

WRITTEN SUBMISSION - 15/9/2026 Ordinary Meeting of Council

12.2 Request for Building Orders - Dr J Stevens, Bicton

Mayor, deputy Mayor, Councillors, please accept this written submission to assist the careful and diligent review of my **Petition, as delivered to the City on Monday 31 August 2026**, and other information previously provided including more recently my 1/9/2026 and 22/8/2026 emails to you all.

The published Agenda for the 15/9/2026 Council meeting states:

“The City of Melville received a petition on Tuesday 1 September 2026 from Dr J Stevens, Bicton. The petition, signed by 20 residents of the City of Melville, is as below:

“We, the undersigned electors of the City of Melville, respectfully request Council to cause the Chief Executive Officer to issue building orders directing Dr Stevens' adjoining property owner to remove the unauthorised encroachments onto his property and make good, in full accordance with the State's building legislation, as justified by Dr Stevens' 22/8/2026 email to Council.”

OFFICER RECOMMENDATION

That the Council acknowledge the petition and advise Dr Stevens that as the Council made a resolution related to this matter at the 18 & 19 April 2023 Ordinary Meeting of Council no further action will be taken.”

I am very dissatisfied with the Officer Recommendation. I am of the view that the Officer Recommendation demonstrates the Administration's real or perceived Conflicts of Interest on the basis that I suspect progressing my Petition may cause the Administration embarrassment, given, from my perspective, the previous lack of action, inappropriate advice, and incorrect information provided to Council and me.

This is why my 1/9/2026 email to you all requested that Council resolves to refer my Petition to a committee (ARIC) for consideration and report, per 6.11 (3) (b) of your meeting procedures local law.

Council's role includes overseeing and governing the City. The problems I see are the ways in which the Administration has dealt with my 2021 (5+ years ago) complaint about the unauthorised encroachments. The building non-compliances and the proven unauthorised encroachment still have not been resolved. The adjoining property owners have refused to remove the unauthorised encroachments.

Several other community members have problems with the Administration's responses to their complaints, as evidenced by the attached 2025 letter from Bicton MLA, Ms Lisa O'Malley's to Mayor Mair. Other community members also have expressed their ongoing problems with the Administration's lack of action to resolve their complaints about unauthorised encroachments.

The Officer Recommendation is misleading or incomplete, from my perspective. My 2023 petition was not the same as my current 31/8/2026 Petition. Council's 18 & 19 April 2023 motion was:

“2. Advise Dr Steven's [sic] that the actions requested of the Council within the petition are inconsistent with the governance role and functions of the Council and that the City's administration will continue to progress with current actions regarding the [REDACTED] and [REDACTED], Bicton building related matters and complaints and that the best course of action is that these matters be resolved amicably between both property owners.”

I am of the view that this motion IS NOT a resolution that Council will not take any further action, as suggested by the Administration. Rather that it directs the Administration to continue to progress current actions, and merely expresses Council's preference that the neighbours resolve it themselves. None of these suggested outcomes have

been achieved, despite my attempts. The Administration, from my perspective, took no further appropriate actions, as they could or should have taken.

Council DOES HAVE the powers to cause the CEO to issue the requested building orders. The State Parliament conferred these powers onto Council under the Building Act 2011, and Council has delegated these powers to the CEO and other Administration officers. This is evidenced by;

1. The City of Fremantle's Council's at the 28/2/2024 meeting resolved the motion, as attached:
"Accordingly, this report recommends that Council -
 - 1) **Approve the issue of a building order pursuant to s. 110 of the Building Act 2011** requiring owners of 5 Beach Street, Fremantle to demolish and remove the building, whilst preserving the existing historic building façade.
 - 2) Delegate authority to the Chief Executive Officer to commence legal proceedings against owners upon failure to comply with building order".
2. The 8/3/2022 Legal Advice confirming that the City has the powers to issues the requested building orders, as attached.
3. The 12/3/2022 summary of Local Government Council building powers and duties.
4. An example of a previous a building order the City issued to deal with another unauthorised encroachment was provided in my 22/8/2026 email to you all.
5. At a SAT hearing earlier this year a Senior Member said, to the effect from my memory and subject to receiving the transcript, that the Permit Authority could/should resolve the unauthorised encroachment. The SAT Senior Member then dismissed my request for building remedy orders, effectively the same as what I am now asking Council to cause the CEO to issue. The adjoining property owners refused the person responsible for the unauthorised building works to access their property to enable the removal of the unauthorised encroachments.

Further, other information provided to Council and me, from my perspective, provides inaccurate, misleading or incomplete information to Council, including;

1. The City's lawyer (McLeods) 27/2/2023 letter, on behalf of the Administration, states:
 - a. "the City has no record of the Stevens Retaining wall ever having been approved by the City. As a result, the Stevens Retaining Wall is unauthorised". This is incorrect as my retaining wall was included in the building approval issued by a City Building Surveyor on 7/11/1997 (Building Licence 157-98).
 - b. "portions of the limestone retaining wall located on the [REDACTED] Property ([REDACTED] **Retaining Wall**) are alleged to be encroaching onto the Stevens Property". This is at least misleading given a 23/1/2023 Administration's email to the adjoining property owner confirmed that my retaining wall was up to 0.22m inside my property from the surveyed subject boundary and that there "is a breach of Section 76, Building Act 2011, where consent was required for the encroachment to take place at the time of installation". So, the unauthorized encroachment should not have been considered merely alleged. My 2021 complaint was confirmed, yet the Administration has still failed to act.
 - c. "If the matter cannot be resolved amicably, the parties may wish to consider commencing civil proceedings in the Magistrate Court". But, previous decisions have confirmed that the Magistrates Courts do not have jurisdiction to deal with boundary retaining walls under the Dividing Fences Act 1965. A feasible Magistrate Courts pathway to obtain Court orders to have the unauthorized encroachment removed has not been identified.
2. The Administration issued approvals in response to my 2021+ complaints about the unauthorised building work undertaken on the adjoining property owners' land. Neither the Administration or adjoining property owners consulted me for my consent; a) prior to issuing the retrospective planning approvals, despite

consulting other neighbours, and b) prior to an Administration building surveyor issuing the retrospective building approval. **New information obtained in the last year confirms that the retrospective building approval plans do not reflect what was built.**

The above summarises why my 1/9/2026 email to you all requested that Council resolves a motion to refer my Petition to a committee (ARIC) for consideration and report, per 6.11 (3) (b) of your meeting procedures local law.

Council should accept this request to demonstrate to the broader community that it takes its oversight and governance role seriously by taking appropriate action consistent with the principles of good governance and justice for those affected.

Dr Jeffrey Stevens M.B.,ChB.,F.R.A.C.P.

Attached:

- a. 20/10/2025 Bicton MLA, Lisa O'Malley letter to Mayor Mair and CEO Bowman
- b. 8/3/2022 Legal Advice confirming that the City has the powers
- c. 12/3/2022 summary of Local Government Council building powers and duties
- d. 28/2/2024 City of Fremantle's Council's resolved the motion

Lisa O'Malley MLA

STATE MEMBER FOR BICTON

Dear Mayor Katy Mair

CC: Gail Bowman, CEO City of Melville

I am writing to you today to advise you of my recent meeting with several of our constituents regarding the Building Act WA 2021, the Building Services (Complaints and Resolution and Administration) Act WA 2021, and the Planning and Development Act WA 2005, at which they raised concerns about the City of Melville's proficiency in relation to these Acts and their personal dealings.

As such, I invite you to meet with me at a time of your convenience.

I hope to hear from you soon.

Sincerely,

Lisa O'Malley

Kind Regards,



Lisa O'Malley MLA
Member for Bicton

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P: 9319 1732 E: bicton@mp.wa.gov.au



Active and Local



9319 1732



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Lisa O'Malley MLA

Our ref: JH:220211 (final)

Your ref:

8 March 2022

To: [REDACTED]

Dear [REDACTED]

Local government enforcement powers for unauthorised encroachment of buildings and incidental structures

I confirm I am instructed to provide a very brief summary of the main enforcement powers available to a local government under the *Building Act 2011* ("the Act") in respect of unauthorised encroachment of buildings and incidental structures.

Subject to various exceptions, s 76 of the Act requires the builder named in the building permit (or the landowner if no building permit is in effect) to ensure under that no part of a building or incidental structure is placed beyond the works land without the consent of the adjoining owner or court order. Failure to comply is an offence.

Conduct which breaches s 76 may also give rise to additional offences such as non-compliance with the building permit in breach of s 29 or doing building work without a building permit in breach of s 9.

The local government as permit authority is authorised to prosecute the above offences within 6 years of the alleged offence.

The local government may be able to issue a building order under s 110 requiring the unauthorised encroachment to be removed (reviewable by SAT under s 122). Non-compliance may allow the local government to give effect to the building order and recover the costs under s 118 and/or prosecute under s 112 within 3 years (if non-compliance was without reasonable excuse).

The builder named on the building permit can potentially be required to remove the unauthorised encroachment under a building order. But a building order can only be issued to the named builder while the building permit is still in effect.

Further or alternatively, a building order can be issued to a landowner at any time. But it appears a building order cannot require a landowner to do work beyond the boundaries of its own land. This would present practical difficulties in the case of unauthorised encroachment as a corresponding building order would also need to be issued to the owner of the adjoining land.

Yours faithfully

[REDACTED]
HOSGOOD LAWYERS

Julian Hosgood

Legal Practitioner Director

julian@hosgoodlawyers.com.au

Local Government Council building powers and duties

This is a summary of the powers and duties as conferred on Local Government Councils so that they can fulfil building approval and compliance functions as specified in the Building Act 2011 (**Act**) and the Building Regulations 2012 (**Regulations**).

1. Local Government Councils (**Council**) are the designated permit authorities for any building or incidental structures (**Structures**) within their districts (s6(3)). Councils can only delegate its powers and duties to a Council employee, the Council's CEOs may be empowered to further delegate (s127(6A)).
2. It is an offence for any person to:
 - a. do building work (s3) or demolition work (s3) without a permit issued by a Council (s9 and s 10);
 - b. not complete the building and demolition work in accordance with issued permits (s29);
 - c. not ensure building and demolition work complies with applicable standards (s37 and s38).

Councils can prosecute these offences (s133) for which the penalties are: (a) for a first offence, a fine of \$50,000;(b) for a second offence, a fine of \$75,000; (c) for a third or subsequent offence, a fine of \$100,000 and imprisonment for 12 months.

If building or demolition work is undertaken without any authorised approvals and permits, or the work is not done in accordance with the previously issued permits it is **unauthorised work** (s51).

No other WA State authority has the power to prosecute these offences.

3. The Regulations specify what type of building and demolition work requires a permit (Regulations Sch 4, Cl2). For example the following types of work requires a permit:
 - a. Renovation, alterations, improvement, repair or maintenance of a Structure that may, for example, impact structural soundness or health and safety elements, uses unique material, changes the classification of the Structure, any applicable standards or where the work may affect other land (s76 to s79) (r Sch 4 Cl2 (2)).
 - b. Construction, erection, assembly or placement of any retaining walls along a boundary, even if under 500 mm in height, and may affected other land (s76 to s79) (r Sch 4 Cl2 (6)(b &c)).
 - c. Construction, erection, assembly or placement of any masonry fence, screen or similar structure that is greater than 0.75 m high (r Sch 4 Cl 2 (4)(b)(i)).
4. Councils to receive building and demolition permit applications, assess them and grant permits where appropriate (s16 to s28). Councils must issue permits to the persons named as the builder or demolition contractor; owners of the land on which the Structure is or is proposed to be located; and the applicants. Councils are also to accept and deal with notices of completion (s33) or notices of cessation (s34) in relation to permits.
5. Councils can police compliance by undertaking inspections (s36) to determine compliance with Act, Regulations, applicable permits and relevant building standards (s29). Councils have the powers to obtain warrants to enter premises (s106) with Police attendance as necessary (s103(3)) and give enforceable directions (s104). Inspections includes barriers to private swimming pools (r28) of which Councils must inspect at least every four years (r53).
6. Councils can issue building orders to address actual or suspected contraventions of the Act and Regulations, including non-compliance with permits (**Orders**). Councils must issue Orders to the builder or demolition contractor where a Permit is current, or a person who is the owner of the land on which the Structure is located (s110). Councils can give effect to Orders if non-compliances are not remedied and recovery the costs (s118).
7. Councils to receive occupancy permit applications for certain types of buildings, assess and grant occupancy permits where appropriate (s46 to s65).

8. Councils can accept applications for building approval certificates in relation to unauthorised work (s51), in effect a retrospective building approval (**BAC**) (s52)(2). Councils must not grant a BAC, amongst other things, if part of the structure encroaches beyond the boundaries of the land on which the Structure is located without the consent of each owner of the land on which the structure located or encroaches in accordance with s76(2) (s58(1)(e)).
9. Councils can act on Act Part 6 – Work affecting other land non-compliances by issuing Orders, infringements (r Sch 6 Div 1) or commence prosecutions (s133) if such work is done without the consent of the landowner (**adjoining landowner**) of the land beyond the boundary of the works land (**other land**) or a Court Order. This includes:
 - a. Encroachments (s 76); noting Councils must not grant permits or BACs in the absence of consent from the adjoining landowners (s20(1)(g), s58(1)(e)). Penalty: a fine of \$25,000.
 - b. Adversely affecting other land (s77); noting Councils must not issue permits in the event work is reasonably likely to adversely affect land beyond the boundary of the works land (s3, s20(h), s 83). Penalty: a fine of \$25,000.
 - c. Putting protection structures beyond the boundary of other land (s78). Penalty: a fine of \$25,000.
 - d. Work affecting party walls, substantial dividing fences or boundary retaining walls (s79). Penalty: a fine of \$25,000.
 - e. Removing fences and gates or other barriers to other land (s80). Penalty: a fine of \$10,000.
 - f. Accessing other land (s81). Penalty: a fine of \$10,000/\$5,000.
 - g. Failing to give notice if it is reasonably likely a notifiable event (those above) will occur (s84). Penalty: a fine of \$10,000.
10. Councils do not have the power or authority to make any decisions in the absence of consents from adjoining landowners if proposed work may affect other land. The person responsible for the building or demolition work must seek a Court Order from the Magistrate Court in the absence of the adjoining landowner consents for work affecting other land (s86).
11. Councils can prosecute any person that knowingly makes statements or provides information that is false or misleading in a material particular (s147). Penalty: a fine of \$25,000.
12. Councils must keep a register of all building and demolition permits, occupancy permits and BACs granted by it and all Orders made by it (s128) (**Register**) and keep all records in relation to the Structure that is the subject of building or demolition permits, occupancy permits, BACs, Orders, a prescribed inspection, a certificate of compliance (design, construction, building) issued by a building surveyor, or a notice of completion or cessation (s130, r12).
13. Councils must make the Register available to any member of the public for inspection (s129) and must provide copies of any building records to the owner of the structure and Police officers or DEFS staff as required to protect the safety of persons (s 131).
14. Councils have a duty to ensure their records accurately reflect approved plans and specifications for all 'as built' Structures that require a permit within their districts. Councils can achieve this by ensuring all Structures are the subject of permits and those Structures are built to comply with the permit approved plans and specifications; or alternatively a BAC is granted to reflect the 'as built' Structures; either by bringing the Structure into compliance with the approved plans and specifications, or requiring a new permit for any modification/alteration to previously approved plans and specifications.
15. **Councils**, in short, have duties and powers to enforce compliance and/or prosecute in the event that Structures exists within their districts that do not have the required approvals and permits, or Structures do not comply with the building permits or BACs it issues.



11.1 Planning reports

C2402-13 BUILDING COMPLIANCE – NO. 5 BEACH ST, FREMANTLE

Meeting date:	28 February 2024
Responsible officer:	Manager Field Services
Voting requirements:	Simple Majority
Attachments:	1. Aerial image 2. Photographs of property

SUMMARY

The purpose of this report is for Council to consider issuing a building order requiring the demolition of an incomplete building at 5 Beach Street, Fremantle.

5 Beach Street consists of a four-storey multiple dwelling development which has stood incomplete since approximately 2010. There is no heritage listing associated with the property. Potential heritage aspects of the place have been diminished by unauthorised works on the site. The building has fallen into a state of dilapidation and is considered to be unfit for human occupation and potentially dangerous. Persons are known to access the building on a frequent basis and are exposed to considerable risk of injury due to precarious site conditions. Moreover, the building is considered to be detrimental to the amenity of the surrounding area.

Due to significant structural and design flaws in the constructed building, there is little prospect that the building can be completed to a fit for purpose use. It is the City's contention that safety and amenity issues associated with the site will persist until the building is removed. Although not protected by heritage or planning legislation, it is considered worthwhile in attempting to retain the historic front façade (to be incorporated into future redevelopment of the site).

Accordingly, this report recommends that Council -

- 1. Approve the issue of a building order pursuant to s. 110 of the *Building Act 2011* requiring owners of 5 Beach Street, Fremantle to demolish and remove the building, whilst preserving the existing historic building façade.**
- 2. Delegate authority to the Chief Executive Officer to commence legal proceedings against owners upon failure to comply with building order.**



BACKGROUND

Strata lots 1-12, 5 Beach Street, Fremantle consists of an incomplete 4 storey multi-residential development incorporating the façade and roofing timbers of a former warehouse. Planning approval was granted for the development on June 24, 2003. A subsequent Building Licence was issued on July 19, 2004. From 2004-2010 sporadic development took place on the site, most of which was undertaken in an improvised manner and in contravention of the approvals granted by the City. This resulted in the owner being convicted on two occasions for undertaking works without a valid planning approval or building licence.

DA Refused, Overturned by SAT

In 2009, development approval was sought to amend the development to include tourist accommodation and recreational uses. This application was refused by the City but subsequently approved by the State Administrative Tribunal (SAT) upon review. A condition of the SAT approval required completion of the development within 2 years. The development was ultimately not acted upon, and the approval lapsed in June 2013.

Building Orders: Illegal Occupation

In 2014, the building was found to be illegally occupied by the (previous) owner and a number of transient tenants. The City evicted the occupants and secured the building by way of building orders in 2015. The orders were given on the basis that the building was considered dangerous and unfit for human occupation by reason of various contraventions of the then edition of the building code.

Building Report

In 2015, the City engaged a private building surveying practitioner to report on compliance of the building against the requirements of the then edition of the Building Code of Australia. Findings of the report included the following –

- The building is not protected by a smoke detection and alarm system.
- The building does not comply with minimum egress requirements.
- Inadequate resistance to water ingress into accommodation units.
- Insufficient light and ventilation to accommodation units.
- Inadequate fire separation between accommodation units and common areas.
- Exit travel distances are in excess of what is considered safe.
- Incomplete balustrading in the eastern portion of the building allowing occupants to fall 7m.

Furthermore, the report described conditions across the site as being generally hazardous.



FESA report

In 2015, FESA submitted an affidavit in support of the City's efforts to evict tenants from the building. A summary of the affidavit is as follows –

- There is nothing to prevent spread of fire between the 3 x 4 storey structures compromising the building on the property.
- There is no hydrant at the property. Fire hydrant is required for timely extinguishment of fire and to provide water for personal protection when conducting rescue activities.
- The nearest hydrant to the centre of the building facade is located 39m away to the south requiring excessive hose length and lower water pressure at the nozzle.
- The multilevel nature of the building would restrict fire fighters to 38mm hose as opposed to 60mm hose which would result in high hydraulic loss.
- In circumstances such as these, DFES could not guarantee rescue of occupants of the building or protection of neighbouring properties.
- Should a fire occur in the building the safety of persons and adjacent properties would be severely compromised.

Building Orders: Deep Excavation

In 2016, the City issued further building orders in relation to a deep excavation at the rear of the lot which was endangering adjacent buildings and had resulted in the collapse of a wall shared with the property at 18-24 Queen Victoria St some years earlier. Owners undertook works to stabilise the neighbouring properties and the rear wall was reconstructed.

Structural Engineers Report

In 2020 the City engaged consulting engineers to report on the structural integrity of the building. The report revealed widespread inadequacy of structural elements and significant deviations of the construction from architectural and engineering drawings. The report uncovered:

- Major deviations from engineering drawings have occurred during construction affecting nearly all building components including footings, floors, and roof structure.
- Rotation and deterioration of façade. (The rotation was previously noted in 2015, but otherwise sufficiently stabilised by way of being anchored the new structure.)
- No engineering documentation for construction of various balconies, corridors, or walkways.
- Footings and walls inadequate to support third floor suspended slab.
- Tie down capacity of third floor staircase roof is unknown.
- Timber trusses have been cut with no proper support at ends.
- Staircases supports not appropriately designed.
- Dangerous form work to third floor concrete suspended slab.
- Rear retaining wall missing lateral support. Prone to overloading.
- Corrosion present in RHS beams. Corrosion present in slab reinforcement bars.
- Design capacity of structural elements of the building is largely unknown.



- Extensive and detailed testing of individual structural components is required to determine structural adequacy.

Current Status

The site has fallen into a state of dilapidation and is frequently subject to unauthorised access including by minors. Access to the property is through or over the main entrance gates and over the back fence via 18-24 Queen Victoria Street. Repairs on entrance gates have been undertaken on three occasions after steel bars were removed by persons seeking access to the site. On the two most recent occasions, the City undertook the repairs in lieu of timely action by owners.

Concerns have repeatedly been raised with the City regarding the safety of persons accessing the site, including the roof level, as well as the propensity for fire. A site inspection carried out in November 2023 by City officers in response to these concerns, identified the following site conditions -

- Vast accumulation of disused materials, equipment/machinery and rubbish throughout the ground floor and extending to the rear boundary resulting in risk of injury and excessive fire loading.
- Evidence of fires being lit within the building. FESA have previously identified the building to be hazardous to persons and property due lack of firefighting capability on site.
- Locked entrance gates preventing emergency egress from the site.
- Incomplete or otherwise defective balustrading to upper floor areas and roof section creating a fall hazard.
- Widespread deterioration and weathering of building elements.
- Extensive vandalism.
- Evidence of drug activity and squatting.

FINANCIAL IMPLICATIONS

Drafting of a building order by the City's solicitors is expected to cost \$500-\$800 plus disbursements. Additional costs of up to \$1500 should be allowed for where the City's solicitors are required to review historical building licences etc. Were the City to commence legal proceedings for noncompliance with a building order, legal costs are estimated to be \$3000-\$4500. Similar costs may be applicable should the matter be subject to review in the State Administrative Tribunal (SAT). These legal costs would be funded from annual operational budgets.

In the event that the Council undertook demolition of the building in lieu of owners, demolition costs are presently indicated to be around \$328,000. There are various avenues the City would have to seek recovery of costs, refer to details in Conclusion. The commitment by the City to fund the full demolition and then to seek recovery of costs would be subject to a further decision by Council.



LEGAL IMPLICATIONS

The building is considered to be in a dangerous state and unfit for human occupation.

Under s. 112 (2) of the *Building Act 2011*, the City may issue a building order requiring a person to whom the order is directed to do any one or more of the following within the specified timeframe –

- (g) if a building or incidental structure is reasonably believed to be in a dangerous state or unfit for human occupation –
 - (v) To renovate or repair the building or incidental structure to a specified standard or in a specified way so as to prevent or stop the building or incidental structure from being a danger to persons, to other property or to the environment or to render it fit for human occupation; (or)
 - (vi) To demolish, dismantle or remove the building or incidental structure.

Under the *Building Act 2011*, a person who is served with a copy of a building order must not without reasonable excuse fail to comply with the order. Non-compliance with a building order carries a penalty fine of up to 50,000 for a first offence.

In accordance with Local Planning Scheme No. 4 (LPP 1.7 - Development Exempt from Approval), works are exempt from the requirement to obtain development approval where they are urgently necessary for public safety, safety or security of plant or equipment, maintenance of essential services, or protection of the environment.

CONSULTATION

There is no community consultation associated with this Report.

There has been ongoing consultation with the building owners regarding the non-compliance building matters for many years. Most recently, a letter was issued to the owners in 2023 that:

- Reconfirmed the non-compliance nature of the building;
- Recommended demolition as the most appropriate course of action.
- Advised owners that in the event that action was not agreed and taken, the City would be placed in a position to require demolition through a building order.
- Advised owners that should that building order be ignored, the City would most likely be required to commence legal action.

No agreed action from the owners to rectify matters has been received by the City. The building continues to present unacceptable risks to the community.



OFFICER COMMENT

Heritage Comment

5 Beach Street is not heritage protected and is not located in a heritage area. In 2000, the place was identified on the Municipal Heritage Inventory as having 'potential heritage value' and in 2003 an independent heritage assessment reported that the place held cultural heritage significance for its aesthetic value as a warehouse building as well as being part of a group of warehouse buildings.

The original development approval for the site (2003) proposed to retain key fabric of the building however unauthorised works which ensued between 2004–10 resulted in significant alterations/damage to the fabric including the original double span timber trusses and limestone façade. Due to the overt damage and ongoing compliance/legal issues with the site, the place was not heritage listed by the City in 2009 with the adoption on Local Planning Scheme No. 4.

In 2010, a further heritage assessment, carried out as part of a proposal to vary the development, suggested that permanent loss of previously held heritage value of the place had occurred.

Although the place has no formal heritage protection, the façade is considered to contribute positively to the Fremantle streetscape and reinforces the character of the port and historic connection between shipping and land-based storage.

The façade has deteriorated and suffered from crude modifications, such as windows being cut into the parapet frieze, however, where achievable, it would be considered advantageous to retain the façade for possible incorporation into future development.

From a structural point of view, the façade is visibly leaning (rotation) toward the footpath (which has been confirmed by independent structural assessment) and is only stabilised by way of being anchored to the rear building. Professional advice would be required to confirm if the façade can be successfully decoupled from the building behind and retained as a free-standing element when the remainder of the building behind is demolished. It is likely that the façade is fragile and susceptible to collapse without appropriate stabilisation measures in place.

Should the facade be retained and then remain for a considerable period of time, it will also require protection and repairs to prevent further deterioration and loss of fabric.

Conclusion

The building at 5 Beach Street has remained unfinished since around 2010 and has fallen into a state of dilapidation. The building is considered to be unfit for occupation due to its incomplete status as well as non-conforming aspects to elements that have been constructed.



The building is also considered to be potentially dangerous due to widespread structural and design deficiencies as well as significant fire loading and egress issues from the site. It is expected that safety and amenity issues at the site will persist unabated unless the building is removed.

Under section 112 of the Building Act 2011, where the City forms the opinion that a building is dangerous or unfit for human occupation, it may serve a building order on an owner requiring demolition or repair of the building. For reasons outlined in the previous sections, repair of the building is not practical nor feasible, therefore, demolition stands as the most appropriate option. As the property is strata titled, orders would have to be concurrently served on all owners for their respective strata lots and common property.

Two of the three property owners are located in Perth and have demonstrated a willingness to cooperate with any enforced demolition requirements of the City. The third owner, who is located interstate and happens to own lot 11 (front building) has contested the need for demolition of lot 11 and considers that the remainder of the building should instead be removed with lot 11 (incorporating the façade) left intact; ostensibly due to the notion that lot 11 does not in fact form part of the more problematic rear section of the development. It is the City's strong contention however that lot 11 equally comprises part of the overall development which remains incomplete and dangerous.

It is anticipated that the owner of Lot 11 (and possibly other owners) will seek review of any building order issued in respect to demolition of the property under statutory review rights and this is more likely with any requirement to retain the façade. This would invariably result in determination of the matter by the State Administrative Tribunal (SAT) however, legal advice received by the City suggests that as per the principles established in *Branca* and *City of Stirling* [2014 WASAT 77], SAT would be in a position to require demolition of the entire development (lot 11 included) as there is little prospect the building will ever be completed.

In the event that owners do not comply with a building order to demolish the building, the City has the ability to undertake demolition in default and seek recovery of costs, either directly through the owners or in court (s118 Building Act 2011). Whilst this would resolve the issue of the dangerous building, it would require up-front expenditure by the City to remove the building.

As an alternative and initial course of action, the City may prosecute the owners for failing to comply with the building order (s115 Building Act 2011) and use the proceeds of prosecution to fund or at least partly fund the cost of demolition - where the owners failed to comply with a subsequent building order(s) to demolish. Prosecution would have the effect of terminating the legal authority of the initial building order requiring a further order to be issued.



Under section 115 of the Building Act, failure to comply with a building order attracts a maximum penalty of \$50,000 for first offence, \$75,000 for a second offence and \$100,000 for a third offence.

Where subsequent demolition orders were not complied with, the City would have the option to instigate further prosecutions which would of course increase the amount of funds available to the City to be able to carry out demolition. Any shortfall in demolition costs may be recoverable from the owners either directly or in court (s118 Building Act).

VOTING AND OTHER REQUIREMENTS

Simple majority required

COUNCIL DECISION ITEM C2402-13 **(Officer's recommendation)**

Moved: Cr Doug Thompson

Seconded: Cr Frank Mofflin

Council:

- 1. Approves the issue of a building order pursuant to Section 110 of the *Building Act 2011* requiring owners of 5 Beach Street, Fremantle to demolish and remove the building within 12 months, whilst preserving the existing historic façade along Beach Street.**
- 2. Delegate authority to the Chief Executive Officer to commence legal proceedings against owners upon failure to comply with building order.**

Carried: 10/0

**Mayor Hannah Fitzhardinge, Cr Jenny Archibald, Cr Geoff Graham,
Cr Andrew Sullivan, Cr Adin Lang,
Cr Fedele Camarda, Cr Ben Lawver, Cr Frank Mofflin,
Cr Doug Thompson, Cr Ingrid van Dorssen**