



# Agenda

## Planning Committee

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Wednesday, 3 July 2019, 6.00pm



**CITY OF FREMANTLE**  
**NOTICE OF A PLANNING COMMITTEE MEETING**

Elected Members

A Planning Committee meeting of the City of Fremantle will be held on **Wednesday, 3 July 2019** in the North Fremantle Community Hall, located at 2 Thompson Road, North Fremantle commencing at 6.00 pm.



Phillida Rodic  
**Acting Director Strategic Planning and Projects**

28 June 2019

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**CITY OF FREMANTLE**  
**Planning Committee**  
**Agenda**

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**1. OFFICIAL OPENING, WELCOME AND ACKNOWLEDGEMENT**

We would like to acknowledge this land that we meet on today is the traditional lands of the Nyoongar people and that we respect their spiritual relationship with their country. We also acknowledge the Whadjuk people as the custodians of the greater Walyalup area and that their cultural and heritage beliefs are still important to the living Whadjuk people today.

**2. ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE**

Cr Bryn Jones - Leave of absence

**3. DISCLOSURES OF INTERESTS**

Elected members must disclose any interests that may affect their decision-making. They may do this in a written notice given to the CEO; or at the meeting.

**4. RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE**

There are no responses to public questions taken on notice at a previous meeting.

**5. PUBLIC QUESTION TIME**

Members of the public have the opportunity to ask a question or make a statement at council and committee meetings during public question time.

Further guidance on public question time can be viewed [here](#), or upon entering the meeting.

**6. PETITIONS**

Petitions to be presented to the committee.

Petitions may be tabled at the meeting with the agreement of the presiding member.

**7. DEPUTATIONS**

**7.1 Special deputations**

A special deputation may be made to the meeting in accordance with the City of Fremantle Meeting Procedures Policy 2018.

There are no special deputation requests.

**7.2 Presentations**

Elected members and members of the public may make presentations to the meeting in accordance with the City of Fremantle Meeting Procedures Policy 2018.

## **8. CONFIRMATION OF MINUTES**

### **Officer's recommendation**

**That the minutes of the Planning Committee meeting dated 5 June 2019 be confirmed as a true and accurate record.**

## **9. ELECTED MEMBER COMMUNICATION**

Elected members may ask questions or make personal explanations on matters not included on the agenda.

## **10. REPORTS AND RECOMMENDATIONS**

## 10.1 DEFERRED ITEMS

### PC1907 -1 HIGH STREET, NO. 223 AND 225 (LOT 100 AND 475), FREMANTLE - PARTIAL CHANGE OF USE (PUBLIC CAR PARK) AND SIGNAGE - (TG DA0093/19)

|                                   |   |
|-----------------------------------|---|
| <b>Meeting Date:</b>              | 3 July 2019   |
| <b>Responsible Officer:</b>       | Manager Development Approvals   |
| <b>Decision Making Authority:</b> | Committee   |
| <b>Attachments:</b>               | 1: Development Plans<br>2: Site Photos<br>3: Applicant response to consultation submissions |

## SUMMARY

Approval is sought for a partial change of use to public car park and associated signage at 223 and 225 High Street (Lots 100 and 475).

The proposal is referred to the Planning Committee (PC) due to comments being 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). These discretionary assessments include the following:

- Land use (Public Car Park)
- On site car parking (223 High Street)

The application is recommended for conditional approval.

## PROPOSAL

### Detail

Approval is sought for a partial change of use of existing car parks into a public carpark at 223 and 225 High Street. The works include:

- The use of all on site car parking bays on 223 High Street as a public car park,
- The use of the majority of onsite car parking bays on 225 High Street as a public car park (16 bays are proposed remain associated with the existing consulting rooms on site),
- Signage to both lots relating to the public car park use, and
- Installation of additional shade trees to landscaping strips at 225 High Street.

The site began operation as a public car park without a valid land use approval. Following contact from the City, existing signage was covered and the public car park land use ceased operation pending the resolution of the subject application.

The applicant submitted amended plans on 17 May 2019 including the following:

- Additional detail with regard to vehicle manoeuvring, deleting onsite bays to accommodate turn around on both sites.
- Additional landscaping on the 225 High Street site in existing landscaping strips.



## **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 comprised a land use which requires consultation in accordance with Local Planning Scheme No. 4. The advertising period concluded on 5 April 2019, and 11 submissions were received, 10 supporting the application and one objecting to the proposal. The following issues were raised in the objecting submission (summarised):

- The operation of a paid car park with an entrance from Holdsworth Street would encourage more traffic in the residential area,
- People parking may opt for free parking for 2 hours on the street rather than pay at a parking station, removing the availability of street parking for residents and visitors,
- It was requested that free parking passes for the subject site be made available to Holdsworth Street residents should the proposal be approved,
- The use of the site as a public car park detracts from the amenity of the area.
- Access to the public car park should be provided from High Street to reduce the impact of additional vehicle movements upon residential dwellings in Holdsworth Street.
- It was requested that some landscaping be provided to screen the site fencing facing Holdsworth Street.
- The operation of the premises as a public car park will result in underutilisation of other nearby facilities.
- A public car park is unnecessary as surrounding residences and businesses have adequate onsite parking.

In response to the above, the applicant submitted revised plans and submitted a response to the concerns raised (Attachment 3).

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

- The accommodation of the car parking at full capacity as a public carpark is consistent with its use by land uses on the subject site. While the offices in the building at 223 High Street are currently vacant and the pathology consulting room is a low intensity land use with regard to car parking, a business consistent with the approved land use could occupy the site resulting in maximum utilisation of the car parking facilities on site.
- The subject sites have approved compliant vehicle access from Holdsworth Street providing for the existing car parking bays. These bays could already be occupied at maximum capacity by the existing land uses on the subject sites.
- The parking bays on Holdsworth Street are managed by the City and are publicly available as two hour parking bays.
- The City is unable to statutorily require that landowners be provided with parking permits for the subject site.

- Only one of the subject sites (225 High Street) has compliant through access to High street, the remaining site having access from Holdsworth Street only. As the subject sites are to remain separate, a potential outcome is that one site may be redeveloped while the other remains as existing. Accordingly predicating any approval of the subject use on access across the site boundary may result in a non-compliant car park arrangement in the future.
- The applicant has submitted amended plans showing the installation of additional shade trees to existing landscaping strips. It is a recommended condition of approval that additional detail be provided with regard to landscaping and that this landscaping be maintained for the life of the use.
- The subject area has been identified as an appropriate location for the establishment of new public parking facilities in accordance with the City's Integrated Transport Strategy.
- There are some sites within the City Centre which do not provide for sufficient car parking in accordance with Local Planning Scheme No. 4 or have no car parking on site. Accordingly the subject land use is considered to support these uses.

The remaining comments are addressed in the Officer Comment section below.

## **OFFICER COMMENT**

### **Statutory and policy assessment**

The proposal has been assessed against the relevant provisions of Local Planning Scheme No. 4. Where a proposal does not meet these requirements, an assessment is made against the relevant discretionary criteria of the Scheme or policy. In this particular application the areas outlined below do not meet the policy or scheme provisions and require discretionary assessment:

- Land use (Public Car Park)
- On site car parking (223 High Street)

The above matters are discussed below.

### **Background**

The subject sites are located on the southern side of High Street and also take rear access from Holdsworth Street. The sites have a land area of approximately 2030m<sup>2</sup> (223 High Street) and 2034m<sup>2</sup> (225 High Street). Both sites accommodate existing commercial buildings including a vacant Office and Consulting Room tenancy at 223 High Street and a Consulting Room (eye clinic) tenancy at 225 High Street. The sites are zoned Mixed Use and have a density coding of R35. The existing building on 225 High Street is on the City's Heritage List as management category 2 and both sites are located in the WECA Heritage Area.

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

## 223 High Street

- On 16 January 1989, the City granted planning approval to a change of use to 'Professional Office' (DA408/88A).
- On 19 November 1990, the City granted planning approval for a change of use to 'Pathology Laboratory' at the subject site (DA408/88B).
- On 16 September 1997, the City granted planning approval to 'Signage' (DA903-97)
- On 18 May 1999 the City granted planning approval for the 'Relocation of Coolroom' at the site (DA99-416).
- On 26 September 2013, the City approved additions and alterations to the existing building (DA0415/13).
- On 2 July 2017, the City approved additions and alterations (two storey) to the existing building (DA0298/17).

## 225 High

- On 28 June 1999, the City granted approval to drain and seal the existing car park on site (DA338/99).

## Land Use

A Public Car Park is an 'A' 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 and given special notice in accordance with clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. 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:

- (a) *The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area*
- (m) *The compatibility of the development with its setting including the relationship of the development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development*
- (n) *The amenity of the locality including the following:*
  - (i) *Environmental impacts of the development*
  - (ii) *The character of the locality*
  - (iii) *Social impacts of the development*
- (y) *Any submissions received on the application.*

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

- The works component of the development comprises the installation of signage and a pay station to the subject sites only, accordingly the change to the effective land use on the subject sites is considered to be limited. The sites are currently occupied by private car parking and this is to be provided as public car parking.
- The subject site is located in an area identified in the City's *Integrated Transport Strategy 2015* as being an area preferred to accommodate public car parking to service the City Centre – that is, an area within walkable distance of, but outside, the city centre core area bounded by the Parry St/Norfolk St 'ring road'.
- The development is not considered to unduly impact the subject sites and locality with regard to environmental or social impacts.

- Having regard to the above considerations, it is considered appropriate to limit the period of approval for the operation of the public car park to five years from the date of approval. This limitation permits the review of the appropriateness of the land use in the context of the City's strategic planning objectives at this time.

### **On site car parking**

| <b>Element</b> | <b>Requirement</b>   | <b>Proposed</b>  | <b>Extent of Variation</b> |
|----------------|--|--|----------------------------|
| Car Parking    | 223 High Street<br>Vacant ground floor office tenancy: 22 parking bays<br><br>Upper floor consulting room (pathology): 10 parking bays<br><br>Total: 32 parking bays | No dedicated parking on site (parking proposed to be provided in public car park). | 32 bays                    |
|                | 225 High Street<br>Consulting room: 5 bays   | 16 bays  | Nil                        |

The provision of onsite parking for the building at 223 High Street is considered to meet the discretionary criteria of Local Planning Scheme No. 4 in the following ways:

- Sufficient car parking remains available on the subject site for the use of employees working at the existing building on site.
- Sufficient public car parking is located in the immediate locality of the subject site to accommodate visitors to and employees of the premises.
- The site is well served by public transport services along High Street with a bus stop located across the road from the subject tenancy.

### **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 LPS4. The proposed change of use is considered to be acceptable in accordance with the objectives of the Mixed Use zone. Accordingly the proposal is recommended for approval, subject to conditions.

### **STRATEGIC IMPLICATIONS**

#### Integrated Transport Strategy 2015

- Increase the number of car parking spaces outside the City Centre.

### **FINANCIAL IMPLICATIONS**

Nil

## **LEGAL IMPLICATIONS**

Nil

## **OFFICER'S RECOMMENDATION**

**Moved: Cr Bryn Jones**

**Seconded: Cr Adin Lang**

Planning committee acting under delegation 1.2:

APPROVE , under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the partial change of use to Public car park and signage at No. 223 and 225 (Lots 100 and 475) High Street, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 17 May 2019 and 14 March 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. Notwithstanding condition 1 above, no later than 5 June 2024 the public car park signage and associated infrastructure (pay station) shall be removed and the public car park use shall cease operating, to the satisfaction of the City of Fremantle.
3. Prior to commencement of the development hereby approved, the car parking and loading area(s), and vehicle access and circulation areas shown on the approved site plan, including the provision of disabled car parking, shall be constructed, drained, and line marked and provided in accordance with Clause 4.7.1(a) of the City of Fremantle Local Planning Scheme No.4, to the satisfaction of the City of Fremantle.
4. The signage hereby permitted shall not contain any flashing or moving light or radio; animation or movement in its design or structure; reflective, retro-reflective or fluorescent materials in its design structure.
5. Prior to the commencement of the land use hereby approved, a detailed landscaping plan, including information relating to species selection, reticulation, details of existing vegetation to be retained, and treatment of landscaped surfaces (i.e. mulch, lawn, synthetic grass etc), shall be submitted to and approved by the City of Fremantle.
6. Prior to the commencement of the land use hereby approved, landscaping shall be completed in accordance with the approved plans required in condition 5 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 on the site to the satisfaction of the City of Fremantle.

Advice Note

- i) Further to condition 3, the applicant is advised that the bollards located in the carpark of 225 High Street require modification to permit through access across the site.

**AMENDMENT 1**

**Moved: Cr Dave Hume**

**Seconded: Cr Jenny Archibald**

**To add the following condition 7:**

7. **Notwithstanding condition 1 above, 32 car parking bays on 223 High Street shall be marked and allocated for car parking for occupiers of the existing building, to the satisfaction of the City of Fremantle.**

**Amendment 1 carried: 6/0**  
**Cr Sam Wainwright, Cr Jenny Archibald,**  
**Cr Bryn Jones, Cr Adin Lang, Cr Andrew Sullivan, Cr Dave Hume**

**AMENDMENT 2**

**Moved: Cr Adin Lang**

**Seconded: Cr Andrew Sullivan**

**To add the following conditions 8 & 9**

8. **Notwithstanding condition 1, vehicle access and egress to Nos. 223 (Lot 100) and 225 (Lot 475) High Street, Fremantle is to be restricted to and from High Street only, with no access or egress to be provided via Holdsworth Street.**
9. **Prior to the commencement of the use, Nos. 223 (Lot 100) and 225 (Lot 475) High Street are to be legally amalgamated or alternatively the owner may enter into a legal agreement with the City of Fremantle, drafted by the City's solicitors at the expense of the owner and be executed by all parties concerned prior to the commencement of the works. The legal agreement will specify measures to allow the development approval to operate having regard to the subject site consisting of two separate lots, to the satisfaction of the City of Fremantle**

**Amendment 2 carried: 3/3**  
**For**  
**Cr Bryn Jones, Cr Adin Lang, Cr Andrew Sullivan,**  
**Against**  
**Cr Jenny Archibald, Cr Sam Wainwright, Cr Dave Hume**

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

**COMMITTEE RECOMMENDATION ITEM PC1906- 4**

Moved: Cr Bryn Jones

Seconded: Cr Adin Lang

Planning committee acting under delegation 1.2:

**APPROVE** , under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the partial change of use to Public car park and signage at No. 223 and 225 (Lots 100 and 475) High Street, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 17 May 2019 and 14 March 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. Notwithstanding condition 1 above, no later than 5 June 2024 the public car park signage and associated infrastructure (pay station) shall be removed and the public car park use shall cease operating, to the satisfaction of the City of Fremantle.
3. Prior to commencement of the development hereby approved, the car parking and loading area(s), and vehicle access and circulation areas shown on the approved site plan, including the provision of disabled car parking, shall be constructed, drained, and line marked and provided in accordance with Clause 4.7.1(a) of the City of Fremantle Local Planning Scheme No.4, to the satisfaction of the City of Fremantle.
4. The signage hereby permitted shall not contain any flashing or moving light or radio; animation or movement in its design or structure; reflective, retro-reflective or fluorescent materials in its design structure.
5. Prior to the commencement of the land use hereby approved, a detailed landscaping plan, including information relating to species selection, reticulation, details of existing vegetation to be retained, and treatment of landscaped surfaces (i.e. mulch, lawn, synthetic grass etc), shall be submitted to and approved by the City of Fremantle.
6. Prior to the commencement of the land use hereby approved, landscaping shall be completed in accordance with the approved plans required in condition 5 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 on the site to the satisfaction of the City of Fremantle.
7. *Notwithstanding condition 1 above, 32 car parking bays on 223 High Street shall be marked and allocated for car parking for occupiers of the existing building, to the satisfaction of the City of Fremantle.*

8. ***Notwithstanding condition 1, vehicle access and egress to Nos. 223 (Lot 100) and 225 (Lot 475) High Street, Fremantle is to be restricted to and from High Street only, with no access or egress to be provided via Holdsworth Street.***
9. ***Prior to the commencement of the use, Nos. 223 (Lot 100) and 225 (Lot 475) High Street are to be legally amalgamated or alternatively the owner may enter into a legal agreement with the City of Fremantle, drafted by the City's solicitors at the expense of the owner and be executed by all parties concerned prior to the commencement of the works. The legal agreement will specify measures to allow the development approval to operate having regard to the subject site consisting of two separate lots, to the satisfaction of the City of Fremantle***

**Advice Note**

- i) **Further to condition 3, the applicant is advised that the bollards located in the carpark of 225 High Street require modification to permit through access across the site.**

**Carried: 6/0**

**Cr Sam Wainwright, Cr Jenny Archibald,  
Cr Bryn Jones, Cr Adin Lang, Cr Andrew Sullivan, Cr Dave Hume**

**Cr Dave Hume requested the item be referred to the Ordinary Meeting of Council.  
Seconded by Cr Andrew Sullivan.**

**ADDITIONAL OFFICER COMMENT**

At its meeting held on 5 June 2019, the Planning Committee referred the application to full Council on 26 June 2019 with a Committee Recommendation for approval subject to relevant conditions.

At the Planning Committee the following additional conditions were added to the Officer's recommendation:

7. ***Notwithstanding condition 1 above, 32 car parking bays on 223 High Street shall be marked and allocated for car parking for occupiers of the existing building, to the satisfaction of the City of Fremantle.***

Condition 7 was added to address the Committee's concern that no tenant parking was being retained on No. 223 High Street for the use of the existing Pathology tenancy and the vacant office tenancy. The number of bays (32) was determined in accordance with the car parking requirement under the Local Planning Scheme No. 4 (LPS4). The Condition results in five (5) car parking bays on No. 223 High Street being available for public parking.

8. *Notwithstanding condition 1, vehicle access and egress to Nos. 223 (Lot 100) and 225 (Lot 475) High Street, Fremantle is to be restricted to and from High Street only, with no access or egress to be provided via Holdsworth Street.*
9. *Prior to the commencement of the use, Nos. 223 (Lot 100) and 225 (Lot 475) High Street are to be legally amalgamated or alternatively the owner may enter into a legal agreement with the City of Fremantle, drafted by the City's solicitors at the expense of the owner and be executed by all parties concerned prior to the commencement of the works. The legal agreement will specify measures to allow the development approval to operate having regard to the subject site consisting of two separate lots, to the satisfaction of the City of Fremantle*

Conditions 8 and 9 were added to address the Committee's concern that there may be an increase in traffic and illegal parking in Holdsworth Street as a result of the public car park. As the lots are currently on separate titles and access is not able to be provided from High Street to No. 223 High Street, the lots will need to be amalgamated or an agreement entered into to ensure that vehicles can access all the proposed tenant and public car parking bays from the High Street crossover on No. 225 High Street.

In response to Committee's recommendation the applicant has submitted a revised plan dated 14 June 2019 and additional information for Council's consideration.

The revised plan includes the following amendments:

#### No. 223 High Street

- Proposed four (4) on site tenant car parking bays for the use of the currently occupied Pathology tenancy.
- Proposed 22 on site tenant car parking bays for the future use of the currently vacant Office tenancy.
- The interim use of the 22 car parking bays for public car parking until such a time that the Office tenancy is leased and occupied.
- Proposed 11 public car parking bays.
- A 2m wide landscaping strip along two-thirds of the Holdsworth Street frontage (either side of the existing crossover).

#### No. 225 High Street

- Proposed 16 on site tenant car parking bays for the use of the currently occupied Eye Clinic.
- Proposed 39 public car parking bays.
- Access and egress to the 55 on site bays being provided via the existing crossover on High Street with egress only permitted via the existing crossover on Holdsworth Street.
- A 2m wide landscaping strip along two-thirds of the Holdsworth Street frontage (either side of the existing crossover).

In support of the amendments the applicant has submitted the following justification:

## Access

*Whilst it is acknowledged that access to 225 High Street from High Street is current extant it is not preferable to provide access and egress for both sites from this access point for the following reasons:*

- It is consistent with orderly and proper planning to limit vehicle access from higher order streets where access to a secondary street is available. This is consideration of reducing obstructions to traffic flow and safety.*
- The two sites are owned by two separate landowners but share one common owner.*
- The landowners do not wish to constrain either of the sites by restricting access to one point only.*
- The vehicular crossovers to Holdsworth Street are extant and commercial vehicular access has historically been obtained from both lots. Thus, vehicular movements associated with the use of the land to and from Holdsworth Street have historically occurred.*

Notwithstanding the above, the applicant proposes to amend the proposal to limit access to No. 225 High Street from High Street only with egress from the site being via High Street or Holdsworth Street only. This amendment is proposed to assist in reducing vehicle traffic in Holdsworth Street without constraining the site.

Officers support the proposed amendment to the vehicle movement to and from the subject sites for the following reasons:

- Restricting all vehicle movements through one entry/exit point from High Street on No. 225 High Street is not desirable as the existing crossover and driveway is narrow and High Street experiences a high volume of traffic, specifically during morning and evening peak periods.
- On street car parking bays in Holdsworth Street are 2 hour time restricted between 9am to 5pm daily, and fee paying for the bays closest to Parry Street. It is also noted that the existing terrace dwellings, located immediately south of the site have historic exclusive use a number of on street bays located on the southern side of Holdsworth Street. Long stay users of the proposed public car parking cannot legally park in Holdsworth Street beyond the current restrictions. It is not expected to increase any illegal use of the bays.

On the basis of the above, Officers recommend that Conditions 8 and 9 of the Committee's recommendation be deleted and a new condition be added as follows:

- x. *Notwithstanding condition 1, no vehicle access is permitted to No. 225 (Lot 475) High Street, Fremantle from Holdsworth Street. The existing entry/exit point on Holdsworth Street is to be modified to facilitate egress only, to the satisfaction of the City of Fremantle.*

### Tenant parking

The applicant has advised that the Pathology tenant does not have any clients attending the site, as it is used as a centralized clinical research laboratory. The pathology use has been in place since the late 1980's and currently leases the upper floor of the building. As such, the applicant has advised that the actual demand for on site car parking for this tenant is four (4) bays. It is proposed to provide four (4) for the use of the Pathology tenancy.

The remainder of the existing building is a vacant office tenancy of approximately 650m<sup>2</sup>. The tenancy has been vacant for some time and as such does not result in any current parking demand.

It is noted that the existing tenancy can be occupied by an Office tenant without the need for further Planning Approval. It is understood the Committee raised a concern in regard to the need for on site tenant parking should the office tenancy be occupied during the term of this approval. Rather than provide the bays whilst the tenancy is vacant, it is proposed to operate these bays as public car parking bays until such a time the tenancy is occupied. On occupation, it is proposed to provide 22 bays for the office tenancy, consistent with the minimum requirements of LPS4.

Officers support the proposed amendment to provide four (4) bays for the use of Pathology tenancy and the interim use of any future tenant car parking bays for the office for public parking subject to the applicant/owner providing the minimum number of bays required under the LPS4 for an 'Office', being 22 bays, on occupation of the tenancy.

As such, Officers recommend that Condition 4 of the Committee's recommendation be deleted and the following new conditions be added:

- x. *Notwithstanding condition 1, four (4) car parking bays are to be provided on No. 223 High Street for the exclusive use of tenants/customers of the upper floor tenancy (Pathology), to the satisfaction of the City of Fremantle.*
- x. *Notwithstanding condition 1, should the existing office tenancy on No. 223 High Street be leased and occupied, prior to occupation of the tenancy 22 of the public car parking bays on No. 223 High Street are to be provided for the exclusive use of the office tenant(s) and their customers, to the satisfaction of the City of Fremantle. The applicant/owner is to notify the City in writing of the leasing of the tenancy 30 days prior to occupation.*

It is noted that should the vacant Office tenancy be occupied by a tenant that does not require 22 car parking bays, or a change of use from Office to another commercial use is proposed the applicant/owner would be required to lodge a new application for Planning Approval in which the provision of tenant parking will be assessed against the provisions of LPS4.

### Landscaping

In response to the Committee's concerns in regard to the visual appearance of the parking area as viewed from Holdsworth Street, the applicant has advised that although the appearance of the site will not change from the existing appearance, the applicant

proposes to increase the landscaping and provide an additional 2m wide strip of landscaping along the Holdsworth Street frontage, either side of the existing crossovers.

Officers support the additional provision of landscaping along the Holdsworth Street frontage of both sites to help soften the view of the car park from the street. The Committee's recommendation includes a condition requiring the submission of a detailed landscaping and reticulation plan to be submitted and approved by the City prior to commencing the use of the site for a public car park.

## **Conclusion**

Having regard for the above, it is considered that the proposed amendments, including the revised access and egress arrangements, the provision of current and future tenant parking on No. 223 High Street and the addition of landscaping along the Holdsworth Street frontage, address the concerns of the Committee. As such, Officers provide the following amended recommendation:

## **AMENDED OFFICERS RECOMMENDATION**

**Moved: Cr Bryn Jones**

**Seconded: Cr Doug Thompson**

APPROVE , under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the partial change of use to Public car park and signage at No. 223 and 225 (Lots 100 and 475) High Street, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plan, dated 14 June 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. Notwithstanding condition 1 above, the public car park signage and associated infrastructure (pay station) shall be removed and the public car park use shall cease operating five (5) years from the date of commencement, to the satisfaction of the City of Fremantle.
3. Prior to commencement of the development hereby approved, the car parking and loading area(s), and vehicle access and circulation areas shown on the approved site plan, including the provision of disabled car parking, shall be constructed, drained, and line marked and provided in accordance with Clause 4.7.1(a) of the City of Fremantle Local Planning Scheme No.4, to the satisfaction of the City of Fremantle.
4. The signage hereby permitted shall not contain any flashing or moving light or radio; animation or movement in its design or structure; reflective, retro-reflective or fluorescent materials in its design structure.
5. Prior to the commencement of the land use hereby approved, a detailed landscaping plan, including information relating to species selection, reticulation, details of existing vegetation to be retained, and treatment of landscaped

surfaces (i.e. mulch, lawn, synthetic grass etc), shall be submitted to and approved by the City of Fremantle.

6. Prior to the commencement of the land use hereby approved, landscaping shall be completed in accordance with the approved plans required in condition 5 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 on the site to the satisfaction of the City of Fremantle.
7. Notwithstanding condition 1, no vehicle access is permitted to No. 225 (Lot 475) High Street, Fremantle from Holdsworth Street. The existing entry/exit point on Holdsworth Street is to be modified to facilitate egress only, to the satisfaction of the City of Fremantle.
8. Notwithstanding condition 1, four (4) car parking bays are to be provided on No. 223 High Street for the exclusive use of tenants/customers of the upper floor tenancy (Pathology), to the satisfaction of the City of Fremantle.
9. Notwithstanding condition 1, should the existing office tenancy on No. 223 High Street be leased and occupied, prior to occupation of the tenancy 22 of the public car parking bays on No. 223 High Street are to be provided for the exclusive use of the office tenant(s) and their customers, to the satisfaction of the City of Fremantle. The applicant/owner is to notify the City in writing of the leasing of the tenancy 30 days prior to occupation.

#### Advice Note

- i) Further to condition 3, the applicant is advised that the bollards located in the carpark of 225 High Street require modification to permit through access across the site.

#### **PROCEDURAL MOTION**

At 6.57 pm the following procedural motion was moved:

#### **COUNCIL DECISION ITEM PC1906-4**

Moved: Cr Adin Lang

Seconded: Cr Jeff McDonald

**The item be deferred for a decision to the next appropriate Planning Committee to allow the Committee to consider a suggestion to impose to a condition to restrict vehicle entry to both No. 223 and 225 High Street from No. 225 High Street only, with exit only permitted into Holdsworth Street from either site.**

**Carried: 10/2**

**For**

**Mayor, Brad Pettitt, Cr Doug Thompson, Cr Bryn Jones,  
Cr Andrew Sullivan, Cr Rachel Pemberton, Cr Adin Lang, Cr Hannah Fitzhardinge,  
Cr Jenny Archibald, Cr Sam Wainwright, Cr Jeff McDonald,**

**Against**

**Cr Jon Strachan, Cr Dave Hume**

## **ADDITIONAL OFFICER COMMENT**

At its meeting held on 26 June 2019, Council deferred the application to full Planning Committee on the 3 July 2019, to allow the Committee to consider how vehicle movements could be minimised to reduce the potential traffic impacts in Holdsworth Street. The Amended Officers Recommendation from Council is provided below for consideration.

## **AMENDED OFFICERS RECOMMENDATION**

**APPROVE**, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the partial change of use to Public car park and signage at No. 223 and 225 (Lots 100 and 475) High Street, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plan, dated 14 June 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. Notwithstanding condition 1 above, the public car park signage and associated infrastructure (pay station) shall be removed and the public car park use shall cease operating five (5) years from the date of commencement, to the satisfaction of the City of Fremantle.
3. Prior to commencement of the development hereby approved, the car parking and loading area(s), and vehicle access and circulation areas shown on the approved site plan, including the provision of disabled car parking, shall be constructed, drained, and line marked and provided in accordance with Clause 4.7.1(a) of the City of Fremantle Local Planning Scheme No.4, to the satisfaction of the City of Fremantle.
4. The signage hereby permitted shall not contain any flashing or moving light or radio; animation or movement in its design or structure; reflective, retro-reflective or fluorescent materials in its design structure.
5. Prior to the commencement of the land use hereby approved, a detailed landscaping plan, including information relating to species selection, reticulation, details of existing vegetation to be retained, and treatment of landscaped surfaces (i.e. mulch, lawn, synthetic grass etc), shall be submitted to and approved by the City of Fremantle.
6. Prior to the commencement of the land use hereby approved, landscaping shall be completed in accordance with the approved plans required in condition 5 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 on the site to the satisfaction of the City of Fremantle.

- 7. Notwithstanding condition 1, no vehicle access is permitted to No. 225 (Lot 475) High Street, Fremantle from Holdsworth Street. The existing entry/exit point on Holdsworth Street is to be modified to facilitate egress only, to the satisfaction of the City of Fremantle.**
- 8. Notwithstanding condition 1, four (4) car parking bays are to be provided on No. 223 High Street for the exclusive use of tenants/customers of the upper floor tenancy (Pathology), to the satisfaction of the City of Fremantle.**
- 9. Notwithstanding condition 1, should the existing office tenancy on No. 223 High Street be leased and occupied, prior to occupation of the tenancy 22 of the public car parking bays on No. 223 High Street are to be provided for the exclusive use of the office tenant(s) and their customers, to the satisfaction of the City of Fremantle. The applicant/owner is to notify the City in writing of the leasing of the tenancy 30 days prior to occupation.**

#### **Advice Note**

- i) Further to condition 3, the applicant is advised that the bollards located in the carpark of 225 High Street require modification to permit through access across the site.**

## 10.2 COMMITTEE DELEGATION

**PC1907 -2      QUEEN VICTORIA STREET NO.229 (LOT 20), NORTH FREMANTLE - PARTIAL CHANGE OF USE TO SMALL BAR, ADDITIONS, ALTERATIONS AND SIGNAGE TO EXISTING BUILDING (JL DA0420/18)**

**Meeting Date:** 3 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Committee  
**Attachment:** 1: Amended Development Plans  
2: Site Photos

### SUMMARY

Approval is sought for the partial change of use from Shop to a Small bar at No. 229 Queen Victoria Street, North Fremantle.

The application is presented to Planning Committee due to a number of submissions received against the proposal which cannot be addressed through conditions of planning approval.

The proposal has been assessed against the provisions of the Local Planning Scheme No. 4 (LPS4) and the City's Local Planning Policies (Council Policies) and seeks discretionary decision in relation to the following:

- Land use (Small Bar)
- Car Parking

The application is recommended for conditional approval.

### PROPOSAL

#### Detail

Approval is sought for a partial change of use to 'Small Bar', and additions, alterations and signage to the existing buildings located at No.229 Queen Victoria Street, North Fremantle (Former Church). The proposed Small bar is also to provide an eatery component for breakfast, lunches and dinners. The applicant is proposing to retain three of the existing four onsite bays (one on Queen Victoria Street and two to the rear off Jewell Street).

Business details provided are as follows:

Staffing levels retail and café/bar combined

- Sunday to Thursday minimum 5-9 maximum staff
- Friday and Saturday minimum 7-10 maximum staff

Trading hours

- Retail shop
  - Monday to Friday 9.00am-5.00pm
  - Saturday and Sunday 9.00am-4.00pm.

- Café/ Small bar
  - Sunday to Thursday 7.00am-10.00pm,
  - Friday and Saturday 7.00am-12.00am midnight

#### Deliveries and collections

- Bins collected 3 times per week
- Cardboard collected weekly
- Grease trap emptied monthly
- Glass collection fortnightly
- Cookers oil collection and cleaning weekly
- Food deliveries, fresh, frozen, dry goods, consumables, twice weekly
- Chemicals deliveries, monthly
- Beverages deliveries 2-3 suppliers alcoholic, weekly
- Non-alcoholic, weekly
- Retail clothing, deliveries fortnightly as required pending trade

The amended proposal now locates the Small bar within the former surf shop building and the retail clothing business to occupy the southern Church portion, which is approximately 112m<sup>2</sup>, Commercial kitchen to the rear of the Church building 23m<sup>2</sup>, internal bar / internal and outdoor seating area and 107m<sup>2</sup>, and amenity/ toilet. The building has pedestrian access only from Queen Victoria Street. As part of the proposed outdoor seating area on Queen Victoria Street the loss of two of the four onsite car bays is proposed.

A 'Small Bar' license differs from hotel and tavern licenses by conditions imposed by the Department of Liquor Racing and Gaming to restrict its use. Restrictions include the prohibition of the sale of packaged liquor and a limitation on the number of people who may be on the premises at any one time to a maximum of 120.

On 11 April 2019 amended plans were submitted outlining additional information for the kitchen, relocation of the small bar from the Church building to the Shop (Former Surfboard shaping building) new bar fitout and addressing heritage concerns associated with impacts of the original proposal on existing fabric of the building.

The amended development plans are enclosed as an attachment to this report (Attachment 1).

#### Site/application information

|                     |  |
|---------------------|--|
| Date received:      | 18 September 2018                                    |
| Owner name:         | Cobaitl Nominees, William Routledge and Sandra Gatti |
| Submitted by:       | Hospitality and Food Service Consultants             |
| Scheme:             | Local Centre   |
| Heritage listing:   | Level 2 and North Fremantle Heritage Area            |
| Existing land use:  | Shop   |
| Use class:          | Small Bar and Shop                                   |
| Use permissibility: | A and D  |



## CONSULTATION

### External referrals

#### Department of Planning, Lands and Heritage)

The amended application was referred to DPLH for comment as the site abuts an 'other regional' category road. On 23 April 2019, the City received a response from Main Roads WA (MRWA) stating that they raise no objection to the proposed development on regional transport grounds.

#### Fremantle Ports (FP)

The original application was referred to Fremantle Port for comment. On 26 October 2018, the City received a response from FPA stating that the proposed development was acceptable subject to the built form requirements and conditions associated with the buffer area 1 provisions of LPP2.3. FP advised the City no additional comments were required with the amended plans as the original advice remained unchanged.

### Community

The original application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations), as the proposal includes a discretionary land use and car parking shortfall.

During the original community consultation period which concluded on 22 October 2018, 33 submissions were received, 31 of which raised objections to the proposal. The applicant opted to revise the proposal due to the community consultation feedback and the amended proposal was readvertised. The second advertising period concluded on 24 May 2019, and 27 submissions were received, 22 of which objected to the proposal. See 'Attachment 3' for schedule of all submission received for the application. The following comments were raised (summarised):

In objection

- Evening trading will be noisy and impact on residents.
- Will be an impact on traffic and parking in the area.
- Major street parking problems exist in Burns, Jewell and Pearse Streets.
- Other entertainment establishments in the immediate vicinity and there is a lack of demand for another.
- Development has insufficient parking for residents, which is making them park in the street.
- City of Fremantle needs to fix problems Council has created in relation to parking and traffic management.
- Customers for existing businesses do not park further away as applicants suggested they would.
- Often have vehicles parking across driveway.
- Noise impacts due to live music, rubbish and antisocial issues associated with the alcoholic nature of business.

In support:

- The development will add a quality venue to the locality.
- The venue will cater to locals and tourists.
- The venue will create employment and tourism opportunities.
- The venue will offer an alternative to the café strip.

In response to the concerns raised, the applicant submitted revised plans and a series of consultant reports detailing how potential traffic, noise, patron behaviour, 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:

- 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 as discussed further in this report.
- 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 ongoing basis through policing and monitoring by the City.
- 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.
- The proposed trading hours are to be in accordance with Section 98 of the Liquor Control Act 1988.
- A management plan must be provided by the applicant as part of liquor licence application. It is considered unlikely that antisocial behaviour will impact the locality in relation to this development. Moreover, whilst public health is an important concern, the management plan indicates that alcohol provision will be appropriately managed, thereby preventing intoxication, and not posing any unreasonable public health impact.

The remaining comments are addressed in the Officer Comment section below.

## **OFFICER COMMENT**

### **Statutory and policy assessment**

The proposal has been assessed against the relevant provisions of LPS4 most significantly in relation to land use and car parking on the site. The relevant assessment criteria are discussed as follows.

### **Background**

The subject site is located on the western side of Queen Victoria Street, North Fremantle. The site has a land area of approximately 519m<sup>2</sup> and is currently improved by a former church and single storey commercial building. The site is zoned Local Centre and has a density coding of R25. The site is individually heritage listed as a management level 2 place and the property is located within the North Fremantle Heritage Area. The church building onsite was previously occupied by an antique dealer and the northern adjoining smaller tenancy was occupied by a surf shop.

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

### Heritage

The subject site is included on the City of Fremantle Municipal Heritage List and on the Municipal Heritage Inventory as management category Level 2. This means that the City has identified this place as being of considerable cultural heritage significance in its own right within the context of Fremantle and its conservation is a priority.

Former Church, 229 Queen Victoria Street, is a simple stone brick and iron church building with symmetrical facade designed as a simple example of the Federation Romanesque style of architecture, dating from the turn of the twentieth century. The place has aesthetic value for its contribution to the streetscape and to the surrounding area.

It is considered that the design approach for the revised plans is in accordance with good practice. The approach has been to set the new works, such as the alterations and additions, within the areas of the building that are not original. As a result, the effect has been to minimise the impact of the new work on the heritage values of the building. In addition, the new works have been designed to touch the existing fabric lightly, or to stand apart from it, and this brings progressively greater opportunities for innovation while minimising any adverse impact on the building. As such the proposal is supported on heritage grounds.

### Use

A Small bar is an 'A' use in the Local Centre zone, which means that the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice (advertising) in accordance with clause 64 of the Regulations.

It is considered that the proposed use of Small bar is consistent with the objectives of the Local Centre zone for the following reasons:

- The proposed Small bar will contribute to the existing uses in the Local Centre zone which encourages uses that provide convenient uses that can serve the needs of the local community.
- The proposed Small bar could make a positive contribution to the local centre, complementing existing uses, adding vitality to the centre and providing an entertainment venue different from any other in the locality, accessible to the local and broader community.
- It is considered that the proposed use would not be significantly detrimental to the amenity of adjacent residential properties. The proposed Small bar will cater for a maximum of 70 seated patrons at any one time. In light of the size of the venue and the stated nature of the proposed business, the potential for significant adverse impact on the amenity of residential properties can be appropriately managed.

Furthermore in considering an 'A' use the Council will have regard to the matters to be considered in the Regulations. In this regard the following matters have been considered:

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

The proposal is considered to address the above matters, for the following reasons:

- The use is considered to provide an active frontage to Queen Victoria Street and would satisfy the objective of the Local Centre zone to provide convenient uses that can serve the needs of the local community.
- A small bar and retail clothing shop use in this location would provide additional retail and hospitality variety within this area of the North Fremantle Local centre.
- 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. Traffic and parking are discussed further below, including a recommendation to consider introducing time restrictions in a number of the adjoining residential streets.
- With regards to generally amenity, social impacts and noise matters, whilst 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.

#### Car Parking

Under the provisions of Table 2 – Vehicle Parking of the City's LPS4, there are no specific parking requirements for the use of a 'Small Bar'. As a result, Clause 4.7.1(c) of

LPS4 states that “where parking provisions are not prescribed for a particular use the requirement will be determined by Council”.

The parking standard used in the determination of previous applications for a ‘Small Bar’ use is as per the requirements for the lounge/garden area of a ‘Hotel/Tavern’ use as prescribed by Table 2 of LPS4.

### Car parking

| Element   | Requirement  | Proposed | Extent of Variation                                      |
|-----------|--|----------|--|
| Small Bar | 1:5 seats or 1:5m <sup>2</sup> dining area, whichever is the greater | Nil      | 19 bays  |
|           | 70 seat (12 bays) or 95m <sup>2</sup> dining area (19 bays)          |          |  |
|           | Delivery bay – 1:service/storage area                                | Nil      | 1 bay  |
|           | Bicycle parking -<br>Class 1 or 2 : 1<br>Class 3: 2                  | Nil<br>5 | 1 Rack<br>Nil  |
| Shop      | 1 per 20m <sup>2</sup> nla<br>112m <sup>2</sup>                      | 2        | 4 bays   |
|           | 6 - required<br>Delivery bay – 1:service/storage area                | Nil      | 1 bay  |
| Total     |  |          | <b>23 Car bays<br/>2 Loading bays<br/>1 Class 1 rack</b> |

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,*

The majority of the objections received during the community consultation period raised concerns regarding the impact of parking within the nearby residential streets and the impact this will have on existing residential properties within the immediate locality.

In regard to the availability of car parking in the immediate locality, there is a total of 208 public car parking bays available in the North Fremantle Local Centre as detailed in the table below.

| <b>Location of car parking</b>                                | <b>Distance from site</b> | <b>No. car bays</b> |
|---|---------------------------|---------------------|
| Corner of Tydeman Road and Queen Victoria Street              | 75m south                 | 30                  |
| Queen Victoria Street, South of the Swan Hotel                | 350m south                | 50                  |
| North Fremantle Bowling Club Car Park / Gordon Dedman Reserve | 200m north east           | 45                  |
| North Fremantle Train Station car park                        | 650m north                | 83                  |
|   |                           | Total – 208 bays    |

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

It is considered that the above public parking facilities are within a walkable distance from the subject site and are therefore could provide alternative parking locations for staff and customers of the Small bar and shop.

In addition to the availability of public car parking bays, the City has also undertaken a survey of the use of existing on street car parking bays in the North Fremantle locality over a two week period between March and April this year, to determine the occupancy rates of these bays. The survey showed 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 of surrounding streets being occupied on these days. Outside of these times, during the day and evening periods (Monday to Thursday) there is a lower demand for on street parking with the number of occupied bays being approximately 45% to 60%.

It is 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 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.

Given the increase in activity in the North Fremantle Local Centre, including the addition of competing night time uses, it may be considered an appropriate time to review the use of the on street parking bays in the immediately surrounding residential streets of Pearse Street, Jewell Parade and Jackson Street. This is usually done by conducting a survey of the affected residents to ascertain their interest in the introduction of time restrictions

with the time restrictions only being implemented if a majority of residents support it. Options put to residents in the survey could include the introduction of time restrictions on Friday, Saturday and Sunday evenings as these are the busy periods. In this regard, Council Policy SG33 Residential and Multi-Purpose Parking Permits allows the City to consider introducing time restrictions for on street parking bays and provide permits to residents, where they meet certain criteria, to exempt permit holders from the restrictions. It is noted that the on street car parking bays in Burns Street (north of Tydeman Road) are already subject to 1 hour time restrictions. In accordance with the Policy, North Fremantle would be subject to a 2 hour time restriction where necessary.

In response to the concerns raised by residents in the immediate locality, it is recommended that a Part B recommendation be included in the Officers Recommendation to request the administration to investigate the introduction of time restrictions in Pearce Street, Jackson Street and Jewell Parade. In light of the parking survey results it is recommended that a gradual introduction of time restrictions may be suitable in these streets with a focus on the peak periods of Friday, Saturday and Sunday. It is noted that this process is separate to the approval process of the application and the approval cannot be made conditional on the implementation of time restrictions.

In addition to the above, it is also noted that the removal of the existing crossover and onsite bays for this site in conjunction with the removal of the redundant crossover on the adjoining property (Miss Piggy's) off Queen Victoria Street, may provide the opportunity for three additional on street car parking bays to be provided.. As such, a condition of approval is recommended to require the redundant crossover be removed and the verge reinstated to allow for the introduction of three additional street bays.

With reference to Clause 4.7.3 of LPS4, which allows Council to relax or waive car parking requirements, given limited patronage capacity (70 seats) of the use, that there are over 200 public car parking bays available within 650m of the site, and that the site is within easy walking distance to train and bus public transport routes, the level of increase is not anticipated to be significantly detrimental to adjoining business or adjacent residential properties of this immediate area.

## **Others Matters**

### Noise Management

The applicant has submitted a Management Plan which specifies that background music will be provided within the venue by way of an in house sound system at a volume that maintains a relaxed and comfortable environmental that allows patrons to converse. Essentially, noise levels are proposed to be no greater than the levels permitted in accordance with the Environmental Protection (Noise) Regulations. The Management Plan also addresses: the managing noise levels, the management of entrances/exits into/out of the venue, general internal and external patron management, and a procedure to actively respond to any complaints.

The applicant has submitted an Acoustic Assessment Report, prepared by Eco Acoustics that considers the potential noise impacts from the proposed development.

The report concludes that the predicted noise levels from the external mechanical plant, background music and patrons dining inside the venue along with patrons dining in the alfresco area comply with the regulatory levels at all nearby residential premises during the worst case night-time period.

It is considered that the proposal has been appropriately designed to minimise any potential impacts and can be appropriately managed once the venue is in operation.

#### DBU6 – Late Night Entertainment Venues Serving Alcohol

In accordance with the general provisions of DBU6 (Late night entertainment venues serving alcohol), it is considered the local area is well serviced by public streets and is accessible to Taxis to allow for safe transport to and from the site without significantly disrupting through traffic.

The adjoining footpaths and streets are well lit to allow for adequate safety for patrons late at night. The proposed small bar is also adjacent to other Restaurants and Shop uses and has separated from residential uses to ensure limited impacts on amenity and reduced opportunity for conflict between uses.

#### Liquor Licensing

Should the subject application be approved, the applicant will be required to make an application to the Department of Racing, Gaming and Liquor WA for appropriate liquor licence approval. If approved, the Liquor Licence will be subject to conditions relating to the hours of operation, the maximum patron numbers, the management of patron behaviour and compliance with relevant policy requirements. The Liquor Licence is considered to be the appropriate tool to manage the operation of the venue in a way which will minimise any potential impact on the immediate locality.

### **CONCLUSION**

The proposal is considered to meet the specific applicable requirements of LPS4. Potential impacts from the operation of the venue including noise, parking and patron behaviour are considered to be minimised 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. 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

#### Alcohol Management (SG50)

- The immediate area includes an appropriate mix of non-residential land uses including existing Restaurants, Retail and Office tenancies
- Potential impacts of the proposed Small bar can be appropriately managed.

## **FINANCIAL IMPLICATIONS**

Nil

## **LEGAL IMPLICATIONS**

Nil

## **OFFICER'S RECOMMENDATION**

The Planning Committee acting under delegation 1.1:

- A. APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, partial change of use to Small Bar, additions and alterations and signage to existing building at No. 229 (Lot 20) Queen Victoria Street, North Fremantle, subject to the following condition(s):**
- 1) This approval relates only to the development as indicated on the approved plans, dated 11 April 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) 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 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 issue of a Building Permit for the development hereby approved, the owner is to submit a waste management plan for approval detailing the storage and management of the waste generated by the development to be implemented and maintained for the life of the development 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 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.**
  - 7) Prior to the issue of a Building Permit, the design and materials of the development shall adhere to the requirements set out within City of Fremantle policy L.P.P2.3 - Fremantle Port Buffer Area Development**

- Guidelines for properties contained within Area 2. Specifically, the development shall provide the following:**
- a) **Glazing to windows and other openings shall be laminated safety glass of minimum thickness of 6mm or “double glazed” utilising laminated or toughened safety glass of a minimum thickness of 3mm.**
  - b) **Air conditioners shall provide internal centrally located ‘shut down’ points and associated procedures for emergency use.**
  - c) **Roof insulation in accordance with the requirements of the Building Codes of Australia.**
- 8) **The signage hereby permitted shall not contain any flashing or moving light or radio; animation or movement in its design or structure; reflective, retro-reflective or fluorescent materials in its design structure.**
  - 9) **The fencing indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site (No.229 Queen Victoria Street, North Fremantle)**
  - 10) **Prior to the issue of a Building Permit, One, Class 1 bicycle rack shall be provided, to the satisfaction of the City of Fremantle.**
  - 11) **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 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](mailto:health@fremantle.wa.gov.au).**
- iii. **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](mailto:health@fremantle.wa.gov.au).**

- iv. **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.**
- v. **Design and installation of all mechanical service systems, including air-conditioners, motors, amplified music, kitchen exhaust ducts and refrigeration motors, etc. is to prevent noise levels from exceeding the relevant assigned levels as set out in the Environmental Protection (Noise) Regulations 1997 (as amended). The applicant is to seek the services of a competent acoustic consultant to assist the applicant to address the potential noise impacts on noise sensitive receivers. A noise management plan for the proposed development is to be lodged with the City's Environmental Health Service.**
- vi. **With regards to condition No.7, it is acknowledged that due to the heritage listing of the building, strict compliance with all built form requirements for Area 2 as per LPP2.3, is difficult and required LPP2.3 works will only relate to the new additions and alterations of the development hereby approved.**
- vii. **With regards to condition 10, Bicycle parking facilities are to be provided in accordance with the following standards:**
- **Class 1 – High security level – Fully enclosed individual locker;**
  - **Class 2 – Medium security level – Lockable compound fitted with class 3 facilities with communal access using duplicated keys;**
  - **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 of Austroads Guides'**

- B. Planning Committee request that the Administration investigate the introduction of time restrictions for existing on street car parking bays in Pearse Street, Jackson Street and Jewell Parade on Friday, Saturday and Sunday in accordance with Council Policy SG33 Residential and Multi-Purpose Parking Permits.**

**PC1907 -3 SOUTH STREET, NO. 214 (LOT 5) – THREE LEVEL MIXED USE DEVELOPMENT CONTAINING FIVE MULTIPLE DWELLINGS AND A RETAIL TENANCY - (TG DA0549/18)**

**Meeting Date:** 3 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Committee  
**Attachments:**  
1: Amended Development Plans  
2: Site Photos  
3: Applicant SPP 7.3 Statement

## **SUMMARY**

Approval is sought for modifications to the existing building at 214 South Street including the addition of five multiple dwellings and a shop tenancy.

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. The proposal is also required to be considered against the performance criteria of recently adopted State Planning Policy 7.3: Residential Design Codes Volume 2 – Apartments. These discretionary assessments include the following:

- Land use
- Lot boundary setbacks
- On site car parking
- Building height
- The design elements of SPP 7.3.

The application is recommended for refusal.

## **PROPOSAL**

### **Detail**

Approval is sought for additions and alterations to an existing commercial building at 214 South Street, White Gum Valley. The proposed works include:

- The addition of five multiple dwellings (apartments).
- Additions to the front of the existing building to establish a two storey shop tenancy.
- Six on site car parking bays.

The applicant submitted amended plans on 16 May 2019 and further amended plans on 14 June 2019 including the following:

- Additional screening to windows and balconies.
- The deletion of the lower ground floor office tenancy and its replacement with two vehicle parking bays resulting in a total of six parking bays.
- The inclusion of bicycle parking on the lower ground floor.
- Revised room layouts and additional information to address the updated design requirements of the R-Codes..

- The inclusion of an upper floor above the proposed shop tenancy comprising 48m<sup>2</sup> plot ratio area. The shop tenancy was amended to comprise a total of 109m<sup>2</sup> plot ratio area.
- The inclusion of a lower ground floor storage area for the retail tenancy (18.9m<sup>2</sup>).
- Truncation of the ground floor retail shop wall.
- Relocation of bin stores to one combined area

Development plans are included as attachment 1.

### Site/application information

Date received: 3 December 2018  
 Owner name: Re-Create Developments Australia Pty Ltd  
 Submitted by: Armstrong Parkin Pty Ltd  
 Scheme: Local Centre R20/25 (can be increased to R100 if discretionary criteria are met).  
 Heritage listing: Not listed.  
 Existing land use: Existing commercial building  
 Use class: Multiple Dwelling and Shop  
 Use permissibility: A and D respectively



## CONSULTATION

### External referrals

#### *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 do not support the proposal for the following reason:

- The driveway designs do not appear to be adequate and it is a requirement that they must be designed to have an internal turn around facility or area that enables vehicles to turn and exit the driveway in a forward movement. Turning circle diagrams as provided do not demonstrate clearly that this requirement has been met and the reverse and forward movement of the car bays remains inappropriate.

The applicant had previously provided revised plans addressing Main Roads' preliminary comments deleting parking in the Primary Regional Road Reserve and providing additional detail with regard to vehicle manoeuvring. While refusal of the application is recommended in accordance with the recommendation from Main Roads, should the Planning Committee determine that the application should be approved, this approval would be under Local Planning Scheme No. 4 only; the application would need to be referred on to the Department of Planning, Lands and Heritage for consideration and determination under the Metropolitan Region Scheme.

### **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 the exercise of discretion with regard to land use, setbacks, onsite parking provision and building height. The advertising period concluded on 4 February 2019, and two submissions were received. The following issues were raised (summarised):

- Visual privacy – the height and location of the entertainment deck will intrude upon neighbouring privacy.
- The height of the building will cast shade over neighbouring gardens.
- The corrugated cladding is out of keeping with the suburbs other dwellings and will be an eyesore as well as causing significant heat in summer.
- Concerns with regard to how close the building is to common boundaries.
- The difference in levels between the subject property and lots to the rear will increase the impact of visual privacy variations and building bulk.
- The proposed addition directly overlooks an adjoining outdoor living area and an area intended for use as a pool.
- The provision of insufficient onsite parking may result in parking for the property taking place in adjacent streets (Yalgoo, Elizabeth, Nannine). Congestion to these areas would impact the amenity of properties to the rear.
- There is no provision for separate pedestrian and vehicle access to the rear office and no onsite ACROD parking/access.
- The rear car parking area will be insecure due to the need to provide access to the office tenancy.
- Concerns with regard to the ability of the dwellings to provide surveillance of the approach to the dwellings.
- Concerns with regard to a lack of bicycle parking on site.
- Concern that the driveway is not set off the property boundary by a minimum of 0.5m to provide for sightlines for exiting vehicles.
- The office tenancy has limited direct natural light access, requiring constant artificial light.
- Similar concerns with regard to there being no natural light source to corridor/stairwell between apartments 4 and 5 especially considering that there is an entrance to apartment 5 in this area.

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

- additional screening to provide for mutual privacy between the subject site and adjoining properties.
- additional detail addressing the R-Code objectives supporting the proposed lot boundary setbacks.
- The surveillance of the approach to the dwellings and additional security measures such as a gate.
- Additional bicycle parking.

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

- The shade cast by the development at midwinter when the extent of shade cast is greatest will fall over the South Street roadway, maintaining sunlight access to the rear yards of adjoining properties.
- Should the proposed development be considered for approval, it would be recommended that a final materials and colours schedule be provided for consideration and approval by the City.
- The proposed building setbacks are consistent with the requirements of the R-Code objectives.
- While it is acknowledged that there is a difference in site levels between the subject site and adjoining properties to the north, the reduced building height requirement to the rear of the subject site was introduced in order to ameliorate this impact.
- It is agreed that the proposed shortfall in parking would result in parking for the development occurring in surrounding streets and in on street bays in the immediate locality. Car parking provision is considered further in the officers assessment.
- It is noted that one ACROD bay would be required in accordance with the Building Code of Australia to support the development, however this will further reduce the available parking on site.
- The proposed development is considered to adequately provide for vehicle sightlines when exiting the property in forward gear.
- The development is considered to be provided with sufficient natural light access.

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. On 24 May 2019, the State Government introduced new requirements for apartment development, being State Planning Policy 7.3: Residential Design Codes Volume 2 – Apartments (SPP 7.3). These do not provide deemed-to-comply requirements; they specify objectives which are to be addressed through a performance based assessment. Compliance is to be demonstrated by the applicant.

Some of the requirements of SPP 7.3 such as building height are superseded by the City's existing statutory requirements. In cases where these aspects of the development do not meet these requirements they have been assessed against the relevant discretionary criteria. In this particular application the areas outlined below are considered to require discretionary assessment:

- Land use
- Lot boundary setbacks,
- On site car parking,
- Building height,
- The design elements of SPP 7.3.

The above matters are discussed below.

### **Background**

The subject site is located on the northern side of South Street, between Yalgoo and Nannine Avenues. The site forms the western edge of Sub Area 6.3.1 of Local Planning Scheme No. 4 (Beaconsfield – White Gum Valley Local Centre). The site has a land area of approximately 746m<sup>2</sup> and is currently occupied by a vacant commercial building. The site is zoned Local Centre and has a density coding of R20/25 and the opportunity to increase this density to R100 if certain development criteria are satisfied. The site is not individually heritage listed nor is it located within a heritage area.

The site slopes approximately 3 metres from south to north and is affected by a 10 metre wide Primary Regional Road reservation. There is an existing commercial building on site accessed from South Street, portions of which are to be maintained through the adaptive reuse of the built form.

The property file indicates that the property was approved for development in accordance with DA228/94. It is noted that the site was previously utilised by the 'Cheesecake Shop'.

### **Land Use**

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

- (a) *The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area*
- (m) *The compatibility of the development with its setting including the relationship of the development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development*
- (n) *The amenity of the locality including the following:*
  - (i) *Environmental impacts of the development*
  - (ii) *The character of the locality*
  - (iii) *Social impacts of the development*
- (y) *Any submissions received on the application.*

The proposed development comprises a mix of land uses which provide for residential accommodation as well as convenience retailing/local offices in accordance with the identified requirements of the Scheme sub area and the objectives of the Local Centre Zone. It is noted, as discussed below, that the provision of car parking for the proposed

land uses is considered insufficient and this is therefore considered to be potentially detrimental to the amenity of the locality.

### Car Parking

| Element  | Requirement                              | Proposed | Extent of Variation |
|--|--|----------|---------------------|
| SPP 7.3 Element 3.9 – Car Parking Local Planning Scheme No. 4 clause 4.7.1 – Car Parking | Apartments (acceptable outcome) – 5 bays | 5 bays   | Nil                 |
|  | Apartment visitor – 2 bays               | Nil      | 2 bays              |
|  | Shop – 5.45 (6) bays                     | 1 bay    | 5 bays              |
|  | Total – 13 bays                          | 6 bays   | 7 bays              |

The applicant provided the following justification in support of the reduced provision of car parking:

| Justification   | Officer Comment  |
|---|--|
| All residential dwellings are provided with a car bay for their exclusive use, which also satisfies the minimum resident parking requirement of the R-Codes.  | It is not contended that insufficient parking is provided for the individual apartments proposed, however it is considered that insufficient parking is provided for the development as a whole due to the need to provide for parking for the commercial elements and for visitor parking.  |
| The proposal is located within a local centre where multi-destination trips are typical as visitors park once to visit a number of activities on foot within close proximity.   | While it is noted that multi destination trips could be anticipated to be carried out in the local centre, the issue remains that the burden of supporting those trips which primarily relate to tenancies and apartments on the subject site would be placed upon side streets and other parking areas.   |
| There is formalised, on-street parking available within the locality during core-business hours to cater for users of the non-residential tenancies, as detailed within the attached Traffic and Parking Impact Assessment:<br>A total of 24 on-street bays are available within the nearby road reserves of Stokes Street and Fifth Avenue (within 150m of the site);<br>A parking survey undertaken for these on-street bays indicates there is a minimum of at least nine bays available between the | These parking bays are noted however the availability of these bays will not be readily evident to visitors and customers of the subject site due to their location.<br><br>It is also noted that these bays have been installed to support the local centre as a whole and it is not considered appropriate for a development to rely completely upon the provision of this parking, a portion of which may be subject to future removal due to the widening of South Street. |

|   |   |
|---|---|
| <p>hours of 9am and 5pm (core business), and an average of 12 bays (greatest total occupancy was 64% at midday), which can accommodate the proposal's shortfall of only five bays;</p> <p>While we acknowledge Local Planning Policy D.G.W3 South Street Local Centre Local Area encourages Council to "be mindful of the need to prevent vehicles using the local centre from parking in adjoining residential streets", the on-street parking bays reference above within Stokes Street and Fifth Avenue are existing, formal bays adjacent to commercial properties, and not adjacent to residential properties.</p> |   |
| <p>Residential visitors to the site characteristically visit outside of core business hours, when the availability of on street parking bays increases (survey indicates occupancy drops to just 42% at 8pm, for example, where 14 bays are available).</p>   | <p>The use of the proposed alternative parking locations on Stokes Street and Fifth Avenue are not considered to be appropriate due to the separation from the subject street by distance or by South Street. It is considered that these potential parking bays will not be readily evident to apartment visitors and may result in unsafe vehicle movements onto South Street or parking within the road reserve, which is not supported.</p> |
| <p>There is public transport available within the locality with a high-frequency bus route traversing South Street, providing convenient connectivity between Fremantle and the Perth CBD.</p>  | <p>While the provision public transport is noted, it is unlikely that residential visitors who are noted by the applicant to primarily visit outside of peak times may not utilise public transport due to the more limited service provision outside of these peak periods.</p>  |
| <p>Cycling infrastructure is provided within the locality, with a dedicated cycle lane contained within South Street, plus five bicycle racks proposed within the development.</p>  | <p>Bicycle parking is required in addition to vehicle parking provision rather than in lieu of these requirements. It is noted that the proposed bicycle parking is located in the Primary Regional Road reserve and this may not be able to be appropriately relocated to be accessible to visitors on site if this land were resumed.</p>   |
| <p>The development is proposing the adaptive reuse of an existing building where the physical space available for parking is extremely restricted.</p>  | <p>While it is acknowledged that there is limited ability to provide onsite parking to support the development, however this can be in part addressed through the rationalisation of the extent of the proposal.</p>  |

Having regard for the comments above, the provision of car parking for the development is not considered to address the discretionary criteria of Local Planning Scheme No. 4

and does not satisfactorily provide for car parking in accordance with SPP 7.3 for the following reasons:

- The existing street parking off Stokes Street and Fifth Avenue is separated from the subject site by either distance or across South Street and the availability of this parking will not be readily evident to visitors and customers of the subject site and may result in unsafe vehicle movements.
- The City's policy D.G W3 requires that parking for development along South Street not be provided in a way that results in street parking on surrounding side streets.

As considered above, the proposed development is not considered to appropriately address car parking demand for the proposed commercial tenancies nor for visitors to the apartments. The availability of bays in adjoining side streets such as Stokes Street and Fifth Avenue is noted, however these parking areas are considered to be significantly separated from the subject site by South Street or by distance and may not be readily noted by visitors to the site, resulting in parking in other side streets which is contrary to the City's policy as noted above.

### Building Height

| Element   | Requirement  | Proposed                                   | Extent of Variation |
|---|--|--|---------------------|
| Local Planning Scheme No. 4 Sub area 6.3.1 – Additional development standards – (d – height buffer) | 6m external wall height<br>9m pitched roof<br><br>Within 5 metres of residential zoned land outside of the sub area. | Perforated screen – overall height of 7.4m | 1.4m                |

The proposed building height is supported in accordance with cl. 4.8.1.3 of LPS4, as the privacy screen is considered to be a minor projection in this instance. It is noted that the wall of the building achieves the required wall height requirement however the screen element (introduced to better maintain neighbouring privacy) exceeds this height limit. This structure is considered to be lightweight and is set back further than the subject wall, resulting in a further graduation of building height away from the property boundary generally consistent with a roof structure.

### SPP 7.3 – Apartment Design Principles

The proposal has been considered against the principles of SPP 7.0 – Design of the Built Environment. These comments are supported by the assessment below which provides more detailed consideration of the specific provisions of SPP 7.3. The applicant has also provided commentary to demonstrate compliance with the objectives of the policy and this is provided in attachment 3.

| Principle   | Officer Comment  |
|---|--|
| <b>Context and character</b><br>Good design responds to and enhances the distinctive characteristics of a local area, contributing to a sense of place. | The proposed development is consistent with the intended future character of the precinct in complying with the relevant height, density, and land use requirements of the Scheme and relevant policy. |

|  |  |
|--|--|
| <p><b>Landscape quality</b><br/>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, within a broader ecological context.</p>   | <p>The development is considered to adequately provide for landscaping on site, considering the limited ability to provide for the acceptable proportion of landscaping on site due to the adaptive reuse of an existing building.</p> <p>The inclusion of planting on the building is considered to provide for additional amenity for inhabitants and landscape quality.</p>   |
| <p><b>Built form and scale</b><br/>Good design ensures that the massing and height of development is appropriate to its setting and successfully negotiates between existing built form and the intended future character of the local area.</p>                         | <p>The proposed development has regard to the relevant statutory controls applicable to the development with regard to building height and lot boundary setbacks. The development is considered consistent with the intended future character of the precinct without being considered to unduly impact the amenity and utility of adjoining residential dwellings.</p>  |
| <p><b>Functionality and build quality</b><br/>Good design meets the needs of users efficiently and effectively, balancing functional requirements to perform well and deliver optimum benefit over the full life-cycle.</p>  | <p>The proposed design is considered to have regard to the functionality of the individual buildings and tenancies including access and circulation. The proposal is considered to appropriately satisfy the relevant accessibility requirements for dwellings, encouraging use of the dwellings by inhabitants for the life of the development.</p> <p>It is considered that the proposal does not provide an appropriate amount of parking to accommodate the lifecycle needs of the premises.</p> |
| <p><b>Sustainability</b><br/>Good design optimises the sustainability of the built environment, delivering positive environmental, social and economic outcomes.</p>   | <p>The proposal is considered to appropriately provide for sustainable outcomes such as providing a minimum 5 star NatHERS rating for each apartment and 6 stars for the overall development.</p> <p>The development itself, being the adaptive reuse of an existing building is considered to result in a more sustainable outcome than its demolition and replacement.</p>   |
| <p><b>Amenity</b><br/>Good design provides successful places that offer a variety of uses and activities while optimising internal and external amenity for occupants, visitors and neighbours, providing environments that are comfortable, productive and healthy.</p> | <p>The proposed development provides for a variety of land uses and contributes to the land use mix of the immediate locality.</p> <p>The internal spaces such as the provided outdoor living areas are considered to appropriately provide for internal amenity.</p>  |

|   |  |
|---|--|
| <p><b>Legibility</b><br/>Good design results in buildings and places that are legible, with clear connections and easily identifiable elements to help people find their way around.</p>                        | <p>Access arrangements for the development are clearly provided and will be readily legible for inhabitants and employees.</p> <p>The only exception is the arrangements for apartment visitors and customer parking at the premises, which is not provided and accordingly may result in additional vehicle movements affecting South Street.</p>   |
| <p><b>Safety</b><br/>Good design optimises safety and security, minimising the risk of personal harm and supporting safe behaviour and use.</p>   | <p>The development provides relevant security measures such as surveillance and controlled building/carpark access to appropriately address this principle.</p>  |
| <p><b>Community</b><br/>Good design responds to local community needs as well as the wider social context, providing environments that support a diverse range of people and facilitate social interaction.</p> | <p>The development provides for a shop tenancy providing for a mix of uses in the locality which is envisioned as the intended future character of the immediate precinct.</p> <p>The applicant has advised that universal design features will be available in all apartments however did not confirm whether the apartments would provide for the relevant silver level accessibility standards listed in the Livable Housing Design Guidelines.</p> |
| <p><b>Aesthetics</b><br/>Good design is the product of a skilled, judicious design process that results in attractive and inviting buildings and places that engage the senses.</p>                             | <p>The development is considered to provide for an appropriate level of design quality in adapting the existing building for residential and expanded commercial use.</p>  |

The above principles inform the Element Objectives of the state planning policy which are supported by 'Acceptable Outcomes'. The Codes state that whilst compliance with the Acceptable Outcomes is likely to achieve the Objectives they are not a deemed-to-comply pathway and the proposal will be assessed in context of the entire design solution to ensure the Objectives are achieved. It also notes that other satisfactory design responses to the Element Objectives may exist which need to be assessed on their merits. The applicant has provided commentary detailing how the development is considered to address the R-Code Objectives.

The below table considers the proposed development against the Acceptable Outcomes in the first instance Where a requirement of SPP 7.3 has been superseded by the requirements of the City's Scheme or policies, this element has been omitted from the table.

Additional commentary is provided in instances where assessment against the Objectives of the policy (rather than the Acceptable Outcomes) has occurred.

| <b>SPP 7.3 – Apartment Design Guidelines</b>   |               |  |
|--|---------------|--|
| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>   |
| <b>2.4 – Side and rear setbacks</b>  |               |  |
| West (side): 3m<br>North (side): 6m  | No            | Refer to additional commentary below.  |
| <b>2.5 – Plot Ratio</b>  |               |  |
| R100 – 1.3   | Yes           | As proposed  |
| <b>2.6 – Building Depth</b>  |               |  |
| Building depth to be considered on its merits with particular regard to <i>4.1 Solar and daylight access</i> and <i>4.2 Natural Ventilation</i>  | Yes           | The apartments are provided with sunlight and ventilation access through openings to the east. It is noted that the development results in an overall width (including the corridor) of 12.9m however additional ventilation and light access is provided through the incursion of the proposed balcony into the living area. Additional commentary is provided in sections 4.1 and 4.2. |
| <b>3.2 - Orientation</b>   |               |  |
| Buildings on street or public realm frontages are oriented to face the public realm and incorporate direct access from the street.   | Yes           | The development provides primary pedestrian access to the apartments and the proposed shop tenancy with direct access from the street.   |
| Development in climate zones 4, 5 and 6 shall be designed such that the shadow cast at midday on 21st June onto any adjoining property does not exceed:<br>adjoining properties coded R25 and lower – 25% of the site area 1 | Yes           | All shade cast by the development falls over South Street at midday on 21 June.  |
| Where adjoining sites are coded R40 or less, buildings are oriented to maintain 4 hours per day solar access on 21 June for existing solar collectors on neighbouring sites.   | Yes           | The development will not cast shade over the existing solar collectors on the property to the north on 21 June.  |
| <b>3.3 Tree canopy and deep soil areas</b>   |               |  |
| The development is sited and planned to have no detrimental impacts on, and to minimise canopy loss of adjoining trees.  | Yes           | The site does not contain any existing trees. No nearby trees are to be directly affected by the proposed development.   |

| <b>SPP 7.3 – Apartment Design Guidelines</b>  |               |  |
|---|---------------|--|
| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>   |
| 74.6m <sup>2</sup> deep soil area is provided (10% of site area). Deep soil areas are to be co-located with existing trees for retention and/or adjoining trees, or alternatively provided in a location that is conducive to tree growth and suitable for communal open space. | No            | The development provides for 83.3m <sup>2</sup> of overall landscaped area with approximately 53m <sup>2</sup> of deep planting zone. It is noted that this planting area is provided in the primary regional road reservation, however due to the nature of the proposal, opportunities to provide additional deep soil area elsewhere are considered to be limited. No existing trees are located on site.                             |
| Landscaping includes existing and new trees with shade producing canopies 2 medium trees.   | Yes           | As proposed.   |
| The extent of permeable paving or decking within a deep soil area does not exceed 20 per cent of its area and does not inhibit the planting and growth of trees.  | Yes           | As proposed.   |
| Where the required deep soil areas cannot be provided due to site restrictions, planting on structure with an area equivalent to two times the shortfall in deep soil area provision is provided.   | No            | While additional planting is provided in the apartment 5 terrace, the area provided does not result in the shortfall being satisfied.  |
| <b>3.4 – Communal Open Space</b>  |               |  |
| Development includes informal seating associated with deep soil or other landscaped areas.  | Yes           | As the proposal does not result in more than 10 dwellings a separately located and designed area of communal open space is not a valid acceptable outcome in this instance. There could, however be an opportunity to provide seating of this nature in the landscaped front setback area, however considering the context of this area, fronting directly onto South Street, it is not considered appropriate to require its provision. |
| Communal open space located on the ground floor or on floors serviced by lifts must be  | Yes           | Available directly in front of the primary pedestrian entrance.  |

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| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>   |
| accessible from the primary street entry of the development   |               |  |
| There is 50 per cent direct sunlight to at least one communal open space area for a minimum of two hours between 9am and 3pm on 21 June.  | Yes           | The communal open space is open to morning and afternoon sun at midwinter.   |
| Communal open space is co-located with deep soil areas and/or planting on structure areas and/ or co-indoor communal spaces.  | Yes           | As proposed.   |
| Communal open space is separated or screened from adverse amenity impacts such as bins, vents, condenser units, noise sources and vehicle circulation areas.  | No            | The area is located at the South Street boundary, however it is noted that only informal seating is recommended rather than a formal communal open space area. |
| Communal open space is well-lit, minimises places for concealment and is open to passive surveillance from adjoining dwellings and/or the public realm.   | Yes           | As proposed.   |
| Communal open space is designed and oriented to minimise the impacts of noise, odour, lightspill and overlooking on the habitable rooms and private open spaces within the site and of neighbouring properties. | Yes           | As proposed.   |
| <b>3.5 – Visual Privacy</b>   |               |  |
| Visual privacy setbacks to side and rear boundaries are provided in accordance with Table 3.5.  | Yes           | Additional commentary on overlooking impact provided below.  |
| Balconies are   | Yes           | As proposed, one side of all balconies is  |

| <b>SPP 7.3 – Apartment Design Guidelines</b>  |               |   |
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| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>  |
| unscreened for at least 25 per cent of their perimeter (including edges abutting a building).   |               | unscreened providing for an appropriate outlook while limiting opportunities to overlook adjoining properties.  |
| Living rooms have an external outlook from at least one major opening that is not obscured by a screen.   | Yes           | As proposed.  |
| Windows and balconies are sited, oriented, offset or articulated to restrict direct overlooking, without excessive reliance on high sill levels or permanent screening of windows and balconies.  | Yes           | The inclusion of the rear screen element and the adjoining boundary wall appropriately limit opportunities to overlook sensitive spaces on neighbouring properties. |
| <b>3.6 – Public Domain Interface</b>  |               |   |
| Car-parking is not located within the primary street setback; and where car parking is located at ground level behind the street setback it is designed to integrate with landscaping and the building façade (where part of the building). | Yes           | As proposed.  |
| Upper level balconies and/or windows overlook the street and public domain areas  | Yes           | Surveillance of the approach to the dwellings is provided by apartment 1.   |
| Bins are not located within the primary street setback or in locations visible from the primary street.   | Yes           | As proposed.  |
| Services and utilities that are located in the primary street setback are integrated into the design of the development and do not detract from the amenity and visual  | Yes           | Water meters are accommodated adjoining an existing wall.   |

| <b>SPP 7.3 – Apartment Design Guidelines</b>  |               |  |
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| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>   |
| appearance of the street frontage.  |               |  |
| <b>3.7 – Pedestrian Access and Entries</b>  |               |  |
| Pedestrian entries are connected via a legible, well-defined, continuous path of travel to building access areas such as lift lobbies, stairs, accessways and individual dwelling entries.                | Yes           | As proposed.   |
| Pedestrian entries are protected from the weather.  | Yes           | Provided with an awning at the building entrance. Opportunities for further weather protection are limited due to the inability to develop within the primary regional road reservation.   |
| Pedestrian entries are well-lit for safety and amenity, visible from the public domain without opportunity for concealment, and designed to enable casual surveillance of the entry from within the site. | Yes           | As proposed. The electronic intercom system will provide for additional surveillance opportunities of the entry.   |
| <b>3.8 – Vehicle Access</b>   |               |  |
| Vehicle access is limited to one opening per 20m street frontage that is visible from the street.   | Yes           | The proposal involves the removal of an existing site vehicle access point, maintaining one for access.  |
| Vehicle entries are identifiable from the street, while being integrated with the overall façade design and/ or located behind the primary building line.   | Yes           | As proposed, the vehicle access point is maintained as existing, with the additions to the building providing additional features to reduce the prominence of its location while still resulting in ready legibility of the access point for visitors. |
| Vehicle circulation areas avoid headlights shining into habitable rooms within the development and adjoining properties.  | Yes           | As proposed, the access point is set below the apartments generally, reducing the incidence of headlight impact.   |
| Driveway width is kept to a functional minimum, relative to the traffic volumes and entry/egress  | Yes           | To be maintained as existing.  |

| <b>SPP 7.3 – Apartment Design Guidelines</b>  |               |  |
|---|---------------|--|
| <b>Acceptable Outcomes (AO) requirements.</b>   | <b>AO Met</b> | <b>Comment</b>   |
| Driveways designed for two way access to allow for vehicles to enter the street in forward gear where the public street to which it connects is designated as a primary distributor, district distributor or integrated arterial road.                        | No            | The applicant has demonstrated vehicle manoeuvring diagrams for the proposed parking bays in accordance with the relevant Australian Standards. Main Roads have raised concerns with regard to the feasibility of these movements and do not support the proposal. |
| Walls, fences and other structures truncated or reduced to no higher than 0.75m within 1.5m of where walls, fences, other structures adjoin vehicle access points where a driveway meets a public street and where two streets intersect (refer Figure 3.8a). | Yes           | No works are proposed at the current vehicle access point. The applicant has revised the floorplan of the proposed shop to provide for improved sightlines should the primary regional road reservation be resumed.  |
| <b>3.9 – Car and Bicycle Parking</b>  |               |  |
| Secure, undercover bicycle parking is provided for 6 bicycle bays and accessed via a continuous path of travel from the vehicle or cycle entry point.   | Yes           | As proposed.   |
| Parking is provided for 5 inhabitants and 2 visitors.   | No            | Parking for the apartment inhabitants is provided only. Additional discussion of the parking provided is above.  |
| Car parking and vehicle circulation areas are designed in accordance with AS2890.1 (as amended) or the requirements of applicable local planning instruments.   | No            | The applicant has demonstrated vehicle manoeuvring diagrams for the proposed parking bays in accordance with the relevant Australian Standards. Main Roads have raised concerns with regard to the feasibility of these movements and do not support the proposal. |
| Car parking areas are not located within the street setback and are not visually prominent from the street.   | Yes*          | As proposed. *If approval of the proposal were considered, modification to the front setback to remove the area of hard stand would be required to ensure that parking in front of the building does not take place.   |

| <b>SPP 7.3 – Apartment Design Guidelines</b>  |               |   |
|---|---------------|---|
| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>  |
| Car parking is designed, landscaped or screened to mitigate visual impacts when viewed from dwellings and private outdoor spaces.   | Yes           | The parking is screened behind the existing built form and does not impose upon outdoor living areas.   |
| <b>4.1 – Solar and Daylight Access</b>  |               |   |
| In climate zones 4, 5 and 6 only:<br>Dwellings with a northern aspect are maximised, with a minimum of 70 per cent of dwellings having living rooms and private open space that obtain at least 2 hours direct sunlight between 9am and 3pm on 21 June<br>AND<br>A maximum of 15 per cent of dwellings in a building receiving no direct sunlight between 9am and 3pm on 21 June. | Yes           | (a) Per the development plans, sunlight access to the balcony and living areas is maximised through the use of glazing and skylights.<br><br>(b) The dwellings are provided with skylights to improve sunlight access, providing for additional direct sunlight to the dwellings. |
| Every habitable room has at least one window in an external wall, visible from all parts of the room, with a glazed area not less than 10 per cent of the floor area and comprising a minimum of 50 per cent of clear glazing.  | Yes           | As proposed   |
| Lightwells and/or skylights do not form the primary source of daylight to any habitable room.   | No            | While skylights will provide for a portion of the sunlight access for the living areas of apartments 1-4, this is considered an appropriate design response to the limited sunlight access resulting from the adaptive reuse of the existing building.                            |
| The building is oriented and incorporates external shading devices in order to:<br>minimise direct sunlight to habitable rooms:<br>between late September   | Yes           | Per the development plans (sections A-D refer), the summer sun will be mitigated while winter sun will enter the dwellings due to the angle of roofs and windows.   |

| <b>SPP 7.3 – Apartment Design Guidelines</b>  |               |  |
|---|---------------|--|
| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>   |
| and early March in climate zones 4, 5 and 6 only AND in all seasons in climate zones 1 and permit winter sun to habitable rooms in accordance with A 4.1.1 (a).   |               |  |
| <b>4.2 – Natural Ventilation</b>  |               |  |
| Habitable rooms have openings on at least two walls with a straight line distance between the centre of the openings of at least 2.1m.  | No            | The proposal does not provide for openings due to the existing boundary wall and proposed access corridor not including windows. The applicant proposes the inclusion of operable skylights to assist in the provision of ventilation to the apartments. Considering the adaptive reuse of the building, the proposed balcony depth and dwelling depth, this design response is considered to provide appropriate ventilation. |
| A minimum 60 per cent of dwellings are, or are capable of, being naturally cross ventilated in the first nine storeys of the building<br>Single aspect apartments included within the 60 per cent minimum at (a) above must have:<br>ventilation openings oriented between 45° – 90° of the prevailing cooling wind direction<br>AND<br>room depth no greater than 3 x ceiling height | No            | As above. Only one apartment (A5) meets the definition of natural cross ventilation.<br><br>The applicant is considered to appropriately address the objective of the requirement per the above comment.   |
| The depth of cross-over and cross-through apartments with openings at either end and no openings on side walls does not exceed 20m.   | Yes           | Apartment 5 is not greater than 20m in depth.  |
| No habitable room relies on lightwells as the primary source of fresh-air.  | Yes           | Ventilation for the dwellings is not primarily supported by the proposed light well/skylight only. Primary ventilation is to be provided via the balcony and appurtenant openings.   |

| <b>SPP 7.3 – Apartment Design Guidelines</b>   |               |   |
|--|---------------|---|
| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>  |
| <b>4.3 – Size and Layout of Dwellings</b>  |               |   |
| Dwellings have a minimum internal floor area of 67m <sup>2</sup>   | No            | The dwellings proposed do not satisfy this area requirement.  |
| Habitable rooms have minimum floor areas and dimensions in accordance with Table 4.3b.   | No            | The proposed dwellings do not satisfy these acceptable development requirements. The proposed bedrooms do not achieve the minimum dimension requirements. |
| Measured from the finished floor level to finished ceiling level, minimum ceiling heights are: — Habitable rooms – 2.7m — Non-habitable rooms – 2.4m All other ceilings meet or exceed the requirements of the NCC   | Yes           | Submitted sections demonstrate compliance with this acceptable development requirement.   |
| The length of a single aspect open plan living area is equal to or less than 3 x the ceiling height. An additional 1.8m length may be provided for a kitchen, where the kitchen is the furthest point from the window in an open plan living area provided that the maximum length does not exceed 9m. | Yes           | As proposed.  |
| <b>4.4 – Private Open Space and Balconies</b>  |               |   |
| Each dwelling has private open space accessed directly from a habitable room with dimensions of 10m <sup>2</sup> and a minimum dimension of 2.4m.  | Yes           | As proposed.  |
| Where private open space requires screening to achieve visual privacy requirements, the entire open space is not screened and any screening is designed  | Yes           | As proposed.  |

| <b>SPP 7.3 – Apartment Design Guidelines</b>   |               |   |
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| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>  |
| such that it does not obscure the outlook from adjacent living rooms.  |               |   |
| <b>4.5 – Circulation and Common Spaces</b>   |               |   |
| Circulation corridors are a minimum 1.5m in width.   | No            | The proposed access corridor provides areas of 1.3m dimension, however the variation in widths is considered to provide for adequate manoeuvring for dwelling access. |
| Circulation and common spaces are designed for universal access.   | No            | The primary access from the carpark is via a stair.   |
| Circulation and common spaces are capable of passive surveillance, include good sightlines and avoid opportunities for concealment.  | Yes           | The corridor is straight and access is controlled.  |
| Circulation and common spaces can be illuminated at night without creating light spill into the habitable rooms of adjacent dwellings.   | Yes           | As proposed, light from the corridor will not enter dwellings and the applicant has advised that the corridor will be provided with motion activated lighting.        |
| Bedroom windows and major openings to living rooms do not open directly onto circulation or common spaces and are designed to ensure visual privacy and manage noise intrusion.  | Yes           | As proposed.  |
| <b>4.6 – Storage</b>   |               |   |
| Each dwelling has exclusive use of a separate, ventilated, weatherproof, bulky goods storage area. This can be located either internally or externally to the dwelling. The stores are to be 4m <sup>2</sup> , a minimum dimension of 1.5m and a minimum height of 2.1m. | Yes           | As proposed.  |
| Bulky good stores that are not directly accessible from the  | Yes           | Proposed to be accessed from the carpark or to the rear of apartment 5, behind the secure carpark gate.   |

| <b>SPP 7.3 – Apartment Design Guidelines</b>   |               |   |
|--|---------------|---|
| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>  |
| dwelling/private open space are located in areas that are convenient, safe, well-lit, secure and subject to passive surveillance.  |               |   |
| Storage provided separately from dwellings or within or adjacent to private open space, is integrated into the design of the building or open space and is not readily visible from the public domain.   | Yes           | As proposed.  |
| <b>4.7 – Managing the Impact of Noise</b>  |               |   |
| Dwellings exceed the minimum requirements of the NCC, such as a rating under the AAAC Guideline for Apartment and Townhouse Acoustic Rating (or equivalent).   | No            | The applicant has not demonstrated the rating of the dwellings against these minimum requirements.<br>In accordance with SPP 5.4 – Road and Rail Noise, Quiet House Design requirements would apply to the subject site and their inclusion would be a condition of development approval if the proposal were otherwise considered satisfactory. The applicant has noted that the dwellings will need to be fire rated resulting in additional acoustic protection for the dwellings. The rating of the property against the relevant assessment tool could be addressed through a condition of approval. |
| Potential noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open space and refuse bins are not located adjacent to the external wall of habitable rooms or within 3m of a window to a bedroom. | No            | The plans indicate the location of air conditioner condensers adjacent to the wall of upper floor bedrooms.<br>The location of this element should be reviewed.   |
| Major openings to habitable rooms are oriented away or shielded from external noise  | Yes           | The shop tenancy added to the proposal plans screens the apartments from road noise.  |

| <b>SPP 7.3 – Apartment Design Guidelines</b>   |               |  |
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| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>   |
| sources.   |               |  |
| <b>4.9 – Universal Design</b>  |               |  |
| (a) 20 per cent of all dwellings, across a range of dwelling sizes, meet Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) OR<br>(b) 5 per cent of dwellings are designed to Platinum Level as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia). | No            | Due to the lack of a convenient step-free, level path of travel from the parking area to the dwelling entrances the dwellings are not readily able to satisfy these requirements.                |
| <b>4.10 – Façade Design</b>  |               |  |
| Façade design includes:<br>— scaling, articulation, materiality and detailing at lower levels that reflect the scale, character and function of the public realm — rhythm and visual interest achieved by a combination of building articulation, the composition of different elements and changes in texture, material and colour.     | Yes           | The proposed shop tenancy fronting South Street is considered to include a variety of materials and detailing resulting in a satisfactory built form.  |
| The façade includes design elements that relate to key datum lines of adjacent buildings through upper level setbacks, parapets, cornices, awnings or colonnade heights.   | Yes           | In accordance with the Scheme sub area requirements, building heights and separation are controlled and result in a consistent built form reflecting the intended future character of this area. |
| Building services fixtures are integrated in the design of the façade and are not visually intrusive from the public realm.  | Yes           | As proposed.   |
| Development with a primary setback of 1m or  | Yes           | The development provides an awning which will provide for pedestrian cover in the event the  |

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| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>   |
| less to the street includes awnings that: — define and provide weather protection to entries — are integrated into the façade design — are consistent with the streetscape character       |               | primary regional road reservation is resumed for road widening.  |
| <b>4.11 – Roof Design</b>  |               |  |
| The roof form or top of building complements the façade design and desired streetscape character.  | Yes           | The proposed flat roof form is consistent with existing buildings within the local centre.   |
| Building services located on the roof are not visually obtrusive when viewed from the street.  | Yes           | If approval of the proposal were considered, a condition requiring the screening of any rooftop plant and equipment would be recommended. The indicative plant and equipment is readily screened by the proposed built form. |
| Useable roof space is safe for users and minimises overlooking and noise impacts on private open space and habitable rooms within the development and on adjoining sites.                  | Yes           | The proposed rooftop terrace for apartment 5 is screened to prevent overlooking towards residential properties to the north.   |
| <b>4.12 – Landscape Design</b>   |               |  |
| Submission of a landscape plan prepared by a competent landscape designer. This is to include a species list and irrigation plan demonstrating achievement of Waterwise design principles. | Yes           | If approval of the proposal were considered, the submission of a detailed landscaping plan would form a recommended condition of approval.   |
| Landscaped areas are located and designed to support mature, shade-providing trees to open space and the public realm, and to improve the outlook and amenity to habitable rooms and       | Yes           | As proposed.   |

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|---|---------------|---|
| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>  |
| open space areas  |               |   |
| Planting on building structures meets the requirements of Table 4.12.   | Yes           | The proposed roof terrace provides sufficient soil depth for the planting of shrubs and ground cover.   |
| Building services fixtures are integrated in the design of the landscaping and are not visually intrusive.  | Yes           | The water meters indicated on the proposal plans are located unobtrusively.   |
| <b>4.13 – Adaptive Reuse</b>  |               |   |
| New additions complement the existing building by referencing and interpreting the scale, rhythm and materiality of the building.   | Yes           | The proposed additions to the existing building appropriately utilise the existing built form while resulting in an appropriate, modern design.   |
| <b>4.14 – Mixed Use</b>   |               |   |
| Ground floor uses including non-commercial uses, such as communal open space, habitable rooms, verandahs and courtyards associated with ground floor dwellings, address, enhance and activate the street.   | Yes           | The proposed shop use, including the two storey glazing element is considered to appropriately provide for streetscape activation and visual interest.  |
| Non-residential space in mixed use development is accessed via the street frontage and/or primary entry as applicable   | Yes           | As proposed.  |
| Non-residential floor areas provided in mixed use development has sufficient provision for parking, waste management, and amenities to accommodate a range of retail and commercial uses in accordance with the requirements of the local planning framework. | No            | The shop is provided with appropriate waste storage, amenities and storage area, however, as discussed above, the proposed shop tenancy is not considered to appropriately provide for car parking on site to accommodate staff and customer parking. |
| Mixed use development   | Yes           | The shop is accessed from the primary frontage  |

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|--|---------------|---|
| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>  |
| is designed to mitigate the impacts of non-residential uses on residential dwellings, and to maintain a secure environment for residents.  |               | which will not necessitate access to the rear of the building.<br>Access to the commercial tenancy bathroom may require modification due to the potential access to the apartment dwellings.  |
| <b>4.15 – Energy Efficiency</b>  |               |   |
| (a) Incorporate at least one significant energy efficiency initiative within the development that exceeds minimum practice (refer Design Guidance) OR<br>(b) All dwellings exceed the minimum NATHERS requirement for apartments by 0.5 stars. | Yes           | The applicant has advised that the dwellings are intended to achieve a 5 star NatHERS rating, and 6 stars for the whole development, exceeding the minimum standard by a half point. If approved, this would be enforced through a condition of approval. |
| <b>4.16 – Water Management and Conservation</b>  |               |   |
| Dwellings are individually metered for water usage.  | Yes           | This could be required as a condition of development approval.  |
| Stormwater runoff generated from small rainfall events is managed on-site.   | Yes           | As above.   |
| Provision of an overland flow path for safe conveyance of runoff from major rainfall events to the local stormwater drainage system.   | Yes           | As above.   |
| <b>4.17 – Waste Management</b>   |               |   |
| Waste storage facilities are provided in accordance with the Better Practice considerations of the WALGA Multiple Dwelling Waste Management Plan Guidelines (or local government requirements where applicable).                               | Yes           | To be considered as a part of any waste management plan.  |
| A Level 1 Waste Management Plan (Design Phase) is  | Yes           | This would be required as a condition of any approval.  |

| <b>SPP 7.3 – Apartment Design Guidelines</b>  |               |  |
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| <b>Acceptable Outcomes (AO)</b>   | <b>AO Met</b> | <b>Comment</b>   |
| provided in accordance with the WALGA Multiple Dwelling Waste Management Plan Guidelines - Appendix 4A (or equivalent local government requirements).   |               |  |
| Sufficient area is provided to accommodate the required number of bins for the separate storage of green waste, recycling and general waste in accordance with the WALGA Multiple Dwelling Waste Management Plan Guidelines - Level 1 Waste Management Plan (Design Phase) (or local government requirements where applicable). | Yes           | The bin store is located on the lower ground floor and if the proposal were considered for approval, a waste management plan, prepared to the City's satisfaction would be required. |
| Communal waste storage is sited and designed to be screened from view from the street, open space and private dwellings.  | Yes           | As proposed.   |
| <b>4.18 - Utilities</b>   |               |  |
| Utilities that must be located within the front setback, adjacent to the building entry or on visible parts of the roof are integrated into the design of the building, landscape and/or fencing such that they are accessible for servicing requirements but not visually obtrusive.   | Yes           | The proposed water meters are located on an existing wall and would require relocation onto the building if the primary regional road reservation were resumed.                      |
| Developments are fibre-to-premises ready, including provision for installation of fibre   | Yes           | The applicant has advised that 'all current and best telecommunication services' will be provided to the development.  |

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| <b>Acceptable Outcomes (AO)</b>  | <b>AO Met</b> | <b>Comment</b>  |
| throughout the site and to every dwelling.   |               |   |
| Hot water units, air-conditioning condenser units and clotheslines are located such that they can be safely maintained, are not visually obtrusive from the street and do not impact on functionality of outdoor living areas or internal storage. | Yes           | As proposed, these elements will not be readily visible from the street.                |
| Laundries are designed and located to be convenient to use, secure, weather-protected and well-vented; and are of an overall size and dimension that is appropriate to the size of the dwelling  | Yes           | The laundries are internal to the apartments and provided with appropriate ventilation. |

### **Lot Boundary Setbacks**

| <b>Element</b>  | <b>Requirement</b>                  | <b>Proposed</b>  | <b>Extent of Variation</b>  |
|---|-------------------------------------|--|---|
| SPP 7.3 – Volume 2 – Element 2.4 – Side and Rear setbacks | Acceptable Outcome: West (side) 3m  | Lower ground floor: 0.6m (min) – otherwise 1.5m<br>Ground floor: 0.6m (min) – otherwise 1.2m | Lower ground floor: 2.4m<br>Ground floor: 2.4m                      |
|   | Acceptable Outcome: North (side) 6m | Lower ground floor: 1.6m<br>Ground floor: 1.6m<br>Upper floor: 2.1m                          | Lower ground floor: 4.4m<br>Ground floor: 4.4m<br>Upper floor: 3.9m |

The proposed lot boundary setbacks are considered to satisfy the element objectives of Volume 2 in the following ways:

- It is considered that the impact of the proposed development has been appropriately addressed through compliance with the applicable height buffer requirements of sub area 6.3.1 which permit a wall height of 6 metres and a pitched roof height of 9 metres within 5 metres of residentially zoned land outside of the sub area. While it is noted that the proposed screening to the upper floor balcony exceeds this height, the lightweight structure is considered consistent with the impact of a pitched roof and therefore appropriate in this instance.

- The height buffer introduced through Local Planning Scheme No. 4 was adopted to provide for an appropriate transition between the development sub area and the adjoining residential properties.
- The proposal was amended to remove an extension to the existing boundary wall from the western site boundary, setting the structure back 0.6m thereby reducing the bulk impact of the structure on the adjoining site.
- The development includes a variety of materials, openings and setbacks which are considered to contribute to the amelioration of building bulk impact.
- The portions of the building visible from the street are either existing or do not vary the applicable setback requirements.

### Visual Privacy

| Element   | Requirement                                   | Proposed | Extent of Variation |
|---|---|----------|---------------------|
| R-Codes Volume 2<br>Element 3.5 –<br>Visual Privacy | Balconies – 6m<br>(acceptable<br>development) | 3.45m    | 2.55m               |

The proposed lot boundary setbacks are considered to satisfy the element objectives of Volume 2 in the following ways:

- The proposed balconies overlook the adjoining boundary wall and outbuilding which are not considered to be spaces sensitive to overlook.
- The future development of the lot to the east may include a boundary wall to the subject site, maintaining the proposed visual privacy arrangement.

It is noted that the applicant has otherwise included screening to limit overlooking towards adjoining residentially zoned properties to the north and west.

In accordance with the above and the additional detail provided in attachments 3 and 4, the proposed apartments are generally considered to appropriately address the guiding principles of the State Planning Policy. The primary element which is not considered to be appropriately addressed is the provision of vehicle parking for the development as a whole as discussed above. Accordingly the proposal is recommended for refusal.

### CONCLUSION

While the proposed development is generally considered to appropriately address the relevant design criteria of the applicable statutory requirements, it is considered that the provision of parking for the subject site is insufficient to support the development.

The potential impact of the proposed development upon the Primary Regional Road reserve and South Street has been raised as a concern by Main Roads and the proposal is likewise not supported by them.

In the event that Council is satisfied that adequate parking is available, then the outstanding design elements could be addressed through conditions of approval. Referral of the proposal to the WAPC for determination under the MRS would also be necessary because of MRWA's objection.

### STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

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

**FINANCIAL IMPLICATIONS**

Nil

**LEGAL IMPLICATIONS**

Nil

**OFFICER'S RECOMMENDATION**

Planning committee acting under delegation 1.1:

**REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the Three level Mixed Use Development containing five multiple dwellings and a Retail tenancy at No. 214 (Lot 5) South Street, White Gum Valley, as detailed on plans dated 14 June 2019, for the following reasons:**

- 1. The proposal is inconsistent with the parking requirements (clause 4.7.2) of Local Planning Scheme No. 4 and the residential visitor parking requirements of State Planning Policy 7.3 – Residential Design Codes.**
- 2. The proposal would be detrimental to the amenity of the area under clause 67 of Planning and Development (Local Planning Scheme) Regulations 2015 by reasons of vehicle parking and traffic.**
- 3. The proposed car parking bays, aisle widths, circulation areas, driveway/s and points of ingress and egress do not comply with the Australian Standard AS/NZS 2890 and AS/NZS 1428 to allow vehicles to exit the site in a forward movement.**

**Advice note:**

- i) Further to reason of refusal (3), Main Roads Western Australia advise that the proposal is not supported as 'the driveway designs do not appear to be adequate and it is a requirement that they must be designed to have an internal turn around facility or area that enables vehicles to turn and exit the driveway in a forward movement. Turning circle diagrams as provided do not demonstrate clearly that this requirement has been met and the reverse and forward movement of the car bays remains inappropriate'.**

**PC1907 -4 S. 31 RECONSIDERATION - SOUTH TERRACE, NO. 193 (LOT 1), SOUTH FREMANTLE - THREE, TWO STOREY GROUPED DWELLINGS AND CHANGE OF USE TO EDUCATIONAL ESTABLISHMENT - (NB DAP002/18)**

**Meeting Date:** 3 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Metro South-West Joint Development Assessment Panel (JDAP)  
**Attachments:**  
1: Previous Determination Notice and Plans  
2: Amended Development Plans  
3: Schedule of Submissions  
4: Applicant's Justification  
5: Applicant's Heritage Report  
6: Site Photos

**SUMMARY**

In its original form, the application proposed a three storey Mixed use development comprising six multiple dwellings, and an additional 'use not listed' in the existing heritage building.

The applicant chose to have the application determined by the Metro South-West Joint Development Assessment Panel (JDAP). At the 14 December 2018 meeting, the JDAP resolved to:

***Refuse DAP Application reference DAP/18/01446 and accompanying plans dated 1 November 2018 marked Feature Survey, and A0 – A20 in accordance with Clause 68 of the Planning and Development (Local Planning Schemes) Regulations 2015 and the provisions of the City of Fremantle Local Planning Scheme No. 4, for the following reasons:***

- a) The proposal is inconsistent with the requirements of the City of Fremantle Local Planning Scheme No. 4 in respect to the proposed density, the building height requirements of Schedule 8, and the land use.***
- b) The proposal fails to comply with the design principles and deemed to comply standards of the Residential Design Codes in respect to minimum site area per dwelling, street setbacks, lot boundary setbacks, open space provision, visual privacy and overshadowing.***
- c) The proposal is detrimental to the heritage significance of the existing building.***

- d) *The proposal would be detrimental to the residential amenity of the area under clause 67 of Planning and Development (Local Planning Scheme) Regulations 2015 by reasons of being detrimental to the amenity of adjoining properties, the negative impact on the heritage significance, the incompatibility of the development with its setting, the incompatibility with the amenity and character of the area, and the impact of the reduction in car parking on the area.***

On 7 January 2019, the applicant lodged an appeal with the State Administrative Tribunal. During the mediation process, the applicant agreed to submit amended plans for reconsideration by JDAP.

Approval is now sought for a revised proposed containing three, two storey Grouped dwellings with undercroft car parking, partial demolition of the rear of a heritage listed place, and a change of use of the existing building to Educational Establishment. These amended plans are the subject of the current report.

The application will be determined by JDAP and the purpose of this report is to provide a Planning Committee recommendation to be included in the final report. As the RAR is not required to be submitted until the end of July, the applicant may choose to respond by providing additional information or further revised plans in light of the City's detailed assessment below. Should the applicant choose to amend the proposal, the RAR will be amended prior to submission to the Department of Planning, Lands and Heritage (DPLH).

The amended development proposal seeks discretion against the Local Planning Scheme No. 4 (LPS4), the Residential Design Codes (R-Codes) and local planning policies for:

- density
- land use (Grouped dwellings, Educational Establishment)
- front setback (South Terrace)
- lot boundary setback (south)
- boundary wall (south)
- open space
- car parking for the Educational Establishment
- outdoor living areas

The subject site is zoned R30, and the application seeks to develop the site at a higher density using clause 12 of the *Deemed provisions* of the *Planning and Development (Local Planning Schemes) Regulations 2015*. Clause 12 allows the local government to vary any site or development requirement of the scheme to facilitate the built heritage conservation of a place or preserve the heritage values in an area. City officers do not consider that increasing the density beyond that allowed in the R-Codes facilitates the built heritage conservation of the area in this instance.

The application is recommended for refusal.

**PROPOSAL**

**Detail**

Approval is sought for three, two storey Grouped dwellings with undercroft car parking, partial demolition of the rear of a heritage listed place, and a change of use of the existing building to Educational Establishment.

**Site/application information**

Date received: 7 January 2019 (SAT Appeal)  
 Owner name: John Mocilac and Annette Eckert  
 Submitted by: Pinnacle Planning  
 Scheme: Residential R30  
 Heritage listing: Individually Listed Level 3, South Fremantle Heritage Area  
 Existing land use: Single house, Home business, Community Purpose  
 Use class: Grouped Dwelling, Educational Establishment  
 Use permissibility: D, A



**OFFICER'S RECOMMENDATION**

**Planning committee acting under delegation 1.1:**

**SUPPORT the Officer's Recommendation to:**

**REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the three, two storey Grouped dwellings and change of use to Educational Establishment at No. 193 (Lot 1) South Terrace, South Fremantle, as detailed on plans dated 30 May 2019, for the following reasons:**

- 1. The increase in density does not facilitate the built heritage conservation of the place, nor does it enhance or preserve the heritage values of the area and is not supported under clause 12 of the Deemed provisions.**
- 2. The proposal is inconsistent with the minimum and average site area requirements of clause 5.1.1 of the Residential Design Codes and would be contrary to orderly and proper planning.**
- 3. The proposal would be detrimental to the residential amenity of the area under clause 67 of Planning and Development (Local Planning Scheme) Regulations 2015 by reasons of being detrimental to the amenity of adjoining properties, the impact of the reduction in car parking on the area, and the reduction in open space.**

### State Administrative Tribunal Reconsideration

#### Responsible Authority Report (Regulation 12)

|                                   |  |
|-----------------------------------|--|
| <b>Property Location:</b>         | No. 193 (Lot 1) South Terrace, South Fremantle   |
| <b>Development Description:</b>   | Three, Two Storey Grouped Dwellings And Change Of Use To Educational Establishment   |
| <b>DAP Name:</b>                  | Metro South-West JDAP  |
| <b>Applicant:</b>                 | Pinnacle Planning  |
| <b>Owner:</b>                     | John Mocilac and Annette Eckert  |
| <b>Value of Development:</b>      | \$2 Million  |
| <b>LG Reference:</b>              | DAP002/18  |
| <b>Responsible Authority:</b>     | City of Fremantle  |
| <b>Authorising Officer:</b>       | Manager Development Approvals  |
| <b>DAP No:</b>                    | DAP/18/01446   |
| <b>Report Date:</b>               | 3 July 2019  |
| <b>Application Received Date:</b> | 30 May 2019  |
| <b>Application Process Days:</b>  | 60 Days  |
| <b>Attachment(s):</b>             | 1: Previous Determination Notice and Plans<br>2: Amended Development Plans<br>3: Schedule of Submissions<br>4: Applicant's Justification<br>5: Applicant's Heritage Report<br>6: Site Photos |

Officer Recommendation:

That the Metro South-West Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 3 of 2019, resolves to:

**Reconsider** its decision dated 14 December 2018 and **refuse** DAP Application reference DAP/18/01446 (City of Fremantle reference DAP002/18) and amended plans A1 – A18, A20 – A24 and the Survey Plan in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Fremantle Local Planning Scheme No.4, for the following reasons:

**Reasons**

1. The increase in density does not facilitate the built heritage conservation of the place, nor does it enhance or preserve the heritage values of the area and is not supported under clause 12 of the Deemed provisions.
2. The proposal is inconsistent with the minimum and average site area requirements of clause 5.1.1 of the Residential Design Codes and would be contrary to orderly and proper planning.
3. The proposal would be detrimental to the residential amenity of the area under clause 67 of Planning and Development (Local Planning Scheme) Regulations 2015 by reasons of being detrimental to the amenity of adjoining properties, the impact of the reduction in car parking on the area, and the reduction in open space.

Details: outline of development application

|                            |      |  |
|----------------------------|------|--|
| Insert Zoning              | MRS: | Urban  |
| LPS:                       |      | Residential  |
| Insert Use Class:          |      | Grouped Dwellings (D), Educational Establishment (A) |
| Insert Strategy Policy:    |      | Local Planning Scheme No. 4                          |
| Insert Development Scheme: |      | n/a  |
| Insert Lot Size:           |      | 799m <sup>2</sup>                                    |
| Insert Existing Land Use:  |      | Single House, Home Business, Community Purpose       |

Approval is sought for:

- Partial demolition of the rear of the existing heritage place
- Three, two storey Grouped dwellings including an undercroft car park and bin storage accessed via a separate driveway on Louisa Street adjacent to the rear right of way.
- Change of use in the existing heritage building to Educational Establishment.

Background:

The site is located on the south-west corner of South Terrace and Louisa Street in South Fremantle. The site is zoned Residential – “R30” under the Scheme and is located within the South Fremantle Heritage Area. The site contains an existing building that is included on the City of Fremantle Heritage List and is management category 3 on the Municipal Heritage Inventory. The existing heritage building contains later additions consisting of additional habitable rooms to the rear, and a verandah extension to the south.

The western side of South Terrace between Russell Street and Rose Street is predominantly zoned Residential, with only a few sporadic Mixed use lots. The Mixed use component of South Terrace is mostly confined to the eastern side, creating a clear distinction between the residential uses and the commercial uses (see Figure 1 below).



**Figure 1:** South Terrace zoning. (Pink is Mixed use, brown is Residential.)

The house directly to the south (No. 195 South Terrace) is a single storey Single house with a large solar array on the roof. It is noted that this adjoining property is currently licensed for use as a Short Stay Dwelling, however, such a use is exempt from requiring planning approval under LPS4. It is understood that the house is used as a permanent residence with the occasional use as a short stay dwelling. The use of the house could be as a permanent residence or short stay dwelling at any time with no additional planning approval required. Therefore, for the purposes of assessing the amenity impacts of proposed development, the house to the south is considered to be a Single house.

The existing building is currently single storey and divided in half internally. The rear half of the house is a residence and the front (South Terrace) half is used for a health education and nutrition business operating under a Home business use and a Community Purpose use. However, the City has doubts that the current land use is considered a Community Purpose. Nonetheless, the applicant has proposed changing the use of the entire building to an Educational Establishment for the purposes of individual and group tutoring.

A search of the property files reveals the following relevant planning history:

- On 14 May 1990, the City approved a partial change of use to Community purpose for a local newspaper. The conditions of approval included the provision of four (4) marked parking bays for the Community purpose use and a requirement that the internal alterations not “*preclude the reconversion of the building back at some future date*” (DA74/90).
- On 2 August 2004, the City approved a change of use to Child care centre. This approval was not acted upon and has since lapsed (DA239/04).
- On 10 October 2016, the City approved a partial change of use to Home business (Health education) and primary street fencing and signage (DA0353/16).
- On 28 June 2017, the City refused an application for two storey additions and alterations and additional uses of Restaurant and Health studio to an existing mixed use building (DA0104/17).
- On 8 August 2017, the applicant (at the time) made an application to the SAT for review of the decision for DA0104/17. As part of the process, amended plans were subsequently submitted to the City for reconsideration.
- On 10 January 2018, the amended plans were refused by the City’s Planning Committee. The application was subsequently withdrawn from SAT consideration.
- On 14 December 2018, the JDAP refused an application for a three storey Mixed Use (Multiple Dwellings, Use not listed) development (DAP002/18).
- On 7 January 2019, the applicant made an application to the SAT for a review of the decision for DAP002/18. This review is the subject of this report.

The application has been substantially changed from the previously refused application. Notably, it has been reduced in height with the introduction of an undercroft parking and bin storage area with at least 50% of its volume below the natural ground level. Therefore, under the definition of “Storey” within LPS4, the undercroft is no longer considered to constitute a storey, with the effect that the overall development is now a maximum of two storeys and consistent with the scheme height requirements for the area.

Legislation and Policy:

#### Legislation

##### *Planning and Development (Local Planning Schemes) Regulations 2015*

- Clause 12 - Variations to local planning scheme provisions for heritage purposes
- Clause 67 – Matters to be considered

##### *Local Planning Scheme No. 4 (LPS4)*

- Clause 3.2.1(a) – Objectives of the Residential zone
- Table 1 – Zoning
- Clause 4.2 – Residential Design Codes
- Clause 4.3.1 – Relationship to Schedule 8 (Local Planning Areas)
- Clause 4.4.1 – Subdivision
- Clause 4.7.2 – Vehicle Parking Requirements
- Clause 4.7.3 – Relaxation of Parking Requirements
- Clause 4.8 – Variations to site and development standards and requirements
- Schedule 1 – Land Use Definitions
- Schedule 8 – Sub Area 4.3.3

State Government Policies

SPP 7.0 – Design of the Built Environment

SPP 7.3 – Residential Design Codes Volume 1

Local Policies

- LPP 1.3: Public Notification of Planning Proposals
- LPP 1.6: Heritage Assessments
- LPP 2.4: Boundary Walls in Residential Development
- LPP 2.9: Residential Streetscape Policy
- LPP 2.20: Discretion to vary local planning scheme site or development requirements for heritage purposes

**Consultation:**

Public Consultation

The amended plans were advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015 and the City's policy LPP 1.3. Advertising consisted of:

- signs on site facing both street frontages
- letters to property owners and residents immediately adjoining the site and directly across each street from the site
- plans posted on the City's MySay website.

The advertising period concluded on 24 June 2019 and seven submissions were received raising the following issues (summarised):

| Issue Raised   | Officer's comments  |
|--|---|
| Development is improved from the previous proposal but still seeks significant discretion in terms of density and land use that will detrimentally impact amenity of surrounding lots. Density increases should be carried out through rezoning. | See 'Density' below   |
| The educational establishment could be turned back into a residential use at any time.   | See 'Density' below   |
| The proposal is trying to get 4 buildings on a site that is too small. Deleting unit 1 would make the proposal more appropriate for the site and also eliminate impacts to neighbours.   | See 'Density' below   |
| Parking around Louisa Street is already bad and this proposal will make it worse.  | See 'Parking' below. The applicant has indicated a willingness to allocate three of the proposed bays for the educational establishment should the development be approved, and this would be recommended as a condition should JDAP resolve to |

|   |   |
|---|---|
|   | approve the application. The parking would therefore be completely compliant.   |
| The building will overshadow the solar panels on the lot to the south.  | The development complies with solar access requirements for the R-Codes. Additionally, the sectional provided shows that the maximum overshadowing will not reach the adjoining solar panels. |
| The proposed buildings don't fit in to the streetscape or the existing heritage house.  | Noted. There are no building design requirements other than to not detract from the heritage character of the place.  |
| Access to sunlight to the southern property would be restricted by the boundary wall and reduced lot boundary setbacks.   | See 'Lot boundary setbacks' below.  |
| Any development of the proposed subject site would require a sewer upgrade and removal of the sewer line from beneath the southern property, as indicated by the Water Corporation. | Noted   |
| Do not support demolition of the heritage place.  | Proposed demolition is to portions of the building not impacting the culturally significant level 3 portions of building.   |

A more detailed summary of submissions is included as Attachment 3.

Planning Assessment:

Local Planning Scheme

| <b>Item</b> | <b>Requirement</b>  | <b>Proposal</b>                                       | <b>Compliance</b>                 |
|-------------|---|---|-----------------------------------|
| Density     | R30 as per the Scheme Map and the Site Area requirements of clause 5.1.1 of the R-Codes | R50 - R60   | Discretionary assessment required |
| Land Use    | Table 1: Land Use of LPS4 - Grouped Dwelling (D)<br>Educational Establishment (A)       | Grouped Dwelling (D)<br>Educational Establishment (A) | Discretionary assessment required |
| Car Parking | Table 2: Vehicle Parking of LPS4<br>1:1 teaching room<br>OR                             | No car parking bays for the Educational Establishment | Discretionary assessment required |

|  |  |  |  |
|--|--|--|--|
|  | 1:6 students,<br>(whichever is the<br>greater) |  |  |
|--|--|--|--|

Local Planning Policies

| Item   | Requirement   | Proposal                   | Compliance                        |
|--|---|----------------------------|-----------------------------------|
| LPP 2.9 - Street Setback (Lower and Upper Floor)   | 7m (lower), 10m (upper)                                     | 5 m (lower), 7.6 m (upper) | Discretionary assessment required |
| LPP 2.20 - Discretion to vary local planning scheme site or development requirements for heritage purposes | Proposal to satisfactorily address requirements of clause 3 | Does not comply            | Discretionary assessment required |
| LPP 2.4: Boundary Walls in Residential Development   | 1 m setback (south)   | Nil setback                | Discretionary assessment required |

R-Codes

Clause 4.2.3 of LPS4 states “*The Residential Design Code density applicable to land within the Scheme area shall be determined by reference to the Residential Design Codes density number on the Scheme map and the area contained thereto as delineated by the dashed black line borders superimposed on the Scheme map.*” The application has therefore been assessed under Volume 1 of the R-Codes.

| Item                                 | Requirement   | Proposal  | Compliance                        |
|--------------------------------------|---|---|-----------------------------------|
| 5.1.1: Minimum and Average Site Area | 260m <sup>2</sup> (min.)<br>300 m <sup>2</sup> (avg.) | 126.54 m <sup>2</sup> (min.)<br>199.75 m <sup>2</sup> (avg.)                              | Discretionary assessment required |
| 5.1.4: Open Space                    | 45%   | 41.2%   | Discretionary assessment required |
| 5.1.3: Lot Boundary Setbacks (south) | 1m, 1.5m  | Nil, 1m, 1.5m   | Discretionary assessment required |
| 5.3.1: Outdoor living areas          | 24m <sup>2</sup> per lot                              | Unit 1 – 29.7m <sup>2</sup><br>Unit 2 – 22.6m <sup>2</sup><br>Unit 3 - 16.5m <sup>2</sup> | Discretionary assessment required |

**Officer Comments**

Heritage

193 South Terrace is included on the City of Fremantle Municipal Heritage List and is management category Level 3 on the Municipal Heritage Inventory. This means that the City of Fremantle has identified this place as being of some cultural heritage significance for its contribution to the heritage of Fremantle in terms of its individual or collective

aesthetic, historic, social or scientific significance, and /or its contribution to the streetscape, the local area and Fremantle. Its contribution to the streetscape and urban context should be maintained and enhanced.

The house, 193 South Terrace stands at the intersection of South Terrace and Louisa Street and is located within the South Fremantle Heritage Area. The single-storey house, built in 1892, is an example of the Federation Bungalow style of architecture. The walls are of red-coloured face brickwork and some of them have been rendered and painted. The roof is hipped and gabled and clad with tiles. Both the South Terrace and Louisa Street facades of the house are terminated by a gabled wing and have an articulated verandah which connects the wing of one façade to that of the other. As a result the composition of the building achieves an overall symmetry when the house is viewed from the intersection, giving equal emphasis to the South Terrace and Louisa Street facades.

The aesthetic characteristics of 193 South Terrace ensure that the house makes a distinctive contribution to the streetscapes of both South Terrace and Louisa Street. This brings with it the need for the additions to have minimal impact on the aesthetic qualities of the house's presentation to both South Terrace and Louisa Street.

It is considered, that the best way of maintaining and enhancing the house's contribution to the urban context is for the new additions to complement those attributes and elements which reflect and embody the aesthetic values attached to the South Terrace and Louisa Street facades of the house.

The proposed demolition will not have an impact on the significance of the house's contribution to the streetscape and urban context. It is considered that the proposed infill additions respond to the prominently projecting gabled wings that terminate both the South Terrace and Louisa Street facades by complementing their siting, gabled form, bulk, scale and building materials.. As a result there is a clear and coherent relationship between the existing house and the new additions, and between the new additions and the urban context into which the new work is to be introduced.

### Density

| Unit                                | Proposed Lot Size   | Required Lot Size           | Variation  |
|-------------------------------------|---|-----------------------------|--|
| 1                                   | 156.23 m <sup>2</sup>   | 260m <sup>2</sup> (Minimum) | 103.77 m <sup>2</sup><br>(39.9%)                                       |
| 2                                   | 126.54 m <sup>2</sup>   |                             | 133.46 m <sup>2</sup><br>(51.3%)                                       |
| 3                                   | 135.53 m <sup>2</sup>   |                             | 124.47 m <sup>2</sup><br>(47.9%)                                       |
| 4<br>(Educational<br>Establishment) | 348.2 m <sup>2</sup>  |                             | Complies   |
| TOTAL                               | 799 m <sup>2</sup> total =<br>266.3m <sup>2</sup> Average<br>Or 199.75m <sup>2</sup> if considering<br>the non-residential use to<br>be an additional lot | 300m <sup>2</sup> (Average) | 33.7m <sup>2</sup><br>(12.7%)<br>Or<br>100.25m <sup>2</sup><br>(33.4%) |

There is no provision within LPS4 for granting a higher density than what is listed on the scheme map in a residential zone. The proposal has been assessed against the site area requirements of development within an R30 density as shown in the table above and does not meet the minimum or average site area of clause 5.1.1 of the Residential Design Codes. The proposed variations are also well outside of the guidelines under which the WAPC would approve a three lot subdivision, due to the siting of the existing heritage building as discussed below. It is noted that the revised proposal does not include details of a future lot layout, nor does the applicant's justification acknowledge that the existing building is proposed as an Educational Establishment but could easily be converted into a Single house in the future, effectively resulting in a four lot subdivision. A four lot subdivision would be unlikely to be approved by the WAPC as the lots would fail to meet both the minimum and average lot sizes.

In regards to the heritage justification (Attachment 5), the applicant correctly identifies that the WAPC's subdivision control policy DC 2.2 allows the WAPC to consider variations to the average lot size for corner lots, provided all lots comply with the minimum lot size. The maximum subdivision, in the City's opinion, that the WAPC would likely consider if the site was vacant would be a three lot subdivision, however, this application effectively proposes four lots when including the Educational Establishment, which would sit on its own lot and could potentially be converted to a residential use in the future. Even if the Educational Establishment was included as part of one of the residential lots, the building bulk would present as four buildings.

A three lot subdivision could only be achieved in such a way as to achieve the minimum lot size and a varied average size if there was no heritage building on the lot. The siting and size of the existing heritage building precludes such a three lot subdivision as, in order to retain the heritage portion of building and maintain appropriate boundary setbacks, the lots would fail to meet both the minimum and average site area size. Consequently, City officers believe that the lot could support, at most, a two lot subdivision (including the retention of the existing building on one of these lots).

By comparing the proposal with the subdivision that would be possible had the lot not contained a heritage place, the application appears to be seeking compensation for retaining the existing heritage building. In fact, a four lot subdivision goes beyond what would be possible if the site was vacant. The wording of clause 12 is clearly not intended to be compensatory, but rather is to be used to result in a better heritage outcome. See the following section for further discussion of clause 12.

Because the dwellings are Grouped dwellings rather than Multiple dwellings, they have been compared to the density within Table 1 of Volume 1 of the R-Codes. It is difficult to come up with an exact comparison but based on the minimum and average site areas in the above table and within Table 1, the development would likely be equivalent to a density somewhere around R50 and R60.

The applicant argues that a density increase to allow for three dwellings and a non-residential use in the heritage building (effectively four lots) should be granted under clause 12 of the *Deemed provisions* in order to facilitate the built heritage of the existing place. City officers do not believe such a density increase would be consistent with the wording or intent of clause 12, nor of Council's policy relating to the interpretation of

clause 12 through policy LPP 2.20. Further, approval of such would have wider negative repercussions for the greater Fremantle area and potentially the state and be contrary to orderly and proper planning. Clause 12 is discussed in detail below.

*Clause 12 of the Deemed Provisions*

Clause 4.14 of the City's scheme states:

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

- (a) has limited or no cultural heritage significance, and*
- (b) does not make a significant contribution to the broader cultural heritage significance and character of the locality in which it is located.*

Complete demolition of the existing level 3 heritage listed building would not be permitted as the City's heritage assessment makes clear that the dwelling does have cultural heritage significance. In any development proposal, the culturally significant portions of the existing heritage place would have to be retained.

Clause 12 of the *Deemed provisions* states:

- (1) The local government may vary any site or development requirement specified in this Scheme to —*
  - (a) facilitate the built heritage conservation of a place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the heritage list; or*
  - (b) enhance or preserve heritage values in a heritage area.*
- (2) A variation under subclause (1) may be unconditional or subject to any conditions the local government considers appropriate.*

The wording of clause 12 of the *Deemed provisions* makes clear that variations to requirements are not intended as compensation for having a heritage place nor as a bonus, but rather are to be used solely to either *facilitate* built heritage preservation, or enhance or preserve values of a heritage area. Words or expressions not defined within the scheme are to have their common English meanings. The word "facilitate" is defined in the Oxbridge English Dictionary as "Make (an action or process) easy or easier".

As the applicant proposes increasing the density through clause 12, in the opinion of officers, the question that must be answered is: how does increasing the density of the development make conserving the heritage place easier, or otherwise enhance or preserve the heritage values of the area?

In answering this question, it is reasonable for the decision maker to ask whether the applicant is proposing any outcome that is not already required by the City's scheme or policies. For, if the applicant is only proposing what is already required, it cannot be said that the variation actually facilitates the built heritage conservation, or enhances or preserves heritage values, any more than is already set out in the scheme.

The applicant's heritage report (Attachment 5) rightly discusses conservation as defined in the Heritage Act (including the proposed amendments) and the Burra Charter. The report also acknowledges that the existing heritage building is in good condition and further states:

*The preservation of the heritage building with an active use is in itself considered to be a good conservation outcome but there are additional restorative works proposed that will enhance the heritage values of the building. While the majority of the existing heritage building was conserved and partially restored in 2005-2006 there remains some work to do and this includes:*

- a. Remove the clay roof tiles and restore the original short sheet galvanised iron cladding*
- b. Remove the cement render to the exterior which has potential to damage the historic brick substrate and restore the tuck pointing using a lime mortar. This will greatly improve the presentation of the building to both South Terrace and Louisa Street.*

The re-roofing and tuck pointing, while desirable conservation outcomes, are unrelated to the proposed density increase, likewise with the proposed active use of the retained building and upgraded landscaping. Each of these items on their own could be achieved now, without relying on adding additional lots, and without varying the minimum and average lot sizes. Varying the density under clause 12 does not facilitate these built heritage preservation outcomes.

The applicant's heritage report then summarises five specific ways that the proposal facilitates the built heritage conservation of the place informed by the Heritage Act and the Burra Charter, as set out below and interspersed by City officer comments:

- a. Preservation – The retention of the heritage building preserves the majority of the significant heritage fabric and the building in its setting.*

Clause 4.14 of LPS4 prevents demolition of the significant portions of the heritage building in any proposal. Retaining the heritage building on the lot is an essential requirement of every development on the lot, and increasing the density to add another house does not facilitate the built heritage conservation beyond that set out in the scheme.

- b. Restoration – Restoring the exterior of the heritage building means that there is an enhancement of the aesthetic value and a better understanding of its original design intent as Federation Bungalow style of architecture.*

The minor works to the building are not required in order to maintain the integrity of the building, and do not require an increase in density nor construction of additional houses in order to be carried out. Arguably, increasing the density of a site makes it more difficult to preserve the built heritage place because a higher density requires a larger footprint, which then threatens to encroach onto the heritage building.

- c. Protection – By incorporating the heritage building within a new boutique development ensures its ongoing protection.*

The building is already protected by the City's scheme, which prevents both deliberate demolition and demolition by neglect. Increasing the density does not provide any more protection than refusing to increase the density.

- d. Adaptation – providing new community access to the heritage building by adapting it into a community education facility improves the benefit to the community in addition to giving the building a sustainable new use. The reversibility of the adaptation means that it could be returned back into a house if necessary, in future.*

As above, community access to the dwelling is not dependent on adding one or two additional houses and, in fact, the heritage place is currently used as a business, which members of the community could enjoy to a similar degree now. Returning the building to a Single house use also results in an even greater density increase of four residential lots.

- e. Maintenance – maintenance of the heritage building has been undertaken to a high standard to date and there is no reason to believe that this would not continue. It is arguably more likely given the proximity to the new town houses. Should the City be concerned about ongoing maintenance this can be ensured by the City entering into a heritage agreement with the owner.*

The City acknowledges that the heritage building has been well maintained to date and that the place is in very good condition. Once again, though, the density increase does not facilitate maintenance of the building. The heritage building can be, and is, well maintained without adding additional houses to the lot.

The heritage report also considers the heritage values of the area as set out in the Statement of Significance for the area and whether the proposal enhances and preserves such values. The relevant values are below, followed by the applicant's comments:

- a. its concentration of mainly modest workers accommodation dating from the Victorian and Federation periods*

*Applicant comments:* The retention and restoration of the heritage building retains the Federation era bungalow in a manner which enhances its significance. It also retains its visual prominence in the Precinct.

The City's scheme already requires the retention of the heritage building without application of clause 12. The restoration works proposed are unrelated to the varied density and minimum and average lot sizes. The existing bungalow is not necessarily enhanced by having two storey buildings surrounding it.

- b. its cultural diversity resulting from successive periods of migrant settlement in the area*

*Applicant comments:* The layering of historical development in South Fremantle is notable and recognised as significant. In close proximity to the subject site there are buildings from a variety of eras and functions. The

development of new contemporary residences adds a new layer to that cultural diversity. The proposed development achieves a 21st century approach to urban infill without diminishing the significance of the heritage building, which retains its visual dominance in its corner location.

City officers contend that the proposal to add additional density and vary the minimum and average lot sizes beyond that contemplated by the scheme and the R-Codes does not enhance or preserve the values of the heritage area beyond that would not otherwise be achieved by a development that complied with the density. Further, the heritage place is required to be retained so the proposal to do so is not providing anything surplus to the City's scheme.

Returning to the fundamental question posed by clause 12, namely "how does increasing the density of the development make conserving the heritage place easier, or otherwise enhance or preserve the heritage values of the area?", Officers conclude that the increased density does not enhance or preserve the heritage values of the place or area. The additional lot(s), and varied minimum and average lot sizes, are unrelated to the heritage outcome. There is not considered to be a link between varying the above and facilitating a positive built heritage outcome.

Nothing significant is achieved in the proposal in regards to the preservation of the heritage building that is not already required by the scheme, and the overall heritage outcome is not improved by varying density. It cannot be said that an increase in density or decrease in minimum lot size facilitates the built heritage conservation of the existing building as required by clause 12. Likewise, constructing more dwellings than would otherwise be permitted does nothing to enhance or preserve the heritage values of the area. As a result, the proposal is inconsistent with clause 12 and it would be considered inappropriate to vary density in this manner.

The proposal is also inconsistent with the guidelines of LPP 2.20, which Council has enacted to assist with determining applications seeking a variation under clause 12.

*LPP 2.20: Discretion to vary local planning scheme site or development requirements for heritage purposes*

Council has adopted a policy to provide guidance on the submission, assessment and determination of applications where the decision making authority is being requested to exercise its discretionary power under clause 12, and sets out requirements to determine whether a variation is appropriate or necessary, and should therefore be supported. The Policy is a lawfully adopted local government policy, therefore the decision maker is to have due regard to its requirements..

Policy LPP 2.20 requires a Statement of Justification be submitted addressing five issues, each of which is discussed in turns below.

- (a) *the physical relationship (including the nature and extent of the relationship) between the elements of the proposed development which require the variation and one of the heritage outcomes referred to in [Clause 12]*

*Applicant comments:* As previously mentioned, the proposed dwellings have been designed in a manner that they allow the heritage building to retain primacy on the

lot. This is achieved by setbacks, subservient bulk and scale, separation between the old and new and the use of a traditional materials palette.

The City maintains that there is no relationship between an increase in density, or varying minimum lot sizes, and a better heritage outcome. Varying the density is not required in order to achieve one of the heritage outcomes in clause 12.

*(b) whether and, if so, how the heritage outcomes achieved through the variations make a contribution to the public realm (e.g. streetscape)*

*Applicant comments:* The proposed dwellings require the removal of the insignificant accretions to the rear and sides of the heritage building and will produce new active street frontages which are an overall improvement on the public realm. The conservation works will enhance the contribution of the existing building to the heritage area and retain its corner prominence.

The City contends that there is no clear heritage outcome achieved through an increase in density and therefore a corresponding increase in built form. The conservation works are not linked to density and could be achieved without such significant variation.

*(c) whether the extent of the variation (e.g. additional building height) is the minimum necessary to achieve the heritage outcome*

*Applicant comments:* The increase in density being sought is not disproportionate for an inner-city suburb and building more homes on the lot is considered a sustainable approach to inner city development. Particularly considering the minimal heritage impact of the proposal.

Given that retention of the existing building is already a requirement of the scheme, it is unclear what the enhanced heritage outcome proposal is intended to be from utilization of clause 12. Since density necessarily results in a large building envelope, the heritage outcome would be better served by maintain the density within the scheme. Varying lot size provisions to facilitate “a sustainable approach to inner city development” is not the role or purpose of Clause 12 and is already being successfully addressed by the City through the appropriate zoning of land.

*(d) the proportionality between the nature and extent of the variation sought and the heritage values and level of the heritage significance of the place or area*

*Applicant comments:* There a very small increase in the densification of the lot which the heritage conservation works more than justify based on the aforementioned reasons.

There is a low degree of proportionality between the variation sought and the level of heritage significance of the place. The existing heritage place is a Heritage Management Category Level 3, the lowest level, and mostly significant for its contribution to the streetscape. The application has not demonstrated that the increase in permissible lots from 2 to 3/4 is related to the built heritage conservation, particularly as the conservation works proposed are not reliant on additional buildings to carry out.

- (e) *the spatial relationship (including degree of proximity) between the place or heritage area (as the case may be) and the development in respect of which a variation is sought.*

*Applicant comments:* The manner in which the proposal is configured allows a generous amount of space to be left around the two main frontages and sufficient space between the development and the neighbours. One of the benefits of the amended proposal is that it reduces the height of the new dwellings and achieves a balanced outcome between conservation and redevelopment while providing a sensitive addition to the heritage area.

Reducing the minimum and average site area in order to develop three to four lots unnecessarily creates additional building bulk. This building bulk then wraps around the existing heritage place and requires some lot boundary setback variations to the southern neighbour. Varying the density therefore results in a negative spatial relationship, as it requires an increase in bulk and scale to accommodate more people on the same amount of space.

Fundamentally, LPP 2.20 seeks to ensure that, where Council varies an application, the variation proposed would result in a better heritage outcome than a compliant development. For the subject application, the decision maker must only grant approval for a density increase if doing so results in a better heritage outcome than not varying the density. There is no need to vary a requirement that could otherwise be achieved without loss of heritage significance. The applicant has failed to explain the link between increased density and a good heritage outcome. The heritage preservation of the site does not rely on clause 12 and can be achieved through a compliant development.

Density, one of the most central development controls within local government schemes, is proposed to be significantly altered in this application for no significant benefit. The argument for increased density is ultimately that the WAPC may have approved three dwellings on the lot if it were vacant, and that in return for preserving the heritage building the City should allow potentially four dwellings. However, clause 4.14 of the City's scheme already protects the heritage building from demolition. In effect, approval would be granting a bonus for having a heritage building on a lot.

Notwithstanding that the application as a whole is not supported due to the above, individual elements of discretion are discussed below.

#### Land use

A Grouped dwelling is a 'D' use in a residential zone, while an Educational Establishment is an 'A' use.

Density and minimum and average site areas notwithstanding, a Grouped dwelling is an appropriate land use within a residential zone and is supported.

The Educational Establishment proposed will be for the use of tutoring small groups. The existing room size within the heritage building necessarily limits the size of classes and it is recommended that the student numbers be capped to 20 at any one time in order to limit the amenity impact on the adjoining residential properties. In general, it is expected

that students will be dropped off or will arrive through alternate modes of transportation, however, the lack of on-site car parking for tutors, who are likely to spend significantly more time in the building, is problematic. Without some additional on-site parking for the Educational Establishment, the use as a whole is considered to be detrimental to the amenity of the area. (See below)

Car parking

| <b>Use</b>                                     | <b>Required</b>   | <b>Provided</b> | <b>Variation</b> |
|--|---|-----------------|------------------|
| Educational Establishment<br>(Table 2 of LPS4) | 1 bay/1 teaching room<br>Or<br>1 bay/ 6 students<br>(whichever is greater) =<br>3 bays (assuming max 20 students) | Nil             | 3                |
|  | 1 delivery bay/lot  | Nil             | 1                |

The proposed visitor bay along South Terrace is not supported by the City's Infrastructure Services nor does it accord with the R-Codes as it is a parallel bay directly adjoining a footpath and requiring vehicles to cross in front of the proposed driveway. Use as a car bay will be problematic and may result in safety issues for vehicles reversing into the street.

The nature of the business is such that classes are likely to occur after school and during evening hours. Though the businesses along South Terrace are likely to be shut during these times, these are also the times when residents are likely to be home. As the majority of the residences are heritage properties, there is little room for on-site parking, with the result that many residents rely on street parking. Increased competition for limited street parking spaces will be detrimental to adjoining residents.

Given the small scale nature of the proposed use, it is unlikely to require frequent deliveries or bulky items, and the delivery bay shortfall is supported.

It is also noted that the applicant has expressed willingness to allocate 3 bays on-site for the exclusive use of the Educational Establishment. This would make the car parking requirements compliant with the R-Codes and the City's scheme. Should JDAP resolve to approve the development, it is recommended that this be included as a condition of approval.

Primary street setback

| <b>Item</b> | <b>Requirement</b>        | <b>Proposal</b>            | <b>Discretion</b>          |
|-------------|---------------------------|----------------------------|----------------------------|
| Unit 1      | 7m (lower)<br>10m (upper) | 5m (lower)<br>7.6m (upper) | 2m (lower)<br>2.4m (upper) |

Policy LPP 2.9: Residential Streetscape sets out the prescribed street setbacks, and clause 1.2 permits variations where development meets one of the following:

- i. The proposed setback of the building is consistent with the setback of buildings of comparable height within the prevailing streetscape; or*

- ii. *The proposed setback of the building does not result in a projecting element into an established streetscape vista by virtue of the road and/or lot layout in the locality or the topography of the land; or*
- iii. *The proposed setback of the building will facilitate the retention of a mature, significant tree deemed by the Council to be worthy of retention (Refer also to LPP2.10 Landscaping of Development and Existing Vegetation on Development Sites); or*
- iv. *Where there is no prevailing streetscape; or*
- v. *Where the proposed development is on a lot directly adjoining a corner lot, Council will consider a reduced setback that considers the setback of the corner lot in addition to buildings in the prevailing streetscape.*

LPP 2.9 defines ‘prevailing streetscape’ as “*means the characteristics (generally limited to the setback and orientation of buildings including garages and carports from the primary or secondary street, front walls and fencing, building height, building/roof form and proportion) of the 3 properties, where appropriate, adjoining either side of the subject site, fronting the same street and in the same street block... For the purpose of this definition, properties separated by a street shall not be considered ‘adjoining’.*”

Note also that the prescribed street setbacks within the policy exclude balconies, porches and verandahs.

The front setback variations to South Terrace are supported under clause (v) above for the following reasons:

- Unit 1 is proposed to be adjoining the existing heritage building on the corner. The ground floor of unit 1 is to be sunk beneath the current level of the lot such that the maximum wall height presented to South Terrace is consistent with the height of the gable of the existing heritage building.
- The design of the façade of Unit 1 imitates the gable end of the house and reduces the streetscape impact so as to present as similar to the existing heritage building.

#### Lot boundary setbacks

| Item           | Requirement | Proposal | Discretion |
|----------------|-------------|----------|------------|
| South (Unit 1) | 1.5 m       | 1 m      | 0.5 m      |

In isolation, the lot boundary setback is minor and would generally be supportable on the basis that the proposed setback does not adversely impact on access to light, sun and ventilation for the adjoining property, however, it is noted that the variation could be avoided if the number of dwellings on the site were reduced to the comply with the density requirements. .

The southern parapet wall is located against the existing nil setback wall of the adjoining lot and is of a smaller dimension. The nil setback is therefore consistent with LPP 2.4: Boundary Walls in Residential Development.

#### Open space

| Item | Requirement | Proposal | Discretion |
|------|-------------|----------|------------|
|------|-------------|----------|------------|

|            |                              |                               |                              |
|------------|------------------------------|-------------------------------|------------------------------|
| Open Space | 45% (359.55 m <sup>2</sup> ) | 41.2% (329.2 m <sup>2</sup> ) | 3.8% (30.35 m <sup>2</sup> ) |
|------------|------------------------------|-------------------------------|------------------------------|

The reduction in open space is not supported for the following reasons:

- The reduction in open space is detrimental to the amenity of the internal spaces of the proposed development, particularly the ground floor of each unit. The building footprint does not maximise each units access to natural light, sun light and ventilation. The openings proposed are predominantly highlight openings or otherwise face onto proposed or existing built form. The development therefore is inconsistent with design principle 6 – Amenity of SPP 7.0: Design of the Built Environment, which applies seven design principles to all built form development.

### Outdoor living areas

| Item                        | Requirement              | Proposal  | Discretion  |
|-----------------------------|--------------------------|---|---|
| 5.3.1: Outdoor living areas | 24m <sup>2</sup> per lot | Unit 1 – 29.7m <sup>2</sup><br>Unit 2 – 22.6m <sup>2</sup><br>Unit 3 - 16.5m <sup>2</sup> | Unit 1 – complies<br>Unit 2 – 1.4m <sup>2</sup><br>Unit 3 – 7.5m <sup>2</sup> |

In assessing the outdoor living area, it also noted that:

- The alfresco of Unit 1 is located within the primary street setback and therefore also requires discretionary assessment.
- The outdoor living areas for Units 2 and 3 are cumulative and include the upper floor balconies and lower floor alfrescos. No single area achieves the minimum 4m by 4m dimensions required by the R-Codes.
- There is no additional communal outdoor space on-site, with the predominant area of open space being between the existing heritage place and the street.

The areas are capable of use in conjunction with a habitable room, are open to winter sun and ventilation, and generally optimise use of the northern aspect of the site in accordance with the design principles of the R-Codes and are therefore supported.

### Conclusion:

The application is not supported as it seeks a variation to the density and minimum and average lot sizes set out under the City's scheme and the R-Codes. Officers do not consider it to be appropriate to exercise the discretionary power permitted through the use of clause 12 of the *Deemed provisions* as the proposed density variation is unrelated to the built heritage outcome and do not facilitate the built heritage conservation of the place or area.

The remaining variations are predominantly a result of the increase in density, which seeks to effectively achieve a four lot subdivision, which is two lots more than the WAPC would approve given the placement of the existing heritage building. The Educational Establishment use is also not supported as the lack of car parking would be detrimental to the amenity of the locality. As such the application is recommended for refusal.

**PC1907 -5 HIGH STREET, NO. 33-37 (LOT ZERO) - TWO STOREY ADDITIONS  
AND ALTERATIONS TO EXISTING SINGLE HOUSE - (TG DA0589/18)**

**Meeting Date:** 3 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Committee  
**Attachments:** 1: Development plans  
2: Site photos  
3: DAC Minutes

**SUMMARY**

Approval is sought for two storey additions and alterations to an existing single house at the rear of a mixed use development at No. 33-37 High Street, Fremantle.

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

- Building height (external wall)
- Side and rear setbacks (east and west)

The application is recommended for conditional approval.

**PROPOSAL**

**Detail**

Approval is sought for two storey additions and alterations to an existing single house at 33-37 High Street, Fremantle. The dwelling is located to the rear of the existing commercial tenancies facing High Street. The proposed works include:

- The two storey addition to provide living, dining, kitchen areas and a bedroom above the existing two storey Single house.
- The addition of a bridge to join the addition to the existing roof terrace on top of the commercial tenancies.
- Internal alterations to the existing building.
- The addition of a carport over existing covered car parking spaces.
- The addition of a water tower to the existing reinforced roof above the commercial tenancies.
- The installation of solar panels to the new building roof.

The applicant submitted amended plans and additional information on 31 May 2019 including the following:

- Additional analysis of the visibility of the addition from notable locations in the West End such as the Round House and Esplanade Park.
- Increasing the height of the addition in accordance with Design Advisory Committee comments.
- Detail of solar panel inclusion and ventilation detail for the addition.

Development plans are included as attachment 1.

### Site/application information

Date received: 21 December 2018  
 Owner name: S Braddock  
 Submitted by: S Braddock  
 Scheme: City Centre Zone  
 Heritage listing: Individually Listed Category 1B and State Registered West End Heritage Area  
 Existing land use: Existing Single house and commercial tenancies  
 Use class: Single house  
 Use permissibility: D



## CONSULTATION

### External referrals

*Heritage Service (DPLH)*

*Heritage Comments (Under Delegation from the Heritage Council of Western Australia)*

The subject site is located within the state registered curtilage of the West End, Fremantle (Place No. 25225). As such the original application was referred to Heritage Services for comment. Heritage Services requested additional information in regard to the materials and colours or addition and line of sight drawings to illustrate the visibility of the additions including the proposed water tank. The applicant provided additional information to address this request for information on 16 April 2019.

Since the application was lodged, the City received delegation from the Heritage Council of WA to carry out a heritage assessment for routine referrals. The application is

deemed to be a routine referral. The heritage impact of the application was consequently assessed by the City acting under delegation from the Heritage Council of WA (HR401) pursuant to Section 22(1) of the *Heritage of Western Australia Act 1990*. The City's Heritage Officer has advised that the proposed additions will not adversely impact on the significance of the West End precinct as the additions will not be readily visible from the street or nearby locations including the Round House and Esplanade Park.

The subject site is also included on the City of Fremantle Municipal Heritage List and on the Municipal Heritage Inventory as management category Level 1b. This means that the City of Fremantle has recommended that this place be considered for entry in the Heritage Council of Western Australia's Register of Heritage Places because it has identified this place as being of exceptional cultural heritage significance in its own right within the context of Fremantle. Its conservation is a requirement of the City. The proposal has been reviewed in regard to its impact on the local significance of the place.

In accordance with the Burra Charter *any new work such as additions or other changes to a heritage place may be acceptable where it respects and does not distort or obscure the cultural significance of the place, or detract from its interpretation and appreciation*. The appearance of the proposed additions indicate a design that creates a very strong contrast between new and existing, rather than a clear, coherent and more respectful relationship. In this regard, alternative design options could be considered more appropriate.

While it is acknowledged that an alternative design could order to achieve an improved heritage outcome, in this case it is considered that due to the limited visibility of the building from the surrounding streets and the broader locality, the proposed additions can be supported.

The high degree of contrast between the existing building and the proposed addition will not be readily appreciated due to the building being screened from the street by adjoining development. Site photos demonstrate that views of the entire development will be very limited and not prominent in the locality. As such the proposed addition is supported in this instance.

### **Design Advisory Committee**

Clause 78B (6)(b) of LPS4 requires Council to have regard to the recommendations of the DAC for applications meeting specific criteria. The application was presented to the DAC on 14 January 2019 where they advised that:

*The Design Advisory Committee, having considered the proposal for the additions and alterations at 33-37 High Street, Fremantle, supports the proposal subject to:*

- *Additional details being provided demonstrating the visibility of the addition from key locations in the West End including the Round House;*
- *Final details of the external finishes, including materials and colours being submitted;*
- *The positioning of the addition being reconsidered to be more sympathetic to the features of the existing building including the upper floor windows.*
- *Improvements being made to the internal planning and room layout of the dwelling in order to maximise its functionality and efficiency;*

- *Details being submitted that demonstrate how the dwelling will maximise its access to adequate light and ventilation;*
- *The floor plans, elevations and sections are to be amended so that they are consistent and contain adequate details to demonstrate the construction of the dwelling.*

The applicant provided amended plans to address the above matters, comprising the following:

- Additional plans demonstrating the visibility of the addition from significant locations in the West End such as the Round House and Esplanade Park as well as additional analysis of the visibility of the addition from the upper floor of the properties across High Street.
- Additional detail of the building finishes, materials and colours.
- The addition was raised to increase the gap between the addition and existing upper floor windows.
- The applicant updated the proposal plans to provide for features such as an ensuite to the mezzanine level to increase the usability of the structure.
- Solar panels and ventilation detail for the addition were added to the proposal plans.
- Development plans and perspectives were updated for consistency.

Accordingly the revised proposal is considered to adequately address the recommendations of the DAC. The additional information demonstrates that the addition will have very limited visibility from the Round House and not visible from the Esplanade Park. To ensure that that quality of materials and finishes carry through to construction, a condition requiring final details of the materials, finishes and colours to be submitted is included in the officers recommendation.

### **Community**

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the proposal involved discretionary assessment of various matters. The advertising period concluded on 16 May 2019, and one submission was received. The following issues were raised (summarised):

- The submitter was concerned with regard to the impact of the addition upon visual privacy for adjoining properties to the south, specifically those with rooftop gardens. The concerns related to the upper floor south facing windows.

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

- There is considered to be sufficient separation between the property of the concerned neighbour and the subject site to minimise any overlooking impact. It is noted that the distance provided between the properties is well in excess of the minimum distances required by the R-Codes.
- The applicant also provided a photo facing south taken from the rear fire escape of the adjoining Orient Hotel which is of a comparable finished floor level to the proposed addition (plan A18 in attachment 1 includes this photograph). This is considered to adequately demonstrate the degree to which the addition will affect adjoining visual privacy. Additional photos were taken by officers on 27 May 2019 and are included as attachment 2.

## 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 or specific criteria of the Scheme and policies, an assessment is made against the relevant discretionary criteria. 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 relevant discretionary criteria:

- Building height (external wall)
- Side and rear setbacks (south / east / west)

The above matters are discussed below.

### Background

The subject site is located on the southern side of High Street, Fremantle. The site has a land area of approximately 433m<sup>2</sup> and is currently occupied by a two storey commercial building facing High Street and a two storey single house located at the rear of the site. The site is zoned City Centre and has no specific density coding. The subject site is primarily accessed via a gated rear lane off Henry Street. The subject building is only readily partially visible from Henry and Mouat Streets and is screened from view by adjoining buildings. Views of the building from the West End the High Street pedestrian realm are likewise limited due to screening from surrounding buildings..

The site is individually heritage listed as category 1B and located within the West End Heritage Area. The subject site is located in Area 2 of the Fremantle Ports buffer area and accordingly additional development requirements apply to the site. These requirements have been addressed in the recommended conditions of approval.

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

- DA554/06 – Alterations and additions (approved).
- DA0395/10 – Painting façade of building (approved).
- DA0024/13 – Demolition of two outbuildings and partial internal wall removal of existing building (approved).
- DA0087/14 – Partial change of use to Single House, alterations to existing buildings and retrospective demolition of ceilings (approved).
- DA0656/14 – Internal fit out of existing shop (Pharmacy) (withdrawn).
- DA0033/15 – Retrospective approval for alterations and proposed alterations to existing building (approved).
- DA0475/15 – Partial change of use to Health Studio (Yoga) and internal alterations to existing building (approved).

In accordance with the 2014 determination, the subject rear building on site received approval for change of use to Single House. Accordingly the current application comprises extensions to this structure only, with no change to the approved land use.

### Building Height (external wall)

| Element   | Requirement   | Proposed            | Extent of Variation |
|---|---|---------------------|---------------------|
| Local Planning Scheme No. 4 – Local Planning Area 1 – City Centre Sub Area 1.3.1 – West End | Maximum height 3 storeys (external wall height of 11 metres)<br>Council may consent to an additional storey subject to:<br>The upper level being sufficiently setback from the street so as to not be visible from the street(s) adjoining the subject site,<br>Maximum external wall height of 14 metres, and<br>Compliance with clause 1.2 of LPA1. | 4 storeys and 15.6m | 1.6m                |

In order to vary the building height outlined in Schedule 8 of LPS4, the proposal must be assessed in accordance with clause 4.8.1 Variation to height requirements of LPS4, which states:

*Where sites contain or are adjacent to buildings that depict a height greater than that specified in the general or specific requirements in schedule 8, Council may vary the maximum height requirements subject to being satisfied in relation to all of the following:*

- (a) The variation would not be detrimental to the amenity of adjoining properties or the locality generally,*
- (b) Degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality*
- (c) Conservation of the cultural heritage values of buildings on-site and adjoining, and*  
The proposed additions are considered to be setback sufficiently from the street so as not to impact significantly on the cultural heritage values of the buildings on site and adjoining.
- (d) Any other relevant matter outlined in Council's local planning policies.*

The height of the building is considered to meet the relevant discretionary criteria of the Scheme in accordance with clause 4.8.1 in the following ways:

- The height of the addition is consistent with or lesser than the height of the building to the east and is considered to effectively graduate height from this building along High Street to the west.
- The addition is well set back from the primary street and per plans submitted by the applicant will not be readily visible from the High Street footpath and the upper floor of buildings on High Street (plan A.15 of attachment 1 demonstrates this).
- The addition will not be readily visible from the street and is set back from adjoining side streets and accordingly is not considered to have an undue impact upon the cultural heritage significance of the immediate locality. It is noted that the building has been reviewed by the City's Heritage officers under delegation from

the State Heritage department and due to the screening of the subject building from the view of the street, the proposal is supported.

- It is noted that if the building were to comply with the 14m wall height requirement and include a 33 degree roof pitch, this would result in a greater height for the building which may have a greater impact on the visual amenity of the locality.

### **Side setbacks**

| <b>Element</b> | <b>Requirement</b> | <b>Proposed</b> | <b>Extent of Variation</b> |
|----------------|--------------------|-----------------|----------------------------|
| West           | 4m                 | 1.615m          | 2.385m                     |
| East           | 4m                 | 1.655m          | 2.345m                     |

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

- In accordance with the City's Local Planning Policy DG.F14, nil setbacks can be considered for development as this comprises a feature of the immediate locality. In accordance with this policy, surrounding sites provide nil setbacks to the subject site. Accordingly the proposed setbacks, being greater than the predominant setbacks in the locality are considered appropriate.
- The proposed addition adjoins non-residential sites and the proposed setbacks are considered to provide for sufficient space between buildings to maintain light access and ventilations to existing and proposed openings.
- The proposed addition replicates the existing setbacks for the rear building on site.
- The windows of the addition do not directly overlook any sensitive spaces on the adjoining properties which comprise of service areas or roof areas.

### **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 LPS4, the R-Codes and Council Policy. Accordingly the proposal is recommended for approval, subject to conditions.

### **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, two storey additions and alterations to existing single house at No. 33-37 (Lot Zero) High Street, Fremantle, subject to the following condition(s):**

- 1. This approval relates only to the development as indicated on the approved plans, dated 16 April 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 issue of a Building Permit, 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.**
- 4. 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.**
- 5. Prior to the issue of a Building Permit or Demolition Permit a Construction Management Plan shall be submitted to the satisfaction of the City of Fremantle addressing the following matters:**
  - Use of City car parking bays for construction related activities;**
  - Protection of infrastructure and street trees within the road reserve;**
  - Security fencing around construction sites;**
  - Gantries;**
  - Access to site by construction vehicles;**
  - Contact details;**
  - Site offices;**
  - Noise - Construction work and deliveries;**
  - Sand drift and dust management;**
  - Waste management;**
  - Traffic management; and**
  - Works affecting pedestrian areas.**

**The approved Demolition and Construction Management Plan shall be adhered to throughout the demolition of the existing building on site and construction of the new development.**

- 6. 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.

7. Prior to the issue of a Building Permit, the design and materials of the development shall adhere to the requirements set out within City of Fremantle policy L.P.P2.3 - Fremantle Port Buffer Area Development Guidelines for properties contained within Area 2. Specifically, the development shall provide the following:
  - a. Glazing to windows and other openings shall be laminated safety glass of minimum thickness of 6mm or "double glazed" utilising laminated or toughened safety glass of a minimum thickness of 3mm.
  - b. Air conditioners shall provide internal centrally located 'shut down' points and associated procedures for emergency use.
  - c. Roof insulation in accordance with the requirements of the Building Codes of Australia.
8. 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 this approved development shall be wholly located within the cadastral boundaries of 33-37 High Street (Lot Zero) including any footing details of the development.
- ii) A Building Permit is required for the proposed Building Works. A certified BA1 application form must be submitted and a Certificate of Design Compliance (issued by a Registered Building Surveyor Contractor in the private sector) must be submitted with the BA1.
- iii) The applicant is advised that the existing car parking bays on site do not meet the requirements of the Australian Standards and Residential Design Codes.
- iv) 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 Engineering department can be contacted via [ibs@fremantle.wa.gov.au](mailto:ibs@fremantle.wa.gov.au) or 9432 9999.

**PC1907 -6 MATHIESON AVENUE, NO. 34 (LOT 45), NORTH FREMANTLE- TWO STOREY SINGLE HOUSE - (CJ DA0133/19)**

**Meeting Date:** 3 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Committee  
**Attachments:** 1: Development plans  
2: Site photos

**SUMMARY**

**Approval is sought for a two storey Single house at No. 34 Mathieson Avenue, North Fremantle.**

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

- Lot boundary setbacks
- Lot boundary setbacks (boundary wall)
- Visual privacy

**The application is recommended for conditional approval.**

**PROPOSAL**

**Detail**

Approval is sought for a two storey Single house on an existing vacant site at No. 34 Mathieson Avenue, North Fremantle. The proposed works include:

- Excavation to create basement with theatre, store and cellar.
- Partial basement garage.
- Ground floor with office, bedroom, kitchen/dining/living, alfresco area and laundry.
- Upper floor with three bedrooms and ensuites, balcony and family room.

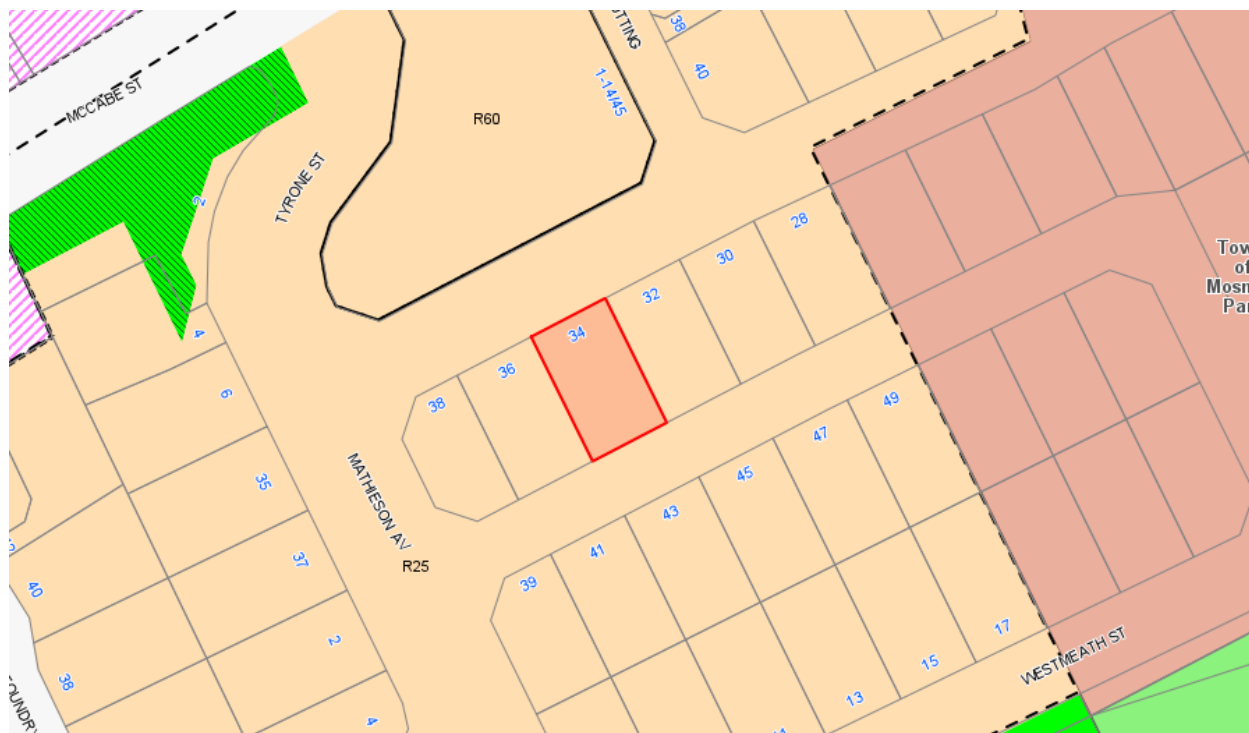
The applicant submitted amended plans on 20 June 2019 including the following:

- Reduction to wall height to below the 7m requirement.
- Alteration to roof design, changing to a traditional pitched roof.
- An amended crossover design.

Development plans are included as attachment 1.

### Site/application information

Date received: 11 April 2019  
 Owner name: Chunhui Cai  
 Submitted by: Wen Guan  
 Scheme: Residential R25  
 Heritage listing: North Fremantle Heritage Area / Not Individually Listed  
 Existing land use: Vacant  
 Use class: Single house  
 Use permissibility: P



### 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 sought discretion against LPS4 and the R-Codes. The advertising period concluded on 20 May 2019, and ten (10) submissions were received. The following issues were raised (summarised):

- Wants setback on the “right” to be increased and upper floor wall angled to retain view (1 submitter)
- External wall height and impact on views (9 submitters)
- Questions about levels on plans and changes to boundary fence (1 submitter)
- Accepts overlooking of pool and spa only if don’t have to screen own lounge window any more (1 submitter).

In response to the above, the applicant submitted revised plans to address the building height discretion.

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

- Where they do not meet deemed to comply, the lot boundary setbacks are discussed in the report below. It is noted that access to views is not a design principle consideration for buildings compliant with the deemed to comply height limit.
- The proposed external wall height has been amended to comply. As such, the building height does not need to be assessed against any discretionary criteria.
- It is not possible to link conditions of approval on a different site to a development application on a neighbouring lot. Visual privacy is discussed in the report below.

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 setbacks
- Lot boundary setbacks (boundary wall)
- Visual privacy

The above matters are discussed below.

### **Background**

The subject site is located on the southern side of Mathieson Avenue, North Fremantle. The site has a land area of approximately 424m<sup>2</sup> and is currently a vacant site. The site is zoned Residential and has a density coding of R25. The site is not individually heritage listed however it is located within the North Fremantle Heritage Area.

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

### **Lot boundary setbacks**

| <b>Element</b>      | <b>Requirement</b> | <b>Proposed</b> | <b>Extent of Variation</b> |
|---------------------|--------------------|-----------------|----------------------------|
| Upper floor (South) | 4.1m               | 3-3.3m          | 0.8-1.1m                   |
| Upper floor (East)  | 2.4m               | 1.5m            | 0.9m                       |
| Upper floor (West)  | 2.4m               | 1.3-1.8         | 0.6-1.1m                   |

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

- The property to the west (No. 36 Mathieson) does not have major openings on its eastern elevation, with all openings considered to be minor openings.

- There is a wading and plunge pool at the rear of site, but this is not significantly impacted by the reduced lot boundary setback as the majority of the pool will abut open space on the proposed development.
- The property to the east (No. 32 Mathieson) has a swimming pool and ground floor terrace on its western elevation (facing the proposed development). The house is setback between 1.5m and 4.2m from the lot boundary. There are no major openings on either floor of its western elevation.
- At ground level the development meets all deemed to comply requirements for lot boundary setbacks (with exception of the boundary wall as discussed below). The upper floor setbacks will have a limited impact on the ground floor swimming pool.
- The setback still allows for ventilation to these open spaces and while sunlight will be impacted, the space will still be able to achieve direct sunlight in the heat of summer. It is also noted that the swimming pool space is unlikely to be used in winter, so while access to northern sunlight is not impacted by this proposed, it is unlikely to be important for this space.
- While the setbacks are reduced, on the upper floor, building height is below compliant levels reducing the potential impact on building bulk. As the ground floor setbacks comply and the upper floors do not have major openings, the building bulk impact will not be significant.

#### **Lot boundary setbacks (boundary wall)**

| <b>Element</b>      | <b>Requirement</b> | <b>Proposed</b> | <b>Extent of Variation</b> |
|---------------------|--------------------|-----------------|----------------------------|
| Ground floor (West) | 1.1m               | 0.2m            | 0.9m                       |

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

- There are no major openings on the ground level of the adjoining property.
- The building on the neighbouring lot is setback between 1.2m and 2.2m, and is not an area designated as outdoor living.
- It is not considered that there are any major openings or outdoor living areas that will have sunlight or ventilation significantly restricted by the boundary wall.
- The remainder of the ground floor and upper floor are setback from the boundary.

#### **Visual privacy**

| <b>Element</b>  | <b>Requirement</b> | <b>Proposed</b>              | <b>Extent of Variation</b> |
|-----------------|--------------------|------------------------------|----------------------------|
| Balcony (South) | 7.5m               | 2.9m to west<br>2.6m to east | 4.6m<br>4.9m               |

The visual privacy from the rear balcony is not considered to meet the Design principles of the R-Codes in the following ways:

- While the areas of overlooking are in street setback areas, it is the rear of both of these dwellings. The level difference between the street and the property, means that these areas achieve a relatively good level of privacy.
- The level of screening of the balcony required is not significant (shown in green in below diagram), and would not compromise the amenity of the users of the balcony, but would have the added effect of protecting the privacy of neighbouring owners. It is noted that the plans demonstrate screening on the both sides of the balcony.



## **OFFICER'S RECOMMENDATION**

**Planning committee acting under delegation 1.1:**

**APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the two storey Single house at No. 34 (Lot 45) Mathieson Avenue, North Fremantle, subject to the following condition(s):**

- 1. This approval relates only to the development as indicated on the approved plans, dated 20 June 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, vehicle crossovers shall be constructed in either paving block or concrete, and thereafter maintained to the satisfaction of the City of Fremantle.**
- 4. Prior to the issue of a Building Permit, a detailed drawing showing how the balcony located on the south elevation, is to be screened in accordance with Clause 5.4.1 C1.1 of the Residential Design Codes by either:
  - a) fixed obscured or fixed translucent glass to a height of 1.60 metres above internal floor level, or**
  - b) With fixed vertical 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.**Prior to occupation, the approved screening method shall be installed and maintained to the satisfaction of the City of Fremantle.**
- 5. Prior to occupation of the development hereby approved, the boundary wall located on the west 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.**

### **Advice note**

- 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 website.**

**PC1907 -7 PASS CRESCENT, NO.24 (LOT 84), BEACONSFIELD- ADDITIONS AND ALTERATIONS TO EXISTING SINGLE HOUSE - (JL DA0118/19)**

**Meeting Date:** 3 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Committee  
**Attachments:** 1: Amended Development Plans  
2: Site Photos

## **SUMMARY**

Approval is sought for single storey additions and alterations to the existing Single house at 24 Pass Crescent, Beaconsfield. The application also includes the construction of an unauthorised retaining wall, dividing fence and site works to the rear portion of the site.

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:

- Visual privacy
- Primary street setback (Carport)
- Vehicle access
- Setback of Retaining
- Dividing Fence height
- Site Works (Fill)
- Primary Street Fence Permeability.

The proposed second crossover does not comply with Council's amended LPP2.9 Residential Streetscape Policy and is considered to have a detrimental impact on the Pass Crescent streetscape. As such, the application is recommended for refusal.

## **PROPOSAL**

### **Detail**

The application includes elements of unauthorised works and proposed additions and alterations to an existing Single house at 24 Pass Crescent, Beaconsfield.

The unauthorised works that have occurred onsite include:

- Retaining wall to the rear southern and northern boundaries,
- Dividing fence addition (south); and
- Minor fill works to a portion of the site located approximately half way along the southern boundary.

The proposed works include:

- Two, 3.5m wide crossovers (one existing crossover is proposed to be replaced),

- Double carport,
- Front deck,
- Internal alterations to the existing dwelling
- Primary street fence.

Development plans are included as Attachment 1.

### Site/application information

Date received: 2 April 2019  
 Owner name: Ashley Barlow  
 Submitted by: Ashley Barlow  
 Scheme: Residential R20/25  
 Heritage listing: Not Listed  
 Existing land use: Single house  
 Use class: Single house  
 Use permissibility: P



### 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 variations to the deemed-to-comply criteria of the R-Codes which had the potential to affect adjoining properties. The advertising period concluded on 10 May 2019, and one submission was received. The following issues were raised (summarised):

- The absence of screening on the southern edged of the alfresco area and impact on privacy is unacceptable and will detract from the habitable rooms of the property to the south.
- The proposed 1.8m boundary wall on top of the retaining wall results in a much higher and overbearing wall along the boundary of the property to the south.
- The retaining wall may impact on the existing wall of the property to the south.
- Its unknown if the retaining wall has been constructed properly and that the owner obtained appropriate approvals.

These comments are addressed in the Officer Comment section 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:

- Visual privacy (south)
- Primary street setback (Carport)
- Vehicle access
- Setback of Retaining (South)
- Dividing Fence height (South)
- Site Works (Fill)
- Primary Street Fence Permeability

These matters are discussed below.

### **Background**

The subject site is located on the eastern side of Pass Crescent in the Beaconsfield Local Planning Area. The site has a land area of approximately 809m<sup>2</sup> and is currently improved by a single storey Single house at the front of site with the rear portion being vacant. The site is zoned Residential and has a density coding of R20/25. The site is not individually heritage listed, nor is it located within a Heritage Area.

The site slopes from the rear of site to the street by approximately 1.8m and has a ground level between approximately 1m to 1.5m lower than the adjoining northern property and 1m to 1.8m higher than the southern adjoining property.

On 9 May 2018 the Western Australian Planning Commission granted conditional approval for a two lot survey strata of the subject site (WAPC126-18). As part of the City's referral to WAPC for WAPC126-18 the City requested that an advice note be added to any approval to advise the applicant that the vehicle access for proposed Lots 1 and 2 shall be achieved via the common property access leg and existing crossover to Pass Crescent and that the City will not support a separate crossover for Lot 1. The WAPC's conditional approval did not include the City's advice note.

The applicant has not applied to clear the subdivision conditions, therefore the survey strata plan is yet to be endorsed by the WAPC.

On 15 January 2019 the City received an application for Planning Approval for similar additions and alterations (DA 0025/19) to the currently proposed additions which was refused under delegation due to the proposal's non-compliance with vehicle access requirements of LPP2.9 Residential Streetscape Policy. This application includes the proposed works previously applied for with a reduction in the width of the two crossovers and the unauthorised works.

### Vehicle Access

| Element        | Requirement  | Provided       | Extent of Variation      |
|----------------|--|----------------|--------------------------|
| Vehicle Access | Provided from a common access point (being defined as a communal street) | Two crossovers | One additional crossover |

In support of the second crossover the applicant has provided the following justification (summarised):

- The carport location will allow my ageing mother ease of access to the front door without the need for steps.
- The front house is being upgraded to allow ageing in place and steps will impair the use of a wheel chair or other mobility aid.
- The crossovers are kept to a minimum and width.
- It is proposed to landscape the verge at the owners cost.
- The proposed crossover will allow the retention of the existing 9m Silky Oak tree which bird's nest in and contributes to the aesthetics of the house.
- The second crossover will assist in resolving the existing drainage issues in Pass Crescent.
- The location of the proposed alfresco would be difficult to achieve without the second crossover.
- The two single crossovers are a better outcome than the existing double crossover. My proposal also includes a better planning outcome compared to double cross over.

At its meeting held on 28 November 2018, Council adopted a revised LPP2.9 Residential Streetscape Policy. The amended Policy requires approval from the WAPC, however as it has been adopted by the Council it is considered to be a seriously entertained document and the development has been assessed against these requirements.

The amended Policy included additional requirements for vehicular access, requiring access to be taken from an access easement if available and no more than one driveway being permitted per property, unless the property contains 5 or more dwellings, the site is a corner lot, or the lot frontage exceeds 30m. In this instance the subject site is only permitted to have one driveway.

Clause 6.1 of the amended Policy states a variation to the above requirements may be considered *at Council's discretion, against the design principles of the R-Codes, with additional due consideration being given to impact on any place of heritage significance.*

*In addition to the above discretionary assessment the Policy also states that an additional access point may be considered in the upgrade of existing dwellings as a condition of subdivision, where the primary outdoor living area is proposed to come off the primary indoor living area and would preclude vehicle access from the existing crossover.*

If a variation is permitted, the development is to provide a landscaping plan demonstrating high quality landscaping features to soften the impact of the additional hardstand on the streetscape appearance and in accordance with Local Planning Policy 2.10: Landscaping of development and existing vegetation on development sites.

In regard to the relevant design principles of the R-Codes, proposals are required to demonstrate that the vehicular access provides:

- vehicle access safety;
- reduced impact of access points on the streetscape;
- legible access;
- pedestrian safety;
- minimal crossovers; and
- high quality landscaping features.

The proposal is not considered to meet the design principles of the R-Codes for the following reasons:

- The proposal does not minimise the number of crossovers in Pass Crescent
- The proposal results in an additional access point which does not contribute to the Pass Crescent streetscape.
- The additional crossover is not considered to be located or separated from existing access points to improve vehicle safety.

In regard to the remaining discretionary criteria of LPP2.9:

- The subject site is not individually heritage listed or located in a heritage area.
- Although the proposal includes an alfresco addition in the front setback area (south western corner of the existing dwelling) which is connected to the existing internal living area of the dwelling, it is questionable if this the dwellings primary outdoor living area as the site includes a second outdoor living area at the rear of the dwelling (indicted in yellow in Image 1 below). In this regard, the front deck addition could be redesigned / reduced to allow for two onsite bays to be provided at the front of site without the removal of the mature tree.
- If the alfresco addition remained as proposed, officers consider that adequate space is available for a two car hardstand or covered car bays between the alfresco addition and the street boundary which can be accessed via the conditionally approved common property access way. It is noted that this option is likely to require the removal of the existing tree due to potential root system damage from the required earthworks.





**Image 2:** Street view image of existing Silky Oak Tree

In regard to the applicant's justification that the second crossover will help reduce the existing drainage issues in Pass Crescent, the City's Engineering department have confirmed that Pass Crescent is a known area which has major street drainage issues. Stormwater flowing along the existing verge is impacting properties further downhill from the subject site. A second crossover, with a modified splay, could divert the current stormwater runoff from the verge at the front of the subject site, in to road to prevent flooding of the subject site and other properties to the south. This option has been discussed with both parties who in principle agree with the proposed solution. It is understood an alternative to the above would be for the City to modify a number of the existing crossovers to achieve a similar solution.

In conclusion, the second crossover is not supported as it is detrimental to the Pass Crescent streetscape and access to the required number of parking bays could be provided from the proposed common property access leg and existing crossover.

**LPP2.9 - Primary street setback**

In relation to the proposed carport setback, clause 2.2 of LPP2.9 states that where a property is not on the Heritage List, carports may be located in front of the dwelling where the development meets all of the following criteria:

| <b>LPP2.9 Requirements</b>  | <b>Provided</b>   | <b>Extent of Variation</b> |
|---|-------------------|----------------------------|
| <i>I. The carport is open on all sides with no door; and</i>  | Open on all sides | Complies                   |
| <i>II. The carport is constructed from timber or steel vertical supports no greater than 150mm in width in any direction; and</i> | 100mm pillars     | Complies                   |

|   |  |          |
|---|--|----------|
| <i>III. The carport does not exceed an average of 2.8 metres in height above natural ground level; and</i>  | 2.5m average height  | Complies |
| <i>IV. The carport is located so as to maintain visibility of the dwelling from the street and surveillance from the dwelling to the street; and</i>  | Carport is located to the northern side of site allowing direct visibility of the dwelling from the street and surveillance from the dwelling to the street; | Complies |
| <i>V. The maximum width of the carport is to be 6 metres on a property with a frontage of 12 metres or greater or on a property with a frontage of less than 12 metres, the maximum width of a carport is to be 3 metres; and</i> | 5.89m (lot frontage greater than 12m)  | Complies |
| <i>VI. The carport is setback one metre or greater from any side boundary</i>   | 1m   | Complies |

The proposed carport complies with all of the above discretionary criteria of Council's Policy relating to the street setback. If access to the proposed carport was via the common property driveway and not a separate crossover, a carport of a similar design could be supported in the front setback area of the site.

### **Front Fence**

| <b>Deemed-to-comply</b>  | <b>Provided</b>  | <b>Extent of Variation</b>                   |
|--|--|--|
| Up to 1.2m solid, up to 1.8m visually permeable with pillars to 2.0m where located in the street setback area. | Up to 1.3m solid, up to 1.8m visually permeable with pillars to 1.9m | Visual Permeability - 100mm of solid fencing |

The proposal is not considered to meet the discretionary criteria of LPP2.8 – Fences Policy for the following reasons:

- There are no other fences within the prevailing streetscape of a comparable height or solid infill nature; and
- The fence does not assist in the provision of visual privacy between the proposed raised outdoor living area when viewed from the street.

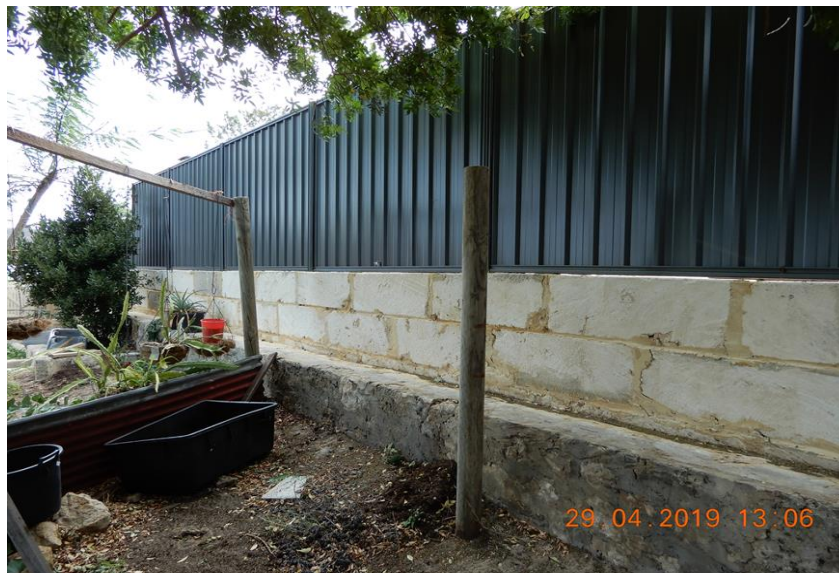
If the application were being recommended for approval this matter could be addressed through the imposition of a condition of approval requiring the solid component of the fence to be no greater than 1.2m.

**Dividing Fence**

| Element | Requirement | Proposed                                       | Extent of Variation |
|---------|-------------|--|---------------------|
| Height  | 1.8m        | 2.8m middle southern portion of dividing fence | 1m                  |

Clause 5 of LPP2.8 states that side boundary fences greater than 1.8 metres in height should only be supported where the fence does not have any significant impact on adjoining properties by way of overshadowing, solar access, or loss of views, having regard to any public submissions.

The City has received an objection during the consultation period raising a concern that the existing and new retaining wall, together with the 1.8m high fence, results in a high and overbearing wall along the common boundary. Furthermore concerns to the visual appearance of the unauthorised retaining wall have been also raised and that the wall appears to be unfinished with missing mortar. The portion of wall which exceeds the allowable 500mm provision can be seen below in the site photos from the neighbouring southern site (No. 26 Pass Crescent).



**Image 3:** View from southern adjoining site (No.26 Pass Crescent)

The area of the adjoining southern site directly abutting this portion of development mainly consists of raised garden bed (see aerial image below). This area is not considered to form part of the adjoining property’s exclusive outdoor living area (area readily accessible from the dwelling and capable of active and passive use) and given its location and positioning on this boundary, the building bulk and shadow impacts created are not considered to be significantly detrimental to the amenity of the neighbouring property. As such, the portion of over height dividing fence is considered supportable.



**Image 4:** Aerial image of the subject site and adjoining southern property at No. 26 Pass Crescent

**Visual Privacy (South)**

| Element   | Requirement  | Provided | Extent of Variation |
|---|--------------|----------|---------------------|
| Alfresco addition ffl exceeds 500mm of existing ngl | 7.5m setback | 4m       | 3.5m                |

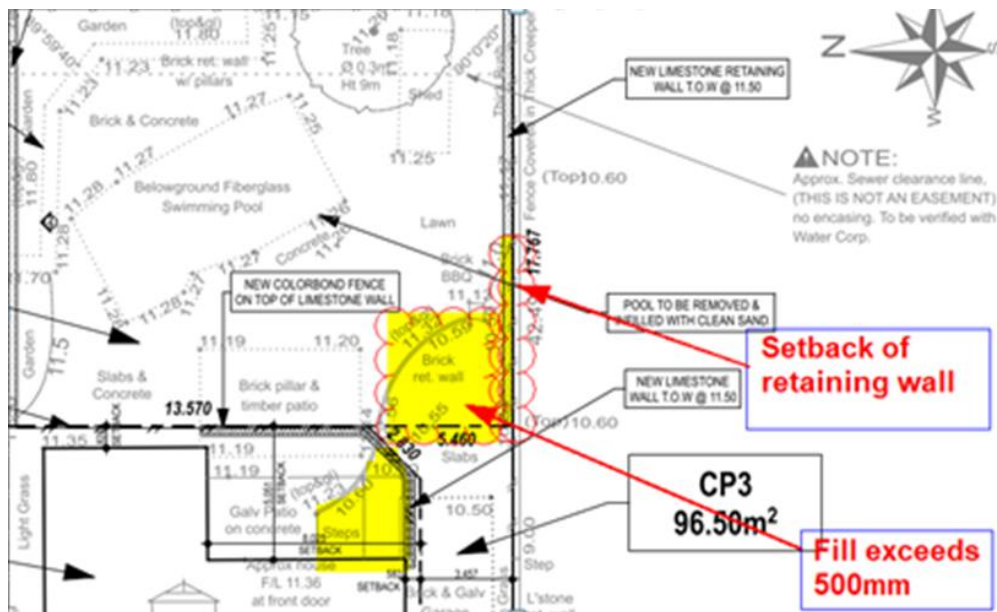
The proposal is not considered to meet the Design principles of the R-Codes as the southern elevation of the raised alfresco will be afforded views over the current adjoining dwelling’s northern elevation which includes habitable room windows.

If the application was being supported then this is a matter which could be addressed through the imposition of condition of approval requiring the addition of a privacy screen to the southern elevation of the proposed alfresco deck.

**Site Works (Fill) and Retaining Wall Setbacks**

| Element                 | Requirement   | Provided         | Extent of Variation |
|-------------------------|---|------------------|---------------------|
| Excavation and Filling  | Excavation or filling between the street and building shall not exceed 0.5m except where necessary to provide pedestrian or vehicle access, drainage works or natural light for a dwelling. | Fill up to 700mm | 200mm               |
| Retaining Walls Setback | 1m  | Nil              | 1m                  |

For simplicity reasons below is an extract of the development plans indicating the portion of site which is impacted by the proposed fill exceeding 500mm above natural ground level of the subject site and the portion of the southern common boundary with a reduced setback for the retaining wall.



**Image 5:** Extract from plans illustrating areas of fill

The proposal is considered to meet the Design principles of the R-Codes relating to site works and setback of retaining walls in the following ways:

- The site works balance the existing stepped natural ground level of the rear portion of site by providing a sufficient gradient for future vehicle access for the rear conditionally approved survey strata lot and providing a finished floor level equivalent to the medium natural ground level for future development.
- The site works are located in the middle southern portion of the site and will not alter the impression of natural ground level when viewed from the public street.

- The change to site levels do not otherwise result in other design principle assessments to relevant criteria such as building height or visual privacy that cannot be dealt with by appropriate conditions.

If the application was to be supported both of these discretionary matters are considered supportable for the above outlined reasons.

## **CONCLUSION**

Accordingly the application is recommended for refusal on the basis that the objectives of LPP 2.9 – Vehicle access and the relevant Design principles of the R-Codes have not been appropriately addressed with regard to the second crossover.

## **STRATEGIC IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

Nil

## **LEGAL IMPLICATIONS**

Nil

## **OFFICER'S RECOMMENDATION**

Planning committee acting under delegation 1.1:

**REFUSE** under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the carport, deck and primary street fence additions and alterations to the existing Single house at No.24 (Lot 84) Pass Crescent, Beaconsfield, on plans dated 14 May 2019, for the following reasons:

1. The proposal is inconsistent with the design principle requirements of the Residential Design Codes in respect to DE5.3.5 – Vehicular Access, as the development results in additional crossovers, which is considered to adversely impact on the streetscape pattern of Pass Crescent.
2. The proposal is inconsistent with the design principle requirements of the Residential Design Codes in respect to DE5.4.1 – Visual Privacy for the northern elevation of the front alfresco addition.

## **ADVICE NOTES:**

- i. The applicant is invited to lodge a separate application for the unauthorised retaining and minor earthworks in order for this compliance matter to be resolved.

- ii. In regard to the refusal above, the proposal does not comply with Draft Local Planning Policy 2.9 – Residential Streetscapes which prohibits more than one driveway from a primary street per lot, requires vehicle access to be taken from an access easement and prohibits a driveway of greater than 4.5m in width at the street boundary.**
  
- iii. The applicant is advised that an amended proposal that provides vehicle access to Lot 1 from the approved common property access leg (as per the survey strata plan for WAPC126-18) may be supported in accordance with the Residential Design Codes and Draft Local Planning Policy 2.9 – Residential Streetscapes.**

**PC1907 -8 SWANBOURNE STREET, NO. 51 (LOT 6), FREMANTLE - TWO STOREY ADDITIONS TO EXISTING SINGLE HOUSE - (NB DA0083/19)**

**Meeting Date:** 3 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Committee  
**Attachments:** 1: Amended Development Plans  
2: Site Photos

## **SUMMARY**

**Approval is sought for a rear two storey addition to an existing Single house at No. 51 Swanbourne Street, Fremantle.**

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

- Lot boundary setback
- Visual privacy
- Solar access

**The application is recommended for conditional approval.**

## **PROPOSAL**

### **Detail**

Approval is sought for a rear two storey addition to an existing Single house at No. 51 Swanbourne Street, Fremantle. The proposed works include:

- partial demolition of the rear of the existing house
- rear ground floor alterations
- upper floor living room and kitchen addition
- upper floor deck with external privacy screen.

The applicant submitted amended plans on 24 May 2019 including the following:

- the addition of an external privacy screen to the north, composed of a shade cloth attached to a pole.
- the removal of the upper floor deck roof to reduce building bulk and overshadowing.

Amended development plans are included as attachment 1.

### **Site/application information**

**Date received:** 8 March 2019  
**Owner name:** Alexander Owen  
**Submitted by:** Simon Vanyai  
**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

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 provisions of the R-Codes. The advertising period concluded on 2 May 2019, and two submissions were received. The following issues were raised (summarised):

- Needs solid screening on sides to prevent overlooking
- Creates overshadowing to rear garden and solar panels
- Building will block view from the southern bedroom
- The length of the proposed balcony will make the backyard of the northern house feel hemmed in and will block sea breeze.

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

- detailed overshadowing diagram showing that the extent of new overshadowing will not impinge on solar panels
- neighbour signed amended plans in resolution of the first two points above
- external privacy screen to the north composed of a shade cloth attached to a pole
- removal of the upper floor deck roof to reduce building bulk and overshadowing.

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
- Visual privacy
- Solar access

The above matters are discussed below.

### **Background**

The subject site is located on the western side of Swanbourne Street between Stevens Street and Fothergill Street and directly across from Stevens Reserve. The site has a land area of approximately 283 m<sup>2</sup> and is currently improved by a single storey Single house. The site is zoned Residential and has a density coding of R25. The site is individually heritage listed level 2.

The ground level of the lot slopes down approximately 700mm from the street to the rear. The lot contains two large mature trees in the backyard, which are not proposed to be removed. The driveway immediately to the south is a right-of-way providing joint vehicle access to the rear of both the subject site and the southern site, being No. 53 Swanbourne Street.

### **Heritage**

The subject site is included on the City of Fremantle Municipal Heritage List and as a Management Category Level 2 on the Municipal Heritage Inventory. The place has been included on the MHI for its considerable cultural heritage significance in its own right within the context of Fremantle and its conservation is a priority.

The existing dwelling is a single storey limestone residence, constructed from 1902, with tuck pointed brick quoining around the openings on the front façade and a bull nosed verandah. The residence has a zincalume hipped roof with two chimneys and is one of a group of four similar stone residences dating from the period of expansion of Fremantle in the late nineteenth and early twentieth centuries (45, 47, 49, 51). The place is medium authenticity and retains much of its significance in relation to its consistency with the other stone residences in the group and their combined contribution to the streetscape.

The proposal has been assessed to determine its potential impact on the significance of the place and the following comments are provided:

- The removal of the internal and rear wall has been assessed as acceptable and will not damage the places significance.
- The inclusion of two chimneys, one at the front and one at the rear, is typical of this group of buildings.

- The retention of the two fireplaces in the rear portion of the building would continue to describe the original layout of the place and how it was used, despite the proposal internal changes.
- It would be desirable if the chimney and associated fireplaces were retained, however, removal is considered reasonable in relation to the usability of the space and the associated impact.
- The setback is in line with a previously constructed addition on no. 47 Swanbourne Street and will have minimal impact on the street.

The partial demolition of roof and some of the rear rooms of the existing house is supported under clause 4.14 of LPS4 as they will have no detrimental impact on the heritage significance of the place. Similarly, the additions as proposed are not considered to have an adverse impact on the significance of the place.

### Lot boundary setbacks

| Element        | Requirement | Proposed | Extent of Variation |
|----------------|-------------|----------|---------------------|
| North (ground) | 1.5 m       | 0.344 m  | 1.156 m             |
| North (upper)  | 1.5 m       | 0.27 m   | 1.23 m              |

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

- The ground floor setback is proposed to remain identical to the existing setback, with the rear rooms of the existing building (kitchen, dining, living room, laundry) removed and replaced with the new extension.
- The ground floor presents no visual privacy variation and maintains the existing historical setback consistent with the remainder of the house.
- The upper floor setback is located adjacent to a side access-way and the laundry, bathroom, and living room of the adjoining lot. The existing house already presents a 4.2m high solid wall to the adjoining living major opening (which itself is south-facing and receives little direct sunlight) and blocks most of the view. The added height of the proposed second storey will have little additional impact on sunlight and ventilation to this window.
- The lot is relatively narrow and building to the boundary continues the line of the existing building with minimal impact to the outdoor living area at the rear of the adjoining lot.
- The upper floor balcony is proposed to have no roof, which will reduce the apparent impact of building bulk and scale when viewed from the outdoor living area of the adjoining lot.

### Visual privacy

| Element | Requirement | Proposed | Extent of Variation |
|---------|-------------|----------|---------------------|
| North   | 7.5 m       | 4.3 m    | 3.2 m               |
| South   | 7.5 m       | 5.1 m    | 2.4 m               |

The visual privacy variations are considered to meet the Design principles of the R-Codes in the following ways:

- Overlooking is oblique, rather than direct, to both north and south.
- The cone of vision to the south overlooks the adjoining garage and driveway. No outdoor living areas or habitable spaces are impacted.

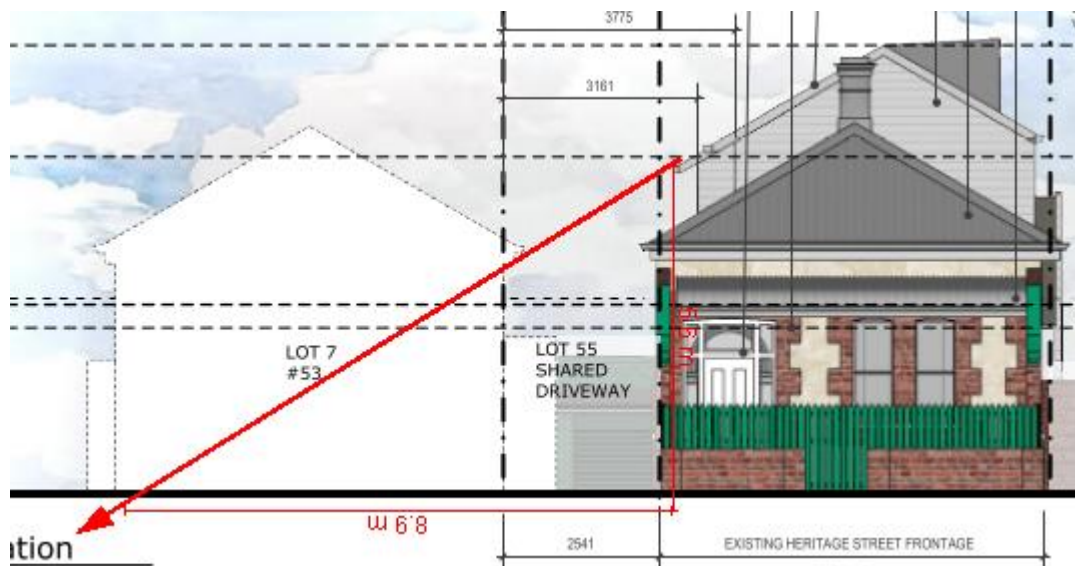
- The cone of vision to the northern outdoor living area is proposed to be blocked through the use of a privacy screen attached to a freestanding pole. A condition is proposed to require screening to this elevation and should the freestanding pole be untenable, another means of screening will be required to be implemented.
- All remaining overlooking is to a small corner of the adjoining lot, which is heavily vegetated and will result in minimal impact to visual privacy.

**Solar access**

| Element       | Requirement                            | Proposed                       | Extent of Variation              |
|---------------|--|--------------------------------|----------------------------------|
| Overshadowing | 25%<br>(70.75 m <sup>2</sup> ) maximum | 55.3%<br>(161 m <sup>2</sup> ) | 30.3%<br>(90.25 m <sup>2</sup> ) |

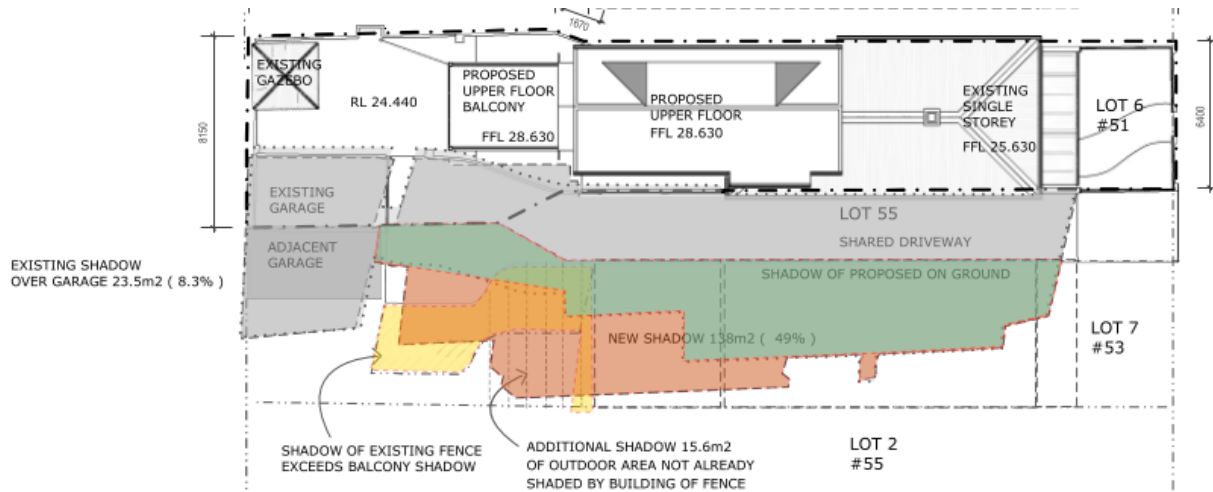
The solar access variation is considered to meet the Design principles of the R-Codes in the following ways:

- The existing development presents 38.4 % (111.7m<sup>2</sup>) overshadowing, resulting in 16.9% (49.3m<sup>2</sup>) additional overshadowing.
- The overshadowing does not fall onto the solar panels of the adjoining lot as shown in Figure 1 below.



**Figure 1:** Overshadowing elevation

- The adjoining southern lot contains a garage and a dividing fence whose shadows will exceed the length of the shadows of the proposed extension. The new extension presents only 15.6m<sup>2</sup> additional shadow beyond the shadows already created from the existing structures (see figure 2 below).
- The additional overshadowing avoids the majority of the outdoor living area, and the adjoining neighbour has signed the overshadowing diagram indicating no objection.



**Figure 2: Overshadowing diagram (Plan A-02)**

### 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, two storey additions to an existing Single House at No. 51 (Lot 6) Swanbourne Street, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 24 May 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. The approved development shall be wholly located within the cadastral boundaries of No. 51 (Lot 6) Swanbourne Street, Fremantle including any footing details of the development.
4. 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.

5. Prior to the issue of a Building Permit, a detailed drawing showing how the upper floor deck is to be screened to prevent direct overlooking to both north and south in accordance with Clause 5.4.1 C1.1 of the Residential Design Codes by either:
- a) fixed obscured or fixed translucent glass to a height of 1.60 metres above internal floor level, or
  - b) With fixed vertical 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 as determined from the internal floor level,
  - d) screening device shown on the approved plans dated 24 May 2019.

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

6. Prior to occupation of the development hereby approved, the boundary walls located on the north and south 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.

**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.

**PC1907 -9 LEFROY ROAD, NO. 146 (LOT 20), BEACONSFIELD - TWO, TWO STOREY GROUPED DWELLINGS AND HOME BUSINESS (BEAUTY THERAPY) - (NB DA0105/19)**

**Meeting Date:** 5 July 2019  
**Responsible Officer:** Manager Development Approvals  
**Decision Making Authority:** Committee  
**Attachments:** 1: Amended Development Plans  
2: Site Photos

## **SUMMARY**

Approval is sought for two, two storey Grouped dwellings, one of which includes a Home business (Beauty Therapy) component at No. 146 (Lot 20) Lefroy Road, Beaconsfield.

The proposal is referred to the Planning Committee (PC) due to 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:

- Home business use
- Visual privacy (east / west)

The application is recommended for conditional approval.

## **PROPOSAL**

### **Detail**

Approval is sought for two, two storey Grouped dwellings. The proposed works include:

- Demolition of the existing Single house (Note: Demolition is exempt from requiring planning approval under the *Deemed provisions*)
- Construction of two, two storey Grouped dwellings
- The easternmost dwelling includes four 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 29 March 2019 including the following:

- Moving the house back to comply with the 7m street setback requirement of LPP 2.9: Residential Streetscape
- Deleting the upstairs kitchen and separate upstairs entrance to the westernmost house. This was required as, otherwise, the upstairs would be considered an 'Ancillary dwelling', which is not permitted within a Grouped dwelling development under the R-Codes.

Development plans are included as attachment 1.

### Site/application information

Date received: 22 March 2019  
 Owner name: Peter Newman, Valerie Newman, Krista Newman  
 Submitted by: Peter Newman, Valerie 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



## 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
- Visual privacy

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 m<sup>2</sup> and is currently occupied by a single house that has been approved for demolition. The site is zoned Residential and has a density coding of R20. The site is not individually heritage listed, nor located within a Heritage Area.

### Land Use

#### *Grouped dwelling*

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:

- (a) *The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area*
- (m) *The compatibility of the development with its setting including the relationship of the development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development*
- (n) *The amenity of the locality including the following:*
  - (i) *Environmental impacts of the development*
  - (ii) *The character of the locality*
  - (iii) *Social impacts of the development*
- (y) *Any submissions received on the application.*

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

- The 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 50m<sup>2</sup> (being approximately 40.6 m<sup>2</sup>), will not employ more than two 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.

### **Visual privacy**

| <b>Element</b>              | <b>Requirement</b> | <b>Proposed</b> | <b>Extent of Variation</b> |
|-----------------------------|--------------------|-----------------|----------------------------|
| Bedroom windows (East/West) | 4.5 m              | 2.8 m           | 1.7 m                      |

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

- Overlooking is oblique rather than direct with the majority of overlooking directed to the rear of the subject site.
- The bedrooms are set back so as to provide minimal overlooking to outdoor living areas of the adjoining lots.
- Overlooking is not towards major openings of the adjoining dwellings.

### **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

## **OFFICER'S RECOMMENDATION**

**Planning committee acting under delegation 1.1:**

**APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, two, two storey Grouped dwellings and 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 29 March 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. The Home business (Beauty Therapy) hereby permitted shall have hours of operation that do not exceed normal trading hours, ie. 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.**
- 4. 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.**
- 5. 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.**

**PC1907 -10 UPDATE ON METRO SOUTH-WEST JDAP DETERMINATIONS AND RELEVANT STATE ADMINISTRATIVE TRIBUNAL APPLICATIONS FOR REVIEW**

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 in the attachment.

**OFFICER'S RECOMMENDATION**

**That the information is noted.**

**PC1907 -11 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.

**OFFICER'S RECOMMENDATION**

**That the information is noted.**

### **10.3 COUNCIL DECISION**

Nil

### **11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

A member may raise at a meeting such business of the City as they consider appropriate, in the form of a motion of which notice has been given to the CEO.

Nil

### **12. URGENT BUSINESS**

In cases of extreme urgency or other special circumstances, matters may, on a motion that is carried by the meeting, be raised without notice and decided by the meeting.

Nil

### **13. LATE ITEMS**

In cases where information is received after the finalisation of an agenda, matters may be raised and decided by the meeting. A written report will be provided for late items.

Nil

### **14. CONFIDENTIAL BUSINESS**

Members of the public may be asked to leave the meeting while confidential business is addressed.

### **15. CLOSURE**

Nil