

DV21.49 LOT 547 (NO. 69) MCCOURT STREET, WEST LEEDERVILLE – SCHEME AMENDMENT INITIATION

PURPOSE OF REPORT:

Following the consideration of planning matters relating to Lot 547 (No. 69) McCourt Street, West Leederville in August 2020 (item 10.2), and Council provided in principle support for the initiation of a scheme amendment in December 2020 (item DV20.165).

A scheme amendment report has been submitted to support the proposed amendment and the associated fees paid. This report seeks Council support to initiate an amendment to Town of Cambridge Local Planning Scheme No. 1 (the Scheme).

SUMMARY:

At the Ordinary Council Meeting held on 25 August 2020, Council received a report outlining the background to the land use at Lot 547 (No. 69) McCourt Street, West Leederville (the site). Following this meeting, the administration liaised with the land owner and the business operator, regarding the next steps required to formalise the land use of the site. A further report was presented to Council in December, where Council resolved to support, in principle, the preparation of the Scheme Amendment.

The scheme amendment report has been prepared, and associated fees paid. It is recommended Council initiate the amendment and allow statutory public advertising to be undertaken.

AUTHORITY/DISCRETION:

- | | | |
|-------------------------------------|----------------|--|
| <input type="checkbox"/> | Advocacy | When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| <input type="checkbox"/> | Executive | The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| <input checked="" type="checkbox"/> | Legislative | Includes adopting local laws, town planning schemes & policies. |
| <input type="checkbox"/> | Review | When the Council operates as a review authority on decisions made by Officers for appeal purposes. |
| <input type="checkbox"/> | Quasi-Judicial | When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. |
| <input type="checkbox"/> | Information | For the Council/Committee to note. |

Address/Property Location:	No. 69 (Lot 547) McCourt Street, West Leederville
Report Date:	4/05/2021
Responsible Officer:	Director Planning & Community Services, Brett Cammell
Reporting Officer:	A/Manager Strategic Planning, Simon Shub
Contributing Officer:	N/A
Reporting Officer Interest:	Nil
Attachment(s):	1. Scheme Amendment Report 2. Extract of August 2020 Council Minutes 3. Extract of December 2020 Council Minutes 4. Extract of Schedule B of Local Planning Scheme No.1

Applicant	CF Town Planning & Development on behalf of Damian Clement and Nicole Matthews
Owner	Dr Alanagh Gilbert
Zoning	Residential R30
Precinct	West Leederville Precinct P5
Development Description	Standard Scheme Amendment
Development Value	N/A
Proposed Land Use	Residential with additional uses: i. Liquor Store – “A” ii. Take Away Food Outlet – “A”
Land Area	549m ²
Heritage Listing	Nil

BACKGROUND:

Site Context

The site subject to this report is addressed as No. 69 (Lot 547) McCourt Street, West Leederville. The site is a rectangular shaped lot, 549m² in area, orientated east to west and located on the south western corner of McCourt Street and Woolwich Street, West Leederville.

The site is developed with what appears to be a traditional single storey house with attached shop addressing the street corner. A traditional corner store type building is visible on Landgate’s aerial photo of the Perth Metropolitan Area dated 27/11/1953 at the subject site. Whilst not verified with building plans, the style of the building indicates construction around the 1930s.

The corner shop is used currently for a liquor store, trading as The Wine Thief. Internal alterations have been made to the former house portion of the building so that now the whole building is used for business purposes. On the southern part of the site, fronting McCourt Street, recent alterations have been made for a food and beverage offering. This business trades as The Coffee Thief and includes a small amount of seating area between the building and McCourt St verge. A number of ancillary outbuilding and patio structures exist towards the rear of the site, including a refrigerated shipping container.

Properties to the south and west of the subject site are used for residential purposes. Opposite Woolwich Street, to the north of the site, is a local park known as McCourt Park. The property on the opposite side of McCourt Street is also a traditional corner store attached to what once was likely a dwelling. This premises is used for Wembley Plumbing Services – a business that has operated from that site since at least 1953 according to City of Perth records.

Timed on-street parking is available on McCourt Street and Woolwich Street in close proximity to the site.

Compliance history

A summary of compliance matters is provided below:

1. Post September 2014 - there was a protracted matter regarding an off-site sign for ‘The Wine Thief’ located at No. 42 McCourt Street, West Leederville. This matter was closed upon removal of the sign and a site visit undertaken on 14 August 2020 confirms the sign remains removed.
2. August 2020 - the Town notified the business operator of the site of various concerns relating to necessary approvals and operations at the site. The Town has since provided a Stay of Proceedings for a period of 60 days to provide an action plan of how matters will be addressed.

- January 2021 – Following Council’s resolution in December, the Town provided a further stay of proceedings until May 2021 to allow sufficient time for scheme amendment documentation to be prepared.

Development history

The development history of the site (dating back to 1967) was outlined in detail in the August Report (refer to **Attachment 4**). At the Ordinary Council Meeting held on 25 August 2020, Council resolved:

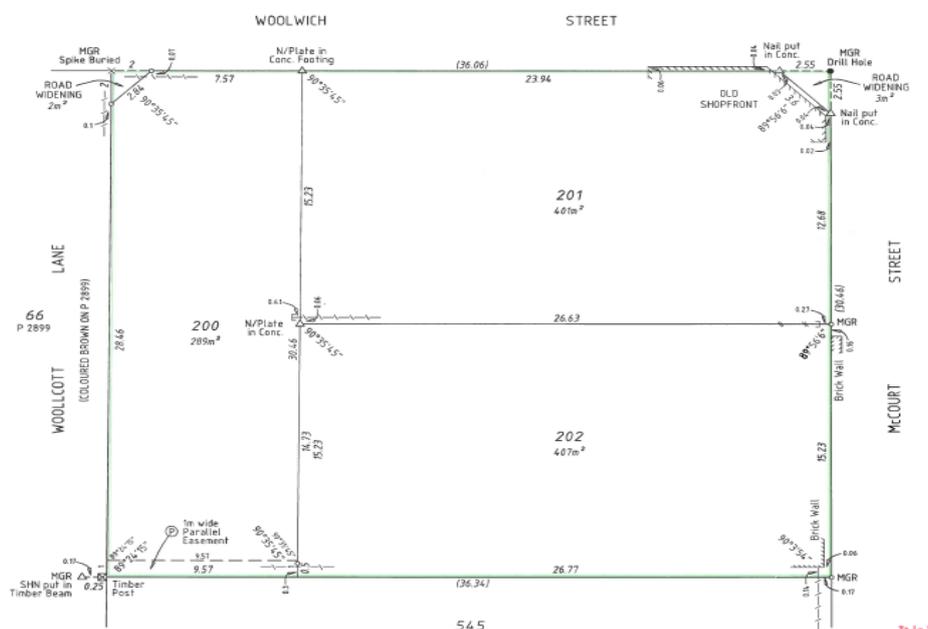
That the item relating to No.69 (Lot 547) McCourt Street, West Leederville – Planning Matters be REFERRED BACK to the Development Committee to enable further discussions to be held with the business operator.

At the Ordinary Council Meeting held on 15 December 2020, Council resolved to:

ADVISE the landowner that:

- Council supports, in principle, the preparation of a scheme amendment for additional uses at Lot 201 (No. 69) McCourt Street, West Leederville, for the purpose of ‘Liquor Store’ and ‘Take away food outlet’; and*
 - The landowner, or a representative of the landowner, shall prepare the relevant scheme amendment documentation and pay the associated fees.*
- Upon receipt of scheme amendment documentation, in accordance with Part 5, Division 2, Section 35(3) of the Planning and Development (Local Planning Schemes) Regulations 2015, Council RECEIVES a further report regarding the scheme amendment*

It should also be noted that the subdivision application for lots 202 (No. 65) and 201 (No. 69) McCourt Street (shown below), previously approved but not actioned, can be resubmitted to the Department of Planning, Lands and Heritage (DPLH). The Town has not received notification from the DPLH that a new subdivision application has been resubmitted. Should this occur, there will be implications for the provision of car parking on the site (these are discussed in the next section).



Action since December 2020 resolution:

Following Council's December resolution, a stay on compliance proceedings was issued by the Town to allow the applicant sufficient time for the Scheme Amendment Report to be prepared and submitted. The applicant has engaged a planning consultant to prepare a scheme amendment report (refer to **Attachment 1**) and this was submitted on 15 April 2021, and the associated fees paid.

DETAILS:

Based on the background outlined above, an amendment to the Scheme is proposed to:

1. Amend the Scheme Text by inserting an entry in Schedule B entitled 'Additional Uses' by including an additional use right over Lot 547 for the purposes of 'Liquor Store' and 'Take Away Food Outlet'; and
2. Amend the Scheme Map accordingly.

The merits of the proposal are assessed under the headings below.

Planning Framework

Local Planning Scheme No. 1

Schedule B 'Additional Uses' of the Scheme, includes 9 additional uses which detail the land particulars (please refer to **Attachment 5** for an extract of these), additional uses and applicable development standards/conditions as shown below:

No.	Land Particulars	Additional Uses	Development Standards/Conditions

'Liquor Store' and 'Take Away Food Outlet' are 'X' uses within the Residential Zone, which means that they are not permitted by the Scheme.

Part 6 of the Scheme provides the following definitions for the additional uses:

Liquor Store: *means any land or buildings the subject of a liquor store licence granted under the provisions of the Liquor Control Act 1988 (as amended).*

Take Away Food Outlet: *means any land or buildings used for the preparation, sale, and serving of food and beverages to customers in a form ready to be consumed without further preparation primarily off the premises, but does not include a Take Away food outlet (drive through).*

On 15 February 2021, amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015*, came into effect. The amended regulations introduced two definitions of liquor store (small and large) based on the net lettable area and combined fast food outlet with lunch bar. These definitions are model provisions for local planning schemes and do not impact the consideration of the proposed additional uses (as defined above). These changes are capable of being addressed as part of the preparation of Local Planning Scheme No. 2.

The Scheme provides objectives for the zones within the Scheme and the objectives for the residential zone are shown in the table below:

Zone Name	Objectives
Residential	<ol style="list-style-type: none"> 1. <i>To provide for a range of housing and a choice of residential densities to meet the needs of the community.</i> 2. <i>To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.</i> 3. <i>To provide for a range of non-residential uses, which are compatible with and complimentary to residential development</i>

The site has operated in some commercial manner since at least 1967, most recently as a Liquor Store and Take Away Food Outlet (further detail is contained within **Attachment 2**). It is acknowledged that there have been concerns raised regarding the use of the site as a Take Away Food Outlet.

To assist in addressing the land use concerns, it is recommended that the land uses be included as additional uses with an 'A' designation. This means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions.

The proposed amendment will bring the Liquor Store land use into conformity with the Scheme. As the Liquor Store land use has been in operation prior to the commencement of the Scheme in 1998, it can continue to operate in accordance with Clause 22 (Non-Conforming Uses) of the Scheme. Any change to this aspect of the land use would need to occur in accordance with Clause 23 (Changes to Non-Conforming Use) of the Scheme.

The business operators would need to submit a development application for the Take Away Food Outlet, which would be assessed against the requirements of the Scheme and local planning policies to ensure that the use is compatible with the surrounding residential areas.

With regard to the lapsed subdivision approval for the site, should the amendment be initiated (and approved), there will be implications for the provision of car parking on the site. Based on the estimated floor area for the Take Away Food Outlet and the existing floor plans, there will not be adequate space available on the site to provide car parking (as shown in the table below).

Land Use	Car Parking Rate	Estimated Floor Area	Car Parking Bays Required	Bays available on site
Take Away Food Outlet	1 space per 5m ² of seating area and 1 space per 3m ² of counter/queuing area	40m ²	8	0

The applicant has indicated that parking to the rear of the site can be explored following the amendment process. This could include embayment of the land adjacent to the site fronting Woolwich Street.

Further, it is possible to include a condition within Schedule B of the Scheme which could restrict the maximum floor area for the Take Away Food Outlet, however it is recommended that through the assessment of a development application, appropriate conditions of approval can be applied where necessary (e.g. Hours of operation and floor space). The 'A' land use

designations allow the proposals to be considered on their merits and provides the business operator with the ability to resolve some of the outstanding food related areas of non-compliance. As the planning process develops, the Town will continue to monitor the food operation of the site.

Standard Amendment

Part 5, Division 1, clause 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015* provides definitions of basic, standard and complex amendments.

The proposed amendment is considered a 'standard' amendment as it is an amendment:

1. Relating to a zone that is consistent with the objectives identified in the scheme for that zone (a); and
2. That does not result in any significant environmental, social, economic or governance impacts on land in the scheme area (f).

Outstanding compliance matters

Should Council initiate the Scheme Amendment, a stay of proceedings will need to be issued until the amendment has been determined. The applicant will need to obtain subsequent planning approvals and any Building Permit /s for a change of use (ie class 1a residential to class 6 shop). Further, the applicant is to submit an application for Food premises/alteration in accordance with the Food Act 2008.

The application for food premises alteration is to be received within 30 days of receiving development approval and works to be completed within 90 days. Food hygiene requirements of the Food Act are to be maintained at all times.

POLICY/STATUTORY IMPLICATIONS:

Part 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015* outlines the requirements for amending the Local Planning Scheme.

Pursuant to Section 81 of the *Planning and Development Act 2005* when a local government resolves to prepare an amendment to a local planning scheme, the local government is to refer the proposed amendment to the Environmental Protection Authority (EPA).

RISK MANAGEMENT IMPLICATIONS:

Low:	This scheme amendment is broadly consistent with the objectives of the Residential Zone. If initiated, Council will have the opportunity to consider the amendment following advertising.
-------------	---

FINANCIAL IMPLICATIONS:

There are no financial implications associated with the recommendations of this report.

STRATEGIC DIRECTION:

This report recommendation embraces the following strategies of the Town's Strategic Community Plan 2018-2028: -

Our Neighbourhoods

Goal 4: Neighbourhoods where individual character and quality is respected, and planning is responsive to residents

Strategy 4.1 Examine and better identify through planning and consultation those features and qualities which define our individual neighbourhoods

Goal 5: Successful commercial, retail and residential hubs

Strategy 5.1: Ensure future planning recognises the emerging diverse role, mixed use potential and opportunities of our centres, and integrates change and growth with surrounding local areas.

COMMUNITY ENGAGEMENT:

Should Council initiate the amendment request, the *Planning and Development (Local Planning Scheme) Regulations 2015* require the Town to advertise the scheme amendment for a period of 42 days. This is also consistent with Local Planning Policy 1.2 'Public notification and advertising procedures'.

COUNCIL DECISION:

(COMMITTEE AND ADMINISTRATION RECOMMENDATION)

Moved by Cr Haddon-Casey, seconded by Cr Fredericks

That Council:-

1. Pursuant to Section 75 of the *Planning and Development Act 2005*, INITIATES an amendment to Local Planning Scheme No. 1 to:

1.1. Amend the Scheme Text by inserting an entry in Schedule B entitled 'Additional Uses' by including an additional use right over Lot 547 (No. 69) McCourt Street, West Leederville, for the purpose of 'Liquor Store' and 'Take Away Food Outlet' as shown below:

No.	Land Particulars	Additional Uses	Development Standards/Conditions
A10	Lot 547 (No. 69) McCourt Street, West Leederville	Liquor Store – "A" Take Away Food Outlet – "A"	Nil

1.2. Amend the Scheme Map accordingly;

2. Pursuant to Part 5, Division 2, Section 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, DETERMINES that the proposed amendment is a Standard amendment as:

2.1. It is consistent with the objectives identified in the Scheme for the Residential Zone; and

- 2.2. It is an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;**
- 3. AUTHORISES Chief Executive Officer to execute the relevant amendment documentation;**
- 4. REFERS the proposed amendment to the Environmental Protection Authority for advice in accordance with the provisions of the *Planning and Development Act 2005*;**
- 5. RECEIVES a further report at the conclusion of the advertising period.; and**
- 6. NOTES that compliance action under the *Food Act 2008* will be deferred with the exception of matters relating to food hygiene or handling.**

Motion put and CARRIED EN-BLOC (7/0) (Unanimous)
(Cr Everett was an apology and Cr McKerracher was on leave of absence)