



MINUTES

Planning Services Committee

Wednesday, 18 August 2010, 6.00 pm

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PLANNING SERVICES COMMITTEE

Minutes of the Planning Services Committee
held in the Council Chambers, Fremantle City Council
on 18 August 2010 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open at 6.10pm.

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	North Ward
Cr Tim Grey-Smith	City Ward
Cr Andrew Sullivan	South Ward
Cr John Dowson	East Ward
Cr Bill Massie	Hilton Ward
Cr Josh Wilson	Beaconsfield Ward

Mr Philip St John	Director Planning and Development Services
Ms Natalie Martin Goode	Manager Development Services
Mr Paul Garbett	Manager Planning Projects and Policy
Mr Steve Sullivan	Coordinator Planning Mediation
Ms Agnieszka Kiera	City Heritage Architect
Miss Kayla Goodchild	Minute Secretary

There were approximately 24 members of the public and 1 member/s of the press in attendance.

APOLOGIES

NIL

LEAVE OF ABSENCE

Brad Pettitt	Mayor
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RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

PUBLIC QUESTION TIME

Nil

DEPUTATIONS / PRESENTATIONS

The following member/s of the public spoke in favour of item PSC1008-149:

John Reeves Burden
Professor David Jones
June Hutchinson
Sue Harcourt-Smith
Jeanette Heaney
Mark Cattell
Bob Third

The following member/s of the public spoke against item PSC1008-149:

Paul Mier
Sasha Ivanovich

The following member/s of the public spoke in favour of item PSC1008-150:

Ian Scott

The following member/s of the public spoke against item PSC1008-150:

A Calalesina

The following member/s of the public spoke against item PSC1008-151:

Ralph Hoare

The following member/s of the public spoke in favour of item PSC1008-153:

Muarry Slaven

The following member/s of the public spoke in favour of item PSC1008-154:

Tony Martinovich

DISCLOSURES OF INTEREST BY MEMBERS

Nil

DISCLOSURES OF INTEREST BY OFFICERS

Agnieshka Kiera declared a proximity interest in item number PSC1008-149 as she is the adjoining Neighbour.

LATE ITEMS NOTED

Nil

CONFIRMATION OF MINUTES

MOVED: Cr A Sullivan

That the Minutes of the Planning Services Committee dated 4 August 2010 as listed in the Council Agenda dated 25 August 2010 be confirmed.

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

TABLED DOCUMENTS

Nil

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

Agnieshka Kiera left the meeting at 6.10pm prior to consideration of the following item.

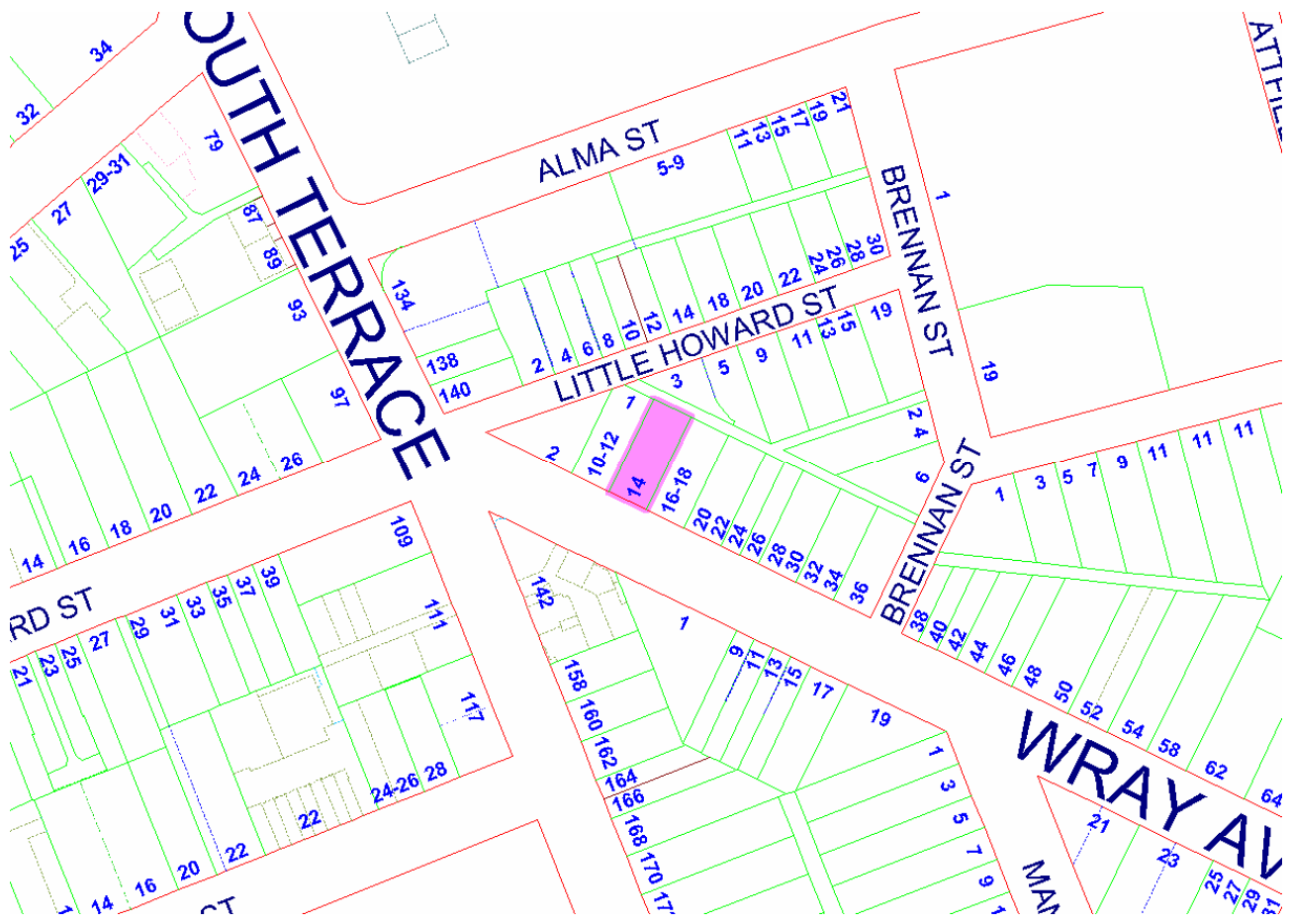
Cr R Fittock vacated the chamber at 6.52 pm during the following item and returned at 6.55 pm prior to determination.

Cr J Dowson vacated the chamber at 7.08 pm during the following item and returned at 7.09 pm prior to determination.

Cr J Wilson vacated the chamber at 7.13 pm during the following item and returned at 7.14 pm prior to determination.

PSC1008-149 WRAY AVENUE NO.14 (LOT 3), FREMANTLE - THREE STOREY MIXED USE ADDITION TO EXISTING BUILDING - (JL DA0123/10)

Meeting Date: Planning Service Committee Meeting - 18 August 2010
Previous Meeting Date: Planning Service Committee Meeting - 13 January 2010
DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Statutory Planning
Decision Making Level: Planning Services Committee
Previous Item Number/s: DA0578/09 – PSC1001-11
Attachment 1: Amended Development Plans dated 9 July 2010
Attachment 2: Heritage Assessment
Date Received: 8 March 2010
Owner Name: P Mier & J Proctor
Submitted by: SIA Architects Pty Ltd
Scheme: Local Centre / R30
Heritage Listing: MHI Level 2
Existing Landuse: Single House
Use Class: Office / Single House
Use Permissibility: P & A



EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee for determination as the application requires several discretionary decisions of Council, specifically in relation to car parking and building height provisions of LPS4.

The applicant is seeking Planning Approval to construct a three storey Mixed Use addition to the rear of an existing single storey Single house at No. 14 Wray Avenue, Fremantle.

The applicant is also seeking performance based assessments from the Residential Design Codes and Council's Local planning Policies in relation to the following:

- Design Element 6.8.1 – Visual privacy, and
- Design Element 7.2.1 – Mixed use Development requirements

As the subject site is listed on the City of Fremantle's (the City's) Heritage List a heritage assessment was required to be undertaken in accordance with Council 'L.P.P1.6 – Preparing Heritage Assessments' policy. Overall, heritage assessment does not support the proposal as the development is not considered to be compatible nor sympathetic to the local architectural form of the immediate locality and would result in a dominating impact on the area.

Therefore proposed development is also contrary to the aims of the City's Local Planning Scheme which seeks, *'to protect and conserve Fremantle's unique cultural heritage'* and *'to ensure all development complements and contributes to the community's desired identity and character of Fremantle'*.

Furthermore, the proposed development does not meet the objectives of the Local Centre zone of LPS4 as the development does not satisfy the provisions of within Clause 4.2.1(c)(iv) which requires that development in the Local Centre zone to conserve and enhance places of heritage significance, the subject of or affected by the development.

Accordingly the application is recommended for refusal.

BACKGROUND

The site is zoned Local Centre and has a R30 density under the provisions of LPS4. The site is located within Sub Area 4.3.4 of the South Fremantle Local Planning Area. The property is listed on the City's Heritage List as well as being located within the South Fremantle Heritage Area. The City's Municipal Heritage Inventory (MHI) lists the property as a management category level 2.

The subject site is approximately 373sqm in area and is located on the northern side of Wray Avenue, Fremantle. The site addresses Wray Avenue however vehicular access is gained via a public laneway at the rear that intersects Little Howard Street.

The site is improved by a single storey, rendered masonry and iron and tiled roofed cottage, representative of typical Fremantle residential buildings from the late 1890s. The premises is currently used for residential purposes.

The adjoining eastern and western properties of the site are also zoned 'Local Centre' under LSP4. The western adjoining property (No.10-12 Wray Avenue) is improved by a two storey heritage listed Mixed Use building which incorporates a nil Primary Street and eastern and western common boundary setbacks.

The eastern adjoining property (No.16-18 Wray Avenue) is also occupied by a two storey Mixed Use building which incorporates a nil Primary Street and eastern and western common boundary setbacks. Both adjoining properties to the subject site are listed as management category Level 2 places on the City's Municipal Heritage Inventory (MHI).

The southern adjacent sites are zoned 'Mixed Use' under the provisions of LPS4 and are occupied by a range of two and three storey developments. The northern adjacent sites are zoned Residential under LPS4 and are separated by private Right of Way (ROW NO.42). These properties are currently occupied by a range of single and two storey Single Houses.

At its meeting held on 13 January 2010, the Planning Service Committee (PSC) refused to grant planning consent for the demolition of the existing building onsite and replacement three storey Mixed Use building (refer DA0578/09) for the following reasons:

1. The proposal did not satisfy the aims of the Local Planning Scheme No. 4 which seek to protect and conserve Fremantle's unique cultural heritage.
2. The proposal did not satisfy the objectives of the Local Centre zone as outlined within Local Planning Scheme No. 4 which aim to conserve places of heritage significance.

DETAILS

Planning Approval is sought for the construction of a three storey mixed use addition to the rear of an existing single storey brick and iron cottage at No. 14 Wray Avenue, Fremantle.

The proposed works specifically include:

- Restoration and reconstruction of elements of the existing dwelling,
- Demolition of the existing rear skillion addition of the cottage, outbuildings and later additions,
- Partial change of use to Office for the existing heritage cottage and a portion of the ground floor element of the development,
- Three storey Mixed Use building to be constructed at the rear of the existing heritage cottage.

On 19 April 2010 the applicant submitted amended plans in order of addressing submitters concerns regarding building bulk and the City's concerns associated with building height.

City officers met with the applicant and landowner in late June to discuss the City's concerns associated with building height, neighbour amenity impacts and car parking provisions.

On 9 July 2010, the City received another set of amended plans which proposed minor amendments to the original plans. The proposed amendments included:

- Increasing the western boundary setback by 750mm for the three storey rear addition,
- Removing the western ground floor wall element of the three storey addition of the development and incorporating two pillars,
- Inclusion of an additional two on site car bays, and
- Roof alterations to the eastern portion of the development.

STATUTORY AND POLICY ASSESSMENT

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

Local Planning Scheme No. 4

Building Height

Schedule 12 Local Planning Area 4 states that development within Local Centre zoned land shall have a maximum external wall height of 7m. The proposed development includes a maximum external wall height of 9.5m and therefore requires a discretionary decision of Council under Clause 5.8.1 of LPS4.

Council may exercise its discretion to vary height requirements, in accordance with clause 5.8.1 of LPS4, which reads:

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

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

The Aims of the Scheme

1.6.1 The aims of the Scheme are to—

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

Objective of the Zone

Use

The subject site is zoned Local Centre. The objectives for the Local Centre zone as outlined within Clause 4.2.1 are as follows:

Development within the local centre zone shall –

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

The proposed additional use of the site for Offices is a permitted under LPS4.

Car Parking

Clause 5.7.1 and 'Table 3 – Vehicle Parking' of LPS4 outline the required on-site car parking for the proposed development.

Requirement	<u>On site Car Bays</u>	<u>Delivery bay</u>	<u>Bicycle Bays</u>
<i>Office 1:30m² gla minimum 3 spaces</i>	9 car bays	1 per 500m ²	1: 200m ² gla
<i>Single House – As per R-Codes</i>	2 car bays (Total -11 car bays)	N/A	N/A
Provided	5 on site car bays	No Delivery Bay	No Bicycle Rack
Variation	6 on site car bays	1 Delivery Bay	1 Bicycle rack

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

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

Residential Design Codes WA 2008 (R-Codes)

The application has been assessed against and complies with the relevant 'Acceptable Development' criteria stipulated within the R-Codes for R30 coded property, other than:

- Design Element 6.8.1 – Visual privacy, and
- Design Element 7.2.1 – Mixed use Development requirements

Accordingly, performance based assessments is required for these elements. This matter will be assessed below in the 'Planning Comment' section of this report.

Council's Local Planning Policies

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

- L.P.P1.6 – Preparing Heritage Assessments,*
- D.B.H1 – Urban Design and Streetscape Guidelines policy, and*
- D.A15 – Policy and Procedure for the Dedication, Upgrade or Closure of Right of Ways*

CONSULTATION

The application was required to be advertised in accordance with Council's *L.P.P1.3 – Public Notification of Planning Proposals* policy, as the proposed development requires several performance based assessment against the development criteria of LPS4 and the R-Codes. At the conclusion of the advertising period, being 14 May 2010, the City had received three submissions. A summary of the objections raised is as follows:

Car Parking and Vehicle Access Issues

- The use of the private ROW is contrary to the requirements Councils policy,

- Traffic congestion and car parking issues,
- Vehicle congestion, access and maintenance problems experienced by all properties abutting private ROW.

Heritage Concerns

- Disregards Councils compatibly criteria set out in L.P.P1.6 – Preparing Heritage Assessments policy, specifically in terms of its ‘*scale and bulk, contrasting proportions, distorting the urban grain and streetscape pattern of Wray Avenue, clashing architectural detail and materials*’,
- Incompatible with the heritage significance of the immediate area as it would portray a ‘box like form’ that is of contrasting architectural style whilst sitting awkwardly in its context, and
- Instead of completing an otherwise largely coherent streetscape, ‘*the development is considered to exaggerate the existing ‘gap’ within the row of heritage frontages along Wray Avenue*’.

Neighbour and Streetscape Amenity Issues

- New building dominates and dwarfs the neighbouring living areas and rear gardens,
- Restricts solar access of adjoining courtyards and existing habitable rooms of both adjoining properties,
- Developments excessive in terms of its bulk and scale,
- Overlooking of adjacent and adjoining residential properties,
- Noise associated with the swimming pool area,
- Nil setbacks contribute to the overshadowing and building bulk impacts,
- Nil western boundary setback will significantly restrict necessary maintenance corridors to the adjoining western heritage building,
- Damage and dilapidation of existing adjoining heritage buildings occurring during to any development works, and
- Permanent loss of the existing rear garden area on site.

PLANNING COMMENT

In considering this application, the following key issues must be addressed. The issue of building height, car parking and heritage are considered to be the primary discretionary decision required from Council.

Car parking and Vehicle Access

Requirement	<u>On site Car Bays</u>	<u>Delivery bay</u>	<u>Bicycle Bays</u>
<i>Office 1:30m² gla minimum 3 spaces</i>	9 car bays	1 per 500m ²	1: 200m ² gla
<i>Single House – As per R-Codes</i>	2 car bays (Total -11 car bays)	N/A	N/A
Provided	5 on site car bays	No Delivery Bay	No Bicycle Rack

Variation	6 on site car bays	1 Delivery Bay	1 Bicycle rack
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Note: There are separate entrances to each tenancy and therefore have the potential to be leased as separate premises. Therefore under the provisions of LPS4 each office tenancy is required to provide 3 on site car bays.

Within this immediate area, car parking, vehicle congestion and vehicle access has historically been an issue and remains so today. Due to the array of existing mixed uses and local centre land uses in this locality, both the limited number of off street parking and vehicle congestion are major ongoing issues. Furthermore for property located on the northern side of Wray Avenue, vehicle access is troublesome and generally the rear ROW No.42 (northern abutting ROW) is used for primary vehicle access to these sites, creating maintenance and vehicle congestion issues for all abutting properties.

Although, the subject site is located in close proximity to the City Centre and existing public transport (Cat Bus and Transperth bus routes) provisions, it is envisaged that future tenants and customers to the ground floor Office tenancies would ultimately contribute to and intensify the existing car parking and traffic congestion issues of this area, if the development was approved with the shortfall of car bays. Therefore, taking into consideration that a development could be designed to accommodate the required car parking provision of LPS4 and the existing vehicle access and car parking problems within this immediate locality, City Officer do not support the car parking variation.

Building Height

Clause 5.8.1 of LPS4 allows Council to vary the maximum height requirements of a site, where it is considered that the site contains or is adjacent to buildings that depict a height greater than that specified in the general or specific requirements in Schedule 12 of LPS4, subject to being satisfied with specific criteria.

The adjoining eastern and western adjoining sites both contain buildings which depict a building height greater than the specified Schedule 12 - 7m maximum requirement. Accordingly the applicant is seeking a Council’s discretion in relation to the proposed 9.5m wall height for the rear three storey addition element of the development.

The following is an assessment of the specific criteria of Clause 5.8.1:

- (a) the variation would not be detrimental to the amenity of adjoining properties or the locality generally,***

LPS4 defines amenity as follows:

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

The character of the immediate northern side of Wray Avenue consists of either single or two storey commercial development (west of the development site) and elevated single storey residential character or single plus two storey rear additions of residential character (east of the development site).

The sites that immediately abut the development site to the east and west consists of two storey Mixed Use buildings.

The character of the immediate southern side of Wray Avenue consists of both two and three storey commercial development (south of the development site). The character of the adjacent northern properties to the subject site (Little Howard Street) consists of single storey residential development.

Although significantly setback from Wray Avenue, the development will still be highly visible from existing developments, vehicle and pedestrian movements along the southern side of Wray Avenue, therefore potentially allowing the development to significantly impact the visual amenity of the immediate area in terms of building bulk.

Therefore the proposed three storey development is considered to be incongruous with the existing and likely character of the locality, and as such, would have a detrimental impact on the amenity of the adjoining properties and likely future amenity.

(b) degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality,

The proposed development is of similar bulk scale and height to the existing developments located on both the adjoining western and eastern properties of the subject site. As seen from the rear (north) boundary of site the development will portray a two storey building which is also considered to allow effective graduation of built form to the north of site.

In terms of effective graduation of scale to Wray Street streetscape, the development would transition from a three storey addition in the middle of site to the existing single storey building height at the front of site. This is not considered to be an appropriate graduation of height.

As seen from Wray Street streetscape the development would give the visual impression of development effectively graduating between existing built form of the locality. However as seen from the adjoining eastern and western properties of the subject site, the development proposes 9.5m high external walls in the middle of site which will be clearly visible from open courtyard and rear backyard areas of respective properties, therefore giving the development a dominating presence to the area.

(c) conservation of the cultural heritage values of buildings on-site and adjoining

The heritage report undertaken for this application found that the proposed development although appropriately setback from Wray Avenue, the development was not compatible in terms of its bulk, scale, architectural patterns, articulation, height, materials and detail to existing local architectural patterns within the immediate locality.

The proposed development is located in the centre of an area that has buildings that are of cultural heritage value based in the Heritage List. The proposed three storey development, due to its architectural form, building material choice, height and design would not be compatible or sympathetic with the established character and scale of the heritage listed properties to the west and east of the development site.

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

There are no other relevant Planning Policies in regard to this matter.

Boundary Walls

The Acceptable Development criteria of Design Element 7.2.1 of the R-Codes states, that the dwelling component of a mixed use building can have walls on the boundary for two thirds of the boundary behind the street setback up to 6 metres in height. In terms of assessing the boundary walls component of this development the provisions of Council's L.P.P2.4 Boundary Walls policy are not applicable, as this policy provides replacement criteria under clause 6.3.2 A2 – buildings on boundary.

Boundary Wall	Permitted	Provided	Variation
East Boundary	6m high for two thirds of the boundary behind the street setback	9.5m high middle portion of wall	Not compliant Variation – 2.5m
Western boundary	6m high for two thirds of the boundary behind the street setback	9.5m high middle portion of wall	Not compliant Variation – 2.5m

The applicant is proposing a 9.5m high portion of wall on the eastern common boundary of site. The development needs to be assessed against the relevant Performance Criteria, which reads as follows:

P1 Dwellings combined with non residential uses on the same site that provide comparable standards of amenity to other multiple dwellings taking account of the need to:

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

Council may consider this element of the development to be satisfactory as it makes effective use of space of the site and the proposed development is consistent with other approved multiple dwellings development within the Fremantle Locality, in terms of boundary wall lengths and heights.

However the proposed development is not considered to satisfy all of above mentioned relevant Performance Criteria as the development does not satisfy the reciprocal car parking requirements for proposed Single House and Office use on site.

Furthermore, several concerns were raised during the 'Community Consultation' period which outlined several potential amenity impacts associated with the boundary wall elements of the proposed development.

Taking into account that the boundary wall additions of the development would partially abut existing major openings and associated outdoor living areas of adjoining residential uses, it is considered that these walls do have the potential to significantly impact the amenity of adjoining eastern and western neighbours. Specifically in terms of excess building bulk, restriction of direct sun light to habitable rooms and spaces of adjoining properties. On this basis the privacy variation is not listed as a reason for refusal.

Visual privacy

The proposal allows direct overlooking of the northern adjacent and western adjoining residential properties from the upper floor pool and deck/alfresco area located at the rear of site. However, if the application were being recommended for approval then it is considered that a relevant planning condition could be imposed to bring the development into compliance with the Acceptable Development criteria of Design Element 6.8.1 of the R-Codes. On this basis the privacy variation is not listed for a reason for refusal

Heritage Matters

LPS4 is clear in its intent to *'protect and conserve Fremantle's unique cultural heritage'*, as evident in clause 1.6 of LPS4. This is further emphasised by subsection (iv) of clause 4.2.1(c) of LPS4 (objectives of a Local Centre zone), which seeks to *'conserve places of heritage significance the subject of or affected by the development.'*

The application was referred to Palassis Architects to undertake a heritage impact assessment of the proposed development.

The report describes the existing dwelling as *'an example of a modest Victorian Georgian style dwelling, with double hipped roof, symmetrical façade and verandah under a separate roof'*. The report acknowledges that the house has undergone various modifications, namely the replacement of verandah roof material, the replacement of flooring, the replacement of doors and windows and painting and rendering the masonry. However the report states that whilst the house has undergone various alterations, the place still exhibits *'some'* cultural heritage significance and contributes to the heritage values of Wray Avenue and Fremantle as a whole.

Nevertheless the report recognises that the subject place contains both aesthetic and historic heritage values. Furthermore, the report states that No.14 Wray Avenue consists of a high degree of integrity as a dwelling, a modest degree of authenticity of internal and external fabric and is a representative example of a typical modest Victorian Georgian style dwelling. In terms of *'significance'* the assessment states, the place contains *'some'* heritage significance.

Overall, the report states that although appropriately setback from Wray Avenue, the three storey flat roofed element of the development would not be compatible in terms of its bulk, scale, architectural patterns, articulation, height, materials and detail to existing local architectural patterns within the immediate locality. Therefore, the proposed development has the potential to dominate this particular historic locality of Fremantle.

The applicant argues that the development was purposefully designed to, *'not respond to the context in grain, articulated detail, material and finishes'* in order of *'providing a simple neutral background to the heritage listed building instead of competing with it in detail, grain, material and finish'*.

Furthermore the applicant states that in relation to identification of Conservation works, *'all new additions should respect the architectural qualities of the existing building, but should be readily identifiable as new works'*. However, it should be noted that conservation processes as stipulated in 'The Illustrated Burra Charter' state that, *'Designing an addition or new building in a modern manner is desirable, but not an excuse to make the new work dominate, or draw attention away from the existing place and its features (pg 66)'*.

Additionally, the report states that the street façade of the addition although not clearly identified in the proposal, appears to be largely glazed commercial faced would also not respond sympathetically to the historic streetscape of Wray Avenue.

In terms of the developments impact on the important public views, vistas, landmarks, landscapes features, the report found that whilst the setback of the addition has little impact on the Wray Avenue streetscape, the developments bulk, flat roof form, and larger areas of unbroken painted masonry will negatively impact on the locality as a whole.

The proposed development would detrimentally impact a building recognised to be of heritage and cultural significance both by the City's Heritage List, MHI and independent heritage assessment. Whilst the dwelling has undergone various alterations, the dwelling still exhibits heritage and cultural characteristics of significance to the place and locality. The proposed additions to the building are therefore contrary to the aforementioned aim of LPS4 and contrary to the objectives of the Local Centre zone.

For these reasons, it is considered that third storey addition should not be supported.

CONCLUSION

Based upon the above assessment, the current proposed development is considered to be contrary to requirements pertaining to building height, car parking and conservation of heritage places of LPS4.

Additionally, the proposal has been assessed against and does not comply with the Performance Criteria of Design Element 7.2.1 – *Dwelling in mixed use developments* and 6.8.1 – *Visual privacy* of the R-Codes.

Furthermore a heritage assessment has found that the proposed works are neither compatible nor sympathetic to the existing local architectural form of this historic locality of Fremantle, resulting in a dominating negative impact on the immediate locality.

As such the proposal is contrary to the aim of LPS4 which seeks to *'protect and conserve Fremantle's unique cultural heritage'* and is contrary to the objectives of the Local Centre zone which aim to conserve places of heritage significance.

Accordingly the application is recommended for refusal.

OFFICER'S RECOMMENDATION

MOVED: Cr A Sullivan

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Three Storey mixed Use addition and alterations to the existing Building at No. 14 (Lot 3) Wray Avenue, Fremantle, as detailed on plans dated 9 July 2010, for the following reasons:

1. The building height of the proposed development does not comply with the height requirements contained within Schedule 12 of City of Fremantle's Local Planning Scheme No.4.
2. The proposed development does not satisfy all of the criteria listed under Clause 5.8.1 of City of Fremantle's Local Planning Scheme No.4.
3. The provisions of car parking bays do not comply with Table 3 of Local Planning Scheme No. 4.
4. The proposal does not satisfy the aims of the Local Planning Scheme No. 4 specifically 1.6.1 (f) which seeks, '*to protect and conserve Fremantle's unique cultural heritage*' and 1.6.1 (g) which seeks, '*to ensure all development complements and contributes to the community's desired identity and character of Fremantle*'.
5. The proposed development does not meet the objectives of the Local Centre zone as the development does not satisfy the provisions of within Clause 4.2.1(c)(iv) which requires that development in the Local Centre zone to conserve and enhance places of heritage significance, the subject of or affected by the development.

COMMITTEE DECISION

Cr T Grey-Smith MOVED to defer the matter to the second planning services committee in September 2010 for the purpose of undertaking wider public consultation.

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

Agnieshka Kiera returned to the meeting at 8:20pm.

PSC1008-150 DOURO ROAD, NO. 19 (LOT 1) SOUTH FREMANTLE - SAT MATTER - PROPOSED DEMOLITION OF EXISTING BUILDING AND CONSTRUCTION OF A MIXED USE DEVELOPMENT (OFFICES, MULTIPLE AND GROUPED DWELLINGS) (SS DA504/08)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 18 August 2010
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Planning Mediation
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0903-47
Attachment 1: Refused plans
Attachment 2: Supporting letter and SAT mediated plans
Attachment 3: Response to submissions
Date Received: Revised plans received 1 June 2010
Owner Name: Squirrel Super Fund and Little Dragons Trust
Submitted by: Scott Penn Hall Architects
Scheme: Neighbourhood Centre – R25
Heritage Listing: Nil
Existing Landuse: Liquor Store (vacant)
Use Class: Office, Multiple and Grouped Dwellings
Use Permissibility: Office – D, Multiple and Grouped Dwellings - A



EXECUTIVE SUMMARY

This matter is being referred to the Planning Services Committee (PSC) as the State Administrative Tribunal (SAT) have requested Council to re-consider its decision under Section 31 of the State Administrative Tribunal Act 2004.

The application was originally recommended for approval by the City but was subsequently refused by Council at its meeting held on 25 March 2009. Council refused the application as:

- its was considered that the development did not meet the objectives of the Neighbourhood Centre zone;
- there was a shortfall of one delivery bay; and
- the development was non-compliant with wall height.

The applicant requested the SAT to review Council's decision. The matter has been the subject of mediation since 15 May 2009. As a consequence of this process and changes made to Local Planning Scheme No. 4 (LPS4), the applicant has submitted revised plans through the SAT process, for Council to review its decision. Council to now required to consider whether the revised plans sufficiently address the previous reasons for refusal.

The revised development proposal also requires a performance based assessments against the provisions of the Residential Design Codes (the Codes) relating to visual privacy, both internally and externally.

The revised plans developed through the SAT process (mediated plans) are considered to have adequately addressed the previous reasons for refusal in terms of meeting the objectives for the Neighbourhood Centre zone and building height. Although the development is still short of a delivery bay, the need for such a space is not considered necessary in this instance as the originally proposed retail land uses have now been removed and replaced by office or residential land uses.

The development has been modified to address other issues such as the southern side boundary setback variation, overshadowing of the southern property, length and height of the boundary wall along the eastern side boundary.

The mediated plans were re-advertised having regard to the interest of the community when this matter first dealt with by Council. Of the 79 advertising letters sent out, the City received three submissions, which the applicant has responded to.

Having regard to the changes made to the development proposal and LPS4, it is considered that the proposed development:

- meets the objectives for the Neighbourhood Centre zone; and
- minimises its impact on the adjoining properties and locality.

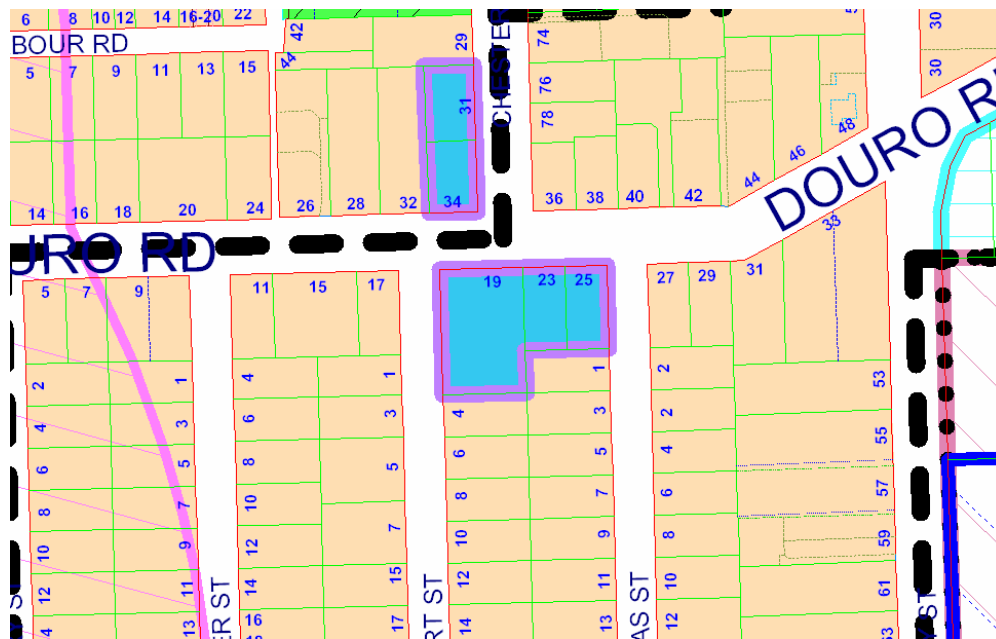
Consequently, it is recommended that the revised application be conditional approved.

BACKGROUND

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

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

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



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

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

The properties with common boundaries to the subject site, being No. 23 Douro Road, No. 1 and 3 Thomas Street and No. 4 Hulbert Street, are all presently utilised for residential purposes.

Previous Decisions relating to the site

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

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

Planning Application subject of the SAT Review

On the 25 September 2008, the City received an application for Planning Approval for the demolition of the existing building and construction of a new mixed use development. The application, based on LPS4 provisions, proposed non-residential uses on the ground level and residential uses on the upper levels. The provision of LPS4 permitted an increase in density to R60 if a mixed use development met certain requirements, including the requirement that the residential uses had to be provided above the non-residential uses.

The application was referred to the 18 March 2009 meeting of the PSC with a recommendation of conditional approval by the City. However, the PSC at that meeting resolved to recommend refusal of the application to Council. At its meeting held on the 25 March 2009, Council resolved to refuse the application for the following reasons:

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

SAT Process

On the 28 May 2009, the City received notification that the owners had applied to the SAT for a review of Council's decision. Since then, there have been numerous SAT direction or mediation hearings during which a series of revised plans were submitted and considered. Council has now been invited by the SAT, to re-consider its decision under Section 31 of the SAT Act based on the revised plan received on the 1 June 2010.

Request to Rezone 19 Douro Road from Neighbourhood Centre zone to Residential Zone

Separately, a petition was submitted when Council was considering the development application for this site to re-zone the land from the Neighbourhood Centre zone to Residential. At its meeting held on the 27 May 2010, council resolved as follows:

That in response to the petition requesting the rezoning of No. 19 (Lot 1) Douro Road, South Fremantle to 'residential' under Local Planning Scheme No. 4, the petitioners be advised Council considers that having regard to the content of the Fremantle Local Planning Strategy, there is insufficient planning justification to support such a rezoning, and the current zoning of No.'s 19, 23, 25 and 34 Douro Road and No. 31 Chester Street as 'neighbourhood centre' should be maintained.

Amendment No. 27

Progress of this development application through the SAT process effectively stopped as Council, on a separate issue, had resolved to commence the process of amending LPS4 through Amendment No. 27. If gazetted, this amendment would have had the effect of amongst other changes, allowing Council to consider residential on the ground level of mixed use developments, while still allowing a density increase to R60. Such a change would have allowed greater flexibility in terms of the design of the proposed developments. In this particular instance, the change would allow for residential land uses to abut the residential zoned properties to the south and east of the development site, rather than having to provide non-residential uses against those properties.

Amendment No. 27 was subsequently gazetted on the 28 May 2010. The revised plans developed through the SAT mediation process have been modified to address the modified provisions of LPS4 relating to mixed use developments.

DETAILS

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

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

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

Tenancy 1	Office	57.65m ²
Tenancy 2	Office	120.14m ²
Tenancy 3	Office	60.19m ²
Tenancy 4	Shop	39.75m ²
Tenancy 5	Shop	36.68m ²
Tenancy 6	Shop	38.77m ²
		<u>353.18m²</u>

2

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

Twenty-three on-site parking bays were originally proposed to be provided.

The following is an extract from the applicant's letter of support that highlights the changes made between the refused plans and the mediated plans submitted for consideration by Council:

- *The total area of commercial space has been further reduced from 355sqm to 270sqm.*

- *Ground floor commercial tenancies (shops 5 & 6) under residential units 6 & 7 on Hulbert Street have been deleted and incorporated into the residential uses directly over.*
- *Ground floor commercial tenancy (shop 4) under residential unit 5 on Hulbert Street has been redesignated as 'office'.*
- *The number of car bays required has been reduced from 23 to 18. 18 are provided.*
- *The external staircases accessing residential units 5, 6 & 7 on Hulbert Street have been deleted.*
- *Wall head heights have been lowered to comply with the 7 metre height limit set out in TPS4. The majority of the external walls including all external walls of residential units 5, 6 & 7 on Hulbert Street have been set at 6.0 metres or lower to comply with the wallhead height limit stipulated in the R-Codes for two storey Category B areas.*
- *The southern wall setback against No 4 Hulbert Street has been increased from 1200 to 1500mm to comply with the setback requirements of the R-Codes.*
- *The southern wall of residential unit 7 on Hulbert Street has been lowered to comply with the overshadowing requirements of the R-Codes.*
- *Minor overlooking of the rear yard of the adjoining property to the south has been addressed by extending privacy screening to comply with the requirements of the R-Codes.*
- *Minor overlooking of the driveway of No.23 Douro Road has been further reduced by extending privacy screening.*
- *Wall head heights have been further reduced whereby no perimeter or visible wall is higher than the 7 metre maximum height limit permitted by LPS4 and the majority of perimeter walls are at or below the 6 metre maximum height limit designated in the R-Codes for category B residential areas.*
- *The eastern boundary wall of Commercial Tenancy No.1 and Residential Unit No.1 has been reduced in both height and in length in compliance with the requirements of the R-Codes.*

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Land Use

Planning Approval is sought for a mixed use development encompassing Offices, Multiple and Grouped Dwelling. It is noted that the "Shop" land use component has been removed from the current application.

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

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

Density

Originally, Clause 5.2.5 of LPS4 stated the following:

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

This clause was subsequently amended by Amendment No. 27, which now reads as follows:

Notwithstanding the requirements of clause 5.2.3 residential density in the Local Centre, Neighbourhood Centre and Mixed Use zones may be increased up to R60, where residential development is part of a mixed use development, where, in the opinion of Council the proposal is not detrimental to the amenity of the area.

This clause, now allows at Council's discretion, residential to be provided on the ground level provided it is not detrimental to the amenity of the area. This is discussed further in the report.

Car Parking

Table 3 of LPS4 sets out the car parking requirements for this type of development. The revised development is still deficient by 1 on-site delivery bay.

Residential Design Codes

The development is compliant with the R-Codes, except for:

- a minor overlooking of the eastern property (the adjoining property is zoned Mixed Use but is used for residential purposes); and
- internal overlooking exists between units 5-7.

CONSULTATION

The revised plans were re-advertised with 79 letters being sent out. The City received three submissions objecting to the proposed development and two submissions in support during the advertising period. The following issues were raised in response to the advertising of the mediated plans:

1. there are adequate shopping facilities in the locality;
2. shops will impact on the available car parking for residential uses;
3. prefer residential only;
4. proposal will adversely impact on the intersection of Douro Road and Hulbert street during peak periods;
5. remove one-way traffic access point from Douro Road onto the site;
6. traffic sight lines impacted while reversing onto Douro Road by proposed development and existing street infrastructure; and
7. Conditions on use of tenancies 1 and 2 should be imposed to ensure no retail or restaurant (café) uses are permitted in the future due to a shortage of car parking in the area.

The applicant has submitted a letter in response to the issues raised in the submissions – refer to Attachment 3.

Please refer to PSC0903-47 for details relating to the issues raised during the submission period for the original application.

PLANNING COMMENT

Through the SAT mediation process, the applicant has modified the refused plans to address the reasons for refusal and other concerns. Further, the change to Clause 5.2.5 of LPS4 has allowed the applicant to amend the design of the development to reduce the impact of the proposed development on the residential zoned properties to the south and east of the development site and the locality generally.

The report focuses on the changes to the proposed development developed through the SAT process:

Council's Reasons for Refusal

Land Use

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

Development within the neighbourhood centre zone shall –

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

The land uses that were proposed as part of the refused application were:

- Shops;
- Offices; and
- Multiple Dwellings

The mediated plans now propose the following land uses:

- Offices;
- Multiple dwellings; and
- Grouped dwellings.

Offices are expressly identified within the list of encouraged uses within the objectives for the Neighbourhood Centre zone. The assessment of any Office use upon the amenity of adjoining owners or residential properties is contingent upon factors such as pedestrian and traffic movement and proximity to residential properties.

The proposed Office tenancies are primarily orientated towards Douro Road and corner of Douro Road and Hulbert Street, with all openings located well away from the adjoining residential properties. In addition, the activities are to be confined to inside the tenancies therefore limiting the potential noise impact.

Further, the removal of the Shop land uses and the reduction of the non-residential floor space has reduced the required number of on-site car parking spaces and the anticipated number of vehicular trips.

Overall, the proposed mixture of residential and office uses are considered to be consistent with the objectives set out for the Neighbourhood Centre zone.

Car parking

Required	Provided	Variation
18 car bays, 1 delivery bay and 3 bike racks	18 car bays and 3 bike racks	1 delivery bay

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

Further, the change in land uses with the removal of the Shop land use, has reduced the demand for an on-site delivery bay. It is anticipated that offices would not generate the same need for such a bay, having regard to the different activities normally associated with a Shop use compared to that of an Office land use.

Consequently, it is considered that this shortfall could be supported.

Height

The development has been modified as a consequence of the mediation process so that the development is now consistent with the heights permitted under LPS4 and the Codes.

Other Changes

There have been other changes to the development as outlined below:

Visual Privacy

Like the original application, the proposed rear balcony for Unit 1 does not satisfy the 7.5m cone of vision requirement specified by the Acceptable Development criteria contained within Design Element 6.8 of the Residential Design Codes. The 7.5m cone of vision from this balcony results in an approximate 3.3m² area of overlooking onto the driveway/carport area of No. 23 Douro Road.

The Performance Criteria for visual privacy states:

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

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

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

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

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

There is also internal overlooking of the courtyards for units 5 – 7 from the balconies of units 5 – 7. This internal overlooking is over large courtyard areas, although the adjacent private ground area adjacent to the ground floor habitable rooms are effectively screened by stairs and balconies. Having regard to the above, it is considered that adequate privacy is provided to the private courtyard areas of units 5 – 7, and therefore, the proposed variation satisfies the Performance Criteria for visual privacy to these areas.

Southern Side Boundary Setback

The original application proposed a minor setback variation (0.3m) along the southern boundary of the site. The development has now been modified so that the southern side boundary setback (1.5m) complies with the Codes.

Overshadowing

The original application had a minor overshadowing variation (26.2% in lieu of 25%) to the adjoining property to the south (No. 4 Hulbert Street). As a consequence of the southern side of the development complying with the Acceptable Standards of the Codes relating to the southern side boundary setback and wall height, the development now complies with the Acceptable Development standards of the Codes relating to overshadowing.

Boundary wall

The height of the boundary wall proposed for the eastern boundary did not satisfy the Acceptable Development criteria relating to mixed use developments of the Codes. The boundary wall was originally proposed to be 11.7m in length and 6.24m in height. The wall was required to be a maximum of 6.0m in height to meet the Acceptable Standards of the Codes. The wall has been modified so that it is now 9.0m in length and 5.914m in height. Consequently, the boundary wall is now compliant with the Codes.

Issues from Original Submission Period

There were 21 submissions received during the original advertising period, which raised the following issues:

1. *Zoning*
2. *Amenity, Streetscape and Design*
3. *Use*
4. *Parking*
5. *Height*
6. *Boundary Setbacks*
7. *Overshadowing*
8. *Visual Privacy*
9. *Boundary wall*
10. *Traffic*

These issues were addressed in the report considered by Council (refer to PSC0903-47) and this report. However, the following additional comments are made in relation to certain points raised above:

Amenity, streetscape and Design

Mixed use developments are seen as an appropriate form of development to address current concerns in relation to such matters as sustainability by means of reducing vehicular trips, promoting greater use of public transport and locating appropriate land uses within reasonable walking distances. The current configuration is a form of development that seeks to meet the objectives of the zone and sustainability by having non-residential uses on the ground level and residential uses above. Having regard to Council's decision to retain the Neighbourhood Centre zoning for this and adjoining sites, it is considered that the proposed development is an appropriate form of development for this site.

Further, the applicant has amended the application so that the proposed southernmost building, which had three offices on the ground level and three units above, now has one office and residence above and two, two storey grouped dwellings. The modified development now provides a transition between the northern mixed use component of the proposed development and the existing single houses located at 4 Hulbert Street and 1 Thomas Street.

A letter was received on the 19 June 2010 from the owner of No. 1 Thomas Street advising of their support for the revised SAT plans. This property is the southern of the two properties that abut the eastern boundary of the subject site.

Issues Raised During Submission Period

The following additional points are discussed which were raised during the latest submission period that have not been addressed above:

Zoning, Amenity, Streetscape, Design and Use

It is noted that that shop uses, which were part of the original application for planning approval, have been removed from the mediated plans. The shop uses have been replaced with office uses or residential.

The proposed offices are considered to be a less intensive use than shop uses. As such, it is considered that the proposed form of the development is one of various options that could be considered for this site under LPS4.

Parking, height and Boundary Setbacks

A traffic report on parking was submitted by Shawmac Consulting Civil and Traffic Engineers, Risk Managers in December 2008 on behalf of the owners and as part of the planning application. The report addressed site access and sight line matters which was reviewed by the City. The City's report to the March 2009 PSC meeting stated the following:

Traffic

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

The access points have not altered between the refused plans and the mediated plans.

Also concern has been expressed in a submission relating to the impact of the proposed development and existing street infrastructure on traffic sightlines for persons exiting 23 Douro Road. The existing street infrastructure consists of a bus shelter, street pole and a freestanding bus timetable notice board. It is proposed to locate the new building on the common boundary and up to the Douro Street boundary.

It is considered that the proposed building could be modified without loss of floor space, to provide adequate pedestrian and traffic sightlines and as such, an appropriate condition of Planning Approval is proposed.

Use

It has been recommended that Council impose conditions on the current application to prevent tenancies 1 and 2 from being used for shop or restaurant (café) purposes in the future. The proposed condition recommended by the submitter seeks to impose powers within a development application decision to over-ride Council's legislative obligations to determine a future application for Planning Approval, if ever it is submitted. Such a condition is considered to be ultra vires. Council can only await the submission of any future application for planning approval and determine that application on its planning merits at the time the application is made and under the relevant planning framework that exists at that time.

CONCLUSION

Council has been requested by SAT to re-consider its decision to refuse the mixed use development for this site on the basis of the mediated plans. The mediated plans, which are considered an improvement to the original plans supported by the City, have addressed various matters raised in the original report to Council. Consequently, it is considered that the mediated plans can be conditionally approved.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION**MOVED: Cr A Sullivan**

That Council, in response to the request by the State Administrative Tribunal be to review its decision under Section 31(1) of the State Administrative Tribunal Act 2004, sets aside its previous decision under Section 31(2)(c) of the State Administrative Tribunal Act and substitutes the following decision:

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

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 1 June 2010 with only such minor modifications as approved by the Manager Development Services.**
- 2. Prior to the occupation of the development, vehicle crossovers shall be constructed in paving block/concrete/bitumen and thereafter maintained to the satisfaction of the Chief Executive Officer of the City of Fremantle.**
- 3. Prior to occupation any redundant crossovers and kerbs shall be removed and the verge reinstated to the satisfaction of the Chief Executive Officer of the City of Fremantle at the expense of the applicant.**
- 4. Prior to occupation of the development, on site car parking shall be provided in accordance with Clause 5.7 of the City of Fremantle Local Planning Scheme No. 4 to accommodate a minimum of 18 vehicles at any given time.**
- 5. Details of the proposed traffic directional signage shall be submitted for approval by and erected to the satisfaction of the Chief Executive Officer of the City of Fremantle.**
- 6. Revised plans shall be submitted for approval by the Chief Executive Officer of the City of Fremantle, that show modifications to the north-eastern design of the corner of the proposed development in order to provide adequate traffic sight lines for No. 23 Douro Road.**
- 7. Prior to occupation the car parking, vehicle access and circulation areas shown on the approved site plan shall be constructed, drained and line marked to the satisfaction of the Chief Executive Officer of the City of Fremantle.**
- 8. All air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located to be not visible from the street, and where visible from other buildings or vantage points shall be suitably located, screened or housed, to the satisfaction of the Chief Executive Officer.**

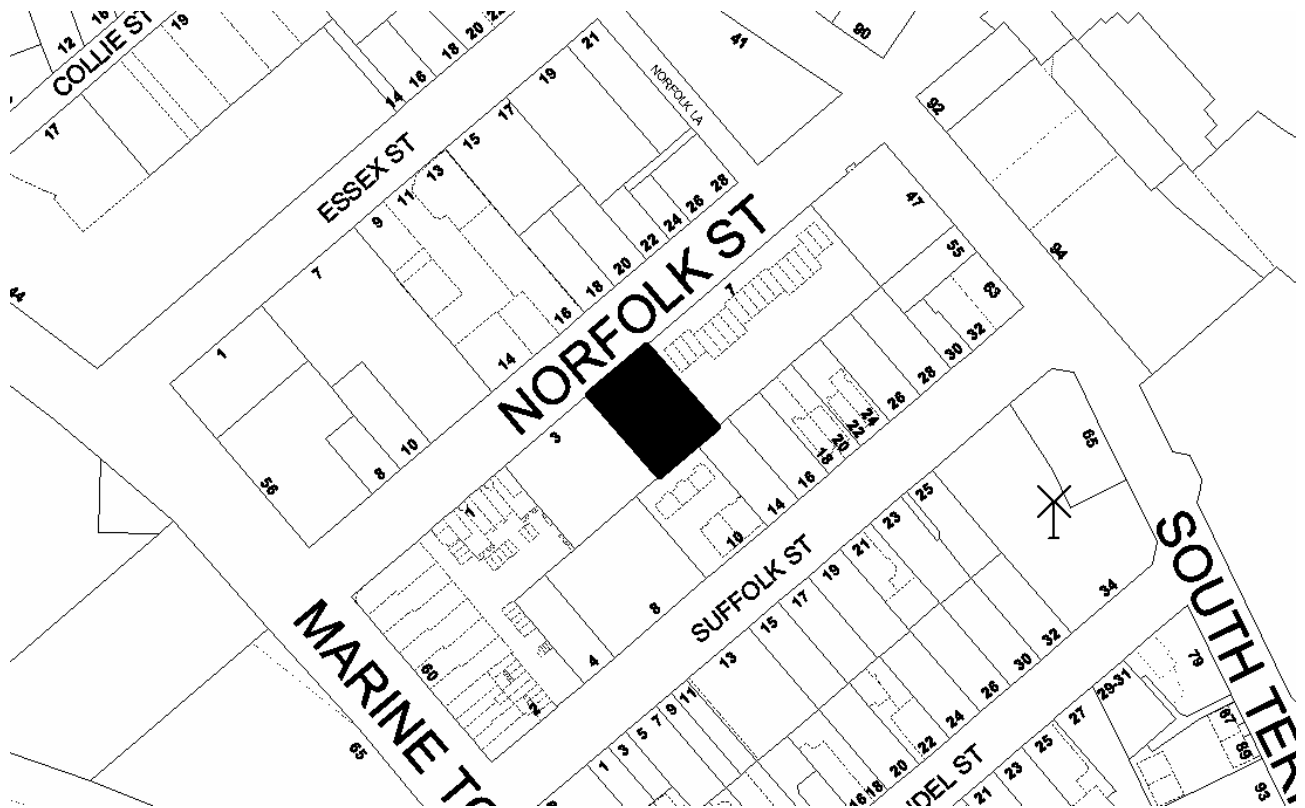
- 9. Signage does form part of this approval and is required to be subject of a separate application for Planning Approval.
- 10. All stormwater generated on site is to be retained on site.
- 11. Prior to occupation boundary walls shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer.

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

PSC1008-151 NORFOLK STREET 5, (LOT 6) - PROPOSED DEMOLITION OF AN EXISTING BUILDING AND CONSTRUCTION OF A THREE STOREY MIXED USE DEVELOPMENT WITH A FOURTH LEVEL WITHIN THE ROOF SPACE (SS DA0218/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 18 August 2010
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Planning Mediation
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachment 1: Supporting letter and plans
Attachment 2: Heritage Assessment
Date Received: 30 April 2010
Owner Name: Roncio Nominees Pty Ltd
Submitted by: Ralph Hoare Architect
Scheme: Mixed Use
Heritage Listing: N/A
Existing Landuse: Offices
Use Class: Offices and Multiple Dwellings
Use Permissibility: Offices – P and Multiple Dwelling - A



EXECUTIVE SUMMARY

The application is submitted for determination by the Planning Services Committee (PSC) as the application involves the exercise of discretion in relation to certain provisions of Local Planning Scheme No 4 (LPS4), including a wall height variation.

The development involves the demolition of an existing two storey office building that is located within the Mixed Use zone and the construction of a three storey office/residential development, with a fourth level within the roof space.

The application requires Council consideration in relation to:

- demolition of the existing building,
- variation to the wall height controls; and
- variations to the side boundary setbacks on the upper level for the residential dwellings.

It is considered that the proposed development, having regard to its proposed design, the existing streetscape and current land uses is capable of being approved by Council. A special condition concerning modifications to the rear upper level car parking deck to minimise its impact on residential properties to the side and rear of the development site are proposed.

The application is recommended for approval subject to standard and special conditions of approval.

BACKGROUND

The City received an application on the 30 April 2010 for a three storey building with a fourth level within the roof space. The site currently consists of an existing two storey office building which is proposed to be demolished as part of this application. The existing building was constructed in 1961.

The site is located mid-block and on the southern side of Norfolk Street, which is located between South Terrace and Marine Terrace. The site is zoned Mixed Use under LPS 4 with a density coding of R35 and is 1176m² in land area.

To the south-east of the site, the abutting land is zoned Residential with a density coding of R35. The land is used for residential purposes. There are three dwellings that have their north facing rear courtyards/roofed entertaining areas abutting the development site.

To the south-west of the development site, there is a three storey office building that has its vehicular access abutting the common boundary.

To the north-east of the development site, there is a row of 18 two storey residential dwellings that front Norfolk Street. Vehicular access to the rear car parking areas for this development is also located against the common boundary with the development site. The western most dwelling of this development has its western side wall abutting the developments common driveway. There are window openings to the side of the building that faces towards the development site.

DETAIL

The application consists of:

- demolition of the existing two storey office building;
- construction of a three storey building, with a fourth level within the roof space, with a maximum wall height of 10.4m;
- the development being constructed up to the Norfolk Street boundary (north-west boundary);
- vehicular access to the two level car park at the rear of the site (34 car parking spaces) is located along the side (north-eastern) boundary;
- the upper level car is proposed to be setback 1.0m from the rear (south-eastern) boundary of the site and located to the rear portion of the side boundaries of the site;
- The height of the car parking deck wall along the north-eastern side boundary is proposed to be approximately 3.8m and 4.0m near the south-eastern rear boundary;
- two proposed commercial tenancies (170 – 185m²) located on the ground level;
- Residential units 1-3 and an office tenancy (84m²) are proposed to be located on the first floor level;
- Residential units 4 – 7, which have two levels, are to be located on the second storey and within the roof space of the development.

The applicant has submitted as part of the application, supporting documentation including a letter in support of the application, floor plans, elevations and a street montage to help substantiate a variation to the height controls of LPS4 – refer to attachment 1.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Land Use

The proposed land uses fall within the Office and Multiple Dwelling land use classifications. LPS4 Table 2 – Zoning – classifies the use class “office as a “P” (permitted) land use in the Mixed Use Zone. This means that the land use is permitted providing that the use complies with the relevant development standards and requirements of the Scheme. In relation to Multiple Dwellings, this land use is an “A” (discretionary) land use.

Density

The site has a density coding of R35. However, the provisions of Clause 5.2.5 of LPS4 permit an increase to an R60 density coding if certain criteria is met.

Building Height

The site is located within Local Planning Area 2 – Fremantle. Schedule 12 of LPS4 prescribes a general maximum wall height of 7.5 metres for development within the Mixed Use zone, with no restriction on the maximum height of roof ridges nor number of storeys.

The wall height of the proposed development exceeds 7.5 metres (proposed to be 10.4m), and as such, is required to be assessed against relevant provisions of LPS4, in particular, Clause 5.8.1 of LPS4.

Residential Design Codes

The proposed development requires assessment under the performance criteria in the following areas:

- side boundary setbacks to the north-eastern and south-western side boundaries;
- privacy variations to the south-western and north-eastern side boundaries.

Fremantle Port Buffer

The site is located to within area 3 of the Fremantle Port Buffer control areas, pursuant to Clause 6.5 of LPS4. The application satisfies the relevant requirements of Local Planning Policy 2.3 - Fremantle Port Buffer Area Development Guidelines (LPP 2.3).

CONSULTATION

The application was required to be advertised in accordance with Clause 9.4 of LPS4, and LPP1.3 – Public Notification of Planning Proposals. The advertising included letters to nearby property owners. A total of 10 letters were sent out and at the end of the advertising period, the City had not received any submissions.

PLANNING COMMENT

Land use

The proposed land uses are considered to be in-keeping with the objectives for the Mixed Use zone.

Demolition

The applicants are proposing to demolish the existing building. A heritage assessment has been undertaken in accordance with Local Planning Policy 1.6 – Preparing Heritage Assessments (LPP 1.6) – refer to Attachment 2.

The heritage assessment has identified that the existing building has some cultural heritage significance but does not make a significant contribution to the broader cultural heritage significance and character of the locality in which it is located. The assessment indicates that:

Although the building has some significance as an architect-designed Modernist commercial building it is contextually isolated in a streetscape that, while it includes some circa 1900 buildings, has undergone substantial modification over time. As a mid-century building 5 Norfolk Street is neutral in its contribution to the heritage values of the local area.

Consequently, Council has the discretion to support the demolition of this building.

Furthermore, the assessment states the following:

The proposed demolition of 5 Norfolk Street constitutes an irreversible loss of the individual values of the place. Were demolition and redevelopment approved, this assessment recommends a comprehensive professionally prepared drawn and photographic record be made of the existing building to archival standards and lodged with the City of Fremantle prior to commencement of any development works.

Having regard to the heritage assessment and the provisions of LPS4, it is recommended that demolition of the building be supported.

Building Height

The site is located within Local Planning Area 2 – Fremantle. Schedule 12 of LPS4 prescribes a general maximum wall height of 7.5 metres for development within the Mixed Use zone, with no restriction on the maximum height of roof ridges nor number of storeys. The wall height of the proposed development is proposed to be 10.4m, which exceeds the 7.5 metre maximum wall height by 2.9m, and as such, the proposed variation is required to be assessed against relevant provisions of LPS4, in particular, Clause 5.8.1 of LPS4.

Clause 5.8.1 states the following:

5.8.1 Variation to height requirements

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

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

In relation to the first part of Clause 5.8.1, it is acknowledged that the existing building on the development site has a wall height of 8.73m, a height of 1.23m higher than the current height controls. The following properties that have a frontage to the northern side of Norfolk Street also have a wall height greater than 7.5m:

- 3 Norfolk Street;
- 1 Norfolk Street;
- 60 Marine Terrace; and
- 47 South Terrace.

The existing variation of wall heights of the five buildings (including the development site) in excess of the 7.5m wall height control varies from 1.23m to 3.06m for the development at No. 3 Norfolk Street. Consequently, Council can consider a development application that seeks to exceed the current height controls of LPS4.

The following comments are made in relation to the various sub-clauses of Clauses 5.8.1:

(a) the variation would not be detrimental to the amenity of adjoining properties or the locality generally.

The proposed building is to be set back from the eastern adjoining residential building by approximately 7.5m. The two existing driveways currently separate the two buildings from each other. The proposed development is not located to the north of the site and as such, overshadowing is not an issue. The matter of the proposed setback variations are discussed later in the report under Residential Design Code variations.

The existing building is set back approximately 9.5m to the boundary of the adjoining residential properties to the rear of the site. Under the current application, it is proposed to set back the new building 18.19m from the common boundary. Any potential impact in terms of building bulk would be from the upper car parking deck. This issue is addressed further in the report with a recommendation to modify the structure to reduce its potential impact on the adjoining properties to the south and east.

To the west of the site, there is an existing three storey office building with its vehicular access way abutting the development site. It is considered that the proposed development will not impact on this site.

On the northern side of Norfolk Street, the land is zoned City Centre. Height controls for this area, which is within the West End Conservation area, allows development to three storeys, 11m wall heights and a maximum roof plane of 33 degrees. Council has the discretion to permit a further storey. As such, it is anticipated that the height and bulk of development on the northern side of Norfolk Street could be greater than that on the southern side of Norfolk Street as of right.

Having regard to the above, it is considered that the variation would not be detrimental to the amenity of adjoining properties or the locality generally.

(b) degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality.

The applicant has submitted montages of Norfolk Street to help substantiate the height variation being sought. The montages show the existing building and proposed building within the streetscape. The proposed development is of a bulk and scale that is more consistent with the existing development to the west of the development site. It is generally compliant with side boundary setbacks to the adjoining residential property and if there was to be any impact, then it would be on the communal driveway that serves the 18 dwellings that are located on that site.

The proposed building, while taller than the existing structure, is setback almost twice the current setback of 9.5m from the rear. Further, proposed changes to the upper level car parking deck would reduce the building bulk impact for that part of the development which is more likely to impact on the adjoining residential properties than the main building.

(c) conservation of the cultural heritage values of buildings on-site and adjoining.

The existing building is not included in the City's Municipal Heritage Inventory nor is it in LPS4's Heritage List. Like any proposal for demolition of a building, a heritage assessment was required to be undertaken in accordance with LPP – 1.6. The assessment indicates that the existing building, which was constructed during 1961 has some cultural heritage significance due to its design. Further, the assessment indicates that the existing building provides a neutral contribution to the altered streetscape and should, if demolition is approved, be appropriately recorded in accordance with relevant protocols.

In terms of adjoining heritage buildings, there are no heritage buildings that abut the development site. The closest heritage listed buildings are those that are located towards the front of 10 Suffolk Street (lot to the rear of the development site). However, the two buildings are separated by three two storey dwellings that were added to the rear of 10 Suffolk street. As such, there are no adjoining heritage listed buildings that will be impacted by the proposed development.

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

There are no other Local Planning Policy or design guidelines that relate to this site.

Car parking

Land Uses	Parking spaces	Delivery Bays	Bicycle racks
Office	16	1	3
Residential	7*	N/A	3
TOTAL REQUIRED	23	1	6
PROVIDED	34	0	0

* Car parking demand based on 1 car parking space per dwelling – refer to DE 7.2.1A1(iii) of the R-codes

The development has a combination of residential and office land uses. Generally, the two uses operate at different times which means that the car parking areas for the two uses can be shared. Also a reduction of the car parking requirements could be considered having regard to the location of the site being in close proximity to the City Centre and public transport.

The mixed use provisions of the Residential Design Codes permit the car parking standard for multiple dwellings to be reduced to 1 car parking space per dwelling if other on-site car parking spaces for non-residential uses allow the use of those spaces for residential use outside of normal business hours. Based on the preceding, the following assessment indicates that the development has been provided with a surplus of 11 car parking spaces:

Although the applicant has provided a total 34 car parking spaces, the plans do not show any provision for a delivery bay or bicycle racks. The need for a delivery bay in this instance could be varied due to the amount of floor space provided, the design of the development with the car parking deck and the type of land use proposed. As such, it is recommended that a delivery bay not be required, but the bicycle racks be provided, which can be covered by a condition of Planning Approval.

The applicant is proposing to provide an upper level car parking deck to within 1m of the rear boundary. The courtyard and enclosed entertaining areas for the each of the abutting southern residential dwellings are located in close proximity to the rear (common) boundary of the development site. Concern is expressed in relation to the potential impact of the upper level car parking deck on the adjoining properties (entertaining areas) to the south through overshadowing, privacy, headlight glare and potential noise.

Having regard to the issues raised above and the car parking surplus for the proposed development site, it is considered that the car parking deck can be modified without detriment to the development of the site in order to minimise its impact on the adjoining residential properties. This could be achieved through:

- a reduction in the number of on-site car parking spaces;
- greater setback of the structure from the common boundary; and
- articulation/treatment in the design to minimise its bulky appearance.

One option could be the removal of the row of car parking spaces located on the southern side of the upper car parking deck. This would reduce the number of car parking spaces provided and with some changes at the lower level, the minimum number of car parking spaces could be provided. This may result in a set back of the car parking deck of approximately 6.5m compared with the proposed 1.0m setback.

As such, it is recommended that a condition of Planning Approval be imposed to modify the upper level car parking structure to ameliorate the impacts of this structure.

Residential Design Codes variations

The following residential variations are being sought under the R-Codes:

Area of Variation	Required	Provided	Variation
South-western side boundary setback			
- with major openings	5.5m	1.2m	3.3m
- without major openings	4.0m	1.2m	2.8m
Study – western side – privacy	4.5m	1.2m	3.3m

These variations relate to the south-western side of the development that abuts the adjoining three storey office development, which has its vehicular access abutting the common boundary.

The development itself consists primarily of a blank wall that is setback 1.2m from the adjoining commercial site that:

- is broken up into three sections by the introduction of two recesses;
- has two habitable room windows in the first and second storeys that face the adjoining commercial site, although these rooms have a second window to that room that are proposed to be orientated into the recesses;
- has openings to the non-habitable rooms that are set back 1.9m from the western boundary.

It is also noted that the 5.5m side setback is based on the south-western wall having a major opening to a habitable room. However, these rooms also have a second window (refer to dot point 2 above).

If the western facing window was removed, the required setback would be reduced to 4.0m, a setback variation of only 2.8m. Having regard to the adjoining land use and the configuration of the proposed building, it is considered that the proposed development will not have an adverse impact on the adjoining site in terms of building bulk or privacy.

Have regard to the configuration of the proposed development, it is considered that there is sufficient light and ventilation to the relevant openings that face the south-western side boundary and those of the habitable rooms that are orientated into the recesses. Further, loss of privacy is not an issue as the adjoining site is used for non-residential purposes.

Area of Variation	Required	Provided	Difference
North-eastern side boundary setback			
- with major openings	5.5m	4.05m	1.45m
- without major openings	4.0m	4.05m	Compliant
Study – eastern side - privacy	4.5m	4.05	0.45m

The layout of the north-eastern side of the development is similar to that of the south-western side. In relation to the north-eastern side boundary setback, there is a proposed setback variation of 1.45m. Similar to the previous assessment, the setback to the third storey is affected by the inclusion of habitable room windows to the side of the building that faces the north-eastern boundary. If these two windows were removed or had their sill heights increased to 1.65m above the floor level, the required setback would be reduced from 5.5m to 4.0m, which would result in the development being compliant.

In relation to the privacy provisions, the proposed development does not comply with the 4.5m privacy setback by 0.45m. As such, a performance based assessment the provisions of Design Element DE6.8.1 of the R-codes is required. The area to be overlooked from the proposed privacy variation is the 3.5m common driveway that serves the 18 units that front Norfolk Street and the side of the building. As this area is not a sensitive area based on the R-Codes provisions, the variation can be supported.

Density

The density coding of the site is R35. However, Clause 5.2.5 of LPS4 permits development to be increased to R60, if certain criteria is met. The applicants are seeking to use this provision to increase the density of development to the R60 density coding. Clause 5.2.5 is reproduced below:

5.2.5 Notwithstanding the requirements of clause 5.2.3, residential density in the Local Centre, Neighbourhood Centre and Mixed Use zones may be increased up to R60, where residential development is part of a mixed use development, where, in the opinion of Council the proposal is not detrimental to the amenity of the area."

The form of the development is the type of development that would normally be anticipated when considering a mixed use development. That is, non-residential uses on the ground level with residential uses above. As discussed in the preceding sections of the report, the development is considered not to be detrimental to the amenity of the area and as such, the application of the R60 density coding is supported, which will increase the maximum number of residential dwellings from 4 to 7.

Fremantle Port Buffer area

The site is located within Area 3 of the Fremantle Port Buffer area. A memorial on title, advising any owners of the potential impact of Port activities on the site, as contained within part 4.3 – Area 3 of LPP 2.3, is considered appropriate in this instance.

CONCLUSION

The proposed development is in keeping with the objectives for the Mixed Use zone. The proposed development although non-compliant with the height controls in LPS4, satisfies the criteria in clause 5.8.1 to warrant a variation to the wall height controls. The development is considered capable of being approved subject to changes being made to the car parking deck located against the side and rear boundaries of the site that abut residential properties. Consequently, a recommendation of approval is proposed.

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the proposed demolition of an existing building and construction of a three storey mixed use development with a fourth level within the roof space at No. 5 (Lot 6) Norfolk Street, Fremantle, as detailed on plans dated 30 April 2010, subject to the following condition(s):

- (a) The development hereby permitted shall take place in accordance with the approved plans dated 30 April 2010 with only such minor modifications as approved by the Manager Development Services.
- (b) Prior to commencement, the existing building shall be fully documented in the form of a professionally prepared study of the physical, documentary and other evidence associated with the site before any physical or material disturbance. This documentation shall consist of the following:
 - (i) A professionally prepared architectural report including the address, names, use and description of the building and accurate measured drawings at a scale not less than 1:100. All documents shall be of A4 size or folded into A4 size.
 - (ii) A photographic report which includes the following:
 - (A) A site plan showing the position, direction and number of each photograph.
 - (B) The history of the original building and subsequent stages of development.
 - (C) Old photographs relating to this site and building.
 - (D) Any other relevant historical information.

One set of such records including photographs shall be submitted to Council in electronic format prior to the commencement of development.

- (c) Prior to commencement of development, outdoor lighting plans must be submitted and approved by the City of Fremantle. The outdoor lighting is to be designed, baffled and located to prevent any increase in light spill onto the adjoining properties.
- (d) Prior to occupation any redundant crossovers and kerbs shall be removed and the verge reinstated to the satisfaction of the Chief Executive Officer and at the expense of the applicant.
- (e) Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened so as not to be highly visible from beyond the boundaries of the development site to the satisfaction of the Chief Executive Officer.
- (f) All storm water discharge shall be contained and disposed of on-site.
- (g) The ground and first floor tenancies identified as Commercial Tenancies A, B and C are approved for use as "Offices" only. Any change in land use is required to be the subject of a separate application for Planning Approval.
- (h) Prior to occupation, the boundary wall located on the side and rear boundaries shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer.
- (i) Prior to occupation, a Notification pursuant to Section 70A of the Transfer of Land Act 1893 shall be registered against the Certificate of Title to the land the subject of the proposed development prior to occupation advising the owners and subsequent owners of the land that the subject site is located in close proximity to the Fremantle Port and the City centre and may be subject to noise, odour and activity not normally associated with residential use.
- (j) Revised plans shall be submitted to the satisfaction of the Chief Executive Officer, City of Fremantle, such plans showing:
 - (i) the provision of 6 bicycle racks;
 - (ii) a reduction in the size of the rear car parking deck to in order to provide privacy to adjoining residential properties, reduction in the potential impact of vehicular noise, articulation in the appearance of the structure and a reduction in its impact from overshadowing of the adjoining residential properties to the south-east; and
 - (iii) the car parking area is to be provided in accordance with Australian Standard AS2890.1

Cr A Sullivan MOVED an amendment to the Officer's Recommendation to change to the following condition:

- (j) (ii) an angled screen as shown on drawing 10 as submitted on the 18th August 2010 to be constructed on top of the upper rear car park deck.

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

COMMITTEE DECISION

MOVED: Cr A Sullivan

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the proposed demolition of an existing building and construction of a three storey mixed use development with a fourth level within the roof space at No. 5 (Lot 6) Norfolk Street, Fremantle, as detailed on plans dated 30 April 2010, subject to the following condition(s):

- (a) The development hereby permitted shall take place in accordance with the approved plans dated 30 April 2010 with only such minor modifications as approved by the Manager Development Services.**
- (b) Prior to commencement, the existing building shall be fully documented in the form of a professionally prepared study of the physical, documentary and other evidence associated with the site before any physical or material disturbance. This documentation shall consist of the following:**
 - (i) A professionally prepared architectural report including the address, names, use and description of the building and accurate measured drawings at a scale not less than 1:100. All documents shall be of A4 size or folded into A4 size.**
 - (ii) A photographic report which includes the following:**
 - (A) A site plan showing the position, direction and number of each photograph.**
 - (B) The history of the original building and subsequent stages of development.**
 - (C) Old photographs relating to this site and building.**
 - (D) Any other relevant historical information.**

One set of such records including photographs shall be submitted to Council in electronic format prior to the commencement of development.
- (c) Prior to commencement of development, outdoor lighting plans must be submitted and approved by the City of Fremantle. The outdoor lighting is to be designed, baffled and located to prevent any increase in light spill onto the adjoining properties.**

- (d) Prior to occupation any redundant crossovers and kerbs shall be removed and the verge reinstated to the satisfaction of the Chief Executive Officer and at the expense of the applicant.
- (e) Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened so as not to be highly visible from beyond the boundaries of the development site to the satisfaction of the Chief Executive Officer.
- (f) All storm water discharge shall be contained and disposed of on-site.
- (g) The ground and first floor tenancies identified as Commercial Tenancies A, B and C are approved for use as “Offices” only. Any change in land use is required to be the subject of a separate application for Planning Approval.
- (h) Prior to occupation, the boundary wall located on the side and rear boundaries shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer.
- (i) Prior to occupation, a Notification pursuant to Section 70A of the Transfer of Land Act 1893 shall be registered against the Certificate of Title to the land the subject of the proposed development prior to occupation advising the owners and subsequent owners of the land that the subject site is located in close proximity to the Fremantle Port and the City centre and may be subject to noise, odour and activity not normally associated with residential use.
- (j) Revised plans shall be submitted to the satisfaction of the Chief Executive Officer, City of Fremantle, such plans showing:
 - (i) the provision of 6 bicycle racks;
 - (ii) *an angled screen as shown on drawing 10 as submitted on the 18th August 2010 to be constructed on top of the upper rear car park deck.*
 - (iii) the car parking area is to be provided in accordance with Australian Standard AS2890.1

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

Cr T Grey-Smith Vacated the chamber at 8.45 pm during the following item and returned at 8:47 pm prior to determination.

PSC1008-153 TYDEMAN ROAD NO. 40A (LOT 5), NORTH FREMANTLE - TWO STOREY OFFICE BUILDING (ES DA0161/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 18 August 2010
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: N/A
Attachment 1: Development Plans
Attachment 2: Heritage Assessment (April 2010)
Date Received: 24 March 2010
Owner Name: Blackwood Consolidated Pty Ltd
Submitted by: Slavin Architects & Peter Lalor
Scheme: Mixed Use R25
Heritage Listing: MHI Management Category Level 3
Existing Landuse: Vacant Lot
Use Class: Office
Use Permissibility: 'P'



EXECUTIVE SUMMARY

On 24 March 2010 the City received an application for Two Storey Office Building at No. 40A (Lot 504, Strata Lot 1) Tydeman Road, North Fremantle.

The subject site is bound by the railway embankment and bridge to the west, Tydeman Road to the south and a heritage listed dwelling to the east. The City sought Heritage advice in regard to the proposal in accordance with *L.P.P 1.6 – Preparing Heritage Assessments*.

The applicant is a heritage architect registered with the Heritage Council and contests the advice received in the Heritage Assessment. Consequently the application has been referred to the Planning Services Committee for determination as the City's Officers are not in a position to support the application given its inconsistency with the Heritage advice received.

Notwithstanding the above, the proposal is consistent with the North Fremantle Local Planning Area requirements, the City's *D.G.N.4* policy relating to *Stirling Highway, Tydeman Road, Jackson & Pearse Streets* and the intentions of the Mixed Use R25 zone. The applicant proposes a variation to the car parking requirements of the City's Local Planning Scheme No. 4 (LPS4), providing six (6) on site car parking bays in lieu of the 8 bay requirement.

The proposal has been considered with due regard to the relevant Statutory provisions but also taking in account the advice received within the Heritage Assessment. Accordingly, the application is recommended for refusal.

BACKGROUND

The site of the subject application is located at Lot 5, No. 40A Tydeman Road, North Fremantle (the site). The 212m² site is located on the northern side of Tydeman Road (Primary Street) and the western side of Pearse Street (Secondary Street) orientated in a north-south direction. The site is strata-titled, with an existing dwelling facing Tydeman Road located on Lot 4 and "The Bakery" and two townhouses on Lots 1, 2 & 3 which face Pearse Street. Lot 5 is on the western side of the property, directly adjoining the railway line embankment and is currently vacant.

The site is zoned Mixed Use R 25 under the provisions of the City of Fremantle Local Planning Scheme No. 4 (LPS4) and is located within the North Fremantle Local Planning Area 3 (LPA) as described in Schedule 12 of the City's LPS4. The site is listed on the City's Municipal Heritage Inventory as a Level 3 Management Category. The site falls within the Fremantle Port Authority Referral Area 1 and Development Area *D.G.N.4 - Stirling Highway, Tydeman Road, Jackson & Pearse Streets Local Area*. Additionally, the site abuts Tydeman Road, which is reserved as a Category 3 Primary Regional Road in the Metropolitan Region Scheme (MRS).

DETAILS

On the 24 March 2010 the City received an application whereby the applicant is seeking Planning Approval for a two storey Office building at the subject site.

The proposed development consists of a two storey building which will be occupied by 261.4m² (net-lettable area) of office space over the ground floor (121.2 m²) and the first floor (140.2 m²). The gross lettable area of the office building is 222.36 m² requiring the car parking provision under LPS4 to be 8 bays (7.412 bays). There are six car bays proposed for the office building on site.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and the City's *LPP1.3 Public Notification of Planning Approvals Policy*. After the advertising period end date 20 April 2010, the City received one (1) submission from the adjoining landowner stating no objections to the proposal.

Fremantle Port Authority Referral Area 1

The proposal was required to be referred to the Fremantle Port Authority (FPA) for comment as the site falls within Referral Area 1. The FPA responded to the City stating *"It is noted that the majority of southern elevation of the proposed development will be glazed. A review of the City of Fremantle's built form requirements for Area 1, as detailed in the Fremantle Port Development Guidelines, states that "The aggregate area of windows and doorways shall not exceed 40% of the total area of the façade facing the Port Inner Harbour". It appears that the proposal does not comply with this. It is requested that the design of the southern façade is amended so that is consistent with the abovementioned requirements"*

The above comments are discussed further in the 'Planning Comment' section below.

Department of Planning

The application was required to be referred to the Department of Planning as the property abuts Tydeman Road which is reserved as a Category 3 Primary Regional Road (PRR) in the Metropolitan Region Scheme (MRS). The Department of Planning state *"the subject lot does not have direct access onto Tydeman Road. This is in accordance with the Commission's Regional Roads (Vehicular Access) Policy D.C.5.1, which suggests minimizing the number of new crossovers onto regional roads. The Department has no further comments on the proposal on transport planning grounds"*.

The comments made by the Department of Planning are noted.

PLANNING COMMENT

Local Planning Scheme No.4 (LPS4)

Land Use

The proposed land use falls within the definition of 'Office' under LPS4:

Office: means premises used for administration, clerical, technical, professional or other like business activities.

LPS4 Table 2 – Zoning – classifies the use class ‘Office’ as a ‘P’ (permitted) use in the Mixed Use zone. This means that the use is permitted providing the use complies with the relevant development standards and requirements of the Scheme.

Car parking

Required	Proposed	Variation
1 space per 30m ² of gross floor area = 8 bays	6 bays	2 bays

Clause 5.7.3 – Relaxation of Parking Requirements states:

Council may –

(a) subject to the requirements of Schedule 12, waive or reduce the standard parking requirement specified in Table 3 subject to the applicant satisfactorily justifying a reduction due to one or more of the following –*

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

Note: In some sub areas identified in Schedule 12 reduction of parking bays is not permitted. The requirements of Schedule 12 prevail over this clause.

In this instance, a reduced car parking provision is supported on the following basis:

- Given the location of the site, the occupants of the office have the ability to utilise the existing public transport network servicing the immediate vicinity including the North Fremantle train station which is within 750 metres (direct line) from the subject site. The site is also well positioned on a main arterial road meaning there is the existing provision of bus services including the Circle Route 98 & 99, 103, 107, 701, 705. The applicant has further stated “*Occupation of the offices will contain conditions relating to the use of transit cards*”. For the abovementioned reasons, it is considered the site is adequately serviced and accessible by public transport.
- End of trip facilities including shower/ change room area are proposed on the first floor of the office building for occupants of the office. As the office building is greater than 200 m², under the provisions LPS4, the applicant would also be required to provide Bicycle Parking facilities.

- A City of Fremantle public car park exists at No. 209 Queen Victoria Street, corner Tydeman Road, North Fremantle, approximately 70 metres (direct line) from the subject site. This car park has the ability to accommodate approximately 30 cars.
- Given the mixed nature of the land uses including commercial and residential along Tydeman Road and adjoining streets such as Jewell Parade and Queen Victoria Street, the transition of the population between daytime office hours should allow for a greater provision of on-street parking in the area for the commercial use, should it be required.
- The City has supported car parking shortfalls in the past in the immediate vicinity of the site including No. 19 Jewell Parade (office use) and No. 7/4 Jewell Parade (warehouse use).
- The entire site has considerable heritage significance and the demolition of existing structures on site to accommodate the required number of car parking bays would be unlikely to be supported by the City, meaning the site does not have the capacity to provide any further car parking bays for the proposed Office Building.
- The owner has identified to the City that *“The strata owners have an ongoing lease with the Department of Transport granting an easement over part of all of the land and which is included in the general railway reserve. This land, under the terms of the lease can be used for parking”*.

The above justification of the car parking shortfall is considered to satisfy the provisions of Clause 5.7.3 of the LPS4 and the overarching aims of the entire scheme as contained within Clause 1.6.1.

Local Planning Policies

Local Planning Policy 1.6 – Preparing Heritage Assessments

In order to guide Council in making its determination on the application, heritage advice was sought as per LPP 1.6. The Heritage Assessment states:

The proposal represents minimal impact to the Pearse St streetscape. The proposal represents a permanent negative impact to the Tydeman Road streetscape in its current form.

The proposal as a separate building to the heritage building represents a reversible loss of any value that may occur.

The application is for the construction of a new, two-storey flat-roofed commercial building. Its bulk is larger than the single-storey dwellings on Tydeman Road, although it is balanced by the townhouses and hall on Pearse Street.

The siting of the proposed new building is incompatible in the character of the immediate streetscape, projecting significantly forward of the House at No. 40A Tydeman Road. The proposal does not incorporate a harmonised integration of new and old, proposing a specifically contemporary building with no reference to local architectural patterns.

The proposal is for a simple, two-storey box like structure with an unremarkable façade in a streetscape of small, detailed dwellings.

The proposal will have a significant impact on the Tydeman Road streetscape, being a dominant new building on the western end of the street.

The full Heritage Assessment is contained within Attachment 2 of this report.

The following comments are made in relation to the Heritage advice sought.

- As viewed from the street, the existing dwelling of heritage significance on the western portion of the site (Lot 4) is screened from direct view by a 1.8 metre solid masonry brick wall as permitted on Tydeman Road under the provisions of L.P.P 2.8 relating to Fences. The existence of a solid wall along the front boundary of the property is consistent with the streetscape along Tydeman Road given the nature of the road as a PRR under the MRS. It could be argued that the proposed Office Building will not interrupt the streetscape given the pattern of solid walls within the streetscape is already considered to interrupt the streetscape through inhibiting direct sight of the dwellings themselves.
- Given the location of the site, abutting the railway line to the west and a Primary Regional Road to the south, it is subject to heavy traffic use and noise, as a regional thoroughfare. The existence of a development on the site will act as a means of screening the heritage dwelling from much of the undesirable impacts associated with frequent rail and vehicular traffic from the west.

L.P.P 2.3 – Fremantle Port Authority Buffer Area Development Guidelines

The above policy states:

Windows and openings

- a) The aggregate area of windows and doorways shall not exceed 40%* of the total area of the façade facing the Port Inner Harbour.*
- b) Any glass used for windows or other openings shall be laminated safety glass of minimum thickness 12 mm or "double glazed" utilising laminated or toughened safety glass of minimum thickness 6 mm.*

Note:

- 1) The City recognises that this requirement may not be possible to achieve in the case of the proposals involving the adaptation / reuse of buildings of conservation and heritage significance.*
- 2) The City may accept alternative built form treatments subject to the applicant satisfactorily demonstrating fulfilment of the potential risk and amenity considerations outlined above. Alternative treatments shall be justified to the City through submission of professionally prepared and certified reports.*

The applicant provided the City with sufficient, relevant justification of the variation proposed to the requirements. Scott Smalley Partnership, Consulting Chartered Engineers, have provided the City with confirmation of the suitability of the proposed alternative in accordance with requirement 2 above. The explanation provided by the applicant above is considered to sufficiently fulfil the potential risk and amenity considerations outlined within L.P.P 2.3.

CONCLUSION

The application is considered to be consistent with the intentions of the Mixed Use R25 zoning of the site, Council's D.G.N.4 Policy and the Fremantle Port Authority Buffer Area Development Guidelines. It is acknowledged the property acts as a gateway site to North Fremantle and directly abuts the railway embankment and bridge to the west and an appropriate development on the site would be a desirable outcome for the immediate locality. Notwithstanding the above, the proposal in its current form is not considered consistent or complementary to the surrounding streetscape and will have a permanent, irreversible impact on the heritage dwelling on the eastern side of the subject site.

Therefore, the application is recommended for refusal.

OFFICER'S RECOMMENDATION

MOVED: Cr A Sullivan

That the Planning Services Committee, acting under authority delegated by the Council, REFUSE planning consent under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for Two Storey Office Building at No. 40A (Lot 504, Strata Lot 5) Tydeman Road, North Fremantle as detailed on plans dated 24 March 2010, for the following reason(s):

- i) The proposal is inconsistent with Clause 10.2.1 (w & zi) of LPS4 in regard to the developments impact on the Heritage features of the site and the likely effect of the height, bulk, scale, orientation and appearance of the proposal on the adjoining land and other land in the locality.

Cr A Sullivan MOVED the following alternative recommendation:

COMMITTEE RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for Two Storey Office Building at No. 40A (Lot 504, Strata Lot 5) Tydeman Road, North Fremantle, subject to the following condition(s):

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 23 March 2010 with only such minor modifications as approved by the Manager Development Services, City of Fremantle.***
- 2. All storm water discharge shall be contained and disposed of on-site.***
- 3. Prior to occupation of the development, a minimum of 2 bicycle racks shall be provided on site to the satisfaction of the Chief Executive Officer, City of Fremantle.***
- 4. Prior to occupation of the development, alternative built form treatments in relation to the proposed windows and openings shall be justified to the Chief Executive Officer, City of Fremantle through submission of professionally prepared and certified reports.***

The applicant shall satisfactorily demonstrate fulfilment of the potential risk and amenity considerations outlined in the City’s L.P.P 2.3 policy.

- 5. Prior to the commencement of development, a detailed landscaping plan to reduce the visual impact of the building from the street (Tydeman Road) shall be submitted to and approved by the Chief Executive Officer, City of Fremantle.***
- 6. Landscaping as indicated on the approved landscaping plan shall be planted within 30 days of the occupation of the building and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle.***
- 7. Prior to occupation, the blank wall on the western side of the lot, abutting the railway embankment, is to be constructed and finished in a manner that reduces its apparent bulk and provides interest to the satisfaction of the Chief Executive Officer, City of Fremantle.***

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

**Cr J Wilson Requested the item be REFERRED to the Ordinary Meeting of Council.
Seconded by Cr A Sullivan.**

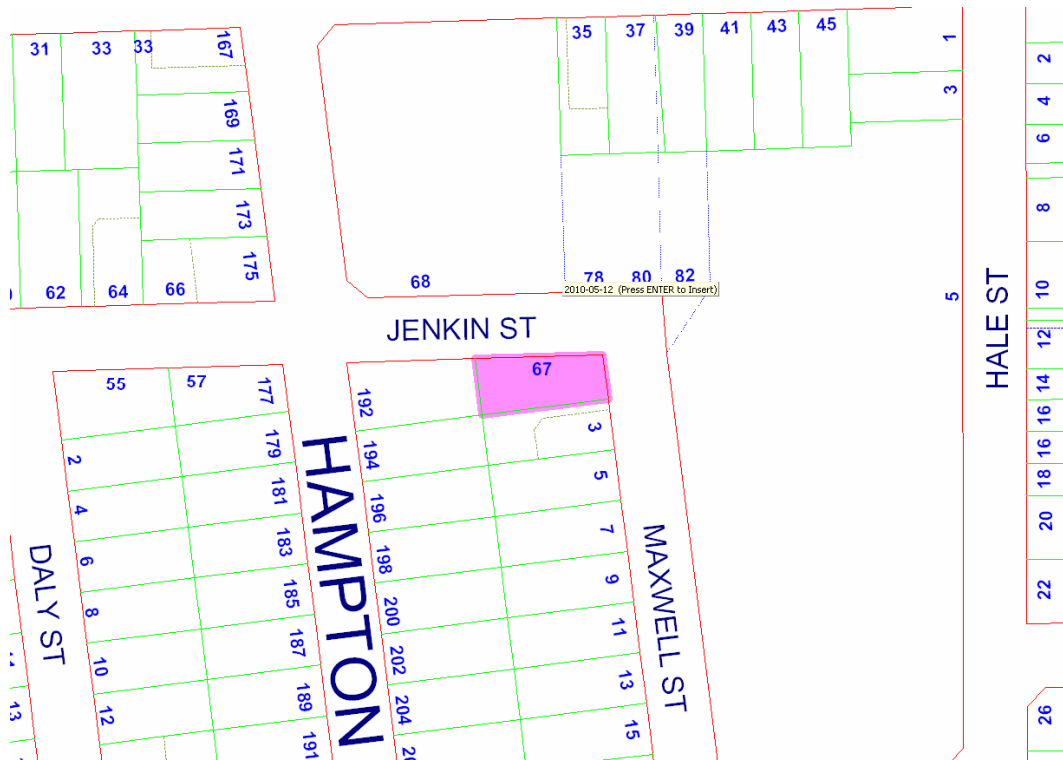
Cr R Fittock Vacated the chamber at 9:00 pm during the following item and returned at 9:01pm prior to determination.

PSC1008-154 NO. 67 (LOT 164) JENKIN STREET, BEACONSFIELD - APPLICATION FOR RETROSPECTIVE PLANNING APPROVAL FOR ALTERATIONS TO EXISTING SINGLE HOUSE - (AD DA0073/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 18 August 2010
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachment 1: Development Plans – Retrospective works
Attachment 2: Approved Development Plans
Date Received: 12th February 2010;
 1st June 2010 (Revised Development Plans);
 9th July 2010 (Latest Revised Development Plans)

Owner Name: Tony and Beverley Martinovich
Submitted by: As Above
Scheme: Residential R25
Heritage Listing: Not Individually Listed;
 South Fremantle Heritage Precinct

Existing Land use: Single House
Use Class: Single House
Use Permissibility: 'P'



EXECUTIVE SUMMARY

The applicant is seeking retrospective planning approval for unauthorised alterations that have been carried out to the existing Single House at No. 67 (Lot 164) Jenkin Street, Beaconsfield.

The applicant has undertaken various unauthorised alterations, including but not limited to the extension of ground floor balcony, alteration to the roof of the upper floor balcony as well as the front and side boundary fences. The unauthorised alterations to both the ground and upper floor balconies have been assessed against, and are considered to comply with the relevant 'Acceptable Development' standards of Design Element (DE) 6.3.1 – Buildings setback from the boundary, DE 6.8.1 – Visual privacy and DE 6.9.1 – Solar access for adjoining sites. However, elements of the unauthorised works pertaining to the front and side boundary fences do not meet the 'Acceptable Development' standards of DE 6.2.5 – Street walls and fences, or the provisions of the City's LPP2.8 – Fences Policy, although it is considered that this can be overcome by imposing a condition of planning approval.

Accordingly, it is recommended that the application be approved subject to appropriate conditions.

BACKGROUND

The development is located at No. 67 Jenkin Street, Beaconsfield (the site). The site is approximately 656m² in area and is located on the southern side of Jenkin Street and the western side of Maxwell Street. The site is a corner lot, with an east-west orientation and slopes approximately 4.7m downwards from the south-east corner to the north-west corner of the lot. The site is currently improved by an existing two storey Single House.

The subject site is zoned 'Residential' under the City of Fremantle's (the City) Local Planning Scheme No. 4 (LPS4) and has a density coding of R25 and is also located within the South Fremantle Local Planning Area 4 (LPA 4). The property is not individually listed on the City's Heritage List; however it is contained within the South Fremantle Heritage Precinct which is a prescribed Heritage Area under Clause 7.2 of LPS4.

An investigation into the property file found the following relevant planning background:

- 22 June 2007, Planning Approval was granted by Council for 'Two Storey Additions to Existing Single Dwelling' on the subject site (refer DA214/07);
- 27 May 2008, Planning Approval was granted by Council for 'Two Storey Additions and Alterations' on the subject site (refer PSC0805-121 and DA81/08); and
- 11 December 2009, the City received a written complaint regarding the possible non-compliance of the development on the subject site.

A site inspection was conducted by the City's Compliance Department on 14 December 2009 and found that the development was not in accordance with the approved plans dated 27 May 2008 (DA81/08).

Subsequently, on 31 December 2009 the City sent the owner a letter advising them to make an appointment to meet with the City's Statutory Planning Department within 28 days to discuss issues pertaining to the development undertaken on the site. On 11 January 2010, the City met with a consultant representing the owner where it was made clear that development took place outside the approved development plans as per (DA81/08).

Subsequently, on 11 January 2010 the owners of the premises were requested to remove the unauthorised alterations or alternatively submit a development application for retrospective Approval for the unauthorised development within 28 days of the letter. A development application was received by the City on 12 February 2010 seeking retrospective Planning Approval for alterations to the existing Single House (refer DA0073/10).

DETAILS

The applicant seeks retrospective Planning Approval for the unauthorised alterations to the existing two storey Single House with undercroft (basement) garage. The developments plans the subject of this application are contained within 'Attachment 1' of this report and the approved development plans for DA81/08 are contained as 'Attachment 2'.

The unauthorised alterations consist of the following:

Fencing:

Fence	Approved	Constructed
Eastern (fronting Maxwell Street)	Solid 1.8m high	1.8m high, visually permeable above 1.4m with piers 2.0m
Northern (fronting Jenkin Street)	1.4m high, visually permeable above 0.75m	2.0- 2.4m high, visually permeable between 1.4 – 1.6m
Western	-	1.6m – 1.9m high with piers 2.5m – 2.8m high
South	1.8m solid	Solid 2.13 – 2.35m

Balconies:

Balcony	Approved	Constructed
Ground Floor Balcony (shown as area clouded 'B' on plans contained within Attachments 1 and 2);	3.45m x 9.2m (31.74m ²) setback 6.2m from western boundary & 3.16m to the southern boundary with no screening devices	6.95m x 10m (69.6m ²) setback 3.9m to western boundary & 2.0m to the southern boundary, includes screening
Upper Floor Balcony (shown as area clouded 'C' on plans contained within Attachments 1 and 2);	'flat roof' and privacy screen to protect southern adjoining property	roof extended from the 'theatre room' with colorbond pitch of 30 degrees and studwall on southern elevation enclosing the area

Other:

- Major Openings –
 - Other unauthorised works include the removal (and in some instances replacement) of a number major openings (ie doors and windows) as per the approved plans on the ground and upper floors on the southern, northern and western elevations. (These unauthorised works are not depicted on the plans contained within Attachments 1 and 2 as was the case with the aforementioned unauthorised works, but are depicted on the revised development plans where appropriate).

A copy of the (revised) development plans dated 9 July 2010 is provided as 'Attachment 1' of this report.

In addition, a copy of the approved development plans dated 27 May 2008 (DA81/08) is provided as 'Attachment 2' of this report.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4 (LPS4)

8.4 Unauthorised Existing Developments

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

8.4.2 Development which was unlawfully commenced shall not be rendered lawful by the occurrence of any subsequent event except the granting of planning approval, and the continuation of the development unlawfully commenced is taken to be lawful upon the grant of planning approval.

Schedule 12 – Local Planning Area 4 – South Fremantle (LPA4)

States that building height requirements are to be as per R-Codes (maximum external wall and roof ridge heights). The unauthorised alterations do not impact the existing approved development by way of increasing building height and as such is considered to satisfy the building height provisions of Schedule 12 – Local Planning Area 4 – South Fremantle (Sub Area 4.3.4) of LPS4.

Council's Local Planning Policies

The unauthorised alterations have been assessed against the Council's following Local Planning Policies:

- LPP1.5 – Planning, Building and Environmental Health Compliance; and
- LPP2.8 – Fences Policy.

CONSULTATION

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and the City's *LPP1.3 Public Notification of Planning Proposals* (LPP1.3) policy.

At the conclusion of the advertising period, being 29 July 2009, the City had received one (1) submission, of which objected to the proposal. A summary of the submission is outlined as follows:

- Visual privacy;
- Overshadowing; and
- Scale of development (building) is out of character with surroundings.

These concerns will be discussed in the 'Planning Comment' section of this report.

PLANNING COMMENT

Major Openings

These variations, whilst located on both the ground and upper floors do not result in any variations to the R-Codes in terms of boundary setbacks or visual privacy or LPS4. As such, there are no objections to these variations.

Council's Local Planning Policies

LPP1.5 – Planning, Building and Environmental Health Compliance

The City's LPP1.5 policy states:

4.5 *Infringement Notices under the Planning and Development Regulations 2009*

In addition to the procedure set out in Part 4.2, an infringement notice under the provisions of the Planning and Development Regulations 2009 will be issued in the following circumstances:

- a) where an offence has occurred and the property has been brought into compliance within the specified period through the removal of the unauthorised development, or the cessation of the unauthorised use; or*
- b) where an offence has occurred, and a retrospective application for planning approval has been submitted within the required timeframe and subsequently approved.*

An infringement notice shall be issued as soon as possible after the offence has been committed, but, in any event, must be given within 6 months after the alleged offence is believed to have been committed.

An infringement notice shall be issued to the alleged offender, as defined by s226 of the Planning and Development Act 2005, unless the Chief Executive Officer following legal advice determines otherwise.

Where, in the opinion of the Chief Executive Officer, there is a broader public interest in undertaking legal action instead of issuing an infringement notice, a report will be prepared for the Council to consider further prosecution action.

4.6 *Prosecution Proceedings under the Planning and Development Act 2005*

Where non-compliant development or use is being or has been carried out; and

- (a) the non-compliance has not been rectified within the specified timeframe following the warning, and*
- (b) an infringement notice has not been issued, or payment of the modified penalty has not occurred within the allotted time, and*
- (c) no opportunity for retrospective approval is to be given, or if given, an application has not been forthcoming or has been refused.*

Then the matter will be the subject of prosecution action, without further notice.

Where the property has been brought into compliance within the specified time period, in most cases, the Council will not prosecute. However where, in the opinion of the Chief Executive Officer there is a broader public interest in undertaking legal action, a report will be prepared for the Council to consider further prosecution action.

As the 'offence' took place more than 6 months ago, in accordance with the regulations, an infringement is not able to be issued.

In accordance with Clause 4.6 of the City's LPP1.5 policy, it is considered that there is no broader public interest in undertaking legal action as the majority of proposed modifications meets the City's requirements. On this basis it is recommended that no legal action be taken in relation to the retrospective works.

LPP2.8 – Fences Policy

The City's LPP2.8 – Fences Policy states that:

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

Council may exercise discretion to vary the height of fences in the primary street setback area where:

- The proposed fence height is consistent with the established pattern of fences within the streetscape, or*
- Minor variations are made necessary by virtue of the sloping topography of the site, or*
- Chain link or mesh fences in non residential areas greater than 1.8m high shall be permitted where in the opinion of Council, it is necessary to provide security to a commercial property, and are consistent with the established pattern of fences within the streetscape."*

The eastern boundary (secondary street) fence (fronting Maxwell Street) was approved as a 'solid rendered brick wall' to 1.8m maximum height, and incorporated no element of visual permeability. It is considered that what has been built in this instance (ie unauthorised works), being a 'solid rendered brick wall' to 1.8m and visually permeable above 1.4m with rendered brick piers to 2.0m meets the requirements of the above clause.

The northern boundary (primary street) fence (fronting Jenkin Street) was approved as '1.4m high max rendered brick screen wall' that was visually permeable above 0.75m but was built as rendered brick screen between 2- 2.4m high visually permeable between 1.4-1.6m.

The subject site slopes approximately 4.7m downwards from its south-east corner to its north-west corner, and it is considered that the variations to the maximum height are supportable given the virtue of the sloping topography. Similarly, in terms of visual permeability variation, the northern boundary (front fence) is supportable due to the nature of the sloping topography.

Clause 1.4 of the policy states:

“Council may permit solid fencing for a portion of the total length of the boundary where surveillance between a habitable room window of the dwelling and the street and approach to the dwelling is available, and the following criteria are satisfied:

- *To provide privacy screening where there is no alternative outdoor living area to the front setback; or*
- *Where consistent with the established streetscape.”*

Adequate surveillance is provided between a number of habitable room's of the existing Single House (Ground Floor: 'Living', 'Dining', 'Bed 2' & 'Bed 3'; Upper Floor: 'Theatre' and 'Study') and the street and approach to the dwelling. There is a need to provide privacy to the outdoor living area which is located within the primary street setback area as there is no alternative location for this area to be sited. As such, it is considered that the eastern boundary (secondary street), and northern boundary (primary street) fences meet the provisions of the City's LPP2.8 policy.

Clause 4.1 of the policy states:

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

- *The proposed fence/screening will not have any significant impact on adjoining properties by way of overshadowing, solar access, or loss of views, and affected neighbours are consulted in accordance with Clause 9.4 of the Scheme.”*

The unauthorised works include the construction of a 'solid rendered brick screen wall' up to 1.9m (max) with rendered brick piers up to 2.8m (max) along the western boundary, which was not included as part of the approved development plans. In this instance there is no justification for the increased wall height and therefore it is recommended to impose a condition of planning approval requiring the applicant to bring the western boundary fence into compliance with the City's LPP2.8 policy.

Submissions

The concerns outlined within the submission not addressed above are assessed below.

Visual privacy

The unauthorised works, and the development as a whole meets the 'Acceptable Development' of DE 6.8.1 – Visual privacy. It is noted that the unauthorised works effectively eliminated overlooking of the southern adjoining properties from the ground and upper floor balcony area through the deletion of any major openings to these areas and replacement with solid 'stud walls'.

Overshadowing

The 'Acceptable Development' standards for DE 6.9.1 of the R-Codes permits 25% of the adjoining site to be overshadowed at midday 21 June. The proposal overshadows 24.9% of the adjoining lot.

Whilst it is acknowledged that the southern adjoining property would be subject to overshadowing, the development meets the 'Acceptable Development' standards.

Scale of development (building) is out of character with surroundings

The unauthorised works, specifically relating to the ground and upper floor balconies meet the 'Acceptable Development' standards pertaining to boundary setbacks and building height, both of which are key elements when determining the impact of building bulk. Further, the subject site itself slopes approximately 4.68m downwards from its south-east corner to its north-west corner, which imposes significant constraints to development upon it.

CONCLUSION

The application for retrospective Approval for alterations to the existing Single House at No. 67 (Lot 164) Jenkin Street, Beaconsfield has been assessed against the relevant provisions of the R-Codes and LPS4.

Consequently, the application is recommended for approval, subject to appropriate conditions.

COMMITTEE AND OFFICER'S RECOMMENDATION

MOVED: Cr A Sullivan

A) That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for Retrospective Planning Approval for Unauthorised Alterations to Existing Single House at No. 67 (Lot 164) Jenkin Street, Beaconsfield, subject to the following condition(s):

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 9 July 2010 with only such minor modifications as approved by the Manager Development Services, City of Fremantle. 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. The western boundary fence shall be reduced to a maximum height of 1.8m, with piers not higher than 2.0m above natural ground level.**
- 4. Within ninety (90) days of the date of approval, the development hereby permitted shall be modified to bring the western boundary fence into conformity as detailed in Condition 3 of this approval, to the satisfaction of the Chief Executive Officer, City of Fremantle.**

B) AUTHORISE the Chief Executive Officer, City of Fremantle to initiate legal action against the owner of the land at No. 67 (Lot 164) Jenkin Street, Beaconsfield, in the instance condition 4 above is not adhered to.

CARRIED: 5/1

For	Against
Cr Andrew Sullivan Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	Cr Robert Fittock

Cr J Dowson requested the item be REFERRED to the Ordinary Meeting of Council. Seconded by Cr A Sullivan.

Cr A Sullivan MOVED en bloc recommendations numbered PSC1008-152, PSC1008-155, PSC1008-156.

PSC1008-152 SUFFOLK STEET, NO. 25 (LOT 1) FREMANTLE - REAR DETACHED TWO STOREY ADDITION TO EXISTING SINGLE HOUSE (JWJ DA0262/10)

DataWorks Reference: 059/002
Disclosure of Interest: None
Meeting Date: 18 August 2010
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0911-215
Attachment 1: Development Plans (Revised June 2010)
Attachment 2: Heritage Council of WA Referral (July 2010)
Date Received: 24 May 2010
Owner Name: P Petroff
Submitted by: Domestic Drafting Service
Scheme: Residential R25
Heritage Listing: Management Category Level 1A
Existing Landuse: Single House
Use Class: Residential
Use Permissibility: 'P'



EXECUTIVE SUMMARY

The City of Fremantle is in receipt of an application which seeks Planning Approval for a rear two storey detached addition to the existing Single House at No. 25 Suffolk Street, Fremantle.

The application is presented before the Planning Services Committee, due to the applicant applying for a variation against the building height requirements of Schedule 12 – Local Planning Area 4 – South Fremantle – Sub Area 4.3.1 (Schedule 12 – Sub Area 4.3.1) of the City’s Local Planning Scheme 4 (LPS4).

The applicant is also requesting a performance based assessment for variations from the Residential Design Codes ‘Acceptable Development’ requirements:

- *Design Element 6.8.1 Visual Privacy* in relation to potential overlooking from the balcony to the eastern and western adjoining properties.

Two submissions were received during the advertising process. One submission had no objection to the proposed development, one submission raised concerns regarding:

- *Proposed removal of a tree situated at the rear of the property and impact on infrastructure on eastern adjoining property;*
- *Ongoing maintenance and retention issues relating to existing limestone boundary wall.*

The proposed variations have been assessed and are considered to have minimal impact upon the amenity of adjoining properties and neighbours.

Therefore, it is recommended that the application be conditionally approved.

BACKGROUND

The subject site (the site) is zoned Residential under the provisions of the City of Fremantle’s Local Planning Scheme 4 (LPS4) and has a density coding of R35. The site is listed on the City’s Heritage List and Municipal Heritage Inventory (MHI) as a Management Category Level 1A but is not located within a designated Heritage Area in accordance with the provisions of LPS4.

The site is located on the southern side of Suffolk Street, Fremantle with a north-west south-east orientation. The site is approximately 553m² and is improved by an existing single storey Single House. The site shares a vehicle access leg with 23 Suffolk Street.

The eastern adjoining property, Arundel Court, a multi-storey apartment complex is zoned Residential and has a density coding of R35. The apartment complex incorporates car parking facilities which abuts the eastern boundary of the subject site.

The western adjoining property, 23 Suffolk Street is zoned Residential and has a density coding of R35. The site is improved by an existing single storey Single House which incorporates a north-west south-east orientation. The site is listed on the City’s Heritage List and MHI as a Management Category Level 1A.

The southern adjoining property, 32 Arundel Street is zoned Residential and has a density coding of R35. The site is improved by three existing two storey Grouped Dwellings. The site is listed on the City's Heritage List and MHI as a Management Category Level 3.

A review of the property file found the following relevant planning background:

On 25 November 2008, the City granted Planning Approval for alterations and additions to the existing Single House (refer PSC0911-215) at 25 Suffolk Street, Fremantle. This approval has been acted upon however the originally proposed carport has not been constructed. The alterations to the existing dwelling are essentially complete.

On 26 May 2008, the City granted Planning Approval for a limestone block boundary wall and partial enclosure of the front verandah of the existing dwelling.

DETAILS

On 24 May 2010, the City received a development application for a rear two storey detached addition to the existing Single House at No. 25 Suffolk Street, Fremantle.

The applicant submitted amended plans on 28 June 2010, following the Heritage Council of WA's (HCWA) request to clarify the impact of the development on the streetscape of Suffolk Street.

The amended plans, dated 28 June 2010 included the following variations to the requirements of LPS4, the Residential Design Codes 2008 and relevant Council Local Planning Policies:

- External wall height variation to Schedule 12 Height Requirements, Local Planning Area 4 – Sub Area 4.3.1 of LPS4;
- Potential overlooking from balcony in accordance with Design Element 6.8.1 Visual Privacy (DE 6.8.1) of the R-Codes.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme 4

Schedule 12 – Height Requirements

Required	Provided
Single storey with loft Maximum external wall height 4.8m Maximum roof pitch 33 degrees	External wall height – 5.6m Roof pitch <33 degrees

In considering a variation to the prescribed building height requirements of Schedule 12 – Sub Area 4.3.1, Council's discretion is required under clause 5.8.1, which states as follows:

5.8.1 Variation to height requirements

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

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

In accordance with clause 5.8.1, Council needs to be satisfied that the proposed development:

- Is capable of being assessed against this provision of LPS4; and
- Meets all the relevant criteria set out in the sub-parts of clause 5.8.1.

Further assessment and discussion is contained in the 'Planning Comment' section of this report.

Residential Design Codes 2008

The proposed development has been assessed against and satisfies all relevant 'Acceptable Development' criteria of the R-Codes, except in relation to:

- DE 6.8.1 in relation to potential overlooking from the balcony to the eastern and western adjoining properties.

Performance based assessments are required for these elements of the development which are contained in the 'Planning Comment' section of this report.

Council Local Planning Policies

The following Council policies are of relevance to this application:

DGF 29 - Suffolk to South Streets Local Area

Council policy *DGF 29 Suffolk to South Streets Local Area* (DGF29) is of relevance to this application.

The site is located within sub-precinct Area A of the policy area outlined in DGF29, which contains development guidelines stating that residential development '...should be predominantly single storey and in accordance with Council policy *DBH 1 Urban Design and Streetscape Guidelines...*' (DBH 1).

Further assessment and discussion is contained within the 'Planning Comment' section of this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Council policy *LPP 1.3 Public Notification of Planning Approvals* as the applicant is proposing variations to building height requirements of LPS4 and potential overlooking to adjoining properties. At the conclusion of the advertising period, being 18 June 2010, the City had received two submissions, one had no objection to the proposed development and one submission raised concerns regarding:

- Proposed removal of a tree situated at the rear of the property and impact on infrastructure on eastern adjoining property;
- Ongoing maintenance and retention issues relating to existing limestone boundary wall.

The applicant submitted signed plans and letters of no objection from the western and southern adjoining neighbours.

Further discussion is contained the 'Planning Comment' section of this report.

Heritage

HCWA

The application was referred to the HCWA on 2 June 2010 for comment due to the building being on the HCWA's Register of Heritage Places. The HCWA requested amended plans on 15 June 2010 in order to assess the impact of the proposed development on the streetscape of Suffolk Street. Amended plans were forwarded to the HCWA on 29 June 2010. The City received a response on 2 July 2010 in support of the proposed works.

Heritage Assessment

A heritage assessment was not required to be undertaken in accordance with *LPP 1.6 Preparing Heritage Assessments* as a heritage assessment has previously been undertaken for the property within two years of the proposed development (refer PSC0911-215).

PLANNING COMMENT

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

Building Height

As mentioned previously, the proposed development does not satisfy the maximum external wall height requirement however has a maximum roof pitch of no more than 30 degrees. The proposed second storey of the rear addition does not satisfy the requirements for proposed development within Sub Area 4.3.1 to be limited to a single storey with loft. In accordance with clause 5.8.1 of LPS4, Council may vary this requirement where the site contains or are adjacent to buildings that depict a height greater than that specified in requirements of Schedule 12, subject to being satisfied to sub-parts clause 5.8.1.

The site at 25 Suffolk Street adjoins existing buildings at 34 Arundel Street (Arundel Court apartments) and 32 Arundel Street which depict heights greater than that specified in the requirements of Schedule 12 – Sub Area 4.3.1. Furthermore, on 8 June 2010, the City granted Planning Approval for a three storey Mixed Use Development (Medical Centre, Hospital and four Multiple Dwellings) at 65 South Terrace, South Fremantle (refer PSC1006-98). Two storey dwellings also exist within the immediate locality, including 14 and 16 Arundel Street and residential units at 8 Suffolk Street.

In accordance with clause 5.8.1, Council must therefore be satisfied with the following:

- (a) *the variation would not be detrimental to the amenity of the adjoining properties or the locality generally,*

Amenity is defined under LPS4 as:

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

The proposed development satisfies the 'Acceptable Development' criteria of the R-Codes including overshadowing, except in relation to potential overlooking to the eastern and western adjoining properties from the proposed balcony. Further assessment and discussion is contained below regarding this element which requires a performance based assessment.

Due to the existing dwellings within the locality that depict a height greater than single storey with loft, it is considered that the proposed building height variation of the development will not have a significant detrimental impact on the amenity of the adjoining properties or the locality.

- (b) *degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality,*

The existing buildings to the east and south portray development greater than single storey with loft. The existing buildings to the north and west portray single storey developments. The proposed variation is considered consistent with other development within the locality as the proposed development at the rear of the property abuts development which portrays buildings of greater than single storey.

There is no proposed change to the existing dwelling which portrays a single storey development to the streetscape of Suffolk Street and therefore the proposed development would graduate the scale of buildings between 25 Suffolk Street and 32 and 34 Arundel Street and the existing adjoining single storey dwellings.

- (c) *conservation of the cultural heritage values of buildings on-site and adjoining,*

The western adjoining property 23 Suffolk Street is listed on the City's Heritage List and MHI as a Management Category Level 1A. The HCWA have provided comment to the City and support the proposed development. The southern adjoining property 32 Arundel Street is listed on the City's Heritage List and MHI as a Management Category Level 3. The building materials used are considered in keeping with those used in the surrounding locality. Furthermore, as mentioned previously, as the proposed development is at the rear of site, there is considered to be minimal impact on the existing streetscape of Suffolk Street.

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

The site is located within sub-precinct Area A of the policy area outlined in DGF 29 which states that residential development '...should be predominantly single storey and in accordance with Council policy *DBH 1 Urban Design and Streetscape Guidelines...*'. The provisions of Council policy DGF 29 specifically focus upon the impact of new development on existing streetscapes. The proposed development is located at the rear of site and therefore would have a minimal impact on the existing streetscape Suffolk Street and sub-precinct Area A of the policy.

It is considered that the height requirements of DGF 29 are contrary to the requirements of Schedule 12 – Sub Area 4.3.1 which require development to be single storey with loft. In accordance with clause 2.3.1 of LPS4, the provisions of LPS4 shall prevail insofar where there is a discrepancy between DGF 29 and LPS4.

As the proposed development is to be located at the rear of site it is considered that the development will have a minimal impact on the existing streetscape and is consistent with the requirements of DBH 1.

5.8.4 – Power Conferred by Clause 5.8.1

Power conferred by clause 5.8.1 may only be exercised if the Council is satisfied that:

- (a) *approved of the proposed development would be appropriate having regard to the criteria set out in clause 10.2,*

As stated previously, the following criteria of clause 10.2 of LPS4 are relevant to this application:

- (o) *the preservation of the amenity of the locality,*
- (s) *the way in which buildings relate to the street and adjoining lots, including their effects on landmarks, vistas, the landscape or the*

traditional streetscape, and on the privacy, daylight and sunlight available to private open space and buildings,

- (w) *the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal,*

These matters are addressed in the discussion above relating to clause 5.8.1. It is considered that the relevant sub-sections of clause 10.2 have been addressed.

Visual Privacy

The proposed balcony allows potential overlooking to the eastern and western adjoining properties as it is not setback 7.5m from the respective boundaries. Potential overlooking to the eastern adjoining property would be to an existing car parking facilities and therefore have minimal impact on amenity of the neighbouring property. However, potential overlooking to the western adjoining property would be to existing exclusive outdoor living area and therefore a condition is recommended to be imposed for the provision of appropriate screening to the western elevation of the balcony in order to minimise potential overlooking to the adjoining property, in accordance with DE 6.8.1 of the R-Codes.

Submitter Concerns

Limestone Boundary Wall

A submission was received during the advertising period enquiring as to any changes to the existing limestone wall and removal of a tree as part of this development application.

This application does not propose any changes to the limestone wall which forms part of a previous Planning Approval granted 26 May 2008.

Removal of Tree

The submitter raised concerns regarding the impact of the removal of the tree upon the infrastructure of the eastern adjoining property.

However, this is a civil matter that falls outside the development assessment process.

CONCLUSION

The proposed development has been assessed against the provisions of LPS4, the R-Codes and relevant Council local planning policies. Performance based assessments have been undertaken for the proposed variations to building height and visual privacy. It is considered that the proposed variations will not have a detrimental impact upon the amenity of adjoining neighbours, the existing streetscape or the immediate locality.

Therefore it is recommended that the application be conditionally approved.

OFFICER'S RECOMMENDATION/ COMMITTEE DECISION

MOVED: Cr Andrew Sullivan

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the Rear Detached Two Storey Addition at No. 25 (Lot 1) Suffolk Street, North Fremantle, for the following reasons:

- 1. This approval relates only to the development as indicated on the approved plans, dated 28 June 2010 with only such minor modifications as approved by the Manager Development Services, City of Fremantle. 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 occupation, appropriate screening shall be provided to the western elevation of the balcony in accordance with clause 6.8.1 A1 of the Residential Design Codes, and thereafter maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.**

Advisory Notes:

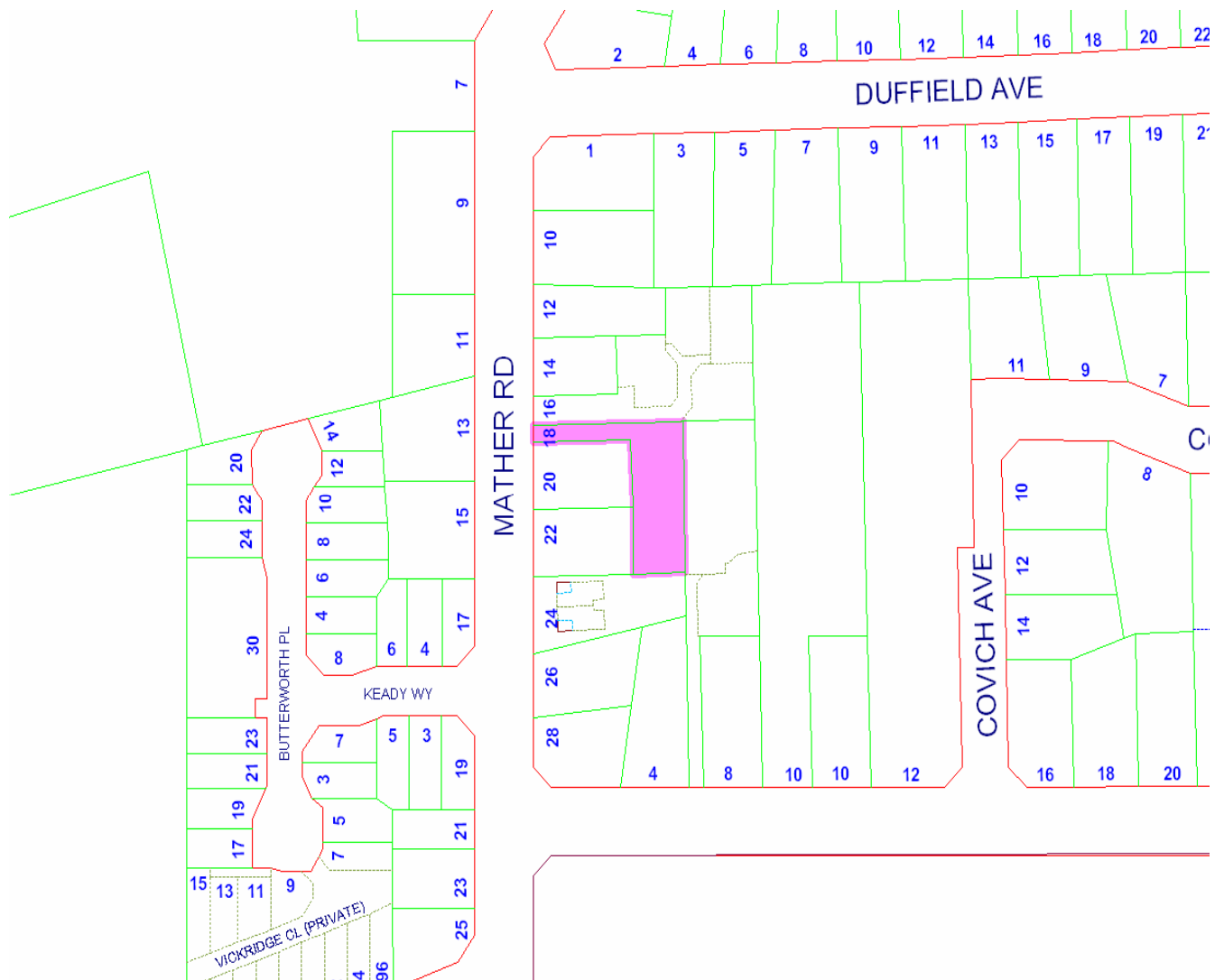
- (i) Council encourages the retention of the existing trees as shown on the approved plan and shall be maintained as part of the development.**

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

PSC1008-155 MATHER ROAD NO. 18 (LOT207) BEACONSFIELD UNAUTHORISED DEVELOPMENT (CHE)

DataWorks Reference: 122/009
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Meeting Date: 18 August 2010
Actioning Officer: Coordinator Development Compliance
Decision Making Level: Planning Services Committee
Attachment: Photos
Previous Item Number/s: Nil
Owner Name: Mark Peter Procter
Scheme: R 20/25
Heritage Listing: Nil
Existing Landuse: Single House



EXECUTIVE SUMMARY

Council's direction is sought in the enforcement of the City of Fremantle's Local Planning Scheme No. 4 (LPS4) and Planning, Building and Environmental Health Compliance Policy (LPP 1.5) in relation to unauthorised outbuildings that were erected at 18 Mather Road, Beaconsfield.

On 3 November 2009 the City served a Direction under Section 214 (3) of the Planning and Development Act 2005 (Act) on the owner to remove two unauthorised Structures (pool house and aviary). On 9 December 2009 the owner appealed against the Direction to the State Administrative Tribunal (SAT). The appeal was accepted by SAT and the Direction was put on hold pending the outcome of the SAT appeal. In the directions hearing SAT requested that the City give the owner the opportunity to make an application for the structures and to supply the necessary documents.

On 9 February 2010 the owner withdrew his application to SAT and the Section 214 (3) Direction was reinstated. The owner did not submit the required application to the City for the unauthorised structures and had to comply with the Direction to completely remove the structures. The timeframe in which the owner had to remove the structures expired and the City commenced legal action against the owner for not complying with the Section 214 (3) Direction.

Further inspections of the property revealed that the owner had partially removed the unauthorised structures. The matter may now fall under Clause 2.3 - Circumstances Where Council May Take No Further Action, as the circumstances have now changed Council may choose to take no further compliance action.

BACKGROUND

On 30 November 2007 the City first wrote to the owner of 18 Mather Road requesting him to submit an application for the unauthorised structures. The City again wrote to the owner on 1 February and 17 March 2008 in an effort to bring the matter into compliance with no response from the owner. The City forwarded the matter to its Solicitors and on 3 November 2009 a Section 214 (3) Direction was served in regard to the aforementioned structures erected on the subject property. The City's records show that there has not been a development approval granted or an application received for the above.

On 9 December 2009 the owner appealed against the Direction to SAT. The appeal was accepted by SAT and the Direction was put on hold pending the outcome of the SAT appeal. In the directions hearing SAT requested the City to give the owner the opportunity to make an application for the structures and to supply him with the necessary documents and information. On 9 February 2010 the owner withdrew his application to SAT pursuant to Section 46 (2) of the State Administrative Act and the Section 214 (3) Direction was reinstated. An inspection revealed that the owner was still in breach of the Direction and the City commenced legal action against the owner for not complying with the Direction.

An inspection of the property on 25 March 2010 revealed that the owner had removed the aviary but that the pool pump house was only partially removed.

The owner was therefore still in breach of the Direction but had made some effort to comply. The matter may now fall under Clause 2.3 of the policy where circumstances have changed and Council may choose to take no further compliance action.

DETAIL

Since the order of withdrawal was made by SAT on 9 February 2010 the owner has removed the unauthorised aviary and half of the pool house. An inspection of the property on 30 June 2010 revealed that the pool house was still in the same state and only partially removed. The owner is therefore still in breach of the Direction that was served on him on 3 November 2009.

STATUTORY AND POLICY ASSESSMENT

In considering the most appropriate manner in which to progress this matter, Council should have regard to the criteria set out in Clause 2.3 of the Policy’;

2.3 Circumstances Where Council May Take No further Compliance Action

Council may, having regard to any legal or technical advice resolve to take no further compliance action in the following circumstances.

2.3.3. Other Circumstances

Where it has been established that a breach of planning or building requirements has occurred and that the breach is neither trivial nor insignificant, Council following the consideration of a report, may determine not to take action where a matter meets all of the following criteria:

- (a) The breach is in relation to a fence, outbuilding, shade structure, external fixture, air conditioner, or minor structure as defined in Schedule 1 of LPS4; and*
- (b) It can be established that the development the subject of the breach has been in existence for a substantial time period; and*
- (c) The development has no apparent impact on the amenity of adjoining properties, the streetscape, or the locality; and*
- (d) The development is, in the opinion of the Principal Building Surveyor, structurally sound.*

COMMENT

It is considered that the matter meets the criteria outlined in clause 2.3.3. This is discussed further below.

- (a) The breach is in relation to a fence, outbuilding, shade structure, external fixture, air conditioner, or minor structure as defined in Schedule 1 of LPS4; and*

A “minor structure’ is defined in the Scheme as:

“means free standing structures not attached to a building including, without limiting the generality of the foregoing, letter boxes, clothes lines, children's play equipment,

basketball and netball hoops, barbeques and free standing satellite dishes, but not including flag poles. “

The structure is considered to meet the above definition.

(b) It can be established that the development the subject of the breach has been in existence for a substantial time period; and

The structure has been in existence prior to April 2006 which is considered to meet the above.

(c) The development has no apparent impact on the amenity of adjoining properties, the streetscape, or the locality; and

The structure has been partially demolished and the remaining structure is below the level of the existing dividing fences and is therefore not visible from the adjoining property. The structure is also not visible from the street or the adjoining southern property.

On this basis it is considered that the structure is unlikely to have an adverse impact on the amenity of the adjoining properties, streetscape or locality therefore satisfying the above provision.

(d) The development is, in the opinion of the Principal Building Surveyor, structurally sound

The City's Principal Building Surveyor has advised that the structure, although partially demolished, is structurally sound.

Based on the above, the structure meets the requirements of clause 2.3.3 of the Compliance policy.

CONCLUSION

Due to the fact that the owner has removed the majority of the offending structures it would not appear to be in the City's best interest to continue with the prosecution against the owner of 18 Mather Road, Beaconsfield. The remaining portion that is still existing on the subject property is considered to meet Clause 2.3 of the policy where circumstances have changed and Council may choose to take no further compliance action.

OFFICER'S RECOMMENDATION/COMMITTEE DECISION

MOVED: Cr A Sullivan

That Council, under the Local Planning Scheme No. 4 with regard to the unauthorised development at No. 18 (Lot 207) Mather Road, Beaconsfield RESOLVE to take no further legal action against the owners of No. 18 (Lot 207) Mather Road, Beaconsfield.

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

PSC1008-156 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 A Sullivan

That the information is noted.

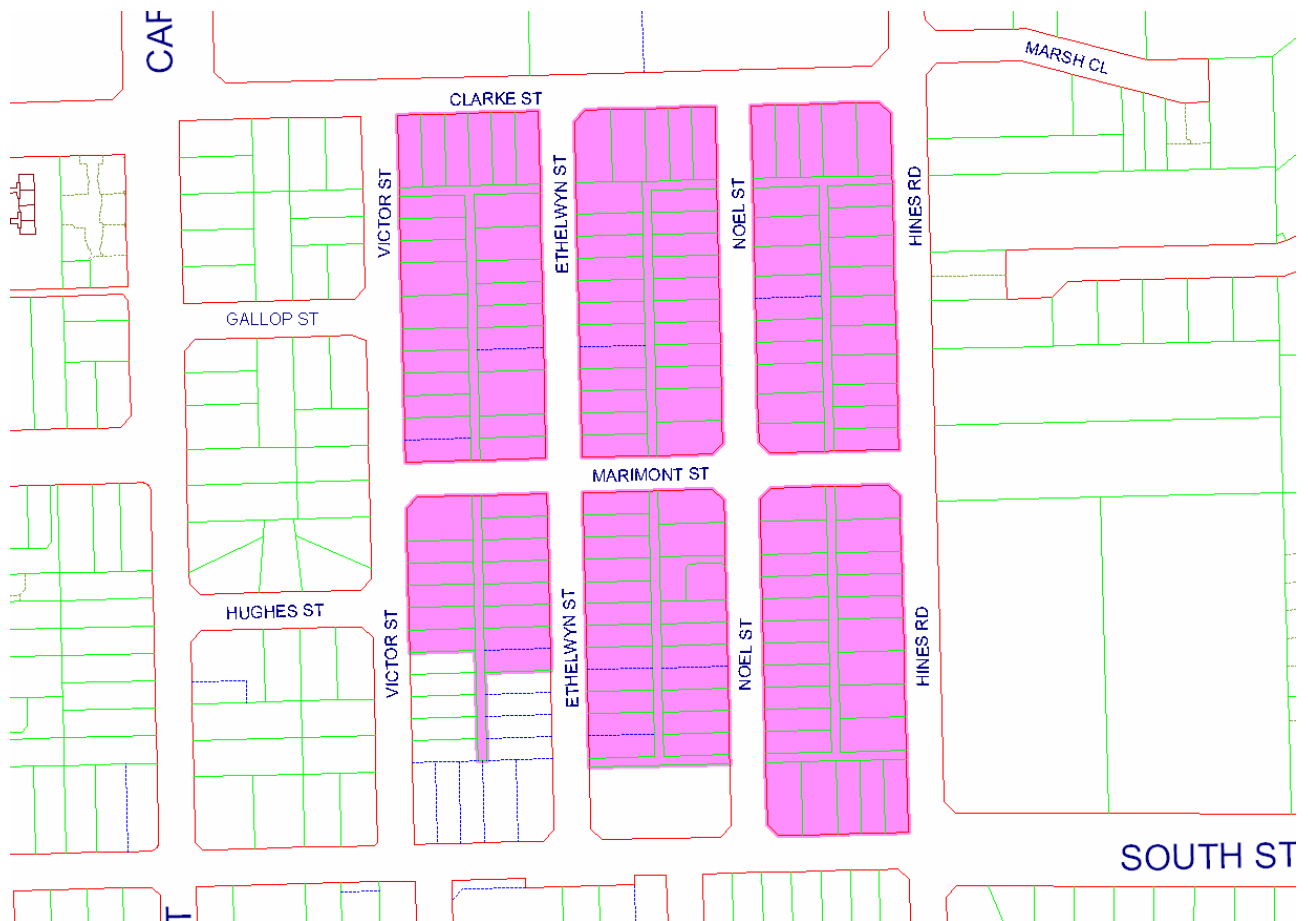
CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

REPORTS BY OFFICERS (COUNCIL DECISION)

PSC1008-157 PROPOSED SCHEME AMENDMENT NO. 33 TO LOCAL PLANNING SCHEME NO. 4 - REZONING OF DEVELOPMENT AREA 11 TO RESIDENTIAL (HILTON VILLAGE STRUCTURE PLAN AREA) - CONSIDERATION OF ALTERNATIVE OPTIONS

DataWorks Reference: 218/016
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Strategic Planning Officer
Decision Making Level: Council
Previous Item Number/s: PSC0708-243, PSC0712-342, PSC0803-64 & PSC0812-341, PSC1001-05, PSC1007-140
Attachments:
 1. Council minutes 28 July 2010 - PSC1007-140
 2. Summary of Submissions



EXECUTIVE SUMMARY

The purpose of this report is to report back to Council on further options for Scheme Amendment No. 33. The application was presented before Council for final adoption on 28 July 2010. However, in light of submissions received Council resolved to defer the item pending *'further information on a possible modification to proposed Scheme Amendment 33 to provide for a higher density coding of properties in the parts of the Scheme Amendment area with frontage onto South Street or adjoining the boundary of the Neighbourhood Centre zone.'*

This report outlines two options for possible modifications to the scheme amendment for Council to consider, plus information on the amendment as previously recommended for adoption. In all cases the previously proposed rezoning of the area bounded by Victor Street, Clarke Street, Hines Road and South Street from Development Area 11 to Residential is still recommended, but each option considers a different density coding. The options are:

- a) R25 density coding (the original scheme amendment proposal);
- b) R30 density coding of all properties in the subject area;
- c) Coding the properties adjoining South Street R30 with the potential to develop at up to R60 and three storeys in height (subject to certain development criteria being met), recoding properties directly abutting the Neighbourhood Centre zone to R40 and recoding the remainder R25 as originally proposed.

Council is recommended to support option c) above. Should Council accept this recommendation, because the modification to the previously advertised scheme amendment would be significant, it is recommended that the modified amendment be readvertised in accordance with the *Town Planning Regulations 1967* and Council's Local Planning Policy *LPP1.3 'Public Notification of Planning Approvals'* prior to being reported back to Council for consideration for final adoption.

BACKGROUND

A previous report recommending final adoption of Scheme Amendment No. 33 was presented to Council 28 July 2010. This report recommended Council to adopt Amendment No. 33 to rezone the area bounded by Victor Street, Clarke Street, Hines Road and South Street from Development Area 11 to Residential with an R25 density coding.

However, based on submissions received Council resolved to further consider possible options to increase density in part of the area. Council's resolution of 28 July 2010 stated:

That the item be deferred to the August 2010 round of Planning Services Committee and Council meetings to allow officers to consider and provide further information on a possible modification to proposed Scheme Amendment 33 to provide for a higher density coding of properties in the parts of the Scheme Amendment area with frontage onto South Street or adjoining the boundary of the Neighbourhood Centre zone.

For more information see Council Minutes 28 July 2010 - PSC1007-140 (refer to attachment 1).

CONSULTATION

Should Council resolve to modify the Scheme amendment, depending upon the extent of the modification the amendment may be required to be undergo further advertising in accordance with the requirements of the *Planning and Development Act 2005 and the Town Planning Regulations 1967*. The amendment, however, would not be required to be sent to the Environmental Protection Authority again for environmental assessment.

Consultation on Scheme Amendment No. 33 was extensively outlined in the previous report. To recap, 9 submissions were received. 2 submissions stated no objection and 1 no comment, 3 of the utility companies provided comments to consider in relation to future development and 3 land owners objected to the scheme amendment. The main issues discussed were laneways (Right of Ways) and the proposed density (refer to Attachment 2 for further information).

These 9 submissions received will be considered in any further consideration of the Scheme amendment.

PLANNING COMMENT

Hilton Village Structure Plan

Previous items to Council have explained in detail the practical difficulties in implementing the form of development envisaged in the 2005 Hilton Village Structure Plan, which proposed that properties in the area the subject of the current Scheme Amendment should have a split density of R30/R60. The primary difficulty was reliance on upgrading and widening of laneways in private ownership density to provide vehicular access and enable development at the higher density. For various reasons the majority of these laneways were considered not capable of being constructed without further major work which had little community support. Accordingly Scheme Amendment No. 33 was initiated to rezone the area to Residential with an appropriate density coding.

As noted in submissions received during the advertising period, this scheme amendment presents an opportunity in Fremantle to increase residential density around an activity centre and increasing the density would be generally consistent with current and emerging State planning policy including Directions 2031 and Activity Centres for Perth and Peel. Council's resolution specified looking at an option to increase the density around South Street and the Neighbourhood Centre zoned area. There was also discussion on upcoding the area to R30. Accordingly these two options plus the 'status quo' option of the amendment as advertised are presented to Council for further consideration.

A) Scheme Amendment No. 33 as advertised – Rezone area to Residential R25

The Scheme amendment as advertised after initiation proposes to place an R25 density coding over the area. The proposed R25 density coding is similar, if not slightly higher, to the existing pattern of development 'on the ground'. There are 142 Lots in this Development Area and lot sizes vary, with a significant number of lots being around 442 sq m which is slightly above the minimum site area per dwelling for development at R20 (440 sq m minimum site area) as specified in the Residential Design Codes. The area also includes some larger lots, particularly on street corners and along Hines Road, of around 580 sq m to 860 sq m. Accordingly allowing for the R25 density coding would reflect what is on site while still potentially allowing for some larger lots (8 Lots in total) to

be subdivided and/or developed with a second dwelling in an acceptable manner, including provision of satisfactory access from a public road.

B) Rezone area to Residential R30

At an R30 density coding 28 (20%) of the 142 Lots in the area would be able to subdivide (based on their size) with satisfactory access from a public road. This option would slightly increase the number of dwellings in the area by comparison to a R25 density coding (see Table 1 below).

Table 1. Subdivision potential at varying densities in Development Area 11 (based purely on Lot size not accounting for structures on site, access or any other factor which would make subdivision less possible)

Density	Average Lot Size	Number of lots which could potentially subdivide	Percentage subdividable Lots
R20	500	0	0%
R25	350	8	6%
R30	300	28	20%
R35	260	50	35%
R40	220	135	95%
R60	180	142	100%

C) Recode the properties fronting South Street to a 'base' coding of R30 with the potential for redevelopment at a density of R60 (subject to certain provisions being met), provide a R40 coded two lot wide 'buffer' behind these South Street properties and adjacent to the Neighbourhood Centre zone and recode the remainder of the area to R25

South Street fronting properties

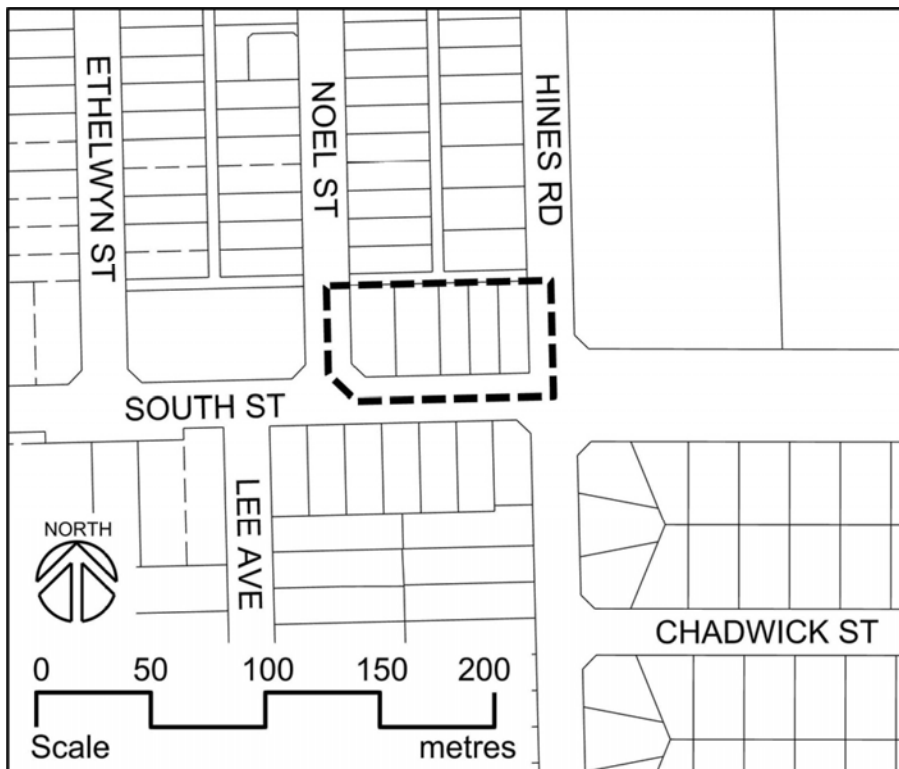
In regard to the five residential lots in Development Area 11 fronting South Street, these lots were included in the R30/R60 coding proposed under the Hilton Village Structure Plan but were not part of the R100 density coding proposed for other parts of South Street in association with mixed use redevelopment on currently commercial sites. There is however more scope for these South Street fronting properties to be considered for a higher height limit and density coding than the rest of the current scheme amendment area as they adjoin properties in the Neighbourhood Centre zone which directly front South Street and under existing Scheme provisions can already potentially develop at R100 and four storeys in height (subject to certain development criteria being met).

Therefore this option proposes zoning these properties Residential with a base density of R30 with the opportunity to increase this density up to R60 with a height limit of 10.5 metres (3 storey) subject to certain development provisions being met. This would be consistent with the redevelopment opportunities for these properties proposed in the original Hilton Village Structure Plan. At the R60 density coding an area of 1500 sq m (the equivalent of any 2 of these 5 lots combined) could potentially yield 8 dwellings as apposed to 5 dwellings at R30.

The suggested requirements to meet for the higher density coding are:

- No vehicle access from South Street. The reasoning for this is to partly avoid any uncertainty with the Department of Transport's (see the Department's previous submission – Attachment 2) proposed future road widening requirements including access into any new developments from South Street. It is also considered reasonable to expect more intensive redevelopment (irrespective of whether or not South Street is ever widened in the future) to be required to be served by rear vehicular access off side streets and/or the laneway running directly to the rear of these lots rather than obtaining direct access from South Street. Unlike other laneways in the area, this laneway is relatively short in length and as part of a comprehensive redevelopment of these lots it would be reasonable to require some land to be given up to achieve any required widening of the laneway to achieve suitable vehicular access and egress.
- Coordinated development (development that is planned for sites of at least 1500m² in area, meaning two or more lots need to be redeveloped together). Two of the properties in this area are large enough to subdivide at R30 (or even the previously proposed R25) however the other smaller lots would not be able to develop at the lower density. Including the requirement for coordinated development means these properties cannot individually develop at the higher density and any development at the higher coding is planned and considered in the context of surrounding properties. This provides for an overall better quality design and planning outcome instead of piecemeal development.
- Development is to front South Street and pedestrian access is to be taken from South Street. This gives development an appealing frontage to South Street and provides interaction and access from a primary public road.

Proposed Scheme Amendment Modification:



Location where specific controls may apply	Criteria to be met in order for specific controls to apply	Specific development controls
<p>Properties fronting South Street</p> <p>324 (Lot 1), 326 (Lot 2), 328 (Lot 178), 330 (Lot 179) and 332 (Lot 180) South Street</p>	<p>Where:</p> <p>1) No vehicle access is obtained directly from South Street, and</p> <p>2) vehicle parking is provided below ground level or at the rear of buildings and</p> <p>3) development is coordinated with development on adjoining lots by means of a minimum development site area of at least 1500m² and</p> <p>4) development is to front South Street and</p> <p>5) pedestrian access is to be provided from South Street.</p>	<p>Maximum building height of three storeys (maximum external wall height of 10.5 metres as measured from ground level with a maximum roof plane pitch of 33 degrees).</p> <p>Residential density may be increased up to R60.</p>
	<p><i>Note: Where the above criteria are not met, the general height requirements in 7.1 above apply.</i></p>	

Residential ‘Buffer’ properties and the remainder of the area

There is also scope for a ‘buffer’ area between the existing single dwelling residential development in the area and the potentially higher density development of the Neighbourhood Centre zone and the South Street properties referred to above, to show a gradual decrease in density and height from high density development fronting South Street down to existing single dwelling development. This approach is consistent with Council’s previous approach for scheme amendment No. 13 (gazetted 17 November 2009) whereby there are higher density (R40 and R60) residential ‘buffer’ lots between the Neighbourhood Centre zone and the Residential R20/25 areas to the north and south.

Therefore it is suggested that two lots (or one in the case of Hines Road) behind these South Street properties and the Neighbourhood Centre zone are rezoned from Development zone (DA11) to Residential R40. The remainder of the area under this option is recommended to be rezoned to Residential with a density coding of R25, as previously proposed, to reflect the existing density in the area (see reasoning in Option A above).

It is pertinent to note that none of the owners of the lots discussed above have made submissions advocating such density increases. Therefore, consultation with these landowners through a further advertising period will be necessary if this option is supported by Council and the content of amendment no. 33 is modified accordingly. Following re-advertising any further submissions will again be considered and presented to Council with a recommendation for final adoption of the amendment.

CONCLUSION

In response to Council's resolution of 28 July 2010 to defer the item for further consideration of potential density increases, the options for modifying Scheme Amendment No. 33 outlined above have been considered by officers. The modification recommended to Council is Option C as described above. This option is considered to avoid the flaws of the structure plan by applying the most appropriate zoning to the development area and not requiring a developer contributions scheme nor laneway reconstruction. The proposed density codings will provide some opportunity for infill development while reflecting the area's established pattern of development and working within the limitations of the area's existing infrastructure.

Council is recommended to note the submissions previously received and to support the Scheme amendment with the recommended modification for re-advertising.

OFFICER'S RECOMMENDATION

That Council:

1. Note the submissions received as detailed in the previous officer's report Council minutes 28 July 2010 - PSC1007-140;
2. Pursuant to Section 75 of the *Planning and Development Act 2005*, resolve to amend Local Planning Scheme No. 4 by:
 - i) Amending the Scheme Map for properties 324 (Lot 1), 326 (Lot 2), 328 (Lot 178), 330 (Lot 179) and 332 (Lot 180) South Street from a zoning of Development Area (DA11) to a zoning of Residential R30.
 - ii) Addition of the following new sub-clause under Clause 12.12 Schedule 12 – Local Planning Areas (Height Requirements) Local Planning Area 7 – Hilton, following 7.2:

<p>SPECIFIC DEVELOPMENT CONTROLS FOR SUB AREA Sub area 7.3.2</p>		
<p>Location where specific controls may apply</p>	<p>Criteria to be met in order for specific controls to apply</p>	<p>Specific development controls</p>
<p>Properties fronting South Street 324 (Lot 1), 326 (Lot 2), 328 (Lot 178), 330 (Lot 179) and 332 (Lot 180) South Street</p>	<p>Where: 1) No vehicle access is obtained directly from South Street, and 2) vehicle parking is provided below ground level or at the rear of buildings; and 3) development is coordinated with development on adjoining lots by means of a minimum development site area of at least 1500m²; and 4) development is to front South Street; and 5) pedestrian access is to be provided from South Street.</p>	<p>Maximum building height of three storeys (maximum external wall height of 10.5 metres as measured from ground level with a maximum roof plane pitch of 33 degrees). Residential density may be increased up to R60.</p>
<p><i>Note: Where the above criteria are not met, the general height requirements in 7.1 above apply.</i></p>		

- iii) Amending the Scheme Map for properties 44 (Lot 116), 46 (Lot 117), 45 (Lot 125), 47 (Lot 124) Noel Street, 43 (Lot 1) Hines Road from a zoning of Development Area (DA11) to a zoning of Residential R40.
- iv) Amending the Scheme Map for all properties, excluding those referred to above, in the remainder of the Development Area 11 from a zoning of Development Area (DA11) to a zoning of Residential R25

3. That the Mayor and Chief Executive officer be authorised to execute the relevant Scheme Amendment documentation.
4. That the Local Planning Scheme Amendment, with modifications, be submitted to the Western Australian Planning Commission for information.

That the amendment, with modifications, be readvertised for a period of not less than 42 days in accordance with requirements of the Town Planning Regulations 1967 and Council's Local Planning Policy LPP1.3 'Public Notification of Planning Approvals'.

Cr A Sullivan MOVED to defer the item to the second PSC meeting in September.

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

PSC1008-158 OLD PORT PROJECT – ADOPTION OF THE REVISED CONCEPT PLAN 2010

DataWorks Reference:	214/003
Disclosure of Interest:	None
Meeting Date:	18 August 2010
Previous Item:	n/a
Responsible Officer:	Director Planning and Development Services
Actioning Officer:	City Heritage Architect
Decision Making Authority:	Council
Agenda Attachments:	Attachment 1 – Old Port Project - Currently Adopted Concept Plan drawings -2004 Attachment 2 – Old Port Project – the revised concept plan 2010

EXECUTIVE SUMMARY

The currently adopted Old Port Conservation Plan was prepared in 2004. Since that time the City has commissioned preparation of the Old Port Archaeological Conservation Plan and Local Identity and Design Code and both studies contain useful information and recommendations, which should be reflected in the project's final design and implementation.

In addition the planned sailing races Perth 2011 involve Bathers Beach as the starting point for some of the races. This will firstly have implication on the temporary use of the area, and secondly, will become intense focus of all sorts of global media exposure. Therefore the project's plans should include provisions for the planned temporary uses without compromising the ultimate outcomes and ensuring that the planned races will leave lasting positive legacy to the area and Fremantle.

The revised plan has been amended to include recommendation of the archaeological plan, Local Identity Code and Perth 2011's requirements and as such represents an update and improvement of the 2004 plan. The revised Old Port, Arthur Head Conservation/Upgrading Plan 2010 is in order to be adopted.

BACKGROUND

The plan to conserve and upgrade the Old Port area was first adopted by the City of Fremantle in November 1993 as part of the Arthur Head Reserve Strategy Plan D.G.F5. The Old Port has also been designated as one of the 12 markers of Heritage Maritime Trail stretching from the Esplanade and Fishing Boat Harbour to Victoria Quay.

The project was subsequently adopted in the Council's 10 year capital conservation projects strategy and adopted by Council in 2002 as part of the City of Fremantle's 10 year Budget Strategy. In accordance with the strategy, funds were allocated in the 2003/04 budget to prepare the conceptual and design development plans for the project.

The City appointed Donaldson + Warn Architects and Urban Designers as consultants to prepare the design plan for the area.

The draft plan was duly consulted, amended in accordance with the comments received and the Council at its 9 August 2004 meeting (item SP0407-56 refers) adopted the finalised Old Port, Arthur Head Conservation/Upgrading Plan 2004.

The 2004 plans and estimates were used by the City to seek external funding for the project. In June 2010 Lotterywest has allocated to the City grant of \$851,580 for the implementation of the land component of project. Thus at this stage the funding excludes the planned reconstruction of the long jetty and underwater heritage trail over the seabed of Bathers Bay. The latter is undergoing the revision of the Arthur Head A Class Reserve's boundaries, which the City has been pursuing and gradually implementing in liaison with the State Department of Planning and Infrastructure over the last three years.

COMMENT

Arthur Head A Class Reserve is a significant heritage place, the landing site for the Swan River Colony. It is listed on the Municipal Heritage Inventory for Fremantle, Heritage List under the Local Planning Scheme no. 4, and the State Heritage Register. In 1987 the place had undergone major transformation when the City removed 150,000 cubic meters of landfill and reconstructed the 1880s shoreline and Bathers Beach as part of the Bicentennial Project, the only reconstructed beach in Australia then and since.

Since the adoption of Arthur Head Strategy the City has been incrementally implementing its recommendations involving conservation, heritage interpretation and upgrading of the area as both, heritage place and public reserve through the rigorous adherence to the Burra Charter process. The process includes preceding each act of construction by archaeological studies, archival and site investigation and development of heritage interpretation plans, all largely funded by the external funding sources, before the design plans are drawn for the actual works. To date Council was able to implement this way the adaptation of J-shed and Fort Arthur, construct public toilets, reconstruct the original wall and path around the former pilots' cottages and the Round House, structurally stabilize the Whalers Tunnel and the cliffs, restore (the backlog of maintenance) the Round House and former bakery and partially complete interpretative reconstruction of the Whaling Station.

Since adaptation of the 2004 plan for conservation and upgrade of the Old Port, the City has also commissioned and completed the Old Port Archaeological Conservation Plan and Local Identity and Design Code for Central Fremantle. These studies provided additional historical and architectural information necessitating the revision of the 2004 plan in order to incorporate the information and take account of the recommendations.

As the result the 2004 plans have been amended to reflect the extension of the West End's sub divisional grid into the Old Port area and the heritage interpretation scheme has been amended to reflect the finding of archaeological plan.

As the result the revised Old Port Project will include the following major conservation works:

- Restoration of the former Kerosene Store and the old sea wall;
- Visual and physical extension and improved pedestrian access from Marine Terrace into the Old Port area and reconstruction of the former operational site of the old port;
- Interpretative reconstruction of the former boat shed and morgue

- Subject to successful finalization of negotiations with the West Australian Museum (Shipwreck Gallery), demolition of the 1970s workshops in order to visually open up the Old Port on approach to Bathers Beach from Marine Terrace and re-establish visual and physical connection between the former Commissariat and Bond Store and the Old Port;
- Restoration of Joan Campbell's interpretative sculpture of the Long Jetty;
- Remedial works and extension of the dunes and coastal vegetation into the Old Port;
- Implementation of the heritage interpretation scheme.

The proposed improvements to public amenity will include:

- Boardwalks along and over the seawall, steps and disable access to Bathers Beach south;
- Rationalization and upgrading of the outdoor eating area along the former Fishermen Coop building;
- Beach showers and drinking fountains;
- Improved landscaping (turf), replanting of pine trees to improve visual extension of Marine Terrace and provide shade within and over the grassed areas;
- Improved low impact lighting, signage, shade structure, forecourt to Kidogo Art Gallery, pathways and access to Bathers Beach north.

It is considered that the revised plan represents an improvement of all aspects and planned facilities of the 2004 plan and will result in the better outcomes in conservation and recreational terms.

In addition the revision has allowed the City to take into consideration the planned sailing races Perth 2011 and reflect it appropriately in the project's program. It will therefore be possible to plan its part completion prior to the sailing races Perth 2011 and finalization after the races, in order to improve the use and appeal of the area to the spectators and, through the media, to the world during the races, while minimizing the potential damage to the planned works. The officers have already established a cooperative liaison process between the City and organizers of Perth 2011 making it possible for the revised plan to include provisions for the planned temporary requirements and structures needed during the races and coordinate its planned implementation with the organizers of the races.

RISK AND OTHER IMPLICATIONS

Financial

The estimated cost of the land works of the Old Port Project is \$1.2m. The Lotterywest has allocated \$851,580 to the project. The City is currently exploring the potential financial contribution of Perth 2011's event to the project. The shortfall of funds will need to be allocated in the 2010/11 municipal budget.

Legal

Nil

Operational

The upgraded area will require revision of the current maintenance regime and budget.

Organisational

The project is consistent with the Council's relevant policies and procedures.

CONCLUSION

The revised concept plan has improved most aspects and planned facilities of the adopted 2004 plan and will result in the better ultimate outcomes. In particular it has taken into account recommendation of the Old Port Conservation Archaeological Plan and the Local Identity and Design Code prepared by the City since 2004.

The revision has allowed the City to take into consideration the planned sailing races Perth 2011 and reflect it appropriately in the project's program. It will therefore be possible to plan its part completion prior to the sailing races Perth 2011 and finalization after the races, in order to improve the use and appeal of the area to the spectators and, through the media, to the world during the races, while minimizing the potential damage to the planned works. The officers have already established a cooperative liaison process between the City and organizers of Perth 2011 making it possible for the revised plan to include provisions for the planned temporary requirements and structures needed during the races and coordinate its planned implementation with the organizers of the races.

STRATEGIC AND POLICY IMPLICATIONS

Once adopted, the revised plan will become a sequential step in implementation of the 1993 adopted Arthur Head Strategy Plan.

PRECINCTS AND OTHER COMMITTEES RECOMMENDATIONS PLUS OTHER CONSULTATION

The project has been widely consulted prior to its 2004 adoption.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required

COMMITTEE/OFFICER'S RECOMMENDATION

MOVED: Cr A Sullivan

That Council:

- 1. adopt the revised Old Port, Arthur Head Reserve - Concept Plan 2010 for implementation;**
- 2. agree that implementation of the proposed conservation/upgrading works be coordinated with the planned organisation of Perth 2011 event.**

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

PSC1008-159 TRANSIT CORRIDOR CONSULTATION

DataWorks Reference:	165/018
Disclosure of Interest:	Nil
Previous Item:	Nil
Responsible Officer:	Director Planning and Development
Actioning Officer:	Sustainability Officer
Decision Making Authority:	Council
Agenda Attachments:	Transit corridor public consultation paper

EXECUTIVE SUMMARY

The City has commissioned a study reviewing the potential alignments for a transit corridor connecting the Fremantle train station to the City's southern border. This study investigated two broad options - the freight rail reserve and a street based option along South Terrace and Hampton Road. Of these two options, at this stage City officers prefer the freight rail reserve option since it minimises impact on streetscape and also provides a stronger impetus for a more sophisticated transit system than a high frequency bus. The next stage of this project is to gauge public opinion on these two options before the Council can decide on preferred alignment to support through its strategic planning processes and in further discussions with State Government agencies and other key stakeholders including the City of Cockburn.

BACKGROUND

The 2009/10 budget allocated \$50,000 for the investigation of potential transit alignments from the Fremantle train station to the City's southern border. The intent of this was to identify technically feasible routes, allowing the Council to then select a preferred alignment. It is unrealistic to think that the City would ever be able to independently fund and construct a transit system so the objective of this study is to have a transit alignment identified and protected for a future transit use. This will then provide a strong position from which to advocate for a transit system connecting Fremantle to the growth regions to the south of the City.

Sinclair Knight Merz (SKM), a firm of transport engineering consultants with expertise in light rail and similar transit systems, was engaged to complete the technical study and has investigated 2 broad options. The first option is a coastal route that uses the existing freight rail reserve. The second option follows South Terrace (including the 'cappuccino strip'), then connects to Hampton Road to complete its southward route to Cockburn Road on the boundary with the City of Cockburn. Several variations of each route were analysed to give a broad understanding of which routes are technically feasible. All but one of the investigated options is technically feasible, but they all require significant compromises to be made in relation to matters including optimum technical design standards, streetscape quality, on-street parking facilities and dedicated road space for different transport modes. This makes selecting a single clearly preferred route difficult.

The full study is too large to include in the meeting agenda, but a copy has been placed in the elected members' lounge.

Electronic or hard copies are also available from the City's officers and will be made available as part of the recommended consultation.

Any public transit system that is constructed will most likely be owned and operated by the Public Transport Authority (PTA). Accordingly the PTA was consulted on the two options as part of the technical study. The PTA has stated a preference for the street based route on the grounds that it wishes to keep freight and passenger rail separate and also considers that this route would better service Fremantle residents and businesses.

SKM has recommended that the preferred route is one variant of the street based route, connecting South Terrace to Hampton Road via Duoro Road. This recommendation was based on the PTA's aversion to use of the rail reserve as well as the level of road vehicle congestion along Hampton Road north of Duoro Road, which is projected to get worse with future planned regional growth including Cockburn Coast.

However the City's officers consider that the design case that the PTA has stated for the freight rail reserve alignment is overly conservative and that it would be simpler to achieve than originally thought. Supplementary technical work by SKM since completion of the main study suggests that the reserve could be reduced by up to 40% if the maintenance track was removed for short sections. Officers prefer the freight rail reserve route alignment, since it would minimise impacts on the City's streetscape (e.g. loss of verges, street trees, quality of pedestrian facilities and on-street parking) and provide a stronger impetus to construct a transit system more effective than a bus service.

COMMENT

The next stage in identifying a preferred corridor is community consultation.

In June 2010, the City released a community engagement framework. A transit system would have a high impact across large parts of the city and despite the large scale of the potential works, the outcomes are relatively easy to understand. For this type of project the community engagement framework suggests that the appropriate level of engagement is to "consult".

Two elements of consultation are recommended. The first would be advertising the corridor options for open public comment by anyone. The second recommended element is a random sample survey of ratepayers within walking distance of the investigated corridor options. Selection of a random sample should allow for conclusions to be drawn that are more representative of the community.

The attached brief (which is yet to be graphic designed) explains the work that has been done to date, the corridor alignment options and invites comment on the relevant issues. This will form the basis of both consultation elements.

CONCLUSION

This project is explicitly included in the City's 2010-2015 Strategic Plan. One of the seven Strategic Imperatives of the Plan is to "lead in the provision of environmentally and economically sustainable transport solutions".

The Strategic Plan also contains a project to “complete the planning for public transit corridors linking Fremantle train station to the expanding urban areas to the south and east of Fremantle”.

The City has taken the first step in identifying a transit corridor to connect the Fremantle train station to the City’s southern border. Two broad options have been identified as technically feasible, but both options would require compromises to be made in relation to other desired objectives or outcomes in terms of transport facilities and/or urban design. The City’s officers consider that the rail reserve option is preferable as it minimises the impact on the city’s streetscape and also provides a stronger impetus to develop high efficiency public transit in a form other than a bus route.

In order to make a final decision about which alignment the Council should adopt as a preferred option, community consultation as outlined above is recommended based around the attached discussion paper.

COMMITTEE/OFFICER'S RECOMMENDATION

MOVED: Cr A Sullivan

That Council:

1. Receive and note the City of Fremantle Transit Corridor Study by SKM dated 1 June 2010; and
2. Authorise public consultation regarding potential transit alignments from Fremantle train station to the City’s southern border. The consultation will include a random sample survey of potentially affected ratepayers and also general public advertising.
3. The consultation will include details of both corridor options examined in the SKM Study and indicate that at this stage the City’s preferred option is a corridor generally aligned along the freight rail reserve.

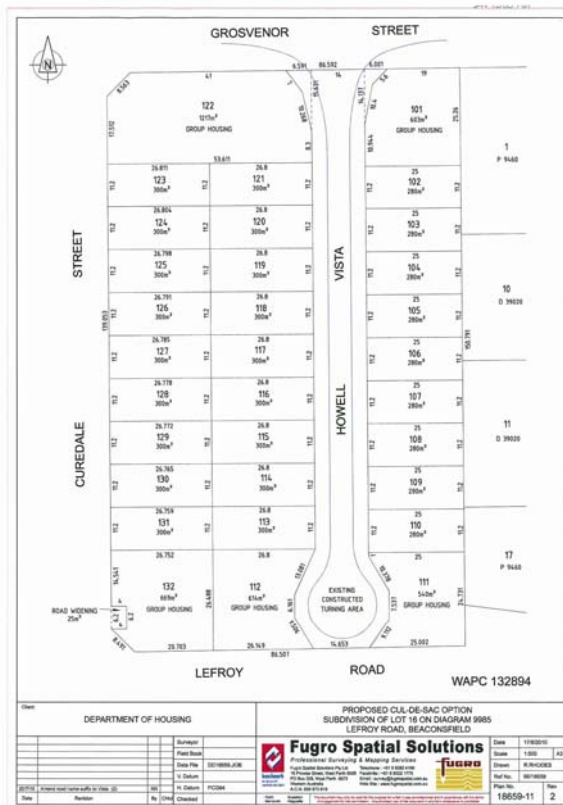
CARRIED: 5/1

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Tim Grey-Smith	Cr Josh Wilson

**PSC1008-160 PROPOSED ROAD NAME AMENDMENT - NO. 38 (LOT 16)
CUREDALE STREET, BEACONSFIELD (KSW)**

DataWorks Reference: 164/001
Disclosure of Interest: Nil
Meeting Date: 25 August 2010
Responsible Officer: Manager Development Services
Actioning Officer: Land Administrator
Decision Making Level: Council
Previous Item Number/s: PSC0909-171
Attachments: Nil

No. 38 (Lot 16) Curedale Street Beaconsfield



EXECUTIVE SUMMARY

Council is requested to consider a road naming amendment in relation to the extension of Davies Street, Beaconsfield formerly approved by Council on 23 September 2009 (PSC0909-171). Fugro Spatial Solutions Pty Ltd (FSS) acting on behalf of the Department of Housing (the Applicant) has requested that a new road name be selected as a result of proposed changes to the road design (Dataworks reference No. 1365701).

The proposed design changes include a cul-de-sac located at the southern portion of the new public road replacing the original through road design to Lefroy Road. The road design changes will be considered in a separate report to Council.

In the interim a new road name is required which complies with the Geographic Names Committee Guidelines (GNC) for a cul-de-sac or a through road design. FSS have submitted the name "Howell" from the City of Fremantle's Reserved Road Name Register with the suffix of "Vista" to suite both road designs. The applicant has requested that the road name be clarified in order to facilitate subdivision clearance. The proposed road name has received conditional approval from the GNC.

Therefore, Council is asked to consider the name "Howell Vista" as the new public road name contained within the subdivision at No. 38 Curedale Street, Beaconsfield.

BACKGROUND

On 23 September 2009 PSC0909-171 - Council resolved to:

" Advise the Geographic Names Committee that it supports the proposed extension southward of Davies Street Beaconsfield to include the unnamed public road within the subdivision at lot 16 (No. 38) Curedale Street Beaconsfield and intersecting with Lefroy Road Beaconsfield to the south."

The GNC approved the extension of Davies Street on 13th October 2009.

COMMENTS

On the 18th June 2010 GNC officers noticed an aerial map of the subdivision which appeared to show the extension of Davies Street ending in a cul-de-sac instead of a through road. The GNC advised the City that should the road end in a cul-de-sac the suffix of Street is not compliant with the GNC Guidelines and a new road name is required. The City's Technical Services Department approved a temporary cul-de-sac to be constructed whilst underground services were re-located. FSS have since submitted a variation to the original through road design which is currently under assessment by Statutory Planning Services. The details surrounding the variation in road design will be provided to Council in a separate report for consideration.

In the interim, the applicant requires the public road to be named in order for clearances to be granted to stage 1 and 2 being the northern portions of the subdivision. Stage 3 being the southern portion includes the proposed variation in road design.

The GNC has provided conditional approval for the use of "Vista" as an acceptable suffix for both a through road and a cul-de-sac.

CONCLUSION

In order to facilitate subdivision clearances for stages 1 and 2 (being No. 38 Curedale Street, Beaconsfield) a new road name is required - "Howell Vista" would meet the requirements of the Geographic Names Committee for a through road or cul-de-sac road design.

Therefore, Council is asked to consider "Howell Vista" as the new road name within the subdivision at 38 Curedale Street, Beaconsfield.

COMMITTEE/OFFICER'S RECOMMENDATION

MOVED: Cr A Sullivan

That Council;

ADVISE the Geographic Names Committee that it has selected "Howell Vista" as the new name to be applied to the public roadway (formerly approved as an extension of Davies Street) located within the subdivision at Lot 16 (No. 38) Curedale Street Beaconsfield.

CARRIED: 6/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr John Dowson Cr Bill Massie Cr Josh Wilson Cr Tim Grey-Smith	

CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

THE PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 9:22PM.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

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

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

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

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

How consultative processes work at the City of Fremantle	
Decisions made for the overall good of Fremantle	8. The Local Government Act requires decision-makers to make decisions in the interests of “the good Government of the district”. This means that decision-makers must exercise their judgment about the best interests of Fremantle as a whole as well as about the interests of the immediately affected neighbourhood. This responsibility from time to time puts decision-makers at odds with the expressed views of citizens from the local neighbourhood who may understandably take a narrower view of considerations at hand.
Diversity of view on most issues	9. The City is wary of claiming to speak for the ‘community’ and wary of those who claim to do so. The City recognises how difficult it is to understand what such a diverse community with such a variety of stakeholders thinks about an issue. The City recognises that, on most significant issues, diverse views exist that need to be respected and taken into account by the decision-makers.
City officers must be impartial	10. City officers are charged with the responsibility of being objective, non-political and unbiased. It is the responsibility of the management of the City to ensure that this is the case. It is also recognised that City Officers can find themselves unfairly accused of bias or incompetence by protagonists on certain issues and in these cases it is the responsibility of the City’s management to defend those City officers.
City officers must follow procedures	11. The City’s consultative processes must be clear, transparent, efficient and timely. City officers must ensure that policies and procedures are fully complied with so that citizens are not deprived of their rights to be heard.
Consultation processes have cut-off dates that will be adhered to.	12. As City officers have the responsibility to provide objective, professional advice to decision-makers, they are entitled to an appropriate period of time and resource base to undertake the analysis required and to prepare reports. As a consequence, consultative processes need to have defined and rigorously observed cut-off dates, after which date officers will not include ‘late’ input in their analysis. In such circumstances, the existence of ‘late’ input will be made known to decision-makers. In most cases where citizen input is involved, the Council is the decision-maker and this affords citizens the opportunity to make input after the cut-off date via personal representations to individual Elected Members and via presentations to Committee and Council Meetings.
Citizens need to check for any changes to decision making arrangements made	13. The City will take initial responsibility, via ‘Consultation Process notifications’, for making citizens aware of expected time-frames and decision making processes, including dates of Standing Committee and Council Meetings if relevant. However, as these details can change, it is the citizens responsibility to check for any changes by visiting www.freofocus.com/projects/html/default.cfm , checking the Port City Column in the Fremantle Herald or inquiring at the Service and Information Desk by phone or in-person.

How consultative processes work at the City of Fremantle	
<p>Citizens are entitled to know how their input has been assessed</p>	<p>14. In reporting to decision-makers, City officers will in all cases produce a Schedule of Input received that summarises comment and recommends whether it should be taken on board, with reasons.</p>
<p>Reasons for decisions must be transparent</p>	<p>15. Decision-makers must provide the reasons for their decisions.</p>
<p>Decisions posted on www.freofocus.com/projects/html/default.cfm</p>	<p>16. Decisions of the City need to be transparent and easily accessed. For reasons of cost, citizens making input on an issue will not be individually notified of the outcome, but can access the decision at www.freofocus.com/projects/html/default.cfm or at the City Library or Service and Information counter.</p>

ISSUES THAT COUNCIL MAY TREAT AS CONFIDENTIAL

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

1. Subject to subsection (2), the following are to be open to members of the public -
 - a) all council meetings; and
 - b) all meetings of any committee to which a local government power or duty has been delegated.

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

3. A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

