



MINUTES

Town Planning & Building Committee

Tuesday, 1 November 2016 at 6.32pm

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MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING & BUILDING COMMITTEE HELD IN THE COUNCIL CHAMBER ON TUESDAY 1 NOVEMBER 2016.

1. DECLARATION OF OPENING OF MEETING/ANNOUNCEMENTS OF VISITORS

The Presiding Member opened the meeting at 6.32pm and welcomed members of the gallery.

2. ACKNOWLEDGEMENT OF COUNTRY

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

3. RECORD OF ATTENDANCE

3.1 Attendance

The following members were in attendance:

Cr C Collinson	Presiding Member
Mayor J O'Neill	
Cr M McPhail	
Cr L Nicholson	
Cr D Nardi	
Cr A White	

The following staff were in attendance:

Mr A Malone	Executive Manager Regulatory Services
Ms G Cooper	Minute Secretary

3.2 Apologies

Nil.

3.3 Leave of Absence

Nil.

4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

5. PUBLIC QUESTION TIME

Nil.

6. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

6.1 Town Planning and Building Committee (4 October 2016)

6.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION

Cr Nardi moved, seconded Cr M McPhail

That the minutes of the Town Planning and Building Committee meeting held on Tuesday 4 October 2016 be confirmed as a true and correct record of proceedings.

(CARRIED 6:0)

7. PRESENTATIONS / DEPUTATIONS / PETITIONS

7.1 Presentations

Nil.

7.2 Deputations

Nil.

7.3 Petitions

Nil.

8. DISCLOSURES OF INTEREST BY MEMBERS

Nil.

9. LATE ITEMS NOTED

Nil.

10. REPORTS OF COMMITTEES

10.1 Community Design Advisory Committee

Prepared by: Andrew Malone Executive Manager Regulatory Services

Supervised by: Gary Tuffin, Chief Executive Officer

Authority/Discretion: Town Planning & Building Committee

Attachments: 1. Minutes of Community Design Advisory Committee Meeting

PURPOSE

To submit the minutes of the Community Design Advisory Committee meeting for receipt by the Town Planning & Building Committee.

EXECUTIVE SUMMARY

The Committee, at its meeting on 24 October 2016, provided comment on planning applications listed for consideration at the November Town Planning Committee meeting and other applications to be considered in the future. Comments relating to applications contained within the November agenda have been replicated and addressed in the individual reports.

There is no further action other than to receive the minute.

10.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP 011116

Cr White moved, seconded Cr Nicholson

That the Minutes of the Community Design Advisory Committee meeting held on 24 October 2016 be received.

(CARRIED 6:0)

11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

11.1 No. 77-79 (Lot 700) George Street – Change of Use

Applicant	D McInTosh – The Pilates Centre WA
Owner	Nakara Nominees P/L & W & A Anderson
File ref	P/GEO77, P089/16, A12462
Prepared by	Andrew Malone, Executive Manager of Regulatory Services
Supervised by	Gary Tuffin, Chief Executive Officer
Meeting date	1 November 2016
Voting requirements	Simple Majority
Attachments	<ol style="list-style-type: none">1. Location plan2. Photos3. Owner's consent letter4. Applicant's covering letter5. Plans received 30 August 2016

Purpose

Change of use from residential on the first floor of the building for the expansion of The Pilates Centre WA, at 77-79 (Lot 700) George Street, East Fremantle.

Executive Summary

The proposal is for a change of use from residential to recreation indoor to facilitate the expansion of the existing ground floor business (The Pilates Centre WA). The proposed change of use is not considered to create any additional planning issues (with the exception of car parking – addressed in detail below). The proposed change of use is recommended for approval subject to conditions.

Background

Zoning: Mixed Use

Precinct: Plympton

Site area: 770 sqm

Date application received: 30 August 2016

Documentation: 30 August 2016

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

11 July 2006 Council approved the change of use from consulting rooms to shop.

6 May 2014 Council approved the change of use from consulting rooms to retail.

Consultation

Advertising

The proposed application was advertised to surrounding landowners for a 2-week period between 7 and 22 September 2016. No submissions were received.

Community Design Advisory Committee

This application was not considered by the CDAC.

Statutory Environment

Planning and Development Act 2005

Residential Design Codes of WA

Town of East Fremantle Town Planning Scheme No. 3

Policy Implications

Town of East Fremantle Residential Design Guidelines 2015
Heritage List – Municipal Heritage Inventory listed Category ‘A’
Fremantle Port Buffer Zone Area – Area 2

Financial Implications

Nil

Strategic Implications

Nil

Site Inspection

Site inspection undertaken: Yes

Triple Bottom Line Assessment

Economic implications

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

Social implications

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

Environmental implications

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

Comment

The existing shops (77-85) are listed in the Schedule of Heritage Places in Town Planning Scheme No 3 and the Municipal Inventory. The heritage status of this building has not been considered in the assessment of this application, in so far as, no external modifications to the building are proposed.

It appears that at the date of gazettal of the Town Planning Scheme No. 2 (9 July 1982) which established the business zoning for the subject site for the first time, there may have been non-conforming uses existing on the lot (the whole of 77-85). Under TPS 2 the units were recognised as being ‘Shops’.

The building at the date of gazettal of the Town Planning Scheme No. 3 is zoned ‘Mixed Use’ and as far as can be ascertained, the unit was operating as a yoga/ Pilates studio in March 2004 prior to the gazettal of TPS 2 (December 2004).

Under Council’s Town Planning Scheme No. 3, a yoga/ Pilates studio in George Street is considered ‘recreation – private’ and is an “A” use, which means the use is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4.3. However, as the property was utilized as a yoga/ Pilates studio prior to the gazettal of TPS 2, there are non-conforming use rights on the property.

4.8 NON-CONFORMING USES

4.8.1 Except as otherwise provided in the Scheme, no provision of the Scheme is to be taken to prevent –

- (a) the continued use of any land for the purpose for which it was being lawfully used immediately prior to the Gazettal date;

-
- (b) the carrying out of any development on that land for which, immediately prior to the Gazettal date, an approval or approvals, lawfully required to authorize the development to be carried out, were duly obtained and are current; or
 - (c) subject to clause 11.2.1, the continued display of advertisements which were lawfully erected, placed or displayed prior to the Gazettal date.

4.9 EXTENSIONS AND CHANGES TO A NON-CONFORMING USE

4.9.1 A person must not:

- (a) alter or extend a non-conforming use;
- (b) erect, alter or extend a building used in conjunction with or in furtherance of a non-conforming use; or
- (c) change the use of land from a non-conforming use to another nonconforming use, without first having applied for and obtained planning approval under the Scheme.

4.9.2 An application for planning approval under this clause is to be advertised in accordance with clause 9.4.

4.9.3 Where an application is for a change of use from an existing non-conforming use to another non-conforming use, the local government is not to grant its planning approval unless the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and is, in the opinion of the local government, closer to the intended purpose of the zone.

With regard to the above, a letter was sent to adjoining tenants and owners of surrounding properties inviting comment on the proposal. No comments were received.

The applicant has stated:

We offer what is known in the industry as non-clinical group reformer Pilates classes. Currently our studio consists of one studio room with 10 Allegro 2 reformers teaching a maximum of 10 clients per class at the below times listed. Classes run for 55min. We also have a small middle room downstairs that consists of a sign in desk, stores some equipment and the pigeon holes for clients to store their personal belongings while attending classes. We also have a small waiting room at the back of the premises. The average attendance across the week for our classes is just under 7 clients per class. There is currently a maximum of two staff members on site at any one time and this will remain the case with the proposed two room arrangement.

The Pilates Centre WA- Opening Hours are as follow:

- Mondays 8:30am -10:30am, 4:30pm - 8:30pm
- Tuesdays: 6am - 11:30am, 5:30pm - 8:30pm
- Wednesdays: 6am-7am, 9.30am-10:30am, 4:30pm - 8:30pm
- Thursdays: 6am-11:30am, 5:30pm-8:30pm
- Fridays: 6am-10:30am
- Saturdays: 7am-10am, 2pm-4:30pm
- Sundays: 8am-11am

The applicant continues:

We have an office offsite so the premises is not being used continuously. Once classes finish in the morning the premises closes and we do not open again till the late afternoon. This will not change with the extension. This application is for the extension of our business to now include a second boutique reformer room containing 8 Allegro 2 Pilates reformers (same equipment as downstairs) directly above the premises at the same address 79 George Street. This is only an extension of the service we currently provide which is teaching reformer Pilates. The upstairs room will allow us to

focus on smaller groups to teach the fundamentals of reformer Pilates and to have some more class options for clients at peak class times.

As can be seen from the above opening hours the business operates generally outside conventional business hours, catering for morning and evening classes. The operating hours are considered to have minimal impact to the George Street area and Council has not received any complaints about the business.

Land Use

The subject site is zoned 'Mixed Use'. As stated, the subject site has been utilized in some form as a yoga/ Pilates Studio prior to 2004, however the upper floor, the subject of this application is a residential studio and does not have any commercial uses approved by Council.

It is considered that the proposed use is consistent with the existing ground floor use and general objectives for a 'Mixed Use' zone as described in the Scheme. The Pilates studio will not have extended opening hours, will not attract significant additional visitor numbers likely to impact on adjoining businesses (maximum class capacity is 10), and does not generate significant adverse noise. As the business has not generated previous parking or other adverse impacts having operated in the area for many years the use is considered a favourable use in the area. In this regard the use can be considered a low-impact use that does not undermine the locality, in accordance with the objectives of the Scheme.

However, the area to be utilized is a residential unit (upper floor) and does change the use from residential to commercial. The parking generation for a commercial use exceeds the residential car parking requirements. The general impact on the locality will be greater than the existing residential use. These issues will be discussed later in the report.

Parking

Research of the subject property was undertaken. Specific information relating to the existing use was sparse, however it is clear that a yoga/ Pilates studio has operated on the lower floor for an extended period of time from the property. The upper floor is utilized for residential uses. The existing yoga/Pilates studio requires 9 spaces, plus 2 spaces for staff, however there were no on-site bays provided (total net area 82.7m² of which 39.3m² is actual physical exercise area). The car parking includes the reception area and waiting area, even though these areas have been stated by the applicant as being utilized infrequently. If the exercise area was calculated for a parking requirement only 4 bays would be required. The applicant has stated there are 3 bays to the rear of the property and these operate on a "first come first served basis". The existing business operates from the property with an 11 car bay parking shortfall.

With respect to the current application for extension of the existing business to the upper floor, under Schedule 10 the parking provisions require an additional 6 car parking bays (59.85m² of exercise area). The total required car parking is 17 bays (9 bays if only the exercise area is considered).

The proposed use as a yoga/Pilates studio is considered a relatively small scale and low impact use, with operating hours generally outside of those of the other business uses in the street. The traffic likely to be generated by the current proposal and the probable effect on traffic flow are considered minor, however an additional 6 bays will be required.

In this situation, Council must first decide whether it is to relax the parking requirements or not. Under Clause 5.6.1, Council may approve the application even if it does not meet Scheme requirements, in this case the parking requirement, however can only do so if it meets the following criteria:

-
- 5.6.2. In considering an application for planning approval under this clause, where, in the opinion of the local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the variation, the local government is to —
- (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 9.4; and
 - (b) have regard to any expressed views prior to making its determination to grant the variation.
- 5.6.3. The power conferred by this clause may only be exercised if the local government is satisfied that —
- (a) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and
 - (b) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

‘Matters to be considered by local government’ as per clause 10.2 of the Scheme (Deemed Provisions), which Council must have regard to if such a relaxation is to be granted, required to be considered under Clause 10.2, include the following:

- (a) the aims, objectives and provisions of the Scheme;
- (c) the requirements of orderly and proper planning;
- (o) the preservation of the amenity of the locality;
- (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; and
- (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.

All car parking and associated street car parking has already been accounted for. There is no other car parking that can be utilised for this proposed application. The George Street Precinct car parking while available cannot be assumed to be used in conjunction with the development at such times as it might reasonably be required.

The following justification with regard to car parking:

1. The majority of customers will be local residents and business operators who originate within walking distance or will be part of the existing user base.
2. The operational hours are considered to be varied from the operating hours of other uses in the area and therefore will utilize spaces early morning and late evening, outside of peak parking hours, however the operating hours may conflict with some of the peak times for the cafes in the area.

With regard to Clause 10.2 of TPS3 (‘Deemed Provisions’), the proposed use is considered to adhere to the George Street ‘Mixed Use’ objectives, primarily “to provide for a limited range of commercial, civic and community facilities to meet the day to day needs of the community, but which will not prejudice the amenities of the neighbourhood”. The traffic likely to be generated by the proposal and the probable effect on traffic flow are considered minor considering the staggered use of the different rooms and the hours of operation. The turnaround of clients is considered relatively high while open (maximum of 10 patrons every hour), however as discussed it is envisaged that these customers may be existing users of other services in the George Street Precinct.

While cash in lieu has been considered as an option, it is considered an unviable option and is one Council should not request in this instance due to the scale and nature of the use and the hours of operation. A condition has been included in the Officer's Recommendation approving the proposed upper floor use for 1 year only on a trial period only. Should the yoga/ Pilates studio close the area is to revert back to a residential use. The applicant will be required to submit a further application to retain the use after the expiry of the 1 year time period. Council can monitor if such a shortfall in the car parking numbers can be facilitated in the area.

A vibrant, efficient and active George Street benefits the Town and the wider community. The existing business has operated in the area for an extended period of time. It is considered that Council can approve the proposed extension to the upper floor to the existing use based on the proposed temporary use. It is recommended Council utilise Clause 5.6.1 of TPS, where Council may approve the application even if it does not meet Scheme requirement of car parking, without the requirement for a cash in lieu payment.

Amenity provisions of the Scheme

The following provisions of Clause 10.2 of the Town of East Fremantle Town Planning Scheme No. 3 Clause 10.2 (a), (c), (g), (j), (o), (p) and (q) are considered relevant in the assessment of this development application.

The following provisions of Clause 10.2 of the TPS No. 3 (j), (o) and (p) are considered most relevant:

- (j) the compatibility of a use or development with its setting;
- (o) the preservation of the amenity of the locality; and
- (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.

The proposed extended use of the building for Pilates is compatible with the surrounds/ residential use of the locality, with the exception of the car parking generation as discussed above. The car parking shortfall is 17 bays (9 bays if only the actual exercise area is considered), of which an 11 bay shortfall is existing. Is this shortfall considered such an impact as to warrant refusal on the grounds that the development does not comply with the amenity provisions of Clause 10.2? Based on the impact the existing business has (11 bay shortfall) and the proposed extension this would result in an additional 6 bays being required (based on net area, including the waiting room and reception, however these areas are not utilized for actual exercisable space), the parking demand is not considered sufficient enough to refuse the proposed extension (subject to conditions, to enable Council to review the potential impact). The business has operated in the area successfully for an extended period of time (since 2004), without any complaints raised by the community. The applicant has provided a detailed letter outlining the operations of the business. The opening hours of the business and the staggered operating hours of the two rooms will minimise the impact to the George Street Precinct.

Based on Clause 10.2 (j), (o) and (p) of the Scheme, the proposed Pilates studio (upper floor change of use) is consistent with the existing (ground floor) use and can be approved by Council. The extension is replacing a residential studio, however due to the location and zoning of the land, Council can approve of the use should it be considered appropriate.

Conclusion

The proposed development extension (change of use) is considered to be consistent with the 'Mixed Use' zone of the locality. The car parking shortfall is 17 bays, which considering the other commercial

uses of the strata, is a considerable shortfall. The conditions of use and the temporary approval will minimise the impact of the business and enable Council to review any potential impacts the shortfall in car parking may have. Based on the conditioned approval, it is recommended Council support the proposed change of use.

- Mr Daniel McIntosh (applicant) addressed the meeting and is in support of the officer's recommendation.

11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP021116

Cr Nicholson moved, seconded Mayor O'Neill

That Council exercise its discretion in granting planning approval for the change of use to expand the Pilates studio space from residential studio located on the first floor at the existing premises at No. 77-79 (Lot 700) George Street, East Fremantle, in accordance with the plans date stamped received 30 August 2016, subject to the following conditions:

- 1. This approval is only valid for 12 months. The applicant is required to submit a further application to retain the use, prior to the 12 months expiry date from the date of this approval.**
- 2. The operational hours of the Pilates studio are not permitted to be altered (as outlined in assessment report) without the prior approval of Council.**
- 3. Should the Pilates studio cease to operate from the upper floor residential studio for a period longer than 6 months, the use of the upper floor is to revert to residential. No other commercial activity is permitted to be utilised from the upper floor without the prior approval of Council.**
- 4. A maximum of 20 patrons are permitted on the property only comprising of all 3 exercise areas.**
- 5. The works are to be constructed in conformity with the drawings and written information in relation to use 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 commercial building 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.**
- 7. 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.**
- 8. The applicant is required to submit the works comply with the relevant BCA requirements for a commercial building and the applicant is required to submit to Council a Certified Building Fitout for the upper floor. With regard to the plans submitted with respect to the building fitout application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.**
- 9. The proposed use is not to be commenced until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**

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) The approval does not include approval of any advertising signage. A separate development application is required for any signage proposal.

(CARRIED 6:0)

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 deemed determined, on behalf of Council, under delegated authority.

11.2 Bedford Street, No 20 (Lot 404) – Demolition and Construction of Two Storey Dwelling

Applicant	Gerard McCann Architect
Owner	D Ogilby
File ref	P/BED20
Prepared by	Christine Catchpole, Planning Officer
Supervised by	Andrew Malone, Executive Manager Regulatory Services
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Location Plan 2. Photographs 3. Plans date stamped received 30 August 2016

Purpose

This report considers a planning application for the construction of a two storey dwelling following the demolition of the existing residence at No. 20 (Lot 404) Bedford Street, East Fremantle.

Executive Summary

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

- Lot boundary setbacks: parapet walls and reduced setbacks to eastern and southern boundary;
- Site works: excavation within the street setback and within 1.0 metre of the lot boundary;
- Retaining walls: greater than 500mm and within 1 metre of the lot boundary required to retain ground level of adjoining sites due to excavation; and
- Garage width exceeding 30% of lot frontage.

It is considered the lot boundary setbacks, site works, retaining walls and garage width variations can be supported subject to conditions of planning approval being imposed to ensure the residential amenity for adjoining properties is maintained.

Background

June 2014 – WAPC approval of freehold subdivision of the lot (450m²).

Consultation

Advertising

The application was advertised by a sign being placed on the site for two weeks and letters sent to surrounding land owners from 8 September to 3 October 2016 during which time one submission was received.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
<p>The two storey section of the dwelling is located at the front of the property, and would make this dwelling the only one in the street with a two storey frontage.</p> <p>The Town of East Fremantle has determined that there are single storey dwellings in Bedford Street, including our property at No. 21, that make the street a location of heritage</p>	<p>The observation is correct, but as discussed in the application, the dwelling has been lowered on the site and the upper floor designed as a loft style so that the overall bulk of the dwelling is not that much greater than the single storey dwellings to either side and is compliant with the Council's height provisions. The double storey section close to the street is a single narrow room, designed to give vertical articulation to the front of the house. This is balanced by the single storey</p>	<p>Two storey dwellings are permitted in a R20 zone and are subject to the height requirements of either the R-Codes or the Residential Design Guidelines. In this location the R-Codes height restrictions apply because significant views out from the property are not considered to be impacted for example, a significant ocean, river or long range view to the city or port is not being impacted.</p>

<p>interest. Giving approval to the proposed design would contradict the stated objective of Council.</p> <p>The proposed dwelling at No. 20 will restrict our view of the large trees and sky as we look east from our front verandah. The two storey development behind our property, what is now Yard Property on Silas Street, backs onto our property. This development was approved by Council with multiple waivers of planning guidelines, and significantly blocks our view of the large trees and skyline looking west. A two storey dwelling immediately across the street from us would further negatively impact the amenity of our property.</p>	<p>sections to either side, stepped back to also create horizontal articulation. All of this is a deliberate 'breaking up' of the façade so as to create visual interest. This is intentional so that this, as a modern house, has as much visual complexity and interest as the heritage housing nearby, without recourse to mimicry of the heritage palette to try and create homogeneity in the streetscape. It is intended that the breakaway from the strict 6.0 metre setback line, which can create a boring two-dimensional streetscape will also enhance the proposal's complexity in terms of the visual, the scale and the bulk.</p> <p>It is acknowledged that Bedford St is a predominantly single storey streetscape, however the above design elements intend to enhance this rather than contradict or destroy that integrity by ensuring the greater part of the building bulk facing the street is single storey. It should also be noted that the design as submitted complies with the R-Codes.</p> <p>Furthermore, we live in a continually changing landscape and streetscape. This is what creates a dynamic Town. Council's own verge trees grow, die and are replaced. Whilst the sentiments of the submission are acknowledged and respected, the terms of the R-Codes do not allow such changes to affect development.</p> <p>The proposal is consistent with R-Code provisions for the zoning. The submitted design is a deliberate attempt to break up the 'flatness' of a consistent 6.0 metre setback to the streetscape. Most heritage housing has articulated facades, with protruding rooms, gables and recessed verandahs etc. This proposal aims to create its own visual complexity by exploiting the R-Code provisions. As noted above, this creates homogeneity in the streetscape by using abstract form to establish this complexity. As well, it should be noted the blight of modern housing in heritage precincts is the ubiquitous double frontage garage dominating the streetscape elevation. This proposal deliberately creates two garage doors,</p>	<p>The submitter will maintain the same streetscape outlook onto single residential properties. Also, the objectives of the Residential Design Guidelines are not to prevent two storey development but to <i>"guide new dwellings and additions /alterations to existing dwellings (particularly second storey additions) which are compatible with the character, form and scale of existing residential development in the locality and harmonize with the existing streetscape"</i>.</p> <p>Views of trees on the street and on surrounding properties will still be possible regardless of whether the development was one or two storeys in height. They are partially obscured now from the submitter's side of the street by the single storey house as it is elevated on the lot. Views of trees either side of the subject site will also be available.</p> <p>The applicant is intending to excavate the site so that on average the ground level will be 600mm below natural ground level over the entire site. The proposed maximum height of the dwelling will be 8.55 metres to the ridge for the two storey section and 5.4 metres to the ridge for the single storey section. This is below the maximum roof ridge height permitted under the R-Codes of 9.0 metres. The ridge of the second storey will be 1.8 metres higher and the single storey roof ridge will be 1.4 metres lower than the roof ridge of the house at No. 18 Bedford Street which provides a good indication of how the new dwelling will sit in the streetscape as this house is more typical of the Federation Bungalow style in the street. It is also noted that a second storey addition has been constructed to</p>
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	<p>setting one forward under a culturally appropriate double height frontage (picking up the language of a gable-fronted heritage house), and then setting the second garage door back and recessed into deep reveals, to minimise the visual impact of the doors.</p> <p>Second storey additions to heritage houses are quite sensibly located at the rear of those houses so as not to challenge the visual integrity of the single storey front elevations. However, with a new house, the rules are obviously less prescriptive.</p> <p>Cognisant of the potential then for a full width two storey façade to ruin the streetscape, this proposal sets the greater bulk of the two-storey section back behind the single storey ridgeline, with just one room protruding forward at the two storey height. The greater bulk of the front façade is thus single storey. As mentioned above, this has been done deliberately to create vertical, as well as horizontal, articulation to the façade and thus enhance its visual complexity. It should be noted that the upper floor has a loft-style ceiling and roof form and the whole building has been lowered on the site to minimise the overall height of the proposal. The heights proposed for the ridges and the walls all comply with Council's Planning requirements.</p>	<p>the rear of 18 Bedford Street.</p>
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Community Design Advisory Committee (CDAC)

This application was considered by the CDAC at its meeting on 19 September 2016. The Panel's comments were recorded as follows:

- *The Committee support the proposed development; and*
- *The Committee appreciate the architect's consideration of the streetscape and character of the locality by reference to the excavation of the subject lot.*

Statutory Environment

Planning and Development Act 2005

Residential Design Codes of WA

Town of East Fremantle Town Planning Scheme No. 3

Policy Implications

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

Fremantle Port Buffer Zone – Area 3

Financial Implications

Nil.

Strategic Implications

Nil.

Site Inspection

August 2016

Triple Bottom Line Assessment

Economic implications

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

Social implications

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

Environmental implications

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

Comment

TPS 3 Zoning: Residential R20

Site area: 450m²

Statutory Assessment

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

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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	6.0m	4.6m – 6.7m (meets averaging provision under the R-Codes)	A
Lot Boundary Setback	1.0m - 1.5m	Nil	D
Open Space	50%	60.6%	A
Outdoor Living	30m ²	>100m ²	A
Car Parking	1	2	A
Site Works	Less than 500mm	600mm excavation	D
Retaining Walls	Greater than 500mm and closer than 1m from lot boundary	Nil and greater than 500mm	D
Overshadowing	25%	16%	A
Drainage	On-site	On-site	A

Local Planning Policy Assessment

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

Building Height Requirement	Required	Proposed	Status
Building Height (wall) (R-Codes)	6.0m	6.0m	A
Building Height (roof) (R-Codes)	9.0m	8.0m	A

The lot to be developed was approved by the WAPC in 2014 as a freehold lot. The lot of 450m² was subdivided from a larger lot with the balance of the land being amalgamated with the lot to the rear at 21 Moss Street. The original dwelling has no heritage listing and is proposed to be demolished. A high limestone block rear retaining and dividing fence has been constructed in anticipation of redevelopment of the Bedford Street lot by the owner who is also an owner of 21 Moss Street.

The proposed dwelling is a two storey house that comprises a ground floor level consisting of a lounge, powder room, kitchen, living, dining, laundry and alfresco area under the main roof; and a first floor level consisting two bathrooms and three bedrooms. Two separate but side by side garages are proposed on the southern side of the lot and although not indicated on the plans would appear to be intending to utilise the existing crossover.

There are a number of minor variations to the R- Codes and the Residential Design Guidelines that are mostly due to the proposed excavation of the lot and the desire to position the garage and the shed as close as possible to the lot boundaries. These matters are discussed below.

Lot boundary setbacks

The lot boundary setbacks of the dwelling do not comply in respect to the parapet walls of the garage, the shed on the southern side and the outdoor living area at the rear which is under the main roof of the house. For the most part the dwelling is well set back from all lot boundaries and complies with the built form and visual privacy setbacks for both the ground and upper floor.

The parapet walls of the garage and shed are small sections of wall at 6.3 metres and 2.1 metres in length respectively. The rear wall of the outdoor living area is to be constructed immediately abutting the limestone boundary wall. The roof of the outdoor area will be attached to the parapet wall which will allow the most effective use of the rear yard on a smallish lot.

The reduced setbacks are considered to have no impact on the amenity of the adjoining lots and the nil rear setback is the preferred design option of the applicant who is a co-owner of the rear lot. The owner to the south has not raised any objection to the parapet walls. A condition in respect to the finish of the walls is recommended in this regard to ensure a satisfactory outcome for the adjoining owner.

As discussed above whilst the 'Deemed to Comply' setback provisions are not achieved the 'Design Principles' of the R-Codes are considered 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 the adjoining property. Overshadowing is within the acceptable limits for the R20 coding at 16% (88m²) of the adjoining lot to the south.

Site works and retaining walls

The proposed excavation is in excess of that permitted under the 'Deemed to Comply' provisions of the R-Codes. The site will be excavated to a ground level of RL 8.20, which is on average 600mm below natural ground level over the entire site. The existing ground level will remain as is, along the northern boundary, to ensure the structural stability of the boundary wall between the site and the lot to the north. Retaining walls will be built to the northern and southern boundaries to the existing ground levels on the adjoining sites. The rear (eastern boundary) has a recently constructed high limestone retaining wall built to below the proposed Lot 404 ground level in anticipation of the redevelopment of Lot 404.

Therefore this element requires assessment under the 'Design Principles' of the R-Codes which state as follows.

- P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.*
- P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the boundary of the site and the adjoining properties and as viewed from the street.*

The proposed maximum height of the residence will be RL 16.75, 8.0 metres above natural ground level and 8.45 metres above the proposed floor level at the roof ridge. The top of the garage parapet wall will be RL 11.20 which will be 2.7 to 2.9 metres above the existing ground level on Lot 400 to the south. The upper wall height will be RL 14.3, which will be 5.52 metres above natural ground level.

As views for surrounding residences are not considered to be impacted the maximum wall height of 6.0 metres and roof ridge height of 9.0 metres under the R-Codes can be applied. The excavation and retaining walls proposed are therefore supported as the height limits of the dwelling are not exceeded and the excavation of the site allows the two storey dwelling to be of a comparable height to the single storey residences in the street. Also, all finished levels will respect existing levels at the lot boundaries.

Garage width and crossover

The crossover is not indicated on the plans so a condition is recommended which will ensure compliance with Council's crossover provisions as outlined in the Residential Design Guidelines. A provision of the Guidelines is that for lots of 12 metres or more in width that crossovers not exceed 5 metres. The lot is 18.3 metres wide and therefore a condition of approval requiring the crossover to be no greater than 5 metres is considered justified. This is important because the double garage and driveway marginally exceeds that permitted for the width of the lot under the Guidelines (i.e. 32% and greater than the permitted 30%) and so minimising hardstand wherever possible is important. This variation, however, is supported because the proposal is considered to meet the 'Performance Criteria' of the Residential Design Guidelines for new dwellings which state:

"Garages and carports are designed to be incorporated into and compatible with, the design of the dwelling."

With new residences the applicant is to demonstrate the impact of the garage or carport on the new dwelling. In this case while the garage is forward of the building line for the lower floor the upper floor extends out over the garage thus minimising its visual impact on the streetscape and providing some interest in the façade above the garage doors. The visual minimisation of the garage is also achieved by offsetting the two garages and this combined with a significant landscaped area across the width of the lot and along the opposite side boundary is considered to compensate for the slightly greater combined width of the garages than that permitted. This variation is therefore supported.

Given the comments above the application is recommended for approval. The submission received is not considered a valid objection to development on the site in the manner proposed as discussed above. The redevelopment of the lot for a two storey dwelling is a permitted use of the land under the R20 code applicable to the area and is not considered to detrimentally impact the amenity of the surrounding area or the heritage values of the Precinct.

11.2 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP031116

Mayor O'Neill moved, seconded Cr Nardi

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

- (i) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback of less than 1.0 metre on the southern boundary and 1.5 metres on the eastern boundary;**
- (ii) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to permit excavation behind a street setback line and within 1 metre of a lot boundary that is greater than 0.5 metres below natural ground level at the boundary;**
- (iii) Clause 5.3.8 - Retaining Walls of the Residential Design Codes of WA to permit a retaining wall greater than 0.5 metres in height less than 1.0 metre from the boundary; and**
- (iv) Clause 3.7.17.3 – Garages, Carports and Outbuildings of the Residential Design Guidelines 2016 to allow the width of the garage to exceed 30% of the lot frontage,**

for a two storey single dwelling at No. 20 (Lot 404) Bedford Street, East Fremantle, in accordance with the plans date stamped received on 30 August 2016, subject to the following conditions:

- 1. Any new crossovers which are constructed under this approval are to be a maximum width of 5.0 metres, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in compliance with Council's Residential Design Guidelines 2016.**
- 2. All parapet walls/building structures to the adjacent property face on the southern boundary are to be finished by way of agreement between the property owners and at the applicant's expense.**
- 3. 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.**
- 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 storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
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:

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

(CARRIED 6:0)

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 deemed determined, on behalf of Council, under delegated authority.

11.3 Hamilton Street, No. 25 (Lot 18) – Alterations and Additions to Existing Dwelling

Applicant/Owner	S & M Lomma
File ref	P/HAM25
Prepared by	Christine Catchpole, Planning Officer
Supervised by	Andrew Malone, Executive Manager Regulatory Services
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	<ol style="list-style-type: none"> 1. Location Plan 2. Photographs 3. Plans dated 20 October 2016 4. Applicant submission - Attachments A - D

Purpose

This report considers a planning application for alterations and additions to an existing heritage listed dwelling, including a rear garage at No. 25 (Lot 18) Hamilton Street, East Fremantle.

Executive Summary

The alterations and additions will involve retention and renovation of the heritage listed dwelling (Category B) and will also include a carport on the southern side of the residence and a double garage in the south west corner of the property.

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

- Lot boundary setbacks: reduced setbacks to southern and western boundaries (garage and carport);
- Garage width exceeding 30% of lot frontage;
- Front fence and sight lines;
- Roof pitch;
- Length of driveway with one way access/egress; and
- Impact on heritage listed dwelling - Category B.

It is considered the variations can be supported subject to conditions being imposed in respect to heritage matters, finish of walls up to the boundary (garage), front fencing, sight lines and crossover width.

Background

9 September 1992 – Building Licence issued for carport.

29 February 2016 – Department of Housing disposed of the property.

Consultation

Advertising

The amended plans were advertised to surrounding land owners from 20 September to 7 October 2016. One submission was received as outlined below.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
The main impact on the property at 27 Hamilton Street, is the proposed garage and carport. No particular concern with the	In response to the neighbour's (27 Hamilton Street) query regarding our proposed garage, we do intend to speak with them directly. However,	A condition of approval is recommended which will require a suitable finish for the garage wall to the adjacent

<p>open carport. The plans show the garage built to the boundary and the wall height/gutter to 3.086m which is higher than the gutter level of the existing open carport.</p>	<p>because we do not live at 25 Hamilton Street we have not had an appropriate opportunity. We will endeavour to speak to them prior to the Town Planning and Building Meeting (1 November).</p>	<p>property faces by way of agreement between the property owners and at the applicant's expense.</p>
<p>The query is with the garage – will it be built up to the existing diving fence i.e. will the fence remain?</p>	<p>To address the query though, it is intended to build the garage on the boundary with a 20mm setback onto our property. This will be done at our cost and with agreed aesthetic outcome for both property owners. To provide such aesthetics we will need to gain access to 27 Hamilton Street to ensure the face brick finish is completed correctly. Once again we will seek this approval from the neighbours at 27 Hamilton Street.</p>	

Community Design Advisory Committee (CDAC)

This application was considered by the CDAC at its meeting on 19 September 2016. The following comments were made:

The Committee support the development in principle with the exception of the two points below:

- *the alteration to the existing roofline (barge and scribe) to the front façade of the proposed development. The original character of the roof should be maintained; and*
- *the retention of the existing chimneys.*

Following the Committee's comments in respect to the roofline changes the applicant was requested to provide further justification for the change to the roofline. The following has been submitted:

"In developing building plans for the renovation of this home, our aim was to not only keep the integrity of the external structures but also keep existing internal aspects (ceiling height, skirting, rosettes etc.) continuing throughout the home and including them in the proposed addition.

Initially, we were concerned that not only would the ridge change but that the side gable would be eliminated. However, we saved the side gable by lowering the ceiling heights in the proposed ensuite and alfresco area. Furthermore, please also note that the existing chimneys will be retained.

However, regarding the existing ridge (see Attachment A) it will cease to exist. As with any substantial addition to the rear of a home the rooflines and its structures change, as to provide the appropriate support to the new dwelling.

A roof structure is designed/engineered on the basis of the overall perimeter of the home. The existing structure is of a rectangular nature like many homes in that time period, allowing the roof to form a ridge rather than an apex. With any addition to the rear of the home, the overall shape has changed creating different roof spans.

An example would be the valley (Attachment B - highlighted on plans) in the existing roof is as seen, however with the additions the same valley needs to extend further to provide appropriate

roof support (Attachment C -Proposed Roof Plan). Ultimately, the roof structure and look changes due to the roof spans, angles and valleys needed to provide the appropriate support.

We tried a number of ways to keep the barge, such as lowering ceiling heights and roof angles, however there is no way possible except for keeping the existing roof on the existing part of the home and a separate roof being constructed on the proposed addition. This would basically create an unsightly roofline with two roofs on the one home and a major issue with expelling rain water. Overall, as mentioned previously the shape of the home has changed creating different roof spans.

While, we wish to place a gable similar in nature to the existing side gable and proposed gable over the carport, if denied this, the ridge will still not exist but instead an apex with a tile finial similar in nature to the example (see Attachment D) will be the result.”

The applicant has also stated previously in writing that the chimneys were mistakenly omitted from the plans and there is no intention to have them removed or altered. A condition of planning approval will be imposed which requires the chimneys be retained and unaltered.

The officer’s comments in response are provided below in the ‘Assessment’ section of the report.

Statutory Environment

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

Policy Implications

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

Financial Implications

Nil.

Strategic Implications

Nil.

Site Inspection

October 2016

Triple Bottom Line Assessment

Economic implications

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

Social implications

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

Environmental implications

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

Comment

TPS 3 Zoning: Residential R20
Site area: 890m²

Statutory Assessment

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

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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	6.0m	unchanged	A
Lot Boundary Setback – rear	1.0m	Nil	D
Lot Boundary Setback – side (garage and carport)	1.0m	818mm	D
Open Space	50%	56%	A
Site Excavation/Fill	Max 500mm	400mm	A
Car Parking	1	2+	A
Overshadowing	25%	<25%	A
Drainage	On-site	On-site	A

Local Planning Policy Assessment

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

Building Height Requirement	Required	Proposed	Status
Building Height (wall) (R-Codes)	6.0m	3.086m	A
Building Height (roof) (R-Codes)	9.0m	6.0m	A

The applicant is seeking Council discretion with regard to several variations to provisions of the R-Codes and the Town's Residential Design Guidelines. These matters are discussed below.

Lot boundary setbacks

The lot boundary setbacks of the carport and the garage at the side and rear of the property do not comply. A double carport is already on site towards the rear corner but will be relocated to the side of

the house as a single carport and the double garage will be constructed in the rear corner as part of the extensions and renovations. The reduced setbacks are not considered to impact on the amenity of the adjoining properties and neither adjoining landowner has raised any concerns in relation to the setback distance by itself, therefore the reduced building setbacks are supported. The fencing matter raised by the adjoining owner is not a planning consideration and a condition of approval in respect to the finish of the garage wall is recommended.

Driveway length and access

The length of the driveway is approximately 17 metres and exceeds the 15 metres maximum length allowed under the R-Codes where one way access only is provided. In this circumstance it is considered the one way access can be supported over this distance as there is no proposed change to the existing access arrangements and no issues in regard to pedestrian or vehicle safety.

Roof pitch

The non-compliance with the roof pitch (i.e. 22° rather than the minimum 28°) is considered desirable in this case because it maintains the pitch of the existing roof as it is viewed from the street and has no impact on the heritage elements of the property.

Front fence – visual permeability and sight lines

The plans do not indicate the type of infill panel elements of the front fence, so it is not possible to determine whether the fence will fully comply with the provisions of the Residential Design Guidelines 2016. Compliance with this element is considered very important to maintaining an open streetscape. All dwellings in the Precinct have been subject to the same requirements since the Guidelines were introduced and this ensures housing remains visible from the street and landscaped front gardens are also the main streetscape element. A condition is therefore recommended that requires the details of the fencing panels to be included with the Building Permit application, be in compliance with the Residential Design Guidelines and to the satisfaction of the Chief Executive Officer.

Heritage

The dwelling is classified Category B and is therefore listed in the Scheme's Heritage List. The CDAC have suggested that the original character of the roof be maintained and that the roofline should not be altered with the addition of the barge and scribe to the front façade. The applicant has responded to the Committee's comments in detail as outlined above and whilst it would have been preferable that the original roofline be maintained the applicant's justification is considered reasonable. All things considered the applicant's position and arguments for modifying the roofline are justifiable and one uniform roof form, rather than two separate roof sections, is considered a better result.

The overall outcome of the development application is the retention and improvement of a heritage property in a street with a considerable number of heritage dwellings and the restoration of the home which will see the continued use of the building for many years to come. This is seen as adding to the valuable heritage assets of the Town and this is considered to offset the change to the roofline. On the whole the dwelling will not change dramatically in appearance and will still maintain many of the features of the original dwelling.

Garage width

Notwithstanding the garage is greater than 30% (i.e. 40%) of the width of the lot the garage is not considered to dominate the dwelling as viewed from the street. It is to be located in the furthest corner of the lot from the street and is partly obscured by the house extensions and the carport. There is also landscaping proposed along the driveway edge. This is considered the best possible location for the garage and therefore the slight increase above the width permitted is of no consequence and is supportable.

Conclusion

The variations sought in respect to this application are considered minor and are mostly a result of maintaining the existing situation with respect to the carport and obtaining the best possible outcome for preservation of the heritage elements of the dwelling. The construction of the garage at the rear of the property is considered the best design outcome and as the adjoining owners have not objected to the position of the garage on the boundary, the nil setback is supported. The application is therefore recommended for approval subject to a number of standard planning and heritage related conditions.

11.3 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP041116

Mayor O'Neill moved, seconded Cr Nardi

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

- (i) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback of less than 1.0 metre from the western and southern side boundaries for the carport and the garage;
- (ii) Clause 5.3.5 – Vehicular Access of the Residential Design Codes of WA to permit the distance from a car space to the street to be greater than 15 metres without two way access for vehicles;
- (iii) Clause 3.7.8.3 of the Residential Design Guidelines 2016 (as amended) to allow a roof pitch of less than 28° for the additions and alterations to the dwelling, carport and garage; and
- (iv) Clause 3.7.17.3 – Garages, Carports and Outbuildings of the Residential Design Guidelines 2016 to allow the width of the garage to exceed 30% of the lot frontage,

for alterations and additions to an existing dwelling, including a rear garage at No. 25 (Lot 18) Hamilton Street, East Fremantle, in accordance with the plans date stamped received on 20 October 2016, subject to the following conditions:

1. The two existing chimneys to be retained and unaltered.
2. The garage walls up to the boundary and facing the adjoining properties are to be fair faced brickwork, cement rendered or of another suitable finish to the adjacent property faces by way of agreement between the property owners and at the applicant's expense.
3. All fencing, including driveway and pedestrian gates within the street setback area to be in compliance with the Residential Design Guidelines 2016 (in particular, in respect to the visual permeability of the infill panels) and in compliance with the Australian Standards in respect to sight lines where boundary fencing meets the street front property boundary and the footpath. Full details of the infill panels to be submitted with the Building Permit application and to be to the satisfaction of the Chief Executive Officer.
4. The garage is not to be used for an ancillary dwelling, short stay or bed and breakfast accommodation (see advice note (i) below).
5. Any new crossover which is constructed is to comply with Council's crossover policy and specifications in consultation with the Operations Manager and not to exceed 5 metres in width. The footpath is to continue uninterrupted across the width of the site and the crossover to be constructed in a material and design to comply with Council's Residential Design Guidelines 2016.
6. The works are to be constructed in conformity with the drawings and written information accompanying the application for development approval other than where varied in compliance with the conditions of this development approval or with Council's further approval.
7. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.

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

Footnote:

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

- (i) *In respect to condition 4 if use of the garage for an ancillary dwelling, short stay or bed and breakfast accommodation is proposed then an application is required to be submitted for Council's consideration.*
- (ii) *This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (iii) *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.*
- (iv) *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.*
- (v) *All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (vi) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (vii) *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 6:0)

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 deemed determined, on behalf of Council, under delegated authority.

12. REPORTS OF OFFICERS (COUNCIL DECISION)

Nil.

13. CONFIDENTIAL BUSINESS

Nil.

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

Nil.

15. CLOSURE OF MEETING

There being no further business, the Presiding Member declared the meeting closed at 6:41 pm.

*I hereby certify that the Minutes of the ordinary meeting of the **Town Planning & Building Committee** of the Town of East Fremantle, held on **1 November 2016**, Minute Book reference **1. to 15** were confirmed at the meeting of the Committee on*

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Presiding Member