AGENDA
Planning Committee

Wednesday, 6 December 2017, 6.00pm
Elected Members

A Planning Committee meeting of the City of Fremantle will be held on **Wednesday, 6 December 2017** in the Council Chamber, Town Hall Centre, 8 William Street, Fremantle (access via stairs, next to the playground in Kings Square) commencing at 6.00 pm.

Paul Garbett
**DIRECTOR STRATEGIC PLANNING & PROJECTS**

1 December 2017
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

DISCLOSURES OF INTEREST BY MEMBERS

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

PUBLIC QUESTION TIME

DEPUTATIONS / PRESENTATIONS

LATE ITEMS NOTED

CONFIRMATION OF MINUTES

That the minutes of the Planning Committee dated 1 November 2017 be confirmed as a true and accurate record.

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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

PC1712 -1 HENDERSON STREET, NO.19 - 29 (LOT 2074), FREMANTLE - CHANGE OF USE TO HOTEL AND ADDITIONS AND ALTERATIONS TO EXISTING BUILDINGS - (SP DAP005/17)

Meeting Date: 6 December 2017
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee Comment to JDAP
Attachments:
1. Location plan
2. Development plans
3. State Heritage Office Comments
4. Schedule of Submissions

SUMMARY

Approval is sought for a change of use to Hotel and additions and alterations to the existing ‘Warders Cottages’ at the corner of Henderson Street and William Street, Fremantle.

As the value of the proposal is $3.5 million, the applicant has opted to have the application determined by the metro south-west Joint Development Assessment Panel (JDAP).

The City’s Responsible Authority Report (RAR) is referred to the Planning Committee (PC) for comment, prior to being forwarded to the JDAP. The resolution of the PC can be included in the RAR as the PC’s comment to the JDAP.

The application is recommended for conditional approval.

PROPOSAL

Detail
Approval is sought to convert the existing six two storey Warders Cottages ‘W1 Block’ located at No.19-29 Henderson Street, into a Hotel development containing 11 boutique guest rooms and a 490sqm rear bar/restaurant area. The proposed additions and alterations include the following:

• alterations to the existing Warders Cottages to provide a reception, bar/café area and 11 guest rooms,
• a two storey rear addition to the existing Warders Cottages to provide stair and lift access to the upper floor guest rooms,
• a two storey rear addition to accommodate kitchen, toilet, storeroom and staff areas for the proposed 490sqm bar/restaurant area at the rear of the existing Warders Cottages.

The full details of the proposal and City Officer’s assessment are contained in the RAR reproduced in the second part of this report.

Site/application information
Date received: 21 September 2017
Owner name: Heritage Council of Australia
Submitted by: Matthew Crawford Architects
 Scheme: City Centre
Heritage listing: Level 1A, Located within WECA Heritage Area
Existing land use: Six (6) Grouped dwellings
Use class: Hotel
Use permissibility: ‘A’

OFFICER’S RECOMMENDATION

Planning Committee acting under delegation 2.1:

SUPPORT the Officer’s Recommendation contained in the Responsible Authority Report as follows:

Approve DAP Application reference DAP/17/01285 and accompanying plans dated 1 November 2017 in accordance with Clause 68 of the Planning and Development (Local Planning Schemes) Regulations 2015 and the provisions of the Metropolitan Region Scheme and the City of Fremantle Local Planning Scheme No. 4, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 23 November 2017. It does not relate to any other development on this lot and must substantially commence within 4 years from the date of the decision letter.

2. All storm water discharge shall be contained and disposed of on site or otherwise approved by the Chief Executive Officer, City of Fremantle.

3. The signage proposed on approved plans DAP005/17, dated 23 November 2017, does not form part of this approval.

4. This development approval does not relate to any works within the road reserve of Henderson Street and William Street, including the proposed hotel car parking bays with the exception of the awning to William Street.

5. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the Chief Executive Officer, City of Fremantle.
6. Prior to the issue of a building permit, detailed drainage plans shall be submitted and approved by the Chief Executive Officer, City of Fremantle.

7. Prior to the issue of a building permit, the design and materials of the development shall adhere to the requirements set out within City of Fremantle policy L.P.P2.3, Fremantle Port Buffer Area Development Guidelines for properties contained within Area 2. Specifically, the development shall provide the following:
   a) Glazing to windows and other openings shall be laminated safety glass of minimum thickness of 6mm or “double glazed” utilising laminated or toughened safety glass of a minimum thickness of 3mm.
   b) Air conditioners shall provide internal centrally located ‘shut down’ points and associated procedures for emergency use.
   c) Roof insulation in accordance with the requirements of the Building Codes of Australia

8. Prior to the issue of a building permit, details of the proposed noise and vibration attenuation measures that are to be incorporated into the internal and external design of the development, to demonstrate compliance with the Environmental Protection (Noise) Regulations 1997, shall be submitted for approval and implemented during the construction of the development to the satisfaction of the Chief Executive Officer, City of Fremantle. Details of the proposed attenuation measures should be accompanied by an updated Acoustic Consultants report detailing the developments compliance with the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the Chief Executive Officer, City of Fremantle.

9. Prior to the issue of a Building Permit, a detailed schedule of the proposed conservation works and new works to be undertaken to the Warders Cottage building, including works required to satisfy Conditions 7 and 8 and construction details of the secondary ceiling proposed for the ground floor units, the proposed door openings in the upper level and new floor is to be submitted for approval and undertaken to the satisfaction of the Chief Executive Officer, City of Fremantle. The schedule is to include details of the impacts and consequences of the proposed new works on the existing heritage fabric of the Warders Cottages building to the satisfaction of the Chief Executive Officer, City of Fremantle.

10. Prior to the issue of a building permit for the new works, details of the provision of five (5) Class 1 and five (5) Class 3 bicycle bays to be provided, in a location approved and to the satisfaction of the Chief Executive Officer, City of Fremantle.

11. Prior to the issue of a building permit, the provision of one (1) unisex shower shall be provided to the satisfaction of the Chief Executive Officer, City of Fremantle.

12. Prior to the issue of a building permit, the owner is to submit a waste management plan for approval detailing the storage and management of the
waste generated by the development to be implemented to the satisfaction of the Chief Executive Officer, City of Fremantle.

13. Prior to the commencement of development, an archaeological investigation of the site located to the rear of the existing Warders Cottages buildings is to be undertaken by a suitably qualified person at the applicant’s expense and a copy of the report of that investigation is submitted and approved by the Chief Executive Officer, City of Fremantle.

14. Prior to the occupation of the development hereby approved as part of DAP005/17, an external lighting and signage strategy shall be submitted for approval and thereafter implemented and maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.

15. Prior to the occupation of the development hereby approved as part of DAP005/17, a Business Management Plan detailing hours of opening, patron capacity (including minimum seating capacity), noise management, waste management, security services and patron management including access/egress from all access points shall be submitted for approval and thereafter implemented and maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.

16. Prior to the occupation of the development hereby approved, the boundary walls located on the east and south eastern boundaries shall be of a clean finish in any of the following materials;
   • coloured sand render,
   • face brick,
   • painted surface,
   • other approved finish
and be thereafter maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.

17. Prior to the occupation of the development hereby approved as part of DAP005/17, the owner shall contribute a monetary amount equal in value to one percent of the estimated development cost, as indicated on the Form of Application for Planning Approval, to the City of Fremantle for development of public art works and/or heritage works to enhance the public realm. Based on the estimated cost of the development being $3,500,000 the contribution to be made is $35,000.

Advice Notes

i) With regard to condition No. 4, the applicant is advised that the City is not prepared to support a request for the exclusive use of any on street public car parking bays located in Henderson Street, for the Hotel development.

ii) With regard to condition No. 13, the final archaeological report should include:
   • a brief summary of the subject site, including a study background of the property referencing the evidence upon which the investigation has been requested;
• description of the site investigations carried out, including location and dimensions of any exploratory dig(s) undertaken;
• all detailed recordings of any findings of archaeological artefacts through surveyed measurements, drawings, documented descriptions and/or photographs, all portrayed upon a site plan(s) when appropriate;
• an analysis of the historical archaeological (including built environment) evidence with the archival documentation (e.g. maps, photographs, documented past use); and
• an archaeological conservation plan including recommendations for heritage interpretation, if warranted.

Council will require one (1) unbound hard copy, four (4) bound copies in A4 format and one (1) electronic copy on disc in either Microsoft Word (.doc) or Adobe Acrobat (.pdf) format, including all graphic materials.

Of the bound hard copies of the report submitted, Council will provide:
• one copy to the Heritage Council of Western Australia;
• one copy to the Local History Section of the City’s library; and
• one copy to the subject property’s owner.

Please refer to the City of Fremantle’s Local Planning policy LPP2.7 for additional information. http://www.fremantle.wa.gov.au/development/planning-policies

iii) With regard to condition 7, LPP2.3 recognises that it may not be possible to achieve compliance with these requirements in cases where an application involves the adaptive reuse of a heritage listed building. The requirement may be waived on the submission of evidence that compliance would be detrimental to the heritage significance of the building.

iv) With regard to condition 17 relating to the public art contribution, the applicant is advised that Council may waive the requirement for the public art/heritage work contribution in accordance with clause 6 of LPP 2.19 where the development incorporates public art in the development to the same value as that specified in Condition 17 that is located in a position clearly visible to the general public on the site of the development. In determining the appropriateness and artistic merit of the public art, council shall seek relevant professional advice.

v) A Building permit is required for the proposed Building Works. A certified BA1 application form must be submitted and a Certificate of Design Compliance (issued by a Registered Building Surveyor Contractor in the private sector) must be submitted with the BA1.

vi) The proposed changes to the buildings must comply with current BCA requirements for the proposed use(s).

vii) The applicant should ensure compliance with Part D3 of the BCA (Access for People with a Disability) can be achieved.

viii) The proponent must make application to establish the food business so that the premises comply with the Food Act, Regulations and the Food Safety
Standards incorporating AS4674-2004 Design, construction and fit-out of food premises and make application for an alfresco dining area. Submit detailed architectural plans and elevations to the City’s Environmental Health Services for approval prior to construction. The food business is required to be registered under the Food Act 2008 and licensed under the City’s Alfresco Dining Areas Local Laws 2014. Submit detailed architectural plans and elevations to the City’s Environmental Health Services for approval prior to construction. The food business is required to be registered under the Food Act 2008. For enquiries and a copy of the application form contact the City’s Environmental Health Services by email health@fremantle.wa.gov.au or telephone 9432 9856.

ix) The proponent must make application during the Building License application stage to the City’s Environmental Health Services via Form 1 - Application to construct, alter or extend a public building as a requirement of the Health (Public Buildings) Regulations 1992. For enquiries and a copy of the application form contact the City's Environmental Health Services by email health@fremantle.wa.gov.au or telephone 9432 9856.

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xi) Prior to the issue of a Building Permit a Construction Management Plan shall be submitted addressing the following matters:
   a) Use of City car parking bays for construction related activities;
   b) Protection of infrastructure and street trees within the road reserve;
   c) Security fencing around construction sites;
   d) Gantry;
   e) Access to site by construction vehicles;
   f) Contact details;
   g) Site offices;
   h) Noise - Construction work and deliveries;
   i) Sand drift and dust management;
   j) Waste management;
   k) Dewatering management plan;
   l) Traffic management; and
   m) Works affecting pedestrian areas.

The approved Construction Management Plan shall be adhered to throughout the demolition of the existing building on site and construction of the new development. The applicant should liaise with the City’s Infrastructure and Project Delivery department to discuss specific requirements for this site.

xii) Any person proposing to alter, demolish or remove materials containing asbestos in buildings or fences must comply with the regulations that prescribe:
Under ten (10) square metres of bonded (non-friable) asbestos can be removed without a licence and in accordance with the Health (Asbestos) Regulations 1992 and the Environmental Protection (Controlled Waste) Regulations 2001. Removal of more than 10 square metres must be completed by a licensed person or business for asbestos removal. All asbestos removal is to be carried out in accordance with the Occupational Safety and Health Act 1984 and accompanying regulations and the requirements of the Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]. Note: Removal of any amount of friable asbestos must be done by a licensed person or business and an application submitted to WorkSafe, Department of Commerce. http://www.docep.wa.gov.au.

xiii) For further information relation to condition 9, please contact the respective officer at the State Heritage Office on (08) 6552 4000.

Form 1 - Responsible Authority Report
(Regulation 12)

| Property Location: | No. 19-29 (Lot 2074) Henderson Street, Fremantle |
| Development Description: | Change of Use to Hotel and Additions and Alterations to Existing Buildings |
| DAP Name: | Metropolitan South-West Joint Development Assessment Panel |
| Applicant: | Matthew Crawford Architects |
| Owner: | Heritage Council of Australia |
| Value of Development: | $3,500,000 |
| LG Reference: | DAP005/17 |
| Responsible Authority: | City of Fremantle |
| Authorising Officer: | Manager Development Approvals |
| DAP File No: | DAP/17/01285 |
| Report Due Date: | 7 December 2017 |
| Application Received Date: | 21 September 2017 |
| Application Process Days: | 90 Days |
| Attachment(s): | 1: Location Plan |
|  | 2: Development Plans |
|  | 3: State Heritage Office Comments |
|  | 4: Schedule of Submissions |

Officer Recommendation:

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   c) Security fencing around construction sites;
   d) Gantry;
   e) Access to site by construction vehicles;
   f) Contact details;
   g) Site offices;
   h) Noise - Construction work and deliveries;
   i) Sand drift and dust management;
   j) Waste management;
   k) Dewatering management plan;
   l) Traffic management; and
   m) Works affecting pedestrian areas.

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Details: outline of development application

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<th>Zoning</th>
<th>MRS:</th>
<th>Central City Zone</th>
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<tr>
<td>LPS:</td>
<td>City Centre Zone</td>
<td></td>
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<tr>
<td>Use Class:</td>
<td>A - Hotel</td>
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<tr>
<td>Development Scheme:</td>
<td>City of Fremantle Local Planning Scheme No. 4</td>
<td></td>
</tr>
<tr>
<td>Lot Size:</td>
<td>1,320m²</td>
<td></td>
</tr>
<tr>
<td>Existing Land Use:</td>
<td>Six, Two Storey Grouped Dwellings</td>
<td></td>
</tr>
</tbody>
</table>

On 21 September 2017, the City received an application to change the use of the existing six, two storey cottages known as the ‘Warders Cottages W1 Block’ at 19 – 29 Henderson Street, Fremantle to a Hotel including the following:

- alterations to the existing Warders Cottages to provide a reception, bar/café area and 11 guest rooms,
- a two storey rear addition to the existing Warders Cottages to provide stair and lift access to the upper floor guest rooms,
- a two storey rear addition to accommodate kitchen, toilet, storeroom and staff areas for the proposed 490sqm bar/restaurant area at the rear of the existing Warders Cottages.

Access and egress to and from the development is provided via William Street, Henderson Street (individual entries to guest room verandahs) and Market Lane (Hotel entry, bar/restaurant entry and service entry).

Revised plans were submitted to the City on 1 November 2017, to satisfy the concerns of the Department of Planning, Lands and Heritage (State Heritage Office).

The proposed works are as follows:
Proposed partial demolition:
- Partial demolition of the north garden wall on William Street to facilitate access to the Hotel
- Partial demolition of south Market Lane garden wall to allow for access from the public access way
- Removing portions of the east side wall of the cottages to allow first floor links to upper level Hotel units in line with the existing staircases.
- Removal on mature vegetation at the rear of site

Proposed additions and alterations:
- Separated two storey stair, lift and walkway to the rear (east) of the Warders Cottages
- Two storey building on the rear (east) boundary which consists of toilets, storage, cool room and kitchen facilities associated with the bar/restaurant area
- Single storey covered bar/dining area
- Canopy over the William Street entry to the bar/restaurant area.
- Alterations to the Warders Cottages to provide a ground floor reception and café
- Internal alterations to convert the Warders Cottages into individual guest rooms including:
  - Sealing existing internal stairs with stud walls to remove access between the lower and upper levels and the addition of bathrooms in each room
  - Insertion of minor services runs for electrical and telecom wiring, television aerial and air-conditioning refrigerant pipework
  - Electrical and telecoms to be routed via surface mounted conduits
  - Air conditioning fan coil units to be floor mounted bulkhead units into the cabinetwork
  - Repainting bedrooms and floor sanding and oiling
  - Refurbishment of windows
  - Tiling of bathrooms over existing villaboard lining
  - Plumbing pipework to be concealed in villaboard ducts
  - Adding a new fire rated ceiling to units.
  - Hard and soft landscaping including the retention of two large trees.

The application also indicates the condition of the existing Warders Cottages as having been improved with the completion of recent conservation works however additional conservation works are required, including the following urgent remedial internal works:

- Wall repair including the removal of plaster to front and end walls, washing to remove salts and re-finishing.
- The replacement of the lean-to roof to the rear section including the provision of new gutters, down pipes and connection to new stormwater drainage.
- The repair and replacement of the timber ceiling through the rear section.
- Treatment of walls for mould.
- Making good of all cracks with lime based mortar and limewashing.
- Retain original Metters stoves
- Repair existing floorboards, sand and oil.
- Remove floor tiles in the kitchen (these contain asbestos).
- Refurbish existing windows and doors.
An indicative signage strategy is proposed indicating key locations for signage for the development. As no specific details of the signage is proposed as part of this application, it will not form part of this approval and will be subject to the submission of a signage strategy. It is also noted that the proposal indicates the use of five public car parking bays on the north west side of Henderson Street for the use of the Hotel. As these bays are not within the boundaries of the subject site they do not form part of this application for approval.

The applicant has also submitted details of the proposed trading conditions of the Hotel including the following:

- Hours of opening for the bar/restaurant:
  - 6.00am to Midnight (Monday to Saturday)
  - 10.00am to Midnight (Sunday)

- Maximum capacity:
  - 25 persons in the bar/café in ground floor of No. 19
  - 450 persons in the bar/restaurant area with seating for a minimum of 225 persons

- Provision of security including CCTV and security services
- Restricted entry/egress from the Market Lane entry points including ceasing all access/egress, except for emergency services from 10.00pm every day of a trading week.

See attachment 2 for the development plans.

Background:

The subject site at No. 19 - 29 (Lot 2074) Henderson Street, Fremantle, comprises of six (6) two storey Grouped dwellings.

The subject site is located within the sub area 1.3.1 West End of the City Centre Local Planning Area under Local Planning Scheme No. 4 (‘LPS4’) and exists in the portion of Henderson Street bound by William Street to the north, Parry Street to the east and South Terrace to the south. The density coding for the subject site is R-AC3 and is located within the West End Conservation Area, as well as being listed on the State Register of Heritage Places.
There have been a number of Public Work applications for restoration and other works on the subject site since 2015. Of specific relevance, the Council considered its position in relation to the existing and future land tenure of the Warders Cottages (W1, W2 and W3) and the likely impact this will have on the ongoing preservation and management of the buildings themselves at its meeting of 24 June 2015, where it was resolved to authorise the Chief Executive Officer to write to the State Heritage Office advising that the City of Fremantle’s position in respect of future ownership and use of the Warders’ cottages is as follows, and that the Council remains committed to working collaboratively with the State Heritage Office to try to achieve an effective outcome for the long term conservation and reuse of the cottage consistent with the City’s position:

- The Council is not supportive of a strata title subdivision of the Warders’ cottages, and instead the Council strongly supports the three blocks of cottages each remaining in a single ownership as this is considered most likely to ensure a consistent approach to property management and ongoing conservation of the integrity and other heritage values of the cottages.

- In respect of the cottages in Block W1, due to the proximity of the cottages and their rear gardens to Fremantle Markets future use should be for purposes compatible with market activities; these include (but are not necessarily limited to) use as short stay accommodation intended primarily for occupation by tourist visitors and/or uses at ground level, possibly utilising the rear gardens area, that could interact with the street and/or laneway access to the markets. The Council is not supportive of reoccupation of the cottages in Block W1 as dwellings intended for long term occupancy as a primary residence, as the amenity expectations of long term dwelling occupiers would be difficult to reconcile with the prevailing character of this area.

- In respect of the cottages in Block W2, future use should be considered as part of an integrated approach to adaptive re-use of the former Police Station/old courthouse complex and the W2 cottages as a whole; this could potentially allow for a diverse range of uses compatible with the cultural heritage significance of both places, recognising the impacts of previous modifications to the original heritage fabric of both building groups. The Council would be most supportive of uses which help activate the eastern section of Henderson Street; however an element of residential
use of some form (short and/or long term occupancy) may be supported if it forms part of a broader mix of compatible uses which reactivate the cottages and Police Station complex as a whole.

- In respect of the cottages in Block W3, due to the proximity of the cottages to Fremantle Markets and other hospitality and entertainment land uses in Henderson St Mall and South Terrace Block W3 is exposed to high levels of noise and activity; therefore future use should be for purposes compatible with these predominant existing uses. Short stay tourist-orientated accommodation and/or non-residential uses (at least at ground level) that could interact with the street and complement the established character of the area would be preferable so long as any physical alterations needed to make such uses viable can be undertaken without unacceptable impact on the heritage values of the existing building fabric. The Council is not supportive of reoccupation of the cottages in Block W3 as dwellings intended for long term occupancy as a primary residence, as the amenity expectations of long term dwelling occupiers would be extremely difficult to reconcile with the prevailing character of this area.

Legislation & policy:

City of Fremantle LPS4 Provisions:
The following Scheme provisions are considered the most relevant in the consideration of the planning application:
- Table 1 - Zoning;
- Table 2 – Vehicle Parking requirements;
- Clause 3.2.1(b) – Objectives for the City Centre Zone;
- Schedule 8 – Local Planning Area 1 City Centre – Sub Area 1.3.1 West End

Local Policies
The site is subject to the following relevant Local Planning Policies:
- Local Planning Policy 1.3 – Public Notification of Planning Proposals (LPP 1.3)
- Local Planning Policy 1.6 – Preparing Heritage Assessment (LPP 1.6)
- Local Planning Policy 2.3 - Fremantle Port Buffer Area Development Guidelines (LPP2.3)
- Local Planning Policy 2.7 – Archaeological Investigation as a Condition of Planning Approval (LPP2.7)
- Local Planning Policy 2.19 - Contribution for Public Art/and or Heritage Works (LPP2.19), and
- D.G.F14 - West End Conservation Policy (DGF14)

Consultation:

Public Consultation
The application was advertised as a ‘Significant Application’ as set out in Local Planning Policy LPP1.3 - Public Notification of Planning Proposals (LPP1.3), as discretions were sought against LPS4 and Council’s Local Planning Policies and the application was considered to be in the public interest. The application was advertised for a period of 28 days and consisted of a sign on-site, letters to properties within 100m of the subject site, notification to the local precinct groups and a community information session. The submission period finished on 14 November 2017 and 10 submissions were received. The main issues raised in the submissions included:
<table>
<thead>
<tr>
<th>Issue Raised</th>
<th>Officer’s comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic and car parking</td>
<td>The proposed variation to the car parking requirements of LPS4 is discussed in this report.</td>
</tr>
<tr>
<td>Noise</td>
<td>An Acoustic Report has been reviewed by the City’s Environmental Health Department, which concluded that the predicted level of noise of the premises to be at an acceptable decibel rating, provided the applicant adheres to the recommendations in their report.</td>
</tr>
<tr>
<td>Heritage impact</td>
<td>The development has been assessed against its likely impacts on the heritage value of the existing site and locality, with support provided by the State Heritage Office.</td>
</tr>
<tr>
<td>Use of Market Lane</td>
<td>The access for Market Lane is legally acceptable, given its status as a Public Access Way.</td>
</tr>
<tr>
<td>Management of premises</td>
<td>This element is governed by the Department of Racing, Gaming and Liquor. Operation in accordance with an approved Management Plan is recommended as a condition of any approval.</td>
</tr>
<tr>
<td>Attraction of antisocial behaviour</td>
<td>This element is governed by the Department of Racing, Gaming and Liquor and the WA Police. Operation in accordance with an approved Management Plan is recommended as a condition of any approval.</td>
</tr>
</tbody>
</table>

A summarised Schedule of Submissions is provided in Attachment 3.

Consultation with other Agencies or Consultants

Fremantle Port Authority (FPA)
The site is located within Area 2 of the Fremantle Port buffer area. In accordance with LPP2.3, the Fremantle Port Authority was advised of the development proposal. The FPA advised the City in a letter dated 6 October 2017 that it had no objections to the proposed development subject to the development being designed and constructed in accordance with the built form requirements for Area 2, as detailed in the City of Fremantle’s ‘Fremantle Port Buffer Area Development Guidelines’. The guidelines contain specific requirements for the provision of safety glass, roof insulation and emergency air conditioning shut down points. LPP2.3 recognises that it may not be possible to achieve compliance with these requirements in cases where an application involves the adaptive reuse of a heritage listed building.
It is recommended that a condition that requires compliance with these requirements be imposed on any approval, with an advice note that advises the applicant that should the requirements not be achievable within the existing Warder Cottages building, the requirement may be waived on the submission of evidence that compliance would be detrimental to the heritage significance of the building.
Department Planning, Lands & Heritage (DPLH) – State Heritage Office

The subject site is included on the State Heritage Office (SHO) State Register of Heritage Places. Accordingly the application was referred to the DPLH for Heritage Council comment.

On 23 October 2017, the City received comment from DPLH, advising that the proposal can be supported subject to the submission of an alternative roof designs for the bar/restaurant roof that reduces the pitch of the skillion roofs within the overall height of the building and consideration of an alternative lift system for the rear addition to reduce the height and mass of this addition.

Revised plans addressing the DPLH’s concerns were submitted to the City on 1 November 2017. The revised plans included alterations to the bar/restaurant roof design to a trussed roof form (from the original skillion roof design) and a reduction in the height of the lift and stair addition at the rear of the Warders Cottage.

The revised plans were referred to the DPLH for comment and on 21 November 2017, the DPLH advised the City that the revised plans responded positively to the Heritage Council’s previous concerns and the revised proposal is supported subject to the submission of a signage and lighting strategy and construction details of the secondary ceilings, door opening and new floors. It is recommended that a condition that requires compliance with these requirements be imposed as a condition of any approval.

See attachment 3 for State Heritage Office comments.

Planning assessment:

Local Planning Scheme No. 4
The proposal includes a variation to the following requirements of LPS4:

<table>
<thead>
<tr>
<th>Element</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land use – Hotel</td>
<td>Zoning permissibility</td>
<td>Hotel – ‘A’ use</td>
<td>Discretionary assessment required</td>
</tr>
<tr>
<td>Vehicle parking (Cl. 4.7.2 of LPS4)</td>
<td>105 bays and 1 Delivery bay</td>
<td>Nil</td>
<td>Discretionary assessment required</td>
</tr>
<tr>
<td>Bicycle parking (Cl. 4.7.2 of LPS4)</td>
<td>5 Class 1 and 5 Class 3</td>
<td>Nil</td>
<td>Discretionary assessment required</td>
</tr>
<tr>
<td>End of trip facilities (Cl. 4.15 of LPS4)</td>
<td>2 showers</td>
<td>1 shower</td>
<td>Discretionary assessment required</td>
</tr>
</tbody>
</table>

Local Planning Policies
LPP2.19: Contribution for Public Art/and or Heritage Works requires a condition to be imposed to ensure a contribution of a monetary amount equal in value to one percent of the estimated development cost for development of public art works and/or heritage works to enhance the public realm, to be paid to the City prior to the commencement of the development.
OFFICER COMMENTS

Land Use

<table>
<thead>
<tr>
<th>Land Use</th>
<th>City Centre Zone Permissibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel</td>
<td>A</td>
</tr>
</tbody>
</table>

The applicant has confirmed that the development will operate under a Hotel Liquor Licence therefore the bar/restaurant component of the development has not been assessed as a separate land use.

‘Hotel’ is an ‘A’ use in the City Centre zone which means that the use is not permitted unless Council has exercised its discretion and granted planning approval after giving special notice (public advertising) in accordance with clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2. In considering an ‘A’ use the Council will also have regard to the matters to be considered in clause 67 of the Regulations including the following matters:

(a) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area

(k) The built heritage conservation of any place that is of cultural significance

(l) The effect of the proposal on the cultural heritage significance of the area in which the development is located

(m) The compatibility of the development with its setting including the relationship of the development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development

(n) The amenity of the locality including the following:
   (i) Environmental impacts of the development
   (ii) The character of the locality
   (iii) Social impacts of the development

(t) The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety

(w) The history of the site where the development is to be located

(y) Any submissions received on the application.

The land use proposed has been advertised in accordance with Clause 64, and the City’s LPP 1.3 Public Notification of Planning Proposals, and assessed against the following objectives of the City Centre zone:

Development within the City Centre zone shall:

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

(ii) Comply with the objectives of local planning area 1 of schedule 8 (Not applicable to this site),

(iii) Conserve places of heritage significance the subject of or affected by development

The proposed development is considered to address the above matters for the following reasons:
The development contributes to a range of appropriate activities that are compatible with fulfilling the objectives of the City Centre zone, such as promoting visitation, entertainment and tourism within Fremantle.

The proposal delivers built form that is consistent with the local planning area provisions specific to the site.

The design of the rear building is considered to be sympathetic to the cultural heritage significance of the built form being retained onsite.

The character impact of the locality is considered negligible, given the development is to maintain a large portion of built form existing on site.

The traffic generated from the proposed development is not considered to result in a greater capacity than the existing road system can manage.

The development retains the historical value of the site by providing minimal alterations to the external presentation of the existing Warders Cottages building, other than necessary works to ensure of the conservation of the building.

It is noted that the subject site is located adjacent to 7 – 17 Henderson Street (Warders Cottages ‘W3’ Block) which has recently been occupied for permanent residential use (Grouped dwellings). These residents are considered the most potentially affected within the immediate locality, as a result of the proposed development. Although it is acknowledged that the immediate locality forms part of the City Centre and the same level of residential amenity experienced in the residential zoned areas of Fremantle cannot be expected in the City Centre zone, an assessment of the proposed land use has taken into consideration the potential impacts on the neighbouring properties including adverse noise and other patron impacts.

An acoustic report, prepared by consultants Herring Storer was submitted with the application. The report concludes that the proposed development, including noise emissions from the bar/restaurant can comply with Environmental Protection (Noise) Regulations 1997. The report recommends a detailed assessment of the design of the bar/restaurant building to be undertaken which will identify the measures required to ensure the premises readily achieves compliance with the Noise Regulations.

It is recommended that a condition of approval requiring details of the attenuation measures required to comply with the Noise Regulations be submitted for approval with these recommendations being implemented during construction of the development.

In regard to potential patron and antisocial behaviour, although it is noted that the management of the premises will be regulated by the Department of Racing, Gaming and Liquor, regard has been given the details provided by the applicant with this application. As detailed in this report the applicant has submitted details of their proposed Liquor Licence Conditions and general management which includes hours of opening, patron capacity (including minimum seating capacity), noise management, security services and patron access/egress. It is considered that these measures will assist in minimising any potential impacts on the immediate locality, particularly 7 – 17 Henderson Street. Given the nature of the premises and the discretionary assessment of the proposed use, it is considered reasonable to impose a condition requiring the submission of a Premises Management Plan, detailing measures to minimise the impact on surrounding residents and other occupant be submitted to the City for its approval and thereafter implemented.
Having regard for the above, it is considered that the proposed Hotel use is consistent with the objectives of the City Centre zone and potential adverse impacts from this use can be minimised through the implementation of adequate noise attention measures and hotel management.

The proposed use will contribute to increased activation of this section of Henderson Street, especially at times with the Fremantle Markets are closed.

**Parking**

<table>
<thead>
<tr>
<th>Required</th>
<th>Provided</th>
<th>Discretion Sought</th>
</tr>
</thead>
<tbody>
<tr>
<td>Car Parking bays</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: 2.5m² of public bar area,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: 5m² of lounge/garden area; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: 1 bedroom</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calculated on the basis of the rear bar/restaurant area and hotel café/lounge (469m²) being lounge/garden area (94 bays) and 11 bedrooms (NB. the ground level rooms with a second area noted as living/bed has not been calculation as two rooms)</td>
<td>Nil</td>
<td>105 bays</td>
</tr>
<tr>
<td>Delivery bay</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: Service/Storage area</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site provides one main storage/service area</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nil</td>
<td>1 bay</td>
</tr>
</tbody>
</table>

It is noted that the application illustrates the reservation of five on-street City of Fremantle ticketed public parking bays for exclusive use of this Hotel. However as these bays are not located within the boundaries of the subject site nor otherwise under the control of the applicant, they do not form part of this application for approval and a relevant condition is included.

It is noted that Council recently considered a similar request for the provision of residential parking permits for the residents of the Warders Cottages at 7–17 Henderson Street. At its meeting held on 28 June 2017, Council resolved to refuse this request.

Clause 4.7.3 of LPS4 outlines circumstances where Council may waive or reduce the standard parking requirement specified in Table 3. The following provisions of clause 4.7.3 are considered directly relevant to this proposal:

(i) the availability of car parking in the locality including street parking,
(ii) the availability of public transport in the locality,
(iii) any car parking deficiency or surplus associated with the existing use of the land,
(iv) the proposal involves the restoration of a heritage building or retention of a tree or trees worthy of preservation,
The proposed variation relating to vehicle parking and loading/delivery bay is supported for the following reasons;

- The proposal includes the adaption and restoration of a State Registered heritage building located on a site with no practical means of providing a significant number of vehicle parking bays. The provision of any on site parking and delivery bays is considered to be detrimental to preservation of the heritage site, consistent with clause 4.7.3.1(a)(vi) of LPS4;
- The site already has an existing shortfall of six car parking bays which would be typically required for six Grouped dwellings located in a high frequency transit zone, consistent with clause 4.7.3.1(a)(iii) of LPS4;
- The subject site is approximately 550m from the Fremantle Railway Station, Bus Station and Taxi rank facilities all of which are considered to be primary forms of transport for local visitors, as well as interstate and international travellers which would be the likely occupants/customers of this development. These high frequency public transport facilities are considered to provide a significant offset to the demand for on site vehicle parking consistent with clause 4.7.3.1(a)(ii) of LPS4; and,
- The subject site is located within ‘Precinct 11’ of the Fremantle City Centre Car Parking Study, which consists of approximately 522 public car parking bays which in total averaged 47% occupancy. The subject site is also adjacent to ‘Precinct 5,’ which has a total of 1,950 public car parking bays. In particular, the application site is located less than 50m away from the Queensgate multi-storey car park which offers contract parking arrangements including secure overnight parking. This could address guest parking arrangements. Given the development will be in close proximity to over 2,400 public bays, the site is considered highly accessible and provides adequate access to parking off site, consistent with clause 4.7.3.(a)(i) of LPS4.

### Bicycle Parking and End of Trip Facilities

<table>
<thead>
<tr>
<th>Required</th>
<th>Provided</th>
<th>Discretion Sought</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bicycle Racks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: 25m² bar floor area and 1 per 100m² lounge and beer garden (Class 1); and 1: 25m² bar floor area and 1 per 100m² lounge and beer garden (Class 3)</td>
<td>Nil</td>
<td>5 (Class 1) and 5 (Class 3)</td>
</tr>
<tr>
<td>End of Trip Facilities</td>
<td>1 unisex shower</td>
<td>1 unisex shower</td>
</tr>
</tbody>
</table>

Calculated on the basis of the rear bar/restaurant area and hotel café/lounge (469m²) being lounge/garden area (5 Class 1 racks and 5 Class 3 racks).
1 or 2 bicycle racks required

Note:
- Class 1 – High security level – Fully enclosed individual locker,
- Class 3 – Low security level – Rails or racks to which both the bicycle frame and wheels can be locked

Clause 4.7.3.3 of LPS4, provides the ability for Council to waive the bicycle parking requirements of Table 2, only in the instance where the application is for a minor change of use. As the proposal includes a change of use to Hotel and the redevelopment of the rear of the site for bar/restaurant, given the provision of no on site car parking for customers and/or staff, it is not considered appropriate to waive the requirement for bicycle parking racks in this instance. It is recommended that a condition requiring the provision of five Class 1 and five Class 3 bicycle racks and a unisex end of trip facility be imposed on any approval.

Local Planning Policies Requirements

Local Planning Policy 2.7 – Archaeological Investigation as a Condition of Planning Approval (LPP2.7)

Clause 13B of LPS4 states that where planning approval is granted in respect of a place included on the Heritage List, Council may impose a condition on that planning approval which requires an archaeological investigation of the place to be undertaken and a report of that investigation to be provided to the Council for its information prior to the commencement of that approved development. Having regard for the work to be carried out on site to the rear of the existing Warders Cottages, including clearing the site and the construction of rear additions, it is considered reasonable to request an archaeological investigation of this area of the site. It is recommended that a condition be imposed on any approval.

Local Planning Policy 2.19 – Contribution for Public Art and/or Heritage Works (LPP2.19)

In accordance with LPP2.19, a Public Art/Heritage Works monetary contribution is required as part of this application. The proposal includes an option of providing on-site public art, which would be clearly visible from the public realm, to the value of 1% of the development at a future stage. No detail in relation to the public art proposal has been provided therefore the appropriateness and artistic merit of the proposal cannot be determined.

On this basis, it is recommended that a condition requiring the owner/applicant to contribute a monetary amount of 1% of the estimated total cost of the development to the City for the development of public art/heritage work in accordance with clause 2 of LPP2.19 be imposed on any approval.

Design Guidelines Fremantle – Fremantle West End Conservation Area Policy (DGF14)

The development is required to satisfy the provisions contained within Council’s D.G.F14 Fremantle West End Conservation Area Policy. The conservation works proposed in accordance with the development plans adhere to the standards set out in D.G.F14 for ensuring adaptation of significant buildings are compatible and create a satisfactory outcome from a cultural heritage preservation perspective. The policy requirements are
considered met through the comments provided in the abovementioned heritage referral section.

**LPP 1.10 Construction sites (LPP1.10)**

LPP 1.10 outlines the requirements for applicants during the construction phase. An advice note is recommended, to remind the applicant of requirements prior to and during the construction phase of the development in order to minimise amenity impacts and verge damage.

**Conclusion:**

Approval is sought to change the use of the existing building to a Hotel including additions and alterations to the existing building.

The proposal is recommended for conditional approval, having regard to the following conclusions:

- The proposed design of the development is sympathetic to the existing building's streetscape appearance and does not overwhelm the existing building on site through excessive scale
- The proposed development and land use, is not considered to result in an activity greater than the expectations and capacity of the City Centre zone.
- Proposed variations to the planning framework relating to land use and vehicle parking are considered acceptable for the reasons outlined above.
Meeting Date: 6 December 2017  
Responsible Officer: Manager Development Approvals  
Decision Making Authority: Committee  
Attachments:  
1: Development Plans  
2: Schedule of Submissions  
3: Applicant’s Justification  
4: Site Photos  

SUMMARY

Approval is sought for a partial change of use to Tavern, and additions and alterations to an existing building at J-Shed, Unit 1 (Lot 2051) Fleet Street, Fremantle.

The application is presented to Planning Committee as it is considered a significant application that seeks considerable discretion and has received objections that cannot be satisfied through a condition of planning approval.

As the proposal is contained within land reserved under the Metropolitan Region Scheme (MRS) as ‘Parks and Recreation’, the City acts only in the capacity as a referral body providing a recommendation to the determining authority, the Western Australian Planning Commission (WAPC).

As the proposal relates to reserved land under the MRS, the provisions of the City’s Local Planning Scheme No. 4 (LPS4) and Council’s Local Planning Policies (LPPs) do not apply, but have been used as a guide in assisting Council in formulating its position for its recommendation to the WAPC. The WAPC’s Development Control Policy 5.3 – Use of Land Reserved for Parks and Recreation and Regional Open Space has also been given due regard in City officers’ assessment of the application.

Having due regard for Council’s previous recommendation on a similar application, community comments, and the Western Australian Planning Commission (WAPC) decision to refuse a similar previous application, it is recommended that the Council advise the WAPC to refuse the application.

PROPOSAL

Detail
The application seeks approval for the following use and additions and alterations to the existing unit:

- Partial change of use to Tavern, which includes a micro-brewery component.
- Additions and alterations to existing J-Shed building to accommodate the proposed tavern land use including kitchen/bar area, decking, pergolas and toilet blocks.
- Landscaping comprising “beach” area, lawn area, interpretive cliff wall and signage.
The Tavern is proposed to operate as follows:

- **Hours of operation:**
  - Monday to Saturday – 11:00am to 12:00am (midnight);
  - Sunday - 11:00am – 10:00pm;

- A patron capacity of 400.
- 10 to 15 staff at any given time.

The applicant submitted amended plans on 1 November 2017 which included the following changes:

- Indicative seating arrangements in the grassed area, outdoor bar, deck and beach area.
- Interpretive cliff wall changed from timber to limestone.
- Addition of public wayfinding signage to significant sites in the area.
- Justification for the proposal based on WAPC’s previous decision (Attachment 3).

A copy of the amended development plans is included as Attachment 1.

**Site/application information**

- **Date received:** 6 April 2017
- **Owner name:** City of Fremantle
- **Submitted by:** Benson Studio
- **Scheme:** Parks and Recreation Reserve (MRS only)
- **Heritage listing:** MHI management category level 1A; Inner Harbour Heritage Area, Arthur Head Precinct Heritage Area, WECA Heritage Area, Victoria Quay Heritage Area
- **Existing land use:** Vacant building
- **Use class:** Tavern
- **Use permissibility:** Not specified
CONSULTATION

External referrals
While the City is not the determining authority for this application, it referred the proposal to external agencies where relevant, as if it were. Advice from these agencies was sought by the City to assist in preparing its recommendation to the WAPC.

Department of Water and Environmental Regulation (DWER)
The application was referred to the DWER as the site is listed as ‘possibly contaminated – investigation required’. The DWER advised that they have no objection to the proposed development provided that the following advice is appended to any approval:

“It is recommended that management of ground disturbing works at the site (if any) include contingency measures for unexpected unearthing of asbestos or other contamination, to mitigate any potential health risks to workers or the public. In the event that the development activities detect or unearth asbestos-containing-material or other contamination at the site, any potential exposure risks should be immediately mitigated and the site should be investigated without delay in accordance with the Department of Water and Environmental Regulations Contaminated Sites Guidelines.”

Department of Planning, Lands and Heritage (DPLH)
The application was referred to DPLH as the site is on the State Heritage Register. The DPLH offered conditional support for the design and submitted the following comments/advice:

Findings
1. The proposed new structures are contemporary and lightweight and will not have a negative impact on the heritage values of the place.

2. The proposal involves works in the vicinity of areas of exceptional archaeological significance. While the works are largely low impact, some levelling and compacting will be required and there will be some excavation for footings etc. A concise Archaeological Management Strategy would be beneficial to ensure that all archaeological considerations have been investigated and to provide a framework for dealing with any archaeological material that may be uncovered.

3. The proposal includes efforts to interpret the history of the site through the interpretive wall and outdoor beach lounge area. The interpretative outcomes could be further developed to improve visitor engagement with the highly significant historical landscape and archaeology.

Advice

The proposed development, in accordance with the plans submitted, is supported subject to the following conditions:

1. An Archaeological Management Strategy (AMS) is to be prepared for the site to the satisfaction of the Assistant Director General, Heritage Services, of the Department of Planning, Lands and Heritage. The AMS should be prepared in accordance with the Heritage Council's draft brief. The AMS is to provide guidelines for dealing with the archaeology at the site and a framework for dealing with any archaeological material that may be uncovered during the site works according to its assessed significance.

2. Interpretative material/signage is to be designed and located on site to ensure that visitors to the venue have access to information explaining the history of the site.

3. The design of the interpretive timber wall is to be revised to include better reference to the original cliff line through the use of appropriate materials.

Department of Aboriginal Affairs (DAA)

The City is not aware of any statutory requirement that may necessitate formal referral of this proposal to the DAA. Notwithstanding this, the application was referred to the DAA for their comment as the site is located within the boundaries of two known Aboriginal heritage places: DAA 3421 (Fremantle: Manjaree) and DAA 3774 (Fremantle: Arthur Head). The DAA considered the proposal and determined that the Aboriginal Heritage Act 1972 does not apply to these Aboriginal heritage places.

The DAA has recommended that the applicant have consideration for the DAA’s Aboriginal Heritage Due Diligence Guidelines.

Fremantle Port Authority (FPA)

The previous application was referred to the FPA as the site is located within Fremantle Port Buffer Area 2, and given that they are adjoining landowners. The FPA objected to the use of their land for vehicle and pedestrian access. Alternate arrangements were made between the City and the applicant, which were ultimately supported by FPA (refer Attachment 2). The subject application (with the same amended access arrangements) was referred to FPA, who provided the following response:
“Thank you for inviting our comment on the proposal. From a land use compatibility perspective the proposed tavern and micro-brewery is of concern to Fremantle Ports. As the Inner Harbour is the only dedicated container port in Western Australia its protection and ability to grow to serve the State and National economies is a fundamental objective for Fremantle Ports.

Fremantle Ports has been in liaison with the proponents and the City since the site was initially approved in late 2015 for events on a temporary basis. Initially concerns were raised in regards to potential externalities including vehicle and pedestrian movements, parking and anti-social behaviour. The process that was put in place to address our concerns in relation to the initial temporary approval, which included regular meetings with the proponents before and after each event has proven to be a very useful mechanism to manage use of the site and to develop a good working relationship; it has been beneficial and effective in dealing with any matters as they have arisen.

We still have concerns over the scale of use of the site and the potential for this to grow. However in light of our experience to date we believe, as per previous advice, the current practise of regular meetings should be continued, for at least the next 12 months on a quarterly basis. This is considered an adequate period to ensure that any potential issues associated with permanent use of the site can be identified and addressed.

It is also requested that the proponent, in liaison with the City and Fremantle Ports, be required to document and commit to the manner in which externalities will be managed.”

It is not considered appropriate to recommend the above requirement as a condition of any planning approval, rather that it be recommended as an advice note that encourages this to occur should the WAPC approve the development.

Community
The application was not required to be advertised in accordance with Council’s Local Planning Policy 1.3 - Notification of Planning Proposals (LPP 1.3) as the provisions of Council’s LPPs are not applicable to land to which the City’s Local Planning Scheme does not apply.

Notwithstanding, the City did advertise the proposal as it considered that it was in the public interest for the following reasons:

- The proposed land use is typically discretionary within most zones under LPS4.
- The car parking requirement for such a land use under LPS4 means that there may be some impact.
- High level of interest from the community in regards to the previous application.

Advertising of the application comprised of the following:

- Letter to owners and occupiers within 100 metres of the site
- Advertising on the City’s website
- One notice relating to the proposal was placed in the Fremantle Gazette on the 1 July 2017.
At the conclusion of the advertising period, being 14 July 2017, the City received 48 submissions: six in support and 42 in opposition, plus a petition with 220 signatories objecting to the tavern use.

The submissions in support stated the following comments (summarised):
- revised proposal addresses most concerns of previous refused proposal
- compatible with landscape and heritage
- will be good for tourism and local visitors
- provides activation in the area
- supportive of proposed land use
- generally supportive as it will increase vibrancy of area.

The objections raised the following concerns (summarised):
- inappropriate land use for a reserve
- inappropriate land use for an arts precinct
- inconsistent with local planning policies
- negative impact to heritage and existing vegetation
- negative impact to nearby tenants
- negative impact to beach and public open space access
- concerns over noise, anti-social behaviour and safety of patrons
- overcrowding of the area
- design inappropriate and incompatible with the adjoining buildings
- lack of car parking
- lack of adequate servicing (infrastructure)

A summarised schedule of submissions is included as Attachment 2.

In response to the concerns raised above, it is acknowledged that current sewerage and water connections of the site are inadequate to support the proposed 400 patron capacity. Infrastructure upgrades will be required to be implemented by the applicant (in accordance with the lease conditions) prior to development of the site, if approved.

The other matters raised are discussed below through an assessment of the individual planning policies governing the area.

OFFICER COMMENT

Statutory and policy assessment
As the proposal relates to reserved land under the MRS, the provisions of the City’s Local Planning Scheme No. 4 (LPS4) and Council’s Local Planning Policies (LPPs) do not apply, but have been used as a guide in assisting Council in formulating its position for its recommendation to the WAPC. An assessment against the relevant provisions is below.

Background
The site is reserved for the purposes of Parks and Recreation under the Metropolitan Region Scheme (MRS). The site is not zoned or reserved under the City’s LPS4.
The site is listed on the City’s Heritage List and the City’s Municipal Heritage Inventory (MHI) as a management category level 1A (State Heritage Register) as well as for precinct management. Furthermore, the site is located within the Inner Harbour Heritage Area, Arthur Head Precinct Heritage Area, WECA Heritage Area, Victoria Quay Heritage Area, which are prescribed Heritage Areas under Clause 7.2 of LPS4.

The subject site is 37,463 m² and is located on southern side of Fleet Street and to the west of the freight rail line. The site has a predominantly north-south orientation.

In November 2012 Council resolved to seek “the front glass-walled studio of J-Shed to be put out for lease through a competitive process as a bar/café/gallery as a major attractor for the whole area. This should include space for artists in Arthur Head precinct to be able to exhibit their work on a priority basis. At other time the gallery space would be for rent like the Moores building.”

An expression of interest process was undertaken in early 2013 in which Sunset Events was selected as the preferred proponent. The City has since undertaken negotiations for a lease with Sunset Events for a term of 21 years for Unit 1 and a portion of the surrounds to J-Shed.

The City advertised the proposal to enter into a land transaction through disposal of Unit 1 J-Shed Fleet Street, Fremantle in the form of a lease. The plan outlined the proposal from Sunset Events and the essential terms and conditions of the lease negotiations. The proposal was extensively advertised through several newspapers, social media, the City’s website, and a public information session.

At its meeting of 26 February 2014, the City’s Strategic and General Services Committee resolved to conditionally grant the lease to Sunset Events for Unit 1 of J-Shed.

On 15 May 2015, the Minister for Lands granted approval for the lease.

Previous planning history
On 31 July 2015, the City received an application for temporary approval - special event venue (live music venue) (DA0373/15). This represented what was effectively a ‘trial’ period for a permanent tavern use and concert venue.

On 5 August 2015, the City received an application for planning approval for a partial change of use to Tavern (including live music), additions and alterations to existing building at J-Shed Unit 1 (Lot 2051) Fleet Street, Fremantle (DA0370/15).

The proposal consisted of the following:
- partial change of use to tavern, which included a micro-brewery component
- additions and alterations to existing J-shed building to accommodate the proposed tavern land use
- 12 concerts over the summer months (held on any day of the week);
- 850 patron capacity for regular ‘tavern’ trade and 1500 capacity for ticket music concert events
- Hours of operation:
  - Monday to Saturday – 11:00am to 12:00am (midnight);
  - Sunday - 11:00am – 10:00pm;
Number of employees: Approximately 10 staff at any given time, during standard operations.

At the Ordinary Council Meeting (OCM) on 14 October 2015, it was resolved to refer DA0373/15 to the WAPC for temporary conditional approval, ending 31 May 2017.

On 27 November 2015, the WAPC granted conditional planning approval for DA0373/15 subject to a number of conditions and advice.

In late 2015, after approval was issued for the temporary activation of the site (DA0373/15), the applicant made a request to the WAPC to put the processing of DA0370/15 for the tavern on hold to allow the concerts to be ‘trialled’. In a letter addressed to the WAPC dated 31 March 2016, being after a number of music concert events had been held at the site, the applicant requested the WAPC to re-activate the processing of the tavern application DA0370/15.

Application DA0370/15 was considered by council on 22 June 2016. Council resolved:

That the application be REFERRED to the Western Australian Planning Commission with a recommendation for REFUSAL under the Metropolitan Region Scheme for the proposed partial change of use to Tavern (including live music), additions and alterations to existing building at J Shed Unit 1/Fleet Street (Lot 2051), Fremantle, as detailed on plans dated 1 April 2016, for the following reasons:

1. The proposal is inappropriate having regard to the purposes for which the land is reserved under the Metropolitan Region Scheme.

2. The proposal is inconsistent with clauses 67 (b), (n) and (y) of the Planning and Development (Local Planning Schemes) Regulations 2015 as the development:
   a) is not consistent with orderly and proper planning;
   b) Will have an adverse impact on the amenity of the locality; and
   c) Has not adequately addressed submissions received.

3. The proposal does not provide sufficient on-site car parking.

4. The proposal is inconsistent with objectives 3.1 and 3.2 of the City of Fremantle’s Local Planning Policy DGF5 – Arthur Head Reserve Strategy Plan.

5. The proposal is inconsistent with Policy 3 of the City of Fremantle’s Local Planning Policy DGF6 – Arthur Head – (West End of High Street, Fremantle).

6. The proposal is inconsistent with clause 3.4 of the City of Fremantle’s Local Planning Policy DGF26 – Planning Policy for the West End of Victoria Quay.
7. The proposal is inconsistent with clause 1.1 of the City of Fremantle’s Local Planning Policy DBU6 – Late Night Entertainment Venues Serving Alcohol.

8. The proposal is inconsistent with clause 4.1.2(b) of the City of Fremantle’s Local Planning Policy DGF14 – Fremantle West End Conservation Area Policy.

Advice Note:

i. The WAPC is advised that the City of Fremantle is not satisfied that the applicant, in the period since they obtained approval for the temporary activation from the WAPC on 27 November 2015 (WAPC05-3715-9; DA0373/15), have demonstrated that they have adequately managed the activities for the following reasons, including but not limited to:
   - Client behaviour;
   - Drunkenness;
   - Rubbish;
   - Management of site;
   - Risks to people on top of the cliff face adjacent to the roundhouse;
   - Provision of promised community events;
   - Provision of food at events, alcohol was the major sales push.

On 30 August 2016, the WAPC refused application DA0370/15 for the following reasons:

1. The proposed application does not comply with the requirements of the Clause 30 of the Metropolitan Region Scheme as it is inconsistent with the purpose for which the land is reserved under the scheme, inconsistent with the orderly and proper planning of the locality and does not allow the preservation of amenities in the locality.

2. The proposal does not provide sufficient on-site car parking.

3. The proposed application does not comply with the requirements of Development Control Policy 5.3 - Use of Land Reserved for Parks and Recreation and Regional Open Space as it is not of a nature and scale compatible with the use and zoning of the surrounding land, the nature and purpose of the reserved land and the environmental character of the location.

4. The proposed application does not comply with the requirements of Development Control Policy 5.3 - Use of Land Reserved for Parks and Recreation and Regional Open Space as it is not identified there being a community need for the proposed facility in the proposed location and the proposal is not consistent with existing or proposed land use and management plans.

5. The proposal is inconsistent with clause 4.1.2(b) of the City of Fremantle’s Local Planning Policy DGF14 - Fremantle West End Conservation Area Policy as the proposal does not demonstrate a low key use and is not compatible with the ethos of the area.

6. The proposal is inconsistent with clause 3.4 of the City of Fremantle’s Local Planning Policy DGF26 - Planning Policy for the West End of Victoria Quay as the
proposed land uses are not compatible with the primary or ancillary land uses desired for the locality.

7. The proposal is inconsistent with objectives 3.1 and 3.2 of the City of Fremantle’s Local Planning Policy DGF5 - Arthur Head Reserve Strategy Plan as the proposal is not a low profile commercial use of J-Shed and is not compatible with the history and maritime themes of Arthur Head and the foreshore.

8. The proposal is inconsistent with Clause 2 of the City of Fremantle’s Local Planning Policy DGF6 - Arthur Head - (West End of High Street, Fremantle) as the proposal is overloading the vicinity with proposed developments.

Current application
On 7 June 2017, the City received the current application (DA0281/17), which differs from the previously refused application by revising the building layout and including the addition of a new freestanding structure comprising of a kitchen, bar and toilets to the west end of the site, as well as varying the use and capacity of the proposal as shown in the table below:

<table>
<thead>
<tr>
<th>Element</th>
<th>Previous proposal (refused by WAPC)</th>
<th>Current proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land use</td>
<td>Tavern</td>
<td>Tavern</td>
</tr>
<tr>
<td>Tavern capacity (patrons)</td>
<td>850</td>
<td>400</td>
</tr>
<tr>
<td>Ticketed music events capacity (patrons)</td>
<td>1500</td>
<td>Not proposed by this application</td>
</tr>
<tr>
<td>Ticketed music events per year (summer months)</td>
<td>Up to 12 per year</td>
<td>Not proposed by this application</td>
</tr>
</tbody>
</table>

A copy of the application plans is provided in Attachment 1.

City officers recommended that the previous application for the permanent change of use to a live music venue (DA0370/15) be approved. Council did not accept this recommendation and instead resolved to recommend to the WAPC that the application be refused. While it is recognized that consistency in decision-making is a component of orderly and proper planning, the land is not zoned under LPS4 and, therefore, the decision-maker in this instance is the WAPC. As noted above, the WAPC refused the previous application. In light of this, and considering the similarities between the subject application and the previously refused application, due regard has been given to the WAPC’s reasons for refusal when assessing the current application. In assessing the application under the scheme provisions and relevant policies, particular attention has been given to whether or not the new proposal has sufficiently addressed the reasons for refusal previously given by Council and the WAPC.

Metropolitan Region Scheme (MRS)
The subject site is reserved as ‘Parks and Recreation’ under the MRS, meaning that it is “Land of regional significance for ecological, recreation or landscape purposes.” Development Control Policy 5.3 (DC 5.3) is a Department of Planning, Lands and Heritage document that establishes the WAPC’s position regarding use and development within a Parks and Recreation reserve. DC 5.3 is intended to guide WAPC decisions in coordinating land use planning throughout the state of Western Australia.
Clause 3 of DC 5.3 states:

The use of reserved land is restricted to:

... 

(b) private businesses, which:

(i) are in accordance with a management plan endorsed by the WAPC;
(ii) are open to and provide services for the public; and
(iii) have a purpose which is ancillary and incidental to the primary purposes of the reservation.

It is noted that the WAPC’s report on the previous application did not support the Tavern component as it was not considered to be incidental to the primary purpose of the reservation nor was it a land use that supported the amenity of the reservation as per DC 5.3. Given that the building footprint of the Tavern has increased (though the patron capacity has decreased) through the addition of a kitchen, bar and toilet structure on the western end of the site, it is unlikely that the current proposal would be considered consistent with, or incidental to, the nature and purpose of the reservation.

Ultimately, however, it is a matter for the WAPC to determine whether it considers the proposal to be consistent with the nature of the reservation, particularly as it pertains to their previous reasons for refusal numbers 1, 3 and 4 above.

Local Planning Scheme No. 4 (LPS4)

Car parking

<table>
<thead>
<tr>
<th>Use</th>
<th>LPS 4 Requirement</th>
<th>Previously required</th>
<th>Currently required</th>
<th>Proposed</th>
<th>Shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tavern/Hotel</td>
<td>1: 2.5m² of public bar area</td>
<td>155m² = 62 bays</td>
<td>252m² = 101 bays</td>
<td>Nil</td>
<td>101</td>
</tr>
<tr>
<td></td>
<td>1: 5m² of lounge/garden area</td>
<td>950m² = 190 bays</td>
<td>408m² = 82 bays</td>
<td>Nil</td>
<td>82</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>252</td>
<td>183</td>
<td>Nil</td>
<td>183</td>
</tr>
</tbody>
</table>

Neither the subject proposal nor the previous permanent proposal (DA0370/15) included any car parking on-site. Therefore, the car parking shortfall of the subject application could be considered to be reduced by 69 bays from the previously refused application.

The site is severely constrained by being located within an open space reserve, on land that is of some heritage significance, and adjacent to FPA land. The WAPC and Council, by refusing the previous application on grounds of lack of on-site car parking, could not have intended that the applicant provide on-site car parking, particularly given the FPA’s refusal to grant permission for service vehicle and pedestrian access over Fleet Street to reach the subject site. Rather, the lack of car parking is considered to be a reflection on the implications of the proposed intensity of use in terms of the required car bays and the intended occupancy of the site.
City officers supported the previous shortfall under Clause 5.7.3 of LPS4 and detailed reasons for doing so in the previous report. In summary, the shortfall was supported due to:

- ability of patrons to utilise existing paid public parking, notwithstanding that some of this parking was located within the FPA area
- underutilisation of existing nearby public parking capacity provided by the City based on a 2012 survey carried out by the City
- proximity to public transport.

The required car bays have been reduced by 27% compared to the previous application, with no live events now being proposed. Given the site constraints and the reasons stated above, the new proposal could be considered to adequately address the car parking shortfall of the previous application.

**Local Planning Policies (LPPs)**

**DGF5 – Arthur Head Reserve Strategy Plan**

The subject site is located within Precinct 3 – J-shed as described by DGF5. DGF5 prescribes that the goal of this precinct is to:

“Develop this area as a transition zone that links the Arthur Head Reserve with port uses and other maritime themes of the foreshore.”

There are three specified objectives for this precinct, which are detailed and discussed below:

Objective 3.1 of DGF5 states:

“Provide a northern access to the Reserve”

Council refused the previous application partly on the grounds that it did not meet this objective. The previous application included a covered walkway that bisected the lease area and included a gate on the northern end. The current proposal provides a pedestrian path through the lease area and eliminates the gate. Deleting the live music events also negates the need for a wider area to be closed off to access during events. However, the additions of the kitchen and bar structures on the western end of the site serve to enclose the seating area and contribute to the sense that the area is a private space rather than a public thoroughfare, thus discouraging entry to non-patrons. Further, the liquor license may require that access be restricted through the site.

The application proposes a pedestrian path around the perimeter of the site, though this is outside the lease area and the proposed western-most walkway is shown to be the responsibility of the City. The lease signed with the City also includes provision for the City to develop a Masterplan for the reserve and implement necessary works to improve pedestrian access. Such works are the subject of a separate process and do not form part of the subject application. It is noted that without such a walkway, there will be no formalised access around the perimeter. This remains unchanged from the previous application.
In regard to improvements to northern access through the site, the current proposal presents little improvement on the previous proposal and is therefore not considered to adequately address the WAPC and Council’s reason for refusal.

Objective 3.2 of DGF5 states:

“Encourage low profile commercial uses of J-Shed reflective of and compatible with the history and maritime themes of Arthur Head and the foreshore.”

Both Council and the WAPC refused the application, in part, because the “proposal is not a low profile commercial use of J-Shed and is not compatible with the history and maritime themes of Arthur Head and the foreshore.”

There is no definition of what distinguishes a ‘low profile’ commercial use against a ‘high profile’ commercial use within DGF5. In refusing the application, the WAPC report reasoned that:

- “…allowing up to 850 patrons in standard tavern mode and/or up to 1,500 patrons for ticketed events…may prevent too many negative amenity concerns and as such not be considered to be ‘low profile’.”
- “The tavern will be visible from many vantage points from Bathers Beach area and due to fencing and expansion of the activities into the adjacent open space area is not considered low profile.”

In terms of use, a maximum of 400 patrons, as now proposed, is certainly lower profile than that of the previously proposed capacity. However a tavern use operating at this capacity would be likely to represent an intensification of land use not currently seen with the artist studios that predominantly exist in the remainder of the J-Shed units.

In regard to the proposed built form, the solid western boundary fence remains and three new buildings are proposed near the western end of the site. Given that the previous tavern use was considered to not be ‘low profile’, in part, for being visible from many vantage points in Bathers Beach and expanding into the open space area, the subject proposal is unlikely to be considered ‘low profile’. This is due to the fact that it presents an intensification of built form through the provision of the new western structures that expand into an area previously used as open space in the previous application.

Having regard for the above, City officers consider the proposal does not conform to the objectives of DGF5 as elucidated by Council and the WAPC, nor does it adequately address the previous reasons for refusal.

DGF6 – Arthur Head – (West End of High Street, Fremantle)

It is noted that this policy is from 1983 and many of its provisions are outdated given the numerous physical and material changes to the broader area since that time. Notwithstanding this, clause 2 of DGF6 relates to access within the Arthur Head area and states:

“Arthur Head is quite small so planning for access is important as well as not overloading the vicinity with proposed developments.

In general terms, visitors should be able to walk easily (from a nearby car park) into the pedestrian-only area of Arthur Head, and enjoy the combination of beach, ocean, vegetation, landforms and historic building as a Local Area which offers
physical pleasure, relaxation, information, creature comforts and - importantly - an emotional experience.”

One of the reasons for refusing the previous application was that “the proposal is overloading the vicinity with proposed developments.” Though the subject proposal reduces the maximum capacity and eliminates the large events, it also introduces three new buildings. This represents an increase of permanent physical development above that refused by Council and the WAPC. See also the discussion of Objective 3.1 above.

Clause 3 of DGF6 relates to new structures within the Arthur Head area and states:

“The only new structures which may be considered for introduction into the Arthur Head area are:

- a public amenities building above Bathers Beach to the north of the pottery workshop, incorporating changing rooms,
- showers, toilets, and kiosk; and
- historic boat shelters, located parallel to the railway line in the vicinity of the Western Australian Maritime Museum.”

The proposal is not considered to be consistent with above clause, specifically in relation to the types of new structures which may be considered for introduction into the Arthur Head area. The subject application introduces additional structures (kitchen, bar and toilets), only one of which (the toilets) is specifically permitted under DGF6. It is worth noting that the overarching objective of DGF6 is the preservation of the historical and cultural significance of the area. In this respect, the application is conditionally supported by the DPLH.

DGF14 – Fremantle West End Conservation Area Policy

Clause 4.1.2(b) of DGF14 provides for development controls within the Arthur Head Reserve as contained within ‘The Foreshore’ area, and specifies:

“A low key use of the J-Shed, compatible with the ethos of the area, is acceptable.”

There are a number of artist-based industries and businesses in and around the J-Shed area. Though the subject application includes the provision of an artists’ exhibition area to the north of the site, this comprises a relatively small portion of the site (approximately 70m²). The predominant proposed use is of a tavern serving up to 400 patrons. While it is unlikely this number would be reached outside of weekends and holidays, it far exceeds the current visitation numbers for the artist units in the remainder of J Shed. Compared with the current uses within J-Shed and considering one of the previous reasons for refusal, the proposed use is not considered to be either low key or compatible with the ethos of the area.

DGF26 – Planning Policy for the West End of Victoria Quay

The subject site is located within ‘Area D – Workshops’ character area as prescribed by this policy. Clause 3.4 of DGF26 sets out conservation objectives, land use and development principles.
The policy prescribes the following uses as ‘primary uses’:

- maritime and port functions;
- maritime education;
- maritime industry, research and exhibition;
- maritime related administration, trade, service and professional offices

Further, the policy prescribes the following uses as ‘ancillary uses’ (maximum 50% total gross floor area per building):

- maritime arts and craft workshops, display, retail (produced on site)
- cultural heritage exhibition and interpretation relevant to the site
- marine related commercial offices e.g. shipping agents,
- marine related trade outlets e.g. boating materials and supplies
- car parking

The proposed use is not considered to fit within the prescribed primary or secondary uses of the site, though it does include provision for cultural heritage exhibition and interpretation relevant to the site through the interpretive cliff wall and potential wayfinding signs. Though it does reduce patron numbers and eliminate the live music events, the land use itself is still quite significant for the area and does not represent a substantial change to the use as compared with the application refused by Council and the WAPC.

Objective iv of DGF26 aims to:

“Ensure an appropriate mix of activities is maintained to ensure development in the policy area supports and complements, rather than competes with, activities accommodated in the city centre or West End of Fremantle. Activities are also required to be compatible with port operations.”

The FPA has noted concerns regarding the intensity of the proposed land use in proximity to port operations (see External referrals above). Specifically, they consider that the proposed number of patrons, potential anti-social activities, and the traffic generated from the use of the site could negatively impact current port activities. If council holds a similar view to the FPA, the application could be considered to be inconsistent with the part of the above objective of DGF26 referring to compatibility with port operations.

DBU6 – Late Night Entertainment Venues Serving Alcohol

Clause 1.1 of Council’s DBU6 relates to the location of late night venues which propose to serve alcohol and states:

“Due to access and safety issues, any proposal for a late night entertainment venue (serving alcohol), including hotels, nightclubs, jazz and piano bars and performing arts centres, should be located on land adjacent to well-lit through streets to enable adequate safety and access for taxi cabs. Ideally a loading zone or similar shall be located near the entrance to the building to allow for private vehicle drop off and pick up as well as pre-ordered taxi travel. Amenity and safety considerations may preclude narrow or quiet streets from this type of development.”
In terms of the Tavern land use, little has changed from the refused application except a reduction in patron numbers. It is recognized that the existing site constraints, such as the distance from a gazetted road, proximity to Fremantle Port, and reliance on existing public footpaths outside of the lease area, make it difficult for the applicant to adequately address the above considerations of this policy.

Council recommended non-compliance with DBU6 as a reason for refusal of the previous application, though the WAPC did not include this in its list of reasons for refusal.

CONCLUSION

The proposal relates to land reserved under the MRS rather than land zoned under the City’s scheme, meaning the City acts only as a referral body to provide a recommendation to the WAPC. Nevertheless, in line with normal practice in such circumstances, relevant provisions of LPS4 and Council policies have been used as a guide in formulating the City’s recommendation to the WAPC.

City officers acknowledge the importance of consistency in decision-making to facilitate orderly and proper planning. In light of the fact that the current application in some ways presents a “scaled down” version of the previously refused application, the above report has endeavoured to assess whether the new application adequately addresses Council’s and the WAPC’s previous reasons for refusal.

City officers consider that the subject application does not represent a change sufficient to overcome the reasons for refusal of the previous application, particularly the policy-based reasons directly relating to incompatibility between the scale and intensity of the proposed Tavern use and the purpose and character of the reserve.

Therefore it is considered the City should recommend to the WAPC that the application be refused.

STRATEGIC IMPLICATIONS

The proposal is consistent with the City’s following strategic documents:

**Strategic Community Plan 2015-25**
- Increase the number of people working in Fremantle
- Increase the number of visitors to Fremantle
- Increase in commercial and retail development within 800m of Fremantle train station

FINANCIAL IMPLICATIONS

There are no financial implications for the City directly related to determination of the development application.

LEGAL IMPLICATIONS

The lease referred to in the Background section of this report gives the City the ability to decrease the patron limit having regard to the management of the premises and compliance with the memorandum of understanding. The lease also grants permission for a “Tavern, restaurant, micro-brewery, performance venue and artists studios” subject
to development approval. If development approval for one of the above uses is not forthcoming, that use is no longer available and the applicant would need to seek approval for another.

OFFICER’S RECOMMENDATION

Planning committee acting under delegation 2.1:

Refer to the Western Australian Planning Commission with a recommendation for REFUSAL under the Metropolitan Region Scheme, the proposed partial change of use to Tavern, and additions and alterations to an existing building at No. 1 (Lot 2051) Fleet Street, Fremantle, as detailed on plans dated 1 November 2017, for the following reasons:

1. The proposal is inappropriate having regard to the purposes for which the land is reserved under the Metropolitan Region Scheme.

2. The proposal is inconsistent with objectives 3.1 and 3.2 of the City of Fremantle’s Local Planning Policy DGF5 – Arthur Head Reserve Strategy Plan.

3. The proposal is inconsistent with Policy 3 of the City of Fremantle’s Local Planning Policy DGF6 – Arthur Head – (West End of High Street, Fremantle).

4. The proposal is inconsistent with clause 3.4 of the City of Fremantle’s Local Planning Policy DGF26 – Planning Policy for the West End of Victoria Quay.

5. The proposal is inconsistent with clause 1.1 of the City of Fremantle’s Local Planning Policy DBU6 – Late Night Entertainment Venues Serving Alcohol.

6. The proposal is inconsistent with clause 4.1.2(b) of the City of Fremantle’s Local Planning Policy DGF14 – Fremantle West End Conservation Area Policy.
Agenda - Planning Committee
6 December 2017

PC1712 -3 JEWELL PARADE, NO. 13 (LOT 30), NORTH FREMANTLE - DEMOLITION OF GROUPED DWELLING - (NB DA0487/17)

Meeting Date: 6 December 2017
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Attachments: 1: Development Plans
2: Applicant’s Justification
3: Site Photos

SUMMARY

Approval is sought to demolish a heritage listed Grouped dwelling.

The application is referred to the Planning Committee (PC) due to the cultural heritage significance of the dwelling. The dwelling is considered to have some significance, despite its poor condition. The application is recommended for refusal.

PROPOSAL

Detail
Approval is sought to demolish an existing Grouped dwelling. The dwelling is included on the Heritage List and Municipal Heritage Inventory (MHI) as a management category level 3 and it is located within the North Fremantle Heritage Area.

The applicant has submitted justification for demolition asserting that the poor condition of the existing dwelling is such that it must be effectively wholly removed/replaced, there is little extant heritage fabric on the site or within the streetscape owing to past development, and the previous demolition and reconstruction was supported by city officers and adjoining neighbours (Attachment 2). The applicant has also made reference to the structural report submitted with the previous application. The above comments are addressed below.

Site/application information
Date received: 3 October 2017
Owner name: Wade Anderson
Submitted by: Wade Anderson
Scheme: Mixed Use (R25)
Heritage listing: Level 3, North Fremantle Heritage Area
Existing land use: Grouped dwelling
Use class: A
Use permissibility: n/a
CONSULTATION

External referrals
Nil required.

Community
The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as demolition of a heritage place was proposed. The advertising period concluded on 10 November 2017, and five (5) submissions were received. The submissions objected to the demolition of the dwelling and stated the following comments (summarised):

- Demolition of a heritage building sets a precarious precedent for the council and residents alike.
- The demolition of a heritage building would be a public statement that heritage is not valued in North Fremantle.
- The existing heritage property is capable of being restored without impacting the amenity of the surrounding neighbours, and in doing so would contribute to the character of the area.
- If the proposed demolition is supported the developer will use the opportunity to overdevelop the site.
- This type of house can be renovated or if not rebuilt.
- The proposal does not come with any indication of what will replace the heritage building if it were to be demolished.

Comments in relation to the demolition are discussed below.

OFFICER COMMENT

Statutory and policy assessment
The proposal has been assessed against the relevant provisions of the City's Local Planning Scheme No. 4(LPS4) and relevant Council local planning policies.
Background

The site is zoned ‘Mixed Use’ under LPS4 with a density coding of R25 and is located within the North Fremantle Local Planning Area 3 (LPA 3). The site is 392m$^2$ and is located on the western side of Jewell Parade between Jackson Street and Tydeman Road. The site is on the City’s Heritage List and Municipal Heritage Inventory (MHI) as a management category level 3 and it is located within the North Fremantle Heritage Area.

The subject site is currently improved by a single storey weatherboard and iron duplex (Grouped dwelling). The Grouped dwelling is raised approximately 1.4 m above street level with a cement rendered brick retaining wall at the front boundary.

At the Planning Committee meeting of 2 July 2014, an application for the reconstruction of the heritage building and the construction of a three storey mixed use development (Multiple Dwellings and Office) (DA0247/12) was refused for the following reasons:

1. The proposal is inconsistent with Clause 5.15 [now Clause 4.14: Demolition of Buildings and Structures] of the City of Fremantle’s Local Planning Scheme No. 4.
2. The proposal does not meet the design principles of the R Codes relating to car parking, lot boundary setbacks, sight lines, visual privacy and overshadowing.
3. The discretions sought relating to car parking and DGN4– Stirling Highway, Tydeman Road, Jackson and Pearse Streets Local Area will have an adverse impact on the amenity of the area.

It is important to note that the building was not proposed to be demolished and removed, but rather “reconstructed” 490mm above the existing ground level using as much of the salvaged original materials as possible. However, as the engineer’s report noted little salvageable material, the proposal was, in effect, a full demolition and reconstruction. The proposal also included the permanent removal of a portion of the existing heritage limestone wall on the front boundary to accommodate vehicle access. These aspects of the application were supported by the City’s Heritage Officer as:

- The existing house appeared to have been poorly constructed even for the building standards of its time (ie: it appears to have not been built on stumps, which restricted airflow beneath the floor boards and contributed to dampness and rot).
- Because such timber houses were usually raised on stumps, introducing a gap between the floor level and the verandah as proposed would be more in keeping with the typical design of houses of the era.
- Heritage support was conditional on the accurate reconstruction of the existing house using as much of the original building materials as possible and retaining evidence of the placement of the limestone retaining wall.

The applicant subsequently lodged an Application for Review to the State Administrative Tribunal (SAT) in regard to the Council’s decision to refuse the application.
There were a number of mediation sessions attended by the parties where Council’s concerns were discussed including the following:

- The proposed reconstruction of the heritage buildings (rather than conservation and restoration in situ).
- The height of the proposed development to the rear of the site.
- The location of the undercroft vehicle access point being central to the development and accessed from directly underneath the heritage building.
- The land uses proposed (mixed use compared to all residential dwellings).

A revised application was subsequently referred back to the Planning Committee (PC) for a decision on amended plans, which included conservation works to the heritage building which was proposed to be retained in situ. It also sought the removal of the heritage stairs leading up to the building, but retained the front limestone wall.

The revised application also converted the office units to residential units, meaning the development was no longer considered to be Mixed use, and therefore sought to increase the density of the development from R25 to R60 using clause 7.5 of LPS4 (now clause 12 of the Deemed provisions). This provision allows the City to vary any site or development requirement in order to facilitate the conservation of a heritage place.

The revised application was presented to PC on 5 August 2015, where it was refused for the following reasons:

1. The density of the proposed development exceeds that permitted under the Residential Design Codes in terms of the deemed-to-comply and design principles.

2. That approval of the development has the potential to adversely affect the amenity of the locality, the existing traditional streetscape and the bulk and scale of the proposal has the potential to adversely affect the neighbouring properties.

3. The proposed four dwellings on a site of 392m² zoned Residential R25 is considered to represent overdevelopment of the site and results in a development that is not compatible within its current setting.

4. The proposal does not meet the design principles of the R Codes relating to lot boundary setbacks, open space, sight lines, outlook living areas, landscaping, design of car parking spaces, vehicular access, visual privacy and overshadowing.

5. The discretions sought relating to DGN4—Stirling Highway, Tydeman Road, Jackson and Pearse Streets Local Area will have an adverse impact on the amenity of the area.

On 20 May 2016, the applicant withdrew the application for review with SAT.

On 4 October 2017, the City received the subject application for demolition of the existing Grouped dwelling. The proposal does not include the reconstruction of the building. The existing limestone front wall is not proposed to be demolished.
Heritage Matters

The proposed demolition has been assessed in accordance with Clause 4.14 of LPS4 which states:

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

(a) has limited or no cultural heritage significance, and

(b) does not make a significant contribution to the broader cultural heritage significance and character of the locality in which it is located.

4.14.2 **In considering an application under 4.14.1, Council shall have regard to any heritage assessment required under the Planning and Development (Local Planning Schemes) Regulations 2015.**

The existing Grouped dwelling is considered to be of some cultural heritage significance (as opposed to limited or none) for the following reasons:

- It has some aesthetic value as a late example of a Victorian Georgian style house and as such it contributes to the quality of its setting along Jewell Parade and the surrounding area.
- It has some historic value as an example of a 19th century worker's house in the North Fremantle area.
- It has some social value for its contribution to the community's sense of place.
- It has some rarity value as one of two remaining timber framed duplex residences in the area.
- The front boundary retaining wall is of cultural heritage significance as a 19th century rubble limestone retaining wall that is now a rare reminder of the original topography of Jewell Parade.

Level 3 places are generally of value for their contribution to the streetscape, which in this case includes the verandah and the front two rooms of the dwelling, as well as the front retaining wall. This front portion of the house is therefore considered the most culturally significant portion of the dwelling and was previously proposed to be reconstructed (in the first application) and then kept and maintained (in the reconsideration).

It is recognised that 13 Jewell Parade has not benefitted from a maintenance regime consistent with its level of significance. However, it is considered that the detrimental effect of this lack of attention can be overcome and that at present it has not diminished the overall level of significance of the place. It is also considered that it is possible to enhance the place’s contribution to the streetscape and local area through the implementation of a programme of careful conservation works, including maintenance. The proposal is considered to be inconsistent with clause 4.14 of LPS4 as the building has some heritage significance and does contribute to the broader cultural heritage significance and character of the locality.
The owner submitted a structural engineering report with the previous application. From this report, it was clear that the existing building was in poor condition and that the process of simply upgrading it would itself require a ‘significant removal of the existing structure’. City officers supported both of the previous applications as they proposed some sort of conservation works to preserve the existing cultural heritage. The *Heritage of Western Australia Act 1990* defines conservation as [emphasis added]:

> “means, in relation to any place, the management of that place in a manner that will—
> (a) enable the cultural heritage significance of that place to be retained; and
> (b) yield the greatest sustainable benefit for the present community without diminishing the cultural heritage significance of that place,
> and may include the preservation, stabilization, protection, restoration, reconstruction, adaptation, and maintenance of that place in accordance with relevant professional standards, and the provision of an appropriate visual setting;”

The previous heritage assessment found that not only was the existing dwelling in poor shape due to a lack of maintenance, but it had also been constructed to standards below that of the era in which it was erected. For instance, it lacked a void beneath the floor to allow for adequate airflow, which assisted in the deterioration of the building. Because of this, reconstruction of the dwelling in the original application was consistent with the *Heritage of Western Australia Act 1990* and supported by city officers as it enabled the cultural significance of the place and the locality to be retained, despite the fact that it would entail significant or complete replacement of the existing fabric. Of note in regards to previous decisions, PC refused the original “relocation and reconstruction” application partly on the basis of loss of heritage fabric, whereas the reconsidered “conservation and maintenance” application was supported on heritage grounds but refused for reasons of overdevelopment.

In contrast to the previous applications supported by city officers, the current application proposes a complete demolition, with no proposal to reconstruct the dwellings. Such a demolition would result in an almost total loss of heritage fabric, leaving the only significant heritage fabric being the front retaining wall. As the site would then be effectively considered vacant, there would be no requirement to rebuild or reconstruct the heritage place in a manner in keeping with the existing significance. This would be a lost opportunity to retain the cultural heritage value of the locality.

As evidenced by the previous applications, it is possible that partial demolition and reconstruction could be supported by city officers on heritage grounds, if future development retaining the heritage significance of the place through some sort of reconstruction and/or repair was included in the application.

It is noted that the previous (reconsidered) application proposed partially restoring the front section of the dwelling (ie: the most culturally significant portion of the dwelling as discussed above), and PC seemed to support this. PC’s objections in that instance primarily related to the built form and proposed density increase, not any loss of heritage fabric. For the subject application, in the absence of any submitted plans for new development, the demolition of the existing dwelling is recommended for refusal.
STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER’S RECOMMENDATION

Planning committee acting under delegation 2.1:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the demolition of the existing Grouped dwelling at No. 13 (Lot 30) Jewell Parade, North Fremantle, as detailed on plans dated 4 October 2017, for the following reason(s):

1. The proposal is contrary to Clause 4.14 of the City of Fremantle’s Local Planning Scheme No. 4 as the existing Grouped dwelling building is identified as having some cultural heritage significance and makes a contribution to the broader cultural heritage significance and character of the locality.
PC1712 -4 UPDATE ON METRO SOUTH-WEST JDAP DETERMINATIONS AND RELEVANT STATE ADMINISTRATIVE TRIBUNAL APPLICATIONS FOR REVIEW

The following applications have been determined by the Metro South-West JDAP and/or are JDAP/Planning Committee determinations that are subject to an application for review at the State Administrative Tribunal.

**Application Reference**
DAP003/17

**Site Address and Proposal**
116 Wray Avenue, Fremantle – Proposed Third Storey Additions, Signage and Additional Uses of Office and Lunch Bar to an Existing Commercial Building

**Planning Committee Consideration/Decision**
- Planning Committee supported the officers recommendation for refusal at its meeting 6 September 2017
- Metro South-West JDAP refused the application on 28 September 2017.

**Current Status**
- Currently subject to an Application for Review by the State Administrative Tribunal
- SAT Direction for Mediation between the parties to be held in December 2017.

**Application Reference**
DA0104/17

**Site Address and Proposal**
193 South Terrace, South Fremantle – Proposed Two Storey Additions and Alterations and Addition Use of Restaurant and Health Studio to Existing Mixed Use Building

**Planning Committee Consideration/Decision**
- Council refused the application at its meeting on 28 June 2017

**Current Status**
- Currently subject to an Application for Review by the State Administrative Tribunal.
- Following SAT directed mediation sessions between the parties the SAT directed the applicant to submit a revised proposal for the City’s reconsideration. The revised proposal includes a reduction in the size of the building addition, reduction in the size of the Restaurant and the retention of four car parking bays.
• The revised proposal is currently out for Public Consultation in accordance with Council’s Local Planning Policy 1.3 - Notification of Planning Proposals (LPP 1.3).

• A report and recommendation will be presented to the Planning Committee in due course (tentatively scheduled for January 2018).

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**Application Reference**

DA0392/17

**Site Address and Proposal**

24/219 Hampton Road, South Fremantle – Proposed Partial Change of use to Liquor Store in an Existing Shop

**Planning Committee Consideration/Decision**

• Planning Committee approved the application at its meeting 1 November 2017, subject to a condition prohibiting any new signage advertising the sale of liquor.

**Current Status**

• Currently subject to an Application for Review by the State Administrative Tribunal for the removal of the condition relating to signage.

• SAT Directions Hearing scheduled for November 2017.

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**OFFICER’S RECOMMENDATION**

That the information is noted.
PC1712 -5 SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

Acting under authority delegated by the Council the Manager Development Approvals 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)

PC1712 -6 AMENDMENT TO LOCAL PLANNING POLICY 2.8: FENCES POLICY - FINAL ADOPTION

Meeting Date: 6 December 2017
Responsible Officer: Manager Strategic Planning
Decision Making Authority: Council
Attachments: 1: Full and Final Local Planning Policy 2.8: Fences Policy

SUMMARY

In September 2017, Council approved amendments to Local Planning Policy 2.8: Fences Policy for community comment. The proposed amendments include the following:

- Reinstall exemptions for certain types of fences from requiring development approval, subject to meeting specific criteria, that were inadvertently deleted.
- Introduce new exemptions for lots within or abutting a place on the City's Heritage List.
- Eliminate the need for neighbour consultation when a side/rear boundary fence only impacts Industrial lots.
- Clarify elements of the existing policy.
- Provide administrative fixes to reflect the changes resulting from the enactment of the Planning and Development (Local Planning Schemes) Regulations 2015.

The proposed amendments to the policy were advertised to the public for comment from 20 October to 13 November 2017. No submissions were received during this time. Some minor amendments have been made for clarification since advertising commenced but these changes are considered so minimal as to not require additional advertising. This report recommends that Council adopt the amendments to the policy.

BACKGROUND

At the Ordinary Meeting of Council on 27 September 2017, officers recommended changes to the Fences Policy to clarify existing provisions and introduce new criteria whereby proposed fences meeting the requirements would be exempt from requiring development approval. Council approved the officer's recommendation and the amendments to the policy were advertised to the public for comment from 20 October to 13 November 2017.
CONSULTATION

Advertising was undertaken in accordance with clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 Deemed Provisions and consisted of:

- a notice in the Fremantle Herald on 21 October 2017
- policy documents and an electronic submission form provided on the City’s MySay webpage
- policy documents located at the City of Fremantle administration building
- email notification inviting comment to all precinct groups.

No submissions were received during the public comment period.

OFFICER’S COMMENT

The proposed amendments to Local Planning Policy 2.8: Fences Policy clarify existing requirements, provide administrative changes to reflect new legislation, and introduce new exemptions for fences satisfying specific criteria. Under the proposed amendments, the following additional fences will not require development approval:

- boundary fences and pool fences on heritage properties and in heritage areas up to a height of 1.8 m and that do not impact the heritage significance of the place
- fences not within or on the boundary of a heritage listed lot and that fully comply with the requirements set out within the policy and, where relevant, the Residential Design Codes (R-Codes).

In addition to the advertised modifications, the following further amendments have been proposed after close of advertising, in the interests of providing additional clarity:

- Under ‘Definitions and Terms’, add the following table to provide clarity to the definition of ‘Visual Permeability’:

<table>
<thead>
<tr>
<th>Slat Size</th>
<th>Gap Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slats less than 50 mm wide</td>
<td>Gap size equal to or greater than twice the slat size</td>
</tr>
<tr>
<td>Slats 50 mm wide and greater</td>
<td>Gap size equal to or greater than slat size</td>
</tr>
</tbody>
</table>

- Amend Clause 7.2 to make clear that fences not within or on the boundary of a heritage listed property do not require planning approval provided they comply with the policy and the R-Codes (in the case of residential development) or the relevant Australian Standards (in the case of non-residential development). This was done by adding an additional criteria that, to be exempt from development approval, a fence must comply with:
  a) All relevant requirements set out in the above clauses of this policy.
- Amend Figure 1 advice to further explain existing R-Code requirements by adding the following sentence:
  Any portion of fence within the truncation area must be no taller than 750mm above natural ground level in order to be considered Deemed-to-comply.
- Modify ‘Table 1: Development criteria for which development approval is not required’ to clarify policy provisions for ease of reference through inclusion of heritage property exemptions (see comparison below).

**Table 1**: Original Table 1 listing fences that do not require planning approval

<table>
<thead>
<tr>
<th>Type of Residential Development</th>
<th>Within or on the boundary of a property within a Heritage Area</th>
<th>All other cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fence within primary street setback area</td>
<td>Approval required</td>
<td>Up to 1.2 m in height</td>
</tr>
<tr>
<td>Fence within secondary street setback area, unless within the primary street setback area</td>
<td>Up to 1.8 m in height*</td>
<td>Up to 1.8 m in height</td>
</tr>
<tr>
<td>Any other fence within 3 m of the boundary of any land depicted on the Scheme map as a local reserve for open space or land shown on the Metropolitan Region Scheme as a regional reserve for parks and recreation</td>
<td>Up to 1.2 m in height*</td>
<td>Up to 1.2 m in height</td>
</tr>
<tr>
<td>Any other fence</td>
<td>Up to 1.8 m in height</td>
<td>Up to 1.8 m in height</td>
</tr>
</tbody>
</table>

*Fences exempt from requiring development approval under Schedule A of Local Planning Scheme No. 4 and shown here for ease of reference only

**Table 2**: Modified Table 1 listing fences that do not require planning approval

<table>
<thead>
<tr>
<th>Location of Fence</th>
<th>Within or on the boundary of a property on the Heritage List</th>
<th>Within or on the boundary of a property within a Heritage Area</th>
<th>All other cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fence within primary street setback area</td>
<td>Approval required</td>
<td>Visually permeable above 1.0 m 1.8 m maximum height Compliant with this policy and the R-Codes</td>
<td>Visually permeable above 1.2 m 1.8 m maximum height Compliant with this policy and the R-Codes</td>
</tr>
<tr>
<td>Fence within secondary street setback area, unless within the primary street setback area</td>
<td>Approval required</td>
<td>1.8 m maximum height*</td>
<td>1.8 m maximum height Compliant with this policy and the R-Codes</td>
</tr>
<tr>
<td>Any other fence within 3 m of the boundary of any land depicted on the Scheme map as a local reserve for open space or land shown on the Metropolitan Region Scheme as a</td>
<td>1.2 m maximum height Compliant with Cl. 7.1 above and the R-Codes</td>
<td>1.2 m maximum height*</td>
<td>1.2 m maximum height Compliant with this policy and the R-Codes</td>
</tr>
</tbody>
</table>
**regional reserve for parks and recreation**

| Any other fence                        | 1.8 m maximum height Compliant with Cl. 7.1 above and the R-Codes | 1.8 m maximum height Compliant with this policy and the R-Codes | 1.8 m maximum height Compliant with this policy and the R-Codes |

*Fences exempt from requiring development approval under Schedule A of Local Planning Scheme No. 4 and shown here for ease of reference only. Fences are expected to comply with the R-Codes in accordance with Clause 4.2.2 of the Scheme.*

A full copy of the policy, with all amendments indicated, is included as Attachment 1.

Clause 5(2) of the *Deemed provisions* allows local government to make amendments to a local planning policy without advertising the amendment (or re-advertising in this instance) if the local government considers the amendment to be minor.

The additional amendments outlined above are considered minor for the following reasons:

- The *Deemed provisions* exempt fences in non-heritage areas and non-heritage listed properties from requiring approval where they comply with all local government policies. The modified table only serves to make that clear and does not add new exemptions that were not advertised.
- The policy permits fences within heritage areas to be solid up to 1.0 m high and visually permeable above that up to 1.8 m high (provided they also comply with the R-Codes). It would be unnecessary and cumbersome on residents to require planning approval where there is no discretion sought.
- The modified table combines heritage and non-heritage requirements as a quick reference guide for the policy.

It is therefore recommended that the policy be adopted with the above minor amendments.

**FINANCIAL IMPLICATIONS**

Adopting the policy may slightly reduce the fees collected by the City due to a decrease in planning applications submitted. However, the fees collected for such fence applications are not significant (a flat rate fee of $147 per application) and do not recover the cost of officer and administrative processing time. Adopting the policy will allow City officers to concentrate on more substantial developments and potentially decrease the overall time taken to assess applications.

**LEGAL IMPLICATIONS**

Local governments are authorised to prepare and/or amend local planning policies under the *Planning and Development (Local Planning Schemes) Regulations 2015*.

**VOTING AND OTHER SPECIAL REQUIREMENTS**

Simple Majority Required
OFFICER’S RECOMMENDATION

Council:

1. Adopt the amendments to the Local Planning Policy 2.8: Fences Policy with the noted modifications, in accordance with the Planning and Development (Local Planning Scheme) Regulations 2015, Schedule 2 Part 2 Clause 4 as follows:

CITY OF FREMANTLE

LOCAL PLANNING POLICY 2.8

FENCES POLICY

ADOPTION DATE: 22 October 2008
AMENDED: 4 September 2012, 13 December 2017
AUTHORITY: LOCAL PLANNING SCHEME NO. 4

STATUTORY BACKGROUND

Under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations), the Deemed provisions contained in Schedule 2 of the Regulations are applicable to all local planning schemes, whether or not they are incorporated into the local planning scheme text. Accordingly, these provisions are applicable to the City of Fremantle Local Planning Scheme No. 4 (LPS4).

The Deemed Provisions of the Regulations require the Local Government to consider a broad range of considerations and allows Council to impose conditions relating to these in dealing with an application for development approval. This includes but is not limited to the height, position, form and materials of fences.

Schedule A of LPS4 includes specific types of fences that are permitted development and therefore development approval from the City is not required.

Note: This policy does not attempt to interpret any of those matters considered under the Dividing Fences Act 1961 (the Act). Where there is a conflict between the Act and this policy, the Act shall prevail.

PURPOSE

The purpose of this policy is to provide development standards for fencing that requires development approval under the Deemed provisions and to exempt certain fencing from the need to seek development approval.

DEFINITIONS AND TERMS

The following terms are used in this policy and are defined as follows:
Prevailing Streetscape: Means the characteristics (front walls and fencing) of the 3 properties, where appropriate, adjoining either side of the subject site, fronting the same street and in the same street block.

In the case of a corner lot where the dwelling is orientated to the splay, the characteristics of the adjoining three properties, where appropriate, facing both streets shall be considered.

Greater weight may be given to the characteristics of the two immediately adjoining properties on either side of the subject site fronting the same street(s).

For the purpose of this definition, properties separated by a street shall not be considered ‘adjoining’.

Subject site: Means the site or lot on which the development is proposed.

Visual Permeability: Means, 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 50mm, occupying at least two thirds of the face in aggregate, as viewed directly from the street.

<table>
<thead>
<tr>
<th>Visual Permeability Based on Size of Slats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slat Size</td>
</tr>
<tr>
<td>Slats less than 50 mm wide</td>
</tr>
<tr>
<td>Slats 50 mm wide and greater</td>
</tr>
</tbody>
</table>

OR

A surface offering equal or lesser obstruction to view.

All other terms used in this policy have the same meaning as defined in the Residential Design Codes (R-Codes) and LPS4.

APPLICATION

The provisions of this policy apply to all areas zoned or reserved under the Scheme area of LPS4, except where specific provisions relating to front fences are contained within a Local Area Planning Policy or equivalent (such as the Hilton...
Garden Suburb Precinct policy). In the event that there is a conflict between this policy, and a provision contained within a Local Area Planning Policy, the Local Area Planning Policy shall prevail.

Note: As at July 2017, those Local Area Planning Policies that include provisions for fencing are:
- DGB4 – Mardie Street including the East of Edmund Street
- DGF8 – Douglas Street Local Area Policy
- LPP3.7 – “Hilton Garden Suburb Precinct” Heritage Area Local Planning Policy
- LPP 3.14 – Wray Avenue Precinct
- DGN10 – Rous Head Industrial Park/Harbour
- DGN11 – Cypress Hill – Harvest Road, Corkhill Street and Alfred Road and the Swan River
- DGN14 – Leighton Design Guidelines.

POLICY

1. Requirements Applicable to All Fencing Excepting:
   - those properties on the Heritage List
   - those properties subject to a Local Area Planning Policy that includes provisions for fencing (such as the Hilton Garden Suburb Precinct policy).

1.1 Fences within the primary street setback area as viewed from the street, and side fences abutting public open space reserves shall be visually permeable above 1.0 metre within heritage areas and 1.2 metres in other areas to a maximum height of 1.8 metres, with piers not higher than 2.0 metres.

1.2 Fences within a secondary street setback area and outside of a primary street setback area may be solid to a maximum height of 1.8 metres.

1.3 Council may exercise discretion to vary the height of fences in the primary and/or secondary street setback area(s) where any of the following apply:
   a) the proposed fence height is consistent with the established pattern of fences within the streetscape
   b) minor variations are made necessary by virtue of the sloping topography of the site
   c) chain link, mesh, or garrison fences on a lot with non-residential land use and that are greater than 1.8 metres in height shall be permitted where in the opinion of Council, it is necessary to provide security to a commercial or industrial property, and are consistent with the established pattern of fences within the streetscape.

1.4 Council may permit solid fencing for a portion of the total length of the boundary within the primary street setback area, where surveillance between a habitable room window of the dwelling and the street and approach to the dwelling is available, and either of the following criteria is satisfied:
a) where it is necessary to provide privacy screening where there is no alternative outdoor living area to the front setback

b) where it is consistent with the prevailing streetscape.

2. Requirements for properties included on the Heritage List pursuant to Clause 8 of the Deemed provisions.

2.1 Fences within the primary and/or secondary street setback area(s) of places on the Heritage List shall be compatible with, and complimentary to, the heritage character of the listed place with respect to height, materials and heritage character.

2.2 Where a property is included on a Heritage List, Council may specify the type of building materials to be consistent with the heritage character of the place or area.

3. Sightlines at Vehicle Access Points on Non-residential Land

3.1 Where a fence is proposed on a lot containing wholly non-residential land use, abuts a vehicle access point, and is not of visually permeable construction, sight lines are to be provided in accordance with the relevant Australian Standards AS2890.2 (as amended).

4. Vehicle and Pedestrian Access Gates

4.1 Where a fence includes vehicle and/or pedestrian access gate(s), Council will only support such gates where they are designed and constructed so that they swing into subject site when opened or closed and are otherwise consistent with the relevant provisions of this policy.

5. Side and Rear Boundary Fences and Screening Materials

5.1 Council will not approve side and/or rear boundary fences greater than 1.80 metres in height, or screening material that projects more than 500 mm above the top of an approved fence unless the proposed fence/screening will not have any significant impact on adjoining properties by way of overshadowing, solar access, or loss of views.

5.2 Council will have particular regard to comments made by neighbouring owners / occupants of adjoining properties where consultation is carried out, and will only consider the criteria in 5.1 to be met where it is satisfied that no significant adverse impacts on the amenity of the neighbouring property will occur.

6. Consultation

6.1 Adjoining property owners shall be consulted in accordance with Clause 64 of the Deemed provisions in any of the following circumstances:

a) where discretion is sought for fences within the primary and/or secondary street setback area(s) in relation to the requirements of clause(s) 1.1 and/or 1.2 above
b) where side and/or rear boundary fences exceed 1.8 metres in height

c) where any form of privacy screening is to be attached to, and extend more than 500mm above a side and/or rear boundary fence.

6.2 Notwithstanding clause 6.1 above, consultation is not required where fencing/screening is on a side or rear boundary, AND the only affected adjacent lot(s) are zoned Industrial.

7. Development Permitted Without Development approval

7.1 Fences on or Abutting a Heritage Listed Property

Where a fence is within or on the boundary of a property included on the Heritage List pursuant to Clause 8 of the Deemed provisions, development approval is not required if it complies with ALL of the following:

a) The maximum height is 1.2 m where within 3 m of the boundary of any land depicted on the Scheme map as a local reserve for open space or land shown on the Metropolitan Region Scheme as a regional reserve for parks and recreation, and a maximum height of 1.8 m in all other cases.

b) The fence is not located within the primary or secondary street setback area.

c) The fence is in line with or behind the main wall of the heritage building when viewed from both the primary and secondary street.

d) The fence is freestanding and not attached to any existing structure, existing building or heritage feature.

e) In the case of development subject to the R-Codes (includes any development on a lot with a residential land use), the fence complies with the R-Codes, including the sight lines criteria of clause 5.2.5 (see Note 2 below).

f) The fence is not within or on the boundary of a lot containing a place that is entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990, the subject of an order under the Heritage of Western Australia Act 1990, or the subject of a heritage agreement entered into under the Heritage of Western Australia Act 1990.

7.2 Fences Not on or Abutting Heritage Listed Properties

Where a fence is not within or on the boundary of a property included on the Heritage List pursuant to Clause 8 of the Deemed provisions, development approval is not required if it complies with ALL of the following:

a) All relevant requirements set out in the above clauses of this policy.

b) In the case of development subject to the R-Codes (includes any development on a lot with a residential land use), the fence complies with the sight lines criteria of clause 5.2.5 of the R-Codes (see Note 2 below).

c) In the case of non-residential development, the fence complies with the site lines criteria of the relevant Australian Standards.
For ease of reference, the following table is provided as a summary of this policy:

Table 1: Development criteria for which development approval is not required

<table>
<thead>
<tr>
<th>Location of Fence</th>
<th>Within or on the boundary of a property on the Heritage List</th>
<th>Within or on the boundary of a property within a Heritage Area</th>
<th>All other cases</th>
</tr>
</thead>
</table>
| Fence within primary street setback area | Approval required | • Visually permeable above 1.0 m  
• 1.8 m maximum height  
• Compliant with this policy and the R-Codes | • Visually permeable above 1.2 m  
• 1.8 m maximum height  
• Compliant with this policy and the R-Codes |
| Fence within secondary street setback area, unless within the primary street setback area | Approval required | 1.8 m maximum height* | 1.8 m maximum height  
• Compliant with this policy and the R-Codes |
| Any other fence within 3 m of the boundary of any land depicted on the Scheme map as a local reserve for open space or land shown on the Metropolitan Region Scheme as a regional reserve for parks and recreation | 1.2 m maximum height  
• Compliant with Cl. 7.1 above and the R-Codes | 1.2 m maximum height* | 1.2 m maximum height  
• Compliant with this policy and the R-Codes |
| Any other fence | 1.8 m maximum height  
• Compliant with Cl. 7.1 above and the R-Codes | 1.8 m maximum height | 1.8 m maximum height  
• Compliant with this policy and the R-Codes |

*Fences exempt from requiring development approval under Schedule A of Local Planning Scheme No. 4 and shown here for ease of reference only. Fences are expected to comply with the R-Codes in accordance with Clause 4.2.2 of the Scheme.

Note 1: For the above table, non-residential fences must comply with the Australian Standards AS2890.2 to qualify for exemption.
Note 2: The Deemed-to-comply requirements of Cl. 5.2.5: Sight lines of the R-Codes requires fences associated with residential development to be truncated, or reduced to no higher than 0.75 m above natural ground level, within 1.5 metres of where a driveway or other vehicle access point meets a street boundary (includes right-of-ways, private streets, etc.) as shown in the figure below.

Figure 1: Locations of truncations or reduced fence height, adapted from Figure Series 9 of the R-Codes. Any portion of fence within the truncation area must be no taller than 750mm above natural ground level in order to be considered Deemed-to-comply.
LOCAL PLANNING POLICY 3.18 - BEACONSFIELD AND WHITE GUM VALLEY LOCAL CENTRES - ADOPT FOR FINAL APPROVAL

Meeting Date: 6 December 2017
Responsible Officer: Manager Strategic Planning
Decision Making Authority: Council
Agenda Attachments: 1. Schedule of submissions
2. Previous report on item PC1707-10 - 26 July 2017

SUMMARY

The purpose of this report is to recommend Council adopt Local Planning Policy 3.18 – Beaconsfield and White Gum Valley local centres (LPP3.18) with a minor modification.

LPP3.18 applies to the local centre areas of Beaconsfield (the commercial area on both sides of Central Avenue to Fifth Avenue) and White Gum Valley (the commercial area on both sides of Yalgoo Avenue to Stokes Street) which face one another across South Street. The policy area was the subject of a scheme amendment (No. 65) gazetted in January 2017. The scheme amendment increased the development potential of the area to up to R100 residential density and three or four storey height where specific criteria are met. The amendment also included a requirement for reduced heights (two storeys) where the development would adjoin existing residential zoned properties. The policy provides additional design direction for development proposals, to enhance the character of the area and promote appropriate interface with adjoining residential properties and the public realm.

Three submissions were received on LPP3.18 during the public comment period. A minor modification is recommended as a result of the submissions received.

BACKGROUND

In July 2017, council adopted Local Planning Policy 3.18 – Beaconsfield and White Gum Valley local centres (LPP3.18) for the purposes of inviting public comment. LPP3.18 applies to the local centre areas of Beaconsfield (from Fifth Avenue and either side of Central Avenue) and White Gum Valley (the commercial area on either side of Yalgoo Avenue) which face one another across South Street, as per figure 1 below.
Agenda - Planning Committee
6 December 2017

The policy area was the subject of a scheme amendment (No. 65) gazetted in January 2017. The scheme amendment increased the development potential of the area to up to R100 residential density and three or four storey height where specific criteria are met. The amendment also included a requirement for reduced heights (two storeys) where the development would adjoin existing residential zoned properties.

The purpose of the proposed draft local planning policy LPP3.18 is to provide controls that ensure that developments enhance the character of the area, respect the interface with residential properties, and provide high levels of public realm engagement. The draft policy sets out design objectives for seven different aspects of development. Proposed development is to demonstrate it meets the design objectives for each. Additional design criteria are provided for each design objective. The design criteria provide specific points to consider when addressing each design objective.

For further information refer to the LPP3.18 initiation report from the ordinary meeting of council minutes 26 July 2017 item PC1707-10 provided in attachment 2.

CONSULTATION

Draft LPP3.18 was advertised in accordance with Schedule 2, clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015 and Local Planning Policy 1.3 - Public Notification of Planning Proposals from 16 September - 23 October 2017 (37 days).

During the consultation period, three submissions were received: two submissions (from the Public Transport Authority and Main Roads WA) support the draft policy and provide additional comment. The third submission, from a land owner of a place adjoining the policy area, did not support the draft policy (or, more specifically, the development potential enabled by scheme amendment No.65).

For a full summary of the submissions and officers comments in respect to the points raised, please refer to attachment 1.

OFFICER COMMENT

The purpose of the draft local planning policy is to provide controls to ensure new development in the centres adds to the character of the area, integrates respectfully with existing residential properties, and provides improved public spaces on South Street. The policy was advertised for public comment during September and October 2017. Three submissions were received as outlined above.

The submission received in objection to the policy raised concerns around the impact of development in the policy area on adjoining residential lots. The development potential of the policy area was established through scheme amendment No. 65. Heights and density established through scheme amendment No. 65 will not be changed through the policy. The policy does address the interface of new development in the policy area with residential, which is the primary concern raised in the submission. The policy specifically seeks to limit the impact on adjoining residential areas under three of the seven design aspects: Development context, Architectural expression and articulation and dwelling design Site planning, orientation and setbacks.
As the policy will not change the requirements of the scheme and includes requirements for new development to address the interface with residential lots, no modifications are proposed in light of this submission.

The Public Transport Authority’s submission actively supported the policy and the consolidation of development in this route enabled by amendment No. 65.

Main Roads WA provided general support and additional specific comments on the wording of the policy. A summary of the comments made by Main Roads WA and officer response, including a recommended modification to the draft policy, are provided below in Table 1 below.

### Table 1. Summary of Main Roads WA submission and officer comments in response

<table>
<thead>
<tr>
<th>Main Roads comments</th>
<th>Officer comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim opportunities for use of land within the South Street road reserve are not to be permanent. Main Roads would support some additional wording or a footnote that states this.</td>
<td>South street is a Primary Regional Road category 3. The instrument of delegation (May 2017) requires local government to refer all development applications to Main Roads WA. This process adequately deals with development Main Roads WA would or would not support on a case by case basis.</td>
</tr>
<tr>
<td>Where a site only has direct access to South Street all waste collection must be undertaken on site, with vehicles exiting the premises in forward gear.</td>
<td>This suggestion would potentially be overly restrictive to new development. Alternatively officers recommend the following is added under building services, design criteria bullet point one: Access to a site for, and the logistics of, waste management are to be discussed with the City of Fremantle and Main Roads WA prior to lodging a development application.</td>
</tr>
<tr>
<td>Restrict vehicle parking and access to local roads only e.g. require, when it develops, a site to provide access to the local road network for all adjacent lots.</td>
<td>Officers do not consider access from South Street should be completely restricted, especially considering some properties currently have access to South Street and several have no alternative. Access to and from a site therefore should be considered on a case by case basis when development is proposed. All development applications on South Street are to be referred to Main Roads WA. Officers consider this process adequately deals with Main Roads WA consideration of any proposal.</td>
</tr>
<tr>
<td>The policy shows building setbacks are a minimum of 10 metres on South Street with a footnote that this can be reduced if supported by Main Roads. Main Roads asks the footnote be modified to read ‘subject to change, for further information contact Main Roads WA.’</td>
<td>The setback requirement and footnotes in this part of the policy are the exact wording from the City’s Scheme from Scheme amendment No. 65 for the area gazetted January 2017. Main Roads comment on the Scheme amendment setback requirement in 2016 was: “Main Roads will need to review each new development application to ensure that any proposed ‘alfresco’ type business is wholly contained within the property boundary.” This would still be the case with the referral requirements under the instrument of delegation (May 2017) without the need to change the footnote in the policy.</td>
</tr>
</tbody>
</table>

One minor modification to the policy is recommended to address the second point raised in Main Roads’ submission, as set out in Table 1 above.
The full wording of the draft local planning policy is set out in the officer’s recommendation below.

Accordingly, this report recommends Council proceed to approve Local Planning Policy 3.18 – Beaconsfield and White Gum Valley with one minor modification.

FINANCIAL IMPLICATIONS

There are no financial implications for the City’s 2017/2018 budget in adopting this local planning policy.

LEGAL IMPLICATIONS

There are no legal implications in adopting the local planning policy under the Planning and Development (Local Planning Schemes) Regulations 2015.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required

OFFICER’S RECOMMENDATION

Council:

1. Note the submissions received as detailed in the Officer’s report and Attachment 1.

2. Adopt Local Planning Policy 3.18 – Beaconsfield and White Gum Valley local centres, with modification, in accordance with Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 part 2 clause 4 and as shown below:

CITY OF FREMANTLE
LOCAL PLANNING POLICY 3.18
BEACONSFIELD AND WHITE GUM VALLEY LOCAL CENTRE AREAS

ADOPTION DATE: ##/##/20##
AUTHORITY: LOCAL PLANNING SCHEME NO. 4

STATUTORY BACKGROUND

The Planning and Development (Local Planning Schemes) Regulations 2015 Deemed Provisions contained in Schedule 2, Part 2, provide the requirements for making a local planning policy.

Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2, requires the Local Government to consider a broad range of matters when determining an application.

Clause 4.2.2 of the City’s Local Planning Scheme No. 4 states that unless otherwise provided for in the Scheme, the development of land for any of the
residential purposes dealt with by the Residential Design Codes is to conform to the provisions of the Residential Design Codes.

Schedule 8 of Local Planning Scheme No. 4 provides the additional development standards including height and density for the sub areas 5.3.1 and 6.3.1 the subject of this local planning policy (refer to appendix 1 for summary of these sub area requirements).

APPLICATION

This policy applies to lots 214-228 South Street, White Gum Valley and lots 199-213 South Street, Beaconsfield.

In the event that there is a conflict between this policy, and a provision contained within a Local Area Planning Policy, the most specific policy provision shall prevail.

DEFINITIONS

Active Edges: Street frontages where there is an active engagement between those in the street and those on the ground floors of buildings characteristically achieved through building design and land use activation via retail and commercial opportunities.

Deep Planting Zone (DPZ): means an area of the lot for the exclusive use of supporting plant life. The deep planting zone shall be a minimum length and width dimension of 4.5 metres and water permeable, unpaved and uncovered. The deep planting zone shall not be used for vehicle parking or access and contain no buildings, structures, or pergolas.

All other definitions are as defined in the State Planning Policy 3.1 - Residential Design Codes and the City’s Local Planning Scheme No.4.

PURPOSE

The purpose of this policy is to provide controls that will ensure that developments enhance the character of the area, preserve established development interfaces, and provide high levels of public realm engagement. The design objectives and criteria in this policy are intended to assist proponents in preparing their development applications.

POLICY AREA
Note: 230 (lot 32) South Street, WGV (corner of Stokes & South Street) is in the Local centre zone, however is excluded from consideration under this policy.

POLICY

1. Development is to demonstrate it meets the following design objectives. The design criteria provide specific points to consider when meeting the design objective.

LOCAL PLANNING POLICY DESIGN OBJECTIVES

Site Specific Development controls

(in addition to LPS4 Schedule 8 Provisions – Appendix 1)

DEVELOPMENT CONTEXT

Design objectives:
Development should improve, acknowledge and be responsive to surrounding development, with appropriate consideration of adjacent site amenity where applicable.

Design criteria:
- Site design shall be responsive to neighbouring sites, the existing context and neighbouring public realm resulting in a positive contribution to the neighbourhood.
- Development must be sensitive to the interface with residential lots.

ARCHITECTURAL EXPRESSION, ARTICULATION AND DWELLING DESIGN

Design objectives:
Development must convey a contemporary and high quality architectural response with active edges at ground level and articulated facades above including appropriate building form design to South Street frontages to achieve vibrant and stimulating pedestrian experiences.

Building design must positively respond to the surrounding urban context, streets, and neighbouring properties and be sensitive to the interface with properties in the Residential zone.

New development should encourage innovative and imaginative development that provides variety, articulation and building outcomes that will enhance the visual amenity of the area.

Design criteria:
- The South Street ground level building facades of retail and commercial tenancies shall be designed to address the street via entries and windows to create interest and a sense of activity within the building.
- Development adjoining Residential zoned properties shall demonstrate a design response that is sensitive to this interface.

Internalised habitable rooms, including bedrooms, will not be permitted.
At least 60% of apartments shall be naturally cross ventilated.

SITE PLANNING, ORIENTATION AND SETBACKS

Design objectives:
Building design must demonstrate satisfactory site planning, orientation and setbacks, with specific attention to the following areas:
- the South Street road setback in terms of building setback and public realm
interface
- the interface with Residential zoned properties
- the existing topography of the site.

Design criteria:
- Buildings shall be oriented to the street and neighbouring buildings so as to maximise amenity, including architectural form to the street, solar access and visual privacy.
- Where level changes occur on sites development shall ensure floor levels and entrances to buildings appropriately interface with the ground plane and adjoining properties.

**CORNERS (BUILDINGS)**

Design objectives:
Development on lots with more than one street frontage shall address and activate both street frontages.

Design criteria:
- Buildings on corners shall address both street frontages and include strong architectural expression to both facades. The ground floor shall provide surveillance and an active edge to the corner return.
- Blank walls to corner frontages will not be permitted.

**LANDSCAPE DESIGN AND PUBLIC DOMAIN INTERFACE**

Design objectives:
Building design must ensure retail areas facilitate the creation of street level activity and vitality of South Street.

Developments must achieve a high quality public realm streetscape that is complimentary to the wider neighbourhood.

Landscaped interfaces between development and South Street shall give expression and character to this location.

Design criteria:
- Footpaths, landscaping and awning shelters shall be included in new developments where considered acceptable by MainRoads WA and the Department of Planning.
- Consider the interim opportunities for land in the Metropolitan Regional Scheme Primary Regional Road reserve setback to benefit the areas' building and streetscape responses. Where possible, a coordinated approach with adjoining properties should be achieved.
- Development shall maximise opportunities to introduce deep planting zones for the protection of new trees.

**BUILDING SERVICES**

Design objectives:
Services are to be well integrated and have minimal visual and acoustic impact on the public realm and adjacent buildings.

Design criteria:
- Waste management and storage designs shall minimise the impact on adjoining residences, and be screened from view. Access to a site and the logistics of waste management are to be discussed with the City of Fremantle
and MainRoads WA prior to lodging a development application.

- Building mechanical services including plant and service equipment shall be integrated into the roof design and/or not be visible above the roof line of the building facade from the public realm.

**VEHICLE PARKING AND ACCESS**

**Design objectives:**

On-site vehicle parking and access is appropriately located to minimise adverse visual impact on the streetscape.

**Design criteria:**

- Where possible, vehicle access shall be taken from the rear of the site.
- Where car parking is provided underground or in a building, car park access shall be integrated with the building's overall facade.

**APPENDIX 1 – SUMMARY OF LPS4 SCHEDULE 8 - SUB AREAS 5.3.1 & 6.3.1**

**Sub Area Map – Sub Area 5.3.1 and 6.3.1**

**SUMMARY OF SCHEDULE 8 PROVISIONS**

(contained within Local Planning Scheme No. 4)

Within sub area 5.3.1 and 6.3.1, clause 5.2.5 does not apply; the following additional development standards apply.

**SUB AREA 5.3.1 AND SUB AREA 6.3.1 ADDITIONAL DEVELOPMENT STANDARDS**

**ACHIEVABLE RESIDENTIAL DENSITY CODE**

R100*1

**LAND USE**

<table>
<thead>
<tr>
<th>South Street frontage</th>
<th>Mandatory non-residential land uses for ground floor</th>
</tr>
</thead>
</table>

**BUILDING HEIGHT (minimum)**

| South Street frontage | 7.0m*2 |

**BUILDING HEIGHT (maximum)**

<p>| Lots less than 1000m² | 13.0m top of pitched roof*3 |</p>
<table>
<thead>
<tr>
<th>Lot Description</th>
<th>Height Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lots equal or greater than 1000m²</td>
<td>as per R100 height requirements in Table 4 of the R-Codes³</td>
</tr>
<tr>
<td>South Street frontage</td>
<td>New building development ground floors shall not be more than 600mm above the adjacent footpath</td>
</tr>
<tr>
<td></td>
<td>Floor to floor heights for new building development situated on the ground floor shall be a minimum of 4.0m above the adjacent footpath</td>
</tr>
</tbody>
</table>

### BUILDING HEIGHT BUFFER

| Development proposed within 5m of adjoining residential zoned lands          | 9.0m top of pitched roof |
|                                                                              | 6.0m top of external wall |
| Development proposed within 15m of adjoining residential zoned lands         | 12.0m top of pitched roof |
|                                                                              | 9.0m top of external wall  |

### BUILDING SETBACKS

| South Street frontage | 10.0m minimum⁵ |
| South Street frontage | 12.0m maximum⁵ |
|                       | Maximum building separation distance of 6.0m per lot (aggregated)⁶ |

### BOUNDARY WALLS

| Lot boundary of adjoining residential zoned land outside of the sub area      | 3.5m maximum height and 3.0m average height |
|                                                                              | Maximum length restricted to two thirds of the length of the boundary |

### BUILDING FRONTAGES

| South Street frontage | Building facade to incorporate windows and doors at the ground floor and windows to the first level |

### CAR PARKING AND VEHICLE ACCESS

| South Street frontage | Primary vehicle access shall be located from side street for all corner lots |
| South Street frontage | Traffic Impact Assessment shall be submitted to support any planning application for lots with frontage to South Street⁷ |
| South Street frontage | Vehicle parking is restricted to rear of buildings and/or below ground level |

### OPEN SPACE

| Overall minimum open space | 30% of site area⁷ |

### LANDSCAPING
All R100 development | 10% minimum of site area shall be landscaped with planting and permeable surfaces

Notes:
*1 All development to be in accordance with R100 Residential Design Code provisions, except where otherwise specified in this policy.
*2 A minimum building height of 7 metres, including a building facade on the South Street frontage which incorporates windows and doors at the ground floor and windows to the first floor level to create interest and a sense of activity within the building, applies.
*3 The building height buffer must also be considered when applying these heights.
*4 The Traffic Impact Assessment (required as specified in Schedule 8 Provisions) is to be undertaken by a suitably qualified traffic engineer and shall be submitted in support of application for planning approval.
*5 Unless Main Roads has no objection to a reduced street setback.
*6 Applies to ground floor level of development to South Street only. The 6.0m maximum aggregate width applies to spaces between the buildings and/or to the building side lot setbacks.
*7 Where development respects existing or preferred neighbourhood character.
SUMMARY

The Western Australian Planning Commission (WAPC) has released for public comment a revised draft State Planning Policy 5.4 ‘Road and Rail Noise’ (SPP 5.4) and Guidelines.

The stated purpose of these documents is to “Minimise the adverse impact of road and rail noise on noise-sensitive land use and / or development. The Policy also seeks to protect the functionality of the State’s transport corridors by protecting them from encroaching incompatible development”. The revisions seek to:

- improve clarity and application
- simplify noise assessments
- enhance ‘deemed to comply’ options through ‘quiet house design’ criteria and
- provide standardised templates for Noise Management Plans, local planning scheme provisions and notifications on title.

This report summarises the key content of the draft documents and recommends to Council that a submission be made by the City of Fremantle. The closing date for submissions is 15 December 2017.

BACKGROUND

The current State Planning Policy 5.4 ‘Road and Rail Transport Noise and Freight Considerations in Land Use Planning’ (SPP 5.4) was gazetted on 22 September 2009. The purpose of the Policy is to manage conflicts between transport noise and noise-sensitive land uses (which include residential uses), with a focus on freight routes. In summary, the Policy:

- applies (in relation to Fremantle) to:
  - major urban roads including those designated as a freight route, and those carrying or expected to carry more than 20,000 vehicles a day within the 20 year horizon of the policy
  - railways and
  - freight handling facilities.
- sets out noise criteria (a target and a limit) for new proposals and requires new development proposals or major infrastructure redevelopment proposals to address the policy and demonstrate how the noise criteria will be achieved
- outlines how and when assessment of transport noise impacts will be required of developers and / or infrastructure agencies, and how the recommendations of these will be applied, and
• requires application of Notification on Certificates of Title on lots created where either noise targets are not achieved and / or ‘quiet house design’ requirements are recommended to be applied to new development to achieve compliance with the targets. (Quiet house design requirements include measures such as orientation of buildings to locate the more noise sensitive areas such as bedrooms and outdoor living areas away from the noise source, and treatment of windows and eaves to minimise the receipt of noise inside buildings).

Section 5.8 states that the policy is a performance-based one which promotes ‘reasonable and practicable measures’, considering proposals individually in the context of what is reasonable and achievable within the various stages of planning.

Application of the Policy is supplemented by implementation guidelines.

In September 2017, the Western Australian Planning Commission (WAPC) called for submissions on proposed revisions to SPP 5.4 and the associated Guidelines. The purpose of the review is to consider the efficacy of the current policy and:
• improve implementation through the provision of clearer policy measures and guidance
• simplify noise criteria and assessment
• enhance ‘deemed to comply’ options though the provision of default ‘quiet house’ design requirements, and
• provide standardised templates for Noise Management Plans, local planning scheme provisions and notification on title wording.

The key changes proposed include:
• Providing more definitive direction on where, when and how the policy will be applied.
• Removal of the previous noise ‘requirement’ criteria for new proposals so that only the more stringent noise ‘target’ applies.
• Replacement of the previous more general and flexible approach to considering noise impacts with a ‘precautionary approach’ (with regards to land use, not infrastructure) and greater emphasis on target compliance.
• Extension of the policy to a greater range of roads and defined proximity to those roads including, within Fremantle:
  o Port Beach Road
  o Stirling Highway
  o Tydeman Road
  o Canning Highway
  o Marmion Street
  o High Street
  o Ord Street
  o Hampton Road
  o South Street
  o Carrington Street
  o Stock Road
  o Both the passenger and freight rail lines (see below map).
• Clarification of exemptions to which the policy does not apply, including:
  o Existing situations.
- Developments which do not increase land use intensity, including single houses exempt for a requirement for planning approval.
- Increase in noise stemming from increased traffic not involving physical construction works.
- “upgrades of existing or new major road and railway construction proposals in existing reserves”. The policy states that that these generally do not require planning approval (implying that this is the reason they are exempt) but goes on to state that “transport infrastructure providers are expected to carry out these works in a manner that is consistent with the policy.”
- Aircraft noise, water craft noise and fixed source noise (such as level crossing warning bells).

The local government is not required to assess noise from rail, port or roads where these are reserved because this is managed at the state and federal level in the design of infrastructure.

![Map](image)

Extract: Planview: Draft SPP 5.4 application areas within Fremantle (Department of Planning, Lands & Heritage)

Whilst the revised policy explicitly states that it is not applicable to Single Houses which are exempt under the deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, it would be applicable to, for example, Freo Alternative housing which will (as currently drafted) generally involve development of ‘grouped’ or ‘multiple’ dwellings rather than single houses.

Notwithstanding the new emphasis on the precautionary principle, the implementation section of the draft policy states that whilst there is a general presumption against approving proposals that cannot achieve the noise criteria, “it is acknowledged that in some circumstances it may not be reasonable or practicable for the Policy’s noise criteria to be met. Discretion may be exercised by the decision-maker.” In such circumstances, decision-makers are required to consider why the criteria cannot be met and the objectives and intent of the policy. It also requires that advice be sought from the state
government agency responsible for noise regulation (currently Department of Water and Environmental Regulation/EPA).

OFFICER COMMENT

General
The issue with which the policy deals is a significant one, particularly in the context of a growing and consolidating city where conflicts between residents’ expectations and transport infrastructure are increasing. The objectives and review of the policy are therefore supported from a general perspective.

Clarity of application
The greater clarity of policy application (where this is achieved) is similarly desirable in making public comprehension and administration of the policy simpler however this is only supported to the extent that it supports reasonable and balanced decision-making. Simplification to the point of ‘dumbing down’ of requirements to create a straight-forward but potentially ineffective or unreasonable policy is cautioned against. The policy seeks to provide a reasonable balance in this regard however there is concern about its over extension through the application of wide trigger distances for a large number of roads.

Compliance based approach and the precautionary principle
In seeking to achieve clarity of requirement, the revised policy removes a number of points of discretion / performance based judgement in application of the policy which is potentially detrimental, particularly in an established area such as Fremantle. The strong focus on noise target compliance creates certainty but can also create an artificial line which can result in less consideration being given to other planning and design considerations which are less definitively framed, such as streetscape and character.

The redrafted policy also fails to acknowledge the inherent conflict being created with other planning policies which seek to consolidate development (including residential development) around and along transport nodes, and provides less latitude than previously for weighing various considerations. Specifically, the policy now states in section 6 as its primary policy measure that “The planning process should apply the precautionary principle of avoidance where there is a risk of future land use conflict. Where it is unavoidable (emphasis added) to place a proposed noise sensitive land use and / or noise sensitive development to which the Policy applies, it will be necessary to demonstrate that the noise impact on the proposed …. development can be adequately mitigated…..”. This (if literally applied) would preclude planning scheme amendment proposals to increase residential densities along transport corridors or around railway stations.

The implementation section of the policy does make provision to vary the noise criteria, and lists the requirements of other relevant plans and policies, and impact of mitigation measures on the built environment as two considerations, which is supported. However, this approach suggests that such variations are exceptions, rather than routine considerations in balanced decision making and, coupled with the wording of section 6, elevate noise target compliance above other factors.
Rewording of section 6 to promote more balanced decision-making is recommended. In so doing, it may be appropriate to recognise that noise impacts may be a more crucial/primary consideration in some locations than others (for example, along a key freight routes).

Remove of two-tiered approach to noise criteria for new development
The replacement of two tiers of noise criteria (‘target’ and ‘requirement’) to a single ‘target’ criterion for new development assists in simplification of the policy. It is also presumably intended to avoid pressure to approve development which meets only the lower ‘requirement’. This may be appropriate, provided that the standard is not excessive and discretion remains for balanced decision making. However, in some situations, the additional requirements this change in standard creates could be significant or even preclude development. This would be particularly problematic for the routes along which the City is pro-actively promoting residential intensification as part of its Integrated Transport Strategy. Without specialist technical input, it is uncertain what the physical and financial implications of this change are likely to be however indications are that they could be significant. The principle of a single target is, however, supported, if appropriately framed.

Application: Road Hierarchy
Similarly, the increased clarification of which roads and routes the policy applies to is supported from the principle of clarity. However, it appears to have resulted in extension to a greater number of lower order roads including, in the Fremantle context, to local distributor roads such as Marmion Street. The appropriateness of this and the public benefit against administrative and landowner cost is questionable. It also reflects an apparent policy shift away from the focus of freight routes and the very high order transport routes which is also questioned: certainly it is desirable to consider transport noise wherever it is experienced but greater flexibility in application in locations with both lesser noise conflict and fewer implications for the state’s economic function would, in the view of officers, be appropriate.

Application: Exemptions
The exemption of single houses and development not involving intensification of development is supported, though such landowners may be encouraged to consider introduction of noise mitigation in the design of new or redevelopment. However greater clarity of application to new or upgraded infrastructure is necessary. The policy discusses its application to new/upgraded infrastructure in various locations (including specifying noise criteria for these) but then lists them as a policy exemption in section 4.3. It is appreciated that, where land is reserved for road or rail purposes, planning approval is not required (and so removing a standard ‘trigger’ for assessment) but given the clear intent for the policy to apply defined criteria for noise generated by new road and rail infrastructure, the listing of them as exempt from the policy creates confusion. Given the controversy that frequently surrounds new road projects, clarity of application (or not) of the policy is considered particularly important. It is noted that the existing policy recognises that planning approval is not required for much transport infrastructure but does not then suggest that this means such infrastructure is exempt from the policy. This is considered a more appropriate approach.
If retained as an exemption, clarification of whether the exemption is intended to apply to infrastructure in existing reserves created under planning schemes (for example the Metropolitan Region Scheme) or only road reserves vested under the Land Administration Act would be desirable. The former is presumed however the removal of doubt is recommended.

**Ground-borne vibration**
Neither the current policy nor the new policy apply to ground-borne vibration, noting that these are best addressed ‘at source’ (ie in the construction and operation of the infrastructure). The reason for the exclusion is unclear given that the policies give direction on the design of infrastructure to minimise air-borne noise transfer which could presumably be extended to encompass vibration. This is considered particularly important for new or significantly upgraded freight rail lines.

**Noise assessment methodology**
The revised policy and guidelines recommend application of LAeq system for assessing noise, which measures and averages noise across an hour. This is understood to be a simpler tool than LAmax, which measures noise and defines maximum noise experienced. Other local governments have raised a concern that the LAeq methodology because it does not well reflect high spikes in noise which can be more intrusive and detrimental to amenity than lower levels of background noise. This is particularly relevant to freight lines which experience relatively few movements (compared to roads) but which can generate particularly penetrating noise, particularly in the event of friction. The City’s Health Officers have considered the merits of each approach. They suggest that, for significant proposals along freight routes, acoustic consultants measure LAmax and LAeq at the same time for any noise/vibration with both to be assessed against the noise target defined in the policy.

**Noise regulation**
Other local governments have also raised a concern about governance of existing transport noise problems. The draft policy is a planning one and so can only address planning approaches to minimise future conflict, not existing situations. However, the desirability of reviewing existing noise management regulations to better address existing areas of conflict is acknowledged, and is recommended to be put forward to the state government for consideration. It should be noted that within Fremantle, the majority of transport noise complaints relate to the freight rail ‘squeal’ on the ‘Round House’ bend and occasionally trucks using Hampton Road. The rail squeal is addressed by the Freight Rail Alliance working group attached to Fremantle Ports which is generally promptly and effectively addressed (voluntarily) by the rail operator.

**Other minor points**
In addition to these key points, a number of more minor points are flagged below.

- 7.2: rewording recommended: it should be the noise information which accompanies scheme amendments and structure plans rather than the other way round.
- 7.3.1: construction of physical barriers (eg noise walls) is explicitly listed as a potential noise mitigation measure which may be required of development. Whilst appropriate in some contexts (and potentially the only practical measure in some circumstances), these are clearly not desirable in many situations for heritage, urban design and / or amenity reasons. This should be noted in the guidelines
(which do suggest that noise walls are suitable where development backs onto but does not front a noise source, but remain silent on the use of front walls to mitigate noise).

- 7.3.1: the requirement for noise management plans (NMPs) to be approved before issuance of conditional subdivision approval is considered unnecessarily arduous, particularly in the context of a small (say, two lot) subdivision. It is considered more appropriate that applicants be required to demonstrate that they can meet the requirements of the Policy prior to conditional approval, then to go through the more detailed process of formal approval of a NMP as a condition of approval prior to the issue of title.

- 7.6: the requirement for advice from the State authority responsible for noise regulation (currently the Department of Water Environmental and Regulation) for any proposal not likely to meet the noise criteria would require adequate resourcing of that department to avoid a backlog of minor referrals. Unless this can be guaranteed, it is considered preferable that some discretion be included in this clause to allow the responsible authority (for example, the council) to make determination of minor variations.

FINANCIAL IMPLICATIONS

There are no financial implications with providing a submission on the draft State Planning 5.4 Road and Rail Noise and Guidelines.

Implementation of the Policy and Guidelines as drafted will require extra resourcing by development applicants and the City to meet and administer the provisions but are intended to reduce more significant longer term mitigation measures which might otherwise be required along key transport routes to address land use – transport noise conflict.

LEGAL IMPLICATIONS

The area no legal implications with proving a submission on the draft State Planning 5.4 Road and Rail Noise and Guidelines.

The City is required to pay ‘due regard’ to State Planning Policies in the administration of its functions. Incorporation of provisions reflecting the direction of the State Planning Policy and Guidelines is likely to be required of the City in future reviews of its Local Planning Scheme.

CONSULTATION

Preparation and modifications to State Planning Policies require consultation under Clause 28 of the Planning and Development Act 2005. The invitation for public comment to which this report recommends a response forms a component of this consultation.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required
1. That the Chief Executive Officer be authorised to make a submission on the draft revision of State Planning Policy 5.4 Road and Rail Noise and the associated guidelines which:

   a) acknowledges the significance of transport noise as a consideration in land use and infrastructure planning
   b) supports the review of the policy and guidelines, and attempts to improve their practicality and efficacy
   c) supports clarification of the requirements and application of the Policy but indicates that further work is required on this to strike an appropriate balance between certainty and more holistically considered context-based outcomes. Additionally, the revised policy should clarify its application to infrastructure projects and remove the exemption of such projects listed in section 3.4
   d) supports inclusion of an effective simple mechanism to assess noise for minor proposals and a more rigorous approach for more significant proposals
   e) recommends rewording of section 6 (policy measures) to make more balanced provision for considerations of transport noise against other planning considerations and remove the reference to ‘unavoidable’ development, particularly in the context of the more minor roads to which the policy now applies
   f) supports simplification of the noise criteria as a general principle, subject to the retention of flexibility to vary these where justified against the considerations listed in the variations clause of section 7 (implementation) of the policy
   g) suggests that a greater focus and controls be placed on high order and freight routes above lower order roads, and recommends removal of local roads with no freight function carrying less than 15,000-20,000 vpd within the 20 year policy horizon
   h) suggests that if the exemption for road and rail infrastructure within clause 3.4 is retained, that it clarify whether the clause refers to existing planning reserves or land administration reserves
   i) recommends that the policy require assessment and mitigation against ground-borne vibration for new or significantly upgraded freight rail routes
   j) recommends that an LAmax as well as LAeq assessment be applied to freight rail lines and major new development along these,
   k) recommends that the state government consider the adequacy of existing noise regulations to manage existing transport noise,
   l) recommends that clause 7.2 be reworded to recognise that the noise assessment information accompanies planning proposals rather than the other way round
   m) recommends that the implementation guidelines include acknowledgement that noise walls for lots facing the noise source may not be appropriate for streetscape, heritage and / or amenity reasons
n) recommends that clause 7.3.1 be modified to require that proposals demonstrate that compliance with the policy can be achieved (unless the policy is to be varied) but that formal approval of a Noise Management Plan can follow conditional subdivision approval.

o) recommends that the policy provide discretion in the referral of minor proposals or those on lower order routes (to be defined) which do not meet the noise criteria to the Department of Water and Environmental Regulation (DWER), and that the Department be adequately resourced to respond to the referrals it receives.
CONFIDENTIAL MATTERS

Nil.
SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

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.

<table>
<thead>
<tr>
<th>How consultative processes work at the City of Fremantle</th>
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<tbody>
<tr>
<td><strong>The City’s decision makers</strong></td>
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<tr>
<td><strong>Various participation opportunities</strong></td>
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<tr>
<td><strong>Objective processes also used</strong></td>
</tr>
<tr>
<td><strong>All decisions are made by Council or the CEO</strong></td>
</tr>
<tr>
<td><strong>Precinct focus is primarily local, but also city-wide</strong></td>
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<tr>
<td><strong>All input is of equal value</strong></td>
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<tr>
<td><strong>Decisions will not necessarily reflect the majority view received</strong></td>
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<td>How consultative processes work at the City of Fremantle</td>
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<tr>
<td>---------------------------------------------------------</td>
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<tr>
<td>Decisions made for the overall good of Fremantle</td>
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<tr>
<td>8. The Local Government Act requires decision-makers to make decisions in the interests of &quot;the good government of the district&quot;. 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.</td>
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<tr>
<td>Diversity of view on most issues</td>
</tr>
<tr>
<td>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.</td>
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<tr>
<td>City officers must be impartial</td>
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<tr>
<td>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.</td>
</tr>
<tr>
<td>City officers must follow policy and procedures</td>
</tr>
<tr>
<td>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.</td>
</tr>
<tr>
<td>Community engagement processes have cut-off dates that will be adhered to.</td>
</tr>
<tr>
<td>12. As City officers have the responsibility to provide objective, professional advice to decision-makers, they are entitled to an appropriate period of time and resource base to undertake the analysis required and to prepare reports. As a consequence, 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.</td>
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</table>
### How consultative processes work at the City of Fremantle

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Citizens need to check for any changes to decision making arrangements made</td>
<td>13. The City will take initial responsibility for making citizens aware of expected time-frames and decision making processes, including dates of Standing Committee and Council Meetings if relevant. However, as these details can change, it is the citizens' responsibility to check for any changes by visiting the City's website, checking the Fremantle News in the Fremantle Gazette or inquiring at the Customer Service Centre by phone, email or in-person.</td>
</tr>
<tr>
<td>Citizens are entitled to know how their input has been assessed</td>
<td>14. In reporting to decision-makers, City officers will in all cases produce a community engagement outcomes report that summarises comment and recommends whether it should be taken on board, with reasons.</td>
</tr>
<tr>
<td>Reasons for decisions must be transparent</td>
<td>15. Decision-makers must provide the reasons for their decisions.</td>
</tr>
<tr>
<td>Decisions posted on the City's website</td>
<td>16. Decisions of the City need to be transparent and easily accessed. For reasons of cost, citizens making input on an issue will not be individually notified of the outcome, but can access the decision at the City's website under 'community engagement' or at the City Library or Service and Information Centre.</td>
</tr>
</tbody>
</table>
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.