

City of Fremantle

MINUTES

Planning Services Committee

Wednesday, 2 September 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

TABLE OF CONTENTS

ITEM NO	SUBJECT	PAGE
	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS	3
	NYOONGAR ACKNOWLEDGEMENT STATEMENT	3
	IN ATTENDANCE	3
	APOLOGIES	3
	LEAVE OF ABSENCE	3
	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	4
	PUBLIC QUESTION TIME	4
	DEPUTATIONS / PRESENTATIONS	4
	DISCLOSURES OF INTEREST BY MEMBERS	4
	LATE ITEMS NOTED	4
	CONFIRMATION OF MINUTES	5
	TABLED DOCUMENTS	5
	DEFERRED ITEMS (COMMITTEE DELEGATION)	5
	REPORTS BY OFFICERS (committee delegation)	6
PSC0909-157	SWANBOURNE STREET NO. 18 (LOT 1034) FREMANTLE - DEMOLITION OF SINGLE HOUSE AND CONSTRUCTION OF THREE STOREY SINGLE HOUSE - (BC DA92/09)	6
PSC0909-158	REES STREET – NO 7 (LOT 8) O'CONNOR - UNAUTHORISED STORAGE OF MOTOR VEHICLE WRECKS AND RUBBISH ON THE PROPERTY VERGE AND DESIGNATED CUSTOMER PARKING – (C08/1210P) GS	23

PSC0909-159	LONGFORD ROAD NO. 34 (LOT 34) BEACONSFIELD - TWO STOREY SINGLE HOUSE - (BC DA95/09)	28
PSC0909-161	JOHN STREET NO.37 (LOT 1), NORTH FREMANTLE – RETROSPECTIVE SOLAR PANEL ADDITIONS TO EXISTING SINGLE HOUSE	39
PSC0909-160	ELDER PLACE NO. 1/20 (STRATA LOT 1) FREMANTLE - RETROSPECTIVE PLANNING APPROVAL FOR SIGNAGE - (BC DA0340/09)	48
PSC0909-162	SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY	52
	REPORTS BY OFFICERS (council decision)	53
PSC0909-163	PROPOSED SCHEME AMENDMENT NO 26 TO LOCAL PLANNING SCHEME NO.4 - DEMOLITION OF BUILDINGS AND STRUCTURES - FINAL ADOPTION	53
PSC0909-164	ITEM FOR ADOPTION OF LPP2.6 PROCEDURES FOR AMENDING MHI AND HL	59
	NOTICE OF MOTION - SWANBOURNE STREET RESERVE 9335 - MONUMENT HILL - PROPOSED LEGACY STATUE - PSC 2 SEPTEMBER 2009	67
	CONFIDENTIAL MATTERS	69
	CLOSURE OF MEETING	69
	SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION	70
	CLOSURE OF MEETING	

PLANNING SERVICES COMMITTEE

Minutes of the Planning Services Committee
held in the Council Chambers, Fremantle City Council
on 2 September 2009 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

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

NYOONGAR ACKNOWLEDGEMENT STATEMENT

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

IN ATTENDANCE

Cr Robert Fittock	Deputy Presiding Member / North Ward
Cr Les Lauder	City Ward
Cr Jon Strachan	South Ward (<i>entered 6.35</i>)
Cr John Dowson	East Ward
Cr Bill Massie	Hilton Ward
Cr John Alberti	Beaconsfield Ward
Mr Philip St John	Director Planning and Development Services
Mr Matt Piggott	Acting Manager Development Services
Mr Steve Sullivan	Statutory Planning Coordinator
Ms Agnieszka Kiera	City Heritage Architect
Mr Geoff Scott	Compliance Officer
Mrs Tanya Toon-Poynton	Minute Secretary

There were approximately 18 members of the public and 1 member/s of the press in attendance.

APOLOGIES

Mayor, Peter Tagliaferri

LEAVE OF ABSENCE

Nil

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

PUBLIC QUESTION TIME

Summary of Question by Terry Gabriel

Mr Gabriel questioned Cr Les Lauder in respect of comments made in relation to the application for Solar Panels at 37 John Street North Fremantle

DEPUTATIONS / PRESENTATIONS

The following member/s of the public spoke in favour of item PSC0909-157:

Louise Bond

Sophie Bond

The following member/s of the public spoke against item PSC0909-157:

Jason Saunders

The following member/s of the public spoke in favour of item PSC0909-158:

David Hawthorn

Margaret Scanlon

The following member/s of the public spoke in favour of item PSC0909-159:

John Chisholm

The following member/s of the public spoke in favour of item PSC0909-161:

Bob Gare

The following member/s of the public spoke against item PSC0909-161:

Ian Alexander

DISCLOSURES OF INTEREST BY MEMBERS

Nil

LATE ITEMS NOTED

Notice of Motion submitted by Cr Robert Fittock - Swanbourne Street Reserve 9335 – Monument Hill – Proposed Legacy Statue

CONFIRMATION OF MINUTES

MOVED: Cr R Fittock

That the Minutes of the Planning Services Committee dated 19 August 2009 as listed in the Council Agenda dated 26 August 2009 be confirmed.

CARRIED: 5/0

For	Against
Cr John Alberti Cr John Dowson Cr Robert Fittock Cr Les Lauder Cr Bill Massie	

TABLED DOCUMENTS

DEFERRED ITEMS (COMMITTEE DELEGATION)

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

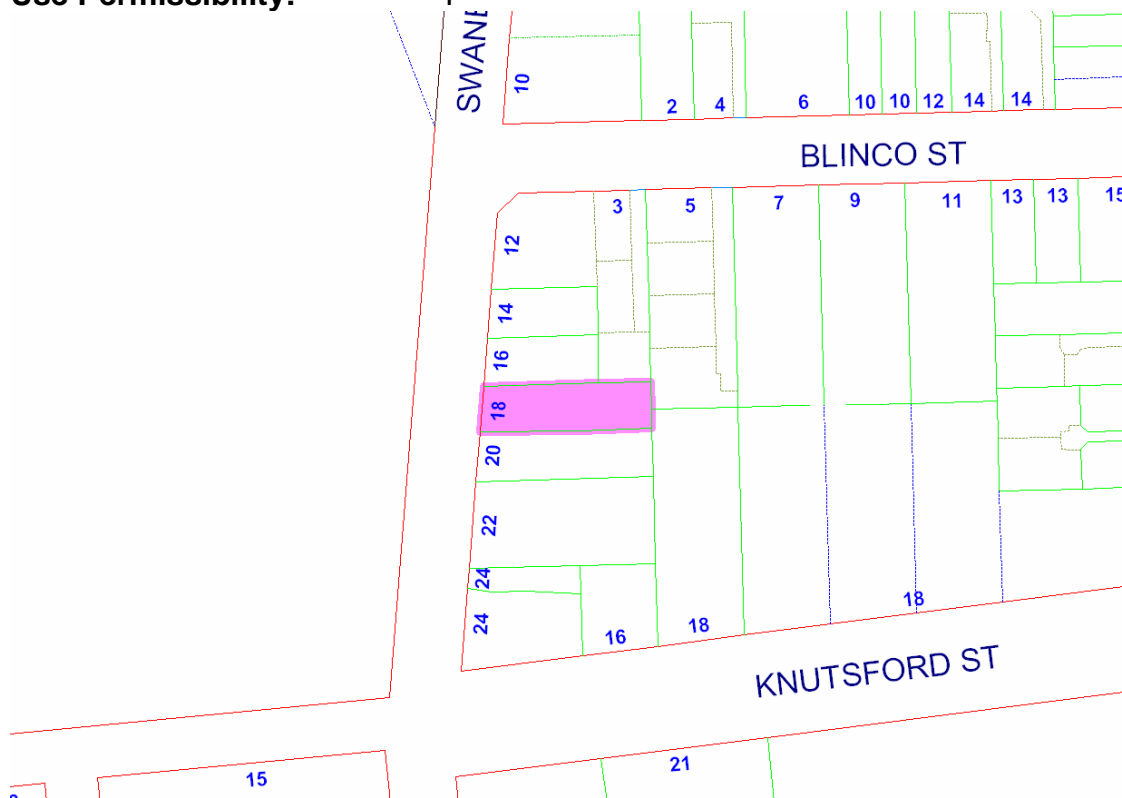
Nil.

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
Cr J Strachan arrived at 6.35 pm prior to consideration of the following item.

PSC0909-157 SWANBOURNE STREET NO. 18 (LOT 1034) FREMANTLE - DEMOLITION OF SINGLE HOUSE AND CONSTRUCTION OF THREE STOREY SINGLE HOUSE - (BC DA92/09)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: A/Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachment 1: Development Plans
Attachment 2: Justification from Applicant
Attachment 3: Heritage Assessment
Date Received: 10 March 2009
 Revised plans 23 June 2009 and 21 August 2009
Owner Name: John and Claire Innes
Submitted by: Arc Seven.1
Scheme: Residential R25
Heritage Listing: Memorial Reserve Precinct
Existing Landuse: Single House
Use Class: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee as the City of Fremantle (the City) received submissions during the consultation period concerning various aspects of the proposal that cannot be resolved via conditions of Planning Approval.

The applicant is seeking Planning Approval for the demolition of a two storey Single House and the construction of a three storey Single House at No. 18 (Lot 1034) Swanbourne Street, Fremantle.

The proposed three storey Single House is not considered to satisfy the performance criteria of the Residential Design Codes 2008 pertaining to the following:

- Design Element 6.3 – Boundary Setbacks
 - o Proposed setback of the second floor element from the northern boundary,
 - o Proposed retaining walls on northern boundary.
- Design Element 6.6 – Site Works
 - o Proposed filling of land within 1m of northern boundary.
- Design Element 6.7 – Building Height
 - o Proposed external wall height of 9m.

The proposed development is also considered inconsistent with the prevailing streetscape and contrary to the objectives of the City's local planning policy, *D.B.H1 Urban Design and Streetscape Guidelines*.

Accordingly the application is recommended to be refused.

Background

The subject site is approximately 688sqm in area and is located on the eastern side of Swanbourne Street, Fremantle. The site is orientated in an east-west direction. The site slopes considerably downwards from the front to the rear by approximately 6m and has a cross fall from the south to the north of approximately 2m. A sewerage easement runs from north to south across the site near the middle of the site.

The site is currently improved by a two storey Single House. The dwelling has been subject to numerous additions and alterations – the most recent significant development being a two storey, corrugated iron addition to the front of the dwelling in 1990. Vehicle access is provided from Swanbourne Street with the vehicle crossover located near the southern lot boundary.

The site is zoned Residential with a density coding of R25 and is located within the Fremantle Local Planning Area (Fremantle LPA) as described in Schedule 12 of the City's Local Planning Scheme No.4 (LPS4). The site is not individually listed on the City's Heritage List or Municipal Heritage Inventory (MHI) however the property is located within the Memorial Hill Precinct which is recognised as a Heritage Area under LPS4.

The site is opposite the Memorial Hill Open Space Reserve. Existing development on the eastern side of Swanbourne Street is generally a mixture of modern two storey dwellings and more modest single storey historic dwellings. Nos 20, 22 and 24 Swanbourne Street

are listed on the City's Heritage List however the dwellings to the north of the subject site (Nos 16, 14 and 12) have not been recognised as being of any heritage significance.

The ground level of the southern adjoining property (No. 20 Swanbourne St) is elevated approximately 1.4m higher than the ground level of the subject site. No. 20 Swanbourne St is improved by a single storey brick and iron dwelling, with two storey additions at the rear. The dwelling is setback approximately 2.4m from the common lot boundary and has a 4m high wall with 2 major openings.

The ground level of the northern adjoining property (No. 16 Swanbourne St) is approximately 1.5m lower than the ground level of the subject site. No. 16 Swanbourne St is improved by a modern two storey, rendered brick and iron Single House which was constructed in 2005. There is a single garage setback approximately 1.6m from the common lot boundary. The main body of the dwelling is setback approximately 3.8m from the common lot boundary. There exists a retaining wall along the common boundary that staggers in height from approximately 1m at the front of the lots to a maximum of approximately 3m near the middle of the site. There also exists a brick fence on top of the retaining wall that is approximately 1.4m high.

DETAILS

The applicant is seeking Planning Approval for the demolition of a two storey Single House and the construction of a three storey Single House at No. 18 Swanbourne Street, Fremantle.

The proposed Single House is of a modern skillion roof design. The ground floor is to provide a double garage, cellar and multi media room. The floor level of the ground floor is to be approximately 0.5m lower than the natural ground level. The main entrance to the dwelling is provided on the northern elevation, with persons entering at the first floor level. The front portion of the first floor is elevated approximately 2.0m above natural ground level and provides for 2 bedrooms, bathroom, dining, kitchen, laundry and sitting rooms. The first floor steps down towards the east, in relation to the natural fall of the land. The second floor level is elevated approximately 5.5m above the natural ground level and provides for a master bedroom, ensuite and sitting room. The development also proposes a number of outdoor living areas at the rear of the dwelling, at various levels relating to the fall of the land. A detached cabana is proposed near the swimming pool at the rear. The development plans also demonstrate fairly extensive landscaping.

The applicant is seeking performance based assessments for the following variations from the Acceptable Development provisions of the Residential Design Codes 2008 (R-Codes):

- Design Element 6.3 – Boundary Setbacks – *Buildings Setback from Boundary, Buildings on Boundary and Retaining Wall,*
- Design Element 6.6 – Site Works – *Excavation and Filling,*
- Design Element 6.7 – Building Height, and
- Design Element 6.8 – Visual Privacy.

The applicant submitted written justification addressing the relevant performance criteria of the R-Codes (see Attachment 2). The applicant also submitted revised development plans on 21 August 2009 addressing some of the officer's concerns regarding the level of fill and height of retaining walls along the northern boundary near the street frontage. The revised plans also show fencing and screening along the northern lot boundary.

Statutory and Policy ASSESSMENT

Local Planning Scheme No. 4

The subject site is located within the Fremantle Local Planning Area as described in Schedule 12 of the LPS4. In accordance with Schedule 12, the applicable height requirement for the Fremantle LPA is as per the R-Codes.

Residential Design Codes 2008

The proposed three storey Single House does not satisfy the Acceptable Development requirements regarding boundary setbacks, site works, building height and privacy. It should be noted that not meeting any Acceptable Development criteria, in and of itself, is not a sound basis on which to refuse or require modifications to a proposal. Instead, the proposal must be considered in the context of the relevant performance criteria.

Council Policies

LPP1.6 Preparing Heritage Assessments

The City's local planning policy, *LPP1.6 Preparing Heritage Assessments*, provides guidance for the preparation of heritage assessments for proposed development. A heritage assessment was prepared in accordance with the policy for the proposed demolition of the existing Single House (see Attachment 3).

LPP2.4 Boundary Walls in Residential Development

The City's local planning policy, *LPP2.4 Boundary Walls in Residential Development*, provides replacement Acceptable Development requirements to those of Design Element 6.3.2 Buildings on Boundary. Where an application is to be assessed against the performance criteria of the R-Codes, Council is to *'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.'*

D.B.H1 Urban Design and Streetscape Guidelines

The City's local planning policy, *D.B.H1 Urban Design and Streetscape Guidelines* aims to *'conserve and enhance areas of architectural or historic character whilst encouraging harmonious development with the existing authentic character and appearance of the traditional residential areas of Fremantle.'*

HERITAGE

The City's local planning policy, *LPP1.6 Preparing Heritage Assessments*, requires the preparation of a heritage assessment for proposals to demolish a primary structure even where the property is not listed on the Heritage List. A heritage assessment was prepared pertaining to the proposed demolition of the Single House at the subject site. The full heritage assessment is included as Attachment 3.

In general the heritage assessment found the place to be of no heritage, architectural or cultural significance and considers the proposed demolition of the place to be acceptable.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and *LPP1.3 Public Notification of Planning Proposals* policy, as the application proposes variations to the Acceptable Development provisions of the R-Codes. At the conclusion of the advertising period, being 30 March 2009, the City had received 5 submissions. The following issues were raised:

- opposition to any variations to Acceptable Development requirements of R-Codes
 - o size of block should not require any variations to Acceptable Development of R-Codes, especially boundary setbacks,
- overshadowing of southern adjoining property, loss of amenity,
- potential overlooking toward northern and eastern adjoining properties from major openings and outdoor living areas,
- building height, bulk and boundary setback
 - o impact of building bulk on southern adjoining property
 - o height of southern boundary wall
 - o wall height in excess of 6m permitted
 - o house style, roof type out of character with existing houses (heritage or moderately designed new dwellings which harmonise with the streetscape)
 - o restrict light to surrounding properties,
- streetscape
 - o out of character with existing houses, heritage nature of the vicinity,
 - o out of scale with prevailing streetscape,
- noise generated from numerous outdoor living areas.

PLANNING COMMENT

Residential Design Codes 2008

Boundary Setbacks

The proposed development does not meet the Acceptable Development requirements of the R-Codes pertaining to boundary setbacks for certain portions of the northern wall of the development. The development also proposes a boundary wall on the southern boundary which does not meet the replacement Acceptable Development requirements of local planning policy, *LPP2.4 Boundary Walls in Residential Development*.

6.3.1 Buildings Setback from the Boundary

Northern Boundary

The required boundary setbacks of the second floor element of the northern wall of the proposed dwelling vary according to the sloping nature of the site. The front portion of the wall is proposed to be setback 2.6m from the boundary – 4.0m short of the required 6.6m setback. The middle portion of the northern wall is proposed to be setback 4.5m from the boundary – 1.3m short of the required 5.8m setback. The rear portion of the northern wall is proposed to be setback 5.3m – 1.3m short of the required 6.6m setback. The proposed reduced setbacks of the second floor northern element of the development are assessed against the performance criteria of the R-Codes as one wall.

The performance criteria 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 proposed reduced setbacks of the second floor northern wall elements are adjacent to the side setback area of the existing dwelling on the northern adjoining property. There exists a small tin garden shed within this side setback area. The setback of the northern adjoining dwelling is approximately 38m from the common lot boundary.

The setback of the proposed second floor element of the northern wall is not considered to significantly impact on the provision of adequate ventilation to the adjoining dwelling and proposed dwelling. Furthermore, given the proposed development is on the southern side of the adjoining dwelling, no impact on the provision of direct sunlight is anticipated.

The maximum height of the proposed northern wall of the development is 9m as measured from the top of an existing retaining wall on the common lot boundary. However the maximum height of the proposed development when viewed from the ground level of the southern adjoining property is approximately 10.5m. The height of the proposed second floor is considered to present a significant impact on the adjoining property by way of building bulk. It is further considered that the bulk is exacerbated by the reduced boundary setback of the second floor element of the proposed wall. Whilst the area on the southern adjoining property immediately adjacent to the proposed second floor element of the development is not considered an active outdoor area, the bulk of the proposed development will be evident from the adjoining property's first floor rear balcony and ground floor windows. The impact the proposed development presents by way of building bulk is not considered to satisfy the performance criteria of the R-Codes pertaining to boundary setbacks.

The second floor element of the proposed development satisfies the Acceptable Development provisions of the R-Codes regarding visual privacy, except for the proposed front balcony. However this area of non-compliance is not considered to significantly impact on amenity of the adjoining property as will be discussed below. The proposed reduced setback of the second floor element is not considered to significantly impact on the privacy of the northern adjoining property.

Overall the reduced setback of the second floor element of the proposed development is not considered to satisfy the performance criteria of the R-Codes due to its impact on the amenity of the adjoining property by way of building bulk.

6.3.2 Buildings on Boundary

The City's *Boundary Walls in Residential Development Policy* provides alternative Acceptable Development standards to those contained within Element 6.3 of the R-Codes. The proposed southern boundary wall does not meet these replacement standards.

The development proposes a boundary wall on the southern boundary that measures 12.4m long and 4m high as measured from the ground level of the adjoining southern property.

In applying the performance criteria of the R-Codes regarding buildings on boundaries, the City's policy states:

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

As previously stated, the City received a submission during the consultation period raising concern about the proposed southern boundary wall. The submitter expressed concern regarding the visual impact of the wall due to building bulk.

The performance criteria of the R-Codes state:

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

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

There exists a boundary wall on the southern boundary of the subject site that is setback 9m from the front boundary. The wall measures approximately 3m high and 6m long. This wall will be demolished as part of the development. The proposed southern boundary wall will be adjacent to a driveway on the southern adjoining property that is approximately 2.4m wide. There is a first floor window and balcony area on the other side of the driveway on the adjoining property. The height of the northern wall of the adjoining dwelling is approximately 4m where the proposed boundary wall will be adjacent to.

The proposed development on the subject site attempts to maximise its northern aspect by locating the main body of the dwelling close to the southern boundary. In this respect, the proposed boundary wall is considered to make effective use of space and to otherwise enhance the development.

The proposed boundary wall is not considered to significantly impact on the amenity of the southern adjoining property largely due to the distance between the proposed wall and the adjoining dwelling that is provided by the driveway. The distance from the window and balcony on the adjoining property to the proposed boundary wall is 2.4m which is considered sufficient to provide for ventilation and light. The shadow cast by the boundary wall on its own is calculated to be less than the broader shadow cast by the overall development. Therefore, whilst the overall development will impact on the provision of direct sun to the major openings to habitable rooms and outdoor living areas of the southern adjoining property, the proposed southern boundary wall will not exacerbate this impact. The shadow created solely by the proposed boundary wall is considered acceptable given its location adjacent to a driveway.

The concern from the southern adjoining property owner regarding building bulk is noted. However the bulk of the boundary wall is not considered to significantly impact on the amenity of the southern adjoining property.

The proposed southern boundary wall is therefore considered to satisfy the performance criteria of the R-Codes and local planning policy, *LPP2.4 Boundary Walls in Residential Development*.

6.3.3 Setback of Retaining Walls

The development proposes retaining walls, ranging in height from 0.6m to 2.2m along the northern boundary. The development also proposes retaining walls, ranging in height from 0.5m to 1.6m along the southern boundary. The Acceptable Development requirements of the R-Codes require retaining walls greater than 0.5m high to be setback 1.0m from the lot boundaries.

The performance criteria of the R-Codes regarding the setback of retaining walls states:

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

Northern Retaining Walls

As previously mentioned the ground level of the northern adjoining property is approximately 1.5m lower (on average) than the ground level of the subject site. There exists multiple retaining walls on the northern boundary that range in height from 0.3m to 3m as measured from the northern adjoining property. There also exists a brick fence on top of the retaining walls that measures approximately 1.4m high.

The development proposes retaining walls that will be located on top of these existing retaining walls and are associated with fill proposed as part of the development's "entry" area and "sunken sitting" area, as indicated on the development plans. The total height of the retaining walls as measured from the northern adjoining property will therefore be up to 4.2m near the "entry" area and 3m near the "sunken sitting" area. The revised development plans submitted on 21 August 2009 further propose a 1.0m high brushwood fence on top of the front section of the retaining walls and 1.65m high brushwood fencing where the "outdoor cooking" and "alfresco" areas.

The retaining walls associated with the "entry" area will be adjacent to a brick garage and small tin shed on the northern adjoining property. Whilst these structures will go some way to alleviating the impact by way of building bulk present by the retaining wall, the proposed retaining wall will still be higher than these structures and will be visible from the adjoining property. The height of the proposed retaining walls will be approximately 1.0m higher than the existing retaining walls and brick fence combined. The visual impact of the combined retaining walls on the northern boundary is not considered acceptable and is anticipated to negatively impact on the amenity of the northern adjoining property. The proposed retaining wall on the northern boundary near the "entry" area is not considered to meet the performance criteria of the R-Codes.

The proposed retaining walls near the "sunken sitting" area will be adjacent to the rear garden area of the northern adjoining property. The maximum total height of the proposed retaining wall will be 3m which is comparable with the extant retaining walls in this area. This rear garden area is not considered an active habitable area and therefore the impact posed by the retaining wall is not considered to be detrimental to the amenity of the adjoining property. Therefore the retaining wall near the "sunken sitting" area is considered to meet the performance criteria of the R-Codes.

Southern Retaining Walls

As previously mentioned, the ground level of the southern adjoining property is approximately 0.5m higher than the ground level of the subject site near to common lot boundary. There already exists retaining walls along the southern lot boundary that are up to approximately 0.5m high, as measured from the subject site, as well as a boundary wall that measures 3m high. The proposed retaining walls on the southern boundary are essentially to replace these extant retaining walls. The maximum height of the proposed retaining walls (1.6m) is approximately in the same location as the extant 3m high boundary wall. Therefore it is considered that the impact posed by the proposed retaining walls on the adjoining property is negligible given the extant retaining and boundary walls on the boundary and the relatively low height of the walls.

The proposed retaining walls on the southern boundary are considered to satisfy the performance criteria of the R-Codes.

Site Works

The Acceptable Development requirements of the R-Codes permit filling up to 0.5m within 1m of a common boundary. The development proposes fill within 1m of the northern boundary up to 2m.

The performance criteria of the R-Codes regarding excavation or fill states:

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

The ground level of the subject site has already been altered from its original state, as evidenced by the retaining walls, particularly on the northern boundary. The proposed level of fill will essentially raise the appearance of the natural ground level when viewed from the street. As previously mentioned, the proposed first floor level of the development will be approximately 0.8m higher than that floor level of the existing house at No. 20 Swanbourne St. As this house is on the higher side of the subject site, the impression from the street will be one of a development that has significantly altered the ground level of the site. Whilst the verge area of the street will provide evidence as to the natural fall of the land, the proposed level of fill associated with the development will create an artificial ground level that is not considered in keeping with the existing development on the street and the natural fall of the land. Furthermore the level of fill along the northern boundary when viewed from the northern adjoining property is considered excessive in relation to the natural slope of the land. It is noted that the revised development plans submitted on 21 August 2009 show the level of fill and retaining wall along the northern boundary pushed back in line with the proposed building. This alteration reduces the impact of the fill as viewed from the north and also reduces the visual impact of the fill from the street. However these impacts are considered minor and do not alter the overall visual impression of the level of fill.

The proposed level of fill within 1m of the northern boundary is not considered to satisfy the performance criteria of the R-Codes.

Building Height

The overall height of the proposed development is 9m (to the top of the roof) which is compliant with the maximum roof ridge height under the R-Codes. However the maximum external wall height requirement as set out in table 3 for category B area buildings is 6 metres with the roof is above and 7 metres where the roof is concealed. The development proposes a maximum external wall height of 8.3 metres where the roof is above (southern elevation) and 9 metres where the roof is concealed (northern elevation).

The performance criteria of the R-Codes with regards to building height states:

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

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

Schedule 12 of LPS4 requires residential development within the Fremantle LPA to comply with the building height requirements of the R-Codes. Therefore it is considered that the desired height for buildings within the locality is the height requirements specified in the R-Codes. The Acceptable Development requirements of the R-Codes provide a maximum external wall height of 6m and maximum roof ridge height of 9m which is generally considered to provide for two storey type development. As the development proposes three storeys and proposes an external wall height greater than 6m, the building height is not considered consistent with the desired height of building in the locality.

The proposed development will impact on the availability of direct sun to the existing dwelling on the southern adjoining property. Whilst the shadow cast by the proposed development is compliant with the overshadowing provisions of Design Element 6.9 of the R-Codes (less than 25% of adjoining site's area), the shadow will impact on the availability of direct sun to a northern facing major opening and first floor balcony at the rear of the adjoining property. It is considered that should the development comply with the 6m external wall height, this impact on the southern adjoining property would be significantly reduced.

As the overall height of the proposed development is compliant with the maximum roof ridge height of 9m, the proposed wall height is not considered to impact on any views of significance anymore than a development with a 9m roof ridge would.

The proposed external wall height of 9m is considered inconsistent with the desired height of buildings within the locality and is considered to negatively impact on the availability of direct sun and daylight to the southern adjoining property. The proposed development is therefore not considered to satisfy the performance criteria of the R-Codes pertaining to building height.

Visual Privacy

6.8.1 Visual Privacy

The proposed development does not satisfy the Acceptable Development requirements of the R-Codes pertaining to visual privacy.

The proposed western facing second floor balcony is required to be setback 7.5m from the northern lot boundary or be fitted with appropriate screening. The proposed balcony is setback a minimum distance of 2.6m from the northern lot boundary thus enabling overlooking into and behind the front setback area of the northern adjoining property.

The main area of overlooking is the front setback area of the northern adjoining property and the roof space of the existing garage and garden shed that are located within the side setback area of the property, as calculated by the cone of vision. There are no major openings or outdoor living areas within the cone of vision. Therefore the potential overlooking from the proposed balcony is considered to satisfy the performance criteria of the R-Codes

The raised outdoor "sunken sitting" area is considered an unenclosed outdoor active habitable spaces as per the R-Codes and is required to be setback from the boundary or provided with appropriate screening. This area is located on the northern boundary and is not proposed to be fitted with screening. The area of overlooking is the rear active habitable garden of the adjoining property and is an area afforded protection from overlooking under the R-Codes. Should Council be of the view to grant Planning Approval for the development, it is recommended that appropriate screening be installed to the "sunken sitting" area in accordance with the visual privacy requirements of the R-Codes.

Council Policies

D.B.H1 Urban Design and Streetscape Guidelines

The City's local planning policy, *D.B.H1 Urban Design and Streetscape Guidelines* aims to 'conserve and enhance areas of architectural or historic character whilst encouraging harmonious development with the existing authentic character and appearance of the traditional residential areas of Fremantle.'

With regards to scale, the policy states that 'on larger lots in wider streets a traditional two-storey built form may be appropriately located in line with other residences in the street.' The proposed development is located in line with the northern and southern adjoining residences however presents as a three storey development when viewed from Swanbourne Street. The ground level is proposed to be used as a garage and multimedia room, with two levels of habitable area located above the ground level. The three storey appearance of the development is inconsistent with the two storey appearance of No. 16 Swanbourne Street and presents a stark contrast to the single storey appearance of Nos 12, 14, 20 and 22 Swanbourne Street.

It is noted that the policy does provide some discretionary criteria for allowing development that exceeds two storeys in height.

“Development of residences of more than two storeys is not generally supported unless particular site characteristics or the individual design indicate that this form of development can be constructed in a manner that will have no unacceptable impact upon the amenity of the locality and adjoining properties.”

Whilst the site does slope considerably downwards to the east and has a crossfall to the north, the site is not considered to have any particular characteristics that necessitate what is essentially a three storey building as viewed from Swanbourne Street. Furthermore, as previously discussed, the proposed external wall height and level of fill are considered to pose an unacceptable impact on the amenity of the northern and southern adjoining properties and are therefore contrary to the above mentioned section of the policy.

With regards to mass, the policy states:

‘Building mass or bulk is the apparent massiveness of a building in relation to its surroundings. To complement the scale of the existing streetscape, new houses should be designed to blend with, rather than dominate, that space. “Oversize” buildings which overwhelm existing houses and dominate the streetscape will be discouraged.’

The proposed development is not considered to complement the scale of the existing streetscape. As previously mentioned, the three storey appearance of the building is contrary to the existing one and two storey dwellings on Swanbourne Street. The proposed development is considered to ‘overwhelm’ the existing dwellings on both the northern and southern adjoining properties and has the potential to dominate the streetscape.

Overall the proposed three storey Single House is considered inconsistent with the objectives of the local planning policy, particular in terms of height, scale and mass.

Submissions

- opposition to any variations to Acceptable Development requirements of R-Codes
 - o size of block should not require any variations to A.D. of R-Codes, especially boundary setbacks,

The Acceptable Development requirements of the R-Codes merely illustrate one way of meeting the associated performance criteria. Whilst the lot size is relatively large, the topography of the site inevitably creates difficulty in meeting the Acceptable Development provisions of the R-Codes. The development has been assessed against the performance criteria for a number of design elements with some deemed to meet the criteria whilst others do not.

- overshadowing of southern adjoining property, loss of amenity,

The calculated overshadowing of the southern adjoining property is within the 25% afforded by the Acceptable Development provisions of the R-Codes. However the 'overheight' external walls of the development are not considered to meet the performance criteria of the R-Codes, partly due to the impact on direct sun and daylight.

- potential overlooking toward northern and eastern adjoining properties from major openings and outdoor living areas,

Should Council be of the view to grant Planning Approval for the proposed development, a condition of approval is recommended to be included for the installation of screening to the northern elevation of the "sunken sitting" area. The proposed balcony is considered to satisfy the performance criteria of the R-Codes pertaining to visual privacy as the areas of potential overlooking are not considered 'sensitive' areas. The proposed development complies with the Acceptable Development requirements of the R-Codes pertaining to overlooking towards the eastern adjoining property.

- building height, bulk and boundary setback
 - o impact of building bulk on southern adjoining property
 - o height of southern boundary wall
 - o wall height in excess of 6m permitted
 - o house style, roof type out of character with existing houses (heritage or moderately designed new dwellings which harmonise with the streetscape)
 - o restrict light to surrounding properties,

The proposed development, in particular the height, bulk and mass, is not considered to satisfy the performance criteria of the R-Codes pertaining to building height. Furthermore the development is considered inconsistent with the prevailing streetscape and contrary to the objectives of the City's local planning policy, *D.B.H1 Urban Design and Streetscape Guidelines*.

- streetscape
 - o out of character with existing houses, heritage nature of the vicinity,
 - o out of scale with prevailing streetscape,

The proposed development is considered contrary to the objectives of the City's local planning policy, *D.B.H1 Urban Design and Streetscape Guidelines*, in terms of height, scale and mass.

- noise generated from numerous outdoor living areas.

The potential noise generated from the proposed outdoor living areas is generally not considered a planning argument. Residential noise is governed by the *Environmental Noise Regulations 1997* and is administered by the City's Environmental Health Department.

CONCLUSION

The existing two storey Single House is not considered to be of any heritage or cultural significance and therefore the proposed demolition of the place is supported.

The proposed three storey Single House is not considered to satisfy the performance criteria of the R-Codes pertaining to boundary setbacks (northern setback and northern retaining wall), site works (fill along northern boundary) and building height. Furthermore the development is considered inconsistent with the City's local planning policy, *D.B.H1 Urban Design and Streetscape Guidelines*, in terms of height, scale and mass.

It is therefore recommended that the application be refused.

OFFICER'S RECOMMENDATION

MOVED: Cr R Fittock

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Three Storey Single House at No. 18 (Lot 1034) Swanbourne Street, Fremantle, as detailed on plans dated 23 June 2009 and 21 August 2009, for the following reasons:

1. The development does not comply with the performance criteria of Clause 6.3.1 of the Residential Design Codes with respect to the setback from the northern boundary, as the development significantly impacts on the amenity of the northern adjoining property by way of building bulk.
2. The development does not comply with the performance criteria of Clause 6.3.3 of the Residential Design Codes with respect to the setting back of retaining walls, as the northern retaining wall presents a negative impact on the amenity of the northern adjoining property by way of building bulk and visual impression.
3. The development does not comply with the performance criteria of Clause 6.6.1 of the Residential Design Codes with respect to the filling of land, as the amount of fill along the northern boundary does not retain the visual impression of the natural level of the site as viewed from the street and the northern adjoining property.
4. The development does not comply with the performance criteria of Clause 6.7.1 of the Residential Design Codes with respect to building height, as the development is not consistent with the desired height of buildings in the locality and negatively impacts on the amenity of the southern adjoining property.
5. The development does not comply with the provisions of Local Planning Policy D.B.H1 – Urban Design and Streetscape Guidelines with respect to the height, scale and mass of the development.

COMMITTEE RECOMMENDATION

MOVED: Cr B Massie

That the application be deferred to allow the applicants to modify the design in order to address the recommended reasons for refusal.

CARRIED: 4/2

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

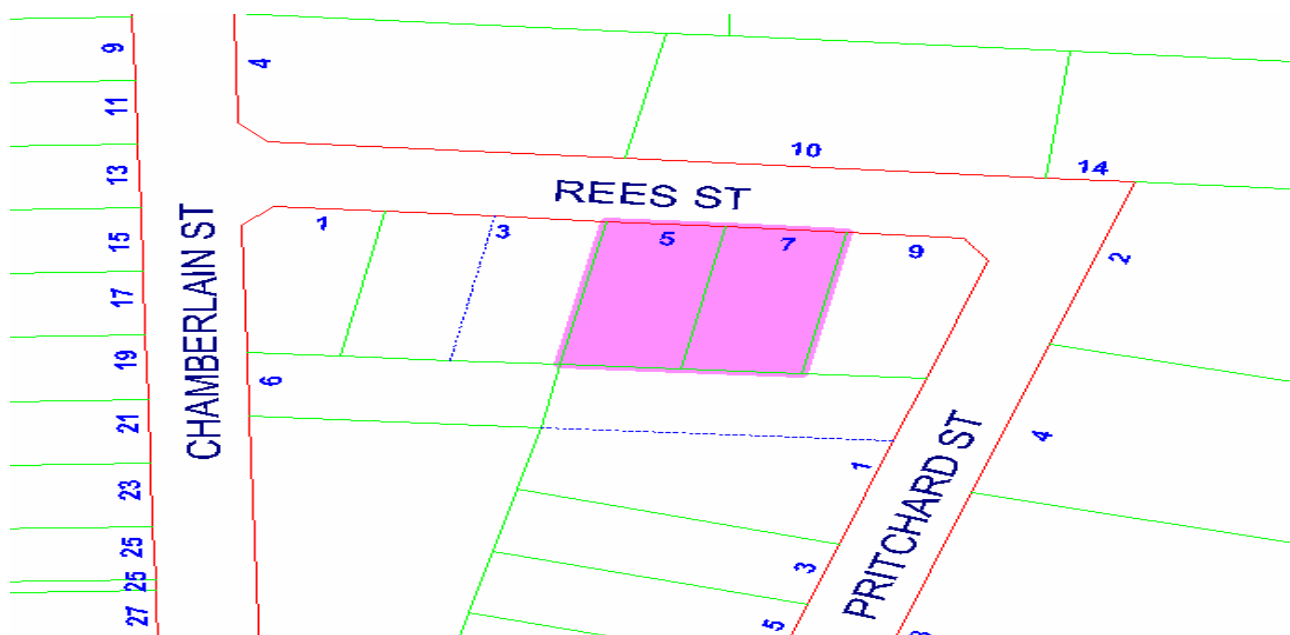
REASON FOR CHANGE TO OFFICER'S RECOMMENDATION

The Committee was of the view the applicant should be given the opportunity to modify the design.

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

PSC0909-158 REES STREET – NO 7 (LOT 8) O’CONNOR - UNAUTHORISED STORAGE OF MOTOR VEHICLE WRECKS AND RUBBISH ON THE PROPERTY VERGE AND DESIGNATED CUSTOMER PARKING – (C08/1210P) GS

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Development Compliance Officer
Decision Making Level: Planning Services Committee
Attachments: Photographs



EXECUTIVE SUMMARY

The City is seeking Council’s direction in the enforcement of the City of Fremantle’s (“City’s”) Local Planning Scheme No. 4 (“LPS4”) and Activities in Thoroughfares and Public Places and Trading local law (“local law”) in relation to the unauthorised use and storage of motor vehicle wrecks, parts and rubbish on the property verge and designated parking areas on 7 Rees Street, O’Connor. The activity contravenes the conditions as set out in DA424/04 and the Local Law.

This non compliance commenced as early as 2003 and continued to date with numerous warnings to the owner not to use the verge and areas in front of the building for the storage portion of the business. With all the compliance actions taken against the owner of this property so far, it is clear that the owner chosen not to comply with LPS4 and the local law.

The alleged non compliance is also unsightly and dangerous and not in the interest of the broader public. It is therefore recommended that Council resolve to institute prosecution action against the owner/s of 7 Rees Street O’Connor for the continued offences against LPS4 and the local law.

BACKGROUND

Planning Approval, as per DA424/04, was issued for the use of the property as a Sales Yard/Wrecking/Repairs and Manufacture of Motor Accessories. The following relevant conditions to this report are show below:

1. *The car parking layout shall be amended to provide a minimum of 8 on-site car parking bays designed in such a way to enable vehicles to enter and exit in a forward gear.*

8. *All existing hardstand on the verge area in front of the development lots shall be removed and the verge reinstated and maintained thereafter to the satisfaction of the Director Urban Management. This shall include the reinstatement of kerbing along the entire frontage.*

10. *A detailed landscape and reticulation plan shall be submitted prior to the issue of a building licence showing the:*
 - a) *Proposed trees, shrubs and lawns to be installed.*
 - b) *Proposed trees, shrubs and lawn to be installed to the street verge adjacent to Lot(s) 8 & 9.*
 - c) *Proposed trees, shrubs and lawns to be installed along the front boundary of the property.*
 - d) *Details of proposed mulching and reticulation.*

The landscaping and reticulation shall be planted / installed to the satisfaction of the Director Urban Management within six months of the date of this planning consent and maintained thereafter.

11. *A Management Plan shall be submitted for the rehabilitation of the site and future operation of the business, prior to the issue of a building licence. The plan shall detail the proposed measures to be taken, within an acceptable timeframe (to be agreed with the Director Urban Management), to address the following:*
 - (a) *Ensure that no vehicle wrecks or parts are stored in front of the building at any time,*
 - (b) *A minimum number of eight customer car parking bays being provided and maintained, at all times, within the front setback of the site and including appropriate signage, clearly visible to customers, to indicate this,*
 - (c) *Ensure all wrecking, repairing and spray painting of vehicles be done within the approved buildings,*
 - (d) *Implementation and maintenance of the agreed landscaping plan, reinstatement of the front verge to City specifications, and*
 - (e) *Compliance with the requirements of the City's Health Department.*

The plan shall be implemented, to the satisfaction of the Director Urban Management.

Below is a chronological description of the compliance matters that have been administered by the City in relation to this matter:

16 Nov 2004	planning approval for a change of use to spray paint shop with numerous conditions;
20 Dec 2005	letter from the City to advise Mr Raphael that he is not complying with conditions set out in DA 424/04;
12 Jan 2005	letter from Mr Raphael to ask for more time; Letter from the City to confirm an onsite meeting on 19 January 2007;
5 Feb 2007	file note and photographs of the non compliance still evident;
13 Nov 2007	file note and photographs of motor vehicle wrecks on verge and designated customer parking areas;
1 Apr 2008	photographs of the property still not complying;
12 Jun 2008	file note and photographs of the non compliance and discussion with Mr Raphael;
12 Jul 2008	file note and photographs of some materials on verge and designated customer parking areas;
28 Jul 2008	photographs to show the property near to compliance;
27 Oct 2008	photographs of verge complying but customer parking being used for storage;
27 Oct 2008	file note of discussion with Mr Raphael;
10 Nov 2008	file note and photographs of the property showing that the verge is being used to conduct the subject business;
13 Nov 2008	letter to Mr Raphael advising of non compliance;
25 Nov 2008	letter from Mr Raphael to confirm that he would keep the verge clean at all times;
11 Dec 2008	file note and photographs showing the property still not complying;
29 Jan 2009	photographs of the verge and property showing the non compliance continued;
5 Feb 2009	letter from Fan & Associates with a business plan that the business will comply with then City's requirements;
29 Jun 2009	file note and photographs of motor vehicle wrecks on verge and designated customer parking areas;
16 Jul 2009	file note about the discussion with Mr Raphael on site and photographs of motor vehicle wrecks on verge and designated customer parking areas;

STATUTORY CONSIDERATIONS

1.) Section 218 of the *Planning and Development Act 2005* states that:

A person who contravenes the provisions of a planning scheme commits an offence.

Clause 11.4.1 of the Scheme states:

A person must not contravene or fail to comply with the provisions of the Scheme.

2.) Activities in Thoroughfares and Public Places and Trading Local Law

Division 1 Section 2.2 activities allowed with a permit – General

- (1) *A person shall not, without a permit –*
 - (b) *Throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government.*

Section 10.3 of the local law states:

- (1) *Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.*
- (2) *Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5000 and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.*

COMMENT

As evidenced in the 'Background' section of this report and the photographs in the Attachment to this report, there have been a number of non-compliance issues relating to this site.

In essence, the property owner received planning approval for the business to be carried out on the site, but has not complied with the conditions as set out in the Planning Approval (DA424/04). Further, the City has not been able to convince Mr Raphael to comply with LPS4 and the Activities in Thoroughfares and Public Places and Trading Local Law.

The City has advised the owner on numerous occasions that he needed to make an application to the City to store items on the verge. The photographs attached to this report show the timeframe and extent of this breach involving this matter.

The dismantling of motor vehicle wrecks for parts and the location of these wrecks on the verge can lure other people to dump their unwanted items on the verge. However, this issue was taken into consideration when dealing with this matter and the City gave the owner ample time to remove the stored items from the designated customer parking area and Council verge.

The City has not been successful in encouraging compliance with the relevant legislation and it is considered to be in the best interests of the broader public that Council take further action.

It is therefore recommended that Council resolve to refer the matter to its solicitors to commence prosecution.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr R Fittock

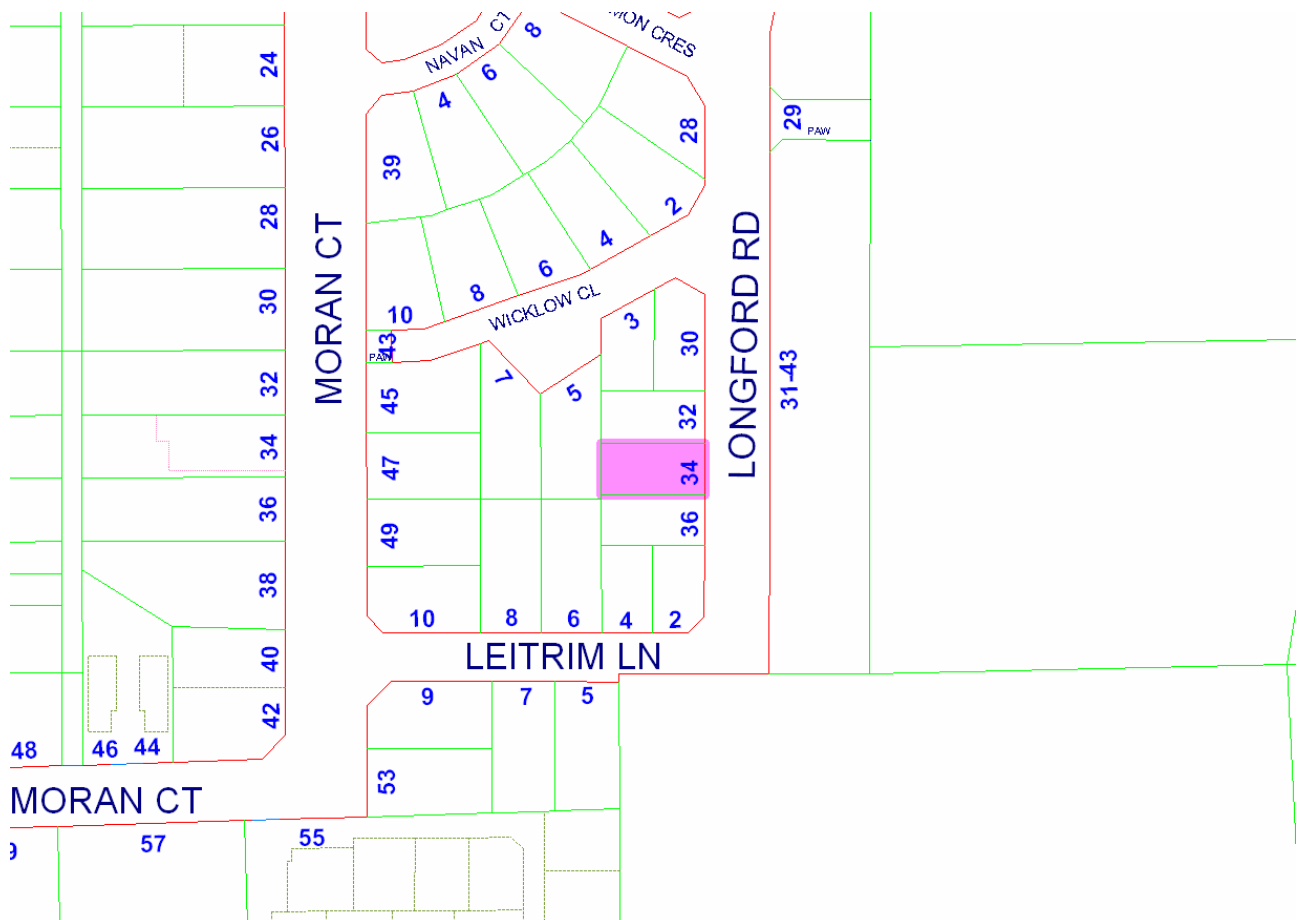
That Council authorise the Chief Executive Officer to initiate legal action against the owner of 7 (Lot 8) Rees Street, O'Connor, Mr George and Mrs Jacqueline Raphael, for failing to comply with the City of Fremantle Town Planning Scheme No.4 and Activities in Thoroughfares and Public Places and Trading Local Law.

CARRIED: 6/0

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

PSC0909-159 LONGFORD ROAD NO. 34 (LOT 34) BEACONSFIELD - TWO STOREY SINGLE HOUSE - (BC DA95/09)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: A/Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachment 1: Development Plans
Attachment 2: Site Photographs
Date Received: 10 March 2009, revised plans 30 July 2009
Owner Name: N. Neff
Submitted by: John Chisholm Design
Scheme: Residential R35
Heritage Listing: Not Listed
Existing Landuse: Vacant Land
Use Class: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee as the City of Fremantle (the City) received submissions during the consultation period concerning various aspects of the proposal that cannot be resolved via conditions of Planning Approval.

The applicant is seeking Planning Approval for a two storey Single House at No. 34 (Lot 34) Longford Road, Beaconsfield.

The proposed development is considered to satisfy the provisions of the R-Codes and relevant local planning policies, including *LPP2.4 Boundary Walls in Residential Development* and *LPP3.5 Beaconsfield Local Planning Area*.

The application is recommended for approval, subject to conditions.

BACKGROUND

The subject site is approximately 332sqm in area and is located on the western side of Longford Road, Beaconsfield. The site is orientated in an east-west direction and is relatively flat. The site is currently vacant.

The ground level of the subject site is approximately 0.8m lower than the ground level of the northern adjoining property. There exists a 0.8m high limestone retaining wall along the northern boundary of the site. The ground level of the subject site is approximately 2.0m lower than the ground level of the western adjoining site. Similarly a 2.0m high limestone retaining wall extends along this boundary. The subject site is approximately 0.4m higher than the southern adjoining site (see Attachment 2).

The northern adjoining property is improved by a two storey Single House. The house is setback 2.5m from the front lot boundary and provides a single garage on the southern side of the house, built up to the boundary. A 3.6m high boundary wall extends 8.2m along the common lot boundary as measured from the ground level of the subject site.

The western adjoining property is improved by a two storey Single House. The house is setback approximately 1.5m from the common lot boundary and is elevated approximately 2.0m relative to the subject site.

The southern adjoining property is currently vacant however the City has recently received a development proposal for a two storey Single House at the site (refer DA0333/09 received on 15 July 2009).

The site is located within the Salentina Ridge subdivision. The existing built form within the locality is characterised by two storey modern style Single Houses, setback a minimum distance from the street. The majority of the existing houses are built up to at least one boundary, with some of the houses built boundary to boundary.

The site is zoned Residential with a density coding of R35 under the provisions of Local Planning Scheme No. 4 (LPS4). The site is located within the Beaconsfield Local Planning Area (Beaconsfield LPA) as described in Schedule 12 of LPS4. The site is not listed on the City's Heritage List nor is the site located within a Heritage Area.

A Restrictive Covenant is registered on the Certificate of Title for the property which places limitations on the style and type of development on the lot and within the subdivision. The beneficiaries of the Restrictive Covenant are the landowner and the developer (former landowner – Moltoni Corporation). The City of Fremantle is not a beneficiary of the Restrictive Covenant and therefore has no obligation or right to enforce the provisions of the Restrictive Covenant.

DETAILS

The applicant is seeking Planning Approval for a two storey Single House at No. 34 Longford Road, Beaconsfield.

The applicant is seeking performance based assessments for the following variations from the Acceptable Development provisions of the Residential Design Codes 2008 (R-Codes):

- Design Element 6.3 – Boundary Setbacks – *Buildings on boundary*, and
- Design Element 6.8 – Visual Privacy.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

The subject site is located within the Beaconsfield Local Planning Area as described in Schedule 12 of the City's LPS4. In accordance with Schedule 12, the applicable height requirement for the Beaconsfield LPA is as per the R-Codes.

Residential Design Codes 2008

The proposed two storey Single House complies with the Acceptable Development requirements of the R-Codes with the exception of boundary walls (as replaced by the City's local planning policy, *LPP2.4 Boundary Walls in Residential Development*) and visual privacy.

It should be noted that not meeting any acceptable development criteria, in and of itself, is not a sound basis on which to refuse or require modifications to a proposal. Instead, the proposal must be considered in the context of the relevant performance criteria.

Council Policies

LPP2.4 Boundary Walls in Residential Development

The City's local planning policy, *LPP2.4 Boundary Walls in Residential Development*, provides replacement Acceptable Development requirements to those of Design Element 6.3.2 Buildings on Boundary. Where an application does not meet the replacement Acceptable Development provisions the application is to be assessed against the performance criteria of the R-Codes with Council having *'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.'*

LPP3.5 Beaconsfield Local Planning Area

The subject site is located within the Beaconsfield LPA. The City's local planning policy, *LPP3.5 Beaconsfield Local Planning Area*, requires development within a Residential zone to adhere to the provisions of the R-Codes.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and *LPP1.3 Public Notification of Planning Proposals* policy, as the development proposes variations from the Acceptable Development provisions of the R-Codes. At the conclusion of the advertising period, being 30 March 2009, the City had received 3 submissions. The following issues were raised:

- *Request that development complies with Restrictive Covenant requirements*
 - *Submission raising concern that the proposed roof pitch is not in accordance with Restrictive Covenant requirements.*
- *Length and height of proposed northern boundary wall will negatively impact on northern adjoining property,*
 - *Loss of views from adjoining property's south facing windows,*
 - *Loss of light into adjoining property's south facing windows,*
 - *Bulk of wall will create "boxed in" feeling.*
- *Proposed upper floor windows will overlook rear outdoor area of northern adjoining property.*

PLANNING COMMENT

Residential Design Codes

Boundary Walls

6.3.2. Buildings on boundary

The City's *Boundary Walls in Residential Development Policy* provides alternative Acceptable Development standards to those contained within Element 6.3 of the R-Codes. The proposed northern and southern boundary walls do not meet these replacement standards.

The proposed northern boundary wall measures a total length of 16.8m. The wall is 5.2m high for 11.8m of this length and 2.9m high for the remaining 5m of the length.

The proposed southern boundary wall is 10.5m long and 2.8m high.

In applying the performance criteria of the R-Codes regarding buildings on boundaries, the City's policy states:

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

As previously stated, the City received one submission during the consultation period raising concern about the proposed northern boundary wall. The submitter expressed concern regarding the loss of views, provision of sunlight and negative impacts due to building bulk.

The performance criteria of the R-Codes state:

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

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

Northern boundary wall

There exists a boundary wall on the northern adjoining property that measures 8.2m long and 3.6m high, as measured from the ground level of the subject site. The existing wall on the northern adjoining property is setback 6.6m from the front lot boundary. There also exists a 1.8m high dividing fence located on top of the existing 0.8m high retaining walls on the common boundary. The southern wall of the first floor of the adjacent dwelling is setback 3.4m from the common lot boundary.

The proposed northern boundary wall will partially abut this existing boundary wall. However the 5.2m high portion of proposed boundary wall will extend 4.4m further forward than the existing wall on the adjoining property. The height of the proposed boundary wall will extend approximately 2.6m above the existing retaining wall and dividing fence on the common boundary.

The proposed two storey Single House is similar in design to existing development within the locality, in particular the boundary to boundary built form. The proposed boundary wall is therefore considered to enhance the development by contributing to a consistent streetscape and built form within the locality.

As previously mentioned, the proposed northern boundary wall will partially abut an existing boundary wall on the northern adjoining property. The remainder of the 5.2m high portion of the proposed boundary wall will be adjacent to the front driveway area. As such there will be no significant impact on the provision of direct sun to major openings to habitable rooms or outdoor living areas. Furthermore, given the elevated ground level of the adjoining property and the existing 1.8m dividing fence, the impact on the adjoining property by way of building bulk is not considered to be significant.

The rear portion of the proposed boundary wall (behind the garage on the northern adjoining property) is 2.9m high and extends approximately 4.2m beyond the existing garage. Taking into account the difference in ground levels and the existing dividing fence, this portion of the proposed boundary wall will extend approximately 0.3m above the dividing fence. This portion of the wall is not considered to significantly impact on the amenity of the adjoining property largely due to its relatively low height.

The northern adjoining property owner has expressed concern regarding the proposed boundary wall and its impact on views, access to sunlight and amenity due to building bulk. The northern adjoining property owner currently enjoys views from their first floor balcony that extend south toward the Clontarf Hill area over the vacant lots at Nos 34 and 36 Longford Street. Any development on these vacant lots, particularly two storey as intended by the Restrictive Covenant on the lots, will impact on the views currently enjoyed by No. 32 Longford Street. The proposed development at the subject site complies with the front setback requirements of the local planning policy and the height requirements of the R-Codes. The impact that the development presents on the views of the northern adjoining property is considered acceptable given the proposed development's compliance with the setback and height requirements. Furthermore it should be noted that the significant views towards the eastern and southeast will still be available to the northern adjoining property.

The impact that the proposed northern boundary wall will have on the access to sunlight is considered negligible given the location of boundary wall on the southern boundary of

the adjoining property. Furthermore the distance between the proposed boundary wall and the first floor element of the northern adjoining property is 3.4m which is considered sufficient for adequate ventilation.

It is acknowledged that the proposed northern boundary wall, particularly the portion located adjacent to the front driveway area of the adjoining property will be of a reasonable size and bulk. However, as previously discussed, boundary walls and minimal front setbacks are features of the built form within the Salentina Ridge subdivision. The proposed development including the northern boundary wall is therefore consistent with the built form in the area and is not anticipated to pose a significant impact on the amenity of the northern adjoining property.

The proposed northern boundary wall is therefore considered to satisfy the performance criteria of the R-Codes and local planning policy, *LPP2.4 Boundary Walls in Residential Development*.

Southern Boundary Wall

As with the proposed northern boundary wall, the proposed southern boundary wall is considered to enhance the development by contributing to a consistent streetscape and built form within the locality.

The southern adjoining site is currently vacant however as previously mentioned, the City is in receipt of a development application for a two storey Single House at the southern adjoining property (refer DA0333/09). A feature of the proposed development on the adjoining property is a 3.0m high boundary wall extending 9.4m from the front setback line. Therefore the proposed southern boundary wall on the subject site will abut a proposed boundary wall of similar dimensions on the adjacent site. The proposed development was advertised to the southern adjoining property owner and no submission was received. The proposed southern boundary wall is not anticipated to impact on the amenity of the southern adjoining property and thus satisfies the performance criteria of the R-Codes and local planning policy, *LPP2.4 Boundary Walls in Residential Development*.

Visual Privacy

6.8.1 Visual Privacy

The proposed development does not satisfy the Acceptable Development requirements of the R-Codes pertaining to visual privacy.

The proposed eastern facing first floor balcony is required to be setback 7.5m from the southern lot boundary or be fitted with appropriate screening. The proposed balcony is setback 6m from the southern lot boundary thus enabling overlooking into and slightly behind the front setback area of the southern adjoining property.

The performance criteria of the R-Codes regarding visual privacy states:

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

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

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

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

The area of potential overlooking from the proposed balcony is mainly over the front setback area of the southern adjoining property. This area is not afforded the same level of protection by the R-Codes as major openings or outdoor living areas given that the front setback area is readily visible from a public street. The area of potential overlooking from the proposed balcony extends approximately 1.5m behind the front setback line of the southern adjoining property. However the proposed development plans submitted to the City on 15 July 2009 (refer DA0333/09) show a two storey external wall with no major openings to be constructed in this area. Therefore the potential overlooking from the balcony will not impact on any major openings or active habitable spaces of the southern adjoining property. The adjoining property owner was notified of the proposed development and no submission was received. The proposed balcony is therefore considered to satisfy the performance criteria of the R-Codes regarding visual privacy.

Council Policies

LPP3.5 Beaconsfield Local Planning Area

The proposed development satisfies the relevant development requirements of the City's local planning policy, *LPP3.5 Beaconsfield Local Planning Area*, in particular the specific requirements pertaining to the Salentina Ridge Development.

Submissions

- *Request that development complies with Restrictive Covenant requirements*
 - *Submission raising concern that the proposed roof pitch is not in accordance with Restrictive Covenant requirements.*

As previously discussed, the City of Fremantle is not a beneficiary to the Restrictive Covenant imposed on the Certificate of Title of the subject site and therefore has no obligation or right to enforcing the provisions of the Restrictive Covenant. The pitch of the proposed roof is 30 degrees which complies with the roof pitch requirements of the *Beaconsfield Local Planning Area* policy.

- *Length and height of proposed northern boundary wall will negatively impact on northern adjoining property,*
 - *Loss of views from adjoining property's south facing windows,*
 - *Loss of light into adjoining property's south facing windows,*
 - *Bulk of wall will create "boxed in" feeling.*

As previously discussed, the proposed northern boundary wall is considered to meet the performance criteria of the R-Codes pertaining to buildings on boundaries and the City's local planning policy, *LPP2.4 Boundary Walls in Residential Development*.

- *Proposed upper floor windows will overlook rear outdoor area of northern adjoining property.*

The development does not propose any northern facing major openings on the first floor level. The proposed western facing window to the first floor bedroom 3 is to be fitted with obscure glazing, as indicated on the development plans, thereby posing no overlooking potential.

CONCLUSION

The proposed two storey Single House is considered to satisfy the relevant requirements of LPS4 and the R-Codes, including performance based assessment pertaining to boundary walls and visual privacy. The development is also considered to satisfy the provisions of the local planning policies, *LPP2.4 Boundary Walls in Residential Development* and *LPP3.5 Beaconsfield Local Planning Area*.

Accordingly the application is recommended for condition approval.

OFFICER'S RECOMMENDATION

MOVED: Cr R Fittock

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two storey Single House at No. 34 (Lot 34) Longford Road, Beaconsfield, subject to the following condition(s):

1. This approval related only to the development as indicated on the approved plans dated 15 June 2009. It does not relate to any other development on this lot.
2. All storm water discharge shall be contained and disposed of on-site.
3. 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.
4. The proposed structures shall be wholly contained within the subject lot and shall not encroach over the lot boundary.

Advisory Notes:

- (i) External fixtures, such as air conditioner units, shall be installed in accordance with the permitted locations of external fixtures as per Schedule 15 of City of Fremantle Local Planning Scheme No. 4. Planning Approval is required where external fixtures are not to be located in accordance with Schedule 15.

The Coordinator of Statutory Planning advised the Committee that in Condition 1 the date on the approved plans should be 30 July 2009.

Cr L Lauder MOVED an amendment to the Officer's Recommendation to include the following condition:

- 5 The window sill to bedroom 3 shall be raised to a minimum height of 1.6m above the floor level or the window being modified so that there is fixed obscure glazing up to 1.6m above the finished floor level.

CARRIED: 6/0

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

COMMITTEE DECISION

MOVED: Cr R Fittock

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two storey Single House at No. 34 (Lot 34) Longford Road, Beaconsfield, subject to the following condition(s):

- 1. This approval related only to the development as indicated on the approved plans dated 30 July 2009. It does not relate to any other development on this lot.**
- 2. All storm water discharge shall be contained and disposed of on-site.**
- 3. 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.**
- 4. The proposed structures shall be wholly contained within the subject lot and shall not encroach over the lot boundary.**
- 5. *The window sill to bedroom 3 shall be raised to a minimum height of 1.6m above the floor level or the window being modified so that there is fixed obscure glazing up to 1.6m above the finished floor level.***

Advisory Notes:

- (i) External fixtures, such as air conditioner units, shall be installed in accordance with the permitted locations of external fixtures as per Schedule 15 of City of Fremantle Local Planning Scheme No. 4. Planning Approval is required where external fixtures are not to be located in accordance with Schedule 15.**

CARRIED: 6/0

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

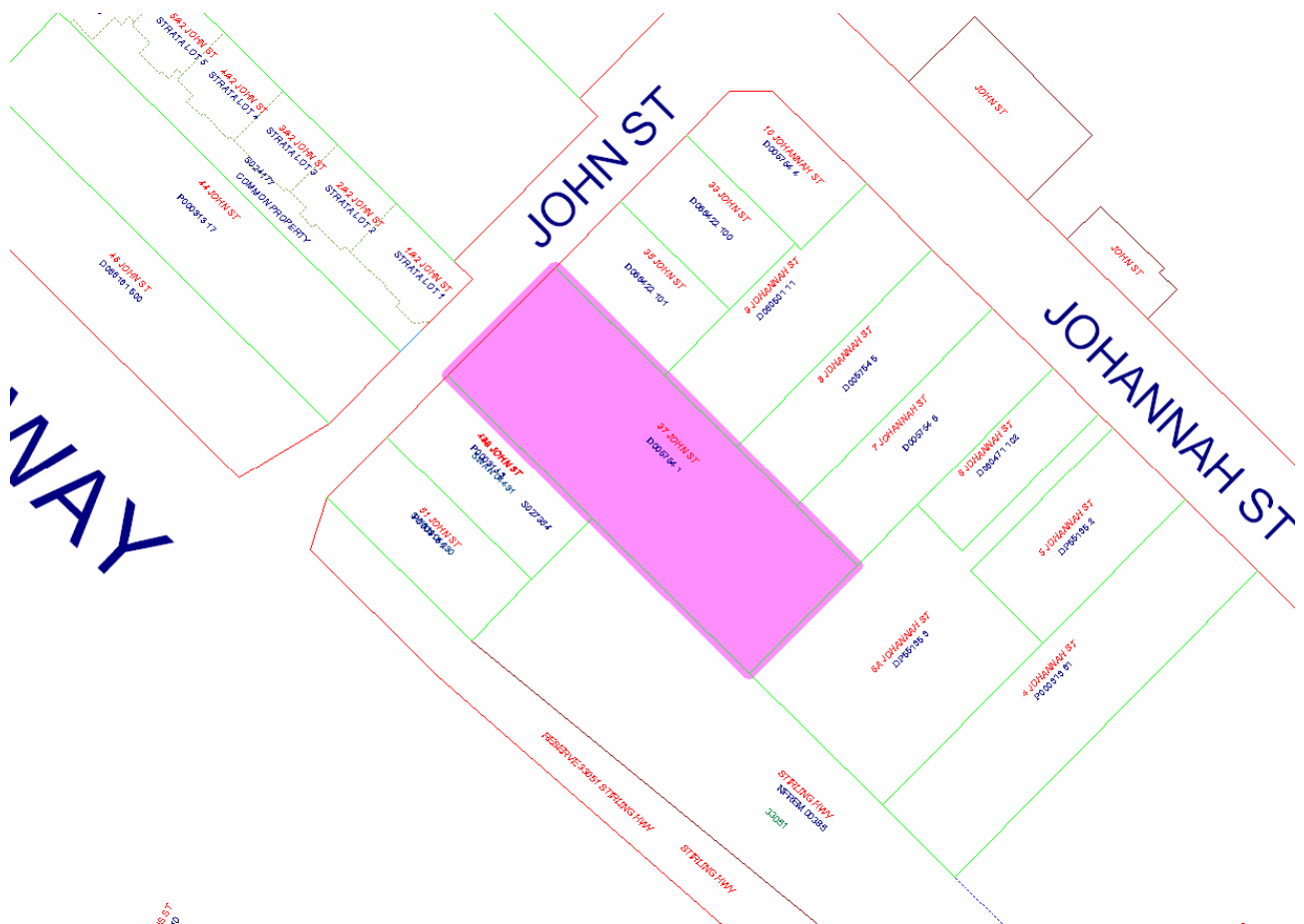
REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

Committee was of the view an additional condition should be imposed to assist in protecting the neighbours privacy.

**PSC0909-161 JOHN STREET NO.37 (LOT 1), NORTH FREMANTLE –
RETROSPECTIVE SOLAR PANEL ADDITIONS TO EXISTING SINGLE HOUSE**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Development Plans dated 30 June 2009
 Aerial of the Site taken November 2008
 External Heritage Assessment

Date Received: 30 June 2009
Owner Name: Benjamin and Sophie Elton
Submitted by: Bob Gare
Scheme: Residential R25
Heritage Listing: Management Category Level 2
Site Area: 2530m²
Existing Landuse: Residential
Use Class: Single House
Use Permissibility: 'P'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee as the proposal is considered to be an application which cannot be determined through delegation.

The applicant is seeking retrospective Planning Approval for the unauthorised erection of solar panels on the north-western and north-eastern facing roof planes of the existing Single House at 37 John Street, North Fremantle. The proposal also consists of unauthorised solar panel additions to the new garage located on the western side of the dwelling and facing towards the street.

The proposal is considered relevant with the relevant provisions of the Local Planning Scheme No. 4 (LPS4), Residential Design Codes 2008 (RDC) and Council Policies.

The retrospective solar panel additions to an existing Single House are recommended for conditional approval.

BACKGROUND

No.37 John Street is a two storey dwelling built by Lewis Benningfield Bateman in c1903. The dwelling located on this site is known as Benningfield House and is noted as being an example of Federation Filigree style of architecture.

The property is zoned Residential under the provisions of LPS4 and has a density coding of R25. The site is listed on the City's Heritage List and Municipal Heritage Inventory as a management category level 2. The site is located within the North Fremantle Heritage Precinct as prescribed under the provisions of LPS4.

Planning Approval was granted on the 1 June 2005 for single storey additions to the existing single dwelling, demolition of the existing garage, construction of a new garage and swimming pool (DA583/04).

A complaint was received on 12 June 2009 regarding the solar panels subject of this application. The complaint was investigated by the City and it was concluded that the solar panels located on the property were installed without the prior Planning Approval from Council. The owner was instructed to remove the solar panels or alternatively submit a development application for retrospective Planning Approval within 28 days of the notice issued on 23 June 2009. An application for retrospective Planning Approval was received by the City on 30 June 2009.

DETAIL

The development application for retrospective Planning Approval is to retain the existing solar panel additions that have been placed on the north-western and northern-eastern facing roof planes of the existing single house and the new garage addition at 37 John Street.

The location and surface area of the existing solar panels are shown below:

Roof Plane	Surface Area (m ²)
North West (Primary Street Facing) towards Front	15m ²
North West (Primary Street Facing) towards Rear	5m ²
North West Facing (Garage)	35m ²
North East (side) Facing – towards Front	7m ²
North East (side) Facing – towards Rear	18m ²
Total Surface Area	80m²

The prospect of relocating some or all of the solar panels was discussed with the applicant, however, the applicant has stated that this is not a preferred option. The following justification was provided by the applicant:

“As the front of the main building faces northwest, in order to gain maximum efficiency from the panels, it is considered absolutely essential that all 4 north-sun facing roof facets be used”.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4 (LPS4)

LPS4 Provisions

The Aims of LPS4 are outlined in clause 1.6 and the following subsections are considered relevant to this application:

- (f) *protect and conserve Fremantle’s unique cultural heritage,*
- (k) *ensure the urban form and development contribute to sustainability (environmental, social/cultural and economic).”*

The erection of a solar panel constitutes development. In accordance with provisions of clause 8.2 of LPS4, some forms of development are deemed to be “Permitted Development”, meaning Planning Approval is not required in some circumstances. Clause 8.2 (l) states that Planning Approval is not required if the development is minor development as listed in Schedule 15 of LPS4.

Under Schedule 15, solar panels are classified as an ‘External Fixture’. External fixtures are permitted development on a property that is on the Heritage List, only if those fixtures (solar panels) face towards a side or rear boundary and are less than 2m in width. The site, the subject of this application, is on the Heritage List established under Part 7 – Heritage and Conservation Protection of LPS4. In this instance, all the existing solar

panels are required to be considered as part of this application for retrospective Planning Approval due to their size and location.

The Heritage List identifies those properties that have cultural heritage significance. LPS4 defines Cultural Heritage Significance as provided for in the Heritage of Western Australia Act 1990, as follows:

“cultural heritage significance means, in relation to a place, the relative value which that place has in terms of its aesthetic, historic, scientific, or social significance, for the present community and future generations;”

Clause 10.2.1 of LPS4 sets out those matters which Council is required to have due regard to when considering an application for Planning Approval. The following sub sections are considered relevant in this instance:

10.2 Matters to be considered by the Council

10.2.1 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 and provisions of this Scheme and any other relevant planning Scheme(s) operating within the Scheme area, including the Metropolitan Region Scheme,*
- (f) any planning policy adopted by the Council under clause 2.4, any heritage policy statement for any designated heritage area adopted under clause 7.2.2 and any other plan, strategy or guideline adopted by the Council under the 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,*
- (zi) the Heritage List, and*
- (zj) any other planning consideration.*

Local Planning Policies

L.P.P1.6 Preparing Heritage Assessments (L.P.P1.6)

In accordance with L.P.P1.6, this application was required to be assessed by an external heritage architect. The expert heritage advice provided to the City is discussed in the ‘Consultation’ section of this report, along with the full assessment being attached to this report (Attachment 3).

D.B.H1 Urban Design and Streetscape Guidelines (D.B.H1)

The proposed development has been assessed with regard to the provisions of the City’s *Urban Design and Streetscape Guidelines Policy*. Further discussion is contained in the ‘Planning Comment’ section of this report.

Residential Design Codes

Clause 5.2.2 of the R-codes states the following:

5.2.2 Unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the Residential Design Codes is to conform to the provisions of those Codes.

In relation to the first part of this clause, development must satisfy provisions of the Scheme as well as the R-Codes.

The R-Codes cover residential development, including solar panels under 6.10.2 – External Fixtures. The Acceptable Development criteria of the R-Codes state that solar collectors are permitted as of right to maximise efficiency. Accordingly, the proposal meets the Acceptable Development requirements of this provision of the R-Codes.

CONSULTATION

Heritage

Heritage advice was received by the City on the 3 August 2009. It was noted in the report that the solar panels located on the garage (forming part of recent additions approved on 1 June 2005) do not have any negative impact on the heritage significance of the site.

With regard to the panels located on the existing north-eastern and north-western facing roof planes, the following comment was provided:

“As the black solar panels predominately cover four visible sections of the roof it is considered that they have a high negative impact on the cultural heritage values of Benningfield.

The proposed solar panels impact negatively on the streetscape as they dominate the visible roof sections. The roof form and roof material are important contributing elements to the aesthetic value of the residence. This aesthetic value is important in the streetscape”.

Further to the above the external heritage architect provided the following response in regard to the degree of permanent impact on the heritage significance of the place:

“The proposed solar panels are reversible, therefore, it is not an irreversible loss of heritage value”.

A copy of the heritage assessment is attached to this report (Attachment 3).

Community

The application was not required to be advertised in accordance with *LPP1.3 Public Notification of Planning Proposals* policy. The proposal was not required to be advertised as the application did not meet the criteria outlined in *L.P.P1.3* that determines if the application is considered ‘significant’. As the proposal did not meet this criteria, it was not required to be advertised.

PLANNING COMMENT

In considering this application, Council needs to determine whether the existing solar panels impact on the cultural heritage significance of the place. Furthermore if it is determined that there is an impact, Council needs to consider the degree of impact, the extent of the impact on the place, whether the impact can be minimised and if the change is reversible without a loss of heritage value, when determining the application.

The expert heritage assessment identifies that the existing solar panels dominate the visible roof sections and impact negatively on the streetscape from an aesthetic perspective. Given that the solar panels are visible from the street and are located on the prominent street facing section of roof, it is clear that the panels will impact upon the visual appearance of the property and thus the heritage values and significance of the property with regard to its contribution to the streetscape.

However, the heritage assessment also notes that the solar panels are completely 'reversible' and are capable of being removed without any loss of heritage value. The existing solar panels will not alter the important features of the dwelling in that the solar panels will not change the structural form of the roof, nor do they result in the removal of any original fabric.

Furthermore, the life of a solar panel could be around 20 years. It is not known whether the technology in the next 20 years would result in different forms of solar panel being developed that would replace the current solar panel design. On this note it is recommended that the Planning Approval be for a 20 year period, following which, a new planning application would be required.

The City's local planning policy, D.B.H1 aims to conserve and enhance areas of architectural or historic character whilst encouraging harmonious development with the existing authentic character and appearance of the traditional residential areas of Fremantle.

D.B.H1 recognises the significant role that roofs play in the urban character of the traditional domestic streetscape in Fremantle. The policy does not specifically provide criteria for additions to roofs such as the solar panels, it rather discusses the form and materials for roofs. The policy is clear in its intention to discourage development that detracts from the traditional elements of the Fremantle area. However as the solar panels are an addition to the roof and are contained within the existing form of the roof and do not alter the form of the roof, the solar panels are considered to satisfy the objectives of the policy.

CONCLUSION

This application presents a challenging planning question. Maintaining the functionality of an original dwelling, preserving its heritage character, whilst promoting energy efficient improvements and practices, proposes a difficult question of balance. In this application, Council is required to determine the extent of the effect that this development would have on the heritage significance of the dwelling, or on the streetscape, whilst having regard to the R-Codes permitting solar panels as of right and the matter of sustainability.

Whilst the solar panels do have a negative impact in the short to medium term on the significance of the building, the works are reversible and do not have any long term

impact on the heritage significance (compared to the life of the building). It is noted that the development of this technology may, in the long term, provide an option for the solar panels to be integrated more harmoniously with the existing dwelling. As a result a condition is recommended that after a period of 20 years (based on the standard lifespan of solar panels) that the use of the panels be reviewed in order to encompass future technological advances. Therefore, on balance, the solar panel additions are recommended for conditional approval.

However, should Council be of the opinion that the solar panels detrimentally impact on the significance of the place, Council may refuse the application or grant approval subject to the removal or relocation of some of the panels to a more suitable location on the subject property.

OFFICER'S RECOMMENDATION

MOVED: Cr R Fittock

That the application for retrospective Planning Approval be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the unauthorised solar panel additions to the existing Single House at No. 37 (Lot 1) John Street, North Fremantle, subject to the following condition(s):

1. This approval relates only to the existing solar panel erected on the existing Single House as indicated on the approved plans dated the 30 June 2009. It does not relate to any other development on this lot.
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. The solar panels, as detailed on plans dated 30 June 2009, shall be removed from the dwelling to the satisfaction of the Chief Executive Officer, City of Fremantle after a period of 20 years, i.e. prior to 2 September 2029.

Advice Notes

- i) The planning approval has been issued on the basis of the plans hereby approved. It is the responsibility of the applicant to ensure that the approved plans are accurate and are a true representation of all existing and proposed development on the site, and to ensure that development proceeds in accordance with these plans.

Cr J Dowson MOVED an amendment to the Officer's Recommendation to include the following wording:

- 2) That the Committee request a report be brought to the October Planning Services Committee relating to the minor development requiring planning approval on Heritage Listed properties

CARRIED: 6/0

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

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

1. This approval relates only to the existing solar *panels* erected on the existing Single House as indicated on the approved plans dated the 30 June 2009. It does not relate to any other development on this lot.
3. The solar panels, as detailed on plans dated 30 June 2009, shall be removed from the dwelling to the satisfaction of the Chief Executive Officer, City of Fremantle after a period of 25 years, i.e. prior to 2 September 2034.

CARRIED:4/2

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

COMMITTEE DECISION

- 1) That the application for retrospective Planning Approval be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the unauthorised solar panel additions to the existing Single House at No. 37 (Lot 1) John Street, North Fremantle, subject to the following condition(s):
1. This approval relates only to the existing solar *panels* erected on the existing Single House as indicated on the approved plans dated the 30 June 2009. It does not relate to any other development on this lot.
 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. The solar panels, as detailed on plans dated 30 June 2009, shall be removed from the dwelling to the satisfaction of the Chief Executive Officer, City of Fremantle after a period of 25 years, i.e. prior to 2 September 2034.

Advice Note

- i) The planning approval has been issued on the basis of the plans hereby approved. It is the responsibility of the applicant to ensure that the approved plans are accurate and are a true representation of all existing and proposed development on the site, and to ensure that development proceeds in accordance with these plans.
- 2) *That the Committee request a report be bought to the October Planning Services Committee relating to the minor development requiring planning approval on Heritage Listed properties.*

CARRIED: 6/0

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

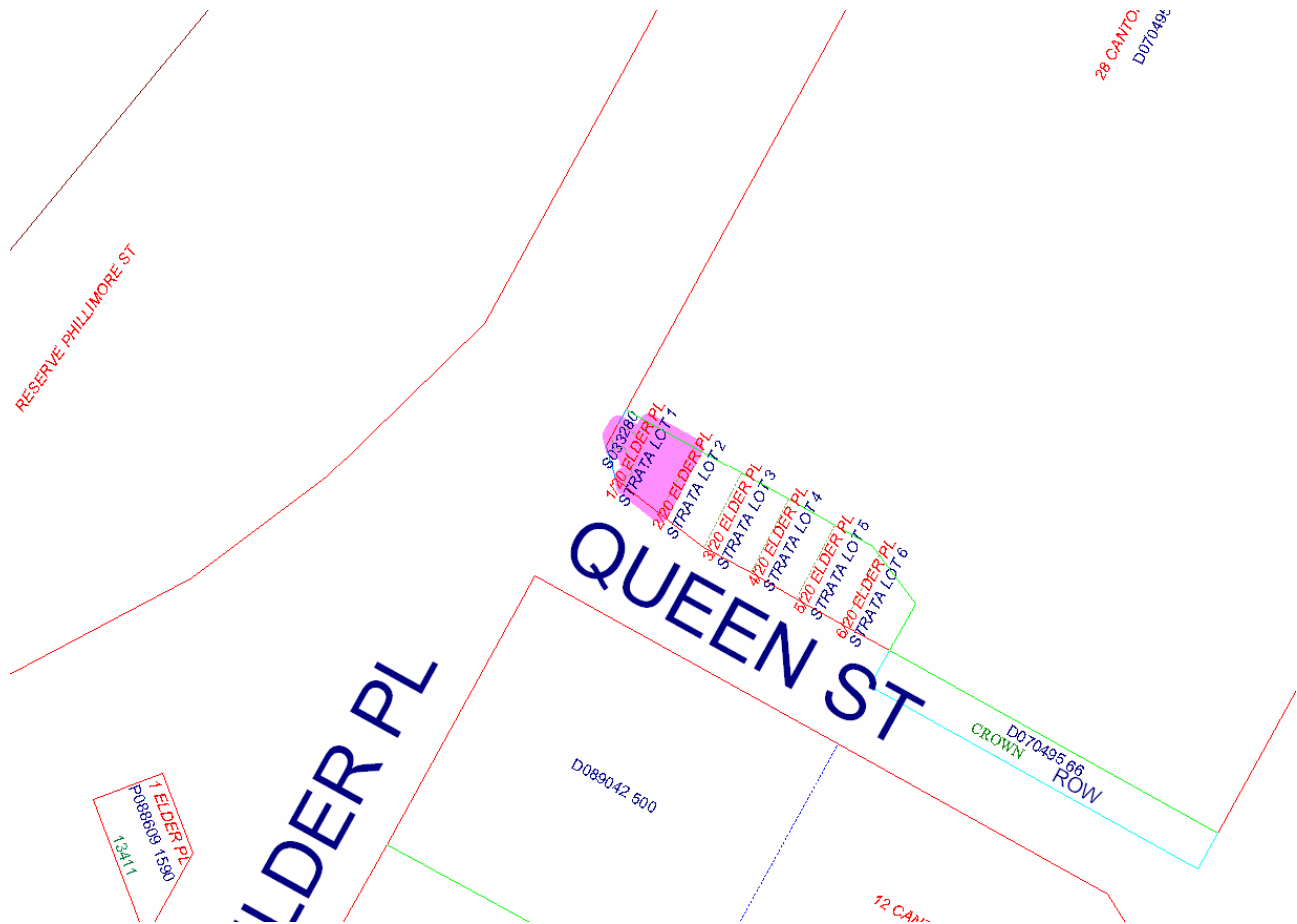
REASON/S FOR CHANGE TO OFFICER'S RECOMMENDATION

The Committee considered that;

- 1) a minor change to condition 3 was necessary
- 2) that a further report relating to minor development on Heritage Listed Properties is necessary.

PSC0909-160 ELDER PLACE NO. 1/20 (STRATA LOT 1) FREMANTLE - RETROSPECTIVE PLANNING APPROVAL FOR SIGNAGE - (BC DA0340/09)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: A/Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachment 1: Development Plans and Justification
Attachment 2: Photograph of sign – 4 August 2009
Date Received: 16 July 2009
Owner Name: Thomas & Maria Tsiaglis
Submitted by: Charles Maasdorp
Scheme: City Centre
Heritage Listing: Archaeological/Historical Site
Existing Landuse: Shop
Use Class: Shop
Use Permissibility: P



EXECUTIVE SUMMARY

The applicant is seeking retrospective Planning Approval for Signage at No. 1/20 Elder Place, Fremantle.

The signage consists of a billboard style sign, measuring 8.3m wide and 2.2m high. The sign is fixed to the north eastern elevation (rear) of No. 1/20 Elder Place.

The advertising content of the sign is not related to the approved Shop land use of the premises, rather the sign currently displays advertisements for motor vehicles. Clause 5.10.1 of Local Planning Scheme No. 4 (LPS4) requires advertising signs to be erected on the property to which they relate.

The application is recommended to be refused as the content of the advertising sign is contrary to the provisions of clause 5.10.1 of LPS4.

BACKGROUND

It has been brought to the City's attention that alleged unauthorised development has occurred at No. 1/20 Elder Place, Fremantle. On 23 June 2009, the owners of the premises were instructed to remove the unauthorised sign or alternatively submit a development application for retrospective Planning Approval for the development within 28 days of the letter. A development application was submitted to the City on 16 July 2009 seeking retrospective Planning Approval for the signage.

The subject site is one of six strata tenancies at No. 20 Elder Place, Fremantle. The site (Unit 1) is located on the corner of Elder Place and Queen Street with pedestrian access gained via a doorway facing the corner of the two streets.

The site is zoned City Centre under LPS4. The site is listed on the City's Heritage List as the site of the former Railway Signal Box. The City's Municipal Heritage Inventory describes the site as of archaeological/historical significance.

The recent development applications relating to the site that are relevant to the current application are listed below:

- Planning Approval was granted on 26 May 2008 for the retrospective change of use to Shop (Bikini Girls) (refer DA126/08). Of note is Condition 1 which deleted various signage from the Approval.
- Planning Approval was granted on 31 March 2009 for signage associated with the current hairdressing (Shop) use of the premises (refer DA87/09).

DETAILS

The applicant is seeking Retrospective Planning Approval for Signage at No. 1/20 Elder Place, Fremantle. The signage consists of one sign measuring 8.3m wide and 2.2m high. The sign has been erected on the north eastern elevation (rear) of the building facing northwards along Elder Place (see Attachment 1).

The applicant has stated that the sign was erected partly as a response to the north eastern wall being used for graffiti and bill posting. The applicant has provided photographs of the described bill posting. The submitted information also shows the erected signage – advertising a “Holden Cruze” motor vehicle (see Attachment 1). A site visit conducted by City Officers on 4 August 2009 also observed the sign advertising motor vehicles (Mercedes E-Motion) (see Attachment 2).

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Clause 8.1 of LPS4 states that all development on land zoned and reserved under the Scheme requires the prior approval of the Council. Note 2 elaborates that development includes the *‘erection, placement and display of any advertisements.’*

Clause 5.10.1 of LPS4 states:

‘All advertising signs shall be –

- (a) attached to the walls or façade of a building or structure so as not to protrude above the height of the wall to the building or the structure,*
- (b) limited to a common pylon sign or hoarding for developments comprising more than two units, strata titled units or businesses, up to a maximum of six (6) advertisements to each sign where there are more than six (6) units, strata titled units or businesses within the development,*
- (c) erected on the property to which they relate.’*

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

The content of the advertising sign does not relate to the property on which it has been erected. The premises is approved for Shop use and is currently tenanted by a hairdresser. The sign is currently used for advertising motor vehicles. The advertising sign is therefore contrary to subsection (c) of clause 5.10.1 of LPS4.

Accordingly the application is recommended for refusal.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr R Fittock

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for Retrospective Planning for Signage at No. 1/20 (Strata Lot 1) Elder Place, Fremantle, as detailed on plans dated 16 July 2009, for the following reasons:

- 1. The proposal is inconsistent with clause 5.10.1 of the City of Fremantle Local Planning Scheme No. 4, in that the sign does not relate to the property on which it has been erected.**

CARRIED: 6/0

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

PSC0909-162 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 R Fittock

That the information is noted.

CARRIED: 6/0

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

REPORTS BY OFFICERS (COUNCIL DECISION)

PSC0909-163 PROPOSED SCHEME AMENDMENT NO 26 TO LOCAL PLANNING SCHEME NO.4 - DEMOLITION OF BUILDINGS AND STRUCTURES - FINAL ADOPTION

DataWorks Reference:	218/030
Disclosure of Interest:	Nil
Responsible Officer:	Manager Planning Projects
Actioning Officer:	Strategic planning Officer
Decision Making Level:	Council
Previous Item Number/s:	PSC0904-64
Attachments:	1.Summary of Submissions 2. Copy of correspondence from Heritage Council of WA

EXECUTIVE SUMMARY

The purpose of this report is to recommend Council adopt an amendment (Amendment No. 26) to the City's Local Planning Scheme No. 4 to amend the provisions relating to the demolition of buildings and structures.

The amendment was advertised for comment and one submission was received from the Heritage Council of Western Australia (HCWA). A modification to the amendment is proposed to address points raised in the submission, and the HCWA has confirmed that it has no objection to the Scheme amendment as modified.

It is recommended that the submission be noted, that Council resolves to adopt the amendment with modifications in light of the submission received, and that the Minister for Planning is requested to grant final consent to the amendment.

BACKGROUND

On 22 April 2009 Council resolved to initiate an amendment to Local Planning Scheme No. 4 (LPS4) to clarify provisions relating to the demolition of buildings and structures (Minute PSC0904-64 refers). In summary, the proposed amendment comprises two changes to LPS4 as follows:

1. The introduction of a new clause 5.15 into Part 5 of the Scheme (which deals with general development requirements) to clearly identify the considerations upon which the determination of planning applications for the demolition of buildings and structures will be based; and
2. An addition to Schedule 15 (which specifies types of minor development permitted without planning approval) to allow the demolition of small outbuildings and other minor structures which are not within the boundary of a property on the Heritage List to occur without planning approval.

CONSULTATION

Pursuant to regulation 25(2)(j) of the *Town Planning Regulations 1967* and following the referral from the Environmental Protection Authority, the amendment was placed out for comment for a period of 45 days between 13 June 2009 to 27 July 2009, with advertisements being placed in the Fremantle Herald and the West Australian newspapers. Letters were also sent to a number of public authorities including the Heritage Council of Western Australia (HCWA) and Department of Housing with copies of the amendment documents being made available for viewing at the Service and Information Counter at the City's William Street Office and on the City's website.

Regulation 18(1) of the *Town Planning Regulations 1967* requires the City to consider any submissions received during its determination of the Scheme Amendment. At the conclusion of the advertising period one submission had been received from HCWA (see Attachment 2).

HCWA's submission is summarised below:

- I. A provision of this kind unusual within a planning scheme and would normally form part of a local planning policy
- II. HCWA finds Clause 5.15.1 categorical and feels it implies that demolition approval will be refused if a place possesses ANY heritage significance, no matter how slight.
- III. Considers further explanation of what 'cultural heritage significance' means in 5.15.1(a) may or may not be helpful.
- IV. Asks why the proposal makes no reference to the places listed in Fremantle's Heritage List, or places within Heritage Areas designated under the Scheme.

City officers subsequently discussed the issues raised in the submission with HCWA officers, suggested a modification to the wording of the amendment to address points (II) and (III) above, and explained in more detail the intent of the amendment and how points (I) and (IV) are dealt with. Following this communication, a further submission was received from the HCWA supporting the modifications and stating that whilst the approach the City is taking in this Scheme amendment is unusual in WA, the HCWA has no objections to the modified amendment. (see Attachment 2).

See Attachment 1 for summary table of submission and officer's comments on each submission point.

PLANNING COMMENT

The current lack of provisions dealing with demolition of buildings is considered by officers to be a deficiency in Local Planning Scheme No 4. The proposed Scheme amendment is intended to address these shortcomings by providing some robust planning criteria by which the City can assess planning applications to demolish buildings and structures. The amendment will also exempt the demolition of some minor and ancillary structures from the need to obtain planning approval, in circumstances where they relate to properties which are not on the heritage list.

The first change to the text of LPS4 proposed by this Scheme amendment – the introduction of a new clause 5.15 (Demolition of Buildings and Structures) - has been modified slightly from the originally proposed wording in the light of comments made by the HCWA in their submission.

In their submission the HCWA raised the concern that under the originally proposed wording of clause 5.15 Council would only grant planning approval for the demolition of a building or structure where that building or structure *“is not of cultural heritage significance in terms of its fabric, design, setting, use, associations, meaning, or rarity”*. The HCWA considered this wording implied that if a place possesses ANY heritage significance, no matter how slight, demolition approval would be refused.

This was not the intent of the amendment - the purpose of the clause is to provide a clear level of protection for those places of some or high significance. However in the light of the HCWA’s submission this clause has been reworded to: *“has limited or no cultural heritage significance”*. Accordingly in considering an application for demolition it has to be demonstrated that the building has limited to nil cultural heritage significance, which is considered to be a clearer test than the previous wording. Additionally, the reference to *“fabric, design, setting, use, associations, meaning, or rarity”* has been deleted because “cultural heritage significance” is already defined elsewhere in LPS4. A footnote to clause 5.15 is recommended to be added to draw attention to the location of this definition within the document.

Consequently the recommended wording of the Scheme amendment, incorporating the above modifications, is as follows (modified wording shown in italics):

Modified Scheme Amendment:

A. Add the following text to Part 5 of the Scheme:

5.15 Demolition of Buildings and Structures

5.15.1 Council will only grant planning approval for the demolition of a building or structure where it is satisfied that the building or structure:

- (a) *has limited or no cultural heritage significance, and*
- (b) does not make a significant contribution to the broader cultural heritage significance and character of the locality in which it is located.

5.15.2 In considering an application under 5.15.1, Council shall have regard to any heritage assessment required under Clause 7.4

Note 1: Schedule 15 exempts demolition of certain buildings and structures from the need to obtain planning approval.

Note 2: *Schedule 1 defines ‘cultural heritage significance’.*

B. Amend Clause 12.15 and Schedule 15 as follows:

Schedule 15 – Minor Development Permitted Without Planning Approval

	Within or on the boundary of a property on the Heritage List	Within or on the boundary of a Heritage Area	All other cases
Demolition	Approval required	Walls and fences not of masonry or limestone construction. Outbuildings not of masonry or limestone construction with a floor area of less than 25m ² Minor structures Patios Shade Structures Carports External Fixtures Air Conditioners Private swimming pools and outdoor spas Water tanks Flag poles	Walls and fences not of masonry or limestone construction. Outbuildings not of masonry or limestone construction with a floor area of less than 25m ² Minor structures Patios Shade Structures Carports External Fixtures Air Conditioners Private swimming pools and outdoor spas Water tanks Flag poles

CONCLUSION

The HCWA has confirmed that the modifications outlined above address concerns raised in its original submission, and it has no objection to the Scheme amendment as modified. Accordingly it is recommended that the submission be noted, that Council resolves to adopt the amendment with the modifications and that the Minister for Planning is requested to grant final consent to the amendment.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Cr R Fittock

1. That Council note the submission received as detailed in the Officer's report;

2. Pursuant to Section 75 of the Planning and Development Act 2005 and Regulation 17(2)(a) of the Town Planning Regulations 1967, resolve to adopt with modification the following amendment to the City of Fremantle Local Planning Scheme No. 4:

A. Insertion of a new clause into Part 5 of LPS4 as follows:

5.15 Demolition of Buildings and Structures

5.15.1 Council will only grant planning approval for the demolition of a building or structure where it is satisfied that the building or structure:

- (a) has limited or no cultural heritage significance, and**
- (b) does not make a significant contribution to the broader cultural heritage significance and character of the locality in which it is located.**

5.15.2 In considering an application under 5.15.1, Council shall have regard to any heritage assessment required under Clause 7.4

Note 1: Schedule 15 exempts demolition of certain buildings and structures from the need to obtain planning approval.

Note 2: Schedule 1 defines 'cultural heritage significance'.

B. Insertion of the following text into Clause 12.15 Schedule 15 – Permitted Development

	Within or on the boundary of a property on the Heritage List	Within or on the boundary of a Heritage Area	All other cases
Demolition	Approval required	Walls and fences not of masonry or limestone construction. Outbuildings not of masonry or limestone construction with a floor area of less than 25m2. Minor structures Patios	Walls and fences not of masonry or limestone construction. Outbuildings not of masonry or limestone construction with a floor area of less than 25m2. Minor structures Patios

		Shade Structures Carports External Fixtures Air Conditioners Private swimming pools and outdoor spas Water tanks Flag poles	Shade Structures Carports External Fixtures Air Conditioners Private swimming pools and outdoor spas Water tanks Flag poles
--	--	--	--

3. Authorise the Mayor and the Chief Executive Officer to execute the relevant documentation and affix the common seal of the City of Fremantle on the documentation; and
4. Request the Minister for Planning to grant final consent to Amendment No. 26.

CARRIED: 6/0

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

**PSC0909-164 ITEM FOR ADOPTION OF LPP2.6 PROCEDURES FOR AMENDING
MHI AND HL**

DataWorks Reference:	117/010
Disclosure of Interest:	Nil
Responsible Officer:	Manager Projects and Policy
Actioning Officer:	Heritage Planner
Decision Making Authority:	Council
Attachments:	Policy DA16 – Policy on adding/Deleting Places Listed on Municipal Heritage Inventory for Fremantle (MHI)

EXECUTIVE SUMMARY

This report seeks Council approval to adopt the draft Local Planning Policy (LPP2.6) as the final version and to revoke planning policy DA16 Policy on adding/Deleting Places Listed on Municipal Heritage Inventory for Fremantle (MHI) which will be superseded should this policy be adopted.

The draft policy has been advertised for public comment in accordance with the requirements of LPS4, with no submissions received. Therefore no amendments have been made to the policy.

It is recommended that LPP 2.6 Procedures for Amending Municipal Heritage Inventory (MHI) and Heritage List be put to Council for final adoption and that DA16 'Adding/Deleting Places Listed on Municipal Heritage Inventory for Fremantle (MHI) be revoked.

BACKGROUND

The Heritage of Western Australia Act, 1990 obliges local governments to develop and maintain a municipal inventory and, once established, to update it annually and review it every 4 years after compilation. Council adopted policy DA16 'Adding/Deleting Places Listed on Municipal Heritage Inventory for Fremantle (MHI) in November 2002 to carry out the procedures in accordance with the Act.

The City of Fremantle Local Planning Scheme No. 4 (LPS4) which was gazetted March 2007 (amended March 2009) obliges Council to establish and maintain a Heritage List to identify those places within the Scheme which are of cultural heritage significance and worthy of conservation under the provisions of the Scheme. Under provisions in the scheme places included on the MHI were adopted onto the Heritage List.

During the Ordinary Meeting of Council 30 January 2008 Council agreed that further amendments to the MHI or Heritage List should not be determined until Policy DA16 was reviewed and revised to reflect the relevant heritage provisions contained in Local Planning scheme 4.

At the ordinary Council meeting of 24 June 2009, Council resolved to adopt draft planning policy LPP 2.6 "Procedures for amending Municipal Heritage Inventory and Heritage List" for the purpose of advertising (refer PSC 0906-112). Furthermore, Council, as part of that resolution, acknowledged that current planning Policy DA16 would be revoked upon final adoption of LPP2.6.

STATUTORY IMPLICATIONS

The recommendations are based on compliance with the following, major documents:

- Heritage of Western Australia Act, 1990.
- The City of Fremantle's Local Planning Scheme No. 4 Part 2 Local Planning Policy Framework and Part 7 - Heritage and Conservation Protection.
- The City of Fremantle's Municipal Heritage Inventory (MHI) for Fremantle and the MHI Management Strategy.

CONSULTATION

The draft policy was advertised as part of the advertising process for a period of not less than 28 days in accordance with Clause 2.4 of the Scheme. The policy was advertised for comment from 4 July until 3 August with no submissions received.

COMMENT

The draft policy has been prepared to retain the requirements of the Heritage Act WA in regards to the MHI as well as reflect the relevant heritage provisions contained in LPS4 for the Heritage List.

The purpose of this policy is;

- 1) To clarify the meaning and implications of the listing on the MHI and Heritage List and the relationship between both.
- 2) To prescribe the process for including/deleting or amending places on the MHI and Heritage List where not specified in the relevant legislation.

The key principles contained within the draft policy which the Council may wish to consider are summarised below (note this is a summary only and the text of the draft policy should be read for precise meaning).

- Nomination of a place to be added/removed or amended on the MHI and/or Heritage List shall be in the form of a written request to the CEO.
- The basis for inclusion or removal on the MHI or Heritage List shall be *cultural heritage significance* as defined by the *Heritage of Western Australia Act 1990* and the Burra Charter. The criteria for places are identified as being of historic, aesthetic, scientific, spiritual or social values for present and future generations.
- The decision to include/remove/amend places on the MHI and/or HL shall be made by Council on an annual basis between February and April.

- The decision to include/remove/amend places on the Heritage List shall be made by Council following the 4 yearly updates or outside this period in exceptional circumstances
- The owners' consultation shall be undertaken for places on the MHI in accordance with the adopted policy and the community consultation for places on the Heritage List under provisions in Part 7 of the LPS4.

STRATEGIC AND POLICY IMPLICATIONS

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

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority required.

LEGISLATIVE AND LEGAL CONSIDERATIONS

Council is required to prepare and maintain an MHI under the provisions of the Heritage Act and the Heritage List under LPS4 this policy has been prepared to provide the process of updates.

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

CONCLUSION

The draft policy has been prepared to address amending places included on the MHI and the Heritage List and, as part of Council's on-going policy review, to ensure that all Council policies are consistent with the Scheme and other legislative requirements. It is recommended that the policy be adopted as printed below. It is recommended that the superseded policy as discussed above be revoked in accordance with the Scheme upon final adoption of this policy.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Cr R Fittock

That Council:

1. **Adopt the following draft Local Planning Policy 2.6 Procedures for Amending Municipal Heritage Inventory (MHI) and Heritage List as printed below:**

CITY OF FREMANTLE

LOCAL PLANNING POLICY 2.6

PROCEDURE FOR AMENDING THE MUNICIPAL HERITAGE INVENTORY (MHI) AND HERITAGE LIST

ADOPTION DATE:

AUTHORITY: LOCAL PLANNING SCHEME NO.4

STATUTORY BACKGROUND

The *Heritage of Western Australia Act 1990* requires that local governments compile and maintain a Municipal Heritage Inventory (MHI) of places which in its opinion are, or may become, of cultural heritage significance, and that the inventory is updated annually, reviewed 4 years after compilation and is compiled with proper public consultation.

Part 7 of Local Planning Scheme No 4 establishes the process for adoption of the Heritage List and Heritage Areas. It provides that heritage considerations will be one of the primary planning considerations when making decisions in relation to a heritage listed place or area. Heritage Listing or inclusion in a Heritage Area also has implications for the type of approvals required for certain forms of development, and the ability for the Council to vary scheme provisions in certain cases.

Places and areas included on the Municipal Heritage Inventory at the time of gazettal of the Scheme are deemed to be included on the Heritage List or as Heritage Areas by virtue of Clauses 7.1.7 and 7.2.9 of the Scheme.

The existence of the Heritage List and Heritage Areas under Local Planning Scheme No 4 does not negate the statutory requirement or the need for the Council to maintain a Heritage Inventory under the Heritage of WA Act. This is still an essential part of the heritage planning framework, in that although it has no direct statutory implications, the Inventory provides a proper archival record and information on heritage places within the City which exists quite independently of the planning system.

POLICY OBJECTIVES

- 1) To clarify the meaning and implications of listing on the Municipal Heritage Inventory and Heritage List and the relationships between these documents.
- 2) To prescribe the process for inclusion of places on the Municipal Heritage Inventory and Heritage List and Heritage Area, where not specified in the relevant legislation.

POLICY

1. Clarification of the meaning of the various types of heritage listing.

Municipal Heritage Inventory (MHI)

The Municipal Heritage Inventory (MHI) comprises the inventory of places which in the opinion of Council are, or may become, of cultural heritage significance as required under section 45 of the *Heritage of Western Australia Act 1990*. The City of Fremantle's MHI is a database that holds heritage assessment information which defines the heritage values, provides the statement of significance and the management category that establishes the extent of conservation required to retain these values for each identified place.

Heritage List

The Heritage List comprises a statutory list of places established under the City of Fremantle Local Planning Scheme 4 (LPS4) which are of cultural heritage significance and worthy of conservation under provisions of the scheme as adopted by Council. The list does not include any other data about the listed places.

Heritage Areas

Heritage Areas are areas which represent the identifiable heritage values as a whole. A heritage area may be a group of places that together form a precinct which is of cultural heritage significance notwithstanding that each place within the precinct does not itself have cultural heritage significance and which, in the opinion of Council, require special planning control to conserve and enhance the cultural heritage significance of the area under provisions of the City's LPS4.

Note: Some areas carry the title of precinct

**Summary of City of Fremantle generated heritage listing regime
(i.e. – not including World, National or State Registration or National Trust listing)**

	Municipal Heritage Inventory	Heritage List	Heritage Area
Statutory authority	Heritage of WA Act	Local Planning Scheme No 4	Local Planning Scheme No 4
Applies to	Buildings and features	Places (may or may not include buildings or objects)	Areas or precincts
Direct statutory planning implications of inclusion	None	1. Scheme states that the place is worthy of conservation 2. Different levels of development permitted without approval 3. obliges Council to consider heritage conservation as one of all other relevant planning considerations	1. Scheme states that special planning control is needed to conserve and enhance the significance of the area 2. Different levels of development permitted without approval
Indirect statutory planning implications of inclusion	1. Establishes heritage values of all listed places 2. Establishes database of heritage places and their significance. 3. May be considered by Council when exercising discretionary planning powers		
Requirements and process of amendment	1. The Act requires “proper public consultation” but is not specific about what this means 2. by decision of Council 3. MHI should be updated annually and reviewed every 4 years after compilation	Specific requirement to consult with the owner and occupier of the place.	Specific requirement to consult with each owner of land within the area and other consultation as determined by the Council.

2. Process for inclusion, removal or amendment of a place on the Municipal Heritage Inventory and Heritage List.

Any person or organisation may nominate a place to be added, removed or amended on the MHI, at any time. This shall be in the form of a written request to the Chief Executive Officer (CEO). The basis for inclusion/removal/amendments of places on the MHI shall be *cultural heritage significance*.

Cultural Heritage Significance

For the purpose of this policy, the “cultural heritage significance” of a place has the same meaning as defined by the *Heritage of Western Australia Act 1990*, the Burra Charter and also adopted by the Heritage Council of WA. The criteria for places are identified as being of historic, aesthetic, scientific, spiritual or social values for past present and future generations. The criteria for assessing the degree of significance include rarity and representativeness (authenticity, integrity) attributes.

Procedure for MHI

The decision to include/remove/amend places on MHI shall be made by Council on an annual basis in February to April and all nominations/amendments made during a year be reported to Council including those preliminary assessed by the CEO.

In considering the inclusion/deletion of a place on the MHI, the Council will ensure that:

1. the owner(s) of the nominated place/area has been notified in writing about the nomination to add/remove a place
2. it has been provided with and have regard to all available information of relevance to the cultural heritage significance of a place, including heritage assessment prepared in accordance with the “Preparing Heritage Assessment Policy” (L.P.P1.6), the Municipal Heritage Inventory Management Strategy (2000), its subsequent updates and any other heritage studies and/or conservation plans already in place.

In assessing nominations for amendment to the MHI, the Council may have regard to advice received from the Heritage and Special Places Advisory Committee.

Procedure for Heritage List

In determining whether a place should be included on the Heritage List the Council will follow the procedure outlined in Clauses 7.1.2, 7.1.3 and 7.1.4 of LPS4 respectively.

Following the annual amendments of the MHI Council will consider which places of those adopted/deleted from the MHI should be considered for inclusion/deletion on the Heritage List.

Having determined which places should be added/deleted on the Heritage List the Council will consult its intention to amend the Heritage List with the relevant property owners as defined by Clause 7.1.3 of LPS4. If possible the consultation on the amendments to MHI and Heritage List should be carried out concurrently.

Procedure for Heritage Area

In determining whether an area or precinct should be included as a Heritage Area the Council will follow the procedure outlined in Clause 7.2.2 through to 7.2.6 of LPS4 respectively.

Council Decision

Following the heritage assessment and consultation procedures outlined above the Council may;

- 1) adopt/not include/delete a place onto the MHI
- 2) amend the existing MHI entry on a place
- 3) adopt/not include/delete a place onto the Heritage List

The MHI database shall be publicly available as a community resource on heritage of Fremantle.

Council may in exceptional circumstances consider amendment to the Heritage List outside this period.

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

- ***DBH16 Adding/Deleting Places Listed on Municipal Heritage Inventory for Fremantle (MHI)***

CARRIED: 6/0

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

NOTICE OF MOTION

**NOTICE OF MOTION - SWANBOURNE STREET RESERVE 9335 - MONUMENT HILL
- PROPOSED LEGACY STATUE - PSC 2 SEPTEMBER 2009**

DataWorks Reference: 097/004
Disclosure of Interest: Nil
Author: Councillor Robert Fittock
Decision Making Authority: Council
Agenda Attachments: Nil

PURPOSE

To consider providing 'in principle' support to Perth Legacy to increase the height of the Legacy Statue to 1.8 metres.

RECOMMENDATION

MOVED: Cr Robert Fittock

That in response to Perth Legacy's request to amend the planning approval dated 25 March 2009 to increase the height of the approved statue to 1.8 metres, Council advise as follows:

1. The Council agrees in principle to support an amended application for planning approval for a memorial statue not exceeding 1.8 metres in height.
2. The applicant is requested to seek agreement from the Heritage Council of Western Australia for the amended proposal.
3. In the event that the proposal is supported by the Heritage Council of Western Australia, Perth Legacy is invited to submit an application to amend the planning approval dated 25 March 2009 in accordance with Clause 8.3 of the City's Local Planning Scheme No.4.
4. In the event that the proposal is not supported by the Heritage Council of WA, the matter be referred back to Planning Services Committee for further consideration.

Cr J Strachan **MOVED** the following alternative recommendation:

COMMITTEE RECOMMENDATION

To defer the item to the next appropriate Planning Services Committee meeting so officers can prepare a report.

CARRIED: 4/2

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

CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

THE PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 7.45 PM.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

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

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

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

How consultative processes work at the City of Fremantle	
The City's decision makers	1 The Council, comprised of Elected Members, makes policy, budgetary and key strategic decisions while the CEO, sometimes via on-delegation to other City officers, makes operational decisions.
Various participation opportunities	2 The City provides opportunities for participation in the decision-making process by citizens via its Advisory Committees and Task Forces, its Community Precinct System, and targeted consultation processes in relation to specific issues or decisions.
Objective processes also used	3 The City also seeks to understand the needs and views of the community via scientific and objective processes such as its annual Community Survey.
All decisions are made by Council or the CEO	4 These opportunities afforded to citizens to participate in the decision-making process do not include the capacity to make the decision. Decisions are ultimately always made by Council or the CEO (or his/her delegated nominee).
Precinct focus is primarily local, but also city-wide	5 The Community Precinct System establishes units of geographic community of interest, but provides for input in relation to individual geographic areas as well as on city-wide issues.
All input is of equal value	6 No source of advice or input is more valuable or given more weight by the decision-makers than any other. The relevance and rationality of the advice counts in influencing the views of decision-makers.

<p>Decisions will not necessarily reflect the majority view received</p>	<p>7 Local Government in WA is a representative democracy. Elected Members and the CEO are charged under the Local Government Act with the responsibility to make decisions based on fact and the merits of the issue without fear or favour and are accountable for their actions and decisions under law. Elected Members are accountable to the people via periodic elections. As it is a representative democracy, decisions may not be made in favour of the majority view expressed via consultative processes. Decisions must also be made in accordance with any statute that applies or within the parameters of budgetary considerations. All consultations will clearly outline from the outset any constraints or limitations associated with the issue.</p>
<p>Decisions made for the overall good of Fremantle</p>	<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>
<p>Diversity of view on most issues</p>	<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>
<p>City officers must be impartial</p>	<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>
<p>City officers must follow procedures</p>	<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>

<p>Consultation processes have cut-off dates that will be adhered to.</p>	<p>1 As City officers have the responsibility to provide 2 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>1 The City will take initial responsibility, via 3 '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>1 In reporting to decision-makers, City officers will in 4 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>1 Decision-makers must provide the reasons for 5 their decisions. .</p>
<p>Decisions posted on www.freofocus.com/projects/html/default.cfm</p>	<p>1 Decisions of the City need to be transparent and 6 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.