



Minutes

Planning Committee

Wednesday, 6 November 2019, 6.00pm

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PLANNING COMMITTEE

Minutes of the Planning Committee
held in the North Fremantle Community Hall on
on Wednesday 6 November 2019 at 6.00 pm.

1. Official opening, welcome and acknowledgement

As this is the first Planning Committee after the 2019 Council elections the Director of Strategic Planning and Projects, Mr Paul Garbett assumed the Chair and declared the meeting open at 6.00 pm.

2.1. Attendance

Cr Bryn Jones	North Ward / Presiding Member
Cr Geoff Graham	Beaconsfield Ward / Deputy Presiding Member
Cr Andrew Sullivan	Deputy Mayor / South Ward
Cr Rachel Pemberton	City Ward
Cr Frank Mofflin	Hilton Ward
Cr Su Groome	East Ward
Cr Adin Lang	City Ward (<i>observing only</i>)
Cr Doug Thompson	North Ward (<i>observing only</i>)
Mr Paul Garbett	Director Strategic Planning and Projects
Ms Julia Kingsbury	Manager Development Approvals
Ms Kayla Goodchild	Meeting Support Officer

There were approximately 35 members of the public and 1 member of the press in attendance.

2.2. Apologies

Mayor, Brad Pettitt

2.3. Leave of absence

Nil

3.1 Election of committee Presiding Member

At 6.02 pm, the Director of Strategic Planning and Projects, Mr Paul Garbett called for nominations for the position of Presiding Member of the Planning Committee.

A nomination was received by Cr Bryn Jones.

At 6.03pm Cr Bryn Jones was elected unopposed as Presiding Member of the Planning Committee for the term of two years, to expire following the next ordinary Council elections.

At 6.03 pm Cr Bryn Jones assumed the chair.

3.2 Election of committee Deputy Presiding Member

At 6.04pm the Presiding Member, Cr Bryn Jones called for nominations for Deputy Presiding Member of the Planning Committee.

A nomination was received for Cr Geoff Graham.

At 6.04pm Cr Geoff Graham was elected unopposed as Deputy Presiding Member of the Planning Committee for the term of two years, to expire following the next ordinary Council elections.

4. Disclosures of interests

Nil

5. Responses to previous questions taken on notice

Nil

6. Public question time

The following members of the public spoke in favour of the Officer's Recommendation for item PC1911 - 1:

Vicki Slate
Andy Zubowicz

The following members of the public spoke against the Officer's Recommendation for item PC1911- 1:

Susanne Richards
Adam Richards
Suzanne Pinker
Stephen Pinker
Pippa Hurst
Judith Ingle
John Teschendorff
Annette Seeman
Penni Fletcher

The following member of the public spoke in favour of the Officer's Recommendation for item PC1911 - 3:

Lachie Bisset

The following members of the public spoke against the Officer's Recommendation for item PC1911 - 3:

Andrea Young
Connie Miller
Sarah Viner
Paula Gargano-Arnold
Brent Fleeton
Lajos Varga
Hamish Flemming
Alessio Mariani

The following members of the public spoke in favour of the Officer's Recommendation for item PC1911 - 5:

Ian Hay
Grant Revell

The following members of the public spoke against the Officer's Recommendation for item PC1911 - 5:

David Emerton
Ellen Zinc

The following member of the public spoke against the Officer's Recommendation for item PC1911 - 10:

John Kirkness

The following members of the public spoke against the Officer's Recommendation for item PC1911 - 11:

Bronwyn Waugh
Tim Houwelling

7. Petitions

Nil

8. Deputations

8.1 Special deputations

Nil

8.2 Presentations

Nil

9. Confirmation of minutes

The minutes of the Planning Committee meeting held on 2 October 2019 were confirmed at the Ordinary Meeting of Council held on 16 October 2019.

10. Elected member communication

Nil

11. Reports and recommendations

11.1 Deferred items

PC1911 - 1 DEFERRED ITEM - S.31 RECONSIDERATION - BELLEVUE TERRACE, NO. 41 (LOT 57), FREMANTLE - ALTERATIONS AND UPPER FLOOR ADDITIONS TO AN EXISTING SINGLE HOUSE - (NB DA0065/19)

Meeting Date:	6 November 2019
Responsible Officer:	Manager Development Approvals
Decision Making Authority:	Committee
Agenda attachments:	1: Amended Development Plans
Additional information	1: Site Photos 2: Previous Plans Deferred by Committee 3: Refused Plans

SUMMARY

Approval is sought for alterations and upper floor additions to an existing Single house.

On 17 June 2019, the application was refused under delegated authority for the following reasons:

- 1. The proposal is contrary to the design principles of clauses 5.1.3, 5.1.6 and 5.4.2 of the Residential Design Codes and will negatively impact the amenity of adjoining properties by virtue of the lot boundary setbacks, wall height, and solar access.*
- 2. The proposal is inconsistent with the City's policy LPP 2.4: Boundary Walls in Residential Development as the boundary walls will detrimentally impact adjoining lots.*
- 3. The proposal will detrimentally impact the heritage significance of the place and the area in which the development is located, and is not compatible with its setting in regards to building bulk as per clauses (k), (l), and (m) of the Deemed provisions.*

The applicant subsequently appealed the decision to the State Administrative Tribunal (SAT). After mediation between the City and the applicant, amended plans were submitted responding to the above reasons for refusal. Comment was sought from the neighbours before the plans were referred back to Planning Committee (PC).

At the 2 October 2019 meeting, PC resolved to:

Refer the application to the Administration with the advice that the Planning Committee is not prepared to grant planning approval to the application for the alterations and upper floor addition to an existing Single house at No. 41 (Lot 57) Bellevue Terrace, Fremantle, based on the current submitted plans, and

invite the applicant, prior to the next appropriate Planning Committee meeting, to consider amending the proposal to address the concerns relating to building bulk and the associated amenity impacts on adjoining neighbours. Further amended plans in response to PC's resolution were submitted on 8 October 2019 deleting the balcony, extending the bedroom but reducing the overall length of the proposed upper floor, and providing obscure glazing to the rear openings.

The revised proposal is referred to the 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 as amended still 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:

- Lot boundary setback
- Solar access
- Open space
- Visual privacy setback

The application is recommended for conditional approval.

PROPOSAL

Detail

The refused proposal sought approval for the following works:

- Upper floor addition (bedroom, bathroom and balcony) located over the middle of the existing Single house
- Decrease in the finished floor level of the rear of the house
- New roof projection
- New roof.

The refused plans are included as additional information item 3.

The first set of amended plans (deferred by committee – see additional information item 2) proposed the following:

- Upper floor addition (bedroom, bathroom and balcony) located over the rear of the existing Single house
- New metal roof to replace the existing roof
- Demolition of front room and replacement with open bullnose verandah
- Ground floor extension towards the southern boundary.

A comparison of the elevations of the refused and deferred plans are as follows:

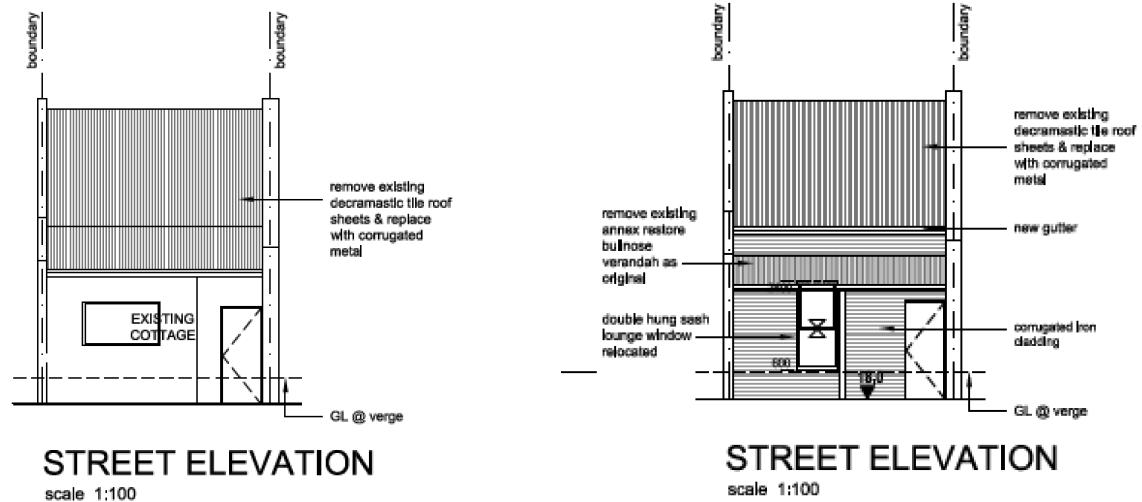


Figure 1: Bellevue Terrace elevation of Refused development (Left) and Deferred Plans (Right).

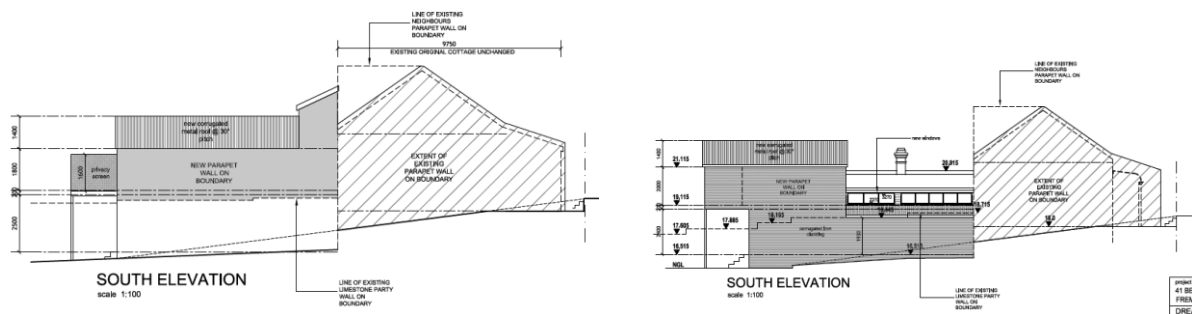


Figure 2: South elevation of Refused development (Left) and Deferred Plans (Right).

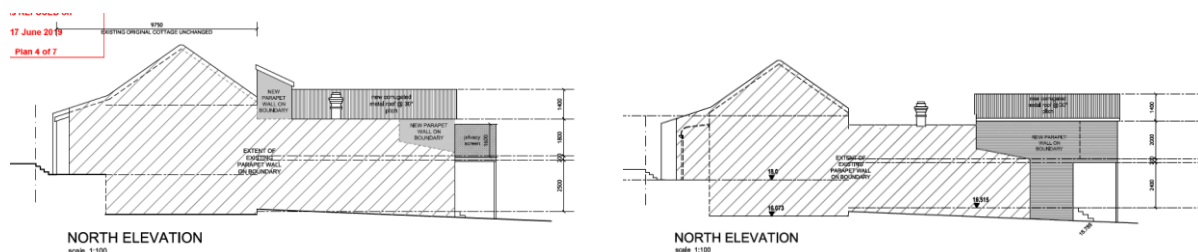


Figure 3: North elevation of Refused development (Left) and Deferred Plans (Right).

In response to the PC's reasons for deferral, a further set of amended plans was received on 8 October 2019 proposing deleting the upper floor balcony but partially extending the loft bedroom, resulting in an overall reduction in length of the upper floor footprint by 700mm (from 7.5m to 6.8m). The proposal also includes obscure glazing to the rear openings to reduce the impact on visual privacy.

Current amended plans are included as Attachment 1.

Site/application information

Date received: 26 February 2019, 16 July 2019 (SAT appeal)
Owner name: Victor Smith
Submitted by: D2R Pty Ltd
Scheme: Residential R25
Heritage listing: Individually Listed Category 2
Existing land use: Single house
Use class: Single house
Use permissibility: P



CONSULTATION

External referrals

Nil required.

Community

All previous submitters were notified of the amended plans and given until 22 October 2019 to comment, otherwise the City would assume that the original comments remained valid.

During this time, the City received a petition signed by 39 nearby residents opposing the development on the basis that the numerous discretionary items result in excessive building bulk and loss of amenity to neighbouring lots and the locality.

The City also received 3 additional submissions raising the following issues (summarised):

- While the amendments go some way to addressing concerns, they still result in a development out of keeping with the street and with negative amenity impacts in terms of bulk and height; overshadowing; overlooking and diminution of natural light.

- The proposal is a gross overdevelopment of a small, narrow lot that was intended for small houses. Even minor discretions can have a major impact when the lots are so small.
- The small size blocks of the adjoining six terrace houses cannot sustain a second story addition without negatively impacting on the amenity of adjoining properties by virtue of the lot boundary setbacks, wall height and solar access and is contrary to the Residential Design Codes.
- These terrace houses are designed to make the most of a small space and this development will change the footprint of the house to the detriment of the subject site and surrounding sites by virtue of reducing outdoor and green space.
- The changes do not substantially address the previous concerns raised regarding height, scale, bulk, overshadowing.
- The second story and new roofline overshadows our outdoor living area which is already a limited space. It also blocks the light to our useable outdoor living area and solar roof, and overshadows the small garden space.
- By developing right on the boundary wall, it prevents any ventilation which is one of the purposes of the light corridor.
- The proposed extension presents excessive bulk to the other properties and takes up most of the space on the lot with building. The new footprint of the building is too big for such a small plot of land and towers over the five other terrace cottages.
- The proposal is contrary to good planning and does not provide an innovative design response to the restrictions of the lot.
- The reduced lot boundary setback of the two storey wall reduces the utility of the adjoining solar pergola and is detrimental to neighbour amenity by blocking out sunlight.
- The application should be judged based on its merits, not as compared to previous plans.
- The adjoining properties comply with open space and there is no reason this property should not do so as well.

The first set of amended plans was advertised and notices were sent to those 11 submitters who had commented on the original application. The advertising period concluded on 13 September 2019, and five (5) submissions were received. The following issues were raised (summarised):

- The balcony will overlook the rear living areas of adjoining lots and compromise privacy.
- The new extension is not in keeping with the scale of the existing houses and will look out of place.
- The new extension presents excessive bulk to other properties and takes up most of the space on the lot with building.
- The overshadowing is excessive and will negatively impact all nearby houses and outdoor areas.
- The bulk of the original proposal is still there, just moved to the rear, and does not substantially address the previous concerns raised regarding height, scale, bulk, overshadowing and heritage impact.

- The proposal is overdevelopment of a small, narrow lot that was intended for small houses. Even minor discretions can have a major impact when the lots are so small.
- Adjoining neighbours expected protection from such excessive development due to the heritage significance and small lot size of the houses within the terrace.
- The revised plans have a greater bulk and scale impact to the outdoor living area of the northern property than the previously refused plans.
- The proposal is contrary to good planning and does not provide an innovative design response to the restrictions of the lot.
- The reflection of the roof sheeting will impact other properties.
- The changes to the front verandah are welcomed.

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

- There is no prohibition on roof colour or reflectivity within the City of Fremantle.

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. 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:

- Lot boundary setback
- Solar access
- Open space
- Visual privacy setback

The above matters are discussed below.

Background

The subject site is located on the western side of Bellevue Terrace, between Fothergill Street and Stevens Street in Fremantle. The site has a land area of approximately 166 m² and is currently a single storey Single house. The site is zoned Residential and has a density coding of R25. The site is individually heritage listed as management category level 2 on the Local Heritage Survey (formerly Municipal Heritage Inventory).

41 Bellevue Terrace is a house within a group of houses at 39-49 Bellevue Terrace, Fremantle. The entrance to the house is below the level of the street, and the interior contains a set of stairs leading down further to follow the slope of the lot, which slopes down in excess of 2 m from front to rear. All the adjoining houses within 39-49 Bellevue Terrace follow this design.

The house displays the defining characteristic of a terrace, in that it was built as a row of houses with uniform fronts which combine to form a single building. The terrace contains six houses that are separated by limestone party walls that extend above the roofline.

The rear portions of each pair of houses are set back from the lot boundary on one side by approximately one metre, allowing light and ventilation to the internal sections (see Figure 4). Light wells such as the ones evident in these houses are characteristic of traditional terrace housing.

There is an existing garage at the rear of the site and a limestone wall/dividing fence separating all properties. The wall ranges in height to follow the slope of the land but is approximately 2 m high.

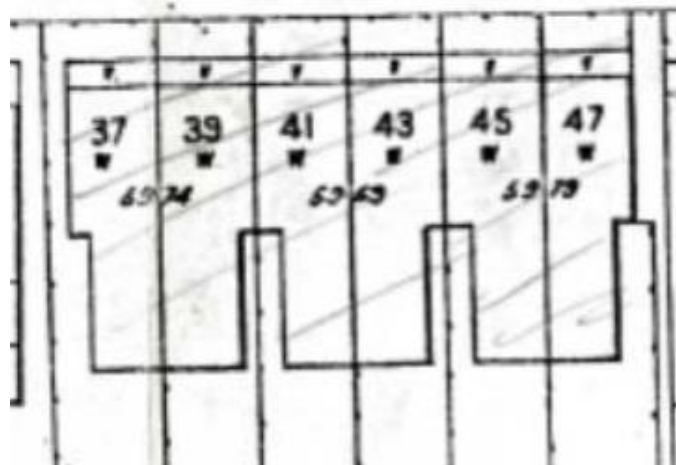


Figure 4: 1908 Sewage plan showing the building separation for lightwells between each pair of units. (Note: Units have since been renumbered. No. 39 in the figure above is now the subject site, No. 41.)

The original application (additional information item 3) was refused primarily because it proposed an upper floor addition above the rear portion of the existing building with a nil setback to both side boundaries. This would have had the effect of severely restricting sunlight to the major openings of the adjoining southern lot and destroying the uniform appearance of the terrace houses by completely eliminating the lightwell separation, thus being detrimental to the heritage significance of the site. Further, the addition was proposed to abut the party wall of the northern house, which may have caused future issues in regards to building compliance and structural matters.

It is noted that the adjoining southern house (No. 43) has an approved upper floor extension projecting from the rear of the existing gabled roof and with a parapet wall to both sides. This approval was granted in 2004, however, new statutory provisions have been adopted since that date which would restrict a similar development being approved today

The amended plans move the upper floor addition further to the rear of the house in order to eliminate the impact of overshadowing to the existing major openings of the adjoining southern house. The proposed changes and variations are further discussed below.

Heritage

The placement of the upper floor will enable the historically significant side setback to continue to be read as the historical footprint of the house. The works to the roof and the front of the house to delete the front room and reinstate the verandah will improve the heritage significance of the place and its contribution to the streetscape. A condition is proposed requiring the works to be based on the adjoining verandah, which demonstrates a good heritage outcome and assists the row of terrace houses in presenting as a cohesive development.

The most recent amended plans do not alter the previous heritage assessment and this assessment is still generally supported. For a more detailed heritage discussion refer to the previous report (PC1910-1 of 2 October 2019 Planning Committee meeting).

Lot boundary setbacks

Element	Requirement	Proposed	Extent of Variation
South - Ground	1.5 m	Nil	1.5 m
South - Upper	1.2 m	Nil	1.2 m
North – Ground	1.2 m	Nil	1.2 m
North - Upper	2.0 m	Nil	2.0 m

The reduction in the upper floor length does not alter the setback requirements under Table 2 of the R-Codes, but does assist in reducing building bulk and perceived scale of the development.

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

South

- The top portion of the existing external wall of the ground floor lounge/dining room remains in situ, the only change being the addition of highlight windows. The proposed lounge/dining extension comes off the existing wall approximately 1m below the existing roof line, resulting in minimal impact to building bulk and no impact to access to direct sun to major openings of habitable rooms of the southern lot (See Figure 5)

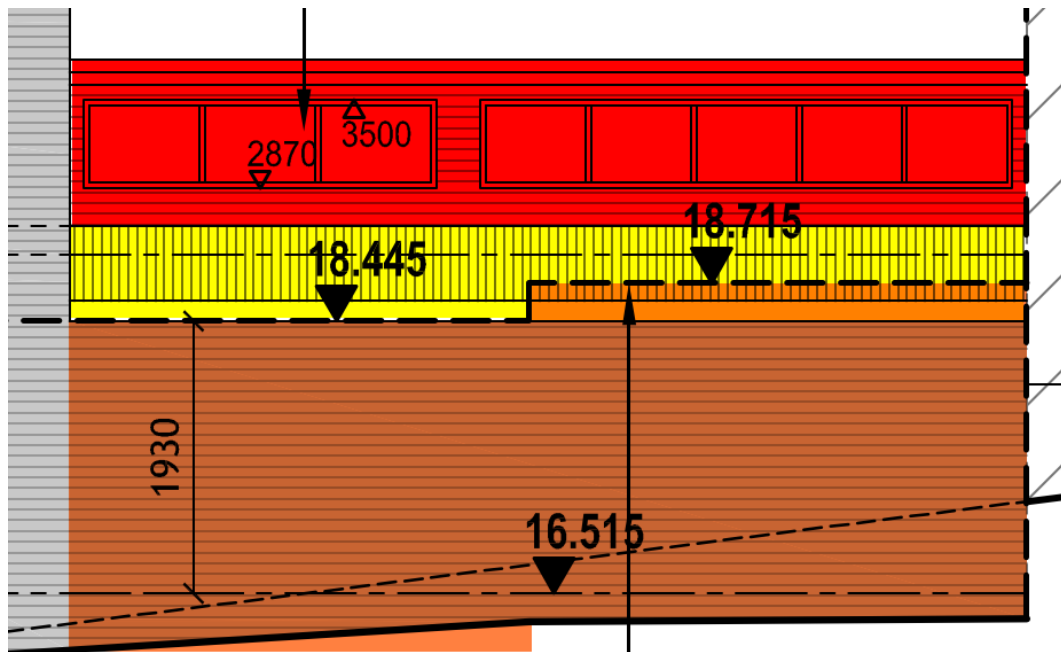


Figure 5: South elevation of ground floor living/dining extension. Red is the existing wall with no change to height or roof pitch. Yellow is the proposed extension. Orange is the existing dividing fence/wall.

- For the dining/living extension, the proposed wall will be slightly below the height of the existing dividing fence/wall at the highest point of the dividing wall. Where the existing dividing wall steps down, only the gutter of the proposed wall will be visible from the southern property. This will result in minimal or no impact on the amenity of the adjoining lot for this section.
- The remainder of the proposed southern ground floor abuts an access way with no major openings and the patio of the existing house, which is located on the boundary.
- The upper floor abuts an existing patio on the adjoining lot with posts located on the boundary. It is noted that the roof of the existing patio, while solid, is semi-translucent to allow sunlight to penetrate, and the proposed two storey boundary wall will inhibit some light at mid-winter.

North

- The bulk of the proposed two storey boundary wall is against an existing single storey boundary wall, roof and masonry dividing fence of the adjoining house. The ground floor will extend approximately 2.3 m past the end of the existing northern parapet wall of No 39, with a further 1.7 m extension to the upper floor (see Figure 6 below).

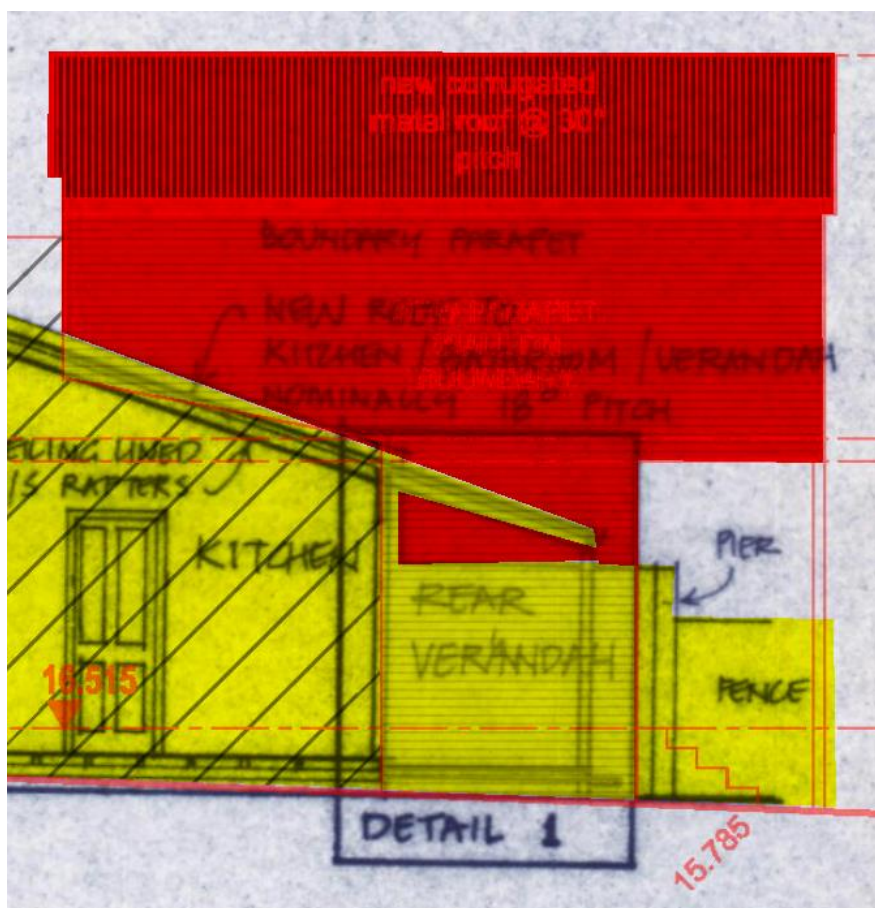


Figure 6: Yellow is the existing house at No. 39. Red is the proposed additions.

- The wall is located on the northern boundary and therefore will have minimal impact on direct sunlight to the outdoor living area of the adjoining lot.
- The subject lot is very narrow, with a frontage of approximately 4.6m, and extensions and additions are only possible through the use of some boundary walls.
- It is not possible to set back the upper floor from both lot boundaries to be Deemed-to-comply with the R-Codes, as this would result in a building envelope only 1.4 m wide.

Solar access to adjoining sites

Element	Requirement (Max)	Proposed	Extent of Variation
Overshadowing	25% of adjoining site area (41.25 m ²)	81.9% (135.1 m ²)	56.9% (93.9 m ²)

The solar access is considered to meet the Design principles of the R-Codes in the following ways:

- The existing development on site provides 75.6% (124.7 m²) overshadowing to No. 43, meaning that the proposed development contributes another 6.3% (10.4 m²). (See Figure 7 below)



Figure 7: Extent of overshadowing from the proposed development and includes the existing rear garage and boundary wall. Yellow is existing overshadowing, red is from the proposed extension, dark red is reduction from amended plans.

- Figure 7 appears to show that overshadowing from the existing roof line towards the street front covers two of the adjoining lots, whereas the existing roof ridges are built up against each other with parapet walls, resulting in no practical overshadowing from where these properties abut each other.
- The new overshadowing will not impact the major openings to the living areas within the central corridor of the house to the south (No. 43).
- Overshadowing to the house two lots to the south (No. 45) from the proposed development will be less than that caused by the existing patio at No. 43. In effect, there will be no additional overshadowing from the proposed upper floor to No. 45.

It is noted that, as per the R-Codes, solar access is measured as though the adjoining lot was vacant. So while the existing overshadowing shown to the southern patio in the figure above appears to cover a large extent of the patio, in actual fact the two existing patios are roughly the same height and any existing overshadowing does not generally fall onto the roof of the southern patio.

Open Space

Element	Requirement (Max)	Proposed	Extent of Variation
Open Space	50% (83 m ²)	23.8% (39.2 m ²)	26.5% (43.8 m ²)

The Open Space is considered to meet the Design principles of the R-Codes in the following ways:

- The existing development onsite provides 32.1% (52.9 m²) of open space, meaning that the proposal decreases existing open space by 5.5% (9.1 m²).
- The ground floor extension to the south replaces an existing access way, and will have minimal or no impact on adjoining lots as discussed above.
- The proposed two storey portion of development only extends the existing house approximately 0.4 m towards the rear of the site.

Visual Privacy

Element	Requirement	Proposed	Extent of Variation
North (Loft)	6 m	1.7 m	4.3 m
South (Loft)	6 m	2 m	4 m

The visual privacy variation to the deemed-to-comply requirements is considered to have been improved by deleting the balcony (thereby reducing the required setback from 7.5m to 6m) and providing obscure glazing to the sliding doors. However as the doors are openable, they are considered to impose an undue overlooking impact onto the rear yards of the adjoining properties to the north and south. The loft sliding doors are not considered to meet the Design principles of the R-Codes for the following reasons:

- The sliding doors, when open, will permit overlooking into adjoining rear yard outdoor living areas.
- The rear sliding doors are proposed to be obscured, thereby eliminating visual privacy variations when the doors are closed, however it is considered that additional measures are required to maintain neighbouring privacy when they are open.
- The opening has the potential to result in overlooking across the adjoining properties and into other nearby rear yards due to the elevation position of the loft.
- Due to the openable sliding doors and the balustrade, the opening has a similar effect to a balcony which has a greater deemed-to-comply setback requirement in accordance with the R-Codes.

A condition of approval is recommended requiring the loft window to be screened in accordance with the requirements of the R-Codes accordingly.

CONCLUSION

In response to Planning Committee's reasons for deferral, the proposed development has reduced the bulk of the upper floor by reducing the overall width by 700mm, deleting the balcony, and providing obscure glazing to the windows to partially mitigate visual privacy impacts. Additionally, the proposed verandah alterations and removal of the concrete slab are positive heritage outcomes, while the living/dining extension to the south is also an acceptable heritage outcome due to the fact that it retains the intended form of the dwellings. These terrace houses have very narrow lots and if any development is to occur, it will likely require the use of one or more boundary walls. The living/ dining extension has been designed in such a way as to have minimal or no impact on the adjoining lot. The development is conditionally supported.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, alterations and upper floor additions to an existing Single house at No. 41 (Lot 57) Bellevue Terrace, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 8 October 2019. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. All storm water discharge shall be contained and disposed of on site or otherwise approved by the City of Fremantle.
3. Prior to occupation of the development hereby approved, the boundary walls located on the southern and northern 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.
- 4. Prior to the issue of a building permit, the verandah shall be designed to match the design and placement of the adjoining verandah at No. 39 Bellevue Terrace, to the satisfaction of the City of Fremantle.
- 5. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of City of Fremantle.
- 6. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the loft sliding doors located on the western elevation, is to be screened in accordance with Clause 5.4.1/6.4.1 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.

Officers Recommendation lost due to lack of mover and seconder.

COMMITTEE DECISION ITEM PC1911 - 1
(Alternative officer's recommendation)

Moved: Cr Rachel Pemberton

Seconded: Cr Su Groome

Planning committee acting under delegation 1.1:

REFUSE under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Alterations and upper floor addition to an existing Single house at No. 41 (Lot 57) Bellevue Terrace, Fremantle, as detailed on plans dated 8 October 2019, for the following reasons:

- 1. The proposal is contrary to the design principles of clauses 5.1.3, 5.1.4, 5.4.1 and 5.4.2 of the Residential Design Codes and will negatively impact the amenity of adjoining properties by virtue of the lot boundary setbacks, reduced open space, visual privacy and solar access.**

- 2. The proposal is inconsistent with the City's policy LPP 2.4: Boundary Walls in Residential Development as the boundary walls will detrimentally impact adjoining lots.**
- 3. The proposal is not compatible with its setting in regards to building bulk and the character of the locality as per clauses 67 (m) and (n) of the *Deemed provisions*.**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

Reason for change

The bulk and scale of the proposed addition is considered to adversely impact on the amenity of the adjoining neighbours by way of visual bulk, overshadowing and overlooking.

11.2 Committee delegation

PC1911 - 3 TYDEMAN ROAD, NO 26 (LOT 24), NORTH FREMANTLE - CHANGE OF USE TO INDUSTRY SERVICES (BAKERY) AND ADDITIONS AND ALTERATIONS TO EXISTING BUILDING (TG DA0263/19)

Meeting Date:	6 November 2019
Responsible Officer:	Manager Development Approvals
Decision Making Authority:	Committee
Agenda attachments:	1: Amended development plans
Additional information:	1: Site visit photos 2: Summary of submissions

SUMMARY

Approval is sought for a change of use to industry service and retail outlet (bakery), with associated additions and alterations to the existing buildings at 26 Tydeman Road, 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 Local Planning Scheme No. 4 (LPS4). These discretionary assessments include the following:

- Land use (Industry Service).
- On site car parking provision.
- Boundary wall (west).

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a change of use, associated works, and signage to establish a bakery at existing buildings at 26 Tydeman Road, North Fremantle. The proposal comprises the following:

- Industry Service land use is proposed to be carried out on site, comprising a bakery and retail outlet.
- Demolition of existing onsite toilet facilities and the establishment of a new toilet block to the western site boundary.
- The enclosure of the existing paved area between the two buildings on site to ensure compliance with the *Environmental Health (Noise) Regulations 1997*.
- Works to provide additional door and window openings in existing walls.

The business details are as follows:

Staffing levels

- Bakery – 5 staff (3 bakers, 2 pastry chefs).
- Retail shop front – 6-7 staff (1 manager, 1 barista, 2 cashiers, 1/2 chefs, 1 kitchen hand).

Trading hours

- Bakery – 7 days per week with operations typically occurring from 10pm onwards.
- Retail shop front – 7 days per week, 6am to 10pm.

Deliveries and collections

- Recyclable waste collected 2 times per week.
- General waste collected 2 times per week.
- Fresh food and vegetables daily.
- Milk 3 times per week.
- Meat, dry goods, small goods, coffee, eggs, butter daily

On 13 September 2019 amended plans were submitted removing roof signage from consideration and providing additional seating detail in addition to a waste management plan, acoustic report, and staff parking details.

On 15 October 2019 the applicant submitted amended plans depicting the enclosure of the onsite courtyard and toilet area in accordance with the recommendations of the acoustic consultant report.

The amended development plans are included as attachment 1.

Site/application information

Date received:	19 July 2019
Owner name:	J & J Vitali
Submitted by:	P Miller/ L Bisset
Scheme:	Mixed Use Zone
Heritage listing:	North Fremantle Heritage Area (Not individually listed)
Existing land use:	Existing Showroom (antiques sales) and Industry General (panel beater)
Use class:	Industry Service
Use permissibility:	D



CONSULTATION

External referrals

Fremantle Ports (FP)

The application was referred to FP as the subject site is located within Fremantle Port Buffer Area 1. FP has advised that they have no objection to the proposal subject to compliance with the standard built form requirements for Port Buffer Area 1. These matters can be dealt with as relevant conditions and advice notes.

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.

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 involved discretionary land use(s) and works which had the potential to impact adjoining properties. The advertising period concluded on 15 August 2019, and 41 submissions were received, 14 of which raised objections or concerns in relation to the proposal and 29 of which expressed support for the proposal. A list of the concerns raised during the consultation is provided as additional information item 2. It is noted that some submissions expressed support for the proposal with some concerns also expressed. The following comments were raised (summarised):

In support of the proposal:

- The business will enhance community cohesion.
- The business will provide services for the North Fremantle town centre that are not otherwise provided in the immediate area.
- Submitters supported the proposed business on the basis of their experience with another location run by the same operators.

- The business was considered to be in keeping with the character of the North Fremantle town centre.
- The business would attract visitors from across Perth to visit North Fremantle.
- The business operating on a short-stay model for customers was supported in consideration of the existing car parking availability issues in North Fremantle.
- The proposed development will enhance a site in the North Fremantle town centre.

Objecting to or raising concerns in relation to the proposal:

- Concerns in relation to noise pollution from patrons, music, 24 hour on site activities, mechanical plant and equipment. It was requested that an alternative entrance directly into the building be provided for use after 6pm to limit noise.
- That the business would generate litter in the locality.
- Waste collection would impede access on Jewell Parade.
- Roof signage would be unnecessary and out of character with the locality.
- Light pollution from the premises may impact neighbouring residential properties.
- Concerns in relation to the impact of the business upon parking availability in the locality including the increased need for staff parking.
- Additional vehicle movements may impact the safety of pedestrians along Jewell Parade.
- Customers may park in Jewell Parade blocking access to driveways.
- Control of delivery times will be required to ensure that residents are not unduly impacted.
- Concerns in relation to the premises attracting potentially inebriated patrons.
- Concerns that up to 120 persons could be accommodated on site at maximum capacity based on the number of toilets provided.
- The applicant may provide more onsite seating than shown on their plans.
- Patrons may spill over into the street blocking the footpath on Jewell Parade.
- The proposal plans do not align with the proposed business model, being a business where patrons do not spend a great deal of time. The provision of seating on site will result in patrons spending more time at the premises.
- The operation of the business may unduly impact adjoining property values.
- Objection to an additional hospitality venue in North Fremantle.
- The proposed tree will impact light access for the adjoining property.

In response to the concerns raised, the applicant submitted revised plans and additional commentary detailing how potential traffic, noise, and waste impacts can be managed. These reports are discussed in the Officer Comments below where applicable.

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

- All development must comply with the Environmental Protection (Noise) Regulations 1997 (as amended) and this is a matter which is subject to ongoing compliance. The applicant has submitted an Acoustic Report demonstrating that the proposal can comply with the relevant regulations if the courtyard were to be appropriately enclosed as per the amended plans.
- The applicant advised that only low level music will be played on site.

- The Applicant's acoustic report also contained recommendations in relation to the placement and nature of mechanical equipment which are addressed as recommended conditions of approval.
- The applicant advised that on site baking operations are generally silent.
- The applicant advised that all deliveries would be undertaken between 7am and 7pm. It is a recommended condition of approval that the applicant submits a final delivery plan for approval by the City which is to be adhered to for the life of the business if approved.
- Conditions of development approval are recommended to ensure that waste management is carried out in accordance with the City's requirements. The applicant's preliminary waste management plan indicates two collections per week from in front of the proposed bin store which is considered to be consistent with waste collections which could occur for the existing businesses on site.
- As discussed in the parking assessment below, traffic and parking impacts are considered to be acceptable and/or manageable to minimise the impact on the immediate locality.
- Traffic issues such as crossovers being blocked exist today and can only ever be dealt with on an ongoing basis through policing and monitoring by the City.
- The behaviour of motorists in the area cannot be controlled through a planning application, however the impact of increased visitation to the area is considered below.
- Littering by individual members of the public cannot be controlled through a planning application. The applicant advised that current waste management practices undertaken at their Cottesloe store would be replicated in North Fremantle if approved, including a staff rubbish pickup around the immediate area of the store.
- The applicant proposes a small number of seats (22) on site and does not intend to encourage on site dining. It is a recommended condition of approval that the business be limited to these 22 seats only.
- Signage to the roof of the premises was removed from consideration in response to submissions.
- The premises are not currently proposed to serve alcohol.
- Following the enclosure of the courtyard, the proposed tree is no longer considered as a part of this application.
- The impact of a proposed development on property values is beyond the scope of the development application process to consider.

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 specified Scheme or policy requirements, an assessment is made against the relevant discretionary criteria. In this particular application the areas outlined require discretionary consideration:

- Land use.
- On site car parking.

- Boundary wall (west).

The above matters are discussed below.

Background

The subject site is located on the northern side of Tydeman Road at the corner with Jewell Parade. The site has a land area of approximately 481m² and is currently improved by two buildings being used as a panel beater and antiques showroom. The site is zoned Mixed Use and has a density coding of R25. The site is not individually heritage listed but is located within the North Fremantle Heritage Area. The site is located directly across Jewell Parade from the City's public car park at 209 Queen Victoria Street.

The site is generally flat and currently contains two buildings which are built up to site boundaries and intended to be retained.

A search of the property file has revealed that there is no relevant planning history for the site.

The North Fremantle Local Centre (Queen Victoria Street, between Jackson Street and Tydeman Road) is typically characterised by commercial properties being of retail, dining and/or entertainment purposes. The Local Centre has developed over the years with the addition of numerous hospitality premises. Only a few premises on Queen Victoria Street have exclusive on-site car parking, with a number of the premises relying on the available street parking for staff and customers. To provide some context in relation to the car parking assessment detailed in the Officer Comment below, the list below outlines the on-site car parking requirements and provision for a number of the existing hospitality premises in the immediate locality that rely on the availability of on-street public parking bays during evenings, when the proposed business intends to operate.

222 Queen Victoria St (Propeller and Guildhall)

Development Approval was approved in 2011 for partial change of use to Small bar and Restaurant, additions and alterations to the existing building. There are 7 communal on-site bays and Officers have assessed there to be an on-site car parking shortfall of approximately 48 bays.

229A Queen Victoria St (Piggy Food Co.)

City records show that a restaurant use has existed and operated since at least 1988. Piggy Food Co is understood to have taken over the premises in approximately 2015. After retrospective approval was granted to remove the three on-site bays for an outdoor dining area, Officers have assessed there to be an on-site car parking shortfall of approximately 17 bays.

237 Queen Victoria Street (Mojo's)

This site has long-standing use as a Tavern. Officers have assessed there to be an on-site car parking shortfall of approximately 60 bays.

241 and 245 Queen Victoria St (Mrs Brown's/ Flip Side)

Development Approval was approved in 2007 for change of use to Small bar including use of 25 car parking bays on an adjoining site. On this basis the proposal was considered to comply with LPS4 parking standards.

1 Harvest Rd (Harvest Restaurant)

This site has long-standing use as Café/Restaurant. Records indicate that a parking arrangement was reached with an adjoining property.

229 Queen Victoria Street (Deus Ex Machina)

In 2019 the Planning Committee approved an application for a change of use to small bar, additions, alterations and signage to the existing building at this site. This application considered an onsite car parking shortfall of 21 bays.

Land Use

The land use Industry Service is a 'D' use in the Mixed Use 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 use is considered to address the above matters for the following reasons:

- The proposed bakery would make a positive contribution to the local centre, providing a service for residents not otherwise offered in the immediate locality.
- It is considered that the proposed use would not be significantly detrimental to the amenity of adjacent residential properties as:
 - the premises provides seating for a maximum of 22 seated patrons at any one time, and
 - the applicant has detailed management practices which encourage rapid turnover of clientele and otherwise how the operation of the business will be managed to limit its impact.
- It is acknowledged that the proposal may increase traffic in the locality and the demand for on-street and public parking however the increase is not considered to be significantly greater than the existing situation in North Fremantle. Further discussion of this matter is included below.

- With regards to generally amenity, social impacts and noise matters, separate legislation must be adhered to for the development ensuring compliance and the additional information provided by the applicant demonstrates that any potential impacts can be appropriately managed.

It is noted that the proposed business includes some seating for patrons on site (22 seats). The applicant has requested that these seats be considered incidental to the proposed Industry Service land use on the basis that it is reasonable for a small amount of seating to be provided for persons waiting for orders or if neighbours meet for a short period. The application was initially considered to include a Restaurant land use on the basis that additional detail regarding seating numbers and location had not been confirmed. Following the applicants explanation of the proposed land use, the most appropriate use in this case is considered to be Industry Service. A condition of approval is recommended to ensure that additional on-site seating is not provided to ensure that the proposed business aligns with this land use.

On site car parking

Element	Requirement	Proposed	Extent of Variation
Existing uses Showroom (antiques sales) Industry general (panel beater)	Showroom – 4 bays Industry general – 5 bays (4.54 bays) Approximately 225m ² GLA	0 bays	9 bays
Proposed use Industry Service (Bakery)	1: 50m ² GLA 10 bays (9.4 bays) Approximately 470m ² GLA.	0 bays	10 bays
	Delivery bay – 1: service/storage area	Nil	1 bay
	Bicycle parking Class 1: 1	Nil class 1 x 4 class 3	1 x class 1 rack

While it is noted that in accordance with the above statutory assessment the change of use results in an increase to the existing onsite parking shortfall of one bay, it is considered that the proposed use may result in much higher visitation rates to the site than either of the current uses. Accordingly, consideration is to be given to parking availability in the immediate area and whether the proposed use is appropriate in this context in the interests of orderly and proper planning.

Clause 4.7.3.1 – Relaxation of Car Parking Requirements Assessment, states that Council may reduce or waive the standard parking requirements specified in table 2 subject to the applicant satisfactorily justifying a reduction due to one or more of the following reasons:

- (i) *the availability of car parking in the locality including street parking*
- (ii) *the availability of public transport in the locality*
- (iii) *any reduction in car parking demand due to the sharing of car spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces,*
- (iv) *any car parking deficiency or surplus associated with the existing use of the land,*
- (v) *legal arrangements have been made in accordance with clause 4.7.5 for the parking or shared use of parking areas which are in the opinion of the Council satisfactory,*
- (vi) *any credit which should be allowed for a car parking demand deemed to have been provided in association with a use that existed before the change of parking requirement,*
- (vii) *the proposal involves the restoration of a heritage building or retention of a tree or trees worthy of preservation,*

A majority of the objections and concerns raised during the community consultation period raised concerns in relation to the impact of the business operations upon car parking availability in the immediate locality.

A total of 64 off-street public car parking bays are available in the North Fremantle Local Centre as detailed in the table below. A site inspection undertaken by City officers has confirmed the accuracy of these calculations.

Location of car parking	Distance from site	No. car bays
Corner of Tydeman Road and Queen Victoria Street	75m south	19
North Fremantle Bowling Club Car Park / Gordon Dedman Reserve	200m north east	45
		Total – 64 bays

Table 1: Table indicating the number of public car parking bays available in the North Fremantle Local Centre, including their approximate distance from the subject site.

In addition to these off street public car parking facilities, there are a total of approximately 38 on-street (kerb side) car parking bays in Queen Victoria Street (between Jackson Street and Tydeman Road) and Harvest Road available for the North Fremantle Local Centre. Six parking bays are also provided in Jewell Parade (reduced from 7 bays should the change of use and development of No. 229 Queen Victoria Street be pursued).

A two week survey (conducted by City officers) of the availability of on street car parking bays in Queen Victoria Street and the surrounding streets demonstrated that on Friday to Sunday (inclusive) the demand for on street parking bays are at their highest, with between 70 to 88% of the available bays on surrounding streets being occupied on these days (inspection times being 3.30pm and 7pm during the respective days). Outside of these last surveyed times, during the day and evening periods (Monday to Thursday) there was a lower demand for on street parking with the number of occupied bays being approximately 45% to 60%.

The City has carried out an additional survey over two weekends in August 2019. This recent survey showed similar results to the previous survey being 70 to 80% of the available bays being occupied in the evening times.

It is still considered that even at the busiest time, there is some availability of the existing on street car parking bays in the immediate locality. Although it is acknowledged that the proposed use may increase the demand on these bays during the peak periods of Friday to Sunday, it is not considered to result in a parking and traffic impact that is significantly greater than the current demand for on street parking.

The subject site is also located across Jewell Parade from the City's car park which contains several 15 minute parking bays which are considered to accommodate some of the proposed business' parking demand, in that visitation to the premises is intended to be sporadic and brief mainly occurring the morning and midday periods of a typical trading day. Currently the 15 minute restriction on length of stay applying to these bays ends at 5pm. Should Planning Committee approve the current application as recommended, once the bakery business is operational the City could monitor parking turnover and if appropriate modify time restrictions on the 15 minute bays so that this length of stay applies until later into the evening.

The applicant has outlined how the business will accommodate parking for staff as follows:

- *"Similar to North Street Store, staff are intended to be employed from the local communities. It is intended staff will walk or use active modes of transport, public transport or if they must drive, requested to avoid parking in adjoining residential areas."*

Based on the availability of parking in the locality outlined above, this staff parking management strategy is considered appropriate.

With reference to Clause 4.7.3 of Local Planning Scheme No. 4, which allows Council to relax or waive car parking requirements, the proposed change of use is considered appropriate for the following reasons:

- The proposed use has limited seating (22 seats) for patrons and the applicant has detailed business management arrangements which are intended to limit the time spent by customers on site, resulting in a higher turnover of patrons.
- There is a public car park of 19 parking bays immediately to the east across Jewell Parade and this car park includes 15 minute restricted parking bays which are considered to support the proposed business which incorporates measures to encourage high turnover of patrons.

- Approximately 38 on-street parking bays are provided in the immediate area of the subject site.
- The subject site is in close proximity to train and bus public transport routes.

In accordance with the above considerations, the increase in parking demand in the locality associated with this change of use is not considered to be unduly detrimental to adjoining businesses or adjacent residential properties.

Boundary Wall (west)

Element	Requirement	Proposed	Extent of Variation
Boundary wall	1.5m setback	Boundary wall (0m setback)	1.5m

The initial proposal involved an extension to the existing boundary wall to the western site boundary to accommodate a new toilet block. This boundary wall was subsequently increased in size to accommodate the acoustic enclosure recommended by the applicant's noise consultant. The boundary wall adjoins a lot zoned Mixed Use which is currently used for residential purposes. The proposed boundary wall is considered to comply with the Design principles of Local Planning Policy 2.4 (Boundary Walls in Residential Development) for the following reasons:

- The wall is located between two existing boundary walls and involves an extension above the existing wall on site.
- The development has been designed so that no overlooking from customers will impact the adjoining property.
- The boundary wall for the development will not cast undue winter shade to adjoining property due to the lot orientation resulting in most shade cast by the development falling over the subject site.
- It is a recommended condition of development approval that the wall be finished to match the existing boundary wall, resulting in a consistent appearance.
- The walls will not be readily visible from the street and boundary walls of this nature are common in the immediate locality.

Other matters

Noise Management

The applicant submitted a noise management plan which detailed the measures required in order to satisfy the Environmental Protection (Noise) Regulations. The report concludes that the premises will be able to satisfy the relevant regulations if an appropriate enclosure were to be provided to the courtyard on site and measures were introduced to address mechanical noise from plant, equipment, and deliveries. The recommendations of this report have been incorporated into the recommended conditions of development approval.

Waste Management

The applicant proposes that waste be collected from in front of the premises adjacent to the proposed bin store. This collection location has been reviewed by the

City' and supported on the basis that these collections will be limited in frequency (two collections per week is indicated in the submitted business plan) and sufficient space will be provided behind a collection truck to accommodate any vehicles which turn Jewell Parade.

It is a recommended condition of development approval that a waste management plan be submitted to, and approved by the City prior to the issue of a building permit for the premises.

CONCLUSION

The proposal is considered to meet the applicable requirements of Local Planning Scheme No. 4 and Council's relevant local planning policies. Potential impacts from the operation of the venue including noise and parking are considered to be acceptable and can be appropriately managed on an ongoing basis. The proposal is considered to contribute to the activation of the North Fremantle Local Centre Area and to provide services for surrounding residences. As such, the application is recommended for approval, subject to the conditions included in the officer's recommendation below.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

- Increase the number of people working in North Fremantle
- Increase the number of visitors to North Fremantle
- Increase the net lettable area of retail space

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Change of Use to Industry Service (Bakery) and Additions and Alterations to existing building at No. 26 (Lot 24) Tydeman Road, North Fremantle, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans, dated 15 October 2019. It does not relate to any other development

on this lot and must substantially commence within four years from the date of this decision letter.

2. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.
3. Prior to the occupation of the development hereby approved, any redundant crossover and kerbs shall be removed and the verge reinstated at the expense of the applicant and to the satisfaction of the City of Fremantle.
4. Prior to the issue of a Building Permit, One, Class 1 bicycle rack shall be provided, to the satisfaction of the City of Fremantle.
5. The approved development shall be wholly located within the cadastral boundaries of the subject site (26 Tydeman Road), including and footing details of the development.
6. A maximum of twenty two (22) seats shall be provided onsite at all times, to the satisfaction of the City of Fremantle.
7. Prior to the issue of a building permit, a Business Management Plan is to be submitted and approved to the satisfaction of the City of Fremantle, including the following:
 - Delivery Management Plan;
 - Parking Management Plan
 - Hours of operation for the business;
 - The maximum number of employees for the business; and
 - Parking arrangements for customers and staff.

The business shall operate in accordance with the approved business management plan thereafter. Any amendments to the management plan shall be submitted to, and approved by the City of Fremantle, prior to implementing the amended management plan.

8. Prior to issue of a building permit of the development hereby approved, the owner is to submit a waste management plan for approval by the City, detailing at a minimum the following:
 - Estimated waste generation
 - Proposed storage of receptacles
 - Collection methodology for waste
 - Additional management requirements to be implemented and maintained for the life of the development.

The approved Waste Management Plan must be implemented at all times to the satisfaction of the City of Fremantle. Onsite waste storage and disposal shall comply with the City's Local Laws and not create a nuisance.

9. Prior to occupation of the development hereby approved, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the

roof of the building shall be located or screened so as not to be highly visible from beyond the boundaries of the development site to the satisfaction of the City of Fremantle.

10. Prior to the issue of a Building Permit, the design and materials of the development shall adhere to the requirements set out within City of Fremantle policy L.P.P2.3 - Fremantle Port Buffer Area Development Guidelines for properties contained within Area 2. Specifically, the development shall provide the following:
 - Glazing to windows and other openings shall be laminated safety glass of minimum thickness of 6mm or “double glazed” utilising laminated or toughened safety glass of a minimum thickness of 3mm.
 - Air conditioners shall provide internal centrally located ‘shut down’ points and associated procedures for emergency use.
 - Roof insulation in accordance with the requirements of the Building Codes of Australia.
11. Prior to the issue of a Demolition Permit or Building Permit for the development hereby approved, all air conditioning systems which are to be installed in the development shall comply with the built form requirements for Area 1 of the Fremantle Port Buffer.
12. Prior to the issue of a Demolition Permit or Building Permit for the development hereby approved, all piped, ducted and wired services, air conditioners, hot water systems, water storage tanks, service meters and bin storage areas must be located to minimise any visual and noise impact on the occupants of nearby properties and screened from view from the street. Design plans for the location, materials and construction for screening of any proposed external building plant must be submitted to and approved by the City of Fremantle.
13. Prior to occupation of the development hereby approved, 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.
14. Prior to occupation/ use of the development hereby approved, the boundary wall located on the western boundary shall be of a clean, face brick finish and be thereafter maintained to the satisfaction of the City of Fremantle.
15. The pedestrian access and / or vehicle gate, as indicated on the approved plans, shall swing into the subject site only when open or closed and shall not impede the adjoining road reservation of the subject site.

16. 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 note

- i. The applicant is advised that additional information in relation to the City's waste management requirements can be found here:
<https://www.fremantle.wa.gov.au/residents/waste-and-recycling>
- ii. With regards to condition (4), Bicycle parking facilities are to be provided in accordance with the following standards:
 - a. Class 1 – High security level – Fully enclosed individual locker;
 - b. Class 2 – Medium security level – Lockable compound fitted with class 3 facilities with communal access using duplicated keys;
 - c. Class 3 – Low security level – Rails or racks to which both the bicycle frame and wheels can be locked.

For more information refer to 'Austroads Cycling Aspects to Austroads Guides'

- iii. In regard to the condition requiring a Construction Management Plan, Local Planning Policy 1.10 Construction Sites can be found on the City's web site 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.

- iv. Any works within the adjacent thoroughfare, i.e. road, kerbs, footpath, verge, crossover or right of way, requires a separate approval from the City of Fremantle's Infrastructure Business Services department who can be contacted via info@fremantle.wa.gov.au or 9432 9999.
- v. Further to condition (n), the recommendations of the LGA Environmental Noise Assessment dated 13 September 2019 shall be incorporated into the design of the mechanical plant, to the satisfaction of the City of Fremantle:
 - All plant shall be selected to be as quiet as reasonably practicable;
 - All plant shall be located as far from residences as practicable (e.g. east boundary) and be as low on the roof as practicable;

- All exhaust fans shall be variable speed;
 - Exhaust fan discharges shall preferably be horizontal and face away from the residences;
 - Exhaust fans to be axial type, contained inside the building and fitted with attenuators on the outside air side of the fan;
 - Air-conditioning and refrigeration plant shall have a low noise mode to be engaged during the night period;
 - All equipment shall be vibration isolated to avoid structure borne noise. Mounts/hangers shall be anti-vibration type, sufficient to achieve 97% isolation efficiency, selected by a supplier such as Embelton's taking into account equipment weight and operating frequency.
 - The applicant is advised that any signage shall be subject to a separate application for planning approval.
- vi. 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.
- vii. 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.
- viii. Work on construction sites shall be limited to between 7am and 7pm on any day which is not a Sunday or Public Holiday. If work is to be done outside these hours a noise management plan must be submitted and approved by the Chief Executive Officer, City of Fremantle prior to work commencing.
- ix. 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.
- x. The Industrial Waste department at the Water Corporation must be consulted for provision of grease traps (passive grease arrestors). Most food premises where food preparation occurs will require a grease trap to be installed.
- xi. With regards to condition (7) the Parking Management Plan shall provide detail measures that the operator will take to inform staff and customers of available car parking and alternative transport options to the satisfaction of the City of Fremantle.

AMENDMENT

Moved: Cr Rachel Pemberton

Seconded: Cr Geoff Graham

Add the following condition 17 as follows

- 17. Notwithstanding condition 7, the retail component of the Industry Service (Bakery) hereby permitted shall have opening hours not exceeding Monday to Sunday 7.00am to 7.00pm.**

Amendment carried: 4/2

For

**Cr Bryn Jones, Cr Geoff Graham
Cr Rachel Pemberton, Cr Frank Mofflin**

Against

Cr Su Groome, Cr Andrew Sullivan

Reason for change:

A reduction in the proposed opening hours of the retail component of the Bakery will assist in reducing the potential amenity impacts on the adjoining neighbours and the increase in demand for on-street and public car parking bays in the evening.

COMMITTEE RECOMMENDATION ITEM PC1911 - 3

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Change of Use to Industry Service (Bakery) and Additions and Alterations to existing building at No. 26 (Lot 24) Tydeman Road, North Fremantle, subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans, dated 15 October 2019. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. Prior to the occupation of the development hereby approved, any redundant crossover and kerbs shall be removed and the verge reinstated at the expense of the applicant and to the satisfaction of the City of Fremantle.**

4. Prior to the issue of a Building Permit, One, Class 1 bicycle rack shall be provided, to the satisfaction of the City of Fremantle.
5. The approved development shall be wholly located within the cadastral boundaries of the subject site (26 Tydeman Road), including and footing details of the development.
6. A maximum of twenty two (22) seats shall be provided onsite at all times, to the satisfaction of the City of Fremantle.
7. Prior to the issue of a building permit, a Business Management Plan is to be submitted and approved to the satisfaction of the City of Fremantle, including the following:
 - Delivery Management Plan:
 - Parking Management Plan
 - Hours of operation for the business;
 - The maximum number of employees for the business; and
 - Parking arrangements for customers and staff.

The business shall operate in accordance with the approved business management plan thereafter. Any amendments to the management plan shall be submitted to, and approved by the City of Fremantle, prior to implementing the amended management plan.

8. Prior to issue of a building permit of the development hereby approved, the owner is to submit a waste management plan for approval by the City, detailing at a minimum the following:
 - Estimated waste generation
 - Proposed storage of receptacles
 - Collection methodology for waste
 - Additional management requirements to be implemented and maintained for the life of the development.

The approved Waste Management Plan must be implemented at all times to the satisfaction of the City of Fremantle. Onsite waste storage and disposal shall comply with the City's Local Laws and not create a nuisance.
9. Prior to occupation of the development hereby approved, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened so as not to be highly visible from beyond the boundaries of the development site to the satisfaction of the City of Fremantle.
10. Prior to the issue of a Building Permit, the design and materials of the development shall adhere to the requirements set out within City of Fremantle policy L.P.P2.3 - Fremantle Port Buffer Area Development Guidelines for properties contained within Area 2. Specifically, the development shall provide the following:

- Glazing to windows and other openings shall be laminated safety glass of minimum thickness of 6mm or “double glazed” utilising laminated or toughened safety glass of a minimum thickness of 3mm.
- Air conditioners shall provide internal centrally located ‘shut down’ points and associated procedures for emergency use.
- Roof insulation in accordance with the requirements of the Building Codes of Australia.

11. Prior to the issue of a Demolition Permit or Building Permit for the development hereby approved, all air conditioning systems which are to be installed in the development shall comply with the built form requirements for Area 1 of the Fremantle Port Buffer.
12. Prior to the issue of a Demolition Permit or Building Permit for the development hereby approved, all piped, ducted and wired services, air conditioners, hot water systems, water storage tanks, service meters and bin storage areas must be located to minimise any visual and noise impact on the occupants of nearby properties and screened from view from the street. Design plans for the location, materials and construction for screening of any proposed external building plant must be submitted to and approved by the City of Fremantle.
13. Prior to occupation of the development hereby approved, 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.
14. Prior to occupation/ use of the development hereby approved, the boundary wall located on the western boundary shall be of a clean, face brick finish and be thereafter maintained to the satisfaction of the City of Fremantle.
15. The pedestrian access and / or vehicle gate, as indicated on the approved plans, shall swing into the subject site only when open or closed and shall not impede the adjoining road reservation of the subject site.
16. 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.

17. Notwithstanding condition 7, the retail component of the Industry Service (Bakery) hereby permitted shall have opening hours not exceeding Monday to Sunday 7.00am to 7.00pm.

Advice note

- i. The applicant is advised that additional information in relation to the City's waste management requirements can be found here:
<https://www.fremantle.wa.gov.au/residents/waste-and-recycling>
- ii. With regards to condition (4), Bicycle parking facilities are to be provided in accordance with the following standards:
 - a. Class 1 – High security level – Fully enclosed individual locker;
 - b. Class 2 – Medium security level – Lockable compound fitted with class 3 facilities with communal access using duplicated keys;
 - c. Class 3 – Low security level – Rails or racks to which both the bicycle frame and wheels can be locked.

For more information refer to 'Austroads Cycling Aspects to Austroads Guides'

- iii. In regard to the condition requiring a Construction Management Plan, Local Planning Policy 1.10 Construction Sites can be found on the City's web site 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.

- iv. Any works within the adjacent thoroughfare, i.e. road, kerbs, footpath, verge, crossover or right of way, requires a separate approval from the City of Fremantle's Infrastructure Business Services department who can be contacted via info@fremantle.wa.gov.au or 9432 9999.
- v. Further to condition (n), the recommendations of the LGA Environmental Noise Assessment dated 13 September 2019 shall be incorporated into the design of the mechanical plant, to the satisfaction of the City of Fremantle:
 - All plant shall be selected to be as quiet as reasonably practicable;
 - All plant shall be located as far from residences as practicable (e.g. east boundary) and be as low on the roof as practicable;
 - All exhaust fans shall be variable speed;
 - Exhaust fan discharges shall preferably be horizontal and face away from the residences;

- Exhaust fans to be axial type, contained inside the building and fitted with attenuators on the outside air side of the fan;
 - Air-conditioning and refrigeration plant shall have a low noise mode to be engaged during the night period;
 - All equipment shall be vibration isolated to avoid structure borne noise. Mounts/hangers shall be anti-vibration type, sufficient to achieve 97% isolation efficiency, selected by a supplier such as Embelton's taking into account equipment weight and operating frequency.
 - The applicant is advised that any signage shall be subject to a separate application for planning approval.
- vi. 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.
- vii. 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.
- viii. Work on construction sites shall be limited to between 7am and 7pm on any day which is not a Sunday or Public Holiday. If work is to be done outside these hours a noise management plan must be submitted and approved by the Chief Executive Officer, City of Fremantle prior to work commencing.
- ix. 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.
- x. The Industrial Waste department at the Water Corporation must be consulted for provision of grease traps (passive grease arrestors). Most food premises where food preparation occurs will require a grease trap to be installed.
- xi. With regards to condition (7) the Parking Management Plan shall provide detail measures that the operator will take to inform staff and customers of available car parking and alternative transport options to the satisfaction of the City of Fremantle.

Cr Bryn Jones used his casting vote FOR the recommendation resulting in it being CARRIED.

Carried: 4/3

For

Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan

Against

Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome,

The above item is referred to the Ordinary Meeting of Council for determination in accordance with the City of Fremantle Delegated Authority Register which requires that at least 5 members of the committee vote in favour of the Committee Recommendation in order to exercise its delegation.

**PC1911 - 5 FREEMAN LOOP, NO. 19 (LOT 1), NORTH FREMANTLE -
CHANGE OF USE FROM LIQUOR STORE TO TAVERN - (NB
DA0315/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1: Development Plans
Additional information: 1: Site Photos

SUMMARY

Approval is sought for a change of use from Liquor Store to Tavern at No. 19 Freeman Loop, 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) and Local Planning Policies. These discretionary assessments include the following:

- **Car parking**
- **Land use.**

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a change of use from Liquor Store to Tavern within the ground floor unit of an existing mixed use development at Leighton Beach. The current liquor store also contains a small incidental takeaway café serving hot drinks. The proposed change of use and subsequent change of liquor license will allow the store to sell liquor by the glass for consumption on the premises, something not permitted under the current Liquor Store liquor license.

The current trading hours for the café are 7am to 7pm, seven days a week, with sales of liquor from 8am to 7pm Monday through Saturday, and from 10am to 7pm on Sundays. The proposed change of use will also include extending the opening hours an additional two hours each day, with consumption of alcohol allowed Monday to Saturday from 8 am to 9 pm, and Sunday from 10 am to 9 pm.

The proposal does not include any expansion or layout alteration of the existing store or alfresco area.

Development plans are included as attachment 1.

Site/application information

Date received: 23 August 2019
 Owner name: Freo Holdings (Aust) Pty Ltd
 Submitted by: Freo Holdings (Aust) Pty Ltd
 Scheme: Development Area (DA5)
 Heritage listing: North Fremantle Heritage Area
 Existing land use: Liquor Store
 Use class: Tavern
 Use permissibility: 'Potential' use under DGN14



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 discretion was sought under the City's scheme and policies. The advertising period concluded on 18 September 2019, and 69 submissions were received. Of these, 62 submissions fully supported the proposal, 6 generally supported it but raised concerns, and 1 objected. The following issues were raised (summarised):

- Should be okay provided it closes at 9pm, has no extra parking, and is limited to 25 patrons.
- Parking is already an issue and will get worse in the summer.

- Concerned about noise after closing from people saying goodbye and staff cleaning up.
- Concerned about music played outside and noise from customers.
- Concerned about people smoking, as the smoke will drift into nearby apartments.
- Object subject to seeing how the owners of the tavern plan on handling security and anti-social behaviour.

In response to the above, the applicant submitted the following response:

- The size of the unit and the restriction of the unisex universally accessible toilet will only allow for 25 persons at a time.
- Daily operations will remain the same: café, take away coffee, gourmet food store and boutique liquor store. We have expanded our café food to include more substantial items that will complement the sale of liquor by the glass.
- The music played will be the streamed music that currently plays via the ipad to speakers located inside the premises and outside in the alfresco area. The music will be played at a level that conversation can easily be heard above. We will be monitoring the noise and asking for feedback from residents. We will have a dedicated phone line for residents to contact us for immediate redress on issues that concern them.
- The tavern will only operate until 9pm. We will mitigate the departure noise by reminding patrons to be aware of the nearby residents. We are sure that as most patrons will be residents themselves, this will add to the success of keeping departure noise at an appropriate level.
- No smoking will be tolerated in the premises or in the alfresco area or within 5 metres of the boundary of our premises.
- Given the nature of the venue, the price point of the alcohol for sale by bottle and by glass, and the limited opening times, patrons enjoying the space will be of a low risk category of harm and anti-social behaviour.
- We will have a high ratio of staff to patrons, and this will enable us to monitor our patrons in terms of intoxication, and in numbers, making sure that we adhere to the quota limitation of 25 patrons.
- We will shut promptly at 9pm. We will have firm procedures around this to make sure that our doors will shut on time. At 9pm our point of sale system will be closed. No sales of any alcohol, take away included, will be sold during the closing down procedures. It is expected that closing procedures will take 30-45 minutes.
- It is expected that most patrons will frequent MrktSpace for drinks by the glass in the late afternoon and early evening when the pressure on car parks is less critical.
- The proximity to public transport and the 280 plus car parking bays in the immediate area, should be adequate to cater to beach goers and businesses in the area.

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. In this particular application the areas outlined below do not meet the scheme or policy provisions and require discretion:

- Land use
- Car parking

The above matters are discussed below.

Background

The subject site is located on the corner of Leighton Beach Boulevard and Freeman Loop, North Fremantle. The tenancy the subject of this application is located on the ground floor on the northern (Freeman Loop) elevation. The floor area of the tenancy is approximately 88m². The site is situated approximately 170m from the North Fremantle Railway Station and 210m from Leighton Beach.

At its meeting of 14 October 2014, the Metro South-West Joint Development Assessment Panel (JDAP) approved an application on the subject site for four, five storey mixed use buildings comprising a total of 207 Multiple dwellings and three commercial tenancies (DAP80003/14). As part of this application, the subject unit was approved as a Shop.

At the Planning Committee (the committee) meeting of 5 September 2018, the committee approved a change of use from Shop to Liquor Store (DA0248/18). This included an incidental use of takeaway coffee.

Land Use

A Tavern is listed as a 'potential' use in Development Plan 17 of LPS4 and policy DGN14: Leighton Design Guidelines, which means that the use is not permitted unless the Council has exercised its discretion by granting planning approval. In considering a potential 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:

- (b) *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:*
 - (viii) *Environmental impacts of the development*
 - (ix) *The character of the locality*
 - (x) *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 development plan encourages a mixture of commercial and residential land uses within the Leighton Beach area, with specific design standards that aim to promote active uses at ground level to strengthen the connection between the railway station and the beach.
- The Structure plan for the area encourages uses that promote the area as a vibrant beachside destination and provide offerings for residents and visitors.
- The size of the tenancy limits the size of the business and by association the amount of patrons.
- The applicant will need to adhere to their liquor license (and associated condition) and building classification requirements in relation to the hours and number of patrons.
- The proposal adds variety to an area that is dominated by residential uses and provides an element of convenience for local residents.

Car parking

Element	Requirement	Proposed	Extent of Variation
Existing Liquor Store	1:20m ² nla (5 bays)	1 bay	4 bays
Tavern (60m ² patron area)	1 bay/ 5m ² of lounge area = 12 bays	1 bay	11 bays

Bike parking

Element	Requirement	Proposed	Extent of Variation
Existing Liquor Store	1:20m ² nla (5 bays)	class 1: 1 per 300 m ² gla = 0 class 3: 1 per 500 m ² gla (over 1000 m ² gla) = 0	Nil
Tavern (60m ² patron area)	class 1: 1 per 100 m ² lounge and beer garden = 1 class 3: 1 per 100 m ² lounge and beer garden = 1	1 x Class 1 1 x Class 3	1 x Class 1 1 x Class 3

Council has the ability to relax the vehicle parking requirements in certain circumstances, in accordance with Clause 4.7.3.1 of LPS4. The variation to car parking is supported for the following reasons:

- There is free on-street car parking in the vicinity, including the beach car parking within reasonable walking distance.
- The site abuts a train station and a high frequency bus route along Stirling Highway.
- The existing Liquor Store use was approved with only a single bay, and included a 4 bay shortfall. The proposal increases the shortfall by 7 bays but does not increase the floor area.

- Clause 5.7 of the Leighton Beach Development Plan states that resident or employee parking is to be provided within basement or undercroft parking areas and customer parking is encouraged to be provided on street. In addition, Clause 2.1.4 of Development Plan 17 states that in relation to transportation, reduced on-site parking requirements are to be encouraged as an incentive for the use of the available public transport services within the locality.
- The nature of the business and the small size of the tenancy mean that it is likely to be used by patrons already walking through the area (ie: after visiting the beach) and is unlikely to be a significant draw in its own right.
- It is considered that the business will be geared toward local residents and beachgoers by virtue of its small size and can reasonably be considered to offset the additional shortfall of car parking proposed for those land uses.
- There is a dedicated loading bay in the road reservation near the tenancy.

In addition to the car parking requirements above, Clause 4.7.3.3 allows Council to waive the class 1 bicycle rack requirements where the application is for a minor change of use. It is considered that the change in land use is not significant and that the bicycle rack requirement should be waived.

Clause 4.7.3.4 allows Council to waive the class 3 bicycle rack requirements. It is considered that this unit was approved as part of the overall development, which included an excess of class 3 bike racks. There are also public cycle facilities located within the public open space reserve immediately to the west of the site, in close proximity to the dual-use path. These existing cycle facilities are considered sufficient to support the proposed change of use.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE RECOMMENDATION ITEM PC1911- 5
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, change of use from Liquor store to Tavern at No. 19 (Lot 1) Freeman Loop, North Fremantle, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 23 August 2019. 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.**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

**PC1911 - 10 JEWELL PARADE, NO. 13 (LOT 30), NORTH FREMANTLE -
DEMOLITION OF GROUPED DWELLING (JL DA0330/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1: Development Plans
Additional information: 1: Site Photos
2: Applicant's Justification

SUMMARY

Approval is sought to demolish a heritage listed Grouped dwelling.

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

The application is recommended for refusal.

PROPOSAL

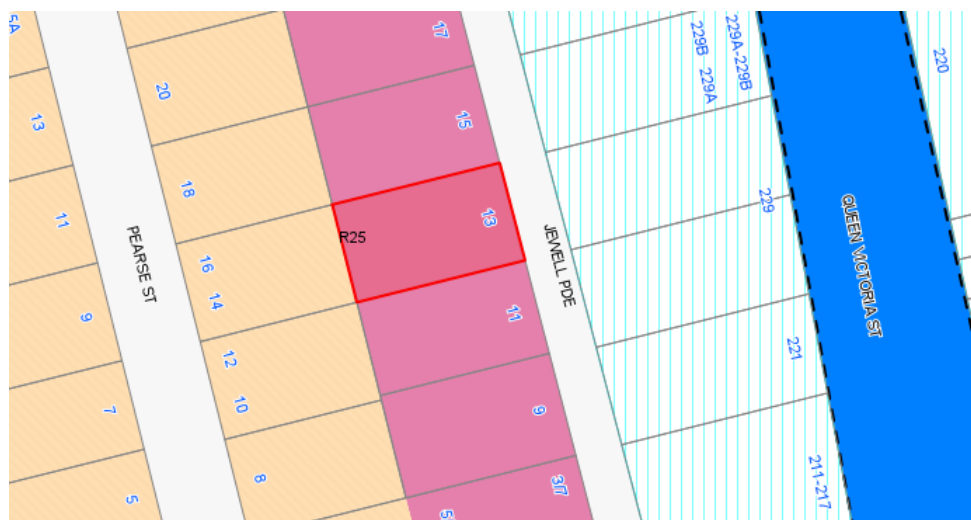
Detail

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

The applicant has submitted justification for demolition asserting that the poor condition of the existing dwelling is such that it must be effectively wholly removed/replaced, there is little extant heritage fabric on the site (or within the streetscape owing to past development) and the previous demolition and reconstruction was supported by city officers and adjoining neighbours (additional information item 2).

Site/application information

Date received: 2 September 2019
Owner name: Wade Anderson
Submitted by: Wade Anderson
Scheme: Mixed Use (R25)
Heritage listing: Level 3, North Fremantle Heritage Area
Existing land use: Grouped dwelling
Use class: A
Use permissibility: n/a



CONSULTATION

External referrals

Nil required.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as demolition of a heritage place was proposed. The advertising period concluded on 26 September 2019, and four (4) submissions were received with two supporting the proposed demolition of the dwelling. The objections to the proposal raised concerns to demolition via neglect and that Council should not be support such action.

OFFICER COMMENT

Statutory and policy assessment

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

Background

The site is zoned 'Mixed Use' under LPS4 with a density coding of R25 and is located within the North Fremantle Local Planning Area 3 (LPA 3). The site is 392m² and is located on the western side of Jewell Parade between Jackson Street and Tydeman Road. The site is on the City's Heritage List and Municipal Heritage Inventory (MHI) as a management category level 3 and it is located within the North Fremantle Heritage Area.

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

At the Planning Committee meeting of 6 December 2017, an application for the demolition of the existing Grouped dwelling (DA0487/17) was refused for the following reasons:

1. *The proposal is contrary to Clause 4.14 of the City of Fremantle's Local Planning Scheme No. 4 as the existing Grouped dwelling building is identified as having some cultural heritage significance and makes a contribution to the broader cultural heritage significance and character of the locality.*

In addition to the above it's also important to note that the City received a subsequent development application for the change of use to public car park of No.13 and No.15 Jewell Parade, North Fremantle (DA0331/19). Given DA0331/19 fundamentally requires the demolition of the existing dwelling (DA0330/19) at No.13 Jewell Parade, this application is held pending Council determination of DA0330/19.

Heritage Matters

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

- 4.14.1 *Council will only grant planning approval for the demolition of a building or structure where it is satisfied that the building or structure:*
 - (a) *has limited or no cultural heritage significance, and*
 - (b) *does not make a significant contribution to the broader cultural heritage significance and character of the locality in which it is located.*
- 4.14.2 *In considering an application under 4.14.1, Council shall have regard to any heritage assessment required under the Planning and Development (Local Planning Schemes) Regulations 2015.*

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

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

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

It is recognised that 13 Jewell Parade has not benefitted from a maintenance regime consistent with its level of significance. However, it is considered that the detrimental effect of this lack of attention can be overcome and that at present it has not diminished the overall level of significance of the place. It is also considered that it is possible to enhance the place's contribution to the streetscape and local area through the implementation of a programme of careful conservation works, including maintenance. The proposal is considered to be inconsistent with clause 4.14 of LPS4 as the building has some heritage significance and does contribute to the broader cultural heritage significance and character of the locality.

The owner submitted a structural engineering report with the previous application. From this report, it was clear that the existing building was in poor condition and that the process of simply upgrading it would in itself require a 'significant removal of the existing structure'. City officers supported both of the previous applications as they proposed some sort of conservation works to preserve the existing cultural heritage. The *Heritage of Western Australia Act 1990* defines conservation as [emphasis added]:

"means, in relation to any place, the management of that place in a manner that will—

- (a) enable the cultural heritage significance of that place to be retained; and*
- (b) yield the greatest sustainable benefit for the present community without diminishing the cultural heritage significance of that place,*

and may include the preservation, stabilization, protection, restoration, reconstruction, adaptation, and maintenance of that place in accordance with relevant professional standards, and the provision of an appropriate visual setting;"

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

In stating the above since the last application's determination the *Heritage of Western Australia Act 1990* has been repealed by the Heritage Act 2018. The definition of 'conservation' has slightly changed and reads as follows:

conservation, in relation to a place of cultural heritage significance, means the conservation of the place so as to retain its cultural heritage significance, including —

- (a) maintenance, preservation, restoration, reconstruction, adaptation and interpretation of the place; and*
- (b) retention of the associations and meanings of the place; and*

(c) *retention or reintroduction of a use of the place;*

Of note in regards to previous decisions, PC refused the original “relocation and reconstruction” application partly on the basis of loss of heritage fabric, whereas the reconsidered “conservation and maintenance” application was supported on heritage grounds but refused for reasons of overdevelopment.

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

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

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

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE RECOMMENDATION ITEM PC1911- 10
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Planning committee acting under delegation 1.1:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the demolition of the existing Grouped dwelling at No. 13 (Lot 30) Jewell Parade, North Fremantle, as detailed on plans dated 2 September 2019, for the following reason(s):

- 1. The proposal is contrary to Clause 4.14 of the City of Fremantle's Local Planning Scheme No. 4 as the existing Grouped dwelling building is identified as having some cultural heritage significance and makes a contribution to the broader cultural heritage significance and character of the locality.**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

**PC1911 - 11 HIGH STREET, NO.142 (LOTS 9, 10, AND 123), FREMANTLE -
PROPOSED ADDITIONS AND ALTERATIONS TO EXISTING
COMMERCIAL DEVELOPMENT (JK DA0417/17)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1: Amended Plans
Additional information: 1: Site Photos
2: Schedule of Submissions

SUMMARY

Approval is sought for construction of a covered bicycle parking facility and associated works to a pedestrian paved area, road kerbs and a loading bay on open land in front of the existing building at No. 142 High Street, Fremantle.

The development application was originally lodged in August 2017. The City declined to assess and determine the application at that time on the basis that the land to which the application relates was Crown land (part of the High Street road reserve). The applicant applied to the State Administrative Tribunal (SAT) for review of the City's decision, on the basis that it constituted a deemed refusal of the development application. Following preliminary hearings the SAT referred the matter to the Supreme Court to determine the ownership of the land.

On 18 April 2019 the Supreme Court handed down a decision that the land was part of the title of the property at No.142 High Street owned by the applicant. The City lodged an appeal against this judgment and these appeal proceedings are still in progress.

Without prejudice to the proceedings in the Court of Appeal to resolve the issue of ownership of the land, the SAT arranged mediation hearings regarding the development application involving the applicant and the City, on the premise that mediation discussions were about development that could take place on the land on the basis of its current status as land owned by the applicant. Following this mediation, amended plans were submitted and an order of the SAT requires the City to reconsider its decision having regard to the amended plans by 27 November 2019.

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) with regard to land use (Use not listed) and Local Planning Policy 3.1.5 (design and public realm interface)

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for construction of a covered bicycle parking facility and associated works to road kerbs and a loading bay on open land in front of the existing building at No. 142 High Street, Fremantle.

The current amended plans submitted on 2 September 2019 indicate the following proposed works:

- Construction of two free-standing covered bicycle parking structures, each comprising eight galvanised tubular steel bike parking hoops to standard AS 2890.3 design, set into bitumen beneath a solid flat roof structure with dimensions of 10.8m x 3m. Each roof would be edged with a 550mm deep fascia constructed of powder coated aluminium. The maximum height of the structures above existing ground level would be 3.55m. The long edge of each roof structure closest to the building at 142 High Street would be aligned with, but structurally separate from, the existing flat awning projecting from the face of the building. The two structures would also each include three vertical decorative panels constructed of laser-cut aluminium sheet displaying fishing and coastal-themed images. An uncovered space 9.5m wide would be maintained between the two structures.
- Power and compressed air services and several bollards.
- Solar panel (60 panel system) addition to roof area of the existing building.
- Modifications to kerb alignments including sections of mountable kerb to allow access to the bike parking hoops, and revisions to the configuration of a service vehicle loading bay at the south-western end of the site frontage to High Street.

Development plans are included as attachment 1.

Site/application information

Date received:	25 August 2017
Owner name:	Imago Holdings Pty Ltd
Submitted by:	Imago Holdings Pty Ltd
Scheme:	City Centre
Heritage listing:	Not Listed
Existing land use:	Various Commercial
Use class:	Use Not Listed
Use permissibility:	Discretionary



CONSULTATION

External referrals

Public Transport Authority

The Public Transport Authority is opposed to the proposed covered bicycle parking development and would recommend that City of Fremantle reject the development application for the following reasons (summarised):

- The proposed development would necessitate relocation of bus stop 10876 and would result in an outcome detrimental to the broader community. The stop has served a significant number of passenger boardings - 34,319 boardings and a further 1,029 alightings on the bus routes 160, 501 and 502 in the period June 2016 to May 2017 (the last continuous twelve month period of the bus stop's operation prior to disruptions caused by roadworks).
- The above boarding figures do not include Fremantle CAT service boardings as CAT services are free and not recorded by the ticketing system. It can be conservatively estimated that the stop achieves a further 13,000 – 14,000 CAT boardings/ alightings per annum.
- The PTA believes that bus stop 10876 is optimally located. Its positioning is sound from the perspective of distance between adjacent stops along with proximity to attractors. The stop's current location is compliant with the Road Traffic Code.
- The stop is the closest bus stop to the eastern end of Kings Square. Given the significant Kings Square upgrade project and the anticipated increase in activation of the precinct, it is envisaged that bus passenger throughput at the subject site will measurably increase upon completion of the Kings Square project.

- Any alternative High Street bus stop location within the vicinity of the current location would require the City of Fremantle to forego up to five on-street parking bays for the purposes of providing a suitable bus embayment, which is likely to be to the detriment of adjacent businesses. It would also involve costs for revision of public-facing information (i.e. timetables, maps, etc.) along with disability access upgrade costs.

The PTA has also advised that the only circumstances under which a bus stop may be placed on privately owned (i.e. non-road reserve land) are:

1. When the Public Transport Authority (PTA) owns or controls the land (i.e. PTA has freehold title or is the lessee); or
2. Where the owner of the land consents to the installation of the bus stop. This circumstance exists at some shopping centres and privately owned schools.

The PTA does not have legislated powers with respect to installing bus stops on privately owned land (without the landowner's consent).

Internal referrals

Infrastructure and Project Delivery and City Design & Projects

Similar comments made by both business units are summarised as follows:

- The proposal does not meet safety standards for lateral clearance between the structure and the existing High Street road reservation.
- The 950mm wide cycle lane shown indicatively on the application plans (not part of the development under consideration as it is on land which is undisputed Crown land within the High Street road reserve) does not meet minimum width requirements in current Austroads standards.
- Easements would be required to ensure access to existing local government and public authority services within the application site (e.g. City of Fremantle drainage infrastructure, telecommunications and electricity services).
- The applicant's liability for any accidents/damage involving structures on the applicant's land should be clarified.
- The overall design quality of the bike parking structures falls well short of the design excellence the City is trying to generate in and around Kings Square.

Appropriate conditions and advice notes are recommended in response to the above advice.

Building Department

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. Appropriate advice note has been included.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, due to the discretions sought (including use of the land as a bicycle parking facility being a use not listed under Local Planning scheme No. 4). The advertising period concluded on 25 September 2019, and 18 submissions were received, 17 of which supported the proposal and one raising concerns in relation to the proposal. A list of the comments received during the consultation is provided as additional information item 2. The following comments were raised (summarised):

In support of the proposal:

- It will be a great addition to the CBD.
- the bicycle parking facility will bring more customers here, make business more active
- It's a positive addition to an area of Fremantle needing rejuvenation.

Objecting to or raising concerns in relation to the proposal:

Loss of street parking is a poor outcome

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. In this particular application the areas outlined below require discretionary assessment against LPS4 and some local planning policy provisions:

- Land Use (Use not listed)
- Local Planning Policy 3.1.5 – public realm provisions

The above matters are discussed below.

Background

The subject site is located on the north side of High Street, between its intersections with Queen Street and Josephson Street. The property addressed as No. 142 High Street comprises three lots (lots 9, 10 and 123) with a total land area of approximately 2230m². The majority of the subject site is developed with a single storey building constructed in the 1960's which is divided into a series of retail/commercial units, some accessed via an internalised pedestrian arcade, but also includes open land to the front of the building. The site is zoned City Centre and has a residential density coding of R-AC3. The site is not individually heritage listed or located within a heritage area.

On 25 August 2017, the applicant submitted an application for Planning Approval for the construction of a private bicycle parking facility in the 'forecourt' area of the subject site, an area of approximately 330m² currently comprised of a paved area for pedestrian use and a bitumised area of road surface including a service vehicle loading zone at the western end of the site frontage. On 3 October 2017, the City advised the owner that the land the subject of the application, i.e. the approx. 330m² 'forecourt' area, was understood to be Crown land and therefore the City declined to determine the application.

Under the provisions of clause 75 of Schedule 2 (the 'Deemed provisions') of the Planning and Development (Local Planning Schemes) Regulations 2015 ('the Regulations'), if an application is not determined within the specified period (60 or 90 days depending on the nature of the application) the local government is taken to have refused the application and the applicant has a right to apply to the State Administrative Tribunal (SAT) for a review of the deemed refusal decision. In this case the applicant applied to the SAT for review in late 2017. Following preliminary hearings the Deputy President of the SAT referred the matter to the Supreme Court to determine the ownership of the land.

On 18 April 2019 Chief Justice Kenneth J Martin handed down his decision on the matter, concluding that the land was part of the title owned by the applicant. The City lodged an appeal against this judgment and these appeal proceedings are still in progress.

Without prejudice to the proceedings in the Court of Appeal to resolve the issue of ownership of the land, the SAT arranged mediation hearings regarding the development application involving the applicant and the City, on the premise that mediation discussions were about development that could take place on the land on the basis of its current status as land owned by the applicant. Following two mediation hearings, on 2 August this year the SAT issued orders requiring the applicant to file amended plans and supporting information with SAT and the City by 23 August, and inviting the City to reconsider its decision on the basis of the amended plans by 27 November 2019. These amended plans (see attachment 1) are the basis for the assessment of the development application in this report.

Land Use

Given the significant size of the proposed covered bicycle parking facility in this instance, and its ability to operate independently of the commercial tenancies within the existing building at 142 High Street, officers consider the proposal effectively constitutes a use of land in its own right. This use cannot reasonably be determined as falling within any of the use classes specified in the zoning table in LPS4, and therefore it is appropriate to assess the use as a 'use not listed' under the provisions of clause 3.4.2 of LPS4.

Clause 3.4.2 states that in the case of a use not listed, the Council may –

- (a) determine that the use is consistent with the objectives of the particular zone and is therefore permitted,
- (b) determine that the use may be consistent with the objectives of the zone and thereafter follow the advertising procedures of the Planning and Development (Local Planning Schemes) Regulations 2015 in considering an application for planning approval, or
- (c) determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.

In this case officers consider that the use falls within category (b) above.

On this basis the application has been considered having regard to the following matters for consideration set out in clause 67 of the Regulations:

- (c) 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:*
 - (xi) Environmental impacts of the development*
 - (xii) The character of the locality*
 - (xiii) Social impacts of the development*
- (y) Any submissions received on the application.*

The proposed development is considered to be consistent with the objectives of the City Centre zone as stated in LPS4:

Development within the city centre zone shall –

- (i) provide for a full range of shopping, office, administrative, social, recreation, entertainment and community services, consistent with the region-serving role of the centre and including residential uses, and*
- (ii) comply with the objectives of local planning area 1 of schedule 8,*
- (iii) conserve places of heritage significance the subject of or affected by development.*

The bicycle parking facility could be considered to provide a community service, as a facility to support visits to nearby shops and other uses by cyclists. The objectives of local planning area 1 in schedule 8 of LPS4 refer to building heights complying with the specified maximum heights. The subject site is located within sub-area 1.3.2 of local planning area 1, and the site is subject to a maximum permitted height limit of 17.5m. The height of the proposed covered bicycle parking structures is 3.55m. The proposed development would not affect any place of heritage significance.

Design and compatibility of proposed development with its setting

As stated above the proposed structures are compliant with permitted building heights for this part of City Centre local planning area under LPS4, however it is also appropriate to assess the development against the relevant provisions of Local Planning Policy 3.1.5 (LPP 3.1.5) and State Planning Policy 7.0 – Design of the Built Environment (SPP 7.0).

Under LPP 3.1.5, High Street is identified as a primary street. Section 5 of the policy (public realm) states:

- All new development along the primary street should be of an appropriate scale, design and finish (clause 5.1.1).
- Awnings should be integrated with the building design, appropriately scaled, and have a clearance height of 3 to 3.5m (clause 5.1.7).
- Footpath widths should be maximised and development should be set back to correlate with the widened road reserve on adjoining lots (clause 5.1.18).
- Any area where the building is set back from the lot boundary should be treated as part of the adjacent pedestrian domain (clause 5.1.9).

SSP 7.0 contains a set of principles of good design, including the following which are considered to be relevant to assessment of the proposed development:

- The design of the space should be suited to its intended purpose whilst maintaining good relationships to other spaces, and ease of use (functionality and build quality).
- Movement (on foot, by bicycle, by car or by bus) should be easy for everyone who uses the development, and spaces should provide a clear distinction between public and private spaces (legibility).
- Design should provide a positive, clearly defined relationship between public and private spaces and should address the need to provide optimal safety and security to the adjacent public realm (safety).

The proposal in its amended form has reduced the size and bulk of the covered structures over the bike parking hoops, and provided a 9.5m wide open space between the two structures. This assists in maintaining views, particularly for pedestrians, along High Street and also visual permeability between the main building façade and the street. It would be preferable for the roofs over the bike parking hoops to be integrated with the projecting awnings on the façade of the existing building (including being set at the same height), but the applicant has declined to do this on grounds that due to the age of the building (early 1960's) the structural condition of the awnings is unknown and the structure could be adversely affected by connecting the new roofs to it. The height from ground level to the underside of the existing building awnings is approximately 3.35m, although existing signs for the shop units suspended from the underside of the awning extend approximately 600mm lower. The height to the underside of the roofs of the new structures, although lower than the existing awnings, is 2.75m above the paved pedestrian area beneath half the roof area and 3.0m above the ground level where the bike parking hoops are located. Although not fully in accordance with the height clearance requirements for awnings in LPP 3.1.5, it is considered that these provide adequate functional clearance for pedestrians and cyclists using the area.

The amended design is considered to satisfactorily separate pedestrian movements from cyclists entering and leaving the bike parking area, and provide adequate delineation between the bike parking area and land which is undisputed Crown land containing the vehicle carriageway in High Street. The definition of space within the subject site intended for pedestrian use is not easily distinguishable from nearby sections of footpath within the High Street road reserve, and it might be considered that this does not provide the legible distinction between public and private spaces which SPP 7.0 promotes. In terms of overall quality of design and finish, the covered structures are fairly utilitarian but do reflect to some degree the predominantly horizontal form of the existing building. Limited detail is provided of materials and colour finishes which are stated to be powder coated metal, and if approval is granted officers consider it would be appropriate to impose a condition requiring submission of material samples for approval by the City prior to commencement of development. On balance, officers consider the proposal sufficiently addresses the policy objectives of LPP 3.1.5 and SPP 7.0 to be considered acceptable.

Other matters

The proposal has significant implications in terms of displacement of the PTA bus stop and access to existing public authority infrastructure within the application site. However, given the Order of the SAT for the City to reconsider the application on the basis that the development would be on land owned by the applicant (notwithstanding the ongoing legal proceedings regarding ownership) there is limited scope to give weight to these matters on planning grounds in determining the development application. The PTA advice acknowledges that a bus stop cannot be installed on private land without the landowner's consent. If the PTA and the City did want to retain a bus stop along this section of High Street within land which is undisputed road reserve, significant works probably involving carriageway realignment would need to be considered. This is a matter requiring separate consideration outside the scope of determining the development application.

CONCLUSION

Despite legal proceedings regarding the ownership of the subject land which are still ongoing and very unlikely to be concluded before the end of 2019, the SAT has issued an order requiring the City to reconsider the proposed development by 27 November on the basis that it would be occurring on land owned by the applicant. Officers have assessed the application on this basis and although the design merit of the covered structures is open to debate, it is recommended that subject to the imposition of appropriate conditions including one requiring further details of materials and finishes, planning approval be granted.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

- Fremantle is recognised as a pedestrian and cycle friendly city.

Green Plan 2020

- There are no existing trees within the subject site.

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, additions and alterations to existing commercial development at No.142 (Lot 9, 10 and 123) High Street, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 2 September 2019. It does not relate to any other development on this lot or the adjoining road reservations and must substantially commence within four years from the date of this decision letter.
2. All storm water discharge shall be contained and disposed of on site or otherwise approved by the City of Fremantle.
3. Prior to the issue of a building permit for the development hereby approved, storm water disposal plans, details and calculations must be submitted for approval by the City of Fremantle and thereafter implemented, constructed and maintained to the satisfaction of the City of Fremantle.
4. All works hereby approved, including any footings shall be wholly located within the cadastral boundaries of the subject site (No.142 (Lots 9, 10 and 123) High Street, Fremantle).
5. Prior to the issue of a Building Permit for the development hereby approved, final details of the external materials, colours and finishes of the proposed development, including a physical sample board or materials is to be submitted and approved 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 Note(s):

- 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(s) is advised that any damage caused by future vehicle movements in High Street road reservation the City is not liable for these actions.
- iii. The applicant is advised that separate development approval will be required if it is proposed to use any part of the outdoor paved area shown on the application plans for dining floor space associated with any existing restaurant / fast food tenancies on the site.

AMENDMENT 1

Moved: Cr Rachel Pemberton

Seconded: Cr Andrew Sullivan

Add the following advice note iv:

- iv. **The applicant is advised that the proposed bicycle lane does not form part of this approval.**

Amendment carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

Reason for change:

The applicant is advised that the proposed bicycle lane is located outside the property boundary of the subject site and has therefore not been considered as part of this application for approval.

AMENDMENT 2

Moved: Cr Rachel Pemberton

Seconded: Cr Andrew Sullivan

To amend the description of the proposed development to read as follows:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, bike parking facility addition to existing commercial development at No.142 (Lot 9, 10 and 123) High Street, Fremantle, subject to the following condition(s):

Amendment carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

Reason for change:

To specify that the approval is for the construction of the proposed bike parking facility only.

COMMITTEE DECISION ITEM PC1911 - 11
(Amended officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, bike parking facility addition to existing commercial development at No.142 (Lot 9, 10 and 123) High Street, Fremantle, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 2 September 2019. It does not relate to any other development on this lot or the adjoining road reservations and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on site or otherwise approved by the City of Fremantle.**
- 3. Prior to the issue of a building permit for the development hereby approved, storm water disposal plans, details and calculations must be submitted for approval by the City of Fremantle and thereafter implemented, constructed and maintained to the satisfaction of the City of Fremantle.**
- 4. All works hereby approved, including any footings shall be wholly located within the cadastral boundaries of the subject site (No.142 (Lots 9, 10 and 123) High Street, Fremantle).**
- 5. Prior to the issue of a Building Permit for the development hereby approved, final details of the external materials, colours and finishes of the proposed development, including a physical sample board or materials is to be submitted and approved 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 Note(s):

- 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(s) is advised that any damage caused by future vehicle movements in High Street road reservation the City is not liable for these actions.**
- iii. The applicant is advised that separate development approval will be required if it is proposed to use any part of the outdoor paved area shown on the application plans for dining floor space associated with any existing restaurant / fast food tenancies on the site.**
- iv. The applicant is advised that the proposed bike lane does not form part of this approval**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

11.1 Deferred items

**PC1911 - 2 DEFERRED ITEM - COLLICK STREET, NO.13 (LOT 1380),
HILTON - TWO, SINGLE STOREY GROUPED DWELLINGS - (TG
DA0262/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda Attachments: 1: Amended Development Plans
Additional Information: 1: Site photos

SUMMARY

Approval is sought for two, single storey Grouped dwellings at 13 Collick Street, Hilton.

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:

- Land use
- Building design (roof design)
- Building height (external wall)
- Boundary wall
- Street walls and fences
- Outdoor living area location
- Visual privacy
- Site works
- Retaining walls
- External fixtures.

The original application was presented to the PC at its meeting held on 2 October 2019 with a recommendation for refusal. PC resolved to:

Refer the application to the Administration with the advice that the Planning Committee is not prepared to grant planning approval to the application for the two, single storey grouped dwellings at No. 13 (Lot 1380) Collick Street, Hilton, based on the current submitted plans, and invite the applicant, prior to the next appropriate Planning Committee meeting, to consider amending the proposal to address the concerns relating to the appearance of the front dwelling in accordance with LPP3.7 including roof form, building height, excavation, front fence and landscaping.

In response to the PC resolution, the applicant submitted amended plans on 14 October 2019 amending the proposed roof form, increasing the finished floor levels of the proposed dwellings, reducing the height of the front fence

and introducing additional landscaping detail. The increase to the finished floor level of the dwellings results in reduced excavation to the primary street setback area however it increases the height of fill and retaining to the eastern property boundary.

The amended plans have been assessed against the relevant requirements and the Planning Committee's reasons for deferral and are considered to address the concerns of the Committee and address the requirements of Local Planning Policy 3.7.

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for two single storey Grouped dwellings to an existing vacant site at 13 Collick Street, Hilton. The proposed works include:

- One single storey four bedroom Grouped dwelling to the front lot.
- One single storey three bedroom Grouped dwelling to the rear lot.
- Vehicle access for both dwellings is provided via a common property access leg. Car parking is provided within carports.

The applicant submitted amended plans on 28 August 2019 including the following:

- Indication of excavation to the front setback.
- Increasing the setback of the front dwelling verandah to 7m from the front boundary in accordance with LPP 3.7.
- Front fence detail.

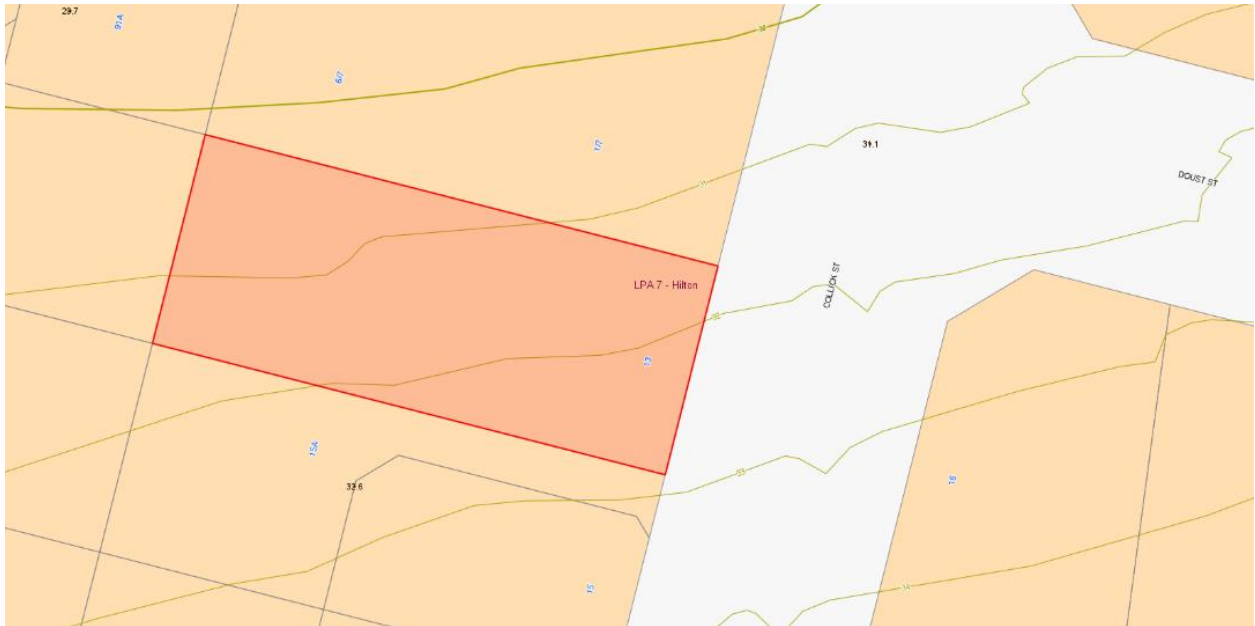
The applicant submitted further amended plans on 14 October 2019 including the following:

- Amending the roof form of the front dwelling.
- Increasing ground levels across the site by approximately 0.5m and associated changes to wall heights.
- Including additional landscaping detail.

Development plans are included as attachment 1.

Site/application information

Date received:	24 July 2019
Owner name:	M G Boni
Submitted by:	M G Boni
Scheme:	Residential R20/25
Heritage listing:	Hilton Heritage Area
Existing land use:	Vacant Site
Use class:	Grouped Dwelling
Use permissibility:	D



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 proposal involved discretionary assessment of various matters which had the potential to impact the amenity of surrounding landowners. The advertising period concluded on 16 August 2019, and no submissions were received.

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:

- Land use
- Building design (roof design)
- Building height (external wall)
- Boundary wall
- Street walls and fences
- Outdoor living area location
- Visual privacy
- Site works
- Retaining walls
- External fixtures.

The above matters are discussed below.

Background

The subject site is located on the north-west side of Collick Street, Hilton. The site has a land area of approximately 814m² and is currently vacant. The site is zoned Residential and has a density coding of R20/25. The site is not individually heritage listed but is located within the Hilton Garden Precinct Heritage Area.

The subject site slopes approximately 3 metres from south to north. The proposal involves significant ground level changes to accommodate this slope.

The site previously accommodated a single storey, post war cottage. This house was severely damaged by fire and on 6 February 2013, the City issued Planning Approval for its demolition.

Conditional approval for the subdivision of the site into two survey strata lots was issued by the Western Australian Planning Commission on 19 August 2019. The conditionally approved lot boundaries align with the proposed development.

Land Use

A Grouped dwelling is a 'D' use in the Residential 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:

- (d) 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:*
 - (xiv) Environmental impacts of the development*
 - (xv) The character of the locality*
 - (xvi) 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 proposed Grouped dwelling development is generally consistent with the aim of Local Planning Scheme No. 4 in providing appropriate residential density in the Hilton area.
- Development of this general nature is common in the immediate locality.
- The applicant has provided details confirming that the requirements of the City's policy for split coded properties will be addressed, permitting grouped dwelling development at the higher density.

Building design

Element	Requirement	Proposed	Extent of Variation
Roof design (Lot 1)	Roofs shall be simple in form incorporating no more than two roof elements facing the primary and/or secondary street.	The roof has been simplified to include two gable ends and a skillion verandah roof.	One additional roof element (skillion verandah roof)

The amended building design is considered to meet the discretionary criteria of LPP 3.7 in the following ways:

- The form is in keeping with the contemporary design of the post war period and extensively used in the suburb.
- The design is functional, without being decorative.
- The intent of these requirements was to limit the inclusion of more than two types of roof element.

Council may, at its discretion, vary the roof form requirement of the policy where it is satisfied that the development is consistent with the roof forms of dwellings within the prevailing streetscape.

For the purposes of this policy, the prevailing streetscape means the three properties adjoining either side of the subject site. In this instance these properties include 1/7, 2/7, 3/7, 15, 17 and 19 Collick Street as shown in Image 1 below.



Image 2: Subject site and properties within the 'prevailing streetscape'.

An assessment of the roof form of the adjoining dwellings has found that a majority of the properties in the prevailing streetscape include additional minor roof elements in addition to one or two primary roof elements facing the prevailing street. 1/7-3/7 Collick Street include a carport and window shade and 17 Collick Street includes a similar front patio element. Accordingly, this amended roof form for the front dwelling is considered appropriate and to be consistent with the character of the Hilton area.

Building Height

Element	Requirement	Proposed	Extent of Variation
Lot 1 - Wall Height	3.2m (min)	2.5m (above natural ground level – as amended)	0.7m
Lot 2 – Wall Height	3.5m (max)	5.5m	2m

LPP 3.7 specifies a minimum building height for elevations facing the primary street. Council may allow a lesser external wall height where it is satisfied that the proposed height is consistent with development within the prevailing streetscape and the development meets one of the following criteria:

- a) The development incorporates design elements that give the development a greater, more traditional presence to the street such as gable ends greater than the minimum external wall height or a steeper roof pitch (within the maximum roof pitch requirement of 35 degrees); or
- b) The natural ground level of the site is higher than the street so the development maintains a greater, more traditional presence to the street.

The amended building height of the front dwelling is considered to satisfy the discretionary criteria above for the following reasons:

- The appearance of the front dwelling has been simplified to provide a more traditional presence to the street with a large gable end greater than the minimum external wall height.
- The amended plans have increased the finished floor level of the proposed dwellings thereby increasing the presence of the dwelling onto the street and reducing the extent of excavation to the street setback.

The proposed building height of the rear dwelling is considered to satisfy the discretionary criteria of LPP 3.7 for the following reasons:

- The dwelling on lot 2 is located on a rear survey strata lot with minimal presence to Collick Street and complies with lot boundary setback requirements, on site open space and overshadowing requirements of the R-Codes.

Street walls and fences

Element	Requirement	Proposed	Extent of Variation
Front fence	1.2m maximum height, visually permeable above 0.3m.	1.2m high picket fencing.	No variation if fence 50% visually permeable.

The amended proposal plans have replaced the 1.5m high picket fence with a 1.2m high picket fence. In accordance with the updated requirements of LPP 3.7, it is a recommended condition of approval that this fence be visually permeable above 0.3m in accordance with the relevant statutory requirement.

Outdoor Living Area

Element	Requirement	Proposed	Extent of Variation
Location – (Lot 1)	Outdoor living area to be located outside the street setback area.	Outdoor living area partially located within street setback area.	11m ² of outdoor living area located within street setback.

The outdoor living area location is considered to meet the Design principles of the R-Codes in the following ways:

- The outdoor living area is readily accessible from the kitchen/living area.
- The front yard is open to winter sun and ventilation.

Visual privacy

Element	Requirement	Proposed	Extent of Variation
Rear Yard (Lot 2)	7.5m	Nil	7.5m

The proposed raised rear yard of lot 2 is not considered to satisfy the design principles of the R-Codes as it would have the potential to overlook adjoining rear yards if not screened. Accordingly a condition of development approval is recommended requiring the screening of this rear yard, noting that a standard diving fence would be sufficient to meet this requirement.

Site works

Element	Requirement	Proposed	Extent of Variation
Front setback excavation.	0.5m (max)	1.2m (max)	0.7m
Side and rear fill (north-east and north-west)	0.5m (max)	1.7m	1.2m

The amended proposal increases finished levels across the site by approximately 0.5m. The excavation to the front setback area is considered to meet the Design Principles of the R-Codes and be supported for the following reasons:

- The finished lot level provides for an average level of fill and excavation to achieve a level site.
- The retaining and fencing will fall across the site frontage, resulting in a clear demonstration of the natural ground level across the site frontage.

The proposed fill to the north east and north western site boundaries to the rear of the lot is considered to meet the Design principles of the R-Codes in the following ways:

- The finished lot level provides for an average level of fill and excavation to achieve a level site.

- The finished levels to the rear, although raised, can be screened by standard dividing fencing, thereby protecting visual privacy.
- The maximum level of fill adjoins a blank bedroom wall, laundry, bathroom and store area, avoiding the primary outdoor living area for 5/7 Collick Street.

Retaining walls

Element	Requirement	Proposed	Extent of Variation
Retaining walls (north-east and north-west)	1.5m	Nil	1.5m

The proposed retaining walls to the rear of the lot could be considered to meet the Design principles of the R-Codes in the following ways:

- As discussed above this aspect of the development is considered to satisfy the design principles relating to visual privacy and site works.

External fixtures

Element	Requirement	Proposed	Extent of Variation
Store room (Lot 2).	Store areas to be enclosed and a minimum dimension of 1.5m where not located within a garage.	Store located within carport, 1m dimension.	Unenclosed store which does not satisfy 1.5m minimum dimension.

The proposed store is considered to meet the Design principles of the R-Codes in the following ways:

- The store location is considered to be conveniently located, screened from view.
- The store is able to be secured through the provision of a door or gate.
- Additional secure storage is provided within the dwelling.

LPP 2.2 Split density codes and energy efficiency and sustainability schedule

As the site is to be subdivided under the higher of the split density R-Codes, the proposed development is required to meet the Energy Efficiency and Sustainability Schedule as follows:

- Dwelling to demonstrate one (1) star in excess of the current energy efficiency requirement of the Building Codes of Australia (BCA), being a total of seven stars.
- 1.5kw photovoltaic solar panel system.
- 3000L rainwater tank or grey-water reuse system.

The applicant has indicated in their application that they will adhere to all of the above requirements. If the application was to be supported, a condition of approval should be imposed to ensure these are met at building permit stage and installed on site.

CONCLUSION

In accordance with the above considerations, the amended proposal is considered to satisfactorily address the applicable statutory requirements and accordingly the proposal is recommended for approval, subject to conditions.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

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

Green Plan 2020

Encourage the retention of vegetation on private land.

1. No trees are proposed to be removed as part of this development.

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC1911 - 2 **(Officer's recommendation)**

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Two, single storey Grouped dwellings at No. 13 (Lot 1380) Collick Street, Hilton, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 14 October 2019. 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 development hereby approved shall be wholly located within the cadastral boundaries of the subject site including any footing details of the development.
3. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.
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 the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the rear yard of lot 2 located on the northern and western elevations, is to be screened in accordance with Clause 5.4.1/6.4.1 C1.1 of the Residential Design Codes by 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 finished ground level, or

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 the issue of a Building Permit for the development hereby approved, evidence is to be submitted demonstrating that both dwellings will achieve a NatHERS accredited energy efficiency star rating of 7 stars that is certified by a NatHERS energy assessor to the satisfaction of the City of Fremantle. The development is to be maintained at the approved standard to the satisfaction of the City of Fremantle.
7. Prior to occupation of the development hereby approved, a minimum 1.5kw photovoltaic solar panel system shall be installed to both Grouped dwellings and maintained thereafter to the satisfaction of the City of Fremantle.
8. Prior to occupation of the development hereby approved, a 3000L rainwater tank plumbed to a toilet and/or laundry, or an approved grey-water reuse system that collects grey water from the laundry and bathroom and re-directs it for garden irrigation/ground water recharge, shall be installed to both Grouped dwellings and maintained thereafter to the satisfaction of the City of Fremantle.
9. Prior to occupation/ use of the development hereby approved, the boundary wall located on the north west internal 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.
10. Prior to the issue of a Building Permit, all fencing within the Primary Street setback area of the subject site, shall be a maximum height of 1.2 metres and 50% visually permeable 0.3 metres (300mm) above natural ground level as per clause 1.5.1 of the City of Fremantle's *Local Planning Policy 3.7 – "Hilton Garden Suburb Precinct"* *Heritage Area Local Planning Policy*, to the satisfaction of the City of Fremantle.

11. Prior to the occupation of the development hereby approved, 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.
12. 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 note(s):

- 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) In regards to condition 5 'Visually permeable' is defined by the Residential Design Codes as:
In reference to a wall, gate, door or fence that the vertical surface has:
 - Continuous vertical or horizontal gaps of 50mm or greater width occupying not less than one third of the total surface area
 - Continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or
 - A surface offering equal or lesser obstruction to view;As viewed directly from the primary street.
- iii) Further to condition (5), the applicant is advised that a 1.8 metre high fence on top of the retaining walls will suffice in this regard. In accordance with the Dividing Fences Act you are required to reach agreement with adjoining land owners as to the height, appearance and location of the dividing fence. Further information is available at www.buildingcommission.wa.gov.au.
- iv) In relation to Condition (6), the applicant is advised that A 'NatHERS energy assessor' is defined in accordance with the Building Commission's Industry Bulletin IB 0244/2014.
- v) 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.
- vi) Fire separation for the proposed building works must comply with Part 3.7.1 of the Building Code of Australia.

- vii) The City strongly encourages deep planting zones that should be uncovered, contain a retained or planted tree to Council's specification, have a minimum dimension of 3.0m and at least 50% is to be provided on the rear 50% of the site.**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

11.2 Committee delegation

**PC1911 - 4 LEFROY ROAD, NO.146 (LOT 20), BEACONSFIELD - TWO
STOREY AND SINGLE STOREY GROUPED DWELLINGS, AND
HOME BUSINESS (BEAUTY THERAPY) (NB DA0309/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Council
Agenda attachments: 1: Development Plans
Additional information: 1: Site Photos

SUMMARY

Approval is sought for one two storey and one single storey Grouped dwellings, with a Home Business (Beauty Therapy) operating from the single storey dwelling.

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) and Residential Design Codes (R-Codes). These discretionary assessments include the following:

- Home business land use
- Lot boundary setbacks.

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for two dwellings in a side-by side layout, comprising the following:

- one two storey grouped dwelling with a detached three car garage at rear of site
- one single storey Grouped dwelling with a detached two car garage at rear of site
- the single storey dwelling (eastern dwelling) includes 4 rooms plus a bathroom and toilet located at the front of the house that are separate from the main house and intended to be used as a Home business (Beauty Therapy).

The applicant submitted amended plans on 23 September 2019 setting both dwellings back to 10 m from the street in order to comply with the upper floor setback requirements of LPP 2.9: Residential Streetscape.

Development plans are included as attachment 1.

Site/application information

Date received:	21 August 2019
Owner name:	Peter Newman, Val Newman, Krista Newman
Submitted by:	Peter Newman, Val Newman, Krista Newman
Scheme:	Residential R20
Heritage listing:	Not Listed
Existing land use:	Single house
Use class:	Grouped dwelling, Home business
Use permissibility:	D, D



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 discretion was sought against the R-Codes and the land use provisions of LPS4. The advertising period concluded on 11 September 2019, and one (1) submission was received. The following issues were raised (summarised):

- The scale and density of the building is inappropriate.
- The design seems more like an Air BNB building.
- The Home business could be turned into extra accommodation.
- The reduced setback will impact the solar passive design, privacy and building bulk to the adjoining house.
- The upper floor will cast too much morning shadow on the adjoining lot.

- The balcony is too close to the adjoining lot and should be screened to prevent overlooking.
- There are no measurements on the window heights overlooking the adjoining property and they may impact privacy.

In response to the above, the applicant submitted revised plans to address the above issues as follows:

- Screening was provided to the western elevation of the balcony to prevent direct overlooking.
- Sill heights were provided on the western elevation windows to demonstrate compliance with the visual privacy requirements of the R-Codes.

Additionally, the following comments are provided by officers:

- The dwellings comply with the Deemed-to-comply open space and density requirements of the R-Codes.
- Any approved dwelling within the City of Fremantle is capable of being used as a Short Stay Dwelling without additional planning approval provided a permit is obtained under the City's Short Stay Accommodation local law.
- Because the development contains two houses on the same lot, it is classified as a Grouped dwelling. The Home business cannot be converted into a separate self-contained accommodation (i.e. through the provision of a kitchen) as this would be contrary to the definitions of the R-Codes. There is no discretion within the R-Codes to permit an Ancillary dwelling on a Grouped dwelling site.

The remaining comments on building bulk and setback 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. 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:

- Home business land use
- Lot boundary setback.

The above matters are discussed below.

Background

The subject site is located on the north side of Lefroy Road between Cadd Street and Smith Street across from Hilton Park. The site has a land area of approximately 994 m² and is currently vacant. The site is zoned Residential and has a density coding of R20. The site is neither listed nor located within a Heritage Area.

At the Planning Committee meeting of 3 July 2019, the committee approved two, two storey Grouped dwellings and a Home Business (Beauty Therapy) as part of DA0105/19.

After approval, the applicant changed the design of the plans to amend the setbacks and remove one of the upper floors, but retain the Home Business (Beauty Therapy) as approved. The new proposal was deemed to be substantially different from the approved development such that a new application, rather than a variation to an existing application, was required as per the guidelines of policy *LPP 1.1*:

Amendment and Extension to the Term of Planning Approval. The entire proposal was therefore treated as a new application, including the Home business (Beauty Therapy), and required advertising as a discretionary land use even though there was no change to the location, design or use of the business from that of the approved development.

Land Use

A Grouped dwelling is a 'D' use in the Residential 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:

- (e) *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:*
 - (xvii) *Environmental impacts of the development*
 - (xviii) *The character of the locality*
 - (xix) *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 Grouped dwelling is consistent with the residential character of the locality and the objectives of the residential zone.
- The Grouped dwelling meets the minimum and average site area requirements of the R-Codes and is consistent with the relevant local planning policies.

Home business

A Home business is an 'A' use in the Residential Zone, which means that the use is not permitted unless the Council has exercised its discretion by granting planning approval after giving special notice. In considering an 'A' use the Council will have regard to the matters to be considered in the Planning and Development (Local Planning Schemes) Regulations 2015, the definition within LPS4, and the objectives of the zone within LPS4.

The proposed Home business is consistent with the objectives of the zone in that it occupies an area less than 50m² (being approximately 40.6 m²), will not employ more than 2 people not members of the occupier's household, will not adversely affect the amenity of the neighbourhood, and will involve a minor increase in vehicle traffic. Ample street parking exists in the immediately adjoining neighbourhood and the floor area and nature of the business, being beauty therapy, necessarily limits the number of visitors likely to be on site at any one time.

The Home business is small in scale so as to have minimal impact on the amenity of the adjoining lots, is designed to be consistent with the existing streetscape, and will be compatible with the character of the area.

Lot boundary setback

Element	Requirement	Proposed	Extent of Variation
Unit 1 – Garage (west)	1 m	0.75 m	0.25 m
Unit 1 – Ground (west)	1.5 m	1 m	0.5 m
Unit 1 – First (west)	1.2 m	1 m	0.2 m
Unit 2 (east)	1.5 m	1 m	0.5 m

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

- The garage of unit 1 and the main building of unit 2 are both single storey buildings, which present minimal bulk and scale to the adjoining sites.
- The single storey components will have minimal impact on direct sun and ventilation to the adjoining sites and will not impact overshadowing as measured by the R-Codes.
- The ground floor of unit 1 is setback so as to have minimal impact on bulk and overshadowing to the adjoining lot.
- The adjoining western lot has a large outdoor living area stretching across the eastern side and the rear of the site, and the major openings of the house are set back in excess of 4 m from the boundary, resulting in little impact on bulk and scale from the entirety of unit 1.
- The western adjoining lot contains a covered patio area on the boundary roughly adjacent to the proposed upper floor. The remaining uncovered area will still have access to ample direct sunlight during the day.
- At 6 m high, unit 1 meets the Deemed-to-comply maximum wall height requirement of the R-Codes.
- The upper floor is only 9 m long, with the bulk of the building comprised of the ground floor.
- None of the elements present visual privacy variations to adjoining lots.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

- Increase the number of people living in Fremantle
- Increase the number of people working in Fremantle

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC1911 - 4 **(Officer's recommendation)**

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, two storey and single storey Grouped dwellings, and a Home Business (Beauty Therapy) at No. 146 (Lot 20) Lefroy Road, Beaconsfield, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 23 September 2019. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on site or otherwise approved by the City of Fremantle.**
- 3. 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.**
- 4. The Home business (Beauty Therapy) hereby permitted shall have hours of operation that do not exceed normal trading hours, i.e. 8:00 am to 6:00 pm on Monday, Tuesday, Wednesday, and Friday; 8:00 am to 9:00 pm on Thursday; and 8:00 am to 5:00 pm on Saturday. Sunday trading is not permitted.**
- 5. This approval allows the Home business (Beauty Therapy) hereby permitted to be conducted by Krista Newman. If Krista Newman ceases to operate the Home business (Beauty Therapy) hereby permitted or occupy the subject site, this approval will expire.**
- 6. The Home business (Beauty Therapy) hereby permitted shall not employ more than 2 persons who are not a member of the occupier's household.**

ADVICE NOTES:

- i. **Fire separation for the proposed building works must comply with Part 3.7.1 of the Building Code of Australia.**
- ii. **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.**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

**PC1911 - 6 CHADWICK STREET, NO5A/B (LOT 1613), HILTON -
DEMOLITION OF TWO GROUPED DWELLINGS - (TG
PW0012/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda Attachments: 1: Development Plans
Additional Information 1: Site Photos
2: Heritage Assessment

SUMMARY

Approval is sought to demolish two existing Grouped dwellings at No. 5A/B Chadwick Street, Hilton (subject site). Development approval under Local Planning Scheme No. 4 would normally be required due to the site being located within the Hilton Heritage Area, however in this case as the owner of the site is the Department of Communities and the proposed works are considered to be public works, no approval is required from the City. The City is required to forward the application, with its comment, to the Western Australian Planning Commission (WAPC) for their determination under the Metropolitan Region Scheme.

The proposal is referred to the Planning Committee (PC) as officers do not have delegated authority in relation to this type of proposal and due to relevant objections being received. The cultural heritage significance of the existing dwelling and associated structures has been assessed and it is considered to contribute to the aesthetic value and cultural heritage significance of the "Hilton Garden Suburb Precinct" Heritage Area and therefore it is recommended that the PC advise the WAPC that the application is recommended for refusal.

PROPOSAL

Detail

Approval is sought for the demolition of the two existing Grouped dwellings and associated outbuildings on the subject site.

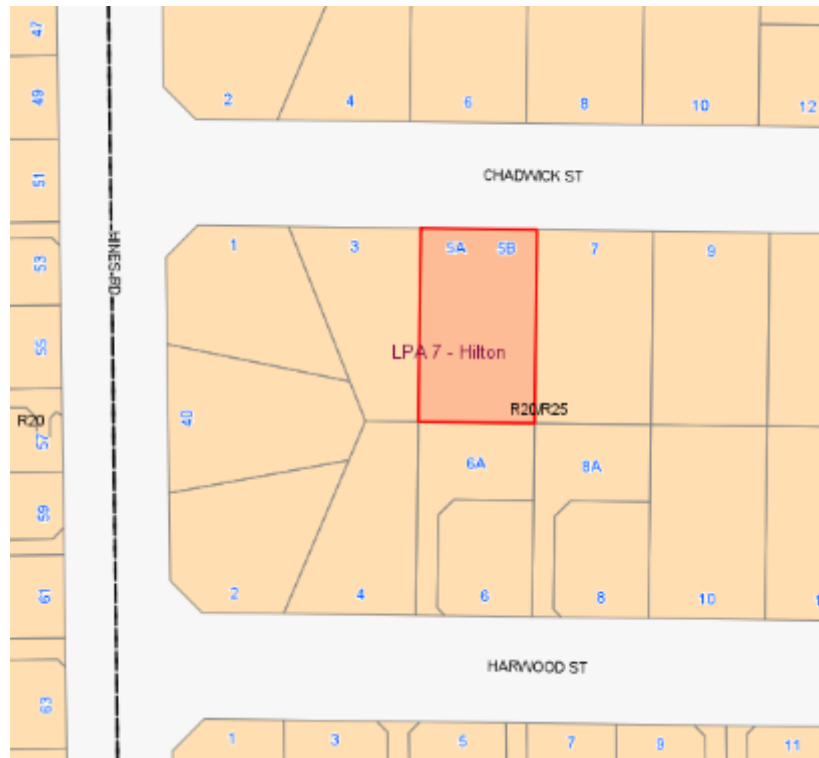
The application does not include any subsequent works or subdivision which would be subject to separate applications for approval from the City and/or the Western Australian Planning Commission (WAPC).

As the owner of the site is the Department of Communities and the proposed works are considered to be public works, no approval is required from the City. The City is required to forward the application, with its comment, to the WAPC for their determination under the Metropolitan Region Scheme.

Development plans are included as attachment 1.

Site/application information

Date received: 9 September 2019
 Owner name: Housing Authority
 Submitted by: Housing Authority
 Scheme: Residential R20/25
 Heritage listing: Hilton Heritage Area
 Existing land use: Existing Grouped Dwellings (2)
 Use class: Grouped Dwelling
 Use permissibility: D



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 proposal involves the demolition of dwellings in a heritage area. The advertising period concluded on 4 October 2019, and two submissions were received. The following issues were raised (summarised):

- Approval to demolish these dwellings may set a precedent.
- The existing dwellings are able to be renovated and sold.
- The proposed demolition is contrary to the preservation of the heritage character of the locality.
- Future development of the site may result in four dwellings being built.
- Future development of the site may block northern light to adjoining properties.

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

- All applications for demolition of dwellings in a heritage area are considered on a case by case basis on their merits.
- The Housing Authority has chosen to apply for the demolition of the dwellings, rather than any renovation.
- Based on site area, the subject site does not appear to exhibit the ability to be developed at a density of four dwellings on site.
- Any future redevelopment of the site would involve consideration of the development against the requirements of the Residential Design Codes, which includes consideration of the impact of the development on access to sunlight for adjoining properties. No further development of the site following any demolition approval has been proposed.

The remaining comments are addressed in the officer comments below.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, and relevant Council local planning policies. In this particular application the following area requires a discretionary assessment:

- ☐ Demolition of dwelling in heritage area

The above matter is discussed below.

Background

The subject site is located on the southern side of Chadwick Street in Hilton. The site has a land area of approximately 809m² and is currently occupied by two Grouped dwellings and associated outbuildings. The sites are zoned Residential and have a split density coding of R20/25.

The sites are not individually heritage listed however they are located within the "Hilton Garden Suburb Precinct" Heritage Area.

The site adjoins other residential dwellings to the west, east and south. The northern side of Chadwick Street is also occupied by residential dwellings. The subject site slopes approximately one metre from west to east. A search of the property file has revealed no relevant history for the site.

Demolition of Dwelling in Heritage Area

In approving an application for demolition, Council is to be satisfied of the following in accordance with clause 4.14.1 of LPS4:

"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 existing dwellings at 5a/b Chadwick Street are a simple painted brick and tile duplex that is considered to contribute to the cohesive character of the streetscape and the “Hilton Garden Suburb Precinct” Heritage Area.

The City’s heritage assessment concludes that the dwellings should be retained for their contribution to the aesthetic value and cultural heritage significance of the “Hilton Garden Suburb Precinct” Heritage Area; therefore the proposed demolition would not be acceptable. Accordingly, the demolition of the dwellings is considered to be detrimental to the character of the heritage area and is not supported.

CONCLUSION

In accordance with the above, the dwellings are considered to contribute to the heritage significance and character of the locality. Accordingly its demolition is recommended for refusal by the WAPC.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC1911-6
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Frank Mofflin

Planning committee acting under delegation 1.1:

REFER to the Western Australian Planning Commission with a recommendation for REFUSAL under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Public works application for demolition of two existing Grouped dwellings at No. 5a/b Chadwick Street (Lot 1613), Hilton, for the following reason:

- 1. The proposed demolition of the existing dwellings on site is not supported in accordance with clause 4.14.1 of Local Planning Scheme No. 4 (LPS4) as the existing dwellings are considered to have cultural heritage significance and to make a contribution to the broader cultural heritage significance and character of the Hilton Locality which is a prescribed heritage area under LPS4.**
- 2. The proposal is detrimental to the amenity of the area, detrimental to the cultural heritage significance 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), (l) and (n) of the Deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015.**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

**PC1911 - 7 COLLICK STREET, NO. 28A/B (LOT 32), HILTON – DEMOLITION
OF TWO GROUPED DWELLINGS - (TG PW0013/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1: Development Plans
Additional information: 1: Site Photos
2: Heritage Assessment

SUMMARY

Approval is sought to demolish two existing Grouped dwellings at No. 28A/B Collick Street, Hilton (subject site). Development approval under Local Planning Scheme No. 4 would normally be required due to the site being located within the Hilton Heritage Area, however in this case as the owner of the site is the Department of Communities and the proposed works are considered to be public works, no approval is required from the City. The City is required to forward the application, with its comment, to the Western Australian Planning Commission (WAPC) for their determination under the Metropolitan Region Scheme.

The proposal is referred to the Planning Committee (PC) as officers do not have delegated authority in relation to this type of proposal and due to relevant objections being received. The cultural heritage significance of the existing dwelling and associated structures has been assessed and it is considered to contribute to the aesthetic value and cultural heritage significance of the “Hilton Garden Suburb Precinct” Heritage Area and therefore it is recommended that the PC advise the WAPC that the application is recommended for refusal.

PROPOSAL

Detail

Approval is sought for the demolition of the two existing Grouped dwellings and associated outbuildings on the subject site.

The application does not include any subsequent works however the City received an application for ‘side by side’ subdivision of the subject site for comment. This subdivision application is still awaiting determination from the WAPC.

As the owner of the site is the Department of Communities and the proposed works are considered to be public works, no approval is required from the City. The City is required to forward the application, with its comment, to the WAPC for their determination under the Metropolitan Region Scheme.

Development plans are included as attachment 1.

Site/application information

Date received: 9 September 2019
 Owner name: Housing Authority
 Submitted by: Housing Authority
 Scheme: Residential R20/25
 Heritage listing: Hilton Heritage Area
 Existing land use: Existing Grouped Dwellings (2)
 Use class: Grouped Dwelling
 Use permissibility: D



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 proposal involves the demolition of dwellings in a heritage area. The advertising period concluded on 4 October 2019, and three submissions were received, two raising concerns in relation to the proposal. The following issues were raised (summarised):

- The dwellings contribute to the character of the 'Hilton Garden Precinct' Heritage Area locality and the immediate streetscape of Collick Street and should be retained for this reason.
- The demolition of the dwellings will "weaken" the overall heritage value of the locality.
- The demolition of the dwellings will permit future 'side by side' subdivision which will be out of character with the locality.

It is noted that Local Planning Policy 3.7 recommends that subdivision within the Hilton Heritage Area be of a battleaxe or survey strata form with one lot behind the other, however the submitted subdivision application is to be determined by the WAPC. 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. In this particular application the following area requires a discretionary assessment:

- ☐ Demolition of dwelling in heritage area

The above matter is discussed below.

Background

The subject site is located on the eastern side of Collick Street in Hilton. The site has a land area of approximately 802m² and is currently occupied by two Grouped dwellings and associated additions. The sites are zoned Residential and have a split density coding of R20/25.

The sites are not individually heritage listed however it is located within the 'Hilton Garden Precinct' Heritage Area.

The site adjoins other residential dwellings to the north, south and east. The site faces the street intersection of Collick Street and Joslin Street. The subject site slopes approximately one metre from west to east. A search of the property file has revealed that the WAPC is currently considering an application for the subdivision of the subject site which has yet to be determined. The City recommended that the subdivision application not be supported as 'side by side' subdivision is contrary to the requirements of LPP 3.7 and the subdivision plan indicated that the site was to be cleared of all works, including the existing dwellings.

Demolition of Dwelling in Heritage Area

In approving an application for demolition, Council is to be satisfied of the following in accordance with clause 4.14.1 of LPS4:

"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 existing dwellings at 28A/B Collick Street are simply composed and modest examples of a brick and tile grouped dwelling duplex that is considered to contribute to the cohesive character of the streetscape and the "Hilton Garden Suburb Precinct" Heritage Area.

The City's heritage assessment concludes that the dwellings should be retained for their contribution to the aesthetic value and cultural heritage significance of the "Hilton Garden Suburb Precinct" Heritage Area; therefore the proposed demolition would not be acceptable. Accordingly, the demolition of the dwellings is considered to be detrimental to the character of the heritage area and is not supported.

CONCLUSION

In accordance with the above, the dwellings are considered to contribute to the heritage significance or character of the locality. Accordingly, the demolition is recommended for refusal by the WAPC.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC1911 - 7 **(Officer's recommendation)**

Moved: Cr Bryn Jones

Seconded: Cr Frank Mofflin

Planning committee acting under delegation 1.1:

REFER to the Western Australian Planning Commission with a recommendation for REFUSAL under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Public works application for demolition of two existing Grouped dwellings at No. 28A/B Chadwick Street (Lot 32), Hilton, for the following reason:

- 1. The proposed demolition of the existing dwellings on site is not supported in accordance with clause 4.14.1 of Local Planning Scheme No. 4 (LPS4) as the existing dwellings are considered to have cultural heritage significance and to make a contribution to the broader cultural heritage significance and character of the Hilton Locality which is a prescribed heritage area under LPS4.**
- 2. The proposal is detrimental to the amenity of the area, detrimental to the cultural heritage significance 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), (l) and (n) of the Deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015.**

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

**PC1911 - 8 SOUTH TERRACE, NO.240 & 242 (LOTS 30 & 31), SOUTH
FREMANTLE - PARTIAL CHANGE OF USE TO RESTAURANT
AND SMALL BAR TO EXISTING BUILDING (TG DA0349/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1: Development Plans
Additional information: 1: Site Photos

SUMMARY

Approval is sought for a change of use for two existing shop tenancies at 240/242 South Street, South Fremantle. These tenancies are currently under construction in accordance with an approved development for the site comprising a mixed use development.

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) and Local Planning Policies. These discretionary assessments include the following:

- Land use (Restaurant and Small Bar).
- On site car parking provision.

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a change of use for two under construction tenancies at 240/242 South Terrace, South Fremantle. As potential tenants for the proposed Restaurant and Small bar have not been found, final details of building fit out, business operation, and signage are not proposed in this application. The proposal includes:

- The change of use of the northern ground floor tenancy (70m²) from Shop to a Restaurant (Café).
- The change of use of the southern ground floor tenancy (90m²) from Shop to a Small Bar.

The applicant submitted additional indicative details in relation to the proposal on 8 October 2019 which are as follows:

Hours of Operation

Restaurant: 11:30am-9pm.

Small Bar: 3pm-10pm.

Staffing

1-2 staff for each tenancy.

Patronage

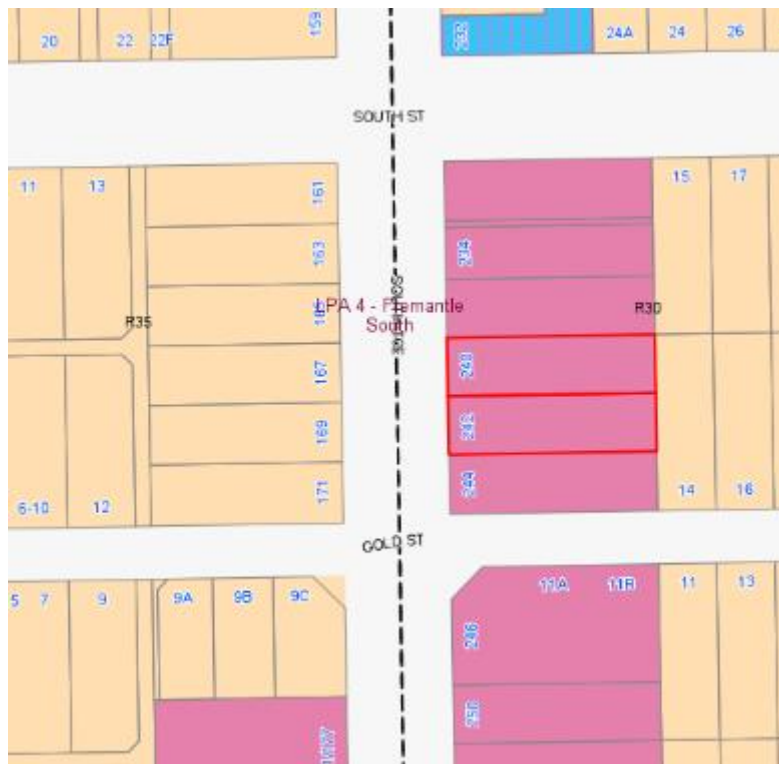
Restaurant: 20-30 patrons (subject to health approvals).

Small bar: 20-50 patrons (subject to health approvals).

Development plans are included as attachment 1.

Site/application information

Date received:	16 September 2019
Owner name:	Lemeg Ventures Pty Ltd
Submitted by:	As above
Scheme:	Mixed Use
Heritage listing:	South Fremantle Heritage Area
Existing land use:	Shop and Multiple dwellings
Use class:	Restaurant and Small Bar
Use permissibility:	A, A



CONSULTATION

External referrals

Nil required.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the proposed land use was required to be advertised in accordance with Local Planning Scheme No. 4 and discretion was requested to be exercised in relation to onsite car parking provision for the proposed uses. The advertising period concluded on 3

October 2019, and one submission was received. The following issues were raised (summarised):

- Concerns in relation to the lack of car parking in the area.
- Queries in relation to the inclusion of additional onsite parking.
- Concerns in relation to patrons, traffic flow and safety due to the proximity of the subject site to the intersection of South Terrace and South Street.
- Noise pollution concerns.
- Concerns with regard to hours of operation.

In response to the above, the applicant submitted the following response (summarised):

- Parking availability is a Council issue for the immediate locality
- The application does not provide any extra bays on site and no parking is provided for visitors to the restaurant and café, accordingly no additional traffic in and out of the site is proposed.
- Additional onsite car parking may not be required in the future.
- The development provides greater onsite car parking for the commercial tenancies than the majority of businesses in the immediate locality, some of which have no effective car parking on site.

It is noted that the applicant also provided supporting justification in relation to onsite parking provision in their original application.

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

- The development will be required to comply with the relevant requirements of the *Environmental Protection (Noise) Regulations 1997* and if the premises are found to be in breach of these requirements in their operation, modifications will be required in order to comply. It is a recommended condition of approval that the applicant prepares and complies with a noise assessment from a suitably qualified acoustic consultant prior to the occupation of the tenancies by the uses hereby recommended for approval.
- A future internal fitout of the tenancies will be subject to a separate planning application and any such noise attenuation measures identified could be incorporated into this future application.
- The applicant has provided indicative hours of operation which are considered consistent with the usual operation of land uses of this nature. In order to consider potential changes in the future a condition of approval is recommended requiring the submission and approval of business management plans for the land uses hereby approved. This permits the applicant to confirm the final details of the proposed uses to the City's satisfaction prior to their occupation and operation of the uses hereby approved.

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 Local Planning Scheme No. 4 and relevant Council local planning policies. Where a proposal does not meet the relevant Scheme or policy assessment criteria, an assessment is made against the relevant discretionary criteria. In this particular application the areas outlined below do not meet the Scheme or policy requirements and require a discretionary assessment:

- Land use (Restaurant and Small Bar).
- Onsite parking

The above matters are discussed below.

Background

The subject site is located on the eastern side of South Terrace, close to the intersection with South Street. The site has a land area of approximately 876m² and is currently occupied by an under construction two storey mixed use development. The site is zoned Mixed Use and has a density coding of R30. The site is not individually heritage listed however is located within the South Fremantle Heritage Area.

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

- DA0238/17 – Two storey mixed use development.
- DAP004/17 – Two storey mixed use development.
- DAPV003/19 – Change of use to Restaurant and Small Bar.

It is noted that DAPV003/19 was not accepted by the Development Assessment Panel as a variation application as the proposed change was considered to be too substantial to form a variation to the original approval. The applicant was advised to lodge the change of use development application which is the subject of this report.

Land Use

A Restaurant and Small Bar are 'A' uses in the Mixed Use Zone, which means that the use is not permitted unless the Council has exercised its discretion by granting planning approval after giving special notice (advertising) in accordance with clause 64 of the Regulations. In considering an 'A' 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:

- (f) *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:*
 - (xx) *Environmental impacts of the development*
 - (xxi) *The character of the locality*
 - (xxii) *Social impacts of the development*

(y) *Any submissions received on the application.*

It is considered that the proposed use of Small bar and Restaurant is consistent with the objectives of the Mixed Use zone for the following reasons:

- The proposed Small Bar and Restaurant could make a positive contribution to the local centre, complementing existing uses, adding vitality to the centre and providing entertainment/recreation venues for the locality, accessible to the local and broader community.
- It is considered that the proposed uses would not be significantly detrimental to the amenity of adjacent residential properties. The proposed uses will cater for a limited number of patrons at any one time per the applicant's submission. In light of the modest size of both tenancies and the stated nature of the proposed businesses, it is considered that the potential for significant adverse impact on the amenity of residential properties can be appropriately managed.
- In relation to the proposed Small Bar land use, it is noted that in accordance with Local Planning Policy 1.7 - Development Exempt from Approval under Local Planning Scheme No. 4 a change of use from Restaurant to Small Bar is exempt from requiring planning approval in an existing building. Accordingly the applicant would have been capable of applying for two restaurant tenancies.

Onsite parking

Element	Requirement	Proposed	Extent of Variation
Restaurant (70m ²)	14 bays	2 bays	12 bays
Small Bar (90m ²)	18 bays	3 bays	15 bays
Multiple Dwellings (8)	8 bays	8 bays	Nil
Visitor bays	2 bays	2 bays	Nil
		Total shortfall	27 bays

Previous approval

Element	Requirement	Proposed	Extent of Variation
Shop tenancies (2)	11 bays	5 bays	6 bays
Multiple dwellings (8)	8 bays	8 bays	Nil
Visitor bays	2 bays	2 bays	Nil
		Total shortfall	6 bays

Per the above assessment it is considered appropriate to utilise the Restaurant car parking standard when assessing the applicable requirement for the tenancy due to the similarity in the two uses. It is noted that a change of use is not required when changing from a Restaurant use to a Small Bar for existing buildings in the Mixed use zone.

It is noted that the proposal plans do not take into account the eventual fit out of the premises which will reduce the available dining/seating area of the tenancy, resulting in a lesser car parking requirement under LPS4.

It is considered that the relaxation of parking requirements under clause 4.7.3 of LPS4 is appropriate for the following reasons:

- A review of on street car parking availability in the immediate locality is included below. Based on this assessment, it is considered that sufficient on street car parking is available in the area to support the proposed uses.
- The subject site is well serviced by public transport. A Blue CAT bus stop is located in the immediate area of the subject site and multiple bus services stop within 100m of the subject site.
- Staff parking demand for the tenancies can be accommodated in the assigned bays for these tenancies.
- The proposal plan does not show final fit out detail for either premises and it is considered that the overall parking requirement for the tenancies would be significantly reduced through the inclusion of essential services (bar and commercial kitchen etc.) for the operation of the tenancies.
- It is considered that there may be a degree of reciprocity between the Restaurant and Small Bar land uses as visitors may attend both tenancies while waiting to be seated for a meal or they may visit the small bar after a meal. There also may be some reciprocal use of on street parking bays between the subject site and surrounding land uses.



Approximate area of parking assessment

Street	Bays available
South Street east of South Terrace before Francisco Street (southern side only)	10 bays
South Street west of South Terrace before Coral Street	6 bays
Gold Street east of South Terrace	11 bays
Gold Street west of South Terrace	11 bays
South Terrace east side before Silver Street	4 bays (one half hour)
South Terrace west side before Silver Street	8 bays
Silver Street east of South Terrace	11 bays
Silver Street west of South Terrace	9 bays
Coral Street	15 bays
Francisco Street	15 bays
Total	Approximately 100 bays

In relation to the above assessment, it is noted that the bay numbers are approximate as a number of the parking areas are not individually marked. A number of these bays are restricted to a 2 hour stay limitation which is considered to be consistent with the potential time spent at a Restaurant or Small Bar land use. It is noted that some of the above streets are marked for Local Traffic Only however the parking bays are not restricted to residential permit use.

Delivery Bays

Element	Requirement	Proposed	Extent of Variation
Small bar	1 bay (1 per store area)	0 bays	1 delivery bay

The lack of specified onsite delivery bays for the tenancies is considered to be appropriate due to the small area of the subject sites.

In relation to deliveries for the proposed tenancies, it is a recommended condition of development approval that a delivery management plan be imposed to ensure that carrying out of deliveries for the premises does not unduly impact the immediate locality. It is considered that the onsite bays assigned to these uses may also provide for parking for deliveries.

Bicycle Parking

Bicycle racks are required for both the Restaurant and Small Bar tenancies in accordance with Table 2 of Local Planning Scheme No. 4. Clause 4.7.3.3 of Local Planning Scheme No. 4 permits Council to waive the bicycle rack requirements of Table 2 for a minor change of use. In this case it is considered that sufficient bicycle parking has been provided on site in accordance with the previous approval for Shop

uses in the subject tenancies and additional bicycle parking is provided in the road reserve which is considered to be sufficient to service the proposed uses.

Noise

In relation to the impact of noise from the proposed land uses, it is noted that the premises will be subject to the *Environmental Health (Noise) Regulations 1997* and will be required to comply with these requirements. As the final tenant and fitout details are yet to be confirmed for the tenancies, it is considered that a condition requiring the submission of an acoustic report demonstrating compliance with these regulations should be required as a condition of development approval.

CONCLUSION

In accordance with the above considerations, aspects of the proposal which vary the statutory planning requirements are considered to appropriately address the relevant discretionary criteria of the Scheme and Council policy. Accordingly, the proposal is recommended for approval, subject to conditions. It is considered that the final detail of the proposed land uses can be appropriately managed through a management plan required as a recommended condition of approval.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, partial change of use to Restaurant and Small Bar at No. 240 (Lots 30 and 31) South Terrace, South Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 16 September 2019. 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 the issue of a Building Permit for the development hereby approved, a report shall be submitted by a suitably qualified acoustic engineer certifying that the proposal incorporates sufficient sound attenuation measures to limit noise impact on adjoining properties to within the requirements of the Environmental Protection (Noise) Regulations 1997. Any noise attenuation measures identified in the submitted report shall be installed and maintained for the life of the development hereby approved to the satisfaction of the City of Fremantle.
3. Prior to the issue of a building permit, a Business Management Plan is to be submitted and approved for both approved land uses to the satisfaction of the City of Fremantle, including the following:
 - Hours of operation for the businesses;
 - The maximum number of employees for the businesses;
 - Delivery management plan, and
 - Parking arrangements for customers and staff.

The businesses shall operate in accordance with the approved business management plans thereafter. Any amendments to the management plan shall be submitted to, and approved by the City of Fremantle, prior to implementing the amended management plan.

4. Prior to issue of a building permit of the development hereby approved, the owner is to submit a waste management plan to the satisfaction of the City of Fremantle, detailing at a minimum the following:
 - Estimated waste generation
 - Proposed storage of receptacles
 - Collection methodology for waste
 - Additional management requirements to be implemented and maintained for the life of the development.

The Waste Management Plan must be implemented at all times 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) The applicant is advised that any signage may be subject to a separate application for planning approval.
- ii) 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.

- iii) The applicant is advised that additional information in relation to the City's waste management requirements can be found here: <https://www.fremantle.wa.gov.au/residents/waste-and-recycling>
- 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.
- v) Work on construction sites shall be limited to between 7am and 7pm on any day which is not a Sunday or Public Holiday. If work is to be done outside these hours a noise management plan must be submitted and approved by the Chief Executive Officer, City of Fremantle prior to work commencing.
- vi) All mechanical service systems including air-conditioners and pool filters etc are to be designed and installed to prevent emitted noise levels from exceeding the relevant decibel levels as set out in the Environmental Protection (Noise) Regulations 1997 (as amended).
- vii) It is recommended that the applicant engages the City's Environmental Health department to determine their obligations in obtaining an alfresco dining permit. The City's Environmental Health department can be contacted on 9432 9999 or alternatively via email at health@fremantle.wa.gov.au.
- viii) 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.

Lost: 0/6

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

PROCEDURAL MOTION

At 8.45pm the following procedural motion was moved:

COMMITTEE DECISION ITEM PC1911 - 8

Moved: Cr Andrew Sullivan

Seconded: Cr Rachel Pemberton

The item be referred to the Ordinary Council Meeting on 27 November 2019
with direction to the administration to prepare a recommendation for refusal

Carried: 6/0

Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome

**PC1911 - 9 ROSE STREET, NO.6 (LOT 21), SOUTH FREMANTLE -
UNAUTHORISED PERGOLA ADDITION AND ADDITIONS TO
EXISTING SINGLE HOUSE (JL DA0357/19)**

Meeting Date: 6 November 2019
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1: Development plans
Additional information: 1: Site Photos

SUMMARY

Approval is sought for an unauthorised pergola and proposed rear additions to the existing single house at 6 Rose Street, South Fremantle.

The proposal is referred to the Planning Committee (PC) due to the unusual nature of the unauthorised addition and its close proximity to the existing windows of an adjoining site, with comments and concerns being received that cannot be addressed through conditions of approval.

The application has been assessed against and deemed compliant with the provisions of the R-Codes and relevant Council policy.

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for an unauthorised pergola and proposed rear additions to the existing Single house at 6 Rose Street, South Fremantle. The subject site is occupied by a two storey Single house. The works (proposed and unauthorised) include:

Unauthorised

- Side (western) pergola addition

New works

- Decking over existing pool in north west corner of site,
- New room and replacement of concrete slab to existing gazebo area middle rear section of site.
- Patio addition over new concrete area

The site is known as No. 6 (Lot 21) Rose Street, South Fremantle and comprises an existing two storey dwelling located centrally on site. The property abuts a 3m wide privately owned right of way along the rear boundary. The property is zoned Residential R30. There is little change in the topography of the site or area.

The site is on the City's heritage list with a management category of level 3. The site is not within any Local Planning Policy area, but is within the South Fremantle Local Planning Area (LPA 4) and Sub Area 4.3.4.

Development plans are included as attachment 1.

Site/application information

Date received: 18 September 2019
 Owner name: National Australian Trustee
 Submitted by: S Newman
 Scheme: Residential R30
 Heritage listing: Level 3
 Existing land use: Single house
 Use class: Single House
 Use permissibility: P



CONSULTATION

External referrals

Nil required.

Community

The application was not required to be advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the proposal involved no discretionary assessment.

Notwithstanding the above, the City did receive a complaint resulting in the lodgement of this application which raised objections to the unauthorised pergola addition and its close proximity to the existing bathroom window of the western adjoining property (no.4 Rose Street, South Fremantle). Specifically, the concerns related to the blocking of the light to the window and also the unsightly visual obstruction of the addition as seen from this window.

See site photos of the unauthorised addition and the view from the subject window in additional information item 1 (Photo's 2 and 3).

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

- The proposed development has been assessed against and complies with the Deemed-to-comply requirements of the R-Codes relating to the shade cast by the development and lot boundary setbacks.
- A pergola structure does not have a required setback distance from a lot boundary as per the R-Codes.
- Whilst some natural light to the lower section of the window is restricted the level of overall impact is considered minimal. The addition still allows for a significant element of sunlight to enter the bathroom of the dwelling and given the window is obscure the visual impact is also considered negligible.

The remaining comments are addressed in the officer comment below.

OFFICER COMMENT

Statutory and policy assessment

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

Heritage Comments

The unauthorised western pergola extension is attached to the c. 1980s extension to the rear of the c. 1908 house. This pergola will not impact upon either the significant heritage fabric of the 1908 house or the streetscape of Rose Street.

The decking and new room at the rear of the site will be concealed from the street by the existing house, so it will not impact upon the streetscape of Rose Street or the 1908 house. Overall, the proposed additions will have minimal impact on the heritage significance of the house, and are therefore deemed acceptable.

Background

The site is known as No. 6 (Lot 21) Rose Street, South Fremantle and comprises an existing single storey dwelling located centrally on site. The property abuts a 3m wide privately owned right of way along the rear boundary. The property is zoned Residential and has a density coding of R30. There is little change in the topography of the site or area.

The site is on the City's heritage list with a management category of level 3. The site is not within any Local Planning Policy area, but is within the South Fremantle Local Planning Area (LPA 4) and Sub Area 4.3.4.

The site was granted planning approval on the 9 November 2009 for two storey rear additions and alteration to the existing Single house.

CONCLUSION

In accordance with the above considerations, the additions have been designed to comply with the relevant requirements of the R-Codes and Council's local planning policies.

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

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC1911 - 9 **(Officer's recommendation)**

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Planning committee acting under delegation 1.1:

APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4, unauthorised pergola addition and proposed additions and alterations to existing Single house at No.6 (Lot 21) Rose Street, South Fremantle, subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans, dated 18 September 2019. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on site or otherwise approved by the City of Fremantle.**
- 3. All works hereby approved, including any footings shall be wholly located within the cadastral boundaries of the subject site (No.6 (Lot 21) Rose Street, South Fremantle).**

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.**

Carried: 5/1

For

**Cr Bryn Jones, Cr Geoff Graham
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

Against

Cr Andrew Sullivan

PC1911 - 12 INFORMATION REPORT - NOVEMBER 2019

1. SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

Responsible Officer: Manager Development Approvals
Agenda 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 SOUTH-WEST JDAP DETERMINATIONS AND RELEVANT STATE ADMINISTRATIVE TRIBUNAL APPLICATIONS FOR REVIEW

Responsible Officer: Manager Development Approvals
Agenda attachments: Nil

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

1. Application Reference
DA0560/17
Site Address and Proposal
137 South Terrace, Fremantle – Proposed two storey Grouped dwelling and conversion of existing Ancillary dwelling to Outbuilding
Planning Committee Consideration/Decision
<ul style="list-style-type: none"> • Council refused the application at its meeting held 7 November 2018.
Current Status
<ul style="list-style-type: none"> • Currently subject of an Application for Review by the State Administrative Tribunal. • A mediation session was held in February 2019. • In accordance with a SAT direction issued on 13 February 2019, the applicant submitted revised plans for Council's reconsideration. • A Section 31 Reconsideration was considered by the Planning Committee on 1 May 2019 and OCM on 22 May 2019, where it was resolved to refuse the amended plans. • A Directions Hearing was held at the end of May where the SAT scheduled the Matter for a full hearing. • A hearing commenced on 9 September 2019, however the hearing has been adjourned until further notice to allow the applicant to address the issue of right of access/carriageway.

COMMITTEE DECISION ITEM PC1911 - 12
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Council receive the following information reports for November 2019:

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

Carried: 6/0

**Cr Bryn Jones, Cr Geoff Graham, Cr Andrew Sullivan,
Cr Rachel Pemberton, Cr Frank Mofflin, Cr Su Groome**

11.3 Council decision

Nil

12. Motions of which previous notice has been given

Nil

13. Urgent business

Nil

14. Late items

Nil

15. Confidential business

Nil

16. Closure

The Presiding Member declared the meeting closed at 9.00 pm.