



LATE ITEM

Ordinary Meeting of Council

28 November 2012

TABLE OF CONTENTS

SUBJECT	PAGE
PSC1211-180 DOURO ROAD NO. 25 (LOT 95), SOUTH FREMANTLE ALTERATIONS TO EXISTING COMMERCIAL BUILDING (RESTAURANT) (AD DA0434/11)	3

The following item has been added to the agenda for the Ordinary Meeting of Council to be held on 28 November 2012. It was referred from the Planning Services Committee meeting held on 21 November 2012

**PSC1211-180 ADDITIONAL DOCUMENTS - ORDINARY MEETING OF COUNCIL
- OFFICE 2007**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 21 November 2012 (PSC)
Responsible Officer: Manager Statutory Planning
Actioning Officer: Acting Coordinator Statutory Planning
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC0811-309 (DA337/08) – 19 November 2008;
PSC1009-163 (DA0197/10) – 22 September 2010;
PSC1106-108 (DA0143/11) – 15 June 2011
Attachments: Development Plans (as amended)
Date Received: 26 June 2012 (amended plans)
Owner Name: Lisa Ramakrishnan & Naimish Patel
Submitted by: Tim Grey-Smith
Scheme: Neighbourhood Centre Zone (R25)
Heritage Listing: MHI – Management Category Level 3,
South Fremantle Heritage Area
Existing Landuse: Restaurant
Use Class: Restaurant
Use Permissibility: 'A'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee (PSC) due to the nature of the proposed variations sought and submissions which have been received which raise concerns that cannot be dealt with via the imposition of conditions.

The applicant is seeking Planning Approval for alterations to the existing commercial building ('Restaurant') at No. 25 (Lot 95) Douro Road, South Fremantle. Broadly speaking, the alterations pertain exclusively to modifications to the existing rear courtyard area of the 'Restaurant', otherwise known as 'The Crowded House' to facilitate use of that area for the purposes of dining.

The application is recommended for conditional approval.

BACKGROUND

The site is zoned 'Neighbourhood Centre' under the City's Local Planning Scheme No. 4 (LPS4) with a density coding of R25 and is located within the South Fremantle Local Planning Area 4 (LPA 4) as prescribed in Schedule 12 of LPS4. The site is located in the street block bound by Hulbert Street to the west, Ocean Road to the south, Douro Road to the north and Thomas Street to the east. The site is listed on the City's Heritage List and the City's Municipal Heritage Inventory (MHI) as a Management Category Level 3, and is located within the South Fremantle Heritage Area which is a prescribed Heritage Area under Clause 7.2 of LPS4.

The subject site is 455m² and is located on the south-eastern side of the intersection of Douro Road and Thomas Street, South Fremantle. The site has a north-south orientation and is currently improved by a single storey commercial building and associated structures and is relatively flat in terms of topography. The site is currently approved for use as a 'Restaurant' and is otherwise known as 'The Crowded House'.

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

- On 19 March 1986, conditional Planning Approval was granted for a Restaurant use at No. 25 (Lot 95) Douro Road, South Fremantle under the City's former Town Planning Scheme No. 2 (TPS2) (refer DA2/86);
- At its meeting held 19 November 2008, the PSC resolved to refuse an application seeking Planning Approval for the use of an outdoor covered area for dining purposes, change of hours of operation to an existing Restaurant use and replacement sign at No. 25 (Lot 96) Douro Road, South Fremantle (refer PSC0811-309 (DA337/08)), as it was deemed contrary to the objectives of the Neighbourhood Centre zone as prescribed by Clause 4.2.1(ii) of LPS4, for the following reasons:
 - “a) the proposed outdoor covered dining area will adversely impact on the amenity of the adjoining and surrounding residential properties due to noise; and

- b) *the proposed extended trading hours of the restaurant activities, coupled with the proposed outdoor dining area, will exacerbate the potential adverse impact on the adjoining/surrounding residential properties."*
- At its meeting held 22 September 2010, the PSC resolved to grant conditional Planning Approval for proposed change in the hours of operation and capacity of the existing Restaurant use and a replacement sign at No. 25 (Lot 96) Douro Road, South Fremantle (refer PSC1009-163 (DA0197/10)); and
- At its meeting held 15 June 2011, the PSC resolved to grant conditional Planning Approval for proposed change to approved days and hours of operation for the existing Restaurant at No. 25 (Lot 96) Douro Road, South Fremantle (refer PSC1106-108 (DA0143/11)).

DETAIL

On 8 September 2011, the City received an application seeking Planning Approval for alterations to the existing commercial building (restaurant) at No. 25 (Lot 95) Douro Road, South Fremantle (refer DA0434/11). Details of the proposal are as follows:

Alterations:

The applicant is seeking Planning Approval for alterations to the existing commercial building (restaurant) which comprises of modifications to the rear courtyard area which is currently covered by a patio. The ultimate purpose of the modifications is to facilitate the use of the covered rear courtyard area as a dining area. The modifications to the covered rear courtyard area include the removal of *"existing lattice on all openings, installing glass brick on the Southern and Western walls, and installing glass louvers on the Eastern wall to allow ventilation."* The applicant has stated in their covering letter that the purpose of these modifications is to *"ensure that there is no impact on the amenity of directly adjoining neighbours due to the sound of dining in this area."*

Further, the applicant has outlined the following measures be put in place to limit the overall impact the use of the rear courtyard area for dining may have on adjoining properties, of which they have stated their willingness for these matters to be addressed via conditions of Planning Approval:

- *"Seating capacity of this space to be limited to 20 persons.*
- *That the area only be used for formal dining, and not as a function space, or karaoke.*
- *That the space only be used in 'peak' periods (ie when planning approval allows 60 seats in total and at all other times be closed).*
- *Live entertainment shall not be permitted in this area.*
- *Amplified music shall be limited to background noise only."*

On 26 June 2012, the City received amended development plans from the applicant which included "plasterboard ceiling insulation with acoustic insulation" to the rear alfresco area.

The proposed development plans (as amended) are contained as 'Attachment 1' of this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and Council's *Local Planning Policy 1.3 - Notification of Planning Proposals* (LPP 1.3), as the proposal sought discretionary decisions to the prescribed standards contained within LPS4. At the conclusion of the advertising period, being 4 October 2011, the City had received nineteen (19) submissions pertaining to the proposal, raising the following relevant planning concerns:

- Car parking and traffic;
- Proximity to residential areas;
- Impact on amenity (noise).

In addition to the concerns raised above, the following concern was raised in the submissions; however they are not considered relevant planning considerations:

- Anti-social behaviour.

It is further noted one of the submissions received was in the form of a petition signed by 57 people whom 'strongly object' to this proposal.

Accordingly, the relevant planning concerns outlined above will be discussed in the 'Planning Comment' section of this report.

STATUTORY AND POLICY ASSESSMENT

The proposal was assessed against the relevant provisions of LPS4 and Council's Local Planning Policies. Variations to the prescribed standards sought are discussed in the 'Planning Comment' section of this report.

PLANNING COMMENT

Local Planning Scheme No. 4 (LPS4)

Car Parking

Under the provisions of Table 3 – Vehicle Parking of the City's LPS4, the parking requirement for a 'Restaurant' is as follows:

Car Parking Bays	Delivery Bays	Bicycle Racks
1: 5 seats; or 1: 5m ² dining area, whichever is the greater	1: service/storage area	1: 30 seats or *1: 100 people accommodated
Required	Provided (on-site)	Discretion
13 bays (62m ² / 5m ²)	0	-13

Clause 5.7.3 of LPS4 outlines circumstances may waive or reduce the standard parking requirement specified in Table 3, and states:

“Council may—

- (a) Subject to the requirements of Schedule 12*, waive or reduce the standard parking requirement specified in Table 3 subject to the applicant satisfactorily justifying a reduction due to one or more of the following—*
 - (i) the availability of car parking in the locality including street parking,*
 - (ii) the availability of public transport in the locality,*
 - (iii) any reduction in car parking demand due to the sharing of car spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces,*
 - (iv) any car parking deficiency or surplus associated with the existing use of the land,*
 - (v) legal arrangements have been made in accordance with clause 5.7.5 for the parking or shared use of parking areas which are in the opinion of the Council satisfactory,*
 - (vi) any credit which should be allowed for a car parking demand deemed to have been provided in association with a use that existed before the change of parking requirement,*
 - (vi) the proposal involves the restoration of a heritage building or retention of a tree or trees worthy of preservation,*
 - (viii) any other relevant considerations.*

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

- (b) Council may require an applicant to submit a report completed by a suitably qualified person or persons justifying any of the points cited above.*

Note: Provides greater flexibility to vary car-parking requirements based upon alternative transport opportunities.”

In relation to the above criteria of Clause 5.7.3, it is noted that there is a significant provision of on-street parking available in the immediate vicinity and surrounding locality of the subject site (i). In terms of public transport (ii), the subject site has a bus stop within approximately 20 metres of its location, and is also located within 300 metres of Hampton Road, which supports high-frequency bus services as well.

It would be reasonable to expect that by the very nature of current approved 'Restaurant' use, and any liquor license that has been granted for that site, that patrons may plan their night ahead, whether that be car pooling, catching a taxi or alternative means of transport other than driving. In this regard, it is considered that this may reduced the overall impact of car parking shortfall associated with this change of use application.

Importantly, Condition No. 3 of the Planning Approval for DA0143/11 dated 14 July 2011 essentially restricted the maximum seating capacity of the approved 'Restaurant' use to 60 persons (customers) on-site at any given time. In this regard, given that the current application does not seek to increase the number of customers above the maximum 60 already approved, whilst the actual parking requirement has increased, by its very nature, Condition No. 3 of the Planning Approval for DA0143/11 negates any perceived car parking shortfall proposed by the current application as there is no increase to the number of customers proposed.

Accordingly, the proposal is considered to satisfy the requirements of Clause 5.7.3 of the City's LPS4.

Consultation

Impact on Amenity (Noise)

In its current form, if the application were to be approved by Council, alterations would need to be carried out in order for the development to comply with the prescribed environmental health regulations regarding noise. In this regard, it is considered that this can be addressed via a condition of the approval. It is recommended that the condition be worded so as to afford the applicant thirty (30) days from the commencement of the rear courtyard area being used for the purposes of dining to provide this information to the City.

This approach is recommended for the following reasons:

- It will provide a degree of flexibility to the applicant to begin using the rear courtyard area for the purposes of dining; and
- It will provide an opportunity to the Noise Consultant ultimately engaged by the applicant to prepare their report based on actual data (ie people using in the dining area) as opposed to predicting data (ie what the noise levels may actually be).

CONCLUSION

Whilst a number of concerns have been conveyed in relation potential for issues arising as a result of the proposed development, it is important to note that there is an existing regulatory framework external to planning control to deal issues such as noise and anti-social behaviour.

The proposal is considered to be generally consistent with the planning requirements encompassed within the City's LPS4. It is considered that the proposal will act to strengthen the purpose of the Neighbourhood Centre zone in providing enhanced flexibility for an existing use which will in turn contribute to the vitality of the South

Fremantle locality and the City as a whole. On this basis, it is considered that a refusal is not warranted in this circumstance.

Based on concerns related to noise, a condition of approval will be included to require that the applicant submit a report detailing noise attenuation measures, including a qualified Noise Consultants report confirming compliance with the *Environmental Protection (Noise) Regulations 1997*, as well as any design measures proposed to address sound attenuation both internally and externally. If these matters cannot be resolved within thirty (30) days from commencement of the rear courtyard area being used for the purposes of dining, the applicant would not be in compliance with their Planning Approval.

Accordingly, the proposal is recommended for approval subject to conditions.

OFFICER'S RECOMMENDATION

MOVED: Cr A Sullivan

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the alterations to existing commercial building (restaurant) at No. 25 (Lot 9) Douro Road, South Fremantle, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans, dated 21 June 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. Within thirty (30) days of commencement of the rear courtyard area being used for the purposes of dining hereby approved, the applicant shall submit a report that addresses the following matters to the satisfaction of the Chief Executive Officer, City of Fremantle:
 - a) Noise attenuation measures, including a qualified Noise Consultants report confirming compliance with the *Environmental Protection (Noise) Regulations 1997*, and
 - b) Internal and external design measures proposed to address sound attenuation both internally and externally and include vibration protection and attenuation.
3. The rear courtyard area hereby approved for the purposes of dining shall:
 - a) be limited to a maximum number of 20 persons at any given time;
 - b) only be used for formal dining, and not as a function space, or karaoke;
 - c) only be used in 'peak' periods (site is restricted to 60 seats as defined by Condition No. 3 of the Planning Approval for DA0143/11 for the site dated 14 July 2011) and at all other times be closed;
 - d) not be used for the purposes of live entertainment; and
 - e) only have amplified music in the form of background music only.

4. All storm water discharge shall be contained and disposed of on-site.

Cr J Wilson MOVED an amendment to the Officer's Recommendation to change the wording of condition 2 to state the following:

2. Prior to commencement of the rear courtyard area being used for the purposes of dining hereby approved, the applicant shall submit a report that addresses the following matters to the satisfaction of the Chief Executive Officer, City of Fremantle:
 - a. Noise attenuation measures, including a qualified Noise Consultants report confirming compliance with the Environmental Protection (Noise) Regulations 1997, and
 - b. Internal and external design measures proposed to address sound attenuation both internally and externally and include vibration protection and attenuation.

CARRIED: 6/0

For	Against
Mayor, Brad Pettitt Cr Ingrid Waltham Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

Cr A Sullivan MOVED an amendment to the Officer's Recommendation to include the following wording to condition 2:

The works detailed in the approved report above be carried out prior to the occupation of the rear courtyard to the satisfaction of the Chief Executive Officer of the City of Fremantle.

CARRIED: 6/0

For	Against
Mayor, Brad Pettitt Cr Ingrid Waltham Cr Robert Fittock Cr Josh Wilson Cr Bill Massie Cr Andrew Sullivan	

COMMITTEE RECOMMENDATION

MOVED: Cr A Sullivan

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the alterations to existing commercial building (restaurant) at No. 25 (Lot 9) Douro Road, South Fremantle, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans, dated 21 June 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. Prior to commencement of the rear courtyard area being used for the purposes of dining hereby approved, the applicant shall submit a report that addresses the following matters to the satisfaction of the Chief Executive Officer, City of Fremantle:

a. Noise attenuation measures, including a qualified Noise Consultants report confirming compliance with the Environmental Protection (Noise) Regulations 1997, and

b. Internal and external design measures proposed to address sound attenuation both internally and externally and include vibration protection and attenuation.

The works detailed in the approved report above be carried out prior to the occupation of the rear courtyard to the satisfaction of the Chief Executive Officer of the City of Fremantle.

3. The rear courtyard area hereby approved for the purposes of dining shall:

a. be limited to a maximum number of 20 persons at any given time;

b. only be used for formal dining, and not as a function space, or karaoke;

c. only be used in 'peak' periods (site is restricted to 60 seats as defined by Condition No. 3 of the Planning Approval for DA0143/11 for the site dated 14 July 2011) and at all other times be closed;

d. not be used for the purposes of live entertainment; and

e. only have amplified music in the form of background music only.

4. All storm water discharge shall be contained and disposed of on-site.

CARRIED: 6/0

Cr J Wilson requested the item be referred to the Ordinary Meeting of Council. Seconded by Cr B Massie.