

MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING & BUILDING COMMITTEE HELD IN THE COMMITTEE MEETING ROOM ON TUESDAY, 1 DECEMBER 2015 AT 6.30PM.

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 Lukus Nicholson	
Cr Andrew White	
Mr Jamie Douglas	Manager Planning Services
Ms Janine May	Minute Secretary

There were 12 members of the gallery in attendance.

4. PRESENTATIONS/DEPUTATIONS/PETITIONS/SUBMISSIONS

Nil.

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

6. PUBLIC QUESTION TIME

Nil.

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Minutes of Town Planning & Building Committee Meeting 3 November 2015

Cr M McPhail moved, seconded Mayor O’Neill

That the Minutes of the Town Planning & Building Committee Meeting of 3 November 2015 be confirmed as a true and accurate record (noting the revocation and replacement motion carried at the Council Meeting of 15 November 2015 relating to MB Ref T128.2 No 64 Glyde Street (Lot 158 & 159)).

CARRIED 6:0

7.2 Minutes of Special Town Planning & Building Committee Meeting 10 November 2015

Cr M McPhail moved, seconded Cr Nardi

That the Minute of the Special Town Planning & Building Committee Meeting of 10 November 2015 be confirmed as a true and accurate record.

CARRIED 6:0

8. DEPUTATIONS/PRESENTATIONS

Nil.

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9. DISCLOSURES OF INTEREST BY MEMBERS

Nil.

10. LATE ITEMS NOTED

10.1 F Castino & M Wardman

Submitting correspondence objecting to the officer's recommendation in relation to the planning application for 49 Fraser Street.

10.2 A Rodda

Seeking the withdrawal of her planning application to extend opening hours at 2/8 Silas Street from tonight's agenda.

Cr Nardi moved, seconded Mayor O'Neill

That the late items be held over and considered when the relevant items were being considered. CARRIED 6:0

11. REPORTS OF COMMITTEES

Nil.

12. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

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 6:0

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REPORT NO 12.3

LOCKE CRESCENT, NO. 6 (LOT 4996) – ADDITIONS AND ALTERATIONS TO AN EXISTING BALCONY AND CARPORT, INCLUDING RETROSPECTIVE APPROVAL FOR PORTION OF EXISTING BALCONY

RESPONSIBLE DIRECTOR	Planning Services Jamie Douglas
AUTHOR	Christine Catchpole
FILE NUMBER	P/LOC6
APPLICATION NUMBER	P88/15
AUTHORITY / DISCRETION	Town Planning & Building Committee

PURPOSE

This report relates to a retrospective planning approval for additions to an existing balcony, as well as refurbishment and extension of the existing balcony and carport structures including external stairs to the rear garden.

EXECUTIVE SUMMARY

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

Visual Privacy setback (north)

- 7.5 metres required (balcony greater than 500mm above natural ground level);
- 750mm proposed; and
- 150mm – 1.6 metres existing.

Note: The top of the staircase would be 2.8 metres from the lot boundary.

Lot boundary setback (north)

- 3.1 metres required;
- 750mm proposed; and
- 150mm – 1.6 metres existing.

The variation to the lot boundary setback for the carport structure and balcony is considered acceptable given there is no impact on residential amenity in this regard. Non-compliance with the R-Code setback and visual privacy provisions can only be supported subject to a condition being imposed which requires adequate permanent privacy screening to be installed in accordance with R-Code requirements. It is recommended the variations be supported subject to conditions relating to screening of the balcony.

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BACKGROUND

Suburb/Location	No. 6 (Lot 4996) Locke Crescent, East Fremantle
Applicant	Wessels Design Studio
Owner	D & L White
Zoning	Residential R12.5 Urban
Site area	660m ²
Structure plan	'Not applicable'

Date Application Received 3 August 2015

Relevant Council Policies

Residential Design Guidelines 2015 (as amended) (RDG)

Impact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: No impact.

Footpath: No impact.

Streetscape: The carport and balcony structure can be seen from the street.

Property History

A search of the property records in the assessment of the application has raised the issue of the unapproved balcony structure. A history of building approvals for the site is as follows:

1960 – Building approval for the original dwelling. This included a terrace to the side and rear of the house.

1975 – Building approval issued, amongst other things, for an extension of the balcony towards the northern boundary with stairs and a carport. Timber decking extended over half the carport structure. Stairs were indicated on previous plans, but were either never constructed or have been removed.

1994 – Building approval for a family room extension.

2010 – Planning approval and Building License issued for a patio to replace an existing structure at the rear of the site adjacent to the pool.

In assessing the application it has become apparent that the original approval of the balcony only extended to approximately half of the current balcony area. The existing area of the balcony covers the full length of the carport and almost the full width; extending to the property line where the balcony is closest to the street and tapering away from the property line towards the rear of the house. As such an application is also required for the retrospective planning approval of the unapproved balcony section. A Building Approval Certificate will also be required for the work that has been completed without prior approvals in addition to a Building Permit for any other building work that Council may endorse.

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DETAILS

The existing balcony and carport structure is positioned alongside the property boundary with the balcony floor forming the carport roof. The balcony support structures are proposed to be set back 750mm from the northern boundary.

The applicant is proposing to extend the balcony to the rear by a maximum of 3.5 metres and across the rear of the house to a width of 10 metres. Part of the balcony will have an awning and external stairs to the rear garden. The setback at the top of the stairs will be 2.8 metres.

The proposal has been assessed against the provisions of Town Planning Scheme No. 3, the Residential Design Codes of Western Australia and the Town's Residential Design Guidelines. 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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	55%	~60%	A
Outdoor Living	30sqm	As existing	A
Car Parking	2	As existing	A
Site Works	Less than 500mm	As existing	A
Visual Privacy	7.5m	750mm	D
Overshadowing	25%	<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	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	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	A

Legislation / Strategic Community Plan / policy implications

Legislation

Town Planning Scheme No. 3 (TPS 3)
Local Planning Strategy (LPS)
Residential Design Codes of WA (R-Codes)

Strategic Community Plan

Strategic Community Plan 2015 - 2025

Key theme

Built and Natural Environment

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Objective	Facilitating sustainable growth whilst maintaining urban and natural character
Strategic initiative	N/A
Policy	Residential Design Guidelines (as amended) 2015 (RDG)

Risk management considerations
N/A

Financial / budget implications
N/A

Regional significance
N/A

Sustainability implications
N/A

Consultation

Advertising

The application was advertised to the impacted adjoining owner and the submission received is summarised below:

- Opposed to the balcony and extension of the balcony and stairs as it will impact on privacy and there are already overlooking issues.
 - The original balcony was not built to "Standard".
 - The balcony is currently constructed of timber and extends along the common property line. It has no setback and is a fire hazard.
 - Free standing shade sails and a pergola have had to be constructed to retain privacy.
- Amended plans were submitted by the applicant in response to the above concerns and readvertised to the same land owner. The following comments were made:
- If there is no overlooking there is no issue with the proposal.
 - A privacy wall on the balcony is considered necessary.
 - A wall would prevent people jumping from the balcony into the property.
 - Require the rear garden to be private and peaceful.

Site inspections with both parties have been undertaken to discuss the issues and the adjoining owner's comments have been taken into consideration. The issues are discussed in the 'Comment' section to follow. The applicant has responded to the most recent comments as outlined below:

- The heavy duty shade structure across the boundary restricts viewing into the non-outdoor living area.
- The existing patio provides complete privacy to the outdoor living area on the adjoining site.
- The eastern wall of the adjoining residence does not have any openings.
- The northern facade of the adjoining residence is designed at 90° to the existing boundary meaning that the cone of vision is restricted due to all openings being 'tucked' beyond the eastern boundary wall, so privacy is provided by the built form.
- The proposed structures have been setback from the boundary 750mm.

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COMMENT

Visual Privacy

Modest single storey original housing in this locality is gradually being replaced with large two storey homes, with outdoor entertaining areas and pools orientated toward the north east to take advantage of river and city skyline views. This occurred on the site to the north of the subject site (No. 8 Locke Crescent) when it underwent redevelopment. As this property is on the lower side of No. 6 some overlooking from No. 6 was possible when the rear garden at No. 8 was redeveloped and a pool installed.

To increase privacy with respect to No. 6 the owner of No. 8 has considerably increased the height of the boundary wall (refer to attached photographs) and constructed a removable marine/boat canopy screen which is attached to the edge of the patio roof by a Velcro/zip system. This screening material extends across the setback area, for approximately 1 metre, to the boundary wall thus preventing any overlooking into the patio area through the gap created by the setback area. This screening device extends the length of the patio to the rear boundary and along with the roof of the patio effectively screens the rear garden area of No. 8 from the viewpoint of the existing balcony and rear windows of No. 6 (refer to psite photographs). It is also not possible to see the upper level deck on the western side of No. 8 from the windows at the rear of the house which face north towards No. 8.

The remaining side setback area between the two properties is between the two houses adjacent to the carport and is directly below the balcony. The setback area on the south side of No. 8 is in considerable shade and a site inspection indicated it does not appear to be used for any purpose. There is no direct access from the house to this area and the owner has covered the area in a visually non-permeable shade sail type structure on a permanent framework. This area cannot be viewed from above. There are also no windows on this side of the house. The attached site photographs show the screening devices discussed above.

The visual privacy non-compliance arises as the balcony is classified as an unenclosed outdoor active habitable space that is greater than 500mm above natural ground level. If this situation exists and the balcony is not screened to prevent overlooking of adjoining properties it is not 'deemed to comply' under the R-Codes. The balcony must be set back from the boundary at least 7.5 metres if it remains unscreened unless Council determines that the structure meets the 'design principles' for visual privacy.

The 'design principles' of the R-Codes cannot be fully met in this circumstance unless screening is put in place. There would be no purpose to constructing the balcony 7.5 metres from the boundary as there is insufficient area across the rear of the house. The proposal to extend the balcony 2.4 metres to the rear and then across the rear of the house is to improve the amenity of the rear garden and connect the balcony to the pool area below via the external stairs. The top of the staircase would be 2.8 metres from the lot boundary.

As can be seen from the photographs the owner of No. 8 has taken a number of measures to restrict overlooking from No. 6 and on this basis it is considered that overlooking issues from the extended area of the balcony will be substantially restricted. The furthest edge of the extended section of the balcony is level with the rear of the house at No. 8 (refer to attached photographs) and for the most part the rear garden cannot be viewed over the extent of the patio roof. However, the Velcro/zip attached shade tarpaulin through the setback area has not had Council approval according to the Town's records and therefore cannot be considered a permanent screening device. It would be possible to see into the patio area without this solid

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strip of fabric being in place. It is therefore necessary to require that permanent screening be installed in the north east section of the balcony extending 2.0 metres in each direction to a height of 1.6 metres. This would mean screening along the rear edge of the balcony would extend to the stairs.

With this screening in place only an outlook into the rear corner of No 8 and over the patio roof would be possible. The remainder of the balcony is either set back further than 7.5 metres or overlooking is considered limited because of the expanse of the patio roof (3 metres), a combined boundary setback of 1.75 metres, plus an additional 2 metre screened balcony section making a total minimum separation distance of 6.75 metres between the area at the top of the stairs to the other side of the patio roof at No. 8. Beyond this point the balcony is further than 7.5 metres from the boundary or faces the blank side wall of No. 8. This distance is considered acceptable for this small section of the balcony and in conjunction with no major openings facing No. 6, the level position of the houses in relation to one another and the required installation of the privacy screens on the balcony is considered to satisfy the 'design principles' of the R-Codes in respect to visual privacy.

It is considered the screening device will address the neighbour's concerns with respect to privacy and overlooking. With regard to the comment about requiring a 'wall' on the balcony to prevent people gaining access to the property this is considered a very unlikely circumstance and the screening is not required for this purpose.

Lot Boundary Setbacks

The R-Codes require a carport and balcony structure of this length and height (balcony has an awning) to be setback 3.1 metres from the boundary because it is technically classified as a patio above ground level and therefore classed as a built structure. The existing carport structure was approved with a nil setback. The 750mm setback for the support structures for the balcony which will form the carport roof is considered acceptable as there is no impact on residential amenity for the adjoining property as discussed above. It is in fact a better outcome than the structure being on the boundary as it currently is and so this setback variation is supported. This will also address the neighbour's concern in this regard.

Construction Materials

The Town's Building Surveyor has advised that the intended construction materials are acceptable under the Building Code of Australia requirements and will not present a fire hazard for the adjoining property.

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council exercise its discretion in granting retrospective planning approval for the balcony extension and planning approval to vary:

- (i) Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to allow a side boundary setback of less than 3.1 metres for the balcony and carport structure;
- (ii) Clause 5.4.1 – Visual Privacy of the Residential Design Codes of WA to allow a setback of less than 7.5 metres for the unenclosed outdoor active habitable space (balcony and external stairs)

for a portion of the balcony and planning approval for alterations and additions to the balcony and carport including rear external stairs at No. 6 (Lot 4996) Locke Crescent, East Fremantle,

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in accordance with the plans date stamped received on 13 November 2015, subject to the following conditions.

1. Permanent non-visually permeable privacy screens to a height of 1.6 metres to be installed in the north east corner section of the balcony for a length of 2.0 metres in each direction on the balcony edges to the satisfaction of the Chief Executive Officer the details of the screening to be installed to be submitted at Building Permit application stage.
2. With regard to the plans submitted with respect to the Building Approval Certificate application for the balcony, 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.
3. The proposed works are not to be commenced until Council has received an application for a building permit and the building permit issued is in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. The proposed carport and balcony are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer.
5. All storm water is to be disposed of on-site and clear of all boundaries, 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 Approval Certificate.
6. 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.
7. 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.
8. Any new crossovers which are constructed under this approval are to be a maximum width of 3.0 metres, 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 Residential Design Guidelines.
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 other 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 approval certificate and a building permit application is to conform with the approved plans unless otherwise approved by Council.*
- (c) *matters relating to dividing fences are subject to the Dividing Fences Act 1961*

Mr Wessels (applicant) addressed the meeting seeking the deletion of Condition 1 of the officer's recommendation.

Cr M McPhail moved, seconded Cr White

That Council exercise its discretion in granting retrospective planning approval for the balcony extension and planning approval to vary:

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- (i) Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to allow a side boundary setback of less than 3.1 metres for the balcony and carport structure;
- (ii) Clause 5.4.1 – Visual Privacy of the Residential Design Codes of WA to allow a setback of less than 7.5 metres for the unenclosed outdoor active habitable space (balcony and external stairs)

for a portion of the balcony and planning approval for alterations and additions to the balcony and carport including rear external stairs at No. 6 (Lot 4996) Locke Crescent, East Fremantle, in accordance with the plans date stamped received on 13 November 2015, subject to the following conditions.

1. Permanent non-visually permeable privacy screens to a height of 1.6 metres to be installed in the north east corner section of the balcony for a length of 2.0 metres in each direction on the balcony edges to the satisfaction of the Chief Executive Officer the details of the screening to be installed to be submitted at Building Permit application stage.
2. With regard to the plans submitted with respect to the Building Approval Certificate application for the balcony, 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.
3. The proposed works are not to be commenced until Council has received an application for a building permit and the building permit issued is in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. The proposed carport and balcony are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer.
5. All storm water is to be disposed of on-site and clear of all boundaries, 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 Approval Certificate.
6. 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.
7. 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.
8. Any new crossovers which are constructed under this approval are to be a maximum width of 3.0 metres, 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 Residential Design Guidelines.
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 other 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 approval certificate and a building permit application is to conform with the approved plans unless otherwise approved by Council.

(c) matters relating to dividing fences are subject to the Dividing Fences Act 1961

CARRIED 6:0

Note:

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

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REPORT NO 12.1

FORTESCUE STREET NO. 6 (LOT 181) CHANGE OF OPERATING HOURS

RESPONSIBLE DIRECTOR	Jamie Douglas Manager of Planning Services
AUTHOR	Andrew Malone Senior Planning Officer
FILE NUMBER	FOR 6
APPLICATION NUMBER	121/15
ATTACHMENT	(A) Application
AUTHORITY / DISCRETION	Town Planning & Building Committee

PURPOSE

This report considers a change to the opening times of the current 'Stepping Stones' Kindergarten at 6 (Lot 181) Fortescue Street, East Fremantle.

EXECUTIVE SUMMARY

An Application for Planning Approval to build a kindergarten facility for 3 and 4 year olds was approved by Council in 2008, with a condition of approval requiring the opening hours to be 0800 to 1800 Monday to Friday. The applicant has requested Council consider an application to modify the opening hours to 0700 to 1800 Monday to Friday.

The change of operating times is not considered to create any additional planning issues that were not previously addressed in the previous change of use application. The proposed change of operating hours is recommended for approval subject to conditions.

BACKGROUND

Suburb/Location	Fortescue Street 6 (Lot 181), East Fremantle
Applicant	Stepping Stones Child Development Centre
Owner	East Fremantle Baptist Church
Zoning	Primary Regional Road, Residential R12.5/R40
Site area	As existing
Structure plan	N/A

Date Application Received

21 October 2015

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

18 September 1978 Council resolves to advise the East Fremantle Baptist Church that it does not favour a Christian Community Primary School for 50 children to be conducted from the premises at the corner of Canning Highway & Fortescue Street;

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- 5 December 1997 CEO grants approval for removal of existing timber floor, its replacement with a concrete floor, and rotate the Church function by 180°;
- 17 March 1998 Council approves various alterations and additions to existing Church primarily involving three offices and parent's room.
- 19 May 1998 Council decides to advise the WAPC that it supports the amalgamation of Lots 181 & 182 Canning Highway;
- 2 June 1998 WAPC conditionally approves the amalgamation of Lots 181 & 182;
- 2 September 1998 Building Licence 224b/2723 approved for 2-storey extensions to Baptist Church at 229 Canning Highway;
- 13 November 1998 WAPC endorses Diagram 96701 for final approval for the amalgamation of Lots 181 & 182 and an 8.5m truncation at the corner of Canning Highway and Fortescue Street;
- 30 November 2005 CEO advises the WAPC that the Town supports the amalgamation of Lots 181 & 182 Canning Highway and their subdivision into Lot 800 comprising 2198m² and Lot 800 comprising 488m² (house/manse lot);
- 14 March 2006 WAPC conditionally approves the amalgamation and subdivision;
- 11 November 2008 Town Planning & Building Committee recommended approval of the kindergarten development subject to conditions;
- 18 November 2008 Application deferred, at applicant's request, after concerns raised by Council officers regarding the authority for several existing uses of the site.
- 2 December 2008 Town Planning & Building Committee recommended:
"That the application for demolition of the single storey house at 6 Fortescue Street and its replacement with a kindergarten facility for 3 & 4 year olds be deferred to the December meeting of Council in order to allow elected members to carry out a site visit of the adjoining property to the south in particular to allow assessment of the setback issues."
- 9 December 2008 Council grant approval of the kindergarten development application subject to conditions.

Documentation

Relevant forms and letter date stamp received on 21 October 2015.

DETAILS

Impact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: No impact.

Footpath: No impact.

Streetscape: No 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

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Legislation / Strategic Community Plan / Policy Implications

Legislation Local Planning Scheme No. 3 – Primary Regional Road,
Residential R12.5/R40 (LPS 3)

Strategic Community Plan

Key theme N/A

Objective N/A

Strategic initiative N/A

Policy N/A

Risk management considerations
N/A

Financial / budget implications
N/A

Regional significance
N/A

Sustainability implications
N/A

Consultation

Advertising

The proposed application was advertised to surrounding neighbours between 29 October 2015 and 12 November 2015. No submissions were received by Council.

Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel as there is no change to the existing property or streetscape.

COMMENT

The East Fremantle Baptist Church currently operates a kindergarten to the south of the existing church at the corner of Canning Highway and Fortescue Street.

It operates the kindergarten during weekdays between the hours of 0800 and 1800 Monday to Friday. The proposed kindergarten accommodates up to 40 students with 5 staff (1 administration, 4 teachers/carers). The applicant has requested a change to a previous condition of Council's 2008 approval:

The approval is confined to the operation of a pre-school/kindergarten only, with the use of the building limited to 8am-6pm, Monday to Friday and numbers of attendees limited to 40 at any time.

The applicant has requested an additional hour operating time each weekday. The proposed opening hours are 0700 to 1800 Monday to Friday. The applicant will continue to limit their programs to children between the ages of 3 and 5. The applicant states:

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The reason we are modifying our operations is in recognition that the needs of the community have changed in that there is now far greater demand for flexible child care over longer hours for both the school terms and holiday periods. The changing demographic and economic circumstances mean that families need the availability of services extended well beyond normal school hours.

The framework for the following discussion is by reference to Clause 12.2 of TPS3: "Matters to be considered by local government".

The subject land is zoned Residential with a split residential density of R12.5/40, and a portion of the land along its frontage is within the Canning Highway Road Reserve for Primary Regional Roads in the Metropolitan Region Scheme under TPS 3.

The Kindergarten falls within the use class "Pre-School/Kindergarten" in the Zoning Table, and this use is classified "A" in the Residential zone, which "means that 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". Council utilised its discretion and approved the Kindergarten in 2008.

The subject lot has 20 car spaces, and was approved with a shortfall of 5 spaces. The proposal does not require any additional car spaces to be provided.

The proposed additional hour of operation will extend the allowable time that children are dropped off/ collected at the Kindergarten, therefore potentially easing traffic congestion and car parking peak requirements in the area.

The kindergarten does provide a use that is consistent with the objectives and purposes as previously approved by Council and the extension by 1 hour each weekday of the opening hours is therefore recommended for approval, subject to conditions.

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council grant approval for a change to the opening times of the current 'Stepping Stones' Kindergarten at 6 (Lot 181) Fortescue Street, East Fremantle for 3 and 4 year olds in accordance with the written information date stamp received on 21 October 2015 subject to the following conditions:

1. The approval is confined to the operation of a pre-school/kindergarten only, with the use of the building limited to 7am-6pm, Monday to Friday and numbers of attendees limited to 40 at any time.
2. 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.
3. 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
4. With regard to the plans submitted with respect to the building licence 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.

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5. 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.
6. All conditions relating to previous development approvals are valid and unless modified by these conditions, must be complied with, including but not limited to:
 - (i) any use of the existing buildings, including existing uses which Council has determined is in breach of the Grant of Planning consent dated 17 March 1998, be terminated if requested by Council, unless otherwise approved by Council;
 - (ii) any existing use of the existing buildings which Council concludes are not demonstrably directly related to the primary function or mission of the Church (and this definition is not to include activities which have been permitted, or are sought, purely for revenue raising purposes to further the primary function or mission of the Church) and are determined by Council to be causing parking problems of a level not acceptable to Council, be terminated if requested by Council, unless otherwise approved by Council.
 - (iii) all future rentals or tenancies, with respect to the use of the existing buildings (and kindergarten, if approved) to require Council approval.
7. The proposed kindergarten 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. 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 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).*

Mr M Deeks (applicant) addressed the meeting in support of the proposal, seeking clarification in respect to some of the conditions.

Cr Nardi moved, seconded Cr White

That Council grant approval for a change to the opening times of the current 'Stepping Stones' Kindergarten at 6 (Lot 181) Fortescue Street, East Fremantle for 3 and 4 year olds in accordance with the written information date stamp received on 21 October 2015 subject to the following conditions:

- 1. The approval is confined to the operation of a pre-school/kindergarten only, with the use of the building limited to 7am-6pm, Monday to Friday and numbers of attendees limited to 40 at any time.**
- 2. 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.**
- 3. 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**

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4. With regard to the plans submitted with respect to the building licence 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 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.
6. All conditions relating to previous development approvals are valid and unless modified by these conditions, must be complied with, including but not limited to:
 - (i) any use of the existing buildings, including existing uses which Council has determined is in breach of the Grant of Planning consent dated 17 March 1998, be terminated if requested by Council, unless otherwise approved by Council;
 - (ii) any existing use of the existing buildings which Council concludes are not demonstrably directly related to the primary function or mission of the Church (and this definition is not to include activities which have been permitted, or are sought, purely for revenue raising purposes to further the primary function or mission of the Church) and are determined by Council to be causing parking problems of a level not acceptable to Council, be terminated if requested by Council, unless otherwise approved by Council.
 - (iii) all future rentals or tenancies, with respect to the use of the existing buildings (and kindergarten, if approved) to require Council approval.
7. The proposed kindergarten 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. 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 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 6:0

Note:

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

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Cr M McPhail made the following impartiality declaration in the matter of 65D Preston Point Road: "As a consequence of the wife of the applicant being known to me, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".

Cr Nicholson made the following impartiality declaration in the matter of 65D Preston Point Road: "As a consequence of the wife of the applicant being known to me, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".

Mayor O'Neill made the following impartiality declaration in the matter of 65D Preston Point Road: "As a consequence of the designer for the project, John Chisholm, having previously designed a rear studio at my property, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".

REPORT NO 12.5

PRESTON POINT ROAD NO. 65D (LOT 8) NEW DWELLING

RESPONSIBLE DIRECTOR	Jamie Douglas Manager of Planning Services
AUTHOR	Andrew Malone Senior Planning Officer
FILE NUMBER	PPT 65D
APPLICATION NUMBER	98/15
ATTACHMENT	(A) Submission (B) Neighbours Objections
AUTHORITY / DISCRETION	Town Planning and Building Committee

PURPOSE

This report considers an application for planning approval for a two storey dwelling located on a vacant rear battle-axe lot at 65D (Lot 8) Preston Point Road, East Fremantle.

EXECUTIVE SUMMARY

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

- variation to the side boundary setback requirements (northern elevation) – Building on the boundary. Required maximum wall height on the boundary 3.5 metres. Proposed maximum wall height on the boundary 7.4 metres;
 - variation to the overall boundary setback requirement (southern elevation) – required setback 3.0 metres. Proposed setback 2.2 metres;
 - 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;
 - variation to Element 5.4.1 of the Residential Design Codes Visual Privacy; and
 - element 3.7.17 of the Residential Design Guidelines: Building Design Requirements;
-

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The proposed dwelling is recommended for approval subject to conditions.

BACKGROUND

Suburb/Location	Preston Point Road 65D (Lot 8), East Fremantle
Applicant	Hooman Raei
Owner	CityPak Pty Ltd
Zoning	Residential R30
Site area	341m ²
Structure plan	N/A

Date Application Received

12 August 2015

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

Nil

Documentation

Relevant forms and letter date stamp received on 12 August 2015.

Revised plans and forms date stamp received on 10 November 2015.

DETAILS

Impact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: No impact.

Footpath: No impact.

Streetscape: No 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 Local Planning Scheme No. 3 – Residential R30 (LPS 3)

Strategic Community Plan

Key theme N/A

Objective N/A

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Strategic initiative N/A

Policy N/A

Risk management considerations
N/A

Financial / budget implications
N/A

Regional significance
N/A

Sustainability implications
N/A

Consultation

Advertising

The application was advertised to surrounding neighbours for a two week period between 18 August 2015 and 1 September 2015. Two submissions were received by Council, both containing similar concerns. The submissions are summarised below. The applicant has made changes to the proposal, which is detailed below.

COMMENTS	APPLICANT RESPONSE	OFFICER COMMENT
<p>As per the proposed plan, the new dwellings will affect sunlight to our properties. The proposed dwellings will be very close to our fence wall contravening building regulations and the buildings proposed in the current state has excess bulk.</p> <p>According to the proposed plan, the dwelling units B and D at 65, Preston Point Road have separation of just 1.2mtrs from our fence wall. For the proposed size and height of the building, the regulations specify a minimum distance of 1.5metres.</p> <p>The proposed dwellings in the current plan will be tall and bulky. This height and bulk will significantly affect sunlight into our living area including kitchen and dining as well as our backyard. We are concerned that in winter, our houses will be in the dark for an extended period of time each day.</p> <p>The proposed dwellings will be built after filling up the land to a height of 800mms. This will raise the final height of the proposed dwelling to over 6 metres plus the height of the roof.</p> <p>Stone cladding and storm water pipes of the dwellings will be very close to our fences again blocking sunlight and contravening building regulations.</p> <p>The proposed windows facing out</p>	<p>Amended plans submitted. Changes to the design include: The design is being driven by the small Lot area.</p> <p>The first floor, ground floor entry, bedroom 5 and the ensuite have undergone a considerable redesign. Bedroom 5 has been moved north away from the southern boundary in order to gain compliance for the required setback to the southern boundary, setback is now 2.2m. This has also increased solar access to the southern adjoining neighbour.</p> <p>Wall height: The proposed building solution does attempt to accommodate the steeply sloping site, the ground floor now steps an additional step, a total of 514mm. The floor to ceiling heights are not excessive 2.65m to the ground floor, and 2.57m to the first floor however due to the steeply sloping site, it does present a top of wall height which is partially compliant but rises as the site slopes away, even with the ground floor stepping.</p> <p>Ridge height: Significantly reduced as the proposed roof pitch has been reduced from 25 degrees to 15 degrees and 5 degrees.</p> <p>Overlooking / site fill: The proposed building solution does attempt to accommodate the steeply sloping site, the ground floor now steps an additional step in an effort to reduce overlooking, a total of 514mm stepping down.</p>	<p>A detailed assessment with regards the development has been undertaken and is discussed below.</p> <p>The adjoining neighbour on the common boundary to the north indicates that he has no issue with the common parapet wall and has signed their agreement / no objection to the proposal.</p>

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<p>properties need to be frosted or obscured for privacy reasons.</p>	<p>Further steps down to the outdoor entertaining area have been introduced so that the height of the proposed deck is in the region of .500-650mm above N.G.L. The issues are somewhat compounded by the natural site conditions, the site has been developed on a cliff, the neighbour to the west is 7m lower than the site of the proposed home. There is essentially no buildable solution on a cliff that would prevent looking towards the river to the west, with the existing neighbour being a full 7m lower than this site.</p> <p>The proposed use of the common ground easement is illustrated with a vehicle turning template, it is proposed that common access to this vehicular movement area is maintained for the common use by all parties to permit forward egress of vehicles. All parties in ownership of the 3 lots agree to maintain the easement, this is to be written into a joint agreement.</p>	
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Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel. The application is a battle-axe lot located at the rear of the parent lot. There are no streetscape or heritage impacts.

COMMENT

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	45%	49.8%	A
Outdoor Living	NA	30sqm	A
Car Parking	2	2	A
Site Works	Less than 500mm	1.1 metres	D
Overshadowing	35%	30%	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	A
3.7.15-20 Precinct Requirements	D

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Site Fill

The subject lot has a fall of 1.8 metres from east to west. The proposed fill is a maximum of 1.1 at the laundry area (adjoining the two sections of parapet wall; minimal impact), with the remaining sections of fill being located to the rear garden being 0.65 metres. The front of the dwelling has a finished floor level of 13.70AHD and reduces to 13.272AHD at the rear of the dwelling (approximately steps down 0.5 metres). The applicant has attempted where practical to minimise the fill required on the lot. The applicant has amended the previous proposed plans to reduce the fill to the rear yard from 1.3 metres to 0.65 metres. As such the proposed dwelling is being filled to provide usable living areas, however the dwelling is stepped down with the fall in the natural ground level, therefore the dwelling will not present as being elevated.

The proposed 1.1 and 0.65 metres of fill 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.*

It is proposed to fill approximately 1.1 metres at the laundry area (will have no impact to neighbours) and 0.65 metres to the rear of the lot to assist with providing a usable rear garden. The proposed fill is considered to have no significant impact on the scale and bulk of the dwelling which is stepped to address the natural ground level.

It is considered the proposed dwelling and fill is consistent with similar dwellings in the locality. There is no impact to the streetscape. The reduced fill and building height from the original plans has reduced the overshadowing to adjoining lots to ensure compliance with the 'Deemed to Comply' provisions of the R-Codes. The fill does not have a significant negative impact on the character or amenity of the neighbours, as the scale and bulk of the building has been reduced. The overlooking will be discussed later in this report, however is considered acceptable.

The proposed development is considered to comply with the Design Principles of Element 5.3.7 Site Works and therefore can be supported.

Side Boundary Setbacks

The following are the areas that require Council to exercise its discretion with regards the Acceptable Development Criteria of the RDG:

- Building on the boundary; northern elevation
- Overall setback for the southern elevation

The northern elevation is built on the boundary for a length of 19.5 metres. The R-Codes requires:

in areas coded R30 and higher, walls not higher than 3.5m with an average of 3m for two-thirds the length of the balance of the lot boundary behind the front setback, to one side boundary only

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The wall is less than two-thirds the length of the balance of the lot boundary, however exceeds the maximum height of 3.5 metres and therefore requires discretion to be exercised.

Each individual section of wall of the southern boundary complies with the requirement of Figure Series 4 of the R-Codes which requires:

Where the side of the building includes two or more portions of a wall without a major opening (such as E) their setbacks shall be determined independently of each other provided they are separated from one another by a distance (D) of more than 4m (in the case of wall heights of 6m or less) and an additional 1m for every 3m increase in height. The setback of D shall be determined on the basis of the total length (C).

The area of (D) (overall length of wall) as noted in the requirement above does not comply with the overall setback requirement. The required overall setback is 3.0 metres. The proposed setback is 2.2 metres. The overall wall setback as described above requires a 0.8 metre setback variation to the 'Deemed to Comply' provisions of the R-Codes. The proposed development will require assessment as per the design provisions 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 dwelling is on a battle-axe lot. There are no primary street issues.

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

The lot is currently vacant. There are no heritage requirements on the lot or adjoining lots.

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

The northern elevation double storey boundary wall has been agreed to by the adjoining neighbour. The adjoining lot is vacant. No planning application has been submitted to Council for the adjoining lot. It would be a practical solution for the northern neighbour when designing their development to simultaneously construct boundary walls. Therefore both lots can effectively utilise the area within the lots. The proposed boundary wall is considered acceptable, as there is no impact to the streetscape or to adjoining neighbours (as agreed).

The proposal is in an area zoned R30 and therefore reduced setbacks are a consequence of the density. The proposal has been significantly amended to take account of the local site constraints and neighbour's objections.

With regard to the proposed southern setback, the proposal has been modified, as discussed above, to address the neighbour's concerns regarding overshadowing, overlooking, scale and bulk. The first floor, ground floor entry, bedroom 5 and the ensuite have undergone a considerable redesign, with bedroom 5 and the ensuite both moved north away from the southern boundary in order to gain individual wall compliance for the required setback to the southern boundary and to reduce bulk and scale, however the overall wall setback as required

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by the R-Codes does require a setback variation. The proposed variation to the 'Deemed to Comply' provisions is 0.8 metres. As mentioned, the individual wall setbacks comply with the setback requirements. The proposed wall has been modified to ensure compliance with the overshadowing requirements of the R-Codes, as well as to further articulate the building to reduce the overall scale and bulk of the building. The proposal has also been reduced in height to minimise the potential impacts to the southern neighbours. The redesigned building minimises scale and bulk, brings the overshadowing into compliance and the revision of side windows eliminates all overlooking thereby protecting the neighbours amenity.

In conclusion the redesigned proposed dwelling has been designed to mitigate any adverse impact with regard to scale or bulk of the dwelling, as raised by the adjoining neighbours. The northern neighbour has approved the boundary wall and the proposal does make use of the lot area effectively. The proposed redesigned southern elevation has individual sections of the elevation which comply with the required setback, however the overall extent of the wall does require a variation of 0.8 metres. The proposed dwelling is considered to comply with the 'Performance Criteria' requirements of the RDG. The amended proposal does not significantly negatively impact on the streetscape or adjoining neighbours and therefore it is considered that the reduced side setbacks can be supported by Council.

Overlooking

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.

The following areas are elevated above 0.5 metres from natural ground level and are located so as to cause potential overlooking into adjoining lots:

- Dining/Family
- Games/ Lounge
- Deck

The 'Design Provisions' of 5.4.1 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;*

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- providing higher or opaque and fixed windows; and/or
- screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).

The proposed two levels of the dwelling and the deck are all raised 0.5 metres above natural ground level and are located closer to the boundaries than is permitted by the 'Deemed to Comply' provisions. The predominant neighbours impacted are the northern, southern and western neighbour. The northern neighbour has signed off on the proposal and therefore is considered to accept any overlooking. The overlooking to the southern neighbour is to a rear access leg/ parking area. The impact to the western neighbour is considered minor, with the living areas primarily overlooking the roof of the western neighbour. The neighbour to the west (Riverside Road) is 7m lower than the subject lot. The applicant has stated:

There is essentially no buildable solution on a cliff that would prevent looking towards the river to the west, with the existing neighbour being a full 7m lower than this site.

Achieving river views from the lot is a primary design feature of living within the Riverside Precinct. The dwelling has been designed to achieve river views. The proposal, whilst overlooking the western neighbour, isn't considered to cause significant negative impacts, as the lot level difference means any overlooking is over the roof of the adjoining neighbour. This area is not currently considered as an active habitable space, therefore it is not necessary to screen these areas.

The owner is attempting to maximise viewing vistas of the river and surrounding locality. It is considered the proposed design achieves maximum visual privacy to side and rear boundaries of adjoining lots through design measures and because of the significant lot level difference between the subject lot and surrounding lots. The proposal is therefore considered to comply with the Design Principles of Element 5.4.1 Visual privacy of the R-Codes and therefore can be supported.

Building Height

Building Height Requirement	Required	Proposed	Status
Building Height (wall) (Council Policy)	5.6m	7.4m	D
Building Height (roof) (Council Policy)	8.1m	9.0m	D

It is noted the applicant has reduced the height of the dwelling by reducing the fill, modifying the roof and stepping the dwelling. The subject lot has a fall of 1.8 metres from east to west. The front of the dwelling has a finished floor level of 13.70AHD and reduces to 13.272AHD at the rear of the dwelling, reducing approximately 0.5 metres to address the site gradient fall, however to facilitate the construction of a dwelling, the applicant has requested a wall and ridge height variation as noted above. The heights have been reduced and the setbacks have been increased to minimise scale and bulk. The overshadowing of the neighbours property is compliant with the 'Deemed to Comply' provisions of the R-Codes.

For sites where views are a consideration (this includes the subject lot), the RDG limits overall roofs to a maximum height of 8.1 metres from natural ground level. The proposed ridge height is 9.0 metres to top of roof. The proposed wall height is 7.4 metres. The Acceptable Development Provisions of the RDG for the building height in the Riverside Precinct states:

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A2.4 *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 development proposes sections (towards the rear of the subject lot) of the dwelling exceed the maximum building height requirements of the above provisions. The building exceeds the 5.6 metre wall height and 8.1 metres roof height requirements to the rear of the lot as the lot falls away.

The proposed dwelling does not comply with the Acceptable Development provisions of the RDG and therefore requires assessment under the Performance Criteria. The Performance Criteria allows for:

- 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 natural slope of the site means the wall height is more significant as measured from the ground levels at the rear of the site. As discussed the subject lot slopes approximately 1.8 metres from the front of the lot to the rear (east to west). It is considered that a variation to the wall height provisions can be supported for the following reasons:

- The dwelling is stepped to address the slope of the lot.
- The proposed ceiling heights are 2.65 metres and 2.57 metres for the ground and first floor and are considered to be a minimal height and only slightly above the BCA requirements for ceiling heights.
- The overall height of the building at the front of the dwelling is compliant with the Acceptable Development Criteria of the RDG.
- The proposed overall ridge height at 9.0 metres (0.9 metre variation) is considered relatively minor from natural ground level.
- The applicant has made significant changes to the setbacks to the southern elevation and amended the roof height and pitch to ameliorate any potential bulk and scale issues.
- The overshadowing by the development to adjoining lot is compliant with the ‘Deemed to Comply’ provisions of the R-Codes.
- View corridors are not impacted.

In this instance, it is considered that it is appropriate to grant discretions to the amended building design, as the building steps in an attempt to address the fall of the lot. The amended design attempts to address the neighbour’s concerns, with increased setbacks and reduced

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building heights. As discussed above, the proposed development can be supported for a number of reasons:

- The proposed development is considered to be consistent with the height of other dwellings in the locality.
- Overall the proposed dwelling is considered to be of a compatible form, bulk and scale to the adjoining dwellings in the locality.
- The proposal has been amended to ameliorate any negative impacts the development may have.
- There are no significant adverse impacts to adjoining neighbours including viewing corridors.

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

Easement

The subject lot utilises the front of the lot as a turning/ reversing area for access/ egress of the garage, however the adjoining lot at 65B requires utilisation of this land also for access/ egress, therefore an easement will need to be created over the lot for the benefit of the owner of 65B. Both owners have acknowledged this requirement and have agreed to the easement. A condition has been included in the Officer's recommendation to reflect the requirements of the easement.

CONCLUSION

The bulk, scale, height and setback of the proposed development (whilst requiring Council to grant discretions to the 'Acceptable Development' and 'Deemed to Comply' provisions) are considered acceptable. The applicant has amended the plans to minimise potential negative impacts. The development is surrounded by R30 density development and has been designed to be consistent with the surrounding design of development in the immediate area. The dwelling has been stepped to address the fall of the lot.

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. The development, while still requiring Council discretion, is considered an appropriate design for the locality. The proposal does not visually interfere with the streetscape. It is considered the proposal can be supported as proposed.

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 side boundary setback requirements (northern elevation) – Building on the boundary. Required maximum wall height on the boundary 3.5 metres. Proposed maximum wall height on the boundary 7.4 metres;
- (b) variation to the overall boundary setback requirement (southern elevation) – required setback 3.0 metres. Proposed setback 2.2 metres;
- (c) 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;

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(d) variation to Element 5.4.1 of the Residential Design Codes Visual Privacy; and
(e) element 3.7.17 of the Residential Design Guidelines: Building Design Requirements;
for construction of proposed two storey single dwelling at 65D (Lot 8) Preston Point Road, East Fremantle, in accordance with the plans date stamp received on 10 November 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 (refer footnote (e) below).
2. Applicant/ owner to create an easement over the subject lot to the benefit of 65B Preston Point Road to facilitate access/ egress and turning circles/ manoeuvrability.
3. 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.
4. 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)
5. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
6. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
8. All 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.
9. 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.
10. 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.
11. 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) *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".*

Mr Narayanan (adjoining owner) & Mr Heinemann (adjoining owner) addressed the meeting objecting to the proposal in respect to reduced setbacks, increased height and the impact of the proposed development on their sunlight.

Mr Chisholm (applicant) and Ms Kiana (owner) addressed the meeting in support of the proposal and outlining the modifications previously made to the application in response to neighbour comment.

Mayor O'Neill moved, seconded Cr Nardi

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

- (a) **variation to the side boundary setback requirements (northern elevation) – Building on the boundary. Required maximum wall height on the boundary 3.5 metres. Proposed maximum wall height on the boundary 7.4 metres;**
- (b) **variation to the overall boundary setback requirement (southern elevation) – required setback 3.0 metres. Proposed setback 2.2 metres;**
- (c) **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;**
- (d) **variation to Element 5.4.1 of the Residential Design Codes Visual Privacy; and**
- (e) **element 3.7.17 of the Residential Design Guidelines: Building Design Requirements;**

for construction of proposed two storey single dwelling at 65D (Lot 8) Preston Point Road, East Fremantle, in accordance with the plans date stamp received on 10 November 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 (refer footnote (e) below).**

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2. Applicant/ owner to create an easement over the subject lot to the benefit of 65B Preston Point Road to facilitate access/ egress and turning circles/ manoeuvrability.
3. 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.
4. 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)
5. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
6. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
8. All 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.
9. 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.
10. 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.
11. 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.*

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- (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".*

CARRIED 6:0

Note:

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

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REPORT NO 12.7

OAKOVER STREET NO. 52 (LOT 991) ADDITION OF A BEDROOM TO AN EXISTING DWELLING

RESPONSIBLE DIRECTOR	Jamie Douglas Manager of Planning Services
AUTHOR	Andrew Malone Senior Planning Officer
FILE NUMBER	OAK52
APPLICATION NUMBER	123/15
ATTACHMENT	(A) Neighbour's Submission (B) Applicant's Letter
AUTHORITY / DISCRETION	Town Planning and Building Committee

PURPOSE

This report considers an application for an addition of a fifth bedroom to the northern elevation (secondary street) at 52 (Lot 991) Oakover Street, East Fremantle.

EXECUTIVE SUMMARY

The proposal raises the following issues which influence the determination of the application:

- Building Setback: Secondary street (northern elevation): proposed setback 1.08 metres; required setback 2 metres. Setback to eastern elevation (rear setback): Proposed 1.02 metres; required 1.5 metres.

The proposed bedroom in all other respects is considered to comply with the Residential Design Codes and Residential Design Guidelines. The addition is recommended for approval subject to conditions.

BACKGROUND

Suburb/Location	Oakover Street 52 (Lot 991), East Fremantle
Applicant	C Morrish
Owner	C Morrish
Zoning	Residential R12.5
Site area	502m ²
Structure plan	N/A

Date Application Received

23 October 2015

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

Nil

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Documentation

Relevant forms and letter date stamp received on 23 October 2015.

DETAILS

Impact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: No Impact.

Footpath: No Impact.

Streetscape: Secondary Street. Proposal is to be constructed into the secondary street setback. The proposed impact is considered to be minimal.

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

Key theme N/A

Objective N/A

Strategic initiative N/A

Policy N/A

Risk management considerations

N/A

Financial / budget implications

N/A

Regional significance

N/A

Sustainability implications

N/A

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Consultation

Advertising

The proposed application was advertised to surrounding neighbours. One objection was received by the adjoining neighbour. The neighbour has stated:

We are NOT in favour of the extension for these various reasons. I am disappointed that the blocks are getting boxed in. I understand that Carolyn is seeking another bedroom but think she has other options.

This will be discussed in detail later in the report.

Town Planning Advisory Panel

The application was referred to the Panel by email, as the November TPAP meeting was not convened due to the minor nature of the applications received by Council. A panel member made the following comment:

Cannot agree that the fifth bedroom addition will 'contribute and be consistent with the streetscape' as the gable roof will be considerably forward of the setback of the adjoining dwelling in Fletcher Street. As the application stands, do not believe it can be supported.

The member's comment is acknowledged and addressed in the Comment section of this report.

COMMENT

The proposal is for an additional bedroom (fifth bedroom) to the northern boundary of the lot. The total area of the additional room is 16.2m². The proposed bedroom is located 1.08 metres from the northern boundary.

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	55%	55%	A
Outdoor Living	30sqm	As existing	A
Car Parking	2	As existing	A
Site Works	Less than 500mm	As existing	A
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	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	A
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	N/A

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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

Boundary Setbacks

The northern wall to the bedroom is 4.5 metres in length along the northern boundary and 3.5 metres in length adjoining the eastern boundary. The wall height is 3.1 metres. The bedroom is setback 1.08 metres from the northern boundary (secondary street) and 1.02 metres from the eastern boundary.

The proposal does not comply with the 'Deemed to Comply' requirements of the R-Codes and the Acceptable Development Criteria of the RDG. The required setback for the bedroom is 2.0 metres from the northern boundary and 1.5 metres from the eastern boundary. The proposed bedroom exceeds the 'Deemed to Comply' provisions of the R-Codes and the Acceptable Development provisions of the RDG for setbacks.

The LPP RDG Element 3.7.7 provides performance criteria by which to assess proposed variations to the 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.

There are no planning implications with regard to the front or street setback for this proposal. The proposal is located wholly to the side/ rear of the subject lot.

With respect to the secondary street, the proposed side set to the dwelling / bedroom addition is required to be set back 2.0 metres from the boundary as per Table 1 of the R-Codes. The proposed set back from the side (secondary street) boundary is 1.08 metres. The existing dwelling is located 4.7 metres from the secondary street.

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

The existing dwelling is not listed on the Town's Municipal Heritage Inventory or the Heritage List.

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

With regard to the proposed side setback to the north, the proposal is located within the secondary street setback area of 2.0 metres. Of the total area of the extension (16.2m²) only 4.5m² is proposed to be located within the secondary street setback area. The bedroom is also located 1.02 metres from the eastern boundary.

The required setback for the bedroom is 2.0 metres from the northern boundary and 1.5 metres from the eastern boundary (0.92 metres variation to the northern boundary and 0.48 metre setback variation to the eastern boundary)

The subject lot is located on a corner lot. The overall primary street impact is minor. The neighbour has objected to the proposal. The neighbours access leg and garage adjoins the proposal. The addition is single storey. It is proposed to be located behind an existing 2 metre

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high boundary wall. Approximately 1.1 metres of height for a length of 4.5 metres will be visible. A window is located in this wall. The wall adjoining the neighbour's property is a painted solid wall to match the existing dwelling. The existing boundary fence (eastern boundary) at 1.8 metres high will also significantly screen the bedroom addition from the neighbours.

It is considered the proposed northern and eastern boundary wall will not significantly impact on the amenity of the adjoining neighbour, as the bedroom adjoins access leg to the garage of the adjoining property. There will be no overlooking or overshadowing impacts.

The side setback to the eastern boundary is considered to have a setback that is consistent with other side setbacks in the area, however due to the corner nature of the lot, the impact to the secondary street (reduced secondary street set back) should be assessed. It is considered there is minimal impact to the primary streetscape. The dwelling is located a minimum of 8.3 metres from the primary street. The setback from the secondary street to the dwelling is in excess of 4.5 metres. The proposed addition being only 4.5 metres in length along the secondary street is not considered to add to the bulk of the building in relation to the secondary street. It is considered, as discussed above, the bedroom does not impact on the amenity of the adjoining neighbour. The dwelling is single storey with a 2 metre high wall on the secondary street, therefore the minor proposal has a minimal impact to the streetscape and character of the area. The proposed height of the wall does not significantly impact on the scale or bulk of the dwelling. The proposal will still maintain an open primary and secondary street.

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

Conclusion

The height and scale of the proposed bedroom, whilst requiring side setback variations to the 'Deemed to Comply' provisions of the R-Codes and the Acceptable Development provisions of the RDG, are considered acceptable. The setback to the eastern boundary is consistent with other such side setbacks in the locality. The proposed incursion of 4.5m² into the secondary street setback is considered minor and does not impact significantly on the secondary street. The proposed single storey bedroom is considered to be consistent and sympathetic with the adjoining properties and the streetscape in the locality, comprising a similar height, scale and bulk as the existing dwelling.

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 setback to the secondary street (northern boundary) and rear boundary (eastern boundary) 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 side and rear setback lot boundary setback of the Residential Design Guideline and R-Codes (northern and eastern boundary) – required setback 2 metres

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(secondary street and 1.5 metres rear boundary), proposed setback 1.08 metres secondary street and 1.02 metres rear setback

for an addition of a fifth bedroom to the northern elevation (secondary street) at 52 (Lot 991) Oakover Street, East Fremantle, in accordance with the plans date stamp received on 23 October 2015, subject to the following conditions:

1. Prior to the installation of externally mounted air-conditioning plant to the ancillary accommodation, 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 (i) below)
2. 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.
3. 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.
4. 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.
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. 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. 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) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (e) *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 Morrish (owner) addressed the meeting in support of her proposal.

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Cr Nardi moved, seconded Mayor O'Neill

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

- (a) variation to side and rear setback lot boundary setback of the Residential Design Guideline and R-Codes (northern and eastern boundary) – required setback 2 metres (secondary street and 1.5 metres rear boundary), proposed setback 1.08 metres secondary street and 1.02 metres rear setback

for an addition of a fifth bedroom to the northern elevation (secondary street) at 52 (Lot 991) Oakover Street, East Fremantle, in accordance with the plans date stamp received on 23 October 2015, subject to the following conditions:

1. Prior to the installation of externally mounted air-conditioning plant to the ancillary accommodation, 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 (i) below)
2. 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.
3. 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.
4. 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.
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. 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. 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) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (e) *Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The*

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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

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

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Mayor O'Neill made the following impartiality declaration in the matter of 65B Preston Point Road:
"As a consequence of the designer for the project, John Chisholm, having previously designed a rear studio at my property, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".

Cr M McPhail made the following impartiality declaration in the matter of 65D Preston Point Road:
"As a consequence of the wife of the applicant being known to me, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".

Cr Nicholson made the following impartiality declaration in the matter of 65D Preston Point Road:
"As a consequence of the wife of the applicant being known to me, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly".

REPORT NO 12.8

PRESTON POINT ROAD NO. 65B (LOT 2) NEW DWELLING

RESPONSIBLE DIRECTOR	Jamie Douglas Manager of Planning Services
AUTHOR	Andrew Malone Senior Planning Officer
FILE NUMBER	PPT 65B
APPLICATION NUMBER	97/15
ATTACHMENT	(A) Submission (B) Neighbours Objections
AUTHORITY / DISCRETION	Town Planning and Building Committee

PURPOSE

This report considers an application for planning approval for a two storey dwelling located on a vacant rear battle-axe lot at 65B (Lot 2) Preston Point Road, East Fremantle.

EXECUTIVE SUMMARY

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

- variation to the side boundary setback requirements (eastern elevation) – Building on the boundary. Required maximum wall height on the boundary 3.5 metres. Proposed maximum wall height on the boundary 5.2 metres; Overall length of wall exceeds the length requirements;
- variation to Element 5.4.1 of the Residential Design Codes Visual Privacy; and
- element 5.1.4 Open Space of the Deemed to Comply Provisions of the R-Codes;
- element 3.7.17 of the Residential Design Guidelines: Building Design Requirements: Wall height

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The proposed dwelling is recommended for approval subject to conditions.

BACKGROUND

Suburb/Location	Preston Point Road 65B (Lot 2), East Fremantle
Applicant	Hooman Raei
Owner	CityPak Pty Ltd
Zoning	Residential R30
Site area	341m ²
Structure plan	N/A

Date Application Received

12 August 2015

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

Nil

Documentation

Relevant forms and letter date stamp received on 12 August 2015.

Revised plans and forms date stamp received on 10 November 2015.

DETAILS

Impact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: No impact.

Footpath: No impact.

Streetscape: No 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 Local Planning Scheme No. 3 – Residential R30 (LPS 3)

Strategic Community Plan

Key theme N/A

Objective N/A

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Strategic initiative N/A

Policy N/A

Risk management considerations
N/A

Financial / budget implications
N/A

Regional significance
N/A

Sustainability implications
N/A

Consultation

Advertising

The application was advertised to surrounding neighbours for a two week period between 18 August 2015 and 1 September 2015. Two submissions were received by Council, both containing similar concerns. The submissions are summarised below. The applicant has made changes to the proposal, which are detailed below.

COMMENTS	APPLICANT RESPONSE	OFFICER COMMENT
<p>As per the proposed plan, the new dwellings will affect sunlight to our properties. The proposed dwellings will be very close to our fence wall contravening building regulations and the buildings proposed in the current state has excess bulk. This has potential to significantly reduce property value of units #3 and #4 at 63, Preston Point Road.</p> <p>According to the proposed plan, the dwelling units B and D at 65, Preston Point Road have separation of just 1.2mtrs from our fence wall. For the proposed size and height of the building, the regulations specify a minimum distance of 1.5metres.</p> <p>The proposed dwellings in the current plan will be tall and bulky. This height and bulk will significantly affect sunlight into our living area including kitchen and dining as well as our backyard. We are concerned that in winter, our houses will be in the dark for an extended period of time each day.</p> <p>The proposed dwellings will be built after filling up the land to a height of 800mms. This will raise the final height of the proposed dwelling to over 6 metres plus the height of the roof.</p> <p>Stone cladding and storm water pipes of the dwellings will be very close to our fences again blocking sunlight and</p>	<p>Amended plans submitted. Changes to the design include: The design is being driven by the small Lot area.</p> <p>Setbacks: The building has been moved north in order to gain compliance for the required setback to the southern boundary, setback is now 1.8m.</p> <p>Wall height: The proposed southern boundary wall has been redesigned in the area of roofing and box guttering, a fascia gutter on top of the wall is now proposed. As a result the proposed wall height of 3.2m - 2.9m is now greatly reduced to 2.9 - 2.6m</p> <p>Ridge Height: Significantly reduced as the proposed roof pitch has been reduced from 25 degrees to 18 degrees.</p> <p>Overlooking: The adjoining neighbour on the common boundary to the east indicates that she has no issue with the proposal and is willing to sign her agreement / no objection to the proposal. Should there be any perceived issue in the future, by either party, then it is proposed that the owner of 65B install visually impermeable screens to protect privacy of both parties and still allow good access to light and airflow.</p> <p>Open Space: There is a small percentage over run in the site coverage / open space calculations and a discretionary variation is sought in this area.</p>	<p>A detailed assessment with regards the development has been undertaken and is discussed below.</p> <p>The adjoining neighbour on the common boundary to the east indicates that she has no issue with the common parapet wall and is willing to sign her agreement / no objection to the proposal.</p>

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<p>contravening building regulations. The proposed windows facing out properties need to be frosted or obscured for privacy reasons.</p>	<p>Access to garage: The proposed use of the common ground easement is illustrated with a vehicle turning template, it is proposed that common access to this vehicular movement area is maintained for the common use by all parties to permit forward egress of vehicles.</p> <p>Easement: Full detail of the permanent access to the easement to be drawn up and signed by all parties.</p>	
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Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel. The application is a battle-axe lot located at the rear of the parent lot. There are no streetscape or heritage impacts.

COMMENT

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	45%	43%	D
Outdoor Living	24sqm	30sqm	A
Car Parking	2	2	A
Site Works	Less than 500mm	Less than 500mm	A
Overshadowing	35%	13% / 16%	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	A
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	A
3.7.15-20 Precinct Requirements	D

Side Boundary Setbacks

The following are the areas that require Council to exercise its discretion with regards the Acceptable Development Criteria of the RDG:

- Building on the boundary; eastern elevation (two storey)

The eastern elevation is built on the boundary for a length of 8.7 metres on the ground floor and 9.2 metres on the first floor. The overall height of the wall is 5.2 metres from natural ground

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level. Boundary walls are only permitted on one boundary. Two sections of boundary walls are proposed. The R-Codes requires:

in areas coded R30 and higher, walls not higher than 3.5m with an average of 3m for two-thirds the length of the balance of the lot boundary behind the front setback, to one side boundary only

The southern section of boundary wall complies with the above R-Code requirements. The eastern wall is two storey (over height). The eastern boundary wall is also considered the second boundary wall. The eastern boundary wall is less than two-thirds the length of the balance of the lot boundary, however exceeds the maximum height of 3.5 metres and therefore requires discretion to be exercised.

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 dwelling is on a battle-axe lot. There are no primary street issues. The dwelling located to the front of the subject lot is approximately 1.1 metres higher (finished floor level) than the proposed dwelling. There will be no primary street issues.

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

The lot is currently vacant. There are no heritage requirements on the lot or adjoining lots.

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

The eastern elevation double storey boundary wall has been agreed in principle by the adjoining neighbour. The dwelling located to the front of the subject lot is approximately 1.1 metres higher (finished floor level) than the proposed dwelling. As such the extent of the wall seen by the adjoining neighbour is 3.7 metres in height. Utilisation of the second boundary wall (located behind a filled lot) makes effective use of space. The proposal is in an area zoned R30 and therefore reduced setbacks are a consequence of the density. Whilst the neighbour has raised no concerns, an assessment of the potential impacts to the neighbour will still be assessed:

- The proposal has been significantly amended to take account of the local site constraints and neighbour's objections. (increased setbacks to the southern neighbour to minimise scale and bulk and overshadowing).
- The adjoining eastern neighbour has no habitable areas facing the boundary wall.
- There is minimal scale and bulk issues. The dwelling located to the front of the subject lot is approximately 1.1 metres higher (finished floor level) than the proposed dwelling. The extent of the wall seen by the neighbour is 3.7 metres.
- The proposal has also been reduced in height to minimise the potential impacts to the southern and eastern neighbours. The redesigned building minimises scale and bulk, brings the overshadowing into compliance and the revision of side (western) windows eliminates all overlooking to the southern neighbour thereby protecting the neighbours amenity.

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The proposed boundary wall is considered acceptable, as there is no impact to the streetscape or to adjoining neighbours (as agreed in principle). The proposed dwelling is considered to comply with the 'Performance Criteria' requirements of the RDG. The amended proposal does not significantly impact negatively on the streetscape or adjoining neighbours and therefore it is considered that the reduced side setbacks (zero lot boundary wall at a height of 3.7 metres as experienced by the eastern neighbour) can be supported by Council.

Overlooking

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.

The following areas are elevated above 0.5 metres from natural ground level and are located so as to cause potential overlooking into adjoining lots:

- Bedroom 4 / 5

The 'Design Provisions' of 5.4.1 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).*

The double storey boundary wall all on the eastern elevation has been agreed to in principle by the adjoining neighbour. Mr. Chisholm has stated:

Should there be any perceived issue in the future, by either party, then it is proposed that the owner of 65B install visually impermeable screens to protect privacy of both parties and still allow good access to light and airflow.

The proposed bedroom window 4 primarily overlooks the driveway, however it does have oblique views through the neighbours (eastern) property. A condition has been included to require the owner to submit plans signed by the eastern neighbour specifically agreeing to no screening for Bedroom 4 and Bedroom 5. In the event no such agreement can be reached

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screening will be required. Notwithstanding the above, the areas overlooked are not to habitable areas and will not impact on the neighbour. The proposed bedroom window 5, whilst looking into the neighbour's property overlooks passageways under the eaves round the dwelling. No habitable areas are overlooked. There will be no significant impact on the neighbour.

Amendments to the plans have been undertaken to ensure full privacy is achieved to the southern neighbours. It is considered the proposed design achieves maximum visual privacy to side and rear boundaries of adjoining lots through design measures, use of windows and because of the significant lot level difference between the subject lot and surrounding lots. The eastern neighbour has agreed to the overlooking. Notwithstanding the "in principle agreement", the areas overlooked are considered not to be habitable or sensitive areas. The proposal is therefore considered to comply with the Design Principles of Element 5.4.1 Visual Privacy of the R-Codes and therefore can be supported.

Open Space

The proposed open space for the lot is 43%. The subject lot is required to have 45% open space. The applicant is requesting a 2% variation (5.4m²) to the 'Deemed to Comply' provisions of the R-Codes.

The Design Principles of 5.1.4 Open Space of the R-Codes states:

- P4 Development incorporates suitable open space for its context to:*
- *reflect the existing and/or desired streetscape character or as outlined under the local planning framework;*
 - *provide access to natural sunlight for the dwelling;*
 - *reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;*
 - *provide an attractive setting for the buildings, landscape, vegetation and streetscape;*
 - *provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and*
 - *provide space for external fixtures and essential facilities.*

With regard to the above, the proposed development provides a 30m² alfresco and adjoining outdoor area with northern exposure and access from a large dining/ kitchen. On the upper floor is an approximate 70m² lounge and games room, providing a substantial amount of area for recreational purposes. All rooms have excellent access to light. The building is not considered overly bulky, with the massing to the southern elevation reduced to minimise any potential impact to the southern neighbours. The 2% variation is minor. The location of the dwelling in Preston Point Road affords the owners a significant number of parks and the river within close proximity.

It is considered the character of the dwelling and locality is being maintained. The alfresco area can be utilised as open space and it is considered this area provides for the residents to use space external to the dwelling for outdoor pursuits and entertaining.

The open space provided is considered acceptable and is considered appropriate for the lot and therefore can be supported by Council.

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Building Height

Building Height Requirement	Required	Proposed	Status
Building Height (wall) (Council Policy)	5.6m	5.9m	D
Building Height (roof) (Council Policy)	8.1m	8.1m	A

For sites where views are a consideration (this includes the subject lot), the RDG limits overall roofs to a maximum height of 8.1 metres from natural ground level. The proposed ridge height is 8.1 metres to top of roof. The proposed wall height is 5.9 to the western elevation and 5.1 metres from the eastern elevation. The Acceptable Development Provisions of the RDG for the building height in the Riverside Precinct states:

- A2.4 *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 development proposes the front sections (towards the rear of the subject lot) of the dwelling exceed the maximum wall height requirements of the above provisions by 0.3 metres (total wall height 5.9 metres).

The proposed dwelling does not comply with the Acceptable Development provisions of the RDG and therefore requires assessment under the Performance Criteria. The Performance Criteria allows for:

- 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 natural slope of the site means the wall height is more significant as measured from the ground levels at the rear of the site. The wall height varies between 5.1 metres and 5.9 metres across the lot because of the fall in the natural ground level. 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 5.9 metres (0.3 metre variation) is considered relatively minor from natural ground level.

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- The applicant has made significant changes to the setbacks to the southern elevation and amended the roof height and pitch to ameliorate any potential bulk and scale issues.
- The overshadowing by the development to adjoining lot is compliant with the 'Deemed to Comply' provisions of the R-Codes.
- View corridors are not impacted.

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.

Access / Egress Easement

The subject lot utilises the front of the adjoining lot at 65D as a turning/ reversing area for access/ egress to the garage. 65B requires utilisation of this land for access/ egress into their lot. Mr Chisholm has stated:

The proposed use of the common ground easement is illustrated with a vehicle turning template, it is proposed that common access to this vehicular movement area is maintained for the common use by all parties to permit forward egress of vehicles.

Full detail of the permanent access to the easement to be drawn up and signed by all parties.

An easement will need to be created over 65D Preston Point Road for the benefit of the owner of 65B (subject lot). Both owners have acknowledged this requirement and have agreed to the easement. A condition has been included in the Officer's recommendation to reflect the requirements of the easement.

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.

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VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

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

- (a) variation to the side boundary setback requirements (eastern elevation) – Building on the boundary. Required maximum wall height on the boundary 3.5 metres. Proposed maximum wall height on the boundary 5.2 metres;
- (b) variation to Element 5.4.1 of the Residential Design Codes Visual Privacy;
- (c) element 5.1.4 Open Space of the Deemed to Comply Provisions of the R-Codes; and
- (d) element 3.7.17 of the Residential Design Guidelines: Building Design Requirements (Building height);

for construction of proposed two storey single dwelling at 65B (Lot 2) Preston Point Road, East Fremantle, in accordance with the plans date stamp received on 10 November 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 (refer footnote (e) below).
2. Applicant/ owner to enter into an agreement with the owner of 65D Preston Point Road to create an easement over 65D Preston Point Road to the benefit of 65B Preston Point Road to facilitate access/ egress and turning circles/ manoeuvrability.
3. Screening to be included on Bedroom 4 and Bedroom 5 windows to a height of 1.6 metres to comply with the 'Deemed to Comply' provisions of the R-Codes. In the event that a mutually acceptable solution can be agreed upon (or where no screening is required by agreement) signed by both parties (eastern neighbour and subject lot owner), the screening may be removed to that elevation / window. Revised plans signed by both parties noting any variations to the propose screening are to be submitted to Council prior to a Building Permit being submitted to Council, to the satisfaction of the Acting Chief Executive Officer.
4. 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.
5. 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)
6. 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.
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. 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.

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10. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
11. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
12. 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".*

Mr Chowdavarapy (neighbour) addressed the meeting advising that he supported the revised proposal.

Cr M McPhail moved, seconded Cr White

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

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- (a) variation to the side boundary setback requirements (eastern elevation) – Building on the boundary. Required maximum wall height on the boundary 3.5 metres. Proposed maximum wall height on the boundary 5.2 metres;
- (b) variation to Element 5.4.1 of the Residential Design Codes Visual Privacy;
- (c) element 5.1.4 Open Space of the Deemed to Comply Provisions of the R-Codes; and
- (d) element 3.7.17 of the Residential Design Guidelines: Building Design Requirements (Building height);

for construction of proposed two storey single dwelling at 65B (Lot 2) Preston Point Road, East Fremantle, in accordance with the plans date stamp received on 10 November 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 (refer footnote (e) below).
2. Applicant/ owner to enter into an agreement with the owner of 65D Preston Point Road to create an easement over 65D Preston Point Road to the benefit of 65B Preston Point Road to facilitate access/ egress and turning circles/ manoeuvrability.
3. Screening to be included on Bedroom 4 and Bedroom 5 windows to a height of 1.6 metres to comply with the 'Deemed to Comply' provisions of the R-Codes. In the event that a mutually acceptable solution can be agreed upon (or where no screening is required by agreement) signed by both parties (eastern neighbour and subject lot owner), the screening may be removed to that elevation / window. Revised plans signed by both parties noting any variations to the propose screening are to be submitted to Council prior to a Building Permit being submitted to Council, to the satisfaction of the Acting Chief Executive Officer.
4. 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.
5. 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)
6. 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.
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. 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.

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10. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
11. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
12. 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".*

CARRIED 6:0

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

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REPORT NO 12.9

FRASER STREET, NO. 49 (LOT 136) – FRONT FENCE AND INCREASED WIDTH CROSSOVER, INCLUDING RETROSPECTIVE APPROVAL FOR PORTION OF BOUNDARY FENCE IN FRONT SETBACK

RESPONSIBLE DIRECTOR	Planning Services Jamie Douglas
AUTHOR	Christine Catchpole
FILE NUMBER	P/FRA49
APPLICATION NUMBER	P120/15
AUTHORITY / DISCRETION	Town Planning & Building Committee

PURPOSE

This report relates to a retrospective planning application for a portion of the front fence and a planning application for the remainder of the fence and increased width crossover.

EXECUTIVE SUMMARY

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

Front fence – side boundary (within 7.5m from street front boundary)

Required: height of solid section of wall not to exceed 1.2 metres (R-Codes & Residential Design Guidelines).

Provided: 1.0 metre – 2.2 metres above natural ground level (eastern boundary) and 600mm – 1.7 metres above natural ground level (western boundary).

The variation cannot be supported and retrospective approval and planning approval is recommended subject to the height of the fencing being reduced to comply with the R-Codes and Residential Design Guidelines for the front setback area.

Sight lines

Required: 1.5 metres x 1.5 metres setback of fence (eastern boundary) at the point where the driveway meets the front boundary/footpath (road reserve) and the western boundary where the fence meets the footpath.

Provided: Nil provided.

The sight line variations cannot be supported and the fences must comply with the sight line requirement of the R-Codes and the Residential Design Guidelines on both lot boundaries.

Crossover width

Required: not to exceed 3 metres (Residential Design Guidelines).

Proposed: 6.0 metres (~7 metres including splays).

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The variation can be supported subject to a condition specifying a reduced maximum width of 4.5 metres.

Crossover construction material

Required: black asphalt (Residential Design Guidelines).

Proposed: exposed aggregate concrete.

The variations in respect to crossover width and construction material can be supported subject to conditions.

BACKGROUND

Suburb/Location	No. 49 (Lot 136) Fraser Street, East Fremantle
Applicant	F Castino
Owner	F Castino
Zoning	Residential R12.5 Urban
Site area	931m ²
Structure plan	'Not applicable'
Date Application Received	21 October 2015

Relevant Council Policies

Residential Design Guidelines 2015 (as amended) (RDG)

Impact on Public Domain

Tree in verge: Mature tree centre of verge.

Light pole: No impact.

Crossover: Increased width and alternate material requested.

Footpath: Reinstatement required.

Streetscape: The front fence and crossover width has a significant impact on the streetscape and pedestrian/vehicle safety.

Property History

25 May 2010 – Council approval for a single storey dwelling with an undercroft area. Subsequent approvals for a swimming pool and air conditioning have been issued.

DETAILS

The applicant is proposing to construct a front boundary fence of rendered masonry which for the most part will not exceed 600mm in height. The letterbox and pier for the street number will be slightly higher.

The side boundary fencing in the 7.5 metre setback area on the eastern boundary ranges in height between 1.0 metre – 2.2 metres above natural ground level. The walls and fencing in this location are also rendered masonry and will form planter boxes for landscaping.

The applicant's argument in support of the increased height fence on the eastern side boundary is as follows:

- The fence as partly constructed is close to the recommended height.
- The neighbour's sight line ability is enhanced because the driveway is sloped upwards.

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- The neighbour's driveway is for access to the back yard of his property and used infrequently.
- The distance from the fence to the neighbour's regularly used driveway to his garage exceeds 3 metres and provides more than adequate sight lines.
- The fence was constructed in consultation and with approval of the neighbour. His letter in agreement with the fence height is attached.
- There are numerous examples of fences in the neighbourhood that do not comply with the truncation height guideline and these act as precedent.

The fence on the western side boundary will range in height from 600mm – 1.7 metres above natural ground level and will also be constructed so that vegetation can be installed alongside. The remainder of the front garden will be a mix of paving and soft landscaping with the driveway being 8.3 metres in width in the setback area.

Legislation / Strategic Community Plan / policy implications

Legislation	Town Planning Scheme No. 3 (TPS 3) Local Planning Strategy (LPS) Residential Design Codes of WA (R-Codes)
Strategic Community Plan	Strategic Community Plan 2015 - 2025
Key theme	Built and Natural Environment
Objective	Facilitating sustainable growth whilst maintaining urban and natural character.
Strategic initiative	N/A
Policy	Residential Design Guidelines (as amended) 2015 (RDG)

Risk management considerations
N/A

Financial / budget implications
N/A

Regional significance
N/A

Sustainability implications
N/A

Consultation

Advertising

The application was not advertised as the affected adjoining owner to the east (No. 51) has indicated in writing his support for the increased height of the front fence in the setback area (attached letter dated 19 October 2015).

COMMENT

Sight lines

The plans do not indicate a sight line at the corner of the driveway/footpath on the eastern boundary. The fencing in this section exceeds the maximum 0.75 metres (within 1.5 metres of the front boundary). It is, therefore, necessary to require a reduction in the height of the already constructed fence at this point to a maximum of 0.75 metres for a distance of 1.5 metres along the side boundary fence and for a length of 1.5 metres along the front boundary. This is required to comply with the requirements of Clause 5.2.5 of the R-Codes and Clause 3.7.11.5 of the RDG.

The applicant's argument that the partly constructed fence should be approved at the height which exceeds the sight line provision (i.e. 1.0m) based on the slope of the driveway and that the driveway is infrequently used for rear access is not considered justified. Should redevelopment of the property at No. 51 Fraser Street occur the slope of the driveway and/or the access arrangements will most likely change and the sight line will be inadequate. For safety reasons the sight line must be adequate at the outset as site circumstances and levels can change. The photographs the applicant has provided in respect to other fences that exceed the sight line requirements are not considered to set a precedent as they may have been constructed without approval or constructed before the sight line requirement was specified in the R-Codes or the RDG.

Fencing in front setback area

The RDG express the preferred streetscape is one without fencing so as to maintain passive surveillance and open streetscapes and this applies throughout the Town. Ideally fences should be as 'open style' as possible to maximise opportunities for passive surveillance and to increase opportunities for interaction between dwellings and the street. It is also desirable for the front door to be clearly visible from the street. The objective behind this is for security so that a person approaching a dwelling, standing on a front verandah or in a driveway is in clear view from the street.

The front fence on the street front boundary achieves these objectives, however, if the side boundary fencing in the front setback area exceeds the permitted heights for solid fencing it detracts from the above objective by 'closing off' the front yard and diminishes from the open landscaped look of the street. In this case, in addition to not meeting the sight line requirements, the side fencing does not strictly meet the fencing in the front setback requirements in that it exceeds a height of 1.2 metres at its highest as it steps back from street level on both side boundaries. Therefore a condition of planning approval will be required to ensure that 'open style' fencing is maintained along both side boundaries in accordance with Council's RDG and the R-Codes.

Crossover width

The demand for double garages, large carports and multiple vehicles on-site has the potential to result in streetscapes becoming dominated by large crossovers and driveways at the expense of landscaping, street trees and kerbside parking. As a result the Town's RDGs specifically address this issue under clause 3.7.14 where the RDG state the following as being the desired outcomes for the Precinct:

- new footpaths and crossovers to match existing streetscapes – preferred material black asphalt with any other material at Council's discretion;
- maintenance of existing footpaths and crossovers;
- 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.

In this circumstance it is not considered necessary for the crossover to be any greater than 4.5 metres including the splays. The applicant's request to increase the width to 6.0 metres (including the splays ~7 metres) is greater than what is considered required and would detract from the general streetscape amenity and safety, particularly as it would directly abut another crossover of approximately 6.5 metres in width. Given the driveway on site is 8.3 metres wide this is considered an adequate size to access the driveway/garage whilst minimising hard surfaces in the verge area. The reduced width will also impact less on street parking and minimise impact on the street tree (e.g. requests for pruning of branches). As the existing street tree is in proximity to the proposed crossover a condition stipulating that the existing street tree be retained in its current state and location and not damaged or pruned in the construction of the crossover is also considered necessary.

Crossover Construction Material

The use of 'exposed aggregate concrete' is considered a material of an acceptable standard for crossovers in this Precinct as it will complement the construction materials of the house and front garden landscaping. The Town has no objection to the use of this material in this circumstance, subject to the dimensions of the crossover meeting the conditions of this planning approval.

VOTING REQUIREMENTS

Simple majority.

RECOMMENDATION

That Council exercise its discretion in granting retrospective planning approval for a portion of the fence in the front setback area, subject to conditions and planning approval to vary:

- (i) Clause 3.7.14.3 – Footpaths and Crossovers of the Residential Design Guidelines to allow a crossover greater than 3.0 metres in width; and
- (ii) Clause 3.7.14.3 – Footpaths and Crossovers of the Residential Design Guidelines to allow a construction material other than black asphalt in the Richmond Precinct,

for a front fence and increased width crossover at No. 49 (Lot 136), Fraser Street, East Fremantle, in accordance with the plans date stamped received on 24 November 2015, subject to the following conditions.

1. A 1.5 metre by 1.5 metre truncation of the fence to be provided where the fence abuts the driveway on the eastern side boundary. If the truncation is not indicated on plans submitted with the building permit application to the satisfaction of the Chief Executive Officer the front and side boundary fence height is not to exceed 750mm metres at its highest point above existing ground level in the area of the required truncation.
2. The fence on the western side boundary is not to exceed a height of 750mm for the first 1.5 metres from the front boundary to maintain a sightline for the driveway on the lot to the west.
3. Any solid sections of wall on the side boundaries of the lot within the front setback area of 7.5 metres (as measured from the front lot boundary) are not to exceed a height of 1.2 metres from natural ground level.
4. Any part of the fence greater than 1.2 metres in height above natural ground level is not to be less than 60% visually permeable across the length and area of the front fence (including the side boundary fencing) to the satisfaction of the Chief Executive Officer. At any point the overall height of the front fence, including fencing in the front setback area is not to exceed 1.8 metres from natural ground level on the lower side of the fence.

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5. Any new crossovers which are constructed under this approval are to be a maximum width of 4.5 metres (including splays) and the footpath to continue uninterrupted across the width of the site in the same material as the existing footpath.
6. The existing street tree being retained in its current state and location and not damaged or pruned in the construction of the crossover.
7. With regard to the plans submitted with respect to the building permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
8. All stormwater is to be disposed of on site, clear of all buildings and boundaries.
9. 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 ground 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.
10. 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.
11. 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) *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).*
- (c) *liaison with the Town's Operations Manager is required with respect to construction of the crossover and reinstatement of the footpath.*
- (d) *a copy of the approved plans as stamped by Council are attached and the application for a building approval certificate and a building permit application is to conform with the approved plans unless otherwise approved by Council.*
- (e) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*

The late information provided by Mr Castino & Ms Wardman (Ref 10.1) was tabled.

Mr Castino (owner) addressed the meeting in support of their proposal for a 6m wide crossover, a new front fence and retrospective approval for the existing side boundary fencing.

Cr Nardi moved, seconded Cr M McPhail

That Council exercise its discretion in granting retrospective planning approval for a portion of the fence in the front setback area, subject to conditions and planning approval to vary:

- (i) **Clause 3.7.14.3 – Footpaths and Crossovers of the Residential Design Guidelines to allow a crossover greater than 3.0 metres in width; and**

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(ii) Clause 3.7.14.3 – Footpaths and Crossovers of the Residential Design Guidelines to allow a construction material other than black asphalt in the Richmond Precinct, for a front fence and increased width crossover at No. 49 (Lot 136), Fraser Street, East Fremantle, in accordance with the plans date stamped received on 24 November 2015, subject to the following conditions.

1. A 1.5 metre by 1.5 metre truncation of the fence to be provided where the fence abuts the driveway on the eastern side boundary. If the truncation is not indicated on plans submitted with the building permit application to the satisfaction of the Chief Executive Officer the front and side boundary fence height is not to exceed 750mm metres at its highest point above existing ground level in the area of the required truncation.
2. The fence on the western side boundary is not to exceed a height of 750mm for the first 1.5 metres from the front boundary to maintain a sightline for the driveway on the lot to the west.
3. Any solid sections of wall on the side boundaries of the lot within the front setback area of 7.5 metres (as measured from the front lot boundary) are not to exceed a height of 1.2 metres from natural ground level.
4. Any part of the fence greater than 1.2 metres in height above natural ground level is not to be less than 60% visually permeable across the length and area of the front fence (including the side boundary fencing) to the satisfaction of the Chief Executive Officer. At any point the overall height of the front fence, including fencing in the front setback area is not to exceed 1.8 metres from natural ground level on the lower side of the fence.
5. Any new crossovers which are constructed under this approval are to be a maximum width of 4.5 metres (including splays) and the footpath to continue uninterrupted across the width of the site in the same material as the existing footpath.
6. The existing street tree being retained in its current state and location and not damaged or pruned in the construction of the crossover.
7. With regard to the plans submitted with respect to the building permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
8. All stormwater is to be disposed of on site, clear of all buildings and boundaries.
9. 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.
10. 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.
11. 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) 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).*
 - (c) liaison with the Town's Operations Manager is required with respect to construction of the crossover and reinstatement of the footpath.*
 - (d) a copy of the approved plans as stamped by Council are attached and the application for a building approval certificate and a building permit application is to conform with the approved plans unless otherwise approved by Council.*
 - (e) matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
 - (f) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- CARRIED 4:2

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

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REPORT NO 12.2

SILAS STREET NO 8 UNIT 2 (LOT 593) CHANGE OF OPERATING HOURS

The late correspondence provided by Ms Rodda (Ref 10.2) was tabled.

Mayor O'Neill moved, seconded Cr White

That the application for Unit 2/8 Silas Street be withdrawn from the agenda as per the applicant's request.

CARRIED 6:0

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REPORT NO 12.4

WOODHOUSE ROAD NO. 49 (LOT 312) DEMOLITION OF EXISTING DWELLING AND ERECTION OF TWO STOREY RESIDENCE

RESPONSIBLE DIRECTOR	Jamie Douglas Manager of Planning Services
AUTHOR	Andrew Malone Senior Planning Officer
FILE NUMBER	WOO 49
APPLICATION NUMBER	113/15
AUTHORITY / DISCRETION	Town Planning and Building Committee

PURPOSE

This report considers the demolition of an existing dwelling and proposed development of a double storey dwelling at 49 (Lot 312) Woodhouse Road, East Fremantle.

EXECUTIVE SUMMARY

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

- 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 dwelling is recommended for approval subject to conditions.

BACKGROUND

Suburb/Location	Woodhouse Road 49 (Lot 312), East Fremantle
Applicant	Riverstone Construction
Owner	M & B Morrissy
Zoning	Residential R12.5
Site area	574m ²
Structure plan	N/A

Date Application Received

12 October 2015

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

Nil

Documentation

Relevant forms and letter date stamp received on 12 October 2015.

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DETAILS

Impact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: proposed 5 metre wide crossover.

Footpath: Proposed 5 metre wide crossover.

Streetscape: Over width crossover. Demolition of an existing dwelling and construction of a 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 Local Planning Scheme No. 3 – Residential R12.5 (LPS 3)

Strategic Community Plan

Key theme N/A

Objective N/A

Strategic initiative N/A

Policy N/A

Risk management considerations

N/A

Financial / budget implications

N/A

Regional significance

N/A

Sustainability implications

N/A

Consultation

Advertising

The proposed application was advertised to surrounding neighbours for a two week period between 21 October 2015 and 9 November 2015. A sign was also located onsite displaying the

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relevant development information between the same dates. No submission was received by Council.

Town Planning Advisory Panel

This application was considered by the Town Planning Advisory Panel via email. A committee member queried the side setbacks of the development, particularly relating to Gordon Street. A full assessment of the development has been undertaken and the relevant variations are discussed below.

COMMENT

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	55%	59%	A
Outdoor Living	NA	sqm	A
Car Parking	2	2	A
Site Works	Less than 500mm	0.2 additional fill (0.98 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

Site Fill

The existing lot levels have previously been raised from natural ground level by approximately 0.7 metres. It is proposed to increase the existing front fill and retaining wall by 0.2 metres. The overall fill existing and proposed on the lot will be 0.98 metres from the natural ground level. No front fence is currently being proposed. The existing dwelling has a finished floor level of 13.24 AHD. The proposed finished floor level of the dwelling will be RL 11.885 for the front ground level, RL13.257 for the rear ground level and RL14.799 for the upper floor. As such the proposed dwelling is being excavated into the lot and therefore will not present as being elevated. The proposed dwelling will have a similar street presentation to the existing dwelling, which is to be demolished.

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The proposed 0.98 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.*

It is proposed to fill approximately 0.98 metres (of which 0.7 metres exists, 0.28 metres proposed) to the front of the lot, to form a levelled front garden. 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.

It is considered the proposed dwelling and retained front garden is consistent with similar retaining walls/ dwelling design in the immediate locality and with the previous planning approval (existing dwelling). The fill does not negatively impact on the streetscape character or amenity of the neighbours. The proposed front garden and alfresco area will improve the visual surveillance of the street and does not impact on the visual privacy of the adjoining lots.

The streetscape elevation is considered to have a consistent scale with the adjoining dwellings (two storeys) and has a finished floor level (ffl) that is appropriate with the gradient of the streetscape. The overall proposed fill will therefore retain the visual impression of the existing ground level of the site as seen from the 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.

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 7.5 metres (assessed as per R12.5).

The proposed dwelling (an approximate 18m² incursion into the front setback area over the ground and first floor) is located 6.67 metres from the front lot boundary bedroom 1 and 4 and the alfresco and balcony (both of which are significantly open on two sides). The majority of the dwelling is setback 9 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:

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- 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. This will be discussed in greater detail in the next section of this report.

Rear Boundary Setbacks

The garage southern boundary set back is 2.75 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 garage 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.

- 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 dwelling is set back 9 metres from the front boundary, apart from an area for the bedrooms and alfresco / balcony (18m² in total area). The proposed built form of the dwelling is set back to match the predominant setback of existing dwellings in the immediate locality. The proposed dwelling will have a minimum set back of 6.6 metres to the bedrooms. While the minimum street boundary setback is 6.6 metres, it is considered the dwelling and design of the alfresco / balcony will have minimal negative impact on the streetscape as the proposed bulk of the built form and articulation of the dwelling 'breaks up' the setback, with the overall setback complying with Element 5.1.2 of the R-Codes so the whole dwelling is averaged with a 7.5 metre front boundary setback.

Any negative impact with regard to the reduced front boundary set back has been mitigated through the design and articulation of the dwelling. The design of the dwelling complies with the height requirements of the RDG. The proposed development is consistent with recently constructed development in the area.

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

The existing development already has an outbuilding located in the rear setback area. All the side setbacks to the east and west elevations comply with the R-Code setback requirements of Table 1 and 2a of the R-Codes. The dwelling is set back approximately 9 metres from the front boundary with a 6.6 setback to 2 bedrooms and the alfresco / balcony. The proposed dwelling front setback variation has been assessed as per P1.1 above. It is considered the proposed development does not adversely affect the visual presence of the streetscape or adjoining neighbours (two modern dwellings have been constructed within close proximity of the subject lot with similar setbacks to those proposed).

The rear setback at 2.75 metres from the back boundary enables the garage to be located to the rear of the lot, a preferable outcome within the RDG. Access would be from Gordon Street, therefore a carport and crossover will be removed from the primary streetscape, ensuring a better outcome for the streetscape. The incursion into the rear setback is acceptable in this instance as the lot is located on dual frontages and the garage will be located so as to be significantly screened from direct view. The design of the garage is single storey and the

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proposed setback is considered to have no significant negative impact to the rear neighbour, as they are elevated above the subject lot.

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

With regard to the proposed rear set back to the garage, it is considered that it will not impact on the amenity of the adjoining neighbour as discussed above. The garage 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 garage 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.

In conclusion the proposed dwelling has been designed to mitigate any adverse impact with regard to scale or bulk, as it has been designed to front Woodhouse Road and to be articulated vertically and horizontally. The garage whilst within the rear setback (6 metre) is located on a secondary street and is screened by the proposed dwelling from the primary street. The proposed front boundary set back of the dwelling of 6.6 metres for an overall width of 11 metres represents minor a front setback inclusion, which is significantly open in the form of the alfresco/ balcony area. The proposed front setback is considered to comply with the 'averaging' of the 'Deemed to Comply' requirements of the R-Codes. The remaining built form of the dwelling is proposed to be set back 9 metres from the front boundary.

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 crossover the level difference from the road to the property boundary and the associated safety issues relating to the level change were considered relevant in this assessment.

The plan has a proposed crossover width of 5.0 metres with 1.0 metre access curves. There is no footpath at this location. The subject lot currently has two crossovers. One crossover is being removed from Woodhouse Road (conditioned).

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;
- maximum of one crossover per lot; and
- 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.*

In light of a review of the crossover policy requirements for a maximum width of 3.0 metre crossovers per lot, the proposed crossover does not comply with the 'Acceptable Development'

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provisions of the RDG, however it does significantly match other crossovers previously approved in the locality, therefore complying with P2 as above. Notwithstanding the above, it is recommended the proposed crossover does not exceed 4.5 metres in width.

Taking into consideration the site constraints and the slope of the entrance, it is considered the outcomes under the RDG can essentially be achieved and installation of a slightly wider crossover will not be detrimental to the streetscape, however the crossover and footpath as proposed cannot be supported.

The following points have been considered in the assessment of this application:

- Due to the dimensions of Gordon Street and the slope of the road, it makes it difficult for the driver to safely access and egress the lot. A wider crossover will allow greater sight lines and more of a turning circle to access and egress from the street. A 3m wide crossover would narrow the turning area available to access and egress the lot.
- A wider crossover is not out of character with the existing streetscape. Several of the existing residences in the area already have a crossover wider than 3m.
- The Residential Design Guidelines states the purpose and objective of the policy is to ensure that all new developments contribute to and harmonise with the existing streetscape. It is considered the conditioned crossover is consistent with other crossovers in the locality.
- The overall length of the lot on Gordon Street to the truncation is 23 metres. The crossover width at 4.5 metres is only 20% of the secondary street frontage. The width of the crossover is considered to have minimal impact to the streetscape and ensures that the streetscape is not dominated by garage and crossovers.

Council can consider a wider crossover in this instance, however a maximum width of 4.5 metres is considered to appropriately address the slope, access and egress issues. The conditioned crossover is considered to be a reasonable compromise to achieving the intent of the Policy requirements.

Given the extent of the length of the secondary street, the existing surrounding crossovers and the constraints of the lot with regard to the gradient and road width, it is considered the conditioned crossover proposal can be supported.

CONCLUSION

The density, scale and setback of adjoining properties are considered to guide the development of the street. It is considered acceptable and appropriate to develop a two storey dwelling, which is excavated into the lot for reduced visual impact. The development will significantly maintain existing levels, thereby maintaining the amenity and views of adjoining neighbours. The proposed fill to the front of the lot is to provide a consistent front garden/ entertainment area. A condition has been included in the Officer's Recommendation to require any additional fence above the retaining wall to comply with Acceptable Development Provisions of Element 3.7.11 of the Town's Residential Design Guidelines.

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

VOTING REQUIREMENTS

Simple Majority

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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 setback 6.6 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 (5.0 metre wide crossover proposed)

for demolition of existing two storey dwelling and construction of proposed two storey single dwelling at 49 (Lot 312) Woodhouse Road, East Fremantle, in accordance with the plans date stamp received on 12 October 2015 subject to the following conditions:

1. Any proposed fencing on top of the retaining wall (primary or secondary street fencing) to Woodhouse Road to comply with the requirements of the Acceptable Development Provisions of Element 3.7.11 of the Town's Residential Design Guidelines.
2. No front fence/ pool fencing is to be constructed without the prior approval of Council to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
3. Crossover to be a maximum width of 4.5 metres.
4. Crossover to be designed and constructed as per Council specifications to the satisfaction of the Chief Executive Officer in consultation with relevant Council Officers.
5. Only one (1) crossover per lot is permitted. Existing crossover (Woodhouse Road) is to be removed as per Council specifications and the verge to be reinstated as per Council requirements to the satisfaction of the Chief Executive Officer in consultation with relevant Council Officers.
6. 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*)
7. 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.
8. 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.
9. 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.
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

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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. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
14. This planning approval to remain valid for a period of 24 months from date of this approval.

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".*

Mayor O'Neill moved, seconded Cr M McPhail

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 setback 6.6 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 (5.0 metre wide crossover proposed)**

for demolition of existing two storey dwelling and construction of proposed two storey single dwelling at 49 (Lot 312) Woodhouse Road, East Fremantle, in accordance with the plans date stamp received on 12 October 2015 subject to the following conditions:

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1. Any proposed fencing on top of the retaining wall (primary or secondary street fencing) to Woodhouse Road to comply with the requirements of the Acceptable Development Provisions of Element 3.7.11 of the Town's Residential Design Guidelines.
2. No front fence/ pool fencing is to be constructed without the prior approval of Council to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
3. Crossover to be a maximum width of 4.5 metres.
4. Crossover to be designed and constructed as per Council specifications to the satisfaction of the Chief Executive Officer in consultation with relevant Council Officers.
5. Only one (1) crossover per lot is permitted. Existing crossover (Woodhouse Road) is to be removed as per Council specifications and the verge to be reinstated as per Council requirements to the satisfaction of the Chief Executive Officer in consultation with relevant Council Officers.
6. 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*)
7. 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.
8. 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.
9. 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.
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. 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

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Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.

14. This planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

CARRIED 6:0

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

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REPORT 12.6

GLYDE STREET NO. 28 (LOT 76) ANCILLARY ACCOMMODATION

RESPONSIBLE DIRECTOR	Jamie Douglas Manager of Planning Services
AUTHOR	Andrew Malone Senior Planning Officer
FILE NUMBER	GLY 28
APPLICATION NUMBER	119/15
ATTACHMENT	(A) Applicant Letter
AUTHORITY / DISCRETION	Town Planning and Building Committee

PURPOSE

This report considers an application for an ancillary dwelling to the rear of the lot at 28 (Lot 76) Glyde Street, East Fremantle.

EXECUTIVE SUMMARY

The proposal raises the following issues which influence the determination of the application:

- Buildings on the boundary/ Parapet wall height: 2 Storey zero lot boundary wall proposed on the northern lot boundary; and
- Roof Pitch: 7.0° roof pitch, a variation to the Acceptable Development Criteria of the RDG.

The proposed ancillary accommodation (studio) in all other respects is considered to comply with the Residential Design Codes and RDG. The studio is recommended for approval subject to conditions.

BACKGROUND

Suburb/Location	Glyde Street 28 (Lot 76), East Fremantle
Applicant	W & J McEwen
Owner	W & J McEwen
Zoning	Residential R20
Site area	509m ²
Structure plan	N/A

Heritage

Management Category – MHI C+

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,

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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.

Date Application Received

20 October 2015

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

Nil

Documentation

Relevant forms and letter date stamp received on 20 October 2015.

DETAILS

Impact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: No Impact.

Footpath: No Impact.

Streetscape: No 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 Local Planning Scheme No. 3 – Residential R20 (LPS 3)

Strategic Community Plan

Key theme N/A

Objective N/A

Strategic initiative N/A

Policy N/A

Risk management considerations

N/A

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Financial / budget implications

N/A

Regional significance

N/A

Sustainability implications

N/A

Consultation

Advertising

The proposed application was advertised to surrounding neighbours. The applicant also submitted an 'Adjoining Property Owner Comment Form' from relevant affected adjoining neighbours, most importantly from the northern neighbour (most affected neighbour).

Town Planning Advisory Panel

This application was not considered by the Town Planning Advisory Panel as the development is to the rear of the subject lot and is considered to have no significant impact to the streetscape.

COMMENT

The proposal is for ancillary accommodation (studio) to the northern boundary of the lot, comprising bedroom, living/ kitchenette and bathroom. The total area of the ancillary accommodation is 58m².

The ancillary accommodation is two storey studio located separate to the existing dwelling on the northern boundary of the lot. The studio will have a skillion form roof. The proposal as per Element 5.3.3 of the R-Codes does not require any further car parking spaces to be provided.

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Open Space	50%	70%	A
Outdoor Living	30sqm	Exceeds 30sqm	A
Car Parking	2	N/A	A
Site Works	Less than 500mm	N/A	A
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	A
3.7.5 Demolition	A
3.7.6 Construction of New Buildings	A
3.7.7 Building Setbacks and Orientation	D
3.7.8 Roof Form and Pitch	D
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A

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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	A
3.7.15-20 Precinct Requirements	A

Side Boundary Setbacks

The northern wall of the proposed two storey ancillary accommodation is 6.325 metres in length with adjoining 2.6 metre length of screen wall. The ancillary accommodation is 5.6 metres in height with adjoining 2.55 metre high screen wall. The ancillary accommodation and screen wall is located on the northern boundary. The proposal does not comply with the 'Deemed to Comply' requirements of the R-Codes and the Acceptable Development Criteria of the RDG. The proposed wall is over 3.0 metres in height and therefore exceeds the 'Deemed to Comply' provisions of the R-Codes and the Acceptable Development provisions of the RDG. The northern boundary wall is required to be 1.2 metres from the 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.

- 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.

There are no planning implications with regard to the front or street setback for this proposal. The proposal is located wholly to the rear of the subject lot.

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

The existing dwelling is listed on the Town's Municipal Heritage Inventory as a C+ category dwelling.

The proposed location of the ancillary accommodation is considered to have no impact to the heritage character of the dwelling. It is detached from the property and will not adversely affect the visual presence of the streetscape. Adjoining neighbours have signed a comment form stating they have no objection to the proposal being constructed on the boundary for a length of 6.325 metres and at a height of 5.6 metres.

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

With regard to the proposed side setback to the north, the proposal is located on the northern boundary for 6.325 metres in length and 5.6 metres in height. A proposed screen boundary wall is also located on the northern boundary for a length of 2.6 metres and to a height of 2.55 metres.

The application was advertised to two adjoining neighbours. A further three neighbours has signed an 'Adjoining Property Owner Comment Form' stating no objection to the proposal. The immediate neighbour to the north has signed an 'Adjoining Property Owner Comment Form', therefore the most impacted neighbour has no objection to a two storey structure being constructed on the boundary.

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It is considered the proposed northern boundary wall will not significantly impact on the amenity of the adjoining neighbour, as the boundary wall will not pose any adverse sunlight, ventilation or privacy impacts. Whilst the boundary wall will be two storey, the neighbour (northern) has agreed to the structure.

The proposed height of the wall at 5.6 metres is considered high for a boundary wall, however the overall distance of 6.325 metres for the length of it does not significantly impact on the scale or bulk to the existing dwelling or adjoining neighbours. The proposed character of the heritage dwelling is also maintained. The proposed ancillary accommodation has a simple design that is sympathetic to the existing heritage dwelling.

It is considered the proposed ancillary accommodation can be supported by Council, especially considering the applicant has provided Council with 'Adjoining Property Owner Comment Form' of no objection.

Roof Pitch

The proposed roof pitch is approximately 7°. 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 roof material is consistent with the existing dwelling ('Colorbond'/ zincalume). The roof form is a contemporary skillion roof form that minimises the scale and bulk of the structure to specifically the northern adjoining neighbour, to surrounding neighbours and to the heritage dwelling. The roof form is considered to complement and be sympathetic with the existing roof form of the dwelling.

The design of the ancillary accommodation also ensures the addition cannot be viewed from the street.

The proposed roof is considered appropriate for the area and therefore can be supported by Council.

Conclusion

The proposed ancillary accommodation has been designed to significantly comply with the relevant legislation with the exception of the criteria for buildings on the boundary and the roof pitch. These variations are considered minor, with no significant impact to the streetscape, heritage dwelling and to adjoining neighbours (as agreed by neighbours on the 'Adjoining Property Owner Comment Form') and therefore the proposal is considered acceptable with regard to height, scale and bulk.

It is considered the proposal can be supported and recommended for approval subject to conditions.

VOTING REQUIREMENTS

Simple Majority

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RECOMMENDATION

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

- (a) variation to side setback lot boundary setback of the Residential Design Guideline and R-Codes – required setback 1.2 metres, proposed setback nil (2 storey on the northern boundary);
- (b) variation to 3.7.8 Roof Form and Pitch of the Residential Design Guidelines for an addition comprising of ancillary accommodation (studio) to an existing dwelling to the rear of the lot at 28 (Lot 76) Glyde Street, East Fremantle, in accordance with the plans date stamp received on 20 October 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 (refer footnote (e) below).
 2. Prior to the installation of externally mounted air-conditioning plant to the ancillary accommodation, 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 (f) below)
 3. 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.
 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. 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.
 6. 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.
 7. 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.
 8. 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:

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

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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) *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”.*

Cr White moved, seconded Nardi

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

- (a) **variation to side setback lot boundary setback of the Residential Design Guideline and R-Codes – required setback 1.2 metres, proposed setback nil (2 storey on the northern boundary);**
- (b) **variation to 3.7.8 Roof Form and Pitch of the Residential Design Guidelines for an addition comprising of ancillary accommodation (studio) to an existing dwelling to the rear of the lot at 28 (Lot 76) Glyde Street, East Fremantle, in accordance with the plans date stamp received on 20 October 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 (refer footnote (e) below).**
 - 2. **Prior to the installation of externally mounted air-conditioning plant to the ancillary accommodation, 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 (f) below)**
 - 3. **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.**
 - 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. **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.**
 - 6. **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.**
 - 7. **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.**

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CARRIED 6:0

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13. REPORTS BY OFFICERS (COUNCIL DECISION)

Nil.

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 7.45pm.

*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 December 2015**, Minute Book reference **1.** to **16.** were confirmed at the meeting of the Committee on*

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Presiding Member