

Heritage of Western Australia Act 1990

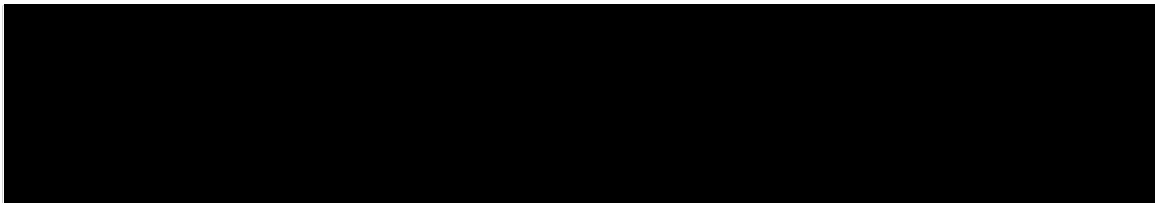
Section 29

HERITAGE AGREEMENT

between

CITY OF PERTH

and



In respect of

ANDREWS HOUSE aka NATIONAL THEATRE
(HCWA Database No. 2076)

TABLE OF CONTENTS

Part 1	Definitions & Interpretation	
1.1	Definitions	Page 3
1.2	Interpretation	Page 5
Part 2	Commencement, Duration and Scope of this Agreement	
2.1	Commencement and duration of this Agreement	Page 6
2.2	Scope of this Agreement	Page 6
Part 3	Development and Conservation	
3.1	Conservation Plan	Page 7
3.2	Conservation Works	Page 7
3.3	Development	Page 7
3.4	Maintenance	Page 7
3.5	Conservation Consultant	Page 7
3.6	Reporting	Page 7
3.7	Insurance	Page 8
3.8	Compliance with Statutes	Page 8
Part 4	City's Rights of Entry and Powers of Inspection	
4.1	City's rights of entry and powers of inspection	Page 8
Part 5	Default	
5.1	Events of default	Page 9
5.2	Rights and remedies of City	Page 9
5.3	Land and Place at risk of Owner	Page 9
5.4	Interest on overdue money	Page 10
Part 6	Notices	
6.1	Form of notices	Page 10
6.2	Address for notices	Page 10
Part 7	General	
7.1	Variation to be in writing	Page 11
7.2	Governing Law	Page 11
7.3	Further assurances	Page 11
7.4	Extension of time by City	Page 11
7.5	Costs	Page 11
The Schedule		Page 12
Executed as a Deed		Page 13
Certificate		Page 15
Annexures		Page 16

HERITAGE AGREEMENT

Andrews House aka National Theatre 360 Murray Street Perth

THIS AGREEMENT is made on the day of 2011 between the following parties:

1. **THE CITY OF PERTH** of Council House, 27-29 St Georges Terrace, Perth, Western Australia, 6000 (the "City"); and
2. [REDACTED] **AS TENANTS IN COMMON IN EQUAL SHARES** of [REDACTED] Western Australia, 6841 (the "Owner").

RECITALS:

- A. The City's functions include the control and management of planning and development within the City of Perth. The City seeks to preserve and protect the unique character of Perth while balancing the need for growth and development. The City's objects are to identify, conserve and, where appropriate, enhance those places which are of significance to the local cultural heritage; facilitate development that is in harmony with the cultural heritage; and to promote public awareness and knowledge of the City's cultural heritage.
- B. The Owner is the Registered Proprietor of the Land.
- C. The Place has been identified as being of local cultural heritage significance, and was listed as such in the City of Perth City Planning Scheme No 2.
- D. The City and the Owner wish to enter this Agreement to provide for the conservation of the Place so as to retain its cultural heritage significance for present and future generations.
- E. The Owner entered into and was bound by the Lease and the Mortgage prior to any negotiations between the City and the Owner relating to or leading to this Agreement.

AGREEMENT:

The Parties agree with each other as follows:

PART 1 DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Agreement, unless the contrary intention appears:

"**Act**" means the *Heritage of Western Australia Act (WA) 1990*;

"**Agreement**" means this Agreement as it may from time to time be varied as permitted by its terms;

"**Conservation Plan**" means the Conservation Plan in respect of the Place described in Item 5 of the Schedule, as may from time to time be varied with the prior written approval of the Council;

"**Conservation Policy**" means the policy specified in Item 3 of the Schedule;

“Conservation Works” means the works specified in Item 6 of the Schedule;

“Construction Completion Date” means:

- (a) in the case of "Urgent Works" as described in Item 6 of the Schedule, the first anniversary of the Effective Date;
- (b) in the case of "Short-term Works" as described in Item 6 of the Schedule, the second anniversary of the Effective Date;
- (c) in the case of "Medium Term Works" as described in Item 6 of the Schedule, the fifth anniversary of the Effective Date; and
- (d) in the case of "Long Term Desirable Works" as described in Item 6 of the Schedule, the tenth anniversary of the Effective Date.

“Damage” means losses, costs, damages, liabilities, expenses, actions, suits or claims of any kind;

“Development” means the development or further or new use of the Place, including:

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the Land;
- (b) the carrying out on the Land of any excavation or other works;
- (c) any act or thing that is likely to change the character of the Place or the external appearance of any building;
- (d) any act or thing that would constitute an irreversible alteration of the Significant Fabric; and
- (e) a material change in the Use of the Place, but which does not extend to or include the Lease.

“Effective Date” means the date on which this Agreement is certified by the Minister pursuant to Section 32(1) of the Act;

“Event of Default” is defined in clause 5.1;

“Fabric” means all the physical material of the Place including, but not limited to:

- (a) components, fixtures, contents and objects;
- (b) natural material such as the landform, vegetation, streams, soil and rock;
- (c) building interiors, sub-surface remains and excavated material; and
- (d) components, fixtures, contents and objects that are temporarily removed for purposes such as repair, safekeeping or exhibition.

“Land” means the land described in Item 4 of the Schedule;

“Lease” means that current lease as to the ground floor and first floor of the building on the Land undated but entered into in about September 2008 between the Owner as lessor and the Cox Group Pty Ltd as Lessee;

“Maintenance” means the continuous protective care of the Significant Fabric as specified in Item 7 of the Schedule;

“Minister” means the Minister responsible for the administration of the Act;

“Mortgage” means that current mortgage registered on the certificate of title for the Land as dealing number J173483 registered in favour of the Bank of Western Australia Ltd or any subsequent holder of the benefit of the same mortgage and any specifically related loan agreement or other security between the Bank of Western Australia Ltd and the Owner;

“Owner” means:

- (a) subject to clause 2.2(d) [REDACTED] AS TENANTS IN COMMON IN EQUAL SHARES, for so long as [REDACTED] 529 501) AND [REDACTED] AS TENANTS IN COMMON IN EQUAL SHARES is the registered proprietor of the Land; and
- (b) the Owner or Owners of the Land from time to time, as the expression “owner” is defined in the Act;

“Place” means the place described in Item 1 of the Schedule;

“Significant Fabric” means the physical material of the Place specified in Item 2 of the Schedule, which may include without limitation components, fixtures, contents and objects, including those that are temporarily removed for repair, safekeeping, exhibition or other purposes; building interiors, sub-surface remains and excavated material; and natural material such as the landform, vegetation, streams, soil and rock;

“Use” means the functions of the Place as well as the activities and practices that may occur at the Place;

and

words and phrases having defined meanings in the Act, unless otherwise defined in this Agreement, have the meanings so defined in the Act.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (b) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (c) no rule of construction applies to the disadvantage of a party on the basis that the party was responsible for drafting this Agreement or any part of it;
- (d) a reference to this Agreement or any other document or instrument includes the Agreement, document or instrument (as the case may be) as varied or replaced, notwithstanding any change in the identity of the parties;
- (e) a reference to the Owner doing or refraining from doing anything includes a reference to the Owner causing a person to do, or causing a person to refrain from doing, that thing (as the case may be); and
- (f) a reference to any thing is a reference to the whole and each part of it.

PART 2
COMMENCEMENT, DURATION AND SCOPE OF THIS AGREEMENT

2.1 Commencement and Duration of this Agreement

- (a) This Agreement is made pursuant to Section 29 of the Act and is conditional upon the Minister
 - (i) being satisfied that this Agreement is necessary for the purposes of, and complies with, the Act; and
 - (ii) certifying that fact upon each executed copy of this Agreement.
- (b) This Agreement commences on the Effective Date and shall be of permanent effect unless terminated with the written consent of the City.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (i) applies to the Land and the Place;
 - (ii) binds the Land and the Place; and
 - (iii) binds the Owner.
- (b) All of the obligations of the Owner under this Agreement dealing with development or use of the Land or any part of the Land or the conservation or care of any building, natural feature or other object on the Land are covenants made pursuant to section 29(10) of the Act and are intended to run with the Land.
- (c) The rights and obligations of the Owner under this Agreement are not assignable by the Owner without the prior written consent of the City, which consent shall not be unreasonably withheld.
- (d) Subject to clause 2.2(e), on the person who is at the time the Owner ("**Outgoing Owner**") transferring the whole of that person's interest in the Place to another person, the Outgoing Owner is released from all personal liability under this Agreement. For the avoidance of doubt, this clause 2.2(d) operates only to release the Outgoing Owner personally and does not release, vary or otherwise affect the obligations of the Owner under, or in connection with, this Agreement.
- (e) The provisions of clause 2.2(d) will not apply in respect of any liability or claim which arose prior to the date of registration of the transfer of the whole of the interest of the Outgoing Owner to another person.
- (f) In consideration of entering into this Agreement and in particular the development and conservation obligations set out in Part 3, the Owner may, pursuant to Clause 34 of the City Planning Scheme, transfer from the Land an amount of unused plot ratio floor area specified in Item 8 of the Schedule.
- (g) For the sake of clarification it is acknowledged that the Owner has certain obligations and contractual duties imposed on it:
 - (i) under the Lease during the continuance of such Lease; and
 - (ii) under the Mortgage until the discharge of the sameand the City agrees to give such time as is reasonable in the circumstances when giving notices prior to any inspections and/or when requiring the Owner to comply with any specific direction or requirement, but in doing so the City does not release or reduce the duties of the Owner under this Agreement.

**PART 3
DEVELOPMENT AND CONSERVATION**

3.1 Conservation Plan

The parties acknowledge that the Conservation Plan is the primary guiding document for the conservation and future use of the Place and should be read in conjunction with this Agreement as an essential reference document. For the avoidance of doubt, all express obligations on the Owner in this Agreement which are derived from the Conservation Plan are described in the Annexures.

3.2 Conservation Works

The Owner must undertake the conservation of the Place in accordance with the Conservation Policy and is required to carry out the Conservation Works, by the Construction Completion Date. All such works must be referred to the City for advice and approval prior to the works actually being undertaken.

3.3 Development

Unless approved in advance in writing by the City, the Owner shall not:

- (a) carry out any Development;
- (b) without prejudice to the generality of clause 3.3(a), do or permit to be done anything on or in relation to the Place which materially adversely affects the cultural heritage significance or characteristics of the Place; or
- (c) sub-divide or make application to sub-divide the Land.

3.4 Maintenance

The Owner shall ensure that the Significant Fabric, as restored and adapted with the approval of the City, is kept in a proper, safe and sound standard of repair and condition in all respects, in accordance with the Conservation Policy.

3.5 Conservation Consultant

The Owner must appoint a consultant approved in advance in writing by the City to supervise the Conservation Works and any Development of the Place or other action which requires the approval of the City under clause 3.3.

3.6 Reporting

- (a) All reports required in this clause shall be prepared on behalf of the Owner by the consultant appointed pursuant to clause 3.5, or such other person with the necessary skills approved in writing in advance by the City.
- (b) The Owner must ensure that a proper, detailed and comprehensive written report describing the completed Conservation Works is provided within 30 days after the Construction Completion Date of each category of Conservation Works (i.e., "Urgent Works", "Short-term Works", "Medium-term Works" and "Long-term Desirable Works", respectively).
- (c) The Owner must ensure that a proper, detailed and comprehensive written report is provided to the City within 60 days after receipt of a written request from the City for a report describing
 - (i) all Conservation Works, Maintenance, or Development activities which the Owner has undertaken pursuant to this agreement since the later of the Effective Date or the date of any previous report;

- (ii) the condition of the Significant Fabric at the time of the report; and
- (iii) any other matters regarding the conservation of the Place as specified in the written request;

provided that no more than one such report shall be required under this Clause 3.6 within any 12-month period.

- (d) In the event that the City requires further information, detail, explanation or other clarification beyond that provided in a submitted report, the City will notify the Owner in writing of the particular information required and the time in which the Owner is to provide that information, which shall not be less than 30 days from the date of receipt of the written notice from the City.
- (e) The Owner's failure to provide any report or additional information required under this Clause 3.4 shall constitute an Event of Default.

3.7 Insurance

- (a) The Owner will maintain an insurance policy with a reputable insurance company approved in advance in writing by the City, sufficient to enable full and proper replacement, reinstatement or restoration of the Significant Fabric in the case of damage or destruction and provide a copy of such a policy and a Certificate of Currency to the City.
- (b) To the extent permitted under the Mortgage, in the event of damage or destruction the Owner shall use monies recovered from its insurance policy and together with certain of its own monies, fully and properly replace, reinstate or restore the destroyed or damaged fabric.

3.8 Compliance with Statutes

The provisions of this Agreement are in addition to the Act and any other applicable written laws and nothing in this Agreement removes, limits or modifies the obligations on the Owner to comply with all relevant statutory and other requirements in connection with the Development of the Land, and the Owner is responsible for obtaining all approvals consents and licences required for Development of the Land, including planning approvals and building licences, from all relevant bodies and authorities including the local authority.

PART 4 CITY'S RIGHTS OF ENTRY AND POWERS OF INSPECTION

4.1 City's rights of entry and powers of inspection

- (a) Subject to clause 4.1(b) the City shall, through its nominated representative or nominated officer from time to time, have the power to enter the Place at reasonable times, and on reasonable prior notice, for any purpose related to the provisions of this Agreement, including without limitation to inspect the Place with a view to ensuring compliance with the provisions of this Agreement.
- (b) Subject to clause 4.1(c), the City will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the City under clause 4.1(a).
- (c) In particular the City will not during the continuance of the Lease either exercise this right to inspect pursuant to this Agreement or require works as part of the Conservation Works to be conducted in such time or

manner as would unduly inconvenience the Lessee or disrupt the business conducted by it.

- (d) Subject to clause 2.2(g), the Owner must do all things necessary to enable the City to exercise its rights of inspection as set out in clause 4.1(a), including without limitation, ensuring that reasonable access is provided to all parts of the Place and ensuring access to and use of any facility at the Place which is necessary to facilitate inspection.

PART 5 DEFAULT

5.1 Events of default

- (a) An Event of Default occurs if:
 - (i) the Owner is in breach of, or does not comply with, any of its obligations under this Agreement and the breach or non-compliance continues for 30 days, or such longer period as is reasonable for rectification having regard to the nature of the breach or non-compliance, after receipt of written notice from the City to effect compliance; or
 - (ii) the Owner repudiates or commits a fundamental breach of this Agreement.

5.2 Rights and remedies of City

In the event any Event of Default occurs, the City shall be entitled to exercise any one or more of the following powers:

- (a) through its agents, contractors or employees enter the Place and take such actions as are in the City's opinion necessary to rectify the Event of Default (including attending to any construction or other works) together with or separately from;
- (b) any rights and remedies which may be available to the City at law or in equity, including applying to the court for an order for specific performance, together with or separately from;
- (c) the rights, powers and remedies available to the City under the Act,

and nothing in this Agreement limits or prejudices or shall hinder the exercise by the City or the Minister or any other person of any of the rights, powers or remedies available to the City, the Minister or that person under the Act if an Event of Default occurs, or any other event occurs which is a breach of any provision of the Act.

5.3 Land and Place at risk of Owner

- (a) The Land and the Place shall remain at the risk of the Owner in all respects, notwithstanding any provisions in this Agreement dealing with the Development or maintenance of the Land or the Place. Without limitation, all Development and maintenance of the Land or the Place shall be conducted entirely at the risk of the Owner and the Owner shall, subject to clause 5.3(b), indemnify and keep indemnified and save harmless the City, the Minister, the State of Western Australia and any of their respective servants or agents (each an '**Indemnified Party**') against all Damage incurred or suffered by any of them arising from or in connection with the Development of the Land or the Place or carrying out

the Conservation Works by the Owner or any person acting through, on behalf of, or under the direction of the Owner.

- (b) The indemnity provided by the Owner in clause 5.3(a) shall be reduced proportionately to the extent that any Damage has been caused by a negligent, deliberate or malicious act or omission by an Indemnified Party.

5.4 Interest on overdue money

If the Owner becomes liable to pay any amount of money to the City pursuant to this Agreement or arising from any matter the subject of this Agreement, the Owner shall pay to the City interest on that amount from and including the due date for payment of the amount to but excluding the actual date of payment of that amount. The interest is to be paid on demand by the City, is to be calculated on daily balances, and is to be at the rate then payable on judgment debts pursuant to the provisions of the *Supreme Court Act (WA) 1935*.

PART 6 NOTICES

6.1 Form of notices

Any notice, report or other communication which must be given, served or made under or in connection with this Agreement:

- (a) must be in writing in order to be valid;
- (b) is sufficient if executed by the Party giving, serving or making the notice, or if executed on such Party's behalf by any officer, director, attorney or solicitor having the authority to so act for such Party;
- (c) is sufficient, in the case of the Owner's obligations under clause 3.6, if executed by the relevant consultant appointed pursuant to clause 3.5;
- (d) will be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by facsimile or sent by email to the address of that person identified in clause 6.2 or at such other address or number as is notified in writing by that person to the other Parties from time to time; and
- (e) will be deemed to be served, given or made:
 - (i) if delivered by hand, on delivery;
 - (ii) if sent by prepaid post, on the second day after the date of posting;
 - (iii) if sent by facsimile, on receipt of a transmission report confirming successful transmission; and
 - (iv) if sent by email, on receipt of confirmation of successful delivery.

6.2 Address for notices

The details of each Party for the purposes of giving notice are as follows:

- (a) the City: City of Perth
Council House
27 St. George's Terrace
Perth WA 6000
Phone: (08) 9461 3333 Fax: (08) 9461 3083
Email:
Attention: Chief Executive Officer

(b) the Owner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fax: [REDACTED]

ATTENTION: [REDACTED]

PART 7 GENERAL

7.1 Variation to be in writing

No variation of this Agreement will be effective unless in writing and executed by the City and the Owner.

7.2 Governing Law

This Agreement is governed by the Laws of the State of Western Australia and the parties submit to the jurisdiction of that State.

7.3 Further assurances

Each party shall do all things and execute all further documents as are necessary to give full effect to this Agreement.

7.4 Extension of time by City

The City may, at its discretion and by written notice to the Owner, extend any time period for performance by the Owner of any of its obligations under this Agreement.

7.5 Costs

- (a) The Owner shall pay or reimburse the City on demand for all reasonable costs and expenses incurred by the City in relation to:
 - (i) the exercise or enforcement by the City of any right, power or remedy under this Agreement, at law, in equity or otherwise; and
 - (ii) any act or omission by the Owner causing Damage to the City, including (without limitation) the City's legal costs and expenses.
- (b) Each party shall pay all its own legal costs and expenses in relation to the preparation, execution and stamping of this Agreement.

THE SCHEDULE

- Item 1: Place**
- Andrews House aka National Theatre* (HCWA Database No. 2076), located at 360 Murray Street, Perth, Western Australia, 6000, and consists of:
- (a) the Land;
 - (b) all buildings, structures and works on the Land from time to time; and
 - (c) any thing in connection with the Land, entered or deemed to be entered in the Register.
- Item 2: Significant Fabric**
- The Significant Fabric is described in Section 6.2, "Levels of Significance", in the Conservation Plan, at pages 62-64.
- Item 3: Conservation Policy**
- The Conservation Policy is described in Section 7.0, "Conservation Recommendations", and Section 8.0, "Implementation", in the Conservation Plan, at pages 65-79.
- Item 4: Land**
- Lot 123 on Diagram 3348 being the whole of the land contained in Certificate of Title Volume 1045 Folio 633.
- Item 5: Conservation Plan**
- Andrews House (fmr) 360 Murray Street, Perth: Conservation Plan* prepared by Hocking Planning and Architecture (August 2008).
- Item 6: Conservation Works**
- The schedule of works described in Annexure A.
- Item 7: Maintenance**
- The schedule of maintenance activities described in Annexure B.
- Item 8: Plot Ratio**
- The amount of unused plot ratio floor area that the Perth City Council has determined may be transferred from the Land is specified in Annexure C. The City of Perth resolution authorising the amount of transferable plot ratio is attached as Annexure D.

EXECUTED AS A DEED

EXECUTED by [redacted] **by authority of its**
Directors in accordance with Section 127 of the Corporations Act 2001:

X
Sig [redacted] n

S
Si [redacted]

[redacted]
Office held

[redacted]
C

[redacted]
Name of authorised person

X
[redacted]
Name of authorised person

EXECUTED by [redacted]

[redacted]
Signature of authorised person

[redacted]
Signature of authorised person

DIRECTOR
Office held

DIRECTOR/SECRETARY
Office held

[redacted]
Name of authorised person

[redacted]
Name of authorised person

THE COMMON SEAL of)
CITY OF PERTH)
was hereunto affixed in accordance with a)
resolution of the Council in the presence of)



Signature of Lord Mayor



Signature of Chief Executive Officer

LISA M. SCAFFIDI

Please print names in full


FRANK EDWARD

Please print names in full

**CERTIFICATE UNDER SECTION 32
OF THE HERITAGE OF WESTERN AUSTRALIA ACT (WA) 1990**

I, The Hon. G M (John) Castrilli, MLA, Minister for Local Government; Heritage;
Citizenship and Multicultural Interests, hereby certify that this Agreement is necessary for
the purposes of, and complies with, the *Heritage of Western Australia Act (WA) 1990*.

Dated the 19th day of April 2011.



Minister for Local Government; Heritage;
Citizenship and Multicultural Interests

Annexure A

Conservation Works

The following list of works is derived from Section 8.0, "Implementation", in the Conservation Plan, at pages 74-79.

Urgent Works (to be completed within 12 months of the Effective Date)

1. Inspect roofing for loose or raised fixings and sheet edges, soldered joints that have cracked or areas that have dented; repair as necessary or replace with like-for-like materials.
2. Inspect flashings and cappings for loose or raised fixings and cappings that have lifted, slipped or are deformed from wind damage; repair as necessary or replace with like-for-like materials.
3. Verify that downpipes are connected to the stormwater system, particularly in the roof space, and correct any that are not.
4. Check vent pipes for missing or damaged weather "hats" or wire basket cowls; repair as necessary or replace with like-for-like materials.
5. Inspect roof top elements for structural integrity to ensure there are no public safety issues.
6. Check roof top elements for water proofness and water penetration through holes, cracks, fixings, penetrations etc.
7. Inspect gutters and downpipe joints for cracks and evidence of drips to underside, and inspect for loose or missing brackets to gutters and downpipes; repair as necessary or replace with like-for-like materials.

Short-term Works (to be completed within two years of the Effective Date)

8. Inspect and rectify eaves and cornice membrane linings to upper surfaces of cornice and light bases for lifting joints, surface blisters or physical damage and cracks.
9. Check ventilation holes of eaves and cornices and clear as required.
10. Inspect and rectify eaves and cornices for paint failure and/or decay to linings, which indicate roof covering/membrane failure.
11. Inspect and rectify render for cracked and drummy areas, movement of base material, possible deterioration from stormwater leakage. Check render for thickness of remaining render coat.
12. Inspect and rectify brickwork for loose, fretted, broken or missing mortar joints and bricks. Check if the brickwork is crumbling or has surface salts, which could indicate that moisture is a problem.
13. Inspect and rectify windows for loose or decayed sash joints and broken or cracked glass or putty.
14. Check internal faces around windows for stains that can indicate failed flashings; rectify as needed.
15. Inspect and rectify window sills/sashes and doors/frames for paint deterioration and weathering.
16. Inspect and rectify render/concrete for crazing and paint deterioration, failure or damage generally.

17. Check rooftop metal fixtures for signs of rust, security of fixings, paint deterioration and weathering.
18. Inspect all downpipes and stormwater installations for paint deterioration and weathering.
19. Inspect sumps for damaged grates and ensure these are not draining surface water.

Medium-term Works (to be completed within five years of the Effective Date)

20. Inspect and rectify windows for loose or damaged mouldings, architraves, decayed stiles at sill level, weathered sills, openness of sashes.
21. Check that ventilators are not blocked and are appropriate in character and adequate for the ventilation purposes required; replace if necessary. Identify extraneous elements, such as abandoned fixings, for removal and appropriate filling of holes.
22. Check metal fixtures of roof top elements for signs of rust, security of fixings, light globes for cracking and safety of electricity supply.
23. Check masonry walls for cracking.
24. Inspect walls for verticality, straightness and trueness.
25. Inspect taps for drips and ease of operation. Look for wet areas within the property during dry periods.
26. Inspect electrical supply to the building and to each floor.
27. Inspect safety of all light fittings, switches and outlets.
28. Check retention of all identified elements of heritage significance specifically the windows, floors and remaining structural timbers.

Long-term Works (to be completed within 10 years of the Effective Date)

29. Reinstate the original (1913) ground floor timber windows and front door to a form consistent with the original design.
30. Remove the paint on the brickwork on the ground floor level of the Murray Street façade, particularly the sunray design around the front door, to reveal the original bands of render and brick.

Long-term Desirable Works (to be completed at the discretion of the owner)

31. Consider replacing the name above the front door with the original name MASSEY HARRIS. Any new signage should consider using the Art Nouveau lettering style associated with the Federation Free style.
32. Consider replacing the aluminium doors and windows on the Murray Street façade with timber doors and windows that are comparable to the original design apparent in the 1920s images at Figures 7 and 8 on page 22 of the Conservation Plan.

Annexure B

Maintenance

The Programme below will form part of the maintenance regime for this place. The programme will be the responsibility of the Owner or the Owner's nominee. Should the property be sold the new proprietor shall nominate the person responsible for carrying out this maintenance schedule. The City should be notified of any change of the person responsible.

This schedule is concerned with the significant heritage fabric and the presentation of the place. It does not aim to cover all the statutory requirements concerning plant and machinery. The required inspection of these items should form part of a broader more comprehensive schedule prepared by the proprietor or building manager.

This schedule should be regarded as provisional and should be adapted by mutual agreement to suit circumstance and experience. This schedule should be regarded as a minimum standard. The schedule should be adhered to in any period where the place is wholly or partially unoccupied.

It is not envisaged that structural monitoring will be required.

Should the place be subject to damage by fire, infestation, seismic or building activity or alteration of the foundation, an inspection of the building frame by a qualified structural engineer will be required and any recommendations implemented.

Periodic Maintenance Schedule

As needed:

- Keep grass and other vegetation on the perimeter of the building trimmed short.
- Maintain ground levels around the building to ensure that the masonry wall of the foundation is visible by 300mm in the clear.

Annually:

- Sweep chimneys and clean fireplaces (if in use).
- Inspect building for termites and other potentially damaging pests; treat as necessary.
- Inspect exterior painted timber for deterioration; repaint as necessary.
- Clean gutters and downpipes for free flow, prior to winter.
- Clean ventilator openings.
- Inspect for rising damp or water penetration and repair immediately as necessary.

Five Yearly:

- Inspect metal roofing, fixings, wall flashings, box gutters and downpipes for corrosion and repair as necessary
- Inspect and repair external glazing as necessary.

Annexure C

Transfer of Plot Ratio

1. In consideration of entering into this Agreement and in particular the development and conservation obligations set out in Part 3, the City of Perth has resolved that the Owner may transfer up to 2324m² of unused plot ratio floor area from the Land (the "Donor" site) under clause 34 of the City of Perth City Planning Scheme No. 2, which amount shall be recorded in the City of Perth Register of Transferable Plot Ratio. The resolution of the City of Perth is attached as Annexure D.
2. Transferable plot ratio floor area described in Paragraph 3 of this Annexure C may be used, sold or retained (banked) by the Owner in accordance with the City of Perth City Planning Scheme No. 2 and subject to the approval of the City. All transfers are to be recorded in the City of Perth Register of Transferable Plot Ratio.
3. The City shall do all things necessary and within its power to effect the transfer of plot ratio and the Owner shall cooperate and execute all necessary consents, permits or authorisations as may be required to give effect to such transfer.

Annexure D

City of Perth Resolution of 15 September 2009

The votes were recorded as follows:-

For: The Lord Mayor, Crs Butler, Davidson, Evangel, Hardy, Liu, McEvoy and Tognolini

Against: Nil

PLANNING COMMITTEE REPORTS

509/09 34 (LOT 1) PARLIAMENT PLACE, WEST PERTH – PROPOSED DEMOLITION OF EXISTING TWO-STOREY BUILDING AND CONSTRUCTION OF A SIX LEVEL OFFICE BUILDING INCLUDING BASEMENT CAR PARK

BACKGROUND:

SUBURB/LOCATION: 34 Parliament Place, West Perth
FILE REFERENCE: 2008/2196
RESPONSIBLE DIRECTOR: Peter Monks, Director Planning and Development
DATE: 27 August 2009
MAP / SCHEDULE: Map and colour perspectives for 34 Parliament Place, West Perth
Schedule 1 - Transfer of Plot Ratio from 360 Murray Street, Perth

LANDOWNER: Recipient Site:-
Fadmoor Pty Ltd
Donor Site:

APPLICANT: [REDACTED]
Town Planning Group
ZONING: Recipient site:-
(MRS Zone) Urban
(City Planning Scheme Precinct) West Perth (P10)
(City Planning Scheme Use Area) Commercial

APPROXIMATE COST: \$5.2 million

The recommended decision is not a 'Major Policy Decision' within the context of the City of Perth Caretaker Policy.

The Committee recommendation to the Council for this report was resolved by the Planning Committee at its meeting held on 8 September 2009.

The Committee recommendation to the Council is the same as that recommended by the administration.

SITE HISTORY:

Donor Site - 360 Murray Street, Perth:-

The site area is 931m² and is located on the north western corner of Murray Street and Prince Lane. 'Andrews House' is a two storey brick and iron commercial building built in 1913 and is listed in the City Planning Scheme No. 2 register of Places of Cultural Heritage Significance.

Approval was issued under delegated authority on 21 January 2008 to change the use of the premises to a 'Gallery' and 'Office', and for an internal refurbishment, minor external alterations, and for the construction of a three-storey office addition to the rear over the car park.

At its meeting held on **28 October 2008**, the Council approved an application for the transfer of 1,700m² of unutilised plot ratio from the site to 997 – 1101 Hay Street, Perth. The transfer leaves the site with an additional 624m² of unused plot ratio which was not included as part of this previous application.

Recipient Site - 34 Parliament Place, West Perth:-

The 738m² subject site is located on the northern side of Parliament Place and is currently occupied by a two-storey building being used as an office. This building has no heritage significance.

DETAILS:

Donor Site - 360 Murray Street, Perth:-

No development of the former Andrews House is proposed with this application. A conservation plan has been provided and approved by the City in conjunction with the previous transfer of 1,700m² of plot ratio floor area to 997 – 1101 Hay Street, Perth. 'Andrews House' is a two-storey brick and iron commercial building built in 1913 and is listed in the City Planning Scheme No. 2 register of Places of Cultural Heritage Significance. It is proposed to transfer 293m² of the remaining 624m² of unutilised plot ratio to 34 (Lot 1) Parliament Place, West Perth.

Recipient Site - 34 Parliament Place, West Perth:-

Approval is sought for the demolition of the existing two-storey building and for the construction of a six-level office development at the subject site. The proposed development contains four office levels (1,769m² of office space), a communal roof top level containing staff facilities and meeting rooms and basement parking for 19 tenant car bays.

As part of the proposal, the applicant is seeking to transfer 293m² of unused plot ratio floor area from 360 (Lot 123) Murray Street, Perth 'Andrews House' in accordance with the provisions of Clause 34(1) of the City Planning Scheme No. 2. The proposal will result in the new development having a plot ratio of 2.4:1, or an additional 20% of plot ratio above the 2.0:1 plot ratio applicable to development under the City Planning Scheme No. 2.

The proposed basement level contains 19 commercial tenant car parking bays and 17 bicycle bays. Access to the basement level will be provided from a newly created right-of-carriageway located at 18 – 32 Parliament Place, West Perth, the adjacent site to the east of the subject site.

The ground to third floors consist of single office tenancies:-

- ground floor 306m²;
- first floor 434m²;
- second floor 461m²;
- third floor 461m².

The fourth floor proposes an enclosed roof top level accommodating a staff tearoom and communal function / boardroom. An open air deck area is also proposed on the roof top level.

LEGISLATION / POLICY / STRATEGIC PLAN:

Policy Parliament House Precinct Policy

The objectives of the Parliament House Precinct Policy are:-

- To recognise the significance of the Institution of Parliament.
- To reinforce the unique role Parliament Hill plays in the structure of the city.

The site is located in the Inner Precinct of the Policy area. A height limit of 17.1 metres AHD applies to the subject site. All applications located within the Inner Precinct are required to be referred to the Western Australian Planning Commission (WAPC) for determination under the provisions of the Metropolitan Region Scheme.

COMPLIANCE WITH PLANNING SCHEME:

Land Use:

Donor Site - 360 Murray Street, Perth:-

There are no changes proposed to the current office use of the existing building.

Recipient Site - 34 Parliament Place, West Perth:-

The subject property is located within the Commercial Area of the West Perth Precinct (P10) under the City Planning Scheme No. 2. The Statement of Intent for the West Perth Precinct states *'that it will be developed as one of several residential quarters, accommodating a range of housing types along with support facilities, and also provide a secondary business area adjacent to the city centre'*. The proposed development satisfies the Statement of Intent for the West Perth Precinct.

Under the Use Group Table for the West Perth Precinct, 'office' is a preferred ('P') use in the Commercial use area.

Development Requirements:

Donor Site - 360 Murray Street, Perth:-

The transfer of unutilised plot ratio seeks to provide a conservation incentive to the owner of the heritage building. No additional new development is proposed on this 'donor' site as part of this application. However, conservation of the heritage building in accordance with an agreed Conservation Plan and in accordance with a current development approval previously issued is to be completed.

The Council's approval for any such transfer of plot ratio is required to be subject to the approval of the Conservation Plan submitted for the former Andrews House, in accordance with Policy 4.6.2 'Transfer Plot Ratio'.

Recipient Site - 34 Parliament Place, West Perth:-

The applicant is seeking to transfer 293m² of unused plot ratio floor area from 360 (Lot 123) Murray Street, Perth, to 34 (Lot 1) Parliament Place, West Perth. The proposal will result in the new development having a plot ratio of 2.4:1, or an additional 20% of plot ratio above the allowable 2.0:1 plot ratio applicable to development under the scheme.

The proposed new development has been assessed against the City Planning Scheme No. 2 requirements and the proposal's compliance with the following development standards is summarised below:-

Development Standard	Proposed	Required/Permitted
Maximum Plot Ratio	2.4:1 (1,769m ²)	2.0:1 (1,476m ²)
Car Parking	19 tenant car bays	22 tenant car bays (maximum integrated access)
Bicycle Parking	17 bays	Nil
Building height	19.8 metres (plant) 17.6 metres (parapet)	17.1 metres (maximum)
Setbacks		
Front – Parliament Place		
- Ground	2.7 metres (to the architectural feature) 3.5 (to building)	6 metres
- 1 st to 3 rd floor	2.7 metres	6 metres
- 4 th floor	8 metres	6 metres
Rear (north)		
- Ground	Nil to 5.35 metres	Nil Permitted
- 1 st to 3 rd floor	3 metres	Nil Permitted
- 4 th floor	3 metres (balcony) 9.3 metres (building)	Nil Permitted
Side (east)		
- Ground	Nil to 1.5 metres	Nil Permitted
- 1 st to 3 rd floor	Nil to 1.5 metres	Nil Permitted
- 4 th floor	5 metres	Nil Permitted
Side (west)		
Ground - 4 th floor	Nil	Nil Permitted

Variations to the plot ratio, building height and setback provisions applicable to the development can be granted by an absolute majority decision of the Council, in accordance with Clause 47 of the City Planning Scheme No. 2 and provided the Council is satisfied that:-

- '47(3)(d)(i) if approval were to be granted, the development would be consistent with:-*
- (A) the orderly and proper planning of the locality;*
 - (B) the conservation of the amenities of the locality; and*
 - (C) the statement of intent set out in the relevant precinct plan; and*
- (ii) the non-compliance would not have any undue adverse effect on:-*
- (A) the occupiers or users of the development;*
 - (B) the property in, or the inhabitants of, the locality; or*
 - (C) the likely future development of the locality'.*

In accordance with the provisions of Clause 34(1) of the City Planning Scheme No. 2:-

"The Council may approve, by grant of planning approval, the transfer of unused plot ratio rights from a site –

- (a) which is –*
 - (i) a place declared by the Council to be significant and worthy of conservation; or*
 - (ii) within a conservation area; and*
- (b) which cannot be developed satisfactorily, to another site."*

COMMENTS:

Consultation

The application was advertised to the owners of adjacent properties for a period of 14 days, due to the non-compliance with the plot ratio, building height and setback requirements of the City Planning Scheme No. 2. One objection was received, raising issues regarding the detail of finishes particularly to the boundary walls and a concern over the setbacks and heights to be agreed. The submission has been considered regarding the non-compliant setback and height detailed in the report with the support of the height and the setback to be conditioned. The finishing details are conditioned to be provided prior to the issue of a building licence.

Design Advisory Committee

The proposal was referred to the meeting of the Design Advisory Committee held on 20 August 2009 for comment in relation to the design aspects of the application. The Committee advised that it supports the design of the development subject to:-

- "1. the basement level being modified to enable some in-ground landscaping within the front setback area;*

2. *the glazing of the front façade being set back a minimum of four metres, commensurate with the glass line of the adjacent office building at 32 Parliament Place, with only minor façade detailing encroaching within the four metre front setback."*

The applicant has submitted a written response and additional plans in response to the Design Advisory Committees comments.

Addressing point 1 above, the applicant has submitted revised plans to allow for the depth of soil in the front setback to go from less than 400mm to 800mm to support a range of vegetation for landscaping. The adjustment is supported however, any approval should be conditioned to require a detailed landscaping and reticulation plan to be submitted for approval and that the landscaping be maintained to a high standard thereafter.

Addressing point 2 above, the applicant has advised the City that it proposes to adjust the eastern glazing on the front setback to 4.7 metres and the western portion of the glazing to 3.53 metres, on average exceeding the four metre setback as advised by the Design Advisory Committee. The proposed additional setback is noted however, is not accepted to have addressed the concern raised by the Design Advisory Committee.

The intent of the policy is for all buildings to be set back six metres from the Parliament Place street boundary. The setback should be landscaped and maintained with no walls or fences located in the setback area. The adjoining property to the east was approved and recently constructed to a minimum setback of four metres, encroaching two metres into the setback. It is considered that to be consistent with the streetscape and other setbacks in the area, that the proposed building line be conditioned to be set back a minimum of four metres, with only minor architectural features being permitted to encroach further into the front setback.

Transfer of Plot Ratio

360 Murray Street, Perth:-

The proposal is to transfer 293m² of the unused plot ratio from the site. The site area is 931m² and at the 5.0:1 plot ratio under the Scheme has a potential plot ratio floor space of 4,655m². The existing heritage building utilises approximately 1,136m² of plot ratio floor space whilst an approved extension to the building will add a further 421m² of plot ratio. This addition has not been constructed. After construction it would leave the site with a balance of unused plot ratio of 3,098m².

Under Policy 4.6.2 'Transfer of Plot Ratio' of the City Planning Scheme No. 2, the calculation of the potential transfer from an eligible site shall be "75% of the difference in square metres between the plot ratio of the site established in City Planning Scheme No. 2 (excluding any bonus plot ratio available in the Scheme) and the existing plot ratio of the listed heritage building on the site".

Based on a site area of 931m² and a 5.0:1 permitted maximum plot ratio, 3,098m² is unused plot ratio and 75% thereof equates to 2,324m². A transfer of 1,700m² to 997 – 1101 Hay Street, Perth, has been approved by the Council leaving 624m² of unutilised plot ratio area of which 293m² is proposed to be transferred to 34 (Lot 1) Parliament Place, West Perth. This would leave 331m² to be utilised on the site or transferred at a later stage.

Recipient Site - 34 Parliament Place, West Perth:-

Approval is sought to transfer 293m² of unused plot ratio floor area from 'Andrews House' located at 360 (Lot 123) Murray Street, Perth to 34 (Lot 1) Parliament Place, West Perth, giving the existing site a plot ratio of 2.4:1, or an additional 20% of plot ratio above the allowable 2.0:1 plot ratio applicable to development under the Scheme.

The Transfer of Plot Ratio Policy enables a maximum of 20% of the total plot ratio provisions established by the Scheme to be transferred to any recipient site which is sought in this instance.

The proposed transfer of plot ratio complies with the requirements of the Transfer of Plot Ratio policy and the additional floor space will not add inappropriate bulk or mass to the proposed development for the site. Given the above, it is considered that the proposed transfer of plot ratio be supported subject to relevant conditions.

Conservation Plan and Heritage Agreement:

360 Murray Street, Perth:-

The submitted draft Conservation Plan for Andrews House has been assessed and is considered to be acceptable. In order to ensure that all works are carried out in accordance with the Conservation Plan a legal heritage agreement between the owner of 360 (Lot 123) Murray Street, Perth and the City of Perth will have to be agreed to and signed by all parties. As such an agreement is necessary in order that the unutilised plot ratio can be transferred, the execution of the agreement must be finalised prior to the issue of any building licence for the development at 34 (Lot 1) Parliament Place, West Perth. This should be made a condition of any approval.

Setbacks

The site is located in the "inner precinct" of the Parliament House Precinct. The proposed development generally meets the policy requirements for setbacks with the exception of the front setback of six metres from Parliament Place. Portions of the proposed building are set back 2.7 metres from Parliament Place.

The adjoining property to the east at 18 - 32 Parliament Place is set back four metres from the Parliament Place street frontage and displays a similar building bulk to the street.

The adjoining property to the west is a two story office building that has a nil setback to the Parliament Place street front.

The applicant's justification for the proposed variation is that the varied setback at the front gives an average of over four metres and is consistent with the adjoining buildings. It is considered that the proposed setback will have an adverse impact on the streetscape, particularly if the building to the west is redeveloped at some stage in the future, is contrary to the intent and requirements of the policy and should be set back further to be consistent with recent approvals. It is therefore proposed, to provide a consistent setback, that the front setback be increased to a minimum of four metres to the street.

Given the above it is considered that a minimum four metre setback will not have an adverse impact on the amenity of the adjoining properties or the immediate locality and can be supported in accordance with Clause 47 of the Scheme.

Building Height

The provisions of the Parliament House Precinct Policy specify that maximum heights are total and include superstructures, lift overrun, and plant rooms a maximum height of 17.1 metres. The proposed development exceeds the maximum building height by 2.7 metres at 19.8 metres total. The height of the front parapet of the building exceeds the maximum height by only 500mm at 17.6 metres. The roof level, combined with the lift overrun, exceeds the height limits but considering a setback of the roof level at 8.1 meters the perceived height is effectively taken away from the streetscape and contained within the site, reducing the impact of the variation on the adjacent properties and the locality. Therefore, the minor height variation can be supported in accordance with Clause 47 of the City Planning Scheme No. 2.

Building Design and Streetscape Presentation

The overall design is generally considered appropriate for the site. The proposed building is well articulated and presents an interesting façade to the street boundary. The proposed treatment of the western façade adequately addresses the issue of a blank wall over the adjacent two storey office.

The proposed building appropriately addresses Parliament Place with the removal of a crossover and access via a right-of-carriageway on the adjacent property. A landscaped front setback with a spacious front entry area provides a strong connection with the building entrance and the street. Internally the ground floor lobby is spacious and considerate to the office nature of the building. The office areas range from 306m² to 407m² and are provided with adequate staff amenities.

The addition of a communal rooftop level provides additional facilities to the tenants and activates the outdoor area of the roof level. Overall the building design and streetscape appearance are functional and provide a level of interest that is compatible with the location.

Conclusion

The proposed transfer of plot ratio from 360 Murray Street, Perth (donor site) to 34 (Lot 1) Parliament Place, West Perth (recipient site), is supported subject to no more than 293m² being transferred from the donor site.

The proposed development will contribute to the locality in the commercial use area of the West Perth Precinct. It is considered that the minor variations to the Scheme requirements proposed will not have an adverse impact on the amenity of the locality and streetscape and can be supported, subject to the design modifications previously outlined.

Having regard to the above, it is recommended that the proposal be supported subject to relevant conditions.

Moved by Cr Hardy, seconded by Cr Butler

That:-

1. ***in accordance with the provisions of the City Planning Scheme No. 2, the Council APPROVES BY AN ABSOLUTE MAJORITY an application for the transfer of plot ratio from 360 (Lot 123) Murray Street, Perth, to 34 (Lot 1) Parliament Place, West Perth as detailed on the Metropolitan Region Scheme Form One dated 15 July 2009, subject to:-***
 - 1.1 ***a maximum of 293m² of plot ratio floor area being transferred from 360 (Lot 123) Murray Street, Perth to 34 (Lot 1) Parliament Place, West Perth;***
 - 1.2 ***a Heritage Agreement between the owner of 360 (Lot 123) Murray Street, Perth and the City of Perth being submitted to the City, and agreed to and signed by all parties, prior to the issue of the relevant building licence for the proposed development at 34 (Lot 1) Parliament Place, West Perth;***
2. ***in accordance with the provisions of the City Planning Scheme No. 2, the Council APPROVES BY AN ABSOLUTE MAJORITY the application for the demolition of the existing two-storey building and for the construction of a six-level office building consisting of four office levels, a communal roof level and associated basement car parking at 34 (Lot 1) Parliament Place, West Perth, as detailed on the Metropolitan Region Scheme Form One dated 15 July 2009, and as shown on the plans received 28 August 2009 subject to:-***

(Cont'd)

- 2.1 *the total development on Lot 1 not exceeding a plot ratio of 2.4:1 or 1,769m² of plot ratio floor space, of which 293m² shall be transferred from 360 (Lot 123) Murray Street, West Perth;*
- 2.2 *the owner submitting evidence to the City that the transaction in respect of the transfer of plot ratio has been finalised between the owners of 360 (Lot 123) Murray Street, Perth and 34 (Lot 1) Parliament Place, West Perth, enabling the City to register the transfer of plot ratio, prior to the issue of a Building Licence;*
- 2.3 *final details of the materials, colours and finishes for the proposed building being submitted and approved prior to the issue of the relevant building licence, with particular attention to the treatment of the western elevation to provide visual interest to the blank façade;*
- 2.4 *a detailed landscaping and reticulation plan being submitted and approved prior to the issue of the relevant building licence, with the approved landscaping being installed prior to the occupation of the building and thereafter maintained to a high standard;*
- 2.5 *the building being set back a minimum of four metres from the front boundary with only minor architectural features providing articulation to the front facade projecting into the setback area;*
- 2.6 *all piped, ducted and wired services, air conditioners, hot water systems, water storage tanks, service meters and bin storage areas being located so as to be screened from view from the street, with details of the location and screening of any proposed external building plant or services being submitted and approved prior to the issue of a building licence;*
- 2.7 *the dimensions of all car parking bays, aisle widths and circulation areas complying with the Australian Standard AS/NZS 2890.1/2004;*

(Cont'd)

- 2.8 *a maximum of 19 tenant car parking bays being provided on the site, with these bays being for the exclusive use of tenants of the development and their guests / customers and not being leased or otherwise reserved for use of the tenants or occupants of other buildings or sites;*
- 2.9 *in the event of the development not proceeding within six months of the demolition of the existing building on the site, the site is to be screened and/or landscaped to the satisfaction of the City in order to preserve the amenity of the area and to prevent dust and sand being blown from the site and is to be maintained in a clean and tidy state;*
- 2.10 *the submission of a construction management plan for the proposed development detailing how it is proposed to manage:-*
- 2.10.1 *the delivery of materials and equipment to the site;*
 - 2.10.2 *the storage of materials and equipment on the site;*
 - 2.10.3 *the parking arrangements for the contractors and subcontractors;*
 - 2.10.4 *maintaining existing access arrangements for affected properties if works affect the right-of-way;*
 - 2.10.5 *other matters likely to impact on the surrounding properties and adjacent residents;*
- 2.11 *signage for the commercial tenancies being subject to a separate application for approval;*
3. *as the site, located at 34 (Lot 1) Parliament Place, West Perth, is located within the Inner Precinct of the Parliament House Precinct Policy the application be referred to the Western Australian Planning Commission for determination under the Metropolitan Region Scheme.*

The motion was put and carried by an absolute majority

The votes were recorded as follows:-

For: The Lord Mayor, Crs Butler, Davidson, Evangel, Hardy, Liu, McEvoy and Tognolini

Against: Nil