



AGENDA

Planning Services Committee

Wednesday, 3 October 2012, 6.00pm

CITY OF FREMANTLE
NOTICE OF A PLANNING SERVICES COMMITTEE MEETING

Elected Members

A Planning Services Committee Meeting of the City of Fremantle will be held on Wednesday, 3 October 2012 in the Council Chamber, Town Hall Centre, 8 William Street, Fremantle (access via stairs, opposite Myer) commencing at 6.00 pm.

Philip St John
DIRECTOR PLANNING AND DEVELOPMENT SERVICES

27 September 2012

PLANNING SERVICES COMMITTEE

AGENDA

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

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."

ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

PUBLIC QUESTION TIME

DEPUTATIONS / PRESENTATIONS

DISCLOSURES OF INTEREST BY MEMBERS

LATE ITEMS NOTED

CONFIRMATION OF MINUTES

That the Minutes of the Planning Services Committee dated 19 September 2012 be confirmed as a true and accurate record.

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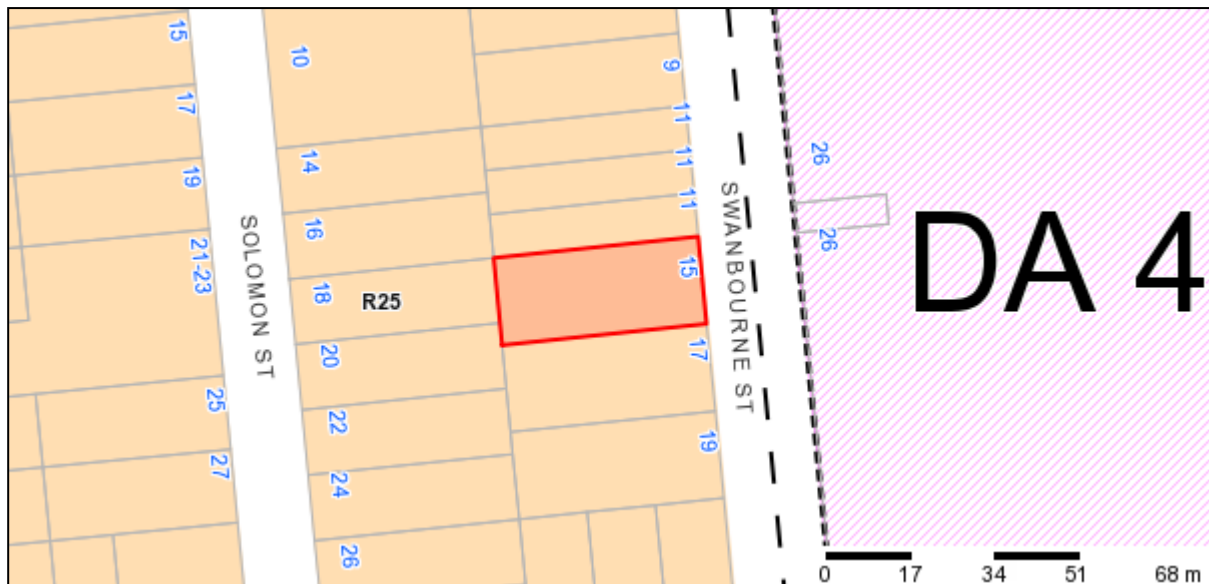
CLOSURE OF MEETING

DEFERRED ITEMS (COMMITTEE DELEGATION)

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

**PSC1210-157 SWANBOURNE STREET, NO. 15 (LOT 30), FREMANTLE
DEFERRED ITEM – TWO, THREE STOREY GROUPED DWELLINGS
(JS DA0250/12)**

DataWorks Reference:	059/002
Disclosure of Interest:	Nil
Meeting Date:	3 October 2012
Responsible Officer:	Manager Statutory Planning
Actioning Officer:	Planning Officer
Decision Making Level:	Planning Services Committee
Previous Item Number/s:	PSC1208-125 (15 August 2012 & 22 August 2012)
Attachments:	Amended Development Plans Original PSC report
Date Received:	5 June 2012
Owner Name:	Simon Brooke Carlin
Submitted by:	Space Agency
Scheme:	Residential R25
Heritage Listing:	Nil
Existing Landuse:	Single House
Use Class:	Grouped Dwellings (Proposed)
Use Permissibility:	'D'



EXECUTIVE SUMMARY

At its meeting held 22 August 2012, the Council resolved to defer the matter to the next appropriate Committee meeting (with delegated approval), to allow the applicant to address the following matters:

- Overlooking to the west; and
- Graduated height especially on the south western side.

The original application was submitted to the City on 5 June 2012. This application was for two, three storey Grouped Dwellings at No. 15 (Lot 30) Swanbourne Street in Fremantle.

On 6 September 2012, the City received amended plans pertaining to the subject application, reducing the height of the rear portion of the most southern dwelling by 515mm and decreasing the overshadowing from 51% to 48%. The application is again referred to the Committee as the proposal requires discretionary decisions of Council in relation to the following:

- Buildings setback from the boundary;
- Building height;
- Visual privacy; and
- Solar Access for Adjoining Sites.

It is noted in assessing the proposal that the narrow, east west aligned lot which is constrained by a northern adjoining dwelling which overshadows the most part of the subject site, provides difficult circumstances in developing a proposal for the site. Additionally, it is to be recognised that such circumstances provide a predisposition to a high level of overshadowing. Notwithstanding, the height of the proposal in combination with the floor area attributed to the third floor will result in restricted access to northern light for the southern adjoining property, therefore contributing to a detrimental impact on the amenity of the southern adjoining property.

Accordingly the proposal is recommended for refusal.

BACKGROUND

For a copy of the detailed background information regarding this application and subject site, see 'Attachment 2' for a copy of the previous report considered by Council at its meeting held 22 August 2012 (refer PSC1208-125).

15 August 2012 – Planning Services Committee Resolution

Cr Andrew Sullivan requested that the officers prepare an alternative recommendation for Approval for consideration at the Ordinary Council Meeting on 22 August 2012.

22 August 2012 - Council Resolution

To defer the item to the next Planning Services Committee meeting with delegated authority to determine the application so as to resolve the following issues:

- overlooking to the west;
- graduated height especially on the south western side

DETAILS

The amended plans propose the following amendments to the previously assessed proposal:

- Reducing the overall height of a portion of the southern proposed dwelling by 0.515m;
- Reducing the overshadowing of the southern adjoining property from 51% to 48%.

Amended development plans are enclosed in this report (attachment 1)

STATUTORY AND POLICY ASSESSMENT

See 'attachment 2' for a copy of the previous report.

CONSULTATION

The amended application was not required to be re-advertised in accordance with Clause 9.4 of LPS4. A summary of the original submissions can be viewed in 'Attachment 2' in the original Committee report (refer PSC1208-125).

PLANNING COMMENT

Buildings Setback from Boundary

No new discretions are sought relating to setbacks. See 'attachment 2' for the discussion component.

Building Height

No new discretions are sought relating to height, see 'attachment 2' for the discussion component.

It is acknowledged that a portion of the building has been reduced by 0.515m, this is not however considered to be sufficient to address the concerns previously raised in relation to height.

Visual Privacy

No new discretions are sought relating to privacy, see 'attachment 2' for the discussion component.

It is also noted that despite the Council resolution of 22 August 2012, specifically mentioning visual privacy as an item to be addressed, the applicant has made no modifications to the plans relating to this.

Solar Access for adjoining sites

	Maximum Permitted	Previous Overshadowing	Overshadowing Provided	Discretion Sought
Shadow Cast (as per R25)	25%	51%	48%	23%

The above discretionary decisions are not supported for the following reasons:

- The discretion sought is significant;
- It is considered that whilst the majority of the proposed shadow will have a limited impact on the southern adjoining property based on the area impacted being comprised of roof space and the northern elevation not containing any north facing major openings, the main outdoor living area will be partially overshadowed by the proposed dwelling.

As previously discussed, it is considered that the accumulated effect of the proposed building height and reduced setback has lead to a substantial exercise of discretion being sought for overshadowing.

It is to be noted that the Explanatory Guidelines of the R-Codes have acknowledged the difficulty in prescribing a maximum permitted shadow percentage over all residential development within the State, due to conditions varying from one situation to another. Furthermore, it should be noted that the overshadowing is calculated based on the maximum shadow cast at the winter solstice. Given the narrow, east west lined lots constrained by a northern adjoining dwelling which overshadows the most part of the subject site, it is to be recognised that such circumstances provide a predisposition to a high level overshadowing.

It is not considered that a 3% reduction in overshadowing is significant enough to warrant a change in the recommendation from approval to refusal.

Council Concerns

At its meeting held 22 August 2012, the committee resolved to defer the matter to the next appropriate Council meeting to allow investigation into a number of matters. These matters are discussed below.

Overlooking to the west

The amended plans have not addressed any overlooking of neighbouring properties, however, if Council should approve this development, a condition of planning approval has been imposed to screen major openings thus complying with design element 6.8.1 of the R-Codes.

Graduated height especially on the south western side

The applicant has lowered a portion of the height of the grouped dwelling on the southern side (lot 51) by 0.515 metres, however, as mentioned above, substantial building height and overshadowing discretions are still sought.

CONCLUSION

The key consideration in entertaining this proposal is in relation to the performance based assessments sought for the following Design Elements of the R-Codes:

- a) Building Height;
- b) Solar Access for Adjoining Sites.

For the reasons outlined within the 'Planning Comment' section above, it is considered that the proposal does not meet the relevant 'Performance Criteria' of the R-Codes, and on this basis should not be supported.

Accordingly, the application is recommended for refusal.

Should the Committee wish approve the development, the following recommendation would apply:

ALTERNATIVE COMMITTEE RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two, three storey grouped dwellings at No.15 (Lot 30) Swanbourne Street, Fremantle, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans, dated 6 September 2012. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. All storm water discharge shall be contained and disposed of on-site.

3. Prior to occupation, the west facing balcony and the west facing lounge room windows to proposed Lot 52 shall be either:
- a) fixed obscured or translucent glass to a height of 1.60 metres above floor level, or
 - b) fixed with vertical screening, with openings not wider than 5cm and with a maximum of 20% perforated surface area, to a minimum height of 1.60 metres above the floor level, or
 - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or
 - d) screened by an alternative method to the satisfaction of the Chief Executive Officer, City of Fremantle,

in accordance with Clause 6.8.1 A1 of the Residential Design Codes and thereafter maintained to the satisfaction of Chief Executive Officer, City of Fremantle.

4. Prior to occupation, the west facing balcony, west facing lounge room and west facing bedroom windows to proposed Lot 51 shall be either:
- a) fixed obscured or translucent glass to a height of 1.60 metres above floor level, or
 - b) fixed with vertical screening, with openings not wider than 5cm and with a maximum of 20% perforated surface area, to a minimum height of 1.60 metres above the floor level, or
 - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or
 - d) screened by an alternative method to the satisfaction of the Chief Executive Officer, City of Fremantle,

in accordance with Clause 6.8.1 A1 of the Residential Design Codes and thereafter maintained to the satisfaction of Chief Executive Officer, City of Fremantle.

5. Prior to occupation, the boundary walls located on the northern and southern boundaries shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer, City of Fremantle.

OFFICER'S RECOMMENDATION

That the application be REFUSED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the two, three storey grouped dwellings at No. 15 (Lot 30) Swanbourne Street, Fremantle for the following reasons:

1. **Discretionary decisions sought from the Acceptable Development standards of the Residential Design Codes which do not meet the relevant Performance Criteria and will have a significant amenity impact relating to:**
- a) Building Height; and**
 - b) Solar Access for Adjoining Sites**

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

PSC1210-158 HARVEST ROAD NO.23 (LOT 7 & 427), NORTH FREMANTLE - REDEVELOPMENT OF AN EXISTING RESIDENTIAL BUILDING (NURSING HOME) (JL DAP0001/12)

DAP Name:	Metropolitan South-West Joint Development Assessment Panel
Applicant:	TPG – Town Planning and Urban Design
Owner of Property:	Retirement Care Australia (Hillcrest) Pty Ltd (Regis)
LG Reference:	DAP0001/12
Reporting Agency:	City of Fremantle
Authorising Officer:	Natalie Martin-Goode - Manager Statutory Planning
Report Date:	27 September 2012
Application Receipt Date:	23 July 2012
Attachment 1:	Locality Plan
Attachment 2:	Amended Plans date stamped having been received by the City on the 21 September 2012 – reference Site Plan, Basement Plan, Ground Floor Plan, Level 1 Floor Plan, Level 2 Floor Plan, North Elevation (Harvest Road), East Elevation (Turton Street), South Elevation, West Elevation, Section, Heritage Plan – Hillcrest Ground Floor, Heritage Plan – Hillcrest First Floor, Survey Plan, Demolition Plan and Section.
Attachment 3:	Schedule of Submissions.
Attachment 4:	Applicants Response to Schedule of Submissions.
Attachment 5:	City of Fremantle Heritage Assessment
Attachment 6:	Context Plan, Constraints and Opportunities Plan, Site Response, 5 x Heritage Context Plans, Context Photos, Existing Streetscape plan, 3 x Cross-Sectional Plans, North Elevation Plan, Existing Streetscape Plan, Harvest Road Perspective Plan, Turton Street Perspective Plan, Link Perspective Plan, 8 x Sun Analysis Plan, North Elevation Mass Comparison Plan and East Elevation Mass Comparison Plan

Recommendation:

- A. That the Planning Services Committee, acting under Delegated Authority from Council, refers the following recommendation to the South-West Joint Development Assessment Panel:**

Refuse DAP Application reference DAP0001/12 and accompanying plans dated 21 September 2012, having been received by the City of Fremantle on the 21 September 2012 (Plan references Site Plan, Basement Plan, Ground Floor Plan, Level 1 Floor Plan, Level 2 Floor Plan, North Elevation (Harvest Road), East Elevation (Turton Street), South Elevation, West Elevation, Section, Heritage Plan – Hillcrest Ground Floor, Heritage Plan – Hillcrest First Floor, Survey Plan, Demolition Plan and Section) in accordance with the City of Fremantle Local Planning Scheme No. 4 and the Metropolitan Region Scheme, for the following reasons:

- 1. The height of the proposed development does not comply with the height requirements contained within Schedule 12 of City of Fremantle Local Planning Scheme No.4.**
- 2. The proposed development does not satisfy all of the criteria listed under Clause 5.8.1, 5.8.4 and 7.5 of City of Fremantle Local Planning Scheme No.4.**

Background:

Property Address:	No. 23 (Lots 7 & 427) Harvest Road, North Fremantle
Zoning MRS:	Urban Zone
LPS:	Residential Zone
Use Class:	A – Residential Building (Nursing home)
Strategy Policy:	N/A
Development Scheme:	City of Fremantle Local Planning Scheme No. 4
Lot Size:	Lot 7 5881m2 and Lot 427 – 248m2
Existing Land Use:	Residential building – (Hillcrest Nursing home)
Value of Development:	\$ 23 million

Refer to 'Attachment 1' for location of the development site.

The City of Fremantle records show that the subject site has been utilised as an aged care/ Nursing home for a substantial period of time. In the late 1980's and early 1990's several incidental building additions were constructed on the site.

The development site is located within and subject to Schedule 12 – Local Planning Areas of LPS4. Specifically, the site is within Local Planning Area 3 – North Fremantle of Schedule 12.

The subject site is listed on the City's Heritage List and Municipal Heritage Inventory as having a management category Level 1A and is also on the State Heritage Register.

Additionally, the subject site is located within the north Fremantle Heritage Area which is prescribed Heritage area under clause 7.2 of the city of Fremantle's Local planning Scheme No.4 (LPS4).

Details: Outline of development application

The applicants are seeking to demolish the northern and eastern wings of the existing Residential Building and replace it with a new two and three storey with basement car park Residential building additions. The development proposal consists of the following:

- ***Basement car parking area;***
 - Including parking for 52 cars, 2 loading/ delivery bays, 11 bicycles storage area, Kitchen Room, Storeroom, Cool Room Bin Storage Area and Laundry;
- ***Ground floor of development incorporates:***

Harvest Road Building

- 30 bedroom, Communal Dining and Living Room facilities, Physiotherapy server and general treatment rooms,
- Approximately 760m² of bedroom and associated en-suite area and 350m² of communal and incidental service areas,

- ***First Floor of development incorporates:***

Harvest Road Building

- 30 bedroom, Communal Dining and Living Room facilities, Physiotherapy server and general treatment rooms,
- Approximately 760m² of bedroom and associated en-suite area and 350m² of communal and incidental service areas,

Turton Street Building

- 15 bedroom, Communal Dining and Living Room facilities, Physiotherapy server and general treatment rooms,
- Approximately 367.5m² of bedroom and associated en-suite area and 100m² of communal and incidental service areas (dining room, Lobby area, Utility room, Storeroom Physiotherapy area etc),

Hillcrest building

- Approximately 540m² of reception/ office room area and other communal and incidental service areas (Cinema, Library/ Media Room, Café, Staff Amenity Rooms, Storeroom area etc),

- ***Second Floor of development incorporates:***

Harvest Road Building

- 26 bedroom, Communal Dining and Living Room facilities, Physiotherapy server and general treatment rooms,
- Approximately 650m² of bedroom and associated en-suite area and 265m² of communal dining/ living room and incidental service areas,

Turton Street Building

- 8 Self contained Bed Apartments bedroom, Communal Dining and Living Room facilities, Physiotherapy server and general treatment rooms,
- Approximately 400m² of accommodation floor area and 115m² of communal and incidental service areas (dining room, Lobby area, Utility room, Storeroom Physiotherapy area etc),

Hillcrest building

- Approximately 540m² of private dining area, server, administration and Office space, incidental use rooms – Hairdresser, day spa library media room and cinema reception/ office room area
- Reinstatement of rear verandah, small portion of the original front eastern elevation veranda and front portico to the 1901 building,
- New Two Storey Glass wing to be attached to the eastern elevation of the 1901 hillcrest building, linking the eastern two storey building addition of the complex.
- Restoration Works to the existing front two storey balcony , re roofing/ plumbing and belvedere of the 1901 building, and
- Numerous internal works including painting, ceiling repair and replacement, raising floor levels of the 1934 rear addition, partial internal wall removal.

Summary of complete development

- 101 single bedroom,
- 8 self contained apartments
- 60 car bays on site
- Approximately 2937.5m² of accommodation floor area, and
- Approximately 2260m² Communal /Incidental facility floor area

Legislation & policy:

The legislative framework and policy base providing for the assessment and determination of the subject application is as follows:

- 1) City of Fremantle Local Planning Scheme No. 4 (LPS4) – application for development on the site is to be determined in accordance with provisions of Part 10 of LPS4.

Scheme Provisions:

The following Scheme provisions are considered the most relevant in the consideration of the planning application:

- Clause 4.2.1(a) - Scheme Objectives for the Residential Zone
- Schedule 12 – Local Planning Area 3 – North Fremantle– primary planning controls for the development of the site;
- Clause 5.8.1.1 – discretionary clause to allow consideration of a height variation(s);
- Clause 5.8.4 – Additional criteria that must be taken into consideration by Council in excising its powers under clause 5.8.1.1;
- Table 3 – Vehicle Parking requirements; and
- Clause 7.5 – Variations to Scheme provisions for a heritage place or heritage area.

Local Planning Policies

The site is subject to the following relevant Local Planning Policies:

- *Local Planning Policy 2.3 Fremantle Port Buffer Area Development Guidelines (LPP2.3)*

The Local Planning Policy requires the imposition of conditions of planning approval in relation to the Port buffer requirements, depending upon which buffer zone the development is located in. The site is located within buffer zone 2.

- *Local Planning Policy 2.13 - Sustainable Buildings Design Requirements (LPP2.13)*

It will not be until the working drawings are completed will it be possible to receive confirmation that the development meets the design criteria set out in LPP2.13. A statutory declaration, as required in part 2.1a) and b) of LPP2.13 has been received from the applicant stating:

- a) *an assessor accredited by the Green Building Council of Australia formed part of the design team for the redevelopment of the Hillcrest Aged Care site and contributed to the overall design of the proposal. As the owners of the site, we are aware of, and on completion will be able to meet, not less than the 4 Star Green Star rating and understand that, within 12 months of an issue of a certificate of classification for the development must submit to the Council a copy of documentation from the Green Building Council of Australia certifying that the development achieves a Green Star Rating of at least 4 Stars.*

Conditions of approval would be imposed to ensure that the final design and the construction of the development satisfy the requirements of LPP2.13 if the application is approved.

Consultation:

Public Consultation

The planning application was identified as a “Significant Application” as set out in Local Planning Policy *LPP1.3 - Public Notification of Planning Proposals* (LPP1.3). The application was advertised for a period of 28 days. The advertising within this period included:

- Signs on site were erected to each street frontage;
- Letter to owners and occupiers within 100m of the site;
- Advertising of the application occurred on the City’s website;
- the Fremantle Inner City Residents Association were informed of the proposal;
- Two notices relating to the proposal were placed in the Fremantle Herald on the 14 and 21 August 2012.

A Community Information session was held on the 21 August 2012 for a one hour period, although staff were present a half hour before and after the advertised session time. Land owners/occupiers within a 100m radius of the site and elected members were invited to attend the Community Information Session. The session was attended by 6 members of the public.

Consultation with Fremantle Port Authority

The site is located within Area 2 of the Fremantle Port buffer area. In accordance with LPP2.3, the Fremantle Port Authority was advised of the development proposal. The authority advised the City in a letter dated 7 August 2012 that it had no objections to the development provided the development was designed and constructed in accordance with the built form requirements for Area 2, as detailed in the City of Fremantle’s “Fremantle Port Buffer Area Development Guidelines”. The guidelines contain specific conditions of approval that are to be applied to developments within Area 2. These would be included as conditions approval if the application is approved.

Consultation with State Heritage Office (SHO)

The application relates to a place which is on the State Heritage Office – (Heritage Council of Western Australia’s) Register of Heritage Places and therefore was referred to the Heritage Council for assessment. SHO responded on 6 September 2012, stating that the,

‘Committee chose to defer a resolution on the referral as it was advised by the applicant that changes to plans may be forthcoming. It is understood that these changes may relate to matters of facilitating universal access to the upper floor of Hillcrest and the structures that link Hillcrest with the proposed new accommodation wings.

The Committee has also advised the applicant that it wishes to see further information on the proposed veranda at the rear of Hillcrest and that modifications of the visitor parking area to provide a greater setback from the front of Hillcrest is desirable’.

At the time of writing this report for PSC the applicant had submitted partial amended plans on 21 September 2012, but they had not been referred to SHO in time for additional comments. SHO were contacted regarding these time constraint and the City was informed that the amended plans would be reviewed by the SHO Council at its general meeting held 25 September 2012.

Design Advisory Committee (DAC)

The proposal has been presented to the City's Design Advisory Committee (DAC) on 3 occasions:

- 17 January 2012 - Concept Designs only
- 30 July 2012 – Original DAP Application Plans; and
- 17 September 2012 - Amended DAP Application Plans

A summary of the comments from those DAC meetings are reproduced below:

DAC Meeting 17 January 2012:

SUMMARY RECOMMENDATION

1. *Further consideration should be given to the context of the development in terms of surrounding development and how the old building relates to the new buildings.*
2. *The independence of the old building needs to be further considered with a view to reducing the physical extent of contact and increasing the setback, between old and new walls*
3. *Justification is needed for the significant height discretion being sought.*
4. *The height could be reduced by decreasing the floor to ceiling heights and moving top floor services zones into the roof space.*
5. *The detail of window treatments needs additional consideration in terms of sun screening and adding depth and articulation to the façade.*
6. *Further consideration needs to be given as to how views to the heritage building can be improved from Harvest Road and Turton Street.*

DAC Meeting 30 July 2012:

SUMMARY RECOMMENDATION

1. *The proposed conservation work to the existing state heritage listed building is acknowledged and commended.*
2. *In general the use of a glazed link between the proposed dining room and the state heritage building is supported, however its success will depend on its detailing, especially of junctions between old and new, so additional details are required.*
3. *Because of its composition, the Harvest Road elevation presents as a significantly bulky building as viewed from the street which is not commensurate with the surrounding development. Additional design work is sought in response to this concern.*
4. *Insufficient regard has been given to how the development fits within the surrounding context namely the surrounding low scale residential buildings. Additional design work is sought in response to this concern.*

DAC Meeting 17 September 2012:

SUMMARY RECOMMENDATION

1. DAC commended some of the positive amendments made to the plan, particularly the improved relationship between the new and heritage buildings on site, although this can't be fully verified until 3D images are provided.
2. DAC acknowledged that some effort has been made to address the bulk and *scale of the development however it remains unable to support the application in its current form on the basis that the building does not adequately respond to the predominantly single residential context, grain and scale of the locality.*
3. *The following changes need to be further considered;*
 - a. *A reduction in floor to floor heights through reducing the dimensions of the suspended ceilings in order to reduce the overall height of the development without the loss of internal amenity;*
 - b. *Breaking down of the symmetry of the building as it presents to Harvest Road in order to diminish the reading of this façade as being a substantial institutional building and enable the opportunity to greater respect the grain and texture of the single residential quality of the prevailing streetscape; and*
 - c. *The strengthening of the relationship of the building to the ground plane on Harvest Road, through the stepping down of the building as it presents to this Road or other solution facilitating a stronger ground plane relationship.*

Internal Heritage Assessment

An internal heritage assessment was undertaken in accordance with the provisions of *LPP1.6 – Preparing Heritage Assessments (LPP1.6)*, as the development proposal involves the restoration and adaption works of the existing state registered building. A summary of the internal heritage assessment is detailed as follows. The assessment determined that the Hillcrest building located on the southern portion of site was of “exceptional” cultural heritage significance and the 1958 and 1979 northern and eastern wings of the residential building are of ‘*limited*’ cultural heritage significance.

The heritage value of the portions of the building proposed to be demolished did not cross the heritage threshold set out in Clause 5.15 of LPS4, which prevents the demolition of a building that has “some” or greater cultural heritage significance. Consequently, the heritage provisions of LPS4 do not prevent the demolition of these existing wings of the existing development onsite.

With regards to the proposed conservation and restoration works to the existing state registered Hillcrest building which include the restoration of the belvedere, reconstruction of the front verandah balustrades, partial reconstruction of the north eastern and rear (north western) verandahs and painting, these works are all considered positive contributions to the heritage significance of the place.

In relation to internal works of this building these works were considered to minimal, however they were considered acceptable for the adaption and ongoing use of the place as a Residential Building (Nursing Home).

In assessing the degree of which the proposed development will have in terms of permanent impact on the heritage significant place onsite, the report found that there will be minimal permanent impact to the loss of heritage significant value through some of the proposed internal works. As mentioned previously the level of cultural significance loss was considered acceptable on heritage grounds as they would help improve the functionality of the continued supported Residential Building (Nursing home) use of the site.

With regards to assessing the compatibility with the heritage significant building in terms of scale, bulk, height and the degree to which the proposal dominates, is integrated with, or is subservient to the heritage place onsite, the report states that the following:

'The proposed development is substantial in bulk and scale and will impact on the surround heritage residences which are predominately single storey with two storey additions.'

The addition of the glazed link to the heritage building will impact on the original residence, however the amended plans show that the partial reconstruction of the verandahs and use of glazing for lightness are designed to lessen the impact.'

Furthermore, in assessing the proposal and its compatibility with the streetscape and heritage area in terms of the sitting, local architectural patterns, and the degree of the harmonised integration of old and new, the report found that the development will have a negative impact on the existing late 19th and early twentieth century residences on Harvest Road as a result of the substantial bulk and scale proposed. In summary the report states that the, *'architecture appears as a typical institutional development rather than site specific to the local North Fremantle streetscape and area'*.

With regards to the degree of impact on the important public views, vistas, landmarks, landscape features, it was found that the existing Hillcrest building on site already is negatively impacted in terms of views to the building from numerous advantage points within the locality and therefore it was understood that any redevelopment of the site is likely to restrict view corridors to the former residence.

For a complete copy of the heritage Assessment undertaken for this site and application, refer to 'Attachment 5' of this report.

Environmental Health Review

The Environmental Health section have reviewed the proposal and provided the following comments:

- *The proposal is similar to what is already on site and the main issues that we have had recently are complaints about early morning noise associated with deliveries and rubbish removal.*

- *The location of the men's shed and the cinema are adjacent to the block of flats at 21 Harvest Road. These rooms could potentially have activities carried out in them that would produce noise over the prescribed limit for this area and should therefore be designed to contain any noise from machinery such as drills etc that may be used in the shed. Plant and equipment such as air conditioning units should be designed and located such that they will not cause a noise problem in the future. The developer should seek guidance from an acoustic consultant to ensure that noise is not an ongoing problem once the development is complete.*
- *The applicant would need to have detailed plans of the kitchen fit out and other food service areas.*
- *Of most concern is the potential for adverse impact on nearby residents associated with the demolition and construction phases of the project.*
- *Dust control and suppression will be required on site with appropriate water supplies to be available on site, wind fencing, and provision for road sweeping for sand carried onto roads by trucks as well as stop work guidelines should wind speeds lead to dust leaving the site.*
- *Vibration control particularly during demolition, site compaction and should any rock breaking be required in association with the car park excavation etc. will need to be addressed and monitored. A dilapidation survey of nearby properties prior to this work may be required.*
- *Adequate signage including details of a 24 hour a day contact for complaint management.*
- *The construction management plan will need to be well considered document given the scale of this development and the close proximity of sensitive land uses such as a school and residential properties.*

Technical Service's Review

The applicant submitted a Traffic impact report prepared by Transcore on the proposed development. The report was reviewed by the City in relation to the anticipated traffic movement and the on-site car parking proposal. As a consequence of that review, the following comments were made:

Impact of Development on local network (Traffic)

- *Satisfied with the projected Trips per day as a result of the development and agree that given the low volumes, will not adversely impact on the adjacent streets (Harvest Road & Turton Street)*
- *LOS for crossovers is satisfactory*
- *No associated sight line issues due to built obstructions*

Internal Parking

- *52 bays + 2 Loading Bays + 6 visitor bays is more than adequate for the site.*
- *Bicycle parking acceptable*
- *ACROD bay allocation (3) acceptable*
- *Note height allowances/headroom clearances in AS/NZS 2890.6 for the underground bays. Was not able to check this however this would be a Building issue.*

Other notes

- *Removal of 3rd crossover noted*
- *Peak hour coincides with school times (report notes the adjacent primary school) which may result in increased parking demand on Turton Street. Recommend a setback for on street parking from the Turton Street crossover (1.5-2m either side of the crossover) to alleviate sight line obstructions at this busy time.*

PLANNING ASSESSMENT:

Zone Objectives and Land Use

The objectives for this zone are set out in Clause 4.2.1(a), which are reproduced below:

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.*

The proposed development includes retaining the existing Residential building (Nursing Home) use of the site. The retention of this use is considered appropriate given it's compatibility within the existing Single House and Grouped dwelling character of the immediate locality. However, whilst the proposed use of the site is supported, the built form of the development is not considered to be appropriate. Therefore at present the development is not considered to recognise or be sympathetic to the predominate single residential grain of the immediate locality. Therefore, in its current form the proposed development will not protect the existing local character.

Furthermore, with regards to the proposed redevelopment and particularly the Harvest Road addition of the development, again in its current form it is not considered to adequately address the objective of part (ii), (iii) and (iv) of clause 4.2.1 (a) of LPS4.

Design

Please refer to the DAC comments mentioned previously in the 'Consultation' section above.

Building Height

The development site is located within Local Planning Area 3 – North Fremantle (Schedule 12 of LPS4) and is subject to the specific building height controls set out in area 3.1 of that local planning area.

Application of the height controls is shown below in the Building Height Table:

Building Height Table:

Building Height Area	Maximum Building Height plus discretionary height	Maximum Permitted Building Height	Actual Building Height	Variation
Residential Zone	Discretion Sought under Clause 5.8.1 of LPS4	Max. Two Storey's	4	2 Storey's
		Max. external Wall height of 5.5m	11.0m (Harvest Road building)	5.5m
			10.8m (Turton Street Building)	5.3m
		Max. roof plain pitch of 33 degrees	27 degrees	Compliant

Harvest Road Building

This portion of the development site is subject to the above building height control. Council discretion exists to permit the additional 5.55m and additional two storey in height sought above the maximum height control provided the development complies with the criteria of Clause 5.8.1 of LPS4.

Turton Street Building

This portion of the development site is subject to the above building height control. Council discretion exists to permit the additional 5.3m in height sought above the maximum height control provided the development complies with the criteria of Clause 5.8.1 of LPS4.

Clause 5.8.1.1 of LPS4 – Variations to height controls

This clause specifically allows Council to consider the height variations provided certain conditions are met. The clause is reproduced below:

5.8.1.1 Variation to height requirements

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

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

Clause 5.8.1.1 contains a pre-condition that must be met before access to this clause can occur. The pre-condition requires there to be sites that “...contain or are adjacent to buildings that depict a height greater than that specified in the general or specific requirements in schedule 12...”.

The existing building on site today currently exceeds the prescribed height requirements (current max height on site is 8.45m) of Schedule 12 Area 3 and as such the pre-condition to clause 5.8.1 of LPS4 is available for Council to entertain should it consider it appropriate in this case. Furthermore the western adjoining site contains a seven storey Multiple Dwelling complex which incorporates a max external wall height that substantially exceeds (Approximately 22m wall height) those maximum height requirements prescribed in Schedule 12 for Local Planning Area 3.

Part (a) of Clause 5.8.1.1

The applicant contends that the height of the proposed development will not be detrimental to the amenity of adjoining properties or the locality generally. Furthermore the applicant states that, *'it is believed that the proposed heights are appropriate and should be supported by the City'*, for the following reasons:

- *The upper floor of the development has been setback from Harvest road so that it will not play a role in dominating the streetscape. For the majority of the streetscape abutting the site the façade will actually appear to be only two storey,*
- *The majority of the development to the east of site is two storey's in height, however there are examples of three storey building directly opposite the site in Turton Street which optimizes the fall of site, but is clearly three storey's when viewed from the south,*
- *The development will graduate the height of development from the adjoining seven storey building down to the two to three storey development which dominates the remainder of the precinct,*
- *The high quality design and finish proposed to the variation will not be detrimental to the amenity of the locality of any adjoining properties, especially given the development will improve the view of the properties opposite the current development; and*
- *The additional height improves the viability of the development to help ensure that the ongoing use and preservation of the heritage listed Hillcrest residence occurs. The height also means that an extensive setback to the southeastern boundary can be provide to maintain the view through to the Hillcrest House from Turton Street to enhance the significance of the building on the site.*

With respect to adjoining properties (those properties that share a common boundary with the subject site), it is unlikely that the proposed height will have any significant impact on amenity by way of building bulk or scale. The adjoining property to the west is utilised for hardstand car parking for the seven storey apartment complex onsite, and as such, can reasonably expect a lower level of amenity than if it were used for more active residential purposes. The property to the south of site consists of land utilised for the North Fremantle Primary School, with the proposed development being significantly setback from the common boundary between these two properties. Furthermore the majority of the built form fronting the southern adjoining property is to be retained as it consists of the Hillcrest building itself.

Given that the western adjoining apartment complex is setback 60m from Harvest Road, it is considered likely that there will be also be minimal impact on solar access to the apartments on this lot, as the majority of shadow created will fall on existing hardstand car parking and vehicle access area at the front of this property. In terms of solar access although the southern adjoining site, will be impacted, the level of impact is considered to be negligible given the area directly impacted on this adjoining site, consists of remote bush land and limestone slope.

Adjoining properties aside, it is considered that the proposed building height will have some significant impact on the amenity of the surrounding locality. The Harvest Road streetscape is established, and consists of predominantly single residential properties, which incorporate single storey built form at the street front with two storey rear additions or just single storey development. The Turton Street streetscape also consists of predominately single residential properties also; however these properties incorporate a mix of two and single storey dwellings.

The proposed development fronting Harvest Road is considered to portray bulk and scale which is comparable to a three to four storey commercial building, particularly four storey to the north western corner of the site. The proposed northern elevation of this building is proposed to incorporate an articulated facade with setbacks ranging from 6m to 9.7m for the ground floor and first floor and between 6.025m to the proposed planter box/ balcony to 10.65m to the wall of the second floor addition. The existing Harvest Road verge area is approximately 2.5m wide. The topography between the subject site and the Harvest Road street level is between approximately 0.5m to 3.3m higher than the abutting footpath.

The proposed development fronting Turton Street is also considered to portray bulk and scale which is comparable to a two to three storey commercial building, particularly three storey as seen from the south eastern corner of site. The proposed eastern elevation of this building is also proposed to incorporate an articulated facade with setbacks ranging from 1.8m to 3.4m for both the ground floor and first floor. The existing Turton Street verge area is approximately 6.6m wide. The topography between where the wall of this addition meets natural ground level (ngl) and the Turton Street footpath level is between approximately 0.5m to 2.5m higher than the abutting footpath.

The adjoining western car park does interrupt the streetscape pattern somewhat. However, the streetscape is intact on both sides of Harvest Road, for the majority of the street. Mainly due to the existing topography of the site, the proposed development will present as a three to four storey development to the Harvest Road frontage and a two to three storey development fronting Turton Street.

These factors, when combined with the current proposed street setbacks result in the development having imposing bulk, which will negatively impact particularly on the Harvest Road streetscape, and the amenity of residential property owners on the other side of Harvest Road that face the subject site.

As Turton Street also incorporates substantial two storey dwellings directly adjacent to the site which also incorporate elevated natural topography, the level of building bulk impact on these properties by this addition is considered significantly less in comparison to the Harvest Road streetscape.

Accordingly in its present form the development is not considered to adequately meet the criterion of sub clause (a) of clause 5.8.1 of LPS4.

Part (b) of Clause 5.8.1.1

Building scale for the purposes of assessing Clause 5.8.1.1(b) includes consideration of matters such as external wall height, bulk, built form, architectural design and setback of buildings.

The existing form of development that abuts and adjoins the development site consists of mainly of single and two storey developments, apart from the unique western adjoining apartment complex. The wall heights of the majority of these developments are well below the wall height of the proposed development and therefore, it is considered that the wall height of the proposed development will not effectively graduate the wall height of the surrounding properties, particularly the northern side of Harvest Road properties.

Properties located on the northern side of Harvest Road consists of dwellings which incorporate between 3m to 6m external wall heights. Of the four directly adjacent residential properties on Harvest Road, three having single storey approximately 3.5m external wall height fronting Harvest Road with rear two storey additions. The remaining dwelling is only single storey.

The proposed development incorporates a 11.0m external wall height to Harvest Road, of which any effective graduation is further impacted by the existing elevated topography of site being 0.5m to 3.3m above the abutting Harvest Road footpath.

The proposed development does to some degree help graduate the scale between the existing western adjoining apartments and the immediate locality to the east of the site. However, as mentioned previously the large majority of properties in the locality are single and two storey, with the western adjoining apartments being a unique and exceptional circumstance. It is considered that the predominant height pattern is one of single and two storey residential developments.

Therefore it is considered that the proposed three to four storey development does not *effectively* graduate the scale between the buildings, as it is generally higher than the majority of the buildings fronting Harvest Road in that particular locality, other than western adjoining apartments, which are considered rather significant exceptions to the height pattern of the locality.

As such, it is considered that the proposed development does not satisfy the requirements of Clause 5.8.1.1(b).

Part (c) of Clause 5.8.1.1

The City's heritage assessment identified that the portions of the existing building onsite proposed to be demolished have either '*no*' or '*limited*' cultural heritage value and as such heritage has supported their demolition.

In terms of the conservation and restoration works proposed for the original Hillcrest building, whilst the majority of these works have been supported on heritage grounds and will be positive outcome for the existing cultural heritage significant building onsite, the building height discretion sought is not considered essential to undertake these works.

Furthermore some concerns has been raised in regards to the proposed design, bulk and scale of the development and in particular whether the development is compatible and sympathetic to the existing streetscape of Harvest Road and Turton Street. Directly adjacent to the subject site on Harvest Road the five single residential dwellings are all registered on the City's Municipal Heritage inventory (MHI) as Management Category Level 3 places. Meaning, the City of Fremantle has identified these places as being of cultural heritage significance for their contribution to the streetscape, local area and Fremantle as a collective whole. The Heritage Assessment found the proposed development to have the potential to negatively impact these cultural heritage significant dwellings in terms of its building bulk dominating this streetscape.

Whilst its acknowledged that in assessing if the proposed development may or may not have an impact on the heritage values of the immediate locality is a subjective argument, it is the opinion of City officers that the proposed variation to building height does not necessary facilitate any conservation objectives of cultural heritage values to the building on site, for adjoining or adjacent properties, or the North Fremantle locality as a whole, and therefore does not satisfy the criterion outlined above.

Part (d) of Clause 5.8.1.1

There are no other Local Planning Policies that are relevant in the consideration of this clause.

Furthermore although the proposed development is not considered to adequately address the entire relevant criterion of Clause 5.8.1 of LPS4, Pursuant to clause 7.5, Council may also vary LPS4 provisions for a heritage place or heritage area where it is considered desirable to:

- (a) *facilitate the conservation of a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the Heritage List under clause 7.1.1; or*
- (b) *enhance or preserve heritage values in a heritage area designated under clause 7.2.1, the Council may vary any site or development requirement specified in the Scheme or the Residential Design Codes by following the procedures set out in clause 5.5.2.*

Therefore in assessing the proposal against the provisions of Clause 7.5, Council must be of the opinion that the development does 'facilitate conservation', particularly with respect to the development's height.

The meaning of the expression ‘*facilitate the conservation of a heritage place*’ is significantly affected by the definition of ‘conservation’ in Schedule 1 of the City’s LPS4 which picks up the definition from the *Heritage of Western Australia Act*. There ‘conservation’ is defined as follows:

“conservation” means, in relation to any place, the management of that place in a manner that will —

- (a) *enable the cultural heritage significance of that place to be retained; and*
- (b) *yield the greatest sustainable benefit for the present community without diminishing the cultural heritage significance of that place, and may include the preservation, stabilization, protection, restoration, reconstruction, adaptation, and maintenance of that place in accordance with relevant professional standards, and the provision of an appropriate visual setting;*

In considering the decision of the height of the development, Council must be satisfied that the additions directly give rise to and promote the conservation of heritage values on the site.

The proposed redevelopment of the existing Residential building has certainly achieved some key conservation objectives, particularly in relation to the Hillcrest Building on site itself. At the time of writing this report it is unknown to the City if SHO support, conditional support and do not support the proposal. However it is important to point out that the SHO do not necessarily assess a proposal on the merits of conservation, but rather, whether a proposed development will have an acceptable level of impact on a place of heritage significance. Furthermore it must also be noted that the future recommendation of the SHO is granted without any consideration of the Local Planning Scheme and policies, and as such, it is inappropriate to consider LPS4 provisions may be satisfied on the basis of the SHO support. It is the duty of officers to assess a development within the context of all applicable provisions, with the SHO’s recommendation being only one of a possible number of such provisions. It is within this total context that Council ultimately, must make a determination.

Nevertheless there seems to be a general agreement that the proposed works and treatments to the original Hillcrest building are sympathetic, with minimal disruption to the heritage fabric of the structure proposed.

The applicant has indicated that the retention of these heritage elements and cohesive land use has necessitated in the additional height being required in order to make the project commercially viable. It should also be noted that commercial viability is not generally a planning consideration, and should not form the basis for allowing such building height variations.

Whilst the proposed conservation and restoration works to the Hillcrest Building itself are supported and ultimately will enable the cultural heritage significance of this place to be retained, the proposed building height variation is not considered essential in order to facilitate these heritage works onsite from being undertaken. Whilst a redevelopment of the site may facilitate these works to occur the development does not specifically need to be in this current configuration and as such may not need to seek height discretion under the provision of LPS4.

In terms of the proposed development enhancing or preserving heritage values within a Heritage Area, which in this case is the North Fremantle Heritage Area, as outlined above in the 'Building Height' section the proposal in its current form, will neither enhance or conserve the North Fremantle Heritage Areas values, as it would introduce a dominating building bulk and scaled building to area and particularly Harvest Road.

For these reasons building height variation cannot be supported under Clause 7.5 of LPS4.

Car parking

The development complies with the car parking requirements set out in LPS4 and the R-Codes as shown below:

		Required	Provided	Shortfall	Excess
Car Parking Spaces	Nursing Homes	1:3 beds, plus 1:2 staff			
Sub-total car parking spaces		109 beds- 36.3 43 Staff – 21.5 = 58 total	36 22	0	0
Bicycle		1:10 beds = 11	11	0	0
Delivery bays		1 per Building = 1	2	0	1

The application has been assessed against and is deemed to comply with the Vehicle parking requirements as stated in Table 3 of the City's LPS4.

MATTERS RAISED DURING THE CONSULTATION PROCESS

'Attachment 3' contains a Schedule of Submissions (14 submissions received) and a response to the issues raised in those submissions. Furthermore the applicant has taken opportunity to provide additional response to these 14 submissions received regarding the proposal and the applicant response can be viewed in 'Attachment 4'. The issues raised in the submission are either addressed in the report or are not relevant planning considerations as identified in the Schedule.

CONCLUSION

Planning Approval is sought for the redevelopment of the existing Residential building (Nursing Home) onsite. Whilst it's acknowledged that the existing building is in need of restoration and redevelopment, Council must ensure that LPS4 is applied rigorously, and unless Council is satisfied that all four of the criteria of Clause 5.8.1 or the relevant criteria of Clause 7.5 discussed above are satisfied, the proposed building height is not capable of approval under the provisions of LPS4.

The other concerns raised as part of this assessment related to car parking, traffic impacts, visual privacy and the land use are all worthy of support for the reasons outlined above. However, given that the proposal does not satisfy the height requirements of Schedule 12 and Clause 5.8.1, and the development is not considered to adequately address the criteria of Clause 7.5, it is recommended that Council refuse the planning application for the proposed redevelopment of the Residential Building onsite.

PSC1210-159 BURT STREET NO. 44 (LOT 37), FREMANTLE - TWO STOREY ADDITIONS AND ALTERATIONS TO EXISTING SINGLE HOUSE - (KS DA0061/12)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 3 October 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Attachment 1: Development Plans
Attachment 2: Heritage Assessment and Comments
Attachment 3: Site Photos
Date Received: Revised plans 13 September 2012
Owner Name: Nancy Clarke & Matthew Clarke
Submitted by: Gary Keen Design
Scheme: Residential R25
Heritage Listing: Level 3
Existing Landuse: Two storey Single House
Use Class: Single House
Use Permissibility: 'P'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee as objections were received during the advertising period which raised concerns that are unable to be addressed through conditions of Planning Approval.

The applicant is seeking Planning Approval for single and two storey additions and alterations to the existing Single House at No. 44 (Lot 37) Burt Street, Fremantle (subject site).

The application has been assessed against relevant requirements of the City's Local Planning Scheme No. 4 and Council's relevant Local Planning Policies. Further, the development has been assessed against the Residential Design Codes (R-Codes) and requires discretionary decisions with respect to:

- **Buildings setback from boundary;**
- **Buildings on boundary;**
- **Building height; and**
- **Visual privacy.**

The proposal is considered to satisfy the relevant Performance Criteria of the R-Codes or has otherwise been made to comply via conditions of approval and therefore can be supported.

BACKGROUND

No. 44 (Lot 37) Burt Street, Fremantle is zoned Residential with a density coding of R25 and is located within the Fremantle Local Planning Area. The subject site is located on the northern side of Burt Street and comprises an existing two storey Single House with undercroft on a lot of 705m². The site is located within the street block bounded by Burt Street, Malcolm Street and Tuckfield Street. The subject site is identified as having cultural heritage significance on the City's Municipal Heritage Inventory as a Management Category Level 3 listing.

DETAIL

On 22 February 2012 the City received a development application seeking Planning Approval for two storey additions and alterations to the existing two storey with undercroft Single House at No. 44 (Lot 37) Burt Street, Fremantle. On 4 May 2012 the City requested amended plans addressing concerns raised in the heritage assessment. The City received amended plans on 3 September 2012 which were subsequently referred once again to heritage for comment. Revised plans still did not address all concerns and amended plans and additional information were requested again on 11 September 2012. On the 13 September 2012 the City received amended plans addressing concerns, proposing the following additions and alterations to the existing Single House:

Basement Level

- Workshop/Garage

Ground Level

- Lounge
- Kitchen extension
- Glazed walkway
- Laundry/Mudroom
- Pergola
- Toilet

Upper Level

- Bedroom
- Bathroom

For further details Development Plans are contained as 'Attachment 1' of this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of LPS4. At the conclusion of the advertising period, being 19 March 2012, the City had received four submissions pertaining to the proposal, raising the following relevant planning concerns:

- Visual privacy;
- Buildings setback from boundary;
- Heritage; and
- Boundary walls

Heritage Referral

The application was referred to an external heritage architect and the City received a heritage assessment on the 4 April 2012, with subsequent heritage comments in relation to revised plans on 20 August 2012, 11 September 2012 and 13 September 2012. Comments in relation to the revised proposal dated 13 September 2012 are as follows:

- *The amendments to the first floor plan, the east elevation and the roof form have been clarified by the architects and the details as shown on the plans are considered acceptable.*

For further details refer to 'Attachment 2' of report for Heritage Assessment and heritage comments.

STATUTORY AND POLICY ASSESSMENT

The following documents have been used in the assessment of the application:

- Local Planning Scheme No. 4
- Residential Design Codes 2010
- D.B.H1 Urban Design and Streetscape Guidelines
- L.P.P1.6 Preparing Heritage Assessments
- L.P.P2.4 Boundary Walls in Residential Development

PLANNING COMMENT

Buildings setback from boundary

Element	Required	Provided	Discretion
Toilet (west)	1m	0m – 1m	Up to 0.24m

The discretion is supported for the following reasons:

- The discretion is considered minor and limited to a 0.35m portion of wall (the remainder of the wall has been assessed as a boundary wall as it is within 0.75 of the boundary) which is situated behind and concealed from the western adjoining property at No. 42 (Lot 33) Burt Street, Fremantle by a 3.3m high boundary fence. The discretion is thus not considered to have any negative impact by means of excessive building bulk upon this adjoining property.
- The setback discretion will not result in the restriction of sunlight or ventilation to the western adjoining property as it is located behind an existing boundary fence.
- The discretion is considered to permit adequate sunlight and ventilation.

Boundary Walls

Required	Element	Proposed	Discretion
Boundary walls to abut existing walls, non-residential land use or be constructed on a property with a frontage of less than 10m.	Toilet/Bath (West)	Height at 3.13m and length at 4.95m. (additional portion of wall associated with toilet (0.55m) setback between 0m and 0.75m from western boundary).	Not to abut any existing walls of greater or similar dimension. Adjoining land uses are Residential.
	Laundry/Mudroom (North east)	Height between 2.6m – 3m and length at 6.175m (setback 0.65m of north eastern boundary).	Lot frontage of subject site is greater than 10m.
	Laundry/Mudroom (South east)	Height at 3m and length at 3.7m (setback at 0.75m from south eastern boundary).	
	Basement workshop (East)	Height between 0m – 1.5m and length at 8m.	

The discretions are supported against the Performance Criteria of the Design Element 6.3.2 of the R-Codes and the additional factors of assessment outlined in L.P.P2.4 for the following reasons:

- The boundary walls are considered to make effective use of space on site.
- The discretions will not restrict any views of significance for any adjoining property.

Toilet/Bath

- The discretion comprises a 0.55m boundary wall addition to the existing boundary wall associated with the Bath located on the western boundary. Further, the boundary wall is situated behind an existing 3.3m high boundary fence which exceeds the height of the extended boundary wall and as such, the discretion will not impact upon the amenity of the western adjoining property at No. 42 (Lot 33) Burt Street, Fremantle by means of excessive building bulk.
- Situated behind the existing boundary fence the boundary wall will not restrict the access of sunlight to the western adjoining property.

Laundry/Mudroom (North east)

- Located on the north eastern boundary the discretion will not significantly restrict the access of sunlight to the north eastern adjoining property at No. 29 (Lot 236) Malcolm Street, Fremantle.
- The discretion abuts rear open space associated with the north eastern adjoining property and is not considered to impact upon this property by means of excessive building bulk.

Laundry/Mudroom (south east)

- The boundary wall abuts rear open space associated with the eastern adjoining property at No. 46 (Lot 36) Burt Street, Fremantle, and is not considered to significantly restrict the access of sunlight or ventilation to any major opening or outdoor living area associated with this property.
- The boundary wall is not excessive in size and in addition to abutting rear open space associated with the eastern adjoining property the boundary wall is not considered to contribute to a sense of confinement for this property as a result of accumulative building bulk.

Basement Workshop

- This boundary wall is considered to be limited in height and is located and concealed behind an existing boundary fence and will not have any impact upon the eastern adjoining property by means of excessive building bulk or its access to sunlight or ventilation.
- Only a portion of this wall is above natural ground level (length of 8m with a maximum wall height of 1.5m above NGL).

Building Height

Required	Provided	Discretion
Maximum wall height – 6m	6.5m - 7.3m.	0.5m - 1.3m.
Maximum roof ridge height – 9m.	8.5m (roof height associated with existing dwelling) 8.4m (roof height associated with additions).	Complies.

The discretion is supported for the following reasons:

- The overall building height is consistent with building heights in the locality. The eastern adjoining property at No. 46 (Lot 36) Burt Street, Fremantle has a maximum wall height greater than that proposed. Further, the wall height discretion is located in the eastern portion of the site which is considered to effectively graduate the scale of the eastern adjoining property's wall height located in the western portion of its site.
- The discretion is not considered to impact upon the amenity of adjoining properties or the streetscape by means of excessive building bulk as the overall building height has not been increased and the discretion is located at the rear of the dwelling and is setback between 2.945m and 6.495m from the eastern boundary. The eastern adjoining property has a greater wall height that is setback from the subject site's eastern boundary at a distance of approximately 1.5m.
- The discretion is a result of second storey additions and alterations to the dwelling's existing upper level and the additions are not considered to restrict any existing views of significance for any adjoining property.

Visual Privacy

Required	Provided	Discretion
7.5m setback.	Balcony (west) 2.4m from western adjoining property at No. 42 (Lot 33) Burt Street, Fremantle.	5.1m.
	Balcony (east) 5.5m from eastern adjoining property at No. 46 (Lot 36) Burt Street, Fremantle.	2m.

The discretions are not supported as privacy may be compromised. On this basis, the following condition is recommended to bring the development into compliance:

- Prior to occupation, the upper level balcony on the western, eastern and northern elevations shall be either:
 - a) fixed obscured or translucent glass to a height of 1.60 metres above floor level, or
 - b) fixed with vertical screening, with openings not wider than 5cm and with a maximum of 20% perforated surface area, to a minimum height of 1.60 metres above the floor level, or
 - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or
 - d) screened by an alternative method to the satisfaction of the Chief Executive Officer, City of Fremantle,

in accordance with Clause 6.8.1 A1 of the Residential Design Codes and thereafter maintained to the satisfaction of Chief Executive Officer, City of Fremantle.

Urban Design and Streetscape Guidelines

Required	Provided	Discretion
Two storey additions built at rear of house to be setback at a minimum distance of 4m from the existing roof ridge.	1.8m – 3.15m.	0.85m – 2.2m.

The above discretion is supported for the following reasons:

- The additions are setback behind the existing non original upper level additions and are not considered to reduce the heritage character or integrity of the existing Single House or the streetscape.
- In accordance with heritage advice, the hipped element associated with the upper level wall facing the eastern elevation (associated with the proposed Bath) is considered to reduce the impact of the discretion upon the streetscape and the existing heritage building.

CONCLUSION

The proposal has been assessed against and is considered to comply with the City's LPS4 and all relevant Acceptable Development provisions of the R-Codes, with exception to buildings on boundary, buildings setback from boundary and building height which are considered supportable under the relevant Performance Criteria, and visual privacy which is recommended to be brought into compliance through a conditional of approval. Further, the development is considered to meet all relevant requirements of Council's relevant Local Planning Policies, with exception to the discretionary decision made in relation to Council's D.B.H1 Urban Design and Streetscape Guidelines. The proposal has been supported on heritage grounds in a heritage assessment.

Accordingly, the application is recommended for conditional approval.

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the single and two storey additions and alterations to the existing Single House at No. 44 (Lot 37) Burt Street, Fremantle, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 13 September 2012. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on-site.**
- 3. Prior to occupation, the upper level balcony on the western, eastern and northern elevations shall be either:**
 - e) fixed obscured or translucent glass to a height of 1.60 metres above floor level, or**

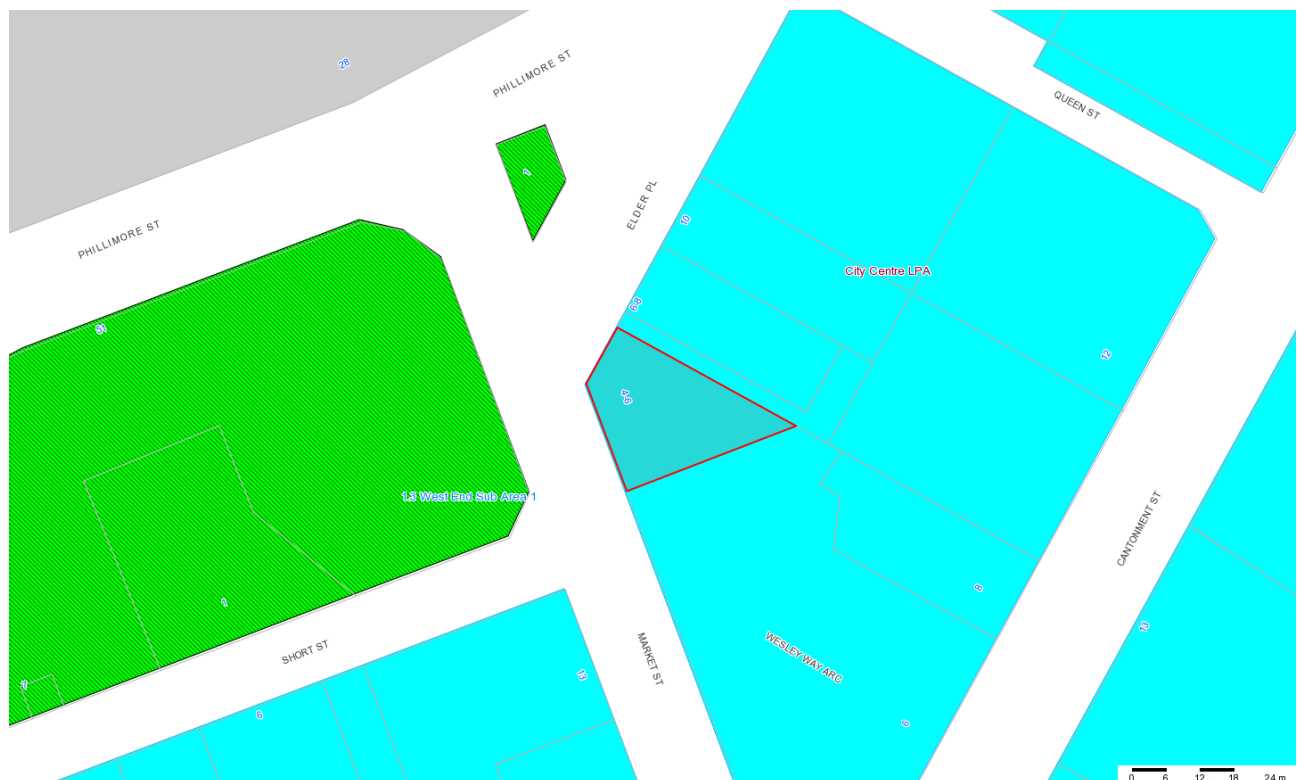
- f) fixed with vertical screening, with openings not wider than 5cm and with a maximum of 20% perforated surface area, to a minimum height of 1.60 metres above the floor level, or
- g) a minimum sill height of 1.60 metres as determined from the internal floor level, or
- h) screened by an alternative method to the satisfaction of the Chief Executive Officer, City of Fremantle,

in accordance with Clause 6.8.1 A1 of the Residential Design Codes and thereafter maintained to the satisfaction of Chief Executive Officer, City of Fremantle.

- 4. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant 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.
- 5. Prior to occupation, boundary walls located on the western, eastern, south eastern and north western elevations shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer, City of Fremantle.

PSC1210-160 MARKET STREET NO. 4-6 (LOT 1), FREMANTLE - RETROSPECTIVE PLANNING APPROVAL FOR EXTERNAL TREATMENT AND SIGNAGE TO EXISTING HERITAGE BUILDING - (KS DA0367/12)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 3 October 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Attachment 1: Development Plans
Attachment 2: Heritage Assessment
Attachment 3: Site Photos
Date Received: 8 August 2012
Owner Name: George Filippou and Manolis Filippou
Submitted by: Didgeridoo Breath
Scheme: City Centre zone
Heritage Listing: Level 1B
Existing Landuse: 'Shop'
Use Class: 'Shop'
Use Permissibility: 'P'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee as objections were received during advertising which are unable to be addressed through conditions of planning approval.

The applicant is seeking retrospective planning approval for unauthorised external treatment and signage to the heritage building at No. 4-6 (Lot 1) Market Street, Fremantle (subject site).

The application has been assessed against the requirements of the City of Fremantle's LPS4 and its Council Policies and is not considered to be consistent with the requirements of L.P.P2.5 External Treatment of Buildings, D.B.H6 Signs and Hoardings and D.G.F14 Fremantle West End Conservation Area Policy.

Further, the application has been assessed against Council's L.P.P1.5 Planning Compliance Policy and as the development has been in existence for a substantial period of time it is recommended that no further compliance action be undertaken.

Accordingly, the application is recommended for refusal with a further recommendation that no further compliance action be undertaken.

BACKGROUND

No. 4-6 (Lot 1) Market Street, Fremantle is zoned City Centre and is located within the City Centre Local Planning Area, 1.3 West End Sub Area 1. The subject site is located on the western side of the intersection of Market Street and Elder Street, Fremantle and is 521m² in area. The application specifically relates to the southern wall associated with the 'Shop' (Didgeridoo Breath) in the southern most tenancy of the site. The site is identified as having cultural heritage significance on the City's Heritage List and Municipal Heritage Inventory (MHI) as a Management Category Level 1B listing and is located within the West End Conservation Area Heritage Area.

On 6 March 2012 the City received an email from an aggrieved member of the community notifying the City of the unauthorised development at the subject site which comprised of external treatment and signage to the building's southern wall.

On 13 March 2012 the unauthorised works were confirmed by a site inspection carried out by one of the City's Officers and subsequently a letter was sent to the land owner of No. 4-6 Market Street, Fremantle on 20 March 2012 advising of their need to bring the development into compliance or seek retrospective planning approval (as required by the Planning Compliance policy at the time).

DETAILS

Subsequent to the above, on the 8 August 2012 the City received a development application seeking retrospective planning approval for external treatment and signage to the southern wall associated with the heritage building at No. 4-6 (Lot 1) Market Street, Fremantle. External treatment and signage is proposed as follows:

- Southern wall painted black.
- Orange text reading: "Learn to Play for Free".
- Painting of seated person playing didgeridoo on orange background.
- Area dedicated to signage and external treatment comprises a width of 3.44m and height of 3.55m.

For further details refer to 'Attachment 1' of this report for Development Plans and 'Attachment 2' for Site Photos.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of LPS4. At the conclusion of the advertising period, being 5 September 2012, the City had received no submissions pertaining to the proposal. However, the initial complaint that notified the City of the unauthorised works on 6 March 2012 raised the following relevant planning concern:

- Impact of external treatment and signage upon heritage fabric of building and streetscape.

Heritage

The application was referred internally to the City's Heritage Department and a heritage assessment was received on 10 September 2012, with the following major comments:

- *"The painted signage has a negative impact on the wall and it is recommended that the paint to the southern wall be removed appropriately so as not to cause any damage to the brickwork.*
- *The works have a negative impact on the place however the painting is removable."*

For further details refer to 'Attachment 2' of this report for a copy of the Heritage Assessment.

STATUTORY AND POLICY ASSESSMENT

The following documents have been used in the assessment of the application:

- Local Planning Scheme No. 4 (LPS4)
- L.P.P1.5 Planning Compliance
- L.P.P1.6 Preparing Heritage Assessments
- L.P.P2.5 External Treatment of Buildings
- D.G.F14 West End Conservation Area Policy
- D.B.H6 Signs and Hoardings

PLANNING COMMENT

Heritage

The proposal has not been supported on heritage grounds in the heritage assessment (see above) as the development is considered to have a negative impact upon the heritage significance of the place.

Further, the proposal has been assessed against and is not considered to comply with the requirements of the following Council Policies, especially in relation to its impact upon heritage:

D.G.F14 West End Conservation Area Policy

Clause 5.4.4 of Council Policy *D.G.F14 West End Conservation Area Policy* pertains to the use of materials as follows:

- *“Use of materials and finishes which match or are compatible with the materials of the existing building.”*

Further, clause 5.6 of the policy requires the following:

“In considering proposals in the West End, the Council will ensure that the existing policies are adhered to. These policies include:

- *Signs and Hoardings (D.B.H6).”*

D.B.H6 Signs and Hoardings

Clause 2.2 of Council Policy *D.B.H6 Signs and Hoardings* reads as follows:

“In the case of a listed building the Council shall have regard to and may attach conditions concerning the historical appropriateness of the materials, style, design and lettering of the sign and whether it is affixed in such a way that it causes no damage to the building and may be removed without leaving evidence of its having been affixed.”

The development is not considered to meet the requirements of the above policies for the following reasons:

- Acrylic paints will have a detrimental impact upon the masonry walls of the building which will compromise the heritage significance of the place.
- The excessive size of the signage and the intensity of the colours are considered to have a negative impact upon the heritage significance of the subject site.

L.P.P2.5 External Treatment of Buildings

Clause 1.1.1 prescribes the following requirements in relation to the treatment of the external surfaces of Level 1 and 2 heritage listed buildings:

“1.1.1 Planning applications that propose the treatment of the external surface of a building shall include the following information:

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

1.1.2 Paint colours shall be consistent with the original colour schemes of the building, as established by Clause 1.1(b) above.

1.1.3 Where it is not possible to determine the original colour scheme, paint colour selection shall be consistent with the following key principles:

- a) The main body of the wall shall be natural wall colours that suggest the natural materials underneath (i.e. brick, stone or render).*
- b) Where it is proposed to paint brick or stone quoining, colours shall be consistent with the natural materials underneath.”*

The development is not considered to meet the requirements of the above policy for the following reasons:

- As the works are unauthorised no painting methodology has been provided. The external treatment of the southern wall of the subject site comprises bright coloured acrylic paints that do not depict the original colour scheme of the heritage building and are not consistent with the colours of the natural materials underneath.

Planning Compliance

Clause 3 of *L.P.P1.5 Planning Compliance* contains provisions regarding circumstances where no further compliance action may be taken. Clause 3.3 of the policy prescribes the following:

"Other Circumstances

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

- a) It can be established that the development the subject of the breach has been in existence for a substantial time period; and*
- b) The development has no apparent impact on the amenity of adjoining properties, the streetscape, or the locality; and*
- c) The development is, in the opinion of the Principal Building Surveyor, structurally sound."*

In relation to the above it is recommended that, on balance, no further compliance action be taken in relation to the matter for the following reasons:

- The unauthorised development pertains to external painting and signage and has been in existence for what is considered a substantial period of time (painting is signed and dated in 2003).
- As the development is tied to a use that is unlikely to occupy the site permanently and the works are removable, as stated in the heritage assessment, the unauthorised external treatment and signage are not predicted to occupy the external face of the southern wall for a period longer than the occupancy of the site by the current tenant.
- The external treatment and painting which is contemporary in nature does not form part of a significant streetscape of heritage buildings and abuts a vehicle access way associated with a recently renovated commercial development (Wesley Way Arcade). On this basis, the development is not considered to be significantly detrimental to the heritage significance of the streetscape on a long term basis.

This is an unusual circumstance where it is recommended that retrospective approval is not granted and no further compliance action be taken. In effect this means that the unapproved works are simply acknowledged with no legal action or infringement being issued. The mitigating circumstances in this instance are considered to be the significant amount of time the external treatment and signage have existed and the fact that the works are tied to the tenancy of the specific 'Shop' use in the southern portion of the subject site. Further, it is recommended that Council refuse the application to ensure precedence is not set for the future external treatment of other heritage buildings in the City.

CONCLUSION

The application has not been supported on heritage grounds and is not considered to comply with the requirements of Council Policies *D.G.F14 West End Conservation Area Policy*, *D.B.H6 Signs and Hoardings* and *L.P.P2.5 External Treatment of Buildings*, and is therefore recommended for refusal. Further, due to the reasons outlined above, Council is recommended to take no further compliance action in relation to the matter.

However, should the Committee consider that further compliance action should be taken the following option is open to Council:

A direction be issued to the owners of No. 4-6 (Lot 1) Market Street, Fremantle to remove the unapproved external treatment and signage within 90 days, to the satisfaction of the Chief Executive Officer, City of Fremantle.

An alternative recommendation in accordance with 1 above as follows:

- A) That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for retrospective planning approval for external treatment and signage to the heritage building at No. 4-6 (Lot 1) Market Street, Fremantle, for the following reasons:
 - 1. The proposal is inconsistent with the requirements of Council Policies *D.B.H6 Signs and Hoardings*, *D.G.F14 West End Conservation Policy* and *L.P.P2.5 External Treatment of Buildings*; and
 - 2. The development is detrimental to the heritage significance of the property.
- B) That a written Direction be issued requiring the owner of the land, within 90 days of the date of the Direction to remove the unauthorised external treatment and signage from the building. Removal of the external treatment and signage shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works result in any damage of the original heritage fabric, such damage shall be rectified to the satisfaction of the Chief Executive Officer, City of Fremantle.

- C) In the event that the written direction is not complied with, authorise the Chief Executive Officer to initiate legal action against the owners, George Filippou and Manolis Filippou of No. 4-6 (Lot 1) Market Street, Fremantle, for failing to comply with the written directions.

OFFICER'S RECOMMENDATION

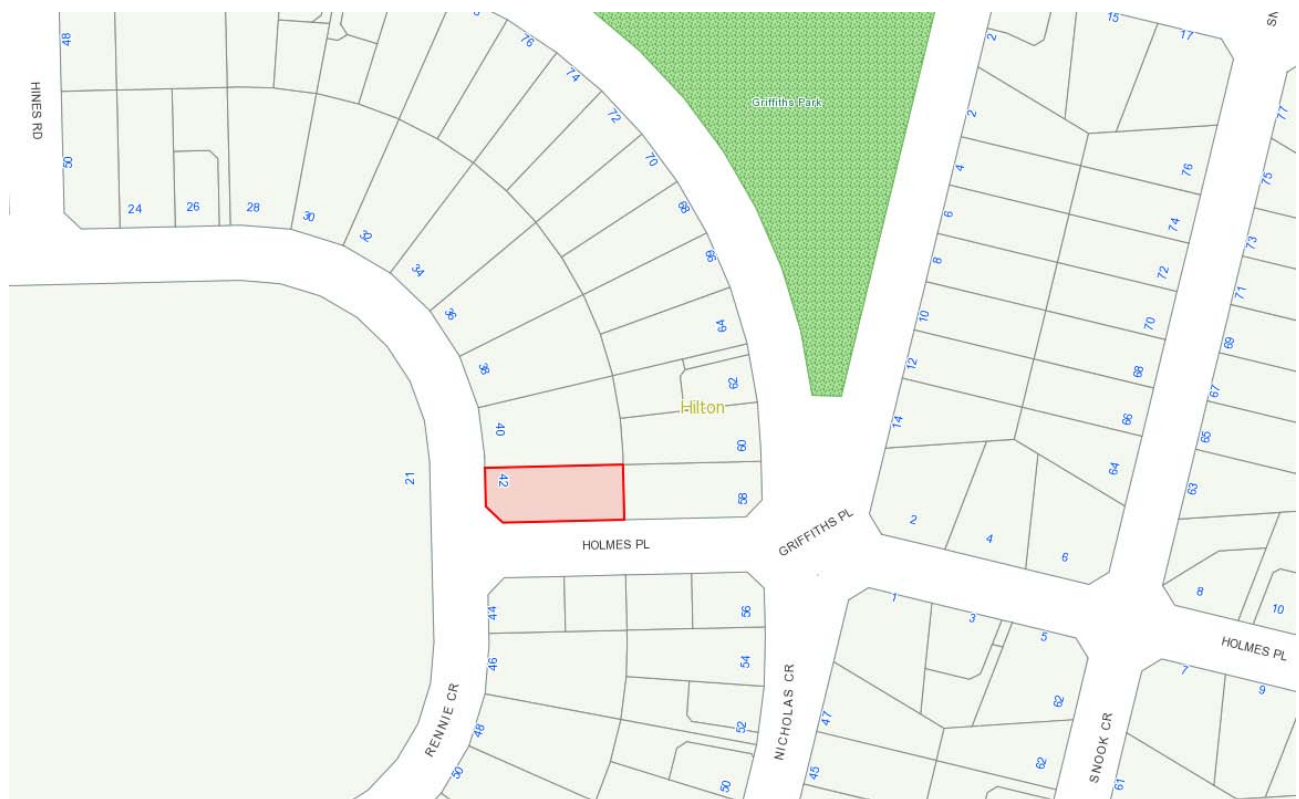
A) That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for retrospective application for external treatment and signage to the heritage building at No. 4-6 (Lot 1) Market Street, Fremantle, for the following reasons:

- 1. The proposal is inconsistent with the requirements of Council Policies D.B.H6 Signs and Hoardings, D.G.F14 West End Conservation Policy and L.P.P2.5 External Treatment of Buildings; and**
- 2. The development is detrimental to the heritage significance of the property.**

B) Take no further compliance action.

**PSC1210-161 COLLICK STREET NO. 20 (LOT 36), HILTON – TWO 92) LOT
SURVEY STRATA SUBDIVISION – (NMG WAPC 526-12)**

DataWorks Reference: 059/002
Disclosure of Interest: The owner is an employee of the City of Fremantle
Meeting Date: 3 October 2012
Responsible Officer: Manager Statutory Planning
Decision Making Level: Planning Services Committee
Previous Item Number/s: NA
Attachment 1: Proposed Subdivision Plan
Date Received: 4 July 2012
Owner Name: Aoning Li
Submitted by: Giudice Surveys
Scheme: Residential R20/R25
Heritage Listing: Hilton Heritage Area
Existing Land use: 2 grouped dwellings
Use Permissibility: D



EXECUTIVE SUMMARY

The Western Australian Planning Commission (WAPC) has referred to the City for comment a side by side subdivision application that proposes to retain two existing single bedroom grouped dwellings. The City only a referral agency and the WAPC is the determining authority for subdivision applications.

This matter is referred to the Planning Services Committee (PSC) as there are several scheme and policy provisions that are applicable to the proposal that offer contradictory conclusions as to whether the proposed subdivision should be supported.

The main issues for PSC to consider are whether:

1. The proposed side by side subdivision is consistent with the objectives of the Scheme and Hilton Planning policy;
2. A battleaxe subdivision (one lot behind the other) would be appropriate in terms of the existing subdivision pattern in the area. This is likely to involve the demolition of one of the dwellings;
3. The existing buildings on site should be retained;

On balance it is recommended that the WAPC be advised that proposed side by side subdivision is supported.

BACKGROUND

A review of the property file revealed the following relevant information:

- On 26 June 2012, the Western Australian Planning Commission (WAPC) received an application for a two (2) lot survey strata subdivision of No. 20 (Lot 36) Collick Street, Hilton (refer WAPC526-12);
- On 28 June 2012, the WAPC referred the application to the City for comment (refer WAPC526-12); and
- On 4 July 2012, the City received the referral from the WAPC (refer WAPC526-12).

DETAIL

The WAPC has referred an application for a subdivision through to the City of Fremantle for comment.

The proposal is comprised of the two (2) lot survey strata subdivision of No. 20 (Lot 36) Collick Street, Hilton.

The configuration of the subdivision is to be as follows:

- Proposed Lot 1 (northern) = 400m²; and
- Proposed Lot 2 (southern) = 399m².

The plan of subdivision is enclosed as Attachment 1 of this report.

The subject site is currently improved by a single storey duplex development. For all intents and purposes, the duplex is essentially two Grouped Dwellings which are a 'mirror images' of one another in terms of their layout and design. Each of the Grouped Dwellings has the following:

- One bedroom;
- One main living area/kitchen; and
- One bath/laundry.

In addition to the above, both dwellings are clearly distinguished as having separate vehicle crossovers as well as separate front entries and a dividing fence that delineates separate rear backyards (refer Figures 1 and 2 below).



Figure 1 - Aerial photo marked with distinguishing features

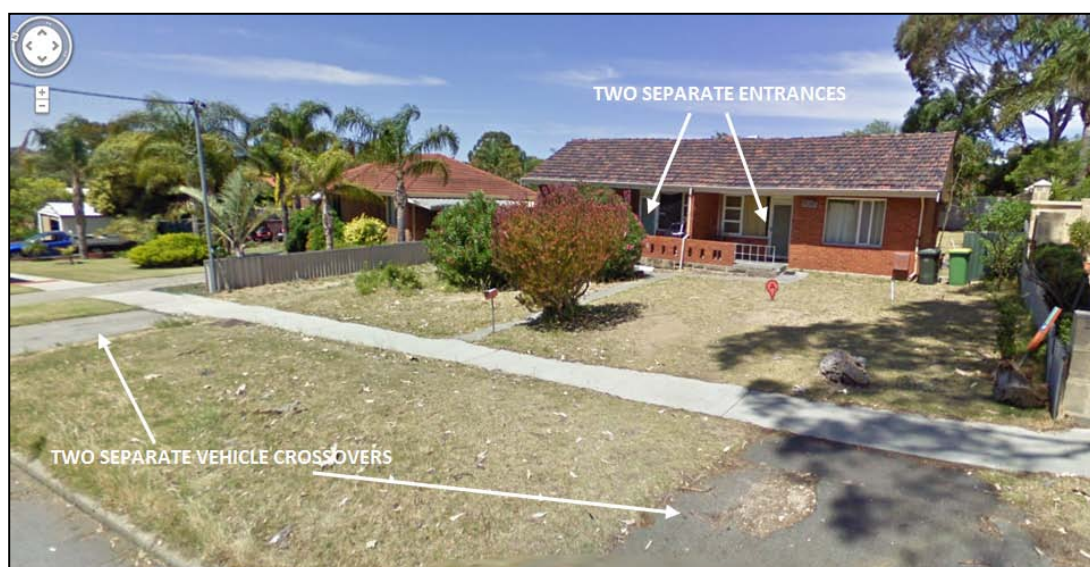


Figure 2 - GoogleMaps Street View marked with distinguishing features

STATUTORY AND POLICY ASSESSMENT

The proposal was assessed against the relevant requirement of the City of Fremantle Local Planning Scheme No. 4 (LPS4), planning policies and the R Codes. Specifically *LPP 3.7 – Hilton Garden Suburb Precinct Heritage Area Local Area Planning Policy* (LPP3.7) is applicable to this application.

The City only a referral agency and the Western Australian Planning Commission (WAPC) is the determining authority for subdivision applications.

CONSULTATION

The subdivision referral was not required to be advertised.

PLANNING COMMENT

There are several scheme and policy provisions that are applicable to the proposal that offer contradictory conclusions as to whether the proposed subdivision should be supported. The relevant provisions of the R Codes, LPS4 and planning policies are discussed further below.

Split Density

The land is zoned R20/R25. The proposed lots do not meet the minimum lot requirements for R20 (minimum 440m², average 500m²) however P3.2 of the Performance Criteria of Clause 6.1.3 of the R-Codes states as follows: (bolded for emphasis)

*“P3.2 The WAPC or a council may approve the creation of a survey strata lot for an existing **authorised** grouped dwelling or multiple dwelling development of a lesser minimum and average site area than that specified in table 1, where, in the opinion of the WAPC or the council, the development on the resulting survey strata or strata lots is consistent with the objectives of the relevant design elements of the codes, and the orderly and proper planning of the locality.”*

On 31 of August 2012, planning staff contacted the WAPC to clarify what the WAPC considers to constitute an ‘existing authorised grouped dwelling’. Based on this discussion, it is the City’s understanding that the WAPC would only consider an existing Grouped Dwelling to be authorised when the local government has issued a valid Planning Approval, Building Permit (or previously Building Licence) or another form of legal approval which provides validity of the development as a Grouped Dwelling.

In this regard, the City was unable to identify any Planning Approval and/or Building Permit/Licence which has been issued for the existing development on-site. It is noted however that when these building were constructed by the Department of Housing, there may have been an arrangement in place where no approvals were required from Council as the dwellings were for public housing. The City has not been able to confirm whether such an arrangement was in place at the time.

Therefore, from the City's perspective, the existing development cannot be considered as an existing 'authorised' Grouped Dwelling and as such the proposed subdivision has to be assessed against the higher R25 density code applicable to the site. While the proposed lot areas comply with the minimum site area requirement for R25 (minimum 320m², average 350m²), Clause 5.3.4 of LPS4 requires that for the higher R25 coding either:

- a) *A building of cultural heritage significant is retained;*
- b) *The provision of low income housing;*
- c) *Buildings designed in accordance with sustainability principles; or*
- d) *Removal of a non-conforming use.*

Criteria b), and d) above do not apply and the applicant is not proposing to retrofit the existing buildings in accordance with sustainability principles. It is also acknowledged that retrofitting the existing 2 single bedroom dwellings to meet the City's sustainability principles may be cost prohibitive.

In relation to criteria a), preliminary advice from the City's Heritage staff is that although the site is not specifically heritage listed, the land is within a heritage precinct, the the buildings on site are part of the original housing stock in the area and are a rare example of 2 single bedroom grouped dwellings originally developed by the Department of Housing. On this basis demolition is unlikely to be supported. Therefore criteria a) could apply and the proposed subdivision could be supported.

Council's Local Planning Policies

LPP3.7 – "Hilton Garden Suburb Precinct" Heritage Area Local Planning Policy (LPP3.7)

Clause 8.1 of Council's LPP3.7 policy relates to subdivision referrals to the WAPC, and states as follows:

"8.1 The historic pattern of subdivision within the Hilton Garden Suburb Precinct is characterised by wide lot frontages which contribute significantly to the streetscape character and amenity of Hilton. In order to preserve the traditional streetscape character and amenity of Hilton, applications referred to the City of Fremantle for comment for subdivision of land within Hilton shall only be supported where the following criteria are met:

8.1.1 The subdivision is in the form of battleaxe or survey strata (with or without common property) with one lot behind the other.

8.1.2 The proposed front lot shall have a minimum frontage of 16 metres. In the case of corner lots, the minimum frontage of 16 metres shall apply to the primary street.

8.1.3 Access legs for battleaxe or survey strata subdivision shall provide reciprocal access to both the front and rear lots. Where such an arrangement is proposed, Council shall recommend the following condition of subdivision to be applied:

"The applicant is to make suitable arrangements to ensure reciprocal rights of access exist over adjoining battleaxe access legs."

Council may, at its discretion, vary the subdivision requirements above where it is satisfied that the proposed subdivision will be consistent with the form of subdivision within the prevailing streetscape."

In relation to 8.1.1 above, the proposed 'side by side' subdivision layout is not consistent with the requirement to have one lot behind the other.

In relation to 8.1.2 above, the width of proposed Lots 1 & 2 is only 10.46m and 10.45m respectively and therefore does not comply with the minimum 16.00m frontage requirement of Clause 8.1.2.

In relation to 8.1.3 above, as an extension to what was discussed for 8.1.1 above, the existing Grouped Dwellings have separate and distinct vehicle crossovers which exist that are not consistent with the policy provisions however it must be acknowledged that the side by side layout currently exists and is part of the established streetscape in the immediate area.

Objectives of the Residential Zone

Clause 4.2.1(a) of LPS4 details the objectives of the Residential zone, and states (bolded for emphasis):

"4.2.1 The objectives of the zones are—

(a) Residential zone

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."*

Regarding criteria (ii) and (iv) above and as outlined above in LPP3.7, it can be argued that the side by side subdivision is not compatible with the tradition subdivision pattern in the area that consists of wide lot frontages. It could also be argued however that as the dwellings exist in a side by side configuration and that the proposed side by side subdivision simply seeks to enable the two dwellings to be sold separately, the character of the area will remain unchanged from the status quo.

In relation to criteria (v) it can be argued that the retention of the existing buildings on site and support of the current the side by side subdivision configuration meets this criteria.

CONCLUSION

As evidenced above, the applicable scheme and policy provisions offer contradictory conclusions as to whether the proposed subdivision should be supported.

LPS4 is a higher order statutory document than LPP 3.7 therefore if it is considered that the dwellings should be retained (as proposed by the subdivision) then the proposed side by side subdivision could be supported.

If it is considered that the requirement of LPP 3.7 to have minimum 16m wide frontages should be upheld and one of the existing single bedroom dwelling could be demolished, then the current subdivision application should be refused.

On balance it is recommended that the WAPC be advised that proposed side by side subdivision is supported.

Should the Committee wish to refuse the subdivision the following recommendation would be applicable

A) That the application be REFERRED to the Western Australian Planning Commission with a recommendation for REFUSAL under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two (2) lot survey strata subdivision at No. 20 (Lot 36) Collick Street, Hilton, as detailed on plans dated 26 June 2012 (Department of Planning date) for the following reason(s):

- 1. The proposal is inconsistent with the orderly and proper planning of the locality.*
- 2. The proposal is inconsistent with the Clause 8.1 of the City of Fremantle's Local Planning Policy 3.7 – "Hilton Garden Suburb Precinct" Heritage Area Local Planning Policy.*

Further should the Committee also wish to advise the applicant and the WAPC that a battleaxe style subdivision may be more appropriate, the following advice note could be added to the above.

The applicant be advised that the City may support a battleaxe style subdivision (one dwelling behind the other) that may result in the demolition of one of the dwellings.

OFFICER'S RECOMMENDATION

That the application be **REFERRED** to the Western Australian Planning Commission with a recommendation for **APPROVAL** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two (2) lot survey strata subdivision at No. 20 (Lot 36) Collick Street, Hilton, as detailed on plans dated 26 June 2012 (Department of Planning date) subject to the following conditions(s):

1. The subdivision being in accordance with the approved plan dated 26 June 2012 (WAPC date) including any amendments placed thereon, other than any modifications that may be required by the conditions that follow.
2. All buildings (and effluent disposal systems), having the necessary clearances from the new boundaries as required under the relevant legislation.
3. The existing dwellings are to be provided with a minimum of two car bays in accordance with the R Codes.

PSC1210-162 SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

Acting under authority delegated by the Council the Manager Statutory Planning 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

That the information is noted.

REPORTS BY OFFICERS (COUNCIL DECISION)

PSC1210-163 PROPOSED PAW CLOSURE - LOT 247 (NO.29) LONGFORD ROAD, BEACONSFIELD (KSW)

DataWorks Reference:	158/008, 059/002
Disclosure of Interest:	Nil
Meeting Date:	03 October 2012
Responsible Officer:	Manager Development Services
Actioning Officer:	Land Administrator
Decision Making Level:	Council
Previous Item Number/s:	PSC1102-42, PSC1106-103, PSC1201-7,
Attachment 1:	WAPC application No. 134198 conditional approval and subdivision plan.
Attachment 2:	WAPC application No. 144297 subdivision amendment
Attachment 3:	Adopted Lefroy Road Structure Plan (POS connection highlighted)

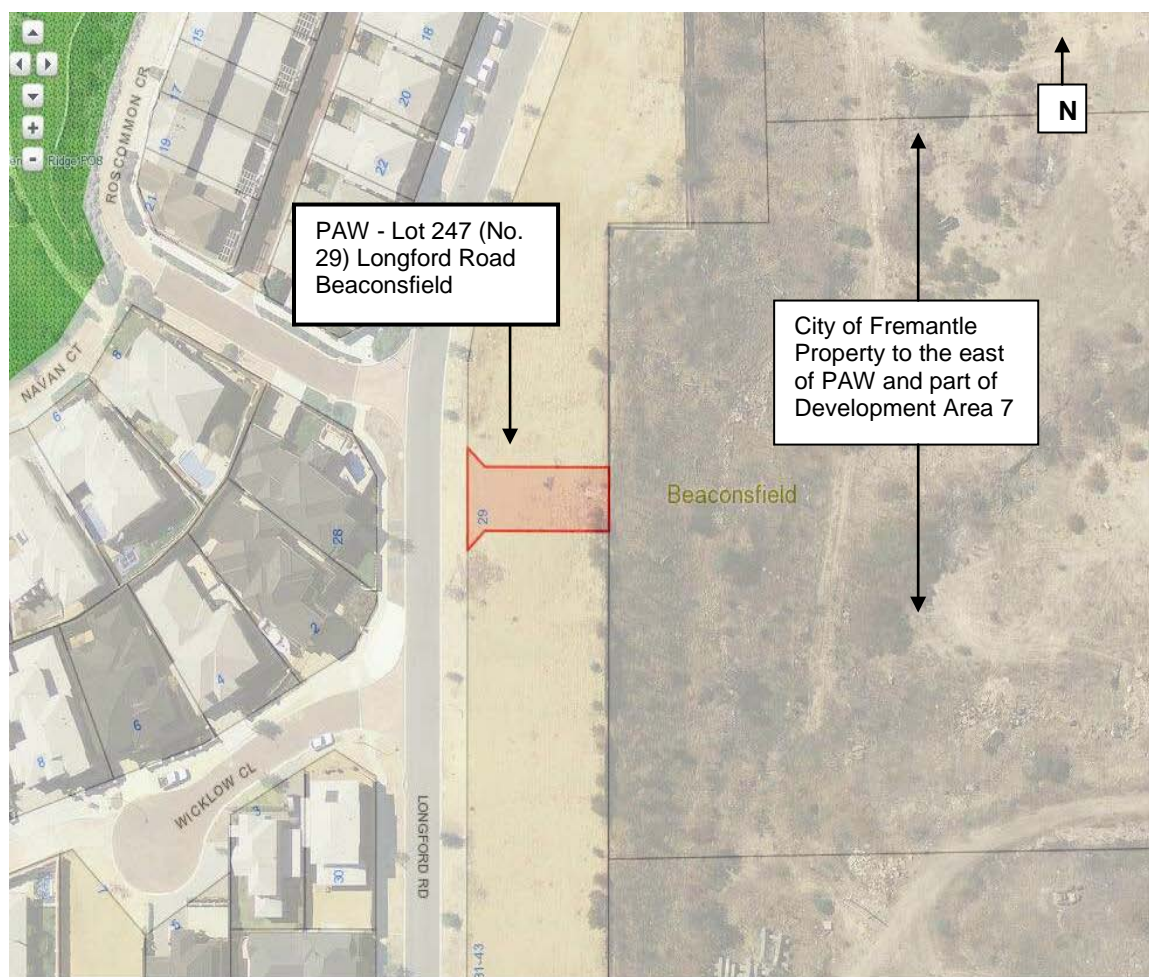


Figure 3 - aerial view showing Lot 247 Longford Road, Beaconsfield.

EXECUTIVE SUMMARY

The purpose of this report is to request the permanent closure of the Pedestrian Access way being Lot 247 (No. 29) Longford Road, Beaconsfield after the completion of further advertising associated with the adjoining Development Area 7.

The previous report (PSC1106-103) adopted by Council on 22 June 2011 provided the results of public advertising with the recommendation to defer the proposed permanent closure of the Pedestrian Access Way as shown on Deposited Plan 42137 being Lot 247 Longford Road, Beaconsfield ("PAW"). The proposal was deferred until the completion of the public advertising period for the Structure Plan relating to Development Area 7. It was considered appropriate to wait until any issues raised by the public regarding the connectivity of the PAW with the adjoining Development Area 7 were considered prior to the proposed permanent closure of the PAW.

The Lefroy Road Quarry Local Structure Plan ("Structure Plan"), comprising most of Development Area 7 (DA7) under Local Planning Scheme No. 4 (LPS4) was adopted by Council on 25 January 2012 and approved by the Western Australian Planning Commission (WAPC) on 02 August 2012. The Structure Plan focused on a potential pedestrian connection to public open space (POS) located 130m south of the existing PAW at the south western corner of DA7. Therefore the subject PAW has no useful purpose or connectivity with DA7, further it was noted that no submissions were received relating to the need for connectivity with the PAW in the existing location (Lot 247 Longford Road).

In this circumstance the proposed closure of the PAW will not significantly impact on pedestrian and cycle access as the PAW has not yet been constructed and the eastern end of the PAW overlooks a significant gradient where connectivity to the adjoining land (in the ownership of the City of Fremantle) will be more difficult. The surrounding land contained in Deposited Plan 42137 is currently vacant as shown in Figure 1 above.

The WAPC granted conditional approval for the Salentina Ridge subdivision (Application No. 134198) on 10 September 2010 with Advice No. 1 supporting the permanent closure of the PAW. The City received an amended Plan under WAPC Application 144297 with a proposal to close and amalgamate the PAW with the adjoining lots.

With further consideration and advertising untaken it is recommended that Council approve the proposed permanent closure of the Pedestrian Access Way being Lot 247 (No.29) Longford Road, Beaconsfield for the purpose of creating a freehold lot with the corner truncations deleted and re-aligned with the adjacent lots to create three (3) equal lots with parallel boundaries.

BACKGROUND

The City received an application from Realcom Group Pty Ltd representing Moltoni No. Pty Ltd ("Applicant") to close the PAW contained within Certificate of Title Volume 2588 Folio 242 on Deposited Plan 42137 being Lot 247 Longford Road, Beaconsfield.

On 10 September 2010 the WAPC (Application No. 134198) issued conditional approval for the subdivision of vacant land at 5-43 Longford Road, Beaconsfield (Lot 9002) which comprises the final phase of a residential subdivision known as Salentina Ridge. Advice Note No. 1 of the WAPC approval letter supports the permanent closure of the PAW running through Lot 9002 which had been created on title (but not physically constructed) as part of an earlier stage of the Salentina ridge subdivision and development. The Advice Note States:

"Given the redundancy of the existing PAW, due to the significant gradient from the eastern end of the PAW to the adjoining site, the WAPC advises that it supports permanent closure of the PAW and the land being incorporated into the adjoining lots, or alternatively, utilised as an additional lot."

On 24 September 2010 the Applicant wrote to the City asking that Council consider the deletion of the PAW from the subdivision plan No. 42137 titled "Proposed Subdivision Lot 9002 Longford Road (Salentina Ridge) Beaconsfield".

On 19 January 2011 the City received an amended version of Deposited Plan 42137 dated 10 November 2010 titled "Proposed Subdivision Lot 247 & 9002 Longford Rd (Salentina Ridge) Beaconsfield." The amended version proposed to delete the PAW Lot 247 (proposed Lot 69) and re-align the adjacent lots to create 3 equal lots with parallel boundaries (by deleting the truncations) subject to the successful application to the City and State Land Services.

On 23 February 2011 (PSC1102-42) Council resolved to:

1. *"Undertake a public consultation and advertising process including a 35 day public comment period in regard to the proposed permanent closure of the Pedestrian Access Way contained within Certificate of Title Volume 2588 Folio 242 on Deposited Plan 42137 being Lot 247 Longford Road, Beaconsfield."*

Following the completion of the advertising period, consider the submissions received during the advertising and public consultation in a report to Council for a final decision prior to an application being made to State land Services to permanently close the Pedestrian Access Way described in (1) above."

The 35 day public comment period ended on 29 April 2011.

On 16 June 2011 the City received WAPC application No. 144297 - Lot 247 Longford Road, Beaconsfield. The application implemented the WAPC's earlier advice note 1 (WAPC application No. 134198) supporting the closure of the PAW.

On 22 June 2011 (PSC1106-103) Council resolved to:

- 1." *Note the results of the 35 day public comment period ending on the 29 April 2011.*

Defer further consideration of the proposed permanent closure of the Pedestrian Access Way as shown on Deposited Plan 42137 being Lot 247 Longford Road, Beaconsfield, until the completion of the public advertising period for the Structure Plan for Development Area 7."

On 25 July 2011 the WAPC agreed to defer and extend Application No. 144297 being the amended version of Deposited Plan 42137 Lots 247 and 9002 Longford Road, Beaconsfield where the PAW is shown as closed. The WAPC deferral is aligned with the City of Fremantle deferral of PSC1106-103.

On 25 January 2012 (PSC1201-7) Council resolved to adopt the Lefroy Road Quarry Structure Plan with minor modification. The Structure Plan was referred to the WAPC for endorsement by the Commission on 22 February 2012.

On 02 August 2012 the WAPC approved the Lefroy Road Quarry Structure Plan Beaconsfield. The WAPC approved structure plan does not include reference to the PAW (Lot 247) land, nor were any submissions received in relation to the PAW during public advertising.

On 11 September 2012 - the proposed subdivision and amalgamation of Lot 247 Longford Road, Beaconsfield to create three new lots (WAPC application 144297) is approved under Delegated Authority allowing the City to provide subdivision clearances. The formal PAW closure process requires a Council resolution in accordance with statutory requirements being the purpose of this report.

PLANNING COMMENT

Council item PSC1106-103 titled "*Proposed PAW closure - Lot 247 (No. 29) Longford Road, Beaconsfield*" reported the results of public advertising and resolved to defer the proposed PAW closure to allow further time for the public to make comments when the Structure Plan went out to public consultation. As a result no further comments were received in relation to the PAW.

The WAPC approved Lefroy Road Quarry Street Structure Plan does not provide connectivity with the PAW or linkages to the Public Open Space located to the south west of the Structure Plan. The PAW, should it be left open, would provide a connection to the rear of a large grouped or multiple dwelling via a steep gradient.

The adopted structure plan indicates a pedestrian POS connection 130m south of the existing PAW over land that has a lesser gradient than where the current PAW is located. It is considered that the pedestrian POS connection indicated in the structure plan is more appropriate due to the less undulating nature of the land and is still a relatively short distance from the Navan Court POS in Salantina Riddge (approx 200m) to provide an appropriate connection to the Quarry site POS.

EXTERNAL SUBMISSIONS

No public comments were received in relation to the proposed PAW closure at the conclusion of the 43 day public advertising period for the Structure Plan closing on 13 December 2011.

CONCLUSION

- The previous report to Council (PSC1106-103) providing the results of public advertising in relation to the PAW closure was deferred pending the outcome of public comment relating to the Structure Plan and part of Development Area 7 (see Figure 1 above).
- The WAPC has granted conditional approval for the Salentina Subdivision (Application No. 134198) with Advice No. 1 supporting the permanent closure of the PAW.
- The City received an amended subdivision application on 16 June 2011 (WAPC Application No. 144297) where the earlier WAPC advice note 1 is implemented. The amended application proposes the closure of the PAW together with the amalgamation of the truncated portions with the adjoining lots to create three equal residential Lots (proposed Lots 68, 69 and 70). The City has provided subdivisional clearance for this application to close and amalgamate the PAW as it is not seen as appropriate to leave the PAW open after the approval of the Structure Plan.
- The Lefroy Road Quarry Structure Plan Beaconsfield has received WAPC approval without any public comment in relation to the adjacent PAW. As it stands, should the PAW remain open it would create a serious security problem by providing a connection via a steep gradient to the rear of an area (zoned R40/R100) set aside for future large grouped or multiple dwellings.

Therefore, with further consideration and advertising untaken it is recommended that Council approve the proposed permanent closure of the Pedestrian Access Way being Lot 247 (No.29) Longford Road, Beaconsfield for the purpose of creating a freehold lot with the corner truncations deleted and re-aligned with the adjacent lots to create three (3) equal lots with parallel boundaries.

OFFICER'S RECOMMENDATION

That Council:

- 1. APPROVE the proposed permanent closure of the Pedestrian Access Way (PAW) located at Lot 247 (No. 29) Longford Road, Beaconsfield - as proposed on Western Australian Planning Commission (WAPC) Application No. 144297 including the associated Deposited Plan No. 42137.**
- 2. PROVIDE the WAPC with a written request to close the PAW with all relevant supporting information in accordance with the WAPC 2009 Procedure for the Closure of PAWs Planning Guidelines and subject to item 1 above.**

PSC1210-164 DRAFT LOCAL PLANNING POLICY LPP2.18 - NEW RESIDENTIAL DEVELOPMENTS IN THE CITY CENTRE ZONE - NOISE FROM AN EXISTING SOURCE - ADOPTION FOR PUBLIC ADVERTISING

DataWorks Reference: 117/053
Disclosure of Interest: Nil
Meeting Date: 3 October 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Strategic Planner
Decision Making Level: Council
Previous Item Number/s: PSC 1208-120 - 1 August 2012
Attachments:
1. D.F.5 New Residential Developments – Noise from an Existing Source
2. Local Planning Policy 2.3 - Fremantle Port Buffer Area Development Guidelines

EXECUTIVE SUMMARY

The purpose of this report is to propose modification of existing Local Planning Policy *D.F.5 New Residential Developments – Noise from an Existing Source*. The intent of the policy is still relevant however the provisions are slightly outdated and difficult to administer.

A report on the proposed modifications was considered by the Planning Services Committee on 1 August 2012. The report was deferred to enable specific noise attenuation measures to be proposed as part of the policy.

The modifications to the original policy provisions therefore include:

1. Applying the policy to just Residential development in the City Centre zone;
2. Revising the title; and
3. Updating the policy provisions including prescribing specific noise attenuation requirements and requiring notification on the Certificate of Title.

Accordingly, it is recommended the amended *Local Planning Policy 2.18 – New residential Developments in the City Centre Zone – Noise from an Existing Source* (LPP2.18) be adopted for advertising for public comment in accordance with clause 2.4 of Local Planning Scheme No. 4 (LPS4).

BACKGROUND

Local Planning Policy *D.F.5 New Residential Developments – Noise from an Existing Source* (DF5) was adopted in 1994. The objective of this policy is:

“to address the issue of noise problems when considering new residential developments in close proximity to existing noise producing uses.”

An item proposing modifications to the policy was considered by the Planning Services Committee on the 1 August 2012. This policy was deferred to the next appropriate Planning Services Committee meeting to enable further research into noise attenuation measures (Refer to PSC1208-120 for more information).

CONSULTATION

If Council resolves to amend DF5 as recommended in this report, the amended local planning policy will be advertised for public comment for a period of not less than 28 days in accordance with the requirements set out in clause 2.4.1 of the City's Local Planning Scheme No. 4 (LPS4) and *Local Planning Policy No. 1.3 'Public Notification of Planning Approvals'*.

PLANNING COMMENT

The purpose of Local Planning Policy *D.F.5 New Residential Developments – Noise from an Existing Source* (DF5) is to mitigate the impact of noise from non residential uses on new residential development. The intent is still relevant, however the policy provisions are slightly outdated and difficult to administer.

Officers propose updating the policy in three ways:

1. Applying the policy to just Residential development in the City Centre zone;
2. Revising the title; and
3. Updating the policy provisions: Noise attenuation matters and notification on the title

1. Applying the policy to just residential development in the City Centre.

DF5 currently applies to any residential development near any existing commercial or industrial uses. This is slightly subjective and results in the policy being applied inconsistently. Instead officers propose applying the policy to just new residential development in the City Centre. These parameters – zone and new development type (Residential) – are less ambiguous than the current policy and will allow for a more consistent application of the policy.

2. Revised policy title

As the policy has been modified to be applicable to residential development in the City Centre zone only, the wording of the title needs to be modified also. Additional to this, since the gazettal of the City's Local Planning Scheme No. 4 local planning policies are prefixed by the wording, “local planning policy”. Accordingly it is proposed the policy be renamed to *Local Planning Policy 2.18 – New residential Developments in the City Centre Zone – Noise from an Existing Source* (LPP2.18).

3. Updating the policy provisions

DF5's policy provisions pertain to attenuating noise and notifying owners of potential noise on new residential development when the development is near commerce and industry. Both provisions require updating. Each provision is discussed separately below:

Noise attenuation matters

The current policy requires, *"All residential developments that are, in the view of Council, in proximity to recognised existing commerce or industry shall be designed and constructed in such a manner so that noise levels from activities associated with existing commerce or industry that could potentially affect future occupiers can be successfully attenuated."*

Officers propose modifying this clause slightly to apply to residential development in the City Centre only (as discussed above). The application of the clause will still be at Council's discretion with the wording "in the view of Council" retained. Following this the relevant regulation on which noise attenuation measures are to comply (*Environmental Protection (Noise) Regulations 1997*) is mentioned along with a recommendation that any new proposals should consult an acoustic consultant to ensure effective noise reduction is achieved.

The policy then provides specific noise attenuation requirements a proposed development is to achieve. The specific measures are set out in appendix one of the policy under the three design measure categories:

1. External Openings (windows and doors);
2. External Walls; and
3. Floors and Ceilings;

Any proposed new Residential development in the City Centre, where in the view of Council is in close proximity to recognised existing non residential land use, is to demonstrate compliance with each of the three design measure categories, are incorporated into the proposed development.

The intent of the specific noise attenuation requirements (design measures) in the policy is to achieve modest all round improvements to a building's noise attenuation. The specific design measures do not seek to achieve compliance with the noise regulation. Instead the policy includes a range of effective options that can be incorporated in future building design. Of course, the Building Codes currently set minimum standards for acoustic design of residences however the policy would go one step further; the policy recommends higher acoustic standards than the Building Codes due to the density and mix of uses in the City Centre. Additionally, the policy recommends that an acoustic consultant is employed to confirm that any proposed changes will provide effective noise reduction and Council may consider variations to the design measures proposed in the policy where the applicant provides an acoustic engineers report identifying alternate noise attenuation design measures.

While this policy would be applicable to residential development in the City Centre, this is not to say that non residential development (e.g. small bar, restaurant etc) does not need to meet the *Environmental Protection (Noise) Regulations 1997*. Any noise complaint received is assessed against the *Environmental Protection (Noise) Regulations 1997*. As part of addressing a noise compliance issue the City can require the land owner to comply with the *Environmental Protection (Noise) Regulations 1997*.

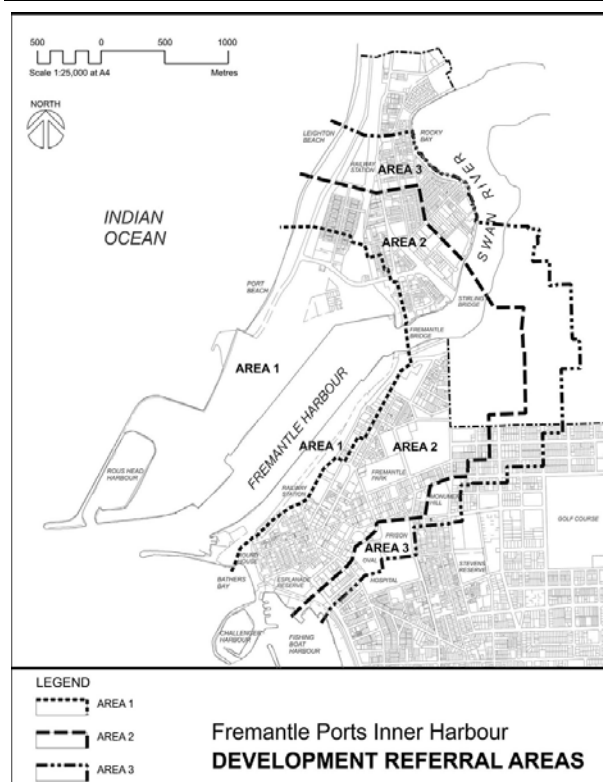
Notification on the Title

The current policy (DF5) requires the developer or owner to advise, in writing, any potentially affected residential unit owner of any potential activity or noise not normally associated with a typical residential development. The intent of the provision – to notify residential owners of potential surrounding nuisances – is still valid however the method in the current policy would not be applicable to new owners. Instead officers propose modifying the provision to require a section 70A of the *Transfer of Land Act 1893* notification on the title. The notification will inform owners and prospective purchasers that the land is located in or adjacent to, an area where non-residential uses exist or can be approved and the land may be affected by activities and noise not normally associated with residential development. The requirement will go on any residential development in the City Centre zone's planning approval as a condition of planning approval. Once on the title the notification flags the issue of non residential noise or activity in the City Centre to all future owners which they can consider prior to purchase.

Local Planning Policy 2.3 - Fremantle Port Buffer Area Development Guidelines (LPP2.3)

The purpose of LPP2.3 is to minimise potential impacts that may arise from the Port, promote land use compatibility between the Port and surrounding urban area and enable continued urban development around the port whilst maintaining efficient operation of the Port.

LPP2.3 contains three different buffer areas (below) each with differing attenuation measures to mitigate a varying degree of noise, nuisance (odour) and potential toxic gas or explosion scenarios.



Area 2 is applicable to the City centre zone and has specific design requirements for new development including window glass of a certain thickness (minimum 3-6mm) to an appropriate Australian Standard, air-conditioning systems, quiet house design guidelines and roof insulation. These measures overlap with the specific noise requirements of appendix one of the modified policy, (e.g. the new policy requires glass to be at least 6mm thick). Considering the differing purposes of each policy (one being noise attenuation from non residential uses and the other being noise and other attenuation from the Fremantle Port) both policies would separately be applicable to development in the City Centre for different reasons. Where the policies' provisions overlap, demonstrated compliance with the higher requirement of the two (in most cases this is the requirements of the new policy's appendix one) would apply. Accordingly, any residential development in the City Centre zone would require assessment under both LPP2.3 and new LPP2.18 (if adopted).

LPP2.3 also requires a notification on the title of properties in area 2 (the City Centre zone). The notification states, *"From time to time the location may experience noise, odour, light spill and other factors that arise from the normal operations of a 24 hour working Port"*.

Again the notification is specific to the Fremantle Port and serves a different purpose than the notification proposed in the modified DF5 policy.

CONCLUSION

It is proposed existing Local Planning Policy *D.F.5 New Residential Developments – Noise from an Existing Source* be modified. The intent of the policy is still relevant however the provisions are slightly outdated and difficult to administer. Officers propose specifying noise attenuation requirements (design measures), applying the policy to only the City Centre zone, updating the notification of future occupier provisions and amending the policy title.

It is recommended Council adopt *Local Planning Policy 2.18 – New residential Developments in the City Centre Zone – Noise from an Existing Source* (LPP2.18) for advertising for public comment in accordance with clause 2.4 of Local Planning Scheme No. 4.

OFFICER'S RECOMMENDATION

That Council adopt the following draft amended *Local Planning Policy 2.18 – New residential Developments in the City Centre Zone – Noise from an Existing Source* for advertising in accordance with the procedures set out in clause 2.4 of the City of Fremantle Local Planning Scheme No. 4:

CITY OF FREMANTLE

LOCAL PLANNING POLICY 2.18

NEW RESIDENTIAL DEVELOPMENTS IN THE CITY CENTRE ZONE - NOISE FROM AN EXISTING SOURCE

ADOPTION DATE: 18 JULY 1994 (D.F.5 New Residential Developments – Noise from an Existing Source)

REVISED DATE: DRAFT

AUTHORITY: LOCAL PLANNING SCHEME NO.4

STATUTORY BACKGROUND

The City of Fremantle's Local Planning Scheme No. 4 (LPS4) allows for a variety of uses in the City Centre zone. The Objectives of the zone under Clause 4.2.1(b) of LPS4 provide that development within the City Centre zone shall –

- (i) Provide for a full range of shopping, office, administrative, social, recreation, entertainment and community services consistent with the region-servicing role of the centre and including residential uses

Local Planning Policy 2.3 - Fremantle Port Buffer Area Development Guidelines - Area 2 is also applicable to the City centre zone. This policy has specific noise attenuation measures for the port which are in addition to the requirements of this policy.

APPLICATION

The provisions of this policy apply to all new residential development in the City Centre zone. In the event that there is a conflict between a provision in this policy, and a provision contained within another Local Area Planning Policy, the most specific policy provision shall prevail.

PURPOSE

The objective of this policy is to address the issue of noise when considering new residential developments in the City Centre zone in close proximity to existing noise producing uses.

POLICY

1. Residential Development in the City Centre zone

- 1.1 New residential development in the City Centre zone that is, in the view of Council, in close proximity to recognised existing non residential land use(s) shall be required to be designed and constructed in such a manner that noise levels from activities associated with the existing non residential land use(s) can be successfully attenuated.**

Noise attenuation measures, include internal and external design measures that address sound attenuation and include vibration protection and compliance with the Environmental Protection (Noise) Regulations 1997. The City of Fremantle recommends that any proposed residential development in the City Centre engages an acoustic consultant to consult on effective noise attenuation design measures.

- 1.2 Any proposed development identified in clause 1.1 above, shall demonstrate it meets the design measure requirements of each of the three design measure categories in appendix one of this policy.**

Variations to the above

- 1.3 Variations to the above requirements of clause 1.2 may be considered, at Council's discretion, subject to an acoustic engineer's report being submitted as part of the application that demonstrates alternate noise attenuation design measures that achieve the same, or higher, noise attenuation outcome.**

2. Notification on the Title

- 2.1 The developer/owner shall advise purchasers of residential dwellings in proximity to existing recognised non residential land uses by placing a notification under Section 70A of the Transfer of Land Act 1893 on each dwelling's certificate of title prior to occupation. The notification will inform owners and prospective purchasers that the land is located in or adjacent to, an area where non-residential uses exist or can be approved and the land**

may be affected by activities and noise not normally associated with residential development.

2.1.1 The following condition shall be included on all planning approvals for new Residential development in the City Centre:

Prior to occupation a Notification pursuant to Section 70A of the Transfer of Land Act 1893 shall be prepared to the satisfaction of the City of Fremantle and registered against the Certificate of Title of every residential dwelling, to notify owners and prospective purchasers of any dwelling that the land is located in or adjacent to, an area where non-residential uses may exist or be approved and, as a result, the land may be affected by activities and noise not normally associated with residential development. All costs and incidentals relating to the preparation of and registration of the Section 70A notification, including related City of Fremantle Solicitors' costs, shall be met by the owner of the land.

APPENDIX 1 – Local Planning Policy 2.18 - New Residential Developments in the City Centre Zone - Noise From an Existing Source

DESIGN MEASURES

1. EXTERNAL OPENINGS (WINDOWS AND DOORS)

1.1 In every instance external window and door frames in a development shall contain airtight rubber seals to provide acoustic protection.

1.2 A proposed development shall also demonstrate compliance with the following design measures, in regards to windows and glazed doors:

- Sliding windows shall be substituted with awning windows as they are able to achieve a positive compression seal; and
- Standard 6mm glass shall be substituted with sealed thickened laminated glass (no less than 10mm); or
- Standard 6mm glass shall be substituted with acoustic double glazing incorporating a 12mm thick pane of laminated glass set in a sealed metal frame with a 100mm air gap to the other pane of glass.

2. EXTERNAL WALLS

2.1 A proposed development shall demonstrate compliance with the following design measure, in regards to external walls:

- The external walls achieve a sound rating of Rw 45 dB or greater.

3. FLOORS AND CEILINGS

3.1 A proposed development shall demonstrate compliance with the following design measures, in regards to floors and ceilings:

- **A 150mm thick concrete slab with either carpet or acoustically installed timber flooring or tiles; or**
- **Installing high density insulation batts into the cavity of a lightweight, suspended and floating ceilings or floors to absorb sound; or**
- **Building components are isolated using resilient compounds such as rubber, neoprene or silicone for the purpose of reducing the transfer of noise.**

CONFIDENTIAL MATTERS

Nil.

SUMMARY GUIDE TO CITIZEN PARTICIPATION & CONSULTATION

The Council adopted a Community Engagement Policy in December 2010 to give effect to its commitment to involving citizens in its decision-making processes.

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

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

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

How consultative processes work at the City of Fremantle	
	of budgetary considerations. All consultations will clearly outline from the outset any constraints or limitations associated with the issue.
Decisions made for the overall good of Fremantle	8 The Local Government Act requires decision-makers to make decisions in the interests of “the good government of the district”. This means that decision-makers must exercise their judgment about the best interests of Fremantle as a whole as well as about the interests of the immediately affected neighbourhood. This responsibility from time to time puts decision-makers at odds with the expressed views of citizens from the local neighbourhood who may understandably take a narrower view of considerations at hand.
Diversity of view on most issues	9 The City is wary of claiming to speak for the ‘community’ and wary of those who claim to do so. The City recognises how difficult it is to understand what such a diverse community with such a variety of stakeholders thinks about an issue. The City recognises that, on most significant issues, diverse views exist that need to be respected and taken into account by the decision-makers.
City officers must be impartial	10 City officers are charged with the responsibility of being objective, non-political and unbiased. It is the responsibility of the management of the City to ensure that this is the case. It is also recognised that City officers can find themselves unfairly accused of bias or incompetence by protagonists on certain issues and in these cases it is the responsibility of the City’s management to defend those City officers.
City officers must follow policy and procedures	11 The City’s community engagement policy identifies nine principles that apply to all community engagement processes, including a commitment to be clear, transparent, responsive, inclusive, accountable and timely. City officers are responsible for ensuring that the policy and any other relevant procedure is fully complied with so that citizens are not deprived of their rights to be heard.

How consultative processes work at the City of Fremantle

Community engagement processes have cut-off dates that will be adhered to.	1 2 .	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, community engagement 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 community input is involved, the Council is the decision-maker and this affords community members the opportunity to make input after the cut-off date via personal representations to individual Elected Members and via presentations to Committee and Council Meetings.
Citizens need to check for any changes to decision making arrangements made	1 3 .	The City will take initial responsibility 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 the City's website, checking the Fremantle News in the Fremantle Gazette or inquiring at the Customer Service Centre by phone, email or in-person.
Citizens are entitled to know how their input has been assessed	1 4 .	In reporting to decision-makers, City officers will in all cases produce a community engagement outcomes report that summarises comment and recommends whether it should be taken on board, with reasons.
Reasons for decisions must be transparent	1 5 .	Decision-makers must provide the reasons for their decisions.
Decisions posted on the City's website	1 6 .	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 the City's website under 'community engagement' or at the City Library or Service and Information Centre.

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.

