



Statutory Planning Committee

Notice is hereby given that a meeting of the
Statutory Planning Committee will be held on:

Tuesday 8 July 2014
9.00 am

Level 2, Room 2.40
One40 William Street
Perth



Tim Hillyard
WAPC Secretary

Please convey apologies to Luke Downes on 6551 9549 or email
luke.downes@planning.wa.gov.au

Statutory Planning Committee

Membership:

Member	Representation in accordance with <i>Planning and Development Act 2005</i>	Term of office ends
Mr Eric LUMSDEN	Chairman, WAPC Schedule 2 clause 4(2)(a)	04/11/2016
Ms Gail McGowan	Director General, Department of Planning Schedule 2 clause 4(2)(b)	Ex officio
Mr Martin CLIFFORD	Nominee of the Regional Minister Schedule 2 clause 4(3)	14/10/2015
Ms Elizabeth TAYLOR	Community representative Schedule 2 clause 4(2)(d)	05/11/2014
Mr Ian HOLLOWAY	Professions representative Schedule 2 clause 4(2)(e)	05/11/2014
Vacant	Local government representative Schedule 2 clause 4(2)(f)	
Ms Megan BARTLE	WAPC appointee Schedule 2 clause 4(2)(g)	05/11/2014
Ms Sue BURROWS	WAPC appointee Schedule 2 clause 4(2)(g)	05/11/2014

Quorum: 4

In accordance with the Western Australian Planning Commission (WAPC) Standing Orders 2009, 3.7 - Quorum for meetings:

(2) A quorum for a meeting of a committee is at least 50% of the number of offices (whether vacant or not) of members of the committee.

Role:

The Statutory Planning Committee is one of four committees set up by the WAPC on 1 March 1995 upon proclamation of the *Planning Legislation Amendment Act (No. 2) 1994*.

Schedule 2(4)(4) of the *Planning and Development Act 2005*

The Statutory Planning Committee is the WAPC's regulatory decision-making body and performs such of the functions of the WAPC under the *Planning and Development Act 2005* and Part II of the *Strata Titles Act 1985* as are delegated to the Statutory Planning Committee under section 16 and such other functions as are delegated to it under that section. These functions include approval of the subdivision of land, approval of leases and licenses, approval of strata schemes, advice to the Minister for Planning on local planning schemes and scheme amendments, and the determination of certain development applications under the Metropolitan Region Scheme.

Delegated Authority (Del 2009/05)

Planning and Development Act 2005 Section 16(1)

- 2.1 Power to determine applications for approval to commence and carry out development lodged with or referred to the WAPC pursuant to the provisions of a region scheme.
- 2.2 Power to approve detailed plans requiring the subsequent approval of the WAPC as a condition of development approval pursuant to the provisions of a region scheme and power to confirm that conditions imposed by the WAPC on a development approval pursuant to the provisions of a region scheme have been complied with.
- 2.3 Power to determine whether or not proposals and the ongoing implementation of a region scheme comply with conditions (if any) applied pursuant to sections 48F and 48J of the *Environmental Protection Act 1986*.
- 2.4 Power to determine whether or not applications to commence and carry out development are of State or regional importance, or in the public interest, pursuant to any resolution of the WAPC made under a region scheme requiring such determination.
- 2.5 Power to request the Minister for Planning to approve the WAPC disregarding the advice of the Swan River Trust in whole or in part in relation to the approval of development of land within the Riverbank or Development Control Area as defined under the *Swan and Canning Rivers Management Act 2006* where the determining authority is the WAPC.
- 2.6 All functions of the WAPC as set out in -
 - (i) Sections 14(a), 14(c), 34, 97, 98, 100, 104, 105, 106, 107, 109, 110, 111, 134, 135, 136, 138, 139, 140, 142, 143, 144, 145, 147, 151, 153, 154, 157, 169, 185, 214, 215, 216 of the Act;
 - (ii) Town Planning Regulations 1967;
 - (iii) Regulations 21, 22, 24 and 27 of the Planning and Development Regulations 2009;
 - (iv) *Strata Titles Act 1985* or the provisions of a strata or survey-strata scheme;
 - (v) *Strata Titles General Regulations 1996*;
 - (vi) Section 52 and section 85 of the *Land Administration Act 1997*;
 - (vii) Section 40 of the *Liquor Control Act 1988*;
 - (viii) *Perry Lakes Redevelopment Act 2005*.
- 2.7 Power to determine requests for variations to plans of subdivision where WAPC approval is required pursuant to the provisions of an approved local planning scheme.
- 2.8 Power to provide comment on and grant approval to plans known generally as outline development plans, structure plans and similar plans, and to planning policies and similar documents or amendments thereto, requiring the approval or endorsement of the WAPC pursuant to the provisions of a local planning scheme.
- 2.9 Power to provide comments or advice on behalf of the WAPC to a local government or a redevelopment authority where a provision of a local planning scheme or a redevelopment scheme requires comments from the WAPC.
- 2.10 Power to execute and accept the benefit of easements in gross, covenants in gross, records on title and other instruments for dealings in land for subdivisions, strata subdivisions and developments in accordance with any applicable policy and legislation.

- 2.11 Power to make recommendations to the Minister for Planning in relation to requests from local governments to expend monies paid by subdividing land owners in lieu of setting aside free of cost to the Crown, areas of land for public open space, where such recommendations are in accordance with WAPC policy.
- 2.12 Power to determine whether or not a proposal is likely to have a significant effect on the environment pursuant to section 38(1) of the *Environmental Protection Act 1986* and to refer such proposal to the Environmental Protection Authority.
- 2.13 Power to waive or clear conditions affixed as conditions of approval.
- 2.14 Power to endorse diagrams and plans of survey and deposited plans involving the acquisition and resumption of land created pursuant to Part 11 of the Act and the *Land Administration Act 1997*.
- 2.15 Power to advise the Minister for Planning on any appeal or matter arising therefrom pursuant to Part 14 of the Act.
- 2.16 Power to defend and otherwise deal with applications for review lodged with the Administrative Tribunal and to appeal, defend, respond and otherwise deal with any matter that may be appealed to the Supreme Court on a question of law.
- 2.17 Power to defend, respond, appeal and otherwise deal with legal proceedings.
- 2.18 Power to prepare and approve, subject to the prior approval of the Minister for Planning, policies relating to planning matters and/or the functions of the WAPC, save and except for State Planning Policies under Part 3 of the Act.
- 2.19 Power to determine matters under Regional Interim Development Orders.
- 2.20 Such powers and functions of the WAPC as set out in-
- (i) Part 5 of the Act;
 - (ii) *Town Planning Regulations 1967*
- as are necessary for the preparation, promulgation and the making of recommendations in relation to the Improvement Scheme authorised by Improvement Plan No. 37 for the Browse Liquefied Natural Gas Precinct.

This meeting is not open to members of the public.

RELEVANT INFORMATION FOR MEMBERS

Disclosure of interests

In accordance with the *Planning and Development Act 2005* and Part 6 of the Standing Orders 2009, members of Committees (and certain employees) are required to disclose the following types of interests that they have or persons closely associated to them, have:

- direct and indirect pecuniary interests (financial);
- proximity interests (location); and
- impartiality interests (relationship).

A “**direct pecuniary interest**” means a relevant person’s interest in a matter where it is reasonable to expect that the matter if dealt with by the board or a Committee, or an employee in a particular way, will result in a financial gain, loss, benefit or detriment for the person.

An “**indirect pecuniary interest**” means a relevant person’s interest in a matter where a financial relationship exists between that person and another person who requires a board or Committee decision in relation to the matter.

A “**proximity interest**” means a relevant person’s interest in a matter if the matter concerns -

- (i) a proposed change to a planning scheme affecting land that adjoins the person’s land;
- (ii) a proposed change to the zoning or use of land that adjoins the person’s land; or
- (iii) a proposed development, maintenance or management of the land or of services or facilities on the land that adjoins the person’s land.

An “**Impartiality interest**” means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the member having the interest and includes an interest arising from kinship, friendship, partnership or membership of an association or an association with any decision making process relating to a matter for discussion before the board or a Committee.

Members disclosing any pecuniary or proximity interests for an item can not participate in discussion or the decision making procedure relating to the item and must leave the meeting room during the discussion of the item. Members disclosing an impartiality interest in an item must also leave the room during the discussion or the decision making procedure relating to the item unless the Committee, by formal resolution, allows the member to remain. The reason to allow a member to remain must be stated in the formal resolution and will be minuted.

Disclosure of representations

Where a member has had verbal communication with or on behalf of a person with an interest in a matter which is before a meeting, the member is to disclose the interest.

Where a member is in receipt of relevant written material (including email) from or on behalf of a person with an interest in a matter which is before a meeting, the member is to table the material at the meeting for the information of members and relevant employees.

ORDER OF BUSINESS

- 1. Declaration of opening**
- 2. Apologies – Mr Martin Clifford**
- 3. Members on leave of absence and applications for leave of absence**
- 4. Disclosure of interests**
- 5. Declaration of due consideration**
- 6. Deputations and presentations**
- 7. Announcements by the Chairperson of the board and communication from the WAPC**
- 8. Confirmation of minutes – 24 June 2014**
- 9. Reports**
- 10. Confidential items**
- 11. General business**
- 12. Items for consideration at a future meeting**
- 13. Closure – next meetings will be held:**
 - Ordinary meeting – 22 July 2014
 - Policy meeting – 26 August 2014

Statutory Planning Committee

Minutes
of policy meeting 7504
held on Tuesday, 24 June 2014

Attendance

Members

Mr Eric Lumsden
Ms Megan Bartle
Ms Sue Burrows
Mr Martin Clifford
Mr Ian Holloway
Ms Gail McGowan
Ms Elizabeth Taylor

WAPC Chairman (Presiding Member)
WAPC appointee
WAPC appointee
Regional Minister's nominee (Deputy)
Professions representative
Director General, Department of Planning
Community representative

Officers

Ms Natalie Cox
Mr Robert Cull
Mr Ben Harvey

Ms Anne Hill

Mr Jas Lapinski
Ms Kym Petani

Department of Planning

Planning Manager; Perth and Peel Planning
Senior Planning Officer; Perth and Peel Planning
Director; Policy and Research Infrastructure, Projects,
Policy and Research
Executive Director; Infrastructure, Project, Policy and
Research
Senior Planning Officer; Perth and Peel Planning
Director Metro North West / Acting Director Metro North
East; Perth and Peel Planning

Presenters

Ms Jane Bennett
Mr Paul Lakey
Mr Ryan Hunter

CLE Town Planning and Design (item 6.1)
PEET (item 6.1)
PEET (item 6.1)

Mayor Tracey Roberts
Mr Daniel Simms
Mr Len Kosova
Mr Nicholas Stawarz

City of Wanneroo (item 6.2)
City of Wanneroo (item 6.2)
City of Wanneroo (item 6.2)
City of Wanneroo (item 6.2)

Committee Support

Mr Luke Downes

Committee Support Officer - Department of Planning

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7504.1 Declaration of Opening

The Presiding Member declared the meeting open at 9.07 am, acknowledged the traditional owners and custodians of the land on which the meeting is taking place and welcomed Members.

7504.2 Apologies

Nil.

7504.3 Members on Leave of Absence and Applications for Leave of Absence

Mr Lumsden has submitted an application for a leave of absence for the Statutory Planning Committee meeting scheduled for 1 July 2014 to 28 July 2014.

Resolved

Moved by Ms Taylor, seconded Mr Holloway

That the approval for a leave of absence be granted to Mr Lumsden for the Statutory Planning Committee meeting to be held on 1 July 2014 to 28 July 2014.

The motion was put and carried.

7504.4 Disclosure of Interests

Member/Officer	Minute No.	Page No.	Nature of Interest
Ms Megan Bartle	7504.9.1	7	Impartiality
Ms Megan Bartle	7504.10.1	10	Impartiality

Ms Bartle declared that she would depart the meeting for items 7504.9.1 and 7504.10.1 and take no part in discussion or voting on the item.

Resolved

Moved by Ms Taylor, seconded by Mr Holloway

In accordance with clause 6.10(6) of the Standing Orders 2009, members of the Statutory Planning Committee agreed that Ms Bartle, who has disclosed an impartiality interest, must not participate in, or be present during, any discussion or decision-making procedure relating to 7504.9.1 and 7504.10.1.

The motion was put and carried.

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7504.5 Declaration of Due Consideration

No declarations were made.

7504.6 Deputations and Presentations

7504.6.1 North Alkimos Local Structure Plan No.73 - Mixed Use Zoning and Built Form Provisions

Presenter Ms Jane Bennett, CLE Town Planning and Design; Mr Paul Lakey, PEET

Ms Bennett provided a PowerPoint presentation to members of the Committee. A copy has been placed on file.

7504.6.2 City of Wanneroo - Local Planning Scheme Amendment No.122 - for Final Approval

Presenter Mayor Tracey Roberts, City of Wanneroo; Mr Daniel Simms, City of Wanneroo; Mr Len Kosova, City of Wanneroo

Mayor Roberts provided a presentation to members of the Committee in support of the report and answered questions.

The Chairman thanked City of Wanneroo staff for their support and work on the Amendment.

7504.6.2 Review of SPP 1 Policy Framework

Presenter Mr Ben Harvey, Department of Planning

THIS ITEM IS CONFIDENTIAL.

7504.7 Announcements by the Chairperson of the Board and communication from the WAPC

The Chairman advised that he would be presenting refinements to the agenda structure with Commission members at the Western Australian Planning Commission meeting along with the Planning Reform. The Chairman advised that Ms Burrows is working on the delegation of items for the Statutory Planning Committee which will be presented at a future meeting.

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7504.8 Confirmation of Minutes

7504.8.1 Minutes of the Statutory Planning Committee meeting held on Tuesday, 10 June 2014

Resolved

Moved by Ms Taylor, seconded by Mr Holloway

1. *To amend the minutes relating to item 7503.10.1 to read as follows:*

“3. requires the Council to further modify the amendment documents in the following manner before final approval is given:

(a) Change the title of Section 7.7 from ‘Demolition by neglect’ to ‘Heritage Conservation Notice’; and

(b) Add the words ‘Works undertaken pursuant to a notice served under this clause are subject to the provisions of clause 8.2.1(p).’ to the end of proposed clause 7.7.2 (after clause 7.7.2(b)).”

2. *That the minutes of the Statutory Planning Committee meeting held on Tuesday, 10 June 2014 as amended, be confirmed as a true and correct record of the proceedings.*

The motion was put and carried.

7504.8.2

Ratification of Out of Session Item – Approval to Commence Development for a Full Bore Rifle Range, Clubroom and Associated Facilities - Lot 5607, Neaves Road, Pinjar

Resolved

Moved by Ms Burrows, seconded by Ms McGowan

That the Statutory Planning Committee confirms its out of session resolution as follows:

“That the Western Australian Planning Commission resolves to approve the

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application to commence development for a full bore rifle range, clubroom and associated facilities at Lot 5607 Neaves Road, Pinjar, subject to the following conditions:

CONDITIONS

1. *This approval relates specifically to the attached plans date-stamped 11 February 2014 by the Department of Planning, on behalf of the Western Australian Planning Commission, and excludes the portion of the proposed development outside the Metropolitan Region Scheme boundaries.*
2. *The development plans being modified to remove the proposed caravan park and camping facilities, which should be excluded from the current approval.*
3. *Prior to the commencement of development works, a Water Management Plan which addresses all potential water contamination issues is to be prepared in consultation with and approved by the Department of Water.*
4. *Development works and the operation of the proposed facilities are to be undertaken in accordance with the approved Water Management Plan to the satisfaction of the Western Australian Planning Commission.*
5. *A Fire Management Plan being prepared and approved and relevant provisions implemented during development works and the operation of the proposed facilities, in accordance with the Western Australian Planning Commission's Guideline for Bushfire Protection Edition 2, May 2010 (in particular Appendix 3), to the specifications of the City of Wanneroo, and to the satisfaction of the Western Australian Planning Commission.*
6. *Parking areas, driveways, crossovers and points of ingress and egress shall be designed and constructed in accordance with the Australian Standard for Off-street*

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Car parking (AS2890) as amended and the City of Wanneroo Technical Standards, and shall be drained, sealed and marked to the satisfaction of the City of Wanneroo.

- 7. The caretaker's dwelling shall be incidental to the predominant use of a full bore shooting range and clubroom facilities and shall not be used for activities unrelated to the approved use.*

ADVICE TO APPLICANT

- 1. All development must comply with the provisions of the Health Act 1911, the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974, Environmental Protection (Noise) Regulations 1997, Building Code of Australia, Public Building Regulations and all other relevant Acts, Regulations and Local Laws. This includes the provision of access and facilities for people with disabilities in accordance with the Building Code of Australia.*
- 2. In regard to condition 1, the applicant is advised that a development approval for the portion of the development outside the boundary of the Metropolitan Region Scheme must be obtained from the Shire of Chittering.*
- 3. The applicant is advised that prior to the commencement of development works, the portion of the Higgins Road Reserve within the development application area is required to be permanently closed and the land amalgamated with the adjoining Crown Reserve. The applicant shall liaise with the Department of Parks and Wildlife and the City of Wanneroo in this regard."*

The motion was put and carried.

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The votes were recorded as follows:-

For: Mr Lumsden, Ms Burrows, Mr Clifford,
Ms McGowan and Ms Taylor

Against: Ms Bartle and Mr Holloway

**7504.8.3 Ratification of Out of Session Item – Adoption of the
Jindee Local Structure Plan No. 84**

THIS ITEM IS CONFIDENTIAL.

Ms Bartle left the meeting at 10.00 am and did not return.

7504.9 Reports

**7504.9.1 North Alkimos Local Structure Plan No.73 - Mixed Use
Zoning and Built Form Provisions**

File SPN/0012
Report Number SPC/670
Agenda Part C
Reporting Officer Planning Manager, Metro Planning
North West

**Ms Bartle disclosed an interest and did not participate
or vote on this item.**

Member	Nature of Interest
Ms Bartle	Impartiality

Members agreed to include a new recommendation 2 as follows:

“advise the applicant that the Western Australian Planning Commission may be prepared to reconsider the requirement to provide lots capable of accommodating the "Mixed Use Walk Up" product adjacent to the future service commercial area to the north upon the submission of further information which demonstrates a satisfactory interface between these lots and the future service commercial area. The applicant is advised to liaise with the adjoining developer in this regard; and”

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Officer's Recommendation

That the Western Australian Planning Commission resolves to:

1. advise the applicant that it is prepared to delete Modification 38(i) subject to Local Structure Plan 73 being modified to insert a Special Control Area over the proposed Mixed Use zone (in its entirety) and additional statutory provisions being included to:-
 - i) ensure that subdivision within the Special Control Area creates lots of a size which are capable of accommodating the "Mixed Use Walk Up" product adjacent to distributor roads, high employment generators and the future service commercial area to the north; and
 - ii) require that the buildings on these lots be developed in accordance with the Building Code of Australia's commercial construction standards; and
2. advise the City of Wanneroo accordingly.

Resolved

Moved by Mr Holloway, seconded by Ms Taylor

That the Western Australian Planning Commission resolves to:

1. *advise the applicant that it is prepared to delete Modification 38(i) subject to Local Structure Plan 73 being modified to insert a Special Control Area over the proposed Mixed Use zone (in its entirety) and additional statutory provisions being included to ensure that subdivision within the Special Control Area creates lots of a size which are capable of accommodating the "Mixed Use Walk Up" product adjacent to distributor roads, high employment generators and the future service commercial area to the north;*

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2. *advise the applicant that the Western Australian Planning Commission may be prepared to reconsider the requirement to provide lots capable of accommodating the "Mixed Use Walk Up" product adjacent to the future service commercial area to the north upon the submission of further information which demonstrates a satisfactory interface between these lots and the future service commercial area. The applicant is advised to liaise with the adjoining developer in this regard; and*
3. *advise the City of Wanneroo accordingly.*

The motion was put and carried.

7504.10 Confidential Items

7504.10.1 City of Wanneroo - Local Planning Scheme Amendment No.122 - for Final Approval

File TPS/0966
Report Number SPC/671
Agenda Part B
Reporting Officer Planning Manager - Schemes, Strategies and Amendments

THIS ITEM IS CONFIDENTIAL.

7504.11 General Business

7504.11.1 2013/2014 Urban Development Program

Members were provided with a copy of the 2013/2014 Urban Development Program. A copy has been placed on file.

7504.12 Items for Consideration at a Future Meeting

Item No	Report	Request	Report Required by
7504.12.1	SPP 1 Policy Framework	Report required from Mr Ben Harvey	August 2014

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7504.12.2 Briefing/update on Update on policies and issues TBA
Liveable Neighbourhoods

7504.13 Closure

The next ordinary meeting is scheduled for 9.00 am on 8 July 2014.

There being no further business before the Committee, the Presiding Member thanked members for their attendance and declared the meeting closed at 10.25 am.

PRESIDING MEMBER _____

DATE _____

UNCONFIRMED

INDEX OF REPORTS

Item	Description
9	REPORTS
G	DEVELOPMENTS / SUBDIVISIONAL / SURVEY STRATA
9.1	Development Application for Storage Yard: Lot 23 Great Northern Highway, Middle Swan
9.2	Proposed Subdivision – Lot 48 Grigg Place, Hilton
9.3	Proposed Subdivision – Lots 1144, 1145 and 1146 Harwood Street, Hilton
9.4	Proposed Extension to Existing Car Park at Bethesda Hospital - Lot 13 (No. 25) Queenslea Drive, Claremont
9.5	Retrospective Application for a Stairway at Lot 13 Cliff Way, Claremont
9.6	Application for Planning Approval for a Stairway at Lot 200 Bindaring Parade, Claremont
10	CONFIDENTIAL REPORTS
B	LOCAL OR REGIONAL PLANNING SCHEMES / AMENDMENTS
10.1	Broome Local Planning Strategy and Local Planning Scheme No. 6 - for Final Approval
E	MINOR LOCAL OR REGIONAL PLANNING SCHEMES / LOCAL PLANNING SCHEME AMENDMENTS
10.2	Town of Port Hedland - Local Planning Scheme Amendment No. 65 - for Final Approval
10.3	Shire of Koorda Draft Local Planning Strategy and Draft Local Planning Scheme No. 3 - for Final Approval
10.4	Shire of Cranbrook Local Planning Strategy - Request for Consent to Advertise
10.5	Shire of Wyndham east Kimberley Local Planning Scheme No. 9 – Resolution to Prepare a Local Planning Scheme
G	DEVELOPMENTS / SUBDIVISIONAL / SURVEY STRATA ITEMS
10.6	State Administrative Tribunal Reconsideration - Endorsement of Deposited Plan - Bushfire Management - Serpentine Jarrahdale

ITEM NO: 9.1

Development Application for Storage Yard: Lot 23 Great Northern Highway, Middle Swan

COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Planning Manager, Metropolitan North-East
AUTHORISING OFFICER:	Director, Metropolitan North-East / Metropolitan North-West
AGENDA PART:	G
FILE NO:	21-50424-1
DATE:	20 June 2014
ATTACHMENT(S):	1. Locality Plan 2. Resolution of Swan Valley Planning Committee 3. Development Plans 4. Indicative Future Site Plan

RECOMMENDATION:

That the Western Australian Planning Commission resolves to approve the development application for a proposed storage yard on Lot 23 Great Northern Highway, Middle Swan dated 1 April 2014, subject to the following conditions and advice:

1. This approval relates to the proposed storage yard only as shown on Plan 09-121 date stamped 8 April 2014 and does not include the warehouse and attached storage building.
2. All storage is to be confined to the areas indicated on the approved plans and stacking of any storage is to be limited to 2.5 metres in height from the finished floor level of any hardstand.
3. The premises shall be kept in a neat and tidy condition at all times to the specifications of the City of Swan and to the satisfaction of the Western Australian Planning Commission.
4. A landscaping plan being prepared and implemented and the landscaping thereafter maintained in accordance with the landscape plan to the specifications of the City of Swan and to the satisfaction of the Western Australian Planning Commission.
5. The carparking and vehicle access areas being designed, constructed and thereafter maintained to the specifications of the City of Swan and to

the satisfaction of the Western Australian Planning Commission. A minimum of eight (8) parking bays are to be provided.

6. The storage of hydrocarbons and hazardous chemicals shall not occur within the 100 year ARI flood fringe of the river. The storage of any environmentally hazardous material outside the flood fringe shall be done in a completely sealed and watertight containment system.
7. The existing ground levels adjacent to the Great Northern Highway road reserve being maintained.
8. Apart from that required for the construction of the proposed parking bays no earthworks shall encroach onto the Great Northern Highway road reserve.
9. No stormwater shall be discharged onto the Great Northern Highway road reserve

ADVICE TO APPLICANT

1. With regard to Condition 4 the landscaping plan is required to incorporate additional screening as indicated on the attached plan.
2. This approval relates to storage yard use only and any retail or wholesale sales from the site will require further approval.
3. Part of the proposed car parking bays encroach within a Primary Regional Road reservation under the Metropolitan Region Scheme. Development within the Primary Regional Road reserve is permitted on the basis that no compensation is sought by the applicant or the applicant's successors in respect of the loss of approved improvements if and when the reserved portion of the land is acquired for any works consistent with the purpose of the reservation.

SUMMARY:

The application proposes to extend an existing additional use right to permit a storage yard on hardstand adjacent to an existing warehouse building. The site is located within that covered by the *Swan Valley Planning Act 1995* and has historically been used for semi-industrial purposes. The proposal is not considered to represent a diminution of existing rural uses. Minor amenity impacts can be addressed via appropriate screening. Conditional approval is recommended.

The City of Swan has recommended approval which is in conflict with the recommendation from the Swan Valley Planning Committee and therefore in accordance with Clause 30B (5) of the Metropolitan Region Scheme, the application has been referred to the Western Australian Planning Commission for determination.

BACKGROUND:

The subject land is zoned Rural under the Metropolitan Region Scheme (MRS). The land is zoned Swan Valley Rural and has Additional Use rights under City of Swan Local Planning Scheme No.17 (LPS 17). The subject lot is irregularly configured and has two separate frontages to Great Eastern Highway (Primary Regional Road), and abuts a Railway reserve along its eastern boundary. Portion of the site is affected by Bush Forever Site No.302 and a Primary Regional Road reserve (*Attachment 1*).

The subject lot is one of several abutting lots in the vicinity which are under the same ownership and have historically been used for a variety of semi-industrial uses. Previous approvals granted by the City of Swan (the City) for the site include;

- Timber Truss Manufacturing (2003);
- Storage Yard (Tyres) (2005); and
- Transport Depot (Retrospective) (2012).

The site is within Area B of the land covered by the *Swan Valley Planning Act 1995* (the Act). The application was considered by the Swan Valley Planning Committee (SVPC) at its meetings of 16 December 2013 and 3 February 2014. The SVPC resolved on 3 February 2014:

"...to recommend that the City of Swan refuse the proposal and defer consideration of any further developments of the larger landholding until a strategic plan, including the timing for and implementation of the proposed access road to Lot 10, has been prepared and agreed to by all stakeholders."

In providing its recommendation the SVPC was mindful that:

- Notwithstanding the subject land's zoning it is still generally bound by the planning objectives of the Swan Valley Planning Act Area B;
- Previous recommendations for vegetative screening on developments "have been honoured in the breach rather than the observance";
- A previous development application for a transport depot on the nearby Lot 10 (also under the same ownership) prompted advice from Main Roads WA (MRWA) requiring a strategic plan to determine how the broader landholding would be serviced by the transport depot, including the timing and implementation of access from the highway to Lot 10. The Committee was not subsequently advised of any change in the stated position of MRWA (*Attachment 2*).

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation	Subdivision / Development Approval / Reconsiderations - Part 10 of the P&D Act 2005
Strategic Plan	
Strategic Goal:	Strategic Goal 2: Planning
Outcomes:	Effective Delivery of Integrated Plans
Strategies:	Implement State and Regional Planning priorities

Policy

Compliance: Proposal complies with WAPC policies unless discussed in Planning Assessment section.

DETAILS:

The application seeks approval for a storage yard on the subject property. The storage areas total 1193m² and are located to the side and rear of an existing warehouse building. Materials to be stored were originally limited to construction scaffolding but will now be determined by the requirements of a tenant yet to be secured (*Attachment 3A and 3B*).

GOVERNMENT AND CORPORATE IMPLICATIONS:

The WAPC is currently reviewing the *Swan Valley Planning Act 1995* and preparing a structure plan over the Swan Valley area in accordance with "*The Way Forward - Swan Valley Land Use and Management: Report on Submissions and Recommendations*". The proposal is unlikely to prejudice the outcomes of either of these processes.

CONSULTATION:

The Department of Parks and Wildlife and the Public Transport Authority raise no objection to the proposal.

The State Heritage Office raises no objection. The Department of Water and the Swan River Trust also raise no objection and offered standard advice regarding flood risk and storage of hydrocarbons.

MRWA and the City of Swan both recommend conditional approval. This is discussed further below.

OFFICER'S COMMENTS:

The subject site currently contains two warehouses, timberyard and transport depot. The Additional Use rights under LPS 17 provide for the consideration of a specified range of uses on the land, in addition to those permitted within the Rural zone under LPS 17. This includes 'Storage Yard' which is a 'D' (discretionary) use as set out under the additional use provisions.

Swan Valley Planning Act Objectives

Section 8 of the Act lists a number of planning objectives for Area B. Those relevant to the proposal are discussed below.

Objective 2: The provision of water for viticulture and horticulture and the discouragement of activities that have high water demands.

The proposed change of use will not lead to activities that have high water demands.

Objective 4: The encouragement of traditional activities of the Swan Valley and industries associated with viticulture, horticulture and cottage industry provided that they are compatible with the rural character of the area.

The proposed use cannot be classified as an agricultural use or cottage industry. However it will not consume land previously used for agricultural purposes. In addition, as noxious uses are not permitted under the site's zoning it will not have odour or environmental impacts. The storage yard is appropriately sited behind existing vegetation and buildings. The City has also recommended a condition requiring additional screening vegetation to be planted and maintained. This is considered appropriate.

Objective 6: The compatibility of design, siting and landscaping with the character of the area.

The City advises that a front setback of 30 metres generally applies, although in Rural zones setbacks in the Swan Valley may be negotiated. Stored materials are to be stacked to a maximum height of 2.5 metres. The storage area is setback 26 metres in lieu of the 30 metre standard requirement. This is considered reasonable as the majority of the storage area is setback over 30 metres with only a 4 m² area protruding to 26 metres. The application includes an additional strip of landscaping proposed along the portion of frontage where the storage area is proposed. The proposed selected plants are tall shrubs/small trees (e.g. grevillea or melaleuca species) which will provide screening at pedestrian level.

A side setback of 8 metres is proposed in lieu of the usual 20 metres. However the adjacent Lot 24 is in the same ownership and enjoys the same Additional Use rights. The portion of Lot 24 in proximity to the proposed development is densely vegetated and forms part of the aforementioned Bush Forever site. It is therefore unlikely to be developed in future. Visual amenity along the southern boundary of Lot 23 is therefore not an issue.

Objective 7: The discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area.

The site is not currently used for agricultural purposes and approval to the proposed development would not result in a loss of area devoted to such uses.

Screening Requirements

The application proposes the planting of shrubs along the western boundary of the lot for additional screening from the highway. The City has recommended a condition requiring compliance and continual maintenance of such screening. The SVPC's comment that such conditions were not met in the past is not a planning matter but should be addressed by appropriate compliance monitoring by the City.

It is recommended that screening be required in addition to that already proposed by the applicant. Following consultation with the City, a condition requiring additional planting on the south-west corner of the lot is recommended. This will provide an additional level of visual screening for vehicles travelling from the south.

Car Parking

The original development approval granted in 2003 (ref: P156660) for the timber truss manufacturing facility had a requirement for 8 parking bays. This has not formally been provided and parking has traditionally been accommodated on the existing hardstand. The City has requested formal provision of the bays with appropriate dimensions, marking etc.

Under *City of Swan Policy PO-TP-129 Vehicle Parking Standards* the 1146m² portion of the existing development which is proposed to be used as a storage yard would normally attract a car parking requirement of 23 bays. Given the site is large, the City has proposed that any additional car parking requirements arising from the proposal be accommodated on the hardstand behind the existing building and designated as informal parking. It is not anticipated that the proposed use will generate a high parking demand and the City's recommendations regarding parking requirements are supported

MRWA Requirements

The applicant has prepared a conceptual strategic plan in consultation with MRWA which indicates integration of future developments on his landholdings with access to Great Northern Highway (*Attachment 4*). The plan indicates changes to the local road network and its integration with the highway, as well as an indicative location for site access to Lots 10 and 11. This is proposed to be used by the City to inform planning decisions. The SVPC was not advised of the existence of this plan at its February meeting, as the plan was prepared in relation to the separate development application for the transport depot. The plan addresses the SVPC's concerns regarding how the broader landholding will be serviced by the highway.

As stated previously, MRWA raises no objection to the current proposal. It does not propose additional vehicle access and the conceptual plan provides surety regarding future intentions and requirements. MRWA advises that the proposed parking bays encroach on the Great Northern Highway Primary Regional Road reservation. It recommends a notification be placed on the Certificate of Title that development is permitted within the Primary Regional Road reservation on the basis that no compensation will be sought by the owners for approved improvements in any part of the reserve if and when it is resumed. A Notification on Title would not normally be imposed as part of a development approval although it is recommended the applicant be advised as per MRWA's comment.

CONCLUSION:

The property contains existing development which is not consistent with the objectives of the Swan Valley Planning Act and which is recognised through the additional use rights under the local planning scheme. While storage is a discretionary use under the additional use provisions applying to the land, the proposed storage yard is in keeping with the existing landuse and development of the site. The visual impacts are considered to be minimal especially when mitigated by the proposed landscaping plan. In view of this and notwithstanding the objections of the SVPC, conditional approval is recommended.

ITEM NO: 9.2

Proposed Subdivision – Lot 48 Grigg Place, Hilton

WAPC OR COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: Planning Officer, Metropolitan Central
AUTHORISING OFFICER: Director, Metropolitan Central
AGENDA PART: G
FILE NO: 149801
DATE: 25 June 2014
ATTACHMENT(S): Attachment 1 - Subdivision Plan
Attachment 2 - Location and Zoning Map
REGION SCHEME ZONING: Urban
LOCAL GOVERNMENT: City of Fremantle
LOCAL SCHEME ZONING: Residential R20
LGA RECOMMENDATION(S): Conditional Approval
REGION DESCRIPTOR: Perth Metro Central
RECEIPT DATE: 3 April 2014
PROCESS DAYS: 76
APPLICATION TYPE: Subdivision
CADASTRAL REFERENCE: Lot 48, Grigg Place, Hilton

RECOMMENDATION:

That the Western Australian Planning Commission resolves to refuse the application for subdivision of Lot 48 Grigg Place, Hilton, for the following reasons:

- 1. Approval of the application will result in the creation of an undersized battle-axe lot which is contrary to WAPC policy State Planning Policy 3.1 Residential Design Codes Table 1.*
- 2. The creation of an undersized battle-axe lot is also contrary to WAPC policy Development Control Policy 2.2 - Residential Subdivision, clause 3.6.5.*
- 3. Approval of the application is not consistent with the orderly and proper planning of the locality, particularly given the density code allocated to the site.*

SUMMARY:

The application proposes the subdivision of a 1806m² lot to create four freehold residential lots in a double battle-axe configuration, with lot sizes of 407m², 512m², 410m² and 477m². There are two existing dwellings, located on proposed Lots 1 and 4, which are to be retained.

The proposed subdivision satisfies the minimum and average lot sizes required for the creation of lots in the R20 density coding as specified by Table 1 of the R-Codes, however proposed Lot 3 of the application does not satisfy the minimum battle-axe lot size area required for R20 development in Table 1 of the R Codes.

The application is presented to the SPC on the basis that there is no scope for the variation of a the size of a battle-axe lot in WAPC policy.

It is recommended that the application be refused.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation *Planning and Development Act 2005*
Section: Subdivision / Development Approval / Reconsiderations
Part 10

Strategic Plan
Strategic Goal: Planning
Outcomes: Effective Delivery of Integrated Plans
Strategies: Implement State and Regional Planning priorities

Policy
Number and / or Name: State Planning Policy 3.1 – *Residential Design Codes*
Development Control Policy 2.2 – *Residential Subdivision*

INTRODUCTION:

The application proposes the subdivision of a 1806m² lot to create four freehold residential lots in a double battle-axe configuration, with lot sizes of 407m², 512m², 410m² and 477m². There are existing dwellings on proposed Lots 1 and 4 which are to be retained (**Attachment 1 - Subdivision Plan**).

The subject land is zoned 'Urban' under the Metropolitan Region Scheme (MRS) and 'Residential - R20' under the City of Fremantle Local Planning Scheme No. 4 (LPS 4) (**Attachment 2 – Location Plan**).

The land is owned by the Department of Housing.

CONSULTATION:

The City of Fremantle supports the application subject to the imposition of standard conditions and advice.

Western Power and the Water Corporation raise no objections to the proposal subject to the imposition of standard servicing conditions.

PLANNING ASSESSMENT:

Hilton Garden Suburb Heritage Area

The application falls within the 'Hilton Garden Suburb Heritage Area' as identified in the City of Fremantle's Local Planning Policy 3.7. The 'Hilton Garden Suburb Precinct' is a designated Heritage Area in accordance with Clauses 7.2.1 and 7.2.9 of LPS 4. The purpose of the policy is to provide development and design guidance within the 'Hilton Garden Suburb' Heritage Area.

While the majority of the local planning policy deals with development of lots within the precinct, Clause 8.1 states that subdivision shall only be supported where the following requirements are met;

- 8.1.1 The subdivision is in the form of battle-axe or survey strata (with or without common property) with one lot behind the other.
- 8.1.2 The proposed front lot shall have a minimum frontage of 16 metres. In the case of corner lots, the minimum frontage of 16 metres shall apply to the primary street.
- 8.1.3 Access legs for battle-axe or survey strata subdivision shall provide reciprocal access to both the front and rear lots. Where such an arrangement is proposed, Council shall recommend the following condition of subdivision to be applied:

"The applicant is to make suitable arrangements to ensure reciprocal rights of access exist over adjoining battle-axe access legs"

The application complies with these requirements.

Residential Design Codes 2013 (R Codes)

Lot	Minimum Lot Size		Complies	Effective Lot Area		Complies
	Required	Provided		Required	Provided	
Lot 1	350m ²	407m ²	Yes	-	-	-
Lot 2	450m ²	512m ²	Yes	360m ²	419m ²	Yes
Lot 3	450m ²	410m ²	No	360m ²	336m ²	No
Lot 4	350m ²	477m ²	Yes	-	-	-
	Average Lot Size		Complies			
	Required	Provided				
Total Site	450m ²	451.5m ²	Yes			

Proposed Lot 3 does not comply with either the minimum lot size or effective lot area requirement for a battle-axe lot, providing a total lot size of 410m² and with an effective lot area of 336m². This represents a variation of 8.8% to the minimum total lot size and 6.7% to the required effective lot area.

Clause 3.6.5 of the WAPC's Development Control Policy 2.2 'Residential Subdivision' (DC 2.2) states that:

- *In areas which are subject to the R-Codes, the minimum lot area will be as set out in Clause 5.1.1 and Column 4 of Table 1 of the R-Codes. The WAPC will not permit reductions in the minimum or average lot sizes set by the R-Codes in respect of battle-axe subdivisions.*

Applicants Justification

The purpose of the proposed subdivision is to retain and sell off the original dwellings located at the front of the property and allow the Department of Housing to construct new public housing stock on the rear lots.

It should be noted that the City of Fremantle and the Department of Housing have a Memorandum of Understanding (MOU) with relation to the Department's properties in the Hilton area. This MOU sits outside of the planning system and is not considered relevant to an assessment of the proposed subdivision on its planning merits.

The applicant provided a covering document with the Form 1A application which acknowledges that the subdivision proposes lot sizes below those permitted by the areas R Coding and provides the following justification for the proposed subdivision.

Clause 138 of the *Planning and Development Act 2005* (the Act) states that:

(3) The Commission may give an approval under section 135 or 136 that conflicts with the provisions of a local planning scheme if -

...(e) in the case of an application under section 135, the local government responsible for the enforcement of the observance of the scheme has been given the plan of subdivision, or a copy, under section 142 and has not made any objection under that section.

The City of Fremantle was referred the plan of subdivision under section 142 of the Act and recommended that the application be approved subject to conditions.

The applicant is of the opinion that the proposed lot sizes are supportable based on Clause 138 of the Act and the MOU between the Department of Housing and the City of Fremantle.

Comments

- Approval of the application will result in the creation of an undersized battle-axe lot which is contrary to the requirements of WAPC policy State Planning Policy 3.1 - Residential Design Codes Table 1.
- The creation of an undersized battle-axe lot is also contrary to WAPC policy Development Control Policy 2.2 - Residential Subdivision, clause 3.6.5 of which states '*the WAPC will not permit reductions in the minimum or average lot sizes set by the R-Codes in respect of battle-axe subdivisions.*'

- If the application is approved others may wish to replicate the outcome in other areas. The proponent (the Department of Housing by way of TPG) has submitted another proposal, WAPC Ref 149802, which also proposes an undersized battle-axe lot with the same justification.
- Approval of the application is not consistent with the orderly and proper planning of the locality.
- The applicant is seeking approval outside of the established planning framework.
- Orderly and proper planning would require the density of the subject land be modified in order to achieve the applicants desired lot sizes.

CONCLUSION:

The application does not comply with the requirements of WAPC policy and approval would result in the creation of an undersized battle-axe lot; it is recommended that the application be refused.

WITHDRAWN FROM AGENDA

ITEM NO: 9.3

Proposed Subdivision – Lots 1144, 1145 and 1146 Harwood Street, Hilton

WAPC OR COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Planning Officer, Metropolitan Central,
AUTHORISING OFFICER:	Director, Metropolitan Central,
AGENDA PART:	G
FILE NO:	149802
DATE:	25 June 2014
ATTACHMENT(S):	Attachment 1 - Subdivision Plan Attachment 2 - Location and Zoning Map
REGION SCHEME ZONING:	Urban
LOCAL GOVERNMENT:	City of Fremantle
LOCAL SCHEME ZONING:	Residential R20/R25
LGA RECOMMENDATION(S):	Conditional Approval
REGION DESCRIPTOR:	Perth Metro Central
RECEIPT DATE:	3 April 2014
PROCESS DAYS:	76
APPLICATION TYPE:	Subdivision
CADASTRAL REFERENCE:	Lots 1144, 1145 and 1146, Harwood Street, Hilton

RECOMMENDATION:

That the Western Australian Planning Commission resolves to refuse the application for subdivision of Lots 1144, 1145 and 1146 Harwood Street, Hilton, for the following reasons:

- 1. Approval of the application will result in the creation of an undersized battle-axe lot which is contrary to WAPC policy State Planning Policy 3.1 - Residential Design Codes Table 1.***
- 2. The creation of an undersized battle-axe lot is contrary to WAPC policy Development Control Policy 2.2 - Residential Subdivision, clause 3.6.5.***
- 3. Approval of the application is not consistent with the orderly and proper planning of the locality, particularly given the density code allocated to the site.***

SUMMARY:

The application proposes the subdivision of three lots totalling 2433m² to create six freehold residential lots with lot sizes of 326m², 469m², 423m², 491m², 338m² and 386m². There are three existing dwellings, located on proposed Lots 1, 3 and 5, which are to be retained.

The proposed subdivision satisfies the minimum and average lot sizes required for the creation of lots in the R25 density coding as specified by Table 1 of the R-Codes, however proposed Lot 6 of the application does not satisfy the minimum battle-axe lot size area required for R25 development in Table 1 of the R Codes.

The application is presented to the SPC on the basis that there is no scope for the variation of a the size of a battle-axe lot in WAPC policy.

It is recommended that the application be refused.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation *Planning and Development Act 2005*
Section: Subdivision / Development Approval / Reconsiderations
Part 10

Strategic Plan
Strategic Goal: Planning
Outcomes: Effective Delivery of Integrated Plans
Strategies: Implement State and Regional Planning priorities

Policy
Number and / or Name: State Planning Policy 3.1 – *Residential Design Codes*
Development Control Policy 2.2 – *Residential Subdivision*

INTRODUCTION:

The application proposes the subdivision of three lots totalling 2433m² to create six freehold residential lots with lot sizes of 326m², 469m², 423m², 491m², 338m² and 386m². There are three existing dwellings, located on proposed Lots 1, 3 and 5, which are to be retained. **(Attachment 1 - Subdivision Plan)**.

The subject land is zoned 'Urban' under the Metropolitan Region Scheme (MRS) and 'Residential - R20/R25' under the City of Fremantle Local Planning Scheme No. 4 (LPS 4) **(Attachment 2 – Location Plan)**.

The land is owned by the Department of Housing.

CONSULTATION:

The City of Fremantle supports the application subject to the imposition of standard conditions and advice.

Western Power and the Water Corporation raise no objections to the proposal subject to the imposition of standard servicing conditions.

The Department of Fire and Emergency Services raised no objections and support the application unconditionally.

PLANNING ASSESSMENT:

Hilton Garden Suburb Heritage Area

The application falls within the 'Hilton Garden Suburb Heritage Area' as identified in the City of Fremantle's Local Planning Policy 3.7. The 'Hilton Garden Suburb Precinct' is a designated Heritage Area in accordance with Clauses 7.2.1 and 7.2.9 of LPS 4. The purpose of the policy is to provide development and design guidance within the 'Hilton Garden Suburb' Heritage Area.

While the majority of the local planning policy deals with development on lots within the precinct, Clause 8.1 states that subdivision shall only be supported where the following requirements are met;

- 8.1.1 The subdivision is in the form of battle-axe or survey strata (with or without common property) with one lot behind the other.
- 8.1.2 The proposed front lot shall have a minimum frontage of 16 metres. In the case of corner lots, the minimum frontage of 16 metres shall apply to the primary street.
- 8.1.3 Access legs for battle-axe or survey strata subdivision shall provide reciprocal access to both the front and rear lots. Where such an arrangement is proposed, Council shall recommended the following condition of subdivision to be applied:

"The applicant is to make suitable arrangements to ensure reciprocal rights of access exist over adjoining battle-axe access legs

The application complies with these requirements.

Split Density Coding

The subject land has a split density coding of R20/R25. Where a site is identified as having a split density coding and is connected to reticulated sewerage, LPS 4 states that the higher code may only be applied where one or more of the following specific requirements are met:

(a) a building of cultural heritage significance is retained on the lot,

(b) provision of 'low income housing',

(c) buildings designed in accordance with Council's energy efficiency and sustainability schedule, and

(d) removal of a non-conforming use.

In its referral response the City of Fremantle did not indicate whether or not the application complies with its requirements for the application of the higher density code. The application has therefore been assessed against both the R20 and the R25 requirements.

Residential Design Codes 2013 (R Codes)

R20 Density Code Assessment

Lot	Minimum Lot Size		Complies	Effective Lot Area		Complies
	Required	Provided		Required	Provided	
Lot 1	350m ²	326m ²	No	-	-	-
Lot 2	450m ²	469m ²	Yes	360m ²	383m ²	Yes
Lot 3	350m ²	423m ²	Yes	-	-	-
Lot 4	450m ²	491m ²	Yes	360m ²	429m ²	Yes
Lot 5	350m ²	338m ²	No	-	-	-
Lot 6	450m ²	386m ²	No	360m ²	317m ²	No
	Average Lot Size		Complies			
	Required	Provided				
Total Site	450m ²	405.5m ²	No			

When assessed at the R20 density code:

- Proposed Lots 1, 5 and 6 do not meet the required minimum lot sizes, requiring respective variations of 6.86%, 3.43% and 14.22%.
- Proposed Lot 6 does not comply with the required effective lot area, requiring a variation of 11.94%.
- The entire subdivision does not meet the required average lot size, requiring a variation of 9.89%.

R25 Density Code Assessment

Lot	Minimum Lot Size		Complies	Effective Lot Area		Complies
	Required	Provided		Required	Provided	
Lot 1	300m ²	326m ²	Yes	-	-	-
Lot 2	425m ²	469m ²	Yes	340m ²	383m ²	Yes
Lot 3	300m ²	423m ²	Yes	-	-	-
Lot 4	425m ²	491m ²	Yes	340m ²	429m ²	Yes
Lot 5	300m ²	338m ²	Yes	-	-	-
Lot 6	425m ²	386m ²	No	340m ²	317m ²	No
	Average Lot Size		Complies			
	Required	Provided				
Total Site	350m ²	405.5m ²	Yes			

When assessed at the R25 density proposed Lot 6 does not comply with either the minimum lot size or effective lot area requirement for a battle-axe lot, providing a total

lot size of 386m² and with an effective lot area of 317m². This represents a variation of 9.18% to the minimum total lot size and 6.76% to the required effective lot area.

Clause 3.6.5 of the WAPC's Development Control Policy 2.2 'Residential Subdivision' (DC 2.2) states that:

- *In areas which are subject to the R-Codes, the minimum lot area will be as set out in Clause 5.1.1 and Column 4 of Table 1 of the R-Codes. The WAPC will not permit reductions in the minimum or average lot sizes set by the R-Codes in respect of battle-axe subdivisions.*

Applicants Justification

The purpose of the proposed subdivision is to retain and sell off the original dwellings located at the front of the properties and allow the Department of Housing to construct new public housing stock on the rear lots.

It should be noted that the City of Fremantle and the Department of Housing have a Memorandum of Understanding (MOU) with relation to the Department's properties in the Hilton area. This MOU sits outside of the planning system and is not considered relevant to an assessment of the proposed subdivision on its planning merits.

The applicant provided a covering document with the Form 1A application which acknowledges that the subdivision proposes lot sizes below those permitted by the areas R Coding and provides the following justification for the proposed subdivision.

Clause 138 of the *Planning and Development Act 2005* (the Act) states that:

(3) The Commission may give an approval under section 135 or 136 that conflicts with the provisions of a local planning scheme if -

...(e) in the case of an application under section 135, the local government responsible for the enforcement of the observance of the scheme has been given the plan of subdivision, or a copy, under section 142 and has not made any objection under that section.

The City of Fremantle was referred the plan of subdivision under section 142 of the Act and recommended that the application be approved subject to conditions.

The applicant is of the opinion that the proposed lot sizes are supportable based on Clause 138 of the Act and the MOU between the Department of Housing and the City of Fremantle.

Comments

- Regardless of the density at which the application is assessed, approval of the application will result in the creation of an undersized battle-axe lot. This is contrary to the requirements of WAPC policy State Planning Policy 3.1 - Residential Design Codes Table 1.

- The creation of an undersized battle-axe lot is also contrary to WAPC policy Development Control Policy 2.2 - Residential Subdivision, clause 3.6.5 of which states *'the WAPC will not permit reductions in the minimum or average lot sizes set by the R-Codes in respect of battle-axe subdivisions.'*
- If the application is approved others may wish to replicate the outcome in other areas. The proponent (the Department of Housing by way of TPG) has submitted another proposal, WAPC Ref 149801, which also proposes an undersized battle-axe lot with the same justification.
- Approval of the application is not consistent with the orderly and proper planning of the locality.
- The applicant is seeking approval outside of the established planning framework.
- Orderly and proper planning would require the density of the subject land be modified in order to achieve the applicants desired lot sizes.

CONCLUSION:

The application does not comply with the requirements of WAPC policy and approval would result in the creation of an undersized battle-axe lot; it is recommended that the application be refused.

ITEM NO: 9.4

Proposed Extension to Existing Car Park at Bethesda Hospital - Lot 13 (No. 25) Queenslea Drive, Claremont

WAPC OR COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: Senior Planning Officer - Metropolitan Planning Central
AUTHORISING OFFICER: Director - Metropolitan Planning Central
AGENDA PART: G
FILE NO: 02-50003-2
DATE: 20 June 2014
ATTACHMENT(S): Attachment 1 - Development Plan
Attachment 2 - Location and Zoning Plan
Attachment 3 - Landscape Concept Plan
Attachment 4 - Aerial Photograph
Attachment 5 - Photographs of Existing Site
Attachment 6 - Approved Jetty Expansion

REGION SCHEME ZONING: Urban and Parks & Recreation reserve
LOCAL GOVERNMENT: Town of Claremont
LOCAL SCHEME ZONING: Special Zone - Restricted Use and Parks & Recreation reserve

LGA RECOMMENDATION(S): Refusal
REGION DESCRIPTOR: Perth Metro Central
RECEIPT DATE: 19 February 2014
PROCESS DAYS: 124 days
APPLICATION TYPE: Development
CADASTRAL REFERENCE: Lot 13 (No. 25) Queenslea Drive, Claremont

RECOMMENDATION:

That the Statutory Planning Committee in relation to the application for the proposed car park extension at Lot 13 (No. 25) Queenslea Drive, Claremont resolves to:

- 1. refer the application to the Minister for Planning in accordance with Clause 30A(7) of the Metropolitan Region Scheme.***
- 2. request the Minister for Planning to liaise with the Minister for Environment in relation to the application.***
- 3. request the Minister for Planning to form a view on the application and advise the Western Australian Planning Commission to disregard the***

advice of the Swan River Trust and approve the application subject to the following conditions:

- 1. The development is to be carried out in accordance with the plans date stamped 22 May 2014 by the Department of Planning on behalf of the Western Australian Planning Commission.**
- 2. The landowner indemnifying the Western Australian Planning Commission against any claim for compensation for the improvements located on land reserved for Parks and Recreation when the land is ultimately acquired, to the satisfaction of the Western Australian Planning Commission.**
- 3. A reciprocal parking and access agreement between Bethesda Hospital and the Claremont Yacht Club to be formalised to the satisfaction of the Western Australian Planning Commission, prior to occupation of the development.**
- 4. The vehicle parking area shall be sealed, kerbed, drained and line-marked in accordance with the approved plans and shall be thereafter maintained to the specification of the local government and to the satisfaction of the Western Australian Planning Commission.**
- 5. Landscaping to be undertaken in accordance with the Landscape Concept plan (dated 20 May 2014, Rev E) to the satisfaction of the Western Australian Planning Commission, prior to occupation of the development.**
- 6. Stormwater is to be retained on-site and/or connected to the local drainage system to the specification of the local government and the satisfaction of the Western Australian Planning Commission.**

ADVICE TO APPLICANT:

- 1. With regard to Condition 2, a legal agreement is required to be put in place to ensure that at such time that the Western Australian Planning Commission acquires the Parks and Recreation reserve, the land shall be acquired at the unimproved value of the land, and that if the improvements are required to be removed by the Western Australian Planning Commission, the owner of the land must do so at their cost.**

SUMMARY:

The proposal is for an extension to an existing car park at the Bethesda Hospital in Claremont. The application is required to be determined by the Western Australian Planning Commission (WAPC) under Clause 30A(2)a(i) of the Metropolitan Region Scheme (MRS).

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation

Section: *Planning and Development Act 2005*
Subdivision / Development Approval / Reconsiderations
Part 10

Strategic Plan

Strategic Goal: Planning
Outcomes: Effective Delivery of Integrated Plans
Strategies: Implement State and Regional Planning priorities

Policy

Number and / or Name: State Planning Policy 2.10 *Swan-Canning River System*

INTRODUCTION:

The subject application seeks approval for an extension to an existing car park at the Bethesda Hospital (**Attachment 1 - Development Plans**). The proposed development is estimated to cost \$270,000 and the estimated construction time is 10 months.

The site is partially zoned 'Urban' and reserved for 'Parks and Recreation' under the MRS. The portion that is zoned 'Urban' under the MRS is zoned 'Special Zone - Restricted Use' under the Town of Claremont Town Planning Scheme No.3 (TPS 3) for the purposes of a Hospital. The portion that is reserved for 'Parks and Recreation' under the MRS is also within the Swan River Trust (SRT) Development Control Area (**Attachment 2 - Location & Zoning Plan**).

The Town of Claremont (the Town) has forwarded the application to the WAPC for determination in accordance with Clause 30A(1)a(i) of the MRS as the proposal relates to development on land that is partially located within the SRT Development Control Area. Accordingly, the WAPC is to have due regard to the recommendation provided by the SRT and in the case of any disagreement, Clause 30A(7) of the MRS states:

'If the Commission does not agree with part or all of the advice of the Swan River Trust on an application referred to in subclause (2)(a) -

- (a) the matter on which there is not agreement is to be resolved in the matter determined by the SCRM Minister and the Minister for Planning;*
- (b) the Minister for Planning is to direct the Commission accordingly; and*
- (c) the Commission is to determine the application in accordance with the direction.'*

In accordance with the provisions of the MRS, in determining the merits of a development application, the WAPC is required to have regard to orderly and proper planning, the preservation of the amenities of the locality and the purpose of the land's zoning.

BACKGROUND:

Development plans were originally received by the WAPC in February 2014 and referred to the SRT for comment in accordance with the requirements of the MRS. At its meeting of 13 May 2014, the SRT Board considered the application and advised that it did not support the proposal in its current form, but would be willing to consider a revised proposal featuring a number of reduced car parking bays with additional screening vegetation and landscaping.

In response, the applicant submitted amended plans that reduced the number of car bays and included additional landscaping strips within the car park (**Attachment 3 - Landscape Concept Plan**). On 10 June 2014, the SRT Board considered the amended plans and again resolved not to support the proposal due to potential amenity impacts and the non-compliance with the purpose of the Parks and Recreation reservation. The Department of Planning (DoP) is of the view that the impacts are negligible and that the application can be supported subject to conditions.

CONSULTATION:

Town of Claremont

The Town considered the application at their Ordinary Council Meeting held 15 April 2014. Although the officer recommendation was to conditionally support the proposal, this recommendation was lost for the following reason:

"The proposal does not satisfy appropriate environmental or land-use standards for the river foreshore, will inhibit pedestrian access along the foreshore and accordingly is an inappropriate use of the regional reservation for Parks and Recreation".

Heritage Council

The Heritage Council have no objections to the proposal.

Swan River Trust

As mentioned previously, the SRT do not support the original or amended plan. At the SRT Board meeting held 10 June 2014, the SRT resolved to recommend that the proposed development be refused for the following reason:

"The proposed development is to be located within and will impact on the natural quality of land reserved for Parks and Recreation under the Metropolitan Region Scheme and is therefore contrary to the long term purpose and intent of the reservation".

Further comment regarding the SRT's recommendation is provided within the 'Comments' section of this report.

COMMENTS:

Existing Development & Land Use

Existing development on the site comprises the Bethesda Hospital, which provides independent surgical and medical services, and comprises seventy-seven (77) beds. The Hospital has been subject to several redevelopment programs over the years, the most recent being completed in 2006. Visitor and patient parking at the Hospital is provided in the form of metered bays at the hospital entrance with limited parking available offsite in the form of a council car park in the Victoria Avenue cul-de-sac, directly adjacent to the Hospital.

Thirteen (13) staff parking bays are provided to the rear of the site, accessible via the Claremont Yacht Club's driveway. The applicant advises that a reciprocal parking agreement between the hospital and the Yacht club exists to access a further sixteen (16) parking bays within the Yacht Club's car park. On weekends, the reverse occurs, with Yacht Club users permitted to park in the Hospital's rear parking area (**Attachment 4 - Aerial Photograph**). It is noted however that this agreement expired on 23 January 2013 and therefore a new agreement is required as a condition of approval.

However, as a result of recent changes to public parking arrangements in the area (timed and paid parking) together with parking demand issues in the area associated with Christ Church Grammar School, Methodist Ladies College and the Yacht Club, there is an urgent need to accommodate additional parking on the site for the staff of the Hospital.

Proposed Development

This application seeks approval for the extension of the existing staff parking area located to the south of the Hospital building between the building and the Swan River. It is proposed to resurface the existing car parking area and to extend the area west to accommodate additional parking. The car parking area is accessed via the Claremont Yacht Club located to the east of the site. Specifically, the proposed works include the following:

- Extension and resurfacing of the existing car park to accommodate a total of 40 car bays, incorporating appropriate native plant species within islands to enhance visual amenity;
- Construction of a new pathway to provide access between the Hospital and the car park;
- Construction of a 1 metre high retaining wall along the northern side of the car park to facilitate preservation of existing Peppermint Trees and the embankment, and to incorporate appropriate native plant species to enhance visual amenity;
- Construction of a 1 metre high foreshore retaining wall and appropriate native plant species to enhance visual amenity; and
- The revegetation of the foreshore area with appropriate plant species to the river's edge.

It is noted that the number of proposed car bays has been reduced from 42 to 40 in order to accommodate additional landscaping as required by the SRT.

The majority of the proposed development falls within the MRS 'Parks and Recreation' reserve. Only a very minor portion of the northern part of the proposed car parking area and the proposed pedestrian path is located in the portion of the site zoned 'Special Zone – Restricted Use' under TPS 3 and 'Urban' under the MRS. As detailed in Appendix VII of TPS 3, the permitted use of the subject site is for a Hospital not exceeding 77 beds, operating theatre, radiology and physiotherapy facilities. The proposed car park is considered to be consistent with the permitted use of the site as it is an ancillary function of the Hospital and is required to address the current parking shortage.

Swan River Trust Assessment

The SRT do not support the amended proposal as their assessment revealed a number of inconsistencies with various SRT and state planning policies. The SRT's assessment against these policies, together with appropriate comments in response, are detailed below.

Policy SRT/D27 - Car Parking and Access

The SRT have advised that the proposal is inconsistent with Policy SRT/D27 as the hardstand and the parking of vehicles will detract from the visual amenity of the river landscape and poses a risk to water quality due to the collection and conveyance of hydrocarbons, sediment and other pollutants into the river system. Accordingly, the SRT advise that the proposal does not comply with a key policy objective that the proposal "will not compromise amenity and environmental values of the area and the safety and comfort of users". In general, the consideration of permanent car parking by the SRT is focussed on the provision of car access as a way to connect the community with the river, to enjoy the ambience of the natural landscape and take part in river based recreational activities, not for car parking solely associated with private development.

DoP Comment

The applicant has advised that the proposed car parking area is located on land that is currently degraded, partially cleared of vegetation and consists of an open area with a series of drainage basins. As this area has little visual amenity benefits, it is considered that the proposed works will in fact enhance the area. An existing path and steps provide access between the area and the river, however it is noted that the area is not generally maintained (**Attachment 5 - Photographs of Existing Site**).

Although elevated higher than the foreshore, the level of the proposed car park is located to the north of the Claremont Yacht Club pens and jetties which extend west towards the Christ Church land. The proposed car park is therefore not considered to have a detrimental impact on the view of the site from the river as it is well screened by the existing boats and jetty structures. In addition, the area will be further obscured with the proposed expansion of Claremont Yacht Club in the near future (an additional 59 pens and 37 finger jetties), which was recently approved by the Minister for Environment on the advice of the SRT (**Attachment 6 - Approved Jetty Expansion**). The retention of the existing mature Peppermint Trees and additional revegetation of the foreshore edge with native vegetation will also assist in reducing

the visual impact of the car parking area from the river. Construction of a contemporary car park with one shade tree per three bays together with associated landscaping proposals on the adjoining foreshore reservation will significantly improve the overall amenity of the location.

It is noted that the parking area will not impact on the current legal pedestrian access opportunity along the foreshore as access to the river, outside of the subject site, will still be maintained. Although the car park will be contained within the Parks and Recreation reservation, it is entirely contained within the subject lot. Any proposed acquisition of this land for the Parks and Recreation purposes is a separate matter for the WAPC to determine with the landowner. The existing car parking area is accessed via the Claremont Yacht Club in accordance with a previous reciprocal parking agreement between the two parties. However, as the agreement expired last year, a new agreement is now required.

Policy SRT/EA1 - Conservation, Land Use and Landscape Preservation

Section SRT/EA1.2 of this policy, which is reflected in guiding principles 7.4.1 and 7.4.2 of State Planning Policy 2.10 *Swan-Canning River System* (SPP 2.10), states that development adjacent to the river should achieve urban design and architectural outcomes which enhance and protect the character and quality of the landscape setting of the river and promote the public resource value of the river environment. The SRT believe that the proposal does not satisfy these requirements.

DoP Comment

The proposed car park is considered to have a relatively low impact and will be of a scale which will not adversely affect the amenity and landscape of the area, or views to or from the foreshore, particularly when taking into consideration the extent of jetties and boat pens which assist to obscure the foreshore area when viewed from the river.

The landscaping and revegetation proposed represents a significant increase to the existing vegetation in the area and will assist to enhance the area's landscape character.

Further, the car park design does not impact on ability for pedestrians to traverse the foreshore area. The design and alignment of the eastern extent of the car park facilitates a slight widening of the foreshore area through the rehabilitation of the south-east corner of the existing car park (adjacent to the Yacht Club slipway), which together with the new landscaping and revegetation proposed, will assist with enhancing and facilitating pedestrian access along the river's edge. Accordingly, it is considered that the proposal is consistent with the objectives of this policy.

State Planning Policy 2.10 – Swan-Canning River System

Clause 7.4.11 of SPP 2.10 states:

'Where public acquisition of private land planned for future foreshore reserve purposes is not likely to occur in the short-term, development should not be permitted within the area of reservation if it is likely to impact on the natural qualities of the land, or if it would prejudice its timely transfer to the Crown in the future.'

Although there aren't any current plans to acquire the land subject to the Parks and Recreation reserve, it is recommended that a condition be included on the approval requiring the landowner to indemnify the Western Australian Planning Commission against any claim for compensation for the improvements located on land when the land is ultimately acquired. This would be achieved by way of a legal agreement.

The SRT reiterate that whilst the subject site is privately owned, it is reserved for Parks and Recreation under the MRS signalling the future intent of the land, as well as the current acceptable use. Furthermore, the SRT reference WAPC's Development Control Policy 5.3 – *Use of Land Reserved for Parks and Recreation and Regional Open Space* (DC 5.3) which states that the use and development of land reserved for Parks and Recreation under the MRS shall be restricted to that which is consistent with furthering the enhancement of the reserve and facilitating its use for recreational or conservation purposes. Accordingly, the SRT do not support the proposal as they believe that it is inconsistent with the purpose and intent of the reserve.

DoP Comment

Whilst the reservation of the land under the MRS is an important consideration, so too is the context in which the application is proposed. The proposal represents an extension to an existing car park, within a portion of land that is degraded and under-utilised. It should be noted that the SRT's policies do not preclude the use of Parks and Recreation reserves for car parking purposes, but if they are, then they should maintain the amenity and environmental values of the area and the safety and comfort of users.

As discussed previously, the proposed car park will not impact on the visual amenity of the area as its view from the river is obscured by the existing boat pens and jetties associated with the adjoining Yacht Club. Further, access to the river can still be obtained by the public with the amenity of this area being enhanced by the proposed revegetation that is to be undertaken as part of these works.

CONCLUSION:

In accordance with the provisions of the MRS, in determining the merits of a development application, the WAPC is required to have regard to orderly and proper planning, the preservation of the amenities of the locality and the purpose of the land's zoning or reservation.

The proposed development, which will provide car parking for Bethesda staff, is necessary due to a growing demand for the hospital's services, coupled with a decline in parking availability in the local area as a result of recent changes to the public car parking regime in the area and no feasible alternative development options on the site. The area proposed to accommodate additional parking currently maintains little environmental or visual amenity, is currently under-utilised and represents a logical extension to current parking onsite. The car park and associated landscaping works has been designed in a manner that provides a net overall benefit for Bethesda, the Claremont Yacht Club and the local community in that it:

- Addresses the urgent need for additional staff parking for the hospital;

- Provides additional parking opportunities for visitors to the Claremont Yacht Club under the reciprocal parking arrangement between Bethesda and the Yacht Club; and
- Enhances the visual amenity, character and local biodiversity of the river foreshore area through the retention and protection of the mature Peppermint Trees, new landscaping within the design of the car park and associated access pathway, and revegetation along the river edge.

On balance, the proposed development is considered to be acceptable, subject to conditions. The SRT recommends refusal of the application due to potential amenity impacts and the non-compliance with the reservation of the land. This report is to ascertain whether the Statutory Planning Committee endorses a recommendation that the application be referred to the Minister for Planning for consideration in accordance with Clause 30A(7) of the MRS.

ITEM NO: 9.5

Retrospective Application for a Stairway at Lot 13 Cliff Way, Claremont

WAPC OR COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Senior Planner Metropolitan Central
AUTHORISING OFFICER:	Director Metropolitan Central
AGENDA PART:	G
FILE NO:	02-25680-5
DATE:	23 June 2014
ATTACHMENT(S):	Attachment 1 Location Plan Attachment 2 MRS Zoning Plan Attachment 3 Application Plans Attachment 4 Site Photos New Stairs Attachment 5 Site Photos Old Stairs Attachment 6 Objecting Landowner Submission Attachment 7 Construction Report

RECOMMENDATION:

That the Statutory Planning Committee resolves to refuse the retrospective construction of a wooden stairway at Lot 13 Cliff Way, Claremont for the following reasons:

- 1. The proposed development is partially located over land reserved for Parks and Recreation and is therefore contrary to the purpose and intent of the Reservation and would prejudice future use of the reservation for recreation and conservation of the escarpment and foreshore.*
- 2. The proposed development will adversely impact on the amenity of the location by its degradation of the natural and unique Freshwater Bay escarpment that is a natural icon on the Swan River.*
- 3. The proposed development and the impacts of the construction of that development is likely to have a deleterious effect on a friable and unstable riverine escarpment.*
- 4. Approval to the Application for Approval to Commence Development would set an undesirable precedent for similar development on surrounding lots.*

SUMMARY:

The application the subject of this report is for retrospective planning approval relating to the unauthorised construction of a wooden stairway and associated retaining walls at Lot 13 Cliff Way, Claremont (**Attachment 1 - Aerial Location Plan**).

The subject land is partly reserved for 'Parks and Recreation' under the Metropolitan Region Scheme (MRS) and has therefore been referred to the Western Australian Planning Commission (WAPC) for determination, pursuant to the provisions of Section 29(1)a(ii) and 30A(2)a(i) of the MRS as the application proposes development on reserved land and land that abuts the Swan River Trust Development Control Area (**Attachment 2 - MRS Plan**).

A similar application is also being presented to the Statutory Planning Committee and relates to the construction of a new stairway at Lot 200 Bindaring Parade, Claremont. Both applications are recommended for refusal.

INTRODUCTION:

The proposal is for the retrospective construction of a wooden stairway and associated retaining walls at Lot 13 Cliff Way, Claremont. The stairs provide access between a residence located at the top of the escarpment of Lot 13 and the foreshore associated with Freshwater Bay, which forms the southern boundary to the property (**Attachment 3 - Application Plans and Attachment 4 - Site Photos**).

The new stairway was constructed to replace a degraded and less formal stairway, which also provided access between the residence and the foreshore. The original stairs, which were removed as part of the new stairway construction, were not an approved structure and would most likely be defined as informal stairway access involving sleepers and without the need for retaining structures (**Attachment 5 - Site Photos of Original Stairs**).

The WAPC is required to determine applications for the development and use of reserved land under the MRS having regard to the following factors:

- *the purpose for which the land is zoned or reserved under the MRS;*
- *the order and proper planning for the locality; and*
- *the preservation of the amenities of the locality.*

BACKGROUND:

The Proposal

The application seeks retrospective planning approval for the unauthorised construction of timber stairs at Lot 13 Cliff Way, as depicted on the Application Plans (**Attachment 3**) and the Site Photos (**Attachment 4**). The steps extend from the top of the escarpment at approximately RL 40.64 metres AHD. The steps then zigzag down the escarpment to an RL of approximately 13.5 metres AHD.

The timber stairs have been constructed to a high standard and at a cost in the order of over \$100,000.00. The stairs have been constructed of seasoned Jarrah decking

and Jarrah structural posts with Jarrah joists and framework having been tied back and braced within the structure. Limestone retaining walls and cliff protection structures have also been constructed to protect the escarpment from erosion. The applicants advise that a combination of limestone rubble and limestone block walls have been constructed to provide for protection of the cliff, the vegetation and the steps.

The WAPC has previously determined to refuse an application for the construction of a private boat shed on the lower escarpment of the same property (Lot 13 Cliff Way). The decision of the WAPC to refuse the application is now the subject of an Application for Review with the State Administrative Tribunal (DR 424 of 2012) and is pending resolution. The Tribunal, is waiting for the WAPC to determine the subject retrospective stairway application, before it determines, directs or hears DR 424 of 2012 (boat shed refusal).

Application plans for the retrospective stairway application were originally submitted by the applicant with the Town of Claremont in June 2013. In accordance with the requirements of the MRS, the application was referred by the WAPC to the Swan River Trust (SRT). Due to a number of complex and non-compliance issues identified by the SRT and the Department of Planning (DoP), an on-site meeting was held with the applicants, the landowners and representatives from the DoP and the SRT on 15 October 2013. The applicants were also requested to submit additional information in support of their application including structural and architectural drawings and details of vegetation that had been removed as part of the construction process. This was submitted with the DoP and referred to the SRT between October and December 2013.

The Site and Surrounding Landuse and Development

The subject land comprises:

- A northern portion fronting Cliff Way on which an existing dwelling is located;
- An escarpment located in the middle portion of the land that slopes steeply down to the foreshore of the Swan River;
- A foreshore at the foot of the escarpment that slopes gently down to the water line; and
- A southern lot that extends to the high water mark.

The southern and central portion of the property adjacent to the Swan River and extending up the escarpment is reserved for 'Parks and Recreation' under the MRS. A summary of the other structures that have been constructed within the 'Parks and Recreation' Reserve adjacent to Freshwater Bay are listed below:

- Claremont Yacht Club
- Christchurch Grammar Boat Club
- MLC Boat storage
- Funicular Railway
- Private Pump Shed
- Private Boat Shed
- Public Jetty.

Whilst the DoP recognises that other private structures have been constructed on land that is reserved for 'Parks and Recreation' along the foreshore of Freshwater Bay, it is considered that structures such as the Yacht Club, Christchurch Grammar School Boat Shed and the Public Jetty are recreational facilities that can be used by the wider public and are therefore generally consistent with the intent of the reservation. The Department acknowledges the other private structures have been constructed on reserved land but does not consider that this should not set a precedent for future approvals and in particular approval to this retrospective application.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation	<i>Planning and Development Act 2005</i>
Section:	Part 10, Division 5
Strategic Plan	
Strategic Goal:	Planning
Outcomes:	Effective Delivery of Integrated Plans
Strategies:	Implement State and Regional Planning Priorities
Policy	
Number and / or Name:	State Planning Policy 2.10 <i>Swan-Canning River System Development Control</i> Policy 5.3 <i>Use of Land Reserved for Parks and Recreation and Regional Open Space</i>

GOVERNMENT AND CORPORATE IMPLICATIONS:

Approval for a private stairway to be utilised for private passive recreational purposes could set an undesirable precedent for similar developments emerging on reserved land adjacent to Freshwater Bay.

In the case of this application and possible future applications, it is considered that passive private recreational development could be supported by the WAPC on reserved land. This support could only be given however, if appropriate conditions are imposed on any approvals, which would require landowners to indemnify the WAPC against any claims for compensation for the improvements located on the reserved land, to remove the structures when/if the land is acquired and to ensure that public access to the foreshore is not restricted as a result of any private development on reserved land.

If approvals for private development on reserved land are issued with appropriate conditions then the corporate implications of issuing such approvals are considered to be minor. In terms of triggering similar applications and an expectation for similar approvals, the Department advises that any future applications and proposals would clearly need to be assessed on a case by case basis looking at the context of where the application is located, the timeline for potential acquisition of the reserved land and the scope of the proposed development.

Refusing the application for the proposed stairway could result in the applicant making an Application for Review with the State Administrative Tribunal and subject to the outcome of the Review, the applicant could then make a claim for injurious

affection, in which case the WAPC may either be required to pay compensation for the injurious affection or to purchase the property from the landowner.

CONSULTATION:

Town of Claremont

The application was referred to the Town of Claremont. The Town has considered the subject proposal and advises that it does not support the application for the following reasons:

1. Approval would be inconsistent with the intent of the use of the Reservation for Regional Parks and Recreation and other developments along the escarpment;
2. The proposal does not comply with the Town's Local Laws – Height of Buildings – Freshwater Bay Escarpment as the floor level is up to 3.5m above ground level (in lieu of 1m) and up to 4.7m high (in lieu of 3.4m);
3. Approval would set an inappropriate precedent of private development within a Reserve for Regional Parks and Recreation; and
4. The development was undertaken without seeking approval.

The Town also objects to the retrospective development because it does not comply with the Town's *Local Law - Height of Buildings - Freshwater Bay Escarpment* which they advise is a long standing planning control that aims to protect scenic landscapes such as the escarpment associated with Freshwater Bay. The Policy states that no part of a building or structure upon the escarpment should exceed 2.4m in height or be raised more than 1m above the natural ground level. The stairway that has been constructed contains multiple portions that exceed these limits and in doing so provides additional views over the river for the applicants' enjoyment but also results in the stairs being more visible from surrounding land and the river. The Town has advised that approval to the stairway would be contrary to its long-standing intent to protect the visual amenity and integrity of the escarpment.

The Town also considers that the granting of Retrospective Approval to the staircase would set an unwanted precedent and that due to the number of properties along the escarpment and the desire of many owners to have direct, private access to the river it is likely any approval of this development will set an unwanted precedent that will precipitate the degradation of the natural and scenic qualities of the escarpment.

The Town also considers that if the owner wishes to gain access to the river across the south-eastern portion of their property a less prominent staircase, such as the one which previously existed on the property, would suffice. The original staircase was constructed at ground level and was designed to fit with the landscape and minimise vegetation loss and retaining, which reduced the visual impact of the stairs and is considered by the Town as an example of a desirable level of development that could be accepted on the escarpment, whereas the recently constructed staircase is considered by the Town to be visually obtrusive with outlooks rising over 3m from ground level and which detracts from the natural beauty of the escarpment.

The Town concludes that approval of this development is not seen as orderly and proper planning and approval would show a disregard for the previous planning

controls of the Town of Claremont over the land which were designed to protect the natural environment.

Submission Received from an Objecting Landowner via the Town of Claremont

A submission has been received by the Town of Claremont on behalf of an objecting landowner who resides in the area. The objection is summarised below and contained at **Attachment 6 -Objecting Landowner Submission**.

- The submission represents an objection to the development, based on privacy, amenity and security concerns;
- The objecting landowner has a large outdoor living area which faces south, east and west, and enjoys a good degree of amenity, including privacy and site security (as they consider no one can access the rear of the property);
- The objecting landowner considers they will be unreasonably impacted by the timber stairs because it will compromise their privacy by having people potentially access the stairway and the neighbouring properties;
- An objection is also raised with regard to the impact the timber stairway has on visual amenity and reduces this;
- An objection has also been raised to noise and impact on amenity during the construction period of the stairways;
- The objecting landowner raises concerns that the wooden stairway is constructed mostly within a MRS 'Parks and Recreation' Reserve and that private development is unacceptable within the reserve and that it could set an undesirable precedent for similar development along the river.

DoP Comment

The property owned by the objecting landowner is already accessible from the foreshore and was accessible before the stairway, the subject of this application, was constructed. The owners have not fenced their property adjacent to and within the escarpment and with or without the subject wooden stairway, access to the residence of the objecting landowner is still possible from the foreshore. With this in mind, it is recommended that the objection of the landowner be dismissed.

The Department agrees that the construction of private stairs is inconsistent with the intent of the 'Parks and Recreation' reserve and that the development is visible from the river and could detract from the natural beauty and visual amenity of the area.

The DoP agrees with the Town's comments that if the owner wishes to gain access to the river across the southern portion of their property a less prominent staircase could be designed to keep to the natural contours of the site, similar to what existed before being replaced by the subject unauthorised stairs.

Swan River Trust

Clause 30A(1)a(i) of the MRS provides that where an application for approval relates to a development of land part of which is in the management area within the meaning of the *Swan River Trust Act 1988* the Commission shall give full particulars of the application to the Minister for Waterways. This has occurred as part of the standard referral of this application to the SRT in August 2013.

The SRT has assessed the development proposal, undertaken a site visit with the landowners, applicants and DoP staff and concluded the new wooden stairway has been constructed to replace a set of informal steps (wooden planks retaining re-contoured soil) which lead from the residence at 14 Cliff Way down the escarpment to Freshwater Bay. The SRT has also advised the Department that although the escarpment is still in private ownership and the land on which the steps have been developed is privately owned land, it is reserved for Parks and Recreation under the MRS and that Clause 7.4.11 of State Planning Policy 2.10 Swan-Canning River System (SPP2.10) states that where public acquisition of private land is not likely to occur in the short-term, development should not be permitted within the area of reservation if it is likely to impact on the natural qualities of the land, or if it would prejudice its timely transfer to the Crown in the future.

The SRT has reinforced the importance of the MRS Amendment 1226/57 which widened the 'Parks and Recreation' Reserve adjacent to Freshwater Bay. The MRS amendment was approved to ensure the protection of the Freshwater Bay escarpment from non-habitable development and to formally preserve its significant landscape values by adjusting the existing reservation boundary to align with the top of the river bank.

The SRT has also advised the Department that given the height of the stairway above natural ground level, bulk/scale, discordant materials, general form and design, and the vegetation on the escarpment which was removed as part of the works, that the SRT considers the stairway in its current form is inconsistent with the guiding principles of SPP 2.10 and the intent of MRS Amendment 1226/57. In this regard, the SRT advises that if this proposal was not retrospective then the SRT would not consider recommending approval of the stairway in its current constructed form and would rather negotiate a more sympathetic stairway design with an aim to reduce the bulk of the design and therefore lessen its visual impact on the significantly valued amenity of the Freshwater Bay escarpment.

Notwithstanding the above, the SRT has advised that because it understands that the WAPC is likely to support the application for the retrospective stairs and given the undesirable situation which may result if the SRT and WAPC do not agree on a recommendation to either approve or refuse the stairway, the SRT advised that it does not object to the retrospective approval of a stairway within the Parks and Recreation reserve on the following grounds:

- The stairway is a replacement of previously existing informal steps which allowed the proponent access to the river (i.e. the general purpose of the two structures is the same);
- The application is retrospective; and
- The stairs will be removed if and when the 'Parks and Recreation' reserve is purchased or ceded to the Crown; and

Whilst the SRT have indicated conditional support for the retention of the stairs it is clear that the preference of the SRT would be that the application be refused and the stairs removed.

DoP Comment

In January 2014, representatives of the DoP and the SRT met to discuss how to progress the application. One of the options was that conditional support could be given for the stairs on the grounds that they had already been constructed and were replacement stairs. It was also discussed that any approval would need to be conditional upon the applicants indemnifying the WAPC and agreeing to remove the stairs and remediate the escarpment should the 'Parks and Recreation' reserve ever be purchased by the WAPC.

In reporting on this application and in particular considering the application that is being presented in relation to the proposed stairs at Lot 200 Bindaring Parade, the DoP agrees with the concerns raised in the SRT's referral response and recommends that the application be refused.

Department of Parks and Wildlife (DPaW) Swan Region

The application has been referred to DPaW. DPaW have responded that they consider that the proposal and any potential environmental impacts will be appropriately addressed through the existing planning framework.

OFFICER'S COMMENTS:

Planning Framework

Metropolitan Region Scheme

A large portion of the subject land is reserved for 'Parks and Recreation' under the MRS. As detailed previously, the WAPC is required to determine applications for the development and use of reserved land having regard to the following factors:

- *the purpose for which the land is zoned or reserved under the MRS;*
- *the order and proper planning for the locality; and*
- *the preservation of the amenities of the locality.*

The purpose of the 'Parks and Recreation' reservation is to protect open space of regional significance for recreation, landscape and conservation and to provide public access where possible.

DoP Comment

Whilst the reservation of the land under the MRS and the intent of the reservation is an important consideration, it is also relevant to consider the context of the application. In this case, it is considered that whilst the land is reserved, it is still in private ownership and on a property that has frontage to the Swan River foreshore and it is reasonable for landowners to be able to access their property in entirety and to access the foreshore. It is also relevant to note that there is no intention/timeframe for the WAPC to purchase the reserved land and as such it could be considered unreasonable to sterilise its use by the landowners until such a time as it is purchased by the WAPC. This aside, the constructed stairway is a substantial

private structure that is visible from Freshwater Bay and could compromise the preservation of the amenities of the reserve and the locality.

In balance, it is therefore considered that there are other ways the landowner could access the reserved portion of their property that would be less visually intrusive and that would be more in keeping with the intent of the reservation, such as the stairs that were removed to make way for the unauthorised steps that are the subject of this application.

Development Control Policy 5.3 Use of Land Reserved for Parks and Recreation and Regional Open Space

The WAPC Development Control (DC) 5.3 deals with the use of land reserved for 'Parks and Recreation' and informs that the use and development of reserved land shall be restricted to that which is consistent with furthering the enhancement of the reserve and facilitating its use for recreational or conservation purposes. The DC Policy further informs that the use and development of land reserved for 'Parks and Recreation' or Regional Open Space for purposes inconsistent with the purpose of the reserve should not be supported.

DC 5.3 sets out that land reserved for Parks and Recreation or Regional Open Space shall be used for:

- Passive recreation;
- Active sporting pursuits;
- Cultural and or community activities;
- Activities promoting community education of the environment; and/or
- Uses that are compatible with and do support the amenity of the reservation (i.e. cafe, restaurant)

DOP COMMENT

Whilst the application consists of development that will be used for private passive recreational purposes, the stairs are proposed to provide access from the residence to the foreshore across privately owned land. The DC Policy is silent on how to deal with land that is privately owned but reserved under the MRS and therefore the Statutory Planning Committee (SPC) has the discretion to consider the application under this DC Policy. To assist the SPC in considering whether to exercise its discretion and approve private development on privately owned and reserved land, the following points are made:

- The location of the stairway will not impact on or impede access which is along the foreshore, outside of the subject site;
- The proposed stairway is not consistent with furthering the enhancement of the reserve or facilitating its use for recreational or conservation purposes; and
- Encroachment of private recreational development into the Parks and Recreation reserve is clearly contrary to the purpose and intent of the reservation, and should not be supported.

Statement of Planning Policy (SPP) No 2 Environment and Natural Resources

The objectives of SPP No. 2 that are relevant to the proposal are:

- To integrate environment and natural resource management with broader land use planning and decision-making;
- To protect, conserve and enhance the natural environment; and
- To promote and assist in the wise and sustainable use and management of natural resources.

SPP No. 2 recognises the significance of natural resources as listed below:

- Avoid development that may result in unacceptable environmental damage.
- Actively seek opportunities for improved environmental outcomes, including support for development which provides for environmental restoration, or enhancement.
- Take account of the availability and condition of natural resources based on best available information at the time.
- Protect significant natural, indigenous and cultural features, including sites and features significant as habitats and for their floral, cultural, built, archaeological, ethnographic, geological, geomorphological, and visual or wilderness values.
- Take into account the potential for economic, environmental and social (including cultural) effects on natural resources.

DoP Comment

The stairway does not meet the objectives of protecting, conserving and enhancing the natural environment and could result in development that would result in damage to the escarpment as a result of the stairway construction.

Statement of Planning Policy No 240 Swan-Canning River System

This policy applies to the Swan and Canning rivers and their immediate surroundings, as described in the Swan River System Landscape Description. The relevant objectives of this policy are to:

- provide a context for consistent and integrated planning and decision making in relation to the river; and
- ensure that activities, land use and development maintain and enhance the health, amenity and landscape values of the river, including its recreational and scenic values.

The property is included within the Melville Water Precinct and the policy states that planning decisions in this area should:

- protect views, in particular the long axial corridors from public vantage points such as Pelican Point, Nedlands foreshore, Keanes Point, Attadale foreshore, Point Heathcote, Canning Bridge, Mounts Bay Road, and the intermediate views in Freshwater Bay, Matilda Bay and Alfred Cove;
- improve opportunities for public access and use of the river, particularly between Chidley Point and Keanes Point, parts of Freshwater Bay and Point Resolution on the northern side, taking account of the terrain, public risk and recreational opportunities;

- ensure urban development complements natural landforms; and
- ensure that vegetation is integrated with development to minimise the contrast between the natural and built elements of the landscape and that ridgeline vegetation and its backdrop to the waterway is retained

DoP Comment

The proposal represents the replacement of an existing stairway that provided residential access between the dwelling at the top of the escarpment and the foreshore of Freshwater Bay, which forms the southern boundary to the site.

The construction of the stairs has already resulted in the removal of some vegetation and some minor disturbance to the escarpment, which has been resolved with a high level of engineering and structural design and some revegetation being undertaken by the landowners. The DoP considers that retention of the stairs will not enhance the natural landform of the escarpment and therefore does not accord with the intent of the Policy and should not be supported.

Other Considerations

Private Development on Reserved Land

The application consists of development that will be used for private recreational purposes and is contrary to the purpose and intent of the reservation, which is to maintain the reserved land for environmental, landscape and recreational purposes.

It is however acknowledged that the reserved portion of the site is still in private ownership and may be lawfully used by the owner to gain access to the river foreshore. The intent of reserving land under the MRS however is for the land to be ultimately acquired but this has not happened and as detailed earlier, there is no specified timeframe for this to occur.

DoP Comment

Whilst private development and use of the reserved land is not consistent with the MRS and other various WAPC and SRT Policies it is considered that a structure such as the stairway could be approved conditionally subject to the WAPC being indemnified for any costs associated with the removal of the structure, when and if the land is ever purchased by the WAPC. This is considered to be a proactive approach and allows the use of the land in the short term but does not restrict the purchase of the land by the WAPC and its development for a Parks and Recreation Reserve in the future. This aside the application consists of development that will be used for private recreational purposes and is not consistent with:

- Clause 30(1) of the MRS which requires the WAPC to have regard for the purpose for which the land is reserved under the MRS;
- SPP 2.10 that seeks to maintain the Swan River and its setting as a public community resource, limiting development to that which demonstrates a benefit to the community;
- Development Control Policy 1.2 that requires the WAPC to have regard for the purpose for which the land is reserved.
- DC 5.3, which seeks to restrict the construction of any additional private facilities on reserved land.

The Department therefore recommends that the application be refused because it proposes private development on reserved land.

Visual Impact

It is acknowledged that the stairs are visible, however this is counteracted by:

- The natural timber materials that the stairs have been constructed with which minimise visual impact and enable the stairs to blend in with the natural environment and conditions to require aesthetic treatments to the retaining wall structures to reduce visual impact;
- the proposed and recommended landscaping, which will assist in concealing the retaining walls and as trees grow a canopy will further conceal the stairs; and
- the distance the stairs are from potential public viewing points, which would mostly be from Freshwater Bay and the visual impact of the stairs reduces when viewed from afar, as will be the case for most observers.

Despite the points made above, the DoP considers that the Freshwater Bay escarpment and foreshore is a prime landscape feature of the Swan River and the introduction of private structures, such as proposed by the application, could diminish the future amenity of the escarpment by introducing a man-made structure in this part of the 'Park and Recreation' reserve associated with Freshwater Bay.

Similar Future Applications

The subject land forms part of the 'Parks and Recreation' reserve. There are in the order of 29 other privately owned properties that are located in the vicinity of the subject land (between the Claremont Yacht Club and the Freshwater Bay Yacht Club) which have frontage to Freshwater Bay and which are partly reserved for 'Park and Recreation'. Approval of this application could trigger similar development applications on other privately owned land that is similarly reserved as 'Parks and Recreation' under the MRS.

The applicant states that the precedent has already been set with other structures having been constructed on land reserved for 'Parks and Recreation'. As discussed previously there are already a number of private structures on the reserved land adjacent to Freshwater Bay ranging from private boat sheds, and jetties. Approval to additional private structures on reserved land would continue to set an undesirable precedent and make future refusals on future applications difficult to justify and substantiate.

CONCLUSION:

In accordance with the provisions of the MRS, in determining the merits of a development application, the WAPC is required to have regard to orderly and proper planning, the preservation of the amenities of the locality and the purpose of the land's zoning. The unauthorised stairway at Lot 13 Cliff Way is not considered to be appropriate development for land that is reserved for 'Parks and Recreation' on the grounds that they will be used for private recreation and have a visual and environmental impact on the reserved land.

In addition, it is considered that approval of the application could have an adverse effect on the amenities of the locality. With regard to orderly and proper planning, it is clear that there are numerous WAPC, SRT and Council policies that promote the retention of reserved land for recreation and conservation values and approval to the proposed structure would not therefore be in keeping with orderly and proper planning.

Finally, approval to the proposal could set an undesirable precedent for similar structures to be constructed, the cumulative effect of which would have an adverse impact on the amenity of the Freshwater Bay escarpment and foreshore.

WITHDRAWN FROM AGENDA

ITEM NO: 9.6

Application for Planning Approval for a Stairway at Lot 200 Bindaring Parade, Claremont

WAPC OR COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: Senior Planner Metropolitan Central
AUTHORISING OFFICER: Director Metropolitan Central
AGENDA PART: G
FILE NO: 02-50002-3
DATE: 23 June 2014
ATTACHMENT(S): Attachment 1 Aerial Location Plan
Attachment 2 MRS Zoning Plan
Attachment 3 Application Plans
Attachment 4 Environmental Report

RECOMMENDATION:

That the Statutory Planning Committee in relation to the application for the construction of a wooden stairway at Lot 200 Bindaring Parade, Claremont resolves to refuse the application for the following reasons:

- 1. The proposed development is partially located over land reserved for Parks and Recreation and is therefore contrary to the purpose and intent of the Reservation and would prejudice future use of the reservation for recreation and conservation of the escarpment and foreshore.*
- 2. The proposed development will adversely impact on the amenity of the location by its degradation of the natural and unique Freshwater Bay escarpment that is a natural icon on the Swan River.*
- 3. The proposed development and the impacts of the construction of that development is likely to have a deleterious effect on a friable and unstable riverine escarpment.*
- 4. Approval to the Application for Approval to Commence Development would set an undesirable precedent for similar development on surrounding lots.*

SUMMARY:

The application the subject of this report seeks planning approval for the construction of a wooden stairway and associated retaining walls at Lot 200 Bindaring Parade, Claremont (**Attachment 1 - Aerial Location Plan**).

The subject land is partly reserved for 'Parks and Recreation' under the Metropolitan Region Scheme (MRS) and has therefore been referred to the Western Australian Planning Commission (WAPC) for determination, pursuant to the provisions of the Section 29(1)a(ii) and 30A(2)a(i) of the MRS as the application proposes development on reserved land and land that abuts the Swan River Trust Development Control Area (**Attachment 2 - MRS Plan**).

A similar application is also being presented to the Statutory Planning Committee and relates to the construction of an unauthorised stairway at Lot 13 Cliff Way, Claremont. Both applications are recommended for refusal.

INTRODUCTION:

The proposal is for the construction of a timber staircase and associated retaining structures at Lot 200 Bindaring Parade, Claremont. The stairs are proposed to provide access from a residence located at the top of the escarpment of Lot 200 and down the escarpment to a decked area with an area in the order of 15m², which will accommodate an outdoor seating/entertainment area where additional views across the river would be achievable (**Attachment 3 - Application Plans**).

The proposed stairs will not provide direct access to the foreshore because of the steepness of the escarpment and the rocky shoreline that abuts the eastern (rear) site boundary of Lot 200.

The WAPC is required to determine applications for the development and use of reserved land having regard to the following factors:

- *the purpose for which the land is zoned or reserved under the MRS;*
- *the order and proper planning for the locality; and*
- *the preservation of the amenities of the locality.*

As detailed above, the MRS requires that the WAPC have due regard to the recommendation provided by the Swan River Trust (SRT) and in the case of any disagreement, Clause 30A(7) of the MRS states:

'If the Commission does not agree with part or all of the advice of the Swan River Trust on an application referred to in subclause (2) (a) -

- (a) the matter on which there is not agreement is to be resolved in the matter determined by the SCRM Minister and the Minister for Planning;*
- (b) the Minister for Planning is to direct the Commission accordingly; and*
- (c) the Commission is to determine the application in accordance with the direction.'*

In the case of this application the WAPC agrees with the recommendation of the SRT, being to refuse the application and the application can therefore be determined by the WAPC.

BACKGROUND:

The Proposal

The application seeks planning approval for the construction of timber stairs at Lot 200 Bindaring Parade, Cliff Way as depicted on the Application Plans (**Attachment 3**). The steps are proposed to extend from the top of the escarpment at an RL of approximately 31 metres AHD and to zigzag down the escarpment to a RL of approximately 9.22 metres AHD and with a setback of between 1.2 and 2 metres from the rear (western boundary).

Application plans were originally submitted by the applicant with the Town of Claremont in January 2014. In accordance with the requirements of the MRS, the application was referred by the WAPC to the Swan River Trust (SRT).

The application proposes that the stairs will lead to a decked area that would be used for outdoor entertaining/seating. The stairs are proposed to be constructed to a very high standard and at a cost in the order of \$100,000.00. The stairs are proposed to be constructed of seasoned Jarrah decking and Jarrah posts and joists. The application does not propose elaborate retaining wall structures and rather proposes to step the steps as much with the topography of the site.

The applicants have undertaken an environmental assessment to identify what trees would need to be removed to facilitate the construction of the stairway and to inform the architects in the design of the stairway in an effort to minimise tree removal. The Environmental Assessment, which is contained as **Attachment 4 - Environmental Report** identifies that a total of 10 trees comprising Callitris and Eucalyptus, may have been impacted by the design of the stairway. The stairway was therefore redesigned and the Environmental Report now concludes that the proposed stairway location will not result in the removal of or any damage to any trees located on the escarpment and within the 'Parks and Recreation' reserve.

The Site and Surrounding Landuse and Development

The subject land comprises:

- A western portion fronting Bindaring Parade on which an existing dwelling is located;
- A sparsely vegetated escarpment located in the eastern portion of the land that slopes steeply down to the foreshore of the Swan River and which is visible from the River; and
- A rocky foreshore at the foot of the escarpment that abuts the property boundary.

The eastern portion of the property adjacent to the Swan River and extending up the escarpment is reserved for 'Parks and Recreation' under the MRS. A summary of other structures that have been confirmed to have been constructed within the 'Parks

and Recreation' Reserve adjacent to Freshwater Bay are listed below however the Department is aware that other private structures such as jetties and boat storage facilities exist also:

- Claremont and Royal Freshwater Bay Yacht Clubs
- Christchurch Grammar Boat Club
- MLC Boat storage
- Private Pump Shed
- Private Boat Shed
- Funicular Railway
- Public and private Jetty structures

Whilst the DoP recognises that other private structures have been constructed on land that is reserved for 'Parks and Recreation' along the foreshore of Freshwater Bay, it is considered that structures such as the Yacht Club, Christchurch Grammar School Boat Shed and the Public Jetty are recreational facilities that can be used by the wider public and are therefore generally consistent with the intent of the reservation. The Department acknowledges the other private structures have been constructed on reserved land but does not consider that this should not set a precedent for future approvals and in particular approval to this application.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation	<i>Planning and Development Act 2005</i>
Section:	Part 10, Division 5
Strategic Plan	
Strategic Goal:	Planning
Outcomes:	Effective Delivery of Integrated Plans
Strategies:	Implement State and Regional Planning Priorities
Policy	
Number and / or Name:	State Planning Policy 2.10 <i>Swan-Canning River System</i> Development Control Policy 5.3 <i>Use of Land Reserved for Parks and Recreation and Regional Open Space</i>

GOVERNMENT AND CORPORATE IMPLICATIONS:

Approval for a private stairway to be utilised for private passive recreational purposes could set an undesirable precedent for similar developments emerging on reserved land adjacent to Freshwater Bay. If approvals for private development on reserved land are issued with appropriate conditions then the corporate implications of issuing such approvals could be lessened.

Refusing the application for the proposed stairway could result in the applicant making an Application for Review with the State Administrative Tribunal and subject to the outcome of the Review, the applicant could then make a claim for injurious affection, in which case the WAPC may either be required to pay compensation for the injurious affection or to purchase the property from the landowner.

CONSULTATION:

Town of Claremont

The application was referred to the Town of Claremont. The Town has considered the subject proposal and advises that it does not support the application for the following reasons:

1. Approval would be inconsistent with the intent of the use of the Reservation for Regional Parks and Recreation and other developments along the escarpment.
2. The proposal does not comply with the Town's Local Laws - Height of Buildings - Freshwater Bay Escarpment as the floor level of the staircase is up to 3.5m above ground level (in lieu of 1m) and up to 4.6m above ground level overall (in lieu of 3.4m);
3. The development would be highly visible from the river and would detract from the natural beauty of the area;
4. The site is substantially more vegetated than shown on the plans and no assessment has been done of the potential vegetation loss.
5. Approval would set an inappropriate precedent of private development within a Reserve for Regional Parks and Recreation.

In regards to the above reasons for refusal the Town further advises that the proposed development does not comply with the Town's Local Laws. Local Law - Height of Buildings - Freshwater Bay Escarpment which was first gazetted in 1967 making it one of the earliest planning controls to protect scenic landscapes in the State. It states that no part of a building or structure upon the escarpment may exceed 2.4m in height or be raised more than 1m above the natural ground level. The Town indicates that the purpose of this Local Law is to preserve the native vegetation and scenic beauty of the Freshwater Bay escarpment for the general public and for future generations.

The Town also considers that the subject staircase would set an unwanted precedent. Although it acknowledges that a number of properties adjacent to the river historically have and may still feature stairs or steps that provide direct access to the river edge, it is considered that the proposed staircase would be visually obtrusive due to its height. Due to the number of properties along the escarpment and the desire of many owners to have direct, private access to the river approval of this development will set an unwanted precedent that will precipitate the degradation of the natural and scenic qualities of the escarpment which have been well protected from development over the last 100 years in this locality. The Town also considers that if the owner wishes to gain access to the river across the eastern portion of their property a less prominent staircase, designed to keep to the natural contours of the site, would suffice.

Submission Received from Objecting Nearby Landowner via the Town of Claremont

A submission has been received by the Town of Claremont on behalf of an objecting landowner who resides in the locality. The objection is summarised below:

- The fragility of the cliff and the fact that any structure could further compromise its stability and recent erosion on the site could be exacerbated.
- The new stairway would be very visible from the river and could encourage people to climb up from the water's edge and have access to the properties along Bindaring Parade and in particular to the residence at 10 Bindaring Parade, increasing security risk to the resident of this property.

DoP Comment

Whilst the property at Lot 200 Bindaring Parade is not accessible from the foreshore or the river because of the steep topography and a rocky shoreline that extends on the eastern side of Freshwater Parade and the land provides limited opportunities for public access or public recreation, it is a semi vegetated piece of land that has conservation and aesthetic value as advised by the Town.

The Department agrees that the proposed construction of private stairs and decking would be inconsistent with the intent of the 'Parks and Recreation' reserve and that the development would be visible from the river and could detract from the natural beauty of the area. The proposed structure is excessive in height and would add to its visibility and potential detract from the visual amenity of the foreshore.

The DoP agrees with the Town's comments that if the owner wishes to gain access to the river across the eastern portion of their property a less prominent staircase could be designed to keep to the natural contours of the site.

Swan River Trust

Clause 30A(1)a(i) of the MRS provides that where an application for approval relates to a development of land part of which is in the management area within the meaning of the *Swan River Trust Act 1988* the Commission shall give full particulars of the application to the Minister for Waterways. This has occurred as part of the standard referral of this application to the SRT in January 2014. The application was considered by the Trust Board at its meeting of 11 March 2014 and the following information and recommendation has been provided to the WAPC as quoted below.

This application proposes the construction of a raised wooden stairway to connect the property's rear landscaped lawn area to the edge of the Swan River, providing a series of viewing platforms on the escarpment". A total of 15 landings, raised on piers up to 3.536 metres high, have been incorporated into the design, two of which are larger than would be required for access purposes only. A 3.4 by 4.4 metre deck, raised between 2.526 and 3.049 metres above natural ground level, is also being proposed adjacent to the waterline. It is understood that there is currently no formal access from the residence at Lot 200 (8) Bindaring Parade down the escarpment to Freshwater Bay. The foreshore along Bindaring Parade is characterised by a

primarily naturalistic limestone escarpment, with development sited at the top of the cliff and an uninterrupted band of vegetation to the water's edge.

Although the escarpment is still in private ownership, the land is reserved for Parks and Recreation under the MRS. Clause 7.4.11 of State Planning Policy 2.10 Swan-Canning River System (SPP2.10) states that where public acquisition of private land is not likely to occur in the short-term, development should not be permitted within the area of reservation if it is likely to impact on the natural qualities of the land, or if it would prejudice its timely transfer to the Crown in the future. Furthermore one of the main purposes of Metropolitan Region Scheme Amendment 1226/57 for the rationalisation of the Parks and Recreation reserve boundary around Freshwater Bay, which was gazetted on 28 May 2013, "is to ensure the protection of the Freshwater Bay escarpment from non-habitable development and to formally preserve its significant landscape values by adjusting the existing reservation boundary to align with the top of the river bank" (Amendment Report WAPC).

Although landowners have a right to access their property, including if it is reserved for 'Parks and Recreation', the proliferation of substantial structures and platforms near the waterline such as proposed in this application is of concern given the likely cumulative visual impact on the escarpment. SPP2.10 specifically states that development should avoid negatively impacting on public views to or from the river, which is of particular importance along this highly visible and relatively undeveloped escarpment at Freshwater Bay.

Given its height above natural ground level, discordant bulk/scale, general form and design, the Trust considers that the proposed in its current form is inconsistent with the guiding principles of SPP2.10 (including 7.4.1, 7.4.2 and 8.2.2) and the intent of MRS Amendment 1226/57. As a result, the Trust advises that it recommends that the proposed raised timber stairway down the escarpment, with raised deck near the waterline, within the Parks and Recreation reserve at Lot 200 (8) Bindaring Parade, Claremont, as described in plans received by the Trust on 23 January 2014, be REFUSED for the following reasons:

- 1. The proposed new structure is to be located within and will impact on the natural quality of land reserved for Parks and Recreation under the Metropolitan Region Scheme and is therefore contrary to the long term purpose and intent of the reservation.*
- 2. The height above natural ground level and bulk of the proposed stairway will be intrusive on the escarpment and have a negative impact on the highly valued visual amenity of the area when being viewed from the Swan River.*
- 3. The development will create an undesirable precedent for the proliferation of similar new structures across the escarpment, to the detriment of the long term and significant landscape value of the Freshwater Bay escarpment."*

DoP Comment

The DoP agrees with the SRT comments and recommendation and in particular the impacts of the proposed stairway on the visual amenity of the escarpment associated with Freshwater Bay.

Department of Parks and Wildlife (DPaW) Swan Region

The application has been referred to DPaW. DPaW have responded that they consider that the proposal and any potential environmental impacts will be appropriately addressed through the existing planning framework.

OFFICER'S COMMENTS:

Planning Framework

Metropolitan Region Scheme

A large portion of the subject land is reserved for 'Parks and Recreation' under the MRS. As detailed previously, the WAPC is required to determine applications for the development and use of reserved land having regard to the following factors:

- *the purpose for which the land is zoned or reserved under the MRS;*
- *the order and proper planning for the locality; and*
- *the preservation of the amenities of the locality*

The purpose of the 'Parks and Recreation' reservation is to protect open space of regional significance for recreation, landscape and conservation and to provide public access where possible.

DoP Comment

Whilst the reservation of the land under the MRS and the intent of the reservation is an important consideration, it is also relevant to consider the context of the application. In this case, it is considered that whilst the land is reserved, it is still in private ownership and on a property that has frontage to the Swan River foreshore and it is reasonable for landowners to be able to access their property in entirety and to access the foreshore. It is also relevant to note that there is no intention/timeframe for the WAPC to purchase the reserved land and as such it could be considered unreasonable to stifle its use by the landowners until such a time as it is purchased by the WAPC. This aside, the proposed stairway is a substantial private structure that would be visible from Freshwater Bay and would compromise the preservation of the amenities of the reserve and the locality.

In balance, it is therefore considered that there are other ways the landowner could access the eastern portion of their property that would be less visually intrusive and that would be more in keeping with the intent of the reservation.

Development Control Policy 5.3 Use of Land Reserved for Parks and Recreation and Regional Open Space

The WAPC Development Control (DC) 5.3 deals with the use of land reserved for 'Parks and Recreation' and informs that the use and development of reserved land shall be restricted to that which is consistent with furthering the enhancement of the reserve and facilitating its use for recreational or conservation purposes. The DC Policy further informs that the use and development of land reserved for 'Parks and

Recreation' or Regional Open Space for purposes inconsistent with the purpose of the reserve should not be supported.

DC 5.3 sets out that land reserved for Parks and Recreation or Regional Open Space shall be used for:

- Passive recreation;
- Active sporting pursuits;
- Cultural and or community activities;
- Activities promoting community education of the environment; and/or
- Uses that are compatible with and or support the amenity of the reservation (i.e. cafe, restaurant)

DOP COMMENT

Whilst the application consists of development that will be used for private passive recreational purposes, the stairs are proposed to provide access from the residence to the foreshore across privately owned land. The DC Policy is silent on how to deal with land that is privately owned but reserved under the MR, and therefore the Statutory Planning Committee (SPC) has the discretion to consider the application under this DC Policy. To assist the SPC in considering whether to exercise its discretion and approve private development on privately owned and reserved land, the following points are made:

- The location of the stairway will not impact on or impede access which is along the foreshore, outside of the subject site.
- The proposed stairway is not consistent with furthering the enhancement of the reserve or facilitating its use for recreational or conservation purposes; and
- Encroachment of private recreational development into the Parks and Recreation reserve is clearly contrary to the purpose and intent of the reservation, and should not be supported.

Statement of Planning Policy (SPP) No 2 Environment and Natural Resources

The objectives of SPP No. 2 that are relevant to the proposal are:

- To integrate environment and natural resource management with broader land use planning and decision-making;
- To protect, conserve and enhance the natural environment; and
- To promote and assist in the wise and sustainable use and management of natural resources.

SPP No. 2 recognises the significance of natural resources as listed below:

- Avoid development that may result in unacceptable environmental damage.
- Actively seek opportunities for improved environmental outcomes including support for development which provides for environmental restoration or enhancement.
- Take account of the availability and condition of natural resources, based on best available information at the time.

- Protect significant natural, indigenous and cultural features, including sites and features significant as habitats and for their floral, cultural, built, archaeological, ethnographic, geological, geomorphological, and visual or wilderness values.
- Take into account the potential for economic, environmental and social (including cultural) effects on natural resources.

DoP Comment

The proposed stairway does not meet the objectives of protecting, conserving and enhancing the natural environment and could result in development that would result in damage to the escarpment as a result of the stairway construction.

Statement of Planning Policy No 2.10 Swan-Canning River System

This policy applies to the Swan and Canning rivers and their immediate surroundings, as described in the Swan River System Landscape Description. The relevant objectives of this policy are to:

- provide a context for consistent and integrated planning and decision making in relation to the river; and
- ensure that activities, land use and development maintain and enhance the health, amenity and landscape values of the river, including its recreational and scenic values.

The property is included within the Melville Water Precinct and the policy states that planning decisions in this area should:

- Protect views, in particular the long axial corridors from public vantage points such as Pelican Point, Nedlands foreshore, Keanes Point, Attadale foreshore, Point Heathcote, Canning Bridge, Mounts Bay Road, and the intermediate views in Freshwater Bay, Matilda Bay and Alfred Cove;
- Improve opportunities for public access and use of the river, particularly between Chidley Point and Keanes Point, parts of Freshwater Bay and Point Resolution on the northern side, taking account of the terrain, public risk and recreational opportunities;
- Ensure urban development complements natural landforms; and
- Ensure that vegetation is integrated with development to minimise the contrast between the natural and built elements of the landscape and that ridgeline vegetation and its backdrop to the waterway is retained

DoP Comment

Whilst the applicants have put forward that the construction of the stairs will not result in the removal of any trees or vegetation the DoP considers that the proposed stairs will not enhance the natural landform of the escarpment and therefore does not accord with the intent of the Policy.

Other Considerations

Private Development on Reserved Land

The application consists of development that will be used for private recreational purposes and is contrary to the purpose and intent of the public recreational purposes.

The application consists of development that will be used for private recreational purposes and is not consistent with:

- Clause 30(1) of the MRS which requires the WAPC to have regard for the purpose for which the land is reserved under the MRS;
- SPP 2.10 that seeks to maintain the Swan River and its setting as a public community resource, limiting development to that which demonstrates a benefit to the community;
- Development Control Policy 1.2 that requires the WAPC to have regard for the purpose for which the land is reserved.
- DC 5.3, which seeks to restrict the construction of any additional private facilities on reserved land.

The Department therefore recommends that the application be refused because it proposes private development on reserved land.

Visual Impact

It is acknowledged that the stairs could be visible from Freshwater Bay, however this could be counteracted by:

- The natural timber materials that the stairs are proposed to be constructed of which minimise visual impact and enable the stairs to blend in with the natural environment and conditions to require aesthetic treatments to the retaining wall structures to reduce visual impact;
- the proposed and recommended landscaping, which will assist in concealing the stairs; and
- the distance the stairs are from potential public viewing points, which would mostly be from Freshwater Bay and the visual impact of the stairs reduces when viewed from afar, as will be the case for most observers.

Despite the points made above, the DoP considers that the Freshwater Bay escarpment and foreshore is a prime landscape feature of the Swan River and the introduction of private structures, such as proposed by the application, could diminish the future amenity of the escarpment by introducing a man-made structure to this part of the 'Park and Recreation' reserve associated with Freshwater Bay.

Similar Future Applications

The subject land forms part of the 'Parks and Recreation' reserve. There are in the order of 29 other privately owned properties that are located in the vicinity of the subject land (between the Claremont Yacht Club and the Freshwater Bay Yacht Club) which have frontage to Freshwater Bay and which are partly reserved for

'Parks and Recreation'. Approval of this application could trigger similar development applications on other privately owned land that is similarly reserved as 'Parks and Recreation' under the MRS.

The applicant states that the precedent has already been set with other structures having been constructed on land reserved for 'Parks and Recreation'. As discussed previously there is already a number of private structures on the reserved land adjacent to Freshwater Bay ranging from private boat sheds, and jetties. Approval to additional private structures on reserved land would continue to set an undesirable precedent and make future refusals on future applications difficult to justify and substantiate.

CONCLUSION:

In accordance with the provisions of the MRS, in determining the merits of a development application, the WAPC is required to have regard to orderly and proper planning, the preservation of the amenities of the locality and the purpose of the land's zoning. The proposed stairway at Lot 200 Bindaring Parade is not considered to be appropriate development for land that is reserved for 'Parks and Recreation' on the grounds that they will be used for private recreation and could have a visual and environmental impact on the reserved land.

In addition, it is considered that approval of the application could have an adverse effect on the amenities of the locality. With regard to orderly and proper planning, it is clear that there are numerous WAPC, SRT and Council policies that promote the retention of reserved land for recreation and conservation values and approval to the proposed structure would not therefore be in keeping with orderly and proper planning.

Finally, approval to the proposal could set an undesirable precedent for similar structures to be constructed, the cumulative effect of which would have an adverse impact on the amenity of the Freshwater Bay escarpment and foreshore.

WITHDRAWN FROM AGENDA