

**5.1 NOS. 367 AND 369 (LOT: 273 & 274; D/P: 1237) FITZGERALD STREET, NORTH PERTH - PROPOSED VIEWING PLATFORM (UNLISTED USE) (UNAUTHORISED EXISTING DEVELOPMENT)****Ward:** South

- Attachments:**
1. Consultation and Location Plan
  2. Development Plans
  3. Site Photos
  4. Assessment of Clause 67 – Matters to be Considered by Local Government
  5. Summary of Submissions - Applicant's Response
  6. Summary of Submissions - Administration's Response
  7. Determination Advice Notes

**RECOMMENDATION:**

That Council, in accordance with the provisions of the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme, **APPROVES** the development application for a proposed Viewing Platform (Unlisted Use) (Unauthorised Existing Development) at Nos. 367 and 369 (Lot: 273 & 274; D/P: 1237) Fitzgerald Street, North Perth, in accordance with the plans shown in Attachment 2, subject to the following conditions, with the associated determination advice notes in Attachment 7:

**1. Development Approval**

This approval is for a temporary Viewing Platform (Unlisted Use) including associated fencing (Unauthorised Existing Development) as shown on the approved plans dated 10 June 2024 and 19 August 2024. No other development forms part of this approval;

**2. Time Limited Approval**

This development approval is valid for a maximum period of 9 months from the date of this approval, until 17 June 2025. The Viewing Platform and associated fencing shall be disassembled and removed entirely from the subject site by 1 July 2025, being 14 days after the approval ceases, by the applicant/landowner and to the satisfaction of the City;

**3. Use of Viewing Platform**

**3.1** The Viewing Platform shall be limited to the following hours of operation, by appointment only:

- Monday to Friday: 10:00am to 6:00pm; and
- Saturday and Sunday: 10:00am to 5:00pm;

**3.2** No more than three people are permitted on the Viewing Platform at any one time, to the satisfaction of the City;

**3.3** The base of the Viewing Platform shall be enclosed by the approved fencing during its entire operation and securely locked outside of viewing times, to the satisfaction of the City; and

**3.4** Attendees shall be accompanied by a staff member associated with the Viewing Platform at all times, to the satisfaction of the City; and

**4. Car Parking**

Prior to use of the Viewing Platform, three (3) car parking bays and related access ways as shown on the approved plans shall be available for the Viewing Platform use. These bays shall be line marked, sign-posted and maintained in accordance with Australian Standard AS2890.1, to the satisfaction of the City.

**EXECUTIVE SUMMARY:**

The purpose of this report is to consider an application for development approval for a temporary Viewing Platform at No. 367-369 Fitzgerald Street, North Perth (the subject site). A location plan of the subject site is included as **Attachment 1**.

The proposal includes the Viewing Platform that is located to the south-east corner of the site and associated fencing around the perimeter of the Viewing Platform.

The Viewing Platform is a steel structure with a maximum height of 20.2 metres above natural ground level, which is approximately equivalent to a six-storey building height.

Metal sheet perimeter fencing surrounds each side of the temporary Viewing Platform to secure the site. The height of the fencing along the north and east is to a maximum height of 2.6 metres. The height of fencing to the western and southern boundaries is to a maximum of 2.1 metres. A lockable pedestrian gate is provided to the northern elevation.

Real estate signage has been affixed to the northern, eastern and southern elevations of the fence which is exempt from development approval in accordance with the City's Signs and Advertising Policy.

The Viewing Platform is proposed as part of the sales and marketing strategy to aid in the sale of apartments associated with the mixed-use development approved at the subject site by the Joint Development Assessment Panel (JDAP) in November 2023. The Viewing Platform would allow prospective buyers to understand potential views from different levels of this approved development.

The Viewing Platform and associated fencing has existed on-site since 10 June 2024. The development was lawfully constructed and has been operating in accordance with relevant planning and building legislation.

The development is currently unauthorised as the relevant planning exemption that the Viewing Platform was constructed in accordance with, expired on 19 July 2024 during the assessment of this development application.

The proposal seeks to extend the period the structure remains on-site for an additional 9-month period, until 17 June 2024, after which time all structures would be removed entirely from the site. This means the Viewing Platform would exist on-site for total of 12-months. The time period proposed aligns with the applicants sales and construction timeline.

The area of discretion being sought under the planning framework relates to the acceptability of the proposed land use, building height, fencing and car parking. The Viewing Platform is an Unlisted Use under the City's Local Planning Scheme No.2, which is capable of approval in the Commercial Zone.

The application has been assessed against Clause 67 – matters to be considered by local government under the *Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2*. Matters relevant to this application include objectives of the City's LPS2, Policy No. 7.1.1 Built Form (Built Form Policy), the compatibility of the proposal within the context of the locality, amenity impacts to surrounding properties and community submissions on the application.

The height is acceptable due to location of the temporary Viewing Platform, its intended purpose, and the scale of the structure relevant to the approved mixed-use development at the subject site. Large setbacks provided to surrounding residential properties to reduce visual impacts, overlooking and shadows cast.

The use would be appropriately managed to reduce amenity impacts through day-time operating hours, appointments held by an authorised sales representative, a maximum of three people using the structure at any one time, and the provision of sufficient on-site parking. The development is temporary and would not provide long-term impacts to the streetscapes and surrounding locality.

Having regard to the objectives of the Commercial zone under LPS2, the development supports the redevelopment of the site to an approved mixed-use development. Future redevelopment would deliver a range of retail, office and social land uses in the future that would facilitate economic growth in the North Perth town centre and create long-term employment opportunities.

The matters raised during community consultation have been addressed by recommended conditions of approval which relate to:

- A maximum 9-month term of approval.
- Number of people on the structure at any one time.
- Operating hours.
- Provision of carparking on-site.

The proposed use, location and design of the temporary Viewing Platform and associated fencing satisfies the planning framework and is recommended for approval, subject to conditions.

#### **PROPOSAL:**

The application seeks approval for a temporary Viewing Platform and associated fencing on the subject site.

The development is proposed to assist in the marketing of apartments for sale, relevant to the Mixed Use Development approved by the Metro Inner-North Joint Development Assessment Panel (JDAP) on [30 November 2023](#).

The development currently exists on-site, as further detailed within the Background section of this report.

The proposal details are summarised below:

#### Built Form

The temporary Viewing Platform is a steel open structure located to the southeast corner of the subject site. The structure has a maximum height of 20.2 metres, which is approximately equivalent to a six-storey building height.

The structure is setback 42.7 metres from western boundary (right-of-way), 6.5 metres from the southern boundary (Raglan Road), and 4.0 metres from the eastern boundary (Fitzgerald Street).

Metal sheet perimeter fencing surrounds each side of the temporary Viewing Platform to secure the site. The height of the fencing along the north and east is to a maximum height of 2.6 metres. The height of fencing to the western and southern boundaries is to a maximum of 2.1 metres.

The fencing includes a 2.0 metre by 2.0 metre sightline truncation at the intersection of Fitzgerald Street and Raglan Road. A lockable pedestrian entry gate is provided to the northern portion of the fence, providing access to the temporary Viewing Platform.

Real estate signage attached to the fencing does not form part of this application. This is because it is exempt from obtaining development approval in accordance with the City's [Signs and Advertising Policy](#).

#### Operation

Use of the Viewing Platform would be by appointment only, during the following hours:

- Monday – Friday: 10:00am and 6:00pm.
- Saturday and Sunday: 10:00am and 5:00pm.

No more than two customers and one staff member are proposed on the structure at any given time.

The application seeks a maximum operational period of nine months from the date of determination, until 17 June 2025. Following this date, the Viewing Platform and associated fencing would be removed within 14 days, by 1 July 2025.

Three car parking bays would be available for customer and staff use, located within an existing car parking area to the rear of No. 369 Fitzgerald Street, North Perth.

The development plans are included as **Attachment 2** and site photos of the development are included as **Attachment 3**.

#### Applicant Justification

A summary of the Applicant's reasoning for the Viewing Platform to remain on-site for an additional 9-month period is provided below:

*The initial three-month period was taken from issue of the building permit. The building permit for the platform was issued on 19 April 2024 and the construction period took almost 2 months. The Notice of Completion was lodged on 10 June 2024.*

*Taking the construction period into account, this only left approximately five-weeks of the three months where the Viewing Platform could be used.*

*The Viewing Platform is an important component of the sales and marketing, as it enables prospective buyers the chance to see what views would be like from the first six levels in the building.*

*With a value more than \$100m, this project is the largest mixed-use project to be undertaken in North Perth in the last 20 years.*

*To obtain construction finance, projects of this size require a minimum level of debt cover by unconditional pre-sales. Typically for a project of this scale we will need to obtain 75% of the peak debt covered by pre-sales which in this case will mean approximately 40 sales.*

*To help secure these sales, fit out is being undertaken for a sales and marketing suite located at No. 103 Alma Road which is due to be completed in October.*

*Commencement of an extensive spend on advertising and lead generation would not begin until all marketing collateral such as the high-quality 3D renders and the sales office including a display kitchen are complete. At this stage it is expected this would be ready for October.*

*Once the sales and marketing officially launch, the Viewing Platform would assist in closing sales, allowing construction to commence as soon as possible, which is earmarked for quarter 2 of 2025.*

*The proposal for the Viewing Platform to remain on-site until June 2025 would align with the current timeline for the above sales and the indicative commencement of construction. If sales are positive, the Viewing Platform would be removed earlier than June 2025.*

#### **DELEGATION:**

This application is being referred to Council for determination in accordance with the City's Register of Delegations, Authorisations and Appointments.

This is because the delegation to Administration to determine applications does not extend to applications for development approval that receive more than five objections during the community consultation period.

The proposed application received 21 objections during the community consultation period.

#### **BACKGROUND:**

<b>Landowner:</b>	Victor Miasi and Joseph Miasi
<b>Applicant:</b>	Celsius Developments Pty Ltd
<b>Client:</b>	Celsius Developments Pty Ltd
<b>Date of Application:</b>	10 June 2024
<b>Zoning:</b>	MRS: Urban \\ LPS2: Zone: Commercial R Code: N/A
<b>Built Form Area:</b>	Activity Corridor
<b>Existing Land Use:</b>	367 Fitzgerald Street: Vacant Land 369 Fitzgerald Street: Office
<b>Proposed Use Class:</b>	Unlisted Use (Viewing Platform)
<b>Lot Area:</b>	367 Fitzgerald Street: 693 square metres 369 Fitzgerald Street: 731 square metres Total: 1,424 square metres
<b>Right of Way (ROW):</b>	Yes, 4.0 metres, constructed
<b>Heritage List:</b>	No

**DETAILS:**Site Context and Zoning

The subject site is bound by Fitzgerald Street to the east, Raglan Road to the south, an unnamed 4.0 metre wide sealed ROW to the west, and a single storey converted office to the north. A location plan is included as **Attachment 1**.

The subject site and the adjoining property to the north are zoned Commercial under LPS2 and are located within the Activity Corridor Built Form Area under the City's Built Form Policy, with a building height standard of four storeys.

The surrounding context is summarised as follows:

- Northern properties are zoned District Centre under LPS2, located are within the Town Centre Built Form Area under the City's Built Form Policy, with a building height standard of six storeys.
- Western properties are zoned Residential R40 under LPS2 and are located within the Residential Built Form Area under the City's Built Form Policy, with a building height standard of two storeys.
- Southern properties fronting the west side of Fitzgerald Street are zoned Mixed Use R80 under LPS2, and the properties fronting the east side of Fitzgerald Street are zoned Commercial under LPS2. These properties fronting Fitzgerald Street and are located within the Activity Corridor Built Form Area under the Built Form Policy, with a building height standard of four storeys.
- Southern properties fronting Raglan Road are zoned Residential R60 under LPS2 and located within the Residential Built Form Area under the City's Built Form Policy, with a building height standard of three storeys.

Along Fitzgerald Street, the subject site is surrounded by mixed-use developments of a commercial nature and of various scales and typologies. The western and eastern sides of Fitzgerald Street include residential development, comprising single house and grouped dwelling developments.

**Site History & Application Background**

The Viewing Platform is proposed as part of a broader sales and marketing strategy as the applicant prepares the site for the approved redevelopment.

Separate to the proposed temporary Viewing Platform, Administration have been working on other matters relevant to the broader site area. This includes the provision of a temporary sales office, real estate signage and matters relating to antisocial behaviour and homelessness.

Separate matters occurring to other areas of the site have no relevance and cannot influence the decision making of the Viewing Platform and associated fencing, which shall be considered on its merits against the relevant planning framework.

Administration are working with the applicant and community to resolve the separate matters occurring across the site under separate processes.

A summary of relevant site history and application background is detailed below.

Previous Approvals*Approved Mixed-Use Development*

At its meeting on [30 November 2023](#) the Metro-West Joint Development Assessment Panel (JDAP) approved a mixed-use development at Nos. 367-373 Fitzgerald Street & 103 Alma Road, North Perth which includes the subject site.

The mixed use development was approved to a maximum of nine storeys with a maximum building height of 32 metres.

In the location where the Viewing Platform is located, the mixed use development was approved to a maximum of six storeys with a building height of 23.3 metres.

The Viewing Platform would allow prospective buyers to understand potential views from different levels of this approved development.

The approved development has not yet commenced construction.

#### *Office at No. 369 Fitzgerald Street*

The City approved a change of use from Single House to Office at No. 369 Fitzgerald Street, North Perth in 2011 under Delegated Authority.

At this time the Office required three on-site parking bays. The application was approved with six on-site parking bays, including four bays at the rear of the site, accessed from the ROW and two bays to the front of the site, accessed from Fitzgerald Street. As such, the development was approved with a three-car parking bay surplus.

The property at No. 369 Fitzgerald Street, North Perth still operates as an Office in accordance with the 2011 development approval. No changes are proposed to this aspect of the site as part of the subject application.

#### Planning Exemptions and Unauthorised Development

The Viewing Platform was lawfully constructed and is operating in accordance with relevant planning and building legislation.

The Viewing Platform did not require planning approval to be constructed or used for a three-month period. This is because temporary Viewing Platforms are permitted to be constructed and operate for a period of three months following the issue of a building permit for the structure, subject to conditions. This is in accordance with [Table 4](#) the City's Local Planning Policy: Planning Exemptions (Planning Exemptions Policy).

In addition to this, use of the Viewing Platform is also exempt from the need to obtain development approval provided that it operates for less than 48 hours in any 12-month period. This is in accordance with [Clause 61\(2\)\(f\)](#) of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Planning Regulations).

A building permit for the Viewing Platform and associated fencing was issued by Administration on 19 April 2024 and construction was completed on 10 June 2024.

At the time of the building permit application, Administration confirmed that the Viewing Platform met all relevant conditions to be exempt from requiring development approval under the Planning Exemptions Policy.

The applicant lodged the current development application seeking approval for an extension to the time period for the Viewing Platform to remain in place on 10 June 2024.

Based on date of issue for the building permit, the temporary planning exemption for the Viewing Platform structure ended on 19 July 2024. The development is unauthorised as the relevant planning exemption that the Viewing Platform was constructed in accordance with, expired on 19 July 2024 during the assessment of this development application.

In accordance with the City's Development Compliance Enforcement Policy, Administration determined it acceptable for the Viewing Platform to remain and be used following the end of the planning exemption on 19 July 2024, for the following reasons:

- The structure does not have an adverse impact to surrounding properties. This is due to the setbacks provided to surrounding properties, the provision of on-site car parking, and due to low-scale use of the structure.
- A development application was lodged prior the expiration of the exemption. The September Council Meeting was the earliest meeting the proposal could be referred to due to community consultation requirements and report preparation.
- Based on logs submitted by the developer regarding use of the Viewing Platform, it is unlikely the use of the Viewing Platform will exceed 48 hours of usage, prior to the application being determined.

## Summary Assessment

The table below summarises the planning assessment of the proposal against the provisions of LPS2, the City's Built Form Policy and Local Planning Policy: Non-Residential Parking (Non-Residential Parking Policy). In each instance where the proposal requires the discretion of Council, the relevant planning element is discussed in the Detailed Assessment section following from this table.

Planning Element	Use Permissibility / Acceptable Outcomes	Requires the Discretion of Council
Land Use		✓
Street Setback	✓	
Building Height/Storeys		✓
Building Setbacks	✓	
Visual Privacy	✓	
Car Parking		✓
Bicycle Parking		✓
Public Domain Interface (Fence)		✓
Pedestrian Access and Entries	✓	
Orientation	✓	

## Detailed Assessment

The use permissibility and acceptable outcome assessment of the elements that require the discretion of Council is as follows:

Land Use	
Use Permissibility	Proposal
<b>LPS2 – Zoning Table</b>  'P' use	A Viewing Platform is an Unlisted Use. This is because is not a land use defined in LSP2.
Building Height	
Acceptable Outcome	Proposal
<b>Built Form Policy Volume 3, Clause 3.1</b>  Four storeys Height of 14.3 metres	The Viewing Platform has a maximum height of 20.2 metres, which is equivalent to approximately six-storeys.
Public Domain Interface	
Acceptable Outcome	Proposal
<b>Built Form Policy Volume 3, Clause 1.7</b>  <b>A1.7.5</b> – Fencing should be visually permeable above 1.2 metres and the average height of solid fences to the street should not exceed 1.2 metres.  <b>A1.7.6</b> – Fencing on the frontage is designed to eliminate opportunities for concealment.	Fencing is visually impermeable to a maximum height of 2.6 metres to Fitzgerald Street and 2.1 metres to Raglan Road.  The fencing to No. 369 Fitzgerald Street would provide opportunities for concealment.
Car and Bicycle Parking	
Deemed-to-Comply Standard	Proposal
<b>Non-Residential Parking Policy</b>  For unlisted uses, car and bicycle parking arrangements to be determined by the City based on a site-specific Parking Management Plan.	A parking management plan has not been submitted. 3 bays provided for the Viewing Platform.

The above elements of the proposal do not meet the specified standards and are discussed in the Comments section below.

Planning and Development (Local Planning Schemes) Regulations 2015

In accordance with [Clause 67\(2\)](#) of the Planning Regulations, and in determining a development application, Council is to have due regard to a range of matters to the extent that these are relevant to the development application.

Administration's response to each matter requiring consideration is listed in the table included as **Attachment 4**.

**CONSULTATION/ADVERTISING:**

Community consultation was undertaken in accordance with the [Planning and Development \(Local Planning Schemes\) Regulations 2015](#) and the City's [Community and Stakeholder Engagement Policy](#) for a period of 28 days, from 18 July 2024 to 15 August 2024. The method of consultation included a notice on the City's website, a sign on-site to the Fitzgerald Street and Raglan Road street frontages, a newspaper advertisement, and 370 letters mailed to the owners and occupiers of the adjoining and adjacent properties of the subject site as shown in **Attachment 1**.

A total of 24 submissions were received during the advertising period. This included three (3) submissions supporting the proposed development and 21 submissions objecting to the proposed development.

The key comments received in support are summarised as follows:

- The proposal assists with facilitating a high-quality redevelopment of the site, which would result in more residents supporting local businesses and invigorating the area.
- The Viewing Platform provides potential buyers with a better understanding of the location.
- Due to the current housing crisis, we should be making it easier for developers to sell apartments.
- The proposal is temporary.

The key concerns raised are summarised as follows:

- The height of the Viewing Platform is imposing and dominates the view from the backyards and windows of surrounding properties.
- The Viewing Platform is not consistent with the desired scale and character of the area and detrimentally impacts the amenity of surrounding properties due to its height and form.
- The Viewing Platform overlooks surrounding residential homes, compromising visual privacy of habitable rooms and backyards.
- Concerns relating to the structure being a public safety risk due to trespassers and attracting anti-social behaviour.
- The perimeter fencing is unsightly, results in opportunities for concealment, reduces surveillance between the site and the street, attracts antisocial behaviour, and is not consistent with the established streetscapes.

A detailed summary of submissions received during consultation, along with the applicant's response to the submissions received is provided as **Attachment 5**. Administration's response to the summary of submissions is provided as **Attachment 6**.

**Design Review Panel (DRP):**

Referred to DRP:           No

The proposal was not referred to the Design Review Panel. This is because the application seeks a time limited approval for a structure that does not meet the requirements for referral established in the [DRP Terms of Reference](#). Due to the nature of the structure, being a temporary viewing platform and associated fencing, there is limited scope for design advice.

**LEGAL/POLICY:**

- *Planning and Development Act 2005.*
- *Planning and Development (Local Planning Schemes) Regulations 2015.*
- *City of Vincent Local Planning Scheme No. 2.*
- *Local Planning Policy: Non-Residential Parking.*
- *Community and Stakeholder Engagement Policy.*
- *Policy No. 7.1.1 – Built Form Policy.*

*Planning and Development Act 2005*

The applicant would have the right to apply to the State Administrative Tribunal for a review of Council's determination.

This would be in accordance with Schedule 2, Clause 76(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and Part 14 of the *Planning and Development Act 2005*.

*Local Planning Scheme No. 2*

In considering the appropriateness of the use, Council is required to consider the objectives of the Commercial zone under LPS2, as follows:

- *To facilitate a wide range of compatible commercial uses that support sustainable economic development within the City.*
- *To ensure development design incorporates sustainability principles, with particular regard to waste management and recycling and including but not limited to solar passive design, energy efficiency and water conservation.*
- *To maintain compatibility with the general streetscape, for all new buildings in terms of scale, height, style, materials, street alignment and design of facades.*
- *To ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality.*

**RISK MANAGEMENT IMPLICATIONS:**

There are minimal risks to Council and the City's business function when Council exercises its discretionary power to determine a planning application.

Concerns relating to public safety risk were raised during community consultation for the proposal. There is no risk to City in making a planning decision to approve the Viewing Platform relating to public safety. This is because the development is located entirely on private land. All public safety responsibility and liability would sit with proponents of the application and not the City.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's Strategic Community Plan 2022-2032:

*Innovative and Accountable*

*Our decision-making process is consistent and transparent, and decisions are aligned to our strategic direction.*

**SUSTAINABILITY IMPLICATIONS:**

The proposal is a temporary addition to the subject site. The use of the structure during the proposed approval period would not generate ongoing energy or water consumption.

As addition, the sustainability implications would be limited to the energy consumption and water use associated with the decommissioning, transport and deconstruction of the existing structure and associated fencing. These would be minimal due to the nature and scale of the works, being a temporary Viewing Platform with associated metal sheet fencing.

**PUBLIC HEALTH IMPLICATIONS:**

This report has no implication on the priority health outcomes of the City's *Public Health Plan 2020-2025*.

**FINANCIAL/BUDGET IMPLICATIONS:**

There are no finance or budget implications from this report.

**COMMENTS:**Summary Assessment

- Temporary Development: The proposal is for the temporary works and use of the land, which is proposed to aid the sale of apartments, supporting the overall redevelopment that is approved for the site. The structure would exist for an additional 9-months from the date of determination. A condition of approval is recommended requiring the removal of all structures within 2 weeks of when the approval expires, by 1 July 2025.
- Streetscape Compatibility: The Viewing Platform would not provide long-term impacts to the adjacent streetscapes or surrounding locality due to its temporary nature. The fencing height is consistent with fences within the existing Fitzgerald Street streetscape and the fence typology is typical to sites preparing for or that are under construction. Real estate signage has been affixed to street facing elevations, providing a level of interest to respective streetscapes.
- Height & Setbacks: The height is acceptable due to location of the temporary Viewing Platform, its intended purpose, and the scale of the structure relevant to the approved mixed-use development at the subject site. The structure is setback 46.7 metres from the nearest residential property, reducing adverse impacts of overlooking and subsequent loss of privacy. The siting of the Viewing Platform would reduce undue amenity impacts to surrounding properties by way of noise, parking and shadow.
- Appropriate Management of Use: The use would be appropriately managed to reduce adverse amenity impacts to surrounding properties, which is secured through conditions of approval. This is achieved through the proposed operating hours, given a maximum of three people are permitted on the structure at any given time, and as attendees must attend with staff members by appointment only.
- Secured Site & Surveillance: The site is secured appropriately via perimeter fencing that is provided at a height that would reduce access to the public. The proposed operating hours would provide activation and use of the site, providing actual and perceived surveillance, in addition to surveillance provided from surrounding properties and the street.
- Car Parking: A total of six on-site parking bays are provided to meet the needs for both the Viewing Platform and existing Office land uses.

Land Use

The proposed Viewing Platform land use is not specifically referred to in the zoning table of LPS2 and cannot reasonably be determined as falling within the interpretation of one of the listed land uses.

The Viewing Platform land use is required to be considered as an Unlisted Use in accordance with Clause 18(4) of LPS2.

An Unlisted Use is not a prohibited land use and can be approved at the discretion of the local government, in consideration of the [objectives](#) of the Commercial zone, and following community consultation.

Administration has assessed the acceptability of the land use against relevant considerations set out in the planning framework.

The Viewing Platform land use is acceptable for the following reasons:

- **Temporary Development:** The proposal is for the temporary works and use of the land, which aids in the sale of apartments, supporting the overall redevelopment that is approved for the site. The structure would exist for an additional 9-months from the date of determination to align with the applicants sales and marketing timeline. A condition of approval is recommended requiring the removal of the Viewing Platform at the end of the 9-month period, by 1 July 2025.
- **Supporting Economic Development:** The Viewing Platform aids with the sale of apartments that would facilitate redevelopment of the site to an approved mixed-use development. Future redevelopment would provide a range of retail, office and social land uses that would support economic development in the North Perth town centre, consistent with objectives of the Commercial Zone.
- **Streetscape Compatibility:** The development is temporary and would not provide long-term impacts to the streetscapes and surrounding locality. The development supports the sale of apartments that would facilitate approved redevelopment that is compatible with the general streetscape in the long-term.
- **Amenity of Adjoining Properties:** The Viewing Platform has been located and designed reduce detrimental impacts to surrounding properties. This is achieved through the following design measures:
  - **Appropriate location:** The Viewing Platform is setback a minimum of 46.7 metres from the closest residential property, at No. 138 Raglan Road North Perth. The siting of the Viewing Platform would reduce undue amenity impacts to surrounding properties by way of noise, parking or shadow.
  - **Protection of Privacy:** The proposal would not adversely impact the visual privacy of surrounding properties due to the large setbacks provided between the structure and surrounding residential buildings and their respective windows and outdoor spaces.
  - **Car parking:** Three car parking bays are provided on-site to meet the needs of customers and staff, reducing the need for on-street parking.
  - **Anti-social behaviour:** The proposed operating hours would provide activation and use of the site, providing actual and perceived surveillance. The adjacent office at No. 369 Fitzgerald Street also operates on weekdays, providing additional surveillance. The site is secured appropriately via perimeter fencing that is provided at a height that would reduce access to the public.
- **Appropriate Management of Use:** The use would be appropriately managed to reduce adverse amenity impacts to surrounding properties. This is achieved through the proposed operating hours, given a maximum of three people are permitted on the structure at any given time, and as attendees must attend with an authorised person by appointment only. Conditions of approval are recommended to secure these requirements.

### Built Form

The proposed building height and associated fencing would satisfy the [element objectives](#) of the Built Form Policy for the following reasons:

- **Height Responds to Desired Scale:** The height is acceptable due to location of the temporary Viewing Platform, its intended purpose, and the scale of the structure relevant to the approved mixed-use development at the subject site. The height of the approved mixed-use development in the location of the temporary Viewing Platform is six storeys with a height of 23.3 metres. The overall maximum height approved for the site is nine storeys at 32 metres. The height of the temporary Viewing Platform sits well below these approved maximum heights, at 20.2 metres. For these reasons, the height of the structure responds to the future scale of the subject site, street and town centre area.
- **Separation to Residential Properties:** The temporary Viewing Platform is appropriately located to minimise amenity and height impacts to surrounding properties, particularly residential houses. The City's Built Form Policy provides an acceptable standard for buildings to provide a 12.5 metre setback to the mid-point of the ROW. The Viewing Platform exceeds this acceptable standard, providing setback of 44.7 metres to the mid-point of the ROW. The large separation between the structure and surrounding properties would reduce adverse impacts to surrounding properties from shadow, overlooking and noise.
- **Visual Privacy:** The location of the structure, including large setbacks to residential properties, and capacity limit of three people on the structure at any one time would reduce adverse overlooking impacts to surrounding properties.
- **Temporary Fencing:** While the fencing height and materiality is not a long-term desired outcome, it is acceptable for the 9-month period as appropriately secures the site from public access and anti-social behaviour. This is due to the height and given the fencing is made from a non-climbable material. Metal sheet fencing is typical to construction sites or development sites preparing for construction. The materiality is not uncharacteristic to the area and the heights are consistent with existing solid walls within the Fitzgerald Street streetscapes.

- Surveillance: The Office land use at No. 369 Fitzgerald Street is in operation and its front facing windows would provide actual and perceived surveillance which would assist in reducing antisocial behaviours and mitigate impacts from concealment.

#### Car and Bicycle Parking

A car parking assessment has been undertaken for both the proposed Viewing Platform use located at No. 367 Fitzgerald Street and the existing Office use at No. 369 Fitzgerald Street.

As highlighted in the Background section of the report, the existing Office use was approved with six parking bays on-site, with three bays required for the Office. As such, a three-car parking bay surplus currently exists at No. 369 Fitzgerald Street.

The City's Non-Residential Parking Policy does not seek for uses to provide on-site car parking bays for all customers or staff attending a premises and instead provides a ratio relevant to the Built Form Area the site is located.

For the Viewing Platform use, the proposal seeks for a maximum of three people to attend the site at any one time, including staff and customers. If each person attended the site individually, a maximum of three car parking bays would be used at any given time for the Viewing Platform use. It may be the case that attendees ride share or use alternate modes of transport to attend the site, reducing the need for on-site parking bays.

The proposed car parking arrangements would satisfy the objectives of the Non-Residential Parking Policy for the following reasons:

- On-Site Parking: Sufficient car parking is provided to meet the needs of users of both the Viewing Platform and Office land uses, reducing reliance on off-site parking.
- Use of Existing Parking Infrastructure: All car parking is located within existing approved car parking areas at No. 369 Fitzgerald Street. All bays have been constructed and are separated from adjoining western residential properties. This removes the need for the temporary use to construct further hardstand areas and alleviates adverse amenity impacts to surrounding residential properties.
- Alternate Modes of Transport: Short-term bicycle racks exist within verge areas adjacent to the subject site. This includes within the Raglan Street verge adjacent to No. 363 Raglan Road, as well as within the Fitzgerald Street verge adjacent to No. 373-380 Fitzgerald Street. The subject site is also located on Fitzgerald Street, which is a high frequency bus route. The proximity to bicycle bays and bus stops provides the ability for customers and staff to access the site through alternate modes of transport.

Due to the above, the car and bicycle parking provided is appropriate for its location and would not result in detrimental impacts to the surrounding area.

**CITY OF VINCENT**  
**LOCAL PLANNING SCHEME NO. 2**  
 SCHEME MAP 1 - LEEDERVILLE

**LEGEND**

**METROPOLITAN REGION SCHEME RESERVES**  
Note: The Western Australian Planning Commission notes of the Department of Planning should be consulted for all information on the actual land requirements for all Metropolitan Region Scheme Reserves.

- R PARKS AND RECREATION
  - Restricted Public Access
- PRIMARY REGIONAL ROADS RESERVATION
- OTHER REGIONAL ROADS RESERVATION
- RAILWAYS
- PUBLIC PURPOSES
  - Particular use denoted as follows:
    - H Hospital
    - HS High School
    - TS Technical School
    - CP Car Park
    - U University
    - CG Community Government
    - SG Sporting Ground
    - WSD Water Authority of Western Australia
    - P Prison

**CITY OF VINCENT LOCAL SCHEME RESERVES**

- PUBLIC OPEN SPACE
- R Restricted
- PUBLIC PURPOSES
  - Particular use denoted as follows:
    - PS Primary School
    - CP Car Park
    - CU Civic Uses
    - HS High School
    - I Institute for the Deaf
    - W Water Supply Sewerage and Drainage
    - TS Technical School

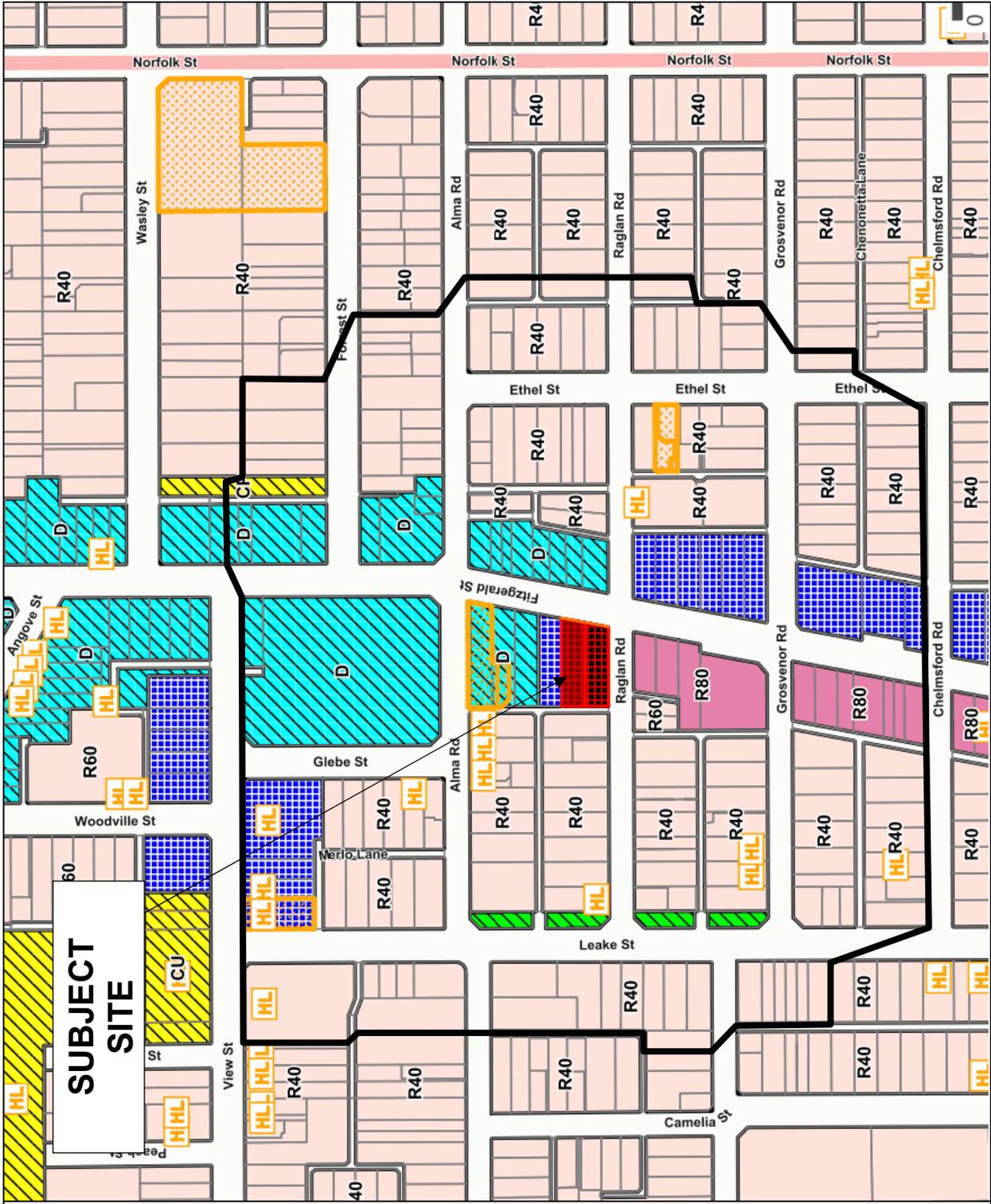
**CITY OF VINCENT SCHEME ZONES**

- RESIDENTIAL
- MIXED USE
- COMMERCIAL
- LOCAL CENTRE
- DISTRICT CENTRE
- REGIONAL CENTRE
- SPECIAL USE
  - Particular use denoted as follows:
    - CP Car Park
    - CU Community Use
    - CC Community Centre
    - HC Hotel and Non Residential Club
    - H Hotel
    - PW Place of Worship
    - S Service Station
- ADDITIONAL USE

- ADDITIONAL INFORMATION & RESIDENTIAL PLANNING CODES**
- CODE AREA BOUNDARY
  - SCHEME AREA BOUNDARY
  - DENSITY CODE



CITY OF VINCENT



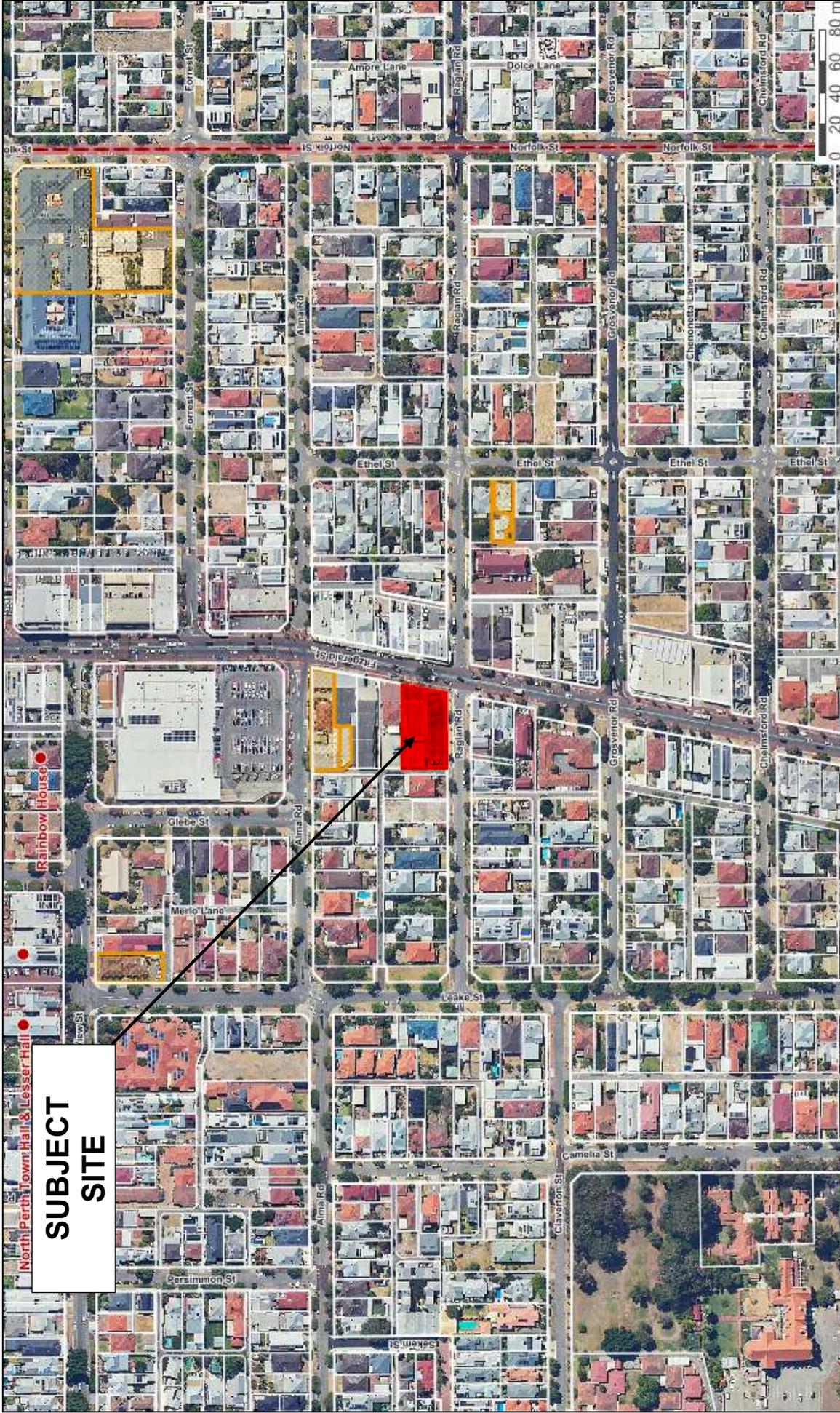
The City of Vincent does not warrant the accuracy of information in this publication and any person using or relying upon such information does so on the basis that the City of Vincent shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information. Includes layers based on information provided by and with the permission of the Western Australian Land Information Authority (Landgate) (2013).

**Consultation and Location Map**

Nos. 367 and 369 Fitzgerald Street, North Perth

Extent of Consultation





**SUBJECT  
SITE**



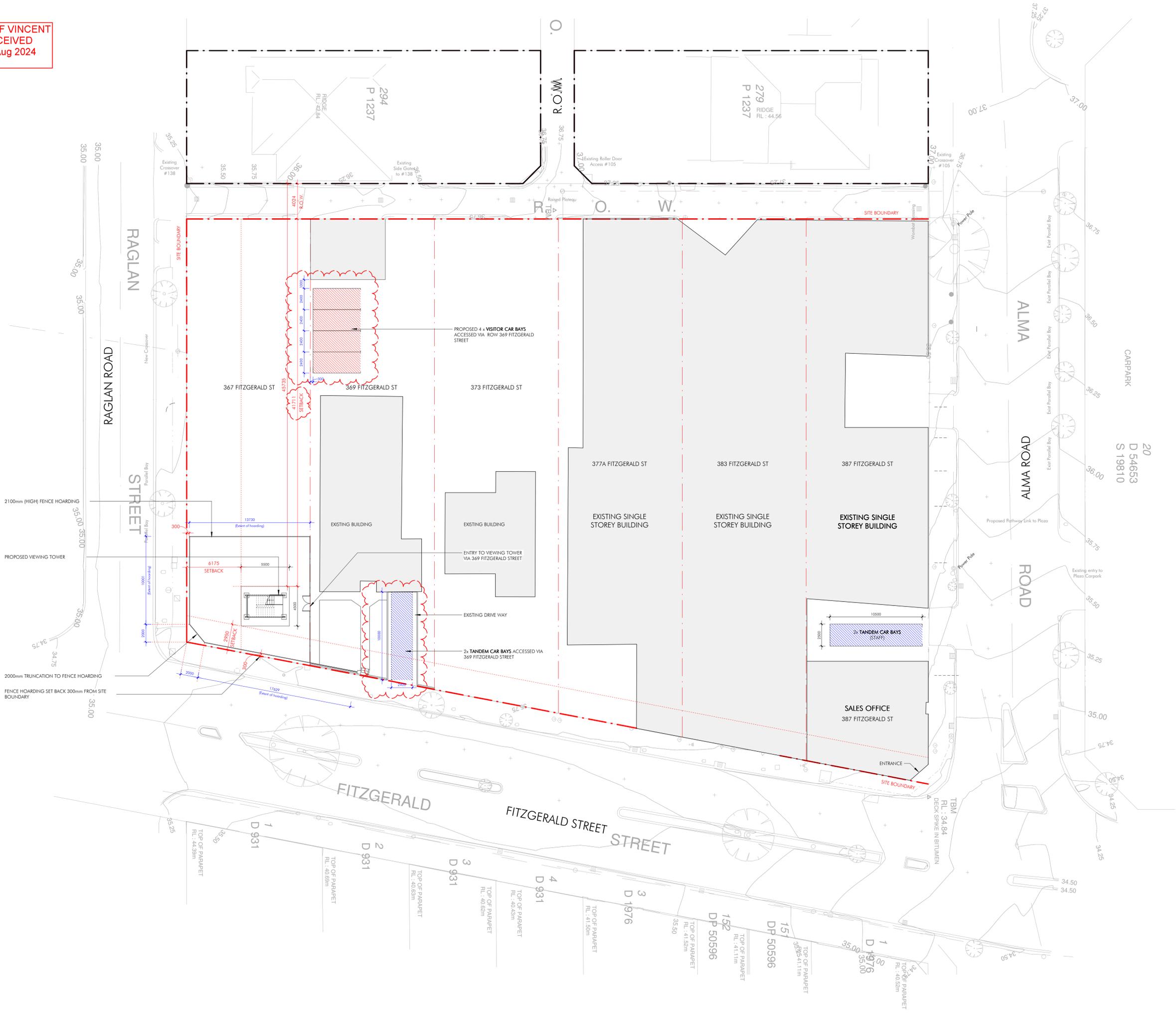
**CITY OF VINCENT**

The City of Vincent does not warrant the accuracy of information in this publication and any person using or relying upon such information does so on the basis that the City of Vincent shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information. Includes layers based on information provided by and with the permission of the Western Australian Land Information Authority (Landgate) (2013).

**Nos. 367 and 369 Fitzgerald Street, North Perth**



CITY OF VINCENT  
RECEIVED  
29 Aug 2024



- GENERAL NOTES
1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL ARCHITECT, CONSULTANT DRAWINGS AND SPECIFICATIONS AND SCHEDULES.
  2. USE FIGURED DIMENSIONS ONLY DO NOT SCALE.
  3. ALL DIMENSIONS ON DRAWINGS SHALL BE CHECKED BY THE BUILDER PRIOR TO COMMENCEMENT OF CONSTRUCTION, PROCEEDING WITH PREPARATION OF SHOP DRAWINGS OR PLACING OF ORDERS. NOTIFY THE ARCHITECT OF ANY DISCREPANCIES FOR CLARIFICATION.
  4. ALL WORK SHALL COMPLY WITH THE NATIONAL CONSTRUCTION CODE (NCC), AUSTRALIAN STANDARDS AND THE REQUIREMENTS OF STATE AND LOCAL AUTHORITIES.
  5. ALL MATERIALS, FIXTURES, FITTINGS AND BUILDING COMPONENTS SHALL BE INSTALLED IN ACCORDANCE WITH MANUFACTURERS' SPECIFICATIONS AND RECOMMENDATIONS.

PRELIMINARY

16.08.2024	C	AMENDED DA VIEWING TOWER	KL
16.07.2024	B	AMENDED DA VIEWING TOWER	KL
07.08.2024	A	DA	DP
DD/M/YY	REV	DESCRIPTION	CHECKED

ARCHITECT

**space collective architects**  
3/140 ONSLOW RD SHENTON PARK WA 6008

CLIENT  
**CELSIUS DEVELOPMENTS**

PROJECT NAME  
**ALMA SQUARE**

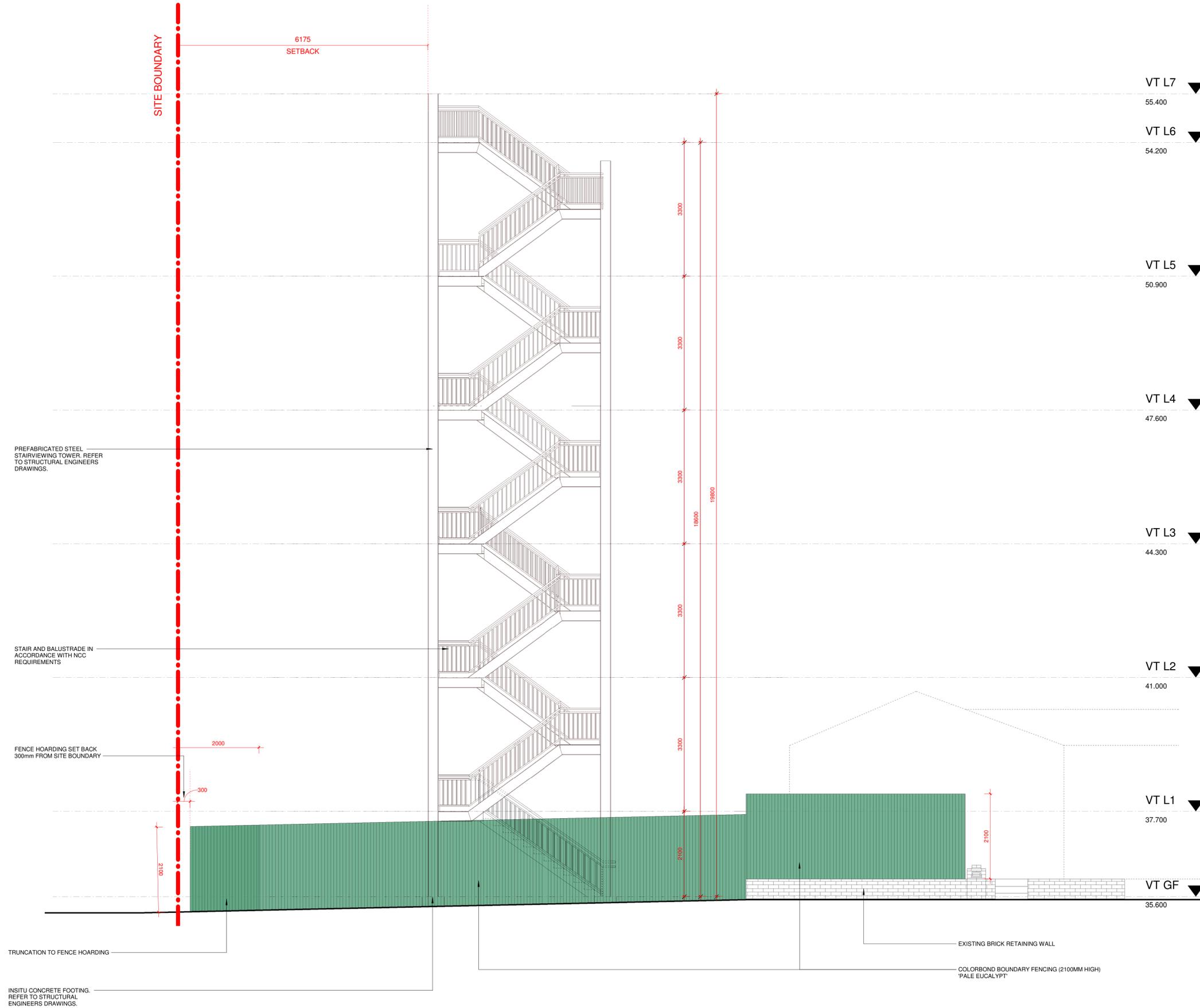
367-387 FITZGERALD ST  
NORTH PERTH WA

DRAWING NAME  
**EX. SITE PLAN - VIEWING TOWER**

DESIGN DEVELOPMENT



PROJECT No.	DRAWING No.	REV
2305	A00-001	C
DRAWN BY		DP



PRELIMINARY

07.06.2024	A	DA	DP
DDMMYY	REV	DESCRIPTION	CHECKED

ARCHITECT



**space collective** architects  
3/140 ONSLOW RD SHENTON PARK WA 6008

CLIENT

**CELSIUS DEVELOPMENTS**

PROJECT NAME

**ALMA SQUARE**  
367-387 FITZGERALD ST  
NORTH PERTH WA

DRAWING NAME

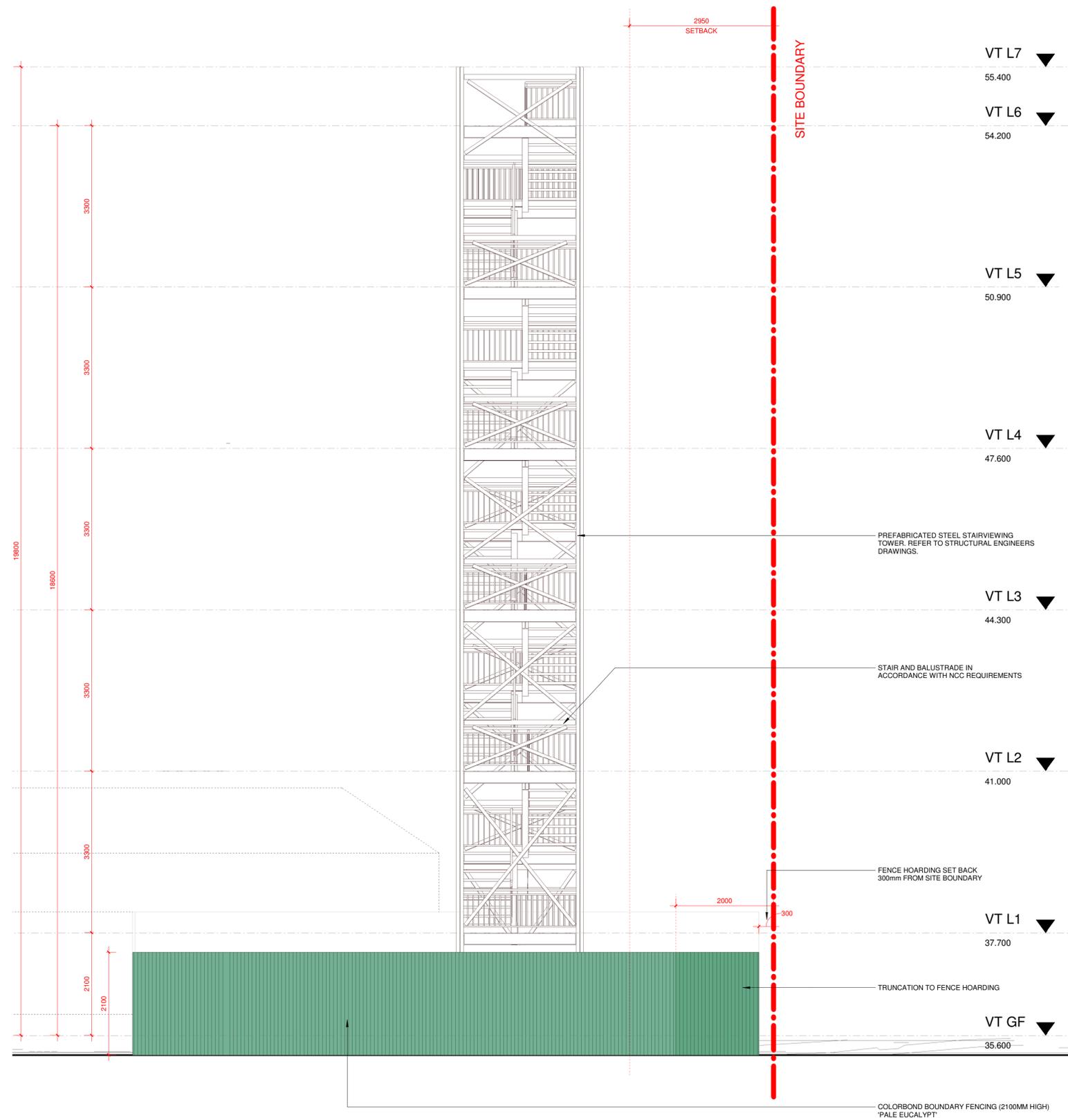
**VIEWING TOWER - EAST ELEVATION**

DEVELOPMENT APP



PROJECT No.	DRAWING No.	REV
2305	A00-002	A
DRAWN BY		DP

**CITY OF VINCENT RECEIVED**  
10 Jun 2024



PRELIMINARY

DATE	BY	DESCRIPTION	CHECKED
07.06.2024	A. DA		DP
DDMMYY	REV	DESCRIPTION	CHECKED

ARCHITECT



space collective architects

3/140 ONSLOW RD SHENTON PARK WA 6008

CLIENT

CELSIUS DEVELOPMENTS

PROJECT NAME

ALMA SQUARE

367-387 FITZGERALD ST  
NORTH PERTH WA

DRAWING NAME

VIEWING TOWER -  
SOUTH ELEVATION

DEVELOPMENT APP



PROJECT No.	DRAWING No.	REV
2305	A00-003	A
DRAWN BY		DP

CITY OF VINCENT  
RECEIVED  
10 Jun 2024



View from intersection of Fitzgerald Street & Reglan Road



View from east – Fitzgerald Street



Fencing to Fitzgerald Street



View from south-east - Raglan Road



View from north – No. 369 Fitzgerald Street



View from west – Right-of-Way

Site Photos – Viewing Platform 367-369 Fitzgerald Street, North Perth – 28.08.24



View from south-west – Intersection of Raglan Road & Right of Way

Planning and Development (Local Planning Schemes) Regulations 2015

In accordance with [Clause 67\(2\)](#) of the Planning Regulations, and in determining a development application, Council is to have due regard to a range of matters to the extent that these are relevant to the development application.

Administration's response to each matter requiring consideration is listed in the table below.

<b>Clause 67 – Matters to be Considered</b>	
<b>Matter</b>	<b>Administration Comment</b>
(a) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area.	This matter is addressed in the Land Use section of the Officer Report.
(b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving.	<p>The suitability of the development has been assessed having regard to the relevant scheme requirements, the City's local planning framework, and the impact of the development on the area, consistent with the principles of orderly and proper planning.</p> <p>There are no draft planning instruments relevant to this application.</p>
(g) Any local planning policy for the Scheme area.	An assessment against the City's Built Form Policy and Non-Residential Parking Policy is discussed within the comments section of the Officer Report.
(m) The compatibility of the development with its setting including – <ul style="list-style-type: none"> <li>(i) The compatibility of the development with the desired future character of its setting.</li> <li>(ii) The relationship of the 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.</li> </ul>	<p>The development would be compatible with its setting, located within a commercial zone and town centre area. This is because the subject site has been approved for redevelopment and the proposed development would assist in the sale of apartments to facilitate this development occurring.</p> <p>The temporary nature of the development would ensure that the development would not have long-term impacts to the locality.</p>
(n) The amenity of the locality including the following – <ul style="list-style-type: none"> <li>(i) environmental impacts of the development;</li> <li>(ii) the character of the locality;</li> <li>(iii) social impacts of the development.</li> </ul>	<p>The proposed development would not unduly impact on the amenity or character of the area. This is because the application is for a temporary viewing tower which is proposed to assist with apartment sales for the approved mixed use development on the site and is not a temporary structure.</p> <p>The location of the structure ensures sufficient separation from residential properties to reduce overlooking and shadow impacts. The use can be appropriately managed so as not to have an adverse social impact on the amenity of the area by way of light spill, noise and parking/traffic impacts.</p>
(r) The suitability of the land for the development taking into account the possible risk to human health or safety.	The site has been appropriately secured through the provision of perimeter fencing and a lockable gate, restricting public access outside of appointments with authorised staff members.

**Clause 67 – Matters to be Considered**

<b>Matter</b>	<b>Administration Comment</b>
	Conditions of approval have been recommended for sufficient lighting and safety signage to be provided to ensure the site is safe.
(s) The adequacy of — (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles	The proposal seeks to utilise existing vehicle access arrangements to the site, located at No. 369 Fitzgerald Street.  Three car parking bays provided are sufficient to meet needs of the proposed development.
(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.	The development includes suitable management measures to manage the anticipated parking demands generated by the development. This achieved through a restriction on the operating hours and the viewing tower being available for customers by appointment only. This will reduce the frequency of visits by customers and staff and reduce the car parking demand and traffic generated by the proposed development.  The additional traffic generated by the proposed development is not anticipated to impact on the surrounding road network in terms of traffic flow and safety for the reasons listed above.
(u) The availability and adequacy for the development of the following — (i) public transport services; (ii) public utility services; (iii) storage, management and collection of waste; (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities); (v) access by older people and people with disability.	The site is optimally located in proximity to easy and convenient public transport services with high level of walkability provided.  The development would not generate any waste.  The development does not offer access for people with limited accessibility or disabilities. As the development is proposed to facilitate sale of apartments, the developer would be in a position to provide information to these potential customers, should they wish to access sales information, including images of potential views from the apartments.
(w) The history of the site where the development is to be located.	A mixed-use development has been approved by the JDAP on the subject site and the northern adjoining properties.  The development is proposed to aid in the sales and marketing strategy for the approved development. The viewing tower would allow prospective buyers to understand potential views from different levels of the development.
(x) The impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals.	The development would not have an adverse impact on the community as a whole.  The development is proposed to assist with sale of apartments, to facilitate the mixed-use development that is approved on the site which would contribute to broader community benefit in the future.
(y) Any submissions received on the application.	The City has undertaken consultation on the proposal in accordance with the City's Community and Stakeholder Engagement Policy.

**Clause 67 – Matters to be Considered**

<b>Matter</b>	<b>Administration Comment</b>
	<p>The outcomes of community consultation are addressed within the Consultation section of the Officer Report.</p> <p>A summary of the submissions received including Administrations response to each comment is included as <b>Attachment 6</b>.</p> <p>The issues raised in the submissions have been considered as part of Administration's assessment of this application.</p>

PS ref: 9162

City ref: 5.2024.205.1

22 August 2024

City of Vincent  
PO Box 82  
Leederville WA 6902

Attention: Karsen Reynolds, A/Manager Development and Design

Dear Karsen,

**LOTS 273 (367) FITZGERALD STREET, NORTH PERTH  
DEVELOPMENT APPLICATION – VIEWING TOWER  
RESPONSE TO PUBLIC SUBMISSIONS**

Planning Solutions acts on behalf of Celsius, the proponent of the proposed development and associated viewing structure on the land identified as Lot 273 (367) Fitzgerald Street, North Perth (**subject site**). An application for temporary development approval for the structure is currently being assessed by the City of Vincent (**City**).

We refer to the summary of public submissions received from the City on 19 August 2024. In response to the matters raised, we are pleased to provide the following submission in support of the application lodged.

**RESPONSE TO PUBLIC SUBMISSIONS**

A written response to the submissions received during the public consultation period is provided in **Table 1** below. It is noted that despite the City issuing 320 referral letters to neighbouring properties, only 24 submissions were received (a response rate of 7.5%, assuming that all submissions were received from residents within 200m, which in reality is likely to be an over-representation). We are aware of objectors using social media to encourage others to lodge objections, and despite these efforts the response rate remains extremely low. This response rate clearly suggests that there is a small but vocal group of residents who are aggrieved by the substantive development approval and are using this application to frustrate the ultimate development.

**Table 1 – Response to public submissions**

Submission Summary	Applicant Response
<b>Comments in Support</b>	
<ul style="list-style-type: none"><li>• The viewing platform provides the ability for potential buyers with a better understanding of the location.</li><li>• The proposal assists with facilitating a high-quality redevelopment of the site. This should be supported given it means more residents supporting local businesses and invigorating the area, which benefits everyone.</li><li>• We are in a housing crisis and developers should be encouraged to build more housing. This proposal assists with this mission.</li><li>• We should be making it easier for developers to sell apartments, not make them jump through more hoops.</li></ul>	Comments of support noted.



Level 1, 251 St Georges Tce, Perth WA  
(08) 9227 7970  
GPO Box 2709  
Cloisters Square PO 6850

admin@planningsolutions.com.au  
www.planningsolutions.com.au  
ACN 143 573 184 ABN 23 143 573 184  
Planning Solutions (Ausd) Pty Ltd

Submission Summary	Applicant Response
<b>Comments in Objection</b>	
<p><u>Building Height</u></p> <ul style="list-style-type: none"> <li>The structure is too tall and well over the permitted height of 14.3m.</li> <li>The additional 6.5m / 41% in height renders the tower even more visually intrusive.</li> <li>The structure is imposing and dominates the sky view from surrounding backyards.</li> <li>The viewing tower is an eye sore to the local area and degrades the character and identity of the neighbourhood.</li> <li>The height and form of the structure is not consistent with and does not respond to the desired future scale and character of the street and local area.</li> <li>The viewing tower has no compatibility with the surrounding streetscape.</li> <li>There has been no landscaping incorporated to enhance the amenity of the public domain.</li> </ul>	<p>The structure is temporary in nature and has a maximum height lower than the mixed use development approved on the subject site. The purpose of the viewing tower is to show prospective purchasers the views that will be enjoyed from the proposed building and, as such, the viewing tower will logically reflect the height of the approved development.</p> <p>The subject site is approved for substantive development, and the viewing tower is related to that development. It would not make sense to provide landscaping to a temporary structure on a site that is likely to become a construction site in the very near future. The substantive development, when complete, will contain a significant amount of landscaping.</p>
<p><u>Land Use</u></p> <ul style="list-style-type: none"> <li>The viewing tower land use which is located next to residential areas does not meet the needs of the community.</li> <li>The proposal does not meet the objectives of the Commercial Zone.</li> <li>The operating hours are excessive. They mean that residents do not have any period of time during the week where they could be free from visitors and staff intrusions upon their amenity.</li> <li>Hours of operation should be reduced and should be restricted to only a few hours on the weekend.</li> <li>Concerns more than 3 people would use the viewing tower at any one time.</li> </ul>	<p>The structure is temporary in nature and is intended to provide prospective purchases the opportunity to observe the view from the approved development. The structure will be used during regular business hours and home open times.</p> <p>The site has been approved for a mixed use development, comprising a variety of commercial and residential uses that entirely align with the objectives of the Commercial zone.</p> <p>The viewing tower will be utilised for only short periods at any time, by appointment only. It is not clear why the objector preference would be for the tower to be used at weekends, when residents are generally more likely to be at home.</p>
<p><u>Fence</u></p> <ul style="list-style-type: none"> <li>The fencing is too high and should not exceed 1.2 metres solid.</li> <li>The perimeter fencing is unsightly.</li> <li>Reducing the solid portion of fencing would allow greater surveillance and reduce opportunities for crime.</li> <li>The fence height does not support the City's policy position which specifically seeks to "eliminate opportunities for concealment".</li> <li>The fencing is not compatible with the general streetscape.</li> <li>The fencing blocks sightlines to view traffic at the Raglan Road and Fitzgerald Street intersection, making it more dangerous as it is obstructing visibility.</li> <li>The fence should be changed to be visually permeable.</li> </ul>	<p>The fencing is typical for a development site, where it is important to limit access and screen construction activities and materials from the public realm. Noting comments below in respect to the safety of the site, including unauthorised access of the structure, it is imperative that the fence is of a height and materiality that does not allow access.</p> <p>Accordingly, the site is secured by a 2.1m Colorbond fence and access is restricted to gate that is locked at all times apart from when the platform is in use and under supervision. This balances the amenity of the site with public safety. The fence does not provide any external areas of concealment, in accordance with the City's policy framework.</p> <p>In addition, a sign will be erected to meet AS 1319-1194 warning members of the public that unauthorised entry is prohibited.</p> <p>The fencing is also outside the visual truncation required for the intersection of Raglan Road and Fitzgerald Street. Ultimately, the platform design and construction has been certified by a qualified Building Certifier and meets all required Australian Standards.</p>

Submission Summary	Applicant Response
<p><u>Visual Privacy</u></p> <ul style="list-style-type: none"> <li>The viewing tower overlooks surrounding residential properties and compromises their privacy.</li> <li>Direct overlooking to backyards and windows of adjoining properties.</li> <li>There is no screening provided to reduce overlooking into surrounding properties. Screening should be provided to reduce views downwards into surrounding residential properties.</li> <li>It is an invasion of privacy to allow people to be able to look directly downwards into peoples backyards,</li> </ul>	<p>The viewing tower is well outside the cone of vision used to determine visual privacy for developments pursuant to the provisions of the <i>Residential Design Codes - Volume 2</i>. The viewing tower does not contain any 'habitable rooms', and will be accessed infrequently and for short periods of time. The R-Codes make it clear that absolute privacy is not a realistic expectation in a suburban context, and it is entirely common for properties to be visible from surrounding dwellings. It is not anticipated that prospective purchasers accessing the viewing tower will have any desire to look into the surrounding properties, and the main focus is expected to be towards views of significance.</p>
<p><u>Car Parking</u></p> <ul style="list-style-type: none"> <li>There are already plenty of parking bays across the property, do not support them providing more.</li> <li>The proposal requires the use of on-street parking, limiting options for local residents.</li> <li>Visitors parking on the street has been detrimental to surrounding residential properties.</li> </ul>	<p>There are no new bays being provided. All bays are existing and service the commercial tenancy at 369 Fitzgerald Street. This application is not changing the current parking on site. Ultimately, all buildings and improvements on the site will be removed to construct the approved development. The subject site is located within a District Centre. It is entirely reasonable for visitors to premises within the District Centre to utilise on-street parking in that area.</p>
<p><u>Street Trees</u></p> <ul style="list-style-type: none"> <li>The construction of the viewing tower resulted in damage to the street trees.</li> </ul>	<p>This comment is not substantiated.</p>
<p><u>Antisocial Behaviour &amp; Safety</u></p> <ul style="list-style-type: none"> <li>The viewing tower has already experienced antisocial behaviour including graffiti and trespassing.</li> <li>Concerns relating to public safety risk from people trespassing on the site.</li> <li>Concerns there are no barriers in place to reduce trespassers from climbing up the tower unauthorised.</li> <li>The proposal presents an unacceptable hazard to the community.</li> <li>The high fencing allows people to get into the site and be hidden from the street, with a risk that crime and/or antisocial behaviour occurring due to this.</li> <li>The graffiti on the signage encourages more antisocial behaviour in the area.</li> <li>Dumping of garbage has increased over the fence.</li> <li>Concerns regarding the need for people to climb up the number of steps proposed.</li> </ul>	<p>This comment is not substantiated. Conversely, the structure has been designed in a manner to mitigate antisocial behaviour. Specifically:</p> <ul style="list-style-type: none"> <li>As discussed above, the structure is protected by a fence to ensure no unauthorised use of the tower. The fence is of a height and materiality which eliminates any unauthorised entry, with a lock provided on the gate. This is entirely consistent with other viewing structures installed throughout the City and broader metropolitan region. This is also consistent with fencing and safety measures for any construction site.</li> <li>The fence and signs have anti-graffiti coating installed so graffiti can be cleaned off as it arises.</li> <li>When in use, the structure provides passive surveillance over the property and surrounding streets. When not in use, as the lot is cleared, it is entirely visible from the street (noting the site is bound by three street frontages). Ultimately, placing a fence around the structure and not the entire lot is considered a superior outcome for streetscape amenity.</li> </ul> <p>Notwithstanding the above, the viewing structure is the initial stage in the ultimate development of the site which when complete, will ultimately help to resolve issues of anti-social behaviour in this area.</p> <p>This site and area of Fitzgerald Street is home to many buildings that have reached the end of their useful life. As a result they are sitting vacant and derelict which is likely to contribute to issues in the area. The approved development will deliver over 160m of activated commercial frontage as well as a significant number of apartments creating passive surveillance to the street. The new development proposes a significant number of café and restaurant tenancies that will</p>

Submission Summary	Applicant Response
	provide day and night time activation of the site which will again greatly assist in reducing anti-social behaviour. It is the strong view that there is no evidence to show the <b>temporary</b> viewing structure has caused an increase in anti-social behaviour in the area. If anything, the temporary structure will increase activity and passive surveillance on a site that is currently sitting vacant <i>with no surveillance</i> .
<p><u>General</u></p> <ul style="list-style-type: none"> <li>Do not support the viewing tower because it is facilitating the future redevelopment of the site which is not supported.</li> <li>If this application is approved, it sends a clear message to the community that developers are given much greater leeway in breaching guidelines than local residents are afforded.</li> <li>The viewing tower should have been lodged before the tower was constructed and sets an undesirable precedent for future similar situations.</li> <li>3 months was a sufficient time for the viewing tower to be in-place and additional time provides adverse amenity impacts to the surrounding area.</li> <li>The approval should not exceed more than 6 months.</li> <li>Adequate time has already been provided to showcase views to potential buyers.</li> <li>Concerns relating to the structural integrity of the structure, including impacts from wind.</li> </ul>	<p>A mixed use development on the subject site was approved by the Metro Inner Joint Development Assessment Panel on 30 November 2023.</p> <p>The temporary viewing structure allows prospective purchases to have a realistic perspective of views from the approved development and is entirely consistent and standard with developments of this nature.</p> <p>The structure is currently exempt pursuant to the City's <i>Local Planning Policy: Planning Exemptions</i>. This application simply allows the structure to continue to be used for an additional 9 months. This provides the applicant sufficient time to undertake marketing and sales prior to development.</p> <p>The structure has been designed to meet all relevant Australian Standards and will not be impacted by wind.</p>

## CONCLUSION

We trust the information provided above addresses the summary of public submissions received and provides sufficient clarity and certainty in the development proposed.

It is clear that the objections are generally unfounded, and the primary motivation for the objections to the viewing tower is clearly a desire to inconvenience the proponent in the hope of obstructing the substantive development which has already been approved. We submit the objections should be dismissed.

Accordingly, we respectfully request the City's officers continue their assessment of the proposal and approved the development.

Should you have any queries or require further clarification in regard to the proposal, please do not hesitate to contact the writer.

Yours faithfully,

p.p 

**NATHAN MAAS**  
**SENIOR PLANNER**

## **Summary of Submissions:**

The tables below summarise the comments received during the advertising period of the proposal, together with the Administration's response to each comment.

<b>Comments Received in Support:</b>	<b>Administration Response:</b>
<ul style="list-style-type: none"><li>• The viewing platform provides the ability for potential buyers with a better understanding of the location.</li><li>• The proposal assists with facilitating a high-quality redevelopment of the site. This should be supported given it means more residents supporting local businesses and invigorating the area, which benefits everyone.</li><li>• We are in a housing crisis and developers should be encouraged to build more housing. This proposal assists with this mission.</li><li>• We should be making it easier for developers to sell apartments, not make them jump through more hoops.</li></ul>	<p>Comments of support are noted by Administration.</p>
<b>Comments Received in Objection:</b>	<b>Administration Response:</b>
<p><u>Building Height</u></p> <ul style="list-style-type: none"><li>• The structure is too tall and well over the permitted height of 14.3m.</li><li>• The additional 6.5m/41% in height renders the tower even more visually intrusive.</li><li>• The structure is imposing and dominates the sky view from surrounding backyards.</li><li>• The viewing tower is an eye sore to the local area and degrades the character and identity of the neighbourhood.</li><li>• The height and form of the structure is not consistent with and does not respond to the desired future scale and character of the street and local area.</li><li>• The viewing tower has no compatibility with the surrounding streetscape.</li><li>• There has been no landscaping incorporated to enhance the amenity of the public domain.</li></ul>	<ul style="list-style-type: none"><li>• The height is acceptable due to location of the temporary Viewing Platform, its intended purpose, and the scale of the structure relevant to the approved mixed-use development at the subject site.</li><li>• The height of the approved mixed-use development in the location of the temporary Viewing Platform is six storeys with a height of 23.3 metres. The overall maximum height approved for the site is nine storeys at 32 metres. The height of the temporary Viewing Platform sits well below these approved maximum heights, at 20.2 metres. For these reasons, the height of the structure responds to the future scale of the subject site, street and town centre area.</li><li>• The development is temporary and would not provide long-term impacts to the streetscapes and surrounding locality. The development would assist with the sale of apartments to facilitate the construction of a mixed-use development approved on the subject site. This would provide a new building that is compatible with the general Fitzgerald Street streetscape in the long-term.</li><li>• The provision of landscaping is not necessarily due to the temporary nature of the proposal.</li></ul>

## Summary of Submissions:

Comments Received in Objection:	Administration Response:
<p><u>Land Use</u></p> <ul style="list-style-type: none"> <li>• The viewing tower land use which is located next to residential areas does not meet the needs of the community.</li> <li>• The proposal does not meet the objectives of the Commercial Zone.</li> <li>• The operating hours are excessive. They mean that residents do not have any period of time during the week where they could be free from visitors and staff intrusions upon their amenity.</li> <li>• Hours of operation should be reduced and should be restricted to only a few hours on the weekend.</li> <li>• Concerns more than 3 people would use the viewing tower at any one time.</li> </ul>	<ul style="list-style-type: none"> <li>• The Viewing Platform has been located and designed to ensure no detrimental impacts are provided to surrounding properties, particularly achieved through large setbacks to surrounding residential properties. The use would be appropriately managed to reduce amenity impacts through day-time operating hours, appointments held by staff members, a maximum of three people using the structure at any one time, and the provision of sufficient on-site parking.</li> <li>• The proposal is consistent with the objectives of the Commercial zone under LPS2, as detailed within the Officer Report. The development supports the redevelopment of the site to an approved mixed-use development. Redevelopment would provide a range of retail, office and social land uses in the future, supporting economic growth in the North Perth town centre.</li> <li>• The development is temporary and would not provide long-term impacts to the streetscapes and surrounding locality.</li> <li>• The proposed operating hours are acceptable as they are typical for the Commercial Zone and are consistent with operating hours of surrounding shops, restaurants, offices and other commercial uses within the Town Centre area.</li> <li>• The application proposes a maximum of three people on the structure at any one time. A condition of approval has been recommended securing this.</li> </ul>
<p><u>Fence</u></p> <ul style="list-style-type: none"> <li>• The fencing is too high and should not exceed 1.2 metres solid.</li> <li>• The perimeter fencing is unsightly.</li> <li>• Reducing the solid portion of fencing would allow greater surveillance and reduce opportunities for crime.</li> <li>• The high fencing allows people to get into the site and be hidden from the street, with a risk that crime and/or antisocial behaviour occurring due to this.</li> <li>• The fence height does not support the City's policy position which specifically seeks to "eliminate opportunities for concealment".</li> <li>• The fence should be changed to be visually permeable.</li> <li>• The fencing is not compatible with the general streetscape.</li> <li>• The fencing blocks sightlines to view traffic at the Raglan Road and Fitzgerald Street intersection, making it more dangerous as it is obstructing visibility.</li> </ul>	<ul style="list-style-type: none"> <li>• The fencing has been provided to a height and solid materiality to ensure the site is appropriately secured from public access.</li> <li>• The area behind fencing is completely secured. A pedestrian entry gate is provided to the northern portion of the fence, which would be closed and locked at all times, reducing public access. Windows from No. 369 Fitzgerald provide surveillance to reduce antisocial behaviour occurring behind fencing.</li> <li>• While the sheet metal fencing is not a built form outcome the City would typically accept, it is appropriate for its intended purpose as providing non-climbable perimeter fencing to secure Viewing Platform from being accessed from the public. The fencing is of a temporary nature, is not uncharacteristic to the area in terms of its materiality or height, and not provide long term visual impacts to the streetscape and locality.</li> <li>• The fencing provides a 2.0 metre by 2.0 metre truncation at the corner of Raglan Road and Fitzgerald Street, providing sufficient sightlines for turning vehicles.</li> </ul>

## Summary of Submissions:

Comments Received in Objection:	Administration Response:
<p><u>Visual Privacy</u></p> <ul style="list-style-type: none"> <li>The viewing tower overlooks surrounding residential properties and compromises their privacy.</li> <li>Direct overlooking to backyards and windows of adjoining properties.</li> <li>There is no screening provided to reduce overlooking into surrounding properties. Screening should be provided to reduce views downwards into surrounding residential properties.</li> <li>It is an invasion of privacy to allow people to be able to look directly downwards into peoples backyards.</li> </ul>	<ul style="list-style-type: none"> <li>The Viewing Platform is appropriately separated from surrounding residential properties to reduce undue impacts from overlooking and subsequent loss of privacy. The Viewing Platform is setback a minimum of 46.7 metres from the closest residential property boundary. These setbacks increase to windows and outdoor areas of residential properties.</li> <li>The location of the structure, the capacity limit of the structure at any one time, and the likeliness that the structure would be used for short periods of time, would reduce overlooking and loss of privacy.</li> </ul>
<p><u>Car Parking</u></p> <ul style="list-style-type: none"> <li>There are already plenty of parking bays across the property, do not support them providing more.</li> <li>The proposal requires the use of on-street parking, limiting options for local residents.</li> <li>Visitors parking on the street has been detrimental to surrounding residential properties.</li> </ul>	<ul style="list-style-type: none"> <li>The application does not seek to provide additional parking spaces and would utilise three parking bays located to the rear of No. 369 Fitzgerald Street, North Perth.</li> <li>Sufficient parking is accommodated on-site to meet the needs of the use and would not rely on on-street parking.</li> <li>A condition of approval has been recommended requiring three parking bays to be accommodated at No. 369 Fitzgerald Street.</li> </ul>
<p><u>Street Trees</u></p> <p>The construction of the viewing tower resulted in damage to the street trees.</p>	<p>Administration have undertaken a review of existing street trees which remain in a healthy state. An advice note has been recommended for street trees to be protected during the dismantling and removal of the Viewing Platform and associated structures once the approval ceases.</p>
<p><u>Antisocial Behaviour &amp; Safety</u></p> <ul style="list-style-type: none"> <li>The viewing tower has already experienced antisocial behaviour including graffiti and trespassing.</li> <li>Concerns relating to public safety risk from people trespassing on the site.</li> <li>Concerns there are no barriers in place to reduce trespassers from climbing up the tower unauthorised.</li> <li>The proposal presents an unacceptable hazard to the community.</li> <li>The graffiti on the signage encourages more antisocial behaviour in the area.</li> <li>Dumping of garbage has increased over the fence.</li> <li>Concerns regarding the need for people to climb up the number of steps proposed.</li> </ul>	<ul style="list-style-type: none"> <li>The Applicant has confirmed that all fencing and signage has an anti-graffiti coating allowing for easy removal.</li> <li>The proposed operating hours would provide activation and use of the site, providing actual and perceived surveillance. The site is located on a busy street and is surrounded by several active uses which would provide additional actual and perceived surveillance to the tower when it is not in use.</li> <li>The proposal does include a barrier to reduce trespassers. This is through the provision of solid fencing and a lockable gate to a 2.1 metre – 2.6 metre height around the perimeter of the structure.</li> <li>Access to the site is only permitted by appointment and with an authorised representative, which form recommended conditions of approval.</li> <li>The applicant has advised there has been no dumping of garbage over the fence since the Viewing Platform has been in use.</li> </ul>

## Summary of Submissions:

Comments Received in Objection:	Administration Response:
<p data-bbox="125 212 226 236"><u>General</u></p> <ul data-bbox="125 276 1037 762" style="list-style-type: none"><li data-bbox="125 276 1037 331">• Do not support the viewing tower because it is facilitating the future redevelopment of the site which is not supported.</li><li data-bbox="125 339 1037 427">• If this application is approved, it sends a clear message to the community that developers are given much greater leeway in breaching guidelines than local residents are afforded.</li><li data-bbox="125 435 1037 523">• The viewing tower should have been lodged before the tower was constructed and sets an undesirable precedent for future similar situations.</li><li data-bbox="125 531 1037 619">• 3 months was a sufficient time for the viewing tower to be in-place and additional time provides adverse amenity impacts to the surrounding area.</li><li data-bbox="125 627 1037 651">• The approval should not exceed more than 6 months.</li><li data-bbox="125 659 1037 715">• Adequate time has already been provided to showcase views to potential buyers.</li><li data-bbox="125 722 1037 762">• Concerns relating to the structural integrity of the structure, including impacts from wind.</li></ul>	<ul data-bbox="1070 276 2110 762" style="list-style-type: none"><li data-bbox="1070 276 2110 395">• The proposal is required to be assessed on its merits against the relevant planning framework. It would not be relevant nor orderly and proper planning to refuse the subject development application on the basis that the separate mixed-use development approved on the site is not supported.</li><li data-bbox="1070 403 2110 491">• The proponents of this application have not breached any relevant planning or building framework in the construction of the Viewing Platform and associated fencing.</li><li data-bbox="1070 499 2110 619">• The Viewing Platform did not require planning approval to be constructed or used for a three-month period. This is in accordance with the City's Planning Exemptions Policy which permits temporary viewing platforms to be constructed and operate for a period of three months following the issue of a building permit for the structure.</li><li data-bbox="1070 627 2110 683">• It is open for the applicant to seek development approval under the planning framework for the Viewing Platform to remain on-site for a greater period.</li><li data-bbox="1070 691 2110 762">• The Viewing Platform has been constructed in accordance with relevant National Construction Code requirements and in accordance with the approved Building Permit.</li></ul>

Note: Submissions are considered and assessed by issue rather than by individual submitter.

**Determination Advice Notes:**

1. This is a development approval issued under the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme only. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/owner to obtain any other necessary approvals and to commence and carry out development in accordance with all other laws.
2. If the applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.
3. This approval is not an authority to ignore any constraint to development on the land, which may exist through statute, regulation, contract or on title, such as an easement or restrictive covenant. It is the responsibility of the applicant and not the City to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the City's attention.
4. Any external artificial lighting installations, including in carparks and common areas, are to comply with Australian Standard AS 4282-1997 'Control of the obtrusive effects of outdoor lighting' and must not be permitted to shine or reflect into other properties, creating a nuisance.
5. At the time in which the development is disassembled and removed from the subject site, all verge trees shall be retained and protected from any damage including unauthorised pruning.