



1 December 2015

AGENDA

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	Location Map 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



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- to be conducted from the premises at the corner of Canning Highway & Fortescue Street;
- 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.

DETAILSImpact on Public Domain

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

Issues and options consideredStatutory 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.



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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 – 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

ConsultationAdvertising

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:

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.

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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.
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).*

REPORT NO 12.2**SILAS STREET NO 8 UNIT 2 (LOT 593) CHANGE OF OPERATING HOURS**

RESPONSIBLE DIRECTOR Jamie Douglas Manager of Planning Services

AUTHOR Andrew Malone

FILE NUMBER SIL8

APPLICATION NUMBER 134/14

ATTACHMENT Location Map
Application Form

AUTHORITY / DISCRETION Town Planning & Building Committee

PURPOSE

This report considers a change to the opening times of the current additional use (coffee kiosk). The prevailing use of the building remains the consulting room, all located at 8 Unit 2 (Lot 593) Silas Street, East Fremantle.

EXECUTIVE SUMMARY

The proposed additional use of the coffee kiosk use has been previously approved. Council has not received any letters of objection/ concern to the use since the kiosk began operating. 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.

The primary use of Unit 2/8 Silas Street is currently a medical use (consulting room). The business is called "the Nest on Silas" and acts as a pregnancy, childbirth and postnatal resource centre. The services provided through the Nest include Midwifery led care, counselling, naturopathy, lactation consulting and hypnotherapy

BACKGROUND

Suburb/Location Silas Street 8 Unit 2 (Lot 593), East Fremantle
Applicant The Nest on Silas
Owner Rembridge Holdings Pty Ltd
Zoning Town Centre
Site area 132m²
Structure plan N/A

Date Application Received
3 October 2015

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

9 March 2004 Special approval granted for proposed medical use – physiotherapist
2 December 2014 Additional use (coffee kiosk) approved by Council.

Documentation

Relevant forms and letter date stamp received on 7 October 2015.

DETAILSImpact on Public Domain

Tree in verge: No impact.

Light pole: No impact.

Crossover: No impact.

Footpath: No impact.

Streetscape: No impact.

Issues and options consideredStatutory 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 – Town Centre (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 not advertised to surrounding neighbours. The change of use (additional use: kiosk) was originally advertised to neighbours in the Town Centre. The proposal is not considered to have any impact to surrounding residents or businesses.

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 subject site is zoned 'Town Centre'. Approval has been granted for a change of use to include an additional use not listed within the zoning table. The proposed additional use has been assessed as per the relevant Council planning requirements.

The kiosk use is not considered to be an intensive use. The kiosk provides takeaway hot drinks and muffins. The use is takeaway only, no seating is provided, therefore for the purposes of patronage, the proposed kiosk is considered to only be utilised by locals and by people already within the town centre or surrounds.

The applicant has requested a change to the operating hours approved by Council. Current operating hours are from 0630-1500 and Monday to Friday. The applicant has requested the revised operating hours of 0630-1700 and Monday to Saturday.

The nature, size and opening hours of the coffee kiosk are considered to be consistent with the uses of a Town Centre. The operating hours of the approval will not impact on the Town centre, adjoining residents or any business. The use is considered not to be intensive and will only serve a local market. The change to the operating hours will have no impact with regard to the car parking requirements of the area.

The kiosk has been operating for a period of close to 12 months. The previous planning approval was conditioned:

1. *This approval is only valid for 12 months. The applicant is required to submit a further application to retain the use, prior to the 12 months expiry date from the date of this approval.*

This application for extension of operating hours is also considered to address the above condition. The kiosk does provide a use that is consistent with the objectives and purposes of the Town Centre zone and is therefore recommended for approval, subject to conditions.

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council grant approval for the change of opening hours at 8 Unit2 (Lot 593) Silas Street, East Fremantle, in accordance with the written information date stamp received on 7 October 2015 subject to the following conditions:

1. The operational hours are not to exceed 0630-1700 Monday to Saturday.
2. No food is to be served from the kiosk with the exception of muffins/ biscuits and associated confectionary.



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3. The sale of coffee, cold beverages and packaged foods (limited to muffins, cake and biscuits) is to be take-away only. No seats are permitted within the area of the building defined for take away coffee purposes.
4. No outdoor seating is permitted.
5. No potentially hazardous foods are to be sold. Foods offered for sale must be manufactured at an approved food premises and must be pre-packaged with the appropriate labelling.
6. Copies of the Food Business Certificate must be provided to Council, and receipts available on request by Council's Principal Environmental Health Officer.
7. Commercial coffee machine must be connected to the drainage system for overflow of water.
8. The works are to be constructed in conformity with the drawings and written information in relation to use accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
9. 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.
10. 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
11. 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.
12. The proposed use is not to be commenced until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *the approval does not include approval of any advertising signage. A separate development application is required for any signage proposal.*

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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/LOC/6
APPLICATION NUMBER	P88/15
ATTACHMENTS	Location map Site photographs from No 6 & No 8 Locke Crescent. Plans
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.

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.

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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

Objective

Facilitating sustainable growth whilst maintaining urban and natural character

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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.

COMMENTVisual 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 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

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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.*
- (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*

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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
ATTACHMENT	Location Plan Plans
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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DETAILSImpact 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 consideredStatutory 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

ConsultationAdvertising

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.

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:

- 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 not 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

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".*