



# MINUTES

## Town Planning & Building Committee

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Tuesday, 5 December 2017 at 6.33pm

### **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, (BOARD ROOM), PETRA STREET, EAST FREMANTLE ON TUESDAY 5 DECEMBER 2017.**

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

Presiding member opened the meeting at 6.33pm 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 J O'Neill	
Cr D Nardi	
Cr T Natale	
Cr A White	
Cr M McPhail	

The following staff were in attendance:

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

**3.2 Apologies**

Cr J Harrington

**3.3 Leave of Absence**

Nil.

**4. MEMORANDUM OF OUTSTANDING BUSINESS**

Nil.

**5. DISCLOSURES OF INTEREST**

**5.1 Financial**

Nil.

**5.2 Proximity**

Mayor O'Neill – Item 11.1 – Allen Street No. 76 - Screen Structure Adjacent to Lot Boundary

Mayor O'Neill declared a proximity interest as he resides at No. 72 Allen Street and the owner Ms Danielle Churack of 76 Allen Street and Mr & Mrs Jonathan and Belinda Oxlade of 78 Allen Street (adjoining neighbour) are known to him as neighbours and declared that he will consider this matter on its merits in terms of the benefit of the Town and vote accordingly.

**5.3 Impartiality**

Nil.



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**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 (7 November 2017)**

**8.1 OFFICER RECOMMENDATION**

Cr Nardi moved, seconded Cr Natale

That the minutes of the Town Planning and Building Committee meeting held on Tuesday 7 November 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:** Nil.

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The Community Design Advisory Committee did not meeting in the month of November.

Cr M McPhail moved, seconded Cr White

That the order of business be changed to allow members of the gallery to speak to specific planning applications.

(CARRIED UNANIMOUSLY)

## 11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

### 11.3 Locke Crescent, No. 7 (Lot 5002) – Demolition of Existing Building and Construction of New Two Storey Dwelling with Undercroft Garage

<b>Applicant/Owner</b>	A Malecky
<b>File ref</b>	P/LOC7; P130/16
<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>	4 December 2017
<b>Documents tabled</b>	Nil
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Location Plan</li><li>2. Photographs</li><li>3. Plans date stamped received:<ul style="list-style-type: none"><li>• 20 September 2017; and</li><li>• 23 November 2017-relating to overshadowing and south eastern elevation of the dwelling only</li></ul></li></ol>

#### Purpose

This report considers a revised planning application for the demolition of the existing dwelling and construction of a two storey dwelling with undercroft garage at No. 7 (Lot 5002) Locke Crescent, East Fremantle. The application considers amendments to the previously approved plans, including height and setbacks.

#### Executive Summary

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

- Lot boundary setbacks: reduced setbacks to the northern and southern boundaries;
- Retaining walls: greater than 500mm in height and within 1 metre of the lot boundary on the front, rear and side boundaries (previously approved);
- Site works: excavation and filling between the street and building and filling behind the street setback line and within 1.0 metre of a common boundary greater than 500mm in height (previously approved);
- Building height: height exceeds 6.5 metres to the top of a concealed roof from the Locke Crescent perspective, approximately a 0.5 metre height variation (maximum height 38.026 AHD);
- Visual privacy setback: balconies (front and side), alfresco/terrace areas and swimming pool surrounds less than 7.5 metres from lot boundaries (previously approved);
- Garage width: exceeds 30% of lot frontage (previously approved); and
- Front fence: overall height greater than 1.8 metres, solid section greater than 1.2 metres in height and less than 60% visually permeable (previously approved).

It is considered the above variations (some as previously approved) can be supported subject to conditions of planning approval being imposed to ensure the residential amenity, landscaping and openness of the streetscape is maintained.

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### Background

Council previously approved of the development in March 2017. The applicant has submitted plans to amend the design of the dwelling, essentially pushing the dwelling back on the lot and increasing the height of the dwelling.

The existing house has been demolished and a new two storey dwelling over three levels is proposed to be constructed on the site. The proposed development will comprise of an undercroft parking level consisting of a double garage and underground entry to the dwelling via stairs and a lift. The ground floor will include a family/kitchen/dining area, guest bedroom, two other bedrooms, laundry and bathrooms. The upper level will contain the master bedroom, bathroom and an additional living area. Both levels have large balconies and alfresco/terrace areas facing the street and the guest bedroom also has a rear facing balcony. The swimming pool is located in the front setback area. The dwelling is positioned more toward the rear of the lot to take advantage of the upwards slope of the land to the rear and the outlook from the Locke Crescent frontage.

The owner/applicant of the subject site also owns the lot immediately to the rear and has designed the dwelling to maximise and retain views from that property.

### Consultation

#### Advertising

The application was advertised by letters to surrounding land owners with the comment period extending from 20 October to 3 November 2017. No submissions were received.

#### Community Design Advisory Committee (CDAC)

This application was not referred to the CDAC as Council had not met to consider applications and appoint Committee members for 2017 at the time the application was submitted. In light of this the design and planning matters that may impact on the subject site and the surrounding lots have been given careful consideration in the assessment of the application. As Council had previously determined this application and the proposed modifications are only minor, the CDAC considered it unnecessary to review the proposal.

### Statutory Environment

*Planning and Development Act 2005*

*Residential Design Codes of WA*

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

### Policy Implications

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

### Financial Implications

Nil

### Strategic Implications

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

#### Built Environment

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

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

- 3.1.1 Advocate for a desirable planning and community outcome for all major strategic development sites.
- 3.1.2 Plan for a mix of inclusive diversified housing options.
- 3.2 Maintaining and enhancing the Town's character.
  - 3.2.1 Ensure appropriate planning policies to protect the Town's existing built form.
- 3.3 Plan and maintain the Town's assets to ensure they are accessible, inviting and well connected.
  - 3.3.1 Continue to improve asset management practices.
  - 3.3.2 Optimal management of assets within resource capabilities.
  - 3.3.3 Plan and advocate for improved access and connectivity.

#### Natural Environment

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

- 4.1 Conserve, maintain and enhance the Town's open spaces.
  - 4.1.1 Partner with Stakeholders to actively protect, conserve and maintain the Swan River foreshore.
  - 4.1.2 Plan for improved streetscapes parks and reserves.
- 4.2 Enhance environmental values and sustainable natural resource use.
  - 4.2.1 Reduce waste through sustainable waste management practices.
- 4.3 Acknowledge the change in our climate and understand the impact of those changes.
  - 4.3.1 Improve systems and infrastructure standards to assist with mitigating climate change impacts.

#### **Site Inspection**

November 2017

#### **Comment**

TPS 3 Zoning: Residential R12.5

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

#### **Statutory Assessment**

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

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

#### **Residential Design Codes Assessment**

Design Element	Required	Proposed	Status
Street Front Setback	7.5m	14.2m	A
Lot Boundary Setback	1.5m GF (east)	1.0 - 1.65m	D
	2.2m UF (east)	1.2 - 2.0m	D
Open Space	55%	~70%	A
Outdoor Living	No minimum	>144m <sup>2</sup>	A
Car Parking	2	2	A
Site Works	Less than 500mm	Greater than 500mm	D





<b>Retaining Walls</b>	<b>Greater than 500mm and closer than 1m from lot boundary</b>	<b>Greater than 500mm and nil setback</b>	<b>D</b>
Overshadowing	25%	11.5%	A
Drainage	On-site	On-site	A
<b>Visual Privacy Setback</b>	<ul style="list-style-type: none"> <li>Balcony – 7.5m</li> <li>Alfresco dining /Guest terrace &gt;0.5m above NGL – 7.5m</li> <li>Swimming pool surrounds &gt;0.5m above NGL – 7.5m</li> </ul>	<b>Less than 7.5m</b>	<b>D</b>

#### Local Planning Policy Assessment

<b>LPP Residential Design Guidelines Provision</b>	<b>Status</b>
3.7.2 Additions and Alterations to Existing Buildings	N/A
3.7.3 Development of Existing Buildings	N/A
<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
<b>3.7.11 Front Fences</b>	<b>D</b>
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
<b>3.7.14 Footpaths and Crossovers</b>	<b>D</b>
<b>3.7.18.3 Garages, Carports and Outbuildings</b>	<b>D</b>
<b>3.7.15-20 Precinct Requirements</b>	<b>D</b>

<b>Building Height Requirement</b>	<b>Required</b>	<b>Proposed</b>	<b>Status</b>
Building Height (wall) (RDG)	5.6m	N/A	N/A
<b>Building Height (concealed roof) (RDG)</b>	<b>6.5m</b>	<b>7.026m</b>	<b>D</b>
Building Height (pitched roof) (RDG)	8.1m	N/A	N/A

There are a number of variations to the R-Codes and the Residential Design Guidelines. Only the variations not previously considered by Council will be discussed in this report. The previous matters relating to all variations as listed above is only discussed in brief.

#### Lot boundary setbacks

The lot boundary setbacks of the dwelling do not comply in respect to the south eastern boundary. The dwelling has been pushed back on the subject lot and increased in height. Due to design changes the required setback for the eastern boundary is 2.2 metres. The proposed setback is 1.2 metres and 2.0 metres respectively, therefore there is a 1.0 metre variation to the 'Deemed to Comply' provisions of the R-Codes.

The proposed setback to the eastern boundary for the ground floor is 1.0 metre to 1.6 metres. The required setback is 1.5 metres. Therefore there is a 0.5 metre variation to the 'Deemed to Comply' provisions of the R-Codes.

The proposed rear setback is considered sufficient to provide a 'Deemed to Comply' compliant setback, whilst providing private open space, drying space and landscaped areas to the rear given the major

outdoor living areas are at the front of the site. The front setback of the dwelling has been pushed back into the lot and is in excess of 14 metres from the front boundary.

The side lot boundary setbacks are non-compliant as noted in the R-Codes summary assessment table above. Whilst the minimum setback cannot be achieved for the side boundary there are sections of the building where the setback compliance has been achieved or the non-compliance is a minimal amount. The reduced setbacks are considered to have minimal impact on the amenity of the adjoining lots, considering the increased front setback, and the location of the upper floor. Whilst the 'Deemed to Comply' setback provisions are not achieved the 'Design Principles' of the R-Codes are considered satisfied as the building does not unnecessarily contribute to excessive building bulk on the adjoining lot. The proposed dwelling provides for adequate sun and ventilation to open spaces to the adjoining property and overshadowing is within more than the acceptable limits for the R-Code at 11.5% of the lot.

#### 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;*
  - *6.5 metres to the top of an external wall (concealed 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.*

As the site slopes away (down) from the rear of the lot toward Locke Crescent, the building height is at its highest point located at the front of the lot. The height of the dwelling is proposed to be increased from the previous approval issued by Council. The proposed height is 38.026 AHD a height variation of the above 'Acceptable Development' requirements by 0.2 metres to a maximum of 0.5 metres, located where the site is to be excavated to accommodate the undercroft garage (middle of the lot). When the dwelling height is calculated from the streetscape AHD, there is a perceived height of 8.4 metres to the top of the concealed roof, this includes the undercroft section of the house, due to the rise in ground level from the street. The additional height from the Locke Crescent perspective is considered to represent as a two and a half (2 storey and partial undercroft) from the centre of the lot from Locke Crescent. The development to the southern side of Locke Crescent and immediately adjacent are primarily older building stock and generally represent as single storey and undercroft. Whilst there is an impact and potential for loss of views to the south eastern properties, the overall height at 7.026 metres is located at the centre of the lot, therefore minimises the perceived bulk and scale of the dwelling.

In this circumstance non-compliance with the Acceptable Development provisions with the height limit must be assessed in respect to the 'Performance Criteria' of the Residential Design Guidelines. For the most part, the proposal significantly demonstrates a design, bulk and scale that responds to recent new

developments within the vicinity, whilst not directly with the design of the older stock. The increased front setback is also considered to mitigate bulk and scale impacts.

#### 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 (i.e. the first 7.5m in R12.5), 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 for the guest bedroom balcony on the northern side or the front balconies and terraces.

It is considered the proposed design will comply with the Design Principles of Element 5.4.1 Visual Privacy of the R-Codes if adequate screening is permanently installed on the northern elevation of the guest bedroom balcony to minimise overlooking of the property to the north. A screen has been indicated on the plans but it is not solid screening, so a condition requiring compliance with the R-Codes screening for visual privacy is recommended.

The remainder of the visual privacy setback variations are in relation to the balconies, alfresco/terrace areas and the surrounds of the pool which are all at the front of the dwelling to take advantage of the outlook from Locke Crescent. These areas are behind the front setback line and the overlooking is to the adjoining properties front gardens, the street and the roofs of the adjoining single storey dwellings.

#### Garage width and crossover

The crossover is indicated on the plans as greater than 5 metres in width (i.e. 5.85 metres) so a condition is recommended which will ensure compliance with Council's crossover provisions as outlined in the Residential Design Guidelines.

A variation in regard to garage width is proposed, however, is supported because the proposal is considered to meet the 'Performance Criteria' of the Residential Design Guidelines for new dwellings. The garage is setback 14 metres from the front boundary and is located at street level, partially excavated into the lot. The garage represents as a half storey. This design lessens the visual impact of the garage on the streetscape. Further, the garage has an open terrace above it which also assists in detracting from the garage and minimising garage width.

#### Site works – retaining walls

The subject lot has a fall from the rear to the front, its highest and lowest points has a gradient of almost 4 metres. So the proposed development involves some degree of excavation and fill at various points across the site. Excavation is required at the rear and eastern side of the site to level the site for the ground floor and on the northern side to construct the undercroft garage and entry level. The front of the lot on the south eastern side will be filled to provide the terrace, lawn and raised pool area, which will result in a front retaining wall discussed in the following section of this report.

The proposed finished levels and amendments to the overall height of the dwelling also help maximise views from the property.

The proposed fill is in excess of the 'Deemed to Comply' provisions of the R-Codes. Even though the fill required to achieve the various levels is greater than the 0.5 metres permitted under the 'Deemed to Comply' provisions, the levels proposed are considered acceptable as the building height limits (non-

compliant) are not considered to have such an impact as to significantly adversely impact adjoining neighbours. The 'Performance Criteria' of the R-Codes is considered met in that the various levels significantly respond to the natural slope of the site and the levels at the lot boundary and as viewed from the street. The maximum amount of fill proposed above the 500mm permitted is a maximum of 1.75 metres (to the finished level of the ground floor).

The proposed fill towards the front of the lot is due to the location of the front terrace, lawn and pool in this area and to position the dwelling at a finished level to gain the best possible views.

#### Boundary Walls

Considering the extent of the walls proposed on Plan Sheet No.7, the potential for scale and bulk to be experienced by adjoining neighbours is high at in sections a boundary walls of 2.3 and 2.5 metres are proposed. This is considered excessive. So as to provide privacy an additional height wall is supported, however a condition is included in the Officer's recommendation to limit any boundary wall to a maximum height of 2.1 metres from natural ground level or by way of agreement with the adjoining landowners.

#### Wall in front setback (front fence provisions)

The proposed retaining wall for the pool in the front garden comprises what is effectively a 'fence' in the front setback area, so assessment against the provisions of the Town's Residential Design Guidelines for front fences is applicable. The front wall is supported in principle, however, the overall height from the street perspective is substantial (3.2 metres at the driveway level - setback 1.1 metres from the boundary). The front section of retaining wall will be a rendered wall to a height of approximately 1.4 to 1.8 metres with a setback of 1.1 metres. The wall will be a combination of rendered wall and frosted glass pool fencing; the combined height range being approximately 1.8 to 3.2 metres.

This wall as currently proposed does not comply with the front fence requirements of the Residential Design Guidelines as it is over height (i.e. greater than 1.8 metres) within the front setback area (including side boundary) and it is not 60% permeable across the length and area of the fence above 1.2 metres in height. So Council is required to exercise discretion with regard to approval of a front wall of this type. It is considered the front wall can be supported on the basis that the pool fencing is either clear glass (not frosted or opaque glazing) or an open style pool fencing panel.

In this location the streetscape significantly contributes to local character and high front fences are very uncommon. Given it is the land owner's decision to locate the pool and outdoor area in the front setback and the R-Codes state that a lesser need for privacy protection is usual in the case of front gardens and areas visible from the street the case for a high front fence for privacy is not considered a compelling reason to support the height of the proposed wall. A condition of approval is recommended in this regard to ensure the front wall complies with the desired outcomes for the Precinct in respect to front fences. A condition which stipulates the pool fencing to be clear glass or open style pool fencing is considered necessary as well as a landscaping plan to ensure the impact of the wall between the wall and the front boundary is minimised through planting along the frontage of the wall.

#### **Conclusion**

Given the above comments the application is recommended for approval subject to conditions. Conditions relating to visual privacy setbacks, landscaping, front fencing and crossover width are recommended to ensure compliance with the Residential Design Guidelines and the R-Codes.

- Andre Malecky (owner) spoke in support of the officer's recommendation.



### 11.3 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP011217

Cr M McPhail moved, seconded Cr Nardi

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

- (i) Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback of 1.5 metres (ground floor south), 2.1 metres (upper floor south) and 4.9 metres (ground floor north);
- (ii) Clause 5.3.7 – Site Works of the Residential Design Codes of WA to permit fill behind a street setback line greater than 0.5 metres from natural ground level and within 1 metre of the lot boundaries;
- (iii) 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 rear and side lot boundaries;
- (iv) Clause 5.4.1 – Visual Privacy of the Residential Design Codes of WA to permit a visual privacy setback for the various balconies, alfresco/terrace areas/pool surrounds of less than 7.5 metres to the northern and southern side boundary;
- (v) Clause 3.7.11.5 – Front Fences of the Residential Design Guidelines 2016 to allow a front fence which is solid above 1.2 metres in height, has an overall height greater than 1.8 metres and is less than 60% visually permeable above 1.2 metres in height;
- (vi) Clause 3.7.17.3 – Garages, Carports and Outbuildings of the Residential Design Guidelines 2016 to allow the width of the carport to exceed 30% of the lot frontage; and
- (vii) Clause 3.7.17.4.1.3 – Building Height, Form, Scale and Bulk of the Residential Design Guidelines 2016 to permit the building height to exceed 6.5 metres to the top of a concealed roof,

for a two storey dwelling with undercroft garage at No. 7 (Lot 5002) Locke Crescent, East Fremantle, in accordance with the plans date stamped received on 20 September 2017 and 23 November 2017 (only for the purposes of overshadowing and the south eastern elevation), subject to the following conditions:

- (1) Maximum height of the dwelling is not to exceed AHD 38.026.
- (2) The permanent installation of a visually non-permeable screen on the northern elevation of the guest bedroom balcony (ground level) to be in compliance with clause 5.4.1 C1.1 (ii) of the Residential Design Codes of WA.
- (3) Pool fencing on top of the front retaining wall to be clear glass or visually permeable along the entire length and area of the wall in the front setback with at least 60% visual permeability above 1.2 metres in height.
- (4) Details of the retaining wall in the front setback area to be submitted prior to the Building Permit application being submitted and to indicate the construction materials, pool fencing to be installed and to include a landscaping plan for the front setback area.
- (5) Any new crossovers which are constructed under this approval are to be a maximum width of 5.0 metres and the crossover to be constructed in compliance with Council's Residential Design Guidelines 2016.
- (6) All side boundary fencing to be a maximum height of 2.1 metres to the side boundaries from natural ground level. In the event that a mutually acceptable solution can be agreed upon, signed by the relevant parties, the boundary fence may be increased in height to an agreed height. Revised plans signed by both parties noting any variations to the propose boundary fencing are to be submitted to Council prior to a Building Permit being submitted to Council, to the satisfaction of the Chief Executive Officer.



- (7) If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (8) Pool filter and pump equipment to be located a minimum distance of 1.0 metre away from all lot boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
- (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 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.
- (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) 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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**11.4 No. 91 (Lot 1) Sewell Street, East Fremantle – Change of Use Residential to Short Term Accommodation**

<b>Applicant/Owner</b>	JR and KL Fitzgerald
<b>File reference</b>	P/SEW91, P108/17
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	5 December 2017
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments1.</b>	1. Location Map 2. Photographs 3. Plans date stamped received 3 October 2017

**Purpose**

This report deals with an application for a change of use from single residential to short term accommodation within an existing dwelling at No. 91 Sewell Street, East Fremantle.

**Executive Summary**

An application for short term accommodation (three bedrooms) within the existing strata titled dwelling is proposed. No food service will be provided and only on street parking is available.

No. 91-93 Sewell Street is a category C rated property in the Municipal Inventory and is described in the Place Record form as having some aesthetic value as a 'Federation Bungalow with Inter-War Functionalist' style modifications. The duplex retains some of the characteristics of the period however, there is considerable loss of detail and a garage has been added to the front of No. 93 Sewell Street.

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

- impact on residential amenity;
- number of people accommodated and number of bedrooms for accommodation purposes;
- adequacy of available car parking;
- management of the property; and
- length of planning approval.

It is considered these matters can be satisfactorily addressed through conditions of planning approval and the application is recommended for conditional temporary approval for 12 months after which time it will be necessary for the applicant to re-apply for approval to continue the use.

**Background**

Zoning: Residential R20

Site area: 250m<sup>2</sup> (strata lot)

The applicant has provided a letter in support of the application dated 3 October 2017 which is summarised below:

*I have recently purchased 91 Sewell as an investment property with a long term vision of having my children live next door. However, as they are only young I will need to rent it out. I would still like full control and use of the property so instead of leasing it out I want to Airbnb it instead.*

*For 9 years it has been leased and neglected with the front garden a disgrace and the state of the home deteriorating with stunning zinc light windows being broken, gutters rusting,*



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*ceilings cracking and eaves and windows rotting. I am spending a considerable amount of money renovating the property and restoring the art deco period styling of the home, I will have Australian native landscaping and will also be decorating the house with local art and floral arrangements and will provide my guests with a folder of all the local attractions, businesses and events.*

*The configuration of the rooms would be main bedroom: queen bed, middle bedroom: two bunk beds and back bedroom: double bed. My target audience for the Airbnb will be families and the house is being renovated with young families in mind. Only a maximum of two families could stay in the property which would equate to a maximum of two cars, which is what you would expect if another family owned/rented it or if it was owned/rented by a couple.*

*The benefits of an Airbnb are that I can and will be placing various restrictions on activities. House Rules will include strictly no smoking inside or outside, no loud music, no pets, no gatherings, parties or events and I will provide a map of the street displaying where they can park without upsetting my neighbours. As I live next door with a common wall I will be very vigilant with the supervision of the property as I will be most affected by their activities.*

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

Nil in respect to this application.

**Consultation**

Advertising

The proposed application was advertised to surrounding land owners from 13 to 27 November 2017. One submission has been received which expressed a number of concerns about the long term and permanent use of the property for commercial purposes and the potential for this to have a negative impact on residential amenity. The matters raised in the submission are summarised below and addressed in the 'Comment' section of the report.

- *The impact short term accommodation is having on communities worldwide is well reported. We share many of the concerns, however we do not feel the need to detail them in regards to this application. We are confident that the Council is already aware of the concerns and will consider the application with this in mind.*
- *We are concerned about the impact guest behaviour will have upon our lives, this includes but not limited to, loud, nuisance or anti-social behaviour.*
- *We are concerned guest/holiday makers movements and the impact this may have upon us. People who are visiting or who are on holiday often keep different hours/routines. All the houses in this area are located closely and people's behaviour easily impacts on others. In general local residents are aware of this and are considerate of their neighbours. Guest may not be aware of how their behaviour impacts a community who live closely together. Nor they are they invested in maintaining good neighbourly relationships.*
- *Car parking is an issues on the street and recently we have experienced parking problems. No. 91 has no car parking. There are 3 bedrooms in 91, there is potential for 3 separate couples and 3 cars. Parking arrangements needs to be addressed as there is currently no car parking available for guests.*
- *If the application for short term rental is granted we also request it is subject to review if there is a change of circumstances. An objection to the proposal would be raised if the use was granted an open ended arrangement.*
- *We request there is a process for managing complaints.*

- *We consent to the property being used for short term rental purposed if the above issues can be managed.*

#### Community Design Advisory Committee

The application was not referred to the Advisory Committee as the proposed short term accommodation is considered to have no impact on the streetscape or the heritage elements of the site. The dwelling is being renovated.

#### **Statutory Environment**

*Planning and Development Act 2005*

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

#### **Policy Implications**

Municipal Heritage Inventory – Category C

#### Note:

No local planning policy applies, however, the Western Australian Planning Commission (WAPC) has published 'Holiday Homes Guidelines – Short Stay Use of Residential Dwellings' (September 2009) which can be used as a guide in the assessment of short term accommodation applications.

#### **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

November 2017

### Comment

#### Statutory Assessment

The proposal has been assessed against the provisions of Local Planning Scheme No. 3.

#### Use for short term accommodation

The applicant seeks planning approval for a change of use from residential to short term accommodation for up to two families at any one time. The accommodation will be provided in an existing strata dwelling which is immediately adjacent to the applicant's dwelling and is owned by the applicant. The dwelling comprises three bedrooms, bathroom, dining room, living room and a kitchen and is currently undergoing renovation.

The proposed use for short term accommodation is an 'unlisted (discretionary) use' within a residential zone and accordingly is required to be advertised before determination. This application has fulfilled the advertising requirements of cl 9.4.3 (a) of LPS No.3.

Council does not have any specific policies or local laws that regulate short term accommodation. The WAPC, however, formulated Guidelines in 2009 for the short term use of residential dwellings. This document identifies the issues or matters to be considered on submission of a planning application. It also makes recommendations in respect to how a local government authority may deal with such applications. The Guidelines provide advice in regard to the following planning considerations:

- •requirement to lodge an application;
- •advertising and invitation to comment;
- •location – potential for conflict between land uses;
- •amenity;
- •building standards;
- •form of approval;
- •type of dwelling;
- •management of property;
- •fire and emergency response plans;
- •approval period;
- •holiday homes register;
- •non-compliance and cancellation of approval; and
- •voluntary accreditation.

Notwithstanding the application has been assessed with regard to the relevant sections of the Guidelines for this application, LPS No. 3 provisions, residential amenity and the impact the use could have on surrounding neighbours and conditions imposed accordingly, it is considered prudent for Council to be cautious when considering applications for the commercial use of properties in Residential zoned areas. For this reason it is considered necessary to only grant approval for a 12 month period in which time the change of use can be monitored in respect to the manner in which it operates and managed and if any negative impacts for residents in the area eventuate. This is not considered

unreasonable given this property is within a Residential zone and it is a reasonable expectation of residents that the protection of residential amenity should be a priority. Prior to expiry of the 12 months, if the applicant wishes to continue the use it will be necessary for a fresh application for development approval to be submitted for the Council's consideration. At that time the application will be readvertised inviting comment from surrounding residents.

#### Car parking

Car parking is an important consideration and should be monitored during the initial approval period to determine there is no adverse impact on resident parking, on-street parking or residential amenity. In this case the owner cannot provide parking as there is none available on-site for this residential property. This is considered acceptable in respect to parking provision, given visitors to Perth travelling together are either unlikely to have a vehicle or would have no more than one car which would be equivalent to, or less than that of a family or person occupying the residential property. However, this will also be monitored over the 12 month period to determine if this is sufficient and there are no additional pressures on parking in the street eventuating. The number of people permitted to be accommodated will also be addressed through a condition of planning approval, which will also limit parking demand. This is discussed further below in regard to the number of bedrooms and people able to stay at the property.

#### Accommodation

The applicant is proposing to accommodate up to two families. This is not considered suitable as this would amount to more people and activity than would normally be the case for a property of this size and more vehicle movements than what would reasonably be expected in a residential dwelling. To safeguard residential amenity it is considered necessary to impose a condition of approval which limits the number of people that can be accommodated to four adults or 2 adults and three children with the maximum number of bedrooms not exceeding three. This number of people (and bedrooms) will be reviewed after a 12 month period and therefore approval is recommended for 12 months only so that the level of activity associated with the accommodation can be monitored. This will be applied as a condition of planning approval.

#### Management plan

A management plan is required to be submitted prior to the use commencing. This is recommended as a condition of planning approval to safeguard amenity in the twelve month period in which the use will be monitored. The Management Plan is to include the following details:

- the owner's contact details (during and after business hours);
- details of how nuisance issues such as noise and anti-social behaviour would be addressed by the owner;
- a fire and emergency response plan;
- car parking;
- the number of people occupying the premises and the number of bedrooms; and
- maximum period of stay.

#### **Conclusion**

It is considered that the application can be approved subject to a number of conditions. The most significant being limiting the term of the approval to 12 months and the requirement for renewal of the approval on a 12 monthly basis to ensure the use of the property is not having a detrimental impact on the surrounding residential properties. Other conditions restricting the scale of the accommodation (i.e. limiting the maximum number of guests to two adults and three children or 4 adults), with only three bedrooms to be used for accommodation purposes are also considered necessary to minimise the potential for issues relating to car parking and noise arising.

In summary it is considered the applicant has provided suitable justification and clarification with regard to the use to ensure the use does not have a detrimental impact on the surrounding residents. However, a 12 month approval period is considered warranted so that the change of use can be monitored for any negative impacts. As this proposal is within a residential area which is already subject to parking, traffic pressures and has dwellings located in close proximity it is considered important that caution be applied to approvals of this nature and that renewals be required every 12 months rather than being granted approval on a permanent basis. This is considered necessary to ensure monitoring of the use occurs and the expectations of residents in respect to their amenity can be met. It also allows Council to get feedback on the operation of the business on a regular basis. A number of other conditions in respect to parking, management and signage are also recommended to be imposed.

- Kate Fitzgerald (owner) spoke in support of officer's recommendation and reiterated that the property will be directly managed by herself.

#### **11.4 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP021217**

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

**That Council grant temporary approval (12 months) for a change of use from residential to short term accommodation for No. 91 (Lot 1) Sewell Street, East Fremantle as indicated on plans date stamped 3 October 2017 subject to the following conditions:**

- (1) Approval is for a temporary period of 12 months only from the date of this development approval.**
- (2) Continuation of the short stay accommodation use after the 12 month approval period has expired will require the submission of a new development approval application for Council's consideration.**
- (3) The owner residing in the other strata titled property on the lot. If this does not occur the development approval will be revoked by Council.**
- (4) The contact details (during and after business hours) of the owner being provided to Council for an emergency contact person prior to the use commencing. If this does not occur the development approval will be revoked by Council.**
- (5) Maximum accommodation is for 4 adults or 2 adults and 3 children based on 3 bedrooms only being provided for guest/occupant accommodation. This is not to be exceeded on any occasion.**
- (6) No more than three (3) bedrooms to be used for accommodation purposes.**
- (7) The submission of a Management Plan to the satisfaction of the Chief Executive Officer and the Plan to be approved by the Town prior to the short term accommodation use commencing.**
- (8) No occupants' vehicles are to be parked on the Council verge, in or across crossovers due to inadequate or unavailable parking on-site or in the street.**
- (9) No on-site signage is permitted with respect to the application.**
- (10) The approval may be revoked by Council, if any adverse impacts involving noise, anti-social behaviour, breaches of length of stay or the management plan, waste removal, security, parking or privacy control measures for adjoining neighbours are unable to be controlled by the applicant/owner in a timely and effective manner which is to satisfaction of the Chief Executive Officer.**
- (11) The approval is valid for a period of 12 months only from the date of the "Approval to Commence Development" and the applicant is required to seek a renewal thereafter to enable the continuance of the short term accommodation use. During the review of the renewal process, assessment of car parking, noise, vehicle movements, number of occupants, any reports of anti-social behaviour and general management of the property will be undertaken.**

**Footnote:**

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

- (i) a fresh development (planning) approval application is to be made for Council's consideration prior to the expiry of the twelve month temporary approval period should the applicant wish to continue the use;***
- (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 use is to conform with the approved plans unless otherwise approved by Council; and***
- (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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**11.6 No. 77-79 (Lot 700) George Street – Change of Use Residential to Recreation - Private**

<b>Applicant</b>	D McInTosh – The Pilates Centre WA
<b>Owner</b>	Nakara Nominees P/L & W & A Anderson
<b>File ref</b>	P/GEO77, P089/16
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager of Regulatory Services
<b>Meeting date</b>	5 December 2017
<b>Voting requirements</b>	Simple Majority
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Location plan</li><li>2. Photographs</li><li>3. Applicant's covering letter date stamped 21 November 2017</li><li>4. Plans date stamped received 21 November 2017</li></ol>

**Purpose**

The purpose of the report is firstly to consider the required renewal of the temporary (12 month) planning approval granted by Council in September 2016 and secondly for the Council to consider permanent approval of the change of use from residential on the first floor to 'The Pilates Centre WA' (Recreation Indoor) at No. 77-79 (Lot 700) George Street, East Fremantle.

**Executive Summary**

An application has been submitted seeking renewal and permanent approval of the above application which was given temporary approval for 12 months. The original proposal was for a change of use from residential to recreation - private to facilitate the expansion of the existing ground floor business (The Pilates Centre WA) to the upper floor of the premises. A parking shortfall of a considerable number of bays was approved by the Council subject to a number of planning conditions which restricted the operating hours and the number of patrons during the 12 months so the business expansion could be monitored for any issues, particularly in relation to car parking. The Town's records indicate the proposed change of use has not resulted in any additional planning issues or parking complaints over the previous 12 months.

The current application proposes minor changes to the operation of the business which are not considered to impact the surrounding residential or commercial uses. The continued operation of the Pilates classes from the premises under the currently imposed conditions, with a slight change to operating hours, is therefore considered supportable given that the Town is not aware of any issues resulting from the expansion and operation of the premises over the past 12 months.

It is therefore considered reasonable for Council to issue a permanent approval for the change of use from residential to recreation - private for the upper floor of the premises subject to conditions relating to operation days and times, number of patrons, signage, future change of the use and other standard planning conditions.

**Background**

Zoning: Mixed Use

Site area: 770m<sup>2</sup>

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

- |               |   |
|---------------|---|
| 11 July 2006: | Council approved the change of use from consulting rooms to shop.   |
| 6 May 2014:   | Council approved the change of use from consulting rooms to retail. |

- 1 November 2016: Council granted temporary (12 month) approval for the change of use on the upper floor from residential to recreation - private. The following text in italics is an extract from the 'Comment' section of the original report to Council on this matter.

**Comment**

(Application dated 30 August 2016)

*The existing shops (No. 77-85) are listed in the Schedule of Heritage Places in Town Planning Scheme No. 3 and the Municipal Inventory. The heritage status of this building has not been considered in the assessment of this application, in so far as, no external modifications to the building are proposed.*

*It appears that at the date of gazettal of the Town Planning Scheme No. 2 (TPS 2 - 9 July 1982) which established the business zoning for the subject site for the first time, there may have been non-conforming uses existing on the lot (the whole of No. 77-85). Under TPS 2 the units were recognised as being 'Shops'.*

*The building, at the date of gazettal of the Town Planning Scheme No. 3, is zoned 'Mixed Use' and as far as can be ascertained, the unit was operating as a yoga/ Pilates studio in March 2004 prior to the gazettal of TPS No. 3 (December 2004).*

*Under Council's Town Planning Scheme No. 3, a yoga/ Pilates studio in George Street is considered 'recreation – private' and is an "A" use, which means the use is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4.3. However, as the property was utilized as a yoga/ Pilates studio prior to the gazettal of TPS 2, there are non-conforming use rights on the property.*

**4.8 NON-CONFORMING USES**

4.8.1 Except as otherwise provided in the Scheme, no provision of the Scheme is to be taken to prevent –

- (a) the continued use of any land for the purpose for which it was being lawfully used immediately prior to the Gazettal date;
- (b) the carrying out of any development on that land for which, immediately prior to the Gazettal date, an approval or approvals, lawfully required to authorize the development to be carried out, were duly obtained and are current; or
- (c) subject to clause 11.2.1, the continued display of advertisements which were lawfully erected, placed or displayed prior to the Gazettal date.

**4.9 EXTENSIONS AND CHANGES TO A NON-CONFORMING USE**

4.9.1 A person must not:

- (a) alter or extend a non-conforming use;
- (b) erect, alter or extend a building used in conjunction with or in furtherance of a non-conforming use; or
- (c) change the use of land from a non-conforming use to another nonconforming use, without first having applied for and obtained planning approval under the Scheme.

4.9.2 An application for planning approval under this clause is to be advertised in accordance with clause 9.4.

4.9.3 Where an application is for a change of use from an existing non-conforming use to another non-conforming use, the local government is not to grant its planning approval unless the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and is, in the opinion of the local government, closer to the intended purpose of the zone.



*With regard to the above, a letter was sent to adjoining tenants and owners of surrounding properties inviting comment on the proposal. No comments were received.*

*The applicant has stated:*

*We offer what is known in the industry as non-clinical group reformer Pilates classes. Currently our studio consists of one studio room with 10 Allegro 2 reformers teaching a maximum of 10 clients per class at the below times listed. Classes run for 55min. We also have a small middle room downstairs that consists of a sign in desk, stores some equipment and the pigeon holes for clients to store their personal belongings while attending classes. We also have a small waiting room at the back of the premises. The average attendance across the week for our classes is just under 7 clients per class. There is currently a maximum of two staff members on site at any one time and this will remain the case with the proposed two room arrangement.*

*The Pilates Centre WA- Opening Hours are as follow:*

- Mondays 8:30am -10:30am, 4:30pm - 8:30pm*
- Tuesdays: 6am - 11:30am, 5:30pm - 8:30pm*
- Wednesdays: 6am-7am, 9.30am-10:30am, 4:30pm - 8:30pm*
- Thursdays: 6am-11:30am, 5:30pm-8:30pm*
- Fridays: 6am-10:30am*
- Saturdays: 7am-10am, 2pm-4:30pm*
- Sundays: 8am-11am*

*The applicant continues:*

*We have an office offsite so the premises are not being used continuously. Once classes finish in the morning the premises closes and we do not open again till the late afternoon. This will not change with the extension. This application is for the extension of our business to now include a second boutique reformer room containing 8 Allegro 2 Pilates reformers (same equipment as downstairs) directly above the premises at the same address 79 George Street. This is only an extension of the service we currently provide which is teaching reformer Pilates. The upstairs room will allow us to focus on smaller groups to teach the fundamentals of reformer Pilates and to have some more class options for clients at peak class times.*

*As can be seen from the above opening hours the business operates generally outside conventional business hours, catering for morning and evening classes. The operating hours are considered to have minimal impact on the George Street area and Council has not received any complaints about the business.*

#### Land Use

*The subject site is zoned 'Mixed Use'. As stated, the subject site has been utilized in some form as a yoga/ Pilates Studio prior to 2004, however the upper floor, the subject of this application is a residential studio and does not have any commercial uses approved by Council.*

*It is considered that the proposed use is consistent with the existing ground floor use and general objectives for a 'Mixed Use' zone as described in the Scheme. The Pilates studio will not have extended opening hours, will not attract significant additional visitor numbers likely to impact on adjoining businesses (maximum class capacity is 10), and does not generate significant adverse noise. As the business has not generated previous parking or other adverse impacts having operated in the area for many years the use is considered a favourable use in the area. In this regard the use can be considered a low-impact use that does not undermine the locality, in accordance with the objectives of the Scheme.*

However, the area to be utilized is a residential unit (upper floor) and does change the use from residential to commercial. The parking generation for a commercial use exceeds the residential car parking requirements. The general impact on the locality will be greater than the existing residential use. These issues will be discussed later in the report.

#### Parking

Research of the subject property was undertaken. Specific information relating to the existing use was sparse, however it is clear that a yoga/ Pilates studio has operated on the lower floor for an extended period of time from the property. The upper floor is utilized for residential uses. The existing yoga/Pilates studio requires 9 spaces, plus 2 spaces for staff, however there were no on-site bays provided (total net area 82.7m<sup>2</sup> of which 39.3m<sup>2</sup> is actual physical exercise area). The car parking includes the reception area and waiting area, even though these areas have been stated by the applicant as being utilized infrequently. If the exercise area was calculated for a parking requirement only 4 bays would be required. The applicant has stated there are 3 bays to the rear of the property and these operate on a "first come first served basis". The existing business operates from the property with an 11 car bay parking shortfall.

With respect to the current application for extension of the existing business to the upper floor, under Schedule 10 the parking provisions require an additional 6 car parking bays (59.85m<sup>2</sup> of exercise area). The total required car parking is 17 bays (9 bays if only the exercise area is considered).

The proposed use as a yoga/Pilates studio is considered a relatively small scale and low impact use, with operating hours generally outside of those of the other business uses in the street. The traffic likely to be generated by the current proposal and the probable effect on traffic flow are considered minor, however an additional 6 bays will be required.

In this situation, Council must first decide whether it is to relax the parking requirements or not. Under Clause 5.6.1, Council may approve the application even if it does not meet Scheme requirements, in this case the parking requirement, however can only do so if it meets the following criteria:

- 5.6.2. In considering an application for planning approval under this clause, where, in the opinion of the local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the variation, the local government is to —
- (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 9.4; and
  - (b) have regard to any expressed views prior to making its determination to grant the variation.
- 5.6.3. 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 10.2; 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.

'Matters to be considered by local government' as per clause 10.2 of the Scheme (Deemed Provisions), which Council must have regard to if such a relaxation is to be granted, required to be considered under Clause 10.2, include the following:

- (a) the aims, objectives and provisions of the Scheme;
- (c) the requirements of orderly and proper planning;

- (o) *the preservation of the amenity of the locality;*
- (q) *whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles; and*
- (r) *the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.*

*All car parking and associated street car parking has already been accounted for. There is no other car parking that can be utilised for this proposed application. The George Street Precinct car parking while available cannot be assumed to be used in conjunction with the development at such times as it might reasonably be required.*

*The following justification with regard to car parking:*

- 1. The majority of customers will be local residents and business operators who originate within walking distance or will be part of the existing user base.*
- 2. The operational hours are considered to be varied from the operating hours of other uses in the area and therefore will utilize spaces early morning and late evening, outside of peak parking hours, however the operating hours may conflict with some of the peak times for the cafes in the area.*

*With regard to Clause 10.2 of TPS No. 3 ('Deemed Provisions'), the proposed use is considered to adhere to the George Street 'Mixed Use' objectives, primarily "to provide for a limited range of commercial, civic and community facilities to meet the day to day needs of the community, but which will not prejudice the amenities of the neighbourhood". The traffic likely to be generated by the proposal and the probable effect on traffic flow are considered minor considering the staggered use of the different rooms and the hours of operation. The turnaround of clients is considered relatively high while open (maximum of 10 patrons every hour), however as discussed it is envisaged that these customers may be existing users of other services in the George Street Precinct.*

*While cash in lieu has been considered as an option, it is considered an unviable option and is one Council should not request in this instance due to the scale and nature of the use and the hours of operation. A condition has been included in the Officer's Recommendation approving the proposed upper floor use for 1 year only on a trial period only. Should the yoga/ Pilates studio close the area is to revert back to a residential use. The applicant will be required to submit a further application to retain the use after the expiry of the 1 year time period. Council can monitor if such a shortfall in the car parking numbers can be facilitated in the area.*

*A vibrant, efficient and active George Street benefits the Town and the wider community. The existing business has operated in the area for an extended period of time. It is considered that Council can approve the proposed extension to the upper floor to the existing use based on the proposed temporary use. It is recommended Council utilise Clause 5.6.1 of TPS No. 3, where Council may approve the application even if it does not meet the Scheme requirement for car parking, without the requirement for a cash in lieu payment.*

#### *Amenity provisions of the Scheme*

*The following provisions of Clause 10.2 of the Town of East Fremantle Town Planning Scheme No. 3 Clause 10.2 (a), (c), (g), (j), (o), (p) and (q) are considered relevant in the assessment of this development application.*

*The following provisions of Clause 10.2 of the TPS No. 3 (j), (o) and (p) are considered most relevant:*

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

*The proposed extended use of the building for Pilates is compatible with the surrounds/ residential use of the locality, with the exception of the car parking generation as discussed above. The car parking shortfall is 17 bays (9 bays if only the actual exercise area is considered), of which an 11 bay shortfall is existing. Is this shortfall considered such an impact as to warrant refusal on the grounds that the development does not comply with the amenity provisions of Clause 10.2? Based on the impact the existing business has (11 bay shortfall) and the proposed extension this would result in an additional 6 bays being required (based on net area, including the waiting room and reception, however these areas are not utilized for actual exercisable space), the parking demand is not considered sufficient enough to refuse the proposed extension (subject to conditions, to enable Council to review the potential impact). The business has operated in the area successfully for an extended period of time (since 2004), without any complaints raised by the community. The applicant has provided a detailed letter outlining the operations of the business. The opening hours of the business and the staggered operating hours of the two rooms will minimise the impact to the George Street Precinct.*

*Based on Clause 10.2 (j), (o) and (p) of the Scheme, the proposed Pilates studio (upper floor change of use) is consistent with the existing (ground floor) use and can be approved by Council. The extension is replacing a residential studio, however due to the location and zoning of the land, Council can approve of the use should it be considered appropriate.*

#### Conclusion

*The proposed development extension (change of use) is considered to be consistent with the 'Mixed Use' zone of the locality. The car parking shortfall is 17 bays, which considering the other commercial uses of the strata, is a considerable shortfall. The conditions of use and the temporary approval will minimise the impact of the business and enable Council to review any potential impacts the shortfall in car parking may have on the surrounding area. Based on the conditioned approval, it is recommended Council support the proposed change of use.*

#### **Consultation**

##### Advertising

The original application was advertised to surrounding land owners for a two week period between 7 and 22 September 2016. No submissions were received.

Given the current application relates to a renewal of a previous approval for the same use operating under very similar conditions and no issues have been raised by surrounding businesses or landowners, during the previous 12 months, it is considered the advertising can be waived in this circumstance.

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

This application was not considered by the CDAC as there are no proposed changes to the building fabric or streetscape.

#### **Statutory Environment**

Planning and Development Act 2005

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

LPS No. 3 – Heritage List

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### Policy Implications

Municipal Heritage Inventory - Category 'A'  
Fremantle Port Buffer Zone Area – 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

November 2017

### Comment

#### **(Application dated 21 November 2017)**

The original 12 month approval only was to 'test' the operation of the Pilates classes primarily in regard to the parking shortfall but also to review the expansion of the Pilates Centre regarding the number of patrons and operating times. The Town's records indicate there have been no complaints or issues raised by the surrounding businesses or land owners in respect to parking or any other operational matters.

The applicant has submitted a covering letter dated 21 November 2017 in support of the application (see Attachment 3). The premises will remain operating in essentially the same manner as the past year. The Pilates Centre is anticipating the number of patrons to not exceed 8 to 10 in number at any one time, however, a small change to the opening hours is proposed as highlighted in the table below. The changes are indicated in emboldened text:

Operating hours 2016/2017	Operating hours 2017/2018
<i>Mondays 8:30am -10:30am, 4:30pm - 8:30pm</i>	<i>Mondays 8:30am -10:30am, 4:30pm - 8:30pm</i>
<i>Tuesdays: 6am - 11:30am, <b>5:30pm</b> - 8:30pm</i>	<i>Tuesdays: 6am - 11:30am, <b>4:30pm</b> - 8:30pm</i>
<i>Wednesdays: 6am-7am, 9.30am-10:30am, 4:30pm - 8:30pm</i>	<i>Wednesdays: 6am-7am, 9.30am-10:30am, 4:30pm - 8:30pm</i>
<i>Thursdays: 6am-11:30am, <b>5:30pm</b>-8:30pm</i>	<i>Thursdays: 6am-11:30am, <b>4:30pm</b>-8:30pm</i>
<i>Fridays: 6am-10:30am</i>	<i>Fridays: 6am-10:30am</i>
<i>Saturdays: 7am-<b>10am</b>, 2pm-4:30pm</i>	<i>Saturdays: 7am-<b>11am</b> depends on the weekend</i>
<i>Sundays: 8am-<b>11am</b></i>	<i>Sundays: 8am-<b>12am</b></i>

The applicant has also stated that:

*The average attendance across the week for our classes including the current use of the extension is just under 7 clients per hour. There is a maximum of two staff members on site at any one time.*

*The extension has become critical in the operation of our business. It has provided us the extra space and flexibility we needed whilst allowing us to stay in the George Street location. It hasn't been as initially successful as we hoped but it's working very well now and we feel very fortunate to have this space to work with.*

*As you can see many of our operating hours run outside the operating hours that many of the businesses on George Street run. The reason for this is simply that clients can generally only attend classes before or after work and on the weekends when they have more free time.*

The changes on balance amount to 1.5 hours more class time per week with some flexibility on the Saturday. This is not considered to be an issue in respect to the operation of the classes as the number of people on the site at any one time will still be limited by a condition of planning approval, as will the day and time of the classes. The surrounding residential area and businesses on George Street should not be impacted by the proposal to change the hours of operation. Notwithstanding the hours appear to be reduced on a Saturday it is considered necessary to specifically state the operating times in the conditions of approval so there is no ambiguity as to when the classes can operate (if the Centre chooses to run a class(es) on that day). The hours for the Saturday morning are acceptable but a time limit of 2pm–4.30pm for the afternoon will be formalised in the conditions of planning approval so there is no ambiguity in relation to operating times.

The continued operation of the Pilates classes from the premises under the currently imposed conditions with a slight change to operating hours is therefore considered supportable given that the Town is not aware of any issues resulting from the expansion and operation of the premises over the past 12 months. It is therefore considered reasonable for Council to issue a permanent approval for the change of use subject to conditions relating to operation days and times, number of patrons, signage, future change to the use and other standard planning conditions.

- Daniel McIntosh (applicant) spoke in support of the officer's recommendation.



#### 11.6 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP031217

Cr M McPhail moved, seconded Cr Nardi

That Council exercise its discretion in granting planning approval for a change of use from residential to recreation - private (expansion of the Pilates Centre of WA) located on the first floor at No. 77-79 (Lot 700) George Street, East Fremantle, in accordance with the plans date stamped received 30 August 2016, subject to the following conditions:

- (1) The operational hours of the Pilates classes are not permitted to be altered without the prior approval of Council and are to be in accordance with the 2017/18 hours stated below:
  - Mondays 8:30am -10:30am, 4:30pm - 8:30pm
  - Tuesdays: 6am - 11:30am, 4:30pm - 8:30pm
  - Wednesdays: 6am-7am, 9.30am-10:30am, 4:30pm - 8:30pm
  - Thursdays: 6am-11:30am, 4:30pm-8:30pm
  - Fridays: 6am-10:30am
  - Saturdays: 7am-11am, 2pm – 4.30pm
  - Sundays: 8am-12am
- (2) Should the Pilates classes cease to operate from the upper floor of No. 77 – 79 George Street for a period longer than 6 months, the use of the upper floor is to revert to residential. No other commercial activity is permitted to operate from the upper floor without the prior approval of Council.
- (3) A maximum of 20 patrons only is permitted on the property in all three (3) exercise areas.
- (4) No signage is approved under this change of use application. A separate planning application is required for any proposed signage. All signage to comply with the Town's Local Planning Policy Design Guidelines – Signage.
- (5) The commercial building is to be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism is to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.
- (6) The applicant is required to demonstrate the works comply with the relevant BCA requirements for a commercial building and the applicant is required to submit to Council a Certified Building fit out for the upper floor. With regard to the plans submitted with respect to the building fit out application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (7) The works are to be constructed in conformity with the drawings and written information in relation to the use and in the 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 use is not to be commenced until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.

**Footnote:**

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

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

- (c) the approval does not include approval of any advertising signage. A separate development application is required for any signage proposal.***

**(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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### 11.1 Allen Street No. 76 (Lot 23) – Screening Structure Adjacent to Lot Boundary

<b>Landowner</b>	D Churack
<b>Applicant</b>	M W Urban
<b>File ref</b>	P/ALL76; P095/16
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	5 December 2017
<b>Documents tabled</b>	Nil
<b>Attachments</b>	1. Location Plan 2. Photographs 3. Plans date stamped received 14 September 2017

#### Purpose

This report considers a development application for a screening structure adjacent to the southern boundary of the lot at No. 76 (Lot 23) Allen Street, East Fremantle. The development has been carried out and subsequent approval of development is now being sought by the applicant under section 164 of the Planning and Development Act, 2005.

#### Executive Summary

The screening structure has been constructed adjacent to the southern boundary of the lot and within the 6 metre rear setback. The structure comprises of 12 timber posts ranging in height from 2.3 metres to 2.7 metres with strands of wire strung between the posts. The wire is for the purpose of attaching a creeper plant which will eventually provide a solid vegetation screen between the two properties. The structure is positioned immediately alongside the dividing fence.

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

- Lot boundary setbacks – screening poles and wire – adjacent to lot boundary fence and within the rear setback.

The variation in regard to the lot boundary setbacks can be supported, therefore, the application is recommended for conditional approval.

#### Background

Zoning: R12.5

Site area: 1,088m<sup>2</sup>

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

It is noted there is a history of overlooking and privacy issues for the owners of No. 76 and No. 78 Allen Street. It appears to have been an ongoing issue which commenced with the additions and alterations to the dwelling at No. 78 Allen Street approved in 2006. It is noted the alterations and additions have been constructed in accordance with the planning approval. Various screening structures have been erected by the owners of No. 78 and are on that side of the property boundary but can be seen projecting above the fence line from No. 76.

**5 December 2016** – Planning approval granted for patio and timber framed screening panels for 78 Allen Street. The screening structure was required to increase privacy levels between the two properties, particularly as the owners of No. 78 had recently installed a pool adjacent to the boundary and the owner of No. 76 objected to the position of the patio on the basis that it overlooked No.76 resulting in privacy concerns for the owner.

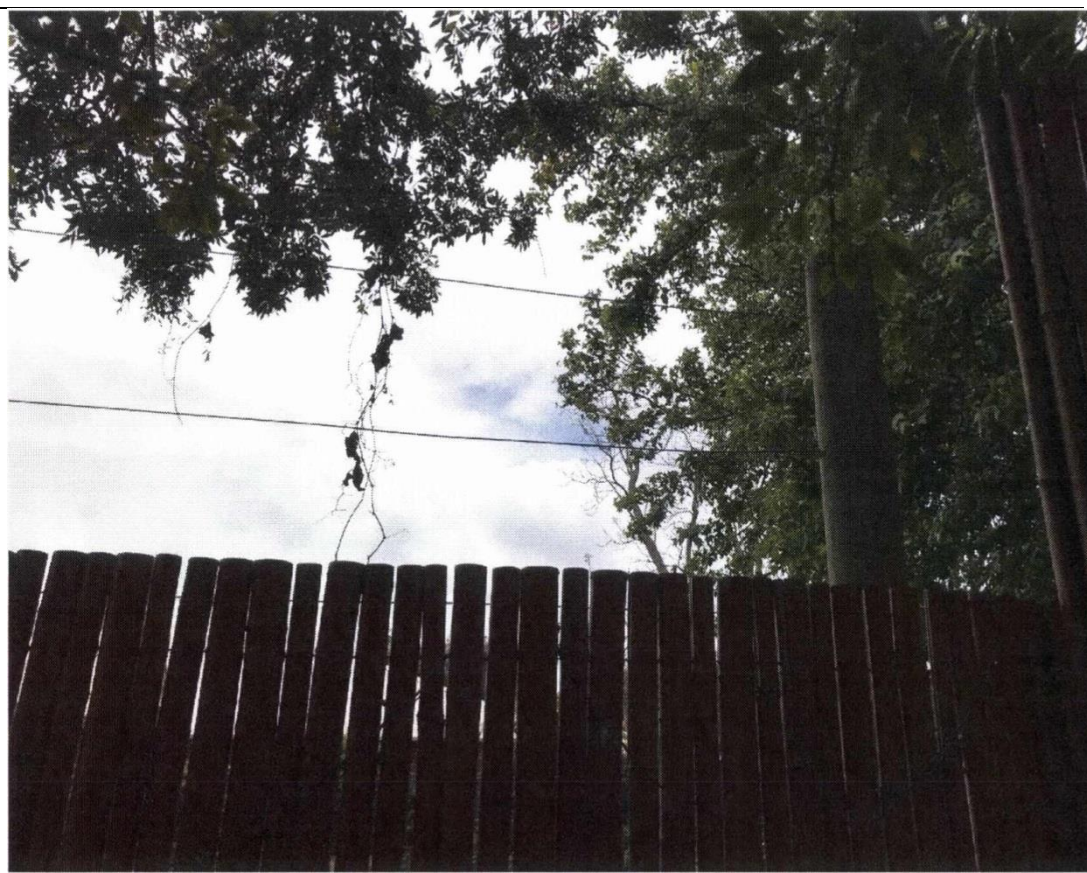
**August 2017** - it was brought to the Town's attention that the owner of No. 76 Allen Street had started installing the posts for a screening structure without development (planning) approval. The Town advised the owner to stop work and submit a development application for Council's consideration, however, this did not occur and the work was completed. A development application was subsequently submitted on behalf of the owner.

### Consultation

#### Advertising

The proposal was advertised to the adjoining impacted land owner from 4 to 20 October 2017. One submission was received dated 14 September 2017 and the comments are noted below. The applicant has also responded to the submission also outlined below.

SUBMISSION	<p>We oppose the excessive height and nature of the fencing proposed by this application. The height and the nature of the screening will seriously negatively impact our rights to use and enjoyment of our garden and living areas.</p> <p>We note the application for higher fencing to 2.7m on our northern boundary, which is directly in front of our living area, and outdoor decking area. This pole and wire screening is in fact higher than the current screening, by a significant margin and has major impacts on our access to northern light in our living areas.</p> <p>Last year we opposed this request from 76 Allen St for this height fencing when we were putting in a pool, for the same reason we oppose this now, it seriously impacts our access to northern light, and we argued *(and the Council agreed with us last year) that the heights proposed to alleviate the neighbour concerns around privacy were more than adequate. We attach below photos from our side of the fence which clearly shows the height of the wire and poles significantly increase the height of the screening, to no purpose as there is no reason for it.</p> <p>There is no overlooking from any point in either garden from either side now due to the massive increase in screening requested by neighbour last year which we agreed with and provided at our cost.</p> <p>Our right to use and enjoyment of our garden and living spaces in our house and in our decking area will be seriously impacted negatively by loss of northern natural light from this excessive height of any kind of fencing.</p> <p>We attach photos to show the area of concern;</p>
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We opposed this last year and do the same now, we have no issue with client putting up a fence on her side but to claim she needs more privacy is excessive. As you can see from the photos the existing (only a year old) screening fencing completely blocks any overlooking issues from both sides, so there is no need for any further screening.

To the right of the photo is the start of the higher screening which if continued would provide too much blocking of northern light and is excessive.

We oppose the height of this wire fencing and request it be reduced in height to no higher than the existing screening in place agreed upon last year.

## **2. The second area of concern is the 2.3m posts further up the back garden**

We also would like to oppose the heights of the posts at 2.3m noted on the application, we note that the blue post with electrical power and 2 large floodlights on our boundary have been in place without council approval and provide a significant lighting issue for us, which are used to light the neighbours above ground swimming pool which has been in place for approx. 5 years, we would like clarification on the details of the approval (we have never been asked if we are happy with an above ground swimming pool on our boundary?) and would like the light pole and post next to it reduced in height to the same as our fencing I screening which would alleviate the lighting overflow from these large and intrusive floodlights that also flood light into our garden. This provides a significant detrimental effect on our rights to have use of our garden without lighting , also it is an ugly and varying height of wires over the top of our fencing, visually unattractive and also excessive , photos attached:



We oppose the height of these posts.

We would like to see these two posts reduced to a height no higher than the existing screening in place so that we do not have to look at this and also are not affected by the significant lighting intrusion provided by the two flood lights attached to the pole.

**3.** We would also like to know when the council provided approval for the neighbours above ground swimming pool, as we have never been notified about any application for this.

We note the applicant has already constructed this structure without any consultant or notification to us or the Council, continued to perform work on this structure after being told to cease work , completed the work and has also since placed creepers on the structure in complete disregard to the instructions of the Council.

Last year we spent around 4 months negotiating what we still feel is a significant and probably excessive screening to alleviate concerns of privacy from the neighbour, so we feel quite strongly that our rights to northern light and ,not having to be impacted by lighting intrusion from our neighbour should also be considered ,not just one neighbours 'privacy' concerns.

	<p><b>4. Residential Design Codes</b></p> <p>Like ours the land is zoned residential in the local planning scheme and is accordingly subject to the requirements of the residential design codes. Clause 5.4.2, of the Codes, deals with solar access to adjoining properties and states:</p> <p><i>5.4.2 Solar access for adjoining sites</i></p> <p><i>P2.1 Effective solar access for the proposed development and protection of the solar access.</i></p> <p><i>P2. Development designed to protect solar access for neighbouring properties taking account the potential to overshadow existing:</i></p> <ul style="list-style-type: none"> <li>• <i>outdoor living areas;</i></li> <li>• <i>north facing major openings to habitable rooms, within 15 degrees of north in each direction; or</i></li> <li>• <i>roof mounted solar collectors</i></li> </ul> <p>The proposal is contrary to the requirements of the clause as it will result in significant overshadowing of our precious outdoor living area. On this basis alone, the proposal should be refused.</p> <p><b>Summary</b></p> <p>We oppose the height of the screening. We feel any new screening is unnecessary as there are zero areas of overlooking from the garden or living areas, due to the screening put in place last year.</p> <p>We request reduction of any new screening / fencing to be no higher than the current height of screening/ fencing.</p> <p>The proposal is contrary to the requirements of the Residential Design Codes as detailed above.</p> <p>We request reduction of height of the existing light pole (no prior approval) to no higher than the existing screening. We request confirmation of when approval was provided to the neighbour for their above ground pool in place for approx. 5-6 years.</p>
<p><b>APPLICANT RESPONSE</b></p>	<p>The existing swimming pool is at no point on land retained at a height greater than 500mm above natural ground level. Furthermore, any concern regarding the light pole referred to in the submission received by the Town can be considered addressed. It is proposed to remove the light and pole following determination of the application.</p> <p>With respect to the post and wire trellis: the structure is innocuous when compared to the extent to which the opposite side of the common boundary has been screened. The purpose of the structure is to provide a screen and improve privacy levels between the properties in question (as described in detail in the application lodged with the Town). It is no different in intent to what has been erected on 78 Allen Street. Accordingly, what's proposed is considered fair and reasonable.</p> <p>The objective with the structure is now starting to be realised as depicted in the first photograph attached to this email. The greenery extending across the wire trellis is attractive to look at and in no way offensive. It appears as a natural screen, consistent with the character of the backyard and boundary line. In the event the wire and trellis structure is not supported by the Town, the owner will look at alternatives for the purpose of maintaining her privacy, including the planting of trees along the lines shown in the second photograph.</p>





**OFFICER  
RESPONSE**

Noted. Comments on submission and response provided below in Comments section of report.

Community Design Advisory Committee

This application was not referred to the Committee as the proposal relates to construction of a screening structure along the side boundary of the site and does not have an impact on the streetscape or the heritage elements of the site.

### **Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

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

*LPS No. 3 - Heritage List*

### **Policy Implications**

*Town of East Fremantle Residential Design Guidelines 2016*

*Municipal Heritage Inventory – Category B*

### **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**

November 2016



## Comment

### 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	N/A	N/A	N/A
<b>Lot Boundary Setbacks</b>	<b>Side: 1.0m</b>	<b>Up to lot boundary</b>	<b>D</b>
	<b>Rear: 6.0m</b>	<b>~5.7m</b>	<b>D</b>
Open Space	55%	>55% (no change to existing)	A
Outdoor Living	N/A	As existing	A
Car Parking	2	Existing	A
Site Works	Less than 500mm	<500mm	A
Overshadowing	25%	<25%	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	N/A
3.7.5 Demolition	N/A
3.7.6 Construction of New Buildings	N/A
<b>3.7.7 Building Setbacks and Orientation</b>	<b>D</b>
3.7.8 Roof Form and Pitch	N/A
3.7.9 Materials and Colours	A
3.7.10 Landscaping	A
3.7.11 Front Fences	N/A
3.7.12 Pergolas	N/A
3.7.13 Incidental Development Requirements	N/A
3.7.14 Footpaths and Crossovers	N/A
3.7.18.3 Garages, Carports and Outbuildings	N/A
3.7.15-20 Precinct Requirements	A

The applicant has provided the following information in support of the application (letter dated 12 September 2017)

#### **"Background**

*Prior to the end of 2016 the Town of East Fremantle granted development approval for the erection of screening by the owners of 78 Allen Street on the common boundary with 76 Allen Street. The screening was erected in association with works on the southern side of the boundary i.e. within the rear yard of 78 Allen Street, but in close proximity to the rear yard of 76 Allen Street.*

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### Proposal

*The subject application is for the erection of timber posts and wiring on the north side of the dividing fence (to create a trellis). In total, 12 posts are involved. Half the posts (6) are at the same height as the existing screening erected on 78 Allen Street. The remaining posts (6) are no higher than 500mm above existing screening already erected on 78 Allen Street, along the central part of the common boundary.*

*Wire strands are to extend between the posts. The strands and posts will act as landscaping trellis, over which existing creepers will be 'trained'. The trellis will provide visual protection where privacy and the rear yard of 76 Allen Street is concerned (having regard for the existing structures on 78 Allen Street). The northern addition to the dwelling on 78 Allen Street results in direct overlooking into the rear yard and outside patio area of 76 Allen Street.*

*Where intent is concerned, the objective is to facilitate higher levels of privacy between the two properties via a sympathetic solution that involves landscaping.*

*The post and wire trellis represents a sympathetic solution to an on-going intrusion on privacy associated with the two storey northern addition in close proximity to the southern side of 76 Allen Street. Where the height and extent of the trellis is concerned, the following is noted:-*

- *With the exception of the eastern most post, the post and wire heights are no greater than the existing screening structure on 78 Allen Street for a distance of 12+ metres; and*
- *The height of posts and wire where they exceed the height of existing screening erected on 78 Allen Street (i.e. between the outdoor patio area on 76 Allen Street and the adjacent two storey addition on 78 Allen Street) is approximately the same (total height) as the screening structure on 78 Allen Street referred to in the above point (see photo below).*

*Bearing the above in mind, and as the post and wire trellis will support a natural screen for the purpose of achieving privacy (rather than the erection of more of the same screening devices), the Town of East Fremantle is respectfully requested to grant approval to the attached plan.*

*Rather than erect significant structures, the owner of 76 Allen Street seeks to address the existing situation with a natural (landscaped) solution. The works involved do not serve to perform the roll of screening; they provide the basis for a natural landscaped screen as mentioned. The creeper to be trained across the trellis is the Virginia creeper vine *Parthenocissus quinquefolia*.*

### Comment

The arguments noted above in support of the application are not considered unreasonable and are supportable subject to a number of conditions being imposed.

The planning considerations discussed below address the matters raised in the submission.



#### Lot boundary setbacks

The lot boundary setback requirement of 1.0 metre (side) and 6.0 metres (rear) under the R-Codes has not been met. The proposed setback to the southern boundary is considered to be nil because the posts are placed as closely as possible to the dividing fence and closer than 6 metres to the rear boundary. The posts, however, are not built structures and have minimal bulk so this is not considered to be an issue in respect to residential amenity for No. 78. The structure proposed is very similar in height to a structure the neighbour at 78 Allen Street was required to construct in accordance with a condition of planning approval and to address the privacy concerns of No. 76.

The land slopes away slightly between No. 78 and No. 76 Allen Street and No. 76 is at a slightly lower level and therefore this property could be overlooked from various points on No. 78 and from the upper storey balcony (part of the 2006 approval). Both neighbours have never considered the dividing boundary fence to be of an adequate height in regard to privacy and there has not been agreement in regard to replacing the existing fence with a higher fence. This has resulted in screening structures being installed. This has not been acceptable to either neighbour for various reasons and in particular No. 76 because the unfinished side of the screening structures (which vary in height, type and age of materials) face toward that side of the property and project above the top of the fence. These structures also vary in height along the length of the boundary and look somewhat unsightly from the No. 76 side. Once fully established the creeper plant will eventually conceal these different materials and structures.

The reduced setback to the rear and side boundary is considered to have minimal impact on the neighbour to the south. The height of the poles above the existing fencing more toward the middle section of the lot is not considered to be excessive as it will not exceed the height of the screening already in place at No. 78. Once the creeper plant is established this will further diminish the visibility of the posts and will most likely grow around the posts. For the remainder of the structure as it extends toward the rear of the site there is only one post which will extend above the existing screening structure with the remaining posts below the existing screening adjacent to the patio. Again, once the creeper is established this post will be less obvious. It cannot be reduced in height because the wiring is connected to this post and extends to the rear of the site. This will conceal the difference between the recent screening and the original fence.

Whilst the existing screening appears adequate in regard to privacy from the ground level the proposed screening will provide slightly greater screening in regard to the balcony and will improve the appearance of the fence and screening structures. Using vegetation to provide a screen in this instance is considered to be the best outcome for both neighbours as it provides a pleasant backdrop for both properties and has the same appearance on both sides. Whilst loss of light is not considered to be an issue because the overshadowing provision of the R-Codes will not be exceeded (i.e. greater than 25% of the adjoining site will not be overshadowed). It is, however, considered necessary to ensure that the height of the structure does not increase any further and therefore it is recommended that conditions of planning approval be applied which restrict any further increase in height of the structure for its entire length and that no other materials are to be attached to the structure to increase screening or the height of the fence. Only plants are permitted to be attached to the structure.

#### Solar access

The additional shadow that will be cast by the additional height of the structure above the fence line is considered minimal and to not impact on the amenity of the adjoining property. As mentioned above slight increase in shadow will not exceed 25% of the adjoining lot area as specified in the R-Codes. As such this is not considered a valid reason to refuse the application.

#### Pool compliance

This matter was raised in the adjoining neighbour's submission. It should be noted that the pool at No. 76 Allen Street has been installed since 2011 but did not obtain planning approval which was required at that time. Planning approval is no longer required for swimming pools unless a raised deck area or surrounds (greater than 500mm above natural ground level) is part of the pool installation. The applicant has informed the Town in writing (email dated 23 November 2017) that the raised platform around the pool is not greater than 500mm above natural ground level therefore further planning approval is not required (in respect to compliance with privacy/overlooking provisions of the R-Codes). The matter of a light pole on the boundary has also been raised. The applicant has stated that the owner will remove the light pole. This will be a condition of planning approval. If the owner does not remove the light pole a retrospective planning approval application will be required to be submitted for Council's consideration. The pool has undergone an inspection for compliance with Australian Standards for pool safety and fencing and the Town's Building Surveyor has reported the pool is compliant. The Town is not required to take any further action in regard to seeking further planning approvals.

#### Heritage

The dwelling is classified as Category 'B' in the Local Planning Scheme Heritage List. It is considered the proposal does not have any impact on the heritage value of the property and the variation from the R-Codes has no bearing on the heritage elements of the dwelling.

#### **Conclusion**

Given the history of issues regarding overlooking and privacy and the lack of neighbour agreement to increasing the height of the existing fence, the structure that has been built to provide some additional screening and improve the appearance of the fence from the applicant's side is considered reasonable. The structure will be less noticeable once the vegetation is more established and will in the long run be completely covered. The overall height is not considered to be excessive either given it is no higher than the existing screening structures. The objections raised in the submission therefore are not considered to be compelling reasons to refuse the structure, however, it is considered necessary to prevent the structure from increasing in height or having further screening devices added. The conditions in the Officer's recommendation are recommended in this regard.



**11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP041217**

Cr White moved, seconded Cr Nardi

That Council exercise its discretion in granting subsequent approval of development carried out and to vary:

- (i) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit an eastern lot boundary (rear) setback of less than 6.0 metres and a southern lot boundary (side) setback of less than 1.0 metre,

for a screening structure adjacent to the southern boundary at No. 76 (Lot 23) Allen Street, East Fremantle, in accordance with the plans date stamp received on 14 September 2017, subject to the following conditions:

- (1) No further increase in the height or length of the screening structure for the length and area of the dividing fence on the southern boundary.
- (2) Only plants are to be attached to the screening structure and the wire trellis. No other screening materials are to be attached to the posts or the wire trellis.
- (3) The posts and wire trellis are not to be attached to the dividing fence and must be freestanding and contained wholly within the property boundary of the subject site.
- (4) The works carried out are not to be modified and are to comply with the conditions of this planning approval or with Council's further approval.
- (5) With regard to the plans submitted with respect to the Building Approval Certificate, 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) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (8) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (9) This planning approval 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) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

**(CARRIED 5:1)**

Note:

As 4 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 20 June 2017 this application deemed determined, on behalf of Council, under delegated authority.

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## 11.2 Duke Street No. 56 (Lot 201) – Two Storey Addition to Heritage Dwelling

<b>Applicant</b>	John Chisholm Design
<b>Owner</b>	B Harrison & S Folks
<b>File ref</b>	P/DUK56; P119/17
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	5 December 2017
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	1. Location plan 2. Photographs 3. Plans date stamped 18 October 2017

### Purpose

This report considers a planning application for a second storey addition to the existing heritage dwelling at No. 56 Duke Street, East Fremantle.

### Executive Summary

The additions to the dwelling are all upper storey and to the rear of the original cottage. The rear section of the dwelling has been extended in the past and this addition will remain unchanged. The second storey will be constructed over the extended rear section of the dwelling and follow the existing building lines for the most part.

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

- Lot boundary setback - reduced on the northern boundary; and
- Solar access for adjoining sites – greater than 25% overshadowing.

It is considered the variations will not have a significant impact on the amenity of adjoining sites or the heritage value of the property and can be supported subject to conditions regarding construction materials and finishes, the finish of the wall on the northern boundary and Main Roads WA comments/advice notes.

### Background

Zoning: Residential R20

Site area: 488m<sup>2</sup>

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

- 29 September 1993: Planning approval granted for extensions to the dwelling.  
5 February 2001: Subdivision application approved by the WAPC.  
21 August 2001: Planning approval granted for a garage.  
17 December 2013: Approval granted for addition of a rear room.  
1 September 2014: Planning approval granted for relocation of a swimming pool.

### Consultation

#### Advertising

The application was advertised to the surrounding land owners from 10 to 27 November 2017 and to Main Roads WA (MRWA). At the time of reporting to Council comments from MRWA had not been received. Any conditions and/or advice notes received will be included in the development approval documentation.

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Community Design Advisory Committee (CDAC)

This application was not referred to the CDAC as the application is compliant in regard to the Residential Design Guidelines and the R-Codes with the exception of two minor matters which are not considered to impact the streetscape or the heritage dwelling.

**Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

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

*LPS No. 3 Heritage List – ‘B’ Category*

**Policy Implications**

*Town of East Fremantle Residential Design Guidelines 2016*

*Municipal Heritage Inventory - ‘B’ Category*

*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

November 2017

## Comment

### 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	6.0m	As existing	A
Lot Boundary Setback	Northern boundary – 1.2m	Nil	D
Open Space	50%	62%	A
Outdoor Living	30m <sup>2</sup>	~150m <sup>2</sup>	A
Car Parking	1	2	A
Site Works	Less than 500mm	Less than 500mm	A
Visual privacy setback (>0.5m above NGL)	Upper level bedroom opening - 4.5m	Greater than 4.5m	A
Overshadowing	≤25%	27.8%	D
Drainage	On-site	On-site	A

### Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	A
3.7.3 Development of Existing Buildings	A
3.7.4 Site Works	A
3.7.5 Demolition	N/A
3.7.6 Construction of New Buildings	A
<b>3.7.7 Building Setbacks and Orientation</b>	<b>D</b>
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
3.7.14 Footpaths and Crossovers	A
3.7.18.3 Garages and Carports	A
3.7.15-20 Precinct Requirements	A

Building Height (R-Codes)	Required	Proposed	Status
External Wall height (R-Code)	6.0m	5.7m	A
Roof Ridge height (R-Code)	9.0m	7.6m	A

There are very few variations from the R-Codes and the RDG in respect to this application. The design responds to the existing site circumstances on both adjacent lots and attempts to minimise the impact on the adjoining lots in respect to building bulk and overlooking.

#### Lot boundary setbacks

The upper floor addition is setback from the rear and southern boundary a considerable distance. On the northern boundary a nil setback is proposed. The storeroom on the upper floor will be built up to the boundary and will follow the building line of the ground floor on this elevation. Despite the non-compliance it is considered there are no issues in respect to the building setback for this portion of the lot and the building will not overshadow or overlook the adjacent property. Also, the owners of the neighbouring lot have not objected.

#### Overshadowing

Overshadowing of the adjoining lot to the south is greater than 25%. It is difficult to achieve compliance in the circumstances as the adjoining lot is less than the average lot size in the Plympton Precinct being only 275m<sup>2</sup> in area. The lot size was reduced from the standard lot size in the Plympton Precinct by a previous owner who re-subdivided two original lots. However, the additional overshadowing caused by the upper floor addition will occur over the roof of the adjoining dwelling and the driveway of the subject lot. This lot is developed with less than 50% open space. The garden is already overshadowed by large trees in the front setback area and the overshadowing does not impact rear areas of open space. As such it is not considered to impact on the amenity of the adjoining lot and is supportable.

#### Heritage

The dwelling is categorised as Category 'B' on the Heritage List of the Planning Scheme. Overall the proposal is considered to acknowledge the heritage value of the property and in the main the variations from the R-Codes are considered to have a minor amenity impact on the neighbouring properties or are acceptable in respect to extension and renovation of the heritage property. The dwelling still maintains the same presence and appearance as far as the streetscape is concerned and the addition which will be partly visible behind the original house has been designed to be as least intrusive as possible.

#### Water Corporation Easement

A number of easements are in place to ensure access to a garage on the site and to maintain access to the sewer. The easements cover the entire lot so it is considered necessary to impose a condition which requires the approval of the Water Corporation prior to any building works being undertaken on the site.

#### MRWA

The application was referred to MRWA for its comments. At the time of writing the report a response had not been received. If a response is received the conditions and/or advice notes will be included in the development approval documentation.

#### **Conclusion**

The application is supported as the upper floor addition is not considered to have a detrimental impact on the amenity of the surrounding properties and the addition is of a scale that is respectful of the heritage dwelling, the existing streetscape and the Plympton Precinct. The application is therefore recommended for approval subject to conditions regarding construction materials and finishes and any MRWA conditions and/or advice notes.

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**OFFICER RECOMMENDATION**

Cr M McPhail moved, seconded Mayor O'Neill

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

- (i) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a nil setback on the northern lot boundary for the upper storey; and
- (ii) Clause 5.4.2 – Solar Access for Adjoining Sites of the Residential Design Codes of WA to permit overshadowing on the adjoining site to exceed 25% of the site area,

for a second storey addition at No. 56 (Lot 201) Duke Street, East Fremantle, in accordance with the plans date stamped received 18 October 2017, subject to the following conditions:

- (1) The proposed works are not to be commenced until approval from the Water Corporation has been obtained and the building permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (2) The proposed parapet wall on the northern boundary is to be of a suitable material to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
- (3) The details of construction materials and finishes to be used to be to the satisfaction of the Chief Executive Officer and to be submitted at Building Permit application stage.
- (4) 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.
- (5) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (6) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (7) The proposed alterations and additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (8) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (9) 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.
- (10) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (11) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.

- (12) This planning approval to remain valid for a period of 24 months from date of this approval.
- (13) The applicant is to undertake a screen assessment in accordance with Appendix A of the Implementation Guidelines for State Planning Policy 5.4 Road and Rail Transport Noise and Freight Considerations in Land Use Planning is to implement all mitigation measures identified in the report to the satisfaction of the Local Government.

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".*

**AMENDMENT**

Cr White moved, seconded Cr Natale

The Committee moved and seconded the adoption of the officer's recommendation with the following condition added:

- (13) The applicant is to undertake a screen assessment in accordance with Appendix A of the Implementation Guidelines for State Planning Policy 5.4 Road and Rail Transport Noise and Freight Considerations in Land Use Planning is to implement all mitigation measures identified in the report to the satisfaction of the Local Government.

(CARRIED UNANIMOUSLY)

**11.2 SUBSTANTIVE MOTION/COMMITTEE RESOLUTION TP051217**

**Cr M McPhail moved, seconded Mayor O'Neill**

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

- (i) **Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a nil setback on the northern lot boundary for the upper storey; and**
- (ii) **Clause 5.4.2 – Solar Access for Adjoining Sites of the Residential Design Codes of WA to permit overshadowing on the adjoining site to exceed 25% of the site area,**

**for a second storey addition at No. 56 (Lot 201) Duke Street, East Fremantle, in accordance with the plans date stamped received 18 October 2017, subject to the following conditions:**

- (1) **The proposed works are not to be commenced until approval from the Water Corporation has been obtained and the building permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**



- (2) The proposed parapet wall on the northern boundary is to be of a suitable material to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
- (3) The details of construction materials and finishes to be used to be to the satisfaction of the Chief Executive Officer and to be submitted at Building Permit application stage.
- (4) 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.
- (5) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (6) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (7) The proposed alterations and additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (8) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (9) 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.
- (10) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (11) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (12) This planning approval to remain valid for a period of 24 months from date of this approval.
- (13) The applicant is to undertake a screen assessment in accordance with Appendix A of the Implementation Guidelines for State Planning Policy 5.4 Road and Rail Transport Noise and Freight Considerations in Land Use Planning is to implement all mitigation measures identified in the report to the satisfaction of the Local Government.

**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 George Street No. 76B (Lot 602) – Change of Use from Service Industry and Shop to Café**

<b>Applicant/Landowner</b>	S Tolcon
<b>Applicant</b>	T Petherbridge
<b>File Ref</b>	P/GEO76B; P115/2017
<b>Prepared by</b>	Christine Catchpole, Planning Officer
<b>Supervised by</b>	Andrew Malone, Executive Manager Regulatory Services
<b>Meeting date</b>	5 December 2017
<b>Voting requirements</b>	Simple Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Location Plan</li><li>2. Site Photographs</li><li>3. Plans date stamped received 13 October 2017</li></ol>

**Purpose**

This report considers a development application for a change of use from service industry and shop to café at No. 76B George Street, East Fremantle.

**Executive Summary**

The subject site is zoned 'Mixed Use'. The applicant is requesting approval for a change of use from a service industry and shop to a café which is an unlisted use in the Zoning Table of the Planning Scheme. An unlisted use is required to be advertised and the application has undergone advertising and no submissions were received.

The proposal raises the following issues which influence the determination of the application:

- Land use (unlisted use in the Zoning Table); and
- Car parking (one bay shortfall based on approved number of seats).

It is considered the land use is appropriate for the George Street Mixed Use zone. The current on-site parking provision of 4 bays is considered sufficient and the one bay shortfall supportable. It is anticipated the café's patrons will be employees and local people living, visiting and working in the Plympton Precinct and George Street.

The recommendation for approval, however, is subject to no more than 25 seats being provided for both indoor and outdoor areas on the site combined (including any alfresco areas) at any one time. It is also recommended, should the proposed use cease or change to a restaurant use, then a further development application to assess the car parking requirement and any additional signage requirements will be required. The approval is recommended only for the café use.

**Background**

Zoning: Town Centre

Site area: 706m<sup>2</sup>

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

15 September 1986 - Council grants approval for a change of use from "Capri Caterers" and "Marie's Fashions" to a Real Estate Office.

20 October 1986 - Council agrees to change the non-conforming use from Meat Brokers to Architect's Office", subject to two sealed parking bays, signage, painting and landscaping.



- 
- 19 October 1992: Council grants approval for the change of use from real estate agent to retail shop for the sale of herbal and associated products from the premises at the corner of Sewell Street and George Street.
- 14 December 1992: Council grants approval for a change of use to an architect's office to retail shop.
- 10 May 1994: Council notifies the owner that the corner shop formerly used as a real estate office is now being utilised as a Doctor's Surgery" and approval is required for the change of use.
- 18 July 1994: Council grants approval for a Bakery and to defer consideration of the Doctor's Surgery.
- 5 September 1994: Applicant for Bakery appeals against conditions of approval.
- 21 December 1994: Council advises an applicant for a Hairdressing Salon that the proposal would exacerbate the parking shortfall, but would reassess the proposal when the issues regarding the unapproved Doctor's Surgery, existing Lodging House, and existing Residence are resolved.
- 22 February 1995: Council grants special approval for a Professional Office.
- 23 August 1996: Council grants special approval for a 'Shiatsu Centre'.
- 23 July 2007: Delegated Approval granted for a Change of Use from 'Shiatsu Centre' to 'Shop'.
- 15 February 2011: Council approval granted for a change of use from 'shop' to 'service industry' and 'shop'. Four parking bays were accepted as sufficient for the proposed uses. The Town's records do not indicate any parking issues or complaints associated with the subject site.

### **Consultation**

#### Advertising

The proposal was advertised to surrounding land owners 27 October to 13 November 2017. No submissions were received.

#### Community Design Advisory Committee

This application was not referred to the Committee as the application is for a change of use on the site and there are no physical changes to the building.

### **Statutory Environment**

*Planning and Development Act 2005*

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

*LPS 3 Heritage List*

### **Policy Implications**

*Municipal Inventory (MI) – Category B*

*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**

10 November 2017

### **Comment**

### 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

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

General Development Standards	Required	Proposed	Status
<b>Land Use - Zoning Table</b>	Café	Unlisted use in Mixed Use zone	A
Building setbacks	Aligned with front property boundary	No change	A
Building height	Overall: 8m Walls: 5.5m	No change	A
Plot ratio	0.5:1.0	No change	A

Design and landscaping	Landscaping plan	No change	A
<b>Car parking &amp; vehicular access (Schedule 10 and 11 of LPS 3)</b>	<b>Ratio for Cafe: 1 space for every 5 seats (i.e. 25 seats)</b>	<b>4 bays proposed; 5 required</b>	<b>D</b>
<b>Location of car parking</b>	<b>4 bays on-site</b>	<b>5 bays</b>	<b>D</b>
On-street parking	On-street may be acceptable	Not applicable	A

The subject site contains a heritage building which fronts both George Street and Sewell Street. The portion of heritage building that fronts Sewell Street houses a chiropractic consulting room. The portion of the heritage building that fronts George Street has been operating as a bakery (service industry) and a shop. It is possible to be seated in the shop section and the open garden area at the rear of the shop to consume drinks and food purchased at the counter and for items to be purchased and taken away. It is this part of the building that is the subject of this application.

The site is located within the Mixed Use zone. The objectives which apply to this zone are listed below:

- *to provide for a limited range of commercial, civic and community facilities to meet the day to day needs of the community, but which will not prejudice the amenities of the neighbourhood;*
- *to ensure future development within each of the Mixed Use Zones is sympathetic with the desired future character of each area, and that a significant residential component is retained as part of any new development;*
- *to promote the coordination of development within each of the Mixed Use zones and to facilitate the safe and convenient movement of pedestrians to and within the area; and*
- *to ensure the location and design of vehicular access and parking facilities do not detract from the amenities of the area or the integrity of the streetscape.*

The proposal to change the use of a portion of the building from 'shop' and 'industry-service' to 'café' is consistent with the objectives of the 'Mixed Use' zone as demonstrated below:

- *the proposed land use will offer food and beverage items for sale to the community and will not prejudice the amenity of this mixed use area;*
- *the desired future character of the George Street 'Mixed Use' zone is to provide a vibrant area which provides a range of land use activities which complement the surrounding residential area and the proposed use will contribute to this; and*
- *the development has some on-site car parking which is part of this application.*

#### Land Use – Café

Whilst a definition for a café is not included in Schedule 1 of LPS No. 3 a café use is considered to fit within the definition of restaurant which is as follows:

*"restaurant" means premises where the predominant use is the sale and consumption food and drinks on the premises and where seating is provided for patrons and includes a restaurant licensed under the Liquor Control Act 1988."*

Also, the Zoning Table of LPS No. 3 does not list café as a use class so the use must be considered an 'unlisted' use and the applicable advertising requirements of LPS No. 3 must be undertaken. Advertising was also required because of the proposed one bay parking shortfall. The Council is then required to consider the outcomes of advertising and exercise its discretion in regard to granting planning approval.

The proposed use of the building for a café is considered appropriate in the George Street mixed use strip.

A café is considered to meet the objectives and intent of the George Street mixed use zone as noted above. Furthermore, the use of the premises for a purpose that will generate more pedestrian traffic in the area and provide an interesting and engaging frontage to the street and pedestrian thoroughfare is considered to be a benefit to the area in general.

Whilst the proposed use is supported it is considered important that if another change of use is proposed that a development approval application is required to be submitted to assess the appropriateness of the use in this location and the car parking requirements that would apply to another use. A development application is also considered necessary should in the opinion of the Chief Executive Officer, the use was to change to a restaurant as the car parking requirements may be increased.

#### Car Parking

The mixed use development is serviced by on street parking on George and to a limited extent Sewell Street and a four bay parking area at the rear of the building. The existing parking area is not designed to meet the car parking and manoeuvring specifications listed in Schedule 12 of LPS No. 3, however it has been approved by Council previously at its meeting in July 1994 when it approved a bakery as part of the mixed use development on the site. Parking at the rear of the site can be made available to employees.

#### Clause 5.8.5 Car Parking and Vehicular Access

Car parking in respect of development in the Commercial Zones is to be provided in accordance with the standards set out in Schedule 10 of the Scheme and the specifications in Schedule 11 of the Scheme. Where there are no standards for a particular use or development, the local government is to determine what standards are to apply. In its determination of the requirements for a particular use or development which is not listed in Schedule 10 of the Scheme, the local government is to take into consideration the likely demand for parking generated by the use or development.

As noted above LPS No. 3 does not contain a specific definition for a café use that can then be applied to a parking ratio for the same use. The closest definition is that for a restaurant use which includes a café use in the definition so the ratio outlined below has been applied in the assessment of this application.

*"1 space for every 5 seats or  
1 space for every 5 persons the building is designed to accommodate, or  
1 space for every 5m<sup>2</sup> of seating area, whichever is the greater, plus  
1 space for every staff member present at any one time."*

The current parking requirements for the approved and the proposed uses are tabled below. This table is based on previous Council approvals.

EXISTING USE	PROPOSED USE				
Use Class	Bays Required	Bays Provided	Use Class	Bays Required	Bays Provided
Consulting Room	4 bays	1 bay on-street	Consulting Room	1 bay on-street	1 bay on-street
Shop/ Service Industry	4 bays	4 bays on-site	Café (25 seats)	5 bays	4 bays



Total	8 bays	5 bays	Total	6 bays	5 bays
Existing Dispensation	3 bays	Shortfall	1 bay		

#### Car parking requirement

For Council to consider varying the parking requirements it is required to be satisfied that the proposed development complies firstly with the provisions of clause 5.6.2 of the Scheme which states as follows:

*In considering an application for planning approval under this clause, where, in the opinion of the local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the variation, the local government is to —*

- (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 9.4; and*
- (b) have regard to any expressed views prior to making its determination to grant the variation,*

and clause 5.6.3(b) which states:

*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.*

Secondly the relevant matters pertaining to clause 67 (Deemed Provisions – matters to be considered by local government) of LPS No. 3, which are listed below, must also be taken into account:

- (a) the aims, objectives and provisions of the Scheme;*
- (c) the requirements of orderly and proper planning;*
- (o) the preservation of the amenity of the locality;*
- (q) whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles; and*
- (r) the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.*

Council's Environmental Health Officer has advised that under the Building Code of Australia regulations a Class 6 building (i.e. 'Gratias') is only able to accommodate 25 persons based on already existing toilet facilities. As there is only one unisex toilet on the premises only 25 seats can be provided. Therefore five bays are required under the Scheme's parking requirement. So a parking shortfall of one bay exists.

At the present time the existing business 'Gratias' has been operating as a bakery and takeaway with an option to sit and consume food on the premises or for it to be taken away. A change of use to a café in practical terms will not be any different to the current use of the premises. It is considered the proposed café use will operate in the same fashion as the current operation which prepared food on the premises for sale in either takeaway form or for consumption in the shop.

The eating area comprises seats within the shop, in the front setback area and at the rear of the premises. The use of the premises for a café will not function any differently to the current operations and therefore the parking demand is not considered to increase. Furthermore, the type of café use proposed is not considered to be one that will generate a large customer base from outside the immediate area. Patrons will most likely be employees from other businesses, local people from the surrounding residential streets and shoppers visiting the George Street strip, therefore the current provision of bays is considered sufficient. Given the location of the café within a traditional shopping strip, proximity to bus routes and what in effect is the continued use of the site for the same purpose, the current parking provided is considered sufficient for the proposed use. However, as noted above it is considered that if the use was to change to a restaurant with potentially more staff and longer opening hours that a further development approval application will be required to be submitted for Council's consideration.

The environmental health conditions listed in the Officer's Recommendation are recommended by the Town's Environmental Health Officer to be imposed as standard conditions for this use.

#### Heritage

The site is listed in the Planning Scheme Heritage List (Category B classification in the MI). The change of use from service industry and shop is considered to be a positive outcome as the building will continue to be used and no change to the building façade is proposed. The interior of the premises has been extensively renovated in keeping with the building's heritage, however, any intended additional signage will require further development approval and it is recommended this matter is addressed as a condition of planning approval.

#### **Conclusion**

It is considered the change of use to a café will not result in any significant change to the current operations of the existing business in that it will prepare food and offer an option to eat in or takeaway. It is more than likely the customer base will be residents and employees in the immediate area and working in the George Street or Town Centre area therefore the proposed use is considered to not place any greater demand on parking as a result.

It is considered that the use will not negatively impact the orderly and proper planning of the area and will result in continued use of premises and activation of this section of George Street. Notwithstanding, it is considered important that conditions are imposed which prohibits the number of seats for the café use to ensure the parking shortfall is not exacerbated beyond the one bay. This limitation is required in any case because the provision of only one unisex toilet on the site means that only 25 seats can be provided under the Building Code of Australia regulations. A condition of approval restricting the number of seats on the site is therefore recommended to ensure compliance with the regulations.

If a different type of use is proposed it is considered necessary that a fresh planning approval application be submitted so that the suitability of the use and the parking and amenity implications can be assessed. A condition of approval in this regard is therefore recommended to advise the owners and prospective owners of this requirement.

In conclusion, the proposal for a café is considered acceptable and is recommended to be supported subject to the conditions outlined below. It is also recommended that a condition be imposed to require a separate application for any proposed future signage on the site for Council's consideration.



**11.5 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP061217**

Cr Nardi moved, seconded Cr Natale

That Council exercise its discretion in granting approval to vary:

- (i) Clause 5.8.5 – Car parking of Local Planning Scheme No. 3 to allow an on-site car parking shortfall of one (1) bay,

for a change of use from service industry and shop to café at No. 76B (Lot 602) George Street, East Fremantle, as indicated on the plans date stamped received 13 October 2017 subject to the following conditions:

- (1) No more than 25 seats to be provided for the café use at any one time. This includes seating to be provided indoors and outdoors on the site (including any alfresco areas).
- (2) The change of use approval is for a café only. If any other shop/retail use or other commercial use is proposed then a further development approval application will be required to be submitted for Council's consideration as to the suitability of the use and parking availability/requirements.
- (3) If the use of the site changes to a use that, in the opinion of the Chief Executive Officer, is a restaurant use then the submission of a fresh development approval application for Council's consideration will be required.
- (4) A separate planning application is required for any proposed signage in relation to the café. All signage is to comply with the Town's Local Planning Policy Design Guidelines – Signage.
- (5) The commercial building to be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours to the satisfaction of the Chief Executive Officer.
- (6) The premises must be inspected by Town's Environmental Health Officer prior to opening.
- (7) The works are to be constructed in conformity with the drawings and written information in relation to use accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (8) With regard to the plans submitted with respect to the building permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (9) The proposed use is not to be commenced until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (10) This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (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, should one be required, is to conform with the approved plans unless otherwise approved by Council.*
- (iii) *the approval does not include approval of any advertising signage. A separate development application for Council's consideration is required for any signage proposal.*

(CARRIED UNANIMOUSLY)



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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 7:01pm.

*I hereby certify that the Minutes of the ordinary meeting of the Town Planning & Building Committee of the Town of East Fremantle, held on 5 December 2017, Minute Book reference 1. to 14 were confirmed at the meeting of the Committee on:*

6 FEBRUARY 2018

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a long horizontal stroke.

Presiding Member