



# MINUTES

## Town Planning & Building Committee

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Tuesday, 3 October 2017 at 6.30pm

### **Disclaimer**

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Whilst the Committee has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a member or officer, or on the content of any discussion occurring, during the course of the meeting.

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**MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING & BUILDING COMMITTEE HELD AT THE EAST FREMANTLE YACHT CLUB, (WARD ROOM), PETRA STREET, EAST FREMANTLE ON TUESDAY 3 OCTOBER 2017.**

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

The Presiding Member opened the meeting at 6.32pm and welcomed members of the gallery.

**2. ACKNOWLEDGEMENT OF COUNTRY**

*"On behalf of the Council I would like to acknowledge the Nyoongar people as the traditional custodians of the land on which this meeting is taking place."*

**3. RECORD OF ATTENDANCE**

**3.1 Attendance**

The following members were in attendance:

Cr C Collinson	Presiding Member
Mayor O'Neill	
Cr M McPhail	
Cr A White	
Cr D Nardi	

The following staff were in attendance:

Mr A Malone	Executive Manager Regulatory Services
Ms G Cooper	Minute Secretary

**3.2 Apologies**

Nil.

**3.3 Leave of Absence**

Nil.

**4. MEMORANDUM OF OUTSTANDING BUSINESS**

Nil.

**5. DISCLOSURES OF INTEREST**

**5.1 Financial**

Nil.

**5.2 Proximity**

Nil.

**5.3 Impartiality**

Nil.

**6. PUBLIC QUESTION TIME**

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

Nil.

**6.2 Public Question Time**

Nil.

**7. PRESENTATIONS/DEPUTATIONS**

**7.1 Presentations**

Nil.

**7.2 Deputations**

Nil.

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

**8.1 Town Planning and Building Committee (5 September 2017)**

**8.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION**

Cr M McPhail moved, seconded Cr White

That the minutes of the Town Planning and Building Committee meeting held on Tuesday 5 September 2017 be confirmed as a true and correct record of proceedings.

(CARRIED UNANIMOUSLY)

**9. ANNOUNCEMENTS BY THE PRESIDING MEMBER**

Nil.

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**10. REPORTS OF COMMITTEES**

**10.1 Community Design Advisory Committee**

**Prepared by:** Andrew Malone Executive Manager Regulatory Services

**Supervised by:** Gary Tuffin, Chief Executive Officer

**Authority/Discretion:** Town Planning & Building Committee

**Attachments:** 1. Minutes of the Community Design Advisory Committee meeting held on 4 September 2017

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**PURPOSE**

To submit the minutes of the Community Design Advisory Committee meeting held in June for receipt by the Town Planning & Building Committee.

**EXECUTIVE SUMMARY**

The Committee, at its meeting held on 4 September 2017, provided comment on planning applications listed for consideration at the September and October Town Planning Committee meetings and other applications to be considered in the future. Comments relating to applications have been replicated and addressed in the individual reports.

There is no further action other than to receive the minute.

**10.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP011017**

**Cr Nardi moved, seconded Cr White**

**That the Minutes of the Community Design Advisory Committee meeting held on 4 September 2017 be received.**

**(CARRIED UNANIMOUSLY)**

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## 11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

### 11.1 Pier Street, No. 36 (Lot 2) – Demolition and Construction of Two Storey Grouped Dwelling

<b>Applicant</b>	Kensington Design Australia P/L
<b>Owner</b>	V & EJ Silich
<b>File ref</b>	P/PIE36; P075/17
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Meeting date</b>	3 October 2017
<b>Attachments</b>	1. Location Plan 2. Photographs 3. Plans dated 20 July 2017

#### **Purpose**

This report considers a planning application for demolition of an existing duplex half on a survey strata lot and construction of a two storey grouped dwelling on the north west corner of Pier and Easton Street being No. 36 (Lot 2) Pier Street, East Fremantle.

#### **Executive Summary**

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

- Dwelling density: redevelopment of a corner strata lot developed at R20 standards in an R12.5 coded area;
- Street setback: stairs and terrace incursion into setback area;
- Lot boundary setbacks: less than required;
- Open space: below required percentage of site area;
- Building height: external wall height and roof pitch height exceeded;
- Site works: fill/excavation behind building setback line greater than 0.5 metres within 3m of the street alignment;
- Retaining walls: greater than 1.0 metre in height closer than 1.0 metre to the lot boundary;
- Garage width: greater than 30% of lot the frontage;
- Crossover number and width: exceed policy requirements;
- Visual privacy setbacks: reduced visual privacy setbacks for guest bedroom and bedroom 1; and
- Driveway setback: less than required distance from boundary.

While there are a significant number of variations sought they are mostly due to the redevelopment of a sloping corner lot of 420m<sup>2</sup> that was developed at R20 standards and is now required to comply with R12.5 development standards. The variations, some of which are very minor, are not considered to have a detrimental impact on the amenity of the adjoining strata lot or the surrounding residential area and therefore supported. This support is subject to conditions being imposed in respect to crossover widths, front fencing, street trees and finish of parapet walls.

#### **Background**

Nil in regard to this application.

#### **Consultation**

##### Advertising

The proposed application was advertised to surrounding land owners from 8 to 25 August 2017 and a sign was placed on site for the same period of time. No submissions were received.

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Community Design Advisory Committee (CDAC)

This application was referred to the CDAC meeting on 4 September 2017. The following comments were made:

Terms of reference:

- (a) *The overall built form merits;*
- *Is considered to have balance and is reasonable considering the existing character of the area.*
- (b) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development;*
- *The Committee does not agree with the second crossover. The Committee has concerns with regard to the immediate area and the crossover on the crest of a hill. The application to be referred to the Operations Manager.*
- (c) *The relationship with and impact on the broader public realm and streetscape;*
- *As per above.*
- (d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
- *No significant impact suits the character of the area.*
- (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 considers the proposal could have better use of climatically appropriate design to maximise northern light and ventilation.*
- (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 proposal complies through passive surveillance.*

Applicant's response

Further discussion with the applicant in regard to the CDAC comments resulted in the applicant not being required to provide a response to the CDAC comments.

Officer's response

- Easton Street crossover  
The Town's Operations Manager has inspected the site in respect to the request for an additional crossover on Easton Street and the CDAC's comments. He has advised he has no concerns from a traffic management or road safety point of view. A crossover providing access to the rear of a lot on the north west corner of View Terrace has already been constructed and the proposed crossover will be adjacent to this crossover, slightly below the crest of the hill. Vehicles already need to exercise caution when exiting this driveway. Also, the footpath is adjacent to the roadway which provides adequate distance between the lot boundary and the roadway so sight lines for cars entering and leaving the site are considered satisfactory.

From a design perspective the additional crossover is not considered to impact the streetscape to any great extent given Easton Street comprises the side lot boundary of houses fronting Pier Street and View Terrace. There is currently a solid brick wall approximately 2 metres in height along this frontage. The reason the additional crossover has been requested is to provide access to a garage as the undercroft garage on the Pier Street frontage has been indicated as a 'workshop' on the plans. The proposal is considered to improve the Easton Street frontage and the garage has been setback 2 metres further than the required distance under the R-Codes. This combined with a well-articulated dwelling facade means the garage does not dominate this frontage of the site, or the dwelling and there is an improvement to the streetscape in this regard. In light of the above the

second crossover to Easton Street is supported subject to the condition that its width does not exceed 5 metres at the widest point.

- *Climate, environment and energy efficiency*

Maximising views in this location is of importance in the design of a dwelling and the applicant has attempted to balance this objective with maximising energy efficiency and designing for the climate. The corner location also adds an element of difficulty in considering these factors and incorporating private open space on a small lot. In light of the above factors it is considered the applicant has made a satisfactory attempt to address resource efficiency in the design and therefore no further changes to the plans are required.

### **Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

*Town of East Fremantle Local Planning Scheme No. 3*

### **Policy Implications**

*Town of East Fremantle Residential Design Guidelines 2016*

### **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.

### Site Inspection

September 2017

### Comment

TPS 3 Zoning: Residential R12.5

Site area: 420m<sup>2</sup>

### Statutory Assessment

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies. 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	7.5m	7.5m	A
<b>Minor incursions</b>	<b>6.5m</b>	<b>2.0m – 5.5m</b>	<b>D</b>
Garage	3.75m	6.0m	A
Secondary Street	2m	4.5m	A
Garage	1.0m	3m	A
<b>Garage</b> (% width of lot frontage)	<b>≤30%</b>	Pier: 21% Easton: 36%	A D
<b>Lot Boundary Setback</b>	<b>1.0m (garage)</b>	<b>Nil</b>	<b>D</b>
<b>Open Space</b>	<b>55%</b>	<b>52.6%</b>	<b>D</b>
Car Parking	2	3	A
<b>Site Works</b>	<b>Excavation or fill behind a street setback line limited by compliance with building height limits and building setback requirements</b>	<b>Existing site levels to be maintained, However, fill and excavation greater than 500mm within 3m of the street alignment and within 1.0m of the lot boundary</b>	<b>D</b>
<b>Visual privacy setback</b>	<b>4.5m (guest bedroom and bedroom 1 window - &gt;500mm above NGL)</b>	<b>1.5m</b>	<b>D</b>
Overshadowing	25%	≤25%	A
Drainage	On-site	On-site	A

### Local Planning Policies Assessment

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

3.7.8 Roof Form and Pitch	A
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	A
3.7.12 Pergolas	A
3.7.13 Incidental Development Requirements	A
<b>3.7.14 Footpaths and Crossovers</b>	<b>D</b>
<b>3.7.18.3 Garages, Carports and Outbuildings</b>	<b>D</b>
<b>3.7.15-20 Precinct Requirements</b>	<b>A</b>

Building Height Requirement	Required	Proposed	Status
Building Height (Maximum external wall height) (RDG)	5.6m	Easton Street - 4.9m – 7.4m Pier Street – 5.9m – 8.2m	D
Building Height (top of pitch of roof) (RDG)	8.1m	Easton Street – 4.9m – 8.6m Pier Street - 8.1m – 10.27m	D

The lot to be developed is a survey strata corner lot which is currently occupied by a 1970s duplex half with an undercroft garage accessed from Pier Street. The built strata was developed under the equivalent of a R20 standard and the lot is now subject to the development standards of R12.5. The original strata lot has been converted to a survey strata and both lots are approximately 400m<sup>2</sup> in area.

The application proposes the demolition of the duplex half on the corner portion of the parent lot. The site will then be redeveloped with a two to three storey dwelling facing Pier Street, with the single and two storey section of the dwelling facing Easton Street. A garage accessed from Easton Street is also proposed. The undercroft garage accessed from Pier Street is indicated as a 'workshop' on the plans.

There are a number of variations to the R- Codes and the Residential Design Guidelines in respect to this application mostly due to the small size of the lot, the existing ground levels, the upwards slope of the land away from Pier Street and the request for a second crossover from the secondary street. These matters are discussed below.

#### Dwelling density (redevelopment of survey strata lot)

The current zoning of the area is Residential R12.5. The strata titled lot was developed in a time preceding the current density code and two grouped dwellings were developed on the parent lot to a standard equivalent to R20. The current Planning Scheme contains clause 5.3.3 which addresses this situation and states as follows:

***Existing non-complying development:***

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

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

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This clause, subject to the design and community consultation parameters being met, provides Council with discretion to approve of the redevelopment of the lot at the existing dwelling density despite the proposal's non-compliance with the current density code.

The advertising requirements of clause 9.4 have been met and there have been no objections to the proposal. Redevelopment of the lot at the same density as the proposed development is considered to contribute more positively to the scale and character of the streetscape, the improvement of the amenity of the area, and the objectives for the precinct than the existing building. The design of the dwelling has street front entries and major openings facing both streets and a low retaining wall which provides an unobstructed view of the dwelling and landscaped front garden from the street.

Furthermore, a redevelopment at this density would be permitted in any case under the corner lot density bonus provision in LPS No. 3, therefore redevelopment under clause 5.3.3 is considered appropriate.

#### Street setback

The primary and secondary street setbacks of the dwelling are mostly compliant with the R-Codes as the main building lines meet both the primary and secondary street setbacks. The R-Codes allow for minor incursions into the setback for structures such as verandahs, stairs and architectural features but these elements cannot protrude more than 1.0 metre into the setback area without Council approval.

In this case the entry stairs and the terrace are to be constructed in the 7.5 metre setback area; being setback between 2 and 5.5 metres from the Pier Street frontage. Whilst these structures are further forward than the existing duplex building line the open terrace will have stairs leading to the garden and is visible from the street. It is not enclosed so the structure is not considered to add to building bulk as it presents to the street. It is more than likely that when the other strata lot is redeveloped a similar setback and architectural features will be applied due to the slope of the land and the need to provide stairs to reach the entry level.

#### Lot boundary setbacks

The lot boundary setbacks do not comply with the R-Codes on the western and northern boundaries.

#### *Northern boundary*

A nil setback has been proposed for the garage on the northern boundary (required setback 1.0m). This abuts the access driveway to the property facing View Terrace, so has no impact on residential amenity in that location and a setback would not be warranted. The slope of the land means the impact of the wall is even less as this section of the site is excavated, lower than the access driveway and a retaining wall is already in place. The remainder of the lower floor of the dwelling on this side is setback between 2.2 and 4.0 metres with the upper floor being setback 7.7 metres. This is well within the setback requirements. The nil setback is therefore supported as the 'Design Principles' of the R-Codes as outlined below are considered satisfied.

#### *Western boundary*

The required setback on the western side boundary (i.e. 1.6 metres) is also proposed to be less than that required under the R-Codes. The undercroft garage and ground level wall are located on the boundary of the strata lot so a nil setback is proposed. There has been no objection to the nil setback by the adjoining owners and this section of the proposed dwelling abuts the other half of the duplex, as does the existing half, so in effect there is little change with the exception of an additional storey above which has been setback 1.5 metres. The upper floor on this boundary is required to be setback 4.0 metres due to the significant height of the wall at this point. This reduced setback from the existing duplex is not considered to have an impact on amenity as it will appear no higher than a two storey

house given this section of the site already has an undercroft garage. It is also very likely that when the other duplex half is redeveloped that reduced boundary setbacks will also be necessary to maximise floor space on a small lot.

Whilst the 'Deemed to Comply' setback provisions are not met the 'Design Principles' of the R-Codes are considered satisfied in regard to both boundary setbacks, in that the building does not unnecessarily contribute to building bulk on the adjoining lot, provides for adequate sun and ventilation to the adjoining property and open spaces and overshadowing is not a consideration. The proposed reduced garage and first level setbacks are therefore supported.

#### Site works and retaining walls

The relevant 'Deemed to Comply' provision of the R-Codes is Clause 5.3.7 C7.2 which states as follows:

*"C7.2 Excavation or filling within a site and behind a street setback line limited by compliance with building height limits and building setback requirements."*

Most of the site works and building levels on the lot are established in that the proposed dwelling will be constructed at almost the same levels as the existing duplex. There will be slightly more retaining and site works in the setback area to allow for construction of the entry stairs and terrace from Pier Street. The ground level will be altered in some sections more than 500mm. This is in excess of the amount of fill and excavation allowed within 3 metres of the street alignment as permitted under the R-Codes, therefore the proposal must be assessed under the 'Design Principles' of the R-Codes which states as follows.

*"P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.*

*P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the boundary of the site and the adjoining properties and as viewed from the street."*

The redevelopment of this site will utilise the natural slope of the land and the floor levels of the existing dwelling. The proposed dwelling will vary from single to three storeys across the site, however, the three storey section is to be constructed over the lowest ground level section of the site, so for the most part the development will appear as a two storey house on Pier Street and partly single storey on Easton Street. The excavation and fill proposed is not significant and does not impact on the amenity of adjoining sites and is therefore considered acceptable.

Similarly the retaining walls on the site have been established and will not be altered, however, there is some retaining work in the front setback and side boundary areas which will be closer than 1.0 metre to the side boundary with walls greater than 500mm in height as permitted under the R-Codes. The retaining walls in this location are considered to result in land which can effectively be used for the benefit of residents and are not considered to impact residential amenity for the adjoining land owner as required under the 'Design Principles' of the R-Codes.

#### Building height

The R-Code provisions in respect to building height are substituted by the height control under the Residential Design Guidelines. Clause 3.7.17.4.1.3 states that:

*Where views are an important part of the amenity of the area and neighbours' existing views are to be affected the maximum building heights are as follows:*

- 8.1 metres to the top of a pitched roof; and*

- 
- 5.6 metres to the top of an external wall and where the following apply.
    - (i) the proposal demonstrates design, bulk and scale that responds to adjacent development and established character of the area or other site specific circumstances;
    - (ii) the provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped and ;
    - (iii) subject to the 'Acceptable Development' standards of the R-Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.

The building height limit of the dwelling is in part compliant, however, there are sections of the building due to the slope of the land and the design of the dwelling that are over height. The sections of the building that do not comply are the undercroft garage section which presents as three storeys to Pier Street and the stairwell tower on the Easton Street frontage. This is due to excavation of the land in the south west corner of the lot and the extra height of the stairwell tower as a focal point of the dwelling.

The above height limits which are lower than the height limits of the R-Codes come into play where views are considered an important part of the amenity of the area. The surrounding land owners have been consulted in this regard due to variations from the R-Codes and the height limits of the Residential Design Guidelines and no submissions on the proposal have been received. This is most likely because the dwellings to the north and east are on higher land and their views are toward the river. The dwellings to the south and west are on lower land and their views are to the ocean and Port to the west and south west. This building sits 'in between' these surrounding dwellings and the height of the proposed dwelling does not appear to impact views in this location.

Non-compliance with the external wall and roof ridge height limit must, however, be assessed in respect to the 'Performance Criteria' of the Residential Design Guidelines as outlined below:

*Bulk and Scale of Dwelling and Character of the Area*

- The proposed dwelling is designed to mostly sit within the 'building envelope' as determined by the R-Codes and the Residential Design Guidelines. That is, the street front and lot boundary setbacks essentially comply (garage walls excluded) and very close to 55% open space will be provided on the lot;
- Two storey development is permitted in the Richmond Hill Precinct. There are no provisions or restrictions limiting new dwelling development to single storey;
- The overall height of the dwelling is mostly compliant (i.e. most sections of the roof ridge under the height limit of 8.1m from an eastern, south eastern and southern perspective; proposed 4.9m – 8.6m and the wall height limit of 5.6m; proposed 4.9m – 7.4m. The dwelling only exceeds the height limit, with the exception of the stairwell tower (~12m<sup>2</sup>) in the south western section of the site;
- The dwelling is considered to satisfy Clause 3.7.4.2 (Site Works) of the Residential Design Guidelines in that *where new development is on a significant slope the floor level of the proposed dwelling shall be the average height of the ground floor levels of the two adjacent dwellings* (floor level of proposed dwelling 49. 28RL and the floor level of the new dwelling 49.49RL – the corner site precludes assessment with any other immediately adjacent dwellings); and
- The non-compliance with the external wall height on one part of the lot (as a result of excavation) is inconsequential in relation to the scale and bulk of the overall development as the dwelling sits mostly within the building constraints applying to the site.

The proposed dwelling is not out of character with the area. Most other homes in the Precinct, including surrounding houses are two storeys. As noted above the dwelling is designed within the parameters of the building envelope prescribed by the R-Codes and the Residential Design Guidelines. Solar access is not an issue and there are no privacy issues for adjoining sites.

There appears to be no impact on views and the sections of the dwelling which do not comply with the height provisions are only minor sections, offset by the majority of the walls being significantly lower than the upper height limits (i.e. the single storey and excavated portions to the rear of the site). In this case the over height sections would not appear to be obstructing views as they are below the ridge height of the adjacent roof area and while there might be some impact on views with the main ridge line of the house this ridgeline is relatively short in relation to the overall property width and more significantly is below the maximum height.

In this case, in respect to overall building height it is considered there are no grounds to refuse the application as the requirements of the R-Codes and the Residential Design Guidelines are satisfied. In respect to the variation to the external wall height and roof pitch the non-compliance is supportable for the reasons outlined above.

#### Visual privacy

The 'Deemed to Comply' provisions for Element 5.4.1 Visual Privacy of the R-Codes requires major openings which have their floor level more than 0.5 metres above natural ground level, and positioned so as to overlook any part of any other residential property behind its setback line, to comply with the following:

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

The proposed development does not comply with the 'Deemed to Comply' provisions of the R-Codes, however, the 'Design Principles' of 5.4.1 allows for:

*P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through: building layout, location; design of major openings; landscape screening of outdoor active habitable spaces; and/or location of screening devices.*

*P1.2 Maximum visual privacy to side and rear boundaries through measures such as: offsetting the location of ground and first floor windows so that viewing is oblique rather than direct; building to the boundary where appropriate; setting back the first floor from the side boundary; providing higher or opaque and fixed windows; and/or screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).*

The windows in each case are forward of the front wall of the adjoining dwelling and only overlook the front garden which is in full view of the street in any case. So the visual privacy of the adjoining site is not considered to be compromised, therefore no screening of these windows is required.

#### Secondary street setback and garage forward of the building line

The proposed building setback of the garage complies with the minimum 1.5 metre secondary street setback as required under the R-Codes and is set back 3.0 metres. However, it does not comply with the Residential Design Guidelines provision that a garage be no further forward of the building line. The

corner lot location, however, provides some scope in this respect for the garage to be positioned slightly forward of the building line because the secondary street setback of the house at 4.5 metres is much greater than the 2 metres required, means the garage is well set back from the secondary street and its visual impact is therefore minimised. In this case therefore the non-compliance with the Residential Design Guidelines is supported.

#### Vehicular access

The R-Codes specify that driveways shall be no closer than 0.5 metres from a side lot boundary. This is a 'Deemed to Comply' provision in order that the impact of accessways on the streetscape is reduced and safety standards are maintained. In this case there is no change to the existing situation on Pier Street and on Easton Street the driveway will align with the nil setback of the garage. On this frontage it is preferred that the driveway abut the existing retaining wall and crossover to minimise the width of the crossover and so there is no gap between crossovers, as these areas are never adequately maintained.

#### Open space

Open space is marginally less than the 55% of the site area required under the R-Codes being 52.6%. This has resulted because the lot area is only 420m<sup>2</sup>. A lot of this size in an R20 coded area would require 50% open space. In this circumstance the slight reduction is considered acceptable as the minimum area for outdoor living (30m<sup>2</sup>) under a R20 code can be provided and there is a large front garden which will be landscaped.

#### Garage and crossover width

Both crossovers are indicated on the plans as being non-compliant with Council policy in that they are wider than 5 metres. This is not supportable in this case, particularly as the applicant is requesting an additional crossover which adds to the hard surfaces and reduced green landscaping on the streetscape. In this case therefore the crossover widths must not exceed 5 metres at their widest point to minimise the impact on the streetscape. Reducing hardstand is the objective so that streetscape amenity is maintained and on-street parking is maximised. It is also necessary to protect the existing street tree on Pier Street so a condition is recommended which will require the crossover to be constructed no closer than 1.5 metres from the tree.

The garage facing Easton Street is greater than 30% the width of the lot frontage and therefore does not comply with the Residential Design Guidelines in this regard. This is due to the small size of the lot and the corner truncation. In this circumstance and the house will be well set back from the secondary street and the visual impact of the garage is also minimised through strong architectural features on this elevation, as such the non-compliance is supported in this circumstance.

#### Driveway distance from lot boundary

The R-Codes require a driveway be setback no less than 0.5 metres from a side lot boundary to allow for a landscaping strip. The application proposes the driveway directly abut the retaining wall of the access driveway to the house on View Terrace. In this circumstance a landscaping strip for the length of 3 metres is not considered necessary given it will have little effect in establishing a high quality landscaped feature. The land will be put to better use, in respect to landscaping, on the other side of the driveway so the variation is supported in this case.

#### Front fence

The applicant has indicated that the front fence/retaining wall will not be replaced with the exception of some retaining work for construction of entry stairs and a dividing fence between the two strata lots. As this is a corner lot the impact of fencing on the streetscape is an important consideration, therefore a condition regarding compliance with the Town's policy in this regard is recommended.

Additional crossover

Comment in regard to the request for an additional crossover has been made in response to the CDAC comments in a previous section of the Report. The additional crossover request is supported as it is not considered to impact residential amenity and is acceptable to the Town's Operations Manager from a traffic management and road safety perspective.

**Conclusion**

Pier Street and the surrounding area has a range of building heights, scales and built forms. Properties in the area are characterised by a fall from the north on this side of Pier Street with the street sloping from east to west. New dwellings are mostly designed to maximise view corridors and long range views to the river and the ocean and this is the case for the current application. The variations proposed have no direct bearing on loss of views for surrounding land owners and there have been no comments from adjoining neighbours/owners in this regard.

Although there are a number of variations from the R-Codes and the Residential Design Guidelines this is mostly as a result of the redevelopment of a site that was developed at R20 standards (i.e. 420m<sup>2</sup> lot) and is now subject to assessment under R12.5 development standards. Nonetheless, the redevelopment proposal is for a well-articulated building that addresses both streets and contributes positively to the scale and character of the streetscape. The design encompasses staggered setbacks to the street frontages and the detailed roof elements that minimise the impact of the bulk of the building on surrounding residences. The development addresses both street fronts well, uses existing ground levels and maintains existing boundary retaining walls which also reduces the impact of a new development on adjoining properties.

In light of the above the variations from the R-Codes and the Residential Design Guidelines are considered acceptable. The applicant has, despite the non-compliance, met the requirements to also satisfy the 'Design Principles' and the 'Performance Criteria' for access, built form, streetscape and residential amenity. The application is recommended for approval subject to conditions regarding use of the workshop indicated on the plans as well as fencing, crossovers, street trees and parapet walls.

**11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP021017**

**Cr Nardi moved, seconded Cr White**

**That Council exercise its discretion in granting planning approval to vary:**

- (i) Clause 5.1.2 - Street Setback of the Residential Design Codes of WA to permit a street setback of less than 7.5 metres;**
- (ii) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a northern lot boundary setback of less than 1.0 metre (ground floor) and a western lot boundary setback of 1.6 metres (ground floor) and 4.0 metres (upper floor);**
- (iii) Clause 5.1.4 - Open Space of the Residential Design Codes of WA to permit less than 55% open space on site;**
- (iv) Clause 5.3.5 - Vehicular Access of the Residential Design Codes of WA to permit a driveway less than 0.5 metres from a side lot boundary;**
- (v) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to allow excavation and fill within 3 metres of the street alignment and excavation and fill greater than 0.5 metres behind a street setback line and within 1.0 metre of a lot boundary;**
- (vi) Clause 5.3.8 - Retaining Walls of the Residential Design Codes of WA to permit a retaining wall greater than 0.5 metres in height less than 1.0 metre from the boundaries;**
- (vii) Clause 5.4.1 - Visual Privacy of the Residential Design Codes of WA to permit a visual privacy setback from the western boundary for the bedroom windows on the western elevation of less than 4.5 metres;**

- (viii) Clause 3.7.14 - Footpaths and Crossovers of the Residential Design Guidelines to allow more than one crossover per lot;
- (ix) Clause 3.7.16.3.2 Garages, Carports and Outbuildings of the Residential Design Guidelines to allow the width of the garage to exceed 30% of the lot frontage;
- (x) Clause 3.7.17.3.3 - Garages, Carports and Outbuildings of the Residential Design Guidelines to allow a garage forward of the building line; and
- (xi) Clause 3.7.17.4.1.3 - Building Height, Form, Bulk and Scale of the Residential Design Guidelines to permit an external wall height greater than 5.6 metres and a roof ridge height of greater than 8.1 metres,

for the construction of a two storey grouped dwelling at No. 36 (Lot 2) Pier Street, East Fremantle, in accordance with the plans date stamped received on 20 July 2017, subject to the following conditions:

- (1) The workshop indicated on the plans date stamped 20 July 2017 not to be used for any purpose other than garaging of vehicles or storage without further Council approval.
- (2) All fencing within the street setback area to be in compliance with the Residential Design Guidelines 2016 and comply with Australian Standards in respect to sight lines (refer to Footnote 1).
- (3) The width of the crossovers on Pier and Easton Street are not to exceed 5.0 metres at the widest point and are to be in accordance with Council's crossover policy as set out in the Residential Design Guidelines 2016.
- (4) The crossover on Pier Street is not to encroach any closer than 1.5 metres from the existing street tree and the tree is not to be pruned or removed.
- (5) All parapet walls/building structures to the adjacent property faces on the western and northern boundaries are to be finished by way of agreement between the property owners and at the applicant's expense.
- (6) If requested by Council within the first two years following installation, the Colourbond 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) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (8) The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (9) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (10) The proposed alterations and additions are not to be used until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (11) All storm water 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.
- (12) 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.

- (13) 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.
- (14) In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
- (15) This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (i) *any proposal to alter or erect street front fencing in the front setback area on Pier and/or Easton Street may be subject to further Council development approval. Enquiries should be made with the Town's Planning Services to determine if a development approval application is required to be made.*
- (ii) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (iii) *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.*
- (iv) *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 provide 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.*
- (v) *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).*
- (vi) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (vii) *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 20 June 2017 this application deemed determined, on behalf of Council, under delegated authority.

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## 11.2 Dalgety Street No. 82B (Lot 2) – Demolition and Construction of Single Storey Grouped Dwelling

<b>Owner</b>	T Jelenich & M Burgess
<b>Applicant</b>	Arken Developments
<b>File ref</b>	P/DAL82B; P084/17
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting Date</b>	3 October 2017
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	1. Location Plan 2. Photographs 3. Plans dated 9 August 2017

### Purpose

This report considers a development application for demolition of the existing grouped dwelling (fronting Dalgety Street) and construction of a new single storey dwelling on the same survey strata lot at No. 82B (Lot 2) Dalgety Street, East Fremantle.

### Executive Summary

The application proposes demolition of the existing 1980s duplex half fronting Dalgety Street and construction of a new single storey residence. The existing dwelling is single storey, however, the other duplex half (strata Lot 1) has already been redeveloped with a two storey dwelling. Both strata lots are irregularly shaped with one having a wider street frontage and the other having a wider rear yard. The lot the subject of the current application has the narrow frontage to the street with a width of 8.4 metres.

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

- Dwelling density: redevelopment of a strata lot (developed at a density the equivalent of R20) in a R12.5 coded area;
- Street setback: minor incursion into setback area;
- Lot boundary setbacks: less than required;
- Garage width: greater than 30% of the lot frontage; and
- Roof pitch: less than required.

While there are a number of variations sought they are mostly due to the redevelopment of a very narrow lot and development being required to meet R12.5 standards. It is considered the variations are mostly of a minor nature, or result in minimal change to existing site circumstances and built form. The application is therefore recommended for approval subject to conditions being imposed in respect to landscaping, garage door details, crossover width, front fencing, finish of parapet walls and roof reflectivity.

### Background

19 July 1980 – Built strata plan approved.

2 April 1997 – Building Licence issued for a garage.

2001 – Survey strata plan created.

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### Advertising

The plans were advertised to surrounding land owners from 16 August to 4 September 2017 and a sign was placed on the site for the same length of time. No submissions were received. The owners to the north, south and east of the subject lot have viewed the plans (provided by applicant) and the applicant has submitted their written endorsement of the plans with the application.

### Community Design Advisory Committee (CDAC)

This application was considered by the CDAC at its meeting on 4 September 2017. The Committee's comments are provided below with the applicant's comments provided in italics following each of the terms of reference:

#### Terms of Reference:

- (a) The overall built form merits;
- The overall built form merit is very low. The building has limited interaction with the street.
    - *The building structure is setback in line with existing streetscape and provides no intrusions or interruptions to the existing streetscape as a whole. This is compliant with 3.7.7.3 pg. 21*
    - *As per parking requirements for Woodside Precinct 3.7.15.2.1 (pg40) it reflects the necessity for the single crossovers, driveways and garages to be maintained where possible. It also reflects the necessity for garage doors to be removed from the streetscape with parking located to the rear.*
    - *As it is impossible to locate the garage to the rear of the lot due to its narrow width of 8.4m frontage, the proposed location removes the garage door as the dominant structure in the streetscape and provides an architectural solution of integrating the cladding façade of the garage into the fabric of the building.*
    - *If the structure was to be more dominating or interacting with the street it would need to be a two storey structure set forward with a building line similar to the adjacent southern property. If this was a viable solution the proposal would have major difficulties complying with overshadowing calculations, loss of amenity and natural light to the southern existing home. It would also not be in line with massing and bulk of the street which is predominantly single storey with only one of the 2 storey structures being the southern neighbour.*
- (b) The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development;
- The proposal is single storey and will have minimal impact to the streetscape and limited relationship to the adjoining development.
    - *Please see comments above for point (a)*
- (c) The relationship with and impact on the broader public realm and streetscape;
- The proposed design is considered to have a façade that does not interact with the street and has no public realm from the front facade.
    - *Please see comments above for point (a)*
- (d) The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;
- As above.

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- *Please see comments above for point (a)*
- (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 proposal is compact and attempts to integrate the design to address a resource efficient design and respond to the climatic appropriateness for environmental sustainability.
    - *The building has a high level of solar passive components and provides natural light and passive cooling through the use of courtyards and high ventilation windows. If the building design was to use a more traditional design methodology it would be very difficult to achieve good natural light and cross ventilation to the southern side of the house. Through high windows facing north and internal courtyards, all rooms including southern areas have good sun and natural breeze patterns.*
- (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 proposal has no consideration of passive surveillance.
    - *The proposed design is compliant with the Residential Design Codes of Western Australia and 5.2.3 Street Surveillance.*
      - *C3.1 street elevation of the dwelling addresses the street and has clearly defined entry points and access from the street.*
      - *C3.2 One major opening from the master suite bedroom (habitable room) provides passive surveillance of the driveway, street and main entry point to the house.*

#### Officer Comment

In light of the applicant’s response above and with respect to the Committee’s views it is considered the dwelling will sufficiently address the streetscape given the significant site constraints. Redevelopment of the lot with a single storey dwelling will significantly reduce the impact on the adjoining lots and the streetscape which is predominantly single storey. Redevelopment of the lot with a two storey structure would have significant overlooking and overshadowing issues for the surrounding lots.

The incorporation of a garage on the site is problematic due to the lot width, however on such a narrow lot reducing the number of vehicles in view of the street is considered preferable. The applicant has provided a considerable street setback for the garage of 13.7 metres, so it is not the dominant feature of the house or the façade as it faces the street. The entry has been designed so it is visible from the street. There is also a window facing the street and the majority of the frontage will be a feature landscaped wall and decorative front gates and letterbox. This is considered to be an alternative façade treatment to the heritage buildings and one that will add architectural interest to the streetscape, without attempting to match the design elements of the original surrounding heritage properties, or the adjoining two storey contemporary dwelling. This is extremely difficult because of the width of the lot and the need to meet the provisions of the Residential Design Guidelines and the R-Codes. The applicant has made every attempt to provide a connection with the street and avoid imposing structures or front boundary fencing. This has included incorporation of landscaping and a mixture of building materials within the built structure. A number of conditions are recommended to be imposed to ensure the construction materials and landscaping are installed as indicated on the plans as these treatments contribute markedly to the integration of the façade with the streetscape.

Given the above the design is considered satisfactory and therefore no further change to the plans is considered necessary.

### **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*

### **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.*

### **Site Inspection**

September 2017

### Comment

LPS 3 Zoning: Residential R12.5

Site area: 511m<sup>2</sup>

### Statutory Assessment

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policy. 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 (Note: based on R20 standards)

Design Element	Required	Proposed	Status
Street Setback	7.5m	7.5m	A
<b>Street Setback Minor Incursion</b>	<b>6.5m</b>	<b>5.9m</b>	<b>D</b>
<b>Lot Boundary Setback – north</b>	<b>1.5m (min)</b>	<b>Nil – 1.2m (min)</b>	<b>D</b>
<b>Lot Boundary Setback – south</b>	<b>1.5m (min)</b>	<b>Nil – 1.2m (min)</b>	<b>D</b>
Open Space	50%	59%	A
Site Excavation	Max 0.5m	<500mm	A
Car Parking	2	2	A
Overshadowing	25%	24.37%	A
Drainage	On-site	On-site	A

#### Local Planning Policy Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
3.7.4 Site Works	A
3.7.5 Demolition	A
3.7.6 Construction of New Buildings	A
<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	A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	A
<b>3.7.18.3 Garages, Carports and Outbuildings</b>	<b>D</b>
3.7.15-20 Precinct Requirements	A

Building Height Requirement	Required	Proposed	Status
Building Height (external wall) (R-Codes)	6.0m	3.1m	A
Building Height (pitched roof) (R-Codes)	9.0m	3.1m – 3.5m	A
Building Height (concealed roof) (R-Codes)	7.0m	4.0m	A

The lot to be developed is a survey strata titled lot which faces Dalgety Street and is currently occupied by a duplex half constructed in the early 1980s prior to the implementation of the R-Codes. The duplex was developed at the equivalent of a R20 standard and the title was converted to a survey strata title in 2001.

The lot is now subject to Clause 5.3.3 of the Planning Scheme in regard to the redevelopment of lots which do not comply with current dwelling density controls. The lot is approximately 511m<sup>2</sup> in area. The remaining part of the parent lot, also facing Dalgety Street, has been redeveloped in recent times with a two storey grouped dwelling. The applicant is now requesting approval for the construction of a single storey grouped dwelling. There are a number of variations to the R- Codes and the Residential Design Guidelines in respect to this application mostly due to the narrow frontage of the lot. Notwithstanding the development at R20, the proposal is mostly compliant if assessed at R12.5 standards.

The outdoor living areas are proposed on the northern side and at the rear of the lot. The existing topography of the site is essentially unchanged, so there is little change to privacy for the adjoining developments with redevelopment of the site. The applicant is providing garaging for only one vehicle (as required under the R-Codes) so the impact of a garage on a narrow frontage is reduced as much as possible. Space for an additional vehicle is provided behind the front setback area.

The applicant is seeking Council discretion with regard to several provisions of the R-Codes and the Town's Residential Design Guidelines. These matters are discussed below.

#### Dwelling density (redevelopment of subdivided lot)

The current zoning of the area is Residential R12.5. The parent lot was developed in a time preceding the current density code (c1981). The current Planning Scheme contains clause 5.3.3 which addresses this situation and states as follows:

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

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

This clause, subject to the design and community consultation parameters being met, provides Council with discretion to approve of the redevelopment of the lot at the same density. The streetscape and advertising requirements of clause 9.4 have been met and as noted above no submissions on the proposal were received. Redevelopment of the lot at the same density as the proposed development is considered to contribute more positively to the scale and character of the streetscape, the improvement of the amenity of the area, and the objectives for the precinct than the existing building.

#### Street setback

The street setback of 7.5 metres is compliant (proposed dwelling setback of 7.5m – and garage setback of 13.7m) with the exception of the minor incursion of a nib wall extending from the front of the

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dwelling and sitting alongside the southern boundary (~300mm in width and 1.5m in length). This wall will house the meter box. It has no impact on the amenity of the streetscape or on the adjacent lot and as such is supported.

#### Lot boundary setback

##### *Northern boundary*

The lot boundary setbacks of the proposed dwelling do not comply with the 'Deemed to Comply' requirements of the R-Codes. Single storey development on a narrow lot has resulted in a long narrow building with some sections of the building being constructed up to, or close to the lot boundary. The required garage setback is 1.0 metre, however, a nil setback has been proposed. The adjoining neighbour has not objected to the setback and the nil setback is not considered to impact on the amenity of the lot to the north. The southern elevation of this house is built up to the boundary for the full length of the building, so there will be no privacy or building bulk impacts.

The remainder of the northern boundary setbacks for various sections of the dwelling meet the R-Code setback requirements, with the exception of the bedroom sections which are required to be setback 1.5 metres (proposed: 1.2 metres with no major openings). For the reasons outlined above the reduced setbacks can be supported.

##### *Southern boundary*

The southern boundary setback under the R-Codes, in part, is non-compliant. At present part of the existing duplex (i.e. the garage) comprises a parapet wall on the southern boundary and this wall will be replaced with a wall of similar dimensions, although slightly longer, for the master bedroom suite of the new dwelling. This is not considered to impact the amenity of the adjoining property as the northern elevation of that dwelling has no major openings and also has a minimal setback to the lot boundary. Also, the owner has not expressed any objection to the proposal.

The remainder of the wall is compliant with the exception of the kitchen/living/dining room section which is required to be setback 1.5 metres, but is proposed to be set back 1.2 metres. The non-compliance is supported on the basis that the variation is minor and another section of the wall has a greater setback and comprises a landscaped courtyard.

#### Crossover and garage width

The crossover indicated on the plans is compliant with Council policy in that the hard paved section is not wider than 3 metres. However, as the lot is only 8.4 metres wide it is important that the remainder of the setback area and the verge are landscaped and the driveway width does not exceed 3 metres. A condition of approval restricting the width of the crossover and the driveway to no greater than 3 metres is therefore considered necessary for this lot.

The garage is greater than 30% the width of the lot frontage (proposed: 41.6% of the width) and therefore does not comply with the Residential Design Guidelines in this regard. This is due to the lot having a frontage of 8.4 metres. The non-compliance is supported in this circumstance as the applicant has attempted to reduce the impact of the garage by only accommodating one vehicle and setting the garage back a further 6.0 metres. It is considered the materials and the design of the garage door in this circumstance will be important to the overall appearance of the house from the street. It is important that it does not present as a blank and monotonous frontage that emphasises the garage over the remainder of the facade. It is therefore recommended that the details of the materials and finish of the garage door be to the satisfaction of the Chief Executive Officer and be submitted for final approval at Building Permit application stage.

### Roof pitch

The non-compliance with the roof pitch (i.e. required: minimum of 28°; proposed: flat roof with central pitched section of 20° providing skylight windows) is considered acceptable in this case because it is an alternative roof design intended to provide additional light for the dwelling. To try and achieve a pitched roof between 28° – 36° on a narrow lot would not have been appropriate and would have created a greater degree of overshadowing for the lot to the south. Given the shape of this lot an alternative design to the original roof forms in the area will provide an interesting architectural roof detail and is considered acceptable.

### **Conclusion**

Dalgety Street between Canning Highway and Marmion Street mostly comprises heritage properties with wide frontage lots and landscaped gardens. Redevelopment of 1970s/80s duplexes on odd shaped lots which reflect the initial design of the duplex can be problematic. The expectation of land owners is to develop large family homes to modern standards. These development applications must then be assessed under more stringent development provisions relative to the density at which they were developed. It is not realistic to expect that the redevelopment of the lot will or should be of the same 'heritage' character as lots developed in the early part of last century, just as the duplex development of the 1980s were not in character with the predominant form of housing in the area. In this case the development of an 8.4 metre wide lot with an alternative modern design that attempts to balance neighbour amenity with surveillance of the street and visual interest from a streetscape perspective is considered acceptable.

Overall the variations proposed are not considered major and will result in an improved presentation to the street. At present the view from the street is of a garage door and large shrubbery in front of a high brick wall covering the entry to the dwelling. This completely obstructs a view of the dwelling from the street. The new design is considered to be an improvement to the streetscape and will sit reasonably well within the streetscape with far less impact on the amenity of adjoining lots than a two storey development.

On this basis it is recommended the application be supported subject to a number of standard planning conditions which will ensure landscaping and architectural features are installed as indicated on the plans and that no further fencing of the site is to occur. The crossover and driveway are not to exceed 3 metres to preserve as much green landscaping of the front setback and verge as possible and all other structures are to remain low and open so as much of the front of the dwelling as possible is visible from the street.

### **11.2 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP031017**

**Cr Nardi moved, seconded Cr M McPhail**

**That Council exercise discretion in granting planning approval to vary:**

- (i) Clause 5.1.2 – Street Setback of the Residential Design Codes of WA to permit a setback of less than 7.5 metres;**
- (ii) Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to permit a setback of less than 1.5 metres on the northern boundary and 1.5 metres on the southern boundary;**
- (iii) Clause 3.7.15.3.2 Garages, Carports and Outbuildings of the Residential Design Guidelines to allow the width of the garage to exceed 30% of the lot frontage; and**
- (iv) Clause 3.7.8.3 of the Residential Design Guidelines 2016 to allow a roof pitch of less than 28°,**

**for construction of a single storey grouped dwelling at No. 82B (Lot 2) Dalgety Street, East Fremantle, in accordance with the plans date stamped received on 9 August 2017, subject to the following conditions:**

- (1) The automated gate to be constructed and installed as indicated on the plans date stamped received 9 August 2017.
- (2) Landscaping of the front setback area to be in accordance with the landscape plan date stamped received 9 August 2017.
- (3) No further fencing in the street setback area is permitted.
- (4) The letterbox structure is not to exceed a height of 1.2 metres.
- (5) The details of the colour, materials and finish of the garage door to be to the satisfaction of the Chief Executive Officer and the details to be submitted for final approval at Building Permit application stage.
- (6) The crossover is not to exceed 3.0 metres in width and any solid paved section of the driveway is not to exceed 3 metres in width for the full length of the driveway and the crossover. The crossover is to be in accordance with Council's crossover policy as set out in the Residential Design Guidelines 2016.
- (7) In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
- (8) All parapet walls/building structures to the adjacent property face are to be finished by way of agreement between the property owners and at the applicant's expense.
- (9) If requested by Council within the first two years following installation, the metal roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (10) 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.
- (11) The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (12) 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.
- (13) The proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (14) All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (15) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (16) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.

**(17) This planning approval to remain valid for a period of 24 months from date of this approval.**

**Footnote:**

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

- (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 20 June 2017 this application deemed determined, on behalf of Council, under delegated authority.

### 11.3 George Street No. 77 (Lot 700) – Minor Additions and Alterations to Existing Restaurant

<b>Applicant</b>	Nakara Nominees P/L
<b>Owner</b>	W M Anderson
<b>File ref</b>	P/GEO77; P081/2017
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Voting requirements</b>	Simple majority
<b>Documents tabled</b>	Nil
<b>Meeting date</b>	3 October 2017
<b>Attachments</b>	1. Location Plan 2. Photographs 3. Plans date stamped received 3 August 2017

#### **Purpose**

This report considers a development approval application for minor alterations and additions to the rear and along the Sewell Street frontage of Limones restaurant. The site is a place entered in the Planning Scheme Heritage List (Municipal Heritage Inventory - category A) and is situated at No. 77 (Lot 700) George Street, East Fremantle.

#### **Executive Summary**

The application proposes minor alterations and additions (kitchen additions and ablutions) to the existing restaurant which occupies a heritage listed building situated on the south eastern corner of George and Sewell Street.

The issues relevant to the determination of this application are:

- Plot ratio increase; and
- Impact on streetscape and heritage listed buildings.

It is considered the non-compliance with plot ratio (permitted 0.5:1; proposed 0.65:1) is a minor variation with no impact on the streetscape, heritage elements or adjacent residential lot. The alterations and additions can therefore be supported subject to conditions relating to final approval of construction materials. It is also recommended the applicant be advised that any proposals for signage, or any other alterations to the building, will be subject to the submission of a further development approval application(s) for Council's consideration.

#### **Background**

LPS 3 Zoning: Mixed Use  
Site area: 764m<sup>2</sup>

#### **Consultation**

##### Advertising

The application was advertised to surrounding land owners from 14 to 29 August 2017. No submissions were received.

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

The application was considered by the CDAC at its meeting of 4 September 2017. The Committee supported the proposal and its comments were as follows:

Terms of reference:

- (a) *The overall built form merits;*
  - *Built form remains relatively unchanged.*
  - *The building has merit.*
- (b) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development;*
  - *The proposal appears to have minimal streetscape impact.*
- (c) *The relationship with and impact on the broader public realm and streetscape;*
  - *The use of the building may be increased therefore positively impacting on the public realm and streetscape.*
- (d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
  - *The proposal is consistent with the overall built form of the area and as an overall design will increase the use of the building.*
- (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 comment.*
- (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 comment.*

**Statutory Environment**

*Planning and Development Act 2005*

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

*LPS No. 3 - Heritage List*

**Policy Implications**

*Municipal Heritage Inventory – Category ‘A’*

*Fremantle Port Buffer Zone – Area 2*

**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.*

**Site Inspection**

September 2017

**Comment**

**Statutory Assessment**

The proposal has been assessed against the provisions of Local Planning Scheme No. 3. A summary of the assessment is provided in the following table.

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

**Local Planning Scheme No. 3 – Commercial Zones (Mixed Use) – Development Standards**

General Standards	Development	Required	Proposed	Status
Building setbacks		Mixed Use: Aligned with front and other property boundaries	Nil – up to street front boundary on Sewell Street	A
		Residential interface: 1.0m	6.39m	A
Building height		Overall: 8m	3.4m	A
		Walls: 5.5m	3.4m	A
<b>Plot ratio</b>		<b>0.5:1</b>	<b>0.65:1</b>	<b>D</b>
Design and landscaping		Landscaping plan	N/A	N/A
Car parking and vehicular access		Schedule 10 and 11 of LPS 3	No change to seating area floor space therefore no additional car parking required	A

Location of car parking	On-site	N/A	N/A
On-street parking	On-street may be acceptable	N/A	N/A

The application proposes a refurbishment of the kitchen and new ablutions which will result in the building being extended to the south into the courtyard area along the same building setback line that presently exists on Sewell Street. The increased floor space does not require any additional car parking to be provided. The resultant increase in floor space will, however, increase the plot ratio of the site to 0.65:1.0 which is marginally greater than that permitted of 0.5:1.0. The additions to the rear will result in a small building addition of approximately 2.5 – 3.5 metres in length, with an overall height of 3.4 metres. This is not considered to visually impact on the streetscape or on the surrounding residential area and is considered an improvement to the existing additions to the rear of the building.

The existing building is listed in the Planning Scheme Heritage List (category ‘A’ on the Municipal Inventory). The applicant is seeking a variation to Scheme provisions with regard to the plot ratio of the site. For Council to consider such a variation, it is required to be satisfied that the proposed development complies with clause 67 (Deemed Provisions) and the provisions of Clause 5.6.3 (b) of the Scheme Text which states as follows:

*“The power conferred by this clause may only be exercised if the local government is satisfied that:*

- (a) approval of the proposed development would be appropriate having regard to the criteria set out in clause 67 (Deemed Provisions); and*
- (b) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.”*

The following sub-clauses to clause 67 of LPS 3 (Deemed Provisions) are considered of particular relevance:

- (k) the built heritage conservation of any place that is of cultural significance;*
- (l) the effect of the proposal on the cultural significance of the area in which the development is located;*
- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development; and*
- (n) the amenity of the locality.*

#### Plot ratio

Clause 5.8.3 of LPS 3 specifies that for buildings in the Commercial Zones (Mixed Use) maximum plot ratio is 0.5:1. The additional floor space results in an overall plot ratio for the entire site (all tenancies included) to 0.65:1. The increase in building area is minor and therefore not considered to add considerable bulk to the building where it will impact on the streetscape, the heritage elements of the site or result in overshadowing for the residential property to the south. The non-compliance with plot ratio is therefore supported in this circumstance.

#### Heritage

The addition to the rear of the building is considered to be a sensitive and compatible approach that will have minimal impact on the heritage fabric of the site. The CDAC have supported the proposal and have made the following comments:

- *Built form remains relatively unchanged.*
- *The building has merit.*
- *The proposal appears to have minimal streetscape impact.*
- *The use of the building may be increased therefore positively impacting on the public realm and streetscape.*

### **Conclusion**

In summary, it is considered the heritage significance of the site and the amenity of the area will not be impacted by the additions to the side and rear of the site. Most of the work will be internal and it is considered the additions and internal improvements will make a positive contribution to the Sewell Street frontage and the appearance of the restaurant.

A condition is recommended which excludes any signage, advertising or building name of any sort to be attached to the building or erected on the property without the further planning approval consent of the Council.

- Mr John Kirkness (architect) addressed the meeting and is supportive of the officer's recommendation.

### **11.3 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP041017**

**Mayor O'Neill moved, seconded Cr White**

**That Council exercise discretion in granting planning approval to vary:**

- (i) Clause 5.8.3 of Local Planning Scheme No. 3 to permit the plot ratio of the site to exceed 0.5:1.0,**

**for alterations and additions to an existing restaurant at No. 77 (Lot 700) George Street, East Fremantle, in accordance with the plans date stamped received on 3 August 2017, subject to the following conditions:**

- (1) Details in respect to the colour and type of construction materials to be used for the additions and alterations to be to the satisfaction of the Chief Executive Officer and submitted with the Building Permit application for final approval by the Chief Executive Officer.**
- (2) No signage, advertising or building name/lettering of any sort to be erected on-site. A separate development approval application is required to be submitted for Council's consideration in respect to all proposed signage on the site.**
- (3) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
- (4) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- (5) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.**
- (6) All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.**

- (7) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (8) This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (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).*
- (iv) *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 20 June 2017 this application deemed determined, on behalf of Council, under delegated authority.

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#### 11.4 Habgood Street, No. 4 (Lot 5017) – Additions and Alterations to Multi-Level Single Dwelling

<b>Applicant/Owner</b>	A & D Malecky
<b>File Ref</b>	P/HAB4; P077/2017
<b>Prepared by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Supervised by</b>	Gary Tuffin, Chief Executive Officer
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Meeting date</b>	3 October 2017
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Location Plan</li><li>2. Photographs</li><li>3. Applicant's and Neighbour's signed agreement</li><li>4. Plans dated 18 September 2017</li></ol>

#### **Purpose**

This report considers a development application for additions and alterations to the existing multi-level single dwelling at No. 4 Habgood Street, East Fremantle.

#### **Executive Summary**

The modified application proposes additions and alterations to the existing multi-level single dwelling, including a gatehouse, front fencing, pool and deck and extension of rear living areas and balconies at No. 4 Habgood Street, East Fremantle. The application was considered by the Town Planning and Building Committee on 5 September 2017. The application was deferred to allow further discussions between the applicant and affected neighbours to be undertaken. A signed agreement by both parties has been submitted to Council for consideration.

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

- Views: loss of part of the existing views for adjoining land owners;
- Street setback and building incursions (existing and proposed structures);
- Front fencing;
- Lot boundary setback (southern and northern boundary) (conditioned to comply with the 'Deemed to Comply' provisions of the R-Codes);
- Buildings on the Boundary;
- Building height: top of external wall;
- Site works: excavation behind building setback line;
- Visual privacy setbacks: rear balconies

The development assessment as per the 'Performance Criteria' of the Residential Design Codes and the Residential Design Guidelines is outlined below. It is noted that the proposed modification require Council to exercise more discretion to the 'Deemed to Comply' provisions as outlined below.

The proposed development is recommended for approval subject to conditions.

#### **Background**

The first development application submitted in March for additions and alterations to the dwelling was withdrawn after numerous amendments to the plans and consultation with the adjoining landowners to the south and meetings with the Town's officers. The application was withdrawn due to administration factors impacting the proposal.

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This administration matter involved the development approval application that was initially submitted on 3 March 2017 seeking approval for additions and alterations to a single residential dwelling at 4 Habgood Street, East Fremantle. The land was classified Residential R12.5, and was subject to a Scheme Amendment to reclassify the land to R17.5 (Amendment No. 11 – submitted to the Dept of Planning in 2015). The rezoning was subsequently gazetted (Tuesday, 13 June 2017). The Town sought advice from the Department of Planning regarding the assessment of this application. (This section of the report has been modified and is discussed further in the report to the 5 September 2017 Town Planning and Building Committee meeting).

A new application was submitted and assessed by administration. The application was presented to the 5 September 2017 Town Planning and Building Committee meeting. Submissions were presented to the Councillors and the development application was deferred to allow for discussions to be undertaken by the applicant and the adjoining neighbour. The applicant and the neighbour have reached an agreement (attached) and the neighbour is supporting the development application.

The development application proposes extensive refurbishment and extension of the existing dwelling towards the rear of the property. The existing driveway access to the rear of the site along the northern boundary will be maintained and a garage will be constructed at the rear of the site. This is an extension of the existing undercroft garage which is accessed from the street on the northern side of the lot. The extensions to the house will then be constructed over the garage. The living/family areas, theatre, guest room/courtyard and pool deck are to be constructed towards the rear of the lot and are at various levels based on the existing floor levels of the dwelling. The front façade of the house will also be altered to update the street presence of the dwelling.

### **Consultation**

#### Advertising

The proposed application is a revised proposal from the original (march application). Further amended plans were submitted by the applicant on 18 September 2017. These plans have not been advertised. The applicant and the most affected neighbours have reached an agreement with regard to the development. The neighbours subject to the agreed modification have agreed to the plans. The proposed modification only impact on the immediate neighbour and therefore do not require further advertising.

The initial application was advertised to surrounding land owners from 17 March to 3 April 2017. This application period was extended to 10 April 2017 for the immediately adjoining owners to the south who were the most impacted by the proposal to allow further time in which to assess the proposal and make a submission.

Six (6) submissions were received objecting to the proposal on various grounds, but primarily focussed on building height, building setbacks from lot boundaries, privacy/overlooking and overshadowing issues. The applicant submitted an amended set of plans with the view to addressing the concerns raised in the submissions. An amended set of plans date stamped received 1 May 2017 was subsequently advertised to the same landowners and there were two submissions received in the comment period which extended from 1 to 16 May 2017. This application was withdrawn in writing and the new development application was advertised to the same landowners from 3 to 21 August 2017. One submission was received from the landowner immediately to the south at 16 Woodhouse Road.

Only the submission relating to the signed agreement/ support letter relevant to the current proposal (plans date stamped 18 September 2017) has been included in the report (attachment) as the other submissions are no longer relevant to the current plans or the issues raised have remained unchanged.

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Please see the report to the 5 September 2017 Town Planning and Building Committee meeting for a full discussion of the issues raised by the adjoining neighbour.

Community Design Advisory Committee (CDAC)

This application was considered by the CDAC at its meeting of 1 May 2017 and the Committee made the following comments:

- *“Dwelling shows a good degree of articulation to the streetscape with improved presence.*
- *Panel recommend continued discussion with the neighbours to ensure view corridors are maximised.*
- *Dwelling has an open design which introduces a ‘Frank Lloyd Wright’ design to the area which is supported.”*

The applicant has responded as follows:

*“We note the Community Design Advisory Committee terms of reference require an assessment of the overall built form merit. In this regard we are pleased with the findings of the Committee that are supportive of the design. It is significant that the Committee has not identified any concerns, noting the Committee advises view corridors should be maximised.”*

The modified application has not been referred to the CDAC because the aspects of the proposal that impact the streetscape have not changed. It is therefore considered the matters raised by the CDAC in May have been addressed.

The applicant has not provided comment relating to the Committee’s positive comments.

**Statutory Environment**

*Planning and Development Act 2005  
Residential Design Codes of WA  
Town of East Fremantle Local Planning Scheme No. 3*

**Policy Implications**

*Town of East Fremantle Residential Design Guidelines 2016*

**Financial Implications**

Nil.

**Strategic Implications**

The Town of East Fremantle Strategic Community Plan 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.*

**Site Inspection**

July 2017

**Comment**

LPS No. 3 Zoning: Residential R17.5

Site area: 736m<sup>2</sup>

**Statutory Assessment**

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies. 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 (building line of dwelling)	6.0m	9.12m – 6.2m	A
<b>Undercroft (terrace and wall)</b>	<b>6.0m</b>	<b>1.9m</b>	<b>D</b>
<b>Gatehouse/stairs</b>	<b>6.0m</b>	<b>1.8m</b>	<b>D</b>
<b>Garage Boundary Wall</b>	<b>9.0m length</b>	<b>9.54m length</b>	<b>D</b>
Lot Boundary Setback	Various	Various (conditioned)	A
Open Space	50%	56%	A
Outdoor Living	36m <sup>2</sup>	>36m <sup>2</sup>	A
Car Parking	2	>2	A

Site Works	Excavation or fill behind a street setback line limited by compliance with building height limits and building setback requirements	Existing level at the rear of existing dwelling on site is not being altered.	A
Visual privacy setback	Pool deck (stairs): 7.5m Rear balcony: 7.5m Side setback (balcony): 7.5m	2.8m 6.44m 1.6m	D D D
Overshadowing	25%	16% (108 <sup>2</sup> )	A
Drainage	On-site	On-site	A

#### Local Planning Policies Assessment

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

Building Height Requirement (RDG)	Required	Proposed	Status
Building Height (external wall height)	6.5m	Street Front (west) - 7.029m North side - 7.2m - 9.7m South side - 6.8m - 7.9m Rear (east) - 8.7m Centre - 9.772m	D

The applicant is seeking Council discretion with regard to several requirements of the R-Codes and the Town's Residential Design Guidelines. The proposed amendments as agreed with the adjoining neighbour has resulted in a greater number of variations to the 'Deemed to Comply' provisions of the R-Codes, than the last set of plans. These matters are discussed below.

#### Street setback and building incursions

The existing dwelling currently has a terrace located to the front of the property setback 1.9 metres from the front boundary. It is proposed to make modifications to the terrace to include fencing (currently clear glazing) a gatehouse and new stone cladding. Whilst the Town acknowledges the existing structures, these structures would not be permitted were an application to be presented to Council today. However notwithstanding this, it is considered the existing structures require updating in line with the overall proposal. The proposed gatehouse setback at 1.8 metres from the front boundary does not comply with the 'Deemed to Comply' provisions of the R-Codes. The Performance Provisions of the R-Codes requires:

*P2.1 Buildings set back from street boundaries an appropriate distance to ensure they:*

- *contribute to, and are consistent with, an established streetscape;*
- *provide adequate privacy and open space for dwellings;*
- *accommodate site planning requirements such as parking, landscape and utilities; and*
- *allow safety clearances for easements for essential service corridors.*

*P2.2 Buildings mass and form that:*

- *uses design features to affect the size and scale of the building;*
- *uses appropriate minor projections that do not detract from the character of the streetscape;*
- *minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and*
- *positively contributes to the prevailing development context and streetscape.*

The existing street form has been established by the construction of the terrace. The proposed addition of the gatehouse is not considered to increase significantly the overall scale and bulk of the development as experienced from the streetscape, subject to the use of materials and the visual permeability of the fencing and gatehouse. A condition has been included in the Officer's Recommendation to ensure the fencing to the terrace and the screening to the gatehouse remain significantly visually permeable to minimise scale and bulk, maintain views and provide for the passive surveillance of the street.

The proposal complies with the requirements of P2.1 above and P2.2. The additional development to the front setback area introduces additional materials, textures, colours and articulation to add character to the dwelling. The overall height of the development at the front of the building is being reduced, further reducing the overall bulk of the building to the streetscape.

The prevailing setback of the dwelling will be 6.2 metres and will therefore comply with the overall street setback requirements for the purposes of the dwelling.

#### Buildings on the Boundary

The proposed garage boundary wall has been relocated to the boundary at the request of the adjoining neighbours. The relocation of the garage will facilitate a future application from 16 Woodhouse Road to alter the ground level of that property. The garage is proposed to be constructed on the boundary. Buildings can be constructed on the boundary for a maximum 'Acceptable Development' length of 9 metres and to an overall height of 3.0 metres constructed on one boundary only, however the proposed garage is approximately only 1.3 metres (2.6 metres with fixed screening included) in height on the boundary and 9.54 metres in length on the boundary. Therefore the garage boundary wall does not comply with the design requirements for structures on the boundary. The required setback of the 'Deemed to Comply' provisions for the western boundary is required to be a minimum of 1.0 metre from the boundary.

The LPP RDG Element 3.7.7 provides performance criteria by which to assess proposed variations to the setback requirements. This is summarised below.

- P1.1 The primary street setback of new developments or additions to non-contributory buildings is to match the traditional setback of the immediate locality.

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There are no specific planning implications with regard to the front or street setback for this proposal. The relocation of the garage does not have any implications to the remaining setbacks of the dwelling. The garage boundary wall has been supported by the effected neighbour.

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

The existing dwelling is not listed on the Town's Heritage List. There are no significant implications to the heritage character of the dwelling or surrounding locality.

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

The proposed garage is 9.54 metres in length on the eastern boundary (exceeds the 'Deemed to Comply' provisions by 0.54 metres), to an overall height of 1.3 metres (2.6 metres with fixed screening included). The structure is not significantly visually dominant from the street. The applicant in consultation with the neighbours has varied the proposed material and moved the garage to the boundary to facilitate the future redevelopment of that property.

The overall height of the structure complies with the length requirements for buildings on the boundary. The overall length of the structure exceeds to 'Deemed to Comply' provisions of the R-Codes. The garage, including the proposed screen is considered acceptable, as supported by the adjoining neighbours.

#### Lot boundary setback

Previous conditions included in the Officer's Recommendation have been included in these amended plans. Once applied, the conditions will result in the development complying with the 'Deemed to Comply' provisions of the R-Codes for all lot boundary setbacks to the dwelling. The conditions relate to wall/ screen requirements.

The boundary pier, located to support the awning over the entrance is still conditioned to be setback 1.2 metres from the south eastern wall so that it is located in line with the scullery wall, minimising any bulk impacts to the adjoining neighbour. This is supported by the adjoining neighbours.

#### Site works

The relevant 'Deemed to Comply' provision of the R-Codes is Clause 5.3.7 C7.2 which states as follows:

*"C7.2 Excavation or filling within a site and behind a street setback line limited by compliance with building height limits and building setback requirements."*

In the central portions of the site the proposed excavation is in excess of the 'Deemed to Comply' provisions. The ground level is proposed to be excavated 716mm from natural ground level for the new garage.

The modification to the proposed design, in consultation with the adjoining neighbour has resulted in the external courtyard being filled (removal of steps and passageway due to garage on the boundary) by 700mm. Additional boundary wall heights are proposed to ensure this location is adequately screened.

The proposed fill and the non-compliance with external wall height permitted under the Residential Design Guidelines (i.e. 6.5m) therefore requires assessment of this variation under the 'Design Principles' of the R-Codes. The R-Codes state as follows in respect to the 'Design Principles'.

*“P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.*

*P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the boundary of the site and the adjoining properties and as viewed from the street.”*

The proposed fill of approximately 700mm located at the courtyard eliminates the requirements for steps. The garage relocation to the boundary deletes the side passageway from the courtyard to the rear of the lot. Therefore no steps are required. The fill enables the small courtyard to have a level finished ground level. Stepping this small courtyard would comprise the functionality of the space. As the area is being filled, additional boundary wall height is required to provide appropriate visual screening to the neighbour’s property. The proposed fill has been supported by the adjoining neighbour. The proposed fill is considered to add some bulk to the proposed boundary wall heights, but when considered as an overall design with the proposed boundary garage wall, the overall impact is not significant.

The proposed excavation of 716mm does respond to the overall gradient of the site. The additional garage area is located in this area of the site and will have no impact to the streetscape. There will be height issues relating to the overall building height due to a continuation of existing finished floor levels, however this will be discussed in the next section of this report.

The proposal does respect the natural ground level at the boundary of the site and the adjoining properties and as viewed from the street.

#### Building height

The R-Code provisions in respect to building height are substituted by the height control under the Residential Design Guidelines. Clause 3.7.17.4.1.3 states that:

*In localities where views are an important part of the amenity of the area and neighbours’ existing views are to be affected, or the subject site is a ‘battleaxe’ lot, then the maximum building heights are as follows:*

- 8.1 metres to the top of a pitched roof;
- 6.5 metres to the top of an external wall (concealed roof);
- 5.6 metres to the top of an external wall; and where the following apply.

- (i) *the proposal demonstrates design, bulk and scale that responds to adjacent development and the established character of the area or other site specific circumstances;*
- (ii) *the provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped and ;*
- (iii) *subject to the ‘Acceptable Development’ standards of the R-Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.*

The overall external wall height of the dwelling is not compliant (i.e. permitted 6.5m to the top of an external wall). Non-compliance with the external wall height limit ranges from 7.029 metres at the street front (note: the height of the dwelling is being reduced from the street front perspective from an overall height of 10.75 metres at the highest point of the roof above ground level), 9.772 metres at the centre and northern section of the site (located on the existing dwelling) and 9.5 metres to centre of the lot (new additions).

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The existing dwelling is non-compliant and whilst recognised as forming part of the scale and bulk of the overall development it has not been assessed for the purposes of height for these additions and alterations. It is noted that the existing roof will be reduced by 1.0 metre and 1.5 metres respectively.

The new sections of the additions and alterations range in height from:

- approximately 9.5 metres to the new section of roof over the family / dining room (centre of the lot) to 7.5 metres at the boundary (as per amended plans roof height has increased to facilitate a reduced roof height in another section, to improve view corridors).
- approximately 8.4 metres to the balcony (centre of the lot) (height reduced as per neighbour's signed agreement) to 7.5 metres on the boundary.

The proposed dwelling (as amended) has been modified from the previous proposal on four occasions to assist in maintaining the view corridors of the neighbours. Walls have been scaled back, building heights reduced at the front of the dwelling and view corridors attempted to be opened up, however views are still impacted and will be discussed later in this report. An agreement with the neighbours further modifies the dwelling to minimise adverse impacts.

The Acceptable Development Provisions state a wall should have a maximum height of 6.5 metres for a concealed roof. Whilst the new sections of roof are not concealed by parapet walls, the development does have skillion roofs of a 3 degree pitch, therefore essentially making it a flat roof for the purposes of this assessment. A concealed roof is required to have a maximum height of 6.5 metres as per the Town's RDG. The wall/ roof height requires Council to consider the application under the Performance Criteria of the Guidelines.

The Residential Design Codes state:

*The performance criteria are general statements of the means of achieving the objective. They are not meant to be limiting in nature.*

The 'Deemed to Comply' provisions illustrate one way of satisfactorily meeting the corresponding performance criterion, and are provided as examples of acceptable design outcomes. The 'Deemed to Comply' provisions are intended to provide a straightforward pathway to assessment and approval; compliance with a 'Deemed to Comply' provision automatically means compliance with the corresponding performance criterion, and thus fulfilment of the objective.

The Town's Guidelines and R-Codes have been developed to be read in conjunction with each other and have been designed to provide a clear choice for applicants to select either a performance criteria approach for assessment, as an acceptable development provision approach or a combination of the two.

As such, the proposed development will be assessed under the Performance Criteria provisions of the Guidelines. The proposed dwelling is required to be assessed as per the PC requirements of the RDG for the building height, which allows for:

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

The Richmond Hill Precinct has a range of building heights, scale and built forms, notably the existing building is considered a high building in the area. On Woodhouse Road there are several buildings to the south, which have partially filled lots and development that exceed the Town's height requirements. There is no established design or traditional development, however the majority of the dwellings are two storey with some developments utilising the ground levels to facilitate undercrofts or garage areas. Roof designs vary from flat to pitched roofs.

The applicant has undertaken design modifications, most recently in consultation with the adjoining neighbour, and included design measures to minimise the impact of the building on the streetscape and to the viewing vistas of adjoining neighbours to the south and across the street, however due to the orientation of the adjoining lot, views currently enjoyed by the neighbours will be reduced. The applicant has attempted to minimise impacts to view corridors by minimising the roof pitch, increasing setbacks and reducing the height of the building and deleted/ altered privacy screens.

The topography of the subject lot slopes approximately 3.0 metres from south to north. It is considered the topography of the site and the existing non-compliant dwelling makes the design of a development that complies with the Acceptable Development Provisions difficult unless it is further designed as a split level, which the house is already designed as. The applicant has factored in the topography of the site into the design of the dwelling, and with the exception of building height and impact to view corridors the remaining assessments under the Performance Criteria provisions are considered to be relatively minor (as conditioned).

The proposed development reduces height of the building as experienced from the streetscape. The reduced height of the dwelling reduces the bulk and scale of the dwelling from the street, improving views of adjoining buildings. Whilst the bulk of the building (3 storeys) from the rear of the lot is considered high (modified plans reduce the height of the rear additions as agreed by the neighbour), the potential impacts to the streetscape is considered minor, however the neighbours at 16 Woodhouse Road will still be impacted. Whilst it is impossible not to impact the adjoining property the scale of the impact will be assessed further in this section of the report and following sections.

It is considered the proposed modifications (outlined in the applicant's/ neighbours agreement submission) to the building does attempt to address Council's previous concerns and the neighbour's previous objections. The deferral by Council facilitated discussions to be undertaken, and agreement to be reached with regard to the overall impact of the dwelling (additions and alterations). The overall height of the additions still requires Council to consider the application under the Performance Criteria provisions of the RDG. The applicant is utilising existing finished floor levels of the property. The existing dwelling is being retained and altered. Lowering the entire rear additions cannot be undertaken, as the applicant is utilising the existing undercroft garage, and upper levels. Lowering the dwelling further would compromise the gradient of the undercroft garage, and render it difficult to use the proposed garage. The proposed building design has been discussed with the adjoining neighbour and as previously stated the neighbour has signed a document of support for the proposed modifications.

The top balcony at 16 Woodhouse Road is at a height of R.L 40.29. The top of roof to the first highest point (located near the existing building: building height 8.3 metres R.L 43.60) is R.L 42.99 (top of skillion roof), therefore views will be impeded, however this view corridor is at an oblique angle to the balconies located at 16 Woodhouse Road. The applicant has lowered the roof over the balcony by 100mm to RL 41.762. Therefore at this point the roof is approximately 1.47 metres over the finished floor level of the balcony at 16 Woodhouse Road. At 1.47 metres, views over the roof to Mosman Park will be significantly maintained by a person standing on the balcony at 16 Woodhouse Road.

The overall height of the structure is being reduced to Habgood Street, reducing overall bulk and scale. An agreement has been reached with the adjoining neighbour with regard to outcome to lessen any potential impact the proposed development may have. The lot orientation and dwelling location of 16 Woodhouse Road is such that the rear of the property is located to face a northerly direction and therefore across the rear of the subject site. The height of the additions are considered to address the performance provisions of the Guidelines. Accordingly, the design of the dwelling and proposed height can be supported by Council.

Loss of Views

Clause 3.7.17.4.1.3 states that:

*where views are an important part of the amenity of the area and neighbours' existing views are to be affected, amongst other things, the following matters are to be considered:*

- (i) the proposal demonstrates design, bulk and scale that responds to adjacent development and established character of the area or other site specific circumstances;*
- (ii) the provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped and ;*
- (iii) subject to the 'Acceptable Development' standards of the R-Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.*

Whilst the proposed dwelling does require an assessment under the Performance Criteria of the Guidelines, the dwelling (additions) is considered to impact on the view shed from neighbouring properties through to the north and east of the proposal, but view corridors have been attempted to be maintained through to North Fremantle/ Mosman Park from the first floor balcony (reduced by a further 100mm as per the agreement).

The applicant and representatives of the applicant have had considerable liaison with the Town. The deferral of the application by the Town Planning and Building Committee enabled discussions between the applicant and the adjoining neighbour. These discussions have resulted in further amendments and an agreement regarding the proposal has been reached between both parties. The proposed modifications clarify building heights and materials to minimise bulk and scale issues and to improve viewing corridors. It is considered the proposed front of the dwelling has been designed in such a manner as to carefully consider and reduce the bulk and scale of the development to the streetscape and the viewing vistas of adjoining neighbours. It is noted that the applicant has attempted to minimise the impact of the height of the dwelling to the rear of the property. Privacy screens have been removed to improve viewing corridors thereby requiring further Council discretion.

It is considered the amendments and agreement with the neighbour demonstrates that viewing vistas have been considered by the applicant and the neighbour, however views through the lot in a north easterly direction will be impacted. Viewing vistas through to North Fremantle/ Mosman Park will still be partially retained from the second storey of the neighbouring balcony over the roof of the subject design (balcony). It is considered the proposed dwelling can be supported in respect to its impact upon views.

Visual privacy

The 'Deemed to Comply' provisions for Element 5.4.1 Visual Privacy of the R-Codes requires major openings which have their floor level more than 0.5 metres above natural ground level, and positioned so as to overlook any part of any other residential property behind its setback line, to comply with the following:

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

The proposed development does not comply with the 'Deemed to Comply' provisions of the R-Codes, however, the 'Design Principles' of 5.4.1 allows for:

*P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through: building layout, location; design of major openings; landscape screening of outdoor active habitable spaces; and/or location of screening devices.*

*P1.2 Maximum visual privacy to side and rear boundaries through measures such as: offsetting the location of ground and first floor windows so that viewing is oblique rather than direct; building to the boundary where appropriate; setting back the first floor from the side boundary; providing higher or opaque and fixed windows; and/or screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).*

There is overlooking from the kitchen window facing northerly and balcony facing southwards, with oblique views to the easterly neighbour. These openings have been conditioned to comply with the 'Deemed to Comply' provisions of the R-Codes. The openings to the balcony area on the western elevation (balcony from the bedroom 2/ kids study) also has been conditioned to comply with the 'Deemed to Comply' provisions of the R-Codes.

Overlooking from the balcony (adjoining family/ living room) and lower deck of the swimming pool will impact on the northern (owned by the applicant) and north easterly neighbour. Screening has been removed to increase viewing corridors for the neighbour to the east. The proposal can be made to be compliant with overlooking to the north easterly neighbour, however this will impact further the viewing corridors of the eastern neighbour at 16 Woodhouse Road. In the interest of maintaining view corridors the overlooking is considered minimal, with minimal adverse impacts to habitable areas and therefore can be supported.

#### Solar access for adjoining sites

The R-codes requires that a development site within a Residential R17.5 density coding does not overshadow in excess of 25 per cent of the adjoining lot. The proposal does comply with the 'Deemed to Comply' provisions of the R-Codes and therefore can be supported.

It is noted that the solar collectors on the adjoining lot (16 Woodhouse Road) will be impacted, however as the proposal does comply with the 'Deemed to Comply' provisions. Clause 2.5.4 of the R-Codes states:

*The decision-maker shall not refuse to grant approval to an application where the application satisfies the deemed-to-comply provisions of the R-Codes and the relevant provisions of the scheme and any relevant local planning policy.*

Therefore in this instance of solar impact, the Town is obliged to approve the development.

#### **Conclusion**

In light of the deferral of the previous application by Council, the applicant has engaged with the immediate adjoining neighbours. Modifications to the plans have been included in new plans submitted to Council and a letter of agreement signed by the concerned parties has been included.

The modifications and conditions applied to the development has resulted in a better design outcome for the neighbours. The proposed variations have been listed and addressed above. The overall building height of the development is being reduced by 1.0 and 1.5 metres respectively (at the street frontage) reducing the overall scale and bulk of the development from Woodhouse Road and Habgood Street. The modifications to the plans also change the proposal to ensure a better outcome for the neighbours.

As per the assessment above the building height is considered to comply with the Performance Criteria of the RDG, as the height limitations of the Guidelines are provided to protect views. In this instance the views of the eastern neighbour are impacted, however the scale of the impact is as a result of site orientation. Significant views will be maintained from the balconies of 16 Woodhouse Road. The dwelling is of a scale, bulk and design that is consistent with the prevailing streetscape and the rear setbacks are compliant with the density coding for the area, therefore the development as a whole cannot be described as out of scale with the prevailing scale, bulk and character of the area. It is considered viewing vistas are protected where practical and as such, the proposed modified development can be supported and is recommended for approval.

- Andre Malecky (owner) addressed the meeting and is supportive of the officer's recommendation.

#### **11.4 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP051017**

**Cr M McPhail moved, seconded Cr Nardi**

**That Council exercise its discretion in granting planning approval to vary:**

- (i) Clause 5.1.2 – Street Setback of the Residential Design Codes of WA to permit a setback of less than 6.0 metres from the front boundary to the gatehouse (terrace is existing);**
- (ii) Clause 5.1.3 – Building on the Boundary; Setback of structure from boundary of the Residential Design Codes of WA: required setback 1.0 metre. Proposed setback nil;**
- (iii) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to permit excavation behind a street setback line that is not within external wall height limits;**
- (iv) Clause 3.7.17.4.1.3 – Building Height, Form, Scale and Bulk of the Residential Design Guidelines 2016 to permit the external wall height to exceed 6.5 metres;**
- (v) variation to variation to Element 5.4.1 of the Residential Design Codes – Visual Privacy**

**for alterations and additions to the single dwelling at No. 4 (Lot 5017) Habgood Street, East Fremantle, in accordance with the plans date stamped received on 18 September 2017, subject to the following conditions:**

- (1) The window to the kitchen (north facing) is to comply with the Deemed to Comply provisions of variation to Element 5.4.1 of the Residential Design Codes Visual Privacy (eastern neighbour).**
- (2) The view corridor located at the balcony through from the kitchen is to comply with the Deemed to Comply provisions of variation to Element 5.4.1 of the Residential Design Codes Visual Privacy (eastern neighbour).**
- (3) The three light-wells located on the balcony adjoining Bedroom 2 and the Kids Study (currently 1200mm frosted glazing) is to comply with the Deemed to Comply provisions of variation to Element 5.4.1 of the Residential Design Codes Visual Privacy (eastern neighbour).**
- (4) The terrace fencing located within the front 6 metre setback zone at the front of the dwelling is to remain 60% visually permeable. The fence treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
- (5) The treatment of the structure behind the gatehouse is to remain 60% visually permeable. The screen treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
- (6) Boundary pier for the architectural awning located on the terrace (south eastern corner of the lot) to be setback 1.2 metres from the boundary in line with the proposed scullery.**
- (7) The crossover width not to exceed 5.0 metres and be in accordance with Council's crossover policy as set out in the Residential Design Guidelines 2016. All redundant crossovers are to be removed and the verge and footpath reinstated to the satisfaction of the Chief Executive Officer. The existing treatment to create a mountable kerb on Habgood Street is to be removed.**

- (8) All parapet walls/building structures to the adjacent property face on a boundary are to be finished by way of agreement between the property owners and at the applicant's expense.
- (9) If requested by Council within the first two years following installation, the Colourbond roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (10) Pool/Spa filter and pump equipment to be located a minimum distance of 1.0 metre away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
- (11) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (12) The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit is issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (13) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (14) The proposed alterations and additions are not to be used until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (15) All storm water 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.
- (16) 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.
- (17) 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.
- (18) In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
- (19) This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (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 20 June 2017 this application deemed determined, on behalf of Council, under delegated authority.

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**11.5 Canning Highway No. 12 (Lot 5 and 6) East Fremantle – Additions and Alterations to Existing Dwelling**

<b>Applicant</b>	Vision Felix P/L T/AS Construction West
<b>Landowner</b>	Paul Hawkins
<b>File ref</b>	P/CAN 12
<b>Prepared by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Supervised by</b>	Gary Tuffin, Chief Executive Officer
<b>Voting Requirements</b>	Simple Majority
<b>Meeting Date</b>	3 October 2017
<b>Attachments</b>	1. Location Plan 2. Photographs 3. Applicant's Heritage Report 4. Plans received 31 July 2017

**Purpose**

This report considers an application for planning approval for additions and alterations to the existing dwellings at 12 Canning Highway (frontage to Riverside Road), East Fremantle.

**Executive Summary**

The proposal has a number of variations and are noted as follows:

- Heritage
- Retaining: Fill and excavation exceeds 0.5 metres
- Setback from the Boundary
- Front fence height – 1.2 metres solid limestone blocks (existing) with infill panels to an overall height of 2.2 metres.
- Overlooking: variation to Element 5.4.1 of the Residential Design Codes Visual Privacy

**Background**

Zoning: R 20/ R40

Date application received: 31 July 2017

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

No recent development applications are applicable to the subject sites.

**Consultation**

Advertising

The application was advertised to surrounding neighbours for a two week period between 15 August 2017 and 29 August 2017. No submission was received by Council.

Community Design Advisory Committee

This application was referred to the Committee on 27 March 2017, the following comments were made:

- (a) The overall built form merits;
  - Built form is considered to have merit.
- (b) The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development;
  - The additions are considered to have minimal impact on the heritage significance of the building.

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- (c) The relationship with and impact on the broader public realm and streetscape;
    - Passive surveillance of the building is considered a positive and adds to the general amenity of the locality.
  - (d) The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;
    - The proposal is considered to be a positive to the area.
  - (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 comment.
  - (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 comment.

Due to the positive nature of the comments, the comments were not sent to the applicant for a response.

#### **Statutory Environment**

*Planning and Development Act 2005*

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

#### **Policy Implications**

Nil

#### **Financial Implications**

Nil

#### **Strategic Implications**

The Town of East Fremantle Strategic Community Plan 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.

**Site Inspection**

18 September 2017

**Statutory Assessment**

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies. 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
Open Space	50%	65.9%	A
Outdoor Living	24sqm	>24sqm	A
Car Parking	2	2	A
Site Works	Less than 500mm	Exceeds 500mm	D
Overshadowing	25%	<25%	A
Drainage	On-site	On-site	A

Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
<b>3.7.4 Site Works</b>	<b>D</b>
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>
3.7.8 Roof Form and Pitch	A
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	A
3.7.15-20 Precinct Requirements	A

### Heritage

The dwelling is categorised as category 'B' on the Municipal Inventory and Council's Town Planning Scheme Heritage List. Category 'B' can be described as:

*Considerable heritage significance at a local level; places generally considered worthy of high level of protection, to be retained and appropriately conserved; provide strong encouragement to owners under the Town of East Fremantle Planning Scheme to conserve the significance of the place. A Heritage Assessment / Impact Statement is required as corollary to any development application. Incentives to promote heritage conservation may be considered where desirable conservation outcomes may be otherwise difficult to achieve.*

As a B category building listed on the Town's MHI, the dwelling has heritage significance at a local level, however it is acknowledged that alternations have occurred to the building.

The applicant is proposing to alter the front garden of the subject lot to include terraced gardens, new pedestrian access and a swimming pool, with deck and pool equipment storage room. A studio is also proposed set back behind the Riverside Road elevation of the dwelling. The additions and alterations are considered not to be significant and the overall heritage value of the dwelling is significantly maintained.

### Site Fill

The existing lot levels are proposed to be altered to facilitate new lawn area, improved pedestrian access and swimming pool. The existing front garden is proposed to be retained at various heights. Most significantly the retaining is already existing and therefore new retaining will only be altering the location of existing limestone retaining to enable greater usability of the front garden. The front garden will require some excavation and fill to facilitate the proposal, however the works are consistent with the existing levels and therefore has limited streetscape impact.

The proposed excavation and fill (existing and proposed) does not adhere to the 'Deemed to Comply' provisions of the R-Codes.

The Design Principles of the R-Codes with regard to Element 5.3.7 Site Works states:

- P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.*
- P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.*

It is proposed to alter the existing retaining walls, terracing the front garden to facilitate swimming pool area, lawn and decking, with three primary levels established RL 2.6, RL 4.2 and RL 5.73. These levels are consistent with the existing levels. The proposed fill is considered to have no significant impact on the scale and bulk of the front landscaped garden/ dwelling.

New steps are proposed through the centre of the front garden, with new terraced garden beds. To the eastern boundary a new swimming pool, deck and pool equipment store is proposed, with access from the top terraced area at RL 5.73. New limestone stairs are proposed with concrete retaining walls.

There is no significant impact to the eastern and western neighbour. The height of the retaining is consistent with existing levels. Whilst there is a deck proposed over the pool equipment store, which does require assessment for overlooking (discussed later), it is considered the eastern neighbours

already have significant views over the subject lot, with any potential overlooking from the deck being minor. No structures are proposed to the rear garden.

The fill does not negatively impact on the streetscape and has no significant negative impact to the amenity of the neighbours. The design of the retaining wall as viewed from Riverside Road will be consistent with the existing retaining and will improve the overall view of the dwelling.

The overall proposed retaining walls will therefore retain the visual impression of the existing ground level of the site as viewed from the street and neighbour's property, due to the stepped design of the retaining and the garden beds. The proposed development is considered to comply with the Design Principles of Element 5.3.7 Site Works and therefore can be supported.

#### Front Fence

The solid component of the base of the fence (existing retaining wall), as it appears from the street, is 1.2 metres. With the additional height of the proposed brick piers and infill panels at 1.0 metre to ensure some barrier is created with the street, the overall height of the retaining and fencing exceeds the Town's policy with regard to front fence height. The proposed retaining and fence will be 2.27 metres from the street, 0.47 metres higher than that permitted by Council's Policy.

The existing retaining wall has no street barriers to secure the site and therefore is a potential safety risk. The existing front retaining, particularly with a solid component at 1.2 metres high does not detract from the existing garden or dwelling. The outlook in respect to the streetscape, will be significantly as existing. This section of front garden is proposed with landscaped gardens and a new swimming pool. The RDG state that less permeable fences above 1.2 metres may be approved if a number of performance criteria can be addressed, in this instance a higher fence at 2.27 metres does address the existing retaining on site and still maintains an 'open' appearance to the streetscape.

In the Riverside Precinct the streetscape significantly contributes to local character of the area and high front fences are very uncommon, particularly abutting the river. Walls in front gardens are generally low and primarily constructed for retaining purposes, as is the case with this dwelling. The visually permeable nature of the proposed fence at an additional 1 metre in height does not contribute to any significant bulk and scale issues. The fencing on top of the retaining is open comprising of brick piers with infill panels. In order to enhance the streetscape the dwelling maintains a strong connection and relationship to the street. Apart from the character of an area, residents expect to maintain their outlook, have security and passive surveillance, landscape and shade, open space, and an attractive setting. The provision of the additional height to the retaining wall will assist in improving the amenity to the above, without comprising on the heritage character of the existing building.

#### Fencing Materials and Permeability

The fencing materials of limestone (existing), brick piers and infill panels are considered acceptable and to ensure these materials are used a condition will be imposed to ensure visual permeability of at least 60% is maintained to maintain the openness for the length and area of the fence. The materials are considered consistent with the existing material of the heritage dwelling.

#### Boundary Setbacks

The proposed studio is located on the western boundary. Buildings can be constructed on the boundary for a maximum 'Acceptable Development' length of 9 metres and to an overall height of 3.0 metres constructed on one boundary only, however the proposed studio is approximately 3.5 metres (to top of parapet wall) in height and therefore does not comply with the design requirements for structures on the boundary. It is also noted the existing garage is also located on the boundary. The required setback

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of the 'Deemed to Comply' provisions for the western boundary is required to be a minimum of 1.0 metre from the boundary.

The LPP RDG Element 3.7.7 provides performance criteria by which to assess proposed variations to the setback requirements. This is summarised below.

- P1.1 The primary street setback of new developments or additions to non-contributory buildings is to match the traditional setback of the immediate locality.

There are no specific planning implications with regard to the front or street (Riverside Road) setback for this proposal. There are no significant modifications to the front of the dwelling. The studio is set back 25 metres from Riverside Road and a minimum of 8 metres from Canning Highway. A high boundary wall to Canning Highway will obstruct all views of the structure. The studio does not detract from the character of the dwelling, as it is fully detached from the heritage dwelling. There are no scale or bulk issues associated with the studio as it is single storey.

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

The existing dwelling is listed on the Town's Heritage List as a B category dwelling. There are no significant implications to the heritage character of the dwelling, as all additions and alterations are separate to the existing dwelling. The proposed rear studio is located on the western boundary approximately 5 metres behind the heritage dwelling. The proposed additions do not impact on the visual appearance of the heritage dwelling. There is a clear and distinct differentiation between the existing old and proposed new elements.

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

The proposed studio is 9.0 metres in length on the western boundary, with a portion of the studio set back off the western boundary approximately 1.1 metres for a length of 2.16 metres. It is also noted a "Fence top screen to Comply with R-Codes Visual Privacy" is also proposed on the western boundary. The structure is not significantly visually dominant and is significantly obscured due to its location by the garage, located in front of the structure.

The overall length of the structure complies with the length requirements for buildings on the boundary. The overall height of the structure is 0.5 metres above the Acceptable Development height requirements, however the natural ground level does fall towards Riverside Road from Canning Highway. The studio has a height of between 3.1 and 3.5 metres from natural ground level, so the additional height in the studio is required to compensate for the ground level change.

The studio, including the proposed privacy screen is considered acceptable. The proposed development is consistent with maintaining the general impression of the character of the area and the streetscape (Riverside Road).

#### Overlooking

The 'Deemed to comply' provisions for Element 5.4.1 Visual privacy of the R-Codes requires major openings which have their floor level more than 0.5 metre above natural ground level, and positioned so as to overlook any part of any other residential property behind its street setback line, to comply with the following:

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

The 'Design Provisions' of 5.4.1 allows for:

- 1 *Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:*
  - *building layout, location;*
  - *design of major openings;*
  - *landscape screening of outdoor active habitable spaces; and/or*
  - *location of screening devices.*
- 2 *Maximum visual privacy to side and rear boundaries through measures such as:*
  - *offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;*
  - *building to the boundary where appropriate;*
  - *setting back the first floor from the side boundary;*
  - *providing higher or opaque and fixed windows; and/or*
  - *screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).*

Western Elevation: It is noted that a passageway windows from each of the floors of the neighbouring multiple dwellings does overlook the subject site. The foyer / lobby area is not a habitable room as defined by the R-Codes (defined below):

- *a bedroom, living room, lounge room, music room, sitting room, television room, kitchen, dining room, sewing room, study, playroom, sunroom, gymnasium, fully enclosed swimming pool or patio;*

*But excludes*

- *a bathroom, laundry, water closet, food storage pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes drying room, verandah and unenclosed swimming pool or patio and other spaces of a specialised nature occupied neither frequently nor for extended periods.*

Therefore the windows on the northern elevation of the neighbouring lot are not assessed for overlooking purposes but do have a perceived impact. The construction of the studio will improve the amenity of the property as experienced by the owner and will reduce overlooking from the neighbouring lot.

The proposed studio (floor plan) includes a privacy screen that is considered to address the 'Deemed to Comply' provisions of the R-Codes. Notwithstanding this the proposed studio overlooks a pedestrian access leg/ passageway down the side of the neighbouring property and does not overlook habitable areas. The screening is considered acceptable and has been included as a condition in the Officer's Recommendation.

Eastern Elevation (Swimming Pool Deck): Again it is noted that the neighbouring property to the east overlook the front garden and proposed swimming pool/ deck area. The proposed deck is raised above 0.5 metres from natural ground level. There is a 1.2 metre wall separating the two properties, however

this does not comply with the 'Deemed to Comply' requirements of a 1.6 metre wall separating properties. Notwithstanding the 1.2 metre wall, the existing verandah of the dwelling overlooks the same area as the deck to a greater extent than the deck will, therefore it is considered any overlooking from the deck can be supported as it will not significantly increase to an adverse extent any overlooking of the eastern neighbour. Any overlooking from the deck will generally be from oblique angles into habitable areas of the neighbours property (neighbours dwelling is also elevated above the subject deck and dwelling).

The proposed overlooking is considered supportable based on the applicant addressing the 'Deemed to Comply' provisions and 'Performance Criteria' provisions as noted above.

### **Conclusion**

The proposed additions, whilst requiring some minor variations to the 'Deemed to Comply' provisions of the R-Codes and the Acceptable Development provisions of the RDG, are considered acceptable, as detailed above.

The application is considered to have had due regard for the Town's requirements relating to residential developments, as well as the requirements outlined within the R-Codes. The proposed development has minimal impact to the existing heritage dwelling. Whilst the application does seek some minor variations as discussed above, these are considered to be minor and do not impact the streetscape and adjoining neighbours.

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

### **11.5 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP061017**

**Mayor O'Neill moved, seconded Cr White**

**That Council exercise its discretion in granting planning approval to vary:**

- (a) variation to side setback lot boundary setback of the Residential Design Guideline and R-Codes – Studio – Required setback 1.0 metre, proposed setback nil;**
- (b) variation to Element 5.3.7 Site Works of the Residential Design Codes;**
- (c) variation to front fence Local Planning Policy – Front fence height – 1.2 metres solid limestone blocks (existing) with infill panels to an overall height of 2.2 metres; and**
- (d) Overlooking: variation to Element 5.4.1 of the Residential Design Codes Visual Privacy**

**for alterations and additions at No. 12 (Lots 5 and 6) Canning Highway, East Fremantle, in accordance with the plans date stamped received 31 July 2017, subject to the following conditions:**

- (1) Where applicable all parapet walls to be fair faced brickwork or cement rendered to the adjacent property face or by way of agreement between the property owners and at the applicant's expense.**
- (2) 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.**
- (3) The swimming pool deck to remain unroofed and open on three sides at all time. Any enclosure of the deck will require Council's further approval.**
- (4) The studio not to exceed a maximum height of 3.5 metres at any point from natural ground level as measured at the boundary of the subject lot.**
- (5) The existing retaining wall located at the front boundary not to exceed a height of 1.270 metres at the maximum height above natural ground level at the verge.**

- (6) The overall height of the fence not to exceed 2.270 metres above natural ground level at the verge.
- (7) The vertical infill panels and the side access gate are to be of the design indicated on the plans submitted and are to be visually permeable for the entire length and area of the fence with at least 60% visual permeability.
- (8) The proposed fence top screening located at the studio as indicated on the submitted plans to comply with the visual privacy requirements of the R-Codes where required.
- (9) 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.
- (10) The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) Development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
- (16) This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (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 20 June 2017 this application deemed determined, on behalf of Council, under delegated authority.

12. REPORTS OF OFFICERS (COUNCIL DECISION)

Nil.

13. MATTERS BEHIND CLOSED DOORS

Nil.

14. CLOSURE OF MEETING

There being no further business, the Presiding Member declared the meeting closed at 6:46pm.

*I hereby certify that the Minutes of the ordinary meeting of the Town Planning & Building Committee of the Town of East Fremantle, held on 3 October 2017, Minute Book reference 1. to 14 were confirmed at the meeting of the Committee on:*

7 NOVEMBER 2017

  
\_\_\_\_\_  
Presiding Member