Cr I Waltham vacated the chamber at 8.13 pm during the following item and returned at 8.15 pm prior to determination.
Cr B Jones vacated the chamber at 8.13 pm during the following item and returned at 8.16 pm prior to determination.

COUNCIL ITEMS

C1702-3 HIGH STREET, NO. 3 (LOT 100), FREMANTLE - FIVE STOREY EDUCATION ESTABLISHMENT, SMALL BAR AND SHOP - (CJ DAP007/16)

Form 1 - Responsible Authority Report (Regulation 12)

<table>
<thead>
<tr>
<th>Property Location:</th>
<th>No. 3 (Lot 100) High Street, Fremantle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Details:</td>
<td>Five storey Educational Establishment, Small Bar and Shop</td>
</tr>
<tr>
<td>DAP Name:</td>
<td>Metro South-West JDAP</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Allerding &amp; Associates</td>
</tr>
<tr>
<td>Owner:</td>
<td>University of Notre Dame</td>
</tr>
<tr>
<td>Value of Development:</td>
<td>$15.4 million (inc GST)</td>
</tr>
<tr>
<td>LG Reference:</td>
<td>DAP007/16</td>
</tr>
<tr>
<td>Responsible Authority:</td>
<td>City of Fremantle</td>
</tr>
<tr>
<td>Authorising Officer:</td>
<td>Director Strategic Planning and Projects</td>
</tr>
<tr>
<td>Department of Planning File No:</td>
<td>DAP/16/01155</td>
</tr>
<tr>
<td>Report Due Date:</td>
<td>1 March 2017</td>
</tr>
<tr>
<td>Application Receipt Date:</td>
<td>13 December 2016</td>
</tr>
<tr>
<td>Application Process Days:</td>
<td>90 Days</td>
</tr>
<tr>
<td>Attachment(s):</td>
<td>1: Development plans</td>
</tr>
<tr>
<td></td>
<td>2: Summary of submissions</td>
</tr>
<tr>
<td></td>
<td>3: Statement of justification – LPP 2.20</td>
</tr>
<tr>
<td></td>
<td>4: Applicant justification report</td>
</tr>
<tr>
<td></td>
<td>5: CoF Heritage Assessment</td>
</tr>
<tr>
<td></td>
<td>6: SHO referral response</td>
</tr>
<tr>
<td></td>
<td>7: DAC Minutes</td>
</tr>
<tr>
<td></td>
<td>8: Site photographs</td>
</tr>
<tr>
<td></td>
<td>9: Applicant response to Heritage</td>
</tr>
<tr>
<td></td>
<td>Assessment</td>
</tr>
</tbody>
</table>

OFFICER RECOMMENDATION:

That the Metro South-West resolves to:

Refuse DAP Application reference DAP/16/01155 and accompanying plans dated 13 December 2016 (Sheets 1-9) in accordance with Schedule 2, Clause 68, of the Planning and Development (Local Planning Schemes) 2015, for the following reasons:
Reasons

1. The building height proposed does not comply with the maximum building height requirements in Schedule 8, Sub Area 1.3.1 and does not satisfy the criteria for variation to height requirements specified in Clause 4.8.1.1 of the City of Fremantle Local Planning Scheme No. 4.

2. The building height is not supported as a variation to a site or development requirement specified in the City of Fremantle Local Planning Scheme No. 4 under the provisions of Clause 12 of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.

3. The proposal is inconsistent with the City of Fremantle’s Planning Policy DGF14 Fremantle West End Conservation Area Policy.

4. The proposal would be detrimental to the amenity and heritage of the area under clause 67 a, c, g, k, l, n, and, y and of Schedule 2 of Planning and Development (Local Planning Schemes) Regulations 2015.

Details: outline of development application

<table>
<thead>
<tr>
<th>Zoning</th>
<th>MRS:</th>
<th>Central City</th>
</tr>
</thead>
<tbody>
<tr>
<td>TPS:</td>
<td>City Centre</td>
<td></td>
</tr>
<tr>
<td>Use Class:</td>
<td>Educational Establishment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Shop</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Small Bar</td>
<td></td>
</tr>
<tr>
<td>Strategy Policy:</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Development Scheme:</td>
<td>Local Planning Scheme No. 4 (LPS4)</td>
<td></td>
</tr>
<tr>
<td>Lot Size:</td>
<td>874sqm</td>
<td></td>
</tr>
<tr>
<td>Existing Land Use:</td>
<td>Nil – site is occupied by a private car park</td>
<td></td>
</tr>
</tbody>
</table>

In December 2016, the City received an application for the addition of a five (5) storey building for an Educational Establishment, Shop and Small Bar at No. 3 High Street, Fremantle. The development includes the following:
• New five storey building, to a maximum building height of 18.09m (plus rooftop plant)
• Education establishment including theatre, simulation rooms, teaching rooms and offices
• Retail (Shop) tenancy on ground floor
• Small Bar on ground floor
• Fifth floor rooftop terrace
• Retention and incorporation of an existing heritage facade

The site is located within the State Registered West End, Fremantle, and is also listed on the City’s Heritage List and Municipal Heritage Inventory (Level 2). The site is located on the south western corner of the intersection of High and Cliff Streets in Fremantle and is currently occupied by a free standing building façade and open air, private carpark.

This application is required to be determined by JDAP, with the Responsible Authority Report due 1 March 2017 and is therefore referred to Council for comment.

Legislation & policy:

Legislation

Planning and Development (Local Planning Schemes) 2015 Regulations
• Deemed provisions for local planning schemes
  o Clause 12 Variations to local planning scheme provisions for heritage purposes
  o Clause 64 Advertising applications
  o Clause 67 Matters to be considered by local government

Local Planning Scheme No. 4 (LPS4)
• 3.2.1 (a) – City Centre zone objectives
• Table 1 – Zoning
• Table 2 – Vehicle parking
• 4.7.3 – Relaxation of parking requirements
• 4.8.1 – Variation to height requirements
• 4.15 – End of Trip facilities
• 5.5.3 – Development referral areas (Fremantle Port buffer)
• Schedule 8
  o Sub Area 1.3.1 West End

State Government Policies

SPP 3.5 – Historic Heritage Conservation

Local Policies

LPP 1.3 - Public Notification of Planning Proposals
LPP 2.3 – Fremantle Port Buffer Area Development Guidelines
LPP 2.7 – Archaeological investigation as a condition of planning approval
LPP 2.12 – Planning Applications impacting on verge infrastructure and verge trees
LPP 2.13 – Sustainable buildings design requirements
LPP 2.19 – Contributions for public art and/or heritage works
LPP 2.20 – Discretion to vary local planning scheme site or development requirements for heritage purposes
DGF14 – Fremantle West End Conservation Area Policy

Consultation:

Public Consultation

In accordance with Clause 64 of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, the application was required to be advertised. As the application is a significant planning application, as determined by LPP 1.3 Public Notification of Planning Proposals, the application was advertised for a period of twenty eight (28) days, in the following manner:

- Local newspaper notice x 2
- Sign on site
- Notice to owners and occupiers within 100m radius of the subject site
- Plans published on the City’s website
- Community information session held on 2 February 2017 with approximately 15 members of the public and 3 Elected Members in attendance

At the time of writing this report, the advertising period had not concluded (due to close 13 February 2017); however the following relevant planning issues were raised in seven (7) submissions:

<table>
<thead>
<tr>
<th>Issue Raised</th>
<th>Officer’s comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building height</td>
<td>Proposed development not supported</td>
</tr>
<tr>
<td></td>
<td>• See discussion in report below</td>
</tr>
<tr>
<td>Heritage and design</td>
<td>Proposed development not supported</td>
</tr>
<tr>
<td></td>
<td>• Notwithstanding DAC’s support for the proposal, there are heritage concerns with</td>
</tr>
<tr>
<td></td>
<td>the design proposed which are discussed in further detail below.</td>
</tr>
</tbody>
</table>

A summary of all submissions received to 8 February 2017 are included as attachment 2; any further submissions received during the final days of advertising will be tabled at Council.

Consultation with other agencies

- State Heritage Office

The application was referred to the State Heritage Office (SHO) with advice provided on 31 January 2017 as follows:
The proposed development, in accordance with the plans submitted, is supported subject to the following condition(s):

1. Existing nib walls to be retained to at least 300mm, and to read as original fabric
2. Render on existing façade to be tested, and render repaired to match existing. If façade is to be painted, selected colour and paint types are acceptable.
3. The following information is to be provided to the satisfaction of the Executive Director, State Heritage Office, prior to application for a building permit:
   a. An archaeological management strategy.

A full copy of the advice is included as attachment 6.

- Fremantle Port Authority

As the application falls within Area 2 of the Fremantle Port Buffer, the development plans were referred to the Fremantle Port Authority for comment on 13 December 2016. The following comment was received on 21 December 2016:

The site is located within Area 2 of the Fremantle Port Buffer. The requirements of the City’s local planning policy LPP 2.3 Port Buffer Area Design Guidelines (LPP 2.3) for Area 2 are applicable. It would be appreciated if these requirements could be included as conditions of approval.

Further discussion on the buffer area requirements is included in the report below. As the application is not recommended for approval, conditions are not included in this report.

Planning assessment:


- Clause 67 – Matters to be considered by local government

On assessment of the application, the following matters are brought to Council/JDAP for consideration:

(a) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;

Relevant scheme provisions are discussed below; however the issues of building height and heritage are of the most importance.

(c) Any approved State planning policy

SPP 3.5 Historic Heritage Conservation provides guidance for local governments when assessing applications within Heritage Areas or on the Heritage List. The following principles should be considered when assessing an application and its appropriateness having regard to existing Heritage Listed features, and a wider heritage area:

Alterations, extensions or change of use affecting a heritage place
• Development should conserve and protect the cultural significance of a heritage place based on respect for the existing building or structure, and should involve the least possible change to the significant fabric.
• Alterations and additions to a heritage place should not detract from its significance and should be compatible with the siting, scale, architectural style and form, materials and external finishes of the place. Compatibility requires additions or alterations to sit well with the original fabric rather than simply copying or mimicking it.
• In some cases, the conservation and protection of a heritage place may require a change of use to ensure a reasonable beneficial use or return. Sympathetic adaptation and change of use should be supported in such cases.
• Development should be in accordance with any local planning policies relating to heritage.

Development within a heritage area

• Development within a heritage area should respect and complement the heritage significance of the area as identified in the local planning policy. A respectful design approach gives special consideration to the siting, scale, architectural style and form, materials and finishes of the proposed development in relation to its neighbours, without copying historic detailing or decoration.
• Alterations and additions to existing buildings should be designed and sited in a manner that respects and complements the heritage significance of the area.
• A general presumption should apply in favour of retaining buildings that make a positive contribution to the significance of the area.
• Any new buildings erected in heritage areas should be designed and sited in a way that respects and complements the heritage significance of the area. New construction that is imaginative, well designed and harmonious should not be discouraged.

A heritage assessment undertaken by the City on the proposed development does not support the existing design and has concluded that the proposed development should not be supported due to the detrimental impact that it will have on the distinctive and culturally significant character of the West End in general and its immediate context in particular.

The applicant has provided a rebuttal from their architect to the City’s Heritage Assessment which is included as attachment 9. The additional assessment provided disagrees with the several fundamental points in the City’s assessment and justifies the proposed design and its compatibility with the streetscape.

(g) any local planning policy for the Scheme area

Assessment against DGF14 West End Conservation Area Policy is provided below.

(k) the built heritage conservation of any place that is of cultural significance

In the assessment of this application, consideration must be given to the existing feature on the subject site. The subject site is currently occupied by an open car park
with a free standing façade from the Gold Rush period. The City’s Heritage Assessment considers the new build and its relationship with this façade as follows:

- A coherent and functional relationship with the retained façade would improve the new development’s contribution to enhancing the quality and distinctiveness of its context within the precinct. This façade is typical of the Free Classical style of buildings in High Street. The proportions, solid to void ratios and sill and cornice heights fit into the established patterns of the larger banks and office buildings in the precinct.

- However, the proposed height of the first floor edge beam to the new development ignores this precedent and instead is at around the same level as the heads of the arched windows of the façade. As a result the installation of a suspended ceiling needed for concealing services such as air-conditioning and lighting would clash with the windows. If this clearance was increased by raising the ceiling height to match the typical established floor to ceiling heights in the precinct, the presentation of the Gold Rush façade would be greatly enhanced and the quality of the new internal space would be greatly improved. It would also provide a legible connection between old and new, with the parapet of the façade serving as a balustrade for first floor level.

(l) the effect of the proposal on the cultural heritage significance of the area in which the development is located

A heritage assessment has been undertaken to review the proposal from a heritage perspective, having regard to the site and the effect the building has on the surrounding West End. The following is provided for Council/JDAP’s consideration in relation to the proposed development and its response to the surrounding context:

The proposed development should respond to the surrounding context in ways that will enhance and strengthen the collective contribution made by the adjacent buildings to the strong sense of unity that characterizes the streetscapes in the precinct. The following provides an outline description and assessment of the response to the context.

- **Ground floor to ceiling height** This should be around 4 to 5 metres to match the typical established heights of other buildings in High and Cliff Streets but instead the proposed development is nearer 3 metres high. The ground floor to ceiling height is of particular significance because it sets the height of shopfronts, entrances, awnings and the way the new building incorporates the Gold Rush facade.

  NOTE: The adjacent former Fremantle Tramways Building is atypical of buildings in High Street because it was designed in response to the specific needs of a tram shed which required a higher than normal ground floor ceiling height to accommodate the tram’s overhead electrical system. Maintaining the contrast between
the tramways building and the other buildings in High street is
important as it helps explain its historic significance. It is not a
suitable benchmark for new development.

- **Ground floor form** In the Gold Rush era the building’s use determined the
design of the front façade particularly in the way it presented to the street.
There were two main types of facade treatments, those for shops and
restaurants that had large glazed shopfronts at ground floor sheltered by a
verandah / awning and those for banks and offices which had regular
openings set in a solid wall to match the upper levels and no verandah. The
proposed development does not relate to either of these established forms
but instead floats above the street level and the surrounding buildings on
piloti like columns.

- **Shopfront height** The coffee shop shopfront should relate to the
established height of shopfronts in High Street, instead it is considerably
lower at approx. 2.8 metres. The low height of the associated awning
further isolates the proposed development from the continuity of its context
by not aligning with the height of the existing awnings in High Street.

- **Horizontal and vertical balance** Generally the front façades of the
surrounding Gold Rush buildings were composed to achieve a balance
between vertical elements such as pilasters, and the horizontality created
by the projecting cornices, entablatures, verandahs and awnings. The
proposed development does not achieve this balance because the facades
are split horizontally into two unrelated elements, a strongly horizontal
planar element (levels 3, 4 and 5) sailing over the top of a strongly vertical
colonnade.

- **Urban grain** The West End was planned in 1833 with narrower streets and
smaller lot sizes, which gives it a finer urban grain than other parts of
Fremantle. This fine urban grain is reflected in the rhythm of the building
frontages along High and Cliff Streets. If it is not well handled, the
amalgamation of lots to create larger sites will undermine this defining
characteristic of the area by introducing much wider buildings with little
relation to the established urban scale. The current proposal for 3 High
Street should be articulated / modulated to reinstate the finer urban grain
that was lost when the buildings on this site were demolished in the 1950s
and 60s. The proposed design does not address this opportunity. For
example on the Cliff Street elevation there is little attempt to interpret the
widths of the original lots or to convincingly integrate the Gold Rush façade
into the overall composition, rather it reads simply as a screen standing in
front of a much larger building.
• **Texture and articulation** - Typically, the front facades of the buildings are strongly modulated using architectural devices such as rendered pilasters in accordance with the general principles of classical architecture. On some front facades this effect is accentuated by the use of contrasting red brick and grey coloured render and varying textures and on others the front facade is completely rendered with lined, grey-coloured hydraulic lime-render to give the appearance of ashlar stonework. This level of texture and articulation reinforces the fine urban grain of High Street. However, the proposed development uses broad horizontal planes with little articulation which undermines the modulation and the finer grain of the established streetscape.

• **Strong corner** A strong corner is a feature of established development in the West End. Generally the corner is treated as a positive element that unifies the two facades and expresses the solidity to the building volume. In some cases the corner is articulated with an entrance or feature such as a turret. The proposed development has a negative corner that instead emphasises the planar nature of the facades and provides no visual link to the established scale, proportioning and articulation of the surrounding precinct.

Further discussion is included in the City’s Heritage Assessment which is included as attachment 5. The City’s policy DGF14 also emphasises the need for strong consideration of the existing heritage streetscape, and it is not considered that the proposed design meets the requirements of the policy as detailed in the heritage comments above.

Notwithstanding the above, it is noted that the City has received advice from the State Heritage Office, who have advised that they support the proposal with conditions. City Officers respect and follow the State Heritage Office’s advice, as noted in their comments and their advice is given “in the context of the identified cultural significance of West End, Fremantle”, i.e. from the perspective of how the development will impact the precinct as a whole, rather than at a closer view of the development at street level. They also note that no specific mention is made of the Liebler Building (existing façade) in their documentation, which signifies that the site is more significant at a local level than regionally.

(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development

The compatibility of the development within its setting is a key consideration for this application, particularly as it is located within a State Registered heritage place, being the West End of Fremantle. As noted above, concerns are evident relating to the detailed design of the building from a heritage perspective from the City, but not SHO. The applicant is seeking discretion under LPS4, and to approve this height JDAP must be satisfied that matters relating to the building’s compatibility, not just relating
to heritage, within its setting are met. Further discussion regarding building height is included in the report below.

\[(n)\] the amenity of the locality including the following –

\[(i)\] environmental impacts of the development

There are no environmental impacts that have been identified.

\[(ii)\] the character of the locality

Discussion regarding the physical compatibility of the development is provided throughout this report. In relation to the land uses proposed, the applicant is seeking to provide an Education Establishment to extend the existing Notre Dame University campus, as well as ground floor Shop and Small Bar which are considered to be appropriate for a City Centre location.

\[(iii)\] social impacts of the development

As the site is currently a ground level car park with limited activation, the social benefits of the proposed land uses are considered to outweigh any potential impacts that land uses such as the Small Bar may trigger. The West End of Fremantle is characterised by the Notre Dame University, which during university holidays results in a low level of activation in this part of the City Centre. The proposal to add alternate land uses like a Shop and Small Bar, as well as a theatre that can be used by third parties, is a positive inclusion from the applicant.

\[(p)\] whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved

The proposed building occupies the entirety of the site, with no trees proposed to be removed or planted as part of the development. A roof top terrace is proposed on Level 5 that shows some vegetation.

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

As there is no car parking proposed on site, there will be no impact on the existing traffic network coming to and from the site. It is acknowledged that the proposal may demand greater pressure on the parking network in the City Centre generally; however, given the University currently runs with limited on site car parking, it is not considered this will dramatically increase the pressure on City Centre parking. Additionally, the existing public transport network can cater for students and staff attending the building.

\[(w)\] the history of the site where the development is to be located

A detailed history of the site is included in the City’s Heritage Assessment (Attachment 5). The City’s Heritage Coordinator has investigated the site and provided a detailed report on the buildings that were previously there. It is noted that since the demolition of the buildings the site has not been developed, so there is a
high possibility that archaeological material has remained largely undisturbed and any development on site should adhere with Clause 13B of Schedule 8 of LPS4 and LPP 2.7.

(y) any submissions received on the application

A summary of submissions received is included as attachment 2 of this report. The key issues arising from the notification period were building height and the design of the building, which are both discussed below.

(za) the comments or submissions received from any authority consulted under clause 66

Comments from Fremantle Port Authority and State Heritage Office both form part of this assessment.

Local Planning Scheme

Land use

The land uses proposed have the following permissibility as per Table 1 of LPS4:

- Education Establishment- ‘D’
- Small Bar- ‘A’
- Shop – ‘P’

The level of permissibility is defined as follows –

- ‘P’ – means that the use is permitted by the Scheme providing the use complies with the relevant development standards and requirements of the Scheme.
  *The Shop requires planning approval, as the required number of car bays is not provided on site as per Table 2 of LPS4

- ‘D’ – means that the use is not permitted unless the Council has exercised its discretion by granting planning approval.

- ‘A’ – means that the use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice (advertising) in accordance with clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2.
  *The Small Bar land use was advertised in accordance with the above.

In assessing the proposed land uses, they are supported for the following reasons against the objectives of the City Centre zone as outlined by LPS4:

(i) Provide for a full range of shopping, office, administrative, social, recreation, entertainment and community services, consistent with the region-serving role of the centre and including residential uses, and

The development includes the expansion of an existing Education Establishment (Notre Dame University), which is considered to be an appropriate, region serving
use in the city centre. Additionally, the uses of Shop and Small Bar contribute to the desired retail and entertainment character of the zone.

(ii) Comply with the objectives of local planning area 1 of schedule 8

There are no objectives listed in schedule 8 for the local planning area.

(iii) Conserve places of heritage significance the subject of or affected by development

While heritage is a significant consideration in this application, it is not considered that the land uses when considered independently will result in a negative impact on the heritage significance of the place.

Car parking bays

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
<th>Discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education establishment – 57 bays*</td>
<td>Nil</td>
<td>57</td>
</tr>
<tr>
<td>Shop – 5 bays</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Small bar - 17 bays^</td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>79 car bays</td>
</tr>
</tbody>
</table>

*The applicant has advised that should all teaching rooms and the theatre be full at once, the maximum number of students would be 340.

^As there is no specific car parking requirement detailed in Table 2, Council shall determine the most appropriate calculation (in this case Hotel – public bar area), as per Clause 4.7.1 (c.) of LPS4.

In addition to the car-parking requirements detailed above, provision is to be made for on-site bus standing spaces for the Education Establishment. The number of spaces is to be determined by the Council, and it is considered in this instance that as the site is for a Tertiary establishment, the demand for buses is significantly less than that of a Primary School that may have a bus service.

While there are no car bays proposed on site, it is considered that the development’s location in the City Centre lends itself to a zero parking development, and the lack of onsite car parking is therefore supported against Clause 4.7.3.1 of LPS4 as follows:

(i) the availability of car parking in the locality including street parking,

As well as on street, paid car parking on Cliff and High Streets surrounding the development, there are a number of public car parks within a reasonable walking distance from the development site.
(ii) the availability of public transport in the locality

The subject site is approximately 500m from the Fremantle Train Station and multiple bus services which run through the City.

(iii) any reduction in car parking demand due to the sharing of car spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces.

While the development is technically an expansion of the existing university, it is acknowledged that students generally visit more than one building throughout their semester of study, and given the close proximity of the Notre Dame buildings, are likely to pick one parking space or catch public transport for the day. The applicant has also acknowledged that the intention is to move some of the existing ground floor office space in other buildings to this new building, thereby freeing up these ground floors for more active, year round uses in the West End.

(viii) any other relevant considerations

As well as the above considerations, the applicant has proposed End of Trip facilities on the ground floor, and there is also a requirement for the addition of bicycle racks.

Notwithstanding the above, should Council/JDAP have concerns that the additional floor space being proposed will place an unreasonable amount of pressure on existing public parking infrastructure and public transport, the lack onsite parking bays could be added to the reasons for refusal.

**Delivery bays**

<table>
<thead>
<tr>
<th>Required</th>
<th>Provided</th>
<th>Discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education establishment</td>
<td>Nil</td>
<td>1</td>
</tr>
<tr>
<td>– 1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The lack of delivery bay is supported for the following reasons against clause 4.7.3.1:
- The Education Establishment is unlikely to have frequent deliveries
- The Small Bar and Shop land uses may have more regular deliveries, however given their limited floor area, the product being delivered is unlikely to be significantly bulky
- The site is located at the end of High Street where there is limited through traffic, meaning that daily deliveries are unlikely to be significantly disruptive

**Bicycle racks**

<table>
<thead>
<tr>
<th>Required</th>
<th>Provided</th>
<th>Discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education establishment –</td>
<td>Nil</td>
<td>Class 1 or 2: 4</td>
</tr>
<tr>
<td>Class 1 or 2 : 4</td>
<td></td>
<td>Class 2: 8</td>
</tr>
<tr>
<td>Class 2: 8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shop –</td>
<td></td>
<td>Class 1: 1</td>
</tr>
<tr>
<td>Class 1: 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small Bar –</td>
<td></td>
<td>Class 1: 2</td>
</tr>
<tr>
<td>Class 1: 2</td>
<td></td>
<td>Class 3 :2</td>
</tr>
<tr>
<td>Class 3: 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>Nil</td>
<td>Class 1: 7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Class 2: 8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Class 3: 2</td>
</tr>
</tbody>
</table>

It is not considered that the proposal is for a minor change of use in accordance with the variation criteria listed in Clause 4.7.3.3, and class 1 and 2 bicycle racks should be provided on site.

As only two (2) class 3 (rails or racks to which both the bicycle frame and wheels can be locked) bicycle racks are required, it is not considered that these would be incompatible with the overall design of the development (4.7.3.4) and could be comfortably accommodated on site.

**Fremantle port buffer**

The subject site is located within Area 2 of the Fremantle Port Area buffer. The application was referred to the Fremantle Port Authority for comment and support was given to the proposal subject to the standard Area 2 built environment requirements being applied.

**Building height**

<table>
<thead>
<tr>
<th>Required</th>
<th>Provided</th>
<th>Discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three (3) storeys 11m external wall height</td>
<td>Five (5) stories 16.64m external wall height (excluding plant) 20 degree roof pitch</td>
<td>Two (2) stories 5.64m Nil</td>
</tr>
</tbody>
</table>
Schedule 8 of LPS4 outlines maximum building heights for properties within the City of Fremantle. For sub area 1.3.1, additional height can be supported as follows:

Council may consent to an additional storey subject to-
(a) the upper level being sufficiently setback from the street so as to not be visible from the street (s) adjoining the subject site,
(b) maximum external wall height of 14 metres, and
(c) compliance with clause 1.2 above.

As the proposed development is proposing two additional stories, an external wall height of over 14m and the fourth floor and not setback so as not to be visible from the street, this criterion is clearly not met, and assessment is required against clause 4.8.1.1.

4.8.1.1 Where sites contain or are adjacent to buildings that depict a height greater than that specified in the general or specific requirements in schedule 8, Council may vary the maximum height requirements subject to being satisfied in relation to all of the following:

The initial part of this clause relies on buildings on the subject site, or those adjacent to the site, depicting a height greater than that specified in schedule 8. The subject site is currently occupied by a uncovered car park and a free standing façade which is approximately 6.3m in height (to the top of the wall).

Some of the buildings that are adjacent to the site are shown in the applicant’s elevations below:
The only building adjacent to the subject site that depicts a height greater than that specified in schedule 8 of LPS4 is No. 1 High Street (Marina Village apartments), which is located to the west of the site. The building is five storeys, with an external wall height to the top of the fifth floor of approximately 15.5m. The building does have additional features such as lift shafts and stairwells that are higher than the proposed external wall height of No. 3 High Street, as well as a comparable roof pitch height.

It is acknowledged that there is one building adjacent to the site that triggers the ability to use this clause. Consequently the ‘threshold’ test for the potential exercise of discretion to vary maximum building height under cl. 4.8.1.1. is met in this instance. However, in order to vary the maximum building height, the decision making body must be satisfied that the proposal meets all of the following criteria:

(a) The variation would not be detrimental to the amenity of adjoining properties or the locality generally.

Amenity is defined by the Regulations, as:

*Means all those factors which combine to form the character of an area and include the present and likely future amenity.*

The City’s Design Advisory Committee (DAC), reviews applications having regard to a number of principles, such as the development’s contribution to character and the quality of the public realm. The DAC has supported the proposal with a condition regarding materials, and considers the proposed building height to be a good response for a prominent location.

Additionally, it is not considered that the development of the site will have a significant adverse impact on adjoining sites by way of shadow, noise, unreasonable amounts of activity, lack of on-site parking and other activity based results from the proposed building’s height.
However, the amenity of an area is also strongly linked to the bulk and scale of its buildings, and the compatibility of a new building. The proposed five storey height, while with a slightly set back upper floor, will be prominent in a streetscape with much smaller buildings. Given the site is located on a corner, it will be visible from many vantage points rather than just directly from across the street.

(b) **Degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality,**

While it is acknowledged that the apartment building to the west can be used to trigger the discretionary clause, it is not considered by Officers that the one building, with some portions exceeding the proposed height, is enough to *graduate* the height down to properties along Cliff or High Streets.

By proposing a height that is similar to the existing building to the west, there is an effect of equalling height, rather than graduating from a high to low point. The term graduating should inspire a design that steps down from the high point (being No. 1 High street to the west), to the significantly lower properties to the east across from the development site.

Along Cliff Street, the two buildings on either side, are two (albeit with greater than usual floor to ceiling heights) storeys – a streetscape where a five storey building will undoubtedly be dominant even with a setback fifth floor. The existing five storey apartment building is setback from the Cliff Street streetscape.

Continuing down Cliff Street to the south, the existing buildings along the street continue in a two to three storey pattern, with some examples of single storey development. To the north of the site, there is one example of a four storey building, which sits at approximately 14m and has its upper floor setback from the street.

The following diagram indicates the storey heights of buildings along Cliff Street:
Being on a corner, consideration should also be given to the High Street streetscape. To the west, there are single or two storey buildings. The tramways building (part of No. 1 High Street ie. Marina Village apartments) is two storeys on the street, with the upper floors setback from the street.

To the east, down High Street, for the next few blocks, the street is dominated by two storey properties with a handful of three storey buildings and one four storey building. Closer to the development site, there is a three storey building on the north eastern corner opposite the development, however directly across the road is a single storey property.

The following diagram demonstrates the storey heights of the buildings along High Street for approximately 250m away from the site:

![Diagram showing building heights]

While it is acknowledged that many of the heritage buildings in the streetscape generally have higher external wall heights than more modern buildings of similar storey heights, the bulk of this building is not considered to effectively graduate (or step down) the height. In summary, a graduation from five stories to three (let alone one storey) storeys, is far too steep and is not supported.

(c) Conservation of the cultural heritage values of buildings on-site and adjoining, and

It is acknowledged by officers that the State Heritage Office has supported the application with conditions. There has been no specific mention of height in their assessment.

Notwithstanding this, the State Heritage Office reviews the application for its impact on the West End of Fremantle, rather than undertaking a detailed assessment of the elevations and the proposed building’s impact on the existing buildings immediately adjoining in the context of the criteria specified in clause 4.8.1.1 of LPS4.
While SHO has supported the application, concerns have been raised in the City’s Heritage Assessment about the detailing of the building and design features, such as the ground floor height which contribute to building height issues.

It should also be noted, that the proposed development site is in close proximity to the Round House, an important historical site at the end of High Street that deserves prominence. A building of five storeys that will be read in the same context of the Round House runs the risk of dominating the view.

(d) Any other relevant matter outlined in Council’s local planning policies.

DGF 14 Fremantle West End Conservation Area Policy reiterates the Scheme height limits and a preference for compatible, considerate design that works with, not against the existing heritage fabric both on site and surrounding the development.

Clause 4.2.2 of the policy states the following in relation to building height:

*The appropriate height is one which respects the scale and reinforces the integrity of the existing streetscape. The Council’s officers and advisers believe that in principle this is to be a maximum height of three storeys on the street frontage. The height will be assessed by appropriately considering its relation to and effect on the existing landmarks, on recognised vistas, skyline and in particular on the heights of the adjacent buildings.*

This is consistent with the maximum building height as outlined by LPS4, while still allowing for the implementation of the fourth floor discretionary height. It also puts a strong emphasis on how the building will influence existing streetscapes, which given this building’s proposed height, the impact on the Cliff and High Street (particularly being so close to the Round House) streetscapes will be significant.

Notwithstanding the 4.8.1.1 discussion above, the applicant is proposing an area of plant equipment on the roof, which further exceeds the proposed external wall height. LPS4 allows for such projections where they can be considered minor as follows:

4.8.1.3Excluding development within the Residential zone, Council may permit a minor projection above the highest part of a development, subject to the development satisfying both of the following criteria –

(a) The minor projection being no more than 4 metres above the highest part of the main building structure; and

The plant screening protrudes only 1m above the highest portion of the building.

(b) The cumulative area of the minor projection being no more than 10 per cent of the total roof area of the building.

The plant area is calculated as the area screened (i.e. the portion that will be visible from street vantage points rather than directly above), rather than each individual item of equipment. The proposed screened plant area occupies approximately 22% of the area of the roof. The plant area projection can therefore
not be considered a minor projection, and is therefore included in wall height, increasing the overall external wall height to approximately 19m (as it protrudes above the roof structure). It would not be considered to be an additional storey, as it is not covered by a roof.

In summary, while it is acknowledged there is a level of interpretation and subjectiveness in the height argument, officers do not support the height proposed due to the impact on the existing heritage streetscape and the bulk of the building in comparison with existing building heights.

Variation to height for heritage reasons

In addition to the LPS4 provisions that allow height variations, Clause 12 of the Regulations, provides an alternative:

(1) The local government may vary any site or development requirement specified in this Scheme to-
   a. Facilitate the built heritage conservation of a place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the heritage list; or
   b. Enhance or preserve heritage values in a heritage area.

To complement this clause, the City has adopted a local planning policy (LPP 2.20) that requires the applicant provide a statement of justification as to why a variation should be granted on heritage grounds. The applicant’s statement of justification is included as attachment 4.

While the applicant’s justification for the greater floor to ceiling volume on the ground floor is acknowledged as increasing the external wall height, there is no logical reason other than the viability of the development for the additional storey. In short, the development could still function with the fifth floor removed, and the impact on the existing heritage feature on site (façade) would not alter, nor would it restrict the ability to conserve the feature. The policy specifically notes that financial viability is not to be a consideration in the assessment of this clause.

It is officer’s opinion that the retention and conservation of the heritage façade does not require any development behind it, let alone discretionary building height – it could in fact be retained and conserved today with no additional development.

Building height is therefore not supported against clause 12 of the Deemed Provisions of the Regulations.

Design Advisory Committee

As the proposed development is proposing building height of greater than 11m, the application is required to first be presented to the Design Advisory Committee (DAC) for review, and the determining authority must have regard to their advice.

The application was reviewed by the DAC against the principles listed in Clause 78B (6) (c) and LPP 1.9 Design Advisory Committee and Principles of Design, on three
occasions, with the final presentation resulting in the DAC resolving support for the proposal subject to the following condition:

Prior to the issue of a Building Permit, the applicant shall submit the following information to the satisfaction of the Chief Executive Officer, City of Fremantle, having due regard to advice from the Design Advisory Committee:

a) Details of external materials to be shown on the plans shall include, but not be limited to:

- Mid bronze coloured steel framing,
- natural limestone,
- off white coloured pre cast concrete beams and columns,
- copper cladding on ground floor, and
- ‘Low E’ glazing.

b) Details of the dark coloured materials for the fifth floor glazing and roofing materials,
c) Detailed plans of the ground floor elevations including colour and design details of the glazing, window framing and operable steel awning additions.

Notwithstanding this, the following comment was made on building height:

The proposed height of the building exceeds what is allowable on this site. The DAC judges the overall design and the set-back and low-profile design solution to the top floor to be well-handled and, considering the adjacent buildings and the prominent location of this site, is willing to support the additional height. This support is dependent on use of the external materials proposed, and the materials to be used on the upper floor (as outlined below under APPROPRIATENESS OF MATERIALS AND FINISHES), and may be withdrawn if changes are made to the quality and nature of external materials upon the lodgement of a Development Application or Building Permit.

Minutes from the meetings are included in attachment 7.

Other relevant local planning policies

In addition to the above matters, the following local planning policies also raise important considerations:

LPP 2.12 – Planning applications impacting on verge infrastructure and verge trees

The following comments are provided in relation to the verge and existing infrastructure:

- Through an Obstruction Permit Application the City may charge a verge protection bond to cover the City’s assets.
- Operable steel/glass awning when fully open shall have sufficient setback, min. 600mm from kerb line.
- Verge tree proposed for removal, to be transplanted at the expense of the proposing party. New location specified by the City of Fremantle

LPP 2.13 – Sustainable buildings design requirements
Should JDAP support the application, LPP 2.13 will apply to ensure the building is built to the required 4 star green star standard (or equivalent).

LPP 2.19 – Contributions for public art and/or heritage works

Should JDAP support the application, LPP 2.13 requires that the applicant is required to contribute a monetary amount in value to one per cent of the estimated development cost (as indicated on the application form), for the development of public art works and/or heritage works to a public building.

Officers’ comments and conclusion:

In determining the application, the following key points are provided for consideration:

- There are more buildings in the immediate area that are closer to the three storey height outlined by the Scheme, and only one building of a comparable five storey height.
- The proposed building is simply too large for its important setting.
- Professional heritage advice is provided by the City that explains further refinement of the design is required to minimise its impact on the listed West End, not just from a height perspective.
- While unusual, there is no requirement for the DAC to agree with Heritage comments (and vice versa) or planning matters.

In summary, the application for a five (5) storey Education Establishment, Shop and Small Bar is not supported having regard to the impact on the existing heritage streetscape and predominant building heights. For these reasons is not considered by officers to satisfy the criteria specified in the Local Planning Scheme to enable the exercise of discretion to approve the development as currently proposed.

OFFICER RECOMMENDATION/COUNCIL DECISION:

MOVED: Cr J Strachan

That the Metro South-West resolves to:

Refuse DAP Application reference DAP/16/01155 and accompanying plans dated 13 December 2016 (Sheets 1-9) in accordance with Schedule 2, Clause 68, of the Planning and Development (Local Planning Schemes) 2015, for the following reasons:

Reasons

1. The building height proposed does not comply with the maximum building height requirements in Schedule 8, Sub Area 1.3.1 and does not satisfy the criteria for variation to height requirements specified in Clause 4.8.1.1 of the City of Fremantle Local Planning Scheme No. 4.
2. The building height is not supported as a variation to a site or development requirement specified in the City of Fremantle Local Planning Scheme No. 4.
under the provisions of Clause 12 of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.

3. The proposal is inconsistent with the City of Fremantle’s Planning Policy DGF14 Fremantle West End Conservation Area Policy.

4. The proposal would be detrimental to the amenity and heritage of the area under clause 67 a, c, g, k, l, n, and, y and of Schedule 2 of Planning and Development (Local Planning Schemes) Regulations 2015.

SECONDED: Cr D Hume

CARRIED: 12/0

<table>
<thead>
<tr>
<th>For</th>
<th>Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayor, Brad Pettitt</td>
<td></td>
</tr>
<tr>
<td>Cr Bryn Jones</td>
<td></td>
</tr>
<tr>
<td>Cr Andrew Sullivan</td>
<td></td>
</tr>
<tr>
<td>Cr Jon Strachan</td>
<td></td>
</tr>
<tr>
<td>Cr Rachel Pemberton</td>
<td></td>
</tr>
<tr>
<td>Cr Simon Naber</td>
<td></td>
</tr>
<tr>
<td>Cr Hannah Fitzhardinge</td>
<td></td>
</tr>
<tr>
<td>Cr David Hume</td>
<td></td>
</tr>
<tr>
<td>Cr Dave Coggin</td>
<td></td>
</tr>
<tr>
<td>Cr Ingrid Waltham</td>
<td></td>
</tr>
<tr>
<td>Cr Sam Wainwright</td>
<td></td>
</tr>
<tr>
<td>Cr Jeff McDonald</td>
<td></td>
</tr>
</tbody>
</table>