



Minutes

Planning Committee

Wednesday, 12 January 2022, 6.00pm

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PLANNING COMMITTEE

Minutes of the Planning Committee Meeting
held in the Walyalup Civic Centre – Council Chamber, 151 High Street,
Fremantle on **Wednesday, 12 January 2022** at 6.00 pm.

1. Official opening, welcome and acknowledgement

The Presiding Member declared the meeting open at 6.00 pm.

2.1. Attendance

Mayor Hannah Fitzhardinge

Cr Bryn Jones

Cr Geoff Graham

Cr Andrew Sullivan

Cr Su Groome

Cr Adin Lang

Cr Ben Lawver

Presiding Member/North Ward

Deputy Presiding Member/Beaconsfield Ward

South Ward

East Ward

City Ward

Hilton Ward

Mr Paul Garbett

Ms Chloe Johnston

Ms Phillida Rodic

Ms Kayla Goodchild

Ms Anne-Marie Bartlett

Director Strategic Planning and Projects

Manager Development Approvals

Manager Strategic Planning

Meeting Support Officer

Governance Officer

There were approximately 24 members of the public in attendance.

2.2. Apologies

Nil

2.3. Leave of absence

Nil

3. Disclosures of interests

Mayor, Hannah Fitzhardinge declared a impartiality interest in item number PC2201-6.
Friendship with submitter.

4. Responses to previous questions taken on notice

Nil

5. Public question time

The following members of the public spoke against the Officer's Recommendation for item PC2201-1:

Craig Stewart
Ken Acton

The following member of the public spoke in favour of the Officer's Recommendation for item PC2201-2:

Mark Manuel

The following member of the public spoke in favour of the Officer's Recommendation for item PC2201-3:

David Bennett

The following members of the public spoke against the Officer's Recommendation for item PC2201-3:

Pauline Meemeduma
Lucy Dennis
Seymore Clifford

The following members of the public spoke in favour of the Officer's Recommendation for item PC2201-4:

Johnathan Chia
Bella Smithies

The following members of the public spoke against the Officer's Recommendation for item PC2201-4:

Debora Friedmann
Gary Warman
Patricia De Kobbe

The following member of the public spoke in favour of the Officer's Recommendation for item PC2201-5:

Mahmod Omran

The following member of the public spoke in favour of the Officer's Recommendation for item PC2201-07:

Eric Denholm

The following members of the public spoke against the Officer's Recommendation for item PC2201-7:

Lucy Dennis
Seymore Clifford

6. Petitions

Mahmod Omran presented a petition containing 167 signatures in support of PC2201-5 – Change of use from warehouse to Place of Worship at 10 Blamey Place, O'Connor.

7. Deputations

7.1 Special deputations

Nil

7.2 Presentations

Nil

8. Confirmation of minutes

COMMITTEE DECISION
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

The Planning Committee confirm the minutes of the Planning Committee meeting dated 1 December 2021

Carried: 7/0

**Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

9. Elected member communication

Nil

10. Reports and recommendations

10.1 Deferred Items

PC2201-1 DEFERRED ITEM - EDMUND STREET, NO. 151 (LOT 2) BEACONSFIELD - ADDITIONS (TWO STOREY) TO EXISTING SINGLE HOUSE (TG DA0310/21)

Meeting Date:	12 January 2022
Responsible Officer:	Manager Development Approvals
Decision Making Authority:	Committee
Attachments:	1. Amended Development Plans
Additional information:	1. Site Photos 2. Updated Heritage Assessment

SUMMARY

Approval is sought for two storey additions to the existing dwelling at 151 Edmund Street, Beaconsfield.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- Primary street setback (upper floor)
- Lot boundary setback (north)
- Boundary wall (south)
- Overshadowing

The application was originally reviewed by PC on 3 November 2022, where PC resolved as follows:

Refer the application for the additions (two storey) to existing house at No. 151 Edmund Street, Beaconsfield to the Administration to allow the applicant, prior to the next appropriate Planning Committee meeting, to consider submitting amended plans for a proposal that addresses the lot boundary setback, visual privacy, open space, overshadowing and/or primary street setback discretions.

On 22 November 2021, the applicant submitted amended plans which are the subject of this report. The applicant made the following amendments (summarised):

- The finished levels of the ground floor additions were lowered by 0.54m to be no higher than 0.5m above natural ground level.
- The ground setback from the rear (west) boundary was increased from 6.1m to 6.25m.
- The upper floor was reduced in area and relocated closer to the northern property boundary, increasing the southern setback.

- The upper floor was relocated closer to the roof ridge of the original cottage portion of the dwelling and therefore closer to the primary street.

The amended plans are considered to appropriately address the reasons for the original recommendation for refusal being predominantly related to the amenity of adjoining properties, however now introduce an issue from a heritage perspective due to the design and location of the upper floor. As such, the application remains recommended for refusal albeit for different reasons to the previous recommendation.

PROPOSAL

Detail

Approval is sought for two storey additions to an existing heritage listed Single house at 151 Edmund Street in Beaconsfield. The proposed works include:

- The demolition of a rear addition to the property comprising a bedroom/study, bathroom and studio/laundry.
- The demolition of internal walls of the existing dwelling on the ground floor.
- The construction of a rear under croft comprising a theatre room and cellar.
- The creation of a combined kitchen/sitting and dining room area on the ground floor.
- The addition of a laundry and terrace to the rear of the ground floor.
- The construction of an upper floor comprising a bedroom, ensuite, sitting room and balcony

The applicant submitted several sets of amended proposal plans making various changes to the proposal. The application was considered by PC on 3 November 2021, where the Committee resolved as follows:

Refer the application for the additions (two storey) to existing house at No. 151 Edmund Street, Beaconsfield to the Administration to allow the applicant, prior to the next appropriate Planning Committee meeting, to consider submitting amended plans for a proposal that addresses the lot boundary setback, visual privacy, open space, overshadowing and/or primary street setback discretions.

After the November PC, the applicant submitted amended plans on 22 November 2021 to address the comments above as follows:

- Lot boundary setback
 - The ground floor setback from the rear (west) boundary was increased from 6.1m to 6.25m.
 - The upper floor was reduced in area from 80m² to 64m² and relocated closer to the northern property boundary, resulting in a 0.76m setback to this boundary, this setback is reduced from 1.5m per the previous set of plans.
 - The southern boundary wall has been reduced in dimension.
- Visual privacy
 - The finished levels of the ground floor additions have been lowered to be no higher than 0.5m above natural ground level to ensure ground level additions were deemed to comply from a privacy perspective.

- Open space
 - Reducing the finished floor levels of the ground level terrace to be no more than 500mm above natural ground level, mean the calculation for open space is now compliant.
- Overshadowing
 - The external wall height has been reduced, and the southern lot boundary setback increased to reduce the overall percentage of shadow. The upper floor addition has been shifted further forward on the lot to reduce the amount of shadow falling on the rear yard of the southern neighbour.
- Primary street setback
 - The upper floor was relocated closer to the roof ridge of the original cottage portion of the dwelling, with a 2.2m setback between the ridge and dwelling proposed. The upper floor is now closer to the primary street with an 8m setback now proposed.

Amended development plans are included as attachment 1.

Site/application information

Date received:	26 July 2021
Owner name:	CWA & J Stewart
Submitted by:	K Acton
Scheme:	Residential R25
Heritage listing:	Level 3 and South Fremantle Heritage Area
Existing land use:	Single house
Use class:	Single house
Use permissibility:	P



CONSULTATION

External referrals

Nil required.

Community

The applicant undertook their own consultation with surrounding landowners following the original submission of this development application. The applicant provided comments supporting the development from all surrounding properties except for the property to the south of the subject site. The City therefore advertised the application as required and received one submission raising concerns with the subject proposal.

This submission raised concerns with respect to the following matters:

- The shade cast by the addition.
- The setback of the building from the street impacting the streetscape.
- The height of the building imposing onto the neighbouring property.
- Concerns in relation to the lot boundary setback from the southern boundary.

The applicant undertook further consultation with the northern and southern neighbours in relation to the most recent set of plans subject to this report. Both neighbours, including the neighbour who expressed objections to the earlier set of plans, have endorsed copies of the plans confirming that they have no objection to the amended set.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Where a proposal does not meet the Deemed-to-comply requirements of the R-Codes, an assessment is made against the relevant Design principles of the R-Codes. Not meeting the Deemed-to-comply requirements cannot be used as a reason for refusal. In this particular application the areas outlined below do not meet the Deemed-to-comply or policy provisions and need to be assessed under the Design principles:

- Primary street setback (upper floor)
- Lot boundary setback (north)
- Boundary wall (south)
- Overshadowing

It is noted that through this final set of amended plans, the subject application has been made to satisfy the relevant deemed-to-comply criteria of the R-Codes with respect to the following elements that previously sought discretion:

- Building height (external wall)
- Visual privacy, and
- Open space.

The above matters are discussed below.

Background

The subject site is located on the western side of Edmund Street in Beaconsfield. The site has a land area of approximately 281m² and is currently occupied by a Single house. The site is zoned Residential and has a density coding of R25. The site is individually heritage listed and located within the South Fremantle Heritage Area.

The site is part of a group of four properties on the western side of Edmund Street, with two of the other properties also being individually heritage listed. The topography of the site falls away from the front boundary by approximately one metre.

This application was reviewed by PC on 3 November 2022, where the Committee resolved as follows:

Refer the application for the additions (two storey) to existing house at No. 151 Edmund Street, Beaconsfield to the Administration to allow the applicant, prior to the next appropriate Planning Committee meeting, to consider submitting amended plans for a proposal that addresses the lot boundary setback, visual privacy, open space, overshadowing and/or primary street setback discretions.

The applicant has subsequently submitted revised plans which are the subject of this report.

Heritage Comment

As the subject property is individually heritage listed, the proposed development has been assessed by the City's Heritage Officers. Prior to the final assessment being completed, the applicant was advised of the concerns raised by the Heritage officers with respect to the offset of the upper floor from the roof ridge of the original dwelling. The applicant elected to submit additional plans setting back the upper floor in accordance with the requirements for heritage listed buildings in Local Planning Policy 2.9 Residential Streetscape Policy which requires a setback of 4m from the roof ridge of the heritage dwelling. Following the consideration of the application at PC, the applicant moved the upper floor closer to the primary street and original heritage fabric of the building in order to respond to concerns relating to the amenity of adjoining neighbours, particularly to the south.

The relocation of the upper floor amendments to be closer to the roof ridge of the original cottage, the amended application is not supported as this addition would have a detrimental impact upon the streetscape, and the subject heritage listed place.

The heritage assessment is provided as additional information to this report and finds that the amended proposal is not able to be supported on heritage grounds. The proposal could have been supported were the upper floor addition set back a minimum of 4m from the original hipped roof section, and the addition was designed so as to create a readable differentiation between early building and the new extension. The updated location of the addition will also impact on the original chimney.

Primary Street Setback

Element	Requirement	Proposed	Extent of Variation
Street setback (Upper Floor)	10m	8m	2m
Setback of upper floor from rood ridge of ground floor	4m	2.2m	1.8m

The applicant amended the development plans after the November PC, relocating the upper floor to be closer to the primary street as well as being closer to the roof ridge of the original portion of the dwelling. This development is required to meet two elements of LPP2.9 – the standard street setback clause and the setback of an addition to an existing heritage building (see table above).

The primary street setback is not considered to satisfy the discretionary criteria of LPP 2.9 for the following reasons:

- Only one dwelling in the prevailing streetscape (149-155 Edmund Street) provides an upper floor which faces the primary street, with the upper floors at No. 149 and No. 155 both being located to the rear of the dwelling, with only roof area facing the street and the dwellings presenting as single storey from Edmund Street. This means that the established streetscape is single storey, further emphasising the need for any new upper floors being introduced into the streetscape to be setback to the full 10m distance so as not to impact on the established pattern.
- The upper floor of the dwelling at No. 153 Edmund Street (~7.5m setback) is set forward of the proposed upper floor on this development, however this element is less obtrusive in comparison to the subject development due to the design of the existing building at No. 153 Edmund Street being partially contained in a roof area.
- Three out of four of the dwellings within this street block on the western side of Edmund Street are heritage listed and likely to be retained in their current form.
- In accordance with cl. 5.1 (ii) of LPP 2.9, additions and extensions to heritage listed properties should be designed and set back so as to retain the impression of a single storey house when viewed from the street. In this case the building will clearly present to the street as a two storey building, impacting the identified heritage significance of the existing building through the projection of the upper floor over the single storey original portion of the house.
- The proposed setback does not relate to the protection of an existing mature significant tree.
- The subject site is not a corner lot, so the allowances for reduced setbacks for a corner lot would not apply.
- The existing lot layout is not considered unusual, with rectilinear lots provided at right angles to the street, accordingly the allowances for unusually shaped lots or unusual topography will not apply.



Image 1 - Existing neighbouring upper floor set back ~7.5m from primary street.

In relation to the discretionary criteria relating to the heritage setback requirements, the development is not considered to satisfy these criteria for the reasons noted in the heritage assessment section above. The addition in its current location would have a detrimental impact upon the heritage significance of the property and streetscape due to its prominence and reduced setback from the original portion of the dwelling.

Finally, in order to determine if the reduced setback is appropriate, the development has also been considered against the relevant design principles of the R-Codes (5.1.2):

5.1.2 – Street setbacks	
Design Principles	Complies
P2.1 Buildings set back from street boundaries an appropriate distance to ensure they:	
<ul style="list-style-type: none"> contribute to, and are consistent with, an established streetscape; 	No – the upper floor addition is considered to project into the streetscape of this portion of Edmund Street.
<ul style="list-style-type: none"> provide adequate privacy and open space for dwellings; 	Yes – the development complies with open space requirements and visual privacy requirements.
<ul style="list-style-type: none"> accommodate site planning requirements such as parking, landscape and utilities; and 	Yes – No change is proposed to the provision of these facilities on site.
<ul style="list-style-type: none"> allow safety clearances for easements for essential service corridors. 	Yes – unaffected by the proposed development.
P2.2 Buildings mass and form that:	
<ul style="list-style-type: none"> uses design features to affect the size and scale of the building; 	No – the varied materials to the building are not considered to appropriately ameliorate building bulk and the addition is considered to unduly impact on the heritage significance of the existing building.

<ul style="list-style-type: none"> uses appropriate minor projections that do not detract from the character of the streetscape; 	<p>No – the projection into the streetscape is not a minor projection as defined by the R-Codes. A minor projection on a wall is a <i>rainwater pipe, vent pipe, eaves overhang, cornice or other moulding or decorative feature, provided that the projection does not exceed 0.75m measured horizontally.</i></p>
<ul style="list-style-type: none"> minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and 	<p>Yes – limited area of blank wall proposed.</p>
<ul style="list-style-type: none"> positively contributes to the prevailing development context and streetscape as outlined in the local planning framework. 	<p>No – the development is considered inconsistent with the required street setbacks and to result in an undue projecting element into the streetscape of the subject portion of Edmund Street</p> <p>LPP 2.9 clearly indicates the City's requirements with respect to the setback of new dwellings and the discretionary criteria have not been adequately addressed in this instance.</p>

Based on the proposed setbacks, the development is not recommended for approval in its current form.

Lot boundary setback

Element	Requirement	Proposed	Extent of Variation
North (Ground floor)	1.8m	0.76m	1.04m
North (Upper floor)	1.2m	0.76m	0.44m

The reduced lot boundary setbacks are considered to meet the Design principles of the R-Codes in the following ways:

- The additions to the northern boundary generally adjoin the roof area of the neighbouring building, which is not an area sensitive to building bulk.
- The windows to the northern elevation overlook only roof area and are onto the stairwell, an area occupied on a transitory basis which is not considered to result in undue privacy issues.
- The northern portion of the development does not cast shade at midwinter onto the adjoining property, with the development having been relocated to the north so as to reduce the impact on the neighbouring lots.

Boundary Wall (South)

Element	Requirement	Proposed	Extent of Variation
Residential boundary walls	1.7m setback for a wall of these dimensions	0m	1.7m

The boundary wall element is considered to meet the Design principles of the R-Codes in the following ways:

- The applicant has amended the plans to reduce the height of the boundary wall along the southern property boundary, thereby reducing the overall building bulk of the structure.
- The shade cast by the development generally limits shade being cast over the neighbouring rear yard as amended.
- It is noted that the wall does not contribute to privacy impacts, being onto a non-habitable space (laundry) and not including any windows.
- It is noted that boundary walls are generally common in the locality due to constrained lot sizes.

Building Height (External Wall)

In the final set of amended development plans, the applicant reduced the overall height of the building, resulting in a wall height which complies with the deemed-to-comply requirements of the R-Codes.

Visual Privacy

Element	Requirement	Proposed	Extent of Variation
Sitting room – north and west facing windows	6m setback or windows to be screened	0.76m	5.24m

The proposed landing onto the upper floor sitting room is provided with windows facing north and east, which are not proposed to be screened or obscured in the submitted set of plans. These windows are not considered to satisfy the relevant design principles of the R-Codes as the windows are located so as to allow potential overlooking towards the rear yard of the neighbouring property to the north. Accordingly, were approval of the application considered, a condition of approval requiring that these windows be screened or otherwise obscured is recommended.

The original assessment of the proposal included a visual privacy assessment of the lower floor terrace as this was proposed to be greater than 0.5m above natural ground level and therefore subject to visual privacy assessment. The final set of amended plans has lowered the rear decking to be no higher than 0.5m above natural ground level, and therefore not subject to visual privacy assessment. The upper floor balcony is now proposed to be screened to provide for visual privacy in accordance with the deemed-to-comply criteria of the R-Codes.

Open space

The lowering of the rear terrace has resulted in the development now satisfying the requirements of the R-Codes in regard to on site open space, as covered outdoor living areas <0.5m above ground level can contribute to the open space calculation under the R-Codes. The amended development provides 52.7% on site open space, with 50% required.

Overshadowing

Element	Requirement	Proposed	Extent of Variation
Shade cast over adjoining property at midday on midwinter	25% of neighbouring lot (70.25m ²)	42% (previously 46.7%)	17% (previous set of plans 21.7%)

It is noted that the applicant's overshadowing diagram shows a shade percentage of 20.06%. This is not accurate and does not appear to have been carried out in accordance with the R-Codes deemed-to-comply assessment requirements (being an assumption of a vacant adjoining site), but rather considering the existing development on the neighbouring lot.

It is noted that in this street block, there is a pattern of shade being cast over neighbouring properties which would normally exceed the deemed-to-comply requirements of the R-Codes, and in its amended form the development is considered to be consistent with this pattern of shade being cast.

In reviewing the application against the design principles of the R-Codes, the overshadowing is supported for the following reasons:

- The majority of shade cast by the building will fall over the side wall of the existing dwelling on the neighbouring site, without affecting the neighbouring solar collectors. The north facing wall of the neighbouring building does not include major openings.
- The amended plans reduce the overall shade cast by the building over the rear yard of the neighbouring building by moving the addition up to the northern boundary and relocating the upper floor closer to the primary street boundary.

In its amended form, the shade cast by the development is considered to be able to be supported.

CONCLUSION

While it is acknowledged that the applicant has sought to address the concerns raised by the neighbouring landowners and PC through the relocation of the upper floor closer to the primary street, these changes have been made at the expense of the Edmund Street streetscape and heritage conservation outcomes for the existing heritage listed dwelling.

The original proposal considered by the PC sought to vary a number of the requirements of the R-Codes and Council policies which apply to the subject site. These elements combined to negatively impact neighbouring properties and the streetscape, and for these reasons the application was recommended for refusal. In the current set of amended plans, the applicant has sought to reduce the impact of the development upon neighbouring properties by relocating the upper floor closer to the northern property boundary and the street and in doing so has resolved a number of the other proposed elements which did not comply with the development requirements for the site.

However, relocating the upper floor closer to the street will result in an upper floor element which is considered to project into the prevailing streetscape and over the top of original building fabric of the existing heritage listed building. As a result, on balance officers consider these amended plans are also not able to be recommended for approval.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Council:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Additions (Two Storeys) to Existing Single house at No. 151 (Lot 2) Edmund Street, South Fremantle, as detailed on plans dated 22 November 2021 for the following reasons:

1. The primary street setback of the upper floor of the dwelling does not satisfy Local Planning Policy 2.9 Residential Streetscape Policy as the setback is inconsistent with the setback of comparable height in the prevailing streetscape and results in a projecting element into the established streetscape and an element which would have a negative impact upon the heritage significance of the existing heritage listed dwelling.
2. The street setback of the upper floor does not satisfy the design principles of State Planning Policy 3.1 (Residential Design Codes of WA) and is detrimental to the residential amenity of the area in accordance with clause 67 of the Planning and Development (Local Planning Scheme) Regulations 2015 as the setback is inconsistent with the established streetscape and does not positively contribute to the prevailing or future development context. The proposed setback of the upper floor results in a projecting element into the streetscape.
3. The proposal is detrimental to the amenity of the area and incompatible with the objectives of the Residential Zone set out in clause 3.2.1 (a) of the Local Planning Scheme No. 4 as per clauses 67(a) (ensuring that the aims and provisions of the Scheme have been met) (k) (the built heritage conservation of any place that is of cultural significance) and (m) (the compatibility of the development with its setting) of the Deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

COMMITTEE DECISION ITEM PC2201-1
(Alternative recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Additions (Two Storeys) to Existing Single house at No. 151 (Lot 2) Edmund Street, South Fremantle, as detailed on plans dated 21 September 2021 subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans dated 22 November 2021. 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 from the development hereby approved shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Any damage shall be rectified to the satisfaction of City of Fremantle.**
- 4. Prior to the issue of a building permit for the development hereby approved, the applicant is to provide the following information, to the satisfaction of the City of Fremantle:**
 - Photographs of the elements that are to be demolished in the context of the house including the rear WC for archival purposes.**
 - Plans confirming the retention of the existing chimney**
 - Further information is required for the proposed cladding to the walls to ensure compatibility with the original cladding.**
 - Further information is required for the colour of the proposed Colorbond to the new roof cladding.**
- 5. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the upper floor balcony located on the north, south and west elevation and the upper floor sitting room windows located on the north and west elevations are to be screened in accordance with Clause 5.4.1 C1.1 of the Residential Design Codes by either:**
 - a) fixed obscured or fixed translucent glass to a minimum height of 1.60 metres above internal floor level, or**
 - b) fixed screening, with openings not wider than 5cm and with a maximum of 25% perforated surface area, to a minimum height of 1.60 metres above the internal floor level, or**
 - c) a minimum sill height of 1.60 metres above the internal floor level,**

Prior to occupation of the development hereby approved, the approved screening method shall be installed and maintained to the satisfaction of the City of Fremantle.

6. Prior to occupation/ use of the development hereby approved, the boundary wall located on the southern boundary shall be of a clean finish in any of the following materials:
 - coloured sand render,
 - face brick,
 - painted surface,and be thereafter maintained to the satisfaction of the City of Fremantle.
7. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.
8. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice notes

- i) A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.
- ii) 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.

Carried: 7/0

Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver

PC2201-2 DEFERRED ITEM - EDMUND STREET, NO. 94A AND 94B (LOTS 1 AND 2) TWO, TWO STOREY SINGLE HOUSES (TG DA0357/21 & DA0358/21)

Meeting Date: 12 January 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Attachments: 1. Amended Development Plans
Additional information: 1. Site Photos

SUMMARY

Approval is sought for two, two-storey single houses at 94A and 94B Edmund Street, White Gum Valley.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval. The applications (one for each house) seek discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- Primary Street setback;
- Visual privacy (south); and
- Lot boundary setback (south, north).

The applications were referred to PC on 1 December 2021, with the Committee providing the following resolution:

DA0357/21 –

Refer the application to the Administration with the advice that the Council is not prepared to grant planning approval to the application for a two storey Single House at No. 94 (Lot 101) Edmund Street, White Gum Valley based on the current submitted plans, and invite the applicant, prior to the next appropriate Planning Committee meeting, to consider improving the presentation to the street by reducing the dominance of the garage door and increasing passive surveillance at the ground floor.

DA0358/21-

Refer the application to the Administration with the advice that the Council is not prepared to grant planning approval to the application for a Single house at No. 94 (Lot 101) Edmund Street, White Gum Valley based on the current submitted plans, and invite the applicant, prior to the next appropriate Planning Committee meeting, to consider improving the presentation to the street by reducing the dominance of the garage door and increasing passive surveillance at the ground floor.

The applicant provided amended proposal plans on 8 and 13 December 2021 comprising the following:

DA0357/21 – 94b Edmund Street

- Reduction in Garage/Store dimension
- Increase in dimension of drying courtyard and study.

DA0358/21 – 94a Edmund Street

- Study added adjacent to entry door.
- Reduction in Garage/Store dimension
- Upper floor ceiling height raised from 2.4m to 2.7m

The application remains recommended for refusal by officers as the upper floor primary street setback has not been altered in the amended set of plans.

PROPOSAL

Detail

Approval is sought for two, two storey Single Houses to an existing vacant site at 94 Edmund Street, White Gum Valley. The proposed works include:

- Proposed Strata lot 1:
 - Two car garage, living and dining areas, guest bedroom and alfresco to ground floor.
 - Three bedrooms and sitting room to upper floor.
- Proposed Strata lot 2
 - Two car garage, living and dining areas, study and alfresco to ground floor.
 - Three bedrooms and sitting room to upper floor.

It is noted that the plans refer to a “possible” mature tree in the rear yard. Officers confirm that there is currently no tree on site. Amended development plans are included as attachment 1.

Site/application information

Date received:	24 August 2021
Owner name:	L & A Manuel, D & D Brown
Submitted by:	Beachside Building & Design
Scheme:	Residential R25
Heritage listing:	Not individually listed, nor in a heritage area
Existing land use:	Vacant Site
Use class:	Single House
Use permissibility:	P



CONSULTATION

External referrals

Nil required.

Community

The applications were advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), as the proposals sought to vary a number of Council policy or R-Codes deemed-to-comply requirements. The advertising period concluded on 20 September 2021, and no submissions were received.

In relation to the amended plans submitted following PC consideration of the application, no new discretionary elements were introduced through these amendments and accordingly further consultation with neighbours was not required.

OFFICER COMMENT

Statutory and policy assessment

The proposals have been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Where a proposal does not meet the Deemed-to-comply requirements of the R-Codes, an assessment is made against the relevant Design principles of the R-Codes. Not meeting the Deemed-to-comply requirements cannot be used as a reason for refusal. In these two applications the areas outlined below do not meet the Deemed-to-comply or policy provisions and need to be assessed under the Design principles:

- Primary Street setback
- Visual privacy (south)
- Lot boundary setback (south, north)

Garage width was previously listed as a discretion, however in the amended plans now complies.

The above matters are discussed below.

Background

The subject site is located on the eastern side of Edmund Street in White Gum Valley. The site has a land area of approximately 720m² and is currently vacant. The site is zoned Residential and has a density coding of R25. The site is not individually heritage listed nor located within a Heritage Area.

The application was referred to PC on 1 December 2021, with the PC resolving as follows:

DA0357/21 –

Refer the application to the Administration with the advice that the Council is not prepared to grant planning approval to the application for a two storey Single House at No. 94 (Lot 101) Edmund Street, White Gum Valley based on the current submitted plans, and invite the applicant, prior to the next appropriate Planning Committee meeting, to consider improving the presentation to the street by reducing the dominance of the garage door and increasing passive surveillance at the ground floor.

DA0358/21-

Refer the application to the Administration with the advice that the Council is not prepared to grant planning approval to the application for a Single house at No. 94 (Lot 101) Edmund Street, White Gum Valley based on the current submitted plans, and invite the applicant, prior to the next appropriate Planning Committee meeting, to consider improving the presentation to the street by reducing the dominance of the garage door and increasing passive surveillance at the ground floor.

The applicant provided amended plans after this meeting comprising the following:

- DA0357/21 – 94b Edmund Street – 13 December 2021
 - Reduction in Garage/Store dimension
 - Study added adjacent to entry door built up to southern boundary.
 - Void area added over entry to upper floor.
 - Increase in dimension of drying courtyard and study.
- DA0358/21 - 94a Edmund Street- 8 December 2021
 - Study added adjacent to entry door.
 - Reduction in Garage/Store dimension.
 - Upper floor ceiling height raised from 2.4m to 2.7m.

The application remains recommended for refusal as the upper floor primary street setback has not been altered in the amended set of plans.

Land Use

The original report addressed the proposed land use of Grouped Dwelling, as the subdivision application for the parent lot had yet to be finalised and the proposals comprised two dwellings to the parent lot. The subdivision application has now been finalised, with the proposed land use becoming Single Houses in accordance with LPS4. Single houses are permitted (P) class uses in the Residential Zone and the proposed land use is not subject to further assessment.

Primary Street setback (ground and upper floor)

Element	Requirement	Proposed	Extent of Variation
Ground floor Lot 1	7m	6.7m	0.3m
Upper Floor Lot 1	10m	6.4m	3.6m
Ground floor Lot 2	7m	6.7m	0.3m
Upper floor Lot 2	10m	6.4m	3.6m

It is noted that this element of the development was not amended by the applicant following consideration of the application by PC.

The reduced street setback to the ground floor is considered to meet the discretionary criteria of Local Planning Policy 2.9 Residential Streetscape Policy (LPP2.9) for the following reason:

- There is an established precedent in the streetscape of single storey buildings at or forward of the proposed primary street setback, both properties to the south of the site in the prevailing street, the Church to the north and the building on the lot north of the drainage sump to the north all exhibit setbacks consistent with the proposed development.

Property	Existing setback
84 Edmund Street	6.7m
90 Edmund Street	5.7m
96 Edmund Street	6.7m
18 Watkins Street	9m

- Both the dwelling at 96 Edmund Street and the existing church at 90 Edmund Street exhibit a lesser ground floor street setback than the proposed Single houses.



Image 1: Aerial image of the subject site and other sites in the prevailing streetscape

In accordance with LPP 2.9, in considering a reduced street setback for the upper floor, consideration is given to the prevailing streetscape, being in this case the adjoining dwellings and church at 84-96 Edmund Street and 18 Watkins Street. The prevailing streetscape is defined in the policy as being the three properties either side of a site not separated by a road. None of these buildings exhibit upper floors which would provide a precedent for the consideration of a reduced setback to the upper floor of the building. It is considered that accordingly the building will result in an excessively projecting element into the streetscape of Edmund Street, and this is inconsistent with the prevailing streetscape and the provisions of LPP 2.9.

The remaining discretionary criteria of LPP 2.9 are not considered to apply as the subject development will not facilitate the retention of a mature, significant tree, the site does not abut a corner, and the subject site is considered to be located in a streetscape which is not unusual in its topography.

The applicant has noted a number of properties in the area of the subject site which were considered to provide a precedent for a reduced upper floor setback:

Site/Example	Is it within prevailing streetscape (3 properties either side of the subject site)	Situation
<i>98a Edmund</i>	No	2004 decision prior to LPP2.9 being adopted in 2013
<i>98b Edmund</i>	No	2004 decision prior to LPP2.9 being adopted in 2013
<i>98c Edmund</i>	No	2004 decision prior to LPP2.9 being adopted in 2013
<i>58 Amherst Street (presented as #35 by applicant)</i>	No	Single storey dwelling with no upper floor.
<i>5a Hope Street (presented as 43 Amherst Street by applicant)</i>	No	Two storey dwelling with compliant primary street setbacks. Setback to Amherst Street reduced as is permitted to a secondary street.
<i>1/51 Amherst (72 Amherst St by applicant)</i>	No	5.4m ground floor, 8.2m upper floor.
<i>2/51 Amherst (72 Amherst St by applicant)</i>	No	6.1m ground floor, 9.4m upper floor.
<i>121-133 Stevens Street</i>	No	Subject to separate setback requirements under a separate local planning policy for the Kim Beazley School site allowing for 2-2.5m setbacks

A map showing the approximate location of these properties is below with the subject site indicated in red and nominated properties in yellow. 121-133 Stevens Street are not shown as they are ~1km from the subject site:



Figure 1: Location of properties with reduced setbacks

Finally, in order to determine if the reduced setback is appropriate, the development has also been considered against the relevant design principles of the R-Codes (5.1.2):

5.1.2 – Street setbacks	
Design Principles	Complies
P2.1 Buildings set back from street boundaries an appropriate distance to ensure they:	
<ul style="list-style-type: none"> contribute to, and are consistent with, an established streetscape; 	No – the upper floor addition is considered to project into the streetscape of this portion of Edmund Street.
<ul style="list-style-type: none"> provide adequate privacy and open space for dwellings; 	Yes – the development complies with open space requirements visual privacy requirements.
<ul style="list-style-type: none"> accommodate site planning requirements such as parking, landscape and utilities; and 	Yes – Readily accommodated on site as existing.
<ul style="list-style-type: none"> allow safety clearances for easements for essential service corridors. 	Yes – unaffected by the proposed development.
P2.2 Buildings mass and form that:	
<ul style="list-style-type: none"> uses design features to affect the size and scale of the building; 	No – the varied materials to the building are not considered to appropriately ameliorate building bulk.

<ul style="list-style-type: none"> uses appropriate minor projections that do not detract from the character of the streetscape; 	<p>No – the projection into the streetscape is not a minor projection as defined by the R-Codes. A minor projection on a wall is <i>a rainwater pipe, vent pipe, eaves overhang, cornice or other moulding or decorative feature, provided that the projection does not exceed 0.75m measured horizontally.</i></p>
<ul style="list-style-type: none"> minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and 	<p>Yes – limited area of blank wall and appropriate provision of vehicle parking supply provided.</p>
<ul style="list-style-type: none"> positively contributes to the prevailing development context and streetscape as outlined in the local planning framework. 	<p>No – the development is considered inconsistent with the required street setbacks and to result in an undue projecting element into the streetscape of the subject portion of Edmund Street.</p> <p>LPP 2.9 clearly indicates the City's requirements with respect to the setback of new dwellings and the discretionary criteria have not been adequately addressed in this instance.</p>

The upper floor street setback is therefore not supported on the basis that it is not considered to satisfy the relevant development requirements of LPP2.9 and specifically, the design principles of 5.1.2 of the R-Codes. In proposing a greatly reduced primary street setback to the upper floor of the proposed dwellings, the development is considered to unduly impact on the amenity of the locality, contrary to the objectives of the Residential Zone under LPS 4. The Scheme sets out that development should recognise the importance of traditional streetscape elements and safeguard and enhance the amenity of residential areas by ensuring that land use is compatible with the character of the area. In this case, due to the proposed development projecting into the streetscape, the development is not considered to appropriately meet the objectives of the Residential Zone.

Lot Boundary Setback (north and south)

Element	Requirement	Proposed	Extent of Variation
Strata lot 1 – Guest/Bathroom wall (north)	1.5m	1m	0.5m
Strata lot 2 – Alfresco/Lounge wall (south)	1.5m	1m	0.5m

These elements have not been amended through the updated sets of plans and the assessment remains consistent with the previous report.

The reduced setback from the northern boundary is considered to meet the Design principles of the R-Codes in the following ways:

- The wall adjoins the driveway access for the adjoining Place of Worship property and this site is less sensitive to the building bulk of adjoining development.
- The shade cast by the wall will be contained to the subject site at midwinter.
- The window will be readily screened by a standard dividing fence.

The reduced setback from the southern boundary is considered to meet the Design principles of the R-Codes in the following ways:

- The building bulk of the wall is broken up through the inclusion of openings and the rear open alfresco area.
- The windows are designed to limit overlooking towards the neighbouring property with only highlight windows to this wall.
- The shade cast by the wall will be limited and will fall over an area on the neighbouring lot which has been built up to the boundary with roof cover.

The lot boundary setbacks are supported against the R-Codes.

Visual Privacy (South)

Element	Requirement	Proposed	Extent of Variation
Strata lot 2 – Bedroom 3	4.5m	2m	2.5m

These elements have not been amended through the updated sets of plans and the assessment remains consistent with the previous report.

The overlooking from Lot 2 is not considered to meet the Design principles of the R-Codes in the following ways:

- Although the adjoining rear yard has been built over with shade structures, if these were removed the window would provide a degree of overlooking over the outdoor living area of the neighbouring rear yard.

It is noted that this issue could be readily addressed through the application of screening to this window, and as such if the PC saw fit to approve the proposal, a screen could be applied to this window to provide appropriate privacy.

Garage width

Element	Requirement	Proposed	Extent of Variation
Width of proposed garages	60%	Strata Lot 2 (94B) – 57% Strata lot 1 (94A) – 54% The previous set of plans proposed a garage width of approximately 70%	Amended to comply

The proposed garage width of both dwellings has been amended to satisfy the deemed-to-comply requirements of the R-Codes in the amended set of plans. The amended plans include small study nooks by the entry way to the dwellings providing additional visibility to the approach to the dwelling.

CONCLUSION

In conclusion, both applications remain recommended for refusal as the discretionary criteria for the proposed reduction of the upper floor primary street setback have not been met. The remainder of matters under consideration in the officer comment section of the report are considered generally supportable for the reasons stated.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Council:

A. Council, in relation to application DA0357/21:

Refuse, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the two storey Single House at No. 94b (Strata Lot 2) Edmund Street, White Gum Valley, as detailed on plans dated 13 December 2021 for the following reasons:

1. The primary street setback of the upper floor of the dwelling does not satisfy Local Planning Policy 2.9 Residential Streetscape Policy as the setback is inconsistent with the setback of comparable height in the prevailing streetscape and results in a projecting element into the established streetscape.
2. The street setback of the upper floor does not satisfy the design principles of State Planning Policy 3.1 (Residential Design Codes of WA) as the setback is inconsistent with the established streetscape and does not positively contribute to the prevailing or future development context.
3. The proposal is detrimental to the amenity of the area and incompatible with the objectives of the Residential Zone set out in clause 3.2.1 (a) of the Local Planning Scheme No. 4 as per clauses 67(a) (ensuring that the aims and provisions of the Scheme have been met) and (m) (the compatibility of the development with its setting) of the Deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

B. Council, in relation to application DA0358/21:

Refuse, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the two storey Single house at No. 94a (Strata Lot 1) Edmund Street, White Gum Valley, as detailed on plans dated 8 December 2021 for the following reasons:

1. The primary street setback of the upper floor of the dwelling does not satisfy Local Planning Policy 2.9 Residential Streetscape Policy as the setback is inconsistent with the setback of comparable height in the prevailing streetscape and results in a projecting element into the established streetscape.
2. The street setback of the upper floor does not satisfy the design principles of State Planning Policy 3.1 (Residential Design Codes of WA) as the setback is inconsistent with the established streetscape and does not positively contribute to the prevailing or future development context.
3. The proposal is detrimental to the amenity of the area and incompatible with the objectives of the Residential Zone set out in clause 3.2.1 (a) of the Local Planning Scheme No. 4 as per clauses 67(a) (ensuring that the aims and provisions of the Scheme have been met) and (m) (the compatibility of the development with its setting) of the Deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

COMMITTEE DECISION ITEM PC2201-2
(Alternative recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

A) APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Two Storey Single House at No. 94b (Strata Lot 2) Edmund Street White Gum Valley subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 8 December 2021. 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 from the development hereby approved shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.
3. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.
4. Prior to the occupation of the development hereby approved, vehicle crossovers shall be constructed to the City's specification and thereafter maintained to the satisfaction of the City of Fremantle.

5. Prior to occupation/ use of the development hereby approved, the boundary wall located on the northern boundary shall be of a clean finish in any of the following materials:
- coloured sand render,
 - face brick,
 - painted surface,
- and be thereafter maintained to the satisfaction of the City of Fremantle.
6. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how Bedroom 3 located on the east elevation, is to be screened in accordance with Clause 5.4.1 of the Residential Design Codes by either:
- a) fixed obscured or fixed translucent glass to a minimum height of 1.60 metres above internal floor level, or
 - b) fixed screening, with openings not wider than 5cm and with a maximum of 25% perforated surface area, to a minimum height of 1.60 metres above the internal floor level, or
 - c) a minimum sill height of 1.60 metres above the internal floor level,
- Prior to occupation of the development hereby approved, the approved screening method shall be installed and maintained to the satisfaction of the City of Fremantle.
7. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice notes

- i. The applicant is advised that a crossover permit must be obtained from the City's Engineering Department. New/modified crossover(s) shall comply with the City's standard for crossovers, which are available on the City of Fremantle's web site.
- ii. The applicant is advised that the existing verge tree is to be protected during the construction process with a minimum 2.8x2.8m fencing enclosure.
- iii. A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.
- iv. Fire separation for the proposed building works must comply with Part 3.7.2 of the Building Code of Australia.

DA0358/21 – Northern Lot – Noted now as 94A - Strata Lot 1

A) APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Two Storey Grouped Dwelling at No. 94a (Strata Lot 1) Edmund Street White Gum Valley subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans dated 13 December 2021. 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 from the development hereby approved shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.**
- 4. Prior to occupation/ use of the development hereby approved, the boundary wall located on the southern boundary shall be of a clean finish in any of the following materials:**
 - coloured sand render,**
 - face brick,**
 - painted surface,****and be thereafter maintained to the satisfaction of the City of Fremantle.**
- 5. Prior to the occupation of the development hereby approved, vehicle crossovers shall be constructed to the City's specification and thereafter maintained to the satisfaction of the City of Fremantle.**
- 6. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.**

Advice notes

- i. The applicant is advised that a crossover permit must be obtained from the City's Engineering Department. New/modified crossover(s) shall comply with the City's standard for crossovers, which are available on the City of Fremantle's web site.**
- ii. The applicant is advised that the existing verge tree is to be protected during the construction process with a minimum 2.8x2.8m fencing enclosure.**

- iii. **A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.**
- iv. **Fire separation for the proposed building works must comply with Part 3.7.2 of the Building Code of Australia.**

Carried: 7/0

**Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

10.2 Committee delegation

PC2201-3 STIRLING HIGHWAY, NO. 72 (LOT 3), NORTH FREMANTLE – VARIATION TO PREVIOUS APPROVAL DA0459/16 (THREE-STOREY MIXED USE DEVELOPMENT (2X OFFICE AND 4 X MULTIPLE DWELLING)) - (ED VA0035/21)

Meeting Date: 12 January 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Planning Committee
Attachments: 1. Amended Development Plans and Heritage Scope of Conservation Works (13 December 2021)
Additional information: 1. Site Photos
 2. Original Development Approval (DA0459/16)

SUMMARY

Approval is sought for variations to the original development approval (DA0459/16) that comprised a mixed-use development (2 x Office Tenancies and 4 x Multiple Dwellings) and involved the partial demolition of a dwelling on the City of Fremantle Heritage List at No. 72 (Lot 3) Stirling Highway, North Fremantle.

The proposal is referred to the Planning Committee (PC) as the application involves the full demolition of a dwelling on the City of Fremantle Heritage List (Category 3) within the North Fremantle Heritage Area and submissions being received objecting to the proposal. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4) and Local Planning Policies.

These discretionary assessments include the following:

- Full demolition of dwelling on the City of Fremantle Heritage List (Category 3) within the North Fremantle Heritage Area.

The application is recommended for conditional approval, including a requirement to implement works to preserve the heritage value of the dwelling specified in a Heritage Scope of Conservation Works and amended development plans.

PROPOSAL

Detail

Approval is sought for variations to an existing development approval (ref. DA0459/16) for a mixed-use development (comprising 2 x Office and 4 x Multiple Dwellings) at 72 Stirling Highway, North Fremantle. A summary of the proposed variations to the existing development approval are provided as follows:

- Full demolition of the existing dwelling where previous applications had granted partial demolition. While the proposal seeks to demolish the existing dwelling, the proposal also seeks to conserve, reinstate and/or replicate a number of materials and design features of the heritage listed dwelling and incorporate these as part of the new development, as outlined in the amended development plans and Heritage

Scope of Conservation Works report (prepared by Element, dated 13 December 2021);

- Provision of an additional dedicated end-of-trip facility for cyclists to the undercroft level, adjacent occupier bicycle racks (shower facilities within each commercial unit also retained);
- Relocation of visitor bicycle parking (4 racks) to be adjacent to undercroft level vehicle entry (previously located near entry ramp); additional visitor bicycle parking (3 racks) also to be retained in courtyard area at ground level;
- Additions of, and alterations to, windows;
- A/C plant relocated from roof to rear ledge over storerooms at ground floor level, screening provided to conceal A/C units; and
- Additional photovoltaic cells (solar panels) to replace skylight over commercial tenancy 02.

It should be noted that the proposed variations do not amend the previously approved number, size or layout of the office tenancies or multiple dwellings within the development nor the approved building setbacks or height. Similarly, car parking, bicycle parking and waste provisions are all to remain as previously approved. As such, these elements of the development are not re-evaluated as part of this variation application.

Please also note that the timeframe for commencing development has been extended under the emergency COVID legislation, meaning that the original development approval for DA0459/16, dated 16 December 2016, is still valid until 16 December 2022.

Amended Development plans are included as attachment 1.

Site/application information

Date received:	21 October 2021
Owner name:	David James Hartree
Submitted by:	David James Hartree
Scheme:	Local Centre Zone (R35)
Heritage listing:	Individually Listed (Category 3) and North Fremantle Heritage Area
Existing land use:	Single House
Use class:	Multiple Dwelling; Office
Use permissibility:	A; P



CONSULTATION

External referrals

Main Roads Western Australia (MRWA)

The application was referred to MRWA for comment as the subject site abuts a Category 3 Primary Regional Road under the Metropolitan Region Scheme (MRS). MRWA provided no objection to the variation application subject to a number of conditions outlined in their letter dated 16 December 2021. Where these conditions are additional or differ to those previously recommended on the original approval, they are to be added or modified accordingly, should the application be approved.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as the proposal involves the full demolition of the existing heritage listed dwelling (refer Local Planning Policy 1.3).

The advertising period concluded on 24 November 2021, and in total, 4 submissions were received including a submission that had been signed by 13 additional neighbouring landowners in objection to the proposal. 1 submission was provided in support of the proposal. The following issues were raised, as summarised below:

Submissions	Officer Comment
<p>The full demolition of the existing building and the construction of the contemporary development will have adverse impact on the established heritage character of White Street.</p> <p>There is no reason to demolish this house because it has strong heritage significance and wider cultural value and plays a significant role in maintaining the collective character and heritage of the area.</p>	<p>City Officers also did not support the full demolition of the heritage dwelling as was proposed in the initial plans submitted with this variation application (dated 21 October 2021) due to the unacceptable loss of heritage value that was proposed.</p> <p>Amended plans and a Heritage Scope of Conservation Works (dated 13 December 2021) were prepared following advice of the City to better conserve the heritage value of the existing dwelling by reinstating and/or replicating certain materials and/or design features at ground level as part of the new development, which is now supported by City Officers,</p>

	as discussed further in the officer comment section of this report.
<p>The proposal for demolition does not sufficiently address the building's heritage with only a tokenistic proposal for interpretation via a 'glazed window strip' facing Stirling Highway.</p> <p>The inclusion of the house in a form suitable to heritage is an integral part of the proposed development and its removal through allowing demolition would substantially change the development proposal and approval. For this reason and given the heritage status of the house through its listing of the house in the Municipal Inventory and the objective of the Local Centre Zone to conserve places of heritage significance, the proposal to now totally demolish the house is beyond Council's discretion to approve.</p>	<p>City Officers also did not support the full demolition of the heritage dwelling as was proposed in the initial plans submitted with this variation application (dated 21 October 2021) due to the unacceptable loss of heritage value that was proposed.</p> <p>Amended plans and a Heritage Scope of Conservation Works (dated 13 December 2021) were prepared following advice of the City to better conserve the heritage value of the existing dwelling by reinstating and/or replicating certain materials and/or design features at ground level as part of the new development, which is now supported by City Officers, as discussed further in the officer comment section of this report.</p>
<p>The progressive applications have slowly proposed further and further demolition of the heritage dwelling and the original application would not have been granted had full demolition been proposed in the first place.</p> <p>White Street is one of the few streets in North Fremantle which still retains a significant heritage streetscape. It is considered the demolition of the Rule home would both contribute to a diminished heritage streetscape, as well as in its proposed replacement office building, would add to a building profile that is contrary to the street.</p>	<p>City Officers also did not support the full demolition of the heritage dwelling as was proposed in the initial plans submitted with this variation application (dated 21 October 2021) due to unacceptable loss of heritage value that was proposed.</p> <p>Amended plans and a Heritage Scope of Conservation Works (dated 13 December 2021) were prepared following advice of the City to better conserve the heritage value of the existing dwelling by reinstating and/or replicating certain materials and/or design features at ground level as part of the new development, which is now supported by City Officers, as discussed further in the officer comment section of this report.</p>

The proposed height of the building and density of the residential structures and offices will result in a built environment which inappropriately overwhelms and dominates White Street.	The building height and density of development are not proposed to be amended from the original approval and are therefore not subject to review as part of this variation application.
Due to the lack of on-site car parking, the proposal will have an adverse impact upon the availability of street parking for other neighbouring properties within the area, leading to car parking, congestion and vehicle/pedestrian safety issues.	The on-site car and bicycle parking provisions are not proposed to be varied or amended from the original approval and are therefore not subject to review as part of this variation application.
As neighbouring owners, we have no objection to the demolition of the existing building on the site	Noted

The above comments are addressed further in the officer comment section below, as well the amended development plans, Heritage Scope of Conservation Works and respective conditions of approval.

OFFICER COMMENT

Statutory and Policy Assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. In this variation application, the following areas outlined below require assessment against Scheme or policy provisions:

- Full demolition of a dwelling on the City of Fremantle Heritage List and within the North Fremantle Heritage Area.

The above matters are discussed below.

Background

The subject site is located on the eastern side of Stirling Highway in North Fremantle and is also bound by White Street to the south of the lot. The subject site is approximately 492m² in area and slopes downward from west to east. The existing dwelling on the site is currently in a dilapidated state (see site photos) though is on the City's heritage survey as a management category Level 3 ('some significance') property. The property has the following heritage management guidance:

The City of Fremantle has identified this place as being of some cultural heritage significance for its contribution to the heritage of Fremantle in terms of its individual or collective aesthetic, historic, social or scientific significance, and /or its contribution to the streetscape, local area and Fremantle. Its contribution to the urban context should be maintained and enhanced.

The property's heritage Statement of Significance states:

House, 72 Stirling Highway, is a typical weatherboard, asbestos and iron single storey cottage dating from c1934. It is representative of the typical building stock located within the residential areas of North Fremantle. Historically significant as a representation of typical workers' houses in the North Fremantle area.

A search of the property file has revealed the following history for the site:

- DA0497/11 – Demolition of Existing Dwelling: Refused as the dwelling was deemed to be of some significance, 30 January 2012;
- DA0527/12 – Demolition of Outbuilding (Shed and Toilet), Fencing Alterations and Temporary Fencing Addition: Granted, 19 December 2012;
- DA0459/16 – Three Storey Mixed Use Development (2 x Offices and 4 x Multiple Dwellings): Granted by Planning Committee in December 2016;
- VA0032/17 – Variation to DA0459/16: Granted 21 December 2017;
- VA0007/21 – Variation to DA0459/16: Granted 13 May 2021.

In terms of the proposed alterations and/or partial demolition to the heritage listed dwelling on the subject site proposed in each of the above applications and respective advice/comment from the City's Planning and Heritage teams, this is outlined in summary in the following table:

Application ref.	Proposal and Heritage and Planning Officer Advice/Comment
DA0497/11	<p>The application proposed the full demolition of the heritage listed dwelling on the site.</p> <p>The application was refused on 30 January 2012 on the basis of an external heritage assessment that confirmed that the subject site has 'some' significance for its contribution to the historical character and streetscape through its scale, materials and modest design.</p> <p>The reason for refusal listed on the Decision Notice is as follows:</p> <ol style="list-style-type: none"> 1. <i>The place is considered to be of "some" cultural heritage significance and having regard to the provisions of clause 5.15.1 (a) of LPS4, demolition is not permitted.</i>
DA0459/16	<p>In relation to the heritage listed dwelling, the application proposed to:</p> <ul style="list-style-type: none"> • Demolish the roof and internal walls of the existing heritage dwelling and incorporate the building into the proposed development over. <p>Officer Comment (from committee report):</p> <p><i>While the main form of the Single house is being retained as part of this proposal, the roof is proposed to be demolished to accommodate the upper floor addition. While the house has been assessed to be of</i></p>

	<p><i>'some' cultural heritage significance, this is for historic reasons only; the retention of the main frame of the house is an appropriate architectural response for appreciation of and retention of the cultural heritage significance of the place.</i></p> <p>As such, demolition of the roof and internal walls of the existing dwelling was therefore supported by Officers and the application approved.</p>
VA0032/17	<p>In relation to the heritage listed dwelling on, the variation application proposed to:</p> <ul style="list-style-type: none"> Existing floor of retained heritage building to be restumped, resulting in increase in internal floor level of the ground floor Office tenancy. <p>Officer Comment (delegated report):</p> <p><i>The previous approval was conditional on retaining elements of the original house and is described in the Heritage Comments document dated September 2016.</i></p> <p><i>The proposed extent of the retention and reconstruction of the original house is considered to be an appropriate interpretation of the heritage values of the house. The proposed re-stumping of the building and the raising of its floor level is seen as sensible precaution that will not detract from its interpretation.</i></p> <p><i>Other proposed variations will not have an impact on any of the retained elements of the original house.</i></p> <p><i>It is recommended that the proposed variations be supported.</i></p> <p>As such, the proposed alterations to the heritage dwelling were supported by Officers and the application approved (including other minor variations).</p>
VA007/21	<p>In relation to the heritage dwelling, the variation application proposed to:</p> <ul style="list-style-type: none"> Replace stumped floor of heritage dwelling with concrete slab to eliminate BCA issues with framed floor and fire and provide an efficient structure tied into ground level lobby and apartments, and support of commercial space over. The VA plans still showed the walls of the existing dwelling to be retained and restored as per the 2016 approval. <p>Officer Comment (delegated report):</p>

	<p><i>I have had a look at the revisions described in VA007/21 to the proposed works approved under DA0459/16 and these works will not further reduce the heritage significance of the timber framed cottage at 72 Stirling Highway. For this reason this variation can be supported on heritage grounds.</i></p> <p>As such, the proposed alterations to the heritage dwelling were supported by Officers and the application approved (including other minor variations).</p>
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While this current variation application proposes the full demolition of the heritage dwelling, the proposal also seeks to conserve, reinstate and/or replicate a number of materials and design features of the heritage listed dwelling and incorporate these as part of the new development, as outlined in the amended development plans and Heritage Scope of Conservation Works report (dated 13 December 2021).

The acceptability of this proposal the subject of this report as is discussed in the following sections of the report.

Demolition and Heritage

Part 3 of the Deemed Provisions prescribes the matters to which the Council is required to afford due regard in considering a proposal. Included amongst these matters are any potential impacts that a proposal may have on the heritage values of an existing place and/or area.

Demolition of any place of heritage value requires careful consideration because it potentially removes all its heritage significance except for intangible historical and social values that are not dependant on physical fabric. In considering these applications, in accordance with clause 4.14 of LPS4, Council must be 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.*

Clause 4.14.2 of the LPS4 provides that in considering an application under clause 4.14.1, Council shall have regard to any heritage assessment required under the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The City's Heritage Team reviewed the proposal and development plans (dated 21 October 2021) as initially submitted with this variation application and provided a Heritage Impact Statement (dated 29 November 2021) that evaluated and considered the background history of development applications for this site, the heritage value and significance of the existing dwelling and the impact the proposal would have on this heritage value. The City's Heritage Impact Statement (see fully detailed statement attached to this report) concluded that the complete demolition of the heritage dwelling, as initially proposed, was not supported, on the following basis:

'The intent of the original planning approval for this mixed-use development in 2016 was that the demolition of some parts of the heritage house would be acceptable if most of the exterior walls of the house were retained and conserved with like for like replacement of damaged doors, windows and wall cladding undertaken to retain the place's contribution to the streetscape of Stirling Highway, White Street and the character of the North Fremantle Heritage Area.

Photographs of the external walls of the house taken between 2016 and 2021 indicate that while some damaged elements such as wall cladding have been further damaged, the condition of the elements of the place that are to be retained is not markedly different.

While the replacement of the timber floor to the building has been approved this does not resolve the need to retain and conserve the external walls of the building. The complete disassembly and reconstruction of these walls is not an acceptable solution due to the extensive loss of original material that will occur. Complete disassembly and reconstruction of the walls would effectively be demolition and would result in the loss of the heritage value of significant building fabric'.

This advice that the proposal in its initially proposed form would not be supported by the City was provided to the Applicant and discussions were subsequently opened with City Officers in an attempt to resolve the issues and revise the proposal in terms of better conservation of heritage that would be acceptable to City Officers. The City's Heritage Officer provided the following advice in an email (dated 1 December 2021) to the Applicant for an alternative approach to the heritage dwelling that may be acceptable in heritage terms, involving greater reuse/restoration and reinstatement of materials and design features within the new development, as follows:

- *The applicant must provide a methodology to demonstrate to the City of Fremantle how the walls will be retained, protected and conserved during the construction of the new building;*
- *The proposed methodology must keep the walls as intact as possible as disassembly will lead to damage and loss of fabric. Examples of possible techniques would include:*
 - *Jacking up the walls while the floor is constructed under and then and then reinstating them in the approved location (slightly higher than existing) and conserving the walls.*
 - *Bracing the walls planes and temporarily removing them as a unit before safely storing them on site. Reinstating and conserving the walls;*
- *Unsound timber members such as studs, windows and weatherboards may be replaced like for like as required but the aim should be to maximise the retention of original fabric. Elements with minor deterioration or patina should not be replaced;*
- *Fibrous cement sheeting and cover battens can be replaced with sheeting with cover battens of the same profile;*
- *It would be a good heritage outcome if timber floorboards from the house can be salvaged and fixed to the new concrete floor. It is recommended that the location of internal walls removed as part of this development could be interpreted with plain timber boards marking the wall locations;*

- *An interpretive finish to the exterior walls of the house is not acceptable as it is not in the spirit of the original approval which sought to retain these walls intact. It should also be noted that the proposed interpretation of the wall cladding will be too abstract and make it difficult for a casual observer to understand that these walls are a remnant of an earlier house.*

The Applicant took the above advice, engaged a heritage consultant (Element) that prepared and submitted the attached Heritage Scope of Conservation Works (dated 13 December 2021) and the Applicant also prepared a set of accompanying amended development plans (dated 13 December 2021). A summary of the works to preserve the heritage value of the dwelling outlined within the Heritage Scope of Conservation Works and amended development plans is provided as follows:

- *'Survey front and section of side elevations to capture dado timber, window details etc.*
- *Carefully remove the window under the verandah and re use if possible;*
- *Remove damaged wall cladding and sheet iron to expose west and south wall framing;*
- *Carefully salvage and clean off wall framing and keep intact;*
- *Carefully salvage and clean off floor boards;*
- *Make good structurally and carefully reinstate wall framing;*
- *Clad walls as existing with timber boards to dado, fibro sheet over and windows to match existing; and*
- *Relay timber floor to tenancy space.*

The proposed action would enhance the heritage value and integrity of the place by improved conservation of significant fabric or values. There would be a moderate long-term improvement in understanding the heritage value of the place'.

The City's Heritage Officer reviewed the amended development plans and Heritage Scope of Conservation Works report, advised the following:

The revised works described in the drawings is informed by the Element report which investigates the condition and significance of the existing heritage fabric and develops a schedule of conservation works to retain the heritage values of the retained sections of the building:

- *External wall cladding - weatherboard dado – poor condition fabric to be replaced like for like;*
- *External cladding asbestos cement sheet cladding with battens – all asbestos products to be replaced with Fibre Reinforced Cladding sheeting and cover battens to match the profile of the existing material;*
- *Jarrah wall framing – sound material to be retained and deteriorated material to be replaced to create a composite wall frame;*
- *West facing windows – timber casement sash windows in poor condition to be replaced like for like; and*

- *Front Door (west) – deteriorated 6 pane glazed timber door to be replaced like for like*

The revised works also describe some elements which interpret the earlier configuration of the place including:

- *The use of contrasting pavers to the landscaped areas in front of the house to mark the location of the original verandah floor; and*
- *The use of recycled Jarrah floor boards laid onto the new ground floor concrete slab to mark the location of the footprint of the original house.*

The Element report also notes earlier heritage advice provided by CoF regarding the need to interpret some of the historical values of the house which are not visibly evident in the fabric of the building such as the strong connection to the original owner and long term North Fremantle Councillor, Charles Percival Rule. Interpretive elements include:

- *An interpretive plaque recording the history of the site; and*
- *Grape vine motif cut into screens to new building to record the domestic garden on site.*

The proposed conservation works described in the drawings provided on 10 December 2021 will retain the values of the heritage fabric that was approved for retention as part of the original planning application for the place in 2016. The revisions made in these drawings mean that VA0035/21 work is supportable on heritage grounds’.

On the basis of the above, in light of the amended development plans and Heritage Scope of Conservation Works (dated 13 December 2021), the proposal is now considered by City Officers to be acceptable pursuant to Clause 4.14 of the LPS4.

Other Variations

- *Provision of additional dedicated end-of-trip facility for cyclists to under-croft level adjacent occupier bicycle racks (shower facilities within each commercial unit also retained).*

The original application was subject to a condition (No. 15) that required an additional end-of-trip facility (two in total) to be provided for cyclists to make the application acceptable due to the discretion sought and approved regarding on-site car parking for the Office uses as it would encourage alternate forms of transport (i.e. cycling / walking) and was required by Table 3 of the City’s LPS4.

The amended development plans now provide three (3) end-of-trip facilities, one dedicated facility in the undercroft level and one in each bathroom of the office tenancies. As such, the proposal now provides in excess of what is required in terms of end-of-trip facilities by Table 3 of the City’s LPS4 and is therefore supported.

Given that the required number of end-of-trip facilities are shown on the amended development plans it is also recommended that condition no. 15 can be deleted from the decision notice.

- *Relocation of visitor bicycle parking (4 racks) to be adjacent undercroft level vehicle entry (previously located near entry ramp); additional visitor bicycle parking (3 racks) also to be retained in courtyard area at ground level*

The relocation of the visitor bicycle parking is considered acceptable as the proposal still provides the same number of visitor bicycle parking spaces (7) that was considered acceptable in the previous variation application (VA0032/17) which added 3 additional bicycle bays to address condition No. 13 of the original decision notice. The proposal exceeds the requirements of the R-Codes Vol. 2 (Table 3.9) for the multiple dwellings (1 required) and Table 2 of TPS4 for the office tenancies (1 required) but additional bicycle bays were deemed necessary based on discretions sought and approved relating to on-site parking.

As such, as the bicycle parking provision also exceeds the additional bicycle bay requirement of the original approval condition No. 13, this condition is no longer necessary and can be deleted. The amendment to the location of bicycle parking spaces is supported.

- *Repositioning, resizing and additional window openings on the northern elevation.*
The repositioning, resizing and additional window openings on the northern elevation are supported and will deliver additional natural light to the dwellings to the benefit of occupiers.

To uphold the privacy of the neighbouring northern dwellings all northern elevation windows were required to provide opaque or obscured glazing to prevent overlooking of the adjoining properties. As annotated on the amended development plans, all northern openings are to be provided with obscure glazing and therefore are supported.

- *A/C plant relocated from roof to rear ledge over storerooms at ground floor level (with appropriate screening).*

Relocation of the A/C plant to the rear ledge over storerooms at ground floor level is considered acceptable as this will abut the carport and driveway of the adjoining southern eastern property which are non-habitable, non-sensitive areas.

Furthermore, the amended development plans provide details of the screening that is to surround the A/C plant to ensure the plant is not visually obtrusive.

- *Additional photovoltaic cells to replace skylight over commercial tenancy 02.*
The additional photovoltaic cells are supported as they will improve the sustainability and energy performance of the development further to LPP 2.13 (Sustainable Building Design) and the City's One Planet Living Framework.

It should be noted that the proposed variations do not affect the previously approved number, size and layout of office tenancies or multiple dwellings within the development nor the approved building setbacks or building height or other features of the development that are not covered above. Similarly, car parking and waste provisions are all to remain as previously approved. As such, on the basis of the above, the proposed variations are supported, subject to appropriate conditions.

CONCLUSION

In accordance with the above assessment and as per the amended development plans and Heritage Scope of Conservation Works (dated 13 December 2021), the proposal is considered to appropriately address the relevant statutory planning requirements of the LPS4, the R-Codes and relevant Council local planning policies and is therefore considered worthy of approval, subject to appropriate conditions.

STRATEGIC IMPLICATIONS

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

Strategic Community Plan 2015-25

- Increase the number of people living in Fremantle.
- Increase the number of people working in Fremantle.
- Increase the number of visitors to Fremantle.
- Increase the net lettable areas of office space.
- Provide for and seek to increase the number and diversity of residential dwellings in the City of Fremantle.

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Nil

Council:

APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4 Variations to Development Approval DA0459/16 (Three storey mixed use (2 x Office and 4 x Multiple dwelling) development) granted 12 December 2016 at No. 72 (Lot 3) Stirling Highway, North Fremantle, subject to the same terms and conditions, except whereby modified by the following condition(s):

- A. Condition 1, 4, 9, 10, 11, 12 and 15 of the Planning Approval dated 12 December 2016, be deleted and replaced with the following condition:
 1. This approval relates only to the development as indicated on the approved plans and Heritage Scope of Conservation Works, dated 13 December 2021. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.

4. No development other than landscaping shall be permitted on the land required for future road purposes, as depicted on the WAPC Land Requirement Plan No. 1.3340/4. The soak well shown within the Stirling Highway PRR reservation on Hartree + Associates Architect Drawing No. A1.00 Rev C. must not be installed within the PRR reservation.
9. Prior to occupation of the development approved as part of VA0035/21, on plans dated 13 December 2021, a Notification pursuant to Section 70A of the Transfer of Land Act 1893 shall be registered against the Certificate of Title to the land the subject of the proposed development advising the owners and subsequent owners of the land that the subject site is located in close proximity to the Fremantle Port and may be subject to noise, odour and activity not normally associated with residential use. The notification is to be prepared by the City's solicitors at the expense of the owner and be executed by all parties prior to occupation.
10. Prior to occupation of the development approved as part of VA0035/21 on plans dated 13 December 2021, a Notification pursuant to Section 70A of the Transfer of Land Act 1893 shall be registered against the Certificate of Title to the land the subject of the proposed development advising the owners and subsequent owners of the land that the subject site is located in close proximity to a passenger rail line and is currently affected by, or may in the future be affected by transport noise. The notification is to be prepared by the City's solicitors at the expense of the owner and be executed by all parties prior to occupation.
11. Prior to the occupation of the development approved as part of VA0035/21, on plans dated 13 December 2021, vehicle crossovers shall be constructed in either paving block, concrete, or bitumen and thereafter maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.
12. Prior to the occupation of the development approved as part of VA0035/21, on plans dated 13 December 2021, any redundant crossovers and kerbs shall be removed and the verge reinstated at the expense of the applicant and to the satisfaction of the Chief Executive Officer, City of Fremantle.
- B. Condition 13 and 14 of the Development Approval dated 12 December 2016 be deleted.
- C. The following condition(s) be added to the Development Approval dated 12 December 2016:
 18. The demolition and development approved as part of VA0035/21, on plans dated 13 December 2021, shall also be undertaken in accordance with the conservation works schedule, methodologies and recommendations of the Heritage Scope of Conservation Works report, prepared by Element and dated December 2021, to the satisfaction of the City of Fremantle. All works shall be completed as detailed in the approved Heritage Scope of Conservation Works report prior to occupation of the development unless otherwise approved by the City of Fremantle.

19. Prior to the issue of a Demolition Permit or Building Permit for the development hereby approved, any such demolition or building permit application shall contain plans and details of how the conservation works schedule, methodologies and recommendations of the Heritage Scope of Conservation Works report, prepared by Element and dated December 2021, are to be implemented into the design/operation of the development and are to be submitted and approved to the satisfaction of the City of Fremantle.

Lapsed due to no seconder

COMMITTEE DECISION ITEM PC2201-3
(Alternative recommendation)

Moved: Cr Su Groome

Seconded: Cr Ben Lawver

Council, under delegation 3.22:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Variations to Development Approval DA0459/16 (Three storey mixed use (2 x Office and 4 x Multiple dwelling) development) granted 12 December 2016 at No. 72 (Lot 3) Stirling Highway, North Fremantle, as detailed on plans dated 13 December 2021, for the following reasons:

- 1. The proposed demolition of the existing dwelling on site is not supported in accordance with clause 4.14.1 of Local Planning Scheme No.4 (LPS4) as the existing dwelling is considered to have some cultural heritage significance and makes a contribution to the broader cultural heritage significance and character of the North Fremantle locality which is a prescribed heritage area under LPS4.**
- 2. The proposal is detrimental to the amenity of the area and incompatible with the objectives of the Local Centre Zone set out in clause 3.2.1 (c) of the Local Planning Scheme No. 4 as per clauses 67(a) (ensuring that the aims and provisions of the Scheme have been met), (k) (the built heritage conservation of any place that is of cultural significance) and (m) (the compatibility of the development with its setting) of the Deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015.**

Carried: 7/0

**Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

PC2201-4 STIRLING HIGHWAY, NO. 110 (LOT 2) AND LESLIE ROAD, NO. 5 (LOT 3) NORTH FREMANTLE - TWO STOREY MIXED USED DEVELOPMENT (THREE MULTIPLE DWELLINGS AND A SHOP) (JCL DA0265/21)

Meeting Date: 12 January 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Attachments: 1. Amended Development Plans
Additional information: 1. Site Photos
2. Schedule of submissions
3. RCodes Volume 2 assessment

SUMMARY

Approval is sought for the construction of a two-storey building comprising upper floor three multiple dwellings and a ground floor Shop at Nos. 110 Stirling Highway and 5 Leslie Street, North Fremantle.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes Volume 2 (R-Codes) and Local Planning Policies. These discretionary assessments, and performance-based assessments, include the following:

- Land use;
- Lot boundary setbacks;
- Pedestrian access;
- Car parking;
- Bicycle parking;
- Landscaping;
- Overshadowing;
- Building height; and,
- Universal access;

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for the construction of a two-storey building comprising three multiple dwellings and a Shop at No's. 110 Stirling Highway and 5 Leslie Street, North Fremantle.

The proposed works include:

- Construction of a two storey building with a Shop on the ground floor.
- Three Multiple dwellings on the first floor;
- Provision of a parking area to the rear of the site for Shop patrons, residents and visitors;

- The applicant submitted several sets of amended plans, with the latest received on 24 November 2021 including the following:

- Development plans are included as attachment 1.

Development information

Date received:	21 June 2021
Owner name:	JYC Consulting Pty Ltd
Submitted by:	Abel Ling Architect
Scheme:	Mixed Use
Heritage listing:	North Fremantle Heritage Area
Existing land use:	Vacant site
Use class:	Shop, Multiple dwellings
Use permissibility:	A, A



CONSULTATION

External referrals

Department of Planning Lands and Heritage – Heritage Services

The application was referred to Heritage Services as the subject site abuts the *Great Southern Roller Flour Mill* (Flour Mill) to the north. They have advised that the Flour Mill will:

“...remain the dominant streetscape feature and retain its landmark quality. The proposed development will not overwhelm or detract from the registered place.”

Fremantle Ports (FP)

The application was referred to the FP as the subject site is located within Fremantle Port Buffer Area 3. The FPA has advised that they have no objection to the proposal subject to compliance with the standard built form requirements for Area 3. These matters are recommended to be dealt with as relevant conditions and advice notes. It is noted that many of the requirements for Area 3 relate to noise, and as such are superseded by the requirements for SPP5.4 Road and Rail Noise, which is discussed further below.

Main Roads Western Australia (MRWA)

The application was referred to MRWA for comment as the site is affected by a Primary Regional Road reservation. MRWA have advised that they have no objection to the proposal subject to the imposition of several conditions relating to minimising the impact on the road reservation and ensuring that future residents are protected from road noise from Stirling Highway. These matters can be dealt with as relevant conditions and advice notes in the Officers recommendation.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), due to the following discretions being sought:

- Building height (external wall)
- On-site car parking
- Residential Design Codes Volume 2 assessment
- Land use (Multiple dwellings and Shop)

The advertising period concluded on 26 July 2021, and 5 submissions were received. Due to the detail and number of submissions received, a Schedule of Submissions has been prepared and attached to the report. The following issues were raised (summarised):

- Parking;
- Traffic;
- Overshadowing;
- Building bulk and scale;
- Building height;
- Lot boundary setback; and,
- Boundary wall.

In response to the above, the applicant submitted revised plans to address the following:

- Building height;
- Overshadowing;
- Lot boundary setbacks.

The remaining comments are addressed in the officer comment below.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies:

State Planning Policy 7.3 Residential Design Codes Volume 2 (Apartments) set out acceptable outcomes for most design elements. Meeting the acceptable outcomes does not mean automatic approval for the design element, rather they provide direction for applicants to meet the design objectives of the Codes. An assessment sheet has been included as additional information and includes both the applicant and City Officers comment on each element. The following elements are discussed in greater detail throughout the report:

- Land use;
- Lot boundary setbacks;
- Pedestrian access;
- Car parking;
- Bicycle parking;
- Landscaping;
- Overshadowing;
- Building height; and
- Universal access.

Background

The subject site is located over two lots (No. 110 Stirling Highway and No. 5 Leslie Road) on the southern side of Leslie Road at its intersection with Stirling Highway. The sites have a combined land area of approximately 685m² and are currently not occupied by any development. The site is zoned 'Mixed Use' and has a density coding of R25. No. 110 Stirling Highway is not individually heritage listed, however No. 5 Leslie Road is due to an existing limestone feature. Both lots are located within the North Fremantle Heritage Area.

The site has a slight slope to the north-west and is currently vacant, except for a limestone fence traversing the rear portion of No. 5 Leslie Road, which runs through several other properties. The front portion of No. 110 Stirling Highway facing Stirling Highway contains a Main Roads Road reservation.

A search of the property file has revealed the following history for the site:

No. 110 Stirling Highway

- Proposed commercial Office – DA0232/10 – Approved 10 August 2010; and
- Two storey Single house with roof patio – DA0170/16 – Approved 15 July 2016

No. 5 Leslie Street

- Commercial offices – DA0352/09 – Refused 23 March 2010; and,
- Two storey house with roof deck and patio – DA0171/16 – Approved 8 August 2016

Land Use

A Shop and a Multiple Dwelling are both 'A' uses in the Mixed Use Zone, meaning the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice (advertising) in accordance with clause 64 of the Regulations, Schedule 2. In considering an 'A' use the Council will have regard to the matters to be considered in the Regulations.

In this regard the following matters have been considered in the table below.

Provision	Officer comment
(c) any approved State planning policy	See discussion in the body of the report relating to State Planning Policy 5.4 and State Planning Policy 7.3 (the Volume 2 assessment is included as an attachment).
(g) any local planning policy for the Scheme area	See body of report for discussion relating to applicable Local Planning Policies.
(j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;	Part of subject site is reserved under the MRS as Primary Regional Roads (PRR), vested in MRWA. MRWA comments relating to the proposal are included in the attachment 3. It is noted that the proposal has no built form within the MRWA PRR reserve, which is compatible with the objective of the reserve for potential future road widening.
(k) the built heritage conservation of any place that is of cultural significance	The subject site is a Level 3 heritage listed place and is located adjacent to the Dingo Flour Mill, which is State Heritage listed. See body of report for further discussion relating to heritage.
(l) the effect of the proposal on the cultural heritage significance of the area in which the development is located	The proposal has no adverse impact on the cultural heritage significance of any property in the locality, specifically the Dingo Flour Mill to the north of the subject site.
(m) the compatibility of the development with its setting, including — (i) the compatibility of the development with the desired future character of its setting; and (ii) the relationship of the development to 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;	The development is considered compatible with its setting for the following reasons: <ul style="list-style-type: none"> • The height of the development is generally consistent with the height allowed under LPS4 for mixed use sites in this portion of North Fremantle; • The proposed land use mix is consistent with that found in the locality, with Shops of a similar scale located at adjoining properties. Moreover, the locality contains a significant number of residential uses. It is considered that the proposed land uses are consistent with the objectives of the 'Mixed use' zone; • The presence of the Shop use isn't considered likely to adversely impact the viability of the City's City, Local, and Neighbourhood Centre zones, given its scale and location;

	<ul style="list-style-type: none"> • The configuration of the development provides for a commercial use at the ground floor, and residential uses at the upper floor; and, • The development is considered relatively modest in its bulk and scale. Further, when viewed in the context of its proximity to the Dingo Flour Mill, the development aids in the graduation of height towards compliance. Therefore, it sets a reasonable precedent for future development in the immediate locality.
<p>(n) the amenity of the locality including the following —</p> <ul style="list-style-type: none"> (i) environmental impacts of the development; (ii) the character of the locality; (iii) social impacts of the development 	<p>The proposal is considered to have an acceptable amenity impact on the locality in the following ways:</p> <ul style="list-style-type: none"> • The proposal is unlikely to have adverse environmental impacts by way of noise or other pollution, noting it abuts a working industrial use, highway and trainline which are the generators of noise and nuisance; • The character of the locality is predominantly comprised of two storey developments constituting commercial and residential uses. It is noted that the Dingo Flour Mill is present in the locality, which comprises four storeys. Given the scale and proposed land use composition, it is considered that the proposal is compatible with the existing predominant character of the locality; and, • It is considered that the proposal will have a positive social impact, given it provides additional housing and commercial space to the locality. Additionally, the balconies and major openings present on this corner lot will provide additional passive surveillance.
<p>(p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved</p>	<p>It is considered that the provision of landscaping and deep soil zones is supportable. A condition will be imposed requiring the provision of a detailed landscaping plan.</p>
<p>(s) the adequacy of —</p> <ul style="list-style-type: none"> (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles 	<p>It is considered that the location of the vehicle access point is a reasonable distance from Stirling Highway.</p> <p>The means of access and egress is considered sufficient, as is the capability of the site to accommodate deliveries and vehicle manoeuvrability and parking.</p>
<p>(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;</p>	<p>It is considered that a modest, amount of traffic will be generated by the proposal for the following reasons:</p> <ul style="list-style-type: none"> • The subject site is in very close proximity to North Fremantle Train Station and bus stops servicing several routes; • Three two-bedroom apartments are proposed; and • One commercial tenancy (Shop) is proposed; and which isn't considered likely to be a particularly highly trafficked use.

<p>(u) the availability and adequacy for the development of the following —</p> <ul style="list-style-type: none"> (i) public transport services; (ii) public utility services; (iii) storage, management and collection of waste; (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities); (v) access by older people and people with disability 	<p>The subject site is in close proximity to the North Fremantle train station and several bus stops.</p> <p>The subject site is in close proximity to Western Power powerlines, which do not physically interfere with the built form at the subject site but service it appropriately.</p> <p>Bin storage areas are in a readily accessible location and may be presented to Leslie Street for collection. The City's Waste Management Department has reviewed the Waste Management Plan provided and is generally satisfied with it and its ability to be implemented. The City's Parking Department has advised that there is no issue posed by Leslie Road being used for waste collection.</p> <p>The subject site provides several bicycle racks throughout to service the needs of residents and patrons. See body of report for further discussion.</p> <p>The Shop component is considered reasonably accessible by the elderly and those with a disability through the provision of a slope to the main entrance, in addition to a wide automatically opening door. Additionally, a universal access bay and associated service bay is provided to the rear of the Shop, which is accessible via a wide automatically openable door.</p>
<p>(v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses</p>	<p>Whilst the current development sites are currently used to accommodate overflow parking, it is not formally approved as such and it is considered that their development will not pose an undue adverse impact onto the community. It is the landowners right to develop their land provided appropriate approvals are obtained.</p> <p>Likewise, it is the responsibility of other landowners and vehicle operators to ensure that required parking areas are provided to service their own requirements.</p>
<p>(w) the history of the site where the development is to be located</p>	<p>The subject sites have had multiple development applications approved at the site, none of which have been acted upon to date.</p> <p>With respect to DA0171/16, the associated Planning Committee report stated the following with respect to the limestone fence, which is relevant to the heritage comments provided relating to this current application:</p> <p><i>"The City's heritage officers have reviewed the site and stated that the heritage listing is a result of the existing limestone wall. The southern portion of the limestone wall is of a recent construction and has no significance. The portion of limestone wall</i></p>

	<p><i>protruding out from the western boundary is of considerable significance and is recommended to be retained. A condition has been added to this effect. Full comments are included as Attachment 3."</i></p> <p>It is noted that the proposed removal of the same limestone fence is consistent with that previously approved under the previous development application, which has informed the Heritage assessment provided as part of this development application.</p>
(y) any submissions received on the application	Please see full address of submissions received in the body of the report.
(za) the comments or submissions received from any authority consulted under clause 66	See body of report.

Based on the discussion included in the above Table, it is considered that the proposed land uses are consistent with the objectives of the Mixed use zone as follows:

- The land use mix is compatible with that present and encouraged for the locality, and doesn't adversely impact the commercial viability of other Centre zones in the City;
- The proposal provides for ground floor commercial and upper floor residential components;
- The development is sympathetic to the current and desired future character of the locality;
- The proposal has an acceptable impact on the amenity of neighbouring properties and the locality more generally; and,
- The impacts on heritage features on the site and in the locality are supported.

Density

The subject site has a density coding of R25. Clause 4.2.5 of LPS4 states:

"Notwithstanding the requirements of clause 4.2.3 residential density in the Local Centre, Neighbourhood Centre and Mixed Use zones may be increased up to R60, where residential development is part of a mixed use development, where, in the opinion of Council the proposal is not detrimental to the amenity of the area."

'Mixed use development' is defined in LPS4 as:

"means, when used in relation to a Planning Application, a combination of one or more of the residential use classes specified in Table 1 - Zoning and any other land use or uses, and where the residential use class and any other one use class each comprise a minimum of 25 per cent of the gross lettable area of the development."

It is noted that the development comprises three multiple dwellings, and a 'Shop' use on the ground floor. The 'Shop' comprises over 25% of the gross lettable area of the development.

The development may therefore be assessed against the R60 density provisions of the R-Codes Volume 2 as it is considered a 'Mixed use development' and, as discussed in the body of the report, it is not considered detrimental to the amenity of the area.

State Planning Policy 5.4 – Road and rail noise

The subject site is located within 100m of the Fremantle train line, and within 300m of Stirling Highway and Curtin Avenue. For this reason, traffic noise may be a significant issue. Therefore, the provisions of State Planning Policy 5.4 (SPP 5.4) are applicable.

The applicants have provided a Road Traffic Noise Assessment (Assessment) prepared by 'Acoustics Consultants Australia', dated 3 September 2021. They have confirmed that the proposal will incorporate all recommendations of the assessment, inclusive of the recommendations of the residential and commercial components.

The City's Environmental Health officers have reviewed the Assessment and are satisfied with the measures proposed in Section 5 of the assessment. A condition of approval is recommended to ensure that compliance with the report is demonstrated.

In addition to the above, as required by the MRWA advice and the provisions of SPP5.4, a condition will be recommended requiring notification on the Certificates of Title advising occupants that the subject site is in proximity to road and rail, which will pose a level of noise

Demolition of limestone fencing

The application proposes the demolition of a portion of the existing limestone fence running along the rear portion of No. 5 Leslie Road which is currently on the City's Heritage List. It is noted that portions of this fence also traverse other properties.

Per the City's Heritage advice, the demolition is supported subject to the imposition of a condition requiring the limestone fence to be repaired in accordance with good conservation practice, using lime based mortar with no cement.

In relation to Clause 4.14.1 of LPS4, in the context of the heritage comments provided, it is considered that the partial demolition of the limestone feature is of little cultural heritage significance and it does not make a significant contribution to the broader cultural heritage significance of the locality.

Side and rear setbacks

Element	Acceptable outcome	Proposed	Extent of departure from Acceptable Outcome
Ground floor - south	3m	Nil - 1.9m	1.55m-1.13m
Upper floor - south	3m	1.45 - 1.87m	1.55m-1.13m
Ground floor - east	3m	Nil - 0.3m	3m-2.7m
Upper floor – east	3m	Nil - 1.85m	3m-1.15m

The ground and upper floor southern lot boundary setback variations impacting No. 108 Stirling Highway are considered to meet the relevant objectives of the R-Codes Volume 2 in the following ways:

- The ground floor setback provided predominantly abuts an existing boundary wall, with the portion exceeding the height of the neighbour's boundary wall predominantly facing a portion of flat, inaccessible roof;
- Building separation is not provided on the ground floor, however given the existing neighbours boundary wall has a nil setback with no openings, it is considered that there is no adverse impact posed by the proposed setback. The upper floor

provides a reasonable level of separation between buildings in proportion to its building height (see Diagram 2 in the body of the report for a cross section demonstrating this separation);

- The setback proposed will have no adverse impact on ventilation for the southern neighbour's property, particularly to the existing outdoor living area;
- Limited solar access impacts are posed by the proposed variation, as discussed in further detail in the body of the report;
- The setback, if it was compliant, would have no meaningful impact on the ability for landscaping to be provided, given it faces south, and the vegetation would not receive adequate sunlight; and
- The variation doesn't pose any visual privacy variation to the southern neighbour.

The reduced southern ground floor setback that abuts No. 107 Stirling Highway abuts a blank boundary wall. No major openings, outdoor living areas or other sensitive spaces are proposed to be impacted.

The ground and upper floor eastern lot boundary setback variations are considered to meet the objectives of the R-Codes Volume 2 in the following ways:

- The proposed ground floor section of wall is an open framed structure for the carpark facing a blank section of boundary wall and dividing fence, thereby posing limited adverse amenity impacts to the neighbour;
- The predominant bulk of the wall abuts an existing boundary wall, with no openings present, with a similar dimension to that proposed. The portion exceeding the width of the neighbours wall abuts a section of roof with no solar collectors, and is set back approximately 2.9m-4.4m from the neighbours front outdoor living area (see Diagram 1 below).



Diagram 1: Eastern boundary wall comparison to neighbour's property

- Along Leslie Road, the predominant built form pattern comprises two storey dwellings with lofts with significant two storey boundary walls between them, with minimal building separation. Therefore, it is considered that the ground and upper floor setbacks are consistent with this predominant built form of the southern section of Leslie Road. The remaining portion of wall is setback to provide an acceptable degree of building separation;
- The setback proposed will have no adverse impact on ventilation for the eastern neighbour's property given it abuts a boundary wall and dividing fence, and is open framed on the ground floor;
- The variation doesn't pose any adverse impacts to solar access for the eastern neighbour;
- The variation doesn't pose any adverse impact on the ability of the site to contain landscaping, as it would not be an optimal location for the provision of landscaping; and,
- No visual privacy variations are posed by the reduced lot boundary setbacks, given all openings are either hi-light windows, or are appropriately screened.

Pedestrian access

The pedestrian access and legibility of the development is considered to meet the relevant Element Objectives of the R-Codes Volume 2 in the following ways:

- The pedestrian access route is protected from the weather, given it is located under cover;
- Access to the stairwell is via a well lit area directly from the car park where many residents will enter. Additionally, the entrance to the parking area is covered by passive surveillance from balconies and major openings, with the applicant also proposing surveillance cameras;
- The commercial component of the development will assist with passive surveillance during business hours with customers coming and going to the Shop;
- Along the route to the stairwell, as well as at the stairwell, there is little opportunity for concealment, noting it is one clear, straight driveway directly from Leslie Street;
- The carpark is relatively small and unlikely to be heavily trafficked, meaning that pedestrian movement through this area is not a significant concern; and
- Generally, the services and utilities located at the pedestrian entry are well integrated into the overall design and don't detract from the general amenity of the entry.

Car parking

Element	Requirement	Proposed	Extent of Variation
Shop	12 bays	8 bays	4 bays

Part 4.7.3.1 of LPS4 allows the City to consider parking shortfalls, subject to meeting one or more of the relevant criteria. It is considered that the parking shortfall is supportable due to the following reasons:

- The subject site is located within a short walking distance of North Fremantle Train Station,
- The site is located close by to several bus stops which service routes from Perth and Fremantle; and,
- The Shop proposes one more bicycle rack than required.

The Multiple dwellings have provided sufficient car parking against the requirements of the R-Codes Volume 2, however it is noted that no visitors car parking is provided. In this instance, given the small quantum of development, it is not necessary to provide a dedicated visitor bay and given many visitors may attend after the closure of the shop shared use of those bays is not unreasonable.

Bicycle parking

Element	Acceptable outcome	Proposed	Departure from acceptable outcome
Multiple dwellings	3 bays	2 bays	1 bay

The bicycle bays provided are considered to meet the relevant objectives of the R-Codes Volume 2 in the following ways:

- The quantum of development is such that it is considered unlikely that there will be a significant demand for bicycle parking in excess of what is proposed;
- The shop provides an additional rack (above what is required by LPS4) which could be shared by visitors and,
- The residential bicycle bays are located under cover and are in a relatively secure location at the rear of the proposed car parking area.

Landscaping

Element	Acceptable outcome	Proposed	Departure from acceptable outcome
Tree canopy and deep soil areas	1 medium tree and small trees to suit	4 small trees	1 medium tree
Deep soil area	10% of site (68.5m ²)	5.9% of site (41m ²)	4.9% (27.5m ²)

The landscaping provided is considered to meet the relevant objectives of the R-Codes Volume 2 in the following ways

- Given the constrained nature of the site due to the Western Power powerlines along Leslie Road, and the MRWA road reserve requiring lower-level vegetation, the applicant has proposed in excess of the required amount of small trees;
- Deep soil area is provided throughout the site and at present is in excess of the requirement. However, it is noted that a portion of the site is affected by a Primary Regional Road reservation. If the PRR reservation is acquired by MRWA, there will be a loss of part of the proposed deep soil area on the subject site. The applicant has proposed the planting of trees outside of this area, meaning that even with the resumption of the land, the trees will not be affected;
- Though the required dimensions for most of the deep soil areas don't comply, the City's Parks and Landscape Department have confirmed that the areas are sufficient for the vegetation proposed in the landscaping plan. Moreover, given the sites constraints as discussed in the body of the report, and the type of vegetation proposed, it is considered that the deep soil areas provided are acceptable, given the portions containing the small trees have a 2m width to allow for adequate growth, and opportunities exist for future planting on the building; and
- Additional smaller areas of soft landscaping are provided throughout the site and the road reserve.

It is noted that the applicant has indicated a willingness to amend the design of the proposed hardstand in the Stirling Highway road reserve, which may be misinterpreted as a vehicle crossover or parking area. Therefore, the amendment of this area of hardstand to reduce its presence and to increase the amount of soft landscaping and deep soil area, will be included in a condition of approval.

Overshadowing

Element	Acceptable outcome	Proposed	Departure from acceptable outcome
Overshadowing to No. 108 Stirling Highway	115.5m ² (25% of neighbouring site)	224m ² (48% of neighbouring site)	108.5m ² (23% of neighbouring site)

The overshadowing is considered to meet the relevant Objectives of the R-Codes Volume 2 in the following ways:

- The development has provided reasonable upper floor setbacks of 1.4m to 1.8m to No. 108 Stirling Highway and 5.3m to 107 Stirling Highway,
- The roof form facing the southern neighbour has a 25° pitch, with a maximum roof pitch height of 9.8m at its greatest height. This pitch, in combination with the setback proposed, means that the outdoor living area on the adjoining property is largely unaffected during the worst case scenario, being 12pm 21st June (see diagram 2 below);
- The shadow predominantly falls upon areas of inaccessible roof, and the neighbouring front car parking area;
- It is further noted that there are no major openings or solar panels present on the southern neighbour's site which would be significantly adversely impacted by the proposal.

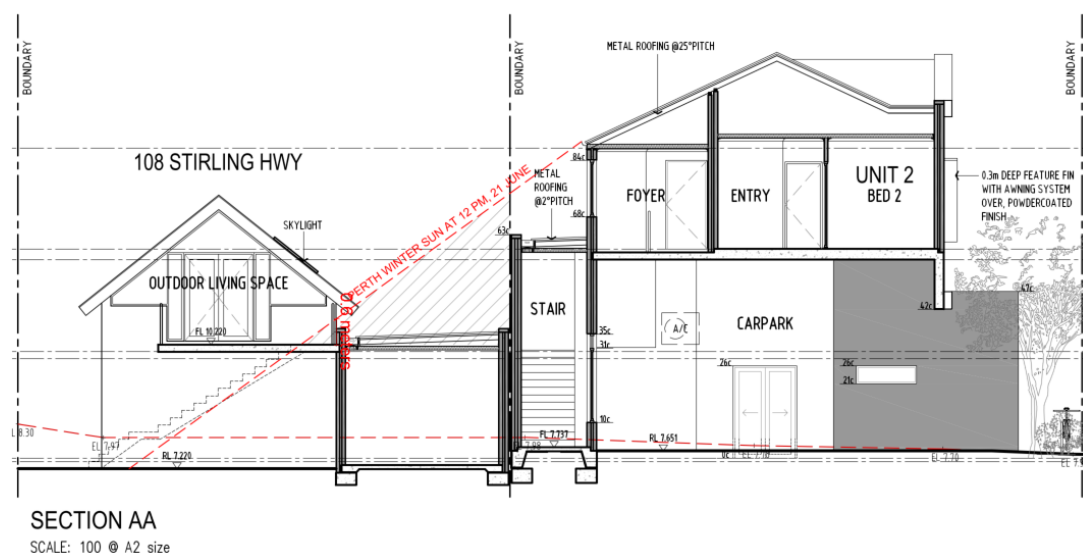


Diagram 2: Cross section showing impact of shadow on 12pm on 21 June on rear outdoor living area of No. 108 Stirling Highway.

Building height

Element	Requirement	Proposed	Extent of Variation
External wall height – North	7.5m	Up to 7.9m-9.7m	0.4m- 2.2m

As per Local Planning Area 3 (North Fremantle), the maximum external wall height permitted for sites in the 'Mixed use' zone is 7.5m. Part 4.8.1 of LPS4 allows the City to consider variations to this height, per the below:

Where sites contain or are adjacent to buildings that depict a height greater than that specified in the general or specific requirements in schedule 7, Council may vary the maximum height requirements subject to being satisfied in relation to all of the following—

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

Noting the above, the Dingo Flour Mill, with an external building height of approximately 16m (four storeys), is located directly to the north of the subject site, thereby triggering the Part 4.8.1 assessment. Other than the Dingo Flour Mill, it is noted that the dominant character of buildings in the area is single storey. However, the external wall height variations are considered to meet the provisions of Part 4.8.1 of LPS4 in the following ways:

- The proposal poses an acceptable impact onto the amenity of adjoining properties and the locality more generally;
- Despite the built form being different from the southern neighbouring properties along Stirling Highway, the proposed heights are considered to provide an appropriate transition between the significantly higher Dingo Flour Mill and the adjoining properties;



Diagram 3: Number of storeys of buildings along nearby portions of Stirling Highway and Leslie Road.

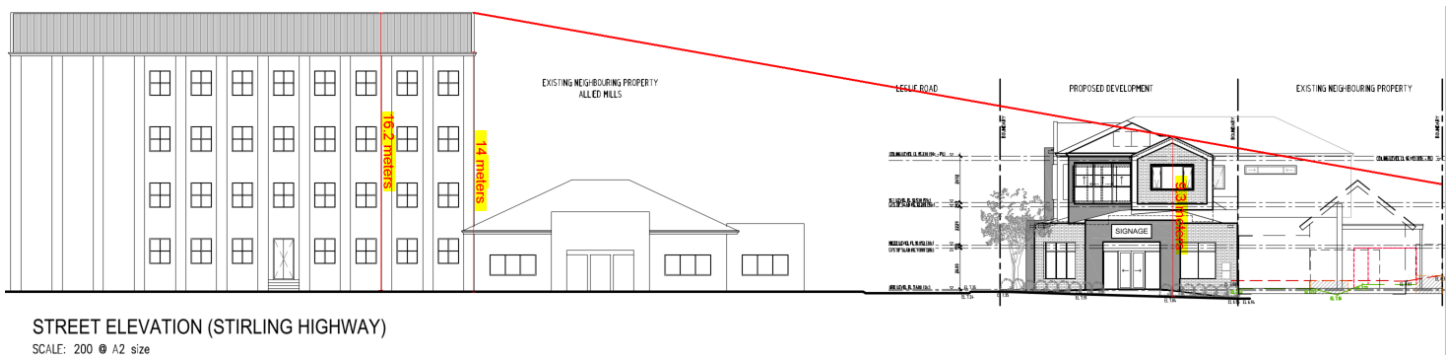


Diagram 4: Street view from Stirling Highway

- It is considered that the proposed building height has no adverse impacts onto the cultural heritage value of the subject site, nor to the Dingo Flour Mill or any other properties in the locality; and,
- The additional building height will not result in a significant amenity impact on adjoining properties;
- The highest points of the development facing north and west are the top of the gable ends, with the predominant building bulk (i.e. external wall height to main gutter line) sitting at or below 8.3m to the west, and 7.7-8.2m to the north.

Universal design

Due to the small number of dwellings proposed, and the requirement to accommodate a commercial premises on the property to obtain “mixed use” status, the applicant has not proposed to apply universal design standards. It is noted that some retrofitting of the dwellings may be able to occur in future as required to suit the needs of residents. It is further noted that the development is two storeys, with one flight of stairs required to access the dwellings from the generally universally accessible parking area. The applicant has included accessibility features for the commercial use, including an ACROD bay and flat surface at the entry.

Signage

The application proposes the provision of a wall sign to the façade of the Shop facing Stirling Highway. The sign located within the PRR at the front of the Shop will not form part of this application.

The wall sign meets all the provisions applicable to all signs, in addition to the provisions applicable to wall signs.

CONCLUSION

Based on the body of the report above, it is considered that the proposal is acceptable when assessed against the relevant provisions of Volume 2 of the R-Codes and LPS4. Therefore, it is recommended that the application be approved subject to the conditions contained in the officer recommendation below.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

- Increase the number of people living in Fremantle
- Increase the number of people working in Fremantle
- Increase the net lettable area of retail space
- Provide for and seek to increase the number and diversity of residential dwellings in the City of Fremantle

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Two Storey Mixed Used Development (three Multiple dwellings and a Shop) at No. 110 (Lot 2) Stirling Highway and No. 5 (Lot 3) Leslie Road, North Fremantle, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans, dated 24 November 2021. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. All storm water discharge from the development hereby approved shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.
3. No part of the building/development (inclusive of awnings and below ground elements) shall be located within the land required for future Stirling Highway upgrades as detailed in Main Roads Western Australia's land requirement plan 1.7143/1.
4. No earth works shall encroach onto the Stirling Highway road reserve.
5. Prior to the issue of a Building Permit an updated version of Landscaping Plan SK01-A is to be provided including additional details of irrigation and modification of hardstand area located at the Stirling Highway frontage of the subject site to the satisfaction of the City.
6. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the air conditioning units shall be screened from view from any public street/neighbouring property is to be submitted and approved, to the satisfaction of the City of Fremantle. The screening shall be installed prior to occupation.
7. Prior to the issue of a Building Permit for the development hereby approved, 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 3. Specifically, the development shall provide air conditioners shall provide internal centrally located 'shut down' points and associated procedures for emergency use.
8. Prior to the issue of a building permit, details shall be provided to and approved by the City demonstrating the location of PV cells (2 x 6.6kwh panels and 2 x 5kwh

inverters) and power points to each residential parking bay to facilitate electric car charging to the satisfaction of the City.

The panels and power points shall be installed prior to occupation of the development.

9. Prior to occupation of the development hereby approved, the development must demonstrate compliance with the recommendations of the Road Traffic Noise Assessment prepared by 'Acoustics Consultants Australia' prepared on 3 September 2021, to the satisfaction of the City of Fremantle.
10. Prior to occupation for the development hereby approved, a notification, pursuant to section 70A of the *Transfer of Land Act 1893*, shall be placed on the certificate of title for the subject lot. The notification shall be at the owner/applicants' expense and lodged with the Registrar of Titles for endorsement. The notification is to state as follows:

'This lot is in the vicinity of a transport corridor and is affected, or may in the future be affected, by road and rail transport noise. Road and rail transport noise levels may rise or fall over time depending on the type and volume of traffic.'
11. Prior to occupation of the development, the retained portion of limestone fence as detailed on the approved plans is to be repaired in accordance with good conservation practice, using a lime based mortar containing no cement to the satisfaction of the City of Fremantle.
12. Prior to occupation of the development hereby approved, No. 110 (Lot 2) Stirling Highway and No. 5 (Lot 3) Leslie Road are to be legally amalgamated into one lot on the Certificate of Title. Alternatively, the owner may enter into a legal agreement with the City of Fremantle, drafted by the City's solicitors at the expense of the owner and be executed by all parties concerned. The legal agreement will specify measures to allow the development approval to operate having regard to the subject site consisting of two separate lots, to the satisfaction of the City of Fremantle.
13. Prior to the occupation of the development hereby approved, vehicle crossovers shall be constructed to the City's specification and thereafter maintained to the satisfaction of the City of Fremantle.
14. Prior to the occupation of the development hereby approved, any redundant crossovers shall be removed and the verge and kerbing reinstated to the City's specifications, at the expense of the applicant and to the satisfaction of the City of Fremantle. The City's crossover specifications can be found via the following link: <https://www.fremantle.wa.gov.au/crossovers>.

15. Prior to the occupation of the development hereby approved, all car parking, and vehicle access and circulation areas shall be marked and signage and/or marking installed to clearly delineate between the residential and commercial components. The bays shall be maintained and made available for car parking and vehicle access and circulation on an ongoing basis to the satisfaction of the City of Fremantle.
16. Prior to the occupation of the development, the approved landscaping shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Fremantle. All landscaped areas are to be maintained on an ongoing basis for the life of the development, to the satisfaction of the City of Fremantle.
17. Prior to occupation/use of the development hereby approved, the boundary wall located on the eastern and southern lot boundaries shall be of a clean finish in any of the following materials:
 - coloured sand render,
 - face brick,
 - painted surface,and be thereafter maintained to the satisfaction of the City of Fremantle.
18. Prior to occupation for the development hereby approved, a notification, pursuant to section 70A of the *Transfer of Land Act 1893*, shall be placed on the certificate of title for the subject lot. The notification shall be at the owner/applicants' expense and lodged with the Registrar of Titles for endorsement. The notification is to state as follows:

"The subject lot is located within 1 kilometres of Fremantle Port. From time to time the location may experience noise, odour, light spill and other factors that arise from the normal operations of a 24 hour working Port."
19. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

ADVICE NOTES

- i. 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.
- ii. The applicant is advised that any signage may be subject to a separate application for planning approval.

- iii. The applicant is encouraged to maintain the adjacent verge in accordance with the City's Verge Garden Policy which can be found on the City website at:
<https://www.fremantle.wa.gov.au/resident-perks>
- iv. The applicant is advised that a crossover permit must be obtained from the City's Engineering Department. New/modified crossover(s) shall comply with the City's standard for crossovers, which are available on the City of Fremantle's web site.

The applicant is advised that the new vehicle crossover shall be separated from any verge infrastructure by:

- a minimum of 2.0 metres in the case of verge trees
 - a minimum of 1.2 metres (in the case of bus shelters, traffic management devices, parking embayment's or street furniture), and
 - a minimum of 1.0 metre in the case of power poles, road name and directional signs.
- v. This property is affected by land reserved in the Metropolitan Region Scheme and will be required for road purposes in the future.
 - vi. The project for the upgrading/widening of Stirling Highway is not in Main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability for the information provided.
 - vii. The applicant is required to submit an application form to undertake works within the road reserve prior to undertaking any works within the road reserve. Application forms and supporting information about the procedure can be found on Main Roads website > Technical & Commercial > Working on Roads.
 - viii. All noise from the proposed development must comply with the requirements of the *Environmental Protection (Noise) Regulations 1997* (as amended), such as:
 - mechanical service systems like air-conditioners, exhaust outlets, motors, compressors and pool filters;
 - vehicles;
 - amplified acoustic systems; and
 - patron noise.

COMMITTEE DECISION ITEM PC2201-4

Moved: Cr Andrew Sullivan Seconded: Cr Su Groome

Refer the application to the Administration with the advice that Council is not prepared to grant planning approval to the application for the two storey mixed use development (three multiple dwellings and a shop) at No. 110 (Lot 2) Stirling Highway and No. 5 (Lot 3) Leslie Road, North Fremantle based on the current submitted plans and invite the applicant, prior to the next appropriate Planning Committee meeting, Consider amending the plans to reduce the impact on neighbouring properties and for the design to make reference to its Stirling Highway streetscape context and character. Amendments could include, but are not limited to:

- **Improve the pedestrian entry to multiple dwellings**
- **Improve universal access to the building**
- **Increased lot boundary setbacks**
- **Increase parking for the shop**

Additional information regarding the impacts from the industrial use opposite the site, including traffic and amenity impacts should also be explored.

Carried: 7/0

**Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

Cr Ben Lawver left the meeting at 7.32 pm.

Cr Ben Lawver returned to the meeting at 7.35 pm.

**PC2201-5 BLAMEY PLACE, NO.10 (LOT 8), O'CONNOR – CHANGE OF USE
FROM WAREHOUSE TO PLACE OF WORSHIP – (CS DA0416/21)**

Meeting Date: 12 January 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Planning Committee
Attachments: 1. Development Plans
Additional information: 1. Site Photos

SUMMARY

Approval is sought for a change of use from Warehouse to Place of Worship at No.10 Blamey Place, O'Connor.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4) requirements. These discretionary assessments include the following:

- Land use (Place of Worship)
- On site car parking

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a Change of Use from Warehouse to Place of Worship at No.10 Blamey Place, O'Connor. The use has been outlined by the applicant as follows:

- Place of Worship
 - Mosque – facilitation of prayer time,
 - Ancillary use as a community facility for Muslims to connect as a community
- Building size of 738sqm,
- Hours of operation,
 - 7 days a week, 4am to 9pm.
 - 30 minute to 1 hour prayer times five times a day, and
- Expected patron numbers approximately 10 per prayer time, with up to 50 at Friday midday prayer time.

The applicant submitted additional information on 13 December 2021 advising the following:

- The total internal floor area is 738sqm,
- No car parking is proposed inside the building,
- Patrons will be encouraged to carpool when attending congregational prayers,
- The proponent will provide 2 parking wardens during Friday congregational prayers to manage parking,

-
- Hand-drawn floor plan of a building with various rooms and exits. The plan includes a central hall with a highlighted area for worship use. Rooms include Ablutions, Office, Kitchen, and a Yard. Exits are labeled Exit One, Exit Two, Exit Three, and Exit Four. A proposed bike rack area is marked with a green rectangle. Dimensions and area calculations are provided for several rooms.
- Rooms and areas:
- ABLUCTIONS (top center)
 - OFFICE (top right)
 - ABLUCTIONS (bottom left)
 - OFFICE (bottom center)
 - KITCHEN (bottom right)
 - YARD (left side)
- Exits:
- EXIT ONE (bottom left)
 - EXIT TWO (bottom center)
 - EXIT THREE (right side)
 - EXIT FOUR (top right)
- Highlighted area to be used for the place of worship use (green rectangle).
- Proposed bike racks (green rectangle).
- Dimensions and area calculations:
- 20.25m² (ALL OFFICE + ABLUTIONS)
 - 20.25m² (ALL OFFICE + ABLUTIONS)
 - 20.25m² (ALL OFFICE + ABLUTIONS)
 - 20.25m² (ALL OFFICE + ABLUTIONS)

Site/application information

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 the proposed use is a discretionary use and involved a shortfall of car parking. The advertising period concluded on 22 October 2021, and one submission was received. The following issues were raised (summarised):

- Concern that insufficient parking is provided for the predicted 50 patrons
- Concern that the numbers of patrons would exceed 50 persons
- There is very little on road parking, which will result in overflow parking on verges
- Additional traffic with existing truck deliveries to existing businesses will cause traffic difficulties
- Concern that overflow parking will impact operation of surrounding businesses

In response to the above, the applicant provided additional clarification on 13 December 2021, as outlined above.

The remaining comments are addressed in the officer comment below.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4 and relevant Council local planning policies. Where a proposal does not meet the statutory requirements of the Scheme or policy, an assessment is made against the relevant discretionary criteria. In this particular application the areas outlined below require the exercise of discretion:

- Land use (Place of Worship)
- On site car parking

The above matters are discussed below.

Background

The subject site is located on the south eastern side of Blamey Place in O'Connor. The site has a land area of approximately 1326m² and is currently approved as a Warehouse. The site is zoned Industrial. The site is not individually heritage listed nor located within a Heritage Area.

A search of the property file has revealed the following history for the site:

- DA0356/88 – Construction of warehouse with office accommodation

Land Use

A Place of Worship is a 'D' use in the Industrial Zone, which means that the use is not permitted unless the Council has exercised its discretion by granting planning approval. In considering a 'D' use the Council will have regard to the matters to be considered in the *Planning and Development (Local Planning Schemes) Regulations 2015*. In this regard the following matters have been considered:

- (a) *The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area*
- (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*
- (y) *Any submissions received on the application.*

The proposed development is considered to address the above matters for the following reasons:

- The objectives of the Industrial Zone aim to provide for a mix of uses which by the nature of their operations should be separated from residential areas. This development is proposed in the middle of the Industrial areas, surrounded by a mix of manufacturing, processing and warehouse type businesses. The proposed use is not considered to impact residential areas.
- The proposed use does not propose any external changes to the building.
- The existing area is a currently characterised by a mix of uses, including warehouses, vehicle and boat related showrooms/repairs, manufacturing, haulage and general industry. The new use proposed is not considered to erode the current diverse character of the locality.
- Providing the movement of people and vehicles are managed appropriately, there is not expected to be any significant amenity impact on the area.
- It is noted that the main operations of the use occur in multiple short time periods across the day. While it is acknowledged this will result in some additional traffic compared with the approved office, which generally has people arriving in the morning and leaving in the evening, the numbers proposed by the applicant are not significant. To ensure parking and traffic does not result in a significant impact on the existing businesses and street network, it is recommended that the use be limited to the maximum capacity as proposed by the applicant. Should the applicant wish to increase capacity after operating for a period, they will be able to apply for further consideration.

On site Car Parking

Element	Requirement	Proposed	Extent of Variation
Car parking	Place of Worship = 12.5 (13) Bays Total = 13 bays	9 parking bays	4 bays
Bicycle bay	Class 2 = 1 per 1500m2 GLA Class 3 = 2 plus 1 per 1500m2 GLA Total = 1 class 2 and 3 class 3	4 class 3	Nil class 2

The subject application shows the provision of 9 existing parking bays on site, with six accessed from the northern side of the building, and three from the western side. Based on maximum patron numbers, LPS4 requires that 13 (rounded up) car bays be required. As patronage increases, so does the parking demand.

In assessing the parking against the relaxation criteria of LPS4, the proposal is supported as proposed for the following reasons:

- The proponent has advised that, with the exception of Friday congregational prayers, few patrons generally attend during business hours, meaning that there will be minimal competition with other businesses in the area for on street parking.
- The proponent has advised that they will encourage patrons to car pool, and will provide parking wardens during Friday congregational prayers (12midday to 1pm) to manage parking. While the largest number of patrons attend during this period, it is typically only for an hour. The parking calculation against the scheme is also measured with this in mind.
- There are bus two routes (160 and 502) within 7 minutes walking distance (along Stockdale Road/Stock Road and Sainsbury Road).

The City's O'Connor Local Planning Policy states that despite the LPS4 parking relaxation provisions, Council will generally not support relaxation of parking requirements, but in this instance, the only scenario which would likely require more than the 9 car bays provided on site, is Friday congregational prayers, where the applicant has advised that car sharing and parking wardens would inform part of their parking management. It is considered appropriate to support a slightly reduced number of car bays in this instance.

In order to ensure the parking situation is controlled as advised by the applicant, a limit on the total patrons attending site and a Traffic and Parking Management Plan is recommended. The Traffic and Parking Management Plan should demonstrate how patrons will be advised of parking availability, alternative travel arrangements (public transport, car share etc) and how parking will be managed during peak times.

The proponent has indicated provision of four class 3 bicycle racks for use by patrons, but nil class 2 racks. Clause 4.7.3.3 allows Council to waive the class 1 or 2 bicycle rack requirements where the development is for a minor change of use. However, as this proposal involves the change of use of the entire building, where on occasion up to 50 patrons could attend on site, it is not considered a minor change of use, nor appropriate to waive the class 2 requirement, despite surplus class 3 bike racks being proposed. A condition of approval to provide one class 2 bicycle rack should be applied.

CONCLUSION

In accordance with the above considerations, a change of use to Place of Worship from the subject site is considered appropriate, subject to conditions.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC2201-5 **(Officer's recommendation)**

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council:

APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the Change of Use to Place of Worship at No. 10 (Lot 8), Blamey Place, O'Connor, as detailed on plans dated 23 September 2021, subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans, dated 23 September 2021. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. The Place of Worship hereby permitted shall have a maximum capacity of 50 persons on site at any one time.**
- 3. Prior to occupancy of the development a Traffic and Parking Management Plan shall be submitted to the City for approval and thereafter implemented to the satisfaction of the City of Fremantle. The Plan shall detail measures that the operator will take to:**

- i. inform staff, clients and customers of available car parking in the immediate area,
 - ii. inform staff, clients and customers of car share options,
 - iii. provide parking wardens during peak periods, and
 - iv. alternative transport optionsto the satisfaction of the City of Fremantle.
4. Prior to the issue of a building permit for the development hereby approved, a plan detailing the provision of three (3) Class 3 and one (1) Class 2 (as defined in LPS4) bicycle racks shall be provided, to the satisfaction of the City of Fremantle.

Prior to occupation of the development hereby approved, the required bicycle racks must be installed in accordance with the approved plan and thereafter be maintained for the life of the development, to the satisfaction of the City of Fremantle.
5. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice notes

- i) A BA9 – Occupancy Permit application form is required to be submitted for the unauthorised building works. A Certificate of Building Compliance (BA18) must be submitted with the application and signed and completed by a Registered Building Surveyor Contractor (private sector). A list of Registered Building Surveyors can be obtained from the Western Australian Building Commission website - <https://www.commerce.wa.gov.au/building-commission>.
- ii) The applicant is advised that any signage may be subject to a separate application for development approval prior to installation.
- iii) The proponent must make application during the Building Permit application stage to 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 further information and a copy of the application form contact Environmental Health Services on 9432 9856 or via health@fremantle.wa.gov.au.

- iv) The premises must comply with the *Food Act 2008*, regulations and the Food Safety Standards incorporating AS 4674-2004 *Design, construction and fit-out of food premises*. Detailed architectural plans and elevations must be submitted to Environmental Health Services for approval prior to construction. The food business is required to be registered under the Food Act 2008. For further information contact Environmental Health Services on 9432 9856 or via health@fremantle.wa.gov.au.

Carried: 7/0

Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver

**PC2201-7 BRACKS STREET, NO.90 (LOTS 241 – 260), NORTH FREMANTLE –
DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES – (CS
DA0440/21)**

Meeting Date: 12 January 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Planning Committee
Attachments: 1. Demolition Plans
Additional information: 1. WAPC Plan No.1.7977

SUMMARY

Approval is sought for the demolition of all existing buildings and structures on the site.

The proposal is referred to the Planning Committee (PC) as it proposes demolition of buildings and incidental structures within the North Fremantle Heritage Area.

The existing buildings and structures are of no cultural significance, nor do they make a positive contribution to the character of the area, therefore the application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for the complete demolition of all existing buildings and structures on site. Multiple buildings and structures are proposed to be demolished over the large site. No subsequent development has been proposed at this stage.

The demolition of these buildings and structures is in addition to demolition of other buildings on nearby properties approved in previous applications at No.22 Bracks Street (DA0178/21) and the Shell State Business Centre and Yard East (DA0347/21).

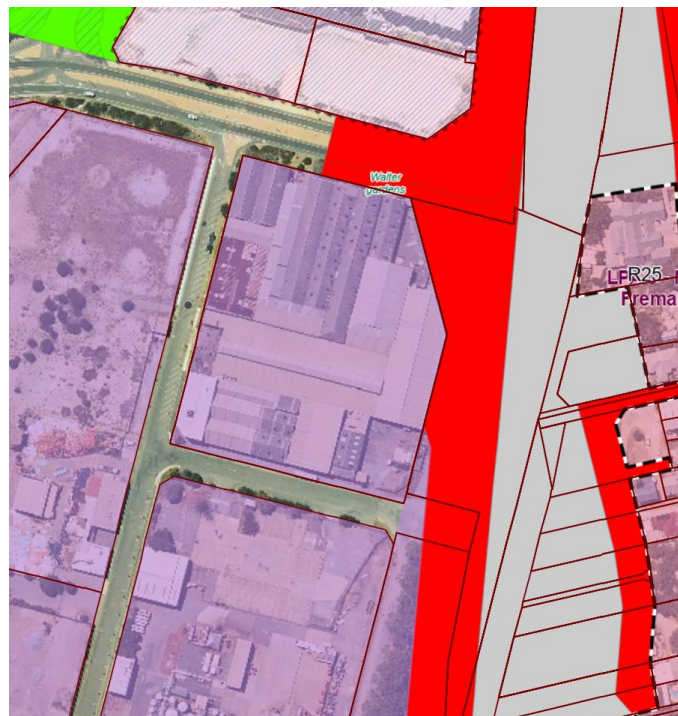
The aerial image below shows the location of the buildings proposed for demolition under this application.



Development plans are included as attachment 1.

Site/application information

Date received:	11 October 2021
Owner name:	North Fremantle JV Pty Ltd
Submitted by:	Taylor Burrell Barnett
Scheme:	Industrial Zone
Heritage listing:	North Fremantle Heritage Area
Existing land use:	Various industrial / warehouse buildings
Use class:	n/a
Use permissibility:	n/a

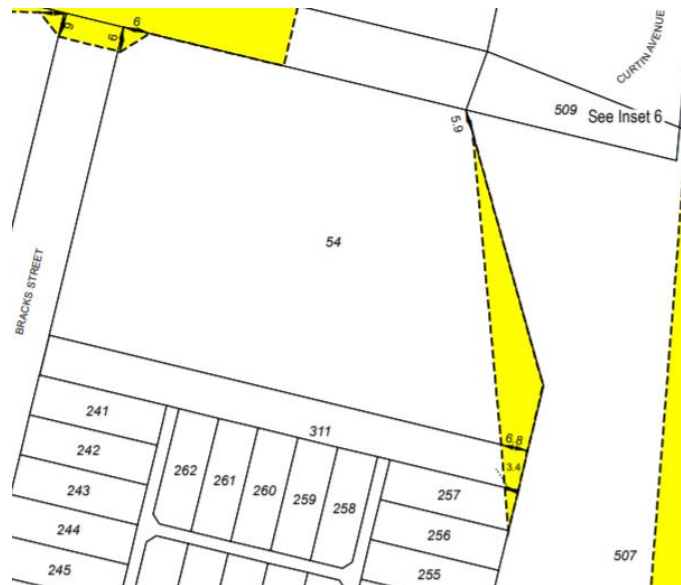


CONSULTATION

External referrals

Department of Planning, Lands and Heritage (DPLH)

The application was referred the Department of Planning Lands and Heritage as a portion of the subject site is within Planning Control Area 158. This section of land is subject to a separate approval by DPLH (a determination has not yet been made by DPLH), therefore the area highlighted in yellow on the plan below is excluded from the application to be considered by the City of Fremantle.



Department of Water and Environmental Regulation (DWER)

The application was referred to DWER as the subject site is adjacent to a contaminated site. DWER has advised that an accredited contaminated sites auditor has been engaged to review the current and previous investigations and are expected to provide a mandatory auditors report in 2021. DWER has advised that based on the available information, and considering the application is not proposing to change to a more sensitive land use, they have no objection to the proposed demolition. They recommend, given the risks associated with potential disturbance of impacted soils, that an advice note is applied to any approval granted by the City of Fremantle to ensure appropriate site management during demolition.

Fremantle Ports (FP)

The application was referred to FP as the subject site is located within Fremantle Port Buffer Area 2. FP have advised that they have no objection to the proposal demolition as it will have no immediate impact on port operations. They have requested that the City requires the proponent to provide parking on site rather than on street during the demolition process. A condition of approval is recommended requiring the lodgement of a Demolition Management Plan which will need to detail site management during demolition.

Main Roads Western Australia (MRWA)

The application was required to be referred to MRWA as the site is affected by a Primary Regional Road reservation. MRWA have advised that they have no objection to the proposal subject to conditions and advice notes to protect the road reservation vegetation, correct discharge of stormwater and permit approvals. These matters can be dealt with as relevant conditions and advice notes.

Public Transport Authority (PTA)

The application was referred to PTA for comment as the site is within 50 metres of the PTA's Rail Reserve (or PTA Protect Zone). PTA have advised that they have no objection to the proposal subject to advice to ensure appropriate permit approvals are sought by the applicant/owner. These matters can be dealt with as relevant advice notes.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as complete demolition of all buildings on a site located within a heritage area is proposed. The advertising period concluded on 23 November 2021, and no submissions were received.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4 and relevant Council local planning policies.

Background

The site has a land area of approximately 17060m² and currently has a number of industrial buildings located on it. The site is zoned Industry. The site is located within the North Fremantle Heritage Area.

Demolition

Clause 4.14.1 of LPS4 states:

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.*

The subject site is a roughly rectangular site bounded by Walter Place to the north, the railway to the east, Irene Street to the south and Bracks Street to the west. Industrial buildings almost completely cover the site from boundary to boundary with the exception of small areas on the north-east and south-east corners of the site. The vehicle access is onto Bracks Street, which corresponds with the earlier Vaughn Street. The areas of the site without buildings are all bituminised and fenced. The vehicle entry from Bracks Street has a high face brick wall with wrought iron gates.

The buildings proposed to be demolished under this application are all located on the eastern side of Bracks Street and are identified as:

- Massey-Harris Co Ltd Building (pre 1936)
- J Gadsden Pty Ltd Building (1937-39)
- Irene Street Block West (c. 1954 – 65)
- Irene Street Block East (c. 1954 – 65)
- Corner Officer (c. 1966 – 74)

The proposed demolition works are intended to be split over two stages:

- All warehouse structures (Stage 1 - majority of the site)
- Two storey brick office building on corner of Bracks Street and Irene Street (Stage 2)

A heritage assessment of the application site and surrounding lots has identified that the oil tanks on the west side of Port Beach Road were demolished in the 1990's followed by most of the buildings of the former Caltex Oil Installation at 85 Bracks Street in 2004, followed by additional tanks in 2014. In 2017 most of the Shell oil terminal structures on the west side of Bracks Street were decommissioned and demolished including the fuel tank farm, oil tank farm, bitumen plant and workshop buildings. In 2021 applications have been approved to demolish all the oil terminal buildings east of Bracks Street, including industrial buildings, structures, offices and laboratories.



Photo 1 –Existing buildings on site proposed for demolition (viewed from Bracks Street)



Photo 2 – Existing buildings on site proposed for demolition (viewed from Irene Street)



Photo 3 – Existing buildings on site proposed for demolition (viewed from Walter Place)

The heritage assessment of the proposed demolition has found that the Inter-War and Post War era industrial buildings at No. 90 Bracks Street have little heritage significance and do not contribute to a significant streetscape. Generally, these buildings are generic industrial buildings of the era with little aesthetic value or landmark quality.

The historic and social values of this place can be captured by recording the information collected as part of this assessment in Inherit as a Historic Record Only listing. A condition of approval is recommended requiring the submission of an archival record.

The proposed demolition is supported on heritage grounds as it does not contribute to the identified significance of the North Fremantle Precinct Heritage Area or meet the threshold for individual listing.

CONCLUSION

The proposed demolition of all buildings on site is considered supportable for the reasons discussed above and is recommended for conditional approval.

STRATEGIC IMPLICATIONS

The demolition is associated with the long term urban redevelopment aspirations of the owners for the site. However, these are in a very early stage of formulation as a preliminary request for rezoning of the land to Urban in the Metropolitan Region Scheme (MRS) has been submitted to the Western Australian Planning Commission (WAPC), but the WAPC has not yet formally decided whether to commence an MRS Amendment Process, which will be a lengthy process involving significant community and stakeholder consultation and will likely be linked to the recently announced WAPC Future of Fremantle Planning Committee project.

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the Demolition of buildings and structures at No.90 (Lots 241-260) Bracks Street, North Fremantle subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 11 October 2021. It does not relate to the area of land subject to PCA158 shown on the attached WAPC Plan No.1.7977. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. Any damage to the existing verge vegetation within the Port Beach Road reservation shall be made good.
3. Stormwater discharge, if any, shall not be discharged into the Port Beach Road reservation or the future Curtin Avenue reservation.
4. No works are permitted within the Port Beach Road or future Curtin Avenue reservations.
5. Prior to the issue of a Demolition Permit for the development hereby approved the existing building shall be fully documented in the form of a professionally prepared study of the physical, documentary and other evidence associated with the site before any physical or material disturbance. This documentation shall consist of the following:
 - a) A professionally prepared architectural report including the address, names, use and description of the building and accurate measured drawings at a scale not less than 1:100. All documents shall be of A4 size or folded into A4 size.
 - b) A photographic report which includes the following:
 - (i) A site plan showing the position, direction and number of each photograph.
 - (ii) The history of the original building and subsequent stages of development.
 - (iii) Old photographs relating to this site and building.
 - (iv) Any other relevant historical information.

One set of such records including photographs shall be submitted to the City of Fremantle in electronic format prior to the commencement of development.

6. Prior to the issue of a Demolition Permit for the development hereby approved, a Demolition Management Plan shall be submitted and approved, to the satisfaction of the City of Fremantle addressing, but not limited to, 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) Gantries;
 - 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 Demolition Management Plan shall be adhered to throughout the demolition of the existing building on site and construction of the new development.

Advice Note(s):

- i. In regard to the condition requiring a Demolition Management Plan, Local Planning Policy 1.10 Construction sites can be found on the City's website via <http://www.fremantle.wa.gov.au/development/policies>

A copy of the City's Construction and Demolition Management Plan Proforma which needs to be submitted with building and demolition permits can be accessed via:

<https://www.fremantle.wa.gov.au/sites/default/files/Construction%20and%20Demolition%20Management%20Plan%20Proforma.pdf>

The Infrastructure Business Services department can be contacted via info@fremantle.wa.gov.au or 9432 9999

- ii. A demolition permit is required to be obtained for the proposed demolition work. The demolition permit must be issued prior to the removal of any structures on site.
- iii. This area is currently subject to quarantine regulations to limit the spread of Red Imported Fire Ants. A permit is required if you are moving any potential host material (including soils and building waste) outside the quarantine area. For more information and permit requirements visit agric.wa.gov/rifa
- iv. Effective measures shall be taken to stabilize sand and ensure no sand escapes from the property by wind or water in accordance with the City's Prevention and Abatement of Sand Drift Local Law.
- v. Any removal of asbestos is to comply with the following –

Under ten (10) square metres of bonded (non-friable) asbestos can be removed without a license and in accordance with the *Health (Asbestos) Regulations 1992* and the *Environmental Protection (Controlled Waste) Regulations 2001*. Over 10 square metres must be removed 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 requirement 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>

- vi. The applicant is advised that an appropriate management plan should be prepared to manage any environmental or health risks from potential exposure of contaminated soils during demolition works.

Any material (soil and hardstand) proposed for off-site disposal should be adequately assessed in accordance with the Landfill Waste Classification and Waste Definitions 1996 (as amended 2019) and the PFAS National Environmental Management Plan (Heads of EPA's Australia and New Zealand, January 202).

- vii. The applicant is required to submit an Application form to Main Roads Western Australia to undertake works within the Curtin Avenue or Port Beach Road reserves prior to undertaking any works within the road reserve. Application forms and supporting information about the procedure can be found on the Main Roads website > Technical & Commercial > Working on Roads.

- viii. This property is affected by land reserved under Planning Control Area 158 as shown on WAPC Plan No.1.7977 and will be required for road purposes at some time in the future.
- ix. The upgrading/ widening of Curtin Avenue and Port Beach Road are not in Main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability for the information provided.
- x. The Public Transport Authority of Western Australia (PTA) advises that, as the proposed works are within 50 metres of the PTA's Rail Reserve (or the PTA Protect Zone), the owner must seek PTA's approval for working in close proximity to the operating railway prior to conducting the proposed demolition works.
- xi. The Public Transport Authority (PTA) advises that the applicant/owner should submit the following documents to PTAThirdPartyAccess@pta.wa.gov.au at least six weeks prior to the commencement of works:
 - a. A completed checklist as located within Appendix 2 of the PTA Procedure 8103-400-004 'Working in and around the PTA Rail Corridor, Assets and Infrastructure' and all required documents listed within the Checklist.
 - b. A Work Method Statement
 - c. Details of plant and equipment that will be used, including cranes, and their location within the worksite.

All PTA specifications and procedures can be obtained on the PTA Vendor Portal <https://www.pta.wa.gov.au/vendor/>

COMMITTEE DECISION ITEM PC2201-7

Moved: Cr Bryn Jones

Seconded: Cr Ben Lawver

Refer the application to the Administration with the advice that Council is not prepared to grant planning approval to the application for the demolition of existing buildings and structures at No. 90 (Lot 241-260) Bracks Street, North Fremantle based on the current submitted plans and invite the applicant, prior to the next appropriate Planning Committee meeting, to consider providing more information on the heritage significance of the site and explore opportunities for interim uses of some or all of the existing buildings

Carried: 6/1

For

**Mayor Hannah Fitzhardinge, Cr Bryn Jones,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

Against

Cr Geoff Graham

Mayor, Hannah Fitzhardinge declared an impartiality interest in item number PC2201-6. She left the meeting at 8.12pm and was absent during discussion and voting of this item.

**PC2201-6 INSTONE STREET, NO. 2A (LOT 1521), HILTON – TWO
STOREY GROUPED DWELLING (ED DA0377/21)**

Meeting Date: 12 January 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Attachments: 1. Amended Development Plans
Additional information: 1. Site Photos

SUMMARY

Approval is sought for a two-storey Grouped dwelling with detached carport on a future rear survey strata lot.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- Maximum building height; and
- Boundary wall (south).

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a two-storey Grouped dwelling on a future rear survey strata lot (conditional approval for survey-strata subdivision issued by WAPC on 28 May 2021, ref. 244-21). The proposed works include:

- Construction of a two-storey grouped dwelling and detached carport on the subject site.

Following Officer assessment, advice and neighbour comments on the proposal initially submitted to the City, the applicant submitted amended plans on 23 November 2021 that incorporated the following key changes:

- Reduced external wall height from 5.6m to 4.9m;
- Reduced roof ridge height from 7.6m to 6.7m;
- Increased southern lot boundary setbacks 1.2m to 1.8m; and
- Reduced ground floor finished floor level (FFL) from 29.10 to 28.85.

Development plans are included as attachment 1.

Site/application information

Date received:	3 September 2021
Owner name:	Richard James Scrivener
Submitted by:	Jeremy Scrivener
Scheme:	Residential R20
Heritage listing:	Hilton Heritage Area
Existing land use:	Single House
Use class:	Grouped Dwelling
Use permissibility:	D



CONSULTATION

External Referrals

Nil required.

Internal Referrals

Community

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as discretion was sought against the R-Codes and local planning policy. The advertising period concluded on 1 October 2021, and 3 submissions were received. The following issues were raised (summarised):

- The reduced southern setbacks are expected to impose unacceptable building bulk impacts upon southern property major openings and outdoor living area as well as reduce outlook;
- Excessive building height and reduced setbacks to cause adverse overshadowing of major openings and outdoor living areas of adjoining property;
- Proposal to have adverse privacy implications and result in overlooking of adjoining sites; and
- Objection to removal of established trees on subject site.

In response to the above, the applicant submitted revised plans on 23 November 2021 to address the following:

- Revised site plan to show location of proposed development in relation to southern property windows, outdoor living area and battle axe lot access leg;
- Reduced external wall height from 5.6m to 4.9m;
- Reduced roof ridge height from 7.6m to 6.7m;
- Increased southern lot boundary setbacks 1.2m to 1.8m to meet deemed-to-comply requirements of R-Codes;
- Reduced ground floor finished floor level (FFL) from 29.10 to 28.85; and
- Reduced shadowing of southern site (580sqm) from 96.9m² (16.7% of site area) to 71.34m² (12.3% of site area)

In response to the comments from submitters, the following comments are provided by officers:

- The revised site plan plots the location of the proposed development in relation to the southern dwelling, showing the location of the adjoining major openings, outdoor living areas and rear battleaxe lot access leg in relation to the proposal. The plans show that the proposed development will, for the most part, be located adjacent the non-sensitive, non-habitable rear access leg of the adjoining site and only be opposite the front half of the adjoining southern dwelling;
- The southern lot boundary setbacks have been increased to achieve the deemed-to-comply requirements of the R-Codes and thereby reduce building bulk, overshadowing and outlook impacts upon the southern property;

- Similarly, the overall external wall height and roof ridge height has been reduced to thereby reduce building bulk, overshadowing and outlook impacts on the southern property;
- The revised site plan shows the proposed boundary wall will only abut the non-habitable, non-sensitive rear battleaxe lot access leg and reversing area of the southern property meaning it will not be opposite any major openings nor outdoor living areas and therefore is not to cause any amenity impact on the property;
- The ground floor FFL has been reduced to ensure no part of the dwelling is greater than 500mm above the natural ground level (NGL) to address all visual privacy concerns in accordance with the R-Codes; and
- Steps have been taken by the Applicant to design the dwelling around the existing established tree on the subject site to ensure its retention (see retained tree on site plan).

The remaining comments are addressed further in the officer comment below. It should be noted that upon reviewing the revised development plans, two (2) of the submitters withdrew their objection stating they had no further objection to the revised plans in email responses.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Where a proposal does not meet the Deemed-to-comply requirements of the R-Codes, an assessment is made against the relevant Design principles of the R-Codes. Not meeting the Deemed-to-comply requirements cannot be used as a reason for refusal. In this particular application the areas outlined below do not meet the Deemed-to-comply or policy provisions and need to be assessed under the Design principles:

- Maximum Building Height; and
- Boundary Wall (south).

The above matters are discussed below.

Background

The subject site is located on the eastern side of Instone Street in Hilton, bound by Oldham Crescent to the north and Winterfold Road to the south. The site has a land area of approximately 883m² and is currently comprised of a single storey single house toward the front of the lot. The site is zoned Residential and has a density coding of R20. The site and those surrounding are not individually listed though are located within the Hilton Heritage Area.

Conditional approval for survey-strata subdivision of the site was issued by WAPC on 28 May 2021 and will result in the retention of the front dwelling and the creation of the rear survey-strata battleaxe type lot, 386m² in area, on which the proposed dwelling will sit, accessed by a common property rear access leg from the Instone Street frontage.

A search of the property file has revealed the following history for the site:

- Two Lot Survey-Strata Subdivision (WAPC Ref. 244-21) – Conditional Approval Issued by WAPC 28 May 2021

Maximum Building Height

Element	Requirement	Proposed	Extent of Variation
External Wall Height	3.5m	4.9m	1.4m
Roof Ridge Height	6.5m	6.7m	0.2m

As outlined in the table above, in accordance with LPP 3.7 (Clauses 2.2.1 & 2.2.2) the proposed External Wall Height and Roof Ridge Height exceed what is generally permitted within the 'Hilton Garden Suburb Precinct Heritage Area'.

Notwithstanding, Clause 2.2.2 goes on to state that the Council may, at its discretion, allow a greater external wall height and/or greater roof ridge where the development complies with the following:

- (a) *The development is on a rear survey strata lot, battleaxe lot or the equivalent and has minimal presentation to the streetscape and the development complies with the Deemed-to-comply requirements of the Residential Design Codes for the following:*
 - i. *Clause 5.1.3 Lot Boundary Setback,*
 - ii. *Clause 5.1.4 Open Space, and*
 - iii. *Clause 5.4.2 Solar access for Adjoining Sites.*

As the proposed dwelling is located at the rear of the existing lot (future rear survey-strata lot as conditionally approved by WAPC), setback over 30m from the street frontage and behind the existing dwelling on the site, the proposed dwelling is to have minimal presentation to the streetscape.

Further, the applicant provided revised plans on 23 November 2021 which reduced the proposed external wall height (5.6m to 4.9m) and roof ridge height (from 7.6m to 6.7m) to better comply with the requirements of LPP 3.7 and reduce the prominence of the dwelling where viewed from the street.

Additionally, the City's Heritage Projects Officer assessed the proposed new dwelling to the rear lot at 2a Instone St, Hilton and the revised drawings and advised that there are no issues from a heritage perspective.

With respect to the satisfying the elements listed above, the following is advised:

- i. As per the revised plans submitted 23 November 2021, the southern lot boundary setbacks of the ground and first floor were increased to 1.8m, satisfying the deemed-to-comply requirements of the R-Codes. All other lot boundary setbacks achieve the deemed-to-comply requirements of the R-Codes;
- ii. The open space provided over the site is 57.87% (223.4m²), exceeding the 50% (193m²) deemed-to-comply requirement of the R-Codes; and

- iii. As per the revised plans submitted 23 November 2021, overshadowing of the adjoining southern site was reduced from 96.9m² (16.7% of the adjoining site area) to 71.34m² (12.3% of the adjoining site area). In both scenarios, the overshadowing of the adjoining site was less than allowed (25%) by the deemed-to-comply requirement of the R-Codes and much of this shadow is to fall on the non-habitable and non-sensitive rear battleaxe lot access leg and reversing area of the southern property.

On the basis of the above, the additional building height is considered acceptable in this circumstance in accordance with Clause 2.2.2(a) of LPP 3.7 and is therefore supported by Officers.

Boundary Wall (South)

Element	Requirement	Proposed	Extent of Variation
Ground Floor (south)	1m	Nil	1m

The ground floor setback is considered to meet the Design Principles of the R-Codes in the following ways:

- The revised site plans demonstrates that the proposed single storey boundary wall will be located adjacent to the non-habitable, non-sensitive battleaxe lot access leg and vehicular reversing bay of the neighbouring property (4A Instone). As such, the proposed boundary wall will not be adjacent any major opening nor outdoor living area of the adjoining site and therefore will have no impact upon the amenity of this adjoining property in terms of building bulk. Similarly, the wall as proposed will ensure sun to major openings of habitable rooms and outdoor living areas for the adjoining property is not restricted;
- The boundary wall does not present any visual privacy variation to the adjoining lot and may serve to enhance privacy between the two sites being a blank wall;
- By virtue of the relatively small dimensions of the wall and location of it against the battleaxe leg of the adjoining lot, the wall will not restrict ventilation between the sites; and

Furthermore, clause 5.1.3 (C3.1 – vi) of the R-Codes Volume 1 provides that the stated setback distances may be reduced by half the width of an adjoining battleaxe lot access leg and given this is the case, the nil setback variation is supported in this circumstance.

CONCLUSION

In accordance with the above assessment, the proposal is considered to appropriately address the relevant statutory planning requirements of the LPS4, the R-Codes and relevant Council local planning policies and is therefore considered worthy of approval, subject to conditions.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

- Increase the number of people living in Fremantle
- Provide for and seek to increase the number and diversity of residential dwellings in the City of Fremantle

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC2201-6 (Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Two Storey Grouped Dwelling at No. 2A (Lot 1521) Instone Street, Hilton as detailed on plans dated 23 November 2021, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 23 November 2021. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. Prior to occupation of the development hereby approved, the boundary wall located on the southern boundary shall be of a clean finish in any of the following materials:
 - coloured sand render,
 - face brick,
 - painted surface,and be thereafter maintained to the satisfaction of the City of Fremantle.
3. The applicant is advised that this approved development shall be wholly located within the cadastral boundaries of the subject site including any footing details of the development.
4. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City.
5. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance

specified in that condition), continues whilst the approved development continues.

Advice Notes:

- i. A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.
- ii. Fire separation for the proposed building works must comply with Part 3.7.1 of the Building Code of Australia.
- iii. The landowner/applicant is advised and encouraged to take measures further to the retention and protection of any established, mature trees on the site during the demolition and construction phase of the development with regard to the Australian Standard, *Protection of Trees on Development Sites* (AS4970/2009).

Carried: 6/0

Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver

Mayor, Hannah Fitzhardinge returned to the meeting at 8.13 pm.

PC2201-8 INFORMATION REPORT - JANUARY 2022

1. SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

Responsible Officer: Manager Development Approvals
Attachments: 1: Schedule of applications determined under delegated authority

Under delegation, development approvals officers determined, in some cases subject to conditions, each of the applications relating to the place and proposals as listed in the attachments

2. UPDATE ON METRO INNER-SOUTH JDAP DETERMINATIONS AND RELEVANT STATE ADMINISTRATIVE TRIBUNAL APPLICATIONS FOR REVIEW

Responsible Officer: Manager Development Approvals
Attachments: Nil

Applications that have been determined by the Metro Inner-South JDAP and/or are JDAP/Planning Committee determinations that are subject to an application for review at the State Administrative Tribunal are included below.

1. Application Reference
DA0405/21
Site Address and Proposal
No. 2/284 South Terrace, South Fremantle – Change of use to Shop
Planning Committee Consideration/Decision
<ul style="list-style-type: none"> At its meeting held on 1 December 2021, the Council resolved to refuse the application.
Current Status
<ul style="list-style-type: none"> On 3 January 2022 an Application for Review by the State Administrative Tribunal was lodged by the applicant. A Directions Hearing is to be scheduled.

COMMITTEE RECOMMENDATION ITEM PC2201-8
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council receive the following information reports for January 2022:

- 1. Schedule of applications determined under delegated authority**
- 2. Update on Metro Inner-South JDAP determinations and relevant State Administrative Tribunal applications for review.**

Carried: 7/0

**Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

10.3 Council decision

PC2201-9 LOCAL PLANNING POLICY 2.24: WASTE MANAGEMENT PLANS FOR NEW DEVELOPEMENT – OUTCOMES OF PUBLIC CONSULTATION

Meeting date:	12 January 2022
Responsible officer:	Manager Strategic Planning
Decision making authority:	Council
Attachments:	<ol style="list-style-type: none"> 1. Schedule of Submissions 2. Revised Draft Local Planning Policy
Additional information:	<ol style="list-style-type: none"> 1. Advertised draft of Local Planning Policy

SUMMARY

In July 2021, Council resolved to undertake community consultation on a draft local planning policy relating to waste management plans for new developments. This policy was prepared to provide greater clarity and direction to development proponents in preparing applications for development approval, and to support the City's strategic goals relating to waste management.

Consultation on the draft policy was undertaken between September and October 2021. A total of 3 submissions were received, all from private waste management consultants. Submissions expressed support for the objectives of the policy and the greater clarity it provides in relation to the City's expectations and included a number of suggestions for further refinements. Feedback also highlighted the need for further clarity on the City's technical standards and service offering, which have been noted to be included in a future waste management guideline document (which addresses the City's service arrangements and specifications rather than planning requirements).

This report discusses the outcomes of consultation in further detail and outlines modifications proposed in light of this. Officers recommend that Council adopt the local planning policy with minor amendments.

BACKGROUND

In mid-2021 the City prepared a draft local planning policy to guide the preparation of waste management plans to support new development applications in the City of Fremantle. The objectives of the policy were as follows (summarised):

- Waste minimisation – to promote waste to landfill minimisation.
- Amenity – to ensure that waste storage and collection facilities minimise negative impacts.
- Functionality – to ensure that waste collection facilities for development are functional and readily used.
- Safety – to maximise safety of all persons involved in the waste management process.

The draft policy (provided in Additional Information attachment 1) was considered at the Strategic Planning and Transport Committee meeting on 21 July 2021, which resolved as follows:

Council: -

- 1. Endorse the draft Local Planning Policy 'Waste Management Plans for New Development' provided in Attachment 1 for the purposes of public consultation.*
- 2. In the event of no objections being received during the consultation period, adopt the revised draft Local Planning Policy 'Waste Management Plans for New Development' provided in Attachment 1. (SPT2107-1)*

Consultation on the draft policy has been undertaken and the outcomes of this are the subject of this report. Further background on the development of the draft policy can be obtained via the agenda and minutes from the above-mentioned meetings.

CONSULTATION

Consultation on the draft policy occurred between 24 September and 22 October 2021 (31 calendar days), in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations)* and the City's Local Planning Policy 1.3.

Consultation included the following:

- The City directly contacted waste consultants and property developers for their feedback on the policy.
- Notification was placed in two editions of the Fremantle Herald newspaper.
- Information about the policy and scheme amendment was also posted on the City's website.

At the conclusion of the consultation period a total of 3 submissions were received (refer Attachment 1).

OFFICER COMMENT

Overall response to the draft policy was positive. Key submission points and officer responses are outlined below. The major point of feedback related to the inclusion of specific details in the policy document regarding the City's service and associated design requirements. However, officers consider these matters are better addressed through the City's Waste Services Guideline (under development) as many relate to vehicle sizing, service offering and technical specifications which are all subject to change. A number of minor amendments and clarifications have been recommended for inclusion in the final draft policy, as outlined below and in Attachment 2.

Submission	Officer comment
Confirmation of vehicle sizes which can access bin compounds and service pathways.	These matters are best addressed in the Waste Services Guideline as they relate to operational matters which are subject to change as the City reviews its service

	options.
Confirmation of FOGO waste generation rates, this information is not included in the WALGA guidelines.	Preliminary data has been collected suggesting an average FOGO of 30L / 8kg or 45% per dwelling. This will be monitored over time and shared with both applicants and WALGA. WALGA will be encouraged to update its Waste Services Guideline.
The policy should set out clear requirements for safe access, parking and vehicle loading.	Safety objective reinforced. Spacing requirements and details are best addressed in the Waste Services Guideline.
The WALGA waste generation rates could be updated to better reflect the specific waste generation rates tracked by the City of Fremantle.	The City considers that the WALGA rates represent a consistent approach across Perth and should be utilised to minimise confusion. The City is able to consider variations to these generation rates on a case-by-case basis for specific land uses: detail confirming this recommended for inclusion. WALGA will be encouraged to update its Waste Services Guideline.
Requirements in relation to safe internal transfer of waste and recyclables should be specified.	Safety objective reinforced.
Management of bulk waste should be addressed, specifically for Multiple Dwelling developments.	Policy encourages developers to consider bulk waste storage on site for developments, however there are no specific requirements in this regard. The proximity and convenience of the Recycling Centre reduces the pressure for onsite storage.
Specification of the services provided to commercial developments.	This matter will be addressed in the Waste Services Guideline.
<p>The policy should provide clear guidance on the following matters:</p> <ul style="list-style-type: none"> • Is on street or on site collection preferred? • What bins are used by the City for collections. • Should bin stores be provided on the ground floor or basements of properties. • Does the City have requirements in relation to bin chutes. • Are there specific considerations for vehicle stopping points. • Should developers contact designers and developers to discuss their requirements in the early design phase. 	<p>Some of these matters, such as the bins used by the City will be specified in the Waste Guideline (being operational), while others are not elements which the City has requirements for, such as bin chutes. Generally these elements are at the discretion of a developer.</p> <p>Street collection is currently preferred due to service limitations, costs and liabilities however this is becoming increasingly challenging for higher density development and therefore review of service alternatives is recommended.</p> <p>A suggestion that developers and designers make contact with the City early</p>

	in the design phase, whilst not strictly policy content, is proposed to be included in the amended policy.
The 'safety' objective should include staff in commercial buildings.	Safety objective reinforced.
Will a Waste Management Plan be required for Aged Care Facilities, Education, Healthcare facilities?	Yes; more specific confirmation on this requirement proposed to be included.
Timing of waste management plan submission	With development application: additional detail reinforcing this proposed to be included.
The policy should specify both the Multiple Dwelling and Commercial/Industrial WALGA Guidelines to minimise confusion.	Clarification proposed to be included
What bins should be provided for FOGO.	These matters are best addressed in the Waste Services Guideline as they relate to operational matters which are subject to change over time.
The City may wish to be specific about drawings provided such as hard stand bin set out points,	Given the variable scale of development covered by the policy, a more flexible approach is proposed initially, with additional detail able to be requested by the City's Waste team upon request on review of the initial plan if required.
WALGA calculation is by number of bedrooms rather than unit size.	Recommended to be included.
Specifications are needed in relation to the bin store design list.	These matters are best addressed in the Waste Services Guideline given the level of detail they relate to
There are circumstances where the City is unable to provide an adequate service for the development and commercial service providers may provide a better outcome.	The City's understanding is that it is obliged to offer (and therefore development must accommodate) domestic waste service. A review of the services offered by the City is recommended to occur to address this issue.

It is recommended that the Council note the submissions received and adopt the revised policy including suggested modifications to address some of the matters raised in submissions as detailed in the table above.

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

The procedure for adopting a local planning policy is provided for under Schedule 2, Part 2, Clause 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority

COMMITTEE RECOMMENDATION ITEM PC2201-9

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council:

- 1. Note the submissions received on draft Local Planning Policy 2.24 – Waste Management Plans for New Development as detailed in Attachment 1, and advise submitters of the outcomes of the process.**
- 2. In accordance with Schedule 2, Part 2, Clause 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, proceed with adoption of Local Planning Policy 2.24 – Waste Management Plans for New Development, with modifications as shown in Attachment 2.**
- 3. Request that staff continue to liaise with WALGA in relation to waste generation averages (including for FOGO) and provision for this within the WALGA Guidelines.**

Carried: 7/0

**Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

PC2201-10 LOCAL PLANNING POLICY 2.2 – SPLIT DENSITY CODES AND ENERGY EFFICIENCY AND SUSTAINABILITY SCHEDULE REVIEW – OUTCOMES OF CONSULTATION

Meeting date: 12 January 2022
Responsible officer: Manager Strategic Planning
Decision making authority: Council
Attachments: 1. Draft revised Local Planning Policy 2.2 – Split Density Codes and Energy Efficiency Schedule
Additional information: Nil

SUMMARY

The purpose of this report is to consider the outcomes of public consultation on proposed revisions to the City's Local Planning Policy 2.2 – Split Density Codes and Energy Efficiency and Sustainability Schedule.

The City's Local Planning Scheme No. 4 identifies several areas that are subject to split residential density codes (e.g. R20/25). Clause 4.3.4 of the Scheme sets out specific requirements that must be addressed by applicants seeking to access the higher codes; otherwise the lower codes prevail. The policy is intended to provide further direction on application of this clause, to guide applicants seeking to access the higher codes, and decision-makers in assessing proposals.

A review of the policy was undertaken earlier in the year with changes recommended to increase clarity, reflect advances in technology and reducing costs, recognise significant tree protection as contributing to sustainability outcomes, and to update the format and structure generally.

Consultation on the revised draft was undertaken between October and November 2021 with 1 submission received.

The report recommends that Council proceed with final adoption of the revised policy with minor modifications.

BACKGROUND

Clause 4.3.4 of the City's Local Planning Scheme No.4 states that:

"Where a site is identified as having a split density coding and is connected to reticulated sewerage, the higher code may only be applied where one or more of the following specific requirements are addressed to the satisfaction of Council:

- (a) a building of cultural heritage significance is retained on the lot,*
 - (b) provision of "low income housing",*
 - (c) buildings designed in accordance with Council's energy efficiency and sustainability schedule, and*
 - (d) removal of a non-conforming use.*
- In all other circumstances, the lower of the two Codes prevails."*

These scheme provisions are supported by Local Planning Policy 2.2 – Split Density Codes and Energy Efficiency and Sustainability Schedule (LPP 2.2), which was adopted by Council in 2007 to clarify the specific requirements that applicants need to meet in order to satisfy the scheme provisions to access the higher density codes.

Last year officers identified that due to improvements in technology, and the potential to achieve better conservation and sustainability outcomes, LPP 2.2 would benefit from revision. The maintenance of local planning policies contributes to the advancement of multiple strategic objectives, aligned and transparent decision making, and good governance.

On 15 September 2021, an updated version of the policy was presented to Council's Strategic Planning and Transport Committee and it was resolved that:

“Council endorse the draft Local Planning Policy 2.2 – Split Density Codes and Energy Efficiency and Sustainability Schedule, as shown in Attachment 1 with the following additional amendments:

- 1. Amend Part B, cl 1 to add an additional subclause "1.4 Specification of solar, electric heat pump or PV-connected electric storage water heaters and electric (non-gas) cooking appliances".*
- 2. Amend Part B, cl 2 to add an additional subclause "2.4 Prior to occupation, solely solar, electric heat pump or PV-connected electric storage water heaters and electric (non-gas) cooking appliances to be installed."*

for the purposes of consultation in accordance with the procedures set out in Schedule 2, clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015 and the City of Fremantle Local Planning Policy 1.3 Community Consultation on Planning Proposals.” (SPT2109-1)

The revised policy was subsequently advertised for public comment with this report considering the outcomes of that process.

OFFICER COMMENT

As noted above, the policy clarifies the specific requirements that applicants need to meet in order to satisfy the scheme provisions and access the higher density codes. It does this by expanding upon each of the four ‘pathways’ to accessing the higher density codes, and by prescribing an energy efficiency and sustainability schedule to be read in conjunction with clause 4.3.4(c) of the Scheme.

The primary changes to the policy recommended as a result of the review relate to:

- Further clarification of requirements for the heritage pathway.
- Update of the energy efficiency and sustainability schedule (including to increase photovoltaic capacity and recognise significant tree retention as an eligible criterion).
- Introduction of a clear purpose and objectives, consistent with contemporary practice.

Specifically, it was proposed to amend the policy to:

- Revise Part A, clause 1 to require a more thorough heritage conservation proposal.
- Revise Part B, clause 1.1 to require the design and construction of any new dwelling(s) to a Nationwide House Energy Rating Scheme (NatHERS) star rating a minimum of one star in excess of the current energy efficiency requirement of the Building Codes of Australia for class 1A buildings, or an equivalent demonstrating comparable energy efficiency.
- Revise Part B, clause 1.2 to require installation of a 3kW photovoltaic solar panel system (in place of the current 1.5kW requirement)
- Revise Part B, clause 1.3 to provide the option of registering an existing tree on the City's Significant Tree and Vegetation Areas Register and retaining it thereafter, in lieu of providing a water tank or greywater reuse system.
- Revise Part B, clause 1.4 to require the specification of solar, electric heat pump or PV-connected electric storage water heaters and electric (non-gas) cooking appliances.

Following public advertising of the proposed revised policy, one submission was received, from a representative of the Housing Industry of Australia (HIA). The submission expresses concern that the policy seeks to implement building performance measures in a planning document and prescribes outcomes above the Australian Building Codes Board's trajectory for low-energy homes. It also expresses concern that the policy locks developers into using the National House Energy Rating Scheme (NatHERS) pathway to demonstrate energy efficiency requirements. It contends that this can come at the expense of net-zero homes, lifecycle assessments and low carbon building methods, as it favours buildings with a high thermal mass, such as those constructed of double brick or concrete. The submission also includes a copy of the Australian Building Codes Board Intergovernmental Agreement 2020, which agrees to take steps to ensure that all building design, construction and performance is consolidated within the National Construction Code.

The proposed changes to the policy would strengthen the existing policy requirement to design and construct a dwelling to a NatHERS star rating a minimum of one star in excess of the current energy efficiency requirement of the National Construction Code for class 1A buildings, by requiring the submission of the NatHERS assessment at the development application stage. While it is acknowledged that this would be embedded in a planning document and exceeds the current minimum energy efficiency requirement, it must be noted that a version of this provision has been in place since 2014 and is only used as a mechanism to unlock the higher density code, rather than a default increase to the base requirement. The provision is in essence a form of planning gain, ensuring that any new dwellings built to the higher density code achieve an energy efficiency rating in excess of the minimum standard; it is *not* a blanket requirement for all new dwellings in the City.

If it is the case that using solely the NatHERS pathway to demonstrate energy efficiency would be at the expense of net-zero homes, lifecycle assessments and low carbon building methods (a point of industry debate), it would be appropriate to permit other suitably certificated approaches that demonstrate comparable energy efficiency, through a report provided by a suitably qualified professional. It is therefore suggested that Part B, clause 1.1 should be revised to read as follows:

“The dwelling shall be designed and constructed to a Nationwide House Energy Rating Scheme (NatHERS) star rating a minimum of one star in excess of the current energy efficiency requirement of the National Construction Code for class 1A buildings, or an equivalent demonstrating comparable energy efficiency. The energy efficiency rating for the dwelling shall be certified by a suitably qualified and accredited energy assessor using accredited software and shall be provided at the development application stage;”

The approach reflects the more flexible / performance-based approach introduced into Local Planning Policy 2.13 – Sustainable Building Design Requirements when that was reviewed in 2019, noting that most dwelling applicants opt for the simpler NatHERs pathway.

All the key changes proposed are highlighted in red in Attachment 1.

FINANCIAL IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

The procedure for amending a local planning policy is provided for under Schedule 2, Part 2, Clause 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

CONSULTATION

The amended local planning policy was advertised for public comment from 29 October to 22 November (25 days) in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* and Local Planning Policy 1.3 – Community Consultation on Planning Proposals. One submission was received.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority

COMMITTEE RECOMMENDATION ITEM PC2201-10

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council:

- 1. Note the submission received on proposed revisions to the City's Local Planning Policy 2.2 – Split Density Codes and Energy Efficiency and Sustainability Schedule.**
- 2. In accordance with Schedule 2, Part 2, Clause 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, proceed with adoption of Local Planning Policy 2.2 – Split Density Codes and Energy Efficiency and Sustainability Schedule, with modification as shown in Attachment 1.**

Carried: 7/0

**Mayor Hannah Fitzhardinge, Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Adin Lang, Cr Ben Lawver**

11. Motions of which previous notice has been given

Nil

12. Urgent business

Nil

13. Late items

Nil

14. Confidential business

Nil

15. Closure

The Presiding Member declared the meeting closed at 8.15.