



MINUTES

Town Planning & Building Committee

Tuesday, 6 November 2018 at 6.30pm

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

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MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING COMMITTEE HELD AT THE EAST FREMANTLE TOWN HALL, 135 CANNING HIGHWAY, EAST FREMANTLE ON TUESDAY 6 NOVEMBER 2018.

1. DECLARATION OF OPENING OF MEETING/ANNOUNCEMENTS OF VISITORS

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

2. ACKNOWLEDGEMENT OF COUNTRY

"On behalf of the Council I would like to acknowledge the 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 O'Neill
Cr M McPhail
Cr D Nardi
Cr T Natale
Cr A White
Cr J Harrington

The following staff were in attendance:

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

3.2 Apologies

Nil.

3.3 Leave of Absence

Nil.

4. MEMORANDUM OF OUTSTANDING BUSINESS

Nil.

5. DISCLOSURES OF INTEREST

5.1 Financial

Nil.

5.2 Proximity

Nil.

5.3 Impartiality

Nil.

6. PUBLIC QUESTION TIME

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

Nil.

6.2 Public Question Time

Nil.

7. PRESENTATIONS/DEPUTATIONS

7.1 Presentations

Nil.

7.2 Deputations

Nil.

8. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

8.1 Town Planning and Building Committee (2 October 2018)

8.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION

Cr Nardi moved, seconded Cr Natale

That the minutes of the Town Planning and Building Committee meeting held on Tuesday 2 October 2018 be confirmed as a true and correct record of proceedings.

(CARRIED UNANIMOUSLY)

9. ANNOUNCEMENTS BY THE PRESIDING MEMBER

Nil.

10. REPORTS OF COMMITTEES

10.1 Community Design Advisory Committee

Prepared by: Andrew Malone Executive Manager Regulatory Services

Supervised by: Gary Tuffin, Chief Executive Officer

Authority/Discretion: Town Planning & Building Committee

Attachments: Nil

PURPOSE

To submit the minutes of the Community Design Advisory Committee meetings held in October for receipt by the Town Planning Committee.

EXECUTIVE SUMMARY

The Committee, at its meetings held on 1 October and 22 October 2018, provided comment on planning applications listed for consideration at the November 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 minutes.

10.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP 011018

Cr White moved, seconded Cr Nardi

That the Minutes of the Community Design Advisory Committee meetings held on 1 October and 22 October 2018 be received.

(CARRIED UNANIMOUSLY)

11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

11.1 Duke Street, No. 27A (Lot 1) – Additions and Alterations to Grouped Dwelling

Applicant	R White Architecture - White Noise Designs
Owner	M Wallis
File ref	P060/2018; P/DUK27A
Prepared by	Christine Catchpole, Senior Planning Officer
Supervised by	Andrew Malone, Executive Manager Regulatory Services
Meeting date	6 November 2018
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	Nil

Purpose

This report considers a planning application for additions and alterations, including a garage and upper storey to the existing grouped dwelling at No. 27A Duke Street, East Fremantle.

Executive Summary

The additions to the house are mostly to the rear with the exception of the garage which is to be positioned alongside the dwelling and adjacent to the driveway to the rear strata lot. The additions involve an internal rearrangement of ground floor space, as well as a two storey addition. A pool, outdoor area and patio are also proposed.

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

- Lot boundary setback (R-Codes);
- Site works (R-Codes);
- Visual privacy setback (R-Codes); and
- Roof pitch (Residential Design Guidelines).

It is considered the variations will not have a significant impact on the amenity of adjoining sites and can be supported subject to conditions regarding parapet walls, visual privacy screening elements and construction materials and colours.

Background

Zoning: Residential R20

Site area: Strata lot of 340m²

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

Nil in relation to this application.

Consultation

Advertising

The application was advertised to the surrounding land owners from 6 to 23 July 2018. Two submissions have been received. One of the submissions was from the adjoining strata owner who has since indicated, in writing, no objection to the proposal after resolving visual privacy concerns with the applicant and owner. The adjoining owner to the north has also indicated concerns with visual privacy which have been discussed, however, this matter needs to be addressed through conditions of planning approval.

Community Design Advisory Committee (CDAC)

This application was considered at the CDAC meeting of 30 July 2018. The following comments were made:

- (a) *The overall built form merits;*
- Limited built form merit. The Committee consider the design is awkward and does not fit with the existing building.
 - The Committee consider the design response of the addition overpowers the existing building.
- (b) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development;*
- Quality of the design is poor and considered to negatively impact the heritage dwelling.
- (c) *The relationship with and impact on the broader public realm and streetscape;*
- No comment.
- (d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
- The Committee consider the design of the building not to be good. The design is considered cumbersome and minimises the heritage value of the heritage building to the front.
- (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;*
- Limited. Not enough information given.
- (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.*
- Poor. No passive surveillance to the streetscape.

The applicant's response is as follows:

- 1) *There are some points regarding the proposed extension clashing with the existing heritage building. I would like to note that additions to heritage buildings are generally preferred not to imitate, replicate or mimic historic architectural styles. This helps to delineate between the heritage build and the new addition. It is intended that the new development is clearly distinguishable from the adjacent heritage listed place.*
- 2) *The Committee indicates that the design 'minimises the heritage value of the heritage building to the front'. I would like to note that:*
 - a) *Most of the plan and front elevation of the heritage building is preserved. The new addition is built in the location of a more recent rear extension to the building.*
 - b) *The addition is set back 13.5m back from the street and 7.3m behind the front of the heritage building. As far back to the rear of the block as realistically possible.*

It is visually recessive from the place's main frontage so that the scale of the heritage place is the dominant element in the streetscape.

- c) *The existing front roof line of the existing heritage building has been retained, and that at its highest point, the new addition is only 1.35m above this ridge line. The bulk of the new build is concealed from the streetscape by the heritage build.*
- 3) *I am mindful that new openings in the principal facade visible from the street should be avoided, or if openings are visible, they are proportionally related to those of the heritage place, unless concealed from view from the principal street frontage. There is a new front facade opening to Bed 1, and we may consider that the original opening be retained in this case and made good in the existing heritage style.*
- 4) *It is indicated that there is no passive surveillance of the street. Given the location of the build to the rear of the site, a greater amount of windows in this extension facing the street would seem to counteract the principle of concealing it behind the heritage build and retaining the existing streetscape. All existing windows and the porch overlooking the street are to be retained.*

Statutory Environment

Planning and Development Act 2005

Residential Design Codes of WA

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

Policy Implications

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

Municipal Heritage Inventory - 'C' Category – Inter-War Bungalow

Fremantle Port Buffer Zone - Area 2

Financial Implications

Nil

Strategic Implications

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

Built Environment

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

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

Natural Environment

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

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

Site Inspection

October 2018

Comment

Statutory Assessment

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

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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	6.0m	6.1m	A
Lot Boundary Setback			
South	1.6m	1.05m	D
Garage	1.5m	Nil	D
Patio	1.0m	685mm	D
Open Space	50%	56.5%	A
Outdoor Living	30m ²	50m ²	A
Car Parking	2	As existing	A
Site Works	Less than 500mm	Up to 700mm	D
Visual privacy setback	Living areas and raised outdoor habitable living spaces >0.5m above NGL – 6.0m	Varying setbacks <6.0m	D
Overshadowing	≤25%	≤25%	A
Drainage	On-site	To be conditioned	A

Local Planning Policies Assessment

LPP Residential Design Guidelines Provision	Status
3.7.2 Additions and Alterations to Existing Buildings	A
3.7.3 Development of Existing Buildings	A
3.7.4 Site Works	D
3.7.5 Demolition	A
3.7.6 Construction of New Buildings	N/A
3.7.7 Building Setbacks and Orientation	D

3.7.8 Roof Form and Pitch	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
3.7.14 Footpaths and Crossovers	N/A
3.7.18.3 Garages and Carports	A
3.7.15-20 Precinct Requirements	A

Building Height (R-Codes)	Required	Proposed	Status
Wall height (R-Code)	6.0m	5.8m	A
Ridge height (R-Code)	9.0m	8.1m	A

The additions and alterations will be to the rear of the cottage and provide a living, dining, kitchen, pantry, bathroom and laundry. The upper storey will contain a master bedroom suite and sitting area. The garage will be positioned along the side of the cottage adjacent to the access driveway to the rear strata lot; the existing driveway to the rear will remain as is. A pool, outdoor area and patio are also proposed to the rear.

Lot boundary setbacks

The northern and western lot boundary setbacks meet the 'Deemed to Comply' provisions of the R-Codes (required: 1.3m and 3.8m; provided: 1.6m and 4.1m respectively). The southern boundary, however, seeks a 550mm variation to the 'Deemed to Comply' provisions (setback required 1.6m: 1.05m proposed) for the main building and a 1.5m variation for the garage wall (garage wall to be built up to the boundary). Similarly, the western setback for the dwelling is compliant, however, the patio is setback 685mm whereas a 1.0 metre setback is required. Compliance with the 'Design Principles' of the R-Codes, however, is considered satisfied in this instance as the proposed setbacks do not unduly contribute to building bulk on the adjoining lots, or impact greatly on light and ventilation to open spaces. Greater than 50% open space can be achieved on-site and overshadowing is less than the permitted percentage under the R-Codes.

Site works

The proposed fill (up to ~700mm) in the north western corner of the lot is outside the parameters of the R-Codes. Some fill is required on this side of the lot so the outdoor area and pool are level with the finished floor level of the dwelling. This is considered to improve the amenity of the site and therefore fill to this level is supported. The extent of the fill, however results in non-compliance with the visual privacy provisions of the R-Codes as discussed in the following section of the report. The 'Design Principles' are considered satisfied in that the fill will not substantially change the natural ground level at the lot boundary of the site as viewed from the street and retaining walls are already established. No further retaining is indicated on the plan.

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 living room windows at the rear and side on the ground level and the unenclosed outdoor habitable living area to the rear, however, the 'Design Principles' of 5.4.1 allows for:

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

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

The application is not compliant in respect to the visual privacy provisions of the R-Codes. The neighbours to the rear and north both made submissions in respect to this matter at the outset of the assessment process. The applicant and owner have resolved the matter as far as the other strata lot owner to the rear is concerned. This owner has endorsed the development application. However, the northern neighbour's rear garden (including pool area) and dwelling are visible from the proposed pool and outdoor area of the subject lot and the windows of the living area. The applicant sought to remedy the concerns of the northern neighbour by proposing the installation of screening by vegetation being planted along the western and northern boundaries.

This is considered the preferred alternative and solution to the privacy issues for all neighbours and as such a condition of planning approval is recommended which requires the planting to be installed as discussed between adjoining owners and indicated on the plans. However, it is very difficult to enforce a condition of planning approval of this nature. The correct size and number of plants must be installed and maintained to achieve an adequate level of screening. It is therefore considered necessary to apply another condition related to screening that Council can enforce if the planting is considered not to be successful. This condition requires that a permanent visually impermeable screening structure is to be installed if the Chief Executive Officer determines that the planting is not providing adequate screening to the standard required under the R-Codes.

Roof pitch

The roof pitch is non-compliant with the Residential Design Guidelines, however, in this circumstance the preference is for the design of the additions to be distinct from and not replicate the design elements of the original dwelling so the roof design and pitch variations are supported. The minimal roof pitch minimises the upper storey addition as viewed from the street and reduces the impact on the strata lot to the rear.

Heritage

The site is classified category 'C' under the Municipal Heritage Inventory. With due regard to the CDAC comments the Town's assessment of the proposal supports the applicant's response to the CDAC comments. The heritage frontage is preserved and the new addition is to be constructed in the same location as a more recent rear extension to the residence. The addition is setback 13.5 metres from the street and 7.3 metres behind the front of the dwelling and is as far back to the rear of the block as possible, while still providing an area of private open space. The scale of the original dwelling is the dominant element in the streetscape. The existing front roof line of the dwelling has been retained and at its highest point, the new addition is only 1.35 metres above this ridge line. The majority of the proposed addition is concealed from the streetscape by the existing residence.

Conclusion

The application is supported, notwithstanding the variations, on the basis that the applicant has retained the cottage and minimised the impact of the second storey addition. The cottage will still maintain a low scale presence in the streetscape and the addition is considered to respect the heritage character of the area. The application is therefore recommended for approval subject to conditions relating to construction materials and colours, visual privacy, parapet walls and other standard planning conditions.

11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP021118

Mayor O'Neill moved, seconded Cr Nardi

That Council grant development approval and exercise its discretion in regard to the following:

- (i) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a rear boundary setback of less than 1.0 metre for the patio and a southern boundary setback of less than 1.5 metres for the garage and 1.6 metres for the dwelling;
- (ii) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to allow fill greater than 0.5 metres behind a street setback line and within 1.0 metre of a lot boundary;
- (iii) Clause 5.4.1 – Visual Privacy of the Residential Design Codes of WA to permit a visual privacy setback for the unenclosed outdoor active habitable space and living room of less than 7.5 and 6.0 metres to the western and northern boundaries; and
- (iv) Clause 3.7.8.3 of the Residential Design Guidelines 2016 to permit a roof pitch and form of less than 28°,

for additions and alterations to a grouped dwelling, including an upper storey and garage at No. 27A (Lot 1) Duke Street, East Fremantle, in accordance with the plans date stamped received 28 June and 27 September 2018, subject to the following conditions:

- (1) The details of construction materials, colours and finishes to be used to be to the satisfaction of the Chief Executive Officer and to be submitted at Building Permit application stage.
- (2) All parapet walls are to be of a suitable material to the adjacent strata lot property face (southern boundary) by way of agreement between the property owners and at the applicant's expense.
- (3) The installation of landscaping as indicated on the landscaping plan date stamped received 27 September 2018. The planting to provide solid visually impermeable screening for the distances along the northern and western boundaries as indicated on the landscaping plan, date stamped received 27 September 2018, and maintained to the satisfaction of the Chief Executive Officer.
- (4) If it is determined that condition 3 above has not been satisfied to the satisfaction of the Chief Executive Officer then permanent privacy screening in accordance with Clause 5.4.1 C1.2 of the Residential Design Codes of WA is to be installed along a portion of the northern and western lot boundaries to the satisfaction of the Chief Executive Officer.
- (5) 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.
- (6) 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.
- (7) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (8) The proposed alterations and additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in

- consultation with relevant officers.
- (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 17 June 2018 this application deemed determined, on behalf of Council, under delegated authority.

11.2 Woodhouse Road No. 7 (Lot 288) – Additions and Alterations (including second storey) to Existing Dwelling

Owner/Applicant	D & O Charlesworth
File ref	P/WOO7; P072/18
Prepared by	Christine Catchpole, Senior Planning Officer
Supervised by	Andrew Malone, Executive Manager Regulatory Services
Meeting date	6 November 2018
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	Nil

Purpose

This report considers a development approval application for additions and alterations to the existing dwelling, including a second storey at No. 7 Woodhouse Road, East Fremantle.

Executive Summary

The application involves additions and alterations, to an existing single storey dwelling which has an undercroft garage. The existing dwelling is to be retained, renovated and extended to the rear and into the western side setback area. The addition of the second storey, will result in the living, kitchen, dining area and balcony being constructed directly above the existing ground level floor space. Additional bedrooms and a spa deck will be located at the rear of the upper level. The rear addition to the lower level will comprise additional bedrooms, amenities, living and alfresco areas. A swimming pool is also proposed.

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

- Building height - over height - north east portion of the proposed dwelling;
- Views - loss of part of the existing view;
- Lot boundary setbacks – reduced on the eastern and western elevations;
- Site works – required for rear addition, landscaping and pool;
- Retaining walls – required for landscaping and pool; and
- Visual privacy setbacks – cone of vision extends over side lot boundary at rear of lot.

Four submissions were received. Three in support and one which commented on the planning considerations of building height, views, setbacks and scale and bulk of the proposed dwelling. Other concerns were expressed which relate to building matters which will be assessed through the Building Permit application assessment process. In response to the adjoining land owners comments an amended set of plans was subsequently submitted which provides a more articulated eastern elevation with a greater section of the wall further set back from the eastern boundary. Other matters the subject of the submission have been assessed as variations to the R-Codes and the Residential Design Guidelines. It is recommended the variations be supported subject to conditions of approval in regard to front fencing, crossover width, external roof fixtures and pool pump equipment.

Background

Nil in regard to this application.

Consultation

Advertising

The proposed application was advertised to surrounding land owners from 4 to 21 September 2018. Four (4) submissions were received; three in support of the application and one supporting

redevelopment of the property but objecting to various aspects of the proposal. The latter submission is outlined below in italics. The applicant has provided a very detailed response to the neighbour's concerns which can be read in Attachment 4. The matters raised in the submission are discussed in the 'Comment' section of the report.

Submission

'General Comments

We have concerns with the bulk and scale of the proposed additions. The proposed design has no articulation on the front and side facades. The side setbacks are non-compliant as is the roof height.

The set of plans available for review are hand drawn and not very well detailed. There is no finishes schedule made available for review, nor a landscaping plan.

We have concerns over the proposed pool to the rear of the property, and how it will be constructed. There is no detail as to the engineering of the design. The excavation angle of repose would potentially damage our property.

The existing dwelling is a fine example of art deco architecture, with curved glass frontage and pitched roof. Whilst there is no heritage listing on the existing dwelling, we note that the proposed additions do not seem to be keeping with the existing style of architecture – as required by the Local Planning Policy.

Setbacks

As per State Planning Policy 3.1 and the Town of East Fremantle Residential Design Guidelines, the side setbacks are not compliant.

By our calculations, the proposed wall dimensions along the eastern façade are over 20m long and over 6m high with no major openings (one window with obscured glass). The wall has no articulation, and the proposed second storey is not setback.

As per the SPP 3.1, the required building side setback for a wall of those dimensions is at least 2.2m. The proposed additions are between 1m to 1.4m setback.

Our concerns are that we will have a 20m x 6.5m blank wall along our Western boundary. We have several major openings that will be directly affected. It will also represent a decreased level of amenity, looking out onto a 120m² blank wall.

The proposed second storey front balcony also has a solid wall on the Eastern façade. This will directly block views from our master bedroom window, and also our front balcony.

Should the second storey addition be set back in accordance with the local and State planning policy, we suggest that this will reduce the detrimental impact on our amenity.

Building Height

We note that the street level falls between 37.24m and 38.76m RL. The proposed building has a Top of Wall height of 47.3m RL. This exceeds the max allowable height of 6.5m (concealed roof).'

Community Design Advisory Committee (CDAC)

This application was referred to the CDAC meeting of 1 October 2018. The Committee made the following comments.

- (a) *The overall built form merits;*
- The Committee consider the plans do not provide sufficient information to be able to make an assessment of the application. Details and materials on the plans are lacking.
- (b) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development.*
- The Committee consider the quality of architectural design is difficult to determine as there is insufficient detail and information to be able to undertake an assessment.
- (c) *The relationship with and impact on the broader public realm and streetscape;*
- As above.
- (d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
- As above.
- (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;*
- As above.
- (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

Applicant response

As noted in detail in Attachment 4 the applicant believes the set of plans provides all the required information and are drawn to scale. External wall finishes and colours are noted and the extent of all landscaping, retaining walls and levels are provided.

Officer response

For the purposes of the planning assessment no further detail or amended plans are required.

Statutory Environment

Planning and Development Act 2005

Residential Design Codes of WA

Town of East Fremantle Local Planning Scheme No. 3

Policy Implications

Town of East Fremantle Residential Design Guidelines 2016

Financial Implications

Nil.

Strategic Implications

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

Built Environment

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

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

Natural Environment

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

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

Site Inspection

October 2018

Comment

LPS 3 Zoning: Residential R17.5

Site area: 748m²

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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	6.0m	8.2m	A
Lot Boundary Setback			
East			
GF:	1.5m	1.4m	D
UF:	2.7m (assessed on total wall length)	2.3m	D
Section 1 (indent)		1.4m	A
Section 2		1.4m	D
Section 3	1.5m		
West			
GF	1.6m	1.1m	D
UF:	1.5m	1.1-1.2m	D
Section 1			
Section 2	1.2m	5.2m	A
Open Space	50%	70% (applicant's calculations)	A
Outdoor Living	36 ² m	≥200m ²	A
Car Parking	2	2+	A
Site Works	Excavation or fill behind a street setback line: • within 1.0m of lot boundary	Retaining garden beds ≥ 500mm up to lot boundary	D
Retaining Walls	Retaining walls set back from lot boundaries in accordance with Table 1 – i.e. 1.0m Retaining walls up to or within 1.0 metre of a lot boundary for landscaping - <0.5m high	Retaining garden beds ≥ 500mm	D
Visual privacy setback (floor level >500mm above NGL)	7.5m balcony	3.2m	D
Overshadowing	25%	≤25%	A
Drainage	On-site	On-site	A

Local Planning Policies Assessment

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

Building Height Requirement	Required	Proposed	Status
Building Height (RDG) (top of an external wall concealed roof)	6.5m	North eastern - 6.84m	D
		North western - 8.14m	D
		South eastern - 5.09m	A
		South western - 5.09m	A

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

Lot boundary setbacks

The lot boundary setbacks of the dwelling are not fully compliant with the R-Codes as outlined in the above table (varies mostly between 100mm – 500mm) on the eastern and western lot boundaries.

Eastern boundary

The eastern boundary setback is mostly compliant when each section of the wall is assessed independently (as is applicable under the R-Codes in this case). It is not compliant where the indented section of the wall is assessed based on the total length of the wall (as is required under the R-Codes). The required setback for this section of the upper storey is 2.3 metres, however, the required setback is 2.7 metres. Similarly one section of wall on the upper level is required to be setback 1.5 metres and it is proposed to be setback 1.4 metres. The ground level complies with the required setbacks under the R-Codes.

The adjoining land owner made a number of comments in respect to the eastern elevation and its lack of articulation, openings and reduced setback. They believe this will impact general outlook and views currently available from the side elevation windows of 9 Woodhouse Road over the roof top of 7 Woodhouse Road. However, the amended plans for the most part address the setback issues in that the indented section of the wall (~7m in length) is now setback a greater distance of 2.3 metres (required 2.7m) and in the main the setback of the eastern elevation complies. It is the height of the wall, (i.e. the second storey addition) not the setback as such, that will impact on views. Nevertheless, second storey development is permitted; any second storey addition regardless of setback will impact on views. The issue of views in relation to the height of the dwelling is the relevant issue and will be discussed further on in the report.

Western boundary

The western boundary does not comply on the lower level as the proposed setback is 1.1 metres and the required setback is 1.6 metres. This is a result of the additions on this elevation following the existing building line of the house and extending into an existing clothes drying and open space area at the rear. The impact on the amenity of the lot to the west is not considered to be significantly impacted from the point of building bulk and overlooking/privacy matters are not an issue. The adjoining land owner was invited to comment and has supported the proposal.

Whilst the 'Deemed to Comply' setback provisions are not met the 'Design Principles' of the R-Codes are considered satisfied in regard to both boundary setbacks, in that the building does not unnecessarily contribute to building bulk on the adjoining lot given two storey development is permitted in the locality. With the exception of what are considered to be minor setback variations it is considered the proposed dwelling will be constructed with sufficient setback from the side and street boundaries. Adequate sun and ventilation will be provided to the adjoining property and open spaces and overshadowing is not a consideration.

The western side of the adjoining dwelling at 9 Woodhouse Road has two bedroom windows and a bathroom window on the lower floor which face the side wall of the existing dwelling, so this outlook will not alter. The upper floor has a smaller bedroom window on the western elevation and a main bedroom window facing the balcony. The smaller bedroom window will face the side wall of the proposed dwelling and the outlook from that window will be obstructed by the construction of a second storey regardless of setback variations. The outlook west from this window, in respect to a long range westward view toward the river and ocean, has already been obstructed by the construction of two storey dwelling at 5 Woodhouse Road and existing trees on a property on Parker Street. Views to the west and north will remain unobstructed. The proposed setbacks are therefore supported.

Site works and retaining walls

Site works

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

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

Excavation is required to facilitate construction of a pool and landscaped area at the rear of the lot. In the south eastern section of the site, the excavation is greater than the 'Deemed to Comply' provisions, that is, greater than 500mm below natural ground level. The ground level will be excavated by up to 1.0 metre. This will lower the level at the rear of the lot. This is considered acceptable in that it does not impact on the bulk and scale or height of the building.

This level of excavation is considered to satisfy the 'Design Principles' of the R-Code. The R-Codes state as follows in respect to the 'Design Principles'.

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

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

Retaining walls

Proposed retaining walls on the site do not comply with the R-Code requirements as outlined in the above table. Various retaining walls are required along the eastern and southern lot boundaries. The walls will be constructed up to the lot boundaries and will be greater than 0.5 metres in height so land can be retained for landscaping and the pool area.

This is considered to meet the 'Design Principles' of the R-Codes in that the walls are for the purpose of benefitting the residents and do not detrimentally impact on adjoining properties. The finished levels will respect the natural ground level at the boundaries of the site and as viewed from the street and are therefore supported.

Visual privacy

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

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

The proposed development does not comply with the 'Deemed to Comply' provisions of the R-Codes, however, the 'Design 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 raised spa deck at the rear of the site is positioned to overlook the pool area. The cone of vision extends over the eastern lot boundary. However, the overlooking is to the very rear corner of the lot and it is considered this does not raise any privacy issues. It is also noted that the adjoining owner did not comment on this aspect of the proposal. The eastern edge of the upper deck is screened to the roof and this full height screening returns along the southern edge of the deck for a distance of 1 metre. This is considered adequate to prevent any overlooking issues and as such the variations from the R-Code in this respect is considered supportable and a condition of approval is not considered necessary.

The adjoining owner has also commented on the privacy screening on the balcony in the respect that it will obstruct their outlook. Whilst this may be the case, this wall is set back further than is required under the R-Codes and it is considered it is necessary to protect the privacy of the balcony and pool area on the adjacent lot to the east. The applicant is also trying to increase privacy for the owners as the two balcony areas are adjacent.

Overall building height – concealed roof

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

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

- 8.1 metres to the top of a pitched roof; and
- 6.5 metres to the top of an external wall (concealed roof);
- 5.6m to the top of an external wall; and where the following apply.
 - (i) the proposal demonstrates design, bulk and scale that responds to adjacent development and established character of the area or other site specific circumstances;
 - (ii) the provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped and ;

(iii) subject to the 'Acceptable Development' standards of the R-Codes – Element 9 – Design for Climate and Element 8 – Privacy being met.

The amended plans do not fully comply with the height limit as demonstrated in the above table. That is, the north eastern and the north western section of the dwelling does not comply (street frontage).

In respect to non-compliance with the 'Acceptable development provisions' and the 'Performance criteria' the following points are made:

Bulk and Scale of Dwelling

The proposed dwelling does not sit entirely within the 'building envelope' as determined by the R-Codes and the Residential Design Guidelines. Whilst the street setback is greater than the required 6.0 metres at 8.2 metres and ~70% open space is achieved (50% required), the side lot boundary setbacks do not comply. Following the submission of amended plans, a greater compliance with side setbacks has been achieved and the bulk and scale of the dwelling is considered to be in keeping with other single residences in the area.

Loss of Views

Clause 3.7.17.4.1.3 states that *where views are an important part of the amenity of the area and neighbours' existing views are to be affected, amongst other things, the following matters are to be considered:*

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

The proposal is considered to satisfy Points (ii) and (iii) in this instance. In relation to point (i) the following comments are made.

The portion of the dwelling most likely to impact views is the north eastern portion of the building. As noted there has been a submission, from an adjacent land owner, commenting on loss of an aspect of their view. The views impacted are westward to the river and ocean. As noted above, the western side of the adjoining dwelling has two bedroom windows and a bathroom window on the lower floor which face the side wall of the exiting dwelling and do not have views. The upper floor has a smaller bedroom window on the western elevation to the front of the house and a main bedroom window facing the balcony. The smaller bedroom window will face the side wall of the proposed dwelling and the outlook from the window will be obstructed by the construction of a second storey regardless of the setback or height of a second storey. The existing outlook to the west from this window, in respect to a long range view toward the river and ocean, has already been obstructed by the construction of two storey dwelling at 5 Woodhouse Road and existing trees on a property on the corner of Parker Street and Woodhouse Road. Any two storey construction on the adjoining site regardless of the height will obstruct views from this window. Partial views looking north will still be available from this window.

The main existing views are from the balcony and the bedroom window opening onto the balcony in a north westerly, northerly and north easterly direction. Views to the ocean are already blocked by the dwelling at 5 Woodhouse Road which is positioned slightly further forward than the dwelling at 9 Woodhouse Road. Views from the balcony and bedroom window will still be available as the second

level of the proposed dwelling will be no further forward of the existing dwelling's setback at 8.2 metres. The applicant has argued that by retaining the dwelling and adding a second storey, rather than demolishing and rebuilding on this site, more of the view has been retained because a new dwelling could be constructed a distance of 6 metres, two metres closer to the front boundary.

The additional height of the dwelling is therefore not considered to have a significant impact on views or bulk and scale. Each application needs to be assessed on its merits and in respect to the current residential development policy. 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 a consideration. Compliance with the heights is required but an additional 'Acceptable development provision' is that the development proposal must demonstrate design, bulk and scale that responds to adjacent development and the established character of the area. It is accepted that the outlook from the property will not remain the same with the construction of an additional level to the dwelling. However, two storey residential development is permitted in the area. The scale and bulk of this development will be no greater than other modern two to three level homes in the precinct and the long range access to views to the west, north and east remains uninterrupted. It is considered there is no further reduction in views to the west because the upper storey additions to 5 Woodhouse Road, setback at ~7.0 metres, and existing trees already blocks this view, so loss of views has already occurred. As such the additional height of the building above that specified in the Residential Design Guidelines is supported.

Conclusion

The Richmond Hill Precinct comprises dwellings of various scales and built forms. Many are two to three storey and comprise large family homes. Properties in the area are characterised by the dwellings oriented to obtain river views. This development approval application is no different in that it is proposed to renovate the existing dwelling and extend the house by adding another level. This also maximises views from the site.

The application proposes a number of variations of the R-Codes and the Residential Design Guidelines. The variations are supportable following the submission of amended plans which addressed setback concerns on the eastern boundary, effectively increasing the setback and articulation. The other matters raised in the submission were either not considered to be relevant planning considerations in the assessment of the proposal or were matters to be assessed at the Building Permit application stage. Furthermore, the view corridor of the most impacted adjoining land owner has been reduced to what is considered to be a minimal extent, with no additional loss of significant views. The application is therefore recommended for approval subject to development conditions in respect to front fencing, crossover width, external fixtures on the roof, and pool pump equipment.

- Donna Charlesworth (owner) spoke in support of the officer's recommendation.

11.2 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION 031118

Cr Natali moved, seconded Mayor O'Neill

That Council grant development approval and exercise its discretion in regard to the following:

- (i) Clause 1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback on the:
 - (a) eastern boundary of less than 2.7 metres (indented section of wall) and less than 1.5 metres for a remaining section of the wall; and
 - (b) western boundary of less than 1.2 to 1.6 metres for various sections of the wall;
- (ii) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to allow excavation greater than 0.5 metres behind a street setback line and within 1.0 metre of a lot boundary;

- (iii) Clause 5.3.8 – Retaining Walls of the Residential Design Codes of WA to permit a retaining wall greater than 0.5 metres in height less than 1.0 metre from the lot boundaries;
- (iv) Clause 5.4.1 – Visual Privacy of the Residential Design Codes of WA to permit a visual privacy setback of less than 7.5 metres for a raised deck/balcony from the eastern lot boundary;
- (v) Clause 3.7.17.4.1.3 – Building Height, Form, Scale and Bulk of the Residential Design Guidelines to allow the top of an external wall (concealed roof) to exceed 6.5 metres in height,

for additions and alterations, including an upper storey to an existing dwelling at No. 7 (Lot 288) Woodhouse Road, East Fremantle, in accordance with the plans date stamped received on 8 August and 3 October 2018, subject to the following conditions:

- (1) No external fixtures, fittings, masts, satellite dishes, telecommunication devices, solar collectors, solar hot water systems or appliances or the like to be installed on the roof of the dwelling without further Council approval.
- (2) The crossover widths not to exceed the width of the crossovers indicated on plans date stamped received on 8 August and 3 October 2018 and to be in accordance with Council's crossover policy as set out in the Residential Design Guidelines 2016 (refer to Footnote 1).
- (3) All fencing within the street setback area to be in compliance with the front fence provisions of the Residential Design Guidelines 2016. The details to be to the satisfaction of the Chief Executive Officer and indicated on the Building Permit application plans.
- (4) Pool filter and pump equipment is not to be located on the eastern boundary of the lot and is to be located a minimum distance of 1.0 metre away from all other boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
- (5) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (6) The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (7) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (8) 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.
- (9) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (10) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (11) This planning approval 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 any changes to the existing crossovers to the site are contemplated Council approval is to be obtained.***
- (ii) This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.***
- (iii) A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.***
- (iv) It is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and 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.***
- (v) All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).***
- (vi) Matters relating to dividing fences are subject to the Dividing Fences Act 1961.***
- (vii) Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – "An Installers Guide to Air Conditioner Noise".***

(CARRIED UNANIMOUSLY)

Note:

As 4 Committee members voted in favour of the Reporting Officer's recommendation, pursuant to Council's decision regarding delegated decision making made on 17 June 2018 this application deemed determined, on behalf of Council, under delegated authority.

11.3 Coolgardie Avenue No. 13 (Lot 22) – Alterations and Additions Including Second Storey Extension

Owner / Applicant	R McFarland & R Baker
File ref	P073/2018; P/COO13
Prepared by	Andrew Malone, Executive Manager Regulatory Services
Supervised by	Gary Tuffin, Chief Executive Officer
Meeting date	6 November 2018
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	Nil

Purpose

This report considers a planning application for alterations and additions including a second storey extension at No. 13 Coolgardie Avenue, East Fremantle.

Executive Summary

The additions and alterations the subject of this application comprise of a second storey, internal alterations and a new carport. The applicant is seeking Council approval for the following variations:

- (i) Clause 5.2.2 – Garage Width of the Residential Design Codes – 30% required, 35% provided; and
- (ii) Building height- Concealed roof 6.5 metres required. 6.9 metres provided;
- (iii) Clause 5.4.1 – Visual Privacy of the Residential Design Codes – bedroom 3 overlooking eastern neighbour

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

Background

Zoning: Residential R17.5
Site area: 814m²

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

No previous approvals have been granted for the site.

Consultation

Advertising

The application was advertised to surrounding land owners from 30 August to 21 September 2018. Two (2) submissions were received. The submissions noted the following comments and the applicant and officer responses are provided below:

Submission 1

- Our neighbours approached us with the plans and I have signed the form saying we are ok with it overall, but I still have concerns on the west elevation showing large clear windows that overlook our property.
- I want to make sure there is no overlooking issues into our property and that they are building within the code. My concern is that they are floor to ceiling windows that look directly into our back yard.
- My understanding when we built 5 years ago that they had to be frosted?

Submission 2

We object to the plans at 13 Coolgardie Avenue application Number CTP073/18 on the following grounds:

- The full length windows on the west elevation on the 2nd story impact our privacy and amenity.
- The elevation of the site and height of the 2nd story permits the bank of windows (major openings) to have direct line of sight into our main living area (i.e. active habitable space) and outdoor living / pool area.
- It is unlikely that vegetation screening would ameliorate the overlook effectively.
- The upper story windows should be reduced in size and have opaque glass fitted to restrict viewing into adjoining properties. We consider that this does not meet the R codes.

Applicant's response

"The 2 submissions seem to be written by the one neighbour as they address the same points in each. The submissions are mainly concerned with the windows not meeting the R-Codes. Clause 5.4.1 of the Residential Design Codes state that for areas coded R50 or less the setback for a window from a bedroom or study to the boundary is 4.5m. Please see an excerpt of Clause 5.4.1 below. Our proposal has a setback of 4.546m from the glazing of the master bedroom and guest bedroom to the boundary. As such it would appear as though the glazing that the neighbour is concerned about does comply with the R-Codes and therefore they do not need to be frosted. The applicant is primarily concerned with achieving views of the ocean after the only views that 13 Coolgardie Street did have were built out by the neighbour to the west. The views were a major reason for purchasing the property. The bedrooms will generally be occupied during the morning and at night and will pose less of an issue in terms of privacy as the neighbours outdoor living areas will be primarily used during the day. The applicant is willing to plant some vegetation along the boundary line that in time will further help minimise any possible overlooking."

Officer response

The objection letters and applicant's submissions are acknowledged and are addressed in the Comment section of this report. However, in the main the proposal is compliant with the R-Codes and the Residential Design Guidelines. No changes to the plans are required.

Community Design Advisory Committee (CDAC)

This application was considered at the CDAC meeting of 30 July 2018 and the Committee made the following comments. The applicant's response is provided in italics below the Committee's comments.

(a) The overall built form merits;

- The Committee consider the design to possess acceptable built form merits and that the retention of the ground floor is a positive design outcome.

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

- The retention of the ground floor is a positive design outcome.

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

- The Committee consider the development has an acceptable relationship with the streetscape.

- (d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
- The Committee determine the development has a positive impact on the immediate locality and is consistent with the surrounding area.
- (e) *The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;*
- The Committee consider it is positive that the original dwelling is being retained; however the Panel mentions that the existing front fence is incongruent to the proposed development.
- (f) *The demonstration of other qualities of best practice urban design including “Crime Prevention” Through Environmental Design performance, protection of important view corridors and lively civic places.*
- The Committee determine the passive surveillance from the development to the public realm is poor. This is due to the main living area being located to the rear of the dwelling, meaning interaction with the primary street is minimal and restrictive.

Applicant response

- As per response) *The Committee consider it is positive that the original dwelling is being retained; however the Panel mentions that the existing front fence is incongruent to the proposed development.*
- We do intend to change the front fence to an electric sliding gate. However due to budget constraints this will happen after the build.
- As per response f) *the Committee determine the passive surveillance from the development to the public realm is poor. This is due to the main living area being located to the rear of the dwelling, meaning interaction with the primary street is minimal and restrictive.*
- As we are trying to keep cost down, we are keeping the original living room as per existing dwelling.

Officer’s response

The CDAC comment and applicant’s submissions are noted.

Statutory Environment

Planning and Development Act 2005

Residential Design Codes of WA

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

Policy Implications

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

Financial Implications

Nil

Strategic Implications

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

Built Environment

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

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

Natural Environment

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

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

Site Inspection

August 2018

Comment

Statutory Assessment

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

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

Residential Design Codes Assessment

Design Element	Required	Proposed	Status
Street Front Setback	7.5m	13.7m	A
Secondary Street Setback	-	-	A
Lot boundary setbacks			
<u>East</u>	1.5m	1.57m	A
West	1.5m - 3.4m	3.6m	A

South	1.5m - 3.8m	18.3m	A
Open Space	55%	64%	A
Outdoor Living	30m ²	91m ²	A
Car Parking	2	2	A
Site Works	Less than 500mm	Less than 500mm	A
Visual privacy setback			
East	4.5m	> 4.5m	D
Overshadowing	≤25%	≤25%	A
Drainage	On-site	To be conditioned	A

Local Planning Policies Assessment

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

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

Although the dwelling exceeds the maximum allowable wall and roof height on the western side of the property in accordance with the Residential Design Guidelines, it does not breach the maximum heights for Category B of the R Codes. The proposed wall/ roof height is 6.9 metres, a 0.4 metre variation to the required 6.5 metre maximum height under the Residential Design Guidelines. The location of the

dwelling is located in an area considered to be sensitive to view, however in this instance the actual location of the dwelling does not directly impact on any view corridors to adjoining neighbours.

The renovations are contemporary in nature and utilise the existing levels of the site and setbacks are considered to be generous.

In this circumstance non-compliance with the Acceptable Development provisions with the height limit must be assessed in respect to the 'Performance Criteria' of the Residential Design Guidelines. For the most part, the proposal significantly demonstrates a design, bulk and scale that responds to the locality. The CDAC also noted their support for the proposal. The increased front setback is also considered to mitigate bulk and scale impacts.

Visual privacy

The 'Deemed to Comply' provisions for Element 5.4.1 Visual Privacy of the R-Codes requires major openings which have their floor level more than 0.5 metres above natural ground level, and positioned so as to overlook any part of any other residential property behind its setback line (i.e. the first 7.5m in R12.5), to comply with the following:

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

The western neighbour has submitted an objection to this proposal based on overlooking. Clause 5.4.1 of the R Codes state that for a bedroom window the required setback is 4.5 metres to the boundary. The subject proposal has a setback of 4.546m from the glazing of the master bedroom and guest bedroom to the western boundary and therefore complies with the "Deemed to Comply" provisions to the western neighbour.

Whilst the proposal does not technically comply with the 'Deemed to Comply' privacy provisions of the R-Codes to the eastern neighbour, it is considered the proposal can be supported. The development is considered to overlook the adjoining property (bedroom 3) to the east. This overlooking is into the front garden, however it also exceeds overlooking into the front setback area, therefore into area considered as private space. Battens are proposed to be utilised as an aesthetic feature of the design (cladding). These battens cover the window and therefore minimises direct viewing to the neighbours property. As the battens screen the window and only oblique views are available, it is considered the overlooking can be supported. The area overlooked is a driveway that can be readily seen from the street and does not form any recreational/ habitable area. The overlooking is supported.

Garage width and crossover

Despite the carport exceeding the maximum 30% of lot width because it is a carport rather than a solid garage it is visually permeable and open which means it does not have the same bulk as a traditional garage. The carport is integrated into the design of the dwelling and adds to the overall design merit of the proposal. The additional width to the carport is supported subject to conditions.

Conclusion

The variations as stated above are considered acceptable and the development application is recommended for approval subject to conditions.

11.3 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP041118

Cr Nardi moved, seconded Cr White

That development approval is granted under delegated authority and discretion exercised in regard to the following:

- (i) Clause 5.2.2 – Garage Width of the Residential Design Codes – 30% required, 35% provided; and
- (ii) Building height- Concealed roof 6.5 metres required. 6.9 metres provided;
- (iii) Clause 5.4.1 – Visual Privacy of the Residential Design Codes – bedroom 3 overlooking eastern neighbour

for additions and alterations (2 storey addition) to an existing single storey dwelling at No. 13 (Lot 22) Coolgardie Avenue, East Fremantle, in accordance with the plans date stamped received 10 August 2018, subject to the following conditions:

- (1) No enclosure of the carport is permitted without the submission of a development approval application for Council's consideration.
- (2) The proposed battens to bedroom 3 are required to be installed. In the absence of the battens being installed, the applicant is to comply with the 'Deemed to Comply' requirements of Clause 5.4.1 – Visual Privacy of the Residential Design Codes.
- (3) If requested by Council within the first two years following installation, the roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (4) No modification to the front crossover is permitted. Any new crossovers which are constructed are to be a maximum width of 5.0 metres and the crossover to be constructed in compliance with Council's Residential Design Guidelines 2016.
- (5) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (6) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (7) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (8) All stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.
- (9) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (10) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.

(11) This planning approval 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 17 June 2018 this application deemed determined, on behalf of Council, under delegated authority.

11.4 View Terrace, No. 65B (Lot 1) – Reconsideration of Conditions of Planning Approval and Installation of Shade Structure for Screening Purposes

Applicant/Owner	S and J Hlevnjak
File ref	P/VIE65B; P082/18
Prepared by	Christine Catchpole, Senior Planning Officer
Supervised by	Andrew Malone, Executive Manager Regulatory Services
Voting requirements	Simple Majority
Meeting date	6 November 2018
Documents tabled	Nil
Attachments	Nil

Purpose

This report considers the reconsideration of conditions of development approval requiring the installation of visual privacy screening on the eastern elevation of the dwelling and the balcony to satisfy the requirements of the R-Codes. The applicant is requesting the conditions be amended (condition 3) and deleted (condition 4) and the matter of visual privacy addressed by the installation of a shade structure in the side setback area at No. 65B (Lot 1) View Terrace, East Fremantle.

Executive Summary

This report concerns a reconsideration of conditions of development approval and a development application for a shade structure in the side setback area. Following approval of the two storey dwelling and partial construction of the residence the owners realised that in satisfying conditions 3 and 4 substantial views from the balcony and the upper storey windows of the living and dining areas would be obscured. The applicant requested the Town's officers inspect the site and review the degree of overlooking to the adjacent property to the east (triplex development) to determine whether the conditions could be deleted and amended.

A site inspection revealed that the balcony and one of the living room window screening treatments were not necessary, as first thought, as these areas overlooked the front setback area of the adjoining site. This area is already visible from the street. Therefore, condition 4 is recommended to be deleted. However, it was determined that the remaining windows in the dining and living areas on the upper level did overlook the side setback and open space areas of the adjoining triplex and that compliance with the R-Codes as per condition 3 would be required, unless a suitable alternative screening device was proposed.

The owner requested that the overlooking be addressed through the installation of a shade structure which obstructed the view downwards into the side setback area. The shade structure was considered adequate by the Town and the applicant informed that a development application was required for the shade structure. The adjoining owners were also satisfied and endorsed the plans the subject of this application. In light of the above it is recommended condition 3 be amended to remove the requirement for screening as per the R-Code requirements for upper level windows on the eastern elevation and condition 4, requiring screening of the balcony, be deleted. The shade structure is recommended for approval subject to conditions to ensure privacy is maintained and compatibility with the finish of the dwelling.

Background

6 September 2016 – Council granted development approval for construction of a two storey dwelling subject to conditions. Two of which read as follows:

- “(3) All major openings to lower (subject to the height of the boundary fence not reaching 1.6 metres above the altered ground level) and upper floor habitable rooms on the eastern and western elevations where the visual privacy setback of the R-Codes is not met to comply with clause 5.4.1 C1.2 of the Residential Design Codes of WA and indicated on the Building Permit application plans to the satisfaction of the Chief Executive Officer and installed prior to occupation of the dwelling.*
- (4) Permanently fixed visually impermeable screening on the eastern elevation of the balcony to comply with clause 5.4.1 C1.2 of the Residential Design Codes of WA prior to occupation of the dwelling.”*

DETAILS

LPS 3 Zoning: Residential R17.5
Site area: 445m² (strata lot)

Consultation

Advertising

The adjoining owners at No. 63 View Terrace (triplex development) were consulted by the applicant/owner in respect to the shade structure proposed to address the visual privacy issues and replace the need for obscure glazing on the upper level windows. All adjoining land owners have endorsed the proposal. Advertising was therefore not required to be undertaken by the Town.

Community Design Advisory Committee (CDAC)

It was not considered necessary to refer this matter to the CDAC as the structure is considered to have minimal impact on the streetscape.

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

October 2018

Comment

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 (balconies, decks etc.)

The original development did not comply with the 'Deemed to Comply' provisions of the R-Codes for the lower and upper levels, however, the 'Design Provisions' of 5.4.1 allow 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; and*
- 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).

However, the original plans the subject of the development application indicated screening on the balcony and the upper level windows, so conditions were imposed to ensure compliance with the R-Codes and prevent overlooking. Once the residence was under construction it became clear substantial views to the river would be obscured if the screening measures were installed and that for some of the openings the screening was unnecessary, despite it being shown on the original plans.

Where the Town determined the screening was still required the applicant/owner requested that Council consider an alternative to screening the windows. A shade structure was proposed to be constructed along a portion of the eastern side setback area which is adjacent to the windows and the open space areas of the triplex development. A structure of this kind would require a 1.0 metre set back from the boundary. It is proposed to construct the three supporting columns on the boundary and these will support the shade cloth framework. The structure will extend in height to just below the upper window sills and will cover the entire setback area for a length of 8.7 metres. The shade cloth will be fixed to a frame so it will remain permanently in place. The structure will be positioned at a slight upwards angle away from the house and toward the lot boundary. Its position directly under the two windows is considered to adequately restrict overlooking into the rear open space areas for each of the triplex units.

For privacy reasons it is important for the shade cloth material to be of a high density (i.e. 90%) so it is not visually permeable and for this material to be replaced when it deteriorates. Conditions of approval are therefore recommended in this regard. It is also recommended that a condition of approval which requires the colour of the poles and shade cloth to be of a colour that is compatible with the wall finishes of the dwelling so that it is less visually obvious be applied.

Reconsideration of conditions

Given the visual privacy issues are considered satisfied it is recommended that condition 4 (as noted above) be deleted and condition 3 be amended to delete reference to the major openings to habitable windows on the eastern elevation. The condition will therefore read as follows:

- (3) *All major openings to lower (subject to the height of the boundary fence not reaching 1.6 metres above the altered ground level) and upper floor habitable rooms on the western elevation where the visual privacy setback of the R-Codes is not met to comply with clause 5.4.1 C1.2 of the Residential Design Codes of WA and indicated on the Building Permit application plans to the satisfaction of the Chief Executive Officer and installed prior to occupation of the dwelling.*

Conclusion

The reconsideration of conditions result in condition 3 being amended to remove reference to the major openings to habitable rooms on the eastern elevation and condition 4, requiring balcony screening, being deleted. The shade structure screening device is recommended for approval subject to conditions regarding the visual permeability (i.e. density of the shade cloth) and colour of construction materials being compatible with the wall finish of the dwelling. It is also recommended the structure be installed before occupation of the dwelling.

11.4 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP051118

Cr Natale moved, seconded Cr White

That Council:

- A. Approve the request for deletion of condition 4 and amendment of condition 3 (as outlined below) in relation to the Development Approval dated 6 September 2016 for No. 65B View Terrace (Lot 1), East Fremantle with reference to plans dated 3 August 2016.
- (3) All major openings to lower (subject to the height of the boundary fence not reaching 1.6 metres above the altered ground level) and upper floor habitable rooms on the western elevation where the visual privacy setback of the R-Codes is not met to comply with clause 5.4.1 C1.2 of the Residential Design Codes of WA and indicated on the Building Permit application plans to the satisfaction of the Chief Executive Officer and installed prior to occupation of the dwelling.*
- B. Grant development approval and exercise its discretion in regard to the following:
- (i) Clause 5.1.3 – Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback of less than 1.0 metre from the eastern lot boundary, for a shade structure for screening purposes at No. 65B (Lot 1) View Terrace, East Fremantle, in accordance with the plans date stamped received on 13 September 2018, subject to the following conditions:
- (1) Installation of the shade structure as indicated on plans date stamped received 13 September 2018 prior to the occupation of the dwelling.
 - (2) The shade structure to be installed with 90% density shade cloth material or alternative to the satisfaction of the Chief Executive Officer (refer to Footnote (i)).
 - (3) The shade cloth material to be replaced, at the owner's expense and in accordance with condition 2, if it is determined by the Chief Executive Officer that the material is no longer functioning as a privacy screening device and requires replacement.
 - (4) The materials and colours to be used in the construction of the shade structure to be to the satisfaction of the Chief Executive Officer. The details to be submitted with the Building Permit application plans.
 - (5) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
 - (6) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
 - (7) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
 - (8) 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.
 - (9) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

- (10) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (11) This planning approval 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) *In regard to condition 2, if an alternative material is to be proposed it must be approved by the Chief Executive Officer.*
- (ii) *This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (iii) *A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (iv) *It is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and 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.*
- (v) *All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (vi) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

(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 17 June 2018 this application deemed determined, on behalf of Council, under delegated authority.

12. REPORTS OF OFFICERS (COUNCIL DECISION)

Nil.

13. MATTERS BEHIND CLOSED DOORS

Nil.

14. CLOSURE OF MEETING

There being no further business, the Presiding Member declared the meeting closed at 6:49pm.

I hereby certify that the Minutes of the ordinary meeting of the Town Planning & Building Committee of the Town of East Fremantle, held on 6 November 2018, Minute Book reference 1. to 14 were confirmed at the meeting of the Committee on:

..... 5/2/19



Presiding Member