



# MINUTES

## Planning Services Committee

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Wednesday, 17 November 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 17 November 2010 at 6.00 pm.

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### DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting open at 6.03 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

Brad Pettitt	Mayor
Cr Robert Fittock	North Ward
Cr Andrew Sullivan	South Ward
Cr John Dowson	East Ward
Cr Bill Massie	Hilton Ward
Cr Josh Wilson	Beaconsfield Ward
Mr Philip St John	Director Planning and Development Services
Ms Natalie Martin Goode	Manager Development Services
Miss Tina Hume	Minute Secretary

*There were approximately 14 members of the public and 2 member/s of the press in attendance.*

### APOLOGIES

Cr Tim Grey-Smith                      City Ward

### LEAVE OF ABSENCE

Nil

### RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

### PUBLIC QUESTION TIME

Nil

**DEPUTATIONS / PRESENTATIONS**

**The following member/s of the public spoke in favour of item PSC1011-218:**

Lisa Garranich  
David Cooper

**The following member/s of the public spoke in favour of item PSC1011-219:**

Luca Dinunzio

**The following member/s of the public spoke against item PSC1011-219:**

Marian Kiely

**The following member/s of the public spoke against item PSC1011-220:**

Mike Richardson

**The following member/s of the public spoke in favour of item PSC1011-222:**

Paul Abbott

**The following member/s of the public spoke against item PSC1011-223:**

David Bebbing

**The following member/s of the public spoke in favour of item PSC1011-224:**

Slobodan Mitrovic

**The following member/s of the public spoke against item PSC1011-224:**

Koroush Kasiri

**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 3 November 2010 be confirmed as listed in the Council Agenda dated 24 November 2010 be confirmed.

**CARRIED: 6/0**

For	Against
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

## **TABLED DOCUMENTS**

- Alternative Recommendation - 1 Instone Street, Hilton
- Alternative Recommendation Scheme Amendment 30 Additional Schedule 12 Provisions
- 9 Little Howard Street, Fremantle– Gerald McCann Heritage Report/Architect Plans

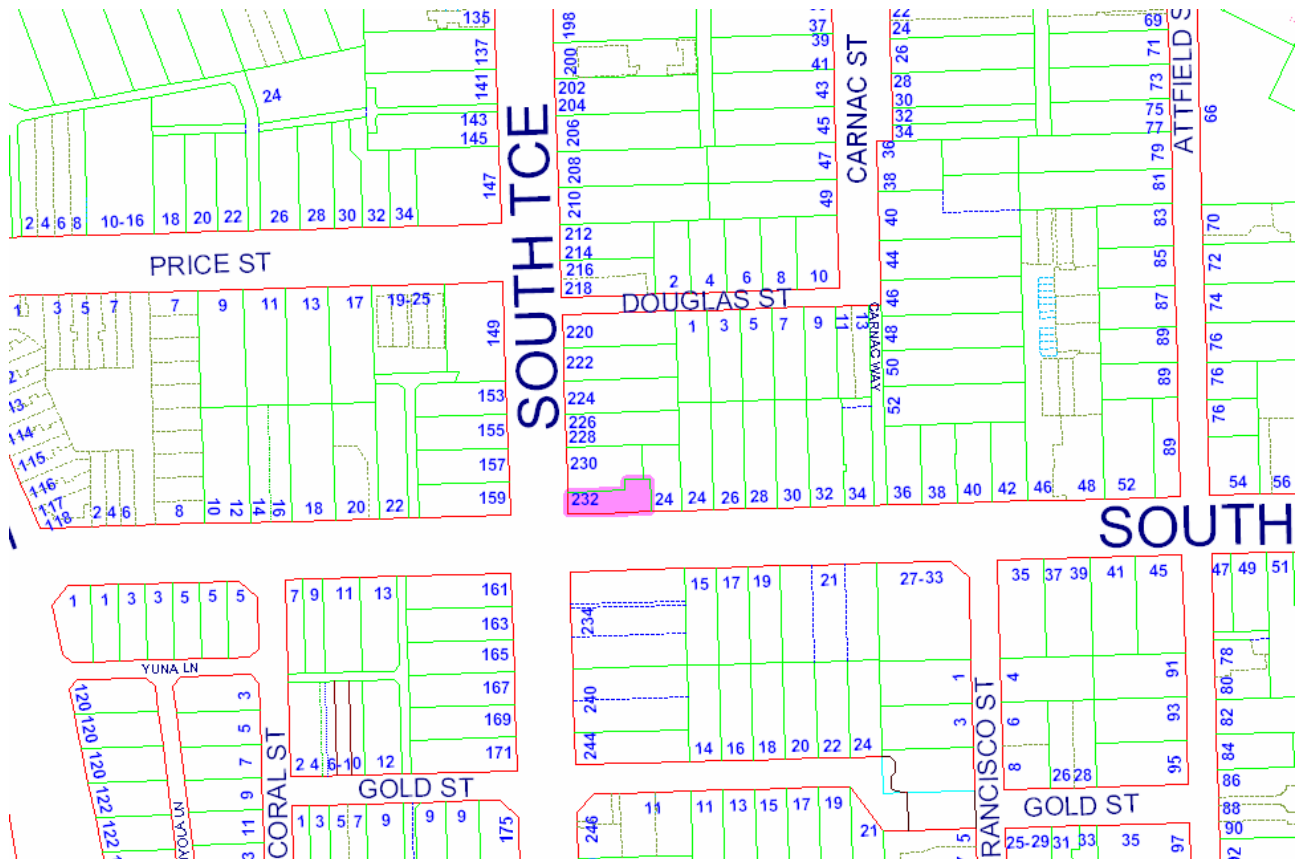
**DEFERRED ITEMS (COMMITTEE DELEGATION)**

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

**PSC1011-218 SOUTH TERRACE, NO. 232 (LOT 1341) FREMANTLE - PROPOSED OFFICE COMPLEX (AH DA0052/10)**

**DataWorks Reference:** 059/002  
**Disclosure of Interest:** Nil  
**Responsible Officer:** Manager Development Services  
**Actioning Officer:** Planning Officer  
**Decision Making Level:** Planning Services Committee  
**Meeting Date:** 17 November 2010  
**Previous Item Number/s:** PSC1008-145  
**Attachments:** 1. Revised development plans (18 Oct 2010)  
 2. Applicants Justification  
 3. PSC Report 1008-145

**Date Received:** 29 January 2010  
**Owner Name:** D. Cooper  
**Submitted by:** Busbys Pty Ltd  
**Scheme:** Neighbourhood Centre  
**Heritage Listing:** Level 3 - Commercial Building  
**Use Class:** Office  
**Use Permissibility:** D



## EXECUTIVE SUMMARY

The application was deferred from the Planning Services Committee held on the 4 August 2010 for the applicant to provide amended plans for the purpose of addressing the sightline issues and matters raised in the heritage assessment.

The applicant has since met with city officer's and councillors to discuss proposed amendment and has now submitted revised plans (dated 18 October 2010).

The application is still seeking Planning Approval for Commercial Offices at No. 232 South Terrace, South Fremantle which seeks a relaxation to parking requirements.

The applicant is proposing to construct a two storey office complex whilst maintaining the existing heritage listed building.

The proposed 'Office' Land Use is considered to comply with the objectives of the Mixed Use zone.

The amended plans are considered to adequately address the issues raised and accordingly, the application is recommended for Approval.

## BACKGROUND

Please refer to previous report presented to PSC on the 4 August 2010 for information on background (see attachment 3 for previous PSC report). At this meeting the Committee resolved:

*That the application be deferred to the next appropriate Planning Service Committee for the applicant to provide amended plans for the purpose of addressing sightline issues and matters raised in the heritage assessment.*

## DETAILS

The application submitted on the 29 January 2010, has undergone modification in order to address concerns outlined by the City's Planning Officer's and Committee.

The latest plans, dated 18 October 2010 involves retention of the existing heritage listed commercial building and addition of a two storey office complex across the remainder of the site.

The proposed amendments to the previous design includes:

- 1.5m rear (north) setback to the upper level office
- Reduction in office floor space by 32m<sup>2</sup>
- Inclusion of sightline mirrors and pedestrian warning light and siren where garage door faces the street
- Inclusion of windows to the rear (north) elevation at the upper level
- Inclusion of various finishes and materials to the main (south) frontage of the building



The building would be 7.0m in height with a flat roof and generally built to the boundary, with exception to the South Terrace frontage where a 3.7m setback to the new building is maintained.

## **STATUTORY AND POLICY ASSESSMENT**

### **Local Planning Scheme No. 4**

#### Neighbourhood Centre Zone

The site is zoned Neighbourhood Centre under LPS 4. The objective of the Neighbourhood Centre zone states:

*Development within the neighbourhood centre zone shall -*

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

Within the Neighbourhood Centre Zone, an Office is a 'D' Land Use meaning the use is not permitted by the Scheme unless Council exercises discretion by granting planning approval.

#### Car Parking

The proposed 'Office' Land Use requires parking to be provided in accordance with Table 3 – Vehicle Parking. An 'Office' is required to be provided with 1 car parking bay for every 30m<sup>2</sup> of gross lettable area with a minimum of 3 spaces.

Clause 5.7.6 of LPS 4 – Design and Layout of Parking Areas states:

*Council shall have regard to all of the following in the location, design and construction of parking areas and associated access areas—*

- (i) layout and access lanes consistent with the Australian Standard for parking facilities & off-street car parking,*
- (ii) the protection and enhancement of the streetscape including street trees,*
- (iii) the provision of landscaping for screening and shade,*
- (iv) the design and construction standards proposed for paving, drainage, line marking, signage, lighting and other relevant matters,*
- (v) the provision for pedestrian movement within and around the parking area,*
- (vi) the measures proposed to enhance the security of people using the parking area,*
- (vii) the provision of parking facilities for cyclists and the disabled,*
- (viii) end of trip facilities for cyclists, and*

*(viii) the ease and safety with which vehicles gain access to the site and circulate within the parking area.*

*Note: Reference to Australian standard in Scheme re layout and design.*

Clause 5.7.3 – Relaxation of Parking Requirements states:

*Council may –*

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

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

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

#### Local Planning Area 4 – South Fremantle

The site is contained within Local Planning Area 4.3.4, however this does not influence this proposal as it refers exclusively to residential development. Therefore, the provisions contained within Local Planning Area 4 (LPA 4) apply and the maximum height controls to be applied within the Neighbourhood Centre zone, require a maximum external wall height of 7.0m.

#### **Council Policies**

The property and proposed development does not fall within any Local Planning Policy.

#### **Residential Design Codes of W.A. (2008)**

As the application is for an 'Office' the Residential Design Codes of W.A. (R-Codes) are not applicable to the assessment of an 'Office' on this site.

## CONSULTATION

### Community

The original application submitted on the 29 January 2010 was required to be advertised in accordance with Clause 9.4 of LPS 4 due to proposed variations to the required number of parking bays.

At the conclusion of the advertising period, 23 February 2010, the City had received one submission.

The issues raised from the submission includes:

- Heritage – The proposed building engulfs the existing heritage shopfront;
- Streetscape – Might benefit from a more interactive ground level, proposal could certainly become a lot more interesting and engaging;
- Commercial Properties – Support Mixed Use rather than singular purely office space;
- Bulk and Scale – Do not support the proposals bulk and scale. No awning or diversity of materials to reduce bulk. No separation (even at first floor level), no environmental input into design (windows only on southern side).
- Roof services – Building services should be contained within prescribed height limits and located as far west to minimise noise pollution and reduce visual impact.

### Heritage

In accordance with Local Planning Policy 1.6 – Preparing Heritage Assessments the City was required to obtain a Heritage Assessment in order to determine the original developments impact on the existing heritage listed commercial building that faces South Terrace.

The Heritage Assessment provided the following advice:

*Overall, the proposed two storey additions are substantial and would have a visual impact in terms of bulk and scale as well as the materials to the heritage significance of the original commercial building and in to the views within the streetscape of South Terrace.*

*It is noted that the proposed additions are set back approximately 2m from the front of the original building and presents single storey fronting the two storey additions. However, it is considered that a further setback of another 2m to both elements would be less detrimental to the streetscape.*

*The removal of the advertising billboard is considered a positive contribution to the streetscape.*

*Although the WC does have heritage value the proposed demolition is considered a minor impact and acceptable to facilitate development of the site.*

*The building original had a verandah and later an awning on the façade.*

*The proposal of replacement canopy is supportable in principle on heritage grounds as there is no documentary evidence showing the original verandah.*

*As there are no details of the proposed canopy or painting of the facade provided these should be provided to the satisfaction of the CEO prior to any works to the façade commencing.*

*The design and detailing of the proposed additions are not sympathetic to the original commercial building. Particularly as it is proposed to use grey bricks with white mortar to the northern, eastern and southern elevations which may dominate visually the heritage buildings although be compatible with the recent two storey residence in South Street. Other proposed materials are appropriate Therefore consideration should be given to proposing more compatible materials and finishes.*

**PLANNING COMMENT**

**Local Planning Scheme No. 4**

Neighbourhood Centre Zone

The Office land use is considered to add to the desirable land uses within the Neighbourhood Centre zone and as a ‘D’ Land Use is considered appropriate in providing a range of services within this locality.

It is considered that the proposed ‘Office’ would be sympathetic to the desired future character of the area.

Car Parking

Required Car Parking Bays (1 car bay per 30m <sup>2</sup> GLA)	Proposed Car Parking Bays
8 bays required	6 bays provided

The revised development requires eight car parking bays to be provided on site, generated from the 236.99m<sup>2</sup> gross lettable area.

The applicant has provided six bays in an undercroft garage parking area. The bays are arranged in a tandem layout with access via a dropped kerb from South Street.

The applicant has also now included bicycle racks into the proposal in order to aid compensating for the relaxation in car bays.

Clause 5.7.6 – Design and Layout of Parking Areas sets out the required assessment criteria to be applied to proposed parking areas.

The layout and access arrangements have been assessed against the provisions of Australian Standard 2890.1 – Parking Facilities – Part 1: Off-street car parking and do not take into consideration adequate measures for the provision of sight lines for vehicular access.

However the applicant has provided justification stating the following:

*To alert passing pedestrians and traffic of entering or exiting cars from the enclosed carpark it is proposed to install warning lights and alarms to operate each time a car is entering or exiting the carpark.*

*To improve sight lines and observation from the carpark for exiting vehicles we intend to install maneuvering mirrors which will enable moving vehicles to see out of the carpark before maneuvers increasing the safety for passing pedestrians.*

Nonetheless, the Australian Standard does not provide criteria for tandem parking arrangements, nor for the provision of mirrors and other visual aids, and as such it is considered that the provision of parking bays in this manner is not ideal. However, it should be noted that these measures have been employed in other instances in the City and as such may be acceptable.

Clause 5.7.3 Relaxation of Parking Requirements sets out the assessment criteria to be applied where a reduction in the number of bays provided does not meet the requirements of Table 3 – Vehicle Parking. In this case the applicant has provided six bays where nine are required.

In allowing a relaxation of the parking requirements as per clause 5.7.3 of LPS 4 it is considered that the following measures may be applicable in this case:

- (i) The availability of car parking in the locality including street parking;
- (ii) The availability of public transport in the locality; and
- (iv) Any car parking deficiency or surplus associated with the existing use of the land.

South Terrace does include a number of on-street marked car bays which permit short stay parking.

South Terrace is also a public transport route for a number of buses servicing Fremantle.

No. 232 South Terrace has been operating as an Office from the existing heritage listed building which is 55m<sup>2</sup> and currently provides 6 car bays on-site, which results in a surplus of four bays. The additions to the site increase the office floor space to 236.99m<sup>2</sup> gross lettable area and as such these bays will be available for the proposed additions to the site.

Given the recent revision to the proposal, it is considered that a 2 bay parking shortfall could be ameliorated by the use of the bicycle racks in conjunction with the public transport and on-street parking available in the area.

Therefore, the parking layout & design and also the relaxation to the required number of parking bays is supported.

#### Local Planning Area 4 – South Fremantle

The application has been assessed against and is considered to comply with LPA 4 – South Fremantle.

### Heritage

The property is individually listed on the City's Heritage List, and the advice contained above outlined that portions of the development were not supported, whilst the majority of the development was supported, pending more appropriate design consideration.

The original Heritage Assessment essentially required the portion of the building facing South Terrace to be further setback so to protect the streetscape.

The original Heritage Assessment goes on to further state that the architectural design of the building would be unsympathetic to the original heritage building, and that the proposals box like form could be given more articulation, with particular attention to the street elevations.

The applicant sought architectural heritage advice, as provided by the City, which resulted in amended plans being submitted on the 18 October 2010 which are considered to address the concerns raised in the heritage assessment.

The amended plans now include a mix of materials and finishes proposed to the building which would enhance its external appearance. The main entry has been enhanced with full height windows to the foyer and stair areas and further treatment to the windows is evident in the revised plans.

The rear upper portion of the building has also been setback from the northern boundary by 1.5m allowing light and ventilation to penetrate to the under-croft parking area. This setback has also allowed for the inclusion of three highlight windows across the rear elevation, further adding light and ventilation to the upper level of the building.

These measures have improved the appearance of the proposal, aid in the buildings energy efficiency through lighting and ventilation and have the effect of reducing the buildings overall building bulk and scale when viewed from the street.

As such, the proposal is now considered to adequately address the issues raised in the heritage assessment and can be supported.

### **RESPONSE TO SUBMISSIONS**

Following consultation of the original application one submission was received from an adjoining landowner. In response to the issues raised:

- Heritage – A Heritage Assessment has been undertaken and the building setback along South Terrace increased so to alleviate the presence of the new building along the South Terrace elevation;
- Streetscape – Whilst the streetscape may benefit from a more interactive ground level there is no provision under the City's Local Planning Scheme that requires the development to incorporate other land uses. Furthermore, the plans have been revised in order to address the blank façade the building presents to the street.
- Commercial Properties – No provision with the City's Local Planning Scheme that requires the development to incorporate other land uses.

- Bulk and Scale – Within the Neighbourhood Centre zone, the building heights and bulk are controlled through a 7m height limit. The application of setbacks to the building to introduce articulation, whilst ideal, are not requirements of the scheme, and the proposal otherwise complies with building height.
- Roof services – External Fixtures (e.g.: vents, panels, dishes aerals etc.) and Air-Conditioning units have specific development requirements under Local Planning Scheme No. 4 and any additions to the building would be required to comply. Furthermore, Environmental Health Regulations provides relevant legislation to which plant equipment is required to comply in terms of noise with when used in proximity to residential uses.

## **CONCLUSION**

The applicant is seeking planning approval for alterations and additions to an existing heritage listed commercial building.

The proposal includes the addition of a two storey Office complex with the provision of six car bays in a tandem arrangement.

The 'Office' land use is supported in the Neighbourhood Centre zone as it is a compatible land use for the area. The revised plans are considered to adequately address the concerns raised in the heritage assessment and the revised South Street elevation is considered to provide an streetscape appearance that is appropriate for the locality.

The application proposes a relaxation to the required number of parking bays, and in this instance it is considered appropriate to allow a relaxation, based on the provision of bicycle racks, street parking and availability of public transport within the area.

Whilst the treatment of the sightlines issue is not considered ideal, it has been previously employed in other developments within the City and as such could be considered acceptable.

The application is considered appropriate and recommended for Approval.

**OFFICER'S RECOMMENDATION/COMMITTEE DECISION**

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Proposed Office Complex, at No. 232 (Lot 1341) South Terrace, South Fremantle, with the following conditions:

- 1.The development hereby permitted shall take place in accordance with the approved plans dated 18 October 2010. It does not relate to any other development on this lot.
- 2.All storm water discharge shall be contained and disposed of on-site.
- 3.The 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.

**MOVED: Cr A Sullivan**

**CARRIED: 6/0**

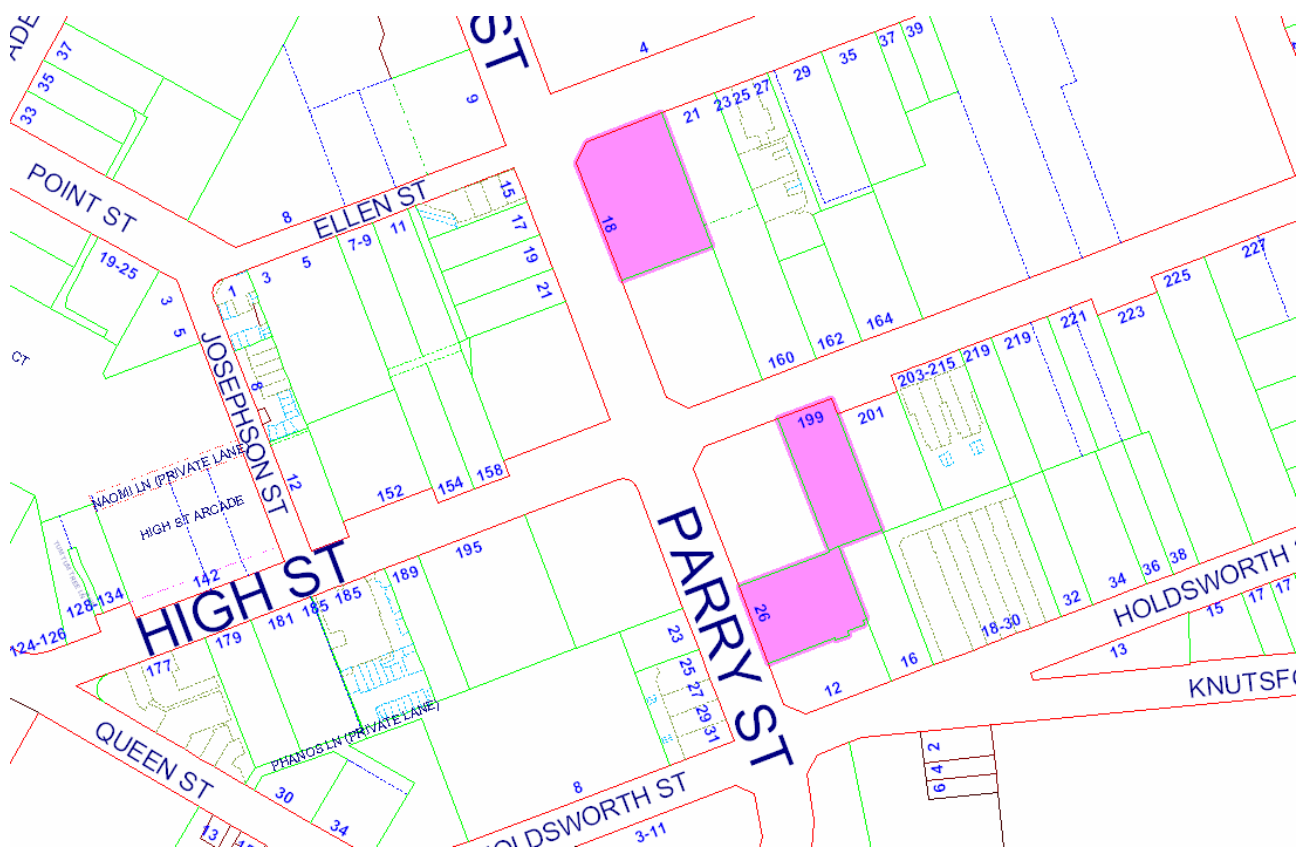
<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	



**DEFERRED ITEMS (COUNCIL DELEGATION)**

**PSC1011-219 SCHEME AMENDMENT NO. 30 TO LOCAL PLANNING SCHEME NO. 4 - ADDITIONAL SCHEDULE 12 PROVISIONS FOR PROPERTIES ON EASTERN SIDE OF PARRY STREET ADJOINING QUEENS SQUARE - FINAL ADOPTION**

- DataWorks Reference:** 218/034  
**Disclosure of Interest:** Nil  
**Responsible Officer:** Manager Planning Projects  
**Actioning Officer:** Strategic Planner  
**Decision Making Level:** Council  
**Previous Item Number/s:** PSC0908-144 (Council 26 August 2009)  
PSC1006-122 (Council 23 June 2010)
- Attachments:**
1. Schedule of Submissions
  2. Copy of Heritage Assessment submitted as part of Scheme Amendment report



**EXECUTIVE SUMMARY**

This item was deferred at the Planning Services Committee meeting on 3 November 2010.

The purpose of this report is to enable Council to determine whether or not to adopt an amendment (scheme amendment No. 30) to the City’s Local Planning Scheme No. 4 to increase the maximum permitted building height applicable to three properties on the eastern side of Parry Street which abut Queens Square. The proposed provisions include a maximum height of three storeys (maximum external wall height of 11 metres) with the provision to consider an additional storey (up to a total of 14 metres external wall height) if set back from the street.

The amendment was placed out for comment and 11 submissions were received. 3 submissions stated no objection, 1 supported the amendment and 7 expressed objections. All submissions have been considered and noted.

It is recommended that Council resolves to adopt the amendment with certain modifications, including amending the definition of ‘visible from the street’, requirements to prevent blank building walls facing street frontages and Queens Square, and the inclusion of minimum and maximum setbacks to the adjoining streets and Queens Square. These modifications address some of the issues raised in submissions.

**BACKGROUND**

In 2009 the City was requested to consider an amendment to the Local Planning Scheme No. 4 (LPS 4), submitted on behalf of the owner of No. 26 (Lot 440) Parry Street, Fremantle. The purpose of the amendment was to bring development standards for those properties adjoining Queens Square on the eastern side of Parry Street closer to the standards applicable within the City Centre zone on the opposite side of Parry Street (see table below for comparison of development standards). Council resolved on 26 August 2009 to express ‘in principle’ support for such an amendment, subject to specific development standards and subject to a heritage assessment being undertaken to consider the impact of potential development anticipated by the amendment upon the area’s heritage listed places and upon view corridors between Queens Square and the Fremantle Prison.

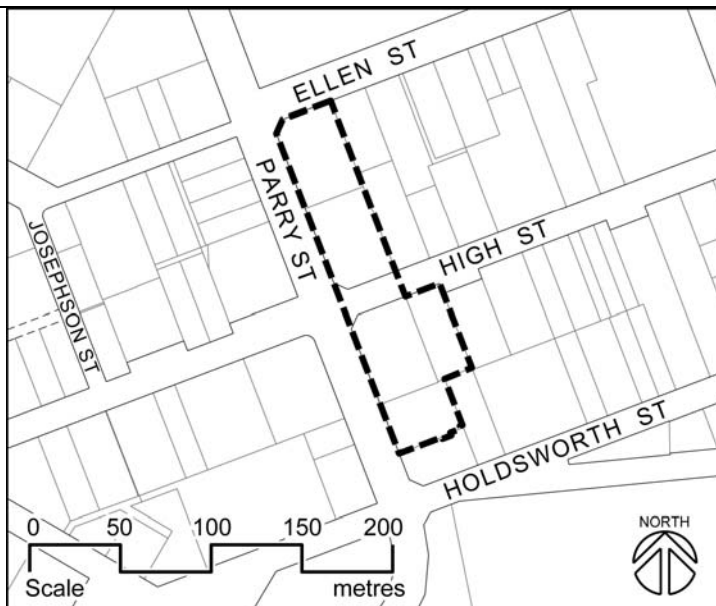
Current Development standards on each side of Queens square are as follows:

Western side of Parry Street	Eastern side of Parry street
<p><b>Zoning:</b> City Centre</p> <p><b>Density:</b> R-IC (no R-Code value however maximum dwelling yields do apply)</p> <p><b>Height:</b> Maximum building height 4 storeys (maximum 14 metres) with potential for a 5<sup>th</sup> storey (maximum 17 metres) based on specific development standards as set out in Schedule 12.12, Local Planning Area 1 – City Centre clause 1.1</p>	<p><b>Zoning:</b> Mixed Use</p> <p><b>Density:</b> Maximum residential density of R60, where residential development is proposed as part of a mixed use development</p>

	<b>Height:</b> Maximum building height of 7.5 metres (2 storeys)
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A scheme amendment and supporting heritage assessment were subsequently submitted and scheme amendment No. 30 was initiated by Council on 23 June 2010. The amendment includes the addition of new development standards for three properties directly abutting the square namely: No. 199 (Lot 1) High Street, No. 26 (Lot 440) Parry Street and No. 18 (Lot 35) Parry Street (see proposed scheme amendment below). For further background see PSC0908-144 (Council 26 August 2009) and PSC1006-122 (Council 23 June 2010)

Proposed Scheme amendment:

<p>Sub Area: 2.3.2 Queens Square</p>	
<p>2.3.2.1 Height Requirements</p>	<p>Despite the general height requirements outlined in 2.1 above, building height shall be limited to a maximum height of three storeys (maximum external wall height of 11* metres as measured from ground level with a maximum roof plain pitch of 33 degrees).</p> <p>Council may consent to an additional storey subject to –</p> <ul style="list-style-type: none"> <li>(a) the upper level being sufficiently setback from the street so as to not be visible from the street(s) adjoining the subject site,</li> <li>(b) maximum external wall height of 14* metres,</li> <li>(c) compliance with clause 2.2 above, and</li> </ul> <p>* inclusive of roof parapet and spacing between floors.</p> <p>Note: ‘Visible from the street’ will be based on an assumed line of sight measured at a perpendicular angle from the streets adjoining the subject land, at an assumed point of 1 metre less than the street width and 1.6 metres above ground level.</p>
<p>2.3.2.2 Building Requirements</p>	<p>New buildings shall provide for activated ground level frontages to High Street and/or Parry Street and passive surveillance to Queens Square.</p>

## **CONSULTATION**

Following referral from the Environmental Protection Authority advertising was undertaken in accordance with regulation 25(2) of the Town Planning Regulations 1967. The proposed scheme amendment was advertised for comment from 10 August 2010 until 24 September 2010, with advertisements being placed in the Fremantle Herald and West Australian newspapers.

The City's precinct groups, utility companies, adjoining neighbours and other interested parties and key agencies were also specifically notified and copies of the amendment documents were made available for viewing at the Service and Information Counter at the Town Hall Centre and on the City's website.

11 submissions were received (refer to Attachment 1 – schedule of submissions - for further information). 3 submissions stated no objection, 1 supported the amendment and the Heritage Council of Western Australia (HCWA) and 6 land owners/occupiers objected to the scheme amendment. The main issues are discussed below:

### **Views to the Fremantle Prison**

HCWA generally acknowledge and agree with the conclusion of the heritage report that development around the square will not impact on the views to the Fremantle Prison due to there currently being limited views because of existing buildings, the topography of the area and mature vegetation in and around the square.

### **Impact of development on heritage buildings and Queens Square**

Several of the submitters are impressed with the work Council has done in re-establishing the Queens Square precinct. However, these same submitters express concern that the square and heritage buildings surrounding the square will be negatively impacted on by buildings significantly higher than current limits. Some submitters fear that the heritage buildings will be dwarfed by new development and the heritage value of the area will subsequently be compromised in both appearance and dimension.

HCWA note that while there is currently some variation in scale and detail, the general character of development surrounding Queens Square is low level, and new development to the proposed heights and setback would have a considerable impact on the Square further weakening the character of the Square and impacting on the 'landmark qualities' of the heritage buildings surrounding the Square.

### **Provisions for the extra storey setback from the street**

HCWA and another submitter further note that the three lots included in the amendment have secondary elevations to Queens Square and other residential properties that have not been adequately addressed; while the fourth storey (14m external wall) will not be visible from the street it could potentially be seen from the Square and/or rear residential buildings which could potentially impact on the amenity of the area.

### **Boundary setbacks**

HCWA point out that there are no street or boundary setback requirements for the mixed-use zone in LPS4; setbacks are only required for residential development and are as per the R-Codes.

HCWA suggests this could pose an issue in agreeing to acceptable side setbacks for the heights proposed for commercial developments and suggest prescribing acceptable setbacks in the Scheme (as part of the scheme amendment) to provide greater clarity.

### **Included Lots**

Three submitters (including HCWA) commented on the Lots included in the scheme amendment:

- HCWA commented that the lots nominated for amendment appear to be relatively arbitrary and without sufficient justification, the result being that each of the three sites would be out of context with their immediate neighbours, with the potential for significant disparity.
- Two of the submitters ask Council to consider the inclusion of 201 High Street in this amendment as the current building on the property fits the description of an 'inappropriate structure' (as per the scheme amendment report) as it was developed in late 1970s and to enable a more orderly and equitable development of this area.

For further information on the submissions see the schedule of submissions in Attachment 1.

### **PLANNING COMMENT**

The scheme amendment is consistent with Council's 'in principle' support from 26 August 2009, with recommendations contained in the City's Local Identity Code and with the intent of the concept plans endorsed by Council in 2000 to enhance the attraction of this sector when upgrading the amenity of the square.

The applicant contends that the purpose of the scheme amendment is to provide a development framework that will:

- Reinforce the formal layout and definition of the park (Queens Square) by enhancing the hard urban edges to its boundaries;
- Ensure that the development within the precinct is sympathetic to the existing heritage buildings in the locality;
- Ensure an appropriate height and scale of development consistent with existing development controls applying to the western side of Parry Street;
- Provide for active frontages on the ground floor of buildings;
- Encourage passive surveillance through residential development to upper levels; and
- Provide a catalyst to promote appropriate redevelopment.

However, through the public comment period some concerns have been raised and these are addressed below:

### **Impact of height on heritage buildings and Queens Square**

Officers acknowledge the issues raised in regards to height; allowing for three storey development with potentially a fourth storey set back represents an increase 'as of right' of one storey (with a possible further additional storey) compared to the current Scheme provisions which limit building height to 7.5m (effectively two storeys). However, the increase in scale and bulk (height) and potential impact on Queens Square and the surrounding heritage buildings has been carefully considered. These issues are discussed below.

### Impact on Queens Square

The urban design/architectural rationale supporting this amendment is to provide a well defined edge, or 'urban wall', around the square. Three storey development adjoining the square, providing active ground level frontages to the square and passive surveillance from upper storeys, would assist in achieving this urban form more effectively than is the case with current buildings on the subject lots. In particular, the current buildings at 199 High Street and 26 Parry Street are predominantly single storey in scale and provide little or no definition or sense of enclosure to the south-eastern quadrant of Queens Square.

Redevelopment of the subject lots in accordance with the proposed scheme amendment development standards could provide a better quality sense of place, add vibrancy and enhance the amenity of the area (see discussion below for proposed prescribed setbacks to the square). However, to ensure that any redevelopment of these sites does not create buildings with 'dead' frontage to Queens Square it is recommended that development standards requiring new buildings to have activated ground level frontages to High Street and Parry Street should apply also to building frontages facing the edges of the square itself. A modification to the text of the scheme amendment is therefore recommended as follows -

Building requirements - New buildings shall provide for activated ground level frontages and passive surveillance from upper floors to High Street and/or Parry Street and to Queens Square.

### Building height

The recommendations of the non statutory Local Identity Code (LIC) reinforce the central role of High Street as the main street into the city. The LIC advocates retaining High Street's existing character and high walls and enhancing Queens Square as a green square with urban walls to give the square an edge. The LIC recommends heights for the properties adjoining Queens Square as follows:

- Area 4a - North eastern side of square – wall height of 15.5 metres with a 1 metre plus or minus deformation and a minimum building height of 14.5 metres.
- Area 4b - South western side of the square - building heights of 10.5 metres with a 1 metre plus or minus deformation and no prescribed minimum building height.

This scheme amendment has taken the heights recommended in the LIC into account as well as attempting to relate to the provisions of the City Centre zone opposite, resulting in the prescribed three storey (11m wall height) height limit with the potential for a fourth storey (14m wall height) if set back. The heights are considered a compromise between the recommendations of the LIC and the higher provisions applicable to the properties opposite in the city centre while still being sympathetic to the character of High Street.

### Impact on heritage buildings

In considering the development standards proposed in the scheme amendment City officers have taken into account the potential impact of new development on adjoining buildings.

With regard to the impact of new development on the existing heritage buildings, the heritage report indicates that the Square being separated by the two streets (High Street and Parry Street), dividing it through the middle, is the main factor that would limit the impact of future development on the area's heritage buildings. Due to this separation, out of the three properties, only new development on 18 Parry Street would directly adjoin a heritage listed building at 21 Ellen Street and 160 High Street, although it should be noted that all three subject properties adjoin Queens Square which is itself heritage listed. 160 High Street is listed on the State Register of Heritage Places so any development proposal at 18 Parry Street would be forwarded to HCWA for comment. Nonetheless, regardless of whether the development site abuts a heritage listed building or not, the impact of any development on the existing streetscape and setting is assessed as part of a planning application under the current provisions of LPS4.

Notwithstanding current Scheme provisions regarding building height applying to properties east of Parry Street, existing buildings at 18 Parry Street (subject to the scheme amendment) and at 160 and 201 High Street which directly adjoin properties covered by the scheme amendment are substantial two storey buildings, and in the case of 18 Parry Street some parts of the building are of a height similar to a typical three storey building.

Therefore on balance, officers consider the three storey 'urban wall' heights as proposed would be of a scale appropriate to enclose the edges of the square and would not overwhelm existing adjoining buildings or other nearby heritage listed buildings in terms of bulk and scale. However, it is considered that the provisions for the discretionary additional fourth floor need to be considered further (see discussion below).

### **Provisions for extra storey setback from the street**

Submitters note that while the fourth floor elevations may not be 'visible from the street' they may be visible from, and thus impact on, Queens Square itself. This is a valid point. Planning officers consider it reasonable to treat Queens Square as a 'street elevation' for the purposes of determining setback requirements for any proposed fourth storey. Depending on several factors in the calculation of 'visible from the street' (e.g. width and length of building, third and fourth storey wall height, width of adjoining street, building setback from boundary etc) it is considered, due to the large size (>1000m<sup>2</sup>) and width and length of the three Lots, that all three sites have the potential to accommodate an appropriately designed fourth storey with the setback restriction.

Accordingly officers recommend modifying the proposed building height provision to say:

Council may consent to an additional storey subject to –

- (a) the upper level being sufficiently setback from the street so as to not be visible from the street(s) adjoining the subject site,
- (b) maximum external wall height of 14\* metres,
- (c) compliance with clause 2.2 above, and

\* inclusive of roof parapet and spacing between floors.

Note: 'Visible from the street' will be based on an assumed line of sight measured at a perpendicular angle from the subject land's lot boundary into the adjoining street for the width of the street and 1.6 metres above ground level. For the purposes of this clause for this sub area:

1. Queens square will be considered to be a street with an assumed width of 20 metres;
2. High Street is deemed to be 13 metres wide; and
3. Parry Street and Ellen Street are deemed to be 18 metres wide.

### **Setbacks**

The scheme amendment as submitted and advertised does not provide specific street or boundary setback requirements. The comment that there should be street and or boundary setbacks for mixed use is more relevant to a residential environment and not entirely applicable to the commercial/mixed use setting of these properties, however to fulfil the purpose of the amendment a specified setback to the adjoining streets and Queens Square may be appropriate.

Appropriate development under the provisions of the scheme amendment should enclose the square with a hard edge and provide active frontages at ground level and passive surveillance from the upper floors to High Street, Parry Street and Queens Square. Setting back a building from the boundary to the square and/or street by an excessive amount would not achieve an appropriate urban design outcome. Therefore it is considered appropriate to specify a maximum setback which might allow a small forecourt area consistent with active ground floor uses (e.g. a café) however a lesser or nil setback to the boundary could be acceptable if the building design complies with Building Code requirements. Accordingly a provision of a zero minimum setback and a 3m maximum setback to Queens Square is recommended as a modification to the Scheme amendment provisions in relation to all three subject properties, along with the other specific setback provisions below:

#### **18 Parry Street (Lot 35) - Zero minimum and 3m maximum setback to Parry Street**

The building at 18 Parry Street is already built approximately up to the boundary along Parry Street and this is considered appropriate to carry through into the scheme, in the event of redevelopment on the site.

#### **199 High Street (Lot 1) - 3m minimum setback and 6m maximum setback to High Street**

The adjoining building at 201 High Street is setback approximately 6m from the footpath. The Lot boundary is approximately 5m from the footpath, not adjoining the footpath like the properties (including 199 High Street) either side. The Lot setback is presumably the result of previous land ceding for road reserve widening when the building currently on site was developed. The property adjoining 201 High Street to the north is heritage listed and has a similar setback distance from the High Street footpath. Accordingly new development up to the High Street boundary on 199 High Street would be in front of the established setback of the two properties adjoining the site and may be inappropriate. To limit the impact of such development a minimum and maximum setback are recommended as above.



**26 Parry Street Lot 440 - 3m minimum setback and 6m maximum setback to Parry Street**

The adjoining property at 12 Holdsworth Street is setback approximately 10.5m. New development at 26 Parry street up to the lot boundary would be quite a way forward of this, and could also have some impact upon the setting of single storey heritage listed cottages on the opposite side of Parry Street. Accordingly a minimum and a maximum setback are recommended as stated above. The maximum setback is recommended to limit provision of parking at the front of any new development for streetscape reasons.

All other setbacks will be provided for as matter of design for example setbacks will be required for pedestrian and car access, to meet the fire separation requirements of the building codes and/or if residential development is proposed the boundary setback provisions of the Residential Design Codes will be apply.

**Included Lots**

As stated above, the reasoning behind the scheme amendment is to more effectively enclose the square on all sides to the next adjoining road. Accordingly, only those properties directly abutting the square were included and this reasoning is still considered valid. Only one property that directly abuts the square (160 High Street (Dalkeith House) was left out of the scheme amendment.

160 High Street is listed on the State Heritage Register and is considered to have reached its full development potential. Including it in this amendment could put the existing building at risk of incompatible development applications, which would not likely be supported by Council, even if the Scheme provisions potentially allow for such development.

Additional Planning Comment following Planning Services Committee 3.11.2010

Consideration of this item was deferred at the Planning Services Committee meeting on 3 November 2010. Representations were made to the Committee on behalf of the owners of No. 26 Parry Street expressing concern regarding the officers' recommended modification to the Scheme Amendment to introduce a requirement for new development to be set back a minimum of 3m from the lot boundary with Parry Street, which the landowners consider would unreasonably constrain the redevelopment potential and commercial viability of the site.

Should the Committee consider that a 3m minimum setback to Parry Street as recommended by officers is unnecessary, the following text could replace the text in section 2.3.2.2 of the scheme provisions as currently set out in the officer's recommendation below:

2.3.2.2 Setbacks	18 Parry Street (Lot 35)	Zero minimum setback and 3m maximum setback to Parry Street zero minimum setback and 3m maximum setback to Queens Square
	199 High Street (Lot 1)	3m minimum setback and 6m maximum setback to High Street zero minimum setback and 3m

		maximum setback to Queens Square
	26 Parry Street Lot 440	Zero minimum setback and 6m maximum setback to Parry Street zero minimum setback and 3m maximum setback to Queens Square

## CONCLUSION

It is considered that the proposed scheme amendment that will allow three storey development with the possibility of a set back fourth storey on those properties adjoining Queens Square on the eastern side of Parry Street is appropriate.

Officers consider it would strike a reasonable balance between enabling a built form of development that would more effectively define and enclose an urban public square whilst also safeguarding the setting of a number of nearby heritage listed places.

Some modification to the amendment is considered necessary (modified definition of 'visible from the street' and other wording and addition of minimum and maximum setback requirements) to further maintain the amenity of the area and respond to a number of issues raised in submissions.

Accordingly It is recommended Council note the submissions received and adopt scheme amendment No. 30 with modifications as outlined in this report to apply to three properties adjoining Queens Square on the eastern side of Parry Street being No. 199 (Lot 1) High Street, No. 26 (Lot 440) Parry Street and No. 18 (Lot 35) Parry Street.

OFFICER'S RECOMMENDATION

That Council:

1. Note the submissions received as detailed in the Officer's report and attachment 1;
2. Resolve, pursuant to Section 75 of the Planning and Development Act 2005 and Regulation 17(2)(a) of the Town Planning Regulations 1967, to adopt with modification the following amendment to the City of Fremantle Local Planning Scheme No. 4:
  - a) Amending Clause 12.12 Schedule 12 Local Planning Areas (Height Requirements) Local Planning Area 2 – Fremantle to include under clause 2.3 a new sub area 2 with provisions relevant to No. 199 (Lot 1) High Street, No. 26 (Lot 440) Parry Street and No. 18 (Lot 35) Parry Street, to read as follows:

<p>Sub Area 2 Queens Square (east)</p>	
<p>2.3.2.1 Height Requirements</p>	<p>Despite the general height requirements outlined in 2.1 above, building height shall be limited to a maximum height of three storeys (maximum external wall height of 11* metres as measured from ground level with a maximum roof plain pitch of 33 degrees). Council may consent to an additional storey subject to –</p> <ol style="list-style-type: none"> <li>(a) the upper level being sufficiently setback from the street so as to not be visible from the street(s) adjoining the subject site,</li> <li>(b) maximum external wall height of 14* metres,</li> <li>(c) compliance with clause 2.2 above, and</li> </ol> <p>* inclusive of roof parapet and spacing between floors.</p>

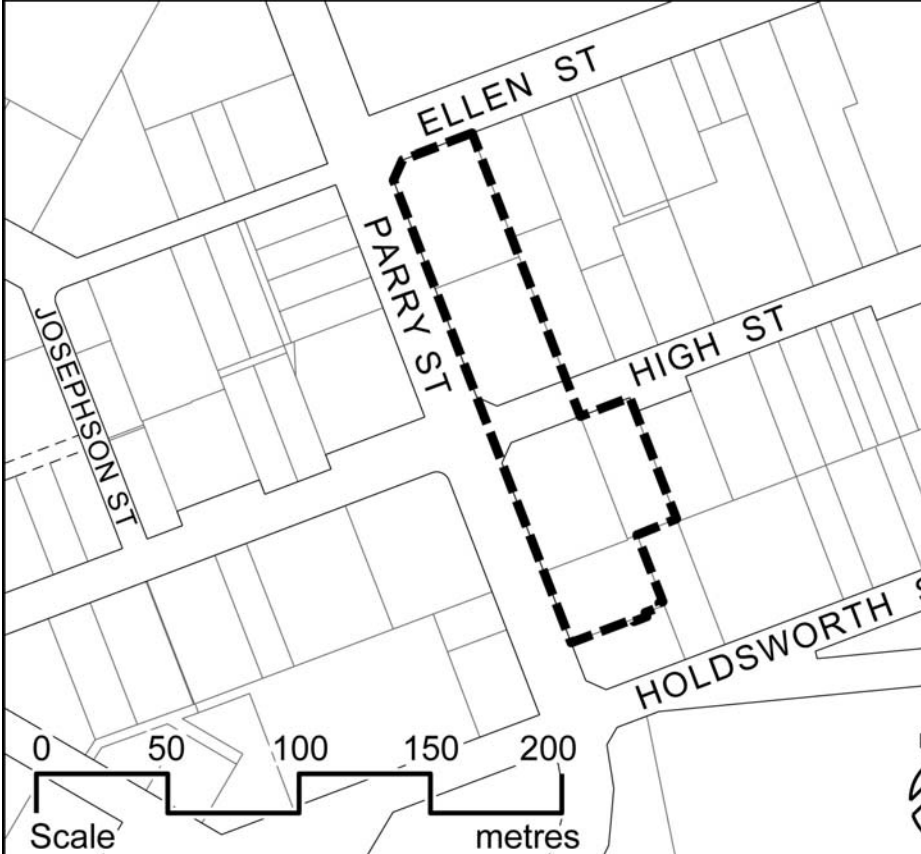
	<p>Note: 'Visible from the street' will be based on an assumed line of sight measured at a perpendicular angle from the subject land's lot boundary into the adjoining street for the width of the street and 1.6 metres above ground level. For the purposes of this clause for this sub area: Queens Square will be considered to be a street with an assumed width of 20 metres; High Street is deemed to be 13 metres wide; and Parry and Ellen Street are deemed to be 18 metres wide.</p>	
2.3.2.2 Setbacks	18 Parry Street (Lot 35)	<p>Zero minimum setback and 3m maximum setback to Parry Street zero minimum setback and 3m maximum setback to Queens Square</p>
	199 High Street (Lot 1)	<p>3m minimum setback and 6m maximum setback to High Street zero minimum setback and 3m maximum setback to Queens Square</p>
	26 Parry street Lot 440	<p>3m minimum setback and 6m maximum setback to Parry Street zero minimum setback and 3m maximum setback to Queens Square</p>
2.3.2.1 Other Building Requirements	<p>New buildings shall provide for activated ground level frontages and passive surveillance from upper floors to High Street and/or Parry Street and to Queens Square.</p>	

3. Authorise the Mayor and the Chief Executive Officer to execute the relevant documentation and affix the common seal of the City of Fremantle on the documentation; and,
4. Request the Minister for Planning grant final consent to Scheme Amendment No. 30

**Cr A Sullivan MOVED the following alternative recommendation:**

**COMMITTEE RECOMMENDATION**

1. Note the submissions received as detailed in the Officer's report and attachment 1;
2. Resolve, pursuant to Section 75 of the Planning and Development Act 2005 and Regulation 17(2)(a) of the Town Planning Regulations 1967, to adopt with modification the following amendment to the City of Fremantle Local Planning Scheme No. 4:
  - a) Amending Clause 12.12 Schedule 12 Local Planning Areas (Height Requirements) Local Planning Area 2 – Fremantle to include under clause 2.3 a new sub area 2 with provisions relevant to No. 199 (Lot 1) High Street, No. 26 (Lot 440) Parry Street and No. 18 (Lot 35) Parry Street, to read as follows:

<p>Sub Area 2 Queens Square Square (east)</p>		
<p>2.3.2.1 Height Requirements</p>	<p>Despite the general height requirements outlined in 2.1 above, building height shall be limited to a maximum height of three storeys (maximum external wall height of 11* metres as measured from ground level with a maximum roof plain pitch of 33 degrees).</p> <p>Council may consent to an additional storey subject to –</p> <ul style="list-style-type: none"> <li>(a) the upper level being sufficiently setback from the street so as to not be visible from the street(s) adjoining the subject site,</li> <li>(b) maximum external wall height of 14* metres,</li> <li>(c) compliance with clause 2.2 above, and</li> </ul> <p>* inclusive of roof parapet and spacing between floors.</p> <p>Note: ‘Visible from the street’ will be based on an assumed line of sight measured at a perpendicular angle from the subject land’s lot boundary into the adjoining street for the width of the street and 1.6 metres above ground level. For the purposes of this clause for this sub area:</p> <p>Queens Square will be considered to be a street with an assumed width of 20 metres; High Street is deemed to be 13 metres wide; and Parry and Ellen Street are deemed to be 18 metres wide.</p>	
<p>2.3.2.2 Setbacks</p>	<p>18 Parry Street (Lot 35)</p>	<p>Zero minimum setback and 3m maximum setback to Parry Street. zero minimum setback and 3m maximum setback to Queens Square</p>
	<p>199 High Street (Lot 1)</p>	<p>5m minimum setback and 7m maximum setback to High Street.</p>

		zero minimum setback and 3m maximum setback to Queens Square
	26 Parry street Lot 440	1m ground floor setback to Parry street with the setback area integrated with the adjoining footpath. zero minimum setback and 3m maximum setback to Queens Square
2.3.2.3 Boundary walls	Boundary walls will be permitted only where the Council is satisfied that both the following criteria are met: (a) the elevation presents as an integral part of the overall aesthetic of the building, and (b) the walls are sympathetic to the surrounding environment.	
2.3.2.4 Vehicle parking	Vehicle parking shall not be provided for in the street setback area of any Lot.	
2.3.2.5 Existing trees	Development abutting Queens Square shall be designed or setback so as to not undermine or compromise the integrity or well-being of the existing trees within Queens Square.	
2.3.2.6 Other Building Requirements	New buildings shall provide for activated ground level frontages and passive surveillance from upper floors to High Street and/or Parry and/or Ellen Street and to Queens Square.	

3. Authorise the Mayor and the Chief Executive Officer to execute the relevant documentation and affix the common seal of the City of Fremantle on the documentation; and,
4. Request the Minister for Planning grant final consent to Scheme Amendment No. 30

**Cr B Massie MOVED an amendment to the alternative Recommendation to include the following wording:**

2.3.2.7	<i>Closed circuit TV cameras facing public areas shall be installed in all new development and thereafter maintained to the satisfaction of Council</i>
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**LOST: 1/5**

<b>For</b>	<b>Against</b>
Cr Bill Massie	Cr Andrew Sullivan Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson

**Cr A Sullivan MOVED an amendment to the alternative Recommendation to include the following wording:**

- (b) the walls are sympathetic to the surrounding environment, and

2.3.2.3

- (c) *the wall being a maximum height of 11 metres with side and rear boundary setbacks above this height being determined in the same manner as setbacks to Queens Square in accordance clause 2.3.2.1 above*

**CARRIED: 6/0**

For	Against
Cr Bill Massie Cr Andrew Sullivan Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson	

**Cr A Sullivan MOVED an amendment to the alternative Recommendation to include the following:**

*Delete height references to 11 metres and replace with 12 metres.*

**CARRIED: 6/0**

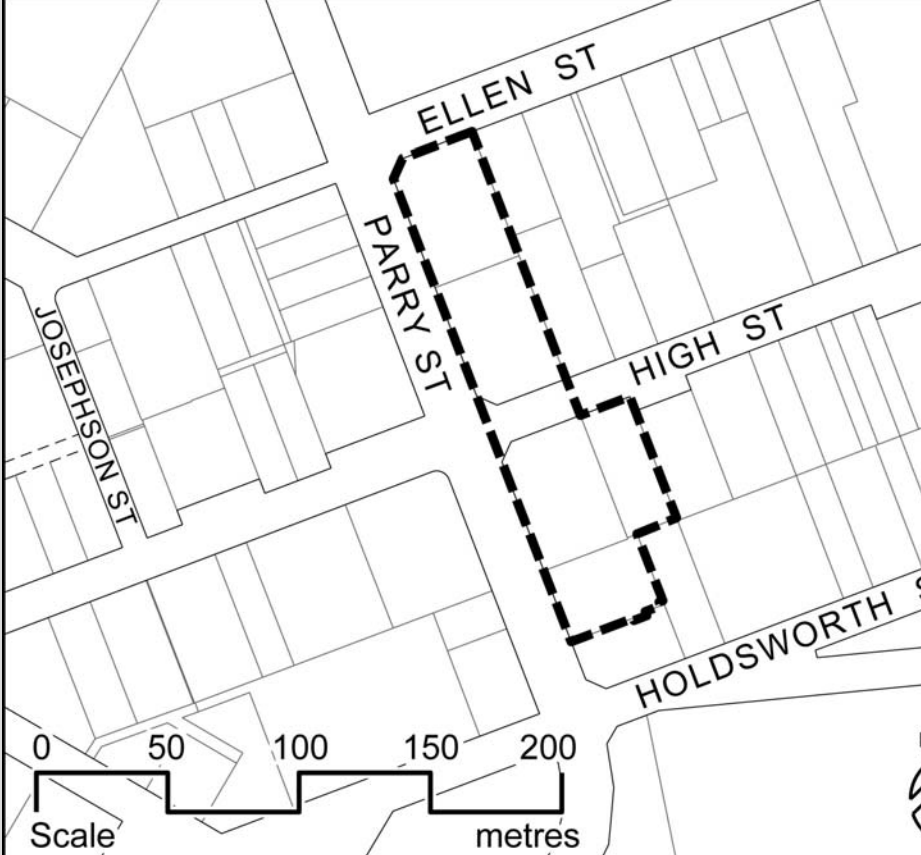
For	Against
Cr Bill Massie Cr Andrew Sullivan Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson	

## **COMMITTEE RECOMMENDATION**

**Cr Andrew Sullivan MOVED the following alternative recommendation as amended, to read as follows;**

1. Note the submissions received as detailed in the Officer's report and attachment 1;
2. Resolve, pursuant to Section 75 of the Planning and Development Act 2005 and Regulation 17(2)(a) of the Town Planning Regulations 1967, to adopt with modification the following amendment to the City of Fremantle Local Planning Scheme No. 4:
  - a) Amending Clause 12.12 Schedule 12 Local Planning Areas (Height Requirements) Local Planning Area 2 – Fremantle to include under clause 2.3 a new sub area 2 with provisions relevant to No. 199 (Lot 1) High

Street, No. 26 (Lot 440) Parry Street and No. 18 (Lot 35) Parry Street, to read as follows:

<p><b>Sub Area 2 Queens Square Square (east)</b></p>		
<p><b>2.3.2.1 Height Requireme nts</b></p>	<p>Despite the general height requirements outlined in 2.1 above, building height shall be limited to a maximum height of three storeys (maximum external wall height of 12 metres as measured from ground level with a maximum roof plain pitch of 33 degrees).</p> <p>Council may consent to an additional storey subject to –</p> <ul style="list-style-type: none"> <li>(a) the upper level being sufficiently setback from the street so as to not be visible from the street(s) adjoining the subject site,</li> <li>(b) maximum external wall height of 14 metres,</li> <li>(c) compliance with clause 2.2 above, and</li> </ul> <p>* inclusive of roof parapet and spacing between floors.</p> <p><b>Note:</b> ‘Visible from the street’ will be based on an assumed line of sight measured at a perpendicular angle from the subject land’s lot boundary into the adjoining street for the width of the street and 1.6 metres above ground level. For the purposes of this clause for this sub area: Queens Square will be considered to be a street with an assumed width of 20 metres; High Street is deemed to be 13 metres wide; and Parry and Ellen Street are deemed to be 18 metres wide.</p>	
<p><b>2.3.2.2 Setbacks</b></p>	<p>18 Parry Street (Lot 35)</p>	<p>Zero minimum setback and 3m maximum setback to Parry Street.</p>



		zero minimum setback and 3m maximum setback to Queens Square
	199 High Street (Lot 1)	5m minimum setback and 7m maximum setback to High Street. zero minimum setback and 3m maximum setback to Queens Square
	26 Parry street Lot 440	1m ground floor setback to Parry street with the setback area integrated with the adjoining footpath. zero minimum setback and 3m maximum setback to Queens Square
2.3.2.3 Boundary walls	Boundary walls will be permitted only where the Council is satisfied that the following criteria are met: (a) the elevation presents as an integral part of the overall aesthetic of the building, and (b) the walls are sympathetic to the surrounding environment, and (c) <i>the wall being a maximum height of 12 metres with side and rear boundary setbacks above this height being determined in the same manner as setbacks to Queens Square in accordance clause 2.3.2.1 above</i>	
2.3.2.4 Vehicle parking	Vehicle parking shall not be provided for in the street setback area of any Lot.	
2.3.2.5 Existing trees	Development abutting Queens Square shall be designed or setback so as to not undermine or compromise the integrity or well-being of the existing trees within Queens Square.	
2.3.2.6 Other Building Requirements	New buildings shall provide for activated ground level frontages and passive surveillance from upper floors to High Street and/or Parry and/or Ellen Street and to Queens Square.	

3. Authorise the Mayor and the Chief Executive Officer to execute the relevant documentation and affix the common seal of the City of Fremantle on the documentation; and,
4. Request the Minister for Planning grant final consent to Scheme Amendment No. 30

**CARRIED: 6/0**

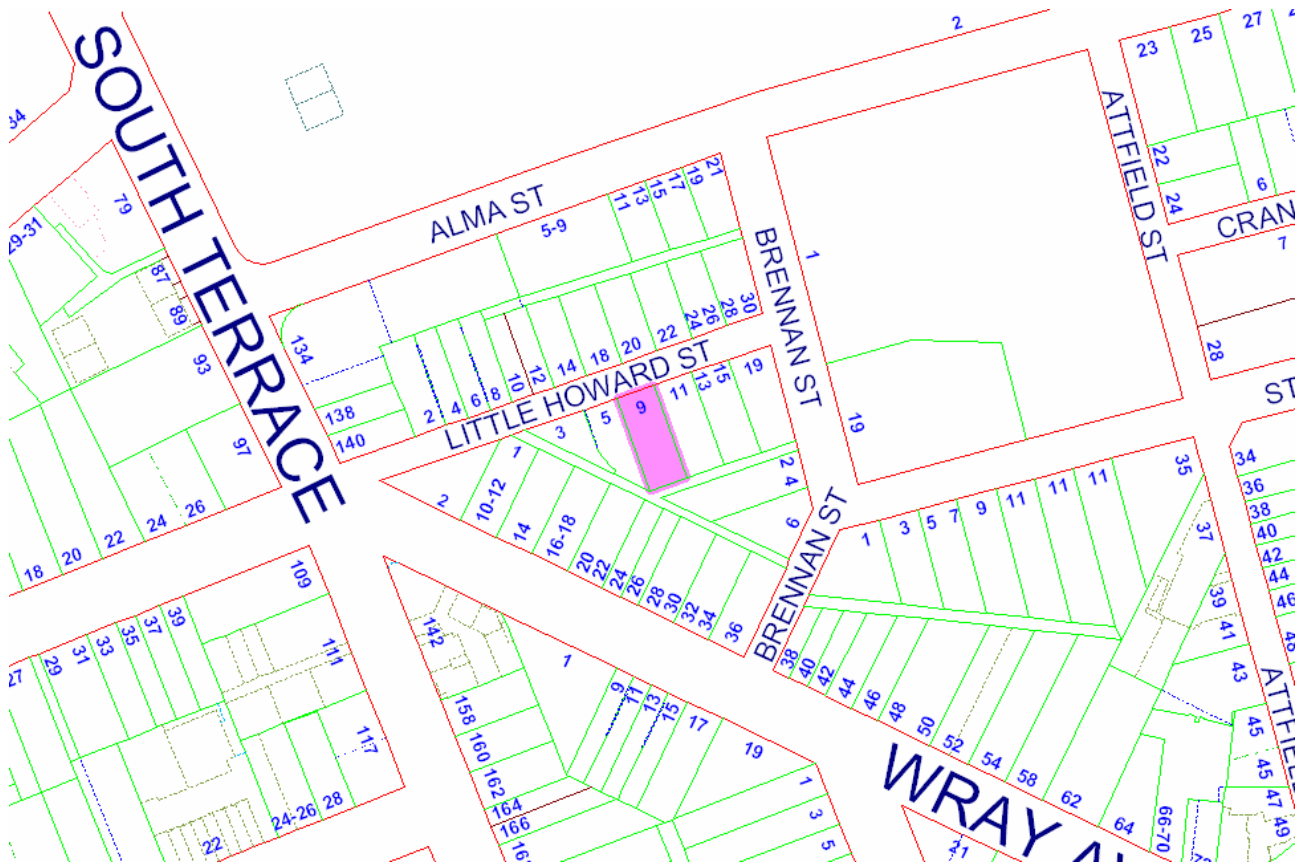
For	Against
Cr Bill Massie Cr Andrew Sullivan Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson	

**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

**PSC1011-220 LITTLE HOWARD STREET, NO. 9 (LOT 11) ADDITIONS AND ALTERATIONS TO EXISTING SINGLE HOUSE (AH DA0458/10)**

**DataWorks Reference:** 059/002  
**Disclosure of Interest:** Nil  
**Responsible Officer:** Manager Development Services  
**Actioning Officer:** Planning Officer  
**Decision Making Level:** Planning Services Committee  
**Meeting Date:** 17 November 2010  
**Previous Item Number/s:** Nil  
**Attachments:**  
1. Development plans (9 September 2010)  
2. Applicants Justification  
3. Heritage Assessment  
  
**Date Received:** 9 September 2010  
**Owner Name:** P Sweeny  
**Submitted by:** Hollis Constructions  
**Scheme:** Residential – R30  
**Heritage Listing:** Level 3  
**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 additions and alterations to an existing single storey house which has implications on the heritage significance of the place.

A heritage assessment has been undertaken and does not support the proposed additions to the property, with specific regard to the alterations to the original roof form.

Furthermore, the application proposes a balcony which does not meet the Acceptable Development provisions of the R-Codes and would require screening to the eastern elevation in order to comply.

Therefore, the application is considered to not meet Clause 4.2.1 (a)(v) of LPS 4 in relation to the impact of the development in conserving a place of heritage significance and is therefore recommended for refusal.

## **BACKGROUND**

The site is known as No. 9 Little Howard Street, Fremantle and comprises a traditional single storey dwelling that was originally part of No. 9 and No. 11 Little Howard Street which includes what is now a large rendered masonry wall with a door and high level windows at No. 9, situated on the front boundary line and a partial limestone brick and rendered masonry wall containing elements of the former bakery at No. 11.

The property is approximately 12.1m in width and 30.7m in length, with rear access via a privately owned Right of Way.

The site is zoned Residential R30 and is located within Sub Area 4.3.4 of the South Fremantle Local Planning Area (LPA 4) as described in Schedule 12 of the City's Local Planning Scheme No. 4 (LPS 4).

The property is listed on the City's Heritage List as No. 9 Little Howard Street, Fremantle with a management category of Level 3. The property has been recommended as a Level 2 heritage listed property as part of the recent update of the MHI.

Planning approval was granted on the 17 October 2006 for rear additions and alterations.

Planning approval was granted on the 28 May 2009 for rear additions and alterations (same proposal as previously approved)

## **DETAIL**

The applicant seeks to erect additions and alterations to the existing single storey single house that would include alterations to the internal ground floor of the existing original cottage, creation of an upper level loft above the existing original cottage and rear alterations to bathroom, studio and garage.

Previous planning approval issued on the 28 May 2009 included the rear additions and alterations to the dwelling and as such are not part of the matter to be considered in this application.

The matter to be considered in this application relates only to the alterations to the existing original cottage and specifically the inclusion of a loft and the resulting alterations on the form of the roof.

## **STATUTORY AND POLICY ASSESSMENT**

### **Local Planning Scheme No. 4**

#### Residential Zone

The site is zoned Residential under Local Planning Scheme No. 4 (LPS 4). The objective of the Residential zone states:

*Development within the residential zone shall:*

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

*Note: All zone objectives should be read in conjunction with individual LPA objectives in schedule 12 and Scheme aims in section 1.6*

### **Residential Design Codes of W.A. (2008)**

The development plans have been assessed against the Acceptable Development criteria set out within the R-Codes. The plans submitted do not meet the Acceptable Development requirements for the following Design Element (DE):

- DE 6.8.1 - Visual privacy.

As such the application is required to be assessed against the Performance Criteria for these variations.

### **Council Policies**

The proposal has been assessed in accordance with Local Planning Policy 1.6 – Preparing Heritage Assessments.

### **CONSULTATION**

#### **Community**

The application was required to be advertised in accordance with Clause 9.4 of the LPS 4, as variations are sought for visual privacy. At the close of the advertising period, being 30 September 2010, the City had received one submission with the following issue being raised:

- Object to the proposed balcony as this will give the owners of 9 Little Howard Street a direct view into our enclosed sitting area and also our outdoor alfresco entertaining area.

#### **Heritage**

Local Planning Policy 1.6 requires a heritage assessment to be undertaken in order to establish whether there would be any adverse impact on the heritage values of the property. The heritage assessment can be found as Attachment 3. Following is a summary of the heritage assessment:

*The proposal for alterations and additions at 9 Little Howard Street includes retention of much of what remains of the original building. Retention of original fabric is positive in light of the place's cultural heritage significance.*

*The application proposes modifications to the original roofline of the house to accommodate a proposed upper floor loft/studio that represents a negative change to the place in light of its significance. The existing roofline has a typical ridge running parallel to the street, while the proposal substantially increases the roof height and reconfigures the ridge to run perpendicular to the street.*

*The proposed modifications to the roof represent a permanent loss of value to the streetscape values of the place.*

### **PLANNING COMMENT**

#### **Local Planning Scheme No. 4**

##### Residential Zone

The application is not considered to meet clause 4.2.1 (a) (v) of LPS 4 as the heritage assessment has stated that the proposed additions would not conserve and enhance a place of heritage significance.

## Residential Design Codes of WA (2008)

### DE 6.8.1 - Visual privacy

The proposed juliet balcony at the rear of the loft does not meet the Acceptable Development requirements of DE 6.8.1 and as such 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.*

Due to the narrow design of the properties, the balcony would allow overlooking to the east of an active habitable outdoor space and as such requires screening from this elevation.

The view to the west however, is largely obstructed by the height of existing boundary walls along the western boundary and as such any view from the balcony would be restricted to the roof of the adjoining lot and the rear garden area.

Accordingly, the overlooking that would occur would have an impact on the outdoor living area of the adjoining property to the east, however the view to the west is considered to meet the Performance Criteria.

The inclusion of screening to the western elevation of the balcony would ameliorate this element.

## Local Planning Policy

### Local Planning Policy 1.6 – Preparing Heritage Assessments

The subject site is on the City's Heritage List with a Management Category of Level 3 and as such a heritage assessment was required. The full heritage assessment can be found as Attachment 3, however the summary contained above (under the heading 'Heritage') demonstrates that the proposal would have a detrimental affect on the heritage value of the property by way of the alteration to the original roof shape.

Therefore the application is considered to not meet the provisions of LPS 4 in that it would not meet objective (v) of clause 4.2.1 (a) that states that development in the residential zone shall conserve and enhance places of heritage significance.

## **SUBMISSIONS**

The application was advertised to the adjoining property owners due to variations visual privacy. Following the close of the advertising period, one submission was received which raised concerns with overlooking.

As discussed above, the proposed balcony is considered to have an impact on the privacy of the adjoining property to the east and as such the application does not meet the R-Codes in this regard. Screening would be required to the eastern elevation of the balcony in order for this element to comply.

## **CONCLUSION**

The applicant is seeking to erect additions and alterations to the existing single storey single house with the addition of a loft to the original cottage. This results in an alteration to the original roof form of the existing heritage listed cottage.

A heritage assessment has been undertaken which does not support the alterations to the roof form of the cottage and as such the application is not support on heritage grounds.

Furthermore, the applicant proposes a rear facing balcony which is considered to overlook the adjoining property the east. Appropriate screening would be required to the eastern elevation of the balcony in order for this element to comply.

Therefore, 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 Proposed Additions and Alterations to the Existing Single Storey Single House at No. 9 (Lot 11) Little Howard Street, Fremantle, as detailed on plans dated 9 September 2010, for the following reasons:

1. The proposal is inconsistent with the City of Fremantle's Local Planning Scheme No. 4 in that it would result in a detrimental impact upon the heritage values of the place and does not meet Clause 4.2.1 (a) (v) of Local Planning Scheme No. 4.
2. The proposal is inconsistent with the Residential Design Codes of W.A. in that it fails to meet Design Element 6.8.1 – Visual privacy from the upper level balcony on the eastern elevation.

**LOST: 0/6**

<b>For</b>	<b>Against</b>
	Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan

**Cr Andrew Sullivan MOVED to defer the item to the Council meeting dated 24 November 2010 to allow council officers to provide a recommendation of approval**

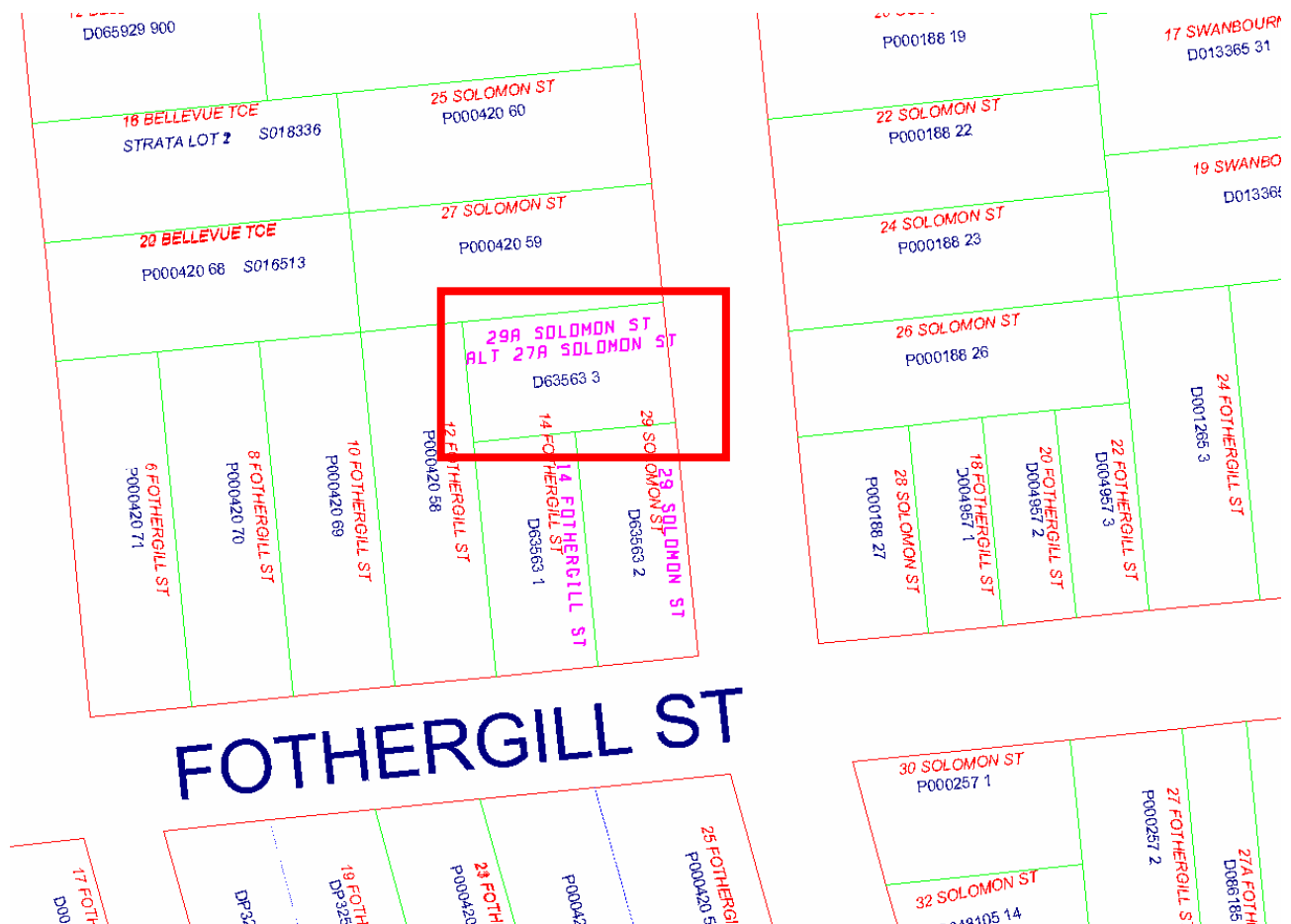
**CARRIED: 6/0**

<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	



**PSC1011-222 SOLOMON STREET NO. 29A(LOT: 3), FREMANTLE -  
RETROSPECTIVE APPROVAL FOR BOUNDARY WALL AND  
INCREASED FINISHED FLOOR LEVEL TO EXISTING SINGLE  
HOUSE**

**DataWorks Reference:** 059/002  
**Disclosure of Interest:** Nil  
**Meeting Date:** 17 November 2010  
**Responsible Officer:** Manager Development Services  
**Actioning Officer:** Planning Officer  
**Decision Making Level:** Planning Services Committee  
**Previous Item Number/s:** N/A  
**Attachment 1:** Development Plan  
**Attachment 2:** Additional Information & Site Photos  
**Date Received:** 20 September 2010  
**Owner Name:** Paul & Michelle Abbott  
**Submitted by:** Paul & Michelle Abbott  
**Scheme:** Residential R25  
**Heritage Listing:** N/A  
**Existing Landuse:** Single House  
**Use Class:** Single House  
**Use Permissibility:** P



**EXECUTIVE SUMMARY**

The application has been referred to the Planning Services Committee for determination given the objection received during the advertising period cannot be dealt with via a condition of planning approval.

The retrospective application relates to works involving an additional 43 millimetres of height to a boundary wall which has been constructed at the site not in accordance with the approved plans (DA0370/08). The approved plans were found to be incorrect, due to an inadvertent error by the surveyor at the time of the initial planning approval where the datum was shown as 31.63 metres AHD instead of 31.36 metres AHD. In addition to this, construction of the dwelling in accordance with the incorrect survey measurements on the approved plans has had a minor impact on the internal finished floor level of the garage and dwelling constructed at the site.

The constructed boundary wall on the southern elevation requires a performance based assessment against the provision Local Planning Policy 2.4 - Boundary Walls in Residential Development (L.P.P 2.4).

Construction work on site has ceased pending the determination of this planning application. Consequently, also contained within this application are proposed modifications to the eave detail on the eastern elevation of the garage entry, increased external wall height, the addition of a verandah area adjacent to the main bedroom and minor modifications to the dining/living room window on the western elevation.

It is recommended that the application be approved subject to appropriate conditions to address the following matters.

**BACKGROUND**

The subject site is zoned Residential under the provisions of the City of Fremantle’s (the City) Local Planning Scheme No.4 (LPS4) with a density coding of R25. The site is located within the Fremantle Local Planning Area under the provisions LPS4.

The development site is located on the western side of Solomon Street, Fremantle. The development site is 387m<sup>2</sup> in area and has a frontage of 15.19 metres to Solomon Street with a fall of 3.57 metres from the Solomon Street elevation to the rear western boundary of the site. The site consists of a partially constructed two storey Single House that was approved by the City on 2 October 2008 (DA370/08).

**DETAIL**

This application comprises the following works:

**Retrospective**

<b>Works</b>	<b>Approved</b>	<b>Constructed</b>	<b>Variation</b>
Ground Floor Finished Floor Level	RL 28.5	RL 28.7	200 mm

Boundary Height (South)	Wall (Garage/)	RL 34.6	RL 35.03	43 mm
Boundary Setback	Wall	Nil setback to southern boundary	80 millimetres off southern boundary	80 millimetres

### Proposed

- Alteration to eave and gutter detail on garage boundary wall, to reduce the overall height of the boundary wall;
- Increased first floor finished floor level. Approved FFL 31.5, proposed 31.796 (0.296 metres);
- Dining/Living room window modification from 2.4 metres in height in lieu of 2.143 metres;
- Verandah addition to eastern (front) elevation adjoining Master Bedroom;
- Increased external wall height on southern elevation (maximum 6.2 metres in lieu of 6 metre requirement).

### CONSULTATION

#### Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4, as the works relate to a boundary wall. At the conclusion of the advertising period, being 21 October 2010 the City had received 1 submission. The following issues were raised:

- *The effect of any increase to the height of the adjoining wall and house structure is magnified.*

The concerns raised in the submission are addressed in the Planning Comment section below.

### PLANNING COMMENT

#### Retrospective Works

##### L.P.P1.5 - Planning, Building and Environmental Health Compliance

Clause 4.6 of Council policy *L.P.P1.5 Planning, Building and Environmental Health Compliance* (L.P.P1.5) 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 Manager Development Services there is a broader public interest in undertaking legal action, a report will be prepared for the Council to consider further prosecution action.

Although the development in its current form is not considered to comply with the provisions of LPS4 and Council's L.P.P2.5 policy, the works that have taken place are rectifiable by way of retrospective Planning Approval. Taking this into account, it is not considered that there is a broader public interest in undertaking legal action regarding the unauthorised works, subject to the determination of the application. Notwithstanding this, if Council refuses the unauthorised works, some enforcement measures are required to ensure the unauthorised works are brought into compliance with the provisions of LSP4.

However, Clause 4.5 of L.P.P1.5 states that in addition to the City giving a written warning (Clause 4.2), '*an infringement notice shall be issued as soon as possible after the offence has been committed, but in any event, must be given within 6 months after the alleged offence is believed to have been committed*'.

The previous works to the existing Single House were approved less than 6 months ago as evidenced by a site inspection conducted by the City's Officer, and therefore an infringement notice is recommended to be issued. An infringement notice would result in a \$500 fine being issued to the '*alleged offender*'. As these unauthorised works have occurred within the specified 6 month timeframe, it is recommended that Council issue the infringement notice in accordance with Section 226 of the *Planning and Development Act 2005*, as prescribed by Council's L.P.P1.5.

#### L.P.P 2.4 – Boundary Walls in Residential Development

The boundary wall on the southern boundary is required to be assessed against the City's L.P.P 2.4 policy. The City's *Boundary Walls in Residential Development Policy* provides alternative 'Acceptable Development' standards to those contained within Element 6.3.2 of the R-Codes. As the development site has a frontage greater than 10 metres, the proposal cannot satisfy the replacement Acceptable Development criteria of L.P.P2.4. Accordingly, the applicant is seeking a performance based assessment against the Council's L.P.P2.4 – Boundary Walls policy.

The boundary walls ranges from 3 – 5 metres in height given the sloping natural ground level and extends for 6.2 metres of the subject common boundary between the subject site and No. 29 Solomon Street.

In relation to the criteria of L.P.P2.4, a site inspection revealed the wall abuts a vehicular car parking area therefore does not significantly add to any sense of confinement in terms of accumulative building bulk as this is a non habitable space. This is the designated location of two car parking bays in a tandem arrangement for No. 29 Solomon Street, as indicated in the WAPC survey strata subdivision approval of the parent property (DA136254). Consequently the City cannot consider this area to be an outdoor living area for this adjoining site.

There are no mature trees or other significant vegetation present on site today worthy of protection. The boundary wall does not restrict any existing views of significance captured by adjoining properties.

Overall the boundary wall is not considered to have a significant adverse impact on the immediate neighbours, in terms of restricted solar access, building bulk or loss of visual amenity.

Therefore this variation is supported as it addresses the relevant 'Performance Criteria' of Design Element 6.3.2 of the R-Codes and the additional criteria stipulated in Council's L.P.P2.4 policy.

## **Proposed Works**

### First Floor Finished Floor Level & External Wall Height

Construction work at the site has ceased and the partially constructed dwelling is presently single storey, therefore the second storey to be constructed is considered to be proposed works. The applicant seeks to increase the internal floor level from RL 31.5 to RL 31.796, a difference of 296 mm. This minor variation to the floor level of the first floor is not considered to have any significant undue impact on the amenity of the adjoining properties or locality generally.

The external wall height is proposed to exceed the permitted maximum height of 6 metres for a portion of wall approximately 1.5 metres in length to the second storey on the southern western corner of the dwelling to the dining room. The external wall height for this portion of wall is proposed to be 6.2 metres in height.

Design Element 6.7.1 of the Residential Design Codes relates to Building Height. While the proposal does not comply with the Acceptable Development requirements as mentioned above, it is considered to comply with the Performance Criteria being the following,

- P1 Building height consistent with the desired height of buildings in the locality, and to recognise the need to protect the amenities of adjoining properties, including, where appropriate:*
- *Adequate direct sun to buildings and appurtenant open spaces;*
  - *Adequate daylight to major openings to habitable rooms; and*
  - *Access to views of significance.*

The proposed external wall height variation is not considered to detrimentally impact the amenity of the directly adjoining property, being No. 14 Fothergill Street. The subject wall will not be visible from the primary street and therefore is not considered to negatively or otherwise impact the amenity of the locality. In addition to this, the additional wall height will not restrict views of significance from or to the adjoining properties.

The proposal is compliant with Design Element 6.9.1 of the R Codes (Solar access for adjoining sites) and the proposed wall will not restrict solar access to major openings of habitable rooms or outdoor living areas on the adjoining property at No. 14 Fothergill Street.

Consequently, the minor variation to the external wall height proposed to the south western corner of the dwelling is supported by the City's Officers in this instance given it is not considered to have any significant detrimental impact on the amenity of the adjoining property or streetscape.

## **CONCLUSION**

The preceding report considers the retrospective and proposed works at No. 29A Solomon Street in accordance with the City's Local Planning Scheme No. 4, Residential Design Codes and City's L.P.P 1.5 & L.P.P 2.4 policies. Both the retrospective works and proposed works are supported on the basis that they do not have a significant adverse impact on the amenity of the adjoining properties or the Solomon Street streetscape.

Therefore, the application is recommended for approval subject to the following conditions to address the above matters.

## **OFFICER'S RECOMMENDATION**

A. APPROVE the application for Retrospective Alterations and Additions and Proposed Alterations and Additions to Existing Single House at No. 29A (Lot: 3) Solomon Street, Fremantle, subject to the following condition(s):

1. The development hereby permitted shall take place in accordance with the approved plans dated 20 September 2010. 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 southern elevation shall be of a clean finish in sand render or face brick to the satisfaction of the Chief Executive Officer, City of Fremantle.

B. AUTHORISE the Chief Executive Officer, City of Fremantle to issue an infringement notice to the alleged offender in accordance with Councils L.P.P1.5 - Planning, Building and Environmental Health Compliance.

## **OFFICER'S RECOMMENDATION/COMMITTEE DECISION**

**MOVED: Cr A Sullivan**

**That Council:**

**A. APPROVE the application for Retrospective Alterations and Additions and Proposed Alterations and Additions to Existing Single House at No. 29A (Lot: 3) Solomon Street, Fremantle, subject to the following condition(s):**

- 1. The development hereby permitted shall take place in accordance with the approved plans dated 20 September 2010. 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 southern elevation shall be of a clean finish in sand render or face brick to the satisfaction of the Chief Executive Officer, City of Fremantle.**

**CARRIED: 6/0**

<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

**OFFICER'S RECOMMENDATION/COMMITTEE DECISION**

**MOVED: Cr A Sullivan**

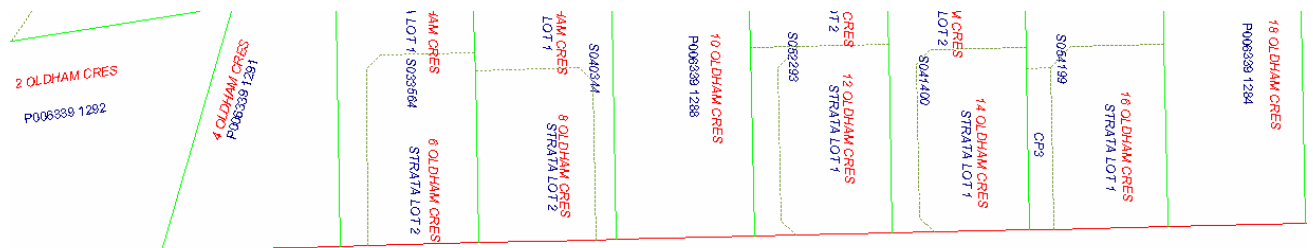
**B. AUTHORISE the Chief Executive Officer, City of Fremantle to issue an infringement notice to the alleged offender in accordance with Councils L.P.P1.5 - Planning, Building and Environmental Health Compliance.**

**CARRIED: 5/1**

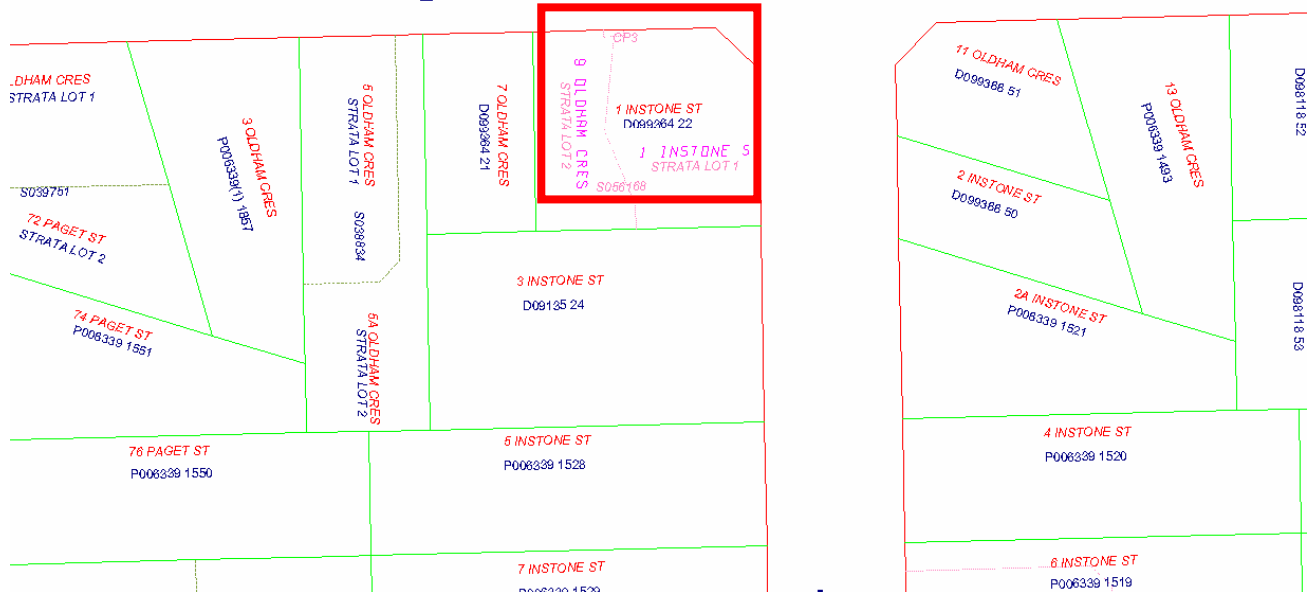
<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	Cr Robert Fittock

**PSC1011-223 INSTONE STREET, NO. 1 (LOT 22) - ALTERATIONS AND ADDITIONS TO EXISTING SINGLE HOUSE (ES DA0484/10)**

**DataWorks Reference:** 059/002  
**Disclosure of Interest:** Nil  
**Meeting Date:** 17 November 2010  
**Responsible Officer:** Manager Development Services  
**Actioning Officer:** Planning Officer  
**Decision Making Level:** Planning Services Committee  
**Previous Item Number/s:** N/A  
**Attachment 1:** Development Plans  
**Attachment 2:** Owners Justification  
**Date Received:** 23 September 2010  
**Owner Name:** David Bebbington  
**Submitted by:** David Bebbington  
**Scheme:** Residential R20  
**Heritage Listing:** Hilton Heritage Precinct  
**Existing Landuse:** Single House  
**Use Class:** Single House  
**Use Permissibility:** P



**OLDHAM CR**





## EXECUTIVE SUMMARY

The application is presented before the Planning Services Committee as the development proposes variations from the design requirements of the City of Fremantle Local Planning Policy, *D.G.H3 Hilton Local Area Planning Policy*.

The applicant is seeking Planning Approval for Alterations and Additions to Existing Single House at No. 1 (Lot 22) Instone Street, Hilton.

The proposed development satisfies the relevant requirements of the Residential Design Codes 2008 and the City's Local Planning Policy, *L.P.P2.4 Boundary Walls in Residential Development*.

The proposed development does not comply with the design requirements of the *Hilton Local Area Planning Policy (D.G.H3)* relating to boundary setbacks, building setting and roof form. The proposed alterations and additions are therefore considered contrary to the objective to ensure that *'all new residential development is compatible with the character ... of the built environment and streetscape'* and are not considered to enhance the features of the garden suburb.

Accordingly, the application is recommended for refusal.

## BACKGROUND

The subject site is zoned Residential under the provisions of the City of Fremantle's (the City) Local Planning Scheme No. 4 (LPS4) and has a density coding of R20. The site is not individually listed on the City's Heritage List but is located within the Hilton Heritage Precinct which is designated as a Heritage Area under clause 7.2 of LPS4.

The development site is 586m<sup>2</sup>, is located on the south western corner of Instone Street and Oldham Crescent and improved by an existing Single Storey Single House.

The subdivision of the site into two survey strata lots, 1 Instone Street and 9 Oldham Crescent (refer DA 613/06, WAPC 1650-06). This subdivision was cleared by the City on 13 July 2009 and endorsed by the WAPC on 21 August 2009.

## DETAILS

On 23 September 2010 the City received a development application seeking Planning Approval for Alterations and Additions to the existing Single House at the subject site. The application proposes an extension to the existing kitchen area to a study and dining area on the western portion of the existing dwelling. A boundary wall is proposed along the western lot boundary. In accordance with the City's L.P.P 2.4 policy, a performance based assessment of this proposed boundary wall has been conducted in the Planning Comment section below. In addition to this, the proposal has also been assessed against the provisions of the D.G.H3 policy relating to the Hilton Local Planning Area.

The applicant has submitted extensive justification in support of the proposal for the Council to consider as part of this application (Attachment 2).

## CONSULTATION

The proposed development was not required to be advertised under clause 9.4 of the LPS4 or the City's *L.P.P. 1.3 Public Notification of Planning Approvals*. The proposed boundary wall abuts No. 9 Oldham Crescent, which is owned by the same landowner as the proposal and therefore it is assumed the same landowner would not provide any objection to the proposal.

## PLANNING COMMENT

### Council Policies

#### **L.P.P2.4 Boundary Walls in Residential Development**

The *Boundary Walls in Residential Development* policy states *'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'*. The L.P.P 2.4 policy requires the Council to have regard to the following factors when considering the impact of a proposed boundary wall on the adjoining properties:

- *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.*

The proposed western boundary wall is considered to make effective use of space and otherwise enhance the amenity of the development as the wall utilises an otherwise limited space between the boundary and the new development. The proposed western boundary wall will not inhibit any views of significance or result in any sense of confinement due to its location as the adjoining lot (No. 9 Oldham Crescent) is currently vacant. The proposed western boundary wall will occupy a 17% of the length of the western boundary (5.1 metres of 28.7 metres) and is therefore not considered to have any significant effect on the adjoining lot in regard to building bulk.

The proposed western boundary wall is not considered to have any significant adverse impact on the amenity of the adjoining northern neighbour as the owner of this property is the same owner as the subject application. In support of the proposed boundary wall, the applicant/owner has stated the following:

- *The proposed parapet wall has limited impact on the street-view for several reasons:*
  - *The angle of the wall offers very limited visibility from the street.*
  - *The steeply rising elevation to the west diminishes the impact of the wall.*
  - *The wall is setback a long way (18m from the primary street, 13.5 metres from the secondary street).*
  - *Existing vegetation (and recent plantings) offer significant screening of the wall/extension.*
  - *The block falls away to the south, limiting visual impact.*

- *The development of a 1.8 metre courtyard/subdivision fence (approved DA257/08) will partly screen the wall.*
- *The proposed parapet wall will have limited impact on the amenity or development potential of No. 9 Oldham because:*
  - *Significant up-slope to the west, creating significant elevation contrast and strongly mitigating overshadowing effects arising from the wall.*
  - *Most likely location for any development is on the western side of the block to advantage of elevation/views, which will preserve a generous setback between new development and proposed parapet wall.*
  - *Provides improved screening for existing residence from development that is likely to be at a significantly higher elevation.*
  - *Very narrow block (11 metres width at narrowest point, 12 metre street frontage) leaves option to integrate parapet wall within development.*

### **D.G.H3 Hilton Local Planning Area**

The guiding principle of the City's local planning policy, *D.G.H3 Hilton Local Planning Area Policy*, is that 'new development should reinforce and complement the garden suburb character and streetscape characteristic of Hilton.'

The Hilton policy states the following in relation to the conservation/adaption of existing houses,

4. *Rear extensions roof types: Hipped or gabled, concrete or terracotta tiled or colourbond in traditional colours. Existing roof may be replaced to match rear extension.*
5. *Rear extensions roof setting out: Roof pitch to match retained front part of house. Eaves overhang 450 mm.*
6. *Rear extensions: external walls can be of flat or weatherboard profile fibrous cement sheeting, timber weatherboarding, exterior-plywood or face brickwork.*
7. *Roof form: Where the roof of the rear extension becomes part of the original roof the retained ridge at the front part of the house will remain the highest point of the roof. The maximum total height of loft type rear extension/addition to the existing house is 6.5m ground floor to ridge level.*
8. *Roof form: Where the roof of the rear extension is kept separate from the retained original roof, the wall plate to ridge level height can be a maximum of 2.7 metres.*

### Boundary Wall

The justification provided by the applicant is noted however the design requirements of the policy are intended to retain a traditional streetscape that reflects the original dwellings in the area. Boundary walls do not form part of the design characteristics of the original dwellings in the Hilton locality.

It is therefore considered that the variation would not satisfy the objective of the policy to ensure that development is compatible with the character of the built environment or to ensure that new development enhances the features of the garden suburb.

### Roof Form

The Hilton policy states that rear extensions must include a hipped or gabled roof in keeping with the roofing style of the locality. Furthermore, the policy also states the roof form of rear extensions is to match the retained front part of the dwelling. The proposed additions include a flat roof that is inconsistent with the roof of the existing dwelling and also of the immediate locality. On this basis, the proposed roof form is not supported.

### **CONCLUSION**

The proposed Alterations and Additions to Existing Single House comply with the relevant requirements of the R-Codes and the City's Local Planning Policy, *LPP2.4 Boundary Walls in Residential Development*.

The proposed development does not meet the design requirements of the City's local planning policy, *D.G.H3 Hilton Local Area Planning Policy*, with regards to boundary setbacks, building setting and roof form. Therefore the proposed development is considered contrary to the objective to ensure that *'all new residential development is compatible with the character ... of the built environment and streetscape'* and is not considered to enhance the features of the garden suburb.

**OFFICER'S RECOMMENDATION**

That the application be **REFUSED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for Rear Alterations and Additions to Existing Single House at No. 1 (Lot 22) Instone Street, Hilton, as detailed on plans dated 23 September 2010 for the following reasons:

The proposal is inconsistent with the design requirements of the City of Fremantle Local Planning Policy *D.G.H3 Hilton Local Area Planning Policy* relating to boundary setbacks, building setting and roof form.

**COMMITTEE RECOMMENDATION**

**MOVED: Cr A Sullivan**

That the application be **APPROVED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for Alterations and Additions to Existing Single House at No. 1 (Lot 22) Instone Street, Hilton, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans dated 23 September 2010. 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 western boundary shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer, City of Fremantle.

**CARRIED: 4/2**

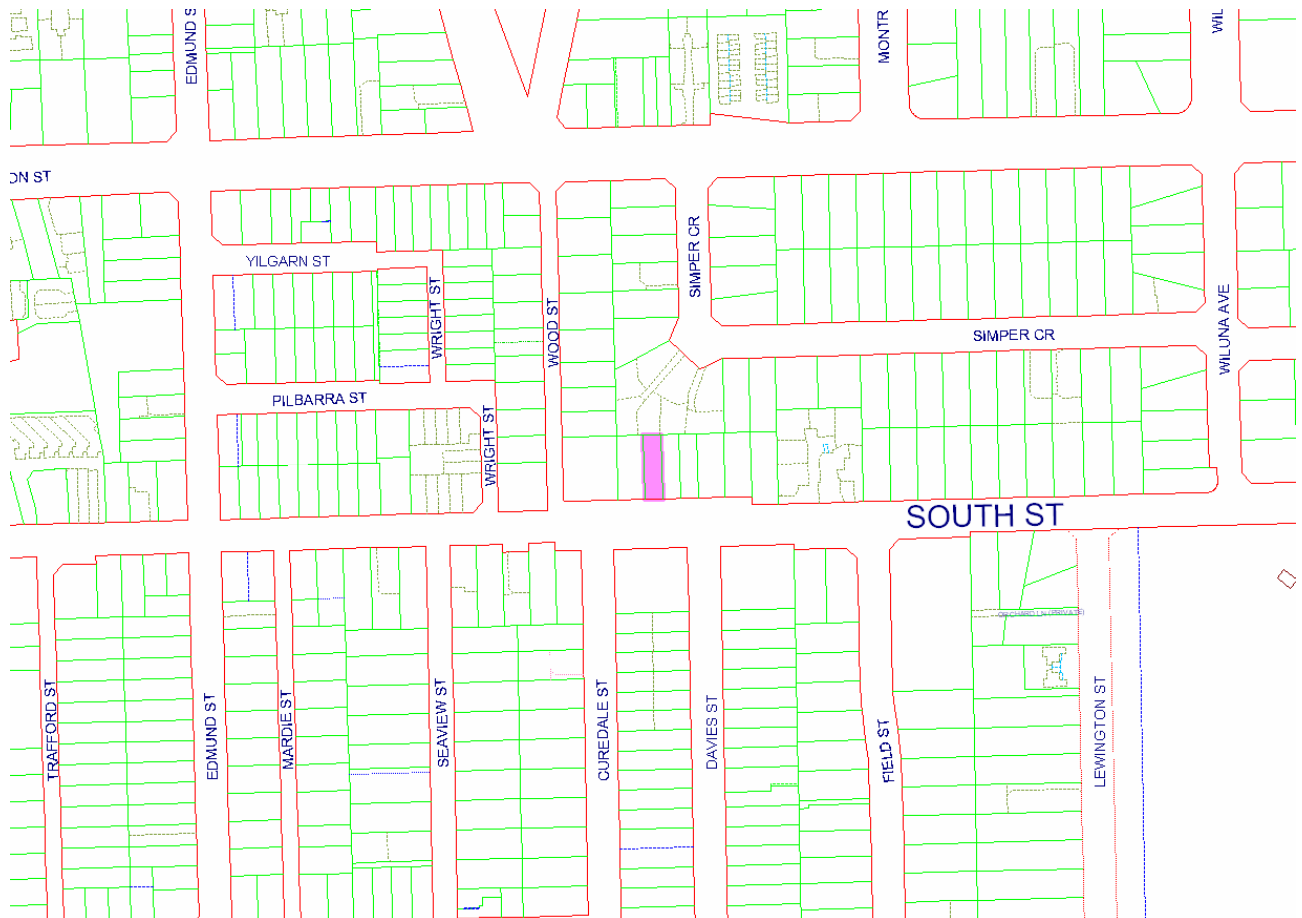
<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr Robert Fittock Cr Bill Massie Cr Andrew Sullivan	Cr Josh Wilson Cr John Dowson

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

Cr B Massie vacated the chamber at 7:50 pm during the following item and returned at 7:51 pm prior to determination.

**PSC1011-224 SOUTH STREET, NO. 146 (LOT 830) WHITE GUM VALLEY - TWO STOREY SINGLE HOUSE (JWJ DA0443/10)**

**DataWorks Reference:** 059/002  
**Disclosure of Interest:** Nil  
**Meeting Date:** 17 November 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 (September 2010)  
**Date Received:** 3 September 2010  
**Owner Name:** Slobodan and Gordana Mitrovic  
**Submitted by:** Avena Pty Ltd T/A Avena Homes  
**Scheme:** Residential R25  
**Heritage Listing:** None  
**Existing Landuse:** Vacant  
**Use Class:** Single House  
**Use Permissibility:** 'P'



## EXECUTIVE SUMMARY

The application is referred to the Planning Services Committee for determination as the proposed development has received comments from nearby landowners that cannot be resolved via conditions of planning approval.

Planning Approval is sought for a two storey Single House at No. 146 South Street, White Gum Valley.

The applicant is also requesting a performance based assessment for a variation from the Residential Design Codes 'Acceptable Development' requirements:

- *Design Element 6.3.1 – Buildings setback from the boundary* relating to the ground floor eastern boundary setback.

Two submissions were received during the advertising process, which raised concerns regarding:

- Objection to the eastern boundary setback;
- Concern regarding commencement times of construction.

The proposed eastern setback variation has been assessed and it is considered it will have a minimal detrimental impact upon the amenity of adjoining properties.

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

## BACKGROUND

The subject site is zoned Residential under the provisions of the City of Fremantle's (the City) Local Planning Scheme 4 (LPS) and has a density coding for R25. The site is not individually listed on the City's Heritage List nor located within a designated Heritage Area in accordance with LPS4.

The site is approximately 441m<sup>2</sup> and is located on the northern side of South Street, White Gum Valley. The site has a south-north orientation and is currently vacant. The site is of an elongated shape and incorporates a frontage of approximately 10.9m.

The topography of the site is relatively flat with a minor slope of approximately 500mm falling from the rear of site to the street. The site incorporates a shared retaining wall with the western adjoining property extending from the street to the centre along the western boundary which has a maximum height of approximately 100mm.

The streetscape of South Street within direct proximity to the site consists of single storey dwellings several with undercroft garages and two storey dwellings.

On 9 June 2006, the Western Australian Planning Commission endorsed a deposited plan to subdivide 148 South Street (refer DA192007) into three freehold lots, all fronting South Street. Lot 830 (the subject site), Lot 831 and Lot 832 have an area of 441m<sup>2</sup>. Lots 831 and 832 incorporate single storey Single Houses.

## DETAILS

On 3 September 2010, the City received a development application for a two storey Single House at No. 146 South Street, White Gum Valley.

The application has been assessed against and satisfies the 'Acceptable Development' criteria of the Residential Design Codes 2008 (R-Codes) and relevant Council Local Planning Policies, except in relation to:

- Ground floor eastern boundary setback – Design Element 6.3.1 of the R-Codes.

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

- *LPP 2.4 Boundary Walls in Residential Development.*

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

## CONSULTATION

### Community

The application was required to be advertised in accordance with *LPP 1.3 Public Notification of Planning Proposals* and clause 9.4 of the LPS4, due to variations proposed against the 'Acceptable Development' criteria of the R-Codes. At the conclusion of the advertising period, being 21 October 2010, the City had received two submissions. The following issues were raised:

- Objection to the eastern boundary setback;
- Concern regarding commencement times of construction.

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

## PLANNING COMMENT

### Reduced Boundary Setback

<i>Required</i>	<i>Provided</i>
Ground floor east – 1.5m	0-3.05m

The eastern adjoining property at 148 South Street is a single storey Single House. A site visit undertaken on 13 October 2010 noted openings to the western elevation of the eastern adjoining dwelling. A 1.8m high boundary fence extends from the eastern adjoining property's boundary wall to the rear of the property.

The eastern adjoining property incorporates a double garage with a western boundary wall. The applicant proposes a boundary wall to abut the adjoining garage wall which is of a similar dimension and therefore is considered to satisfy the provisions of Council Local Planning Policies *LPP 2.4 Boundary Walls in Residential Development* (LPP 2.4).

The upper floor of the proposed dwelling satisfies the 'Acceptable Development' criteria of the R-Codes relating to setbacks.



Proposed openings to the eastern elevation of upper floor also satisfy the 'Acceptable Development' criteria relating to visual privacy as they either have a sill height 1.6m above the finished floor level (FFL) or are less than 1m<sup>2</sup> in area.

As mentioned previously, an objection was received regarding the proposed eastern boundary setback of the proposed dwelling. The objection specifically referred to an element of the elevation which is setback 1m from the eastern boundary (3.08m long wall to the dining room). The submitter requested that the entire eastern ground floor elevation be moved at least 1.5m away from the boundary. This element of the proposal meets the 'Acceptable Development' provision of the R-Codes relating to setbacks.

A portion of the eastern ground floor elevation of the proposed dwelling is to extend to the rear of the property from the proposed boundary wall at a 45° angle to a maximum setback of 3.05m. However, the small boundary wall element which is angled away from the dwelling is setback between 0 and 1.5m and therefore constitutes a variation to the 'Acceptable Development' criteria of the R-Codes relating to setbacks.

As the dwelling extends from south-north, it is considered the proposed development will not significantly restrict direct sun access to the eastern and western adjoining properties as the majority of overshadowing will fall onto the subject site or South Street.

The proposed eastern ground floor boundary setback variation is considered to satisfy the 'Performance Criteria' of Design Element 6.3.1 of the R-Codes.

### **Submitter Concerns**

#### *Construction Commencement Times*

As mentioned previously, a submission was received by the City during the advertising process which raised concerns regarding commencement times of construction of the proposed development. Construction times are controlled under separate legislation and are not directly relevant to the development application process.

### **CONCLUSION**

The proposed development has been assessed against the provisions of LPS4, the R-Codes and relevant Council Local Planning Policies. A performance based assessment has been undertaken for the proposed variation to the eastern boundary setback. It is considered that the proposed variation will not have a detrimental impact upon the amenity of adjoining neighbours, the existing streetscape or the immediate locality.

Therefore it is recommended that the application be conditionally approved.

**OFFICER'S RECOMMENDATION/COMMITTEE DECISION**

**MOVED: Cr A Sullivan**

**That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Storey Single House at No. 146 (Lot 830) South Street, White Gum Valley, subject to the following condition(s):**

- 1. This approval relates only to the development as indicated on the approved plans, dated 3 September 2010. It does not relate to any other development on this lot.**
- 2. All storm water discharge shall be contained and disposed of on-site.**
- 3. Prior to the occupation of the development, vehicle crossovers shall be constructed in either paving block, concrete, or bitumen and thereafter maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.**

**CARRIED: 6/0**

<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

**PSC1011-221 HIGH STREET NO 222 (LOT 725), FREMANTLE - UNAUTHORISED DETACHED HABITABLE BUILDING AND MINOR ENCROACHMENT ONTO 220 HIGH STREET (SSDA0438/10)**

**DataWorks Reference:** 059/002  
**Disclosure of Interest:** Nil  
**Meeting Date:** 17 November 2010  
**Responsible Officer:** Manager Development Services  
**Actioning Officer:** Coordinator Planning Mediation  
**Decision Making Level:** Planning Services Committee  
**Previous Item Number/s:** PSC-1002-20  
**Attachment 1:** Revised plans  
**Attachment 2:** Surveyors plan –submitted by owner of 220 High Street  
**Attachment 3:** Photographs  
**Date Received:** 1 September 2010  
**Owner Name:** Bernadette Costa  
**Submitted by:** Owner  
**Scheme:** Residential R25  
**Heritage Listing:** Nil  
**Existing Landuse:** Dwelling  
**Use Class:** P  
**Use Permissibility:** P



## **EXECUTIVE SUMMARY**

The application is submitted for determination by the Planning Services Committee (PSC) as the application involves retrospective planning approval and consideration of a minor encroachment into an adjoining property where an objection has been received in relation to that encroachment.

Sometime prior to 1981, the owners of the site, based on the City's records, did not obtain a planning or building approval to construct a single storey, flat concrete roofed detached structure. The structure contains two rooms that could be used for habitable purposes. The structure was built against the boundary with No. 220 High Street.

During 2009, the matter of the unauthorised structure became evident following investigation into complaints concerning the structural adequacy of a concrete walkway that connected the existing grouped dwelling on No 222 High Street to the detached habitable building. The existing unauthorised detached habitable building has a concrete roof.

The owner of No. 220 High Street provided the City with a Licensed Surveyors survey plan. That survey plan shows the extent of the encroachment (2-5cm) of the existing unauthorised structure onto No. 220 High Street. The plans before the PSC were modified to show the encroachments (refer to Attachments 1 to 3).

Council is required to determine whether:

- retrospective planning approval should be granted for the portion of the unauthorised detached building located on the development site;
- a notice should be served to require the unauthorised encroachments to be removed from the adjoining property; and
- legal action be taken for undertaking works without the relevant planning and building approvals.

Based on the assessment of the application as if it was a new building, it is considered that Planning Approval should be granted for the unauthorised structure. A special condition should be imposed prohibiting the use of the roof of the structure as an "outdoor living area" as defined in the Residential Design Codes (R-Codes).

In relation to the encroachments, these encroachments are considered to be very minor. Further, having regard to the length of time that the building has been in existence and the negligible impact the encroachments would have on the amenity of the adjoining site, it is considered that no further action be taken in relation to the issuing of a Notice to remove the encroachments nor the commencement of any legal action for the undertaking of works without the necessary approvals. Should the owner of the adjoining property feel aggrieved in relation to the minor encroachments, they have the ability to privately undertake civil action to rectify the encroachments.

## **BACKGROUND**

The development site consists of one half of a grouped dwelling development, with a detached habitable building to the rear of the main building. The detached habitable room is of brick construction with a concrete roof. To the west of the development site is the property known as No. 220 High Street. The detached habitable building abuts and partly projects across the common boundary.

A check of the City's planning and building records do not reveal any approval for the detached building. It is believed that the structure was in existence prior to late 1981 when the City served a noise abatement notice on the then owners of the property to address a noise complaint from band(s) using the detached building.

An elevated walkway that links the roof of the deck and the main building, has been the subject of consideration by the PSC at its meeting held on 3 February 2010 - refer to PSC-1002-20. A Notice was served to address safety issues, which has now been resolved.

At its 17 February 2010 meeting, the PSC considered a compliance report on the unauthorised construction of the detached habitable building and the encroachment into No. 220 High Street - refer to PSC1002-33. At that meeting the PSC resolved as follows:

*That Council with regard to the encroachment of the unauthorised structure at No. 222 (Lot 725) High Street, Fremantle:*

1. *Grant an extension of two months to make the appropriate applications to rectify the matter.*

This matter has been ongoing and subsequently, on 1 September 2010, the owners of the development site submitted a planning application for the retrospective approval of the existing detached habitable building.

On 7 September 2010, the City received an objection to the development and a copy of a Licensed Surveyors survey plan from the owner of No. 220 High Street. The survey plan shows the location of the existing detached building on No. 222 High Street and the extent of the encroachments onto No. 220 High Street (refer to attachment 2).

On the 22 October 2010, the owners submitted a revised plan that showed the encroachments onto the property at No. 220 High Street, based on the Licensed Surveyors survey plan, which are the plans before Council (refer to attachment 1).

## **DETAILS**

The planning application is for the retrospective approval of the portion of the existing unauthorised detached habitable building located on No. 222 High Street. The building is approximately 5.5m in width, 9.5m in length and 3.1m in height. The side of the building abuts the common boundary with No. 220 High Street. The owners are not seeking to undertake any works that will remove the portion of the footings and wall that project across the boundary into 220 High Street.

The owners of No. 222 High Street provided the City with a surveyors plan (refer to Attachment 2) that shows the top northern portion of the wall of the existing building overhanging the property at No. 220 High Street by 20mm. The wall is set back approximately 30mm from the common boundary at its southern end. The footings are approximately 50mm into the property at the northern end of the building (refer to Attachment 3).

## **STATUTORY AND POLICY ASSESSMENT**

The development is subject to the provisions of LPS4 and *Local Planning Policy 2.4 Boundary Walls In Residential Development (LPP2.4)*. The matter of the encroachments and the unauthorised works are subject to *Local Planning Policy 1.5 - Planning, Building And Environmental Health Compliance Policy (LPP1.5)*.

## **CONSULTATION**

The planning application was advertised to the adjoining property owner to the west as the application involved the retrospective approval of a building that was located on the common boundary. At the conclusion of the advertising period, being 20 September 2010, the City had received one submission. The submitters objected to the development as the building was illegal and encroached onto their property.

## **PLANNING COMMENT**

The applicants are seeking retrospective planning approval for a development that has existed for at least thirty years. However, the development projects into the adjoining property. Therefore, Council is required to:

- make a determination on the planning application as if the building had not been constructed;
- determine whether to issue any Notices to rectify any encroachments; and
- determine whether to initiate legal action for the undertaking of works without the necessary approvals.

## **Application for Retrospective Approval**

### LPP2.4

Apart from the need for the retrospective approval of the existing detached building, the owners would need to seek approval for the boundary wall. The lot has a "frontage" of greater than 10m and as such, any boundary wall is required to be assessed against the Performance Criteria of DE6.3.2P2 of the R-Codes. LPP2.4 states the following:

*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.*

The following comments are made in relation to this part of LPP2.4:

*Access to daylight and ventilation to major openings;*

There are no buildings in close proximity that would have daylight and ventilation affected by the existing development.

*Access to direct sunlight and ventilation to outdoor living areas;*

The overall height of the existing structure is approximately 3.0m. Having regard to the size of the existing lot, the development will not adversely affect direct sunlight or ventilation to these spaces.

*Sense of confinement due to accessible cumulative building bulk;*

The existing structure does not result in a sense of confinement due to a cumulative affect of building structures surrounding the site at No. 220 High Street, having regard to the existing development that abuts the other boundaries of No. 220 High Street.

*Existing trees or vegetation;*

There is no effect on existing trees or vegetation as the structure has been there for some thirty plus years.

*Access to views of significance.*

The land is generally flat and any views of any significance are obtained from the upper levels.

**Performance Criteria 6.3.2 P2 - R-Codes**

In response to the Performance Criteria of the R-Codes, the existing development:

- makes effective use of space on the development site;
- does not impact on the privacy of the adjoining property (see comments below);
- enhanced the amenity of the development due to the narrow width of the grouped dwelling site;
- does not have a significant impact on the amenity of the adjoining property at No. 220 high street; and
- does not restrict direct sunlight and ventilation to major openings to habitable room or outdoor living areas on adjoining properties.

It is considered that the existing structure meets the objective of LPP2.4 and the Performance Criteria of the R-Codes in relation to DE6.3.2 Buildings on Boundary and as such, approval of the portion of the development on the development site is recommended for approval. The matter of the encroachment and use of the roof of the structure are discussed below.

**Removal of encroachment by Issuing of a Notice – Initiating legal action for undertaking works without the relevant approvals - LPP1.5**

In deciding whether to undertake compliance action, Council is required to have regard to certain discretionary requirements that are set out in Clause 1.1 of LPP1.5. These criteria are shown and discussed below:

- (a) *Whether it is in the public interest of the proper and orderly development and use of land that planning law(s) should generally be complied with;*

In this instance, the matter before Council is to determine whether to serve a Notice to require either the overhanging 20mm slither of the existing building or the 50mm footings encroachment to be removed. Whilst it is important to ensure that development occurs in accordance with the relevant legislation, the extent of non-compliance is considered very minor in this instance.

- (b) *the impact of the contravention of the law on the effected locality and environment. This includes a consideration of whether the breach complained of is purely technical in nature which is unnoticeable other than to a person well versed in the relevant law;*

The area of non-compliance would not be readily perceived by the public or by a person well versed in the relevant law, that being the partial projection of the building into an adjoining site by 20-50mm. Apart from the knowledge that there is a minor intrusion based on a Licensed Surveyor's survey plan, there is little impact on the amenity of the adjoining property or the surrounding area.

- (c) *those factual circumstances in which the contravention of the law took place;*

Having regard to the length of time that has lapsed (over thirty years), it is not possible to ascertain the factual circumstances in which the contravention took place.

- (d) *the time which has elapsed since development was undertaken in contravention of the law; and*

The evidence appears that the existing building was constructed some thirty plus years ago. Having regard to the significant time frame that has lapsed and the extent of the encroachments (20-50mm), it is considered that it would be unreasonable to require the removal of the portions of the building that encroach into No.220 High Street.

- (e) *the expense and inconvenience which would be involved in remedying the contravention of the law.*

The trimming of certain portions of the building to remove the areas of encroachment would involve some expense and inconvenience and is not likely to affect the structural adequacy of the building. However, the end result of achieving some minor removal of the wall or footings is considered unwarranted have regard to the length of time and the lack of demonstrable benefit to the occupants of the No. 220 High Street.

Clause 2.3 of LPP1.5 allows Council to determine whether it should take any further compliance action. Specifically, 2.3.2 states the following:

*Where there is a breach of planning and building requirements and the matter may reasonably be considered trivial or insignificant.*



*For the purposes of this policy, a matter will be considered to be trivial or insignificant only where the extent of the non-compliance is very minor to the point where the distinction between complying and not complying with the relevant legislation would be almost indistinguishable.*

It is considered that it would be extremely difficult to distinguish a 20mm wall overhang for a portion of the building or a 50mm footing projection into an adjoining property. As such, it is considered that the matter could be considered as being insignificant.

### **Potential use of the roof of the existing structure**

A review of the City's records indicate that complaints were received around 1994 concerning the use of the roof of the existing habitable building for viewing. A concrete bridge/walkway linked the existing grouped dwelling and the flat concrete roof of the existing detached building. Council has taken action (2010) to require works to be carried out to the balustrading of the main building to prevent access to the flat concrete roof, as the structure was considered to be dangerous. The owners have welded the gate shut in the balcony balustrade to prevent access to the flat roof of the detached building. As the detached building structure now requires retrospective planning approval, the use of the roof as a deck area would not satisfy the Acceptable and Performance criteria of the R-Codes as it exists. Consequently, a condition of approval is proposed that would prohibit the use of the roof as an "outdoor living area" as defined in the R-Codes.

### **CONCLUSION**

It is considered that Planning Approval should be granted for the portion of the existing detached building that is located on No 222 High Street. A condition of planning approval should be imposed to address any potential impact on the amenity of the adjoining properties through the use of the roof as an active habitable space, as defined in the R-Codes.

Planning approval cannot be granted for the portion of the building located across the common boundary with No. 220 High Street. Council has the discretion to issue a Notice under the Planning and Development Act to require the encroaching portion of the existing building to be removed. Whilst legal action is a further option that could be considered, the length of time since the unauthorised works occurred discounts this option. Another option is to impose a fine, however the timeframe has lapsed for the issue of the fine and it would be unreasonable to impose a fine on the current owners when the unauthorised action happened some 30 years ago by another party. Having regard to the minor extent of the encroachments, the length of time that has passed since the structure was built and the lack of impact on the amenity of the adjoining property, it is recommended that Council takes no further action in relation to this matter.

If Council takes no further action on the encroachments and the owners of No. 220 High Street still feel aggrieved with the encroachments onto their property, they do have the option of taking private civil action in relation to this matter. If the owners undertake any private action, then depending upon the outcome of that action will determine whether the City has any further involvement in this matter.

**OFFICER'S RECOMMENDATION/COMMITTEE DECISION**

**MOVED: Cr A Sullivan**

- 1) That the application be **APPROVED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the retrospective approval for the portion of the existing single storey detached habitable building located on No. 222 (Lot 725) High Street, Fremantle, as detailed on the revised plans dated 22 October 2010, subject to the following condition(s):
  - a) This approval relates only to the portion of the detached habitable building that is located on No. 222 High Street. It does not relate to any other development on this lot or encroaching onto an adjoining lot.
  - b) The flat roof of the detached habitable room shall not be used as an "Outdoor living area", as defined in the "Residential Design Codes 2008".
  
- 2) That Council takes no further action in relation to the encroachments that project into No. 220 High Street, having regard to the length of time that has lapsed since the structure was constructed and the insignificant nature of the building encroachments.

**CARRIED: 6/0**

<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

**PSC1011-225 STEVENS STREET NO.53 (STRATA LOT 2), WHITE GUM VALLEY - TWO STOREY GROUPED DWELLING (MS DA0459/10)**

**DataWorks Reference:** 059/002  
**Disclosure of Interest:** Nil  
**Meeting Date:** 17 November 2010  
**Responsible Officer:** Manager Development Services  
**Actioning Officer:** Planning Officer  
**Decision Making Level:** Planning Services Committee  
**Previous Item Number/s:** Nil  
**Attachments:** Development Plans  
**Date Received:** 10 September 2010  
**Owner Name:** B. Endersby  
**Submitted by:** Hodge Collard Preston Architects  
**Scheme:** Residential R25  
**Heritage Listing:** Nil  
**Existing Landuse:** Grouped Dwelling  
**Use Class:** Residential  
**Use Permissibility:** 'D'



## EXECUTIVE SUMMARY

The applicant is seeking Planning Approval for a two storey Grouped Dwelling at No.53A Stevens Street, White Gum Valley. The proposal is presented before the Planning Services Committee due to concerns received during the consultation period with regard to the wall height of the proposed dwelling. The proposal is considered to be consistent with the relevant provisions of the City's Local Planning Scheme No. 4 (LPS4), Residential Design Codes 2008 (R-Codes) with the exception of Design Elements 6.3.1 Buildings Setback from Boundary, 6.3.2 Buildings on Boundary, 6.7.1 Building Height and 6.8.1 Visual Privacy and the City's L.P.P2.4 Boundary Walls in Residential Development.

The proposed two storey Grouped Dwelling is recommended for conditional approval.

## BACKGROUND

The subject site is approximately 350m<sup>2</sup> in area and is located on the southern side of Stevens Street within the White Gum Valley Local Planning Area under the provisions of LPS4. The site incorporates a north-south orientation and is currently vacant. The site is zoned 'Residential' with a density coding of R25. The property is not listed on the City's Heritage List or Municipal Heritage Inventory (MHI) nor is the site located within a designated heritage area in accordance with clause 7.2 of LPS4.

## DETAIL

The applicant is proposing a two storey Grouped Dwelling to be located at No.53A Stevens Street, White Gum Valley. The proposed dwelling is to be of modular construction and incorporates a colorbond roof and cladding, rendered and painted brick and feature stone cladding. The development plans are enclosed as an attachment to this report (Attachment 1).

## CONSULTATION

### Community

As a part of the application, the applicant submitted letters that evidenced pre-consultation with the northern, eastern and western adjoining property owners/occupiers. Of the adjoining properties consulted, the owners/occupiers of the northern adjoining site stated that they accepted the proposed departures from the R-Codes. The remaining owners and occupiers did not provide any comment.

As the owner did not provide comment from all of the adjoining neighbours, the application was required to be advertised in accordance with Clause 9.4 of LPS4 and the City's L.P.P1.3 *Public Notification of Planning Proposals*, informing the adjoining owners/occupiers of discretionary decisions in relation to the R-Codes and Council Policy. At the conclusion of the advertising period, being 30 September 2010, the City had received no submissions, however a late submission was received on the 12 October 2010 relating to this proposal. A summary of the concerns raised are provided below.

The submitter raised concerns in regard to the overshadowing associated with the proposal and possible impact on the northern facing outdoor living areas and major openings on the southern adjoining site.

The submitter raised further concern in regard to the proposed wall height and the potential impacts in relation to creating a sense of confinement. The submitter also requested that consideration be given to the relocation of the outdoor living area along with raising concern about the window on the southern elevation.

The projected overshadowing of the proposal complies with the Acceptable Development criteria of the Residential Design Codes, therefore this component does not require the discretion of the Council.

As the submission raises concerns regarding the proposed wall height variation, the applicant is proposing a wall height in excess of the minimum requirements stipulated in Design Element 6.7.1 *Building Height* this component is discussed further in the Planning Comment Section of this report.

The concerns raised in regard to the location of the outdoor living area and window located on the southern elevation relate to aspects of the proposal where the applicant is not seeking any variations of the R-Codes. Therefore these components do not require the discretion of the Council.

## **STATUTORY AND POLICY ASSESSMENT**

### **Residential Design Codes**

The development has been assessed against and complies with the relevant 'Acceptable Development' criteria of the R-Codes with the exception of Design Element 6.3.1 Buildings Setback from Boundary, 6.3.2 Buildings on Boundary, 6.7.1 Building Height and 6.8.1 Visual Privacy.

### **Council Policy**

The following Council Policy is of relevance to the assessment of this application:

- L.P.P2.4 Boundary Walls in residential development;

The assessment against L.P.P2.4 *Boundary Walls in Residential Development* is discussed further in the 'Planning Comment' section below.

## **PLANNING COMMENT**

### **Boundary Setbacks**

The applicant is proposing the following departures from the Acceptable Development Criteria of Design Element 6.3.1:

Required	Provided	Variation
<u>Western Elevation</u>		
Ground Floor (Deck Component) – 1.5m	1m	0.5m
<u>Eastern Elevation</u>		
Upper Floor – 1.9m	1.9m	1.8m

The proposed reduced setbacks have been assessed against the Performance Criteria of Design Element 6.3.2.

The Performance Criteria of the R-Codes relating to boundary setbacks state:

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

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

#### Western Boundary Setbacks

The proposed boundary setbacks are considered to provide for direct sun and ventilation to the proposed dwelling as the western adjoining site. As the component associated with the reduced setback is to be single storey, the setback is not anticipated to significantly impact on the amenity of the adjoining property nor restrict the development potential of the adjoining lot. Furthermore, as the wall is aligned from north to south the proposed wall will not overshadow the western adjoining site.

As a result, the proposed western boundary setback is considered to satisfy the Performance Criteria of the R-Codes.

#### Eastern Boundary Setback

Given the minor nature of the proposed variation, the proposed boundary setback is not anticipated to restrict direct sun and ventilation to the proposed dwelling as well as the dwelling on the eastern adjoining site. The proposed departure from the required boundary setbacks is not anticipated to significantly impact on the amenity of the adjoining property nor restrict the development potential of the adjoining lot.

Overall the proposed western boundary setback is considered to satisfy the performance criteria of the R-Codes.

#### **Boundary Walls**

The applicant is proposing boundary walls to be located on the northern and eastern boundaries of the subject site.

The wall to be located on the northern boundary is to be 7.3m in length and 3m in height, the wall proposed on the northern boundary is to be 6.1m in length and 3 in height.

The proposed eastern boundary wall, for the most part abuts an existing constructed boundary wall of similar scale and dimension, which in accordance with L.P.P2.4 is permitted. Therefore in regard to the proposed eastern boundary wall, the northern most component of 1.9m that does not abut the boundary wall on the adjoining property requires the further assessment. As a result the northern most component of the eastern boundary wall and the northern boundary wall requires a performance based assessment of the R-Codes. Council's LPP 2.4 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”.*

The northern adjoining property has provided a letter of consent in regard to the location of the proposed boundary wall. Furthermore the owners/occupiers of the eastern adjoining property have viewed the proposal but have not provided any comment. L.P.P2.4 outlines the following criteria for consideration when assessing the impact of a boundary wall on adjoining properties:

- 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.

Given that the boundary walls located on the northern and eastern boundary of the site are single storey, it is considered they are located so as not to have an impact on the northern and eastern adjoining neighbours in regard to the above. As stated previously, the eastern boundary wall abuts an existing boundary wall, thus for the most part complies with the replacement Acceptable Development criteria of L.P.P2.4. Furthermore, the northern boundary wall is located adjacent to a rear setback between the common property and the northern adjoining sites Garage.

Notwithstanding, the proposed boundary walls are required to be assessed against the Performance Criteria of Design Element 6.3.2. The Performance Criteria of this provision states as follows:

*“Buildings built up to the 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 impact 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”.*

The proposed northern and eastern boundary walls are supported in accordance with the Performance Criteria of Design Element 6.3.2 for the following reasons:

- Due to the aforementioned existing boundary wall on the eastern adjoining site the proposed boundary walls are considered to make effective use of space on the subject site;
- As the walls are single storey, they are not anticipated to have any significant impact on the adjoining neighbours in terms of building bulk;
- The northern and eastern boundary walls will not restrict direct sunlight to any outdoor living areas or major openings as all shadow cast from these structures will fall onto the subject site;
- The northern and eastern boundary walls are not anticipated to restrict direct sunlight to any outdoor living areas or major openings due to the alignment of the walls;

Overall, the proposed boundary walls are considered to satisfy the Performance Criteria of the R-Codes and Council's L.P.P2.4 Boundary Walls Policy.

### **Building Height**

The applicant is proposing the following departures from the Acceptable Development Criteria of Design Element 6.7.1:

<b>Permitted</b>	<b>Provided</b>	<b>Variation</b>
Maximum Wall Height (in accordance with Table 3) – 6m	7.65m at highest point	1.65m

The Performance Criteria of DE 6.7.1 – Building Height states:

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

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

Designs that incorporate a flat, skillion or curved roof are more likely to require a greater wall height than a development that incorporates a more traditional pitched roof. The extent of the increased wall height varies with the curve of the roof with the maximum height being 7.65m and the lower side being 7.17m in height.

The proposed roof slopes up from the east to the west, therefore the western adjoining property will be subject to a larger elevation than the western adjoining neighbour. As the proposed dwelling is retained within the overall allowable building envelope this form of development may be entertained.

It is worth noting that there are existing dwellings within the locality that are constructed with a similar roof form to that proposed. Furthermore, given that the dwelling is located to on a rear lot, its impact on the streetscape will be negligible, thus not establishing an undesired precedent along Stevens Street.



A Submission was received from the southern adjoining property raising concerns in regard to the proposed departure from the wall height requirements of the R-Codes. Therefore the Council must be satisfied the proposal meets the Performance Criteria of the Design Element.

Given that the site is rear strata lot on the southern side of the parent lot, it is acknowledged that the proposed wall height is more likely to have an impact on the southern adjoining property in regard to the above criteria due to the proximity of the dwelling to the southern boundary. Notwithstanding the applicant has concentrated the two storey component of the proposal to the eastern side of the site, as a result the majority of the shadow cast will fall on the roof space on the southern adjoining property. Whilst the southern adjoining properties outdoor living area which is located in the north-west corner of the lot has been partially overshadowed, it is considered that this can be attributed as much to the inherent constraints on the site rather than the proposal itself.

The proposal is not anticipated to restrict views of significance from the southern adjoining property.

Whilst the applicant is proposing a departure from the Permitted wall height, it is worth noting that the proposal complies with the Acceptable Development Criteria of the Residential Design Codes pertaining to overshadowing and the southern setback requirements.

It is on this basis the proposed departure from the height requirements of Table 3 is supported in accordance with the Performance Criteria of Design Element 6.7.1.

### **Visual Privacy**

As stated in Design Element 6.8.1 of the R-Codes, the 'Acceptable Development' criteria requires an unenclosed outdoor active habitable space have a cone of vision setback of 7.5m.

In regard to the major openings associated with the proposed balcony on the northern elevation, the area that will be visually impacted is comprised of a Garage and does not form part of existing outdoor living area. Therefore, as this area is not visually sensitive, a performance based assessment is considered to be appropriate.

The Performance Criteria of Design Element 6.8.1 states:

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

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

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

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

The Performance Criteria discuss the provision of screening devices and provides consideration of the remoteness of affected areas. The location of the key outdoor living area of the northern adjoining site is on the northern side of the dwelling, therefore it will not be within the vicinity of the cone of vision projected from the proposed balcony. Furthermore, the extent that the cone of vision falls within the adjoining limited and comprised largely of the northern adjoining neighbour's Garage, therefore it is considered that the existing Garage will provide for adequate privacy provision in this instance. Furthermore, the northern adjoining owner has viewed the proposal and provided a letter of consent in relation to the proposal.

The amenity of the northern adjoining neighbour is not envisaged to be impacted by the projected cone of vision from the balcony on the northern elevation, and therefore this component of the proposal is considered to satisfy the Performance Criteria of this Design Element.

## **CONCLUSION**

In determining this application the Council needs to be satisfied that the proposed wall height variation meets the Performance Criteria of the R-Codes. It has been acknowledged that there is potential for the development to have some impact on the southern adjoining property, however it is considered that such an impact on the southern adjoining property is largely unavoidable due to the configuration of the lot. It is considered that the applicant has given due consideration to the southern adjoining property, and has designed the proposal so as to comply with the Acceptable Development Criteria pertaining to the southern setback and overshadowing requirements and in a manner that limits the shadow that falls on the southern adjoining outdoor living area.

The proposed Grouped Dwelling is considered to satisfy the relevant 'Performance Criteria' of the R-Codes and Council Policy, based on the reasons outlined in the Planning Comment section. It is on this basis that the proposed Grouped Dwelling is recommended for approval, subject to conditions.

**OFFICER'S RECOMMENDATION/COMMITTEE DECISION**

**MOVED: Cr A Sullivan**

**That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two storey Grouped Dwelling at No.53A Stevens Street (Strata Lot 2), White Gum Valley, subject to the following condition(s):**

- 1. This approval relates only to the development as indicated on the approved plans, dated 4 November 2010. 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 walls located on the northern and eastern boundary shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer, City of Fremantle.**

**Advisory Notes:**

- i) This planning decision is confined to the authority of the *Planning and Development Act 2005* and the City of Fremantle Local Planning Scheme 4. This decision does not remove the obligation of the applicant and/or property owner to ensure that all other required local government approvals are first obtained, all other applicable state and federal legislation is complied with, and any restrictions, easements, or encumbrances are adhered to.**
- ii) This planning approval has been issued on the basis of the plans hereby approved. It is the responsibility of the applicant to ensure that the approved plans are accurate and are a true representation of all existing and proposed development on the site, and to ensure that development proceeds in accordance with these plans.**

**CARRIED: 6/0**

<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

**PSC1011-226 SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY**

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

**OFFICER'S RECOMMENDATION/COMMITTEE DECISION**

**MOVED: Cr A Sullivan**

**That the information is noted.**

**CARRIED: 6/0**

<b>For</b>	<b>Against</b>
Mayor, Brad Pettitt Cr John Dowson Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

**REPORTS BY OFFICERS (COUNCIL DECISION)**

Nil.

**CONFIDENTIAL MATTERS**

Nil.

**CLOSURE OF MEETING**

**THE PRESIDING MEMBER DECLARED THE MEETING CLOSED AT 8:00 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.

<b>How consultative processes work at the City of Fremantle</b>	
<b>The City's decision makers</b>	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.
<b>Various participation opportunities</b>	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.
<b>Objective processes also used</b>	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.
<b>All decisions are made by Council or the CEO</b>	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).
<b>Precinct focus is primarily local, but also city-wide</b>	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.
<b>All input is of equal value</b>	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.
<b>Decisions will not necessarily reflect the majority view received</b>	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

<b>How consultative processes work at the City of Fremantle</b>	
	clearly outline from the outset any constraints or limitations associated with the issue.
<b>Decisions made for the overall good of Fremantle</b>	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.
<b>Diversity of view on most issues</b>	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.
<b>City officers must be impartial</b>	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.
<b>City officers must follow procedures</b>	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.
<b>Consultation processes have cut-off dates that will be adhered to.</b>	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

How consultative processes work at the City of Fremantle	
	personal representations to individual Elected Members and via presentations to Committee and Council Meetings.
<b>Citizens need to check for any changes to decision making arrangements made</b>	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 <a href="http://www.freofocus.com/projects/html/default.cfm">www.freofocus.com/projects/html/default.cfm</a> , checking the Port City Column in the Fremantle Herald or inquiring at the Service and Information Desk by phone or in-person.
<b>Citizens are entitled to know how their input has been assessed</b>	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.
<b>Reasons for decisions must be transparent</b>	15. Decision-makers must provide the reasons for their decisions.
<b>Decisions posted on <a href="http://www.freofocus.com/projects/html/default.cfm">www.freofocus.com/projects/html/default.cfm</a></b>	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 <a href="http://www.freofocus.com/projects/html/default.cfm">www.freofocus.com/projects/html/default.cfm</a> 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.

