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TOWN OF  
EAST FREMANTLE

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# MINUTES

Town Planning & Building  
Committee Meeting

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Tuesday, 1 March 2016 at 6.32pm



**MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE MEETING, HELD IN THE COMMITTEE ROOM, ON TUESDAY, 1 MARCH, 2016 COMMENCING AT 6.32PM.**

1. **DECLARATION OF OPENING OF MEETING/ANNOUNCEMENT OF VISITORS**
2. **ACKNOWLEDGEMENT OF COUNTRY**
3. **RECORD OF ATTENDANCE/APOLOGIES**
4. **RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**
5. **PUBLIC QUESTION TIME**
6. **CONFIRMATION OF MINUTES OF PREVIOUS MEETING**
- 6.1 *Minutes of Town Planning & Building Committee Meeting – 2 February 2016*
7. **DEPUTATIONS/PRESENTATIONS**
8. **DISCLOSURES OF INTEREST BY MEMBERS**
9. **LATE ITEMS NOTED**
10. **REPORTS OF COMMITTEES**
11. **ORDER OF BUSINESS**
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14. **CONFIDENTIAL BUSINESS**
15. **NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY  
DECISION OF THE MEETING – ELECTED MEMBERS,  
OFFICERS**
16. **CLOSURE OF MEETING**

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**MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING & BUILDING COMMITTEE HELD IN THE COMMITTEE MEETING ROOM ON TUESDAY, 1 MARCH 2016 AT 6.32PM.**

**1. DECLARATION OF OPENING OF MEETING/ANNOUNCEMENT OF VISITORS**

The Presiding Member opened the meeting and welcomed members of the gallery.

**2. ACKNOWLEDGEMENT OF COUNTRY**

The Presiding Member made the following acknowledgement:

*“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/APOLOGIES**

Cr Cliff Collinson	Presiding Member
Mayor Jim O’Neill	
Cr Michael McPhail	
Cr Dean Nardi	
Cr Andrew White	
Mr Jamie Douglas	Manager Planning Services
Mr Andrew Malone	Senior Town Planner
Ms Janine May	Minute Secretary
Ms Georgina Cooper	Minute Secretary

There were 8 members of the gallery in attendance.

**4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

**5. PUBLIC QUESTION TIME**

Nil.

**6. CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**6.1 Minutes of Town Planning & Building Committee Meeting 2 February 2016**

Cr Nardi moved, seconded Cr M McPhail

That the Minutes of the Town Planning & Building Committee Meeting of 2 February 2016 be confirmed as a true and accurate record. CARRIED 5:0

**7. PRESENTATIONS/DEPUTATIONS/PETITIONS/SUBMISSIONS**

Nil.

**8. DISCLOSURES OF INTEREST BY MEMBERS**

Nil.

**9. LATE ITEMS NOTED**

Nil.

**10. REPORTS OF COMMITTEES**

Nil.

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**11. ORDER OF BUSINESS**

**Mayor O'Neill moved, seconded Cr M McPhail**

**That the order of business be changed to allow members of the gallery to speak  
to specific planning applications.**

CARRIED 5:0

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**12. REPORTS OF OFFICERS (COMMITTEE DELEGATION)**

REPORT NO. 12.1

**FRASER STREET NO. 66 (LOT 15) DEMOLITION & NEW DWELLING WITH GRANNY FLAT**

<b>AUTHOR</b>	Jamie Douglas, Manager of Planning Services
<b>FILE NUMBER</b>	P/FRA66
<b>APPLICATION NUMBER</b>	P002/16
<b>AUTHORITY / DISCRETION</b>	Town Planning and Building Committee

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**PURPOSE**

This report considers the demolition of an existing heritage dwelling (Cat C on MI) and proposed development of a single storey dwelling and an associated ancillary dwelling at 66 (Lot 15) Fraser Street, East Fremantle. The subject site is a corner lot with frontages to Fraser Street and Gill Street.

**EXECUTIVE SUMMARY**

The proposal raises the following key issues with regard to the determination of the application:

- Demolition of a Category C property on the Municipal Inventory
- variation to the front and rear boundary setback requirements
- variation to Element 5.3.7 Site Works of the Residential Design Codes and Element 3.7.4 of the Residential Design Guidelines Site Works; and
- variation to Element 3.7.14 of the Residential Design Guidelines: Crossovers and Footpaths

The proposed demolition, and new dwelling and ancillary dwelling are recommended for approval subject to conditions.

**BACKGROUND**

<b>Suburb/Location</b>	Fraser Street 66 (Lot 15), East Fremantle
<b>Applicant</b>	Shelford Constructions Pty Ltd
<b>Owner</b>	G & S Macchiusi
<b>Zoning</b>	Residential R12.5
<b>Site area</b>	916 m <sup>2</sup>
<b>Structure plan</b>	N/A
<b>Heritage List</b>	Municipal Heritage Inventory listed Category C

**Date Application Received**

11 January 2016

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

Nil

**Documentation**

Relevant forms and letter date stamp received on 11 January 2016.

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**DETAILS**Impact on Public Domain

- Tree in verge: No impact.
- Light pole: No impact.
- Crossover: Two proposed 3 metre wide crossovers.
- Footpath: Proposed 3 metre wide crossover with tapered drive.
- Streetscape: Demolition of an existing dwelling and construction of a new single storey dwelling and ancillary dwelling.

**Issues and options considered**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.

Town Planning Scheme No. 3 Assessment:

Scheme Provision	Status
4.2 Zone Objectives	A
4.3 Zoning Table	A

**Legislation / Strategic Community Plan / Policy Implications**

Legislation	Local Planning Scheme No. 3 – Residential R12.5 (LPS 3)
Strategic Community Plan	Strategic Community Plan 2015-20125
Key Focus Area	Built & Natural Environment
Aspiration	Facilitating sustainable growth whilst maintaining urban and natural character.
Outcome	N/A
Policy	Residential Design Guidelines 2015 (as amended) (RDG)N/A

**Risk management considerations**

There are no risk management considerations.

**Financial / budget implications**

There are no financial budget implications.

**Regional significance**

There is no regional significance.

**Sustainability implications**

There are no sustainability implications.

**Consultation**Advertising

The proposed application was advertised to surrounding neighbours for a two week period between 12 January 2016 and 1 February 2016. A sign was also located onsite displaying the relevant development information between the same dates. Two submissions were received by Council.





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## Town Planning Advisory Panel

This application has not been considered by the Town Planning Advisory Panel as the Panel was in recess during January.

## COMMENT

## Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	55%	60%	A
Outdoor Living	NA	sqm	A
Car Parking	2	2	A
Site Works	Less than 500mm	0.7 additional fill (1.2 metres)	D
Overshadowing	25%	Less than 25%	A
Drainage	On-site	On-site	A

## Local Planning Policies 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	A
3.7.6 Construction of New Buildings	A
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	A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	D
3.7.15-20 Precinct Requirements	A

## Heritage

The existing dwelling on the subject site is proposed to be demolished. The dwelling is categorised as 'C' on the Municipal Inventory but is not included on the scheme's Heritage List.

Category C Management Guidelines are as follows;

*"Some heritage significance at a local level; places to be ideally retained and conserved; endeavour to conserve the significance of the place through the standard provisions of the Town of East Fremantle Planning Scheme and associated design guidelines; a Heritage Assessment / Impact Statement may be required as corollary to a development application, particularly in considering demolition of the place. Full documented record of places to be demolished shall be required. Further development needs to be within recognised design guidelines. Incentives should be considered where the condition or relative significance of the individual place is marginal but where a collective significance is served through retention and conservation."*

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The MI 'Statement of Significance' for the subject property is as follows;

*"No 66 Fraser Street is a single storey house constructed in timber framing, weatherboard and fibrous cement cladding with a tiled roof. It has historic and aesthetic value for its contribution to Richmond's high concentration of predominantly Federation and Inter-War period houses and associated buildings. The place contributes to the local community's sense of place.*

*The place has some aesthetic value as a Post-World War II Austerity style house. The place retains a moderate degree of authenticity and a high degree of integrity. The additions to the rear have no significance.*

*No 66 Fraser Street is not rare in the immediate context, but Richmond has rarity value as a cohesive middle class suburb."*

The loss of any structure with heritage significance is regrettable and where practical, adaption and extension are favoured over demolition. However, in this instance the location and built form of the existing dwelling mitigates against re-use and adaption. Under the new Planning Regulations only demolitions for properties contained on the Heritage List require a planning application. As such the demolition of the existing structure, in itself, is exempt from the requirement for a planning application. Council has decided to include only 'A' and 'B' categorised properties on the Heritage List at this time. Accordingly any refusal of the application on heritage grounds cannot be sustained. Some consideration has been given to require the documentation and photographic recording of the existing structure as a condition of any approval. However given its acknowledged lack of rarity, it is not considered justified in this instance.

#### Land Use

Under recent amendments to the R-Codes both the principal dwelling and the ancillary dwelling are 'as of right' permitted uses within the Residential zone.

#### Water Corporation Sewer

The site plan shows the 'approximate location' of a Water Corporation sewer line abutting the proposed ancillary dwelling and subject to proposed site fill. Accordingly a condition of any approval should require Water Corporation approval of proposed working drawings prior to application for a Building Permit.

#### Site Fill

The subject site has a site fall of approximately 2.2 meters from its northern to southern boundaries. It is proposed to bench the site between the principal and ancillary dwellings with a 0.7 metre high retaining wall. A further approximately 0.6 metre high retaining wall is proposed on the southern boundary.

The proposed finished floor level of the principal dwelling will be RL 12.6 for the front ground level, and will have a similar street presentation to the existing dwelling, which is to be demolished.

The proposed 1.2 metres fill (existing and proposed) does not adhere to the 'Deemed to Comply' provisions of the R-Codes.

The Design Principles of the R-Codes with regard to Element 5.3.7 Site Works states:

- 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 lot boundary of the site and as viewed from the street.*

The proposed fill is considered to have no significant impact on the scale and bulk of the dwelling. The dwelling does have a roof and wall height which is compliant with the height requirements of the Residential Design Guidelines, therefore the additional fill will not impact the streetscape or adjoining neighbours.

By benching the site across the fall approximately 7 metres from the southern boundary, the impacts of the fill to the lot boundaries and rear neighbour is minimised. A further approximately 0.6 metre high retaining wall is proposed on the southern boundary. However this does not materially impact upon the relevant neighbour in terms of visual intrusion, or overshadowing.

The fill does not negatively impact on the streetscape character or amenity of the neighbours.

The streetscape elevation is considered to have a consistent scale with the adjoining dwellings and has a finished floor level (RL 12.6) that is appropriate with the gradient of the Fraser Street frontage. The overall proposed fill will therefore retain the visual impression of the existing ground level of the site as seen from Fraser Street and from the adjoining property. The proposed development is considered to comply with the Design Principles of Element 5.3.7 Site Works and therefore can be supported.

#### Street Setbacks

The proposed development incorporates a front setback variation to the Acceptable Development Provisions of Element 3.7.7 of the RDG (front boundary) setback requirements. The proposed set back from the front boundary (Fraser Street) is required to be 7.5 metres (assessed as per R12.5).

The proposed dwelling is located 6 metres (average) and 4 metres (minimum for a length of 3 metres) from the front lot boundary. The majority of the dwelling is setback 6 metres from the front boundary. The proposed incursion into the front setback is considered to be an architectural feature of the front façade articulating the dwelling. The dwelling as a whole is considered to comply with the R-Code requirements for averaging of the front setback, Element 5.1.2 Street setback allows for setbacks to be:

*“reduced by up to 50 per cent provided that the area of any building, including a carport or garage, intruding into the setback area is compensated for by at least an equal area of open space between the setback line and line drawn parallel to it at twice the setback distance.”*

The proposed front setback is considered to comply with this requirement. The RDG states:

A1.1 New developments, additions and alterations are to match the existing front and side setbacks of the immediate locality.

The proposed front set back is considered consistent with the predominant front setback in the locality.

The proposed development has a minimum and average setback to the secondary street (Gill Street) of 1.6 metres. With regard to the proposed side set (secondary street) to the dwelling, the required set back from the boundary is 2.0 metres as per Table 1 of the R-Codes. Assessment under the following Performance Criteria is required;

*“P1.3 Developments are to have side setbacks complementary with the predominant streetscape.”*

It is considered the proposed side setback is consistent with other side setbacks on corner lots in the area. Accordingly, it is considered there is minimal impact to the primary or secondary streetscape. The dwelling is single storey and the respective side elevation is articulated and addresses the street. The ancillary dwelling (which addresses Gill Street) has been set back 9.3metres from the lot boundary. It therefore provides a good transition to the front boundary setbacks of other properties in Gill Street. It is therefore considered there are minimal impacts to the streetscape and character of the area.

The proposal does not significantly negatively impact the streetscape or adjoining neighbours and therefore it is considered that the reduced side setback can be supported by Council.

#### Rear Boundary Setbacks

The ancillary dwelling southern boundary set back is 1.02 metres from the rear boundary. Table 1 of the R-Codes requires a rear boundary setback for a R12.5 density lot to be 6 metres. The proposed ancillary dwelling is within the rear 6 metre setback area.

The LPP RDG Element 3.7.7 provides performance criteria by which to assess proposed variations to setback requirements. This is summarised below.

The ‘Design Provisions’ of 5.1.3 *Lot boundary setback allows for:*

*“P3.1 Buildings set back from lot boundaries so as to:*

- reduce impacts of building bulk on adjoining properties;*
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”*

With regard to the proposed rear set back to the ancillary dwelling, it is considered that it will not impact on the amenity of the adjoining neighbour as discussed above. The ancillary dwelling is single storey, located to the rear of the dwelling therefore there are reduced impacts to the streetscape and character of the area. The proposed height and location of the ancillary dwelling does not significantly impact on the scale or bulk of the dwelling, therefore it is also considered the dwelling is the dominant structure within the streetscape.

The proposal does not significantly impact negatively on the streetscape or adjoining neighbours and therefore it is considered that the reduced front and rear setback can be supported by Council.

#### Crossover

With respect to the proposed two crossover’s,

The Town’s RDG specifically addresses this issue under clause 3.7.14 where the RDG states the following as being the desired outcomes for the Precinct:

- new footpaths and crossovers to match existing streetscapes;*
- maintenance of existing footpaths and crossovers;*
- a maximum width up to 5.0 metre (lots greater than 20m width)*
- maximum of one crossover per lot; and*

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- *street trees to be conserved or replaced where a new crossover requires their removal.*

The Performance Criteria states:

- P1 Pedestrian walk ways will take priority over vehicular access. Re-kerbing is to be done wherever footpaths are replaced.*
- P2 Footpaths and crossovers to match the existing relevant Precincts.*

The subject lot has a frontage to Gill Street of 43 metres. The proposed secondary crossover for the ancillary dwelling is 38 metres from the road junction. The proposal plan indicates the removal of a street tree subject to 'shire approval'. It is considered that Council should support this request in this instance because of the tree's proximity to a Water Corporation sewer line and obstruction to the footpath. Numerous other street trees exist along the Gill Street frontage and it is considered that a replacement should not be required. In light of the above, it is considered that a variation to the crossover requirements can be supported.

**CONCLUSION**

The loss of any structure with heritage significance is regrettable and where practical, adaption and extension are favoured. However in this instance the location and built form of the existing dwelling mitigates against re-use and adaption. The property is not included on the Scheme's Heritage List notwithstanding its MI category 'C' listing. The new Planning Regulations exempt from the need for planning approval demolition of properties where they are not included on the Scheme's Heritage List.

The height, scale and setback of the proposed dwelling are consistent with the prevailing built form in the streetscape. The proposed single storey dwelling is considered to be consistent and sympathetic with the adjoining properties and the streetscape in the locality.

The application is considered to have had due regard for the Town's requirements relating to residential developments, as well as the requirements outlined within the R-Codes. Whilst the application does seek some minor variations for site works, setbacks to the primary and secondary streets and the rear boundary and proposes two crossovers, it is considered the proposal has been designed to minimise impact to the streetscape and adjoining neighbours.

Based on the above, it is considered the proposal merits approval subject to appropriate conditions.

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

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

- (a) variation to the front boundary setback requirements (northern elevation) – Required front setback 7.5 metres. Proposed is an average setback of 6.0 metres. (Complies with the averaging of the front setback, Element 5.1.2 Street setback of the R-Codes)
- (b) variation to Element 5.3.7 Site Works of the Residential Design Codes and Element 3.7.4 of the Residential Design Guidelines Site Works;
- (c) variation to Element 3.7.14 of the Residential Design Guidelines: Crossovers and Footpaths (Two 3.0 metre wide crossover proposed)

for demolition of an existing dwelling and construction of a proposed single dwelling and ancillary dwelling at 66 (Lot 15) Fraser Street, East Fremantle, in accordance with the plans date stamp received on 11 January 2016 subject to the following conditions:

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1. Any proposed fencing (primary or secondary street fencing) to comply with the requirements of the Acceptable Development Provisions of Element 3.7.11 of the Town's Residential Design Guidelines.
2. Crossovers to be designed and constructed as per Council specifications to the satisfaction of the Chief Executive Officer in consultation with relevant Council Officers.
3. The applicant shall gain the written approval from Water Corporation in respect to the indicated sewer line of all relevant working drawings prior to submission for a Building Permit.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *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.*
- (c) *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.*
- (d) *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).*

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- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (h) *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".*

Ms Charlotte Hocking (neighbour) addressed the meeting stating she had no objection to the demolition of the residence. A dilapidation report for her property has been carried out and a copy sent to Council.

Mr John Bird (neighbour) addressed the meeting requesting that no street trees be removed from the Gill Street frontage, in particular the Carob trees which were important to the local culture of East Fremantle and requested Council to impose a condition requiring their retention.

**Moved Cr M McPhail, seconded Cr Nardi**

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

- (a) **variation to the front boundary setback requirements (northern elevation) – Required front setback 7.5 metres. Proposed is an average setback of 6.0 metres. (Complies with the averaging of the front setback, Element 5.1.2 Street setback of the R-Codes)**
- (b) **variation to Element 5.3.7 Site Works of the Residential Design Codes and Element 3.7.4 of the Residential Design Guidelines Site Works;**
- (c) **variation to Element 3.7.14 of the Residential Design Guidelines: Crossovers and Footpaths (Two 3.0 metre wide crossover proposed)**

**for demolition of an existing dwelling and construction of a proposed single dwelling and ancillary dwelling at 66 (Lot 15) Fraser Street, East Fremantle, in accordance with the plans date stamp received on 11 January 2016 subject to the following conditions:**

- 1. Any proposed fencing (primary or secondary street fencing) to comply with the requirements of the Acceptable Development Provisions of Element 3.7.11 of the Town's Residential Design Guidelines.**
- 2. Crossovers to be designed and constructed as per Council specifications to the satisfaction of the Chief Executive Officer in consultation with relevant Council Officers.**
- 3. The applicant shall gain the written approval from Water Corporation in respect to the indicated sewer line of all relevant working drawings prior to submission for a Building Permit.**
- 4. 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.**
- 5. 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.**



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6. 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.
7. 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.
8. 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.
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.
11. If any street tree is to be removed, the applicant is to liaise with Council to replace or relocate the street tree within the streetscape to the satisfaction of the Chief Executive Officer.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *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.*
- (e) *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.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (h) *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*

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***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”.***

CARRIED 4:1

**Note:**

**As 4 Committee members voted in favour of the amended recommendation and the Manager Planning Services supported the amendment, pursuant to Council's decision regarding delegated decision making made on 16 June 2015 this application is deemed determined, on behalf of Council, under delegated authority.**

**Reason for Varying the Officer's Recommendation**

Condition 11 was added to minimise the impact on the public domain.

REPORT NO 12.5

**EASTON STREET 3 (LOT 11) FIRST FLOOR ADDITION AND ALTERATIONS TO AN EXISTING DWELLING**

<b>RESPONSIBLE DIRECTOR</b>	Jamie Douglas Manager of Planning Services
<b>AUTHOR</b>	Andrew Malone Senior Planning Officer
<b>FILE NUMBER</b>	P/EAN3
<b>APPLICATION NUMBER</b>	P003/16
<b>AUTHORITY / DISCRETION</b>	Town Planning and Building Committee

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**PURPOSE**

This report considers an application for a first floor addition and ground floor renovations to an existing dwelling at 3 (Lot 11) Easton Street, East Fremantle.

**EXECUTIVE SUMMARY**

The proposal raises the following key issues with regard to the determination of the application:

- variation to the Acceptable Development provisions of the Residential Design Codes for wall height. Allowable wall height 5.6 metres. Proposed wall height 6.0 metres

An assessment of the proposal under the Town's Planning Scheme, the Town's Residential Design Guidelines and the Residential Design Codes has been completed, and the proposal generally complies with the above, with exception of the wall height. The neighbour has objected to the proposal and has raised visual privacy as a concern. This will be discussed in detail below.

The proposal is recommended for approval subject to conditions.

**BACKGROUND**

<b>Suburb/Location</b>	Easton Street 3 (Lot 11), East Fremantle
<b>Applicant</b>	RyanArc Architects
<b>Owner</b>	Carlen Pty Ltd, I & A Dolton
<b>Zoning</b>	Residential R12.5
<b>Site area</b>	448m <sup>2</sup>
<b>Structure plan</b>	N/A

**Date Application Received**

18 January 2016

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

6 April 2010 Council grant approval for a patio.

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**Documentation**

Relevant forms and letter date stamp received on 18 January 2016.

**DETAILS**Impact on Public Domain

Tree in verge: No impact.  
 Light pole: No impact.  
 Crossover: No impact.  
 Footpath: No impact.  
 Streetscape: Visible, but not adversely impact

**Issues and options considered**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.

Town Planning Scheme No. 3 Assessment

Scheme Provision	Status
4.2 Zone Objectives	A
4.3 Zoning Table	A

**Legislation / Strategic Community Plan / Policy Implications**

Legislation	Town Planning Scheme No. 3 Policy - Residential Design Guidelines
Strategic Community Plan	
<i>Key Focus Area</i>	Area 3 Built and Natural Environment
<i>Aspiration</i>	Our Town is developing in harmony with our unique character within the fabric of the Region's built and natural environment.
<i>Outcome</i>	3.2 Maintain a safe and healthy built and natural environment.
Policy	Not Applicable.
Legislation	Local Planning Scheme No. 3 – Residential R12.5 (TPS 3)

**Risk management considerations**

There are no risk management considerations.

**Financial / budget implications**

There are no financial/budget implications.

**Regional significance**

There is no regional significance.

**Sustainability implications**

There are no sustainability implications.

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**Consultation**Advertising

The proposed application was advertised to surrounding neighbours between 20 January 2016 and 5 February 2016. One submission was received by Council.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
41 Fraser Street Privacy issues: proposed south/west windows overlook swimming pool, outdoor area, master bedroom. Noise: B-Fold doors convert upper floor to balcony. Overshadowing: Winter sunlight will be impacted and already in an elevated position Landscape change: minimal set back from corner Materials: not to the same standard in the area In-fill: not enough buffer and exceeds plot ratio, not typical to street	Visual: The proposed southern first floor window would be 840mm over allowable setback. Noise: Proposed western bi fold windows sill height do not constitute a balcony, also ground floor roof pitches do not allow to convert window to balcony. Overshadowing: shadow are under the max allowable Setbacks & Plot Ratio: compliant with R-codes and LPP Materials: are widely used in area i.e. 39 Pier Street	Any area of non-compliance or requiring Council discretion with regards to the Scheme, R-Codes or the RDG will be addressed in detail in the discussion section of this report or have been suitably addressed by the applicant.  Whilst there may be issues raised, the assessment of this proposal can only assess the relevant requirements of the R-Codes and RDG and therefore where the development is compliant with the 'Deemed to Comply' provisions the matters are not discussed.  The issues raised by the neighbour have been assessed and are considered to be compliant with the planning requirements.

Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel as a similar proposal was considered by the TPAP previously.

**COMMENT**

## Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	55%	63%	A
Outdoor Living	30sqm	As existing	A
Car Parking	2	As existing	A
Site Works	Less than 500mm	Less than 500mm	A
Overshadowing	25%	Less than 25%	A
Drainage	On-site	On-site	A

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## Local Planning Policies 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	A
3.7.5 Demolition	N/A
3.7.6 Construction of New Buildings	N/A
3.7.7 Building Setbacks and Orientation	A
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	N/A
3.7.15-20 Precinct Requirements	D

## Building Height

Building Height Requirement	Required	Proposed	Status
Building Height (wall) (Council Policy)	5.6m	6.0m	D
Building Height (roof) (Council Policy)	8.1m	7.5m	A

For sites where views are a consideration (this includes the subject lot as it has views toward the town centre: southern direction), the RDG limits overall roofs to a maximum height of 8.1 metres from natural ground level. The proposed ridge height is 7.5 metres to top of roof, below the required overall height of 8.1 metres. The proposed wall height is 6.0 metres at the maximum height. The Acceptable Development Provisions of the RDG for the building height in the Riverside Precinct states:

- “A1.4 In localities where views are an important part of the amenity of the area and neighbours existing views are to be affected, or the subject site is a “battle axe” lot, then the maximum building heights are as follows:*
- 8.1m to the top of a pitched roof*
  - 6.5m to the top of an external wall (concealed roof)*
  - 5.6m 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 the 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 Residential Design Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.”*

The site and dwelling currently step down on the lot. The proposed wall height does not comply with the Acceptable Development provisions of the RDG and therefore requires assessment under the Performance Criteria. The Performance Criteria allows for:

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- “P1 New developments, additions and alterations to be of a compatible form, bulk and scale to traditional development in the immediate locality.*
- P2 Form and bulk of new developments to be designed appropriately to the topography of the landscape.”*

The step in the lot means the wall height is more significant as measured from the ground levels at the south of the lot. The wall height varies between 5.6 metres (compliant) and 6.0 metres across the lot because of the step in the lot. It is considered that a variation to the wall height provisions can be supported for the following reasons:

- The dwelling complies with the overall ridge height requirements of the RDG provisions.
- The proposed ceiling heights are considered standard heights and are not excessive.
- The overall height of the building adjoining the eastern neighbour is compliant with the Acceptable Development Criteria of the RDG.
- The proposed overall wall height at 6.0 metres (0.4 metre variation) is considered relatively minor from natural ground level.
- The overshadowing by the development to adjoining lot is compliant with the ‘Deemed to Comply’ provisions of the R-Codes.
- Notwithstanding overall ridge height compliance, it is considered the view corridors of surrounding neighbours are not significantly impacted due to the elevated finished floor levels of the northern lots.

In this instance, it is considered that it is appropriate to grant the 0.3 metre wall height discretion to the amended building design, as the building has been designed to address any bulk and scale issues. No viewing corridors are impacted. The overall height (ridge height) of the dwelling is compliant with the RDG requirements. The amended design attempts to address the neighbour’s concerns, with increased setbacks and reduced building heights.

It is therefore considered the proposed height of the dwelling complies with the Performance Criteria of the RDG and can be supported.

**CONCLUSION**

The bulk, scale, height and setback of the proposed development (amended to minimise impact to adjoining neighbours) requires Council to grant discretions to the ‘Acceptable Development’ and ‘Deemed to Comply’ provisions. As discussed above the proposed variations are considered minor and are acceptable. The development is surrounded by R30 density development and has been designed to be similar in design, scale and bulk with the surrounding development in the immediate area.

The proposed design of the dwelling is considered sympathetic with the diversified character of the locality. The proposed amended design is considered to have a minimal impact to surrounding neighbours, especially the southern neighbours. The eastern neighbour has agreed in principle to the boundary wall and the overlooking. The development is considered an appropriate design for the locality. The proposal does not visually interfere with the streetscape.

Based on the above, it is considered the proposal merits approval subject to appropriate conditions.

**VOTING REQUIREMENTS**

Simple Majority

### RECOMMENDATION

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

- (a) variation to Element 3.7.17 Building Height requirements of the Residential Design Guidelines: required 5.6 metres: proposed 6.0 metres;

for additions and alterations, including new first floor to an existing dwelling at 3 (Lot 11) Easton Street, East Fremantle, in accordance with the plans date stamp received on 18 January 2016 subject to the following conditions:

1. Prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to be lodged and approved to the satisfaction of the Chief Executive Officer. (*Refer footnote (g) below*)
2. Wall height is not to exceed a maximum height of 6.0 metres from ground level. The ridge height is not to exceed a maximum height of 7.5 metres from ground level.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*



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- (b) 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.
- (c) 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.
- (d) 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).
- (e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.
- (f) matters relating to dividing fences are subject to the Dividing Fences Act 1961.
- (g) 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".

Mr Rance Dorrington (neighbour) addressed the meeting stating that the windows at the rear of the addition to the south and west overlook into his rear yard. Also commented that he would like the applicant to use quality weatherboard and materials for the addition.

Mr & Mrs Backhouse-Smith (owners) and Mr Seamus Ryan (architect) addressed the meeting and pointed out that the setbacks and overall building height is compliant. They would look at the window to the south and may amend it to a highlight window.

The Committee requested the applicant give consideration to installing highlight windows to the southern elevation.

**Moved Mayor O'Neill, Seconded Cr M McPhail**

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

- (a) variation to Element 3.7.17 Building Height requirements of the Residential Design Guidelines: required 5.6 metres: proposed 6.0 metres;  
for additions and alterations, including new first floor to an existing dwelling at 3 (Lot 11) Easton Street, East Fremantle, in accordance with the plans date stamp received on 18 January 2016 subject to the following conditions:
  1. Prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to be lodged and approved to the satisfaction of the Chief Executive Officer. (Refer footnote (g) below)
  2. Wall height is not to exceed a maximum height of 6.0 metres from ground level. The ridge height is not to exceed a maximum height of 7.5 metres from ground level.
  3. 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.

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4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *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.*
- (c) *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.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

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- (g) *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”. CARRIED 5:0*

**Note:**

As 4 Committee members voted in favour of the Reporting Officer’s recommendation, pursuant to Council’s decision regarding delegated decision making made on 16 June 2015 this application is deemed determined, on behalf of Council, under delegated authority.

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## AGENDA

## REPORT NO 12.6

## RIVERSIDE ROAD NO. 26 (H263/41519/LS1) (DOME CAFÉ) – APPLICATION FOR PROPOSED PARTIAL CHANGE OF USE

<b>RESPONSIBLE DIRECTOR</b>	Jamie Douglas Manager of Planning Services
<b>AUTHOR</b>	Andrew Malone Senior Planning Officer
<b>FILE NUMBER</b>	
<b>APPLICATION NUMBER</b>	P008/16
<b>AUTHORITY / DISCRETION</b>	Town Planning and Building Committee

### PURPOSE

This report considers an application for additions and alterations including a partial change of use to the existing Dome Café at 26 (Lot 20) Riverside Road, East Fremantle. Under the Swan and Canning Rivers Management Act, the Department of Parks and Wildlife is the determining authority in this instance.

However since the subject site is on land reserved for 'Parks and Recreation'. The Department of Parks and Wildlife acknowledge that Council should consider its position in respect to the application prior to determination by the Department of Parks and Wildlife.

### EXECUTIVE SUMMARY

This report is to resolve Councils position in respect to the application and to provide comment from Council, to the Department of Parks and Wildlife, concerning alterations and additions including partial change of use to the Dome Café (previously Red Herring Restaurant), 26 Riverside Road East Fremantle.

A shortfall in car parking is the primary issue relating to the determination of this application. This will be addressed in detail in the Comment Section of this report.

The proposed application is recommended for approval subject to conditions.

### BACKGROUND

<b>Suburb/Location</b>	Riverside Road No. 26 (H263/41519/LS1) (Dome Café, previously the Red Herring Restaurant)
<b>Applicant</b>	Dome Coffees Australia Pty Ltd
<b>Owner</b>	Dome Coffees Australia Pty Ltd
<b>Zoning</b>	Reserve – Parks and Recreation
<b>Site area</b>	N/A
<b>Structure plan</b>	N/A

### Date Application Received

22 January 2016

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

The Town Planning and Building Committee on 8 August 2006 resolved that notwithstanding the modified parking layout received on 11 July 2006, the Swan River Trust be advised that Council reiterates the following resolution made at its meeting held on 16 May 2006 regarding alterations and additions to the Red Herring Restaurant, Lot 20 (No. 26) Riverside Road, East Fremantle:

*“That Council advise the Swan River Trust:*

- (a) Council objects to the proposed additional dining areas to 26 Riverside Road*
- (b) Council’s grounds for objection are that:*
  - (i) No provision has been made for additional car parking to service the additional floor area of the restaurant.*
  - (ii) Parking proposals by the applicants rely on the use of public parking areas provided by Council for the general public but which are in fact heavily utilised by Red Herring and Left Bank patrons, with neither establishment providing their own parking, and that the applicant’s parking proposal does not have the support of Council.*
  - (iii) This parking does not meet existing demand and it is considered this proposal will exacerbate existing foreshore parking problems.*
  - (iv) Council does not consider the application of a ‘cash in lieu’ payment for car parking would be an appropriate option as this would require Council to construct car parking on existing landscaped foreshore areas.*
  - (v) Council is concerned at the precedent any acceptance of this proposal would create, in terms of considering other applications which give rise to increased parking requirements along the river.*
  - (vi) The proposed service yard and planter are outside the applicant’s lease boundary and in fact situated on land in the ownership of Council and this aspect of the proposal does not have the support of Council.*
  - (vii) It is considered structures of the existing restaurant previously constructed on land in the ownership of Council should be subject to an appropriate legal agreement, before any new structures are considered.*
  - (viii) Council is concerned the proposed dredging breaches Council’s Policy No 79.*
- (c) that if the Trust nevertheless grants approval to the application the following conditions and notes should be applied in the consent:*
  - 1. 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 the Trust’s further consent.*
  - 2. the proposed works are not to be commenced until the Town of East Fremantle 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 the Trust.*
  - 3. 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.*
  - 4. compliance with all relevant engineering, building and health requirements*
  - 5. the doorway to the service yard, if approved, despite Council’s objection, shall not open outwards, but shall be roller or sliding.*

6. *that at all times, except where waste is being collected by a contractor any compactus bins/trolleys associated with the use of the service yard may only be kept in the service yard and may not be stored for collection on the driveway.*
7. *that if approval is given for a commercial vehicle car space to be constructed within the existing grass verge opposite the service yard (notwithstanding Council does not support such a proposal) any such construction shall be in accordance with Council specifications and to the satisfaction of the Chief Executive Officer.*
8. *prior to the commencement of building works the applicant shall pay to Council a cash contribution in lieu of parking, to be based on advice from the Valuer General and any other relevant advice, for the additional 14 spaces required for the proposed additions.*
9. *that the applicant enters into a lease with the Town of East Fremantle for that portion of the development located within Council's reserve with the Valuer General's Office to be consulted on the rental and any costs incurred in establishing the rent, preparing lease documentation and any other legal costs involved, to be met by the applicant.*
10. *The following advice be given to the applicant/owner:*
  - (a) *this decision of the Swan River Trust does not include acknowledgement or approval of any unauthorised development which may be on the site.*
  - (b) *a copy of the approved plans as stamped by the Swan River Trust should be returned to Council and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
  - (c) *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).*

CARRIED

Of importance is condition c) 8 and 9 relating to a car parking shortfall and required cash in lieu payment. Car parking for this subject property has been an ongoing issue and remains the main determining factor to be considered in the assessment of this proposal.

#### **Documentation**

Relevant plans, forms and letter date stamp received on 8 January 2016.

#### **Relevant Council Background**

On 23 February 2006 Council received a copy of an application for additions and alterations (Red Herring Restaurant) from the Swan River Trust. Council was asked for "any comments and recommendations you consider relevant to this application".

Under the Swan River Trust Act 1988, the Swan River Trust was the determining authority for this application as the proposed development is entirely within the Swan River Trust Management Area. In such matters, the Trust does however invariably refer such applications to the relevant local government for comment.

The applicant's architects, Oldfield Knott Architects Pty Ltd, in referring to the application, stated:

*"Generally, the alteration and additions shall include the following:*

- *the ongoing replacement of the existing piling system supporting the original building together with the driving of new piles to support a new partially enclosed deck roofed with a cable edged conical shaped tensile sail structure, together with new boarding platform to the SW corner of the building, and*

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- a 2m wide boardwalk extension of the existing function rooms on the northern side of the building, together with a new deck area at the end of that boardwalk.
- 4 existing mooring piles to the west of the restaurant will be removed and replaced with 6 new piles to facilitate better mooring facilities allowing direct access to the property from the river.
- The installation of a single row of piles along the western edge of the existing restaurant supporting a rubbing streak to protect the building from boats manoeuvring (sic) in the area
- the construction of a new shelter on the end of the existing jetty
- the excavation of approximately 1 metre depth of approx. 60m<sup>2</sup> of riverbed between the new deck to the SW corner of the restaurant and the end of the existing jetty, to facilitate boat access to the area designated during low tide.
- Install a new disabled toilet adjacent to the disabled ramp at the front entry to meet with BCA requirements and install an airlock to main kitchen
- construct a new service enclosure on foreshore land outside of the existing kitchen.”

A report by Acting Planning Officer, Malcolm Lane, was subsequently considered by the Town Planning & Building Committee (Private Domain) on 14 March 2006 and by Council on 21 March 2006.

It was noted in that report:

- the front part of the existing restaurant (entry porch, ramps and planters) had been built outside of the Red Herring lease area and in fact were located on part of the foreshore reserve which is vested in Council's care and control. This had been discovered in 1998 after building works were commenced at the Red Herring without the required building licence.
- on this issue the report commented further:  
*“Ultimately Council allowed the structures which had been built outside of the Red Herring lease area, to remain, although no lease area adjustment, compensatory payment or any other arrangement was made, to properly address the situation in a legal sense. In the current situation, the Chief Executive Officer, on behalf of the Town of East Fremantle as landowner, has signed the application for planning approval with the qualification “that Council reserves the right to provide comments on the proposal...and the Council also reserves its right to deal with the owners of the Red Herring restaurant on lessor/lessee matters”.*
- *The front 3.4 metres of the restaurant is on Council's reserve, not the seabed lease. Council has not received a rental from the restaurant for this area. Council should engage the Valuer General to establish an appropriate rental for the restaurant. This process will need to be undertaken in close consultation with the Department of Planning & Infrastructure.”*

Based on the information provided, the required car parking for the additional floor areas was assessed at 32 spaces.

As:

- (i) the proposal provided for no parking to meet the car parking as required under Town Planning Scheme 3
- (ii) the existing restaurant was providing no parking (rather it was using public car parks for its patrons)
- (iii) there were frequently serious parking shortages in the area (due mainly to Left Bank & Red Herring patrons)

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- (iv) a cash in lieu contribution was not considered appropriate as the only way Council could construct parking in the locality would be to use landscaped areas along the foreshore.
- (v) if council were to support the application, regardless of the above concerns regarding parking, an undesirable precedent may be set in the event of other requested expansions e.g. Left Bank, Aquarama, local yacht clubs etc.

the officer's recommendation was to recommend to refuse the proposal due to the parking shortfall.

The Town Planning & Building Committee (Private Domain) (who were also addressed by Mr Roger Gregson of Oldfield Knott Architects) did not carry the above resolution but instead carried the following resolution:

*"That this matter be deferred pending clarification of the seating and car parking requirements given the information presented to the meeting this evening by the applicant."*

At the Council Meeting of 21 March 2006 a further report, dated 17 March 2006, jointly prepared by Malcolm Lane and the Chief Executive Officer, was considered. This report had been prepared following an onsite meeting and discussions between the applicants and planning staff, in which the applicants provided new information and further clarification of the seating arrangements occurred.

Following those discussions it was agreed by both parties (in Council's case at a planning officer level) the parking shortfall was 14 car spaces. It should be noted that under Town Planning Scheme 3, three formulae are available for calculating the number of bays required and Council is obliged to apply "*whichever (result) is the greater*". In the Chief Executive Officer's view the 14 bay shortfall conclusion is arguably a charitable interpretation of the situation however one which has been accepted. Following this decision the applicants submitted a proposed layout (received 17 March 2006) for the two adjacent car parks which they stated would provide an additional 15 spaces.

However the sketch plan submitted contained no dimensions and it was therefore impossible to assess the proposal against the required standards. The officers concluded a more detailed plan needed to be received and assessed.

It was thus the officer's recommendation that:

*"That Council advise the Swan River Trust that a recommendation to the Trust on this matter has been deferred by Council pending receipt of a detailed parking proposal from the applicants, sufficient to allow a proper assessment of the proposal and further consideration by Council on the matter."*

At the meeting Mr Gregson (Oldfield Knott Architects) addressed the meeting advising that his client considered that as the parking areas adjacent to the Red Herring restaurant were under Council's control, the onus should not be on the applicants to provide a detailed parking proposal. Mr Gregson also drew attention to the grassed area on the east side of Riverside Road opposite the restaurant which, he suggested, could accommodate the parking shortfall.

The Council minutes record that in response, at the invitation of the Mayor, the Chief Executive Officer noted that the request for a "detailed parking proposal" followed the receipt



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of an un-dimensioned sketch plan which the applicants had submitted last Friday (“agenda day”) and which the Works Supervisor, having checked the plan against the site, had advised:

- (i) was an inaccurate plan of the site; and
- (ii) the proposed parking arrangements did not meet relevant standards.

The then Chief Executive Officer advised that in his view in such a situation, where applicants were seeking to rely on a parking proposal they were putting forward, the onus was on the applicants to produce a detailed accurate proposal if they wished Council to consider this in their decision making.

The subsequent Council decision was as follows:

*“That Council advise the Swan River Trust that a recommendation to the Trust on this matter has been deferred by Council to allow further consideration of issues arising from and related to the identified parking shortfall. This consideration to include:*

1. *requirement of the applicant to provide parking as per Town Planning Scheme No 3.*
2. *the sketch of the parking proposal recently submitted by the applicant received on 17 March 2006.*
3. *the availability and use of car parking on the east side of Riverside Road (opposite the restaurant). This to include provision and intent of Town Planning Scheme No 3 and Council’s Foreshore Policy, Policy Plan & Design Guidelines.”*

Following this decision, and notwithstanding the above comments of Mr Gregson, the applicants did subsequently submit a more detailed parking plan. This was received on 5 April. At the Council Meeting of 18 April 2006 the following resolution was carried:

*“The application for alterations/additions to the Red Herring Restaurant be deferred to the Council Meeting of 16 May 2006 to enable the Chief Executive Officer to consult with the Swan River Trust and report back to Council.*

At the Town planning and Building Committee on 8 August 2006, a recommendation was made to the Swan Rover Trust as noted above.

**DETAILS**

Impact on Public Domain

Tree in verge: No impact.  
Light pole: No impact.  
Crossover: No impact.  
Footpath: No impact.  
Streetscape: Modifications to the elevation. Second storey proposed. Streetscape presentation will be altered. New jetties, berths and swimming bath.

**Issues and options considered**

Statutory Assessment

- Part 5 of the Swan River Trust Act
- Town of East Fremantle Planning Scheme No. 3
- Metropolitan Region Scheme
- State Planning Policy 2.6 Coastal Planning Policy

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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.

## Town Planning Scheme No. 3 Assessment

Scheme Provision	Status
4.2 Zone Objectives	A
4.3 Zoning Table	A

**Legislation / Strategic Community Plan / Policy Implications**

Legislation                                      Town Planning Scheme No. 3

Strategic Community Plan

*Key Focus Area*                                      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.

*Outcome*    3.1 Facilitating sustainable growth whilst maintaining urban and natural character

Policy    N/A

**Risk management considerations**

There are no risk management considerations.

**Financial / budget implications**

As per a previous planning condition, there was a shortfall of 14 car parking bays. A cash in lieu payment was conditioned, however this condition was never adhered to and it still outstanding.

**Regional significance**

There is no regional significance.

**Sustainability implications**

There are no sustainability implications.

**Consultation**Advertising

The application was not advertised to surrounding neighbours. The Department of Parks and Wildlife is the determining authority in this instance. The application was referred to Council on 22 January 2016. The application could not be appropriately advertised in a timely manner due to the time constraints required by the Department of Parks and Wildlife.

Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel.

**COMMENT**

In short the below is noted and will be addressed:

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- (i) the proposal gives rise to a parking shortfall.
- (ii) there is already a parking shortfall in the area and this proposal, if implemented, will increase the existing car parking shortfall for the area.
- (iii) the parking proposal/ Traffic Impact Statement submitted by the applicant not only relies on the use of public car parks throughout the Riverside Precinct, but further, if implemented, could impact on Council's current objective of enhancing pedestrian access to the river foreshore.
- (iv) the previous development approval had a condition for a 'cash in lieu' payment for (14) fourteen car parking bays. The application of a 'cash in lieu' payment for car parking would not be an appropriate option as this would require Council to construct car parking on existing landscaped foreshore areas/ or alternatively require Council to restrict and monitor the existing car parking in the area, potentially to the detriment of the area.
- (v) if this proposal is allowed, despite the parking shortfall, it is unlikely to set an undesirable precedent for Council in terms of considering other applications which give rise to increased parking requirements along the river, as existing uses are limited along the river foreshore.
- (vi) the proposed community benefits will improve the amenity of the foreshore and river and may provide (at Council's discretion) a suitable benefit in kind to the community to approve the development.

It is concluded the proposal has significant potential positives and negatives for the Town, however no provisions have been made for additional car parking to service the additional floor area of the accommodation.

The parking proposal / Traffic Impact Statement by the applicant:

- (i) relies on the use of two (adjacent) public car parks, which are already inadequate in terms of potential increased demands of the car park (no. 3, 4 and 5 are approximately 80% full according to the Traffic Impact Statement).
- (ii) the Traffic Impact Statement is considered to be flawed, for example the additional moorings were not considered in the parking assessment and car park 1 and 2 were utilised in the traffic assessment, however the utilisation rate of these bays are low as they are some distance from the subject building and located on the street and have a 4 hour time restriction.
- (iii) did not refer to the relevant provisions in Council's Town Planning Scheme 3, and requested changes to the car parking bays provided to facilitate a loading bay, pick up and drop off bay and an additional disabled car parking bay.

Several parking issues arise from the Traffic Impact Statement:

- (i) The Red Herring restaurant use was permitted with approval for 240 patrons at 1 space per 5 seats, equating to a requirement of 48 bays, and conditioned with a shortfall of 14 bays so a requirement for cash in lieu payment for the 14 bays.
- (ii) The existing Dome Café has a capacity of 143 patrons 1 space per 5 seats is a requirement for 29 bays. The proposed 16 rooms accommodation requires 1 space for each unit plus 1 space for every staff member present at any one time requiring a total of 18 bays. Therefore the café and accommodation requires a total of 47 car parking bays. Additionally (not covered by the Traffic Impact Statement) the leased boat pens (5 pens) require an additional 3 car parking bays to be provided. A total of 50 car parking bays are required.
- (iii) The previous car parking requirement was 48 (conditioned with a shortfall of 14 bays so a requirement for cash in lieu payment for the 14 bays). The proposed development

requires 50 car parking bays and the applicant requests the deletion of any requirement for a cash in lieu payment.

- (iv) The Traffic Impact Statement has concluded in points 1 and 2:
  1. *Designate an additional disabled bay in the Town of East Fremantle Car parking No.4;*
  2. *Designate a bay with the Town of East Fremantle Car park No. 4 as 'set down/ pick up 15 min' to enable guests at the proposed accommodation to drop and pick up baggage;"*
- (v) in essence an additional disabled bay and set down/ pick up bay would reduce the car parking in the area by potentially an additional 3 bays (disabled bays construction standards require approximately 2 standard 2.5 metre car parking bay widths and the set down/ pick up area could not be utilised for car parking further reducing the car parking in the area by 1 bay: total 3 bays).
- (vi) The proposal would if implemented as proposed, result in the requirement for 2 additional car parking bays being required and the loss of 3 existing bays, essentially creating an additional car parking shortfall of 5 bays.
- (vii) The previous shortfall is 14 bays. The proposed application would result in the same 14 bay shortfall with the requirement for an additional shortfall of 5 bays, creating a total shortfall of 19 car parking bays.

The public car park used by the Dome Café is used by other users within the area, however the provision of parking bays for the benefit of the expansion of the operations of the Dome Café can be considered to provide a community benefit in the infrastructure the Dome Café is proposing e.g. public berths and swimming bath.

As an approximate market value on dollar per square metre of space, 19 car parking bays would represent 261.25sqm with a market value of \$1556 per sqm, thereby equating to a cost of \$406,505 for the land purchase alone, notwithstanding any construction costs associated with the 19 car bays shortfall.

The applicant has provided details of additional benefits proposed from the development to the community and are as follows:

- (i) *A new additional fixed deck on the foreshore – located adjacent to the existing café entrance the scheme proposed a new fixed deck of some 50sqm. Accessible to the public 24 hours a day it will offer a combination of fixed general seating, adjacent racks for bicycle access and a hitching post and watering trough for dogs. It will also be constructed in the same style and theme as the recently completed 64sqm area of decking on the south-west corner of the building.*
- (ii) *Swimming baths – The fixed deck noted above will look down onto a proposed natural river-water swimming pool of 21m x 8m in dimension.*
- (iii) *Ramp and floating pontoons – an 8m long ramp will take visitors down from the new fixed deck to the floating pontoon which runs the length of the river swimming bath. This floating pontoon is also the means of access to the casual and permanent berthing.*
- (iv) *The significantly aging existing fixed timber jetty will be removed and replaced with an entirely floating system for both casual and limited leased berthing. (Mixture of motorised and non-motorised, small dinghies, tenders and larger vessels).*
- (v) *Specialist Leased berthing – the berth bays marks as #12 on the plan will provide space for x5 leased pens for vessels around 30ft in length overall. They will be baffed from wake ad wash by the large 3m width casual berthing pontoon. Because all of the amenities in (i) through (iv) are accessible to the general public*

*and are not income producing these berths seek to provide some kind of off-set contribution to the cost of installing and maintaining all of the other amenities.*

- (vi) *Short stay "Dome Inn" accommodation – in the area marked as #13 on the plan it is proposed to development x 16 short stay accommodation units. These will occupy the currently vacant area of the building on the ground floor as well as a new floor in this same part of the building....The "Inn" is to be limited to accommodation services only with the neighbouring Dome Café to be used by the guests for all / any on site eating / drinking.*

The applicants have proposed to re-use the existing building, with an additional storey proposed above the currently vacant restaurant to enable the additions and alterations to be undertaken to provide improved services, facilities and the "Inn" accommodation.

#### Reserve – Parks and Recreation

The subject land is zoned Parks and Recreation under the Local Planning Scheme and under the Metropolitan Regional Scheme. Clause 3.2 Regional Reserves of TPS3 is relevant, which states:

3.2.1 *The land shown as 'Regional Reserves' on the Scheme Map are lands reserved under the Metropolitan Region Scheme and are shown on the Scheme Map for the purposes of the Metropolitan Region Town Planning Scheme Act 1959/WA Planning Commission Act 1985. These lands are not reserved under the Scheme.*

3.2.2 *The approval of the local government under the Scheme is not required for the commencement or carrying out of any use or development on a Regional Reserve.*

*Note: The provisions of the Metropolitan Region Scheme continue to apply to such Reserves and approval is required under the Metropolitan Region Scheme from the Commission for the commencement or carrying out of any use or development on a Regional Reserve unless specifically excluded by the Region Scheme.*

Council are a referral body only. The Department of Parks and Wildlife is the determining authority for this development application for the proposed development.

#### Land use

The Dome Café is defined as a 'restaurant' use under TPS No.3 however given the subject site is on land designated as a Local Reserve under the Scheme, this land use is not categorised within the Zoning Table. The proposed use would be 'Motel' for definition purposes under the Scheme, which states:

*"motel" means premises used to accommodate patrons in a manner similar to a hotel but in which specific provision is made for the accommodation of patrons with motor vehicles and may comprise premises licensed under the Liquor Licensing Act 1988;*

The amendments to the existing use to include a motel "Inn" should therefore be considered as an 'unlisted discretionary use' which is subject to Clause 3.4.2 of the Scheme which states as follows:

"3.4.2 In determining an application for planning approval the local government is to have due regard to -

- (a) the matters set out in clause 10.2; and
- (b) the ultimate purpose intended for the Reserve.”

Council is to have due regard to the purposes intended for the river foreshore area. Notwithstanding the above the Town's Local Planning Strategy 2013 identifies the site as being for 'café/ restaurant/ tourism' uses. As such the proposed use is consistent with the overall intent of the Planning Strategy.

#### Matters to be Considered by Local Government

There are no specific development requirements under the Scheme or Council Policies which relate to development of a non-residential nature on land zoned Reserve. It is noted however the proposed additions to the building are above the currently vacant restaurant (ground floor 222sqm, first floor 311sqm) with an overall height of 7 metres from the existing finished floor level.

This proposal has been assessed against the provisions of Clause 10.2 of the Town Planning Scheme and the development, as proposed, is considered to comply with aims, objectives and proper planning of the area with the exception of the car parking shortfall.

The proposed application has been assessed as per the provisions of the Town of East Fremantle Town Planning Scheme No. 3 Clause 10.2, which states:

- (a) *the aims, objectives and provisions of the Scheme and any other relevant town planning schemes operating within the Scheme area (including the Metropolitan Region 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 submissions to be sought;*
- (g) *any Local Planning Policy adopted by the local government under clause 2.4 or effective under clause 2.6, any heritage policy statement for a designated heritage area adopted under clause 7.2.2, and any other plan or guideline adopted by the local government under the Scheme;*
- (j) *the compatibility of a use or development with its setting;*
- (l) *the cultural significance of any place or area affected by the development*
- (m) *the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;*
- (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; and*
- (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;*
- (v) *whether adequate provision has been made for access by disabled persons;*

It is considered the proposed development is consistent with the existing use of the land. There is no change of use required.

An assessment of all the above criteria has been undertaken against the proposed development. The development (accommodation and associated lot services / facilities) is assessed as being consistent with the restaurant/ service industry currently being undertaken from the location.

Whilst the lot is not listed on the Town's Heritage List or Municipal Heritage Inventory, the site does have a cultural significance to the area and as detailed within the applicant's submission, efforts are being made to ensure the character and cultural significance of the building/ locality is being retained/ recognised.

The natural environment of the area is considered will be protected, especially considering the proposed plan include a swimming area and public pontoons.

The built form of the building will not significantly impact on the locality or on any residential properties.

The amenity of the area is considered will be improved providing the proposed 'public area' remain unrestricted and un-commercialised. The proposed berths, floating pontoon and swimming bath are public areas, which will provide recreational facilities to the local and wider community. The proposed facilities are considered to improve the connection with the areas natural surrounds and will be a benefit to the community and the Town.

Clauses (q), café, (s) and (v) as noted above will be discussed in the parking section of this report.

#### Car Parking

Clause 10.2 (q), café, (s) and (v) of TPS No. 3 requires Council to consider access, egress, car parking and traffic movements to the area. A parking proposal / Traffic Impact Statement has been prepared by the applicant. As previously noted the Traffic Impact Statement is considered to be flawed, as full car parking requirements are not considered and the interpretation of the assessment has not included all relevant issues. The proposed assessment relies on the use of adjacent public car parks, some within a 400 metre distance from the subject site, which are already inadequate in terms of potential increased demands as the car park, whilst others have a 4 hour time limit on the bays thereby limiting their use with regard the proposed accommodation. Car parks no. 3, 4 and 5 (as noted by the applicant) are immediately adjacent the subject property, however the Traffic Impact Statement indicates that they have an approximate 80% capacity rate. The Traffic Impact Statement concludes by recommending changes to the car parking bays provided to facilitate a loading bay, pick up and drop off bay and an additional disabled car parking bay.

The previous approved use 'The Red Herring' restaurant use was permitted approval for 240 patrons at 1 space per 5 seats, equating to a requirement of 48 bays, and conditioned with a shortfall of 14 bays so a requirement for cash in lieu payment for the 14 bays.

The existing Dome Café building has a capacity of 143 patrons (at 1 space per 5 seats) is a requirement for 29 bays. The proposed 16 rooms accommodation requires 1 space for each unit plus 1 space for every staff member present at any one time requiring a total of 18 bays. Therefore the café and accommodation requires a total of 47 car parking bays. Additionally the

additional leased boat pens (5 pens) require an additional 3 car parking bays to be provided. A total of 50 car parking bays are required.

The previous car parking requirement was 48 (conditioned with a shortfall of 14 bays so a requirement for cash in lieu payment for the 14 bays). The proposed development requires 50 car parking bays and the request to delete any requirement for a cash in lieu payment.

The Traffic Impact Statement has concluded additional car parking bays are required to provide a loading bay, pick up and drop off bay and an additional disabled car parking bay in essence an additional disabled bay and set down/ pick up bay would reduce the car parking in the area by potentially an additional 3 bays (disabled bays construction standards require approximately 2 standard 2.5 metre car parking widths and the set down/ pick up area could not be utilised for car parking further reducing the car parking in the area by 1 bay, resulting in the further loss of 3 car parking bays in the area as a result of facilitating the accommodation.

The previous shortfall is 14 car parking bays. The proposed application would result in the same 14 bay shortfall with the requirement for an additional shortfall of 5 bays, creating a total shortfall of 19 car parking bays. The applicant does not wish to pay any form of cash in lieu payment for the car parking shortfall.

Several matters arise from this. As an approximate market value on dollar per square metre of space, 19 car parking bays would represent 261.25sqm with a market value of \$1556 per sqm, thereby equating to a cost of \$406,505 for the land purchase alone, notwithstanding any construction costs associated with the 19 car bays shortfall. Car parking bays 3, 4 and 5 at an 80% are already heavily utilised (Traffic Impact Statement was undertaken January / February 2016). At the time of the assessment the function element of the previous Red Herring restaurant was closed, therefore the use of the car parking at 80% utilisation does not include full utilisation of the building. With a further 3 bays removed and 18 bays required for the proposed accommodation, further stress will be put on the existing car parks. Notwithstanding the shortfall, the accommodation is short stay. The parking immediately adjacent the Dome Café is 24 hour parking. Cars may be left in a bay for in excess of 24 hours, therefore not facilitating to the churn rate of the car park and placing a further stress on the parking demand in the area.

It is proposed to modify the car parking recommendation as proposed in the Traffic Impact Statement to facilitate a further disabled bay and a 'drop off/ pick up' area.

It is noted, with a car parking area, at or near capacity, the proposed use / addition may exacerbate the car parking issues in the area, however this would potentially be to the detriment of the Dome Café as the café in reality does rely on a medium to high churn of patrons. If parking is not available in the area, the churn in patrons will not be able to occur.

It is considered Council has three options available to it:

Option 1: maintain the cash in lieu car parking requirement for 19 car parking bays, ultimately then taking responsibility for any shortfall in car parking. Council would have to provide additional car parking in the area to facilitate the current and additional uses in the area should the cash in lieu payment be required. Parking and related issues would become the responsibility of Council should the cash in lieu payment for car parking be required.

Option 2: delete any requirement for a cash in lieu payment. Facilitate the development. Require the applicant to incur all costs associated with altering existing car parking areas and



alterations to Council land to facilitate a ramp and associated landscape picnic area to the satisfaction of the Chief Executive Officer. Into the 'swimming area' and for all services/facilitates associated with the jetty and swimming pool, e.g. taps, showers, bins etc. to be wholly located on the applicant's lease area. The applicant will further enter into a legal agreement/ notification with the Town at the applicant's expense (similar to a Section 70A notification) indicating:

*The subject lot is located within a Reserved area within proximity of the Swan River Foreshore in a recreational zone. From time to time the location may experience traffic, car parking issues, noise, odour, light spill and other factors that arise from the normal operations of a public reserve. The applicant / owner acknowledges Council cannot ensure/ provide for appropriate car parking for the proposed uses (restaurant and accommodation) as the development lot / leased area has no dedicated on-site car parking. There is a car parking shortfall of (19) car parking bays to the development. The applicant / owner of the lot acknowledges the car parking shortfall of the lot and the use of Council public parking for their approved use. The applicant / owner acknowledges and agrees that Council may from time to time without notice amend/ modify or change the operations/ layout of the car parking areas.*

*The applicant also acknowledges the subject lot is located within proximity to the Swan River and 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 River and Port.*

Option 3: refuse the development in full.

To facilitate the development of the area and an improvement in the amenities provided to the area (and to acknowledge the public services the applicant / owner is providing the Town) Option 2 is recommended to be supported subject to conditions to ensure the community benefit appropriately balances with Council deleting any requirement for a cash in lieu payment.

#### State Coastal Policy – Sea Level Rise

With respect to physical coastal processes, SPP2.6 contains guidance for development setbacks to reduce risks associated with the effects of coastal processes, such as storm surge, tidal movement and sea level change. The guidance for development setbacks also requires consideration of other factors such as ecological values and public access. The Policy indicates that development should be set back sufficient to achieve a 0.9m vertical separation to the existing High Water Mark.

It is for the Department of Parks and Wildlife as the 'approving authority' in this instance to ultimately determine the applicability of the Coastal Policy provisions, however it is considered that any determination should address the possible future liabilities which may arise in consequence of a known risk.

#### **VOTING REQUIREMENTS**

Simple Majority

#### **RECOMMENDATION**

That Council advise the Department of Parks and Wildlife that it supports the application by *Dome Coffees Australia Pty Ltd* for plans and documentation date stamp received on 8

January 2016, for proposed additions and alterations, including additional partial change of use for 16 single bed accommodation rooms and all associated decking, jetties and swimming pool and services/ facilities, located at Riverside Road No. 26 (H263/41519/LS1) (Dome Café, previously the Red Herring Restaurant) East Fremantle, to the Department of Parks and Wildlife subject to the following conditions:

1. A detailed landscaping plan including public access leg to the swimming bath, public areas and the grassed picnic area (on Council property) treatments associated with the development to be submitted to the Town and approved by the Chief Executive Officer prior to the commencement of site works. The plan to include location, species and planting details, having regard to water-wise garden practices and street furniture, taps, bins etc. All works to the public areas on the subject lot and on Council property are to be undertaken by the applicant at the applicant's expense to the satisfaction of the Chief Executive Officer. All works to be should be constructed within 12 months of determination of this applicant.
2. The public access leg (to the proposed swimming pool area) partially located on the Council's land is to be constructed at the applicant's expense to Council's specifications to the satisfaction of the Chief Executive Officer, in consultation with relevant Officers and should be constructed within 12 months of determination of the application. The public access leg is to be kept free from obstructions and remain open to public access at all times.
3. All public areas (pontoon, berths and swimming bath) are not to be utilised for any commercial enterprise without prior approval being sought from Council (except for the leased berths).
4. At the applicant's expense, the applicant is to undertake the following:
  - a. *Designate an additional disabled bay in the Town of East Fremantle Car parking No.4;*
  - b. *Designate a bay with the Town of East Fremantle Car park No. 4 as 'set down/ pick up 15 min' to enable guests at the proposed accommodation to drop and pick up baggage;"*to the specifications of Council to the satisfaction of the Chief Executive Officer, in consultation with relevant Officers. The applicant is to submit to the Town a full car parking plan indicating the above requirements and specifications.
5. A Site and Traffic Management Plan for trades persons and delivery vehicles / site storage to be approved by the Chief Executive Officer in consultation with relevant officers, prior to a Building Permit being submitted.
6. Prior to occupation of the accommodation unit, the applicant to provide a secure external bicycle parking area with a minimum of four bicycle parking bays to be provided to the satisfaction of the Chief Executive Officer, located wholly within the lease area of the Dome Café.
7. The proposed 'accommodation' 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.
8. All plant such as exhaust fans, air conditioners etc. shall be screened from view where it is located on balconies or the external walls of buildings adjacent to any public road or public space.
9. A Rubbish Collection Strategy / Management Plan shall be submitted to and approved by the Chief Executive Officer prior to the commencement of works. Any alterations to the approved plans required as a result of the Strategy / Plan shall be incorporated into the Building Permit plans. The approved Strategy / Plan shall be implemented to the satisfaction of the Chief Executive Officer.

10. The buildings kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.
11. The applicant will further enter into a legal agreement/ notification with the Town at the applicant's expense (similar to a Section 70A notification) indicating:

*"The subject lot is located within a Reserved area within proximity of the Swan River Foreshore in a recreational zone. From time to time the location may experience traffic, car parking issues, noise, odour, light spill and other factors that arise from the normal operations of a public reserve. The applicant / owner acknowledges Council cannot ensure/ provide for appropriate car parking for the proposed uses (restaurant and accommodation) as the development lot / leased area has no dedicated on-site car parking. There is a car parking shortfall of (19) car parking bays to the development. The applicant / owner of the lot acknowledges the car parking shortfall of the lot and the use of Council public parking for their approved use. The applicant / owner acknowledges and agrees that Council may from time to time without notice amend/ modify or change the operations/ layout of the car parking areas.*

*The applicant also acknowledges the subject lot is located within proximity to the Swan River and 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 River and Port."*

12. The swimming pool and jetties to be wholly located in the lease area of the 'Dome Café'.
13. Appropriate safety measures are to be undertaken by the applicant to ensure to continued safety of users of the swimming baths.
14. The jetties to the public berths and swimming baths are to remain open to the general public at all times.
15. All services and facilities associated with the swimming bath, berths and jetties e.g. bins, taps, etc to be located wholly within the lease area of the 'Dome Café'.
16. The applicants acknowledge the development and its site may in the future be subject to the environmental consequences of sea level rise and contaminates associated with past activities and agree to indemnify the Town of East Fremantle and the Department of Parks and Wildlife from any liability arising from these consequences now and in the future to the satisfaction of these Authorities.
17. No signage is approved under this change of use application. A separate planning application is required for any proposed signage. All signage to comply with the Town's Local Planning Policy Design Guidelines - Signage
18. 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.
19. 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.
20. 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.
21. 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,

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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.

22. 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.
23. 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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *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.*
- (c) *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).*
- (d) *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”.*

Mr Nigel Oakey (applicant) addressed the meeting and advised Council of the process his company had already undertaken with the application in consultation with Council and the Swan River Trust and the overall outcome for the community they would like the development to achieve.

**Moved Cr McPhail, seconded Cr Nardi**

**That Council advise the Department of Parks and Wildlife that it supports the application by *Dome Coffees Australia Pty Ltd* for plans and documentation date stamp received on 8 January 2016, for proposed additions and alterations, including additional partial change of use for 16 single bed accommodation rooms and all associated decking, jetties and swimming pool and services/ facilities, located at Riverside Road No. 26 (H263/41519/LS1) (Dome Café, previously the Red Herring Restaurant) East Fremantle, to the Department of Parks and Wildlife subject to the following conditions:**

1. **A detailed landscaping plan including public access leg to the swimming bath, public areas and the grassed picnic area (on Council property) treatments associated with the development to be submitted to the Town and approved by the Chief Executive Officer prior to the commencement of site works. The plan to include location, species and planting details, having regard to water-wise garden practices and street furniture, taps, bins etc. All works to the public areas on the subject lot and on Council property are to be undertaken by the applicant at the applicant's expense to the satisfaction of the Chief Executive Officer. All works to be should be constructed within 12 months of determination of this applicant.**

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2. The public access leg (to the proposed swimming pool area) partially located on the Council's land is to be constructed at the applicant's expense to Council's specifications to the satisfaction of the Chief Executive Officer, in consultation with relevant Officers and should be constructed within 12 months of determination of the application. The public access leg is to be kept free from obstructions and remain open to public access at all times.
3. All public areas (pontoon, berths and swimming bath) are not to be utilised for any commercial enterprise without prior approval being sought from Council (except for the leased berths).
4. At the applicant's expense, the applicant is to undertake the following:
  - a. *Designate an additional disabled bay in the Town of East Fremantle Car parking No.4;*
  - b. *Designate a bay with the Town of East Fremantle Car park No. 4 as 'set down/ pick up 15 min' to enable guests at the proposed accommodation to drop and pick up baggage;"*to the specifications of Council to the satisfaction of the Chief Executive Officer, in consultation with relevant Officers. The applicant is to submit to the Town a full car parking plan indicating the above requirements and specifications.
5. A Site and Traffic Management Plan for trades persons and delivery vehicles / site storage to be approved by the Chief Executive Officer in consultation with relevant officers, prior to a Building Permit being submitted.
6. Prior to occupation of the accommodation unit, the applicant to provide a secure external bicycle parking area with a minimum of four bicycle parking bays to be provided to the satisfaction of the Chief Executive Officer, located wholly within the lease area of the Dome Café.
7. The proposed 'accommodation' 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.
8. All plant such as exhaust fans, air conditioners etc. shall be screened from view where it is located on balconies or the external walls of buildings adjacent to any public road or public space.
9. A Rubbish Collection Strategy / Management Plan shall be submitted to and approved by the Chief Executive Officer prior to the commencement of works. Any alterations to the approved plans required as a result of the Strategy / Plan shall be incorporated into the Building Permit plans. The approved Strategy / Plan shall be implemented to the satisfaction of the Chief Executive Officer.
10. The buildings kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.
11. The applicant will further enter into a legal agreement/ notification with the Town at the applicant's expense (similar to a Section 70A notification) indicating:

*"The subject lot is located within a Reserved area within proximity of the Swan River Foreshore in a recreational zone. From time to time the location may experience traffic, car parking issues, noise, odour, light spill and other factors that arise from the normal operations of a public reserve. The applicant / owner acknowledges Council cannot ensure/ provide for appropriate car parking for the proposed uses (restaurant and accommodation) as the development lot / leased area has no dedicated on-site car parking. There is a car parking shortfall of (19) car parking bays to the development. The applicant / owner of the lot acknowledges the car*

*parking shortfall of the lot and the use of Council public parking for their approved use. The applicant / owner acknowledges and agrees that Council may from time to time without notice amend/ modify or change the operations/ layout of the car parking areas.*

*The applicant also acknowledges the subject lot is located within proximity to the Swan River and 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 River and Port."*

12. The swimming pool and jetties to be wholly located in the lease area of the 'Dome Café'.
13. Appropriate safety measures are to be undertaken by the applicant to ensure to continued safety of users of the swimming baths.
14. The jetties to the public berths and swimming baths are to remain open to the general public at all times.
15. All services and facilities associated with the swimming bath, berths and jetties e.g. bins, taps, etc to be located wholly within the lease area of the 'Dome Café'.
16. The applicants acknowledge the development and its site may in the future be subject to the environmental consequences of sea level rise and contaminates associated with past activities and agree to indemnify the Town of East Fremantle and the Department of Parks and Wildlife from any liability arising from these consequences now and in the future to the satisfaction of these Authorities.
17. No signage is approved under this change of use application. A separate planning application is required for any proposed signage. All signage to comply with the Town's Local Planning Policy Design Guidelines - Signage
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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:*

- (a) This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
  - (b) 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.*
  - (c) 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).*
  - (d) 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”.*
  - (e) That consideration be given to extending the public access boardwalk across the northern and eastern elevations of the building to reconnect with the existing foreshore pathway.*
- CARRIED 4:1

**Note:**

As 4 Committee members voted in favour of the Reporting Officer’s recommendation, pursuant to Council’s decision regarding delegated decision making made on 16 June 2015 this application is deemed determined, on behalf of Council, under delegated authority.

**Reason for Varying the Officer’s Recommendation**

An additional footnote (e) was added for consideration to providing more assets to the public amenity.

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**13. REPORTS BY OFFICERS (COUNCIL DECISION)****REPORT NO 13.1****PROPOSED AMENDMENT 12 TO TOWN PLANNING SCHEME NO. 3 – WOODSIDE HOSPITAL**

**AUTHOR** Jamie Douglas  
Manager Planning Services

**FILE NUMBER** B/TPS3, A12

**ATTACHMENT** 1. Proposed Amendment Map

**AUTHORITY / DISCRETION** Council

Comment [GC1]: Who is the author?

**PURPOSE**

This report considers the application for the rezoning of the Woodside Hospital Site at 18 Dalgety Street site from 'Public Purpose - Hospital' to 'Residential', with a density coding of 'R15'.

**EXECUTIVE SUMMARY**

This Scheme Amendment proposes to rezone the subject site from Reservation – 'Public Purposes – Hospital' to 'Residential', with a density coding of 'R15'. Refer Attachment-Proposed Scheme Amendment.

The intent of the Scheme Amendment 12 is to facilitate redevelopment options for the residential use of the subject site.

The proposed rezoning represents the most appropriate use for the subject site with minimal impact on the heritage place. While, it is considered the proposed rezoning will not impact upon the heritage significance of the structures and the significant trees within the curtilage, careful consideration has been given to how these matters can be appropriately addressed in any subsequent subdivision and development applications.

The proposed residential density – R15 (min lot size 580m<sup>2</sup>) is reflective of that proposed within the immediate surrounding 'Residential' zoned area by Scheme Amendment No. 10. The proposed re-zoning for 'residential use' will facilitate the use of the site for its original residential use and is consistent with the surrounding residential area.

It is therefore recommended that the proposed re-zoning is supported by Council.

**BACKGROUND**

**Suburb/Location** Lot 2015 (No. 18) Dalgety Street, (former Woodside Hospital), East Fremantle

**Applicant Owner** Greg Rowe & Associates for 'LandCorp'  
State of Western Australia

**Zoning** Local Reserve – Public Purposes Hospital  
Metropolitan Region Scheme - Urban



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<b>Site area</b>	The subject site has a total area of approximately 1.00Ha, with frontages of approximately 99.58m to Dalgety Street and Fortescue Street.
<b>Structure plan</b>	N/A

**DETAILS**

The subject site is occupied by the Woodside Hospital [former]. Prior to its use as a hospital, the existing two storey building situated in the centre of the subject site was used as the primary residence of the Moore family.

The original residence was constructed in 1902 and was used as a residence until 1923. The property was then sold in 1924 and for the following 23 years the place served as a private hospital. The Department of Health purchased the property in 1951 and converted it into a public maternity hospital.

A number of other small extensions were added to the complex over the next decade and a new theatre and birthing suites were added in 1966. Following this, only minor alterations have been made.

In 1997 Woodside Hospital was assessed by the Heritage Council of Western Australia and permanently placed on the State Register of Heritage Places. The place was also entered on the Municipal Heritage Inventory for the Town of East Fremantle [adopted 1997] and Listed in the schedule of heritage places in the Town Planning Scheme in 2004. This listing was reconfirmed in the Town's recent heritage review.

In 2003 the Department of Health reviewed all obstetrics facilities in the State and in 2005 it was decided that Woodside Hospital was no longer required because it was too small to achieve optimum safety and economics of scale for a modern hospital and because the existing facilities needed major refurbishment due to their age and changing requirements for medical facilities. In 2006 Woodside Hospital was closed and the remaining patients relocated to new purpose built facilities at Kaleeya Hospital. Its last use as administration and hospital related uses, also ceased in 2015 leaving the place vacant.

The Government now wishes to dispose of the site.

**Issues and options considered**

Council may determine to support or not support the proposed Scheme Amendment or initiate an Amendment for an alternate zone and/or density.

**Legislation / Strategic Community Plan / policy implications***Legislation*Planning & Development Act 2005

The process for Scheme Amendments under the Planning and Development Act 2005 is as follows:

- A Local Government may at its sole discretion decide whether or not to initiate an amendment (sec75). There are no appeal provisions associated with this decision.
- The Minister may direct a Local Government to make an amendment to adopt a new scheme (sec76).
- A Local Government must have due regard to any State Planning Policy in preparing an amendment (sec77).
- Proposed scheme amendment to be referred to the

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Heritage Council (sec79).

- Proposed scheme amendment to be referred to the EPA (sec81)
- Proposed scheme amendment to be referred to relevant public authorities such as Water Corporation, Western Power, the Western Australian Planning Commission (sec83).
- Subsequent to the above, the amendment is publicly advertised (sec84).
- The amendment is submitted for the Final Approval of the Minister (sec87) and if approved published in the Gazette (sec87(3)).

Planning Regulations 2015

The application for re-zoning is deemed to be 'standard amendment' under the Regulations. The applicable process is as follows:

- If the Local Government resolves to adopt a standard amendment, it must publish a notice in the local newspaper, display a copy of the notice at its offices, give a copy of the notice to relevant public authorities and publish the notice on its website and otherwise advertise the amendment as directed by the WAPC.
- The submission period must not be less than 42 days and all submissions must be in writing and received within the submission period.
- The consideration period is 60 days after the end of the submission period or 21 days after advice from the Department of Environment Protection under the EPA Act (sec48F(2)(a)).
- Before the end of the consideration period the LG must pass a resolution to support the amendment with or without modifications or not to support the amendment and advise the Commission accordingly.

Heritage of Western Australian Act, 1990

- The subject site gained permanent entry in the Register of Heritage Places on 6<sup>th</sup> February 1998.

*Strategic Community Plan*

*Key Focus Area  
Aspiration*

Built and Natural Environment.  
Facilitating sustainable growth while maintaining urban and natural character

*Outcome*

Strategic Land Use Planning

*Policy*

There are no policy implications.

**Risk management considerations**

The Council may be directed to amend the scheme by the Commission should it not determine the application for re-zoning within the consideration period prescribed by the Regulations.

### **Financial / budget implications**

The proposed rezoning does not have any financial/ budget implications. However subsequent development may positively impact upon rate income.

### **Regional significance**

Rezoning the subject site from 'Public Purposes – Hospital' to 'Residential' with a density coding of 'R15' is consistent with the 'Urban' zoning under the Metropolitan Region Scheme.

The draft 'Perth and Peel Towards 3.5 Million' is a suite of strategic land use planning documents that aim to accommodate 3.5 million people in the Perth and Peel regions by 2050. The four draft planning frameworks for the Central, North-West, North-East and South Metropolitan Peel sub-regions were released for public comment in May 2015. The subject site is located within the Central Metropolitan Sub-region.

The Central Metropolitan Sub-region Planning Framework strongly encourages urban consolidation and infill development. The Central Metropolitan Sub-region Planning Framework identifies an infill housing target of 900 dwellings within the Town of East Fremantle.

Section 5.2 of the Central Metropolitan Sub-region Planning Framework states that there are a number of measures, statutory mechanisms or provisions available to Local Government to enable urban consolidation. These include up-coding (increasing residential density) and split coding (permitting development at a higher density if a number of requirements are met). Both of these options have incorporated into Scheme Amendment No. 10.

### **Sustainability implications**

#### Environmental

The retention of significant trees on the subject site will be a consideration in respect to any subsequent subdivision and development application.

#### Social

The subject site has heritage significance and has importance in the social history of the Town.

#### Economic

The redevelopment of the site has the potential to significantly contribute to the rate base of the Town.

### **Consultation**

The application has been referred to the Heritage Council pursuant to s. 79 of the Planning & Development Act 2005 as the subject site contains a 'Listed Property' – Woodside Hospital.

The Heritage Council advised on 4 February 2016;

- "1. The subject area contains the State Registered Woodside Hospital. The rezoning of this site from 'Public Purposes – Hospital' to 'Residential' is supported, as this will provide opportunity for a range of appropriate uses, including aged care, child care or residential.*
- 2. Please note that any development proposals which may affect the Hospital will need to ensure that its heritage significance is retained. Development applications will be assessed on their merits and may not be supported if it is not demonstrated that heritage issues are adequately addressed."*

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The application was also referred to the Environmental Protection Authority as it was anticipated that the matter would be determined by Council in March, accordingly advice was sought pursuant to Section 48A (1) (a) of the Environmental Protection Act 1986.

The Authority had not responded at time of writing however its advice is required prior to public notification.

As previously stated, should Council determine to support the application, it would be subject to a period of statutory advertising.

**COMMENT****Density and Land Use**

Currently, the subject site is reserved 'Public Purposes – Hospital'. Clause 3.4.2 of TPS No. 3 states that in determining an application for planning approval the local government is to have due regard to the matters set out in Clause 10.2 of the Scheme and ultimate purpose intended for the Reserve (i.e. Hospital).

The proposed Scheme Amendment will rezone the subject site to 'Residential' with a density coding of 'R15'. The R-Codes require a minimum lot size of 580m<sup>2</sup> with an average lot size of 666m<sup>2</sup> for R15.

Applicable land uses that could be approved within the Residential zone under TPS No. 3. are as follows (P - permitted, A & D - may be approved at discretion of Council);

- Advertising Sign (A);
- Aged or Dependent Persons Dwelling (D);
- Ancillary Accommodation (A);
- Bed and Breakfast (A);
- Civic Use (A);
- Community Purposes (A);
- Educational Establishment (A);
- Family Day Care (A);
- Grouped Dwelling (A);
- Home Occupation (D);
- Home Office (P);
- Industry – Cottage (A);
- Pre-School / Kindergarten (A);
- Single House (P); and
- Telecommunications Infrastructure (A).

It is considered the allowable land uses and density proposed in the rezoning are consistent with that prevailing in the surrounding residential zone. While the proposed density of R15 is slightly higher than the current R12.5 in the surrounding zone, it is proposed in Amendment 10, that the general area be rezoned to R15 to more closely reflect the existing building density. The proposed amendment is therefore consistent with Amendment 10.

The proposed range of land uses will enhance the potential for adaption of the existing structures and conservation of the site's significance in comparison to the existing 'Hospital Reservation' zone. This view is shared by the Heritage Council in its referral response which supports the re-zoning.

#### Heritage Impacts

The subject site is occupied by the Woodside Hospital [former] which is a registered heritage place on the State Register of Heritage Places and the Municipal Heritage Inventory for the Town of East Fremantle.

The proposed Scheme Amendment will rezone the subject site so that the existing heritage place may be used for its original use (residential purposes). This proposal will have minimum impact to the existing heritage place.

The 'Burra Charter' conservation principles are based on the concept of cultural heritage significance and that retaining that significance is the primary objective of conservation of a place. One of the key aspects of conservation is to encourage the continued use of a heritage place through sympathetic adaptation and development where necessary. In the instance the original use was as a large family house. This was subsequently replaced by hospital functions.

Although the original use of the place is just as important as the subsequent uses, it is the hospital use that Woodside Hospital [former] has been known and valued for. However a determining factor in the hospital's closure was the outdated facilities and the extent of the works that would be required for the place to meet current standards. These substantial works would necessarily impact upon the significant building fabric. Accordingly, rezoning from 'Hospital' to 'Residential' is supported, as it facilitates potentially less intrusive redevelopment options. It is noted however that under Clause 7.5 of TPS No. 3, Council may determine to vary any site or development requirement of the Scheme to facilitate the conservation of a heritage place. Therefore, any of the following options could be pursued by a 'would-be' occupant/development:

1. Retention of the buildings in their current form and introduction of a new use with no alterations;
2. Retention of the buildings in their current form, but with substantial alterations to accommodate a new use; or
3. Demolition of portion of the existing heritage place, which may be found to have little or no heritage value and development of a new building to accommodate a new use.

However, the heritage impact of the various options will be appropriately assessed when subsequent development applications are submitted to the Town of East Fremantle and the State Heritage Office.

#### Significant Trees

Consideration has been given to how best to identify and conserve, where practical, significant trees on the site. While the process of rezoning does not in itself present any immediate threat to the trees, this may not be the case when subdivision and development is proposed.

A range of options have been considered and discussions have been held with representatives of LandCorp and the Heritage Council. The parties are in agreement that the best process will be to establish an inventory of the trees on the subject site, establish a criteria for significance and to include reference to these trees within the Register for the Place compiled by the Heritage Council. It is also proposed to amend the Place Record Form in the Town's Municipal Inventory to specify the significant trees which contribute to the heritage significance of the place.

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LandCorp has agreed to fund the Arborist survey which is to be conducted under the following instructions issued to 'Arbor Logic' by the Town;

*"The purpose of the inspection is to;*

- *Undertake an on- site inspection of all trees present on the subject site.*
- *Provide information in regards to the species of each of the identified trees, its current physical attributes, health, age, etc., and any comments deemed pertinent to the identified tree.*
- *Based on the findings of the assessment provide an 'opinion' on the significance of each of the trees regarding physical attributes, age, condition, rarity, climatic impact, etc. and provide a recommended zone of protection for each tree deemed 'significant'.*
- *Identify any trees which may be suitable for relocation (transplanting), and provide indicative time frame and budget requirements as well as any aftercare considerations that may be considered applicable.*
- *Provide any broad-brush purposeful and practical recommendations for any site management, design and construction implications that may apply for any trees identified as being suitable for retention so to ensure their preservation, if undertaken, remains successful."*

It is anticipated the survey and Arborists report will be completed by the end of February. This data will then inform decisions in respect to subdivision and redevelopment.

**VOTING REQUIREMENTS**

A simple majority of Council is required to support the recommendation.

**RECOMMENDATION**

It is recommended that Council:

1. Initiate the proposed Amendment Series 12 to the Town of East Fremantle Town Planning Scheme No. 3, 3 December 2004 pursuant to section 75 of the Planning and Development Act 2005; and
2. Refer the proposed Scheme Amendment to relevant agencies pursuant to Sections 79-83 of the Act; and
3. After compliance with the requirements of Sections 79-83, publicly advertise the proposed Scheme Amendment pursuant with Section 84 of the Act.

Mr Nathan Stewart (Greg Rowe) addressed the meeting in support of his application.

**Moved Mayor O'Neill, seconded Cr White**

**It is recommended that Council:**

1. **Initiate the proposed Amendment Series 12 to the Town of East Fremantle Town Planning Scheme No. 3, 3 December 2004 pursuant to section 75 of the Planning and Development Act 2005; and**
2. **Refer the proposed Scheme Amendment to relevant agencies pursuant to Sections 79-83 of the Act; and**
3. **After compliance with the requirements of Sections 79-83, publicly advertise the proposed Scheme Amendment pursuant with Section 84 of the Act. CARRIED 5:0**

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**12. REPORTS OF OFFICERS (COMMITTEE DELEGATION).....continued**

**REPORT NO 12.2**

**CANNING HIGHWAY NO. 217 (LOT 1 / SP5132) SIGNAGE**

**RESPONSIBLE DIRECTOR** Jamie Douglas Manager of Planning Services

**AUTHOR FILE NUMBER** Andrew Malone Senior Planning Officer  
P/CAN217

**APPLICATION NUMBER** P130/2015

**AUTHORITY / DISCRETION** Town Planning and Building Committee

**PURPOSE**

This report considers an application for signage to be erected on the building and a pole/ pylon sign fronting Canning Highway at 217 (Lot 1/SP5132) Canning Highway, East Fremantle.

**EXECUTIVE SUMMARY**

The issue raised by this application which is relevant to its determination is the impact upon the streetscape and the building – these are considered to be acceptable and are further discussed below.

The proposal is recommended for conditional approval.

**BACKGROUND**

**Suburb/Location** 217 (Lot 1/SP5132) Canning Highway, East Fremantle  
**Applicant** Kingskip Pty Ltd.  
**Owner** C Scalise  
**Zoning** Residential R12.5/ 40 (MRS Primary Regional Road Reserve)  
**Site area** N/A  
**Structure plan** N/A

**Date Application Received**

16 November 2015

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

There are no relevant previous decisions or history which will impact on the determination of this application.

**Documentation**

Relevant plans, forms and letter date stamp received on 16 November 2015

**DETAILS**

Impact on Public Domain

Tree in verge: No impact.  
Light pole: No impact.  
Crossover: No impact.

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Footpath: No impact.  
Streetscape: Signage will be visible from Canning Highway.

**Issues and options considered****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.

## Town Planning Scheme No. 3 Assessment

Scheme Provision	Status
4.2 Zone Objectives	A
4.3 Zoning Table	A

**Legislation / Strategic Community Plan / Policy Implications**

Legislation Town Planning Scheme No. 3  
Policy – Signage Design Guidelines  
Notice of Delegation to Local Governments (18/12/15)  
(extracts below), applications for development on land that is fully or partly reserved for PRR is delegated to LG to determine.

Strategic Community Plan

*Key Focus Area* Primary Regional Road Reserve

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

*Outcome* 3.2 Maintain a safe and healthy built and natural environment.

Policy N/A

**Risk management considerations**

There are no risk management considerations.

**Financial / budget implications**

There are no financial/budget implications.

**Regional significance**

There is no regional significance

**Sustainability implications**

There are no sustainability implications.

**Consultation**

The proposal was not advertised to adjoining landowners. The application has also been referred to Main Roads for comment. The application was forwarded to the Department of Planning for determination. Notice of Delegation to Local Governments (18/12/15) requires applications for development on land that is fully or partly reserved for PRR is delegated to LG to determine.



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Main Roads has no objection to the signs as shown on the drawings subject to conditions as included in the Officer's Recommendation.

Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel.

**COMMENT**

Heritage

The existing building built during the Interwar Period for use as a Masonic Hall is listed in the Town of East Fremantle's Heritage List as having level 1 rarity value and level 2 aesthetic value, architectural merit and integrity. The proposed triangular wall sign located above the entry will cover the Masonic symbol above the door, an important symbol for the heritage character and identification of the building. This sign is 4.5m<sup>2</sup> in area and will be a prominent feature to the front of the building. The proposed signage is considered to impact the heritage character of the building and the streetscape, therefore the proposed triangular entrance sign is conditioned to be deleted.

Signage

The following clauses of the Scheme apply:

*5.9 Advertising Signs*

*5.9.2 Advertising signs are to be designed and constructed having due regard to any relevant local government Policy.*

*5.9.3 In its determination of any application for erection or display of an advertising sign for which planning approval is required, the local government is to take into consideration the likely impact of the proposal on the safety and amenity of the area.*

*10.2 Matters to be considered by local government*

*The local government in considering an application for planning approval is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application —*

*(j) the compatibility of a use or development with its setting;*

*(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;"*

It is considered the proposed signs have been designed having due regard to the Town's Local Planning Policy and the relevant sections of Clause 5.9 and 10.2 of the Town Planning Scheme.

Local Planning Policy – Design Guidelines - Signage

Council adopted the Local Planning Policy – Design Guidelines - Signage (LPP) pursuant with clause 2.4 of TPS No. 3 at its meeting on 21 June 2011. The policy clarifies the range and extent of signage that is allowable.

Under Clause 2.3.2 of the Scheme, Council must have regard to a Policy but is not bound by any provision of a Policy and may vary or disregard a Policy provision where it is considered that it is not inconsistent with the Scheme provisions to do so.

The proposed signs are assessed pursuant to the relevant provisions of the LPP as follows:

**1 March 2016****MINUTES**Wall Signs

Where multiple wall signs are proposed they are to be considered under the following Alternative Performance Criteria (Discretionary) provisions of the Policy. The Alternative Performance Criteria (Discretionary) provisions states:

- *Multiple wall signs or wall signs exceeding the acceptable solution provisions shall only be considered as part of an approved signs regime;*
- *Signs must face a primary space;*
- *Maximum height equivalent to 10% of height of building wall or 2 metres, whichever is greater; and*
- *Maximum length 5 metres.*

Two wall signs are proposed, both located above the entrance of the building. As noted above the proposed triangular sign coving the Masonic symbol is not supported and has been recommended to be deleted. The second façade wall sign is 6.185 metres in length by 0.630 metres in height (overall area approximately 3.9m<sup>2</sup>). This contains the business name in white surrounded by blue fascia.

The proposed signage is considered not to be excessive, even though the maximum length exceeds 5 metres. The wall sign is separately located and is not massed on the building, therefore it will not detrimentally impact on the streetscape or the appearance of the building. The scale and bulk of the building can support such a sign without the sign dominating the front façade.

Pole Sign

A Pole or pylon sign is required to be considered under the following Alternative Performance Criteria (Discretionary) provisions of the Policy:

- *Total height should not exceed 5m.*
- *Total area of each sign face should not exceed 6m<sup>2</sup>.*
- *Double sided signs should be identical in dimension and both sides should be less than 300mm apart.*
- *Only one pole or pylon sign per site (land parcel).*
- *May be internally illuminated.*

The pole sign is 3.7 metres total in height above the ground and is located on private property to the north west of the lot adjoining Canning Highway. The pole signage is visible to Canning Highway vehicle and pedestrian traffic. The overall area of the signage is approximately 5.2sqm. The sign comprises of the company name and logo and directional information.

This sign complies with the "Alternative Performance Criteria" under the Design Guidelines for Signage. The proposed sign does not impede sightlines for traffic. The proposed signage will not impact on the streetscape or the appearance of the building.

**CONCLUSION**

It is considered that the overall extent and scale of the proposed signs (as conditioned) will not conflict with the fabric of the building and will not detract from the streetscape character. Accordingly the proposed signs will comply with the "Alternative Performance Criteria" of the Signs Policy.

It is considered that discretionary approval under the Policy in respect to the proposed wall signs and pole / pylon sign is supported and it is considered that it would be consistent with Clauses 5.9 and 10.2 of the Scheme.

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**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

It is recommended that Council:

(a) exercise its discretion pursuant to the provisions of the Local Planning Policy 'Design Guideline Signage' in respect to the proposed wall signs and pole / pylon sign; and grant approval for signage (one wall signs and one pole / pylon sign) at 217 (Lot 1/SP5132) Canning Highway, East Fremantle in accordance with the Application for Planning Approval received on 16 November 2015, subject to the following conditions:

1. The proposed triangular wall sign located above the entry will cover the Masonic symbol above the door is not approved as part of this application. The Masonic symbol above the door is to remain unobstructed.
2. All signage shall be constructed and installed in accordance with the Local Planning Policy 'Design Guideline Signage' – Part 4 'General Requirements for Signage'.
3. All signage to be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.
4. 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.
5. The works are to be constructed in conformity with the 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 sign and sign structure is to be placed wholly on private property within the lot.
7. Main Roads agreement is to be obtained prior to any modifications.
8. If illuminated it must be of low-level not exceeding 300cd/m<sup>2</sup>, not flash, pulsate or chase.
9. The device shall not contain fluorescent, reflective or retro reflective colours or materials.
10. The type of sign and location must comply with all relevant by-laws and planning schemes made by Council.
11. No other unauthorised signage is to be displayed.
12. The proposed works are not to be commenced until Council has received an application for a Building Permit for the signage and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
13. 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.
14. 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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*

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- (b) *a copy of the approved signage as stamped by Council are attached and the graphics and wording of the signage is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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).*

Moved Cr White, seconded Cr Nardi

It is recommended that Council:

(a) exercise its discretion pursuant to the provisions of the Local Planning Policy 'Design Guideline Signage' in respect to the proposed wall signs and pole / pylon sign; and grant approval for signage (one wall signs and one pole / pylon sign) at 217 (Lot 1/SP5132) Canning Highway, East Fremantle in accordance with the Application for Planning Approval received on 16 November 2015, subject to the following conditions:

1. The proposed triangular wall sign located above the entry will cover the Masonic symbol above the door is not approved as part of this application. The Masonic symbol above the door is to remain unobstructed.
2. All signage shall be constructed and installed in accordance with the Local Planning Policy 'Design Guideline Signage' – Part 4 'General Requirements for Signage'.
3. All signage to be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.
4. 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.
5. The works are to be constructed in conformity with the 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 sign and sign structure is to be placed wholly on private property within the lot.
7. Main Roads agreement is to be obtained prior to any modifications.
8. If illuminated it must be of low-level not exceeding 300cd/m<sup>2</sup>, not flash, pulsate or chase.
9. The device shall not contain fluorescent, reflective or retro reflective colours or materials.
10. The type of sign and location must comply with all relevant by-laws and planning schemes made by Council.
11. No other unauthorised signage is to be displayed.
12. The proposed works are not to be commenced until Council has received an application for a Building Permit for the signage and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
13. 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.
14. This planning approval to remain valid for a period of 24 months from date of this approval.

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*Footnote:*

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

- (a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) a copy of the approved signage as stamped by Council are attached and the graphics and wording of the signage is to conform with the approved plans unless otherwise approved by Council.*
- (c) 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).*

Amendment

**Moved Mayor O'Neill, seconded Cr Collinson**

**That approval for the 3.660 high pole / pylon sign be refused.**

CARRIED 3:2

The substantive motion, as amended was put.

**Moved Cr White, seconded Cr Nardi**

**It is recommended that Council:**

- (a) exercise its discretion pursuant to the provisions of the Local Planning Policy 'Design Guideline Signage' in respect to the proposed wall signs; grant approval for signage (one wall sign) at 217 (Lot 1/SP5132) Canning Highway, East Fremantle in accordance with the Application for Planning Approval received on 16 November 2015, subject to the following conditions:**
  - 1. The proposed triangular wall sign located above the entry will cover the Masonic symbol above the door is not approved as part of this application. The Masonic symbol above the door is to remain unobstructed.**
  - 2. The proposed pylon / pole sign located to the north of the lot (3.7 metres total in height with an area of 5.2sqm) is not approved as part of this application.**
  - 3. All signage shall be constructed and installed in accordance with the Local Planning Policy 'Design Guideline Signage' – Part 4 'General Requirements for Signage'.**
  - 4. All signage to be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.**
  - 5. 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.**
  - 6. The works are to be constructed in conformity with the 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.**
  - 7. The sign and sign structure is to be placed wholly on private property within the lot.**
  - 8. Main Roads agreement is to be obtained prior to any modifications.**
  - 9. If illuminated it must be of low-level not exceeding 300cd/m<sup>2</sup>, not flash, pulsate or chase.**

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10. The device shall not contain fluorescent, reflective or retro reflective colours or materials.
11. The type of sign and location must comply with all relevant by-laws and planning schemes made by Council.
12. No other unauthorised signage is to be displayed.
13. The proposed works are not to be commenced until Council has received an application for a Building Permit for the signage and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
14. 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.
15. 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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved signage as stamped by Council are attached and the graphics and wording of the signage is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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).*

CARRIED 3:2

Reason for Varying the Officer's Recommendation

The Committee was of the opinion to reduce the amount of signage in the Town and consider the position of the sign redundant.

Note:

As the Reporting Officer did not support the amended resolution, the Committee's delegation was not exercised.

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**AGENDA****REPORT NO 12.3****HUBBLE STREET NO. 62 (LOT 271) ALTERATIONS AND ADDITIONS TO EXISTING DWELLING**

<b>RESPONSIBLE DIRECTOR</b>	Jamie Douglas, Manager of Planning Services
<b>AUTHOR</b>	Christine Catchpole, Planning Officer
<b>FILE NUMBER</b>	P/HUB62
<b>APPLICATION NUMBER</b>	P146/15
<b>AUTHORITY / DISCRETION</b>	Town Planning and Building Committee

**PURPOSE**

This report considers a planning application for alterations and additions to the rear of the existing dwelling.

**EXECUTIVE SUMMARY**

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

- Lot boundary setback (rear) – 1.0 metre rear boundary setback required; nil proposed (Residential Design Codes).
- Lot boundary setback (southern side) – 1.5 metres required; 1.36 metres proposed (Residential Design Codes).
- Open space – 50% required; 47.6% proposed (Residential Design Codes).
- Roof Pitch – 28° - 36° required; 25° proposed (Residential Design Guidelines).

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

**BACKGROUND**

It is proposed to extend the dwelling constructed approximately 8 years ago a further 13 metres to the rear boundary for half the width of the dwelling. This will increase the size of the existing living area to provide a larger living space and kitchenette, with stacking doors opening to a courtyard. As such the amount of open space on site will be reduced to 47.6% (applicant's calculations). There will be some internal alterations to accommodate the changes to existing walls and windows.

The extended portion of the building will follow the existing building line, which is set back approximately 1.3 metres for the full extent of the lot finishing on the rear boundary. There are no windows proposed on the rear boundary and highlight windows with a sill height of 1.6 metres from finished floor level are indicated on the southern elevation. The lot to the south has outbuildings extending from the rear of the dwelling the full length of the lot to the boundary.

<b>Suburb/Location</b>	No. 62 (Lot 271) Hubble Street, East Fremantle
<b>Applicant</b>	E Franco
<b>Owner</b>	E Franco

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<b>Zoning</b>	Town Planning Scheme No. 3 - Residential R20 MRS – Urban
<b>Site area</b>	506m <sup>2</sup>
<b>Structure plan</b>	Not Applicable

**DETAILS****Impact on Public Domain**

Tree in verge:	No impact.
Light pole:	No impact.
Crossover:	No impact.
Footpath:	No impact.
Streetscape:	No impact.

**Town Planning Scheme No. 3 Assessment**

Scheme Provision	Status
4.2 Zone Objectives	A
4.3 Zoning Table	A

**Residential Design Codes Assessment**

Design Element	Required	Proposed	Status
Open Space	50%	47.6%	D
Outdoor Living	30sqm	54sqm	A
Car Parking	2	As existing	A
Site Works	Less than 500mm	~200mm	A
Visual Privacy	6.0m	N/A not >500mm above NGL	A
Overshadowing	25%	<25%	A
Drainage	On-site	On-site	A
Lot Boundary Setback	>1m	<1m	D

**Local Planning Policies 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	N/A
3.7.5 Demolition	N/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	N/A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	N/A
3.7.15-20 Precinct Requirements	A

**Legislation / Strategic Community Plan / policy implications**

**Legislation**                      Town Planning Scheme No. 1 (TPS 1)  
Residential Design Codes of WA (RDC)  
Fremantle Port Buffer Zone – Area 2

**Strategic Community Plan**      Strategic Community Plan 2015 - 2025



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<i>Key Focus Area</i>	Built and Natural Environment
<i>Aspiration</i>	Facilitating sustainable growth whilst maintaining urban and natural character.
<i>Outcome</i>	N/A
<i>Policy</i>	Residential Design Guidelines 2015 (as amended) (RDG).

**Risk management considerations**

There are no risk management considerations.

**Financial / budget implications**

There are no financial budget implications.

**Regional significance**

There is no regional significance.

**Sustainability implications**

There are no sustainability implications.

**Consultation**

Town Planning Advisory Panel Comments

The application was not referred to the Town Planning Advisory Panel as the proposal has no impact on the streetscape.

Advertising

The application was advertised to the five adjoining landowners to the side and rear and comment invited from 7 to 21 January 2016. No comments were received.

**COMMENT**

Lot boundary setbacks

The proposed additions and alterations to the dwelling, do not comply with the requirements of the RDC in respect to side and rear lot boundary setbacks. A 1.0 metre setback from the rear and a 1.5 metre setback from the side boundary are required. The applicant has argued that the reduced setbacks are acceptable on the basis that adjoining 'on boundary walls', that is walls 600mm or close to the boundary exist on the adjoining properties. While the lot to the rear does have an outbuilding wall with a nil setback and a shed with a minimal setback these structures are not directly opposite the proposed 'on boundary wall', but more so on the northern half of that lot.

The adjoining lot to the south has a line of outbuildings and shed type structures extending along the boundary to the rear that cannot be viewed as a continuous wall of a permanent structure. Notwithstanding, because of the location of these outbuildings along the boundary it is unlikely the proposed wall will have a negative impact on the amenity of the property at No. 64 Hubble Street. Also, the reduced setbacks are considered supportable on the basis the 'Design Principles' are satisfied, in that the building does not unnecessarily contribute to building bulk on the adjoining lot, provides for adequate sun and ventilation to open spaces and adjoining properties and minimises the extent of overlooking and the resultant loss of privacy on adjoining properties. It is also noted the reduced setback from the southern side boundary is

minimal, that is 200mm. Any further overshadowing caused by the extension of the building will be across an area already occupied by outbuildings.

Furthermore, adjoining landowners who might be impacted by the reduced setbacks have not indicated any concern with the proposal.

#### Open space

The open space requirement of the RDC has not been met and whilst this is not ideal the applicant argues that the 'Design Principles' have been met in that the streetscape character is retained, natural sunlight to the dwelling is maintained, the building bulk in respect to the extension has been minimised, as it is single storey and the extension allows the occupants to use the space for outdoor activities. The argument is supported in this instance as no significant trees are required to be removed to allow the dwelling to be extended. Given the above circumstances the 3.4% shortfall in open space is considered supportable.

#### Roof pitch

The roof form of the proposed extension is a pitched roof of approximately 25° so the additions to the dwelling will not meet the 28° - 36° requirement of the RDG in respect to roof pitch, however, this roof pitch is considered acceptable as it has a lesser impact in terms of building bulk and height on adjoining properties, cannot be seen from the street and complements the existing roof line.

### **VOTING REQUIREMENTS**

Simple Majority.

### **RECOMMENDATION**

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

- (a) Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to permit a rear lot boundary setback of less than 1.0 metre and a southern lot boundary setback of less than 1.5 metres;
- (b) Clause 5.1.4 – Open Space of the Residential Design Codes of WA to allow open space on the site of less than 50%; and
- (c) Clause 3.7.8.3 of the Residential Design Guidelines 2015 to allow a roof pitch of less than 28°;

for alterations and additions at No. 62 (Lot 271) Hubble Street, East Fremantle, in accordance with the plans date stamped received 23 December 2015, subject to the following conditions:

1. If requested by Council within the first two years following installation, the Colourbond 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.
2. 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.
3. The proposed works are not to be commenced unless there is a valid building permit and the building permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. 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.

5. The proposed alterations and additions are not to be used until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
6. 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.
7. 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.
8. 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.
9. 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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *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.*
- (c) *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.*
- (d) *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).*
- (e) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

**Move Cr M McPhail, seconded Mayor O'Neill**

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

- (a) **Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to permit a rear lot boundary setback of less than 1.0 metre and a southern lot boundary setback of less than 1.5 metres;**
- (b) **Clause 5.1.4 – Open Space of the Residential Design Codes of WA to allow open space on the site of less than 50%; and**
- (c) **Clause 3.7.8.3 of the Residential Design Guidelines 2015 to allow a roof pitch of less than 28°;**

**for alterations and additions at No. 62 (Lot 271) Hubble Street, East Fremantle, in accordance with the plans date stamped received 23 December 2015, subject to the following conditions:**

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1. If requested by Council within the first two years following installation, the Colourbond 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.
2. 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.
3. The proposed works are not to be commenced unless there is a valid building permit and the building permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. 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.
5. The proposed alterations and additions are not to be used until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
6. 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.
7. 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.
8. 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.
9. 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:*

- (c) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (d) *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.*
- (c) *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.*

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- (d) *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).*
- (e) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED 5:0

**Note:**

As 4 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 16 June 2015 this application is deemed determined, on behalf of Council, under delegated authority.

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**REPORT NO 12.4**

**GLYDE STREET NO. 11 (LOT 901) NEW DWELLING**

<b>RESPONSIBLE DIRECTOR</b>	Jamie Douglas Manager of Planning Services
<b>AUTHOR</b>	Andrew Malone Senior Planning Officer
<b>FILE NUMBER</b>	P/GLY11
<b>APPLICATION NUMBER</b>	P144/2015
<b>AUTHORITY / DISCRETION</b>	Town Planning and Building Committee

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**PURPOSE**

This report considers an application for a two storey single dwelling with associated swimming pool at 11 (Lot 901) Glyde Street, East Fremantle.

**EXECUTIVE SUMMARY**

The proposal raises the following key issues with regard to the determination of the application:

- Overshadowing
- Overlooking
- Front and Side setback
- Roof pitch

The proposed dwelling in all other respects (as conditioned) is considered to comply with the Residential Design Codes and RDG. A similar application P107/14 was previously approved by Council. This proposed design is significantly consistent with the previous development approval. The dwelling is recommended for approval subject to conditions.

**BACKGROUND**

<b>Suburb/Location</b>	11 (Lot 901) Glyde Street, East Fremantle
<b>Applicant</b>	Swell Homes
<b>Owner</b>	A & K Davidson
<b>Zoning</b>	Residential R 20
<b>Site area</b>	456m <sup>2</sup> (vacant land)
<b>Structure plan</b>	N/A

**Date Application Received**

21 December 2015

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

1 September 2015 That Council exercise its discretion in granting approval for proposed two storey single dwelling with associated swimming pool at 11 (Lot 901) Glyde Street, East Fremantle, subject to conditions.

**Documentation**

Relevant plans, forms and letter date stamp received on 21 December 2015

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## DETAILS

### Impact on Public Domain

- Tree in verge : No impact  
Light pole : No impact  
Crossover : 6.2 metre wide new crossover. Conditioned to comply with a 3.0 metre wide crossover.  
Footpath : No impact  
Streetscape : New two storey single dwelling.

## Issues and options considered

### 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.

### Town Planning Scheme No. 3 Assessment

Scheme Provision	Status
4.2 Zone Objectives	A
4.3 Zoning Table	A

## Legislation / Strategic Community Plan / Policy Implications

Legislation	Town Planning Scheme No. 3 Policy - Residential Design Guidelines
Strategic Community Plan	Not applicable.
Key Focus Area	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.
Outcome	3.2 Maintain a safe and healthy built and natural environment.
Policy	Not applicable.

## Risk management considerations

There are no risk management considerations.

## Financial / budget implications

There are no financial/budget implications.

## Regional significance

There is no regional significance.

## Sustainability implications

There are no sustainability implications.

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**Consultation**

Advertising

The application was advertised to surrounding neighbours between 7 and 21 January 2016. At the close of advertising, Council has not received any comments from the surrounding neighbours.

Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel as a similar proposal was considered by the TPAP previously. This application was considered by the Town Planning Advisory Panel at its meeting held on 26 August 2014 and the following comments were made:

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
Panel supports the proposed development and commends the negotiations / discussions with the neighbours with regard to dwelling design, overlooking and overshadowing.	<p>The Panels comments were forwarded to the applicant, however due to the time constraints associated with the Panel's comments and the finalisation of the Town Planning and Building Committee Agenda, comment from the applicant could not be included in the Officer's report at this time.</p> <p>As the proposed development was supported by the Panel, comments from the applicant were not considered necessary.</p>	The Panel's comments are acknowledged and agreed with.

**COMMENT**

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	50%	59%	A
Outdoor Living	30sqm	> 30sqm	A
Car Parking	2	2	A
Site Works	Less than 500mm	Less than 500mm	A
Overshadowing	25%	26%	D
Drainage	On-site	On-site	A

Local Planning Policies 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	A
3.7.5 Demolition	N/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	A
3.7.12 Pergolas	N/A



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3.7.13 Incidental Development Requirements	A
3.7.14 Footpaths and Crossovers	D
3.7.15-20 Precinct Requirements	A

The adjoining neighbours to the north and south were engaged in the original design process of the previously approved dwelling. The subject lot was subsequently sold. The current owner has significantly kept the intent of the original design, however modifications are proposed to the original design. A generous rear setback allows the southern neighbour to retain views to the port.

A significant olive tree is located on site. The olive tree is proposed to be retained and relocated on site by the applicant.

Front Fence

The front fence is stated as being 1.0 metre in height. No details have been provided for the front fence. A condition has been included in the Officer's Recommendation to require all street and front fencing to be visually permeable and to comply with Councils Acceptable Development Criteria of the RDG Element 3.7.11 provisions for front fences.

Crossover

The applicant has requested a crossover width of 5.8 metres, greater than permitted within the Town's RDG for crossovers. This is not considered acceptable. The Town Planning and Building Committee on 2 February 2016 resolved to:

1. Council endorse the proposed amendments to the 'Local Planning Policy - Residential Design Guidelines 3.7.14 Footpaths and Crossovers Performance Criteria and Acceptable Development Provisions A2.2, A2.3, A2.4 as outlined:  
A2.2 **Amended Policy** - The following outlines the prescribed maximum crossover widths:
  - For lots 12 metres in width or less the maximum width is 3.0 metres and
  - For lots 12 metres or more the maximum width is 30 % of the lot frontage up to a maximum width of 5.0 metres. No crossovers are to be constructed over the maximum width of 5.0 metres.A2.3 Precinct materials: **Proposed to be deleted.**  
A2.4 **Amended Policy** - All crossover materials will be at the discretion of the Chief Executive Officer. Crossovers are to be constructed as per Council's Crossover Specification requirements.
  - All other Policy requirements relating to the Local Planning Policy - Residential Design Guidelines 3.7.14 Footpaths and Crossovers are to remain the same. Policy numbers to be amended and modified as required.
2. Pursuant to Clause 2.4 of the Town of East Fremantle Town Planning Scheme No. 3, Council resolves to publicly advertise the proposed amendments to the 'Local Planning Policy - Residential Design Guidelines - September 2012'.
3. The Town of East Fremantle to amend as required Council's Crossover Specification requirements to align with the Local Planning Policy - Residential Design Guidelines 3.7.14 Footpaths and Crossovers Performance Criteria and Acceptable Development Provisions.

A condition has been included in the Officer's Recommendation to require any new crossover to comply with Council's amended crossover requirements. The overall width of the lot is 11.0

metres and therefore for lots 12 metres in width or less the maximum width of a crossover is 3.0 metres. The crossover is to have a maximum width of 3.0 metres and to be designed to Council's specifications. A condition has been included in the Officer's Recommendation to require the applicant to comply with the 'Acceptable Development' provisions of the RDG.

#### Overshadowing

The proposed development overshadows the neighbouring lot to the south by 26% (previous development application as granted planning approval for 27.4% overshadowing). The overshadowing 'Deemed to Comply' provisions of the R-Codes requires a maximum of 25% overshadowing of the adjoining lot. The proposed dwelling required to be assessed under the 'Design Provisions' of the R-Codes for overshadowing, which state:

- P2.1** *Effective solar access for the proposed development and protection of the solar access.*
- P2.2** *Development designed to protect solar access for neighbouring properties taking account the potential to overshadow existing:*
- *outdoor living areas;*
  - *north facing major openings to habitable rooms, within 15 degrees of north in each direction; or*
  - *roof mounted solar collectors.*

The applicant is seeking Council discretion of 1% over the 'Deemed to Comply' provisions of the R-Codes. The applicant has released a copy of the plans to the adjoining affected neighbour. The neighbour has commented:

*"Although there are some changes the overall impact is not dissimilar to the original plans so we have no comments regarding these.*

*The location of the tree on the southern boundary just beyond our outside deck is a critical element and works well to soften the impact on the house for us; we would just like to ensure that this will happen."*

The dwelling has been designed to maximise setbacks adjoining the southern neighbour's outdoor area. Increased setbacks adjoining outdoor habitable areas and increased first floor setbacks minimises overshadowing to those areas. The development has been designed to protect the solar access for neighbouring properties where practical.

Due to the minor nature of the variation to the 'Deemed to Comply' provisions of the R-Codes and the protection of the neighbours amenity, it is considered the proposal complies with the 'Design Provisions' of the R-Codes and therefore can be supported.

#### 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 metre above natural ground level, and positioned so as to overlook any part of any other residential property behind its street 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.

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The plans and window design/ layout have been significantly amended / altered to reduce the overlooking from the plan that was previously approved. This reduces the extent of overlooking into the northern neighbour's lot. There is no overlooking to the southern neighbour.

Notwithstanding the fact the adjoining neighbours have approved of any proposed overlooking, the 'Design Provisions' of 5.4.1 of the R-Codes allows for:

- 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.*
  
- 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).*

So as to take advantage of panoramic north-western views, the rear first floor sunroom windows will overlook into the northern neighbour's property, however this is overlooking the neighbour's rear access leg and a garage, both not habitable spaces.

Overlooking diagrams on sheet A1.02 demonstrates the previous approval and the proposed overlooking. It also demonstrates that oblique views, rather than direct views extend beyond the northern boundary. The viewing cones fall over areas not deemed to be directly habitable areas and outdoor living space under the requirements of the R-Codes.

The overlooked areas are solely over a driveway to the northern neighbour. The 'Design Provisions' as noted, specifically element 1 above, are considered to be adequately addressed through the location of windows and the minimal amount of direct overlooking of active habitable spaces and outdoor living areas of the adjacent dwelling.

Front Setback

The proposed development incorporates a front setback variation to the Acceptable Development Provisions of Element 3.7.7 of the RDG (front boundary) setback requirements. The proposed set back from the front boundary is required to be 6.0 metres (assessed as per R20).

The proposed store and carport are located 2.5 metres from the front boundary and these setbacks are consistent with the previous approval. There is no change to the design of the store and carport.

The store and carport whilst set forward of the required 6.0 metre street set backs are considered to have been designed so as to minimise street impact and integrate with the

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existing built form of the adjoining dwellings. The dwelling as a whole has also been located forward of the building line to retain neighbour's viewing corridors.

The proposed store is proposed adjoining a simultaneously constructed carport on the adjoining lot. The first floor is set back 4.0 metres from the front lot boundary. The LPP RDG Element 3.7.7 provides performance criteria by which to assess proposed variations to the setback requirements. This is summarised below.

Side Boundary Setbacks

Boundary Setbacks							
Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status
Side (south)							
Ground floor	Dwelling (WC)	2.0m	2.8m	N	1.0m	0.185	D
Side (North)							
First floor	Dwelling	6.5m	15.9m	Y	4.2m	2.1m	D
First floor	Dwelling	6.8m	8.8m	Y	3.3m	2.76m	D
Rear (West)							
	Plant Room / Bath	2.8m	6.5m	N	1.0m	Nil	D

The southern and northern first floor elevations, as well as the plant /bath room, as outlined in the table above, require Council to vary the Town's Acceptable Development Criteria of the RDG. The LPP RDG Element 3.7.7 provides performance criteria by which to assess proposed variations to setback requirements. This is summarised below.

*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.*

The proposed carport is set back 2.5 metres from the front boundary. Whilst this is forward of the building line, the carport has been integrated into the overall design of the dwelling. The proposed setback is consistent with the previously approved development.

The proposed built form of the dwelling is set back to match the traditional setback of the immediate locality and is consistent with the adjoining dwelling to the south which is setback 4.8 metre with the carport located 2.5 metres from the front boundary. The store is proposed to be constructed simultaneously abutting the neighbour's carport.

With regard to the prevailing traditional street setback, the below table illustrates the current street set back:

Street Setbacks			
Wall Orientation	Wall Type	Required Setback	Existing Setback
13 Glyde Street (south)			
	Dwelling	6.0m	4.8m
	Carport	4.5m	2.5m
11 Glyde Street (proposed)			
	Store	6.0m	2.5m
	Carport	4.5m	3.8m
First Floor	Dwelling	6.0m	4.0m
9 Glyde Street (north)			

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	Patio	6.0m	2.3m
	Dwelling	6.0m	4.4m

The existing setbacks of the streetscape on Glyde Street are varied. Several dwellings have a nil setback to the front of the street. The prevailing streetscape is set forward of the required 6.0 metre building setback. The proposed dwelling has been designed to match the immediately adjoining dwellings.

The overall dwelling has a contemporary design that is sympathetic with the adjoining dwellings and is significantly similar to the previously approved dwelling. The design has attempted to have minimal impact to surrounding neighbours and to the streetscape, with the dwelling excavated into the lot. The proposed front setback while forward of the required 6.0 metre front setback has been designed to respond to the prevailing street set back.

*P1.2 Additions to existing contributory buildings shall be setback so as to not adversely affect its visual presence.*

The subject lot is currently a vacant lot.

The proposed dwelling front setback variation has been assessed as per P1.1 above. It is considered the proposed development maintains the intent of the previous design which was designed to ensure the neighbours amenity where possible is not adversely affected. The proposed design is considered to have no significant impact on the visual presence of the streetscape or adjoining neighbours and has been articulated to minimise any perceived scale and bulk issues associated with a front set back variation.

*P1.3 Developments are to have side setbacks complementary with the predominant streetscape.*

The proposed set back to the southern, northern and western elevations require Council to assess the set back as per Performance Criteria of the RDG.

The proposed setbacks are similar to the previously approved setback

The northern first floor wall is 15.9 metres and 8.8 metres in length respectively. There is a required "Deemed to Comply" set back of 4.2 metres and 3.3 metres (based on major window openings of table 2b of the R-Codes) from the northern boundary, however the applicant is proposing a setback of 2.1 metres and 2.7 metres. The proposed setbacks from the dwelling adjoin a driveway to the neighbour's (northern) lot which is approximately 3.2 metres in width; therefore the proposed minimum setback to the adjoining northern dwelling is 5.3 metres. The two areas where the openings are considered major openings are at the front upper bedroom and rear 'sunroom'. The front bedroom overlooks the front of the property. The sunroom overlooks a garage area/ turning circle. Whilst the dwelling is required to be assessed for a setback with a major opening, the overlooking from the major opening is considered minor and can be supported, therefore the northern first floor wall is considered to have minimal impact on the amenity of the adjoining neighbour. The proposed setback can be supported

The proposed ground floor store and 'wc' on the southern boundary are proposed to be built on the boundary for the purposes of definition under the RDC. Buildings on the boundary: A maximum 'Acceptable Development' length of 9 metres and a height of 3.0 metres is permitted for a wall constructed on one boundary only, however the proposed design incorporates three

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sections of parapet walls, two on the southern boundary (total length 9.9 metres) with a total maximum height less than 2.0 metres. The 'wc' at 2.7 metres in length and is less than 2.0 in height from natural ground level. The minor nature of the 'wc' will not impact on the southern neighbour. The proposed height of the wall at 2.0 metres is only 0.2 over any dividing fence height and as such does not have any significant scale or bulk issues.

The western boundary wall (plant room and bathroom) requires a "Deemed to Comply" set back of 1 metre from the boundary (based on the store room already being located on the boundary), however the applicant is proposing a nil setback. The proposed wall is lower in height than the existing boundary wall and therefore the plant and bathroom structure will not be visible by the western neighbour. The proposed plant and bathroom building are considered to have no impact to adjoining neighbours.

The proposed setbacks to the southern and northern lot boundaries are consistent with the area. Both the southern and northern neighbours signed previous copies of the plans (design is consistent with previous approval) indicating support for the development. It is considered the proposed side set backs are consistent with the adjoining dwellings with regard to wall lengths. While both adjoining dwellings are single storey, the proposed dwelling (2 storey) has been designed to significantly match the overall roof heights of the adjoining dwellings (height compliant), therefore the proposed impact to the street is considered minor. It is also considered the side set back variations do not impact on the bulk and scale of the dwelling as viewed by adjoining neighbours, as vegetation and building articulation break up the proposed structure.

Based on the proposed design, it is considered that the revised plans reduce impacts to the streetscape and character of the area. The proposed height and set back from the boundaries of the walls do not significantly impact on the scale or bulk of the dwelling and are consistent with the previous approval, therefore it is also considered the boundary walls have no significant negative impacts.

Roof Pitch

The proposed roof is a skillion roof. The proposed dwelling has a proposed 5° roof pitch.

The Acceptable Development Provisions of Element 3.7.8 Roof Form and Pitch states:

*A4.2 A contemporary roof form or roof pitch that is less than 28° or greater than 36° shall be approved where the applicant demonstrates compatibility with the immediate locality.*

The Performance Criteria states:

*P4 Roof forms of new buildings complement the traditional form of surrounding development in the immediate locality.*

The proposed additions have been redesigned from a 9° pitch to a 5° pitch. The proposed redesign and amended pitch lowers the overall building height to ensure compliance with the height requirements of the Town.

The proposed roof form maximises the viewing corridors and vistas for surrounding neighbours and also reduces the overshadowing impact to the southern neighbour (minor discretion for overshadowing of 1%). The roof form and pitch is contemporary in nature and is

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considered to complement the traditional form of surrounding development in the immediate locality. It is considered appropriate in this instance to have a roof pitch of 5° as it complements the overall design of the dwelling and maintains a distinction between the modern design and traditional streetscape.

The proposed roof form and pitch minimises the impact to adjoining neighbours and to the streetscape. The proposed roof is considered appropriate and therefore can be supported by Council.

**CONCLUSION**

The height, scale and setback of the proposed dwelling are sympathetic with the prevailing built form in the streetscape. The proposed development has been designed in conjunction with the adjoining neighbours (previous approval) to minimise any potential impacts. The proposed design is consistent with the previous approval.

The proposed dwelling has been designed to mitigate any adverse impact with regard to scale or bulk of the dwelling as it has been designed to be articulated vertically and horizontally along the side and front boundaries. The proposed front set back has resulted from the prevailing street set back and traditional form of dwellings in the area. The design of the dwelling whilst contemporary in nature has been designed to protect the locality and the adjoining neighbours. The proposal does not significantly negatively impact on the streetscape or adjoining neighbours.

Whilst there are a number of discretions required these discretions are considered an appropriate outcome for the adjoining neighbours and a sympathetic design for the locality. The applicant has had due regard to the Performance Criteria of the RDG and the Design Provisions of the R-Codes to provide a design that recognises the character of the area and the design requirements of the neighbours.

Based on the above, it is considered the proposal merits approval subject to appropriate conditions.

**VOTING REQUIREMENTS**

Simple Majority

**RECOMMENDATION**

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

- (a) variations to the front / side setback requirements of Element 5.1.3 Lot boundary setback of the R-Codes (south, north and west elevation)
- (b) variation to Element 5.4.1 of the Residential Design Codes Visual Privacy;
- (c) variation to Element 5.4.2 of the Residential Design Codes Solar Access;
- (d) element 3.7.8 of the Residential Design Guidelines: Roof pitch;

for proposed two storey single dwelling with associated swimming pool at 11 (Lot 901) Glyde Street, East Fremantle, in accordance with the plans date stamp received on 21 December 2015 subject to the following conditions:

- 1. 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.
- 2. Any new crossovers which is constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.

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3. The maximum height of the fence along Glyde Street not to exceed a height of 1.8 metres above natural ground level and the infill panels for the fence and the gate are to be of the design to be visually permeable for the entire length and area of the fence, with at least 60% visual permeability.
4. The maximum height of the entry gate and fence not to exceed a height of 1.8 metres above natural ground level and the infill panels for the fence and the gate are to be of the design to be visually permeable for the entire length and area of the fence, with at least 60% visual permeability.
5. Olive tree to be retained on site. Suitable care to be taken to ensure the safety, care and maintenance of the tree during the construction period of the dwelling. The olive tree is to be maintained at the owner's expense for a period of two years.
6. 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.
7. The swimming pool fencing not to be erected without prior approval from Council. A building permit is required to be submitted to Council prior to the swimming pool being filled.
8. Pool installer and/or property owner to whom this planning approval is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the planning application has been granted.
9. Pool filter and pump equipment to be located a minimum of 1.0 metre away from any boundary as determined by Council and all pool equipment shall comply with noise abatement regulations.
10. Prior to the issue of a building permit the applicant is to submit a report from a suitably qualified practising structural engineer demonstrating to Council's satisfaction how any structure or property closer than one and half times the depth of the pool will be adequately protected from potential damage caused by the excavation/and or the pool construction.
11. Prior to the commencement of any works on site, the applicant to notify affected adjoining landowners of intended commencement date.
12. Pool contractor/builder is required to notify Council's Building Surveyor immediately upon completion of all works including fencing.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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



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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.

18. 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.
19. prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to be lodged and approved to the satisfaction of the Chief Executive Officer (*refer footnote (h) below*).
20. 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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *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.*
- (c) *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.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (h) *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".*

**Moved Cr M McPhail, Seconded Cr White**

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

- (a) **variations to the front / side setback requirements of Element 5.1.3 Lot boundary setback of the R-Codes (south, north and west elevation)**
- (b) **variation to Element 5.4.1 of the Residential Design Codes Visual Privacy;**
- (c) **variation to Element 5.4.2 of the Residential Design Codes Solar Access;**
- (d) **element 3.7.8 of the Residential Design Guidelines: Roof pitch;**

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for proposed two storey single dwelling with associated swimming pool at 11 (Lot 901) Glyde Street, East Fremantle, in accordance with the plans date stamp received on 21 December 2015 subject to the following conditions:

1. 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.
2. Any new crossovers which is constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
3. The maximum height of the fence along Glyde Street not to exceed a height of 1.8 metres above natural ground level and the infill panels for the fence and the gate are to be of the design to be visually permeable for the entire length and area of the fence, with at least 60% visual permeability.
4. The maximum height of the entry gate and fence not to exceed a height of 1.8 metres above natural ground level and the infill panels for the fence and the gate are to be of the design to be visually permeable for the entire length and area of the fence, with at least 60% visual permeability.
5. Olive tree to be retained on site. Suitable care to be taken to ensure the safety, care and maintenance of the tree during the construction period of the dwelling. The olive tree is to be maintained at the owner's expense for a period of two years.
6. 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.
7. The swimming pool fencing not to be erected without prior approval from Council. A building permit is required to be submitted to Council prior to the swimming pool being filled.
8. Pool installer and/or property owner to whom this planning approval is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the planning application has been granted.
9. Pool filter and pump equipment to be located a minimum of 1.0 metre away from any boundary as determined by Council and all pool equipment shall comply with noise abatement regulations.
10. Prior to the issue of a building permit the applicant is to submit a report from a suitably qualified practising structural engineer demonstrating to Council's satisfaction how any structure or property closer than one and half times the depth of the pool will be adequately protected from potential damage caused by the excavation/and or the pool construction.
11. Prior to the commencement of any works on site, the applicant to notify affected adjoining landowners of intended commencement date.
12. Pool contractor/builder is required to notify Council's Building Surveyor immediately upon completion of all works including fencing.
13. 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.

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14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to be lodged and approved to the satisfaction of the Chief Executive Officer (*refer footnote (h) below*).
20. 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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *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.*
- (c) *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.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*

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- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (h) *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". CARRIED 5:0*

**Note:**

As 4 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 16 June 2015 this application is deemed determined, on behalf of Council, under delegated authority.

**14. CONFIDENTIAL BUSINESS**

Nil.

**15. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING – ELECTED MEMBERS, OFFICERS**

Nil.

**16. CLOSURE OF MEETING**

There being no further business, the Presiding Member declared the meeting closed at 8.37pm.

*I hereby certify that the Minutes of the ordinary meeting of the **Town Planning & Building Committee** of the Town of East Fremantle, held on **2 March 2016**, Minute Book reference **1. to 16.** were confirmed at the meeting of the Committee on*

.....

\_\_\_\_\_  
*Presiding Member*