

**CITY OF FREMANTLE
LOCAL PLANNING SCHEME NO. 4
AMENDMENT NO. 57**

SCHEME AMENDMENT REPORT

**CITY OF FREMANTLE
PLANNING AND DEVELOPMENT SERVICES
8 WILLIAM STREET
FREMANTLE WA 6160**

PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME

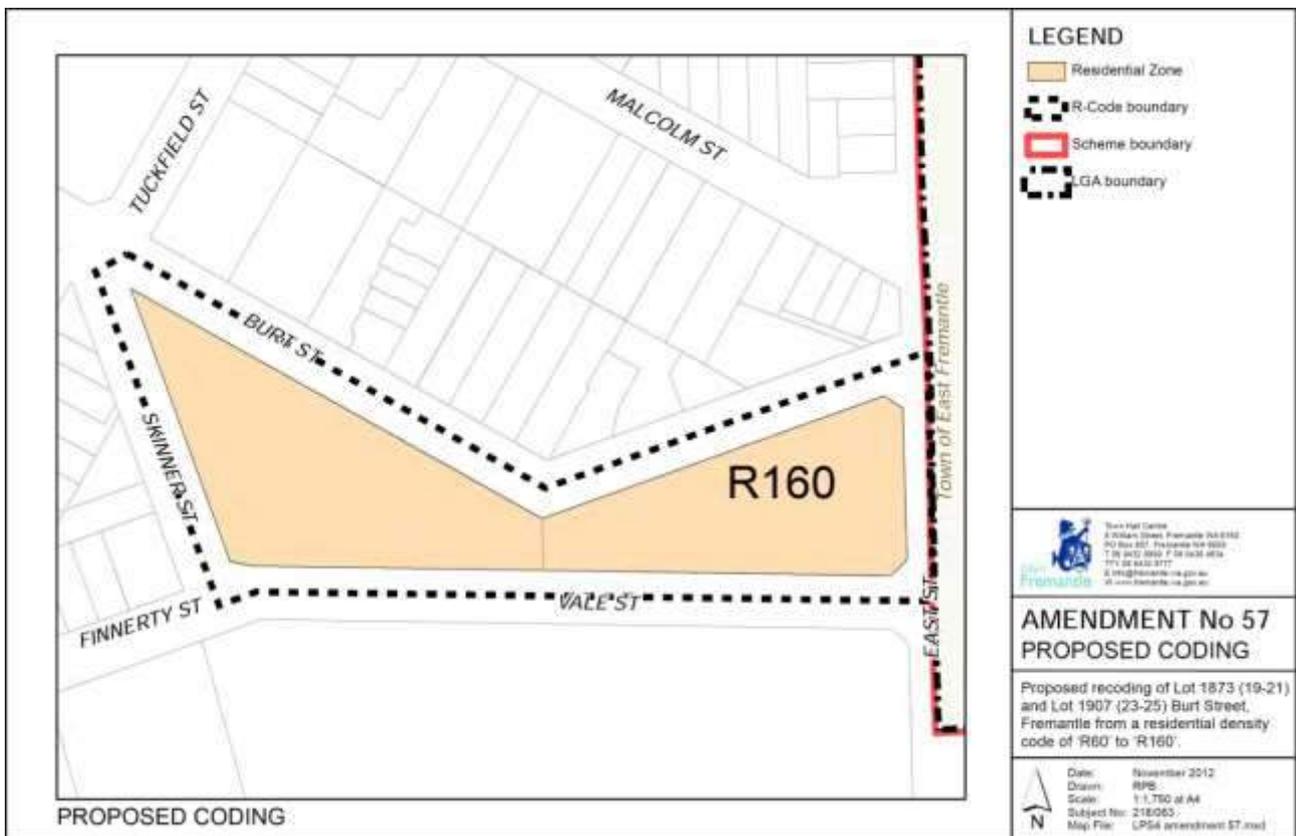
CITY OF FREMANTLE

LOCAL PLANNING SCHEME NO. 4

AMENDMENT NO. 57

RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above local planning scheme by:

- i) Amend the Scheme Map to apply a residential density coding of R160 to No. 19-21 (Lot 1873) and No. 23-25 (Lot 1907) Burt Street, Fremantle as shown on the map below:



Dated this 7th day of February 2013

.....
GRAEME MACKENZIE
CHIEF EXECUTIVE OFFICER

PROPOSAL TO AMEND A LOCAL PLANNING SCHEME

- 1. Local Authority:** **City of Fremantle**
- 2. Description of Local Planning Scheme:** **Local Planning Scheme No. 4**
- 3. Type of Scheme:** **District Zoning Scheme**
- 4. Serial No. of Amendment:** **57**
- 5. Proposal:**
Increase the residential density coding of No. 19-21 (Lot 1873) and No. 23-25 (Lot 1907) Burt Street, Fremantle from R60 to R160

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1.0 PURPOSE

1.1 SUMMARY OF PROPOSAL

This amendment to the City of Fremantle Local Planning Scheme No.4 (LPS No.4) is proposed by the Department of Housing and applies to a 13,742m² portion of land, comprising 2 lots generally bounded by Burt Street, Skinner Street, Vale Street and East Street, Fremantle.

The amendment proposes to increase the density coding of the Residential zoned properties of Lot 1873 (19-21) & Lot 1907 (23-25) Burt Street, Fremantle from 'R60' to 'R160' to provide an opportunity to redevelop the site at a higher density and to take advantage of the site's proximity to transport, educational infrastructure, public recreation spaces, high amenity and employment opportunities associated with the city centre.

This Scheme Amendment report includes a description and illustration of the proposal, and provides an evaluation of the various town planning considerations, and the rationale supporting the re-coding.

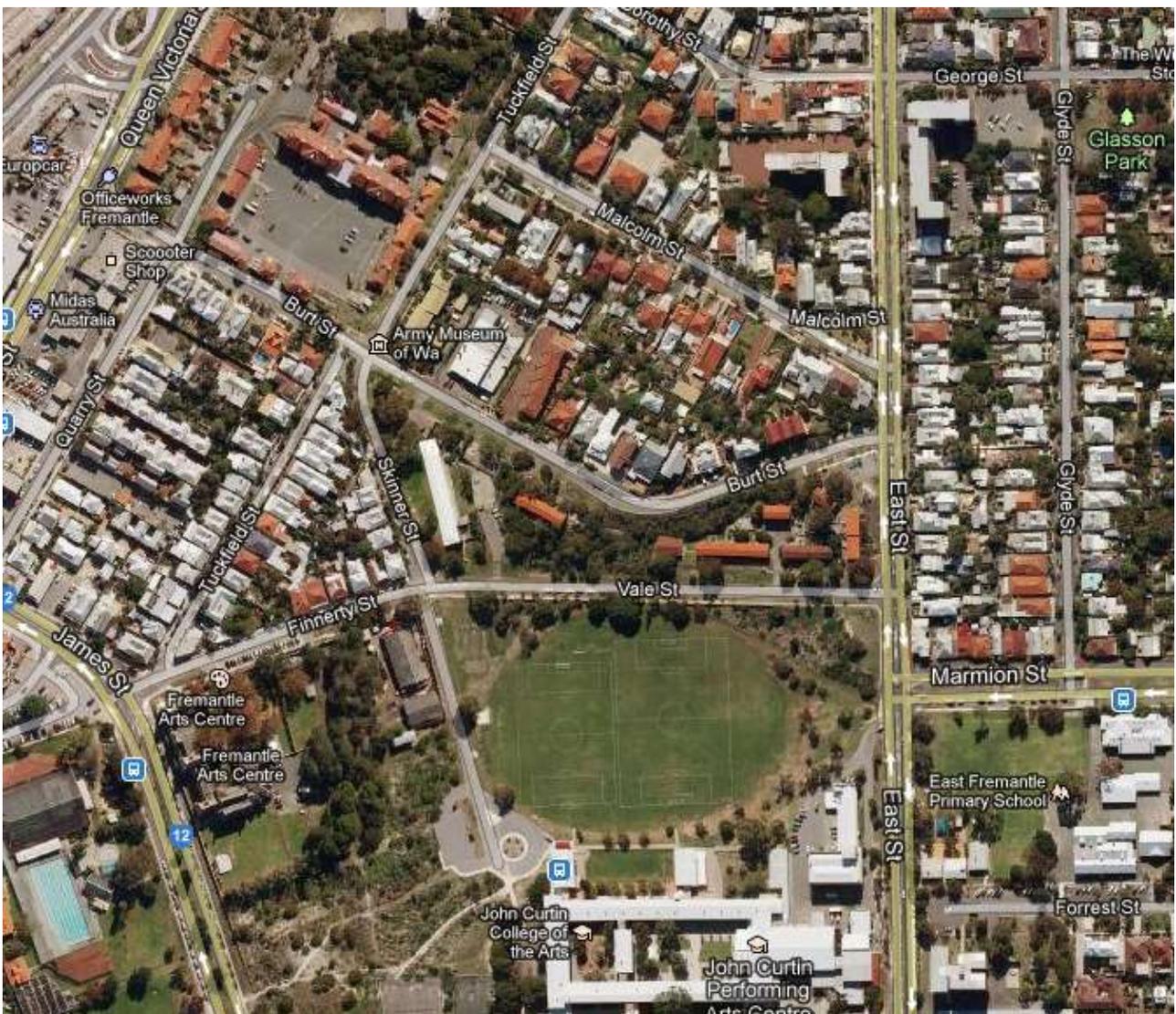


Figure 1 Location plan

1.2 ROLE OF THE DEPARTMENT OF HOUSING

Department of Housing (DoH) has a significant involvement in residential land development throughout the State, including within the metropolitan area.

Projects undertaken by the Department include large broad-hectare developments that may be developed either in-house (e.g. Bertram – Belgravia Central) or in joint-venture with a private partner (e.g. Brighton, Ellenbrook, Wellard), large scale urban regeneration projects under the New Living brand (e.g. Balga, Kwinana, Coolbellup, Midland), and many smaller infill residential developments.

An element of the Department's development activities includes the acquisition and redevelopment of surplus government land, allowing the Department to satisfy its obligation of the delivery of public housing outcomes, contribution to private sector housing affordability, and achieving a reasonable financial outcome to State Government.

Consistent with the Department's 'State Affordable Housing Strategy' and requirement to undertake strategic redevelopment in accordance with the State Governments urban consolidation and growth strategy *Directions 2031 and Beyond*, the Department is equally focused on opportunities to deliver high quality mixed-use urban redevelopment projects in well located inner urban areas. The subject lots are suitable for this purpose and represent the opportunity to deliver exemplar housing product with a mixture of tenure (public, affordable and private) to satisfy the housing diversity aspirations of Government.

The sites were acquired by the former State Housing for the purpose of public housing provision. The Commission received planning approval for the development of seven multiple unit developments across both sites in 1972 and a subsequent planning approval for an associated community centre in 1976.

In 2011, the Department of Housing sought approval of the Western Australian Planning Commission (WAPC) to demolish the community centre and six (6) of the apartment buildings under the *Public Works Act*. Consistent with the demolition approvals process, the application was forwarded to the City of Fremantle for comment. The City proceeded to undertake a Heritage Assessment in line with the City's Local Planning Policy 1.6 Preparing Heritage Assessment which revealed that 'the place had limited or no heritage significance'. The City of Fremantle therefore recommended approval for the demolition of six multiple dwelling buildings and community centre on the 2nd September 2011. The sites were subsequently cleared of these structures. Currently only one of the original multiple dwelling apartment blocks nearest to Skinner Street remains onsite. It is the Department's intention to demolish and redevelop this land portion following successful rezoning.

The site is extremely well located being within close proximity to public transport, educational institutions and public recreation lands rendering it a suitable for residential redevelopment. Given the sites prominent location and topography, careful consideration of context, design aesthetics, build form massing and height will be undertaken. The City of Fremantle and the Department of Housing have agreed to progress the scheme amendment and control development via the application of the Statement of Planning Policy 3.1: Residential Design Codes. The R Codes provide the basis for permissible building height, plot ratio and open space amongst other planning requirements. Given that detailed design cannot be determined without the appointment of a joint venture development partner contingent on some degree of certainty over the proposed higher zoning, the Department and the City of Fremantle have commenced the preparation of a Deed to

secure specific outcomes from the development. The Deed sets out development requirements relating to the subject sites should redevelopment occur at the higher density, including the housing diversity and affordability outcomes, vehicle access, building height and sustainable design.

The Deed is to be progressed concurrent to the rezoning process and is presented in draft format alongside this Scheme Amendment document.

2.0 BACKGROUND

2.1 PLANNING CONTEXT

2.1.1 LOCATION, AREA AND OWNERSHIP OF PROPERTY

The subject site is two separate lots. The western lot is legally described as Lot 1873 on Deposited Plan 210544 as contained on Certificate of Title Volume 1360 Folio 142. The eastern lot is legally described as Lot 1907 on Deposited Plan 210544 as contained on Certificate of Title Volume 1360 Folio 143.

The subject sites are located in the City of Fremantle approximately 14 kilometres south west of Perth CBD. No.'s 19-21 (Lot 1907) and 23-25 (Lot 1873) Burt Street, Fremantle, are located approximately 1km north east of the Fremantle city centre and are wholly bound by Burt, East, Vale and Skinner Streets, with a combined total land area of 13,738.9m².

The subject sites are adjoined by John Curtin College of the Arts to the South, the Fremantle Arts Centre to the south-west, the Local Government Authority Boundary within the Town of East Fremantle to the east, and medium density residential development to the north and east. The two sites slope significantly from east to west. Both Lots are owned by the Department of Housing ('Housing Authority').

LOT No.	AREA	OWNER
23-25 (Lot 1873)	6,131m ²	HOUSING AUTHORITY
19-21 (Lot 1907)	7,611m ²	HOUSING AUTHORITY
TOTAL AREA	13,742m²	



Figure 2 Aerial photograph of subject site

2.1.2 EXISTING AND SURROUNDING LAND USE

No.'s 19-21 (Lot 1907) Burt Street is currently vacant and 23-25 (Lot 1873) Burt Street, Fremantle, is currently occupied by a one remaining multistorey unit. The site has frontage to Vale Street to the south, Skinner Street to the west and East Street to the East. The site is situated within 500 metres of the Fremantle city centre, 300 metres of George Street mixed use precinct and 1000m of the East Fremantle neighbourhood centre (Canning Highway).

The subject lots have historically been developed and used for the purposes of medium density multiple dwelling residential buildings (up to three (3) stories) and associated community buildings within landscaped grounds. The subject land now represents a large expanse of well drained predominantly vacant land suitable for redevelopment.

Existing adjoining and nearby land uses are broadly described as follows:

- North/North East: Medium to high density residential land use;
- North West: Commonwealth land (military);
- South: Educational land uses, namely, John Curtin College of Arts, associated playing grounds and East Fremantle Primary School;
- East/South East: Medium density housing, vacant land and Fremantle Arts Centre.

The lands sloping topography presents the opportunity for innovative design and the delivery of appropriate higher densities without significant impact on surrounding land uses. The surrounding built form (within 150 metres) ranges from single storey single detached houses, two/three storey grouped dwellings and town houses and up to eight (8) storey multiple dwelling units. The sites topography and the existence of a limestone cliff face along the northern site periphery, renders the majority of residential development to the north and east at a significantly higher in elevation. This landscape encourages frontage, connection and future built form orientation towards the south and west overlooking the John Curtin playing grounds providing excellent amenity.

Vale Street provides convenient access to the city centre and recreation lands (Leisure Centre) whilst East Street provides convenient access to both Canning Highway and High Street acting as major east west connectors. The sites are well serviced by numerous bus routes from East Street and Vale Street which provides access to the Fremantle city centre, inner harbour precinct as well as bus connection to the east via Marmion Avenue. The subject site has ample access to public transport including the provision of two bus stops within 200 metres of the subject site which provide high frequency services (every 10 to 15 minutes) during peak times.



Figure 3 Public transport connections (bus)

Having regard for the sites central location, within walking distance to the Fremantle city centre, and the land's historic use accommodating residential dwellings, there does not appear to be any physical characteristics that would constrain the ability to re-code and develop the land for higher density residential land use. Furthermore, the development is within close proximity to the 'East End' Precinct where the City has traditionally sought to increase densities to support redevelopment and commercial revitalization. In the context of surrounding built form and amenities discussed above and illustrated below, the site is considered appropriate for high density residential development.



Figure 3 Site Context

2.2 PLANNING FRAMEWORK

2.2.1 STATE GOVERNMENT

STATE PLANNING STRATEGY

The subject site is identified as being within an 'Urban Area' in the Perth Region in the Western Australian Planning Commission (WAPC) State Planning Strategy. The future development of the subject site is in keeping with the principles and objectives where it asserts the need to ensure land close to the appropriate amenity, community facilities and public transport opportunities are more intensively used.

DIRECTIONS 2031 AND BEYOND

Directions 2031 and beyond has been adopted as a strategic document intended to set the direction towards shaping the future of our metropolitan area. This document predicts that the Perth and Peel region will house a population of more than 2.2 million people. This is an additional 556,000 people on today's population. To accommodate this level of growth a further 328,000 dwellings and approximately 356,000 jobs will be needed.

Directions 2031 and beyond makes the proposition that a more compact city is desirable, the implication being that the community needs to focus on achieving more consolidated development in appropriate, existing urban locations.

On current trends it is estimated that the amount of infill residential development achieved as a proportion of total development between now and 2031 will be between 30 and 35 per cent. The preferred scenario under *Directions 2031* seeks a 50 per cent improvement on current trends and has set a target of 47 percent or 154,000 of the required 328,000 dwellings as infill development.

The proposed Scheme amendment and future redevelopment will assist in achieving these dwelling targets.

DRAFT CENTRAL METROPOLITAN PERTH: SUB-REGIONAL STRATEGY

The *draft Central Metropolitan Perth: sub-regional strategy* is intended to provide guidance to assist in the application and delivery of *Directions 2031 and beyond* at a local level. The Strategy provides specific information relating to the expected growth of each local government area as well as apportioning target dwelling yields for infill development.

The sub-regional strategy identifies Fremantle as a metropolitan centre suitable for strategic urban growth and redevelopment given its strong public transport links, employment opportunities and existing essential services/public infrastructure. Accordingly, the Draft Central Metropolitan Perth: Sub-Regional Strategy has proposed an increased yield of 3500 dwellings within Fremantle by 2031.

The City has since reviewed the target figure in the context of the potential capacity of redevelopment sites such as Knutsford Street/Swanbourne Street, McCabe Street and Strang Street Development Areas as well as plans for the city's 'East End' finding that existing identified sites can easily accommodate the projection. Accordingly, prior to the adoption of the Draft strategy, the City of Fremantle provided a detailed submission to the Western Australian Planning

Commission indicating that the proposed target dwelling yield may be unreasonably conservative. The City requested that the Commission consider their proactive work in facilitating infill through inner city rezoning and the progressive redevelopment of the 'East End' precinct. Recent analysis including the proposed rezoning of the subject sites has revealed greater capacity to accommodate growth and residential populations within the city. Accordingly, the City offered a more realistic figure upward of 4,500 new dwellings.

The proposed scheme amendment will facilitate development which is considered to be consistent with the consolidation, revitalisation, and transit orientated principles supported in the *draft Central Metropolitan Perth: Sub-regional Strategy*.

REGION SCHEME

The MRS provides the statutory mechanism to assist strategic planning and the coordination of major infrastructure in the Perth Metropolitan Region.

The subject site and the majority of land immediately surrounding it are zoned 'Urban' under the MRS. Neighbouring commercial, educational and industrial reservations provide essential services and potential employment opportunities. Similarly, Canning Highway and Leach Highway provide convenient links to nearby employment centres and greater Perth.

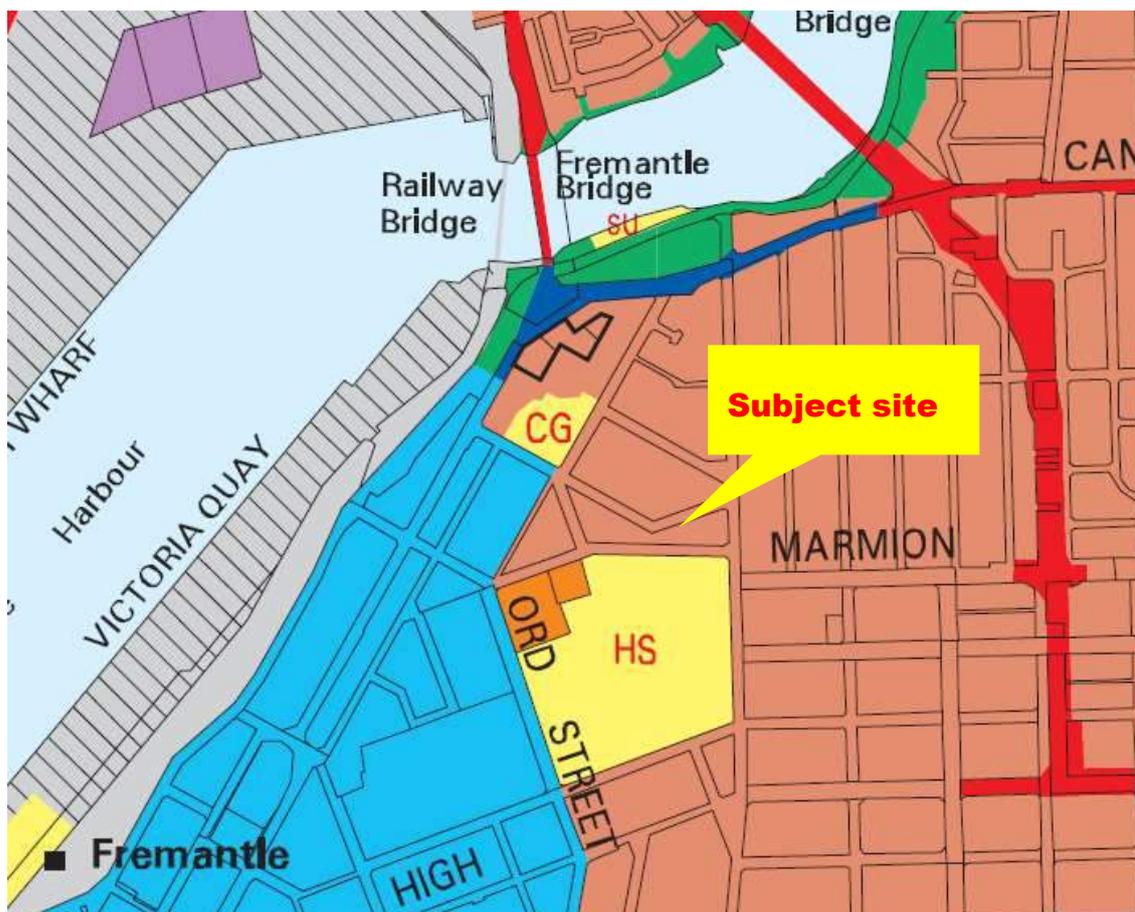


Figure 4 MRS zoning and reservations

STATE PLANNING POLICIES

The future development of this site is proposed to be in accordance with the current state planning framework. Specifically, the project will be developed in accordance with the applicable provisions of the Residential Design Codes of Western Australia and Liveable Neighbourhoods (if applicable).

DEVELOPMENT CONTROL POLICIES

The site is located on several public transport routes and within 1200 metres of the Fremantle Train Station. Accordingly, Development Control Policy 1.6 Planning to Support Transit Use and Transit Oriented Development is of relevance to the proposed re-coding of 19-21 (Lot 1907) and 23-25 (Lot 1873) Burt Street, Fremantle. DC 1.6 seeks to maximise the benefits to the community of an effective and well used public transport system by promoting planning and development outcomes that will sustain public transport use and achieve a more effective integration of land use and public transport infrastructure.

A key objective of DC 1.6 of relevance to the re-coding proposal is that higher density residential development should be encouraged close to transit services, increasing the potential for those residents to look to transit as a travel option. As previously discussed, the subject site and future local scheme amendment is considered to be consistent with the objectives of DC1.6.

2.2.2 LOCAL GOVERNMENT

Local Planning Scheme No. 4

The site is situated within the City of Fremantle, and is classified as “Residential R60” under the City’s Local Planning Scheme No.4. This Scheme Amendment proposes to change the density code of the Residential zoned land of the subject sites to a density code of R160.

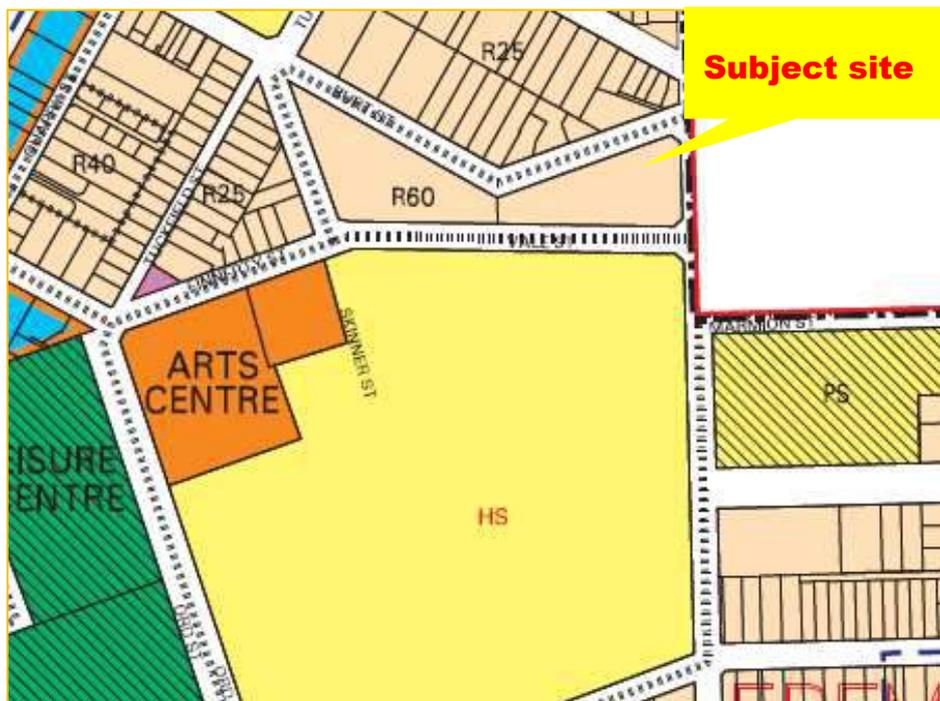


Figure 6 Extract of City of Fremantle Scheme Map

LOCAL STRATEGIC PLAN

The City of Fremantle Strategic Plan 2010-15 articulates the City's vision and objectives for the creation of a vibrant, creative and innovative, diverse and sustainable city. The strategy identifies seven key themes and values to achieve this vision, highlighting housing diversity (mixed use/tenure) and affordability as a strategic imperative and a fundamental precursor to a liveable city and sustainable community.

Housing must provide for the diverse needs of households of varying size and composition, and appropriate forms of housing must be accessible to the entire cross section of our population. The Department of Housing, through the development of the subject site and others within Fremantle, continually seeks to deliver dwellings types appropriately designed and priced to bolster the affordability and dwelling diversity that is currently lacking in the marketplace. The provision of single, two and three bedroom dwellings through innovative apartment typologies in Cockburn Central, the Perth CBD and new town centres such as Ellenbrook town centre are just a few examples of this type of work.

The Strategy acknowledges the marked decrease in housing affordability for both tenants and first homebuyers in the past 10 years and the steep increase in land values which is compounding the necessity for the provision of public housing. The Strategy also acknowledges the role that infill development and strategic densification (in areas such as the 'East End') plays in support of and supply of housing diversity and efficient accommodation of growth.

Since the strategies inception, the Governments *State Affordable Housing Strategy* has been released by the Department of Housing. This strategy acknowledges resistance to medium and high density development due to previous poor design practices, which have in the past created a lasting impression of large sterile spaces with uninteresting facades and a lack of integration with other activities. The Department of Housing is continually seeking to redefine this public perception by employing thoughtful, innovative yet cost effective design solutions.

The Strategy clearly supports planning to facilitate the provision of additional housing stock in major brownfield re-developments such as Fremantle, Stirling City Centre and the Transit Precincts. The subject site, being in close proximity to the town centre, is a natural extension of the infill and redevelopment already occurring in the City's 'East End'.

POLICIES

The proposed Scheme amendment has been developed in consideration of applicable City policies, in particular, Community Services Policy *SG47 - Diverse and Affordable Housing Policy*. This Policy communicates the City's housing aspirations including key strategies and action to facilitate and enable housing diversity and affordability within the City.

Within the Policy, 'diverse housing' refers to dwelling and lots sizes, density, dwelling types (units, apartments, student housing, etc), design features, tenure, adaptability and affordability. Policy actions to achieve this vision include contribution to research and cooperation with industry, directly influencing provision through employing planning mechanisms (applying density bonuses and mandating minimum proportion of affordable housing in new developments) and the provision of Council owned land to accommodate the construction of affordable housing.

The Amendment seeks the development of a wide range of dwelling types and therefore reinforces a more diverse community. The area is ideally located regarding proximity to public transport and to various community services and facilities and the widest possible range of the community should be given the opportunity to live in the area. Smaller units would typically be cheaper and more affordable for the 'key workers' who allow Fremantle to function.

It is relevant to distinguish the difference between 'affordable housing' and 'social/public housing'. *Affordable housing* can be defined as encompassing range of housing options to meet affordability of low to moderate income earners, whilst *social housing* is housing sold or rented to eligible people by the State Housing Authority or not for profit housing providers, with eligible purchasers or tenants determined by the relevant housing provider.

It is considered that through the planning scheme the Department can assist the Council in addressing affordable housing, whilst social housing should remain the responsibility of relevant state and not for profit housing organisations.

The proposed Amendment will see the delivery of approximately 200-250 new dwellings in a high density arrangement comprising a range of housing types, sizes and tenure consistent with the Policy intent. The Department has made a commitment through its *Deed of Covenant* with the City to deliver between 10-15% of total yield in the form of public housing in addition to which 30% of the total yield will be delivered to the market in other forms of affordable housing (shared equity, income eligibility).

Accordingly, the re-coding of the subject sites will allow for the delivery of a substantial portion of affordable housing in line with the City's Diverse and Affordable Housing policy.

3.0 PROPOSAL

3.1 DETAIL OF PROPOSAL

3.1.1 PROJECT RATIONALE SUMMARY

The Amendment proposes to re-code Lot 1873 (19-21) & Lot 1907 (23-25) Burt Street from 'R60' to 'R160' to enable the redevelopment and achievement of affordable housing outcomes consistent with government policy and the strategic vision for Fremantle as a strategic metropolitan centre (please see the Scheme Amendment mapping at Attachment 1).

The Amendment is to allow the redevelopment of the subject sites comprising a mixture of social rental housing, other 'affordable housing' tenures such as shared equity and subsidised private rental housing, and market housing for sale. It is considered that a density of up to R160 is necessary to enable redevelopment to achieve a yield that would render the project financially viable.

The subject sites are well located within close proximity to the Fremantle city centre, essential services, public recreation facilities and transport. The subject sites are well located for high density residential development and present an appropriate and highly desirable opportunity for infill development that would take advantage of the high amenity and walkability of the area. The site has a number of locational advantages, including close proximity to a local and district activity centre, high frequency public transport (bus and train) and areas of high amenity (parkland and Fremantle/Harbour views). Furthermore, the higher density coding would allow the City of Fremantle to maximise its contribution to the Governments strategic consolidation aspirations in keeping with Directions 2031 and beyond as well as provide the opportunity to deliver public, private and affordable housing stock within the City.

The proposed Scheme Amendment is considered to accord with the objectives of the Directions 2031 and beyond and subsequent draft Central Metropolitan Sub-Regional Strategy. The sub-regional strategy identifies Fremantle as being a major growth area with an anticipated additional dwelling yield of 3500 or more. The strategy identifies this location as being a key element to the sub-region's urban structure which coincides with medium and high density housing.

The subject site represents one of less than a hand full of large opportunity development sites remaining in this locality. The redevelopment of underutilised sites is complementary to the overall planning strategy for the Perth region, in that it promotes efficient land use through infill residential development. The proposed scheme amendment would therefore support development on the basis of sound consolidation principles. The sites location adjoining parkland and sloping topography provides the capacity to create significant density and height without excessively compromising neighbouring development or neighbourhood character. As such the proposed density code of R160 is considered appropriate to ensure the delivery of a significant and financially viable infill project.

The Deed of Covenant between the City of Fremantle and the Department of Housing sets out the Departments commitment to deliver diverse and affordable housing consistent with the City's local planning policy and strategic intent. The subsequent development of the site by DoH would therefore contribute to the delivery of a range of much needed affordable housing in Fremantle.

On this basis, it is requested that the City formally initiate the local planning scheme amendment process and advertise the proposed re-coding to the local community and service authorities for comment prior to final consideration.

3.2 DEVELOPMENT POTENTIAL

3.2.1 DEVELOPMENT

The properties are located within Schedule 12: Local Planning Area 2 (LPA2) – Fremantle and are currently zoned 'Residential' under Local Planning Scheme No. 4 (LPS4), with a residential density coding of R60. The topography and location of the site, combined with the City and Departments collective vision of a high quality mixed tenure redevelopment (public, affordable and private housing), would require a significant increase to the existing residential density to enable redevelopment to achieve a yield that would render the project financially viable. Accordingly, the site is intended redevelopment to accommodate higher density residential land use consistent with the provisions of the City of Fremantle Local Planning Scheme, Policies and SPP3.1 - Residential Design Code at the R160 development density.

Under LPA2, the height provisions for 'Residential' development are as per the requirements of the Residential Design Codes (R Codes). Under the R Codes, for multiple dwellings with a density of R60, a maximum external wall height of 9 metres is allowed, with a maximum roof height of 12m (top of pitched roof). Additionally, under the current density of R60, at Table 4 of the R Codes, a maximum plot ratio of 0.7 for multiple dwellings is allowed, with a minimum of 45% of the site as open space. Neither of the subject sites are located on the City's Heritage List, however they are located within an area of high heritage significance due to their proximity to the State Heritage listed Fremantle Arts Centre.

Public Works under the WAPC's 'Planning Bulletin 94 – Approval requirements for Public Works and Development by Public Authorities' and section 6 of the *Planning and Development Act 2005* (PD Act), the Department of Housing, as a public authority, is permitted to undertake public work without obtaining development approval from the responsible authority under the relevant planning scheme. However, the public authority is required to consult with the relevant local government authority and public works undertaken under the Metropolitan Region Scheme (MRS) requires application to the WAPC for development approval. The City's Scheme supports this at clause 8.2 (j) of LPS4, permitting 'works by any public authority acting pursuant to the provisions of any Act on, in, over or under a public street, or works for a utility service.' However, the public authority are still required to comply with requirements of section 6(2) and (3) of the PD Act whereby they must have regard to the purpose and intent of the City's Scheme, have regard to the principles of proper and orderly planning and the amenity of the area, and are to consult with the City when a proposal for public works is being prepared. Also of note, only public housing, and not private market housing, is considered public works under the *Public Works Act 1902*. Accordingly the proposed development is not considered a Public Work and will be considered under the City of Fremantle Local Planning Scheme No.4.

Whilst the Residential Design Codes prescribe acceptable development form, given the site unique topography, prominent location, access to inner harbour views and location within an established neighbourhood, greater consideration of built form control may be required.

The DoH proposes to deliver this project through a joint venture arrangement with a private sector developer, secured through a tender process. DoH is therefore seeking an amendment to the scheme to allow for development at a higher density, prior to engaging in the tender process as this approach provides greater certainty to the potential developer.

The DoH acknowledges that the City cannot reasonably be expected to support a 'blanket' up-coding to a substantially higher density in the absence of a clear design proposal. However a detailed design for any redevelopment would not be prepared until after a joint venture partner has been appointed. To address this issue and attempt to provide some level of certainty to the City and the local community about future development outcomes, and in exchange for allowing a significant increase in the residential density of the subject sites, the Department proposes that concurrent to commencement of this Scheme amendment process a Deed of Covenant is entered into between the City of Fremantle and the DoH.

In consideration of the above, the City of Fremantle and the Department of Housing have prepared a Deed to secure specific outcomes from the redevelopment of the subject sites (please see Attachment 3). The Deed is intended to set out development requirements relating to the subject sites should redevelopment occur at the higher density, including the following:

- Housing diversity and affordability outcomes
- Vehicle access
- Building height

Accordingly, the City has agreed to use its reasonable endeavours to procure the re-coding on the terms and conditions contained within the Deed. In order to comply with the City's terms and conditions in respect of the re-coding, the DOH (the 'Authority') has agreed to enter into this Deed with the City.

The draft Deed sees the Authority agreeing to apply the following development requirements to the Development Application:

- (a) where the development proposes 180 dwellings or less:
 - (i) between 10% and 15% of the dwellings are to be in the form of Public Housing; and
 - (ii) at least 30% of the dwellings (which is not to include the dwellings referred to in paragraph (i)), are to be in the form of Affordable Housing;
- (b) where the development proposes in excess of 180 dwellings:
 - (i) between 10% and 15% of the first 180 dwellings must be in the form of Public Housing;
 - (ii) at least 45% of the first 180 dwellings must consist of a mix of Public Housing and Affordable Housing (including the Public Housing referred to in clause 2.4.(b) (i));
 - (iii) the balance of the first 180 dwellings may be in any form capable of approval under the Scheme; and

- (iv) all dwellings in excess of the first 180 dwellings must consist of a diverse range of specialised accommodation types which may include dwellings that are adaptable to accommodate people with disabilities, studio or single bedroom dwellings, aged or dependant persons' dwellings, artist studio dwellings and dwellings for students and key workers and these dwellings may be in the form of Affordable Housing or a form suitable for sale on commercial terms in the residential property market;
- (c) at least 25% of all dwellings shall be designed so they are readily adaptable to accommodate people with disabilities in accordance with the provisions of Australian Standard AS4299-1995 relating to adaptable housing class C;
- (d) primary vehicle access to the development shall be from Vale Street;
- (e) the maximum height of the development shall not exceed the Australian Height Datum height plane identified in Annexure A ;
- (f) The development shall be designed to achieve a rating of not less than 5 Star Green Star using the relevant rating scheme adopted by the Green Building Council of Australia;
- (g) the development shall incorporate public art equal in value to 1% of the Development Cost which shall:
 - (i) be located within 200m of the nearest boundary of the Land; and
 - (ii) conform with the objectives and requirements of the Percent for Art Scheme as amended from time to time and in consultation with the City; and
- (h) the development shall conform with the following objectives for landscaping and parking:
 - (i) integration with the surrounding public areas;
 - (ii) opportunities to retain existing trees and provide significant areas of new planting;
 - (iii) retention and/or interpretation of any features of cultural heritage or landscape significance;
 - (iv) improved and increased parking to accommodate visitors to the development and address the existing high demand for parking in the surrounding area; and
 - (v) physical and visual connectivity through the site.

The development requirements as set out in the Deed will take precedent over the Residential Design Codes where it applies to building height. The development requirements are intended to realise full development potential of the subject sites with minimum impact on surrounding land uses. In addition, the Deed sets out that prior to the lodgement of the Development Application with the City, the Authority shall carry out the following:

- a) consultation with the local community in accordance with a community engagement strategy to be developed in consultation with the City; and
- b) at least two consultations with the City's Design Advisory Committee.

Furthermore, the Department may develop the subject sites in a manner that does not comply with the development requirements set out in clause 2.4 of the draft Deed and as above, provided that the Department does not undertake residential development on the subject sites which exceeds a

density consistent with the R60 residential density code, notwithstanding that the proposed Amendment to re-code the subject sites to R160 has been made and approved.

3.2.2 SERVICING, ENVIRONMENTAL AND CULTURAL HERITAGE FACTORS

The site is located within an established urban residential area. As such the site is well serviced with all services, including public roads and all essential utility services. Preliminary investigation has shown that the surrounding services are considered to have sufficient capacity to serve the proposed development. Given site topography, future development will need to take access from Vale Street frontage.

The existing sites are currently serviced by Water Corporation or Western Power and all essential service infrastructure is readily available. Sewer connection is provided via Vales street with a portion of sewer traversing the north western corner of the site. This is not represented as an easement on the title for Lot 1873, however, will need to be considered as a constraint for future design and construction. Gas availability and pressure is not uniform across both sites. WA Gas Net has advised that a medium pressure gas main is available for both sites via Skinner Street or Burt Street to service future development. A low pressure gas main is also available via East Street, however, this connection point was not recommended by the service provider.

A desktop survey reveals that no portion of the subject site is considered to have risk of acid sulphate soils. Prior to development, the site will undergo geotechnical investigation to ensure the site is adequate for the proposed land use. The geological formation will be investigated through detailed geological survey undertaken concurrent to future site planning.

A recent search of the Department of Environment and Conservation database has shown that there is no identified contamination onsite. No flora or fauna study has been undertaken as the majority of the site has been cleared and is now vacant. As such the site does not accommodate any protected species as identified under Commonwealth or State legislation.

A recent search of the Department of Indigenous Affairs database (June 2011) has indicated that there are currently no Aboriginal sites on the subject site, however, has been the subject of a broader Aboriginal Heritage Survey. It is noted that Fremantle is in the traditional land of the Noongar Aboriginal people and has.

3.2.3 URBAN DESIGN AND COMMUNITY IMPLICATIONS

The proposed LPS amendment would facilitate medium to high density residential development. Detailed urban design considerations, such as building height, site access, interfaces with adjacent uses, built form control will be addressed through the development process and in accordance with the Deed of Covenant. The Department will seek to ensure an appropriate level of design quality is achieved as a requirement of infill densification to minimize risks to the community of adverse outcomes that are known to be associated with poor quality developments that seek to increase density.

Future development of the site is intended to provide opportunities for affordable housing by offering additional housing choices to that provided within the existing Fremantle community. Such housing choices could include a range of dwelling types for singles or couples, more affordable dwellings for first homebuyers and housing appropriate for retirees to downsize within their existing community (“aging in place”).

4.0 CONCLUSION

The Department of Housing is an experienced land developer, and has a history of working with Local Government and State agencies to deliver positive urban redevelopment outcomes.

The primary justification for the proposed amendment includes:

- The site being suitable for infill residential development which corresponds with the zoning proposed;
- The proposed amendment facilitating efficient use of existing urban land;
- The proposed amendment facilitating the delivery of greater housing choice and diversity in the locality;
- The proposed amendment facilitating the delivery of additional affordable housing options within the locality;
- The site representing a good opportunity for housing that is well located in terms of transport, employment, education, essential services and shopping facilities and capable of being readily connected to engineering services.

On this basis, the proposal is considered consistent with the principles of proper and orderly planning.

PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME

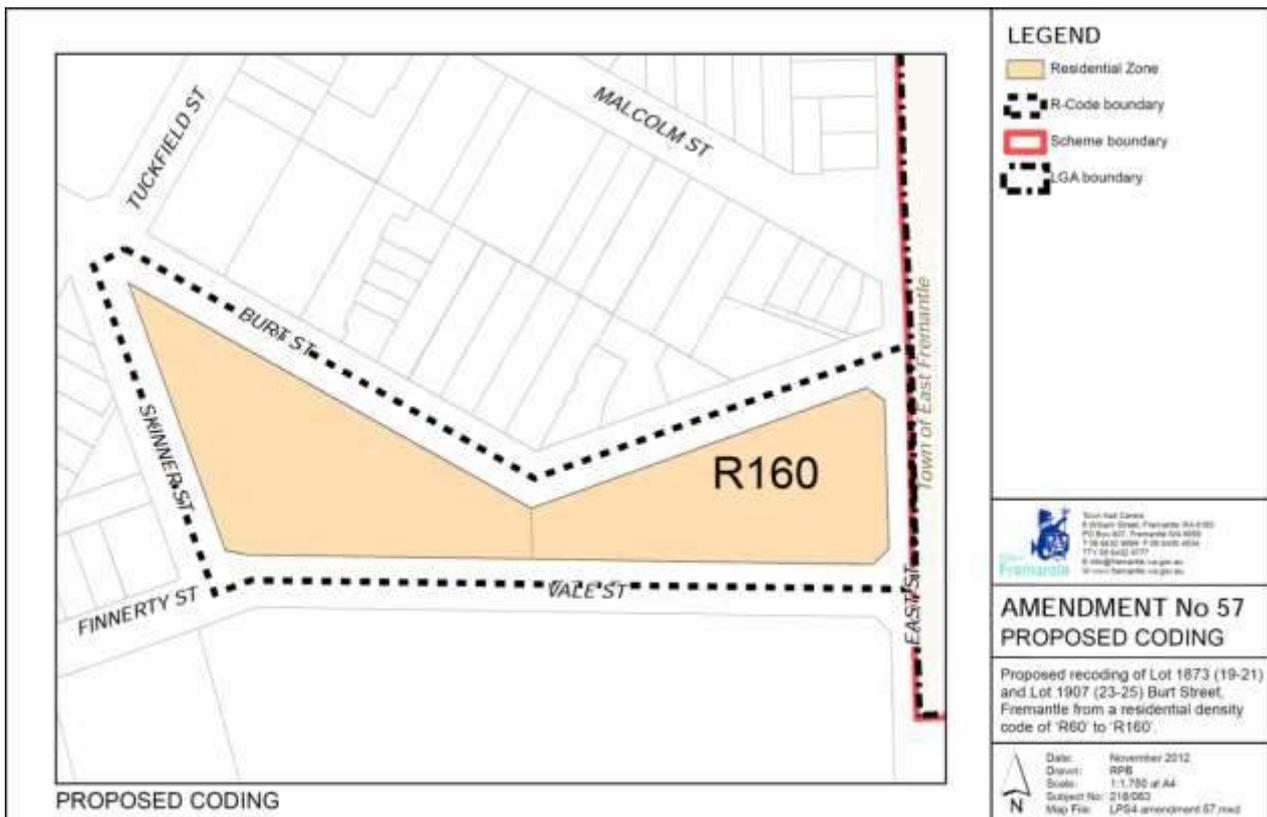
CITY OF FREMANTLE

LOCAL PLANNING SCHEME NO. 4

AMENDMENT NO. 57

RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above local planning scheme by:

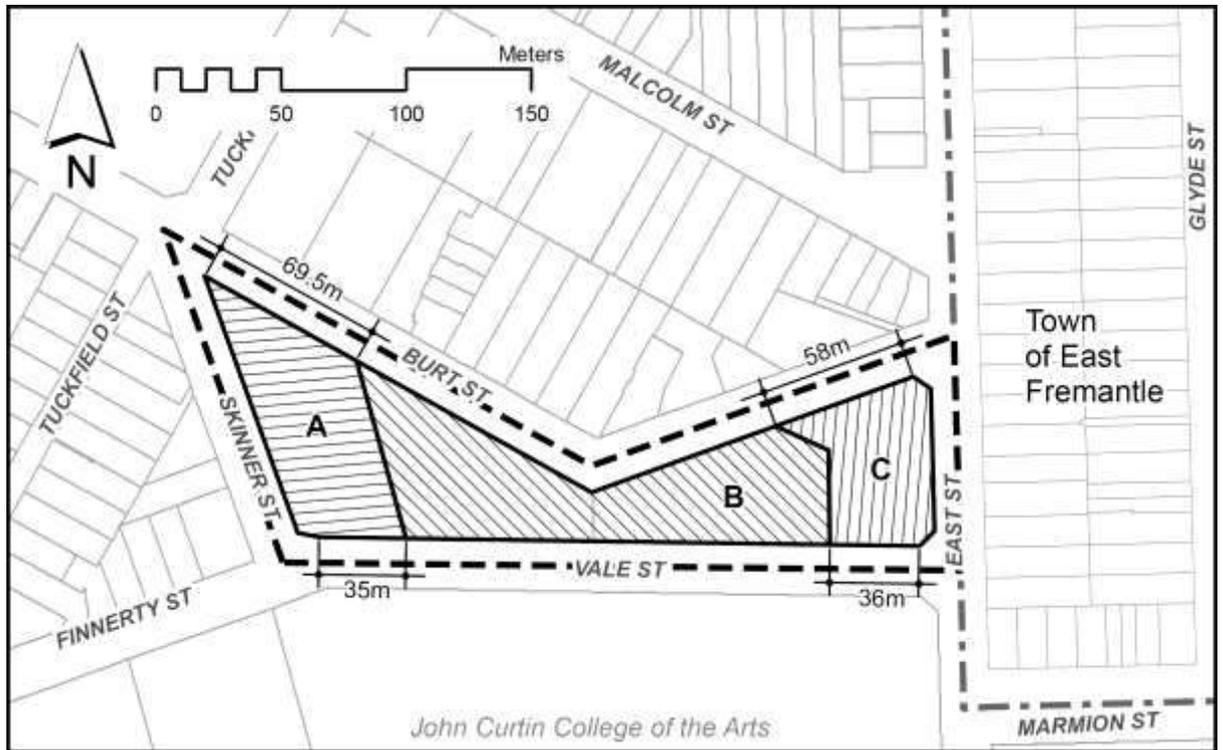
- i) Amend the Scheme Map to apply a residential density coding of R160 to No. 19-21 (Lot 1873) and No. 23-25 (Lot 1907) Burt Street, Fremantle as shown on the map below:



- ii) Amending Clause 12.12 Schedule 12 Local Planning Areas (Development Requirements) Local Planning Area 2 – Fremantle by inserting the following:

**SCHEDULE 12: LOCAL PLANNING AREA 2 – FREMANTLE
SPECIFIC DEVELOPMENT CONTROLS FOR SUB AREAS**

2.3.4 Sub Area 4



- a) Clause 2.1 'Height controls' and clause 2.2 'Matters to be considered in applying general and specific height controls' of Local Planning Area 2 do not apply.
- b) Building height and setbacks
- i) The highest part of any building shall not exceed the Australian Height Datum levels as set out in the table below for Area's A, B and C of Sub Area 4 above:

Area	Australian Height Datum (metres)
A	37
B	40
C	42

- ii) In Area A, in addition to complying with the height requirements in the table above, no part of any building may project above a height plane measured at an angle of 22.5 degrees above horizontal at a height of 28m AHD along the property boundary on the east side of Skinner Street.
- iii) Notwithstanding the street setback requirements of the Residential Design

Codes, in Area C of Sub Area 4, the minimum street setback shall be 5 metres at the lot boundary to East Street.

c) Car parking and vehicle access

- i) Primary vehicle access to the development shall be from Vale Street;**
- ii) A Traffic Impact Assessment undertaken by a suitably qualified traffic engineer shall be submitted in support of application for planning approval.**

d) Other design requirements

Development shall satisfy the following design requirements:

- i) Retain and/or interpret any features of cultural heritage or landscape significance;**
- ii) Maximise opportunities to retain existing trees and provide significant areas of new planting;**
- iii) Landscaping treatment of the street verge, including the provision of vehicle parking for public use;**
- iv) Integrate with surrounding public areas;**
- v) Provide visual permeability through the site and mitigate the impact of building bulk on streetscape.**

ADOPTION

ADOPTION

Adopted by resolution of the Council of the City of Fremantle at the Ordinary Meeting of the Council held on the 19 December 2012.

.....

MAYOR

.....

CHIEF EXECUTIVE OFFICER

FINAL APPROVAL

FINAL APPROVAL

Adopted for final approval by resolution of the City of Fremantle at the Ordinary Meeting of the Council held on the 28 day of January 2015 and the Common Seal of the City of Fremantle was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....
MAYOR

.....
CHIEF EXECUTIVE OFFICER

Recommended/Submitted for Final Approval

.....
DELEGATED UNDER S.16 OF
PD ACT 2005

DATE.....

Final Approval Granted

.....
MINISTER FOR PLANNING

DATE.....

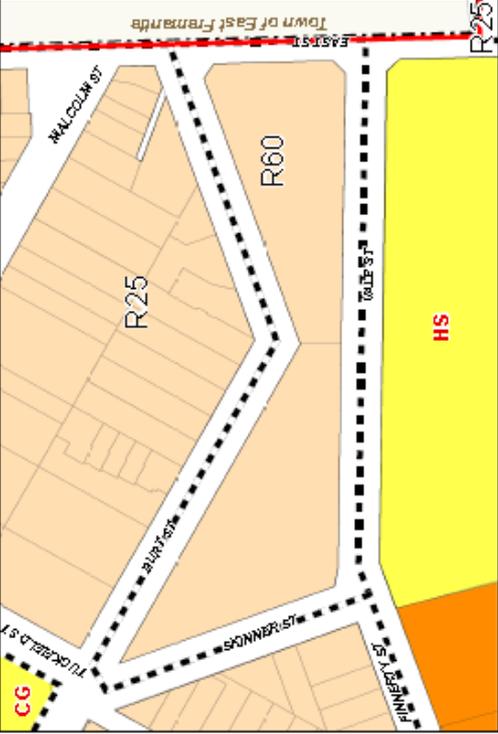
LPS4 AMENDMENT MAPPING

<p>ADOPTION</p> <p>Adopted by resolution of the Council of the City of Fremantle at the meeting of the Council held on the day of 2011.....</p> <p>Mayor _____</p> <p>City Executive Officer _____</p>	<p>FINAL APPROVAL</p> <p>1. Adopted for final approval by resolution of the City of Fremantle at the ordinary meeting of the Council held on the day of 2011..... and the common seal hereunto set by the authority of a resolution of the Council in the presence of:</p> <p>Mayor _____</p> <p>City Executive Officer _____</p> <p>2. RECOMMENDED SUBMITTED FOR FINAL APPROVAL</p> <p>Delegated Under Section 104 of the Planning and Development Act 2005 _____ Date _____</p> <p>3. FINAL APPROVAL GRANTED</p> <p>Member for Planning and Infrastructure _____ Date _____</p>
<p>City of Fremantle LOCAL PLANNING SCHEME No 4</p>	
<p>AMENDMENT No 57</p> <p>Proposed re-coding of Lot 1873 (19-21) and Lot 1907 (23-25) Burt Street, Fremantle from a residential density code of R60 to R160.</p>	
<p>Date: November 2012 Drawn: RPB Scale: 1:2000 A3 Table of No: 218003 Map File: LPS4 amendment57.mxd</p>	

Legend

-  MRS Civic and Cultural Reserve
-  MRS Public Purposes Reserve (Commonwealth Government)
-  MRS Public Purposes Reserve (High School)
-  Residential Zone
-  R-Code boundary
-  LP S4 LG boundary
-  LP S4 Scheme boundary

EXISTING ZONING



This map shows the current zoning for the area. It includes a yellow 'CG' zone, a large orange 'R25' zone, an orange 'R60' zone, and a yellow 'HS' zone. A dashed line indicates the 'R25' boundary, and a red dashed line indicates the 'LP S4 Scheme boundary'.

PROPOSED ZONING



This map shows the proposed zoning changes. The 'R60' zone is replaced by an orange 'R160' zone. The 'CG' and 'HS' zones remain. The 'R25' boundary and 'LP S4 Scheme boundary' are also shown.

CERTIFICATE OF TITLE

WESTERN  AUSTRALIA		REGISTER NUMBER 1873/DP210544	
		DUPLICATE EDITION N/A	DATE DUPLICATE ISSUED N/A
RECORD OF CERTIFICATE OF TITLE UNDER THE TRANSFER OF LAND ACT 1893		VOLUME 1360	FOLIO 142

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.


REGISTRAR OF TITLES 

LAND DESCRIPTION:

LOT 1873 ON DEPOSITED PLAN 210544

REGISTERED PROPRIETOR:
(FIRST SCHEDULE)

THE STATE HOUSING COMMISSION OF 99 PLAIN STREET, EAST PERTH
(XE A000001A) REGISTERED 1 JANUARY 0001

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND:	1360-142 (1873/DP210544).
PREVIOUS TITLE:	This Title.
PROPERTY STREET ADDRESS:	19-21 BURT ST, FREMANTLE.
LOCAL GOVERNMENT AREA:	CITY OF FREMANTLE.
RESPONSIBLE AGENCY:	DEPARTMENT OF HOUSING (SSHG).

NOTE 1: A000001A LAND PARCEL IDENTIFIER OF FREMANTLE TOWN LOT/LOT 1873 (OR THE PART THEREOF) ON SUPERSEDED PAPER CERTIFICATE OF TITLE CHANGED TO LOT 1873 ON DEPOSITED PLAN 210544 ON 21-JUN-02 TO ENABLE ISSUE OF A DIGITAL CERTIFICATE OF TITLE.

NOTE 2: THE ABOVE NOTE MAY NOT BE SHOWN ON THE SUPERSEDED PAPER CERTIFICATE OF TITLE OR ON THE CURRENT EDITION OF DUPLICATE CERTIFICATE OF TITLE.

NOTE 3: DUPLICATE CERTIFICATE OF TITLE NOT ISSUED AS REQUESTED BY DEALING L581124



REGISTER NUMBER 1907/DP210544	
DUPLICATE EDITION N/A	DATE DUPLICATE ISSUED N/A

RECORD OF CERTIFICATE OF TITLE
UNDER THE TRANSFER OF LAND ACT 1893

VOLUME **1360** PCLID **143**

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.


REGISTRAR OF TITLES 

LAND DESCRIPTION:

LOT 1907 ON DEPOSITED PLAN 210544

REGISTERED PROPRIETOR:
(FIRST SCHEDULE)

THE STATE HOUSING COMMISSION OF 99 PLAIN STREET, EAST PERTH
(XE A000001A) REGISTERED 1 JANUARY 0001

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND: 1360-143 (1907/DP210544).
PREVIOUS TITLE: This Title.
PROPERTY STREET ADDRESS: 23-25 BURT ST, FREMANTLE.
LOCAL GOVERNMENT AREA: CITY OF FREMANTLE.
RESPONSIBLE AGENCY: DEPARTMENT OF HOUSING (SSHC).

NOTE 1: A000001A LAND PARCEL IDENTIFIER OF FREMANTLE TOWN LOT/LOT 1907 (OR THE PART THEREOF) ON SUPERSEDED PAPER CERTIFICATE OF TITLE CHANGED TO LOT 1907 ON DEPOSITED PLAN 210544 ON 21-JUN-02 TO ENABLE ISSUE OF A DIGITAL CERTIFICATE OF TITLE.
NOTE 2: THE ABOVE NOTE MAY NOT BE SHOWN ON THE SUPERSEDED PAPER CERTIFICATE OF TITLE OR ON THE CURRENT EDITION OF DUPLICATE CERTIFICATE OF TITLE.
NOTE 3: DUPLICATE CERTIFICATE OF TITLE NOT ISSUED AS REQUESTED BY DEALING L581126



DATED

2013

CITY OF FREMANTLE

and

THE HOUSING AUTHORITY

DEED

Relating to the Development of Lots 1873 (No's 19-21) and 1907
(No's 23-25) Burt Street, Fremantle, Western Australia

Squire Sanders (AU)
Level 21
300 Murray Street
Perth WA 6000
Australia
DX 124 Perth

O +61 8 9429 7444
F +61 8 9429 7666

Reference LRB 60-1506651
McLeods reference: AR:32878-FREM

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Details

Date

Parties

City of Fremantle

of 8 William Street, Fremantle, WA 6160

(City)

The Housing Authority

of 99 Plain Street, East Perth, WA 6004

(Authority)

Introduction

- A The Authority is the registered proprietor of the Land.
- B The Authority wishes to develop the Land for a high density residential development that includes public and affordable housing.
- C The Authority's proposed development requires an amendment to the Scheme to be capable of approval under the Scheme.
- D The City has agreed to use its reasonable endeavours to procure an amendment to the Scheme on the terms and conditions contained in this Deed.
- E The Authority has agreed to develop the Land in accordance with this Deed if the Scheme is amended.

AGREED TERMS

2 DEFINED TERMS AND INTERPRETATION

2.1 Defined terms

In this Deed unless the context requires otherwise:

Act means the *Planning and Development Act 2005*.

Affordable Housing means dwellings which households on low to moderate incomes can afford, while meeting other essential living costs. It includes Public Housing, not-for-profit housing, other subsidised housing under the National Rental Affordability Scheme together with private rental and home ownership options for those immediately outside of the subsidised social housing system.

Amendment means the amendment of the Scheme referred to in clause 2.2 of this Deed.

Business Day means any day except a Saturday, Sunday or public holiday in Western Australia.

Development Application means the application for planning approval referred to in clause 2.4.

Development Cost means the estimated total cost to construct the development the subject of the Development Application, including car parking and landscaping, but excluding the value of the land or construction finance costs.

Gazette has the same meaning as it has in section 5 of the *Interpretation Act 1984 (WA)*.

Land means:

- (a) Lot 1907, being all of the land contained in certificate of title Volume 1360, Folio 143; and
- (b) Lot 1873, being all of the land contained in certificate of title Volume 1360, Folio 142,

and includes any subsequent amalgamation, strata title or lots created by subdivision of Lot 1907 and Lot 1873.

LEADR means the corporation named 'LEADR', with ACN 008 651 232, which provides services in alternative dispute resolution.

National Rental Affordability Scheme means the scheme by that name adopted by the Australian Government and administered by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, under the *National Rental Affordability Act 2008*.

Percent for Art Scheme means the scheme by that name administered by the Western Australian Department of Culture and Arts.

Public Housing means rental accommodation provided by the Authority to members of the public who meet the Authority's eligibility criteria.

Regulations means the *Town Planning Regulations 1967 (WA)*.

Scheme means the *City of Fremantle Local Planning Scheme No.4* or any subsequent local planning scheme adopted by the City of Fremantle.

Written Law has the same meaning as it has in Section 5 of the *Interpretation Act 1984 (WA)*.

2.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) references to any legislation or legislative provision include:
 - (i) any statutory modification or re-enactment of;
 - (ii) any legislative provision substituted for; and
 - (iii) any statutory instrument issued under that legislation or legislative provision;
- (b) words denoting the singular number include the plural number and vice versa;
- (c) words denoting individuals or persons include corporations, authorities, governments and governmental agencies and vice versa;
- (d) words denoting any gender include all genders;
- (e) headings and bolding are for convenience only and do not affect interpretation;
- (f) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (g) references to a party, paragraph, clause, schedule and annexure are to a party, paragraph, clause, schedule and annexure of or to this Deed;
- (h) references to any agreement or document are to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (i) references to any party to this Deed or any other document or arrangement include that party's executors, administrators, substitutes, successors and permitted assigns;
- (j) where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it;
- (l) an obligation, representation or warranty in favour of two or more persons:

- (i) is for the benefit of them jointly and severally; and
- (ii) binds them jointly and severally;
- (m) a reference to a '\$' or 'dollar' is a reference to Australian dollars; and
- (n) each annexure to this Deed forms part of this Deed.

3 AGREEMENT

3.1 Covenant

The parties covenant with each other on the terms and conditions of this Deed.

3.2 Amendment of the Scheme

The City shall in accordance with the Act and Regulations, use its best endeavours to:

- (a) prepare an amendment to the Scheme which changes the residential density code applicable to the Land from R60 to R160; and
- (b) submit the amendment for approval of the Minister under the Act.

3.3 No Fettering of the City's Powers

Nothing in this Deed shall fetter or be construed as an attempt to fetter the City in the exercise of any of its powers or performance of its functions under any written law.

3.4 Development Application

If the Amendment is approved by the Minister and published in the Gazette in accordance with section 87(5) of the Act, the Authority shall submit or cause to be submitted to the City for its determination under the Scheme and the Metropolitan Region Scheme an application for approval of a development which conforms with the following requirements:

- (a) where the development proposes 180 dwellings or less:
 - (i) between 10% and 15% of the dwellings must be in the form of Public Housing; and
 - (ii) at least 30% of the dwellings (which is not to include the dwellings referred to in paragraph (i)), must be in the form of Affordable Housing; and
 - (iii) all other dwellings may be in any form capable of approval under the Scheme;
- (b) where the development proposes in excess of 180 dwellings:
 - (i) between 10% and 15% of the first 180 dwellings must be in the form of Public Housing;

- (ii) at least 45% of the first 180 dwellings must consist of a mix of Public Housing and Affordable Housing (including the Public Housing referred to in clause 2.4.(b) (i));
 - (iii) the balance of the first 180 dwellings may be in any form capable of approval under the Scheme; and
 - (iv) all dwellings in excess of the first 180 dwellings must consist of a diverse range of specialised accommodation types which may include dwellings that are adaptable to accommodate people with disabilities, studio or single bedroom dwellings, aged or dependant persons' dwellings, artist studio dwellings and dwellings for students and key workers and these dwellings may be in the form of Affordable Housing or a form suitable for sale on commercial terms in the residential property market;
- (c) at least 25% of all dwellings shall be designed so they are readily adaptable to accommodate people with disabilities in accordance with the provisions of Australian Standard AS4299-1995 relating to adaptable housing class C;
- (d) primary vehicle access to the development shall be from Vale Street;
- (e) the maximum height of the development shall not exceed the Australian Height Datum height plane identified in Annexure A ;
- (f) The development shall be designed to achieve a rating of not less than 5 Star Green Star using the relevant rating scheme adopted by the Green Building Council of Australia;
- (g) the development shall incorporate public art equal in value to 1% of the Development Cost which shall:
- (i) be located within 200m of the nearest boundary of the Land; and
 - (ii) conform with the objectives and requirements of the Percent for Art Scheme as amended from time to time and in consultation with the City; and
- (h) the development shall conform with the following objectives for landscaping and parking:
- (i) integration with the surrounding public areas;
 - (ii) opportunities to retain existing trees and provide significant areas of new planting;
 - (iii) retention and/or interpretation of any features of cultural heritage or landscape significance;
 - (iv) improved and increased parking to accommodate visitors to the development and address the existing high demand for parking in the surrounding area; and
 - (v) physical and visual connectivity through the site.

3.5 Consultation with the Community and Design Advisory Committee

Prior to the lodgement of the Development Application with the City, the Authority shall carry out the following:

- (a) consultation with the local community in accordance with a community engagement strategy to be developed in consultation with the City; and
- (b) at least two consultations with the City's Design Advisory Committee.

3.6 Alternative Development

The Authority may develop the Land in a manner that does not comply with the requirements set out in clause 2.4 provided that the Authority does not undertake residential development on the Land which exceeds a density consistent with the R60 residential density code, notwithstanding that the Amendment has been made.

4 CHARGE

In order to better secure the performance of the Authority's obligations under this Deed, the Authority charges the Land in favour of the City until such time as the Authority's obligations have been satisfied.

5 CAVEAT

- (a) The parties intend this Deed to run with the land and to be enforceable by the City against the Authority and any subsequent registered proprietors of the Land.
- (b) In accordance with clause 5(a) and to protect the charge granted to the City under clause 3, the Authority authorises the City to register, at the City's expense, an absolute caveat against the certificates of title for the Land in order to protect the interests of the City under this Deed.
- (c) The City will withdraw any caveat registered by it in accordance with clause 4(b) if:
 - (i) this Deed is terminated in accordance with clause 6 and all of the fees, charges, costs and expenses payable under clauses 7 (if any) have been paid in accordance with this Deed; or
 - (ii) the withdrawal is for the purpose of effecting any sale, lease, mortgage, charge or assignment (**Transaction**) for which an agreement required under clause 5 has been entered into with the City, and all of the fees, charges, costs and expenses that have become payable under clause 7 up to the time of effecting the Transaction (if any) have been paid in accordance with this Deed; or
 - (iii) the Authority's obligations under this Deed have been satisfied.
- (d) Where a caveat is withdrawn in accordance with clauses 4(c)(i) or 4(c)(ii), the Authority consents to the City registering another caveat in its place.

6 SALE, TRANSFER OR OTHER DISPOSITION OF LAND

The Authority shall not sell, transfer, mortgage, charge or otherwise dispose of or enter into any agreement for the sale, transfer, mortgage, charge or other disposition of the Land or any part of it without first procuring the execution by the proposed purchaser, transferee, mortgagee (or both where there is a simultaneous transfer and mortgage) or chargee of an agreement with the City to be bound by the terms of this Deed.

7 TERMINATION

- (a) If the Amendment has not been published in the Gazette after 24 months from the date the Deed is executed then either party may at any time thereafter by notice to the other party withdraw from and terminate this Deed.
- (b) This Deed cannot be terminated by either party once the Amendment has been advertised pursuant to the Act and Regulations.
- (c) The City may terminate this Deed if its council passes a resolution for the purpose of regulation 17(2)(b) of the Regulations.
- (d) If a party terminates this Deed under clause 6(a), the City shall, if it is able to, discontinue the process of procuring the Amendment and the Authority shall not be entitled to a refund of, reimbursement of or compensation for any fees, costs or expenses paid whatsoever in connection with this Deed.
- (e) Subject to clause 10 of this Deed, if either party terminates this Deed under clause 6, neither party will have any claim or right of action against the other arising from the termination.

8 GOVERNMENT TAXES, DUTIES AND CHARGES

The Authority shall pay all taxes, duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Deed or any of the transactions performed under this Deed.

9 DISPUTES

9.1 Dispute

If a dispute between the parties arises in connection with this Deed then a party must give a written notice of dispute to the other Party identifying the dispute and providing details of it.

9.2 Mediator

The parties must endeavour to settle the dispute by mediation to be conducted by a mediator independent of the parties appointed by agreement of the parties or, failing agreement, by a person appointed by the Chair of the LEADR or his or her nominee.

9.3 Rules

The mediation rules of LEADR shall apply to the mediation.

10 MISCELLANEOUS

10.1 Further Assurances

Each party shall execute all documents and do all acts and things necessary or desirable in order to implement and give full effect to the provisions and purpose of this Deed.

10.2 Notices

Any notice, demand, consent or other communication which shall be given in connection with this Deed:

- (a) shall be in writing;
- (b) is sufficient if executed by the party giving the notice or on its behalf by any director, secretary, duly authorised officer or solicitor of such a party;
- (c) in order to be valid shall be given to a party as follows:
 - (i) delivered or sent by prepaid post to, or left at, the address of that party as follows:
 - (A) **Authority**
99 Plain Street
East Perth WA 6005
Facsimile: (08) 9221 1338
Attention: Principal Lawyer
 - (B) **City**
8 William Street
Fremantle WA 6160
Facsimile: (08) 9430 4634
Attention: Chief Executive Officer
 - (ii) sent to the facsimile number of that party as set out in paragraph (i); or
 - (iii) delivered to, sent by prepaid post to, or left at another address or facsimile number as notified in writing by that party to the other parties from time to time; and
- (d) if given in accordance with clause 9.2(c), will be deemed to take effect as follows:
 - (i) in the case of prepaid post, on the second Business Day after the date of posting;
 - (ii) in the case of facsimile, on receipt of a transmission report from the sending machine confirming successful transmission; and
 - (iii) in the case of delivery by hand, on delivery.

10.3 Severability

If any provision of this Deed is void or unenforceable, that provision is void and unenforceable only to the extent of that voidness or unenforceability, without invalidating the remaining provisions which shall remain in full force and effect.

10.4 Amendments

This Deed may not be modified, amended or varied except by a document in writing signed by or on behalf of each of the parties.

10.5 Waiver

No waiver of one breach of any term or condition of this Deed will operate as a waiver of any other breach of the same or any other term or condition of this Deed.

10.6 Laws of Western Australia apply

This Deed shall be construed and interpreted in accordance with the laws of the State of Western Australia and the parties agree to submit to the jurisdiction of the courts of that State and of courts competent to hear appeals from them.

SIGNING PAGE

EXECUTED as a deed

The common seal of the **CITY OF FREMANTLE** is affixed by authority of a resolution of the Council in the presence of

Mayor

Chief Executive Officer

The common seal of the **HOUSING AUTHORITY** is affixed in the presence of

Signature of Authorised Officer

Signature of Authorised Officer

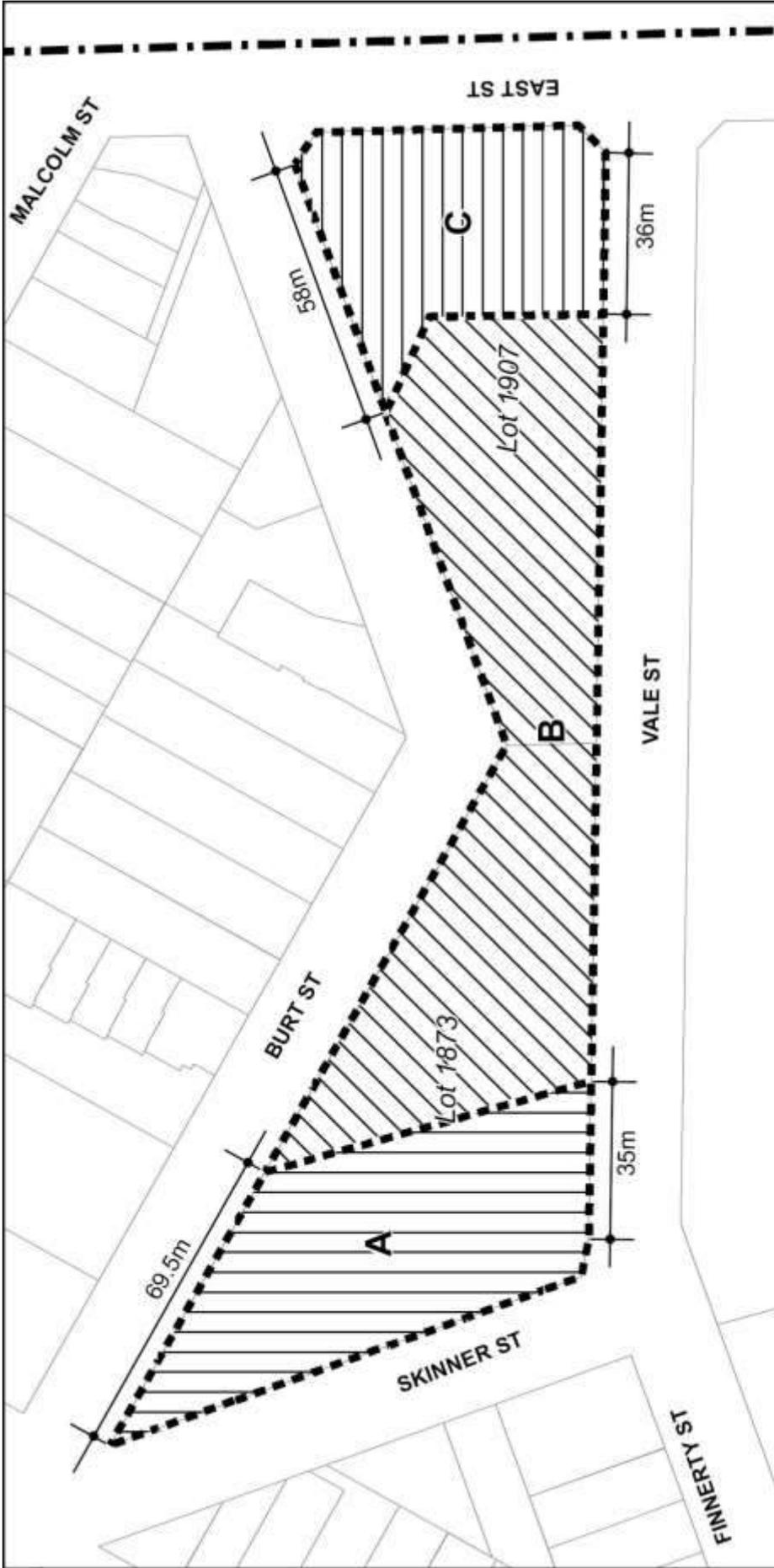
Name of Authorised Officer (please print)

Name of Authorised Officer (please print)

ANNEXURE A

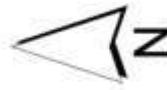
BUILDING HEIGHT PLAN

Annexure to Deed of Covenant



LEGEND

- LGA boundary
- ▨ AREA A - 37 AHD max
- ▧ AREA B - 40 AHD max
- ▩ AREA C - 45 AHD max



ANNEXURE A

Maximum Building Height Plan
LOTS 1873 & 1907 (19-25) BURT ST,
FREMANTLE

Maximum Building Height Plan(19-25 Burt St).mxd - 7/01/2013