



## Statutory Planning Committee

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

**Tuesday 23 September 2014**  
**10.00 am**

**Level 2, Room 2.40**  
**One40 William Street**  
**Perth**



**Tim Hillyard**  
**WAPC Secretary**

# 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**
3. **Members on leave of absence and applications for leave of absence**  
- Ms Sue Burrows
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**  
- Tuesday, 9 September 2014
9. **Statutory items for decision**
10. **Policy items for discussion/decision**
11. **Confidential items (Statutory & Policy)**
12. **Stakeholder engagement & site visits**
13. **Urgent business**
14. **Items for consideration at a future meeting**

<b>Item No</b>	<b>Report</b>	<b>Request</b>	<b>Report Required by</b>
<b>7509.14.1</b>	Statistics on planning schemes, amendments and structure plans	Briefing required containing appropriate data and reasoning behind delays to approvals for schemes, amendments and structure plans with an outline of financial implications as a result of delays.	14 October 2014
<b>7509.14.2</b>	Policy Review Update	Follow up report to be provided by Ms Burrows.	TBA
<b>7509.14.3</b>	Small lot products 50-80m <sup>2</sup>	An update is required to be submitted to the Committee	TBA

## **15. Closure**

- Next meetings will be held:

- Ordinary meeting – 14 October 2014
- Policy meeting – 28 October 2014

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

### Attendance

#### Members

Mr Eric Lumsden	WAPC Chairman (Presiding Member)
Ms Megan Bartle	WAPC appointee
Mr Martin Clifford	Regional Minister's nominee (Deputy)
Mr Ian Holloway	Professions representative
Ms Gail McGowan	Director General, Department of Planning
Ms Elizabeth Taylor	Community representative

#### Officers

Ms Kylie Beach  
Mr Shau Chong  
Mr Ben Harvey

#### Department of Planning

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

Ms Anne Hill

Ms Kym Petani

Ms Rowena Rodrigues

#### Committee Support

Mr Luke Downes                      Committee Support Officer - Department of Planning

### 7509.1      Declaration of Opening

The Presiding Member declared the meeting open at 9.04 am, acknowledged the traditional owners and custodians of the land on which the meeting is taking place and welcomed Members.

### 7509.2      Apologies

Nil.

### 7509.3      Members on Leave of Absence and Applications for Leave of Absence

Ms Burrows has previously submitted an application for a leave of absence for the 9 September 2014 Statutory Planning Committee.

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

### 7509.4 Disclosure of Interests

Nil.

### 7509.5 Declaration of Due Consideration

No declarations were made.

### 7509.6 Deputations and Presentations

#### 7509.6.1 State Planning Policy 1 Review Update

Presenter Ms Anne Hill, Mr Ben Harvey, Ms Laura Gladstone; Department of Planning

Ms Gladstone provided a PowerPoint presentation to members on the State Planning Policy 1 Review Update.

A copy has been placed on file.

Following the presentation members were requested to provide guidance on two matters:

1. Should the review of the Planning Policy Framework:
  - (a) be retained with minor amendments to update and clarify SPP.1; or
  - (b) take a more rigorous approach to develop a simplified and streamlined Planning Policy Framework, noting the approach that has been taken in Queensland?
2. Should Codes be part of the Planning Policy Framework, such as SPP3.1: Residential Design Codes and the Liveable Neighbourhoods policy?

Members noted the simplicity of the Queensland framework, and requested that the review aim to develop a new model to substantially simplify, clarify and streamline Western Australian planning policy framework.

Members supported the concept of including Codes in the Planning Policy Framework, and giving them statutory weight.

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

### **7509.7 Announcements by the Chairperson of the Board and communication from the WAPC**

The Chairman announced that new members have been approved and will attend their first meetings in October 2014.

### **7509.8 Confirmation of Minutes**

#### **7509.8.1 Minutes of the Statutory Planning Committee meeting held on Tuesday, 26 August 2014**

**Resolved**

***Moved by Ms Taylor, seconded by Mr Holloway***

*That the minutes of the Statutory Planning Committee meeting held on Tuesday, 26 August 2014, be confirmed as a true and correct record of the proceedings.*

***The motion was put and carried.***

Members agreed to endorse, en-bloc, all the recommendations associated with Items 7509.9.1, 7509.9.2 and 7509.9.4 to 7509.11.4 inclusive.

**Resolved**

***Moved by Mr Clifford, seconded by Ms Bartle***

That the Statutory Planning Committee resolved to endorse, en-bloc, all the recommendations associated with Items 7509.9.1, 7509.9.2 and 7509.9.4 to 7509.11.4 inclusive.

***The motion was put and carried.***

### **7509.9 Statutory Items for Decision**

**7509.9.1 Development Application for Shed: Lot 183 Robinson Road, Herne Hill**

File	21-50432-1
Report Number	SPC/698
Agenda Part	G
Reporting Officer	Senior Planning Officer, Metro North East

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

### Resolved

#### ***Moved by Mr Clifford, seconded by Ms Bartle***

*That the Western Australian Planning Commission resolves to approve the development application for a shed on Lot 183 Robinson Road, Herne Hill dated 3 July 2014 subject to the following conditions and advice:*

- 1. Approval relates to the Development Plan Drawing No. HLWP05-0355 and Site Plan received by the Western Australian Planning Commission on 3 July 2014;*
- 2. The shed shall only be used for domestic and/or rural purposes associated with the property, and not for human habitation; and*
- 3. The walls and roof of the shed shall be clad in a material or painted in a colour to complement the surroundings and/or adjoining developments, in which it is located to the specifications of the City of Swan and the satisfaction of the Western Australian Planning Commission.*

#### ADVICE TO APPLICANT

- 1. The City of Swan advises that any additional development, which is not in accordance with the application (the subject of this approval) or any condition of approval, will require further approval of the City.*

***The motion was put and carried.***

**7509.9.2**

#### **Retrospective Application for Commercial Vehicle Parking and Proposed Shed - Lot 20 Padbury Avenue Herne Hill**

File 21-50433-1  
Report Number SPC/699  
Agenda Part G  
Reporting Officer A/Director Metropolitan North East

### Resolved

#### ***Moved by Mr Clifford, seconded by Ms Bartle***

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

*That the Western Australian Planning Commission resolves to refuse the development application for commercial vehicle parking and the construction of a shed for the following reasons:*

- 1. The proposed development is inconsistent with the objectives of Area C of the Swan Valley Planning Act 1995.*
- 2. The land is zoned 'Rural' in the Metropolitan Region Scheme and 'Rural Living' within the City of Swan Local Planning Scheme No.17. The proposed development is contrary to the intent of the rural zoning which is to preserve the rural character and landscape of the area.*
- 3. The proposal is inconsistent with the Swan Valley Interim Policy whereby the use of land within Area C of the Swan Valley Planning Act 1995 as a transport depot is not consistent with the objectives of the policy which aims to preserve the rural amenity of the area.*
- 4. The proposal is inconsistent with the Swan Valley Interim Policy whereby the development of shed above the 200m<sup>2</sup> total floor area in Area C of the Swan Valley Planning Act 1995 is not consistent with the aims of the policy to protect rural uses of the area.*
- 5. Approval of the proposal would create a precedent for the introduction of development contrary to the objectives of the Swan Valley Planning Act 1995 and inconsistent with the rural character of the area.*

***The motion was put and carried.***

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

7509.9.3

### Proposed Place of Worship - Lot 627 Hyem Road Herne Hill

File 21-50431-1  
Report Number SPC/700  
Agenda Part G  
Reporting Officer A/Planning Manager Metropolitan North East

#### Officer's Recommendation

That the Western Australian Planning Commission resolves to refuse the development application for a Place of Public Worship at Lot 627 Hyem Road Herne Hill for the following reasons:

1. The proposed development is inconsistent with the objectives of Area B of the Swan Valley Planning Act 1995.
2. The land is zoned 'Rural' in the Metropolitan Region Scheme and 'Swan Valley Rural' within the City of Swan Local Planning Scheme No.17. The proposed development is contrary to the intent of the rural zoning which is to preserve the rural character and landscape of the area.
3. The proposal is inconsistent with the Swan Valley Interim Policy whereby the use of land within Area B of the Swan Valley Planning Act 1995 as a 'Place of Worship' is not permitted unless it is incidental to the predominant use of the subject land.
4. Approval of the proposal would create a precedent for the introduction of development contrary to the objectives of the Swan Valley Planning Act 1995 and inconsistent with the rural character of the area.

**Resolved**

***Motion to defer***

***Moved by Ms Bartle, seconded by Ms Taylor***

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

*That the item relating to Proposed Place of Worship - Lot 627 Hyem Road Herne Hill as detailed in the report dated 15 August 2014 be deferred to the next meeting of the Statutory Planning Committee to allow further information to be obtained by the Department of Planning including an alternate recommendation.*

***The motion was put and carried.***

**7509.9.4**

**Proposed Subdivision – Lot 258 Buckle Street, Balcatta**

File 150157  
Report Number SPC/701  
Agenda Part G  
Reporting Officer Planning Officer, Metropolitan Central,  
Perth and Peel Planning

**Resolved**

***Moved by Mr Clifford, seconded by Ms Bartle***

*That the Western Australian Planning Commission resolves to approve the application for subdivision of Lot 258 Buckle Street, Balcatta as shown on the plan date stamped 10 June 2014 subject to the following conditions and advice:*

**CONDITIONS:**

- 1. All septic sewer systems including all tanks and pipes and associated drainage systems (soak wells or leach drains) and any stormwater disposal systems are to be decommissioned, in accordance with the Health (Treatment of Sewerage and Disposal of Effluent and Liquid Waste) Regulations 1974, removed, filled with clean sand and compacted. Proof of decommissioning is to be provided in the form of either certification from a licensed plumber or a statutory declaration from the landowner/applicant, confirming that the site has been inspected and all septic tanks, soak wells, leach drains and any associated pipework have been removed. (Local Government)*
- 2. Other than buildings, outbuildings and/or structures shown on the approved plan for retention, all buildings, outbuildings and/or*

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

*structures present on proposed lots 91 and 92 at the time of subdivision approval being demolished and materials removed from the lot. (Local Government)*

3. *Redundant vehicle crossover(s) to be removed and the kerbing, verge, and footpath (where relevant) reinstated with grass or landscaping to the satisfaction of the Western Australian Planning Commission and to the specifications of the local government. (Local Government)*
4. *Arrangements being made to the satisfaction of the Western Australian Planning Commission and to the specification of Western Power for the provision of an underground electricity supply to the lot(s) shown on the approved plan of subdivision. (Western Power)*
5. *Arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to the lots shown on the approved plan of subdivision. (Water Corporation)*
6. *Arrangements being made with the Water Corporation so that provision of a sewerage service will be available to the lots shown on the approved plan of subdivision. (Water Corporation)*
7. *Suitable arrangements being made with the Water Corporation for the drainage of the land either directly or indirectly into a drain under the control of that body. (Water Corporation)*

### ADVICE:

1. *In regard to Condition 2, planning approval and/or a demolition licence may be required to be obtained from the local government prior to the commencement of demolition works.*
2. *In regard to Condition 4, Western Power provides only one underground point of electricity supply per freehold lot.*

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

- In regard to Conditions 5, 6 and 7, the landowner/applicant shall make arrangements with the Water Corporation for the provision of the necessary services. On receipt of a request from the landowner/applicant, a Land Development Agreement under Section 67 of the Water Agencies (Powers) Act 1984 will be prepared by the Water Corporation to document the specific requirements for the proposed subdivision.*

***The motion was put and carried.***

### **7509.10 Policy Items for Discussion/Decision**

#### **7509.10.1 Shire of Ravensthorpe R-Codes Policy to vary State Planning Policy 3.1 Residential Design Codes**

File 853-5-20-7  
Report Number SPC/702  
Agenda Part A  
Reporting Officer Manager - Statutory Planning, Central Regions

#### **Resolved**

***Moved by Mr Clifford, seconded by Ms Bartle***

*That the Western Australian Planning Commission resolves to:*

- approve the amendment of deemed-to-comply provisions of State Planning Policy 3.1 Residential Design Codes as contained in the Shire of Ravensthorpe Outbuildings Local Planning Policy, adopted by the Shire of Ravensthorpe on 27 June 2014;*
- notify the local government accordingly.*

***The motion was put and carried.***

### **7509.11 Confidential Items**

## Statutory Planning Committee

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

- 
- 7509.11.1 Shire of Gnowangerup - Resolution to Prepare a New Local Planning Scheme No. 3**  
File TPS/1381  
Report Number SPC/703  
Agenda Part B  
Reporting Officer Regional Manager - Great Southern Planning

**THIS ITEM IS CONFIDENTIAL**

- 7509.11.2 City of Stirling - Local Planning Scheme No. 3 Amendment No. 15 - for Final Approval**  
File TPS/1071/1  
Report Number SPC/704  
Agenda Part B  
Reporting Officer Planning Manager, Schemes and Amendments

**THIS ITEM IS CONFIDENTIAL**

- 7509.11.3 Shire of Kalamunda - Local Planning Scheme No. 3 Amendment No. 46 - for Final Approval**  
File TPS/0859  
Report Number SPC/705  
Agenda Part B  
Reporting Officer Planning Manager, Schemes and Amendments

**THIS ITEM IS CONFIDENTIAL**

- 7509.11.4 City of Melville Local Planning Scheme No. 6 Modifications**  
File TPS/0606  
Report Number SPC/706  
Agenda Part B  
Reporting Officer Planning Manager - Schemes and Amendments

**THIS ITEM IS CONFIDENTIAL**

- 7509.12 Stakeholder Engagement & Site Visits**

Nil.

**Statutory Planning Committee**

Minutes  
of ordinary meeting 7509  
held on Tuesday, 9 September 2014

---

**7509.13 Urgent Business**

**7509.12.1 “Planning Delays Hit Land Prices”**

The Chairman tabled an item titled “Planning delays hit land prices” to members from the West Australian Tuesday, 9 September 2014. Members discussed land price issues and associated timeframes.

A copy has been placed on file.

**7509.14 Items for Consideration at a Future Meeting**

<b>Item No</b>	<b>Report</b>	<b>Request</b>	<b>Report Required by</b>
<b>7509.14.1</b>	Statistics on planning schemes, amendments and structure plans	Briefing required containing appropriate data and reasoning behind delays to approvals for schemes, amendments and structure plans with an outline of financial implications as a result of delays.	14 October 2014
<b>7509.14.2</b>	Policy Review Update	Follow up report to be provided by Ms Burrows.	TBA
<b>7509.14.3</b>	Small lot products 50-80m <sup>2</sup>	An update is required to be submitted to the Committee.	TBA

**7509.15 Closure**

The next ordinary meeting is scheduled for 9.00 am on 23 September 2014.

There being no further business before the Committee, the Presiding Member thanked members for their attendance and declared the meeting closed at 9.56 am.

PRESIDING MEMBER \_\_\_\_\_

DATE \_\_\_\_\_

# INDEX OF REPORTS

<b>Item</b>	<b>Description</b>
<b>9</b>	<b>STATUTORY ITEMS FOR DECISION</b>
<b>D</b>	<b>GENERAL ITEMS / OTHER MATTERS</b>
9.1	RETROSPECTIVE APPLICATION FOR A STAIRWAY AT LOT 13 CLIFF WAY CLAREMONT
<b>G</b>	<b>DEVELOPMENTS / SUBDIVISIONAL / SURVEY STRATA</b>
9.2	PROPOSED EXTENSION TO EXISTING SHED – 98 RAILWAY PARADE, MIDDLE SWAN
9.3	PROPOSED PLACE OF WORSHIP - LOT 627 HYEM ROAD HERNE HILL
<b>10</b>	<b>POLICY ITEMS FOR DISCUSSION/DECISION</b>
<b>A</b>	<b>POLICY</b>
10.1	RESIDENTIAL DESIGN CODES (R-CODES) VARIATIONS – ISSUES SCOPING PAPER
<b>11</b>	<b>CONFIDENTIAL REPORTS</b>
<b>B</b>	<b>LOCAL OR REGIONAL PLANNING SCHEMES / AMENDMENTS</b>
11.1	CITY OF FREMANTLE LOCAL PLANNING SCHEME NO.4 AMENDMENT NO. 57 - FOR FINAL APPROVAL
11.2	SHIRE OF PEPPERMINT GROVE DRAFT LOCAL PLANNING STRATEGY AND LOCAL PLANNING SCHEME NO. 4 - CONSENT TO ADVERTISE
<b>E</b>	<b>MINOR LOCAL OR REGIONAL PLANNING SCHEMES / LOCAL PLANNING SCHEME AMENDMENTS</b>
11.3	SHIRE OF COCOS (KEELING) ISLANDS LOCAL PLANNING SCHEME AMENDMENT NO. 1 - FOR FINAL APPROVAL

---



## ITEM NO: 9.1

### RETROSPECTIVE APPLICATION FOR A STAIRWAY AT LOT 13 CLIFF WAY CLAREMONT

<b>WAPC OR COMMITTEE:</b>	<b>Statutory Planning Committee</b>
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Senior Planner Metropolitan Central
AUTHORISING OFFICER:	Director Metropolitan Central
AGENDA PART:	D
FILE NO:	02-25680-5
DATE:	10 September 2014
REPORT CATEGORY:	Statutory
RECOMMENDATION OUTCOME:	1. A APPROVE
ATTACHMENT(S):	Attachment 1 MRS Context Plan Attachment 2 Location Plan Attachment 3 Application Plans Attachment 4 Site Photos New Stairs Attachment 5 Site Photos Old Stairs Attachment 6 Construction Report Attachment 7 Environmental Report Attachment 8 Objecting Landowner Submission

#### RECOMMENDATION:

***That the Statutory Planning Committee resolves to retrospectively approve the construction of a wooden stairway at Lot 13 Cliff Way, Claremont subject to the following conditions:***

- 1. The stairway shall be removed in its entirety, including all related structures, from within the Parks and Recreation reserve and the area reinstated, if and when the Parks and Recreation reserve is purchased, or ceded to the Crown, to the specification of the Swan River Trust and to the satisfaction 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. ***The visual impact of the stairway, and its related structures, when viewed from Crown Reserve 24523 and the Swan River shall be addressed to the specification of the Swan River Trust and to the satisfaction of the Western Australian Planning Commission and with the necessary improvements being carried out within 2 months of the date of this approval;***
4. ***A Landscaping plan for the Parks and Recreation Reserve (to replace removed vegetation and to ameliorate the visual impact of stairway) shall be approved and implemented to the specification of the Swan River Trust and to the satisfaction of the Western Australian Planning Commission and with the landscaping being completed within 5 months of the date of this approval;***
5. ***A geotechnical report undertaken by a suitably qualified and practising specialist to conform that the stability of the escarpment has not been adversely impacted as a result of the stairway construction and any recommendations made in this geotechnical report to be implemented to the specification of the Swan River Trust and to the satisfaction of the Western Australian Planning Commission within 3 months of the date of this approval; and***
6. ***No further vegetation removal or disturbance to the natural and river park environment shall occur within the Swan River Trust Development Control Area or the 'Parks and Recreation' Reserve.***

#### **ADVICE**

1. ***With regard to Condition 2, it is recommended that a legal agreement is put in place to ensure that at such time that the WAPC acquires the P&R, the land shall be acquired at the unimproved value of the land, and that if the improvements are required to be removed by the WAPC, the owner of the land must do so at their cost. This is to ensure the improvements to the land will not prejudice the timely transfer to the Crown in the future.***
  2. ***With regard to Condition 3, the intent of the condition is to address the bulk, contrasting colour, including the limestone block retaining walls and consideration should be given to treating these in a darker colour in an effort to make them blend with the escarpment landscape.***
  3. ***Any landscaping within the Parks and Recreation Reserve should be locally native species that are suited to the soil type of the area and strategically placed vegetation should be used to screen the more prominent parts of the stairway structure, where visible from Crown Reserve 24523 and the river. The revegetation shall also be done in such a way to offset the trees that were removed and trimmed during the construction of the stairway.***
-

5. ***A planning approval is not an approval to commence any works associated with the development. A Building Permit must be obtained prior to commencement of any site and building works.***
6. ***Retrospective Approval to this development should not be constructed as support for any further structures within the Parks and Recreation Reserve and should not be considered a 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 MRS Context Plan and Attachment 2 - Aerial Location Plan**). 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. The new stairway was constructed to replace a degraded and less formal at-grade stairway constructed out of old railway sleepers and without the need for retaining structures, which also provided access between the residence and the foreshore.

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.

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.*

The subject application is supported by both the Department of Planning and the Swan River Trust (SRT) and the application can therefore be determined by the WAPC.

#### **BACKGROUND:**

This application was previously identified on the agenda for the Statutory Planning Committee (SPC) meeting of the 8 July 2014 but was withdrawn from the July agenda at the applicants' request. Since this time, the applicants have liaised with officers of the Department and have requested that the application be considered at the next SPC Meeting.

---

## LEGISLATION / STRATEGIC PLAN / POLICY:

### Legislation

Section:

*Planning and Development Act 2005*

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 *Swan-Canning River System*  
Development Control Policy 5.3 *Use of Land Reserved  
for Parks and Recreation and Regional Open Space*

## DETAILS:

### 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 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 (**Attachment 6 Construction Report** and **Attachment 7 Environmental Report**).

### 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 is listed below:

- Claremont Yacht Club;
- Christchurch Grammar Boat Club;
- Methodists Ladies College (MLC) Boat storage;
- Funicular Railway;
- Private Pump Shed to service Cliff Street residence;
- Private Boat Shed; and
- 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 as referred to above, it is considered that some of these structures such as the Yacht Club, Christchurch Grammar School and MLC boat facilities and 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 however also acknowledges that other private structures have been constructed in proximity and on reserved land and whilst it does not consider that these have by any way set a precedent for approval to this application, the Department will consider the other private structures in making a recommendation to the SPC on this application

### **GOVERNMENT AND CORPORATE IMPLICATIONS:**

Approval for a private stairway to be utilised for private passive recreational purposes on land reserved 'Parks and Recreation' under the MRS could set an undesirable precedent for similar developments emerging on other 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.

Oppositely, by refusing the application for the retrospective 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, which would then have financial implications on the WAPC.

## **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.

The Town of Claremont advertised the Retrospective application for public comment. A submission was 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 8 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; and
- 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.

---

## ***Swan River Trust***

Clause 30A(1)a(i) of the MRS provides that where an application for approval relates to the 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 advises 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

The SRT only support the stairway conditionally with conditions to require visual attenuation and revegetation to be undertaken by the applicant to reduce any impact on the amenity of the escarpment.

### DoP Comment

In January 2014, representatives of the DoP and the SRT met to discuss how to progress the application. At this meeting it was agreed that conditional support could be given for the stairs on the grounds that they had already been constructed and were replacement stairs (albeit more substantial than the original 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.

Portion of the application area and surrounding land that abuts Freshwater Bay and the Swan River has been the subject of a recent Amendment to the MRS (Amendment 1226/57). The MRS Amendment widened the 'Parks and Recreation' Reserve in order to align the MRS reservation with the line of the escarpment. The recent MRS Amendment does impact on the retrospective application because the location of the new stairway is wholly within the 'Parks and Recreation' Reserve.

The DoP agrees with the SRT that the stairs are a replacement stairway and that with appropriate conditions to require the applicants to minimise the visual impact of the stairway (mainly associated with the limestone retaining walls) and with other conditions to indemnify the WAPC and require the removal of the structure if the land is purchased, then conditional approval in this instance is appropriate.

### ***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 entire property and 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 however considered that whilst 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, the reserved land on which the unauthorised stairs have been constructed is in private ownership and the owners have a right to be able to access and utilise the land until it is acquired by the WAPC.

#### ***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 and restaurant).
-

## Dop comment

Whilst the application consists of development that will be used for private recreational purposes, the stairs do provide access from the residence to the foreshore across privately owned land and provide for passive recreational opportunities for the landowners and provide them with safer access to the foreshore which abuts the southern boundary of the lot.

The WAPC DC Policy is silent on how to deal with land that is privately owned but reserved under the MRS and therefore the 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 does not impact on or impede the current pedestrian access which is available along the foreshore, outside of the subject site;
- Whilst, the stairway will be utilised for private passive recreation on reserved land, the objectives of the DC Policy can still be met by maintaining access to and public use of the remainder of the abutting 'Parks and Recreation' reserve; and
- Whilst the stairs are not consistent with furthering the enhancement of the reserve or facilitating its use for recreational or conservation purposes, if conditional approval is granted with conditions to require the removal of the stairs when the land is acquired, then at this time there would be no impact on the enhancement of the reserve.

## **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 SRT has recommended that approval be granted subject to conditions that would require remedial works to the stairway structure and revegetation to improve the visual integrity of the escarpment. It is the belief of the DoP that if these conditions are imposed and complied with, the stairs could be physically altered to reduce impacts and to try and retain the significance of the escarpment and would not therefore conflict with the SPP.

### **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

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. In addition, the conditions that are included in the recommendation will ensure that works be undertaken to ensure the stairway is better integrated with the natural environment and the escarpment.

---

Most significantly, the construction of the steps has not restricted public access to the foreshore because they are setback in the order of 35 metres from the high water mark. Access and use of the foreshore area adjoining the property is limited, as no road access is available and only pedestrian access or access to the foreshore via boat is possible. On balance it is considered that because the stairway will not impact the use, functioning or access to the remainder of the 'Parks and Recreation' Reserve, support for its retention can be granted.

### 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.

The Department therefore supports the subject private development on reserved land on these grounds.

### **Visual Impact**

It is acknowledged that the Freshwater Bay escarpment and foreshore is a prime landscape feature of the Swan River and the continued introduction of private structures could collectively diminish the future amenity of the escarpment. In the context of this application however, the potential visual impact 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.

In addition it is considered that with the imposition of conditions, as recommended by the SRT that the visual impact can be further reduced. The applicants have also outlined an intention to landscape areas adjacent to the steps to blend in with the current landscape, to visually enhance the stairs and the view of the escarpment from the River and to decrease soil erosion.

### **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 two boat sheds and other structures having been constructed on land reserved for 'Parks and Recreation'. The applicant has also been advised that a Funicular Railway has been constructed within the 'Parks and Recreation' Reserve however this was not identifiable on a site visit. Research has identified that a Funicular Railway was constructed on privately owned land on the escarpment of the Cliff Road properties without approval and that the approval of the structure was issued through a tribunal decision (Appeal 3 of 2000). Similarly, the private boat shed referred to previously is understood to have been approved by the Town Planning Appeals Tribunal on the 3 April 1986 (Appeal 19 of 1985).

As discussed previously there is already a number of private structures on the reserved land adjacent to Freshwater Bay ranging from private boat sheds, jetties and stairs and the retention of the subject stairs is not seen to be inconsistent with the development that has occurred. As long as future applications are assessed on their merits, precedent is not considered to be a limiting factor in the determination of this application.

### **Conclusion**

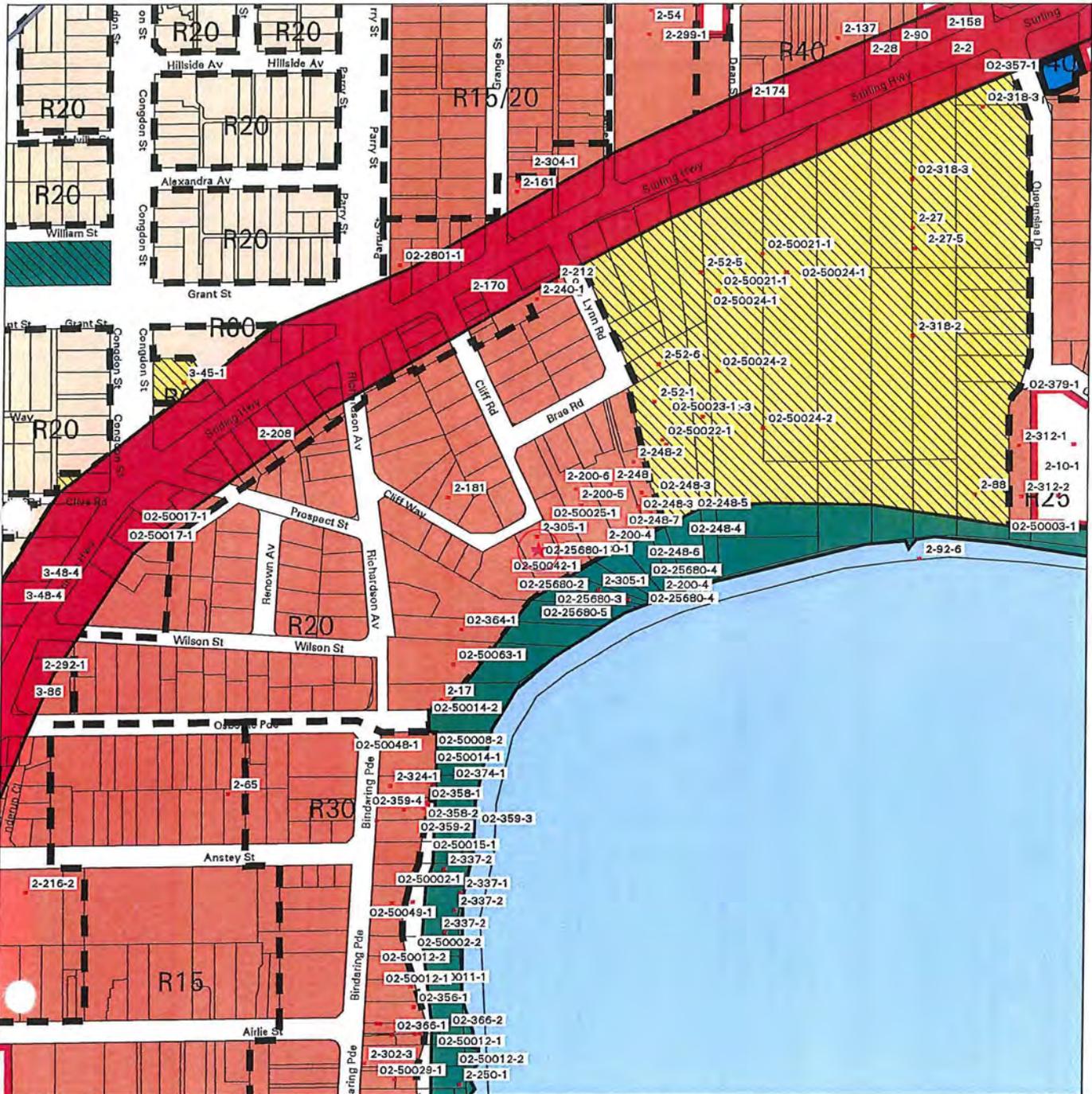
In accordance with the provisions of the MRS, in determining the merits of a development application, the WAPC is required to have regard to orderly and proper planning, the preservation of the amenities of the locality and the purpose of the land's zoning. The retrospective stairway and associated retaining walls are considered to be appropriate development for the land that is reserved for Parks and Recreation on the grounds that they are replacement steps and that the steps will not restrict public access to the foreshore. In addition, it is considered that approval of the application will not have an adverse effect on the amenities of the locality. With regard to orderly and proper planning, it is proposed that the process to determine this application will follow a process which will ensure that any decision made is in keeping with orderly and proper planning.

---

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 its removal, when and if the land is ever purchased by the WAPC. This is considered to be a proactive approach and allows private use of the land by the landowners 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.

The proposed development is considered by the DoP and the SRT to be acceptable, subject to conditions, which are included in the recommendation. The application is therefore recommended for conditional approval.

---



**Development Application 02-25680-5 (MGA ref 384132mE 6460183mN Zone 50)**

**This data is to be used for the processing of subdivision applications only.**

- |  |                                |  |                               |  |   |
|--|--------------------------------|--|-------------------------------|--|---|
|  | APPROX LOCATION OF APPLICATION |  | SPECIAL ZONE - RESTRICTED USE |  | PUBLIC PURPOSES<br>WATER SUPPLY SEWERAGE & DRAINAGE |
|  | PRIMARY REGIONAL ROADS         |  | RESIDENTIAL                   |  | PUBLIC PURPOSES                                     |
|  | WATERWAYS                      |  | SPECIAL DEVELOPMENT           |  | PUBLIC PURPOSES<br>COMMONWEALTH GOVERNMENT          |
|  | PARKS & RECREATION             |  | HIGHWAY                       |  |   |
|  | CADASTRAL BOUNDARY             |  | EDUCATIONAL                   |  |   |
|  | WESTNET ENERGY GAS PIPELINE    |  | NO ZONE                       |  |   |
|  | DEVELOPMENT APPLICATION        |  | RESIDENTIAL                   |  |   |
|  | R CODE BOUNDARY                |  | PARKS AND RECREATION          |  |   |

143325d.eps

## ITEM NO: 9.2

### PROPOSED EXTENSION TO EXISTING SHED – 98 RAILWAY PARADE, MIDDLE SWAN

**WAPC OR COMMITTEE:** Statutory Planning Committee

REPORTING AGENCY: Department of Planning  
REPORTING OFFICER: A/Director Metropolitan North East  
AUTHORISING OFFICER: Director - Perth and Peel Planning  
AGENDA PART: G  
FILE NO: 21-50436-1  
DATE: 1 September 2014  
REPORT CATEGORY: Statutory  
ATTACHMENT(S): Attachment 1 - Development Plans  
Attachment 2 - Location/Zoning Plan  
REGION SCHEME ZONING: Rural  
LOCAL GOVERNMENT: City of Swan  
LOCAL SCHEME ZONING: Swan Valley Rural  
LGA RECOMMENDATION(S): Refusal  
REGION DESCRIPTOR: Metropolitan North East  
RECEIPT DATE: 12 August 2014  
PROCESS DAYS: 19  
APPLICATION TYPE: Development Application  
CADASTRAL REFERENCE: Lot 98 Railway Parade, Middle Swan

#### RECOMMENDATION:

***That the Statutory Planning Committee resolves to refuse the development application for the lean-to extension to the existing shed for the following reasons:***

- 1. The application is inconsistent with the objectives of 'Area B' of the Swan Valley Planning Act 1995 and the Swan Valley Interim Planning Policy;***
  - 2. The subject land is zoned 'Rural' under the Metropolitan Region Scheme and 'Swan Valley Rural' under the City of Swan Local Planning Scheme No.17. The application is contrary to the intent of the rural zoning which is to preserve the rural character and landscape of the area; and***
  - 3. The proposal constitutes 'storage' which is a use not permitted in the 'Swan Valley Rural' zone under the City of Swan Local Planning Scheme No.17.***
-

## SUMMARY:

The application seeks to increase the existing 360m<sup>2</sup> shed with the addition of a 240m<sup>2</sup> 'lean-to' to its northern side, partially enclosed by a 1.8m high walls. The lean-to addition will be setback 20m from the northern side boundary. The lean-to area will be used for the storage of various pieces of equipment comprising mostly of trailers which were previously stored at another property.

The application was referred to the Swan Valley Planning Committee (SVPC) who, on 3 June 2014, resolved to refuse the application. The City of Swan Council subsequently resolved, on 30 July 2014 to conditionally approve the application. Due to the conflicting resolutions, and pursuant to Clause 26 (3) and 30b (5) of the Metropolitan Region Scheme, the application is required to be determined by the Western Australian Planning Commission (WAPC). The proposal is considered inconsistent with the City of Swan Local Planning Scheme No.17 and the intent of the *Swan Valley Planning Act 1995*. Refusal of the proposal is recommended.

## LEGISLATION / STRATEGIC PLAN / POLICY:

<b>Legislation</b>	<i>Planning and Development Act 2005 - Part 10</i> <i>Swan Valley Planning Act 1995 - Part 3</i>
<b>Strategic Plan</b>	
Strategic Goal:	Planning
Outcomes:	Planned Local Communities Developing a Sense of Place
Strategies:	Encourage innovation in the design of our communities
<b>Policy</b>	
Number and / or Name:	<i>Swan Valley Interim Planning Policy</i>

## INTRODUCTION:

### Details

The application seeks development approval for an extension to the existing 360m<sup>2</sup> shed by the addition of a 240m<sup>2</sup> 'lean-to' (**Attachment 1: Development Plans**). The addition to the shed will result in a total floor area of 600m<sup>2</sup> with the lean-to proposed to be 4.5m in height. This area will be enclosed by an existing 1.8m high fence for screening. The addition is proposed to be setback 20m from the side boundary in accordance with the setbacks prescribed for the zone. The lean-to extension is to provide further space for the undercover storage of domestic purpose trailers (including a box trailer, fire fighting trailer, off-road/camper trailer, two car trailers, motorbike trailer), emergency power generator, and piping and fencing materials.

The proposal relates to Lot 98 Railway Parade, Middle Swan. The subject land has an area of 1.9626ha, and is occupied by an existing dwelling and shed. Lot 98 is zoned 'Rural' under the Metropolitan Region Scheme and 'Swan Valley Rural' under the City of Swan's Local Planning Scheme (LPS) No.17 (**Attachment 2: Location/Zoning Plan**).

---

## Background

The City of Swan Council, on 22 May 2013, approved an application for a 360m<sup>2</sup> shed (12m by 30m) with a wall height of 4.8m, and a height of 6.08m to the apex of the roof. Approval was also granted for a Home Business in an area of 50m<sup>2</sup> within the shed. The Home Business approval allows for the parking of the 2.5 tonne work truck, and the storage of planks and concrete trowel machines.

### **CONSULTATION:**

The proposal was advertised to seven surrounding landowners, with four letters of no objection and one letter of objection received.

The objection was from the adjoining landowner to the rear (north-east) of the property approximately 190m from the proposal. The objection raised the following concerns:

- 1. The application does not comply with the City of Swan Local Planning Scheme No. 17 specifically clauses 4.2.17, 4.2.18, 4.2.19 and 4.2.23.*
- 2. The proposal is in breach of conditions of Council's previous approval.*
- 3. The applicant originally applied for a 420m<sup>2</sup> shed. This was denied by the City of Swan Council for reasons of size. The current application is for a further 240m<sup>2</sup> which added to the existing shed is a total of 600m<sup>2</sup>.*
- 4. The applicant's original intention put to Council was for shed space for a boat, caravan and tools of trade. It appears that the intention has been for uses other than the original advice to Council.*
- 5. The permitted use for this property is agricultural activities in accordance with City of Swan Local Planning Scheme No. 17, however, the application now represents a business activity that is not the intended use for the property and is of a light industrial nature.*
- 6. The application is not amenable to the neighbourhood.*

It should be noted that Point 3, raised in the objection letter by the adjoining landowner, is incorrect. The City of Swan has confirmed that there are no plans on file or a previous application for a 420m<sup>2</sup> shed on this property. In addition, Clauses 4.2.17, 4.2.18 and 4.2.23 of the LPS No. 17 are irrelevant to this application as those clauses relate to the objectives of the 'Rural Residential', 'Special Rural' and 'General Rural' zones and do not apply to the application pertaining to the land which is zoned 'Swan Valley Rural.' With respect to the shed being in breach of Council approval, City staff have inspected the property and are satisfied that the owner is complying with the conditions of the approval for a Home Business.

The Swan Valley Planning Committee (SVPC), on 3 June 2014, resolved to:

- 1. note that the development application does not meet objectives 4, 6 and 7 of Area B of the Swan Valley Planning Act relating to the discouragement of uses*
-

*that are incompatible with the rural character and traditional activities of the area; and*

- 2. recommend that the City of Swan not approve the development application.*

The Swan City Council, on 30 July 2014, resolved to conditionally approve the proposal, contrary to the advice of the SVPC.

## **COMMENTS:**

### Swan Valley Planning Act 1995

The SVPC resolved to refuse the proposal on the grounds that the proposal was inconsistent with planning objectives 4, 6 and 7 of 'Area B' under Section 8 of the *Swan Valley Planning Act 1995*. These objectives broadly seek to encourage traditional activities of the Swan Valley and industries associated with viticulture, horticulture and cottage industry, ensure compatibility of design, siting and landscaping with the character of the area, and discourage uses that are incompatible with the rural character and traditional agricultural activities of the area.

The combined area of the shed and lean-to is 600m<sup>2</sup>, which is considerable given the rural residential nature of the land use. The shed extension is not required for storage of equipment associated with the maintenance of the land but rather the storage of goods that had previously been stored elsewhere. Accordingly, it constitutes a use that is not compatible with the rural character and traditional agricultural activities of the area.

### City of Swan Local Planning Scheme (LPS) No.17

Under LPS No. 17 the 'Swan Valley Rural' zone's objectives aim to:

- 1. promote the core area of the Swan Valley primarily as a horticultural, recreational, tourism and landscape resource;*
- 2. provide for limited rural living within the Swan Valley, subject to locational, design and landscaping requirements to enhance the character and amenity of the valley and to ensure compatibility with productive rural activities;*
- 3. recognise the occurrence of high quality horticultural soils and scarce plastic clays and to protect these resources from development which would jeopardise their current and future use; and*
- 4. ensure that the development and use of land accords with the planning objectives for Area B as specified in the Swan Valley Planning Act 1995.*

In undertaking their assessment of the application, the City of Swan outlined the following reasons for recommendation of approval:

- Consideration of the applications fulfilment of the above objectives is related to its use classification under the Scheme. Rural sheds and extensions are considered appurtenant to the existing use of the land for some rural productive purpose or associated with normal domestic residential land use. Considered as part of the latter, a 'Single House' is a permitted use within the 'Swan Valley Rural' zone, meaning that the use cannot be refused by reason of unsuitability.
-

- A shed/extension may not be associated with viticulture, horticulture, recreational or tourism uses but that cannot determine that it is inappropriate in the zone.
- The shed/extension is associated with the dwelling, and dwellings are appropriate in all residential and rural zones within the City of Swan.
- Having established, by fact under the Scheme, that the shed/extension is not a use inappropriate or incompatible with the rural character per se, it remains to be considered whether its design, location and scale is or is not prejudicial to the rural character and amenity of the area in which it is to be located.

Notwithstanding, the number of trailers proposed to be stored in the lean-to are suggestive of activity beyond a domestic use and cannot be construed as incidental to the predominant use of the land for residential purposes. The proposed use of the lean-to is more akin to a storage land use, particularly since the applicant states that the trailers were once stored at a separate property. Under LPS No. 17, storage is defined as 'premises used or provided for use for the storage of goods, equipment, plant or materials.' Storage is not permitted within the 'Swan Valley Rural' zone.

### Swan Valley Interim Planning Policy (Interim Policy)

In February 2014, Cabinet endorsed the findings of *The Way Forward, Swan Valley Land Use and Management Report on Submissions and Recommendations*, and committed to establishing a new governance and regulatory framework for the Swan Valley. The Interim Policy has been prepared to assist decision making authorities to provide consistent advice on land use and planning matters within the Swan Valley, until the new Swan Valley legislation and associated planning instruments take effect. The SVPC and WAPC endorsed Interim Policy guides the assessment and determination of subdivision and development applications within the *Swan Valley Planning Act 1995* area.

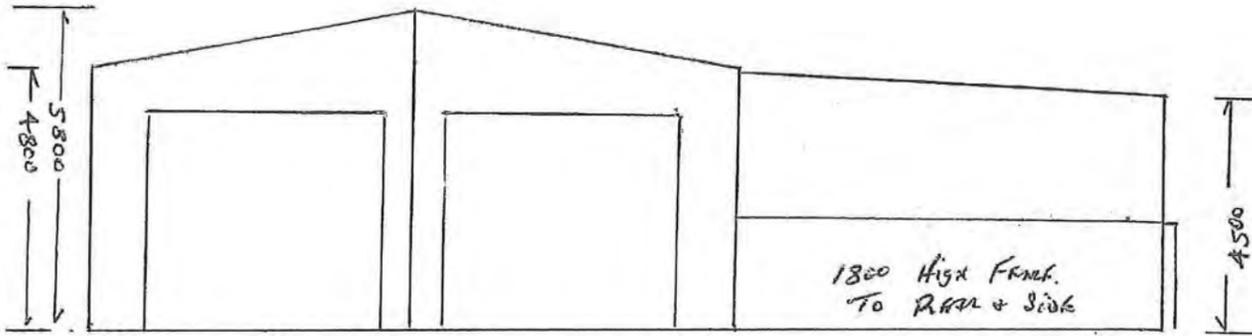
The Interim Policy seeks to protect the viticultural and agricultural industries of the Swan Valley from competing residential and commercial land uses. For reasons previously outlined, the use of the lean-to is not considered incidental to the residential use and is incompatible with the rural character and traditional agricultural activities of Swan Valley area. To ensure the Swan Valley is protected from competing and incompatible land uses, the application for the lean-to should not be supported.

### **CONCLUSION:**

It is considered that the proposal is not compliant with LPS No. 17, the *Planning and Development Act 2005* and the *Swan Valley Planning Act 1995*. Refusal is recommended.

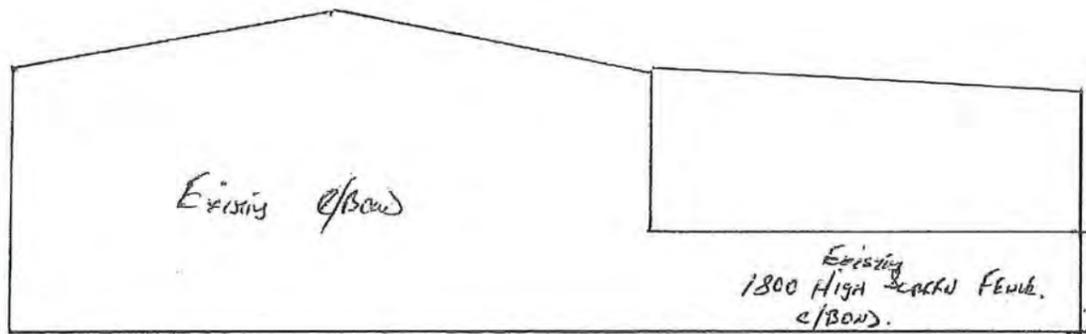
---

ATTACHMENT 1



EAST ELEVATION

DEPARTMENT OF PLANNING  
 12 AUG 2014  
 FILE 21-5-436-1



WEST ELEVATION

City of Swan  
 APPROVED PLAN  
 No. 3 of 3

File No. DA335-14

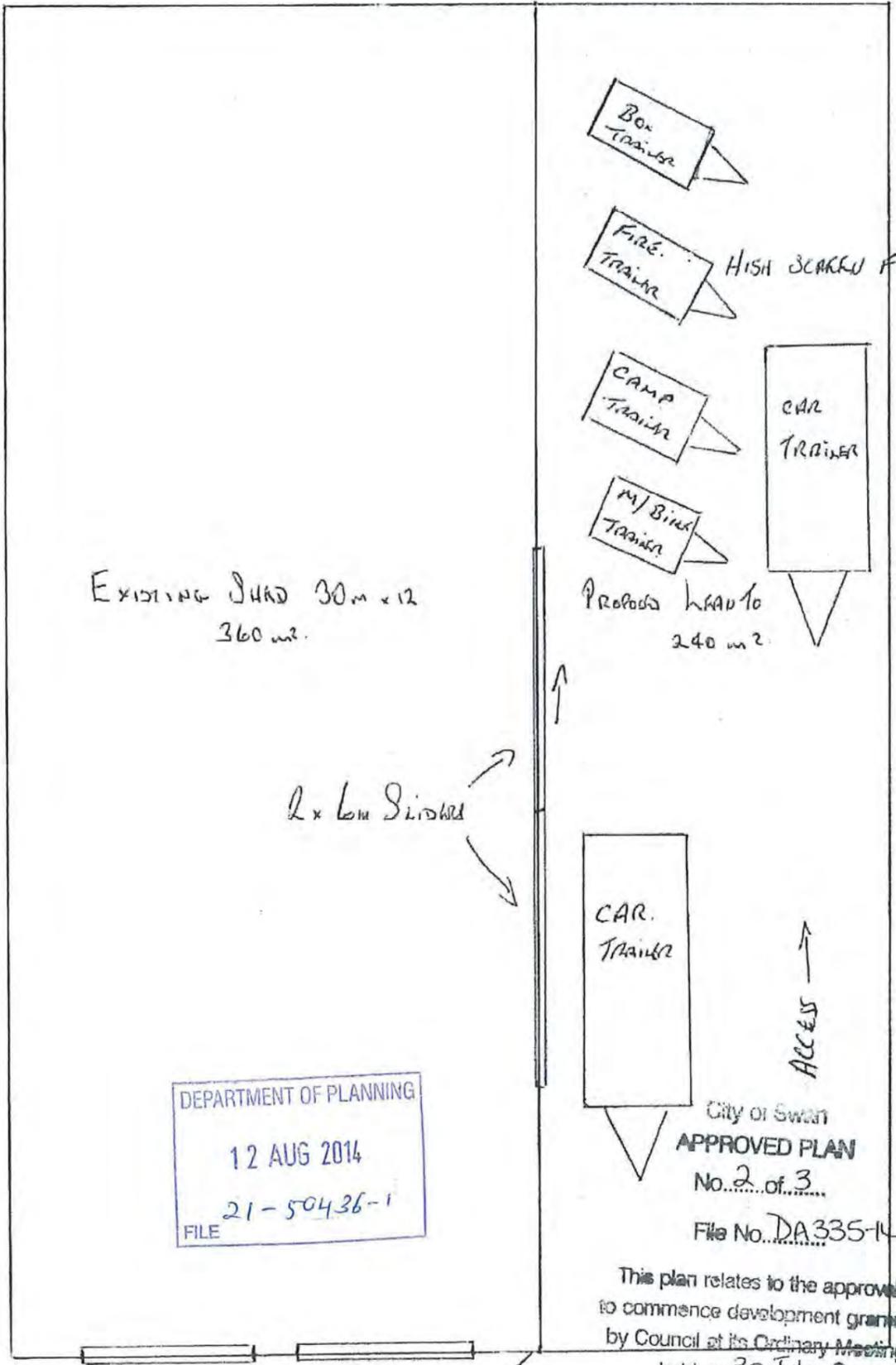
This plan relates to the approval  
 to commence development granted  
 by Council at its Ordinary Meeting  
 held on 30 July 2014

Lot 98 Railway Pde Middle Swan.

SCALE 1:125

Lot 98 Railway Pde Middle Swan Road.

CITY OF SWAN  
19 1994  
MIDLAND



HIGH SECURITY FENCE

DEPARTMENT OF PLANNING  
12 AUG 2014  
21-50436-1  
FILE

City of Swan  
APPROVED PLAN  
No. 2 of 3  
File No. DA335-14

This plan relates to the approval  
to commence development granted  
by Council at its Ordinary Meeting  
held on 30 July 2014

2 x Rough Drives

PA Deck

SCALE 1:125



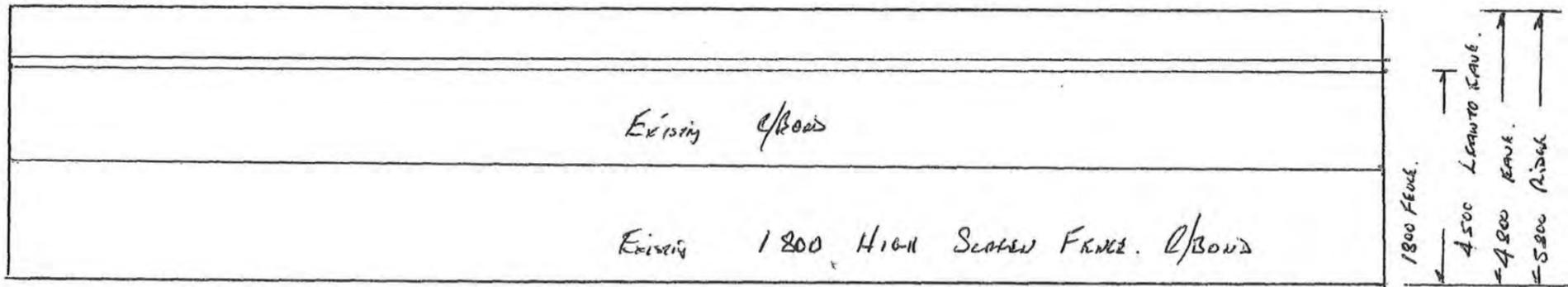
DISCLAIMER: Information shown herein is a composite of information from various sources and is provided for general reference only. It is not intended to be used for any purpose without verification with the original source.

20 March 2014

1 10000



DEPARTMENT OF PLANNING  
12 AUG 2014  
FILE 21-50436-1

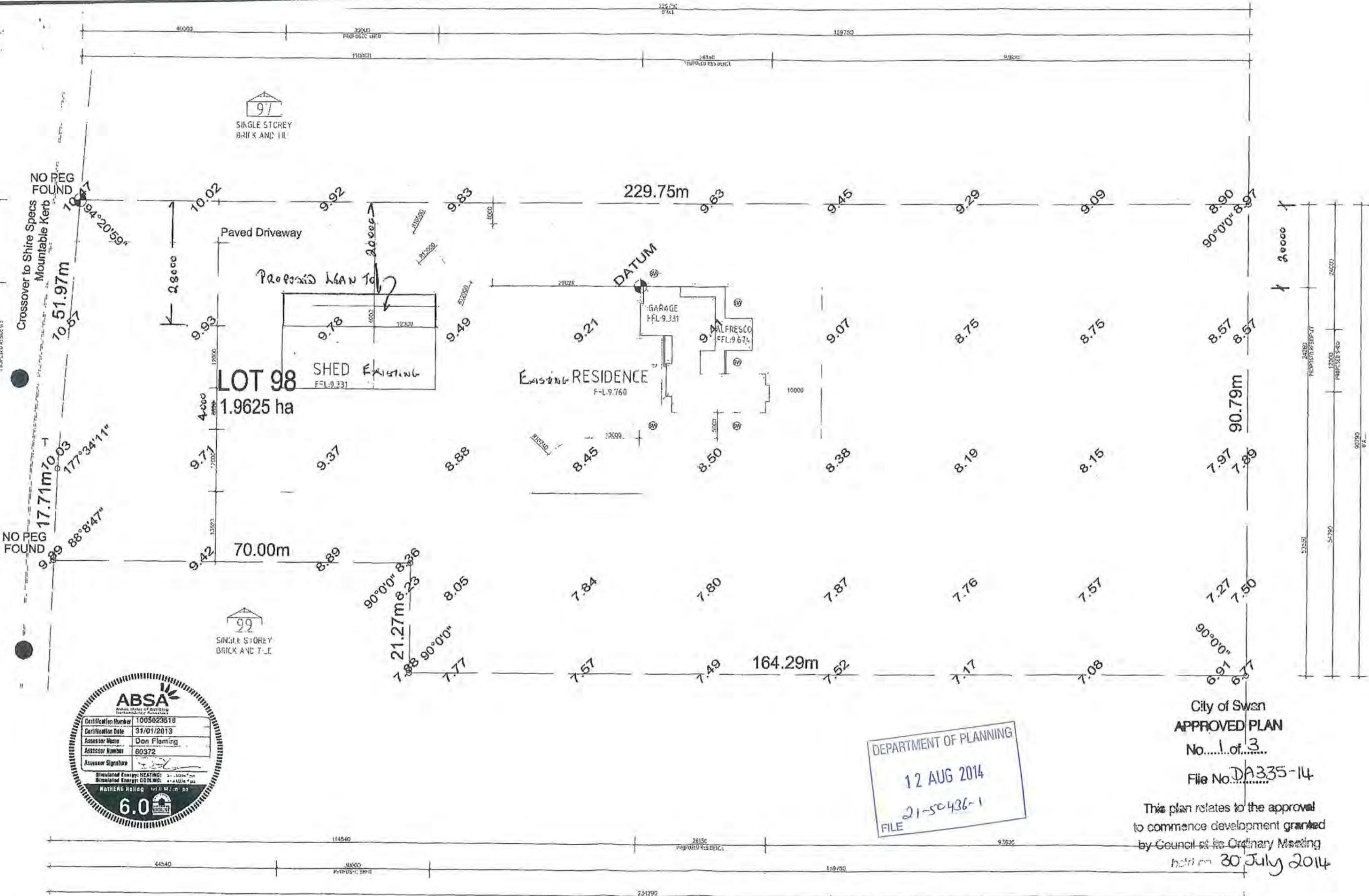


LOT 98 RAILWAY FOR MOORE SWAN.

NORTH ELEVATION

SCALE 1:125

DEPARTMENT OF PLANNING  
 12 AUG 2014  
 FILE 21-50436-1

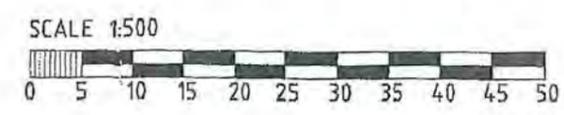


DEPARTMENT OF PLANNING  
 12 AUG 2014  
 FILE 21-50436-1

City of Swan  
**APPROVED PLAN**  
 No. 1 of 3  
 File No. DA335-14

This plan relates to the approval  
 to commence development granted  
 by Council at its Ordinary Meeting  
 held on 30 July 2014

AN	<b>PROPOSED RESIDENCE FOR D &amp; J CARTER</b>	<b>AREA:</b> GROUND FLOOR: 255.84m² GARAGE: 75.82m² PORCH: 81.16m² PATIO/VERANDAH: 72.67m² SITE COVERAGE: 251.86m²	<b>NOTES:</b> 1. TERMITE MANAGEMENT SYSTEM AS PER BCA 3.1 2. PV 3. 50MM SLAB AND 100MM TO A 200C 4. TYPICAL 450MM SPACING TO A 5 360 1/2 F.L.W. PRT. - CHS RUC/BW 5. DURABLE 40T CE. IN PROMINENT POSITION WITH F.L.L. DETAILS AS PER BCA 3.1.3.1 6. REGULAR MAINTENANCE	SHEETS: 1 ARE SHEETS: 1 DATE: 25/07/13 DESIGNED BY: <b>GRAHAM MALONE</b> © COPYR CHT 2013
----	--	---	--	---



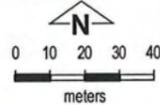


**LOCATION PLAN**

Development Application 21-50436-1

Decision: **OUTSTANDING**

Printed: 12/08/2014



This data is to be used only for the processing of Development Application

**Legend**

**Development Applications**

● Outstanding

**Existing LPS Zone Category**

□ Rural

**Existing Region Scheme Reserves**

□ Railways

## ITEM NO: 9.3

### PROPOSED PLACE OF WORSHIP - LOT 627 HYEM ROAD HERNE HILL

<b>WAPC OR COMMITTEE:</b>	<b>Statutory Planning Committee</b>
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	A/Planning Manager Metropolitan North East
AUTHORISING OFFICER:	Director Perth and Peel Planning
AGENDA PART:	G
FILE NO:	21-50431-1
DATE:	15 August 2014
REPORT CATEGORY:	Statutory
ATTACHMENT(S):	1 - Development Plans 2 - Location / Zoning Plan 3 - Aerial Photograph 4 - Land Capability Maps 5 - Alternative Recommendation
REGION SCHEME ZONING:	Rural
LOCAL GOVERNMENT:	City of Swan
LOCAL SCHEME ZONING:	Swan Valley Rural
LGA RECOMMENDATION(S):	Conditional Approval
REGION DESCRIPTOR:	
RECEIPT DATE:	23 June 2014
PROCESS DAYS:	32
APPLICATION TYPE:	Development Application
CADASTRAL REFERENCE:	Lot 627 Hyem Road Herne Hill

#### RECOMMENDATION:

***That the Western Australian Planning Commission resolves to refuse the development application for a Place of Public Worship at Lot 627 Hyem Road Herne Hill for the following reasons:***

- 1. The proposed development is inconsistent with the objectives of Area B of the Swan Valley Planning Act 1995.***
  - 2. The land is zoned 'Rural' in the Metropolitan Region Scheme and 'Swan Valley Rural' within the City of Swan Local Planning Scheme No.17. The proposed development is contrary to the intent of the rural zoning which is to preserve the rural character and landscape of the area.***
-

3. *The proposal is inconsistent with the Swan Valley Interim Policy whereby the use of land within Area B of the Swan Valley Planning Act 1995 as a 'Place of Worship' is not permitted unless it is incidental to the predominant use of the subject land.*
4. *Approval of the proposal would create a precedent for the introduction of development contrary to the objectives of the Swan Valley Planning Act 1995 and inconsistent with the rural character of the area.*

#### **SUMMARY:**

The WAPC's Statutory Planning Committee on 9 September 2014 resolved to defer consideration of the application pending receipt of additional information relating to the capability of the land to support viticultural and horticultural activities.

Data sets obtained from the Department of Agriculture and Food (DAFWA) indicate that while the soil capability would not support viticulture it would support agricultural and horticultural activities (**Attachment 4 - Land Capability Maps**).

The application proposes the change of land use within Lot 627 Hyem Road Herne Hill, from the current use of café and art gallery to 'Place of Worship'. The existing art gallery and cafe buildings are proposed to be converted into a meditation hall and multifunctional hall respectively.

It is recommended that the application be refused, consistent with the endorsed Swan Valley Interim Policy. Notwithstanding, draft conditions have been provided should the Committee be of a mind to support the application (**Attachment 5 – Alternative Recommendation**).

#### **LEGISLATION / STRATEGIC PLAN / POLICY:**

<b>Legislation</b>	Planning and Development Act 2005 Swan Valley Planning Act 1995 Metropolitan Region Scheme
Section:	Part 10 Swan Valley Planning Act 1995 - Section 8 Metropolitan Region Scheme Text - Part IV subclause 30B(5)
<b>Strategic Plan</b>	
Strategic Goal:	Planning
Outcomes:	Planned Local Communities Developing a Sense of Place
Strategies:	Encourage innovation in the design of our communities
<b>Policy</b>	
Number and / or Name:	Swan Valley Planning Interim Policy

---

## **INTRODUCTION:**

The application proposes a change of land use within Lot 627 Hyem Road Herne Hill, involving the conversion of an existing art gallery and café on site to a meditation hall and multifunctional hall respectively. The application constitutes a change in land use to 'Place of Worship' which is defined as 'premises used for religious activities such as a church, chapel, mosque, synagogue or temple,' under Local Planning Scheme No.17 (LPS 17). Additional buildings are not proposed on site (**Attachment 1 - Development Plans**). The subject land also contains an existing dwelling and associated outbuildings which are to be retained.

### Details

Lot 627 is located on the corner of Hyem Road and Great Northern Highway in Herne Hill. The subject land is zoned Swan Valley Rural under the City of Swan's Local Planning Scheme No.17 (LPS 17) and 'Rural' under the Metropolitan Region Scheme (MRS) (**Attachment 2 - Location / Zoning Plan**). The subject land is located within 'Area B' of the *Swan Valley Planning Act 1995*. The subject land is 7086m<sup>2</sup> in area and also contains a dwelling and outbuildings which are to be retained.

The 204m<sup>2</sup> meditation hall will be utilised for meditation, reciting Buddhist teachings and reflection. The proposed multifunction hall will be utilised for lecturing / teaching, counselling, dining and a meeting place. The proposed halls are to operate on Sundays only, during 9am-5pm. Spiritual reflection will occur fortnightly between 3pm-5pm in winter and 4pm-6pm in summer. Annual celebrations and events will occur about three to four times a year, and on Sundays only. The arrival and departure times of vehicles to the site will be dispersed over the course of the day. The projected maximum number of people onsite at any time during any of the proposed functions will not exceed thirty people.

Clause 26 (3) and 30b (5) of the Metropolitan Region Scheme requires that the City refer the decision to the WAPC for determination when advice of the SVPC is not accepted by the Local government.

## **CONSULTATION:**

The proposal was advertised for public comment between 17 January and 26 February 2014. Landowners within a 200m radius of the subject land and various interest groups were consulted during this time. A sign was also erected on site to advise of the proposed change in land use.

A total of eleven submissions were received, all of which objected to the proposal. The main issues raised related to a potential increase in local traffic and congestion, lack of screening for adjacent property owners, visitor enforcement, lack of adequate parking facilities and overall amenity issues citing that the proposal is not consistent with the overall objectives of the zone within LPS 17, and 'Area B' of the *Swan Valley Planning Act 1995*. Loss of property value was also cited as a reason for objection to the proposal.

---

The proposal was also referred to the Department of Water and Main Roads Western Australia (MRWA) for comment. Both agencies raised no objections to the proposal, with MRWA recommending a condition and providing advice.

The application was referred to the Swan Valley Planning Committee (SVPC), who at a meeting on 3 February 2014 resolved to:

- "1. note that the proposal is not consistent with planning objectives 1, 4 and 7 of section 8 of the *Swan Valley Planning Act 1995*; and
2. recommend that the City of Swan refuse the proposal on the basis that it is an inappropriate use and it is not compatible with the rural character of the Valley."

The City of Swan at their Ordinary Council Meeting of 28 May 2014 resolved to approve the proposal on the basis that the nature and scale of the proposal was considered consistent with the objectives of 'Area B' of the *Swan Valley Planning Act 1995*, and the objectives of the 'Swan Valley Rural' zone within LPS 17. The City recommended approval of the proposal subject to conditions.

#### **COMMENTS:**

##### *City of Swan's Local Planning Scheme No.17 (LPS 17)*

A 'Place of Worship' is a discretionary use within the Swan Valley Rural zone under TPS 17.

The objectives of the 'Swan Valley Rural' zone under LPS 17 include to:

- (a) promote the core area of the Swan Valley primarily as a horticultural, recreational, tourism and landscape resource;
- (b) provide for limited rural living within the Swan Valley, subject to locational, design and landscaping requirements to enhance the character and amenity of the valley and to ensure compatibility with productive rural activities;
- (c) recognise the occurrence of high quality horticultural soils and scarce plastic clays and to protect these resources from development which would jeopardise their current and future use; and
- (d) ensure that the development and use of land accords with the planning objectives for Area B as specified in the *Swan Valley Planning Act (1995)*.

The proposal does not provide for horticultural practices, neither does it provide for recreation or tourism activities within the site. Furthermore the proposed change in use to 'Place of Worship' is not consistent with the objectives for 'Area B' as specified within the *Swan Valley Planning Act (1995)* and therefore refusal of the proposal is recommended.

##### *Swan Valley Planning Act 1995 (Act)*

The SVPC resolved to refuse the proposal on the grounds that the proposal was not consistent with planning objectives 1, 4 and 7 of section 8 of the Act. These objectives seek:

- objective 1 - the protection of viticulture;
-

- 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; and
- objective 7 - the discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area.

The proposal does not provide for viticulture or horticultural practices to occur on site. There are existing vineyards to the south of the subject land approximately 80 to 110 metres in distance (**Attachment 3 - Aerial Photograph**). As such it is considered that the proposed change in use is not consistent with the rural character of the area.

### Swan Valley Interim Planning Policy (Interim Policy)

In February 2014 Cabinet endorsed the findings of *The Way Forward, Swan Valley Land Use and Management Report on Submissions and Recommendations*, and committed to establishing a new governance and regulatory framework for the Swan Valley. The Swan Valley Interim Policy has been prepared to assist decision making authorities to provide consistent advice on land use and planning matters within the Swan Valley, until the new Swan Valley legislation and associated planning instruments take effect.

The Interim Policy has been endorsed by the Swan Valley Planning Committee at their meeting on 7 July 2014 and the Western Australian Planning Commission's (WAPC) Statutory Planning Committee at their meeting on 22 July 2014. The Interim Policy is to be used by the WAPC when determining subdivision and development applications within the *Swan Valley Planning Act 1995* area.

Under the Swan Valley Interim Planning Policy a 'Place of Worship' is not supported unless it is incidental or ancillary to the predominant viticulture use within 'Area B' of the Act. In this case the 'Place of Worship' is not considered incidental to the viticulture use on the site and it is therefore inconsistent with the Interim Policy.

### Previous decisions

At the meeting on 14 December 2005, the SVPC resolved to approve a proposed development for a Tibetan Buddhist Temple with a meditation hall and accommodation within Lot 6 Campersic Road, Herne Hill. The SVPC in their decision resolved that the proposal was consistent with the objectives of Area B of the Act. Following the resolution by the SVPC the application was conditionally approved by the City.

The above decision was made prior to the endorsement of the Swan Valley Interim Policy and therefore, does not have relevance to the current application.

### Soil Types

Recent data sets obtained from the Department of Agriculture and Food (DAFWA) dated May 2012 (**Attachment 4 - Land Capability Maps**) provide information relating to the land capability for horticultural, agricultural and viticultural uses within the Swan Valley Plan Act 1995 precincts A, B and C. The data indicates that the subject land is classified as having:

---

- very high to fair land capability for horticultural use;
- low to very low land capability for viticultural use; and
- very high to fair land ability for agricultural use.

In light of the high agricultural and horticultural capability of the soils within the subject land, the use of the site as a place of worship is not considered consistent with the aims of the Act, the Interim Policy or LPS 17.

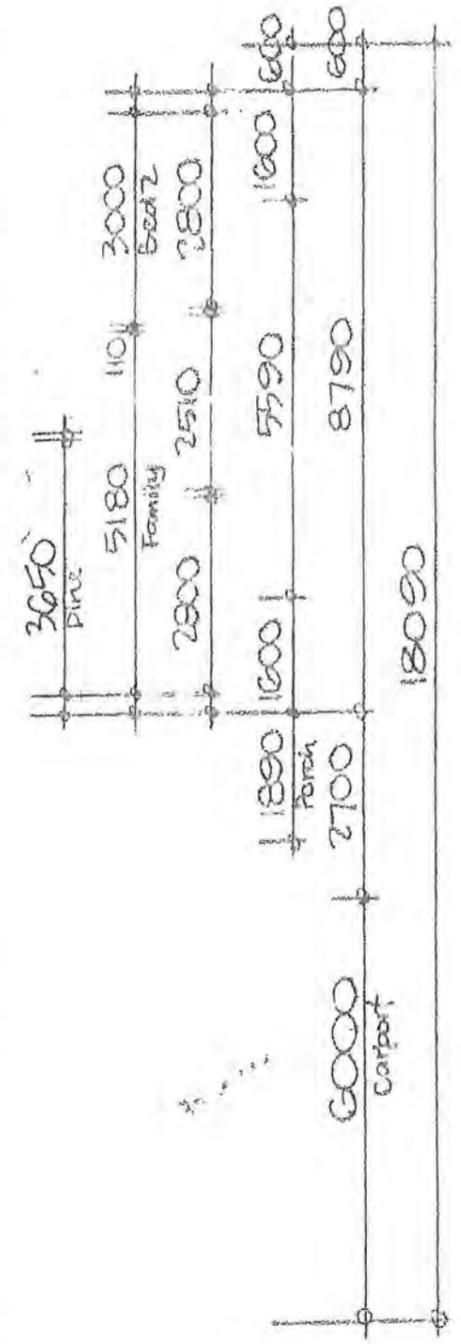
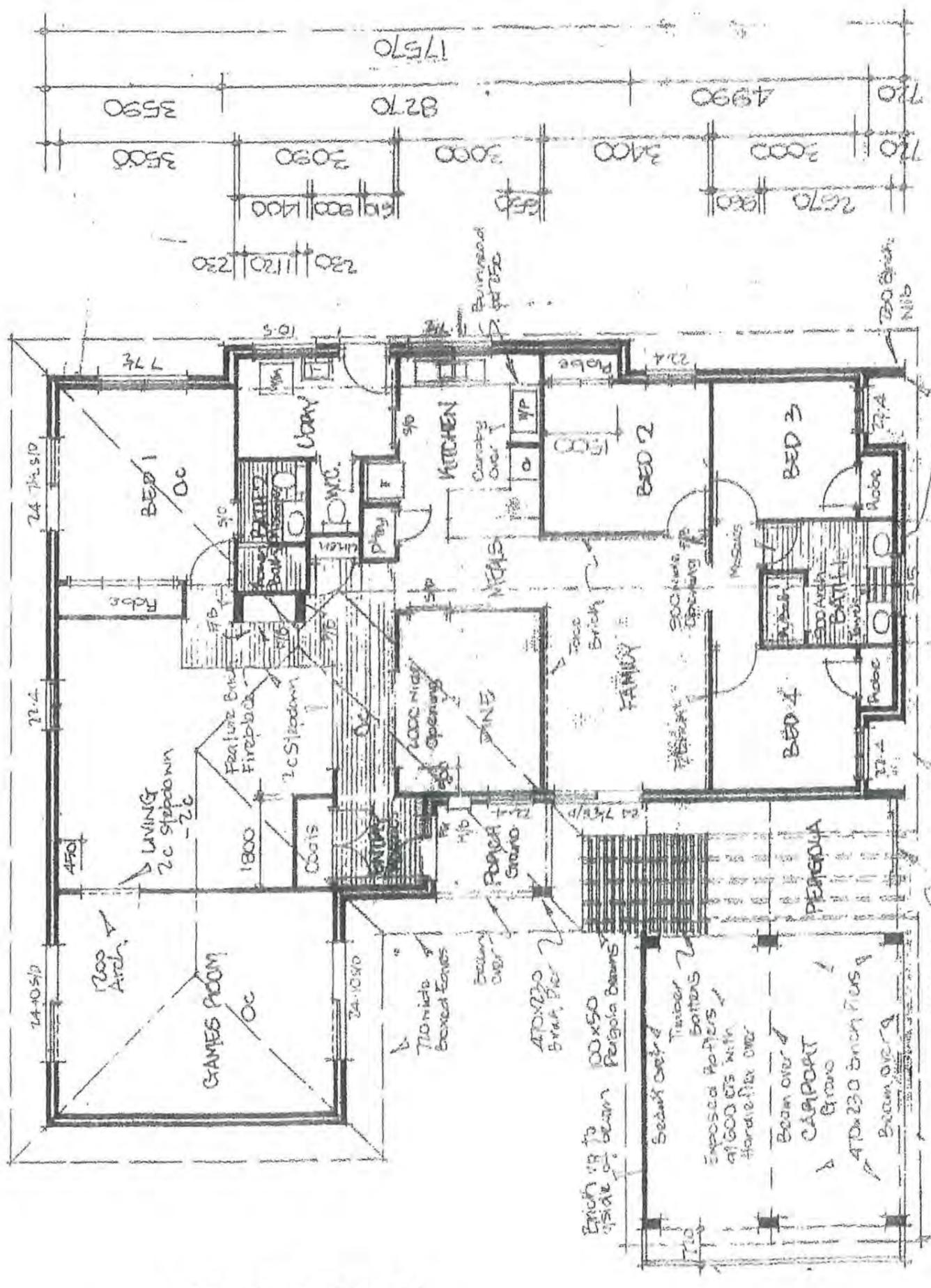
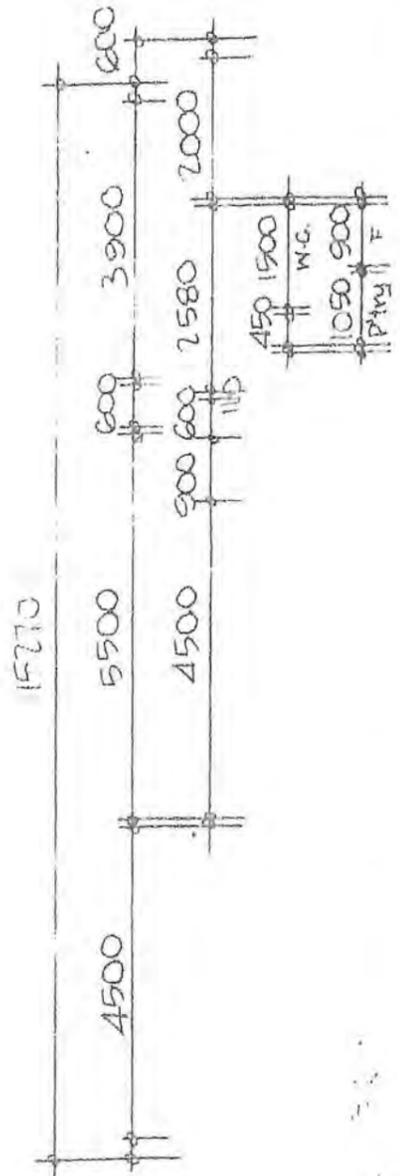
**CONCLUSION:**

It is considered that the proposal is not compliant with the objectives of the LPS 17, and that of Area B of the *Swan Valley Planning Act 1995*, as it encourages the introduction of uses that are not consistent with the traditional agricultural activities of the area, thereby preventing the use of the land for viticultural, horticultural and cottage industries.

---



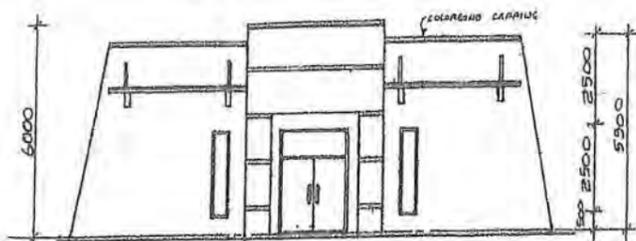
DEPARTMENT OF PLANNING  
 102 NT 87  
 FILE 1-13425-12



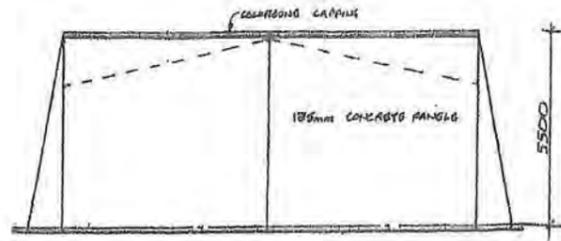
FLOOR PLAN  
 EXISTING RESIDENCE TO REMAIN

1/12/02	FLOOR PLAN	DWG.No. VT01A1	AMENDED
DRAWN: DP.	SC: 1/100	SHEET No: 2/6	-/

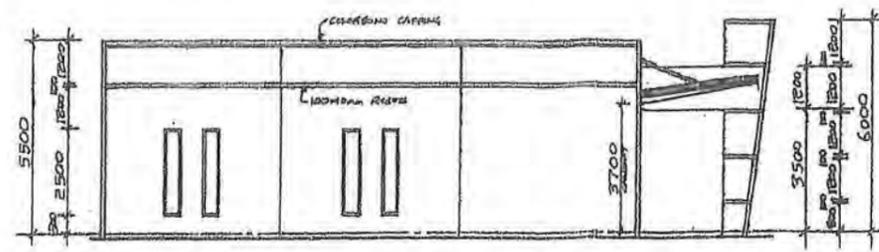
# GALLERY PLAN



EAST ELEVATION



WEST ELEVATION

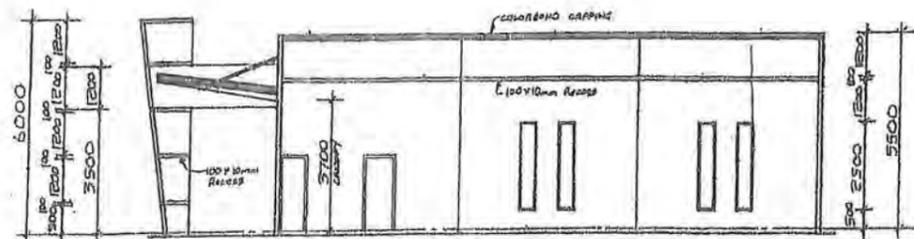


SOUTH ELEVATION

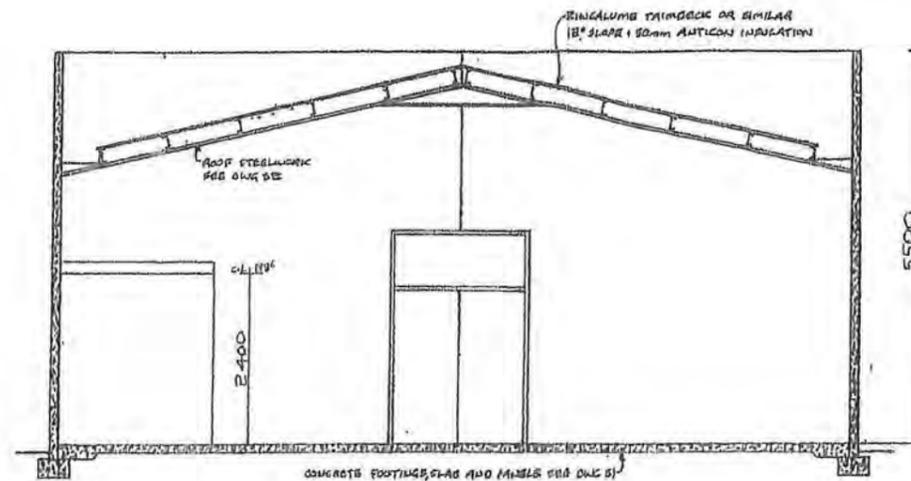
DEPARTMENT OF PLANNING

23 JUN 2014

FILE 21-50431-1

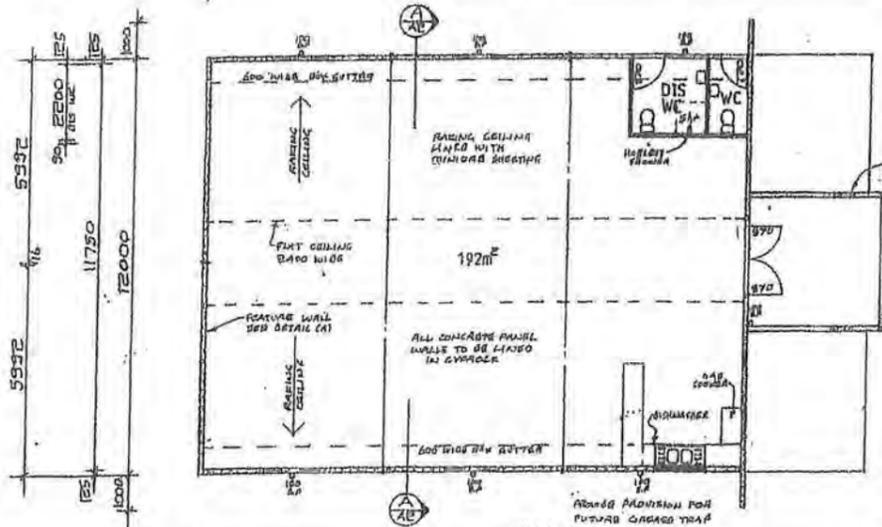
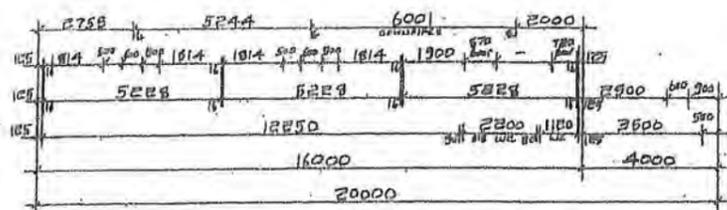


NORTH ELEVATION



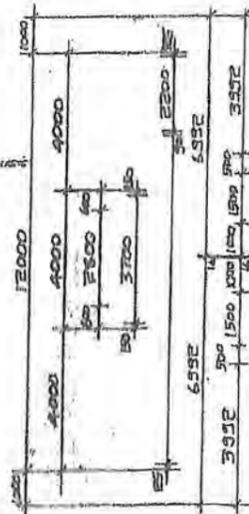
SECTION A-A  
SCALE 1:50

EXISTING GALLERY CAFE  
TO REMAIN FOR MULTI FUNCTION ROOM.

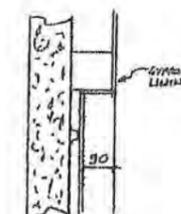


MULTI FUNCTION ROOM

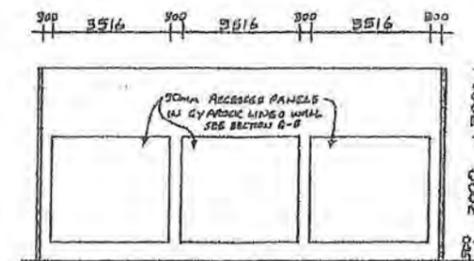
FLOOR PLAN GALLERY



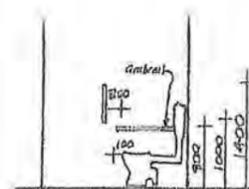
FLOOR PLAN DISABLED TOILET



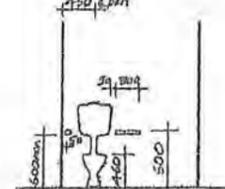
SECTION B-B



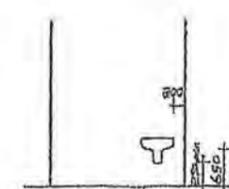
DETAIL A



ELEVATION 1



ELEVATION 2

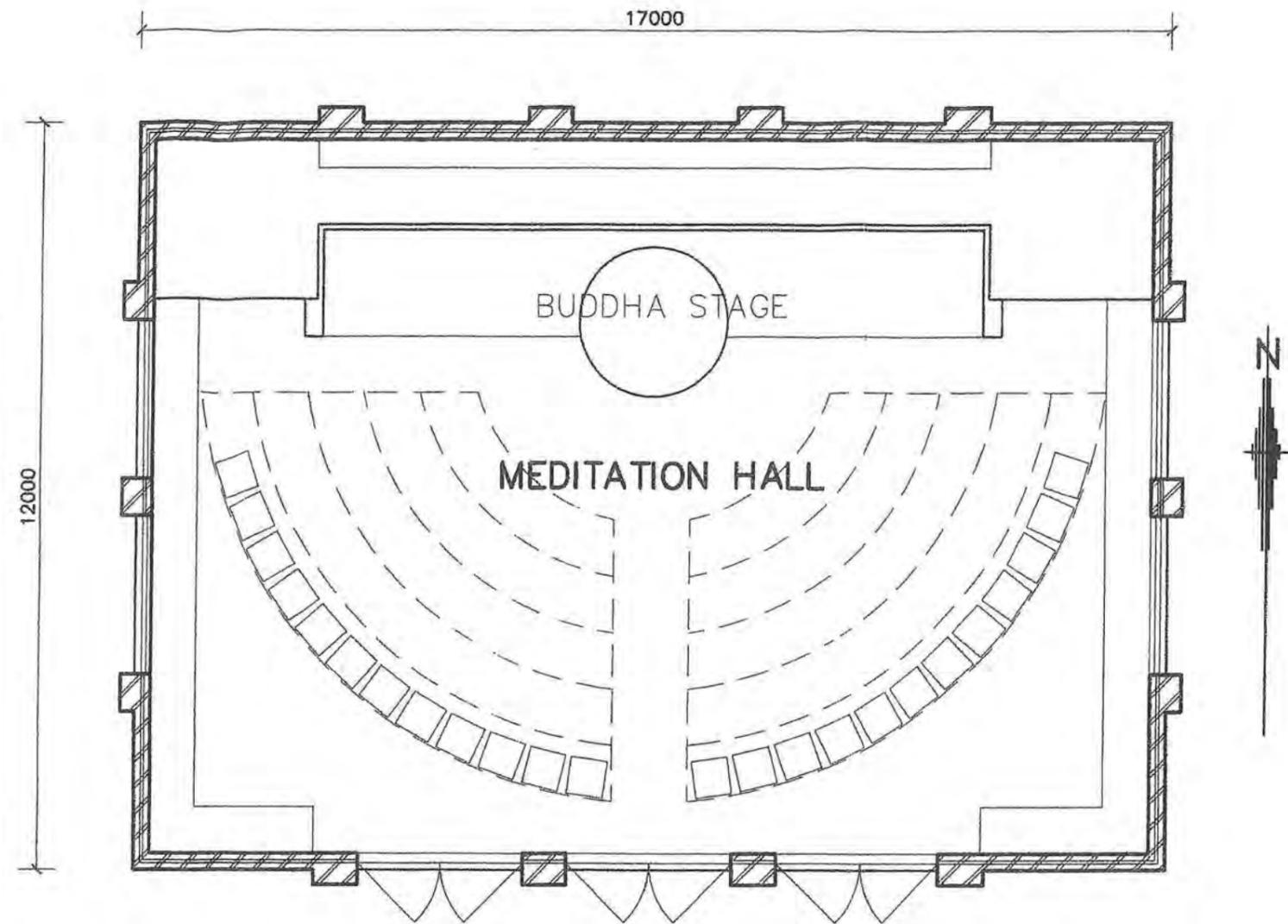
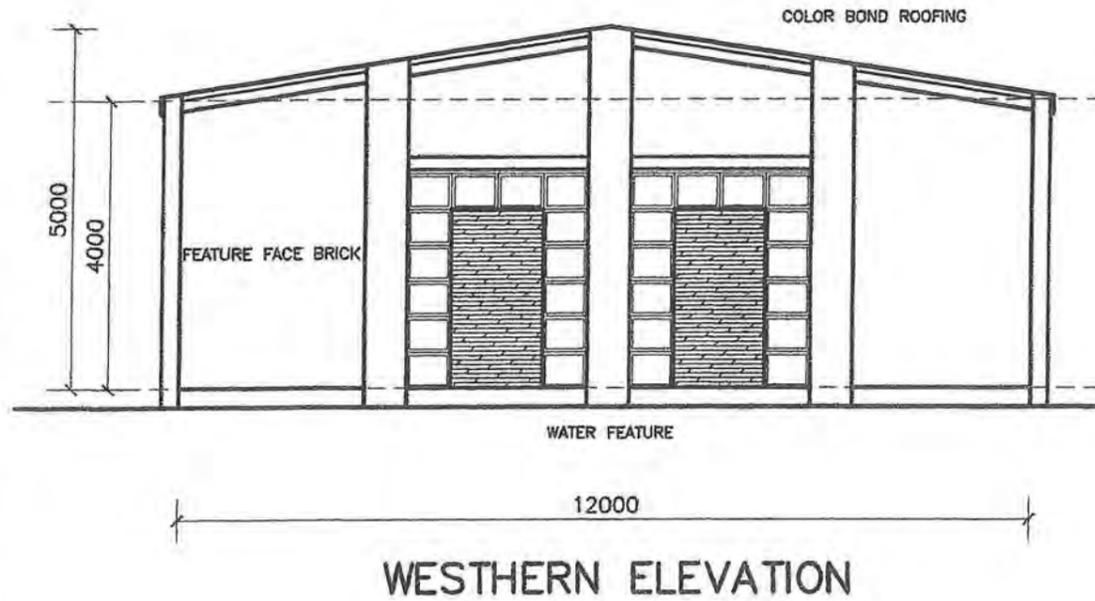


ELEVATION 3

**CONDIPODERO & ASSOCIATES**  
STRUCTURAL ENGINEERS & DESIGNERS  
2 VALE STREET MALAGA 4000  
Ph: (08) 9249 3888 Fax: (08) 9249 3866  
TRA CONDOMINIUMS PTY LTD ACN 684 857 785  
AS TRUSTEE FOR CA A CONDIPODERO FAMILY TRUST

PROPOSED GALLERY  
LOT 303 (No 5) HYEM ROAD HERNE HILL  
FOR - R. GALLAGHER

DRAWN: H. CONDIPODERO DATE: MAY 05  
SCALE: 1:100 JOB NO: C5/14/8 DRAWING NO: A2



FLOOR PLAN

DEPARTMENT OF PLANNING  
 23 JUN 2014  
 FILE 21-50431-1

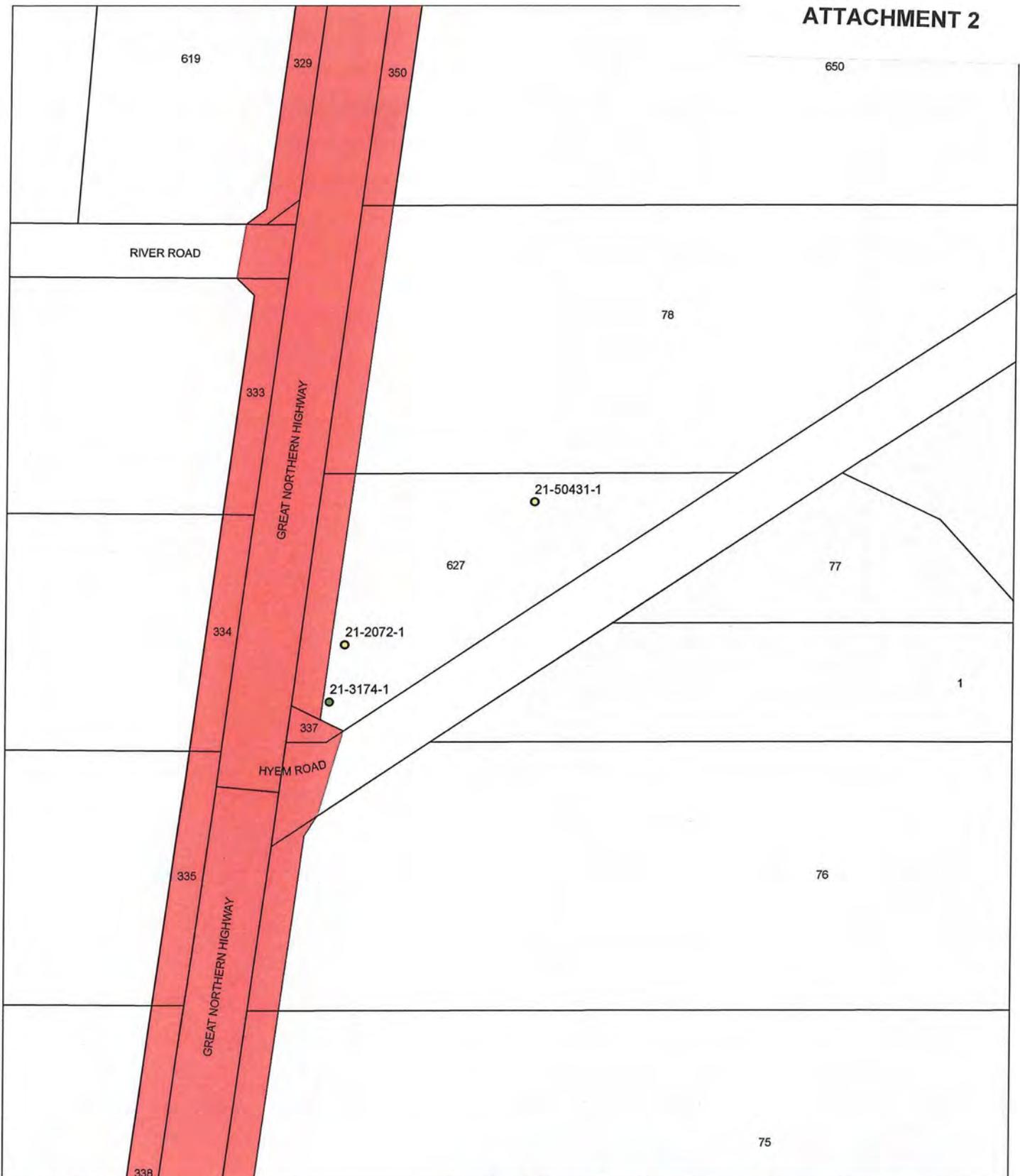


SOUTHERN ELEVATION



MAKE GOOD EXISTING FULL BRICK PREMISE  
 FOR USE AS MEDITATION HALL.  
 PROVIDE UPGRADE TO BCA CLASS 9B  
 CONSTRUCTION WHERE REQUIRED.

17/11/13	1st. FLOOR PLAN	DWG.No. MQP201	AMENDED
DRAWN: DP.	SC: 1/100	SHEET No: 2/4	-/

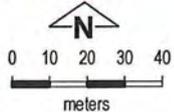


**LOCATION PLAN**

Development Application 21-50431-1

Decision: **OUTSTANDING**

Printed: 24/06/2014



Department of Planning



This data is to be used only for the processing of Development Application

**Legend**

**Development Applications**

- Approved
- Outstanding

Cadastre with Lot number

**Existing Region Scheme Reserves**

Primary Regional Roads

**Existing LPS Zone Category**

Rural



**Legend**

- Local Government Area
- Cadastre (view 1)
- Cadastre (view 2)
- Cadastre (view 3)
- Cadastre (view 4)
- W.A. Coastline
- Landgate Imagery

**Notes:**

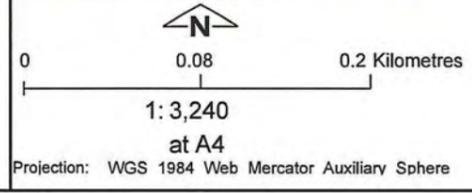
The data that appears on the map may be out of date, not intended to be used at the scale displayed, or subject to licensing agreements. This information is stored in the relevant layers metadata. For the reasons the map should not be distributed outside of the Department.

Map was produced using DoP's PlanViewWA.

**Aerial Photograph**

**INTERNAL USE ONLY**

PlanViewWA  
[Link to viewer](#)



Produced by: FUNCTIONALITY TO COME  
Date produced: 29-Jul-2020

## ITEM NO: 10.1

### RESIDENTIAL DESIGN CODES (R-CODES) VARIATIONS – ISSUES SCOPING PAPER

**WAPC OR COMMITTEE:** Statutory Planning Committee

REPORTING AGENCY: Department of Planning  
REPORTING OFFICER: Planning Manager, Urban Policy  
AUTHORISING OFFICER: Executive Director, IPPR  
AGENDA PART: A  
FILE NO: DP/14/00301/1  
DATE: 9 September 2014  
REPORT CATEGORY: Policy  
RECOMMENDATION OUTCOME: 2. A

A APPROVE  
D DEFER  
N NOTE  
R RECEIVE  
RM RECOMMEND  
RF REFUSE  
RQ REQUEST  
RV REVOKE / REPEAL  
PR PRESENTATION  
NA NO ACTION REQUIRED  
ATTACHMENT(S): Nil

#### RECOMMENDATION:

*That the Statutory Planning Committee resolves to:*

- 1. approve the preparation of amendments to the R-Codes to address variations being made to 'deemed-to-comply' standards on a systematic basis;*
- 2. note that this work will be progressed through a working group including the outer metropolitan growth councils and the development/building industry.*

#### SUMMARY:

A number of local governments and the development industry have raised concerns with the WAPC and the Department of Planning relating to the increasing use of variations to various R-Codes 'deemed-to-comply' standards advocated under

---

various planning mechanisms, specifically via Local Structure Plans and Local Development Plans (LDPs).

The type, extent and planning mechanisms used to apply R-Codes variations is inconsistent and has led to implementation issues and in some instances poor built form outcomes.

It is proposed to convene a working group of key stakeholders to identify the relevant issues and potential solutions. Proposed amendments responding to these solutions to the R-Codes (SPP 3.1) will then be drafted for SPC's consideration.

## **BACKGROUND:**

The use of LDPs are advocated in Liveable Neighbourhoods (LN) to address future development on 'constrained' sites and to enable subdivisions to be progressed without the need to be accompanied by detailed development plans. LDPs have become the primary tool to vary R-Codes deemed-to-comply standards in greenfields areas.

The ability to vary R-Codes standards via local planning policies, LDPs, local structure plans and activity centre plans are also prescribed within Part 7 of the R-Codes. Variations to various R-Codes standards outlined under R-Codes Clause 7.3.1 do not require WAPC approval. Variations to any other R-Codes standards require WAPC approval.

R-Codes variations in LDPs are inconsistent, overused and are not limited to specific constrained lots as intended under LN. Some LDPs apply to lots across entire housing estates, remove various R-Codes deemed-to-comply standards (e.g. solar access) and substantially amend various R-Codes deemed-to-comply standards (e.g. open space – minimum total % of site) to ensure compliance to facilitate large dwellings on small lots.

It has been suggested that the impacts are exacerbated by covenants imposed by some developers that require house sizes that can only be constructed on the lots if the R-Codes are varied.

Only a limited number of LDPs have been used as LN intended, for example, to guide future density intensification of the lot or for the detailed planning of schools. LDPs are generally considered on a case by case basis by local government with no guidance provided by the WAPC.

Deputations were made at the SPC meeting on 26 August 2014 by Bob Jeans, City of Rockingham, and Jane Bennett, CLE Town Planning + Design in which various R-Codes variation issues and suggested solutions were presented. The SPC requested a report outlining a process by which this issue could be addressed.

---

## **LEGISLATION / STRATEGIC PLAN / POLICY:**

### **Legislation**

Section:

*Planning and Development Act 2005*

Part 3 – State Planning Policy

### **Strategic Plan**

Strategic Goal:

1. Regulation
2. Planning

Outcomes:

1. Effective, consistent and enforceable regulation

Strategies:

1. Improve, streamline and simplify regulatory processes within a risk based framework
2. Develop agreed standards aligned to national standards and legislation.
3. Encourage innovation in the design of our communities

### **Policy**

Number and / or Name:

State Planning Policy 3.1 – Residential Design Codes  
Liveable Neighbourhoods

## **DETAILS:**

To address the issue, it is proposed to:

- convene a working group comprising the key local government and development industry stakeholders of WALGA, Building Commission, UDIA, LGPA, PIA, MBA, HIA and the outer metropolitan growth local governments (Rockingham, Swan, Armadale and Wanneroo) to discuss the issues and potential solutions with a view to achieving consensus where possible;
- incorporate the acceptable R-Code variations and implementation method into Liveable Neighbourhoods where possible, to strengthen links between structure planning, subdivision and residential development. In this regard consideration could also be given to outlining the extent that variations to the deemed to comply provisions could be entertained within local planning policies;
- prepare amendments to the R-Codes based on the outcomes of the working group to enact acceptable R-Codes variations for SPC's consideration prior to submission to the WAPC for approval to publicly advertise, thereby reducing the future need for variations to be contained within and implemented via local structure plans and or local development plans.
- Consider whether, in the interests of a rapid response to this issue, it would be appropriate to issue a Planning Bulletin containing acceptable R-Codes variations, or whether it should be directly progressed through a formal SPP amendment process.

## **GOVERNMENT AND CORPORATE IMPLICATIONS:**

Modifications to the R-Codes will provide consistency in relation to the deemed to comply provisions of the R-Codes and reduce the dependency on local development plans and or local structure plans to provide for variations.

---

Modifications to the R-Code will provide for streamlined consideration by departmental officers and local government planners, reducing time delays and costs.

**CONSULTATION:**

A working group comprising DoP, WALGA, UDIA, LGPA, PIA, HIA and outer metropolitan growth local governments (Rockingham, Swan, Armadale and Wanneroo) will be convened to assist the preparation of the Planning Bulletin.

**OFFICER'S COMMENTS:**

It is proposed that the working group be convened in September/October with a view to proposed changes to the R-Codes being presented to the SPC for endorsement (subject to any further consultation deemed appropriate) prior to submission to the WAPC for approval for public advertising.

Relevant content could be incorporated into LN as part of the finalisation of the review process.

---