



AGENDA

Town Planning & Building Committee

Tuesday, 6 September 2016 at 6.30pm

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Whilst the Committee has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a member or officer, or on the content of any discussion occurring, during the course of the meeting.

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NOTICE OF MEETING

Elected Members

An Ordinary Meeting of the Town Planning & Building Committee will be held on **Tuesday, 6 September 2016** in the Council Chamber, 135 Canning Highway East Fremantle commencing at 6.30pm and your attendance is requested.

GARY TUFFIN
Chief Executive Officer
30 August 2016

AGENDA

1. DECLARATION OF OPENING OF MEETING/ANNOUNCEMENTS OF VISITORS

2. ACKNOWLEDGEMENT OF COUNTRY

"On behalf of the Council I would like to acknowledge the Nyoongar people as the traditional custodians of the land on which this meeting is taking place."

3. RECORD OF ATTENDANCE

3.1 Attendance

3.2 Apologies

3.3 Leave of Absence

Cr A White
Cr C Collinson

4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

5. PUBLIC QUESTION TIME

6. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

6.1 Town Planning and Building Committee (2 August 2016)

6.1 OFFICER RECOMMENDATION

That the minutes of the Town Planning and Building Committee meeting held on Tuesday 2 August 2016 be confirmed as a true and correct record of proceedings.

7. PRESENTATIONS / DEPUTATIONS / PETITIONS

7.1 Presentations

7.2 Deputations

7.3 Petitions

8. DISCLOSURES OF INTEREST BY MEMBERS

9. LATE ITEMS NOTED

10. REPORTS OF COMMITTEES

10.1 Community Design Advisory Committee

Prepared by: Jamie Douglas Manager Planning Services

Supervised by: Gary Tuffin, Manager Planning Services

Attachments: Nil.

Authority/Discretion: Town Planning & Building Committee

The Community Design Advisory Committee did not meet in the month of August 2016 as there were no items for the committee.

11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

11.1 Wolsely Road 15 (Lot 102 Wolsely Road and Lots 3 and 8 Alexandra Road) – Proposed Aged Care facility with Associated Services

Applicant	SPH Architects and Interiors
Owner	Southern Cross Care WA Inc
File ref	PWOL15 / P075/16
Prepared by	Andrew Malone, Acting Manager of Planning Service
Supervised by	Gary Tuffin, Chief Executive Officer
Meeting date	6 September 2016
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. DAP Report 2. Location plan 2. Photo 3. Plans

Purpose

The attached report considers a development application for planning approval to be determined by the Development Assessment Panel (DAP) for the following:

A revised proposal was submitted to Council on 27 July 2016 and includes:

Previous public functions of the commercial / consultants (refused by DAP) have been removed.
Aged care facility (68 beds, reception/ lobby, activity rooms, dining room, lounges, personal services, courtyards, kitchen and laundry previously approved) extension of an additional six (6) aged care beds;
The remaining areas of the ground floor retain their former functions and are proposed to be for internal use only;
Two (2) additional bedrooms are proposed on the previously approved upper aged care (total beds 76);
Proposed courtyard along Staton Road and minor changes to the crossover;
Minor changes to the Staton Road elevation; and
Minor changes to the eastern elevation.

The proposed development modifies the previously approved DAP development application. The proposed application does not significantly modify the built form of the structure. There are no changes to the height of the building or the plot ratio. All works are considered to be primarily internal. The primary purpose of this application is to assess the proposed uses for the subject site which is designated Reserve 'Public Purpose – Hospital' and Special Use Zone – Hospital under Schedule 4 of TPS No.3.

The additional beds, increases the total number of beds to 76.

The proposed development application is recommended for approval for the reasons outlined within the DAP report.

11.1 OFFICER RECOMMENDATION

It is recommended that this report be received and that Council endorse the Officer's recommendation for approval of the proposed development subject to the conditions as outlined in the attached DAP report.

11.2 View Terrace, No. 65B (Lot 1) –Two Storey Dwelling

Applicant	MW Urban
Owner	S & S Hlevnjak
File ref	P/VIE65B
Prepared by	Christine Catchpole, Planning Officer
Supervised by	Andrew Malone, Acting Manager Planning Services
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Location Plan 2. Photo 3. Amended plans dated 3 August 2016

Purpose

This report considers a planning application for the construction of a two storey dwelling on vacant land at 65B (Lot 1) View Terrace, East Fremantle.

Executive Summary

The following issues are relevant to the determination of this application:

- Street front setback;
- Lot boundary setbacks: parapet walls and reduced setbacks to eastern and western boundary;
- Building height;
- Open space;
- Visual privacy: reduced visual privacy setbacks;
- Site works: fill and excavation within the street setback and within 1.0 metre of boundary;
- Retaining walls: to retain garage, driveway, stairs and entry porch, mainly in the front setback area; and
- Garage width exceeding 30% of lot frontage.

It is considered the street and lot boundary setbacks, site works, retaining walls, building height and open space variations can be supported, however, the variations in respect to overlooking/privacy setbacks and garage width can only be supported subject to conditions being imposed which will ensure compliance with the R-Codes and the Town's Residential Design Guidelines.

Background

18 November 2003 Council advises the WAPC that it does not support the subdivision of 65 View Terrace into two survey strata lots.

17 December 2003 WAPC grants conditional approval of the above subdivision.

23 December 2004 Demolition approved for the single storey dwelling.

11 November 2005 WAPC endorses Survey Strata Plan 48493 for final approval for the subdivision into two survey strata lots of 445m² each.

19 September 2006 Council grants approval for a two storey house at 65A View Terrace.

9 December 2006 Council granted planning approval for a two storey dwelling at 65B View Terrace.

Consultation

Advertising

The application was advertised by a sign being placed on the site for two weeks and letters sent to surrounding land owners inviting comment from 7 July to 1 August 2016 during which time one

submission, relating to construction and building matters and one submission indicating conditional support, were received.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
<p>Concerns relate to the following:</p> <ul style="list-style-type: none"> • The existing brick wall/fence that separates part of 65B and 67C View Terrace. • The limestone retaining wall that runs most of the length of 67 View Terrace which retains soil from the higher adjoining block, 65B View Terrace. • That earth works carried out to build a new dwelling at 65B may damage the existing brick wall/fence and limestone retaining wall. • Photographed these walls as a record of the condition of the adjoining structures prior to any building activities at 65B View Terrace. <p>No other concerns with the proposed new dwelling.</p>	<p>The concern deals with existing structures and how these might be affected by the construction of the proposed dwelling. The concern is building related. Selford Quality Homes have been informed of the concern and will engage a structural engineer to prepare a dilapidation report on the existing structure. Shelford has also confirmed it will make good any damage to the structures during construction. A letter has been sent to the submitters and copied to the Town.</p>	<p>The letter noted in the applicant's response regarding building matters has been received by the Town.</p> <p>The Town has also received a letter signed by the owners of 65A View Terrace indicating the proposal is supported based on the construction being compliant with the amended plans dated 3 August 2016. The adjoining land owner requested a recessed planter box be constructed on the western boundary parapet wall.</p> <p>A condition requiring this be constructed, landscaping and reticulated by the owners of 65B View Terrace and installed prior to occupation is recommended.</p>

Town Planning Advisory Panel

This application was considered by the Town Planning Advisory Panel at its meeting on 18 July 2016. The Panel's comments were recorded as follows:

"The Panel notes that the front façade is well articulated and addresses the streetscape."

Statutory Environment

Planning and Development Act 2005
Residential Design Codes of WA
Town of East Fremantle Town Planning Scheme No. 3

Policy Implications

Town of East Fremantle Residential Design Guidelines 2016 (as amended)

Financial Implications

Nil.

Strategic Implications

Nil.

Site Inspection

12 August 2016

Triple Bottom Line Assessment

Economic implications

There are no known significant economic implications associated with this proposal.

Social implications

There are no known significant social implications associated with this proposal.

Environmental implications

There are no known significant environmental implications associated with this proposal.

Comment

TPS 3 Zoning: Residential R12.5

Site area: 445m²

Statutory Assessment

The proposal has been assessed against the provisions of Town Planning Scheme No. 3 and the Town's Local Planning Policies. A summary of the assessment is provided in the following tables.

Legend <i>(refer to tables below)</i>	
A	Acceptable
D	Discretionary
N/A	Not Applicable

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	7.5m	6.5m – 7.5m (stairs – 4.3m)	D
Lot Boundary Setback	1.5m – 7.7m	Nil – 2.8m	D
Open Space	55%	51.2%	D
Site Works	Less than 500mm	>500mm	D
Retaining Walls			D
Visual Privacy	Kitchen (scullery): 6m Dining room: 6m Living room: 6m Bedroom: 4.5m	2.4m 1.5m 1.5m 1.5m	D
Overshadowing	25%	<25%	A
Drainage	On-site	On-site	A
Car Parking	2	2	A
Outdoor Living	N/A	N/A	N/A

Local Planning Policy Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
3.7.4 Site Works	D
3.7.5 Demolition	N/A
3.7.6 Construction of New Buildings	D
3.7.7 Building Setbacks and Orientation	D

3.7.8 Roof Form and Pitch	A
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	N/A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	D
3.7.18.3 Garages, Carports and Outbuildings	D
3.7.15-20 Precinct Requirements	D

Building Height Requirement	Required	Proposed	Status
Building Height (wall) (R-Codes)	5.6m	5.4m - 7.9m	D
Building Height (roof) (R-Codes)	8.1m	7.5m – 8.4m	D

The lot to be developed is the eastern half of a ‘down the middle’ subdivision approved by the WAPC in 2003 prior to the current Planning Scheme R12.5 density coding for the area being gazetted. The lot was approved for subdivision at approximately R20 standards and is now subject to the development standards of R12.5. Both lots are approximately 445m² in area and have lot frontages of only 10 metres. The lot to the west has been developed with a large two storey dwelling with a garage parapet wall on the eastern boundary. The applicant is requesting approval for a similar style development to that of 65A View Terrace with the exception that the development will be forward of the building line for 65A View Terrace.

There are a number of variations to the R- Codes and the Residential Design Guidelines in respect to this application due to the slope of the land and the narrowness of the lot. The current preference for large homes with the provision of a two car garage results in lots being developed almost boundary to boundary and with a double garage occupying more than half the width of the lot with narrow lot subdivision.

The site is situated on the south side of View Terrace where the land rises above the street and forms the east-west ridge line of the highest land in the Richmond Hill Precinct. The houses along this side of the street have views northwards toward the river. The houses to the rear along Pier Street have views to the south. The Precinct is a mix of dwelling types, including grouped dwellings and the site to the east is an older style single storey triplex development.

The proposed dwelling will consist of: a lower level double garage; raised entry portico; ground floor level consisting of two bedrooms (each with ensuite), multi-purpose room on the ground floor (including a kitchen) and laundry; and a first floor level consisting of an open plan upper level living space, kitchen, dining, master bedroom, study, powder/utility room and lift with separate access from the house and the garage. The design takes into account the views from the second storey, so a balcony is designed to sit over the garage and the entry stairs, porch and front door face the street.

The existing topography of the site is essentially unchanged and the finished floor level of the garage will be at approximately the existing ground level. The western side of the lot will be raised to provide an entry to the house to achieve a finished floor level that matches levels at the middle and rear of the site, enabling the ground floor to be on the one level.

As a result of the above site circumstances and design the applicant is seeking Council discretion with regard to several provisions of the R-Codes and the Town’s Residential Design Guidelines. These matters are discussed below.

Street setback

The R-Codes specify a 7.5 metre street setback in an R12.5 coded residential zone.

The R-Codes and the Residential Design Guidelines Element 3.7.7 provide performance criteria by which to assess proposed variations to setback requirements. This is summarised below.

R-Codes

P2.1 - building setback from street boundaries an appropriate distance to ensure buildings:

- *contribute to and are consistent with, established streetscape;*
- *provide adequate privacy and open space for dwellings;*
- *accommodate site planning requirements such as parking, landscape and utilities; and*
- *allow safety clearances for easements for essential service corridors.*

Residential Design Guidelines (RDG)

P1.1 The primary street setback of new developments or additions to non-contributory buildings is to match the traditional setback of the immediate locality.

P2 Developments to be oriented to address the street.

P3 Wall heights to reflect the immediate locality.

The proposed setback of the garage meets the minimum 7.5 metres which is a desired outcome for the streetscape. The elements of the design which do not meet the setback requirements are the front entry steps and a portion of the porch (~1 metre) and the second storey balcony (~0.5 metres). These variations are considered supportable on the basis that they are all design measures which assist in minimising the visual impact of a double garage on a narrow lot. They also help to create a visually interesting façade and give prominence to the entry way and the balcony, again minimising the driveway and garage which can often become the dominant element. The proposal that the dwelling sit further forward than the building line of the dwelling at 65A View Terrace is also considered to be another positive outcome for the streetscape as it reduces the dominance of the double garage and wider driveway on that lot. This is a far better result than both dwellings sitting side by side where the frontage is dominated by garages and blank expansive building facades. The glass balustrade on the balcony also 'opens' the dwelling to the street and counteracts the reduced setback. Street surveillance as required under the R-Codes is also provided.

Lot boundary setbacks

The lot boundary setbacks of the dwelling do not comply. The narrow lot results in long walls and this combined with a two storey building height, requires a setback of up to 7.7m where there are major openings to habitable rooms. This cannot be achieved on a narrow lot, however, in the circumstances the applicant has aimed to minimise the major openings along the side boundaries by either indicating highlight windows or that the windows will be installed with obscure glazing or film to prevent overlooking. This will adequately address any privacy and overlooking issues.

The adjoining lot owners to the east have not raised any objection to the setback of the dwelling, however, the land owners of the other subdivided lot have expressed concern with the parapet wall being forward of their building line. This is seen as a positive for the streetscape overall as each dwelling is offset and their combined scale and bulk is reduced because they are not side by side presenting as two adjoining double garages with combined driveways. To soften the impact a recessed planter or cavity for a wall mounted garden has been proposed and the adjoining owners have indicated their support for the development if the recessed planter box is included as part of the design. As such a condition of planning approval has been recommended to ensure this is installed, landscaped and reticulated.

For the most part the building is set back 1.5 metres with smaller sections toward the centre of the building being set back 2.8 metres. Thus reducing the bulk and scale of the dwelling on the adjoining lots as much as possible. The exception being the parapet wall for the garage (~7m of a 31m wall) and entry passageway (~10.5m of a 31m wall), which partly aligns with the parapet garage wall on the adjoining subdivided lot.

Although the parapet walls are to the front of the dwelling they are considered acceptable from a streetscape perspective for the reasons outlined above. The walls do not impact views and any overshadowing of the triplex development will not impact the front dwelling's open space area. The other areas of open space are not on the common boundary side. The parapet wall on the western side will partly abut the parapet wall of the garage on the adjoining site. Where it extends forward of that wall its length will be minimised by the recessed planter box, which in turn will assist in reducing the impact of the double garage at 65A on the streetscape.

Building height

The R-Code provisions in respect to building height are substituted by the height control under the Residential Design Guidelines. Clause 3.7.18.4.3.1 states that:

Where views are an important part of the amenity of the area and neighbours' existing views are to be affected the maximum building heights are as follows:

- 8.1 metres to the top of a pitched roof; and
- 5.6 metres to the top of an external wall and where the following apply:
 - (i) the proposal demonstrates design, bulk and scale that responds to adjacent development and established character of the area or other site specific circumstances;
 - (ii) the provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped; and
 - (iii) subject to the 'Acceptable Development' standards of the R-Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.

With the exception of minor projections the wall and ridge heights are mostly compliant. The maximum height is exceeded where the roof line and floor levels at the front of the site are a continuation of the natural ground level at the middle and rear of the site as the lot slopes downhill to the road. The site topography and the views available have resulted in the applicant wishing to maximise the outlook from the house and the upper level outdoor entertaining areas.

The increase above the permitted height is not considered to be an issue as neighbours' views are not affected. The height limits of the Residential Design Guidelines are more rigorous where views are potentially impacted. Although these height limits are often applied in the Richmond Hill Precinct because of the topography and available views, in this case where views are not an issue, the scale and bulk of the building can also be considered against the R-Code height provisions. The building height proposed does not exceed the maximum height limits under the R-Codes of 6 metres to the top of an external wall and 9 metres to the top of a pitched roof and is therefore considered supportable.

Also, the proposed design of the dwelling is consistent with the prevailing height and finished floor levels of developments in the locality. Given the topography and nature of this street it is considered that it is appropriate to grant discretions with regard to building height as it will not result in any major obstruction to existing view corridors or impacts on the streetscape.

Visual privacy

The 'Deemed to Comply' provisions for Element 5.4.1 Visual Privacy of the R-Codes requires major openings which have their floor level more than 0.5 metres above natural ground level, and positioned so as to overlook any part of any other residential property behind its setback line, to comply with the following:

- 4.5 metres in the case of bedrooms and studies;
- 6.0 metres in the case of habitable rooms, other than bedrooms and studies; and
- 7.5 metres in the case of unenclosed outdoor active habitable spaces (balconies, decks etc.)

The proposed development does not comply with the 'Deemed to Comply' provisions of the R-Codes for the lower and upper levels, however, the 'Design Provisions' of 5.4.1 allow for:

P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through: building layout, location; design of major openings; landscape screening of outdoor active habitable spaces; and/or location of screening devices; and

P1.2 Maximum visual privacy to side and rear boundaries through measures such as: offsetting the location of ground and first floor windows so that viewing is oblique rather than direct; building to the boundary where appropriate; setting back the first floor from the side boundary; providing higher or opaque and fixed windows; and/or screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).

It is considered the proposed design will comply with the Design Principles of Element 5.4.1 Visual Privacy of the R-Codes if adequate glazing or glass film to prevent overlooking is installed. If all habitable room windows on the lower (subject to the height of the boundary fence not reaching 1.6 metres above the altered ground level) and upper levels, below 1.6 metres sill height, are installed with obscure glazing or visually impermeable film then overlooking of adjoining sites will not be possible. The building is set back adequately from the rear to address overlooking and privacy issues. Even though there is a lesser expectation for privacy in the front setback area (public domain) the applicant has addressed any potential overlooking issues from the balcony for the triplex development by indicating fixed screening on the eastern elevation of the balcony. To ensure privacy is maintained it is recommended a condition be imposed in this regard.

Site works and retaining walls

The proposed fill is in excess of the 'Deemed to Comply' provisions of the R-Codes. On the western side of the lot the fill is greater than 0.5 metres and closer than 1 metre from the boundary and on the eastern side excavation is greater than 0.5 metres. Therefore this element requires assessment under the 'Design Principles' of the R-Codes which state as follows.

P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill; and

P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the boundary of the site and the adjoining properties and as viewed from the street.

Even though the fill required to achieve the highest level to maximise views (maintain rear ground levels across the site) is greater than the 0.5 metres permitted under the 'Deemed to Comply' provisions of the R-Codes the levels proposed are considered acceptable. The building height and

building setbacks are supportable over this portion of the lot and the 'Performance Criteria' of the R-Codes can be met in that the development on the whole does not completely change the natural slope of the site; the levels generally respect the natural ground and lot boundary levels and the existing retaining walls of the site as viewed from the street.

Open Space

The proposal does not meet the minimum open space requirements as specified in the R-Codes; approximately 51.2% is provided where as 55% is required under the R12.5 standards.

The 'Design Principles' of the R-Codes state that:

"P4 Development incorporates suitable open space for its context to:

- Reflect the existing and/or desired streetscape character;*
- Provide access to natural sunlight for the dwelling;*
- Reduce building bulk on the site , consistent with the expectations of the applicable density code;*
- Provide an attractive setting for the buildings, landscape , vegetation and streetscape;*
- Provide opportunities for the residents to use space external to the dwelling for outdoor pursuits and access within and around the site; and*
- Provide space for external fixtures and essential facilities."*

Given the subdivision is at R20 standards a requirement of 50% open space can be considered in the assessment, in which case the development would comply. The above design principles are also considered to be adequately met through adequate space along each side setback of the dwelling and an alfresco and open space area to the rear of over 90m².

Crossover Width

The crossover is not indicated on the plans so a condition is recommended which will ensure compliance with Council's crossover provisions as outlined in the Residential Design Guidelines. A provision of the Guidelines, is that for lots of 12 metres or less in width, that crossovers not exceed 3 metres. The lot is 10 metres wide and therefore a condition of approval requiring the crossover to be no greater than 3 metres is considered justified. This is important because the double garage and driveway exceeds that permitted for the width of the lot under the Guidelines (i.e. greater than 30%). This variation is supported because of the subdivision constraints and because the applicant has indicated other 'soft' landscaped areas, which will minimise the extent of hard paved surfaces in the front setback.

Conclusion

View Terrace has a range of dwelling types of various ages, design and scale. Properties along this section of the street are close to the highest point of the east-west ridge running through the Richmond Hill Precinct. The fall of the land on this stretch of View Terrace is north to the river. New dwellings along this portion of the street have been designed to maximise river views. With this development proposal the variations from the R-Codes and the Residential Design Guidelines are mainly due to the slope of the land and the desire to develop a large contemporary house on a narrow lot approved prior to the R12.5 code being in place. It is reasonably difficult to construct a two storey home which maximises views and meets the R12.5 development standards on a lot subdivided at a R20 density without seeking a number of variations from the R-Codes and the Design Guideline provisions.

Notwithstanding the non-compliance with development standards it is considered the application can be supported as the overall design outcome addresses the streetscape issues and is considered to

contribute in a positive way to the immediate streetscape. Furthermore, the adjoining owners' concerns regarding building construction and the impact of the parapet wall further forward of the neighbour's building line have been addressed by the applicant. The application is therefore supported subject to the conditions outlined below.

It is noted this dwelling could potentially function as two separate living quarters/apartments under the one roof, with separate and secure access via the lift from the garage to the second storey. If the owners wish to use the property for short term or bed and breakfast accommodation a separate application to Council for its consideration will be required for this use. However, a separate street number (i.e. address) for the property will not be issued by the Town as the development approval is for a single dwelling only, as permitted under a density code of R12.5. A footnote in this regard is recommended.

11.2 OFFICER RECOMMENDATION

That Council exercise its discretion in granting planning approval to vary:

- (i) Clause 5.1.2 - Street Setback of the Residential Design Codes of WA to permit a street setback of less than 7.5 metres;**
- (ii) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback of less than 7.7m on the eastern boundary and 3.8m on the western boundary;**
- (iii) Clause 5.1.4 – Open Space of the Residential Design Codes of WA to permit less than 55% open space on site;**
- (iii) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to permit fill behind a street setback line and within 1 metre of a lot boundary that is greater than 0.5 metres above natural ground level at the boundary;**
- (iv) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to permit excavation behind a street setback line and within 1.0 metre of a lot boundary that is greater than 0.5 metres below natural ground level at the boundary;**
- (v) Clause 5.3.8 - Retaining Walls of the Residential Design Codes of WA to permit a retaining wall greater than 0.5 metres in height less than 1.0 metre from the boundaries;**
- (vi) Clause 3.7.18.4.1 – Building Height, Form, Scale and Bulk of the Residential Design Guidelines 2016 to permit the building height to exceed 5.6 metres to the top of an external wall and 8.1 metres to the top of a pitched roof; and**
- (vii) Clause 3.7.17.3 – Garages, Carports and Outbuildings of the Residential Design Guidelines 2016 to allow the width of the garage to exceed 30% of the lot frontage,**

for a two storey dwelling at No. 65B (Lot 1) View Terrace, East Fremantle, in accordance with the plans date stamped received on 3 August 2016, subject to the following conditions:

- (1) The construction of the recessed planter box/cavity within the parapet wall on the western lot boundary facing 65A View Terrace as indicated on plans date stamped received on 3 August 2016. The planter box recess to be landscaped and reticulated by the owners of 65B View Terrace to the satisfaction of the Chief Executive Officer prior to occupation of the dwelling.**
- (2) All parapet walls to be fair faced brickwork or cement rendered to the adjacent property face or by way of agreement between the property owners and at the applicant's expense (refer footnote (e) below).**

- (3) All major openings to lower (subject to the height of the boundary fence not reaching 1.6 metres above the altered ground level) and upper floor habitable rooms on the eastern and western elevations where the visual privacy setback of the R-Codes is not met to comply with clause 5.4.1 C1.2 of the Residential Design Codes of WA and indicated on the Building Permit application plans to the satisfaction of the Chief Executive Officer and installed prior to occupation of the dwelling.
- (4) Permanently fixed visually impermeable screening on the eastern elevation of the balcony to comply with clause 5.4.1 C1.2 of the Residential Design Codes of WA prior to occupation of the dwelling.
- (5) Any new crossover which is constructed is to comply with Council's crossover policy and specifications in consultation with the Operations Manager and not to exceed 3 metres in width. The footpath is to continue uninterrupted across the width of the site and the crossover to be constructed in a material and design to comply with Council's Residential Design Guidelines 2016.
- (6) The works are to be constructed in conformity with the drawings and written information accompanying the application for development approval other than where varied in compliance with the conditions of this development approval or with Council's further approval.
- (7) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (8) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (9) The proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (10) All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (11) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (12) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (13) This planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

The following are not conditions but notes of advice to the applicant/owner:

- (i) *Condition 3 does not void the provisions of the Dividing Fences Act, 1961 and a fence above 1.8 metres in height will require the submission of a development approval application for Council's consideration.*

- (ii) If use of the property for short term or bed and breakfast accommodation is contemplated a separate development application for Council's consideration is required to be submitted. A separate street number (i.e. address) for the property will not be issued by the Town.*
- (iii) The spa is not included in this development approval and a separate Building Permit application is required for the installation of the spa.*
- (iv) This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (v) A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (vi) It is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (vii) All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (viii) Matters relating to dividing fences are subject to the Dividing Fences Act 1961 under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – "An Installers Guide to Air Conditioner Noise".*

11.3 George Street No. 67 (Lot Pt 3/ SP16096) – Two Storey Dwelling

Applicant	McNally Group Pty Ltd
Owner	A Jones & A Medcalf
File ref	PGEO/67
Prepared by	Andrew Malone, Acting manager Planning Services
Supervised by	Gary Tuffin, Chief Executive Officer
Meeting date	6 September 2016
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Location plan 2. Photo 3. Plans

Purpose

This report considers an application for planning approval for a three storey high residence, comprising of two storey single dwelling and undercroft existing car park (for 44 Hubble Street and 67 George Street) located at 65 George Street, East Fremantle. 44 Hubble Street, 65 George Street and 67 George Street are all located on one parent lot.

Executive Summary

This application is a reassessment of a development that was approved by the Town Planning and Building Committee in June 2013. There has been no significant change to the planning framework that would result in this application being considered differently from the development application approved previously.

The following issues are relevant to the determination of this application:

- On-site car parking
- Building height
- Plot ratio
- Overshadowing

It is considered the variations can be supported, therefore the application is recommended for conditional approval.

Background

Zoning:	Mixed Use. Residential density R40 as per Town Planning Scheme.
Site area:	587m ² Strata lot, of which 128m ² relates to the specific development site.
Date application received:	7 July 2016
Documentation:	Application form, correspondence and plans

Previous Decisions of Council and/or History of an Issue or Site

16 April 1973	Council refuses permission for a fish wholesale business;
18 February 1974	Council declares stables at 44 Hubble Street neglected buildings;
November 1975	Council decides to permit the continued occupation of 44 Hubble Street for Office and Storage for Electrical Equipment;
20 August 1984	Council grants approval for a change of use from “Electrical Contractor” to “Florist/Nursery – Gift Lines and Craft Retail”;

21 April 1986	Council grants special approval for the erection of 2 additional living units and 2 additional commercial units at 44 Hubble Street (65A & 65B George Street);
21 April 1986	Council grants planning consent for 65 George Street to be used for multi-purpose residential and business purposes;
28 July 1986	Building Licence 08/1165 issued for two 3-storey units at the rear of 44 Hubble Street;
22 April 1987	Council grants approval for a change of use from “Florist/Nursery – Gift Lines and Craft Retail” to Second-hand shop dealing in bric-a-brac, ceramics, small pieces of furniture, silverware, and local handicrafts for a period of 2 years;
31 March 1988	Council agrees to the existing timber fence remaining providing it is extended to a maximum height of 2100mm, and endorses unauthorised variations consisting of two dormer windows;
3 May 1988	State Planning Commission endorses a Strata Plan for the subdivision of the buildings at 44 Hubble Street into 3 built strata lots;
20 March 1995	Council grants conditional approval for therapeutic massage on the ground floor with residence above;
19 June 1995	Council resolves to instruct its solicitors to prosecute for non-compliance with the planning consent provisions relating to the residential/therapeutic massage salon;
15 July 1997	Council decides to advise the applicant that the residence at 44 Hubble Street cannot be used for commercial activities – it must be retained for residential purposes, special approval granted for an under verandah sign, and a sandwich board sign;
21 April 1998	Council decides to prosecute the owner and occupier of 65 George Street for erecting a sign without approval;
20 April 1999	Council decides to ask the Police to investigate as there are strong grounds for believing the premises is operating illegally as a place of prostitution;
27 October 1999	Detective Superintendent of the Organised Crime Division advises in writing that the premises at 65 George Street ceased to operate as a massage parlour on 22 October 1999;
20 June 2000:	Council grants conditional special approval for use of the premises as a service store (health & fitness services) on the ground floor and a residence above;
19 March 2002	Council grants approval for the use of 44 Hubble Street as a Buddhist Centre in conjunction with a residence;
4 November 2005	Building Licence 05/89 issued for verandah;
17 October 2006	Council grants approval for additions at the rear of 44 Hubble Street;
8 May 2007	Town Planning and Building Committee resolved to approve a retail flower shop on the ground floor, with residential use of the 2 upper floors at Unit No 2, 65 George Street;
9 October 2007	That Council exercise its discretion in granting approval for a change of use of the premises at No. 44 Hubble Street (cnr George Street) from “Buddhist Centre and residential” to “Shop for the purposes of retailing swimwear and gym wear, and residential”.
4 June 2013	Approval granted for a two storey single dwelling and undercroft existing car park (for 44 Hubble Street and 67 George Street) located at 65 George Street, East Fremantle.

Consultation

Advertising

The proposed application was advertised to surrounding landowners for a two week period between 11 July 2016 and 26 July 2016.

Neighbour's comment

The proposed development has a substantial impact on the solar access (and amenity) of our main internal and external living areas. We are concerned that the relevant R-Code provisions that seek to protect a neighbouring property solar access will be ignored or explained away. The existing overshadowing of our lot is 29.5% (4.5% over R-code provisions). The new development would increase the overshadowing to over 40% and this is neither reasonable nor fair.

Applicant's Response

There has been no change in the design of the building that would have any additional impact on the shadowing of the neighbouring property than what was in the original development application that was approved in December 2013. I refer to page 47 Overshadowing, of the Town Planning & Building Committee meeting minutes dated 3 December 2013 and page 37 of the original Woods and Bagot prepared development application document.

Neighbour's comment

The proposed development which is described as a two storey development with undercroft car park is actually a three storey building. The proposed development appears to be over roof height (270mm) and the wall heights and setbacks do not appear comply with the relevant requirements.

Applicant's Response

There has been no change in the height of the building from what was approved in the design application in 2013 therefore there is no additional impact on the neighbouring property than what was approved on the 3 December 2013. I refer to page 45, Building Height, of the Town Planning & Building Committee meeting minutes dated 3 December 2013.

Neighbour's comment

Our son is a chronic asthmatic and the design of our house including solar access is critical in our ability to manage his health condition. Direct sunlight kills dust mite one of the key triggers to his condition which is at its worst in the winter months.

Applicant's Response

There has been no change in the design of the building that would have any adverse impact on the shadowing of the neighbouring property than what was approved on the 3 December 2013. I refer to page 47 Overshadowing, of the Town Planning & Building Committee meeting minutes dated 3 December 2013 and page 37 of the original Woods and Bagot prepared development application document.

Neighbour's comment

The design does not appear to comply (in any way) with the design guidelines for the George Street Heritage precinct. Our knowledge of these (and overshadowing) requirements was developed when the Councillors applied these requirements to our own development with no compromise or exceptions. Our design was amended to comply with these requirements.

Applicant's Response

There has been no change in the design of the building that was approved in the design application issued in December 2013. I refer to page 42, Mixed use zone of the Town Planning & Building Committee meeting minutes dated 3 December 2013.

Neighbour's comment

The proposed development appears to be a modular construction 'danger' site shed on stilts. Whilst I'm sure it's a cost effective form of construction I'm not sure what architectural merit it has in the George Street Heritage Precinct.

Applicant's Response

There has been no change in the design of the building that was approved for construction in December 2013. The building originally was to be constructed entirely onsite however we now have the ability to construct large portions of this dwelling offsite to greatly minimise the time required on the George street site to complete the project. This will also significantly reduce the amount of trades required onsite at any one time and reduce the noise and disturbance to the neighbouring properties. The build is a hybrid construction however the construction methods are no different to a conventional in-situ built building and to ensure that the finish is no different the windows and external cladding are being installed onsite.

In terms of architectural merit, the building has been designed by Woods Bagot who are global industry leaders in architecture and design, (currently ranked 6th in the World Architecture 100 list). Their innovative design for 65 George Street unlocks the potential of small, otherwise unusable lots, with a building that integrates with its surroundings by adding character and charm to the iconic George Street.

Neighbour's comment

The southern elevation of the proposed development has a two storey full height window looking directly into our indoor and outdoor living areas. There appears to be no consideration of the neighbour's privacy.

Applicant's Response

The Window from the living area that faces the southern boundary of the property will have frosted glass from the FFL of the first floor to 1600mm high to allow the privacy to the neighbouring property.

Neighbour's comment

The Council have taken a very strong stand on the parking issues in and around George Street. The proposed development makes no provision for parking for the residents of the development or are the tenants of the neighbouring offices/retail losing their parking bays?

Applicant's Response

The under croft parking area is to be shared between the new residence and existing properties directly on the Eastern and Western boundaries of the George street site. I refer to page 43, Car parking, of the Town Planning & Building Committee meeting minutes dated 3 December 2013.

Neighbour's comment

The current design proposes a master bedroom of approximately 60 square metres. A reduction to this area and the incorporation of a sloped roof truncation could reduce the solar impact of the proposed development. If the Application is to be supported by the Councillors, it would be great to see them consider this design amendment in their assessment and possible approval of the application.

Applicant's Response

It is intended that the design is to be kept exactly to the design that was approved for construction in December 2013 as overshadowing concerns were previously addressed.

Neighbour's comment

Mayor Jim O'Neill was elected on a platform of caring for East Fremantle residents and more particularly protecting views, privacy and amenity by improved planning consistency. It'd be good if these principles and planning consistency was applied to the development application rather than having R-code and Town Planning Scheme provisions explained away and ignored.

Applicant's Response

I refer to page 50, Conclusion, of the Town Planning & Building Committee meeting minutes dated 3 December 2013.

Community Design Advisory Committee

The application was considered by the Community Design Advisory Committee (CDAC – formally Town Planning Advisory Panel) at its meeting of 12 March 2013. As there is no change to the development application, the proposal was not resubmitted to the CDAC for comment. The Panel made the following comments:

- Panel recognise the George Street Precinct is a noisy area and recommend suitable noise attenuation methods are used to limit the impact of potential noise.
- Panel thanks the applicant for the previous feedback, comments and further information.
- Panel welcomes and supports the development.

Statutory Environment

Planning and Development Act 2005
Residential Design Codes of WA
Town of East Fremantle Town Planning Scheme No. 3

Policy Implications

Town of East Fremantle Residential Design Guidelines 2015
Fremantle Port Buffer Zone Area '3'

Financial Implications

Nil

Strategic Implications

Nil

Site Inspection

Site inspection undertaken: Yes

Triple Bottom Line Assessment

Economic implications

There are no known significant economic implications associated with this proposal.

Social implications

There are no known significant social implications associated with this proposal.

Environmental implications

There are no known significant environmental implications associated with this proposal.

Comment

Statutory Assessment

A summary of the assessment is provided in the following table.

Legend <i>(refer to tables below)</i>	
A	Acceptable
D	Discretionary
N/A	Not Applicable

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	4.0m	0.9m	D
Open Space	45%	86%	A
Outdoor Living	20sqm	20sqm	A
Car Parking	1	1	A
Site Works	Less than 500mm	Less than 500mm	A
Overshadowing	25%	13.3%	A
Drainage	On-site	On-site	A

The proposal has been assessed against the provisions of Town Planning Scheme No. 3 and the Residential Design Codes of Western Australia. The proposed development incorporates a number of variations to the Town of East Fremantle Town Planning Scheme No.3 and the Residential Design Codes, as detailed below.

This application is a reassessment of a development that was approved in June 2013. There has been no significant change to the planning framework that would result in this application being considered differently from the development application approved previously by the Town Planning and Building Committee.

Heritage

The subject lot is listed on the Town's Heritage List by virtue of the subject parent lot being located in the Plympton Precinct and included on the Heritage List. The subject lot has a B category rating on the Heritage List.

The subject property is also located in the George Street Precinct in which properties are on the Heritage List under TPS 3 by virtue of their location in the George Street Precinct.

The proposed development has been assessed to require variations to the Town's Planning Scheme. The proposed variations were considered pursuant with Clause 7.5 (a) of Town Planning Scheme No. 3 – Variations To Scheme Provisions for a Heritage Place or Heritage Area. This Clause provides that *"the local government may vary any site or development requirement specified in the Scheme or the Residential Design Codes by following the procedures set out in clause 5.6.2"*. However this provision may only be utilised if due regard has been given to Clauses 5.6.2, 5.6.3, 9.4 and 10.2 of the Town Planning Scheme.

Mixed Use Zone

TPS3 provides for the following objectives to be considered in the development of a building within a mixed use zone:

- To provide for a limited range of commercial, civic and community facilities to meet the day to day needs of the community, but which will not prejudice the amenities of the neighbourhood;
- To ensure future development within each of the Mixed Use Zones is sympathetic with the desired future character of each area, and that a significant residential component is retained as part of any new development;

- To promote the coordination of development within each of the Mixed Use zones and to facilitate the safe and convenient movement of pedestrians to and within the area;
- To ensure the location and design of vehicular access and parking facilities do not detract from the amenities of the area or the integrity of the streetscape.

TPS 3, sub-clause 5.8.10 states for development in the Mixed Use zone:

“5.8.10 Development in the Mixed Use Zone: The local government will generally not approve any development or re-development involving a change in use of existing residential floor space in a Mixed Use zone, unless it is satisfied that an appropriate mix of uses, including residential, is to be maintained. No development is to be approved in a Mixed Use zone where it would prejudice the character or amenity of the locality by reason of the nature of the resultant activities, the building design or the impact of traffic or car parking.

Note: While the Mixed Use zones are intended to provide for a range of commercial facilities, residential development is an essential characteristic of these areas, and care needs to be taken to ensure preservation of a residential component.”

The proposed development is for a two storey residential dwelling located above the existing off street car park located on 65 George Street. There are no substantial changes to the proposed plans from the ones previously approved by Council. The proposal is associated with 44 Hubble Street, (commercial and residential building) and 67 George Street, (commercial and residential building).

The proposed development is considered to adhere to the objectives for the mixed use zone as outlined in the Scheme.

Residential Development in Non-Residential Zones

Clause 5.3.4 Residential Development in Non-Residential Zones of TPS3 states:

‘Subject to clause 5.3.5, where residential development is provided for in non-residential zones, a maximum density of R40 shall apply, although the local government may vary the requirements relating to bulk, form and setbacks so as to facilitate coordinated development, having regard to the local government’s objectives for the Precinct.’

The development requirements are R40 density in a mixed use zone. These development requirements are outlined below in the R-Codes assessment. The proposed development does require Council to exercise discretion with regard to the height requirements, however the proposed development is considered of a scale and bulk that is sympathetic with the adjoining buildings and is consistent with the coordinated development of George Street.

A comprehensive development application, including detailed streetscape analysis and assessment has previously been submitted with the original application. The currently application is consistent with the previously approved plans.

Setbacks

Clause 5.8.1 Building Setbacks of TPS3 states:

‘Except as otherwise required or permitted by the local government, buildings in the Commercial Zones are to be aligned with the front property boundary, and are to be built up to any side boundary, other than a boundary which abuts the Residential Zone. In the case of a boundary

which abuts land situated in the Residential Zone, the side setback standards applicable to the adjoining Residential Zoned land are to apply.'

The proposed building has been designed to be aligned with the front property boundary (similar to the recently approved development application at 90 George Street), and is to be built up to the eastern side boundary. Whilst the proposed building is not proposed with a zero lot setback on the eastern and western boundaries. The proposed setbacks from the boundaries are considered to articulate the building and delineate the structure, from the other adjoining structures.

The setbacks are considered appropriate as the proposed development is designed to minimise the impact to the adjoining buildings on George Street. The proposed southern boundary adjoins residentially zoned land. The southern elevation is setback 3.5 metres from the boundary. The required R-Code setback is 1.4 metres. The building adjoining the proposal is a dwelling on land zoned Residential R20. The proposed development is setback the appropriate distance to comply with the 'Deemed to Comply' provisions of the setback requirements of the R-Codes, however there are overshadowing issues and the adjoining neighbour (southern) has objected to the development for the reasons outlined in the Consultation section of this report.

Car Parking

On 8 May 2007 the Town Planning and Building Committee resolved to approve a retail flower shop on the ground floor, with residential use of the 2 upper floors at Unit No 2, 65 George Street. This was based on:

'The Net Lettable Area of the approved shop comprised of 36m² therefore 4 spaces are required for the shop tenancy, and 2 for the residential use pursuant to the R-Codes, a total of 6 spaces are required to be provided.'

However, under the R-Codes, Mixed – Use Development Requirements, the Acceptable Development performance criteria states:

'On-site parking – as for Multiple Dwellings: may be reduced to one per dwelling where on-site parking for other users is available outside normal business hours;'

The above circumstance applies to the subject property, which has an allocated on-site parking space adjacent to the west wall of the building, and 1 immediately adjacent on-street parking space.

Based on this allowable relaxation the parking standard is 5 car parking spaces.

Council approved a variation for 1 car parking bay to be provided on-site. There are 2 on-site car parking spaces allocated for the specific use of 44 Hubble Street. These spaces are located in a walled enclosure accessed via George Street, which is jointly used by Units 1 and 2, 65 George Street, which have one designated car parking bay each.

6.3.3 C3.1 of the R-Codes states the following minimum number of on-site car parking spaces per dwelling comprising the following:

Type and plot ratio area of dwelling	Car parking spaces*	
	Location A	Location B
Small (<75m ² or 1 bedroom)	0.75	1
Medium (75-110m ²)	1	1.25

Large (>110m ²)	1.25	1.5
Visitors car parking spaces (per dwelling)	0.25	0.25

*Note: 6.3.3 C3.1.

A = within:

- 800m of a train station on a high frequency rail route, measured in a straight line from the pedestrian entry to the train station platform to any part of a lot; or
- 250m of a high frequency bus route, measured in a straight line from along any part of the route to any part of a lot.

B = not within the distances outlined in A above.

The subject lot is located 270 metres from four bus routes along Canning Highway, and 220 metres from Marmion Street, therefore the subject lot is considered to be in an area with good access to public transport and is to be considered under the requirements for Location A requirements.

Based on the overall size of the proposed dwelling 153m², 1.5 car spaces are required to be provided based on a dwelling of greater than 110m², however it is considered that due to the nature of the proposal, and the design being only 1 bedroom (proposed on the second floor), the assessment should be undertaken for a 1 bedroom dwelling. As such the provisions of a small dwelling (1 bedroom) is considered sufficient, therefore 0.75 spaces are required for the dwelling with 0.25 spaces for visitors. A total of 1 car parking space is required. A condition has been included in the Officer's Recommendation limiting the dwelling to be utilised only as a 1 bedroom building. No further bedroom is permitted without prior Council approval.

In addition, it should also be noted there is significant scope for street car parking with respect to the shops. It is also noted that there is scope for reciprocal car parking. The parking will typically be vacated by the existing commercial tenancies during times when the residential parking use is required.

Based on previous approvals and this current proposal, a total of 5 spaces are required to be provided. 2 on-site car parking spaces allocated for the specific use of 44 Hubble Street and 1 space each for Units 1 and 2, 65 George Street and 1 space for the proposal. The applicant during the original development application demonstrated that 5 car parking can be provided on site in the off street enclosed car parking area.

It was however considered that the car parking arrangement as detailed in the original proposed plans was not appropriate with regards to access, egress and car parking. It was considered 1 on-site car parking space can be allocated to 44 Hubble Street and 1 space each for Units 1 and 2, 65 George Street parking in tandem and 1 space for the proposal, totalling 4 spaces on-site. Further, it was considered spaces as indicated on the plan would create egress issues.

Therefore, at the time of the approval it was considered 44 Hubble Street would lose one car parking bay to facilitate the car parking for the proposal, resulting in a shortfall of one (1) on-site car bay.

Clause 5.8.5 Car Parking and Vehicular Access of TPS3 states:

'Car parking in respect of development in the Commercial Zones is to be provided in accordance with the standards set out in Schedule 11 of the Scheme and the specifications in Schedule 4 of the scheme. Where there are no standards for a particular use or development, the local government is to determine what standards are to apply. In its determination of the requirements for a particular use or development which is not listed in Schedule 11 of the Scheme, the local government is to take into consideration the likely demand for parking generated by the use or development.'

The Scheme provisions provide four means to satisfy the car parking requirements:

- (i) on-site (section 5.8.6 refers)
- (ii) immediately adjacent on-street car parking as per 5.8.7 which reads as follows:
5.8.7 On-Street Parking: The local government may accept immediately adjacent on-street car parking as satisfying part or all of the car parking requirements for development, provided such allocation does not prejudice adjacent development or adversely affect the safety or amenity of the locality.
- (iii) off-site as per 5.8.6 which reads, in part:
5.8.6 Location of Car Parking ... subject to the local government's approval, off-site in the immediate vicinity of the development site. In considering a proposal for off-site parking, applicants will need to demonstrate to the satisfaction of the local government that any off-site parking areas will continue to be available for use in conjunction with the development at such times as it might reasonably be required.
- (iv) cash-in-lieu as per 5.8.8 which reads as follows:
5.8.8 Cash-in-lieu of Parking: The local government may accept or require cash-in-lieu of all or a proportion of required car parking, based on the estimated cost of providing the requisite parking, including any associated access and manoeuvre facilities. Cash-in-lieu of parking shall be paid into a trust fund and used to provide public parking in the vicinity of the development site(s) in relation to which any cash-in-lieu contributions have been received.

With the reorganisation of the car parking standards for the lot (as conditioned), it is considered the proposed development adheres to the 'Deemed to Comply' provisions of the R-Codes. However 44 Hubble Street will be required to lose one of its on-site car parking bays. As 44 Hubble Street has 3 on street car parking spaces adjoining the property, it is considered appropriate to consider the proposed car parking acceptable. The allocation of the on-street car parking does not prejudice adjacent developments or adversely affect the safety or amenity of the locality and therefore it is considered the proposed development as previously approved can be supported by Council.

Building Height

The application proposes a building height of 8.27m to the flat roof from the natural ground level.

Clause 5.8.2 Building Height of TPS3 states:

Except as otherwise permitted by the local government, the maximum height of buildings in the Commercial Zones are to be as follows:

- (a) Town Centre: Walls: 8.0 metres Overall: 10.5 metres*
- (b) Special Business: Walls: 8.0 metres Overall: 10.5 metres*
- (c) Mixed Use: Walls: 5.5 metres Overall: 8.0 metres*

Under TPS 3 except as otherwise permitted by Council, the maximum overall building height in the Mixed Use zone is 8m, with walls being 5.5 metres. As the building is a flat roofed structure, the wall height is 8.2 metres, exceeding the maximum wall height by 2.7 metres and the overall height by 0.27 metres. It is noted that the scheme height restrictions do not specifically provide for flat roofed design structures.

The streetscape analysis provided with the original development application identified a varied building height development pattern. The proposed development has an overall height of 8.27 metres to the top of the concealed roof, and is considered consistent with the adjoining buildings and with recently approved building on George Street.

The proposed building form and retention of the existing ground floor car park increases the overall height of the building to a maximum height of 8.27 metres. The proposed development has been designed to complement the existing heritage dwelling at 44 Hubble Street, by being contemporary in design. The design of the building does not try to replicate conventional parapet flat roofs, but is designed with varied setbacks and roof articulation to George Street.

The overall height of the building is considered consistent with previously approved recent developments in the area. The developments scale and bulk is ameliorated through the articulation of the building and roof design. As is demonstrated by the photomontages/ streetscapes provided by the applicant (original application), the proposed development is not considered to significantly impact on the area. The overall building height of the development requires Council discretion of 0.27 metres to the overall development height. This height variation is minor and is considered acceptable when assessed with the overall design of the building.

Plot Ratio

The plot ratio of the proposed development on 65 George Street is 1.2:1, however 44 Hubble Street, 65 and 67 George Street all form part of one parent lot, therefore the proposed plot ratio of the whole parent lot is 0.8:1.

TPS 3 specifies that plot ratio in the Mixed Use zone should be no more than 0.5:1 therefore the proposed development exceeds the specified plot ratio by 0.3. This is not considered excessive.

The proposed development is considered of a similar or lesser scale, bulk and plot ratio to recently approved developments within the area. The proposed development is considered to significantly comply with the 'Deemed to Comply' provisions of the R-Codes requirements for Mixed Use developments.

Residential Design Codes

The following is an assessment of the development as per the requirements of the Residential Design Codes. The areas of Council discretion required regarding the 'Deemed to Comply' provisions and the compliance with the Design Provisions of the R-Codes are addressed below:

Street Setbacks and Side and Rear Setbacks

The proposed development does not comply with the 'Deemed to Comply' provisions of Element 6.1.3 Street Setback of the R-Codes, which states:

Development complies with the minimum setback from the primary and secondary street(s) in accordance with Table 4.

And

Balconies are to be located entirely within the property boundary.

The proposed development also does not comply with the 'Deemed to Comply' of Element 6.1.4 Side and Rear Setback of the R-Codes, which states:

In area coded R30-R60, the development complies with minimum side and/ or rear boundary setback requirements as set out in table 2a and 2b, and Figure 3 subject to any additional measures in other elements of the code.

The above 'Deemed to Comply' requirements are considered superseded by the Town's Town Planning Scheme requirement in Clause 5.8.1 Building Setbacks, which states:

Except as otherwise required or permitted by the local government, buildings in the Commercial Zones are to be aligned with the front property boundary, and are to be built up to any side boundary...

It is noted however that in the case of a boundary which abuts land situated in a Residential Zone, the side setback standards applicable to the adjoining Residential Zoned land are to apply. The proposed design of the development has setbacks to the south, east and west boundaries. The development is set back 0.3 metres from the western boundary, 1.4 metres from the eastern boundary and 3.5 metres from the southern boundary. The east and west are commercial properties. To the south is residential zoned land. The required setback is 1.4 metres. Therefore the proposed development complies with the 'Deemed to Comply' provisions of the R-Codes.

Overshadowing

The main premise of the neighbour's objection relates to overshadowing. The proposed development, if constructed in its current form, would increase the overshadowing of 46 Hubble Street residence to 42%. This is 17% over the R-Codes limit of 25%. The impact of the proposal at 21 June is to overshadow 105 square metres of the outdoor living area equivalent to 78% of the 'back yard'. This overshadowing extends into the living areas by a further 21 square metres.

The proposed building is located between two existing commercial buildings at 44 Hubble Street and 67 George Street. The site of the proposed dwelling and the commercial buildings on either side are located on a single parent lot (Pt 3/ SP16096).

An assessment previously provided to Council by the southern neighbour for overshadowing combines existing commercial overshadowing, with the overshadowing created by the proposed dwelling (13.3%). Clause 1.4 of the R-Codes details how the R-Codes are to be applied. The R-Codes are not applied to commercial properties, however in this instance the commercial properties do overshadow residential land. The proposal as assessed against the R-Codes results in no variation to the 'Deemed to Comply' provisions of the R-Codes relating to solar access which states overshadowing should not exceed 25% of the adjoining lot as assessed on a residential density of R20. The overshadowing from the proposed development is 13.3% assessed in isolation. The proposed heights, setbacks, plot ratio and density permitted on the site, including the orientation of the subject lot and the size and orientation of the affected lot make it difficult for the development to comply with the 25% overshadowing provisions. The Town Planning Scheme does not provide provisions for overshadowing.

The affected property abuts a higher density coded area 'Mixed Use' area / R40 density. The proposed development whilst requiring a 0.27 metre height variation to the maximum allowable height is considered appropriate. The reduction of 0.27 metres to the overall height is considered to have minimal positive impact to the neighbour therefore the proposed development has not been recommended to be reduced in height. The site orientation of the neighbour's lot and the subject lot, the density of the subject lot and the proposed height means overshadowing of the neighbour's lot will be non-compliant. However based on the previous approval (plans have not been modified), the proposal can be supported.

Consideration for Council

In respect to parking and overshadowing requirements as raised in the neighbour's letter, specific clauses in the Scheme are required to be adhered to for Council to appropriately support the proposed development.

Under Clause 7.5 and 5.6 of Town Planning Scheme No 3, the applicable development standard may be relaxed, unconditionally or subject to such conditions as the local government thinks fit, however the power conferred in this clause can only be exercised if:

- (i) Council is satisfied the non-compliance will not have an adverse effect upon the occupiers and users of the development, the inhabitants of the locality or the likely future development of the locality.
- (ii) Council is satisfied the relaxation would be appropriate having regard to the criteria set out in clause 10.2
- (iii) If, in the opinion of Council, the relaxation is likely to affect any owners or occupiers in the general locality or adjoining the site, the Council is to consult the affected parties, as per the provisions of clause 9.4 and have regard to any expressed views prior to making its determination to grant the relaxation.

Clause 5.6.2 States:

'In considering an application for planning approval under this clause, where, in the opinion of the local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the variation, the local government is to-

- (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 9.4; and*
- (b) have regard to any expressed views prior to making its determination to grant the variation.'*

The application was advertised for a two week period. The adjoining neighbour has submitted a letter of objection.

Clause 5.6.3(b) of TPS3 requires that:

'the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.'

With respect to (ii) the criteria extracted from clause 10.2 which appears relevant is as follows:

- (a) the aims, objectives and provisions of the Scheme*
- (c) the requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submission to be sought;*
- (i) the conservation of any place that has been entered in the Register within the meaning of the Heritage of Western Australia Act 1990, or which is included in the Heritage List under clause 7.1, and the effect of the proposal on the character or appearance of a heritage area;*
- (j) the compatibility of a use or development with its setting;*
- (l) the cultural significance of any place or area affected by the development;*
- (o) the preservation of the amenity of the locality;*
- (p) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;*
- (q) whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;*

-
- (r) *the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
 - (s) *whether public transport services are necessary and, if so, whether they are available and adequate for the proposal;*

In short, having considered all of the above provisions, Council has the power, if satisfied that the relevant Scheme provisions have been met, to relax the development standards applicable in this application. Those provisions provide for relaxations of applicable standards if Council has satisfied itself with regard to relevant matters which must be considered prior to considering granting such relaxations. As Council previously approved the development, it would be reasonable to assume Council has satisfied the development satisfies the provisions of the Scheme.

The neighbour has objected to the development on the basis of non-compliance with car parking and overshadowing. The applicant is seeking Council discretion with regard to car parking requirements, plot ratio and building height requirements. The variations are considered not to significantly impact on the amenity of the area, with the exception of the proposed overshadowing, however as addressed above the overshadowing is considered acceptable. The proposed development would not prejudice the character or amenity of the locality by reason of the nature of the building design or the impact of traffic or car parking, therefore the proposed development is considered can be supported by Council.

Conclusion

The proposed development is consistent with the previous development approval. A building Permit has been approved for the proposed development, however prior to works commencing, the planning approval lapsed. This application is for a re-approval of the previous proposal. The proposed development is considered to be consistent with the overall building height of other developments in the area. The overall total height variation is 0.27 metres. This is considered minor. It is considered the proposed design of the building, articulation and setback minimise the scale and bulk impact to the streetscape. The proposed design is considered to add interest to the street and the applicant has provided an integrated and thorough design proposal that will improve the character of the area.

The proposed two storey development has an overall plot ratio of 1.2:1 (0.8:1 over the whole parent lot). The permitted plot ratio of the area is 0.5:1. Adjoining buildings on George Street have been redeveloped at a greater plot ratio than TPS 3 permits. In this instance the proposed plot ratio is considered appropriate. The proposed development is considered of a scale and height consistent with the 'mixed use' zone and has been designed to be consistent and sympathetic to adjoining buildings. The proposed development is considered not to be excessive in height, scale or bulk.

The proposed development, if constructed in its current form, would increase the overshadowing of 46 Hubble Street residence to 42% (of the overall parent lot including commercial uses), but the overshadowing from the proposed development is 13.3% (solely proposed residential) as considered in isolation. The orientation of the neighbouring lot (eastwards) exacerbates the overshadowing of the neighbouring lot, however as discussed above the proposed overshadowing can be supported.

The parking reorganisation is not considered significant given that the proposal provides on-site parking to accommodate commercial units and the proposed residential development. Conditions have been included in the Officers Recommendation to ensure the car parking bays are appropriately marked and managed.

The application is recommended for approval, subject to conditions.

11.3 OFFICER RECOMMENDATION

That Council exercise its discretion in granting approval for the following:

- (a) variation to the provision of on-site parking pursuant to Town Planning Scheme No 3;
- (b) variation to building height under Town Planning Scheme No 3 (required 5.5 wall, 8.0 metres overall : proposed 8.27 metres concealed roof)
- (c) variation to plot ratio of Town Planning Scheme No 3 from 0.5:1 to 1.2:1 (0.8:1 for the overall parent lot);

for two storey over existing car parking development located at 65 (Pt 3/ SP16096) George Street, East Fremantle, in accordance with the plans date stamp received on 7 July 2016 subject to the following conditions:

1. Prior to the applicant submitting an application for a Building Permit, the development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer as detailed in the Local Planning Policy – Element 3.7.16.4.3 Fremantle Port Buffer of the Residential Design Guidelines.
2. The landowner shall lodge a section 70A notification pursuant to the transfer of Land Act on the Certificate of Title(s) of the development site, prior to the issue of a Building Permit. This notification shall be sufficient to alert prospective landowners that the dwellings are located within Area 2 of the Fremantle Port Buffer and the proposed built form of the development within the precinct is to be adhered to. The wording of the memorial shall be placed on all strata titles as follows;
 - *The subject lot (strata) is located within proximity to the Fremantle Port. From time to time the location may experience noise, odour, light spill and other factors that arise from the normal operations of a 24 hour working Port’.*
3. The landowner shall lodge a section 70A notification pursuant to the transfer of Land Act on the Certificate of Title(s) of the development site, prior to the issue of a Building Permit. This notification shall be sufficient to alert prospective landowners that the dwellings are located within the commercial zone of George Street. The wording of the memorial shall be placed on all strata titles as follows;
 - *The subject lot (strata) is located within proximity to George Street commercial zone. From time to time the location may experience noise, odour, light spill and other factors that arise from the normal operations of a commercial area.*
4. The ground floor car parking at 65 George Street is to be a minimum of 4 spaces, clearly assigned a minimum of 1 on-site car parking spaces allocated for the specific use of 44 Hubble Street residential and 1 space each for Units 1 and 2, 65 George Street and 1 space for the proposal.
5. The proposed development is to be only 1 bedroom. Any modification to the plans to include a second internal bedroom is to be approved by Council. An new development application will be required to be satisfaction of the Chief Executive Officer in consultation with relevant officers.
6. A Site and Traffic Management Plans for trades persons and delivery vehicles to be approved by the Chief Executive Officer in consultation with relevant officers, to be lodged with the Building Licence application.
7. The works to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council’s further approval.
8. The proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.

9. The proposed development is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
10. All stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
11. All parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
12. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
13. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
14. This planning approval to remain valid for a period of 24 months from date of this approval.
15. That Council authorise the Mayor and Chief Executive Officer to sign and affix the Common Seal in relation to the Section 70A Notification for the subject lot, as detailed in in conditions 2 and 3 (as above), or as required for this development application.

Footnote:

The following are not conditions but notes of advice to the applicant/owner:

- (i) This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (ii) A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (iii) It is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (iv) All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (v) Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (vi) Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – "An Installers Guide to Air Conditioner Noise".*

11.4 Duke Street No. 36 – 42 (Lot 601 & 602) – Roof Top Air Conditioning Plant and Enclosure

Applicant	The Buchan Group
Owner	Manotel P/L
File ref	P/DUK36-42; P199/2010
Prepared by	Christine Catchpole, Planning Officer
Supervised by	Jamie Douglas, Manager Planning Services
Documents tabled	Nil
Attachments	1. Location Plan 2. Photo 3. Plans dated 15 and 25 August 2016

Purpose

This report considers a development approval application for the roof top air conditioning plant and enclosure at 36-42 (Lot 601 & 602) Duke Street, East Fremantle.

Executive Summary

The application proposes to install a rooftop air conditioning plant and screening enclosure for the commercial building (jazz club and apartments).

The issues relevant to the determination of this application are:

- building height; and
- impact on heritage listed building.

It is considered the addition of the enclosure on the roof top can be supported subject to conditions relating to the maximum number of condensers, floor area of the structure, the type and colour of materials to be used and that no signage is to be permitted on the structure. It is also recommended the applicant be advised that any further proposals for roof top structures will be subject to the submission of a development approval application for Council's consideration.

Background

TPS 3 Zoning:	Mixed Use
MRS:	Site abuts an Important Regional Road reservation
Site area:	1,451m ²
Date application received:	4 July 2016
Documentation:	Application form and plans

17 November 2014 Delegated Authority planning approval granted for minor amendments to the northern and eastern elevation of the heritage building façade and an increase in the size of one of the car park entry openings.

15 October 2013 Council granted approval for the following:

- the proposed development comprising of a penthouse apartment "Option A" located on top of the former Lauder and Howard building; and
- the proposed amendment to the operating hours of the jazz club, subject to conditions relating to the days of operation and the opening times.

16 July 2013 Planning approval granted for amendments to a previously approved planning application for two storeys of commercial offices above the approved jazz club/performance space. Council refused the penthouse apartment located above the "Brush Factory".

12 February 2013 Planning Approval granted to amendments to a previously approved planning application for a private recreation use, to extend the previous planning approval for a further two years.

15 March 2011 Council approved a change of use, partial demolition, redevelopment and new construction to accommodate a mixed use residential, arts and entertainment venue. This was subject to a number of conditions of planning approval one of which specified that the development was required to meet the built form requirements for Area 2 of the Fremantle Port Buffer Zone as detailed in the Town's Residential Design Guidelines.

Consultation

Advertising

The proposed application was not advertised to surrounding land owners as it is considered the proposal will have no impact on the residential amenity or streetscape of the surrounding area.

Town Planning Advisory Panel

This application was not referred to the Town Planning Advisory Panel. The application was not considered to have a direct impact on the streetscape in the immediate locality from a pedestrian perspective.

Statutory Environment

Planning and Development Act 2005

Town of East Fremantle Town Planning Scheme No. 3 (TPS 3)

TPS No. 3 - Heritage List – Category A

Policy Implications

Municipal Heritage Inventory – Category 'A'

Fremantle Port Buffer Zone – Area 2

Financial Implications

Nil.

Strategic Implications

Nil.

Site Inspection

12 July 2016

Triple Bottom Line Assessment

Economic implications

There are no known significant economic implications associated with this proposal.

Social implications

There are no known significant social implications associated with this proposal.

Environmental implications

There are no known significant environmental implications associated with this proposal.

Comment

Statutory Assessment

The proposal has been assessed against the provisions of Town Planning Scheme No. 3. A summary of the assessment is provided in the following tables.

Legend (refer to tables below)	
A	Acceptable
D	Discretionary
N/A	Not Applicable

Town Planning Scheme No. 3 – Commercial Zone (Mixed Use) – Development Standards

General Development Standards	Required	Proposed	Status
Building setbacks	Aligned with front property boundary	N/A	N/A
Building height	Overall: 8m Walls: 5.5m	15.2m Duke St. elevation 16.93m George St. elevation (1.050m visible above roof top parapet)	D N/A
Plot ratio	0.5:1.0	Not included in the calculation of plot ratio	N/A
Design and landscaping	Landscaping plan	N/A	N/A
Car parking and vehicular access	Schedule 4 and 11 of TPS 3	N/A	N/A
Location of car parking	On-site	N/A	N/A
On-street parking	On-street may be acceptable	N/A	N/A

The application proposes to locate the air conditioning plant for the commercial component of the development on the roof top of the Lauder and Howard building on the corner of George and Duke Street. It is proposed to place six condensers in a location toward the south east corner of the roof top (Stirling Highway side). Including the enclosure this will comprise an area of approximately 32m² (i.e. 4m in width, with a 15.6 metre setback from Duke Street and 8 metres in length and an 8.4 metre setback from George Street). The enclosure is proposed to be charcoal covered horizontal aluminium slats.

The existing building is listed on the Town's Heritage List (category A). The applicant is seeking a variation to Scheme provisions with regard to the proposed maximum height of the building. For Council to consider such a variation, it is required to be satisfied that the proposed development complies with clause 67 (Deemed Provisions) and the provisions of Clause 5.6.3 (b) of the Scheme Text which states as follows:

"The power conferred by this clause may only be exercised if the local government is satisfied that:

(a) approval of the proposed development would be appropriate having regard to the criteria set out in clause 67 (Deemed Provisions); and

(b) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality."

The following sub-clauses to clause 67 of TPS 3 (Deemed Provisions) are considered of particular relevance:

- (k) the built heritage conservation of any place that is of cultural significance;*
- (l) the effect of the proposal on the cultural significance of the area in which the development is located;*
- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development; and*
- (n) the amenity of the locality.*

Building Height

Clause 5.8.2 of TPS 3 specifies that maximum height in the Commercial Zone (Mixed Use) is to be 5.5 metres for walls and 8.0 metres overall.

'Option A' of the redevelopment proposal for apartments on top of the Lauder and Howard building was approved at the Council meeting of 15 October 2013. The approved building elevation to Duke Street (Option A) is approximately 13.2 metres in height and was approved in excess of the 8.0 metres overall building height permitted within the Commercial Zone (Mixed Use), so the addition of a roof top air conditioning enclosure would in turn increase the overall height of the building to 15.2 metres from the Duke Street elevation and to 16.9 metres on the George Street elevation. The applicant, however, has indicated on plans that only 1.050 metres of the enclosure will be visible above the parapet of the approved building.

The approved plans, submitted in 2013, did not indicate any air conditioning plant for the commercial component of the development. It is only at this point in the construction process that the Town has been consulted in respect to the need to find a suitable location for the commercial air conditioning plant. The applicant was asked to consider an alternative location other than the roof top, however, the applicant has stated that no alternative space within the building or another external location can be established.

The location proposed is not the optimal solution as any increase in the height of the building is not desirable from the perspective of the potential impact on the heritage building itself, the Royal George Hotel and long range views of the site from vantage points in the Town. For this reason the applicant has been asked to revise the initial proposal and in doing so has reduced the height so that 1.050 metres of the enclosure will be visible over the parapet. The Town has requested the applicant move the air conditioning plant as far as possible to the south on the roof top so that the visual impact of the structure in relation to the Royal George Hotel and the long range views is minimised. The view of the plant from the south is more restricted and it will be less visible from that direction given the topography, housing and trees already restrict views. From the street level and a pedestrian perspective the enclosure itself will not be visible because of the height of the building and its location on the roof.

Heritage

To address the issue of the impact on the heritage building it is considered necessary to impose conditions of planning approval that restrict the floor area of the plant and its height. Careful consideration in regard to the construction materials and colours is also important to reduce the visual impact of the enclosure from a distance as much as possible.

The two factors in the assessment of this proposal that are considered to be the most important in respect to heritage are: to ensure the heritage facade still remains the strongest element from the streetscape perspective not only from the footpath level but from other vantage points along George Street and other vantage points from which roof top structures might be visible.

It is considered that from a built heritage conservation viewpoint (impact on the Lauder and Howard and Royal George Hotel) the roof top enclosure will have a minimal impact. The structure cannot be seen from street level and from long range views only approximately one metre of the enclosure will be visible above the parapet. Also, the structure will be setback approximately 25 metres from the Royal George Hotel. This is considered far enough removed that it will not dominate the skyline or detract from the prominence of the Hotel's corner tower and dome.

The applicant has attempted to minimise the visibility of the structure and with careful thought to the colour and materials used for the enclosure it is considered that the visual impact can be even further reduced. In summary, it is considered the cultural heritage significance and the amenity of the area will not be greatly impacted.

Conclusion

Despite any further structures on the roof not being ideal it is considered the application complies with the criteria noted above which must be considered if the height variation to the Scheme, under Clause 12 (Deemed Provisions - variations to local planning scheme provisions for heritage purposes), is to be approved.

Accordingly it is recommended that Council approve the application subject to conditions relating to limiting the number of air conditioning condensers (i.e. six), the maximum height (RL 24.905) and floor area of the roof top occupied by the air conditioning plant and enclosure (32m²) and the colour and type of materials used for the enclosure to be submitted at Building Permit application stage to the satisfaction of the Chief Executive Officer.

Also, a condition is recommended which excludes any signage, advertising or building name of any sort to be attached to the air conditioning enclosure and any signage indicated on the plans from being part of the current development application approval. The applicant will be advised that all proposed signage is to form part of a separate development approval application that is to be submitted for Council's consideration.

An advice note to the applicant is also recommended to inform the applicant that any other proposed mechanical plant structures, communications equipment, antennae, satellite dishes or the like are subject to Council approval and that a development approval application must be submitted for Council's consideration.

11.4 OFFICER RECOMMENDATION

That Council exercise discretion in granting planning approval to vary:

- (i) Clause 5.8.2 of Town Planning Scheme No. 3 that specifies the maximum height of buildings in the Commercial Zone (Mixed Use) is to be 8.0 metres,**

for a roof top air conditioning plant and enclosure at No. 36 – 42 (Lot 601 & 602) Duke Street, East Fremantle, in accordance with the plans date stamped received on 15 and 25 August 2016, subject to the following conditions:

- 1. The number of air conditioning condensers not to exceed six (6) without further Council consideration of a development approval application.**

2. The roof top enclosure not exceeding RL 24.905 in height and positioned on the roof top as indicated on the plans date stamped received 25 August 2016.
3. The colour and type of construction materials to be used for the enclosure to be to the satisfaction of the Chief Executive Officer and submitted with the Building Permit application for final approval.
4. No signage, advertising or building name/lettering of any sort to be attached to the air conditioning enclosure. A separate development approval application is required to be submitted for Council's consideration in respect to all proposed signage on the site.
5. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
6. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
8. All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
9. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
10. This planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

The following are not conditions but notes of advice to the applicant/owner:

- (i) All signage on the site is subject to further submission of a development approval application for Council's consideration.*
- (ii) Any other proposed mechanical plant structures, communications equipment, antennae, satellite dishes or the like are subject to Council approval and a development approval application must be submitted for Council's consideration.*
- (iii) This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (iv) A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (v) All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (vi) Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – "An Installers Guide to Air Conditioner Noise".*

11.5 Preston Point Road, No. 54 (Lot 1) – Alterations and Additions to Existing Dwelling

Applicant/Owner	K Lamperd & A Cliff
File ref	P/PPT54
Prepared by	Christine Catchpole, Planning Officer
Supervised by	Jamie Douglas, Manager Planning Services
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Location Plan 2. Photographs 3. Amended plans dated 23 August 2016

Purpose

This report considers a planning application for alterations and additions to an existing house including a second storey and double garage at No. 54 (Lot 1) Preston Point Road, East Fremantle.

Executive Summary

The alterations and additions will involve renovation of the street front house, including the addition of a second storey and demolition of sections of the house at the front and rear. The dwelling is one of two dwellings in a battleaxe configuration.

The following issues are relevant to the determination of this application:

- Boundary setbacks: reduced setbacks to northern, southern and rear boundaries;
- Garage located forward of the building line;
- Garage width exceeding 30% of lot frontage;
- Building height;
- Front fence and sight lines;
- Open space;
- Privacy and overlooking: reduced visual privacy setbacks from side and rear boundaries;
- View/outlook: partial loss of view/outlook for adjoining owners;
- Site works: excavation in the front setback area to accommodate the garage;
- Retaining walls: northern side boundary;
- Roof pitch; and
- Impact on municipal heritage inventory listed dwelling: category 'C'.

It is considered the variations can be supported subject to conditions being imposed in respect to visual privacy, front fencing, sight lines and the crossover.

Background

16 December 1993	Building Licence issued for an additional dwelling in a battleaxe lot configuration.
6 November 1995	Building Licence issued for a pergola.
2008	Application for non-compliant front fence not proceeded with by previous owner.
2011	Request to previous owner to submit application for front fence.

Consultation

Advertising

The amended plans were advertised to surrounding land owners from 7 July to 11 August 2016. Three adjoining land owner submissions were received. The following comments were made:

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
<p>New development will devalue or diminish the current amenity or privacy of the surrounding properties.</p> <p>Property purchased to enjoy pleasant outlook mainly to the north and west, with a high degree of privacy.</p> <p>Current Lot 1 is elevated on the block; the new plan indicates that the proposed second storey will retain the full ceiling height of the existing single storey residence. This exaggerated increase in roof height will result in a loss of amenity, view, ambience and privacy for all residences at 52 Preston Point Road. This is unacceptable.</p> <p>For example, pages 10/13 and 11/13 of the revised plans showing elevations and overshadowing indicate that the roof height reaches 9.44m, 8.798m and 9.758m respectively.</p> <p>The proposed roof heights are excessive, exceed the current building height of the Town's Residential Design Guidelines and will have a negative impact on the amenity of the property and the other two dwellings at 52 Preston Point Road.</p>	<p>52 Preston Point Road is approximately 15m away from the proposed upper floor extension at 54 Preston Point Road. As demonstrated on the plans overshadowing only falls onto the driveway there is, therefore, no loss of amenity. There are no openings proposed to habitable rooms on any of the walls adjacent to 52 Preston Point Road therefore privacy is not compromised in any way. At present the occupants of 52 Preston Point Road would not be able to see past the existing single storey roof and therefore the proposed upper floor extension will result in no loss of views of significance.</p> <p>As demonstrated on the overshadowing plan the shadows do not reach beyond the middle of the driveway at number 52 Preston Point Road, as mentioned in the above statement their active habitable spaces are on the upper floor and would not be impacted in any way.</p> <p>The design of the roof is very typical of the predominant roof styles within the immediate vicinity in pitch, shape and finish. Due to the existing ground floor wall heights and a willingness to preserve the character of the existing dwelling rather than demolish and rebuild an attempt to bring the pitch height as low as possible by designing verandahs and balconies to reduce the impact of the additional height has been the approach.</p> <p>The neighbouring dwellings at 52 Preston Point Road are a reasonable distance from the proposed extensions at 54 Preston Point Road being separated by two 4.5m wide battleaxe driveways and then a further building setback placing them ~15m away from the proposed dwelling extension. This 15m separation is double that required</p>	<p>Comments noted and officer response is provided in detail in the 'Comment' section below. However, it is noted the application complies with the visual privacy setbacks and overshadowing provisions the R-Codes.</p> <p>Note: the plans have been amended since the submission was received.</p>

	<p>for the purposes of visual privacy. Screening to the balcony adjacent to the master bedroom has also been proposed to further mitigate any chance of causing nuisance to 52 Preston Point Road. Overshadowing as demonstrated has no impact upon 52 Preston Point Road and there are currently no views of significance that could be retained by reducing the proposed ridge heights. It should therefore be considered that the objections raised by the owners of 52 Preston Point Rd do not effectively demonstrate any loss of amenity or privacy.</p>	
<p>The height of the dwelling and carport is far too high.</p> <p>The south side of the upper floor verandah is an invasion of privacy with respect to the living area of the dwelling. No privacy what so ever would be the result.</p> <p>Suggests replacing screening with enclosed wall as per rest of south wall.</p>	<p>The height of the building has no impact on the amenity of the neighbouring property, it does not overshadow nor impede any significant views. If the proposed extension was compliant with the heights it would make little difference to the outcome for the neighbour concerned.</p> <p>The proposed balcony in question is a secondary balcony off of a bedroom which will see little use. The inclusion of it is to reduce the afternoon sun from penetrating the master bedroom and as weather protection for the verandah below. The proposed dwelling sits 15m away from the existing neighbour's balcony and residence, there are no proposed habitable windows and the balcony is already screened as a gesture of good faith to the neighbour. A solid wall will hamper cooling of the house blocking out the prevailing breezes and it would seem completely unnecessary and a detriment to the aesthetic of the proposed extension.</p>	<p>The only major opening facing this property is an existing kitchen window, which will after the additions and alterations become a laundry window.</p> <p>Officer response is provided in detail in the 'Comment' section below. It is noted, however, the application complies with the visual privacy setbacks and overshadowing provisions of the R-Codes.</p> <p>Note: the plans have been amended since the submission was received.</p>
<p>Notes the height is ~300mm above the maximum height permitted. No objections if the proposals conforms with regulations, otherwise believes that amenity will be reduced, in particular views that would be lost if the application does not comply.</p> <p>Objects to the height proposed.</p>	<p>Based upon the location of 56C Preston Point Road being further to the rear of the lot and higher up the slope with a significant difference in floor level, there would be no loss of views of significance. This property does not face the river and in fact looks over the outdoor living areas of the neighbouring properties. If the property to the rear of 54 Preston</p>	<p>Comments noted.</p> <p>Response to proposed height noted in 'Comments' section of the report.</p>

	<p>Point Road were to be developed within the confines of the Residential Design Guidelines it would be higher than the proposed dwelling at 54 Preston Point Road which would nullify any impact on 56C from any additional height at 54 Preston Point Road.</p> <p>Please see attached image indicating direction of significant views towards the river, the existing property at 56C is orientated south and overlooks neighbouring properties it does not face the river.</p>	
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Town Planning Advisory Panel

This application was considered by the Town Planning Advisory Panel at its meeting on 18 July 2016. The Panel did not support various aspects of the proposal as indicated below.

- the relaxation to the R-Codes with regard to bulk, height and scale of the project;
- regrets the loss of the original façade and steps; and
- the carport forward of the building line and located in the front setback area of the property.

Since the Panel viewed the plans revised drawings have been submitted which reduced the overall height of the dwelling. The loss of the original façade and steps, however, was not a feature the owner wished to retain for a number of reasons and whilst this is regrettable given the property's listing in the Municipal Heritage Inventory, the dwelling has a category 'C' rating and is not protected under the provisions of the Planning Scheme. The carport in the front setback area was not supported and the plans amended to include a garage within the front façade. These issues are discussed further in the 'Comment' section of the report.

Statutory Environment

Planning and Development Act 2005
Residential Design Codes of WA
Town of East Fremantle Town Planning Scheme No. 3

Policy Implications

Town of East Fremantle Residential Design Guidelines 2016 (as amended)
Municipal Heritage Inventory Category 'C'
Fremantle Port Buffer Zone Area 3

Financial Implications

Nil.

Strategic Implications

Nil.

Site Inspection

5 August 2016

Triple Bottom Line Assessment

Economic implications

There are no known significant economic implications associated with this proposal.

Social implications

There are no known significant social implications associated with this proposal.

Environmental implications

There are no known significant environmental implications associated with this proposal.

Comment

TPS 3 Zoning: Residential R12.5

Site area: 449m² (front strata lot)

Statutory Assessment

The proposal has been assessed against the provisions of Town Planning Scheme No. 3 and the Town's Local Planning Policy. A summary of the assessment is provided in the following tables.

Legend <i>(refer to tables below)</i>	
A	Acceptable
D	Discretionary
N/A	Not Applicable

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	7.5m Reduced by up to 50% provided the garage area intruding is compensated for by an equal area of open space behind the setback line	5.5m (garage) – 8m (dwelling) Adequate area of open space provided behind the setback line.	A
Lot Boundary Setback – side	1.5m – 1.8m	861mm	D
Lot Boundary Setback - side	3.5m - 4.6m	2.2m	D
Lot Boundary Setback – rear	6m	4.5m	D
Open Space	55%	51%	D
Visual Privacy Balcony (southern)	7.5m	1.0m from strata lot boundary 4.5m to boundary of battleaxe access leg	D
Balcony (northern)	7.5m	2.2m	D
Kitchen	6.0m	3.7m	D
Family room	6.0m	3.7m	D
Bedroom	4.5m	3.7m	D
Rear Scullery / Pantry kitchen sink window	6.0m	4.5m	D
Site Excavation/Fill	Max 0.5m	600mm	D
Car Parking	2	2	A
Overshadowing	25%	3%	A
Drainage	On-site	On-site	A

Local Planning Policy Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	A
3.7.3 Development of Existing Buildings	A
3.7.4 Site Works	D
3.7.5 Demolition	A
3.7.6 Construction of New Buildings	A
3.7.7 Building Setbacks and Orientation	D
3.7.8 Roof Form and Pitch	D
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	D
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	D
3.7.18.3 Garages, Carports and Outbuildings	D
3.7.15-20 Precinct Requirements	D

Building Height Requirement	Required	Proposed	Status
Building Height (wall) (R-Codes)	5.6m	6.0m – 6.9m	D
Building Height (roof) (R-Codes)	8.1m	7.2m – 8.4m	D

The lot to be developed is the street front strata lot which is occupied by the original dwelling. The two strata lots were created under the equivalent of a R20 standard and both are now subject to the development standards of R12.5. Both lots are approximately 450m² in area. The lot to the rear has been developed with a single storey dwelling. The applicant is requesting approval for what will be a major renovation and remodelling of the original single storey house with the addition of a full second storey including a balcony on the northern and western elevations.

There are a number of variations to the R- Codes and the Residential Design Guidelines in respect to this application due to the slope of the land away from the road and the access driveway for the rear lot being in the ownership of the rear strata owner, with no right of carriageway easement over the lot for the front strata. This prevents any vehicular access to the rear of the front strata from that driveway. The current parking arrangements for the front strata is a hardstand area along the northern side of the property and this abuts the driveway to the three grouped dwellings on the adjoining lot at No. 56 Preston Point Road. This area can accommodate two cars in a tandem arrangement. The original application proposed a garage under the main roof of the dwelling at the rear with access from the battleaxe lot driveway. Subsequent to the application being submitted the rear owner withdrew support for an easement to be granted to allow use of the driveway to access the proposed double garage. This was the preferred option for the owner. When this could no longer proceed the owner revised the plans. The first revision proposed a double carport in the setback area. This was not the preferred outcome and after further discussion with the applicant the plans were revised to incorporate a fully enclosed double garage under an extension of the upper level balcony. The balcony steps down three to four steps over the garage to reduce the height of the garage from street view.

The proposed dwelling will consist of: the existing house being retained with the bedrooms, family room, bathroom and laundry located on the ground level; the upper floor will contain the kitchen, living and dining room, master bedroom and ensuite. The design takes into account the views from the second storey, so the upper level balcony is proposed on the western and northern elevation. The

existing topography of the site is essentially unchanged, however, excavation will be required to accommodate the garage forward of the building line and reduce the steepness of the driveway

As a result of the above site circumstances the applicant is seeking Council discretion with regard to several provisions of the R-Codes and the Town's Residential Design Guidelines. These matters are discussed below.

Street setback

The R-Codes specify a 7.5 metre street setback in an R12.5 coded residential zone.

The R-Codes state that:

C2.1 iii - Buildings setback from the primary street boundary...can be reduced by up to 50 per cent provided that the area of any building, including a carport or garage, intruding in the setback area is compensated for by at least an equal area of open space between the setback line and a line drawn parallel to it at twice the setback distance.

Residential Design Guidelines (RDG)

P1.1 The primary street setback of new developments or additions to non-contributory buildings is to match the traditional setback of the immediate locality.

P2 Developments to be oriented to address the street.

P3 Wall heights to reflect the immediate locality.

The proposed setback of the dwelling complies with the 'Deemed to Comply' standards of the R-Codes. The double garage, however, is set back 5.5 metres with the upper level balcony extending over the garage. Whilst this aspect of the proposal complies with the R-Codes it does not comply with the Residential Design Guidelines and this is discussed further in the report.

Lot boundary setbacks

The lot boundary setbacks of the dwelling do not comply. The subdivided lot and the position of the existing dwelling on the lot combined with the second storey and rearrangement of rooms/windows within the existing dwelling means none of the setbacks can be achieved. This is not a concern with respect to building bulk because the footprint of the building already exists and although a second storey will result, it has been setback from the lot boundaries and overshadowing is not an issue for the properties to the south.

For the most part the building is set back 2.2 metres on the northern side and although the setback on the southern side is less than 1.0 metre (existing building setback to remain unchanged) there is further separation as the two access driveways for 52 and 54 Preston Point Road abut. The rear setback is less than the 6.0 metres required, however, this is considered more of an issue in respect to privacy rather than overshadowing or building bulk. A privacy screen has been indicated on the balcony and a condition is recommended in respect to the scullery window to avoid overlooking of the rear strata lot.

Building height

The R-Code provisions in respect to building height are substituted by the height control under the RDG. Clause 3.7.18.4.3.1 states that:

Where views are an important part of the amenity of the area and neighbours' existing views are to be affected the maximum building heights are as follows:

- 8.1 metres to the top of a pitched roof; and*

-
- 5.6 metres to the top of an external wall and where the following apply:
 - (i) the proposal demonstrates design, bulk and scale that responds to adjacent development and established character of the area or other site specific circumstances;
 - (ii) the provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped and ;
 - (iii) subject to the 'Acceptable Development' standards of the R-Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.

The maximum height is exceeded due to the owner's wish to retain the existing ceiling height of the 1930s residence and the slope of the site downhill toward the road. The site topography and the views available have resulted in the applicant also wanting to maximise the outlook from the house and the second storey will have extensive balconies on the western and northern elevations. It is noted that approximately the rear half of the dwelling complies with the maximum height under the Design Guidelines (~7.2m – ~7.6m). It is only where the land falls away toward the road that the maximum height of the dwelling increases to 8.4 metres at the centre of the roof .

The height of the dwelling from a rear perspective is ~7.6 metres to the roof ridge and ~5.9 metres to the top of the wall. The owners immediately to the rear have viewed the plans and have not made a submission in respect to height; believing that views will be maintained through the open space created by the access driveway of 56 Preston Point Road and the ~2 metre setback of the proposed dwelling. The owner of the grouped dwelling at the very rear of the triplex development at 56 Preston Point Road has commented that the additional 300mm in excess of the building height permitted will result in a loss of amenity, principally views. Notwithstanding the increase above the maximum height for a portion of the roof, a fully compliant second storey dwelling would in any case significantly impact the views from this dwelling. As the applicant has noted the balcony and major openings of this dwelling face south this is not in the direction of the river. Existing views of significance for this dwelling would be through the access driveway of the site. The additional height for a small portion of the pitched roof is considered to impact views to a minor degree and therefore can be supported

Two landowners from the two storey triplex development immediately to the south have commented, not in respect to loss of long range views, but more so in respect to the bulk of the building and the 'open' outlook over the roof space of the existing single storey dwelling being impacted by the construction of a two storey building. It is acknowledged that the adjoining landowners have for many years enjoyed a more 'open' outlook, however, the zoning of the land allows for two storey developments up to a height of 9 metres under the R-Codes (where views are not impacted) and had the original dwelling been demolished it could be replaced by a two storey building. The impact of the additional height does not result in overshadowing of these dwellings and the privacy setback provisions under the R-Codes have been met. The variation with regard to building height in this circumstance is therefore not considered supportable as a residential building of this scale is in keeping with the type of development expected in the locality.

Visual privacy

The 'Deemed to Comply' provisions for Element 5.4.1 Visual Privacy of the R-Codes requires major openings which have a floor level more than 0.5 metres above natural ground level, and positioned so as to overlook any part of any other residential property behind its setback line, to comply with the following:

- 4.5 metres in the case of bedrooms and studies;
- 6.0 metres in the case of habitable rooms, other than bedrooms and studies; and
- 7.5 metres in the case of unenclosed outdoor active habitable spaces.

The proposed development does not comply with the 'Deemed to Comply' provisions of the R-Codes for the lower and upper levels in respect to a number of rooms and outdoor living space on both levels because the foundations of the house are greater than 0.5 metres above natural ground level, however, the 'Design Principles' of 5.4.1 allows for:

P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through: building layout, location; design of major openings; landscape screening of outdoor active habitable spaces; and/or location of screening devices.

P1.2 Maximum visual privacy to side and rear boundaries through measures such as: offsetting the location of ground and first floor windows so that viewing is oblique rather than direct; building to the boundary where appropriate; setting back the first floor from the side boundary; providing higher or opaque and fixed windows; and/or screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).

The adjoining owners to the south have raised the issue of privacy, however, the actual setback of the open space, habitable rooms and balcony between dwellings is well beyond the visual privacy setbacks required (i.e. greater than 15m) for both landowners who made a submission. However, technically the setback of the balcony to the strata lot boundary does not meet the 7.5 metre setback required (861mm and to the access driveway ~4.4m). For this reason the applicant has indicated that permanently fixed solid screening will be installed along the southern elevation of the balcony so that it complies. The only other window to this elevation will be a laundry window which will replace the existing kitchen window. This is considered to satisfy the 'Design Principles' of the R-Codes.

The proposed design will also comply with the 'Deemed to Comply' provisions of Element 5.4.1 Visual Privacy of the R-Codes to the rear (battleaxe lot) if a solid screen, to 1.6 metres in height as indicated on the plans, is installed and the scullery window at the rear is installed with obscure glass or replaced with a highlight window. The visual privacy setback to the north cannot be met, however, the adjoining owners have made no comment in any respect on the proposal and the overlooking is across the driveway to the grouped dwellings which face toward the driveway on this strata lot. The visual privacy setback required for the living room, bedrooms and kitchen extends into the access driveway and the balcony setback marginally encroaches over the front façade and side elevation of the front and middle dwellings. Although approved the street front lot has not yet been constructed but the open space for this lot is to the northern side of the property and the owner has provided a written statement to the effect that he fully supports the proposal. To ensure privacy is maintained to the rear it is recommended a condition be imposed in regard to the installation of the privacy screens and the obscure glazing to the scullery window.

Site works and retaining walls

The proposed excavation is in excess of the 'Deemed to Comply' provisions of the R-Codes. On the northern side of the lot the excavation is slightly greater than 0.5 metres (i.e. ~600mm) and closer than 1 metre from the boundary to accommodate the double garage and pedestrian access to the rear of the lot. The excavation is not considered to be an issue in as much as fill is also required at this point and beyond along the northern boundary to a certain point to maintain the same level for the lower level balcony as that of the existing house. Therefore this element requires assessment under the 'Design Principles' of the R-Codes which state as follows.

P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.

P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the boundary of the site and the adjoining properties and as viewed from the street.

Under the 'Design Principles' of the R-Codes the levels proposed are considered acceptable. The building height and building setbacks are supportable over this portion of the lot and the 'Performance Criteria' of the Residential Design Guidelines can be met in that the development on the whole does not completely change the slope of the site or the finished level and retaining walls on the site as viewed from the street and the adjoining lot.

Open space

The proposal does not meet the minimum open space requirements as specified in the R-Codes; approximately 51% is provided whereas 55% is required under the R12.5 standards.

The 'Design Principles' of the R-Codes state that:

"P4 Development incorporates suitable open space for its context to:

- Reflect the existing and/or desired streetscape character or as outlined under the local planning framework;*
- Provide access to natural sunlight for the dwelling;*
- Reduce building bulk on the site, consistent with the expectations of the applicable density code or as outlined in the local planning framework;*
- Provide an attractive setting for the buildings, landscape, vegetation and streetscape;*
- Provide opportunities for the residents to use space external to the dwelling for outdoor pursuits and access within and around the site; and*
- Provide space for external fixtures and essential facilities."*

Given the strata subdivision is at R20 standards a requirement of 50% open space can be considered in the assessment, in which case the development would comply. The above 'Design Principles' are also considered to be adequately met in that sufficient space along the northern side setback of the dwelling and a reasonably large open space area to the rear of approximately 70m² will be provided.

Garage – forward of building line and percentage of lot width

The site is situated on the eastern side of Preston Point Road. Single houses, townhouse complexes and new developments such as Tingira (opposite) do not have carports or garages in the front setback. They are mostly aligned with the dwelling setback or are located at the rear of complexes.

The proposed development proposes a garage incorporated within the front façade. Although the garage setback complies with the R-Code requirements in respect to street front setback it does not comply with the requirements of the Residential Design Guidelines (RDG) with respect to location. Clause 3.7.15.3 of the RDG requires the garage to be setback 1.2 metres behind the building setback line. The RDG specify that this setback is calculated from behind the furthest setback of the dwelling from the street. In this instance this would require the garage to be setback greater than 12.0 metres from the street, rather than the 5.5 metres proposed.

The size of the lot and the position of the house does not allow for the garage to be setback that distance from the street. This cannot be achieved on this strata lot without complete redevelopment of the site. The objective of the RDG for this Precinct is that the garage does not dominate the dwelling as viewed from the street. It is also considered that where it is possible to lessen the impact of garages on the streetscape that this should be the outcome. Notwithstanding the garage is greater than 30% of the

width of the lot the garage is not considered to dominate the dwelling as viewed from the street because the extensive upper and lower balcony surrounds most of the house which provides for an interesting façade and numerous windows and glass doors facing the street. The balcony will step down and extend over the garage roof further reducing the emphasis on the garage. The applicant has minimised the width of the double garage door at 6 metres.

Crossover width

The crossover is not indicated on the plans, however, where the driveway meets the road verge the width is 6.0 metres. A provision of the Guidelines is that for lots of 12 metres or greater the width cannot exceed 5 metres. As this lot is 16.92 metres a condition requiring a maximum width of 5 metres is considered important if the Committee determine to support the garage, as the width of this structure will be greater than 30% of the width of the lot (i.e. 36%). Minimising further hardstand is considered important from a streetscape perspective.

Roof pitch

The non-compliance with the roof pitch (i.e. 18° rather than the minimum of 26°) is considered desirable in this case because it assists in reducing the overall height and bulk of the dwelling. The applicant was requested to reduce the roof height for this reason and in the context of other houses in the precinct which are a mix of pitch and skillion roofs this is considered supportable.

Front fence – height and sight lines

The proposed front fence does not strictly comply with the requirements of the Residential Design Guidelines 2016 in that it is over height within the front setback area. Compliance with this element is considered very important to maintaining open streetscapes. All other dwellings in this area have been subject to the same requirements since the Guidelines were introduced and this has ensured that the housing is very visible from the street and landscaped front gardens are also visible. Given this fence has not previously received planning approval (previous owners were requested to apply for planning approval but did not proceed) a condition is recommended to ensure the requirement for the front fence to be reduced in height along the battleaxe driveway within the front setback and comply with Australian Standards for sight line requirements.

Heritage

The dwelling is classified category C under the Municipal Inventory. Whilst it would have been preferable for more of the original features of the dwelling to have been retained, demolition cannot be prevented under the new Local Planning Scheme Regulations 2015 for a property of this rating and retention of architectural features cannot be enforced under the Planning Scheme. In this case the dwelling had already undergone some changes in respect to building materials and render.

Conclusion

The variations sought in respect to this application are sought primarily because the applicant wishes to retain the existing house and add a second storey keeping the existing ground floor level and the original ceiling height. It is also difficult to accommodate parking for two cars under cover as the owner cannot use the rear owner's driveway for rear access. A garage has therefore been incorporated within the front façade of the dwelling albeit forward of the building line. This was viewed as a better outcome for the streetscape than a double carport within the front setback area which was originally proposed.

Due to the slope of the land and the lot size, the front portion of the dwelling exceeds the wall and roof heights permitted under the Residential Design Guidelines and it is difficult to meet the lot boundary and visual privacy setbacks. The section of the roof that exceeds the height limit is not considered to impact on views that would not have otherwise been impacted by the construction of a two storey dwelling in this location. The applicant has addressed a number of the overlooking matters through

privacy screens and position of windows. This is considered to either satisfy the R-Codes requirements or will result in minimal impact on residential amenity for adjoining lots. It is, however, recommended a number of conditions be imposed which will require the permanent installation of privacy screens and ensure crossover width and height and sight lines are maintained in relation to front fencing.

Preston Point Road is a mix of single dwellings, town house and villa complexes and old style walk up flats so street and side boundary setbacks and building heights vary. The area is in a phase of transition where older home sites are being redeveloped and previously approved subdivided land is being developed. Overall the variations proposed will result in a dwelling that is in keeping with contemporary housing in the area. On that basis it is recommended the application be supported.

OFFICER RECOMMENDATION

That Council exercise discretion in granting planning approval to vary:

- (i) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a setback of less than 1.8 metres (southern), 4.8 metres (northern) and 6.0 metres (rear - eastern) for the alterations and additions to the existing dwelling;
- (ii) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to permit excavation behind a street setback line and within 1.0 metre of a lot boundary that is greater than 0.5 metres below natural ground level at the boundary for the alterations and additions;
- (iii) Clause 5.3.8 - Retaining Walls of the Residential Design Codes of WA to permit a retaining wall greater than 0.5 metres in height less than 1.0 metre from the boundary;
- (iv) Clause 5.4.1 – Open Space of the Residential Design Codes of WA to permit less than 55% open space on-site;
- (v) Clause 3.7.8.3 of the Residential Design Guidelines 2016 to allow a roof pitch of less than 28°;
- (vi) Clause 3.7.15.3 of the Residential Design Guidelines 2016 to allow a garage forward of the building line;
- (vii) Clause 3.7.17.3 – Garages, Carports and Outbuildings of the Residential Design Guidelines 2016 to allow the width of the garage to exceed 30% of the lot frontage; and
- (viii) Clause 3.7.18.4.1 – Building Height, Form, Scale and Bulk of the Residential Design Guidelines 2016 to permit the building height to exceed 5.6 metres to the top of an external wall and 8.1 metres to the top of a pitched roof,

for alterations and additions, including a second storey and double garage at No. 54 (Lot 1) Preston Point Road, East Fremantle, in accordance with the plans date stamped received on 23 August 2016, subject to the following conditions:

1. The permanent installation of fixed privacy screens on the lower and upper level balconies on the southern and eastern elevations that are in accordance with 'Deemed to Comply' clause 5.4.1 C1.2 provisions of the Residential Design Codes of WA. The detail to be to the satisfaction of the Chief Executive Officer and submitted with the Building Permit application and installed prior to occupancy of the dwelling.
2. The increase in the sill height of the scullery window to comply with the 'Deemed to Comply' clause 5.4.1 C1.2 provisions of the Residential Design Codes of WA or the window to be installed with obscure glazing to the satisfaction of the Chief Executive Officer and shown on the plans at Building Permit application stage.
3. All fencing within the street setback area to be in compliance with the Residential Design Guidelines 2016 and in compliance with the Australian Standards in respect to sight lines where boundary fencing meets the street front property boundary.
4. The crossover width not to exceed 5.0 metres and be in accordance with Council's revised crossover policy as set out in the Residential Design Guidelines 2016.
5. The works are to be constructed in conformity with the drawings and written information

- accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
6. The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
 7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
 8. The proposed alterations and additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
 9. All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
 10. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
 11. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
 12. In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
 13. This planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

The following are not conditions but notes of advice to the applicant/owner:

- (i) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (ii) a copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (iii) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (iv) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (v) matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

(vi) under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – “An Installers Guide to Air Conditioner Noise”.

12. REPORTS OF OFFICERS (COUNCIL DECISION)

12.1 Tree Preservation Policy

Applicant	NA
File ref	C/POL1
Prepared by	Jamie Douglas, Manager Planning Services
Supervised by	Gary Tuffin, Chief Executive Officer
Voting requirements	Simple Majority
Attachments	1. Draft Tree Preservation Policy 2. Submissions received

Purpose

This report considers submissions received in regard to a draft Planning Policy to preserve mature trees and recommends the Policy be adopted.

Executive Summary

This analysis has been undertaken in response to Council's request to investigate means to protect significant trees within the Town. The Policies of six different Councils have been considered and their various strengths and weaknesses identified within the context of the Town's existing environment, statutory planning provisions and resource capacity of the Town. A Planning Policy has been drafted which is considered to be a practical approach which best fits the perceived aims of Council.

The draft Policy has been advertised and two submissions have been received. Accordingly the following is recommended:

It is recommended that Council adopt the Draft Planning Policy: Tree Preservation, pursuant with clause 2.4 of the Town Planning Scheme No 3, subject to the following amendment;

- (1) The addition of the following note under 'Definitions'

Note: Height of a tree and shrub is measured from the average natural ground level within 2m radius of the plant to the highest point of the foliage.

Background

Council has previously discussed this matter at a Forum meeting in February 2016 and further considered means for tree preservation in respect to the initiation of the Scheme amendment for the Woodside Hospital which was approved in March 2016.

A draft policy was considered by the Town Planning & Building Committee at its meeting on 7 June 2016. The Committee recommended that the matter be considered at the Concept Forum held on 14 June 2016 prior to a determination at the June 21 Council Meeting.

The matter was considered at the June Concept Forum with elected members raising a number of concerns. Council at its June meeting resolved to defer the matter to the July Council Meeting to allow elected members to provide feedback to the author.

At the Concept Forum on 12 July 2016 the following feedback was recorded and has been incorporated into the attached revised draft Policy (see yellow shading):

Cr White suggested the following changes to the draft policy:

- *Replace the reference to "mature" trees in the introduction with "advanced".*
- *The words "new/replacement" replace the word "new" in section 2(b) Objectives.*
- *Definitions for "tree" and "shrub" be included within the Policy*

- *The Policy relate to trees 5m or more and shrubs 3m or more in height.*

Cr Harrington suggested the following paragraph be added to section 9 Protection of trees which are to be retained:

“All trees to be retained are to be clearly marked prior to construction and shall be maintained in a healthy condition for a period of not less than 2 years post construction or replaced by a tree of similar maturity.”

Mayor O’Neill expressed his concern that the Policy needed to be workable and elected members should be mindful of costs to Council and the applicant. He suggested the following note be added to section 7 (c) and (d) Trees on Development Sites:

- * *Where a site is well treed less emphasis may be placed on shrub/tree retention/replacement.*

Council at its meeting on the 19 July 2016 endorsed the Draft policy for release for public consultation for the purposes of Public Notification pursuant with clause 2.4 of the Town Planning Scheme No 3.

Consultation

Consultation has been undertaken by advertisement in the local press and posting on Council’s website for a minimum period of 21 days .

Advertising

The proposed policy was advertised in The Fremantle Herald on Saturday 30 July 2016 and on the Town’s website. Public submission period was from 29 July to 22 August 2016. Two submissions were received.

SUBMISSION	OFFICER COMMENT
<p>19 Sewell Street Support proposal</p> <p>In 1980 or '81 Councillor T Malone and myself proposed that Council verges in Plympton ward be planted with native trees shrubs to soften what was ugly streetscape dominated by power poles. This policy was adopted by Council and achieved the result intended and with the placement of underground power (The first Local Government in WA to do this), the foundations of what is now a wonderful vibrant community orientated ward were laid. I recommend that where trees are proposed the word native should precede the word trees.</p>	<p>Clause (e) (ii) does encourage the use of local species trees with broad canopies and discourages the use of palms – they have poor shade and habitat values.</p> <p>It is considered that an absolute requirement for ‘native ‘trees in all circumstances may be too prescriptive</p>
<p>39 Gill Street Needs further consideration</p> <p>I believe the following may be improvements to be considered:</p> <p>The objectives should include "Preservation of trees that may be of historic or cultural significance". This is because the Town is more than merely a convenient place for planning of developments - it has (and it needs to create and cherish) cultural ties for its residents and visitors.</p>	<p>This was considered in the preparation of the policy but was not progressed due to the technical difficulties on enforcement associated with such an approach</p>

<p>Objectives could also include water conservation and encouragement or retention of wildlife.</p> <p>If these are to be included, then the document needs to change throughout to reflect these eg in Policies.</p> <p>A tree is currently defined as "A woody plant usually over 5m high and with an unbranched lower axis". This definition rules out a number of the Council's existing plantings (recent and mature). My suggestion is to define a tree as "A woody plant usually with the potential to be over 5m high, or a shrub determined by the Town as being significant". An unbranched lower axis is vague and undefined.</p> <p>If, for example you were to take the fig trees in King's Square in Fremantle, or possibly the Proclamation Tree in Fremantle, they would fall outside the current proposed definition of a tree because they have low branches (indeed kids can climb dangerously in them).</p> <p>The height of 5m needs to be defined as being from average ground level within 2m radius of the plant to the highest point of the foliage, to avoid mounding up round the trunk to circumvent the policy.</p> <p>The definition of shrub is not currently valuable, as a shrub (which may in any case be significant) is only mentioned once elsewhere and that is in the title attached to the #. If the Town deems a shrub to be significant, it should be treated like a tree (hence the inclusion in Tree definition above). A shrub is currently defined as "A woody plant usually less than 5m high and many branched without a distinct main stem except at ground level". Suggested definition "A woody plant usually with the potential to be less than 5m high".</p> <p>The document refers throughout to Trees of more than 5m in height. Is this intended since "tree" is defined near the document start?</p>	<p>Noted It is considered that Objective (d) encompasses these objectives.</p> <p>See above</p> <p>Councillors debated this definition and it was defined as such to provide a clear cut off to what constitutes a tree. If smaller vegetation with potential to grow to the definition of a tree it would broaden the policy extent beyond that approved by Council.</p> <p>It is not considered the existing definition would preclude such trees.</p> <p>Agreed, amend policy accordingly.</p> <p>Disagree the current definition is proposed so that significant shrubs may be included, the proposed alternate definition may be open to wider interpretation and cause confusion.</p> <p>Yes</p>
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Policy Implications

The proposed Policy for the Preservation of Significant Trees in the Private Domain would complement the Planning Policy – *Residential Design Guidelines*.

Financial Implications

The assessment and compliance management of the proposed Policy will impact upon the Council's finances and may increase the costs associated with private developments in the Town.

Strategic Implications

The proposed Planning Policy will positively impact the Strategic Community Plan by supporting the achievement of the following Key Focus Area.

Key Focus Area 3: Built and Natural Environment:

Aspiration: Our Town is developing in harmony with our unique character within the fabric of the region's built and natural environment.

*Outcomes: 3.1 Facilitating sustainable growth whilst maintaining urban and natural character.
3.2 Maintain a safe and healthy built and natural environment.*

Triple Bottom Line Assessment

Economic implications

The retention and enhancement of tree cover within residential areas will enhance the monetary value of private dwellings.

The retention and/or replacement of significant trees may have development cost implications, depending on the location and design elements of individual developments.

Social implications

There are no known significant social implications associated with this proposal.

Environmental implications

There are significant environmental benefits in relation to solar and privacy screening, microclimate, carbon absorption, bird and animal habitat, air quality and visual attractiveness associated with tree cover in urban areas.

Comment

The two submissions received are generally supportive and the constructive comments are welcomed. In light of the comments received it is proposed that the definition of an 'existing tree be amended as follows:

The addition of the following note under 'Definitions'

Note, Height of a tree and shrub is measured from the average natural ground level within 2m radius of the plant to the highest point of the foliage.

Subject to the above amendment it is considered the draft Policy will best facilitate infill development within the Town that is necessary to meet urban sustainability objectives and State Planning Policies, while maintaining and enhancing the extent of tree coverage within the Town.

OFFICER RECOMMENDATION

That Council resolves to adopt the Draft Planning Policy: Tree Preservation, pursuant with clause 2.4 of the Town Planning Scheme No 3, subject to the following amendment;

(1) The addition of the following note under 'Definitions'

Note: Height of a tree and shrub is measured from the average natural ground level within 2m radius of the plant to the highest point of the foliage.

- 13. CONFIDENTIAL BUSINESS**
- 14. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING – ELECTED MEMBERS, OFFICERS**
- 15. CLOSURE OF MEETING**