

City of Fremantle

MINUTES

Planning Services Committee

Wednesday, 1 July 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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PLANNING SERVICES COMMITTEE

Minutes of the Planning Services Committee
held in the Council Chambers, Fremantle City Council
on 1 July 2009 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Acting Director of Planning and Development Services declared the meeting open at 6.00 pm. The A/Director called for nominations for the chair. Cr Alberti nominated Cr Massie. Cr Dowson nominated Cr Lauder. Cr Massie withdrew. Cr Lauder was declared chair.

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

Cr Les Lauder	City Ward
Cr Georgie Adeane	South Ward
Cr John Dowson	East Ward
Cr Bill Massie	Hilton Ward
Cr John Alberti	Beaconsfield Ward
Ms Kathy Bonus	Acting Director Planning Services
Mr Paul Garbett	Manager Planning Projects and Policy
Mr Justin Lawrence	Senior Planning Officer
Mr Matt Slocomb	Planning Officer
Mr Anthony Denholm	Planning Officer
Ms Joanne Wardell-Johnson	Planning Officer
Ms Rowena Amistad	Minute Secretary

There were approximately 13 members of the public and 1 member/s of the press in attendance.

APOLOGIES

Peter Tagliaferri	Mayor / Presiding Member
Cr Robert Fittock	Deputy Presiding Member / North Ward
Cr Jon Strachan	South Ward

LEAVE OF ABSENCE

Nil

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

PUBLIC QUESTION TIME

Summary of Questions by Bobby Wilson

Q. Why has the City not informed me of the decision?

A. In accordance with Local Planning Policy 1.4 - Applications for Review

"6. Notification of Interested Parties of an Application for Review of a Decision

Upon receipt of written advice that an application for a review of a decision has been lodged, the City will advise all parties who made a submission with regard to the original decision that such an application has been received. The notification shall be made in writing once only within ten (10) days of the City receiving such advice and shall only contain information regarding the reviewable decision, the Tribunal's reference number and contact details. "

Q. Will the City support an application for presidential review that must be lodged by Friday, 2 July 2009?

A. Due to the legal advice received information relating to 446B South Terrace further discussion regarding this matter will be held as a Confidential Item following the end of the meeting.

DEPUTATIONS / PRESENTATIONS

The following member/s of the public spoke in favour of item PSC0904-67:

Graham Wilcox

The following member/s of the public spoke against item PSC0904-67:

Jill Howieson

The following member/s of the public spoke in favour of item PSC0905-83:

Trent Woods

The following member/s of the public spoke against item PSC0905-83:

Neil Reynolds

The following member/s of the public spoke in favour of item PSC0907-113:

Justin Paris

The following member/s of the public spoke in favour of item PSC0907-114:

Kent Heard

The following member/s of the public spoke in favour of item PSC0907-116:

Marko Cikara

The following member/s of the public spoke against item PSC0907-116:

Sandro Carusi

DISCLOSURES OF INTEREST BY MEMBERS

Nil

LATE ITEMS NOTED

Nil

CONFIRMATION OF MINUTES

MOVED: Cr B Massie

That the Minutes of the Planning Services Committee dated 17 June 2009 as listed in the Council Agenda dated 22 July 2009 be confirmed.

CARRIED: 5/0

For	Against
Cr Les Lauder Cr Georgie Adeane Cr John Alberti Cr John Dowson Cr Bill Massie	

TABLED DOCUMENTS

Revised Plans – 36 Paget Street

**PSC0904-67 - 21 Jewell Parade North Fremantle - ALTERNATIVE
RECOMMENDATION**

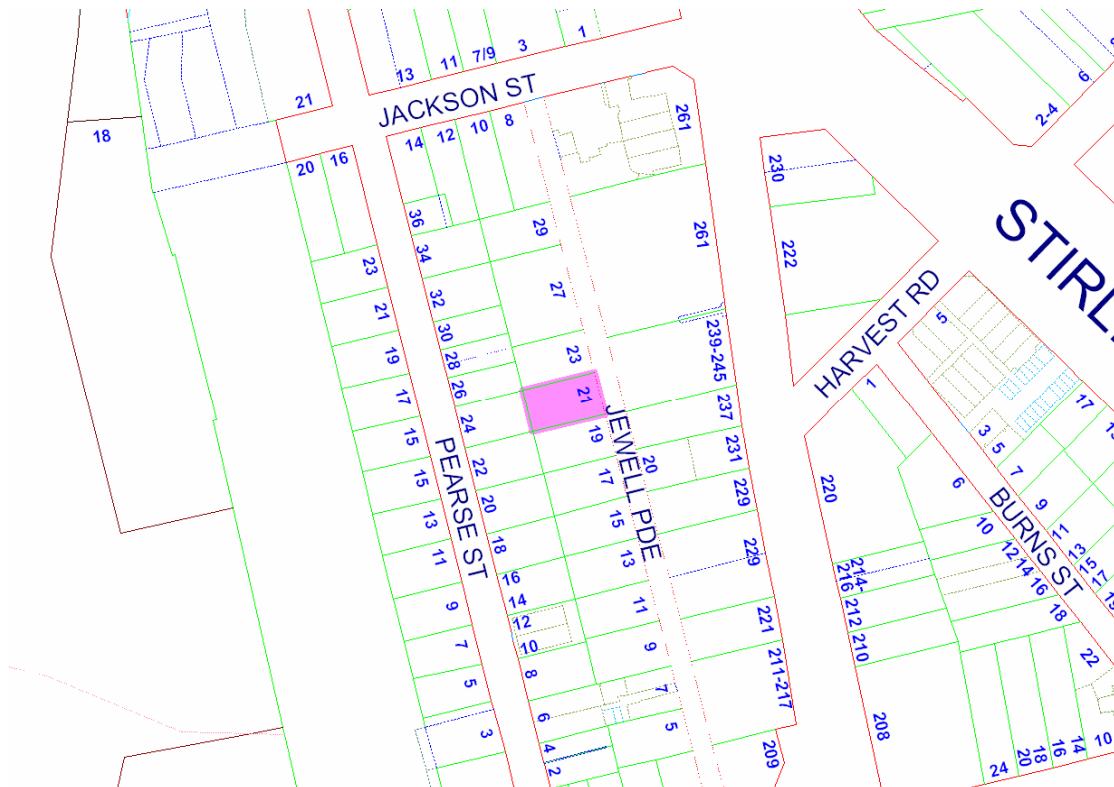
DEFERRED ITEMS (COMMITTEE DELEGATION)

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

PSC0904-67 JEWELL PARADE, NO. 21 (LOT 34), NORTH FREMANTLE – TWO STOREY SINGLE HOUSE AND HOME OCCUPATION

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Statutory Planning
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0904-67
Attachments:
 1. Site Photos
 2. Applicant's justification dated 6 June 2009
 3. TPG letter dated 30 March 2009
 4. Home occupation details
 5. Development plans (3 June 09)

Date Received: 21 October 2008
Owner Name: C Paparone & J Howieson
Submitted by: C Paparone & J Howieson
Scheme: Mixed Use – R25
Heritage Listing: North Fremantle Heritage Precinct
Use Class: Single House and Home Occupation
Use Permissibility: A and A



EXECUTIVE SUMMARY

The application is presented before the Planning Services Committee as the applicant is seeking Planning Approval for a two storey Single House and a Home Occupation business at No. 21 Jewell Parade, North Fremantle. The original application received submissions during the consultation period concerning various aspects of the development. Numerous amendments to the plans to address the majority of concerns raised have been made, the latest having been submitted on the 3 June 2009.

The application does not meet the Acceptable Development requirements of the R-Codes, pertaining to buildings setback from boundaries, buildings on the boundary and visual privacy. However, a Performance Criteria based assessment has been undertaken and the variations are considered minimal in their impact on the amenity of adjoining owners and can be overcome through appropriate conditions requiring screening, if approval is granted to the application.

The property has been assessed against Local Planning Policy D.G. N4 - Stirling Highway, Tydeman Road, Jackson and, Pearse Streets Local Area (D.G. N4) with regard to the height of the proposal and its impact on the residential character of the locality.

The proposal seeks to vary the design guidelines of Local Planning Policy D.G. N4 due to the proposed development not providing continuity with existing residential buildings. Having regard to Policy D.G. N4, it is recommended that the application be refused.

BACKGROUND

The application site is known as No. 21 Jewell Parade, North Fremantle and is located on the western side of Jewell Parade. The site has an area of approximately 384m², is orientated in an east-west direction and slopes from the street, up towards the rear of the site, by approximately 1.5 metres.

The site is zoned Mixed Use under Local Planning Scheme No. 4 (LPS4), has a density coding of R25 and is located within the North Fremantle Local Planning Area as described in Schedule 12 of LPS 4.

The site is not individually listed on the City's Heritage List but is located within the North Fremantle Heritage Precinct. The Heritage Precinct is not complemented by a specific heritage policy and therefore has no influence on the proposal. The site is located within the area subject to Policy D.G N4.

The surrounding area comprises a mix of land uses and building types including a Heritage Listed single storey house, single storey houses with pitched roofs, dwellings with high pitched roofs that include dormer windows and balconies, warehouse and storage type industrial and commercial units of single and two storey height, second hand furniture retail outlets, rear service areas to commercial units facing Queen Victoria Street and a church with a steep pitched roof and architectural tower elements.

The applicant submitted the application on the 20 October 2008 but has since submitted revised plans on the 16 December 2008, 28 January 2009, 6 March 2009 and 31 March 2009 in order to address concerns raised by neighbouring property owners.

The application was presented to Planning Services Committee on the 19 April 2009 with a recommendation for refusal. The recommendation was carried and referred to the Ordinary Meeting of Council for determination.

At the Ordinary Meeting of Council held on 22 April 2009, Council resolved to defer the item to the next appropriate meeting in order to allow amended plans to be assessed by officers, following a request from the owners.

DETAILS

Following Council's resolution to defer the item, the applicant submitted amended plans on the 3 June 2009 with the following modifications:

- Ground floor laundry setback has been increased from 1.5m to 2.2m;
- First floor front setback has been reduced from 3.7m to 2.7m for the façade of the dwelling and 1.2m to the balcony;
- First floor Bed 1 and Ensuite 1 has been relocated and replaced with a garden balcony with screening; and
- A skillion roof has been included for a portion of the roof.

The applicant is seeking planning consent for a two storey, Single House with a part flat, part skillion roof and a home occupation.

The two storey single house consists of:

- A ground level with garage, laundry/bathroom 1, kitchen, family, dining rooms, alfresco area and home office; and
- A second level with bedrooms 1 – 4, bathroom, ensuite 1 and 2 and a balcony to the front and rear.

The dwelling measured from natural ground level, to the top of external walls would have a maximum height of 6.4m and to the top of the roof ridge a maximum height of 7.5m.

Externally, the proposal would include a retaining wall setback 1.5m from the rear boundary (east), a lap pool along the side boundary (north) and an alfresco area at the ground floor level providing access from the dwelling to the outdoor living areas.

There are four parking bays provided onsite, two located within a double garage and two visitor car bays on the driveway.

The home office is proposed to be used as a mediation consultancy, to be used by appointment only Monday to Friday between 9:00 a.m. to 5:00 p.m. It is proposed that a maximum of two clients would be present at any one time.

Assessed as abutting residential land uses, the proposed development seeks variations to the Residential Design Codes of W.A. 2008 (R-Codes) for reduced side setbacks, the height and length of a boundary wall and visual privacy.

The applicant has submitted written justification for the variations, received by the City on the 17 December 2008, 6 March 2009 and 8 June 2009. The applicant has also engaged TPG – Town Planning and Urban Design to submit written justification on their behalf, which was received by the City on 31 March 2009.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Mixed Use Zone

The site is zoned Mixed Use under LPS 4. The objective of the Mixed Use zone states:

Development within the mixed use zone 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 (ie. Showrooms, cafes, restaurants, consulting rooms), small scale offices and administration, entertainment, residential at upper level 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.*

Home Occupation

Within the Mixed Use Zone, a Single House and Home Occupation are an 'A' Land Use, meaning the use is not permitted unless Council has exercised discretion and granted planning approval after giving special notice (advertising) in accordance with clause 9.4.

In accordance with LPS4, a Home Occupation:

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

- (a) does not employ any person not a member of the occupier's household,*
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood,*
- (c) does not occupy an area greater than 20 square metres,*

- (d) *does not display a sign exceeding 0.2 square metres,*
- (e) *does not involve the retail sale, display or hire of goods of any nature,*
- (f) *in relation to vehicles and parking, does not result in the requirement for a greater number of parking facilities than normally required for a single dwelling or an increase in traffic volume in the neighbourhood does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight, and does not include provision for the fuelling, repair, or maintenance of motor vehicles, and*
- (g) *does not involve the use of an essential service of greater capacity than normally required in the zone.*

Local Planning Area 3 - North Fremantle

Local Planning Area 3 (LPA3) sets out the maximum height controls to be applied within North Fremantle. Within the Mixed Use zone, the maximum wall height is 7.5m, although there is no maximum roof height limit.

However, LPA3 also states:

In granting consent to the maximum height prescribed, Council shall be satisfied in regard to all of the following-

- a) *that the proposal is consistent with predominant height patterns of adjoining properties and the locality generally,*
- b) *the proposal would not be detrimental to the amenity of adjoining properties or the locality,*
- c) *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 Policies

The following Design Guidelines and Policy provisions are also relevant to the proposed development as they provide specific guidance on development in specified areas:

- D.G.N4 – Stirling Highway, Tydeman Road, Jackson and Pearse Streets Local Area;
- Local Planning Policy 2.4 – Boundary Walls in Residential Development; and
- Local Planning Policy 2.8 – Fences Policy.

Residential Design Codes of W.A. (2008)

The development plans have been assessed against the Acceptable Development criteria set out within the R-Codes. The proposed development is considered to satisfy the relevant Acceptable Development criteria with the exception of Element 6.3.1 – Boundary Setback Requirements, 6.3.2 Building on the boundary and Element 6.8 – Visual Privacy. Consequently, a Performance Criteria based assessment is required for these elements of the development.

CONSULTATION

Community

The original application was required to be advertised in accordance with Clause 9.4 of LPS 4 due to proposed variations to the Acceptable Development provisions of the R-Codes and the proposed uses being 'A' Land Use classes within the Mixed Use zone. At the conclusion of the advertising period, 1 December 2008, the City had received three submissions. The following issues were raised:

- Impact of boundary wall on the amenity of No. 19 Jewell in terms of restriction of direct sun;
- Outdoor roof garden compromises visual privacy or causes overshadowing;
- Typology of the proposed building does not correlate with the typology of the existing streetscape;
- Privacy issues with neighbours;
- Three storeys is out of keeping with neighbouring properties;
- Loss of sunlight to No. 24 Pearse Street;
- Noise issues as a result of major living areas and swimming pool;
- The plans propose to infill and raise the ground before building, thus raising the height of the block and house;
- The loft is actually a third storey;
- Very few windows are frosted for privacy;
- Morning sun will be restricted to No. 22 Pearse Street; and
- Impact of reduced setbacks and boundary wall on neighbouring properties.

PLANNING COMMENT

Unauthorised Land Use and Development – No. 19 Jewell Parade

It is acknowledged that the adjoining use on No. 19 Jewell Parade is an unauthorised land use and has unauthorised development. The owners of No. 19 Jewell Parade have submitted a planning application for retrospective works and the change of use which is currently being dealt with by the City. At the time of writing this report, no determination had been made on the application for No. 19 Jewell Parade.

Local Planning Scheme No. 4

Mixed Use Zone

A Single House in the Mixed Use zone 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 given special notice (advertising) in accordance with clause 9.4.

The original application was advertised in accordance with clause 9.4 and there were no objections to the use of the land for Single House purposes. The comments received related to the design of the dwelling only.

The use of the land as a Single House is consistent with previous development approved within this area and would not be out of keeping with the general locality. The additional Home Occupation to be used in conjunction with the Single House is considered to add to the desirable land uses within the Mixed Use zone and as such it is considered that the proposed land uses are acceptable.

Home Occupation

The proposed Home Occupation includes the use of a ground floor home office as a mediation consultancy business. The nature of the business would include dispute resolution and mediation practice. It would involve the home office space being used as a general office for administrative purposes, a mediation room and a consultation room.

The Home Occupation would employ family members of the household only. Only two clients would be present in the office space at any one time and by appointment only. The Home Occupation would operate as required but not outside Monday to Friday between the hours of 9:00 a.m. – 5:00 p.m.

The home office is accessible from the street via a gate into the front garden area. The property also has an area for use by visitor vehicles, a total of four parking spaces (two are required for the dwelling) are provided and therefore it is considered that the site has adequate parking as a Single House and Home Occupation. The proposed Home Occupation in conjunction with the Single House will contribute to the desired range of uses within the Mixed Use zone. As such, the Home Occupation component is considered to be consistent with LPS 4.

Local Planning Area 3 – North Fremantle

a) Predominant Height Pattern of adjoining properties and the locality generally

The adjoining properties on Jewell Parade are single storey dwellings with pitched roofs. Their design and style reflects the historic nature of the area in that they are single storey cottage type dwellings oriented lengthways to the street frontage with moderately high roof pitches.

The adjoining properties to the rear on Pearse Street also comprise single storey dwellings with moderately high roof pitches. However, the topography of the area results in Pearse Street being considerably elevated in comparison to Jewell Parade. Thus the overall appearance of the properties to the rear of the application site on Pearse Street is substantially higher than those along Jewell Parade. As such, the height pattern of adjoining properties would be single storey along Jewell Parade, with additional height to the rear.

The predominant building height pattern of the locality generally is difficult to determine due to the range of land uses and differing building types and styles. Specifically, at the northern end of Jewell Parade there is a two storey dwelling with a high pitched roof (approximately 12m in height) which sits opposite a church that has a high first floor with a very steep pitching roof.

Towards the southern end of Jewell Parade, older residential properties have been approved as single storey dwellings employing the roof space as a second level of habitable space. The building style of these properties includes:

- high ground floor external walls;
- the placement of gable ends to the street with reduced street setbacks; and
- the addition of balconies, dormer windows, major openings and external fixtures that dominate the street façade.

These dwellings appear as small to moderate sized two storey dwellings. This style of development emphasises height rather than building bulk due to the more squat nature of the dwellings that have been designed to be built across the street frontage.

The remainder of Jewell Parade is made up of some older single storey cottage style dwellings, again with pitched roofs, and a number of commercial units that occupy large storage/warehouse buildings that generally reflect a two storey built form.

The surrounding area includes large two and three storey buildings on Queen Victoria Street situated directly opposite the subject site and older single storey residential dwellings in and around Pearse and Jackson Street.

Given the diverse range of buildings within the locality generally there is little ground for establishing a *predominant* height pattern, other than stating that the height of development along Queen Victoria Street is generally three storey's whilst development within Jewell Parade, Pearse and Jackson Streets is a mix of single and two storeys.

b) Amenity of adjoining properties

The proposal has been assessed against the R-Codes for its impact on the adjoining properties, which is discussed in more detail further in the report.

c) Conservation Objectives

There are no identified conservation objectives for this locality.

In granting consent to the maximum height prescribed it is considered that the proposal would be consistent with the height pattern of the locality generally. Whilst the development would not be consistent to the height pattern of the adjoining properties it is considered that there would not be any significant detrimental affect on the amenity of the adjoining properties. Furthermore the proposal seeks to build to the maximum height prescribed for a portion of the skillion roof only, whilst the majority of the building would be below the maximum height prescribed. Given the above it is considered that the proposal is acceptable in this regard and can that consent should be granted for the maximum height prescribed under LPA 2.

Council Policies

Local Planning Policies, whilst at a lower level of status than LPS 4, do provide direction and guidance in the anticipated form of development in a specific locality. In this instance, the following Local Planning Policies are relevant to this development application:

D.G. N4 – Stirling Highway, Tydeman Road, Jackson and Pearse Streets Local Area

It should be noted that as part of revising the City of Fremantle's Local Planning Policies, the City will be addressing the policies that affect North Fremantle.

D.G. N4 was adopted in March 1994 and sets out design guidance for the local area. D.G. N 4 states, with specific regard to land use within Jewell Parade:

Within Jewell Parade, the traditional occurrence of mixed land use shall continue to be supported by the Council. It is envisaged that land uses will be of a small scale, residential/commercial of specialist nature.

The proposed development meets the objectives of achieving a mix of uses along Jewell Parade by the provision of the home occupation and its use as a small scale, specialist mediation practice within a residential property.

D.G. N4 goes on to state:

New residential development should complement the existing streetscape, residential character and building form, therefore remaining predominantly single storey with additional dwelling space in the roof area if required. Two storey development will only be permitted in instances where it can be demonstrated that no loss of streetscape continuity or amenity will result.

Specifically, D.G. N4 states in relation to development within Jewell Parade the following:

In Jewell Parade, it is envisaged that building form will remain small scale. This will predominantly result in single storey buildings above street level, with additional floor space in the roof if necessary.

Existing streetscape

The established streetscape that continues for the majority of the street is formed mainly through the appearance of buildings built up to the street. In this instance a relatively consistent setback of buildings from the street of approximately 2m is maintained (No. 17 is setback approximately 4m, while strata lot units at No. 9 are setback approximately 7.5m, however these are exceptions to the predominant street setback). The placement of buildings up to the street is more predominant towards the southern end of Jewell Parade where the design of dwellings includes gable ends to the street at the second storey level.

The proposal is similarly setback at the first floor level with the main building façade setback at 2.7m with a front balcony setback 1.2m from the street. The first floor setback of the proposal is therefore consistent with the predominant development found within Jewell Parade.

It is noted that the ground floor setback of 3.7m to the office and 5.3m setback to the garage are not consistent with the predominant pattern, however due to the cantilevered design of the first floor level and the front fence being located along the property boundary it is considered that these undercroft elements would not detract from the established street setback pattern.

Residential character

Residential developments within Jewell Parade consist of a mix of residential styles. There are a number of older single storey dwellings with pitched roofs generally towards the central area of Jewell Parade, where the development site is located. These dwellings emulate a traditional cottage style of development, being single storey with a pitched roof, which is inconsistent with D.G. N4.

The northern and southern most ends of Jewell Parade have seen more recent residential development which takes on greater height through the incorporation of the roof space as habitable living areas. These developments include high ground floor walls and steep pitching roofs with gable ends facing the street. In these cases, major openings and dormer windows have been added to the face of the roof pitch and gable ends with balconies facing the street.

It is considered that the proposal does not reflect the traditional style of residential development that has taken place within the street and the type of development sought in D.G. N4. However the applicant has stated in their submission dated 6 June 2009:

The design profile amendments include construction of a "saw-tooth industrial design" roof (see DBH12) pitched over the southern half of the building with reduced finished eaves levels of 13.086m along the southern boundary and a mirror pitched elevation at the rear.

This profile reminiscent of "early industrial buildings" (DBH12) further protects the solar access to the adjoining sites and creates a more slender profile. The front façade pays homage to both the pitched roof designs of Jewell Parade and the flat or saw-tooth designs of Queen Victoria Street and the building materials will be consistent with the traditional brick and iron construction. As the proposal provides a visual link between these two streets it is a clever solution to include these two traditional design profiles while retaining the public/private interface of the North Fremantle Local Centre.

The amendment also reduces any apparent bulk and creates an urban industrial and vibrant identity for the locality while maintaining all amenities for the adjoining neighbours.

Whilst the proposal does not present to the street in a fashion similar to other residential developments within the street, the incorporation of a skillion roof design has aided in breaking up the square appearance of the dwelling and makes some attempt to reflect the design of non-residential buildings in the surrounding area.

In terms of the affect the proposal would have on the residential character of the area, it is considered that the proposed development of a two storey dwelling with a portion of flat roof and portion of skillion roof is not consistent with the cottage style dwellings nor with the pitched roof and gable end dwellings that are more common to Pearse Street and parts of Jewell Parade.

Built form – Jewell Parade

In terms of an established built form and height for Jewell Parade, when viewed from the south, the developments at No. 7, 9 and 11 Jewell Parade appear two storeys in height, and when viewed from the north the redevelopment of No. 29 appears three storeys in height.

In comparison, the proposals total height of 7.5m to the top of the roof ridge and 6.3m to the top of the external walls would be similar to the height of dwellings at No. 7, 9 & 11 Jewell Parade (6.8m to 7.3m in height) and significantly lower than No. 29 Jewell Parade (approximately 12m in height). Thus in terms of height the proposal would generally be in keeping with the overall height seen elsewhere in Jewell Parade.

The revised plans submitted on the 3 June 2009 have sought to bring the proposal in line with the existing street setback and has revised the roof form in order to address the built form of the dwelling when viewed from the street.

The built form of the building would still include a bulky dwelling that would be prominent due to the two storey nature of the development rather than a single storey development with the additional floor within the roof space. As such the bulk of the design is still dominant in comparison to the existing built form of Jewell Parade.

Having regard to the guidance currently contained within D.G. N4, the proposal does not accord with the direction for residential development in Jewell Parade to remain predominately single storey and the character of the proposal would not respect the current traditional residential character of the area, therefore the proposal does not generally accord with the existing residential objective of D.G. N4.

Local Planning Policy 2.8 – Fences Policy

The applicant proposes a 2m high visually permeable front fence to be constructed from vertical timber slats. Local Planning Policy 2.8 (LPP 2.8) states that front fences shall be visually permeable above 1.2m to a maximum height of 1.8m, with piers not higher than 2.0m.

The fence complies with all other elements of LPP 2.8, including sightlines at vehicle access points, however the front fence should be reduced to a height of no more than 1.8m and if applicable can be conditioned as part of any approval.

Residential Design Codes (2008)

The proposal seeks variations to the Acceptable Development requirements of the R-Codes against four of the Design Elements (DE). A Performance Criteria based assessment is required for DE 6.3.1 – Buildings setback from the boundary, DE 6.3.2 Buildings on boundary, DE 6.6.1 – Site Works Requirements and DE 6.9.1 – Design for Climate Requirements.

6.3.1 - Buildings setback from the boundary

The applicant proposes two setback variations to the Acceptable Development requirements of the R-Codes for walls along the southern boundary. The setback variations are for:

- 6.75m long, ground floor kitchen wall. Setback 1.2m in lieu of a 1.5m required setback; and
- 9m long, first floor bedroom wall. Setback 1.2m in lieu of a 2.8m required setback.

As the setbacks do not comply with the Acceptable Development requirements as set out in Table 2a and 2b, as such the variation is required to be assessed under the Performance Criteria of the R-Codes.

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

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

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

The ground floor kitchen wall is not considered to significantly affect access to direct sun and ventilation for the proposed dwelling nor the adjoining property due to the variation being minor in nature.

At the time of writing this report, the adjoining southern property had submitted a planning application that depicted a courtyard to be located along the boundary that would be affected by the reduced setback. A determination has not been made on the neighbouring properties application at this stage. Nonetheless, the overshadowing diagram submitted with the application shows that the shadow cast by the wall would affect approximately 7.65m² of the proposed 31.5m² courtyard. The shadow cast by the wall is considered acceptable in that it would still allow adequate direct sun to the open space of the proposed courtyard.

The first floor bedroom wall (shown as Bed 2) would affect an area that is currently used for driveway access and parking. The proposed plans submitted by the affected neighbouring property depict that this area would remain for the use of vehicular parking and access. The setback variation in this location would not affect access to direct sun and ventilation and the shadow cast by the wall would not affect major openings to habitable rooms nor outdoor living areas and as such is considered acceptable.

For these reasons it is considered that the proposed variations to the boundary setbacks meet the Performance Criteria of DE 6.3.1 of the R-Codes for buildings set back from the boundary.

6.3.2 - Buildings on boundary

Local Planning Policy 2.4 (LPP 2.4) provides replacement Acceptable Development and Performance Criteria to be applied for boundary walls. The proposed boundary wall will be assessed against these replacement requirements as set out in LPP 2.4.

The proposed boundary wall comprising the southern elevation of the proposed dwelling does not meet the Acceptable Development provisions of DE 6.3.2 of the R-Codes (as replaced by LPP 2.4 – *Boundary Walls in Residential Development*) because:

- the wall is not specifically permitted by LPS 4 or any other Local Planning Policy;
- the wall would not abut an existing or simultaneously constructed wall of similar or greater dimensions;
- the wall will not abut a property used for non-residential purposes; and
- the lot has a street frontage with a width more than 10 metres.

With respect to the Performance Criteria, LPP 2.4 states that in considering any application under the Performance Criteria of DE 6.3.2 of the R-Codes:

The Council will have particular regard to comments made by neighbouring owners/occupiers of adjoining properties and will only consider these criteria to be met where it is satisfied that no adverse impacts on the amenity of the neighbouring property will occur.

In considering the comments made by neighbouring owners it should be noted that the effected owner objected to the original boundary wall as proposed on plans dated 21 October 2008. The proposed boundary wall has since been reduced in length and height following objections from neighbouring owners. As shown on plans dated 3 June 2009, the boundary wall now measures 6.9m in length, with a minimum height of 3.2m, a maximum height of 3.7m and an average height of 3.45m.

Whilst the comments made by the neighbouring owner refer to a significantly higher and longer boundary wall, the objections raised are still valid. The neighbouring property owner objected to the boundary wall based on the impact it would have on the restriction of direct sun to their only major north facing opening and outdoor area.

The applicant has submitted an overshadowing diagram in support of their application, depicting the shadow thrown by the proposed building at mid-day on the 21 June (Winter Solstice as set out by the R-Codes), which is considered the worst case scenario.

The diagram has been assessed and is consistent with the criteria for overshadowing calculations as set out in the R-Codes and shows that the shadow cast by the boundary wall would not affect the neighbouring properties north facing major opening (window). The shadow would be cast onto a portion of the wall 0.35m from ground level. The window on this side boundary is located above the height to which the shadow would fall and as such the window remains protected from overshadowing.

In addition to overshadowing, the issue of outlook needs to be taken into consideration, as a boundary wall has the effect of placing a portion of the proposed dwelling on the southern boundary and may impact on the neighbouring properties amenity.

The neighbouring dwelling is setback approximately 4m from the side boundary and this area is used for car parking. The outdoor living areas for the neighbouring dwelling are located at the rear of the property and the boundary wall would not be visible from that area. The location of one major opening, looking out onto a car parking area, is not considered to be significantly affected by the boundary wall as the wall would be setback from the street by 5.3m and would still allow an outlook from the major opening through to the street. Therefore, the proposed boundary wall would not significantly affect the outlook of the neighbouring property.

As such the proposed boundary wall is considered to comply with the Performance Criteria as set out in LPP2.4 and therefore complies with 6.3.2 of the R-Codes, due to:

- the setback of the boundary wall from the street frontage, allowing an open view to the street; and
- the protection of access to direct sunlight onto the north facing window.

6.8.1 – Visual Privacy

The proposed plans submitted on the 3 June 2009 have modified a number of upper level major openings and balconies that now fail to meet the Acceptable Development provisions for visual privacy setbacks. The proposal seeks variations to:

- First floor bedroom 2, window facing south located at the front of the dwelling;
- First floor bedroom 1 & 4 with windows facing east located in the centre of the site; and
- First floor balcony, with views to the west located at the rear of the dwelling.

The Performance Criteria of DE 6.8.1 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 first floor bedroom 2 is provided with a window that faces to the south and towards the adjoining property. The window is located at the front of the dwelling and overlooks the neighbouring properties driveway, parking area and roof. The location of the window, being at the front of the property, would not allow a significant view to the adjoining neighbours north facing window by virtue of the window being offset from the location of the adjoining properties window.

The first floor bedroom 2 & 4 has been provided with obscure glass for the portion of the windows that face directly east so as to prevent overlooking to the neighbouring property. However, the windows that are located along the north and south facades of these bedrooms would allow an element of overlooking to the east. The application was advertised to the affected adjoining neighbour with no submission received. Furthermore the extent of the overlooking from these windows would be minimal in that the visual privacy setback is 4m in lieu of the 4.5m Acceptable Development requirement and that any view from these windows would be from a 45° angle from the bedrooms.

The first floor balcony located at the rear of the dwelling with views to the west does not meet the Acceptable Development requirements as the balcony would be setback 4.53m from the rear boundary in lieu of 7.5m. The balcony has been provided with screening to the south and south west and the applicant has stated that the balcony would be provided with a 1m wide landscaped garden bed to allow suitable vegetation to be planted so to screen any views to the west. Landscaping is not considered a permanent screening solution and affective screening would be required to satisfy the R-Codes.

The affected adjoining neighbour to the west raised concerns about possible overlooking from the rear elevation in their previous submission. The balcony would allow overlooking into the affected properties outdoor living area and main living rooms of the dwelling.

To prevent overlooking, through a permanent solution, the application should be provided with permanent fixed screening to the satisfaction of the City of Fremantle. It is considered a condition to this affect should be included, if the application is supported.

It is considered that the overlooking from the first floor bedrooms 1, 2 & 4 are acceptable as they meet the Performance Criteria of the DE 6.8.1, however the first floor balcony would have to be provided with appropriate screening to comply with this requirement of the R-Codes.

Response to Submissions

Three letters of objection were received from adjoining owners based on the consultation of the original application (three storeys) and plans dated 20 October 2008. The main issues raised include: -

Height of the proposed development:

- The plans propose to infill and raise the ground before building, thus raising the height of the block and house;
- Three storey residence is out of keeping with neighbouring properties;
- The height of the development will create privacy problems with neighbours;
- The location of a 'loft' is 2.4m tall, and effectively a third level;
- Proposal would be out of keeping with other residences in the area; and
- In the immediate locality a two-storey residence with loft, effectively will compromise the current single storey low-scale streetscape aesthetic.

Overlooking and Privacy issues:

- The location of windows in the rear elevation that overlook rear internal and external living areas of 24 Pearse Street;
- Overlooking and impact on privacy of north eastern courtyard of 22 Pearse Street;
- Very few windows are frosted for privacy; and
- The roof garden will compromise our privacy by being located within 5.3m or if screened will act as a further two storey aspect to the building and cause further overshadowing.

Overshadowing and restriction of direct sunlight:

- Development would restrict morning sun into north east courtyard of 22 Pearse Street;
- The height of the building will adversely reduce the amount of sunlight to main living areas for 24 Pearse Street; and
- The wall along the southern boundary will significantly restrict direct sun to 19 Jewell Parade's only major north facing opening and direct sun to the only outdoor area.

Impact of the development on neighbouring amenity:

- Close to 60% of the boundary will be built out by the proposed zero setback wall;
- The roof garden should be setback by 5.3m for its 8.5m height; and
- Major living areas of the proposed development include a pool at the rear of the property and noise issues as a consequence of its close proximity to the living areas of 24 Pearse Street are likely to be a major and continuing issue;

The revised plans received on the 3 June 2009 were not re-advertised as they were developed in response to the submissions that have been received. It should be noted that the applicant approached the adjoining neighbours when re-designing the proposal and has incorporated a number of their suggestions into the design of the dwelling.

With regard to comments on the height of the dwelling, the applicants do not seek to raise the dwelling or fill the lot before development. Also, the Mixed Use zone, within Local Planning Area 3 – North Fremantle, allows a maximum wall height of 7.5m above natural ground level. The proposal complies with this requirement. Furthermore, amended plans dated 3 June 2009 have removed the three storey element of the proposal that was previously included.

In terms of privacy and overlooking, the development has been provided with screening and/or highlight windows to the majority of major openings that would have otherwise impacted on the privacy of neighbouring properties. The proposal does allow an element of overlooking from bedroom 1, 2, and 4 which are considered to comply with the Performance Criteria of DE 6.8.1. The first floor balcony located at the rear of the dwelling would require an appropriate level of screening.

The overshadowing calculation of the development complies with the Acceptable Development provisions of the R-Codes by virtue of the revised design reducing the bulk of the dwelling at the rear of the property through modifications to the roof design.

Amended plans received 3 June 2009 have removed the majority of the boundary wall previously proposed. The boundary wall currently proposed is considered to satisfy the Performance Criteria of LPP 2.4. The amended plans received 3 June 2009 have also removed the third storey element of the proposal that included the roof garden. The impact of the use and location of outdoor living areas, on another outdoor living area, is not an element of the R-Codes to be assessed. The location of neighbouring landowners existing outdoor living area is not a sufficient basis for restricting the location of proposed outdoor living areas.

CONCLUSION

The proposal has undergone multiple changes in order to take into consideration the comments of neighbours and the existing character of Jewell Parade.

The applicant is seeking approval for a two storey Single House, with a portion of flat roof and a portion of skillion roof, with a Home Occupation.

The proposed land uses are considered to comply with the objectives of LPS 4 with regard to development of a Single House and a Home Occupation within the Mixed Use zone.

The proposal is considered to meet the provisions of LPA 3 with regard to building height.

The proposal seeks to vary the Acceptable Development provisions of the R-Codes but it is considered that the proposal meets the Performance Criteria of the R-Codes (or LPP 2.4 where appropriate) through submission of amended plans that have addressed the concerns raised by neighbouring property owners with exception to the visual privacy setback from the first floor balcony located at the rear of the dwelling.

The subject balcony would require permanent fixed screening which complies with the R-Codes in order to satisfy the City of Fremantle that visual privacy concerns can be addressed.

The proposed front fence does not comply with LPP 2.8 and should be no higher than 1.8m.

It is considered that the proposal does not reflect the existing residential character of Jewell Parade as set out in the current objectives of D.G. N4.

On balance, whilst the application generally complies with all other elements of assessment, it is considered that as the dwelling design does not reflect the guidance contained within D.G. N4 officers can not support the application and therefore is recommended for Refusal.

OFFICER'S RECOMMENDATION

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two storey Single House and a Home Occupation at No. 21 (Lot 34) Jewell Parade, North Fremantle, for the following reasons:

The proposed development is inconsistent with the objectives of Local Planning Policy D.G. N4 - Stirling Highway, Tydeman Road, Jackson and, Pearse Streets Local Area for development within the Jewell Parade locality.

Cr B Massie moved the following alternative recommendation:

COMMITTEE RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two storey Single House and a Home Occupation at No. 21 (Lot 34) Jewell Parade, North Fremantle, subject to the following condition(s):

1. The development hereby permitted must be substantially commenced within two (2) years from the date of this decision.
2. The development hereby permitted shall take place in accordance with the plans dated 3 June 2009.
3. Prior to the commencement of development, suitable privacy screening details to the western elevation of the first floor balcony shall be submitted to and approved by the Chief Executive Officer, City of Fremantle.

4. The proposed front fence shall be modified to comply with Council's Local Planning Policy 2.8 - Front Fences, in that the height of the front fence shall not exceed 1.8m in height (excluding pier caps).
5. The proposed structures shall be wholly contained within the subject lot and shall not encroach over the lot boundary.
6. All storm water discharge shall be contained and disposed of on-site.
7. 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 City of Fremantle.
8. Any redundant crossovers and kerbs shall be removed and the verge reinstated to the satisfaction of the City of Fremantle and at the expense of the applicant.
9. The Home Occupation hereby permitted shall:
 - only operate between the hours of 8:00 am to 6:00 pm on Monday, Tuesday, Wednesday, and Friday; 8:00 am to 9:00 pm on Thursday; and 8:00 am to 5:00 pm on Saturday;
 - not involve the retail sale, hire or display of goods that are not directly associated with the Home Occupation;
 - be conducted by Jillian Howieson and/or Claude Papparone. If both Jillian Howieson and Claude Papparone cease to operate the Home Occupation hereby permitted or occupy the subject site, this approval will expire;
 - not occupy an area of greater than 50m²;
 - not erect any signage at the site that exceeds 0.2m² in area; and
 - not employ any person who is not a member of the occupier's household.

Cr J Dowson moved to defer the item to the Planning Services Committee, 15 July 2009.

CARRIED: 5/0

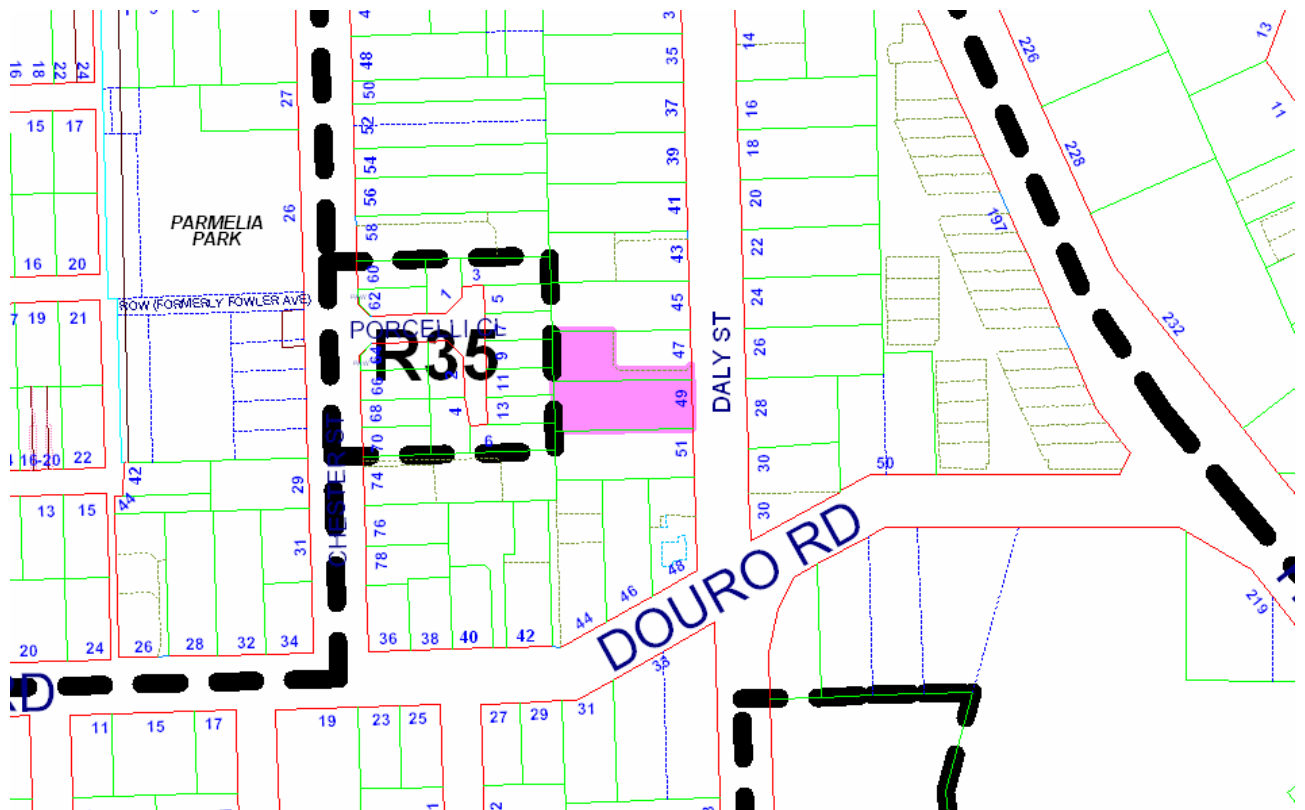
For	Against
Cr Les Lauder Cr Georgie Adeane Cr John Alberti Cr John Dowson Cr Bill Massie	

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

The item was deferred to allow for consultation with the neighbouring property to the rear over the amended plans.

PSC0905-83 DALY STREET NO.49 (LOT 39) AND NO.47/A (LOT 101), SOUTH FREMANTLE - ADDITIONAL INFORMATION - TWO, TWO STOREY GROUPED DWELLING AND A SINGLE BEDROOM GROUPED DWELLING ADDITION (JL DA93/09)

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: DA553/08
Attachment 1: Amended Development Plans
Attachment 2: Previous Report PSC0905-83
Attachment 3: Applicant's Minutes (Meeting with adjoining neighbour)
Date Received: 10 March 2009
Owner Name: Barry Trewin
Submitted by: Officer Woods Architects Pty Ltd
Scheme: Residential R25
Heritage Listing: 49 Daly Street -Heritage Listed – MHI Level 3
Existing Landuse: Single house & Vacant Site
Use Class: Grouped Dwelling
Use Permissibility: D



EXECUTIVE SUMMARY

The applicant is seeking Planning Approval for Two, Two Storey Grouped Dwellings and a Single Bedroom Grouped dwelling at No.49 (Lot 39) and No.47A (Lot 101), Daly Street, South Fremantle.

The application was presented to the Planning Services Committee held 20 May 2009. This application was originally referred to the Planning Services Committee for determination as the applicant was requesting several discretionary decisions of Council in relation to the City of Fremantle Local Planning Scheme 4 (LPS4) and the Residential Design Codes (R-Codes) in terms of external wall height and boundary setbacks.

The Committee resolved to defer the application to allow further discussion between the applicant and the affected southern neighbour regarding the proposed setbacks of the development. The applicant was contacted and informed of the Committee's decision and subsequently met with the adjoining neighbours.

The applicant has since responded to the Committees decision to defer the application and has met with the adjoining southern neighbour in order to address specific setback and design concerns in the form of amended plans (see Attachment 1).

The application is recommended for approval subject to conditions.

BACKGROUND

Please see 'Attachment 2' below for the detailed background information relating to this application prior to the item being presented before the Planning Service Committee meeting held 20 May 2009.

On 20 May 2009, the Planning Service Committee deferred consideration of this matter in order to *'allow further discussion between the applicant and the affected neighbour'*.

On 25 May 2009 and the 8 June 2009 the applicant and adjoining southern neighbour met to discuss design issues. The applicant has provided the City with a copy of the minutes taken from this meeting which is attached below in this report (see Attachment 3).

On 9 June 2009 the applicant submitted amended plans.

DETAILS

Please see 'Attachment 2' below for the specific details of the original proposed development relating to this application prior to the item being presented before the Planning Service Committee meeting held 20 May 2009.

The proposed grouped dwelling development consists of a Single Bedroom dwelling addition to be located in the middle of No.49 Daly Street and two, two storey Grouped Dwellings to be located in the rear portion of No.49 Daly Street and No.47/A Daly Street.

The grouped dwelling development consists of what is considered to be a modern architectural design which incorporates skillion style roofs (leaning from north to south). Furthermore the development is considered to be designed in order to maximise energy efficiency of the individual grouped dwellings with the inclusion of rain water storage tanks, solar panelling and northern orientated internal and external habitable spaces and the skillion roof design.

The applicant is proposing amendments to the original development which include the following:

- Increased eastern boundary setback of the proposed Single Bedroom Dwelling from 840mm to 1.7 metres,
- Deletion of the study room activity located on the ground floor storeroom area (southern elevation),
- Accurate layout of the adjoining southern dwelling depicted on plans,
- Deletion of the proposed rain water tanks and washing line along the southern elevation of the Single Bedroom Dwelling,
- Reduced western boundary setback of the proposed Single Bedroom Dwelling from 3.95m to 2.095m.

In relation to these proposed amendments, the applicant is requesting several performance based assessments. These variations include:

- northern elevation external wall height of the two, two storey grouped dwellings, (Lots C & D) and the northern elevation of the single bedroom grouped dwelling (Lot B),
- The reduced primary street setback (proposed common property access leg) for all the grouped dwellings,
- Nil setback for the eastern boundary wall for the proposed dwelling to be located on Lot D,
- 800mm of fill proposed for the south- western corner of the proposed grouped dwelling for Lot C.

These planning matters have been discussed in the original report to Planning Services Committee and can be seen in the 'Statutory & Policy Assessment' and 'Planning Comment' section of the original report which is attached below in this report (Attachment 2).

STATUTORY FRAMEWORK

As stated in the previous report (Attachment 2) the proposed development has been assessed against the relevant provisions of LPS4, the Residential Design Codes (R-Codes) and Council's Local Planning Policies.

The proposed amendments to the development plans are only associated to the proposed Single Bedroom Dwelling.

Residential Design Codes of Western Australia 2008 (R-Codes)

The original application was assessed against the relevant 'Acceptable Development' criteria of the R-Codes for R25 coded property. The proposed development satisfied all of the relevant 'Acceptable Development' criteria with the exception of Design Element 6.2 Streetscape requirements, Design Element 6.3 – Boundary Setbacks requirements and Element 6.7 – Building Height requirements. Accordingly performance based assessments were required for these elements and this assessment can be seen in the original report which is attached below (Attachment 2).

However, as a result of the proposed amended plans, the original performance based assessment required in relation to the eastern boundary setback of the Single Bedroom Dwelling is now no longer required as the applicant has brought the development into compliance with the 'Acceptable Development' criteria of the R-Codes.

Design Element 6.3.1 – Building Setback from the boundary

The applicant was originally proposing a reduced setback of 840mm from the eastern side boundary for the Single Bedroom Dwelling. The applicant has since amended the plans to increase this setback for the dwelling to 1.7 metres. The R-Codes Table 2b requires a setback of 1.7 metres for a wall that is less than 9 metres in length and 4.5 metres in height with no major openings. Therefore, this element of the proposed development now meets the 'Acceptable Development' criteria as prescribed in Table 2a of the R-Codes.

However, it is acknowledged that the proposal still includes an 840mm eastern boundary setback for the front wall element of the development associated with the deck area located above the carport area at the front of the Single Bedroom Dwelling. Table 2a of the R-Codes requires a 1.5 metre setback for a wall that is 11 metres in length and 4 metres in height with no major openings. Therefore as the development does not meet the 'Acceptable Development' criteria prescribed in Table 2a of the R-Codes the development should be assessed against the relevant 'Performance Criteria' which reads as follows:

P1 Buildings set back from boundaries other than street boundaries so as to:

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

HERITAGE ASSESSMENT

The application was required to have a detailed Heritage Assessment undertaken in accordance with Council's *L.P.P.1.6 Preparing Heritage Assessment* policy and this is attached below in Attachment 2 below.

CONSULTATION

Community

See original report below (Attachment 2) for the summary of concerns raised by submitters.

PLANNING COMMENT

In considering this application, Council shall have regard to the following key points.

Eastern Boundary Setback (Lot B)

As stated above the applicant has increased the eastern boundary setback of the Single Bedroom Dwelling from 840mm to 1.7 metres, bringing this element of the development into compliance with the 'Acceptable Development' criteria of the R-Codes. As mentioned in the previous report the original reduced eastern boundary setback of 840mm was considered to allow adequate direct sunlight and ventilation to both the proposed Single Bedroom dwelling, the existing eastern adjoining dwelling and the respective private outdoor living areas. However, the PSC were concerned that the adjoining southern dwelling would be adversely impacted as a result of this variation.

As a result of meeting with the adjoining southern neighbour, the applicant is now proposing to increase this setback to 1.7 metres. This amendment will not only help safeguard an appropriate light corridor for the southern adjoining dwelling and its existing rear habitable spaces, but it will also help reduce any potential building bulk impacts created from the development, which may have been envisaged by the adjoining southern neighbour.

As mentioned previously, the proposed development still requires a performance based assessment in relation to the proposed 840mm eastern boundary setback for the front deck wall element of the Single Bedroom Dwelling.

The reduced eastern boundary setback for the deck wall addition of the Single Bedroom Dwelling is considered appropriate, as it will have minimal impact on direct sunlight and/or ventilation to the proposed Single Bedroom Dwelling, the adjoining eastern dwelling or the southern adjoining dwelling. With regards to any impacts created by excess building bulk on adjoining neighbours, these are also considered to be minimal as the subject site has a lower topography than the adjoining eastern site and the addition is sufficiently setback (approximately 6.3 metres) from the southern adjoining property.

For the reasons outlined above, the reduced eastern boundary setback of the proposed deck wall is supported.

Submitters Concerns

The original report presented to Council addressed the original submitters concerns (see Attachment 2) however as a result of the amended plans some of these concerns have consequently been addressed. These are as follows:

- ***Overshadowing impacts created by the development on adjoining properties***

The original proposed development was calculated to overshadow 23% of the southern adjoining site and therefore complied with the 'Acceptable Development' criteria for design Element 6.9.1 of the R-Codes for R25 coded property.

The proposed amended plans do not increase the 23% overshadowing of the southern adjoining site. Therefore the amended plans satisfy the R-Codes 'Acceptable Development' requirement for R25 coded property.

- ***Setback of the proposed Single bedroom dwelling from the eastern boundary***

The amended plans propose an increased eastern boundary setback, bringing the development into compliance with the 'Acceptable Development' setback requirement of Table 2a of the R-Codes.

- ***Setback of the proposed Single Bedroom Dwelling from the southern boundary***

The original plans indicated a study/ storeroom to be located on the ground floor southern elevation of the proposed Single Bedroom Dwelling. It is acknowledged that the original development plans failed to distinguish what portion of this proposed room was to be utilised for study room and storeroom activity. This was requested to be clarified by the applicant who consequently deleted the study room activity from this dwelling in the amended plans. Therefore, the southern boundary wall of the proposed Single Bedroom Dwelling has been assessed against the provisions of Table 2a of the R-Codes as this wall does not incorporate any major openings. Table 2a of the R-Codes requires a setback of 1.2 metres for a wall that is less than 9 metres in length and 5.5 metres in height. Therefore, the proposed setback is supported as it complies with the 'Acceptable Development' standards of the R-Codes.

- ***The misrepresentation of the submitted development plans***

The applicant has contacted the adjoining southern neighbour, who has provided a copy of house plans in order to assist with the accurate depiction on the development plans of the existing built form of the adjoining southern dwelling.

- ***The negative visual impact is increased by planned washing line and rainwater tanks along the southern boundary***

Another concern originally raised was in relation to the negative visual impacts created by the proposed Single Bedroom Dwelling's southern elevation location of the washing line and rainwater tanks. This concern is considered to be addressed as the applicant has removed these elements of the development from the proposal.

CONCLUSION

Overall the proposed amendments to the original development are considered to be acceptable as they have been assessed against and are consistent with the provisions of LPS4, the R-Codes, and Council's Local Planning Policies.

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

OFFICER'S RECOMMENDATION

MOVED: Cr L Lauder

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two, Two Storey Grouped Dwellings and Single Bedroom Grouped Dwelling at No. 49 (Lot 39) & No.47/A (Lot 101) Daly Street, South Fremantle, subject to the following condition(s):

1. The development hereby permitted shall take place in accordance with the approved plans dated 9 June 2009.
2. All storm water discharge shall be contained and disposed of on-site.
3. The external face of the eastern boundary wall for the proposed Grouped Dwelling on Lot D shall be finished in either two coat sand render or face brick to the satisfaction of the Chief Executive Officer, City of Fremantle.
4. Prior to the occupation of the proposed Single Bedroom Grouped Dwelling and Two, Two Storey Grouped Dwellings hereby permitted, Lot 101 (No.47/A Daly Street, South Fremantle) and Lot 39 (No.49 Daly Street, South Fremantle) are to be legally amalgamated.

Cr B Massie moved to defer the item to the Planning Services Committee, 15 July 2009.

CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

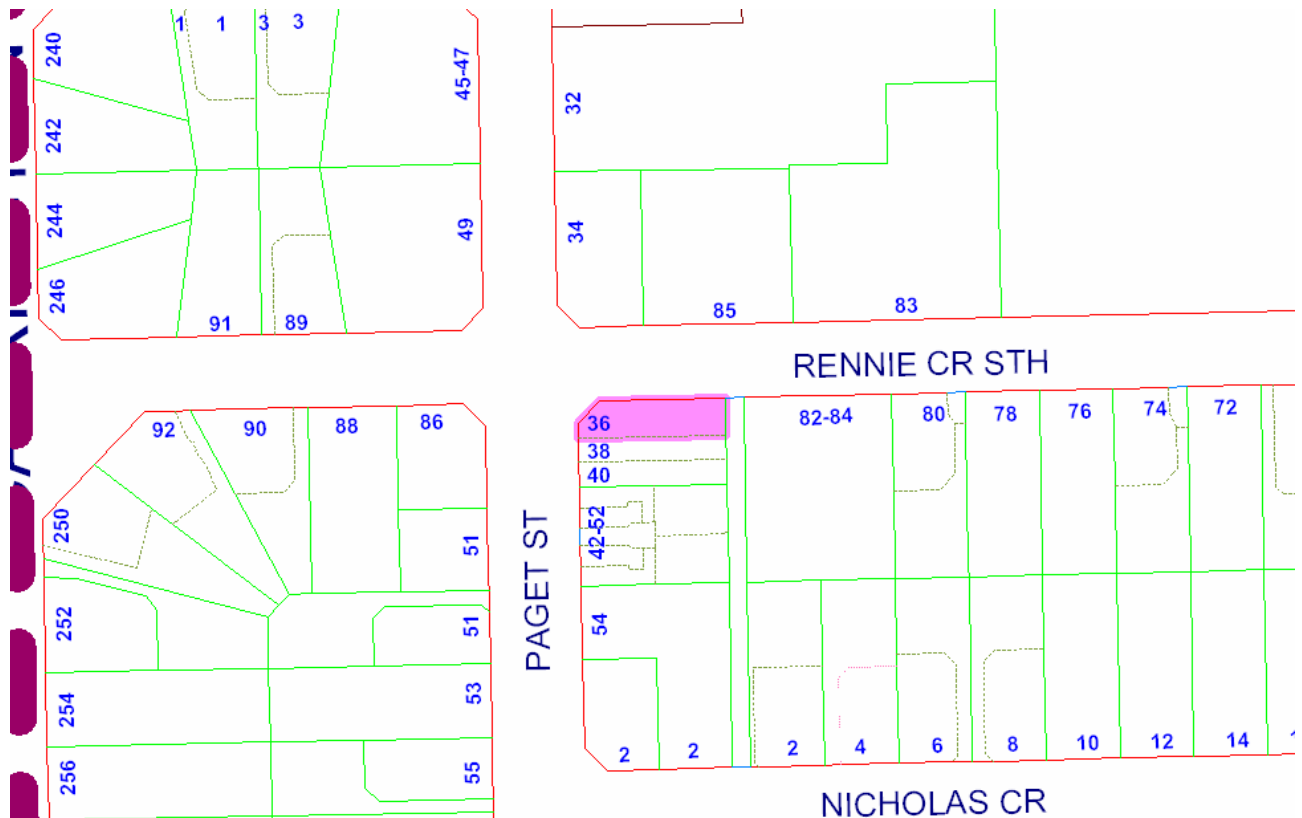
The item was deferred to allow for neighbour consultation over the amended plans.

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

PSC0906-113 PAGET STREET, NO. 36 (LOT 4) HILTON - MIXED USE DEVELOPMENT (OFFICE AND TOURIST ACCOMMODATION) (JL DA466/08)

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: DA297/07 and ET11/08
Attachments: Development Plans
Date Received: 2 September 2008
Owner Name: Justin Paris / Café Aromatico Pty Ltd
Submitted by: Broadview Design
Scheme: Neighbourhood Centre – R20
Heritage Listing: Hilton Garden Precinct
Existing Landuse: Cafe
Use Class: Office and Tourist Accommodation
Use Permissibility: Office – D, Tourist Accommodation - A



EXECUTIVE SUMMARY

The application is presented before the Planning Service Committee as the proposed development requires discretionary decisions of Council.

The City of Fremantle (the City) is in receipt of an application for planning approval for a two storey mixed use development with a loft to be constructed at the rear of the existing building located at No.36 (Lot4) Paget Street, Hilton.

The applicant is requesting discretionary decisions in relation to the:

- proposed 'Office' and 'Tourist Accommodation' use of site,
- external wall height of the building, and
- nil delivery parking bay for the development.

The proposed development has been assessed against the requirements of City of Fremantle Local Planning Scheme No.4, the Residential Design Codes and local planning policies.

It is recommended that the application be conditionally approved.

BACKGROUND

The subject site is located at No. 36 (Lot 4) Paget Street, Hilton on the southeast corner of the intersection of Paget Street and Rennie Crescent. The site has an area of 387m² and is within the Hilton Local Planning Area as prescribed under Local Planning Scheme No. 4 (LPS4). The site is zoned Neighbourhood Centre under LPS4 and has a density coding of R20.

Hilton Garden Precinct is currently located on the City's Heritage List however by resolution of Council on 23 April 2008 this Precinct is to be treated as a Heritage Area under the provisions of LPS4.

The site is one lot (Pt 4) of a three lot built strata subdivision which was endorsed by the Western Australian Planning Commission on 28 August 2008 and has frontage to Paget Street, Rennie Crescent and a privately owned right of way to the rear.

There has been an ongoing dispute as to whether the applicant has legal rights of access over the rear abutting privately owned right of way (ROW) (described as Lot 66 on deposited plan 16033) which is intended to be utilised for vehicle access to the proposed development. It is understood that the landowner has a right of access to this ROW under the provisions of s167A of the Transfer of Land Act 1893.

Furthermore, it is also noted that another ongoing dispute is in regards to the sealing of the subject ROW. Council is currently dealing with this as a compliance matter which is a separate matter which will be presented before Council at a later date. It should also be noted that on 10 June 2009, Department of Planning for Infrastructure contacted the City regarding a request from the private ROW owner (Department of Housing & Works) to have the subject ROW re-vested and reserved for the ROW with management to the City of Fremantle.

The subject site currently contains an existing cafe located at the western end of the site and the adjacent two survey strata sites also contain shops. The surrounding area contains a mix of residential, education and community uses.

Temporary development approval for a storage structure to the rear of the existing cafe was approved in October 2007 (DA297/07). On 10 September the City granted approval for a nine month extension to the temporary approval (ET11/08). This storage structure has been removed from site today.

DETAILS

Development Approval is sought to construct a two storey with loft mixed use building to the rear of the existing café. This building is to contain one office tenancy of 58m² floor area and six car parks on the ground floor and two tourist accommodation units above. The tourist accommodation units are to be one, single bedroom unit and one, two bedroom unit both of which incorporating study rooms within the proposed roof space of the development. Vehicle access is provided to the on-site parking spaces via the privately owned right of way to the rear of site. An awning is proposed over the Rennie Street footpath.

The applicant has undertaken a number of amendments to the proposed development since lodging the application with the City on 2 September 2008. The current report is based upon the amended development plans received 27 October 2008 and 26 November 2008.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Use

The 'Office' land use is defined within LPS4 as follows:

Means premises used for administration, clerical, technical, professional or other like business activities.

Within the 'Neighbourhood Centre' zone an Office is prescribed as a 'D' activity which means that the use is not permitted unless the Council has exercised its discretion by granting Planning Approval.

'Tourist Accommodation' is defined within LPS4 as follows:

Means land and buildings used for the purpose of short term accommodation primarily for tourists visiting the district and includes backpackers, cabins, chalets, short stay self contained accommodation and similar forms of tourist accommodation, together with uses ancillary to the primary use.

The proposed 'Tourist Accommodation' use is an 'A' use which means that the use is not permitted unless the Council has exercised its discretion and has granted approval after giving special notice (advertising) in accordance with Clause 9.4.

In assessing the appropriateness of the proposed 'Office' and 'Tourist Accommodation' use classes, the objectives of the Neighbourhood Centre zone (Clause 4.2.1(d) of LPS4) provide guidance:

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.*

Height

Schedule 12 of LPS4 provides a maximum external wall height of 5.5m for properties zoned Neighbourhood Centre. Although, there are restrictions on maximum external wall height there are no specific provisions restricting the ridge height of the development.

Clause 7.2 outlines the matters to be considered in applying this height requirement:

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

- (a) that the proposal is consistent with predominant height patterns of adjoining properties and the locality generally,*
- (b) the proposal would not be detrimental to the amenity of the area,*
- (c) the proposal would be consistent, if applicable, with conservation objectives for the site and locality generally, and*
- (d) 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.

The proposed development is considered to consist with the existing external wall height associated with the two southern adjoining buildings within this Neighbourhood Centre hub. The proposed mixed use building exceeds the 5.5m external wall height for the loft bedrooms. A maximum height of 7.6m is proposed for the small portion of wall associated with the two dormer window projections within the roof space of the building.

Clause 5.8.1 of LPS4 allows the Council to vary the maximum height requirements specified in Schedule 12 subject to the following being satisfied:

Where sites contain or are adjacent to buildings that depict a height greater than that specified in the general or specific requirements in schedule 12, Council may vary the maximum height requirements subject to being satisfied in relation to all of the following –

- (a) the variation would not be detrimental to the amenity of adjoining properties or the locality generally,*
- (b) degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality,*
- (c) conservation of the cultural heritage values of buildings on-site and adjoining, and*
- (d) any other relevant matter outlined in Council’s local planning policies.*

Car Parking

The proposed ‘Office’ tenancy requires 1 car park per 30m² of gross floor area with a minimum of 3 spaces, 1 delivery bay per 500m² and 1 bike rack per 200m² gross floor area. A gross floor area of approximately 58m² is proposed therefore three car parks are required, one delivery bay and one bike rack for the proposed ‘Office’ use.

The proposed Tourist Accommodation units require 1 car parking bay per unit or 1 car parking bay per bedroom and 1 delivery bay per administration centre. Three bedrooms are proposed between the two units and no administration centre is proposed. Consequently, under Table 3 – *Vehicle Parking* of LPS4, a total of three car parking bays are required for the proposed ‘Tourist Accommodation’ use.

Overall, the proposed development requires the following:

On-site parking bays	6
Delivery bay	1
Bike rack	1

Six parking bays and one bike rack are provided on-site. Therefore, there is a shortfall in one delivery bay. Clause 5.7.3 of LPS4 allows the Council to waive or reduce the standard parking requirement specified in Table 3 providing one of the following criteria is satisfied:

- (i) the availability of car parking in the locality including street parking,*
- (ii) the availability of public transport in the locality,*
- (iii) any reduction in car parking demand due to the sharing of car spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces,*
- (iv) any car parking deficiency or surplus associated with the existing use of the land,*

- (v) *legal arrangements have been made in accordance with clause 5.7.4 for the parking or shared use of parking areas which are in the opinion of the Council satisfactory,*
- (vi) *any credit which should be allowed for a carparking demand deemed to have been provided in association with a use that existed before the change of parking requirement,*
- (vii) *the proposal involves the restoration of a heritage building or retention of a tree or trees worthy of preservation,*
- (viii) *any other relevant considerations.*

Council's Local Planning Policies

D.G.H3 – Hilton Local Area Planning Policy

The subject site is located within the *D.G.H3: Hilton Local Area Planning Policy* area. However, as stated in Clause 1.2: Application of Policy, the policy applies to only residential development. The proposed development does not involve residential development and therefore, the policy is not applicable to the proposed development.

Encroachment into airspace over roads

Section 400 of the *Local Government (Miscellaneous Provisions) Act 1960* (LGA 1960) empowers local governments to regulate to allow buildings to encroach over streets, ways or other public spaces. With respect to cantilever awnings, 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 LAA. When giving approval for building encroachments, local governments are required to advise applicants of the need to obtain Landgate's consent.

CONSULTATION

Community

The application received 2 September 2008 was advertised under the City of Fremantle policy *L.P.P1.3: Public Notification of Planning Proposals*. At the conclusion of the advertising period, five submissions were received.

Upon receipt of amended development plans which substantially altered the development proposed, the application was re-advertised on 28 October 2008. At the conclusion of the re-advertising period being 17 November 2008, eight submissions had been received.

Of the eight submissions received, one cited no objection however the remaining outlined concerns relating to the proposed development. The primary concerns are summarised below:

Design

- The building design conflicts with the heritage values and original design philosophy of Hilton Park.
- Building up to the footpath sightlines are being obstructed.
- The design is out of character with the surrounding buildings in terms of scale and proportion.
- The development will have a significant impact on the amenity and streetscape.
- The building is too high for the area. The height should be kept to two story's like the other buildings in the area.

Density

- The density is too high.

Zoning

- The current Neighborhood Centre zoning should be reversed.

Use

- Short term accommodation and office are not suitable uses for the heart of Hilton.
- This is a residential area and it is unsafe to have transient people around the primary school.
- The proposed building will mean the loss of the existing café as there will not be adequate space on site to operate in.
- The use will increase noise and traffic generation.
- The existing café uses the footpath for seating which gives the impression they own the footpath.

Parking

- The whole ground floor level is parking which is not in keeping with the heritage values of Hilton Park.
- The use of the verge parking along Rennie Crescent will result in a lack of parking being available for the patrons of the existing shops on Lots 1 – 3.
- The development should contain all of the required car parking bays.
- Car parking is already in demand in the area and cars already park illegally on the other side of Rennie Crescent and over driveways.
- There are no loading zone car bays for delivery vans and no parking for the disabled. Two bays should be allocated for these needs.
- The car parking from the laneway does not have the required setback for the turn into the car bays.

Land Ownership

- The applicant is not the owner of all of the land referred to in the application and there is a dispute about the right of the applicant to become the owner of all of the land. The application relates to land of which the applicant is not the registered proprietor (Lot 4). In part, the proposed development is over land which is the property of the strata company and is not the applicant.

Boundary Wall

- The proposed double storey parapet wall will block out light and be an eyesore to the adjoining property.

Internal Comments – Proposed Awning

The proposed 900mm awning addition encroaching Rennie Crescent is supported as it is considered to be sufficiently setback from the existing kerb line. Furthermore the awning is setback a further 600mm from the existing street carbay area abutting the subject site.

PLANNING COMMENT

Use

The proposed Office use is expressly specified within the objectives for the Neighbourhood Centre zone. Offices generally have little impact upon the surrounding area as they are contained within a building and result in little noise. The proposed office tenancy in this location is considered to have little impact upon the amenity or heritage values of the adjoining sites or area due to it being located adjacent to the existing café and shops and away from existing residential properties.

Two tourist accommodation units are proposed which are of self-contained design. One, single bedroom unit and one, two bedroom unit is proposed. Therefore a maximum of six persons between the two units are anticipated (assuming two persons per bedroom).

Tourist Accommodation is not expressly stated within the list of appropriate uses for the Neighbourhood Centre zone, however the use is considered to be similar to a residential use, which is a specific use prescribed within Neighbourhood Centre objectives. Furthermore, although 'Tourist Accommodation' is not expressly included within the objectives of LSP4 for Neighbourhood Centre zones, the likely impacts are considered to be less than those uses that are prescribed such as retailing convenience, shops and the existing cafe activities.

The likely impacts of the proposed Tourist Accommodation use are also considered minimal as it will result in the units being able to accommodate a maximum of six guests at any one time. Further, the occupants of a 'Tourist Accommodation' generally tend to be more tolerant of commercial activity than permanent occupants.

In terms of amenity impacts on adjoining owners of residential properties in the locality, the closest adjoining residential properties are the pensioner units to the east of the site which are separated from the subject site by a shared right of way. It is considered that there would be minimal, the potential impacts of the tourist accommodation activity on these adjoining residential dwellings are anticipated to be mitigated.

Furthermore, the proposed use is considered to be consistent and sympathetic with the land use character of the surrounding area. Given the nearby land uses, it is considered that the likely impacts resulting from the proposed change of use will not significantly impact the amenity of the adjoining commercial owners or surrounding residential.

Heritage

The subject site falls within the Hilton Garden Heritage Precinct which is included as a Heritage Area under Clause 7.2 of LPS4. It is acknowledged that Council's *D.G.H3 – Hilton Local Area Planning Policy* provides a 'Statement of Significance' for the Heritage Precinct, however as stated above the provisions of this policy do not apply to non-residential development. It is also acknowledged that the 'Statement of Significance' provided for in D.G.H3 is mainly directed at the residential component and the garden suburb aspects of the Hilton area. Furthermore, the proposed mixed use development is considered to positively contribute to the only commercial node within the suburb.

Height

The proposed development exceeds the maximum height limit specified within Schedule 12 of LPS4. As a result, an assessment against Clause 5.8.1 of LPS4 is required.

The proposed development incorporates 5.612 metres high external wall height for majority of the development along Rennie Crescent elevation. The applicant is also proposing an external wall height of 6.3 metres for the southern boundary wall and middle parapet wall section of the development. However, the maximum external wall height proposed for the development is 7.7 metres which is associated with the two small internal dormer window wall additions. Therefore, the development is contrary to the 5.5 metre maximum external wall height provision prescribed in Schedule 12 of LPS4 for this site.

The first paragraph of Clause 5.8.1 requires the site to contain or be adjacent to buildings that depict a height greater than that specified in Schedule 12 being 5.5 metres. The existing building on the subject site contains a building at the front portion of site which has an existing maximum wall height of 6.3 metres. Therefore this part of clause 5.8.1 of LPS4 has been met.

Sub-clause (a) requires an assessment about the potential impact upon the amenity of adjoining properties or the locality as a result of the proposed variation. With respect to adjoining properties, the subject site is bounded by Rennie Crescent to the north, the shared right of way and pensioner housing to the east, two strata lots containing existing shops to the south and Paget Street to the west. As a result of the subject sites separation from any residential properties by the two streets, the right of way and the shop sites, the impact upon the amenity of the adjoining properties as a result of the height variation is considered minimal.

The surrounding locality is mixed in character with the Hilton Primary School and associated buildings located to the north across Rennie Crescent and existing shops, offices and police station to the south. To the west and south of the subject site, the predominant land use is residential. Given the mixed character of the locality, the subject sites corner location and the Neighbourhood Centre zoning applicable to this site, the proposed height variation is not considered to result in a significant detriment to the amenity of the locality.

Sub-clause (b) of Clause 5.8.1 requires an assessment of the degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality. The existing development within the surrounding area is predominantly single storey, however the existing shops located on the subject site as well as the two southern adjacent sites (Nos. 38 and 40 Paget Street) have a maximum external wall height of 6.3m. In addition, the existing shops (providing the development is constructed in accordance with the approved plans) located at Nos. 42 – 44 Paget Street and Nos. 50 – 52 Paget Street have a maximum external wall height of approximately 6.8m. However it is acknowledged that the closest eastern adjacent site is occupied by single storey Grouped Dwellings which depict a maximum external wall height of approximately 3 metres. The portion of the proposed development that is closest to this property depicts an external wall height of 5.612 metres. Furthermore, it is noted that the development site and the adjacent eastern property are divided by private ROW which is 5 metres wide. Taking all of the above into consideration the proposed building height of the development is considered to effectively graduate with the existing scale and built form of both the Paget Street and Rennie Crescent streetscape, therefore satisfying sub clause (b) of clause 5.8.1 of LPS4.

Sub-clause (c) relates to the conservation of the cultural heritage values of building that are on-site and/or adjoining. The subject site nor the adjoining properties at Nos. 82-84 Rennie Crescent or Nos. 38-40 Paget Street are listed on the City's Heritage List as containing buildings of cultural heritage significance.

There are no local area planning policies of relevance to the subject application therefore sub-clause (d) is not applicable to the current application.

Overall, the external wall height variation is supported as it is not anticipated to be detrimental to the amenity of the adjoining and adjacent properties or the immediate locality.

Car Parking

It is noted that a number of the submissions received outlined concerns about insufficient car parking associated with the proposed development. Six on-site car parks and one bike rack are provided which complies with the LPS4 requirements however the proposed development does not provide the required delivery bay.

Deliveries to the proposed office tenancy are anticipated to be sporadic, of short duration and during normal business hours. As outlined above, six on-site parking bays are provided on site, three for the proposed 'Office' tenancy and three for the two 'Tourist Accommodation' units.

In general, it is acknowledged that occupants of tourist accommodation type developments leave the premises during daylight hours to undertake sight seeing and day trips. As a result, it is anticipated that the three allocated on-site parking bays for the tourist accommodation units will often be available during normal business hours for the use of deliveries. Accordingly, it is considered that the provisions of an on-site delivery bay can be waived under sub-clause (iii) of clause 5.7.3 of LPS4, which allows for a reduction in car parking demand due to the sharing of car spaces by multiple uses.

Road Reserve Encroachment

The application includes an encroachment into the Rennie Crescent road reserve. The encroachment is in the form of a cantilevered awning. The extent of the encroachment is 0.9m in width and 25m in length. The approximate area of the encroachment is 22.54m². This encroachment of the awning is a feature of the design to break up the form of the building. The awning will also provide amenity for people going to and from the building and pedestrians walking along the Rennie Street footpath in hot and wet weather. The proposed awning is consistent with the awnings which protrude over the road reserve at the front of this Neighbourhood Centre shopping complex, along Paget Street.

It is considered appropriate to support the encroaching awning as it is appropriately located so as to not obstruct vehicle or pedestrian movement, or provision of essential services. Furthermore, the design of the awning will assist to provide some articulation to the Rennie Crescent façade of the building.

An advice note is recommended advised of the requirement to obtain approval from Landgate pursuant to Section 400 of the *Local Government Act 1960*. Furthermore the applicant will also be advised of the requirement to indemnify the local government against any claim for damages which may arise in, or out of, the awning construction and/ or maintenance.

Submissions

The concerns outlined within the submissions not addressed above will be assessed below.

Design

The City's LPS4 and Council policies provide limited guidance with regard to developments within the 'Neighborhood Centre' zone. The only design restriction outlined within these documents is with regard to height. The proposed height variation is addressed in detail above.

Density

As the proposed development does not include any residential component the applicable R-Coding is not applicable. Additionally, LPS4 does not provide any plot ratio restriction on the subject site. As a result, the density of the site is a function of the allowable height and the size of the site, unit size and other development standards.

Zoning

One submitter has stated that the current 'Neighborhood Centre' zoning should be reversed. The Neighborhood Centre zoning of the subject site came into force upon the gazettal of LPS4 in March 2007 which was advertised for public comment. It is noted that prior to the gazettal of LPS4, the subject site was zoned Local Centre under Town Planning Scheme No. 3 (TPS3).

Under the TPS3 zoning, an office tenancy (service – professional) was a permitted (P) use class and tourist accommodation (residence – other) was a use class requiring the discretion of Council after advertising. Accordingly, it is considered that the change in zoning has not altered the permissibility of the proposed use classes on the subject site.

Use

A number of the submitters state that Tourist Accommodation is not a suitable use for Hilton as it is a residential area, it will increase noise and traffic and it is unsafe to have transient people around the primary school. One submitter also states that the Office tenancy is not suitable for the site. The assessment of the proposed use classes against the objectives set out within LPS4 for the 'Neighbourhood Centre' zone has been outlined in detail above. However, both uses are considered to be compatible with the existing uses within the surrounding area.

The proposed Office and Tourist Accommodation uses are not anticipated to create a nuisance factor by way of increased noise levels. Furthermore the proposed uses are not considered to adversely affect the amenity of the existing residential properties within the immediate area in terms of noise anymore so than that generally associated with residential activity. Noise generated from amplified activity is not regulated through planning and is governed instead under the *Environmental Protection Act 1997*. It must be noted that any activity would need to comply with the *Environmental Protection (Noise) Regulations 1997* and an appropriate advice note will be included in the Officer Recommendation.

With respect to traffic generation, the proposed use classes are not anticipated to result in a substantial increase in traffic in the area compared to that already existing. It is acknowledged that the surrounding area is already busy in terms of traffic generation due to the existing shops, primary school and community building activity.

It is also acknowledged that the primary school is a sensitive use in terms of child safety, however it is noted that generally self-contained Tourist Accommodation units in suburban areas are not rented by 'transient' people. In addition, the Tourist Accommodation use and view available from the proposed units will allow for surveillance of Rennie Crescent and part of the school grounds which may enhance safety.

With respect to the continued operation of the existing café on the subject site, this is not considered to be a relevant planning matter as it does not form part of the proposal. This is for consideration by the owner of the site. The proposed development is situated so that the existing café building is to remain. The use of the footpath area to the front of the café requires a separate trading in public places license which is not the subject of planning approval.

Parking

Parking has been assessed in detail above. The proposed development provides the required number of on-site car parking bays and bike rack, however there is a shortfall of one delivery bay. The proposed delivery car parking bay variation is addressed in detail above.

Land Ownership

With respect to land ownership, a copy of the properties Certificate of Title has been provided with the application. This document specifies the owner of the subject site and notes that this owner has a share in the common property as set out in the strata plan.

Boundary Wall

One submitter states that the proposed double storey parapet wall will block out light and be an eyesore to the adjoining property. The applicant is proposing to extend the existing southern boundary wall by 18 meters to the east of site at the same height of 6.3 metres. LPS4 does not impose any setback requirements on building location within the 'Neighbourhood Centre' zone, additionally the City's boundary walls policy (L.P.P2.8) and the Residential Design Codes requirements for boundary walls only apply to residential development. However it is considered appropriate for a planning condition to be imposed regarding the southern exterior of the boundary wall being finished to the satisfaction of the City.

CONCLUSION

Overall, the proposed development is considered to satisfy the relevant provisions within LPS4 and Council's Local Planning Policy.

Although the proposed design of development is not totally in keeping with the existing residential built form of the Hilton area, however the proposed development forms part of a mixed use development which will help improve the amenity and vibrancy of the area by positively contributing to a deteriorated commercial building with a useable commercial tenancy and two modern 'Tourist Accommodation' units.

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

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Mixed Use Development (Two Storey with Loft addition Office and Tourist Accommodation building) at No. 36 (Lot 4) Paget Street, Hilton, subject to the following condition(s):

1. The use and development hereby permitted shall take place in accordance with the approved plans dated 27 October 2008 and 26 November 2008.
2. The external face of the southern boundary wall shall be finished in either two coat sand render or face brick to the satisfaction of the Chief Executive Officer, City of Fremantle.
3. The Tourist Accommodation use shall be limited to six (6) guests at any one time.
4. All storm water discharge shall be contained and disposed of on-site.

Advice Note(s):

- 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.
- ii. Regulation 17 of the *Local Government (Uniform Local Provisions) Regulations 1996*, requires that an insurance policy, in the joint names of the local government and the person, indemnifying the local government against any claim for damages which may arise in, or out of, the balcony construction, maintenance or use is required to be obtained by those persons constructing anything within the road reserve.
- iii. The applicant is advised that the development shall comply with the *Environmental Protection (Noise) Regulations 1997*.

Cr J Dowson moved to defer the item to the next appropriate Planning Services Committee.

CARRIED: 5/0

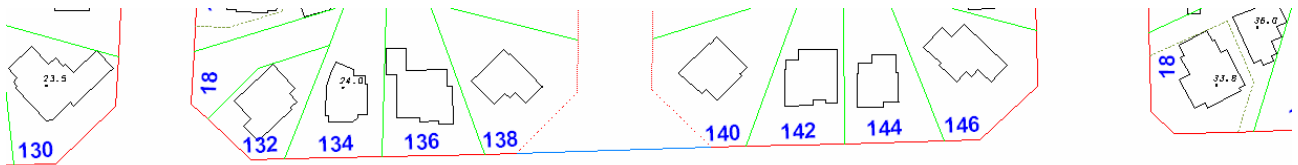
For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

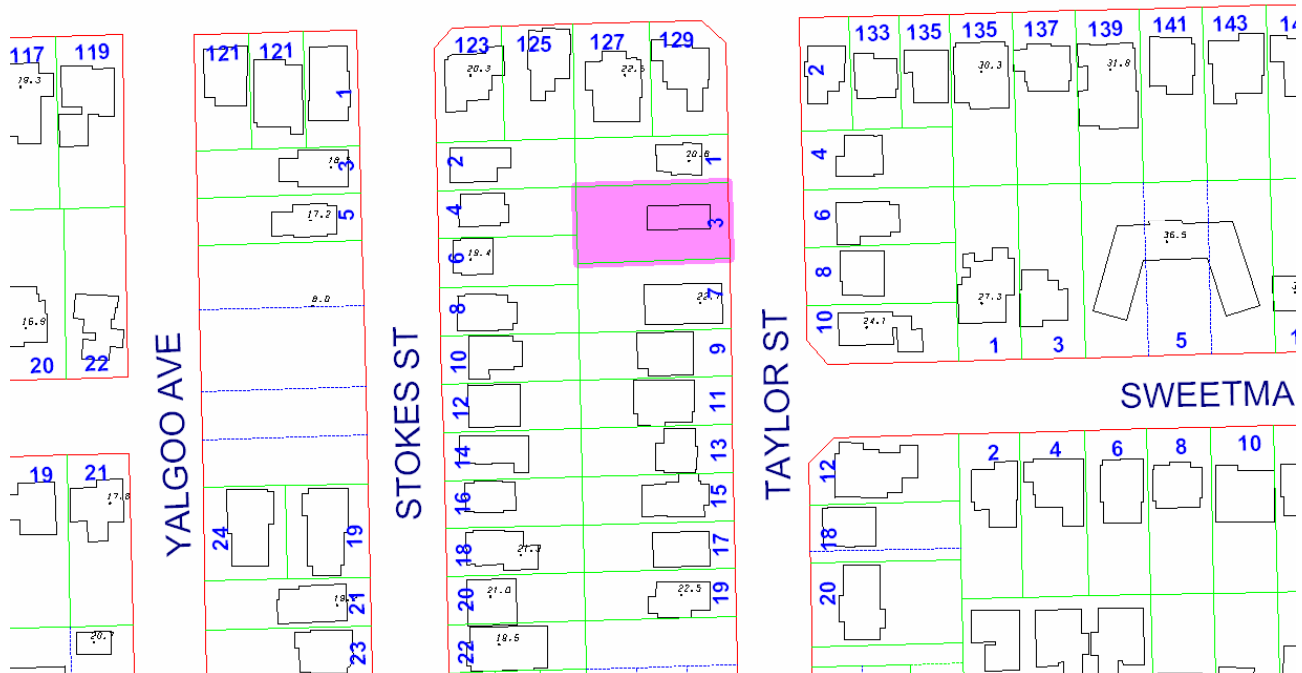
The item was deferred to allow the officers to review the amended plans.

**PSC0906-114 TAYLOR STREET NO. 3 (LOT 38) WHITE GUM VALLEY -
RELOCATION OF EXISTING SINGLE HOUSE - (BC DA34/09)**

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: DA138728 – two lot subdivision
Attachment 1: Conditionally Approved Subdivision Plan
Attachment 2: Development Plans
Attachment 3: Palassis Heritage Report
Date Received: 4 February 2009, Revised Plans 18 May 2009
Owner Name: Kent Heard
Submitted by: Kent Heard
Scheme: Residential R20/R25
Heritage Listing: Not Listed
Existing Landuse: Single House
Use Class: Single House
Use Permissibility: P



SA



EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee for determination as the application involves the relocation of an existing dwelling that has been recognised as being of cultural and historic significance.

The applicant is seeking Planning Approval to relocate an existing single storey, timber-framed worker's cottage at No. 3 (Lot 38) Taylor Street, White Gum Valley.

The Western Australian Planning Commission conditionally approved a two lot subdivision of the subject site on 3 December 2008. Condition 1 of the subdivision approval requires planning consent to be obtained from the City of Fremantle to demolish all buildings, outbuildings and structures from the land.

The applicant originally proposed to demolish the existing Single House to satisfy Condition 1 of the subdivision approval. The applicant was advised that the proposed demolition of the dwelling would not be supported at officer level due to the heritage and cultural significance of the dwelling. The applicant subsequently requested the application be deferred until such time that an alternative proposal could be submitted.

The proposed relocation of the existing Single House is considered acceptable in that a place of heritage significance is conserved and relocated within close proximity to its original location. Furthermore, whilst the relocation of the dwelling will alter the existing streetscape, the dwelling is anticipated to still collectively contribute to a historic streetscape in association with the dwellings at No.1 and No. 7 Taylor Street.

Accordingly the application is recommended for conditional approval.

BACKGROUND

The subject site is located at No. 3 (Lot 38) Taylor Street, White Gum Valley. The site is approximately 799m² in area and is located on the western side of Taylor Street, White Gum Valley. The site is orientated in an east-west direction and slopes downwards from the front to the rear by approximately 2 metres.

The subject site is zone Residential R20/R25 and is located within the White Gum Valley Local Planning Area (White Gum Valley LPA) under the City's Local Planning Scheme No. 4 (LPS4).

There presently exists a Single House and two sheds on the property. The existing dwelling is a single storey timber framed and weatherboard clad house with a zincalume hipped and small gable roofed. The roof has a brick chimney and extends onto the verandah which is supported by timber posts. While some alterations have occurred including the probable replacement of a window with a pair of French doors opening onto the verandah, the place retains its original form and is largely intact. The house is setback approximately 5m from Taylor Street and is located near the centre of the lot.

The site is not listed on the City's Heritage List or located within a Heritage Area. The property has been identified as being of cultural heritage significance and has been recommended for inclusion on the City's Municipal Heritage Inventory (MHI) by external consultants as part of the MHI Review which has been ongoing for the City of Fremantle. However, at the date of writing this report, the site has not been adopted onto the MHI.

On 3 December 2008 the Western Australian Planning Commission (WAPC) conditionally approved a two lot green title subdivision of the subject site (refer DA138728). To date this subdivision plan has not been endorsed by the WAPC. The proposed subdivision is to divide the parent Lot down the centre, resulting in two Lots with frontages of 9.9m. To facilitate this subdivision the existing dwelling is required to be either demolished or relocated. Condition 1 of this approval states:

'Prior to the commencement of subdivision works to satisfy the conditions of this approval, planning consent shall be obtained from the City of Fremantle pursuant to the provisions of the City of Fremantle Local Planning Scheme No. 4 to demolish all buildings, outbuildings and structures from the land. (Local Government)'

The original development application submitted on the 4 February 2009 proposed the demolition of the existing Single House (Attachment 1). The applicant was advised that the proposed demolition would not be supported at officer level on the basis that the existing dwelling is of heritage and cultural significance, and that demolition would be contrary to the objective of LPS4 to *'protect and conserve Fremantle's unique cultural heritage.'* The applicant requested that the application be deferred until such time that an alternative proposal could be submitted. The applicant submitted the current application on 18 May 2009, proposing to relocate the existing dwelling so that it is located entirely on proposed Lot 901 (southern lot) of the conditionally approved subdivision (Attachment 2).

DETAILS

The applicant is seeking the Planning Approval of Council for the relocation of the existing Single House at No. 3 (Lot 38) Taylor Street, White Gum Valley.

The existing Single House is proposed to be relocated 6.8m to the south so that it is located entirely on Lot 901 of the conditionally approved subdivision. The relocated dwelling will be setback 6m from the front lot boundary, which is 1.2m further than the existing setback of 4.8m. The relocated dwelling will be setback 2.4m from the proposed northern boundary and 0.9m from the southern boundary. Vehicle parking is proposed to be provided in the front setback area of the relocated dwelling with access to be gained from a widened crossover.

The applicant is seeking a variation from the Acceptable Development provisions of the Residential Design Codes (R-Codes) pertaining to the proposed southern boundary setback.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Clause 1.6.1(f) of LPS4 states that one of the aims of LPS4 is to protect and conserve Fremantle's unique cultural heritage.

Clause 10.2 of LPS4 outlines the matters that Council shall have due regard to in assessing a development application.

Of particular relevance to the current application are the following clauses:

Clause 10.2.1 states:

'The Council in considering an application for planning approval shall have due regard and may attach conditions relating to these, but not be limited to, such of the following matters as are in the opinion of the Council relevant to the use or development subject of the application'-

- (a) *'the aims, zoning objectives of this Scheme and any other relevant planning Scheme(s) operating within the Scheme area, including the Metropolitan Region Scheme,'*
- (k) *'the cultural significance of any place or area affected by the development, including but not limited to provision for the preservation, incorporation or recording (by means including public art works) and significant cultural values of the site'.*
- (s) *'the way in which buildings relate to the street and adjoining lots, including their effects on landmarks, vistas, the landscape or the traditional streetscape, and on the privacy, daylight and sunlight available to private open space and buildings'.*

The subject site is zoned Residential. The objectives for this zone as outlined within Clause 4.2.1 of LPS4 are as follows:

Development within the residential zone shall –

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

- (vi) *safeguard and enhance the amenity of residential areas by ensuring that land use is compatible with the character of the area.*

Residential Design Codes 2008

The proposed relocation of the Single House satisfies the relevant Acceptable Development requirements of the Residential Design Codes 2008 (R-Codes) with the exception of boundary setbacks. The required setback of the dwelling from the southern lot boundary is 1.6m. The provided setback is 0.9m. The applicant is requesting a discretionary decision of Council regarding the reduced southern boundary setback.

Council Policies

LPP1.6 Preparing Heritage Assessments

Council resolved to adopt local planning policy, *LPP1.6 Preparing Heritage Assessments*, on 25 February 2009. Council also resolved to rescind local planning policies *D.B.H10 Preservation of Historic Buildings* and *D.B.H13 Impact of Development on Heritage Places*.

The purpose of *LPP1.6 Preparing Heritage Assessments* is to address the following matters relating to the seeking of expert heritage advice.

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

The original application for Planning Approval to demolish a Single House was referred to an external Heritage Consultant on 6 February 2009 - prior to the adoption of *LPP1.6 Preparing Heritage Assessments*. The advice and recommendation received is consistent with the assessment requirements of the City's (now rescinded) *D.B.H10 Preservation of Historic Buildings* and *D.B.H13 Impact of Development on Heritage Places* policies. The heritage advice received is considered applicable to the revised development proposal to relocate the existing dwelling.

HERITAGE ASSESSMENT

As previously stated, the original application was referred to external heritage consultants to undertake a heritage impact assessment of the proposal to demolish the dwelling. The report is attached to this report as Attachment 2. Of particular importance to the revised development proposal is the streetscape context and place description. The report states:

'3 Taylor Street remains representative of typical early timber-framed workers' houses constructed in White Gum Valley, and has historic and aesthetic value as an example of its type.

3 Taylor Street forms part of precinct of workers' houses along the street. The three buildings at 1, 3 and 7 Taylor Street create a coherent historic group, contributing to the streetscape of Taylor Street and having aesthetic and historic significance as a representation of working people's living conditions in the Fremantle area in the early years of the twentieth century.'

CONSULTATION

Community

The original application was not required to be advertised in accordance with Clause 9.4 of the LPS4 and the City's *LPP1.3 Public Notification of Planning Proposals* policy.

The revised application was advertised to the southern adjoining property owners/occupiers as the relocated dwelling proposed a reduced southern boundary setback. At the conclusion of the advertising period, being 4 June 2009, the City had received no submission.

PLANNING COMMENT

Matters to be considered and objectives of LPS4

The existing Single House on the subject site has been recognised as of heritage and cultural significance in its own right, as well as for its contribution to the traditional streetscape of the immediate locality.

The revised proposal to retain the existing dwelling is considered consistent with the objectives of LPS4 in that a dwelling of heritage significance is conserved in its original form and relocated within close proximity of its original place.

However, it should be acknowledged that the relocation of the existing dwelling will alter the streetscape characteristics of Taylor Street, particularly when viewed in association with the existing dwellings at No. 1 and No. 7 Taylor Street. The relocation of the existing dwelling to the southern lot of the proposed subdivision will result in a vacant parcel of land between the No. 1 Taylor Street and the relocated dwelling (i.e. proposed Lot 902). Future development of the vacant lot may present a different contribution to the streetscape aspect than what is presently afforded by the three historic dwellings. The result of this could be an interrupted streetscape where the '*coherent historic group*' of No. 1, 3 and 7 Taylor Street is reduced in prominence. This is perhaps the critical point for Council to consider when determining the current application.

Nevertheless, it is considered that on balance, the retention of the dwelling of heritage significance within close proximity to its original location is an acceptable proposal whilst still allowing the 'green title' subdivision of the parent lot. The relocated dwelling is anticipated to still provide a significant contribution to the streetscape of Taylor Street, and will still be associated with the dwellings at No. 1 and No. 7 Taylor Street. The close association of the three dwellings is anticipated to continue to provide a '*representation of working people's conditions in the Fremantle area in the early years of the twentieth century.*'

Capacity for Future Subdivision

There are three options available to the landowner of the subject site to facilitate a subdivision of the parent lot.

1. *Demolition of dwelling*

As previously stated, conditional approval has been granted for a two lot 'green title' subdivision resulting in two lots with street frontages of 9.9m. The final endorsement of this subdivision is based on the condition that the existing dwelling is removed from the site. The applicant originally applied for the demolition of the existing dwelling to fulfill this condition, however was advised that the proposal would not be supported at officer level due to the heritage and cultural significance of the dwelling.

2. *Relocation of dwelling*

Consultation with the WAPC has established that the conditionally approved two lot 'green title' subdivision could still be endorsed with the existing dwelling relocated in its entirety to either one of the proposed lots. As previously discussed, this option would retain a dwelling of heritage significance within close proximity to its original location, however would alter the existing traditional streetscape of the immediate locality.

3. *Retention of dwelling - Survey Strata 'Battleaxe style' Subdivision*

The parent lot could support a two lot survey strata subdivision whilst retaining the existing dwelling in its current location. There is sufficient area at the rear of the existing dwelling to provide for a second lot, with vehicle access to be provided down either side of the existing dwelling. This option would retain the existing dwelling and would not alter the contribution the dwelling makes to the traditional streetscape.

On balance, the proposed relocation of the existing dwelling is considered an acceptable option which will still facilitate the subdivision of the parent lot in a 'green title' configuration. The historically significant dwelling is conserved and relocated within close proximity to its original location. Furthermore the dwelling is still anticipated to contribute to the traditional streetscape in association with the dwellings at No.1 and 7 Taylor Street.

Residential Design Codes 2008

The proposed relocation of the existing dwelling satisfies the Acceptable Development provisions of the R-Codes with the exception of boundary setbacks.

Southern Boundary Setback

6.3.1 Buildings setback from the boundary

The required setback of the dwelling from the southern lot boundary is 1.6m as per Table 2a requirements. The proposed setback of the dwelling is 0.9m.

The performance criteria of the R-Codes pertaining to boundary setbacks state:

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

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

The relocated dwelling will be adjacent to a single storey garage and side garden area of the southern adjoining property. Furthermore there exists a 1.8m high dividing fence between the two lots. The distance between the relocated dwelling and the existing dwelling on the southern adjoining property is approximately 8m.

The proposed setback of the relocated dwelling is considered to provide adequate direct sun and ventilation to the dwelling and the existing dwelling on the adjoining property. The proposed setback will not impact on the adjoining dwelling's outdoor living area or any major openings to habitable rooms, nor is the reduced setback anticipated to impact on the privacy of the proposed dwelling or adjoining dwelling. The single storey height of the dwelling is not considered to impose on the adjoining property by way of building bulk.

The southern adjoining property owner and occupier were notified of the proposed reduced boundary setback, however no submission was received. Overall the proposed setback is considered to satisfy the performance criteria of the R-Codes.

Conclusion

The proposed relocation of the dwelling is considered acceptable in that the original dwelling is retained and is relocated within close proximity of its original place. Whilst the existing streetscape will be altered as a result of the relocation, the historic dwelling is anticipated to still contribute to the heritage significance of the streetscape along with the dwellings at No.1 and 7 Taylor Street. Furthermore the relocated dwelling satisfies the relevant requirements of LPS4 and the R-Codes.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr L Lauder

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Relocation of Existing Single House at No. 3 (Lot 38) Taylor Street, White Gum Valley, subject to the following conditions:

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 18 May 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.**
- 3. All storm water discharge shall be contained and disposed of on-site.**

Advisory Notes:

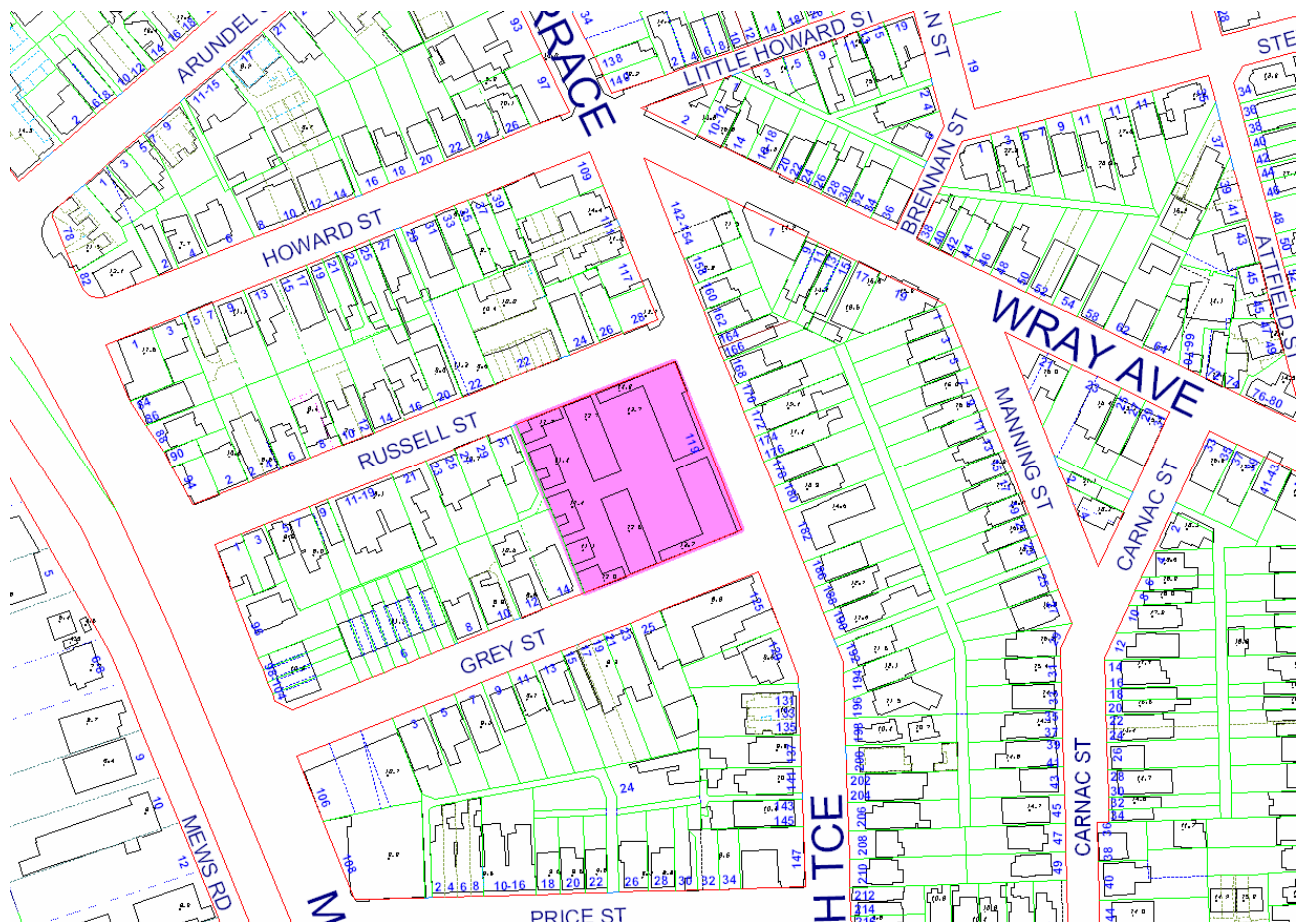
- (i) This approval does not authorise the commencement of any building/demolition works. A building/demolition licence must be obtained prior to the commencement of construction works. Please contact Building Services on 9432 9778.**

CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

**PSC0906-115 SOUTH TERRACE NO. 119 (LOT 77) SOUTH FREMANTLE -
REMOVAL OF TIMBER ROOF TRUSSES - (BC DA37/09)**

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: Nil
Attachment 1: Site photos
Attachment 2: Heritage and Special Places Committee minutes 3 March 2009
Attachment 3: Structural Engineering inspection report
Attachment 4: External Heritage Report and Revised Development Plans received 28 May 2009
Date Received: 10 February 2009
Owner Name: Numerous owners
Submitted by: John Dethridge Strata Services
Scheme: Residential R35
Heritage Listing: Not Listed
Existing Landuse: Grouped Dwellings
Use Class: Grouped Dwellings
Use Permissibility: D



EXECUTIVE SUMMARY

The item is presented before the Planning Services Committee as the application proposes development to a building of cultural and heritage significance.

The applicant is seeking Planning Approval for the repairs and partial removal of the timber roof structure of the former 'Primaries Woolstores' warehouse at No. 119 South Terrace, South Fremantle.

The item was presented before the City's Heritage and Special Places Committee (H&SPC) who resolved to recommend to Council:

- a. The applicant(s) engage a structural engineer to report on the structural integrity of the structure, and;*
- b. engage a heritage architect to design an appropriate heritage interpretation of the former warehouse including retention/ replacement of the sections of the sawtooth roof in galvanised steel at all entry gates and in the centre of the open space area, and;*
- c. to provide advice on the timber trusses that are to be retained so they are properly conserved, protected and maintained in the long term.*

The applicant provided a structural engineering report detailing the status of the timber roof structure. The applicant further engaged the services of Ralph Hoare Architect to revise the proposed development in accordance with the recommendations of the H&SPC.

The proposed development is considered to satisfy the objectives of Local Planning Scheme No. 4 pertaining to the protection and conservation of Fremantle's unique cultural heritage.

The application is recommended for conditional approval.

BACKGROUND

Site Description

The subject site is approximately 6080 square metres in area and is located on the western side of South Terrace, South Fremantle. The site has vehicle entrances to Russell Street and Grey Street. The site was formerly utilised as a warehouse however has since been converted to residential use. The site is now occupied by 40 brick and galvanised iron Grouped Dwellings.

The property is included on the City's Municipal Heritage Inventory (MHI) however to date has not been formally adopted onto the MHI or Heritage List. The MHI notes:

The Primaries WA was originally built for Wilcox Mofflin as a wool and hide store. In 1993 as the Swan Wool Auctions the local wool brokers sold to Primaries of WA for \$32 700 (Fremantle Gazette 5/10/1983). In 1989 – the wool store and headquarters of Primaries WA was moved from Fremantle to Spearwood. In 1993 Council approved the conversion of the wool stores to a commercial and residential development. The architect was Brian Klopper. Council further approved an additional 18 grouped dwellings in December 1996. In 1998 the Primaries Wool store project was recognised by the Housing Industry Association of WA for its innovative design building quality and was awarded in three categories.

The open space area on the site is divided into two courtyards. The eastern, more predominant courtyard, measures approximately 80m long by 29m wide (approximately 2300sqm). The western courtyard measures approximately 80m long by 12m wide (approximately 960sqm). Both courtyards display the roofing framework associated with the former warehouse use of the site (see Attachment 1).

The site is zoned Residential with a density coding of R35 and is located within the South Fremantle Local Planning Area under LPS4. The site is not individually listed on the City's Heritage List or MHI however the site is located within South Fremantle which is a Heritage Area under LPS4.

Previous Development Applications

Planning Approval was granted on 21 December 1993 for the Conversion of the Existing Building into a Mixed Commercial/Residential Development under the City of Fremantle Town Planning Scheme No. 3 (TPS3) (refer DA535/83.01). Under TPS3, the subject site was zoned 'Inner Urban' with a Residential density coding of R35. The development required the discretionary decision of Council regarding the granting of a 'density bonus' pursuant to clause 69 of TPS3. Council formed the opinion that the proposed development constituted a 'renovation' of an existing building and was consistent with the objective of the 'density bonus' clause that was to provide incentive for developers to retain buildings worthy of preservation.

Planning Approval was granted on 6 January 1997 for the Construction of an Additional 18 Grouped Dwellings under TPS3 (refer DA519/96). The 18 additional Grouped Dwelling units replaced 14 previously approved units, thus resulting in a net increase of 4 units. However as the previously approved units were a mixture of commercial, retail and residential units, the development of a total of 18 Grouped Dwelling units resulted in a 'density bonus' of 92.5% (i.e. R69.4 compared with the R35 density coding of the site), again granted in accordance with clause 69 of TPS3

DETAILS

The applicant is seeking the Planning Approval of Council to undertake works on the roofing framework of the former warehouse building. A structural engineering assessment identifies the timber deterioration and recommends a comprehensive renovation of the roof framework consisting of the removal, refurbishment or replacement of the majority of timber work (see Attachment 3). However, according to the applicant, the renovation of the entire structure would be expensive and beyond the means of the current owners. Subsequently the applicant has proposed the retention of some of the roof structure in order to retain some interpretation of the former use of the site and the removal of the rest of the structure. The proposed works consist of:

Eastern Courtyard

- removal of 10 of the 17 braced timber rafters,
- removal of 6 timber posts,
- removal of timber cross beams and diagonal struts in 12 bays ,
- remaining original roof structure to be consolidated into 3 distinct zones
 - o north and south ends of courtyard will retain 2 bays,
 - o two bays retained in centre of courtyard – timber treated and capped with colourbond capping. Replacement of any timber that has deteriorated beyond repair.
- retention of 4 timber posts to be converted to free standing lamp posts.

The original application was to remove the entire timber framework except for the two bays either end of the eastern courtyard which are covered by the former warehouse roof. However this proposal would have significantly reduced the interpretive features of the former use of the site and was generally not supported. The applicant was advised that the additional retention or restoration of part of the framework in the centre of the eastern courtyard would be a more sympathetic proposal.

The applicant prepared a revised development proposal, with assistance from Ralph Hoare Architect, which seeks to retain and refurbish a roof element in the centre of the eastern courtyard as well as to retain 4 timber posts to be converted to lamp posts. The proposal also retains the roof framework at the northern and southern entrances to the courtyard. It should be noted that the proposal still seeks to remove the vast majority of the timber roof trusses, rafters and posts.

Western Courtyard

- removal of all timber purlins not covered by remains of original roof,
- removal of exposed timber rafters and associated struts,
- retention of steel trusses and columns and existing roof structure fabric.

The existing timber framing within the western courtyard consists primarily of timber purlins between the steel trusses and columns. The proposal is to remove all of these purlins as well as 5 large timber rafters and associated struts at the northern end of the courtyard. The proposal retains all the steel trusses and also retains and refurbishes (where required) the roof framework at the northern and southern entrances to the courtyard.

The development application was presented before the City's Heritage and Special Places Committee (H&SPC) meeting on 3 March 2009. The Committee resolved to recommend to Council that:

- a. *The applicant(s) engage a structural engineer to report on the structural integrity of the structure, and;*
- b. *engage a heritage architect to design an appropriate heritage interpretation of the former warehouse including retention/ replacement of the sections of the sawtooth roof in galvanised steel at all entry gates and in the centre of the open space area, and;*
- c. *to provide advice on the timber trusses that are to be retained so they are properly conserved, protected and maintained in the long term.*

The applicant has provided a structural engineer's report detailing the condition of the timber truces and beams (see Attachment 3).

The applicant engaged the services of Ralph Hoare Architect to prepare a heritage report on the impact of the proposed works to the roof framework and to subsequently revise the development proposal to better retain the heritage characteristics of the site. The heritage report and revised developments plans are included as Attachment 4. Marked up plans of the development proposal highlighting the retained roof structure will be on display at the Planning Services Committee meeting.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Clause 1.6 of LPS4 details the aims of the Scheme. Of particular relevance to the current development application are the following subsections:

- (f) *protect and conserve Fremantle's unique cultural heritage,*
- (g) *ensure all development complements and contributes to the community's desired identity and character for Fremantle.*

Clause 10.2 provides the matters to be considered by Council when determining an application for planning approval. Of particular relevance to the current development application is the following subsection:

- (k) *the cultural significance of any place or area affected by the development, including but not limited to provision for the preservation, incorporation or recording (by means including public art works) and significant cultural values of the site.*

Council Policies

D.G.F29 Suffolk to South Streets Local Area

The City's local planning policy, *Suffolk to South Streets Local Area*, provides development and land use guidelines for new development within the policy area. A relevant objective of the policy is to *'ensure that any new development ... contributes to the preservation and enhancement of the cultural heritage of the area ... and preserving the traditional building forms and streetscapes.'*

CONSULTATION

Community

The application was not required to be advertised in accordance with Clause 9.4 of the LPS4 and *LPP1.3 Public Notification of Planning Proposals* policy.

PLANNING COMMENT

As previously mentioned, the density bonus associated with the Residential conversion of the former 'Primaries' warehouses was granted partly on the basis that the development retain the structural framework of the warehouse as an interpretive feature to the site's former use. However no condition of Planning Approval was included that required the on-going maintenance or conservation of the retained timber framework. Consequently, the exposed timber beams and trusses have deteriorated to a point of disrepair.

The proposed development, in particular the retention and refurbishment of the entrances to both courtyards and the central element to the eastern courtyard, is considered an appropriate and acceptable compromise to the renovation of the entire roof framework. The proposal will retain the heritage values of the site and provide an interpretive element (albeit reduced in size) to the former use of the premises, as stated in the heritage report.

The proposed development is therefore considered consistent with clause 1.6 of LPS4 detailing the aims of the Scheme, particularly regarding the protection of Fremantle's unique cultural heritage and to ensure that development complements and contributes to the community's desired identify and character of Fremantle. Furthermore the revised development proposal, incorporating the structural engineering report, heritage report and conservation measures, is consistent with the recommendation of the City's H&SPC.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr L Lauder

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Repairs and Partial Removal of the Existing Roof Structure at No. 119 (Lot 17) South Terrace, South Fremantle, subject to the following condition(s):

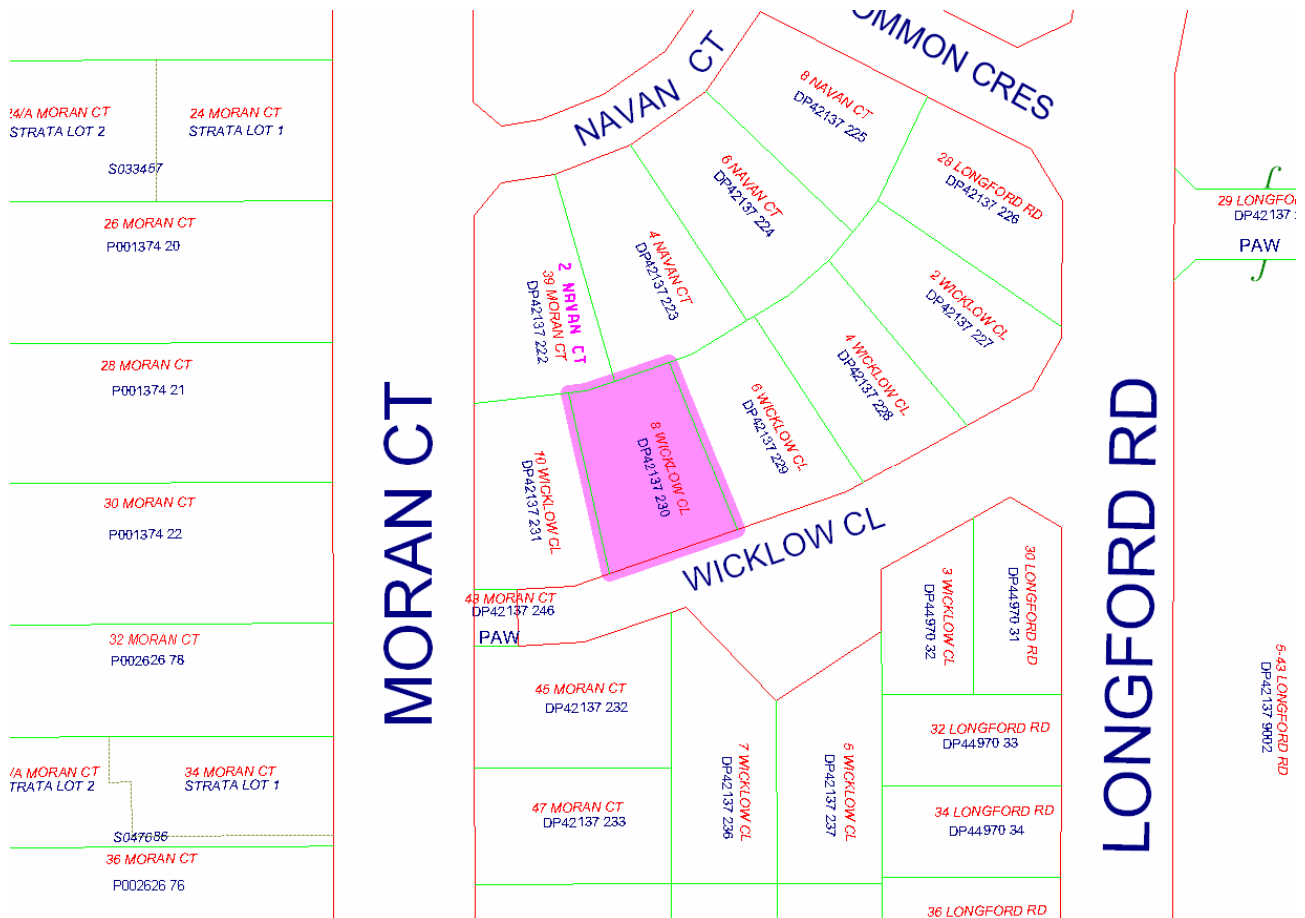
- 1. The development hereby permitted shall take place in accordance with the approved plans dated 28 May 2009.**
- 2. The roofing framework shall be maintained and conserved on an ongoing basis to the satisfaction of the Chief Executive Officer, City of Fremantle.**

CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

PSC0906-116 WICKLOW CLOSE NO.8 (LOT 230), BEACONSFIELD - SCREENING TO EXISTING DIVIDING FENCE (MS DA152/09)

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: DA300/05
Attachments: Development Application received 7th April 2009
 Site Photos taken on the 9th June 2009
Date Received: 7th April 2009
Owner Name: Grace Cikara
Submitted by: Grace Cikara
Scheme: Residential R20
Area: 444m²
Heritage Listing: Nil
Existing Landuse: Residential
Use Class: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

This application is presented before the Planning Services Committee (PSC) as the City of Fremantle (the City) received a submission during the consultation period concerning the proposal that cannot be entirely addressed via conditions of planning approval.

The applicant is seeking Planning Approval for a 1m high vertical screening addition above an existing side boundary fence between 8 and 10 Wicklow Close. The applicant is requesting that Council exercise a discretionary decision regarding the height of the proposed screening.

The proposed variation has been assessed in accordance with Local Planning Scheme No.4 (LSP4) and Local Planning Policy 2.8 - Fences Policy and is considered to be acceptable in order to protect the privacy of the applicant's outdoor living area.

The application is recommended for approval, subject to conditions.

BACKGROUND

The City is the recipient of a proposal from the owner of 8 Wicklow Close, Beaconsfield for the addition of screening on an existing dividing fence. The site is zoned Residential under City's LPS4 and has a density coding of R20. The site is not listed on the City's Heritage List or Municipal Heritage Inventory. Furthermore the site is not located within a prescribed Heritage Area under the provision of LPS4.

An application for Planning Approval was received on the 12th May 2005 for the construction of a two storey, Single House at 10 Wicklow Close. Amended plans which were received on the 31st August 2005 were approved by the City on the 23rd of September 2005.

A Single House was approved for the development site on the 21st May 2009. The approved two storey house was designed with an outdoor living area located on the western side of the dwelling. Single storey additions and alterations that included the addition of a pool and patio located in the outdoor living area where approved on the 22nd January 2009. A minor setback Variation to the Patio which formed part of the previously discussed single storey addition was approved on the 5th of June 2009.

DETAIL

The Applicant has proposed screening of aluminium slatted construction to 1m above the existing fence on the western boundary of 8 Wicklow Close. The screening is proposed to be constructed 9.5m from the front boundary to the rear boundary of the property, an overall length of approximately 15m.

The applicant has stated that the intent of this application is to address visual privacy concerns relating to a balcony (eastern elevation) associated with the existing two storey Single House at 10 Wicklow Close.

STATUTORY AND POLICY PROVISIONS

Local Planning Scheme No.4

Schedule 12 – Minor Development Permitted Without Planning Approval

This provision states that screening projecting no more than 500mm above the top of a fence at any point, not located in a primary or secondary street setback does not require planning approval. The applicant has proposed a 500mm variation to this provision and therefore the application does not constitute minor development, as a result planning approval is required.

Council Policy

L.P.P.2.8 Fences Policy

In relation to screening on side and rear boundary fences, L.P.P2.8 states the following:

4. Side and Rear Boundary Fences and Screening Materials

4.1 Council will not approve side and/or boundary fences greater than 1.8m in height, or screening material that projects more than 500mm above the top of a fence unless the following criteria are satisfied:

(a) The proposed fence/screening will not have any significant impact on adjoining properties by way of overshadowing, solar access, or loss of views and affected neighbours are consulted in accordance with clause 9.4 of the scheme.

4.2 Council will have particular regard to comments made by neighbouring owners/occupiers of adjoining properties, and will only consider the criteria in 4.1(a) to be met where it is satisfied that no adverse impacts on the amenity of the neighbouring property will occur.

The proposal contains variations to clause 4.1 of this policy, therefore Council has to consider if the proposed development will have any adverse impact on the adjoining neighbor in regard to overshadowing, solar access and loss of views, and ultimately, is satisfied that no adverse impact on the amenity on the neighboring property will occur.

CONSULTATION

Community

The application was required to be advertised in accordance with the City's *LPP1.3 Public Notification of Planning Proposals* policy. Due to the proposal being located on a common boundary and a variation to the requirements to Council Policy the application was advertised to the western adjoining neighbour. At the conclusion of the advertising period on the 28th April 2009, the City had received one submission from the occupant of 10 Wicklow Close, the main concern expressed was primarily in relation to the building bulk of the proposed screening.

PLANNING COMMENT

Council Policy

L.P.P2.8 Fences Policy

As per L.P.P2.8 Council is required to consider the following factors when determining the proposed variation:

- Overshadowing
- Solar Access
- Loss of Views

The policy states that Council must be satisfied that proposal will have no adverse impact on the adjoining property owner.

The proposal will have a minimal effect on the adjoining neighbour in regard to overshadowing. The existing fence is of a Nor North -Western alignment and the shadow cast on the adjoining property by the proposed screening will be insignificant and have no negative effect on the amenity of the adjoining neighbour. Likewise the alignment of the existing wall will not decrease solar access to the site.

The proposal will not contribute to loss of views as the existing outlook from the ground floor of 10 Wicklow Close is limited, being largely encroached upon by the two storey dwelling at 8 Wicklow Close and a 4.5m wall to the rear of the site. The only loss of view is from the existing balcony on the second storey of the applicant's outdoor living area, but the proposal will not obstruct any other views from this balcony.

The proposal was advertised in accordance the City's *LPP1.3 Public Notification of Planning Proposals* policy and one submission was received in relation to the proposal. The detail of this submission is provided below.

Submissions

The submitter raised the following concerns:

- "1m height request will make the fence total height of 2.8m high, which will be unattractive, anti-neighbourhood, de-value the property value and against Fremantle council policies on residential appearances (refer to photo example of the 2.8m high boundary fence, the addition is to scale"*
- As seen by photos (current situation), the neighbours have already installed a sail shade as a measure of privacy*
- The neighbors were fully aware of my house design prior to selecting their final house design*
- There are other means of privacy which have no affect on building, surrounding environment and neighbourhood relations e.g. privacy window*

films, blinds and sail shades. I have placed privacy film on my master bedroom window only (Ground Floor) and very content.

- e) *Cone of Vision drawings were supplied with my building licence application and passed without needing any privacy screening*
- f) *“First Floor, Both parties have the same issue of seeing into each other, therefore privacy not applicable. Actually neighbours have installed a sun shade blind”*
- g) *“Ground Floor, the current 1.8m high boundary fence and shade sail is ample privacy provisions. Neighbours ground levels are very similar to my property since the boundary wall footings have already been laid prior to their house construction and they have not placed any further retaining walls against the boundary fence wall.”*
- h) *“The neighbours need to be reminded that the lots in the estate are approximately 400-500 sqm and the estate was promoted as high density living with double storey homes. Actually, our lots have a 3 metre high rear retaining wall with rear properties overlooking into our premises freely. This is the nature of the estate high density living. Therefore there is no consistency with their privacy application.”*
- i) *“This request promotes anti-social behaviour and not neighbourhood friendly which is against Fremantle council planning policies.”*

The key issues that have been raised by the submitter are the building bulk of the proposed screening, from the view of the submitter’s property and as viewed from the street.

On a site inspection on the 9th June 2009 it was noted that the proposal will be largely screened from the view of the street by an existing boundary wall which forms part of the Garage of 10 Wicklow Close. This proposal will have a minimal effect on the streetscape as prescribed within the provision of the City’s policy D.B.H1 *Urban Design and Streetscape Guidelines*.

The submitters concerns regarding potential reduction of amenity by way of building bulk are acknowledged. As a result, a condition will be recommended to ensure that the screening will be kept within the view of the balcony (eastern elevation) of 10 Wicklow Close and not be 15m in length as proposed, this will minimise the bulk of the proposal.

Furthermore a condition will be recommended to ensure that the screening be visually consistent as viewed from both the applicants and western adjoining neighbours property. The purpose of this is to ensure the residents of 10 Wicklow Close will not be negatively affected by the appearance of this screening.

The remaining comments made by the submitter are not considered to be relevant matters for Council to consider in addressing the current application.

CONCLUSION

The applicant is seeking Planning Approval for a variation to the height requirements of Local Planning Policy 2.8. The applicant is requesting that Council exercise a discretionary decision regarding the height of the proposed screening. The proposed variation has been assessed in accordance with LPS4 and Local Planning Policy 2.8 - *Fences Policy* and is considered to have limited adverse impact on the adjoining neighbor. The abovementioned conditions are recommended to minimise any impact this proposal may have on the adjoining owner however, Council is required to be satisfied that there will be no adverse effects on the adjoining owner if the proposal is to be approved.

The application is recommended for approval, subject to conditions.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr L Lauder

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Screening at No. 8 (Lot 230) Wicklow Close, Beaconsfield, subject to the following condition(s):

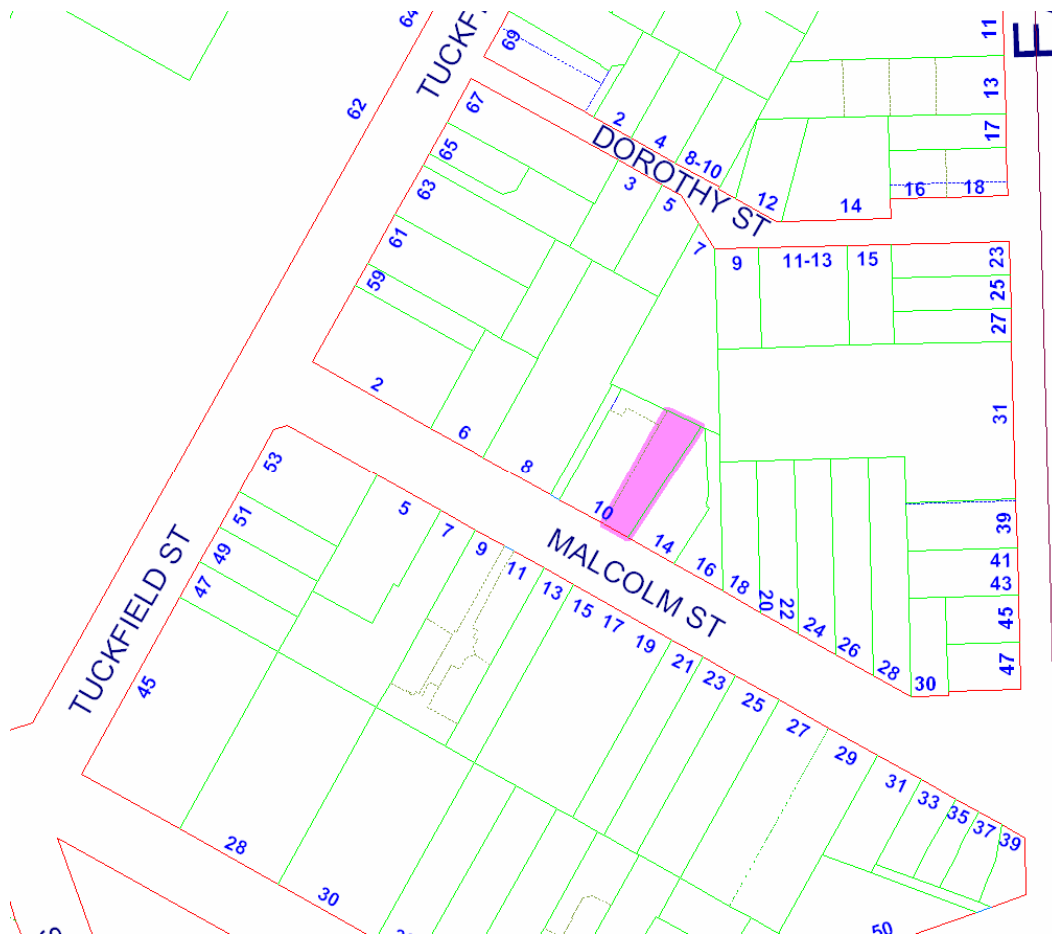
- 1. The development hereby permitted shall take place in accordance with the approved plans dated 7th April 2009 subject to any changes as part of this approval.**
- 2. The proposed screening be of the same appearance as viewed from both 8 & 10 Wicklow Close to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 3. The proposed screening only to be constructed 9.5m from the front boundary to 18.5m from the front boundary. The proposal is to be no higher than 1m above the existing fence.**

CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

PSC0906-117 NUMBER 12 (STRATA LOT 2) MALCOLM STREET, FREMANTLE - UNAUTHORISED DEVELOPMENT - CHE

DataWorks Reference: 122/009
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Development Compliance
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC 0811-301 and CL C08/0209
Owner Name: Mark Andrew and Ross Edgar Lee
Scheme: Residential R25



EXECUTIVE SUMMARY

On 26 November 2008 Council resolved to initiate legal action against the owner of No. 12 (Lot 2 on D5994) Malcolm Street, Fremantle, for failing to comply with the requirements of the City of Fremantle Town Planning Scheme No. 4 in that the building was not built in accordance with the planning approval dated 17 May 2006 (DA156/06).

The City has been advised that under section 21(2) of the *Criminal Procedure Act* a prosecution must be commenced within twelve (12) months of the date on which the offence was allegedly committed. It has become apparent that the timeframe of this matter may fall outside this required 12 month period and on this basis it is recommended that Council resolves to take no further action in the matter.

BACKGROUND

In November 2008 Council resolved to:

1. *Acknowledge the increase in building height of 200mm of the grouped dwelling at No. 12 (Lot 2 on D5994) Malcolm Street, Fremantle, and resolve to allow the development to remain as constructed.*
2. *Authorise the Chief Executive Officer to initiate legal action against the owner of No. 12 (Lot 2 on D5994) Malcolm Street, Fremantle, for failing to comply with the requirements of the City of Fremantle Town Planning Scheme No. 4 and not building in accordance with the planning approval dated 17 May 2006 (DA156/06).*

At the time of preparation of the item for the PSC agenda (late October 2008), the City was not in receipt of a retrospective application for this breach although a retrospective application was later submitted (and this was subsequently approved by PSC in January 2009).

Officers forwarded the matter to the City's Solicitors who subsequently advised that the time has expired for a prosecution in accordance with s.21 (2) of the *Criminal Procedure Act*. It is therefore the Solicitors opinion that the City would not be in a position to take any further action against the owners of 12 Malcolm Street, Fremantle as the City is unable to prove that the alteration of the floor level (and thus the offence) has occurred within the 12 months.

The City has further been advised that in light of the retrospective approval of the altered dwelling, if the time has expired for a prosecution in relation to the construction otherwise than in accordance with the plans then there is no other action the City is able to take.

COMMENT

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

Where, after reasonable investigation,

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

Due to the advice received by the City it is considered that there is a lack of certainty as to the likelihood of successful enforcement in this matter and it is therefore recommended that no further action be taken in relation to this matter.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr L Lauder

That Council, in accordance with the provisions of Local Planning Scheme No. 4 with regard to compliance with the planning approval issued 17 May 2006 DA156/06 at No. 12 (Strata Lot 2, on D5994) Malcolm Street, Fremantle, RESOLVE to take no further action in the matter pertaining to building height.

CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

PSC0906-118 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: Cr L Lauder

That the information is noted.

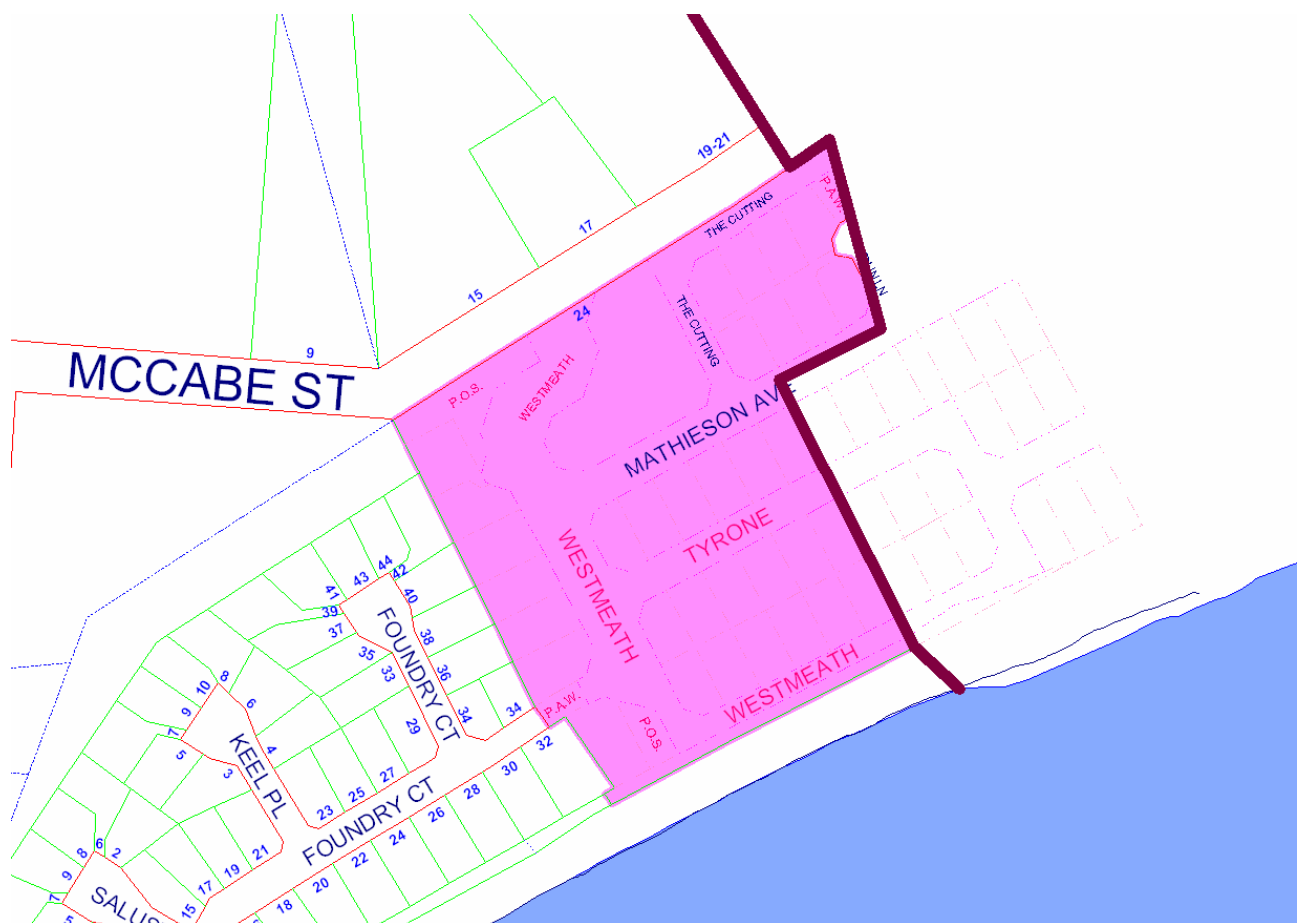
CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

REPORTS BY OFFICERS (COUNCIL DECISION)

PSC0906-119 DRAFT LOCAL PLANNING POLICY LPP 3.13 - MINIM COVE, NORTH FREMANTLE - ADOPTION FOR THE PURPOSE OF ADVERTISING (PG)

DataWorks Reference: 117/038
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Manager Planning Projects
Decision Making Level: Council
Previous Item Number/s: Nil
Attachments: Draft Local Planning Policy LPP 3.13 – Minim Cove, North Fremantle



EXECUTIVE SUMMARY

The purpose of this report is to recommend Council to adopt a draft version of a local planning policy for the Minim Cove development for public consultation. The purpose of the policy is to provide specific development control standards for new residential development in the part of the Minim Cove subdivision that lies within the City of Fremantle, to ensure that the design of new dwellings in this area is consistent with previous development on lots in the part of Minim Cove within the Town of Mosman Park.

Due to the unusual topography of the Minim Cove subdivision, featuring lots on engineered terraces stepping steeply down to the Swan River foreshore, certain acceptable development provisions of the Residential Design Codes are proposed to be varied by the provisions of the recommended local planning policy in order to achieve more appropriate and consistent design outcomes. The provisions of the policy primarily relate to building setbacks and location of garages.

BACKGROUND

The former State Engineering Works industrial land between McCabe Street and the Swan River has been progressively redeveloped for residential purposes since the 1990's. The final stage of the redevelopment (known as Minim Cove) relates to land straddling the municipal boundary between the City of Fremantle and the Town of Mosman Park. In August 2007 the Western Australian Planning Commission (WAPC) approved the subdivision of this land into 52 freehold residential lots, 34 of which are located within the City. 33 of these lots are single dwelling lots ranging between 387 and 586 sq m and one grouped dwelling lot of 2884 sq m in area. The grouped dwelling lot (Lot 217 Mathieson Avenue) is the subject of Amendment No. 18 to Local Planning Scheme No. 4 (LPS4) proposing an increase in density coding to R60 and a maximum building height of 10m. Council resolved to adopt this amendment on 22 April 2009, and the amendment is currently awaiting final approval by the WAPC and the Minister for Planning.

Due to the steep slope from McCabe Street down to the Swan River, site preparation works for this subdivision, like previous stages on land further east within the Town of Mosman Park, have involved re-contouring the land into a series of terraces running parallel to the river foreshore which step up to McCabe Street. Substantial limestone retaining walls have been constructed by the developer (LandCorp) as part of the site works.

Landcorp has recently commenced marketing lots on the part of the subdivision within the City of Fremantle, and in order to ensure that the design of new dwellings in this area is consistent with previous development on lots in the part of Minim Cove within the Town of Mosman Park it is proposed to apply certain development requirements to the design of dwellings proposed to be built on the single dwelling lots. Some of these requirements involve variations from the acceptable development provisions of the Residential Design Codes (R-Codes), and following discussion between City officers and the developer it is considered that these requirements can be most effectively applied and enforced if they are incorporated into a local planning policy under the provisions of LPS4.

STATUTORY AND POLICY ASSESSMENT

Section 5.3 of the R-Codes states that local planning policies may contain provisions that vary or replace certain acceptable development provisions set out in the codes, including streetscape, building design and boundary walls.

The subject land is zoned Residential under LPS4 and the single residential lots are subject to a density coding of R25. Under Schedule 12 of LPS4 (Local Planning Area 3 – North Fremantle; sub area 3.3.1 Rocky Bay) a maximum building height of two storeys (7m external wall height/10m roof ridge height) applies.

Clause 2.2.1 of LPS4 empowers the Council to prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area.

Clause 2.4 of LPS4 outlines the procedures for preparing and adopting a local planning policy.

CONSULTATION

If Council resolves to adopt the draft local policy recommended in this report, the policy will be advertised for public comment for a period of not less than 28 days in accordance with the requirements set out in clause 2.4.1 of LPS4.

PLANNING COMMENT

The proposed policy is contained in Attachment 1 to this report. As stated above the objective of the policy is to ensure a built form of development on individual lots that is appropriate to the particular local context of the site and consistent with the pattern of development already established by development of parts of the Minim Cove subdivision within the Town of Mosman Park.

The part of Minim Cove that has already been developed has a distinctive enclosed streetscape created by the terracing of lots, high retaining walls and dwellings and garages built on short street setbacks. In order to continue this streetscape character in the portion of the subdivision within the City of Fremantle, it would be appropriate for the recommended policy to vary the normal acceptable development provisions of the R-Codes in relation to minimum street setbacks and garage setbacks and locations. As the policy would only apply to lots within a new subdivision that adjoin lots developed in accordance with similar requirements, development in accordance with the policy would not adversely affect the amenities of any existing residents.

Achievement of building heights that are consistent with existing development can be ensured through the maximum height provisions already contained within Schedule 12 of LPS4 and consequently there is no need for the proposed policy to address building heights. Other aspects of development not referred to in the draft policy would be subject to control through the normal application of the R-Codes and the R25 density coding under LPS4.

The proposed policy would not apply to development on the grouped housing site at Lot 217 Mathieson Avenue due to the completely different built form that is anticipated to occur on this site due to its size, characteristics, intended use and proposed density coding under Amendment 18 to LPS4.

CONCLUSION

The proposed policy is intended to ensure that appropriate statutory planning control mechanisms exist to bring about a built form of development on individual lots that is appropriate to the particular local context of the site and consistent with the pattern of development already established by development of other parts of the Minim Cove subdivision.

It is therefore recommended that the draft policy be advertised for public comment, after which it will be reported back to Council for further consideration.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Cr L Lauder

That Council adopt the following draft Local Planning Policy for the purpose of public advertising in accordance with the provisions of clause 2.4 of Local Planning Scheme No. 4:

CITY OF FREMANTLE

LOCAL PLANNING POLICY 3.13

MINIM COVE, NORTH FREMANTLE

ADOPTION DATE:
AUTHORITY: LOCAL PLANNING SCHEME NO.4

STATUTORY BACKGROUND

Part 2 of the City's Scheme allows Council to prepare a local planning policy in respect to any matter related to planning and development of any part of the Scheme area.

Should this local planning policy be inconsistent with the provisions of the City's Scheme, the Scheme will prevail.

While Council is not bound by the provisions contained within this local planning policy, Council will have due regard to the objectives and provisions contained within.

PURPOSE

The objective of this policy is to provide design guidance for the policy area, primarily with respect to overall built mass, scale and vehicle access, in conjunction with the City's Scheme, the Residential Design Codes and other relevant Council Policies.

POLICY

The policy applies to the undeveloped area bound by McCabe Street and the Swan River in North Fremantle, specifically identified as, Lot 9503 on deposited plan 48312.

Lot 9503 has been approved for subdivision into 34 lots (WAPC Ref 133796). The provisions of this policy apply to all lots shown in this subdivision approval with the exception of Lot 217 as shown on the plan included in this policy. Other than the site requirements outlined within this local planning policy, the provisions of the Residential Design Codes and any other relevant Council Policies will apply.

The subject land is in the Residential R25 zone in the City of Fremantle Local Planning Scheme No. 4 and falls in Local Planning Area 3 – Sub Area 3.3.1 Rocky Bay.

SETBACKS

The Residential Design Codes for R25 specify a 6 metre setback to the primary street with 1.5 metres setback to a secondary street. In this case, due to the topography of the site with tiered lots rising steeply from the river foreshore to McCabe Street, building setbacks will be varied from the acceptable development provisions of the Residential Design Codes as indicated in the table below.

Lot Numbers	Primary Street and Min. Setback	Secondary Street and Min. Setback	Min. Rear Setback	Side Setback
18-23	Westmeath Street 3 metres	N/A	As per R Codes	As per R Codes.
24-29	Tyrone Street 3 metres	N/A	4 metres	As per R codes
42-47	Mathieson Avenue 3 metres	Mathieson Avenue 3 metres	3 metres	As per R codes
48	Foundry Court extension As per R codes	N/A	6 metres to foreshore reserve	As per R codes
209-212	Mathieson Avenue 4 metres	N/A	4 metres (includes battleaxe legs)	As per R Codes
213-216	The Cutting 3 metres	N/A	As per R Codes	As per R Codes
217	Excluded	From Local	Planning	As per R Codes
218-223	Westmeath Street As per R Codes	N/A	As per R Codes	As per R Codes
				Policy
				As per R Codes

Note: “Dwelling” as referred to in the dwelling setback is defined as per the R Codes. However, for the application of this policy a “garage” is not considered a dwelling or part of a dwelling even though it may form part of the main structure of the dwelling.

A variation to Council's Policy DC 6 – 'Garages/Carports in front of dwellings/buildings' will be applied in certain circumstances to allow garages in the front setback area, to create a confined streetscape. These circumstances apply to garages which form part of the main building structure and provided the total width of the garage element of the building structure projecting into the front setback area does not exceed 7 metres. In these circumstances garages may have a minimum setback to the primary street frontage of 1.5 metres.

GROUND LEVELS


Approximate finished ground levels are as indicated in the LPP Plan and are in accordance with previously approved ground levels. The finished ground levels match closely those to the west and the east of the subject land. Building heights are to be measured from the identified ground level for each lot. Additional fill of more than 500 mms requires the planning approval of the Council under clause 8.1 and Part 9 of Local Planning Scheme No. 4.

Retaining walls are to be provided by the developer generally in accordance with the locations indicated on the Local Planning Policy Plan and to a height to facilitate the retention of the finished approved level assigned to each lot. Any other walls or fences that require planning approval will be assessed having regard to the provisions of Council's Policy LPP 2.8 – Fences Policy.

Landcorp

- Legend**
- Public Open Space
 - Road Pavement
 - Principal Pedestrian Links
 - Retaining Walls (diagrammatic only)
 - Dwelling Setbacks
 - LGA Boundary
 - Finished Ground Level

NOTE:
Dimension and areas indicated are approximate only and subject to survey. Final Lot numbers may vary from those referred to in the Guidelines and on this DDP.



Landcorp Pty Ltd
Land Planning & Survey Services
Suite 10, Rosslyn House
7-15 Rosslyn Hill
Perth WA 6008
T: 08 9438 3333
F: 08 9438 3334
E: enquiries@landcorp.com.au

SCALE 1:100 (A3)

60m

N

DATE: 16 JUNE 2009
PROJECT: 1206
FILE: G:\Data\Planning\006 LandCorp\2009 LATEST PLANS\1006-cps-guidelines-010.dgn

LOCAL PLANNING POLICY PLAN - MINIM COVE
LOT 8503 MCCABE ST, NORTH FREMANTLE

- DESIGN GUIDELINES**
- This Local Planning Policy (LPP) Plan accords with the Local Planning Policy Minim Cove Development Guidelines for the City of Fremantle Planning Scheme (CPS) No.4
 - Modifications may be made by Council to the LPP Plan and the guidelines if Council is satisfied that the modifications will improve public amenity.
 - Dwelling and garage setbacks are to be in accordance with the R25 code except as indicated in the Development Guidelines and on this plan. For the purpose of these guidelines, a garage is not considered a dwelling even though it may form part of the main structure of the dwelling.
 - A variation to Councils generic Garages Policy DC6 applies in circumstances where garages form part of the main building structure and provided the width does not exceed 7metres in which case garages may have a minimum setback of 1.5 metres to the primary street in order to create a confined streetscape.
 - Building height limits are to be measured from the datum level for each lot.
 - No vehicle access is to be permitted from the south west of the policy area to the adjoining Foundary Court.



CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

**PSC0906-120 RESPONSE TO GOVERNMENT DISCUSSION PAPER ON
STRUCTURE PLANS (PG)**

DataWorks Reference:	118/001 and 218/003
Disclosure of Interest:	Nil
Responsible Officer:	Manager Planning Projects
Actioning Officer:	Manager Planning Projects
Decision Making Level:	Council
Previous Item Number/s:	PSC0906-110
Attachments:	Department for Planning and Infrastructure Discussion Paper – ‘Review of the Town Planning Regulations 1967 and Model Scheme Text – Additional Discussion Paper – Structure Plans

EXECUTIVE SUMMARY

The purpose of this report is to inform Council of an addendum to a discussion paper previously issued by the State Government on a review of the Town Planning Regulations 1967 and the Model Scheme Text. Council at its meeting on 24 June 2009 resolved to approve a submission by the City of Fremantle on the discussion paper. The addendum provides additional information omitted from the original discussion paper on proposed new processes for the assessment and determination of structure plans.

This report recommends a further submission on behalf of the City in response to additional matters contained in the second discussion paper.

BACKGROUND

As part of a broader program of review and reform of the operation of the planning system, in May 2009 the State Government through the Department for Planning and Infrastructure (DPI) issued a discussion paper on proposed changes to the Town Planning Regulations 1967 and the Model Scheme Text. These documents govern the process for preparation, and some of the content, of Local Planning Schemes.

Council at its meeting on 24 June 2009 resolved to approve a set of comments on the discussion paper for submission to the DPI (see previous item PSC 0906-110). One of the issues raised in the City’s submission was the lack of detail in the discussion paper regarding proposed changes to provisions relating to structure plans to be incorporated into all local planning schemes.

The DPI has recently issued an addendum to the previous discussion paper, providing additional detail of the proposed structure plan provisions to be incorporated into all local planning schemes through new Regulations under the Planning and Development Act 2005. A copy of the additional discussion paper is included as an attachment to this report. DPI is inviting submissions on the additional paper by 27 July 2009.

SUMMARY OF KEY PROPOSALS IN THE DISCUSSION PAPER

The discussion paper makes the observation that existing provisions relating to structure plans within individual local governments' planning schemes vary considerably, and even in the case of schemes which contain provisions based on model text provided by the DPI (such as the City's Local Planning Scheme No. 4) there is duplication and overlap between the decision-making roles of the local government and the Western Australian Planning Commission (WAPC) in relation to approval of structure plans. There are also rights of review to the State Administrative Tribunal (SAT) available at different stages in the process, but these rights relate only to the decision of the local government, not the WAPC, which is unusual.

The discussion paper outlines a revised process for assessment and determination of structure plans which is claimed to be less complex, and would be consistently applied in all local governments' schemes. The proposed process can be summarised as follows:

1. Structure plan lodged with local government (LG). Within 21 days the LG must determine whether or not the information submitted with the structure plan is adequate, and if so the LG must advertise the plan regardless of its substantive planning merits. If the LG has requested additional information prior to advertising which the applicant contends is unnecessary, or the LG has failed to certify the plan for advertising within 21 days, the applicant can request the WAPC to make the same determination. If the WAPC makes the same decision as the LG the applicant has a right of review to the SAT. In this situation both the LG and the WAPC will be the respondent in the SAT proceedings.
2. Where the LG certifies a structure plan is adequate for advertising, the LG must send a copy to the WAPC (for information only at this stage) within 7 days.
3. Structure plan is advertised for at least 21 days but no longer than 42 days. LG refers the structure plan to relevant agencies at the same time as public advertising, and also commences its assessment of the planning merits of the plan. WAPC simultaneously commences assessment of the plan against strategic and regional objectives.
4. Within 60 days of the end of the advertising period the LG is to determine to either (a) approve the plan (with or without modifications) or (b) refuse the plan. Failure to determine the plan within this time period will constitute a deemed refusal.
5. WAPC is notified of the LG's decision on the plan within 7 days.
6. Within 60 days of receipt of the LG's decision the WAPC is to determine to (a) approve the plan, (b) refuse the plan or (c) approve the plan subject to further modifications (i.e. in addition to any modifications required by the LG).
7. A right of review to the SAT is available to the applicant only where the Commission refuses the plan, requires further modifications unacceptable to the applicant, or fails to determine the plan within the prescribed period. In each case both the WAPC and the LG would be the respondent (even if the LG had approved the plan prior to the WAPC refusing it).

A structure plan would not become operative until it is approved by the WAPC, and regardless of the decision of the LG.

The proposed process would only apply to a structure plan lodged by a landowner as a precursor to subdivision or development taking place. It would not fetter the power of a local government or the WAPC to prepare any type of structure plan, and such a plan would not be subject to the proposed process.

The discussion paper proposes the preparation of guidelines to provide further detail on how the structure plan process would operate, and what information is required to be provided as part of structure plans.

PLANNING COMMENT

One of the points made in the City's submission on the previous discussion paper was that the paper provided very little detail of the proposed structure plan provisions to be included in the new Regulations and Model Scheme Text. Therefore the issuing of the additional discussion paper providing more detail, with a further opportunity to comment, is welcome.

Officers support the view expressed in the discussion paper that current arrangements for dealing with structure plans within local planning schemes are unnecessarily complex, inconsistent, and involve duplication and overlap between the roles of local governments and the WAPC. The objective of seeking to address these shortcomings through revised, uniform provisions that would apply in all local government area should therefore be supported.

However, officers consider that some of the detailed elements of the proposed new structure plan assessment and approval process as outlined in the discussion paper fail to fully address these objectives and in some respects appear to have been developed without a full appreciation of their practical implications. In particular, the following aspects of the proposed process are considered to be unsatisfactory:

- The proposed requirement for local governments to advertise structure plans within 21 days of submission regardless of their planning merits and without referral to elected members, on the basis that all that is required to be done at that stage is an administrative check that all required information has been provided. Firstly, this approach underestimates the need for some planning or other professional judgement of whether the submitted information is adequate. It is quite common for a structure plan to be lodged with information that purports to meet certain requirements of the plan's content, e.g. a traffic impact assessment or study of a particular environmental issue, but on closer examination the information provided lacks adequate detail or is deficient in its scope. This judgement cannot be made without some professional assessment. Secondly, the requirement to advertise a plan proposing clearly unacceptable development that has no prospect of being approved by the local government is likely to give rise to unnecessary anxiety within local communities who may perceive advertising of the plan as an indication that it has a certain level of support from the local government.
- The proposal to give applicants what in effect is a 'right of review' to the WAPC in situations where an applicant disagrees with a local government's request to provide further information appears to be recreating the duplication of decision-making roles between local government and the WAPC which the discussion paper cites as a shortcoming of the current system. It is recommended that this provision be removed, and replaced with a provision giving the local government the power to refuse the structure plan on grounds of inadequate information if the required information is not provided by the applicant within a specified time period after the local government has sent the applicant a written request specifying the further information required. There could be a right of review to the SAT against a refusal on grounds of inadequate information.
- The proposal to provide an applicant with a single opportunity for a right of appeal to the SAT against a decision to refuse a structure plan at the final stage of the determination process – i.e. determination by the WAPC. The principle of simplifying the process by removing the opportunity for several rights of review at different stages in the process, which is currently possible under the provisions of some local planning schemes, is supported. However, the proposal to make the local government as well as the WAPC the respondent in all cases is not supported. This arrangement could result in a situation whereby the local government has approved a structure plan but the plan is subsequently refused by the WAPC. In this situation requiring the local government to be a respondent would seem to serve no useful purpose yet local government resources would be tied up in participating in SAT proceedings. It is recommended that the proposed new provisions should be modified to require a local government to be a respondent along with the WAPC only in cases where the local government as well as the WAPC has made a decision to refuse a structure plan.

- The discussion paper does not make it clear whether the proposed process will apply only in cases where a structure plan is a precursor to subdivision (with subsequent development), or also in cases where development may occur directly after approval of a structure plan without any need for subdivision of the subject land. This matter requires clarification. Within the City of Fremantle there have been a number of cases where structure plans have been prepared and approved by Council in relation to land where no subdivision is subsequently involved. Currently under the City's Local Planning Scheme No. 4 there is no requirement for such structure plans to be referred to the WAPC for approval following approval of the plan by Council. If these scheme provisions are replaced by uniform State-wide provisions this requirement needs to be clarified. In the interests of consistency of process it is recommended that all structure plans should be subject to the same approval procedures irrespective of whether or not the plan contemplates subsequent subdivision of the subject land.

CONCLUSION

The additional discussion paper proposes some significant changes to the current arrangements for dealing with structure plans which if implemented would have an impact upon the City's Local Planning Scheme. It is recommended that the City should seek to influence the final arrangements that the Government proposes to implement by making a submission based on the comments set out in the 'Planning Comments' section of this report.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Cr L Lauder

That Council authorise the Chief Executive Officer to submit the following comments to the Department for Planning and Infrastructure as the City of Fremantle's submission on the discussion paper titled 'Review of the Town Planning Regulations 1967 and the Model Scheme Text – Additional Discussion Paper – Structure Plans' dated June 2009:

The City of Fremantle supports the view expressed in the discussion paper that current arrangements for dealing with structure plans within local planning schemes are unnecessarily complex, inconsistent, and involve duplication and overlap between the roles of local governments and the WAPC. The objective of seeking to address these shortcomings through revised, uniform provisions that would apply in all local government area is therefore supported by the City.

However, the City considers that some of the detailed elements of the proposed new structure plan assessment and approval process as outlined in the discussion paper fail to fully address these objectives and in some respects appear to have been developed without a full appreciation of their practical implications. In particular, the following aspects of the proposed process are considered to be unsatisfactory:

- The proposed requirement for local governments to advertise structure plans within 21 days of submission regardless of their planning merits and without referral to elected members, on the basis that all that is required to be done at that stage is an administrative check that all required information has been provided. Firstly, this approach underestimates the need for some planning or other professional judgement of whether the submitted information is adequate. It is quite common for a structure plan to be lodged with information that purports to meet certain requirements of the plan's content, e.g. a traffic impact assessment or study of a particular environmental issue, but on closer examination the information provided lacks adequate detail or is deficient in its scope. This judgement cannot be made without some professional assessment. Secondly, the requirement to advertise a plan proposing clearly unacceptable development that has no prospect of being approved by the local government is likely to give rise to unnecessary anxiety within local communities who may perceive advertising of the plan as an indication that it has a certain level of support from the local government.
- The proposal to give applicants what in effect is a 'right of review' to the WAPC in situations where an applicant disagrees with a local government's request to provide further information appears to be recreating the duplication of decision-making roles between local government and the WAPC which the discussion paper cites as a shortcoming of the current system. It is recommended that this provision be removed, and replaced with a provision giving the local government the power to refuse the structure plan on grounds of inadequate information if the required information is not provided by the applicant within a specified time period after the local government has sent the applicant a written request specifying the further information required. There could be a right of review to the SAT against a refusal on grounds of inadequate information.
- The proposal to provide an applicant with a single opportunity for a right of appeal to the SAT against a decision to refuse a structure plan at the final stage of the determination process – i.e. determination by the WAPC. The principle of simplifying the process by removing the opportunity for several rights of review at different stages in the process, which is currently possible under the provisions of some local planning schemes, is supported. However, the proposal to make the local government as well as the WAPC the respondent in all cases is not supported. This arrangement could result in a situation whereby the local government has approved a structure plan but the plan is subsequently refused by the WAPC. In this situation requiring the local government to be a respondent would seem to serve no useful purpose yet local government resources would be tied up in participating in SAT proceedings. It is recommended that the proposed new provisions should be modified to require a local government to be a respondent along with the WAPC only in cases where the local government as well as the WAPC has made a decision to refuse a structure plan.

- The discussion paper does not make it clear whether the proposed process will apply only in cases where a structure plan is a precursor to subdivision (with subsequent development), or also in cases where development may occur directly after approval of a structure plan without any need for subdivision of the subject land. This matter requires clarification. Within the City of Fremantle there have been a number of cases where structure plans have been prepared and approved by Council in relation to land where no subdivision is subsequently involved. Currently under the City's Local Planning Scheme No. 4 there is no requirement for such structure plans to be referred to the WAPC for approval following approval of the plan by Council. If these scheme provisions are replaced by uniform State-wide provisions this requirement needs to be clarified. In the interests of consistency of process it is recommended that all structure plans should be subject to the same approval procedures irrespective of whether or not the plan contemplates subsequent subdivision of the subject land.

CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

CONFIDENTIAL MATTERS

Consideration of request for Tribunal President to review the decision - 446B South Terrace raised during Public Question Time during a member of the public.

At 6:15pm Cr L Lauder moved that the consideration of request for Tribunal President to review the decision - 446B South Terrace be closed to members of the public in accordance with Section 5.23(2) (d) of the Local Government Act.

RESOLUTION FOR CONFIDENTIALITY

The question needed to be discussed in light of legal advice obtained.

MOVED: Cr L Lauder

That the consideration of request for Tribunal President to review the decision - 446B South Terrace be closed to members of the public in accordance with Section 5.23(2) (d) of the Local Government Act.1995.

SECONDED: Cr J Dowson

CARRIED: 5/0

For	Against
Cr Les Lauder Cr John Alberti Cr John Dowson Cr Bill Massie Cr Georgie Adeane	

REASON FOR CONFIDENTIALITY

The discussion is CONFIDENTIAL in accordance with Section 5.23(2) of the Local Government Act 1995 which permits the meeting to be closed to the public for business relating to the following:

- 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;

At 7:10pm Cr L Lauder requested the public to vacate the chamber to allow discussion on the consideration of request for Tribunal President to review the decision - 446B South Terrace, which was deemed to be confidential.

Following discussion of the legal advice the Committee were in favour of not lodging a request for the Tribunal President to review the decision

CLOSURE OF MEETING

THE PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 7:24PM.

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

How consultative processes work at the City of Fremantle	
	<p>processes.</p> <p>Decisions must also be made in accordance with any statute that applies or within the parameters of budgetary considerations. All consultations will clearly outline from the outset any constraints or limitations associated with the issue.</p>
Decisions made for the overall good of Fremantle	<p>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.</p>
Diversity of view on most issues	<p>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.</p>
City officers must be impartial	<p>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.</p>
City officers must follow procedures	<p>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.</p>

How consultative processes work at the City of Fremantle	
<p>Consultation processes have cut-off dates that will be adhered to.</p>	<p>12. As City officers have the responsibility to provide objective, professional advice to decision-makers, they are entitled to an appropriate period of time and resource base to undertake the analysis required and to prepare reports. As a consequence, consultative processes need to have defined and rigorously observed cut-off dates, after which date officers will not include 'late' input in their analysis. In such circumstances, the existence of 'late' input will be made known to decision-makers. In most cases where citizen input is involved, the Council is the decision-maker and this affords citizens the opportunity to make input after the cut-off date via personal representations to individual Elected Members and via presentations to Committee and Council Meetings.</p>
<p>Citizens need to check for any changes to decision making arrangements made</p>	<p>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.</p>
<p>Citizens are entitled to know how their input has been assessed</p>	<p>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.</p>
<p>Reasons for decisions must be transparent</p>	<p>15. Decision-makers must provide the reasons for their decisions.</p>
<p>Decisions posted on www.freofocus.com/projects/html/default.cfm</p>	<p>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.</p>

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.