

9.1 DEVELOPMENT APPLICATION AND LICENCE TO LOCATE A FENCE IN THE GREGSON STREET ROAD RESERVE ADJACENT TO NO. 76 (LOT: 1; D/P: 52824) NEWCASTLE STREET, PERTH

- Attachments:**
1. Proposed License Area
 2. Location Map - Gregson Street Road Reserve
 3. Proposed Development Plans - Gregson Street Road Reserve
 4. Determination Advice Notes
 5. Images of Subject Site and Context

RECOMMENDATION:

That Council:

1. APPROVES the City granting a licence to the owners of Eastgate Apartments, No. 76 Newcastle Street, Perth, Strata Plan 52824 (Applicant), for part of the Gregson Street road reserve abutting No. 76 Newcastle Street, as shown in Attachment 2, on the following key terms:

1.1	Term:	5 years with a 5 year option term;
1.2	Licence Area:	39m ² (6.2m x 6.3m) of Gregson Street road reserve;
1.3	Licence fee:	nil;
1.4	Permitted use:	installation of a fence and gate with WAS Western Power approved lock (Installation) for the purpose of preventing entry onto the Licence Area except by relevant public authorities;
1.5	Cleaning:	Applicant must, at its cost, keep the Installation clean and tidy at all times, including removing any graffiti, posters or unauthorised signage from the exterior of the Installation, and ensure any build up of debris or rubbish within the Licence Area is removed and disposed of;
1.6	Insurance:	Applicant must ensure its public liability and property insurance extends to cover the Installation and (upon request) provide the City with a certificate of currency in respect to those policies;
1.7	Indemnity:	Applicant to indemnify the City and the Minister for Lands against loss or damage to property or persons occurring as a result of the Installation, the licensee's use of the Licence Area or the licensee failing to maintain the Installation in accordance with the terms of the licence;
1.8	Maintenance:	Applicant must, at its cost, keep the Installation in good repair and condition including repairing damage or deterioration to the Installation;
1.9	Removal and make good:	the Installation must be removed and the Licence Area made good by Applicant (to the City's satisfaction) at the request of the City, Minister for Lands, utility service provider or a public authority or on the termination or earlier determination of the Licence;
1.10	Compensation:	No compensation will be payable to the Applicant if the City, Minister for Lands, utility service provider or

a public authority make a request in accordance with recommendation 1.9 above; and

- 1.11 WAS lock: the Applicant must provide the City and Western Power with working copies of the WAS keys and must, at all times, retain a set of keys to allow access to the Licence Area at the request of a service provider or public authority. If, at any time, the lock on the Installation must be replaced, the Applicant must, at its cost, arrange the replacement of the lock and provide copies of the new keys to the City and Western Power;
2. Subject to final satisfactory negotiations being carried out by the Chief Executive Officer, AUTHORISES the Mayor and Chief Executive Officer to affix the common seal and execute the licence in recommendation 1 above; and
3. In accordance with the provisions of the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme, APPROVES the application for the proposed Alterations and Additions to Mixed Use Development within the Gregson Street road reserve adjacent to No. 76 Newcastle Street, Perth in accordance with the plans provided within Attachment 3, and subject to the following conditions and Advice Notes included in Attachment 4:
- 3.1 This approval is for Alterations and Additions to Mixed Use Development as shown on the approved plans dated 20 November 2020. No other development forms part of this approval; and
- 3.2 Other than the structures which form part of this approval, no other permanent structure, improvement or fixture within the road reserve area is permitted without prior written approval of the City.

PURPOSE OF REPORT:

To consider granting a licence to the owners of Eastgate Apartments, No. 76 Newcastle Street, Perth, Strata Plan 52824 (Applicant) and an application for development approval for Alterations and Additions to Mixed Use Development for the construction of a fence with locked gate (Installation) across a portion of the Gregson Street road reserve adjoining No. 76 Newcastle Street, Perth, as shown in **Attachment 3**.

PROPOSAL:

The Applicant proposes to erect a fence with gate across a portion of the Gregson Street road reserve. The fence would enclose a portion of the road reserve which is currently bound on three sides by the adjoining mixed use building at No. 76 Newcastle Street, Perth, creating an alcove. The alcove is currently subject to reports of anti-social behaviour, such as drug use, and poses a risk to the actual and perceived safety of pedestrians and residents. The proposed fence is sought to enclose this alcove to the street to remove the opportunities for anti-social behaviour and concealment by blocking access to the space.

As the Applicant is proposing to locate a permanent structure within a road reserve it is necessary for the Department of Planning, Lands and Heritage (DPLH) to sign the development application as the "landowner." DPLH's signing of the Development Application is subject to the City, who is responsible for the care, control and management of the road reserve, to enter into an appropriate tenure (land use) arrangement with the Applicant. The City proposes a licence with the Applicant, which will indemnify the City and Minister for Lands against any damage or loss arising in connection with the use of the Licence Area, and require that the Applicant maintain the Licence Area to the City's satisfaction.

The proposed fence is to run parallel with the adjacent pedestrian footpath and would enclose the portion of this road reserve as a safety measure. The fence is 6 metres in length, has a maximum height of 1.8 metres and is visually permeable. Vertical slats are proposed to remove ability to climb the fence. The fence is to be constructed of powder coated aluminium in a dark grey (Woodland Grey) as shown in **Attachment 3**. This is generally consistent with the construction of the existing pedestrian gate and the vehicular access gate on the same elevation of the adjoining mixed use development (refer to **Attachment 3**).

The subject portion of the road reserve is currently occupied by Western Power infrastructure associated with the mixed use development located on the adjoining land (No. 76 Newcastle Street, Perth). The land within this portion of road reserve has dimensions of 6 metres by 6 metres and a total area of 38.9 square metres.

A locked gate is to be included in the fence to permit access to Western Power and strata management as required. A copy of the proposed development plans are included at **Attachment 3**.

BACKGROUND:

Landowner:	State of Western Australia (road reserve). City has care, control and management of this road reserve.
Applicant:	Owners of Eastgate Apartments
Date of Application:	11 November 2020
Zoning:	MRS: Urban LPS2: Zone: No zoning – Road Reserve R Code: N/A
Built Form Area:	N/A
Existing Land Use:	Road Reserve
Proposed Use Class:	N/A
Lot Area:	N/A
Right of Way (ROW):	N/A
Heritage List:	N/A

The subject site is a 6 metre x 6 metre portion of road reserve created at time of subdivision for Western Power infrastructure associated with the adjoining mixed use development.

The subject site is bound by the three storey mixed use development at No. 76 Newcastle Street to the north, south and west and Gregson Street to the east. Further east, across Gregson Street, is a four storey mixed use development at No. 150 Stirling Street, Perth. Gregson Street forms the secondary street for both adjoining developments. A location plan is included as **Attachment 2**.

All properties adjacent to the subject site are zoned Mixed Use R100 under the City's Local Planning Scheme No. 2 (LPS2) and are within the Activity Centre Built Form Area under the City's Policy No. 7.1.1 Built Form (Built Form Policy).

The City's crime and drug statistics confirm needle collection within the site, and reports of theft on Gregson Street and anti-social behaviour associated with adjacent Newcastle Street and nearby Weld Square. The City's records includes reports of:

- Two thefts on Gregson Street (one incident each in February and May 2020); and
- 14 syringe removal requests from behind the transformer boxes since 2017, with three of these requests made in 2020.

DETAILS:

Summary Assessment

The provisions of the City's Built Form Policy do not extend to reserves. In assessing the application for development approval on land located on road reserve, the City is to have due regard to relevant matters as stipulated under the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 Clause 67 - Matters to be considered by local government. An assessment against the relevant matters is discussed in the Comments section of this report.

The City does not have any adopted local planning policies that relate to development on road reserves.

The City's draft Development on City Owned and Managed Land Policy (Draft Policy) is silent on private development/installation of this nature on a road reserve. However, as the installation is for the purpose of reducing anti-social and criminal behaviour and the licence terms reflect the requirements of the Draft Policy (including indemnifying the City and Minister for Lands) Administration supports the grant of the licence on the terms set out in Recommendation 1.

CONSULTATION/ADVERTISING:

In accordance with section 3.58 of the *Local Government Act 1995* (LGA) and Regulation 30 of the *Local Government (Functions and General) Regulations 1996* (Regulations), the licence meets the requirements of an exempt disposition (Regulation 30(2)(a)). Local public notice of the proposed licence is not necessary.

The development application does not require advertising. The application does not propose any departures from the relevant planning framework which could reasonably be considered to have an adverse impact on the adjoining properties or the surrounding streetscape. In accordance with the City's Policy No. 4.1.5 – Consultation, the proposed amendments would not have a significant impact on the community, or the economy, lifestyle, amenity and/or environment of any member of the community or community group.

Design Review Panel (DRP):

Referred to DRP: No

LEGAL/POLICY:

- *Land Administration Act 1997*;
- *Local Government Act 1995*;
- *Local Government (Functions and General) Regulations 1996*;
- *Local Government (Uniform Local Provisions) Regulations 1996*;
- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- City of Vincent Local Planning Scheme No. 2; and
- Policy No. 4.1.5 – Community Consultation.

Section 55(2) of the *Land Administration Act 1997* places responsibility for the care, control and management of road reserves (within the district of the City) with the City.

Regulation 17 of the *Local Government (Uniform Local Provisions) Regulations 1996* provides:

- that the City may grant permission to a person to construct a specified thing on, over, or under a public thoroughfare or public place that is local government property; and
- specifies the requirements for the permission to be granted.

Section 3.58 of the LGA sets out the process for disposing of City owned and managed property. Section 3.58(5) provides for exceptions as set out in the Reg. 30 of the Regulations, as follows:

- (2) a disposition of land is an exempt disposition if –
- (a) the land is disposed of to an owner of adjoining land (in this paragraph called the transferee) and –
 - (i) its market value is less than \$5,000; and
 - (ii) the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee.

Planning and Development Act 2005

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*, the applicant will have the right to apply to the State Administrative Tribunal for a review of Council's determination.

Draft Development on City Owned Land Policy

The City's draft Development on City Owned and Managed Land Policy (Draft Policy) was approved by Council for the purposes of advertising at its 28 July 2020 Ordinary Meeting. The Draft Policy is not a given due regard status under Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This is because the status of the Draft Policy is not yet 'seriously entertained', as it has not received final support from Council and it is not certain or imminent in coming into effect in the form that it was advertised in. Notwithstanding this, the proposed development would be consistent with the objectives of the Draft Policy.

Delegation to Determine Applications:

The development application has been referred to Council to allow for the development of the land to be considered in conjunction with the application for licence approval.

RISK MANAGEMENT IMPLICATIONS:

Low: It is low risk for Council to enter into a licence for part of the road reserve where the licence addresses the risk to the City in respect to the proposed Installation.

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

STRATEGIC IMPLICATIONS:

This is in keeping with the City's Strategic Community Plan 2018-2028:

Thriving Places

Our town centres and gathering spaces are safe, easy to use and attractive places where pedestrians have priority.

Our physical assets are efficiently and effectively managed and maintained.

Sensitive Design

Our built form character and heritage is protected and enhanced.

Innovative and Accountable

We are open and accountable to an engaged community.

SUSTAINABILITY IMPLICATIONS:

Nil.

PUBLIC HEALTH IMPLICATIONS:

This is in keeping with the following priority health outcomes of the City's *Public Health Plan 2020-2025*:

Reduced injuries and a safer community

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:*Planning and Development (Local Planning Schemes) Regulations 2015*

An assessment of the proposed fence has been undertaken against Schedule 2, Part 9, Clause 67 (Matters to be Considered by Local Government) of the *Planning and Development (Local Planning Schemes) Regulations 2015*. The matters relevant to this application include:

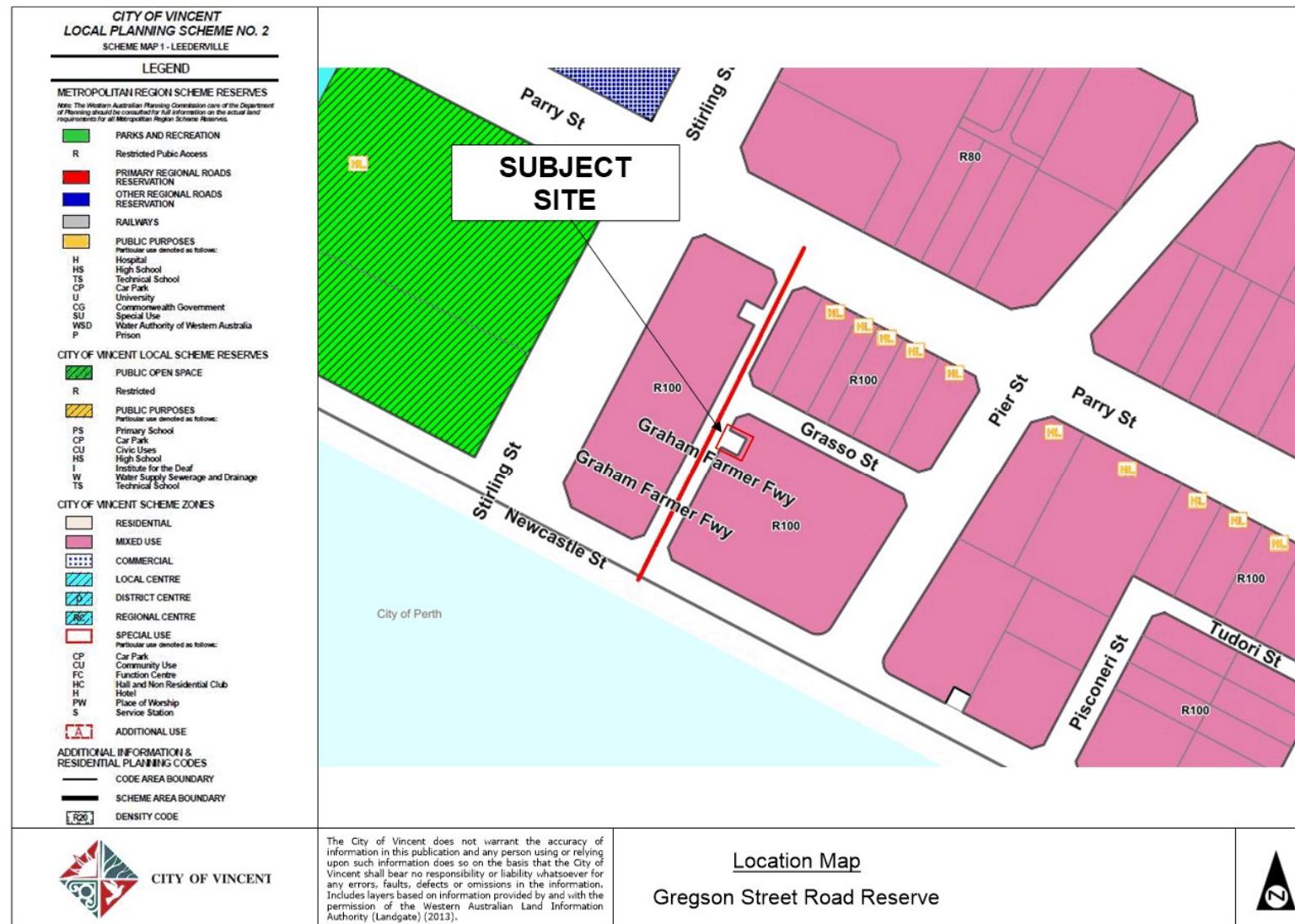
- m) *The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.*
- n) *The amenity of the locality including the following -*
 - (i) *environmental impacts of the development;*
 - (ii) *the character of the locality; and*
 - (iii) *social impacts of the development.*

Assessment of the proposed fence located in the road reserve against these relevant matters is provided below:

- The design of the fence, having regard to its scale and appearance, would be compatible with the streetscape character and that of the adjoining mixed use developments. Gregson Street has a reduced level of visual amenity, as it is characterised by blank walls and vehicular/garaging access at street level with balconies and windows on upper floors. The proposal would improve the character of the immediate locality by screening unsightly service infrastructure from view of Gregson Street.
- The alcove (subject portion of road reserve) has a 6 metre wide opening to Gregson Street and a depth of six 6 metres, as depicted in **Attachment 5**. The alcove is partially occupied by the Western Power infrastructure which is comprised of solid metal structures which occupy a total of approximately 3 metres in width by 1.5 metres in height (**Attachment 5**). Opportunities for concealment exist behind the Western Power infrastructure and within the alcove itself, particularly at night. The area is poorly lit and provides a low level of visibility from the street which undermines actual and perceived safety in the immediate area, particularly for pedestrians. The nature of Gregson Street is primarily providing for garaging of adjoining developments and does not serve as the main pedestrian entrances to these buildings. There are also no balconies or major openings from the adjoining development that directly overlooks the alcove area. This means that there is low level of passive surveillance of this area. The fence would create a barrier to this alcove to prevent access from Gregson Street and would deter the anti-social behaviour which has been known to occur on this portion of road reserve;
- The design of the fence is intended to prevent it from being climbed and to restrict it from concealment opportunities. The fence has a maximum height of 1.8 metres and is designed to be visually permeable with vertical slats to prevent a person getting a foot hold to climb over. The slats will have gaps of a minimum of 50 millimetres between to retain visibility. The proposal would result in an improvement to the amenity of the area having regard to visual amenity and pedestrian safety;
- The enhanced actual and perceived safety of the immediate area is anticipated to improve, having regard for social impacts through deterring anti-social behaviour and reducing opportunity for anti-social or illegal activity to occur. In this regard the proposal responds to the Western Australian Planning Commission's Designing out Crime Planning Guidelines by:
 - Restricting public access to an area around the Western Power infrastructure which currently presents as a congregation and entrapment area;
 - The fence has been designed to be visually permeable, providing opportunities for surveillance. The use of vertical slats restricts the ability for the fence to be easily climbed; and
 - Although the area is public for the purposes of Western Power being able to access its infrastructure, the fence assists to delineate between the public realm and this servicing space. The strata owner has consulted with Western Power, who has advised that it is supportive of the proposed fence, provided that a Western Australian Services (WAS) lock is provided so that it can access the infrastructure as required. A WAS lock is a lock commonly used throughout the State in similar situations where access is to be permitted only to the relevant parties such as the landowner and services provider. The provision of a WAS lock and the submission of a key to the City of Vincent and to Western Power forms one of the conditions of the licence.

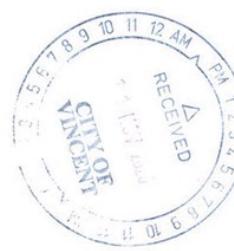
The proposed fence located in the road reserve meets the relevant matters to be considered by local government, would not result in any adverse impact to the adjoining properties or surrounding area, and would result in an improved safety outcome for the street and surrounding residents.



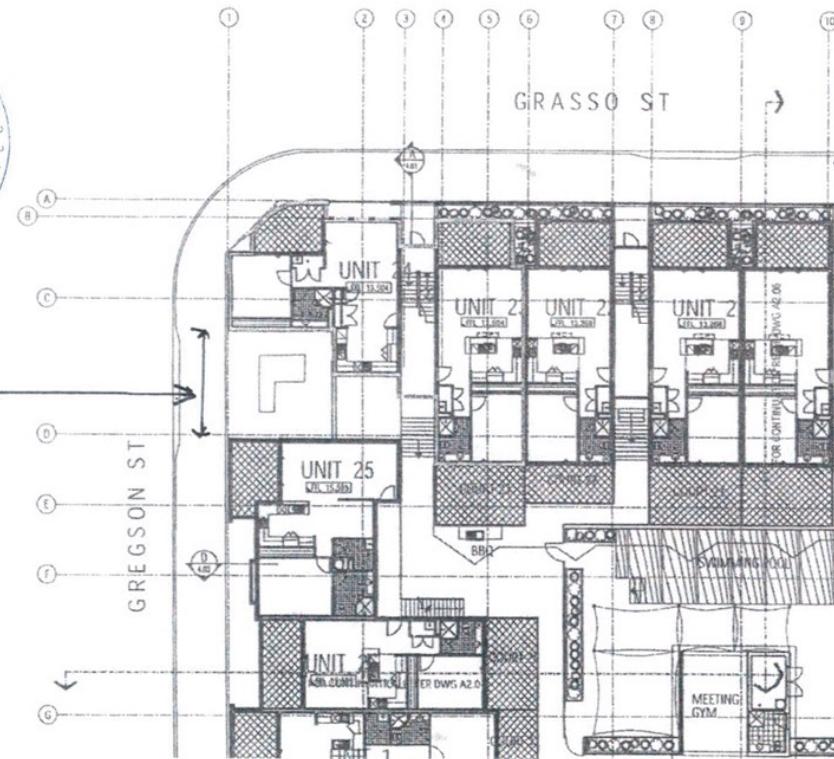




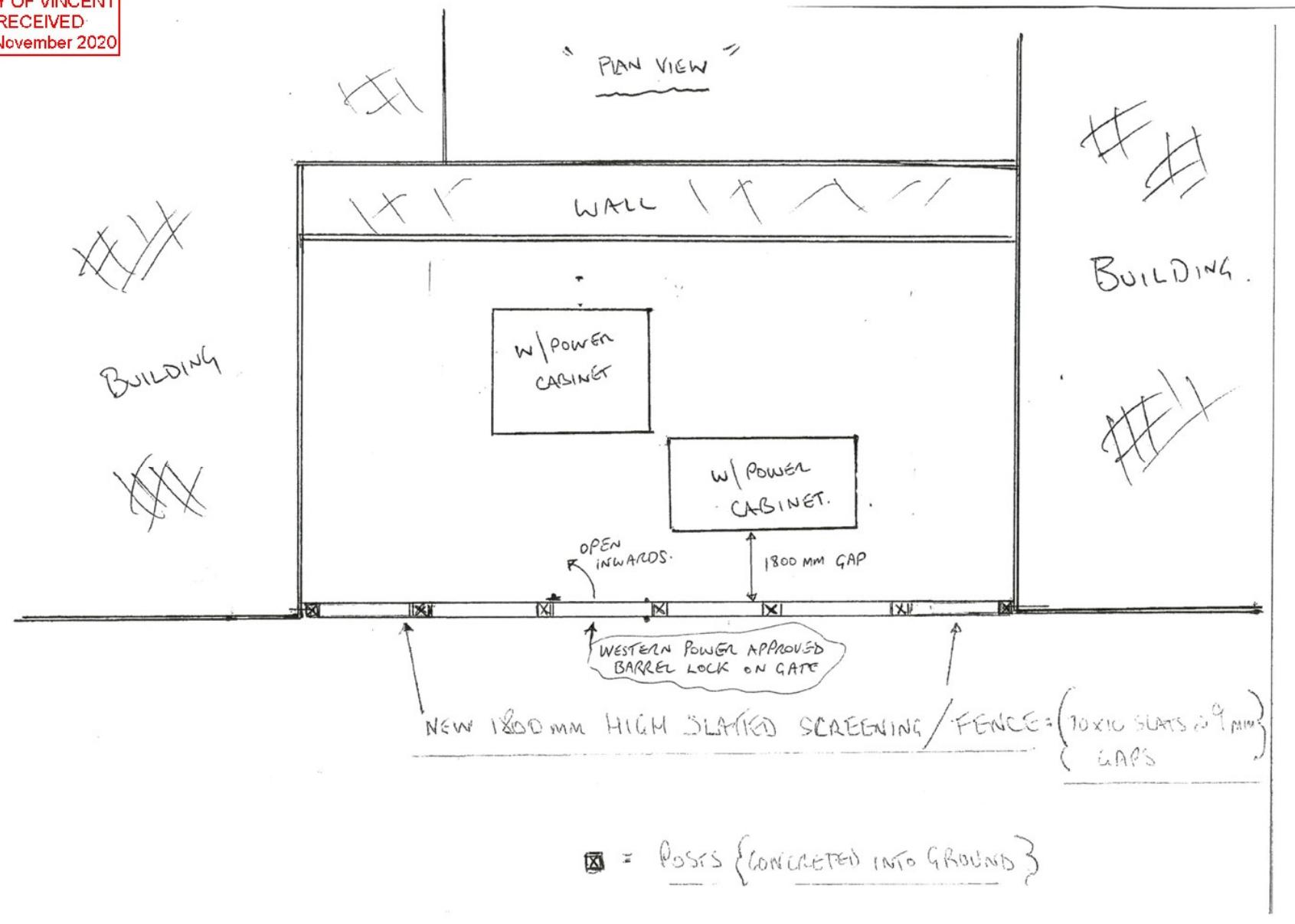
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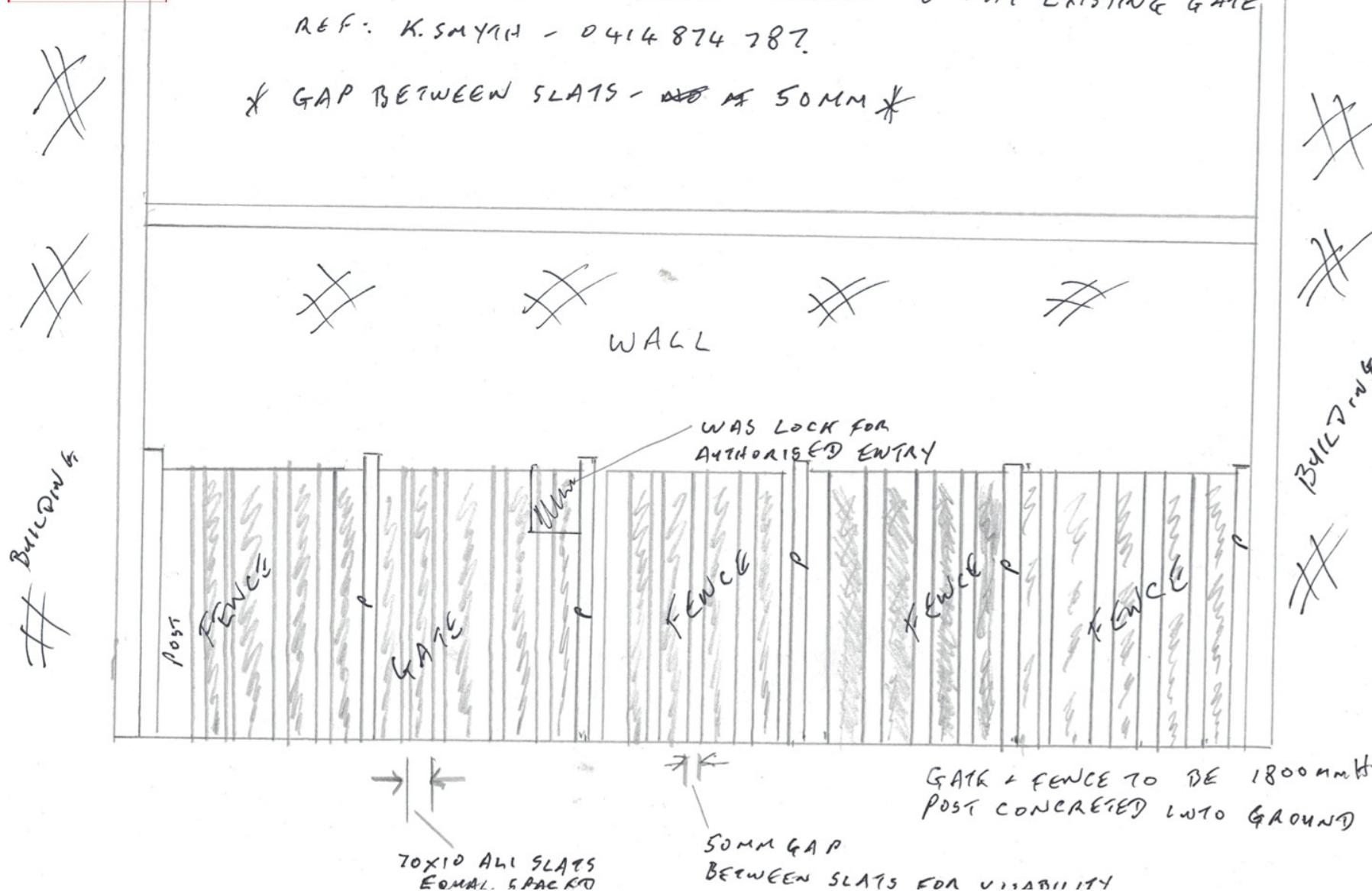
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PROPOSED FENCE FOR 76 NEWCASTLE STREET - GREGSON ST TRANS ACROSS
POWDER COATED ALI VERTICAL SLATS - COLOUR TO SUIT EXISTING GATE
REF: K.SMYTH - 0414 874 787.

* GAP BETWEEN SLATS - ~~MIN~~ AT 50MM *



Determination Advice Notes:

1. The Applicant must provide the City and Western Power with working copies of the WAS keys and must, at all times, retain a set of keys to allow access to the Licence Area at the request of a service provider or public authority. If, at any time, the lock on the Installation must be replaced, the Applicant must, at its cost, arrange the replacement of the lock and provide copies of the new keys to the City and Western Power.
2. 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.
3. The movement of all path users, with or without disabilities, within the road reserve, shall not be impeded in any way during the course of the building works. This area shall be maintained in a safe and trafficable condition and a continuous path of travel (minimum width 1.5 metres) shall be maintained for all users at all times during construction works. Permits are required for placement of any material within the road reserve.

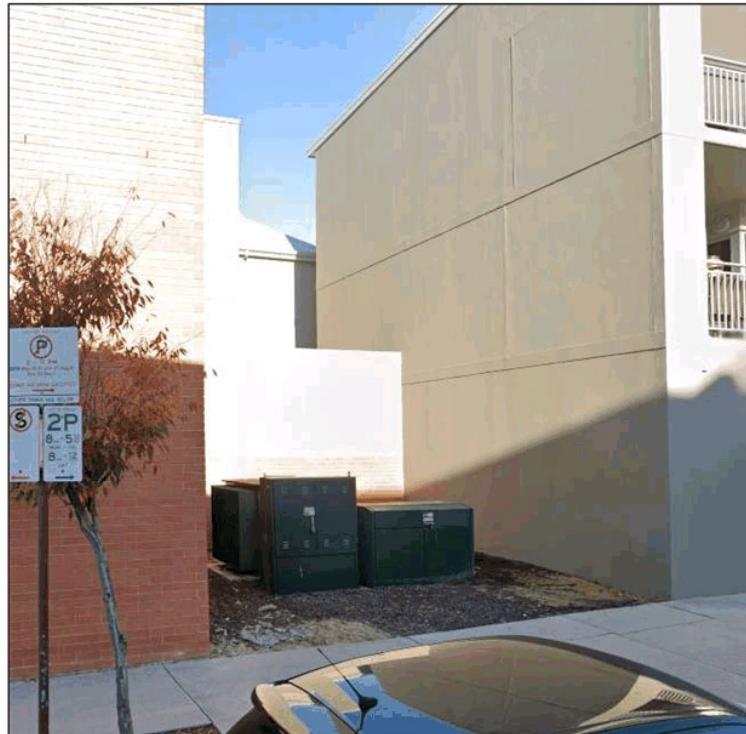


Image 1: Subject site looking south-east

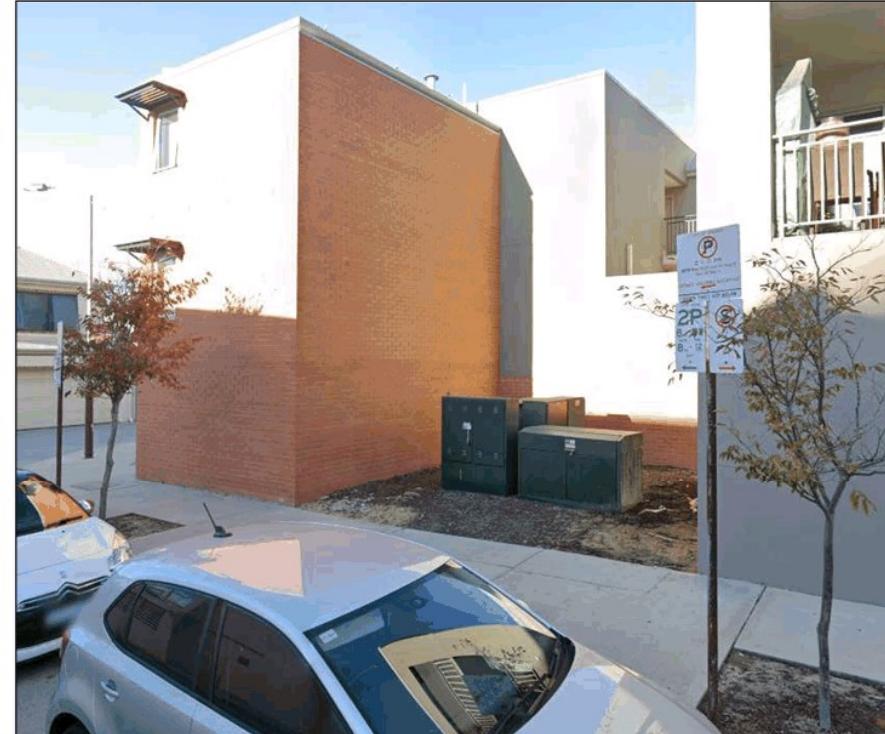


Image 2: Subject site looking north-east



Image 3: Subject site and immediate context