



Minutes

Planning Committee

Wednesday 3 May 2023 6pm



Table of Contents

1.	Official opening, welcome and acknowledgement	3
2.1.	Attendance	3
2.2.	Apologies	3
2.3.	Leave of absence	3
3.	Disclosures of interests	3
4.	Responses to previous questions taken on notice	3
5.	Public question time	4
6.	Petitions	4
7.	Deputations	4
7.1	Special deputations	4
7.2	Presentations	4
8.	Confirmation of minutes	4
9.	Elected member communication	4
10.	Reports and recommendations	5
10.1	Committee delegation	5
PC2305-1	EDMUND STREET, NO. 82 & 84 (LOT 12 & 13) WHITE GUM VALLEY – CHILD CARE PREMISES (JD DAP001/23)	5
PC2305-2	SWANBOURNE STREET, 29 (LOT 5) FREMANTLE – ALTERATIONS AND ADDITIONS (TWO STOREY) TO EXISTING SINGLE HOUSE (JZ DA0018/23)	29
PC2304-1	HICKORY STREET, NO. 8 (LOT 30), SOUTH FREMANTLE - TWO STOREY ADDITIONS AND ALTERATIONS INCLUDING A ROOF TOP TERRACE ADDITION TO EXISTING SINGLE HOUSE (ED DA0263/22)	46
PC2305-3	BRADBURY WAY, NO. 3 (LOT 50), SAMSON – UNAUTHORISED OUTBUILDING ADDITION TO EXISTING SINGLE HOUSE (JZ DA0083/23)	72
PC2305-5	INFORMATION REPORT - MAY 2023	82
10.2	Council decision	84
PC2305-5	PROPOSED MRS AMENDMENT 1400/41 - NORTH FREMANTLE URBAN PRECINCT (MAJOR AMENDMENT)	84
11.	Motions of which previous notice has been given	94



12. Urgent business.....	94
13. Late items	94
14. Confidential business.....	94
15. Closure	94



1. Official opening, welcome and acknowledgement

The Presiding Member declared the meeting open at 6pm.

The Presiding Member informed members of the public that the meeting was being recorded and streamed live on the internet. He/She further advised that while all care is taken to maintain privacy, visitors in the public gallery and members of the public submitting a question, may be captured in the recording.

2.1. Attendance

Cr Bryn Jones	Presiding Member/North Ward
Cr Geoff Graham	Deputy Presiding Member/Beaconsfield Ward
Cr Andrew Sullivan	South Ward
Cr Su Groome	East Ward
Cr Frank Mofflin	Hilton Ward
Mr Glen Dougall	Chief Executive Officer
Mr Russell Kingdom	Director Planning, Place and Urban Development
Ms Chloe Johnston	Manager Development Approvals
Ms Michelle Gibson	Meeting Support Officer

There were approximately 6 members of the public in attendance.

2.2. Apologies

Mayor Hannah Fitzhardinge
Cr Ben Lawver
Cr Adin Lang

2.3. Leave of absence

Nil

3. Disclosures of interests

Nil

4. Responses to previous questions taken on notice

Nil



5. Public question time

The following members of the public spoke against the Officer's Recommendation for item PC2305-2:

David Jones
Philip Stejskal

The following member of the public spoke in favour of the Officer's Recommendation for item PC2304-1:

Petar Mrdja

6. Petitions

Nil

7. Deputations

7.1 Special deputations

Nil

7.2 Presentations

Nil

8. Confirmation of minutes

COMMITTEE DECISION
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

The Planning Committee confirm the minutes of the Planning Committee meeting dated 5 April 2023.

Carried: 5/0

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

9. Elected member communication

Nil



10. Reports and recommendations

10.1 Committee delegation

PC2305-1 EDMUND STREET, NO. 82 & 84 (LOT 12 & 13) WHITE GUM VALLEY – CHILD CARE PREMISES (JD DAP001/23)

Meeting Date:	3 May 2022
Responsible Officer:	Manager Development Approvals
Decision Making Authority:	Committee
Agenda attachments:	1. Development Plans
Additional information:	1. Site Photos 2. Applicant's Supporting Report 3. Traffic Impact Statement 4. Acoustic Report 5. Advertising Submissions (verbatim)

SUMMARY

Approval is sought for a child care premises at Lot 12 (No. 82) and Lot 13 (No. 84) Edmund Street, White Gum Valley (the subject site). As the development value is \$2.3 million, the applicant has chosen to have the application determined by a Development Assessment Panel as it fits within the "opt-in" value threshold.

The City's Responsible Authority Report (RAR) is referred to the Planning Committee for endorsement of the recommendation.

The application is recommended for conditional APPROVAL.

Proposal

The proposed development is for a child care premises across two residential zoned lots. The existing grouped dwellings will be demolished with a new building constructed in their place.

The child care premises is proposed to:

- Provide child care services for up to 92 children;
- Operate from 6:30am to 6:30pm Monday to Friday excluding public holidays;
- Operate with 15 staff members.

The works component of the development includes;

- Construction a building with a gross floor area of 580m² with 700m² allocated for outdoor play;

- Construction of a vehicular crossover;
- Construction of 24 car parking bays;
- Construction of a bin store enclosure at the front of the lot adjacent the vehicular access point;
- Erection of a 1.8m high garrison fencing along the street boundary and internally between the car parking area and outdoor play area;
- Erection of a 2.2m high Colorbond fencing along the northern side and eastern rear lot boundaries and 1.8m high Colorbond fence along the southern side lot boundary.
- Installation of landscaping.

Site/application information

Date received:	13 December 2021
Owner name:	Hindle Properties - Averly Ply Ltd
Submitted by:	Meyer Shircore & Associates
Scheme:	Residential R25
Heritage listing:	No
Existing land use:	Grouped Dwellings
Use class:	Child Care Premises
Use Permissibility:	A





OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Council:

SUPPORT the Officer's Recommendation to APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the child care premises, subject to conditions, for the reasons outlined in the Responsible Authority Report (RAR)

AMENDMENT 1

Moved: Cr Su Groome

Seconded: Cr Frank Mofflin

Add the following advice note 13:

- 13. It is advised that the City of Fremantle encourages the use of cycling as an alternative form of transport and the developer is encouraged to consider design solutions to ensure safe access for small children and their parents to access the centre by bicycle. It is therefore recommended that bicycle parking facilities and a clear, delineated pathway for cyclists is incorporated into the proposed development.**

**Amendment carried: 5/0
Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Frank Mofflin**

AMENDMENT 2

Moved: Cr Andrew Sullivan

Seconded: Cr Su Groome

Add the following Additional Condition 21:

- 21. Prior to the lodgement of a building permit, the applicant shall provide a verge landscaping plan for the verge to be approved. Prior to the occupation of the development, the landscaping shall be installed and thereafter maintained to the satisfaction of the City of Fremantle.**

**Amendment carried: 5/0
Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Frank Mofflin**



COMMITTEE DECISION ITEM PC2305-2
(Amended officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Council:

SUPPORT the Officer's Recommendation to APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the child care premises, subject to conditions, for the reasons outlined in the Responsible Authority Report (RAR) *the addition of advice note 13 and condition 21 as follows:*

Advice note:

- 13. *It is advised that the City of Fremantle encourages the use of cycling as an alternative form of transport and the developer is encouraged to consider design solutions to ensure safe access for small children and their parents to access the centre by bicycle. It is therefore recommended that bicycle parking facilities and a clear, delineated pathway for cyclists is incorporated into the proposed development.***

Condition

- 21. *Prior to the lodgement of a building permit, the applicant shall provide a verge landscaping plan for the verge to be approved. Prior to the occupation of the development, the landscaping shall be installed and thereafter maintained to the satisfaction of the City of Fremantle.***

Carried: 5/0

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



Form 1 – Responsible Authority Report
(Regulation 12)

DAP Name:	Metro Inner South	
Local Government Area:	City of Fremantle	
Applicant:	Meyer Shircore and Associates	
Owner:	Hindle Properties - Aveley Ply Ltd	
Value of Development:	\$2.3 million ☐ Mandatory (Regulation 5) ☒ Opt In (Regulation 6)	
Responsible Authority:	City of Fremantle	
Authorising Officer:	Manager Development Approvals	
LG Reference:	DAP001/23	
DAP File No:	DAP/23/02450	
Application Received Date:	22 February 2023	
Report Due Date:	23 May 2023	
Application Statutory Process Timeframe:	90 Days	
Attachment(s):	1. Applicants Supporting Report 2. Development Plans 3. Traffic Impact Statement 4. Acoustic Report 5. Planning Committee Minutes – TBA	
Is the Responsible Authority Recommendation the same as the Officer Recommendation?	☐ Yes	Complete Responsible Authority Recommendation section – TBA
	☐ No	Complete Responsible Authority and Officer Recommendation sections – TBA

Responsible Authority Recommendation

That the Metro Inner South resolves to:

1. Choose Accept/Refuse that the DAP Application reference DAP/23102450 is appropriate for consideration as a “Child Care Premises” land use and



compatible with the objectives of the zoning table in City of Fremantle Local Planning Scheme No. 4;

2. Choose Approve/Refuse DAP Application reference DAP/23102450 and accompanying plans (Plan No, Rev No - if applicable) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of City of Fremantle Local Planning Scheme No. 4, subject to the following conditions:

Choose Conditions/Reasons If a refusal, please delete points 1 and 2 below.

1. Pursuant to clause 26 of the Metropolitan Region Scheme, this approval is deemed to be an approval under clause 24(1) of the Metropolitan Region Scheme. Include for LG RARs where land is zoned 'Urban' under the MRS and the conditional Clause 26 of the MRS apply. Delete if a separate decision of the WAPC is needed.
2. This decision constitutes planning approval only and is valid for a period of Number years from the date of approval. If the subject development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.

Details: outline of development application

Region Scheme	Metropolitan Region Scheme
Region Scheme - Zone/Reserve	Urban Zone
Local Planning Scheme	Local Planning Scheme 4
Local Planning Scheme - Zone/Reserve	Residential Zone
Structure Plan/Precinct Plan	N/A
Structure Plan/Precinct Plan - Land Use Designation	N/A
Use Class and permissibility:	Childcare Premises - A
Lot Size:	82 Edmund Street: 1019m ² 84 Edmund Street: 1024m ² Total Area of Subject Site: 2043m ²
Existing Land Use:	Grouped Dwellings
State Heritage Register	No
Local Heritage	☒ N/A ☐ Heritage List ☐ Heritage Area
Design Review	☒ N/A



	☐ Local Design Review Panel ☐ State Design Review Panel ☐ Other
Bushfire Prone Area	No
Swan River Trust Area	No

Proposal:

The proposed development is for a child care premises at Lot 12 (No. 82) and Lot 13 (No. 84) Edmund Street, White Gum Valley (the subject site). The key components of the development can be seen at Attachment 1 and 2 and are summarised as follows:

Proposed Land Use	Child Care Premises
Proposed Net Lettable Area	580m ²
Proposed No. Storeys	Single Storey
Proposed No. Dwellings	N/A

The child care premises is proposed to:

1. Provide child care services for up to 92 children.
2. Operate from 6:30am to 6:30pm Monday to Friday excluding public holidays.
3. Operate with 15 staff members.

The works component of the development includes;

1. Demolishing of the existing grouped dwellings on the subject site.
2. Construction a building with a gross floor area of 580m² with 700m² allocated for outdoor play.
3. Construction of a vehicular crossover.
4. Construction of 24 car parking bays.
5. Construction of a bin store enclosure located at minimum 17m from any boundary abutting a residential lot and at minimum 20m from the front boundary.
6. Erection of a 1.8m high garrison fencing along the street boundary and internally between the car parking area and outdoor play area.
7. Erection of a 2.2m high Colorbond fencing along the northern side and eastern rear lot boundaries and the erection of a 1.8m high Colorbond fence along the southern side lot boundary.
8. Installation of landscaping.

In support of the proposal, the applicant has submitted the following technical documents:

1. Planning Report



2. Development Plans
3. Traffic Impact Statement
4. Environmental Acoustic Assessment

Background:

Subject Site

The subject site comprises two (2) residential lots with a total land area of approximately 2043m². Refer to the table below for the individual lot details subject of this development application.

ADDRESS	LANDOWNER	VOL.	FOLIO	AREA (M ²)
Lot 12 (No. 82) Edmund Street, White Gum Valley	Hindle Properties - Aveley Pty Ltd	2127	995	1019m ²
Lot 13 (No.84) Edmund Street, White Gum Valley	Hindle Properties - Aveley Pty Ltd	2127	996	1024m ²

The two (2) lots are to be amalgamated in accordance with recommended condition 14 which will ensure the lots are amalgamated prior to the occupation of the development. An alternative option involving a legal agreement between the landowner and the City of Fremantle that the lots be amalgamated within a year of the completion of the development will be included within this condition.

In summary, the site is described as follows:

1. Zoned 'Urban' under the Metropolitan Region Scheme (MRS) and 'Residential' with a density coding of R25 under the City of Fremantle Local Planning Scheme 4 (LPS4).
2. The subject site abuts one (1) residential lot to the north, two (2) residential lots to the east and a drainage sump reserve to the south.
3. The subject site currently features grouped dwellings and associated incidental structures. The grouped dwellings located on the subject site were constructed in approximately 1970.

Refer to the figures below for additional site context.

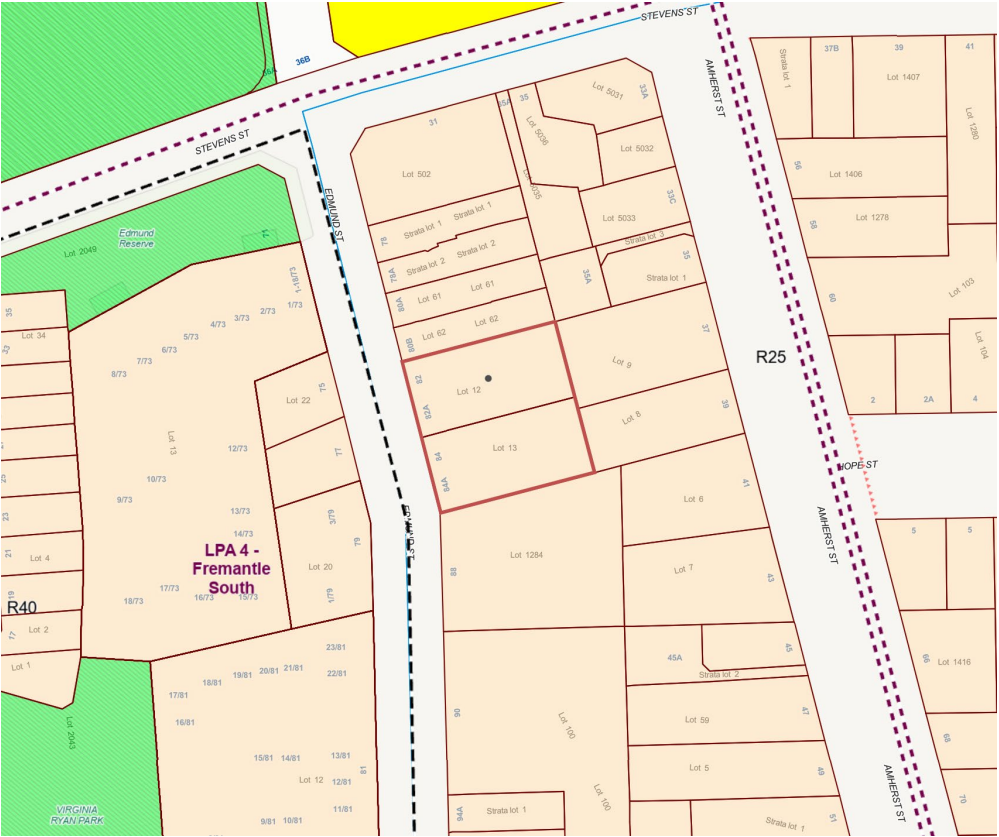


Figure 1 – Planning Context Map



Figure 2 – Site Aerial Image





Figure 3 – Existing Street View

Surrounding Area Context

To the south of the subject site is a stormwater sump reserve owned and managed by the City of Fremantle. The lot to the south of this reserve features a place of worship. Residential lots with existing dwellings abut the northern and eastern boundaries of the subject site. The subject site is within an area with an allocated density of R25. On the opposing side of Edmund Street the allocated density has been increased to R40 resulting in a higher density of development.

Edmund Street is approximately 1km in length running north to south and features footpaths running along both sides. There is a bus stop approximately 100m from the subject lot (bus service travels along Edmund Street to/from Fremantle and Bull Creek Stations).

Legislation and Policy:

The legislative framework and policy base providing for the assessment and determination of the subject application is as follows:

1. Planning and Development Act 2005
2. Planning and Development (Local Planning Schemes) Regulation 2015 (WA)
3. Planning and Development (Development Assessment Panels) Regulations 2011
4. Metropolitan Region Scheme
5. City of Fremantle Local Planning Scheme No. 4
6. Environmental Protection (Noise) Regulations 1997 (WA)
7. Child Care Services Act 2007
8. Community Services (Child Care) Regulations 1998

State Government Planning Policies and Bulletins (SPP's)

9. State Planning Policy 7.0 – Design of the Built Environment
10. State Planning Policy 7.3 – Residential Design Codes Volume 1
11. Planning Bulletin 72/2009 – Child Care Centres

Local Planning Policies (LPP's)

12. Local Planning Policy 1.3 – Community Consultation on Planning Proposals
13. Local Planning Policy 1.10 – Construction Sites
14. Local Planning Policy 2.8 – Fences Policy
15. Local Planning Policy 2.9 – Residential Streetscape Policy
16. Local Planning Policy 2.24 – Waste Management Plans for New Development



The development assessment has been undertaken in accordance with the abovementioned legislation and policies. The proposed development and use generally complies with the legislation and policies listed above, with the exception of the following variations:

1. Parking shortfall as per Table 2 'Vehicle Parking' of LPS4.
2. Hours of operation exceed the prescribed limits for a noise sensitive premises specified within the *Environmental Protection (Noise) Regulations 1997*.
3. Variation to the visual permeability requirements for primary street fencing as per LPP2.8 and the Residential Design Codes.

These variations have been addressed in the 'Car Parking', 'Noise' and 'Fencing' sections of this report.

Consultation:

Public Consultation

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. The planning application was identified as a standard application as set out in Council's LPP1.3 Community Consultation on Planning Proposals. The application was advertised for a period of 14 days (between 16 March 2023 and 30 March 2023) and included the following actions:

- a) Sign notice being placed on the development site.
- b) Letters to owners and occupiers in the surrounding area.

In response to the public advertising, a total of three (3) submissions were received with one (1) submission supporting the proposal unconditionally and two (2) not specifically objecting to the proposal but requesting a number of concerns be addressed. A summary of the key concerns raised are outlined in the table below. A list of the submissions verbatim can be found in the additional information.

Issue Raised	Officer comments
No secure fencing at the entrance to the carpark.	There is no statutory requirement for the proposal to include secure fencing at the entry to the carpark. Secure fencing has been provided between the outdoor play area and carpark to ensure the safety of the children.
Request for landscaping on the rear boundary of the carpark for noise mitigation.	The Colorbond fencing has been designed to comply with noise regulation requirements and is an acceptable material for noise mitigation.
Concern over variation in natural ground level between	A request for a site survey plan will be recommended as a condition an any potential development approval.



subject site and adjoining lot.	
Request for boundary Colorbond fencing to be in 'Pale Eucalypt'	Refer recommended advice note 3 advising applicant to liaise with adjoining landowners regarding dividing fence considerations.
Insufficient number of car parking bays / potential occurrence of street parking and vehicle congestion	The one (1) bay shortfall has been addressed in the Car Parking section below. There is no proposed street or verge parking indicated on the plans. All car parking bays are indicated within the lot boundaries.
Safety of pedestrians utilising public footpath	Refer to the Traffic section below.
Insufficient landscaping / presence of large trees for shade	A request for a comprehensive landscaping plan will be recommended as a condition on any potential development approval. Refer recommended condition 7.

The applicant was advised of the abovementioned concerns. It is considered that the concerns can be addressed via the recommendation of applicable conditions and advice notes of which the applicant agreed.

Referrals/consultation with Government/Service Agencies

There were no requirements for the application to be referred to external agencies for comment.

Design Review Panel Advice

Not applicable.

Other Advice

The application was referred to the relevant internal departments at the City of Fremantle for formal comment as part of the assessment process. All departments were generally satisfied with the appropriateness of the proposal. Any comments received will be addressed via conditions and advice notes. The comments received related to:

1. Requirement for a building/demolition permit (advice notes).
2. The requirement for a vehicle crossover approval and the reinstatement of the verge and kerbing (conditions and advice note).
3. Food premises compliance with the applicable Act (advice note).
4. Asbestos removal to comply with the applicable Regulations (advice note).
5. Construction work noise emission to comply with the applicable Regulations (advice note).



6. Sand drift management (advice note).
7. Acoustic noise to comply with the applicable regulation (advice note).
8. Request for a landscaping, amended car parking, waste management, stormwater disposal and construction management plans (conditions).

Planning Assessment:

Land use

Provision	Proposal	Zone	Permissibility
Local Planning Scheme 4 clause 3.3 - Zoning Table	Child Care Premises	Residential	A – Refer assessment below

A child care premises is defined under Schedule 1 of LPS4 as –

- (a) an education and care service as defined in the Education and Care Services National Law (Western Australia) section 5(1), other than a family day care service as defined in that section, is provided; or
- (b) a child care service as defined in the Child Care Services Act 2007 section 4 is provided;

A child care premises is an 'A' use in the Residential zone, which means that the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice in accordance with clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* ("Regulations"), Schedule 2.

In considering an 'A' land use, the Council will have regard to the matters set out in clause 67 of the Regulations, Schedule 2. 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 –
 - (i) the compatibility of the development with the desired future character of its setting; and
 - (ii) the relationship of the development to 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;



(s) the adequacy of –

(i) the proposed means of access to and egress from the site; and

(ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;

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

(y) any submissions received on the application;

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

1. The Scheme allows for a child care premises subject to the granting of development approval and special notice being given in accordance with the Regulations. It is considered that Child Care Premises are common in residential areas and serve an important community purpose.
2. Child care premises are considered complimentary to the character of a residential area.
3. The single storey building (2.57m wall height, 5.05m roof height) is considered appropriate in the surrounding context of the area which largely consists of single storey dwellings.
4. It is not expected that the building bulk or scale from the single storey building will result in any significantly detrimental impact to the amenity of adjoining landowners or the streetscape.
5. The building is orientated parallel to the street which will provide a uniform and legible appearance.
6. The building will consist of a variety of materials which will complement the streetscape and surrounding built environment via the proposed non-reflective colour palette and the use of natural materials and tones.
7. Any environmental impact will be minimal as the lots do not feature any significant vegetation. The environment will be enhanced by the proposed landscaping both within the lot and on the road verge which does not currently feature any vegetation other than low grass.
8. A child care premises is considered complimentary to the residential character of the area.
9. No significantly detrimental social impacts are expected to arise from a building primarily responsible for the care of children below the age of 5.

Built Form

Clause 4.9.1 of LPS4 requires that "*non-residential development, where permitted in the Residential zone shall comply with the requirements of the Residential Design Codes*". The provisions of the Residential Design Codes deemed applicable to the assessment of the application are addressed in the table below.



Provision	Requirement	Proposal	Complies Y/N
Lot Size Min/Ave	300m ² / 350m ²	2043m ²	Y
Primary Street <i>As per LPP2.9</i>	7m	7m	Y
Side/Rear Setback *Refer note 1	North: 1.5m	1.5m	Y
	South: 1.5m	19m	Y
	East (rear): 1.5m	8.5m	Y
Building Height	Wall: 7m	3.8m	Y
	Roof: 10m	5.05m	Y
Open Space	50% / 1021.50m ²	Open Space: approx: 1449m ² / 71%	Y

Note 1: Although the windows would not technically be considered as major openings as the opening is not from a habitable room identified under the Residential Design Codes, it is considered appropriate to assess it as such.

Note 2: Visual privacy provisions do not apply as there is no part of the development raised 500mm or greater above natural ground level.

Note 3: Windows from the office, planning room and kindy area include windows which address the access into the premises allowing for appropriate levels of street/access surveillance.

The proposed child care premises satisfies the applicable deemed-to-comply requirements of the R-Codes and is considered to be generally consistent with the building height and setback of the surrounding properties. It is considered the proposal will be complimentary to the prevailing streetscape and the character and amenity of the area. Condition 12 has been recommended to obtain a final schedule of external materials, colours and finishes of the proposed development. This condition will ensure the final appearance of the building is complimentary and compatible with the surrounding area.

Car Parking

Provision	Requirement	Proposal	Assessment
Local Planning Scheme No. 4 cl. 4.7 – Vehicle Parking	Car parking bays 1: Employee plus 1: 10 children allowed under maximum capacity	14 Employee Bays 10 Visitor Bays	1 employee bay shortfall See comments below



	15 employee – 15 bays required 92 children – 9.2 (10) bays required		
	Delivery Bays – N/A	N/A	N/A
	Bicycle Racks – N/A	N/A	N/A

The proposed child care premises features a one (1) bay shortfall for employee parking. It is worth noting that the total number of employee bays required under LPS4 has been rounded up from 9.2 bays to 10. The one (1) bay car parking shortfall is considered acceptable as the proposed child care premises is serviced by suitable public transport (closest bus stop approximately 100m to the south) with pedestrian access via paths down each side of Edmund Street. The pedestrian access is considered safe and manageable with no significantly steep inclines/declines or rough terrain. The proposed child care premises is also suitably located to service the surrounding residential area which will minimise the requirement for people to utilise their vehicles.

Comments received via the internal referral process was that the car park overall design including the car parking bays illustrated on the submitted plans are required to be amended to meet Australian Standard AS/NZS 2890 and AS/NZS 1428. This will be addressed via recommended condition 15 and the requirement for the ongoing maintenance of the car parking bays addressed via condition 16.

Traffic and Access

In accordance with Planning Bulletin 72/2009 Child Care Centres, the proposed child care premises is supported with the inclusion of a Traffic Impact Statement (TIS) demonstrating that the traffic impact of the proposed development will be readily absorbed into the existing road network. The TIS prepared by Uloth and Associates found the following;

1. Edmund Street is a north-south running street connected to Stevens Road (at the northern end) and Lefroy Road (at the southern end). Edmund Street transects Watkins, Samson, and South Street. These roads all feature good connectivity to the surrounding area.
2. The closest bus service is Route 502, travelling from Fremantle Station to/from Bull Creek Station (along Edmund Street) with the closest stop approximately 100m south of the subject lots which will provide suitable accessibility via public transport.



3. It is estimated that the proposed child care premises will generate approximately 64 vehicles trips in the morning peak, and 70 vehicle trips in the afternoon peak.

In accordance with the submitted TIS, it is considered that the proposed child care premises is suitably located in the context of the surrounding road network. Any increased traffic generation should therefore not result in a significantly detrimental impact to the amenity and safety of the area.

Fencing

The City's Fencing Policy LPP2.8 is applicable to all areas zoned under LPS4 except where superseded by specific policy provisions applying to a local area. In this instance there are no policy provisions which supersede LPP2.8.

The proposed child care premises features visually permeable fencing along the street boundary of the subject site, 2.2m high Colorbond fencing extending the full length of the north side and east rear boundary (to comply with noise regulation requirements) and 1.8m high Colorbond fencing extending the full length of the southern side boundary (the southern boundary abuts a drainage sump reserve and does not require the additional height for noise mitigation). In the context of the subject site, LPP2.8 requires fencing within the primary street setback to be visually permeable above 1.2m, maximum height of 1.8m and compliant with the R-Codes. In this instance, the proposed fencing varies the visual permeability provision as the solid Colorbond fencing on the side boundaries extends into the 7m street setback area.

It is considered that the proposed fencing will satisfy the design principles of the R-Codes as

1. There will no impact on the sight lines at vehicular access points on the subject site or the adjoining lot to the north.
2. The verge is of sufficient width that the fence will not impose on the streetscape or impact on sight lines along Edmund Street.
3. The fencing is sufficiently justified for the purpose of noise mitigation.

Noise

In accordance with the submitted Herring Storer acoustic report, the premises will satisfy the relevant noise protection requirements, with the inclusion of the following:

1. The *Environmental Protection (Noise) Regulations 1997* specify that noise sensitive premises (including a child care premises) can operate/produce noise between 7am and 7pm. Although the proposed child care premises plans to open at 6:30am, the play area will not be used before 7am, resulting in the noise received at adjoining residences complying with the assigned day period noise level.



2. The construction of a 2.2m high dividing fence along the northern and eastern site boundaries to protect from the occupants from the noise of car doors.
3. The air conditioning condensing units have been assessed and it is considered they will comply with the requirements of the *Environmental Protection (Noise) Regulations 1997*.

Condition 5 has been recommended to identify how the recommendations in the Acoustic Report prepared by Herring Storer Acoustics will be implemented in the development of the child care premises. In addition to this condition, the applicant is advised via recommended advice note 11 that the operation of the child care premises must comply with the *Environmental Protection (Noise) Regulations 1997* at all times.

Conclusion:

In accordance with the above considerations, the proposed childcare centre is considered appropriate for approval, subject to conditions.

The applicant has demonstrated that the development can operate without unduly impacting the surrounding residences with respect to noise emanating from the premises and that the traffic impact of the use will be limited and accommodated within the existing road network. The built form will be complimentary to the existing streetscape and will likely enhance the amenity of the area while providing an essential service to residents.

Officer Recommendation

It is recommended that the Metro Inner South JDAP resolves to:

1. **Accept** that the DAP Application reference DAP/23102450 is appropriate for consideration as a "Child Care Premises" land use and compatible with the objectives of the zoning table in City of Fremantle Local Planning Scheme No. 4;
2. **Approve** DAP Application reference DAP/23102450 and accompanying plans (attachment number) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of City of Fremantle Local Planning Scheme No. 4, subject to the following conditions:

Conditions

1. Pursuant to clause 26 of the Metropolitan Region Scheme, this approval is deemed to be an approval under clause 24(1) of the Metropolitan Region Scheme.



2. This decision constitutes planning approval only and is valid for a period of 4 years from the date of approval. If the subject development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.
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. The City's crossover specifications can be found via the following link: <https://www.fremantle.wa.gov.au/crossovers>.
4. Prior to the occupation of the development hereby approved, any redundant crossovers shall be removed and the verge and kerbing reinstated to the City's specifications, at the expense of the applicant and to the satisfaction of the City of Fremantle. The City's crossover specifications can be found via the following link: <https://www.fremantle.wa.gov.au/crossovers>.
5. Prior to lodging an application for a Building Permit for the development hereby approved, details of how the recommendations contained in the Acoustic Report (Ref: 30548-3-22408), prepared by Herring Storer Acoustics, dated 2 February 2022 are to be implemented are to be submitted to the satisfaction of the City of Fremantle.
6. Prior to lodging an application for 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.
7. Prior to lodging an application for 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.
8. 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.
9. Prior to lodging an application for a Building Permit for 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



- Management of any noise and/or odour nuisance to adjacent residences that may arise
- 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.

10. Prior to lodging an application for a Building Permit or Demolition Permit for the development hereby approved, a Construction/Demolition 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) Gentries;
 - 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.
11. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.
12. Prior to lodging an application for a Building Permit for the development hereby approved, final details of the external materials, colours and finishes of the proposed development, including a physical sample board or materials, is to be submitted and approved to the satisfaction of the City of Fremantle.
13. Prior to lodging an application for a Building Permit for the development hereby approved, an outdoor lighting plan must be submitted and approved by the City of Fremantle. The outdoor lighting is to be designed, baffled and located to prevent any increase in light spill onto the adjoining properties.
14. Prior to occupation of the development hereby approved, No. 82 (Lot 12) and No. 84 (Lot 13) are to be legally amalgamated into one lot on the Certificate of Title. Alternatively the owner may enter into a legal agreement with the City



of Fremantle, drafted by the City's solicitors at the expense of the owner and be executed by all parties concerned. The legal agreement will specify measures to allow the development approval to operate having regard to the subject site consisting of two separate lots, to the satisfaction of the City of Fremantle.

15. Prior to lodging an application for a Building Permit for the development hereby approved, the applicant is to submit, and have approved to the satisfaction of the City of Fremantle, a detailed parking plan design which complies with the Australian Standard AS/NZS 2890 and AS/NZS 1428, including (insert number) parking bay/s (comprising (insert number) visitor bays, (insert number) loading bays, (insert number) disabled bays, (insert number) motorcycle / scooter bays), aisle widths, circulation areas, driveway/s and points of ingress and egress.
16. Prior to the occupation of the development hereby approved, all car parking, and vehicle access and circulation areas shall be maintained and available for car parking/loading, and vehicle access and circulation on an ongoing basis to the satisfaction of the City of Fremantle.
17. The maximum number children in child care at the site shall not exceed 92 at any one time.
18. For the duration of the development, the hours of operation associated with the Child Care Premises are only on Monday to Fridays from 6:30am to 6:30pm.
19. 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.
20. Prior to the issue of a Building Permit for the development hereby approved , all piped, ducted and wired services, air conditioners, hot water systems, water storage tanks, service meters, other plant and bin storage areas must be integrated into the design of the building and located to minimise any visual and/or noise impact on the occupants of nearby properties and screened from view from the street. Design plans for the location, materials and construction for screening of any proposed external building plant must be submitted to and approved by the City of Fremantle.

Advice Notes

1. A demolition permit is required to be obtained for the proposed demolition work. The demolition permit must be issued prior to the removal of any structures on site.



2. 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.
3. It is recommended that the applicant liaise with the adjoining property owner (s) regarding the replacement of the existing dividing fence(s) 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
4. 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.
 - a) The applicant is advised that the /The new/ modified vehicle crossover shall be separated from any verge infrastructure by:
 - b) a minimum of 2.0 metres in the case of verge trees
 - c) a minimum of 1.2 metres (in the case of bus shelters, traffic management devices, parking embayment's or street furniture), and
 - d) a minimum of 1.0 metre in the case of power poles, road name and directional signs.
5. The premises must comply with the *Food Act 2008*, regulations and the Food Safety Standards.
6. The applicant is advised that additional information in relation to the City's waste management requirements can be found here:
<https://www.fremantle.wa.gov.au/residents/waste-and-recycling>
7. The applicant is encouraged to maintain the adjacent verge in accordance with the City's Verge Garden Policy which can be found on the City website at:
<https://www.fremantle.wa.gov.au/resident-perks>
8. 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 Class B asbestos removal licence holder for. All asbestos removal is to be carried out in accordance with the Work Health and Safety Act 2020 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 Class A asbestos removal licence holder and an application submitted to WorkSafe, Department of Commerce. <https://www.commerce.wa.gov.au/worksafe>

9. If construction works involve the emission of noise above the assigned levels in the Environmental Protection (Noise) Regulations 1997, they should only occur on Monday to Saturday between 7.00 am and 7.00 pm (excluding public holidays). In instances where such construction work needs to be performed outside these hours, an Application for Approval of a Noise Management Plan must be submitted to the City of Fremantle Environmental Health Services for approval at least 7 days before construction can commence.
Note: Construction work includes, but is not limited to, Hammering, Bricklaying, Roofing, use of Power Tools and radios etc.
10. Effective measures shall be taken to stabilize sand and ensure no sand escapes from the property by wind or water in accordance with the City's Prevention and Abatement of Sand Drift Local Law.
11. All noise from the proposed development must comply with the requirements of the Environmental Protection (Noise) Regulations 1997 (as amended), such as:
 - mechanical service systems like air-conditioners, exhaust outlets, motors, compressors and pool filters;
 - vehicles;
 - amplified acoustic systems; and
 - patron noise.
12. The applicant is advised that any signage may be subject to a separate application for planning approval.



**PC2305-2 SWANBOURNE STREET, 29 (LOT 5) FREMANTLE –
ALTERATIONS AND ADDITIONS (TWO STOREY) TO
EXISTING SINGLE HOUSE (JZ DA0018/23)**

Meeting Date: 3 May 2023
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Attachments: 1. Amended Development Plans
Additional information: 1. Site Photos
2. Applicant Justification

SUMMARY

Approval is sought for two storey additions and alterations including a roof top terrace addition to an existing single house at No. 29 (Lot 5) Swanbourne Street, Fremantle.

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

- **Overshadowing (First and Upper floors)**
- **Boundary walls (South – Ground floor)**
- **Lot boundary setbacks (North and south – First floor)**
- **Visual Privacy (Upper floor – Roof Terrace)**

The application is recommended for refusal.

PROPOSAL

Detail

Approval is sought for two storey additions and alterations to an existing single house at No. 29 (Lot 5) Swanbourne Street, Fremantle. The proposed works include:

- Demolition of the rear single storey modern additions of existing dwelling;
- New ground floor extension providing an additional living room and study room;
- New first floor extension providing an additional bedroom with ensuite; and
- New roof terrace addition to upper floor

The applicant submitted amended plans on 11 April 2023 including the following:

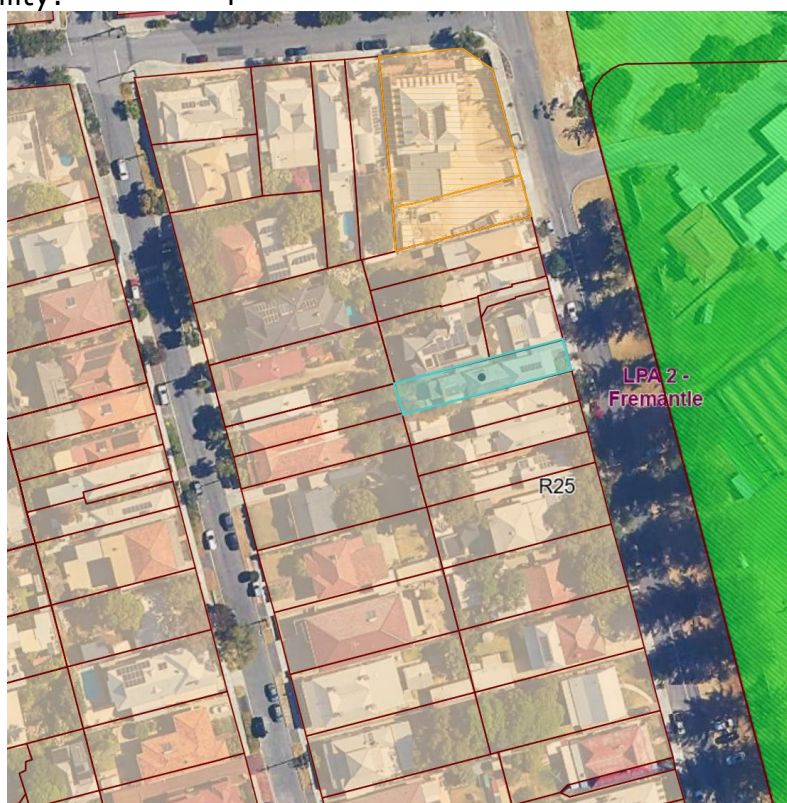
- Southern boundary wall shortened in length from 15.0m in length and 3.3m in height and lowered to a total of 12.58m in length and 3.0m in height;
- New open pergola structure addition to first floor;
- Reduced setback to the north by 15mm (from 1.8m to 1.785m) to shift the first floor more north and increase the setback to the south (from 0.9m to 1.5m), to improve solar access for the southern adjoining neighbour; and
- Roof terrace shifted North and provided with 1.6m privacy screening

The details of these amendments and analysis of their net effect on the neighbouring property are discussed further in the Report.

Development plans are included as attachment 1.

Site/application information

Date received:	17 January 2023
Owner name:	David Hugh Jones and Mary Louise Jones
Submitted by:	Georgia Jeps
Scheme:	R25
Heritage listing:	Individually Listed Category 3
Existing land use:	Single House
Use class:	Single House
Use permissibility:	P





CONSULTATION

External referrals

Nil required.

Internal referrals

The heritage impact of the proposal is deemed acceptable as it will have limited impact on the heritage significance and values of the subject site and on the streetscape of Swanbourne Street. Refer to the Heritage Assessment section of this report for further discussion.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as the application proposed variations to the R-Codes and policy provisions. The advertising period concluded on 2 March 2023, and 2 submissions were received, with one supporting the proposal. The following issues were raised (summarised):

- The ground floor additions provided with boundary walls will create a sense of confinement through added building bulk and will significantly impact on the adjoining property's ability to access adequate sunlight and ventilation and will abut the primary outdoor living area.
- The first floor and roof terrace additions with reduced lot boundary setbacks, will introduce mass building bulk and impact the amenity of southern adjoining property.
- The roof terrace addition will have a visual privacy impact, overlooking the primary outdoor living area of the southern adjoining property.
- The rear additions will have a detrimental impact on the solar access and ventilation owing to the southern adjoining property's primary outdoor living area.

An excerpt of the submission is provided as follows:

I strongly reject the development application in its current form.

The proposed development shows no consideration for the adverse impacts on my property, and so I recommend the following points for consideration:

- *The first floor's footprint should be shifted north towards the boundary of 27/27a Swanbourne Street. The reasons for this are:*
 - *The first floor could then meet the deemed to comply provisions of Table 2a of Section 5.1.3 of the R-Codes;*



- *The first floor would abut uninhabitable areas on 27a Swanbourne Street, not leading to a scale and bulk impact, nor would it overlook 27a Swanbourne Street's primary outdoor living area;*
 - *By shifting the first floor's footprint north, this would significantly reduce the extent of overshadowing on our property, particularly as the proposed development's shadow casts directly over our property's outdoor living area.*
- *The roof terrace be completely removed from the plans. The reasons for this are:*
 - *The roof terrace overlooks our property's primary outdoor living area and a habitable ancillary studio dwelling;*
 - *The roof terrace likely also overlooks 27 Swanbourne Street's primary outdoor living area, located at the western rear of the property.*
- *If the applicant desires a roof terrace, it would need to be relocated to the front (eastern end) of the property, so as not to not overlook neighbouring properties' outdoor living areas.*

For the reasons given above, I am completely opposed to the development as outlined in the attached plans.

I will never agree to the viewing deck as shown. I want setback requirements to be observed on the southside of the building. I want the issues of view loss, visual privacy and overshadowing to be significantly addressed. I trust that Council will follow up on matters rigorously.

In response to the above, the applicant submitted revised plans on 11 April 2023, to address the concerns of visual privacy from the roof terrace and the boundary wall length, by providing written responses and further justification to the issues raised by the objection and planning assessment items (see Additional Information 2), including the following changes:

- Southern boundary wall shortened in length from 15.0m in length and 3.3m in height and lowered to a total of 12.58m in length and 3.0m in height;
- New open pergola structure addition to first floor;
- Reduced setback to the north by 150mm (from 1.8m to 1.785m) to shift the first floor more north and increase the setback to the south (from 0.9m to 1.5m), to improve solar access for the southern adjoining neighbour; and
- Terrace shifted North and provided with 1.6m privacy screening

Detailed Officer comments on the lot boundary setbacks, overshadowing and visual privacy elements of the proposal are provided in the officer assessment section below.

OFFICER COMMENT



Statutory and policy assessment

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

- Overshadowing (First and Upper floors)
- Boundary walls (South – Ground floor)
- Lot boundary setbacks (North and south – First floor)
- Visual Privacy (Upper floor – Roof Terrace)

The above matters are discussed below.

Background

The subject site is located on the western side of Swanbourne Street. The site has a land area of approximately 311m² and is currently an existing a single storey single house. The subject site slopes downward from the street to the rear of the site by approximately 1-1.5m. The site is zoned Residential and has a density coding of R25. The site is individually heritage listed.

There is no relevant planning history applicable to the subject site.

Boundary wall

Element	Requirement	Proposed	Extent of Variation
Boundary wall (south)	1.0m	Nil	-1.0m

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

- The proposed boundary wall enables more effective use of space on the site as it creates an enhanced private outdoor living area for the northern area of the subject property;
- The proposed boundary wall is considered a minor departure from the deemed-to-comply requirement of LPP 2.4 Cl IV (i) as the total wall length is 12.58m (580mm above the length requirement) and the height of the wall is to a maximum of 3.0m which as a result reduces the building bulk of the development; and



- In relation to overshadowing, the southern boundary wall is considered acceptable as the extent to overshadowing is caused by the additions of floors above (first floor and roof terrace), whereby the overshadowing has been deemed unacceptable by City Officers. See further discussion of this concern in 5.4.2 section below.

Northern boundary wall

Please note the northern boundary wall proposed is deemed-to-comply and meets Cl IV (i) of LPP 2.4 as it is less than 2.9m in height and to a length of 8.9m.

Lot Boundary Setback

Element	Requirement	Proposed	Extent of Variation
First Floor (South)	1.8m	1.5m	-0.3m
First Floor (North)	1.8m	1.785m	-0.015m

First Floor (Southern Setback)

The southern boundary setback to the first floor is not considered to meet the Design principles of the R-Codes in the following ways:

- In relation to overshadowing, the lesser setback does not provide adequate solar access for the southern adjoining neighbour – 31 Swanbourne Street, (refer to overshadowing assessment below), whereby the overshadowing has been deemed unacceptable by City Officers.

First Floor (Northern Setback)

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

- The lesser setback to the northern boundary enables more effective use of space on the site as it creates an enhanced private outdoor living area for the northern area of the subject property;
- The lesser setback minimises the impact of building bulk and as a result the amenity of the northern adjoining neighbour by opening up the wall through an open pergola design (see Figure 1 below). Therefore, the mass of the wall which extends for 13.0m in length and 6.8m in height to the first floor addition is reduced in size and form;

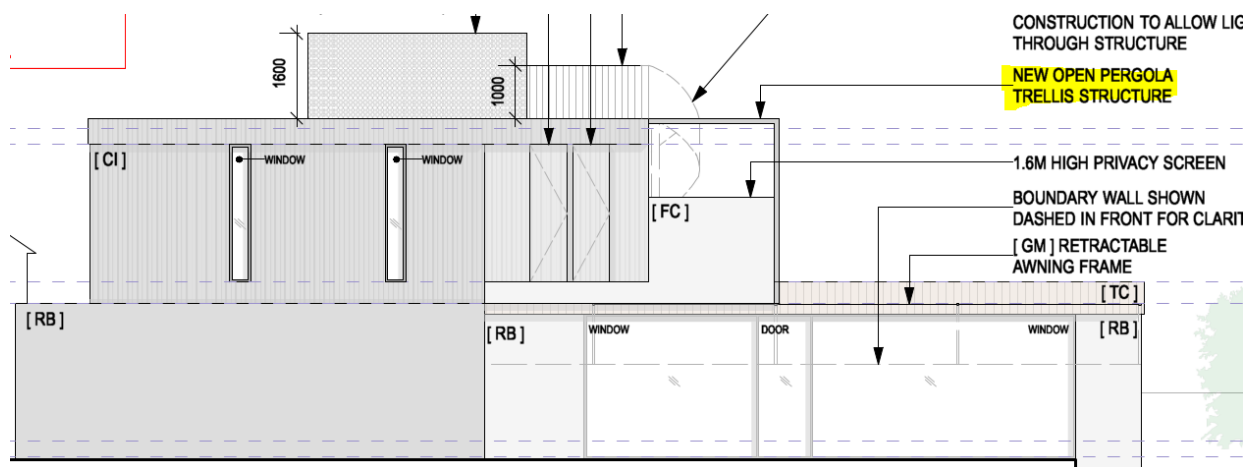


Figure 1: Proposed Open Pergola Trellis Structure to Northern portion of proposed first floor addition to subject site.

- The lesser setback to the northern boundary is considered a minor variation from the deemed-to-comply criteria (1.785m in lieu of 1.8m) and therefore, is acceptable by City Officers.

Visual Privacy

Element	Requirement	Proposed	Extent of Variation
Cone-of-vision setback (New Open Terrace; view south-west)	7.5m	3.5m	-4.0m

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

- The cone-of-vision from the proposed roof terrace encroaches a portion of the primary outdoor living area of the southern adjoining neighbour – being a sensitive, habitable living area (see Figure 2 below);
- It is noted the proposed roof terrace will provide some privacy screening to mitigate the extent of overlooking to the southern adjoining neighbour, (see Figure 2 below); and

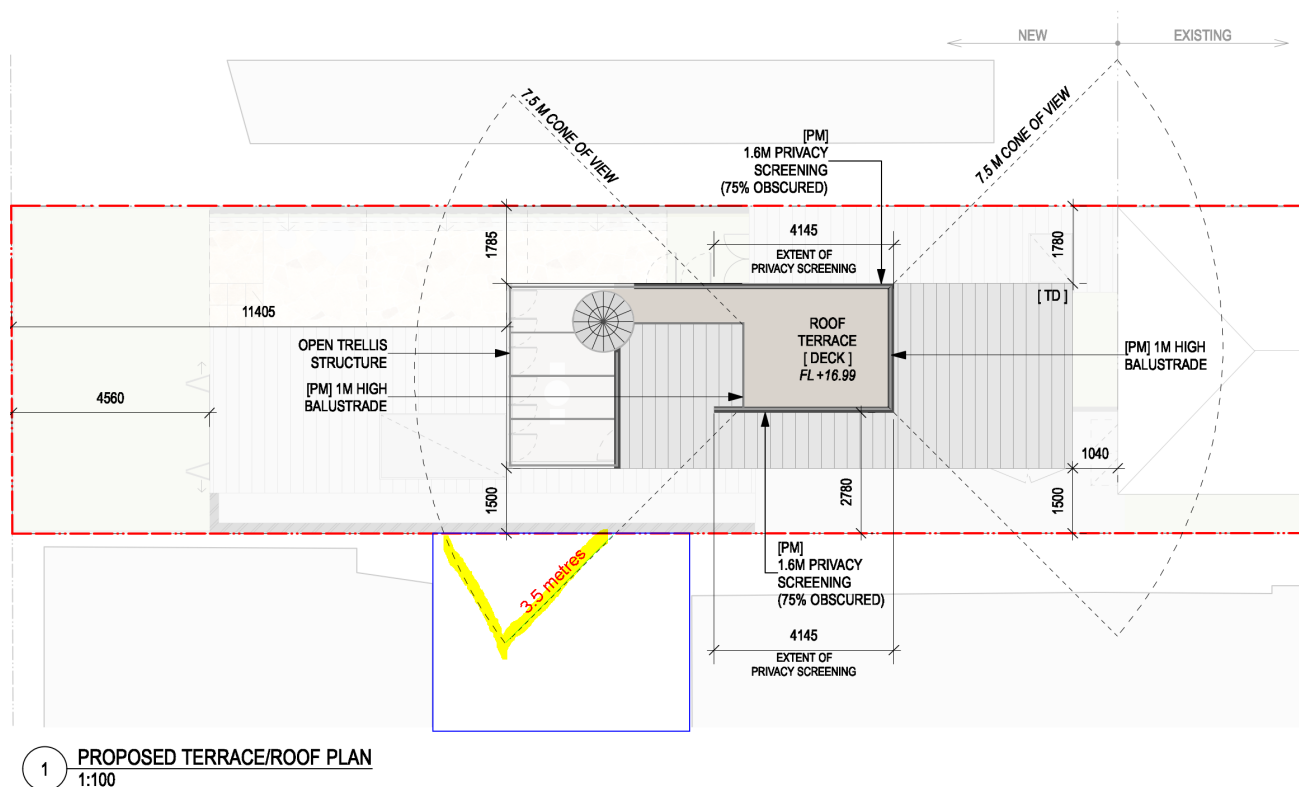


Figure 2: Cone-of-vision from proposed Roof Terrace of subject site – showing a portion of the primary outdoor living area within the cone-of-vision of the southern adjoining property (31 Swanbourne Street).

- The applicant has not demonstrated that this variation does not compromise the privacy of the adjoining neighbour.

Solar Access (South)

Element	Requirement	Proposed	Extent of Variation
Maximum Permissible Overshadowing of Adjoining Sites (R-Codes 5.4.2)	Max. 25% of shadow cover of adjoining site: No. 31 Swanbourne Street (Site Area: 311m ²)	47.6% (150.8m ²)	22.6% (70.29m ²)

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

- The proposed rear alterations and additions do not comply with the deemed-to-comply requirement of the R-Codes and are not designed in a manner to protect solar access for the southern adjoining neighbour (31 Swanbourne Street), as it will overshadow the only existing outdoor living area of the neighbour site;
- It is noted that approximately 79.5% of the existing primary outdoor living area and key internal habitable living areas of the southern adjoining site (31 Swanbourne Street), such as the deck area (as shown in Figure 3 below) which will be overshadowed by the proposal;

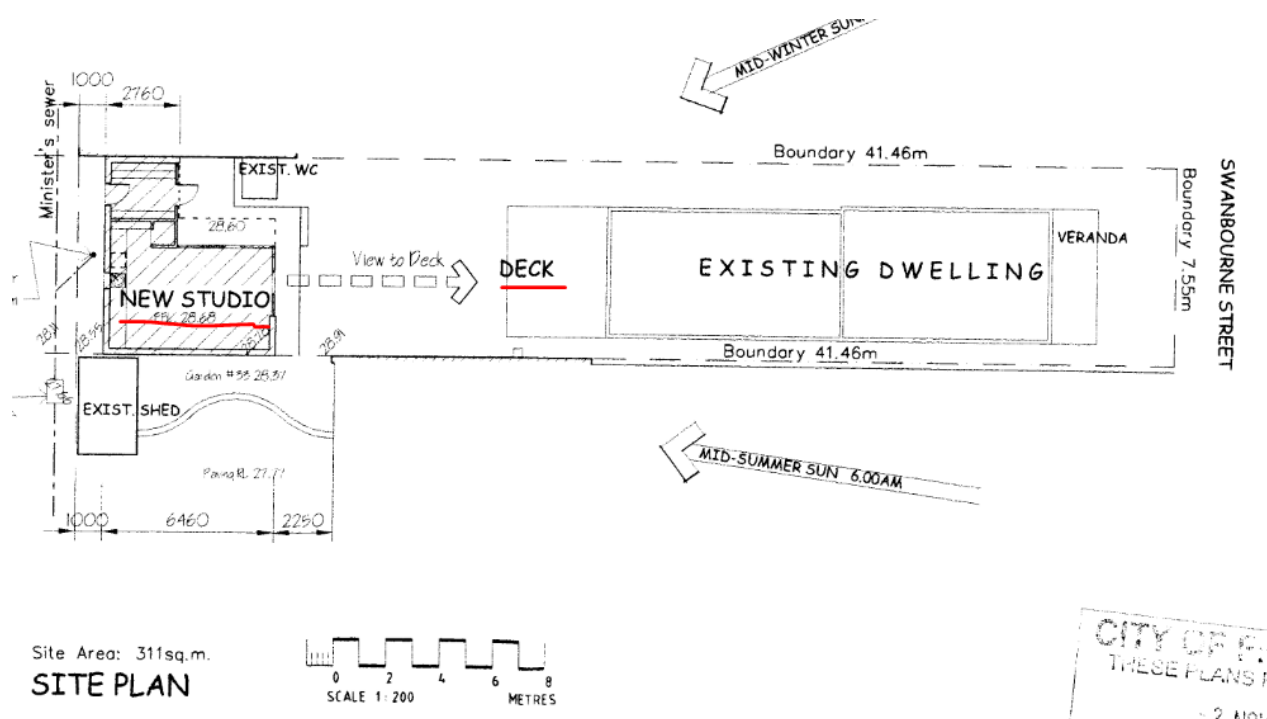


Figure 3: 31 Swanbourne Street – showing primary outdoor living area and studio.

- It is also important to note that the east-west oriented lots such as those on Swanbourne Street, with lot widths of 8m or less are considered narrow lots, and some overshadowing is inevitable for development proposals above a single storey. Therefore, consideration has been given to the proposed rear alterations and additions to exceed the deemed-to-comply requirement of the R-Codes.

However, despite the submission of amended plans dated 11 April 2023, the amended design does not comply with P2.2 of 5.4.2 of the R-Codes – to protect the outdoor living area of the southern adjoining property, therefore this proposal is not supported by City Officers (see Figures 4 and 5 below);

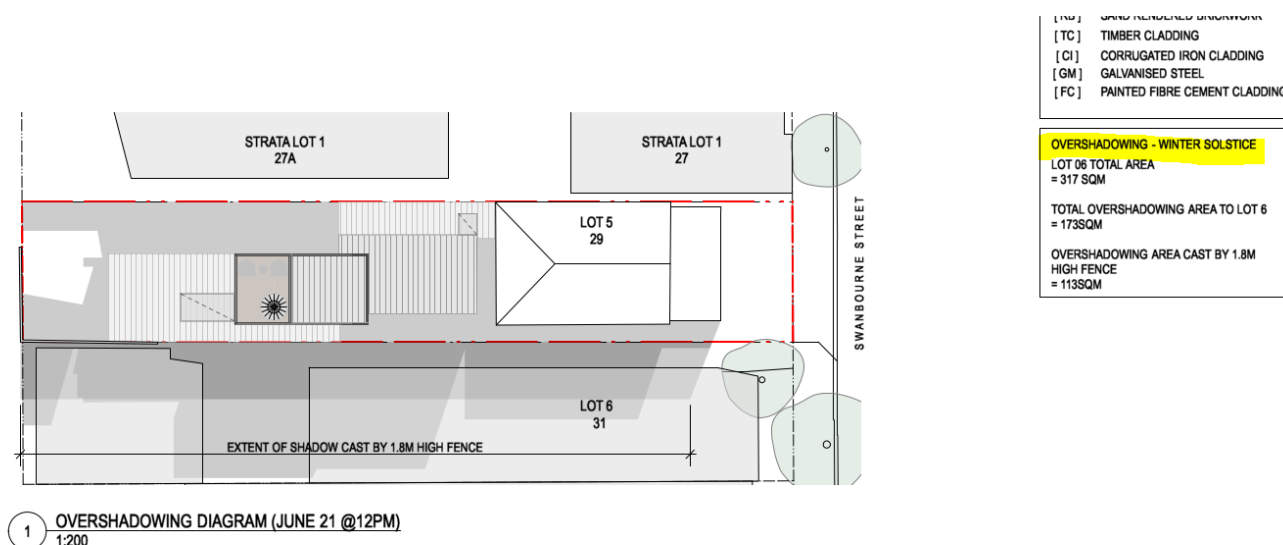


Figure 4: Original Plans dated 17 January 2023, showing Overshadowing Assessment.

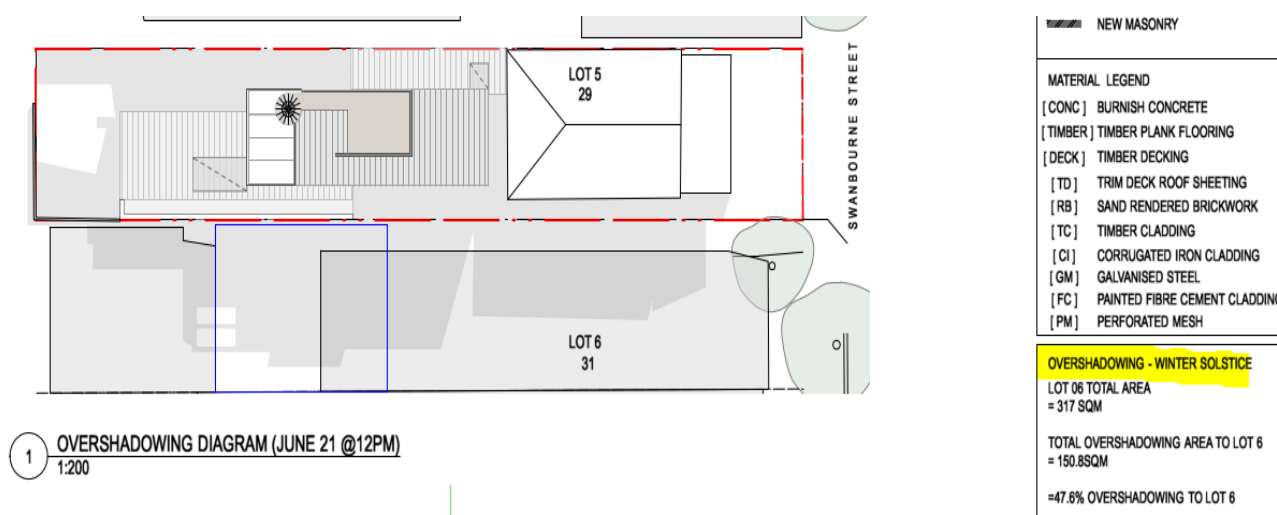


Figure 5: Amended Plans dated 11 April 2023 showing Overshadowing Assessment showing the existing outdoor living area (shown in blue box above figure 4 of No.31 Swanbourne Street.

It should also be noted that the variation to solar access provided by the proposed southern boundary wall and first floor addition would otherwise be accepted if it wasn't for the extent of the overshadowing to cover the primary outdoor living area (OLA) of the Southern adjoining neighbour.

It should be acknowledged there are design solutions to mitigate the extent of the overshadowing impact on the southern adjoining property or at least reduce the impacts over more sensitive habitable spaces such as outdoor living areas. However, this proposal has chosen to retain certain design elements (being



the upper floor roof terrace) which will overshadow almost all of the existing OLA on the adjoining southern site and therefore, is not supported by City Officers.

Heritage Assessment

As the proposed development is Level 3 Heritage Listed, it is subject to assessment against LPP 3.6 – Heritage Areas Local Planning Policy. As outlined in LPP 3.6, the intent of additions and alterations to existing buildings is as follows:

When altering or adding to a place with heritage protection, the goal is for an outcome that does not reduce the cultural heritage significance of the place (whether this significance is individual to the site, or part of the broader significance of the area) and ideally, enhances it. This generally involves changing as little as possible but as much as necessary in order to retain the cultural heritage significance of the place and maintain its utility. Because the significance of each place and its context is different, assessment of the suitability of proposals requires that each proposal should be assessed on its own merits.

The proposal was reviewed and as noted above, the heritage impact of the proposal is deemed acceptable as it will have limited impact on the heritage significance and values of the place. City Heritage Officers provided the following comments;

We have assessed the DA for 29 Swanbourne Street – two storey addition to the rear of single storey cottage and can advise that there are no heritage issues. The new addition allows for the original cottage to remain with its roof form intact. There is a separation between the original cottage roof form and the two storey section of the addition and there will be minimal impact to the streetscape.

The only issue is the front fencing which could be modified to allow for more visual permeability using the Heritage Areas policy as a guide, although it is acknowledged that they are modifying the existing.

It is noted the concern related to the proposed front fencing to the subject site as per the above Heritage comments, has been considered and as a result the front fencing is to be conditioned.

In accordance with LPP 3.6, new development in heritage areas needs to satisfy the following criteria (assessment against relevant criteria outlined below):



3.5 Additions and Alterations (to existing buildings)

Element	Officer comment
General	
i. Alterations and additions in heritage areas should respond sympathetically to the heritage values of the area as a whole and that part of the heritage area in the vicinity of the proposed development, with changes designed and sited in a manner that retains, conserves, respects and complements the heritage significance of the place and area.	In accordance with the heritage comments provided by City Heritage Officers, the proposed additions and alterations are considered to comprise changes to the place which are able to be supported.
ii. Alterations and additions to contributory places should seek to change as little as reasonably possible.	The proposed rear additions and alterations will retain the existing Heritage listed single house and comprise changes to the place which are able to be supported.
Siting and scale	
v. Double storey additions to a contributory building may be considered where: • they are located to the rear of the original building; • they do not alter the original building roof line; • they are constructed so that the roof of the new addition is independent from the original building's roof form; • the roof form of the addition is not visible from the street (a minor variation to this may be permitted based on a proposal's impact on the streetscape); AND • if the addition is attached to the original building, in order to allow the original building to retain its original form, then this is to: - o Be via a linked pavilion, or	The proposed additions and alterations are located to the rear of the original heritage listed building; The rear additions does not alter the original building's roof form. The rear additions will provide separation between the original cottage roof form and the two storey section of the addition and therefore, there will be minimal impact on the original building's roof form The rear additions will not detract from the existing streetscape and therefore there will be minimal impact caused by the additions. The rear additions provide a separation wall between the original building and the new rear additions and will not detract from the original built form the cottage on the subject site.



o Have side external walls of the extension set in from the side walls of the original building, or o Be supported by a material change at the junction of the old and new	
Form	
i. Additions to places within a heritage area must respect and harmonise with and be sympathetic to the predominant form of the prevailing streetscape and existing building, without falsely mimicking heritage detailing.	The additions contribute to the streetscape in a positive manner, through a contemporary, sympathetic design.
ii. Where a building form is highly repetitive, significant departures in form will appear at variance to the streetscape and should not be introduced.	The two-storey addition will sit behind the roof line of the existing dwelling and is largely concealed from the existing streetscape due to the sloping of the site from the from the street to the rear. The addition responds to and interprets the scale, form and articulation of existing and nearby buildings.
iii. The treatment of additions in terms of the roof form, proportions, materials, number, size and orientation of openings, ratio of window to wall etc. of an addition should relate to the existing contributory building and to its neighbours.	In accordance with the attached heritage comments, the proposed additions are subservient to the main house in form and are deemed as acceptable.
iv. Symmetry or asymmetry of facades in the prevailing streetscape is an element of form to be kept consistent.	The façade of the main dwelling will be maintained and extended as existing.
v. Contemporary addition designs should respond to, and interpret, the scale,	In accordance with heritage comments provided by City Heritage Officers, the proposed additions are considered acceptable.



articulation and detail of the existing and nearby buildings in a modern, innovative and sympathetic way.	
Roofs	
i. Traditionally roof lines are a predominant element of the streetscape. Additions should respond to and reinforce the existing characteristics of a streetscape or neighbourhood with regards to plate and wall heights, roof form, ridge lines, parapet lines, roof slopes and eaves overhangs.	The rear additions will retain the original roof form and reinforce the existing streetscape.
Materials, Colours and Detailing	
i. Significant original or early materials and detailing to contributory places should be retained and conserved. Where it can be demonstrated that original fabric has been previously removed or unsympathetically altered, restoration/reconstruction of the street front facades to their original form and detailing is strongly encouraged. This should be based on documentary and/or physical evidence such as remaining traces of earlier fabric and old plans and photographs	The proposed rear additions and alterations will retain the existing Heritage listed single house and comprise changes to the place which are able to be supported. No changes to the original built form of the existing dwelling as a part of the additions and alterations.
ii. Intrusive finishes to heritage buildings should be removed. Intrusive finishes could be aesthetically intrusive or physically intrusive such as cement render or acrylic paints.	As above.
iii. It is recommended that paint finishes or rendered finishes to	As above.



previously unpainted or un-rendered surfaces on heritage buildings be avoided. Further, glossy materials or finishes on heritage buildings should be avoided unless there is a historical precedent for their use.	
iv. Use of original colours (based on physical inspection or paint scrapes) or traditional colours is encouraged. Where a contemporary paint colour scheme is being considered 16/66 for a contributory building in a heritage area, consideration should be given to the traditional tonal contrasts and façade detailing. Monochromatic schemes are not appropriate on heritage buildings and should be avoided.	The colour scheme is considered acceptable from a heritage perspective.

Demolition of Buildings and Structures

Demolition of any place of heritage value requires careful consideration because it potentially removes all its heritage significance except for intangible historical and social values that are not dependant on physical fabric. In considering these applications, in accordance with clause 4.14 of the City's LPS4, Council must be satisfied that the building or structure:

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

The City's Heritage Officers have confirmed that the two storey rear additions and alterations to the existing Level 3 Heritage Listed Single house at 29 Swanbourne Street, will have no discernible impact on the original cottage or built form as there is a separation between the original cottage roof form and the new rear two storey extension. Furthermore, the additions and alterations will have minimal impact on the streetscape of Swanbourne Street.



On the basis of the above, the demolition of the existing buildings on the subject site is supported pursuant to clause 4.14 of the City's LPS4.

Front Gate Addition

It is noted the proposal includes modifications to an existing primary street fence to allow a new single onsite car parking bay. These modifications will include the addition of a front pedestrian gate to be made visually permeable and two solid piers to a height of 1.9m.

A condition requiring the pedestrian gate as indicated on the approved plans to swing into the subject site only when opened and not impede on the adjoining road reservation, if the application was being supported then an appropriate condition could be imposed to ensure the above would be met.

CONCLUSION

In accordance with the above assessment, it is considered that the subject proposal does not comply with the provisions of the relevant statutory planning requirements of LPS4 and relevant Council local planning policies and is therefore, recommended for refusal pursuant to Clause P2.2 of 5.4.2 of the R-Codes.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Council:

REFUSE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the Two Storey Additions and Alterations Including a Roof Top Terrace Addition to existing Single house at No. 29 (Lot 5) Swanbourne Street, Fremantle, as detailed on plans dated 11 April 2023, for the following reasons:

1. The proposal is inconsistent with the design principles of the Residential Design Codes in respect to the building height, visual privacy and solar access for the adjoining property and are considered to cause an unacceptable amenity impact upon the adjoining southern property with



excessive overshadowing of primary outdoor living area and habitable room openings.

COMMITTEE DECISION ITEM PC2305-2

Moved: Cr Bryn Jones

Seconded: Cr Su Groome

Refer the application to the administration with the advice that the Council is not prepared to grant planning approval to the application for the additions and alterations to the existing Single house at No. 29 (Lot 5) Swanbourne Street, Fremantle based on the current submitted plans and invite the applicant, prior to the next appropriate Planning Committee meeting to consider submitting an amended proposal to reduce the impact of overshadowing on the southern neighbour's outdoor living area.

Carried: 5/0

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



PC2304-1 HICKORY STREET, NO. 8 (LOT 30), SOUTH FREMANTLE - TWO STOREY ADDITIONS AND ALTERATIONS INCLUDING A ROOF TOP TERRACE ADDITION TO EXISTING SINGLE HOUSE (ED DA0263/22)

Meeting Date: 5 April 2023
Responsible Officer: Director Planning, Place and Urban Development
Decision Making Authority: Committee
Agenda attachments: 1. Amended Development Plans (14 April 2023)
Additional information: 1. Site Photos
2. Applicant additional information

SUMMARY

Approval is sought for two storey additions and alterations including a roof top terrace addition to an existing single house at No. 8 (Lot 30) Hickory Street, South Fremantle.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period. 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**
- **Overshadowing**
- **Lot Boundary Setbacks**
- **Visual Privacy**

This application was originally referred to the 7 December 2022 Planning Committee with a recommendation for refusal for the following reasons:

- 1. The proposal is inconsistent with the design principles of the Residential Design Codes in respect to the building height and solar access for the adjoining property and are considered to cause an unacceptable amenity impact upon the adjoining southern property with excessive overshadowing of habitable spaces.**

At the Planning Committee held on 7 December 2022, the Council resolved as follows:

'Refer the application to the administration with the advice that the Council is not prepared to grant planning approval to the application for the two



storey additions and alterations including a roof top terrace addition to existing Single House at No. 8 Hickory Street, South Fremantle based on the current submitted plans and invite the applicant, prior to the next appropriate Planning Committee meeting to consider submitting an amended proposal to address overshadowing on the southern neighbour.'

Subsequently, the applicant has provided amended plans (dated 3 March 2023). It is considered that the amendments constitute a re-design of the proposal, satisfactorily addressing the reasons for deferral provided above. As such, the amended proposal is recommended for conditional APPROVAL.

PROPOSAL

Detail

Approval is sought for two storey additions and alterations (including a roof top terrace addition) to an existing single house at No. 8 (Lot 30) Hickory Street, South Fremantle. The proposed works include:

- New stairwell addition to existing ground floor;
- New first floor addition above the existing ground level providing additional living area and bedrooms; and
- New partly enclosed roof top terrace above the first-floor level.

Please note the new ground floor pool, landscaping and alfresco additions shown on the development plans do form part of this application and have been approved separately as part of application ref. DA0265/22 (determined under delegation on 22 August 2022). These elements, subject of this separate approval, are annotated with an 'N/A' on the proposed ground and upper floor plan.

The applicant submitted amended plans on 3 March 2023 after being referred back to the administration for the purpose of addressing the adverse overshadowing impacts upon the southern neighbour that were considered evident by officers in the previous plans (dated 18 November 2023).

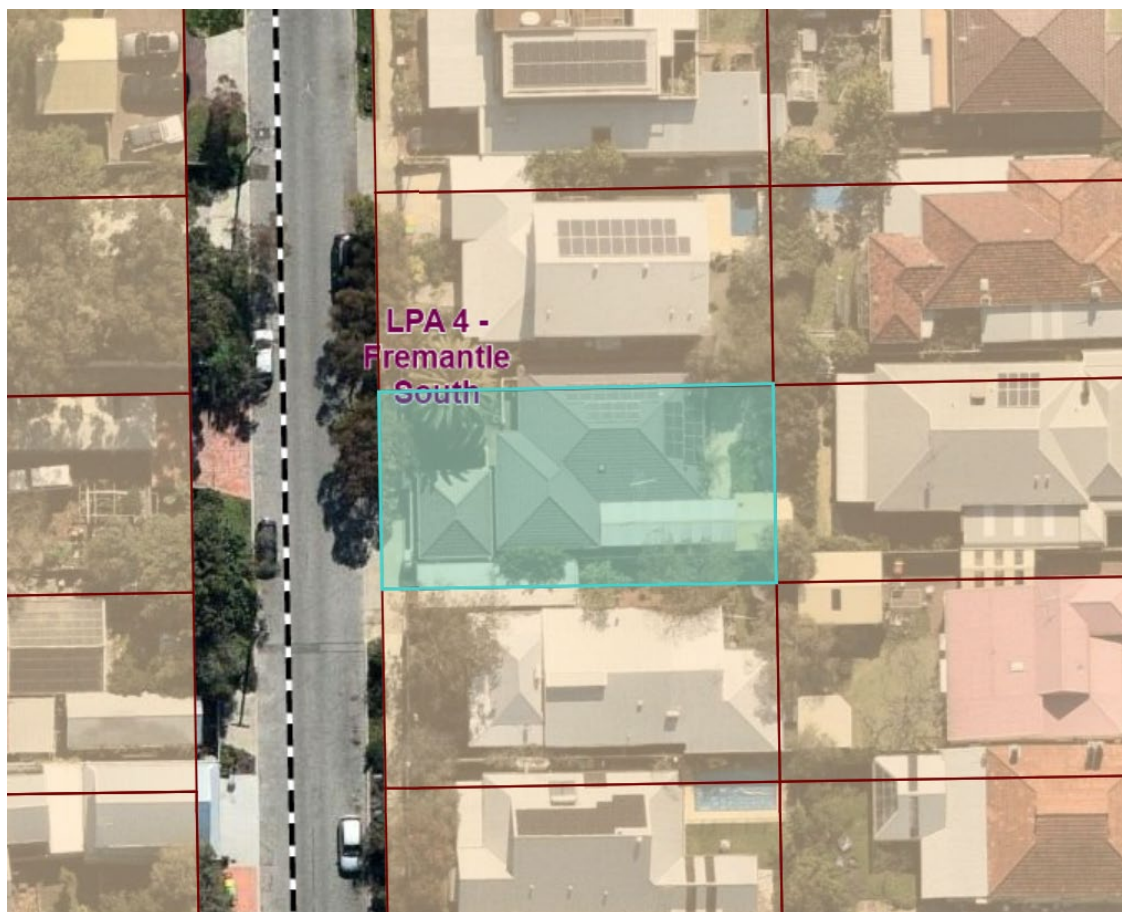
The amended plans, submitted on 3 March 2023, included the following changes:

- Increase in the southern side lot boundary setback of the third level (partly enclosed roof terrace) from 4.6m to 7.195m (2.595m increase in the southern lot boundary setback of the third level);
- Reduction in the overall overshadowing of the neighbouring southern lot from 34.95% (159m²) to 29.45% (134m²), representing a 5.5% (25m²) reduction in the overshadowing of the neighbouring southern lot.

Amended development plans are included as attachment 1.

Site/application information

Date received: 2 August 2022
Owner name: Ian Robert Stone Bellinge & Jahna Alexandra Gisela
Maria Josepha Spielmanns Bellinge
Submitted by: Australian Renovation Group
Scheme: Residential (R25)
Heritage listing: South Fremantle Heritage Area
Existing land use: Single House
Use class: Single House
Use permissibility: P



CONSULTATION

External Referrals

Nil required.

Internal Referrals

Heritage

The proposal can be supported from a heritage perspective for the following reasons:



- The streetscape is considered to be of a complex and inconsistent nature.
- This existing building is considered non-contributory to the South Fremantle Heritage Area.
- There is a prevalence of garages and newer two-storey additions and residences to the opposite side of the road, allowing some flexibility in the nature and design of this proposal.
- Further to preliminary discussions prior to submission of the application, the roof terrace element has been modified to reduce the impact on the streetscape and the building appearance from the streetscape appears more of a two-storey nature.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as variations to the deemed-to-comply provisions of the R-Codes and Council policies were proposed. The advertising period concluded on 8 September 2022, and three (3) submissions were received. The following issues were raised (summarised):

- Concerns that the height of the external walls and overall building height exceeds the maximum permitted by the R-Codes and the impact of this will be to reduce access to natural light and unacceptably overshadow the adjacent southern property. The proposal should be made compliant with relevant R-Code and/or Council policy requirements.
- Concerns that visual privacy will be significantly compromised from the rear facing openings at first floor level and from the roof terrace that will afford direct overlooking of adjoining properties.
- The use of the rooftop terrace will generate unacceptable noise impacts upon adjoining dwellings.
- The new 1800mm dividing fencing will not be sufficient to prevent overlooking from the new decking around the pool; the fencing should be raised 1800mm above the level of the decking.
- Concerns the large 3 storey dwelling will set a precedence for such a scale of development that will adversely impact the established heritage and general character of the area and impact the amenity of neighbouring properties.

In response to the above, the applicant submitted revised plans (dated 18 November 2023) to address the visual privacy concerns from the roof terrace and provided written responses and further justification to each of the above comments and planning assessment items (refer **Additional Information 2**).

It is noted that the adjoining northern landowners (No. 6 Hickory Street) provided written consent to the development plans.



Following referral of the application back to the administration at the 7 December 2022 Planning Committee in order to address overshadowing of the southern neighbour, further amended plans (dated 3 March 2023) were provided by the applicant to address this matter.

Detailed Officer comment on the building height, overshadowing and visual privacy elements of the proposal are provided in the officer assessment section below.

OFFICER COMMENT

Statutory and policy assessment

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

- Primary Street Setback
- Building Height
- Overshadowing
- Lot Boundary Setbacks
- Visual Privacy

The above matters are discussed below.

Background

The subject site is located on the eastern side of Hickory Street. The site has a land area of approximately 455m² and currently comprises a single storey single house. The site is zoned Residential and has a density coding of R25. The site is not individually heritage listed though is located within the South Fremantle Heritage Area.

The surrounding area is predominantly residential and is characterised 1-2 storey single houses.

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

- DA0265/22 - Rear landscaping, pool and alfresco additions to existing Single house; and
- DA0591/16 - Carport and primary street fencing addition to existing Single House.

Primary Street Setback (1st Floor)

Element	Requirement	Proposed	Extent of Variation
Primary Street Setback (Wall Height >4.0m – 1 st Floor)	10.0m	9.43m	0.57mm

The first-floor primary street setback variation of 0.57m from the required 10m setback required by LPP2.9 (Residential Streetscape) is supported on the following basis:

- The Hickory Street streetscape is of a highly varied and inconsistent nature with no prevailing character. The western side of Hickory Street is characterised by the rear of properties fronting South Terrace and includes development built right up to the Hickory Street frontage of these lots. The western side of Hickory Street is characterised by one and two-storey single houses with varied setbacks from Hickory Street (refer aerial image below). As such, the minor variation to the street setback of the 1st floor does not have an adverse impact upon the streetscape character of Hickory Street.

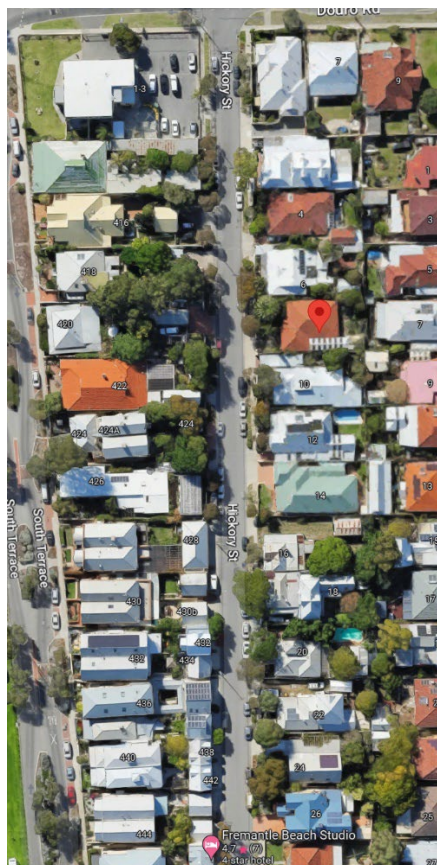


Figure 1. Aerial Image showing Hickory Street Streetscape



- The upper floor of the adjoining northern dwelling (No. 6 Hickory Street) is setback 9.7m from the street boundary (within 300mm of the proposed) and is therefore comparable and consistent with the upper floor street setback proposed at the subject site.

It should be noted that the proposed second floor is setback and stepped further from the first floor below and has a primary street setback of 14.82m which complies with LPP2.9 requirements.

Building Height

As outlined in Schedule 7 of the City's LPS4 (Local Planning Areas (Development Requirements)), building heights for residential development within LPA4 (Fremantle South) defer to the R-Code building heights in Table 3.

Element	Requirement	Proposed	Extent of Variation
External Wall Height	≤7.0m	7.2m	0.2.
Total Roof Height	≤8.0m	8.7m	0.7m

Over-Shadowing Comment, based on Original set of Plans Submitted

The additional building height is not considered to meet the Design Principles of the R-Codes for the following reasons:

- The additional building height is contributing to excessive overshadowing of habitable room major openings and outdoor living areas of the adjoining southern property (No. 10 Hickory Street), as discussed further in the overshadowing section below.

Notwithstanding the above, from a streetscape perspective, the additional building height is generally supported as the third level is stepped and setback 14.82m from the street (5.39m further than the first floor below) so would be expected to appear as only a two-storey dwelling from the street.



Overshadowing (amended, based on revised plans submitted)

Element	Requirement	Proposed	Extent of Variation
Maximum Permissible Overshadowing of Adjoining Sites (R-Codes 5.4.2)	Max. 25% shadow cover of adjoining site: No. 10 Hickory Street (Site Area: 455m ²)	29.45% (134m ²)	4.45% (20.25m ²)

On the basis of the amended development plans, dated 3 March 2023, the overshadowing of the adjoining southern lot (No. 10 Hickory Street) is considered to meet the Design principles of the R-Codes, for the following reasons:

- The applicant has taken measured steps to improve the overshadowing impact upon the southern neighbour by increasing the southern side lot boundary setback of the third level (partly enclosed roof terrace) from 4.6m to 7.195m increasing the southern lot boundary setback of this level by 2.595m. This has reduced the overall overshadowing of this southern lot from 34.95% (159m²) to 29.45% (134m²), representing a 5.5% (25m²) reduction in the overshadowing of this lot.
- It is noted that approximately 75m² of the shadow is to fall across existing roof areas of the adjoining carport and house which are non-sensitive, non-habitable areas of the adjoining dwelling.
- Importantly, the extent of overshadowing of outdoor living areas and habitable room windows has been partly reduced and given the overshadowing is assessed under the worst-case scenario (winter solstice), is it expected that the overshadowing impacts upon outdoor living areas and habitable room windows will be acceptable under the amended development proposals.
- It is also important to note that on east-west orientated lots such as those on Hickory Street, with lot widths of 15m, some overshadowing is generally inevitable for development proposals above a single storey. The shadow impact of the proposal has clearly informed the overall design of the amended proposals with all southern lot boundary setbacks achieving or greatly exceeding (in the case of the third (roof terrace) level) the deemed-to-comply requirements of the R-Codes and shadow impact of the proposal has been effectively mitigated as a result.

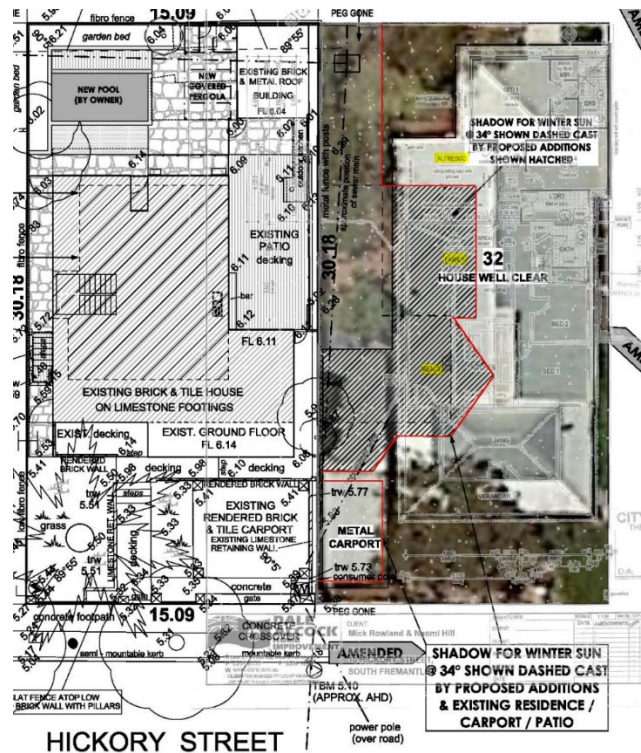


Figure 2. Previous Plans Overshadowing Assessment, plans dated 18 November 2022.

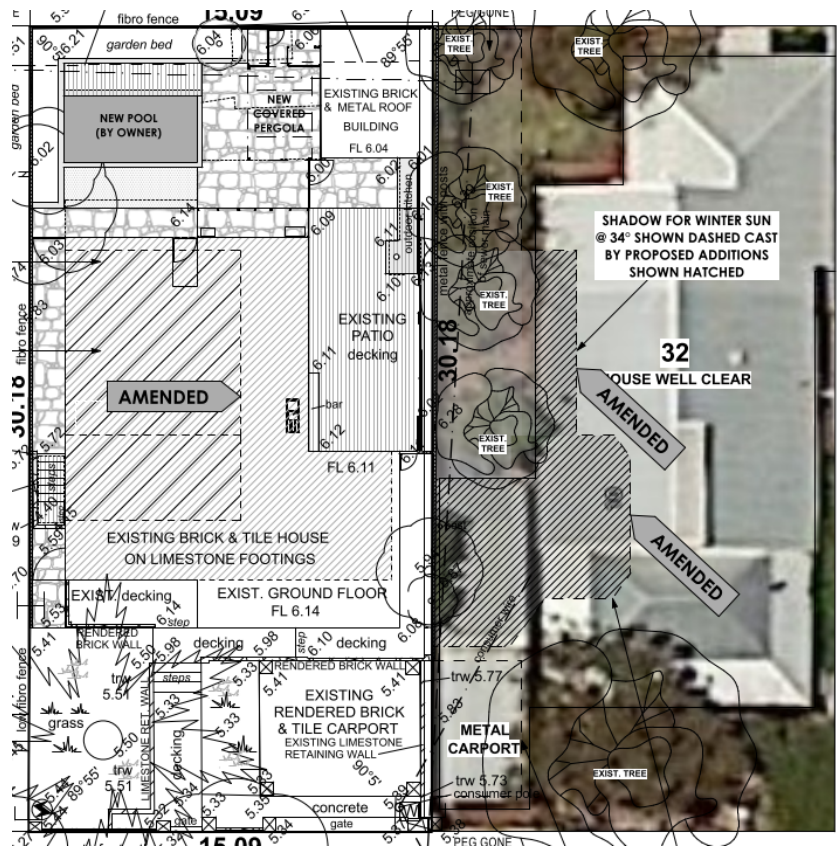




Figure 3. Amended Plans Overshadowing Assessment, plans dated 3 March 2023.

Lot boundary setback

Element	Requirement	Proposed	Extent of Variation
Northern Setback: First Floor New Upper Living – New Bed 2 Wall	1.7m	1.4m	0.3m

The first floor northern lot boundary setback variation is considered to meet the Design Principles of the R-Codes for the following reasons:

- The setback is to the northern lot boundary and therefore will not cause any overshadowing impact on the adjoining property (No. 6 Hickory Street).
- The proposed wall will be opposite the second storey of the adjoining property (No. 6 Hickory) which is setback only 1.5m from the subject site and is of a similar extent/length (12.85m compared to the proposed 12.83m). The Proposed Upper Floor Plan shows the extent of the adjoining dwelling compared to that proposed.
- The proposed wall will not be opposite any sensitive outdoor living areas of the adjoining dwelling and nor is it expected to have an adverse amenity impact upon habitable rooms of the adjoining property.
- It is noted the affected northern neighbour has provided written consent to the proposed amended development plans.

It should be noted that all other lot boundary setbacks either comply or exceed the deemed-to-comply requirements of the R-Codes.

Visual Privacy

Element	Requirement	Proposed	Extent of Variation
Cone-of-vision setback (New Open Terrace; view west)	7.5m	1.36m	6.14m
Cone-of-vision setback (New Open Terrace; view north-west)	7.5m	3.7m	3.8m



Cone-of-vision setback (First Floor New Upper Living; view north-west)	6.0m	3.8m	2.2m
--	------	------	------

The cone-of-vision setback of the New Open Terrace (view north) is not supported by Officers though is able to be resolved through the imposition of a condition of approval to require screening of the New Open Terrace along the northern edge/elevation of the terrace.

With the exception of the above, the remainder of the above visual privacy variations are supported under the Design Principles of the R-Codes for the following reasons:

- With reference to the 'Proposed Upper Floor Plan', 'Proposed Third Floor Plan' and aerial images above, it is noted that remainder of the above cone-of-vision variations (viewing north-west only) over the adjoining properties fall onto the rooves of the adjoining dwellings. Other elements that fall within the cone of vision are in the street setback area which is deemed to comply under the R-Codes.

As such, these variations do not allow for any direct overlooking over any sensitive habitable room windows or outdoor living areas of the adjoining properties and can therefore be supported under the design principles.

It should be noted that all visual privacy assessments from other habitable spaces in the proposed additions greater than 500mm above natural ground level are fully compliant with the deemed-to-comply requirements of the R-Codes, either achieving the require cone-of-vision setback or have an appropriate design solution such as hi-lite windows or screening to ensure compliance.

CONCLUSION

In accordance with the above assessment, the proposal as amended is considered to appropriately address the relevant statutory planning requirements of the LPS4, the R-Codes and relevant Council local planning policies and is therefore recommended for approval, subject to conditions.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil



LEGAL IMPLICATIONS

Nil

COMMITTEE RECOMMENDATION ITEM PC2304-1 **(Officer's recommendation)**

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council:

APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Two Storey Additions and Alterations Including a Roof Top Terrace Addition to an Existing Single House at No. 8 (Lot 30) Hickory Street, South Fremantle, subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans, dated 3 March 2023. 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.**
- 3. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the New Open Terrace located on the north elevation, is to be screened in accordance with Clause 5.4.1C1.1 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.

- 4. Prior to commencement of development the existing tree within the road reserve, shown on the approved plans shall be protected through the implementation of a Tree Protection Zone for protection during construction. Additional information with regard to the tree protection zone requirements can be**



found here: <https://www.fremantle.wa.gov.au/residents/trees-and-verges>.

5.

Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice Note(s):

- i. **A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.**
- ii. **Fire separation for the proposed building works must comply with Part 3.7 of the Building Code of Australia.**
- iii. **The applicant is advised that the existing verge tree is to be protected during the construction process with a minimum 2.8 x 2.8m fencing enclosure.**

**Lost: 2/4
For**

Cr Geoff Graham, Cr Su Groome

Against

Cr Bryn Jones, Cr Andrew Sullivan, Cr Adin Lang, Cr Ben Lawver

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

Additional Officers Comment

At the City's Planning Committee on 5 April 2023, the item for 8 Hickory Street, South Fremantle (*Two Storey Additions and Alterations Including a Roof Top Terrace Addition to Existing Single House*) was sent to the Ordinary Meeting of Council to be held on 26 April 2023 due to Planning Committee not being able to exercise their delegation.



Councillors had primarily raised concerns surrounding the overshadowing impact of the proposal on the southern neighbour at 10 Hickory Street, South Fremantle. On the 14 April 2023 the applicant provided Officers with a set of amended development plans in an attempt to address some of the concerns raised by the Planning Committee meeting, particularly in relation to the overshadowing impacts on the southern neighbour.

The applicant has advised:

"The intent of the changes is to reduce the extent of overshadowing on the adjoining property as suggested in Andrew's emails, and also to gain some more space on the balcony, without increasing overshadowing, due to the reduced head room within the third level as a result of the pitched roof".

The amended plans indicate that due to the change in roof pitch of the upper floor extension, the shadow extent and impact have been reduced, particularly toward the more sensitive living room openings and alfresco area of the southern property. The amended plans indicate that the overall shadow coverage has been reduced by approximately 6.7m² (see extract of overshadowing analysis below, the green area of shadow has reduced due to the change in roof form shown in elevations). This reduction results in an overall overshadowing area of 127.3m² (or 27.97% coverage of the adjoining southern property) compared with the previous plans which proposed 134m² (or 29.45%) overshadowing of the southern property.

Please note due to time constraints, officers have not had sufficient opportunity to assess the plans in detail or update any reporting in light of them.

Notwithstanding, should Council be of the mind to support the amended plans, an alternative recommendation could be put forward which simply amends approved plan date listed in condition No. 1 of the existing Officer's Recommendation to state 14 April 2023.





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.
3. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the New Open Terrace located on the north elevation, is to be screened in accordance with Clause 5.4.1C1.1 of the Residential Design Codes by either:
 - d. fixed obscured or fixed translucent glass to a minimum height of 1.60 metres above internal floor level, or
 - e. 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
 - f. 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.

4. Prior to commencement of development the existing tree within the road reserve, shown on the approved plans shall be protected through the implementation of a Tree Protection Zone for protection during construction. Additional information with regard to the tree protection zone requirements can be found here: <https://www.fremantle.wa.gov.au/residents/trees-and-verges>.
5. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

Advice Note(s):

- i. A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.
- ii. Fire separation for the proposed building works must comply with Part 3.7 of the Building Code of Australia.



- iii. The applicant is advised that the existing verge tree is to be protected during the construction process with a minimum 2.8 x 2.8m fencing enclosure.

AMENDMENT

Moved: Cr Andrew Sullivan

Seconded: Cr Bryn Jones

To amend the date in condition 1 and add the following condition 6

1. This approval relates only to the development as indicated on the approved plans, dated ~~3 March~~ 14 April 2023. 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.
6. Prior to the submission of a building permit application, the applicant is to prepare and submit for approval, a revised set of development plans that demonstrate the extent of overshadowing of the adjoining southern property is no more than 28% of the adjoining property site area (455m²), to the satisfaction of the City of Fremantle.

Amendment Lost: 3/9

For

Cr Andrew Sullivan, Cr Ben Lawver, Cr Adin Lang

Against

**Mayor Hannah Fitzhardinge, Cr Jenny Archibald, Cr Su Groome,
Cr Fedele Camarda, Cr Frank Mofflin, Cr Doug Thompson,
Cr Bryn Jones, Cr Rachel Pemberton, Cr Marija Vujcic**



COUNCIL DECISION ITEM PC2304-1
(Alternative recommendation)

Moved: Cr Doug Thompson

Seconded: Cr Bryn Jones

Council refers this item back to the next Planning Committee Meeting to allow the amended plans, dated 14 April 2023, to be formally assessed.

Carried: 10/2

For

**Mayor Hannah Fitzhardinge, Cr Jenny Archibald, Cr Fedele Camarda,
Cr Frank Mofflin, Cr Doug Thompson, Cr Bryn Jones, Cr Rachel Pemberton,
Cr Adin Lang, Cr Marija Vujcic, Cr Ben Lawver**

Against

Cr Andrew Sullivan, Cr Su Groome

Following the above Council decision to refer this item back to the next Planning Committee meeting. The requested Additional Officer's Comment and Amended Officer's Recommendation will be distributed in the Additional Documents, prior to the Planning Committee meeting on Wednesday, 3 May 2023.

ADDITIONAL OFFICERS COMMENT

BACKGROUND

At the City's Planning Committee on 5 April 2023, the proposal and plans (dated 3 March 2023) for 8 Hickory Street, South Fremantle (*Two Storey Additions and Alterations Including a Roof Top Terrace Addition to Existing Single House*) was referred to the Ordinary Meeting of Council on 26 April 2023 due to Planning Committee not being able to exercise their delegation.

Councillors had primarily raised concerns surrounding the overshadowing impact of the proposal on the southern neighbour at 10 Hickory Street, South Fremantle.

On 14 April 2023 the applicant provided Officers with a set of amended development plans (**Attachment 1**) in an attempt to address some of the concerns raised by the Planning Committee meeting, particularly in relation to the overshadowing impacts on the southern neighbour.



The applicant advised:

"The intent of the changes is to reduce the extent of overshadowing on the adjoining property as suggested in Andrew's emails, and also to gain some more space on the balcony, without increasing overshadowing, due to the reduced head room within the third level as a result of the pitched roof".

The amended plans, submitted on 14 April 2023, are noted to include the following key changes:

- Change in the roof form and pitch of the third level roof from flat to pitched/gabled roof with an aim to reduce overshadowing impacts;
- Reduction in overall overshadowing of the adjoining southern neighbour by 6.7m². This reduction results in an overall overshadowing area of 127.3m² (or 27.97% coverage of the adjoining southern property) compared with the previous plans (dated 3 March 2023) which proposed 134m² (or 29.45%) overshadowing of the southern property;
- Increase in northern third floor external wall height from 7.7m to 8.2m (500mm increase). Increase in overall roof height 9.2m to
- Alterations to eastern facing third level opening to the enclosed portion of the terrace;
- Increase in width of the open/unroofed portion of the terrace by 2m.

A marked-up version of the amended plans clearly highlighting and annotating the changes that have been made can be found at **Additional Information 3**.

While these plans were circulated to elected members ahead of the Ordinary Meeting of Council on 26 April 2023, due to time constraints, Officers had not yet had sufficient time to carry out any detailed assessment of the amended plans so the item was referred back to the 3 May 2023 Planning Committee. Officers have since had the chance to review and assess the amended plans (dated 14 April 2023) as is the subject of the additional discussion below.

In particular, the following areas still represent variations from deemed-to-comply policy requirements and require discretionary consideration:

- Building Height
- Overshadowing
- Lot boundary Setback
- Visual Privacy

These and any other relevant matters above matters are discussed in the following section below.

The amended plans were also circulated to previous submitters on the application on 27 April 2023. Further comments on the amended plans were invited from submitters so they could be considered by the Planning Committee and/or deputations were invited of the submitters at the Planning Committee meeting on to be held on 3 May 2023.



It is also noted there are some minor inconsistencies between some of the floor and elevation plans provided as part of the amended plans due to time constraints, however, these were not considered to impede the officer assessment below and should the plans be recommended for approval a condition will be recommended to ensure a fully consistent set of development plans are prepared to the satisfaction of the City of Fremantle, prior to the issue of a building permit.

Statutory and Policy Assessment of Revised Plans

The amended proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Key assessment items are as follows:

Building Height

As outlined in Schedule 7 of the City's LPS4 (Local Planning Areas (Development Requirements)), building heights for residential development within LPA4 (Fremantle South) defer to the R-Code building heights in Table 3.

Element	Requirement	Proposed	Extent Variation of
External Wall Height	≤7.0m	8.2m	1.2m
Total Roof Height	≤8.0m	10.2m	2.2m

The additional building height is considered to meet the Design Principles of the R-Codes for the following reasons:

- From a streetscape perspective, the additional building height is generally supported as the third level is stepped back from the levels below (3m further than floor below) and 11.652m from the street meaning this element is unlikely to be visible from the public street;
- With the upper floor subservient in area to the floor below it is less prominent and is not to appear as a 3 storey dwelling from the street;
- The City's Heritage Officers previously noted:

'the roof terrace element has been modified to reduce the impact on the streetscape and the building appearance from the streetscape appears more of a two-storey nature.'

- While the amended plans add additional external wall height to the northern side and overall roof height with the gabled roof, the actual overshadowing of the southern lot has been reduced due to the shorter southern external wall height (reduced by 300mm) and the new pitched roof actually improves solar access to the southern neighbour (see further discussion in

AMENDED

FIRST & SECOND FLOOR ADDITIONS

RENDERED CARPORT TO SIDE OF NEW ROOF

200H WINDOW SILL

NOTE: NO GUTTER (TILED END EXPOSED)

NEW 23° PITCH TILED ROOF

NEW 18° PITCH TILED ROOF

NEW LEAN-TO ROOF (IN BACKGROUND)

EXISTING BRICK & METAL ROOF BUILDING (IN BACKGROUND)

NEW HORIZONTAL METAL SLAT SHOWER SCREEN TO MATCH EXISTING FRONT FENCE INFILL

NEW COVERED PERGOLA (PITCHED)

NEW RENDERED WALL FINISH

PRIVACY SCREEN

H-LITE WINDOW

NEW 1200H POOL SAFE BARRIER FENCING & GATE BY OWNER

FL 6.14

EXISTING RESIDENCE - GROUND FLOOR

ELEVATION 3 - EAST

SCALE 1:100

Overlay of new plan over plan presented at the April Planning Committee (in light grey)

Overshadowing (amended, based on revised plans submitted)

Element	Requirement	Proposed	Extent of Variation
Maximum Permissible Overshadowing of Adjoining Sites (R-Codes 5.4.2)	Max. 25% shadow cover of adjoining site: No. 10 Hickory Street (Site Area: 455m²)	27.97% (127.3m²) (Previously 29.45% or 134m² plans dated 3 March 2023)	2.97% (13.5m ²)

On the basis of the amended development plans, dated 14 April 2023, the overshadowing of the adjoining southern lot (No. 10 Hickory Street) is considered to meet the Design principles of the R-Codes, for the following reasons:

- The applicant has amended plans that have further reduced overshadowing of the adjoining southern neighbour by 6.7m². This reduction results in an overall overshadowing area of 127.3m² (or 27.97% coverage of the adjoining southern property) compared with the previous plans (dated 3 March 2023) which proposed 134m² (or 29.45%) overshadowing of the southern property.
- Importantly, the extent of overshadowing over the more sensitive outdoor living area (alfresco) and habitable room windows of the adjoining dwelling, which was previously the main concern, has been partly reduced and therefore the potential overshadowing impact upon active habitable spaces has improved under the amended plans and is considered acceptable.

See the below comparative plans that illustrate how the shadow impact has been reduced between the plans previously considered (dated 3 March 2023) vs. the amended plans (dated 14 April 2023) – the red colouring shows how the shadow impact has been reduced:

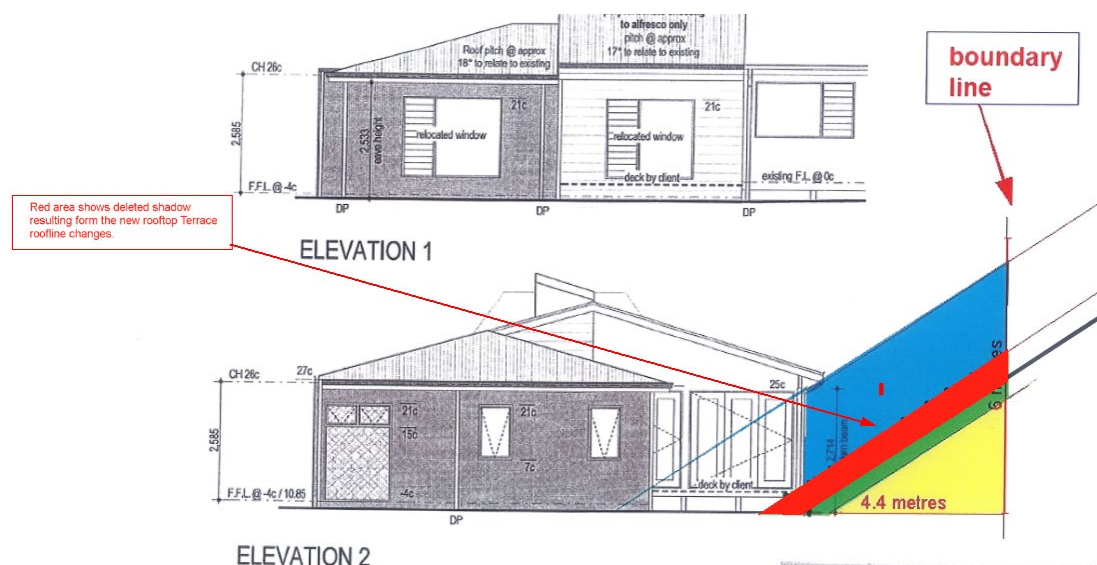


Figure 2. Diagram illustrating shadow impact of proposed development upon adjoining southern dwelling (No. 10 Hickory – east elevation shown above). The area shaded red demonstrates the reduction in extent of overshadowing due to changed roof pitch and form.

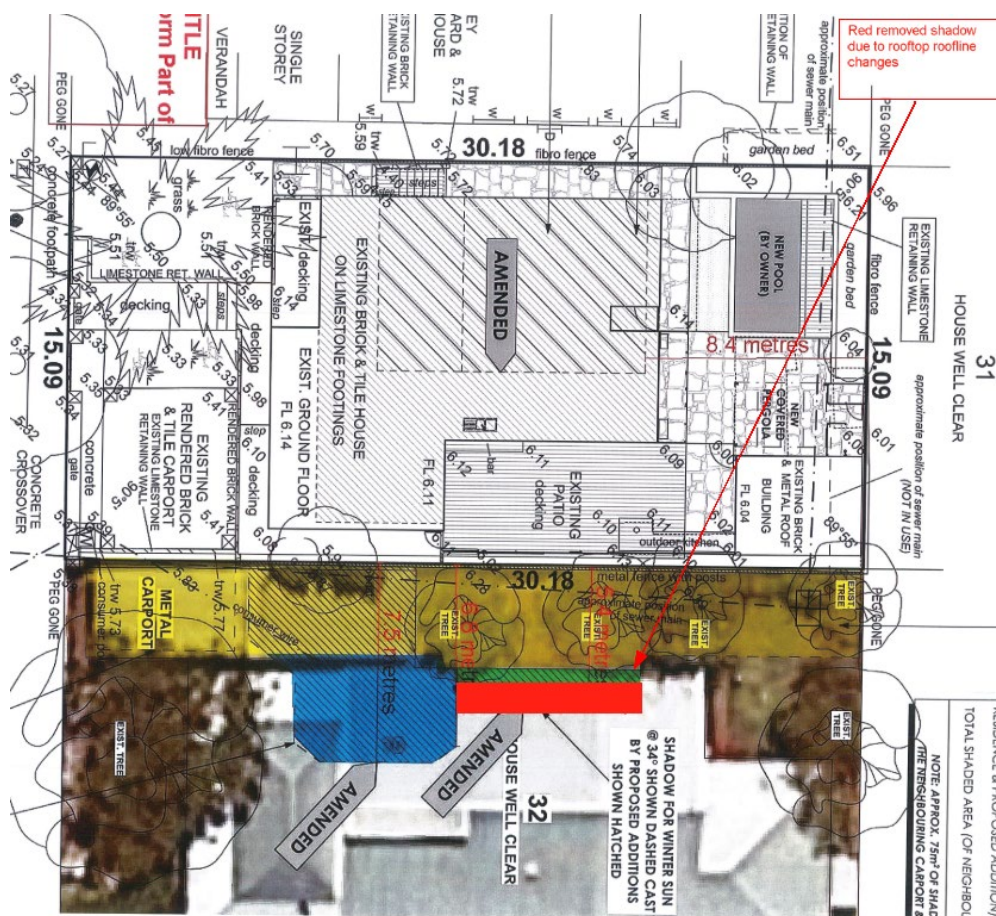


Figure 3. diagram illustrating the reduction in overshadowing as a result of amendments to the third level roof form and pitch (see area shaded red for reduction).

- It is also important to note that on east-west orientated lots such as those on Hickory Street, with lot widths of 15m, some overshadowing is generally inevitable for development proposals above a single storey. The shadow impact of the proposal has clearly informed the overall design of the amended proposals with all southern lot boundary setbacks achieving or greatly exceeding (in the case of the third (roof terrace) level) the deemed-to-comply requirements of the R-Codes and shadow impact of the proposal has been effectively mitigated as a result.



Lot boundary setback

6. Element	7. Requirement	8. Proposed	9. Extent of Variation
10. Third Level Terrace Wall (northern setback)	11. 1.4m	12. 1.361	13. 39mm

The northern third level terrace wall is considered to meet the Design Principles of the R-Codes for the following reasons:

- The variation is of a very minor nature 39mm and is considered to be negligible in terms of impact upon the adjoining northern property as discussed further below;
- The setback is to the northern lot boundary and therefore will not cause any overshadowing impact on the adjoining property (No. 6 Hickory Street).
- The proposed wall will be opposite the second storey of the adjoining property (No. 6 Hickory) which is setback only 1.5m from the subject site and is of a similar extent/length (12.85m compared to the proposed 12.83m). The Proposed Upper Floor Plan shows the extent of the adjoining dwelling compared to that proposed.
- The proposed wall will not be opposite any sensitive outdoor living areas of the adjoining dwelling and nor is it expected to have an adverse amenity impact upon habitable rooms of the adjoining property.

It is noted the affected northern neighbour has provided written consent to the proposed amended development plans.

Visual Privacy

It is noted that any major opening or unenclosed roof terrace above ground level that provides views behind the street setback line in any direction (i.e. north, south and east) and provides a cone-of-vision that is not setback in accordance with R-Codes visual privacy requirements, will be required to be adequately screened to prevent any compromise of visual privacy for adjoining neighbours.

A condition of approval is recommended to this effect should the application be approved.

CONCLUSION

In accordance with the above assessment, the proposal as amended is considered to appropriately address the relevant statutory planning requirements of the LPS4, the R-Codes and relevant Council local planning policies and is therefore recommended for approval, subject to conditions.



COMMITTEE DECISION ITEM PC2304-1
(Amended officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Andrew Sullivan

Council:

APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4 the Two Storey Additions and Alterations Including a Roof Top Terrace Addition to an Existing Single House at No. 8 (Lot 30) Hickory Street, South Fremantle, subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans, dated 14 April 2023. 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 No.1, prior to the submission of a building permit application, a revised, complete set of consistent development plans across floor and elevation plans shall be submitted to, and approved by the City of Fremantle.**
- 3. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City.**
- 4. Prior to the issue of a Building Permit for the development hereby approved, a detailed drawing showing how the New Open Terrace located on the north and south elevations and the eastern facing openings to the New Roof Covered Area, are to be screened in accordance with Clause 5.4.1C1.1 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.



- 5. Prior to commencement of development the existing tree within the road reserve, shown on the approved plans shall be protected through the implementation of a Tree Protection Zone for protection during construction. Additional information with regard to the tree protection zone requirements can be found [here: https://www.fremantle.wa.gov.au/residents/trees-and-verges](https://www.fremantle.wa.gov.au/residents/trees-and-verges).**
- 6. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.**

Advice Note(s):

- i. A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.**
- ii. Fire separation for the proposed building works must comply with Part 3.7 of the Building Code of Australia.**
- iii. The applicant is advised that the existing verge tree is to be protected during the construction process with a minimum 2.8 x 2.8m fencing enclosure.**

Carried: 5/0

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



**PC2305-3 BRADBURY WAY, NO. 3 (LOT 50), SAMSON – UNAUTHORISED
OUTBUILDING ADDITION TO EXISTING SINGLE HOUSE (JZ
DA0083/23)**

Meeting Date: 3 May 2023
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Attachments: 1. Development Plans
Additional information: 1. Site Photos

SUMMARY

Approval is sought for an unauthorised outbuilding addition to existing Single House at No. 3 (Lot 50), Bradbury Way, Samson.

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 wall (east – outbuilding)**

The application is recommended for conditional approval.

PROPOSAL

Detail

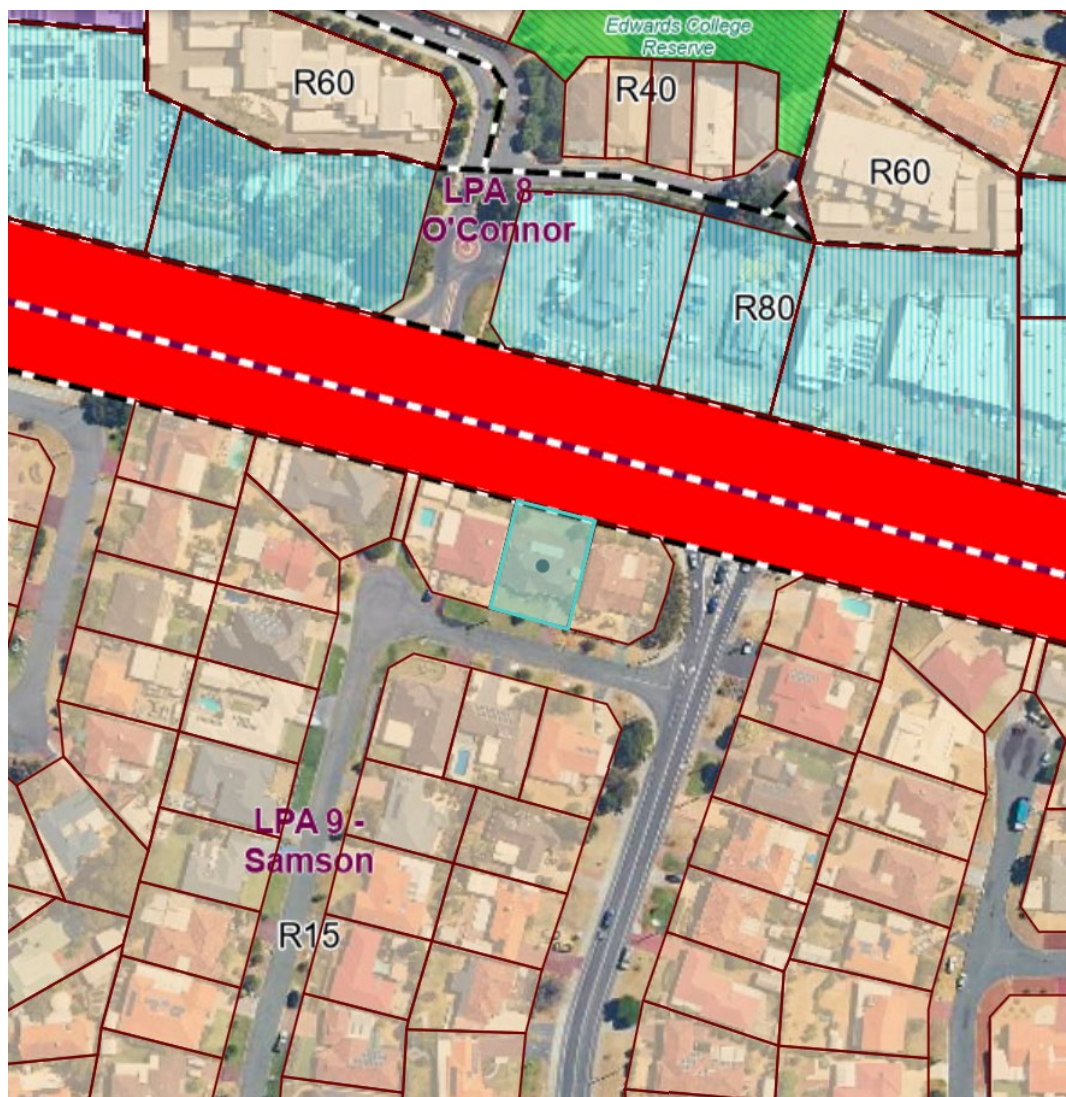
Approval is sought retrospectively for an unauthorised Outbuilding addition to existing Single House at No. 1 (Lot 50), Bradbury Way, Samson. The proposed works include:

- Outbuilding addition to rear of existing house.

Development plans are included as attachment 1.

Site/application information

Date received: 14 March 2023
Owner name: Michael and Melissa Humphreys
Submitted by: Michael Humphreys
Scheme: R15
Heritage listing: Not Listed
Existing land use: Single House
Use class: Single House
Use permissibility: P



CONSULTATION

External referrals

Nil required.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as discretion was sought to the deemed-to-comply requirements of the R-Codes and LPS4. The advertising period concluded on 14 April 2023, and 1 submission was received. The following issues were raised (summarised):

- The reduced eastern setback will cause an adverse impact by way of reduction in ventilation and natural light to two bedrooms and one bathroom on the eastern adjoining property.



- The height of the outbuilding structure will significantly reduce natural light and ventilation to the main living areas of the eastern adjoining property.

In response to the above submission, the applicant provided further justification and additional information on 12 April 2023, which is provided below:

- a) The shed is located to the west of 1 Bradbury Way, where it does not block the passage of northern light, or compromise the overshadowing calculations as they are defined in the deemed-to-comply provisions of the R-Codes Volume 1 in any way;*
- b) The shed is a single-storey structure that has far less impact on 1 Bradbury than a fully approvable two-storey dwelling might, or a 3.0m-high wall-on-boundary might. The shed does not "abut" the neighbour's dwelling as is claimed, but is in fact situated 500mm from the boundary, which is in turn a metre from the dwelling at 1 Bradbury Way. This means the shed is 1500mm from the neighbour's house, and there is ample room for the circulation of breezes/ventilation in general;*
- c) The rooms referred to in the neighbour's submission are not primary living areas as defined by the R-Codes Volume 1. Bedrooms are by definition primarily occupied at night, when access to direct sunlight is logically impossible, and is not a valid factor in decision making. Bathrooms are usually occupied by one person for short periods only and are not afforded the same protections as primary living areas. Moreover, no outdoor living areas are affected by the shed;*
- d) The shed is overall a structure that preserves the low-density, low-rise amenity of the area. The shed is of standard "suburban scale", and ensures the occupants of 3 Bradbury Way will have no need of two-storey development for the foreseeable future. Intended mostly for the storage of inert items such as furniture, exercise equipment, toys, clothing, tools and the like, the shed has no windows, poses no privacy concerns and will not generate noise or fumes.*

The applicant was given the opportunity to submit amended plans to address the above concerns. No amended plans were submitted.

Officer comments on the expected impact of the existing boundary wall are provided in the Officer Comment section below.



OFFICER COMMENT

Statutory and policy assessment

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

- Boundary wall (east – outbuilding)

The above matters are discussed below.

Background

The subject site is located on the northern side of Bradbury Way in Samson, bound by South Street to the north. The site has a land area of approximately 704m² and is currently an existing Single House. The site is zoned Residential and has a density coding of R15. The site is not individually heritage listed nor located within a Heritage Area.

The application was lodged with the City for the approval of a proposed outbuilding addition to the existing single house at 3 Bradbury Way, Samson. During the advertising process for the proposed application, a submission was received from an adjoining neighbour which raised a concern that the outbuilding had been constructed.

An inspection by City Officers was conducted and it is apparent the outbuilding structure has been constructed (see Figure 1 below), without approval, deeming it as an unauthorised outbuilding addition.

As a result, the owner of 3 Bradbury Way has since paid the retrospective fee for the unauthorised structure. However, due to the application receiving an objection during the advertising period, this application is required to be submitted to the Planning Committee to determine its outcome.

Boundary wall (East)

Element	Requirement	Proposed	Extent of Variation
Outbuilding (East)	1.0m	0.5m	-0.5m

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

- The eastern boundary wall, despite being 2.7m in height (overall roof height 3.05m) will not result in an unreasonable loss of sunlight or ventilation owing to the eastern adjoining property (1 Bradbury Way), as the boundary wall is compliant with the deemed-to-comply requirement for solar access for adjoining sites (1.6% overshadow over the adjoining eastern site);
- The eastern boundary wall will not create a sense of building bulk or mass when viewed from the eastern adjoining property, as the outbuilding addition extends for less than 1/3 (8.0m) of the total length of the boundary (30.87m) and only a small portion of the building is adjacent to a habitable room (bedroom three) on the eastern adjoining site (see Figure 2 and 3 below); and
- The boundary wall does not present any visual privacy variation owing to the eastern adjoining lot, as there are no major openings to the outbuilding.



Figure 1 - Outbuilding Addition view North – showing height above existing boundary fence.



Figure 2 – View of Outbuilding addition from Eastern adjoining property – showing one habitable room (bedroom) adjacent to the outbuilding.

Outbuilding (Large)

Element	Requirement	Proposed	Extent of Variation
Area of structure	Individually or collectively does not exceed 60m ² or 10% in aggregate of the site area, whichever is the lesser;	12m ²	Complies



Set back in accordance with Table 2a	1.0m	0.5m	Complies
Outbuilding (Wall Height)	2.4m	2.7m	-0.30m
Outbuilding (Roof Height)	4.2m	3.05	Complies
Outbuilding Location	Not located within the primary or secondary street setback area;	Located to the rear of the site	Complies
Open space and Outdoor living area Requirements	Does not reduce the open space and outdoor living requirements in Table 1	< 50% and 12m ² in area	Complies

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

- The outbuilding addition, despite the existing wall height being 300mm above the height requirement for large outbuildings, will not result in an unreasonable loss of sunlight or ventilation owing to the eastern adjoining property – 1 Bradbury Way, as the overshadowing is compliant with the deemed-to-comply requirement (only 1.6% of the adjoining eastern site);
- The outbuilding addition is located behind the primary street setback and will not impact on the streetscape or the neighbouring property by way of added building bulk (see Figure 1); and
- The outbuilding addition wall height is considered a minor departure in height (300mm above the 2.4m required) from the deemed-to-comply criteria.

It is also noted the unauthorised outbuilding addition is compliant with the deemed-to-comply requirement of the R-Codes for solar access for adjoining sites as the total overshadowing calculated is 1.6% (11.5m²) over the eastern adjoining property.



Figure 3: Site Plan showing proposed outbuilding addition and how it relates to the existing layout of the adjoining property at 1 Bradbury Way, Samson.

On the basis of the above, the boundary wall is considered acceptable in this circumstance in accordance with LPP 2.4 and 5.1.3 P3.2 of the R-Codes and is therefore supported by Officers.

CONCLUSION

In accordance with the above assessment, the proposal is considered to appropriately address the relevant statutory planning requirements of the LPS4, the R-Codes and relevant Council local planning policies and is therefore considered worthy of approval, subject to conditions.



STRATEGIC IMPLICATIONS

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

COMMITTEE DECISION ITEM PC2305-3 **(Officer's recommendation)**

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Unauthorised Outbuilding Addition to existing Single House at No. 3 (Lot 50), Bradbury Way, Samson, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 14 March 2023. It does not relate to any other development on this lot.**
- 2. All storm water discharge from the development hereby approved shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. The applicant is advised that this approved development shall be wholly located within the cadastral boundaries of the subject site including any footing details of the development.**

ADVICE NOTES:

- i. A BA13 – Building Approval Certificate application form is required to be submitted for the unauthorised building works. 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>.**



- ii. Fire separation for the proposed building works must comply with Part 3.7 of the Building Code of Australia.**

Carried: 5/0
Cr Bryn Jones, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Su Groome, Cr Frank Mofflin



PC2305-5 INFORMATION REPORT - MAY 2023

1. SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

Responsible Officer: Manager Development Approvals
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: Acting 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
DAP001/22
Site Address and Proposal
Address – 34-38 Amherst Street, Fremantle
Planning Committee Consideration/Decision
- At its meeting held on 23 September 2022, the Planning Committee resolved to provide a comment to the JDAP that it did not support the Officers recommendation to approve the development. - The applicant opted to submitted revised plans which were presented to the Planning Committee at its meeting held 2 November 2022. The Planning Committee resolved to provide a comment to the JDAP that it did not support the development. - At its meeting on 23 November 2022, the Joint Development Assessment Panel (JDAP) resolved to refuse the development in accordance with the Committee’s Recommendation.
Current Status
- Late December 2023 an Application for Review by the State Administrative Tribunal was lodged by the owner. - Since the last mediation session between JDAP and the applicant, SAT have issued orders for a Section 31 reconsideration of an amended proposal.



- A Section 31 – Reconsideration of the application has been submitted with JDAP and recently forwarded to the City. An assessment of the amended proposal is underway and will be presenting a report to the June Committee meeting.

COMMITTEE DECISION ITEM PC2305-4
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Geoff Graham

Council receive the following information reports for May 2023

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

Carried: 5/0

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



10.2 Council decision

PC2305-5 PROPOSED MRS AMENDMENT 1400/41 - NORTH FREMANTLE URBAN PRECINCT (MAJOR AMENDMENT)

Meeting Date: 3 May 2023
Responsible Officer: Manager Strategic Planning and City Design
Decision Making Authority: Council
Attachments: Nil
Additional information: 1. MRS amendment 1400/41 report - North Fremantle Urban Precinct

SUMMARY

The Western Australian Planning Commission (WAPC) is inviting comment on a proposed major Metropolitan Region Scheme (MRS) amendment (1400/41) for the 'North Fremantle Urban Precinct'.

The WAPC considered the potential impact of the Future of Fremantle Planning Study and propose an amendment to rezone approximately 23.93ha in North Fremantle (adjacent to Port Beach) from an industrial zone to an Urban Deferred zone and Parks and Recreation reserve. Under the proposed MRS amendment, the following matters would require resolution prior to the transfer to the urban zone:

- **finalisation or substantial progression of the Future of Fremantle project;**
- **confirmation of regional road and transport requirements in the locality;**
- **confirmation of coastal foreshore reserve requirements;**
- **consideration of the Fremantle Port buffer.**

WAPC provide the intent of the amendment is to facilitate redevelopment of the site for primarily mixed-use commercial and residential uses, with areas of public open space, following the lifting of Urban Deferment, Local Planning Scheme (LPS) amendment and detailed local structure planning.

Council has previously indicated support in principle for an MRS Amendment in this location (PC2204-12, 27 April 2022) and proposed an interim zoning of 'Urban Deferred'. The City is pleased that the WAPC also supports an 'urban deferred' zoning to enable important broader planning matters to advance sufficiently before urban development should proceed.

Officers consider the previous planning concerns made by Council to still be relevant and recommend these be included in a formal submission to the WAPC during the current consultation period (closes 30 June 2023).

BACKGROUND

Proposed amendment and subject site

The Western Australian Planning Commission (WAPC) is inviting comment on a proposed major Metropolitan Region Scheme (MRS) amendment (1400/41) for the 'North Fremantle Urban Precinct'.

The amendment proposes rezoning approximately 23.93 ha in North Fremantle from the industrial zone to the urban deferred zone and parks and recreation reserve. The site is bound by Port Beach Road to the west, Primary Regional Road reserve to the east, Tydeman Road and Freight Rail Reserve to the south, and Walter Place to the north (refer to figure 1). The land has historically been used for industrial purposes including a fuel terminal and lubricant depot by Viva Energy Australia (formerly Shell Australia), a former Standard Wool site and a former Caltex operation.

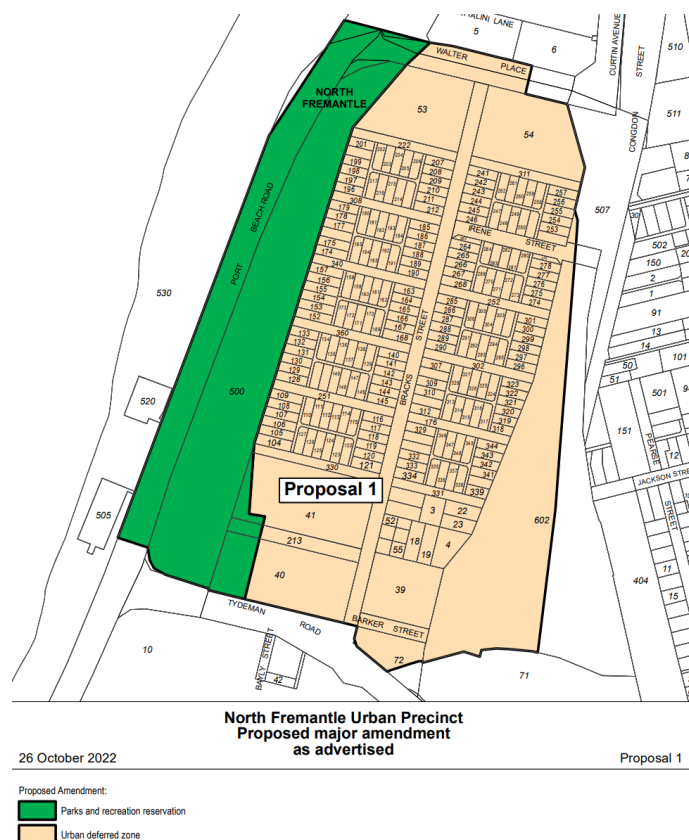


Figure 1. Subject site of proposed major MRS amendment (1400/41) for the 'North Fremantle Urban Precinct'.



WAPC provide the urban deferred zoning is to ensure that the MRS amendment process does not prejudice or pre-empt the Future of Fremantle Planning Committee (FFPC) outcomes. Under the proposed MRS amendment, the following matters would require resolution prior to the transfer to the Urban zone:

- finalisation or substantial progression of the Future of Fremantle project
- confirmation of regional road and transport requirements in the locality
- confirmation of coastal foreshore reserve requirements
- consideration of the Fremantle Port buffer.

Council's Previous Resolution

Council resolution, 27 April 2022 (Item PC2204):

Council advises the Western Australian Planning Commission (WAPC) that the City of Fremantle's preliminary comments on the Proposed Metropolitan Region Scheme (MRS) Amendment – North Fremantle Development Precinct (RLS/1012), are as follows:

1. *The exploration of alternative land uses for the North Fremantle Development Precinct is reasonable given the vacant, and largely cleared, and underutilised status of the land in this precinct. A component of 'Urban' zoning may present as one logical option for a part of the site given its prime location, subject to the WAPC being satisfied that the loss of this land to industrial use (whether related to Fremantle Port or other industrial land needs) would not be contrary to the objectives of the Commission's Economic and Employment Lands Strategy: non-heavy industrial. However, due to:*
 - *the land's past industrial use and proximity to Fremantle Port;*
 - *the site's juxtaposition to two spatially under-serviced coastal recreation nodes of critical regional significance (i.e., the Port Beach and Leighton Beach nodes), the known vulnerability of this particular section of coastline to coastal hazards, and the unpredictable coastal impacts that redevelopment of the port may cause;*
 - *the need to review and resolve the regional and local transport and access considerations in a manner that facilitates improved urban form and connectivity for the Leighton/North Fremantle Peninsula rather than induce further fragmentation or create disconnected cells; and,*
 - *the 'Future of Fremantle' work, and the impact of future development on the subject site to the wider area, including the desire for full economic, land-use and built-form integration with the surrounding areas,*

the rezoning exercise is considered premature. There are several issues that the City considers need a greater degree of resolution prior to any of the subject site being suitable for rezoning, including as follows:



- a. *Determination of the extent of land required for an enlarged coastal foreshore Parks and Recreation Reserve, taking into account the need for the portion of the reserve inland of the year 2120 coastal erosion hazard line to provide sufficient space for environmental conservation and public recreational needs, noting that to meet these needs community infrastructure to service Port Beach as a second beach 'node' to relieve pressure on Leighton Beach and accommodate growing population demands for beach use will be required.*
 - b. *The land being capable of being provided with essential services and agreement has been reached between the developers and service providers with regard to the staging and financing of services.*
 - c. *Future of Fremantle planning has sufficiently advanced to a stage that depicts clear objectives to guide future urban integration and development in the area.*
 - d. *Regional road and rail planning requirements have been resolved and provision made for them in a manner that compliments and re-integrates the existing and future urban environments.*
2. *Having regard to point 1 a) above, the City requests the WAPC to engage in further discussions with the City of Fremantle, the proponents and other relevant stakeholders to review the extent of land required to be included within an expanded Parks and Recreation Reserve in order to meet the long-term recreational demands upon this precinct in addition to addressing the risks and impacts of coastal processes.*
3. *Having regard to point 1 d) above, the City requests that planning for the North Fremantle Development Precinct be expanded to include all of the Primary Regional Road and Railway reserve land, and the existing urban zoned land located to the east (from Tydeman Road to the North Fremantle railway station), including the North Fremantle town centre, with the aim of delivering an integrated urban environment.*
4. *Subject to resolving the appropriate extent of land required for inclusion in the coastal foreshore Parks and Recreation Reserve as referred to in point 2 above, and developing the integrated transport and urban planning outcome referred to in point 3 above, the City considers that the remaining land subject to the rezoning proposal and the land to the east could more appropriately be considered for a MRS 'urban deferred' zoning in the first instance, to allow for more planning imperatives to be demonstrably implementable prior to a transfer to the Urban zone. The lifting of urban deferred status should be tied to demonstration of the matters referred to in point 1b and 1c above having been satisfactorily addressed.*



CONSULTATION

The procedures for WAPC to amend the MRS are prescribed by the *Planning and Development Act 2005*. The procedure for a substantial alteration to the Scheme (referred to as a major amendment) involves:

- Formulation of the amendment by the WAPC.
- Referral to the EPA for environmental assessment.
- Completion of an environmental review (if required) to EPA instructions.
- ***Public submissions** on the proposed amendment (close 5pm, 30 June 2023).
- Consideration of submissions (including hearings where requested).
- Referral of WAPC recommendations, with or without any modifications in response to submissions, to the Minister for Planning.
- Approval by the Governor.
- Consideration by both Houses of Parliament, who can disallow the amendment.
- Amendment takes legal effect when no longer subject to disallowance after 12 sitting days.
- Where the WAPC has agreed to the parallel amendment of a LPS under section 126(3) of the Planning and Development Act, the LPS amendment becomes effective upon gazettal of the MRS amendment.

*Denotes current stage.

OFFICER COMMENT

Officers consider the comments previously made by Council to still be relevant. Council has noted that exploration of alternative land uses for the North Fremantle Development Precinct is reasonable given the vacant, and largely cleared, status of the land in this precinct. However, there are several issues that need a greater degree of resolution prior to the subject site being suitable for an urban redevelopment zoning. The issues Council previously noted are provided below along with the corresponding comment from the WAPC amendment report that addresses the comment.

City of Fremantle's Previous Comment	WAPC amendment report response
The loss of industrial land and the land being located within the Fremantle Port Buffer area.	The <i>Central Sub-regional Planning Framework</i> primarily reflects the sites industrial use. A small strip along the northern and eastern boundary of the site is within the Activity Centre - Frame around the North Fremantle District Centre. The Framework states that in frame areas, there is an opportunity to investigate higher residential densities and the potential expansion of the core area (commercial and mixed uses) over time. The



	proposed Urban Deferred zone and Parks and Recreation reserve is considered to be a logical transition and continuation of the urbanisation of the locality which is consistent with the general intent of the Framework.
The land's proximity to Fremantle Port.	As the amendment area is partly located within the port buffer areas 1 & 2, and any development is constrained by the port buffer considerations including built form, land use and density, this matter, and the need for these constraints on future development considering the future of Fremantle Port, is to be addressed prior to the lifting of Urban Deferment. Requires resolution prior to the transfer to the Urban zone: • consideration of the Fremantle Port buffer.
An expanded Parks and Recreation reserve area to meet the long-term recreational demands of the precinct.	As the proposed coastal foreshore reserve and any additional recreational area in this location is to be finalised having regard to the Future of Fremantle Planning Committee (FFPC) outcomes, this has been included as a requirement to be considered prior to the lifting of Urban Deferment. The department's officers have noted the reserve boundary can also be modified at the final approval stage of the amendment to urban deferred zone and Parks and Recreation reserve. Requires resolution prior to the transfer to the Urban zone: • confirmation of coastal foreshore reserve requirements.
A consideration of the wider transport and urban area to deliver an integrated urban environment.	As there is uncertainty on the regional road network which has yet to be finalised this has been included as a matter to be addressed prior to the lifting of Urban Deferment. Requires resolution prior to the transfer to the Urban zone: • confirmation of regional road and transport requirements in the locality.
The provision of essential services	The Water Corporation advises that it may be possible to extend water and sewerage services to the site as a



and staging and financing of services.	standalone development, provided that the developers fund extensions and upgrades to the surrounding networks. The extent of any upgrades will be determined by the land use mix and development yields in the local structure plan.
Future of Fremantle planning being sufficiently advanced to a stage that depicts clear objectives to guide future urban integration and development in the area.	The area is within the FFPC area of consideration. The Future of Fremantle project is in the early stages and is estimated to be completed by mid-2024. A multi-disciplinary team is to develop a future focused Land Use Plan incorporating a highly integrated land use, transport and infrastructure response and supporting Economic Development Strategy for bringing economic growth, investment and employment into Fremantle. Requires resolution prior to the transfer to the Urban zone: • finalisation or substantial progression of the Future of Fremantle project.

While the amendment to an Urban Deferred zoning and Parks and Recreation reserve and the 'lifting of the deferment' include consideration of the issues Council previously provided comment on (refer to above), there may be scope for discussions on matters with the WAPC, specifically the Parks and Recreation reserve boundary, prior to finalising the amendment and Urban Deferred zoning.

Officers at the Department of Planning, Lands and Heritage have advised that there will be two stages where the WAPC can determine whether to modify the proposal to include further land into the MRS Parks and Reserve (P&R) reservation. These are:

Modification of the amendment at final approval Stage

The WAPC could modify the amendment at the final approval stage by extending the P&R reservation (i.e. reducing the Urban Deferred zone) if there was sufficient certainty from the Future of Fremantle work which confirmed that a wider foreshore reserve was required.

Modification at the Lifting of Urban Deferment Stage

Prior to any Urban Deferred area being transferred to Urban, the WAPC will need to confirm whether a wider foreshore is required. If a wider foreshore is required, this area would not go to Urban but remain Urban Deferred to be reserved as P&R in a future MRS amendment.

The intent of the amendment is to facilitate redevelopment of the site for primarily mixed-use commercial and residential uses, with areas of Public Open



Space, following the lifting of Urban Deferment, Local Planning Scheme (LPS) amendment and detailed local structure planning.

In conclusion, Officers recommend a submission similar to the preliminary comment Council previously provided that emphasises the need for further discussion, prior to a rezoning, between the WAPC, City and other stakeholders regarding proposed Parks and Recreation reserve boundary to:

- Adequately provide for the precinct/region's coastal recreational needs.
- Establish clear planning policy around managing coastal processes / predicted inundation and impact on land.
- Ensure compatibility with short-term port operations (including Port Buffer) and long-term Future Fremantle planning directions including sustainability, economics, land use, population density, transport, etc).

Following this, the urban deferred zoning could be considered for the remaining land. Additional criteria are suggested as conditions for the WAPC to lift the urban deferred zoning, including:

- finalisation or substantial progression of the Future of Fremantle project
- confirmation of regional road and transport requirements in the locality
- confirmation of coastal foreshore reserve requirements
- consideration of the Fremantle Port buffer.

FINANCIAL IMPLICATIONS

Providing comments on a proposed MRS amendment to WAPC does not have any financial implications for the City.

LEGAL IMPLICATIONS

Nil

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority.



COMMITTEE RECOMMENDATION ITEM PC2305-5
(Officer's recommendation)

Moved: Cr Bryn Jones

Seconded: Cr Frank Mofflin

Council advises the Western Australian Planning Commission (WAPC) that the City of Fremantle's submission on the Proposed Metropolitan Region Scheme (MRS) Amendment – North Fremantle Urban Precinct (1400/41), is as follows:

1. refers the WAPC to its initial comments, Council Meeting 27 April 2022 (Item PC2204), and adds the following comments to assist with clarifying the key planning issues that require resolution prior to any of the site being suitable for rezoning:

1.1 COASTAL RECREATIONAL NEEDS – A clear government position on the extent of land required for precinct/regional recreation and beach access in this location, considering this in context of the (a) Leighton Foreshore Masterplan and (b) predicted growth / future demand for public land in this location;

1.2 COASTAL EROSION – a clear government position on coastal management and what erosion predictions will underpin planning decisions, in particular, what extent of land loss will be planned for in this location that will potentially impact on a reduced width of the proposed Parks and Recreation Reserve;

1.3 TRANSPORT – a clear government position on the future transport network in North Fremantle, in particular, (a) the extension/ alignment/ design capacity of Curtin Avenue, (b) freight and passenger rail, (c) potential pedestrian connection under rail corridor to the North Fremantle local centre;

1.4 FUTURE PORT PLANNING – a clear government position on the future redevelopment plans being developed through Future Fremantle Committee, in particular, intensity of land uses and the associated transport / access requirements within the North Fremantle peninsula;

1.5 PORT BUFFER ZONE – the current planning impact of the port buffer zone restricts potential urban development to non-residential uses. This may force a short-term planning outcome on the subject site that runs contrary to the proper and orderly planning of the broader neighbourhood / precinct. Can the buffer zone be amended, or, should urban development wait until the buffer zone is no longer required?



- | |
|--|
| 2. Confirms the Council's willingness and deep interest in working collaboratively with all relevant government agencies to help deliver an acceptable planning framework for the key issues listed above, to enable high quality sustainable development in North Fremantle. |
|--|

Carried: 3/2

For:

Cr Bryn Jones, Cr Geoff Graham, Cr Frank Mofflin

Against:

Cr Andrew Sullivan, Cr Su Groome,



11. Motions of which previous notice has been given

Nil

12. Urgent business

Nil

13. Late items

Nil

14. Confidential business

Nil

15. Closure

The Presiding Member declared the meeting closed at 7.02pm.