Summary of Submissions:

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

Comments Received in Objection:	Applicant Comment:
Building Height • Concern about shading from overshadowing in afternoons from three-storey building. • Concern about the bulk that would be presented by the three-storey nature of the proposal. • The proposed building height would block access to direct sun to habitable rooms and outdoor spaces and does not minimise overshadowing of adjoining properties.	• Overshadowing is inevitable due to location and orientation of the block relative to its neighbour. Total shadow is less than the 50% permissible area, and much of the overshadowing overlaps the neighbouring tree shadow falling on the adjacent paved car parking area (Refer to Page 2.02). We would have liked to have the driveway on the South side as a solar buffer for the neighbours but could not do so due to a root protection zone needed by the neighbouring Moreton Bay Fig tree in the park. • Flat roofs have been chosen to decrease bulk compared to 2 storey plus pitched roofs. The top of the proposed buildings are only half a storey taller than the top of the neighbouring houses. The bulk is not continuous with separation between buildings and only 35% of the site at 3 storeys high. • Single storey height gaps between the buildings have been designed to maintain partial solar access to neighbours windows (Refer to Elevations page 4.02) We feel that this will have less impact than building adjoining terraces spread along the whole length of the block.
Street Setbacks • Street setback should be consistent with Nos. 105 and 107 Palmerston Street and the design is not consistent with the established character of the streetscape. • The proposed buildings would not be not consistent with the streetscape and are not complementary to the park.	• The front street setback has been calculated by averaging the setbacks for the adjoining 5 properties, including the apartments at number 99 Palmerston st. This was then averaged, with only 20% of the frontage containing a 1.925m front setback. The low front setback is consistent with the high density zoning and future development potential of the area. • The proposed buildings were designed to be sympathetic to the streetscape using complimentary materials, forms and architectural treatments. Garden terraces and on structure planting (including vines and creepers) have been included to create a green transition to the park. Curves in the building have been inspired by the buttress roots in the neighbouring fig trees in the park.

Summary of Submissions:

Comments Received in Objection:	Applicant Comment:
Lot Boundary Setbacks • The proposed setbacks will present significant massing, with 9-metre-high walls wall less than 1.2m from the lot boundary. • Concern about the bulk and scale that would be presented by the dwellings to the adjoining property.	• All 3 storey walls are a minimum of 1.6m from the boundary. Some 2 storey walls are 1m from the boundary, which is consistent with the houses next door. Given the small block sizes we felt that having decreased setbacks compensated by spacing between the houses was a better design outcome than spreading the built form along the whole length of the blocks. • The 3 storey nature of the development is consistent with the zoning, future development potential, and existing recent residential developments in the immediate area. We feel that the proposal is a sensible mid-point between single dwellings and apartments and is an appropriate scale and density for inner city living.
Overshadowing • The shadow caused by the proposed building would impact on the adjoining property's access to direct sun and ventilation to outdoor living areas and major openings to active habitable spaces. • Extent of overshadowing will result in the adjoining properties being in shadow for the entirety of the day.	• Overshadowing is inevitable due to the orientation of the block relative to its neighbours. We were unable to use our driveway as a solar buffer to the neighbours due to the root protection zone required by the neighbouring 22m tall Moreton Bay fig tree in the park. This tree already overshadows a significant part of the neighbouring property. • Single storey height gaps between the buildings have been designed to maintain partial solar access to neighbours windows. The hit and miss brick screening to the 3rd floor balconies has been designed with air flow and ventilation to the neighbours in mind. (Refer to Elevations page 4.02) • The neighbouring properties do not appear to have been designed with solar orientation in mind, with only small windows to the North and Verandah's shading the North West and South East windows. It is anticipated that any future development of the neighbouring site could be weighted towards the South boundary, regaining a better solar aspect.
Visual Privacy • Concerns about the impact of visual privacy of adjoining properties from the reduced setback to the proposed Unit 2 and 3 balconies. • Concern about visual privacy impacts from the proposed terraces	• Hit and miss brick screen walls to Unit 2 and 3 balconies have been used to maintain visual privacy to the neighbours while maintaining light and air flow. The thickness of these brick walls ensure no downward visibility towards the neighbours through the gaps. Cones of vision show that there is no direct view into neighbours windows, with only blank walls and minor openings falling within the visual cone. • The terraces are orientated away from the neighbouring property towards views to the park on the North East side. All major openings, balconies and terraces facing this way.

Summary of Submissions:

Comments Received in Objection:	Applicant Comment:
Car Parking • Street parking is limited, and the lack of visitor bays would further impact this. • Cars will be entering the sole driveway which may cause noise and disruption.	• There are 4 council managed parking bays directly in front and adjacent to the site. There are an additional 5-6 parking bays further along the road alongside the park. We consider this to be ample street parking. • We have provided parking for 8 cars on the site which will decrease the pressure of the house occupants on the street parking. • Adding a visitors parking bay to the front of the property alongside existing street parking could create an excessive car presence, detracting from the vibrancy of the streetscape. An additional car bay would also decrease landscaping and increase non-permeable surface. • The driveway areas in front of the garages are approx 12x6m in size, large enough to fit a car parked across the front of a double garage without blocking the driveway. This could be useful where a service or trade vehicle needs to temporarily park close to a house. • The driveway is located away from neighbouring properties so is unlikely to cause noise and disruption. The driveway is consistent with other driveways serving neighbouring grouped dwellings.
Design • The design is not sympathetic to the parkland and adjoining properties • Concern about overall over-development of the site, reflected in the departures from the deemed-to-comply setback standards. • Concern that design maximises impact on property to the south-west due to the location of the driveway along the north-eastern lot boundary, resulting in bulk, massing and overshadowing impacts.	• The proposed buildings were designed to be sympathetic to the streetscape using complimentary materials, forms and architectural treatments. Garden terraces and on structure planting (including vines and creepers) have been included to create a green transition to the park. Curves in the building have been inspired by the buttress roots in the neighbouring fig trees in the park. • The scale of the development is in line with the dense zoning and future development potential of the area. There are other 3 storey townhouse developments in the area, and large scale apartments a few houses away. We believe the scale makes good use of the inner-city location while balancing the diverse size of buildings in the area. • We would have liked to locate the driveway along the South west boundary to decrease the impact on the neighbour. However in order to protect a significant Moreton Bay Fig tree in the park next door we were required to provide an extensive root protection zone along the North East boundary, preventing us from building there. This had a significant impact on the overall design.

Summary of Submissions:

Comments Received in Objection:	Applicant Comment:
Street walls and fences • The proposed fence does not comply with the City's Built Form Policy	• We believe that the proposed fence does comply with the City's Built Form Policy. The form and materials used in the front part of the fence are consistent with the built form of the proposed dwellings and neighbouring properties. • The fence along the park boundary is currently a solid timber fence which is partially covered in vines. We would like to maintain this appearance as it creates a soft green transition the park. Creepers have been specified in our landscape plan to soften the fence from the driveway side, while vines from the park side are likely to continue growing along the fence if not removed.

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

URBANISTA
TOWN PLANNING

14 February 2023

Attn. Officer
City of Vincent
244 Vincent Street
LEEDERVILLE WA 6007

Dear Officer

NO. 109 (LOT 100) PALMERSTON STREET, PERTH
RESPONSE TO SUBMISSION – FOUR (4) GROUPED DWELLINGS

Urbanista Town Planning have been engaged on behalf of the proponent of a development application at No. 109 Palmerston Street to respond to a submission prepared by Planning Solutions on behalf of the neighbouring landowners.

As you are aware, our client is proposing four (4) grouped dwellings on the subject site and is seeking several variations to the deemed-to-comply requirements of the planning framework. However, Planning Solutions' submission specifically addresses the perceived overshadowing impacts and on this basis, this submission seeks to respond to the claims made in their submission dated 18 January 2023 submission which objects to the proposal.

In reviewing the submission prepared by Planning Solutions, it is considered that there are several shortcomings with their planning assessment. On behalf of our client we seek to respectfully address these deficiencies, with a detailed analysis of the proposed development's overshadowing discussed in further detail below.

ASSERTIONS MADE BY PLANNING SOLUTIONS

Planning Solutions make the following assertions and claims in their submission dated 18 January 2023:

- It is accepted that four (4) grouped dwellings will be development on the subject site, however, the proposed development in it's current form is not supported.
- The submission prepared by the proponent does not provide adequate justification to support the overshadowing variation sought.
- The proposed development should demonstrate that it meets the performance criteria set out in Clause 5.4.2 of the R-Codes which states that the proposed development should be:

  "*designed to protect solar access for neighbouring properties taking into account the potential to overshadowing existing: outdoor living areas; north facing major openings to habitable rooms, with 15 degrees of north in each direction; or roof mounted solar collecters*".

- The proposed development will overshadow the residents of Unit 1 by 74 per cent, Unit 2 by 95 per cent and Unit 4 by 73 per cent.
- The underlying assumption appears to be that everyone is entitled to build the biggest development they can, regardless of size, shape and orientation and that a deemed-to-comply development would result in 57.2 per cent of overshadowing to the adjoining property, with the actual variation being 3.4 per cent greater that what would ordinarily be acceptable.
- Adherence to the deemed-to-comply setback requirements of the planning framework does not provide support to the proposed variation.

While majority of these assertions made by Planning Solutions could be considered acceptable, there are several key factors that influence and drive the acceptability of the proposed overshadowing arrangements that manifest beyond the built form proposal that must be considered in the decision-maker's assessment. These aspects are discussed in further detail below.

DEVELOPMENT CONTEXT

In considering the proposal, it is necessary to review the immediate context of the subject site to gain an understanding of the unique features of the locality, which can inform and shape an appropriate design for the subject site.

In considering the existing context, *State Planning Policy 7.0 – Design of the Built Environment* (SPP 7.0) provides guidance and performance-based Design Principles that, when used together, create a broad definition of what is meant by 'good design'.

Specifically, SPP 7.0, under 'Context and Character' states that "*good design responds intelligently and sensitively to factors such as prominent natural and built features, social, economic and environmental conditions to positively contribute to the identity of an area including adjacent sites, streetscapes and the surrounding neighbourhood context. Interpretative responses to context are encouraged, imitation of existing features should be avoided.*"

In considering the subject site's context, three (3) influencing factors area identified as being unique to the subject site. These are; the prevailing lot orientation of the locality, the adjoining Robertston Park reserve to the north of the subject site, and the existing overshadowing constraints. These aspects are discussed in further detail below.

LOT ORIENTATION

In reviewing the prevailing lot configuration of the locality, the following unique features are noted:

- The subject site is located immediately north of No. 107 Palmerston Street, with the subject site's greatest length being along the east to west orientation (a total length of 50.29 metres).
- All properties along Palmerston Street follow the same lot configuration as described above; essentially properties are sandwhiched between each other, with the east to west orientation being the prevailing lot pattern within the locality.
- This lot configuration will inherently cause overshadowing impacts that would not ordinarily be attributed to alternative lot configurations.

The below image depicts the context of the prevailing lot configuration within the locality and along Palmerston Street.

Prevailing Lot Configuration – Palmerston Street (east-west)

The context of the prevailing lot confirugation of Palmerston Street described above makes it difficult to achieve fully compliant overshadowing for any new development within the locality. Additionlly, lot frontages along Palmerston Street typically have a width of 14.08 metres to the front and rear lot boundaries. This makes it challenging to appropriately site and configure dwellings in a manner that will not cause undue overshadowing impacts within this prevailing lot configuration.

Notwithstanding, what this prevailing context means is that new buildings on properties along Palmerston Street would ideally need to be located along the northern boundary of their respective site with driveways being located to the south so as to ensure as much overshadowing as possible occurs within the respective lot boundary.

However, in the context of the subject site, this is not possible as there is another influencing factor that must be considered when examining the siting of new development on the subject site. Unlike the rest of the properties along Palmerston Street, the subject site abuts Robertson Park. The constraints associated with the subject site abutting Robertson Park is discussed in further detail below.

ROBERTSON PARK

As discussed above, the subject site is located adjacent to Robertson Park. Robertson Park features a large Moreton Bay Fig Tree (Fig Tree), adjacent to the northern corner of the subject site and is included

in the City's Trees of Signifiance Inventory. Treets listed on the Inventory have significant value and are considered worthy of retention and protection.

Specifically, the Fig Tree is situated approximately 4.7 metres to the north of the subject site and is approximately 28 metres high. The canopy of the tree also spreads approximately 12 metres to the south-west and overhangs into the subject site. Additionally, Robertson Park is included on the State Register of Heritage Places and is listed on the City's Municipal Heritage Inventory as Category A – Conservation Essential.

Streetview of 107 Palmerston Street, Development Site & Fig Tree

In essence, any development proposal on the subject site must have a high level of due regard for the significance of the Fig Tree located to the north of the property. Furthermore, to ensure the ongoing viability of the tree, the City's Planning Department requested that adequate separation be provided between the Fig Tree and any future development to ensure the ongoing protection of the tree's root system.

In attempting to provide adequate separation between the development and the existing Fig Tree and avoiding any overshadowing impacts to properties to the south, the effective area that could be developed at the rear of the property would be nil. Notwithstanding, one final aspect of the prevailing development context must also be considered.\

EXISTING OVERSHADOWING

Notwtihstanding above, and noting the tree's signifiancant height, further analysis of the existing overshadowing conditions experienced by the subject site and the property to the south should also be considered. A desktop analysis of aerial imagery that depicts the range of overshadowing that occurs as a result of the Fig Tree is provided below.

Overshadowing at 3 June 2022 (winter)

A desktop analysis of the subject site and the adjoining site to the south reveals the following:

- As depicted in the 3 June 2022 image, the Fig Treet to the north overshadows approximately 58 per cent of No. 107 Plamerston Street (~455m^2 of overshadowing), extending all the way to the laneway to the south of No. 107 Palmerston Street.
- The existing oveshdowing as a result of the Fig Tree impacts the overdoor living areas and habitable rooms of the rear two units and a portion of the outdoor living area of one of the front units at No. 107 Palmerston Street.

The significance of the existing overshadowing conditions is discussed in further detail below.

SITING OF THE DEVELOPMENT

As the subject site is vacant, it is evident that during the winter period, the Fig Tree is responsible for a significant overshadowing impact onto the subject site and to the units at No. 107 Palmerston Street to the south.

It is well established that the R-Codes Vol. 1 requires an assessment of any new development's overshadowing impact on the shortest day of the year, being June 21. While the exact date the June Nearmap image was taken; it does provide evidence that during the winter solstice the subject site and the adjoining site are severely impacted by overshadowing as a result of the Fig Tree to the north.

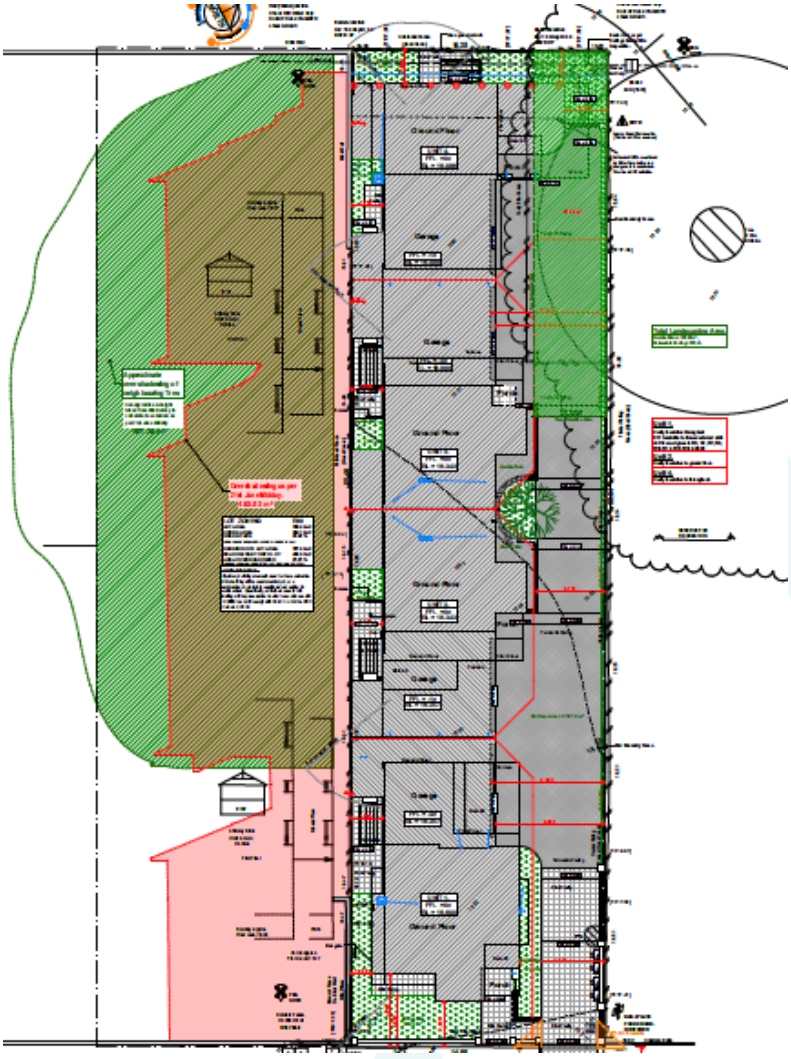
In reviewing the prevailing lot configuration of the locality it is preferable to locate any new development on the subject site, as close as possible to the northern boundary. However this siting requirement

competes with the desire to provide adequate separation between new buildings and the Fig Tree (a tree protection zone to protect the roots and provide for adequate infiltration to the root system); and as such a conflict arises.

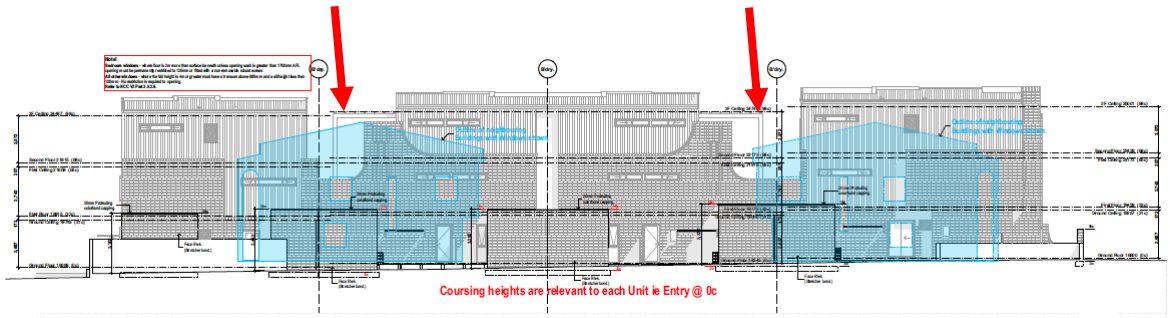
Notwithstanding, a closer look a the existing overshadowing situation also provides an opportunity to appropriately site a portion of the built form in the existing overshadowing pocket that occurs as a result of the Fig Tree. This is because any new buildings proposed in the existing overshadowing area will not exacerbate the winter overshadowing scenario that exists as a result of the Fig Tree.

In reviewing our client's development plans, it is considered the assertions made by Planning Solutions, particularly that the proposed development does not meet the performance criteria set out in Clause 5.4.2 (i.e., designed to protect sollar access for neighbouring properties), is inappropriate for the following reasons:

- The form of the proposed development is entirely acceptable on the basis that it responds to the constraints that are unique to this property discussed above.
- It is unreasonable and disproportionate to request that the design should "*protect solar access for neighbouring properties*" (Clause 5.4.2 of the R-Codes Vol. 1), when the Fig Tree causes such a significant overshadowing contribution to No. 107 Palmerston Street in its own right – refer to below image take from the development plans which depicts the overshadowing of the Fig Tree (shaded green) compared with the overshadowing of the development on 21 June.



- The proposed design seeks to break-up the built form (as depicted in the development plan elevations) that were inserted to reduce the Outdoor Living Areas adjoining the properties to the south that is overshadowed by the Fig Tree during winter. Additionally, this design feature was requested by the City's Design Review Plan. The below image depicts the location of the spacing/articulation, where light and natural ventilation can be provided to the units to the south.



- The overall design also seeks to break-up the proposed built form through the use of meaningful articulations and spacing between the dwellings. This allows northern sunlight to filter through to the properties to the south at No. 107 Palmerston Street, particularly as it is clear that sunlight will be able to pass through to some of the major openings associated with the buildings to the south.
- While overshadowing will occur onto the two units at the front of No. 107 Palmerston Street, in this instance instance is considered appropriate on the basis that the dwellings at the front of the subject site are appropriately located as the vehicle access leg to the north acts as the central spine to anchor the development and a dwelling is required to address the main street frontage associated with Palmerston Street.
- It is appropriate to suggest that my client has sought the pursuit of lot yield above good design that considers the size, shape and orientation of the proposed dwellings. This is evidenced by the high scores given by the City's Design Review Panel during the design review process and the changes made during this process. Additionally, four grouped dwellings is appropriate lot density for the subject site and a density that fits appropriately with the surrounding area.

For these reasons, it is considered the proposed development is appropriately sited on the subject lot as it has a high level of due regard for the existing overshadowing conditions and the amenity associated with the Fig Tree and can be supported.

DISCRETION

Discretion is used to describe the ability of decision-makers to make decisions that are not solely based on fixed rules or guidelines, but also on their own judgement and interpretation of the relevant planning policies and legislation.

Discretion is used in various stages of the planning process, such as in the interpretation of planning polcies, the assessment of planning applications, and the determination of planning appeals. A decision maker may use discretion in the interpretation of a planning policy, taking into account the **unique circumstances** of a particular development site, such as the nature and scale of a proposed development or the impact on the local area.

The use of discretion provides flexibility in the planning system, allowing for decisions to be made that are appropriate for each individual case, rather than a one-size-fits-all approach.

In this instance, discretion regarding the overshadowing variation is sought on the following basis:

- The unique features of the subject site and its surrounds (the prevailing lot configuration, the location of the Fig Tree and the existing overshadowing conditions).
- In order to faciliate development on the subject site it is reasonable that some concessions will be sought, in particular the overshadowing impacts as there is no alterative design option due to the constraints associated with the provision of adequate separation between the tree and the development.
- On balance, while overshadowing may appear detrimental and overly excessive, the design responds to the unique features of the site by turning constraints into opportunities that have informed the design process to create the best possible solution for the subject site.

CONCLUSION

In considering the location of the proposed development's footprint on the subject site, it is necessary to account for the specific site constraints that relate to this proposal. In this regard, the location of the development on the subject site has sought to appropriately respond to both the significant tree to the north and the lot's orientation within the locality.

Based on the justification presented in this submission, it is considered that the overshadowing concerns raised by Planning Solutions are not warranted and can be disregarded due to the site's unique features and development context. The design remains respectful of the neighbour's amenity whilst also adequately considering the site constraints.

Should you have any question in relation to the details provided in this submission, please contact Petar Mrdja on 6444 9171 or petar@urbanistaplanning.com.au.

Yours sincerely,

Petar Mrdja
Director