



# MINUTES

## Town Planning Committee

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### Tuesday, 3 April 2018 at 6.34pm

#### Disclaimer

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**MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING COMMITTEE HELD AT THE EAST FREMANTLE TOWN HALL, 135 CANNING HIGHWAY, EAST FREMANTLE ON TUESDAY 3 APRIL 2018.**

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

Presiding member opened the meeting at 6.34pm and welcomed members of the gallery.

**2. ACKNOWLEDGEMENT OF COUNTRY**

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

**3. RECORD OF ATTENDANCE**

**3.1 Attendance**

The following members were in attendance:

|                 |                  |
|-----------------|------------------|
| Cr C Collinson  | Presiding Member |
| Mayor J O'Neill |                  |
| Cr J Harrington |                  |
| Cr M McPhail    |                  |
| Cr D Nardi      |                  |
| Cr T Natale     |                  |
| Cr A White      |                  |

The following staff were in attendance:

|             |                                       |
|-------------|---------------------------------------|
| Mr A Malone | Executive Manager Regulatory Services |
| Ms J May    | Minute Secretary                      |

There were seven members of the public in the gallery.

**3.2 Apologies**

Nil.

**3.3 Leave of Absence**

Nil.

**4. MEMORANDUM OF OUTSTANDING BUSINESS**

Nil.

**5. DISCLOSURES OF INTEREST**

**5.1 Financial**

Nil.

**5.2 Proximity**

Nil.

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**5.3 Impartiality**

**5.3.1 Cr White – Item 11.5 Fortescue Street No 63**

As a consequence of the applicant for this project being a relative, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly.

**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 (6 March 2018)**

**8.1 OFFICER RECOMMENDATION**

Moved Cr M McPhail, seconded Cr Natale

That the minutes of the Town Planning and Building Committee meeting held on Tuesday 6 March 2018 be confirmed as a true and correct record of proceedings.

(CARRIED UNANIMOUSLY)

**9. ANNOUNCEMENTS BY THE PRESIDING MEMBER**

Nil.

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**10. REPORTS OF COMMITTEES**

**10.1 Community Design Advisory Committee**

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

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

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

**Attachments:** 1. Minutes of the Community Design Advisory Committee meeting held on 26 March 2018

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**PURPOSE**

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

**EXECUTIVE SUMMARY**

The Committee, at its meeting held on 26 March 2018, provided comment on planning applications listed for consideration at the March Town Planning Committee meeting and other applications to be considered in the future. Comments relating to applications have been replicated and addressed in the individual reports.

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

**10.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP010418**

**Moved Cr White, seconded Cr Harrington**

**That the Minutes of the Community Design Advisory Committee meeting held on 26 March 2018 be received.**

(CARRIED UNANIMOUSLY)



## 11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

### 11.1 Staton Road No. 73B (Lot 303) – Construction of Three Level Dwelling on Vacant Land

|                            |  |
|----------------------------|--|
| <b>Applicant</b>           | Private Horizons Planning Solutions                  |
| <b>Owner</b>               | K F MacDonald  |
| <b>File ref</b>            | P/STA73B; P083/17                                    |
| <b>Prepared by</b>         | Christine Catchpole, Planning Officer                |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Meeting date</b>        | 20 March 2018  |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil.   |

#### Purpose

This report considers a planning application for the construction of a three level single dwelling on vacant land at No. 73B (Lot 303) Staton Road, East Fremantle.

#### Executive Summary

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

- Street setback: less than the required 7.5 metres and 6.5 metres (incursions);
- Lot boundary setbacks: reduced setbacks to the rear, northern and southern boundary;
- Open space: less than the required 55%;
- Building height: external wall height exceeds 5.6 metres and top of pitch of roof exceeds 8.1 metres;
- Site works: excavation and fill greater than 500mm;
- Retaining walls: greater than 500mm and within 1 metre of the rear and side lot boundaries;
- Visual privacy setback: less than required for various habitable rooms and balcony;
- Solar access: exceeds 25% permitted;
- Roof pitch: less than the required 28°; and
- Front fence: marginally exceeds overall permitted height of 1.8 metres.

It is considered the above variations can be supported subject to conditions of planning approval being imposed to address the adjoining owner submissions where appropriate and residential amenity.

#### Background

The 450m<sup>2</sup> freehold lot to be developed has been vacant since 2005 and was created with a frontage to Staton Road. The subject lot was subdivided from two larger parent lots. The subdivision also comprised survey strata lots which have driveway access and a frontage to Preston Point Road. At the time of subdivision reciprocal rights of carriageway (driveway access) were registered on the Title of 56 Preston Point Road benefitting and allowing the owners of 73A and 73B Staton Road to access the rear of those lots from Preston Point Road. The survey strata lot fronting 56 Preston Point Road was later developed with three two storey grouped dwellings. These lots use the same driveway to access their garages. The application is proposing vehicular access from Preston Point Road to basement parking and only pedestrian access from Staton Road. The lot has no remaining vegetation.

The site slopes away from Staton Road and there is an approximately 3 metre level difference between the eastern and western lot boundaries. This fall of the land will enable the lot to be excavated for basement parking at the western end of the lot. Within the rear setback a vehicle reversing area will be

located under a concrete deck which will cover and mostly enclose this reversing area. The basement level will also contain a storage room, lift, gym, kitchenette, bathroom, toilet and large storeroom.

The ground level accessed from Staton Road will comprise two bedrooms, a theatre room, bathrooms, laundry, study and large storeroom. This level will also contain a pool and patio on the northern side of the lot and an artificially grassed area over the top of the vehicle reversing area. The third level will contain another bedroom and ensuite bathroom with the kitchen, living, dining and balcony areas positioned at the western end of the lot to gain access to views.

## Consultation

### Advertising

The application was advertised twice to those surrounding land owners considered impacted. The first round of advertising involved letters to land owners. This comment period resulted in four submissions being received which objected to the building height, boundary setbacks and listed impacts on privacy as a concern. Amended plans were prepared in response to the submissions and were subsequently advertised by letter to surrounding land owners inviting comment. Five (5) submissions were received after the amended plans were advertised. The submissions have been summarised below and the applicant's response has been provided in italics following each submission. An Officer response is also provided.

### Submission 1

- *"Request maximum set back from the boundary on all sides of the building to allow for light and airflow.*
- *Only to maximum height as my views, (south and southwest) will be considerably impacted and I am concerned with any portion of the proposed building that is over height and in excess of height restrictions.*
- *Overlooking balcony and windows – prefer open (glass) not block out screening to maximise airflow on hot days and limit view obstructions.*
- *The balcony and lounge room window boundary setbacks to comply within maximum boundary limits.*
- *My views will be considerably blocked so I am objecting to any part of the building that is over maximum height limit."*

### Response from Applicant

- *Air flow between the existing dwellings and the proposed dwelling is considered to be acceptable. Although the proposed dwelling seeks some minor side setback variations from the northern and southern boundaries, the resulting combined setbacks between the existing dwellings and proposed dwelling ensures more than ample separation for light and ventilation.*

*Momentarily excluding the proposed parapet wall on the southern boundary, the separation between buildings at the mid floor level varies from a minimum of 3.0m for the majority of the wall length, to 4.5m where the stair well light wells correspond opposite each other.*

*The northern boundary enjoys even greater building separation with the minimum distance between dwellings being 3.9m at their closest, increasing to 4.5m then separating to 8.4m at the pool courtyard. These separations arguably provide substantial light and ventilation. Furthermore, the location of the proposed dwelling is atop of a hill which affords generous breezes and winds direct from the ocean without impedance. Given the lots are orientated East West, exposure to the prevailing winds of the west coast and the 'Fremantle Doctor' ensures excellent natural ventilation to the subject site and adjoining dwellings.*

*With regards to provision of natural light, the adjoining northern dwellings will not be affected by the reduced side setback due to the sun trajectory from the north. The adjoining southern dwelling will experience some loss of direct natural light in the mid-winter months, but as there are no north facing windows in the northern wall of the adjoining southern dwelling's ground floor, other than the non-habitable stairwell, the reduction of direct sunlight will have negligible impact on the adjoining southern dwelling. The upper floor open balconies will not experience any loss of natural sunlight.*

- *The building height is compliant. The chimney does exceed the building height, but this is considered to be an architectural feature, and consists of minimal visual bulk. The adjoining southern dwelling has similar architectural features which like the proposed dwelling, enhances the visual aesthetics and design of the dwelling and poses no loss of views for surrounding properties.*
- *We are happy to maintain the balcony ends open to ensure maximum air flow and minimal visual blockage.*
- *A setback variation is proposed to the lounge room of the third level. The proposed setback is not dissimilar to the existing northern side setback of the adjoining southern dwelling in the same positioning. The intent of the reduced side setback is primarily for the following reasons:*
  - *The design of the dwelling is an English Manor / Federation style design with a bull nose verandah, limestone walls, decorative balustrade and tin roofing. Such a design requires all floors to be located directly upon one another for building symmetry.*
  - *The primarily internal and external living area of the dwelling is the third level lounge room and family room. Given this is the main private entertaining and living area, this area requires greater living space, and has thus proposed the northern side setback variation to provide the required space.*
  - *The proposed width of the dwelling is to maximise available river views which is why the subject lot was purchased by the current owner in the first place.*

*The proposed northern setback, as mentioned in previous comments above, will have no impact on the access to natural light and ventilation for the adjoining northern dwellings. The combined setback between the two buildings ensures this. There will be some building bulk impact, but this is unavoidable in any respect given the subject lot has been vacant for so long. Any construction of any dwelling on this lot will have this impact on the adjoining properties regardless of the proposed setbacks. Being used to a clear and open view will be impeded by any proposed development. Given the extent of amendments already made to this proposal to significantly reduce the building height and the extent of side setbacks, the current proposal is considered to be suitable for the locality, lot size, maintenance of surrounding dwellings existing views, and is consistent with the character and building bulk of the area.*

- *The proposed amended plans have ensured building height is now compliant. Any further reduction in height will require the deletion of the entire third level of the proposed dwelling. Given the building height is now compliant, we do not propose or endorse any further reduction in building height. We understand adjoining neighbours will lose some of their views, however as they have been afforded the luxury of overlooking a vacant lot for several years, this luxury was always going to be temporary until such a time the lot was developed.*

#### Officer's Response

The applicant's response is considered reasonable in regard to building setbacks and in the main the reduced setbacks are supported. Building height is compliant in respect to the portion of the building that is at natural ground level. Views will be obstructed with development of the vacant lot, however, two storey development is permitted in this Precinct and under the R-Code provisions. It is noted that views will be lost for the upper level apartment to the north simply because the new dwelling comprises three levels and views would be lost with any development greater than single storey.





The applicant has provided some relative levels of surrounding dwellings to assist in the assessment of impacts on views. Apartment windows on the property to the north are positioned approximately midway along the length of the proposed dwelling so a considerable section of the view corridor to the south and south west will be blocked because a large portion of the building will be positioned further westward of the windows. The sill height of the apartment windows is level with the guttering of the proposed dwelling so the view remaining will be over the proposed roof (i.e. a further 1.0 to 1.5 metres in height). The view corridor, more directly to the west, will remain but it will also be over the roof tops of the grouped dwellings on the lot fronting Preston Point Road and between dwellings. In summary, loss of views is unavoidable if anything other than a single storey dwelling is to be constructed.

It is noted that the construction of the visual privacy screens on balconies and windows would further impede views so at the request of the submitter screens will not be recommended to be installed as a condition of planning approval.

### Submission 2

- *"Concerns regarding a one car driveway. Up to eight (8) cars in use potentially increasing congestion, noise and disruption.*
- *Small turning circle on the driveway and this coupled with more vehicles will place extra pressure on an already confined area as there is no parking on nearby Preston Point Road.*
- *Another concern is the earth works and construction as the proposed dwelling is of a significant size and its impact on the structure of our home and land.*
- *The property and garage opens onto the driveway and the increased traffic in the driveway will have a greater impact on the ability (of owners, family and visitors) to navigate to and from the residence.*
- *Subdivision seemingly takes priority over the well-being of ratepayers affected by these changes.*
- *Alternate access plan with access to the proposed dwelling via Staton Road encouraged."*

### Response from Applicant

1. *The subdivision was designed and approved with the intent that multiple dwellings would be utilising the shared access way. The basis for this intent was to assist the streetscape of Staton Road to consist of attractive dwelling facades, and not dominated by garages and vehicles. We believe this intent has been successful.*
2. *The subdivision turning circle design has assumedly been designed and approved in accordance with Australian Standards. Restricting the location of a dwelling's garage based on an approved and established subdivision is not acceptable.*
3. *Earthworks are a necessary element of any construction. All reasonable care will be taken to ensure minimal disruption and inconvenience to surrounding neighbours. If there are concerns with potential structural damage to adjoining dwellings, it is suggested the owners of the dwellings engage independent engineers to undertake dilapidation assessments of their homes to record any potential damage that might result from the unavoidable earthworks.*
4. *The garage is setback 7.189m from the rear boundary of the subject lot, and incorporates a substantial reversing area to ensure all vehicles exiting the site are in a forward motion. This will ensure excellent sight lines of approaching vehicles are maintained. Providing no vehicles are parked in the shared access way, there will be no issue with the subject site utilising the right of way for the movement of their private vehicles, or the navigation and movement of the vehicles visiting or residing at the other dwellings that utilise the right of way.*
5. *The subdivision has been approved and established. The proposed dwelling is simply utilising its right to use the right of way in accordance with the approved subdivision design and intent.*



6. *The rear right of way is the preferred access due to it being the low point of the subject site, and it eliminates the garage façade within the Staton Road streetscape.*

Officer Response

The applicant's response is considered reasonable and adequately addresses the issues raised by the submitter. A legal right to use the driveway of 56 Preston Point Road exists and this was the intention of the subdivision. Manoeuvrability of vehicles within the proposed reversing area will be difficult but achievable and it is preferred that the vehicles enter Preston Point Road in a forward direction. The other matters regarding construction are addressed at Building Permit and construction phase by the builder.

Submission 3

- *"Concerned regarding the protection of views.*
- *Existing owners entitled to protections offered in Local Planning Scheme and the R-Codes.*
- *Owner requests assurances that the development complies with the height and setback stipulations in the aforementioned documents with no variations to ensure fairness and consistency across the immediate locality."*

Response from Applicant

1. *Views have been protected so far as they are able to be whilst building within the prescribed maximum building height. Substantial modifications have been made to the existing design to ensure the maximum building height is not exceeded, and that existing views are maintained as best as possible within the building height limits.*
2. *Noted: Owners alike, inclusive of the developing landowner and existing landowner are both offered protections within the Local Planning Scheme and R-Codes. Specific reference should be made to which part of the proposal the affected landowner is referring to.*
3. *As stated in the previous two submission responses, building height is compliant.*

Officer Response

The applicant's response is considered reasonable and addresses the issue raised by the submitter adequately. The applicant has provided some relative levels of surrounding dwellings to assist in the assessment of impacts on views. The levels provided are discussed in more detail in the 'Statutory Assessment' section of the report, however, in summary the levels provided indicate that views from the properties on the other side of Staton Road will be available over the roof of the proposed dwelling from a raised verandah (6 Fraser Street) and the second level of a new dwelling (70 Staton Road).

Submission 4

- *"Zero setback for the south eastern part of the development - repeated concern from original submission (Requests 1.5m). Objects to building's non-compliance with minimum setback requirements.*
- *West facing window of Bedroom 1 - overlooks directly into habitable rooms on both levels.*
- *Requests a shifting back of the building further from the boundary line."*

Response from Applicant

1. *The proposed southern parapet wall for bedroom 1 will have minimal impact on the adjoining southern dwelling. The parapet wall will be built behind the existing limestone boundary wall which will provide visual relief through setback and texture articulation. The parapet wall will largely be adjacent to the blank northern wall of the adjoining southern dwelling thus creating no impact on an adjoining room or outdoor habitable area.*

*The wall will be in part, adjacent to the front verandah of the southern dwelling. We do not believe the proposed parapet will have any detrimental impact on the verandah as it is considered to be a symmetry design feature of the dwelling's façade. The front verandah is not used as a habitable*

*outdoor living area, as all the outdoor living area is utilised at the rear of the dwelling on the balconies overlooking the river.*

*The proposed parapet wall is in line with the existing ground floor and upper floor front setback of the adjoining southern dwelling and will therefore have no impact on the streetscape either.*

2. *The west facing window in bedroom 1 is approximately 8.5m from the nearest habitable room window of the adjoining southern dwelling. Noted the window does overlook the northern side boundary of the adjoining southern lot, however as this northern side consists of minimum side setbacks, a blank north facing wall and comprises of no outdoor habitable area, the northern side of this dwelling is considered to have the lesser need for visual privacy protection. The subject window has been proposed in this position to make the most of river glimpses available between the two dwellings.*
3. *The proposed 1.52m southern side setback is considered to be a minor variation. As stated in response to submission 1 above, the proposed southern side setback does not hamper nor restrict natural light and ventilation to the adjoining southern dwelling. The proposed dwelling is merely seeking a setback identical to the northern side setback of the adjoining southern dwelling. The impact and visual bulk created by the proposed dwelling compared to the existing adjoining southern dwelling is also near identical.*

#### Officer Response

The applicant's response is not considered to address the concerns of the submitter with respect to the nil setback proposed and the overlooking concerns. Conditions are recommended in regard to the setback for bedroom 1 being increased to comply with the R-Codes and the visual privacy screening of the bedroom window to comply with R-Code requirements. This is discussed further in the 'Statutory Assessment' section of the report. It should be noted it may not be necessary for the screening condition to be applied if the window is removed to achieve compliance with the required setback under the R-Codes.

#### Submission 5

*"With regards to the proposed three level development at the subject site, we would like to object to the height of the dwelling proposed due to adverse impacts to our uninterrupted views of significance which we have enjoyed over the years. We believe that the proposal is not consistent with the existing streetscape and height alignment of dwellings and will detract from the amenity of the neighbourhood. We would like to note that there have been previous proposals for the site of similar nature that has been refused by the Town."*

#### Response from Applicant

1. *The proposed dwelling, whilst partially obstructing the views of the adjacent neighbour on the eastern side of Staton Road, is within the maximum prescribed building height stipulated by the Town of East Fremantle and the R-Codes.*
2. *Building height was reduced to appease the neighbours initial concerns and objections. Building is now compliant with height.*
3. *The initial proposed building height was substantially higher than the current revised proposal. The current modified version will still afford substantial views over their rooftop for the objecting neighbour, whilst not exceeding the maximum building height on the subject site.*
4. *The adjacent eastern neighbour are on an elevated site with an elevated building, ensuring significant views will still be achieved. Please see attached photo demonstrating the height advantage the adjacent eastern dwelling has over the subject site.*
5. *With further reference to the attached photo, the adjacent neighbour have complained about the loss of their views, yet they have installed substantially block out blinds along the full length of their western elevation which obscures their entire view.*



6. *The adjacent eastern neighbour has been fortunate enough to enjoy substantial views over the subject vacant lot for an extended period of time, to the point they have become accustomed to such ongoing views. However the owner of the adjacent lot has always been aware that the subject site would eventually be redeveloped, and redeveloped in such a way to maximise the views available to the owner of the subject site.*
7. *The adjacent eastern neighbour had the opportunity to purchase the subject and impose a height covenant on the site to ensure their views were always maintained. The objecting neighbour did not utilise this opportunity.*
8. *Whilst the objecting neighbour is correct in their statement that the proposed dwelling is 3 storey, in effect, the Staton Road frontage is that of a single storey dwelling only, and a very modest single storey dwelling at that. We bring your attention to the attached elevation plans that clearly show a single storey Staton Road frontage which increases to a split level dwelling half way down the lot. Even at this point where the building height increases, the impact on the eastern neighbour is only very marginal as a shallow low pitched roof rises slightly above the roof pitch of the front single storey portion. This clearly demonstrates the most minimal of view impact for any development proposed on the subject site.*
9. *The owner of the subject site could have built substantially higher at the Staton Rd frontage, impacted the adjoining eastern neighbour's view significantly, and still complied with the maximum building height. This configuration has not been proposed as we are aware of the neighbour's views and have done all we have been able to do to ensure the majority of their view is maintained and uninterrupted.*
10. *Their argument of streetscape is without founding. As the attached streetscape elevation successfully demonstrates the existing streetscape design, height and architecture is maintained without fault. Furthermore, the proposed dwelling is to be constructed in classic East Fremantle style of limestone and Federation influences. Much in the same style as that of the home of the objecting neighbour across the road.*

#### Officer Response

The applicant's response is considered reasonable and addresses the issue raised by the submitter adequately. The proposal is consistent with the Staton Road streetscape and in effect presents as a single storey development from this perspective. The Town has no record of any other development application for development of this lot being considered. The previous house was demolished c2005.

The applicant has provided some relative levels of surrounding dwellings to assist in the assessment of impacts on views. The levels provided are further discussed in the 'Statutory Assessment' section of the report, however, in summary the levels provided indicate that views from the properties on the other side of Staton Road will be available over the roof of the proposed dwelling from a raised verandah (6 Fraser Street) and the second level of a new dwelling (70 Staton Road).

#### Community Design Advisory Committee (CDAC)

This application was considered by the CDAC at its meeting on 4 September 2017. The Committee's comments were recorded as follows:

#### Terms of reference:

##### *(a) The overall built form merits;*

- The committee considers the proposal has limited built form merit and that it has poor internal design. In particular relating to solar access and overlooking by adjoining neighbours.
- There is insufficient material and lack of detail on the plans, particularly relating to the elevations and front fence, which should be designed to comply with Council's Fencing Policy.

- 
- (b) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development;*
- No comment.
- (c) *The relationship with and impact on the broader public realm and streetscape;*
- The overall streetscape is consistent with the overall character of the area.
- (d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
- No comment.
- (e) *The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;*
- No comment.
- (f) *The demonstration of other qualities of best practice urban design including “Crime Prevention” Through Environmental Design performance, protection of important view corridors and lively civic places.*
- No comment.

The applicant’s response is as follows:

*Thank you for your feedback re the construction of the dwelling at 73B Staton Road East Fremantle which when completed will be our home. The brief for the design and layout of the house was to be ‘Traditional Old World Charm’ and true to the heritage of the area. It is to incorporate comfortable, modern, convenient living. We were very conscious that the design of the home be completely at ease with the neighbourhood and the community style in general. Traditional homes are not pretentious and are completely at ease in most communities especially East Fremantle.*

*Solar access was a consideration when designing the house. The design has incorporated easements on each side of the house, north and south, which enable either neighbour’s properties solar access. This was a consideration not only for the neighbours but also for us. Each neighbouring property is of considerable height and therefore has the potential to restrict the solar access on our house. These properties do not have any easements for solar access.*

*A true passive solar designed home is unsustainable due to the amount of overshadowing by the neighbouring dwellings unbroken bulk and height, we have designed with this in mind for the best possible outcome for the neighbouring dwellings and also our house.*

*The layout of the house is a traditional layout having a long passage with rooms off the passage and opening up to a larger family/living area. This is reminiscent for turn of the century houses that may have had an extension at a later stage. The floors will be timber and finishes will be of a traditional nature such as skirtings, picture rails and traditional mouldings.*

*The external of the house will be double brick with random limestone cladding paired with recycled brick an iron roof and verandah. This is a very common look in the East Fremantle area and one that builds on the heritage of the area. The front fence will complement the house and is to be of the same material and appearance.*

*In order to provide more context to the plans we have attached photographic examples of the external limestone finish and recycled brick paving. Additionally, we have attached photographs of homes around Perth (including East Fremantle) from which we have taken inspiration. Hopefully these photographs provide more context to those viewing our plans.*

The amended plans were also referred to the CDAC meeting of 5 February 2018. The Committee made no further comment on the revised proposal or amended plans dated 15 December 2017.

### **Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

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

### **Policy Implications**

*Town of East Fremantle Residential Design Guidelines 2016 (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**

January 2018

### Comment

LPS 3 Zoning: Residential R12.5

Site area: 450m<sup>2</sup>

### Statutory Assessment

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

|                                   |                |
|-----------------------------------|----------------|
| Legend<br>(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   | 6.0m   | D      |
| Street Front Setback<br>(minor incursions) | 6.5m   | 4.5m – 7.0m  | D      |
| Lot Boundary Setback                       | Rear (west) - 6.0m<br><br>Side (north) - 1.5m (GF)<br>Side (north) - 2.8m (UF)<br>Side (north) - 3.8m (UF)<br><br>Side (south) - 1.5m (GF)<br>Side (south) - 3.8m (GF)<br>Side (south) - 5.2m (UF)<br><br>Basement - 1.0m – 1.5m<br>Rear deck - 1.0m | 5.8m - 5.9m<br><br>1.02m (GF)<br>1.52m (UF)<br>1.52m (UF)<br><br>Nil (GF)<br>1.52m - 2.0m (GF)<br>1.52 - 2.0m (UF)<br><br>Nil<br>Nil | D      |
| Open Space                                 | 55%  | 53.5%  | D      |
| Outdoor Living                             | No minimum   | Decked area and balcony ~25m <sup>2</sup><br>each<br>Pool area ~35m <sup>2</sup>   | A      |
| Car Parking                                | 2  | >2   | A      |
| Site Works<br>Excavation/Fill              | Less than 500mm  | Up to 2.4m excavation<br>900mm fill  | D      |
| Retaining Walls                            | Greater than 500mm and<br>closer than 1m from lot<br>boundary  | >500mm and setbacks vary<br>Nil (rear)<br>2.4m (north)<br>2.4m – 5m (south)  | D      |
| Overshadowing                              | 25%  | 35.7%  | D      |
| Drainage                                   | On-site  | On-site  | A      |
| Visual Privacy Setback                     | Balcony – 7.5m<br>Kitchen – 6.0m<br>Lounge/Family – 6.0m<br>Dining – 6.0m<br>Theatre – 6.0m<br>Bedroom 1 – 4.5m<br>Bedroom 2 – 4.5m  | 1.02m - 4.8m<br>1.52m<br>1.02m<br>1.52m<br>1.52m<br>1m – 2m<br>1.02m   | D      |

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                                      | D        |
| 3.7.5 Demolition                                      | N/A      |
| <b>3.7.6 Construction of New Buildings</b>            | <b>D</b> |
| <b>3.7.7 Building Setbacks and Orientation</b>        | <b>D</b> |
| <b>3.7.8 Roof Form and Pitch</b>                      | <b>D</b> |
| 3.7.9 Materials and Colours                           | A        |
| 3.7.10 Landscaping                                    | A        |
| <b>3.7.11 Front Fences</b>                            | <b>D</b> |
| 3.7.12 Pergolas                                       | N/A      |
| 3.7.13 Incidental Development Requirements            | A        |
| 3.7.14 Footpaths and Crossovers                       | A        |
| 3.7.18.3 Garages, Carports and Outbuildings           | A        |
| 3.7.15-20 Precinct Requirements                       | A        |

| Building Height Requirement   | Required    | Proposed    | Status |
|---|-------------|-------------|--------|
| Building Height (wall) (Residential Design Guidelines)              | 5.6m        | 3.1m – 7.7m | D      |
| Building Height (top of roof pitch) (Residential Design Guidelines) | Staton Road | 4.4m        | A      |
|   | South       | 5.3m - 8.1m | A      |
|   | North       | 5.0m - 7.7m | A      |
|   | West        | 10.2m       | D      |

There are a number of variations to the R-Codes and the Residential Design Guidelines most of which are a result of the R12.5 provisions being applied to a smaller lot area the equivalent of a density code of R20 (i.e. 450m<sup>2</sup> lot area). These matters and those raised by adjoining land owners through submissions are discussed below.

Street setback

The primary street setback of the dwelling is not compliant with the 7.5 metre setback required under the R-Codes. A setback of a slightly lesser distance of 6 metres is proposed for the main façade and 4.5 metres for the verandah. The R-Codes allow for minor incursions into the setback for structures such as verandahs, stairs and architectural features but these elements cannot protrude more than 1.0 metre into the setback area without Council approval.

In this case a portion of the front façade is within the 7.5 metre setback area. There are no objections to the proposed setback given it is not out of character with the streetscape and considered to comply with the 'Design principles' of the R-Codes in that it is setback an appropriate distance to ensure maintenance of the established character, privacy and open space, accommodates utilities and landscaping and allows for services.

The proposed development essentially presents as a single storey house from the primary streetscape (i.e. Staton Road) so the size and scale of the dwelling is considered appropriate. Minor projections such as the verandah do not detract from the streetscape, the façade is articulated and is considered to contribute positively to the streetscape and is not contrary to the development context of the area. The reduced street setback is therefore supported.



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Lot boundary setbacks

The lot boundary setbacks of the dwelling do not comply in respect to all side lot boundaries. This is not unexpected on a lot that is only 12.8 metres wide. Redevelopment of small narrow lots on which large family homes are constructed and views maximised results in walls which require greater setbacks from the side boundaries even where there are no major openings. This is the case with this application. Various sections of the wall have been setback in an attempt to minimise bulk and most major openings face north or west along the boundary where the building has a greater setback. Some sections of the walls comply with the prescribed setbacks and other sections do not. The details of the variations and conditions imposed are discussed below.

*Rear (western boundary)*

The non-compliance with the rear setback is marginal (in respect to the ground and upper floors) being only slightly less than the required 6.0 metres at 5.8 - 5.9 metres and is not considered to be of any significance. Adjoining land owners have not objected to the reduced setback with respect to the dwelling itself. The basement/undercroft reversing area has a nil setback and although the walls on the rear boundary are of a significant height they abut walls of a similar height and length and are therefore considered to have minimal impact on the amenity of the adjoining site.

*Southern boundary*

The setback on the southern boundary does not meet the R-Code requirements with the exception of the middle section of this elevation. The dwelling is setback for the most part 1.52 metres with some sections slightly greater at 2.0 metres and one other section with a nil setback (bedroom). This is somewhat less than required for the ground level (i.e. 1.5m - 3.8m) and the upper level (i.e. 5.2m). The reason being that the sloping site and narrowness of the lot has increased the wall height and that combined with lengthy side walls with major openings has resulted in considerable setback distances being applicable for the upper storey. These setbacks are often not achievable with these site circumstances and multi-level dwellings. The adjoining owner has been consulted in relation to the reduced side setbacks and has not objected to the setbacks proposed with the exception of a section of wall towards the front of the dwelling which has a proposed nil setback (bedroom 1).

The adjoining owner has requested that this section of wall be set back the minimum distance required under the R-Codes. The neighbour is of the view that the reduced setback impacts on the amenity of the property and in particular the outlook from the front verandah area. In this circumstance and for that reason it is considered appropriate for the setback to be a minimum of 1.0 metre from the southern boundary. The reduction in room size will not have a detrimental impact on the bedroom size (i.e. 5.5m x 4.5m proposed with a substantial separate walk in robe and bathroom), however, a nil setback and sizeable blank wall 3.7 – 4.2 metres above natural ground level in this location will have an impact on the outlook from the front verandah of the lot to the south. It is therefore recommended that the applicant be required to set back this section of wall. A condition is recommended requiring the applicant to provide a setback for bedroom 1 of at least 1.0 metre.

Notwithstanding the recommended setback for bedroom 1 the setback distances are not considered to contribute significantly to the scale of the dwelling in proportion to the lot size or to be out of character with other new dwellings in the vicinity and are therefore supported.

*Northern boundary*

The setback of the northern side of the building is mostly compliant with the exception of a section of the wall where the wall height is greater at the western end of the dwelling requiring a greater setback. The required setback being 1.5 – 3.8 metres; the proposed setback is 1.02 metres. This is considered to be supportable in respect to this elevation, however, an adjoining owner has objected to reduced setbacks on the basis that it will impede views, light and air circulation. The latter is not considered to be an issue because there is adequate space between the buildings for light and air circulation. As

discussed earlier, in respect to significant views being impeded this is more so because the redevelopment of the lot will result in a two storey development, rather than the setback of the building. The adjoining owner has had views because the lot has been vacant for a considerable number of years so views to the south and south west were possible. Maintaining views is also the reason the adjoining owner has requested that no visual privacy screening be installed to address the non-compliance with visual privacy for major openings and the balcony on the second level. This is considered a reasonable request so no conditions are recommended in that regard.

With regard to the overall setback variations the 'Design Principles' of the R-Codes are considered satisfied in that the building does not unnecessarily contribute to building bulk on the adjoining lot (given two storey development is permitted in the Precinct), provides for adequate sun and ventilation to open spaces and overshadowing is primarily over a dwelling which occupies a similar proportion of the adjoining lot with outdoor habitable spaces being primarily balconies/deck areas.

#### Retaining walls and site works

The proposed excavation (up to 2.4m) of the rear of the lot is outside the parameters of the R-Codes. The applicant is excavating the rear of the site to accommodate basement car parking, reversing areas, a lift and other amenities as well as utilising the access to parking from Preston Point Road. This is not considered to impact on the amenity of the adjoining sites and can be supported. The area of fill (900mm) toward the front of the site is to enable the entry and ground floor levels to match. The retaining walls are therefore closer to the rear and side boundaries than permitted under the R-Codes. The excavation work in fact reduces the height of the building and therefore the retaining is supported. The 'Design principles' are considered satisfied in that the excavation/fill respects the natural ground level at the lot boundary of the site as viewed from the street.

#### Building height

The R-Code provisions in respect to building height are substituted by the height control under the Residential Design Guidelines. Clause 3.7.15.4.1.3 states that:

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

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

In the main the overall building height limit of the dwelling is compliant (8.1m limit; 4.4m – 7.7m proposed to the top of the pitched roof) from the eastern, northern and southern perspectives. The amended set of plans reduced the height from that initially proposed to address the concerns of neighbours regarding views being obstructed. However, as discussed above, the excavation at the rear of the site increases the building height limit and from a western perspective the height is exceeded (i.e. top of wall 9.0 metres and 10.2 metres to top of a pitched roof). Views are not impeded from this perspective. It should be noted that significant excavation at this end of the site has resulted in a lowering of the original ground level so the building remains below the height limit of 8.1 metres from natural ground level.

Non-compliance with the external wall and pitch of roof height limits at the western end of the dwelling must be assessed in respect to the 'Performance Criteria' of the Residential Design Guidelines. The submissions from the property owners relating to height are addressed as follows:

Primarily submissions from the eastern side of Staton Road and to the north relate to obstruction of views. In response to the submissions the following points are made:

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

- The proposed dwelling in the main sits within the 'building envelope' as determined by the R-Codes and the Residential Design Guidelines. That is, over the length of the site the building ranges in height from single to three storey but is within the building height limits from natural ground level and the perspective that impacts views;
- Two storey development is permitted in the Richmond Precinct. There are no provisions or restrictions limiting new dwelling development to single storey and there are in fact many new two storey developments in the area;
- The overall height of the dwelling as a whole is compliant (i.e. height mostly ranging between 5.0m – 8.1m (excavated portion 2.4m lower than ground floor increases in height to 10.2m at the western end of the lot. Natural ground level was originally higher through this section of the site). The proposed fill of 900mm toward the front of the lot (where the building height is compliant) in respect to the R-Code 'Deemed to Comply' does not result in that part of the building being over height;
- The dwelling is considered to satisfy Clause 3.7.4.2 (Site Works) of the Residential Design Guidelines in that *where new development is on a significant slope (degree of slope not defined in the Guidelines) the floor level of the proposed dwelling shall be the average height of the ground floor levels of the two adjacent dwellings*. The floor level of the new dwelling is only marginally higher than that of the dwelling to the south and substantially lower than the block of flats to the north as demonstrated in the elevations (Dwg No. STTN005P/1), so it 'sits' comfortably in the streetscape; and
- The non-compliance with the external wall height (3.1m – 7.7m) on one part of the lot (as a result of excavation) is inconsequential in relation to the scale and bulk of the overall development as the dwelling sits well within the building constraints applying to the site if the existing (natural) ground level had been maintained and excavation for the basement level not undertaken.

*Loss of Views*

Clause 3.7.15.4.1.3 states that *where views are an important part of the amenity of the area and neighbours' existing views are to be affected, amongst other things, the following matters are to be considered:*

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

Points (i) to (iii) in this instance are considered satisfied. The proposed dwelling is not out of character with the area. Many other homes in the Precinct, including adjacent houses are two storey. Whilst the dwelling has not been designed to fit entirely within the parameters of the building envelope, prescribed by the R-Codes and the Residential Design Guidelines (non-compliance with lot boundary setbacks), it is of a scale that is similar to other new houses in the area and in particular the neighbouring dwelling and residence under construction on the opposite side of the road. Solar access

is not considered an issue (although non-compliant at 35.7%) the overshadowing occurs mostly over the house to the south and the only potential privacy consideration that requires an amendment to the plans is bedroom 1 (as discussed below). It is, however, noted that one of the submissions requests that a privacy screen not be installed in order to maintain views. The proposed design of the dwelling is consistent with the prevailing height and finished floor levels of other developments in the street (as indicated on the plan STTN005P/1) and is not considered to be of any greater scale and bulk than that of any of the residences in the immediate vicinity.

The applicant has submitted a revised version of the plans to primarily address over height issues. There have been three submissions from adjacent and nearby land owners on the loss of part of their views. The views impacted are toward the river and port.

Whilst the Residential Design Guidelines 'Acceptable Development Provisions' take views into account in the overall assessment of the application the protection of every aspect of a private view cannot be guaranteed regardless of whether the views preexisted a site being redeveloped. The development provisions in place at a particular time apply to all landowners. Each case needs to be based on its merits and the technical assessment of the application in respect to the current residential development policies. The provision in the Residential Design Guidelines which addresses the issue of views specifically states that where views are to be affected then the issue of building height is one of the considerations. The Guidelines, however, do not specify that the height of the building is to be controlled or determined on the basis of protecting existing views of surrounding land owners. There are no provisions which state the building must be single storey or designed so as not to block or limit existing views of current residents. The Guidelines and the R-Codes would allow for a dwelling on this lot to be constructed that is of greater height toward the middle section of the lot and the Staton Road end and still be compliant with the R-Codes and Guidelines.

The applicant has also provided further information regarding floor levels of adjoining dwellings in order to assist in the assessment of the impact on views. It should be noted this specific information cannot be verified by the Town and the commentary on the impact on views is the applicant's opinion:

- *"The verandah level (floor level of 23.09) of 6 Fraser Street (opposite subject site) is substantially higher than the gutter line of the top of the floor of the proposed dwelling. A person standing on the verandah will have a clear and uninterrupted view over the roof top of 73B Staton Road.*
- *The ground floor pad of 70 Staton Road (opposite subject site and currently under construction) will be higher than the verandah level of 6 Fraser Street and will therefore have uninterrupted views directly over the roof top of 73B Staton Road.*
- *The window sill of the upper floor of the northern apartment is just below the gutter line of the of the proposed dwelling's roof top. The views from this apartment window will be substantially retained. The lower apartment will lose their direct views over the subject site. This is unfortunately unavoidable regardless of any development on the subject site."*

The above comments have been discussed in greater detail earlier in the report in response to the submissions. In summary, the existing views through the vacant site cannot be retained with any form of redevelopment of the site. In particular, two storey development on this lot will substantially change the outlook for landowners on the opposite side of Staton Road and that of residents of the apartments to the north. From the perspective of the submitters some views will be retained, albeit not to the same extent, but as discussed the Guidelines do not require that every aspect of a view be preserved. The proposed wall and roof ridge heights are therefore supported (including chimney) as the non-compliance is not considered to detrimentally affect the amenity of the adjoining sites to a level that is not reasonable in respect to the redevelopment of the site within allowable parameters.

Also, the proposed floor levels of the dwelling are not inconsistent with the finished floor level of the dwelling to the south and the height does not dominate the streetscape given the apartment block to the north is between two and three levels in height and on higher ground. From a Staton Road perspective the dwelling appears as single storey. Given the existing site levels and topography it is considered appropriate to grant discretions in regard to the wall/roof pitch height (western perspective) and the chimney exceeding the height limits.

In this case, in respect to overall building height it is considered there are no grounds to refuse the application as the requirements (Design Principles and the Performance Criteria) of the R-Codes and the Residential Design Guidelines are satisfied.

#### Visual privacy

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

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

The proposed development does not comply with the 'Deemed to Comply' provisions of the R-Codes for a number of habitable rooms on the western, northern and southern boundaries and the balcony due to the narrow width of the lot and the aim to maximise views. This has been discussed in detail above, however, the 'Design Provisions' of 5.4.1 allows for:

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

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

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 the screening measures for bedroom 1 are applied. This will also address the concerns of the adjoining owner. However, if Council determines to apply the condition requiring the increased setback from the side boundary for bedroom 1 then screening of this window may no longer be required, if it is no longer large enough to be classified as a major opening, or it is deleted from the plans. The other aspects of visual privacy non-compliance have not been identified as requiring screening by the adjoining landowners as to do so would obstruct their views, so they have requested no screening be installed.

#### Open space

Open space is marginally less than the 55% of the site area required under the R-Codes being 53.5%. This has resulted because the lot area is only 450m<sup>2</sup>. A lot of this size in an R20 coded area would require 50% open space. In this circumstance the minor non-compliance is considered acceptable as

the minimum area for outdoor living (30m<sup>2</sup>) and the percentage of open space required under a R20 code can be provided and there is a front garden and side setback areas which will be landscaped. A pool, balcony and deck area also provide outdoor living/recreation areas. The lot has been cleared of all vegetation and trees so planting within any of the open space areas will be an improvement to the current situation.

#### Solar access - overshadowing

Overshadowing greater than that permitted under the R-Codes, will occur on the property to the south (i.e. permitted 25%; proposed 35.7%). The adjoining owners have not objected because the majority of the overshadowing will occur over the roof of the house. A raised deck area will be in shadow for a small portion of time. The non-compliance and additional overshadowing can therefore be supported.

#### Front fence

The proposed front fence does not strictly comply with the requirements of the Residential Design Guidelines in that it is over height within the front setback area. In the main the fence complies, however, in this circumstance due to the slope of the land the southern portion of the fence is slightly higher than 1.8 metres at approximately 2.0 metres in height. Also, a solid fence exists along the southern side boundary between the two properties for privacy and it is therefore considered acceptable for this situation to be maintained. A condition of approval is recommended only to ensure that the visual permeability of the fence as proposed is constructed and maintained for the Staton Road frontage.

#### Roof pitch

The non-compliance with the roof pitch (i.e. ~16 - 25° rather than the minimum of 28°) is considered desirable in this case because it assists in reducing the overall height of the dwelling and consistency with other roof forms in the area is not necessary due to the variation in the design of modern housing. This is a preferable outcome because a submission (dwelling to the north) has been received which comments on wishing to preserve as much of a view as possible. The site will be excavated thereby lowering the overall height of the dwelling and providing for the basement parking which is also a better outcome for the Staton Road streetscape perspective. Minimising the overall height of the proposed dwelling will result in the finished height of the dwelling sitting more comfortably between the adjoining residential buildings as far as the streetscape is concerned.

#### Vehicle access

When the lot was subdivided access to the rear of the lot was created from Preston Point Road. The three owners of 56 Preston Point Road would have been aware of this when they purchased the properties because it is clearly indicated on the Certificate of Title that the owners of 73A and 73B Staton Road could use that driveway to access their properties, therefore, there is no objection to the proposed access to basement parking from the rear of the site and there is no regulation which can prevent it.

It is considered acceptable for the vehicle parking to be accessed in the above manner and for parking to be accommodated in a screened area at the rear of the lot. It is therefore not considered necessary that further vehicle parking be provided in the front setback area on Staton Road. It is noted that a large sliding gate is incorporated in the proposed front fence and has been indicated on the plan, however, the provision of further vehicle parking in the front setback area is not supported and a condition of planning approval is recommended which addresses this issue.

#### Approval for single dwelling

It is noted this dwelling could potentially function with two separate living quarters under the one roof, with separate and secure private access via the lift from the garage to the upper levels. A section of the

basement with separate access from the garage and driveway to Preston Point Road could function as a separate and independent living area. If the owners wish to use the property for ancillary, short term or bed and breakfast accommodation a separate application to Council for its consideration will be required for these uses. However, a separate street number (i.e. address) for the property will not be issued by the Town as the development approval is for a single dwelling only, as permitted under a density code of R12.5. A footnote in this regard is recommended.

### Conclusion

Given the above comments the application is recommended for approval subject to conditions. The redevelopment of the lot for a three level single dwelling is a permitted use of the land under the R12.5 code applicable to the area and is not considered to detrimentally impact the amenity of the surrounding area.

- Mr Di Nunzio (representing owners of 73A Staton Road) addressed the meeting requesting no relaxation of the southern setback requirement of 1.5 metres be granted.
- Mr McCarthy (applicant for 73B Staton Road) addressed the meeting in support of the officer's recommendation, including the one metre setback to the southern boundary.

### 11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION 020418

Moved Cr White, seconded Cr Nardi

That Council exercise discretion in granting development approval to vary:

- Clause 5.1.2 – Street Setback of the Residential Design Codes of WA to permit a street setback of less than 7.5 metres and minor incursions of less than 6.5 metres;
- Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to permit a rear lot boundary setback of less than 6 metres, 1.5 metres (ground floor north) and 3.8 metres (upper floor north), 1.5 metres and 3.8 metres (ground floor south) and 5.2 metres (upper floor south);
- Clause 5.1.4 - Open Space of the Residential Design Codes of WA to permit less than 55% open space on site;
- Clause 5.3.7 - Site Works of the Residential Design Codes of WA to allow excavation and fill greater than 0.5 metres behind a street setback line and within 1.0 metre of a lot boundary;
- 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;
- Clause 5.4.1 – Visual Privacy of the Residential Design Codes of WA to permit a visual privacy setback for the balcony, lounge/family/dining room/theatre and bedroom 2 of less than 7.5 metres, 6.0 metres and 4.5 metres respectively from the side boundaries;
- 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;
- Clause 3.7.8.3 – Roof Form and Pitch of the Residential Design Guidelines 2016 to allow a roof pitch of less than 28°;
- Clause 3.7.11.5 – Front Fences of the Residential Design Guidelines 2016 to allow a front fence to exceed 1.8 metres in overall height in the front setback area; and
- Clause 3.7.15.4.1 – Building Height, Form, Scale and Bulk of the Residential Design Guidelines 2016 to permit the building wall height to exceed 5.6 metres to the top of an external wall and the overall height to exceed 8.1 metres to the top of a pitched roof,

for a three level single dwelling at No. 73B (Lot 303) Staton Road, East Fremantle, in accordance with the plans date stamped received on 15 December 2017, 31 January and 26 February 2018, subject to the following conditions:

- (1) The setback of bedroom 1 (southern elevation) is to be no less than 1.0 metre from the



- southern boundary. The amended setback to be indicated on the plans submitted with the Building Permit application to the satisfaction of the Chief Executive Officer;
- (2) The permanent installation of a fixed privacy screen or screening film on the bedroom 1 window (western elevation) in accordance with 'Deemed to Comply' clause C1.2 of the Residential Design Codes of WA. The detail to be to the satisfaction of the Chief Executive Officer and indicated on the plans submitted with the Building Permit application.
  - (3) No external fixtures, fittings or appliances to be installed on the roof of the dwelling without further Council approval.
  - (4) Fencing on the Staton Road street frontage of the lot to be in compliance with the Residential Design Guidelines 2016 with the exception of the overall height of the fence on the front boundary and the fencing on the side boundaries (existing). The height of fencing in the street setback area is not to exceed the overall height indicated on the plans dated 15 December 2017.
  - (5) No vehicle parking is permitted in the Staton Road front setback area.
  - (6) If requested by Council within the first two years following installation, the Colorbond 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.
  - (7) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
  - (8) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  - (9) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
  - (10) All 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.
  - (11) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
  - (12) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
  - (13) 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) *If use of the property for ancillary, short term or bed and breakfast accommodation is contemplated a separate development application for Council's consideration is required to be submitted. A separate street number (i.e. address) for the property will not be issued by the Town.*





- (ii) It should be noted that Council will not support vehicle parking in the Staton Road front setback area. Any proposed use of the front setback area for this purpose will be subject to the submission of a development approval application for Council's consideration.*
- (iii) This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (iv) 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.*
- (v) 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.*
- (vi) 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).*
- (vii) Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (viii) Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – "An Installers Guide to Air Conditioner Noise".*

(CARRIED UNANIMOUSLY)

Note:

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

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**11.2 Alexandra Road No. 53 (Lot 200) – Construction of Two Storey Grouped Dwelling and Alterations and Additions to Existing Dwelling**

|                            |  |
|----------------------------|--|
| <b>Applicant/Owner</b>     | J Boston   |
| <b>File ref</b>            | P/ALE53; P006/2018                                   |
| <b>Prepared by</b>         | Christine Catchpole, Planning Officer                |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Meeting date</b>        | 3 April 2018   |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil.   |

**Purpose**

This report considers a development application for the construction of a two storey grouped dwelling and alterations and additions to the existing dwelling located on a corner lot at No. 53 (Lot 200) Alexandra Road, East Fremantle.

**Executive Summary**

The applicant is proposing the construction of a two storey grouped dwelling and alterations and additions to the existing dwelling located on a corner lot. The lot is the subject of a survey strata subdivision under the corner lot density bonus provision of the Planning Scheme. Two lots will be created; the two storey grouped dwelling will be constructed on the western section of the lot (Lot 2 - 445m<sup>2</sup>) and the original dwelling will be retained, renovated and extended on the remaining portion of the lot (Lot 1 - 503m<sup>2</sup>). The WAPC conditionally approved the survey strata subdivision on 14 February 2018.

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

- Dwelling density: corner lot density bonus at R20 development standards;
- Street setback: non-compliance with street setback;
- Lot boundary setbacks: non-compliance with southern boundary (additions to original dwelling);
- Crossover width; and
- Garage width: exceeds 30% of lot frontage.

It is considered the above variations can be supported subject to conditions of planning approval being imposed to ensure, the 'openness' of the streetscape and compliance with Council policy.

**Background**

The 948m<sup>2</sup> lot on the south west corner of Alexandra Road and Salvado Avenue is intended to be partly redeveloped. At present the original single storey dwelling is located toward the Alexandra Road frontage of the lot. The applicant has already been granted development approval for alterations and additions to this property (i.e. a carport, patio, storeroom and fencing) so that it meets the provisions of the R-Codes and the Planning Scheme to qualify for the corner lot density bonus being sought.

Approval for the alterations and additions to the original dwelling was granted on 16 February 2018. The outbuildings and dividing wall alongside the rear boundary are to be demolished to make way for the two storey grouped dwelling the subject of this application.

Survey strata subdivision approval was granted by the WAPC in February 2018. Clearance of conditions of subdivision approval is yet to be sought but will occur over the coming months.

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## Consultation

### Advertising

A number of adjacent owners endorsed the plans and the application was also advertised by letters sent to surrounding land owners with a comment period extending from 17 January to 2 February 2018. One submission was received which stated as follows:

*"I have concerns about the impact of this development in relation to retaining walls and fencing which I believe have not been adequately addressed and will impact substantially on my property in terms of safety, security, privacy and will dramatically affect the aesthetics of my private open space which has taken years to develop.*

- 1. There exists along the boundary of the two properties three sections of walls that appear as a continuous wall that has acted as both a boundary and retaining wall, and which abuts my open space. The first section is the back of a small shed, the second is the back of a large work shed/garage. Underneath both these walls is a structure that is acting as a retaining wall and which may be the footings for the structures. This is difficult to assess. The last section is a freestanding boundary wall. I estimate that all of these walls have been there for at least 40 years, long before my property was developed.*

*A survey, which was completed last Friday, indicated that the first two sections of the wall are within the neighbouring property but the retaining wall underneath is in part on the boundary and may even be on my side for a section. The last bit of wall to the rear appears to straddle the boundary and is therefore a dividing fence. I engaged the services of a structural engineer who verified that these walls are in good condition and with some extra structural work could be saved, which is my preferred option. My understanding from verbal discussions with my neighbour is that the entire structure and walls are to be demolished although no details have been provided. He has applied for a demolition licence.*

- 2. No details of **retaining walls** or fencing have been included on the development application plans either. Council's development application form states that these are to be included on the plan yet Council staff have advised that, in this case, these are not considered necessary and that the applicant has met all his requirements for this application to be considered by Council. I have been repeatedly told that these matters come under the Dividing Fences Act and that they are a matter for the two adjoining landowners to sort out themselves. I believe it would've been more helpful to me if Council had required these details so that I knew exactly what is being proposed. I still don't have those details. My only option is to make an application to the Magistrates Court myself.*
- 3. This means that at this stage there is no requirement for the applicant to provide details for retaining his soil on his property, despite the fact that he proposes, within the next week, to demolish the entire structure, which is presently acting as both a boundary and retaining wall parts of which appear to be on my property.*
- 4. There are a number of concerns about providing a retaining wall in that location because*
  - a) There is a sewer line running inside my boundary at a distance of 1 m which has implications for any proposed retaining works.*
  - b) The difference in height of the land between the two properties is above 0.8m at the rear of my block.*

*None of these concerns have been addressed as part of the subdivision process and are not being addressed as part of the development application process either.*

5. *I am also very concerned about the effect of works at the site to my **security, safety and privacy** of my backyard during the demolition process and want an assurance that my backyard will be secured at all times during the demolition and construction phases. There has been no comment from the applicant despite my repeated attempts to ask him about his proposals to address these issues. I have a dog that remains outside at all times and two young grandchildren that use this garden on a regular basis. I understand that the builder has a requirement to secure the building site when works on the building begin but until that time there is no way to compel my neighbour to secure his site even though he is demolishing a wall that is approx. 3m in height. (Council, Worksafe and the Building Commission have all said that they cannot compel him to secure his site). It could be months before building starts and I understand that demolition is to occur this week.*
6. *I respectfully request that Council require the applicant to:*
  - a) *Provide temporary fencing to address my safety and privacy concerns from the time the wall is removed until the new fencing is put in place,*
  - b) *Take responsibility to ensure that the soil on his land is adequately and safely retained at no cost to me,*
  - c) *Any proposed new fencing be installed to a height of 1.8m above whatever retaining wall is proposed, to ensure maximum privacy to my open space area.*
  - d) *Set-back his proposed building in accordance with the deemed to comply requirements of the R codes, and*
  - e) *install opaque glass to his bathroom window that directly faces my main bedroom window.*

*I would also like to respectfully urge Council to consider liaising with WALGA to promote changes to legislation under both the Building and Dividing Fences Acts, as this whole process has left me on my own to take action to safeguard my rights, which has been very stressful and disappointing."*

#### Applicant's Response

*The applicant has meet numerous times with the adjoining landowner and upon confirmation of the position of the boundary structures, in relation to the dividing line between the properties determined on 16 March, we continue to discuss correct alignment of the boundary and form of the fence.*

1. *Subject to agreement, replacement of the fence can occur promptly. I have already engaged numerous contractors to provide quotations. The matter is being addressed in accordance with the procedure set out Dividing Fences Act.*

#### Position of the Boundary Structure:

*The most recent survey has indicated that all boundary structures, being a brick shed, garage and wall are located within the boundary of 53 Alexandra Road. The issue is the single brick retaining wall in front of these structures commences inside the boundary of 53 Alexandra and then progresses at the rear to be on the boundary if not just inside. On this basis and in accordance with the WAPC approval I have applied for and received permission to remove the structure fully within my property in consultation with WAPC, Town of East Fremantle and the Act. Investigation has*

*established the garage was constructed on or about 1984. It is unclear if the retaining wall existed before this time though it is clear the adjoining neighbour's front court yard has been excavated (lowered) from road level at some point in time or during construction.*

*Construction of the Boundary Structures*

*The existing structure is significantly deteriorated and has been added to over the years in a haphazard way (increasing height) with non-uniform second hand materials. It is clear from materials used such as different size bricks, railway steel beams and parts of old buildings and the low quality of mortar that the structures were not Council compliant when constructed or would meet today's building standards. The structural integrity of the structures is questionable and they currently lean into the rear neighbour's property. It is only a matter of time before failure in the structure or retaining that the structure or part thereof will fall into the neighbour's property presenting a significant public risk and liability to myself. This is confirmed by the neighbour having a structural engineer survey the structures and suggesting a series of supports to brace the structures. The current structures and retaining would not meet current Australian Building Standards. I have separately had the structure reviewed by a builder and the surveyor who similarly questioned the structural integrity.*

*Retaining*

*The current boundary structure is inadequately retained by a single leaf brick wall and would not meet Australian Standards for load bearing/retaining. The adjoining neighbour wishes information on how retaining is to occur (should it be removed). I note that based on existing and historical contours between the properties. The neighbour's front courtyard has been excavated and lowered beyond the natural ground level as can be observed by the difference in levels at the road and on the site. Where this has occurred it is normal that the cost of retaining to natural ground level be shared by the parties. This is a matter to be determined under the Dividing Fences Act as the retaining is not above 0.5m which would require Council consideration.*

- 2. The applicant has provided all information requested and / or required by the Council's Planning Department under the planning application. I note this is a planning application and not a building permit application which has different criteria to be satisfied. As noted by the Council the matter is correctly governed by the Dividing Fences Act. It is difficult to comment on the retaining of the existing retaining walls is still a consideration to be discussed by the parties due to the proposed new home not being located on the boundary.*
- 3. Where historical contours have been changed it is normal that to the extent of the change by one particular party the retaining is shared by the two land owners. It has been suggested that the existing retaining was put in place as part of the adjoining owners development of the block in the 1990s to support this excavation as the garage was already in place. Removal of the existing retaining has not been progressed and discussion has only centred on it being non-compliant with Australian Standards.*
- 4. There are a number of concerns about providing a retaining wall in that location because:*
  - a) If retaining is required, any retaining must meet Australian Standards and Water Corporation requirements at a minimum.*
  - b) The difference in height of the land between the two properties is above 0.8m at the rear of my block.*



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*We have addressed all the matters and concerns either as requested by the Planning Department and/or raised by the neighbour and continue to discuss matters the subject of the Dividing Fences Act.*

5. *As conveyed to the adjoining landowner on more than one occasion, now that the boundary has been established installation of the fence can occur promptly. I have already engaged three contractors to provide quotations. The matter is being undertaken in accordance with the procedure set out Dividing Fences Act.*
6. *I note that matters (a) to (c) (neighbour's submission) are the subject of ongoing discussions between adjoining land owners and are the subject of the provisions of the Dividing Fences Act. It has been my experience with other Councils that they have been hesitant to engage in matters the remit of this Act. Matters (a) to (c) remain not settled at this time due to the lot boundary only being determined last week. Matters (d) and (e) have or will be addressed by the Planning Application criteria and/or building permit criteria.*

*I note my adjoining neighbour's on all sides have 2m by 2m windows that all look into my proposed development and I have had to accede this concession as these windows are existing rather than challenge the impact on my privacy and quiet enjoyment of my property.*

*My final comment is that, as the applicant from the time of engaging with the Council when seeking to purchase the property, to making the planning application I have endeavoured to take an "open book" and path of least resistance, meaning my planning application does not seek to leverage any concession or exemptions outside the planning guidelines for the property. I have obtained all permits and approvals to undertake activities on my property as required by Council. On this matter I have engaged with the adjoining neighbour three times and agreed not to proceed until the location of the boundary structures was established.*

*In short, upon removal of the carport the two adjacent structures, due to leaning into the adjoining neighbour's property, pose a risk to public safety which I am not comfortable to accept and should not be forced to due to these structures being on my property. The parties are still considering if the existing retaining can remain. Even if this is agreed this is a short term appeasement due to the inadequate construction of the structures failure of the retaining will occur. Common sense would suggest this matter be addressed with rectification of the dividing fence under the relevant Act.*

*While I appreciate my adjoining neighbour's resistance to change and preference to leave things as is after being faced with the cost of installing a brick wall practical considerations suggest removal of the existing structures is required. It is therefore only a consideration of when this would need to be addressed.*

#### Officer Response (Planning and Building)

##### **Development approval application**

The applicant has submitted all the necessary documentation to assess the development proposal the subject of this application. It is also noted that the Town's 'Checklist for Development Applications' is provided to assist applicants in submitting a Development Application. It is not mandatory that every item listed in the checklist be provided. Under the *Local Planning Schemes Regulations 2015* (Reg. 63[2]) a local government may waive or vary a requirement in regard to the documents submitted with a development approval application. The documents required to be submitted in regard to plans and additional information depend on the merits and specific details of each individual application. In this

case the applicant is considered to have satisfied the requirements and provided the necessary information to fully assess the application for planning purposes.

The plans have been assessed in accordance with LPS 3 and the Town's Residential Design Guidelines and planning conditions imposed in relation to relevant planning matters.

#### ***Retaining walls***

With regard to the location of and responsibility for retaining walls built on the applicant's property and/or the submitter's property an independent surveyor is required to provide detailed information to determine the location of the lot boundary and subsequently the location of the walls. If one party is not satisfied with the survey or wishes to dispute the survey then they are at liberty to undertake their own independent survey.

If at the time the submitter's property was developed which postdates the development on the subject site, all retaining walls constructed were required to be wholly within that property's boundaries. Any alteration of ground levels on the submitter's side of the boundary results in that owner being responsible for retaining the soil. In this particular case if the garage wall has been utilised as a retaining wall, additional retaining may be required with the responsibility for providing this retaining being on the person(s) who altered the ground level. The plans do not indicate any changes to the natural ground level which would require any retaining walls in relation to the construction of the dwelling. No fencing along the boundary has been proposed as part of the development application.

However, given one of the main concerns of the submitter is centered on the position of a retaining wall in relation to the property boundary the applicant has undertaken a detailed survey for the western boundary of the subject lot. The applicant has provided an email stating both sections of wall are within the property boundary of the subject lot, so the walls are the responsibility of the applicant.

#### ***Dividing fence***

The submitter has been informed that if agreement cannot be reached with the applicant in regard to fencing, including the height of the fencing (where the Development Approval of the Council is not required), the matter will be determined under the Dividing Fences Act. The applicant was under no obligation to provide the fencing details to the Town and they were not relevant to the development approval application. The matter required discussion with the neighbour and any conflict resolved under the provisions of the Act. The Town's Building Surveyor did not require a Demolition Permit for the existing sections of wall, either side of the old garage, because in his view these walls form the dividing fence and therefore the matter does not fall within the Town's jurisdiction. All works need to be completed in accordance with the *Dividing Fences Act*.

#### ***Privacy, security and construction issues***

The privacy (additional matters not subject to planning assessment), security and construction issues raised in the submission must be raised with the adjoining owner and builder prior to the construction phase commencing and if required during the construction phase. The Town has no jurisdiction over these matters, however, it should be noted the applicant is well aware of the matters raised by the neighbour and has met with the adjoining owner on several occasions to discuss these issues.

The submission also contains comments to the effect that the Town has not been able to provide adequate assistance and support in respect to safeguarding the submitter's rights. The issues raised are primarily in relation to fencing and retaining which in turn have the potential to impact privacy and security and may potentially result in costs for the submitter. These issues are not considered to be directly relevant to the proposal the subject of the planning application but rather are of impact on the

adjoining owner's property as a result of removal of a structure that has functioned as a dividing fence and a backdrop to landscaping.

The government authority that administers the *Dividing Fences Act 1961* and the *Building Act 2011* (now the Department of Mines, Industry Regulation and Safety) provides assistance and support in respect to the rights and responsibilities of citizens under each of the Acts. These Acts and subsidiary legislation provide processes to resolve issues and achieve outcomes that are fair and equitable for citizens. In this particular case local government does not have jurisdiction over the matters raised and therefore does not have the legal authority to determine the matters or compel the owner to undertake the works suggested by the submitter. The adjoining owner has been provided with all the relevant information to obtain further assistance in this regard.

Community Design Advisory Committee (CDAC)

This application was considered by the CDAC at its meeting on 5 February 2018. The Committee's comments were recorded as follows. The applicant's response has been provided in italics below the Committee's comments:

*(g) The overall built form merits;*

- The Committee note there is minimal design integrity for the proposal.

*The design for the proposed new two storey dwelling was developed in line with the East Fremantle Planning Guidelines and was undertaken by a designer who prepared the designs for two of the most recent built properties constructed on Wolsely Street, the next road down from Salvado.*

*The design's elevation aligns to other locally built homes and is why the rendered finish and tin roof was adopted. The intention is for the new property to blend into the street which has a mix of homes from 1950's, 1970's 1980's and 1990 with no defined theme.*

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

- No comment.

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

- No comment.

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

- No comment.

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

- No comment.

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

- No Comment.



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### Statutory Environment

*Planning and Development Act 2005*

*Residential Design Codes of WA*

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

February 2018

### Comment

LPS No. 3 Zoning: R12.5 (corner lot density bonus to R20 development standards applicable)

Site area: 948m<sup>2</sup> (parent lot); Lot 2 - 445m<sup>2</sup> (two storey dwelling) and Lot 1 - 503m<sup>2</sup> (original dwelling)

### 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<br>(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 (R20)                      | 6.0m              | A      |
| Minor Incursions     | 5.0m (R20)                      | 4.9m              | D      |
| Lot Boundary Setback | Original dwelling<br>1.0 – 1.1m | Nil               | D      |
| Open Space           | 50%                             | 58%               | A      |
| Outdoor Living       | 30m <sup>2</sup>                | 56m <sup>2</sup>  | A      |
| Car Parking          | 2                               | 2                 | A      |
| Site Works           | Less than 500mm                 | Less than 500mm   | A      |
| Retaining Walls      | >500mm & bndy setback <1m       | Less than 500mm   | A      |
| Overshadowing        | 25%                             | ≤25%              | A      |
| Drainage             | On-site                         | To be conditioned | A      |

### Local Planning Policy Assessment

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

| Building Height Requirement  | Required | Proposed   | Status |
|------------------------------|----------|------------|--------|
| Building Height (wall) (RDG) | 5.6m     | 5.4m       | A      |
| Building Height (roof) (RDG) | 8.1m     | 7.4m (max) | A      |

The variations to the R- Codes and the Residential Design Guidelines are discussed below.

### Dwelling density

The area is coded Residential R12.5, however, corner lots are subject to a special application of the Residential Design Codes under clause 5.3.1 of the Planning Scheme which states as follows:

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**5.3.1 Density Bonus for Corner Lots:**

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

The proposed lot on which the new dwelling would be constructed will meet the minimum site area requirements for a R20 code (i.e. minimum 350m<sup>2</sup>; proposed 445m<sup>2</sup>) and the minimum lot frontage requirement (required 10m; proposed 23.3m). The dwelling has been designed to face Salvado Avenue and as previously mentioned the original dwelling has been refurbished and modified to provide a frontage to Alexandra Road so it complies with the Scheme provision. The lot area remaining for the original dwelling is 503m<sup>2</sup>.

The principle of the clause is aimed at ensuring the redevelopment of corner lots has regard for both streetscapes. This aim is considered satisfied in that there will be an improvement in the overall amenity of Salvado Avenue and Alexandra Road as a result of the development. The removal of the freestanding garage at the rear of the lot is also required and its replacement with an additional dwelling which addresses the street is considered a better streetscape and design outcome.

Street setback

The street setback of 6.0 metres under R20 standards is essentially achieved. There are two window incursions within the incursion setback permitted under the R-Codes (i.e. 5.0 metres). However, the upper level setback of 4.9 metres falls outside the 1.0 metre allowance for minor incursions. Notwithstanding, the street setback proposed is consistent with other setbacks in the street. The corner lot subdivision only allows for a 19 metre lot depth so it is difficult to achieve the 6.0 metre setback and still maintain a reasonable setback from the rear boundary, however the applicant is proposing a 2.0 – 2.1 metre setback from the rear lot boundary which will allow for some landscaping and separation between the three grouped dwellings on the lot to the south.

In light of the above the 'Design principles' of the R-Codes are considered satisfied in respect to the following and the reduced street setback is supported:

- the development is not contrary to the established streetscape;
- open space and privacy is protected;
- landscaping of the front setback will occur;
- it is not considered there is any detracting from the amenity or character of the area; and
- the development positively contributes to the character of the area and prevailing development.

Lot boundary setback

The proposed two storey development is fully compliant with lot boundary setbacks.

The proposed lot boundary setbacks of the original dwelling will not comply in respect to the southern boundary. The applicant is proposing extensions to that side of the dwelling to provide and activity/study and a fourth bedroom. The nil setback proposed is supported on the basis that there is minimal overshadowing and there are no objections from the adjoining property owners.

Notwithstanding the setback variations the 'Design Principles' of the R-Codes are considered satisfied in that the dwelling overall does not unnecessarily contribute to building bulk and scale on the adjoining lot, provides for adequate sun and ventilation to open spaces and overshadowing is within the acceptable limits for the R12.5/R20 coding. The impact on the streetscape and amenity of the adjoining property is considered minimal.

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Garage width

The garage width marginally exceeds 30% of the lot frontage (proposed width 30.9%) and so does not comply with the Residential Design Guidelines. The non-compliance is a result of a storeroom being located on the side of the garage increasing the width of the garage structure, and does not entirely contribute to the width of the garage door but more so to the overall width of the dwelling. The non-compliance is therefore supported as the additional width is not considered to visually detract from the streetscape.

Crossover width

The crossover width indicated on the plans at the front boundary is 5 metres. This complies with Council policy, however the crossover width increases to 7.0 metres at the verge and this is not acceptable as it is non-compliant with Council policy. Council policy in this regard is aimed at reducing hard paved surfaces on the street verge. A condition is therefore recommended which will ensure compliance with Council's crossover provisions, as outlined in the Residential Design Guidelines, in respect to maximum width and removal of redundant crossovers.

Front fence

No front fence is indicated on the plans, however, one may be considered at a later date. Given the corner lot development for two grouped dwellings is already approved with substantial variation to the front fence provisions as it fronts Alexandra Road the applicant indicated the front fence to Salvado Road would remain open and be in compliance with the Residential Design Guidelines in respect to visual permeability and maximum height permitted for the front setback area (including the first 6 metres of the fencing between the strata lot boundary running north – south. A condition of approval is recommended in this regard to ensure the street front fence does not exceed the height permitted and sight lines are maintained in the front setback area, including the front setback area between the two dwellings.

Existing trees

Two verge trees on Salvado Avenue are considered to be worthy of being retained and may be susceptible to damage during the construction phase. A condition of planning approval is recommended to ensure they are retained and protected during the construction phase.

**Conclusion**

Given the above comments the application is recommended for approval subject to conditions. The redevelopment of the lot with a total of two dwellings is permitted under the corner lot density bonus clause of the Planning Scheme and is not considered to have a detrimental impact on the amenity of the surrounding area. It is considered there will be an improvement in the overall amenity of the street as a result of the development and alterations and additions to the existing dwelling (granted planning approval under separate development application).

- Mr Boston (applicant) advised the meeting that he supported the officer's recommendation.



## 11.2 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION 030411

Moved Cr Nardi, seconded Cr White

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

- (i) Clause 5.1.2 – Street Setback of the Residential Design Codes of WA to permit a street setback of less than 6.0 metres (i.e. a minor incursion less than 5.0 metres);
- (ii) Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback of less than 1.5 metres for the original dwelling (southern elevation);
- (iii) Clause 3.7.8.3 – Roof Form and Pitch of the Residential Design Guidelines 2016 to allow a roof pitch of less than 28°; and
- (iv) Clause 3.7.17.3 – Garages, Carports and Outbuildings of the Residential Design Guidelines 2016 to allow the width of the garage to exceed 30% of the lot frontage,

for a two storey grouped dwelling and alterations and additions to the existing dwelling at No. 53 (Lot 200) Alexandra Road, East Fremantle, in accordance with the plans date stamped received on 15 January 2018, subject to the following conditions:

- (1) All parapet walls are 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.
- (2) The verge trees on Salvado Road are not to be removed. If any damage or loss of the trees occurs during the construction phase the trees are to be replaced at the discretion of the Operations Manager and at the applicant's cost.
- (3) Fencing within the street setback area (including the setback required along the north – south strata lot boundary) to be in compliance with the Residential Design Guidelines 2016 and sight lines maintained in accordance with Australian Standards.
- (4) Any new crossovers which are constructed under this approval are to be a maximum width of 5.0 metres (including splays/wings) and the crossover is to be constructed in compliance with Council's Residential Design Guidelines 2016.
- (5) In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council.
- (6) If requested by Council within the first two years following installation, the Colourbond roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (7) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (8) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (9) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (10) All 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.
- (11) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.



- (12) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (13) 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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### 11.3 Canning Highway No. 209 (Lot 49) – Construction of Two Storey Dwelling

|                            |  |
|----------------------------|--|
| <b>Applicant</b>           | Sidi Construction P/L                                |
| <b>Owner</b>               | Caesar Holdings P/L                                  |
| <b>File ref</b>            | P/CAN209; P008/18                                    |
| <b>Prepared by</b>         | Christine Catchpole, Planning Officer                |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting Date</b>        | 3 April 2018   |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### Purpose

The WAPC has granted conditional approval for the freehold subdivision of No. 209 and No. 211 Canning Highway, East Fremantle. One of the proposed lots is the subject of this application. This report considers a development approval application for the construction of a two storey dwelling on a portion of vacant land at the rear of the lot which fronts Allen Street.

#### Executive Summary

The assessment has been based on the development being constructed within the boundaries of proposed Lot 2 at the rear of the parent lot (No. 209 Canning Highway - Lot 49). The following issues are relevant to the determination of this application:

- Street setback: 1.0 metre incursion of balcony which exceeds 20% of the lot frontage;
- Lot boundary setbacks: parapet wall and reduced setbacks to eastern and southern boundary;
- Outdoor living area: less than required dimension of 4 metres;
- Site works: Excavation and fill greater and less than 500mm within the street setback and 1.0 metre of the lot boundary;
- Retaining walls: greater than 500mm and within 1 metre of the lot boundary required to retain the ground level;
- Visual privacy: less than the required 7.5 metre setback for the balcony and the 6.0 metre setback for the kitchen window;
- Front fence: non-compliance with Policy requirements in respect to solid section and overall height and visual permeability; and
- Roof pitch and form: less than specified in the Policy.

It is considered the street setback, lot boundary setbacks, outdoor living area, site works, retaining walls, visual privacy, outdoor living area, and roof pitch variations can be supported subject to conditions of planning approval being imposed to ensure the residential amenity for adjoining properties and the streetscape is maintained. Compliance with the front fencing provisions is considered necessary and a condition is recommended to ensure this is achieved.

#### Background

6 July 2017: WAPC approval for freehold subdivision of the lot to R40 standards (Lot 2 - 288m<sup>2</sup>).  
March 2018: Development approval application for heritage listed property on No. 209 (Lot 49) currently under informal consideration by Council through the CDAC.

#### Consultation

##### Advertising

The application was advertised for two weeks with letters sent to surrounding land owners from 30 January to 16 February 2018. No submissions were received.

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Community Design Advisory Committee (CDAC)

The application was referred to the CDAC meeting of 5 February 2018 and the CDAC's comments are noted below. The applicant's response is indicated in italics below the CDAC comments:

(a) *The overall built form merits;*

- The building has no relationship to any other development of the locality.

*Whilst the form of the building is not in the style of the traditional housing stock of Allen Street, throughout the design we have implemented a materiality (traditional recycled red brick) and colour pallet (Zincalume greys and white) that is intended to create a relationship with the existing built form whilst not pretending to be a historic building.*

- The Committee consider there is no design merit in the proposed development.

*The location of the development is at the beginning of Allen Street and part of a larger subdivision that will endeavour to create modern houses that are sensitive in materiality and scale to the surrounding built form. As the development is on the corner of Canning Hwy and not situated between existing built form that would interrupt an existing streetscape the development will propose a consistent internal style and we will continue to consult with East Fremantle Council.*

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

- See above comments.

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

- The Committee consider the proposed development would have a detrimental impact to the locality and result in a poor streetscape outcome.
- See above comments.

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

- No comment.

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

- The proposal has some passive solar efficiencies assisting in the environmental sustainability in the design.

*The uses all principles of solar passive design (long north and south walls, short east and west walls, protection to windows on western façade, natural cross ventilation of living areas and bedrooms with openable windows on the north and south façade to capture prevailing SE summer cool breezes, eaves and shading designed to protect window and walls from summer sun and provide solar passive gain in winter months, masonry and concrete are used in an appropriate way to provide thermal mass, screening is used around balconies to provide maximum winter sun penetration and summer shade, all outdoor and living areas are north facing.*



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

- The proposal demonstrates passive surveillance to the streetscape.

*The design not only attempts to engage with the street through passive surveillance but utilises the front garden space in a way that would potentially create more interaction with the local community with the intention to create better neighbourhood relationships and local community engagement.*

#### Officer response

The subdivision of the corner lots at No. 209 - 211 Canning Highway has been endorsed by Council at a redevelopment density of R40 pursuant to the provisions of Clause 5.4.2 (highway frontage dual coding). The subsequent redevelopment of the lots will therefore be subject to design and assessment under the R40 code and the Residential Design Guidelines. In the main the applicant has designed to these standards and within the confines of a 288m<sup>2</sup> lot. The applicant has also addressed the provisions of the Planning Scheme in relation to dual frontage and noise attenuation (to be conditioned). The two heritage listed properties are also being retained and renovated. One of these has already been the subject of an addition and refurbishment which has significantly increased the longevity of the heritage dwelling. The applicant’s response, therefore, is considered to adequately address the CDAC comments.

#### **Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

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

*LPS 3 – Heritage List*

#### **Policy Implications**

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

*Fremantle Port Buffer Zone – Area 3*

*Municipal 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**

March 2018

#### **Comment**

LPS 3 Zoning: Residential R12.5/40 (Lot 2 subdivided to R40 minimum site area per dwelling standards – average 220m<sup>2</sup>)

Site area: 288m<sup>2</sup>

#### **Statutory Assessment**

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

|                                   |                |
|-----------------------------------|----------------|
| Legend<br>(refer to tables below) |                |
| A                                 | Acceptable     |
| D                                 | Discretionary  |
| N/A                               | Not Applicable |

#### Residential Design Codes Assessment

| Design Element       | Required  | Proposed  | Status |
|----------------------|---|---|--------|
| Street Front Setback | 4.0m  | 4.2m  | A      |
| Minor Incursion      | 1.0m<br>(not greater than 20% of the lot frontage)    | 3.0m<br>(47% of the lot frontage)                       | D      |
| Lot Boundary Setback | Southern (UF) - 2.2m<br>Eastern (GF) - 1.5m           | 1.51m<br>Nil  | D      |
| Open Space           | 45%   | 45.5%   | A      |
| Outdoor Living Areas | Minimum length and width dimension of 4m              | Minimum dimension of 3.8m                               | D      |
| Car Parking          | 1   | 2   | A      |
| Site Works           | Less than 500mm                                       | Greater than 500mm                                      | D      |
| Retaining Walls      | Greater than 500mm and closer than 1m to lot boundary | Greater than 500mm and closer than 1.0m to lot boundary | D      |
| Overshadowing        | 25%   | 17.37%  | A      |
| Drainage             | On-site   | On-site   | A      |

Local Planning Policy Assessment

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

| Building Height Requirement      | Required | Proposed     | Status |
|----------------------------------|----------|--------------|--------|
| Building Height (wall) (R-Codes) | N/A      | N/A          | N/A    |
| Building Height (wall) (R-Codes) | 7.0m     | 6.4m – 6.67m | A      |
| Building Height (roof) (R-Codes) | N/A      | N/A          | N/A    |

The lot to be developed was approved by the WAPC in July 2017 as a freehold lot. The lot of 288m<sup>2</sup> was subdivided from a larger lot (No. 209 Canning Highway) with the balance of the land being further subdivided with land at No. 211 Canning Highway. The original heritage listed dwellings on the site have been retained and are being renovated and extended. Two of the four lots will be further subdivided into survey strata lots at a density of R40.

The proposed dwelling is a two storey residence that comprises a ground floor consisting of a lounge, kitchen, living, dining, powder room, laundry, bedroom with ensuite bathroom, double garage and storeroom. There is also an outdoor area with a plunge pool positioned on the northern side of the lot. The upper level consists of two bathrooms, three bedrooms a lounge and balcony. Access to the garage is from the internal accessway not the street.

The dwelling has been designed to front Allen Street as required under clause 5.3.2 (highway frontage dual coding) of the Planning Scheme. There are a number of variations to the R- Codes and the Residential Design Guidelines that are mostly due to the small lot area and a frontage of 9.8 metres. These matters are discussed below.

Street setback

The subject lot has now been subdivided allowing for a development at a density of R40. The R-Codes specify a 4.0 metre street setback in R40 coded residential areas. A 4.0 metre street setback has been proposed for the main building line. However, the balcony of the upper level protrudes 1.0 metre into the street setback to a distance of 3.0 metres from the front boundary, which it is permitted to do under the R-Codes, but not for more than 20% of the lot frontage. The incursion occupies 47% of the lot frontage.

The R-Codes and the Residential Design Guidelines Element 3.7.7 provide 'Design principles' and 'Performance criteria' by which to assess proposed variations to setback requirements. These are summarised below.

R-Codes

*P2.1 - building setback from street boundaries an appropriate distance to ensure buildings:*

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

Residential Design Guidelines (RDG)

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

*P2 Developments to be oriented to address the street.*

*P3 Wall heights to reflect the immediate locality.*

The proposed setback is considered to meet the above criteria with the exception of consistency with established streetscape and matching traditional setbacks. Notwithstanding, the proposed setback is supported on the basis that the redevelopment of the two lots fronting Canning Highway (No. 209 and 211) has been based on permitting redevelopment at a density of R40 on the highway. This corner pocket of new housing, whilst incorporating the restoration of two heritage listed properties, once fully redeveloped will differ considerably from the architecture, built form and streetscape pattern of the remainder of Allen Street. This is considered acceptable as the developments will adequately address Canning Highway and Allen Street and being on the corner will not detract from the heritage streetscape of Allen Street. Also, the inclusion of the balcony within the street front elevation provides a far better connection of the dwelling with the street by providing a more articulated and interesting façade.

The objective of increasing the number of dwellings in the Town along a transport corridor without detrimentally impacting on the heritage character of the Town is considered to be an acceptable outcome and one that is being undertaken to a high standard.

Lot boundary setbacks

The lot boundary setbacks of the dwelling do not comply in respect to the parapet walls of the garage on the eastern side and the upper floor on the southern side of the lot. For the most part the dwelling meets the required setback from the lot boundaries due to the internal accessway to the rear lot which creates an additional buffer from which the lot boundary setback can be calculated.

The parapet walls of the garage and store room have no impact at present as the rear boundary abuts a vacant lot which is to be further subdivided. The development on this lot (also at R40 standards) is more than likely to have an abutting parapet wall to enable the most efficient development of smaller lot areas. The wall of the outdoor living area is to be constructed immediately abutting the accessway and will form the side lot boundary fence. This is also considered acceptable as the wall is not excessive in height and is of a suitable material and finish.

The reduced setback to the southern boundary for the upper level is also considered acceptable and the adjoining owner has not objected to the setback or any other aspect of the proposal. The proposed setback of 1.5 metres will allow for landscaping within the setback area which will also assist in reducing the impact of the building on the adjoining property.

As discussed above whilst the 'Deemed to Comply' setback provisions are not achieved the 'Design Principles' of the R-Codes are considered satisfied, in that the dwelling is not considered to unnecessarily contribute to building bulk on the adjoining lot, provides for adequate sun and ventilation to open spaces and the adjoining property. Overshadowing is only marginally impacting the adjoining lot at ~17%; well within the R12.5 limit of 25% at 12.00pm on 21 June.

#### Site works and retaining walls

The proposed excavation is in excess of that permitted under the 'Deemed to Comply' provisions of the R-Codes. The site will be excavated (rear) and filled (front) up to approximately 1.0 metre to achieve a level building pad. The existing ground level will remain over most of the site. Retaining walls will be built along the southern, northern and eastern boundaries to allow for levelling of the site.

Therefore this element requires assessment under the 'Design Principles' of the R-Codes which state as follows.

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

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

As views for surrounding residences are not considered to be impacted the maximum wall height (concealed roof) of 7.0m metres under the Table 3 of the R-Codes can be applied as per the provisions in the Residential Design Guidelines. The fill and retaining walls proposed are therefore also supported as the height limits of the dwelling are not exceeded. Also, all finished levels will respect existing levels at the lot boundaries.

#### Visual privacy

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

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

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

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

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

The proposed design is considered to comply with the Design Principles of Element 5.4.1 Visual Privacy of the R-Codes. The cone of vision from the southern elevation of the balcony is greater than 7.5 metres and extends approximately 1.0 metre over the common boundary. However, overlooking is of the front setback area of the property to the south on Allen Street which is already visible from the street and footpath. So this non-compliance is not considered to require screening.

The northern elevation of the balcony is also less than 7.5 metres from the property boundary, but a 6 metre wide internal vehicle accessway will provide a reasonable degree of separation between the proposed lots fronting Allen Street. The applicant has proposed a degree of screening on the balcony and this is considered sufficient given the separation created by the accessway.

The kitchen window on the southern elevation once constructed will be more than 500mm above natural ground level. The visual privacy setback required is therefore 6 metres and the setback provided is 1.5 metres. The window is a bench height window behind a sink and therefore will not be any higher than 1.6 metres from floor level so screening will be provided by a standard 1.8 metre high fence along the property boundary. Additional screening to comply with the visual privacy setbacks is therefore not considered necessary.

#### Outdoor living area

The R-Codes specify that the minimum dimension for an outdoor living area cannot be less than 4 metres (proposed 3.8 metres). This is considered a minor non-compliance and one that can be supported on the basis that the minimum outdoor living area is achieved (proposed: ~50m<sup>2</sup>; required: 20m<sup>2</sup>) and the outdoor living area directly connects with an indoor living area (bifold doors) thereby making it easily accessible from a living area and increasing the useable area. It is also screened from the street.

#### Front fence

The front fence as indicated on the plans does not comply with the Residential Design Guidelines in respect to the height of the solid portion (greater than 1.2m; proposed 1.6 - 2.7m) the overall height (greater than 1.8m; proposed up to 2.0m) and the visual permeability (less than 60%). In this circumstance as the new dwelling is on a site that is higher than the street and footpath level and positioned between two heritage dwellings it is considered that front fencing should not be visually dominant or intrusive nor appear excessively high in relation to the front fence of the adjoining heritage property which has a low limestone wall of approximately 600mm in height. The front setback area is not required for private open space and therefore a high front wall is not considered necessary. It is considered more important that the front fence not dominate that section of the streetscape and impede a view of the dwellings and their front gardens. Keeping the streetscape as open as possible in this circumstance is considered to be the best outcome. A condition requiring compliance with the Residential Design Guidelines in this regard is therefore recommended to be imposed.

#### Roof pitch

The non-compliance with the roof pitch (i.e. ~ skillion roof of less than 5° rather than the minimum of 28°) is considered supportable in this case because it is not considered necessary for the roof form to conform to that of the original housing in the Woodside Precinct. This is a preferable outcome because the contemporary dwelling is quite distinct from the original dwellings in the street. Although it is positioned between two heritage listed dwellings the remainder of the dwellings to be developed on this corner will be of a contemporary design and the additions to the heritage dwellings are also of a contemporary design which is in keeping with the proposal for the site.



### Conclusion

Given the comments above the application is recommended for approval. The redevelopment of the lot for a two storey single dwelling is a permitted use of the land under the R40 code to which it has been subdivided and the development of this site is not considered to detrimentally impact the amenity of the surrounding area or the heritage values of the Precinct. A number of planning conditions have been recommended to ensure the heritage values and streetscape are maintained to an acceptable standard.

- Mr Parsons (applicant) addressed the meeting in support of the development application.

### 11.3 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION 040418

Moved Cr Natale, seconded Cr M McPhail

That Council exercise discretion in granting planning approval to vary:

- Clause 5.1.2 – Street Setback of the Residential Design Codes of WA to permit a minor incursion into the street setback to exceed more than 20% of the lot frontage;
- Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a setback of less than 1.5 metres on the eastern boundary and 2.2 metres on the southern boundary (upper floor);
- Clause 5.3.1 – Outdoor Living Area of the Residential Design Codes of WA to permit an outdoor living area with a minimum width dimension of less than 4 metres;
- Clause 5.3.7 - Site Works of the Residential Design Codes of WA to allow excavation and fill greater than 0.5 metres behind a street setback line and within 1.0 metre of a lot boundary;
- Clause 5.3.8 - Retaining Walls of the Residential Design Codes of WA to permit retaining walls greater than 0.5 metres in height less than 1.0 metre from the lot boundaries;
- Clause 5.4.1 – Visual Privacy of the Residential Design Codes of WA to allow an unenclosed outdoor active habitable space (balcony) to be set back less than 7.5 metres from the northern lot boundary and a kitchen window to be setback less than 6.0 metres from the southern lot boundary; and
- Clause 3.7.8.3 of the Residential Design Guidelines 2016 to allow a roof form and pitch of less than 28°,

for construction of a two storey single dwelling at No. 209 (Lot 49 – proposed Lot 2) Canning Highway, East Fremantle, in accordance with the plans date stamped received on 24 January 2018, subject to the following conditions:

- All fencing in the street setback area (including side boundaries) is to fully comply with the Residential Design Guidelines and no solid portion of the fence is to be above a height of 1.2 metres from natural ground level on the footpath or access driveway side of the fence. The remainder of the fence is not to exceed an overall height of 1.8 metres and the infill panels are not to exceed a height of 1.8 metres above natural ground level and are to be 60% visually permeable for the entire length and area of the fence.
- Compliance with sight lines in accordance with Australian Standards for the garage and the access leg from Allen Street.
- Noise attenuation measures are to be included in the dwelling to the satisfaction of the Chief Executive Officer with the details being submitted and indicated on the plans submitted with the Building Permit application.
- The installation of a glass balustrade on the upper level balcony as indicated on the plans date stamped received 24 January 2018.
- The dwelling is to be constructed using the materials, colours and finishes indicated on the plans date stamped received 24 January 2018 unless otherwise varied by the Chief Executive Officer.
- The bin storage area is not to be located within the front setback area.



- (7) All parapet walls/building structures to the adjacent property face are to be finished by way of agreement between the property owners and at the applicant's expense.
- (8) 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.
- (9) In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
- (10) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (11) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (12) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (13) The proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (14) All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (15) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (16) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (17) This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (i) *This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (ii) *A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (iii) *It is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (iv) *All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*



- (v) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (vi) *Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – “An Installers Guide to Air Conditioner Noise”*

(CARRIED 6:1)

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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#### 11.4 Oakover Street No. 25 (Lot 278) – Request for second crossover to Oakover Street

|                            |  |
|----------------------------|--|
| <b>Applicant/Owner</b>     | L Brookes & J Tonga                                  |
| <b>File ref</b>            | P/OAK25  |
| <b>Prepared by</b>         | Christine Catchpole, Planning Officer                |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Meeting date</b>        | 3 April 2018   |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil.   |

#### Purpose

This report considers a request for a second crossover at No. 25 (Lot 278) Oakover Street, East Fremantle.

#### Executive Summary

The following issues are relevant to the determination of this request for a second crossover.

- Maximum number of crossovers per lot: 1 permitted; 2 proposed.
- Pedestrian priority over vehicular access.
- Pedestrian and cyclist safety.
- Streetscape and street tree.
- Parking within the street setback area.
- Location of power pole.

Taking into consideration the streetscape, location of a power pole and the site circumstances a second crossover is considered unnecessary and will be to the detriment of pedestrian, cyclist and motorist safety, as well as the overall appearance of the streetscape and should not be supported. As such the application is recommended for refusal on the grounds that it does not comply with the provisions of the Residential Design Guidelines, the objectives of the Residential zone under the Planning Scheme and is contrary to the orderly and proper planning of the area.

#### Background

The owner wishes to apply for a second crossover on the following grounds:

- *“Oakover Street has numerous vehicles of residents (and visitors) continually parked along the street which pose a considerable danger to drivers, cyclists and pedestrians alike as well as continual congestion in the street.*
- *A large increase in the volume of through traffic down Oakover Street, from both Canning Highway and Marmion Street, by vehicles trying to avoid Petra Street. This through traffic then has to negotiate the resident's cars parked on the street, needing to weave in and out to do so which is extremely dangerous.*
- *A large number of homes also have cars parked on their verge at all angles which makes it very difficult and dangerous to see any vehicles exiting the property. Any grass and landscaping on the verges are being destroyed by these vehicles constantly being parked on them and thus leading to unkempt/unsightly verges and streetscapes.*
- *Many of the homes in the street are resided in by families with children/teenagers/young adults many of which are either learning to drive or have recently obtained their driver's license. This fact is therefore adding to the number of*

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*vehicles per household (our house alone will soon have an additional two cars). The number of vehicles parked along the street or verge is therefore going to, and is, increasing.*

*We need to get as many of these vehicles off the street and make our street as safe as possible for every resident living in Oakover Street as well as for every vehicle, cyclist and pedestrian using our street.*

*In addition, due to the Zoning and R-Codes not allowing any further sub-division of single residential lots along this section of Oakover Street the likelihood of any additional crossovers due to development is basically non-existent. Therefore a second crossover on a single residential lot should be viewed more favorably by Council.*

*In conclusion, we strongly believe a second crossover to our property would improve the visual continuity of the overall streetscape of Oakover Street and importantly provide a designated area on our verge for an additional vehicle to be safely parked off the street. Sometime in the future we would also like to create a paved area, in keeping with our existing driveway paving and within our lot boundary, which would connect to the new crossover. This would mean a vehicle could then be parked within our lot boundary and no longer parked on our new second crossover."*

#### **DETAILS**

The proposed new crossover (~3 metres wide) when constructed and adjacent to the adjoining neighbour's crossover will result in two crossovers side by side with a width of approximately 8.5 metres. The overall width of the lot is approximately 20.1 metres. The existing crossover (~3.0 metres wide) is on the southern side of the lot adjacent to another crossover of approximately 3.5 metres in width. There also appears to be a paved area for a vehicle immediately adjacent to the driveway in the front setback area.

The second crossover is sought to enable additional vehicles to be parked on the crossover and eventually on site in the front setback area. Once constructed it would be an added convenience for the owners.

LPS 3 Zoning: Residential R12.5  
Site area: 1,011m<sup>2</sup>

#### **Consultation**

##### Advertising

Advertising was not required as the proposed crossover is wholly within the road reserve. Adjoining neighbours are not directly impacted.

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

The application was not referred to the CDAC as it will have no impact on the design or heritage elements of the place, in that the design of the dwelling will remain unchanged.

#### **Statutory Environment**

*Planning and Development Act 2005  
Town of East Fremantle Local Planning Scheme No. 3 (LPS 3)  
LPS 3 - Heritage List*

#### **Policy Implications**

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

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*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**

March 2018

**Comment**

The preference for some land owners to accommodate additional vehicles on site and pave front setback areas as indicated in the applicant's submission has the potential to result in streetscapes becoming dominated by more and larger crossovers and driveways at the expense of pedestrian and cyclist safety, landscaping, streetscape amenity, street trees and on-street parking. As a result the Town's Residential Design Guidelines (RDG) specifically addresses this issue under clause 3.7.14 where the RDG state the following as being one of the 'Desired Outcomes' for the Precinct:

- *maximum of one crossover per lot.*

and the RDG 'Performance Criteria' states, in part, that:

- *Pedestrian walk ways will take priority over vehicular access.*

also Clause 3.7.15.2.2 – ‘Acceptable Development Provisions’ states that:

- *A1.1 parking to be located at the rear of the block.*

There are a number of matters that are relevant to the consideration of this request for a second crossover. Aerial photography and site inspection of Oakover Street, demonstrates that double crossovers are not the norm and have been kept to a low number even though there are some double crossovers that have resulted with battleaxe subdivision. Between Canning Highway and Fletcher Street, the street block in which No. 25 Oakover Street is located, there are 48 lots. Of these, 41 are single crossovers and 7 are double crossovers.

The Policy of one crossover per lot is for the purpose of maximising the safety, comfort and convenience for pedestrians and cyclists and minimising the need for them to be overly cautious and vigilant on footpaths and roadways. Minimising the crossover points is therefore very important in maximising safety and amenity for residents and motorists. It is considered the applicant has not provided adequate relevant justification to merit support for a second crossover. The addition of another crossover without adequate justification is not supportable as it reduces safety for pedestrians, cyclists and motorists already using the road/footpath and reduces on-street parking for visitors and trades people.

Notwithstanding the request for a crossover, this application is for an off-street parking bay on the verge. It is not intended at this point to provide site access from the crossover. The additional ~21m<sup>2</sup> of crossover paving on the verge is considered to detract from the streetscape and will effectively result in another double crossover on Oakover Street when positioned adjacent to the neighbour’s crossover. Double crossovers, or crossovers immediately adjacent to each other have an even greater visual impact, resulting in a greater proportion of paving as opposed to landscaping which in turn results in greater storm water run-off and overall less ‘soft’ landscaping.

The double crossovers that exist in the street were more than likely constructed prior to the RDG being adopted by Council. There are two matters to be considered in relation to this point. The timeframe is particularly relevant because in every neighbourhood there will be examples of structures and crossovers that do not comply with Guidelines or Policy. The second is that Guidelines or any other Council policy cannot undo what has been done and many provisions are often formulated to prevent things that have been allowed in the past from reoccurring; this was the case with the Residential Design Guidelines in respect to crossovers. For this reason structures and access points that do not comply with the Guidelines have no influence on whether a development or crossover will be approved and are not considered to be a valid supporting argument.

Also of consideration in respect to this request is the location of a power pole approximately 900mm away from the proposed crossover. The Town’s Operations Manager has stated that a minimum 1.0 metre separation between a crossover and a light pole is required. The proposed distance from the power pole is therefore considered to be inadequate and a further contributing factor as to why a second crossover should not be approved. It is also noted that a street tree would need to be removed to accommodate the crossover. Whilst it is acknowledged that there are numerous street trees on this section of verge that have been planted by the applicant, it is still disappointing to see a tree removed when it is not considered necessary.

While there may be vehicles parking in the street and from time to time on the verge, the installation of a second crossover to act as a parking bay is not considered warranted particularly so at the expense of safety and streetscape amenity. In this case the lot is over 1,011m<sup>2</sup> with a rear garden and a ~38 metre

long driveway in which additional vehicles can be accommodated. The applicant has stated that within the street there are households which have a need to accommodate an increasing number of vehicles due to adult children's cars. Whilst this is acknowledged as most likely being the case for some households it is not considered to be a strong enough justification for approving additional crossovers as this increase in vehicles is cyclical. The applicant also states that in the future a section of the front garden would be paved to accommodate a vehicle. This paved parking area would not be supported at by the Town as the Residential Design Guidelines (Woodside Precinct) also specify that parking is to be located at the rear of the lot (Clause 3.7.15.2.2).

The applicant has commented that the demand for street parking is high and that high volumes of traffic use the street. Whilst it is not possible to assess the volume of traffic using the street for the purposes of assessing this second crossover request, the noted high demand for parking was not apparent during recent site visits undertaken at various times of the day. The applicant has also commented on increased traffic in the street as a result of vehicles avoiding Petra Street and the need for vehicles to be off-street to allow for non-local traffic to use the street less impeded by parked vehicles. If this is the case it is a traffic management matter which should not determine whether additional crossovers are required. Furthermore, on the matter of traffic safety it is considered a parking bay on the verge would be a traffic safety issue because it will obstruct views of the adjoining neighbour leaving their driveway.

Taking into consideration the lot size, site circumstances, location of the power pole, the proximity to Fletcher Street and adequate space for vehicles to be parked on-site a second crossover, acting as a parking bay, is considered unnecessary and will be to the detriment of pedestrian and motorist/cyclist safety, as well as the overall appearance of the streetscape and should not be supported. As such the application is recommended for refusal on the grounds that it does not comply with the provisions of the Residential Design Guidelines, the objectives of the Residential zone and is contrary to the orderly and proper planning of the area.

### Conclusion

The request for a second crossover is not supportable and the application is recommended for refusal on the basis that the application does not comply with:

1. The *Acceptable Development Criteria* or the *Performance Criteria* of the Local Planning Policy Residential Design Guidelines 2016 with regard to:
  - (i) Clause 3.7.14 Footpaths and Crossovers in that a maximum of one crossover per lot is permitted and pedestrian walk ways will take priority over vehicular access; and
  - (ii) Clause 3.7.15.2.2 in that parking is to be located at the rear of the block.
2. Aims (b) and (f) of the Planning Scheme for a Residential zone, specifically:
  - to enhance the character and amenity of the Town, and to promote a sense of place and community identity within each of the precincts of the Town;
  - to ensure the safe and convenient movement of people throughout the Town, including pedestrians, cyclists, public transport users and motorists.
3. Also, as the proposed development conflicts with Clause 4.2 Objectives of the Zones - Residential Zone which, amongst other things, are to:
  - to recognise the importance of design elements such as the 'front yard' and the 'back yard' to the character, amenity and historical development of the Town and to the community.

4. The proposed development also conflicts with the provisions of the Local Planning Scheme under clause 67 (Deemed Provisions) because it is incompatible with:
- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;
  - (g) any local planning policy for the Scheme area (i.e. the Residential Design Guidelines);
  - (n) the amenity of the locality including the (ii) the character of the locality; and
  - (s) the proposed means of access to and egress from the site.

As such the application is recommended for refusal on the grounds that it does not comply with the provisions of the Residential Design Guidelines, the aims of the Planning Scheme, the objectives of the Residential Zone and is contrary to the orderly and proper planning of the area.

- Ms Brookes (applicant) addressed the meeting in support of the crossover request and querying aspects of the officer's report.

#### **11.4 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION 050418**

**Moved Cr M McPhail, seconded Cr Nardi**

**That Council refuse the application for a second crossover at No. 25 (Lot 278) Oakover Street, East Fremantle, as proposed in the application dated 10 January 2018 for the following reasons:**

- (1) The proposed development does not comply with the requirements of the 'Acceptable Development Criteria' or the 'Performance Criteria' of Local Planning Policy 3.1.1 - Residential Design Guidelines 2016 (as amended) with regard to:**
  - (i) Clause 3.7.14 Footpaths and Crossovers in that a maximum of one crossover per lot is permitted and the pedestrian walkways will take priority over vehicle access; and**
  - (ii) Clause 3.7.15.2.2 Access, Parking and Rights of Way.**
- (2) The proposed application does not comply with the following requirements of Local Planning Scheme No. 3 as the proposed development:**
  - **conflicts with Clause 1.6 - Aims of the Scheme;**
  - **conflicts with Clause 4.2 - Objectives of the Zones: Residential Objectives; and**
  - **the proposed application conflicts with the provisions of the Town of East Fremantle Local Planning Scheme No. 3 – Deemed Provisions Clause 67 (a), (g), (n) and (s) because it would detrimentally impact on the amenity of the area.**
- (3) The proposed crossover does not comply with the orderly and proper planning of the area.**

**(CARRIED 5:2)**

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 Fortescue Street No. 63 (Lot 131) – Request for second crossover to Fortescue Street

|                            |  |
|----------------------------|--|
| <b>Applicant/Owner</b>     | B Woodhead & S Quin                                  |
| <b>File ref</b>            | P/FOR63  |
| <b>Prepared by</b>         | Christine Catchpole, Planning Officer                |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Meeting date</b>        | 3 April 2018   |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil.   |

#### Purpose

This report considers a request for a second crossover at No. 63 (Lot 131) Fortescue Street, East Fremantle.

#### Executive Summary

The following issues are relevant to the determination of this request for a second crossover.

- Maximum number of crossovers per lot: 1 permitted; 2 proposed.
- Parking within the street setback area.
- Pedestrian priority over vehicular access.
- Pedestrian and cyclist safety.
- Streetscape.
- Street trees.

Taking into consideration the streetscape and the site circumstances a second crossover is considered unnecessary and will be to the detriment of pedestrian, cyclist and motorist safety, as well as the overall appearance of the streetscape and should not be supported. As such the application is recommended for refusal on the grounds that it does not comply with the provisions of the Residential Design Guidelines, the objectives of the Residential zone under the Planning Scheme and is contrary to the orderly and proper planning of the area.

#### Background

16 February 2010: Planning approval issued for a single storey addition, deck area and swimming pool.  
10 June 2014: Planning approval granted for additions and alterations to the rear of the existing dwelling, separate games room and swimming pool.  
27 October 2014: Planning approval granted for additions and alterations comprising a rear addition to the existing dwelling, separate games room and swimming pool. A number of conditions of planning approval, listed below, were imposed and are relevant to this application:

1. *The existing street tree to the south of the subject lot being retained in its current state and location and not damaged or pruned in the construction of the relocated crossover should it be approved by the Operations Manager.*
2. *Approval for the relocation of the crossover and driveway being obtained from the Town's Operations Manager prior to the submission of a building permit application.*
3. *No front fence is to be constructed without the prior approval of Council to the satisfaction of the Chief Executive Officer in consultation with relevant officers.*
4. *The construction of the new crossover and associated works including kerbing modifications, on the south side of the property, to be in accordance with the Residential Design Guidelines for the Woodside Precinct and to Council's satisfaction,*



- with all works to be approved by the Chief Executive Officer before the submission of a building permit application and all costs to be met by the applicant.*
5. *The abovementioned crossover to have a maximum width of 3.0 metres and the footpath to continue uninterrupted across the crossover.*
  6. *The submission of a landscaping plan indicating the replacement of the hard paved existing driveway area in the front setback with predominantly "green" landscaping. The landscaping plan to be submitted with the Building Permit application and approved by the Chief Executive officer prior to the issue of a Building Permit.*
  7. *The landscaping is to be installed and maintained throughout the occupation of the property.*

The owner now wishes to apply for a second crossover on the following grounds:

*"We would like to apply for planning approval for a second verge crossover at the above address. As per our earlier application (P47/14 on 26 March 2014) we will be constructing a new crossover, maximum width 3 metres, on the south side of the property. However; rather than the replacement of the hard paved existing driveway area on the north side with green landscaping we would like to apply to retain this crossover as a storage/parking niche (please see attached plans).*

*Precedence has already been set in our street with the two properties opposite both having dual driveways {64 and 66 Fortescue Street}. Refer attached photos.*

*The new footpath on Fortescue Street {approximately width 2m} no longer allows us to park our current utility in the crossover. As you can see by the attached photo the vehicle is either on the footpath or jutting into the road creating a safety issue. This means the car must be parked on the verge or driveway at all times.*

*Our Intention is not to have any vehicles parked on the street verge. Instead our front verge is soon to be reticulated and lawn to be established as per council specifications. We consider this to be a safer, more secure, more aesthetically pleasing option than the current parking arrangements that we have (parking on dry sand verge plus on street).*

*The new southern driveway will be the primary driveway as per the original building application and allows access to the kitchen area for carrying in shopping, school bags etc. as it was designed. The storage nook is primarily for the trailer and will be located on the northern part of the block. This area will not continue to the rear of the property, as per plans, and therefore allows the landscaping of the front yard in its entirety. It also allows us access to the trailer in a way that allows full visibility and minimal risk as the car can back up to the trailer at the storage niche, attach and drive out with no loss or minimizing of overall vision. It also allows us access to the northern side of the property for lawnmowers etc. without having to establish hardscaping throughout the front yard.*

*As you can see safety, aesthetics and access are the three major reasons for this application."*

It is also noted the applicant has been requested to submit a development approval application for the proposed front fence and new driveway along the southern boundary of the property.

#### **Details**

The proposed new crossover (~3 metres wide) will be located on the southern side of the lot and will access a driveway approximately 12 metres in length.

The second crossover is sought to enable additional vehicles to access the site on the southern driveway which will be the primary driveway as per the original development (planning) application and will allow access to the kitchen area. The other driveway is primarily for a trailer and will be maintained on the northern part of the lot.

Once constructed the crossover would be an added convenience for the owners by providing additional parking bays for vehicles and a trailer. It should also be noted that the second driveway/crossover as proposed in a previous development application was never given outright approval. It was only granted conditional planning approval subject to endorsement by the Town's Operation Manager in respect to the second crossover/driveway and the reinstatement of the verge and the re-landscaping of the existing crossover and driveway.

The Town's Operations Manager has inspected the site and has advised that the tree located just south of the lot would require substantial pruning to enable vehicles to access the site. Pruning must be carried out so the crown of the tree remains symmetrical, so additional branches on the other side of the crown would need to be substantially pruned as well. This can impact the long term health and longevity of the tree which should not be compromised unnecessarily. It is also noted that one other mature verge tree in front of No. 63 died sometime in 2017 and has been removed. This tree should be replaced.

LPS 3 Zoning: Residential R12.5

Site area: 1,011m<sup>2</sup>

### **Consultation**

#### Advertising

Advertising was not required as the proposed crossover is wholly within the road reserve. Adjoining neighbours are not directly impacted.

#### Community Design Advisory Panel (CDAC)

The application was not referred to the CDAC as it will have no impact on the design or heritage elements of the place in that the design of the dwelling will remain unchanged.

### **Statutory Environment**

*Planning and Development Act 2005*

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

### **Policy Implications**

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

*Municipal Heritage Inventory – Category C*

### **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**

March 2018

#### **Comment**

The preference for some land owners to accommodate additional vehicles on site and provide more than one driveway as indicated in the applicant's proposal has the potential to result in streetscapes becoming dominated by more and larger crossovers and driveways at the expense of pedestrian and cyclist safety, landscaping, streetscape amenity, street trees and on-street parking. As a result the Town's Residential Design Guidelines (RDG) specifically addresses this issue under clause 3.7.14 where the RDG state the following as being one of the 'Desired Outcomes' for the Precinct:

- *maximum of one crossover per lot.*

and the RDG 'Performance Criteria' states, in part, that:

- *Pedestrian walk ways will take priority over vehicular access.*

also Clause 3.7.15.2.2 – 'Acceptable Development Provisions' states that:

- *A1.1 parking to be located at the rear of the block.*

There are a number of matters that are relevant to the consideration of this request for a second crossover. Aerial photography and site inspection of Fortescue Street, demonstrates that double crossovers are not the norm and have been kept to a low number even though there are some double crossovers that have resulted. On Fortescue Street between Fletcher and Marmion Street, the street block in which No. 63 Fortescue Street is located, there are 37 lots. Of these, 33 are single crossovers and 4 are double crossovers. Also, as noted above there is a street tree located in a position which will be impacted if a second crossover is permitted in the location proposed.

The Policy of one crossover per lot is for the purpose of maximising the safety, comfort and convenience for pedestrians and cyclists and minimising the need for them to be overly cautious and vigilant on footpaths and roadways. Minimising the crossover points is therefore very important in maximising safety and amenity for residents and motorists. It is considered the applicant has not provided adequate relevant justification to merit support for a second crossover. The addition of another crossover without adequate justification is not supportable as it reduces safety for pedestrians, cyclists and motorists already using the road/footpath and reduces on-street parking for visitors and trades people.

Notwithstanding the request for a crossover, this application is also to provide off-street parking in a second driveway; one of the reasons being that the applicant's vehicle is too large to be parked in the existing crossover following widening of the footpath. This is not considered to be a justifiable argument as the vehicle can be parked in the existing driveway and street parking is available. The proposed additional ~21m<sup>2</sup> of crossover paving on the verge is considered to detract from the streetscape. Second crossovers have a greater visual impact, resulting in a greater proportion of paving as opposed to landscaping which in turn results in greater storm water run-off and overall less 'soft' landscaping. Furthermore, as discussed above the mature street tree will require pruning to enable vehicles to enter the site which may impact the health of the tree and detract from the visual amenity of the tree.

The double crossovers that exist opposite No. 63 Fortescue were more than likely constructed prior to the RDG being adopted by Council. There are two matters to be considered in relation to this point. The timeframe is particularly relevant because in every neighbourhood there will be examples of structures and crossovers that do not comply with Guidelines or Policy. The second is that Guidelines or any other Council policy cannot undo what has been done and many provisions are often formulated to prevent things that have been allowed in the past from reoccurring; this was the case with the Residential Design Guidelines in respect to crossovers. For this reason structures and access points that do not comply with the Guidelines have no influence on whether a development or crossover will be approved and are not considered to be a valid supporting argument.

Also of consideration in respect to this request is the location of a crossover directly opposite the proposed second crossover (see aerial photograph below) at No. 64 Fortescue Street. Whilst this in itself does not prevent the construction of a crossover it is not ideal in respect to traffic safety, as vehicles are in danger of colliding if reversing/exiting at the same time. This is considered to be a situation to be avoided, particularly when there is no strong justification for the second crossover. It is also noted in the aerial photograph that despite the double crossover on the property on the opposite side of the road providing access to on-site parking, two vehicles are parked on the verge and in the crossover.



The installation of a second crossover to provide additional parking is not considered warranted particularly so at the expense of safety and streetscape amenity. In this case the lot is over 1,011m<sup>2</sup> with a ~15 metre long driveway in which additional vehicles can be accommodated. The applicant is proposing the additional driveway to accommodate parked vehicles and this is contrary to the Residential Design Guidelines (Woodside Precinct) which specify that parking is to be located at the rear of the lot (Clause 3.7.15.2.2).

Taking into consideration the lot size, site circumstances, opposing crossovers and adequate space for vehicles to be parked on-site a second crossover, is considered unnecessary and will be to the detriment of pedestrian and motorist/cyclist safety, as well as the overall appearance of the streetscape and should not be supported. As such the application is recommended for refusal on the grounds that it does not comply with the provisions of the Residential Design Guidelines, the objectives of the Residential zone and is contrary to the orderly and proper planning of the area.

### Conclusion

The request for a second crossover is not supportable and the application is recommended for refusal on the basis that the application does not comply with:

1. The *Acceptable Development Criteria* or the *Performance Criteria* of the Local Planning Policy Residential Design Guidelines 2016 with regard to:
  - (iii) Clause 3.7.14 Footpaths and Crossovers in that a maximum of one crossover per lot is permitted and pedestrian walk ways will take priority over vehicular access; and
  - (iv) Clause 3.7.15.2.2 in that parking is to be located at the rear of the block.
2. Aims (b) and (f) of the Planning Scheme for a Residential zone, specifically:
  - to enhance the character and amenity of the Town, and to promote a sense of place and community identity within each of the precincts of the Town;
  - to ensure the safe and convenient movement of people throughout the Town, including pedestrians, cyclists, public transport users and motorists.
3. Also, as the proposed development conflicts with Clause 4.2 Objectives of the Zones - Residential Zone which, amongst other things, are to:

- to recognise the importance of design elements such as the 'front yard' and the 'back yard' to the character, amenity and historical development of the Town and to the community.
- 4. The proposed development also conflicts with the provisions of the Local Planning Scheme under clause 67 (Deemed Provisions) because it is incompatible with:
  - (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;
  - (g) any local planning policy for the Scheme area (i.e. the Residential Design Guidelines);
  - (n) the amenity of the locality including the (ii) the character of the locality; and
  - (s) the proposed means of access to and egress from the site.

As such the application is recommended for refusal on the grounds that it does not comply with the provisions of the Residential Design Guidelines, the aims of the Planning Scheme, the objectives of the Residential Zone and is contrary to the orderly and proper planning of the area.

#### **11.5 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION 060418**

**Moved Cr Nardi, seconded Cr M McPhail**

**That Council refuse the application for a second crossover at No. 63 (Lot 131) Fortescue Street, East Fremantle, as proposed in the application dated 8 March 2018 for the following reasons:**

- (1) The proposed development does not comply with the requirements of the 'Acceptable Development Criteria' or the 'Performance Criteria' of Local Planning Policy 3.1.1 - Residential Design Guidelines 2016 (as amended) with regard to:**
  - (i) Clause 3.7.14 Footpaths and Crossovers in that a maximum of one crossover per lot is permitted and the pedestrian walkways will take priority over vehicle access; and**
  - (ii) Clause 3.7.15.2.2 Access, Parking and Rights of Way.**
- (2) The proposed application does not comply with the following requirements of Local Planning Scheme No. 3 as the proposed development:**
  - **conflicts with Clause 1.6 - Aims of the Scheme;**
  - **conflicts with Clause 4.2 - Objectives of the Zones: Residential Objectives; and**
  - **the proposed application conflicts with the provisions of the Town of East Fremantle Local Planning Scheme No. 3 – Deemed Provisions Clause 67 (a), (g), (n) and (s) because it would detrimentally impact on the amenity of the area.**
- (3) The proposed crossover does not comply with the orderly and proper planning of the area.**

**(CARRIED UNANIMOUSLY)**

Note:

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



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

Nil.

**13. MATTERS BEHIND CLOSED DOORS**

Nil.

**14. CLOSURE OF MEETING**

There being no further business, the Presiding Member declared the meeting closed at 7:30pm

*I hereby certify that the Minutes of the ordinary meeting of the Town Planning Committee of the Town of East Fremantle, held on 3 April 2018, Minute Book reference 1. to 14 were confirmed at the meeting of the Committee on:*

.....1/5/18.....

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