



AGENDA

Planning Services Committee

Wednesday, 3 April 2013, 6.30pm

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 April 2013** in the Council Chamber, Town Hall Centre, 8 William Street, Fremantle (access via stairs, next to the playground in King Square) commencing at 6.30 pm.

Philip St John
DIRECTOR PLANNING AND DEVELOPMENT SERVICES

28 March 2013

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 20 March 2013 be confirmed as a true and accurate record.

TABLED DOCUMENTS

TABLE OF CONTENTS

ITEM NO	SUBJECT	PAGE
	DEFERRED ITEMS (COMMITTEE DELEGATION)	1
	REPORTS BY OFFICERS (COMMITTEE DELEGATION)	1
PSC1304-46	SOUTH STREET NO.349A (LOT 2) HILTON - SINGLE STOREY GROUPED DWELLING (JS DA0039/13)	1
PSC1304-47	MARINE TERRACE, NO. 88 LOT 3 FREMANTLE - RETROSPECTIVE PLANNING APPLICATION FOR UNAUTHORISED WORKS AND APPROVAL FOR CHANGES TO PREVIOUS APPROVAL (SS DA624/12)	7
PSC1304-48	QUARRY STREET NO 77 (LOT 6) FREMANTLE - TWO STOREY ADDITIONS AND ALTERATIONS TO EXISTING GROUPED DWELLING (JS DA0424/12)	19
PSC1304-49	SAT MATTER - CANTONMENT STREET NO 48-68 (LOT 201 AND STRATA LOT 40 ON LOT 202) REMOVAL OF TIMBER FLOORING FROM HERITAGE LISTED SITE	23
PSC1304-50	SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY	32
	REPORTS BY OFFICERS (COUNCIL DECISION)	33
PSC1304-51	PROPOSED SCHEME AMENDMENT NO. 56 - NEW SCHEDULE 12 SUB AREA FOR 20 (LOT 1354) KNUTSFORD STREET, FREMANTLE - FINAL ADOPTION	33
	CONFIDENTIAL MATTERS	40
	Summary Guide to Citizen Participation and Consultation	41
	AGENDA ATTACHMENTS	1
PSC1304-46	SOUTH STREET NO.349A (LOT 2) HILTON - SINGLE STOREY GROUPED DWELLING (JS DA0039/13)	3
PSC1304-47	MARINE TERRACE, NO. 88 LOT 3 FREMANTLE - RETROSPECTIVE PLANNING APPLICATION FOR UNAUTHORISED WORKS AND APPROVAL FOR CHANGES TO PREVIOUS APPROVAL (SS DA624/12)	9
PSC1304-48	QUARRY STREET NO 77 (LOT 6) FREMANTLE - TWO STOREY ADDITIONS AND ALTERATIONS TO EXISTING GROUPED DWELLING (JS DA0424/12)	53

PSC1304-49	SAT MATTER - CANTONMENT STREET NO 48-68 (LOT 201 AND STRATA LOT 40 ON LOT 202) REMOVAL OF TIMBER FLOORING FROM HERITAGE LISTED SITE	74
PSC1304-50	SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY	84
PSC1304-51	PROPOSED SCHEME AMENDMENT NO. 56 - NEW SCHEDULE 12 SUB AREA FOR 20 (LOT 1354) KNUTSFORD STREET, FREMANTLE - FINAL ADOPTION	86

DEFERRED ITEMS (COMMITTEE DELEGATION)

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

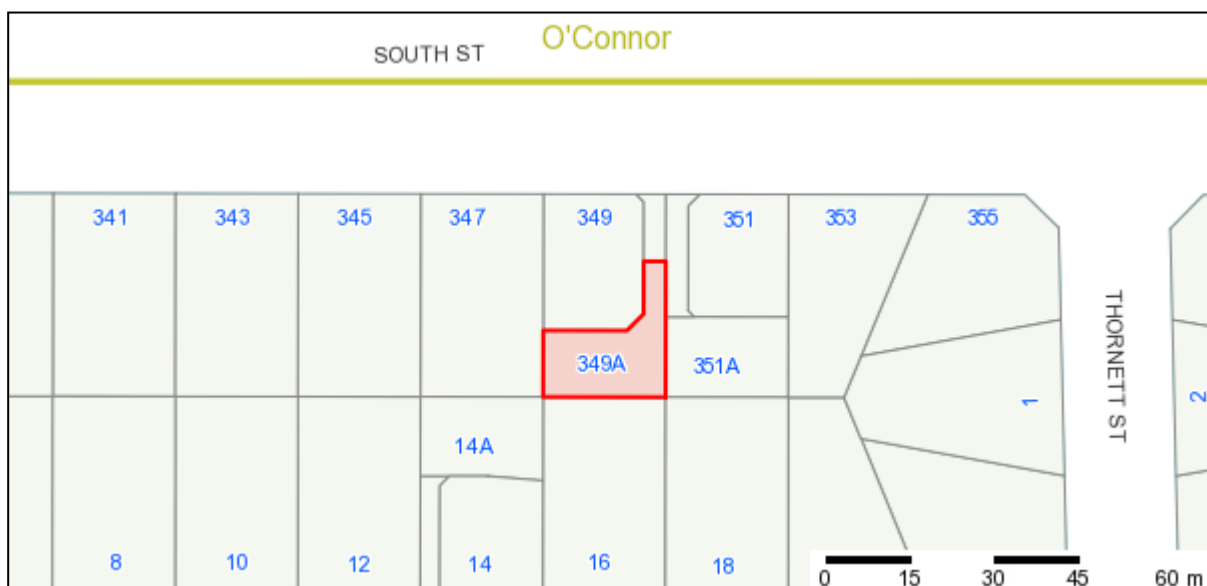
Nil.

REPORTS BY OFFICERS (COMMITTEE DELEGATION)

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

PSC1304-46 SOUTH STREET NO.349A (LOT 2) HILTON - SINGLE STOREY GROUPED DWELLING (JS DA0039/13)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 3 April 2013
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Attachment 1: Development Plans (amended plans dated 13 March 2013)
 Attachment 2: Site Photographs
Date Received: 30 January 2013
Owner Name: Scott Turnbull
Submitted by: Scott Bradley
Scheme: Residential R20/R25
Heritage Listing: No
Existing Landuse: N/A (Vacant Site)
Use Class: Grouped Dwelling
Use Permissibility: 'D'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee (PSC) for determination due to an objection being received that cannot be addressed by the imposition of planning approval condition/s.

The proposal is comprised of a single storey Grouped Dwelling, to be constructed on a rear configured lot at No. 349A (Lot 2) South Street, Hilton.

The applicant is pursuing discretions in relation to:

- **Boundary Walls;**
- **Boundary Setbacks;**
- **Outdoor Living Areas;**
- **Building Height (LPP 3.7); and**
- **Energy Efficiency.**

It is considered that the proposal satisfies the performance criteria of the R Codes and the discretionary provisions of the relevant planning policies.

Accordingly, it is recommended that the proposal be supported, subject to conditions.

BACKGROUND

The subject site is zoned Residential with a split density code of R20/R25 under the provisions of the City of Fremantle's (the City's) Local Planning Scheme No. 4 (LPS4). The site is not individually listed on the City's Heritage List nor is does it fall within one of the City's allocated heritage areas.

The site is approximately 320m² and is a rear configured lot located on the southern side of South Street in Hilton. The site is currently vacant and surrounded by numerous single storey dwellings in the immediate vicinity. The site is bounded by the street block that includes Thornett Street to the east, South Street to the north, Chadwick Street to the South and Hines Road to the west. Located directly across South Street is the O'Connor industrial area.

STATUTORY AND POLICY ASSESSMENT

The proposed development has been assessed against the relevant provisions contained within LPS4, the R-Codes and Council Local Planning Policies. The proposed development includes the following discretions to acceptable design requirements:

- **Boundary Walls (LPP 2.4);**
- **Boundary Setbacks;**
- **Outdoor Living Areas;**
- **Building Height (LPP 3.7); and**
- **Energy Efficiency (LPP 2.2).**

Detailed assessment of the abovementioned discretions will be discussed further in the 'Planning Comment' section of this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Council policy *LPP 1.3 Public Notification of Planning Proposals*. At the conclusion of the initial advertising period, the City had received two submissions which raised the following planning related concerns (summarised):

- Boundary wall impacts; and
- Vehicle manoeuvrability.

At the conclusion of the initial advertising period, the submissions were forwarded onto the applicant who, in turn, submitted amended plans addressing the vehicle manoeuvrability. For the manoeuvrability to comply, the boundary wall on the south was extended 2.09 metres. The amended plans also depicted a reduced boundary wall on the east.

As the boundary wall on the south was extended, the application was required to be readvertised of which the affected neighbour to the south provided a letter (email) of no objection.

PLANNING COMMENT

Buildings on Boundary

Boundary Wall	Required	Proposed	Discretion Sought
East (garage and store)*	1.00m	Nil	1.00m
South (store)	1.00m	Nil	1.00m
South (bathrooms)	1.00m	Nil	1.00m

*objection received

These discretionary decisions are recommended to be supported for the following reasons:

- The size of the boundary walls are not considered excessive on a small 320m² lot;
- The boundary walls are considered to enhance the privacy between the subject site and neighbouring properties;
- The boundary walls protrude a maximum 1.1m above the existing 1.8m high boundary fence, this in conjunction with the wall lengths is not anticipated to significantly increase any impact of building bulk on any adjoining properties;
- The amount of overshadowing that exists from the walls located on the southern boundary (9% of southern site) is well within the permitted capacity (25%) as per design element 6.9.1 of the R-Codes.
- The boundary wall on the east abuts hardstand car parking area (refer attachment 2) and therefore is not considered to result in any significant detrimental impact on the adjoining property;

- The walls are not considered to significantly restrict solar access to the exclusive outdoor living area of the subject site or the adjoining properties;
- The owner of the property affected by the southern boundary walls has written a letter (email) of no objection.

Accordingly, the proposed boundary walls are considered to satisfy the Performance Criteria of the R-Codes and the additional criteria of LPP2.4.

Boundary Setbacks

Setback	Required	Proposed	Discretion Sought
North	2.40 m	1.75 m	0.65 m
West	1.80 m	1.00 m	0.80 m

These discretions are recommended to be supported for the following reasons:

- The discretions do not result in a restriction in adequate direct sun or ventilation to the building or adjoining properties;
- Given the discretions are minor and the proposal is single storey, the reduced boundary setbacks are not anticipated to result in significant building bulk impacts on adjoining properties;
- The discretions assist in protecting privacy between the subject site and adjoining properties.

Outdoor Living Areas

Required	Proposed	Discretion Sought
30m ²	27m ²	3m ²

The discretion is recommended to be supported for the following reasons:

- The living area proposed takes the best advantage of the northern aspect of site;
- The size of the outdoor living area is considered reasonable given the small size of the lot;
- The outdoor living area is capable of use in conjunction with a habitable room (living) and is open to winter sun.

Building Height (LPP 3.7)

Maximum Permitted	Proposed	Discretion Sought
3.50 m	4.10 m	0.60 m

The discretion is recommended to be supported for the following reasons:

- The proposed dwelling is situated on a rear survey strata lot and thus impacts to the streetscape will be minimal;
- The maximum height of the dwelling (4.10 m) is well within the 6.5 m roof ridge height permitted under LPP 3.7;
- The over height elevation is on the northern side of site (due to the skillion roof design) and therefore the shadow cast from the discretion will fall within the subject site.

Energy Efficiency (LPP 2.2)

All components of LPP 2.2 are complied with the exception of the 4.0 m northern setback, the 30m² outdoor living area and the grey water reuse system. The size of the lot is the fundamental restriction on the non provision of these elements. The applicant has requested providing a minimum 3kw photovoltaic solar power system as an alternative.

CONCLUSION

The key discretionary decision associated with this application relates to the boundary wall on the eastern boundary, and as it is considered to meet the performance criteria outlined in the R-Codes and LPP 2.4 – *Boundary Walls in residential development*, it is recommended to be supported. Furthermore, the proposed development is considered to comply with LPP2.2 – *Energy Efficiency and Sustainability Schedule*, and LPP 3.7 Hilton Garden Suburb Precinct.

The other discretions sought relating to the R-Codes are considered to be of a minor nature and are recommended to be supported.

The application is presented to PSC with a recommendation for conditional approval.

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the single storey Grouped Dwelling at No. 349A (Lot 2) South Street, Hilton, as detailed on plans dated 13 March 2013, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 13 March 2013. 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 occupation, the boundary walls located on the southern and eastern boundaries shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 3. Prior to occupation, a minimum 3kw photovoltaic solar power system shall be installed and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 4. Prior to occupation, a gas boosted solar hot water system shall be installed and maintained thereafter, to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 5. Prior to occupation, ventilators in the roof void (above the insulation layer) shall be installed and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle. Ventilators shall be capable of being closed during winter conditions.**
- 6. The roof material of the dwelling shall not be of black or grey colour.**
- 7. All east and west windows of the dwelling shall be tinted or shaded.**
- 8. Prior to occupation, insulation (minimum R4 roof insulation and minimum R2.5 wall insulation) shall be installed and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 9. Prior to occupation, the installation of water-efficient fixtures, including 3A-5A rated taps, toilets and showerheads shall be installed and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 10. Prior to occupation, installation of rainwater tanks that hold a total water capacity of 3000 litres shall be installed and maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 11. Prior to occupation, landscaping shall be completed in accordance with the approved plans dated 13 March 2013, or any approved modifications thereto to the satisfaction of the Chief Executive Officer, City of Fremantle. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 12. Prior to occupation any new or modified crossover associated with the approved development must receive separate approval from the City of Fremantle's Technical Services Department.**
- 13. All storm water discharge shall be contained and disposed of on-site.**

PSC1304-47 MARINE TERRACE, NO. 88 LOT 3 FREMANTLE - RETROSPECTIVE PLANNING APPLICATION FOR UNAUTHORISED WORKS AND APPROVAL FOR CHANGES TO PREVIOUS APPROVAL (SS DA624/12)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 3 April 2013
Responsible Officer: Manager Statutory Planning
Actioning Officer: Coordinator Planning Mediation
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC1002-17 (3 March 2010)
Attachment 1: Planning submission - applicant
Attachment 2: Copy of submissions
Attachment 3: Applicants response to submissions
Attachment 4: City's schedule of identified changes – March 2013
Attachment 5: Relevant Site photographs
Date Received: 4 January 2013
Owner Name: Abigail Santos
Submitted by: Urbanism
Zoning: MRS: Urban
LPS4: Mixed Use
Heritage Listing: Nil
Existing Landuse: Office/Short Stay Dwelling/Multiple Dwellings (Under construction)
Use Class: Office, Tourist Accommodation and Multiple Dwellings
Use Permissibility: Office (P) Tourist Accommodation (A) Multiple Dwellings (A)



EXECUTIVE SUMMARY

The application for retrospective planning approval is submitted to the Planning Services Committee as the planning application involves retrospective approval for works that have been undertaken, which were the subject of a Written Direction Notice (the Notice).

Planning approval was granted in 2010 for a three storey mixed use development at No. 88 Marine Terrace (DA52/08). The owner obtained planning approval and commenced the construction of the development.

Following a complaint the City inspected the site and ascertained that works had been carried out contrary to the planning approval. A \$500 Planning Infringement and a Notice were issued to the owner in accordance with Local planning policy LPP 1.5 – Planning Compliance (LPP1.5). The Notice required certain parts of the development to be modified to accord with the 2010 planning approval or to seek retrospective planning approval.

On the 24 December 2012, a retrospective planning application was submitted for works that had been carried out without a planning approval and for proposed changes to the development.

Two submissions were received during the consultation period, which expressed concerns in relation to the changes, in particular, the matter of privacy.

There have been some building works undertaken which, if had been submitted prior to the works being undertaken, would have met the performance criteria of the R-codes and as such, these changes are supported. There have been changes to the window type (from fixed obscure glazing to 1.65m to obscure glazed awning windows) which are not supported. Further, there is privacy screening that is proposed which is considered not to meet the condition of planning approval and these need to be modified prior to occupation. The change to the ground level street facade is not supported and changes are required.

It is recommended conditional approval be granted for some of the works with the Chief Executive Officer being authorised to undertake legal action for non-compliance with the Notice.

BACKGROUND

The planning application for this site was originally lodged on the 24 January 2008. The application underwent various changes, intensive community consultation processes (including a City facilitated mediation session with the owner and various neighbours attending). The application was also the subject of the SAT Review process. The planning application was subsequently granted conditional planning under Section 31 of the SAT Act at the 3 March 2010 meeting of the PSC as shown below:

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

1. *That the application be APPROVED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Mixed Use Development (Office, Tourist Accommodation and Multiple Dwellings) at No. 88 (Lot 3) Marine Terrace, South Fremantle, subject to the following condition(s):*
 - a) *The development hereby permitted shall take place in accordance with the approved plans dated 21 December 2009, and revised building/roof plan dated 22 February 2010 incorporating the conditions listed in this approval.*
 - b) *All storm water discharge shall be contained and disposed of on-site.*
 - c) *Prior to occupation, 80% solid surface area/obscured balustrading to a minimum height of 1.8m above floor level shall be provided to the northern, eastern and southern elevations of the proposed balconies in accordance with Clause 6.8.1 of the Residential Design Codes.*

A building licence was issued on the 20 December 2010 which allowed construction works to commence on the site. The development is getting close to practical completion.

On the 25 May 2012, the City investigated a complaint concerning the alleged unauthorised works being carried out on the site. The owner was advised of these concerns and on the 21 September 2012, the City received "as constructed drawing". These drawings were reviewed and the owner was advised of the various departures from the planning approval plans. Some of the works were consistent with the Building Licence, however, the owner had not sought to obtain planning approval for those changes prior to commencing works on the site.

On the 21 November 2012, a \$500 Planning Infringement Notice was issued and subsequently paid by the owner on the 13 February 2013.

On the 18 December 2012, the City issued a Notice to the owner of the site which required the following:

- 1) *Pursuant to section 214(3) of the Act the City directs the Parsons Group to modify the building to accord with the approved planning approval plans and conditions of approval as set out below:*

- a) *Modify the recessed front ground floor office elevation to reflect the approved plans;*
- b) *Modify the portion of the building on the second floor, between the Bedroom 1 WIR and the study, and the modified laundry, to accord with the approved plans;*
- c) *Modify the kitchen wall to accord with the approved plans;*

within four (4) months of the date of service of this Direction Notice upon you.

OR

- 2) *Pursuant to Clause 8.4.1 of the Scheme you could make a retrospective application for the items listed in 1) of this Direction notice. This however will require the matter to be resolved within four months and will include retrospective approval, changes as required or modification of the items should the retrospective approval be refused.*

The four month time period in relation to the Notice expires on the 18 April 2013.

The City received on the 24 December 2012 an application for retrospective Planning Approval for:

- The unauthorised changes to the building; and
- Approval to undertake changes to the approved plans or vary the conditions of approval.

On the 14 January 2013, additional information was received in relation to the screening material proposed to be used on the balconies.

DETAIL

The existing development under construction on the site consists of:

- an office, service areas and under croft parking area on the ground level;
- two short stay dwellings on the first floor level; and
- a single dwelling on the second floor level.

In response to the Notice, the applicant has submitted a detailed planning report that identifies the various changes to the approved planning approval plans, responds to the unauthorised changes and details proposed changes (refer to Attachment 1).

STATUTORY AND POLICY ASSESSMENT

The application is subject to the provisions of the LPS4, the Residential Design Codes and *Local Planning Policy DGF29 – Suffolk Street to South Street Local Area*. The discretions being sought are set out in the Planning Comment section.

CONSULTATION

The abutting property owners were advising in writing and provided a two week submission period on the planning application. The advertising period closed on the 30 January 2013. At the end of the submission period, there had been two submissions. The submission are attached to this report - refer to Attachment 2.

A copy of the submissions were forwarded to the applicant as set out in *Local Planning Policy LPP1.3 – Public notification of Planning Proposals*. A response to the submissions was received on the 15 February 2013 – refer to Attachment 3.

PLANNING COMMENT

The site is still a construction site and occupation of the development has not yet occurred. Inspections of the site have revealed that some works have been undertaken, which do not accord with the planning approval. These areas of non-compliance will be discussed in the following section.

Following on from the site inspections, a table was compiled by the City in 2012 which identified the various unauthorised changes or where works had yet to be completed in accordance with the approved plans or conditions of approval. The list identified each change, an explanation of the issue relating to that change and a response to those changes. The list was provided to the applicant, who then provided a very detailed response to the changes (refer to Attachment 1). Attachment 4 contains an update on the list of identified changes and the City's proposed response to those changes based on a recent inspection.

There are some areas of the development that have not been completed in accordance with the approved plans or conditions of approval and as such, some of these areas do not become a compliance issues until occupation of the building occurs. The owner still has time to ensure that the development is modified to accord with the relevant approvals.

Comment on Item Numbers – Attachment 4

Item Nos G1 and WE4-G – (existing change to design of building - ground floor elevation – office)

The planning approval plans showed that the ground floor level (south side) facing Marine Terrace would have a raised terrace, which would be accessible for the office through sliding doors. This part of the building has been modified so that it is now used as a service area, containing such items as fire hydrant, meter boxes and other plant equipment.

The following is an extract from the City's report presented to the August 2008 PSC meeting on the proposed facade treatment to Marine Terrace. The report assessed the development against the provisions of *Local Planning Policy DGF29 – Suffolk Street to South Street Local Area*:

D.G.F29: Suffolk to South Streets Local Area

...

Development should contribute to the traditional streetscape and amenity including:

- *orientation of openings, awnings, verandahs and balconies to street frontages;*
- *consistency in wall heights, roof pitches, building materials and colours;*
- *minimisation of overshadowing and overlooking of adjacent residential developments; and*
- *passive solar orientation and energy efficient building design principles.*

The proposed development has major openings and balconies along the street frontage and"

The front elevation has been adversely impacted by the provision of a service enclosure/space and the loss of the major opening/terrace to Marine Terrace to help activate the street. It is proposed to provide a powder coated louvered aluminium screen (approximately 2.4m high) to screen the service area. Two doors are proposed to provide access to the service space, although these are not permitted to open out onto the street. It has been argued in the submission that there are other spaces that provide activation of the street.

In discussions with the owner, it is proposed to re-align the Marine Terrace footpath to marry up with an adjoining footpath. This will create some space in front of the building where they are proposing to landscape this area, to help soften the building and reduce the impact of the service area.

The change to the elevation is a move away from the design that was originally approved. It is considered that the aluminium louvered screen option is not appropriate option. Therefore, this part of the application should not be approved as part of this application.

The non-acceptance of this option that has been presented, is likely to result in the applicant not being able to satisfy the Notice that has been issued. Therefore, the City, at the expiry of the time set out in the Notice, will undertake legal action in accordance with the provisions of LPP1.5

Separately, another alternative option should be canvassed to:

- Reduce the impact of the service area on the streetscape, and
- To provide surveillance of the street from the office.

This could include inserting a window within the recessed space as well as other design treatments to screen the services within this section of the building. This aspect would need to be the subject of a further application for planning approval.

Item No F2 and NE4 – F (existing change to window design - first floor - northern elevation)

The original planning approval plans showed that the northern windows to this space, which was an extension of the kitchen area, would be provided with fixed obscure glazing to 1.65m above floor level, to address the privacy provisions of the R-Codes. The internal floor layout has now been changed and the space would now be classified as a passageway, and therefore, based on the definitions within the R-codes, becomes a non-habitable space. Consequently, the privacy provisions of the R-Codes would not be applicable to these windows.

The approved windows were changed also during construction to awning windows, which could then allow a restricted downward view into the adjoining property. The adjoining property owner has provided photographs in his submission to highlight this concern (refer to Attachment 2). The applicant has responded to this issue by advising that they will restrict the opening of the window to 50mm to address the privacy issue, but would still allow ventilation into this space.

Having regard to the above, the City is recommending that the modified window design be accepted with the maximum opening for the window to be 50mm.

If the PSC is of the opinion that the departure from the design of these passageway windows should not be permitted, then a modification to the proposed condition A 4a) and 5 is required.

Item No F3 and EE4 – F and NE3 – F (existing screening to rear balcony of Unit 1 (short stay) - first floor)

The rear balcony of Unit 1 was to be provided with solid balustrading and privacy screens to a height of 1.8m above floor level. Privacy screening has been constructed to a height of 1.8m. It consists of solid balustrading and a metal panel with perforations. The City is of the opinion that the screening material that has been installed does not meet condition c) of the planning approval (refer to background section for condition c)) and should be modified to achieve a minimum of 80% solidness to achieve privacy. Therefore, the existing screening and the other areas where this type of material is proposed to be used, should be provided with an alternative treatment that achieves the intent of the condition and the areas with the existing screening is to be modified prior to the occupation of the development in order to satisfy condition c) of approval.

Item No F7 and SE4 – F (existing change to window design – southern side – first floor level)

There has been some minor modification to the floor layout of this area. Whilst there is no new planning issue, the window to the bedroom is similar to the window identified in Item No. F2 above. That is, the window has been changed from a fixed obscure glazed window to a height of 1.65m above floor level to an awning window.

When the window is open, it is possible to view into the rear courtyard of the adjoining residential property. Therefore, it is considered that the window should also be a fixed glazed window to a minimum height of 1.6m above the floor level, prior to occupation.

Item No S2 and NE2 – S (change to design of building – northern side – second floor level)

Under the assessment criteria of the Codes, the required setback of two sections of walls that are separated by a minimum distance of 4.0m between the two sections of wall can be calculated separately of each other. The approved space between these two sections of wall has been reduced from 4.0m to 2.67m.

The two sections of wall were approved a setback of 2.2m. By reducing the space between these sections of walls to 2.67m, the walls are required to be setback 3.1m from the boundary. The options open are to either

- a) *Grant retrospective approval under the Performance Criteria of DE 6.3.1 of the Codes*

The adjoining building is to the north of the development site is a heritage listed building and is single storey in height whereas this change has occurred at the third floor level. The minor change would not significantly impact the adjoining property to the north from overshadowing, direct sun or ventilation to the adjoining building, as compared to the previous approval. Privacy is not an issue from this level and it is considered that there is sufficient articulation within the building not to create a significant adverse impact due to the reduced distance (1.33m) between the two sections of wall. As such, it is considered that the variation meets the performance criteria of DE 6.3.1 and the unauthorised change could be supported.

- b) *Require the building to be modified to accord with the approved plans.*

This option would involve the issuing a Written Direction Notice requiring the building to be modified to accord with the approved plans. This option would be used if it was considered that the variation could or should not be supported. Such a process would be open to the SAT review process. SAT would assess whether the Notice should be enforced having regard to various criteria it is likely to consider when making a decision on this matter. SAT is likely to consider such matters as:

- a) *Whether it is in the public interest of the proper and orderly development and use of land that the applicable law(s) should generally be complied with;*
- b) *The impact of the contravention of the law on the affected locality and environment. This includes a consideration of whether the breach complained of is purely technical in nature which is unnoticeable other than to a person well versed in the relevant law;*
- c) *The expense and inconvenience which would be involved in remedying the contravention of the law; and*
- d) *The extent of amenity impact the contravention may have on adjoining properties and the locality.*

It is considered unlikely that the general public would identify an issue with the two sections of wall being closer together than 4.0m. Further, it is considered minimal what benefit would be achieved to the adjoining property if the third level was modified to create the 4.0m setback distance between the two sections of building.

On balance, it is considered that as the unauthorised works would meet the performance criteria of DE 6.3.1, no further action be taken in relation to this aspect of the development.

Item No S3 and NE1 (change to design of building – northern elevation – second floor level)

The eastern end of the northern side of the third level has been modified. The change has resulted in a small area of building floor space (1 sq m x 1 sq m), being re-shaped so that it is now 0.5 in depth and 2m in length.

Similar to the comments made in the preceding section, the changes are not readily identifiable and are not likely to have significant adverse impact on the adjoining northern property, and as such, the variation is supported.

Item No S6 and SE1 – S (change to design of building – southern elevation – second floor level)

The length of this wall has increased in length by approximately 0.5m and 0.4sq m in area. The increase in length is sufficient to require a greater setback. The length of wall was approved at a setback of 1.2m, whereas a setback of 1.7m was required. The additional length would require a 1.9m setback.

The variation was supported on the basis that this section of the building is located against the property at No. 90 Marine Terrace, which is a two storey commercial building that incorporates a boundary wall. The increase in length is considered to be a minor variation and will not impact on the adjoining commercial building, this variation is supported.

Item No NE2 – S – (change in window design – northern elevation – second floor level)

The comments for this are similar to those on Item No. F2. This involves a window change for a fixed obscured glazed window to an awning window with obscure glazing. In this instance, the window is to a study.

On balance, it is considered that the awning windows should be fixed obscure glazed windows to protect the amenity of the adjoining property owner. This window needs to be modified prior to occupation.

Item No EE2 – S (screening details for rear balcony – eastern elevation - second floor level – single dwelling)

During the consultation process, it was agreed by the applicant to provide screening to a height of 1.8m rather than the 1.65m under the R-codes. Condition c) of Planning Approval states the following:

Prior to occupation, 80% solid surface area/obscured balustrading to a minimum height of 1.8m above floor level shall be provided to the northern, eastern and southern elevations of the proposed balconies in accordance with Clause 6.8.1 of the Residential Design Codes.

The screening has yet to be provided and the applicant has until occupation of the building to ensure that the condition is met.

The applicant has provided a photograph of screening that they are proposing, as well as suggesting horizontal louvers as an option, although no horizontal louver design has been submitted.

The mediation process, undertaken as part of the 2008 approval process, resulted in the plans being supported on the basis that the height of the screens would be 1.8m in height, as well as the screens being designed to provide privacy. The notes on the plans indicate that the privacy screen parts of the balcony were to be "fixed obscure privacy screens". No detail was provided, although the condition requires the privacy matter to be addressed. There is some landscaping on the adjoining site that will provide a level of screening, although there are gaps that allow viewing from the balcony into the rear of the site at this stage.

If Council is satisfied with the condition, then it can require the applicant to submit more detail in relation to the screening. The existing screening at the next level down does not provide protection of privacy to the adjoin property owners. The screens need to be less open in the material to be used.

It is recommended that the applicant be required to provide more detail for approval by the CEO, demonstrating that the screening material to be used, satisfies the requirement of condition c). Should Council determine that the use of vertical screening is an option, then the decision should be tailored to allow for consideration of horizontal louvers in this instance.

COMMENTS ON SUBMISSIONS

The following comments are made in relation to the submissions;

Changes to window types

Concern has been expressed that the change to awning windows does not provide privacy nor support the consultation process that occurred when the application was initially considered by Council. It has been recommended that the awning windows not be accepted that the windows be modified to have fixed obscure glazing as originally proposed.

Balcony heights and screening

The original planning approval showed solid balustrading on the rear balconies to approximately 0.9m in height with fixed obscure screening up to 1.8m in height. The works that have been undertaken have increased the height of the solid balustrading between 1.39m and 1.8m in height, with screening to be provided on top of the solid balustrading to take it up to 1.8m in height.

The recent inspection of the building has revealed that the screening has not been installed on all balconies. Where the screening has been provided, the City is not satisfied with the material used, and is seeking to require compliance with the intent of the R-codes and the planning approval in the use of screening material to provide privacy to the adjoining residential properties.

Overlooking of the front yard of No. 86 Marine Terrace

The concern is that the front yard can be overlooked at the front of the property. The privacy provisions of the R-codes are specific that front courtyards are not subject to the privacy provisions as they are considered to be part of the public realm.

Change from planter to balcony – southern side, second floor level

The proposal originally showed a planter area on the southern side of the building at the second floor level. The space was originally to be used as a planter with a glass screen wall height of 1.8m. Details in the applicants submission indicates that a planter will be provided against the 1.8m high screen wall (predominately solid with a metal screening panel on top) to the southern side of this area. Such a change in use, having regard to the height of the privacy screening, does not introduce any new planning issues and as such is considered acceptable.

CONCLUSION

The owner has undertaken works which has resulted in some departures from the approved plans. Some of the changes do not create new planning issues nor do they adversely impact on the adjoining property owners. There are other areas of the development where the PSC is required to make a discretionary decision as outlined above.

There are still other parts of the development that still need to be addressed, such as the construction of approved privacy screens, however, these do not become a planning compliance matter unless the building is occupied and these screens have not been provided in accordance with approved plans. The site will be continued to be monitored to ensure that the development is completed in accordance with the approved plans and conditions of approval.

In terms of the Notice that has been issued, the owner is required to have satisfied the terms of that Notice by the 18 April 2013. Should the owner not comply with the Notice, then the City is required to immediately take this matter to Court for non-compliance with the Notice, based on the provisions of LPP1.5. Council has the discretion to determine whether or not to enforce the Notice, defer action on the Notice or amend the Notice to provide the owner more time to comply with the Notice. The City is supporting parts 1) b) and c) of the Notice, but not 1)a). Consequently, the City will undertake legal action after the 18 April 2013 if the owner has not modified the recessed front ground floor office elevation to reflect the approved plans, as set out in the Notice.

In relation to the other matters, the development has not been occupied, therefore, the owner has time to rectify any areas or undertake works that are consistent with this approval. If occupation of the building occurs and the development is not in accordance with the relevant approval, the City can proceed to undertaken further legal action.

OFFICER'S RECOMMENDATION

- A** That the application for retrospective planning approval be **APPROVED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the changes to the development under construction at No. 88 (Lot 3), Marine Terrace, Fremantle, as detailed on plans dated 24 December 2012, subject to the following condition(s):
1. This approval relates only to the development as indicated on the approved plans, dated 24 December 2012, with the exception of the unauthorised modifications to the recessed front ground floor office, which is excluded from this approval.
 2. The 1.8m high privacy screening to all balconies as shown on the approved plans are to have openings not wider than 5cm and with a maximum of 20% perforated surface area to a minimum height of 1.80 metres above the floor level, details of which is required to be submitted for approval by the Chief Executive Officer.
 3. The existing awning windows are not permitted to remain and are required to be replaced with fixed obscure glazing to 1.6m in height above floor level to the following rooms/spaces in the following locations:
 - a) The existing windows that face into the northern light well at the first floor level, with the exception of the windows to the passageway;
 - b) the existing second floor level study window facing into the northern light;
 - c) The existing window to bedroom 4 of Unit 3 at the first floor level; and
 - d) The existing window to Guest bedroom 2 of unit 3 on the second floor level.
 4. The windows to the passageway referred to in condition 3b) above are to be openable to a maximum depth of 50mm.
 5. The privacy screening and window modifications required by conditions 2 and 3 above are required to be completed and maintained to the satisfaction of the Chief Executive Officer prior to occupation of any part of the development.
- B** The applicant be advised that the existing and proposed 1.8m high balcony privacy screening that incorporates perforated metal panels do not meet the requirements of condition 2 of this approval as they incorporate a surface area that is more than 20% permeable.
- C** That at the expiry of the four month time period set out in the Written Direction notice issued on the 18 December 2012 (18 April 2013), if the recessed front ground floor office portion of the building has not been modified to accord with the original planning approval (DA52/08), the Chief Executive is authorised to undertake legal action as set out in Local Planning Policy 1.5 – Planning Compliance.
- D** In the event that the privacy screening and window modifications as outlined in this approval are not completed prior to occupation, the Chief Executive Officer is authorised to undertake legal action as set out in Local Planning Policy 1.5 – Planning Compliance.

**PSC1304-48 QUARRY STREET NO 77 (LOT 6) FREMANTLE - TWO STOREY
ADDITIONS AND ALTERATIONS TO EXISTING GROUPED
DWELLING (JS DA0424/12)**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 3 April 2013
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachments: Attachment 1 – Amended Development Plans dated 17 December 2012
Attachment 2 – Site Photographs
Attachment 3 – Heritage Assessment

Date Received: 11 September 2012
Owner Name: Graeme Baumgarten & Serina Herbert
Submitted by: Sasha Ivanovich
Scheme: Residential R25
Heritage Listing: Yes – Level 3
Use Class: Grouped Dwelling
Use Permissibility: 'D'



EXECUTIVE SUMMARY

The application has been referred to the Planning Services Committee (PSC) for determination due to a lack of information being available and the City's uncertainty regarding the possible Home Business component of the site. The development plans illustrate a new office and the provision of 6 car parking bays on site.

The application is recommended for approval with a condition imposed permitting no Home Business to operate from site unless a separate planning approval has been granted for this use.

BACKGROUND

The subject site is zoned Residential in accordance with the provisions of the City's Local Planning Scheme No. 4 (LPS4) with a density coding of R25. The site is not located within a sub area in accordance with Schedule 12 of LPS4. The site is listed on the City's Heritage List and the Municipal Heritage Inventory with a management category listed as a level 3 property. The site is not located within a designated Heritage Area in accordance with clause 7.2 of LPS4.

The site is approximately 679m² and is located on the eastern site of Quarry Street in Fremantle. The site is currently improved by a single storey Grouped Dwelling. The street block in which the subject site lies is bounded by Tuckfield Street to the East, Burt Street to the North, Quarry Street to the West and James Street to the South.

STATUTORY AND POLICY ASSESSMENT

The proposed development has been assessed against the relevant provisions contained within LPS4, the R-Codes and Council Local Planning Policies. The proposed development includes the following discretion to acceptable design requirements:

- Streetscape (Carport) – LPP 2.9

Detailed assessment of the abovementioned discretion will be discussed further in the 'Planning Comment' section of this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Council policy *LPP 1.3 Public Notification of Planning Proposals*. At the conclusion of the advertising period, the City had received two submissions (one objection) which raised the following concerns (summarised):

- Retention of the outdoor toilet; and
- Heritage impacts.

Both these concerns have been addressed in the Heritage Assessment (attachment 3).

Heritage Department Referral

The following concerns have been raised in the heritage assessment (summarised):

- Demolition of the rear laundry and WC is proposed. Demolition of the laundry is supported, however the WC which is original and forms and adjoining pair to the WC of the duplex pair should be retained and conserved.
- Construction of the two storey additions on the northern side of the duplex fronted by a carport will not have a negative impact given the raised height of the original duplex. However, the carport which is to be sited in the front setback will have a negative impact on the visual qualities to the original duplex and streetscape and is therefore not supported on heritage grounds.
- The internal works will have a negative impact on the understanding of the layout of the duplex, however, it is intended to provide interpretive remnants to assist with understanding the original duplex.
- The façade of the duplex is to be restored including the verandah roof and timber balustrading similar to no. 75. Although there is no historic evidence (other than 1947 aerial which is not very clear) of the appearance of original façades the proposal is compatible and consistent with the adjoining duplex and can be supported. Physical evidence maybe visible during the removal of the existing roof over the verandah and may inform the future works.
- Any removal of cement render will be a positive contribution to the conservation of the place. The removal of the render and exposing the original limestone and brickwork should be done with care not to damage the original fabric and should be undertaken using original methods and materials, including using only lime mortars.

PLANNING COMMENT

Home Occupation/ Home Business

As previously mentioned, the applicant has stipulated that no home occupation or home business forms part of this application, however, the proposed works show design components that are not normally associated with residential living. The existing dwelling is proposed to have an office and there are 6 car parking bays proposed on site. Due to the lack of information available, the City is uncertain as to the use of the subject site and thus the application is presented to PSC to make a determination on the matter.

Carport

The Heritage Assessment has indicated that the carport which is to be sited in the front setback will have a negative impact on the visual qualities of the original duplex and the streetscape and is therefore not supported. In addition, LPP 2.9 requires carports not under the main roof of the development to be setback in line with or behind the front wall of the dwelling. Condition 5 has been included to delete the carport from the approval.

CONCLUSION

The proposed development has been assessed against the provisions of LPS4, the R-Codes and Local Planning Policies and is considered to comply with all elements with the exception of LPP 2.9 of which the front carport does not comply and has therefore been deleted from this application.

The application is recommended for approval.

OFFICER'S RECOMMENDATION

That the application be **APPROVED** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the Two Storey Additions and Alterations to existing Grouped Dwelling at No. 77 (Lot 6) Quarry Street, Fremantle, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans, dated 17 December 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. No Home Occupation or Home Business forms part of this approval. If the intent of the owner is to operate a Home Business or Home Occupation from site, a Change of Use application must be lodged and approved with the City prior to operation.
3. All storm water discharge must be contained and disposed of on-site.
4. All fencing within the Primary Street setback area shall be visually permeable above 1.2 metres above natural ground level.
5. The front carport and marked in red on the approved plans does not form part of this approval.
6. Demolition of the rear WC does not form part of this approval.
7. The render to be removed from the original duplex is removed so as not to damage the original fabric and is undertaken using only original methods and materials, including only using lime mortars.
8. Any of the internal walls of the original duplex that are to be removed are retained as interpretative bulkheads above 2400mm height from the floor.

Advice Note(s):

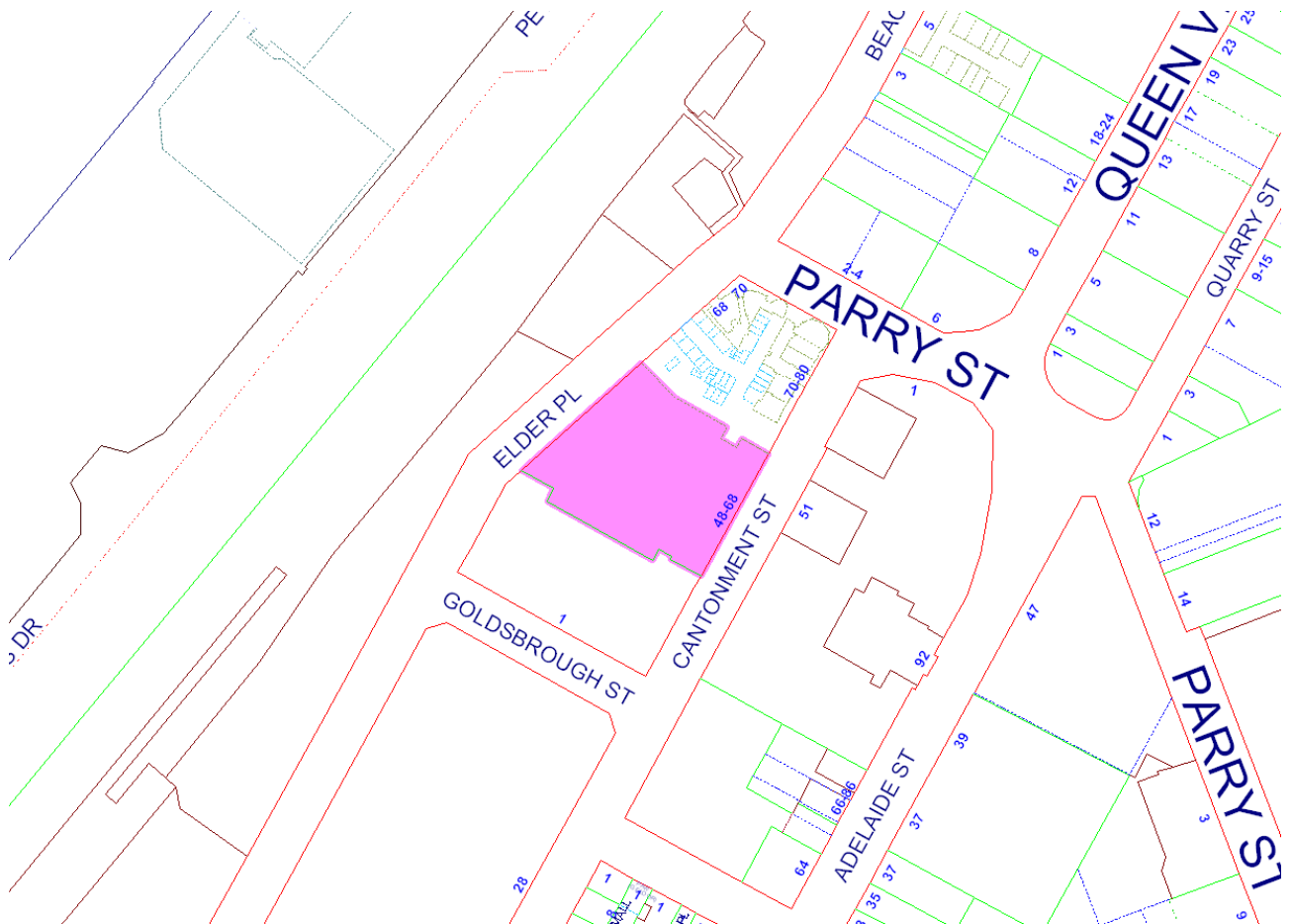
- i. In relation to Condition 4, the applicant is advised that the definition of 'Visually permeable' as prescribed by Local Planning Policy 2.8 is as follows:

“In reference to a wall, gate, door or fence that the vertical surface has:

- Continuous vertical or horizontal gaps of at least 50 mm width occupying not less than one half of its face in aggregate of the entire surface or where narrower than 50 mm, occupying at least two thirds of the face in aggregate, as viewed directly from the street; or
- A surface offering equal or lesser obstruction to view.”

PSC1304-49 SAT MATTER - CANTONMENT STREET NO 48-68 (LOT 201 AND STRATA LOT 40 ON LOT 202) REMOVAL OF TIMBER FLOORING FROM HERITAGE LISTED SITE

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Responsible Officer: Manager Statutory Planning
Actioning Officer: Coordinator Planning Mediation
Date of Meeting: 3 April 2013
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC 1203-29 (7 March 2012)
Attachment 1: Copy of Written Direction Notice
Attachment 2: 7 March 2012 PSC Report
Owner Name: MMAGS
Submitted by: N/A
Scheme: City Centre
Heritage Listing: Heritage List – Local Planning Scheme No. 4
MHI Management Category 2
Existing Landuse: Vacant Building



EXECUTIVE SUMMARY

The matter is referred to the Planning Services Committee (PSC) as Section 26 of the State Administrative Tribunal Act 2004 (the Act), permits Council, with the agreement of both the appellant and the respondent, to re-consider its previous decision to serve a Written Direction Notice (the Notice) requiring the removed timber flooring and joists to be re-instated at the Woolstores building. This matter is still within the mediation process of the SAT process.

The City commenced action against the owners of the site due to the unauthorised removal of timber flooring and joists within the building by:

- Issuing a Written Direction Notice (the Notice) under Section 214 of the Planning and Development Act (the P&D Act); and
- Instituting legal action under Section 218 of the P&D Act.

The owners requested the State Administrative Tribunal (SAT) to Review the Notice that was issued to re-instate the timber flooring and joists that were removed. The legal action was commenced, but has been placed on hold while the Notice is resolved through the SAT process.

As a consequence of the SAT mediation process, a draft Deed has been prepared and submitted to Council for consideration under Section 26 of the SAT Act. The draft Deed seeks:

- To vary the content of the Notice by allowing the owners to store and maintain the returned timber under specific conditions until it is needed in any re-development proposal for the site in lieu of re-instating only the useable timber flooring and joists/beams; and
- The withdrawal of the legal proceedings and for each party to bear their own costs.

The matters of the Notice and legal action are two completely different actions.

A copy of the Notice is attached to the Report (Attachment 1)

The City is concerned that there is still potentially a significant amount of timber that has not been returned and should be returned to the building. Therefore, on this basis, it is recommended that the SAT be advised that the Deed is not supported.

BACKGROUND

During December 2011, the City received a complaint that timber had been removed from the 1950s Woolstores building and re-located to another site. The City inspected the site in December 2011 and established:

- That it was visible that there was fresh cuts to the end of certain in-situ timber joists at the first floor level;
- The flooring to the first floor level appeared to have been removed; and
- There was some flooring and other timbers that were in piles on the ground floor level; and
- Existing timber beams with fresh saw cuts were stacked on the ground floor level.

The City, through its solicitors, wrote to the owners of the site on the 5 January 2012 requesting an explanation of the works undertaken. An interim response was received on the 11 January 2012 advising that a further response would be provided in the week commencing the 16 January 2012. The City's solicitors wrote again on the 31 January 2012 seeking a final response to its letter, which it received on the 1 February 2012.

The response received by the City on the 1 February 2012 confirmed that a section of floor joists and timber boards had been cut from the 1950s building. Further, the City was advised that a portion of the timber removed was found to be rotten and was piled onsite. The removal of this rotten timber was raised as an issue by the owner, as it was considered that this material had the potential to be a hazard, which the owners would then seek guidance from the City on.

It was also confirmed in that letter that the:

- (i) sound beams had been stacked and stored onsite; and
- (ii) sound floorboards were removed from the site and placed into storage, but would be returned to the site in the week commencing the 6 February 2012.

The solicitors representing the owners also advised that no further timbers had been cut nor would they be cut without the client making application the appropriate planning application to the Fremantle City Council.

The City received a letter dated the 16 February 2012 confirming the return of timber flooring that had been stored offsite. An inspection of the site occurred on the 23 February 2012.

At its 7 March 2012 meeting, the Planning Services Committee resolved as follows:

That Council, having regard to the unauthorised removal of timber flooring and joists from No. 48-68 Cantonment Street, which is a building that is on the Heritage List of Local Planning Scheme No. 4, authorises the Chief Executive Officer to commence the following actions against the owners of the site:

- 1) *Take legal action against the owners for a breach of Clause 8.1 of Local Planning Scheme No. 4; and*
- 2) *A Written Direction Notice be issued requiring the owners to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the Chief Executive Officer.*

The City commenced legal action and issued the Notice.

The owners requested the SAT to review the decision of the Local Authority in relation to the Notice. The matter was the subject of the SAT mediation process and at an onsite mediation hearing was held on the 24 August 2012. The SAT on-site mediation session was attended by the owner's representatives, solicitors representing the owners and the City, Cr Sullivan, City staff and the SAT mediator. Through the mediation process, the parties agreed to develop a draft Deed of Agreement for consideration by Council on the matter of the returned timbers and the legal action. The Deed was developed over a period of time.

In relation to the legal action, this has been held in abeyance by the court depending upon the outcome of the re-consideration of the Notice by Council.

STATUTORY AND POLICY ASSESSMENT

The matter is the subject of a review under the State Administrative Tribunal Act 2004. At this point, the matter is in mediation and consequently, the matter is dealt with on a “without prejudice” basis.

Section 26 of the Act states the following:

26. *Restriction on powers of decision-maker after review commenced*

After the commencement of a proceeding for the review of a decision the decision-maker cannot —

- (a) vary the decision; or*
 - (b) set aside the decision and substitute its new decision,*
- unless —*
- (c) that is permitted by the enabling Act;*
 - (d) the parties to the proceeding consent; or*
 - (e) the decision-maker is invited under section 31 to reconsider the decision.*

DETAILS

In response to the Notice to the applicant advising that the removed timbers were to be returned and re-instated, a request for a Review of the Notice was submitted to the SAT. The matter is still subject to the SAT mediation process. As a consequence of this process, the applicant has submitted:

- A draft Minute of Consent that seeks to amend part b) of the Section 214 Notice to permit the requirements of the draft Deed to apply, rather than the re-instatement of the returned timbers;
- A draft Deed that seeks to permit the owners to record, protect and store the returned timbers onsite, in accordance with specific requirements as set out in the Deed; and
- Withdrawal of the Section 218 prosecution.

The draft Deed includes a requirement that the owner is to prepare a Preservation Report on the timbers for the approval by the CEO within 14 days of the signing of the Deed, and then to prepare regular reports on the condition of the returned timbers and to ensure that the timbers are stored and looked after until they are used in any development proposal for the site.

Removal of timber can only occur in an emergency or with the approval of the CEO and remain in force until such time as the timbers are required to be used within the building.

On the basis that the returned timber was:

- stored in a safe way,
- inspected on a regular basis; and
- available for re-use in any development proposal for the site;

it was proposed by the applicant that the:

- Deed of Agreement satisfied the intent of the Notice, in that the timber that had been removed, was stored in a safe place on the site; and
- That withdrawal of the legal action occur with both parties being responsible for their own costs

PLANNING COMMENT

The following comments are made concerning the two actions that have been undertaken in relation to the alleged breach of LPS4:

Written Direction Notice – re-instatement of removed timbers

The Notice sought to require the applicant to return all the timbers that had been removed from the site and to reinstate them. It was put that some:

- of the timbers had rotted and were no longer suitable for use,
- could not be returned and no explanation was given; and
- could be returned, which were now stored on the site.

It was also put forward at the on-site meeting that a re-development of the site would result in timbers having to be removed to allow for the provision of lifts, ducting etc. Therefore, it was proposed that it would be more appropriate to store the timbers on-site and for there to be regular inspections and a maintenance program developed to ensure that the returned timbers were protected until such time as they could be used in any development proposal for the site. The draft Deed seeks to put this regime in place.

The content of the draft Deed has been developed with the assistance the City's Heritage Architect and a timber industry representative on the best way to store and maintain the timber. This includes dealing with such matters as the method for removal of the nails within the timber, termites, moisture and ultraviolet light.

The proposed response to the Notice is not in accordance with the Notice and as such is referred to Council for consideration.

Estimated removed/returned timber flooring and joists/beams

The 7 March 2012 report estimated that 7 bays of timber joists had been removed. If the flooring and joists had been removed over the area where the timber had been removed, the area could be up to approximately 13 bays. The following is a summary of the estimates provided by the applicant and the City in relation to the timber flooring and the timber joists at the first floor level.

Flooring	City	Applicant
First Floor – number of bays	7 bays to 13 Bays	10 Bays
Estimated timber floor area cut away	137 sq m to 255 sq m	60 sq m
Estimated timber flooring area returned in good condition	21 sq m	30 sq m
Estimated on-site timber flooring in poor condition	30 sq m	30 sq m
*Estimated total area of returned timber flooring on-site	51 sq m	60 sq m
* Percentage of returned timber flooring on-site	20% to 37%	100%

* “Returned timber” means the returned timber that had been stored off-site and the timber in poor condition on the development site

The City’s assessment for 13 bays has been based on plans received during 2007 (DA199/05) and that there have been no planning approvals issued for the removal of any timber flooring or joists. The 7 bays has been used based on the timber cuts to the extant timber joists.

Timber joists (Approximately 4.0m lengths)	City	Applicant
First Floor – Number of bays	13 Bays	Approx 9 bays
Estimated timber joist cut away	104	76
Estimated timber joists on site	83	76
Percentage of timber joists on the site	96%	100%

The City was also aware that timber joists had been removed from the third floor level of the site following a complaint from a member of the public, but could not determine the extent of any removal. A company representative, when questioned over this matter, confirmed that 15 timber joists beams (approximately 8-9m in length) had been removed from the third floor level.

Options open to Council include:

a) Require compliance with the existing Notice

If the draft Deed is not accepted on this aspect, the Notice will require the owner to:

- i) return all the removed timber;
- ii) establish a method of re-instating the timbers, due to the length of the beams being shortened when they were cut into shorter sections; and
- iii) undertake the work to re-instate the timbers.

If the owner finds this option unacceptable, they could seek to have the matter moved from the SAT Mediation process to a Final Hearing on the content of the Notice. SAT would ultimately determine the final form of the Notice.

The outcome from the Final Hearing process could lead to the content of the Notice remaining unchanged or similar to the content of the draft Deed.

b) Acceptance of the Deed

If Council accepts the mediated outcome as presented, the existing Notice would be varied by the draft Consent Orders, the Deed would become effective from the Date of signing and the applicant would then need to satisfy the content of the Deed. Failure to comply allows the City to commence action against the owner for the breach of the Deed.

Conclusion

The Woolstores building has not been protected from the weather due to a lack of regular maintenance. The weather, especially the rain, has impacted on the condition of the timbers within this section of the building. The owners, in recent times, have undertaken works to assist in weather protecting the building as a consequence of action taken by the City under the Local Government Act.

Any proposal to develop the site would require a thorough inspection of the existing timber beams and flooring to determine whether they would be acceptable for re-use in any adaption of the building. It is unknown at this stage, how much of the in-situ timber beams and flooring could be used in a proposal to re-use the existing building.

The City is of the view that the amount of timber removed/returned is very small based on the information above. It is considered that all the removed timber should be returned to the site and then the details of storing and maintaining the timber could then be considered.

Therefore, it is recommended that the option a) be adopted.

Legal Action – Section 218 Prosecution

The City commenced legal action in the Fremantle Local Courts over the alleged breach of LPS4 through section 218 of the P&D Act. This action has been placed on hold as a consequence of the request for Review of the Notice by SAT.

The draft Deed seeks to draw in together the proposed amendment to the Notice and withdrawal of the Section 218 prosecution on the basis of the Deed proposed by the owners. Council could:

a) Agree to the Deed – withdrawal of the proceedings

If Council agrees to the draft Deed in its current form, then the legal proceedings for breaching LPS4 will then cease. Further, the owner would then need to meet the obligations of the Deed once signed, to maintain the existing timber flooring/joists that have been returned to-date.

b) Agree to Deed subject to removal of the section of the draft Deed concerning the City's withdrawal from the Section 218 prosecution action

Council could agree to the draft Deed subject to the removal of the section "agreeing to withdrawal from the legal proceedings". The owner would then determine what course of action they would wish to take, which could include:

- i) accepting the draft Deed with the change and defending the Section 218 prosecution in the Local Courts;
- ii) accepting the draft Deed with the change and not contesting the Section 218 prosecution in the Local Courts; or
- iii) withdrawing from the SAT process, re-instating the removed timber and contesting/not contesting the Section 218 prosecution action.

c) Not agree to draft Deed

If the draft Deed was not supported, then the next course of action would then be determined through the SAT process in relation to the Notice. Once that matter is resolved, then the City could take the prosecution matter further.

CONCLUSION

The Notice was issued to obtain the return of all removed timber. Based on the estimates, there appears to be still a significant amount of timber that has not been returned. Council needs to determine whether it wishes to continue to seek the return of all the removed timber.

The action undertaken under Section 218 on the P & D Act was instigated on the basis of a Council resolution that related to the unauthorised removal of the timber from within a building on the City's heritage list. From the evidence and discussions with the City's solicitors, there is a strong likelihood that a prosecution could be achieved.

Based on the discussion above, the officers recommend that the PSC:

- not agree to the draft Deed at this stage;
- seeks the return of all removed timber; and
- authorise the continuation of the legal proceedings under Section 218 of the Planning and Development Act for the unauthorised removal of timber from a heritage listed building, as soon as practical.

OFFICER'S RECOMMENDATION

- A That Council, having regard to Section 26(a) and (b) of the State Administrative Tribunal Act 2004, advise the State Administrative Tribunal that it does not agree to the draft Deed, as the City is of the view that there is still a significant amount of timber that has yet to be returned and the Council is not yet satisfied that sufficient explanation for this has been provided, and;**

- B That Council authorises the Chief Executive Office to continue with the legal proceedings under Section 218 of the Planning and Development Act for the unauthorised works as soon as practical.**

PSC1304-50 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.

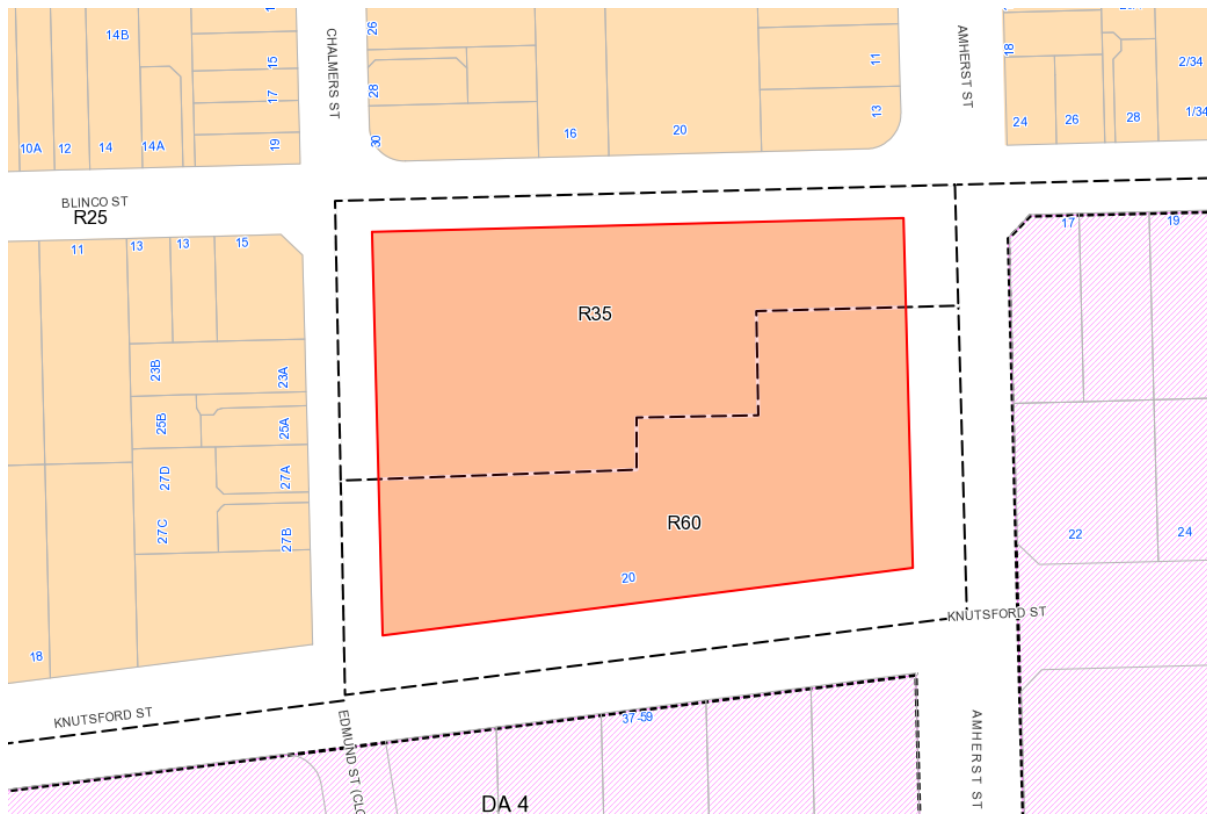
OFFICER'S RECOMMENDATION

That the information is noted.

REPORTS BY OFFICERS (COUNCIL DECISION)

**PSC1304-51 PROPOSED SCHEME AMENDMENT NO. 56 - NEW SCHEDULE 12
SUB AREA FOR 20 (LOT 1354) KNUTSFORD STREET, FREMANTLE
- FINAL ADOPTION**

DataWorks Reference: 218/062
Disclosure of Interest: Nil
Meeting Date: 3 April 2013
Responsible Officer: Manager Statutory Planning
Actioning Officer: Strategic Planning Officer
Decision Making Level: Council
Previous Item Number/s: PSC1211-176 - 28 November 2012
Attachments: Schedule of Submissions



EXECUTIVE SUMMARY

The purpose of this report is to recommend to Council final adoption of Amendment No. 56 to the City's Local Planning Scheme No. 4 (LPS4) , relating to No. 20 (Lot 1354) Knutsford Street, Fremantle.

The scheme amendment introduces a new sub area into LPS4 Schedule 12, Local Planning Area 2 – Fremantle, for the site known as No. 20 (Lot 1354) Knutsford Street, Fremantle. The proposed new sub area will permit a broader range of working from home uses and a modified maximum building height provision to allow for concealed roof types.

The amendment was placed out for public comment and three submissions were received. One submission raised concerns over traffic in the area and two stated no objection.

Since initiation of the amendment another of the City's Scheme amendments (Scheme Amendment No. 51) has been gazetted (7 December 2012). This Scheme amendment introduced sub area 3 into Schedule 12 of LPS4 for Local Planning Area 2 – Fremantle. Accordingly this Scheme amendment will be renumbered to sub area 4 under Local Planning Area 2 – Fremantle.

Therefore, it is recommended that Council resolves to adopt the amendment to the City's LPS4 with the above minor modification to the sub-area numbering.

BACKGROUND

At its ordinary meeting of Council, 28 November 2012, Council adopted Scheme Amendment No. 56, new Schedule 12 sub area & requirements for 20 (Lot 1354) Knutsford Street, for public comment.

For further background information please see the initiation report on Scheme Amendment No. 56 in the ordinary meeting of Council minutes 28 November 2012 (PSC1211-176).

CONSULTATION

Following referral from the Environmental Protection Authority, advertising of the scheme amendment was undertaken in accordance with regulation 25(2) of the Town Planning Regulations 1967. The proposed scheme amendment was advertised for comment from 29 January 2013 to 15 March 2013, with advertisements being placed in the Fremantle Gazette for two consecutive weeks and West Australian newspaper for one week.

Owners and occupiers within a 100 metre radius of 20 Knutsford Street were notified along with the City's precinct groups, utility companies, and key agencies. Copies of the amendment and policy documents were made available for viewing at the Service and Information counter at the Town Hall Centre and on the City's website.

Three submissions were received (refer to Attachment 1 – schedule of submissions for further information). Two submissions raised no objection to the scheme amendment. One submission raised concerns and further questions over future traffic management in the area. This submission has been forwarded to the City’s Technical Services Department to address the submitter’s questions as they relate to general traffic management issues rather than the content of the scheme amendment.

PLANNING COMMENT

The amendment will introduce a new sub area into Schedule 12 of LPS4 specific to 20 (Lot 1354) Knutsford Street, Fremantle. The sub area will permit a broader range of working from home uses and a modified maximum building height provision to allow for concealed roof types on R60 density development on the subject site.

The two components (height and additional uses) of the amendment are detailed below.

Additional height requirements

The current specific height control in LPS4 for R60 development on Lot 1354 (20 Knutsford Street, Fremantle) allows for 3 storey development, however does not allow for three storey development with a flat (concealed) roof higher than 9m. Accordingly it is proposed that the current specific height requirements be deleted from LPS4 and replaced by the height controls in the Residential Design Codes 2010 (R-codes), Table 3 Category C (development on three levels).

Category C has the same requirements as currently provided in LPS4 (9m external wall height and 12m to of pitch roof height) with an additional requirement that caters for concealed roofs (see below). This amendment to the scheme will allow for greater scope in design of the R60 developments, including potentially three storey development with a flat roof (concealed).

Height measurement	Current requirements in LPS4	Category C requirements of the R-codes 2010
Top of external wall (roof above)	9m	9m
Top of external wall (concealed roof)	None	10m
Top of pitched roof	12m	12m

Home uses

Additional use

20 Knutsford Street, Fremantle, is zoned Residential. Land uses in the Residential zone are restricted to the type of uses where a member of the household works from home (e.g. home – office, store, business or occupation). These uses are further restricted by the land use definition in LPS4 which cannot be varied. For example, the definition of the uses home business and home occupation restrict the floor size of each use to 50 and 20 square metres, respectively. The definitions further restrict the number of employees allowed to be employed from outside the household, signage and use type.

This scheme amendment proposes allowing for larger work from home uses within development at 20 Knutsford Street. To do this, as land use definitions in LPS4 cannot be varied, the amendment proposes an additional use of 'Office' be provided for the area and the use restricted through the following provisions:

- i. The gross lettable area of the Office use does not exceed 80m²;
- ii. The Office use is operated by an occupier of the household; and
- iii. The Office use does not employ more than three employees (not including any occupiers of the household);

The additional Office use within the Scheme amendment area is intended to provide for a diverse range of home based office/business uses on an appropriate scale for the Residential zone. The additional use reflects the surrounding neighbourhood's uses and activity and will increase the vibrancy and activity of the area during the day.

Permitted Uses

As this 'standalone' site is considered an opportunity to encourage a mix of home uses, the Scheme amendment also proposes that the additional office use and home occupation, home office, home business and home store uses shall be considered "P" (permitted and not require planning approval) uses and the requirements of Table 3 – Vehicle Parking of LPS4 will not apply to these development types (only the office and home store use currently have vehicle parking requirements under table 3; there are no parking requirements for home occupation, home office, home business). Permitting these uses without planning approval lowers barriers to the establishment of small scale home uses, which in turn fosters and encourages the start up of these business types in the area.

The increased potential for home businesses, coupled with the suspended vehicle parking requirements, raises the concern of whether adequate vehicle parking will be provided in the area and surrounds. In general, home business uses do not require more car parking than what is provided on site as they are predominantly undertaken by resident(s) of the dwelling. Furthermore, it is anticipated that not all dwellings will take up a home business/office use. Nonetheless, the consortium developing the area have provided on-street parking at one bay per two dwellings and have designed several residences with the opportunity to provide an additional onsite vehicle car bay in the development's courtyard. These design initiatives are considered to provide the area with adequate additional vehicle parking to service the demand created through home business/office uses.

Minor Modification

The original Scheme amendment proposed numbering the new sub area for 20 (Lot 1354) Knutsford Street in Local Planning Area 2 – Fremantle, as sub area 3. However, since initiation of the amendment another of the City's Scheme amendments (Scheme Amendment No. 51) has been gazetted (7 December 2012). This Scheme amendment introduced sub area 3 into LPS4's Schedule 12 Local Planning Area 2 – Fremantle. Accordingly this Scheme amendment requires minor modification of the numbering to sub area 4 under Local Planning Area 2 – Fremantle.

CONCLUSION

The scheme amendment introduces into LPS4 a new sub area into Schedule 12, Local Planning Area 2 – Fremantle, for No. 20 (Lot 1354) Knutsford Street, Fremantle. The proposed new sub area will permit a broader range of working from home uses in the area and provide an additional height provision to allow for concealed roof types.

Three submissions were received on the amendment. Two submissions were generally supportive and one submission raised concerns over traffic in the area.

A minor modification of the amendment is required to renumber the proposed sub area to 4 instead of 3 under Local Planning Area 2 – Fremantle. This is due to another of the City's Scheme amendment's being gazetted and using the sub area 3 for Local Planning Area 2 – Fremantle, between the time of initiation and final adoption of this Scheme amendment.

Accordingly, it is recommended Council resolve to adopt Scheme Amendment No. 56 to LPS4 with the minor modification to the sub-area numbering described above.

OFFICER'S RECOMMENDATION

That Council:

1. Note the submissions received as detailed in the Officer's report and attachment 1;
2. Resolve, pursuant to Section 75 of the Planning and Development Act 2005 and Regulation 17(2)(a) of the Town Planning Regulations 1967, to adopt the following amendment to the City of Fremantle Local Planning Scheme No. 4 with minor modification:

- A. Delete the following wording from Schedule 12, Local Planning Area 2 – Fremantle, 2.1 Height requirements:

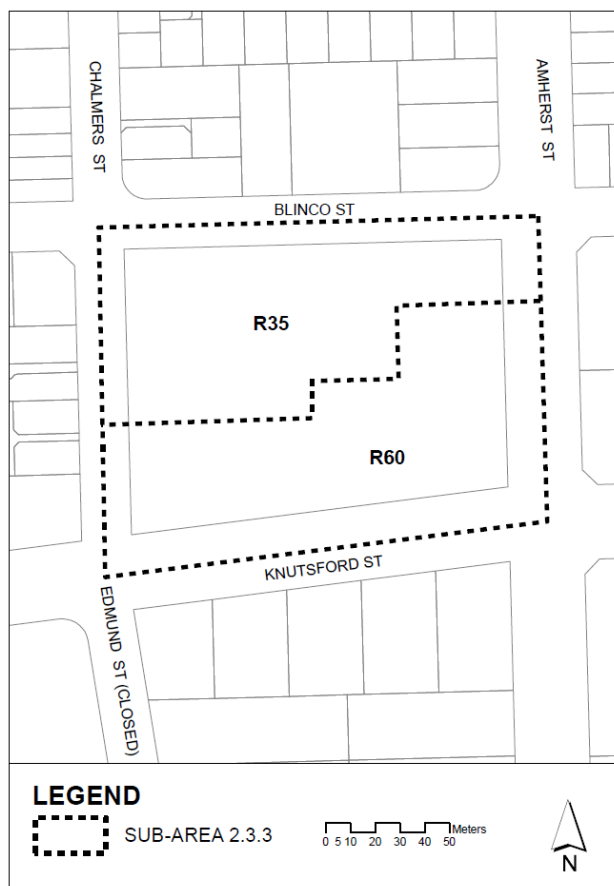
excepting that portion of Lot 1354 Knutsford Street as shown on the Scheme map as having a density coding of R60, where the following shall apply:

- 9m maximum to the top of the external wall and 12m to the top of a pitched roof.

- B. Introduce Sub Area 4 – 20 (Lot 1354) Knutsford Street, Fremantle into Schedule 12 after Local Planning Area 2 - Sub Area 3

2.3.4

Sub Area 4 – 20 (Lot 1354) Knutsford Street, Fremantle



1. The building height requirements on the properties coded R60 shall be as per the Category C maximum building heights of Table 3 of the Residential Design Codes

2. Notwithstanding the requirements of Table 2 – Zoning, an Office use will be permitted in Residential developments where the use meets the following:

i. The gla of the Office use does not exceed 80m2;

ii. The Office use is operated by an occupier of the household; and

iii. The Office use does not employ more than three employees (not including any occupiers of the household);

3. The office use mentioned in clause 2 above and the uses home occupation, home office, home business and home store shall, notwithstanding the provisions of table 2 – Zoning and table 3 – Vehicle Parking, be considered “P” uses as per clause 4.3.3.

- 3. Authorise the Mayor and Chief Executive Officer to execute the relevant documentation and affix the common seal of the City of Fremantle on the documentation.**
- 4. Request the Minister for Planning to grant final consent to Scheme Amendment No. 56 as referred to in (2) above.**

CONFIDENTIAL MATTERS

Nil.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND 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 of budgetary considerations. All consultations will clearly outline from the outset any constraints or

How consultative processes work at the City of Fremantle	
	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.	<p>1 As City officers have the responsibility to provide</p> <p>2 objective, professional advice to decision-makers,</p> <p>.</p> <p>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.</p>
Citizens need to check for any changes to decision making arrangements made	<p>1 The City will take initial responsibility for making</p> <p>3 citizens aware of expected time-frames and</p> <p>.</p> <p>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.</p>
Citizens are entitled to know how their input has been assessed	<p>1 In reporting to decision-makers, City officers will in</p> <p>4 all cases produce a community engagement</p> <p>.</p> <p>outcomes report that summarises comment and recommends whether it should be taken on board, with reasons.</p>
Reasons for decisions must be transparent	<p>1 Decision-makers must provide the reasons for</p> <p>5 their decisions.</p> <p>.</p>
Decisions posted on the City's website	<p>1 Decisions of the City need to be transparent and</p> <p>6 easily accessed. For reasons of cost, citizens</p> <p>.</p> <p>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.</p>

Issues that Council May Treat as Confidential

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

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

