



Additional information

Ordinary Meeting of Council

Wednesday 25 May 2022 6pm



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**Additional information – Ordinary Meeting of Council
25 May 2022**



**PC2022-2 SOUTH TERRACE, NO. 2/284 (LOT 22) SOUTH FREMANTLE
– SECTION 31 STATE ADMINISTRATIVE TRIBUNAL
RECONSIDERATION FOR CHANGE OF USE FROM OFFICE
TO SHOP AND UNAUTHORISED SIGNAGE (JL DA0405/21)**

ADDITIONAL INFORMATION 1 – Applicant's Justification



Your Ref: DA0405/21 – DR1/2022

Our Ref: 284South/SAT1

8 April 2022

Planning Services
City of Fremantle
PO Box 807
FREMANTLE WA 6959
Via E-Mail: ChloeJo@fremantle.wa.gov.au

Attn: Chloe Johnston

Dear Madam,

**SAT APPLICATION – NO. 2/284 (LOT 22) SOUTH TERRACE, SOUTH FREMANTLE – POST-MEDIATION
SUBMISSION – CONFIDENTIAL & WITHOUT PREJUDICE**

Regarding the above matter, SAT orders (dated 3 February 2022) require us to provide the City further information here within for the Council to reconsider.

1. Retrospective Application

We seek to inform the Council in their deliberation of the reason this application is retrospective, so there is no misunderstanding that the tenant might have been concealing the business, implying guilt, and possibly resulting in punitive considerations.

In February 2021, the builder spoke with the City prior to commencing construction, and asked if planning approval was required. The City confirmed in writing that the proposed use did not need planning approval, resulting in the unauthorised development.

2. Plans

As-constructed plans of the fitout are attached (**Attachment 6**), noting that only three of the rooms are being used for massages and are fitted out with a small shower, with Room 1 being used for storage. Each room is purpose-built fitted-out for massages, including massage tables and ceiling-mounted handrails (for walking on backs).

Signage plans and photographs are also attached (**Attachment 7**), showing the amount of obscure glazing at 47%, which is compliant with the City's Local Planning Policy 2.14 (max. 50%).



3. Cost of Works

The cost breakdown of the fitout is considerable at \$114,000 (**Attachment 5**), which demonstrates that the business cannot be characterised as 'fly-by-night' as the majority of these works cannot be relocated or refunded, with the exception of appliances, loose furniture and linen. Please note that this information is confidential and not authorised to be directly or indirectly released to the public.

This is an indication that the business is not illegal because in our experience, new brothels are typically rentals with basic fitouts so that the tenant can quickly and inexpensively relocate if forced to by the landlord, local government, or police. Whilst it has been alleged that a brothel operates across the road from the Site, presumably with an extensive fitout, it is suggested that this could be due to the business operating for over 3 decades, and possibly the property is owned by the brothel business.

4. Services, Staffing & Qualifications

The types of services offered at the Site are all related to massages (**Attachment 1**):

- **Relaxation / Deep Tissue Oil Massage** – Facial, neck, shoulder, back, arms, legs and full body.
- **Feet Massage** – Cleansing, reflexology and full body.

These services and costs are closely aligned to massage parlours typically found in suburban shopping centres (**Attachment 1**, www.woodvaleboulevard.com.au/stores/cayenne-massage).

Staffing is a maximum of 2 people, noting that 1 of the 3 massage rooms is being used for storage, and massages typically do not require 100% supervision by staff. For example, customers need time and privacy to change into a robe, pre-massage settling time, post-massage relaxation time, wash massage oils off, and change clothes.

In relation to qualifications, the tenant has a Diploma in Remedial Massage and a First Aid Certificate (**Attachment 2**), and the other staff member (if present) focuses on administration, preparing customers, and simple massages under training. Additional qualification could be gained if customer volumes increase.

5. Customer Trends

When the business was operating, the following was encountered:

- **Trends** – It was for a short period and customer trends were not established.
- **Peak Hours** – Were not witnessed.
- **Bookings** – Phone bookings and walk-ins were encountered.
- **Gender** – Male and female customers attended.
- **Disabilities** – Two disabled female customers, one in a wheelchair that regularly attends.

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- **Customer Volumes** – 3-12 per day.
- **Services** – Most selected a full-body, deep-tissue and relaxation massage.
- **Duration** – Mostly for 1 hour, some for 45 minutes and 30 mins.

6. Proposed Opening Hours & Days

The proposed opening days and hours of operation were / are:

- **Tenant's Lease** – 9am-9pm, 7 days/week.
- **DA Proposal** – 9am-8pm, 7 days/week.
- **Reconsideration** – 9am-7pm, 4 days/week (Mon.-Thurs.); and
– 9am-6pm, 2 days/week (Fri. & Sun.).

The Respondent queried why Saturday was chosen to be a day to close shop, which on face value is unusual, however the tenant's decision revolves around personal preference.

It should be noted that this issue appears to be as a result of noise concerns, however the *Environmental Protection (Noise) Regulations 1997 (Noise Reg's)* have the same acoustic limits between 7am-7pm during weekdays. In effect, if the City/Council is satisfied with potential noise emissions upon opening at 9am, then it should be satisfied with that same noise emission upon closing at 7pm.

Although the Noise Reg's have more restrictive 'Levels Assigned' during Sundays (**Attachment 3**) as is part of the proposal, the difference compared with weekdays is not unachievable, from 45dB to 40 dB (Level Assigned 10% / LA10 measurement) and from 55dB to 50dB (LA1). Furthermore, the maximum noise level remains the same at 65dB (L_{Amax}).

7. Transportation Factors

The City has provided an in-depth analysis of a previously approved shortfall, various supporting factors, and support for a variation to the number of required car-parking bays. In addition to this:

- **High-Frequency Public Transport** – Two bus stops are located immediately in front of the premises (northbound and southbound), with 6 services/hour in peak times (free Blue CAT and #532 routes).
- **Bicycles** – The tenant has agreed to advertise that cyclists are welcome to ride to the Site, with a bike rack having been installed on the corner (Charles Street). Furthermore, customers are welcome to walk-through the shop to use more secure onsite racks located in the car-park behind a vehicular security gate.
- **End-of-Trip Facilities** – The three massage rooms can be considered to be end-of-trip facilities as each has privacy to change clothes, clothes storage and a shower. Furthermore, the staff room has secure lockers for staff to secure clothes and personal effects.



- **Pedestrians** – This type of business is one that could reasonably attract customers that live locally, and therefore some customers will be able to walk to the premises without the need for a car-bay.
- **Consistent Decision-Making** – This is an established factor in caselaw. The JDAP, stepping in the shoes of the Council, previously approved the same provision of car-parking being 2 bays in lieu of 3 (1 bay shortfall). Accordingly, we apply to the decision-maker, this time the Council itself, to be consistent in its assessment and determination, inline with the recommendation from the City's Administration.

8. Alleged Prostitution

We continue our position that the Site has not, and will not, be used for prostitution, and does not form part of this application.

The premises have not been attended by the Police, and there has not been any allegation of any specific offence being committed under the *Prostitution Act 2000*.

Community Submission

We note a submission including an advertisement has been presented to the SAT (a jpeg image file) which alleges our client conducts sexual services at the Subject Site (**Attachment 4**), and in response:

- **Name** – No name is presented (business or living person);
- **Location** – The location is not the Subject Site, nor nearby (Belmont);
- **Images** – The images could easily be taken from the internet and the locations are not from the Subject Site;
- **Accessibility** – Posting an advertisement is free and available to the general public;
- **Timing** – The advertisement was posted on 4 November 2021, which was long after the tenant started business on 23 August, and after the community consultation for the DA closed on 20 September 2021. If the tenant placed this add, it is illogical to do so 10 weeks after opening. If this was someone from the local community, it would be after being alerted to the business by the City; and
- **Denial** – Our client denies she has, or caused others to, posting/placing this advertisement, and has engaged professional IT services to track the person(s) involved.

A recent desktop search of this advertisement revealed (24 February 2022) it has expired, and the mobile phone number does not return any other web-search results.

Our position is that this advertisement was posted by a member of the local community in order to cause this matter to be refused by the Council and unsuccessful upon SAT appeal. The nature of this material is deeply personal and offensive, and in our opinion could be considered a 'disadvantage' to the Appellant by means of vexatious conduct by a third-party under s. 48 of the *State Administrative Tribunal Act 2004*.

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Ada Rose Brothel

It is also noted that a brothel is operating across the road at No. 205 South Terrace (South Fremantle), openly advertising their services (www.adarose.com.au), and has been operating for over 30 years.

The City and Council have explicitly made it known that they are aware of this business, but there is no indication that it is under investigation or subject to compliance action. If this is accurate, then it places the Council in a duplicitous and compromised position that the Subject Site cannot operate as an alleged brothel, if that is the true nature of its opposition.

It is also suggested that some members of the local community may have significant moral and ethical concerns regarding the Ada Rose brothel, which are not being addressed to their satisfaction. This concern may be projected upon this planning proposal during a phase where community input is being sought and concerns addressed.

9. Limited Approval

The Respondent has indicated that it may seek to condition an approval (if that comes to pass), with a limit of 1 or 2 years, at which time the Tenant will need to reapply for planning approval.

In response, the Tenant has generously agreed with a 1 year time limit, which is hereby proposed as part of the planning application. We note that this component of the proposal is not required of the applicant, and in its absence the Council could have imposed such a condition. Accordingly, we trust that the respondent receives this measure as an example of good faith.

If you have any queries, or wish to discuss this matter further, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read "M. Stuart".

Matt Stuart

Principal Urban Planning Consultant

BA (URP) Hons | Grad Cert (UD) | MLGPA

0408 000 477 | matt@townplanningadvice.com.au

- Att.
1. Services
 2. Qualification Certificates (dated March 2021)
 3. Noise Limits
 4. Advertisement Image (dated 4 November 2021)
 5. Fitout Costs (dated June 2021)
 6. Revised Fitout Plans Package (dated 20 February 2022)
 7. Revised Signage Plans Package (dated 21 February 2022)

**Additional information – Ordinary Meeting of Council
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CC: Joe Algeri, Altus Planning & Appeals - joe@altusplan.com.au
State Administrative Tribunal - sat@justice.wa.gov.au



Services

KOYUKI SAKURA Bodycare Health Massage		KOYUKI SAKURA Bodycare Health Massage	
Price List		Price List	
Relaxation / Deep Tissue Oil Massage		Relaxation / Deep Tissue Oil Massage	
Neck & Shoulder	20mins	Neck & Shoulder	\$35
Head & Facial Massage	20mins	Head & Facial Massage	\$35
Neck & Shoulder & Head	30mins	Neck & Shoulder & Head	\$45
Neck & Shoulder & Head & Back	45mins	Neck & Shoulder & Head & Back	\$60
Neck & Shoulder & Back & Legs (choose Head/Arms/Feet)	45mins	Neck & Shoulder & Back & Legs (choose Head/Arms/Feet)	\$60
Low Back & Legs	60mins	Low Back & Legs	\$85
Relaxation Massage	40mins	Relaxation Massage	\$55
Deep Tissue Full Body Massage	60mins	Deep Tissue Full Body Massage	\$75
	60mins		\$85
Feet Massage		Feet Massage	
Ion Cleanse Detox Reflexology	30mins	Ion Cleanse Detox Reflexology	\$30
	30mins		\$50
	45mins		\$65
	60mins		\$85
	60mins		\$80
	90mins		\$120
	120mins		\$150
Reflexology & Ion Detox Spa Full Body and Reflexology		Reflexology & Ion Detox Spa Full Body and Reflexology	

Subject Site

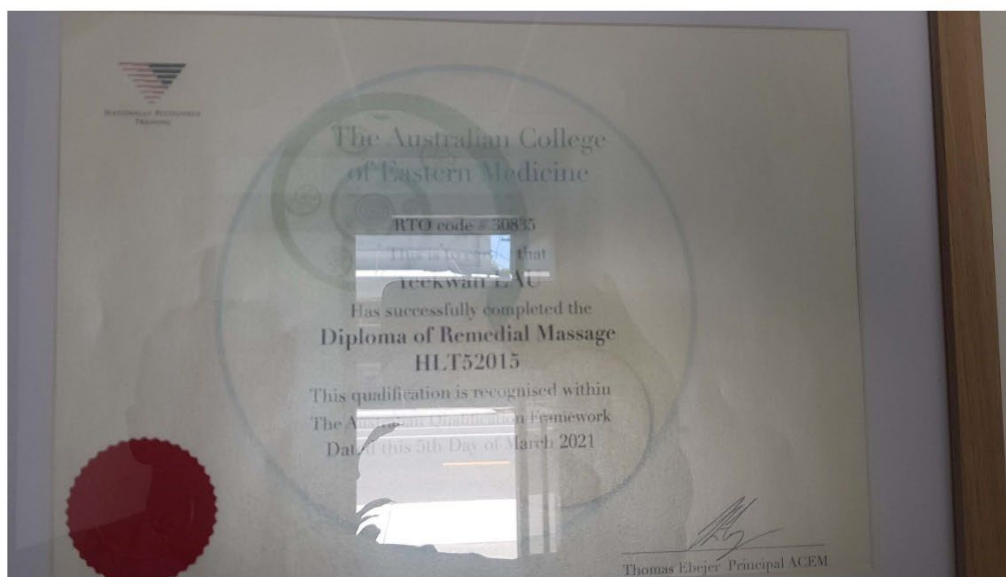
Cayenne Massage Price List	
HIRING Cayenne Massage is looking for massage therapists. Please contact the shop manager Susan on 0488099988 if you are interested in a position. 招聘 本店招聘按摩师，有意向者 请与我电话联系。 Susan : 0488099988	
Acupressure Massage (No oil)	
Relaxation and Deep Tissue Massage (With oil)	
Neck & Head Massage	\$25
Shoulders Massage	\$30
Neck & Shoulders Massage	\$35
Neck & Shoulders & Head Massage	\$40
Arms & Hands Massage	\$35
Ear Candling	\$35
Cupping	\$35
Cupping & Back Cupping	\$75
Back Massage	\$50
Neck Shoulders & Back Massage*	\$65
Leg Massage*	\$50
Back & Leg Massage*	\$70
Neck, Shoulders, Arms & Back Massage*	\$75
Neck, Shoulders, Back & Legs Massage*	\$75
Sciatica Massage*	\$70
Whole body Massage*	\$80
Hot Stone Therapy	
Neck, Shoulders, Head & Back Massage	\$75
Neck, shoulders, Arms & Back Massage	\$75
Neck, shoulders, Back & Legs Massage	\$75
Whole body Massage	\$115
Foot Treatment	
Feet Reflexology	\$50
Foot Spa & Reflexology	\$75
AOK Foot Spa	\$45
AOK Foot Spa & Reflexology	\$75
Luxurious Package	
Whole Body Massage + AOK Foot Spa + Feet Reflexology ..	\$185
Whole Body Massage (with oil) + Feet Reflexology	\$140
Whole Body + Feet Reflexology	\$125
Pregnancy Massage	
Child Care	\$70
Frozen Shoulders	\$45
Tennis Elbow	\$45
*Appointment is required for remedial massage	

Unrelated Site in a Suburban Shopping Centre

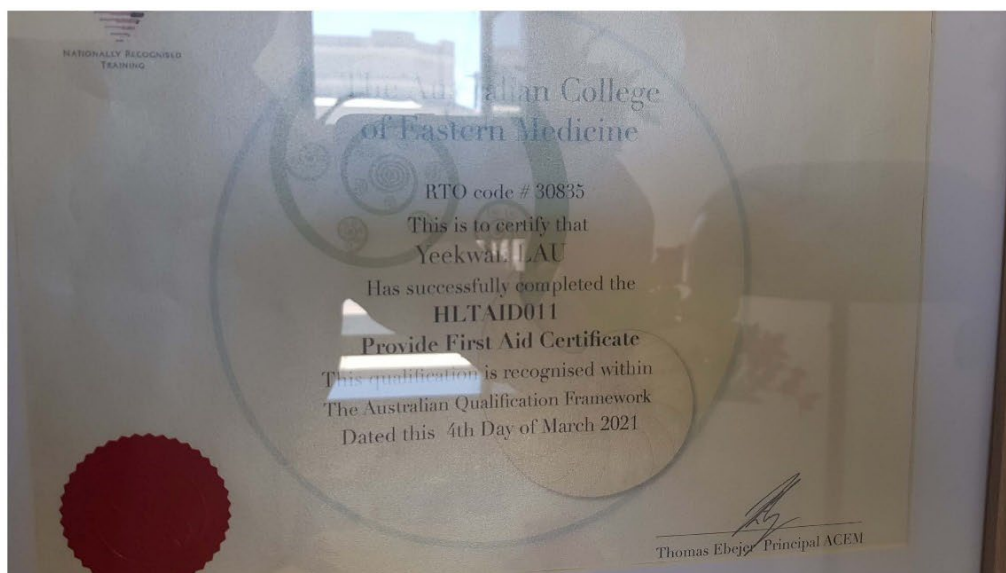
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Qualifications



Diploma of Remedial Massage



Certificate in First Aid

**Additional information – Ordinary Meeting of Council
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Noise Limits

Environmental Protection (Noise) Regulations 1997

Part 2 Allowable noise emissions

Division 1 General provisions

r. 8

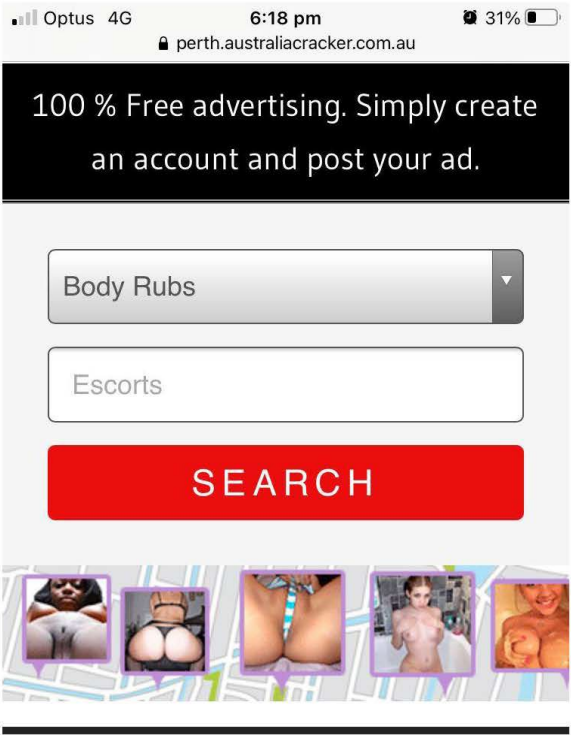
Table 1

Type of premises receiving noise	Time of day	Assigned level (dB)		
		L_{A10}	L_{A1}	L_{Amax}
Noise sensitive premises: highly sensitive area	0700 to 1900 hours Monday to Saturday	45 + influencing factor	55 + influencing factor	65 + influencing factor
	0900 to 1900 hours Sunday and public holidays	40 + influencing factor	50 + influencing factor	65 + influencing factor
	1900 to 2200 hours all days	40 + influencing factor	50 + influencing factor	55 + influencing factor
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and public holidays	35 + influencing factor	45 + influencing factor	55 + influencing factor
Noise sensitive premises: any area other than highly sensitive area	All hours	60	75	80
Commercial premises	All hours	60	75	80
Industrial and utility premises other than those in the Kwinana Industrial Area	All hours	65	80	90

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Advertisement Image



**Perth Belmont Massage -
26 tel. 0405277719**

November 4, 2021 04:30:04



Advertisement Image

Attachment 4

**Additional information – Ordinary Meeting of Council
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Fitout Costs

**2-284 South Tce - Lease & Fitout Expenses Sheet
Koyuki Pty Ltd**

Jun-21

	Total (incl GST)
Business & Shop Expenses	
Fremantle Council DA lodgement	295
Fitout design - Metamorphica	2,495
Insurance - Koyuki	272
Epoch Media - James design fee signage	440
Compliance - Milestone (fee \$450 + council \$168 + GST)	680
Concrete Cut n Core	2,996
Concrete Taxi	410
Bunnings	219
Waste to Landfill Hederson	165
Waste to Landfill Hederson	165
Signage - quote \$2400 + GST Epoch Media (1/2 of \$1600)	880
Signage - quote \$2400 + GST Epoch Media (balance of work)	1,320
Signage - footpath signs and cards	627
Signage - internal walls	150
Cabinets - Fitting	800
Bunnings Cabinets	1,778
Security install	560
Bunnings - Swann Security	1,319
Bunnings - Overheads & Shelf	486
Bunnings - keys	12
Bunnings - paint, brushes, shelf, hooks etc	95
Bunnings - shwr curtain rails, clips, d/s tape, door wedge, etc	96
Bunnings - more shwr rails, paint brushes touch up, etc	104
Bunnings - kitchen leg	19
Eltu Blinds - quote \$1530 (50% deposit)	1,265
Eltu Blinds - balance	265
J Car - security and audio equipment	1,380
Ceiling and Walls - \$10450 + \$9000 = \$19450	19,450
Painting - quote \$4070	4,070
Plumbing - quote \$15246	15,246
Reece - shower cowlings & duct	143
Electrical - quote \$15730	15,730
Retravisision - A/C supply	3,146
Brendan Flegg Electrical for A/C install	4,382
Tiling - quote \$18700	18,700
Trapeze - Paul	1,750
Appliances - washer \$1200 dryer \$1800 Good Guys	3,000
Linen - towels \$-----, bed covers \$-----	1,200
Furniture - mass/tables 4x \$750	3,000
Towels - previous cost	860
Furniture - Ikea shelves/cupboards/mirrors	420
Bar Fridge - Harvey Norman	259
Reception Desk	1,900
Sign - open and door chime	255
Empire estate agents - carpark gate remote & entry door FOB	211
Telstra	440
NBN	210
Total Inclusive of Builders margin (excluding GST)	113,665

ADDITIONAL INFORMATION 2 - Site Photos

Photo 1: Subject site as viewed from South Terrace



Photo 2: Subject site corner of South terrace and Charles Street



Photo 3 – Subject tenancy





**FPOL2205-4 ADOPTION OF THE CITY OF FREMANTLE LOCAL
GOVERNMENT PROPERTY AMENDMENT LOCAL LAW 2022
– FOR THE CONTROL OF SHARK FISHING**

**ADDITIONAL INFORMATION 1 - Consolidated Local Government Property
Local Law with changes indicated**



LOCAL GOVERNMENT PROPERTY LOCAL LAW 2002
(consolidated to include 2019, 2021 and 2022 local law amendments)



Local Government Property Local Law (consolidated February 2021)



Local Government Act 1995
City of Fremantle

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2002
(consolidated with 2019, 2021 and 2022 local law amendments)

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *City of Fremantle* resolved on 21 October 2002 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

- (1) This local law may be cited as the City of Fremantle Local Government Property Local Law 2002.

1.2 Definitions

- (1) In this local law unless the context otherwise requires -

"**Act**" means the *Local Government Act 1995*;

"**applicant**" means a person who applies for a permit under clause 3.2;

"**authorised person**" means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

"**balloon**" means a pliable container of any shape which is inflated with air or gas;

"**boat**" means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski;

"**building**" means any building which is local government property and includes a –

- (a) hall or room;
- (b) corridor, stairway or annexe of any hall or room; and
- (c) jetty;

"**CEO**" means the chief executive officer of the local government;

"**commencement day**" means the day on which this local law comes into operation;

"**Council**" means the council of the local government;

"**date of publication**" means, where local public notice is required to be given of a matter under this local law, the date on which notice of the matter is published in a newspaper circulating generally throughout the district;

"**determination**" means a determination made under clause 2.1;

"**district**" means the district of the local government;



Local Government Property Local Law (consolidated February 2021)



"function" means an event or activity characterised by all or any of the following –

- (a) formal organisation and preparation;
- (b) its occurrence is generally advertised or notified in writing to particular persons;
- (c) organisation by or on behalf of a club;
- (d) payment of a fee to attend it; and
- (e) systematic recurrence in relation to the day, time and place;

"liquor" has the same meaning as is given to it in section 3 of the *Liquor Licensing Act 1988*;

"local government" means the City of Fremantle;

"local government property" means anything –

- (a) which belongs to or is leased or licensed by the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an 'otherwise unvested facility' within section 3.53 of the Act;

"Manager" means the person for the time being employed by the local government to control and manage a pool area or other facility which is local government property and includes the person's assistant or deputy;

"permit" means a permit issued under this local law; **"permit holder"** means a person who holds a valid permit; **"person"** does not include the local government;

"pool area" means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

"Regulations" means the *Local Government (Functions and General) Regulations 1996*;

"sign" includes a notice, flag, mark, structure or device approved by the local government on which maybe shown words, numbers, expressions or symbols;

"trading" means the selling or hiring, or the offering for sale or hire of goods or services, and includes displaying goods for the purpose of –

- (a) offering them for sale or hire;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or
- (d) carrying out any other transaction in relation to them; and



Local Government Property Local Law (consolidated February 2021)



"vehicle" includes –

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes –

- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
- (d) a pram, a stroller or a similar device; and
- (e) a boat.

1.3 Interpretation

- (1) In this local law unless the context otherwise requires a reference to local government property includes a reference to any part of that local government property.

1.4 Application

- (1) This local law applies throughout the district and in the sea adjoining the district for a distance of 200 metres seawards from the high water mark of the Indian Ocean.
- (2) Notwithstanding anything to the contrary in this local law, the local government may -
 - (a) hire local government property to any person; or
 - (b) enter into an agreement with any person regarding the use of any local government property.

1.5 Repeal

- (1) The following local laws are repealed –
 - (a) *Parks, Recreation Grounds & Public Reserves Local Law gazetted on 6 December 1985 and amended 25 September 1998.*
 - (b) *Swimming Pools Local Law gazetted on 13 January 1971*
- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.



PART 2 - DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

Division 1 - Determinations

2.1 Determinations as to use of local government property

- (1) The local government may make a determination in accordance with clause 2.2 –
 - (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
 - (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
 - (c) as to the matters in clauses 2.7(2) and 2.8(2); and
 - (d) as to any matter ancillary or necessary to give effect to a determination.

2.2 Procedure for making a determination

- (1) The local government is to give local public notice of its intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that –
 - (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to –
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to –
 - (a) consider those submissions; and
 - (b) decide –
 - (i) whether or not to amend the proposed determination; or
 - (ii) not to continue with the proposed determination.



Local Government Property Local Law (consolidated February 2021)



- (5) If the Council decides to amend the proposed determination, it is to give local public notice –
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

2.3 Discretion to erect sign

- (1) The local government may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

2.4 Determination to be complied with

- (1) A person shall comply with a determination.

2.5 Register of determinations

- (1) The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.
- (2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

2.6 Amendment or revocation of a determination

- (1) The Council may amend or revoke a determination.
- (2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.
- (3) If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.



Division 2 - Activities which may be pursued or prohibited under a determination

2.7 Activities which may be pursued on specified local government property

- (1) A determination may provide that specified local government property is set aside as an area on which a person may –
- (a) bring, ride or drive an animal;
 - (b) take, ride or drive a vehicle, or a particular class of vehicle;
 - (c) fly or use a motorised model aeroplane
 - (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
 - (e) launch, beach or leave a boat;
 - (f) take or use a boat, or a particular class of boat;
 - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
 - (h) play or practice –
 - (i) golf or archery;
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
 - (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
 - (j) wear no clothing.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular –
- (a) the days and times during which the activity may be pursued;
 - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
 - (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
 - (e) may specify that the activity can be pursued by a class of persons or all persons; and
 - (f) may distinguish between different classes of the activity.



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2.8 Activities which may be prohibited on specified local government property

- (1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property –
- (a) smoking on premises;
 - (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
 - (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
 - (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
 - (e) taking or using a boat, or a particular class of boat;
 - (f) the playing or practice of -
 - (i) golf, archery, pistol shooting or rifle shooting; or
 - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
 - (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property;
 - (h) the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose;
 - (i) releasing an unsecured balloon inflated with a gas that causes it to rise in the air;
 - (j) using a motorised model airplane, helicopter, boat, drone or other similar remotely piloted device; and
 - (k) smoking in contravention of a sign which prohibits the act of smoking.
- (2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular –
- (a) the days and times during which the activity is prohibited;
 - (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;
 - (d) that an activity is prohibited in respect of a class of persons or all persons; and
 - (e) may distinguish between different classes of the activity.
- (3) In this clause –
- "premises"** means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.



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Division 3 - Transitional

2.9 Signs taken to be determinations

- (1) Where a sign erected on local government property has been erected under a local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.
- (2) Clause 2.5 does not apply to a sign referred to in subclause (1).

PART 3 - PERMITS

Division 1 - Preliminary

3.1 Application of Part

This Part does not apply to a person who uses or occupies local government property under a written agreement with the local government to do so.

Division 2 - Applying for a permit

3.2 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall –
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.



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3.3 Decision on application for permit

- (1) The local government may –
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.
- (4) The local government may, at any time, amend a condition of approval and the amended condition takes effect 30 days after written notice of it is given to the permit holder.

Division 3 - Conditions

3.4 Conditions which may be imposed on a permit

- (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to –
 - (a) the payment of a fee;
 - (b) compliance with a standard or a policy of the local government adopted by the local government;
 - (c) the duration and commencement of the permit;
 - (d) the commencement of the permit being contingent on the happening of an event;
 - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
 - (f) the approval of another application for a permit which may be required by the local government under any written law;
 - (g) the area of the district to which the permit applies;
 - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
 - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued –
 - (a) when fees and charges are to be paid;
 - (b) payment of a bond against possible damage or cleaning expenses or both;
 - (c) restrictions on the erection of material or external decorations;
 - (d) rules about the use of furniture, plant and effects;
 - (e) limitations on the number of persons who may attend any function in or on local government property;



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- (f) the duration of the hire;
- (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Licensing Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

3.5 Imposing conditions under a policy

- (1) In this clause –

"policy" means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

- (2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government shall give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).
- (4) An application for a permit shall be deemed not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.
- (5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy shall be deemed to be information within section 5.94(u)(i) of the Act.

3.6 Compliance with and variation of conditions

- (1) Where an application for a permit has been approved subject to conditions, the permit holder shall comply with each of those conditions.
- (2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.



Division 4 - General

3.7 Agreement for building

- (1) Where a person applies for a permit to erect a building on local government property the local government may enter into an agreement with the permit holder in respect of the ownership of the materials in the building.

3.8 Duration of permit

- (1) A permit is valid for one year from the date on which it is issued, unless it is –
 - (a) otherwise stated in this local law or in the permit; or
 - (b) cancelled under clause 3.12.

3.9 Renewal of permit

- (1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of this Part shall apply to an application for the renewal of a permit as though it was a new application for a permit.

3.10 Transfer of permit

- (1) An application for the transfer of a valid permit is to –
 - (a) be made in writing;
 - (b) be signed by the permit holder and the proposed transferee of the permit;
 - (c) provide such information as the local government may require to enable the application to be determined; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the local government approves an application for the transfer of a permit, the transfer may be affected by an endorsement on the permit signed by the CEO.
- (4) Where the local government approves the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

3.11 Production of permit

- (1) A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.



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3.12 Cancellation of permit

- (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a –
 - (a) condition of the permit; or
 - (b) determination or a provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder –
 - (a) shall return the permit as soon as practicable to the CEO; and
 - (b) is to be taken to have forfeited any fees paid in respect of the permit.

Division 5 - When a permit is required

3.13 Activities needing a permit

- (1) A person shall not without a permit –
 - (a) subject to subclause 3, hire local government property;
 - (b) advertise anything by any means on local government property;
 - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
 - (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
 - (e) plant any plant or sow any seeds on local government property;
 - (f) carry on any trading on local government property unless the trading is conducted -
 - (g) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
 - (h) by a person who has a licence or permit to carry on trading on local government property under any written law;
 - (i) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose -
 - (j) drive or ride or take any vehicle on to local government property; or
 - (k) park or stop any vehicle on local government property;
 - (l) conduct a function on local government property ;
 - (m) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
 - (n) light a fire on local government property except in a facility provided for that purpose;
 - (o) parachute, hang glide, abseil or base jump from or on to local government property;
 - (p) erect a building or a refuelling site on local government property;
 - (q) make any excavation on or erect or remove any fence on local government property;



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- (r) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
 - (s) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property; or
 - (t) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

3.14 Permit required to camp outside a facility

- (1) In this clause –
- "facility"** has the same meaning as is given to it in section 5(1) of the Caravan Parks and Camping Grounds Act 1995.
- (2) This clause does not apply to a facility operated by the local government.
- (3) A person shall not without a permit –
- (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
 - (b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.
- (4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the Caravan Parks and Camping Grounds Regulations 1997.

3.15 Permit required for possession and consumption of liquor

- (1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless –
- (a) that is permitted under the Liquor Licensing Act 1988; and
 - (b) a permit has been obtained for that purpose.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.



Division 6 - Responsibilities of permit holder

3.16 Responsibilities of permit holder

- (1) A holder of a permit shall in respect of local government property to which the permit relates –
- (a) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
 - (b) leave the local government property in a clean and tidy condition after its use;
 - (c) report any damage or defacement of the local government property to the local government; and
 - (d) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the Liquor Licensing Act 1988 for that purpose.

PART 4 - BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

Division 1 - Behaviour on and interference with local government property

4.1 Behaviour which interferes with others

- (1) A person shall not in or on any local government property behave in a manner which –
- (a) is likely to interfere with the enjoyment of a person who might use the property; or
 - (b) interferes with the enjoyment of a person using the property; or
 - (c) places the public at risk or interferes with the safety of others.

4.2 Behavior detrimental to property

- (1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property.
- (2) In subclause (1) –
- “detrimental to the property”** includes –
- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and
 - (b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.

4.3 Taking, injuring or damaging any fauna or flora

- (1) A person shall not, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorised under a written law to do so.



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(2) In this clause –

"animal" means any living thing that is not a human being or plant; and

"fauna" means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal –

- (a) any class of animal or individual member;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur.

(3) A person must not remove or damage or attempt to remove or damage any flora which is on or above any local government property, unless that person is authorised to do so under a written law or with the written approval of the local government.

(4) In this clause "flora" means all vascular plants.

4.4 Intoxicated persons not to enter local government property

(1) A person shall not enter or remain on local government property while under the influence of liquor or a prohibited drug.

4.5 No prohibited drugs

(1) A person shall not take a prohibited drug on to, or consume or use a prohibited drug on, local government property.

Division 2 - Signs

4.6 Signs

(1) A local government may erect a sign on local government property specifying any conditions of use which apply to that property.

(2) A person shall comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is –

- (a) not to be inconsistent with any provision of this local law or any determination; and
- (b) to be for the purpose of giving notice of the effect of a provision of this local law.



PART 5 – MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY

Division 1 - Beaches

5.1 Powers of surf life saving club members

- (1) Subject to subclause (2), the local government may authorise under section 9.10 of the Act the members of a surf life saving club to perform all or any of the following functions in relation to a beach –
 - (a) patrol any beach;
 - (b) carry out any activity on any beach;
 - (c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;
 - (d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf life saving club activities; and
 - (e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.
- (2) Under subclause (1), the local government shall authorise only those members who have been recommended by the surf life saving club as competent to perform the functions referred to in that subclause in respect of which they are authorised.
- (3) Under subclause (1), the local government may authorise members generally, or in relation to particular times, days or months.

5.2 Authorising other persons

- (1) A local government may authorise, under section 9.10 of the Act, a person to perform all or any of the functions referred to in clause 5.1(1) in relation to a beach.
- (2) Under subclause (1), the local government shall authorise only those persons who, in the reasonable opinion of the local government, are competent to perform the functions referred to in clause 5.1(1) in respect of which they are authorised.
- (3) Under subclause (1), the local government may authorise a person generally, or in relation to particular times, days or months.
- (4) Where the local government has authorised members of a surf life saving club under clause 5.1(1) and a person under subclause (1) in relation to the same beach, so that they can perform all or any of the functions referred to in clause 5.1(1) contemporaneously, the local government is to specify which authorisation is rendered ineffective when both are exercised.



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5.3 Persons to comply with signs and directions

- (1) A person shall -
- (a) not act in contravention of any sign erected on a beach under clause 5.1(1)(c);
 - (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf life saving club activities, unless he or she is a member of the club or has obtained permission to enter from the club; and
 - (c) comply with any direction given under clause 5.1(1)(c) or 5.1(1)(e),
- notwithstanding that the sign or the direction was erected or given, as the case may be, by a person referred to in clause 5.2(1).

5.4A Prohibited fishing activities

- (1) A person must not fish for sharks –
- (a) by means of any fishing line that contains any metal wire or chain within one metre of any hook;
 - (b) with use of blood or berley as a lure;
 - (c) with use of a device such as a spear gun, hand spear, hawaiian sling or other like device.

Division 2 - Fenced or closed property

5.4 No entry to fenced or closed local government property

- (1) A person must not enter local government property which has been fenced off or closed to the public by a sign or otherwise, unless that person is authorised to do so by the local government.



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Division 3 - Golf course

5.5 Interpretation

(1) In this Division –

"controller" means the person appointed by the local government to direct, control and manage a golf course;

"golf course" means that portion of a golf course reserve which is laid out as a golf course and includes all tees, fairways, greens, practice tees, practice fairways, practice greens and any driving range; and

"golf course reserve" means the local government property described in Schedule 2 and includes all buildings, structures, fittings, fixtures and equipment on that land.

5.6 Observance of special conditions of play

(1) While on a golf course, every player shall observe and comply with a –

- (a) direction of a controller in respect of any special conditions of play; and
- (b) requirement of any notice erected to direct or control play.

PART 6 - FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY

6.1 No unauthorised entry to function

(1) A person shall not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorised, except –

- (a) through the proper entrance for that purpose; and
- (b) on payment of the fee chargeable for admission at the time.

(2) The local government may exempt a person from compliance with subclause (1)(b).



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PART 7 - JETTIES AND BRIDGES

Division 1 - Preliminary

7.1 Interpretation

- (1) This Part only applies to bridges and jetties which are local government property.
- (2) In this Part –
 "jetty" means any jetty, pier, wharf or landing place which is local government property; and
 "bulk cargo" means bulk produce, such as grain, coal, oil or mineral ore, which is not packaged.

Division 2 - Consents and fees

7.2 Application for consent and application fee

- (1) Where a person is required to obtain the consent of the local government under this Part, the person is to apply for that consent in the manner required by the local government.
- (2) The local government may require an application for consent made under subclause (1) to be accompanied by a fee.
- (3) If an application for consent is not made in the manner required by the local government or the fee which is to accompany that application is not paid, the local government may refuse to consider the application for consent.
- (4) The local government shall give its decision on an application for consent, in writing to the person who applied for that consent.
- (5) Where a fee is referred to in this Part, the fee must be imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

Division 3 – Prohibitions on use of jetty

7.3 When use of jetty is prohibited

- (1) A person shall not land at, use or go on any part of a jetty which is –
 - (a) under construction or repair; or
 - (b) closed,unless that person has first obtained the consent of the local government.



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Division 4 - Mooring boats to jetties

7.4 Method of mooring boat

- (1) A person in control of a boat shall not moor or make fast the boat to a jetty, or to any part of the jetty, except to such mooring piles, ring bolts or other fastenings as are provided.

Division 5 - When boats may remain at jetty

7.5 When boat may remain moored

- (1) A person in control of a boat shall not moor or make fast the boat to a jetty unless –
- (a) the boat is in distress and then only to effect the minimum repairs necessary to enable the boat to be moved elsewhere;
 - (b) the embarking or disembarking of passengers is in progress, and then not for a consecutive period exceeding 2 hours without the prior consent of the local government;
 - (c) the loading or discharging of cargo or other goods is in progress in accordance with Division 7; or
 - (d) where the boat is used at that time for commercial purposes, the person has first paid the fee (if any) for such mooring or making fast to the local government.

7.6 Authorised person may order removal of boat

- (1) Notwithstanding anything to the contrary in this Part, a person in control of a boat moored or fastened to or alongside a jetty shall remove it immediately upon being directed to do so by an authorised person.

Division 6 - Launching of boats

7.7 Restrictions on launching

- (1) A person shall not launch a boat from or over any jetty (other than a boat ramp) unless she or he has first obtained the consent of the local government.



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Division 7 - Cargo or other goods

7.8 Loading and discharging

- (1) A person in control of a boat shall not allow the boat to come alongside or be moored or made fast to a jetty for the purpose of loading or discharging cargo or other goods –
- (a) until the cargo or other goods are ready to be loaded or discharged; or
 - (b) without the consent of the local government –
 - (c) between the hours of 6.00pm to 6.00am on the next day; or
 - (d) for longer than 2 consecutive hours.

7.9 Outgoing cargo not to be stored on jetty

- (1) A person in control of cargo or other goods intended for loading on to a boat shall –
- (a) not allow them to be stored or placed on a jetty unless and until the boat is moored or fastened to or alongside the jetty; and
 - (b) load them on to the boat as soon as practicable after the boat is moored or fastened to or alongside the jetty.

7.10 Removal of incoming cargo from jetty

- (1) Any person unloading cargo or other goods from a boat on to a jetty shall remove them, or cause them to be removed from the jetty as soon as practicable, but not later than 6.00pm on the day on which they were placed there.

7.11 Authorised person may direct removal

- (1) An authorised person may direct a person who, in the opinion of the authorised person, is in charge of cargo or other goods which remain on a jetty contrary to any provision of this Part to remove them from the jetty.

7.12 Handling of bulk cargo

- (1) Except with the prior consent of the local government, a person shall not place or deposit bulk cargo from a vehicle, boat or container on to a jetty.

Division 8 - Polluting surrounding area

7.13 Polluting surrounding area

- (1) A person shall not tip or deposit anything on to a jetty so as to pollute the surrounding area.



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Division 9 - Fishing from jetties and bridges

7.14 Limitations on fishing

- (1) A person shall not –
 - (a) fish from a jetty or a bridge so as to obstruct or interfere with the free movement of a boat approaching or leaving the jetty or the bridge or so as to unreasonably interfere with the use of the jetty or the bridge by any other person; or
 - (b) hang or spread a fishing net from, on or over any part of a jetty or a bridge.

PART 8 - OBJECTIONS AND APPEALS

8.1 Application of Division 1, Part 9 of the Act

- (1) When the local government makes a decision as to whether it will –
 - (a) grant a person a permit or consent under this local law; or
 - (b) renew, vary, or cancel a permit or consent that a person has under this local law,the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 9 – MISCELLANEOUS

9.1 Authorised person to be obeyed

- (1) A person on local government property shall obey any lawful direction of an authorised person and shall not in any way obstruct or hinder an authorised person in the execution of her or his duties.

9.2 Persons may be directed to leave local government property

- (1) If the CEO or an authorised person reasonably suspects that a person is breaching, or has just breached, a provision of this local law or any other written law, the CEO or authorised person may –
 - (a) refuse to allow that person to enter local government property; and
 - (b) if the person is on local government property, direct the person to leave the local government property.
- (2) A person who has been refused entry or who has been directed to leave under subclause (1) must immediately leave the local government property quickly and peaceably.
- (3) If a person fails to comply with subclause (2), the CEO or and authorised person may remove the person, or arrange for the person to be removed, from the local government property.



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9.3 Disposal of lost property

- (1) An article left on any local government property, and not claimed within a period of 1 month, may be disposed of by the CEO or an authorised person –
 - (a) if the value of the property is reasonably believed to exceed the amount prescribed by regulation 30(3) of the Local Government (Functions and General) Regulations 1996, using the process under section 3.58 of the Act for the sale of the article as if it was property referred to in that section;
 - (b) if the article is reasonably believed to be of a negligible or little value or likely to be of no interest to a not for profit body, in any manner they think fit; or
 - (c) in any other case, by donation to a not for profit body incorporated under the Association Incorporations Act ~~1987~~ 2015.

9.4 Liability for damage to local government property

- (1) Where a person unlawfully damages local government property, the local government may by notice in writing to that person require that person within the time required in the notice to, at the option of the local government, pay the costs of –
 - (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
 - (b) replacing that property.
- (2) Unless there is proof to the contrary, a person is to be taken to have damaged local government property within subclause (1) where –
 - (a) a vehicle or a boat caused the damage, the person was the person responsible, at the time the damage occurred, for the control of the vehicle or the boat; or
 - (b) the damage occurred under a permit, the person is the permit holder in relation to that permit.
- (3) On a failure to comply with a notice issued under subclause (1), the local government may recover the costs referred to in the notice as a debt due to it.

PART 10 - ENFORCEMENT

Division 1 - Notices given under this local law

10.1 Offence to fail to comply with notice

- (1) Whenever the local government gives a notice under this local law requiring a person to do any thing, if a person fails to comply with the notice, that person commits an offence.

10.2 Local government may undertake requirements of notice

- (1) Where a person fails to comply with a notice referred to in clause 10.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.



Division 2 - Offences and penalties Subdivision 1 - General

10.3 Offences and general penalty

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

Subdivision 2 - Infringement notices and modified penalties

10.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that –
 - (a) commission of the prescribed offence is a relatively minor matter; and
 - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

10.5 Form of notices

- (1) For the purposes of this local law –
 - (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
 - (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
 - (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.
- (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.



Local Government Property Local Law (consolidated February 2021)



Division 3 - Evidence in legal proceedings

10.6 Evidence of a determination

- (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.
- (2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.
- (3) Subclause (2) does not make valid a determination that has not been properly made.

**Additional information – Ordinary Meeting of Council
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Local Government Property Local Law (consolidated February 2021)



**SCHEDULE 1
PENALTIES**

ITEM	CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
1	2.4	Failure to comply with determination	125
2	3.6(1)	Failure to comply with conditions of permit	125
3	3.13(1)	Failure to obtain a permit	125
4	3.14(3)	Failure to obtain permit to camp outside a facility	125
5	3.15(1)	Failure to obtain permit for liquor	125
6	3.16	Failure of permit holder to comply with responsibilities	125
7	4.2(1)	Behaviour detrimental to property	125
8	4.3(1)	Taking or injuring any fauna	125
9	4.3(3)	Removing or damaging any flora	125
10	4.4	Under influence of liquor or prohibited drug	125
11	4.6(2)	Failure to comply with sign on local government property	125
12	5.3	Failure to comply with sign or direction on beach	125
13	5.4A	Undertaking prohibited fishing activities	500
14	5.4	Unauthorised entry to fenced or closed local government property	125
15	5.5	Failure to comply with direction of controller or notice on golf course	125
16	6.1(1)	Unauthorised entry to function on local government property	125
17	7.3	Unauthorised use of any part of jetty which is closed or under repair or construction	125
18	7.4	Mooring of boats in unauthorised manner	125
19	7.5	Unauthorised mooring of a boat to jetty	125
20	7.6	Failure to remove moored boat on direction of authorised person	125
21	7.7	Launching of boat from jetty without consent	125
22	7.8	Mooring when not ready to load or discharge cargo, at times not permitted or for longer than permitted	125
23	7.9	Unlawful storing of goods on jetty	125
24	7.10	Removing goods from jetty during other than permitted hours	125
25	7.11	Failure to remove cargo on jetty on direction of authorised person	125
26	7.12	Unauthorised deposit of bulk cargo on jetty	125
27	7.14	Fishing from jetty or bridge so as to obstruct a boat or another person	125
28	10.1	Failure to comply with notice	250

**Additional information – Ordinary Meeting of Council
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Local Government Property Local Law (consolidated February 2021)



**SCHEDULE 2
GOLF COURSE RESERVE**

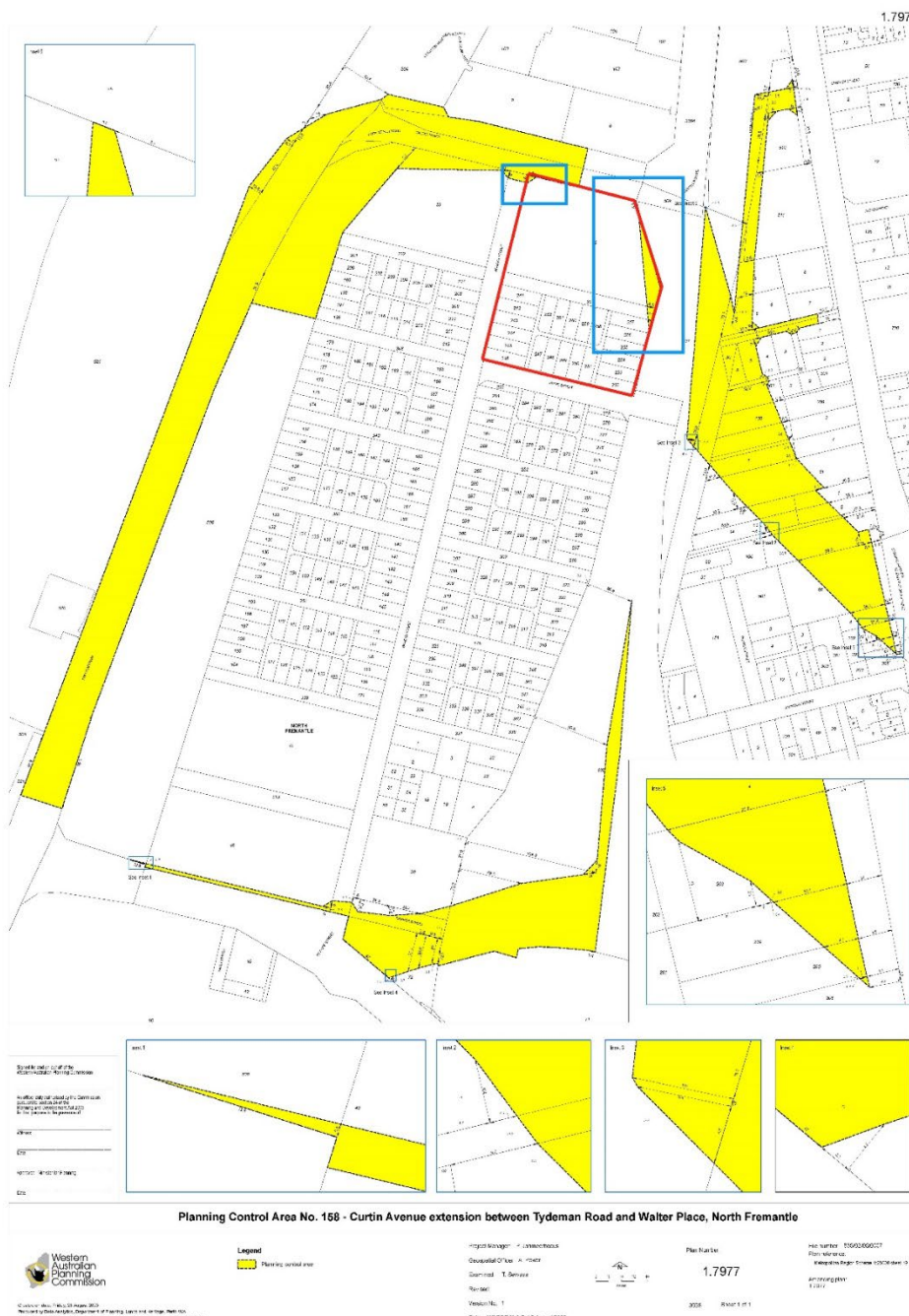
The golf course reserve referred to in Part 5 Division 5 of this local law is described below:

“That portion of Reserve Number 6638, bordered by Montreal Street to the west, High Street to the north, Royal Fremantle Golf Club to the east, and Booyeembara Park to the south, and commonly known as the Fremantle Public Golf Course.”



C2205-1 SECTION 31 RECONSIDERATION - BRACKS STREET, NO. 90 (LOTS 241-260), NORTH FREMANTLE - DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES - (CS/CJ DA0440/21)

ADDITIONAL INFORMATION 1 – WAPC Plan No. 1.7977



ADDITIONAL INFORMATION 2 – City of Fremantle Heritage Assessment

Heritage Impact Assessment– DEMOLITION OF PLACE

Address: 90 Bracks Street, North Fremantle
Application number: DA0440/21
Proposal: Demolition of all buildings on site
Requesting officer: Catherine Sullivan
Date: 26/11/2021



90 Bracks Street, North Fremantle, Aerial photograph, CoF ESRI, February 2021



INTRODUCTION

The purpose of this heritage comment is to assess the changes to the place that are proposed in DA0440/21 and the affect that they will have upon the heritage values of 90 Bracks Street and the North Fremantle Heritage Area. The proposed changes include:

- Demolition of all existing buildings and structures

HERITAGE LISTINGS

State Register of Heritage Places

The place is not included on the State Register of Heritage Places – a referral to DPLH Heritage is **not** required.

Inherit

There is no place record for 90 Bracks Street, North Fremantle on the Inherit database.

The Inherit database number for the North Fremantle Heritage Area is 22385.

Heritage List

90 Bracks Street is NOT included on the City of Fremantle's Heritage List.

Heritage Area

90 Bracks Street is part of North Fremantle Precinct Heritage Area which was designated as a Heritage Area in accordance with clauses 7.2.1 and 7.2.9 of Local Planning Scheme No. 4.

Local Heritage Survey (formerly Municipal Heritage Inventory)

90 Bracks Street is not included on the Local Heritage Survey

RELEVANT PREVIOUS DEALINGS

Recent meetings or discussions:

- Site Visit – 16 November 2021

Previous relevant DAs:

- N/A

Previous relevant legal dealings:

- N/A



BACKGROUND

Historical Information

The North Fremantle area proper did not develop until after the arrival of the convicts in 1850. In 1851, Captain J. Bruce, commanding officer of the pensioner guards, was granted 150 acres in the area and allotments were surveyed and allocated to the pensioner guards, who accompanied the convicts. Other places associated with the Convict Establishment period include the North Fremantle Convict Depot (on site of fmr North Fremantle School, and North Fremantle Railway Station) and the construction of the Fremantle-Perth Road.

The Perth to Fremantle railway line opened in March 1881 offering a reliable route for goods to be moved in an era before roads dominated transport. The line ran through North Fremantle but on a slightly different alignment to the existing line with the original rail bridge over the Swan River located further west and the original North Fremantle Station located around 800m south of the current station.

With the impact of the goldrushes in the 1890s and 1900s and the huge growth in population and the increase in prosperity, North Fremantle began to develop as a residential area. However, with the construction of the Rocky Bay Quarries in 1892 and the completion of the Inner Harbour in 1897, there were also opportunities for the development of industry, trade and commercial businesses in North Fremantle. Since the first decades of the twentieth century, North Fremantle has functioned as a mixed residential and medium to light industrial area.¹

The railway corridor created a separation of the more coastal parts of the peninsula from the more estuarine land. Relatively large portions of land were taken up for Railway uses; stores, works, future expansion, etc. Most of this was on the ocean side of the main railway line. Harbour works also consumed large portions of land and the originally settled lots between Lilburn Road and Lukin Road were resumed for intended Harbour works.

The impact of the railway initially was to provide better communication and accessibility for people and goods however its location ultimately became a divisive element with a predominately industrial character established to the west on the sand dune topography of the coast. A predominately residential character was established to the east by subdivision of the original Pensioner Lots on the limestone hills and alluvial flats. The rapid residential and industrial development

¹ North Fremantle Heritage Study, 1993



coupled with the establishment of local government established a strong sense of local community and identity.

In the Gold-rush era industry developed with the establishment of the Fremantle Steam Laundry (1897), Burfords Soap factory (1905), Fergusons Timber Yard, Pearse Bros., yard, Victorian Galvanizing Iron Co., the Government Abattoirs at Port Beach (1907), Mount Lyall Mining Railway Company (later CSBP) and the State Engineering Works at Rocky Bay (1913). In the Inter-War era industrial development in North Fremantle was reflected in such landmark buildings as; The Great Southern Flour Mills (Dingo Flour), the Weeties factory, the Ford Factory, the Vacuum Oil Company, and the long, corrugated iron sheds along North Quay, Port Beach and Leighton Beach.

Aerial photographs taken in the 1930s record the industrial development west of the railway. The site that is now 90 Bracks Street is only partially developed with the large Massey-Harris Co. Ltd, industrial building with three gable roofs on the north side of the site together with a smaller freestanding gable roofed building and some small structures and railway spur lines on the south. The large oil terminal belonging to the Shell Oil Co. can be seen on both sides of Bracks Street to the south of 90 Bracks Street and the smaller Caltex Oil terminal is to the west.



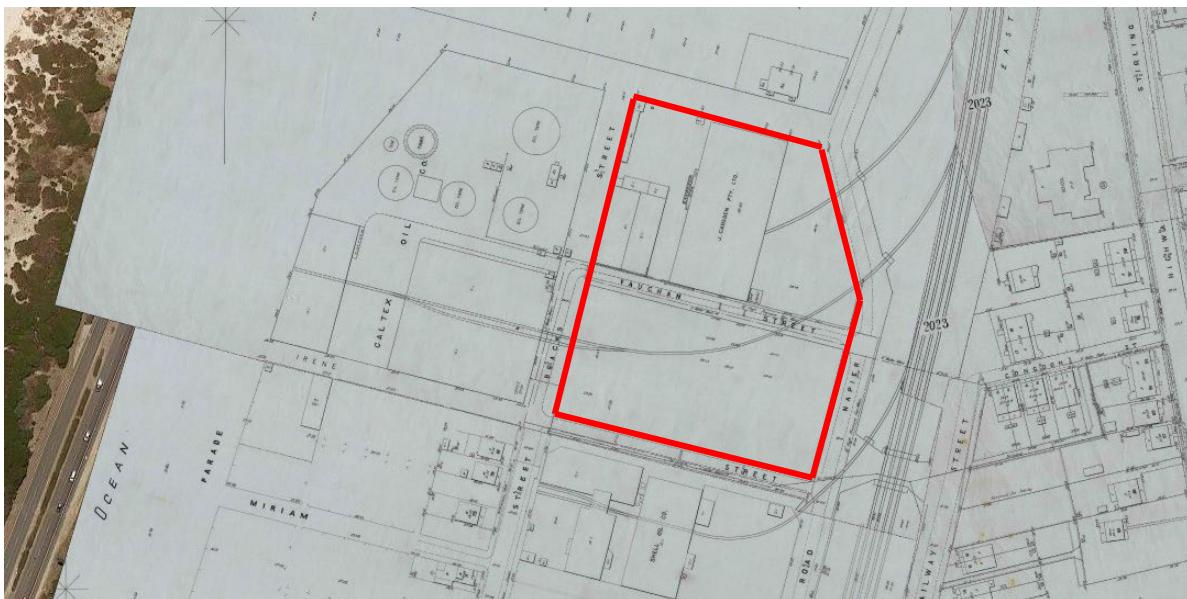
Shell Oil Co., North Fremantle, 1936. Gore, Stuart, 1905-1984. Illustrations Ltd. State Library of WA
Shell Oil Co. is in the top left of the photograph, 90 Bracks Street in the centre and Caltex is in the top right.

**Additional information – Ordinary Meeting of Council
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Shell Oil Co., North Fremantle, 1936. Gore, Stuart, 1905-1984. Illustrations Ltd. State Library of WA

90 Bracks Street is on the left-hand side.



Metropolitan Sewerage North Fremantle Municipality Sheet No. 2023, 1940



The earliest Metropolitan Sewerage plan for the site dates from 1940. This plan shows that 90 Bracks Street was originally bisected by Vaughan Street which ran east to west from Bracks Street to Napier Street. In the northern half of the site the large industrial building with three gable roofs is now named J. Gadsden Pty Ltd. The smaller building has been duplicated and a masonry façade has been added to the Vaughn Street side. The southern section of the site between Vaughan and Irene Streets is vacant. Spur lines from the railway serve J. Gadsden Pty Ltd, Shell Oil Co. and Caltex Oil.

The post-war era saw the construction of major infrastructure projects in and around Fremantle Port and the greater industrialisation of North Fremantle west of the railway. Between 1950 and 1965 Fremantle Port was modernised and upgraded under a new General Manager of the Fremantle Harbour Trust, F. W. E. Tydeman. Tydeman implemented a program of mechanisation, containerisation and expansion of the port. Works in the Inner Harbour were focused on North Quay which was developed for handling general cargo with the construction of the North Quay Transit Sheds, improved methods for handling grain, modification of berths for roll on roll off ships and the installation of seven new quay cranes.²

Port Beach Road was constructed in 1960 and land was acquired in North Fremantle to expand the port and to upgrade railway facilities. In 1959 the Leighton Marshalling Yards were constructed and in 1961 work commenced on the realignment of the railway and construction of a new rail bridge to allow north quay to be extended further eastward. Tydeman Road was constructed in the 1970s linking Port Beach Road to the new traffic bridge further upstream. These works gradually removed residential development east of the railway and by 1971 only one house was left to the west of the railway line.³

In 1961 J. Gadsden Pty Ltd moved from its premises in Vaughan Street, North Fremantle to the newly established industrial suburb of O'Connor. The firm continue to manufacture cans, mattresses, sheets and bags for packaging, canvas for tarpaulins and hatch covers for shipping. An aerial photograph of the site from 1965 shows that the site has been extensively redeveloped reaching close to its current configuration. New sheds have been constructed covering most of the southern and northern halves of the site and Vaughan Street has been incorporated into the site as an internal street and carpark.

² HCWA Register Entry, Victoria Quay, Fremantle, March 202

³ North Fremantle Heritage Study, 1993



Aerial photographs of the Shell bulk storage depot, 1/8/1978. Aerial Surveys Australia. State Library of WA



Detail of 1964 aerial photograph



The long period of port expansion and modernisation triggered by the agricultural and mineral booms of the 50s and 60s ended in the 1970s. In the 1980s and 1990s industry began to leave North Fremantle for industrial estates on the outskirts of the metropolitan area. The State Engineering works closed in 1987 followed by other businesses such as the Ford Motor Company, Harvest Road Iceworks, the Weeties factory, Bradford Insulation, Dillingham Shipyards, Precision Marine, Phillips and Joinery Works.⁴ The oil tanks on the west side of Port Beach Road were demolished in the 1990s.

In 2000 the State Government undertook a major project to redevelop the Leighton Marshalling Yards and industrial sites to the north of 90 Bracks Street. As a part of these works the railway was rationalised, Port Beach Road was relocated and a new area of medium density residential development was established centred around the relocated train station.

The oil tanks on the west side of Port Beach Road were demolished in the 1990s followed by most of the buildings of the former Caltex oil Installation at 85 Bracks Street in 2004 followed by the tanks in 2014. In 2017 most of the Shell oil terminal structures on the west side of Bracks Street were decommissioned and demolished including the fuel tank farm, oil tank farm, bitumen plant and workshop buildings. In 2021 applications have been approved to demolish all the oil terminal building east of Bracks Street including industrial buildings, structures, offices and laboratories. These buildings are gradually being removed.

Physical Description

90 Bracks Street is a roughly rectangular site bounded by Walter Place in the north, the Perth – Fremantle railway on the east, Irene Street on the south and Bracks Street on the east. Industrial buildings almost completely cover the site from boundary to boundary with the exception of small areas on the north-east and south east corners of the site and the vehicle access on Bracks Street which corresponds with the earlier Vaughn Street. The areas of site without buildings are all bituminised and fenced. The vehicle entry area off Bracks Street has a high face brick wall with wrought iron gates with the name C. H. Mann Pty Ltd worked in wrought iron.

All the buildings on this site date from.

Massey-Harris Co. Ltd Building (pre 1936)

Dating from the Inter-War period and associated with the Massey-Harris Co. Ltd, this is one of the earliest building on site. The building is roughly rectangular with

⁴ North Fremantle Heritage Study, 1993



three gable roofs running north to south. The north end of the building has retained its timber gable vents but the south end was modified when it was extending in the early 1960s. Aerial photos show that existing corrugated asbestos cement sheet roofing with matching verge capping, ventilators and ridge vents was installed in the early 1960s replacing earlier corrugated iron sheeting. The walls are clad with a dado of red, stretcher bond, face brick with corrugated steel sheeting with a trim deck profile above. This is not an original wall cladding and its use across the site suggests that it was replaced as part of a later project to upgrade the complex.

J. Gadsden Pty Ltd Building (1937 - 1939)

This building was built in two stages. The eastern half had been constructed by 1936 and the western half and the brick, south facing façade that unifies the two halves of the building had been constructed by 1940. The western façade is constructed from painted, red face brickwork. It is a late example of the Federation warehouse style and shows the influence of classical composition in the way that façade is modulated with expressed mass brickwork structural elements such as engaged piers, beams and entablature. Each half of the façade is divided into four bays by the engaged piers and each bay contains a 12 pane, steel windows. The façade has a parapet that conceals the corrugated steel sheet clad gabled roof. The façade has a small return on Bracks Street but most of this elevation the standard wall cladding with a dado of red, stretcher bond, face brick with corrugated steel sheeting with a trim deck profile above.

Irene Street Block West (c. 1954 - 1965)

This rectangular building has two gable roofs running parallel with Irene Street and one . It has the standard wall cladding with a dado of red, stretcher bond, face brick with corrugated steel sheeting with a trim deck profile above. Part of the building is clad with corrugated steel roof sheeting with a trim deck profile and part with the original corrugated asbestos cement sheeting. The Irene Street elevation has steel roller doors and horizontal format steel framed windows with obscured glass.

Irene Street Block East (c. 1954 - 1965)

This rectangular building has a brick front section with a parapet that conceals a low pitch roof. The façade is utilitarian with plain stretcher bond face brickwork, horizontal format windows and double doors. Behind the brick section is a steel framed shed with a corrugated asbestos cement sheet gable roof that runs perpendicular to Irene Street.

Corner Office (c. 1966 – 1974)

This narrow brick building wraps around the corner of Bracks and Irene Streets with a truncated corner. The building is utilitarian face stretcher bond brickwork



with horizontal format aluminium windows. The roof is concealed behind a parapet. Signage painted on the façade reads “Standard Wool Australia Pty Ltd”.

Current photographs of the complex are included as an appendix to this document.

HERITAGE IMPACT ASSESSMENT

Statement of Significance

North Fremantle is significant as a mixed residential and industrial area located to the north of the Swan River and adjacent to the Port of Fremantle with a history of European settlement dating back to the Pensioner Guards in the mid nineteenth century. The proposed demolition of 90 Bracks Street was assessed against the following values identified in the statement of significance for the North Fremantle Heritage Area:

Its connection with the Convict Establishment, convict built public works and the Pensioner Guards whose former Barracks and settlement were located in the area;	No discernible impact
its unique topography located between the river and the ocean which contributes to its unique character;	No discernible impact
its role in World War II defences with the establishment of the Leighton Battery;	No discernible impact
its concentration of mainly modest workers accommodation dating from the Federation and Inter-War periods together with some pockets of more substantial development around areas such as Brucetown;	No discernible impact
its focus on the industries relating to the Port of Fremantle, the railways and associated industries established in the area;	Minor impact
its former industrial character resulting from the former Leighton Marshalling Yards, State Engineering Workshops and other industries such as the Dingo Flour Mill, the Ford Motor Factory etc;	Minor impact
because of its association with boat building and the marine industry.	No discernible impact
its cultural diversity resulting from successive periods of migrant settlement in the area;	No discernible impact



its long connection with places of recreation including Leighton and Port Beaches together with the Swan River banks and beaches and the Gill Fraser Oval	No discernible impact
surviving natural landforms located at Cypress Hill and the cliffs and cave limestone formations of Rocky Bay together with remnant indigenous flora in these areas	No discernible impact

Heritage values

The impact of the proposed demolition of 90 Bracks Street on the North Fremantle Heritage Area was assessed using the following heritage values from the ICOMOS Burra Charter, 2013:

Aesthetic value	No discernible impact	Condition	No discernible impact
Historic value	Minor impact	Integrity	No discernible impact
Scientific value	No discernible impact	Authenticity	No discernible impact
Social value	Minor impact	Historical evolution	No discernible impact
Rarity	No discernible impact	Streetscape	No discernible impact
Representativeness	No discernible impact		

Heritage Comments

Demolition of any place requires careful consideration because it removes all of its heritage significance except for intangible historical and social values that are not dependent on physical fabric.

The Inter-War and Post War era industrial buildings at 90 Bracks Street have little heritage significance and do not contribute to a significant streetscape. Generally, these buildings are generic industrial buildings of the era with little aesthetic value or landmark quality.

The historic and social values of this place can be captured by recording the information collected as part of this assessment in Inherit as a Historic Record Only listing.

RECOMMENDATIONS:

The proposal to demolish 22 Bracks Street, North Fremantle is supported on heritage grounds as it does not contribute to the identified significance of the North Fremantle Precinct Heritage Area or meet the threshold for individual listing.

RECORD PHOTOGRAPHS - 2021



North east corner of the site viewed from Walter Place near the railway reserve.



North side of 90 Bracks Street facing Walter Place. The Inter-War era Massey-Harris Co. Ltd Building is in the middle of the photograph. The external wall and roof cladding were changed c. 1960s but the timber louvre vents to the gable ends have been retained. The lower gabled building to the left of the photograph dates from the 1960s.



The building on the corner of Walter Place and Bracks Street dates from the 1960s.



Bracks Street parapeted façade of the J. Gadsden Pty Ltd Building (1937 – 1939. This façade was modified in the 1960s.



Detail of brick façade to J. Gadsden Pty Ltd Building (1937 - 1939)



J. Gadsden Pty Ltd Building (1937 – 1939) to the left of the photograph with late 20th Century shed in the centre and 1970s Office on the right.



Detail of J. Gadsden Pty Ltd Building (1937 – 1939). This façade faced onto Vaughan Street which was incorporated into the site in the 1960s. Half of the façade is concealed within the adjacent building.



Detail of the steel framed windows to the J. Gadsden Pty Ltd Building (1937 – 1939).



Detail of steel gate incorporating the name " C. H. Mann Pty Ltd" facing Bracks Street.

**Additional information – Ordinary Meeting of Council
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Corner Office circa 1970s.

**Additional information – Ordinary Meeting of Council
25 May 2022**



South east corner of the site.



Detail of 1960s brick office to Irene Street.