



AGENDA

Planning Services Committee

Wednesday, 15 August 2012, 6.00 pm

CITY OF FREMANTLE
NOTICE OF A PLANNING SERVICES COMMITTEE MEETING

Elected Members

A Planning Services Committee Meeting of the City of Fremantle will be held on Wednesday, 15 August 2012 in the Council Chamber, Town Hall Centre, 8 William Street, Fremantle (access via stairs, opposite Myer) commencing at 6.00 pm.

Philip St John
DIRECTOR PLANNING AND DEVELOPMENT SERVICES

10 August 2012

PLANNING SERVICES COMMITTEE

AGENDA

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

NYOONGAR ACKNOWLEDGEMENT STATEMENT

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

ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

PUBLIC QUESTION TIME

DEPUTATIONS / PRESENTATIONS

DISCLOSURES OF INTEREST BY MEMBERS

LATE ITEMS NOTED

CONFIRMATION OF MINUTES

That the Minutes of the Planning Services Committee dated 1 August 2012 be confirmed as a true and accurate record.

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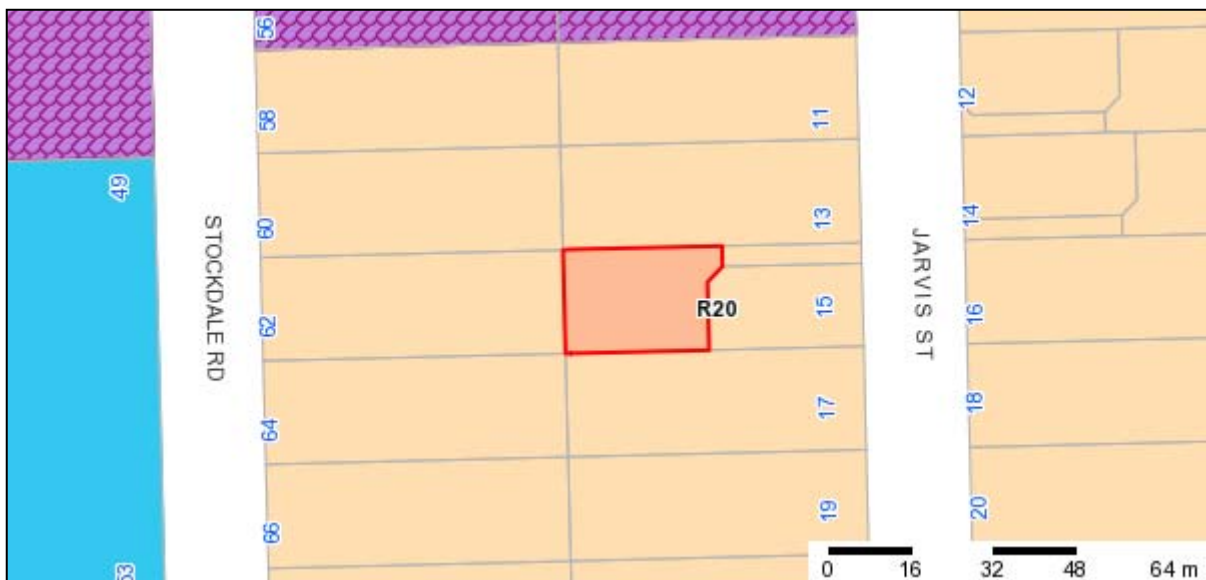
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DEFERRED ITEMS (COMMITTEE DELEGATION)

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

PSC1208-121 NO. 15A (LOT 2) JARVIS STREET, O'CONNOR – DEFERRED ITEM – TWO STOREY RESIDENTIAL BUILDING (JS DA0089/12)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC1207-108 (18 July 2012)
Attachments: Amended Development Plans
 Original PSC Report
Date Received: 13 March 2012
Owner Name: Jason Townes and Big Moreton Pty Ltd
Submitted by: Bernard Seeber Pty Ltd
Scheme: Residential R20
Heritage Listing: Not listed, not within Heritage Area
Existing Landuse: Vacant Site
Use Class: Residential Building
Use Permissibility: 'A'



EXECUTIVE SUMMARY

At its meeting held 18 July 2012, the Planning Services Committee (the Committee) resolved to defer the matter to the next appropriate Committee meeting, for the following reasons:

1. Advise the applicant that the Planning Services Committee is not prepared to approve the development in its current form.
2. That the matter be deferred to the next appropriate Planning Services Committee to allow investigation into the following matters:
 - a) A revised single storey building having specific regard to reducing overshadowing of the adjoining southern property's pool area;
 - b) Reducing amenity impacts on neighbours (including location) associated with car parking;
 - c) Restrictions on numbers of occupants;
 - d) Negotiations of alternative access arrangements from Stockdale Road;
 - e) Management of through traffic and pedestrian access; and
 - f) Clarification of the management of the two properties.

The original application was submitted to the City on 13 of March 2012. This application was for a Single Storey Residential Building that included 2 on-site car parking bays.

On 5 June 2012, the City received amended plans after requesting the number of car parking bays be increased to comply with the car parking requirements of Local Planning Scheme No. 4 (LPS4). The amended plans comprised five on site car parking bays and consequently increased the building from single storey to two storey.

In accordance with 2a) of the 18 July 2012 PSC resolution, the applicant has reverted back to the original single storey plans submitted to the City on 13 March 2012.

The application is again referred to the Committee as the proposal requires discretionary decisions of Council in relation to the proposed 'Residential Building' use and subsequent on-site car parking requirements. Furthermore, the City still has submissions that have raised concerns which cannot be addressed by the imposition of relevant planning conditions.

In relation to built form requirements of LPS4, the Residential Design Codes (R-Codes) and Council's LPP3.8 – O'Connor Local Planning Policy, the development is considered compliant with all design elements with the exception of the following:

- On-site Car Parking
- Boundary Setback (West)

The amended application is recommended for approval as the proposed Residential Building is considered to be consistent with the objectives of the residential zone as prescribed by Clause 4.2 and several provisions of Clause 10.2 of LPS4.

BACKGROUND

For a copy of the detailed background information regarding this application and subject site see 'Attachment 2' for a copy of the previous report, considered by Council at its meeting held 18 July 2012 (refer PSC1207-108).

DETAILS

The current single storey plans propose the following key amendments to the previously assessed two storey proposal:

- Reducing the building height from two storeys to single storey;
- Reducing the amount of car parking bays from five to two;
- Reducing the amount of shadow falling onto the southern adjoining neighbours' pool area from 10.8% to 8.4%;
- Reducing the eastern setback from 4.0m to 2.0m; and
- Reducing the amount of site coverage occupied by a building from 52.3% to 47.3%.

See 'Attachment 1' for a copy of the development plans.

STATUTORY AND POLICY ASSESSMENT

The proposed development has been assessed against the provisions of the City's LPS4, the R-Codes and Council's L.P.P 3.8 – O'Connor Local Planning Policy. Variations to the City's requirements are discussed in the Planning Comment section of the report below.

CONSULTATION

Community

The amended application was not required to be re-advertised in accordance with Clause 9.4 of LPS4. A summary of the original submissions can be viewed in 'Attachment 2' in the original Committee report (refer PSC1207-108). A number of the submitting neighbours have viewed the single storey design.

The City facilitated a meeting between the applicant and neighbours on 2 August 2012. Attendees included 7 neighbours, the owner of 15A Jarvis St, Councillors Sullivan, Wainwright and Massie and 2 planning staff. While various issues were discussed, no final agreement was reached.

PLANNING COMMENT

Buildings Setback from the Boundary

Element	Setback Required	Setback Provided	Discretion
Western Elevation	1.50 m	1.00 m	0.50 m

The discretion sought is recommended to be supported in its current state for the same reasons outlined in the original report that is included as 'Attachment 2'.

Car Parking

	LPS4 Requirement	Proposed	Discretion
1.	1 car parking space per guest bedroom plus; 1 car parking bay per caretaker/ onsite manager. Total =6 car bays	2 car bays (room for 3)	4 Bay shortfall
2.	<u>Delivery bay</u> 1 service/ storage area Total = 1 Delivery Bay	Nil	1 Delivery Bay shortfall
3.	<u>Bicycle Racks</u> 1: 4 lodging rooms Total = 2 Bicycle Racks	0 Bicycle racks	2 Bicycle Rack shortfall

Discretionary decisions 1 and 2 can be supported for the following reasons:

- As the subject site is within close proximity to South Street which is an arterial public bus transport route, and the site is within close walking distance to shopping and essential services (Hilton Shopping complex), it could be argued that the combination of these provisions could be sufficient reasons to support a relaxation for the shortfall of on-site car bays.
- The applicant argues that although contrary to the LPS4 provisions, the 2 proposed on-site car bays will adequately accommodate the car parking demand for the proposed use of the site, as it is envisaged that the majority of tenants in low income housing either use public transport, car share or don't own vehicles.
- Adequate street parking is available along Jarvis Street.
- There is possible room for up to 3-4 car parking bays on site.
- Clause 5.7.2 stipulates that 1 delivery bay needs to be provided per service/ storage area. It is considered that no delivery bay is required on site as there is a sufficient amount of hardstand area on site to act as a hardstand loading bay in the unlikely event that one is required.

It is envisaged that a number of residents may use bicycle as a means of transport therefore discretion 3 relating to the provision of no bicycle backs is not supported. A condition of planning approval will be imposed requiring the applicant to provide 2 on-site bicycle racks.

Council Concerns

At its meeting held 18 July 2012, the Committee resolved to defer the matter to the next appropriate Council meeting to allow investigation into a number of matters. These matters are discussed below.

- a) *A revised single storey building having specific regard to reducing overshadowing of the adjoining southern property's pool area;*

The applicant has reverted back to the single storey plans that have reduced the amount of shadow that will fall on the southern property from 126m² to 98m² (10.8% to 8.4%). In particular a large portion of the shadow removed has been directly from the pool area of the southern property. The 8.4% reduction in overshadowing falls well within the 25% prescribed in the R-Codes for the R20 density coding. Furthermore, the single storey development also alleviates the visual privacy concerns that were raised regarding overlooking from the first floor component.

b) Reducing amenity impacts on neighbours (including location) associated with car parking;

The current plans reduce the amount of on-site car parking bays from 5 to 2-3. One of the major concerns raised in the initial advertising period was relating to the traffic and noise associated with car use on the common property access leg. The reduction of on-site car bays will help alleviate the noise concerns of neighbours.

c) Restrictions on numbers of occupants;

The applicant has indicated that the numbers are not proposed to exceed those that can be accommodated in a single house (6 unrelated persons). In this instance limiting the residential building to occupants would be difficult from a compliance perspective, limiting occupancy by restricting the number of beds would be more simple to enforce. On this basis a condition has been included limiting the number of beds.

d) Negotiation of alternative access arrangements from Stockdale Road;

The applicant has advised that access arrangements from Stockdale Road is not an option as it will require the removal of a minimum 3 on site car parking bays from the property at 62 Stockdale Road resulting in further on street parking. Furthermore as 15A Jarvis is a separate lot to 62 Stockdale Road, there is no reliance on an adjacent sites to provide any vehicle access or other service to the subject site.

e) Management of through traffic and pedestrian access;

Concerns have been raised relating to possible pedestrian flow between the two sites. The applicant has indicated that a 1.8m high fence will be erected between the subject site and the neighbouring western site (with no pedestrian gate) to cease pedestrian flow, however, this is classified as exempt development under schedule 15 of LPS4. Council may however impose a condition relating to a provision of a fence between the two properties if planning approval is granted which would read as follows:

“Prior to occupation a 1.8m high fence is to be constructed on the common boundary between the subject site and the western adjoining property 62 Stockdale Road. The fence is not to include a pedestrian gate.”

f) Clarification of the management of the two properties;

Not provided.

CONCLUSION

Overall, the application is recommended to be supported in its current form, as the proposed Residential Building use and development are considered to satisfy the prescribed objectives for a Residential zone under Clause 4.2.1 (a) and several criteria of clause 10.2 – *Matters to be considered by the Council* of the City's LPS4.

The discretionary decision sought in relation to built form is considered to be of a minor nature and therefore supportable. Furthermore, the reduced number of on-site car parking bays is considered to reduce amenity impacts in terms of vehicle movements along the access leg on neighbouring properties than the initial 5 bays provided.

The impacts that the proposal will have on adjoining properties is considered to be generally comparable to that of a Single House which can comprise up to 6 unrelated occupants, which is a permitted 'P' use in the Residential zone.

Consequently the application is recommended for approval.

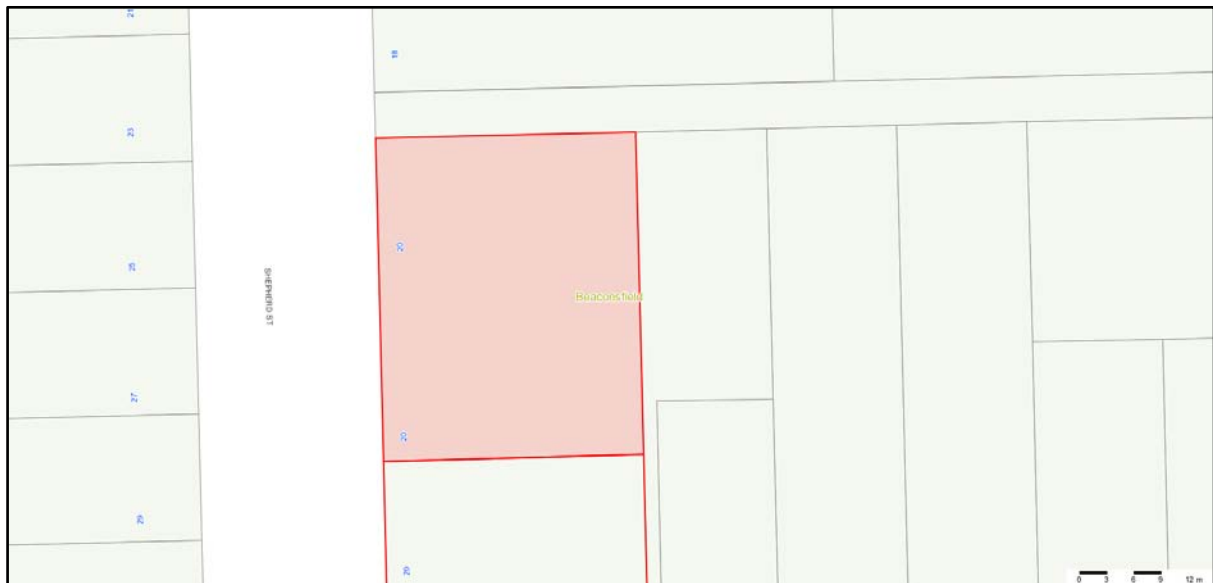
OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the two storey Residential Building at No. 15A (Lot 2) Jarvis Street, O'Connor, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans dated 13 March 2012. It does not relate to any other development on this lot.**
- 2. All storm water discharge shall be contained and disposed of on-site.**
- 3. Prior to occupation, 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 Chief Executive Officer, City of Fremantle.**
- 4. Prior to occupation, 2 bicycle racks are to be provided on site.**
- 5. The residential building is limited to a maximum of 6 beds (one in each bedroom) at any one time.**

**PSC1208-122 DEFERRED ITEM - SHEPHERD STREET NO.20 (LOT 1),
BEACONSFIELD – CARPORT AND OUTBUILDING ADDITION TO AN
EXISTING GROUPED DWELLING (MS DA0413/11)**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC1206-89 (20 June 2012), PSC1207-95 (4 July 2012),
Attachments: Development Plans
Date Received: 29 August 2011
Owner Name: M & S Dimmick
Submitted by: As Above
Scheme: Residential R20
Heritage Listing: Nil
Existing Landuse: Grouped Dwelling
Use Class: As Above
Use Permissibility: 'D'



EXECUTIVE SUMMARY

The proposal was considered by the Planning Services Committee (PSC) on 20 June 2012 and deferred to the next appropriate PSC meeting at the request of the applicant so they could attend.

Subsequently, the report was presented to the Planning Services Committee meeting on the 4 July 2012. Given the applicant was not in attendance, a motion was put forward to defer the matter to the next appropriate PSC meeting. The recommendation was carried with 4 votes, which as per the City's delegation register requires the item to be referred to the Ordinary Meeting of Council.

At its meeting on the 25 July 2012, council resolved to defer the matter to the next appropriate PSC Meeting.

The application was initially presented to PSC as the proposed development does not satisfy the requirements of the City's Local Planning Policy D.C6 - Carports/Garages in front of Dwellings/Buildings or the relevant requirements of the R-Codes relating to front setbacks.

Planning Approval is sought for the construction of a carport and store to be located in the front setback area at No.20 (Lot 1) Shepherd Street, Beaconsfield.

Given that the Carport is proposed to be built in front of the existing dwelling and that there are no other approved examples of such development in the street, the proposal is considered to be contrary to the requirements of the City's D.C.6. nor satisfy the relevant Performance Criteria of the R-Codes. On this basis, it is recommended that the proposal be refused.

BACKGROUND

The subject site is zoned Residential under the provisions of the City's Local Planning Scheme No.4 (LPS4) with a density coding of R20. The site is located within the Beaconsfield Local Planning Area under and is not listed on the City's Heritage List or Municipal Heritage Inventory. Furthermore, the site is not located within a designated Heritage Area in accordance with clause 7.2 of LPS4.

The subject site is located on the eastern side of Shepherd Street, Beaconsfield and has a site area of approximately 638m². The site is currently improved by a single storey Grouped Dwelling.

The proposal was considered by PSC on 20 June 2012 and deferred to the next appropriate PSC meeting at the request of the applicant so they could attend.

Subsequently, the report was presented to the Planning Services Committee meeting on the 4 July 2012. Given the applicant was not in attendance, a motion was put forward to defer the matter to the next appropriate PSC meeting. The recommendation was carried with 4 votes, which as per the City's delegation register requires the item to be referred to the Ordinary Meeting of Council.

At its meeting on the 25 July 2012, council resolved to defer the matter to the next appropriate PSC Meeting.

This report is substantially unchanged from the 20 June 2012 PSC report.

DETAIL

The applicant is proposing the construction of a carport and store to be located in the front setback area at No.20 Shepherd Street, Beaconsfield. Specifically the proposal is comprised of a brick, colorbond and timber screened carport and storage area located to the northern side of the site, with a nil setback to the northern and western boundaries.

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

STATUTORY AND POLICY ASSESSMENT

In assessing the proposal, it is noted the following discretionary decisions are being sought in relation to the Acceptable Development criteria of the R-Codes:

- Front setback
- Outbuildings.

The variation to the Acceptable Development criteria of the R-Codes will be discussed further in 'Planning Comment' section of this report.

Additionally, the applicant is pursuing an exercise of discretion in relation to the requirements contained in the City's D.C6 *Carports/Garages in front of Dwellings/Buildings*.

These variations will be discussed further in the 'Planning Comment' section of this report.

CONSULTATION

Community

The application was not required to be advertised in accordance with Clause 9.4 of LPS4 and the City's L.P.P1.3 *Public Notification of Planning Proposals*.

PLANNING COMMENT

Residential Design Codes

Front setback

Required provision	Proposed	Variation
6m	Nil	6m

The above variation is not supported for the following reason:

- The reduced setback is not considered to contribute to the desired streetscape of Shepherd Street in that the proposal will be contrary to the established pattern of dwellings setback in the vicinity of 6m or greater.

For the above reasons it is considered that the proposal does not satisfy the Performance Criteria of Design Element 6.10.1.

Outbuildings

Required provision	Proposed	Variation
Wall height less than 2.4m	Maximum wall height of 3.2m	0.8m
Not located within primary street setback area	Located within primary street setback area	See discussion below
Complies with side boundary setbacks, but do not need to meet rear setback requirements of Table 1.	Nil setback to northern boundary	1m

The above variations are not supported for the following reason:

- The Outbuilding is not considered to be consistent with the established pattern of the streetscape, therefore may result in a detrimental impact on the visual amenity of residents or neighbouring properties;

For the above reasons it is considered that the proposal does not satisfy the Performance Criteria of Design Element 6.10.1.

Council Policy

D.C 6 Garages/Carports in front of Dwellings/Buildings

The City's D.C 6 Garages/Carports in front of Dwellings/Buildings states that:

1. *Carports and garages will not be allowed in the front setbacks unless:*
 - (i) *There is an existing pattern of carports/garages in the street;*
 - (ii) *The topography of the land is such that the carport/garage can form a part of the existing slope/cliff or retaining wall;*
 - (iii) *The topography of the land is such that the existing house is significantly below the street level;*
 - (iv) *The house is located on a corner lot. In this case a carport/garage can be built to the secondary street;*
 - (v) *The existing house's setback is significantly greater than other setbacks in the street or*
 - (vi) *The subject lot is irregular in shape and location.*

The established pattern of Shepherd Street is predominantly comprised of carports and garages setback behind the front façade of the dwelling or as either under-croft garages or alternatively located at the side of dwellings. There is not considered to be an existing pattern of carports/garages in the front setback areas in the street.

The differentiation in topography of the site is marginal, so as to not warrant a carport forming part of the slope/cliff or retaining wall.

The subject site is not irregular in its shape or location.

Furthermore, the setback of the existing dwelling located on site (approximately 8m) is consistent with other dwellings in the street, forming part of a largely uniform streetscape along Shepherd Street.

On this basis, the proposed carport is not considered to be consistent with the provisions contained within the City's D.C6 *Garages/Carports in front of Dwellings/Buildings*.

CONCLUSION

In considering this proposal, Council should be satisfied that the development will not result in any adverse impact on the streetscape through discretionary decisions sought for the proposed location of the carport and Outbuilding.

It is considered that the proposed location of the carport is incongruous with the established streetscape of Shepherd Street, and will therefore act to diminish the uniformity of buildings setback from the primary street. Furthermore, the inclusion of an Outbuilding within the primary street setback area is not considered to be acceptable on the basis that it may establish an undesirable precedent along Shepherd Street.

For the reasons outlined within the 'Planning Comment' section above, it is considered that the discretionary decisions sought should not be supported on the basis that they are contrary to the relevant 'Performance Criteria' of the R-Codes and objectives of Council Policy.

Accordingly, the application is recommended for refusal.

OFFICER'S RECOMMENDATION

That the application be REFUSED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the carport and outbuilding addition to an existing Grouped Dwelling at No.20 (Lot 1) Shepherd Street, Beaconsfield for the following reasons:

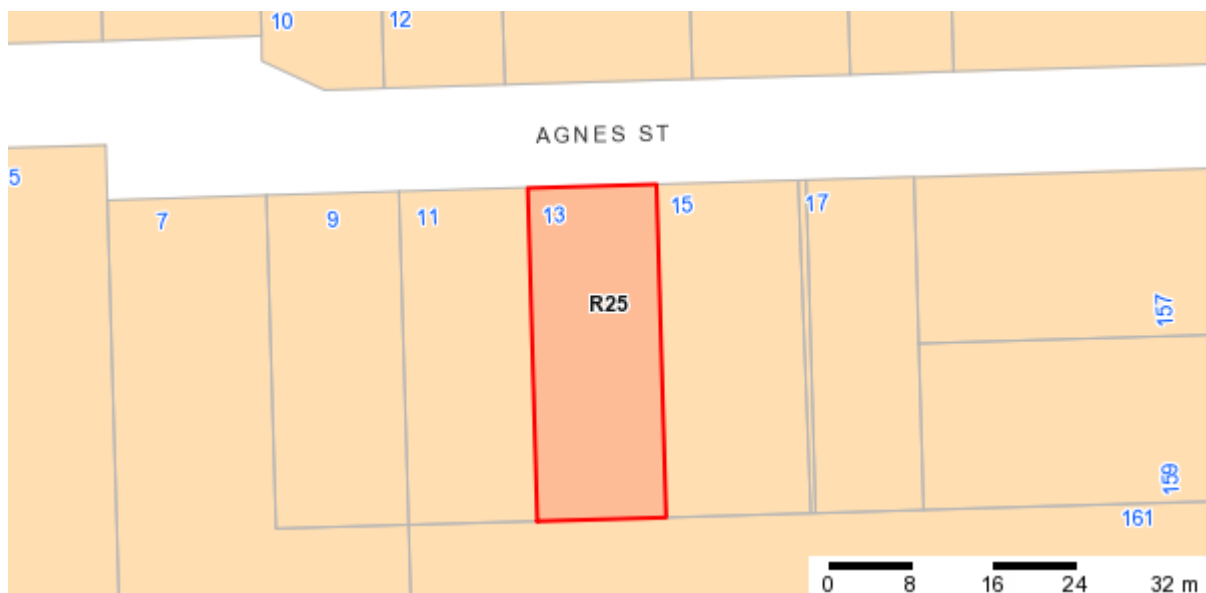
- 1. The proposal does not meet the provisions of the City of Fremantle's D.C6 Garages/Carports in front of Dwellings/Buildings policy or the performance criteria of the Residential Design Codes relating to front setbacks and outbuildings.**

REPORTS BY OFFICERS (COMMITTEE DELEGATION)

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

PSC1208-123 AGNES STREET, NO. 13 (LOT 5) BEACONSFIELD - PARTIAL DEMOLITION, THREE STOREY ADDITION AND ALTERATIONS TO EXISTING SINGLE HOUSE (JWJ DA0371/11)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: n/a
Attachment 1: Development Plans (Revised - 10 July 2012)
Attachment 2: Heritage Assessment (September 2011)
Date Received: 8 August 2011
Owner Name: A Clippingdale
Submitted by: As above
Scheme: Residential
Heritage Listing: MHI Level 3
Existing Landuse: Single House
Use Class: Residential
Use Permissibility: P



EXECUTIVE SUMMARY

The application has been referred to the Planning Services Committee for determination as objections were received from adjoining neighbours that cannot be resolved via conditions of planning approval.

Planning approval is sought for partial demolition, a three storey addition and alterations to the existing Single House at No. 13 Agnes Street, Beaconsfield.

The applicant is also requesting performance based assessments for the following variations to the 'Acceptable Development' criteria of the Residential Design Codes (R-Codes):

- External wall height;
- Boundary Setbacks;
- Visual privacy.

Three submissions were received during the advertising process, two objecting to the proposed development. The following comments were raised (summarised):

- **Objection to:**
 - Building height;
 - Overlooking;
 - Open space;
 - Boundary setbacks;
 - Overshadowing;
- **Concern regarding:**
 - Inaccuracy of plans in relation to site levels;
 - Detrimental impact on adjoining properties and locality from excessive building bulk and scale;
 - Detrimental impact of development on heritage significance of existing dwelling and adjoining buildings;
 - Detrimental impact on Agnes Street streetscape.

The discretions have been assessed against and are considered to satisfy the 'Performance Criteria' of the R-Codes.

It is recommended that the application be conditionally approved.

BACKGROUND

The subject site is zoned Residential in accordance with LPS4 and has a residential density coding of R25. The site is listed on the City's Heritage List and Municipal Heritage Inventory (MHI) as a management category level 3. The site is also located within the South Fremantle Heritage Precinct which is a designated heritage area in accordance with clause 7.2 of LPS4.

The site is approximately 402m² and is located on the southern side of Agnes Street, Beaconsfield. There is an existing downwards slope on site of approximately 1.5m from the south east corner of the site and the street and an existing 0.5m crossfall from the southeast corner and the southwest corner of the site. Existing 0.4m high retaining walls are located in the centre of site extending east from the western boundary. The site is improved by an existing single storey Single House and rear single storey addition.

A background review of the property file found the following relevant planning information:

- On 24 September 2009, planning approval was granted for rear detached studio and associated patio/decking (refer DA0387/09)

DETAILS

On 8 August 2011, the City received a development application for partial demolition and a three storey addition and alterations to existing Single House. The proposed development included the following:

- Two storey addition, connecting rear of existing dwelling with rear detached single storey studio;
- Eastern boundary wall as part of the two storey addition.

A heritage assessment undertaken in September 2011 did not support the proposed works as it was not considered compatible with the heritage significance of the building.

Subsequently, revised plans were submitted to the City on 16 March 2012. The revised plans incorporated the following changes:

- Two storey element of addition relocated to southern end of addition;
- Single storey addition extending from rear of dwelling;
- Two storey addition incorporates third storey balcony;
- Eastern boundary wall removed;
- Decking proposed to western side of addition;
- Conservation works and alterations to existing dwelling.

The revised plans dated 16 March 2012 were readvertised to adjoining neighbours due to the significant amendments to previous plans dated 8 August 2011.

Following discussions with adjoining neighbours a site inspection undertaken by City officers on 25 May 2012 found that revised plans submitted 20 April 2012 were considered to incorporate several discrepancies in relation to existing site levels depicted on the plans.

Final plans were submitted 10 July 2012 which are considered to address concerns regarding:

- Site levels;
- Heritage concerns.

The revised plans dated 10 July 2012 contain the following discretions to the relevant provisions of LPS4, the R-Codes and Council policies:

- External wall height;
- Boundary Setbacks;
- Visual privacy.

Further assessment and discussion is contained in the Planning Comment section of this report.

STATUTORY AND POLICY ASSESSMENT

The proposed development has been assessed against the relevant provisions of LPS4, the R-Codes and Council Local Planning Policies.

The following Council Policies are considered relevant to the development application:

- *DBH 1 Urban Design and Streetscape Guidelines;*
- *LPP 1.6 Preparing Heritage Assessments;*
- *LPP 2.4 Boundary Walls in Residential Development.*

Further assessment and discussion is contained in the Planning Comment section of this report.

CONSULTATION

Community

The application was required to be readvertised in accordance with clause 9.4 of the LPS4, as revised plans submitted dated 16 March 2012 incorporated significant design changes to the original plans dated 8 August 2011. At the conclusion of the advertising period, being 10 April 2012, the City had received three submissions, two objecting to the proposed development. The following issues were raised:

- Objection to:
 - Building height;
 - Overlooking;
 - Open space;
 - Boundary setbacks;
 - Overshadowing;
- Concern regarding:
 - Inaccuracy of plans in relation to site levels;
 - Detrimental impact on adjoining properties and locality from excessive building bulk and scale;
 - Detrimental impact of development on heritage significance of existing dwelling and adjoining buildings;
 - Detrimental impact on Agnes Street streetscape.

Further assessment and discussion is contained in the planning comment section of this report.

Heritage

An external heritage assessment was undertaken against the original plans dated 8 August 2011. The assessment raised the following concerns:

- The place is of some heritage significance with some aesthetic, some historic and some social values;
- The values are predominantly evident through the place's overall appearance, form, scale, architectural details and its contribution to the streetscape;
- Proposal has two components:
 - Alterations and additions to the existing cottage;
 - New two storey addition connected to existing cottage and studio;
- The siting of the proposed addition to the rear of the existing cottage follows sound heritage principals;
- The alterations and additions to the existing cottage are compatible with the heritage place;
- The gable roof to the northern elevation of the addition accentuates the scale of the addition in comparison to the scale of the heritage place;
- The form of the proposed additions, specifically immediately adjacent to the existing cottage will have a negative impact on the aesthetic significance of the place;
- The selected materials corrugated steel Zinalume roof and timber windows are compatible with the existing palate of materials;
- The selected wall material will be applied vertically and will also accentuate the height of the proposed addition;
- The design solution should be reconsidered at the junction of the single storey existing cottage and the proposed addition;
- The scale and roof form at the junction should also be reconsidered.

On 16 March 2012, the applicant submitted revised plans to address concerns raised in the heritage assessment.

On 28 May 2012, the City requested amended plans be submitted to address discrepancies in site levels depicted on the revised plans and also heritage concerns.

The City's Heritage department requested the following:

- One metre setback required to eastern adjoining property where originally proposed boundary wall abutted original weatherboard material, with a 200mm setback at the return (south);
- Clarification regarding restoration works to the existing building;
- Outline of proposed materials and finishes to existing and proposed development.

On 10 July 2012, the applicant submitted revised plans to address the above concerns.

The City's Heritage department advised that the revised plans are considered to address previous heritage concerns raised in the heritage assessment and subsequent comments provided in May 2012.

PLANNING COMMENT

External Wall Height

<i>Maximum Permitted</i>	<i>Provided</i>	<i>Discretion</i>
6m	Third storey balcony – 8m	2m

The western, southern and eastern adjoining properties are two storey dwellings. The proposed 'roofdeck' depicted on the revised plans dated 10 July 2012 is considered to be a third storey as it is not considered to fall within the definition of loft as per LPS4.

Subsequently, the third storey element is assessed against the building height requirements of the R-Codes. The external wall height discretion is supported for the following reasons:

- The third storey element of the roof triggering the discretion is of skillion roof design and limited in length (3.2m);
- The remaining two storey element of the development is a pitched roof design and depicts a maximum external wall height of 6m and roof pitch height of 7.5m, which is considered to satisfy the acceptable development provisions of the R-Codes in relation to building height;
- The third storey element is considered to comply with boundary setback requirements of the R-Codes;
- The development is not considered to significantly restrict direct sun access or ventilation to the buildings and appurtenant spaces;
- A condition is recommended to be imposed requiring the western elevation of the balcony to be screened in accordance with the visual privacy requirements of the R-Codes.

Boundary Walls

<i>Elevation</i>	<i>Length</i>	<i>External Wall Height</i>
West (patio)	0.5m (remaining element of patio abuts existing boundary wall of similar or greater proportion)	3m

The western boundary wall is supported for the following reasons:

- The patio is to be of open and lightweight construction and therefore not considered to create a sense of confinement by way of excessive building bulk;
- It is not considered to significantly restrict direct sun access to the western adjoining property;
- The FFL of the proposed patio is not greater than 0.5m above the existing ground level on site and therefore is considered to comply with the visual privacy requirements of the R-Codes.

Visual Privacy

<i>Type & Elevation</i>	<i>Required Setback</i>	<i>Provided</i>	<i>Discretion</i>	<i>Supported/Not Supported</i>
Lounge (ground floor) - north	6m	West – 4m	2m	Supported – see performance assessment below
Lounge (ground floor) – west	6m	West – 1.9m South – 1.2m	4.1m 4.8m	Not supported – condition to be imposed requiring screening
Studio/study (upper floor) – west	4.5m	West – 3.2m	1.3m	As above
Studio/study (upper floor) - south	4.5m	South – 1.2m	3.3m	As above
Third floor balcony – west	7.5m	West – 6.5m	1m	As above

The discretion relating to the northern Lounge (ground floor) privacy setback is supported for the following reasons:

- The western elevation of the rear addition abuts an existing two storey boundary wall associated with the western adjoining property;
- Overlooking from the ground floor northern elevation ‘Lounge Area’ window of the rear addition is not considered to create direct overlooking to the active habitable space or outdoor living areas of the western adjoining property.

CONCLUSION

The proposed works are considered appropriate and in keeping with the heritage significance of the building. It is considered that the proposed development will not have a significant detrimental impact upon the amenity of adjoining neighbours, the existing streetscape or the immediate locality.

Therefore it is recommended that the application be conditionally approved.

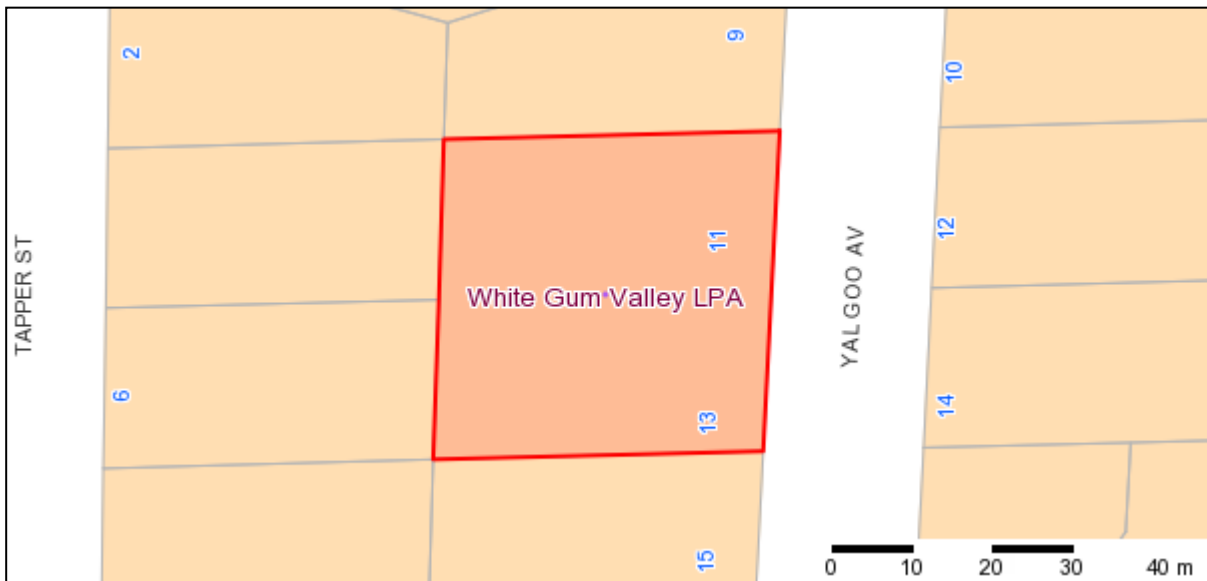
OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the Partial Demolition, Three Storey Addition with and Alterations to Existing Single House at No. 13 (Lot 5) Agnes Street, Beaconsfield, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans dated 10 and 18 July 2012. It does not relate to any other development on this lot.**
- 2. All storm water discharge shall be contained and disposed of on-site.**
- 3. Prior to occupation, the ground level window(s) on the western ('Lounge Area') elevation, the upper level window(s) on the southern ('Studio/Study'), western ('Studio/Study') elevations and the western elevation of the upper level balcony shall be either:**
 - a) fixed obscured or translucent glass to a height of 1.60 metres above floor level, or**
 - b) fixed with vertical screening, with openings not wider than 5cm and with a maximum of 20% perforated surface area, to a minimum height of 1.60 metres above the floor level, or**
 - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or**
 - d) screened by an alternative method to the satisfaction of the Chief Executive Officer, City of Fremantle,**
in accordance with clause 6.8.1 A1 of the Residential Design Codes and thereafter maintained to the satisfaction of the Chief Executive Officer, City of Fremantle.
- 4. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the Chief Executive Officer, City of Fremantle.**

**PSC1208-124 YALGOO STREET NO.11A (LOT 3), WHITE GUM VALLEY –
UNAUTHORISED FENCING ADDITION TO AN EXISTING GROUPE
DWELLING (MS DA0267/12)**

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachment: Development Plans
Date Received: 12 June 2012
Owner Name: M & S Davidson
Submitted by: As Above
Scheme: Residential R20/25
Heritage Listing: Nil
Existing Landuse: Grouped Dwelling
Use Class: As Above
Use Permissibility: 'D'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee given objections have been received that cannot be addressed by conditions of planning approval.

The proposal is comprised of retrospective approval for unauthorised screening/fencing located along the eastern boundaries of the subject site, along with the northern and southern sides of the rear access leg.

A portion of the development is consistent with the permitted development provisions contained within Clause 8.2 of LPS4 therefore not requiring the assessment of the council. Notwithstanding, part of the fence located on the eastern side of the subject site and within the front setback area require the approval of the City.

In relation to the unauthorised screening, the following measures are recommended to be taken:

- Allow the 2.4m high fencing between the subject site and No.11 & 13 Yalgoo Avenue to remain in situ by exercising discretion for the additional 0.6m height above the Permitted Development provisions contained within Clause 8.2 of LPS4;
- Note that the 1.8m fencing located along the rear access leg outside of the Primary Street setback area constitutes Permitted Development in accordance with Clause 8.2 of LPS4.
- Require the fencing located within the Primary Street setback be either removed or altered so as to meet the Acceptable Development provisions of Design Element 6.2.5 and the Permitted Development provisions contained within Clause 8.2 of LPS4 within 60 days of the determination.

BACKGROUND

The City received a complaint on the 5 January 2012 regarding the installation of unauthorised screening in the Primary Street setback area of No.11AYalgoo Avenue. The correspondence acknowledged that the structures had been in place for some time and were consistent with those already located to the eastern side of the site.

As a result, the City's compliance department sent a letter to the owner of the subject site on the 16 January 2012 requesting either:

- a) the removal of the unauthorised panelling;
- b) the submission of a planning application seeking retrospective approval for the unauthorised panelling.

Following the correspondence, it was indicated that by the owner of No.11A Yalgoo Avenue that the screens located adjacent to the northern side of No.13 Yalgoo Avenue would be lowered to 1.8m, whilst retrospective approval would be sought for the remaining screens to be retained in situ.

Accordingly the retrospective planning application was received by the City on the 12 June 2012.

DETAIL

The application is comprised of the unauthorised fencing and screening addition to an existing Grouped Dwelling located at No.11A Yalgoo Avenue. The screens are made of stained timber with 65mm slates spaced at 10mm. The proposal is situated as follows:

- North-south aligned screening to 2.4m above natural ground level (including truncated components) located between the subject site and No.11 & 13 Yalgoo Avenue;
- East-west aligned screening to 1.8m above natural ground level located to the northern side of the access leg of the subject site and No.11 Yalgoo Avenue, behind the Primary Street setback area;
- East-west aligned screening to 1.8m above natural ground level located to the northern side of the access leg of the subject site and No.13 Yalgoo Avenue, located with a portion contained within the primary street setback area.

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

STATUTORY AND POLICY ASSESSMENT

The proposed development has been assessed against the relevant provisions of LPS4, the R-Codes and relevant planning policies. Of the council's local planning policies L.P.P2.8 Fences Policy is of relevance to the determination of the application.

Under clause 8.2 of LPS4, circumstances are set out where specific forms of development are categorised as 'permitted development', and therefore do not require planning approval from the City. Clause 8.2(m) refers to 'minor development' listed in Schedule 15.

On this basis, the following components are consistent with the requirements of Schedule 15 and are therefore permitted development and excluded from further assessment:

- East-west aligned fencing categorised as 'any other fence' to 1.8m above natural ground level located along the access leg of the subject site and behind the Primary Street setback area;

Accordingly the above component will not be discussed further within this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of LPS4 and the City's L.P.P1.3 *Neighbour Notification of Planning Proposals*. At the conclusion of the advertising period, being extended to the 23 July 2012, the City had received one submission. The following issues were raised:

- Concerns regarding the fences being installed without appropriate approvals or liaison with the neighbour;

- Acknowledged that no compliant was made after the installation of the panels located to the eastern side of No.11A Yalgoo Avenue, but found it necessary following the installation along the access led to the site;
- Indicated that the 'unsightly' fencing located within the access leg to No.11A Yalgoo Avenue serve no purpose;
- Modern structures incongruent with exiting fencing on site, described as 'highly offensive';
- Indicated that the issue associated with the fencing is of great concern;
- Requested the removal of the panels located within the driveway area of No.11A Yalgoo Avenue.

The relevant planning comments raised within the above submission will be discussed further in the Planning Comment section below.

PLANNING COMMENT

Primary Street Fencing

Permitted	Provided	Variation
Visually permeable above 1.2m	Not 'Visually Permeable' above 1.2m	0.6m
Maximum height of 1.8m	1.8m	Nil

The following discretionary criteria apply to the assessment of the fencing proposed within the primary street setback area.

- 1.2 *Council may exercise discretion to vary the height of fences in the primary street setback area where:*
- The proposed fence height is consistent with the established pattern of fences within the streetscape, or*
 - Minor variations are made necessary by virtue of the sloping topography of the site, or*
 - Chain link or mesh fences in non residential areas greater than 1.8m high shall be permitted where in the opinion of Council, it is necessary to provide security to a commercial property, and are consistent with the established pattern of fences within the streetscape.*

The fencing proposed within the Primary Street setback area is not considered to meet the above criteria for the following reasons:

- The existing streetscape is predominantly comprised with low fencing (generally no higher than 1.2m), therefore the proposal is not considered to be consistent with the established pattern of fencing in the streetscape;
- The site contains a gradual fall from the street to the dwelling at No.11A Yalgoo Avenue, however not to the extent considered to facilitate increased fence height.

Accordingly in relation to the Primary Street fence, is recommended that council require the applicant to either:

- a) Require the fencing located within the Primary Street setback be either removed or lowered to 1.2m in height so as to comply with the Permitted Development provisions contained within Clause 8.2 of LPS4 within 60 days of the determination; or
- b) Modify the fencing so as to meet the definition of 'visually permeable' above 1.2m as required in accordance with clause 1.1 of L.P.P2.8, and modify the fencing so as to meet the Acceptable Development provisions of Design Element 6.2.6, Sightlines at vehicle access points and street corners.

In undertaking either of the above, the proposed primary street fence will be compliant with the statutory provision pertaining to fencing as per the City's Local Planning Policy and the R-Codes.

Fencing categorised as 'Any other fence'

Permitted	Provided	Discretion
1.8m High	2.4m	0.6m

The City's L.P.P2.8 states that Council will not approve side and/or rear boundary fences greater than 1.8m in height, or screening material that projects more than 500mm above the top of a fence unless the following criteria are satisfied:

- a) *The proposed fence/screening will not have any significant impact on adjoining properties by way of overshadowing, solar access, or loss of views, and*
- b) *Affected neighbours are consulted in accordance with Clause 9.4 of the Scheme*

In addition to the above, clause 4.2 states that in entertaining the above criteria, council will have particular regard to the comments made by adjoining owners and occupiers of adjoining properties and only consider the above criteria satisfied where no adverse impacts on the amenity of the neighbouring properties will occur.

The proposed north-south aligned fencing located to the eastern side of the subject site is considered to satisfy the above criteria for the following reasons:

- The fencing will not have any impact on the adjoining property by way of overshadowing, solar access or loss of views;
- The proposed fencing is considered to protect the privacy of the subject and adjoining sites, as is therefore of mutual benefit to the adjoining properties;
- As the fencing is located a significant distance from the adjoining dwellings, potential impacts on the adjoining properties will be diminished.

Accordingly the rear fencing is considered to comply with the relevant provision of the City's Local Planning Scheme and L.P.P2.8.

CONCLUSION

A previously discussed, the fence has been separated into two separate components for the purposes of assessment, which are listed as follows:

- Fencing categorised as 'any other fence' higher than 1.8m above natural ground level;
- Primary Street Fencing.

It is considered that the fencing categorised as 'any other fence' meets the discretionary criteria of L.P.P2.8 and can therefore be supported.

The proposed primary street fence is not considered to meet the relevant discretionary contained within clause 1.2 of L.P.P2.8. Accordingly it is recommended that the primary street fence is modified to be exempted development or otherwise meet the provisions of L.P.P2.8.

It is anticipated that these conditions will act to ameliorate some of the concerns raised through the consultation period, and bring the proposal into compliance with the scheme so as to not detract from the established pattern within the streetscape.

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

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the unauthorised fencing addition to an existing Grouped Dwelling at No. 11A (Lot 3) Yalgoo Avenue, White Gum Valley, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 16 July 2012, other than any modifications that may be required by the conditions that follow. It does not relate to any other development on this lot.**
- 2. Within sixty (60) days of the date of approval, all fencing within the Primary Street setback area as marked in red on the plans dated 16 July 2012 shall be modified to either be:**
 - a) Visually permeable above 1.2 metres above natural ground level as per clause 6.2.5 A5 of the Residential Design Codes to the satisfaction of the Chief Executive Officer, City of Fremantle;**

Or otherwise:

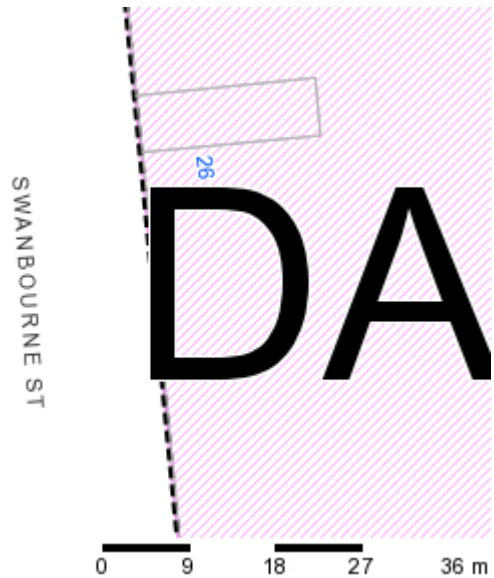
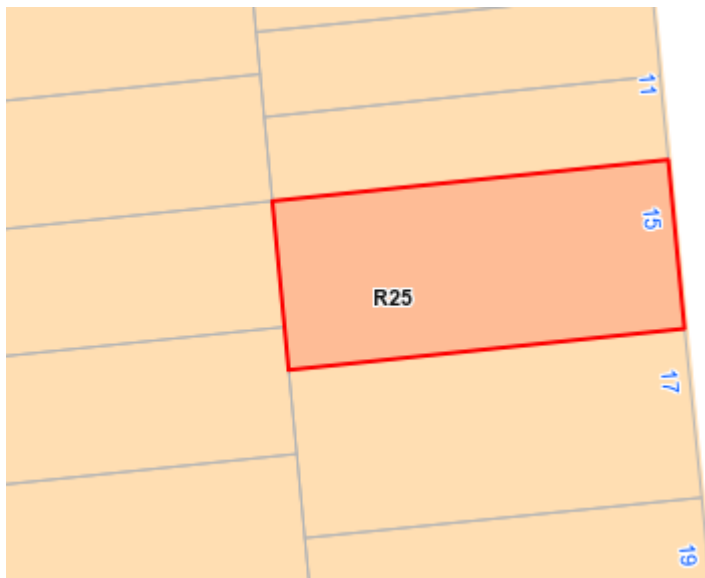
- b) Modified to be a maximum of 1.2m in height above natural ground level so as to comply with the Permitted Development provisions contained within Clause 8.2m (Schedule 15) of Local Planning Scheme No.4**

Advice Note(s):

- (i) In relation to condition 2, please be advised that in relation to a fence, the Residential Design Codes define visually permeable as follows:**
 - Continuous vertical or horizontal gaps of at least 50 mm width occupying not less than one third of its face in aggregate of the entire surface or where narrower than 50mm, occupying at least one half of the face, as viewed directly from the street; or**
 - A surface offering equal or lesser obstruction to view.**

**PSC1208-125 SWANBOURNE STREET NO.15 (LOT 30), FREMANTLE – TWO,
THREE STOREY GROUPED DWELLINGS (MS DA0250/12)**

Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: Nil
Attachment: Development Plans
Date Received: 5 June 2012
Owner Name: Simon Brooke Carlin
Submitted by: Space Agency
Scheme: Residential R25
Heritage Listing: Nil
Existing Landuse: Single House
Use Class: Grouped Dwellings (Proposed)
Use Permissibility: 'D'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee given objections have been received that cannot be addressed by conditions of planning approval.

The proposal is comprised of two, three storey Grouped Dwellings proposed to be constructed at No.15 Swanbourne Street, Fremantle. The applicant is pursuing an exercise of discretion in relation to the Acceptable Development standards of the Residential Design Codes (R-Codes) pertaining to:

- Buildings Setback from Boundary;
- Building Height;
- Visual Privacy; and
- Solar access for Adjoining Sites.

It is noted in assessing the proposal that the narrow, east west aligned lot which is constrained by a northern adjoining dwelling which overshadows the most part of the subject site, provides difficult circumstances in developing a proposal for the site. Additionally, it is to be recognised that such circumstances provide a predisposition to a high level overshadowing. Notwithstanding, the height of the proposal in combination with the floor area attributed to the third floor will result in restricted access to northern light for the southern adjoining property, therefore contributing to a detrimental impact on the amenity of the southern adjoining property.

Accordingly the proposal is recommended for refusal.

BACKGROUND

On the 22 March 2006, the Council approved an application for a 'three storey dwelling' located at No.11B Swanbourne Street Fremantle (Northern Adjoining Site) that incorporated fill between 1-1.5m and a building with an overall building height between 8-11.5m.

On the 24 June 2012, the City received an application for the demolition of the existing Single House located on site, site works (excavation and fill) and 'in principle' approval for indicative building envelopes for two, three story Grouped Dwellings (Refer DA0297/11). The purpose for the proposed building envelopes was to ameliorate the differentiation in scale along Swanbourne Street, namely the substantial difference in height between the dwellings at No.11 and No.17 Swanbourne Street.

The proposal was referred to the Planning Services Committee (PSC) meeting on the 23 November 2011 with a recommendation for approval, subject to the deletion of the indicative building envelope.

At its meeting on 23 November 2011, Council resolved to defer the application to the 7 December PSC meeting to "allow officers time to consider pending legal advice".

On 2 December 2011 legal advice was provided the City in order to address the above reason for deferral. In summary, the legal advice indicated that the City did not have the legal capacity to grant planning approval for an indicative building envelope, however approval could be granted to the demolition of the existing dwelling and site works.

On this basis, given the City's incapability of entertaining an indicative building envelope, the condition was retained removing this component of the proposal. Accordingly planning approval was granted for the proposed demolition and site works.

DETAIL

On the 5 June 2012 the City received an application for Planning Approval for two, three storey Grouped Dwellings located at No.15 Swanbourne Street, Fremantle.

Specifically the proposal is comprised of two grouped dwellings with a predominantly symmetrical design, comprising of a common boundary wall transecting the centre of the site, with the individual dwellings extending to the north (Lot 52) and south (Lot 51).

Following the conclusion of advertising period, amended plans were requesting in order to address concerns associated with the number of discretionary decision sought from the applicant and to address a number of issues raised with the provided development plans.

As a result, amended development plans and justification were submitted to the City on the 26 July 2012.

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

STATUTORY AND POLICY ASSESSMENT

Residential Design Codes

The applicant is pursuing the following discretionary decisions from the Acceptable Development criteria of the Residential Design Codes:

- Buildings Setback from Boundary;
- Building Height;
- Visual Privacy
- Solar Access for adjoining sites.

The variations to the acceptable development criteria of the R-Codes will be discussed further in Planning Comment section of this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and L.P.P1.3 *Public Notification of Planning Proposals*. At the conclusion of the advertising period, being 3 July 2012, the City had received four submissions which raised the following concerns:

- Inconsistency with the R-Codes requirements relating to Surveillance of the Street, Street walls and fences, Sightlines at vehicle access points and street corners, Buildings setback from the boundary, Setback of retaining walls, Design of parking spaces, Excavation or fill, Building Height, Visual Privacy.
- Inconsistency with the objectives of the City's Local Planning Policy L.P.P2.4 *Boundary Walls in Residential Development* and *D.B.H1 Urban Design & Streetscape Guidelines*;
- Similarity to the previously determined application in terms of the extent to which discretion is sought and the potential to impact on the amenity of the adjoining properties;
- Alterations to the existing ground level;
- Scale of the proposal (three storey development);
- Accuracy of contours provided on the development plans;
- Accuracy of the depiction of natural ground level on the proposed development plans;
- Bulk and scale associated with the proposed northern boundary wall.

The applicant's response to the above comments is enclosed accompanying the amended development plans as an attachment to this report (Attachment 1).

PLANNING COMMENT

Buildings Setback from Boundary

Elevation	Required	Provided	Discretion
South			
Lounge (First Floor)	1.2m	1m	0.2m
Bedroom 1 & 2 (Second Floor)	1.5m	1m	0.5m
North			
Lounge (First Floor)	1.2m	1m	0.2m
Bed 1 (Second Floor)	1.4m	1m	0.4m

The above discretionary decisions are supported for the following reasons:

- The proposed northern boundary setback is not anticipated to restrict direct sun and ventilation to the proposed dwelling, as well as the dwelling on the northern adjoining site;
- The proposed northern setback is not anticipated to significantly impact on the amenity of the adjoining property given the difference in site levels between the sites, and the proximity and scale of the existing northern dwelling. Additionally, it was indicated by the northern adjoining property that a one metre setback could be tolerated;

- The proposed setbacks are not anticipated to limit ventilation to the subject site nor the southern adjoining property.
- Whilst it is acknowledged the combination of the east west orientation of the subject site, along with the narrow cadastral dimensions makes maintaining access to sunlight difficult to address in this circumstance, the extensive height of the proposal in combination with the floor area attributed to the third floor will result in restricted access to northern light for the southern adjoining property. Notwithstanding, it is noted that the area adjacent to the discretionary component of the southern elevation is comprised of a garage, and therefore will not be as detrimentally impacted compared to a circumstance where the area is used for habitable purposes.

On this basis, it is considered that the proposal meets the Performance Criteria of the R-Codes.

Building Height

	Maximum Permitted	Provided	Discretion
External Wall Height	7m	Lot 52 10.2m (at highest point)	3.2m
		Lot 51 10.7m (at highest point)	3.7m
Roof Height	9m	Lot 52 10.2m (at highest point)	1.2m
		Lot 51 10.7m (at highest point)	1.7m

The above discretionary decisions are not supported for the following reasons:

- The discretions sought are significant;
- The main outdoor living area of the southern adjoining property located to the eastern side of the dwelling is anticipated to be partially overshadowed by the proposed dwelling.
- The increased height of southern most proposed dwelling is considered to have an adverse impact on the amenity of the adjoining southern property in terms of excessive building bulk.

It is worth noting that in this circumstance, there are examples of buildings depicting a height greater than that proposed immediately adjacent to the subject site. Accordingly, the applicant has attributed the increased height to creating a graduation in scale between the northern and southern adjoining properties, which are substantially different in terms of scale and presentation to the street. It is considered that on this basis, the proposal has some merit in mitigating the effect of a number of anomalies within the streetscape.

While the height of the proposal will restrict access to northern sunlight for the southern adjoining property, it is noted however that the extent has been limited where possible by the applicant in containing shadow to the roof space of the southern adjoining site and the northern elevation of the southern adjoining property which does not contain any north facing major openings.

Visual Privacy

Lot 52			
Elevation	Required provision	Proposed	Discretion
West (Balcony)	7.5m	5.4m	2.1m
West (Lounge)	6m	1.8m	4.2m
West (Bedroom)	4.5m	1.8m	2.7m
Lot 51			
Elevation	Required provision	Proposed	Discretion
West (Balcony)	7.5m	5.4m	2.1m
West (Lounge)	6m	1.8m	4.2m

It is considered that projected cone of vision from the major openings located on the western elevation may contribute to a detrimental impact on adjoining properties; however it is considered that measures could easily be put in place in order to mitigate any visual privacy concerns. Accordingly, should the proposal be approved, a condition would be recommended for inclusion requiring the above components of the design to be treated so as to comply with the Acceptable Development Criteria of Design Element 6.8.1 of the R-Codes.

Solar Access for adjoining sites

	Maximum Permitted	Provided	Discretion
Shadow Cast (as per R25)	25%	51%	26%

The above discretionary decisions are not supported for the following reasons:

- The discretion sought is significant;
- It is considered that whilst the majority of the proposed shadow will have a limited impact on the southern adjoining property based on the area impacted being comprised of roof space and the northern elevation not containing any north facing major openings, the main outdoor living area will be partially overshadowed by the proposed dwelling.

As previously discussed, it is considered that the accumulated effect of the proposed building height and reduced setback has led to a substantial exercise of discretion being sought for overshadowing.

It is to be noted that the Explanatory Guidelines of the R-Codes have acknowledged the difficulty in prescribing a maximum permitted shadow percentage over all residential development within the State, due to conditions varying from one situation to another. Furthermore, it should be noted that the overshadowing is calculated based on the maximum shadow cast at the winter solstice.

Given the narrow, east west lined lots constrained by a northern adjoining dwelling which overshadows the most part of the subject site, it is to be recognised that such circumstances provide a predisposition to a high level overshadowing.

CONCLUSION

The key consideration in entertaining this proposal is in relation to the performance based assessments sought for the following Design Elements of the R-Codes:

- a) Building Height;
- b) Solar Access for Adjoining Sites.

For the reasons outlined within the 'Planning Comment' section above, it is considered that the proposal does not meet the relevant 'Performance Criteria' of the R-Codes, and on this basis should not be supported.

Accordingly, the application is recommended for refusal.

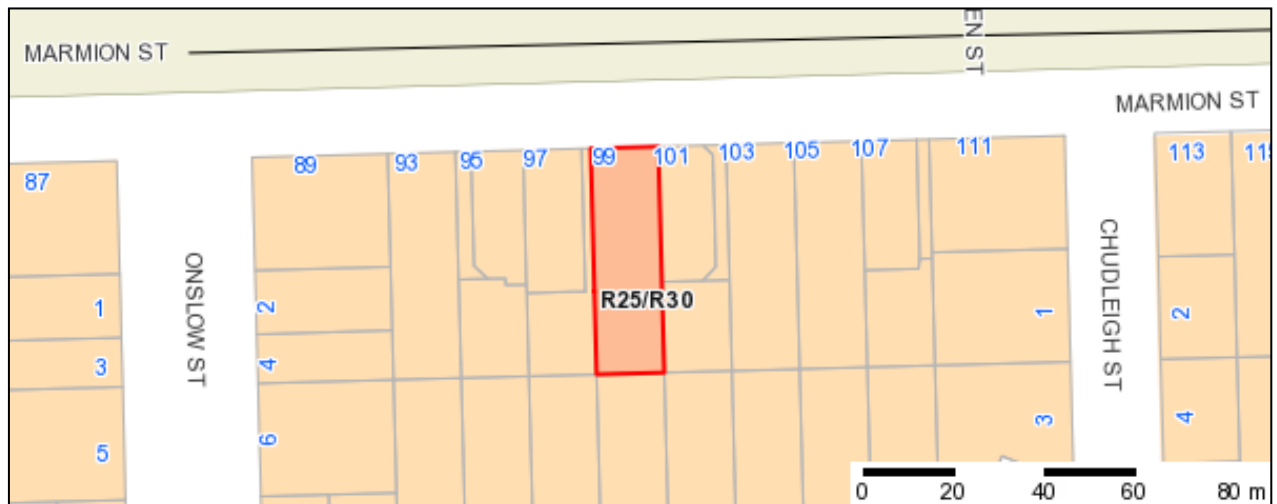
OFFICER'S RECOMMENDATION

That the application be REFUSED under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the two, three storey grouped Dwellings at No.15 (Lot 30) Swanbourne Street, Fremantle, for the following reason:

- 1. Discretionary decisions sought from the Acceptable Development standards of the Residential Design Codes which do not meet the relevant Performance Criteria and will have a significant amenity impact relating to:**
 - a) Building Height;**
 - b) Solar Access for Adjoining Sites.**

PSC1208-126 MARMION STREET NO. 99 (LOT 1), FREMANTLE - TWO STOREY GROUPED DWELLING (NB DA0227/12)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Strategic Planning Officer
Decision Making Level: Council
Previous Item Number/s: Nil
Attachment 1: Development Plans
Attachment 2: Streetscape Photos
Date Received: 25 May 2012
Owner Name: Brett Donnelly
Submitted by: Brett Donnelly
Scheme: Residential R25/R30
Heritage Listing: Nil
Existing Landuse: Vacant Land
Use Class: Grouped Dwelling
Use Permissibility: 'D'



EXECUTIVE SUMMARY

The application is being referred to the Planning Services Committee (PSC) as a discretion is being sought against *Planning Policy DBH1 – Urban Design and Streetscape Guidelines* (the policy) in terms of the two storey nature of the dwelling. The proposal however complies with other portions of the policy that permit two storey development.

The application for a two storey dwelling does not seek any other discretions.

It is recommended that the application be approved.

BACKGROUND

The subject site is located on the southern side of Marmion Street, Fremantle, faces the City of Fremantle local government area boundary with East Fremantle and is opposite the East Fremantle Oval. The site is an area of approximately 331m², is currently vacant land, and adjoins approximately 168m² of common property (driveway) at the eastern boundary.

The subject site is zoned 'Residential' under the provisions of the City's Local Planning Scheme No.4 (LPS4) with a split density coding of R25/R30. The site is located within the Fremantle Local Planning Area (Local Planning Area 2) but is not located within a designated Heritage Area. The property is not listed on the City's Heritage List but is recorded in the City's Municipal Heritage Inventory (MHI) as a Management Category Level 3.

The subject site previously comprised a single storey timber framed cottage, constructed in 1903 - 1904; and of which recently underwent extensive fire damage. Demolition of the fire damaged dwelling was approved in 2011 (DA0442/11). The Advice Note of this approval stated the following:

- i) The owner is advised that in accordance with the heritage planner's recommendation, in the heritage assessment dated September 2011 for 99 (Lot 1) Marmion Street, Fremantle, any future development on the site shall be designed to be compatible with the existing streetscape and neighbouring heritage cottages.

DETAILS

The applicant is proposing the construction of a two storey grouped dwelling and detached rear garage at 99 Marmion Street, Fremantle. The dwelling is proposed to be comprised of limestone brickwork, with a grey clay tiled pitched roof, and a portico cover to the front door. The existing detached carport at the rear of the lot is proposed to be retained and enclosed to form a two car bay garage.

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

STATUTORY AND POLICY ASSESSMENT

The proposal was assessed against the relevant provisions of LPS4, the Residential Design Codes 2010 (R-Codes) and Council's Local Planning Policies (LPP). The following planning policy is relevant to the application:

- *DBH 1 – Urban Design and Streetscape Guidelines*

Further assessment and discussion of the proposal under the provisions of DBH1 is contained in the 'Planning Comment' section of this report.

CONSULTATION

Community

The application was not required to be advertised in accordance with Clause 9.4 of LPS4 and the City's LPP 1.3 - Public Notification of Planning Proposals.

PLANNING COMMENT

Planning Policy DBH1 – Urban Design and Streetscape Guidelines

Clause 3d) of the policy states:

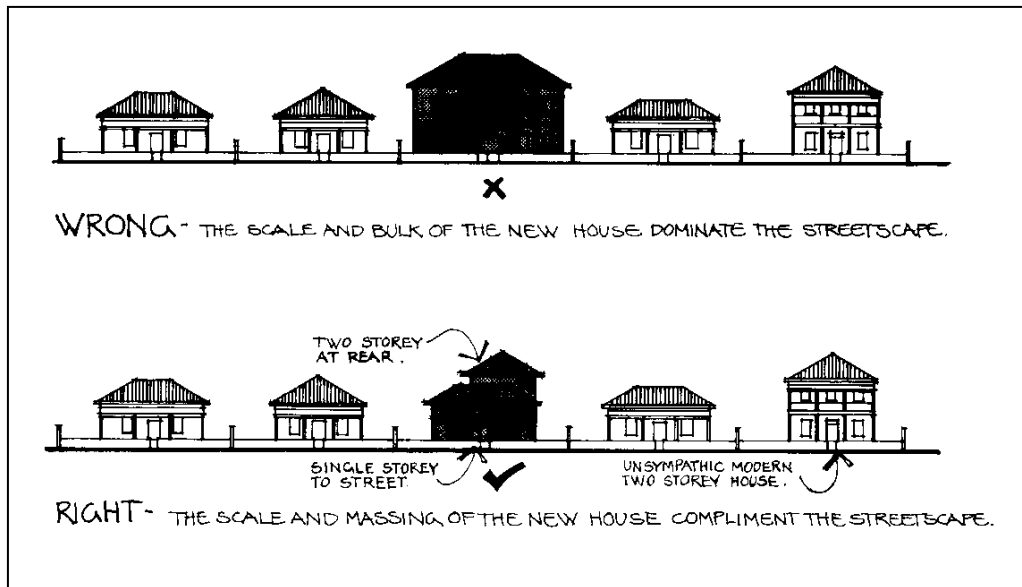
“The great majority of traditional residential areas of Fremantle consist of single to two storey houses. Therefore a two storey limit will be generally applied to the design of new infill houses.

In a predominantly single storey narrow inner urban street, the new development should be single storey at the street frontage, with any two storey extensions (if required) constructed to the rear. Alternatively on larger lots in wider streets a traditional two-storey built form may be appropriately located in line with other residences in the street.”

As Marmion Street is not a narrow inner urban street (24m wide), two storey dwellings are permitted by this clause.

Clause 3e) of the policy states:

“Building mass or bulk is the apparent massiveness of a building in relation to its surroundings. To complement the scale of the existing streetscape, new houses should be designed to blend with, rather than dominate, that space. “Oversize” buildings which overwhelm existing houses and dominate the streetscape will be discouraged (Refer to Diagram 5).”



DBH1 - Diagram 5

The variation to clause 3e) of the policy is supported for the following reasons:

- The street block of the subject site does contain a range of building heights including one, two and three storey buildings facing Marmion St;
- The new development is proposed to be setback approximately 4.9m from the primary street, and corresponds with the average of the front setbacks of the existing dwellings on each side with 97 Marmion St being setback approximately 5m, and 101 Marmion St being setback approximately 4m from the primary street;
- The width of proposed dwelling is consistent with the surrounding properties (approximately 10m);
- The proposal is consistent with the rhythm of the frontages of the surrounding properties that incorporate a 10m wide dwelling with a 3-4m setback at the side of the dwelling for vehicular access;
- No car parking structures are proposed at the front of the dwelling which is consistent with the surrounding development;
- The total building height complies with the R Codes and is proposed at 7.75m, below the permitted pitched roof height under the R Codes of 9m; and
- Elements of the design of the development are consistent with the neighbouring cottages with a central and covered front door, adjacent windows and the garage located at the rear of the development.

CONCLUSION

The proposed two storey grouped dwelling at 99 Marmion Street is assessed to comply with the relevant provisions of LPS4 and the Residential Design Codes. In addition, officers assessed the proposed development against the provisions of the City's Planning Policy DBH1 - Urban Design and Streetscape Guidelines, with particular consideration to the provisions regarding scale and mass under clause 3 – New Infill Development of the Policy, and for the reasons outlined within the 'Planning Comment' section above, the development is considered to comply with these provisions.

Accordingly, the application is recommended for approval.

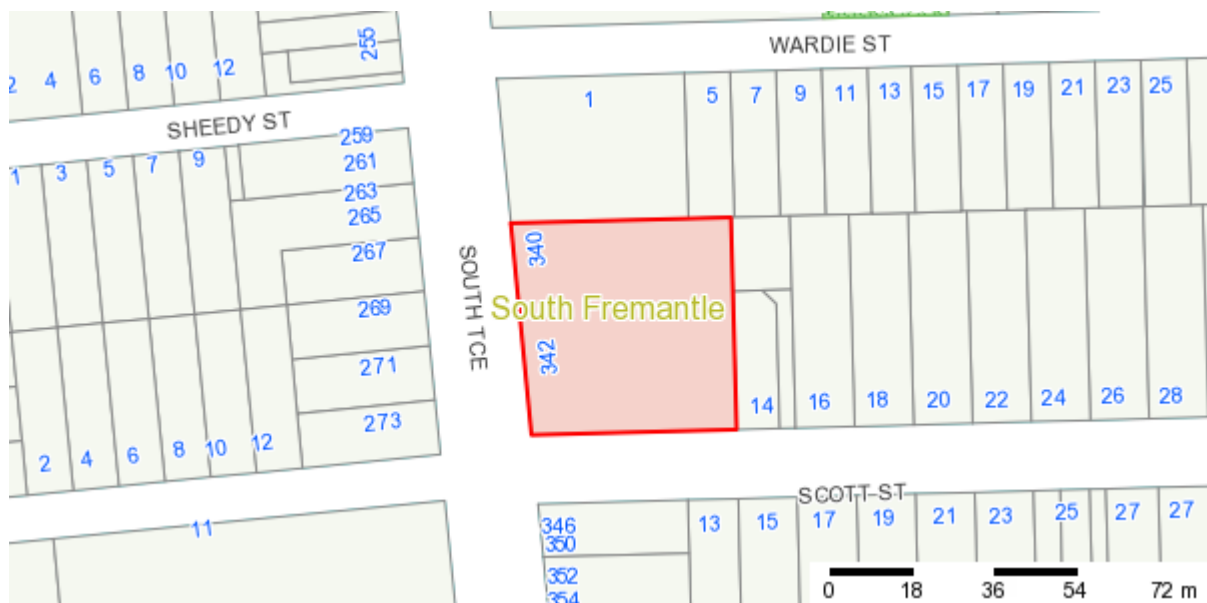
OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the Two Storey Grouped Dwelling at No. 99 (Lot 1) Marmion Street, Fremantle, as detailed on plans dated 25 May 2012, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans dated 25 May 2012. It does not relate to any other development on this lot.**
- 2. Prior to occupation, the boundary wall located on the eastern boundary shall be of a clean finish in sand render or face brick, to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- 3. All storm water discharge shall be contained and disposed of on-site.**

PSC1208-127 SOUTH TERRACE NO. 16/342 (LOT 16), SOUTH FREMANTLE – HOME BUSINESS (MEDITATION CLASSES) – (AD DA0246/12)

DataWorks Reference: 059/002
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Senior Planning Officer
Decision Making Level: Planning Services Committee
Previous Item Number/s: PSC1107-132 (20 July 2011)
Attachments: Development Plans
Date Received: 1 June 2012
Owner Name: Robert Williams
Submitted by: Brahma Kumaris Centres for Spiritual Learning
Scheme: Mixed Use (R30)
Heritage Listing: MHI – Management Category Level 3 (Demolished), South Fremantle Heritage Area
Existing Landuse: Home Business
Use Class: Home Business
Use Permissibility: 'A'



EXECUTIVE SUMMARY

The application is presented to the Planning Services Committee (PSC) as the proposal involves an amendment to a condition imposed by the PSC for a previous Planning Approval.

The applicant is seeking Planning Approval for a change in the operating hours for a Home Business (Meditation Classes) approved as part of DA0167/11 by the PSC at its meeting held 20 July 2011 (refer PSC1107-132). The application is considered to comply with the relevant requirements of the City's Local Planning Scheme No. 4 (LPS4) and Council's Local Planning Policies.

The application is recommended for conditional approval.

BACKGROUND

The site is zoned 'Mixed Use' under the City's Local Planning Scheme No. 4 (LPS4) with a density coding of R30 and is located within the South Fremantle Local Planning Area 4 (LPA 4) – Sub area 4.3.3 as prescribed in Schedule 12 of LPS4.

The site is located in the street block bound by South Terrace to the west, Wardie Street to the north, Chester Street to the east and Scott Street to the south. The subject site is 135m² in area and is located on the north-eastern side of the intersection of South Terrace and Scott Street, South Fremantle. The site is listed as a Management Category Level 3 on the City's Heritage List however as the place has been demolished it is listed for reasons of historical information purposes only, and is located within the South Fremantle Heritage Area as prescribed under Clause 7.2 of LPS4.

A review of the property file revealed the following relevant information:

- On 20 July 2011, the PSC granted conditional Planning Approval for a Change of Use to Home Business (Meditation Classes) at No. 16/342 (Lot 16) South Terrace, South Fremantle (refer DA0167/11).

DETAIL

On 1 June 2012 the City received an application seeking Planning Approval for a change in the operating hours for a Home Business (Meditation Classes) approved as part of DA0167/11 by the PSC at its meeting held 20 July 2011 (refer PSC1107-132). Specifically, condition No. 6 of the Planning Approval for DA0167/11 dated 22 July 2011 stated as follows:

"The hours of operation shall be limited to 7.00am to 8.00am Monday to Saturday, 10.00am to 1.00pm Tuesday to Friday and 6.30pm to 8.00pm Sunday to Thursday."

The applicant is now seeking Planning Approval to operate from 7:00am to 8:00pm, seven days a week. As part of their covering letter submitted as part of this application, the applicant provided the following justification as to why they are seeking an amendment to the hours of operation of the Home Business (Meditation Classes):

“Brahma Kumaris Centres for Spiritual Learning is a registered charity offering courses in Positive Thinking, Managing Stress and Meditation, free of charge to the community. The Centre is run solely by volunteers. Our volunteers are available at varying times and we would like to provide our services to the community at varying times.

The Centre will not be operating for the whole period between 7.00am and 8.00pm. However the current hours of operation have limited our availability to provide some services to the public. Approval to operate between the hours of 7.00am and 8.00pm would provide us with more flexibility.”

The table below breaks down the hours of operations approved as part of DA0167/11 and the new hours sought as part of this application, as well as the total operating hours of the Home Business (Meditation Classes) per week.

Day	Approved as part of DA0167/11		Proposed by DA0246/12	
	Operating Hours	Hours	Operating Hours	Hours
Monday	7:00am – 8:00am	1	7:00am – 8:00pm	13
	6:30pm – 8:00pm	1.5		
Tuesday	7:00am – 8:00am	1	7:00am – 8:00pm	13
	10:00am – 1:00pm	3		
	6:30pm – 8:00pm	1.5		
Wednesday	7:00am – 8:00am	1	7:00am – 8:00pm	13
	10:00am – 1:00pm	3		
	6:30pm – 8:00pm	1.5		
Thursday	7:00am – 8:00am	1	7:00am – 8:00pm	13
	10:00am – 1:00pm	3		
	6:30pm – 8:00pm	1.5		
Friday	7:00am – 8:00am	1	7:00am – 8:00pm	13
	10:00am – 1:00pm	3		
Saturday	7:00am – 8:00am	1	7:00am – 8:00pm	13
Sunday	6:30pm – 8:00pm	1.5	7:00am – 8:00pm	13
Total Operating Hours (Per Week)		25.5	-	91

It is noted that the applicant is not seeking any change to the previous Planning Approval for DA0167/11 other than the hours of operation. In this regard, the applicant is not seeking to amend Condition No. 7 of the Planning Approval for DA0167/11 dated 22 July 2011 which restricted the number of clients on-site at any one time, stating as follows:

“A maximum of ten clients shall attend the Home Business at any one time.”

The proposed development plans are contained as 'Attachment 1' of this report.

CONSULTATION

Community

The application was required to be advertised in accordance with Clause 9.4 of the LPS4 and Council's *Local Planning Policy 1.3 - Notification of Planning Proposals* (LPP 1.3), as the proposed 'Home Business' (Meditation Classes) use is an 'A' use within the 'Mixed Use' zone. The application was advertised in the form of a sign on site. At the conclusion of the advertising period, being 29 June 2012, the City did not receive any submissions pertaining to the proposal.

STATUTORY AND POLICY ASSESSMENT

The proposal was assessed against the relevant provisions of LPS4 and Council's Local Planning Policies. The proposed 'Home Business' (Meditation Classes) is considered to be consistent with the objectives of the 'Mixed Use' zone as prescribed by Clause 4.2.1(e) of LPS4.

PLANNING COMMENT

The key issue that requires Council's consideration is the impact that the proposed operating hours may have on the amenity of the adjoining properties and the locality in general. The increase in the total number of operating hours of the Home Business (Meditation Classes) per week, being 65.5 hours (currently 25.5, proposed to be 91) is considered to be substantial.

The applicant has advised that the centre will not operate for the whole period between 7:00am and 8:00pm due to the availability of volunteers, and that the extension of the operating hours sought is purely to provide greater flexibility based on the availability of those volunteers.

It is further noted that since Planning Approval for the Home Business (Meditation Classes) was granted by the City on 22 July 2011, the City has not received any complaints pertaining to its operation. The nature of the use, being for the purposes of meditation is not typically a use associated with one that creates conflict with adjoining properties given its limited impact by way of noise. In this regard, it could be considered that the Home Business (Meditation Classes) has had limited impact upon the amenity of the adjoining properties and the locality in general in its operations to date and that this may be grounds for Council to extend the hours of operation proposed as part of this application.

CONCLUSION

Overall, the proposed Home Business (Meditation Classes) at No. 16/342 (Lot 16) South Terrace, South Fremantle is considered to comply with the relevant requirements of the City's Local Planning Scheme No. 4 (LPS4) and Council's Local Planning Policies.

Given that the applicant has made it clear that the extension to the operating hours sought is purely to provide more flexibility in the services they provide, and that they are not seeking an increase to the maximum number of clients permitted on site at any one time (being ten (10)), it is considered that the application should be supported.

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

OFFICER'S RECOMMENDATION

That the application be APPROVED under the Metropolitan Regional Scheme and Local Planning Scheme No. 4 for the Home Business (Meditation Classes) at No. 16/342 (Lot 16) South Terrace, South Fremantle, subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans and supplementary documentation dated 1 June 2012. It does not relate to any other development on this lot.**
- 2. The Home Business (Meditation Classes) hereby permitted shall not involve the retail sale, hire or display of goods that are not directly associated with the Home Business.**
- 3. This approval allows the Home Business (Meditation Classes) hereby permitted to be conducted by Brahma Kumaris Centres for Spiritual Learning. If Brahma Kumaris Centres for Spiritual Learning ceases to operate the Home Business (Meditation Classes) hereby permitted or occupy the subject site, this approval will expire.**
- 4. The Home Business (Meditation Classes) shall not occupy an area greater than 50 square metres.**
- 5. The Home Business (Meditation Classes) shall not employ more than two people not members of the household.**
- 6. The hours of operation of the Home Business (Meditation Classes) shall be limited to 7.00am to 8.00pm Monday to Sunday.**
- 7. A maximum of ten (10) clients shall attend the Home Business (Meditation Classes) at any one time.**

**PSC1208-128 NOTICE OF MOTION - PSC1202-23 HIGH STREET NO. 72 (LOT 410),
FREMANTLE DEFERRED ITEM - RETROSPECTIVE SIGNAGE
ADDITION TO EXISTING BUILDING (AD DA0379/11) (SUBMITTED
BY MAYOR BRAD PETTITT)**

Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Previous Item: PSC1202-23
Responsible Officer: Manager Statutory Planning
Actioning Officer: Manager Statutory Planning
Decision Making Authority: Committee

ELECTED MEMBER SUMMARY

This matter was considered by PSC on 15 February 2012, where it was resolved a follows;

- A) APPROVE the application for retrospective approval under the Metropolitan Region Scheme and Local Planning Scheme No. 4 for the unauthorised Signage Addition to Existing Building at No. 72 (Lot 410) High Street, Fremantle, as detailed on plans dated 12 August 2011, subject to the following conditions:**
- 1. Two (2) vertical banner signs are permitted, provided that:**
 - i. The signs do not protrude further than 600mm from the external face of the wall;**
 - ii. The fabric of the signs are no more than 500mm in width and no more than 2000mm in height;**
 - iii. The signs are affixed so as to cause minimal impact to the fabric of the original facade; and**
 - iv. The signs are of the same colouring and design of the unauthorised banner signage as detailed on the plans dated 12 August 2011.**
 - 2. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or rare fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- B) AUTHORISE the City of Fremantle to issue a direction to require that within sixty (60) days, the unauthorised signs be removed from the existing building to the satisfaction of the Chief Executive Officer, City of Fremantle.**
- C) In the instance that the direction outlined in B) above is not complied with, AUTHORISE the City of Fremantle to initiate legal action.**

Further consideration of this matter is considered to be necessary to enable review of the time period for compliance with this resolution.

NOTICE OF MOTION

- 1. That the time period referred to in part B of the Committee decision of 15 February be amended to 1 year (from the date of the original resolution).**
- 2. That no legal action be taken if the development is brought into compliance with the requirements of this resolution within the modified time period.**

OFFICER COMMENT

The City's solicitors have advised that as only preliminary actions has been undertaken relating to the prosecution, there is sufficient time to extend the time in which to comply to 1 year without significant penalty.

**PSC1208-129 SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED
AUTHORITY**

Acting under authority delegated by the Council the Manager Statutory Planning determined, in some cases subject to conditions, each of the applications listed in the Attachments and relating to the places and proposal listed.

OFFICER'S RECOMMENDATION

That the information is noted.

REPORTS BY OFFICERS (COUNCIL DECISION)

PSC1208-130 FINAL ADOPTION OF SCHEME AMENDMENT NO. 52 - NEW PERMITTED CHANGE OF USE CLAUSES INTO 8.2T AND 8.2S

DataWorks Reference: 218/058
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Strategic Planning Officer
Decision Making Level: Council
Previous Item Number/s: PSC1204-64 (24 April 2012)
Attachments: 1. Schedule of Submissions

EXECUTIVE SUMMARY

The purpose of this report is to recommend to Council final adoption of Scheme Amendment No. 52 to the City's Local Planning Scheme No. 4 (LPS4).

The scheme amendment introduces into LPS4 two new clauses that will exempt a change of use from requiring planning approval where:

- The development is an existing building in the City Centre zone and the change of use is to Shop, Office, Restaurant, Small Bar and/or Consulting Room use.
- The development is an approved Restaurant or Small Bar in the Mixed Use and Local Centre zones and the change of use is to a Restaurant or Small Bar use and subject to the new use operating in accordance with any conditions of the previous approval relating to the hours of operation of the use.

As part of the amendment the provisions of the zoning and use table (Clause 4.3), and vehicle parking requirements (clauses 5.7.1 to 5.7.4 inclusive) would not apply to the above changes of use.

The amendment was placed out for public comment and five submissions were received. The submissions support the aims of the scheme amendment with comments.

It is recommended that Council resolves to adopt the amendment to the City's LPS4 without modification.

BACKGROUND

On 24 April 2012 Council considered the amendment and resolved:

1. *“That Council resolve, pursuant to Section 75 of the Planning and Development Act 2005, to amend Local Planning Scheme No. 4 by:*

A. Inserting into clause 8.2 ‘Permitted Developments’ the following text:

8.2(s) Notwithstanding the provisions of clause 4.3 and clauses 5.7.1 to 5.7.4 inclusive, a change in the use of an existing building in the City Centre zone to any of the following uses:

- (vi) Shop;*
- (vii) Office;*
- (viii) Restaurant;*
- (ix) Small bar; or*
- (x) Consulting rooms.*

8.2(t) Notwithstanding the provisions of clause 4.3 and clauses 5.7.1 to 5.7.4 inclusive, a change of use of a building which currently has planning approval for use as a Restaurant or Small Bar to use as a Restaurant or Small Bar where:

- (iii) the building is on land zoned Mixed Use or Local Centre; and*
- (iv) the new use operates in accordance with any conditions of planning approval relating to the hours of operation that apply to the currently approved Restaurant or Small Bar use on the subject site.*

2. *That the Mayor and Chief Executive Officer be authorised to execute the relevant Scheme Amendment documentation.*
3. *That the Local Planning Scheme Amendment be submitted to the Department for Environment and Conservation requesting assessment prior to commencing public consultation.*
4. *That the Local Planning Scheme Amendment be submitted to the Western Australian Planning Commission for information.*
5. *That upon receipt of the environmental assessment from the Department for Environment and Conservation, the amendment be advertised for a period of not less than 42 days in the “West Australian” and a local newspaper.”*

A change in the use of a building does not require planning approval under Local Planning Scheme No. 4 (LPS4) where the new use is a ‘P’ use in the Zoning Table (Table 2) of LPS4 and the use complies with all the relevant development standards specified in LPS4, most notably on-site parking requirements. Due to there being limited space for on-site car parking at most properties in the City Centre zone, planning approval is frequently required even if the new use is a ‘P’ use. In such cases, change of use applications for uses such as restaurants, small bars and shops are almost invariably approved as the City Centre provides sufficient alternatives to on-site vehicle parking such as public transport and public car parks. The requirement for planning approval is therefore considered to hinder the timely and efficient setting up of new businesses such as Restaurants, Offices, Shops, Small Bars and Consulting Rooms which are most appropriately located in the City Centre zone and contribute to the vibrancy of the area.

Additional to permitting certain changes of use without planning approval in the City Centre zone, the amendment also includes permitting property in a Mixed Use or Local Centre zone which has already been granted planning approval for use as a Restaurant to change its use to a Small Bar, and vice versa, without planning approval.

The reason being that these two uses are considered to have very similar impacts on a locality as both are permitted a similar number of patrons for the same size building (Small Bars are limited to a maximum of 120 persons), and give rise to similar amenity issues for the neighbourhood. Both uses currently go through the same planning assessment process by being advertised to neighbours and both are assessed on the same requirements when considering development applications e.g. neighbours comments, hours of operation and similar car parking standards.

For more information please see Council minutes 24 April 2012 (PSC1204-64).

CONSULTATION

Following referral from the Environmental Protection Authority, advertising of the scheme amendment was undertaken in accordance with regulation 25(2) of the Town Planning Regulations 1967. The proposed scheme amendment was advertised for comment from 12 June 2012 to 27 July 2012, with advertisements being placed in the Fremantle Gazette for two consecutive weeks and West Australian newspaper for one week.

The City's precinct groups, utility companies, and key agencies were also specifically notified and copies of the amendment and policy documents were made available for viewing at the Service and Information Counter at the Town Hall Centre and on the City's website.

Five submissions were received (refer to Attachment 1 – schedule of submissions for further information). All submissions are generally supportive of the scheme amendment and three provided further comments. The comments provided are summarised below:

Additional considerations to change of use applications

The State Heritage Office and another submitter suggest the need to communicate to applicants other City requirements that, in addition to requiring planning approval (or not requiring planning approval as the case may be with this amendment), would also be necessary for a change of use application.

State Heritage Office highlight that, in some cases, change of use applications may trigger a re-classification under the Building Codes of Australia (BCA) and as a result may require a building permit to ensure the building is compliant with the current standards. They note these works can negatively impact on heritage places and suggest this and other requirements be communicated when the City receives enquiries on these changes of use.

The other submitter highlights that other requirements, such as health, may also be required as part of a change of use.

Increase the scope of the amendment to apply to all heritage buildings

One submission suggests extending the relaxation of the onsite parking provisions to all heritage buildings in all zones to increase adaptability and reuse of heritage buildings. The reason being that heritage properties/buildings rarely have the space to meet the minimum parking requirements for new uses and adaptive re-use is one of the most successful ways of both preserving and conserving the heritage values of these places.

Submitter iterates that Fremantle's heritage buildings are a tourism attraction for the City and given that heritage buildings are a scarce resource, it is important to provide redevelopment incentives and reduce the impediments in order to preserve the stock. Parking requirements are an impediment to the preservation of heritage buildings and the submitter believes that the alternative to off-street parking is market-priced on-street parking (including car parks) together with appropriate mass-transport strategies and implementation.

These submissions are discussed further in the Planning Comment section of the report below.

PLANNING COMMENT

The scheme amendment introduces into LPS4 two new clauses that will exempt a change of use from requiring planning approval where:

- The development is an existing building in the City Centre zone and the change of use is to Shop, Office, Restaurant, Small Bar and/or Consulting Room use.
- The development is an approved Restaurant or Small Bar in the Mixed Use and Local Centre zones and the change of use is to a Restaurant or Small Bar use and subject to the new use operating in accordance with any conditions of the previous approval relating to the hours of operation of the use.

As part of the amendment the provisions of Clause 4.3.4 ('P' uses are exempt if other scheme requirements are met) and vehicle parking requirements (clauses 5.7.1 to 5.7.4 inclusive) would not apply to the above changes of use. This means applicable sites do not have to provide additional parking (if necessary).

The proposed scheme amendment was advertised widely. Four submissions were received, no submission objected to the amendment and three provided further comments. These comments are addressed in the discussion below.

Additional considerations to change of use applications

Two submitters noted that a planning application is not always the only requirement of a change of use; even if planning approval is not required for a change of use the use may still require approvals under the BCA or health regulations. Planning officers advise applicants of their planning obligations and refer onto other departments where necessary. Building and health are happy to discuss any requirements with applicants when approached, but ultimately, it is up to the applicant to ensure all approvals have been obtained before commencing a use.

A planning application may be required for works or signage needed as part of the change of use and would be required for any internal works where the building is heritage listed. Again, it is up to the applicant to ensure all approvals are obtained before commencing a use.

Increase the scope of the amendment to apply to all heritage buildings

One submission suggests extending the relaxation of the onsite parking provisions to all heritage buildings in all zones to increase adaptability and reuse of heritage buildings. The majority of the City's commercial heritage buildings are in the City Centre, Local Centre and Mixed Use zones. Therefore this amendment indirectly goes some way in ensuring the reuse of the City's heritage listed places through permitting some uses without planning approval, though this was not the primary purpose of the amendment. Additionally in circumstances where heritage listed buildings require planning approval for a change of use Council may waive or reduce the parking requirement under clause 5.7.3 where there is:

- (iv) any car parking deficiency or surplus associated with the existing use of the land;*
- (vi) the proposal involves the restoration of a heritage building...*

The primary purpose of the amendment was to facilitate the timely and efficient setting up of new business. Considering a large proportion of the City's commercial heritage listed places are encompassed in the scheme amendment (Residential zoned land has restricted commercial uses and including these heritage listed buildings into the amendment would not be appropriate) and the relaxation of parking requirements under clause 5.7.3 of LPS4 assist in the reuse of heritage buildings, it is not considered necessary to increase the scope of the amendment to include all heritage buildings at this stage.

CONCLUSION

The uses identified in the amendment were selected because they have similar amenity impacts and are the most appropriate uses in the specified zone. It is considered that allowing these uses to be permitted without requiring planning approval in the City Centre, Mixed Use or Local Centre zone is unlikely to have a significant adverse impact on the amenity of the area. The amendment will also facilitate the timely and efficient setting up of new business and contribute to vibrancy and economic performance in appropriately zoned areas.

Accordingly it is recommended that Council note the submissions received and adopt scheme amendment No. 52 without modification.

OFFICER'S RECOMMENDATION

That Council:

- 1. Note the submissions received as detailed in the Officer's report and attachment 1;**
- 2. Resolve, pursuant to Section 75 of the Planning and Development Act 2005 and Regulation 17(2)(a) of the Town Planning Regulations 1967, to adopt without modification the following amendment to the City of Fremantle Local Planning Scheme No. 4:**

Inserting into clause 8.2 'Permitted Developments' the following text:

8.2(s) Notwithstanding the provisions of clause 4.3 and clauses 5.7.1 to 5.7.4 inclusive, a change in the use of an existing building in the City Centre zone to any of the following uses:

- (i) Shop;**
- (ii) Office;**
- (iii) Restaurant;**
- (iv) Small bar; or**
- (v) Consulting rooms.**

8.2(t) Notwithstanding the provisions of clause 4.3 and clauses 5.7.1 to 5.7.4 inclusive, a change of use of a building which currently has planning approval for use as a Restaurant or Small Bar to use as a Restaurant or Small Bar where:

- (i) the building is on land zoned Mixed Use or Local Centre; and**
- (ii) the new use operates in accordance with any conditions of planning approval relating to the hours of operation that apply to the currently approved Restaurant or Small Bar use on the subject site.**

- 3. Authorise the Mayor and the Chief Executive Officer to execute the relevant documentation and affix the common seal of the City of Fremantle on the documentation.**
- 4. Request the Minister for Planning to grant final consent to Scheme Amendment No. 52 as referred to (in 2) above.**

**PSC1208-131 AMENDMENTS TO LOCAL PLANNING POLICY 2.8 - FENCES
POLICY (LPP2.8) - FINAL ADOPTION**

DataWorks Reference: 117/033
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Responsible Officer: Manager Statutory Planning
Actioning Officer: Strategic Planner
Decision Making Level: Council
Previous Item Number/s: PSC0809-288 – 22 October 2008
PSC1203-44 - 28 March 2012
PSC1204-55 - 24 April 2012
Attachments: None

EXECUTIVE SUMMARY

The purpose of this report is to recommend final adoption of *Local Planning Policy 2.8 – Fences (LPP2.8)*.

The modifications were originally to consolidate and clarify the existing provisions of the policy. At the Ordinary meeting of Council 24 April 2012, Council included further amendments to the policy including adding a new definition of Visual Permeability, altering Clause 1.1 allowing within heritage areas solid fencing is up to 1.00 metre and 1.20 metres in other areas (visually permeable above this) and deleting clause 1.3 which relates to allowing solid fencing on certain busy streets.

The draft modified policy was placed out for public comment for over 28 days on two separate occasions in accordance with Clause 2.4 of the City's Local Planning Scheme No. 4 (LPS4). No submissions were received in either submission period.

It is recommended that Council resolves to adopt the Local Planning Policy without modification.

BACKGROUND

The intent of LPP2.8 is to provide development standards for fence applications that require planning approval under the provisions of LPS4.

Since LPP2.8 was adopted in 2008, there have been various issues in relation to applying the provisions to the assessment of planning applications. Such issues include:

- Inconsistent use of, and reference to, various defined terms and meanings; and
- Poor structure of certain provisions that seek to achieve development standards that are impractical.

For more information on the Local Planning Policy please see Council Minutes 28 March 2012 (PSC1203-44) and 24 April 2012 (PSC1204-55).

CONSULTATION

The modified policy was required to be advertised in accordance with Clause 2.4 of the City's Local Planning Scheme No.4 and *Local Planning Policy No. 1.3 'Public Notification of Planning Approvals'*, for a period of no less than 28 days. The proposed policy was advertised for comment from 15 May 2012 to 15 June 2012 with advertisements being placed in the Fremantle Gazette for two consecutive weeks. The City's precinct groups were also specifically notified and copies of the policy were made available for viewing at the Service and Information Counter at the Town Hall Centre and on the City's website.

Unfortunately the first time the amendment was advertised the draft policy did not include all of Council's modifications. Accordingly the fully modified policy was advertised for a second time from 3 July to 27 July 2012.

At the conclusion of both advertising periods, the City had received no submissions.

PLANNING COMMENT

The bulk of the modifications to the policy were minor grammatical and wording amendments for the purpose of clarifying and consolidating the policy's provisions. At the Ordinary meeting of Council 24 April 2012, Council included further amendments to the policy including adding a new definition of Visual Permeability, altering Clause 1.1 so that within heritage areas solid fencing is up to 1.00 metre and 1.20 metres in other areas (visually permeable above this) is permitted and deleting clause 1.3 which relates to allowing solid fencing on certain busy streets. The five main modifications are discussed below:

1. Definitions and terms

The following definitions and terms were included into the policy:

- Prevailing streetscape;
- Subject site; and
- Visual Permeability (Included in Council's resolution 24 April 2012)

2. Clause 1.1 - Fence and retaining wall height

The reference to retaining wall was deleted from Clause 1.1 and the solid fence height reduced to 1 metre for fences in heritage areas (as per Council's resolution 24 April 2012). The clause now reads:

Fences within primary and/or secondary street setback area(s) as viewed from the street, and side fences abutting public open space reserves shall be visually permeable above 1.00 metre within heritage areas and 1.20 metres in other areas to a maximum height of 1.80 metres, with piers not higher than 2.00 metres.

3. Clause 1.3 - Solid fencing

Council's resolution on the 24 April 2012 also deleted Clause 1.3 which relates to allowing solid fencing on certain busy streets.

4. Clause 3.1 - Sight lines

Clause 3.1 relating to sight lines at vehicle access points within residential areas was deleted from the policy. This provision required a traffic engineer's report to certify that vehicle access points will provide for adequate lines of sight. This requirement was considered too onerous and already covered by the applicable 'Performance Criteria' of the R-Codes for Design Element 6.2.6.

5. New clause 4 - Vehicle and Pedestrian Access gates

A new clause, 'Vehicle and Pedestrian Access gates' was added to LPP2.8. The provision was introduced to ensure vehicle and pedestrian access gates are designed and constructed so that they only swing into the subject property when opened or closed.

CONCLUSION

The modifications to the policy are a mixture of grammar and wording improvements and clause deletions and changes. Overall they will streamline the LPP2.8 and allow for the consistent assessment of fences in the city of Fremantle.

Accordingly it is recommended that Council adopt *Local Planning Policy 2.8 - Fences* without modification.

OFFICER'S RECOMMENDATION

That Council:

1. Adopt Local Planning Policy LPP2.8 – Fence, without modification, in accordance with clause 2.4 of the City's Local Planning Scheme No. 4 as shown below;

CITY OF FREMANTLE

LOCAL PLANNING POLICY 2.8

FENCES POLICY

ADOPTION DATE: 22 October 2008

AMENDED: xx/xx/2012

AUTHORITY: LOCAL PLANNING SCHEME NO. 4

STATUTORY BACKGROUND

Clause 8.2 of the City's Local Planning Scheme No. 4 (LPS4) specifies that minor development is considered 'permitted development' as listed in Schedule 15. Schedule 15 includes specific types of fences that are 'permitted development' and therefore exempt from the need to obtain planning approval from the City.

Clause 10.2 of LPS4 empowers the Council to consider a broad range of considerations and impose conditions relating to these in dealing with an application for planning approval. This includes but is not limited to the height, position, form and materials of fences.

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

PURPOSE

The purpose of this policy is to provide development standards for fencing that requires planning approval under the provisions of LPS4.

DEFINITIONS AND TERMS

The following terms are used in this policy and are defined as follows:

Prevailing Streetscape: Means the characteristics (front walls and fencing) of the 3 properties, where appropriate, adjoining either side of the subject site, fronting the same street and in the same street block.

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

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

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

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

Visual Permeability: *Means, in reference to a wall, gate, door or fence that the vertical surface has:*

Continuous vertical or horizontal gaps of at least 50mm width occupying not less than one half of its face in aggregate of the entire surface or where narrower than 50mm, occupying at least two thirds of the face in aggregate, as viewed directly from the street; or

A surface offering equal or lesser obstruction to view."

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

APPLICATION

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

Note: *As at March 2012, those Local Area Planning Policies that include provisions for fencing are:*

- *DGB4 – Mardie Street including the East of Edmund Street;*
- *DGF8 – Douglas Street Local Area Policy; and*
- *LPP3.7 – "Hilton Garden Suburb Precinct" Heritage Area Local Planning Policy.*

POLICY

1. Requirements applicable to all fencing excepting:
 - Those properties on the Heritage List; and

- Those properties subject to a Local Area Planning Policy that includes provisions for fencing
- 1.1 Fences within primary and/or secondary street setback area(s) as viewed from the street, and side fences abutting public open space reserves shall be visually permeable above 1.00 metre within heritage areas and 1.20 metres in other areas to a maximum height of 1.80 metres, with piers not higher than 2.00 metres.
 - 1.2 Council may exercise discretion to vary the height of fences in the primary and/or secondary street setback area(s) where:
 - a) The proposed fence height is consistent with the established pattern of fences within the streetscape; or
 - b) Minor variations are made necessary by virtue of the sloping topography of the site; or
 - c) Chain link or mesh fences in non residential areas greater than 1.80 metres in height shall be permitted where in the opinion of Council, it is necessary to provide security to a commercial property, and are consistent with the established pattern of fences within the streetscape.
 - 1.3 Council may permit solid fencing for a portion of the total length of the boundary within the primary and/or secondary street setback area(s), where surveillance between a habitable room window of the dwelling and the street and approach to the dwelling is available, and the following criteria are satisfied:
 - a) Where it is necessary to provide privacy screening where there is no alternative outdoor living area to the front setback; or
 - b) Where it is consistent with the *prevailing streetscape*.
 2. Requirements for properties included on the Heritage List pursuant to Clause 7.1 of the LPS4
 - 2.1 Fences within the primary and/or secondary street setback area(s) of places on the Heritage List shall be compatible with, and complimentary to, the heritage character of the listed place with respect to height, materials and heritage character.
 - 2.2 Where a property is included on a heritage list Council may specify the type of building materials to be consistent with the heritage character of the place.
 3. Sightlines at Vehicle Access Points
 - 3.1 Where a fence is proposed within a wholly non-residential area, and is not of visually permeable construction, a 3.00 metre truncation shall be provided where that fence adjoins vehicle access points where a driveway meets a public street and where two streets intersect, so as to allow for adequate sight lines.

4. Vehicle and Pedestrian Access Gates

- 4.1 Where a fence includes vehicle and/or pedestrian access gate(s), Council will only support such gates where they are designed and constructed so that they swing into subject site when opened or closed.**

5. Side and Rear Boundary Fences and Screening Materials

- 5.1 Council will not approve side and/or rear boundary fences greater than 1.80 metres in height, or screening material that projects more than 500mm above the top of an approved fence unless the following criteria are satisfied:**

- a) The proposed fence/screening will not have any significant impact on adjoining properties by way of overshadowing, solar access, or loss of views; and**
- b) Affected neighbours are consulted in accordance with Clause 9.4 of LPS4.**

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

6. Consultation

- 6.1 Adjoining property owners shall be consulted in accordance with Clause 9.4 of LPS4 in the following circumstances:**

- a) Where discretion is sought for fences within the primary and/or secondary street setback area(s) that are not visually permeable above 1.20 metres in height; or**
- b) Where side and/or rear boundary fences exceed 1.80 metres in height; or**
- c) Where any form of privacy screening is to be attached to, and extend more than 500mm above side and/or rear boundary fence.**

**PSC1208-132 PROPOSED RESCINDING OF LOCAL PLANNING POLICY 3.12 -
POINT STREET PROPERTIES**

DataWorks Reference: 053/003, 117/036
Disclosure of Interest: Nil
Meeting Date: 15 August 2012
Previous Item: PSC 1108-150
Responsible Officer: Manager Planning Projects & Policy
Actioning Officer: Strategic Urban Designer
Decision Making Authority: Council
Agenda Attachments: Local Planning Policy 3.12 – Point St Properties

EXECUTIVE SUMMARY

The purpose of this report is to recommend Council to revoke local planning policy 3.12 - Point Street Properties.

Local Planning Policy 3.12 was first adopted in February 2009 to provide development requirements for the City of Fremantle owned properties bounded by Point, Adelaide and Cantonment Streets and Princess May Park (referred to as the 'Point St properties'). The policy was amended in August 2011.

The Point Street properties was one of the sites considered as part of the City Centre Strategic Sites project undertaken in 2011 and subsequently included in Amendment 49 to LPS4 which was adopted by Council in March 2012, and is expected to be considered by the Minister for Planning for final approval in the near future.

This report concludes that all of the provisions of LPP3.12 are now adequately addressed either by Amendment 49, by incorporation into any tender and sale documents for the site, and/or by the involvement of the Design Advisory Committee and therefore LPP3.12 is no longer required and can be revoked.

BACKGROUND

Local planning policy LPP3.12 was adopted by Council in February 2009 to provide development requirements for the City of Fremantle owned properties bounded by Point, Adelaide and Cantonment Streets and Princess May Park (referred to as the 'Point St properties'). The policy was reviewed in early 2011 as a result of a number of changes in the planning and development context of the site. An amended policy was subsequently advertised (no submissions were received) and adopted by Council on 24 August 2011.

The Point Street properties was one of the sites considered as part of the City Centre Strategic Sites project undertaken in 2011 and consequently included in Amendment 49 to LPS4 which was finally adopted by Council in March 2012. Most of the contents of LPP3.12 were addressed by the provisions of Amendment 49 as outlined in the 'comment' section of this report.

STATUTORY AND POLICY ASSESSMENT

Pursuant to clause 2.5.1(b) of the City's Local Planning Scheme No. 4, Council may revoke a local planning policy by the publication of a formal notice of revocation by the Council once a week for 2 consecutive weeks in a local newspaper circulating in the Scheme area.

COMMENT

Most of the contents of LPP3.12 have been superceded by the provisions in Amendment 49, as shown in the following table. The other change subsequent to the initial adoption of LPP3.12 that would remove the need for parts of the policy has been the appointment of the Council's Design Advisory Committee.

LPP3.12	Amendment 49
Area of application of the policy.	The total area addressed in the policy is included in Amendment 49 as site 3a/b.
Purpose of the policy: <ul style="list-style-type: none"> • <i>Act as a catalyst to stimulate development and further regeneration of the east end area of the city centre.</i> • <i>Incorporate a high standard of sustainable design into redevelopment of the site as good practice as well as a demonstration to other developers and the community.</i> • <i>Achieve a quality modern development that protects and reinforces the area's significant cultural heritage.</i> • <i>Ensure that the quality, safety and amenity of the surrounding public spaces are enhanced by the development.</i> 	While the general intent of Amendment 49 is consistent with the stated purpose of the policy it is considered that these development objectives should be carried forward into any tender and sale documents for the property.

<ul style="list-style-type: none"> • <i>Increase the number and diversity of people in the area as a combination of workers, residents and visitors.</i> 	
<p>Encumbrances. The policy identifies the following 2 development requirements that would be legally imposed via encumbrances on the property title:</p> <ol style="list-style-type: none"> 1. A minimum of 30% of total floorspace should be provided for office use, and 2. A minimum 5 star Green Star sustainable building requirement. 	<ol style="list-style-type: none"> 1. The amendment would require a minimum of 15% for office use. While substantially less than the policy provision, it is considered acceptable in the context of the additional office floorspace that could now be anticipated on other sites as a result of Amendment 49. 2. The amendment does not include specific sustainable building design requirements for this site, however Local Planning Policy 2.13 would require a minimum of 4 star Green Star rating for redevelopment of the site. It is considered however that the Council, as owner of the property, should continue to aim for a higher standard of sustainable design and that the requirement for at least 5 star Green Star should be incorporated into any tender and sale documents for the site.
<p>Building heights</p>	<p>Addressed by Amendment 49.</p>
<p>Uses</p>	<p>Addressed by Amendment 49.</p>
<p>Diversity of residential units</p>	<p>Addressed by Amendment 49.</p>
<p>Parking</p>	<p>Addressed by Amendment 49.</p>
<p>Built form</p>	<ol style="list-style-type: none"> 1. Treatment of ground level frontages is adequately addressed by Amendment 49. 2. The provision of at least 25% of the top level being landscaped would be addressed as part of the sustainable building design requirement to be incorporated into any tender and sale documents for the site.
<p>Relationship to Princess May Park</p>	<p>This specific design issue would be addressed by the Design Advisory Committee when considering any development proposal for the site.</p>

The incorporation of the development objectives for the properties and the 5 star Green Star sustainable building requirement into the business plan and therefore into any tender and sale documents for the site is the subject of a separate report to the August 2012 meeting of the Strategic and General Services Committee and Council.

If LPP3.12 was to remain operative following the final approval of Amendment 49 as part of LPS4 there would be duplication and in some respects inconsistency between the provisions of the two documents. In the event of any inconsistency, the provisions of the Local Planning Scheme prevail over any local planning policy. It is not in the interests of orderly and proper planning to have two operative planning instruments containing duplicated or inconsistent provisions for the same site, and to avoid this situation arising it is recommended that LPP3.12 should be revoked.

CONCLUSION

It is concluded that all of the provisions of LPP3.12 are adequately addressed either by Amendment 49 to LPS4, by incorporation into any tender and sale documents for the site, and/or by the involvement of the Design Advisory Committee in the development assessment process, and therefore LPP3.12 is no longer required and can be revoked.

OFFICER'S RECOMMENDATION

That Council, in accordance with Clause 2.5.1(b) of Local Planning Scheme No 4, revoke local planning policy 3.12 – Point Street Properties; and that a formal notice of revocation of the policy be placed in a local newspaper once a week for 2 consecutive weeks.

CONFIDENTIAL MATTERS

Nil.

SUMMARY GUIDE TO CITIZEN PARTICIPATION AND CONSULTATION

The Council adopted a Community Engagement Policy in December 2010 to give effect to its commitment to involving citizens in its decision-making processes.

The City values community engagement and recognises the benefits that can flow to the quality of decision-making and the level of community satisfaction.

Effective community engagement requires total clarity so that Elected Members, Council officers and citizens fully understand their respective rights and responsibilities as well as the limits of their involvement in relation to any decision to be made by the City.

How consultative processes work at the City of Fremantle	
The City's decision makers	1. The Council, comprised of Elected Members, makes policy, budgetary and key strategic decisions while the CEO, sometimes via on-delegation to other City officers, makes operational decisions.
Various participation opportunities	2. The City provides opportunities for participation in the decision-making process by citizens via its council appointed working groups, its community precinct system, and targeted community engagement processes in relation to specific issues or decisions.
Objective processes also used	3. The City also seeks to understand the needs and views of the community via scientific and objective processes such as its bi-ennial community survey.
All decisions are made by Council or the CEO	4. These opportunities afforded to citizens to participate in the decision-making process do not include the capacity to make the decision. Decisions are ultimately always made by Council or the CEO (or his/her delegated nominee).
Precinct focus is primarily local, but also city-wide	5. The community precinct system establishes units of geographic community of interest, but provides for input in relation to individual geographic areas as well as on city-wide issues.
All input is of equal value	6. No source of advice or input is more valuable or given more weight by the decision-makers than any other. The relevance and rationality of the advice counts in influencing the views of decision-makers.
Decisions will not necessarily reflect the majority view received	7. Local Government in WA is a representative democracy. Elected Members and the CEO are charged under the Local Government Act with the responsibility to make decisions based on fact and the merits of the issue without fear or favour and are accountable for their actions and decisions under law. Elected Members are accountable to the people via periodic elections. As it is a representative democracy, decisions may not be made in favour of the majority view expressed via consultative processes. Decisions must also be made in accordance with any statute that applies or within the parameters of budgetary considerations. All consultations will

How consultative processes work at the City of Fremantle	
	clearly outline from the outset any constraints or limitations associated with the issue.
Decisions made for the overall good of Fremantle	8 The Local Government Act requires decision-makers to make decisions in the interests of “the good government of the district”. This means that decision-makers must exercise their judgment about the best interests of Fremantle as a whole as well as about the interests of the immediately affected neighbourhood. This responsibility from time to time puts decision-makers at odds with the expressed views of citizens from the local neighbourhood who may understandably take a narrower view of considerations at hand.
Diversity of view on most issues	9. The City is wary of claiming to speak for the ‘community’ and wary of those who claim to do so. The City recognises how difficult it is to understand what such a diverse community with such a variety of stakeholders thinks about an issue. The City recognises that, on most significant issues, diverse views exist that need to be respected and taken into account by the decision-makers.
City officers must be impartial	10 City officers are charged with the responsibility of being objective, non-political and unbiased. It is the responsibility of the management of the City to ensure that this is the case. It is also recognised that City officers can find themselves unfairly accused of bias or incompetence by protagonists on certain issues and in these cases it is the responsibility of the City’s management to defend those City officers.
City officers must follow policy and procedures	11. The City’s community engagement policy identifies nine principles that apply to all community engagement processes, including a commitment to be clear, transparent, responsive, inclusive, accountable and timely. City officers are responsible for ensuring that the policy and any other relevant procedure is fully complied with so that citizens are not deprived of their rights to be heard.

How consultative processes work at the City of Fremantle	
Community engagement processes have cut-off dates that will be adhered to.	12 . As City officers have the responsibility to provide objective, professional advice to decision-makers, they are entitled to an appropriate period of time and resource base to undertake the analysis required and to prepare reports. As a consequence, community engagement processes need to have defined and rigorously observed cut-off dates, after which date officers will not include 'late' input in their analysis. In such circumstances, the existence of 'late' input will be made known to decision-makers. In most cases where community input is involved, the Council is the decision-maker and this affords community members the opportunity to make input after the cut-off date via personal representations to individual Elected Members and via presentations to Committee and Council Meetings.
Citizens need to check for any changes to decision making arrangements made	13 . The City will take initial responsibility for making citizens aware of expected time-frames and decision making processes, including dates of Standing Committee and Council Meetings if relevant. However, as these details can change, it is the citizens responsibility to check for any changes by visiting the City's website, checking the Fremantle News in the Fremantle Gazette or inquiring at the Customer Service Centre by phone, email or in-person.
Citizens are entitled to know how their input has been assessed	14 . In reporting to decision-makers, City officers will in all cases produce a community engagement outcomes report that summarises comment and recommends whether it should be taken on board, with reasons.
Reasons for decisions must be transparent	15 . Decision-makers must provide the reasons for their decisions.
Decisions posted on the City's website	16 . Decisions of the City need to be transparent and easily accessed. For reasons of cost, citizens making input on an issue will not be individually notified of the outcome, but can access the decision at the City's website under 'community engagement' or at the City Library or Service and Information Centre.

Issues that Council May Treat as Confidential

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

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

