



Town Planning & Building Committee

**7 May 2013
6.30pm**

MINUTES

MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON TUESDAY, 7 MAY, 2013 COMMENCING AT 6.30PM.

T41. OPENING OF MEETING

T41.1 Present

T42. ACKNOWLEDGEMENT OF COUNTRY

T43. WELCOME TO GALLERY

T44. APOLOGIES

T45. CONFIRMATION OF MINUTES

T45.1 Town Planning & Building Committee – 2 April 2013

T46. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)

T46.1 Clayton Street No 42A (Lot 2)

T46.2 Clayton Street No 42A (Lot 2)

T46.3 Clayton Street No 42A (Lot 2)

T47. REPORTS OF COMMITTEES

T47.1 Town Planning Advisory Panel – 12 March 2013

T48. ORDER OF BUSINESS

T49. REPORTS OF OFFICERS - STATUTORY PLANING/DEVELOPMENT CONTROL

T49.1 Receipt of Reports

*T49.2 Fortescue Street No. 14 (Lot 177)
Applicant: Harry Monaghan Architect
Owner: Kate Johnson
Application No. P226/2010 and P132/2012*

*Page No 2
Agenda Ref 9.2*

*T49.3 Woodhouse Road No. 33 (Lot 302)
Applicant / Owner: R & K Igloi
Application No. P13/13*

*Page No 9
Agenda Ref 9.4*

*T49.4 Hubble Street No. 72 (Lot 275)
Applicant: Sam Teoh Architects
Owner: Ms JE Kargotich
Application No. P25/13*

*Page No 20
Agenda Ref 9.6*

T50. ADJOURNMENT

T51. RESUMPTION

- T52. REPORTS OF OFFICERS – STATUTORY PLANNING/DEVELOPMENT CONTROL**
- T52.1** *Hubble Street No. 72 (Lot 275) (Continued)*
Applicant: Sam Teoh Architects
Owner: Ms JE Kargotich
Application No. P25/13
- T52.2** *View Terrace No. 1 (Lot 237)* *Page No 36*
Applicant: David Weir for Arcccon Mining Services *Agenda No 9.7*
Owner: Paul Kreppold
Application No. P194/12
- T52.3** *Angwin Street No. 2 (Harbour Lights)* *Page No 47*
Applicant: Gavin Constructions *Agenda No 9.10*
Owner: Harbour Lights Strata Co.
Application No. P39/13
- T52.4** *Canning Highway No. 199 (Lot 22)* *Page No 51*
Applicant: Rad Architecture *Agenda No 9.1*
Owner: K. Tushingham
Application No. P134/12
- T52.5** *Windsor Road No. 6 (Unit 1) (Lot 3)* *Page No 54*
Applicant / Owner: S Browning *Agenda No 9.3*
Application No. P34/13
- T52.6** *Clayton Street No. 42A (Lot 2)* *Page No 61*
Owner/Applicant: R & J Jarman *Agenda No 9.5*
Applicant: APG Homes
Application No. P9/13
- T52.7** *Alexandra Road No. 42 (Lot 1001)* *Page No 71*
Applicant: Derek Westera *Agenda No 9.8*
Owner: R Harlan
Application No. P39/13
- T52.8** *Osborne Road No. 40 (Lot 22)* *Page No 79*
Applicant: Duncan & Melanie Coutts *Agenda No 9.9*
Owner: Duncan & Melanie Coutts
Application No. P129/2011
- T52.9** *East Fremantle Football Club Facility* *Page No 89*
Change of use from Storage Room and Office to *Agenda No 9.11*
Beautician Shop and Pilates Studio
- T53. REPORTS OF OFFICERS – STRATEGIC PLANNING**
- T53.1** *Review of TPS No 3 and Local Planning Strategy* *Page No 91*
Agenda No 8.1
- T54. CONFIDENTIAL BUSINESS**
- T55. URGENT BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING**
- T56. CLOSURE OF MEETING**

MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON TUESDAY, 7 MAY, 2013 COMMENCING AT 6.30PM.

T41. OPENING OF MEETING

The Presiding Member opened the meeting.

T41.1 Present

Cr Alex Wilson	Presiding Member
Cr Cliff Collinson	
Cr Siân Martin	
Cr Dean Nardi	
Cr Maria Rico	
Mr Jamie Douglas	Manager – Planning Services
Mr Andrew Malone	Senior Town Planner
Ms Janine May	Minute Secretary

T42. 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.”

T43. WELCOME TO GALLERY

There were 10 members of the public in the gallery at the commencement of the meeting.

T44. APOLOGIES

Cr Barry de Jong
Mayor Alan Ferris

T45. CONFIRMATION OF MINUTES

T45.1 Town Planning & Building Committee – 2 April 2013

Cr Rico – Cr Nardi

That the Town Planning & Building Committee minutes dated 2 April 2013 as adopted at the Council meeting held on 16 April 2013 be confirmed. CARRIED

T46. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)

T46.1 Clayton Street No 42A (Lot 2)

Submission from adjoining owner at 42 Clayton Street seeking a reassessment of the proposed boundary wall at 42A Clayton Street, due to the perceived impact of scale and bulk.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref T52.6).

CARRIED

T46.2 Clayton Street No 42A (Lot 2)

Submission from adjoining owners at 40 Clayton Street seeking reconsideration of the overall height and elevation of the proposed development at 42A Clayton Street, due to concerns regarding privacy to their rear patio area and internal living spaces.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref T52.6).

CARRIED

T46.3 Clayton Street No 42A (Lot 2)

Correspondence from applicants for development at 42A Clayton Street in response to submissions from adjoining owners of 40 and 42 Clayton Street.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref T52.6).

CARRIED

T47. REPORTS OF COMMITTEES

T47.1 Town Planning Advisory Panel – 9 April 2013

Cr Martin – Cr Rico

That the minutes of the Town Planning Advisory Panel meeting held on 9 April 2013 be received and each item considered when the relevant development application is being discussed.

CARRIED

T48. ORDER OF BUSINESS

Cr Martin – Cr Nardi

The order of business be altered to allow members of the public to speak to relevant statutory planning items.

CARRIED

T49. REPORTS OF OFFICERS - STATUTORY PLANING/DEVELOPMENT CONTROL

T49.1 Receipt of Reports

Cr Nardi – Cr Collinson

That the Reports of Officers be received.

CARRIED

T49.2 Fortescue Street No. 14 (Lot 177)

Applicant: Harry Monaghan Architect

Owner: Kate Johnson

Application No. P226/2010 and P132/2012

By Andrew Malone, Senior Planner on 8 April 2013

BACKGROUND

Purpose of this Report

This report considers an application for the retrospective planning approval of steel lattice driveway entrance and pedestrian entry gates which have been erected on the front boundary at 14 (Lot 177) Fortescue Street, East Fremantle, without planning approval. A previous planning application for retrospective approval was refused by Council on 17 May 2011. Amended plans were subsequently received, however the proposed steel lattice driveway entrance and pedestrian entry gates are again recommended for refusal.

Further, an application for a retrospective planning approval of sauna area with associated roof cover (P132/2012) is also being considered on the abovementioned lot. The retrospective sauna is recommended for approval subject to appropriate conditions.

Past Resolution

At its meeting on 17 May 2011 Council considered an application for retrospective approval for steel lattice automatic vehicular entrance gate measuring 2.26 metres in height (maximum) and 4.75 in width and a pedestrian gate measuring 2.1 metres in

height and 1 metre in width. Council determined to refuse the application for the following reasons:

- “1. *The proposed gates exceed the maximum height requirements for front fences specified in Part 3.1 of Local Planning Policy 143 – Policy on Local Laws Relating to Fencing.*
2. *The application does not meet the; Objectives of the Town Planning Scheme No.3, Clause 4.2 and Clause 10.2 (j),(o),(p) of the Scheme since it would detract from the visual amenity of the area and is incompatible with the existing fence and those of surrounding properties and would be a discordant element which is not supported by the prevailing built form character in the vicinity.”*

Amended plans were subsequently lodged.

Statutory Requirements

Town Planning Scheme No. 3 (TPS3)
Local Planning Strategy – Woodside Precinct (LPS)
Residential – R 20 – TPS No. 3

Relevant Council Policies

Policy No. 143 Policy on Local Laws Relating to Fencing

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact
Streetscape : The gates are in front of the building line and accordingly impact upon the streetscape.

Documentation

Plans and relevant forms date stamp received on 18 August 2011 (Front gate).
Plans and relevant forms date stamp received on 28 May 2012 (Sauna).

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

21 December 2010	Email from Peta Cooper to Harry Monaghan requesting – confirmation of natural ground level and dimensions of fencing/gates including height above NGL
16 March 2011	Amended plans received indicating ‘average height of walls and gates 1800mm above natural ground level’.
17 May 2011	Council refuses application for retrospective planning approval for driveway and pedestrian front entry gates.

DESCRIPTION OF THE PROPOSAL

The proposal is for an amended application for front vehicular gate and pedestrian gate based on the previous refusal by Council. The previous application for retrospective approval incorporated steel lattice automatic vehicular entrance gate measuring 2.26 metres in height (maximum) and a pedestrian gate measuring 2.1 metres in height. The amended application has reduced the pillar height to 2.18 metres and the maximum height of the vehicular entrance gate to 1.98 metres. The maximum height of the pedestrian gate is approximately 2.0 metres.

CONSULTATION

Town Planning Advisory Panel

The application was considered by the Panel at its meeting on Tuesday 25 January 2011. The Panel made the following comments:

- *Panel does not support retrospective approval and would recommend replacement of gates with a material sympathetic to existing fence material.*
- *Gate and fence should be height compliant.*

The applicant (Harry Monaghan Architect) responded to the Panel's comments on 14 March 2011. This response is attached to this report and is summarised as follows:

- *The existing piers on the upper side of the gates are approximately 1800 mm above the ground level.*
- *The gates at this point do not exceed the height of the adjacent pier*
- *The steel gates have an attractive pattern, are visually permeable and provide security needed for the owners children.*
- *The gates cost \$18,000 and improve the presentation of the property.*

Due to the minor scale and nature of the reduction of height, the proposed application was not referred back to the Panel. The proposed retrospective sauna was also not referred to the Panel, as it is minor in nature and located to the rear of the property.

Adjoining Property Owner

The adjoining property owner at 16 Fortescue Street was not formally notified in writing of the retrospective sauna. A telephone conversation was held on 9 April 2013 with Mr Newland. It is noted that Mr. Newland did not raise any concerns with regard to the proposed sauna area and did not want to formally view the plans.

Site Inspection

By Senior Planner on 4 April 2013.

RELEVANT PLANNING PROVISIONS

*Note**

This application was lodged prior to the adoption of the Town's Residential Design Guidelines and has been assessed as per the previous Town's policies.

4.1 Local Planning Policy 143 – Policy on Local Laws Relating to Fencing.

The policy states:

"Where the application does not conform to the Local laws and or this Policy the proposal is to be the subject of a Planning Approval and a report to Council. Council has discretion to approve an application for a fence or wall which does not conform to the Local Law or this Policy."

Part 3 – Fence Design

3.1 Maximum Height

The maximum height of any part of the fence is to be 1.8 m."

"5.2 A person shall not without the written consent of the Building Surveyor erect a fence higher than 1.2m in the front setback of a residential lot which includes the front boundary."

Part 4 – Council Approval Required

Under special circumstances including those listed below Council may approve a fence to be less visually permeable and or with a maximum height greater than 1.8 m.

"4.1 a higher fence/wall is required for noise attenuation."

"4.2 a less visually permeable fence would aid in reducing headlight glare from motor vehicles. This would apply more particularly where the subject property is opposite or adjacent to an intersection which could lead to intrusion of light into windows of habitable rooms."

"4.3 where the contours of the ground or the difference in levels between one side of the fence and the other side warrant consideration of a higher fence."

"4.4 where the applicant can demonstrate to Council that there is a need to provide visual screening to an outdoor living area. This may apply in situations where there is no alternative private living space other than in front of the residence or for part of the secondary side boundary of a corner lot."

- 4.2 TPS No 3, Clause 1.6 (b) which states (inter alia) the aims of the Scheme are to: *“enhance the character and amenity of the Town...”*

Clause 4.2 Objectives of the zones

General - *“To recognise and respect the desired future character of each precinct and to ensure future development is sympathetic with that character”.*

Residential Zone – *“To safeguard and enhance the amenity of residential areas and ensure that new housing development is sympathetic with the character and scale of existing built form”.*

- 4.3 TPS No.3 Clause 10.2 Matters To Be Considered By Local Government Clause 10.2 states:
“The local government in considering an application for planning approval is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application-“

The following sub-clauses are considered relevant to this assessment

- “(j) the compatibility of a use or development with its setting;*
- (o) the preservation of the amenity of the locality;*
- (p) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal,”*

CONSIDERATION

Front Gates

Council previously refused the gates based on non compliance with Part 3.1 of Local Planning Policy 143 – Policy on Local Laws Relating to Fencing and non compliance with Clause 10.2 (j),(o),(p) of TPS3. An approval of the gates would require Council to exercise discretion to vary the maximum fence height requirements of the LPP and Clause 10.2 (j), (o) and (p) of TPS3. Based upon site measurements, the extent of the variation required is 0.38 of a metre above the 1.8 metre height maximum specified in the LPP.

The proposed vehicular gate and pedestrian gate are not considered to warrant discretion based on Part 4 of the LPP, therefore it is not considered the proposed vehicular gate or pedestrian access should be considered as a special circumstance.

The LPP provides for such variations to be considered within an application for planning consent subject to a number of criteria. Clause 4.2 and Clause 10.2 of TPS No 3 also establish a number of criteria against which the merit of exercising a discretion to allow the proposal can be judged. These are assessed as follows:

- Compatibility of the development with its setting:
The design, scale and materials of the gates are incompatible with the existing sandstone and picket front fence. The maximum height of the existing sandstone and picket fence is 1.8 metres. A site inspection of the street revealed that there was minimal front fencing to any of the adjoining properties.

The front gate is powder coated wrought iron and is a contemporary ornate style and design. The existing fence is sandstone with wooden picket infill panels in a simple design. There are no similar examples of such gates which have been approved in the vicinity. It is considered the proposal is incompatible with the existing character of the front fence. It is further considered the gates are inconsistent with the prevailing front fences of the Fortescue Street streetscape.

The Town Planning Advisory Panel *recommended replacement of gates with a material sympathetic to existing fence material.* The design, scale, height and use of

materials are not evident in the area. The gates are considered inappropriate and inconsistent with the aim and objectives of the Scheme and with Clause 10.2 of the Scheme.

- Preservation of the amenity of the locality and its relationship to adjoining development:

While the gates are proposed to be reduced in height by 0.2 metres, the overall maximum height of the vehicular gate is 2.18 metres, 0.38 metres higher than the height maximum specified in the LPP and the existing sandstone and picket fence. The scales of the gates are considered out of character with the existing fence and prevailing streetscape. The gates are considered to be completely at odds with Clause 10.2 (j), (o) and (p) of TPS3.

The gates are visually obtrusive, due to the scale, height and specifically with regard to the materials and design of the gate. The gates are incompatible with the existing front fence on the subject site and those prevailing in the vicinity. Accordingly any approval would introduce a discordant element into the streetscape and would not preserve the visual amenity of the locality and its relationship with adjoining development.

Based on the above, it is considered the steel lattice automatic vehicular entrance gate and the pedestrian gate is refused.

Sauna Area

The retrospective sauna and roof cover has been constructed and is located to the rear of the subject site. The sauna has a roof height of 1.85 metres and has a total area of approximately 2.25m². A clear poly-carb roof sheeting has been constructed over the sauna and a total height of 2.45m and 2.25m located on the boundary. It is proposed to amend the boundary wall by 0.3m so as to prevent storm water from leaving the property. This will create a 2.55m high wall on the boundary. It is considered appropriate to increase the wall height to comply with condition 5 of the Officer's Recommendation.

The boundary wall with proposed 0.3m height increase abuts an existing or simultaneously constructed wall of similar dimension (existing bamboo fence). The proposed increase in wall height is considered to comply with the Acceptable Development Provisions of Element 6.3.2 Buildings on the boundary of the R-Codes. The proposed wall increase, retrospective sauna and retrospective roof covering is considered to comply with the provisions of the R-Codes and with the LPP provisions. Based on this it is considered the sauna and roof cover merits approval subject to appropriate conditions.

CONCLUSION

The application is for an approval for amended gates which exceed the required height maximum of the relevant Local Planning Policy by a maximum of 0.38 of a metre. The gates are visually obtrusive, due to the scale, height and specifically with regard to the materials and design of the gate. The gates are incompatible with the existing front fence on the subject site and those prevailing in the vicinity. The proposed fence, if approved, could establish a precedent for similar height structures on other front property boundaries. Therefore it is recommended the gates be refused and an order for the removal of the gates be issued.

The retrospective sauna and roof cover are considered to comply with the requirements of the R-Codes and the LPP. It is considered the sauna and roof cover can be supported by Council and approved subject to appropriate conditions

RECOMMENDATION

1. Council refuse the application for planning approval for amended steel lattice driveway and front entry gates located on the front fence line at 14 Fortescue Street, East Fremantle for the following reasons:

- 1.1. The proposed gates exceed the maximum height requirements for front fences specified in Part 3.1 of Local Planning Policy 143 – Policy on Local Laws Relating to Fencing.
- 1.2. The application does not meet the Objectives of the Town Planning Scheme No.3, Clause 4.2 and Clause 10.2 (j), (o), (p) of the Scheme since it would detract from the visual amenity of the area and is incompatible with the existing fence and those of surrounding properties and would be a discordant element which is not supported by the prevailing built form character in the vicinity.
2. That the steel lattice driveway and front entry gates be removed from the front boundary within a period of 90 days from the date of this determination.
3. That Council approve the application for retrospective planning for the sauna and roofed cover at 14 Fortescue Street, East Fremantle as described on the plans date stamped received 13 August 2012, subject to the following conditions being complied with:
 - 3.1. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
 - 3.2. 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.
 - 3.5. 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.
 - 3.6. 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.
 - 3.7. 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) *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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

- (i) *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 Johnson (owner) addressed the meeting in support of the proposal.

Cr Nardi – Cr Martin

1. **Council refuse the application for planning approval for amended steel lattice driveway and front entry gates located on the front fence line at 14 Fortescue Street, East Fremantle for the following reasons:**
 - 1.1. **The proposed gates exceed the maximum height requirements for front fences specified in Part 3.1 of Local Planning Policy 143 – Policy on Local Laws Relating to Fencing.**
 - 1.2. **The application does not meet the Objectives of the Town Planning Scheme No.3, Clause 4.2 and Clause 10.2 (j), (o), (p) of the Scheme since it would detract from the visual amenity of the area and is incompatible with the existing fence and those of surrounding properties and would be a discordant element which is not supported by the prevailing built form character in the vicinity.**
2. **That the steel lattice driveway and front entry gates be removed from the front boundary within a period of 90 days from the date of this determination.**
3. **That Council approve the application for retrospective planning for the sauna and roofed cover at 14 Fortescue Street, East Fremantle as described on the plans date stamped received 13 August 2012, subject to the following conditions being complied with:**
 - 3.1. **The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council’s further approval.**
 - 3.2. **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.**
 - 3.5. **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.**
 - 3.6. **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.**
 - 3.7. **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) ***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) the patio may not be enclosed without the prior written consent of Council.*
- (h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air Conditioner Noise".*

CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T49.3 Woodhouse Road No. 33 (Lot 302)

Applicant / Owner: R & K Igloi

Application No. P13/13

By Andrew Malone, Senior Town Planner on 4 April 2013

PURPOSE OF THIS REPORT

This report considers an application for Planning Approval for a two storey single dwelling, with basement garage situated at 33 (Lot 302) Woodhouse Road, East Fremantle. The application is recommended for conditional approval.

BACKGROUND

Description of Site

The subject site is:

- a 759m² freehold lot
- zoned Residential 12.5
- vacant block
- located in the Richmond Hill Precinct

Statutory Considerations

Town Planning Scheme No. 3 (TPS3) – Residential R12.5
Residential Design Codes (R-Codes)

Relevant Council Policies

Local Planning Policy – Residential Design Guidelines (RDG)

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact
Streetscape : Proposed new two storey dwelling

Documentation

Plans and relevant forms date stamp received on 1 February 2013.

Plans received to scale date stamp received 12 February 2013.

Amended plans and relevant forms date stamp received on 1 March 2013.

Date Application Received

1 February 2013

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

12 November 2012 – Application for Demolition Permit

CONSULTATION**Advertising**

The application was advertised to surrounding neighbours for a two week period between 7 February and 25 February 2013. At the close of advertising 3 submissions have been received and are attached to this report. The issues raised in the submissions are summarised in the following table alongside the applicant's response and officer's comment.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
34 View Terrace No objection		Acknowledged
36 View Terrace Views will be severely affected	Will reduce FFL by 600mm. Adhering to Design Codes of Australia. Overshadowing is due to the orientation of block	The proposed dwelling will have an overall average ridge height of approximately 47.8m AHD. The rear of the lot is at 43.95m AHD with an approximate 3 metre all separating both properties (46.79m AHD top of wall). The proposed top of ridge to the roof is 1.1 metres above this. This is not considered to significantly impact on the views of the adjoining property.
35 Woodhouse Rd Retaining wall will overshadow our property and affect views to the west, river and ocean. Privacy issues with upper floor.	Can only make decision on current situation and not future events.	The subject site is north/south orientated. The dwelling and retaining walls are considered to comply with the Acceptable Development Provisions of the R-Codes. As can be seen from the proposed streetscape the retaining walls are proposed at a similar height to both adjoining properties. The proposed dwelling is to be setback 9.0 metres into the lot and is not considered to impact on adjoining neighbours views. The proposed development is considered to comply with the Performance Criteria of the R-Codes with regard to visual privacy. This will be discussed in further detail later in the report.

Town Planning Advisory Panel

The proposal was presented for comment at its meeting held on 12 March 2013.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
Panel queried demolition of original residence	Demolition permission was given by council and work has been completed	A Demolition Licence was granted for the demolition of the dwelling. The lot is currently vacant. The dwelling was not listed on the Town's Heritage List or Municipal Heritage List and as such did not require planning approval prior to demolition.
Pool to the front elevation will still require a permeable fence	Pool fencing will be installed as per client and policy. An additional condition can be placed on the approval if necessary.	Pool area has been recommended to be maintained as visually permeable as per Council Policy in the Officer's Recommendation, so as to maintain an active street frontage and to maintain the visual character of the streetscape.
Query height, bulk and scale, overlooking and overshadowing impacts.	Revised plan discussed with A Malone and plans submitted addressing all issues and there is NO impact on surrounding neighbours.	The subject site is north/south orientated. The dwelling and retaining walls are considered to comply with the Acceptable Development Provisions of the R-Codes. Overlooking issues are considered appropriate and will be addressed in further detail later in this report. The dwelling height, bulk and scale are considered appropriate to the streetscape and adjoining dwellings, as the dwelling is considered consistent with the prevailing built form and bulk of the street.

Site Inspection

By Senior Town Planner on 5 April 2013.

ASSESSMENT

The proposed development incorporates a number of variations to the Town's Local Planning Policies and the Residential Design Codes, as detailed below.

STATUTORY ASSESSMENT

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 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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
6.4.1 Open Space	50%	71%	A
6.4.2 Outdoor Living	30sqm	38sqm	A
6.5 Car Parking	2	4	A
6.6 Site Works	Less than 500mm	1.7m	D
6.9.1 Overshadowing	25%	N/A	A
6.9.2 Drainage	On-site	On-site	A

6.3 Boundary Setbacks							
Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status
Front (north)							
Ground	Pool	2.3m	13.7m	N/A	1.5m	1.4m	D
Ground	Dwelling	N/A	N/A	N/A	7.5m	9.0m	A
Rear (south)							
Ground	Dwelling	1.3	13.4	Y	1.5m	9.0m	A
Upper	Dwelling	3.25m	11.1m	Y	1.5m	9.0m	A
Side (east)							
Ground	Dwelling	2.3m	9.4m	Y	1.5m	2.4m	A
Upper	Dwelling	4.3m	9.4m	N	1.5m	2.4m	A
Side (west)							
Ground	BBQ	3.3m	4.3m	N	1.2m	1.2m	A
Upper	Daybed	6.5m	4.3m	N*	1.2m	1.2m	A
Ground	Kitchen	3.4m	8.8m	Y	1.5m	1.5m	A
Upper	Master	5.3m	8.8m	N	1.2m	1.5	A

**Note: Daybed area has been recommended to be screened in the Officer's Recommendation, therefore it has been assessed as a minor opening.*

6.8 Visual Privacy				
Wall Orientation	Major Opening Type	Required Setback	Proposed Setback	Status
Front (north)				
	Alfresco	6.0	2.6	D
	Daybed*	7.5	1.5	D
	Balcony	7.5	2.7	D

**Note: Daybed area has been recommended to be screened in the Officer's Recommendation, therefore it is considered to comply with the visual privacy requirement of Element 6.8 of the R-Codes.*

In all other respects the proposed dwelling is considered to comply with the Acceptable Development Provisions (**ADP**) of the visual privacy requirements of Element 6.8 of the RDC.

Local Planning Policies Assessment

LPP Residential Design Guidelines Provision. Residential Design Guidelines	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	D
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	N/A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	A
3.7.15-20 Precinct Requirements	D

DISCUSSION Residential Design Codes

Boundary Setback

- **6.3.1 Buildings setback from the Boundary (R-Codes)**
- **3.7.7 Building Setbacks and Orientation (RDG)**

The proposed development incorporates a single setback variation to the front boundary. The proposed setback variation is to the retaining wall at the front of the property. The variation to the Acceptable Development Provisions (**ADP**) of the R-Codes setback requirements is 0.1m.

The LPP RDG Element 3.7.7 provides criteria by which to assess proposed variations to setback requirements. These are as 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 setback approximately 9.0 metres from the front boundary. It is considered the proposed dwelling matches the prevailing built form and primary street setback of the immediate locality. The proposed retaining wall to the front of the property requires Council discretion. The subject site has an approximate 5.84 metre fall from south to north. Retaining walls on the subject site are required. The dwelling to the east of the subject lot has a finished floor level of 41.45m. The dwelling to the west of the subject lot has a finished floor level of 46.63m. Both adjoining dwellings are retained to the front of the lot. It is considered the proposed retaining wall to the front of the lot does not impact on the prevailing street setback or the streetscape. The previously approved dwelling (now demolished) was built up and had front retaining walls.

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

In all other respects other than the retaining wall, the proposed development complies with the setback requirements of the R-Codes and the RDG. The proposed setback variation to the retaining wall does not impact on the adjoining dwellings nor to the visual presence of the dwelling.

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

In all other respects other than the retaining wall, the proposed development complies with the setback requirements of the R-Codes and the RDG. The proposed retaining wall is not considered to impact on the streetscape.

Notwithstanding the above RDG requirements, it is further considered that the proposed building does not meet the ADP of Element 6.3.1 of the R-Codes and must therefore be assessed against the Performance Criteria (**PC**) for this element with regard specifically to the following provisions:

- *Ensure adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties;*
- *Assist with the protection of privacy between adjoining properties.*

The proposed dwelling will have a finished floor level consistent with the dwelling at 31 and 35 Woodhouse Road. The proposed development is considered to address the requirements of the PC as follows:

- The proposed development has access to direct sun and ventilation to habitable areas and outdoor spaces. The proposed retaining wall creates a usable outdoor space to the front of the dwelling.
- The subject site is north/ south orientated. The proposed retaining wall and dwelling will not impact on the direct access to sun and ventilation to adjoining property. All overshadowing is located on the subject site.
- The lot is north/ south in orientated. The dwelling is orientated to have the main living areas of the alfresco area, pool and first floor balcony facing north, therefore there is adequate direct sun to the building and appurtenant open spaces.
- The orientation of the lot and design of the dwelling does not create overshadowing to adjoining lots.
- The scale and bulk of the dwelling is not considered to impact on the character of the area or on the streetscape. The design of the proposed dwelling is two storey and it is consistent with the prevailing built form of the locality. The dwelling is sympathetic to the character of the existing heritage dwelling and is not considered to impact on the locality. The proposed dwelling does not increase the impact of bulk and built form as presented to the street.
- There are no visual privacy issues. Appropriate conditions have been included in the Officer's Recommendation to minimise overlooking. The proposed dwelling complies with the ADP of the R-Codes.

Fill/ Excavation

- **6.6.1 Excavation or Fill (R-Codes)**
- **3.7.4 Site Works (RDG)**

The proposed development does not comply with the Acceptable Development Criteria of the R-Codes. The development will be assessed as per the Performance Criteria of the R-Codes with regard to Element 6.6.1, which states:

P1 Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property.

The Performance Criteria of the RDG with regard to Element 3.7.4 states:

- P1 Siting of new developments is to be consistent with the immediate locality and shall not negatively impact on the streetscape character and amenity.*
- P2 New developments are to maintain the prevailing natural ground level of the site.*
- P3 New developments, additions and alterations are to be designed so that a strong level of visual privacy is retained.*

A maximum 2.3m high retaining wall is proposed to the front of the subject site. The proposed fill is located 1.4 metres from the northern (front) boundary, situated behind a 0.4 metre retaining wall. The proposed fill and existing retained fill is not considered to impact on the scale and bulk of the dwelling. The dwelling is to be excavated into the subject site by approximately 0.63m at the finished floor level. The proposed dwelling maintains a consistent level with the adjoining dwellings and is considered of a similar height and scale. A basement garage is proposed, wholly excavated into the lot. The rear of the dwelling is being excavated into the rear of the lot by approximately 1.9 metres. The proposed dwelling retains the visual impression of the natural level of the site, as seen from the street and from an adjoining property.

It is considered the proposed dwelling and retained front garden is consistent with the immediate locality and shall not negatively impact on the streetscape character or amenity. The proposed pool/ front garden and alfresco area will improve the visual surveillance of the street and does not impact on the visual privacy of the adjoining lot. It is noted the adjoining neighbour has raised concern regarding privacy.

The proposed development is considered to comply with the Performance Criteria Element 6.6.1 Excavation of Fill and therefore can be supported.

6.8.1 Visual Privacy

The ADP provisions for visual privacy require 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 setback line, to comply with the following:

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

The proposed development does not comply with the ADP of the RDC.

The PC of 6.8.1 allows for:

“Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location, and the design of major openings and outdoor active habitable spaces, screening devices, and landscape, or remoteness.”

The alfresco area and first floor balcony overlook the front retaining wall of 35 Woodhouse Road. There is no direct overlooking of active habitable spaces and outdoor living areas of other dwellings. A condition has been included in the Officer's Recommendation to screen the daybed area. The building layout, location, and the design of the alfresco and balcony as an outdoor active habitable spaces minimises overlooking to adjoining neighbours, while maintaining the passive visual surveillance of the street. It is considered the overlooking of the neighbours retaining wall and front garden from the alfresco area and balcony is appropriate.

It is considered the proposed minimal extent of overlooking can be supported by Council.

Residential Design Guidelines

The proposed dwelling has also been assessed in accordance with the Town's Residential Design Guidelines. The following areas are considered the areas of non compliance with the Acceptable Development Provisions and the Performance Criteria of the Guidelines:

3.7.8 Roof Form and Pitch

Acceptable Development Provisions states:

A4.1 Roof forms of new developments should be pitched between 28° and 36° and are of consistent scale and form with the prevailing building typology in the immediate locality.

The Performance Criteria states:

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

The proposed roof pitch of the dwellings is 25°. The proposed 25° requires a 3° variation to Council Policy. The variation in the overall roof pitch reduces the overall height of the dwelling by 0.4m. The proposed reduction in height is considered of greater importance to the streetscape and in maintaining viewing vistas as the overall pitch of the roof. The proposed roof pitch is considered to reduce any perceived bulk of the dwelling. The proposed roof form is considered to complement the traditional form of surrounding development in the immediate locality, and therefore complies with the Performance Criteria of the RDG.

Element 3.7.17.4 of the Residential Design Guidelines – Building Design Requirement

The Acceptable Development Provisions of the RDG for the building height states:

A1.4 *In localities where views are an important part of the amenity of the area and neighbours existing views are to be affected, or the subject site is a 'battle axe' lot, then the maximum building heights are as follows:*

- 8.1m to the top of a pitched roof
- 6.5m to the top of an external wall (concealed roof)
- 5.6m to the top of an external wall; and where the following apply:
 - i. *The proposal demonstrates design, bulk and scale that responds to the established character 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 provisions of Residential Design Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.*

The proposed dwelling is two storey and has a maximum height of 6.0 metres to eaves and 8.2 metres to roof pitch from natural ground level. The proposed dwelling heights are considered to comply with the Acceptable Development Provisions of the R-Codes. The proposed dwelling is required to be assessed as per the PC requirements of the RDG for the building height allows for:

P1 *New developments, additions and alterations to be of a compatible form, bulk and scale to traditional development in the immediate locality.*

The streetscape perspective clearly illustrates the proposed dwelling is consistent with the prevailing built form, bulk and scale of the locality and of the traditional development in the area. The built form in Woodhouse Road is predominantly two storey with fill in the front setback area and retaining walls to the front boundaries. The dwelling is considered to be appropriately setback from the front, side and rear boundaries.

The dwelling is considered to not significantly impact on the adjoining neighbours views to the side to rear of the subject site. The proposed development complies with the ADP of the R-Codes for Element 9 – Design for Climate and Element 8 – Privacy.

The proposed height of the dwelling is considered to be not excessive and does not impact on adjoining properties or on the streetscape. It is considered the proposed basement garage and front outdoor space will improve the activity to the street and will add to the visual amenity of the area therefore it is considered the proposed dwelling can be supported by Council.

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, excavated into the lot for reduced visual impact to be developed on the lot. It is proposed to add fill to the front of the property and excavate to the rear of the property thereby maintaining the amenity and views of adjoining neighbours. The proposed fill to the front of the lot are for a swimming pool area and usable outdoor entertaining area. A condition has been included in the Officer's Recommendation to require any additional fence above the retaining wall to comply with Element 3.7.11 of the Town's Residential Design Guidelines.

The proposed height of the dwelling is not considered excessive and is not considered to impact on adjoining properties or on the streetscape. It is considered the proposed basement garage and front outdoor space will improve the activity to the street and will add to the visual amenity of the area therefore it is considered the proposed dwelling can be supported by Council. Based on this it is considered the proposal merits approval subject to appropriate conditions.

RECOMMENDATION

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

- (a) variation to the primary street setback requirements (northern elevation) – required setback 1.5 metres (retaining wall). Proposed setback is 1.4 metres;
- (b) variation to Element 6.6 of the Residential Design Codes and Element 3.7.4 of the Residential Design Guidelines Site Works;
- (c) variation to Element 6.8 of the Residential Design Codes Visual Privacy;
- (d) element 3.7.7 of the Residential Design Guidelines: Construction of New Building;
- (e) element 3.7.8 of the Residential Design Guidelines: Roof pitch; and
- (f) element 3.7.17 of the Residential Design Guidelines: Building Design Requirements; for two storey dwelling at 33 (Lot 302) Woodhouse Road, East Fremantle, in accordance with the plans date stamp received on 01 March 2013 subject to the following conditions:
 1. Eastern wall of the 'Daybed' to be visually screened to a height of 1.6 metres above the finished floor level.
 2. Any proposed fencing on top of the retaining wall to comply with the requirements of Element 3.7.11 of the Town's Residential Design Guidelines.
 3. No front fence/ pool fencing is to be constructed without the prior approval of Council.
 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 (i) 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 Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
 7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
 8. 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. 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.
 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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *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 Paino (representing his parents, owners of 35 Woodhouse Road) addressed the meeting expressing concern about the overshadowing and streetscape impact of the proposed retaining wall to the east and seeking the residence, or at least the lower pool area, be dropped by one metre to reduce this impact.

Mr Igloi (owner) addressed the meeting in support of the proposal advising that they had already lowered the ground level by 600mm.

Cr Nardi – Cr Wilson

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

- (a) variation to the primary street setback requirements (northern elevation) – required setback 1.5 metres (retaining wall). Proposed setback is 1.4 metres;**
- (b) variation to Element 6.6 of the Residential Design Codes and Element 3.7.4 of the Residential Design Guidelines Site Works;**
- (c) variation to Element 6.8 of the Residential Design Codes Visual Privacy;**
- (d) element 3.7.7 of the Residential Design Guidelines: Construction of New Building;**
- (e) element 3.7.8 of the Residential Design Guidelines: Roof pitch; and**
- (f) element 3.7.17 of the Residential Design Guidelines: Building Design Requirements;**

for two storey dwelling at 33 (Lot 302) Woodhouse Road, East Fremantle, in accordance with the plans date stamp received on 01 March 2013 subject to the following conditions:

- 1. Eastern wall of the 'Daybed' to be visually screened to a height of 1.6 metres above the finished floor level.**
- 2. Any proposed fencing on top of the retaining wall to comply with the requirements of Element 3.7.11 of the Town's Residential Design Guidelines.**
- 3. No front fence/ pool fencing is to be constructed without the prior approval of Council.**
- 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 (i) 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 Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
 7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
 8. 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. 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.
 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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document–“An Installers Guide to Air Conditioner Noise”.*
- CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T49.4

Hubble Street No. 72 (Lot 275)**Applicant: Sam Teoh Architects****Owner: Ms JE Kargotich****Application No. P25/13**

By Andrew Malone, Senior Town Planner and Jamie Douglas, Manager of Planning Services on 21 March 2013

PURPOSE OF THIS REPORT

This report considers an application for Planning Approval for a single two storey dwelling at 72 (Lot 275) Hubble Street, East Fremantle. The application is recommended for conditional approval.

BACKGROUND**Description of Proposal**

The proposed development involves demolition of an existing dwelling (listed as C+^ on the Town's Municipal Heritage List (MHI) 2006) and construction of a new single two storey dwelling. The existing dwelling is a early Federation dwelling and included on the Town's Municipal Heritage Inventory under the C+^ Management Category.

The proposed new dwelling is double-storey in height. The dwelling comprises four bedrooms; study; open plan living, dining and kitchen and alfresco; two bathrooms; laundry, with adjoining shed. The proposed garage is a single garage.

Description of Site

The subject site is:

- a 509m² lot
- zoned Residential R20
- located in the Plympton Precinct
- improved with a single-storey single dwelling listed on the Town's Municipal Heritage Inventory under the C+^ Management Category.

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

Statutory Considerations

Town Planning Scheme No. 3 (TPS3) – Residential R20
Residential Design Codes (R-Codes)

Relevant Council Policies

Local Planning Policy – Residential Design Guidelines (RDG)

Impact on Public Domain

- Tree in verge : No impact
- Light pole : No impact
- Crossover : Proposed new crossover. Removal of existing crossover.
- Footpath : No impact
- Streetscape : Proposed new dwelling. Demolition of existing dwelling. Proposed two storey dwelling.

Documentation

Plans and relevant forms date stamp received on 22 February 2013.
Revised plans date stamp received on 12 April 2013.
Justification letter date stamp received on 16 April 2013.

Based on discussions with the Planning Department and the submission from the adjoining neighbour, the applicant made amendments to the plans to minimise the impact to adjoining neighbours and provide a better outcome with regard to the overall design of the dwelling. The following changes were included in the revised plans:

- The cross over is now 3.0m wide
- The front setback to the garage is now 5.5m. The length is now suitable for the second car bay.
- The ceiling over the Living and Alfresco has been reduced to approx 3.2m AFL. The ceiling over this area was previously 3.8m AFL. Refer to changes on the north elevation on dwg A2-01
- The south wall on the first floor has been reduced to 13.0m reducing the impact on the adjoining southern neighbour.

Date Application Received

22 February 2013

CONSULTATION

Town Planning Advisory Panel Comments

The application was considered by the Town Planning Advisory Panel at its meeting of 22 March 2013. The Panel made the following comments:

PANEL COMMENT	APPLICANT RESPONSE	OFFICER ASSESSMENT
Majority of the panel do not support the demolition of this early example of a timber framed single-faced cottage.	The Development Impact Statement prepared by an accredited Heritage consultant comprehensively details the Heritage Impact of no 72 Hubble St. Without summarising the findings I would like to highlight some pertinent issues. The report finds that the building in its current form is likely to have gone through significant changes. "...it is likely the dwelling was originally clad with weatherboard and had corrugated iron roof. The verandah roof may have once been a separate element, as is apparent at a similar cottage located at 28 Hubble St. The current wall and roof cladding	The Development Impact Statement prepared by a Katrina Chisholm comprehensively details the Heritage Impact Statement of no 72 Hubble St. It is considered the Heritage Impact Statement is a fair and accurate report of the existing and proposed dwelling. Based on the Heritage Impact Statement it is considered the proposed demolition of the existing dwelling and construction of new dwelling can be supported by Council.

PANEL COMMENT	APPLICANT RESPONSE	OFFICER ASSESSMENT
	<p>materials at 72 Hubble St are more typical of residential fabric from later in the twentieth century than the original era of construction, with the post second war era experiencing a boom in asbestos fibre-cement products. “</p> <p>“..Notches in the timber post provide evidence of some modification to these elements in the past.”</p> <p>The comment at the end of Section 7.1 (Levels of Significance) of the Development Impact Statement best sums up the significance of no 72 Hubble Street:</p> <p>“While 72 Hubble Street was assigned a Category C+ Management Category in the 2006 Heritage survey closer examination has shown that the place makes a minimal contribution to the streetscape; has no particular historic, social or scientific values; and whilst the place has a relatively unusual form in Hubble Street it is not rare or particularly good example of this value. The place also lacks the authenticity required to be a representative example of a ‘Gable Domestic Carpenter Cottage’.”</p>	
<p>Building could be retained and restored to original external materials of timber weatherboard and Zinalume roof.</p>	<p>The terms Restoration and Reconstruction have very specific meanings under the Burra Charter (the Australia ICOMOS Charter for Places of Cultural Significance)</p> <p>Restoration means returning the existing fabric of a place to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material.</p> <p>No 72 Hubble cannot be restored to its original material because the original fabric is likely to have been removed.</p> <p>Reconstruction means returning a place to known earlier state and is distinguished from restoration by the introduction of new material into the fabric.</p> <p>In discussing Reconstruction it is also pertinent to note Article 20 of the Burra Charter which states:</p> <p>“..Reconstruction is appropriate only where a place is incomplete through damage or alteration and only where there is sufficient evidence to reproduce an earlier state of the fabric...”</p>	<p>The applicant’s response is an accurate interpretation of the Burra Charter. The existing dwelling according to the Heritage Impact Statement lacks authenticity.</p> <p>It is considered significant alterations would be required to create a usable family home, therefore the authenticity and existing dwelling would be altered to such a degree as to warrant the with no heritage value remaining.</p>

PANEL COMMENT	APPLICANT RESPONSE	OFFICER ASSESSMENT
	<p>The building fabric of no 72 Hubble Street is in very poor condition. Whilst it is possible to reconstruct places that are in poor or ruinous condition, it would only be done if reconstruction were to retain or reveal places of high cultural significance. Research undertaken to compile the Heritage Impact Statement has not revealed any cultural significance. Hence the panel's suggestion to reconstruct the cottage is about 'creating heritage' rather than trying to reveal or retained cultural significance.</p> <p>With reference to Article 20 of the Burra Charter, there is insufficient evidence to accurately reproduce the earlier state of the fabric.</p>	
<p>Scale of proposal does not appear compatible with current streetscape.</p>	<p>The proposal has a single storey verandah and a single storey building fronting onto Hubble Street. The double storey section is towards the middle and rear of the site, almost hidden by the pitched roof of the front of the house. This method of second storey building is supported by the Council's Residential Design Guidelines.</p> <p>Set back of the front verandah matches the setback of the existing verandah. The set back of the single storey building matches the setback of the existing building. These setbacks are in keeping with the established setback in the immediate vicinity of the street. Although marginally higher, the scale and height of the front verandah is similar to the scale of the existing verandah.</p> <p>We have elected not to propose a development where the second storey fronts onto Hubble Street.</p> <p>We feel that the single storey street front of our proposal, the orientation of the roof and the setbacks matching the set back of the current house fits in with the more prevalent nature of the single storey streetscape of Hubble Street.</p>	<p>The heritage Impact Statement states:</p> <p><i>The design proposal for the new residence acknowledges the qualities of the existing dwelling adopting a similar simplicity of form and design in the predominant street elevation. The refinement of form fabric and detailing in the proposed new dwelling is likely to improve on the neutral streetscape presence of the existing dwelling.</i></p> <p>The above statement is acknowledged and agreed with. The proposed dwelling is sympathetic to the character of the area and presents as single storey from the street.</p> <p>The impact of the proposed dwelling is considered minimal.</p>
<p>A sympathetic contemporary addition to the existing development should be considered.</p>	<p>The Development Impact Statement has concluded that the existing building fabric does not have any significant Heritage or Cultural Significance. The existing building is in very poor condition. The existing building no longer fits the current living requirements.</p> <p>As discussed previously whilst it is possible to reconstruct dilapidated</p>	<p>As above.</p>

PANEL COMMENT	APPLICANT RESPONSE	OFFICER ASSESSMENT
	houses, it would be an unnecessary burden imposed on the owners when the existing house has no significant heritage or cultural significance.	
Independent heritage report is required.	N/a	It is considered the Heritage Impact Statement undertaken by Katrina Chisholm is a fair and accurate report regarding the existing dwelling and proposed development. A further report on the dwelling is not considered to be required.

Advertising

The application was advertised to surrounding neighbours for a two week period between 1 March 2013 and 15 March 2013. At the close of advertising one (1) submission had been received and is attached to this report. The issues raised in the submission are summarised in the following table alongside the applicant’s response and officer’s comment.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
<p><i>70 Hubble Street</i></p> <p>We oppose the development in its current format. The reasons are set out below.</p> <p>Residential design guideline:</p> <p>3.7.6.1 States “Designs that do not follow the established pattern in terms of form, scale, bulk, or other design features shall not be supported.</p> <p>3.7.6.2 NOTE 2 States “New developments however should reflect the traditional setbacks, scale and bulk of the traditional buildings.</p> <p>3.7.16.4.1.1 States “In any new development, the form, bulk and scale will need to be demonstrably compatible with the existing and surrounding residences.</p> <p>3.7.16.4.1.2 States “New developments should reflect the prevailing form, bulk and scale of the immediate locality.</p> <p>3.7.16.4.1.3 Acceptable development provisions A1.5 States “The proposal demonstrates design, bulk and scale that responds to neighbouring developments and the established character on the site or other site specific circumstances.” –“The proposed development does not unreasonably impact upon the amenity of the principal outdoor living area of the adjacent properties.</p> <p>3.7.16.4.2.3 Performance Criteria and Acceptance Development Provisions (P1) The principle façade and main entrance of a new building should address the street in a manner that reflects the predominant character of the traditional development in the immediate locality. (A1) New developments to include a verandah or</p>	<p>The applicant has submitted revised plans addressing the concerns of the adjoining neighbour.</p>	<p>The applicant has submitted revised plans. The revised plans are considered to address some of the concerns of the adjoining neighbour.</p>

<p>porch that address the primary street and comprises the primary access to the building.</p>		
<p>Our main concern is the bulk and scale of the proposed development, particularly the overall height and even more particularly the height of the ground floor cantilever roof. This roof is to be 4.2 metres high over 30 metres long and as close as 600 millimetres from our boundary. This would continue to within 4 metres of the rear boundary. The entire building including the roof covers close to 80% of the block area. Being on the lower side of the proposed development our entire outdoor living area will be severely impacted.</p>		

The neighbours were advised that amended plans were submitted. The neighbours have provided comment on these plans.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
<p>The cantilever roof is still greatly overbearing on our property and would like it to be set back more and its height greatly reduced.</p>	<p>The applicant has discussed the revisions with the Planning Department and a suitable mediated outcome was agreed to ensure the neighbours amenity is maintained.</p>	<p>Conditions have been included in the Officer's Recommendation to reduce the overall height of the dwelling and increase the setback of the cantilevered roof.</p>
<p>The pillar on the boundary near the entrance door and its associated structure is 4.2 metres high, we would like this to be no more than fence height.</p>		<p>The revised plans setback the roof by 1.5 metres from the boundary and lower the height of the cantilevered roof. The amendments are considered to address the concerns of the adjoining neighbour to the north.</p>
<p>The house on the north side is right on our boundary. Now to have another right on the boundary on the south side would take away from our amenity.</p>		<p>The pillar on the boundary is a design feature and is seen to enhance the visual amenity of the proposed dwelling. The pillar is not considered to impact significantly on the adjoining lot and therefore it is considered the pillar can be supported by Council.</p>

Site Inspection

By Senior Town Planner on 19 April 2012

ASSESSMENT

The proposed development incorporates a number of variations to the Town's Local Planning Policies and the Residential Design Codes, as detailed below.

Town Planning Scheme No. 3 Assessment

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 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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
6.4.1 Open Space	50% (254.5m ²)	50% (255m ²)	A
6.4.2 Outdoor Living	30m ²	43m ²	A
6.5 Car Parking	2	2	A
6.6 Site Works	Less than 500mm	Less than 500mm	A
6.9.1 Overshadowing	25%	29%	D
6.9.2 Drainage	On site	On Site	A

6.3 Boundary Setbacks							
Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status
Front (west)							
Ground	Porch	N/A	N/A	N/A	6.0m	3.0m	D
Ground	Activity	N/A	N/A	N/A	6.0m	4.5m	D
Ground	Garage	N/A	N/A	N/A	6.0m	5.5m	D
Rear (east)							
<i>Ground</i>	Alfresco	4.4m	8.0m	Y	2.0m	5.0m	A
<i>Upper</i>	Dwelling	7.3m	7.0m.	Y	3.5m	12.4	A
Side (north)							
Ground	Bed3/ 4	4.4m	14.4m	Y	1.6m	1.5m	D
	Dining	4.4m	13.7m	Y	3.0m	2.9m	D
<i>Upper</i>	Bed 1	7.4m	8.8m	N	1.3m	2.8m	A
Side (south)							
Ground	Garage	2.8m	16.3m	N	1.5m	Nil	D
	Shed	2.8m	4.2m	N	Nil	Nil	A
	Kitchen	2.3m	6.7m	N	1.0m	1.5m	A
<i>Upper</i>	Study/ Bath	6.0m	13.0m	N	1.6m	1.5	D

Local Planning Policies Assessment

LPP Residential Design Guidelines Provision. Residential Design Guidelines	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	D
3.7.7 Building Setbacks and Orientation	D
3.7.8 Roof Form and Pitch	D
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	A
3.7.15-20 Precinct Requirements	D

DISCUSSION

The proposed development incorporates a number of variations to the Town's Local Planning Policies and the Residential Design Codes, as detailed below.

Heritage

A heritage Impact Statement has been undertaken by Katrina Chisholm. The Heritage Impact Statement states:

While 72 Hubble Street was assigned a Category C+ Management Category in the 2006 Heritage survey closer examination has shown that the place makes a minimal contribution to the streetscape; has no particular historic, social or scientific values; and whilst the place has a relatively unusual form in Hubble Street it is not rare or particularly good example of this value. The place also lacks the authenticity required to be a representative example of a 'Gable Domestic Carpenter Cottage'.

The report continues:

The existing fabric lacks authenticity and overall the place has limited heritage significance.... The design proposal for the new residence acknowledges the qualities of the existing dwelling adopting a similar simplicity of form and design in the predominant street elevation. The refinement of form fabric and detailing in the proposed new dwelling is likely to improve on the neutral streetscape presence of the existing dwelling.

The Heritage Impact Statement is considered an accurate and appropriate report of the existing dwelling and the impact the proposed dwelling will have. It is considered the proposed dwelling is sympathetic in form and character with the streetscape and locality. The impact is considered minimal. It is considered the proposed demolition of the existing dwelling and construction of new dwelling can be supported by Council.

Street Tree

There is an existing street tree to the front of the property. The tree is well formed, mature and forms an integral and integrated element to the character of the streetscape. The tree will limit the view of the dwelling from the street. It is considered the tree should be protected and retained. Appropriate conditions have been included in the Officer's Recommendation.

Residential Design Codes

6.2.1 Setbacks of the Building Generally

A1.1 states buildings setback from street boundaries to be in accordance with Table 1 of the R-Codes. The subject site has a density of R20. Table 1 requires dwellings in areas zoned R20 to be setback a minimum of 6.0 metres from the primary street. The proposed minimum setback is 3.0 metres to the porch and 5.5 metres to the garage. None of the front setbacks comply with the Acceptable Development Provisions (ADP) of the R-Codes.

The Performance Criteria for front setback requirements dwellings to:

- *Contribute to the desired streetscape.*
- *Provide appropriate privacy and open space for dwellings; and*
- *Allow safety clearances for easements for essential service corridors.*

The proposed dwelling is considered to contribute to the desired streetscape and the prevailing setback of the area. It is considered the existing built form of the Street has reduced primary street setbacks. The proposed dwelling replicates the setback of the existing adjoining dwellings. The proposed design has been carefully considered by the architect to address Hubble Street in a sympathetic manner. The design presents as single storey to Hubble Street, with roof pitch repeating the prevailing form of the surrounding properties and that of the existing dwelling. The porch is setback 3.0m from the primary street. The overall design and presentation of the dwelling to Hubble Street is considered appropriate and sympathetic with the prevailing character of the area. The design outcome addresses the provisions of the RDG and it is considered a thorough and appropriate design.

The proposed dwelling is of a scale and bulk that is consistent with the streetscape and the existing dwelling on the property, which it is to replace. The proposed second storey

is setback 14.2 metres from the front boundary and is hidden from the streetscape. The proposed design is consistent with the existing cottage design and setbacks.

It is further considered the staggered incursion into the front setback area helps to ameliorate the impact of the garage upon the front elevation by articulating the building.

There are no open space or privacy issues with regard to the proposed dwelling. Safety clearances for easements for essential service corridors are provided.

The proposed dwelling does not impact the streetscape or adjoining neighbours and therefore is considered it can be supported by Council.

Boundary Setback

- **6.3.1 Buildings setback from the Boundary (R-Codes)**
- **3.7.7 Building Setbacks and Orientation (RDG)**

For the purposes of this assessment the proposed Nil ground floor setbacks to the southern boundary will be assessed as per A2 (i) and (ii) of Element 6.3.2 Building on the boundary of the R-Codes.

The proposed development incorporates a number of variations to setback requirements to the side boundaries. The LPP RDG Element 3.7.7 provides criteria by which to assess proposed variations to setback requirements. These are as 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.*

As previously stated the dwelling has setback variations to the front setback ranging from 3.0 metres to 0.5 metre. It is considered the primary street setbacks match the traditional setback of the immediate locality. It is considered the proposed dwelling makes a positive contribution to the street. The design is single storey as presented to the primary street and is sympathetic with adjoining dwellings. It is considered the proposed primary street setback can be supported by Council as a greater setback would significantly impact on the streetscape.

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

The heritage dwelling is proposed to be demolished. Based upon a site inspection and the assessment of the applicants Heritage Consultant, it is considered that the alterations to the building fabric and the existing deteriorated condition of the building have diminished the heritage value of the existing dwelling to an extent where demolition of the dwelling can be supported. The proposed dwelling acknowledges the existing heritage dwelling and character of the area by presenting as a single storey cottage to the street. The proposed primary street and side setbacks do not adversely affect its visual presence from the streetscape or adjoining neighbours. The neighbour to the north has raised concerns regarding the setback of the roof overhang. A greater setback has been requested. The neighbour's comments regarding the roof are acknowledged and an appropriate condition has been included in the Officer's Recommendation to increase the setback of the roof from 1.0 metres to 1.5 metres. The proposed dwelling will contribute positively to the scale and character of the prevailing heritage built form of the area.

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

The proposed setbacks do not significantly impact on the streetscape. The side variations are considered minor. The proposed front setback variation has been previously discussed. The proposed setbacks are considered appropriate considering the design of the dwelling and the scale and bulk of the dwelling. The proposed setbacks are

not considered to significantly impact adjoining neighbours considered the natural ground level and overall height of the boundary wall.

Notwithstanding the above RDG requirements, it is further considered that the proposed building does not meet the ADP of element 6.3.1 Side and rear boundary setbacks and must therefore be assessed against the Performance Criteria (PC) for this element with regard specifically to the following provisions:

- *Ensure adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties;*
- *Assist with the protection of privacy between adjoining properties.*

The proposed development is considered to address the requirements of the PC as follows:

- The proposed development has access to direct sun and ventilation to habitable areas and outdoor spaces. The design will maximise solar efficiency and energy efficiency.
- The adjoining properties have access to direct sun and ventilation. The proposed development requires a Council variation with regard to overshadowing. This is addressed later in the report. It is considered the overshadowing does not significantly impact on the adjoining neighbour and as such can be supported.
- The lot is east/west in orientation. The dwelling is orientated to have the main living areas and alfresco area facing north, therefore there is adequate direct sun to the building and appurtenant open spaces. The proposed roof form to the rear of the dwelling maximises solar efficiency.
- As noted above, this will be addressed later in the report. It is considered there is adequate direct sun to the dwelling and open spaces.
- The scale and bulk of the dwelling is not considered to impact on the character of the area or on the streetscape. The dwelling presents as single storey to the street. The dwelling is not considered to impact on the locality. The proposed dwelling does not increase the impact on the bulk and built form as presented to the street.
- There are no visual privacy issues. The proposed dwelling complies with the ADP of the R-Codes.

The proposed dwelling does not impact the streetscape or adjoining neighbours and therefore is considered it can be supported by Council.

6.3.2 Building on the Boundary

The applicant is seeking Council discretion with regard to the ADP for the south elevation setback requirements of the R-Codes and the Town's RDG. A2 (i) and (ii) of Element 6.3.2 Building on the boundary of the R-Codes states that:

- Where the wall abuts an existing or simultaneously constructed wall of a similar or greater dimension; or*
- In areas coded R20 and R25, walls not higher than 3m with an average of 2.7m up to 9m in length up one side boundary only.*

The shed parapet wall to the southern boundary abuts an existing boundary wall of a similar dimension and therefore complies with buildings on the boundary. The shed is considered a minor development and is not considered to impact on in the streetscape or adjoining property.

The garage, storage and laundry parapet wall does not comply with the ADP of Element 6.3.2 Buildings on the boundary, therefore there is a requirement for the garage to be assessed as per the Performance Criteria of the R-Codes. P2 states:

Buildings built up to the boundaries other than the street boundary where it is desirable to do so in order to:

- *Make effective use of space; or*
- *Enhance privacy; or*
- *Otherwise enhance the amenity of the development;*
- *Not have any significant adverse effect on the amenity of the adjoining property; and ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.*

The above points are addressed as follows:

- The parapet wall is considered to make effective use of the 12 metre wide frontage of the lot. The garage, storage and laundry located on the southern boundary maximises the northern sun to the main living area, while having minimal impact to the adjoining neighbour to the south. The proposed wall overshadows a driveway.
- There are no privacy issues relating to the proposed development.
- The proposed parapet wall facilitates the location of the main service areas and ancillary rooms to the southern boundary thereby maximising the amenity to the main living areas as these area are located to the north and can benefit from a large alfresco area. The use of the parapet wall also maximises the development potential of the ground floor thereby minimising the first storey of the dwelling, reducing the impact to surrounding neighbours and to the streetscape.
- The proposed zero lot wall to the garage is considered minimal in height and does not have an adverse effect on the adjoining neighbour. The proposed wall is located adjoining a driveway or to the property to the north. Direct sun is received to major openings to habitable rooms and outdoor living areas by the adjoining property. The adjoining neighbour has not raised any concerns with regard to the parapet walls. The proposed dwelling does not impact the streetscape or adjoining neighbours and therefore is considered can be supported by Council.

6.9.1 Overshadowing

The orientation of the block is east/west and the design of the proposed dwelling overshadows the neighbouring lot by 29%. The proposed development is not considered to significantly impact the amenity of the adjoining neighbour. The overshawing is located over an existing driveway and rear shed. The proposed additions and alterations are required to be assessed as per the PC requirements of the R-Codes.

In regard to overshadowing the following extract from the R-Codes is relevant:

In terms of residential development, the three main aims of climate-sensitive design are to reduce energy consumption, optimise on-site solar access, and protect solar access for neighbouring properties.

However, it is difficult to translate these aims into development provisions. This is not because the issues are subjective but because conditions vary greatly from one situation to another, making it difficult to establish universally valid rules.

The proposed development has been designed as a climate-sensitive design maximising northern light into habitable areas, whilst also having extended eaves to protect the property in the summer months, thereby optimising on-site solar access. The proposed development protects the solar access for neighbouring properties by limiting the bulk of the overshadowing to the middle third of the adjoining lot. Conditions have been included in the Officer's recommendation which reduce the building height of the dwelling by 0.3

metres. This will further reduce the overall overshadowing of the adjoining lot (discussed later). Given this, the PC 6.9.1 Solar access for adjoining sites states:

The development designed to protect solar access for neighbouring properties taking account the potential to overshadowing:

- *Outdoor living areas;*
- *Major opening to habitable rooms;*
- *Solar collector; or*
- *Balconies or verandahs.*

The proposed second storey additions are to the middle third of the lot, so as to protect solar access for neighbouring properties. The overshadowing is located to a driveway, rear shed and garden area. It is considered the orientation of the lot exacerbates the overshadowing issue. Major openings to the northern elevation of the adjoining dwelling have been protected. The proposed development does not impact the front verandah of the adjoining property. There is no issue with regard to solar collectors. The proposed overshadowing and reduced building height (as conditioned) for the proposed dwelling are considered minor and can be supported by Council.

Element 3.7.6 of the Residential Design Guidelines – Construction of New Building

Acceptable Development Provisions states:

- A1 Developments to comply with all design elements of this Local Planning Policy and are compatible with the context in terms of bulk, scale, materials and design.*

The Performance Criteria states:

- P1 New buildings are to be designed and constructed in a style compatible with, but which does not overtly mimic, the traditional building styles found in the Town.*

The proposed dwelling has been designed to be compatible in style, scale and bulk with those in the adjoining locality, presenting as single storey and having a consistent primary street setback. The dwelling has been designed to have minimal impact to adjoining property and to the streetscape. The proposed dwelling is considered to complement the adjoining dwellings and streetscape, respecting the traditional building style and built form of the locality.

It is considered the dwelling can be supported by Council.

Element 3.7.8 of the Residential Design Guidelines – Roof Form

The Acceptable Development Provisions of the RDG for the Richmond Precinct 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 proposed roof has a 30°, 2° and 4° roof pitch. This does not adhere to the ADP of the RDG. The PC requirements for the roof pitch allows for:

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

The proposed roof has a 30° roof pitch to replicate the 'cottage' design at the front of the dwelling. The proposed rear and first floor roof of the dwelling has a pitch of 2° and 4° respectively. The various roof forms effectively hide the rear of the dwelling from the street. As is illustrated in the southern and northern elevation, the proposed roof form screens the rear two storey component when viewed from the street, thus reducing the

visual impact of the proposed structure. The proposed dwelling presents as single storey from the streetscape, thereby minimising the impact to adjoining neighbours and the streetscape. The roof form ensures the scale and bulk of the dwelling is significantly consistent with the adjoining dwellings and the traditional built form of the area. The roof form at 30° and pitch is considered to complement the traditional form, whilst also hiding the rear of the development.

It is considered the dwelling can be supported by Council.

Element 3.7.17.4 of the Residential Design Guidelines – Building Design Requirement

The Acceptable Development Provisions of the RDG for the building height states:

- A1.5** *Category „B“ will apply as set out within Table 3 – Maximum Building Heights of the Residential Design Codes.*
- i. The proposal demonstrates design, bulk and scale that responds to neighbouring developments and the established character of the existing development on the site or other site specific circumstances;*
 - ii. Subject to compliance with the „Acceptable Development“ standards of Residential Design Codes – Element 9 – Design for Climate and Element 8 – Privacy.*
 - iii. The proposed development does not unreasonably impact upon the amenity of the principal outdoor living area of adjacent properties.*
 - iv. The subject lot is not a battle axe lot.*

The proposed dwelling is two storey and has a maximum height of 7.3 metres to the external flat roof. The proposed development does not comply with the provisions of category B building height of the R-Codes. The proposed development has approximately 0.3 metres of fill to increase the finished floor level of the dwelling (ffl 21.80). The finished floor level of the existing dwelling is 21.63.

A condition has been included in the Officer's Recommendation for the maximum ffl of the ground floor not to exceed 21.63, consistent with the existing dwelling. This will reduce the overall height of the dwelling by 170mm. A further condition has been included in the Officer's Recommendation for the maximum ffl of the first floor not to exceed 25.10. This will reduce the overall height of the dwelling by 380mm. The roof height is not to exceed 28.50 AHD, thereby complying with the ADP of the R-Codes for building height.

The height reduction is also considered to address the neighbour's concerns with regard to the cantilevered roof. The roof will also be setback 1.5 metres from the northern boundary, therefore the impact on the neighbour will be minimal and is considered acceptable.

Notwithstanding this, the PC requirements for the building height allows for:

- P1** *New developments, additions and alterations to be of a compatible form, bulk and scale to traditional development in the immediate locality.*

The proposed dwelling is designed to be of a bulk, scale and design as the prevailing built form in the locality. The bulk and scale of the proposed development is not considered excessive, considering the single storey nature of the 'cottage' element of the front facade. The proposed flat roof to the first floor and rear of the dwelling are considered as being hidden from the streetscape. The dwelling is a modest family home. The built form and setbacks are consistent with the traditional and prevailing dwellings in the locality. The design of the dwelling minimises impacts to neighbours. The proposed dwelling complies with ADP of Element 8 of the R-Codes and the PC of Element 9 of the R-Codes.

It is considered the proposed building height complies with the ADP of the R-Codes relating to building height subject to the conditions outlined in the Officer's Recommendation.

CONCLUSION

It is considered the proposed dwelling is designed to be of a bulk, scale and design similar to the existing dwellings on the streetscape and is considered sympathetic to the character of the area.

As discussed, the above variations are offset by the design of the dwelling including building height (as conditioned), roof form and 'cottage' format of the front facade, thereby mitigating any potential impact to adjoining neighbours and the streetscape. The proposed development is considered to comply with the Performance Criteria of the R-Codes and RDG. Based on this it is considered the proposal merits approval subject to appropriate conditions. The proponent has been consulted with regard to the proposed conditions and supports the conditions as imposed by the Planning Department should planning approval be granted.

It is considered the demolition of the existing building can be supported given the constraints of the site and the existing condition of the dwelling. The proposed level of design outcomes would be difficult to achieve if it was attempted to retain a portion of the existing structure.

RECOMMENDATION

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

- (a) variation to the primary street setback requirements (western elevation) – required setback 6.0 metres (R-Codes). Proposed setback is 3.0 metres (porch), 4.5 metres (activity room) and 5.5 metres (garage);
- (b) variation to the setback requirements of the side setback (northern elevation) – required setback 1.6 metres (bed 3/ 4). Proposed setback is 1.5 metres;
- (c) variation to the setback requirements of the side setback (northern elevation) – required setback 3.0 metres (dining). Proposed setback is 2.9 metres;
- (d) variation to the setback requirements of the side setback (southern elevation) – required setback 1.5 metres (garage, storage and laundry). Proposed setback is Nil;
- (e) variation to the setback requirements of the side setback (southern elevation) – required setback 1.6 metres (study/ bath). Proposed setback is 1.5 metres;
- (f) 6.9.1 Solar access for adjoining sites of the Residential Design Codes;
- (g) element 3.7.6 of the Residential Design Guidelines: Construction of New Building;
- (h) element 3.7.8 of the Residential Design Guidelines: Roof pitch;

for two storey dwelling at 72 (Lot 275) Hubble Street, East Fremantle, in accordance with the plans date stamp received on 12 April 2013 subject to the following conditions:

1. Prior to the applicant submitting an application for a Building Permit, the development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer as detailed in the Local Planning Policy – Element 3.7.16.4.3 Fremantle Port Buffer of the Residential Design Guidelines.
2. The landowner shall lodge a section 70A notification pursuant to the transfer of Land Act on the Certificate of Title(s) of the development site, prior to the issue of a Building Permit. This notification shall be sufficient to alert prospective landowners that the dwellings are located within Area 2 of the Fremantle Port Buffer and the proposed built form of the development within the precinct is to be adhered to.
3. Roof overhang to alfresco area to be a minimum of 1.5 metres from the northern boundary.
4. Finished floor level of the proposed ground floor of the dwelling being reduced by 170mm to be a maximum height of 21.63 AHD.
5. Finished floor level of the proposed first floor of the dwelling being reduced by 210mm to be a maximum height of 25.10 AHD.
6. Overall building height of the dwelling not to exceed a maximum building height 28.50 AHD.
7. Crossover width to be a maximum width of 3.0 metres.

8. Existing verge tree and canopy to be retained and protected. It is the owner's responsibility to ensure that at all stages during the construction of the dwelling the tree is protected from damage. Where damage occurs Council is to be notified immediately.
9. Where this development requires that any facility or service within a street verge trees to be removed, modified or relocated then such works must be approved by Council and to the satisfaction of the Chief Executive Officer.
10. 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 (i) below*)
11. 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.
12. 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.
13. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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) the patio may not be enclosed without the prior written consent of Council.
- (h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.
- (i) 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 & Mrs Roberts (adjoining owners) addressed the meeting requesting that the proposed height of the cantilever roof be reduced to minimise overshadowing to their property and the pillar on the northern boundary be lowered from 4.2m to fence height.

Mr Kargotich (owner) and Mr Teoh (applicant) addressed the meeting thanking planning staff for their assistance and advising that they supported the officer's recommendation.

Cr Collinson – Cr Wilson

That the matter be deferred to allow the applicants to submit an alternative design that retains as much as possible of the existing dwelling.

T50. ADJOURNMENT

Cr Martin – Cr Rico

That the meeting be adjourned at 7.40pm to allow Committee members to further discuss this matter. CARRIED

T51. RESUMPTION

Cr Rico – Cr Martin

That the meeting be resumed at 7.50pm with all those present prior to the adjournment, in attendance. CARRIED

T52. REPORTS OF OFFICERS – STATUTORY PLANNING/DEVELOPMENT CONTROL

T52.1 *Hubble Street No. 72 (Lot 275) (Continued)*

Applicant: Sam Teoh Architects

Owner: Ms JE Kargotich

Application No. P25/13

The motion previously submitted was put.

Cr Collinson – Cr Wilson

That the matter be deferred to allow the applicants to submit an alternative design that retains as much as possible of the existing dwelling. CARRIED

Reason for not Supporting Officer's Recommendation

The majority of the Committee, supported the Town Planning Advisory Panel's view that the cottage (or at least the front rooms) should be restored to conserve the existing streetscape, and therefore could not support the proposed demolition of the cottage.

Cr Wilson made the following impartiality declaration in the matter of 1 View Terrace: "As a consequence of the applicant, Mr Weir, having designed my brother's residence, 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".

T52.2 View Terrace No. 1 (Lot 237)
Applicant: David Weir for Arccon Mining Services
Owner: Paul Kreppold
Application No. P194/12
By Andrew Malone, Senior Town Planner on 22 April 2013

PURPOSE OF THIS REPORT

This report reconsiders an application for Planning Approval for additions and alterations, comprising first-floor addition to the existing 2-storey residence situated at 1 (Lot 239) View Terrace, East Fremantle. Following the receipt of revised plans the application is recommended for approval. The Council's previous concerns have been addressed by the applicant in the revised plans.

BACKGROUND

Past Council Resolutions

The application was presented to Town Planning and Building Committee on 2 April 2013 and then the Ordinary Council Meeting on 16 April 2013, where Council resolved:

That determination of the proposal for additions and alterations, comprising first-floor addition to the existing 2-storey residence and viewing loft, situated at 1 (Lot 239) View Terrace, East Fremantle be deferred pending the submission of revised plans which address the following:

- (a) Proposed 'Widow's watch' be deleted from the proposed development.*
- (b) The proposed outdoor living area/ workshop are setback a minimum of 1.0metres from the southern boundary.*
- (c) Setback to first floor additions to eastern boundary is setback 1.9 metres as required under the Acceptable Development Provisions of Element 6.3.1 of the Residential Design Codes.*
- (d) Proposed roof of the outdoor living area/ workshop be modified to Skillion or a reduced pitch to minimise the impact the proposed roof form has on the streetscape.*
- (e) Parapet wall of the proposed carport to be illustrated on the plans.*
- (f) Access/ Egress truncation from View Terrace to be illustrated on the amended plans.*

Amended plans were submitted to Council on 19 April 2013 addressing the above proposed amendments.

Description of Proposed Development

The proposed development comprises:

- New carport with parapet wall accessed from View Terrace; to be located in front of the existing garage/ workshop.
- Detached outdoor living area/ workshop located to the eastern boundary. The proposed outdoor living area is setback 1.1 metres from the southern boundary. An amended roof form is also proposed.
- First floor additions comprising of kitchen, lounge, ensuite and bedroom with associated deck. The proposed first floor additions have been setback 1.9 metres from the boundary as per the Planning Officer's Recommendation.
- New pergola located at swimming pool.

Description of Site

The subject site is:

- a 1072m² freehold lot
- zoned Residential 12.5.

- developed with a double storey dwelling.
- located in the Richmond Hill Precinct.

Statutory Considerations

State Planning Policy 3.1 Residential Design Codes (**R-Codes**)
 Town Planning Scheme No. 3 (**TPS3**) (Residential R20)

Relevant Council Policies

Local Planning Policy No. 1 : Residential Design Guidelines (**RDG**)

Impact on Public Domain

Tree in verge : No Impact
 Light pole : No impact
 Crossover : No impact
 Footpath : No impact
 Streetscape : Dwelling on secondary street (Parker Street) more evident.

Documentation

Plans and relevant forms date stamp received on 21 December 2012.
 Neighbour submission date stamped received 22 January 2013
 Applicant's response to neighbour submission and TPAP date stamped received 22 January 2013.
 Response to comments (meeting 26 February 2013) date stamped received 12 March 2013.
 Amended plans date stamped received 19 April 2013.

Date Application Received

21 December 2012.

CONSULTATION

Town Planning Advisory Panel Comments

The application was considered by the Town Planning Advisory Panel at its meeting of 29 January 2013. The revised application was not referred to the Town Planning Advisory Panel, as the application was considered to have addressed the Panel's and Council's concerns. The following Panel and applicant comments have not been amended and refer to the original development application, however the Planning Officer's responses have been amended to address the proposed revised plans. These are detailed below.

Panel Comment	Applicant Response	Officer Assessment
Application should be height complaint	The November edition of the Town of East Fremantle Residential Guidelines include a new Clause 3.7.17.4.1.3 A1.4 whereby building heights are treated differently "in localities where views are an important part of the amenity of the area and neighbours (sic) existing views are to be affected". The revised heights allow for a height of 8.1m to the top of a pitched roof. As such, if it is determined that views are an important part of the amenity of this locale and the neighbours' existing views are to be affected then the roof of the proposed extension is acceptable at a height of 7.69m.	Noted. The proposed additions and alterations are height compliant and are considered acceptable.
Panel does not support the addition of the viewing platform, this seen as a discordant and over-height element of the proposal.	The proposed Widow's Watch is in keeping with the precinct and surrounding area, and is in keeping with the spirit of Clause 3.7.8.3 P5 of the Town of East Fremantle	Acknowledged The proposed 'Widow's watch' (viewing platform) has been deleted from the proposed development.

Panel Comment	Applicant Response	Officer Assessment
	Residential Design Guidelines. As per the argument 2 above, the Widow's Watch should not be considered as an 'over-height element' under the Guidelines nor the R-Codes.	The proposed development is considered height compliant.
Query setbacks and site coverage	<p>The setback of the proposed first floor addition seeks a 300mm concession as per Table 1 and subsequently Table 2 of the R-Codes, in keeping with the Performance Criteria of Clause 6.3.1 P1 in relation to the neighbouring property; that is, "to ensure adequate direct sun and ventilation being available to adjoining properties...assist with protection of access to direct sunlight for adjoining properties...(and) assist in protecting privacy between adjoining properties". This element is the only concession sought from the council in regards to the R-Codes and Residential Design Guidelines.</p> <p>The setbacks of the incidental development to the eastern and southern neighbours have received no objections from those neighbours, both by non-response and written response. Further, the setback of the incidental development is in accordance with the R-Codes criteria for buildings on boundaries 6.3.2 A2 i & ii.</p>	<p>Side setbacks require Council discretion. It is considered the proposed amended setbacks are acceptable and can be supported.</p> <p>The site coverage complies with Council requirements.</p>
The application proposal presents as an overdevelopment of the lot.	It is understood that this opinion is based on the position that the proposal does satisfy the R-Codes or Design Guidelines in terms of building height, setbacks and site coverage. We believe that the design satisfies all these requirements with one minor concession of setbacks, and have detailed our adherence in both the original DA submission and further in this letter. Of particular importance is the oversized 14.24m setback from Parker St to minimise the impact of the proposed addition to the streetscape.	<p>Noted.</p> <p>The site coverage complies with Council requirements.</p> <p>It is considered the proposed amended plans address Council's concerns.</p> <p>It is considered the proposed amended development is not an overdevelopment of the lot.</p> <p>The proposed setbacks are considered to appropriate.</p>

Advertising

The application was advertised to surrounding neighbours for a two week period between 8 January 2013 and 22 January 2013. At the close of advertising one submission had been received and is attached to this report. The issues raised in the submissions are summarised in the following table alongside the applicant's response and officer's comment. The neighbour was advised on 24 April 2013 revised plans had been received by Council and of the proposed changes to those plans. No further submission was received.

NEIGHBOUR COMMENT	APPLICANT RESPONSE	OFFICER ASSESSMENT
<p>I have no objections to the new storeroom designed on the boundary.</p>	<p>Mr Garofalo states that he has no objections to the new storeroom on the boundary between 1 View Tce & 3 View Tce; whilst this is appreciated it is to be noted that as this proposed design meets with the R-codes criteria for buildings on boundaries (6.3.2 A2 i & ii) and as such is allowable whether it is objected to or not.</p>	<p>The applicants view that R-Code compliance means "allowable" development is an incorrect interpretation of the Codes. The provisions of the TPS including Clause 10.2 of the Scheme are still to be applied regardless of R-Code compliance.</p>
<p>I have concerns with regards to the second story extensions and the set back from the side boundary line dividing 3 and 1 View Terrace East Fremantle. The proposed second story extension would create a double storey wall approximately 40 metres in length from the front to the rear of the boundary. The second story extension should be set back more than the 1.5 metres as currently drawn, maybe more in line with the existing house which has a 4.5m setback. There seems to be ample room to move the extension towards the centre of the block.</p>	<p>The boundary in question is only 44.26m long and includes a setback from the front boundary of 8.1m. The existing 2-storey wall of the house measures 14.8m and the proposed second storey addition measures 14.53m; a total of 29.33m. In any case, as this wall and the proposed addition do not breach the code in regards to over-looking or overshadowing the comment has no bearing on the codes or guidelines.</p> <p>As such the 10.17m wall requires a setback under the R-Codes of 1.5m and is setback 3.7m; the 4.4m wall requires a setback under the R-Codes of 2.8m and is setback 4.595m; the proposed addition wall of 14.53m requires a setback under the R-Codes of 1.8m and we are seeking an adjustment of policy by the council to allow for a 300mm relaxation of this setback, considering both the generous setbacks of the existing walls, the over-sized setbacks of the neighbouring property and the fact that the proposed development includes no major openings for overlooking and has no issue of overshadowing.</p>	<p>It is considered the proposed setbacks are not acceptable based on impact of setback, scale and bulk to adjoining neighbour and it is recommended they be revised to comply with the Acceptable Development Provisions of the R-Codes, specifically with regard to the eastern and southern elevations.</p>

Site Inspection

By Town Planner on 28 February 2013

ASSESSMENT

Town Planning Scheme No. 3

If the R20 density code is to be utilised, as sought by the applicant, the proposed development is required to comply with the provisions of Clause 5.3.1 of the TPS3.

Clause 5.3.1 Density Bonus for Corner Lots of the TPS No. 3 reads as follows:

In areas with a density coding of R12.5, the local government may approve development up to a density of R20 on corner lots where the dwellings are designed to face each of the two street frontages, and in the opinion of local government, there will be an improvement in the overall amenity of the streets as a result of the development.

The subject lot is corner lot, within an area with a density coding of R12.5. The proposed development has been assessed by the applicant using the R20 development requirements, however based on the proposed development, it is considered there is not an overall improvement in the amenity of View Terrace or Parker Street as a result of the development, therefore the proposed development does not benefit from the provisions of Clause 5.3.1 of TPS3.

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
6.4.1 Open Space	50%	60%	A
6.4.2 Outdoor Living	30sqm	82sqm	A
6.5 Car Parking	2	3	A
6.6 Site Works	Less than 500mm	Less than 500mm	A
6.9.1 Overshadowing	25%	4.4%	A
6.9.2 Drainage	On-site	On-site	A

Setbacks							
Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status
<i>Front (north)</i>							
As Existing							
<i>Rear (south)</i>							
Ground	Outdoor Living/ Workshop	2.7	9.6	N	1.5	1.0	D
<i>Upper</i>	Bed	5.6	4.0	Y	2.8	7.1	A
<i>Side (East)</i>							
Ground	Workshop	2.7m	6.0m	N	1.0m	Nil	D
Ground	Carport	2.9m	5.6m	N	1.0m	Nil	D
<i>Upper</i>	Kitchen/ Lounge/ Bed	5.6m	14.5m	N	1.9m	1.9m	A
<i>Side (west)</i>							
<i>Ground</i>	Vergola	2.8m	3.1m	Y	2.0m	5.4m	A

Local Planning Policies Assessment

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

DISCUSSION

Revised plans were submitted to Council addressing the following amendments:

- (a) *Proposed 'Widow's watch' deleted from the proposed development.*
- (b) *The proposed outdoor living area/ workshop area setback a minimum of 1.0 metres from the southern boundary.*
- (c) *Setback to first floor additions to eastern boundary is setback 1.9 metres as required under the Acceptable Development Provisions of Element 6.3.1 of the Residential Design Codes.*
- (d) *Proposed roof of the outdoor living area/ workshop be modified to Skillion or a reduced pitch to minimise the impact the proposed roof form has on the streetscape.*
- (e) *Parapet wall of the proposed carport to be illustrated on the plans.*
- (f) *Access/ Egress truncation from View Terrace to be illustrated on the amended plans.*

Boundary Setback

- **6.3.1 Buildings setback from the Boundary (R-Codes)**
- **3.7.7 Building Setbacks and Orientation (RDG)**

The applicant is seeking Council discretion with regard to the setback requirements of the R-Codes and the Town's RDG.

The proposed development incorporates a number of variations to setback requirements to the side and rear boundaries. The LPP RDG Element 3.7.7 provides criteria by which to assess proposed variations to setback requirements. These are 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 changes proposed to the primary street setback. The proposed additions and alterations are to the rear and eastern elevation of the lot. The proposed additions and alteration will be visible from Parker Street, a secondary street to the dwelling. The proposed outdoor area/ workshop have been revised to be setback 1.0 metre from the southern boundary. The roof has also been modified to a skillion roof to minimise the impact to the heritage dwelling Category A-^ adjoining the subject site. . It is considered the proposed setbacks match the traditional street setback of the immediate locality and sympathetically address the adjoining heritage dwelling.

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

The setbacks requiring Council discretion are to the southern and eastern elevations. The proposed development does adjoin a Category A-^ dwelling. The proposed outdoor living area and workshop is setback 1.0 metre from the southern boundary (0.5 metre setback variation to the Acceptable Development Provisions (**ADP**)). The roof form of the building has been amended and it is considered the proposed development does not impact on the adjoining heritage dwelling. It is considered the proposed outdoor living area/ workshop set back from the boundary is appropriate. Furthermore the proposed setback to the eastern first floor elevation has been amended to comply with the ADP of the R-Codes and is appropriate. The building on the boundary maintains the consistent built form of the dwelling. The wall adjoins a driveway and simultaneously abutting outbuilding to the rear.

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

The proposed amended additions and alteration require setback variations to the south and east of the lot. The proposed redesign has been undertaken to address the Officer's previous concerns. The proposed development is considered to complement the predominant streetscape. The first floor additions have been designed to a scale that

matches the existing building. A condition has been included in the Officer's Recommendation to maintain one of the established trees to Parker Street, thereby minimising the potential impact the additions may have on Parker Street.

Notwithstanding the above RDG requirements, the proposed development is seeking Council discretion with regard to the ADP of the R-Codes. The proposed additions and alterations will be assessed as per the Performance Criteria (PC) of Element 6.3.1. The PC states:

- P1 Buildings setback from boundaries other than street boundaries so as to:*
- *Provide adequate direct sun and ventilation to the building;*
 - *Ensure adequate direct sun and ventilation to the adjoining properties;*
 - *Provide adequate direct sun to the building and appurtenant open spaces;*
 - *Assist with protection of access to direct sun for adjoining properties;*
 - *Assist in ameliorating the impacts of building bulk on adjoining properties;*
- and*
- *Assist in protecting privacy between adjoining properties.*

The proposed additions and alteration to the existing dwelling are considered to comply with the above Performance Criteria as follows:

- There are no concerns with regard to the proposed development impacting on the direct sun and ventilation to the building, open space or adjoining buildings or associated open space. Therefore the proposed development is considered to address the first 4 criteria of the Performance Criteria.
- The proposed additions and alterations have been amended to minimise the impact on building bulk of adjoining properties. The first floor addition is setback 1.9 metres from the eastern boundary and complies with the ADP of the R-Codes. The parapet wall adjoins a driveway and simultaneously constructed building and is therefore considered appropriate. The setback to the south of the lot to the outdoor living area and workshop is 1.0 metre. The building is single storey. The roof form has been altered to a skillion roof. The culmination of these amendments minimises the scale and bulk of the building to the adjoining heritage dwelling on Parker Street.
- There are no privacy concerns.

Residential Design Guidelines

The proposed dwelling has also been assessed in accordance with the Town's Residential Design Guidelines. The following areas are considered the areas of non compliance with the Acceptable Development Provisions and the Performance Criteria of the Guidelines:

Element 3.7.2 of the Residential Design Guidelines

The proposed additions and alterations are accommodated to the rear of the existing dwelling and are visible from Parker Street, however the proposed second storey additions are set back approximately 16 metres from Parker Street which is the secondary street frontage of the property. The additions are proposed to continue the prevailing roof form. The second storey additions comply with the Town's RDG requirements for building height. The proposed development does not adhere to Clause A1.2 ii of Element 3.7.2 of the RDG. The ADP of Element 3.7.2 of the RDG requires:

- A1.2** *Second storey additions that are:*
- i. Accommodated within the existing roof (without changes to the roof geometry); and,*
 - ii. Built behind the existing building and not visible from the opposite side of the street. A minor variation to this may be permitted on the basis of its impact on the streetscape*

It is noted that the proposed development presents to a secondary street and therefore will be visible from a side street, however the proposed additions are considered

sympathetic to the area and are appropriate. The proposed additions and alterations are required to be assessed as per the PC of the RDG. This requires:

- P1.1** *Additions and alterations to contributory buildings are designed to ensure that the existing building remains the dominant element when viewed from the primary street and to ensure that the existing buildings contribution to the streetscape is maintained. The council shall allow additions to be located in the front setback zone where there is no other option and the addition is demonstrably compatible with the existing streetscape character and not impact on the heritage value of a particular place. All applications to include site plans, plans and street elevations.*
- P1.2** *Replacement of, or construction of, elements such as carports shall not obscure the original dwelling.*

While the existing dwelling is not listed on the Town's Municipal Inventory, the adjoining dwelling on Parker Street is an A-[^] listed dwelling. As noted previously the proposed amended outdoor living area/ workshop is considered to sympathetically address the built form of the adjoining heritage dwelling.

The proposed additions and alterations are appropriate to the area and have addressed the Officer's original concerns. The proposed additions and alterations are recommended for approval.

3.7.8 Roof Form and Pitch

Acceptable Development Provisions states:

- A4.1 Roof forms of new developments should be pitched between 28° and 36° and are of consistent scale and form with the prevailing building typology in the immediate locality.*

The Performance Criteria states:

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

The proposed roof pitch of the dwelling is 27°. The existing roof form is 27°. The proposed additions maintain the existing roof form and pitch and is considered can be supported. The proposed additions to the main dwelling are considered appropriate with regard to this policy. The redesigned outdoor living area and workshop roof is a skillion roof and does not comply with the ADP of Element 3.7.8. The skillion roof to the outdoor living area/ workshop roof minimises the bulk and scale of the building, thereby minimising the impact on the adjoining heritage dwelling. It is considered the skillion roof is appropriate and complements the adjoining dwelling.

CONCLUSION

It is considered the current amended proposal does meet the relevant provisions of the Town's RDG and the R-Codes, the aims of the Town Planning Scheme and the various provisions of the Scheme. The amended plans reduce the scale and bulk of the development as viewed from View Terrace and Parker Street. The scale and form of the additions and alterations are considered to consistent with the adjoining property and the streetscape. The applicant has redesigned the proposed development to address Council's concerns.

The proposed variations are considered minor and are considered to be acceptable. The proposed development application is recommended for approval.

RECOMMENDATION

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

- (a) variation to the setback requirements of the side setback (eastern elevation) – required setback (Outdoor living/Workshop) 1.0 metre. Proposed setback is Nil;
- (b) variation to the setback requirements of the side setback (eastern elevation) – required setback (garage) 1.0 metre. Proposed setback is Nil;

- (c) variation to the setback requirements of the rear setback (southern elevation) – required setback (Outdoor living/Workshop) 1.5 metre. Proposed setback is 1.0 metre; and
- (d) variation to Element 3.7.8 Roof Forma and Pitch of the RDG.
- for two storey addition to an existing dwelling at 1 (Lot 237) View Terrace, East Fremantle, in accordance with the plans date stamp received on 19 April 2013 subject to the following conditions:
1. Tree to south western corner of the subject lot to be retained.
 2. 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 (i) below)
 3. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
 4. The proposed works are not to be commenced until Council has received an application for a 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.
 5. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
 6. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
 7. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
 8. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
 9. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
 10. This planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*

- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *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 Weir (applicant) addressed the meeting advising that he supported the officer's recommendation.

Cr Martin – Cr Rico

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

- (a) **variation to the setback requirements of the side setback (eastern elevation) – required setback (Outdoor living/Workshop) 1.0 metre. Proposed setback is Nil;**
 - (b) **variation to the setback requirements of the side setback (eastern elevation) – required setback (garage) 1.0 metre. Proposed setback is Nil;**
 - (c) **variation to the setback requirements of the rear setback (southern elevation) – required setback (Outdoor living/Workshop) 1.5 metre. Proposed setback is 1.0 metre; and**
 - (d) **variation to Element 3.7.8 Roof Forma and Pitch of the RDG.**
- for two storey addition to an existing dwelling at 1 (Lot 237) View Terrace, East Fremantle, in accordance with the plans date stamp received on 19 April 2013 subject to the following conditions:**

1. **Tree to south western corner of the subject lot to be retained.**
2. **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 (i) below)**
3. **The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
4. **The proposed works are not to be commenced until Council has received an application for a 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.**
5. **With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.**
6. **All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.**
7. **All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the**

form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

8. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
9. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
10. This planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air Conditioner Noise".*

CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T52.3 Angwin Street No. 2 (Harbour Lights)**Applicant: Gavin Constructions****Owner: Harbour Lights Strata Co.****Application No. P39/13**

By Jamie Douglas, Manager Planning Services, on 15 April 2013

PURPOSE OF THIS REPORT

This report recommends the conditional approval of a development application for maintenance work and a new western façade for Harbour Lights Apartments at 2 Angwin Street, East Fremantle.

BACKGROUND**Description of Site**

The subject site is:

- Strata Plan 710
- improved with an apartment building containing 35 units

Statutory Considerations

Town Planning Scheme No. 3 – Residential R12.5/R40
Residential Design Codes of Western Australia (RDC)

Relevant Council Policies

Local Planning Policy -Residential Design Guidelines
Located in the Riverside Precinct

Impact on Public Domain

- Tree in verge : No impact
- Light pole : No impact
- Crossover : No impact
- Footpath : No impact
- Streetscape : Given the prominence of this building, changes to the western façade will have a substantial impact upon the streetscape

Documentation

Application plans and relevant forms date stamped received on 27 March 2013.

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

May 2011 Approval granted for landscaping in front setback area.

CONSULTATION**Advertising**

The plans were advertised for public comment from 3 to 17 April 2013. No submissions were received.

Referrals

The application was referred to Main Roads WA and Fremantle Ports on 8 April 2013. No referral responses were received from Fremantle Ports at time of writing however the Port of Fremantle standard conditions are applicable to any approval and form part of the recommendation.

Main Roads WA has advised it has no objections to the proposal but requests the inclusion of three standard conditions and an advice note be included in any approval.

Town Planning Advisory Panel Comments

The application was considered by the Panel at its meeting on 9 April 2013. The Panel made the following comments:

Maintenance to Western Facade

- Query external material choice of aluminium in providing the greatest longevity to the renovation.

It is understood the Panel was generally supportive of the application.

The applicant has forwarded the following response to the Panel's comments.

Thank you for considering our application at the Town Planning Advisory Panel, please find the below response regarding the choice of material (aluminium) for the proposed works to the western façade.

- *Aluminium is an inherently light material which can provide the structural integrity required for the proposed façade system's main structural frame. It is also industry standard for this type of curtain wall façade system. In attaching a new façade frame to an existing structure we have carefully considered the 'Dead Load' of the new façade, a steel frame would have too large a dead load for this existing structure, leaving aluminium as the only option.*
- *The other non-structural aluminium elements such as inner/opening frames, spandrel panels & downpipe cappings are preferred to be aluminium also from an overall dead load reason. Also using a mixture of metals or materials introduces accelerated corrosion issues and differing maintenance regimes & warranty periods. It may be possible to substitute the powder coated aluminium spandrel panels with a colour back glass panels. The downside of this alternative is that it is heavier, more expensive and more reflective. Powder coated aluminium is also preferred for the downpipe cappings as these are to be fabricated in small sections so as to be removable for future maintenance requirements, lightweight powder coated aluminium is therefore most appropriate material for this area.*
- *Aluminium (powder coated or anodised) has excellent maintenance & material longevity properties, it does not rust like steel or rot like timber. Please find attached proposed maintenance documents for the elements of the proposed façade. As a general rule, powder coated finish on aluminium gives a 15 year warranty from the installer, this can be upgraded at extra cost to an anodised aluminium finish for a 25 year warranty provided the maintenance regime is adhered to (3 monthly clean down). The actual life span of the product is likely to far exceed these warranties if properly maintained.*

Site Inspection

By - Manager Planning Services on 17 April 2013.

ASSESSMENT

The 'Harbour Lights' apartment building's west facing façade has glazed enclosed balconies with, in most cases, refurbished living rooms extending into these balcony areas. This western façade requires urgent maintenance and refurbishment works to address significant concrete degradation in this external wall which has been caused by exposure to the maritime environment and its orientation. In addition, the rainwater pipes within the brick piers are leaking which is causing substantial damage to the interiors of apartments and to the structural integrity of the building.

The proposal contains a structural engineering assessment which confirms that without urgent remedial action the building may, in the not too distant future, be rendered uninhabitable. Currently there exists the potential risk to occupants and visitors to the site from falling concrete which is delaminating from the wall.

The proposal does not alter the form or extent of the existing structure other than altering the appearance of the western façade. Accordingly, the determination of the merit of the proposal is limited to the aesthetic impact of the proposed changes on the streetscape. However, given the prominence of the building and in particular the western façade which dominates the 'gateway' to the Town from the Stirling Highway Bridge, the proposed changes will have a marked impact on the visual amenity within an extensive viewscape.

In essence the proposed works involve the removal of areas of delaminated concrete, patching and making good to the concrete wall and the application of a barrier coat. A protective aluminium curtain wall and new fenestration will then be installed to the outside of the existing wall. The new cladding system will provide a significant facelift to the building and give protection from the airborne chlorides and moisture which have been corroding the reinforcement bars and delaminating the concrete.

The proposed new blue tinted "e-glass" glazing, blue/grey powder coated aluminium panels and dark grey powder coated aluminium capped vertical columns will improve the existing façade by breaking the current mass by adding vertical and horizontal segmentation of the façade. The new materials will also 'update' and address the somewhat dilapidated existing façade state. The use of "e-glass" glazing panels will both improve acoustic and solar efficiency for the apartments. As a consequence the building's performance in respect to the Fremantle Ports' buffer requirements will be improved.

It is noted the Town Planning Advisory Panel comments did not raise any aesthetic or streetscape concerns in respect to the proposal but did query whether the use of aluminium would provide satisfactory longevity for the renovation. It is considered that, based upon the applicant's further advice, the use of aluminium for the curtain wall, frames and capping is a necessary design/engineering solution to minimise loadings on the existing structure and to provide satisfactory weather resilience.

CONCLUSION

The Structural Engineer's assessment provided in the proposal is that without the proposed remedial works the alternative is probably forced closure and demolition of the building and redevelopment of the site. This would obviously result in a huge financial loss for the owners and from the broader viewpoint of 'sustainability' would represent the loss of 45 dwellings and the embedded energy which they represent.

The proposed façade works will improve the aesthetic qualities and streetscape impact of this 'iconic' building and are therefore recommended for approval.

RECOMMENDATION

That Council approve the development application for maintenance works and new western façade for Harbour Lights Apartments at 2 Angwin Street, East Fremantle in accordance with the plans date stamped received on 26 March 2013, subject to the following conditions:

1. The design, construction and use of the buildings shall at all times conform with the requirements of the Town of East Fremantle Local Planning Policy – Noise Attenuation and the Environmental Protection (Noise) Regulations 1997.
2. All dwellings shall have outdoor living areas which have privacy screens where necessary, to restrict direct overlooking into the active habitable spaces and outdoor living areas of other dwellings in compliance with R-Codes cl 7.4.1 A1(ii).
3. All plant such as exhaust fans, air conditioners etc. shall be screened from view where it is located on balconies or the external walls of buildings adjacent to any public road or public space.
4. The works are to be constructed in conformity with the drawings date stamped 'Received 26 March 2013 and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
5. The proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
6. With regard to the plans submitted with respect to the building 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.
7. The development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer as detailed in the Local Planning Policy - 'Fremantle Port Buffer Area Development Guidelines'.

8. This planning approval to remain valid for a period of 24 months from date of this approval.
9. No earthworks are to encroach onto the Canning Highway road reservation to the satisfaction of Main Roads WA.
10. No stormwater drainage is to be discharged onto the Canning Highway road reservation to the satisfaction of Main Roads WA.
11. The applicant shall make good any damage done to the existing verge and its vegetation within the Canning Highway road reservation to the satisfaction of Main Roads WA

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).*
- (d) *under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the **installer** of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air-Conditioner Noise"*
- (e) *this property is impacted by a proposed increased land requirement subject to approval from the Western Australian Planning Commission as depicted in Main Roads drawing 201232-0158 (refer Main Roads WA).*

Ms Telfer and Mr Hutchison (Harbour Lights Strata Co) addressed the meeting advising that they supported the officer's recommendation.

Cr Martin – Cr Nardi

That Council approve the development application for maintenance works and new western façade for Harbour Lights Apartments at 2 Angwin Street, East Fremantle in accordance with the plans date stamped received on 26 March 2013, subject to the following conditions:

1. **The design, construction and use of the buildings shall at all times conform with the requirements of the Town of East Fremantle Local Planning Policy – Noise Attenuation and the Environmental Protection (Noise) Regulations 1997.**
2. **All dwellings shall have outdoor living areas which have privacy screens where necessary, to restrict direct overlooking into the active habitable spaces and outdoor living areas of other dwellings in compliance with R-Codes cl 7.4.1 A1(ii).**
3. **All plant such as exhaust fans, air conditioners etc. shall be screened from view where it is located on balconies or the external walls of buildings adjacent to any public road or public space.**
4. **The works are to be constructed in conformity with the drawings date stamped 'Received 26 March 2013 and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
5. **The proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
6. **With regard to the plans submitted with respect to the building 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.

7. The development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer as detailed in the Local Planning Policy - 'Fremantle Port Buffer Area Development Guidelines'.
8. This planning approval to remain valid for a period of 24 months from date of this approval.
9. No earthworks are to encroach onto the Canning Highway road reservation to the satisfaction of Main Roads WA.
10. No stormwater drainage is to be discharged onto the Canning Highway road reservation to the satisfaction of Main Roads WA.
11. The applicant shall make good any damage done to the existing verge and its vegetation within the Canning Highway road reservation to the satisfaction of Main Roads WA

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).*
- (d) *under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air-Conditioner Noise"*
- (e) *this property is impacted by a proposed increased land requirement subject to approval from the Western Australian Planning Commission as depicted in Main Roads drawing 201232-0158 (refer Main Roads WA).* CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T52.4

Canning Highway No. 199 (Lot 22)

Applicant: Rad Architecture

Owner: K. Tushingham

Application No. P134/12

By Jamie Douglas, Manager Planning Services, on 18 April 2013

PURPOSE OF THIS REPORT

This report considers revised plans to convert an existing double car garage that has been constructed without planning approval in the front setback area of 199 Canning Highway into a carport. The retrospective application for approval of the garage has been previously refused. In accordance with SAT Order dated 26/2/13 "*the respondent* (Council) *is invited to reconsider its decision at its meeting of 7 May 2013.* The revised plans are recommended for conditional approval.

BACKGROUND

1. At its meeting on 2 October 2012 the Town Planning & Building Committee under delegated authority, refused to grant retrospective approval for a double garage which had been erected in the front setback of 199 Canning Highway. The grounds

- for refusal are contained in the attached Planning Assessment Report dated 24 September 2012.
2. On behalf of the applicant, Mr. Peter Webb lodged an appeal with the State Administrative Tribunal on 1 November 2012 seeking that the decision be reviewed.
 3. The matter was listed for mediation on Friday 14 December 2012. Following a site visit the Manager Planning Services attended mediation on this day with the concerned parties before SAT Member Connor.
 4. Member Connor issued the following Order on 18 December 2012.
 1. *The applicant is to provide alternative design options to the respondent by Tuesday, 15 January 2013.*
 2. *The alternative design options are to be presented to the respondent's committee meeting of 19 February 2013 for discussion purposes only.*
 3. *The matter is listed for mediation at 10.00 am on Monday, 25 February 2013.*
 4. *The TP&BC resolved to refuse the amended plans for the garage at its meeting on 19 February 2013.*
 5. *The matter was subject to further mediation on 25 February 2013. Subsequently the applicant submitted amended plans for a car port.*

Description of Proposal

The development is a double car-width garage located in the front setback area of the main dwelling. The garage has a limestone block base with weatherboard clad walls, 'colorbond' roof and panel lift doors. The applicant has advised that the garage was originally constructed as a carport in approximately 1995 and was enclosed in later years.

The amended plans incorporate the removal of the weatherboard clad walls and panel lift doors so that the structure will be open on all sides above the limestone block base which is 920mm high.

CONSULTATION

The amended drawings were not referred to the Town Planning Advisory Panel as the Panel has previously considered the matter on two occasions and it is considered the amended application now accords with the Panel's previous comments.

Agency Referral

Main Roads response was received in respect to the earlier application for retrospective approval of the existing garage. In summary this advice is that since the structure exists, Main Roads does not object to it remaining, however the garage is sited on land designated for road widening and the applicant must agree to its removal as required without seeking compensation. On site turning must be provided and no further development shall be permitted within the area designated for road widening. These requirements are equally applicable to the current amended proposal.

CONSIDERATION

It is considered the amended proposal has addressed the concerns identified in the previous planning assessment. The visual impact of the structure upon the streetscape and the significant heritage dwelling on the site has been substantially reduced.

The amended plans and request for retrospective approval now relate to the carport structure which was constructed in 1995. This construction predates the Local Planning Policy 142 – Residential Development. Accordingly, although the carport does not adhere to the setback requirements of the LPP 142, any retrospective approval of the amended application will not set a precedent for new development applications under the existing policy provisions.

It is noted this application has been subject to a protracted period of lodgement and appeal. Throughout this period the applicant has enjoyed the continued use of the unapproved development. Accordingly it is considered that any approval should be conditional upon works being undertaken to bring the development into conformity with the provisions of planning approval within 60 days of Council's determination.

CONCLUSION

It is considered the amended proposal has addressed the concerns identified in the previous planning assessment. Given the carport which is the subject of this amended application predates the introduction of LPP 142 it is not considered to create a precedent for approval of new garages or carports.

It is considered the application for retrospective approval of the carport should be approved subject to conditions which include the requirements of Main Roads WA.

RECOMMENDATION

That the application for retrospective approval of a carport at 199 Canning Highway be approved in accordance with amended plan date stamp received 25 March 2013, subject to the following conditions;

1. The applicant is to ensure that on site turning facilities are developed to enable vehicles to enter and exit the subject lot in a forward direction.
2. No further development other than landscaping shall be permitted on the land shown as 'required for future road purposes on Main Roads drawing 201232-0158.
3. Works are to be undertaken to bring the development into conformity with the provisions of this planning approval and in accordance with the plan date stamp received 25 March 2013, within 60 days of Council's determination.
4. The works are to be constructed in conformity with the drawings date stamped 'Received 25 March 2013 other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
5. The proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
6. With regard to the plans submitted with respect to the building 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.

Advice to Applicant

Main Roads WA states:

1. *This property is affected by land reserved in the Metropolitan Region Scheme and additional land requirement as shown on the enclosed extract of Main Roads WA drawing 9321-07, and will be required for road purposes at some time in the future.*
2. *The project for the upgrading/widening of Canning Highway is not in Main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability whatsoever for the information provided.*

Cr Martin – Cr Wilson

That the application for retrospective approval of a carport at 199 Canning Highway be approved in accordance with amended plan date stamp received 25 March 2013, subject to the following conditions;

1. **The applicant is to ensure that on site turning facilities are developed to enable vehicles to enter and exit the subject lot in a forward direction.**
2. **No further development other than landscaping shall be permitted on the land shown as 'required for future road purposes on Main Roads drawing 201232-0158.**
3. **Works are to be completed to bring the development into conformity with the provisions of this planning approval and in accordance with the plan date stamp received 25 March 2013, within 60 days of Council's determination.**
4. **The works are to be constructed in conformity with the drawings date stamped 'Received 25 March 2013 other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
5. **The proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**

6. With regard to the plans submitted with respect to the building 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.

Advice to Applicant

Main Roads WA states:

1. ***This property is affected by land reserved in the Metropolitan Region Scheme and additional land requirement as shown on the enclosed extract of Main Roads WA drawing 9321-07, and will be required for road purposes at some time in the future.***
2. ***The project for the upgrading/widening of Canning Highway is not in Main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability whatsoever for the information provided.***

CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T52.5

Windsor Road No. 6 (Unit 1) (Lot 3)

Applicant / Owner: S Browning

Application No. P34/13

By Andrew Malone, Senior Planning Officer, on 16 April 2013

PURPOSE OF THIS REPORT

This report considers a development application for additions and alterations to the side (southern elevation) of an existing dwelling at located at 6, Unit 1 (Lot 3) Windsor Road, East Fremantle. The proposed additions and alterations are recommended for approval subject to appropriate conditions

BACKGROUND

Description of Proposal

The subject application proposes alterations and additions to the side of the dwelling. The amendments include the following works:

- New two storey addition, comprising ground floor activity room and first floor retreat with associated porch and balcony to the side elevation of the dwelling, abutting Canning Highway.

The application seeks discretion with regard to the setback requirements of the Residential Design Codes (R-Codes) and Council's Local Planning Policies which will be discussed in the Assessment and Discussion sections of this report.

Description of Site

The subject site is:

- a 438m² freehold title.
- zoned Residential R12.5 and A14 Additional Use – Nursing Home.
- located in the Richmond Precinct
- improved with a double-storey single dwelling

Statutory Considerations

Town Planning Scheme No. 3 (TPS3) – Residential R12.5 – A14 Additional Use – Nursing Home
Residential Design Codes (R-Codes)

Relevant Council Policies

Local Planning Policy – Residential Design Guidelines (RDG)

7 May 2013

MINUTES**Impact on Public Domain**

Tree in verge : No Impact
 Light pole : No impact
 Crossover : No impact
 Footpath : No impact
 Streetscape : New addition to Windsor Road and Canning Highway.

Documentation

Plans and relevant forms date stamped received on 19 March 2013.
 Further information date stamped received on 12 April 2013.

Date Application Received

19 March 2012

CONSULTATION**Advertising**

The application was not formally advertised to surrounding neighbours. Signed approval letters were submitted with the application from the owners of the Windsor Gardens Strata.

The application was referred to Main Roads WA for comment. Main Roads WA has indicated the application is acceptable subject to conditions and advice notes. These have been included in the Officer's Recommendation.

Town Planning Advisory Panel Comments

The application was considered by the Town Planning Advisory Panel at its meeting of 9 April 2013. The Panel made the following comments:

PANEL COMMENT	APPLICANT RESPONSE	OFFICER ASSESSMENT
Panel recommends further visual articulation to the Canning Highway elevation, such as windows or an architectural reveal of some kind.	<p>It is intended that the building wall adjacent to the Canning Highway boundary will be clad in limestone to match existing stone work that we have in our rear courtyard. See attached photo.</p> <p>Where the wall ends i.e. as you head towards the Windsor Rd corner there will be an upstairs verandah with similar ballustrading to what we have at the front, again see the attached photo.</p> <p>We already have significant boundary screening along Canning Highway and certainly to the height of the boundary wall this will be reinstated again when the building is completed. We may not go higher than this as the limestone cladding on the Building wall is a feature so we would be reluctant to hide it.</p> <p>I have also attached several options for windows on the Canning Highway boundary wall.</p>	Visual articulation to Canning Highway elevation to be provided in the form of two windows to southern elevation and limestone feature wall. Appropriate conditions have been included in the Officer's Recommendation.

Site Inspection

By Town Planner on 17 April 2013

STATUTORY ASSESSMENT

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 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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
6.4.1 Open Space	55%	78%	A
6.4.2 Outdoor Living	30sqm	N/A	A
6.5 Car Parking	2	N/A	A
6.6 Site Works	Less than 500mm	Less than 500mm	A
6.9.1 Overshadowing	25%	N/A	A
6.9.2 Drainage	On-site	On-site	A

Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status
Front (west)							
<i>Ground</i>	As Existing						
Rear (east)							
<i>Ground</i>	Activity	2.8	2.6	N	1.0	1.2	A
<i>Upper</i>	W.I.R	4.4	1.8	N	1.1	1.1	A
Side (north)							
<i>Ground</i>	As Existing						
Side (south)							
<i>Ground</i>	Activity	2.8	4.2	N	1.0	0.7	D
<i>Ground</i>	Retreat/ W.I.R	5.5	5.4	N	1.2	0.7	D

Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	A
3.7.3 Development of Existing Buildings	A
3.7.4 Site Works	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
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

DISCUSSION

The subject application proposes additions to the side of the dwelling to accommodate an activity room and first floor retreat with associated patio and balcony. The proposed additions front Windsor Road and Canning Highway.

Residential Design Codes**Boundary Setback**

- **6.3.1 Buildings setback from the Boundary (R-Codes)**
- **3.7.7 Building Setbacks and Orientation (RDG)**

The proposed development incorporates a minor setback variation to the side boundary (Canning Highway). The proposed setback variation to the Acceptable Development Provisions (**ADP**) of the R-Codes setback requirements is considered sympathetic with

the existing dwelling and considered to have minimal impact to the Canning Highway streetscape. Main Road WA has indicated the proposed development is acceptable.

The LPP RDG Element 3.7.7 provides criteria by which to assess proposed variations to setback requirements. These are as 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 front setback to Windsor Road is not impacted. The proposed additions are to the side boundary and will only impact a secondary street (Canning Highway). The proposed additions will be setback to match the prevailing immediate locality (adjoining carports and dwellings to the east). It is considered the proposed development will not have a visual impact to Canning Highway.

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

The proposed setback does not adversely affect the visual presence from the streetscape because there is significant boundary screening along Canning Highway. This vegetation is proposed to be retained and additional plantings after the proposed addition has been constructed. The additions are proposed in limestone cladding, a feature that will improve the visual presence of the building to Canning Highway.

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

The proposed setbacks do not impact on the primary streetscape and are considered to improve the Canning Highway streetscape. A condition has been included to further articulate the Canning Highway elevation, as recommended by TPAP. The proposed setbacks are considered appropriate considering the design scale and bulk of the addition. The proposed setbacks are considered to complement the existing dwelling.

Notwithstanding the above RDG requirements, it is further considered that the proposed additions do not meet the ADP of Element 6.3.1 of the R-Codes and must therefore be assessed against the Performance Criteria (**PC**) for this element with regard specifically to the following provisions:

- *Ensure adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties;*
- *Assist with the protection of privacy between adjoining properties.*

The proposed addition will have a finished floor level consistent with the existing dwelling. The proposed setbacks are considered sympathetic with the existing dwelling. The proposed development is considered to address the requirements of the PC as follows:

- The proposed development has access to direct sun and ventilation to habitable areas and outdoor spaces via the proposed patio and balcony and major openings to habitable rooms.
- The proposed additions do not impact on the direct access to sun and ventilation to adjoining property.
- The subject site is east/ west orientated. The proposed additions are orientated to have the main living areas address the west, therefore it is considered there is adequate direct sun to the building and appurtenant open spaces.
- The orientation of the lot creates no overshadowing to adjoining lots.

- The scale and bulk of the additions will not significantly impact the street and is not considered to impact on the character of the area. The designs of the proposed additions are consistent with the prevailing built form of the existing dwelling and surrounding locality.
- There are no visual privacy issues.

Main Roads WA has provided advice with regard to this proposal. No objections have been raised. The side setback variations are considered minor. The proposed development is considered to comply with the Performance Criteria of the RDG and R-Codes and therefore can be supported.

CONCLUSION

It is considered the application has had due regard for the Town's requirements relating to residential developments, as well as the requirements outlined within the R-Codes. The application has been supported by the Town Planning Advisory Panel, subject to further visual articulation to the Canning Highway elevation. This has been conditioned as a recombination of approval.

Whilst the application does seek two minor variations to the R-Codes with regard to side setback, these are considered to be very minor in nature and to be acceptable. The proposed development application is recommended for approval.

RECOMMENDATION

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

- (a) variation to the setback requirements of the side setback (south elevation) – required setback (Activity) 1.0 metres. Proposed setback is 0.7 metres;
 - (b) variation to the setback requirements of the side setback (south elevation) – required setback (store/ games room) 1.2 metres. Proposed setback is 0.7 metre;
- for two storey addition to an existing dwelling at 6, Unit 1 (Lot 3) Windsor Road, East Fremantle, in accordance with the plans date stamp received on 19 March 2013 subject to the following conditions:
1. Prior to an application for a Building Permit being submitted, the applicant to submit revised southern elevations indicating the inclusion to two highlight windows (one to activity room and the second to the retreat) to the satisfaction of the Chief Executive Officer in consultation with the Manager of Planning Services.
 2. No earthwork shall encroach onto Canning Highway Reserve.
 3. No material storage or vehicle parking shall be permitted onto the Canning Highway reserve.
 4. No stormwater drainage shall be discharged onto Canning Highway reserve.
 5. No vehicle access shall be permitted onto the Canning Highway reserve.
 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 (i) 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 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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *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 Nardi – Cr Rico

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

- (a) **variation to the setback requirements of the side setback (south elevation) – required setback (Activity) 1.0 metres. Proposed setback is 0.7 metres;**
- (b) **variation to the setback requirements of the side setback (south elevation) – required setback (store/ games room) 1.2 metres. Proposed setback is 0.7 metre;**

for two storey addition to an existing dwelling at 6, Unit 1 (Lot 3) Windsor Road, East Fremantle, in accordance with the plans date stamp received on 19 March 2013 subject to the following conditions:

1. Prior to an application for a Building Permit being submitted, the applicant to submit revised southern elevations indicating the inclusion to two highlight windows (one to activity room and the second to the retreat) to the satisfaction of the Chief Executive Officer in consultation with the Manager of Planning Services.
2. No earthwork shall encroach onto Canning Highway Reserve.
3. No material storage or vehicle parking shall be permitted onto the Canning Highway reserve.
4. No stormwater drainage shall be discharged onto Canning Highway reserve.
5. No vehicle access shall be permitted onto the Canning Highway reserve.
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 (i) 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 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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air Conditioner Noise".*
- CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T52.6

Clayton Street No. 42A (Lot 2)
Owner/Applicant: R & J Jarman
Applicant: APG Homes
Application No. P9/13

By Andrew Malone, Senior Town Planner on 28 March 2013

PURPOSE OF THIS REPORT

This report considers an application for planning approval for a two storey single dwelling, located on a battleaxe lot, situated at 42A (Lot 2) Clayton Street, East Fremantle. The application is recommended for conditional approval.

BACKGROUND**Description of Site**

The subject site is:

- a 493m² freehold battleaxe lot.
- zoned Residential 12.5 but assessed at R20 as per Clause 5.3.3 of TPS No. 3.
- vacant block.
- located in the Richmond Hill Precinct

Statutory Considerations

Town Planning Scheme No. 3 (TPS3) – R12.5
 Residential Design Codes (R-Codes)

Relevant Council Policies

Local Planning Policy – Residential Design Guidelines (RDG)

Impact on Public Domain

Tree in verge : No impact
 Light pole : No impact

Crossover : No impact
 Footpath : No impact
 Streetscape : No Impact.

Documentation

Plans and relevant forms date stamp received on 30 January 2013

Date Application Received

30 January 2013

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

20 November 2001 Western Australian Planning Commission (WAPC) in a letter dated 20 November 2001, refused a proposed subdivision.
 6 February 2002 Council resolve to refuse subdivision subject to ‘the Chief Executive Officer in consultation with relevant officers prepare an alternative recommendation including conditions in the event that the WAPC may support this subdivision’;
 23 April 2002 WAPC conditionally approves the subdivision application;
 26 April 2005 WAPC approves Survey-Strata Plan 46806 for 2 survey-strata lots;
 25 May 2011 Planning application for a 2 storey residence P233/10 was cancelled.

CONSULTATION

Advertising

The application was advertised to surrounding neighbours for a two week period between 1 February and 14 February 2013. At the close of advertising 2 submissions were received and are attached to this report. The issues raised in the submissions are summarised in the following table alongside the applicant’s response and officer’s comment.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
<p><i>D & N Pansini</i> 40A Clayton Street</p> <p>The current proposed elevation of the property will seriously compromise privacy to our rear outside entertaining area and inside living spaces (northern aspect). We are concerned over the height of the retaining wall to be built (given the nature of the setback) and the elevation of the proposed building, as lower ground windows to bedroom one, ensuite and toilet will directly overlook our property and intrude upon our privacy.</p>	<p>Windows will have obscure glazing</p>	<p>The proposed floor plans note that Bedroom 1 windows and the first floor windows will have obscure glazing. This has also been conditioned in the Officers Recommendation.</p>
<p>Roof glare.</p>	<p>Roofing material has not been selected and are happy for that to be conditioned by council.</p>	<p>A condition has been included in the Officer’s recommendation stating: If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity.</p>
<p><i>Suellen Redapple</i> 42 Clayton Street</p> <p>Garage boundary wall finish.</p>	<p>Happy to correspond with the neighbour about choice</p>	<p>A condition has been included in the Officer’s Recommendation advising that the applicant is to finish the wall in consultation with the affected adjoining neighbour.</p>

Disturbance to the existing garden fence.	Happy to make good any disturbance	An advice note has been included in the Officer's Recommendation advising the applicant to carry out a dilapidation report prior to any works being carried out.
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Town Planning Advisory Panel Comments

The application was considered by the Town Planning Advisory Panel at its meeting of 12 February 2012. The Panel made the following comments in regard to the application and the applicant has responded.

COMMENTS	APPLICANT RESPONSE	OFFICER COMMENT
Mock Doric styling will not be visible from the street, hence will not affect streetscape, can perhaps therefore be forgiven.	Agrees	The proposed dwelling design is considered to be consistent with adjoining battleaxe developments in the adjoining area.
Lack of eaves call in to question the building's solar efficiency.	Adding eaves would change the roof pitch and the look of the house. The house will comply with 6 star requirements.	The applicant's response is considered appropriate and acceptable.
Rear setback is less than the specified minimum, but ample precedent for a reduced setback, only highlight windows facing neighbour. No overlooking issue.	Agrees	The proposed setback will be discussed in further detail. It is considered the applicant is only requesting 1 setback variation to the Acceptable Development Provisions of the Residential Design Codes.

Site Inspection

By Senior Town Planner on 28 March 2013.

ASSESSMENT

Town Planning Scheme No. 3

The proposed development is required to comply with the provisions of Clause 5.3.3 of the TPS3 to enable the R20 density code to be utilised.

Clause 5.3.3 of the TPS No. 3 reads as follows:

Existing non-complying development: Where a lot contains an existing authorised development which exceeds the prescribed density coding, the local government may permit redevelopment of the lot up to the same density of the existing development, or of a different form than otherwise permitted, provided that:

- (a) *In the opinion of the local government, the proposed development will contribute more positively to the scale and character of the streetscape, the improvement of the amenity of the area, and the objectives for the precinct than the existing building; and*
- (b) *Except where the proposed development comprises minor alterations to the existing development which, in the opinion of the local government, do not have a significant adverse effect on the amenity of adjoining land, advertising of the proposed development has been undertaken in accordance with the provision of clause 9.4.*

The subject lot is a survey-strata development that was subdivided under the previous TPS No. 2 at a greater density than permitted under the current TPS No. 3 zoning (R12.5). Being 493m² in area, the site area is consistent with a density of R20. To maintain the R20 coding, the proposed development is required to comply with the provisions of Clause 5.3.3 (a) and (b) prior to the development being assessed at R20.

The subject site is consistent with Council's determinations in respect to similar battleaxe subdivisions with lot sizes to the north and south of the lot and with regard to Clause 5.3.3 of the Scheme. It is considered the proposed development will contribute positively to the scale and character of the streetscape, the improvement of the amenity of the area, and the objectives for the precinct. The proposed development is considered sympathetic to the character of the area. It is considered the dwelling will not be visible from the streetscape and it is considered sympathetic to the existing heritage dwelling to the front lot. The proposed dwelling will contribute positively to the scale and character of the dwelling at 42 Clayton Street. As such, the R-Code provisions for R20 have been applied in this assessment.

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
6.4.1 Open Space	50%	63%	A
6.4.2 Outdoor Living	30sqm	47sqm	A
6.5 Car Parking	2	2	A
6.6 Site Works	Less than 500mm	1m	D
6.9.1 Overshadowing	25%	11%	A
6.9.2 Drainage	On-site	On-site	A

Setbacks:							
Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status
<i>Front (west)</i>							
Ground	Garage	3.85m	8m	N	1.1m	Nil	D
<i>First</i>	Dwelling	6.0m	5.4	Y	1.2m	6.55m	A
<i>Rear (east)</i>							
<i>Ground</i>	Dwelling	3.5m	14.3	Y	1.5m	3.15m	A
<i>First</i>	Dwelling	5.9m	11.8	N	1.5m	4.0m	A
<i>Side (north)</i>							
<i>Ground</i>	Dwelling	2.7m	8.4m	N	1.0m	4.35m	A
<i>First</i>	Dwelling	5.3m	7.5m	N	1.2m	4.35m	A
<i>Side (south)</i>							
<i>Ground</i>	Dwelling/ garage	3.85m	16.1m	N	1.6m	1.6m	A
<i>First</i>	Dwelling	6.0m	7.5m	N	1.2m	4.1m	A

Local Planning Policies Assessment

LPP Residential Design Guidelines Provision. Residential Design Guidelines	Status
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
3.7.4 Site Works	D
3.7.5 Demolition	A
3.7.6 Construction of New Buildings	D
3.7.7 Building Setbacks and Orientation	D
3.7.8 Roof Form and Pitch	D
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	N/A
3.7.12 Pergolas	N/A

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

DISCUSSION

The proposed development incorporates a number of variations to the Town's Local Planning Policies and the Residential Design Codes, as detailed below.

Residential Design Codes

Boundary Setback

- **6.3.1 Buildings setback from the Boundary (R-Codes)**
- **3.7.7 Building Setbacks and Orientation (RDG)**

The applicant is seeking Council discretion with regard to the Acceptable Development Provisions (**ADP**) setback requirements of the R-Codes and the Town's RDG. A2 (ii) of Element 6.3.2 Building on the boundary of the R-Codes states that:

In areas coded R20 and R25, walls not higher than 3m with an average of 2.7m up to 9m in length up one side boundary only.

It is noted that the predominant density coding in the area is R12.5, therefore the garage cannot be assessed under the provisions of Element 6.3.2 Building on the boundary of the R-Codes. The garage is required to be assessed as per Element 6.3.1 Building setback from the Boundary of the R-Codes and Element 3.7.7 of the Town's RDG.

The proposed development incorporates one setback variation to the garage to the western side requirements to the side and rear boundaries. The LPP RDG Element 3.7.7 provides criteria by which to assess proposed variations to setback requirements. These are as 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 dwelling is on a rear battleaxe lot. The only views from the street are to the side elevation of the lounge and living area. The driveway is approximately 24 metres from the primary street. Views to the dwelling are considered minimal, due to the length of the access leg. All remaining setbacks except for the garage setback complies with the R-Code setback requirements.

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 dwellings on the lot. A new dwelling is proposed. The proposed setback does not adversely affect its visual presence from the streetscape. The proposed dwelling will contribute positively to the scale and character of the existing heritage dwelling at 42 Clayton Street.

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

The proposed setbacks do not impact on the streetscape. The garage parapet wall cannot be viewed from the street. The proposed setbacks are considered appropriate considering the design of the dwelling and scale and bulk of the dwelling. The proposed setbacks are considered to have no significant impact on adjoining neighbours.

Notwithstanding the above RDG requirements, it is further considered that the proposed building does not meet the ADP of element 6.3.1 Side and rear boundary setbacks and must therefore be assessed against the Performance Criteria (PC) for this element with regard specifically to the following provisions:

- *Ensure adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties;*
- *Assist with the protection of privacy between adjoining properties.*

The proposed dwelling will have a finished floor level consistent with the dwelling on 42 Clayton Street. The parapet wall to the garage is 8 metres long and has a maximum height of 3.85 metres. The proposed development is considered to address the requirements of the PC as follows:

- The proposed development has access to direct sun and ventilation to habitable areas and outdoor spaces.
- The adjoining properties have access to direct sun and ventilation.
- The lot is east/west in orientated. The dwelling is orientated to have the main living areas facing north, therefore there is adequate direct sun to the building and appurtenant open spaces.
- The orientation of the lot and design of the dwelling minimises overshadowing. Overshadowing to the south over the adjoining lot comprises of a total area of approximately 49m². It is considered there is adequate direct sun to the dwelling and open spaces.
- It is considered the scale and bulk of the dwelling will not impact on the character of the area or on the streetscape. The dwelling is sympathetic to the character of the existing heritage dwelling and the built form in the locality. The proposed dwelling does not increase the impact on the bulk and built form as presented to the street.
- There are no visual privacy issues. The proposed dwelling complies with the ADP of the R-Codes.

Fill/ Excavation

- **6.6.1 Excavation or Fill (R-Codes)**
- **3.7.4 Site Works (RDG)**

The proposed development does not comply with the Acceptable Development Criteria of the R-Codes. The development will be assessed as per the Performance Criteria of the R-Codes with regard to Element 6.6.1, which states:

P1 Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property.

The Performance Criteria of the RDG with regard to Element 3.7.4 states:

P1 Siting of new developments is to be consistent with the immediate locality and shall not negatively impact on the streetscape character and amenity.

P2 New developments are to maintain the prevailing natural ground level of the site.

P3 New developments, additions and alterations are to be designed so that a strong level of visual privacy is retained.

A maximum of 1m fill is proposed to the southern boundary. The proposed fill is located 1.6 metres from the southern boundary and located on the western boundary situated at the garage. It is considered the proposed fill will not impact on the scale and bulk of the dwellings. The proposed dwelling maintains a consistent level with the driveway. The proposed dwelling retains the visual impression of the natural level of a site, as seen from the street and from an adjoining property.

It is considered the proposed dwelling is consistent with the immediate locality and will not negatively impact on the streetscape character and amenity. There are no privacy issues. It is noted the adjoining neighbour has raised concerns regarding privacy, however bedroom 1 and the first floor windows are obscure and comply with the ADP for visual privacy of the R-Codes. A condition requiring suitable screening has also been included in the Officer's Recommendation.

The proposed development is considered to comply with the Performance Criteria Element 6.6.1 Excavation of Fill and therefore can be supported.

Element 3.7.6 of the Residential Design Guidelines – Construction of New Building
The Acceptable Development Provisions of Element 3.7.6 states:

- A1 Developments to comply with all design elements of this Local Planning Policy and are compatible with the context in terms of bulk, scale, materials and design.*

The Performance Criteria states:

- P1 New buildings are to be designed and constructed in a style compatible with, but which does not overtly mimic, the traditional building styles found in the Town.*

The proposed dwelling has been designed to be compatible in style, scale and bulk as those in the adjoining locality, primarily with the battleaxe dwellings in the locality. TPAP have commented on the proposed dwelling, however the issues raised are not considered of a nature so as to warrant modifications to the development, therefore it is considered to complement the adjoining dwellings and streetscape.

Element 3.7.8 of the Residential Design Guidelines – Roof Form

The Acceptable Development Provisions of the RDG for the Richmond Precinct 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 proposed roof has a 27° pitch. This does not adhere to the ADP of the RDG. The PC requirements for the roof pitch allows for:

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

The proposed roof pitch is 27°. The roof form ensures the scale and bulk of the dwelling is significantly consistent with the adjoining dwellings and reduces the visual impact of the dwelling to the street. It is considered the proposed 1° variation to the ADP of Element 3.7.8 of the RDG will not be clearly discernable from the street or adjoining neighbours. The roof form and pitch is considered to complement the traditional form of surrounding development in the immediate locality.

It is considered the dwelling can be supported by Council.

Element 3.7.17.4 of the Residential Design Guidelines – Building Design Requirement

The proposed dwelling is located on a battleaxe lot. The Acceptable Development Provisions of the RDG for the building height states:

- A1.4 In localities where views are an important part of the amenity of the area and neighbours existing views are to be affected, or the subject site is a 'battle axe' lot, then the maximum building heights are as follows:*
- *8.1m to the top of a pitched roof*

- 6.5m to the top of an external wall (concealed roof)
- 5.6m to the top of an external wall; and where the following apply:
 - i. The proposal demonstrates design, bulk and scale that responds to the established character 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 provisions of Residential Design Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.

The proposed dwelling is two storey and has a maximum height of 6.0 metres to the external wall. The PC requirements for the building height allows for:

P1 *New developments, additions and alterations to be of a compatible form, bulk and scale to traditional development in the immediate locality.*

The proposed dwelling is designed to be of a bulk, scale and design as adjoining battleaxe lots. The bulk and scale of the proposed development is not considered excessive. The dwelling is a modest family home. The built form and setbacks minimises impacts to neighbours and the proposed development will not be significantly visible from the street. The proposed dwelling complies with Element 8 and 9 of the R-Codes. The proposed dwelling complies with the eaves height and ridge height of the ADP of Element 6.7.1 Building Height of the R-Codes. It is considered the design of the dwelling minimises the impact to adjoining neighbours and is considered can be supported by Council.

CONCLUSION

The proposed dwelling is to be situated on a battleaxe lot. The lot have an approximate 1.5 metre fall from north to south (approximately about a 1 metre fall from the driveway to the south boundary. So as to provide a suitable access/egress to the garage the proposed finished floor level of the garage is 9.714 AHD. It is considered the proposed dwelling is designed to be of a bulk, scale and design as adjoining battleaxe lots and is considered sympathetic to the character of the area.

As discussed the above variations are offset by the design of the dwelling including setback from boundaries, the minimal impact to adjoining neighbours and the compliance with the Performance Criteria of the R-Codes and RDG. Based on this it is considered the proposal merits approval subject to appropriate conditions.

RECOMMENDATION

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

- (a) variation to Acceptable Development Provisions of Element 6.6 of the Residential Design Codes – Excavation or Fill and to Element 3.7.4 Site Works of the Residential Design Guidelines – Maximum fill 1.5 metres
- (b) variation to the setback requirements of the side setback (south elevation) – required setback 1.1 metres. Proposed setback is Nil;
- (c) Element 3.7.6 of the Residential Design Guidelines – Construction of New Building;
- (d) Element 3.7.8 of the Residential Design Guidelines – Roof Form 27°; and
- (e) Element 3.7.15.4 of the Residential Design Guidelines – Building Design Requirement

for two storey single dwelling at 42A (Lot 2) Clayton Street, East Fremantle, in accordance with the plans date stamp received on 30 January 2013 subject to the following conditions:

1. Windows to habitable rooms (Bedroom 1) on ground floor and the upper floor windows of the southern boundary of proposed dwelling to be suitably screened to comply with Clause 6.8.1 of the Residential Design Codes.
2. Walls on the boundary (Garage Wall) shall be finished or rendered to match where practicable the colours and materials of the affected property or alternative as agreed with the affected owner, all to the satisfaction of the Chief Executive Officer.
3. 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 (i) below*)
4. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
 5. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
 6. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
 7. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
 8. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
 9. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
 10. 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.
 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.*
- (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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *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”.*

The items of late correspondence (MB Ref T46.1, T46.2 & T46.3) were tabled.

Cr Nardi – Cr Rico

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

- (a) variation to Acceptable Development Provisions of Element 6.6 of the Residential Design Codes – Excavation or Fill and to Element 3.7.4 Site Works of the Residential Design Guidelines – Maximum fill 1.5 metres**
- (b) variation to the setback requirements of the side setback (south elevation) – required setback 1.1 metres. Proposed setback is Nil;**
- (c) Element 3.7.6 of the Residential Design Guidelines – Construction of New Building;**
- (d) Element 3.7.8 of the Residential Design Guidelines – Roof Form 27°; and**
- (e) Element 3.7.15.4 of the Residential Design Guidelines – Building Design Requirement**

for two storey single dwelling at 42A (Lot 2) Clayton Street, East Fremantle, in accordance with the plans date stamp received on 30 January 2013 subject to the following conditions:

- 1. Windows to habitable rooms (Bedroom 1) on ground floor and the upper floor windows of the southern boundary of proposed dwelling to be suitably screened to comply with Clause 6.8.1 of the Residential Design Codes.**
- 2. Walls on the boundary (Garage Wall) shall be finished or rendered to match where practicable the colours and materials of the affected property or alternative as agreed with the affected owner, all to the satisfaction of the Chief Executive Officer.**
- 3. 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 (i) below)**
- 4. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council’s further approval.**
- 5. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- 6. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council’s attention.**
- 7. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.**
- 8. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.**
- 9. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by**

Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.

10. 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.
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.*
- (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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air Conditioner Noise".*

CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T52.7

Alexandra Road No. 42 (Lot 1001)

Applicant: Derek Westera

Owner: R Harlan

Application No. P37/13

By Andrew Malone, Senior Planning Officer, 26 April 2013

PURPOSE OF THIS REPORT

This report considers an application for Planning Approval for additions and alterations comprising landscaping, alfresco area, entrance canopy, gatehouse and retrospective planning approval for primary street retaining walls to an existing dwelling at 42 (Lot

1001) Alexandra Road, East Fremantle. The application is recommended for approval subject to deletion of the gatehouse and other relevant conditions.

BACKGROUND**Description of Site**

The subject site is:

- a 965m².
- zoned R12.5
- Improved with a two storey dwelling.
- located in the Richmond Precinct.

Statutory Considerations

Town Planning Scheme No. 3 (TPS3) – R12.5
Residential Design Codes (R-Codes)

Relevant Council Policies

Local Planning Policy – Residential Design Guidelines (RDG)

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact
Streetscape : Retaining wall/ fence and gatehouse are proposed to the primary street. Landscaping is also proposed.

Documentation

Plans and relevant forms date stamp received on 26 March 2013.

Date Application Received

26 March 2013

CONSULTATION**Advertising**

The application was not advertised to surrounding neighbours. The proposed retrospective retaining wall and associated gatehouse are not considered to impact on adjoining neighbours. For the purposes of obtaining advice on design and streetscape impact, the application was emailed to the Town Planning and Advisory Panel for comment.

Town Planning Advisory Panel Comments

The application was emailed to the Town Planning Advisory Panel members on 24 April 2013. No Panel member responses have been received to date.

Site Inspection

By Senior Town Planner on 29 April 2013.

ASSESSMENT

The proposed development incorporates a number of variations to the Town's Local Planning Policies and the Residential Design Codes, as detailed below.

Town Planning Scheme No. 3 Assessment

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 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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
6.4.1 Open Space	55%	N/A	A
6.4.2 Outdoor Living	N/A	36.5sqm	A
6.5 Car Parking	2	N/A	A
6.6 Site Works	Less than 500mm	2.0m	D
6.9.1 Overshadowing	25%	N/A	A
6.9.2 Drainage	On-site	On-site	A

6.3 Boundary Setbacks							
Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status
Front (west)							
Ground	Retaining	1.5	11.6	N	1.5	Nil	D
	Gatehouse	2.6	3.0	N	1.0	1.0	A
Side (south)							
Ground	Retaining	2.4	9.2	N	1.5	Nil	D
Side (southwest)							
Ground Truncation	Retaining	2.7	6.2	N	1.0	1.0	A

**Note: A condition is included in the Officer's Recommendation to delete the gatehouse from the proposed development.*

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	D
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
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	N/A

DISCUSSION

All existing significant vegetation is proposed to be retained and further terracing is proposed to provide secure and retained areas for the retention of trees to the southern boundary.

The proposed canopy and alfresco area are considered consistent with the design and character of the existing dwelling. The proposed height of the canopy articulates the entrance, providing protection from the weather. The height and scale of the canopy are required to facilitate the existing window in the southern and western elevation. Alterations to the height of the canopy will result in a 'cut' through with the entrance window or a side window and will impact on the character of the dwelling.

The decking and alfresco area provides a usable front garden, providing views to the surrounding locality and also improving the passive surveillance of the street.

The proposed alfresco area and entrance canopy are considered to comply with the ADP of the R-Codes and RDG.

Access Leg / Truncation

A condition has been included in the Officer's Recommendation regarding the access leg/ truncation. No wall/ fence or landscaping over 0.75 metres from natural ground level is permitted within the 3.5 metre x 3.5 metre truncated area as identified on the plans. This is to ensure safe vehicular access/ egress from the development.

Gatehouse

It is considered the proposed gatehouse is out of character with the existing area. The applicant has indicated the gatehouse is to protect visitors from the weather and for security. The proposed gatehouse is considered not to provide extra protection from either the weather or security above that of the proposed pedestrian gate, therefore the proposed gatehouse is recommended to be deleted from the proposal.

The proposed gate house is visually obtrusive, due to the scale, height and bulk as represented to the streetscape. The gatehouse is incompatible with the existing front fence on the subject site and those prevailing in the vicinity. The gatehouse is considered to be completely at odds with Clause 10.2 (c), (o) and (p) of TPS3. A condition has been included in the Officer's Recommendation to delete the gatehouse from the recommended approval.

Fill/ Excavation/ Retaining Walls

- **6.6.1 Excavation or Fill (R-Codes)**
- **3.7.4 Site Works (RDG)**

The retrospective retaining wall to the western boundary constructed (photographs attached) is to replace an existing retaining wall of approximately 1.0 metres in height. A further retaining wall to the lawn area has also been demolished and replaced. Additional terracing has been incorporated into the design, with the addition of front gates and a gatehouse. This work is not considered to impact the adjoining neighbours.

There is a significant level change between the street and the front garden, approximately dropping 4.9 metre from the previous retained front garden to the south west corner of the lot. Retaining walls have been constructed between the previous retaining walls to provide a pedestrian access leg from the primary street to the dwelling. Vegetation has been removed and it is proposed to further terrace and landscape the front of the property to provide a street frontage and pedestrian access to the front of the property. It is noted all significant vegetation is being retained on the subject site.

The application requires Council to exercise a variation in respect to the setback provisions relating to the retaining walls and the fill to the front of the property. The proposed retaining walls act as a front fence for the dwelling. The scale and built form of the retaining wall is consistent with retaining walls/ front fences in the locality.

The proposed development does not comply with the Acceptable Development Criteria of the R-Codes with respect to fill. The development will be assessed as per the Performance Criteria of the R-Codes with regard to Element 6.6.1, which states:

P1 Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property.

The Performance Criteria of the RDG with regard to Element 3.7.4 states:

P1 Siting of new developments is to be consistent with the immediate locality and shall not negatively impact on the streetscape character and amenity.

- P2 New developments are to maintain the prevailing natural ground level of the site.*
P3 New developments, additions and alterations are to be designed so that a strong level of visual privacy is retained.

A maximum height of 2.3m high retaining wall is proposed to the front of the subject site. The proposed fill is located on the south western boundary. Further behind this is a 2.5 metre high retaining / terrace wall with a maximum RL level of 13.429. Located in-between this area is landscaping/ vegetation. The existing dwelling is located 4.9 metres above the natural ground level at the footpath. It is noted a previous retaining wall of approximately 1.0 metre was located on the boundary with a greater retaining wall located behind this.

The subject lot had heavy vegetation to the front of the property situated in-between the previous retaining wall (attached photograph). This vegetation blocked all views to the dwelling and passive surveillance to the street and adjoining properties. The existing retaining wall and proposed landscaping will present a distinct pedestrian access leg to the dwelling, while providing an attractive landscaped streetscape.

The proposed fill and existing retained fill is not considered to impact on the scale and bulk of the existing dwelling or proposed alfresco area. The proposed dwelling retains the visual impression of the natural level of the site as previously constructed, as seen from the street and from an adjoining property. The proposed front of the dwelling will be 'opened' up to present to the street and provide pedestrian access. The pedestrian access to the dwelling also establishes a front access point and visual presentation to the streetscape. The terracing and front boundary articulation minimises visual impact. The proposed condition to delete the gatehouse also reduces the over bulk of the retaining wall.

It is considered the proposed dwelling and retained front garden is consistent with the immediate locality and will not negatively impact on the streetscape character or amenity. The adjoining dwellings and dwellings adjacent the subject lot all have large retaining walls/ front fences. It is noted that the adjoining properties to the north and south both have significant retaining walls/ front fences that block street views and impact on the character of the area. The proposed walls while considered high, will also provide an articulated streetscape, with landscaped terraced frontage and landscaping.

The proposed front garden and alfresco area will improve the visual surveillance of the street and will not impact on the visual privacy of the adjoining lot. The proposed development is considered to comply with the Performance Criteria Element 6.6.1 Excavation of Fill and therefore can be supported.

No further front fence is proposed. The proposed balustrade to the stair is to be visually permeable. A condition has been included in the Officer's Recommendation to require a fully visually permeable balustrade.

In all respects the retrospective retaining wall and proposed retaining walls are considered appropriate considering the significant natural ground level variations on the subject lot and proposed landscaping and articulation to minimise the visual impact. It is considered the proposed retaining walls can be supported.

CONCLUSION

It is considered the proposed development will not impact on the amenity of the streetscape or on the amenity of the neighbouring properties. Based on this it is considered the proposal merits approval subject to appropriate conditions.

RECOMMENDATION

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

- (a) variation to the primary street setback requirements (western elevation) – required setback 1.5 metres (retaining wall). Proposed setback is Nil;

- (b) variation to the access leg setback requirements (southern elevation) – required setback 1.5 metres (retaining wall). Proposed setback is Nil;
- (c) variation to Element 6.6 of the Residential Design Codes and Element 3.7.4 of the Residential Design Guidelines Site Works;
- for a retrospective retaining wall, pedestrian access way, alfresco area and canopy situated at 42 (Lot 1001) Alexandra Road, East Fremantle, in accordance with the plans date stamp received on 26 March 2013 subject to the following conditions:
1. The proposed gatehouse does not form part of this planning approval and shall be deleted from the plans submitted to Council for a Building Permit.
 2. No building, wall, fence or landscaping greater than 0.75 metres in height measured from the natural ground level at the boundary, shall be constructed within 3.5 metres x 3.5 metre vehicular access way unless such a building, wall or fence receives the prior approval of Council.
 3. No front fence or further retaining is to be constructed without the prior approval of Council. Such fencing is to comply with the requirements of Element 3.7.11 of the Town's Residential Design Guidelines.
 4. The proposed balustrade to the pedestrian access leg to be visually permeable.
 5. Existing mature trees and canopy as indicated on the plans date stamp received on 26 March 2013 to be retained and maintained, all to the satisfaction of the Chief Executive Officer.
 6. The landscaping is to be undertaken in conformity with the drawings 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 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 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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

Cr Martin – Cr Collinson

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

- (a) **variation to the primary street setback requirements (western elevation) – required setback 1.5 metres (retaining wall). Proposed setback is Nil;**
- (b) **variation to the access leg setback requirements (southern elevation) – required setback 1.5 metres (retaining wall). Proposed setback is Nil;**
- (c) **variation to Element 6.6 of the Residential Design Codes and Element 3.7.4 of the Residential Design Guidelines Site Works;**

for a retrospective retaining wall, pedestrian access way, alfresco area and canopy situated at 42 (Lot 1001) Alexandra Road, East Fremantle, in accordance with the plans date stamp received on 26 March 2013 subject to the following conditions:

- 1. The proposed gatehouse does not form part of this planning approval and shall be deleted from the plans submitted to Council for a Building Permit.**
- 2. No building, wall, fence or landscaping greater than 0.75 metres in height measured from the natural ground level at the boundary, shall be constructed within 3.5 metres x 3.5 metre vehicular access way unless such a building, wall or fence receives the prior approval of Council.**
- 3. No front fence or further retaining is to be constructed without the prior approval of Council. Such fencing is to comply with the requirements of Element 3.7.11 of the Town's Residential Design Guidelines.**
- 4. The proposed balustrade to the pedestrian access leg to be visually permeable.**
- 5. Existing mature trees and canopy as indicated on the plans date stamp received on 26 March 2013 to be retained and maintained, all to the satisfaction of the Chief Executive Officer.**
- 6. The landscaping is to be undertaken in conformity with the drawings 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 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 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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

- T52.8** **Osborne Road No. 40 (Lot 22)**
Applicant: Duncan & Melanie Coutts
Owner: Duncan & Melanie Coutts
Application No. P129/2011
By Andrew Malone, Senior Town Planner on 12 April 2013

PURPOSE OF THIS REPORT

This report considers amendments to a previously approved development application for the construction of additions and alterations to the rear and side of an existing dwelling at 40 (Lot 22) Osborne Road, East Fremantle. The proposed additions and alterations are recommended for approval subject to appropriate conditions.

BACKGROUND

Description of Proposal

The subject application proposes alterations and additions to the rear and side of the dwelling. The proposed amendments are similar in design, scale and nature to the previously approved plans. The amendments include the following works:

- demolition of the existing shed/studio, store/ wc, retaining wall and gazebo to the rear of the property;
- construction of a new garage, toilet facilities, store, games area, games room and a covered alfresco area to the rear and side of the dwelling;
- construction of a new pool with associated service shed to the rear of the subject site; and
- minor works to the internal/ external walls of the existing rear of the dwelling.

The application seeks several discretions to the setback requirements of the Residential Design Codes (R-Codes) and Council's Local Planning Policies which will be discussed in the Assessment section of this report.

Description of Site

The subject site is:

- a 976m² block
- zoned Residential R12.5
- developed with a single storey dwelling
- located in the Richmond Precinct.

Statutory Considerations

Town Planning Scheme No. 3 (TPS3) – Residential R12.5

Residential Design Codes (R-Codes)

TPS No. 3 Heritage List – Code 31

A- Management Category - Municipal Heritage Inventory

The Municipal Heritage Inventory states an A- Management Category as:

High heritage significance at a local level, and having potential State Heritage significance; informed consideration should be given to nomination for State Register listing prior to or at the time of consideration for further development, and prior determination of any significant development application for the place. Places to be generally retained and conserved, and worthy of a high level of protection. Conservation Plans may be required depending on relative significance and apparent impact of development on the place; detailed Heritage Assessments otherwise required as corollary to any development application. Strong encouragement to the owner under the Town of East Fremantle Planning Scheme to conserve the significance of the place. Incentives to promote heritage conservation should be considered where necessary to achieve desirable conservation outcomes in context of permissible development.

Impact on Public Domain

- Tree in verge : No impact
 Light pole : No impact
 Crossover : No impact
 Footpath : No impact
 Streetscape : Minimal impact to side of dwelling. New garage will be visible from streetscape.

Documentation

Plans and relevant forms date stamp received on 22 March 2013.

Date Application Received

22 March 2013

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

- 19 August 1985 Council resolved to grant approval for the conversion of an existing brick garage into a games room.
- 21 Sept 1992 Council resolved to grant approval for the erection of a front fence with metal wrought iron inserts.
- 5 April 1993 Council endorses carport structure under authority of Building Licence No. 069/2050.
- 25 February 1997 Council resolved to grant approval for alterations/extensions to residence & relocation of pergola.
- 18 October 2011 Council resolved to grant approval for alterations/alterations to rear of existing dwelling. Resolution:

That Council exercise its discretion in granting approval for a variation to the requirements of LPP No. 142 to allow an additional boundary wall that is 12 metres long in lieu of the 9 metre restriction for the construction of additions to the residence at No. 40 (Lot 22) Osborne Road in accordance with the plans date stamp received on 25 August 2011, subject to the following conditions:

1. *If it is intended to install air conditioning, prior to the installation of externally mounted air conditioning plant, a development application is to be lodged and approved by Council which demonstrates that noise from the air conditioner will comply with the Environmental (Noise) Regulations 1997. (refer footnote (d) below).*
2. *The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.*
3. *The proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence 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 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 extensions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.*
6. *All stormwater is to be disposed of on site and clear of all boundaries.*
7. *All parapet walls are 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.*
8. *Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the*

removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.

- 9. That the zincalume roofing be treated to Council's satisfaction to reduce reflectivity if requested by Council in the first two years following installation, at the owner's expense.
- 10. This planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.
- (b) a copy of the approved plans as stamped by Council are attached and the application for a building licence 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 owner.
- (d) under the Environmental Protection (Noise) Regulations 1997, the noise from an air conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air Conditioner Noise".
- (e) 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).
- (f) 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.
- (g) matters relating to dividing fences are subject to the Dividing Fences Act 1961

CONSULTATION

Advertising

The application was advertised to surrounding neighbours for a two week period between the 3 March 2013 and the 17 March 2013. At the close of advertising no submissions were received.

Town Planning Advisory Panel

The proposal was presented for comment at its meeting held on 12 March 2013.

SUBMISSION	APPLICANT RESPONSE	OFFICER COMMENT
Query all chimneys are to be retained to the existing house (elevations do not illustrate chimneys)	Please be advised that in response to the Panel's comments, all chimneys will be retained.	While the chimneys are not noted on the elevation details, the chimneys are noted on the ground floor plan. A condition has been included in the Officer's Recommendation to retain all chimneys on the existing dwelling.

Site Inspection

By Senior Town Planner on 5 April 2013.

ASSESSMENT

The proposed development incorporates a number of variations to the Town's Local Planning Policies and the Residential Design Codes, as detailed below.

STATUTORY ASSESSMENT

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 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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
6.4.1 Open Space	55%	57.1%	A
6.4.2 Outdoor Living	30sqm	40.3sqm	A
6.5 Car Parking	2	2	A
6.6 Site Works	Less than 500mm	Less than 500mm	A
6.9.1 Overshadowing	25%	7%	A
6.9.2 Drainage	On-site	On-site	A

Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Proposed Setback	Status	
Front (west)								
	Ground	As Existing						
Rear (east)								
	Ground	Games/Studio	2.7	5.5	No	1.0	1.5	A
	Ground	Pool Shed	2.5	2.7	No	1.0	Nil	D
Side (north)								
	Ground	Alfresco	2.4	3.5	Yes	1.5	1.2	D
Side (south)								
	Ground	Garage	2.7	6.4	No	1.0	0.95	D
	Ground	Store/Studio	2.7	8.5	No	1.0	Nil	D

Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	A
3.7.3 Development of Existing Buildings	A
3.7.4 Site Works	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	N/A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	A
3.7.15-20 Precinct Requirements	A

DISCUSSION

The subject application proposes additions to the rear of the residence to accommodate a covered alfresco area, garage, store, laundry and games room with a boundary wall to the southern boundary.

Heritage Assessment

The dwelling at 40 Osborne Road is included on Council's Municipal Heritage Inventory as an 'A-' Management Category. Whilst works involving "A" listed properties would generally result in a heritage report or heritage assessment being required, in this case additions of a similar nature and design were previously approved by Council (P129/11). The additions will be set back a considerable distance from the street and as such will not significantly impact on the existing heritage with regard to streetscape impact, amenity or built form character.

The proposed application proposes additions to the rear of the dwelling to accommodate a covered alfresco area, garage, store area, laundry and games room. The additions are single storey. Only minor internal and external works are required to accommodate the additions. The additions are single storey and will not be significantly visible from the street. The proposed works are not considered to be significant to impact the main building to an extent necessary to warrant a Heritage Assessment. It is also noted that Council has previously approved of a development of the same scale and nature in 2011.

The applicant's submission that the proposed additions to the dwelling will be sympathetic to the original dwelling and will be carefully separated and distinguishable from the existing building structure is supported.

The proposal accords with the provisions of TPS3, the R-Codes and the Town's Planning Policies with the exception of the minor setback variations to the north and south boundaries and a parapet walls to the south and east boundaries.

Residential Design Codes

Boundary Setback

- **6.3.1 Buildings setback from the Boundary (R-Codes)**
- **3.7.7 Building Setbacks and Orientation (RDG)**

The proposed development incorporates 4 setback variations to the side and rear boundary. The proposed setback variations to the Acceptable Development Provisions (ADP) of the R-Codes are considered sympathetic with the existing heritage dwelling and considered minor in nature.

The LPP RDG Element 3.7.7 provides criteria by which to assess proposed variations to setback requirements. These are as 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 only views from the street are to the garage and adjoining windows. The existing carport partially blocks sightlines of the rear additions. The driveway is approximately 25metres from the primary street, with all additions located beyond this point. The proposed variations that can be viewed from the street are to the garage and storage/games room. These variations are considered minor. The proposed additions do not impact on the streetscape or the character of the property as view from the street.

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

The proposed setbacks do not adversely affect its visual presence from the streetscape. All additions are setback greater than 25 metres from the front boundary. The proposed additions and alterations will contribute positively to the scale and character of the existing heritage dwelling on the subject site.

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

The proposed setbacks do not impact on the streetscape. The proposed setbacks are considered appropriate considering the design of the dwelling and the scale and bulk of the dwelling. The additions are single storey. The proposed setbacks are considered to complement the existing dwelling. The proposed setbacks are not considered to significantly impact adjoining neighbours with regard to overshadowing, amenity or privacy. The proposed development in a similar context has been previously approved by Council (P129/11).

Notwithstanding the above RDG requirements, it is further considered that the proposed additions do not meet the ADP of Element 6.3.1 of the R-Codes and must therefore be assessed against the Performance Criteria (**PC**) for this element with regard specifically to the following provisions:

- *Ensure adequate direct sun and ventilation to the building;*
- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*
- *Assist with protection of access to direct sun for adjoining properties;*
- *Assist in ameliorating the impacts of building bulk on adjoining properties;*
- *Assist with the protection of privacy between adjoining properties.*

The proposed additions and alterations will have a finished floor level consistent with the existing dwelling. The proposed setbacks are considered sympathetic with the heritage dwelling. The proposed development is considered to address the requirements of the PC as follows:

- The proposed development has access to direct sun and ventilation to habitable areas and outdoor spaces. The proposed games room and outdoor kitchen and alfresco area address the outdoor open space and create a usable outdoor space to the rear of the dwelling.
- The subject site is east/ west orientated. The proposed additions and alterations will not significantly impact on the direct access to sun and ventilation to adjoining property. The parapet wall is single storey. The overshadowing of the adjoining lot is approximately 6%.
- The subject site is east/ west orientated. The additions are orientated to have the main living areas of the alfresco area and the games room addresses the north, therefore adequate direct sun to the building and appurtenant open spaces is provided.
- The orientation of the lot and design of the additions do not create significant overshadowing to adjoining lots.
- The scale and bulk of the additions will not be significantly visible from the street and are not considered to impact on the character of the area or on the streetscape. The design of the proposed addition is single storey and is consistent with the prevailing built form of the existing dwelling and surrounding locality.
- There are no visual privacy issues.

The proposed development is considered to comply with the Performance Criteria of the RDG and R-Codes and therefore can be supported.

6.3.2 Building on the Boundary

The application proposes to construct two boundary walls along the southern (side) boundary and the rear boundary associated with the store/games area and the pool shed. The R-Codes only permit the following in relation to boundary walls in areas with a density coding of R12.5:

“i Where the wall abuts an existing or simultaneously constructed wall of similar or greater dimension; “

The proposed development does not comply with the Acceptable Development Provisions of the R-Codes of Element 6.3.2. The Performance Criteria of the R-Codes with regard to Element 6.3.2 states:

P2 Buildings built up to the boundaries other than the street boundary where it is desirable to do so in order to:

- *Make effective use of space; or*
- *Enhance privacy; or*
- *Otherwise enhance the amenity of the development;*
- *Not have any significant adverse effect on the amenity of the adjoining property; and*
- *Ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.*

With regard to the above provisions the following statements can be made:

- The proposed additions have been designed to maintain the original character of the dwelling, while providing for additions and alterations. It is considered the proposed additions and alterations do make effective use of the rear of the subject site, while not impacting on the heritage character of the dwelling or adjoining lots. The pool shed is 2.7 metres wide by 2.5 metres high. The shed is considered minor in nature.
- There are no privacy issues relating to the additions and alterations. The maximum height of the boundary wall is required to be 3.0 metre with the average height being 2.7 metres. The proposed wall has an average height of 2.7 metres which is lower than maximum boundary wall height permitted for a R20/ R25 density coding. The parapet walls provide increased privacy to the rear garden and adjoining neighbours.
- The additions and alterations provide for better living areas/ usable space with the dwelling, while not impacting on the heritage significance of the dwelling. The shed increases the amenity of the area by obscuring the services to the pool area and by providing noise attenuation measure for surrounding residents.
- The proposed boundary wall is at the rear of the residence. The southern boundary wall primarily abuts a garage to the southern boundary. The southern boundary wall to the garage and store does not have significant adverse effects on the amenity of the adjoining property. The pool shed is also not considered to have an impact on adjoining neighbours.
- The construction of a boundary wall on the southern boundary will only result in minor additional overshadowing of the adjoining property and will only overshadow a driveway and a garage roof on the property that adjoins to the south. The proposed parapet wall to the southern elevation and the proposed parapet wall to the pool shed will not impact on the direct sun to major openings to habitable rooms or outdoor living areas of adjoining properties.

The proposed development is considered sympathetic to the heritage character of the dwelling and complies with the Performance Criteria Element 6.3.2 Buildings on the Boundary and therefore can be supported.

Conclusion

A previous application of a similar scale, bulk and design was previously approved by Council. It is considered the proposed amendments to the previous approval are minor. 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. The application has been supported by the Town Planning Advisory Panel.

Whilst the application does seek a minor variation to the R-Codes this is considered to be very minor in nature and to be acceptable. The proposed additions will not impact on the heritage significance of the residence and will not be visible to the street.

The application is therefore considered to be suitable for determination and is recommended for approval.

RECOMMENDATION

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

- (a) variation to the setback requirements of the side setback (south elevation) – required setback (Garage) 1.0 metres. Proposed setback is 0.95 metres;
- (b) variation to the setback requirements of the side setback (south elevation) – required setback (store/ games room) 1.0 metres. Proposed setback is Nil;
- (c) variation to the setback requirements of the rear setback (east elevation) – required setback (pool shed) 1.0 metres. Proposed setback is Nil;
- (d) variation to the setback requirements of the side setback (north elevation) – required setback (alfresco) 1.5 metres. Proposed setback is 1.2 metres;

for single storey additions and alterations to an existing dwelling at 40 (Lot 22) Osborne Road, East Fremantle, in accordance with the plans date stamp received on 22 March 2013 subject to the following conditions:

1. Existing roof chimneys (4) to be retained within the existing roof form. This is to be notated on the plans submitted with respect to the Building Permit application.
2. Existing carport located within the front setback area to be retained. This is to be notated on the plans submitted with respect to the Building Permit application.
3. The swimming pool is not approved under this application. A separate planning application is required to be lodged illustrating pool specifications.
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 (i) 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 Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
8. 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. 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.
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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *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 Martin – Cr Nardi

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

- (a) **variation to the setback requirements of the side setback (south elevation) – required setback (Garage) 1.0 metres. Proposed setback is 0.95 metres;**
- (b) **variation to the setback requirements of the side setback (south elevation) – required setback (store/ games room) 1.0 metres. Proposed setback is Nil;**
- (c) **variation to the setback requirements of the rear setback (east elevation) – required setback (pool shed) 1.0 metres. Proposed setback is Nil;**
- (d) **variation to the setback requirements of the side setback (north elevation) – required setback (alfresco) 1.5 metres. Proposed setback is 1.2 metres;**

for single storey additions and alterations to an existing dwelling at 40 (Lot 22) Osborne Road, East Fremantle, in accordance with the plans date stamp received on 22 March 2013 subject to the following conditions:

1. **Existing roof chimneys (4) to be retained within the existing roof form. This is to be notated on the plans submitted with respect to the Building Permit application.**
2. **Existing carport located within the front setback area to be retained. This is to be notated on the plans submitted with respect to the Building Permit application.**
3. **The swimming pool is not approved under this application. A separate planning application is required to be lodged illustrating pool specifications.**
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 (i) 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 Demolition Permit and a Building Permit and the Building**

- Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
7. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
 8. 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. 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.
 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) *the patio may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of*

Environmental Protection document--“An Installers Guide to Air Conditioner Noise”.

CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

**T52.9 *East Fremantle Football Club Facility
Change of use from Storage Room and Office to Beautician Shop and Pilates Studio***

By Jamie Douglas, Manager Planning Services on 3 May 2013

Introduction

An application has been received from the East Fremantle Football Club to allow a change of use in part of the Club's facilities to accommodate two commercial operations – namely a Beautician and a Pilates Studio.

Under the provisions of the Town Planning Scheme No. 3 Council's approval is not required for the carrying out of any use or development on a Regional Reserve. However approval is required under the Metropolitan Region Scheme from the Western Australian Planning Commission. In practice Council considers such applications and advises the WAPC whether it supports the application and the conditions it considers should be associated with any approval. The WAPC then determines the application and issues its determination.

Consideration

The businesses which wish to temporarily establish within the Football Club's facilities currently operate within tenancies which are to be displaced when construction of the 'Richmond Quarter' mixed use development commences in the Town Centre. It is therefore to the community's advantage that local business operators be sustained in a nearby location during the construction period. It will also bring much needed revenue to the EFFF which is struggling financially.

The details of the proposed change of use are as follows;

- Beautician – 'Bliss Boutique' 1 staff and 2 clients at any one time. Floor area approximately 44m² which is currently used for administration purposes by the 'Coastal Sharks Netball Club' which is to be relocated elsewhere on site. No works are proposed other than painting and new floor covering. Hours of operation are generally normal business hours plus Saturday mornings and with some appointments on Wednesday evenings and Saturday afternoons. It is proposed that car parking on the corner of Moss and Marmion Streets would be used by clients and staff for parking.
- Pilates – 'Definitive Fitness' 1 instructor and a maximum of 5 clients. Floor area approximately 80m² which is currently used for storage. No works are proposed other than painting and new floor covering. Hours of operation are Monday to Friday 6 am to 9pm. and Saturday 9am to noon.

The proposal was advertised in the local press between the 13 & 29 of April 2013 and no submissions were received. The proposal is located with sufficient separation from residences in Moss Street so that the proposed uses will not affect residential amenity. The proposed uses have a parking requirement of 8 spaces in total under Schedule 10 of TPS No.3. This parking requirement can be comfortably accommodated within the nearby car park on the corner of Moss and Marmion Streets or in the Moss Street road reserve except on 'game days'. It is considered the hours of operation of the businesses should be restricted so that they do not operate when WAFL games are played at the venue.

It is also considered that the relocation of commercial operations in the recreation reserve should be seen as a temporary situation which may be subject to review upon resolution of any redevelopment of the site and whilst the Town Centre development occurs. Accordingly it is considered that any approval should be limited to a period of 3 years unless an application for an extension of time is approved.

Signage for the proposed premises are not included in this application and would require separate approval.

Conclusion

Approval of the proposal would help to retain existing commercial operations within the Town which is to the community's benefit of the community whilst redevelopment of the Town Centre occurs. The proposal does not impact upon residential amenity or the recreational use of the reserve.

Recommendation

It is recommended Council gives landowner consent to the application for a partial change of use to accommodate a Beautician premises and Pilates studio at the East Fremantle Football Club Rooms, Moss Street in accordance with the plans and information date stamp received on 11 March 2013 and advise the Western Australian Planning Commission that it supports approval of the application subject to the following conditions:

1. The businesses shall not operate at any time on the days when WAFL games are played at the venue.
2. The maximum number of clients and staff to be accommodated in the area occupied by the beautician premises shall not exceed 3 persons at any one time.
3. The maximum number of clients and staff to be accommodated in the area occupied by the Pilates studio shall not exceed 6 persons at any one time.
4. The proposed development is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. The Planning approval is valid for a period of three years from the date of approval.

Footnote:

The following is not a condition but a note of advice to the applicant/owner:

... this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.

Cr Martin – Cr Nardi

Council gives landowner consent to the application for a partial change of use to accommodate a Beautician premises and Pilates studio at the East Fremantle Football Club Rooms, Moss Street in accordance with the plans and information date stamp received on 11 March 2013 and advise the Western Australian Planning Commission that it supports approval of the application subject to the following conditions:

1. **The maximum number of clients and staff to be accommodated in the area occupied by the beautician premises shall not exceed 3 persons at any one time.**
2. **The maximum number of clients and staff to be accommodated in the area occupied by the Pilates studio shall not exceed 6 persons at any one time.**
3. **The proposed development is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
4. **The Planning approval is valid for a period of three years from the date of approval.**

Footnote:

The following is not a condition but a note of advice to the applicant/owner:

... this decision does not include acknowledgement or approval of any unauthorised development which may be on the site. CARRIED 5:0

Note:

As 5 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2013, this application is deemed determined, on behalf of Council, under delegated authority.

T53. REPORTS OF OFFICERS – STRATEGIC PLANNING**t53.1 Review of TPS No 3 and Local Plan**

By Jamie Douglas, Manager Planning Services on 9 April 2013

PURPOSE OF THIS REPORT

This report explains the proposed revised Local Planning Strategy and consequential amendments to the Town Planning Scheme No 3 and recommends that:

1. the draft Local Planning Strategy be forwarded to the Western Australian Planning Commission for approval to advertise;
2. subject to the WAPC granting approval to advertise the draft LPS, Council agree to initiate Amendment 10 to the Town of East Fremantle Town Planning Scheme No 3; and
3. Council undertake a comprehensive community engagement exercise to support the concurrent statutory public notification of the LPS and Scheme Amendments.

BACKGROUND

In May last year, the project consultant Eugene Ferraro completed a projected population analysis and a survey of the existing housing density and development pattern throughout the Town to inform revisions to the Planning Strategy and Scheme. Based on this analysis and in response to relevant State Planning Strategies, the draft Strategy proposes that potential infill development locations would be rezoned as dual R-coded areas where subdivision and development could be considered at the higher indicated density providing the proposals meet certain performance criteria. This approach will encourage housing diversity, since not all lots in an area will be able to satisfy the criteria necessary for redevelopment and will protect heritage and streetscape values.

The draft strategy was circulated to elected members and an overview of the findings of the analysis and the proposed LPS were presented to the Town Planning Advisory Panel and subsequently to the Town Planning & Building Committee meeting on 8 May 2012. The Committee endorsed the draft LPS as the basis for the review of the TPS No 3. Subsequently, the draft LPS has been further refined and an omnibus scheme amendment has been drafted in consultation with senior officers of the Department of Planning. The scheme amendment has also been subject to a legal audit and further changes have been made upon advice from Mr Craig Slarke, Managing Partner at McLeods Barristers & Solicitors.

Town Planning Advisory Panel

The draft strategy was considered by the TPAP at its meeting on 24 April 2012. The Panel commented as follows:

- *The Committee recognises the consultant's sensitive consideration of existing heritage housing stock;*
- *Higher density development to be located near public transport routes;*
- *Consideration of housing density that responds to population growth trends.*
- *The Draft LP strategy highlights the need for further analysis and reappraisal of the veracity of the Town's Municipal and Heritage lists in order to establish where significant properties need to be moved from the Municipal Inventory to the Heritage List.*
- *Important that any future assessment of options for the old Woodside Hospital site shall have regard to the need for the retention of its heritage significance.*

- Council needs to consider developing a distinct 'Open Space' strategy to integrate with the Local Planning Strategy.

REPORT

Explanation of the Approach for the Planning Review

The *Planning and Development Act 2005* requires local governments to either consolidate existing town planning schemes or prepare a new town planning scheme every five years. As the existing Town Planning Scheme No 3 was gazetted in December 2004, the deadline under the Act, to commence either the consolidation or review of the Scheme is overdue.

In addition to the Town Planning Scheme, the Council is also required to prepare and adopt a Local Planning Strategy that supports and provides the rationale for the (revised) Town Planning Scheme. The existing LPS was finalised in 2003 and is therefore also in need of review.

Although it is considered the current Scheme and Strategy are generally operating effectively, it is recognised that neither of these documents reflect current regional policies set by the State Government through the Western Australian Planning Commission. Accordingly, the review of the LPS gives the Council the opportunity to examine long term options for the Town and provide a strategy that meets both local and regional requirements and expectations.

Following on from the Strategy, an omnibus amendment to the Town Planning Scheme (Amendment No 10) has been prepared which will implement the recommendations of the draft Strategy. The omnibus amendment also provides the opportunity to undertake other minor changes to the Scheme to address inconsistencies, typographical errors and necessary updates.

In an effort to simplify the community engagement and consultation processes, it is proposed that both Amendment 10 and the LPS will be advertised concurrently. This will provide the opportunity for the community to see the entire package of changes proposed to the Town's planning framework.

While the Council can initiate Amendment 10 and commence the advertising process upon clearance from the Environmental Protection Authority, the LPS must be approved by the Western Australian Planning Commission prior to public advertising. As the approval processes for the two documents differ, it is proposed that the formal decision on the Amendment be deferred pending the decision by the Western Australian Planning Commission on the Strategy.

Town of East Fremantle Local Planning Strategy 2013

The draft Local Planning Strategy 2013 is divided into two parts (refer Attachment 1). Part 1 provides the detailed background analysis, while Part 2 details the strategy. The text and the Strategy Map combine to form the complete LPS.

In preparing the new Strategy, a comprehensive density analysis was undertaken, which included mapping the density of all the existing development and re-subdivisions that have taken place in the Town. The density analysis provides information on existing densities and also provides a firm footing on which to base any changes to the existing residential density coding.

To understand possible future population trends a detailed population analysis was undertaken using the 2006 census data and the projections provided by the Western Australian Planning Commission in its document *WA Tomorrow* published in Feb 2012. (The 2011 population data was not available at the time).

Finally an analysis of the regional planning requirements published by the WAPC through its *Directions 2031 and Beyond* regional planning strategy established a requirement for the Town to accommodate an additional 600 new dwellings by the year 2031. The

primary intent for the strategy is to accommodate this infill development while protecting the established streetscape character and heritage values which contribute to the 'sense of place' of the Town.

As there were only 2,991 dwellings and 1,839 separate houses in the Town in 2006, an increase of 600 additional dwellings could, if not managed appropriately, adversely impact on the character and amenity that the Town enjoys. For example, if the 600 new dwelling target was to be achieved through a slight increase in the residential density coding to allow for side by side or front and rear subdivision, over 30% of the existing single residential lots would need to be developed in this manner to achieve the target.

In light of the population projections, the Strategy has sought to accommodate this additional housing through medium and high density zonings in selected locations. This approach would retain the Town's predominant built form of single detached dwellings.

The approach to accommodate medium and higher density housing was also seen as a means of addressing the ageing population predicted for the Town. The smaller units may be more affordable for younger members of the community and will also provide opportunities for existing residents to "age in place."

High density dwellings are accommodated in the Town Centre and reflect the Centre's recently adopted Local Planning Policy.

Medium density areas were selected to take advantage of existing bus routes or along the major roads in the Town. These areas are located along Marmion Street, Canning Highway and Petra Street, Preston Point Road, View Terrace and Fraser Street.

These medium density areas have been assigned a R12.5/R40 dual code. The advantage of this dual coding approach is that it will encourage a greater diversity in building types and an increased retention of existing built form in comparison with a blanket rezoning to R40. The approach requires that development proposals meet certain design criteria and only those lots/proposals meeting all the criteria can be considered for redevelopment at the higher code.

The Strategy states that:

- development to the higher R40 code will only be approved if all the specified design criteria can be achieved;
- the higher density code is not a subdivision code and therefore cannot be used simply to subdivide land into smaller parcels, other than for properties on the Municipal Inventory or Heritage List; and
- dwellings on the Municipal Inventory or Heritage List must be retained.

Subdivision of vacant land will only be permissible for those properties on the Municipal Inventory or Heritage List. This concession has been made to encourage the retention of these dwellings and to preserve the character and amenity of the Town.

The R40 code was selected as it will enable four units to be constructed on lots between 880m² and 1100m² in size. This type of development will enable vehicle egress and access to be rationalised and also better manage impacts such as overlooking, overshadowing etc.

There are approximately 200 lots included in the proposed dual coding area which are not on the Municipal Inventory or Heritage List. This would provide for an additional 600 new dwellings if all of these properties sought to take advantage of the dual coding provisions.

Furthermore, there are approximately 100 lots with buildings on the Municipal Inventory or Heritage List included in the proposed dual coding area that have the potential to provide between 100 and 200 additional dwellings.

Finally, the proposed high density areas in and around the town centre provide the opportunity to accommodate a further 150 new dwellings. In total, the 2013 Local Planning Strategy creates the potential for an additional 1000 new dwellings.

In addition to the introduction of high and medium density areas, the Strategy also identifies Redevelopment Investigation Areas: Leeuwin Barracks and the Woodside Hospital site. The Strategy does not recommend the rezoning of this land at this stage, but simply identifies these two sites as possibly having redevelopment potential in the future. The Strategy makes no comment on how either of these sites could be redeveloped. This is a matter for detailed investigation, analysis and consideration by the Council and community, if and when either the State or Commonwealth Government decide that the sites are surplus to their respective requirements.

Amendment 10 to Town Planning Scheme No 3

This amendment has been prepared to implement the major initiatives of the 2013 Local Planning Strategy, which include changes to both the Scheme Maps and Text.

The Amendment Report forms Attachment 2 to this report and provides a detailed description of each of the proposed changes.

The changes to the maps largely relate to changes in the coding of residential land.

The changes to the text seek to update the wording of provisions and implement the objectives of the Strategy. The major changes are summarised as follows:

Dual Coding

The amendment will modify the density coding in the Scheme Maps consistent with the Strategy. In addition it will remove provisions associated with bonuses for corner lots and in its place introduce provisions relating to the dual coding requirements.

As the majority of eligible lots have now taken advantage of the corner lot bonuses, this provision is now largely irrelevant.

The amendment provides that for a property to take advantage of the higher of the dual codes, development must address seven specific criteria, aimed at minimising the impact on the amenity of the area. These include the requirement for at least three new dwellings being constructed; preservation of heritage values; minimisation of crossovers; provision of landscaping, including the preservation of mature trees wherever possible; and the need for new dwellings to address the street.

In addition to these provisions, all new development will also be required to comply with the Town's recently adopted Planning Policy - Residential Design Guidelines.

The proposed subdivision requirements are important provisions aimed at avoiding the subdivision of land prior to development. Without these provisions, density and housing targets are not likely to be achieved, as many landowners are likely to favour subdividing properties into two or three lots and development outcomes will be uncertain. In turn the Town will be under pressure to further increase densities, thereby undermining character and amenity.

Dual coded properties included on the Heritage List or Heritage Register may, however, be subdivided into two lots as a means of encouraging the retention of these important buildings.

George Street Mixed Use Precinct

The amendment proposes to include the Mixed Business zone along George Street within an R-AC-3 Residential Coding. The R-AC codes were introduced in the Residential Design Codes to better manage mixed use projects and provide for greater flexibility in terms of building height, plot ratio, car parking and setback standards.

The amendment proposes to vary the R-AC 3 code requirements by limiting the building height to a maximum of three storeys.

Town Centre

The amendment seeks to bring the Scheme into alignment with the recently adopted Local Planning Policy - Town Centre Redevelopment Guidelines. The Guidelines will be implemented by utilising Part 6 of the existing Scheme which allows for the establishment of 'Special Control Areas'. Accordingly the existing Town Centre zone will be included within a 'Special Control Area' in which the provisions of the Local Planning Policy – Town Centre Redevelopment Guidelines will apply once adopted as a Structure Plan under the proposed new provisions to be inserted in Part 6 of the Scheme.

Currently Part 6 of the Scheme does not contain any provisions; accordingly a number of clauses drawn from the 'model scheme' text will be inserted to provide for the establishment of 'Special Control Areas' and for approved Structure Plans to establish specific design guidelines and development criteria in these areas. This approach will also enable the adoption of planning controls in the future for the Redevelopment Investigation Areas identified in the Strategy - Leeuwin Barracks and Woodside Hospital site.

Home Businesses

An analysis of Home Business permissibility in surrounding local governments found that East Fremantle has the only Scheme where this use is prohibited in the Residential zone.

The amendment proposes to include Home Business as a discretionary use in the Residential zone. It is considered that the requirements for this use class under the Scheme is such that any impact upon residential amenity is effectively controlled. Notwithstanding this, additional conditions of any approval may still be applied to address specific issues which may be associated with any such proposal.

Natural Ground Level

The definition of Natural Ground Level included in TPS 3 is unique to the Scheme. The definition has created difficulties in attempting to administer its intent and has resulted in unintended consequences. The proposal is to amend the definition to have the same meaning as the Residential Design Codes. This will simplify the definition and provide a common understanding of intent.

Incidental Changes to the Scheme Text

A number of minor changes to the scheme text are included within the proposed amendment. These will not have any practical effect other than removing redundant provisions or misplaced references or typographical errors.

Heritage Provisions

It is proposed to include in the amendment a new definition –“heritage building” to include a building in either the Heritage List or the Municipal Inventory, so that the pre-conditions for subdivision and development approval for dual coded lots apply equally to buildings on either list. However this will not resolve the underlying problem which is:

- while the vast majority of heritage significant properties (approximately 1,028) are included on the 'Municipal Inventory' only 35 are formally adopted on the 'Heritage List'. It is only buildings on the 'Heritage List' which currently gain added protection under Part 7 of the Scheme; and
- it is only buildings on the Heritage List which are afforded protection by State Planning Policy 3.5 : Historic Heritage Conservation

In light of the above, although planning approval is needed to demolish a building in the Municipal Inventory, it can be difficult to sustain a refusal on heritage grounds alone.

As stated, legal advice was requested from Craig Slarke of 'McLeods Barristers and Solicitors'. This advice included consideration of various alternatives by which the

heritage provisions of the Scheme could be strengthened. The following is a summary of this advice and comments upon the various options:

- *If the Council believes that some or all of the properties which are on the Municipal Inventory but not on the Heritage List should be given the same protection as the properties on the Heritage List, then the proper response is to review the Heritage List and include the additional properties on it.*

Agreed, this would nominally be the preferred course. Accordingly a project to systematically notify property owners in each Precinct of the intention to transpose properties from the MI to the Heritage List was commenced last year, commencing with Plympton Ward. However the weight of the initial objections from landowners notified in the Plympton Ward has meant that the process has not been progressed, as it will clearly be a long and protracted task that is beyond the currently available staff resources of the Town.

- *It should also be kept in mind that the Scheme provides for the designation of heritage areas. If it is the case that the character of a particular area is heavily influenced by the fact many buildings in it are on the Municipal Inventory, it may be worthwhile for the Town to designate that area as a heritage area under the Scheme and to adopt a suitable supporting local planning policy.*

This option may be preferable to attempting to individually list particular properties. It will require a survey and analysis to justify the establishment of a 'heritage area' and relevant planning provisions (much of this work exists). Although it would be subject to similar public notification provisions as the preceding option, the resolution of objections and the drafting of applicable controls should be much more manageable. Nevertheless it is beyond the scope of this Scheme revision.

- *It would be possible, in theory, to amend the Scheme in order to give to the Municipal Inventory the same status, or a similar but reduced status, as the Heritage List. However to do so would require a substantial rewriting of the Scheme, as it is inconsistent with the model scheme text provisions upon which Part 7 is based.*

It is considered highly unlikely that the Minister, upon advice from the Department of Planning, would countenance such an approach because it would entail a substantial deviation from the Model Scheme text and would establish a precedent for other local governments to adopt similar provisions at variance with the established approach for heritage management within local planning schemes.

- *As to alternative means by which the status of places on the Municipal Inventory may be increased, it would be possible to adopt a local planning policy which seeks to give additional protection to such buildings. However that is unlikely to be of any real assistance if challenged in the SAT, as the applicant would undoubtedly point to clauses 7.1.1 and 7.1.2 of the Scheme which clearly indicate it is only those buildings on the Heritage List which are considered worthy of protection.*

This option is not supported for the reasons stated in the advice.

In conclusion, the proposed amendment will strengthen heritage provisions in relation to properties considered for redevelopment at the higher of the dual code provisions. However the existing issues in respect to heritage protection within the Scheme are not addressed within the proposed amendment. It is considered that to do so would delay the implementation of the Scheme Review and substantially broaden the scope and resource requirements of the review process. Accordingly it is considered desirable that the heritage issues identified within this report be separately addressed.

Conclusions

The planning review addresses the statutory requirement of the *Planning and Development Act 2005* for a periodic review of the Town Planning Scheme and Local Planning Strategy. Urban infill objectives of relevant State Planning Policies and the aspirations of many existing landowners are considered to have been met by this review whilst protecting the heritage and streetscape values of the Town.

It is considered the dual coding approach proposed to be incorporated in the Scheme will encourage a greater diversity in building types and an increased retention of existing built form in comparison with a blanket higher density rezoning. The approach requires that development proposals meet certain design criteria and only those lots/proposals meeting all the criteria can be considered for redevelopment.

Finally it is considered the proposed series of amendments will improve and update the existing Scheme whilst retaining the essential form and intent of the Scheme provisions.

RECOMMENDATION

That:

1. The Town of East Fremantle Local Planning Strategy 2013 be forwarded to the Western Australian Planning Commission seeking approval to advertise the Strategy in accordance with Regulation 12B of the Town Planning Regulations 1967 (as amended)
2. Council endorses the proposed Amendment 10 to the Town of East Fremantle Town Planning Scheme No 3 for the purposes of public notification and agrees that:
 - (a) the amendment should be advertised concurrently with the 2013 Local Planning Strategy once the Western Australian Planning Commission has granted approval to the advertising of the Local Planning Strategy.
 - (b) a copy of the draft amendment be forwarded to the Western Australian Planning Commission in support of the 2013 Strategy.
 - (c) a Community Engagement Program shall be developed to explain the Local Planning Strategy and proposed Scheme Amendment 10 prior to the statutory public advertising of the documents. The community engagement program shall be the subject of a separate report and determination by Council.

Cr Martin – Cr Nardi

That:

1. **The Town of East Fremantle Local Planning Strategy 2013 be forwarded to the Western Australian Planning Commission seeking approval to advertise the Strategy in accordance with Regulation 12B of the Town Planning Regulations 1967 (as amended)**
2. **Council endorses the proposed Amendment 10 to the Town of East Fremantle Town Planning Scheme No 3 for the purposes of public notification and agrees that:**
 - (a) the amendment should be advertised concurrently with the 2013 Local Planning Strategy once the Western Australian Planning Commission has granted approval to the advertising of the Local Planning Strategy.**
 - (b) a copy of the draft amendment be forwarded to the Western Australian Planning Commission in support of the 2013 Strategy.**
 - (c) a Community Engagement Program shall be developed to explain the Local Planning Strategy and proposed Scheme Amendment 10 prior to the statutory public advertising of the documents. The community engagement program shall be the subject of a separate report and determination by Council.**
3. **Council initiate the designation of heritage areas within the Town pursuant to clause 7.2 of the Scheme and further identify individual properties outside of the designated areas which may require particular heritage protection. CARRIED**

T54. CONFIDENTIAL BUSINESS

Nil.

T55. URGENT BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING

Nil.

T56. CLOSURE OF MEETING

There being no further business the meeting closed at 8.58pm.

*I hereby certify that the Minutes of the meeting of the **Town Planning & Building Committee** of the Town of East Fremantle, held on **7 May 2013**, Minute Book reference **T41. to T56.** were confirmed at the meeting of the Committee on*

.....

Presiding Member