelling in a group of more than one dwelling on a lot where any part of a dwelling is vertically above part of a dwelling is vertically above part of any other but:

- *Does not include a grouped dwelling; and*
- *Includes any dwellings above the ground floor in a mixed use development.*

Within the Neighbourhood Centre zone, Multiple Dwellings are an 'A' use meaning that the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice (advertising) in accordance with Clause 9.4. The application has been advertised.

Density

Clause 5.2.5 of LPS4 states the following:

Residential density in the Local Centre, Neighbourhood Centre and Mixed Use zones may be increased up to R60, contingent on the ground floor development being restricted to non-residential uses and the residential uses being restricted to the first floor and above.

Pursuant to this clause, the density of the proposed development may be increased to R60 as commercial land uses are proposed for the ground floor level and residential above.

Height

Schedule 12 of LPS4 prescribes a 7m maximum external wall height for development within the Neighbourhood Centre zone. The maximum external wall height of the proposed development is 7m.

Clause 4.2 of Schedule 12 sets out the matters to be considered in applying general and specific height requirements:

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

- that the proposal is consistent with predominant height patterns of adjoining properties and the locality generally,*
- the proposal would not be detrimental to the amenity of the area,*
- the proposal would be consistent, if applicable, with conservation objectives for the site and locality generally, and*
- any other relevant matter outlined in Council's local planning policies.*

Council may impose a lesser height in the event that the proposal does not satisfy any one or all of the above requirements.

Car Parking

The on-site car parking requirements for the proposed 'Office' land use is one car parking bay per 30m² gross floor area with a minimum requirement of three bays. Additionally, one delivery bay per 500m² gross floor area and one bike rack per 200m² is also required. Accordingly, the three proposed Office tenancies require 10 on-site parking bays, one delivery bay and two bike racks.

Within Table 3 of LPS4, the 'Shop' land use is broken down further into 'shop local' and 'shop with dwelling'. These both have the same car parking requirements being one car bay per 20m² nett floor area with a minimum requirement of two bays. Additionally one bike rack per 200m² nett floor area is required. As a result, the on-site car parking bay requirement for the three Shop tenancies is six bays with one bike rack.

The car parking requirements for the proposed Multiple Dwellings are prescribed for mixed use developments within Design Element 7.2 of the Residential Design Codes. The Acceptable Development criteria for mixed use developments specifies that the on-site parking requirements for Multiple Dwellings '*may be reduced to one per dwelling where on-site parking required for other users is available outside normal business hours*'. As a result, seven on-site parking bays are required to be allocated for the individual use of the Multiple Dwellings. The additional seven bays required for the Multiple Dwellings can be provided by the 16 car parks allocated for the Office and Shop tenancies outside of business hours.

Accordingly, under the applicable LPS4 and Residential Design Code provisions, 23 on-site car parking bays are required for the Multiple Dwellings, Office and Shop land uses. In addition, one delivery bay and three bike racks are also required. It is proposed to provide 23 on-site parking bays and 10 bicycle racks, however no allocated delivery bay is provided.

Clause 5.7.4 of LPS4 allows the Council to require a cash payment in lieu of the provisions of paved car parking spaces. However as the subject site is outside of the area specified within City of Fremantle *D.B.M7: Cash in Lieu of Carparking* policy, this is not considered to be applicable.

Residential Design Codes

The proposed development has been assessed against the relevant Acceptable Development criteria set out within Design Element 7.2: Mixed Use development requirements of the Residential Design Codes. The Acceptable Development criteria relating to the LPS4 provisions, side boundary setbacks and boundary wall height are not considered to be met by the proposed development. Accordingly, the proposed development requires a performance based assessment against Design Element 7.2.

Design Element 7 of the Residential Design Codes sets out the assessment criteria for Mixed Use developments however this element does not provide adequate criteria for the assessment of visual privacy, design for climate and incidental development. Accordingly, the development application has also been assessed against Part 6 of the Residential Design Codes for Design Elements 6.8 – Visual Privacy, 6.9 – Design for Climate and 6.10 – Incidental Development. The proposed development does not satisfy the Acceptable Development criteria with respect to Design Elements 6.8 – Visual Privacy and 6.9 – Design for Climate.

Encroachment into airspace over roads

Section 400 of the *Local Government (Miscellaneous Provisions) Act 1960 (LGA 1960)* empowers local governments to approve encroachments over streets, ways or other public spaces. With respect to cantilever balconies, a minimum clearance of 2.75m above street level is required and a depth of up to 750mm may be approved without the need to obtain Ministerial approval.

Landgate (previously DOLA and DLI) has advised local governments through a Government Land Bulletin issued in July 2001 that approvals should not be given pursuant to the *LGA 1960* or the *Local Government Act 1995* to encroachments over Crown land without the developer being required to also seek consent from the Minister for Lands and appropriate tenure under the *Land Administration Act 1997*. When giving approval for building encroachments, local governments are required to advise applicants of the need to obtain Landgate's consent.

CONSULTATION

Community

The original application was required to be advertised in accordance with Clause 9.4 of LPS4 and City of Fremantle *L.P.P1.3: Public Notification of Planning Proposals* policy.

It should be noted that the submissions received are based upon the development plans dated 23 September 2008. As a result of the submissions received and Council officer's concerns, amended development plans were provided on 1 December 2008, 11 February 2009 and again on 27 February 2009. These amended plans were not required to be re-advertised under the provisions of *L.P.P1.3: Public Notification of Planning Proposals* as the modifications were not considered to significantly impact upon the issues raised in the submissions or relate to matters which would otherwise be the subject of the giving of notice. In fact, the revised development plans are considered to have reduced the scale of the proposed development.

Notwithstanding the above, at the conclusion of the advertising period, being 10 November 2008, the City received 21 submissions. Of these submissions, one was in the form of a petition, which included the signatures of ten residents from the general vicinity of the site all in opposition to the originally proposed development.

Another petition addressed to the Planning Minister, Mr John Day, was also received by the City on 1 December 2008 (outside of the submission period) which requests the subject site be rezoned for residential use only and that the 146 undersigned residents of South Fremantle reject the proposed plans.

The majority of the submissions received on the original application outlined concerns with regards to insufficient parking being provided on the site, however all of the concerns outlined within the submissions are summarised below.

Amenity and Streetscape

- The proposed development would not be in keeping with the visual amenity, “village character” and neighbourhood context.
- Not in keeping with the existing streetscape design and the integrity of the immediate neighbourhood should be maintained.

Parking

- The development has insufficient parking.
- The area is already congested. Parking on Douro Road is not an option leaving the surrounding residential streets to accommodate parking. When the six commercial tenancies are operational there will be at least 6 staff occupying the premises. Customers will also require parking and will therefore have to use the surrounding street parking.

Traffic

- Increased traffic volumes.
- Impacts on ingress and egress from nearby properties and streets that are already difficult to access.
- Douro Road cannot cope with a multi-business/multi resident development on this corner.
- Concern about the location of the proposed crossover directly next door to a residential property.

Use

- No clear identification of the initial and ongoing uses of the commercial properties.
- Questions whether the commercial centre is required as the vacancy rate at the nearby South Fremantle Shopping Centre is high and they have ample parking.
- The residential character of the area needs to be preserved and enhanced.
- One submitter also questions the use of the stores.

Zoning

- The fact that the lot and several adjacent blocks are zoned ‘commercial’ is either a historical relic or planning error and this zoning should be removed.
- South Fremantle is already well serviced with commercial lots and shopping areas.

Overshadowing

- The overshadowing of the southern block by 31% is inconsiderate.
- No calculation of overshadowing to the eastern property.
- The development will create shading issues for neighbouring properties.

Visual Privacy

- Three of the dwellings facing the eastern boundary have balconies which will allow overlooking of neighbouring properties.

Design

- One submitter would prefer limestone as a building material as the building looks 'a little cheap and nasty'.
- The proposal is based upon the economic considerations of cramming as much as possible on to one site with no sensitivity to the adjacent residential property owners.
- A number of submitters would like the second levels to be accessed via internal stairs rather than the external stairs as proposed.
- Opposed to the 'scale, density and overall appearance of the proposed development'.

Height

- The development appears to be three storeys in the western corner. No dwelling on Hulbert Street is over 2-storeys.
- The scale is too big and will be out of proportion with the surrounding properties.
- The wall heights on the eastern and southern boundaries are detrimental to the adjoining properties and do nothing to enhance either the streetscape or neighbourhood.

Boundary Setbacks

- A number of the submitters express concern about the reduced boundary setbacks proposed.

Boundary wall

- The proposed boundary wall will run for almost the entire length of the submitter's property which will block light and enclose their courtyard and will therefore impact the amenity of the submitter's property. The submitter requests that should approval be granted for this wall that it be extended for the entire length for aesthetic and security reasons and the developer be required to liaise with the submitter in the selection of building materials.

Concurrent application

- An application for a restaurant at No. 25 Douro Road is presently being considered by Council. This application is based upon renting 10 bays on the subject site.

Staging of the development

- The submitter fears that the development will not be completed should it be undertaken in stages.

Reserve

- One submitter seeks that the site is developed as a reserve.

PLANNING COMMENT

Only the elements of the application which require variations to the provisions contained within LPS4 or performance based assessments under the Residential Design Codes will be assessed within this section.

Demolition

The proposed demolition of the existing building on-site is supported as the building does not provide a significant contribution to the existing streetscape or surrounding area.

Use

The proposed development involves the construction of a mixed use development for commercial and residential purposes.

The residential units proposed are considered to be encompassed within the definition of 'Multiple Dwelling' contained within the Residential Design Codes. Multiple Dwellings are an 'A' use within the Neighbourhood Centre zone requiring the discretion of Council to approve after advertising.

The proposed Multiple Dwellings located on the first floor level are considered to be consistent with the objectives of the Neighbourhood Centre zone, which specify that residential uses at upper levels are intended. In addition, the proposed Multiple Dwellings are not anticipated to be detrimental to the amenity of the locality and no impact upon places of cultural heritage significance is anticipated. Overall the proposed Multiple Dwellings use is considered consistent with the objectives of the Neighbourhood Centre zone.

The applicants have now clearly identified the proposed non-residential uses for the development as being offices and shops. Shops and Offices are expressly identified within the list of encouraged uses within the objectives for the Neighbourhood Centre zone and are generally considered to be for the daily convenience of the local community.

The assessment of any Shop or Office use upon the amenity of adjoining owners or residential properties is contingent upon factors such as pedestrian and traffic movement and proximity to residential properties, which are assessed below. The proposed Shop and Office tenancies are orientated towards the street boundaries of the site and all openings are located well away from the adjoining residential properties. In addition, the activities are to be confined to inside the tenancies therefore limiting the potential noise impact. In general, the Shop and Office uses are considered to be consistent with the Neighbourhood Centre zoning of the site which is to provide goods and services for the surrounding residents and is not anticipated to result in any significant impact upon the amenity of the adjoining properties or surrounding area.

The proposed Shop and Office uses are not anticipated to have any impact upon the cultural heritage values of the subject site or surrounding area.

Overall, the proposed Shop and Office uses are considered to be consistent with the objectives set out for the Neighbourhood Centre zone.

Height

As outlined above, Schedule 12 of LPS4 specifies a 7m external wall height restriction for the Neighbourhood Centre zone. Notwithstanding the above, the application of the 7m maximum external wall height prescribed for the Neighborhood Centre zone is reliant upon the satisfaction of the criteria contained within Clause 4.2 of Schedule 12.

In assessing this clause, it is considered necessary to specify the area surrounding the site which is to be assessed as part of the 'locality'. 'Locality' is not defined within LPS4, the Residential Design Codes or the relevant City of Fremantle policies therefore for the purpose of the assessment of the current application, the locality is considered to include those sites which can be viewed within the same streetscape view as the subject site by a person standing at ground level at any point on the adjoining streets. Consequently, these properties are considered to be situated along the southern side of Douro Road, a small number of the properties located on the northern side of Douro Road in the vicinity of the intersection with Chester Street, as well as properties close to the intersection of Douro Road and Hulbert Street.

With regard to the assessment of Clause 4.2(a) of Schedule 12, it is noted that the buildings located on all of the adjoining properties (those which share a common boundary) are all single storey. The majority of the existing buildings in the surrounding locality are also of single storey design however it is noted that there are two storey buildings situated at Nos. 76 and 78 Chester Street. Taking the above assessment into account, it is considered that the predominant height patterns exhibited within the adjoining properties and locality is that of single storey design.

Clause 4.2(b) requires an assessment of whether the proposal would be detrimental to the amenity of the area. 'Amenity' is defined within LPS4 as follows:

Means all those factors which combine to form the character of an area and include the present and likely future amenity.

The potential impact on the amenity of an area is considered to be a highly subjective assessment given that one person's appreciation of an area may be based upon different elements to another person's. Notwithstanding this, the amenity of the surrounding area is considered to generally relate to the wider established residential neighbourhood in conjunction with the cluster of non-residential buildings surrounding the subject site. In terms of height, as outlined above, it is considered that the predominant established height of the buildings in the surrounding locality is that of single storey design. Consequently, this could be considered to form part of the amenity of the area. As a result, it could be argued that the construction of the proposed development of two storey design could have a detrimental impact upon the amenity of the surrounding area.

Clause 4.2(c) involves the assessment of whether the proposal would be consistent with the conservation objectives for the site and locality if applicable. The existing building on the subject site is not considered by the City to be of cultural heritage value. South Fremantle is listed as a Heritage Area however the City has not adopted any local area policies or similar documents which outlined conservation objectives for the South Fremantle Heritage Area. As a result, there are no relevant conservation objectives against which to assess the application.

Clause 4.2(d) allows an assessment of any other relevant matters outlined within the Council's local planning policies with regard to height. The City has not adopted any specific local planning policies which cover the subject site however the height provisions contained within the Residential Design Codes for Category B Areas are applicable. Should a Single House or Grouped Dwelling development have been proposed for the subject site without containing any commercial land use, the development would be required to be assessed against the maximum wall and ridge heights specified within the Category B requirements of the Residential Design Codes. These maximum heights are generally a 6m external wall height and 9m ridge height. For clarity it should be noted that the Schedule 12 provisions do not specify a maximum roof ridge height, only a maximum external wall height.

The maximum external wall height of the proposed development exceeds the maximum wall height requirements set out for Category B areas within the Residential Design Codes having a maximum external wall height of 7m. However it should be noted that the overall height of the proposed development is below the 9m maximum ridge height prescribed for Category B areas within the Residential Design Codes.

Taking the above assessment into account, Clause 4.2 of Schedule 12 states that '*Council may impose a lesser height in the event that the proposal does not satisfy any one or all of the above requirements*' (a) – (d). As outlined above, the proposed development may not satisfy clauses (a) and (b) as the proposal is not consistent with the predominant height patterns of the adjoining properties and locality and due to this may be detrimental to the amenity of the area. Consequently, Council could impose a lesser height restriction for the subject site than the 7m maximum external wall height outlined for the Neighbourhood Centre zone in Schedule 12. Should the Council resolve that a lesser height requirement be required for the subject site, it is considered that the best way of assigning a maximum height requirement for the site be through the undertaking of a height study and a possible amendment to LPS4.

Notwithstanding the above, should Council not resolve to provide a lesser height requirement on the subject site, the height of the proposed development could be supported on the basis that it complies with the maximum external wall height prescribed within Schedule 12 of LPS4.

Carparking

As outlined above, under the requirements of LPS4 and the Residential Design Codes, 23 on-site parking bays are required by the Multiple Dwellings, Office and Shop land uses in addition to one delivery bay and three bike racks. There are proposed to be 23 on-site parking bays and 10 bike racks however no allocated on-site delivery bay is provided.

Clause 5.7.3 allows the car parking requirements specified in Table 3 of LPS4 to be waived or reduced subject to the applicant satisfactorily justifying a reduction due to one or more of the criteria. With respect to the required on-site delivery bay not being provided on site, it is noted that there is adequate hardstand area within the site in which a delivery vehicle could park temporarily whilst dropping off or picking up goods. Consequently it is considered that this shortfall could be supported.

Residential Design Codes

As the residential component of the proposed development does not satisfy the Acceptable Development criteria contained within Design Element 7.2 of the Residential Design Codes relating to the LPS4 provisions, side boundary setbacks and boundary wall height are not considered to be met by the proposed development. Consequently, an assessment against the Performance Criteria is required. The Performance Criteria for mixed use development states:

Dwellings combined with non-residential uses on the same site that provide comparable standards of amenity to other multiple dwellings taking account of the need to:

- *Satisfy streetscape objectives;*
- *Provide open space in accordance with resident needs; and*
- *Provide car parking to satisfy reciprocal requirements of residents and other users.*

The applicant has provided a detailed justification of the proposed development against the Performance Criteria.

With respect to the assessment of the proposed development in terms of the streetscape objectives of the area it is noted that the Acceptable Development criteria for mixed use development allow a nil setback to the street and there are no applicable local area planning policies that set out any streetscape objectives for Douro Road or Hulbert Street. The proposed development includes nil boundary setbacks for the majority of the length of Douro Road and for an 8.5m length along Douro Road.

It should also be noted that along Douro Road, particularly on corner sites that contain non-residential uses, nil boundary setbacks to the street boundaries are common with Nos. 17, 25 and 34 Douro Road all exhibiting this characteristic. As a result, the proposed nil setbacks are considered to be consistent with the existing streetscape pattern for corner sites. In addition to this, the applicant has stated that *'the southern portion of the development in Hulbert Street has been setback six metres from the street boundary to assist with the transition from the nil setback of the denser northern portion of the Neighbourhood Centre development to its interface with the residential streetscape'*.

With regards to open space, it is considered that substantial open space is provided on the site encompassed within the 6m setback to the ground floor level of the building along Hulbert Street, the area between Tenancies 4 – 6 and the eastern boundary as well as the communal car parking area. In addition to this area, first floor balconies are proposed for each of the Multiple Dwellings.

The Performance Criteria also require an assessment of the provision of sufficient car parking to satisfy the reciprocal requirements of residents and other users. The proposed development provides adequate car parking for the Multiple Dwellings both during the day and at night. In addition to this, the proposed one delivery bay shortfall is supported based upon the availability of the large area of on-site hardstand space that will be available for temporary parking during times of delivery and pick-up.

Overall, the proposed development is considered to satisfy the Performance Criteria relating to mixed use developments.

Visual Privacy

The proposed balcony for Unit 1 does not satisfy the 7.5m cone of vision requirement specified by the Acceptable Development criteria contained within Design Element 6.8 of the Residential Design Codes. The 7.5m cone of vision from this balcony results in an approximate 2m² area of overlooking onto the driveway/carport area of No. 23 Douro Road.

The Performance Criteria for visual privacy states:

Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.

Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.

Where these are used, they should be integrated with the building design and have minimal impact on residents' or neighbours' amenity.

Where opposite windows are offset from the edge of one window to the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.

The applicant has indicated that a 1.8m high screen is proposed for the eastern side of the balcony which is also to have a return on it to screen an additional 1.5m length of the southern side of the balcony. Through the use of this screen the overlooking of the adjoining property has been minimised and the area within the 7.5m cone of vision from this balcony is not considered to fall upon an active habitable space or outdoor living area, being the neighbouring property's driveway and carport area. As a result, the proposed development is considered to satisfy the Performance Criteria for visual privacy.

Overshadowing

The adjoining property to the south (No. 4 Hulbert Street) has a density coding of R25. As a result, the Acceptable Development criteria of the Residential Design Codes allows development on the subject site to be designed so that its shadow only falls upon 25% of the site area of No. 4 Hulbert Street at midday 21 June. The proposed development results in 26.2% overshadowing of No. 4 Hulbert Street.

The Performance Criteria for overshadowing states:

Development designed to protect solar access for neighbouring properties taking account the potential to overshadow:

- *Outdoor living areas;*
- *Major openings to habitable rooms;*

- *Solar collectors; or*
- *Balconies or verandahs.*

The additional area of overshadowing on to the adjoining property above the 25% permitted by the Acceptable Development criteria is attributed to the reduced boundary setback distance to the southern boundary which does not satisfy the Acceptable Development criteria contained within Design Element 7.2 as outlined above. The additional area of 1.2% overshadowing on to the adjoining site to the south is however considered to be of such small area that it is unlikely that this area could easily be perceived on-site.

The proposed development will result in overshadowing of the northern elevation of the dwelling on the adjoining property which includes major openings and a verandah. It is however noted that the existing verandah along this elevation already provides shade to the major openings along this elevation.

A small area of the adjacent site's outdoor living area situated to the rear of the existing dwelling is anticipated to be overshadowed by the proposed development, however given the size of the backyard, this small area adjacent to the existing driveway is not anticipated to significantly impact upon this property's solar access.

Overall, the proposed 1.2% additional overshadowing compared to the 25% allowed by the Acceptable Development criteria is considered to be minor and meets the Performance Criteria for overshadowing.

Road Reserve Encroachment

The application includes an encroachment into both the Douro Road and Hulbert Street road reserves. The encroachments are in the form of cantilevered balconies on the first floor level and a small area of awning along both the Douro Road and Hulbert Street elevations.

The maximum extent of the encroachment of the proposed balconies into the road reserve is 0.75m along the Hulbert Street elevation and 0.4m along the Douro Road elevation. The maximum encroachment of the proposed Hulbert Street awning is 2.3m and the proposed Douro Street awning encroaches by 1.4m.

As a result of the proposed balconies not encroaching more than 0.75m into the road reserve; the City is able to issue approval under the *LGA 1960*.

In assessing the compatibility of the proposed encroachments within the existing streetscapes of Douro Road and Hulbert Street, it is noted that the existing liquor store building currently has an awning over both the Douro Road and Hulbert Street footpaths. In addition to this, the two existing restaurants in the area also have awnings encroaching into the Douro Road, road reserve. In terms of amenity of the subject site as well as pedestrians passing the site, it is considered that the proposed balcony encroachments would increase the footpath cover and therefore amenity of pedestrians and the visitors to the commercial tenancies. Consequently, as a result of the above assessment and due to the proposed balconies only projecting a small amount into the two road reserves it is considered that the proposed balcony encroachments could be supported.

With respect to the proposed awnings, it is noted that these are of reduced width being 3.7m in length along the Douro Street elevation and 2.6m along the Hulbert Street elevation. The *LGA1960* does not provide any restrictions on the width of awning encroachments into the road reserve. These awnings will be consistent with the treatment of corner sites in the area as well as providing cover over two of the entrances to the site. Consequently, the proposed awning encroachments are supported.

Submissions

The concerns outlined within the 21 submissions received will be addressed below where not dealt with above.

Amenity, Streetscape and Design

The impact of the proposed development upon the amenity of the area is considered to be a subjective assessment as one person's appreciation of an area may be based upon a different element of an area than another's. It is noted that the proposed development is of contemporary design compared to the predominant design of the surrounding area being of single storey heritage cottage type development. Notwithstanding this it is noted that there are existing examples of new contemporary designed houses located to the north of the subject site.

The Acceptable Development criteria for mixed use developments allow nil boundary setbacks to the street boundaries. Small parts of the Douro Road elevation and part of the Hulbert Street elevation of the proposed northern building have nil setbacks as these elevations are set at an angle to the street boundary. It is considered that nil boundary setbacks to the street boundaries is a consistent design approach with the treatment of corner properties in the vicinity.

The ground floor level of the proposed building in the southern portion of the site is setback 6m from the Hulbert Street boundary however the first floor level is to be cantilevered further towards the Hulbert Street boundary having a minimum setback of only 1.8. It should however be noted that this minimum setback distance is only for a small area of the elevations for Units 5 and 6 as the remainder of the first floor elevation is setback further to a maximum setback of approximately 4.4m. These proposed setback distances are considered to be similar to the existing streetscape pattern of the residential dwellings along Hulbert Street.

With regard to the overall design of the proposed development, a number of submitters have outlined concerns relating to the apparent cost of the development including use of materials and the access of the residential units via external staircases. These matters are not governed by the criteria contained within LPS4 or the Residential Design Codes.

As outlined above, the assessment of the proposed development upon the amenity of adjoining owners or residential properties is considered to be contingent upon factors such as pedestrian and traffic movement and proximity to residential properties. However the proposed Shop and Office tenancies are orientated towards the street boundaries of the site and all openings are located well away from the adjoining residential properties. In addition, the activities are to be confined to inside the tenancies therefore limiting the potential noise impact.

In general, the Shop and Office uses are considered to be consistent with the Neighbourhood Centre zoning of the site and will have no significant impact upon the amenity of the surrounding area.

Parking

Parking has been addressed in detail above.

Traffic

A number of submitters have outlined concerns relating to increased traffic volumes and impacts on ingress and egress. The City has assessed the proposed development and has not outlined any concerns relating to the potential increased traffic volumes. In addition, conditions will be recommended relating to the provision of adequate crossovers should approval be granted.

Use

Concerns relating to the identification of the initial and ongoing uses of the commercial properties have been outlined. These have been addressed by the applicant assigning a use to each of the tenancies as 'Shops' or 'Offices'.

A number of submitters questioned whether the commercial centre or Neighbourhood Centre zoning of the subject site is required as the vacancy rate at the nearby South Fremantle Shopping Centre is high and they have ample parking. The Neighbourhood Centre zoning of the subject site allows a development such as that proposed to be constructed on the site. The City cannot base its decision upon business competition or vacancies in the surrounding area. Commercial viability of a project is a matter for the applicant and not the City to assess.

As outlined in a number of submissions received as well as the petitions, a number of people are concerned about the retention of the residential character of the area. It is considered that the proposed development has been orientated away from the adjoining residential properties and towards Hulbert Street and Douro Road to preserve the amenity of the adjoining residential properties.

One submitter has questioned the use of the stores. The stores are storerooms available for the storage of equipment such as bicycles, tools and other large items associated with the Multiple Dwellings.

Zoning

Many submissions and the petition received stated concerns relating to the Neighbourhood Centre zoning of the subject site. The subject site under the previous Town Planning Scheme No. 3 was zoned Residential however upon the gazettal of LPS4 in March 2007 the site was re-zoned Neighbourhood Centre. This zoning also covers an additional four sites in the surrounding area that presently contain two restaurants and two residential properties.

Overshadowing

This has been addressed above relating to the overshadowing of No. 4 Hulbert Street to the south.

With respect to the submission regarding overshadowing of the property to the east, the proposed development complies with the Acceptable Development criteria contained within the Residential Design Codes for overshadowing of the properties to the east (i.e. less than 25%).

Visual Privacy

This has been addressed above relating to the proposed balcony to Unit 1. The remainder of the development satisfies the Acceptable Development criteria for visual privacy.

Height

This matter is addressed in detail above.

Boundary Setbacks

A reduced boundary setback is proposed to the southern boundary; therefore the proposed development does not satisfy the Acceptable Development criteria relating to mixed use developments. The proposed development has subsequently been assessed against the Performance Criteria relating to mixed use developments above.

Boundary wall

The height of the boundary wall proposed for the eastern boundary does not satisfy the Acceptable Development criteria relating to mixed use developments. The proposed development has therefore been assessed against the Performance Criteria relating to mixed use developments above.

The applicant has liaised with one of the owners of the adjoining property to the east and has amended the development plans to include a boundary fence along the entire length of this boundary in addition to the proposed boundary wall to enhance the security of this adjoining property as requested.

Concurrent application

An application for amendments to the existing restaurant at No. 25 Douro Road (DA337/08) was being considered by the City during the submission period for the current application. On 26 November 2008 this application was refused by the City. Additional information on the operation of this site was considered at the Planning Services Committee meeting held on 21 January 2009.

Staging of the development

Neither LPS4 nor the Residential Design Codes provide any restriction upon the staging of developments. Under the provisions of LPS4, should approval be granted, the development will be required to be substantially commenced within 2 years of the date of the decision letter unless an extension of time application is granted approval prior to this expiry date.

Reserve

One submitter seeks that the site is developed as a reserve. Public reserves are zoned under the Metropolitan Region Scheme or the City's LPS4. The subject site is zoned Neighbourhood Centre and therefore is not a reserve.

CONCLUSION

The proposed development requires Council's discretion for the approval of the proposed development due to variations to the provisions of Local Planning Scheme No. 4 relating to the proposed land uses and the shortfall in one on-site delivery bay. Additionally performance based assessments against the provisions of the Residential Design Codes relating to mixed use developments, visual privacy and overshadowing are required.

The revised proposed development plans are considered to have adequately addressed the previous reasons for refusal being the significant shortfall in on-site car parking and the removal of the third floor element. The proposed development now provides 23 on-site parking bays and 10 bike racks and the development complies with the 7m external wall height restrictions prescribed within Schedule 12 of LPS4.

The development is recommended for conditional approval.

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

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Demolition of Existing Building and Construction of a Mixed Use Development (Shops, Offices and Multiple Dwellings) at No. 19 (Lot 1) Douro Road, South Fremantle, subject to the following condition(s):

1. The development hereby permitted shall take place in accordance with the approved plans dated 27 February 2009.
2. Prior to the commencement of development, detailed drainage plans shall be submitted and approved by the Chief Executive Officer of the City of Fremantle.
3. Prior to occupation, stormwater drainage works must be completed in accordance with the approved plans to the satisfaction of the Chief Executive Officer of the City of Fremantle.
4. Prior to the occupation of the development, vehicle crossovers shall be constructed in paving block/concrete/bitumen and thereafter maintained to the satisfaction of the Chief Executive Officer of the City of Fremantle.
5. Prior to occupation any redundant crossovers and kerbs shall be removed and the verge reinstated to the satisfaction of the Chief Executive Officer of the City of Fremantle at the expense of the applicant.
6. Prior to occupation any damage that occurs during construction to the kerb / footpath / verge trees shall be rectified/replaced at the cost of the applicant to the satisfaction of the Chief Executive Officer of the City of Fremantle.
7. Prior to occupation of the development, on site car parking shall be provided in accordance with Clause 5.7 of the City of Fremantle Local Planning Scheme No. 4 to accommodate a minimum of 23 vehicles at any given time.
8. Prior to occupation the car parking and loading area(s) and vehicle access and circulation areas shown on the approved site plan shall be constructed, drained and line marked to the satisfaction of the Chief Executive Officer of the City of Fremantle.
9. All air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located to be not visible from the street, and where visible from other buildings or vantage points shall be suitably located, screened or housed, to the satisfaction of the Chief Executive Officer.

10. Prior to commencement of the development, details of the proposed design and materials to be used in the construction of the external staircases to Units 5 – 7 shall be provided which show adequate sightlines being provided from the site exit point and car parking bays 21 – 23 to the satisfaction of the Chief Executive Officer.

Advisory Notes

- (i) 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.

LOST: 3/3

Mayor, Peter Tagliaferri used his casting vote AGAINST the recommendation resulting in it being LOST.

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

Mayor, Peter Tagliaferri **MOVED** the following alternative recommendation:

COMMITTEE RECOMMENDATION

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Demolition of Existing Building and Construction of a Mixed Use Development (Shops, Offices and Multiple Dwellings) at No. 19 (Lot 1) Douro Road, South Fremantle, for the following reasons:

- 1 The proposed development does not satisfy the objectives of the Neighbourhood Centre zone as outlined within Local Planning Scheme No. 4 as the development will be detrimental to the amenity of the residential properties in the locality.**
- 2 The proposed development does not satisfy the requirements of Clause 5.7.2 of Local Planning Scheme No. 4 as no on-site delivery bay is provided.**
- 3. The proposed development is not considered to meet the criteria under Local Planning Scheme No. 4 for exercise of discretion in relation to building height.**

CARRIED: 3/3

Mayor, Peter Tagliaferri used his casting vote **FOR** the recommendation resulting in it being **CARRIED**

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

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

The committee was of the view that the proposed development is not consistent with the relevant objectives of the zone under Local Planning Scheme 4.

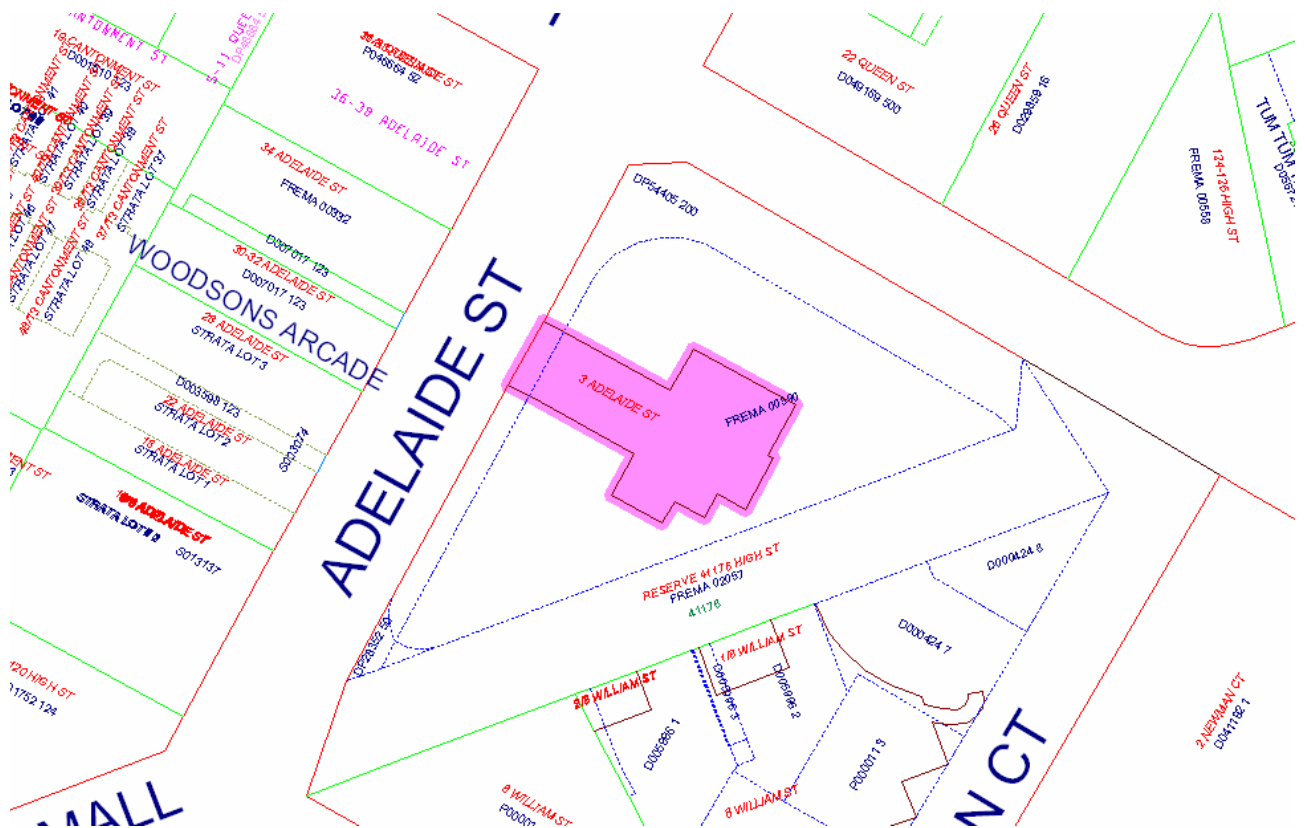
The above item is referred to the Ordinary Meeting of Council for determination in accordance with 1.1 or 2.1 of the City of Fremantle Delegated Authority Register which requires that at least 5 members of the committee vote in favour of the Committee Recommendation in order to exercise its delegation.

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

PSC0903-49 ADELAIDE STREET, NO. 3 (LOT 390) FREMANTLE - UNIVERSAL ACCESS RAMP ADDITION TO PLACE OF WORSHIP (AT DA293/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: DA451/04
Attachments: Development plans
Heritage Council of WA letter
Date Received: Amended plans received 28 January 2009
Owner Name: Anglican Parish of Fremantle / Perth Diocesan Trustees
Submitted by: As above
Scheme: City Centre
Heritage Listing: State Heritage Register, Heritage List, Level 1A on MHI
Existing Landuse: Place of Worship



EXECUTIVE SUMMARY

This application is referred to the Planning Services Committee for determination as the subject site is listed on the State Heritage Register.

Planning approval is sought to construct a universal access ramp to the front doors of St Johns Church at No. 3 Adelaide Street, Fremantle.

The proposed development will provide an equality of access to St Johns Church by all persons and will not significantly impact upon the cultural heritage values of the subject site or surrounding area.

Subject to conditions of approval, requiring no cutting of the flagstones, obscuring or touching of the date stone or the use of cement, the proposed development is considered to be consistent with the advice received from the Heritage Council of Western Australia and the City's Heritage and Special Places Advisory Committee.

As a result, the proposed development is considered to be consistent with those matters the Council has to have regard to under LPS4.

The application is recommended for conditional approval.

BACKGROUND

The subject site is located at No. 3 Adelaide Street, Fremantle which is located within Kings Square.

Under the provisions of Local Planning Scheme No. 4 (LPS4) the subject site is zoned City Centre and is within the West End Conservation Area.

Planning Approval was granted on 19 April 2005 for the construction of a universal access ramp to the St Johns Church forecourt (DA451/04). This approval allowed the commencement of construction within two years and completion within three years of the date of the decision. The works have not been commenced on site, consequently this approval has lapsed.

DETAILS

Planning Approval is sought to construct a universal access ramp leading up to the front door of St John's Church. The ramp is to range in gradient between 1:12 and 1:14 and is to be constructed of pavers to match the existing pavers in front of the church.

This application is similar to the application approved by the City on 19 April 2005 and outlined above.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Clause 8.2 of LPS4 does not expressly permit the construction of the universal access ramp therefore the development requires planning approval.

Clause 10.2 of LPS4 outlines the matters to be considered by the Council in the assessment of an application for planning approval, these include:

- (h) *the conservation of any place that has been entered in the Register within the meaning of the Heritage of Western Australia Act 1990, or which is included in the Heritage of Western Australia Act 1990, and the effect of the proposal on the character or appearance of the heritage area,*
- (zd) *whether adequate provision has been made for access by persons with disabilities.*

Council Policies

City of Fremantle policies *D.G.F14: Fremantle West End Conservation Area* and *D.G.F23: Kings Square* are of relevance to the application.

CONSULTATION

Community

The application was required under *L.P.P1.3: Public Notification of Planning Proposals* to be advertised as the application involves the alteration to the built fabric of a place listed on the State Heritage Register. At the conclusion of the advertising period being 10 January 2009, the City had received no submissions.

Heritage Council of Western Australia

As the subject site is listed on the State Heritage Register the application was referred to the Heritage Council of Western Australia (HCWA) who provided the following advice:

We note that the current proposal for the ramp as a three way fall away from the doorway with the change of fall occurring on a diagonal line. The Heritage Council fails to see how this fall could be achieved without the cutting of the flagstones.

Our concerns about the proposed ramp remain, as follows:

- 1. The proposed ramp obscures the date stone.*
- 2. The proposed ramp touching/wearing on the date stone.*

The letter received from HCWA is attached as Attachment 2 to this report.

Heritage and Special Places Advisory Committee

The application was considered at the Heritage and Special Places Advisory Committee (HSPAC) meeting on 3 February 2009. At this meeting the Committee resolved to recommend to Council its support for the proposed ramp subject to the following conditions:

- 1) *that during the works the flagstones will be carefully lifted, stored and reused without damage such as cutting;*
- 2) *that no cement products be used in the sand substrate or mortar mix; and*
- 3) *the work is reversible without damage to the church.*

PLANNING COMMENT

The proposed access ramp is to be contained within the existing paved area to the front of St Johns Church which abuts the Adelaide Street footpath. The intention of the installation of the access ramp is to enable access to the church by people with disabilities. At present, access to the Church through the main doors facing Adelaide Street requires a step up from the flagstone level into the church which can be prohibitive for people with disabilities, especially those in wheelchairs. As a result, the proposed universal access ramp is considered to be a positive addition to the church in terms of providing equality of access to all persons.

Notwithstanding the above, the primary consideration for the proposed development relates to its potential impact upon the cultural heritage values of the subject site and surrounding area as the subject site is listed on the State Heritage Register, the City's Heritage List and has a management category Level 1A on the City's Municipal Heritage Inventory. The site is also within the Fremantle West End Conservation Area which is a Heritage Area under the provisions of LPS4.

HCWA have outlined three primary points of concern relating to the proposed works, including the potential cutting of the flagstones, the obscuring of the date stone and the touching/wearing on the date stone. The City's HSPAC has supported the proposed works subject to conditions. One common point between these two parties is the concern relating to the cutting of the flagstones. As a result of this concern, the City's HSPAC have recommended a condition requiring the flagstones to be lifted prior to works commencing. The application of this condition is considered to satisfy HCWA's concern relating to the cutting of the flagstones.

With respect to the other two concerns outlined by HCWA relating to the visibility and wearing of the date stone, in order to be consistent with the HCWA's advice, two conditions of approval are recommended ensuring that the proposed works do not obscure the date stone or touch the date stone.

Of the three conditions recommended by the City's HSPAC, Condition 3) pertaining to the reversibility of the works is considered to be a statement in support of the application rather than a matter which requires the Applicant to do something. As a result, this condition is not included within the recommended conditions below.

CONCLUSION

The proposed development will provide an equality of access to St Johns Church by all persons and will not significantly impact upon the cultural heritage values of the subject site or surrounding area.

Subject to conditions of approval, requiring no cutting of the flagstones, obscuring or touching of the date stone or the use of cement, the proposed development is considered to be consistent with the advice received from HCWA and the City’s HSPAC.

As a result, the proposed development is considered to be consistent with those matters the Council has to have regard to under LPS4. The application is recommended for conditional approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Universal Access Ramp Addition to Place of Worship at No. 3 (Lot 390) Adelaide Street, Fremantle, subject to the following condition(s):

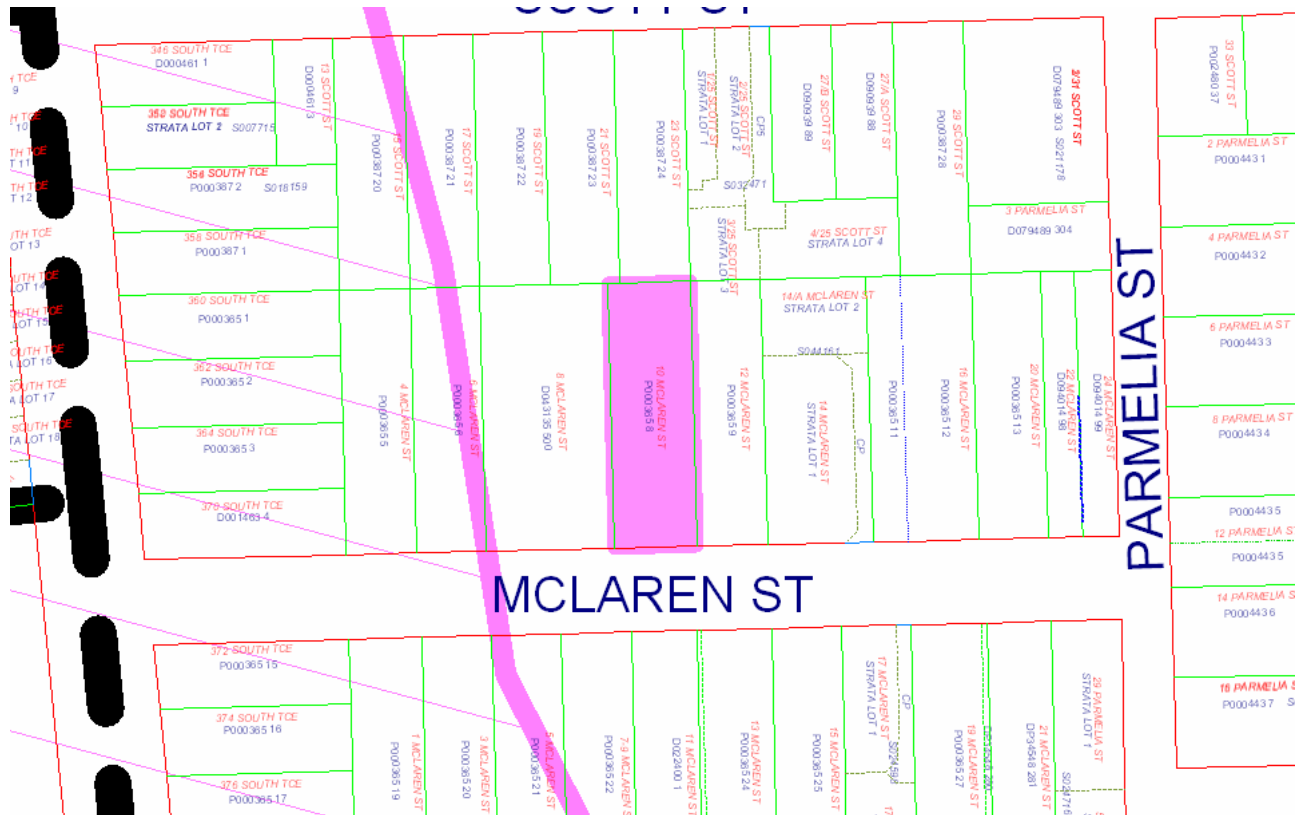
- 1. The development hereby permitted shall take place in accordance with the approved plans dated 28 January 2009, subject to the amendments required by the following conditions.**
- 2. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the Chief Executive Officer of the City of Fremantle.**
- 3. Prior to construction, the flagstones will be carefully lifted, stored and reused without damage such as cutting.**
- 4. No cement products are to be used in the sand substrate or mortar mix.**
- 5. The works hereby approved shall not obscure the date stone or be constructed so to touch the date stone to the satisfaction of the Chief Executive Officer of the City of Fremantle.**

CARRIED: 6/0

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

PSC0903-50 MCLAREN STREET NO.10 (LOT 8), SOUTH FREMANTLE - EXTENSION OF TIME TO PLANNING APPROVAL FOR DA398/06 (JL ET01/09)

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: DA398/06
Attachments 1: Applicant's Request Letter
Attachment 2: Approval to Commence Development letter for DA398/06
Attachment 3: DA398/06 Development Plans
Date Received: 9 January 2009
Owner Name: M. Sambrailo & P. Hutchinson
Submitted by: As Above
Scheme: Residential R30
Heritage Listing: Not Listed
Existing Landuse: Single house
Use Class: Single house
Use Permissibility: P



EXECUTIVE SUMMARY

This item is presented before PSC as the application was previously determined under the provisions Town Planning Scheme No.3 and the City has adopted a Local Planning Policy dealing with amendments to and extensions to the terms of Planning Approvals.

Development approval is sought to extend the term of Planning Approval for single storey additions and alterations to existing Single house at No.10 McLaren Street, South Fremantle, which was granted on 17 January 2007.

It is recommended that Council grant approval, subject to same terms and conditions as the previous approval, for a two year extension to the planning approval in accordance with the City's Local Planning Scheme No. 4 and Council's Local Planning Policies.

BACKGROUND

On 10 January 2007 the Planning Services Committee granted Planning Approval for single storey additions and alterations to the existing Single house at No.10 McLaren Street, South Fremantle (the site).

On 17 January 2007, the City issued an 'Approval to Commence Development' relating to the abovementioned approval.

DETAILS

The City received a written request on 9 January 2009, seeking an extension to the term of Planning Approval for DA398/06, due to ongoing applicant health issues and complications of securing a builder for the development. A copy of the approved development plans for DA398/06 is attached to the report below (Attachment 2).

The development application has not been acted upon as no construction has commenced on site to date.

CONSULTATION

Community

The proposed extension of time is not required to be advertised under Clause 9.4 of LPS4 or the provisions of Council's *L.P.P1.3 Public Notification of Planning Approvals*.

The original development application was advertised to adjoining land owners and the City received a submission on the proposal. The concerns raised were in relation to the boundary wall and reduced setbacks of the development on the western boundary of the site.

STATUTORY AND POLICY IMPLICATIONS

TPS3

The previous development approval was granted under the provisions of TPS3. Clause 92 of TPS3 stated the following:

Every consent shall, unless extended, lapse if:

- (a) *where consent is given for land to be used for a specified use in accordance with Part III, such use has not commenced within six months or within such time as stipulated by the Council;*
- (b) *where consent is for building, such building has not been commenced within six months or completed within two years or within such times as stipulated by the Council.*

As outlined above the development approval was to be commenced within six months or completed within two years.

The development application was assessed against the relevant provisions contained within TPS3 and the application was supported.

LPS4

LPS4 was gazetted in March 2007, and superseded TPS3. Clause 10.5.1 of LPS4 provides that a planning approval lapses in the event that the development is not substantially commenced within the term of that approval. LPS4 specifies a period of 2 years from the date of determination as the term of approval, unless another time period is specified.

Clause 10.5.2 of LPS4 states that a written request may be made for an extension of the term of a planning approval at any time prior to the expiry of the approval period.

Residential Design Codes

The development application was assessed against the provisions of the R-Codes (2002) and two performance based assessment were required for the proposed boundary walls and boundary setbacks of the development.

In April 2008, amendments were gazetted to the R-Codes (2008). However, the new amendments do not alter the assessment of this application.

Council's Local Planning Policies

L.P.P1.1 - Amendment to and Extension to the Term of Planning Approvals

The City's Local Planning Policy 'Amendment to and Extension to the Term of Planning Approvals' (LPP1.1) outlines the manner in which the City will deal with requests for the extension to the term of planning approvals.

Clause 3.1 of the policy states that where an extension is granted, a period of up to a further two years will be granted.

Clause 3.2 outlines that for such a request, Council may have regard to the following:

- (a) *whether the scheme or a relevant planning policy has changed in a material way since the planning approval was granted;*
- (b) *whether in granting the planning approval, a discretion was exercised in relation to the Scheme or policy requirements; and*
- (c) *whether a material change has occurred to either the site to which the planning approval relates or the surrounding locality since the planning approval was granted.*

L.P.P2.4 - Boundary Walls in Residential Development Policy

Additionally, since planning approval was granted, Council has adopted a new 'Boundary Walls in Residential Development' (L.P.P2.4) policy. The provisions contained in this policy are of relevance to this development as the original development application was assessed against the 'Performance Criteria' of design element 6.3.2 of the R-Codes.

Other Local planning Policies

The original development application was previously assessed against the provisions contained within the City's policies: *D.B.H1: Urban Design and Streetscape Guidelines* and *D.C.6 - Garages/Carports in front of Dwelling/Buildings*. Apart from the adoption of the *L.P.P 2.4 - Boundary Wall's* policy the provisions prescribed in these policies have not altered since the date of approval.

PLANNING COMMENT

The original development application was assessed under the provisions of TPS3 in which the site was zoned 'Residence' and had a density coding of R30. With the subsequent gazettal of the City's LPS4 in March 2007, the zoning and density coding of the subject property did not change. Furthermore, no material change to the subject site or surrounding area has occurred since the date of development approval. However, as previously stated, Council has adopted a Boundary Walls (L.P.P2.4) policy which would be applicable to the assessment of a similar development today.

The City's *Boundary Walls L.P.P2.4* policy provides alternative 'Acceptable Development' standards to those contained within design element 6.3 of the R-Codes. The original development application did not comply with the 'Acceptable Development' provisions of the R-Codes and therefore was assessed against the relevant 'Performance Criteria'.

Although Council did exercise its discretion in relation to boundary walls it must be acknowledged that if the original application was to be assessed today Council would pay particular regard to comments made by neighbouring owners / occupiers of adjoining properties, and would only consider the 'Performance Criteria' in clause 6.3.2 P2 to be met where it is satisfied that no adverse impacts on the amenity of the neighbouring property will occur.

As mentioned previously, the original development application was advertised and the City received one submission which raised concerns associated with the boundary wall located on the western boundary of the property. Whilst taking into consideration the concern raised, Council did assess the original application against the 'Performance Criteria' of 6.3.2 of the R-Codes and was satisfied that no adverse impacts on the amenity of the adjoining properties/ neighbours would occur. Therefore the development was considered to satisfy the Performance Criteria of the R-Codes. Accordingly, if the application was re-assessed against the present relevant statutory provisions, the development would still satisfy the Performance Criteria of the R-Codes.

Furthermore the new amendments to the R-Codes do not alter the assessment of this application.

CONCLUSION

Overall, the proposed extension of time for Planning Approval is considered to be consistent with the provisions contained within City of Fremantle's Local Planning Policy 1.1 - *Amendment to and Extension to the Term of Planning Approvals*. Consequently, an extension to the term of approval for another two years is supported.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the extension to the term of approval for a period not exceeding two years from the date 17 January 2009, for the Additions and alterations to existing Single house at No. 10 (Lot 8) McLaren Street, South Fremantle, subject to the same terms and conditions as stated on the Approval to Commence Development notice dated 17 January 2007, reference DA398/06.

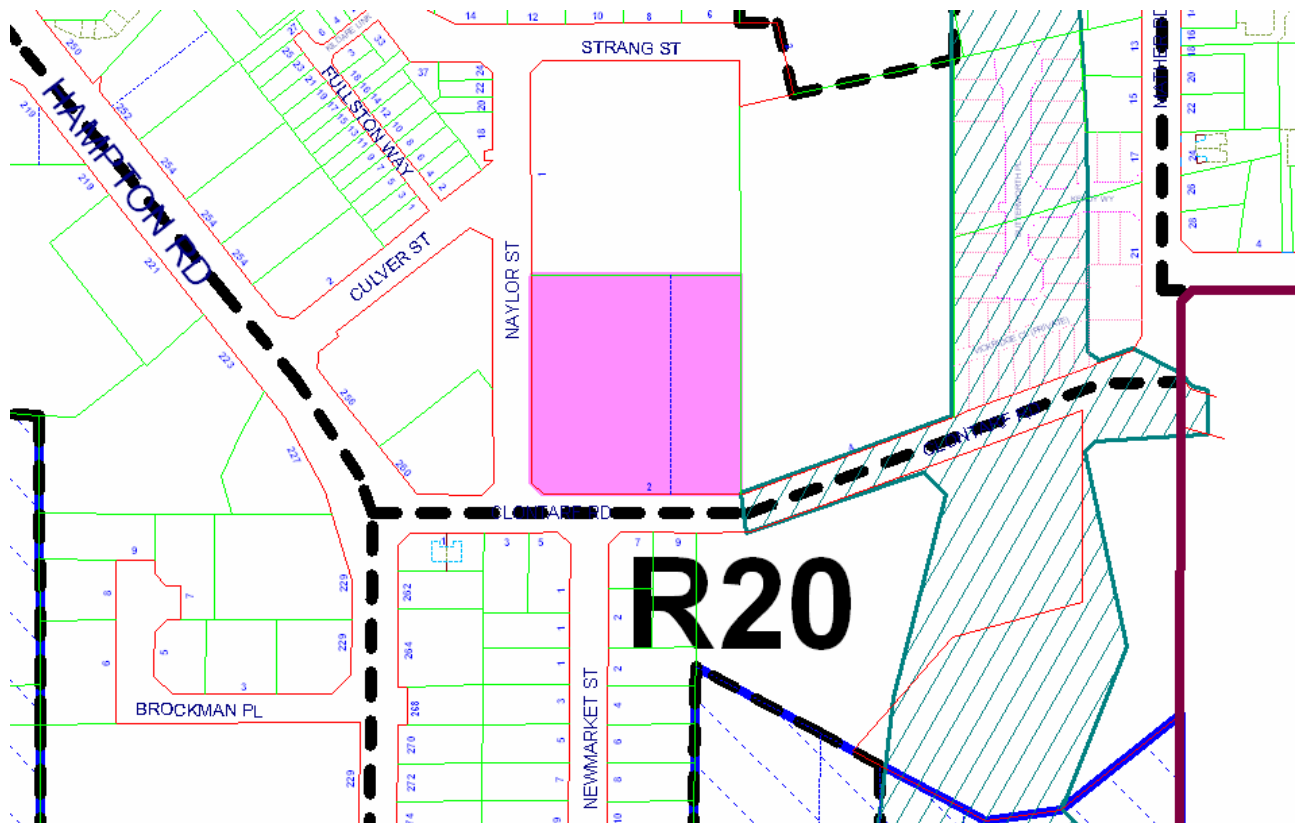
CARRIED: 6/0

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

Cr R Fittock vacated the chamber at 6.57 pm.
Cr R Fittock returned to the meeting at 6.58 pm.

PSC0903-51 CLONTARF ROAD NO.2 (LOT 72 & 100), BEACONSFIELD - PARTIAL CHANGE OF USE TO STORAGE YARD (JL DA611/08)

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: DA548/08 & DA631/07
Attachments: Development Plans
Date Received: 13 November 2008
Owner Name: Brencolda Nominees Pty Ltd
Submitted by: As Above
Scheme: Development Zone – Development Area 14
Heritage Listing: Historic and Archaeological Site
Existing Landuse: Warehouse and Office
Use Class: Warehouse, Office and Storage Yard
Use Permissibility: P, P and A



EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee for determination as the subject site is within the Development Zone – Development Area 14 (Strang Court Structure Plan Area).

Planning Approval is sought for the partial change of use to ‘Storage Yard’ at No.2 Clontarf Road, Beaconsfield. A Storage Yard use is classed as an ‘A’ use within Development Zone (Development Area 14) and as such is subject to Council’s discretion.

With respect to exercising its discretion regarding the Storage Yard use, Council is required to have due regard to the appropriateness of the use within the locality against its impact to the nearby residents.

It is recommended that the application be refused on the basis that approval of the proposed use is not consistent with the intended uses for ‘Mixed Use’ zones described in the Strang Street Structure Plan and thus not consistent with the desired future character of the area.

BACKGROUND

The subject site is located at No.2 Clontarf Road, Beaconsfield (the site). The site is located within the ‘Development Zone’ Development Area 14 under the provisions of the City of Fremantle’s (the City) Local Planning Scheme No.4 (LPS4).

The site is approximately 8349m² and is located on the northern side of Clontarf Road. There are two existing commercial buildings occupying the site. The building located on the western side of the site is occupied by an ‘Office’ use and the building located in the middle of the site is utilised as a ‘Warehouse’.

The adjoining northern, eastern and western abutting lots of the site are also zoned ‘Development Zone – Development Area 14’ under the provisions of LPS4. The northern adjoining site is occupied by a ‘Storage Yard’ use (Salvage Yard). The eastern adjoining site is occupied by a single storey saw tooth roofed building, which is utilised for ‘Warehouse’ use. The western abutting lots are occupied as a ‘Garden Centre’. The southern adjacent lots are zoned ‘Residential’ under the provisions of LPS4 and are currently occupied for residential purposes.

The City’s records show the site, as being the former Metropolitan Transport Trust bus depot.

On 13 May 1998 the City granted temporary planning approval, for a period of 4 months, for the property to be used as a bonded storage facility and alterations to an existing warehouse (refer DA219/98).

On 15 July 1998 the City granted planning consent for the site to be used as a storage facility for a customs, shipping and forwarding brokers (refer DA333/98).

On 4 September 2006 the City received an application for the site to be used as a landscaping supply outlet, however this application was subsequently withdrawn by the applicant and was never considered by Council (refer DA498/06).

On 15 January 2008 the City refused to grant retrospective planning approval for a change of use to a transport depot, but granted Planning Approval for the retrospective change of use to industrial – light (steel manufacturing) (refer DA631/07) subject to the use only being permitted for a period of 18 months.

The unauthorised use continued until the 25 March 2008, when the City agreed to an extension of 30 days for the unauthorised Transport Depot to cease operation at 2 Clontarf Road, Beaconsfield. The use of this site as a Transport Depot has ceased.

On 22 October 2008 the City granted Planning Approval for a change of use to 'Warehouse' and 'Office' at the site.

DETAILS

On 13 November 2008 the City received a development application proposing a partial change of use to 'Storage Yard' at the site. The applicant intends to utilise 4755m² of the site for 'Storage Yard' use. The applicant has also stated that the proposed Storage Yard will be occupied by a scaffolding company of which will have 3 employees. The applicant is proposing business hours between 6am - 6pm Monday to Friday and 8am to 5 pm Saturday. The applicant has also stated that they envisage a lease of potentially 6 years at which point they intend to develop the site. The existing approved 'Warehouse' and 'Office' uses are to remain active on the site.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Zone

The site is zoned 'Development' under the provisions of LPS4. The purpose of the Development zone is as follows:

'to provide for future residential, industrial, commercial or other uses in accordance with a comprehensive structure plan or detailed area plan prepared in accordance with the provisions of the Scheme.'

The site is located within 'Development Area 14 – Strang Court Area Beaconsfield'. Schedule 11 of LPS4 states that for this area a:

- '1. Structure plan is to be adopted to guide subdivision, land use and redevelopment prior to the approval of residential development applications.'*

2. *Investigations of potential site contamination to the satisfaction of the DECWP.*

Development applications received prior to adoption of a structure plan shall be assessed via the Mixed Use zone provisions of the Scheme. Applications for any form of residential development and subdivision applications, should be deferred until the structure plan is adopted in order that servicing, open space provisions, environmental remediation and other issues are resolved.

Notwithstanding the above, all development is to be as per the requirements of the Mixed Use zone.'

The Strang Street Structure Plan was adopted by Council on 7 February 2005. The Western Australian Planning Commission (WAPC) advised the City of its willingness to endorse the Structure Plan subject to a number of modifications and conditions. At the date of writing this report, Officers are reviewing the feasibility of modifying the plan to address the WAPC requirements, which involves investigation of a possible Cost Contribution Scheme for infrastructure up grades. Consequently the Strang Street Structure Plan does not currently have statutory weight. Accordingly the Strang Street Area remains a Development Zone under LPS4.

Clause 6.2.4.1 states:

In the absence of a structure plan or detailed area plan, Council may determine a subdivision or development application in accordance with the interim controls listed in Schedule 11 for the particular Development Area.

Therefore the City has assessed the application against the 'Mixed Use' provisions of LPS4 as per Schedule 11 prescribes.

Use

LPS4 defines a 'Storage Yard' as:

'means premises used for the storage of goods, equipment, plant, or materials'

A 'Storage Yard' use within a 'Mixed use' zone is classified as an 'A' use under Table 2 of LPS4. An 'A' use, *means that the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice (advertising) in accordance with clause 9.4.*

The objectives set out within LPS4 for development within a 'Mixed use' zone are as follows:

- (i) provide for a limited range of light, service and cottage industry, wholesaling, trade and professional services, small scale retailing of goods and services (ie. showrooms, cafes, restaurants, consulting rooms), small scale offices and administration, entertainment, residential at upper levels and recreation,*
- (ii) ensure future development within each of the mixed use zones is sympathetic with the desired future character of each area,*
- (iii) ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality, and*

- (iv) *conserve places of heritage significance the subject of or affected by the development.*

Car Parking

Table 3 of LPS4 sets out the car parking requirements for the 'Storage Yard' use as 1 car parking bay per employee. The applicant is proposing 3 employees for this use and therefore the site is required to provide 3 additional car parking bays. The proposal includes 8 additional bays and therefore the required level of car parking is provided on site for the proposed 'Storage Yard' use.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of LPS4 and the requirements of the City's *L.P.P1.3 Public Notifications of Planning Proposals* policy by way of written notification of adjoining owners/occupiers. At the conclusion of the advertising period, being 4 December 2008, the City had received four submissions against the application. A summary of the concerns raised is as follows:

- Noise generated from the proposed 'Storage Yard' use,
- Hours of operation for the proposed use,
- Increase in commercial traffic to and from the site, and
- Possibility of increased work at unsocial hours.

PLANNING COMMENT

Structure Plan

The key principle in determining whether to exercise discretion in respect of this proposal is the extent the development being proposed will prejudice or compromise the eventual implementation of the Structure Plan. Factors to consider in this assessment would therefore include issues such as:

- The long term aspirations of the landowner in terms of participation in the Development Contributions Plan eventually adopted by the Council,
- The degree of permanence of and level of investment being proposed in the development,
- The extent of new buildings or earthworks,
- Any fragmentation of the land.

The long term aspirations of the landowner in terms of participation in a future Development Contributions Plan are not at this stage known. However as this plan has yet to be adopted and implemented, there would be reasonable planning grounds to consider that certain forms of interim development may be acceptable within the Structure Plan area whilst this planning process is proceeding.

The level of investment being proposed as part of this application is considered to be minimal as the applicant merely intends to utilise existing outdoor hardstand space and no additional buildings, earth works or ancillary structures are being proposed. However, the degree of permanence of the proposal is debatable. Although there is no substantial

new development or earthworks being proposed, the 'Storage Yard use if approved could potentially compromise the implementation of the Structure Plan. Council could impose a condition limiting the planning approval to a reduced period of time if it were satisfied this would help protect implementation of the Structure Plan at a later period.

The site currently consists of two lots and the application will not result in any fragmentation of the site. However, the proposed development will result in an intensification of on site operations because of an additional use.

Overall, it is considered that the proposed use does have the potential to compromise the implementation or application of the approved Structure Plan.

Use

As mentioned previously, in the absence of a structure plan or detailed area plan, Council may determine a subdivision or development application in accordance with the interim controls listed in Schedule 11 for the particular Development Area. Schedule 11 of LPS4 states that for Development Area 14, all Development Applications received prior to adoption of a structure plan shall be assessed via the 'Mixed Use' zone provisions of LPS4. When considering this application Council is required to assess and balance the use's appropriateness to the area against the current and future amenity of the area.

Therefore the objectives set out within LPS4 for a 'Mixed Use' zone, which have been outlined in the 'Statutory and Policy Assessment' section of this report, will be utilised for the assessment of this application.

Although 'Storage Yard' is not expressly included within the objectives for Mixed Use zones set out above, the likely impacts are considered to be less than industry, wholesaling, retailing and entertainment activities which are included in the Mixed Use objective (i). Additionally, the proposed use for the site is considered to be sympathetic and compatible with the existing land uses (Storage Yard, Showroom, Garden Centre and Offices) associated with the adjoining northern, western and eastern properties.

However, it is questionable as to whether the use is;

- compatible with the adjacent residential property, and is
- sympathetic to the desired future character of the area.

The Strang Street Structure Plan, '*proposes to redevelop the larger industrial sites located on the south eastern portion of the designated area to residential...*' (pg10). Therefore it is considered that the proposed 'Storage Yard' use if approved would prejudice the successful implementation of the specific purposes and requirements of this development area.

The property has had a history of light industrial and transport orientated uses with the structures found on-site reflecting this past. However, it is considered that the additional 'Storage Yard' use will have the potential to increase commercial vehicle activity to and from the site, and with the applicant intending to operate forklift machinery on site, the potential to adversely impact the amenity of the existing abutting residential property is a relevant concern. Therefore the proposal is considered to not be consistent with the LPS4 'Mixed Use' zone objectives (ii and iii).

There are no places of heritage significance affected by the proposed development and therefore objective (iv) for a 'Mixed Use' zone is not applicable to this application.

Submitters Concerns

Several of the concerns raised during the Community Consultation process were in relation to the proposed Storage Yard use and the possible negative impacts which may be created on the abutting Residential zoned land (southern side of Clontarf Road).

The applicant has stated that the proposed 'Storage Yard' use is to be occupied by a scaffolding business and that forklift machinery will operate on site between Monday – Friday (6am – 6pm) and Saturday (8am – 5pm). It is also envisaged that commercial vehicles will enter and leave the site on a regular basis transporting the stored products (scaffolding equipment) to client off site. In recent times the City has received numerous complaints relating to operational noise emitting from previous land uses from this property. Whilst this has more often than not been related to the sound of trucks coming and going from the site, there have been some complaints regarding the sound of fabrication works. These past complaints were in relation to the previous industrial uses operating from site, such as 'Industry General' and Transport Depot'. The two previous uses are not only considered to be more intense land uses in comparison to the proposed 'Storage Yard' use, but they had a greater potential to impact than what is being proposed.

The proposed use will be operating in an open unenclosed area on site, and as such it is envisaged that the potential for future nuisance complaints would also increase with possible issues arising in relation to the operation of commercial machinery, the loading of stored materials and commercial vehicles/ trucks entering and leaving from the site.

The overall character of the immediate area is currently undergoing significant land use and development changes, with several recent Planning Approval's being granted for residential development in Fullstone/ Kildare Way (North-east of subject site) which is contained within the Strang Street Structure Plan Area. Additionally, on 21 July 2008 Western Australian Planning Commission resolved to endorse the Mather Road Structure Plan which consisted of 26 residential lots.

Taking all of the above into account it is considered reasonable to assume that the proposed additional 'Storage Yard' use will have the potential to not only increase commercial vehicle activity to the immediate area, but it would also generate further noise pollution through on site activity to nearby residential property impacting their existing residential amenity.

CONCLUSION

In determining this application Council has the following options:

- 1) Council could exercise its discretion and approve the application as it considers the proposed use to be compatible and sympathetic with the existing surrounding land uses and the desired future character of the immediate area, or
- 2) Alternatively, Council could exercise its discretion and approve the application under the Mixed Use provisions of LPS4, providing that appropriate conditions are included ensuring that the use does not adversely affect the amenity of the locality. Council could impose conditions restricting the number of employees on site at any one time, limit the hours of operation on site and/ or limit the term of planning approval for the use, or
- 3) Council could refuse the proposed use as it is not considered to be compatible with the existing surrounding uses or sympathetic to the desired future character of the area as required for a Mixed Use zone.

Having regard to the current status of the Strang Street Structure Plan and the Mixed Use objectives prescribed in LPS4, it is recommended that Council refuse the application on strategic planning grounds as the 'Storage Yard' use is not consistent with the intended uses for 'Mixed Use' zone as described in the Strang Street Structure Plan or LSP4 and thus not consistent with the desired future character of the area.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the partial change of use to Storage Yard at No. 2 (Lots 72 & 100) Clontarf Road, Beaconsfield for the following reasons:

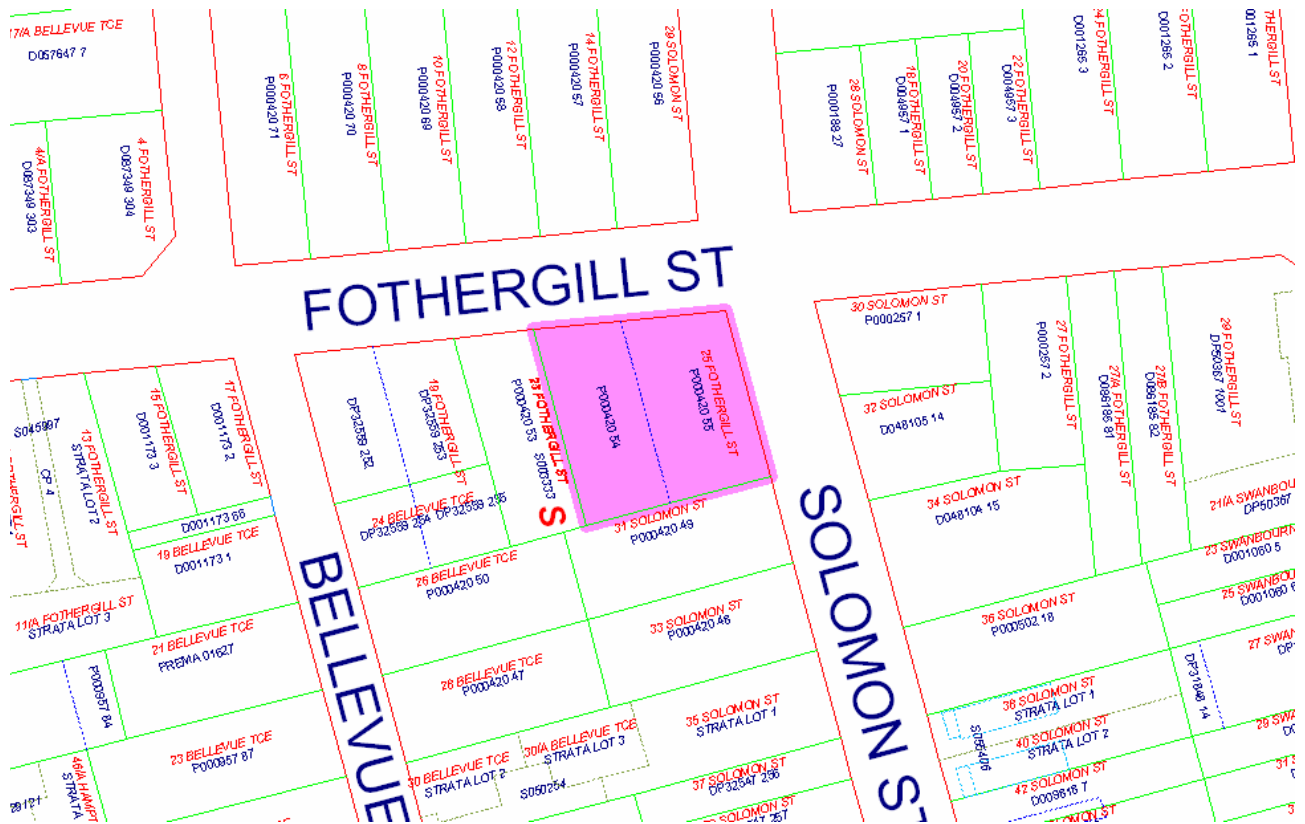
- (i) The proposal is inappropriate having regard to the purposes for which the land is zoned and Clause 4.3 of the City of Fremantle Local Planning Scheme 4. The proposed land use is inconsistent with the intended land zoning under the Strang Street Structure Plan and thus not consistent with the desired future character of the area as required of a Mixed Use zone. Approval at this stage may create a possible impediment to the effectual implementation of the Structure Plan.**
- (ii) The proposal would be detrimental to the residential amenity of the area under clause 10.2 of Local Planning Scheme No. 4 by reasons of the intensity and nature of the proposed use, including its environment impact by way of noise emissions and hours of operation.**

CARRIED: 6/0

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

PSC0903-52 FOTHERGILL STREET, NO. 25 (LOT 54) FREMANTLE - RETROSPECTIVE PLANNING APPROVAL FOR UNAUTHORISED INTERNAL ALTERATIONS TO EXISTING SINGLE HOUSE (AT DA42/09)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Development plans
Heritage Council of WA letter
Date Received: 13 February 2009
Owner Name: N Pedersen
Submitted by: N Pedersen
Scheme: Residential – R25
Heritage Listing: City’s Heritage List, Level 1B on City’s MHI
Existing Landuse: Single House
Use Class: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee for determination as the subject site is adjacent to the Fothergill Heritage Precinct which is included on the State Heritage Register.

Retrospective Planning Approval is sought for unauthorised internal additions to No. 25 Fothergill Street, Fremantle in the form of an internal staircase providing access to the existing roof void of the Single House.

The application is supported by the Heritage Council of Western Australia and the City on heritage grounds and is considered to be consistent with the applicable provisions contained within Local Planning Scheme No. 4 and the City's *D.B.H13: Impact of Development on Heritage Places* policy.

The application is recommended for conditional approval.

BACKGROUND

The subject site is located at No. 25 Fothergill Street, Fremantle. The site has frontage to both Fothergill Street and Solomon Street and is improved by a single storey Single House and associated landscaping and parking areas.

Under the provisions of Local Planning Scheme No. 4 (LPS4) the subject site is zoned Residential – R25 and is within the Fremantle Local Planning Area. The site is also listed on the City's Heritage List and has a management category Level 1B on the City's Municipal Heritage Inventory.

The City is in receipt of another application for planning approval (DA41/09) for the subject site relating to the construction of three rooms within the roof void including one bedroom, one bathroom and a television room. This application relates to the current application as the staircase is to provide access to the proposed three rooms in the roof void.

DETAILS

Retrospective Planning Approval is sought for unauthorised internal alterations to the existing Single House. These alterations relate to the construction of a staircase to provide access to the roof void in order to allow this area to be utilised for the storage of household belongings according to the application.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Clause 8.2 of LPS4 states that the carrying out of internal alterations to a place listed on the City's Heritage List requires approval.

Clause 4.2 of LPS4 sets out the objectives of the Residential zone. These objectives include:

- (v) *conserve and enhance places of heritage significance the subject of or affected by the development.*

Council Policies

The subject site is within the *D.G.F24: Solomon Street* policy area however this policy does not contain any relevant provisions relating to the proposed internal alterations. Notwithstanding this, the City's *D.B.H13: Impact of Developments on Heritage Places* policy is of relevance to the subject application.

CONSULTATION

Community

The application was required to be advertised under the City's *L.P.P1.3: Public Notification of Planning Proposals* as the development involves the alteration of the built fabric of a heritage listed property. At the conclusion of the advertising period, the City had received one submission citing no objection to the application.

Heritage Council of Western Australia

As the subject site is adjacent to the Fothergill Heritage Precinct which is listed on the State Heritage Register, the application was referred to the Heritage Council of Western Australia (HCWA) who provided the following advice:

A Conservation Officer, with delegated authority from the Heritage Council, has assessed the development referral in the context of the identified heritage significance of the place. We advise that the referral has been supported as it will not impact negatively on the adjacent Fothergill Precinct which is listed in the State Register of Heritage Places.

PLANNING COMMENT

The alterations which are the subject of this application are limited only to the inside of the subject dwelling and will not be evident from outside the dwelling.

Both HCWA and the City consider that the construction of the staircase is supportable on heritage grounds. Consequently, the development is considered consistent with the objectives of the Residential zone as set out within Clause 4.2 of LPS4 and the City's *D.B.H13: Impact of Development on Heritage Places* policy as the alterations are not considered to result in a significant adverse impact upon the cultural heritage values of the place.

CONCLUSION

The application is supported by HCWA and the City on heritage grounds and is considered to be consistent with the applicable provisions contained within LPS4 and the City's *D.B.H13: Impact of Development on Heritage Places* policy. The application is therefore recommended for conditional approval.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Retrospective Planning Approval for Unauthorised Internal Alterations to the existing Single House at No. 25 (Lot 54) Fothergill Street, Fremantle, subject to the following condition(s):

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 13 February 2009.**
- 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 City of Fremantle.**

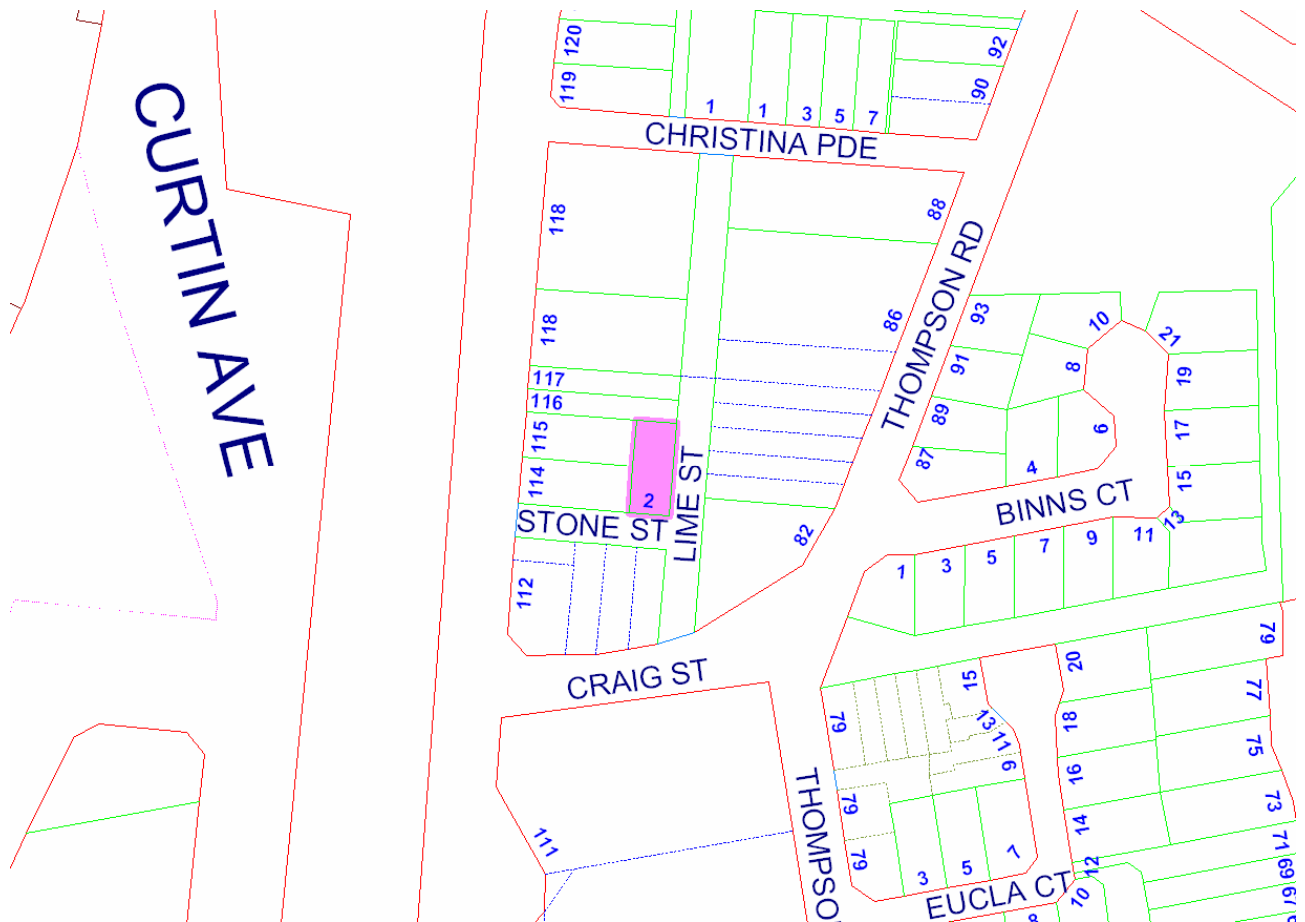
CARRIED: 6/0

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

Cr J Alberti vacated the chamber at 7.16 pm.
Cr J Alberti returned to the meeting at 7.17 pm.

**PSC0903-53 STONE STREET, NO. 2 (LOT 3), NORTH FREMANTLE -
TEMPORARY APPROVAL (TWO YEARS) FOR TWO SEA
CONTAINERS FOR STORAGE (JL & BC DA622/08)**

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 cover letter
Date Received: 20 November 2008
Owner Name: D L Hoare & M G McLean
Submitted by: D L Hoare & M G McLean
Scheme: Mixed Use R25
Heritage Listing: North Fremantle Heritage Precinct
Existing Landuse: Vacant/nil/unlawful storage
Use Class: Storage
Use Permissibility: A



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee because two submissions have been received and the issues raised cannot be overcome by conditions.

Planning approval is sought for the relocation and retention of two existing and currently unlawful sea containers that are used for storage for a temporary period of two years.

The application is recommended for conditional approval for a period of 12 months only.

BACKGROUND

The subject site is approximately 344m² and is located on the corner of Stone Street and Lime Street, North Fremantle. The site is orientated in a north-south direction and the land slopes upwards from the eastern boundary towards the western boundary.

The site is zoned Mixed Use under the provisions of the City of Fremantle's (the City) Local Planning Scheme No. 4 (LPS4), has a density coding of R25 and is located within the North Fremantle Local Planning Area as prescribed in Schedule 12 of LPS4. The site is not individually listed on the City's Heritage List but is located within the North Fremantle Heritage Precinct which is included as a Heritage Area under LPS4.

To the north and west of the site are residential properties, to the south is a commercial unit and to the east is a building site that is currently being developed with residential units.

The two storage containers have been *in situ* for approximately three years (they appear on the City of Fremantle's August 2006 aerial photography). It was brought to the City's attention that the storage containers existing on site did not have a valid Planning Approval. On 5 November 2008, the landowner was requested to either remove the containers from site or alternatively submit a development application seeking the City's Planning Approval.

DETAILS

On 20 November 2008 the City received a development application seeking a Temporary Planning Approval for two storage containers at No.2 Stone Street (Lot 3), North Fremantle (the site).

As stated in an accompanying letter with the planning application the applicant proposes to relocate and retain the two existing storage containers that are on site (and partly overlapping the boundary of the site onto the Lime Street roadway).

The storage containers are 2.4 metres wide, by 12.0 metres long, by 2.6 metres high. Additionally the applicant has stated in a letter that the storage containers hold the belongings of an elderly widowed relative who is awaiting the construction of a new home and their own household effects. Approval is sought for up to two years.

STATUTORY AND POLICY ASSESSMENT

Local Planning Policy No. 4

Clause 10.6.1 of LPS4 states:

Despite any other provision of the Scheme to the contrary, if the Council considers that any use should be permitted on any land temporarily, it may give Planning Approval strictly limited in time as a temporary use.

Clause 10.6.4 of LPS4 states:

The Council shall not approve a temporary use for more than two years.

In accordance with LPS4, a 'storage yard':

"means premises used for the storage of goods, equipment, plant or materials."

In accordance with clause 4.2 of LPS4, the objectives of a Mixed Use zone are that development shall-

- (i) *provide for a limited range of light, service and cottage industry, wholesaling, trade and professional services, small scale retailing of goods and services (i.e. showrooms, cafes, restaurants, consulting rooms), small scale offices and administration, entertainment, residential at upper levels and recreation,*
- (ii) *ensure future development within each of the mixed used zones is sympathetic with the desired future character of each area,*
- (iii) *ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality, and*
- (iv) *conserve places of heritage significance the subject of or affected by the development.*

Clause 8.4.1 of LPS4 states:

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.

Car Parking – Table 3

LPS4 sets out the car parking requirements for a 'Storage Yard' use as 1 parking bay per employee. The proposed 'Storage Yard' use has no employees and as such under the provisions of LPS4 no onsite car bays are required.

Residential Design Codes (2008)

Design Element 6.10 of the Residential Design Codes (R-Codes) relates to incidental development requirements with part 6.10.1 relating to outbuildings.

The definition of 'incidental development' stated in the R-Codes is:

"Development which is associated with or attached to a dwelling and incidental to its main residential functions."

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 10.6.3 of LPS4, which states:

Before approving a temporary use under the provisions of this subclause the Council shall advertise the proposal and consult with the public in accordance with clause 9.4.3 of the scheme.

At the conclusion of the advertising period, being 30 January 2009, the City had received two submissions (both appear to be from representatives of the same company). The submissions are reproduced below:

- *"We strongly oppose the application for two sea containers to be left in Stone Street/Lime Street for the next two years. Lime Street, which until now has been an uneven back laneway of sand, stones and limestone rocks, is currently being upgraded to a sealed road with an impressive retaining wall on the western side. On the eastern side of this road a most attractive and well-built residential development is underway which will vastly improve the area between Thompson Road and Lime Street to the benefit of all local residents in accordance with Council's plans for the overall improvement of the North Fremantle area. We understand that Council has previously requested the owner of these sea containers have them removed. The time has surely come for this to happen."*
- *"We strongly oppose the application. This is a retrospective application given that they have been located on the property for many years. Furthermore, contrary to what we understand has been intimated by the applicant, the containers are being used in part for commercial activities with commercial vehicles frequenting the property. The City of Fremantle is well aware that these containers have been in situ for many years without approval, as evidenced by the application. Neighbours have requested they be removed previously. Last year a third container was placed within the Stone Street road reserve adjoining Lot 2 demonstrating a complete lack of respect for other residents in the area. The owners of 2 Stone Street have now only lodged this application as a result of the recent threat of legal action by the City. We are cognisant of the mixed use zoning of the subject property however to the immediate east of 2 Stone Street a 24 dwelling residential development is underway providing a significant transformation from the property's previously "non-conforming" warehouse use."*

In addition Lime Street is being upgraded to a full operating standard which will require the containers to be relocated given they presently partially encroach onto the Lime Street road reserve. The development activity currently underway represents a major step towards the City's desire for residential use and for the City to set a dangerous precedent by permitting a "container park" within this precinct will clearly be a highly inappropriate outcome and contrary to recent efforts to improve the amenity of the area. Both the council and surrounding neighbours have been extremely patient regarding this matter, but it is now time for the situation to be resolved with the removal of the containers as a matter of urgency."

PLANNING COMMENT

The existing storage containers are currently utilised for the storage of household items and thus could be considered comparable to a residential outbuilding. However, the provisions for outbuildings within the R-Codes fall under Design Element 6.10 – *Incidental Development requirements* and the definition of 'Incidental Development' refers to development which is associated with or attached to a dwelling and incidental to its main residential functions. Given that there is currently no dwelling on the site, the storage containers cannot be assessed as residential outbuildings and are therefore are not subject to the requirements of the R-Codes.

Use

The sea containers are considered to be consistent with type of development that is normally associated with a 'Storage yard' land use. Therefore it is considered that the subject site is being utilised as a use that is consistent with a 'storage yard' land use as defined in LPS4.

LPS4 defines a 'Storage Yard' as a *premises used for the storage of goods, equipment, plant or materials*. Within a Mixed Use zone, a Storage Yard is an 'A' use which means that the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice (advertising) in accordance with clause 9.4.

The objectives set out within LPS4 for a 'Mixed Use' zone, which have been outlined in the 'Statutory and Policy Assessment' section of this report, will be utilised for the assessment of this application.

A 'Storage Yard' is not expressly included within the objectives for Mixed Use zones set out above. However, Council does have the discretion to permit a 'Storage Yard' land use within a Mixed Use zone provided that Council is satisfied that the use is compatible and sympathetic with and will not be detrimental to the existing and desired land uses within the locality. Apart from the southern adjacent commercial property, the existing adjoining properties are used or intended to be utilised for residential use. If Council chooses to exercise its discretion and grant Planning Approval for a permanent 'Storage Yard' use, then on site activities could potentially be intensified with the operating of commercial machinery (forklifts and trucks), creating further detrimental impacts on the amenity of neighbouring properties. The future character of this specific area will be residential and therefore a permanent 'Storage Yard use would not be compatible with the desired land uses of the locality.

However, under Clause 10.6 of LPS4, Council may grant Temporary Planning Approval for a maximum of two years if it is satisfied that a use is compatible with the use of adjoining properties or the predominant use of land within the immediate locality and the use would not be prejudicial to the amenity of the locality.

As previously mentioned the eastern adjoining site is being redeveloped for the purpose of 24 residential dwellings. The development is currently in early stages of construction and is expected to be near completion within 12 months time. Furthermore the southern adjoining property is currently used for commercial activity. The unauthorised storage containers have remained in situ for approximately three years and their existence has only come to the City's attention through recent complaints. Taking these matters into account, Council could grant a Temporary Planning Approval for the 'Storage Yard' use as it is considered to not be prejudicial to the amenity of the immediate locality in the short term. It is noted that the applicant has applied for a two year Temporary Planning Approval for the unauthorised storage containers, however it is considered that a one year planning approval is sufficient given that these structure have already been in situ for at least three years. Furthermore, a one year term of planning approval would correlate with the expected construction completion time of the adjoining 24 residential dwellings on the eastern lot.

Development

Schedule 12 requirements of LPS4 require building height with a Mixed Use zone of North Fremantle to be limited to a maximum wall height of 7.5 metres. The height of the sea containers is 2.6 metres, thus satisfying the building height requirements of Schedule 12. However as the sea containers are associated with the 'Storage Yard' use on site and are not regarded as Outbuildings as per the R-Codes, it is considered appropriate that the sea containers be removed from the site at the cessation of the 'Storage Yard' land use. Accordingly a condition of Planning Approval has been included in the Officers Recommendation requiring that all structures be removed from site following expiration of the Temporary Planning Approval.

Submissions

The issues raised in the submissions are noted and acknowledged. Accordingly, planning approval is not supported as a permanent 'Storage Yard' use is not considered to be compatible with the desired land uses for the locality. However, in light of the current construction works that are taking place on the eastern adjoining site, it is considered that the 'Storage Yard' use and associated sea containers will not be detrimental to the character of the area for a further twelve months.

Conclusions

The storage containers are not considered to be incidental development and therefore can not be assessed via the R-Code provisions. The storage containers are associated with a land use that is consistent with a 'Storage Yard' land use as defined under LPS4. Consequently, the provision of storage containers on the subject site requires a change of use. A permanent change of use to 'Storage Yard' is not considered to be appropriate in terms of potential impact on amenity and character of the area.

However, in light of the present construction underway on the adjoining eastern site and the existing commercial activity on the abutting southern site it is considered reasonable that a Temporary Planning Approval for 'Storage Yard' use be granted for a period of 12 months. Furthermore as the existing storage containers are associated with the 'Storage Yard' use it is recommended a condition be included requiring the removal of these containers at the termination of the Temporary Planning Approval.

In light of the existing residential uses in the vicinity and the information submitted to the city with the applicants application, it is recommended that a condition be imposed restricting the storage use to the applicant for personal (including family) effects only.

Additionally the applicant should be advised that an extension to the approval is unlikely to be granted and that if the applicant wishes to continue storing personal items on the site beyond the one year period, then a more appropriate solution should be to relocate the sea container structures to a more compatible location.

OFFICER'S RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Temporary Planning Approval for 'Storage Yard' use and Two Storage Container additions at No. 2 (Lot 3) Stone Street, North Fremantle, for a period not exceeding 12 months from the date of this decision, subject to the following conditions:

1. The two storage containers hereby approved shall be relocated in accordance with the approved plans dated 20 November 2008, within one month of the date of this approval.
2. The development and use hereby permitted shall take place in accordance with the approved plans dated 20 November 2008.
3. The storage containers hereby approved shall only be used by the applicants, D L Hoare & M G McLean, and their family for personal effects only.
4. The two storage containers hereby approved in accordance with the approved plans dated 20 November 2008, shall be removed from the site within 12 months of the date of this approval.

Cr R Fittock MOVED an amendment to the Officer's Recommendation to change the following wording:

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Temporary Planning Approval for 'Storage Yard' use and Two Storage Container additions at No. 2 (Lot 3) Stone Street, North Fremantle, for a period not exceeding *6 months* from the date of this decision, subject to the following conditions:

- 4 The two storage containers hereby approved in accordance with the approved plans dated 20 November 2008, shall be removed from the site within *6 months* of the date of this approval.

LOST: 2/4

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

OFFICER'S RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Temporary Planning Approval for 'Storage Yard' use and Two Storage Container additions at No. 2 (Lot 3) Stone Street, North Fremantle, for a period not exceeding 12 months from the date of this decision, subject to the following conditions:

1. The two storage containers hereby approved shall be relocated in accordance with the approved plans dated 20 November 2008, within one month of the date of this approval.
2. The development and use hereby permitted shall take place in accordance with the approved plans dated 20 November 2008.
3. The storage containers hereby approved shall only be used by the applicants, D L Hoare & M G McLean, and their family for personal effects only.
4. The two storage containers hereby approved in accordance with the approved plans dated 20 November 2008, shall be removed from the site within 12 months of the date of this approval.

LOST: 1/5

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

Mayor, Peter Tagliaferri **MOVED** the following alternative recommendation:

COMMITTEE DECISION

- 1 That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Temporary Planning Approval for ‘Storage Yard’ use and Two Storage Container additions at No. 2 (Lot 3) Stone Street, North Fremantle, for the reason that the continued location of the sea containers is inconsistent with the amenity of the locality.**
- 2 That the landowners be advised that the containers should be removed within 30 days of the date of refusal.**
- 3 That the CEO be authorised to initiate legal action to ensure removal in the event that part 2 above is not complied with.**

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 containers should be removed.

PSC0903-54 SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

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

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Mayor, Peter Tagliaferri

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)**PSC0903-55 FREMANTLE MUSEUM AND ARTS CENTRE - UPDATE ON
NOMINATION OF FREMANTLE ASYLUM FOR THE NATIONAL
HERITAGE LIST**

DataWorks Reference:	114/003
Disclosure of Interest:	nil
Previous Item:	n/a
Responsible Officer:	Graeme Mackenzie, Chief Executive Officer
Actioning Officer:	Agnieshka Kiera, City Heritage Architect
Decision Making Authority:	Council
Agenda Attachments:	DEWHA acknowledgment of the National Heritage Nomination of the Fremantle History Museum and Arts Centre (former Fremantle Asylum) Letter to Hon John Castrilli MLA and Melissa Parker, MP, Federal Member for Fremantle.

PURPOSE

For Council to receive and note progress update of the National Heritage nomination of Fremantle of Fremantle History Museum and Arts Centre (former Fremantle Asylum).

EXECUTIVE SUMMARY

Australian Government has nominated the 11 convict sites of Australia, including Fremantle Prison, for the World Heritage Listing. The nomination was submitted to the United Nations Educational Scientific and Cultural Organisation (UNESCO) in October 2007. The nomination was received by World Heritage Committee in February 2007 and deferred from further consideration in the 2008 UNESCO cycle to 2009 pending more information.

This nomination excludes to date the former Fremantle Asylum, now Fremantle Museum and Arts Centre. The City of Fremantle commissioned Dr Michael Pearson with assistance of Duncan Marshall to assess the Asylum for World Heritage Listing, which concludes that the place meets at least two of the WHL criteria and there are grounds to argue that the Fremantle Asylum should be added to the current nomination.

The City has initiated the first step in achieving inscription on the World Heritage List by submitting the National Heritage nomination of Fremantle Asylum to the Commonwealth Government. The City is currently seeking political support of WA Government for this nomination.

BACKGROUND

On 1 August 2005 Fremantle Prison was inscribed on the National Heritage List and it has been included by the Commonwealth Government on the provisional list of cultural sites for the World Heritage nominations as a serial listing of convict sites of Australia.

At its 27 September 2006 meeting (item SGSO609 refers) Council noted the Fremantle Prison Heritage Precinct Master Plan and made a commitment to have regard to its recommendations when making future decisions within the area.

In January 2007 the former Minister for the Environment and Heritage, Senator Ian Campbell, announced that nomination of the Australian Convict Sites for World Heritage List will be submitted to the United Nations Educational Scientific and Cultural Organisation (UNESCO) in October 2007 and processed as part of the 2008 UNESCO cycle.

In May 2008 Hon Peter Garrett, the Commonwealth Minister for the Environment, Heritage and the Arts, announced that the World Heritage Centre resolved to defer consideration of the Australian nomination to 2009 in order to seek additional information.

The Council, at its 22 August 2007 meeting (item PSC0708-242 refers) resolved among other things that "Council pursue nomination of the Fremantle History Museum and Arts Centre (FM&AC) for the World Heritage Listing as a convict site historically related to Fremantle Prison and a report detailing eligibility and implications of such nomination be brought back to Council for further consideration within 6 months".

The Council at its 23 July 2008 meeting (item C0807-2 refers) resolved among other things to authorize the CEO to negotiate with the State Government, through Heritage Council of WA, to urgently request the Commonwealth Minister to add the Asylum to the existing nomination and to proceed with preparation of nomination of the Asylum to the National Heritage List. The Council also requested further report on the initiative.

COMMENT

The City Heritage Architect used the opportunity of her attendance of the General Assembly of ICOMOS in Quebec as an opportunity to investigate and seek support for the Asylum's potential addition to the World Heritage nomination of the serial listing of the Australia's convict sites.

In doing so City Heritage Architect discussed the Asylum's nomination with the following persons of various levels of expertise and/or decision making capacity:

- Christina Cameron, President of the World Heritage Committee
- Benedicte Selfslagh, The Secretary General of the ICOMOS International, formerly Rapporteur of the World Heritage Committee
- Kristal Buckley, Former President of Australia ICOMOS and currently vice President of ICOMOS International
- Peter Phillips, at the time President of Australia ICOMOS
- Jane Harington, Manager of the Tasmanian Port Arthur, one of the 11 nominated convict sites, and a member of the National Coordination Committee on the serial convict sites' nomination.

The undivided conclusion of these discussions was the following advice to the City of Fremantle:

- An attempt to slot the Fremantle Asylum's nomination into the current convict sites nomination could unsettle the process and create a perception that current nomination is incomplete or not well thought through and this may jeopardise its successful passage through the assessment process by the World Heritage Committee;
- It is much more advisable for the City to proceed slowly through the already established process that requires firstly to accomplish inscription of the Asylum on the National Heritage List;
- To seek State and Commonwealth support for the nomination to ensure its successful passage through the process for the National List's inscription, and;
- To use the period of 18 months following the convict sites' nomination i.e. the average period for World Heritage nomination to get through the World Heritage Committee's listing process, for preparation jointly with the Commonwealth Government an excellent World Heritage nomination for the Asylum.
- Part of this process would involve cooperation with Department of Environment Water, Heritage and the Arts (DEWHA) to gain the administrative support and adequate resources to prepare the case for the Asylum, once the convict sites of Australia have been, hopefully, inscribed on World Heritage List.
- The experience of other countries shows that expansion of the successfully inscribed World Heritage place by the subsequent extension of its boundaries or addition of a new place(s) is a common occurrence and in some instances has happened not once, but twice (for example the Austria's Tivoli Gardens).

Subsequent to Council's 23 July 2008 resolution the officers proceeded with preparation of the National Heritage nomination and lodged with the Commonwealth Government. It has been acknowledged by DEWHA on behalf of the Commonwealth and scheduled for consideration in the 2009 -10 National Heritage List work plan (attachment 1).

In order to assist the passage of the nomination, the Mayor sent the letters to Hon John Castrilli, WA Heritage Minister and Melissa Parker, MP, Federal Member for Fremantle seeking their active support for the nomination (attachment 2).

In the meantime the officers are preparing briefing of DEWHA on the nomination, yet to be arranged.

CONCLUSION

Following the Council's resolution of 23 July 2008, the officers have prepared with nomination of the Fremantle Asylum for National Heritage List and lodged it in December 2008 with the Commonwealth Government. Department of Environment, Water, Heritage and the Arts (DEWHA) acknowledged the nomination on behalf of the Commonwealth as scheduled for consideration in the 2009 -10 National Heritage List work plan.

In order to assist the passage of the nomination, the Mayor sent the letters to Hon John Castrilli MLA, WA Heritage Minister, and Melissa Parker, MP, Federal Member for Fremantle, seeking their active support for the nomination (attachment 2).

In the meantime the officers are preparing briefing of DEWHA on the nomination, yet to be arranged.

STRATEGIC AND POLICY IMPLICATIONS

There are no policy implications associated with this item as it is consistent with the City of Fremantle's adopted policies for the Fremantle Museum and Arts Centre.

TRIPLE BOTTOM LINE IMPLICATIONS

Economic

Policy and economic investment in the future of Fremantle Prison and Fremantle History Museum and Arts Centre (former Fremantle Asylum) is consistent with the City's economic strategy. It is likely boost the current activities of the Arts Centre, improve its functional links with the city centre and produce spill off effect for the central area businesses associated with the Prison and Arts Centre as the major tourist attractions of Fremantle.

Environmental

The item is concerned with environmental protection of both, Fremantle Prison and Arts Centre as a major testimony to the colony's convict's past and the two main places of Fremantle's many irreplaceable heritage resources.

Social

Community's consultation on the Fremantle Museum and Arts Centre Conservation Works Strategy has demonstrated the community's attachment to the place as both, place that defines identity of the city and its residents and the cultural icon i.e. arts centre. This also demonstrates the personal attachment of many, whose descendants/relatives were directly involved or affected by the convict and penal past of the Asylum or who have had strong association with the Arts Centre in its current use.

BUDGET IMPLICATIONS

There are no budget implications associated with this item.

Any future developments related to the masterplan and/or conservation works strategy will be subject of the normal budgetary process of the Council.

LEGISLATIVE AND LEGAL CONSIDERATIONS

Nil.

PRECINCTS AND OTHER COMMITTEES RECOMMENDATIONS PLUS OTHER CONSULTATION

Heritage & Special Places Committee has been involved in both, consultation on the development of Fremantle Prison Heritage Precinct Masterplan and the Conservation Works Strategy for Fremantle Museum and Arts Centre.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

That Council receives and notes progress update on the National Heritage nomination of Fremantle History Museum and Arts Centre (former Fremantle Asylum) to the Department of Environment, Water, Heritage and the Arts on behalf of the Commonwealth Government.

CARRIED: 6/0

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

PSC0903-56 PROPOSED SCHEME AMENDMENT NO. 22 - SUSTAINABLE BUILDING DESIGN REQUIREMENTS - PROGRESS REPORT

DataWorks Reference: 218/026
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Strategic Planning Officer
Decision Making Level: Council
Previous Item Number/s: PSC0901-14
Attachments: N/A

EXECUTIVE SUMMARY

The purpose of this report is to advise Council of the progress of the proposed amendment to Local Planning Scheme No. 4 (LPS 4) providing the City with the statutory authority to secure requirements relating to Sustainable Building Design in new commercial and multi-residential developments, in line with the intent of Council's resolution of 28 January 2009.

Officers have drafted the proposed scheme amendment text and are currently liaising with the Green Building Council of the Australia on its support for the scheme amendment.

BACKGROUND

On 28 January 2009 Council resolved to endorse the preparation of an amendment to LPS4 to incorporate statutory sustainable building design requirements for certain types of development, with the aim of strengthening the City of Fremantle's commitment to delivering sustainable places and urban form. Refer to previous item PSC0901-14 for further details.

PLANNING COMMENT

The proposed amendment text has been drafted by City officers and is broadly consistent with the 'in principle' approach to sustainable building design requirements supported by Council on 28 January 2009. The scheme amendment text incorporates the following objectives:

- 1) the Scheme should include an ability for the Council to mandate a requirement for certain types of development to be designed and constructed in such a way as to achieve a minimum of a 4 Star rating under the Green Building Council of Australia 'Green Star' Rating Tool, or an equivalent rating under another nationally recognised rating tool;
- 2) types of development that would always be exempt from this requirement, and circumstances in which Council might otherwise exercise a discretionary power to waive the requirements, should be clearly set out in the Scheme;
- 3) the Green Star Certification or nationally recognised equivalent would be required to be submitted to Council after completion of the development,;
- 4) the requirement does not replace or alter other the statutory development requirements as set out in the Scheme; and

- 5) the amendment should not attempt to duplicate the role of other statutory agencies.

Upon the drafting of the scheme amendment text officers approached the Green Building Council of Australia for comment on the sustainable building design requirements. Initial verbal feedback from the Green Building Council of Australia’s Western Australian Representative highlighted some reservations with regard to the scheme amendment text. In particular concerns were raised regarding the intent of the City’s scheme amendment to create a mandatory requirement for development to obtain a 4 Star Green Star Certified Rating, when the Green Building Council of Australia advocates its use as a voluntary program.

Officers consider that the issue can be overcome through a modification to the draft scheme text, to require development to obtain a “4 Star Green Star Certified Rating or equivalent certification under another nationally recognised rating tool”. However officers consider it would be appropriate to seek written confirmation from the Green Building Council of Australia of its formal position on this issue prior to the initiation of scheme amendment 22.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

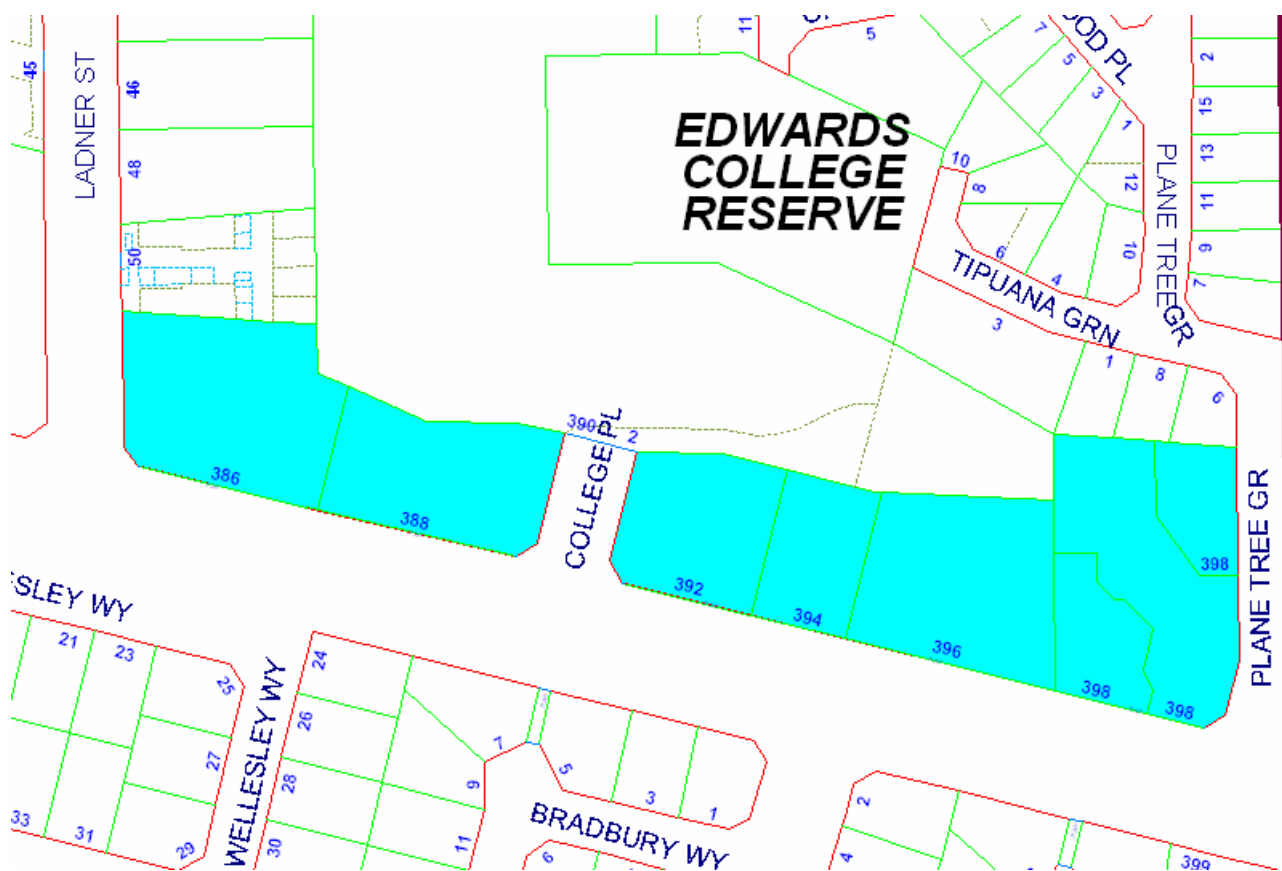
That Council note progress to date on preparation of proposed Amendment No. 22 (Sustainable Building Design Requirements) to LPS 4, and authorise the Chief Executive Officer to write to the Green Building Council of Australia seeking written confirmation of its position in relation to a mandatory requirement being introduced into LPS 4 regarding Green Star Certification of new development.

CARRIED: 6/0

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

**PSC0903-57 PROPOSED AMENDMENT NO. 25 TO LOCAL PLANNING SCHEME 4
- O'CONNOR LOCAL CENTRE, SOUTH STREET**

DataWorks Reference: 218/029
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Manager Planning Projects
Decision Making Level: Council
Previous Item Number/s: Nil
Attachments: Nil



EXECUTIVE SUMMARY

A proposed amendment to Local Planning Scheme No. 4 (LPS4) has been lodged on behalf of the landowner in relation to Lot 152 (No. 2/398) South Street, O'Connor. It proposes to increase the R Code density coding on this lot to R80 and to increase the maximum wall height to 11m to facilitate a 3 storey mixed use redevelopment of the site incorporating a café and convenience retail store on the ground floor and residential apartments on the upper floors.

Officers consider that there is significant planning merit in considering how appropriate amendments to LPS4 could facilitate opportunities to develop the potential of the O'Connor Local Centre as a much more diverse, genuinely mixed use centre with significant residential accommodation above commercial uses. This could help support a broader range of convenience retail and service uses for the local community. The centre is well situated in relation to transport facilities to meet the travel needs of an increased residential population in this location.

The proposed Scheme Amendment as lodged is considered to have merit, however it could be a missed opportunity if a 'spot' amendment for Lot 152 alone was to be initiated rather than considering the potential benefits of a similar amendment to density and height controls for the centre as a whole. Accordingly it is recommended that rather than simply supporting the proposed scheme amendment for Lot 152 alone, Council should support preparation of an amendment to LPS4 on a more comprehensive basis to amend the density coding and building height controls for the entire Local Centre zone along the lines proposed for Lot 152. This could provide an incentive for more extensive mixed use redevelopment over time by other landowners within the centre.

BACKGROUND

A proposed amendment to Local Planning Scheme No. 4 (LPS4) has been lodged on behalf of the landowner in relation to Lot 152 (No. 398) South Street, O'Connor.

The subject property is currently occupied by a single storey building used as a restaurant (the Roxby Thai) and associated car parking to the front and rear of the building. The property forms part of a linear commercial area fronting onto the north side of South Street between Lander Street and Plane Tree Grove which is zoned 'Local Centre' under LPS4. The uses in the Local Centre comprise mainly restaurants and takeaway food businesses, with some retail uses. Mid-way along the frontage is College Place, which gives access to the former Taylor's College site immediately north of the Local Centre, and also gives access onto shared driveways through frontage parking areas to all premises in the centre.

The subject property is near the eastern end of the frontage, adjoined to the east by a car wash business on Lot 153. The existing building on the subject property is set back approximately 35m from the property boundary with South Street, and there is a right of carriageway easement across part of the car parking area at the front of Lot 152 to enable customers of businesses on other lots in the Local Centre to have legal access through the site to Plane Tree Grove.

To the north of the Local Centre is an established residential area of single storey, single and grouped dwellings off Plane Tree Grove and the former Taylor's College site which is currently being redeveloped as a new residential subdivision following approval of a structure plan and subdivision by the City and the Western Australian Planning Commission in 2008. Plane Tree Grove marks the eastern boundary of the City of Fremantle with the City of Melville, and to the west of the Local Centre there is a group of larger 'bulky goods' retail stores.

All the properties zoned Local Centre including Lot 152 are currently subject to the R20 residential density coding that applies to the Plane Tree Grove residential area. Schedule 12 of LPS4 specifies height controls for development in the O'Connor Local Planning Area and states that in the Local Centre zone the maximum wall height should be 5m. The existing building on Lot 152 and some other existing buildings in the Local Centre have wall heights in excess of this height.

The proposed Scheme Amendment lodged on behalf of the owner of Lot 152 proposes to increase the R Code density coding on this lot to R80 and to increase the maximum wall height to 11m to facilitate a 3 storey mixed use redevelopment of the site incorporating a café and convenience retail store on the ground floor and residential apartments on the upper floors, and on the rear part of the ground floor behind the commercial uses. All the proposed uses are permitted or discretionary uses in the Local Centre zone under LPS4. An artist's perspective image of a conceptual design of the development has been submitted in support of the Scheme Amendment which will be displayed at the meeting. This illustrates the proposed new building sited on a similar setback to the existing building, with frontage parking and access retained for customers of commercial ground floor uses and undercroft parking to the rear for residential occupiers. The concept design indicates up to 25 dwelling units in the development under an R80 density coding.

STATUTORY AND POLICY ASSESSMENT

Clause 4.2.1 (c) of LPS4 states that the objectives of the Local Centre zone are:

- (i) provide for weekly and convenience retailing including small-scale shops, showrooms, cafes, restaurants, consulting rooms, entertainment, residential (at upper levels), recreation, open spaces, local offices, cottage industry, health, welfare and community facilities which serve the local community, consistent with the local-serving role of the centre,
- (ii) encourage the provision of suitable and accessible services to residents of the locality,
- (iii) ensure that development is not detrimental to the amenity of adjoining owners or residential properties, and
- (iv) conserve places of heritage significance the subject of or affected by the development.

Local Area Planning Policy LPP 3.8 for O'Connor (adopted 25th July 2007) includes the following objective for the South Street Local Centre:

"4. To ensure the development of the South Street Local Centre as a vibrant community hub that serves the day-to-day needs of local residents."

The State Government's Network City initiative identifies this Local Centre as an 'Activity Centre', which are locations where a range of activities are encouraged, including retail, employment, living and entertainment.

CONSULTATION

Should Council resolve to initiate this amendment to the Scheme, the amendment would be advertised in accordance with the requirements of the Planning and Development Act 2005 and the Town Planning Regulations 1967

PLANNING COMMENT

The justification put forward to support the proposed Scheme Amendment may be summarised as follows:

- The intended redevelopment would achieve objectives for the Local Centre contained in the Scheme and Local Area Planning Policy LPP 3.8 for O'Connor in terms of providing for the local retail and other service needs of the local community and ensuring development of the Local Centre as a vibrant community hub.
- This Local Centre is identified as an 'activity centre' under the State Government's Network City initiative where the primary objective is to 'make fuller use of centres' through strengthening the sense of place, delivering local jobs and providing affordable housing.
- The introduction of a higher residential density coding is consistent with the objectives in relation to local centres of the WAPC's Liveable Neighbourhoods policy. The provision of multiple dwellings as part of a mixed use development would provide a form of housing not currently found in the local area. The smaller dwelling units proposed could offer affordable housing opportunities for one and two person households in proximity to employment and education facilities in Fremantle, the O'Connor industrial area and the Murdoch University precinct.
- The site adjoins South Street which is very well served by public transport and provides good connectivity to major employment centres in Fremantle and around Murdoch University and the future Fiona Stanley Hospital development, and linkages to other public transport services. A residential population on the site as well as commercial uses could utilise and support the transport network.
- The current R20 density coding which is carried over from the adjoining suburban style residential area in Plane Tree Grove does not provide any incentive for redevelopment and cannot viably facilitate a mixed use development on the site. The proposed density coding of R80 and increased maximum wall height would resolve this constraint.
- The site's relationship to neighbouring properties and access from South Street would minimise intrusion of traffic into residential side streets and limit other impacts from building height upon the amenity of nearby residential landowners.
- The conceptual design illustrated would be capable of complying with development standards including car parking requirements in LPS4 for the range of land uses envisaged and maximum plot ratio and site coverage requirements in LPP 3.8.

Officers consider that there is significant planning merit in considering how appropriate amendments to LPS4 could facilitate opportunities to develop the potential of the O'Connor Local Centre as a much more diverse, genuinely mixed use centre with significant residential accommodation. Presently the centre functions primarily as a 'strip' commercial area containing predominantly restaurant and takeaway uses. New residential development on the Taylor's College site plus upper floor apartment-style residential accommodation above commercial uses within the centre itself could help support a broader range of convenience retail and service uses for the local community. The centre is well situated in relation to transport facilities to meet the travel needs of an increased residential population in this location.

The centre is largely separated from existing residential properties in Plane Tree Grove by the current redevelopment of the former Taylor's College site, and residential properties to the south are on the opposite side of South Street which is a dual carriageway in this locality. Consequently there is potential to allow for greater building heights within the centre compared to the currently permitted 5m without presenting the prospect of significantly greater impact from overshadowing, overlooking, etc upon the amenities of existing residents.

In view of these factors, officers consider that rather than simply supporting the proposed scheme amendment for Lot 152 alone, further consideration should be given to a possible amendment to LPS4 on a more comprehensive basis to amend the density coding and building height controls for the entire Local Centre zone along the lines proposed for Lot 152. This could provide an incentive for more extensive mixed use redevelopment over time by other landowners within the centre.

CONCLUSION

The proposed Scheme Amendment as lodged has planning merit for the reasons outlined in this report, however it is considered it would be a missed opportunity if a 'spot' amendment for Lot 152 alone was to be initiated rather than considering the potential benefits of a similar amendment to density and height controls for the centre as a whole.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Mayor, Peter Tagliaferri

1. That Council support the preparation by officers of an amendment to Local Planning Scheme No. 4 in relation to all properties zoned Local Centre at Nos. 386, 388, 392, 394, 396, 1/398, 2/398 and 3/398 South Street, O'Connor as follows:
 - (a) Amending the Scheme Map to apply a residential density coding of R80; and
 - (b) Amending clause 12.12 Schedule 12 – Local Planning Areas (height requirements) Local Planning Area 8 – O'Connor by increasing the maximum wall height in the Local Centre zone from 5 metres to 11 metres and introducing minimum boundary setback requirements where new development in the Local Centre zone adjoins residential uses in other zones.
2. That the owner of Lot 152 (No. 2/398) South Street, O'Connor be requested to support the incorporation of the scheme amendment request lodged by West Coast Plan into a more comprehensive scheme amendment relating to all properties in the O'Connor Local Centre as described in (1) above; and
3. That a draft amendment to Local Planning Scheme No. 4 as described in (1) above be reported to Council for consideration for initiation in April 2009.

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 PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 7.35 PM.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

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

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

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

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

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

How consultative processes work at the City of Fremantle	
	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.