



# MINUTES

## Town Planning Committee

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Tuesday, 3 September 2019 at 6.30pm

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MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING COMMITTEE HELD IN THE COUNCIL CHAMBER, 135 CANNING HIGHWAY, EAST FREMANTLE ON TUESDAY 3 SEPTEMBER 2019

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

Presiding member opened the meeting at 6.30 pm and welcomed members of the gallery

**2. ACKNOWLEDGEMENT OF COUNTRY**

*"On behalf of the Council I would like to acknowledge the Whadjuk Nyoongar people as the traditional custodians of the land on which this meeting is taking place and pay my respects to Elders past and present."*

**3. RECORD OF ATTENDANCE**

**3.1 Attendance**

The following members were in attendance:

Cr Collinson	Presiding Member
Mayor O'Neill	
Cr Natale	
Cr Harrington	
Cr White	
Cr Nardi	

The following staff were in attendance:

A Malone	Executive Manager Regulatory Services
K Culkin	Minute Secretary

**3.2 Apologies**

Nil

**3.3 Leave of Absence**

Nil

**4. MEMORANDUM OF OUTSTANDING BUSINESS**

Nil

**5. DISCLOSURES OF INTEREST**

**5.1 Financial**

Nil

**5.2 Proximity**

Nil

**5.3 Impartiality**

Nil

**6. PUBLIC QUESTION TIME**

**6.1 Responses to previous questions from members of the public taken on notice**

Nil

**6.2 Public Question Time**

Nil

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**7. PRESENTATIONS/DEPUTATIONS**  
Nil

**7.1 Presentations**  
Nil

**7.2 Deputations**  
Nil

**8. CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**8.1 Town Planning Committee (6 August 2019)**

**8.1 OFFICER RECOMMENDATION**

Moved Cr Harrington, seconded Cr White

That the minutes of the Town Planning Committee meeting held on Tuesday 6 August 2019 be confirmed as a true and correct record of proceedings.

(CARRIED UNANIMOUSLY)

**9. ANNOUNCEMENTS BY THE PRESIDING MEMBER**  
Nil

**10. REPORTS OF COMMITTEES**  
Nil

## 11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

### 11.1 Philip Street No 2 (Lot 700) New double storey dwelling and studio

<b>Owner</b>	Ante and Branka Musulin
<b>Applicant</b>	Ante and Branka Musulin
<b>File ref</b>	P110/18; PHI2
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	3 September 2019
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

#### Purpose

This report considers a planning application for the development of a new double storey dwelling and studio at No 2 (Lot 700) Philip Street, East Fremantle.

#### Executive Summary

The applicant is seeking Council approval to construct a new double storey dwelling and studio at the subject property. This plan is amended from the original plans that were submitted but never presented to Planning Committee or Council for a final determination in late 2018.

The owner chose to put the development on hold to address a number of concerns that the Town had with regard to the design and location of the original proposal. The current proposal includes a house located to the north of the lot and a studio to the south, as well as the retention of the existing carport to the south and extensive garden beds along the southern boundary of the lot.

The proposed demolition of the existing dwelling on site does not require planning approval as the existing development is not listed as a heritage building. There will only be a requirement to gain a demolition permit in compliance with the Building Act.

The proposed new double storey dwelling is comprised of four bedrooms, two bathrooms, double garage and an upstairs alfresco/balcony. The dwelling has been designed to face Gordon Street rather than Philip Street in the same manner as the existing dwelling on the site, although the property address is 2 Philip Street.

Two variations are requested to the requirements of the Residential Design Guidelines and five variations are requested to the requirements of the Residential Design Codes including;

- (i) Primary Street Setbacks – 6m required, 4.5m provided,
- (ii) Minor Incursions into Street Setback Area – 1m maximum, 1.5m provided,
- (iii) Wall Heights – 5.6m required, 6.171m provided,
- (iv) Roof Pitch – 10 degrees provided,
- (v) Outdoor Living Area – Not accessible from habitable room,
- (vi) Lot Boundary Setbacks – 3.8m required, 3.721m provided,
- (vii) Visual Privacy – Kitchen Window – 6m required, 3.6m to 5m provided,
- (viii) Visual Privacy – Alfresco/Balcony Window – 7.5m required, 3.6m to 5m provided,

It is felt that this proposal can be supported with the inclusion of planning conditions.

## Background

Zoning: Residential R17.5

Site area: 745m<sup>2</sup>

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

P29/17 Planning approval for 2 storey grouped dwelling 3 July 2017

Building permit 2017106 15 September 2017

WAPC Ref 155758- 18 July 2018- Subdivision of parent lot (No 2 (Lot 66) Philip Street into 2 smaller lots of 745m<sup>2</sup> (No 2 Lot 700 Philip Street) and 368m<sup>2</sup> (No 11 Lot 699 Gordon Road)

## Consultation

### Advertising

The proposal was advertised to the surrounding landowners from 19 July to 2 August 2019. No submissions were received.

### Community Design Advisory Committee (CDAC)

This application was not considered at a formal CDAC meeting, however, members of the Committee were emailed a copy of the plans to make comment. Comments were received from one Committee member and a summary of these comments are included below;

Committee Member Submission	Officer Response
<p>The primary issue for this proposal is that the Council's Town Planning Scheme is generous and fair in providing an opportunity for a corner lot to be subdivided where each house faces a separate street frontage. Interestingly it is the same reason why the clause 4.2.4 of the DC subdivision Policy was introduced. But this has already occurred as a result of the subdivision of the original lot into two lots.</p> <p>By permitting and supporting a further potential subdivision it will result in additional building bulk and have an effect on the immediate area, as well as setting an undesirable precedent.</p> <p>During the subdivision application the WAPC will ask for Council's comments, which may be "not to support" the application, but ultimately the WAPC will make a decision on what they consider are its merits.</p> <p>It appears (and only appears, until we get a further application for subdivision or development) that the applicant and their advisers are being deceitful to the detriment of the community.</p>	<p>The CDAC member's comments are noted. The application that is the subject of this report is a development application for a new double storey dwelling and studio on an existing approved lot. The matter being decided is not regarding the subdivision of the lot although there are concerns that there may be an attempt in the future to subdivide the lot. Currently subdivision is not possible given the size of the lot and the density coding. The Town would take the position that subdivision would only be supported if all the requirements for the relevant density coding are met. Ultimately final approval of subdivisions is made by the Western Australian Planning Commission and although they may follow the recommendations of the Town there are examples where the WAPC has given subdivision approval that are contrary to the advice provided by the Town.</p>

The building proposed for the site is still lacking in design quality, but this unfortunately is not uncommon and is likely to be supported by Council.

My only practical suggestion is to flush out the applicant's intention and present a challenge; Clarify the Council's position on corner lot subdivisions by adding a policy statement; or accept the proposal; The proposed location of the dwelling indicates the applicant's intention to further develop the site, which is contrary to the intention of the scheme and will have an impact on the amenity of the community. The proposed design is not considered of a suitable standard to justify the dwelling with potential additional development that may be presented to the Council at a future time. Council is only willing to consider a proposal on the site deemed to be of exceptional design that will contribute to and be acceptable to the community.

Recommend the Planning Department prepares a simple policy, which clarifies where subdivision of corner lot has occurred no further subdivision of the corner lot will be supported as it is contrary to the scheme's intent and provisions. The purpose for a policy like this is to provide "substance" to any subdivision referral that is sent by the WAPC to Council. Roll the dice, accept the proposal and see what happens!

#### **Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

*Town of East Fremantle Local Planning Scheme No. 3 (LPS No. 3)*

#### **Policy Implications**

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

#### **Financial Implications**

Nil

## Strategic Implications

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

### Built Environment

*Accessible, well planned built landscapes which are in balance with the Town's unique heritage and open spaces.*

3.1 *Facilitate sustainable growth with housing options to meet future community needs.*

3.1.1 *Advocate for a desirable planning and community outcome for all major strategic development sites.*

3.1.2 *Plan for a mix of inclusive diversified housing options.*

3.2 *Maintaining and enhancing the Town's character.*

3.2.1 *Ensure appropriate planning policies to protect the Town's existing built form.*

3.3 *Plan and maintain the Town's assets to ensure they are accessible, inviting and well connected.*

3.3.1 *Continue to improve asset management practices.*

3.3.2 *Optimal management of assets within resource capabilities.*

3.3.3 *Plan and advocate for improved access and connectivity.*

### Natural Environment

*Maintaining and enhancing our River foreshore and other green, open spaces with a focus on environmental sustainability and community amenity.*

4.1 *Conserve, maintain and enhance the Town's open spaces.*

4.1.1 *Partner with Stakeholders to actively protect, conserve and maintain the Swan River foreshore.*

4.1.2 *Plan for improved streetscapes parks and reserves.*

4.2 *Enhance environmental values and sustainable natural resource use.*

4.2.1 *Reduce waste through sustainable waste management practices.*

4.3 *Acknowledge the change in our climate and understand the impact of those changes.*

4.3.1 *Improve systems and infrastructure standards to assist with mitigating climate change impacts.*

## Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not approve the proposed development	Possible (3)	Minor (2)	Moderate (5-9)	COMPLIANCE Some temporary non-compliances	Accept Officer Recommendation



## Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	6
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

## Site Inspection

A site inspection was undertaken.

## Comment

### Statutory Assessment

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

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

## Residential Design Codes Assessment

	Required	Proposed	Status
Street Front Setback	6.0m	4.5m	D
Minor Incursions	0.75m	2.5m	D
Secondary Street Setback	1.5m	6.84m	A
<b>Lot boundary setbacks</b>			
Studio - East	1.0m	1.2m	A

Eastern wall – main dwelling – bottom storey	1.5m	1.8m	A
Eastern wall – main dwelling – top storey	1.8m	1.8m	A
Northern wall – main dwelling – bottom storey	1.5m	3.721m	A
<b>Northern wall – main dwelling – top storey</b>	<b>3.8m</b>	<b>3.721m</b>	<b>D</b>
Open Space	50%	72%	A
<b>Outdoor Living Areas</b>	<b>Accessible from habitable room</b>	<b>Not directly accessible from habitable room</b>	<b>D</b>
	36m <sup>2</sup>	>130m <sup>2</sup>	A
Car Parking	1-2	2	A
Vehicle Access	Driveway	5m wide	A
Site Works	Max 0.5m	<0.5m	A
Visual privacy setback	N/A	N/A	N/A
Overshadowing	≤25%	Overshadows subject property	A
Stormwater management	On-site	To be conditioned	A

#### Local Planning Policies Assessment

<b>LPP Residential Design Guidelines Provision</b>	<b>Status</b>
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
3.7.4 Site Works	A
3.7.5 Demolition	A
3.7.6 Construction of New Buildings	A
<b>3.7.7 Building Setbacks and Orientation</b>	<b>D</b>
<b>3.7.8 Roof Form and Pitch</b>	<b>D</b>
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
<b>3.7.14 Footpaths and Crossovers</b>	<b>D</b>
<b>3.7.17 Precinct Requirements</b>	<b>D</b>

This development application was originally submitted to the Town in November 2018 but following a request for the applicant to submit amended plans to address a number of issues relating to the proposal the application was never presented to Committee/Council. Amended plans were subsequently presented to the Town which addressed some of the Council's concerns, and these are the subject of this report.

This development application proposes the demolition of the existing dwelling and the development of a new dwelling including a studio at the subject property. The existing carport located on the southern end of the lot is to be retained. This represents a considerable change to the previously presented plans for the same site. The dwelling has been relocated to the north of the site and a studio has been added to the southern portion of the site. Two variations are requested to the requirements of the Residential Design Guidelines and five variations are requested to the requirements of the Residential Design Codes for the main double storey dwelling. The studio is fully compliant with the Residential Design Codes.

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### **Context**

The lot was previously subdivided in February 2018 with two lots being created of 368m<sup>2</sup> (No 11 (Lot 66) Gordon Street) and 745m<sup>2</sup> (No 2 (Lot 700) - the subject lot). A planning approval and building permit was granted for development at what is now No 11 (Lot 66) Gordon Street in July and September 2017 respectively. No 11 (Lot 66) Gordon Street achieved the minimum and average lot size requirements and minimum lot frontage requirements for lot subdivision at R20 density code as required by the R Codes and as permitted by LPS No 3. Under Clause 5.3.1 there is a density bonus for corner lots which can be subdivided at the R20 density coding although the surrounding lots are still coded R17.5. The Town recommended to the WAPC that the subdivision be approved.

It should be noted that the owner of 2 Philip Street is also the owner of 11 Gordon Street which is directly to the north of the property that is the subject of this report.

### Primary Street Setback

The current dwelling on site fronts Gordon Street, although the registered address is 2 Philip Street. Under the Residential Design Codes a primary street is defined as "Unless otherwise designated by the local government, the sole or principal public road that provides access to the major entry (front door) to the dwelling." In this case the applicant has chosen to continue to have the proposed dwelling facing Gordon Street, rather than Philip Street. The assessment of the proposed dwelling will assume that the primary street is Gordon Street although the address is 2 Philip Street.

The dwelling is setback 4.5m from the primary street front rather than 6m as required by the deemed to comply requirements of clause 5.1.2 C2.1. However, the design does achieve design principles 5.1.2 P2.1. The buildings are setback such that they contribute to and are consistent with established streetscape, provide adequate privacy and open space for dwellings and accommodate site planning requirements such as parking landscape and utilities. The dwelling is located on a corner lot that is set back a considerable distance from Philip Street and is located the same distance from the front boundary as the neighbouring property which has the same owner. The reduced primary street setback can be supported.

### Minor Incursions into Street Setback Area

A porch which is considered a minor incursion is set into the street setback area by 1.5m. Although it does not achieve the deemed to comply clause 5.1.2 C2.4 it does achieve design principles 5.1.2 P2.2 in that the minor projections do not detract from the character of the streetscape and the feature porch positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework. There is sufficient open area to the south of the property to offset the fact that the features protrude into the primary setback area. As such this variation can be supported.

### Maximum Wall Height

The height of the exterior walls of the dwelling exceed the maximum wall height as required by clause 3.7.17.4.1.3 of the Residential Design Guidelines. The walls rise to 6.171m where a maximum height of 5.6m is permitted. Although it does not comply with the maximum wall height the dwelling is 0.7m lower than what it possibly could be in terms of maximum roof height (7.4m compared to 8.1m) therefore has a lesser impact on views for neighbouring properties. By having a total roof height less than the maximum permitted by the Residential Design Guidelines it is less likely that river views which are a relevant planning consideration in the Richmond Hill precinct will be impacted upon. As such the increased wall height can be supported.

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#### Roof Pitch

The Residential Design Guidelines allow for properties in Richmond Hill to not be restricted to traditional roof forms provided they do not adversely affect the immediate locality. With a pitch of 10 degrees the roof is similar to the property to the north and a more contemporary roof design than older dwellings in the area. The shallow pitch means that the roof can be lower than the maximum roof height while still allowing for full height ceilings inside the dwelling. The proposed roof pitch of 10 degrees is an acceptable variation as the roof is sympathetic to surrounding dwellings in accordance with Performance Criteria Clause 3.7.8.3 P5.

#### Outdoor Living Areas

The outdoor living area is not directly accessible from a habitable room, and entry can only be from the laundry or rear of garage. There is a large balcony 4m by 5.8m that is adjacent to the upstairs lounge and living area of the dwelling, which faces the northern sun and has large concertina windows that ensure good ventilation, and optimise the northern aspect of the site (in accordance with design principles 5.3.1 P1.1 of the Residential Design Codes). As such the upstairs outdoor living area can be supported in lieu of other outdoor areas.

#### Lot Boundary Setbacks

##### Northern Wall – Main Dwelling – Top Storey

The dwelling is proposed to be located 3.721m rather than 3.8m from the northern boundary of the property. As such it does not achieve the deemed to comply requirements of Clause 5.1.3C3.1i of the Residential Design Code. However, this variation can be supported based on design principles Clause 5.1.3.P3.1;

- (i) More effective use of the space
- (ii) There is minimal impact of building bulk on adjoining properties
- (iii) Minimal impact on sunlight and ventilation to the building and open spaces on the site or adjoining properties.
- (iv) No overlooking or loss of privacy
- (v) Does not have an adverse impact on the amenity of the adjoining property

#### Visual Privacy

##### Kitchen

The kitchen is seen as a habitable room according to the Residential Design Codes. It has major openings and is located on the upper storey of the dwelling. As a result it is required to achieve a privacy setback of 6m from the neighbouring properties in accordance with deemed to comply clause 5.4.1 C1.1. However, the windows only achieve setbacks of between 3.6m and 5m. The dwelling is able to achieve the design principles 5.4.1 P1.1. The kitchen window faces the southern wall of the neighbouring dwelling. There are significant blank sections and highlight windows located a minimum of 1.6m from the finished floor level of the upper storey of the neighbouring dwelling. As a result the kitchen window does not look directly into any habitable rooms or outdoor living areas and there is little loss of privacy. As noted earlier the neighbouring property (11 Gordon Street) has the same owner as 2 Philip Street. The reduced privacy setback for the kitchen can be supported.

##### Scullery

The scullery is an extension of the kitchen and is therefore required to have privacy setbacks of 6m. In this case the setbacks are only between 3.6m and 5m and as a result it may be possible to see into the rear of the property to the north and the rear of the yard of the property to the east. In the interests of privacy it was required that the windows have either obscure glazing or are changed to be highlight windows. Amended plans were presented that included obscure glazing to the scullery window which

addresses the potential overlooking issue into the rear yard of the neighbouring properties. Although the scullery does not achieve deemed to comply requirement 5.4.1 C1.1 the use of obscure glazing ensures achievement of design principles 5.4.1 P1.2.

#### Upstairs alfresco

The upstairs alfresco is required to have privacy setbacks of 7.5m however the setback is only between 3.6m and 5m. The alfresco faces the southern wall of neighbouring dwelling which has highlight windows and faces living area and bed 1. Although there is direct overlooking of the northern property from the balcony/alfresco the location is acceptable and can be supported given that the balcony/alfresco overlooks a dwelling to the north which has the same owner, overlooks walls with highlight windows and these rooms are internal living areas, rather than outdoor active habitable spaces. In accordance with design principles clause 5.4.1 P1.1 and P1.2 the reduced privacy setbacks can be supported.

#### Crossovers

It is noted that 2 crossovers were indicated on the original plans. Under the Residential Design Guidelines Clause 3.7.14.3 A5.1 only one crossover per dwelling is permitted per lot. Amended plans were presented that added the notation that the second crossover will be removed at the applicant's expense. A condition will be imposed that requires the removal of the original crossover at the landowner's expense.

#### **Conclusion**

The proposed demolition of the existing dwelling and other structures on the subject site does not require planning approval as it is not listed as a heritage building. As such the demolition can proceed without the planning approval of Council. A demolition license only will be required.

Based on the assessment that has been completed for this proposed development and the explanation provided in this report, the variations that have been proposed to the Residential Design Guidelines and the Residential Design Codes are considered acceptable. As such it is recommended that the proposed development be supported subject to planning conditions.

- *Mr A Musulin attended the meeting to answer any questions raised by the Committee and responded to Cr Natale's query regarding the exterior colour and finish of the walls.*

#### **11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP010919**

**Moved Cr White, seconded Cr Natale**

**That Council grant development approval and exercise discretion in regard to the following variations;**

- (i) Clause 5.1.2 C2.1 – Residential Design Codes – Primary Street Setbacks – 6m required, 4.5m provided;**
- (ii) Clause 5.1.2 C2.4 – Residential Design Codes – Minor Incursions into Street Setback Area – 1m maximum, 1.5m provided;**
- (iii) Clause 3.7.17.4.1.3 - Residential Design Guidelines – Wall Heights – 5.6m required, 6.171m provided;**
- (iv) Clause 3.7.8.3 – Residential Design Guidelines - Roof Pitch – 10 degrees provided;**
- (v) Clause 5.3.1 – Residential Design Guidelines - Outdoor Living Area – not accessible from habitable room;**
- (vi) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – 3.8m required, 3.721m provided;**



- (vii) Clause 5.4.1 – Residential Design Code - Visual Privacy – Kitchen Window – 6m required – 3.6m to 5m provided;
- (viii) Clause 5.4.1 – Residential Design Code - Visual Privacy – Alfresco/Balcony Window – 7.5m required – 3.6m to 5m provided;

for a new double storey dwelling and studio at No. 2 (Lot 700) Philip Street, East Fremantle, in accordance with the plans date stamped received 21 August 2019, subject to the following conditions:

- (1) The crossover located closest to Gordon and Philip Street and part of the original development at the site shall be removed at the owner's expense prior to occupation of the dwelling.
- (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 Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (4) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (5) All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (6) If requested by Council within the first two years following installation, the roofing is to be treated to reduce reflectivity. The treatment is to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (7) 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) Any proposed new fencing or walls along the front boundary will require the submission of a development application for Council's consideration. All fencing and walls are required to be in compliance with the Residential Design Guidelines in terms of materials, dimensions and visual permeability, as well as truncations and sightlines where the fence or wall meets the vehicle driveway.
- (10) This approval does not apply to any other works including front fences or other structures. Any further proposed development will require the submission of a development application to the Town for the consideration of Council.
- (11) The use of the studio for short term accommodation will require a change of use application to be submitted to the Town for the consideration of Council.
- (12) This planning approval is to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

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

**(CARRIED UNANIMOUSLY)**

**Note:**

As 4 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2019 this application deemed determined, on behalf of Council, under delegated authority.

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## 11.2 Gordon Street No 11 (Lot 699) Temporary installation of sea container and barbeque shed

<b>Owner</b>	Ante and Branka Musulin
<b>Applicant</b>	Ante and Branka Musulin
<b>File ref</b>	P006/19; GOR11
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	3 September 2019
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

### Purpose

This report considers a planning application for the temporary installation of a sea container and barbeque shed at No 11 (Lot 699) Gordon Street, East Fremantle.

### Executive Summary

The applicant is seeking Council approval to temporarily retain a sea container and barbeque shed as currently positioned at the subject property. This follows a hearing at the State Administrative Tribunal and mediation meeting held between the Town's representatives and the applicant under the auspices of SAT. Council is required to reconsider the application under section 31 of the State Administrative Act (2004).

It is felt that this proposal can be supported subject to the temporary nature of the proposal and the inclusion of planning conditions.

### Background

Zoning: Residential R17.5

Site area: 368m<sup>2</sup>

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

WAPC Ref 155758- 18 July 2018- Subdivision of parent lot (No 2 (Lot 66) Philip Street into 2 smaller lots of 745m<sup>2</sup> (No 2 (Lot 700) Philip Street) and 368m<sup>2</sup> (No 11 (Lot 699) Gordon Road)

DA P029/17- 3 July 2017- Two storey grouped dwelling

DA P051/17- 23 June 2017- Temporary approval for the location of a sea container

DA P006/19- 16 April 2019- Refusal of proposal to install sea container- matter appealed to State Administrative Tribunal

Building permit 2017106- Two storey grouped dwelling

### Consultation

#### Advertising

Advertised to the landowners directly to the north of the subject property. No submissions received.

#### Community Design Advisory Committee (CDAC)

This application was not referred to CDAC.



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**Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

*Town of East Fremantle Local Planning Scheme No. 3 (LPS No. 3)*

**Policy Implications**

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

**Financial Implications**

Nil

**Strategic Implications**

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

*Built Environment*

*Accessible, well planned built landscapes which are in balance with the Town's unique heritage and open spaces.*

*3.1 Facilitate sustainable growth with housing options to meet future community needs.*

*3.1.1 Advocate for a desirable planning and community outcome for all major strategic development sites.*

*3.1.2 Plan for a mix of inclusive diversified housing options.*

*3.2 Maintaining and enhancing the Town's character.*

*3.2.1 Ensure appropriate planning policies to protect the Town's existing built form.*

*3.3 Plan and maintain the Town's assets to ensure they are accessible, inviting and well connected.*

*3.3.1 Continue to improve asset management practices.*

*3.3.2 Optimal management of assets within resource capabilities.*

*3.3.3 Plan and advocate for improved access and connectivity.*

*Natural Environment*

*Maintaining and enhancing our River foreshore and other green, open spaces with a focus on environmental sustainability and community amenity.*

*4.1 Conserve, maintain and enhance the Town's open spaces.*

*4.1.1 Partner with Stakeholders to actively protect, conserve and maintain the Swan River foreshore.*

*4.1.2 Plan for improved streetscapes parks and reserves.*

*4.2 Enhance environmental values and sustainable natural resource use.*

*4.2.1 Reduce waste through sustainable waste management practices.*

*4.3 Acknowledge the change in our climate and understand the impact of those changes.*

*4.3.1 Improve systems and infrastructure standards to assist with mitigating climate change impacts.*

## Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not approve the proposed development	Possible (3)	Minor (2)	Moderate (5-9)	COMPLIANCE Some temporary non-compliances	Accept Officer Recommendation

## Risk Matrix

Consequence		Insignificant	Minor	Moderate	Major	Extreme
Likelihood		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	6
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

## Site Inspection

A site inspection was undertaken.

## Comment

### Statutory Assessment

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

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

#### Residential Design Codes Assessment

	Required	Proposed	Status
<b>Street Front Setback</b>	<b>6.0m</b>	<b>4.9m</b>	<b>D</b>
Secondary Street Setback	N/A	N/A	N/A
<b>Lot boundary setbacks</b>			
<b>North</b>	<b>1.0m</b>	<b>0.6m</b>	<b>D</b>
East	1.0m	9.0m	A
<b>Open Space</b>	<b>50%</b>	<b>47%</b>	<b>D</b>
<b>Outdoor Living Areas</b>	Accessible from habitable rooms	Access from habitable room	A
	<b>36m<sup>2</sup></b>	<b>18m<sup>2</sup></b>	<b>D</b>
Car Parking	N/A	N/A	N/A
Vehicle Access	N/A	N/A	N/A
Site Works	N/A	N/A	N/A
Visual privacy setback	N/A	N/A	N/A
Overshadowing	≤25%	Overshadows subject property	A
Stormwater management	On-site	To be conditioned	A

#### Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
<b>3.7.2 Additions and Alterations to Existing Buildings</b>	<b>D</b>
<b>3.7.3 Development of Existing Buildings</b>	<b>D</b>
3.7.4 Site Works	N/A
3.7.5 Demolition	N/A
3.7.6 Construction of New Buildings	N/A
<b>3.7.7 Building Setbacks and Orientation</b>	<b>D</b>
<b>3.7.8 Roof Form and Pitch</b>	<b>D</b>
<b>3.7.9 Materials and Colours</b>	<b>D</b>
3.7.10 Landscaping	N/A
<b>3.7.11 Front Fences</b>	<b>D</b>
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	N/A
<b>3.7.17 Precinct Requirements</b>	<b>D</b>

The application proposes to retain a sea container as a garden shed to be located on the northern side of the subject property. The matter was referred to the Council under section 31 of the State Administrative Tribunal Act (2004). A number of variations are requested to the requirements of the Residential Design Guidelines and the Residential Design Codes. It was agreed at a SAT mediation hearing that an application would be submitted for temporary approval of the sea container and barbeque shed located in the given position for a temporary period of 2 years, until they could be relocated to the neighbouring lot when redevelopment occurred on that site. Since the previous development application was brought before Council the applicant has endeavoured to shield the structure from the street front using dense planting of vegetation, as well as planting vegetation



between the sea container and barbeque shed to soften the stark look of the structures, which adjoin the neighbour's southern wall.

#### Street Setback

The sea container is set back 4.8m from the front boundary. There is a requirement that the front boundary setback is 6m for properties with a density coding of R17.5 in accordance with Table 1 of the Residential Design Codes. This development does not comply with the minimum requirement. It is noted that extensive vegetation has been planted in front of the sea container to obscure its presence from the street front, and therefore has minimal streetscape impact.

#### Side Lot Boundary Setback

There is a requirement for structures to be located a minimum of 1m from the side boundary. In this case the sea container wall is located 0.98m from the northern lot boundary and the barbeque shed is located 0.35m from the northern lot boundary. Neither structure is in compliance with Table 2a of the Residential Design Codes in accordance with Clause 5.1.3 C3.1 (i), however, given the temporary nature of the structures in the location and the fact that they do not impact on sunlight or ventilation to the adjoining site and improve privacy and reduce overlooking to adjoining properties in accordance with design principles Clause 5.1.3 P3.1 the setbacks are considered acceptable. After a two year period there will be reduced impact on the neighbouring property as the sea container and barbeque shed will be removed and the area adjacent to the boundary wall will be cleared of structures.

#### Open Space

The total open space is equivalent to 43% (160m<sup>2</sup>) of the lot is provided on the subject property which is below the minimum 50% required by Clause 5.1.4 Table 1 of the Residential Design Codes. Given that the structures on site are temporary, the reduction in open space is considered acceptable. A condition has been included in the Officer's recommendation limiting the duration of time that the structures can remain on site.

#### Outdoor Living Area

The outdoor living area does not achieve the minimum area of 36m<sup>2</sup> as required by Table 1 of the Residential Design Codes. In this case the outdoor living area is 18m<sup>2</sup> well below the minimum required area, however, a first floor balcony provides a quality outdoor space accessed from a habitable room. This balcony minimises any impacts from the lack of ground floor living areas.

#### Aesthetics

There is a requirement that the proposed structures should follow the established pattern of development in terms of form, scale and bulk (Residential Design Guidelines Clause 3.7.6.1) and new developments should not negatively impact on the streetscape character (Residential Design Guidelines Clause 3.7.6.2). Whilst the sea container does not match the existing pattern of development nor does it add positively to the streetscape character of the Richmond Hill area, the applicant has added substantial vegetation to the front of the property which does "green" the front of the property and minimise any impact caused by the sea container. A permanent sea container is a form of development that detracts from the streetscape and could potentially establish an undesirable form of development in the area. However, a temporary approval would mean that after 2 years the structures would be removed. At the same time the applicant has worked hard to reduce the impact of the structures from the street front by planting vegetation in front of the fence. The vegetation has significantly reduced the aesthetic impact of the sea container from the street and as such can be supported.

## Conclusion

It should be noted that an approval was given for the temporary placement of the same sea container on the verge during the construction of the dwelling located on the subject lot (DA P051/17). Since then the sea container has been relocated to the side of the dwelling without approval and the transfer was photographed by Council Officers. Likewise the barbeque shed was located on site without planning approval. The siting of the sea container on site in its current position was the subject of a development application that was presented to Council in April of this year and refused. This decision was appealed at the State Administrative Tribunal with a hearing being held that resolved to adjourn a decision for mediation after an on-site visit by officers from the Town, the applicant and a member of SAT. At a subsequent mediation meeting a number of commitments were made that were reflected in this subsequent application for planning approval for the sea container, barbeque shed and fence. The temporary approval of both structures on site for a 2 year period acts to formalise the actions of the applicant and also imposes a requirement on the applicant to require a relocation of the structures in the future when the neighbouring lot is redeveloped.

Although the location of both structures does compromise the requirements of the Residential Design Codes and the Residential Design Guidelines for the time that the developments are in place the approvals are only temporary (as conditioned) and there is an expectation that at the end of this time the structures would be relocated in a more appropriate location that would ensure an improvement in urban design outcomes on the subject lot. It was proposed that the sea container and barbeque shed would be relocated to the neighbouring property at a future time following the development of a new dwelling on that lot and which is the subject of development application P110/18. The applicant has spent considerable time and effort vegetating the front of the property and minimising the impact of the sea container on the streetscape. As such the development should be supported subject to planning conditions.

- *Mr Musulin attended the meeting to answer any questions raised by Committee members and responded to the query regarding the screening of the sea container to shield it from view from the street.*

### 11.2 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP020919

**Moved Cr Natale, seconded Cr Nardi**

**That development approval is granted and Council exercises its discretion in regard to the following;**

- (i) Clause 5.1.2 – Residential Design Codes – Street Setback – Sea Container - 6m required, 4.8m provided**
- (ii) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks - Sea Container – 1m required, 1.6 m provided;**
- (iii) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – Barbeque Shed – 1m required, .35m provided;**
- (iv) Clause 5.1.6 – Residential Design Codes – Open Space – 50% required – 43% provided;**
- (v) Clause 5.3.1 – Residential Design Codes – Outdoor Living Areas – 36m<sup>2</sup> required, 18m<sup>2</sup> provided**
- (vi) Clause 3.7.6.3 – Residential Design Guidelines – Construction of New Buildings – compatible with context in terms of bulk, scale and design**

**for a sea container and barbeque shed to the existing residence at No. 11 (Lot 699) Gordon Street, East Fremantle, in accordance with the plans date stamped received 21 June 2019, subject to the following conditions:**



- (1) This is a temporary planning approval which permits the sea container and the barbeque shed to be located in their approved locations for a period of twenty four months. At the end of this time the structures shall be removed and relocated to another site.
- (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) All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (4) If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (5) 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.
- (6) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (7) This approval does not relate to other works or uses. A development application is required to be submitted to the Town for any other proposed works or changes of use for the consideration of Council.
- (8) This planning approval is to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

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

***conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – “An Installers Guide to Air Conditioner Noise”***

***(CARRIED UNANIMOUSLY)***

Note:

As 4 Committee members voted in favour of the Reporting Officer’s recommendation, pursuant to Council’s decision regarding delegated decision making made on 19 March 2019 this application deemed determined, on behalf of Council, under delegated authority.

### 11.3 View Terrace No 11 (Lot 1) Proposed alterations and additions

<b>Owner</b>	Michael & Georgia & Bernadette Hardwick
<b>Applicant</b>	Michael Hardwick
<b>File ref</b>	P054/19; VIE11
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	3 September 2019
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

#### **Purpose**

This report considers a planning application for proposed alterations and additions including renovations to an existing dwelling and a new second storey addition at No 11 (Lot 1) View Terrace, East Fremantle.

#### **Executive Summary**

The applicant is seeking Council approval for the following variations to the Residential Design Code and the Residential Design Guidelines;

- (i) Lot boundary setbacks - rear garage – a wall is proposed that is located on the boundary (nil setback) where 1m is required;
- (ii) Lot boundary setbacks - front garage – a wall is proposed that is located 0.2m from the boundary where 1m is required;
- (iii) Wall height- the dwelling exceeds the maximum 5.6m required;
- (iv) Roof pitch – the roof pitch is 2.5 degrees where 28 to 36 degrees is required;
- (v) Outdoor living area – not located behind the front setback area

It is considered that the above variations can be supported subject to conditions of planning approval being imposed.

#### **Background**

Zoning: Residential R17.5

Site area: 383m<sup>2</sup>

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

P049/18 - 2 October 2018 - Planning approval given for demolition and new 2 storey dwelling

#### **Consultation**

##### Advertising

The application was advertised to surrounding land owners 4 July to 19 July 2019. No submissions were received. The neighbouring strata property owner provided support for the proposed development

##### Community Design Advisory Committee (CDAC)

The application was not referred to CDAC as the overall design is considered to be similar to the previously approved development, however, in this instance the existing dwelling is being retained and substantially altered to resemble a similar design.

##### External Consultation

Nil



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**Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

*Town of East Fremantle Local Planning Scheme No. 3 (LPS No. 3)*

**Policy Implications**

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

**Financial Implications**

Nil

**Strategic Implications**

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

*Built Environment*

*Accessible, well planned built landscapes which are in balance with the Town's unique heritage and open spaces.*

*3.1 Facilitate sustainable growth with housing options to meet future community needs.*

*3.1.1 Advocate for a desirable planning and community outcome for all major strategic development sites.*

*3.1.2 Plan for a mix of inclusive diversified housing options.*

*3.2 Maintaining and enhancing the Town's character.*

*3.2.1 Ensure appropriate planning policies to protect the Town's existing built form.*

*3.3 Plan and maintain the Town's assets to ensure they are accessible, inviting and well connected.*

*3.3.1 Continue to improve asset management practices.*

*3.3.2 Optimal management of assets within resource capabilities.*

*3.3.3 Plan and advocate for improved access and connectivity.*

*Natural Environment*

*Maintaining and enhancing our River foreshore and other green, open spaces with a focus on environmental sustainability and community amenity.*

*4.1 Conserve, maintain and enhance the Town's open spaces.*

*4.1.1 Partner with Stakeholders to actively protect, conserve and maintain the Swan River foreshore.*

*4.1.2 Plan for improved streetscapes parks and reserves.*

*4.2 Enhance environmental values and sustainable natural resource use.*

*4.2.1 Reduce waste through sustainable waste management practices.*

*4.3 Acknowledge the change in our climate and understand the impact of those changes.*

*4.3.1 Improve systems and infrastructure standards to assist with mitigating climate change impacts.*

## Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not approve the proposed development	Possible (3)	Minor (2)	Moderate (5-9)	COMPLIANCE Minor regulatory or statutory impact	Accept Officer Recommendation

## Risk Matrix

Consequence		Insignificant	Minor	Moderate	Major	Extreme
Likelihood		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	6
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

## Site Inspection

A site inspection was undertaken.

## Comment

### Statutory Assessment

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies including the Residential Design Guidelines, as well as the Residential Design Code. A summary of the assessment is provided in the following tables.

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

#### Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	6m	6.373m	A
Secondary Street Setback	-	-	N/A
Lot boundary setbacks			
<b>East garage</b>	<b>1m</b>	<b>0m</b>	<b>D</b>
East bed 2, bath, WC	1.2m	1.66m	A
South bed 2	1.5m	4.103m	A
South bed 3	1.5m	5.2m	A
<b>Front garage</b>	<b>1m</b>	<b>0.2m</b>	<b>D</b>
South new bed 4 (lower) & master bed (upper)	3m	5.1m	A
West new bed 4 (lower) & master bed (upper)	3m	3.6m	A
West entry & stairs	3m	4.555m	A
Open Space	50%	52%	A
<b>Wall height</b>	<b>5.6m</b>	<b>6.3m</b>	<b>D</b>
Roof height	8.1m	6.5m	A
Setback of Garage	4.5m	6.3m	A
Car Parking	2	3	A
Site Works	Less than 500mm	Less than 500mm	A
Overshadowing	≤25%	24%	A
Drainage	On-site	To be conditioned	A

#### Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	A
3.7.3 Development of Existing Buildings	A
3.7.4 Site Works	A
3.7.5 Demolition	N/A
3.7.6 Construction of New Buildings	N/A
3.7.7 Building Setbacks and Orientation	A
<b>3.7.8 Roof Form and Pitch</b>	<b>D</b>
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
3.7.16.4.3.3 Fremantle Port Buffer Area	N/A
3.7.17.3.3 Garages and Carports	A
3.7.17 Precinct Requirements	A

This development application proposes additions and alterations to an existing dwelling including an upper storey at the subject property. The property is not on the heritage list or the heritage inventory and as such significant changes can be made to the dwelling. A number of variations are requested to the requirements of the Residential Design Guidelines and the Residential Design Codes.

#### Side Boundary Setback - Rear Garage

The rear garage is located on the boundary where the deemed to comply setback is 1m in accordance with Clause 5.1.3 C3.1 I of the Residential Design Codes. Although it does not achieve the deemed to comply requirements it meets the requirements of design principles Clause 5.1.3 P3.2 including;

- Makes effective use of space for enhanced privacy
- Adequate sunlight and ventilation to building and open spaces on site and adjoining properties
- Minimises the extent of overlooking and loss of privacy on adjoining properties
- Does not have adverse impact on adjoining property

Therefore, the reduced side boundary setback can be supported.

#### Side Boundary Setback – Front Garage

The garage located on the northern side that faces the street front is proposed to be 0.2m from the side boundary where a 1m setback is required by Clause 5.1.3 C3.1 i of the Residential Design Codes. The location of the garage wall does achieve design principles 5.1.3 P3.2 including;

- Makes effective use of space for enhanced privacy
- Adequate sunlight and ventilation to building and open spaces on site and adjoining properties
- Minimises the extent of overlooking and loss of privacy on adjoining properties
- Does not have adverse impact on adjoining property

Therefore, the reduced side boundary setback can be supported.

#### Maximum Wall Height

The building has a rear wall that exceeds the maximum wall height of 5.6m rising to a height of 6.3m. Although this does not comply with the acceptable development provisions of the Residential Design Guidelines Clause 3.7.15.4.1.3 A1.5 the proposed development is well below the maximum allowable roof height of 8.1m and therefore can be supported. The use of a skillion roof forces the design to utilise high walls, nonetheless there is minimal impact on surrounding neighbours and no views are obscured.

#### Roof Pitch

The dwelling has a roof pitch of approximately 2.5 degrees which does not comply with the acceptable development provisions of the Residential Design Guidelines Clause 3.7.8.3 which requires a roof pitch of between 28 and 36 degrees. However, it can be argued that the roof pitch of 2.5 degrees is an acceptable variation as the roof contributes positively and complements the existing dwelling and is sympathetic to surrounding dwellings in accordance with Performance Criteria Clause 3.7.8.3 P1, P2, P3 and P4. It is an improvement on the existing dwelling design and integrates well into the streetscape.

#### Outdoor Living Area

The outdoor living area is not behind the street setback area as required by the deemed to comply clause 5.3.1 C1.1 of the Residential Design Codes. However, the variation can be supported as a result of achievement of design principles 5.3.1 P1.1 as the outdoor area;

- takes advantage of connection to a habitable room of the dwelling
- is open to winter sun and ventilation
- utilises the northern aspect of the site

At the same time there is a large upstairs balcony that faces north, overlooks the front yard and will provide a significant amount of space and amenity to future residents and adds to the outdoor living area in the front setback area.

### Conclusion

Based on the assessment that has been completed for this development and the explanation provided in this report, the variations that have been proposed to the Residential Design Code and the Residential Development Guidelines are considered acceptable. As such it is recommended that the proposed development be supported subject to planning conditions.

#### 11.3 OFFICER RECOMMENDATION COMMITTEE RESOLUTION TP030919

Moved Cr White, Seconded Cr Harrington

That development approval is granted and discretion is exercised in regard to the following;

- (i) Clause 5.1.3 – Residential Design Code – Lot Boundary Setbacks – 1m required, 0m provided
- (ii) Clause 5.1.3 – Residential Design Code – Lot Boundary Setbacks – 1m required, 0.2m provided
- (iii) Clause 3.7.15.4.1.3 A1.5 - Residential Design Guidelines - Maximum Wall Height – 5.6m required, 6.3m provided
- (iv) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch – 28 to 36 degrees required, 2.5 degrees provided
- (v) Clause 5.3.1 – Residential Design Codes - Outdoor Living Area – located in front setback area

for proposed renovations and additions at No. 11 (Lot 1) View Terrace, East Fremantle, in accordance with the plans date stamped received 30 July 2019, subject to the following conditions:

- (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.
- (2) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (3) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (4) All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (5) 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.
- (6) 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.
- (7) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the



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

- (8) The front fence is to remain visually permeable at all times in accordance with the plans date stamped received 30 July 2019.
- (9) No approval is given for any other structures in the front setback area. A separate development application for such structures will have to be submitted for consideration by Council.
- (10) This planning approval is to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

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

**(CARRIED UNANIMOUSLY)**

**Note:**

As 4 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2019 this application deemed determined, on behalf of Council, under delegated authority.

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**11.4 Irwin Street No 65 (Lot 213) Proposed rear additions and alterations including office studio, bedroom/ensuite, cabana, patio and plunge pool**

<b>Owner</b>	Gareth Mahon & Emily Gillett
<b>Applicant</b>	Rohan White
<b>File ref</b>	P062/19; IRW65
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	3 September 2019
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

**Purpose**

This report considers a planning application for rear additions and alterations including office studio, bedroom/ensuite, cabana, plunge pool and patio at No 65 (Lot 213) Irwin Street, East Fremantle.

**Executive Summary**

The applicant is seeking Council approval to construct rear additions and alterations including office studio, bedroom/ensuite, cabana and plunge pool at the subject property.

The following variations to the Residential Design Guidelines and the Residential Design Codes are being requested;

- (i) Roof pitch of office/studio/bedroom/ensuite and cabana – 28 to 36 degrees required, 2.5 degrees provided
- (ii) Roof pitch of patio – 28 to 36 degrees required, 0 degrees provided
- (iii) Lot boundary setbacks – south – office studio/bedroom ensuite – 1.5m required, 1.34 m provided
- (iv) Lot boundary setbacks – west – office studio/bedroom ensuite – 6m required, 3.84 m provided
- (v) Lot boundary setbacks – west – cabana– 6m required, 1m provided
- (vi) Lot boundary setbacks – north – cabana and plunge pool– 1.5m required, 1m provided
- (vii) Lot boundary setbacks – north – patio– 1m required, 0.9m provided

It is felt that this proposal can be supported subject to the inclusion of planning conditions.

**Background**

Zoning: Residential R12.5

Site area: 1012m<sup>2</sup>

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

Nil

**Consultation**

**Advertising**

The proposal was advertised to the surrounding landowners from 23 July to 9 August 2019. One submission was received.

Submission	Applicant Response	Officer Response
<p>We have examined the plans and have the following concerns:</p> <ul style="list-style-type: none"> <li>• We live on the north side of the proposed cabana /plunge pool structure and are troubled by the sheer size of the building which we consider to be overly obtrusive. The whole structure is 3.62 metres high by (6.62 + 5.9) metres long.</li> <li>• Another concern we have, given the sheer bulk of the structure, is the 500mm setback (as shown in the plans) from our boundary. Our understanding of the building code is that the minimum setback for a structure in East Fremantle is 1000mm.</li> <li>• Given the ample size of the building block we consider a 500mm setback to be far too close to our boundary. On the plans, the setback on the southern boundary is 1340mm and 1000mm on the western boundary. We wonder why the setback on the northern boundary is 500mm.</li> <li>• We feel the size of the structure imposes upon our amenity and privacy and that a minimum of a 1000mm or more setback is not an unreasonable request.</li> </ul>	<p>1) In response to the neighbours concerns regarding the height of the cabana wall and screening attached to the plunge pool facing the northern boundary, we have increased the setback from 0.5m to 1m for both the Cabana and the pool. This is in compliance with the neighbours request for a 1m setback. It is also in compliance with table 2a of the R-Codes.</p> <p>2) I can also confirm that the retaining to the plunge pool is located 1m setback from the boundary, and that there are no changes to the natural ground level along the fence line.</p> <p>3) As per the councils request for sound screening to the rear boundary, I have shown fixed glazing to the rear opening to a height greater than 1.6m.</p>	<p>The proposed cabana and plunge pool has been located only 0.5m from the northern side boundary. Given that the wall is a total length of 12.52m and 3.169m high in accordance with the Residential Design Codes the setback should be 1.5m. A request has been made with the applicant to increase the setback to 1m in response to the submitters concerns.</p> <p>A request has been made with the applicant to fill in the space in the western wall of the cabana (either with solid fill or glazing above 1.6m FFL) to improve privacy and mitigate sound carried from the area to neighbouring properties.</p> <p>The changes should address the concerns of the submitter and reduce amenity impacts to neighbouring properties.</p> <p>Amended plans have been submitted that increase the side boundary setback of the cabana to 1m and utilise a window to 1.92m from finished floor level in the rear of the cabana.</p>

Community Design Advisory Committee (CDAC)

This application was not referred to CDAC. The additions and alterations that are the subject of this report relate to works at the rear of the property and have no impact on the streetscape.



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**Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

*Town of East Fremantle Local Planning Scheme No. 3 (LPS No. 3)*

**Policy Implications**

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

**Financial Implications**

Nil

**Strategic Implications**

The Town of East Fremantle Strategic Community Plan 2017 – 2027 states as follows:

*Built Environment*

*Accessible, well planned built landscapes which are in balance with the Town's unique heritage and open spaces.*

*3.1 Facilitate sustainable growth with housing options to meet future community needs.*

*3.1.1 Advocate for a desirable planning and community outcome for all major strategic development sites.*

*3.1.2 Plan for a mix of inclusive diversified housing options.*

*3.2 Maintaining and enhancing the Town's character.*

*3.2.1 Ensure appropriate planning policies to protect the Town's existing built form.*

*3.3 Plan and maintain the Town's assets to ensure they are accessible, inviting and well connected.*

*3.3.1 Continue to improve asset management practices.*

*3.3.2 Optimal management of assets within resource capabilities.*

*3.3.3 Plan and advocate for improved access and connectivity.*

*Natural Environment*

*Maintaining and enhancing our River foreshore and other green, open spaces with a focus on environmental sustainability and community amenity.*

*4.1 Conserve, maintain and enhance the Town's open spaces.*

*4.1.1 Partner with Stakeholders to actively protect, conserve and maintain the Swan River foreshore.*

*4.1.2 Plan for improved streetscapes parks and reserves.*

*4.2 Enhance environmental values and sustainable natural resource use.*

*4.2.1 Reduce waste through sustainable waste management practices.*

*4.3 Acknowledge the change in our climate and understand the impact of those changes.*

*4.3.1 Improve systems and infrastructure standards to assist with mitigating climate change impacts.*

## Risk Implications

Risk	Risk Likelihood (based on history & with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council does not approve the proposed development	Possible (3)	Minor (2)	Moderate (5-9)	COMPLIANCE Some temporary non-compliances	Accept Officer Recommendation

## Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Extreme
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating is provided below. Any items with a risk rating over 16 will be added to the Risk Register, and any item with a risk rating over 16 will require a specific risk treatment plan to be developed.

Risk Rating	6
Does this item need to be added to the Town's Risk Register	No
Is a Risk Treatment Plan Required	No

## Site Inspection

A site inspection was undertaken.

## Comment

### Statutory Assessment

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

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

#### Residential Design Codes Assessment

	Required	Proposed	Status
Street Front Setback	6.0m	-	N/A
Minor Incursions	1m	-	N/A
Secondary Street Setback	1.5m	-	N/A
<b>Lot boundary setbacks</b>			
Sleepout and studio - south	1.5m	1.34m	D
Sleepout - west	6m	3.84m	D
Cabana - west	6m	1m	D
Cabana and plunge pool	1.5m	1m	D
Patio	1m	0.9m	D
Concrete bench	1m	1m	A
Open Space	50%	63%	A
Outdoor Living Areas	Accessible from habitable rooms	Accessible from habitable room	A
Car Parking	1-2	2	A
Vehicle Access	Driveway	-	N/A
Site Works	Max 0.5m	<0.5m	A
Visual privacy setback	7.5m	Screening fitted on northern side of pool deck	A
Overshadowing	≤25%	Overshadows southern property by an additional 3.4%	A
Stormwater management	On-site	To be conditioned	A

#### Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	A
3.7.3 Development of Existing Buildings	A
3.7.4 Site Works	A
3.7.5 Demolition	A
3.7.6 Construction of New Buildings	A
<b>3.7.7 Building Setbacks and Orientation</b>	<b>D</b>
<b>3.7.8 Roof Form and Pitch</b>	<b>D</b>
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	N/A
<b>3.7.12 Pergolas</b>	<b>D</b>
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	N/A
<b>3.7.17 Precinct Requirements</b>	<b>D</b>

This development application proposes rear additions and alterations, including office studio, bedroom/ensuite, cabana and plunge pool at the rear of the subject property. Multiple variations are requested to the requirements of the Residential Design Guidelines and the Residential Design Codes.

Roof Pitch - Cabana and Office Studio/Bedroom Ensuite

The cabana and the office/studio/bedroom/ensuite located at the rear of the lot has a roof pitch of 2.5 degrees which does not comply with the acceptable development provisions of the Residential Design Guidelines Clause 3.7.8.3 which requires a roof pitch of between 28 and 36 degrees. However, the roof pitch of 2.5 degrees is an acceptable variation as the roof contributes positively and complements the existing dwelling and is sympathetic to surrounding dwellings in accordance with Performance Criteria Clause 3.7.8.3 P1, P2, P3 and P4. The roof is not imposing or bulky and is well below the maximum permissible height of 9m (at their highest points the cabana is approximately 3.6m high and the office studio/bedroom ensuite is approximately 3.2m high) as a result of the choice of shallow roof pitch. As such the proposed variation can be supported.

Roof Pitch - Patio

The patio which adjoins the existing dwelling has a roof pitch of 0 degrees which does not comply with the acceptable development provisions of the Residential Design Guidelines Clause 3.7.8.3 which requires a roof pitch of between 28 and 36 degrees. However, the roof pitch of 0 degrees is an acceptable variation as the roof contributes positively and complements the existing dwelling and is sympathetic to surrounding dwellings in accordance with Performance Criteria Clause 3.7.8.3 P1, P2, P3 and P4. The proposed variation can be supported because it does not represent a bulky structure as it is below the existing dwelling's roof height and is open sided.

Lot Boundary Setback – Southern side boundary - Office studio/bedroom ensuite

The office studio/bedroom ensuite is located 1.34m from the southern side boundary. As such it does not achieve the deemed to comply requirements of Clause C3.1 i. of the Residential Design Codes which requires a minimum setback of 1.5m. This variation of 0.16m can be supported based on design principles Clause 5.1.3.P3.1;

- (vi) There is minimal impact of building bulk on adjoining properties
- (vii) There is adequate sun and ventilation and the structure does not impact on neighbouring properties
- (viii) No overlooking or loss of privacy

It is noted that part of this structure is an existing structure that is in place on site and the design incorporates this existing structure. The new part of office studio/bedroom ensuite utilises the existing setback from the boundary of 1.34m. The proposed variation is supported.

Lot Boundary Setback –Western rear boundary - Office studio/bedroom ensuite

There is a requirement under the Residential Design Codes that a rear boundary setback of 6m is required in areas with a density coding of R12.5. In this case a 3.84m rear boundary setback is sought. This can be supported based on design principles Clause 5.1.3.P3.1;

- (i) There is minimal impact of building bulk on adjoining properties
- (ii) There is adequate sun and ventilation and the structure does not impact on neighbouring properties
- (iii) No overlooking or loss of privacy

The rear of the office studio/bedroom ensuite utilises a structure that is already in place which means that the existing rear boundary setbacks are utilised. As such the proposed variation is supported

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Lot Boundary Setback –Western rear boundary - Cabana

There is a requirement under the Residential Design Codes that a rear boundary setback of 6m is required in areas with a density coding of R12.5. In this case a 1m rear boundary setback is sought. This can be supported based on design principles Clause 5.1.3.P3.1;

- (i) There is minimal impact of building bulk on adjoining properties
- (ii) There is adequate sun and ventilation and the structure does not impact on neighbouring properties
- (iii) No overlooking or loss of privacy

There was concern from the officer that an open wall at the rear of the structure that is primarily used as an outdoor entertaining area could become noisy and in an effort to reduce this the applicant agreed to the addition of glass panels in the opening to reduce noise transmission and improve privacy.

The structure is a maximum of 2.852m above natural ground level and is a relatively low structure from the boundary. Planting of vegetation is planned to occur between the rear of the cabana and the rear boundary fence. A window up to a height of 1.92m above finished floor level will be placed in the western wall to mitigate noise. As the area is an outdoor entertaining area it is not defined as a habitable room, therefore like a patio or verandah it is not unreasonable to locate the structure closer to the boundary than a bedroom or a living area of a dwelling. The variation is therefore supported.

Lot Boundary Setback –Northern side boundary – Cabana and plunge pool

The cabana and plunge pool are located 1m from the northern side boundary. As such it does not achieve the deemed to comply requirements of Clause C3.1i. of the Residential Design Codes which requires a minimum setback of 1.5m. The location of the cabana can be supported based on design principles Clause 5.1.3.P3.1;

- (i) There is minimal impact of building bulk on adjoining properties
- (ii) There is adequate sun and ventilation and the structure does not impact on neighbouring properties
- (iii) No overlooking or loss of privacy

Following a submission from the neighbouring property a request was made to ensure that the structure was located a minimum of 1m from the boundary to ensure that the wall of the structure was not too bulky or imposing. The applicant responded by modifying the design such that this was achieved.

The setback of 1m reduces the building bulk from the neighbouring property. The pool has visual screening, but is open to the sky and therefore receives adequate sunlight and ventilation while remaining relatively private. The screening prevents people overlooking into the neighbouring property. As such the variation is supported.

Lot Boundary Setback – Northern side boundary - Patio

The patio is located 0.9m from the northern side boundary. As such it does not achieve the deemed to comply requirements of Clause C3.1 i. of the Residential Design Code which requires a minimum setback of 1m. This variation of 0.1m can be supported based on design principles Clause 5.1.3.P3.1;

- (i) There is minimal impact of building bulk on adjoining properties
- (ii) There is adequate sun and ventilation and the structure does not impact on neighbouring properties
- (iii) No overlooking or loss of privacy

The structure is flat roofed and has minimal building bulk. As it is an open structure it will allow adequate sunlight and ventilation and it does not have a finished floor level above 0.5m so does not present a problem in terms of overlooking or loss of privacy. This variation is also supported.

### Conclusion

Based on the assessment that has been completed, and the subsequent report on the variations to the Residential Design Guidelines and the Residential Design Codes that have been requested, the proposed development can be supported subject to the inclusion of standard conditions.

#### 11.4 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP040919

Moved Cr Natale, seconded Cr White

That development approval is granted and Council exercises its discretion in regard to the following;

- (i) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch of office/studio/bedroom/ensuite and cabana – 28 to 36 degrees required, 2.5 degrees provided;
- (ii) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch of patio – 28 to 36 degrees required, 0 degrees provided;
- (iii) Clause 5.1.3 – Residential Design Code – Lot Boundary Setbacks – south – office studio/bedroom ensuite – 1.5m required, 1.34 m provided;
- (iv) Clause 5.1.3 – Residential Design Code – Lot Boundary Setbacks – west – office studio/bedroom ensuite – 6m required, 3.84 m provided;
- (v) Clause 5.1.3 – Residential Design Code – Lot Boundary Setbacks – west – cabana– 6m required, 1m provided;
- (vi) Clause 5.1.3 – Residential Design Code – Lot Boundary Setbacks – north – cabana and plunge pool– 1.5m required, 1m provided;
- (vii) Clause 5.1.3 – Residential Design Code – Lot Boundary Setbacks – north – patio– 1m required, 0.9m provided;

for rear additions and alterations including office studio, bedroom/ensuite, cabana and plunge pool at No. 65 (Lot 213) Irwin Street, East Fremantle, in accordance with the plans date stamped received 19 August 2019, subject to the following conditions:

- (1) If the studio is rented out for short term accommodation, then a change of use application for short term accommodation shall be made to the Town for the consideration of Council.
- (2) The screening to be fitted to the northern edge of the plunge pool deck shall be visually impermeable, at least 1.6m in height, at least 75% obscure and permanently fixed in position in accordance with Clause 6.4 C1.2 of the Residential Design Codes.
- (3) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (4) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (5) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.

- (6) All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (7) If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (8) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (9) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (10) This approval does not extend to any other works or use on site that requires the submission of a development application for the consideration of the Council.
- (11) This planning approval is to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

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

(CARRIED UNANIMOUSLY)

Note:

As 4 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2019 this application deemed determined, on behalf of Council, under delegated authority.

**12. REPORTS OF OFFICERS (COUNCIL DECISION)**

Nil.

**13. MATTERS BEHIND CLOSED DOORS**

Nil.

**14. CLOSURE OF MEETING**

There being no further business, the presiding Member declared the meeting closed at 6.45 pm

*I hereby certify that the Minutes of the ordinary meeting of the Town Planning Committee of the Town of East Fremantle, held on 3 September 2019, Minute Book reference 1. to 14. were confirmed at the meeting of the Committee on:*

1 OCTOBER 2019

  
Presiding Member