

5.1.5 LATE ITEM: No. 44 (Lot 382 D/P 2334) Shakespeare Street and No. 19 (Lot: 352 D/P: 2334) Dunedin Street – Proposed Addition to Dividing Fence

Ward:	North	Date:	21 July 2015
Precinct:	Precinct 1 – Mount Hawthorn	File Ref:	PR16793/PR12261; 5.2015.246.1
Attachments:	1 – Consultation Map 2 – Development Application Plans 3 – Proposed Development on Adjoining Property		
Tabled Items:	Nil		
Reporting Officer:	G Poezyn, Director Planning Officer		
Responsible Officer:	G Poezyn, Director Planning Officer		

OFFICER RECOMMENDATION:

That Council, in accordance with the provisions of the City of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, **APPROVES** the application submitted by the owners Bruce Webber and Tony Reed, for the proposed Addition to the Dividing Fence at No. 44 (Lot 382) Shakespeare Street and No. 19 (Lot 352) Dunedin Street, Mount Hawthorn as shown on plans date stamped 2 June 2015, included as Attachment 2, subject to the following conditions:

1. The existing dividing fence shall not be removed; and
2. The height of the proposed wall shall not exceed the height of the existing dividing fence in the area that is adjacent to the outdoor areas of proposed Units 4 and 5 at No. 86 Hobart Street.

PURPOSE OF REPORT:

To consider the addition of a wall structure alongside the existing boundary fence.

BACKGROUND:

Nos. 44 Shakespeare Street and 19 Dunedin Street share a common boundary along their southern side with No. 86 Hobart Street. Council approved a development for 18 multiple dwellings at No. 86 Hobart Street in February 2014.

Seven of these units face the common boundary between the three properties.

There is an existing dividing fence between No. 86 Hobart Street and the subject properties. No. 86 Hobart Street slopes down from Shakespeare Street to Dunedin Street by approximately 1.5 metres so that the levels of No. 86 Hobart Street are approximately 300mm lower than the adjoining properties in the north eastern corner of No. 86 Hobart Street.

History:

Date	Comment
23 October 2012	Council approved the demolition of an existing building and construction of a two-storey building comprising of 11 multiple dwellings, two one bedroom multiple dwellings and associated car parking.
17 December 2013	Council refused the demolition of an existing building and construction of a two-storey building comprising 18 multiple dwellings. The refusal was appealed.

Date	Comment
25 February 2014	Council approved a revised proposal under S31 of the <i>State Administrative Tribunal Act 2013</i> .
20 August 2014	The City under delegated authority approved a planning application that made amendments to the February approval.
7 November 2014	Building Permit approved by Delegated Authority to commence construction of the Multiple Dwellings.

DETAILS:

Landowner:	B L and CA Webber and A A Reed
Applicant:	Bruce Webber and Tony Reed
Zoning:	Metropolitan Region Scheme: Urban Town Planning Scheme No. 1 (TPS1): Residential R20 Draft Town Planning Scheme No. 2 (TPS2): Residential R20
Existing Land Use:	Two Single Houses
Use Class:	N/A
Use Classification:	N/A
Lot Area:	No. 44 Shakespeare Street = 546 square metres No. 19 Dunedin Street = 546 square metres
Right of Way:	Not Applicable
Date of Application:	2 June 2015

The development application is for a proposed additional wall structure to be constructed within the property boundary of Nos. 44 Shakespeare Street and 19 Dunedin Street adjacent to the existing dividing fence between Nos. 44 Shakespeare Street and 19 Dunedin Street and No. 86 Hobart Street. The design and material of the proposed wall addition are such that it will provide acoustic privacy for the applicants.

The existing dividing fence was constructed less than six months ago. This fence is approximately 2.4 metres high when measured from No. 86 Hobart Street due to the retaining walls built along the common boundary ranging in height to a maximum of 300mm, and 2.1 metres when measured from the adjoining properties' ground levels.

In relation to No. 44 Shakespeare Street the proposed wall ranges in height between 2.4 metres and 3 metres (300mm and 900mm higher than the existing dividing fence measured from the ground level of No. 44 Shakespeare Street) and in relation to No. 19 Dunedin Street the proposed wall is 3 metres high (900 mm higher than the existing dividing fence measured from the ground level of No. 19 Dunedin Street).

ASSESSMENT:

Summary Assessment

The table below is a summary of the planning assessment of the proposal against the provisions of the City of Vincent Town Planning Scheme No. 1, the 2013 Residential Design Codes and the City's policies. In each instance where the proposal requires the exercise of discretion, the relevant planning element is discussed in the section of the report following from this table.

Design Element	Complies	Requires the Discretion of Council
Density/Plot Ratio	N/A	
Front Setback	N/A	
Front Fence	N/A	
Building Setbacks	N/A	
Boundary Wall	✓	

Design Element	Complies	Requires the Discretion of Council
Building Height	N/A	
Building Storeys	N/A	
Roof Form	N/A	
Open Space	N/A	
Privacy	N/A	
Access & Parking	N/A	
Bicycles	N/A	
Solar Access	N/A	
Site Works	N/A	
Essential Facilities	N/A	
Surveillance	N/A	
Dividing Fence		✓

Detailed Assessment

Issue/Design Element:	Wall on boundary
Requirement:	<p>2013 Residential Design Codes Clause 5.1.3 C3.2</p> <p>Wall on one lot boundary not exceeding a maximum height of 3 metres and an average height of 3.5 metres for one third the length of the balance of the lot boundary behind the front setback line.</p>
Applicant's Proposal:	Walls on boundary ranging in height from 2.4 metres to 3.0 metres
Design Principles:	<p>Buildings set back from lot boundaries so as to:</p> <ul style="list-style-type: none"> • Reduce impacts of building bulk on adjoining properties; • Provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and • Minimise the extent of overlooking and resultant loss of privacy on adjoining properties.
Summary of Applicant's Justification:	To provide screening against the 18 units being built at No. 86 Hobart Street. The applicants have also provided additional justification to Elected Members.
Officer Technical Comment:	<p>The proposed structure on the boundary is discretionary in relation to No. 44 Shakespeare Street as the existing development already contains a wall on the other property boundary, but complies with the acceptable development standards in relation to No. 19 Dunedin Street. In both situations the impact of the proposal on the adjoining property needs to be considered.</p> <p>The proposed wall exceeds the height of the existing dividing fence by 300mm in the area where the proposal abuts an existing carport structure at No. 44 Shakespeare Street and 900mm for the remainder of the proposal.</p> <p>As the additional wall is located parallel to the northern boundary of No. 86 Hobart Street the impact of the additional height above the existing dividing fence is overshadowing.</p> <p>The courtyards to three multiple dwellings (proposed Units 3, 4 and 5) are located along the northern boundary of No. 86 Hobart Street. Refer Attachment 3.</p>

Issue/Design Element:	Wall on boundary
	<p>While Unit 3 will not be affected by this proposal as there is already the existing structure at No. 44 Shakespeare Street adjacent to the courtyard of Unit 3 and the proposed wall height is 2.4 metres, the impact is on the outdoor areas of the two most eastern ground floor units (Units 4 and 5).</p> <p>Each of the courtyards is just under 3 metres in width and at the current height of the dividing fence the courtyards are overshadowed in the winter months, although the adjoining lounge rooms currently still obtain some access to sunlight at that time through the sliding door that leads to the respective outdoor areas.</p> <p>The increase in height on the common boundary above the existing dividing fence will result in additional overshadowing of in excess of 1 metre, and consequently obstruct all access to sunlight for Units 4 and 5 in the winter months.</p> <p>While the portions of the proposed wall that aligns with the height of the dividing fence and the section alongside the existing carport are acceptable, the higher sections of the wall are not supported by Administration.</p> <p>In this context the negative impact of the additional height of the proposed structure on the adjoining ground floor multiple dwellings is expected to be greater than the additional privacy benefit that it may gained, especially given that the windows on the upper level of the development at No. 86 Hobart Street facing Nos. 44 Shakespeare Street and 19 Dunedin Street fully comply with the overlooking provisions of the 2013 Residential Design Codes and have also been screened to a height of 1.8 metres.</p> <p>On this basis it is therefore recommended that the proposal is supported subject to a condition that limits the height of the proposed wall to the existing height of the dividing fence for the extent that the proposed wall is located adjacent to the outdoor areas of Units 4 and 5.</p>

CONSULTATION/ADVERTISING:

Required by Legislation:	Yes	Required by City of Vincent Policy:	Yes
Consultation Period:	12 June 2015 to 25 June 2015		
Comments Received:	One objection was received from No. 86 Hobart Street.		

The table below discusses the comments/issues raised during consultation.

Summary of Comments Received:	Officer Technical Comment:
<p>Issue: Height of Wall</p> <p><i>“Our property is set lower than 44 Shakespeare Street with retaining along the northern boundary. This will significantly raise the effective wall height closer to 4 metres in height in parts”.</i></p>	<p>The proposal will not have any impact on the outdoor area of proposed Unit 3 given the existing structure at 44 Shakespeare Street, but it may unreasonably obstruct the access to sunlight for proposed Units 4 and 5 at No. 86 Hobart Street.</p>

Summary of Comments Received:	Officer Technical Comment:
<i>"The wall will completely block out all winter sun to the northern courtyards of three apartments. This will have a major impact on the amenity of those apartments".</i>	

Design Advisory Committee:

Referred to Design Advisory Committee: No

LEGAL/POLICY:

- *Planning and Development Act 2005;*
- *City of Vincent Town Planning Scheme No. 1;*
- *2013 Residential Design Codes; and*
- *City of Vincent Fencing Local Law 2008.*

The applicant will have the right to have Council's decision reviewed by the State Administrative Tribunal (SAT) in accordance with Part 14 of the *Planning and Development Act 2005*.

RISK MANAGEMENT IMPLICATIONS:

It is Administration's view that there are minimal risks to Council and the City's business function when Council exercises its discretionary power to determine a planning approval.

STRATEGIC IMPLICATIONS:

The City's Strategic Plan 2013-2023 states:

"Natural and Built Environment

1.1 *Improve and maintain the natural and built environment and infrastructure.*

1.1.2 *Enhance and maintain the character and heritage of the City."*

SUSTAINABILITY IMPLICATIONS:

The City's Strategic Plan 2013-2023 states:

"Encourage the incorporation of sustainable design principles and features in existing and new development within the City as standard practice."

The following tables outline the applicable sustainability issues for this proposal:

ENVIRONMENTAL	
Issue	Comment
Not applicable.	

SOCIAL	
Issue	Comment
Not applicable.	

ECONOMIC	
Issue	Comment
Not applicable.	

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

The proposal is classified as development under the City's Town Planning Scheme No. 1 and is therefore required to be dealt with as a planning application, rather than under the provisions of the City of Vincent Fencing Local Law 2008 and the *Dividing Fences Act 1961*.

There is no objection to the construction of an additional wall along the common boundary between Nos. 44 Shakespeare Street, 19 Dunedin Street and 86 Hobart Street to provide the additional privacy. However the height of the proposed wall for the portion of the wall that is proposed to be located alongside the outdoor areas of proposed Units 4 and 5 at No. 86 Hobart Street is not acceptable from a planning perspective, because the additional height above the existing dividing fence will obscure all access to sunlight for two of the dwellings currently under construction at No. 86 Hobart Street during the winter months and severely impact the amenity of these dwellings.

Notwithstanding Administration's recommendation for conditional approval of the proposed wall at a lesser height where it adjoins the courtyards of Units 4 and 5 at 86 Hobart Street, it is open to Council to approve the wall, as proposed. Council might consider taking this approach if it considers that:

- The privacy and acoustic benefits of the proposed wall (to the applicants) outweigh the overshadowing impacts of that wall on the courtyards of Units 4 and 5;
- The proposed wall would ameliorate any privacy and overlooking concerns raised by the applicants in relation to the first floor apartments immediately above Units 4 and 5;
- The proposed wall is an appropriate screening response to the departures approved by Administration to the Council approved plans for the development at 86 Hobart Street.

CONCLUSION:

It is recommended that the proposal is supported subject to the condition that the height of the additional wall is limited to the height of the existing dividing fence in the area that is adjacent to the outdoor areas of proposed Units 4 and 5 at No. 86 Hobart Street.