



MINUTES

Planning Services Committee

Wednesday, 1 September 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 1 September 2010 at 6.00 pm.

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open at 6.09 pm.

NYOONGAR ACKNOWLEDGEMENT STATEMENT

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

IN ATTENDANCE

Cr Andrew Sullivan	South Ward
Cr Robert Fittock	North 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 Steve Sullivan	Coordinator Planning Mediation
Mr Ian Townson	Principal Building Surveyor
Tina Hume	Minute Secretary

There were approximately 63 members of the public and 1 member/s of the press in attendance.

APOLOGIES

Cr John Dowson	East Ward
Cr Tim Grey-Smith	City Ward

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 against item PSC1009-161:

**Aaron Lohman
Ian Hocking
Peter Airey**

The following member/s of the public spoke against item PSC1009-162:

Maria Marrollo

The following member/s of the public spoke in favour of item PSC1009-163:

Helen Greysmith

The following member/s of the public spoke against item PSC1009-163:

**James Barrie
Gavin Munroe
Kim Ward
Steven Chinna
Lee O'Brien
Suzie Gibbs
Lindsay O'Brien
Alan Nuttall
Tony Calaesina
Brad Pantall
Frey Skipworth**

The following member/s of the public spoke in favour of item PSC1009-165:

Jenny Officer

The following member/s of the public spoke against item PSC1009-165:

Andrew Noad

The following member/s of the public spoke in favour of item PSC1009-166:

**Noel Wilkinson
Danny Makin**

DISCLOSURES OF INTEREST BY MEMBERS

Nil

LATE ITEMS NOTED

Nil

CONFIRMATION OF MINUTES

MOVED: Cr A Sullivan

That the Minutes of the Planning Services Committee dated 18 August 2010 as listed in the Council Agenda dated 25 August 2010 be confirmed.

CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

TABLED DOCUMENTS

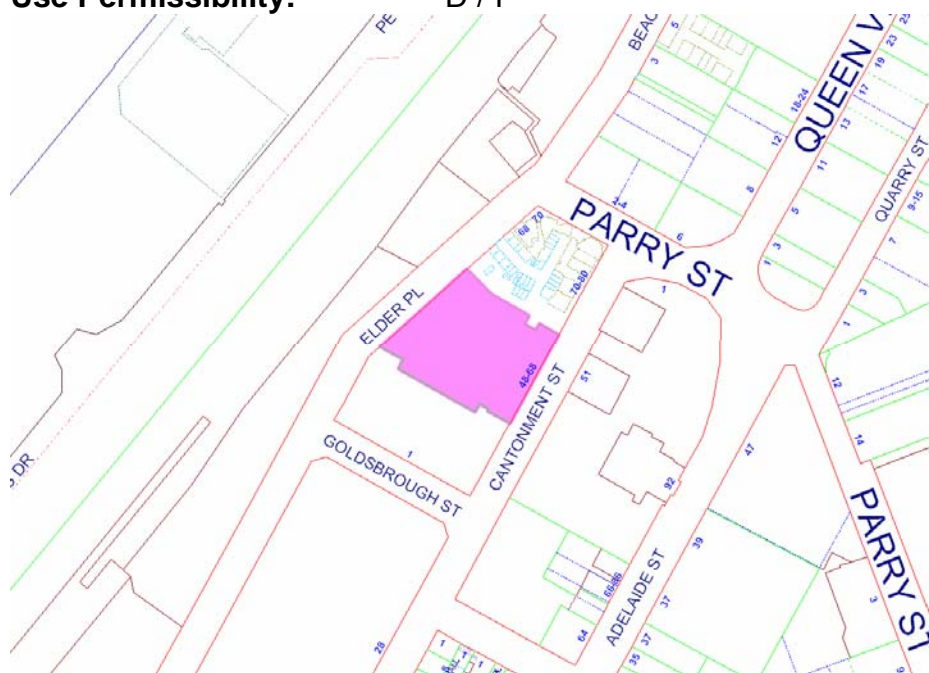
Nil

DEFERRED ITEMS (COMMITTEE DELEGATION)

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

PSC1009-161 CANTONMENT STREET 48-68 (LOT 201 AND STRATA LOT 40 ON LOT 202) - REPORT ON ADDITIONAL INFORMATION PROVIDED IN SUPPORT OF PROPOSED DEMOLITION OF AN EXISTING BUILDING AND CONSTRUCTION OF A MIXED USE DEVELOPMENT (SS DA0722/09)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Planning Mediation
Date of Meeting: 1 September 2010
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC1005-91 – DA0722/09
PSC1002- 38 – DA0722/09
PSC0710-270 – VA03/07
PSC0512-117 – DA199/05
Attachment 1 Heritage Assessment Report
Attachment 2 Response to Heritage Assessment
Attachment 3 Final comments
Date Received: 22 December 2009
Owner Name: MMAGS Holdings Pty Ltd
Submitted by: Greg Rowe and Associates
Scheme: City Centre
Heritage Listing: MHI Management Category 2
Existing Landuse: Vacant Building
Use Class: Multiple Dwellings / Shop
Use Permissibility: D / P



EXECUTIVE SUMMARY

At its 17 February 2010 meeting, the Planning Services Committee (PSC) resolved to defer consideration of the above matter following a formal request from the owners of the site for the PSC to defer consideration of this matter. This would allow the owners to submit additional information in support of their application and to respond to the City's recommendation for refusal. Please refer to PSC1002-38 of the 17 February 2010 Agenda to review the City's report and the attachments to that item.

The matter was referred to 19 May 2010 meeting of the PSC. At that meeting, the PSC received a further request from the applicant to defer consideration of this matter to enable them to review the independent heritage assessment requested by the City and to respond to perceived discrepancies in the City's report. The PSC agreed to the deferral.

The City received the independent heritage assessment on the 17 June 2010, which did not support the applicant's proposal. The assessment was then provided to the applicant for review. On the 30 June 2010, the applicant's heritage consultant provided a response to the 17 June 2010 heritage assessment, raising various objections and concerns in relation to the assessment. The City's heritage consultant was then requested to review the applicant's response to their heritage assessment (refer to attachments 1-3).

The proposal includes the complete demolition of the existing heritage listed building and the construction of a new façade on the Cantonment Street *'utilising salvageable materials where possible'* and a contemporary façade on the Elder Place frontage.

Having regard to the information received on this matter, the proposed development does not comply with schedule 12 of the City of Fremantle Local Planning Scheme 4 (LPS4) with respect to building height. The applicant is requesting Council to consider the proposed height variation under Clause 5.8.1 of LPS4.

The independent heritage assessment does not support the demolition of the building and the consultants are of the view that the proposal does not conserve the heritage values of the site, although this position is disputed by the applicants.

Council is required to be satisfied that the proposed development satisfies the criteria set out in Clause 5.8.1. In particular, clause 5.8.1(c) which requires Council to be satisfied that the demolition of the existing heritage listed building and the subsequent re-use of some of the existing brickwork as part of the new Cantonment Street façade retains the cultural heritage value of the building on the site and adjoining sites.

If Council forms the view that the proposed recycling of some of the bricks from the existing building into the new Cantonment Street façade does not retain the cultural heritage value of the place, then there is no discretion to vary the height controls for the site and the application must be refused.

In relation to Clause 5.15 of LPS4, the Scheme provision permits Council to support demolition if a building has no or little cultural significance and does not make a significant contribution to the broader cultural heritage significance and character of the locality in which it is located. In this instance, the building has been determined through the heritage assessment to have considerable cultural heritage significance and is seen as being significant to the broader cultural heritage significance and character of the locality.

Having regard to the previous report on this matter and the additional information provided to the City, the City still remains of the view that the proposal does not satisfy the criteria in Clause 5.8.1. Further, the retention of the building due to its cultural heritage values, is considered appropriate having regard to the provisions of Clause 5.15 of LPS4.

Consequently, it is recommended that Council refuse the application.

BACKGROUND

The history of the site prior to this development application is contained in the report that was presented to the 17 February 2010 PSC meeting (refer to PSC1002- 38). At that meeting, the City recommended refusal of the application for the following reasons:

1. *The height of the proposed development does not comply with the height requirements contained within Schedule 12 of City of Fremantle 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 Local Planning Scheme No. 4.*

Prior to determining the application, the applicant submitted a request for the PSC to defer consideration of the matter to allow them further time to respond to the City's recommendation. The PSC agreed to the deferral.

On the 12 March 2010, Amendment No 26 to LPS4 was gazetted. This amendment had the effect of amending LPS4 by the introduction of a new clause relating to the demolition of buildings and structures.

The City received the additional information for review on the 6 April 2010.

The documentation provide by the applicant on the 6 April 2010, which contains a heritage opinion, was referred to an external heritage consultant for review. It was anticipated that the response from the external heritage consultant would have been received prior to the 19 May 2010 PSC meeting. However, the report was not received at the commencement of the meeting and as such, the applicants sought PSC approval to defer consideration of the matter until they had time to review the report and provide a response to certain statements made by the City. The request for deferral was agreed to by the PSC (refer to PSC1005-91).

The City received the external heritage consultants report on the 17 June 2010 (refer to Attachment 1).

The report was then forwarded onto the applicant to enable their heritage consultant to review the report. On the 30 June 2010, the City received comments from the applicant's heritage consultant (Refer to Attachment 2). The City then sought a response from the City's independent heritage consultant on the comments made by the applicant's heritage consultant which were subsequently received by the City on the 17 July 2010 (refer to Attachment 3).

This application is also subject to a State Administrative Tribunal (SAT) process that involves a Notice that has been issued by the City for works to be undertaken to reduce the dilapidated condition of the external elevations of the existing building.

DETAILS

The development application has not changed (Refer to PSC1002- 38) as a consequence of the additional reports. The key issue is whether the existing building should be permitted to be demolished or not, having regard to its cultural heritage value. As such, the key aspects of the proposed development relevant to this matter are listed as follows:

- Complete demolition of the 1947 building.
- Construction of a 'replica' façade on the Cantonment Street façade.
- Construction of a contemporary façade on the Elder Place frontage.
- Total height of six storeys with the top storey setback from both Elder Place and Cantonment Street - total height of 21.3m as measured from Cantonment Street and 23.3m as measured from Elder Place (building height is referred to as 25.7m AHD on plans).

STATUTORY AND POLICY ASSESSMENT

The statutory framework for this application is set out in the original report to the 17 February 2010 PSC (Refer to PSC1002- 38). However, since the original report on this application for Planning Approval was presented to the PSC, Amendment 26 to LPS4 was gazetted, which amended LPS4 by the inclusion of the following new clause:

5.15 Demolition of Buildings and Structures

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

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

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

Whilst this is a new clause, Clause 10.2.1(b) of LPS4 states the following:

10.2 Matters to be considered by the Council

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

- (a) *the aims, zoning objectives and provisions of this Scheme and any other relevant planning Scheme(s) operating within the Scheme area, including the Metropolitan Region Scheme,*
- (b) *the requirements of orderly and proper planning including any relevant proposed new local planning Scheme or amendment, or region Scheme or amendment, which has been granted consent for public submissions to be sought,*
- (c) *any approved Statement of Planning policy of the Commission,*
- ...
- (k) *the cultural significance of any place or area affected by the development, including but not limited to provision for the preservation, incorporation or recording (by means including public art works) and significant cultural values of the site,*
- ...
- (o) *the preservation of the amenity of the locality,*
- ...
- (zi) *the Heritage List, and*
- (zj) *any other planning consideration.*

Clause 10.2.1(c) of LPS4 requires Council to have regard to any relevant Statement of Planning Policy. In this regard, Statement of Planning Policy 3.5 – Historic Heritage Conservation (SPP 3.5) is a State Planning Policy to which Council is required to have regard to when considering applications for Planning Approval involving buildings of cultural heritage significance, whether it is of state or local significance.

LPS4 refers to the *Heritage of Western Australia Act 1990 (HWCA)* when defining “cultural heritage significance” and “conservation”. The *HWCA* states:

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

‘Conservation means, in relation to any place, the management of that place in a manner that will –

- (a) *enable the cultural heritage significance of that place to be retained; and*
- (b) *yield the greatest sustainable benefit for the present community without diminishing the cultural heritage significance of that place;*

and may include the preservation, stabilization, protection, restoration, reconstruction, adaptation, and maintenance of that place in accordance with relevant professional standards, and the provision of an appropriate visual setting.’

CONSULTATION

Heritage

The City engaged an independent external heritage consultant to prepare a heritage assessment based on Local Planning Policy 1.6 – Preparing Heritage Assessments (LPP1.6). Further, the consultant was requested to provide comments in relation to the applicant's proposal to demolish the existing building and recycle bricks for use in the Cantonment Street facade as a means of conserving the cultural heritage significance of the site – refer to Attachments 1-3.

Community

As stated in the original report, the application was not required to be advertised in accordance with local planning policy, *LPP1.3 Public Notifications of Planning Proposals*, as clause 4 of the policy enables Council to refuse a development application 'without the giving of public notice.'

PLANNING COMMENT

The subject site has been the subject of applications for approval since 2006 that, in relation to the Elder Place and Cantonment Street façades, have proposed the following:

- retention of the existing facades to Elder Place and Cantonment Street (2005 proposal – considered under Town Planning Scheme No. 3);
- demolition of the Elder Place Façade, re-construction of this façade using re-cycled bricks and retention of the Cantonment Street façade (2007 proposal to vary the 2005 proposal – considered under LPS4);
- Demolition of the existing building, construction of a new contemporary façade to Elder Place and construction of a new façade to Cantonment Street using recycled bricks (current proposal – to be considered under LPS4).

During the SAT process when the applicants appealed against certain conditions imposed on the 2007 proposal, there was some confusion over the heritage category of the c1947 portion of the site in the City's Municipal Inventory. It was determined by SAT that the existing building would be a Category 2 building on the MI. Such a classification indicates that the building is important to the City of Fremantle, rather than a Category 1 which is of State significance or the Category three which is important to the streetscape. The building is now contained in the Heritage List under LPS4.

One of the aims of LPS4 relating to heritage is set out in Clause 1.6.1, which is shown below:

1.6.1 The aims of the Scheme are to—

....

(f) protect and conserve Fremantle's unique cultural heritage,

In relation to this application, Council is required to determine whether:

- the demolition of the existing building and the re-use of bricks within the Cantonment Street façade protects and conserves Fremantle's unique cultural heritage (aim of LPS4)
- the proposal conserves the cultural heritage significance of the site and consequently, permits access to the provisions of LPS4 to allow an increase in building heights (Clause 5.8.1 of LPS4); and
- demolition should be permitted, having regard to the significance of the site having regard to the provisions of Clause 5.15 of LPS4.

Except for the consideration of the provisions of Clause 5.15, which was gazetted subsequent to the City's report to the 17 February 2010 meeting of the PSC, the City's position on the application has been clearly set out in its report to the February 2010 meeting of the PSC – refer to PSC1002- 38 – DA0722/09.

The City subsequently sought an independent heritage assessment of the proposal and engaged the services of the Heritage and Conservation Professionals to conduct a heritage assessment based on LPP 1.6. From that assessment, it has been determined that the building is of “considerable cultural heritage significance”. Based on the heritage assessment that was carried out in accordance with LPP 1.6, the position of the independent heritage consultants is that the proposal before Council does not conserve the cultural heritage significance of the building (refer to Attachment 1). The conclusions drawn by the consultant aligns with the City's assessment of the application, as set in the report to the 17 February 2010 meeting of the PSC.

The applicant's response to the City's independent heritage report expresses concerns in relation to:

- heritage issues cannot be separated from the long term structural integrity of the c.1947 building;
- report follows a format of a heritage assessment but does not consider relevant material, such as structural integrity;
- the preparation of the report by Heritage and Conservation Professionals “after the event” of the development application and the City's report to the PSC;
- matters contained within the City's independent heritage assessment.

In relation to dot points 1 and 2, this aspect is discussed further in the report.

In relation to dot point 3, the heritage assessment report has been based on the format set out in LPP 1.6. The assessment is required to be prepared for any application for demolition, as set out in recently introduced clause 5.15 of LPS4.

In relation to dot point 4, the City's independent heritage consultants have responded to the matters raised in relation to this aspect of the development, as well as the matter of structural integrity (refer to Attachment 3).

It is the City's view that the existing building, based on the independent heritage assessment, has “considerable” heritage significance. Having regard to this assessment, and based on the provisions of clause 5.15, there is a very strong presumption against demolition.

Further, the independent heritage consultants have formed the view that the demolition of the existing building and construction of the Cantonment Street facade using re-cycled bricks does not constitute the conservation of the heritage significance of the building.

If Council accepts this position, then the development presented to Council should be refused on the basis that proposal does not meet the requirements of Clause 5.8.1(c) to permit a variation to the height controls under LPS4 for this site.

Structural Condition

As stated above, the City is required to have regard to any Statement of Planning Policy, and in this regard SPP 3.5 applies.

The objectives of SPP 3.5 are shown below:

The objectives of this policy are—

- To conserve places and areas of historic heritage significance.
- To ensure that development does not adversely affect the significance of heritage places and areas.
- To ensure that heritage significance at both the State and local levels is given due weight in planning decision-making.
- To provide improved certainty to landowners and the community about the planning processes for heritage identification, conservation and protection.

Specific development control principles within SPP 3.5 relating to a heritage listed building are as follows (emphasis added):

Demolition of a heritage place (including a place within a heritage area)

- *Demolition of a local heritage place should be avoided wherever possible, although there will be circumstances where demolition is justified.* The onus rests with the applicant to provide a clear justification for it.
- *Demolition approval should not be expected simply because redevelopment is a more attractive economic proposition, or because a building has been neglected.* Consideration of a demolition proposal should be based upon the significance of the building or place; the feasibility of restoring or adapting it, or incorporating it into new development; the extent to which the community would benefit from the proposed redevelopment; and any local planning policies relating to the demolition of heritage places.

The heritage significance of the property is considered beyond dispute, as discussed above. Therefore the demolition of that place should be avoided except where circumstances justify such an approach. The structural engineering information provided to the City outlines the structural state of the building, specifically noting the deterioration of the concrete. The report concludes that the most cost effective option would be to demolish the building and use the salvaged bricks and other materials in the reconstruction. However it must be noted that the report does state that there is an option to “...remediate concrete to restore a 50 year life to sound concrete...” (part 6 of Attachment 3 to the report presented to the 17 February 2010 meeting of the PSC). Whilst the report goes on to state that this option is not usually considered due to significant cost restraints, clearly there clearly is an option to restore the significant building that could be further explored.

Given the possibility of restoration of the building and the stated cultural heritage significance of the building, both in its own right and the contribution to the social and historical values of Fremantle as a whole,

it is not considered that the circumstances exist where demolition of this significant building should be entertained, by virtue of above stated principle of SPP3.5.

In relation to the two preceding dot points, the relevant Local Planning Policy would be LPP 1.6. The building has been identified as being of “considerable heritage significance” through the heritage assessment undertaken as part of meeting the requirements of LPP 1.6.

Rather than a LPP that addresses demolition, Council has amended LPS4 by introducing Clause 5.15 which effectively allows Council to grant planning approval for the demolition of a building if it has no or little “cultural heritage significance” and does not provide a significant contribution the broader cultural heritage significance and character of the locality in which it is located. In this instance, the heritage assessment has identified that the building is of considerable heritage significance and provides a significant contribution to the locality in which it is located.

CONCLUSION

The report to the 17 February 2010 PSC meeting contained a recommendation for refusal. The conclusion contained within that reported contained the following statements were contained in the reports conclusion:

The proposed replacement development exceeds the specified height requirements for the City Centre LPA contained in Schedule 12 of LPS4. Clause 5.8.1 of LPS4 provides Council with the discretion to vary the development requirements of Schedule 12 subject to being satisfied that the development addresses specific matters. The proposed development is not considered to satisfy paragraph (c) of clause 5.8.1 of LPS4 as the demolition of the building and reconstruction of the Cantonment Street façade is not considered to conserve the place of cultural heritage significance. For the same reason, it is not considered appropriate for Council to vary the building requirements of LPS4 under clause 7.5 of LPS4 as the demolition is not considered to constitute conservation.

Accordingly the application is recommended for refusal.

Having regard to the additional information, the City is still of the view that the proposed demolition of the existing development and re-use of the bricks is an interpretative representation of the masonry building material used on the site. The demolition of the heritage listed building and the proposal to re-cycle some of the bricks as part of the construction of a new facade to Cantonment Street does not conserve the cultural heritage significance of the building and as such, does not meet the:

1. Scheme objectives (Clause 1.6.1(f));
2. criteria to permit Council to consider a height variation under Clause 5.8.1 of LPS4; and
3. provisions of Clause 7.5.1 of LPS4, to permit a variation of the site or development requirements under LPS4

If Council forms the same view that the application does not satisfy the criteria in Clause 5.8.1, then discretion does not exist for the height variation and the application is required to be refused.

Further, it is noted that the City has served Notices on the owners to require works to be undertaken to assist in protecting the integrity of the existing structures, that is the c.1947 building the subject of this application and the 1927 building which is a state heritage listed building. Whilst the matter of structural integrity has been presented as the argument for the total demolition of the building, the structural engineers report indicates that rectification work can be carried out on the existing concrete to remediate it to a 50 year life.

In addition, the provisions of Clause 5.15 of LPS4 have a presumption against demolition of the building having regard to the identified heritage significance of the building and to the locality that has been established through the heritage assessment prepared under LPP1.6. Consequently, this matter should also be a new reason for refusal having regard to the gazettal of Amendment No. 26 that introduced this new clause into LPS4 since the original 2010 February report was considered.

OFFICERS AND COMMITTEE RECOMMENDATION

MOVED: Cr A Sullivan

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Demolition of Existing Building and Construction of 87 Multiple Dwellings and 4 Shops at No. 48 – 68 (Lot 201 and Strata Lot 40 on Lot 202) Cantonment Street, Fremantle, as detailed on plans dated 22 December 2009, for the following reasons:

- 1 The height of the proposed development does not comply with the height requirements contained within Schedule 12 of City of Fremantle 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 Local Planning Scheme No. 4.**
- 3 The proposed development due to its cultural heritage significance, should not be permitted to be demolished having regard to the provision of Clause 5.15 of City of Fremantle Local Planning Scheme No. 4.**

CARRIED: 3/2

Cr A Sullivan used hiscasting vote FOR the recommendation resulting in the recommendation being CARRIED.

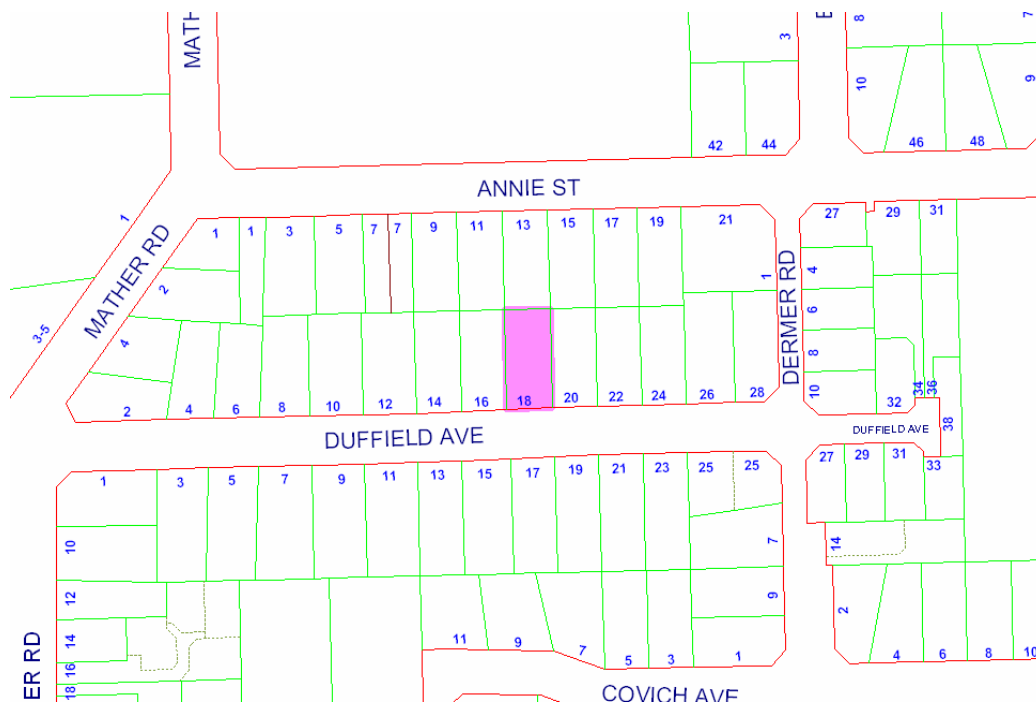
For	Against
Cr Andrew Sullivan Cr Josh Wilson	Cr Robert Fittock Cr Bill Massie

REPORTS BY OFFICERS (COMMITTEE DELEGATION)

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

PSC1009-162 DUFFIELD STREET, NO. 18 (LOT 191) BEACONSFIELD - RECONSIDERATION UNDER SECTION 31 - PROPOSED CARPORT (AH DA0112/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Meeting Date: 1 September 2010
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC1006-112 (Attachement 3)
Attachment 1: Development Plans
Attachment 2: PSC1006-126 (PSC Minutes - 30 June 2010) Preliminary Discussion of Local Planning Policy Review Regarding Residential Streetscapes, Garages and Carports
Attachment 3: Previous Item - PSC 1006-112
Date Received: 4 March 2010
Owner Name: Marco Serrangeli
Submitted by: Marco Serrangeli
Scheme: Residential R20/25
Heritage Listing: Nil
Existing Landuse: Single House
Proposed Landuse: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

The application was presented to the Planning Services Committee on the 16 June 2010 where the proposed Carport in the front setback was not considered to satisfy the requirements of Local Planning Policy DC 6 Carports/Garages and was refused.

The applicant has since lodged an application for review with the State Administrative Tribunal (SAT) who has required the City to reconsider a modified application under Section 31 of the SAT Act 2004.

At Planning Services Committee on 30 June 2010 a report was presented with draft provisions to amend Local Planning Policy DC 6. The application has been modified having regard to the draft policy provisions.

Given the preliminary nature of the draft provisions it is considered that the application be refused, however it should be noted that Council may have regard to the draft policy provisions.

BACKGROUND

Please refer to PSC Item 1006-112 (Attachment 3) for previous background information relating to the original application.

With regard to Local Planning Policy DC 6 Garages/Carports in Front of Dwellings/Buildings, a report was presented to the Planning Services Committee on the 30 June 2010 with recommendations to amend the policy.

The proposed recommended amendments to the policy include:

Setback of Garages/Carports where not under the main roof of the development

1. Garages and carports are to be setback in line with or behind the front wall of the dwelling.
2. Carports may be located in front of the dwelling where:
 - a. The carport is open on all sides with no door;
 - b. The carport is of simple and lightweight construction;
 - c. The carport will be located so as to maintain visibility of the house from the street and surveillance from the house to the street; and
 - d. The maximum width of a carport is to be 6 metres on a property with a frontage of 10 metres or greater. On a property with a frontage of less than 10 metres, the maximum width of a carport is to be 3 metres.
3. Variations to the above requirements may be considered subject to discretionary criteria relating to consistency and compatibility with the streetscape.

The above item was deferred by Planning Services Committee on 7 July 2010.

DETAIL

The applicant has submitted an application for review with the State Administrative Tribunal, where through the process of mediation it was discussed that Committee may have regard to the proposed draft recommended amendments to LPP DC 6.

As such, the applicant has amended the plans so that the carport would be a maximum of 6m in width and as such meets the draft recommended amendments to LPP DC 6.

STATUTORY AND POLICY ASSESSMENT

State Administrative Act 2004

Section 31, subsection 2, of the State Administrative Tribunal Act 2004 states:

Upon being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may —

- (a) affirm the decision;*
- (b) vary the decision; or*
- (c) set aside the decision and substitute its new decision.*

Local Planning Scheme No. 4 (LPS 4)

- Clause 4.2.1 (a) – Objectives of the Residential Zone; and
- Clause 10.2 – Matters to be considered by the Council.

Residential Design Codes 2008 (R-Codes)

The proposed development has been assessed against and complies with the relevant 'Acceptable Development' requirements of the R-Codes, with the exception of the following Design Elements (DE):

- DE 6.3.2 – Buildings on boundary.

Local Planning Policies

The application was also assessed against the following relevant Council Planning Policies:

- LPP 2.4 Boundary Walls in Residential Development; and
- DC 6 Garages/Carports in front of Dwellings/Buildings.

CONSULTATION

Community

The application was not required to be advertised in accordance with Clause 9.4 of the LPS 4 or LPP 1.3 as the applicant has provided a signed consent form from the neighbouring property owner who is subject to the proposed boundary wall.

PLANNING COMMENT

Residential Design Codes 2008 (R-Codes)

DE 6.3.2 Buildings on boundary

LPP 2.4 replaces the Acceptable Development provisions of the R-Codes with alternative standards and as such the proposal does not meet the replacement Acceptable

Development provisions and is thus required to be assessed against the Performance Criteria of LPP 2.4 which states:

When considering an application under the performance criteria in clause 6.3.2P2 of the Residential Design Codes, the Council is required to consider a number of specified matters, including whether a boundary wall is desirable in order to not have any significant adverse effect on the amenity of the adjoining property. In considering the effect of a proposed boundary wall on the amenity of an adjoining property, the Council shall have regard to the following factors:

- *access to daylight and ventilation to major openings;*
- *access to direct sunlight and ventilation to outdoor living areas;*
- *sense of confinement due to accessible cumulative building bulk;*
- *existing trees or vegetation;*
- *access to views of significance.*

This list of factors is not exhaustive and does not preclude Council from considering any other matter which is relevant to an assessment of the effect of a boundary wall on the amenity of an adjoining property. In considering such effects, the Council will have regard to any comments made in this regard by the owners and occupiers of the adjoining properties.

As mentioned previously, the applicant has provided a signed consent form from the affected land owners (western adjoining property) stating that they have no objections to the proposed boundary wall.

The 'Performance Criteria' for boundary walls state:

P2 Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

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

It is considered that the proposed location of the pillars and carport roof on the western boundary makes effective use of the space available and that the due to the carport abutting an area used as hardstand parking there would be minimal impact on the amenity of the adjoining property nor impact to major openings and outdoor living areas.

Therefore, the proposed boundary wall is considered to meet the Performance Criteria of DE 6.3.2 and LPP 2.4.

Local Planning Policies

DC 6 Garages/Carports in front of Dwellings/Buildings

This policy states that:

1. *Carports and garages will not be allowed in the front setbacks unless:*
 - (i) *There is an existing pattern of carports/garages in the street;*
 - (ii) *The topography of the land is such that the carport/garage can form a part of the existing slope/cliff or retaining wall;*
 - (iii) *The topography of the land is such that the existing house is significantly below the street level;*
 - (iv) *The house is located on a corner lot. In this case a carport/garage can be built to the secondary street;*
 - (v) *The existing house's setback is significantly greater than other setbacks in the street or*
 - (vi) *The subject lot is irregular in shape and location.*

Existing carports and garages within this street are setback behind the front façade of the street and located as either under-croft garages or located at the side of dwellings. There is no existing pattern of carports/garages in the street.

The topography of the land is gently sloping from west to east, but is not severe to the extent that the carport can form part of the slope/cliff or a retaining wall.

The house is not significantly below the street level and instead sits relatively high in the street.

The existing house's setback is consistent with other setbacks in the street and this is largely the same for the remainder of the street.

The lot is not irregular in shape or location.

Therefore, the proposed carport is not considered to comply with Local Planning Policy DC 6 Garages/Carports in front of Dwellings/Buildings.

Proposed recommended amendments to Local Planning Policy DC 6 Garages/Carports in front of Dwellings/Buildings

As mentioned above, a report was presented to PSC on the 30 June 2010 whereby amendments to the above policy were recommended.

Whilst the item was deferred the following recommendations were presented:

Setback of Garages/Carports where not under the main roof of the development

1. *Garages and carports are to be setback in line with or behind the front wall of the dwelling.*
2. *Carports may be located in front of the dwelling where:*
 - a. *The carport is open on all sides with no door;*
 - b. *The carport is of simple and lightweight construction;*
 - c. *The carport will be located so as to maintain visibility of the house from the street and surveillance from the house to the street; and*
 - d. *The maximum width of a carport is to be 6 metres on a property with a frontage of 10 metres or greater. On a property with a frontage of less than 10 metres, the maximum width of a carport is to be 3 metres.*

3. *Variations to the above requirements may be considered subject to discretionary criteria relating to consistency and compatibility with the streetscape.*

The amended plans subject to this Section 31 reconsideration have been amended to comply with the above criteria.

Committee may have regard to the above recommended policy provisions in reconsidered this application.

However, it is recommended that given the above provisions have not been subject to discussion within Council, nor adopted as a draft, nor advertised to the public, reliance on these provisions in determining this reconsideration may be premature.

Therefore, in reconsidering its decision it is recommended that the original decision to refuse the application be affirmed.

CONCLUSION

The original application for a carport was refused at Planning Services Committee on the 16 June 2010.

The applicant has submitted an application for review with the State Administrative Tribunal which has ordered that the City reconsider a modified application under Section 31 of the SAT Act 2004.

A report was presented to PSC on the 30 June 2010 with recommended amendments to Local Planning Policy DC 6.

The applicant has amended their application to comply with these recommended amendments.

Committee may have regard to the recommended amendments to DC 6 when determining the application, however, the carport does not meet the current provisions of DC6 Garages/Carports in front of Dwellings/Buildings and given the preliminary nature of the proposed policy amendment it is recommended that the previous decision for the carport to be refused by affirmed.

OFFICER'S RECOMMENDATION

That the application be REFUSED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the Proposed Carport at No. 18 (Lot 191) Duffield Street, Beaconsfield for the following reasons:

The proposal does not meet the provisions of the City of Fremantle's DC 6 Garages/Carports in front of Dwellings/Buildings policy.

COMMITTEE DECISION

Cr J Wilson MOVED to defer the item to the next Planning Services Committee meeting to be held 15 September 2010 to allow officers time to prepare a recommendation for approval.

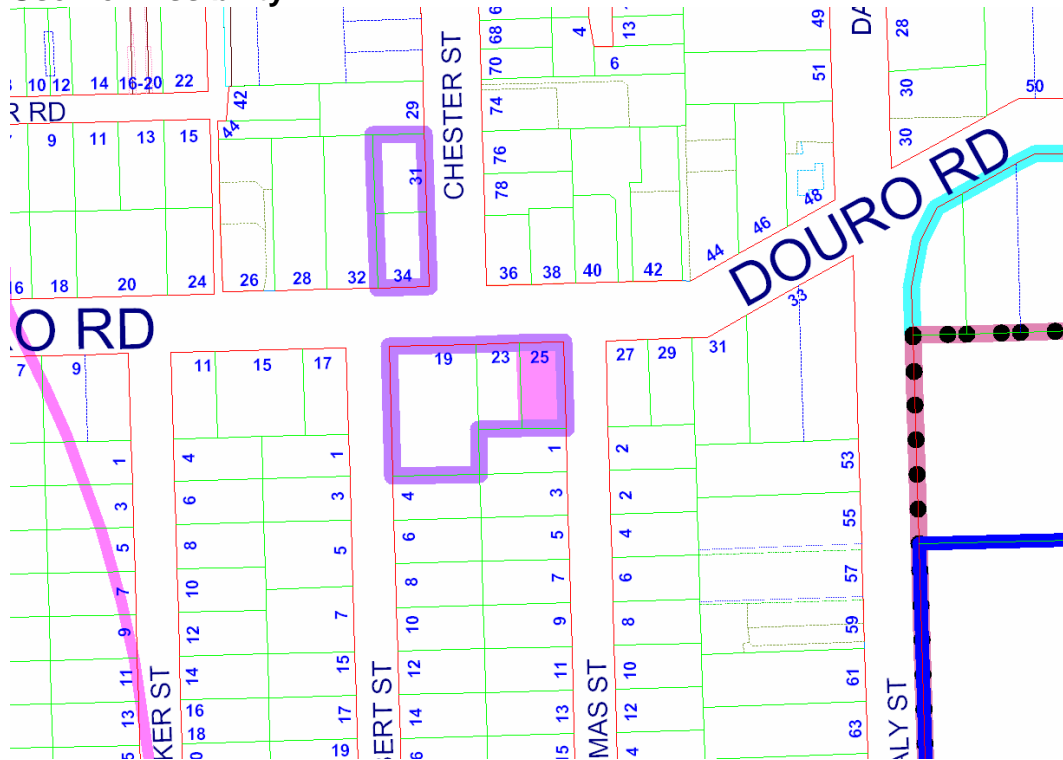
CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

At 7:25pm pm Cr A Sullivan adjourned the meeting as Cr Fittock vacated and reconvened at 7:26 pm.

PSC1009-163 DOURO ROAD NO. 25 (LOT 95) SOUTH FREMANTLE - PROPOSED CHANGE IN HOURS OF OPERATION AND SEATING CAPACITY OF EXISTING RESTAURANT AND SIGNAGE - (SS DA0197/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Actioning Officer: Coordinator Planning Mediation
Decision Making Level: Planning Services Committee
Meeting Date: 1 September 2010
Previous Item Number/s: PSC0811-309
Attachment 1: Summary of previous development applications
Attachment 2: Covering letter and original development plans
Attachment 3: Letter modifying development application
Submissions and petitions: A copy of the letters submitted in relation to this application and the two petitions were made available for review by Councillors in the Councillors Lounge room.
Date Received: 16 April 2010
Owner Name: Lisa Ramakrishnan & Naimish Patel
Submitted by: Timothy Grey-Smith
Scheme: Neighbourhood Centre
Heritage Listing: Heritage List (LPS4) and Management Cat. Level 3 (MHI)
Existing Land use: Restaurant
Use Class: Restaurant
Use Permissibility: A



EXECUTIVE SUMMARY

The development application is referred to the Planning Services Committee meeting for determination as numerous submissions have been received of which the concerns outlined cannot be resolved via conditions of approval.

Planning approval was granted in 1986 for the site to be used for restaurant purposes, subject to restrictions on the hours of operation and the provision of 16 car parking spaces on the site or in the locality. Council has received applications since that time to use the rear enclosure of the site for dining purposes which have previously been refused.

The applicant was originally seeking Planning Approval for the:

- creation and use of a rear outdoor dining courtyard for restaurant dining purposes,
- extended hours of operation; and
- replacement of existing signage at No. 25 Douro Road, South Fremantle.

No additional seating from the originally approved restaurant use was proposed by the application, only the location of the seating.

After the close of the submission period, the applicant modified his application to order to respond to issues raised during the submission period. The modified application now does not seek approval for the use of the rear enclosure for dining purposes as part of this application. Further, it is proposed to reduce the seating capacity of the restaurant (when compared to the 80 seat 1986 application). Extended trading hours are proposed with the capacity of the restaurant being varied between 40-60 patrons depending upon the hours of operation. However, the restaurant will now no longer open on Monday to Wednesday nights as part of this modified application.

The submission period resulted in the receipt of 25 individual submissions and a petition against the development and a further petition in support of the application. Issues were raised in relation to the following matters:

- non-compliance with the 1986 car parking requirement,
- potential impact of noise problems from the use of the rear enclosure,
- traffic safety at the intersection of Douro Road and Thomas Street,
- traffic safety within Thomas Street; and
- effect on the amenity of the street through the operation of the restaurant.

Dot points one and two have been addressed either through an agreement received from the owners of the shopping centre at No. 219 Hampton Road to allow patrons to park on their land or the removal of the part of the application seeking approval for the use of the rear enclosure.

In relation to dot points 3 and 4, there was considerable concern in relation to the potential impact that the operation of the premises would have on the residents. However, it is the City's view that there are other issues impacting on the safety of the Douro Road/Thomas Street intersection which cannot be solely attributed to the existing approved restaurant use on the development site.

A more holistic view of this matter is required and as such, it has been recommended that Council agree to an independent traffic and parking study to be undertaken for the locality between Daly Street and Hulbert Street.

In relation to dot point 5, it is proposed that a Management Plan for the site be provided by the applicant that addresses the issues raised in the submissions relating to the operation of the restaurant, such as delivery times and location, cooking odours and compliance with seating numbers at different operating times.

It is considered that the modified application has reasonably addressed the issues raised during the submission period through the reduction in the capacity of the restaurant as well as restricted trading at night. Overall it is considered that the application could be approved subject to the conditions of approval. Separately, it is believed that an independent traffic study should be undertaken to address future issues that may arise as a consequence of further development within the Neighbourhood Centre zone and traffic issues in Douro Road which may impact on the streets within this locality.

BACKGROUND

The subject site is zoned Neighbourhood Centre and is located within the South Fremantle Local Planning Area as described in Schedule 12 of the City's LPS4. The site is listed on the City's Municipal Heritage Inventory as a Management Category Level 3 due to the property's contribution to the streetscape, local area and Fremantle as a collective whole. The property is also listed on the City's Heritage List under LPS4.

The subject site is located on the south-western corner of Douro Road and Thomas Street, and coupled with the properties to the west, are within the Neighbourhood Centre Zone. Although the property at No. 23 Douro Road is zoned Neighbourhood Centre, the property is used for residential purposes. The land immediately to the south of the site (1 Thomas Street) and located on the western side of Thomas Street are all zoned Residential.

On the 19 March 1986, conditional Planning Approval (DA2/86) was granted under Town Planning Scheme No. 2 (TPS2) for a Restaurant use on the development site. The development site has been used for restaurant purposes for most of that time.

Planning Approval was granted on 23 May 2006 under Town Planning Scheme No. 3 (TPS3) for the replacement/restoration of windows and awning, disabled access and internal refurbishment at the subject site. The applicant also proposed additional dining floor space within the rear outdoor courtyard. The use of the courtyard for dining purposes was refused on the basis that the applicant had not adequately demonstrated the provision of the required number of additional car parking bays.

The owner submitted an application for Planning Approval to the City on 1 October 2008. The application sought approval to:

- relocate some of the approved seating to the proposed outdoor covered dining area;
- change of hours of operation; and
- proposed signage change.

The applicant was proposing to reduce the number of internal dining seats and to provide dining for 38 people in the existing rear covered outdoor courtyard. The overall number of dining seats (80) approved for the subject site was proposed to remain unchanged. Furthermore, it was proposed to amend the approved opening times of 7pm to 10pm to 6pm to 11pm, six days a week.

This application for Planning Approval was refused at the PSC meeting held on the 19 November 2008 for the following reasons:

That the application be REFUSED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the use of an outdoor covered area for dining purposes, change of hours of operation to an existing Restaurant use and a replacement sign at No. 25 (Lot 95) Douro Road, South Fremantle, as detailed on plans dated 1 October 2008, as the proposal is contrary to the objectives of clause 4.2.1 ii) of the Neighbourhood Centre Zone for the following reasons:

- a) the proposed outdoor covered dining area will adversely impact on the amenity of the adjoining and surrounding residential properties due to noise; and
- b) the proposed extended trading hours of the restaurant activities, coupled with the proposed outdoor dining area, will exacerbate the potential adverse impact on the adjoining/surrounding residential properties.

During consideration of the above matter, issues were raised by the community in terms of the history of the existing restaurant, in particular, whether the site was subject to non-conforming land uses rights and whether those rights had expired. In response to those concerns, the City prepared a report and presented it to the 21 January 2009 meeting of the PSC, which the PSC resolved as follows:

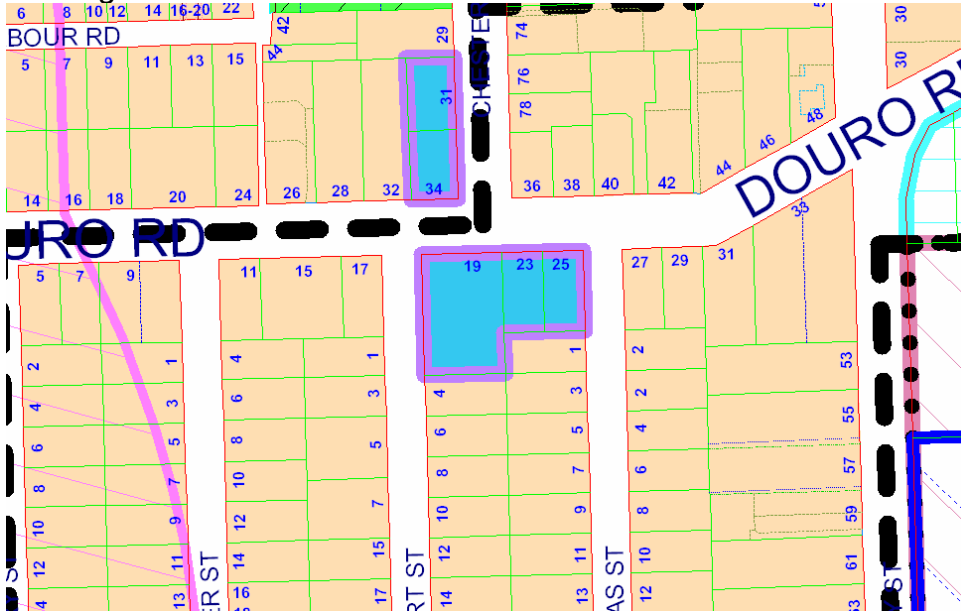
That Council:

- 1) *Notes the research findings that the existing restaurant use on No. 25 Douro Road South Fremantle was a conforming land use under Town Planning Scheme No's 2 and 3 and Local Planning Scheme No. 4 and not a "non-conforming" land use;*
- 2) *Advise the owner and the submitters of the City's findings by providing them with a copy of the City's report item on this matter.*

Separately, on 25 March 2009, two Council resolutions were made in regard to No. 19 (Lot 1) Douro Road, South Fremantle. Firstly the planning application was refused by Council due to the proposed development's potential detrimental impact upon the amenity of the area, a deficit of car parking and height. Secondly, Council resolved that 'a further report be brought back to the next appropriate Planning Services Committee on the request to rezone the land'. The land being the Neighbourhood Centre zoned land in the vicinity of Douro Road/Hulbert Street/Thomas Street, which includes No. 25 and 19 Douro Road – refer to the following map.

At its meeting held on the 27 May 2009, Council resolved not to support the request to change the zoning of the Neighborhood Centre zone to Residential (Refer to PSC0905-88) 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, 21, 23 and 34 Douro Road and No. 31 Chester Street as 'neighbourhood centre' should be maintained.



Attachment 1 is a summary of the planning applications received in relation to the use of the site for restaurant purposes since 1986.

DETAILS

The City received an application (refer to Attachment 2) for the proposed following changes to the operation of the approved restaurant use on the subject site:

- alteration to the existing rear structure;
- use of the rear structure for dining purposes;
- retaining the existing seating capacity of 80 patrons;
- alterations to the hours of operation to trade between 7:00am to 10:pm, 7 days a week; and
- proposed replacement sign.

In response to the submissions received during the submission period, the application was amended (refer to Attachment 3), with Council now being requested to make a determination on the following proposed changes to the operation of the existing approved restaurant:

- alterations to the proposed hours of operation; and
- changes to the seating capacity of the existing use.

There is no change to the part of the application relating to the replacement sign.

The applicant has received a written undertaking from the owners of 219 Hampton Road that patrons to the restaurant can park on their land subject to certain conditions.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4

Objectives of Zone

The objectives of the Neighbourhood Centre zone state that development 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 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.'*

Land Use

A Restaurant land use for the site was approved under TPS2. Further, as a Restaurant land use is a permitted (discretionary) land use under the City's Local Planning Scheme No.4 (LPS4), Planning Approval is not required for a change in the type of restaurant use. The proposed changes to the original approval do not require the Restaurant land use to be re-assessed against the provisions of LPS4.

Car Parking and hours of operation

The applicant is proposing a change in the seating capacity of the existing restaurant use, depending upon the proposed hours of operation. As a comparison, the following table shows the restrictions relating to the original approval (which have not changed with subsequent decisions) and the Modified 2010 application currently before Council:

	Approved 1986 application	Proposed Modified 2010 Planning Application
Hours of operation and seating capacity	Midday to 2:00pm and 5pm to 10pm. Maximum of 80 patrons within main building	Monday to Friday – 7am to 4pm – 40 seats Saturday and Sunday – 7am to 4pm – 60 seats Thursday to Sunday – 6pm to 10pm – 60 seats (Within main building only as use of courtyard area does not form part of this modified application)

With changes to the original condition of approval in relation to hours of operation, the application is to be assessed against LPS4 parking provisions of Table 3. Based on the maximum seating number of 60 seats, LPS4 would require the provision of 12 on-site car parking spaces, compared with the 16 car parking spaces originally required.

Clause 5.7.3 of LPS4 allows Council to waive or reduce the standard car parking requirement 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 [sic] for the parking or shared use of parking areas which are in the opinion of the Council satisfactory,*
- (vi) *any credit which should be allowed for a car parking demand deemed to have been provided in association with a use that existed before the change of parking requirement,*
- (vi) *the proposal involves the restoration of a heritage building or retention of a tree or trees worthy of preservation,*
- (viii) *any other relevant considerations.*

A letter of agreement has been submitted as part of the application from the owners of 219 Hampton Road indicating that they are prepared to permit patrons from the restaurant to park on their land subject to certain conditions. This is discussed further in the "Planning Comment" section of the report.

Heritage List

The site is listed in the City's List of Heritage places under LPS4. The aims of LPS4, in relation to Heritage matters, states the following:

1.6 The Aims of the Scheme

1.6.1 *The aims of the Scheme are to—*

...

(f) *protect and conserve Fremantle's unique cultural heritage,*

Council Policies

D.B.H6 Signs and Hoardings

The proposed signage complies with the relevant requirements of the City's *Signs and Hoardings Policy*.

D.B.H13 Impact of Developments on Heritage Places Policy

The application satisfies the requirements of the City's *Impact of Development on Heritage Places Policy*.

CONSULTATION

Community

In accordance with Clause 9.4 of the LPS4 and the City's *LPP1.3 Public Notification of Planning Proposals Policy*, the original 2010 planning application, which sought to use the rear courtyard, extend the hours of operation and retain the maximum number of patrons to 80, was advertised for public comment.

At the conclusion of the advertising period, being 21 May 2010, the City had received 25 written submissions. After the close of the submission period the City received two petitions, one objecting to the proposed development whilst the second petition supported the proposed development.

Individual Submissions

The City received 25 individual submissions, of those submissions, 22 did not support the application while 3 submissions were in support of the proposal.

The following primary issues were raised:

- Impact of use of Courtyard/Noise from Courtyard
- Provision of adequate car parking;
- Impact of hours of operation/capacity of restaurant;
- Impact on Douro Road/Thomas Street;
- Impact on amenity of Thomas Street;
- Implications on local traffic given the other restaurant uses in the vicinity;
- General complaints associated with food providers – noise, smells, littering.

Petition 1

A petition was received on the 24 May 2010, with 41 signatories that sought to require three matters to be addressed by Council before any consideration on the development application occurs. These are summarised below:

1. applicant to satisfy the original 1986 condition of approval relating to parking;
2. detailed traffic and parking management study be conducted to address specific issues raised in the submission; and
3. implementation of a defined traffic management and parking management solution that can be enforce by Council

Of the 41 signatories, 35 were from Thomas Street.

Petition 2

This second petition which was received on the 4 August 2010, has 69 signatories from persons from within and outside of the City, supporting the proposed development. The grounds of support are summarised below:

- in keeping with the objectives of the zone;
- proposed changes will increase amenity of the locality;
- operating hours less intensive than the hours already approved;

- issues with traffic and parking better resolved through co-operation rather than imposition of conditions of approval.

PLANNING COMMENT

The existing site has been approved for restaurant purposes and can continue to operate from the site without the need for any further approvals. The site has been restricted in terms of hours of operation being midday to 2:00pm and 5:00pm to 10pm, 7 days a week. A condition requiring the provision of 16 car parking spaces to be provided on-site or on the vicinity saw the use of the Liquorland site (19 Douro Road) to meet some of that requirement. The recent approval of Council to allow re-development of that site will result in loss of those parking spaces for use by various activities that had a lawful right to use them.

The planning application that was originally submitted to the City sought to:

1. use the rear enclosure for dining room purposes without increasing the capacity of the premises;
2. undertake certain works to address potential noise issues from the use of the rear enclosure;
3. alter the hours of operation of the premises, and
4. change the signage for the premises;

The planning application was subsequently modified so that items 1 and 2 were no longer part of this application for planning approval. Further, item 3 was amended so that the proposed hours of operation have changed, as well as changes to the proposed seating capacity of the building at different opening times. Item 4 has remained unchanged.

In essence, the matter before Council is to determine whether the proposed change to the hours and days of operation in association with changes to the seating capacity at those times are considered acceptable having regard to the objectives of the Neighbourhood Centre zone.

Car Parking

The existing restaurant use was approved on 19 March 1986. Under TPS2, the restaurant use was required to be provided with 16 car parking bays. The following condition was imposed:

- (ii) *Parking facilities for sixteen cars shall be provided on-site or in the near vicinity.'*

No on-site parking facilities were provided. The restaurant has previously used the site at No. 19 Douro Road, South Fremantle (former Liquorland premises) for the provision of some of the car parking bays. However, the redevelopment of the site for a two storey mixed use development was approved by the PSC at its meeting held on the 18 August 2010. As such, any formal/informal arrangement will no longer be of effect when this site is re-developed or the current owners cease to permit the use of their site for car parking purposes by other persons.

The provision of 16 car parking spaces, based on LPS4 requirements would accommodate 80 patrons. The applicant is proposing to reduce the number of patrons to a maximum of 60 persons, which would require the provision of 12 car parking spaces. Although the provisions of Clause 5.7.3 of LPS4 permits Council to consider waiving or varying the car parking requirement for a development, the applicant has not sought to seek access to this provision of LPS4. It is considered that the provisions of Clause 5.7.3(i) and (ii) may be open to the applicant to seek a reduction if a case is presented, as these provisions relate to the close proximity of public transport (bus stops in front of 19 and 32 Douro Road) to the development site and the availability of street parking.

Clause 5.7.3(viii) of LPS4 allows Council to consider any other consideration in waiving or reducing the standard parking requirement. In this instance, the applicant has received the written agreement from the owners of 219 Hampton Road to allow restaurant patrons of the development site to use the car parking spaces of this shopping centre. The agreement, which the City received via e-mail on the 7 August 2010, is summarised below:

- They have considered their situation and car parking quota at the shopping centre.
- They believe that they have additional bays to spare.
- Although these bays exist, any agreement which is drafted will need to contain a provision entitling them to terminate at any time in the future for any reason.
- Any future development/change of use/alteration of tenancy mix etc may require them to want to utilise their full allotment of car bays on the various lots occupied by the centre.
- They do not want these options to be constrained by the agreement with the applicant and as such, a provision within the agreement is required to allow them to “opt out” agreement.

The car parking area referred to is part of the South Fremantle shopping centre that has approximately 296 on-site car parking spaces. Based on 60 patrons, LPS4 would require the provision of 12 car parking spaces and for 40 patrons, only 8 car parking spaces would be required. Having regard to the proposed reduction in the capacity of the restaurant use as part of this application, the applicant should only need to provide 12 car parking spaces based on the reduced seating numbers.

The closest part of the car parking area of No. 219 Hampton Road is approximately 130m from the development site, which is considered a reasonable short walking distance. Based on this agreement, the car parking requirements set out in Table 3 of LPS4 would be met without any discounting of car parking spaces under Clause 5.7.3 of LPS4.

It is considered that appropriate conditions of planning approval be imposed that:

- requires a legal binding agreement be entered into between the City, the applicant and the owners of 219 Hampton Road formalising the arrangement to park on the site;
- the legal agreement is to remain in place; and
- should the legal agreement cease to exist, and unless alternative arrangements are then put into place to the satisfaction of the City, then this approval would lapse and be of no further effect.

It is noted that like any car parking area, whilst this space is provided, it does not necessarily mean that people will use the car parking area. This is discussed further in the report.

Hours of Operation/Seating Capacity

The operators of the existing premises have a right to trade between the hours of midday to 2:00pm, 5:00pm to 10:00pm, 7 days a week, with a maximum number of 80 patrons at those times.

In the amended application before the PSC, the applicant is proposing to extend the hours of operation, to not open on certain evenings and to reduce the approved seating capacity (25-50% at different times) of the restaurant when compared to the original approval. The proposed modified times and seating capacity are shown below:

PROPOSED DAYS OF OPERATION	PROPOSED HOURS OF OPERATION	PROPOSED SEATING CAPACITY
Day time hours		
Monday – Friday	7:00am – 4:00pm	40 Seats
Saturday and Sunday	7:00am – 4:00pm	60 Seats
Evening/Night time hours		
Thursday to Sunday	6:00pm – 10:00pm	60 Seats

The objective of the Neighbourhood Centre zone is to support the use of land for such activities as shops or offices, including Cafes. Whilst there is no definition of a Café under LPS4, it is considered that such a term fits under the main land use term of “Restaurant”.

This is discussed further in relation to the section on Submissions.

SUBMISSIONS

Response to petition against proposed development

The City received a petition that objected to the proposed development. Part of the petition sought to have certain matters addressed before the development application was to be considered by Council. However, Council has statutory timeframes in which to consider matters, otherwise, the application is deemed to have been refused and the applicant could exercise their right to request the State Administrative Tribunal to review the deemed refusal. As such, having regard to the time that has lapsed, the matter should be determined by Council.

A response to the three matters raised in the petition is provided below:

- 1. applicant to satisfy the original 1986 condition of approval relating to parking;*

In response to this matter, the applicant has obtained the written agreement of the owners of the South Fremantle Shopping Centre to allow patrons to park on the shopping centre land. Subject to this being converted into a binding legal agreement, the applicant has met the 1986 condition of approval and the parking requirements under LPS4.

2. *detailed traffic and parking management study be conducted to address specific issues raised in the submission; and*
3. *implementation of a defined traffic management and parking management solution that can be enforce by Council*

A petition was previously received from residents of the locality that sought Council's approval to change the zoning of this Neighbourhood Centre zone to Residential when considering the application for the development of 19 Douro Road at its March 2009 meeting. Council, following a review of a report from the City, resolved not to agree to the request, and as such, the land between Hulbert Street and Thomas Street, including the development site, has retained its Neighbourhood Centre zoning.

Further, there are likely to be further implications for this area with any future development of land within the Neighbourhood Centre zoned land, including No. 23 Douro Road. With the change in the road configuration at Hampton Road/Douro Road, there has been a change in movement of traffic along Douro Road. From observations of the movement of traffic at the intersection of Douro Road/Thomas Street and along Douro Road, concern is expressed in relation to the speed of traffic and safety along this section of Douro Road.

Consequently, having regard to the above, it is considered that the City should undertake an independent review of traffic movement and parking in the locality of Douro Road, between Daly Street and Hulbert Street. Such a review should look at the speed and volume of vehicles along this section of Douro Road, the safety of traffic movement and parking within Thomas Street, Hulbert Street and Chalmers Street. Following a review, then any recommendations that arise out of the review should be considered for implementation. Any review should include neighbour consultation.

In addition to the petition against the development, various individual submissions have raised concerns in terms of the impact that the change in operations of the restaurant will have on the safety and amenity within the street. These issues can be considered as part of the study.

The review is likely to take some time to complete as this will be dependant upon budgetary consideration and as such, it is considered inappropriate to delay any decision having regard to the Council's timeframe for determining this development application, especially as the proposal relates only to a change in the hours of its operation.

Other Issues

In response to the other issues raised in the individual submissions, the following comments are made:

Use of Rear Enclosure

The use of the rear enclosure has been removed from this application. It is understood that the applicant is seeking advice from a qualified noise consultant to consider measures to be undertaken to address the concerns of residents in relation to potential impact of noise from the use of this space. This matter will be considered on its merits by Council if and when an application is received by the City.

An issue raised in the submissions was the noise impact that the existing window openings of the main building was having on the amenity of surrounding residential properties. A previous planning approval permitted the change in windows configuration. It is considered that this aspect of the existing development is likely to be considered as part of the noise assessment if and when the rear enclosure application is received.

Hours and Days of Operation

Submissions were received that sought to vary the hours and days of operation, such as:

- to restrict the operation of the restaurant to daytime operations only, no night time activity;
- the closure of the restaurant on 1 or two days; and
- extending the hours of operation on the weekend.

The current approval allows for the restaurant to operate 7 days a week and between certain hours. The applicant has responded to concerns raised during the submission period by amending the current application so that the restaurant will only operate on Thursday to Sunday nights with a reduced seating capacity. Such a change is considered to be of a lesser impact than the current approval. Should Council have any concerns in relation to the opening time on Sunday mornings, a later opening time could be considered.

The proposed hours of the daytime operation are generally considered to be reasonable hours for a restaurant in terms of trading hours and capacity. Based on the agreement to park at the shopping centre site, it is assumed that parking and activities such as noise of vehicles is not likely to have a significant detrimental impact on the amenity of the area.

However, it has been acknowledged earlier in the report that whilst access to these car parking spaces is permitted, the operator of the premises or the City cannot require the patrons to park there. As such, it is considered that this issue should be addressed as part of an overall review of traffic and parking in this locality as proposed earlier in the report. There are currently no funds in the 2010/2011 budget to undertake a study of this type. Therefore, it is recommended that Council assess this matter as part of the Draft 2011/2012 budget considerations.

Impact on street

The zoning of this site and similarly zoned adjoining sites under LPS4 promotes the development of the land for non-residential uses such as shops, offices and cafes, which are considered acceptable uses based on the objectives for the zone.

Comments have been made in relation to the potential adverse impact that the proposed development, through traffic, parking and its operation will have on the amenity and use of the street. The use of the site has been already approved for restaurant use, 7 days a week within specified hours. It is considered that the proposed traffic study will address these issues in further detail.

Deliveries and Rubbish and other matters

Certain submissions raised issues in relation to deliveries and rubbish storage location and removal.

The site has a vehicular space, with access from Douro Road that could be used as a service bay. A restaurant of this size is not likely to have a considerable number of deliveries during the week.

It is considered that the applicant should submit a management plan that addresses issues such as:

- timing and location of deliveries of goods;
- rubbish storage and removal,
- other issues associated with the operation of a restaurant, such as containment of cooking odours; and
- modifying the seating capacity during the different hours of operation to reflect the approved hours of operation/seating capacity.

Council Policies

D.B.H6 Signs and Hoardings Policy

The signage is considered to be appropriate to the location and function and of the site and would not diminish the visual amenity, aesthetic, heritage significance and character of the locality or detract from the appearance of buildings and places.

The proposed signage displays the name of the business, identifies the nature of the business and is attached to the building where the business takes place. The proposed signage is considered to contribute to the urban environment as the signs' functions are to convey information to the public.

The proposed horizontal signage is applied to horizontal elements of the building and does not cut across any vertical elements of the building. The proposed signage to be applied to the façade of the building is considered to be appropriate to the period and function of the building.

As the proposed sign is to be illuminated, a condition of planning approval is recommended to be included prohibiting any flashing or moving light at any time, should Council decide to approve the application.

The proposed sign is considered to satisfy the relevant requirements of the City's *D.B.H6 Signs and Hoardings Policy*.

D.B.H13 Impact of Development on Heritage Places Policy

The City's *Impact of Development on Heritage Places Policy* aims to ensure that Council has regard to heritage issues when determining applications, particularly with respect of impacts of proposed developments on heritage places and their site and streetscape contexts.

The proposed signage is to be attached to the building façade above the verandah facing the street. There already exists a similar sized sign in that location. The overall size and appearance of the sign is not anticipated to be detrimental to the heritage characteristics of the property and is therefore considered appropriate and acceptable.

Conclusion

The existing site has been approved for restaurant use since 1986. Such a use is supported having regard to the current objectives for the Neighbourhood Centre zone that are applicable to this site and other surrounding properties that also have the same zoning. The site is also heritage listed and adaptive use of the existing building has retained its heritage significance.

The proposal before Council is to vary the days and hours of operation, with a subsequent reduction in the capacity of the restaurant use based on the hours of operation. It is considered that the modified application has reasonably addressed the concerns raised during the submission process.

Whilst the applicant has been able to obtain an agreement that allows patrons to park on a site in close proximity to the development site, the report has acknowledged that patrons cannot be required to park on a development site that has its own on-site car parking or access to car parking in close proximity to the development site.

Issues already exist associated with traffic and safety issues along Douro Road. Further, intensified development may exacerbate these issues into the side streets. It has been recommended that Council budget for the City to undertake a traffic and parking study to consider these issues in this locality as a whole.

The proposed signage is considered to satisfy the City's *D.B.H6 Signs and Hoardings Policy* and *D.B.H13 Impact of Development on Heritage Places Policy* and the proposed change is supported.

Overall, it is considered that the proposed variations can be supported and a recommendation of approval is proposed with certain conditions of approval.

OFFICER'S RECOMMENDATION

1. That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the proposed change in the hours of operation and capacity of the existing Restaurant use and a replacement sign at No. 25 (Lot 95) Douro Road, South Fremantle, as set out in the plans dated 16 April 2010 and correspondence received by the City on the 20 July and 7 August 2010, subject to the following conditions:

- a) This approval does not permit the use of the rear enclosure of rear courtyard for dining purposes. Any proposal for the use of these areas shall be the subject of a separate application for planning approval.
- b) The hours and days of operation of the restaurant, and the seating capacity of the restaurant, shall be restricted as follows:

PERMITTED DAYS OF OPERATION	PERMITTED HOURS OF OPERATION	MAXIMUM SEATING CAPACITY
Daytime hours		
Monday – Friday	7:00am – 4:00pm	40 Seats
Saturday and Sunday	7:00am – 4:00pm	60 Seats
Evening/Night time hours		
Thursday to Sunday	6:00pm – 10:00pm	60 Seats

- c) That within three months of the re-commencement of the approved use, the applicant is to have a legal binding agreement in place with the owners of No. 219 Hampton Road that allows for the use of 12 car parking spaces on that site to be used by patrons of 25 Douro Road for the life of the use of the site for restaurant purposes, unless varied by any subsequent Planning Approval. The agreement is to be drafted by the City's solicitors at the expense of the applicant.
- d) If the agreement referred to in condition c) no longer exists, the operator of the restaurant on 25 Douro Road shall to the satisfaction of the Chief Executive Officer, find 12 alternative car parking spaces and enter into a legal binding agreement as set out in Condition c) above;
- e) If those car parking spaces cannot be secured as set out in d) above, then the approval is no longer valid.
- f) Once acted upon, this approval supersedes the 1986 Planning Approval (DA2/86).
- g) A Management Plan for the site shall be submitted for approval by the Chief Executive Officer, City of Fremantle, and the operation of the site shall be carried out in accordance with the approved Management Plan. The Management Plan shall cover the following areas of operation of the restaurant, including but not limited to the following:
 - location and timing of deliveries,
 - rubbish storage and removal,

- method by which patrons will be encouraged to park at No. 219 Hampton Road and/or use alternative means of travelling to and from the site; and
 - minimising of odours from the kitchen; and
 - modifying the seating capacity during the different hours of operation to reflect the approved hours of operation/seating capacity.
- h) The proposed sign shall not contain any flashing or moving lights at any time.
2. That Council, as part of the Draft 2011/2012 budget considerations, consider the undertaking of an independent Traffic and Parking study of Douro Road, between Daly Street and Hulbert Street locality.

Cr A Sullivan MOVED the following alternative recommendation:

COMMITTEE RECOMMENDATION

1. That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the proposed change in the hours of operation and capacity of the existing Restaurant use and a replacement sign at No. 25 (Lot 95) Douro Road, South Fremantle, as set out in the plans dated 16 April 2010 and correspondence received by the City on the 20 July and 7 August 2010, subject to the following conditions:

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Evening/Night time hours		
Thursday to Sunday	6:00pm – 10:00pm	60 Seats

- c) Prior to the re-commencement of the approved use under this approval, the applicant is to have a legal binding agreement in place with the owners of No. 219 Hampton Road that allows for the use of 12 car parking spaces on that site to be used by patrons of 25 Douro Road for the life of the use of the site for restaurant purposes, unless varied by any subsequent Planning Approval. The agreement is to be drafted by the City’s solicitors at the expense of the applicant.
- d) If the agreement referred to in condition c) no longer exists, the operator of the restaurant on 25 Douro Road shall to the satisfaction of the Chief

Executive Officer, find 12 alternative car parking spaces and enter into a legal binding agreement as set out in Condition c) above;

- e) If those car parking spaces cannot be secured as set out in d) above, then the approval is no longer valid.
- f) Once acted upon, this approval supersedes the 1986 Planning Approval (DA2/86).
- g) Prior to the re-commencement of the approved use under this approval, a Management Plan for the site shall be submitted and approved by the Chief Executive Officer, City of Fremantle, and the operation of the site shall be carried out in accordance with the approved Management Plan. The Management Plan shall cover the following areas of operation of the restaurant, including but not limited to the following:
 - location and timing of deliveries,
 - rubbish storage and removal,
 - method by which patrons will be encouraged to park at No. 219 Hampton Road and/or use alternative means of travelling to and from the site; and
 - minimising of odours from the kitchen; and
 - modifying the seating capacity during the different hours of operation to reflect the approved hours of operation/seating capacity.
- h) The proposed sign shall not contain any flashing or moving lights at any time.

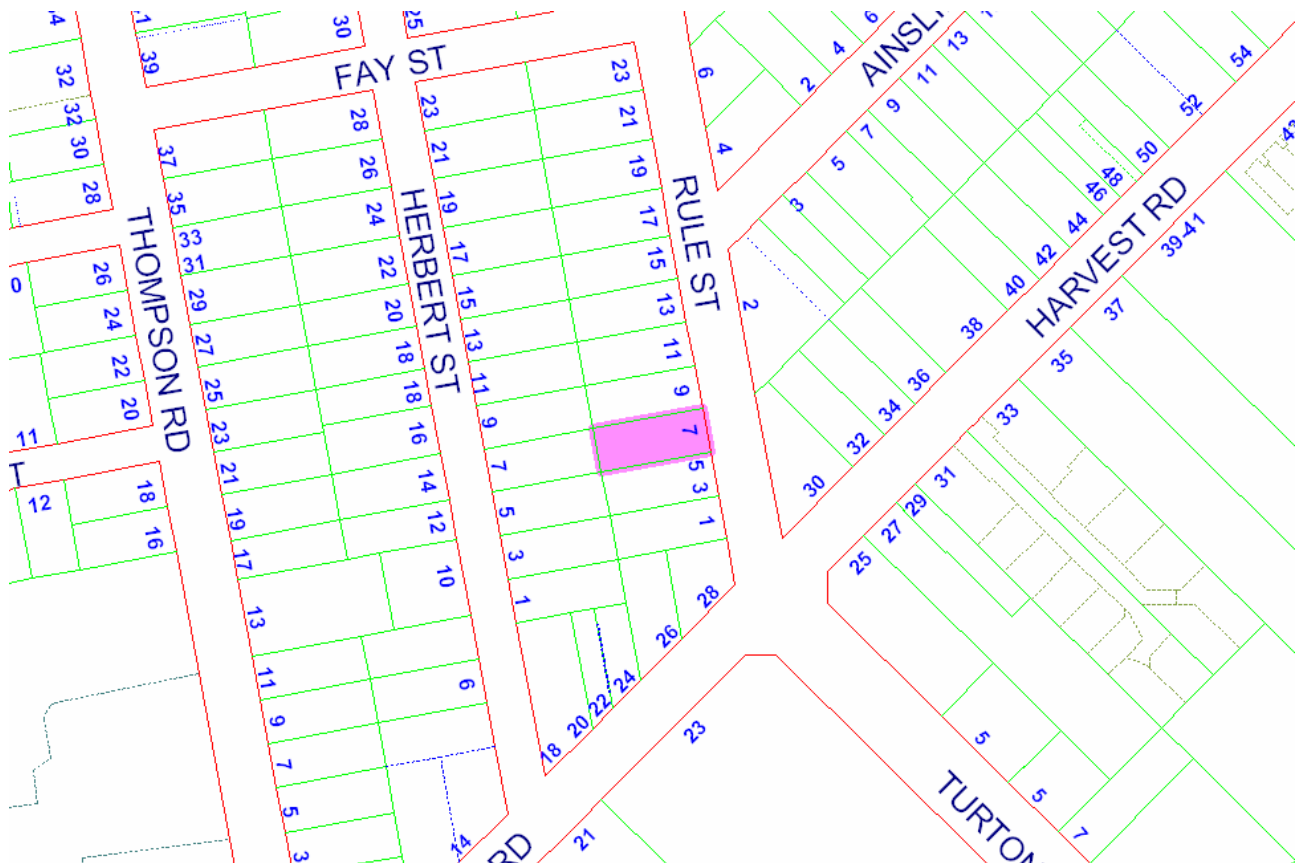
2. That Council, as part of the Draft 2011/2012 budget considerations, consider the undertaking of an independent Traffic and Parking study of Douro Road, between Daly Street and Hulbert Street locality.

CARRIED: 3/1

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Bill Massie	Cr Josh Wilson

PSC1009-165 RULE STREET, NO. 7 (LOT 20) NORTH FREMANTLE - PROPOSED TWO STOREY ADDITIONS (AH DA0105/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 1 September 2010
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: 1. Development plans (22 June 2010)
2. Applicants Justification
3. Heritage Assessment
Date Received: 2 March 2010
Owner Name: R. Shillington
Submitted by: AND Design
Scheme: Residential – R25
Heritage Listing: Level 3 – 14/10/2000
Use Class: Single House
Use Permissibility: P



EXECUTIVE SUMMARY

The application is presented before the Planning Services Committee as the applicant is seeking Planning Approval for Two Storey Additions and Alterations to a Single House at No. 7 Rule Street, North Fremantle. The applicant seeks variations to the R-Codes which have received objections from neighbours.

The applicant seeks variations to the Acceptable Development requirements of the R-Codes, and does not meet the Performance Criteria for overshadowing. The applicant seeks a variation to the prescribed height limit as contained in Local Planning Area 3 – North Fremantle and does not meet clause 5.8.1 – Variation to height requirements, of Local Planning Scheme No. 4.

The property is heritage listed and a heritage assessment has been undertaken with positive comments received.

Due to the impact of overshadowing on the adjoining neighbour, the height variation is not supported and as such the application is recommended for Refusal.

BACKGROUND

The application site is known as No. 7 Rule Street, North Fremantle and is located on the western side of Rule Street. The site has an area of approximately 372m², is orientated in an east-west direction and slopes from the street, down towards the rear of the site, by approximately 2.5 – 3.0 metres.

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

The site is listed on the City's Heritage List with a Management Category of Level 3. The site is also located within the area subject to Policy D.G N13 – Thompson, Alfred, Rule and Harvest Road Local Area Policy.

The surrounding area comprises a mix of older residential heritage listed properties, a number of which have undergone recent development in the form of two storey rear additions, not dissimilar to the proposed development.

DETAILS

The applicant submitted the application on the 2nd March 2010 and following advertising of the application and receipt of submissions, has since amended the plans, dated 22 June 2010, to address the concerns raised. The application therefore now involves retention of the two bedroom cottage at the front of the property and demolition of the rear additions to be replaced by:

- Ground floor Master Bed, Study, amenities and storage rooms; and
- Upper level Kitchen, Living, Dining and Alfresco/Balcony.

Due to the topography of the site the dwelling additions have been designed, at the rear of the existing heritage listed cottage, with access to a landing providing split level stairs to both upper and ground floors.

The building style incorporates a flat roof and a long linear internal layout with the majority of the dwelling being located towards the northern boundary. This has resulted in two boundary walls to the northern boundary, one at the upper level where the balcony/alfresco area steps towards the north and one where the single garage abuts the boundary.

Assessed against the Residential Design Codes of W.A. (R-Codes) the applicant is seeking variations to the following Design Elements (DE):

- 6.3.1 – Buildings setback from the boundary;
- 6.3.2 – Buildings on boundary;
- 6.8.1 – Visual privacy; and
- 6.9.1 – Solar access for adjoining properties.

Further to the above, the applicant is also seeking a variation to the height controls as contained within Local Planning Area 3 – North Fremantle and this variation will be assessed against the provisions of Clause 5.8.1 of Local Planning Scheme No. 4.

The applicant has submitted written justification for the variations which is contained as Attachment 2 and the original submitters have also reviewed the amended plans, who have maintained their concerns.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No. 4

Local Planning Area 3 - North Fremantle

Local Planning Area 3 (LPA 3) sets out the maximum height controls to be applied within North Fremantle. Within the Residential zone, the maximum wall height is 5.5m, with a roof pitch to a maximum of 33 degrees permitted.

Clause 5.8.1 – Variation to height requirements

Where a proposal exceeds the prescribed heights as contained within a Local Planning Area clause 5.8.1 allows variations to be considered subject to satisfying a number of criteria. Clause 5.8.1 states:

‘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.'

Council Policies

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

- D.G.N13 – Thompson, Alfred, Rule and Harvest Local Area; and
- Local Planning Policy 2.4 – Boundary Walls in Residential Development.

CONSULTATION

Community

The original application was required to be advertised in accordance with Clause 9.4 of LPS 4 due to proposed variations to the Acceptable Development provisions of the R-Codes. At the conclusion of the advertising period, 26 March 2010, the City had received three submissions. The following issues were raised:

- I recommend that the proposed northern boundary wall be extended westwards by about 2m to reduce the area of my garden which would be overlooked;
- Change to driveway levels or retaining should be subject to a separate application;
- The northern wall of the development is stated as being finished with 'colorbond'. It will radiate heat and light onto my house. The nature of the colorbond needs to be stated clearly;
- Whilst the application breaches the visual privacy cone of vision to my outdoor area, I am prepared to accept it as one of the characteristics of living in this locality;
- The proposed southern boundary setback to ground floor should be setback in accordance with the R-codes as it prevents sun being available to my property;
- The building height will have an unacceptable impact (bulk, scale and overshadowing) of the adjoining property to the south;
- Every opening (all to habitable rooms) will be fully in shadow in winter as well as over one-third of the outdoor living area.
- I believe the impacts of overshadowing on No. 5 will have a flow on affect creating an issue for No. 3. This flow on effect would be because No. 5 would need to build significantly bigger and overshadow No. 3.
- I believe a better design of No. 7 would limit this impact.

Heritage

The original property is Heritage listed with a management category of Level 3 and as such is required to be assessed for its impact on the heritage values of the property. An external heritage assessment was undertaken (see Attachment 3 for full details) with the following comments:

Retention and restoration of original fabric is positive in light of the place's cultural heritage significance.

Consideration should be given to the fact that the proposed upper floor roof is lower than the ridge of the existing and will be generally not visible, and therefore neutral in its impact on the streetscape values of the place.

The proposed alterations and additions to 7 Rule Street are compatible with the existing heritage building in terms of use of traditional materials and textures such as masonry and iron, although applied in a contemporary style, such as Colorbond cladding to external walls.

PLANNING COMMENT

Local Planning Scheme No. 4

Building Height

Permitted	Provided	Variation
6.0m	6.8m	0.8m

Clause 5.8.1 requires the proposal to satisfy further criteria to allow a variation. In this case, the proposal meets three of the four criteria, failing to meet part (a) which states:

The variation would not be detrimental to the amenity of adjoining properties or the locality generally.

As will be demonstrated under the R-Codes assessment, discussed below, the proposal overshadows the adjoining property by more than the allowable 25% (namely 28%), partially affecting a window to a habitable room and a third of the outdoor living area.

Clause 5.8.1 does not take into account the degree of impact and does not permit a height variation if there is *any* impact.

The overshadowing of the adjoining property to the south still has some impact and thus clause 5.8.1 does not allow the variation to be considered. Accordingly, the application fails to meet this provision of LPS 4 and as such is recommended for refusal due to building height.

Residential Design Codes of WA (2008)

Setbacks

Permitted	Provided	Variation
1.5m	1.0	0.5m

The Performance Criteria for boundary setbacks states:

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

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide adequate direct sun to the building and appurtenant open spaces;*
- *assist with protection of access to direct sun for adjoining properties*

- assist in ameliorating the impacts of building bulk on adjoining properties; and
- assist in protecting privacy between adjoining properties.

In this case, the ground floor setback would not affect access to direct sun or ventilation to the building nor the adjoining building. Building bulk and privacy at the ground level would be improved as the existing dwelling at the ground floor is setback 0.2m from the southern boundary and the proposal would include a 1.0m setback. Furthermore, the shadow cast by the building is due to the upper level which is setback in excess R-Code requirement and as such the ground floor setback variation is considered appropriate.

Boundary Walls

LPP 2.4 does not permit boundary walls as of right. The development proposes two boundary walls and as such is required to be assessed against the Performance Criteria which states:

When considering an application under the performance criteria in clause 6.3.2P2 of the Residential Design Codes, the Council is required to consider a number of specified matters, including whether a boundary wall is desirable in order to not have any significant adverse effect on the amenity of the adjoining property. In considering the effect of a proposed boundary wall on the amenity of an adjoining property, the Council shall have regard to the following factors:

- access to daylight and ventilation to major openings;
- access to direct sunlight and ventilation to outdoor living areas;
- sense of confinement due to accessible cumulative building bulk;
- existing trees or vegetation;
- access to views of significance.

This list of factors is not exhaustive and does not preclude Council from considering any other matter which is relevant to an assessment of the effect of a boundary wall on the amenity of an adjoining property. In considering such effects, the Council will have regard to any comments made in this regard by the owners and occupiers of the adjoining properties.

In this case the boundary walls are located on the northern boundary in two separate sections, a ground floor garage wall towards the front of the property and an upper level alfresco/balcony wall towards the rear. The boundary walls are not considered to significantly affect daylight, ventilation to major openings or outdoor living areas as the adjoining property is setback approximately 2.5m – 3.0m. The ground floor boundary wall abuts an area used for car-parking and access to the rear of the dwelling. The upper level boundary wall would sit opposite a similar balcony and would provide privacy between to the two upper levels of the dwellings.

Furthermore, the adjoining property owner offered comments on the boundary wall seeking that the alfresco/balcony wall be extended by 2m in order to further protect visual privacy of their garden area. The applicant has amended their plans to reflect this modification and it is considered appropriate in this case.

Thus the proposed boundary walls are considered to meet the Performance Criteria of LPP 2.4 and the R-Codes.

Visual Privacy

Permitted	Provided	Variation
7.5m	2.0m (North)	5.5m
7.5m	7.0m (South)	0.5m

The application is required to be assessed against the Performance Criteria which 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.

In this instance the southern elevation has been provided with a privacy screen to restrict the 0.5m incursion to a rear portion of the neighbour's garden. The area overlooked is not an active habitable space, outdoor living area or major opening to a habitable room. Furthermore, the affected neighbour has stated in their submission that they are prepared to accept it as one of the characteristics of living in this locality.

The proposed variation to the northern property, whilst seemingly appearing as being setback only 2.0m, is provided with a 'finn' wall that extends to restrict the visibility from the alfresco/balcony to the rear corner of the adjoining property. The area overlooked is not an active habitable space, outdoor living area or major opening to a habitable room. Furthermore, the affected neighbour proposed that this 'finn' wall be included so to provide this level of privacy, which has been incorporated into the design.

Therefore, it is considered that the proposal meets the Performance Criteria for this element of the R-Codes.

Overshadowing

Permitted	Provided	Variation
25%	28%	3%

The Performance Criteria states:

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

- *Outdoor living areas;*

- Major openings to habitable rooms;
- Solar collectors; or
- Balconies or verandahs.

In this instance the shadow cast by the proposal would affect a major opening to a habitable room and the outdoor living area of the southern adjoining property.

It should be noted however, that the affected window would receive approximately 80% access to sunlight and the applicant is offering to install a taller window, at their own expense, to increase the available light into this habitable room so to help alleviate the potential to overshadow.

Furthermore, the shadow cast on the outdoor living area would affect approximately a third of the available outdoor living area contained on the property.

The applicant has submitted justification in relation to this and states:

There will be less shadow on the existing windows of #5 as a result of our amended design.

That is, as a result of the proposed additions to #7, more sunshine will fall onto the northern wall windows of #5.

The owner of #7 has also offered to supply and install a larger window to #5's kitchen, if that would be desirable to them. This is just a gesture of good will.

The existing trees along the southern boundary of #7 cast shadow almost completely over #5's back yard. These trees are to remain in the proposed development.

The existing trees at #7 cast shade over the rear yards of #3 and #5, although the fence between #3 and #5 casts a bigger shadow into #3 than the trees from #7. The trees are to remain and so this situation will not be altered for #5

In summary, it would be unrealistic to use percentage calculations of overshadowing in the instance of this application, for the reasons outlined above. Unchanged the existing house and garden at #7 already overshadows more than 25% of #5. However the proposed development at #7 will result in a small net gain in sunlight to #5.

Whilst the applicant is generally correct with the above, the R-Codes do not take into account shadow cast by vegetation and instead refer the assessment against the shadow cast by the building.

As such, the additions to the building would cast a shadow on to the southern adjoining property and would affect a major opening to a habitable room and a third of the outdoor living space, thus does not meet the Performance Criteria of 6.8.1 of the R-Codes.

Furthermore, the trees located along the rear boundary are not a permanent feature in comparison to a building and can be altered through seasonal variation and pruning. The overshadowing requirements of the R-Codes relates to the impact of the building rather than vegetation.

Local Planning Policy

Local Planning Policy 1.6 – Preparing Heritage Assessments

Local Planning Policy 1.6 – Preparing Heritage Assessments (LPP 1.6) states that where an application is made for a property that is on the City's Heritage List as a Management Category of Level 3, a Statement of Significance and a Statement of Heritage Impact is required.

A Heritage Assessment has been undertaken and has found that the alterations and additions are generally acceptable with exception to the upper level roof that protrudes to the north of the site and is visible from the street.

However, this portion of the development is setback behind the main façade of the original dwelling and is light weight in its impact on the streetscape and as such is considered appropriate. Furthermore, the roof span at this point is designed for solar protection of north facing openings and is considered acceptable in this case.

As such the application is considered acceptable for the purposes of LPP 1.6.

D.G. N13 – Thompson, Alfred, Rule and Harvest Local Area

D.G. N13 provides additional criteria in the assessment of building height for properties in this locality and allows a maximum height of 5.7m.

It also states that variations to height can be granted on the basis of the average height of the building not exceeding the maximum.

In this case the application complies with the average height however the policy also requires the proposal to not be detrimental to the amenity of the adjoining properties. In this case, as demonstrated above, the building height would have an impact on the southern property through overshadowing and as such the application exceeds the height requirements of D.G. N13.

CONCLUSION

The proposed rear additions and alterations do not comply with the prescribed heights of Local Planning Area 3 and does not meet the building height variations clause 5.8.1 of Local Planning Scheme No. 4 due to the shadow impact to the southern adjoining property.

The proposal meets the Acceptable Development requirements of the R-Codes, with the exception of overshadowing.

The application has had a heritage assessment as per LPP 1.6, and is considered to be acceptable in retaining the heritage value of the property.

Based on the height and overshadowing variations the application is recommended for Refusal.

OFFICER'S RECOMMENDATION

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Storey Additions and Alterations at No. 7 (Lot 20) Rule Street, North Fremantle, subject to the following condition(s):

1. The proposal fails to meet Clause 5.8.1 – Variation to height requirements of Local Planning Scheme No. 4 in that it would have a detrimental affect on the amenity of the southern adjoining property through its impact on access to direct sunlight.
2. The proposal fails to meet the Performance Criteria of Design Element 6.9.1 – Solar access for adjoining sites of the Residential Design Codes.

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 the Proposed Two Storey Rear Additions to Existing Single House at No. 7 (Lot 20) Rule Street, North Fremantle, subject to the following conditions:

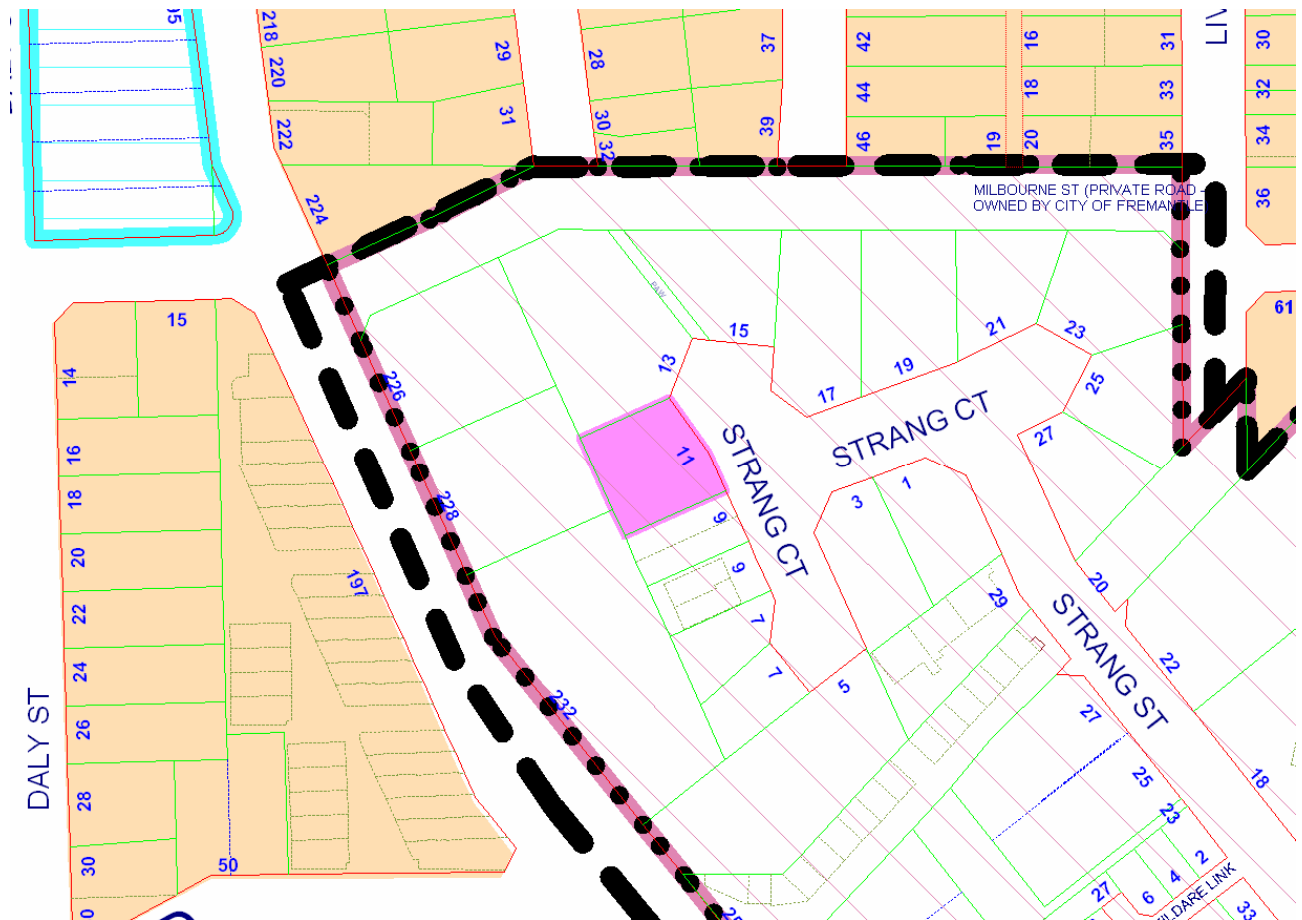
1. **The development hereby permitted shall take place in accordance with the approved plans dated 22 June 2010, except with any minor modifications as approved by the Manager Development Services. It does not relate to any other development on this lot.**
2. **All storm water discharge shall be contained and disposed of on-site.**
3. **Prior to occupation, the boundary wall located on the northern side boundary shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer, City of Fremantle.**
4. **The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the City of Fremantle.**

CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

PSC1009-166 STRANG COURT, NO. 11 (LOT 109) BEACONSFIELD - CHANGE OF USE RESIDENTIAL BUILDING (JWJ DA0160/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 1 September 2010
Responsible Officer: Manager Development Services
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: None
Attachment 1: Development Plans (March 2010)
Attachment 2: Site visit photos (August 2010)
Date Received: 25 March 2010
Owner Name: CCFC Pty Ltd
Submitted by: As above
Scheme: Development Zone DA14
Heritage Listing: South Fremantle Heritage Precinct
Existing Landuse: Warehouse/Workshop
Use Class: Mixed Use
Use Permissibility: 'A'



EXECUTIVE SUMMARY

The City of Fremantle is in receipt of an application which seeks retrospective approval for unauthorised change of use to 'Residential Building' for 11 Strang Court, Beaconsfield.

The site is zoned Development Zone - Development Area 14 under the provisions of Local Planning Scheme No. 4 (LPS4). LPS4 provides for development to be assessed under the 'Mixed Use' provisions in the absence of an adopted Structure Plan.

It is recommended that the application be granted approval subject to conditions.

BACKGROUND

The subject site (the site) is zoned 'Development Zone' and specifically affected by Development Area 14 under the provisions of LPS4. The surrounding area is also subject to the same zoning and are currently occupied by an array of uses including retail, commercial and industrial uses.

Development Area 14 states that a Structure plan is to be adopted to guide subdivision, land use and redevelopment and that any applications received prior to the adoption of a Structure Plan shall be assessed via the Mixed Use zone provisions of LPS4.

The Strang Street Structure Plan was adopted by Council on 7 February 2005 and identifies the site for use for industrial purposes. The Western Australian Planning Commission (WAPC) advised the City of its willingness to endorse the Structure Plan subject to a number of modifications and conditions. The City is yet to address these modifications and conditions to the satisfaction of the WAPC.

As such the Structure Plan is yet to be formally adopted and accordingly this application will be assessed against the Mixed Use provisions of the Scheme.

It should be noted that a report is expected to be presented to the Planning Services Committee in the near future regarding possible amendments to the Strang Street Structure Plan, including potential rezoning to Mixed Use.

The subject site is 1157m² and is located on the western side of Strang Court, Beaconsfield. The site is currently improved by existing buildings including a brick building and warehouse/workshop. A large bitumen area provides sufficient area for parking on the site.

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

- On 28 March 2006 the City of Fremantle granted Planning Approval for two storey workshop addition/alterations to the existing building (DA85/06);
- On 27 September 2005 the City of Fremantle granted Planning Approval for a two storey workshop addition (DA499/05).

A letter sent to the applicant advised that a change of use application was required to be submitted to the City pertaining to the unauthorised use of the building for residential purposes. Subsequently a planning application was received by the City on 25 March 2010.

DETAILS

On 25 March 2010, the City received a retrospective development application for a Change of Use to Residential Building at No. 11 (Lot 109) Strang Court, Beaconsfield.

The applicant has stated that the change of use would utilise upstairs rooms which may be used as residential accommodation on an occasional basis, such as when functions require country or other guests to stay overnight. It is not envisaged that these rooms would be occupied on a permanent basis.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme 4

Zone

As mentioned previously, the site is zoned 'Development Area' under the provisions of LPS 4 and is specifically affected by Development Area 14 which states:

- 1. Structure plan is to be adopted to guide subdivision, land use and redevelopment prior to the approval of residential development applications.*
- 2. Investigations of potential site contamination to the satisfaction of the DECWP.*

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

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

Clause 6.2.4.2 states that:

'...a local government may recommend subdivision or approve the development of land within a Development Area prior to a structure plan coming into effect in relation to that land, if the local government is satisfied that this will not prejudice the specific purposes and requirements of the Development Area.'

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

- (i) provide for a limited range of light, service and cottage industry, wholesaling, trade and professional services, small scale retailing of goods and services*

- (ie. Showrooms, cafes, restaurants, consulting rooms), small scale offices and administration, entertainment, residential at upper levels and recreation,
- (ii) ensure future development within each of the mixed use zones is sympathetic with the desired future character of each area,
- (iii) ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality, and
- (iv) conserve places of heritage significance the subject of or affected by the development.

Use

LPS4 states that 'Residential Building' has the same definition as in the Residential Design Codes. The Residential Design Codes 2008 states:

A building or portion of a building, together with rooms and outbuildings separate from such building but incidental thereto; such building being used or intended, adapted or designed to be used for the purpose of human habitation:

- temporarily by two or more persons; or
- permanently by seven or more persons, who do not comprise a single family, but does not include a hospital, or sanatorium, a prison, a hotel, a motel or a residential school.

Car Parking

In accordance with Table 3 – Vehicle Parking of LPS4, Residential Building requires one parking bay per guest bedroom and one per caretaker/on-site manager.

Council Local Planning Policies

Clause 4.6 of Council policy *LPP 1.5 Planning, Building and Environmental Health Compliance* (LPP 1.5) contains provisions that relate to where non-compliant development has been carried out and when the matter will be the subject of prosecution action.

The policy states that 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.

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

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4, as a Residential Building is an 'A' use within a Mixed Use Zone. At the conclusion of the advertising period, being 5 August 2010, the City had received two submissions, one supporting the application and one which raised the following concerns:

- Potential residential use being impacted by adjoining Place of Worship and associated hours of operation and noise.

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

PLANNING COMMENT

Land Use

The Strang Street Structure Plan has not been endorsed by the WAPC for Development Area 14, therefore development is to be assessed against the provisions of the Mixed Use Zone. Residential Building is classed as an 'A' use within the Mixed Use Zone. The proposed land use is supported as it is considered to satisfy the relevant objectives of the Mixed Use zone. Furthermore, ample area for parking is provided on site to cater for the additional land use.

In this instance, the City would be determining the application prior to the adoption of the Structure Plan which is permissible under clause 6.2.4.2 of LPS4, however this requires the City to be satisfied that the decision will not prejudice the specific purposes and requirements of the Development Area.

The specific purposes and requirements of the Development Area would result in the site being earmarked for Industrial purposes as part of the proposed Strang Street Structure Plan. A Residential Building is an 'X' use within an Industrial zone and as such this decision may prejudice the purposes and requirements of the Development Area.

Therefore it is recommended that temporary approval be granted for five years. The temporary approval will allow the site to operate as a Residential Building whilst it satisfies the objectives of the Mixed Use Zone. If a structure plan has not yet been endorsed by the WAPC at the expiry of the temporary approval, the applicant may reapply for a further temporary approval for Residential Building use of the site.

Retrospective Change of Use

As mentioned previously, the City notified the applicant that planning approval would be required for a change of use pertaining to the unauthorised use of the building for residential purposes. The applicant submitted a planning application for the change of use to Residential Building in March 2010.

Council may grant planning approval for an unauthorised use if the development conforms to the provisions of LPS4. The unauthorised use is not considered to have created a variation against the relevant provisions of LPS4 or relevant Council Local Planning Policies. In accordance with clause 4.6 of Council policy LPP 1.5 there is not a broader public interest in undertaking legal action regarding the unauthorised works, subject to the determination of the application. The unauthorised use is considered to be supportable for retrospective approval.

Submitter Concerns

A submission was received which raised concerns regarding the potential for the proposed Residential Building being impacted by noise emissions and hours of operation from an adjoining Place of Worship. In general terms, noise is required to be within the prescribed limits contained in the *Environmental Protection (Noise) Regulations 1997*. However, the issue is not directly relevant to this application.

CONCLUSION

The proposed Residential Building satisfies the objectives of the Mixed Use zone. Sufficient area for parking is provided on site for the proposed use and other existing ancillary uses. As the proposed Strang Street Structure Plan has not yet been finalised, it is recommended that the proposed use be granted temporary approval for five years.

OFFICER'S AND COMMITTEE RECOMMENDATION

MOVED: Cr A Sullivan

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Retrospective Change of Use to Residential Building at No. 11 (Lot 109) Strang Court, Beaconsfield, subject to the following condition(s):

- 1. The use hereby permitted shall take place in accordance with the approved plans dated 25 March 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 site.**
- 2. The 'Residential Building' use hereby approved in accordance with the approved plans dated 25 March 2010 shall cease within 5 years (60 months) of the date of this approval.**

Advisory notes:

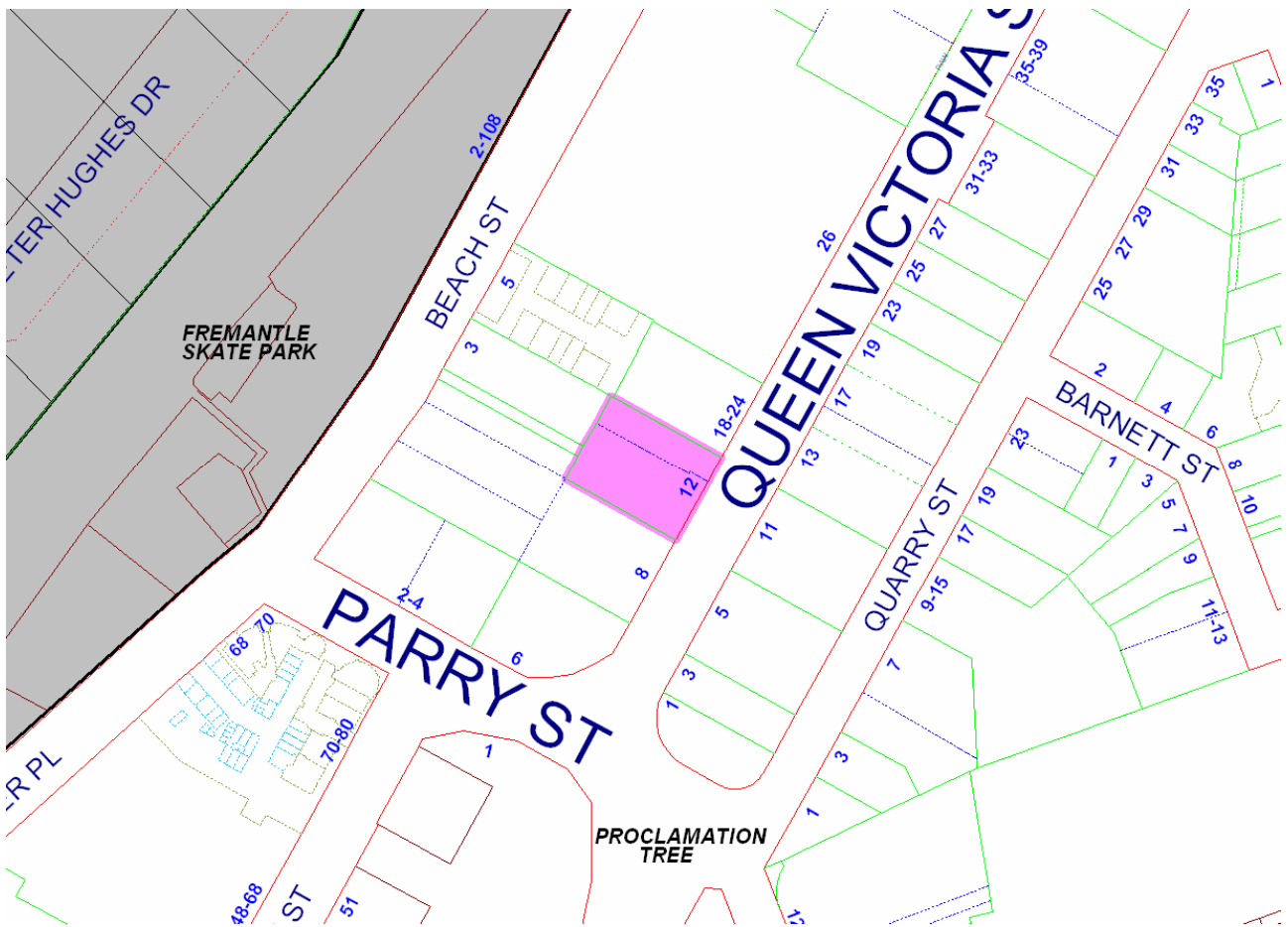
- (i) Please be advised that a Building Licence will not be required for this change of use, however, the City requests that two copies of the proposed plans be submitted to the City's Building Department, so an inspection can be carried out, and advice be given on any possible additional fire suppression or occupant warning systems that may need to be put in place, in order to comply with the Building Code of Australia 2009 Volume 1. For information on this requirement, please contact the City's Building Services Department on 9432 9781.**
- (ii) The applicant shall submit a health application, with fees, showing amendments to the existing apparatus for the treatment of sewage (application form can be found on the City's website). The application must show the new sanitary facility connections to the existing (and amended) septic tank apparatus. Alternatively the applicant should investigate if the sanitary facilities can be connected to an available Water Corporation sewer. A licensed plumber shall complete the work in accordance with the relevant WA plumbing codes and submit to the City of Fremantle an as constructed diagram of all sewer apparatus and sanitary facility connections to main sewer.**

CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

PSC1009-164 QUEEN VICTORIA STREET NO. 12-16 (LOTS 3 & 31), FREMANTLE - EXTERNAL TREATMENT (PAINTING) OF WALLS OF EXISTING BUILDING - (AD DA0311/10)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Development Services
Meeting Date: 1st September 2010 (PSC)
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0912-222 (PSC Meeting held 2 December 2009); PSC1001-1 (PSC Meeting held 13 January 2010)
Attachment 1: Development Plans
Attachment 2: Heritage Assessment
Date Received: 25 June 2010
Owner Name: St Patricks Community Support Centre
Applicant: Konstruct WA
Scheme: 'Mixed Use' - R60
Heritage Listing: Heritage Listed – MHI Level 1B
Existing Landuse: 'Office' & 'Residential building'
Use Class: 'Office' & 'Residential building'
Use Permissibility: 'P' & 'A'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee (the Committee) as it involves development that is retrospective in nature and a place that is registered on the City's Heritage List and Municipal Heritage Inventory as a management category Level 1B.

The applicant is seeking Council's Planning Approval for external treatment (painting) of walls of existing building at No's 12-16 (Lots 3 & 31) Queen Victoria Street, Fremantle (Stella Maris Building).

At its meeting held 13 January 2010, PSC (refer previous item PSC1001-1) resolved to grant Retrospective Approval for the removal of existing render on the building and Planning Approval for external rendering to a portion of the existing building, subject to the following conditions:

1. *This approval relates only to the development as indicated on the approved plans dated 26 May 2009. It does not relate to any other development on this lot.*
2. *The external lime based render shall be constructed and applied in accordance with the additional information (Mortar Methodology) dated 6 November 2009.*
3. *Within 28 days of the date of the approval letter, the applicant shall submit for approval by the Chief Executive Officer, City of Fremantle, a schedule of works detailing the method(s) to be used in the removal of the existing unauthorised cement render from the façade (eastern) elevation of the building.*
4. *The existing unauthorised cement based render on the façade (eastern) elevation of the building shall be removed within 28 days from the date of the Chief Executive Officer's approval letter referred to in condition 3 above and in accordance with the approved Schedule of Works.*
5. *The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the City of Fremantle.*
6. *The external painting of the building does not form part of this approval.*

In accordance with Condition 3 above, the applicant provided a schedule of works detailing the method(s) to be used in the removal of the existing unauthorised cement render from the façade (eastern) elevation of the building within 28 days of the date of the approval letter. However, Condition 4 above required the applicant to remove the aforementioned existing unauthorised cement render within 28 days from the date of the Chief Executive Officer's approval letter referred to in Condition 3, and in accordance with the approved Schedule of Works, of which has not been undertaken in accordance with this condition of the Retrospective Approval.

This report provides for Council's consideration, a recommendation for Planning Approval, subject to appropriate conditions.

BACKGROUND

The subject site is located at No.12-16 Queen Victoria Street, Fremantle (the site) and is known as the Stella Maris building. The subject site is located within the block bound by Queen Victoria Street, Beach Street, Parry Street and James Street, Fremantle. The site consists of two lots (3 & 31) with an existing two storey building which is currently occupied by St Patrick's Community Support Centre.

The subject site is zoned 'Mixed Use' under the provisions of the City of Fremantle's (the City) Local Planning Scheme No.4 (LPS4) and has a density coding of R60. The site is registered on the City's Heritage List and Municipal Heritage Inventory (MHI) as Management Category level 1B.

See previous report (refer PSC0912-222) in relation to the relevant planning background prior to this report. However, the following information represents the most recent relevant planning background since the previous application was determined:

- On 10 February 2010, the applicant submitted a letter to the City with the necessary information (schedule of works) as required by condition 3 of Planning Approval dated 19 January 2010 (refer DA198/09);
- On 5 March 2010, the applicant sent a letter to the City requesting an extension to the 28 day time frame stipulated as part of condition 3 of the Planning Approval dated 19 January 2010 (refer DA198/09), citing complications in obtaining financial assistance from Lotterywest in order to meet the cost of the approved works. The applicant further stated that Lotterywest has advised that it would take at least 90 days for their application for financial assistance to be considered. Subsequently, the applicant requested sufficient time to obtain this financial assistance from Lotterywest, whereby the approved works would be undertaken within 28 days of the necessary funding being secured;
- On 12 March 2010, the applicant submitted an additional letter further to their letter to the City dated 5 March 2010 stating that further to discussions with Lotterywest, there would be difficulties in obtaining the necessary funding for the approved works at that time, and that alternative means of funding was required. The applicant further advised that in light of this, there would no longer be reason for any delay as requested in their letter dated 5 March 2010 and that they looked forward to the City issuing a letter confirming compliance of Planning Approval dated 19 January 2010 (refer DA198/09);
- On 3 May 2010, the City sent the applicant a letter in relation to the compliance with the Planning Approval dated 19 January 2010 (refer DA198/09) outlining that further to the applicants letter dated 10 February 2010, Planning Approval had not been granted for the remaining acrylic paint to existing limestone facades to be scraped off, nor the painting of the remaining external facades of the building that aren't limestone with a high grade acrylic paint and would therefore need to form part of a separate application for Planning Approval; and
- On 2 June, the City's Officer's met with the applicant whereby it was outlined that Planning Approval is required to be obtained for the proposed painting works.

DETAILS

On 25 June 2010 the City received a development application seeking Planning Approval for external treatment (painting) of walls of existing building at No's. 12-16 (Lots 3 & 31) Queen Victoria Street, Fremantle (refer DA0311/10). Specifically, proposes to paint the front façade of the existing building with lime-wash based 'Dulux Weathershield White Base' and 'Solver Duraguard Low Sheen' paint, which is to match the lime-wash on the refaced limestone.

On 1 July 2010 the City received written correspondence (letter attached to an email) from the applicant requesting approval be granted for the following reasons;

"...we request approval be granted to incorporate both the external remedial works and the external painting works to the Stella Maris building so that this can be done at the same time.

This is to facilitate,

- 1. The completion of these works which have been in abeyance for nearly two years.*
- 2. To save the unnecessary cost to St Patricks Community Services of double scaffolding costs, (estimated at \$15,000). Money better spent on charitable works.*
- 3. Continuity for the builder to complete the works."*

The City understands that the applicant has not met the requirement of Condition 4 of Planning Approval dated 19 January 2010 (refer DA198/09) for the aforementioned reasons.

STATUTORY AND POLICY ASSESSMENT

Local Planning Scheme No.4 (LPS4)

The proposed development is consistent with the objectives of the 'Mixed Use' zone, as specified in LPS4. Clause 8.2 of LPS4 prescribes that painting on the external surface of any building is development which can be undertaken without planning approval excepting where the building or structure is:

- (i) located in a place that has been entered in the Register of Places under the Heritage of Western Australia Act 1990,*
- (ii) the subject of an Order under Part 6 of the Heritage of Western Australia Act 1990, or*
- (iii) included on the Heritage List under clause 7.1 of the Scheme.*

The site is included on the City's Heritage List under clause 7.1 of LPS4 and therefore Planning Approval is required to be obtained for the proposed external treatment (painting). Clause 8.1 of City of Fremantle Local Planning Scheme No.4 (LPS4), 'all development on land zoned and reserved under the Scheme requires the prior approval of the Council.'

Clause 10.2.1 of LPS4 prescribes the matters to which the Council is required to have due regard to in considering a proposal.

Included amongst these matters are any potential impacts that a proposal may have on the heritage values of an existing place and its context including the streetscape and/or heritage area.

As such, the proposed external treatment (painting) works of this application requires Planning Approval.

Council's Local Planning Policies

The application was assessed against the following relevant Council Planning Policies:

- *LPP1.5 – Planning, Building and Environmental Health Compliance;*
- *LPP1.6 – Preparing Heritage Assessments;*
- *LPP2.5 – External Treatment of Buildings; and*
- *DGF21 – Quarry Street, Queen Victoria Street, James Street and Beach Street Local Area.*

CONSULTATION

Community

The application was required to be advertised in accordance with Council's *LPP1.3 - Public Notification of Planning Proposals* policy as the application involves the semi permanent alteration to the original built fabric of the building that is located on a site that is registered as Management Category Level 1B on the City's Municipal Heritage Inventory (MHI). The proposal was advertised by way of written notification to adjoining and abutting landowners. At the conclusion of the advertising period, being 16 July 2010, the City had received no submissions relating to the proposal.

Heritage

In accordance with Clause 3.2 of Council's *LPP1.6 – Preparing Heritage Assessments* policy, a Heritage Assessment was not required to be undertaken as one was “*previously obtained on another relevant proposal within two calendar years of the date of application*”, prepared by an external Heritage Architect for DA198/09 and received by the City on 17 July 2009.

A copy of the Heritage Assessment previously undertaken is contained as ‘Attachment 2’ of this report.

PLANNING COMMENT

In relation to this application, Council needs to consider whether to:

1. refuse the external treatment (limewash painting) and take legal action; or
2. approve the external treatment (limewash painting) and take legal action; or
3. approve the external treatment (limewash painting) and not take legal action.

LPP1.5 – Planning, Building and Environmental Health Compliance

The City's *LPP1.5* policy states:

4.4 Extension to 28 Day Period for Compliance

The Chief Executive Officer may grant one extension of up to a further 28 days to the 28 day time period where the Chief Executive Officer is satisfied that the landowner has made a reasonable effort to bring the property into compliance within the 28 day period, and that the property will be brought into compliance in the immediate future. No further extensions will be granted.

In accordance with Condition 3 of Planning Approval dated 19 January 2010 for DA198/09, the applicant was required to provide a schedule of works detailing the method(s) to be used in the removal of the existing unauthorised cement render from the façade (eastern) elevation of the building within 28 days of the date of the approval letter, which was satisfied. However, Condition 4 of that same Planning Approval also required the applicant to remove the aforementioned existing unauthorised cement render within 28 days from the date of the Chief Executive Officer's approval letter referred to in Condition 3, and in accordance with the approved Schedule of Works, of which has not been undertaken in accordance with this condition of the Retrospective Approval.

As discussed above in the 'Details' section of this report, the applicant is proposing to undertake the outstanding works associated with this condition in conjunction with the external treatment (painting) works subject of this application. Notwithstanding, the applicant is still not complying with the Planning Approval (DA198/09) which was granted by Council on 19 January 2010.

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 discussed above, the development was not brought into compliance (rectified) within the specified timeframe provided as part of the Planning Approval (DA198/09) dated 19 January 2010. However, in relation to 4.6(c) relating to the submission of a development application, as a development application has been submitted for works which the applicant has advised has a direct relationship to satisfaction of condition 4, it is considered that there is no broader public interest in undertaking legal action.

LPP2.5 – External Treatment of Buildings

The purpose of this policy is to provide guidance for the assessment of planning applications for the treatment of heritage listed buildings and for new and infill development, to prescribe the circumstances where:

- a) *painting and treatment of finishes of buildings are to be considered as part of a planning application, and*
- b) *where it may be dealt with via a condition, and*
- c) *where no condition is considered to be necessary.*

Additionally, Clause 1.1.1 of this policy states that planning applications that propose the treatment of the external surface of a building shall include:

- a) *A 'painting methodology' to demonstrate that the type of paint, as well as the preparation of the building and application of the paint will contribute to the conservation of the building, and will not significantly compromise the significant heritage fabric of the building.*
- b) *Evidence of research into original colour schemes in the form of a paint scraping and/or historical research into the style of building.*

Furthermore, Clause 2.1 states that paint colours, *shall be compatible and complimentary to the heritage character of the existing building.* The applicant has submitted a proposed colour schedule (see 'Attachment 1').

With regards to the proposed external treatment (painting) works of the front façade of the building, Clause 1.2.1 of this policy states that:

Council will not approve the rendering or painting of face brickwork or limestone fabric for buildings of recognised heritage significance unless it can be demonstrated by the applicant that it is not possible to conserve the face brickwork or limestone fabric in its current form, and painting or rendering the face brickwork or limestone fabric is the only suitable conservation treatment in the circumstances.

Furthermore, Clause 1.2.2 states that:

The sealing of exposed face brickwork or limestone fabric of buildings with recognised heritage significance is not considered appropriate and will not be supported.

Additionally, Clause 1.2.3 states that:

In cases where treatment of face brickwork and limestone fabric is proposed, an application shall be accompanied by a technical report from a suitably qualified expert in support of the methodology to ensure that the treatment will be beneficial for the ongoing conservation of the building.

The subject site (Stella Maris) is included on the City of Fremantle's Heritage List and has a management category on the Municipal Heritage Inventory (MHI) as a Level 1B. The place is considered by the City of Fremantle to be of exceptional significance to the City and its conservation is required. It is also classified by the National Trust of Australia (WA).

The applicant proposes to only paint the façade (eastern elevation) of the building and not the northern and southern elevation of the front building.

The original external Heritage Report undertaken supported both the colour choice and the external painting of the north, south and facade of the building. However, the report did not support the acrylic based paint for the original application and did not stipulate what elements of the external painting of the building were supported. Alternatively, Lime Wash Based paint was recommended by a consultant Stonemason, as this paint enables limestone rock face to breath adequately allowing moisture to escape the walls of the building. Subsequently, taking this into consideration, the previous recommendation presented to PSC on 2 December 2009 (refer PSC0912-222), included a condition limiting the proposed external paint material to be of 'Lime Wash Base'.

As requested by PSC, the City's Heritage staff conducted a site inspection investigated the matter further. The City's Heritage Staff provided the following comments pertaining exclusively to the painting component of the proposal:

"Lime based paints should only be used on areas such as the rendered quoining that has any acrylic coatings removed prior. Where acrylic finishes are not to be removed from the original fabric no further painting should occur."

The applicant has stated that their original intention was to merely clean up the façade of the building, improving the streetscape presence of the existing landmark building on site. The external Heritage Report identified the two proposed external painting colours were acceptable on heritage grounds as they would be compatible and complimentary to the heritage character of the existing building. However the acrylic based nature of the chosen paints was not supported. The City has been advised (Stonemason Technical advice) that acrylic based paint does not allow limestone to breath adequately, as it seals a membrane over the external surface not allowing moisture to escape the wall, resulting in the limestone rock gradually breaking down and deteriorating.

The applicant now proposes to use a lime-wash base in-lieu of the previously proposed acrylic based paints, whilst retaining the same 'Dulux Weathershield White Base' and 'Solver Duraguard Low Sheen' colours, of which were deemed compatible with and complimentary to the heritage character of the existing building.

The City's heritage staff were consulted again in relation to the proposed painting works and provided further comment in relation to the lime wash paint, stating that a lime wash painting coat to the new lime render and existing quoining would provide further protection, and therefore upon reviewing this matter, now concur with the Stonemason's Technical advice and support the proposed painting.

DGF21 – Quarry Street, Queen Victoria Street, James Street and Beach Street Local Area

The proposal has been assessed against, and is considered to satisfy the general requirements of the City's DGF21 policy.

CONCLUSION

The application for the external treatment (painting) of walls of existing building at No's. 12-16 (Lot 3 & 31) Queen Victoria Street, Fremantle has been assessed against, and is considered to be generally consistent with the provisions of LPS4 and relevant Council policies.

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

OFFICER'S AND COMMITTEE RECOMMENDATION**MOVED: Cr A Sullivan**

A. APPROVES the application for Planning Approval under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the External Treatment (Painting) of Walls of Existing Building at No's. 12-16 (Lot 3 & 31) Queen Victoria Street, Fremantle, subject to the following condition(s):

1. The development hereby permitted shall take place in accordance with the approved plans dated 25 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. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the Chief Executive Officer, City of Fremantle.
3. The development hereby permitted shall be finished and maintained generally in accordance with the approved lime based paint colour/building finishes schedule dated 25 June 2010.

B. AUTHORISES the Chief Executive Officer, City of Fremantle to issue a written direction in accordance with Section 214 (3) of the *Planning and Development Act 2005* requiring the owner of the land at No's. 12-16 (Lot 3 & 31) Queen Victoria Street, Fremantle, to within 90 days:

- a) remove the existing unauthorised cement based render on the façade (eastern) elevation of the building in accordance with the approved Schedule of Works, to accord with the plans the subject of the planning approval granted on 19 January 2010 (DA198/09).

C. In the event that the written direction is not complied with, AUTHORISES the Chief Executive Officer, City of Fremantle to initiate legal action against the owner of the land at No's. 12-16 (Lot 3 & 31) Queen Victoria Street, Fremantle, for failing to comply with the written direction and/or contravening LPS4.

CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

PSC1009-167 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 AND COMMITTEE DECISION

MOVED: Cr Sullivan

That the information is noted.

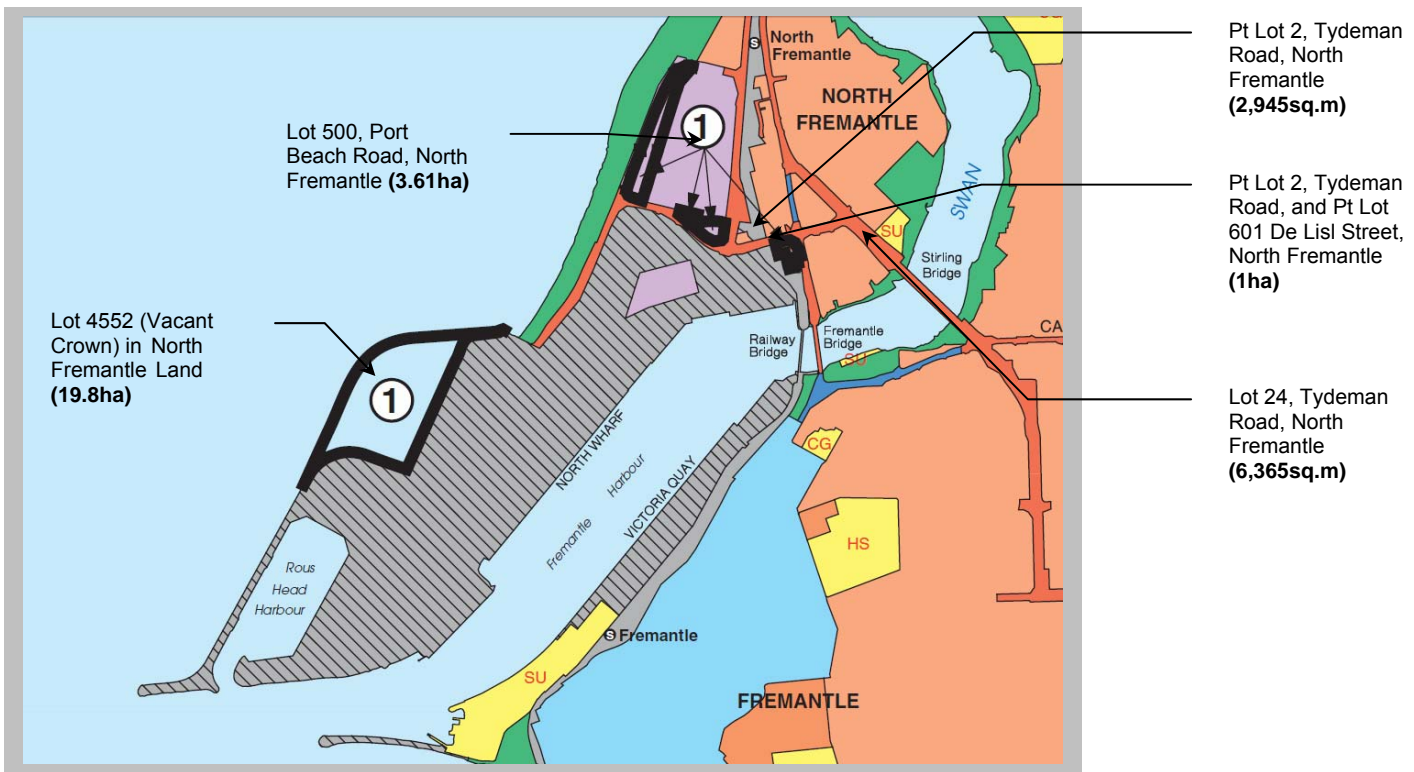
CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

REPORTS BY OFFICERS (COUNCIL DECISION)

PSC1009-168 SUBMISSION ON PROPOSED METROPOLITAN REGION SCHEME AMENDMENT MRS REZONING OF LAND AT ROUS HEAD, AND ALONG PORT BEACH ROAD AND TYDEMAN ROAD, NORTH FREMANTLE

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Planning Projects
Actioning Officer: Strategic Planning Officer
Decision Making Level: Council
Previous Item Number/s: Nil
Attachments: 1. EPA Statement No. 801 (August 2009)



EXECUTIVE SUMMARY

The Western Australian Planning Commission (WAPC) is inviting comments on an Amendment to the Metropolitan Regional Scheme (Amendment 1191/41) in relation to rationalisation of Fremantle Ports operations.

The purpose of the proposed Metropolitan Regional Scheme (MRS) Amendment is to rezone an area of approximately 25.34ha to consolidate all operational areas within the Fremantle Inner Harbour area as Port Installations reservation.

The amendment proposes to rezone five areas from the Urban and Industrial zones and/or Waterways reservation to Port Installations reservation, including the Rous Head reclamation area and properties owned by the Fremantle Port Authority along Port Beach and Tydeman Roads.

It is recommended that Council supports in part the proposed MRS amendment but that the proposed rezoning of Lot 500, Port Beach Road to Port Installations is not supported and instead this parcel of land should be rezoned to Parks and Recreation reserve to enlarge the existing reserve along the Port Beach/Leighton Beach foreshore.

BACKGROUND

Purpose

The purpose of the proposed Metropolitan Regional Scheme (MRS) Amendment is to rezone five parcels of land totalling approximately 25.34ha to consolidate all operational areas within the Fremantle Inner Harbour area and adjacent land owned by Fremantle Ports as Port Installations reservation.

DETAILS

The amendment proposes to rezone the following five areas from the Urban and Industrial zones and/or Waterways reservation to the Port Installations reservation.

Rous Head reclamation area - Lot 4552 (Vacant Crown Land) from the Waterways reservation to the Port Installations reservation. The Rous Head reclamation area is linked to the deepening of the Inner Harbour, Entrance Channel and Deepwater Channel to accommodate bigger ships by removal of approximately 3.1 million cubic metres of sediment material. Approximately two thirds of the dredged material is being reused to create additional land at Rous Head and the balance will be deposited offshore on the western margin of Gage Roads. The reclamation area comprises 19.8ha of Waterways reservation. The area will be used to expand the North Quay rail terminal and will provide additional space required for port related uses such as container parks. The reclamation area accords with the Fremantle Inner Harbour Port Development Plan (FIHPDP) and the endorsed Fremantle Port Authority (FPA) Rouse Head Strategic Planning Policy (RHSP).

The key objectives of the RHSP are:

- to ensure that new uses/developments integrate with and make a positive contribution to the long term sustainability of the Port of Fremantle; and

- proposed land uses are linked with the transport network and contribute to long term sustainable planning.

In support of this element of the MRS amendment the documentation states that:

- expanding the rail terminal will promote the use of rail freight. It is anticipated that this will reduce the need to use road transport for the movement of freight to and from the port;
- the reclamation of this land will provide the additional space required for port related uses such as container parks;
- the North Quay reclamation will use dredge spoil from the dredging of the Inner Harbour, and is considered to be one of the more beneficial and sustainable outcomes for the dredge spoil; and
- the dredging of the Inner Harbour is of strategic significance as it ensures existing Port facilities remain competitive (given the State's economic growth), resulting in significant social and economic benefits to the Western Australian community.

The statement by the Environmental Protection Authority (EPA) allowing the harbour deepening proposal to be implemented under the Environmental Protection Act 1986 form part of the supporting documentation to the MRS amendment and is attached as Attachment 1 to this report.

Lot 500 Port Beach Road - from the Industrial zone to Port Installations reservation. The subject land is approximately 3.61ha, is owned by Fremantle Ports and a portion of this site was formerly used as a rail link between the Leighton Rail Yards and Fremantle Ports. Since the rail line was made obsolete following the construction of the North Quay Rail Loop and the decommissioning of the Leighton Rail Yards, the remainder of the site has been used for port related industrial storage purposes (port storage shed and fuel storage tanks). Fremantle Ports states that as demand increases, this site will be used more intensely for port related uses and it will also allow it to be better managed as part of Fremantle Ports' Inner Harbour site.

Pt Lot 2 Tydeman Road - from the Industrial zone to the Port Installations reservation. This portion of Lot 2 is approximately 2,945m², is owned by Fremantle Ports and was formerly part of the Shell site in North Fremantle. The site was purchased by Fremantle Ports to facilitate the construction of the North Quay Rail Loop. Following the completion of the North Quay Rail Loop, the site was leased back to Shell for use as a car park, which is its current use. Fremantle Ports advises that as demand increases this site will be used for port related purposes.

Pt Lot 2 Tydeman Road & Pt Lot 601 De Lisl Street - from the Industrial zone to the Port Installations reservation. This land is approximately 1ha, is owned by Fremantle Ports and has a long history as a container storage yard. It continues to be used for storage of port related equipment. It is proposed that the site be reserved Port Installations to allow for it to be used for port related uses.

Lot 24 Tydeman Road - from the Urban zone to the Port Installations reservation. The subject land is approximately 6,365m², is owned by Fremantle Ports and is an industrial site which is currently used as cold stores. It is proposed that the site be reserved Port Installations to enable it to be managed as part of the Inner Harbour site for port related purposes.

STATUTORY AND POLICY ASSESSMENT

Coastal Planning

The Fremantle Regional Strategy by Department of Planning and Urban Development in 1994 flagged the recreational and development potential of the coastal reserve and emphasised immediate repairs and maintenance of beach facilities along Port and Leighton beach. Strategy recommendations were made to resolve the transport and land use issues in proximity to Port and Leighton beaches. A recommendation was made to consolidate the transport corridor by relocating Port Beach railway line. This would facilitate the development of the Leighton Marshalling Yards for residential purposes and the establishment of an adequate coastal foreshore reserve.

In 1997, the Port & Leighton Beaches Coastal Study investigated the extent and cause of beach erosion in the winters of 1995 and 1996. The erosion was found to result from seasonal variation in the direction of longshore sediment transport along Port Beach, the interaction of this migration with the most recent Rous Head extension in 1995 and the influence of strong offshore sediment transport in 1995 and 1996.

The Port and Leighton Beaches Management Plan was completed by the City in 2001, to guide the ongoing maintenance and future planning and development within the coastal reserve. The aim of this plan was to make the coastal reserve a natural dune setting, with native species, catering to the community's recreational needs whilst minimising annual maintenance costs.

In July 2003, the City of Fremantle's Port Beach Interagency Technical Group asked coastal engineers from the Department for Planning and Infrastructure (DPI) New Coastal Assets branch to determine the extent and cause of the erosion at Port Beach and to identify longer-term coastal management options. In July 2004, DPI delivered the Port Beach Coastal Erosion Study. This study identified ongoing losses of sand from Port Beach to Leighton Beach and to both the sand bank north of the Rous Head extension and to the southern side of the Rous Head extension. The findings state that this erosion trend is expected to continue. This will progressively reduce beach amenity and leave car parks and existing buildings increasingly vulnerable to storm erosion.

The State Coastal Planning Policy (State Planning Policy No. 2.6) (SPP 2.6) provides clear guidelines to manage development on the coast. When dealing with a Coastal Foreshore Reserve, local and regional planning strategies, structure plans, schemes, and other planning decisions and instruments relating to the coast should ensure that the identification of land to be set aside for public ownership for conservation, management, public access and recreation is undertaken during the planning process. Generally this land, from the total setback line seaward, should be given up free of cost at the time of development, subdivision or strata subdivision, over and above the required provision of public open space (SPP 2.6, 5.1 General Measures). Setbacks are calculated according to a formula provided in the SPP 2.6 to reduce the risk of erosion by coastal processes. Its primary focus is to the development of private residential development but should be considered when planning is undertaken in any coastal location.

SPP 2.6 identifies three factors to consider in calculating a setback to protect development from physical processes on the coast: (1) Distance For Absorbing Acute Erosion (Extreme Storm Sequence), (2) Distance to Allow For Historic Trends (Chronic Erosion or Accretion), and (3) Distance to Allow for Sea Level Change. The development setback for the Leighton Foreshore Area was calculated at approximately 95-100m from the vegetation line.

Fremantle Local Planning Strategy (July 2001)

The City’s Local Planning Strategy was adopted by Council in 2001, and provides the strategic planning context for the content of Local Planning Scheme No. 4.

In the section of the Strategy dealing with the North Fremantle Local Planning Area the planning issues identified include the need to make appropriate provision for regional recreation demands and to plan for storm events, erosion and future changes in sea level. In this context the plan for the North Fremantle area included in the Local Planning Strategy identifies the land east of Port Beach Road between Tydeman Road and Walter Place (i.e. Lot 500) and appropriate for designation as regional open space along with the existing Port Beach/Leighton Beach foreshore reserve (see Figure 2 below).

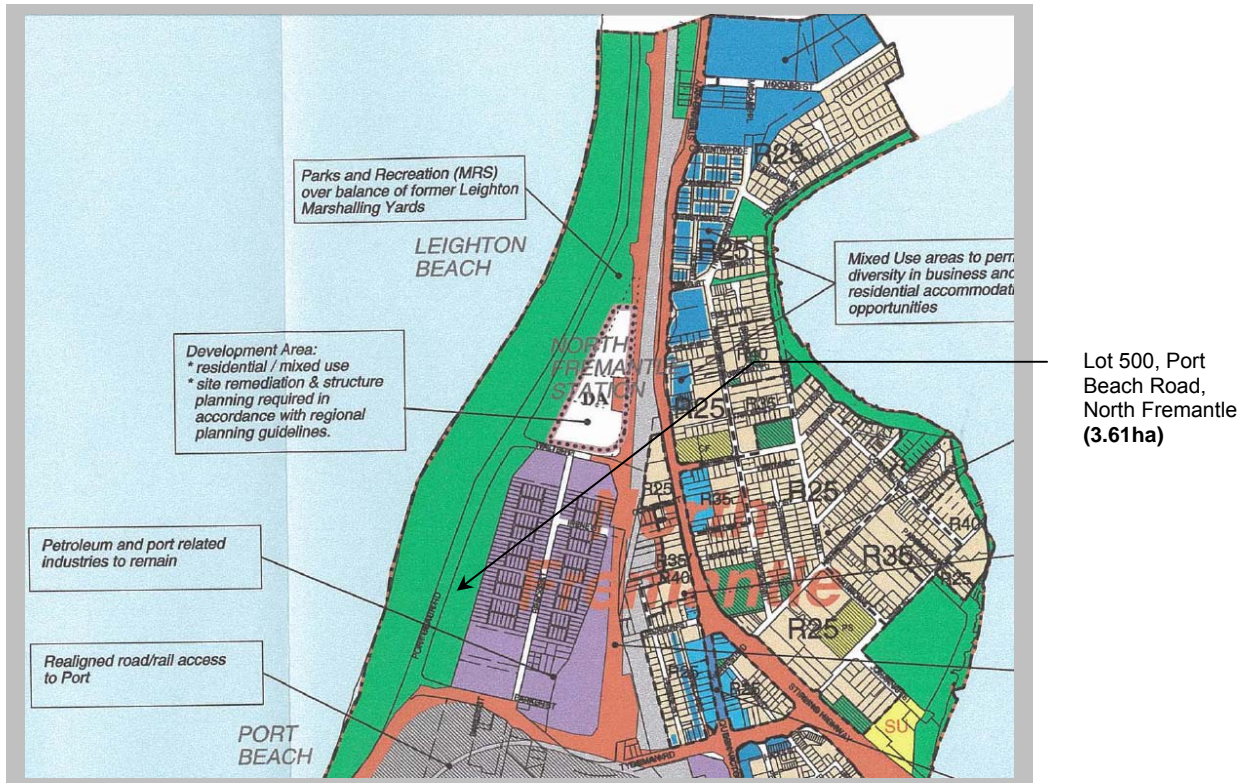


Figure 2: Local Planning Strategy for City Planning Scheme No. 4 (July 2001).

PLANNING COMMENTS

With the exception of Lot 500 Port Beach Road, officers consider that the incorporation of the various areas of land the subject of the MRS amendment into the Port Installations reserve is appropriate and should be supported for the following reasons:

- The Rous Head reclamation area forms a key part of the Inner Harbour Port Development Plan and the rezoning of this area (Lot 4552) from Waterways reservation is the last stage of formalising the newly reclaimed land for future use for Port related purposes. The creation of the reclamation area is consistent with the Dredge Spoil Disposal Management Plan that was approved by the EPA as part of the environmental approvals process for the deepening of the Inner Harbour.
- The properties to be rezoned from Industrial Zone and Urban zone have been used for Port related purposes for many years and their incorporation into the Ports Installation reserve will more appropriately reflect this and ensure that Port land is better controlled and managed.

However, with regard to Lot 500 Port Beach Road it is considered that any rezoning proposal should be taken as an opportunity to create a wider Parks and Recreation reserve as advocated in the City's Local Planning Strategy, and consistent with the greater coastal setback achieved by the width of the reserve immediately to the north adjacent to the Leighton Beach development area. Should the subject site be rezoned as proposed it could lead in the future to more intensive development along the Port Beach Road frontage for port related uses, which may be detrimental to the visual and recreational amenity of the foreshore area and compromise achievement of coastal planning objectives promoted in SPP 2.6.

It is therefore recommended that the WAPC be advised that the City does not support the element of the MRS amendment proposing the rezoning of Lot 500 Port Beach Road from Industrial zone to Port Installations reservation.

OFFICER'S RECOMMENDATION

That the Western Australian Planning Commission be advised that the City of Fremantle's comments on proposed Amendment 1191/41 to the Metropolitan Region Scheme are as follows:

- The rezoning of Lot 4552 (Vacant Crown land) in North Fremantle from Waterways reservation to Port Installations reservation is supported;
- The rezoning of Pt Lot 2 Tydeman Road, North Fremantle from the Industrial zone to Port Installations reservation is supported;
- The rezoning of Pt Lot 2 Tydeman Road and Pt Lot 601 De Lisl Street, North Fremantle from the Industrial zone to Port Installations reservation is supported;
- The rezoning of Lot 24 Tydeman Road North Fremantle from the Urban zone to Port Installations reservation is supported; and

The rezoning of Lot 500 Port Beach Road, North Fremantle from the Industrial zone to Port Installations reservation is not supported on the grounds that the proposed rezoning would not be consistent with the objectives contained in the City's Local Planning Strategy for this area, which identify this land as being appropriate for inclusion within the coastal open space reserve.

- The City requests the WAPC to consider modifying MRS amendment no. 1191/41 to rezone this site to Parks and Recreation reservation to achieve more consistency with the width of the portion of coastal regional open space reserve immediately to the north in the vicinity of Leighton Beach.

Cr A Sullivan MOVED an amendment to the Officer's Recommendation to include the following wording:

Inclusion of this land within the coastal open space reserve would also fulfill one of the general policy measures in State Planning Policy 2.6 – Coastal Planning Policy (section 5.1 (iv)) which supports public ownership of the coast, including where appropriate the provision of a coastal foreshore reserve and accommodation of regional and local recreational needs.

CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

OFFICERS AND COMMITTEE RECOMMENDATION

That the Western Australian Planning Commission be advised that the City of Fremantle’s comments on proposed Amendment 1191/41 to the Metropolitan Region Scheme are as follows:

- The rezoning of Lot 4552 (Vacant Crown land) in North Fremantle from Waterways reservation to Port Installations reservation is supported;
- The rezoning of Pt Lot 2 Tydeman Road, North Fremantle from the Industrial zone to Port Installations reservation is supported;
- The rezoning of Pt Lot 2 Tydeman Road and Pt Lot 601 De Lisl Street, North Fremantle from the Industrial zone to Port Installations reservation is supported;
- The rezoning of Lot 24 Tydeman Road North Fremantle from the Urban zone to Port Installations reservation is supported; and

The rezoning of Lot 500 Port Beach Road, North Fremantle from the Industrial zone to Port Installations reservation is not supported on the grounds that the proposed rezoning would not be consistent with the objectives contained in the City’s Local Planning Strategy for this area, which identify this land as being appropriate for inclusion within the coastal open space reserve. *Inclusion of this land within the coastal open space reserve would also fulfill one of the general policy measures in State Planning Policy 2.6 – Coastal Planning Policy (section 5.1 (iv)) which supports public ownership of the coast, including where appropriate the provision of a coastal foreshore reserve and accommodation of regional and local recreational needs.*

- The City requests the WAPC to consider modifying MRS amendment no. 1191/41 to rezone this site to Parks and Recreation reservation to achieve more consistency with the width of the portion of coastal regional open space reserve immediately to the north in the vicinity of Leighton Beach.

CARRIED: 4/0

For	Against
Cr Andrew Sullivan Cr Robert Fittock Cr Josh Wilson Cr Bill Massie	

CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

THE PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 8:59 PM.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

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

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

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

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

How consultative processes work at the City of Fremantle	
Citizens need to check for any changes to decision making arrangements made	13. The City will take initial responsibility, via 'Consultation Process notifications', for making citizens aware of expected time-frames and decision making processes, including dates of Standing Committee and Council Meetings if relevant. However, as these details can change, it is the citizens responsibility to check for any changes by visiting www.freofocus.com/projects/html/default.cfm , checking the Port City Column in the Fremantle Herald or inquiring at the Service and Information Desk by phone or in-person.
Citizens are entitled to know how their input has been assessed	14. In reporting to decision-makers, City officers will in all cases produce a Schedule of Input received that summarises comment and recommends whether it should be taken on board, with reasons.
Reasons for decisions must be transparent	15. Decision-makers must provide the reasons for their decisions.
Decisions posted on www.freofocus.com/projects/html/default.cfm	16. Decisions of the City need to be transparent and easily accessed. For reasons of cost, citizens making input on an issue will not be individually notified of the outcome, but can access the decision at www.freofocus.com/projects/html/default.cfm or at the City Library or Service and Information counter.

ISSUES THAT COUNCIL MAY TREAT AS CONFIDENTIAL

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

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

