



Agenda

Planning Committee

Wednesday, 3 March 2021, 6.00pm

CITY OF FREMANTLE
NOTICE OF A PLANNING COMMITTEE MEETING

Elected Members

A Planning Committee meeting of the City of Fremantle will be held on **Wednesday 3 March 2021** in the North Fremantle Community Hall, located at 2 Thompson Road, North Fremantle commencing at 6.00 pm.



Paul Garbett
Director Strategic Planning and Projects

26 February 2021

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CITY OF FREMANTLE
Planning Committee
Agenda

1. Official opening, welcome and acknowledgement

We acknowledge the Whadjuk people as the traditional owners of the greater Fremantle/Walyalup area and we recognise that their cultural and heritage beliefs are still important today.

2. Attendance, apologies and leaves of absence

Mayor, Dr Brad Pettitt – Leave of Absence

Cr Marija Vujcic - Apology

3. Disclosures of interests by members

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

4. Responses to previous questions taken on notice

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

5. Public question time

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

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

6. Petitions

Petitions to be presented to the committee.

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

7. Deputations

7.1 Special deputations

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

There are no special deputation requests.

7.2 Presentations

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

8. Confirmation of minutes

OFFICER'S RECOMMENDATION

The Planning Committee confirm the minutes of the Planning Committee meeting dated 17 February 2021.

9. Elected member communication

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

10. Reports and recommendations

10.1 Deferred items

PC2103-1 SOUTH STREET, NO. 2/398 (LOT 152) O'CONNOR - ADDITIONS (AQUAPONICS NURSERY) TO EXISTING RESTAURANT/TAVERN (TG DA0409/20)

Meeting Date:	3 March 2021
Responsible Officer:	Manager Development Approvals
Decision Making Authority:	Committee
Agenda attachments:	1. Development Plans
Additional information:	1. Site Photos

SUMMARY

Approval is sought for the addition of an aquaponics nursery facility, constructed from stacked sea containers at 2/398 South Street, O'Connor.

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

- Car Parking.
- Land use (Nursery).

The application is recommended for a temporary approval for five years.

PROPOSAL

Detail

Approval is sought for a two storey building constructed from sea containers to an existing Restaurant/Tavern at 2/398 South Street, O'Connor. The proposed works include:

- The addition of four sea containers of various sizes stacked and partially cantilevered over the existing car parking on site. The sea containers will feature window and door openings and covered in a vinyl wrap featuring graphics of green vegetation.
- Indicative signage advertising the business.

The subject building is proposed to be used as an aquaponics nursery, growing ingredients for the on-site 'Deebo's Burger' Restaurant/Tavern. The applicant has confirmed that there will be no public admission into the aquaponics building nor will any other sales of produce occur.

The applicant has provided the following description of the aquaponics operation. *Aquaponics is a combination of aquaculture and hydroponics. Aquaponics uses a hydroponics system to grow plants with the water supplied, together with the fish waste providing nutrients into the aquaculture system. In turn, the plants in the hydroponic system clear the water that goes back to the fish. The roots of the plants contain microbes which convert the fish waste into substances the plant can use to grow. The*

water is recycled in the closed system lowering the consumption of and wastage of water. Aquaponics provides a most sustainable method of providing plant and fish produce for human consumption.

Development plans are included as attachment 1.

Site/application information

Date received:	1 October 2020
Owner name:	ICIE Pty Ltd
Submitted by:	West Coast Plan
Scheme:	Local Centre
Heritage listing:	Not Listed
Existing land use:	Restaurant/Tavern
Use class:	Nursery
Use permissibility:	D



CONSULTATION

External referrals

Main Roads Western Australia (MRWA)

The application was referred to MRWA for comment as the site is adjoins land reserved for Primary Regional Road purposes (Category 3). MRWA have advised that they have no objection to the proposal subject to the following conditions and advice:

Conditions

1. *The landowner/applicant shall make good any damage to the existing verge vegetation within the South Street road reserve.*
2. *No earthworks are to encroach onto the South Street road reserve.*
3. *No stormwater drainage is to be discharged onto the South Street road reserve.*
4. *The ground levels on the South Street boundary are to be maintained as existing.*

Advice

- i. *During installation, the applicant is required to submit an application form to undertake works within the road reserve prior to undertaking any works within the road reserve. Application forms and supporting information about the procedure can be found on the Main Roads website > Technical & Commercial > Working on Roads.*

These matters can be dealt with as relevant conditions and advice notes per the officer recommendation.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the development sought discretion in relation to various aspects of the Scheme. The advertising period concluded on 11 November 2020, and eight (8) submissions were received. The following issues were raised (summarised):

- The addition will create noise, waste management, odours and light spill issues.
- The addition will impact the ability of drivers to safely enter South Street Plane Tree Grove by limiting sightlines and therefore have flow on effects for traffic congestion in the area.
- The addition is unsightly and will impact on the visual amenity of the entrance to the nearby residential area. The use of sea containers for the addition is inappropriate basis of their appearance.
- Consideration must be given to relocating the addition to a less prominent location behind the existing Deebo's Burger.
- The development did not conform to the 'particulars and condition and contract of sale of land at the Plane Tree Grove estate'.

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

- Noise from the building will be limited to the air conditioner unit, which will have no greater capacity than a typical residential system.
- The only waste will be unusable plant material which will be disposed of in the Restaurant/Tavern bins.
- There will be little odour from the operation, no more than that of a residential pond.
- There will be no external lighting of the facility, internal lighting will be left on at night to allow pedestrians to view the operation at night time.
- The site has an existing truncation to allow for sightlines for vehicles, South Street has a dedicated left turn lane which provides for adequate sightlines for the Plane Tree Grove intersection.
- The exit point from Plane Tree Grove is well set back from the subject site and the development will not impact sightlines for vehicles using this exit point.
- The development will not generate additional traffic.

- The design of the building is intended to provide a 'port themed' entry to the south eastern gateway of Fremantle. The building is intended to address Fremantle's context, and focus on sustainable food production.
- The intent of the building is to both provide for sustainable food production as well as promoting and celebrating this. The applicant noted that the relocation of the building to a less prominent location would also potentially block existing car parking bays.
- The Plane Tree Grove estate requirements do not affect the subject site.

The remaining comments are addressed in the officer comment below.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of Local Planning Scheme No. 4 and relevant Council local planning policies. Where a proposal does not meet a particular requirement, an assessment is made against the relevant discretionary criteria. In this particular application the areas outlined below do not meet the relevant Scheme or policy provisions and need to be assessed against discretionary criteria:

- Car Parking.
- Land use (Nursery).

The above matters are discussed below in addition to a number of matters relevant to the consideration of this application:

- Landscaping.
- Building height.
- Noise.
- Waste Management.

Background

The subject site is located on the corner of Plane Tree Grove and South Street, in O'Connor, with the development proposed to take place in the south east portion of the unusually shaped site. The site has a land area of approximately 3175m² and is currently occupied by several commercial enterprises, being the 'Salty Gnome Café' and 'Deebo's Burger & Beer Bar'. The café is located in an existing building in the car parking circulation area, and the Restaurant/Tavern is located in a larger building at the centre of the site. The subject site is otherwise generally flat and occupied by vehicle circulation spaces, landscaping, car parking and service areas.

The site is zoned Local Centre and has a density coding of Residential R80. The site is not individually heritage listed nor located within a Heritage Area. It is noted that access to some adjoining properties is provided across the subject site.

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

<i>Application</i>	<i>Detail</i>
DA649/07 – Partial change of use (Tavern)	This application approved the use of a portion the existing building at the centre of the site for use as a Tavern.
DA0031/11 – Drive through Coffee Shop (Fast Food outlet)	This application approved the construction of a drive through coffee shop in the southern portion of the site.
DA0603/11 – Temporary sales office	Sales office in the existing landscaped setback area at the corner of South Street and Plane Tree Grove.
DA0095/13 – Demolition of existing structures and construction of a four storey (27 Multiple Dwellings) Building, Shop, Office and Tavern	Construction of a four storey mixed use development to the south eastern corner of the site, in a similar location to the subject development.
DA0175/16 – Retrospective additions and alterations to existing Fast Food Outlet	Retrospective additions to fast food outlet approved under DA0031/11
DA0573/16 – Temporary sales office	Construction of sales office in the same location as that approved under DA0603/11.
ET06/17 – Extension of term for DA0095/13	Extension of term for mixed use development.

As noted above in relation to DA649/07, the City approved a portion of the building currently occupied by ‘Deebo’s Burger Bar’ for use as a Tavern, subject to conditions. The remainder of the building remained approved as a Restaurant land use. In this report the existing burger bar has been referred to as a Restaurant/Tavern.

It is noted that the 2017 application to extend the 2013 approval for the four storey mixed use development in the same area of the site expired in November 2019 and a further application would be required to pursue this development.

Land Use

Although the proposal is intended to supply the existing Restaurant/Tavern on site, officers considered the most appropriate land use definition in LPS4 for the proposed activity is a Nursery. A per the definition of LPS4, a Nursery is land and buildings used for the propagation, rearing and sale of plants, and the storage and sale of products associated with horticultural and garden décor.

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

- (a) *The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area*
- (m) *The compatibility of the development with its setting including the relationship of the development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development*

- (n) *The amenity of the locality including the following:*
- (i) *Environmental impacts of the development*
 - (ii) *The character of the locality*
 - (iii) *Social impacts of the development*
- (y) *Any submissions received on the application.*

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

- The proposed use is considered to contribute to the existing range of services available to residents of the locality as it will supply produce to the existing Restaurant/Tavern to be grown on site.
- The use is generally considered to be incidental to the existing businesses operating on the subject site in that the facility is to be used for growing ingredients by the existing burger Restaurant/Tavern and is not proposed to have any external customers visiting the site.
- With respect to the impact of the development on the amenity of the locality, it is considered that relevant matters such as waste management, noise and parking are appropriately addressed in accordance with the below considerations.

Car parking

The application does not propose to provide any additional car parking bays as a result of the addition nor does it propose to remove any of the existing car parking bays on the subject site. The addition has been considered against the car parking requirements for a Nursery under LPS4 as follows:

Element	Requirement	Proposed	Extent of Variation
Car parking	Restaurant/Tavern: 115	52 bays (existing)	Existing
	Fast Food Outlet: 3 bays	Nil	4 bays
	Nursery: 4 bays		
	Total:		
Delivery Bay	Restaurant/Tavern: 1	Restaurant & Tavern – As existing	Existing
	Fast Food Outlet: 1	Nil	1 bay
	Nursery: 1		
	Total: 3 bays		
Bicycle parking	Not applicable to Nursery land use	N/A	N/A

The proposal generates a requirement for an additional four (4) car parking bays on the subject site, where no additional bays are proposed. This 4 bay variation is considered to meet the discretionary criteria of LPS4 in the following ways:

- As per the above considerations, the operation of the proposed development is to be subservient to the operation of the existing Restaurant/Tavern on the subject site, with no customers accessing the development directly.
- The nursery has been located so as to retain all existing car parking on the subject site, and the applicant has confirmed that the facility will be managed by staff of the existing Restaurant/Tavern. This results in little practical car parking demand associated with the nursery as management will be handled by existing staff and no public access is proposed.
- The subject site is well served by public transport facilities, with bus services available on South Street.
- Due to existing access arrangements across the subject site, there is a degree of reciprocal parking between the subject site and adjoining properties in the Local Centre, resulting in some sharing of parking facilities.
- It is considered that any parking required for the nursery would generally be minor due to the self contained nature of the nursery and the lack of public access. The nursery is proposed to be operated as a part of the existing Restaurant/Tavern facility, and if it were considered an incidental part of this land use, no parking would be formally required under LPS4.

With respect to delivery management, it is considered that generally any occasional deliveries can be accommodated with the existing deliveries for the Restaurant/Tavern on site, the applicant has advised that generally aquaponics facilities act as closed systems with respect to waste, with much waste being recycled back into the aquaponics system. However it is noted that by locating the nursery so as to not disturb existing parking arrangements on site, the building would not be readily accessed for any occasional deliveries which may be required for the facility. On this basis, a condition is required to ensure that deliveries for the building can be appropriately managed through a delivery management plan.

Landscaping

The proposed addition is to be located over an existing area of landscaping on the subject site. The applicant submitted a landscaping plan on 9 December 2020 confirming that the development will continue to provide more than the minimum 5% landscaping requirement for the site.

Building height and Design

The proposed development complies with the applicable Local Centre building height requirement of 11 metres in accordance with Local Planning Scheme No. 4 Local Planning Area 8. It is noted that the O'Connor Local Planning Policy (3.8) specifies a lesser height requirement, but in cases where there is an inconsistency between a policy and the Scheme, the Scheme takes precedence (LPS4 cl. 4.3.1).

It is noted that the proposed building form and appearance is unique compared to the character of the immediate locality which is characterised by generally large, single storey commercial buildings containing traditional facades and shopfronts setback from

South Street. Residential development is located to both the north and south of the site, however these dwellings are separated by South Street (with their frontages facing internal streets away from the site) or located behind the existing commercial buildings located at the rear of the subject site.

Neither the Scheme or LPP specify particular design requirements for this locality, therefore its design, quality of materials and appearance has been considered on its individual merits. Having regard for the existing buildings on site, the site's location along a wide arterial road and on the corner of Plane Tree Grove being the entry to a residential estate, the building is considered acceptable for a temporary period until a more coordinated development proposal is considered for the site.

Given the above, it is considered appropriate to impose relevant conditions relating to the proposed finishes, signage and the term of the development.

Noise

The applicant has confirmed that the operation of the site will generally be quiet once established, with an air conditioner comparable to a residential system operating. On the basis of these notes, it is considered sufficient to note to the applicant the need to comply with the *Environmental Health (Noise) Regulations 1997* at all times.

Waste Management

The applicant has confirmed that generally once the nursery is established, waste from the premises will be limited to unusable plant material which is to be accommodated in the Restaurant/Tavern waste bins. On this basis it is not considered necessary to require the provision of a full waste management plan for the development.

Signage

The submitted plans and perspectives of the development show only indicative signage and finish details. It is recommended that the final detail of the signage be provided to the satisfaction of the City.

CONCLUSION

Whilst acknowledging the unusual built form of this proposal, it is considered that the development satisfies the general development requirements applicable to the subject site, and the proposed land use will contribute to the services already available on the subject site in the Local Centre Zone. On this basis it is considered that the development is appropriate for approval, subject to conditions.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE RECOMMENDATION ITEM PC2102-1
(Officer's recommendation)

Moved: Cr Andrew Sullivan

Seconded: Cr Doug Thompson

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Additions (Aquaponics Nursery) to existing Restaurant/Tavern at No. 2/398 South Street (Lot 152) O'Connor:

1. This approval relates only to the development as indicated on the approved plans, dated 1 October 2020. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. Notwithstanding Condition 1, the approved Aquaponic Nursery addition is to be removed from site five (5) years from the date of occupation and the site made good, to the satisfaction of the City of Fremantle.
3. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.
4. Prior to the issue of a building permit for the development hereby approved, storm water disposal plans, details and calculations must be submitted for approval by the City of Fremantle and thereafter implemented, constructed and maintained to the satisfaction of the City of Fremantle.
5. Prior to the issue of a Building Permit for the development hereby approved, plans for the location, materials and construction for screening of any proposed external building plant must be submitted to and approved to the satisfaction of the City of Fremantle.
6. Prior to the issue of a Building Permit for the development hereby approved, final details of the external colours and finishes and signage of the proposed development is to be submitted and approved to the satisfaction of the City of Fremantle.
7. Prior to the issue of a building permit for the development hereby approved, a delivery management plan is to be submitted and approved to the satisfaction of the City of Fremantle, including the following:
 - a. Delivery timing and frequency, and
 - b. Parking arrangements for delivery vehicles.The nursery shall operate in accordance with the approved delivery management plan thereafter. Any amendments to the delivery management plan shall be submitted to, and approved by the City of Fremantle prior to implementing any amended delivery management plan.

8. The landowner/applicant shall make good any damage to the existing verge vegetation within the South Street road reserve.
9. No earthworks are to encroach onto the South Street road reserve.
10. No stormwater drainage is to be discharged onto the South Street road reserve.
11. The ground levels on the South Street boundary are to be maintained as existing.
12. Prior to the issue of a Building Permit for the development hereby approved, a Construction Management Plan shall be submitted and approved, to the satisfaction of the City of Fremantle addressing, but not limited to, the following matters:
 - a) Use of City car parking bays for construction related activities;
 - b) Protection of infrastructure and street trees within the road reserve;
 - c) Security fencing around construction sites;
 - d) Gantries;
 - e) Access to site by construction vehicles;
 - f) Contact details;
 - g) Site offices;
 - h) Noise - Construction work and deliveries;
 - i) Sand drift and dust management;
 - j) Waste management;
 - k) Dewatering management plan;
 - l) Traffic management; and
 - m) Works affecting pedestrian areas.

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

13. All noise from the proposed development must comply with the requirements of the *Environmental Protection (Noise) Regulations 1997* (as amended), these noise sources may include but are not limited to:
 - a. mechanical service systems such as air-conditioners, motors, filters and aerators;
 - b. vehicle deliveries;The applicant is advised to seek the services of a competent acoustic consultant to assist the applicant to address the potential noise impacts on noise sensitive receivers.
14. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice note(s):

- i. A Building permit is required for the proposed Building Works. A certified BA1 application form must be submitted and a Certificate of Design Compliance (issued by a Registered Building Surveyor Contractor in the private sector) must be submitted with the BA1.
- ii. The applicant is advised that this approval does not permit any signage not related to the Aquaponic activity. Local Planning Policy 2.14 does not permit any third part signage for general advertising purposes.
- iii. The proposed development shall comply with the requirements of the City of Fremantle Health Local Laws with particular attention to odour.
- iv. All wastewater from the site shall be suitably disposed of in accordance with the City's Health Local Laws and Water Corporations Trade Waste Department.
- v. The premises must comply with the requirements of the Food Act 2008, regulations and the Food Standards Code.
- vi. During installation, the applicant is required to submit an application form to undertake works within the road reserve prior to undertaking any works within the road reserve. Application forms and supporting information about the procedure can be found on the Main Roads website > Technical & Commercial > Working on Roads.
- vii. The applicant/owner is advised that the premises must comply with the Environmental Protection (Noise) Regulations 1997.
- viii. In regard to the condition requiring a Construction Management Plan, Local Planning Policy 1.10 Construction Sites can be found on the City's web site via <http://www.fremantle.wa.gov.au/development/policies>.
A copy of the City's Construction and Demolition Management Plan Proforma which needs to be submitted with building and demolition permits can be accessed via:
<https://www.fremantle.wa.gov.au/sites/default/files/Construction%20and%20Demolition%20Management%20Plan%20Proforma.pdf>
The Infrastructure Business Services department can be contacted via info@fremantle.wa.gov.au or 9432 9999.
- ix. In regard to condition 2 if the temporary development is to continue beyond the approved 5 year period, the applicant may submit a separate application for Planning Approval to continue the development/use. The applicant is encouraged to lodge any such application three months (minimum) prior to the expiry of the approval and include details as to whether any part of the development site has been altered since its original approval.

LOST: 4/8

For

Cr Jenny Archibald, Cr Frank Mofflin, Cr Doug Thompson, Cr Bryn Jones

Against

Cr Su Groome, Cr Geoff Graham, Cr Hannah Fitzhardinge,

Cr Sam Wainwright, Cr Marija Vujcic, Cr Andrew Sullivan,

Cr Rachel Pemberton, Cr Adin Lang

Cr Andrew Sullivan noted, as the motion was LOST, the item will be REFERRED to the next Planning Committee meeting for further consideration of terms for a refusal motion, to be prepared by officers.

ADDITIONAL OFFICER COMMENT

Following the decision of Council at its meeting held on 24 February 2021, the following wording is suggested as a reason for refusal, should the Planning Committee be of the view that the application should not be supported.

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Additions (Aquaponics Nursery) to existing Restaurant/Tavern at No. 2/398 South Street (Lot 152) O'Connor as detailed on the plans dated 1 October 2020, for the following reason:

1. The proposal is inconsistent with clauses 67(m) and 67(n) of the *Deemed Provisions* as the development is not compatible with the existing or desired future character of the locality and will adversely impact on the amenity of the locality by virtue of its siting, scale, design and materials.

10.2 Committee delegation

PC2103-2 KEEL PLACE, NO. 4 (LOT 51), NORTH FREMANTLE - THREE STOREY SINGLE HOUSE AND ANCILLARY DWELLING (TG DA0166/20)

Meeting Date: 3 March 2021
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1. Amended development plans
Additional information: 1. Refused development plans
 2. Original Officers Report
 3. Site photos
 4. Applicant supporting information

SUMMARY

Approval is sought for a three storey Single house with an internal Ancillary dwelling at 4 Keel Place, North Fremantle.

The original proposal was referred to the Planning Committee (Committee or PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval.

The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- Building height (external wall)
- Visual privacy (north west)
- Lot boundary setbacks (north west, south east)
- Boundary walls (north west, north east, south east)

At its meeting on 4 November 2020 the Planning Committee resolved to:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, three storey Single house and Ancillary dwelling at No. 4 (Lot 51) Keel Place, North Fremantle, as detailed on plans dated 14 September 2020, for the following reasons:

- 1. The proposal is inconsistent with the requirements of the City of Fremantle Local Planning Scheme No. 4 in respect to building height requirements of Local Planning Area 3, sub area 3.3.1 and does not satisfy the discretionary criteria of clause 4.8.1.***

The applicant appealed this decision to the State Administrative Tribunal (SAT). The parties were invited to participate in SAT mediation. Following the mediation the SAT issued a directions notice inviting the City to reconsider an amended proposal submitted to the City by the applicant on 10 February 2021. The amended proposal includes a reduction in area, roof form and materials of the roof terrace

additional and minor alterations to the second floor. This amended proposal is the subject of the current report.

In the view of Officers, the amended proposal does not satisfy the discretionary criteria for building height and the application is recommended for refusal for the same reasons as the original submission. If the amended plans address the Committee's concerns relating to the height of the development and the potential impacts on the neighbours and the locality, an alternative recommendation for the approval of the development is provided in this report.

PROPOSAL

Detail

Approval is sought for a three storey dwelling and ancillary dwelling to an existing vacant site at 4 Keel Place, North Fremantle. The proposed works include:

- Ground floor:
 - Double garage and store.
 - Self contained guest room/ancillary dwelling.
 - Kitchen/dining/living room.
 - Gazebo and pool.
- Upper floor:
 - Three bedrooms.
 - Family Room.
 - Three bathrooms.
 - Study.
 - Balcony.
- Terrace:
 - Terrace room.
 - Balcony.

Following SAT Mediation, the applicant submitted amended plans on 10 February 2020 including the following amendments:

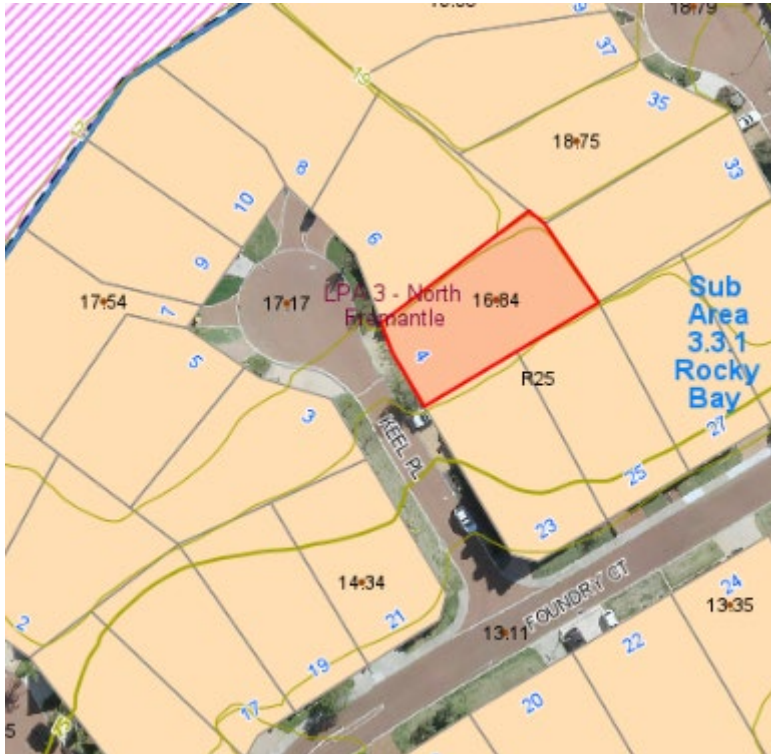
- A 0.7m reduction in the wall height of the north west elevation of the upper floor terrace.
- Change terrace roof from concealed roof to skillion roof.
- Changes to building materials.
- Reduction in internal terrace area from 17.5m² to 14.4m².
- Reduction in terrace width from 9.4m to 8.3m.
- Increase second floor wall height from 5.9m to 6.6m to reduce height of upper floor terrace wall above as viewed from the neighbouring property.

Amended development plans are included as attachment 1.

Site/application information

Date received:	19 May 2020
Owner name:	P Ridley and S Ridley
Submitted by:	Bellagio Homes
Scheme:	Residential R25
Heritage listing:	North Fremantle Heritage Area

Existing land use: Vacant Site
 Use class: Single house
 Use permissibility: P



CONSULTATION

External referrals

Nil required.

Community

The original application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the proposal included elements which varied deemed-to-comply criteria of the R-Codes. The original officers report (Additional Documents Attachment 2) details the comments received by the City during this process.

It is noted that in accordance with Council Policy 1.4, Applications for Review of Town Planning Decisions and Written Directions the submitters were notified of the application to Appeal the Committee’s decision to refuse the application. On the direction of the SAT, the City extended an invite to the Submitters to attend the commencement of the Mediation in order to express their views on the proposal to the SAT Member. It is noted that neither submitted accepted this offer. In accordance with Council Policy LPP1.3, the amended plans were not required to be re-advertised.

OFFICER COMMENT

Statutory and policy assessment

The amended plans have been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. The original officers report (Additional Documents Attachment 2) details the visual privacy and setback assessment, with the changes to building height discussed below.

Background

The subject site is located on the Keel Place cul-de-sac head. The site has a land area of approximately 509m² and is currently vacant. The site is zoned Residential and has a density coding of R25. The site is not individually heritage listed but is located within the North Fremantle Heritage Area.

The site is generally flat and is identified as being bushfire prone in accordance with DFES mapping. As the proposal is exempt from compliance with the requirements of State Planning Policy 3.7, which relates to development on bushfire prone land, the development response to potential bushfire risk is to be addressed through the building permit process.

A search of the property file has revealed no relevant history for the site, however it is noted that the site was established in the 1990s as a part of the overall development of the Rocky Bay estate and has been left vacant.

The original application was referred to the PC at their meeting on 5 August 2020, where they resolved to:

Refer the application to the Administration with the advice that the Planning Committee is not prepared to grant planning approval to the application for the construction of two storey Single house at No. 4 (Lot 51) Keel Place, North Fremantle based on the current submitted plans, and invite the applicant, prior to the next appropriate Planning Committee meeting, to consider amending the proposal to reduce the scale of the development, particularly the height of the building in order to minimise the adverse impacts on the amenity of the adjoining properties and the locality.

The applicant submitted amended plans which were presented to the November 2020 Planning Committee meeting where committee resolved to:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, three storey Single house and Ancillary dwelling at No. 4 (Lot 51) Keel Place, North Fremantle, as detailed on plans dated 14 September 2020, for the following reasons:

- 1. The proposal is inconsistent with the requirements of the City of Fremantle Local Planning Scheme No. 4 in respect to building height requirements of Local Planning Area 3, sub area 3.3.1 and does not satisfy the discretionary criteria of clause 4.8.1.*

The applicant subsequently appealed this decision to the State Administrative Tribunal and the matter was referred for mediation between the City and the applicant's representatives on 21 January 2021. Following the mediation the SAT issued a directions notice inviting the City to reconsider an amended proposal. This amended proposal is the subject of the current report. The City is invited to reconsider its decision

to refuse the application on or before 24 March 2021 pursuant to section 31 of the State Administrative Tribunal Act 2004.

Building Height (External Wall)

Element	Requirement	Proposed	Extent of Variation
Wall height – LPS4 sub area 3.3.1	7m	8.2m (low side of skillion) 9.2m (high side of skillion)	1.2m (low side) 2.2m (high side)

The amended plans submitted by the applicant reduce the height of the wall adjacent to the north west boundary by ~0.4m, while increasing the opposite side of the terrace to create a skillion roof form, the difference between the elevation of the current plans and the refused plans is shown below:

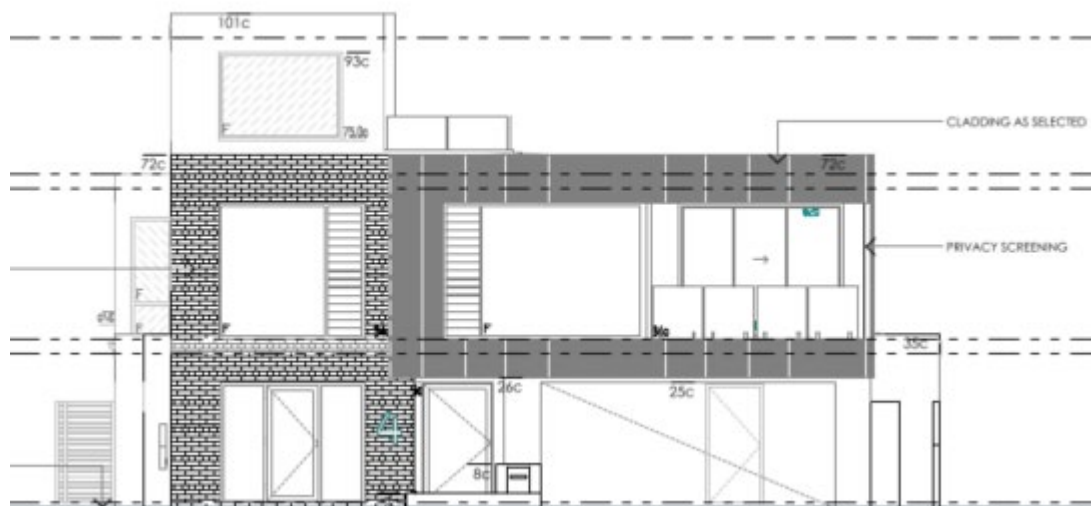


Image 1: Street elevation of the Refused Application

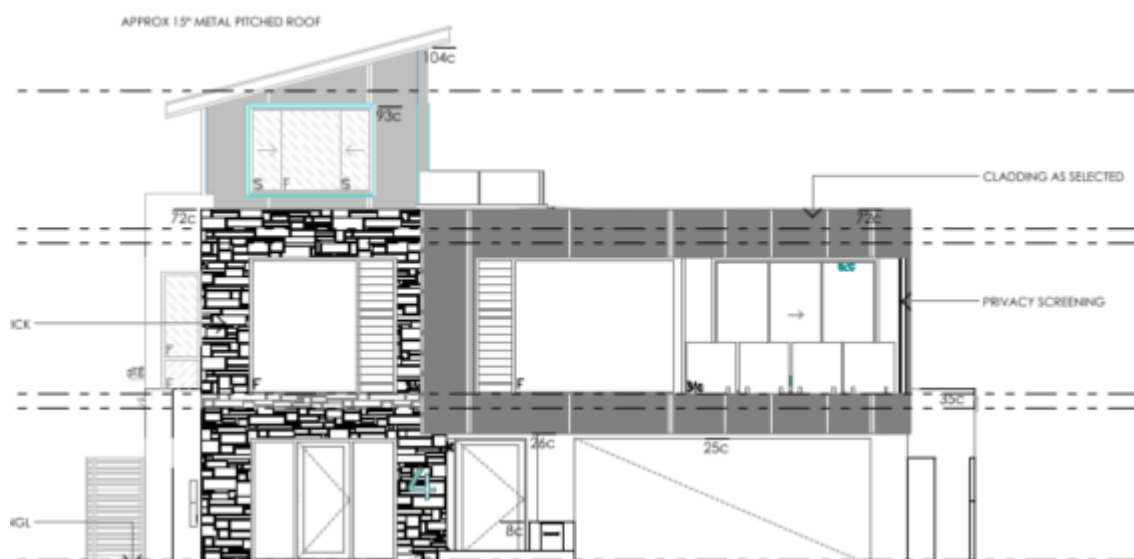


Image 2: Street elevation of the Amended Application

In accordance with clause 4.8.1 of LPS4, the City is able to consider variation to height requirements in cases where a site is adjoining or adjacent to a building which depicts a height greater than the specified heights. In this case, the properties in the immediate area generally comply with the LPS4 height requirement, with the exception of 3 Keel Place, which exhibits a tower element which was approved with the dwelling in 1997 to a wall height of approximately 8.2 metres. Accordingly, the City is able to consider a variation to the maximum height requirement if all of the following criteria are considered to have been satisfied.

Officers are of the view that although the amended plans may reduce the amenity impacts on the neighbour to the north-west, the plans do not significantly alter the officers assessment against 4.8.1.1 of LPS4, as detailed below:

LPS4 - 4.8.1.1	Applicant Response	Officer Comment
<p>a) The variation would not be detrimental to the amenity of adjoining properties or the locality generally.</p>	<ul style="list-style-type: none"> • The proposal is consistent with the context of the area with a number of properties along Foundry Court and Keel Place having 3rd floor lofts, storeys and/or outdoor terraces. • The outdoor terrace is sufficiently setback from the adjoining properties outdoor living areas to minimise noise impacts. • The outdoor terrace will not obstruct views from No. 6 Keel Place. • The outdoor terrace will not impact on the streetscape. 	<p>It is noted that the amended plans attempt to minimise the bulk and scale impact of the 3rd floor to the neighbour the north-west. The increase to the wall height of the 2nd floor and the change in roof form of the 3rd help reduce the visual bulk of the dwelling as viewed from the neighbour to the north-west. It is also noted that the addition will not be highly visible from Keel Place immediately in front of the dwelling, however it is likely to be visible from other view points along Keel Place.</p> <p>Notwithstanding the above, officers remain of the view that the additional height may limit views for properties to the north and west unnecessarily contributes to a bulky appearance for the subject dwelling as viewed from other adjoining properties nothing that in accordance with the Rocky Bay Estate design guidelines (LPP N9), generally two storey development is expected to be developed.</p>
<p>b) degree to which the proposed height of external</p>	<ul style="list-style-type: none"> • The modified roof form results in a 'stepping' down of the building in line with the 	<p>The amended proposal does not alter the officers assessment in regard to how</p>

<p>walls effectively graduates the scale between buildings of varying heights within the locality.</p>	<p>topography.</p> <ul style="list-style-type: none"> • The 3rd floor is minor in scale and its size has been reduced to offset any impacts. • The scale is considered to be a better solution than a pitched roof. 	<p>effectively the height of the proposed development graduates the scale between the varying heights in the locality.</p> <p>Based on a review of the properties in the immediate area of the subject site, only one building exceeds the relevant building height requirements, being the tower element to the dwelling at 3 Keel Place. It is noted that a few properties, typically along the north-west side Foundry Court facing the river feature a loft with dormer style terrace. These elements are noted, however it is considered that these elements are better integrated into the built form of these properties and read as smaller roof elements integrated into the roof of the dwelling rather than an additional storey of the dwelling.</p> <p>It is considered that the proposed dwelling does not effectively graduate the height and scale of the dwelling at 3 Keel Place, with the varying complying heights in the immediate locality for the following reasons:</p> <ul style="list-style-type: none"> • The proposed upper floor terrace is higher than the height of the 3 Keel Place tower element. • The 3 Keel Place tower element is a minor element which is located to the centre of this lot. The proposed terrace forms a much larger element. • The two properties are separated by the Keel
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		Place road reserve.
c) conservation of the cultural heritage values of buildings on-site and adjoining.		No adjoining sites are individually identified on the City's heritage list.
d) any other relevant matter outlined in Council's local planning policies.		Local Planning Policy N9 contains criteria relevant to the assessment of building height. A further assessment against these criteria is carried out below.

In accordance with LPS4 4.8.1 (d), consideration is to be given to clauses of relevant local planning policies relating to building height:

Local Planning Policy Design Guideline N9 Rocky Bay Estate (Former State Engineering Works Site)	Applicants Response	Officer Comment
7.3b – "...Council will have consideration to river views and vistas between buildings and the roofscapes that affect those vistas..."	<ul style="list-style-type: none"> The 3rd floor is centrally located. It is considered that the proposal minimises the impacts that a ridge roof would create. 	As per the comments above, the proposal my impact on some views from the north and west, however it is noted that the additional storey is generally located at the centre of the subject lot, to minimise the impact on views across the rear setback area of the subject site.
<p>7.3d – The development plan outlines a 7.0m wall height or 10m roof height limit and therefore a two storey limit will be generally applied to the design of houses.</p> <p>Development of residences more than two storeys is not generally supported unless particular site characteristics or the individual design indicate that this form of development can be constructed in a manner that will have no unacceptable impact upon the amenity of the locality and adjoining</p>	<ul style="list-style-type: none"> The discretion is considered minor. The 3rd floor primarily faces 6 Keel Place which has no major openings on its eastern side. The amended material palette is more representative of the locality with the 3rd floor 'softened' to reduce its bulk. 	<p>See discussion above with respect to building height. The topography of the site is generally flat, with no site characteristics resulting in a need to exceed the height requirements applicable to the site.</p> <p>As noted above, the amended proposal attempts to minimise the bulk and scale impact of the 3rd floor to the neighbour the north-west, however it is still considered to unnecessarily contribute to a bulky appearance for the subject dwelling as viewed</p>

properties, and within the indicated height limits.		from other adjoining properties and within the locality.
7.5c/d – In assessing the impact of development the Council will pay particular attention to whether the proposed development is sympathetic to the streetscape and the scale and character of the locality and the amenity of the locality.	<ul style="list-style-type: none"> The dwelling and the proposed height will not undermine the streetscape. 	Generally it is considered that the character of the immediately adjoining dwellings is two storey, with the exception of the minor tower element to 3 Keel Place.

Based on the above assessment, the discretionary criteria of LPS4 are not considered to be satisfied with respect to the height of the building. Accordingly, the application is recommended for refusal. The amendments made by the applicant to are noted, however the reasons for recommending the refusal of the development above remain relevant.

Should the Planning Committee consider that the development as amended satisfies their concerns in relation to the impacts on the amenity of adjoining properties and the locality, an alternative recommendation including relevant conditions of approval is provided as follows:

Alternative approval recommendation

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Three storey Single House and Ancillary Dwelling at No. 4 (Lot 51) Keel Place, North Fremantle, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 10 February 2021. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. Prior to the occupation of the development hereby approved, vehicle crossovers shall be constructed to the City's specification and thereafter maintained to the satisfaction of the City of Fremantle.**
- 4. Prior to the issue of a building permit for the development hereby approved, the property driveway is to taper from garage to the street at a maximum rate of 1:5, and be a maximum width of 4.5 metres at the front property boundary, and thereafter maintained to the satisfaction of the City of Fremantle.**

5. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the study window located on the north west elevation and the side of the balcony located on the south east elevation, is to be screened in accordance with Clause 5.4.1/6.4.1 C1.1 of the Residential Design Codes by either:
 - a) fixed obscured or fixed translucent glass to a minimum height of 1.60 metres above internal floor level, or
 - b) fixed screening, with openings not wider than 5cm and with a maximum of 25% perforated surface area, to a minimum height of 1.60 metres above the internal floor level, or
 - c) a minimum sill height of 1.60 metres above the internal floor level,Prior to occupation of the development hereby approved, the approved screening method shall be installed and maintained to the satisfaction of the City of Fremantle.
6. Prior to occupation of the development hereby approved, the boundary wall located on the north east, north west and south east boundaries shall be of a clean finish in any of the following materials:
 - coloured sand render,
 - face brick,
 - painted surface,and be thereafter maintained to the satisfaction of the City of Fremantle.
7. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.
8. The applicant shall replace the existing Agonis verge tree with a new replacement tree of a species chosen by the City of Fremantle of a minimum pot size of 150 litres. The replacement tree shall be planted to the left hand side of the property verge. The replacement tree is to be watered and maintained for a minimum of two (2) years by the landowner. The cost of the removal of the existing tree and the planting of the replacement tree is to be the responsibility of the applicant/landowner.
9. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice notes

- i) A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.
- ii) The applicant is advised that a crossover permit must be obtained from the City's Engineering Department. New/modified crossover(s) shall comply with the City's standard for crossovers, which are available on the City of Fremantle's web site.

- iii) **Levels at the property boundary including any driveways and pedestrian access points shall match existing footpath.**

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Planning committee acting under delegation 1.1:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, three storey Single house and Ancillary dwelling at No. 4 (Lot 51) Keel Place, North Fremantle, as detailed on plans dated 10 February 2021, for the following reasons:

- 1. The proposal is inconsistent with the requirements of the City of Fremantle Local Planning Scheme No. 4 in respect to building height requirements of Local Planning Area 3, sub area 3.3.1 and does not satisfy the discretionary criteria of clause 4.8.1.**

PC2103-3 CADD STREET NO.7B (LOT 250), BEACONSFIELD - TWO STOREY SINGLE HOUSE (JL DA0488/20)

Meeting Date: 3 March 2021
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1. Amended Development Plans
Additional information: 1. Site Photos

SUMMARY

Approval is sought for a two storey Single house at 7b Cadd Street, Beaconsfield.

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

- Boundary walls (south)
- Lot boundary setback
- Building height
- Garage width
- Visual privacy

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a two storey dwelling to an existing vacant lot at 7b Cadd Street, Beaconsfield. The proposed works include:

- Ground floor
 - Double garage.
 - Laundry and powder room.
 - Combined Kitchen, Lounge and Dining Room.
 - Rear outdoor living area
- Upper floor
 - Three bedrooms
 - Bathroom and ensuite.
 - Sitting room,
 - Study

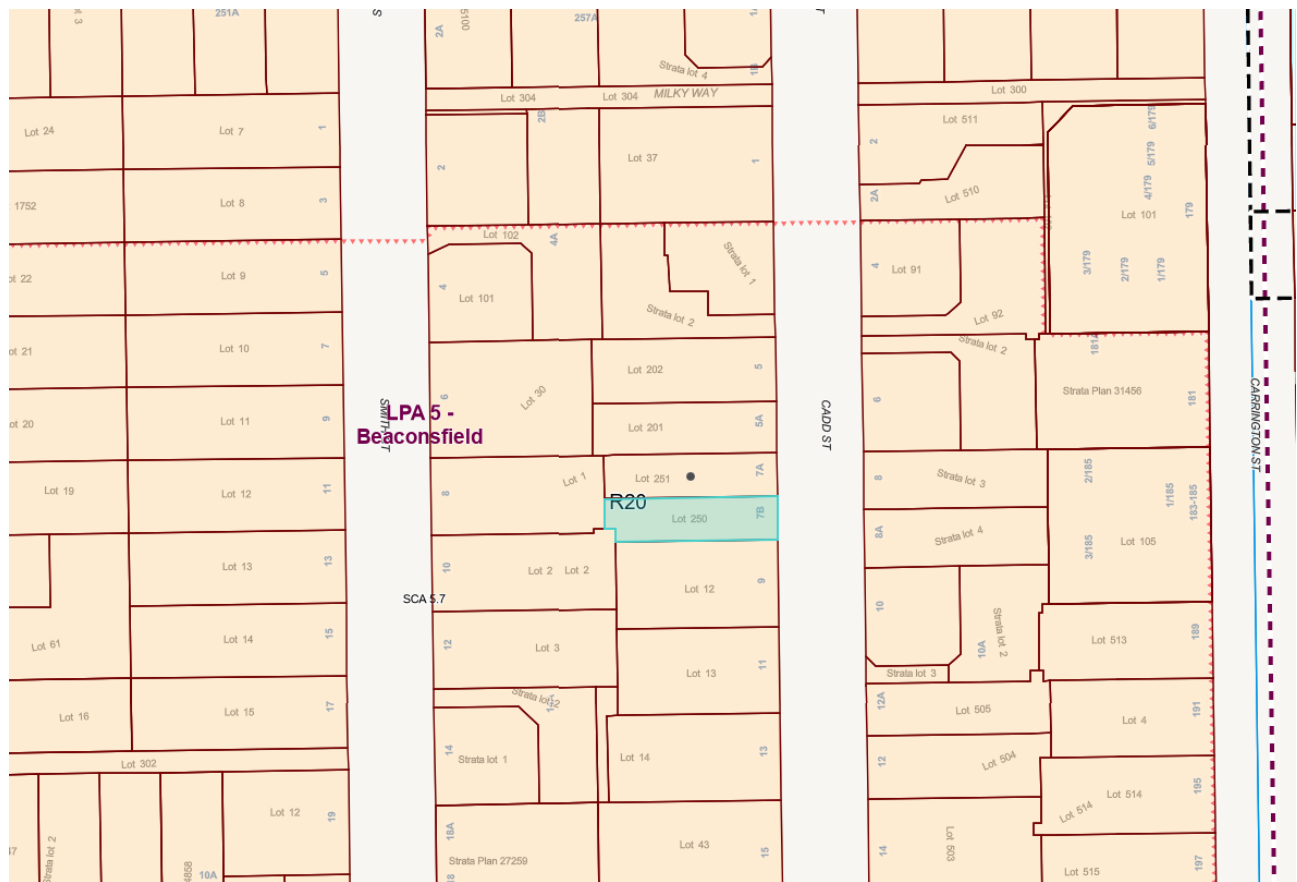
In response to Officer comments, the applicant submitted amended plans including the following changes:

- Increasing the primary street setback to meet the requirements of LPP 2.9
- Reducing the height of the upper floor to be less than 7m and increasing the setback of the master bedroom on the upper floor.

Amended development plans are included as attachment 1.

Site/application information

Date received: 9 November 2020
 Owner name: WA Property Developers
 Submitted by: C. Ahern and S. Neeling
 Scheme: Residential R20
 Heritage listing: Not listed
 Existing land use: Vacant
 Use class: Single house
 Use permissibility: P



CONSULTATION

External referrals

Nil required.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the development sought to vary relevant statutory requirements applicable to the development. The advertising period concluded on 10 December 2020, and one (1) submission was received stating that they have no concern to with the location of the boundary wall, the ground level southern boundary setback or the proposed garage width however the following objections were raised (summarised):

- The external fence is to be properly finished to ground level.
- The asbestos fencing is to be removed.
- Object to reduced side setback as it will result in additional building bulk and overshadowing to the southern property.
- The height of wall will result in visual building bulk, increase overshadowing to property and northern aspect of site. A window to a habitable room on the northern façade of the dwelling will be impacted by overshadowing. The shade cast by the development will impact future development opportunities for the site. Request that upper floor be flipped so high side of skillion is to north.
- Stormwater concerns to Cadd Street

In response to the above, officers can provide the following comments:

- The finish of the boundary wall will be conditioned to ensure it is of a clean and acceptable finish as viewed from the neighbouring property.
- Appropriate advice notes have been included regarding dividing fences.
- The applicant submitted amended plans reducing the height of the building and increasing the setback of a portion of the southern boundary wall to comply with the relevant setback requirements of the R-Codes.
- A condition is recommended to ensure storm water is retained on the subject site.

OFFICER COMMENT

Statutory and policy assessment

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

- Boundary walls (south)
- Lot boundary Setback (south)
- Building height (Wall height)
- Garage width
- Visual privacy (south)

The above matters are discussed below.

Background

The subject site is located on the western side of Cadd Street in Beaconsfield. The site has a land area of approximately 396m² and is currently vacant. The site is zoned Residential and has a density coding of R20. The site is not individually heritage listed nor located within a prescribed Heritage Area. The site is east-west orientated and has a sloping topography of approximately 2.5m front to rear of site.

A search of the property file has revealed no relevant history, with no proposals being made to develop the site until the subject application. Subdivision of the parent property to create the subject site was approved by the WAPC in 2017.

Boundary wall

Element	Requirement	Proposed	Extent of Variation
South (Garage)	1m	Nil	1m

The proposed boundary wall is considered to meet the Design Principles of the R-Codes and the additional criteria of LPP 2.4 in the following ways:

- The wall abuts a carport structure used for caravan storage on the neighbouring property and a water tank, minimising the building bulk impact to the neighbour.
- The wall is of limited length and height being 6m long and 2.84m high, minimising the impact in respect to shade over the neighbouring property.
- The wall introduces no additional privacy impact to the neighbour as a non habitable space.
- The use of a boundary wall is considered an effective use of space on the subject lot particularly given its narrow frontage
- By setting back the building, the boundary wall element has been removed from the streetscape, being set back in accordance with adjoining dwellings. This is considered to be a positive outcome with respect to the wall integrating with the established streetscape.

Lot boundary setback

Element	Requirement	Proposed	Extent of Variation
South (Ground floor Laundry, Kitchen and living room wall Wall)	1.5m	1.45m	50mm

The proposed reduced setback to the ground floor on the southern boundary is considered to meet the Design Principles of the R-Codes in the following ways:

- The 50mm reduced setback is not considered to impose any additional building bulk, with the 2.7m high ground floor considered to be of limited bulk impact, due to it being of low height.
- Any openings facing this boundary are either non major openings or sufficiently screened by a standard dividing fencing.
- With respect to the shade cast by the building, this falls over a neighbouring service yard/water tank area to the site, minimising any shade impact.

Building height

Element	Requirement	Proposed	Extent of Variation
External Wall	6m	6.9m	900mm
Roof Ridge	9m	7.1m	Nil

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

- The application proposes a skillion roof. The proposed roof form, while above the external wall limit is significantly below the height of a deemed-to-comply pitched roof (9m) and is considered to be of less bulk and scale;
- The orientation of the land means the additional height has limited impact on access to light to adjoining properties noting that the proposal complies with the maximum percentage of overshadowing permitted over the adjoining site;
- There are no views of significance apparent in the locality; and
- The proposal presents as a two storey building, which is the clear intent of this design element of the R-Codes.

Garage Width

Element	Requirement	Proposed	Extent of Variation
Width of garage and supporting structures	50% of frontage	60% of frontage	10% (0.62m)

The proposed garage width is considered to meet the Design Principles of the R-Codes in the following ways:

- The garage dominance is mitigated through the location of the upper floor above and in front of the garage door;
- The front door is clearly visible thereby appropriately retaining visual connectivity with the streetscape.
- Were the ground floor setback increased 10cm to be 1m behind the upper floor the proposal would comply fully.

Visual Privacy (South)

Element	Requirement	Proposed	Extent of Variation
Master Bedroom (East)	4.5m	3m	1.5m

This window is considered to meet the design principles of the R-Codes in the following ways:

- The degree of overlooking is oblique towards the south and overlooks only the established front yard area of the adjoining property which based on street photos is not currently afforded particular privacy due to the low fencing to the street.

CONCLUSION

In accordance with the above assessment, the proposed dwelling is considered to satisfy the relevant development requirements applicable to the site and is therefore recommended for approval, subject to conditions.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Planning committee acting under delegation 1.1:

APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Two Storey Single House at No. 7B Cadd Street (Lot 250), Beaconsfield subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans, dated 20 January 2021. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. Prior to the occupation of the development hereby approved, vehicle crossovers shall be constructed to the City's specification and thereafter maintained to the satisfaction of the City of Fremantle.**
- 4. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.**
- 5. Prior to the issue of a building permit for the development hereby approved, the property driveway is to taper from garage to the street at a maximum rate of 1:5, and be a maximum width of 4.5 metres at the front property boundary, and thereafter maintained to the satisfaction of the City of Fremantle.**
- 6. Prior to occupation/ use of the development hereby approved, the boundary wall located on the southern boundary shall be of a clean finish in any of the following materials:**
 - coloured sand render,**
 - face brick,**
 - painted surface,****and be thereafter maintained to the satisfaction of the City of Fremantle.**
- 7. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.**

Advice notes

- i) **The applicant is advised that a crossover permit must be obtained from the City's Engineering Department. New/modified crossover(s) shall comply with the City's standard for crossovers, which are available on the City of Fremantle's web site.**
- ii) **A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.**
- iii) **Fire separation for the proposed building works must comply with Part 3.7 of the Building Code of Australia.**
- iv) **Levels as per existing footpath and/or ROW**
 - **Levels at the property boundary including any driveways and pedestrian access points shall match existing footpath and/or right of way levels;**
 - **Any adjustment in levels is to be achieved within the property boundaries;**
 - **Details of all existing and proposed levels to be shown in the submitted working drawings for a building permit, to show that existing footpath levels are maintained.**
- v) **Minimum floor level to be road reduced level plus kerb height (150 mm) plus 2% slope towards to the property boundary. All levels are to be in AHD.**
- vi) **The floor level of any new structure capable of being occupied is to be a minimum of above 150 mm plus 2% slope towards to the property boundary. Basement car parks and similar areas may be permitted below this level if the structure and any access to the structure is tanked to a level of above. Please contact the Infrastructure Business Services department via info@fremantle.wa.gov.au or 9432 9999.**
- vii) **Any removal of asbestos is to comply with the following –**

Under ten (10) square metres of bonded (non-friable) asbestos can be removed without a license and in accordance with the *Health (Asbestos) Regulations 1992* and the *Environmental Protection (Controlled Waste) Regulations 2001*. Over 10 square metres must be removed by a licensed person or business for asbestos removal. All asbestos removal is to be carried out in accordance with the *Occupational Safety and Health Act 1984* and accompanying regulations and the requirements of the *Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]*;

Note: Removal of any amount of friable asbestos must be done by a licensed person or business and an application submitted to WorkSafe, Department of Commerce. <http://www.docep.wa.gov.au>

- viii) **It is recommended that the applicant liaise with the adjoining property owner (s) regarding the possible retention or replacement of the existing dividing fence along the common lot boundary. Please refer to the Dividing Fences Act 1961 for the rights and responsibilities of land owners regarding dividing fences. Information is available at the following website:
http://buildingcommission.wa.gov.au/bid/Dividing_Fences.aspx.**

PC2103-4 ESSEX STREET NO. 19 (LOT 8) FREMANTLE - CHANGE OF USE FROM OFFICE TO EDUCATION ESTABLISHMENT, SIGNAGE AND INTERNAL FIT OUT (JCL DA0525/20)

Meeting Date: 3 March 2021
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1. Development Plans
Additional information: 1. Site photos

SUMMARY

Approval is sought to change the use of a portion of the existing two storey building at No. 19 (Lot 8) Essex Street, Fremantle from Office to Educational Establishment including an associated fitout and signage

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

- Land use
- Car parking
- Bicycle racks

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a change of use of a portion of the existing two storey building at No. 19 (Lot 8) Essex Street, Fremantle from Office to Educational Establishment including an associated fitout and signage.

The existing building features four tenancies on the ground floor and one larger tenancy on the upper floor that sits over the southern half of the building. The use and works are proposed within Tenancy 2 on the ground floor and the entire upper floor area.

The scope of the proposal includes:

- Using the tenancy as an Educational establishment, proposing:
 - Provision of a literacy, numeracy and language course to allow for further study, training, or employment. The age range of students for this course is 15 to 67; and,
 - An 'Alternative Education Program for Educationally at Risk Youth' is also offered for clients between 15 to 18 years old.
 - Two classes operate per day, comprising a maximum of 20 students. Additionally, two teachers, a youth worker, student counsellor, and assessor comprise the staff.

- Classes occur Monday to Friday between 9.00am and 2:30pm, with a maximum of 45 people attending the site on any given day;
- Signage is proposed on the ground floor in the form of window signs; and,
- Internal fit-out is proposed to create new classrooms and incidental elements, such as office rooms for the premises on the ground floor. No works are proposed to the upper floor.

Development plans are included as attachment 1.

Site/application information

Date received: 1 December 2020
 Owner name: Pacemate Pty Ltd
 Submitted by: Centacare Employment and Training
 Scheme: City Centre
 Heritage listing: Individually Listed (Level 2) and Central Fremantle Heritage Area
 Existing land use: Office
 Use class: Educational establishment
 Use permissibility: D



CONSULTATION

External referrals

Heritage Service (DPLH)

The application was referred to Heritage Services as the subject site is adjacent to State Registered Places (No. 17 Essex Street and 26-28 Norfolk Street). Heritage Services

have advised that they have no objection to the proposal as it will not significantly impact the identified cultural heritage significance of *Port Flour Mill*.

Heritage Comments (internal)

The application was referred to the City Heritage Officer as the site is individually listed and located within the Central Fremantle Heritage Area. The site includes part of 19-21 Essex Street (corner Norfolk Lane), known as the Former Mills and Co building, which is identified as being significant in its own right within the context of Fremantle (Level 2) and its conservation is a priority. The proposed use and associated fitout and signage do not adversely impact on the significance of the building or the heritage area and can be supported.

Fremantle Ports (FP)

The application was referred to FP as the subject site is located within Fremantle Port Buffer Area 2. The FP have advised that they have no comments relating to the proposal.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as shortfalls to on-site car parking and bicycle racks, are proposed. The advertising period concluded on 14 January 2021, and two (2) submissions were received. The following issues relevant to planning were raised (summarised):

- Parking concerns as visitors to nearby residential premises will need to compete for on-street parking in the locality, which will be made scarcer by the proposal;
- Anti-social behaviour;
- Suitability of site for the proposed use given there are other premises in the area which may be better suited;
- Stormwater issues between this and neighbouring properties has caused flooding issues during winter; and,
- No detail has been provided regarding noise levels during standard operating activities during any given day).

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

- Clients don't drive to class and are made aware of the lack of parking to be made available to them at initial enrolment. All sites are located to be easily accessible by public transport, which is a major mode used by the clients;
- Clients sign a code of conduct which is monitored and regulated by staff. Further, there hasn't been a history of anti-social behaviour by the organisation, and has strict standards of appropriate behaviour due to the ethos of the organisation;
- The subject property meets all desired criteria, specifically proximity to public transport. Other suitable locations may not be currently available;
- Stormwater impacts are not considered relevant to the proposal; and,
- Noise will fully comply with relevant regulations. Further, operations do not occur on the weekends and the organisation hasn't received any noise complaints.

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

- As discussed in the body of the report, it is considered that the shortfall in on-site parking is supportable given the extensive on and off-street public parking options available in Fremantle city centre;
- The site is zoned 'City Centre', in which an "Educational establishment" is a discretionary use. On this basis, and the assessments made in the body of the report, it is considered that the site is appropriate for use as an Educational establishment;
- No external works are proposed which will likely result in any adverse stormwater issues to neighbouring properties; and,
- The proposal will need to comply with the relevant noise regulations on an ongoing basis.

The remaining comments are addressed in the officer comment below.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4 and relevant Council local planning policies. In this application the areas outlined below do not meet the Scheme or policy provisions and need to be assessed under the appropriate discretionary criteria

- Land Use
- Car parking
- Bicycle racks

The proposed window signage is considered exempt per Clause 5 of Local Planning Policy 2.14 – *Advertisement Policy* as the signage relates to the subject operations occurring on site, and the extent of the signage is less than 50% of the window area of the tenancy as viewed from Essex Street.

The proposed ground floor fit out is also considered to be exempt in accordance with Local Planning Policy 1.7 – Development Exempt from Development Approval given the works are internal, non-load bearing and generally cosmetic in nature (ie new floor coverings etc).

The above discretionary matters are discussed below.

Background

The subject site is located on the south-eastern side of Essex Street. The parent lot has a land area of approximately 1,614m² and currently comprises several tenancies. The site is zoned City Centre. The site is individually heritage listed and is located within the Cultural Fremantle Heritage Area.

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

- DA0078/17 – Approval was granted on 20 February 2017 for an internal fit out to existing Office tenancy (subject tenancies).

Land Use

An 'Educational establishment' use is a 'D' use in the City Centre zone, meaning that the use means that the use is not permitted unless the Council has exercised its discretion

by granting planning approval. In considering this use the Council will have regard to the matters to be considered in the Planning and Development (Local Planning Schemes) Regulations 2015. In this regard the following matters have been considered:

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

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

- It is considered that the land use meets the aims the 'City Centre' zone by way of the following:
 - The use provides a community service due to it providing cost-free educational services to underserved sections of the community;
 - The use is considered to have no significant impact on any identified heritage elements of the place or neighbouring properties, as discussed in the body of the report.
 - The identified character of the broader area is that of a transitional area between the City core and the lower scale surrounding residential and mixed-use areas. The specific locality contains a variety of land uses, including residential, commercial, and entertainment uses, in addition to health and government premises. On this basis, it is considered that the use is consistent with the existing, and contemplated future character of the locality and the 'City Centre' zone more broadly;
 - It is considered that the proposal will have a net-positive social impact on the locality, as it will provide educational opportunities to underserved members of the community. It is considered unlikely that any greater risk of anti-social behaviour would occur by virtue of the proposal than would otherwise be present in the locality without it.

Car parking

Element	Requirement	Proposed	Extent of Variation
On-site car parking 1 bay per teaching room or* 1 bay per 6 students	6.6 (7)	2	5
Delivery bay	1	Nil	1

In accordance with clause 4.7.3.1 Council may waive or reduce car parking requirements. The proposal is considered to meet the discretionary criteria of LPS4 in the following ways:

- Ample street parking is available in the locality, in addition to City and privately operated off-street public car parks; and,
- Given its proximity to Fremantle Train Station, and several Transperth and CAT bus stops, it is considered that the site is highly accessible by public transport, which is considered the main mode by which clients will attend the site.
- The parent lot contains existing loading/unloading facilities. These existing facilities are considered adequate for delivery demands of the proposed use.

Bicycle parking

Element	Requirement	Proposed	Extent of Variation
Class 2: 1 per 1500 m ² gla;	1	Nil	1
Class 3: 2 plus 1 per 1500 m ² gla	3	Nil	3

The shortfall of bicycle racks is not considered to meet the discretionary criteria of LPS4 for the following reasons:

- The proposal is not considered to be a minor change of use given the nature of the new use as discussed, in addition to the extent of internal works being undertaken. Therefore, the Class 2 rack should be provided; and,
- The provision of Class 3 bicycle racks is not considered to adversely impact the design of the development. Additionally, no bicycle racks are currently available in the immediate vicinity of the site in the public realm.

Based on the above, it is considered appropriate to condition the required bicycle racks be provided on-site prior to occupation of the development.

Regarding end-of-trip facilities, it is considered that they may be waived, given a universal access toilet with shower is proposed as part of the fit-out, and existing amenities exist on the first floor.

CONCLUSION

Based on the above assessments against Clause 67 of the Planning and Development (*Local Planning Schemes*) Regulations 2015 and discretionary criteria of LPS4, it is considered that the proposal is supportable, and is thereby recommended for approval subject to the conditions contained in the officer recommendation below.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

- Increase the number of people working in Fremantle
- Increase the number of visitors to Fremantle

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Planning committee acting under delegation 1.1:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Change of Use from Office to Education establishment, Signage and Internal Fitout at No. 19 (Lot 8) Essex Street, Fremantle subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans, dated 1 December 2020. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. Prior to the issue of a Building Permit for the development hereby approved, 1 Class 2 and 3 Class 3, as defined in LPS4, bicycle racks shall be provided, to the satisfaction of the City of Fremantle. Prior to occupation of the development the approved bicycle racks must be installed and thereafter be maintained for the life of the development, to the satisfaction of the City of Fremantle.

ADVICE NOTES

- i. A Building permit is required for the proposed Building Works. A certified BA1 application form must be submitted and a Certificate of Design Compliance (issued by a Registered Building Surveyor Contractor in the private sector) must be submitted with the BA1

PC2103-5 SOUTH TERRACE, NO. 41 (LOT 2090) FREMANTLE – PARTIAL CHANGE OF USE TO HOTEL AND ADDITIONS AND ALTERATIONS TO EXISTING BUILDING (TG DA0410/20)

Meeting Date:	3 March 2021
Responsible Officer:	Manager Development Approvals
Decision Making Authority:	Committee
Agenda attachments:	1. Amended Development Plans
Additional information:	1. Site Photos 2. DPLH Heritage Comment 3. Applicant Acoustic Report

SUMMARY

Approval is sought for a partial change of use to Hotel and additions and alterations to the existing buildings on site at 41 South Terrace, Fremantle. The proposal comprises a food and beverage provider to the site which is intended to operate under an extended trading permit to the Norfolk Hotel liquor license.

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

- Land use (Hotel).
- On site car parking.

For reasons outlined in the officer comment section, the applicant is unable to demonstrate that the proposal is capable of complying with the requirements of the *Environmental Protection (Noise) Regulations 1997* and as such is considered to adversely impact on the amenity of the locality. As such, the application is recommended for refusal.

PROPOSAL

Detail

Approval is sought for a change of use to Hotel and associated works to an existing building and courtyard on the subject site at 41 South Terrace, Fremantle. The subject site is the site of the former Old Girls School and Fremantle Technical College, comprising existing State Heritage listed buildings.

The applicant has described the proposal as a pop-up food, beverage and event venue, accommodating up to 700 patrons, trading 7am to Midnight seven days per week throughout the summer months. The design proposes to utilise the buildings for a range of temporary uses including cafe, provedore, bar, restaurant and outdoor event spaces. The proposal is intended to activate the site until the proponent proceeds with further development at a later stage.

The proposed floor plan indicates the following:

- Bar and Café uses within the existing Old Girls School Building with outdoor dining to both the front (South Terrace) and rear of the building; and
- An outdoor event space of approximately 640m², in the existing car parking area at the South Terrace and Norfolk Street corner of the site. The plans include areas for a screen/stage, a bar and food trucks.
- No use is currently proposed within the Fremantle Technical College building (Essex Street).

The proposed works and uses include:

- Interior bar area and support spaces to central lobby area.
- The addition of a temporary external preparation kitchen and support spaces.
- New openings to the courtyard and building from lobby area.
- Modifications to the existing toilet facilities.
- Landscaping works to the existing rear carpark area.
- Screening/enclosure of a store area adjacent to the Norfolk Street access point.
- New entry point from Norfolk Street close to the corner of South Terrace, and pergola structures over these entries.

The business is intended to operate under an extended trading permit from the Norfolk Hotel on the opposite side of Norfolk Street. In accordance with Local Planning Scheme No. 4, the business is to be assessed as a Hotel use, as it is to operate under the relevant Hotel liquor license.

On 14 October 2020 the applicant provided an indicative seating plan for the business and further signage details showing 'Norfolk Hotel West' signage.

Development plans are included as attachment 1.

Site/application information

Date received:	2 October 2020
Owner name:	Trafalgar Investments Pty Ltd ATF Prendiville Property Unit Trust
Submitted by:	E Reeves
Scheme:	City Centre
Heritage listing:	Individually Listed Category 1A and WECA Heritage Area
Existing land use:	Educational Establishment
Use class:	Hotel
Use permissibility:	A



CONSULTATION

External referrals

Heritage Service (DPLH)

The application was referred to Heritage Services as the subject site is individually State Heritage listed. The State Heritage Office (SHO) responding on 12 November 2020 advising the following:

Heritage Services have advised that they have no objection to the proposal subject to:

1. Detailed drawings are to be provided, to the satisfaction of the Director, Heritage Development, Department of Planning Lands and Heritage. The drawings are to detail the following items: -
 - The two proposed new door openings, along with works to any existing openings where door or window furniture may be being introduced or replaced.
 - The proposed canopies and/or covered walkways.
 - The proposed secure store along the southern limestone boundary wall.
 - The integration of the former metallurgy classroom chimney and bench into the proposed café fit out.
 - The proposed food prep/store areas at the end of each wing.
 - Information about any proposed repairs and finishes to the timber floors and plaster walls.
 - The proposed alfresco area on South Terrace, including any proposed shade or shelter structures.
2. The new opening (Entry 1) in the limestone wall along Norfolk Street is not supported and is to be deleted from the proposal. Opportunities for a secondary entrance/exit could be investigated near the east corner of the Infants and Girls

School where a recent curved limestone fence with timber picket infill and gate has been constructed.

3. Any entrance statement at the existing entrance to the site from Norfolk Street is to be freestanding

These matters can be dealt with as relevant conditions and advice notes. The City's Heritage team have reviewed the DPLH assessment and recommendations and concur with their findings with no further conditions. If approval of the development were considered, it is noted that the applicant has submitted an updated site plan showing the deletion of the second opening to Norfolk Street, however a full set of updated plans have not been provided and this would be required prior to the issue of a building permit.

Fremantle Ports (FA)

The application was referred to FP as the subject site is located within Fremantle Port Buffer Area 2. The FP have advised that they have no objection to the proposal subject to compliance with the standard built form requirements for Area 2. These matters can be dealt with as relevant conditions and advice notes.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the proposal comprised a land use which required advertising and the exercise of discretion was required with respect to the provision of on site car parking. The advertising period concluded on 3 November 2020, and no submissions were received.

It is noted that the proposed use was initially considered as a Tavern, however in accordance with Local Planning Scheme No. 4 as the applicant has advised that the use is to operate under a Hotel license (being an extended trading permit from the Norfolk Hotel), the land use is therefore defined to be a Hotel. Local Planning Scheme No. 4 defines various land uses such as Taverns, Hotels and Small Bars by the liquor license type that they operate under.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, and relevant Council local planning policies. The following elements of the proposal require the exercise of discretion with regard to the requirements of Local Planning Scheme No. 4:

- Land Use (Hotel)
- On site car parking

The above matters and other notable matters such as managing the impact of noise which are to be considered in the determination of the application are discussed below.

Background

The subject site is located on the corner of South Terrace and Norfolk Street, bounded by Norfolk Lane to the rear and Essex Street to the north west. The site has a land area of approximately 2444m² and is currently unoccupied, but is the former site of the Old Girls School Building and the Fremantle Technical College, which comprised the two existing buildings on site, one of which is subject to this development application. The

site is zoned City Centre. The site is heritage listed on the State Register of Heritage Places and on the City's heritage list under LPS4 (category 1A). The site is also located within the Central Fremantle Heritage Area.

The site is generally flat, with two buildings to the northern and central portions of the site. The south eastern portion of the site, is vacant with the exception of several trees, and was previously used as a car parking area for the Technical College.

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

- DA0258/13 – Repair of lintel to existing heritage building.
- PW0005/18 – Conservation and maintenance works to existing building.

Land Use

As noted above, the development is considered as a Hotel use as the premises is to operate under the existing Hotel license held by the Norfolk Hotel. Should the Department of Racing, Gaming, and Liquor consider that an alternative license type is required for the business, this may be subject to further approval from the City of Fremantle to ensure that the approved land use aligns with the relevant licence type.

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

- (c) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area*
 - (m) The compatibility of the development with its setting including the relationship of the development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development*
 - (n) The amenity of the locality including the following:*
 - (vii) Environmental impacts of the development*
 - (viii) The character of the locality*
 - (ix) Social impacts of the development*
 - (y) Any submissions received on the application.*
- The proposed land use and development could be considered compatible and consistent with existing businesses in the City Centre area and consistent with the objectives of the City Centre Zone.
 - The proposed development in isolation (the proposed physical works) is not considered to unduly impact adjoining properties by way of its appearance noting it is a corner lot adjoining a road and laneway.
 - Consultation undertaken by the City received no responses in support of or opposing the proposal.

It is acknowledged that there is general support for an 'Entertainment' type use for this site however, as detailed further in this report the applicant is unable to demonstrate that the proposed use, specifically the outdoor event space is capable of complying with the *Environmental Protection (Noise) Regulations 1997* and as such Officers are not

satisfied that the proposal will not adversely impact on the amenity of the locality, specially the adjacent and nearby residential developments by way of noise, particularly after 10pm.

It is considered that the proposed Hotel land use in and of itself could be considered appropriate to operate from the site provided that sufficient noise mitigation measures were introduced to manage the business. Officers are of the view that the potential noise impact as a result of this proposal cannot be dealt with by way of a condition of approval (such as a management plan) and for that reason the proposal is recommended for refusal.

On site car parking

Element	Requirement	Proposed	Extent of Variation
Vehicle parking Hotel 1 per 2.5m ² of public bar area 1 per 5m ² of lounge/garden area 1/bedroom	Events area – 640m ² 128 bays LHS Lounge – 100m ² 40 bays Café – 42m ² 16.8 (17 bays) RHS Lounge – 92m ² 26.8 (37) bays Bar – 42m ² 16/8 (17) bays Lobby outdoor area – 160m ² 32 bays Front seating – ~50m ² 10 bays Total – 281 bays	Nil	281 bays
Delivery bays 1 per Service/Storage area	1 bay	Nil	1 bay
Bicycle bays Class 1: 1 per 25m ² bar floor area and 1 per 100m ² lounge and beer garden Class 3: 1 per 25m ² bar floor area and 1 per 100m ² lounge and beer garden	Class 1 13 bays Class 3 13	No bays indicated, 4 class 3 bicycle bays existing.	13 class 1 bays & 9 class 3 bays

In accordance with clause 4.7.3.1 Council may waive or reduce car parking requirements subject to the following –

i) The availability of car parking in the locality including street parking:

Public parking is available in nearby streets, as well as larger public car parks (Fremantle Oval, Kings Square, Cappuccino Strip and Collie Street Car park) within a reasonable walking distance.

ii) The availability of public transport in the locality;

The City Centre is well serviced by bus and rail transport, as well as Taxis and ride share providers.

It is also noted that the proposed lack of onsite parking encourages the use of alternative modes of transport for a land use which is likely to result in the consumption of alcohol.

In isolation, for the reasons noted above, the proposed variation to the car parking requirements of LPS4 could be waived in this instance.

Bicycle parking

In relation to bicycle parking for the proposed use, the applicant has not provided details of any provision for these bays. In relation to their provision, it is considered that the full provision of 13 individually contained class 1 bicycle parking bays may impact the heritage significance of the subject site. Accordingly it is recommended that the applicant provide 13 class 2 bicycle parking bays, being a lockable compound with communal access.

Due to the State Heritage listing of the subject site, the provision of the shared (class 2) bike store would need to be confirmed and finalised to the satisfaction of the City of Fremantle and Heritage Services at the Department of Planning, Lands, and Heritage.

With respect to the provision of the class 3 bicycle bays, these are recommended to be provided due to both the proposed capacity of the site and its potential to attract customers from the immediate locality who may visit the site by bike. The existing bicycle parking facilities are noted, and sufficient space appears to be available on the subject site to provide these facilities.

It is considered that the end of trip facilities normally required in association with class 1 bicycle bays can be waived as these are not being required to support the development.

Delivery parking

Delivery bays are not formally provided on site, however the applicant intends to utilise the existing access point on Norfolk Street to accommodate deliveries. These are considered to be able to be appropriately accommodated in this area on an informal basis, and existing loading bays on Norfolk Lane will also assist in accommodating deliveries. It is recommended that a delivery management plan be provided to the City

and approved prior to the commencement of the use to ensure that the amenity impact for deliveries to the site can be appropriately controlled and managed.

Demolition/Building modification works

The proposal involves some demolition works to facilitate the occupation of the subject site for its intended use. In accordance with the attached heritage assessment prepared by the officers of the Department of Planning, Lands, and Heritage and supported by the City's Heritage officers, the works proposed are considered to appropriately address the requirements of Local Planning Scheme No. 4 cl. 4.14, in that the demolition works are considered minor and not to unduly impact the heritage significance of the property or locality.

Waste Collection

The applicant has provided a preliminary waste management plan and supplementary details which have been provided to the City's Waste team and supported. Should the application be supported, a condition of approval is recommended for the applicant to provide a consolidated waste management plan to the City's satisfaction which is to be adhered to for the life of the development to ensure that waste collection is appropriately managed

Noise Management Plan

The applicant submitted an Acoustic Report and Noise Management Plan in support of the proposed development. The report concludes that noise emissions from the proposed development are generally compliant to the *Environmental Protection (Noise) Regulations 1997* at the nearest noise sensitive receiver under a typical operating scenario in the day and evening time. For the purposes of the Acoustic Report, the 'typical operating scenario' does not include movie screenings or events in the outdoor event area.

The City's Environmental Health Officers have found the following in relation to the report:

Contrary to the thrust of the Noise Report provided, the Environmental Protection (Noise) Regulations 1997 (Regulations) remain the 'in-force' criteria for assessment of noise performance and planning. The City has received noise complaints from residents in the area, regarding the existing noise, and has not condoned or approved the present level of noise, which is an object of concern for City's Environmental Health Section.

The attached Report identifies that patron noise from the outdoors area will not comply with the Regulations, during the night period, and that amplified music needs to be set by a qualified person to manage amplified noise. As such, the contained Noise Management Plan must be modified so that:

- *operating hours for the outdoor area is restricted to close at 10:00pm;*
- *For any PA/amplifier system used, external noise measurements at resident's premises should be undertaken by qualified acoustic consultants to ensure soundtrack/music complies with the Regulations; and*

- *All mechanical equipment must be installed so that it complies with the Regulations.*

If events/activities on the site that are likely to emit noise exceeding the assigned levels (plus influencing factor) as assessed under the Regulations, they may be managed under the appropriate application provided for by the Regulations.

The Plan may be amended in the future to allow for any Special Entertainment Precinct, once such Precincts have been incorporated into law and when the premises is contained within such a precinct.

The applicant has contended that the development does not increase noise levels in the immediate area over and above what is existing in the immediate locality and existing venues currently do not comply with the *Environmental Protection (Noise) Regulation* requirements, that the imposition of a these requirements upon the subject proposal is unfair, and that the noise emissions from the site will not contribute adversely to environmental noise levels. As noted above, the City is obliged to consider all new proposals against the current legislative requirements as they apply.

It is considered that, as it has been demonstrated that the business as proposed would not be capable of operation in accordance with the *Environmental Health (Noise) Regulations 1997*, a recommendation to approve the use under planning legislation would not be appropriate. A condition of approval requiring that the outdoor area close at 10pm would be a de-facto refusal of the application as currently proposed, and the applicants have given no indication of being supportive of an approval conditioned in this manner. Recent announcements by the State Government in relation to Special Entertainment Precincts are noted and indicate an appetite for potential changes to the noise regulations in the future to accommodate entertainment precincts and their impacts, however these requirements are not currently in force in Fremantle and are not capable of consideration in determining this application.

It is noted that the subject site is located on South Terrace in the city centre of Fremantle, and the applicant's contention that there is a higher expectation of noise in this area is noted, however it is also noted that the subject site is located in relatively close proximity to residential properties in Norfolk Street. Should the Planning Committee consider that the development as submitted should be approved, conditions of approval are recommended to ensure that the development operates in accordance with the recommendations of the acoustic engineers' report to ensure that the facility remains as close to compliance as possible.

DBU6 – Late Night Entertainment Venues Serving Alcohol

In accordance with the general provisions of DBU6 (Late night entertainment venues serving alcohol), it is considered the local area is well serviced by public streets and Taxi ranks to allow for safe transport to and from the site without significantly disrupting through traffic. The adjoining footpaths and streets are well lit to allow for adequate safety for patrons late at night. The policy also requires development to reduce the opportunity for conflict between uses in the locality. As detailed above, officers are of the view that, in its proposed form, the venue will adversely impact on the amenity of the locality, particularly the nearby residential developments.

Liquor Licensing

Should the subject application be approved, the applicant will be required to receive approval from the Department of Racing, Gaming and Liquor WA for appropriate liquor license approval. It is understood that the applicant has progressed an application for an extended trading permit associated with the Norfolk Hotel. Should a different liquor license type be sought, it is noted that a further change of use application may be required.

CONCLUSION

In accordance with the above considerations, the proposed land use would be considered acceptable where noise could be appropriately managed by the venue. Given the large scale of the proposed outdoor event area, which is proposed to operate until midnight, with noise impacts that have been identified to most likely exceed the assigned noise levels of the *Environmental Protection (Noise) Regulations 1997*, Officers are unable to support the proposal in its current form. As such, the application is recommended for refusal. Should the Planning Committee be satisfied that the proposal is capable of approval in its current form an alternative recommendation for approval is detailed below.

Alternative recommendation for approval.

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Change of use to Hotel and Additions and Alterations to Existing Building at No. 41 (Lot 2090) South Terrace, Fremantle, subject to the following condition(s):

1. This approval relates only to the development as indicated on the approved plans, dated 2 October 2020. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.
2. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.
3. Prior to issue of a building permit for the development hereby approved, the owner is to submit a delivery management plan for approval detailing the timing of and access for deliveries to be implemented and maintained for the life of the development to the satisfaction of the City of Fremantle.
4. Prior to the issue of a building permit for the development hereby approved, the applicant is to provide detailed drawings, to the satisfaction of the City of Fremantle on the advice of the Director, Heritage Development, Department of Planning Lands and Heritage. The drawings are to detail the following items: -
 - The two proposed new door openings, along with works to any existing openings where door or window furniture may be being introduced or replaced.
 - The proposed canopies and/or covered walkways.

- The proposed secure store along the southern limestone boundary wall.
 - The integration of the former metallurgy classroom chimney and bench into the proposed café fit out.
 - The proposed food prep/store areas at the end of each wing.
 - Information about any proposed repairs and finishes to the timber floors and plaster walls.
 - The proposed alfresco area on South Terrace, including any proposed shade or shelter structures.
5. Notwithstanding condition 1, the new opening in the limestone wall along Norfolk Street is not supported and is to be deleted from the proposal prior to the issue of a building permit for the development hereby approved.
6. Prior to the issue of a Building Permit, detailed drawings are to be submitted to illustrate that the entrance statement at the existing entrance to the site from Norfolk Street is freestanding, to the satisfaction of the City of Fremantle.
7. Prior to the issue of a Building Permit for the development hereby approved, a plan detailing the provision of 13 Class 2 and 9 Class 3 (as defined in Local Planning Scheme No. 4) bicycle racks shall be provided, to the satisfaction of the City of Fremantle on the advice of the Department of Planning, Lands and Heritage (Heritage Services). Prior to occupation of the development hereby approved the required bicycle racks must be installed in accordance with the approved plan and thereafter be maintained for the life of the development, to the satisfaction of the City of Fremantle.
8. Prior to issue of a building permit of the development hereby approved, the owner is to submit a waste management plan for approval by the City, detailing at a minimum the following:
- Estimated waste generation
 - Proposed storage of receptacles
 - Collection methodology for waste
 - Additional management requirements to be implemented and maintained for the life of the development.
- The waste management plan should give consideration to the fact the City is required to manage residential waste. As a result, the waste management plan will need to align with the waste services available to residents. The Waste Management Plan must be implemented at all times to the satisfaction of the City of Fremantle.
9. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of City of Fremantle.

- 10. Prior to the issue of a Building Permit a Construction Management Plan shall be submitted to the satisfaction of the City of Fremantle addressing the following matters:**
- a) Use of City car parking bays for construction related activities;**
 - b) Protection of infrastructure within the road reserve;**
 - c) Security fencing around construction sites;**
 - d) Access to site by construction vehicles;**
 - e) Contact details;**
 - f) Site offices;**
 - g) Forward works for the site;**
 - h) Delivery of materials and equipment to the site;**
 - i) Storage of materials and equipment on the site;**
 - j) Parking arrangements for contractors and subcontractors;**
 - k) Sand drift and dust management;**
 - l) Noise - Construction work and deliveries;**
 - m) Construction Waste management;**
 - n) Traffic management; and**
 - o) Works affecting pedestrian areas; and**
 - p) other matters likely to impact on the surrounding properties;**

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

- 11. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.**
- 12. This development approval does not relate to any works within the road reserve other than awnings for weather protection and signage**
- 13. Prior to the issue of a Building Permit for the development hereby approved, a detailed landscaping plan, including information relating to species selection, reticulation, details of existing vegetation to be retained, and treatment of landscaped surfaces (i.e. mulch, lawn, synthetic grass etc), shall be submitted to and approved by the City of Fremantle.**
- 14. Prior to the occupation of the development hereby approved, the approved landscaping shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Fremantle. All landscaped areas are to be maintained on an ongoing basis for the life of the development, to the satisfaction of the City of Fremantle.**
- 15. The signage hereby permitted shall not contain any flashing or moving light or radio; animation or movement in its design or structure; reflective, retro-reflective or fluorescent materials in its design structure.**

16. Prior to the issue of a Building Permit for the development hereby approved, the design and materials of the development shall adhere to the requirements set out within City of Fremantle policy L.P.P2.3 - Fremantle Port Buffer Area Development Guidelines for properties contained within Area 2. Specifically, the development shall provide the following:
 - a) Glazing to windows and other openings shall be laminated safety glass of minimum thickness of 6mm or “double glazed” utilising laminated or toughened safety glass of a minimum thickness of 3mm.
 - b) Air conditioners shall provide internal centrally located ‘shut down’ points and associated procedures for emergency use.Roof insulation in accordance with the requirements of the Building Codes of Australia.
17. Prior to the issue of a Building Permit, details of how the recommendations contained in the environmental acoustic report prepared by Stantec Australia Pty Ltd (dated 24 November 2020 (Ref: 301250036) are to be implemented into the design/operation of the development are to be submitted and approved to the satisfaction of the City of Fremantle.
18. All air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located to be not visible from the street, and where visible from other buildings or vantage points shall be suitably located, screened or housed, to the satisfaction of the City of Fremantle.
19. The access gates, as indicated on the approved plans, shall open into the subject site only and shall not impede the road reservation adjoining the subject site.
20. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice notes

- i. The proponent must:
 - a. make application to Environmental Health Services via Form 1 - *Application to construct, alter or extend a public building* as a requirement of the Health (Public Buildings) Regulations 1992;
 - b. once construction has been completed, make application to Environmental Health Services via Form 2 - *Application for a public building certificate*;

- c. once construction has been completed, complete and submit Form 5 - *Certificate of Electrical Compliance for a Public Building* to Environmental Health Services.

Note that Section 1 does not apply to or in relation to building work, as defined in the *Building Act 2011* section 3, for which a building permit is required under that Act.

For further information and a copy of the application form contact Environmental Health Services on 9432 9999 or via health@fremantle.wa.gov.au.

- ii. The premises must comply with the Food Act 2008, regulations and the Food Safety Standards incorporating AS 4674-2004 *Design, construction and fit-out of food premises*. Detailed architectural plans and elevations must be submitted to Environmental Health Services for approval prior to construction. The food business is required to be registered under the Food Act 2008. For further information contact Environmental Health Services on 9432 9856 or via health@fremantle.wa.gov.au.
- iii. A Building permit is required for the proposed Building Works. A certified BA1 application form must be submitted and a Certificate of Design Compliance (issued by a Registered Building Surveyor Contractor in the private sector) must be submitted with the BA1.
- iv. A BA9 – Occupancy Permit application form is required to be submitted for the change of use. A Certificate of Building Compliance (BA18) must be submitted with the application and signed and completed by a Registered Building Surveyor Contractor (private sector). A list of Registered Building Surveyors can be obtained from the Western Australian Building Commission website - <https://www.commerce.wa.gov.au/building-commission>.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2015-25

- Increase the number of people working in Fremantle
- Increase the number of visitors to Fremantle
- Increase in commercial and retail development within 800m of Fremantle train station

Green Plan 2020

- Encourage the retention of vegetation on private land.
- No existing trees are affected by this development.

Alcohol Management (SG50)

- Potential impacts of the proposed Licensed Premises can be appropriately managed

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Planning committee acting under delegation 1.1:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Change of use to Hotel and Additions and Alterations to Existing Building at No. 41 (Lot 2090) South Terrace, Fremantle, for the following reason:

1. The proposal is inconsistent with clauses 67(d), and 67(n) of the *Deemed provisions* as the noise likely to be generated by the development would be detrimental to the amenity of the area and nearby residential properties.

PC2103- 6 INFORMATION REPORT – MARCH 2021

1. SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

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

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

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

Responsible Officer: Manager Development Approvals
Agenda attachments: Nil

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

1. Application Reference
DA0166/20
Site Address and Proposal
4 Keel Place, North Fremantle – Proposed 3 Storey Single house
Planning Committee Consideration/Decision
<ul style="list-style-type: none"> At its meeting held on 4 November 2020, the Council resolved to refuse the application.
Current Status
<ul style="list-style-type: none"> On 19 November 2020 an Application for Review by the State Administrative Tribunal was lodged by the owner. Mediation between the relevant parties was held on 21 January 2021. The applicant submitted amended plans on 10 February 2021. The City has been invited to reconsider its decision, based on the amended plans on or before 24 March 2021. A report relating to the amended plans forms part of this Agenda.

2. Application Reference
DAP004/20
Site Address and Proposal
19-21 McCabe Street, North Fremantle – Proposed 8 Storey mixed use development
Planning Committee Consideration/Decision

<ul style="list-style-type: none"> At its meeting held on 4 November 2020, the Metro Inner-South Development Assessment Panel resolved to Approve the application.
Current Status
<ul style="list-style-type: none"> On 15 December 2020 an Application for Review by the State Administrative Tribunal was lodged by the owner. The application requests the deletion of Condition 28, which required the addition of three deep soil areas in or immediately adjacent to the Public Art Walk/public pedestrian accessway. As the JDAP was the decision maker the Department of Planning Lands and Heritage is the respondent in this instance. Mediation between the relevant parties was held on 10 February 2021. The applicant submitted amended plans on 23 February 2021. The JDAP has been invited to reconsider its decision, based on the amended plans on or before 19 March 2021.

3. Application Reference
DA0166/20
Site Address and Proposal
6 Commercial Street, South Fremantle – Proposed Demolition of existing Single house and construction of a single storey Single house.
Planning Committee Consideration/Decision
<ul style="list-style-type: none"> At its meeting held on 25 November 2020, the Council resolved to refuse the application.
Current Status
<ul style="list-style-type: none"> On 22 December 2020 an Application for Review by the State Administrative Tribunal was lodged by the owner. A Directions Hearing has been scheduled for 22 January 2021. Mediation between the parties was held on 22 February 2021. Mediation was adjourned to Monday 29 March 2021.

4. Application Reference
DAP008/20
Site Address and Proposal
11 Freeman Loop, North Fremantle – Proposed Six Storey Mixed Use Development
Planning Committee Consideration/Decision
<ul style="list-style-type: none"> At its meeting held on 19 February 2021, the Metro Inner-South JDAP resolved to defer the application to allow the applicant to consider amending the proposal to increase the south-west (rear) setback of the development to provide greater building separation from the residential development to the south to improve access to light and ventilation and maintain the outlook from the adjoining dwellings.

- The item is to be reschedule for a JDAP Meeting on or before the 2 April 2021.

OFFICER'S RECOMMENDATION

Council receive the following information reports for March 2021:

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

10.3 Council decision

Nil

11. Motions of which previous notice has been given

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

12. Urgent business

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

13. Late items

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

14. Confidential business

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

15. Closure