



# MINUTES

## Town Planning Committee

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Tuesday, 7 April 2020 at 6.30pm

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**MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING COMMITTEE HELD VIA ELECTRONIC MEANS ON TUESDAY 7 APRIL 2020**

## 1. DECLARATION OF OPENING OF MEETING

The Presiding Member opened the meeting at 6.30pm and welcomed committee members and administrative staff.

The Presiding Member advised that due to the need to conduct the meeting via electronic means, under the present COVID-19 meeting restrictions, a suspension of standing orders is required to suspend the operations of clauses 5.7, 5.9, 5.10 and 7.1 of *The Town of East Fremantle Meeting Procedures Local Law 2016* for the duration of this electronic meeting

## PROCEDURAL MOTION

**Moved Cr Nardi, seconded Cr Natale**

**The suspension of clauses 5.7, 5.9, 5.10 and 7.1 of *The Town of East Fremantle Meeting Procedures Local Law 2016* for the duration of this electronic meeting**

(CARRIED UNANIMOUSLY)

## 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

Each attendee gave their name, address and the room from which they conducted attendance at the electronic meeting, as previously approved by the CEO, Gary Tuffin.

### 3.1 Attendance

The following members were in attendance:

Cr C Collinson Presiding Member

Mayor J O'Neill

Cr A Natale

Cr J Harrington

Cr D Nardi

Cr A Watkins

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

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**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

**7. PRESENTATIONS/DEPUTATIONS**

**7.1 Presentations**

Nil

**7.2 Deputations**

Two written deputations received:

Item 11.1 – 76 Allen Street

Item 11.3 – 70 Duke Street

The Presiding member acknowledged the written deputations and noted them as being read.

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

**8.1 Town Planning Committee (3 March 2020)**

**8.1 OFFICER RECOMMENDATION**

Moved Cr Watkins, seconded Cr Harrington

That the minutes of the Town Planning Committee meeting held on Tuesday 3 March 2020 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)**

**PROCEDURAL MOTION**

Moved Cr Natale, seconded Cr Watkins

That the officer recommendations for items 11.2, 11.7 and 11.8 are adopted en bloc.

(CARRIED UNANIMOUSLY)

**11.2 Glyde Street No 71 (Lot 125) Demolition of front wall and garage. Development of an ancillary dwelling including new front fence and new boundary wall**

<b>Owner</b>	Greg Watkinson and Melanie Watkins
<b>Applicant</b>	White Noise Designs
<b>File ref</b>	P015/20; GLY71
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Attachments</b>	Nil

**Purpose**

This report considers a planning application for the proposed demolition of front wall and garage and development of ancillary dwelling, new front fence and new boundary wall for an existing dwelling at No 71 (Lot 125) Glyde Street, East Fremantle.

**Executive Summary**

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

- (i) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – 1.5m required, 1.44m provided
- (ii) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – 1.5m required, 1.44m provided
- (iii) Clause 5.2.5 – Residential Design Codes – Fence Sightlines – 1.5m truncation or maximum fence height of 0.75m required, 0.35m separation from visually permeable fence to driveway provided
- (iv) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch – 28 to 36 degrees required, 24 degrees provided

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

**Background**

Zoning: Residential R20

Site area: 508m<sup>2</sup>

Heritage: not heritage listed

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

P086/17 - 7 November 2017 - Planning approval given for 2 storey addition with studio addition above existing garage

P048/19 -6 August 2019 – planning approval given for alterations and additions – new upper floor addition and alterations to existing dwelling

**Consultation**

Advertising

The application was advertised to surrounding land owners 9 to 23 March 2020. No submissions were received.

Community Design Advisory Committee (CDAC)

The application was not referred to CDAC due to the COVID19 National Emergency.

External Consultation

Nil

**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**

A risk assessment was undertaken and the risk to the Town was deemed to be negligible.

### **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 Codes. A summary of the assessment is provided in the following tables.

<b>Legend</b> <i>(refer to tables below)</i>	
A	Acceptable
D	Discretionary
N/A	Not Applicable

### Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback			A (see below)
Secondary Street Setback			N/A
Lot Boundary Setbacks			
Southern wall	1.5m	1.44m	D
Carport	1.5m	0m	D
Open Space	50%	59%	A
Wall height	6m	4.3m	A
Roof height	9m	5.7m	A
Setback of Garage	1.2m behind dwelling	1.6m behind dwelling	A
Sightlines	1.5m truncation	0.35m setback from driveway	D
Car Parking	1 car bay	1 car bay	A
Site Works	Less than 500mm	Less than 500mm	A
Overshadowing	≤25%	23.3%%	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	A
3.7.6 Construction of New Buildings	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	N/A
3.7.16.4.3.3 Fremantle Port Buffer Area	A
3.7.16.3 Garages and Carports	A
3.7.16 Precinct Requirements	A

This development application proposes the development of ancillary accommodation, a new front fence and a new side boundary wall at the front of the lot. It is proposed to demolish the existing garage and solid, visually impermeable front wall. Three variations are requested to the requirements of the Residential Design Codes and one variation is requested to the Residential Design Guidelines. No submissions were received following advertising.

Although the ancillary dwelling is located close to the front boundary it is in alignment with the Residential Design Guidelines where front setbacks are permitted if they match the front setback of an adjacent existing dwelling. In this case the front setback for the ancillary dwelling is 1.8m which matches the existing setback of the dwelling at 69 Glyde Street. This represents a significant improvement on the existing arrangements; currently the solid wall and enclosed garage encloses the front yard of the dwelling and does not permit visual surveillance of the street from the property or the dwelling from the street and there is no connection between the two. By permitting an open front yard facilitated by the removal of the solid wall and the enclosed garage on the front boundary surveillance of the street is possible and passers-by can look into the property. Both security and sociability are improved.

Lot Boundary Setback – Southern Wall

The lot boundary setback of the southern wall of the ancillary dwelling (8.1m long and 2.6m high with major openings) is located 1.44m from the boundary where there should be a setback of 1.5m in accordance with Table 2b and deemed to comply clause 5.1.3 C3.1 of the Residential Design Codes. However, the development does achieve the design principles of clause 5.1.3 P3.1 for the following reasons;

- There is no significant impact from building bulk on the adjoining properties
- The development does not significantly impact on sunlight or ventilation to the building and open spaces on the site and adjoining properties and
- There is minimal impact on overlooking or loss of privacy to adjoining properties

For these reasons the reduced setback can be supported.



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#### Lot Boundary Setback – Carport

A carport wall built to the boundary is proposed that is 12.6m long and between 2.054m and 2.7m high. This is equivalent to 30% of the length of the boundary (which is permissible) but 1m of this wall is in front of the front setback area, therefore does not fully comply with Residential Design Codes deemed to comply Clause 5.1.3 C 3.2 ii. However, it does achieve design principles of Clause 5.1.3 P3.2 for the following reasons;

- Effective use is made of space for enhanced privacy for the occupants
- There is reduced impact of building bulk on adjoining properties
- There is no impact on sunlight and ventilation to the building and open spaces on the site and adjoining properties
- There is no overlooking and loss of privacy to adjoining properties
- It does not have any adverse impact on the amenity of adjoining properties
- There is no impact on major openings to habitable rooms and outdoor living areas for adjoining properties It positively contributes to the prevailing and future development context and streetscape as outlined in the local planning framework

For these reasons the reduced setback can be supported.

#### Fence Sightlines

There is a requirement that there are open sight lines where walls, fences and other structures adjoin vehicle access points where a driveway meets a public street and where two streets intersect. There is no truncation or reduction in front wall height to no more than 0.75m in accordance with deemed to comply clause 5.2.5 C5. However, the design does achieve design principles clause 5.2.5 P5 – unobstructed sightlines at the meeting point of the drive with the footpath. The front fence is visually permeable and there is a separation of approximately 0.35m from the fence to the driveway. As stated previously there is an improvement on the existing situation as the visually impermeable front wall and solid, enclosed garage is being removed. For these reasons the reduced sightlines can be supported.

#### Roof Pitch

In accordance with the Residential Design Guidelines acceptable development provisions 3.7.8.3 A4.1 the pitch of the roof is supposed to be between 28 and 36 degrees. In this case the roof pitch is proposed to be 24 degrees which complements the traditional form of surrounding development in the immediate locality in accordance with performance criteria 3.7.8.3 P4 and for this reason can be supported.

#### Conclusion

The proposed ancillary dwelling at the front of the lot is an unusual approach, however, it represents an improvement on the existing structures on site. The current development is enclosed and makes visual surveillance of the property impossible. The proposed development opens up the front of the existing property and sees the solid, visually impermeable wall and single garage replaced with a visually permeable front fence, ancillary dwelling and garage with a visually permeable garage door. Links with the street are improved. Visual surveillance and connection between the street and the buildings on site are now possible. Pedestrians walking along the street can see into the property and residents can view what is happening on the street. There is also an improvement in sociability. The proposal represents how modern housing design should be; open and welcoming rather than enclosed and shielded.

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 Codes and the

Residential Development Guidelines are considered acceptable. As such it is recommended that the proposed development be supported subject to planning conditions.

**11.2 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP010420**

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

- (i) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – 1.5m required, 1.44m provided
- (ii) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – 1.5m required, 1.44m provided
- (iii) Clause 5.2.5 – Residential Design Codes – Fence Sightlines – 1.5m truncation or maximum fence height of 0.75m required, 0.35m separation from visually permeable fence to driveway provided
- (iv) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch – 28 to 36 degrees required, 24 degrees provided

for demolition of the front wall and garage and development of ancillary accommodation (granny flat), new front fence & new boundary wall at 71 (Lot 125) Glyde Street, East Fremantle, in accordance with the plans date stamped received 19 February & 12 March 2020, 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 front fence and gates shall be at least 60% visually permeable in the areas between the piers drawn on the submitted plans.
3. The garage door shall be at least 50% visually permeable for the garage door opening.
4. All parapet walls are to be fair faced brickwork, or as agreed to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
5. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
6. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
7. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
8. If requested by Council within the first two years following installation, the roofing 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.
9. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or



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

10. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
11. This planning approval 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".*

(ADOPTED BY EN BLOC RESOLUTION)

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.

**11.7 Fortescue Street No 80 Lot 147 Proposed alterations and additions to existing dwelling**

<b>Owner</b>	Anthony Neville & Stephanie Hanco
<b>Applicant</b>	Sam Martin
<b>File ref</b>	P008/20
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

**Purpose**

The purpose of this report is for Council to consider a planning application for proposed additions and alterations at No 80 (Lot 147) Fortescue Street, East Fremantle. The dwelling is a Category B dwelling on the Town's heritage list.

**Executive Summary**

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

- (i) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – Studio/Bedroom – 6m required, 2.1m provided;
- (ii) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – Enclosure of Existing Verandah and New Verandah - 4.5m required, 3.995m provided;
- (iii) Clause 3.7.7.3 – Residential Design Guidelines – Lot Boundary Setbacks – Carport – 1m required, 0.5m provided;
- (iv) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Verandah – 28-36 degrees required, 2 degrees provided;
- (v) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Carport – 28-36 degrees required, 0 degrees provided;
- (vi) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Verandah – 28-36 degrees required, 5 degrees provided;
- (vii) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Studio/Bedroom – 28-36 degrees required, variable pitch provided;

It is considered that the above variations are minor and have minimal impact on the heritage dwelling and therefore can be supported subject to conditions of planning approval being imposed.

**Background**

Zoning: Residential R12.5  
Site area: 1013m<sup>2</sup>  
Heritage: Category B

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

Nil

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## Consultation

### Advertising

The application was advertised to surrounding land owners from 26 February to 12 March 2020. No submissions were received.

### Community Design Advisory Committee (CDAC)

The application was not referred to CDAC. The development is concentrated towards the rear of the dwelling with the exception of the carport and study. There are minimal streetscape impacts.

### External Consultation

Nil

## 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

A risk assessment was undertaken and the risk to the Town was deemed to be negligible.

### 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 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

Design Element	Required	Proposed	Status
Street Front Setback			N/A
Lot Boundary Setbacks			
Study	1m	1m	A
Laundry	1.1m	1.6m	A
Kitchen	1.1	3.885m	A
Verandah	6m	13.5m	A
Studio/bedroom – eastern wall	6m	2.1m	D
Studio/bedroom – southern wall	1m	1.2m	A
Northern wall	4.5m	3.995m	D
Verandah	1.1m		
Carport	1m	0.5m	D
Open Space	55%	74%	A
Car Parking	1-2 cars	3 cars	A
Site Works	<0.5m	<0.5m	D
Visual Privacy			N/A
Overshadowing	<25%	10%	A
Drainage	Contained 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
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	A
3.7.15.4.2.3 Fremantle Port Buffer Area	N/A
3.7.15.3.1 Garages and Carports	A

This development application proposes additions and alterations to an existing Category B heritage dwelling. Two variations are requested to the requirements of the Residential Design Codes and 5 variations are requested to the Residential Design Guidelines.

#### Heritage

The property is listed as Category B on the Town's heritage list and heritage inventory. The proposed development does not have a significant impact on the heritage characteristics of the existing dwelling. The majority of the development is concentrated to the rear of the dwelling with only the open carport and the front of the proposed study being within view of the streetscape. The proposed development is being completed in a manner which ensures the existing dwelling is largely unaffected. The changes being proposed ensure that the dwelling becomes a more liveable home for the residents without significantly compromising the heritage qualities.

#### Lot Boundary Setbacks – Studio/Bedroom

A studio/bedroom is proposed to be added towards the rear of the dwelling. There is a requirement from Table 1 of the R Codes deemed to comply clause 5.1.3 C3.1 i that the rear setback of buildings constructed in a residential area with a density coding of R12.5 have a rear lot boundary setback of 6m. In this case a 5.03m wall with a height of 2.8m is proposed to be constructed parallel to the rear boundary with a setback of 2.1m. Although the deemed to comply requirements are not met, design principles P3.1 are achieved for the following reasons;

- The buildings are setback from the lot boundary to reduce impact of building bulk on adjoining properties
- There is minimal impact on sunlight and ventilation to the building and open space on the site and the adjoining properties and
- There is minimal overlooking or loss of privacy on adjoining properties.

It is noted that the adjacent property to the rear (79 Irwin Street) also has a shed located in close proximity to the joint rear boundary between the two properties that is located less than 6m from the rear boundary. Based on these reasons the reduced rear boundary setback of 2.1m can be supported.



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Lot Boundary Setback – Enclosure of existing verandah and new verandah

The enclosure of the existing verandah and the construction of a new verandah creates a new wall that is 6m long and 3.36m high without major openings. This would normally require a side boundary setback of 1.1m where there is a 3.995m setback, however, the setback required has to be calculated for a wall with a length of 22.2m, median height of 3.8m and major openings, as there are no articulations in the wall. As a result the wall requires a 4.5m setback in accordance with Table 2 of the R codes and clause 5.1.3 C3.1 i. The existing wall setback of 3.995m is considered sufficient for this area and is supported. The proposed reduced boundary setback achieves the design principles clause 5.1.3 P3.1 for the following reasons;

- The buildings are setback from the lot boundary to reduce impact of building bulk on adjoining properties
- There is minimal impact on sunlight and ventilation to the building and open space on the site and the adjoining properties and
- There is minimal overlooking or loss of privacy on adjoining properties.

Lot Boundary Setbacks - Carport

The proposed carport is 6m long and 3.36m high with the wall located 0.5m from the northern boundary. It does not comply with the Residential Design Guidelines acceptable development provisions 3.7.7.3 A3. The wall exceeds the maximum height of 3m and the wall does not abut an existing wall on the adjacent property. However it does achieve performance criteria clause 3.7.7.3 P1.3 & P3 of the Residential Design Guidelines. The side boundary setback is complementary with the predominant streetscape and the wall height is reflective of the immediate locality. For these reasons the reduced boundary setback for the carport can be supported. It is noted that the dwellings at 77, 81 & 82 Fortescue Street have carport/garage walls located on or close to the side boundary and have structures that are similar heights to the proposed carport at the subject site.

Roof pitch - Verandah

The verandah has a pitch of 2 degrees which is less than the required pitch of 28 to 36 degrees in accordance with the acceptable development provisions 3.7.8.3 A4.1 of the Residential Design Guidelines. However, this reduced pitch can be supported in accordance with performance criteria clause 3.7.8.3 P1 because the roof of the verandah positively contributes to the existing dwelling.

Roof Pitch – Carport

The carport has a pitch of 0 degrees which is less than the required pitch of 28 to 36 degrees in accordance with the acceptable development provisions 3.7.8.3 A4.1 of the Residential Design Guidelines. However, this reduced pitch can be supported in accordance with performance criteria clause 3.7.8.3 P1 because the roof of the carport positively contributes to the existing dwelling.

Roof Pitch – Rear bathroom

The rear bathroom has a pitch of 5 degrees which is less than the required pitch of 28 to 36 degrees in accordance with the acceptable development provisions 3.7.8.3 A4.1 of the Residential Design Guidelines. However, this reduced pitch can be supported in accordance with performance criteria clause 3.7.8.3 P1 because the roof of the rear bathroom positively contributes to the existing dwelling.

Roof Pitch – Studio/bedroom

The studio/bedroom has a curved roof with a variable pitch which at certain points on the roof is less than the required pitch of 28 to 36 degrees in accordance with the acceptable development provisions 3.7.8.3 A4.1 of the Residential Design Guidelines. However, this variable pitch can be supported in

accordance with performance criteria clause 3.7.8.3 P1 because the roof positively contributes to the existing dwelling.

#### 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 Codes and the Residential Design Guidelines are considered acceptable. As such it is recommended that the proposed development be supported subject to planning conditions.

#### **11.7 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP020420**

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

- (i) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – Studio/Bedroom – 6m required, 2.1m provided;**
- (ii) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – Enclosure of Existing Verandah and New Verandah - 4.5m required, 3.995m provided;**
- (iii) Clause 3.7.7.3 – Residential Design Guidelines – Lot Boundary Setbacks – Carport – 1m required, 0.5m provided;**
- (iv) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Verandah – 28-36 degrees required, 2 degrees provided;**
- (v) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Carport – 28-36 degrees required, 0 degrees provided;**
- (vi) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Verandah – 28-36 degrees required, 5 degrees provided;**
- (vii) Clause 3.7.8.3 - Residential Design Guidelines – Roof Pitch – Studio/Bedroom – 28-36 degrees required, variable pitch provided;**

**for alterations and additions at No 80 (Lot 147) Fortescue Street East Fremantle, in accordance with the plans date stamped received 24 February 2020, 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. The verge trees shall be protected during construction.**
- 5. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.**
- 6. If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.**

7. 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. 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".*

(ADOPTED BY EN BLOC RESOLUTION)

**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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**11.8 George Street No 88 (Shop A Lot 1) Proposed intensification of use restaurant**

<b>Owner</b>	Puresea Investments for the IBC Ricciardi Family Trust
<b>Applicant</b>	The Wine Store & Wine Liaisons Pty Ltd T/A Ethos Deli & Dining Room
<b>File ref</b>	P018/20, P/GEO88
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

**Purpose**

The purpose of this report is for Council to consider a planning application for proposed intensification of the current use from a café and shop to a café, delicatessen, bakery and restaurant at No 88 Shop A (Lot 1) George Street, East Fremantle.

**Executive Summary**

The applicant is seeking Council approval for the intensification of use of the current site. It is proposed to establish a combined café, bakery, delicatessen and licensed restaurant on site to be called “Ethos Deli and Dining Room”. The café will sell pastries, coffee, sandwiches and other foods either to dine in or take away. The delicatessen will stock boutique provisions and ingredients prepared by the business. Breads will be cooked on site. A licensed restaurant will be established utilising the mezzanine area operating on Thursday, Friday and Saturday nights and Sunday for brunches.

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

**Background**

Zoning: Mixed Use

Site area: 108m<sup>2</sup>

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

There have been a number of food related businesses located on site including Ari and Esmay, Antipotea and Cookie Dough.

DA P045/12 - Change of use from shop to café – approved by Council 15 May 2012

DA P83/08 – Mixed use development – approved under delegated authority 31 January 2011

**Consultation**

Advertising

The application was advertised to surrounding land owners from 9 March to 23 March 2020. No submissions were received.

Community Design Advisory Committee (CDAC)

The proposed development does not have streetscape impacts so was not referred to CDAC.



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External Consultation

Nil

**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**

A risk assessment has been completed for this development application and the risk is deemed to be negligible.



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**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 George Street Designated Heritage Area, as well as the deemed provisions from Planning and Development (Local Planning Schemes) Regulations 2015.

The applicant is seeking Council approval for the intensification of use at No 88 Unit A (Lot 1) George Street. It is proposed to establish a combined café, bakery, delicatessen and licensed restaurant on site. The café will sell pastries, coffee, sandwiches and other foods either to dine in or take away. The delicatessen will stock boutique provisions and ingredients prepared by the business. Breads will be cooked on site. A licensed restaurant will be established utilising the mezzanine area within the unit operating on Thursday, Friday and Saturday nights as well as Sunday for brunch.

The applicants have requested a section 39 and section 40 application be completed by the Town as part of the business's application for a liquor license with the State government. As part of this it is necessary to seek Council approval for the intensification of use and establishment of a restaurant, as well as the other parts of the business.

The business will be operating from one of four units in the building all of which have the same owner. The owner is supportive of the proposed use.

The applicants currently operate the Young George Bar and Kitchen.

The fact that there have been food businesses operating from the site previously means that there is not a significant change in use, although it is noted that previous eating establishments did not have a liquor license. Extending the hours of operation into the evening is considered to have minimal impact on adjoining residential properties.

Liquor licenses are complementary to many eating establishments and probably considered essential nowadays in terms of improving the success of restaurant businesses.

Local Planning Scheme No 3 remains silent on liquor licenses, but does allow restaurants to operate from the mixed use zone that this business is located subject to the discretion of Council granting planning approval.

Heritage

The subject property is located in the George Street Designated Heritage Area. The proposed intensification of use to a shop and restaurant does not impact on the heritage nature of the area and is suitable for the mixed use zoning that applies to premises along the street.

Car Parking

In terms of car parking a restaurant (including a café) is required to provide 1 space for every 5 seats plus 1 car bay for every staff member. A shop is required to have 1 car bay for every 20m<sup>2</sup> of net lettable area with a minimum of 5 spaces required. Given that the restaurant is planned to have 40 seats means that a minimum of 8 car bays are required with additional car bays required for each staff member (in this case 5 staff will work from the premises).



The building has already been used as a café and shop with a similar number of seats and wait staff. As the uses are the same, the car parking is the same and the only difference is in the intensification in the hours of operation. However, given that the location is George Street, on street parking becomes available as people come and go during the day. There is additional parking available at night when many businesses are closed.

It is considered acceptable to allow for a reduction in the minimum number of car bays that the business is required to provide and is similar to previous uses. There is ample car parking available at night and over the weekends when the restaurant is proposed to be operating. Like many other small businesses operating during the day there is sufficient parking available along George Street, although it may not be directly adjacent to the business.

#### Noise

One of the issues with regards to the operation of eating and drinking establishments is the noise that is created. There is an expectation that some noise will be created from patrons arriving and departing premises, as well as enjoying themselves while socialising within the premises. Given that the subject site is located within a mixed use zone it is not unreasonable to expect some noise to be created from the operations of the business. Nonetheless, in an effort to limit noise particularly later at night a condition will be imposed that will not allow live music or piped music, as well as limit operations to the interior of the building with no dining to be carried out on the street during the evening (after 5pm). Any outdoor eating permit will be limited to the daytime up to 5pm.

It is recommended to support the intensification of the use of the subject site such that the Town approves the change of use to a shop and restaurant.

#### Conclusion

Based on the assessment that has been completed for this development and the explanation provided in this report, the proposed intensification of use of the site is considered acceptable. As such it is recommended that the proposed change of use be supported subject to planning conditions.

**11.8 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP030420**

That development approval for a change of use to a café, delicatessen, bakery and restaurant is granted and Council exercises its discretion in regard to the following;

(i) Parking – Local Planning Scheme No 3 – A minimum of 8 car bays required, existing on street parking provided

at No. 88 (Shop A - Lot 1) George Street, East Fremantle, in accordance with the plans date stamped received 26 February 2020, subject to the following conditions:

1. No live or amplified music shall be played from the premises. Any required change to this condition shall require the submission of a development application for the consideration of Council.
2. Use of the footpath for outdoor dining with tables and chairs located on the footpath will require the submission of an application for an outdoor area eating permit for the consideration of Council. No tables or chairs shall be located on the footpath after 5pm.
3. This planning approval does not include approval for any signage. A separate development application for signage shall be submitted to the Town for the consideration of Council. No unauthorised signage is to be displayed.
4. Seating shall be limited to a maximum of 40 people for the restaurant. Any change to this shall require the submission of a development application requesting an increase in the restaurant seating.
5. The change of use approval is for shop and restaurant only. If any other use not within the definition of shop or restaurant is proposed then a further development approval application will be required to be submitted for Council's consideration.
6. Any works are to be constructed in conformity with the drawings and written information in relation to use accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
7. With regard to the plans submitted with respect to the building permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
8. The proposed use is not to be commenced until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
9. This planning approval is to remain valid for a period of 24 months from the 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) ***the premises must be inspected by the Town's Environmental Health Officer prior to opening.***

**(ADOPTED BY EN BLOC RESOLUTION)**

**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.

### 11.1 Allen Street No 76 (Lot 23) Proposed single storey extensions

<b>Owner</b>	Danielle Churack
<b>Applicant</b>	Brent de Pledge
<b>File ref</b>	P097/19, P/ALL76
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

#### Purpose

Council is to consider a planning application for proposed single storey extensions at No 76 (Lot 23) Allen Street, East Fremantle.

#### Executive Summary

The applicant is seeking Council approval for the following variations to the Residential Design Codes;

- (i) Clause 3.7.7.3 – Residential Design Guidelines – Garage Wall – Lot Boundary Setbacks – 1m required, 0m provided.
- (ii) Clause 3.7.8.3 - Residential Design Guidelines – Alfresco - Roof Pitch – 28 to 36 degrees required, 0 degrees provided

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

#### Background

Zoning: Residential R12.5

Site area: 1088m<sup>2</sup>

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

P095/17 Timber posts and wire trellis on boundary

#### Consultation

##### Advertising

In an attempt to address the concerns of the southern neighbouring property owners significant amendments were made to the proposed design of the project including a reduction in the roof pitch to bring it into compliance with the acceptable development requirements of the Residential Design Guidelines. The new design was re-advertised from 30 January to 14 February 2020. One submission was received regarding the new proposal.

The submission stated;

*We would like to submit our concerns for the revised new additions proposed at 76 Allen Street East Fremantle. After meeting with the Town of East Fremantle to discuss these additions and plans, they have confirmed the additions are within the appropriate setbacks and heights of the requirements of planning.*

1. *The revised plans bedrooms' setback has increased from 1.486 metres to now 2.186 metres. This additional setback from our boundary is welcomed but we would like to suggest that this setback is also applied on the living area at the rear of the extension. The plans show that the living room has a setback of 1.486m. Our concerns for this setback is the negative impact on our amenities of our pool and outdoor area. The material proposed for the roof is metal, this raises concern for us as this will impact us negatively in the form of glare and heat in our pool and alfresco areas. Therefore, the current enjoyment of these areas will be severely diminished. The eaves from the proposed new roof is 500 metres from boundary.*
2. *The revised pitch of the roof is now 35 45"degrees. The pitch of the roof at the front of the home is 26 degrees. This still seems excessive and not consistent scale and form with the prevailing building typology of the original home or the immediate locality. It should also match the original roof pitch of 26 degrees. This roof pitch needs to be addressed as it will be visually intrusive by virtue of height. Particularly when the setback of the roof eaves from the dividing fence is .500m. We will also no longer enjoy our outlook, as our outlook will be severely interrupted by this intrusive addition which runs down the majority our common boundary.*
3. *The new proposed change of crossover and new garage raises several concerns for us also. Council has confirmed via the designer that the current brick wall will be removed to allow for the new parapet wall to be erected (this was not obvious on the plans supplied to us). This will need to be built from 76 Allen to minimise inconvenience caused from the new wall. Confirmation is required on whether this is going to be rendered on our side of the parapet wall and painted at the owners' cost, this was raised with the designer and he has confirmed this to be the case. We would like it noted that there must be discussion between both parties in regard to replacing dividing fence heights and materials, along the remainder of the dividing fence at the front of the property. We would like to raise with council the state of current retaining wall at the very bottom of driveway. This will need to come down and replaced, as this is completely inadequate and is dangerous broken fibrous cement. Their plan is not obvious in regards to what the intention of the owners of 76 Allen Street have for this retaining wall. See photos*





*Our vegetation along this boundary will need to be protected and all new dividing fences will need to be erected from number 76 side.*

#### *Summary*

*The Town of East Fremantle has asked for comments from the respective neighbours on the proposed additions at 76 Allen Street East Fremantle. Although the proposal seems to comply mostly with the provisions of planning, we believe that this addition will impact severely the amenity and enjoyment of the adjoining property at 78 Allen Street East Fremantle. We would like council to consider the pitch of the roof being excessive to the original roof pitch with the materials used on the roof to be a negative impact on our enjoyment of our pool outdoor entertaining areas with eaves only being .500m from our common boundary. The other main concern is the new proposed driveway and garage. The plans are insufficient and would like further clarification on the retaining wall.*

#### *Applicant Comment*

*I will respond to the concerns in sequence as per the submission-*

*The proposed southern boundary setbacks are in excess of the deemed to comply requirements of the R-Codes and therefore do not need to be adjusted. It should also be pointed out that no shadow is cast over our southern neighbour's property at midsummer allowing and 81 degree vertical sun angle as per the R-Codes.*

*The proposed 35 degree 45 minute roof pitch complies with the Town of East Fremantle roof pitch policies. The section of eave that is setback 500mm from the boundary also complies with the Building Code of Australia. The owners of 78 Allen Street seem unreasonable commenting on this proposal affecting their amenities and outlook when they have a second storey balcony close to the southern boundary of 76 Allen Street which they can clearly overlook the entire backyard of 76 Allen Street from.*

*In regards to the dividing fence the owners of 76 Allen Street will be in contact with the owners of 78 Allen Street and will follow the procedures as outlined in the Dividing Fences Act. In relation to the retaining wall the owners of 76 Allen Street had a full repeg completed by a licensed surveyor indicating the exact location of boundary fences and their existing house location to ensure the application is 100% correct with setbacks etc. See attached a copy of the re-pep carried out (Attachment 4). This clearly indicates the retaining wall they are concerned about is completely inside the property of 78 Allen Street.*

*In regards to their concerns about the proposed driveway and garage the south elevation on sheet 3 of 4 of the application clearly indicates the existing ground level and proposed driveway. The driveway gradient will be very similar to the driveway gradient at 78 Allen Street, therefore this retaining wall they are concerned about may not even need to exist.*

*In summary the design of the extensions at 76 Allen Street is very conservative in relation to any impact on the surrounding neighbours. The new proposal also provides greater privacy for the owners of 76 Allen Street from the current overlooking from the southern neighbour's balcony across their backyard area. The proposed design is also oriented to maximise the northerly aspect of the property, therefore providing a more energy efficient and environmentally friendly building.*

Officer Comment

The applicant has ensured that the minimum lot boundary setbacks are achieved for the rear living spaces.

The roof pitch was reduced to be in compliance with the Residential Design Guidelines in response to the previous complaints from the southern neighbour stating that the roof pitch exceeded Town requirements.

Dividing fences are ultimately a matter between property owners.

The applicant has ensured that a site survey and repeg was completed prior to development to verify lot boundary locations and building setbacks.

Approval for retaining walls less than 500mm above natural ground level is not required and as such does not have to be indicated on plans. The applicant has indicated that retaining walls will not be required along the southern side boundary.

The gradient of the driveway of 76 Allen Street will be similar to 78 Allen Street and does not exceed any requirements for driveways.

The applicant has designed a dwelling with living areas that have a northern aspect to capture sunlight. The design is relatively conservative in surface area, height, setbacks and site coverage and as a result there is no reason to refuse the development.

Community Design Advisory Committee (CDAC)

The application was not referred to CDAC as there are minimal streetscape impacts. Refer to CDAC.

External Consultation

N/A

*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**

A risk assessment has been completed for this development application and the risk is deemed to be negligible.

**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 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

Design Element	Required	Proposed	Status
Street Front Setback	7.5m	>7.5m	A
Lot Boundary Setback			
Northern wall – colonnade & living	1.5m	11.5m	A
Northern wall - alfresco	1m	2m	A
Northern wall – new bay window	1.5m	2m	A
Southern wall – living, bedrooms, bathrooms, laundry	1.5m	1.5m	A
Eastern wall - living	6m	7.25m	A
Southern wall – bedrooms	1.5m	2.186m	A
Southern wall – bathroom & laundry	1m	1.456m	A
Open Space	55%	67.97%	A
Wall Height	6m	3.349m	A
Roof Height	9m	6.1m	A
Setback of Carport/Garage	1.2m behind dwelling	17m	A
Car Parking	2	2	A
Site Works			N/A
Visual Privacy	6m	Wall on adjoining property	A
Overshadowing	Maximum 25%	11.1%	A
Drainage		Will be conditioned	

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	N/A
3.7.11 Front Fences	A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	A
3.7.15.4.3.1 Fremantle Port Buffer Area	N/A
3.7.15.3.3 Garages and Carports	A

This development application proposes a single storey extension to the existing dwelling. The extension is concentrated to the rear of the dwelling. Two variations are requested to the requirements of the Residential Design Guidelines in relation to lot boundary setbacks and roof pitch. It is noted that the applicant submitted an amended set of plans addressing the concerns of the neighbours following the original round of advertising that was undertaken in November and December of 2019. The proposed changes represent a means to retain the property, ensure that the dwelling is a liveable structure that suits the owners without imposing heavily on neighbouring properties or the streetscape.

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### Heritage

The dwelling is categorised as a Category C heritage property and as such is included on the Heritage Inventory, but not the Town's Heritage List. As such it could be demolished, but the applicant has chosen to retain the dwelling and renovate as is acceptable to the Town. The tile roof is being replaced with a Colorbond roof and extensions are proposed for the rear and side of the dwelling. Nonetheless the character of the front part of the heritage dwelling is being retained and the dwelling enhanced.

### Building Setbacks

The garage is proposed to be located on the southern boundary of the dwelling with a nil setback. Under Clause 3.7.7.3 A3 of the Residential Design Guidelines it is possible to construct a wall on the boundary if it achieves the following criteria;

- walls are not higher than 3m and up to 9m in length up to one side boundary,
- walls are behind the main dwelling,
- subject to overshadowing provisions of the Residential Design Codes, in the opinion of Council the wall would be consistent with the character of development in the immediate locality and not adversely affect the amenity of adjoining property(s) having regard for the views, and
- where the wall abuts an existing or simultaneously constructed wall of similar or greater dimensions.

In this case the proposed development achieves all criteria except for the last. Given that the wall is built against the dividing wall between the 2 properties which is only 2.2m high reference is made to the performance criteria clause 3.7.7.3 P1.3 which states that developments are to have side setbacks complementary with the predominant streetscape while P3 states that wall heights are to reflect the immediate locality. In this case the reduced lot boundary setback is complementary to the predominant streetscape and the wall height of the garage wall is up to 3.105m with an average height of 2.992m which is not considered excessive and ensures that there is considerable privacy between the two properties. For these reasons the proposed reduced boundary setback for the garage wall is supported.

### Roof Pitch

The alfresco is proposed to have a roof pitch of 0 degrees which does not achieve the acceptable development requirements of the Residential Design Guidelines (clause 3.7.8.3 A1 requires roof pitch to be 28 to 36 degrees).

The proposed development does achieve performance criteria clause 3.7.8.3 P1 which requires that roof forms of additions and alterations positively contribute to the existing dwelling. In this case the proposed alfresco is at the rear of the dwelling, hidden from the front streetscape and the new roof will complement the existing dwelling. For this reason the roof pitch of the alfresco can be supported.

### Concerns of Neighbours

There were a number of questions asked of the designer of the proposed development after a meeting with the owners of a neighbouring property in response to concerns regarding the development. Responses were provided by the designer and are in italics after the question. These responses were provided in addition to the responses relating to formal advertising.

- 1) Can you confirm what is happening to the existing wall near/in similar position to the proposed parapet wall for the garage- is it being demolished and completely replaced?

*The existing brick wall in the location of the proposed garage will be demolished and replaced with the new garage parapet wall.*

- 2) What will be the finish and colour on the external face of the parapet wall?

*A condition in the recommendation that requires discussions to be undertaken between owners of 76 and 78 Allen street regarding the finish and colour of the wall. The finish of the proposed parapet wall will be sand finish render and painted in a colour selected by the owners of 78 Allen Street.*

- 3) It is stated that new fencing will be installed along the boundary between the front wall of the garage and the front boundary- will there be retaining along this fence- this is not indicated on the plans – will the fence type and finish be discussed with the neighbours?

*Due to the driveways of both 76 and 78 Allen Street being on a similar gradient it is anticipated that very little retaining would be required. If you refer to the Proposed South Elevation on sheet 3 of 4 the gradient of the driveway is indicated against the dotted line being the existing level. This indicates a small section of possible retaining 250mm high due to our proposed driveway cutting into the existing ground level. The owners of 76 Allen Street will be in contact with the owners of 78 Allen Street to discuss the proposed fence.*

- 4) Are new/additional retaining walls being constructed along the southern boundary behind the parapet wall?

*Yes there are retaining walls being constructed behind the proposed parapet wall. These retaining walls are all under the 500mm maximum cut and fill allowance. If you refer to the Proposed South Elevation on sheet 3 of 4 the extent of the cut and fill and retaining walls are indicated.*

- 5) How much do the levels change where the new driveway is to be constructed?

*The proposed new driveway for 76 Allen Street is on a very similar gradient and level to the driveway of 78 Allen Street. Once the new driveways and crossovers are complete with the new fencing, it will enhance the current streetscape.*

The proposed development is considered appropriate for the street and in context with the surrounding development. It is a single storey development that has relatively generous setbacks to side boundaries (with the exception of the garage wall), adequate open space provision and no privacy or overlooking concerns. There will be no significant impact on the streetscape or the amenity of neighbouring properties as a result of development. As private land the proposed development is appropriate for the site and there are no genuine planning reasons for not supporting the proposed development. The designer has gone to great lengths to provide information requested of him by the neighbouring property owners with regards to the proposed development.

#### 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 Guidelines are considered acceptable. As such it is recommended that the proposed development be supported subject to planning conditions.

- The deputation submitted by the owner of 76 Allen Street, as part of this application was acknowledged and considered by committee members

Amendment

*Cr Collinson moved that clay tiles be used for the roof.* (THE AMENDMENT WAS LOST FOR WANT OF A SECONDER)

**11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP040420**

Moved Cr Natale, seconded Cr Nardi:

That Council grants development approval and exercises discretion in regards to the following;

- (i) Clause 3.7.7.3 – Residential Design Guidelines – Garage - Building Setbacks and Orientation – 1m required, 0m provided
- (ii) Clause 3.8.7.3 – Residential Design Guidelines – Alfresco - Roof Pitch - 28 to 36 degrees required, less than 28 degrees provided;

for single storey extensions at No 76 (Lot 23) Allen Street, East Fremantle, in accordance with the plans date stamped received 28 January, 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 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.
6. All parapet walls are to be fair faced brickwork, cement rendered or as agreed to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
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. The original crossover is to be removed and the crossover, footpath and kerbing is to be restored to Council requirements and to the satisfaction of the Chief Executive Officer.
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 5:1)**

**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 Duke Street No 70 (Lot 500) Change of Use - Short Term Accommodation

<b>Owner</b>	Jacquelyn and Lucas Harris
<b>Applicant</b>	Jacquelyn and Lucas Harris
<b>File ref</b>	P007/20; P/DUK70
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

#### Purpose

The purpose of this report is for Council is to consider a planning application for a change of use to operate short term accommodation at No. 70 Duke Street, East Fremantle.

#### Executive Summary

The applicant is seeking Council approval for a change of use to permit short term accommodation to operate within ancillary accommodation at a heritage (Category C) single storey dwelling that is located within the Plympton Precinct residential zone. Short term accommodation is an unlisted use within the Town's Local Planning Scheme No 3 (LPS3) and as such requires the approval of Council. Short-term accommodation operated at the property until April 2019 and was then cancelled. Following works at the premises to construct new ancillary accommodation and an elevated pool and deck the applicants have decided to re-start operating short-term accommodation.

It is considered that the proposal can be supported subject to conditions of planning approval.

#### Background

Zoning: Residential

Site area: 508m<sup>2</sup>

Heritage: Category C

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

P092/19 development application for raised pool and deck issued 3 December 2019

P099/18 development application for ancillary dwelling issued 5 February 2019

P097/18 development application for change of use to operate short stay accommodation issued 11 December 2018

P096/12 development application for alterations and additions issued 1 June 2012

#### Consultation

##### Advertising

The applicant provided signed statements from the neighbouring properties directly to the north and south of the subject property supporting the proposal.

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

This matter was not referred to CDAC. There are no streetscape or building design impacts.

#### Statutory Environment

*Planning and Development Act 2005*

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

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**Policy Implications**

Nil

**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**

A risk assessment has been completed for this development application and the risk is deemed to be negligible.

**Site Inspection**

No inspection was required.

**Comment**

It is noted that this is the second application for a change of use from a residential dwelling to short stay accommodation for this property. The first (DA P097/18) was issued on 11 December 2018, but was voluntarily cancelled by the applicants. In the meantime approvals were sought and works undertaken

to develop ancillary accommodation (DA P099/18) and an elevated pool and deck (DA P092/19) that would be used by guests of the short term accommodation.

A time limit is placed on the approval to ensure that any issues or problems around the change of use can be controlled and where necessary the approval can be rescinded. There have been no complaints received by Council or the surrounding residents relating to the operation of the short term accommodation while it was operating.

#### 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 Planning and Development (Local Planning Schemes) Regulations 2015.

Section 67 of the Regulations refers to matters to be considered by local government. In the words of the regulations;

*In considering an application for development approval the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application —*

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (n) the amenity of the locality including the following- (ii) the character of the locality;*
- (r) the suitability of the land for the development taking into account the possible risk to human health or safety;*
- (s) the adequacy of —(i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles; (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- (v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;*
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*
- (y) any submissions received on the application;*
- (zb) any other planning consideration the local government considers appropriate.*

For applications such as the one being discussed a range of issues need to be examined drawing on the points listed above.

The proposed short term accommodation will be carried out in the Residential Zone as defined by the Local Planning Scheme No 3. In areas zoned residential short term accommodation is not listed as a use. However, it is a use that is similar to bed and breakfast as listed in the Zoning Table of LPS 3.

Short term accommodation potentially has minimal impacts on the amenity of surrounding properties if managed correctly and the requirements of the Scheme are met including car parking, signage and noise, as well as health and safety requirements in accordance with the Building Code and Health Act.

There are already a number of properties that have successfully applied for approval from Council to operate short term accommodation in the Plympton Precinct.



The heritage category of the property (Category C) should not be seen as an obstacle to the change of use to short term accommodation. By approving the dwelling for use as short term accommodation it allows its heritage nature to be enjoyed by visitors. This development application only refers to a change of use and there are no proposed works. These were dealt with under previous development applications as noted previously.

#### Management Plan

The applicant has provided a management plan that describes emergency evacuation procedures and the owners contact details if there are any issues at the property. There were no issues or complaints made to the Town from the previous change of use regarding neighbourhood amenity.

#### Car Parking

As short term accommodation is an unlisted use there are no specified parking standards. No onsite parking is available and parking is to be provided from the street in close proximity to the dwelling.

In line with the Residential Design Codes reduced parking provision is an acceptable outcome if proposed development occurs in close proximity to major transport routes. In this case the property has regular Transperth bus services that operate along Canning Highway and Marmion Street and provide access to Fremantle and the Perth to Mandurah railway line at Canning Bridge and Bull Creek train stations. Guests will be encouraged to utilise public transport.

#### Signage

Commercial operations in residential areas that impact on the amenity of surrounding residents should be mitigated, including matters such as excessive signage, which can create visual pollution. No signage is referred to in the development application.

#### Noise

Noise is a legitimate concern for surrounding residents of short term accommodation. It is considered that the day to day operations of short term accommodation should not exceed normal household levels. In this case the owners will be able to be contacted directly by phone if there are issues with noise. The management plan states that noise must be kept to a minimum between 10.30pm and 7.00am

#### Conclusion

It is necessary to ensure that the short term accommodation within a residential zone does not adversely affect the amenity of nearby residents. A condition will be imposed requiring renewal of the planning application to be submitted within 12 months that will address any concerns that may have arisen in the intervening period and the Town reserves the right to revoke the planning approval should there be any impacts that cannot be controlled by the applicant in a timely and effective manner.

Based on information supplied by the applicant and the subsequent assessment it is considered that the proposal can be supported subject to conditions of planning approval.

- The deputation submitted by the owner of 70 Duke Street, as part of this application, was acknowledged and considered by committee members.



**11.3 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP050420**

Moved Cr Nardi, seconded Cr Watkins

That Council exercise its discretion and grant planning approval for the change of use for the proposed short term accommodation at No. 79 (Lot 255) Sewell Street, East Fremantle, in accordance with the plans date stamped received 13 December 2019, subject to the following conditions:

1. The short term accommodation is limited to a maximum of 4 adults being accommodated on site at any one time.
2. The ancillary accommodation is to be used for accommodation purposes.
3. No occupants' vehicles are to be parked on the Council verge, in or across crossovers.
4. Hard wired smoke alarms as required by the Building Code of Australia are to be installed and proof of the instalment is to be provided to the satisfaction of the Chief Executive Officer.
5. Residual Current Devices are to be provided to all power points and lights switches and proof of installation is to be provided to the satisfaction of the Chief Executive Officer.
6. The contact details (all hours) of the owner and the owner's representative being provided to Council for an emergency contact person immediately within 14 days of the owner being advised of the approval of the Council. If this does not occur the development approval will be revoked by Council.
7. The owner's representative is to advise guests of key elements of the management plan including;
  - a) emergency evacuation procedures
  - b) reminder that the premises are surrounded by residential dwellings and that noise is to be kept to a minimum after 10.30pm and before 7am.
8. This planning approval is to remain valid for 12 months from the date of this approval.
9. A new planning approval will be required to be submitted and approved by Council prior to the expiry of the planning approval to continue operating the short term accommodation from the current site.
10. The approval may be revoked by Council, prior to the expiration of the 12 month period if there are any adverse impacts involving noise, parking, vehicle traffic and surrounding amenity which are unable to be controlled by the applicant in a timely and effective manner and which is to the satisfaction of the Council.
11. This planning approval does not include any planning approval for any signage or advertising. No signage is to be displayed onsite.

**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.*
- (iii) *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".*
- (iv) *the owner/operator of the short term accommodation is to ensure that aquatic facilities are fully compliant with all requirements established by both the Western Australian Department of Health and local government and queries should be directed to the Town's Environmental Health Officer and Building Surveyor.*

**(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.

#### 11.4 Osborne Road No 1 (Lot 2) Proposed double storey dwelling

<b>Owner</b>	Linda & Michael Horko
<b>Applicant</b>	J Corp Pty Ltd TA Perceptions
<b>File ref</b>	P004/20; OSB1
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

#### Purpose

For Council to consider a planning application for a proposed double storey dwelling at No 1 (Lot 2) Osborne Road, East Fremantle.

#### Executive Summary

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

- (i) Clause 5.2.1 – Residential Design Codes – Garage Setbacks – 4.5m required, 4m provided;
- (ii) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch – 28 to 36 degrees required, 26 degrees provided;
- (iii) Clause 5.3.1 – Residential Design Codes - Outdoor Living Areas Length– 4m required, 2.63m provided;
- (iv) Clause 5.3.8 – Residential Design Codes - Retaining Walls – less than 0.5m height required, more than 0.5m provided; and
- (v) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – 1m required, 0m provided.

Amended plans were received in response to comments made by the Community Design Advisory Committee. The amended plans address a significant number of issues raised by the Committee.

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

#### Background

Zoning: Residential R12.5/40

Site area: 191.95m<sup>2</sup>

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

Survey strata subdivision 540/19 19 September 2019

Demolition permit 2019113 for existing structures on site

DA P084/19 Modifications of existing wall along the front boundary and in the front setback area and crossover

Building permit 2019113 Modifications to front wall and creation of crossover

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## Consultation

### Advertising

The application was advertised to surrounding land owners 23 January to 7 February 2020. No submissions were received.

### Community Design Advisory Committee (CDAC)

The application was referred to CDAC. The following comments were made;

(a) *The overall built form merits;*

- The Committee does not support the proposal
- The Committee recommend changes are made to the design of the dwelling.
- The committee consider the bulk of the building is excessive. The dwelling is considered to impact of the heritage significance of the parent lot and heritage dwelling due to the overall bulk and proximity to the boundary. It is considered the two lot subdivision significantly impacts on the curtilage of the heritage dwelling. The bulk and setbacks are considered too restrictive.

(b) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development.*

- The Committee note the bulk of the building is considered excessive when assessed against the retention of the existing heritage dwelling.

(c) *The relationship with and impact on the broader public realm and streetscape;*

- The Committee state that the crossover is considered excessively wide for the overall lot width and should be reduced to comply with Councils crossover requirements.
- The Committee consider the garage size/ width is excessive and does not comply with the Town's Residential Design Guidelines.

(d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*

- As noted above.
- The Committee note concern regarding the overlooking to the rear of the yard (adjoining properties).

(e) *The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;*

- The Committee consider the dwelling has minimal passive solar achieved through design.

- The Committee consider the dwelling has minimal ability for cross ventilation opportunities in the dwelling, which increases the use of air conditioning to cool the property.
- The Committee consider the dwelling has minimal environmental benefits.
- (f) *The demonstration of other qualities of best practice urban design including “Crime Prevention” Through Environmental Design performance, protection of important view corridors and lively civic places;*
- The Committee note the proposal demonstrates positive passive surveillance principles.

Applicant Comment

*On behalf of our clients Michael and Linda Horko, who have subdivided the rear of the block at 1 Osborne Road East Fremantle, we are proud to submit this planning application which has taken on the comments of the advisory committee as well as the advice from the planning team at the Town of East Fremantle. We believe the development compliments the existing Class A Federation home. It embodies some of the materials and adds value to the existing streetscape. Please see the responses below for further understanding of the changes made to ensure the proposal will be of satisfaction to the CDAC and the planning team at the Town of East Fremantle.*

*We have reduced the building bulk of the dwelling by pushing back the garage a further 500mm (originally 4m setback) to ensure we are compliant with the 4.5m required setback as per the Residential Design Codes. This ensures that all setbacks from the dwelling to the lot boundary as viewed from the front elevation are compliant. As per the Design principles of the Residential design Codes, and ensuring compliance with lot boundary setbacks and open space requirements, this reduces the impact of building bulk on adjoining neighbours. With this change made, this proposal ensures that both design principle provisions are now compliant.*

*As per the amended plans, the crossover has been reduced from approximately 4m to 3m to ensure compliance with the Councils crossover requirements*

*We have increased the setback of the garage. Due to the setback of the garage being increased in length from 4m to 4.5m, this still does not allow for additional cars to park at the front of the dwelling (as per BCA requirements). The future occupants of the dwelling will likely own more than 1 vehicle (as do a large portion of households throughout the Perth metropolitan), therefore it is preferable that the width of the garage is maintained. By keeping two cars within a garage and out of view, the streetscape is significantly visually improved by avoiding unappealing street parking. As per research into other approved cases throughout the Town of East Fremantle, it can be noted, garages of this width have previously been supported on similar lot widths and sizes;*

*3 x single dwellings at 5 Irwin Street, East Fremantle – approximately 2 years old , whereby a double garage has been approved on a 9m wide lot.*

*9A Pier Street, East Fremantle – a double garage has been approved on a 10m wide lot.*

*82 Sewell Street, East Fremantle – the carport width proposed is not compliant with the 30% requirement, however, was approved due to “site constraints”. Similar to the respective lot, Strata lot 2*

*provides site constraints as discussed above, therefore our clients would benefit significantly from a garage of this width.*

*Our design has been amended to ensure the heritage significance of the parent lot has been represented through the revision of key design elements of the amended proposal. As evident in the amended streetscape proposal, we have incorporated face brick around the garage in lieu of an original render. We have done this at an attempt to transition the face brick façade and heritage features of the existing dwelling into the new proposal. The face brick addition to strata lot 2 provides a variation in materials and colours, which the CDAC and the Town have previously been supportive of. Other examples of a similar approved facade can be seen at 54 Preston Point Road, East Fremantle and 24B Zenobia Street, Palmyra. It can also be noted that the new dwelling is now setback 4.5m which is much greater than the setback of the existing heritage dwelling on Lot 1, which has a setback of 2.4m.*

*Our proposal for strata lot 2 has been designed to ensure that we are fully compliant with all deemed to comply provisions of "5.4.1 Visual privacy" outlined in the Residential design Codes. All windows and major openings (balcony) proposed on the upper floor of strata lot 2 ensure that overlooking will not breach into the rear yards of the adjoining property. Please refer to the cone of vision diagrams on the upper floor plans. Please note that all upper floor windows facing the northern, southern and western boundaries are classified as "minor openings". The proposed dwelling will also incorporate laser cut artistic frieze panels to provide screening to the front balcony and create variety in the streetscape.*

*The amended design has incorporated additional windows to Bedroom 2, Bedroom 3 as well as the upper floor living and dining room at an attempt to increase the amount of cross ventilation present throughout the proposed design. It can also be noted that the length of the upper floor powder room window has been increased as a result. Our design is fully compliant with the lighting and ventilation requirements as per the BCA.*

*In order to achieve additional passive solar aspects within the proposal, we have added additional north facing windows (as stated above – bedroom 3 and upper floor dining) which enhances the passive solar.*

*Additional vegetation within the primary street setback has been incorporated as a result of increasing the setback from the garage to the primary street from 4m to 4.5m. The additional vegetation not only increases the environmental benefits of the proposal, but also enhances the streetscape significantly from an environmental and sustainable point of view. The large existing tree that is a dominant factor in the streetscape perspective (see attached) has a major environmental benefit.*

*As indicated our design provides sufficient passive surveillance principles.*

#### Officer Comment

Following CDAC's response to the proposed development the applicant and owner in consultation with Council planners have made changes to the proposed dwelling to address these concerns.

The building was setback an additional 0.5m to lessen building bulk. As such it achieves the deemed to comply requirements of the Residential Design Codes in terms of primary street and garage setbacks.

The crossover width was reduced to 3m which is the maximum for lots less than 12m wide. In this case the lot is 9m wide.

The garage width is in compliance with the requirements of the Residential Design Guidelines for new dwellings. The acceptable development requirements clause 3.7.15.3.3 A2 state "Plans, elevations and section drawings are to be provided to demonstrate the impact of the garage or carport on the new dwelling". There is no requirement to limit the width of the garage to 30% for new dwellings; this only applies to existing dwellings.

There is no overlooking from upper storey windows, The openings are all 1.6m above finished floor level of the upper storey and as such are not considered major openings and do not create privacy or overlooking issues.

Additional windows have been added in Bedroom 2 and 3 on the lower floor and the living and dining room on the upper floor as well as a wider window in the powder room on the upper floor to improve cross ventilation through the dwelling. The additional windows on the north side increase access to northern sunlight and the benefits linked to passive solar access.

The verge tree is retained and the plans indicate that additional plants will be able to be grown in the front garden.

The fact that there are 2 additional dwellings on a site and the existing dwelling has been retained means that 2 additional households can live adjacent to Canning Highway in close proximity to Fremantle and within walking distance of regular bus services to Fremantle and Perth. The proposed development achieves increases in density at a level that is at a human scale, rather than as a result of bulkier and higher apartments, and more fitting of suburban streets that have densities typically between R12.5 and R17.5. There will be no demolition of dwellings or broad acre land clearing (and associated loss of native flora and fauna) as a result of the proposed development. The proposed development does not consume the same amount of energy or resources as a much larger development. The development is less environmentally damaging than development on the urban fringes of greater Perth and is more economically and socially sustainable than isolated urban fringe urban development, due to its proximity to larger activity centres that provide employment and entertainment, as well as social and recreational infrastructure. It is noted that all buildings are now required to meet minimum energy efficiency requirements such that new buildings are significantly more energy and water efficient than older heritage dwellings that may not have roof or wall insulation, poor cross ventilation and solar passive characteristics due to inappropriate window location and size, as well as outdated and inefficient lighting and plumbing fittings.

Significant passive surveillance is possible from the front study, as well as the upper storey balcony, living and dining rooms.

#### External Consultation

Nil

#### **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)*

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### 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

A risk assessment was undertaken and the risk to the Town was deemed to be negligible.

### 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 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

Design Element	Required	Proposed	Status
Street Front Setback	4m	4.5m	A
Lot Boundary Setbacks			
Study	1m	1.21m	A
Entry	1m	1.61m	A
Bath	1m	1.21m	A
Toilet & bed 3	1m	1.51m	A
Bed 3 & 2	1.5m	2.63m	A
Alfresco	1m	1.17m	A
Bed 2 & laundry	1m	1.2m	A
Staircase	1m	1.91m	A
Garage	0m	0m	A
Balcony, dining, kitchen	1.2m	1.21m	A
Ensuite & master suite	1.2m	1.91m	A
Master suite & WIR	1.2m	2.63m	A
WIR	1.2m	1.2m	A
Toilet & staircase	1.9m	1.2m	A
<b>Entry porch</b>	<b>1m</b>	<b>0m</b>	<b>D</b>
Open Space	45%	48.4%	A
Wall height	6m	6m	A
Roof height	9m	7.2m	A
Setback of Garage	4.5m	4.5m	A
Car Parking	2 cars	2 cars	A
<b>Retaining Wall</b>	<b>&lt;0.5m</b>	<b>&gt;0.5m</b>	<b>D</b>
Visual Privacy	Balcony 7.5m	7.5m	A
Overshadowing	35%	12.1%	A
Drainage	On site	Condition	



Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
3.7.4 Site Works	A
3.7.5 Demolition	N/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	A
3.7.14 Footpaths and Crossovers	A
3.7.15.4.3.1 Fremantle Port Buffer Area	N/A
3.7.15.3.3 Garages and Carports	A

This development application proposes the construction of a new double storey dwelling. The dwelling is one of two development applications that have been proposed for 1 Osborne Road; the other being the adjoining lot to the south at strata lot 3. The original property is a Category A heritage listed dwelling on the corner of Canning Highway and Osborne Road (strata lot 1). As such it has a R12.5/40 density coding and has been able to utilise the surplus land in the rear yard of the existing dwelling.

The proposed development does not impact on the heritage characteristics of the original building. The subdivision was conditionally approved as a survey strata subdivision on 19 September 2019 and allows for development on these sites. The proposed development has been mindful of the heritage property in terms of setbacks, overshadowing and privacy. The development proposed does not include any modifications to the existing heritage dwelling.

This development application proposes the construction of a new double storey dwelling. Three variations to the Residential Design Codes and one variation to the Residential Design Guidelines are requested. Following CDAC comments the applicant has responded by making some changes that improve the acceptability of the proposed design.

Roof Pitch

The roof pitch is 25 degrees. It does not achieve acceptable development provision 3.7.8.3 A4.1 which requires a roof pitch of 28 to 36 degrees, but it does achieve performance criteria 3.7.8.3 P4. The roof pitch less than that required complements the traditional form of surrounding development in the immediate locality and also reduces the size and bulk of the building compared to a dwelling with a steeper pitch roof. For these reasons the proposed roof pitch can be supported.

Outdoor Living Areas

The deemed to comply clause 5.3.1 C1.1 of the Residential Design Codes requires that outdoor living areas have a minimum length and width of 4m. In this case the outdoor area has dimensions of 9.12m by 2.63m. Although it does not achieve the 4m minimum dimension it does achieve design principles 5.3.1 P1.1 because the proposed outdoor living area is capable of use in conjunction with a habitable room, is open to the winter sun and ventilation and the northern aspect of the site is optimised. For these reasons the reduced width of the outdoor living area can be supported.

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### Retaining Walls

Post and panel retaining walls on the western boundary are greater than 0.5m above natural ground level and therefore do not achieve the deemed to comply clause 5.3.8 C8 of the Residential Design Codes. However, they are able to achieve design principles 5.3.8 P8. The retaining walls allow the residents to effectively benefit from the use of the land and they do not detrimentally affect neighbouring properties. For these reasons the retaining wall above 0.5m height can be supported subject to the erection of privacy screening between 0.3m and 0.5m high above the height of the dividing fence located along the boundary.

### Lot Boundary Setbacks – Entry Porch

An open air entry porch is proposed between the proposed dwelling and the neighbouring property. It is approximately 6.46m long and 2.83m high and is located on the boundary where it should have a minimum setback of 1m. It does not achieve deemed to comply clause 5.1.3 C3.1i but it does achieve design principles 5.1.3 P3.2 for the following reasons;

- Buildings built up to boundaries other than street boundary where this makes effective use of space,
- Reduced impact of building bulk on adjoining properties, adequate sunlight and ventilation is provided to the building and open spaces,
- No overlooking or loss of privacy,
- Does not have an adverse impact on amenity of adjoining property,
- Sunlight to major openings and outdoor living areas for adjoining properties is not restricted,
- Positively contributes to prevailing or future development context and streetscape

The fact that the entry to the dwelling is located here means that the structure which is narrow and open to the front of the property does not have significant impacts on either this property or the adjoining properties. It acts as a decorative and architectural feature, rather than having any material effect on the amenity or useability of the subject property or the adjoining lots and for the listed reasons above can be supported.

### 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 Codes and the Residential Development Guidelines are considered acceptable. As such it is recommended that the proposed development be supported subject to planning conditions.

**11.4 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP060420**

Moved Cr Watkins, seconded Cr Nardi

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

- (i) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch – 28 to 36 degrees required, 26 degrees provided;
- (ii) Clause 5.3.1 – Residential Design Codes - Outdoor Living Areas Length– 4m required, 2.63m provided;
- (iii) Clause 5.3.8 – Residential Design Codes - Retaining Walls – less than 0.5m height required, more than 0.5m provided;
- (iv) Clause 5.1.3 – Residential Design Codes – Lot Boundary Setbacks – 1m required, 0m provided

for a new double storey dwelling at No 1 (Lot 2) Osborne Road, East Fremantle, in accordance with the plans date stamped received 6 7 16 March 2020, 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. Visually impermeable screening shall be installed and fixed in place on the southern opening of the front balcony in accordance with the approved plans.
5. Visually impermeable screening shall be located along the western boundary a minimum of 0.3m and a maximum of 0.5m above the 1.8 high dividing fence.
6. The crossover shall be constructed such that it is a maximum of 3m width and in accordance with the Residential Design Guidelines and Council specifications.
7. The front porch shall remain unroofed and open to the front streetscape. Any proposal to enclose the front porch with roof or gates will require the submission of a development application for the consideration of Council.
8. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
9. If requested by Council within the first two years following installation, the roofing is to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
10. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
11. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated

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

12. This planning approval 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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**11.5 Osborne Road No 1 (Proposed Lot 3) Proposed double storey dwelling**

<b>Owner</b>	Linda & Michael Horko
<b>Applicant</b>	J Corp Pty Ltd TA Perceptions
<b>File ref</b>	P005/20; OSB1
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

**Purpose**

The purpose of this report is for Council to consider a planning application for a proposed double storey dwelling at No 1 (Proposed Lot 3) Osborne Road, East Fremantle.

**Executive Summary**

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

- (i) Clause 5.1.4 – Residential Design Codes – Open Space – 45% required, 43.7% provided;
- (ii) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch – 28 to 36 degrees required, 20 and 26 degrees provided;
- (iii) Clause 5.3.1 – Residential Design Codes - Outdoor Living Areas – minimum width of 4m required, 3.56m provided;
- (iv) Clause 5.3.8 – Residential Design Codes - Retaining Walls – less than 0.5m height required, more than 0.5m provided;
- (v) Clause 5.4.2 – Residential Design Codes – Overshadowing – 35% maximum, 56% provided

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

**Background**

Zoning: Residential R12.5/40

Site area: 275m<sup>2</sup>

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

Survey strata subdivision 540/19 19 September 2019

Demolition permit 2019113

DA P084/19 Modifications of existing wall along the front boundary and in the front setback area and crossover

Building permit 2019113 Modifications to front wall and creation of crossover

**Consultation**

Advertising

The application was advertised to surrounding land owners 22 January to 5 February 2020. No formal submissions were received.

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Community Design Advisory Committee (CDAC)

The application was referred to CDAC. The following response was received;

(g) *The overall built form merits;*

- The Committee does not support the proposal.
- The Committee recommend changes are made to the design of the dwelling.
- The committee consider the bulk of the building is excessive. The dwelling is considered to impact the overall locality due to the overall bulk of the dwelling and proximity to the boundary. It is considered the two lot subdivision significantly impacts on the curtilage of the heritage dwelling. The bulk and setbacks are considered too restrictive.

(h) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development.*

- The Committee note the bulk of the building is considered excessive when assessed against the retention of the existing streetscape. The two dwellings provide little articulation and combined result in an excessive built form.

(i) *The relationship with and impact on the broader public realm and streetscape;*

- The Committee state that the crossover is considered excessively wide for the overall lot width and should be reduced to comply with Councils crossover requirements.
- The Committee consider the garage size/ width is excessive and does not comply with the Town's Residential Design Guidelines.

(j) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*

- As noted above.
- The Committee note concern regarding the overlooking to the rear of the yard (adjoining properties).

(k) *The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;*

- The Committee consider the dwelling has minimal passive solar achieved through design.
- The Committee consider the dwelling has minimal ability for cross ventilation opportunities in the dwelling, which increases the use of air conditioning to cool the property.
- The Committee consider the dwelling has minimal environmental benefits.

(l) *The demonstration of other qualities of best practice urban design including "Crime Prevention" Through Environmental Design performance, protection of important view corridors and lively civic places;*

- The Committee note the proposal does not have suitable passive surveillance. The dwelling on Strata Lot 2 is considered to demonstrate good/ positive passive surveillance, however Strata Lot 3 does not demonstrate this.

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Applicant Comment

*On behalf of our clients Michael and Linda Horko, who have subdivided the rear of the block at 1 Osborne Road East Fremantle, we are proud to submit this planning application which has taken on the comments of the advisory committee as well as the advice from the planning team at the Town of East Fremantle. We believe the development compliments the existing Class A Federation home. It embodies some of the materials and adds value to the existing streetscape. Please see the responses below for further understanding of the changes made to ensure the proposal will be of satisfaction to the CDAC and the planning team at the Town of East Fremantle.*

*The height of both proposed two storey dwellings have been kept to the minimum height by utilising low pitched roofs, which as a result improves the overall building bulk of the dwelling. As per the streetscape attached (with tree removed), there is notable articulation between the upper and ground floors of the dwelling, whereby the upper floor bedroom and balcony extends over the garage. Please also note that due to the mature aged tree which fronts the front elevation (see proposed streetscape attached) a large portion of the building bulk is not visible.*

*As per the amended plans, the crossover has been reduced from 4m to 3.86m to ensure compliance with the Council's crossover requirements.*

*The proposed garage has been designed to accommodate for the vehicles of the future occupant, however, does not comply with the Town of East Fremantle Design Guidelines. The proposed garage does not visually dominate the streetscape due to the articulation that exists, but also in particular due to the large mature aged tree which fronts a large portion of the front elevation (see proposed streetscape attached). By keeping two cars within a garage and out of view, the streetscape is significantly visually improved by avoiding unappealing street parking. As per research into other approved cases throughout the Town of East Fremantle, it can be noted, garages of this width have previously been supported on similar lot widths and sizes;*

*3 x single dwellings at 5 Irwin Street, East Fremantle – approximately 2 years old , whereby a double garage has been approved on a 9m wide lot.*

*9A Pier Street, East Fremantle – a double garage has been approved on a 10m wide lot.*

*82 Sewell Street, East Fremantle – the carport width proposed is not compliant with the 30% requirement, however, was approved due to “site constraints”. Similar to the respective lot, Strata lot 2 provides site constraints as discussed above, therefore our clients would benefit significantly from a garage of this width.*

*Our design has been amended to ensure the heritage significance of the parent lot has been represented through the design elements of the amended proposal. The proposed dwelling has also been designed to reflect positively with the new proposed dwelling on Lot 2 and the neighbouring 1950s salmon brick, flat roofed, 3 storey block of flats (23 Osborne Road, East Fremantle). As evident in the amended streetscape proposal, we have now incorporated face brick around the garage of the proposed strata lot 2 which was done to try to mirror but not mimic the existing dwelling. As a result of this, we have proposed a different timber cladding on the upper floor of strata lot 3 at an attempt to transition from the heritage significance of the designs.*

*Our proposal for strata lot 3 has been designed to ensure we are fully compliant with all deemed to comply provisions of “5.4.1 Visual privacy” outlined in the Residential Design Codes. All windows and*

*major openings (balcony) proposed on the upper floor of strata lot 3 ensures that overlooking will not breach into the rear yards of the adjoining property. Please refer to the cone of vision diagrams on the upper floor plans. Please note that all upper floor windows facing the northern, southern and western boundaries are classified as “minor openings”.*

*The amended plans of strata lot 3 have been amended to increase the amount of passive solar efficiency. In order to achieve additional passive solar aspects within the proposal, solar panels have now been incorporated. As evident in the amended plans, the upper floor has been flipped to ensure an increase of northern light into living spaces (activity room) rather than the bedrooms. As a result of flipping the upper floor, a window has been added to the activity room. An additional window to the ground floor master suite (northern facing) has been implemented to improve the solar passive efficiency of the proposed dwelling.*

*The amended design for strata lot 3 has seen the incorporation of additional windows to the master suite, living room as well as the upper floor activity room at an attempt to increase the amount of cross ventilation present throughout the proposed design. Flipping the upper floor design and adding a window to this living space will significantly improve the cross ventilation throughout the upper floor. Our design is fully compliant with the lighting and ventilation requirements as per the BCA.*

*Additional vegetation within the primary street. The additional vegetation not only increases the environmental benefits of the proposal, but also enhances the streetscape significantly from an environmental and sustainable point of view. The large existing tree is a dominant factor in the streetscape perspective (see attached). The existing tree provides significant environmental benefit.*

*As per the Residential Design Codes (5.2.3 Street Surveillance) passive surveillance can be achieved through major openings “from a habitable room of the dwelling” that faces the street. Therefore, it is through this definition that indicates three habitable areas with surveillance: (1) the proposed major opening to the master suite, (2) the upper floor balcony and (3) bedroom 2 ensures we are compliant with this concern and provision of the Residential Design Codes.*

#### Officer Comment

Following CDAC’s response to the proposed development the applicant and owner in consultation with Council planners have made changes to the proposed dwelling to address these concerns.

The lot is part of a 3 lot strata subdivision which includes a Category A heritage listed dwelling. The 2 additional lots that have been approved are able to be developed at R40 density coding in accordance with the Residential Design Codes’ and Local Planning Scheme No 3.

The proposed dwelling achieves all the deemed to comply setbacks from the front, rear and side boundaries as well as building heights for walls and rooves. It complies with the minimum primary street setback requirements for both the whole building and the garage.

Given that the development has been subdivided at R40 density coding and the proposed development achieves the required setbacks and heights and the large tree located on the verge is being retained means that much of the building bulk is softened when viewed from the street. There is significantly more variety in colours and materials and articulation in the proposed development compared to the previous blank brick face wall that was constructed along the street front. The proposal incorporates



timber coloured cladding that breaks up the soft grey colours that have been incorporated into the façade of the development.

The crossover width has been reduced such that it complies with the Town's Residential Design Guidelines; the crossover is 3.86m which is 30% of the lot width of 12.9m.

The garage width is in compliance with the requirements of the Residential Design Guidelines for new dwellings. The acceptable development requirements clause 3.7.15.3.3 A2 state "Plans, elevations and section drawings are to be provided to demonstrate the impact of the garage or carport on the new dwelling". There is no requirement to limit the width of the garage to 30% for new dwellings; this only applies to existing dwellings.

There is no overlooking from upper storey windows. The openings are all 1.6m above finished floor level of the upper storey and as such are not considered major openings and do not create privacy or overlooking issues. With regards to the area adjacent to the alfresco that has been elevated in excess of 0.5m above natural ground level, a condition will be imposed requiring the addition of screening along the western rear boundary to ensure that the privacy of the adjacent dwelling is protected.

The top storey has been reversed such that the activity room and balcony are now to the north of the upper storey and are able to benefit from the northern sunlight while bedrooms 2 and 3 have been relocated to the south of the dwelling, thereby improving the solar passive characteristics of the proposed building. The windows of bedroom 2 and 3 are now able to provide cross ventilation through the activity room of the dwelling.

The fact that there are 2 additional dwellings on site and the existing dwelling has been retained means that 2 additional households can live adjacent to Canning Highway in close proximity to Fremantle and within walking distance of regular bus services to Fremantle and Perth. The proposed development achieves increases in density at a level that is at a human scale, rather than as a result of bulkier and higher apartments, and more fitting of suburban streets that have densities typically between R12.5 and R17.5. There will be no demolition of dwellings or broad acre land clearing (and associated loss of native flora and fauna) as a result of the proposed development. The proposed development does not consume the same amount of energy or resources as a much larger development. The development is less environmentally damaging than development on the urban fringes of greater Perth and is more economically and socially sustainable than isolated urban fringe urban development, due to its proximity to larger activity centres that provide employment and entertainment, as well as social and recreational infrastructure. It is noted that all buildings are now required to meet minimum energy efficiency requirements such that new buildings are significantly more energy and water efficient than older heritage dwellings that may not have roof or wall insulation, poor cross ventilation and solar passive characteristics due to inappropriate window location and size, as well as outdated and inefficient lighting and plumbing fittings. The verge tree is being retained and as such it provides significant shading to the street and the surrounding area to help reduce the urban heat island effect.

Significant passive surveillance of the front yard and the street is possible from the master suite, on the ground floor as well as bedroom 2, activity room and balcony located on the upper storey.

#### 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

A risk assessment was undertaken and the risk to the Town was deemed to be negligible.

### 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 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

Design Element	Required	Proposed	Status
Street Front Setback	4m	4m	A
Lot Boundary Setbacks			
Master suite and ensuite	1m	1.060m	A
Alfresco	1m	1.26m	A
Kitchen and living	1m	1.03m	A
Kitchen	1.5m	1.55m	A
Laundry and garage	0m	0m	A
Bed 2 & bed 3	1.2m	1.55m	A
Toilet & storage	1.2m	3.56m	A
Bed 4 west	1.2m	2.93m	A
Bed 4 south & staircase	1.2m	3.25m	A
Bathroom activity & balcony	1.2m	1.46m	A
<b>Open Space</b>	<b>45%</b>	<b>43.7%</b>	<b>D</b>
Wall height	6m	5.7m	A
Roof height	9m	7.95m	A
Setback of Garage	4.5m	5.3m	A
Car Parking	2 cars	2 cars	A
<b>Retaining Wall</b>	<b>&lt;0.5m</b>	<b>&gt;0.5m</b>	<b>D</b>
Visual Privacy			
Balcony	7.5m	7.5m	A
<b>Alfresco and rear yard</b>	<b>7.5m</b>	<b>&lt;7.5m</b>	<b>D</b>
<b>Overshadowing</b>	<b>35%</b>	<b>56%</b>	<b>D</b>
Drainage	On site	Condition	



#### Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
3.7.4 Site Works	A
3.7.5 Demolition	N/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	A
3.7.14 Footpaths and Crossovers	A
3.7.15.4.3.1 Fremantle Port Buffer Area	N/A
3.7.15.3.3 Garages and Carports	A

This development application proposes the construction of a new double storey dwelling. The dwelling is one of two development applications that have been proposed for 1 Osborne Road; the other being the adjoining lot to the south at strata lot 2. The original property is a Category A heritage listed dwelling on the corner of Canning Highway and Osborne Road (strata lot 1). As such it has a R12.5/40 density coding and has been able to utilise the surplus land in the rear yard of the existing dwelling.

The subdivision was conditionally approved as a survey strata subdivision on 19 September 2019 and allows for development on these sites. The proposed development has been mindful of the heritage property in terms of setbacks, overshadowing and privacy. The development proposed does not include any modifications to the existing heritage dwelling.

Four variations to the Residential Design Codes and one variation to the Residential Design Guidelines are requested. Following CDAC comments the applicant has responded by making some changes that improve the acceptability of the proposed design.

#### Open Space

The proposed development provides 43.7% open space rather than the 45% required by the Residential Design Codes and the deemed to comply clause 5.1.4 C4. However, it does achieve design principles 5.1.4 P4. Suitable open space is incorporated into the development that reflects the existing and desired streetscape character, provides access to natural sunlight for the dwelling, reduces building bulk on the site consistent with the density coding, provides an attractive setting for the buildings, landscape, vegetation and streetscape, provides external space for the residents and provides external space for fixtures and essential facilities. For these reasons the minimal reduction in the required open space can be supported.

#### Roof Pitch

The roof pitch is 25 degrees. It does not achieve acceptable development provision 3.7.8.3 A4.1 which requires a roof pitch of 28 to 36 degrees, but it does achieve performance criteria 3.7.8.3 P4. The roof pitch less than that required complements the traditional form of surrounding development in the immediate locality and also reduces the size and bulk of the building compared to a dwelling with a steeper pitch roof. For these reasons the proposed roof pitch can be supported.

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#### Outdoor Living Areas

The deemed to comply clause 5.3.1 C1.1 of the Residential Design Codes requires that outdoor living areas have a minimum length and width of 4m. In this case the outdoor area has dimensions of 9.12m by 3.56m. Although it does not achieve the 4m minimum dimension it does achieve design principles 5.3.1 P1.1 because the proposed outdoor living area is capable of use in conjunction with a habitable room, is open to the winter sun and ventilation and the northern aspect of the site is optimised. For these reasons the reduced width of the outdoor living area can be supported.

#### Retaining Walls

Post and panel retaining walls in various sections of northern and western boundary are greater than 0.5m above natural ground level and therefore do not achieve deemed to comply clause 5.3.8 C8 of the Residential Design Codes. However, they are able to achieve design principles 5.3.8 P8. The retaining walls allow the residents to effectively benefit from the use of the land but they may affect neighbouring properties as a result of possible overlooking created by the elevated rear yard and alfresco. A condition will be imposed that requires the addition of visual privacy screening between 0.3m and 0.5m above 1.8m fence height along the rear boundary that will increase the visual privacy between neighbouring properties and for these reason the retaining wall above 0.5m height can be supported.

#### Overshadowing

The maximum overshadowing that is permitted for R40 coded lots according the deemed to comply clause 5.4.2 C2.1 of the Residential Design Codes is 35%. In this case the proposed development overshadows approximately 56% of the southern adjoining lot. It does achieve design principles clause 5.4.2 P2.2. The proposed dwelling overshadows the northern walls of the building, however, the outdoor living area is not overshadowed and bedroom 3 and the study all have windows that face east or west and therefore are not impacted by the overshadowing. As the neighbouring property is narrow and has the same owner the overshadowing is considered acceptable. For these reasons the overshadowing can be supported.

#### 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 Codes and the Residential Development Guidelines are considered acceptable. As such it is recommended that the proposed development be supported subject to planning conditions.

**11.5 OFFICER RECOMMENDATION/COUNCIL RESOLUTION TP070420**

Moved Cr Nardi, seconded Cr Watkins

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

- (i) Clause 5.1.4 – Residential Design Codes – Open Space – 45% required, 43.7% provided;
- (ii) Clause 3.7.8.3 – Residential Design Guidelines – Roof Pitch – 28 to 36 degrees required, 26 degrees provided;
- (iii) Clause 5.3.1 – Residential Design Codes - Outdoor Living Areas – 4m required, 3.56m provided;
- (iv) Clause 5.3.8 – Residential Design Codes - Retaining Walls – less than 0.5m height required, more than 0.5m provided;
- (v) Clause 5.4.2 – Residential Design Codes – Overshadowing – 35% maximum, 56% provided

for a new double storey dwelling at No 1 (Lot 3) Osborne Road, East Fremantle, in accordance with the plans date stamped received 6 & 16 March 2020, 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. Visually impermeable screening shall be installed and fixed in place on the southern opening of the front balcony in accordance with the approved plans.
5. Visually impermeable screening between 0.3m and 0.5m above a 1.8m high dividing fence shall be installed and fixed in place along the western boundary.
6. The crossover shall be constructed such that it is a maximum of 30% of the lot width and in accordance with the Residential Design Guidelines and Council specifications.
7. All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
8. 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.
9. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
10. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal,

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

11. This planning approval 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 4:3 ON THE CASTING VOTE OF THE PRESIDING MEMBER)**

**Note:**

As the resolution did not obtain a simple majority (casting vote of Presiding Member) in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 19 March 2019, this item is required to be presented to the next Council meeting.



## 11.6 George Street, No. 135 Lot 802 Proposed Signage

<b>Applicant</b>	Manotel Pty Ltd
<b>Owner</b>	Manotel Pty Ltd
<b>File ref</b>	P/GEO135
<b>Prepared by</b>	James Bannerman Planning Officer
<b>Supervised by</b>	Andrew Malone Manager Regulatory Services
<b>Meeting date</b>	7 April 2020
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	Nil

### Purpose

The purpose of this report is for Council to consider a signage application for the 'Brush Factory' at 135 George Street, East Fremantle.

### Executive Summary

The application proposes signage to be located on the northern corner of the building advertising the location of the commercial tenancies including the dance studio, yoga studio, consulting rooms and offices.

The signage would clearly indicate the commercial tenancies accessed via the 36 Duke Street entrance and the 137 George Street entrance.

This application was first considered at Town Planning Committee in March but was deferred by Committee. The applicant provided clarification around the signage but requested the same number of signs.

The signage proposal can be supported subject to the conditions of development approval being imposed.

### Background

LPS 3 Zoning:	Mixed Use
Site area:	1008m <sup>2</sup>
Heritage:	Category A (LPS3 Heritage List)

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

1897	Building at 36 Duke Street starts use as a 'Brush Factory';
20 May 1983	Council approves the use of 36 Duke Street for restoration and sale of furniture;
14 June 1983	Council approves use of the building at 42 Duke Street for the manufacture of decorative glass (Freedom Glass);
21 November 1983	Council grants conditional approval for the erection of two signs at 36 Duke Street;
16 April 1984	Council advises Lauder & Howard that it has no objections to repainting the exterior of the building at 36 Duke Street;
16 July 1984	Council approves signs on the façade of 36 Duke Street;
24 April 1986	CEO advises Lauder & Howard that signage on the east wall of the building at 36 Duke Street is approved;



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19 June 1995	Council endorses a proposal for an opening to the front wall of the building at 42 Duke Street;
10 July 1995	Building Permit 100/2309 approved for installation of new door frame, doors and side-lights at 42 Duke Street;
24 July 1996	Building Surveyor approves removal of a chimney and portion of a parapet wall from the building at 36 Duke Street;
19 August 1996	Council decides to advise the WAPC that it supports the subdivision and amalgamation of Lots 1, 2 & 3;
10 December 1996	WAPC grants conditional approval to the subdivision & amalgamation;
25 February 1997	Council resolves to rezone 36 Duke Street to Residential Area 2;
June 1997	Conservation Plan prepared for Main Roads Department for 36 & 42 Duke Street;
16 December 1997	WAPC endorses for final approval Diagram 94449 for the subdivision & amalgamation;
21 July 1998	Council resolves to reconsider a proposal to convert existing workshop at 42 Duke Street into 2 workshops;
18 August 1998	Council grants special approval for 2 workshops at 42 Duke Street;
5 May 1999	Building Licence 93/2833 approved for alterations to the building at 42 Duke Street to form 2 separate workshops;
25 August 1999	Storm damages building; roof ends up on Stirling Highway;
3 August 2001	Premier Gallop, MPs, Mayor and CEO & VIPs join in the reopening of Lauder & Howard's antiques;
9 December 2008	Planning Approval granted to redevelop the buildings at 36-42 Duke Street from antique furniture showrooms and workshops to 7 x 1 bedroom apartments, and 5 x 3 bedroom apartments;
15 March 2011	Planning Approval granted to redevelop the buildings at 36-42 Duke Street for a change of use, partial demolition, redevelopment and new construction to accommodate a mixed use residential/arts and entertainment venue;
12 February 2013	Planning Approval granted to amendments to a previously approved planning application, date stamped Approved on 15 March 2011 (Application (P199/10) and to extend the previous planning approval P199/10 for a further 2 years. The previously approved application was for a change of use, partial demolition, redevelopment and new construction to accommodate a mixed use residential/arts and entertainment venue;
16 July 2013	Planning Approval granted to amendments to a previously approved planning application, date stamped Approved on 15 March 2011 (Application (P199/10) for 2 storeys of commercial offices above the approved Jazz Club/ Performance space. Council refused the penthouse apartment located above the 'Brush Factory';
1 October 2013	Planning Approval for a penthouse apartment to be erected on top of the proposed performance space and existing heritage building at the 'Brush Factory (former Lauder & Howard building), 36-42 Duke Street. In addition it considers an application which has been presented to Council with regards to a review of the opening times for the Jazz Club.
7 May 2019	Planning approval for a change of use from office in basement to yoga studio.
2 July 2019	Planning approval for change of use from storage area for tenancy 1 and performing arts/music space for tenancy 4 to office space.

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## Consultation

### Advertising

The application for the proposed signage was advertised to surrounding properties along George Street and Duke Street from 14 January to 28 January 2020. No submissions were received.

### Community Design Advisory Committee (CDAC)

This application was referred to the January CDAC meeting. The following comments were made;

*(a) The overall built form merits;*

- The Committee is supportive of the sign in principle, however note that no additional signage should be permitted on the front façade or side facade.
- The Committee acknowledges the signage is relevant to the use of the tenancies in the building and therefore support the signage as a means of activating the street.

*(b) The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development.*

- The Committee considered the proposal has no significant heritage impact issues.
- The Committee recommends a condition is included in the Officers report requiring stainless steel fixings to be utilised.

*(c) The relationship with and impact on the broader public realm and streetscape;*

- The Committee notes that no additional signage should be permitted on the front façade or side façade as additional signage may impact on the heritage of the building and on the wider public realm.

*(d) The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*

- No further comment at this time.

*(e) The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;*

- No further comment at this time.

*(f) The demonstration of other qualities of best practice urban design including "Crime Prevention" Through Environmental Design performance, protection of important view corridors and lively civic places;*

- No further comment at this time.

### Applicant Response

The applicant chose not to respond to original comments from CDAC, however an email was provided after the March Town Planning Committee meeting.

*I confirm my serious concern on the Planning Committee's delaying comments on my signage request. As I said this has been cleared by the Council's own Advisory Committee and by your department. Now I may have to wait for a full council meeting, which means more than 4 months to obtain approval. Then there*

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*will be a minimum of one month to get individual signs, quotes and installation—at least 5 months in total. Some builders build small homes in that time. This is bureaucracy at its very worst.*

*I have spent millions on the Brush Factory to restore it to a magnificent property which “repeatedly” gets plaudits from locals and more distant visitors, despite the fact that I had to fight the Council all the way which added enormously to the cost.*

*As in my signage application, there are a significant number tenants in the building with more to come. Almost all are small businesses (community related) which rely on visual building advertising. Some are now experiencing loss of patrons to competing businesses who have substantial building signage. Plus with no signage how are new patrons supposed to know that their businesses occupy the Brush Factory. This is bad enough in normal conditions but we are in a serious downturn in WA and now the corona-virus will make things worse.*

*The result is businesses fall apart, people become unemployed and community expectations are not met and I have an empty building.*

*The signage size relates to the size of the building, the number of tenants and the type of tenants who very much rely on visual site advertising - have a look down George St where no-one would know what businesses were there without adequate signage.*

*As advised, I have spent days measuring, visually checking for clarity from a distance and taking measurements to ensure our tenants have some chance of recognition. I cannot reduce the size of the signage further without cutting out some tenants or destroying individual signs to a non-descript registry board. Surely with the quality of the building Councilors would anticipate that I would be the last person to create unattractive signage.*

*I confirm the aluminium tracking will be painted black (my fault for not saying that in the submission).*

*This is a kick in the guts for me and our tenants by the very people who have a responsibility to support local businesses. If the committee goes against the advisory committee then why ask their opinion in the first place. I therefore ask your urgent attention to this and hope balanced common sense prevails. Waiting more than a further month is not an option.*

Officer Comment

Noted.

**Statutory Environment**

Planning and Development Act 2005

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

**Policy Implications**

Town of East Fremantle Residential Design Guidelines 2016

Municipal Heritage Inventory - 'A' Category

Fremantle Port Buffer Zone - Area 3

**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

A risk assessment was undertaken and the risk to the Town was deemed to be negligible.

### Site Inspection

A site inspection was completed.

### Comment

#### Statutory Assessment

This proposal was first presented to the March Town Planning Committee, however, a decision was deferred by Committee and clarification was requested regarding the design of the signage. The proponent agreed to ensure that the aluminium tracking on the signs would be painted black, but in all other aspects the design of the sign remains the same as the previous application.

The current proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies including the Signage Design Guidelines LPP 3.1.4 and the George Street Designated Heritage Area LPP 3.1.6. It has been assessed as wall signs under the definition provided in

the Signage design Guidelines as it is a sign attached parallel to the wall of a building. It was not assessed as a business directory sign as it is deemed to also be advertising signage for the businesses within the building and is much larger than a typical business directory. A summary of the assessment is provided in the following tables.

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

Signage Design Guidelines LPP3.1.4			
Alternative Performance Criteria	Required	Provided	Status
	Multiple wall signs or wall signs exceeding the acceptable solution provisions shall only be considered as part of an approved signs regime	2 additional signs, already vertical projecting sign in place for jazz bar & wall sign on top of western façade of building	D
	Signs must face a primary space	Signs face north towards the pedestrian footpath and adjacent to the George and Duke Street intersection	A
	Maximum height equivalent to 10% of height of building wall or 2m, whichever is greater	2.75m Note that this is does not include the total length of the Brush Factory sign at the top of the western facade	D
	Maximum length 5m	2.4m	A

George Street Designated Heritage Area LPP 3.1.6 (draft) Requirement	Status
Signage complementary to streetscape	D
Should not replicate traditional styles and typefaces	A
Not to obscure or detract from place or streetscape	A
Suits proportions and elements on which it is mounted	A
Window signs are to retain views from shop to street	N/A
Mounting of signs is to avoid damage or removal of significant fabric	A
Face brick walls are not to be painted over with new signage	N/A
Externally mounted signs or signs that project forward of the building envelope are not permitted	N/A
Existing signage that is contributory to heritage area should be retained	N/A
Maximum of 2 signs per facade	D
Maximum of 1 advertising sign located under verandah or awning	N/A

The Brush Factory is a Category A heritage building on the Town's heritage list. It is zoned for mixed use with a combination of commercial and residential uses. It has had extensive additions and alterations undertaken over the past few years with the existing heritage building being significantly renovated and

modified. New commercial tenancies have been created within the building along with a penthouse apartment.

The proposed signage consists of 2 signs located side by side on the northern wall of the Brush Factory building that faces George Street. The 2 signs are proposed to be 1.2m wide and 2.75m high with interchangeable panels on the sign to indicate the location of the various tenancies within the building. The aluminium tracking will be painted black in accordance with the email provided by the applicant. Each interchangeable panel within the sign would be approximately 0.35m high.

There are 2 signs on the building to ensure that the 2 addresses are adequately serviced by the signs. Sign A indicates those commercial tenancies that have an entry via 36 Duke Street, while Sign B indicates the entry for those businesses with an address linked to 137 George Street.

The signage was assessed against both the Signage Design Guidelines LPP 3.1.4 and the signage requirements of the George Street Designated Heritage Area LPP3.1.6.

In terms of the Signage Design Guidelines LPP 3.1.4 the proposed signage was categorised as wall signs. It does not meet the acceptable solution (permitted) requirements. Two signs are proposed (where one is permitted), and the maximum height of 1m and maximum length of 3m is exceeded.

For this reason the alternative performance criteria were utilised to assess the proposed signage. There are 4 criteria that have to be considered;

- Multiple wall signs or wall signs exceeding the acceptable solution provisions shall only be considered as part of an approved signs regime.  
There are four signs located on the building, including the existing Duke of George Jazz Bar sign and the Brush Factory building sign at the top of the western façade, as well as the 2 signs proposed as part of this development application. The purpose of the signs that are the subject of this application serve a different role and are for different parts of the building. They locate and advertise the different business tenancies within the building. To limit the intrusion of any further signs a condition will be imposed that limits signage to the 2 existing signs that are in place and the 2 signs that are part of this application.
- Signs must face a primary space.  
The signs face the area in front of the northern wall of the Brush Factory building which is a paved pedestrian footpath that in turn is adjacent to the intersection of Duke and George Streets. This could be considered a primary space.
- Maximum height equivalent to 10% of height of building wall or 2m, whichever is greater.  
The building is over 12m tall which means that the maximum permitted height of wall signs is 2m. In this case the wall signs are a maximum of 2.75m high which is in excess of the maximum height. The size would ensure that the signs can be clearly seen from further away and can include the names of all businesses operating from within the building and for this reason should be supported.
- Maximum length 5m.  
The signs are a maximum length of 2.4m which is in accordance with the Signage Design Guidelines. However, it does not include the length of the existing Brush Factory sign on top of the western building façade.

Although the proposed signs only meet 2 of the 4 criteria it is considered that the variations are acceptable given the clarification provided by the applicant and as such can be supported when assessed against the Signage Design Guidelines.

It is also located within the proposed George Street heritage area that was formally adopted on 18 February 2020. There are specific requirements as to the type of signage that can be utilised on the building in accordance with the George Street Designated Heritage Area LPP3.1.6.

Currently there are no other signs on the northern side of the building with the exception of the sign for the Duke of George Jazz Bar and the Brush Factory sign on the top of the western façade of the building. There is also a history of a large sign being located on the side of the wall. It is noted that the applicant provided a photo displaying the location of signage on the side of the building in 1901. In the photo the signage displayed was in larger lettering and covered the top section of the northern building façade which represents a greater area of signage than currently proposed in this development application.

The signs comply with the advertising requirements of the policy with the exception of whether the signage is complementary to the streetscape and the total permissible number of signs. In all other criteria the signage meets the requirements of the George Street Designated Heritage Area policy;

- It does not replicate traditional signage styles or typeface.  
Each tenancy will be responsible for creating their own sign to fit in the relevant panel on the proposed signage.
- It does not obscure or detract from the place or streetscape.  
Sightlines and views of the building are not obstructed by the proposed signage.
- It is in proportion to the size of the building.  
It is approximately 25% of the building height, but is in proportion to the building.
- It is not a window sign.
- When mounted on the wall the signs will cause minimal damage to the building fabric.  
The signage will cover a section of the exposed brickwork but will cause minimal damage to the bricks and mortar.
- Face brick walls are not painted over.
- It is within the building envelope.  
The signage has minimal protrusion from the walls that it is attached.
- The existing heritage signage (The Brush Factory) is retained on the western wall of the building.
- No signage is proposed for a verandah or awning.

The proposed signage includes one more sign than is permissible under the George Street Heritage area requirements. However, as no other signage is proposed for the building it is considered that on balance the additional sign is acceptable and should be supported. The signage will add to the building by giving clear direction to visitors and passers-by as to the location of the various commercial and residential tenancies within the building and it helps to advertise the associated businesses. It must be recognised that the building was approved as a mixed use development and there is an expectation that businesses located in commercial premises will want to advertise their location and activities. A condition will be imposed in the recommendation that limits any further signage on this site without further consideration of Council.

The signage is complementary and does not detract from the streetscape. It is designed to give clear directions to passers-by as to the location of tenancies within the building. If it is any smaller, then it becomes difficult to read text and the purpose of the sign is defeated. As it faces George Street it does not impact on the southern properties to the south of the intersection of Duke and George Street.



The materials are in keeping with the building in that the aluminium strips that hold each respective tenancy sign is a similar colour to the cladding located on the top floor of the high quality building. It is to be installed in such a way that the building can be fully reinstated if the signage is removed at a later date. The applicant has provided written confirmation in an email that the aluminium tracking on the signage would be painted or coloured black and it is felt that this is appropriate and will be included as a condition in the final recommendation. For these reasons the proposed signage is recommended to be supported

It is noted that CDAC was generally supportive of the signage. The Committee did want a limitation on any further signage on site. As stated previously this will be incorporated as a condition in the final recommendation. There was also a request that a condition be imposed that required that the signage be fixed to the wall using stainless steel fastenings. This will also be included as a condition in the final recommendation.

Although support for signage on this heritage building may be considered detrimental to the heritage fabric of the building, the willingness of the applicant to change the aluminium track colour to black will soften the starkness of the aluminium and will ensure that businesses that operate within the building are clearly visible to visitors and passers-by which is essential for the success of businesses located within the building.

The restoration of the building has been a success and it is critical that the businesses operating from the site can also be successful. The Town would not want to see the building become a monument to heritage preservation and an empty disused building. Rather it is critical that the building is utilised and is vibrant ensuring that the heritage features of the building are promoted through activation of the site as a result of businesses being able to successfully operate from the site. Signage indicating their location is essential. Given that many businesses are facing unprecedented difficulties following the emergence of the COVID19 virus and the subsequent limitations on gatherings and movement, support for the signage is strongly recommended.

### **Conclusion**

The proposed signage is considered appropriate for the subject property. Amenity impacts are considered minor and when assessed with the overall high quality redevelopment of the building will not cause significant visual impacts. The use will help to guide users around the building, as well as advertise the businesses located within the building. The heritage nature of the building is retained with the proposed signage and as the building is a mixed use building there has to be an expectation that there will be some commercial signage on the side of the subject property. As stated earlier there was signage across the building in earlier periods that was more extensive than the current signage proposed. Given the current economic crisis and the explanation provided in this report the proposed signage is recommended for approval subject to conditions.



#### 11.6 OFFICER RECOMMENDATION/COUNCIL RESOLUTION TP080420

Moved Mayor O'Neill, seconded Cr Watkins

That Council grant development approval and discretion is exercised in regard to the following:

- (i) Signage Design Guidelines- Local Planning Policy 3.1.3- one wall sign permitted, two additional wall signs provided;
- (ii) Signage Design Guidelines- Local Planning Policy 3.1.3- 2m height permitted, 2.75m provided

for signage at No. 135 (Lot 802) George Street, East Fremantle, in accordance with the plans and information date stamped received 24 December 2019 and 6 March 2020, subject to the following conditions:

1. All fastenings and fittings that are utilised to attach the signage to the wall are to be made from corrosion resistant stainless steel.
2. The aluminium tracking on the signage is to be coloured black.
3. All signage proposed being in accordance with the correspondence, elevations and accompanying notations and plans in regard to signage dimensions, wording, materials and graphics submitted with the application and date stamped received 24 December 2019 other than where varied by Council and in compliance with conditions of this approval.
4. All signage to be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.
5. The device shall not contain fluorescent, reflective or retro reflective colours or materials and shall not be illuminated internally.
6. No other unauthorised signage is to be displayed. Additional signage or modifications to the location, dimensions, materials and illumination of this signage will require the submission of a development application for the consideration of Council.
7. The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
8. With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
9. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
10. This planning approval 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) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*

(CARRIED 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.

**13. MATTERS BEHIND CLOSED DOORS**

Nil.

**14. CLOSURE OF MEETING**

There being no further business, the Presiding Member declared the meeting closed at 7.23 pm

*I hereby certify that the Minutes of the ordinary meeting of the Town Planning Committee of the Town of East Fremantle, held on 7 April 2020, Minute Book reference 1. to 14. were confirmed at the meeting of the Committee on:*

5 MAY 2020

  
Presiding Member