



# MINUTES

## Town Planning & Building Committee

---

Tuesday, 5 February 2019 at 6.30pm

### Disclaimer

The purpose of this Committee meeting is to discuss and, where possible, make resolutions about items appearing on the agenda.

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.

Persons should be aware that the provisions of the Local Government Act 1995 (section 5.25 (e)) establish procedures for revocation or rescission of a Committee decision. No person should rely on the decisions made by the Committee until formal advice of the Committee decision is received by that person.

The Town of East Fremantle expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any resolution of the Committee, or any advice or information provided by a member or officer, or the content of any discussion occurring, during the course of the Committee meeting.

### Copyright

The Town wishes to advise that any plans or documents contained within this Agenda may be subject to copyright law provisions (Copyright Act 1968, as amended) and that the express permission of the copyright owner(s) should be sought prior to their reproduction

---

CONTENTS

|  |    |
|--|----|
| 1. DECLARATION OF OPENING OF MEETING/ANNOUNCEMENTS OF VISITORS   | 1  |
| 2. ACKNOWLEDGEMENT OF COUNTRY  | 1  |
| 3. RECORD OF ATTENDANCE  | 1  |
| 3.1 Attendance   | 1  |
| 3.2 Apologies  | 1  |
| 3.3 Leave of Absence   | 1  |
| 4. MEMORANDUM OF OUTSTANDING BUSINESS  | 1  |
| 5. DISCLOSURES OF INTEREST   | 1  |
| 5.1 Financial  | 1  |
| 5.2 Proximity  | 1  |
| 5.3 Impartiality   | 1  |
| 5.3.1 A Malone – Refer Item 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar     | 1  |
| 5.3.2 Cr Collinson - Refer Item 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar | 1  |
| 5.3.3 Cr Nardi- Refer Item 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar      | 2  |
| 6. PUBLIC QUESTION TIME  | 2  |
| 6.1 Responses to previous questions from members of the public taken on notice   | 2  |
| 6.2 Public Question Time   | 2  |
| 7. PRESENTATIONS/DEPUTATIONS   | 2  |
| 7.1 Presentations  | 2  |
| 7.2 Deputations  | 2  |
| 8. CONFIRMATION OF MINUTES OF PREVIOUS MEETING   | 2  |
| 8.1 Town Planning and Building Committee (6 November 2018)   | 2  |
| 9. ANNOUNCEMENTS BY THE PRESIDING MEMBER   | 2  |
| 10. REPORTS OF COMMITTEES  | 3  |
| 10.1 Community Design Advisory Committee   | 3  |
| 11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)   | 4  |
| 11.1 Pier Street, No. 9A (Lot 500) – Construction of Two Storey Single Dwelling on Vacant Land                                 | 4  |
| 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar                                 | 16 |
| 11.9 Staton Road, No 70 (Lot 54) Home Occupation (Beauty and Skin Therapy)   | 23 |
| 11.2 Silas Street, Unit 24 No 3 Lot 123- Mixed Use Development- Change of Use From Office to Recreation- Private               | 32 |
| 11.3 Woodhouse Street, No 27 (Lot 299) Proposed Steel Framed Vergola Structure   | 39 |
| 11.4 Richmond Circus No 70 (Lot 226) - Carport   | 45 |
| 11.5 Duke Street, No. 70 (Lot 500) – Ancillary Dwelling  | 50 |
| 11.6 Canning Highway, No 238A (Lot 300) Proposed New Single Storey Dwelling  | 57 |

**MINUTES OF TOWN PLANNING MEETING  
TUESDAY, 5 FEBRUARY 2019**



---

|   |    |
|---|----|
| 11.7 Sewell Street No 82 (Lot 297) Proposed carport and alfresco  | 63 |
| 11.10 Allen Street, No 35 (Lot 12) Demolition and Site Works Including Retaining Walls and Fill   | 70 |
| 12.REPORTS OF OFFICERS (COUNCIL DECISION)   | 79 |
| 12.1 Economics and Industry Standing Committee Inquiry into Short-stay Accommodation in WA –<br>Draft Town of East Fremantle Submission | 79 |
| 13.MATTERS BEHIND CLOSED DOORS  | 87 |
| 14.CLOSURE OF MEETING   | 87 |

---

MINUTES OF THE ORDINARY MEETING OF THE TOWN PLANNING COMMITTEE HELD AT THE EAST FREMANTLE TOWN HALL, 135 CANNING HIGHWAY, EAST FREMANTLE ON TUESDAY 5 FEBRUARY 2019.

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

Presiding member opened the meeting at 6.31pm 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 A White

The following staff were in attendance:

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

**3.2 Apologies**

Cr T Natale

**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**

**5.3.1 A Malone – Refer Item 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar**

**5.3.2 Cr Collinson - Refer Item 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar**

**5.3.3 Cr Nardi- Refer Item 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar**

**6. PUBLIC QUESTION TIME**

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

Nil.

**6.2 Public Question Time**

Nil.

**7. PRESENTATIONS/DEPUTATIONS**

**7.1 Presentations**

Nil.

**7.2 Deputations**

Nil.

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

**8.1 Town Planning and Building Committee (6 November 2018)**

**8.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION**

Cr White moved, seconded Cr Nardi

That the minutes of the Town Planning and Building Committee meeting held on Tuesday 6 November 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:**

1. Minutes of the Community Design Advisory Committee meeting held on 19 November 2018.
2. Minutes of the Community Design Advisory Committee meeting held on 21 January 2019

---

**PURPOSE**

To submit the minutes of the Community Design Advisory Committee meetings held in November 2018 and January 2019 for receipt by the Town Planning Committee.

**EXECUTIVE SUMMARY**

The Committee, at its meetings held on 19 November 2018 and 21 January 2019, provided comment on planning applications listed for consideration at the February 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 TP010219**

**Cr Nardi moved, seconded Cr White**

**That the Minutes of the Community Design Advisory Committee meetings held on 19 November 2018 and 21 January 2019 be received.**

(CARRIED UNANIMOUSLY)

Cr Nardi moved, second Cr McPhail

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

(CARRIED UNANIMOUSLY)

## 11. REPORTS OF OFFICERS (COMMITTEE DELEGATION)

### 11.1 Pier Street, No. 9A (Lot 500) – Construction of Two Storey Single Dwelling on Vacant Land

|                            |  |
|----------------------------|--|
| <b>Applicant</b>           | Brolga Developments and Construction P/L             |
| <b>Owner</b>               | S Sorgiovanni  |
| <b>File ref</b>            | P/PIE9A; P096/18                                     |
| <b>Prepared by</b>         | Christine Catchpole, Senior Planning Officer         |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Attachments</b>         | Nil  |

#### Purpose

This report considers a development application for construction of a two storey single dwelling on vacant land on the southern side of the street being No. 9A (Lot 500) Pier Street, East Fremantle.

#### Executive Summary

It is proposed to develop a vacant lot with a two storey single dwelling. The 465m<sup>2</sup> lot is the result of a 'down the middle' subdivision. The resulting lot is long and narrow with a width of approximately 10 metres, sloping downwards away from the road. The lot dimensions have presented some challenges in complying with the R-Code standards for a R12.5 coded area as the lot has been subdivided at R20 standards. The following non-compliance matters are relevant to the determination of this application:

- Street setback: balcony, fencing and entry gate incursion into the setback area;
- Lot boundary setbacks: less than required;
- Open space: below required percentage of site area;
- Building height: building height exceeded for a portion of the dwelling;
- Site works: excavation and fill greater than permitted under the R-Codes;
- Retaining walls: greater than 1.0 metre in height closer than 1.0 metre to the lot boundary and within the front setback area;
- Visual privacy setbacks: less than permitted for upper level bedroom 4 and rear alfresco area;
- Garage width: greater than 30% of the width of the lot frontage; and
- Front fencing.

The variations in regard to impact on amenity are considered reasonable given the site circumstances and are supportable. The application is recommended for approval subject to specific planning conditions relating to balustrading materials, no external roof fixtures, front fencing, crossover width, roof reflectivity and parapet walls.

#### Background

Nil in regard to this application. Vacant land.

---

## Consultation

### Advertising

Surrounding land owners considered to be impacted by the proposal were contacted by mail and comments invited for a two week period from 9 to 23 November 2018. A sign was also placed on the vacant land for the same two week period. Four submissions were received all objecting to the proposal on various grounds. The planning issues raised were discussed with the applicant and amended plans have been submitted and re-advertised to the owners from 9 to 23 January 2019. The only submission received was in support of the application.

### Community Design Advisory Committee (CDAC)

This application was referred to the CDAC meeting on 21 January 2019. The following comments were made:

- (a) *The overall built form merits;*
  - The Committee acknowledge the improvement to the front façade.
  - The Committee note that the garage does not comply with the Town's Residential Design Guidelines or the R-Codes.
- (b) *The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development.*
  - No further comment at this time.
- (c) *The relationship with and impact on the broader public realm and streetscape;*
  - No further comment at this time.
- (d) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
  - No further comment at this time.
- (e) *The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;*
  - No further comment at this time.
- (f) *The demonstration of other qualities of best practice urban design including "Crime Prevention" Through Environmental Design performance, protection of important view corridors and lively civic places;*
  - No further comment at this time.

### Officer Comment

The applicant is required to provide two parking bays on site. A lot width of ~10 metres provides few options for accommodating two bays and complying with the provision that requires the width of the garage to be 30% or less of the lot frontage width. The applicant has provided undercroft parking as requested by the Town to minimise the impact of the garage width on the streetscape, so no further changes to the plans are required.

### **Statutory Environment**

*Planning and Development Act 2005*

*Residential Design Codes of WA*

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



---

**Policy Implications**

*Town of East Fremantle Residential Design Guidelines 2016*

**Financial Implications**

Nil

**Strategic Implications**

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

Built Environment

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

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

Natural Environment

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

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

**Site Inspection**

November 2018

**Comment**

LPS 3 Zoning: Residential R12.5  
Site area: 465m<sup>2</sup>

### Statutory Assessment

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

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

### Residential Design Codes Assessment

| Design Element                   | Required  | Proposed   | Status |
|----------------------------------|---|--|--------|
| Street Setback                   | 7.5m  | 7.5m average achieved as / R-Codes   | A      |
| Minor incursions                 | 6.5m  | Nil to 5.5m<br>(entry statement internal fencing and gate)   | D      |
| Lot Boundary Setback             | West<br>GF: 1.5 – 1.8m<br>UF: 2.4m<br>East<br>GF: 2.6 – 3.3m<br>UF: 2.0m<br>South:<br>LF – 6.0m (rear)<br>UF – 6.0m   | East<br>GF: 1.0 – 2.1m<br>UF: 1.0 – 2.1m<br>West<br>GF: nil – 1.8m<br>UF: 1.2 – 4.0m<br>South<br>LF: 4.1m<br>UF: 22.4m | D      |
| Garage (R-Codes)                 | 3.75m   | 6.0m   | A      |
| Garage (RDG)                     | Incorporated into and compatible with dwelling  | In alignment with dwelling   | A      |
| Garage (% width of lot frontage) | ≤30%  | 54%  | D      |
| Open Space                       | 55%   | 50%  | D      |
| Car Parking                      | 2   | 2  | A      |
| Site Works                       | Excavation or fill behind a street setback line: <ul style="list-style-type: none"> <li>• Within 3m of front boundary</li> <li>• limited by compliance with building height limits and setbacks</li> <li>• within 1.0m of lot boundary</li> </ul> | Various<br>967mm – 1.2m  | D      |
| Retaining Walls                  | Retaining walls set back from lot boundaries in accordance with Table 1 – 1.0 metre<br>Retaining walls up to or within 1.0 metre of a lot boundary for landscaping - <0.5m high   | Various<br>521mm – 881mm   | D      |
| Visual privacy setback           | 4.5m (bedroom 4)<br>7.5m (alfresco) - >500mm above NGL)   | 3.2m<br>4.2m   | D<br>D |
| Overshadowing                    | 25%   | 2.5%   | A      |
| Drainage                         | On-site   | On-site  | A      |

### Local Planning Policies Assessment

| LPP Residential Design Guidelines Provision           | Status   |
|---|----------|
| 3.7.2 Additions and Alterations to Existing Buildings | N/A      |
| 3.7.3 Development of Existing Buildings               | N/A      |
| <b>3.7.4 Site Works</b>                               | <b>D</b> |
| 3.7.5 Demolition                                      | N/A      |
| 3.7.6 Construction of New Buildings                   | A        |
| <b>3.7.7 Building Setbacks and Orientation</b>        | <b>D</b> |
| 3.7.8 Roof Form and Pitch                             | A        |

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

| Building Height Requirement                          | Required | Proposed                  | Status |
|--|----------|---------------------------|--------|
| Building Height (Maximum external wall height) (RDG) | 6.5m     | North: 4.8m – 5.8m        | A      |
|  |          | East: 4.7m – 6.6m         | D      |
|  |          | West: 6.6m – 7.3m         | D      |
| Building Height (top of pitch of roof) (RDG)         | 8.1m     | 5.5m (rear single storey) | A      |

The lot to be developed is a vacant freehold lot of 465m<sup>2</sup>. The subdivision was approved under the equivalent of a R20 density standard and the lot is now subject to the development standards of R12.5. The original parent lot was the subject of a ‘down the middle’ subdivision making the resulting lots long and narrow.

There are a number of variations to the R- Codes and the Residential Design Guidelines in respect to this application mostly due to the lot dimensions and the existing ground levels which slope away from Pier Street. These matters are discussed below.

#### Street setback - incursions

The primary street setback of the dwelling is compliant with the R-Codes. The 1.5 metre incursion into the setback is compensated for by a greater area of open space behind the setback line (as permitted under cl. C2.1 (iii)). The R-Codes also allow for minor incursions into the street setback for structures such as balconies, verandahs, stairs and architectural features but these elements cannot protrude more than 1.0 metre into the setback area without Council approval.

In this case the balcony, entry gate and fencing for a front courtyard protrude into the front setback by more than the 1.0 metre permitted. Whilst these structures are further forward than the building line they are below street level and in the case of the balcony, only slightly forward of the building line. The open style balustrading of the balcony assists in reducing the overall bulk of the proposed dwelling and its visual presence in the streetscape. Maintaining an open frontage to the dwelling with minimal ‘solid’ façade features facing the street is considered important on narrow lots. Undercroft garaging also assists in reducing the dominance of the garage and paved areas fronting the street. It is therefore considered necessary to impose conditions which specify the balustrading be an ‘open’ style as indicated on the approved plans or a glass balustrade and that fencing details and construction materials, to the satisfaction of the Town, are to be submitted and approved prior to the issue of a Building Permit.

#### Lot boundary setbacks

The lot boundary setbacks do not comply with the R-Codes on the southern, western and eastern side boundaries. Most side wall sections do not comply with the exception of recessed sections. However, the majority of the side walls are setback from both side boundaries at least 1.0 metre and in some cases between 3.0 – 3.5 metres. On the eastern boundary which abuts another vacant lot three sections of wall, between 4.0 and 7.0 metres in length, will be built up to the lot boundary. The

amended plans indicated fewer and shorter sections of wall with a nil setback on both side boundaries as requested.

The proposed setbacks are the result of the applicant responding to the issues raised by adjoining land owners in the initial advertising period. The amended plans, whilst not fully compliant now indicate greater setbacks with some sections of wall in compliance and a greater amount of open space on site provided. This has resulted in reducing building bulk overall and on the boundaries.

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. The applicant has now reduced building bulk on the adjoining lots and provided for a greater degree of light and ventilation to the adjoining properties. Open space is improved and there are more areas available for landscaping.

#### Site works and retaining walls

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

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

Most of the site works and building levels on the lot are the result of the 3 metre fall in the land away from Pier Street. There will be slightly more retaining and site works at the front of the lot to facilitate excavation for the garage. The ground level, however, will be altered in some sections more than 500mm behind the street setback line. This is in excess of the excavation permitted under the R-Codes, therefore the proposal must be assessed under the 'Design Principles' of the R-Codes which states as follows.

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

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

The redevelopment of this site does not fully utilise the natural slope of the land. The applicant has excavated the front of the site to reduce the impact of the double garage on a 10 metre lot frontage. The proposed dwelling will vary from single to two storeys across the site, however, the two storey section is to be constructed over a higher ground level than the single storey section at the rear, so for the most part the development will appear as a two storey house from Pier Street.

Excavation and fill across the site is therefore required for the dwelling to be on the same level across the full length of the site. The proposed ground levels will result in building height limits being exceeded for a portion of the upper storey from the north western perspective and although not fully compliant with lot boundary setbacks, these aspects of the development are considered to have minimal negative impact on the amenity of surrounding lots and do not impact views.

Similarly there are retaining walls on the site that exceed 500mm and will be adjacent to the lot boundary. These walls do not comply with the R-Codes 'Deemed to Comply' standards. Due to the excavation at the front of the lot, retaining walls in the front setback and side boundary areas are required for the driveway and entry. These structures will be closer than 1.0 metre to the side boundary with walls greater than 500mm in height as permitted under the R-Codes. The retaining walls in this location are considered to result in land which can be used effectively for the benefit of residents without impacting residential amenity as required under the 'Design Principles' of the R-Codes.

There is also a small amount of fill required at the rear of the lot in the south west corner where the land slopes away. Retaining walls that do not comply will be required but again this is not considered to impact resident amenity and can be supported.

#### Building height

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

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

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

The building height of the dwelling for the most part is compliant, however, there is a section of the building due to the slope of the land falling length-ways and width-ways across the site, where the dwelling is over height. The over height section is not impacting views and does not overly add bulk or scale to the dwelling. The surrounding land owners have been consulted in this regard due to variations from the R-Codes and the height limits of the Residential Design Guidelines and no submissions on the revised proposal, in regard to building height, have been received. This is most likely because the dwellings to the north and east are on higher land and their views are toward the river. The dwellings to the south and west are on lower land and their views are to the ocean and Port to the west and south west. This building sits 'in between' these surrounding dwellings and the height of the proposed dwelling does not appear to impact views in this location or dominate the streetscape.

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

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

- The proposed dwelling is designed to sit reasonably within the 'building envelope' as determined by the R-Codes and the Residential Design Guidelines.
- Two storey development is permitted in the Richmond Hill Precinct. There are no provisions or restrictions limiting new dwelling development to single storey;
- The overall height of the dwelling is mostly compliant;
- The dwelling is considered to satisfy Clause 3.7.4.2 (Site Works) of the Residential Design Guidelines in that *where new development is on a significant slope the floor level of the proposed dwelling shall be the average height of the ground floor levels of the two adjacent dwellings*; and
- The non-compliance with the external wall height on one part of the lot is not a result of fill and is therefore not contributing to the scale and bulk of the overall development.

The proposed dwelling is not out of character with the area. Most other homes in the Precinct, including surrounding houses are two storeys. As noted above the dwelling sits reasonably well within the accepted building envelope parameters for a lot of this size and dimensions. Solar access is not an

issue and the privacy issues for adjoining sites have been addressed with the exception of an upper floor bedroom window which is not considered to present an overlooking issue. The immediate neighbour on this side of the lot has supported the proposal. In respect to the variation to the external wall height the non-compliance is supportable for the reasons outlined above.

#### Visual privacy

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

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

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

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

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

The upper level bedroom 4 window and the rear alfresco area are considered to be marginally non-compliant. The bedroom window faces to the rear and only a small area of overlooking occurs into the side setback area of the adjoining lot. The adjoining owners have endorsed the proposal so the visual privacy of the lot is not considered to be compromised. Screening of this window is therefore not considered necessary.

The rear alfresco area is partly raised above 500mm in the south west corner. Under the R-Codes it should either be screened or setback a distance of 7.5 metres from the boundary. In this circumstance the required setback or screening is not considered necessary for the minor corner portion of the alfresco area that will be raised approximately 100mm more than the 500mm permitted under the R-Codes. Furthermore, the adjoining lots to the rear have shrubs and trees which offer some screening. The land owner to the immediate rear has not objected to the proposal.

#### Open space

Open space is less than the 55% of the site area required under the R-Codes being 50%. A lot of this size in a R20 coded area would require 50% open space. The minimum area for outdoor living (30m<sup>2</sup>) under a R20 code can be provided at the rear and there are courtyard spaces which can be used for outdoor habitable areas. There are also areas which can be landscaped with vegetation. In this circumstance this non-compliance is considered a slight reduction and is supportable.

#### Crossover and garage width

The crossover indicated on the plans is non-compliant with Council policy in that it is almost 5 metres (for lots 12 metres in width or less the maximum width is 3 metres). This is not supportable in this case, particularly as the adjoining 10 metre wide lot will also require a crossover, potentially adjacent to this crossover. In this case it is considered necessary for the crossover to not exceed 3 metres to minimise the impact on the streetscape. Reducing hardstand is the objective so that streetscape amenity is maintained and on-street parking is maximised. It is also necessary to protect the existing street tree on Pier Street so a condition is recommended which will require the crossover to be constructed no closer than 1.5 metres from the tree and no greater than 3.0 metres in width. A condition requiring the street tree be protected during the construction phase is also considered necessary as construction on narrow vacant lots can often result in the tree perishing.

The garage width does not comply with the Residential Design Guidelines in that it occupies greater than 30% of the width of the lot frontage (i.e. 54%). The 30% maximum is not achievable if a double garage is required. In this case the R-Codes require two parking bays to be provided on site and the applicant has attempted to reduce the dominance of the garage in respect to the streetscape the additional width is supported.

#### Front fence

Proposed front fencing does not fully comply in that the entry gate and front courtyard (considered front fencing in the setback area) have solid sections which are greater than 1.2 metres in height from natural ground level. This fencing is setback from the lot boundary which lessens its height and visibility from footpath level. It is therefore considered supportable provided that the open grille style gates to the undercroft garage remain a minimum 60% visually permeable to comply with Council's Residential Design Guidelines. With the exception of this section of the fence a condition is recommended which requires all other front fencing to comply with the Residential Design Guidelines so that fencing along each side boundary is not over height and maintains some openness to the streetscape and verge. Also, for the same reason, a condition requiring fencing construction materials and details to be submitted should also be imposed.

#### **Conclusion**

Pier Street and the surrounding area has a range of building heights, scales and built forms. Land in the area is characterised by a fall from the north on the opposite side of Pier Street with the street sloping from east to west. New dwellings are mostly designed to maximise view corridors and long range views to the river and the ocean. In this case, however, the subject lot does not have significant views. Some limited views may be gained from the upper level balcony. The variations proposed have no direct bearing on loss of views for surrounding land owners and there have been no comments of objection from adjoining neighbours/owners in this regard.

Although there are a number of variations from the R-Codes and the Residential Design Guidelines this is mostly a result of the creation of a lot at R20 standards (i.e. 465m<sup>2</sup> lot) which is now subject to assessment under R12.5 development standards. Nonetheless, the amended plans demonstrate an effort to provide reasonable setbacks from the side boundaries given the narrowness of the lot and to attempt to meet the minimum amount of open space required for the site. The dwelling will address the street and is not contrary to the scale and character of the streetscape. The design encompasses a staggered street front setback and a skillion roof and balcony over a double undercroft garage. This minimises the impact of the bulk of the dwelling on surrounding residences. The development addresses the street front reasonably well and only alters the existing slope of the land so that the garage is less visually prominent.

In light of the above the variations from the R-Codes and the Residential Design Guidelines are considered supportable. The applicant is considered to have met the requirements to satisfy the 'Design Principles' and the 'Performance Criteria' for built form, streetscape and residential amenity. The application is recommended for approval subject to conditions as outlined in the Officer report in addition to standard planning conditions relating to balustrade and fencing materials, no external roof fixtures, front fencing, crossover width, roof reflectivity and parapet walls.

- Carlo Famiano (Town Planning Consultant) – spoke in support of the officer's recommendation. The original submitted plans were amended after community consultation, comments from the CDAC and Council staff and feel, this proposal is a better outcome for the site.

#### **11.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP020219**

**Cr Nardi moved, seconded Cr White**

**That Council grant development approval for a single two storey dwelling and exercise its discretion in regard to the following:**

- (i) Clause 5.1.2 - Street Setback of the Residential Design Codes of WA to permit a street setback incursion of less than 6.5 metres;**
- (ii) Clause 5.1.3 - Lot Boundary Setback of the Residential Design Codes of WA to permit a southern, western and eastern lot boundary setback of:**
  - (a) Less than 1.5 – 1.8 metres on the western boundary for the ground floor and 2.4 metres for the upper floor;**
  - (b) Less than 2.6 – 3.3 metres on the eastern boundary for the ground floor and 2.0 metres for the upper floor; and**
  - (c) Less than 6.0 metres from the southern (rear) boundary for the ground floor;**
- (iii) Clause 5.1.4 - Open Space of the Residential Design Codes of WA to permit less than 55% open space on site;**
- (iv) Clause 5.3.7 - Site Works of the Residential Design Codes of WA to allow excavation within 3 metres of the street alignment and excavation and fill greater than 0.5 metres behind a street setback line and within 1.0 metre of a lot boundary;**
- (v) Clause 5.3.8 - Retaining Walls of the Residential Design Codes of WA to permit retaining walls on the side lot boundaries and within the front setback area greater than 0.5 metres in height less than 1.0 metre from the boundaries;**
- (vi) Clause 5.4.1 - Visual Privacy of the Residential Design Codes of WA to permit a visual privacy setback from the western boundary for upper level bedroom 4 of less than 4.5 metres and a raised unenclosed outdoor habitable space of less than 7.5 metres;**
- (vii) Clause 3.7.17.3.2 Garages, Carports and Outbuildings of the Residential Design Guidelines to allow the width of the garage to exceed 30% of the lot frontage;**
- (viii) Clause 3.7.17.4.1.3 - Building Height, Form, Bulk and Scale of the Residential Design Guidelines to permit an external wall height greater than 6.5 metres,**

**for the construction of a two storey single dwelling at No. 9A (Lot 500) Pier Street, East Fremantle, in accordance with the plans date stamped received on 2 January 2019, subject to the following conditions:**

- (1) The balcony balustrade to be of an 'open' style grille or glass material. It is not to be of solid masonry or solid building material construction.**
- (2) All front fencing within the street setback area (including the front setback along the side lot boundaries) is to be in compliance with the Residential Design Guidelines 2016 and comply with Australian Standards in respect to sight lines.**



- (3) Fencing details and construction materials, are to be submitted and approved by the Chief Executive Officer, prior to the issue of a Building Permit.**
- (4) The width of the crossover on Pier Street is not to exceed 3.0 metres at the widest point and to be in accordance with Council's crossover policy as set out in the Residential Design Guidelines 2016.**
- (5) The location of the crossover is not be closer than 1.5 metres to the existing verge tree.**
- (6) The existing verge tree is to be protected to the satisfaction of the Chief Executive Officer during the construction phase. The details of protective barriers to be provided with the Building Permit application plans to the satisfaction of the Chief Executive Officer.**
- (7) All parapet walls/building structures to the adjacent property faces on the eastern boundary are to be finished by way of agreement between the property owners and at the applicant's expense.**
- (8) No external fixtures, fittings or appliances of any nature to be installed on the roof of the dwelling without further Council approval.**
- (9) If requested by Council within the first two years following installation, the Colourbond roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.**
- (10) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
- (11) The proposed works are not to be commenced until Council has received an application for a Demolition Permit and a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- (12) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.**
- (13) 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.**
- (14) 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.**
- (15) 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.**
- (16) In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.**
- (17) This planning approval to remain valid for a period of 24 months from date of this approval.**

**Footnote:**

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

- (i) 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.*
- (ii) 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.*
- (iii) All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (iv) Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (v) 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.

- *The Supervisor of this report makes the following impartiality declaration in the matter of No. 11 Petra Street: "As a consequence of the applicant, Ms Maria Rico being known to me as a former Councillor and former Member of the Town Planning and Building Committee, there may be a perception that my impartiality on the matter may be affected. I declare that I have considered this matter entirely on its merits and with complete impartiality and objectivity".*
- *Cr Collinson made the following impartiality declaration in the matter of No. 11 Petra Street. "As a consequence of the applicant, Ms Maria Rico being known to me as a former Councillor and former Member of the Town Planning and Building Committee, there may be a perception that my impartiality on the matter may be affected. I declare that I have considered this matter entirely on its merits and with complete impartiality and objectivity".*
- *Cr Nardi made the following impartiality declaration in the matter of No. 11 Petra Street. "As a consequence of the applicant, Ms Maria Rico being known to me as a former Councillor and former Member of the Town Planning and Building Committee, there may be a perception that my impartiality on the matter may be affected. I declare that I have considered this matter entirely on its merits and with complete impartiality and objectivity".*

### 11.8 Petra Street No 11 (Lot 390) Proposed House Extensions Including Garage, Patio and Cellar

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Maria Rico   |
| <b>Applicant</b>           | Perth Builders Pty Ltd                               |
| <b>File ref</b>            | P114/18; PET11                                       |
| <b>Prepared by</b>         | James Bannerman Planning Officer                     |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### **Purpose**

This report considers a planning application for extensions including garage, patio and cellar at No 11 (Lot 390) Petra Street, East Fremantle.

#### **Executive Summary**

The applicant is seeking Council approval for the following variations;

- (i) Provision 5.3.8 C8 – Residential Design Codes – Site Works
- (ii) Provision 5.4 C1.1 – Residential Design Codes – Visual Privacy
- (iii) Provision 3.7.14.3 A5.1 of the Residential Design Guidelines - Crossovers

It is considered that the first two variations can be supported subject to conditions of planning approval being imposed. The third variation cannot be supported and is reflected in a condition being imposed requiring removal of the second crossover.

#### **Background**

Zoning: Residential R12.5

Site area: 983m<sup>2</sup>

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

P137/2011 – development application for solar panels

---

**Consultation**

Advertising

The applicants approached the neighbouring properties and received no objections from 80 Oakover Street, 9 Petra Street, 13 Petra Street and 13A Petra Street for the proposed development.

Officer response

Nil

Community Design Advisory Committee (CDAC)

The application was referred to CDAC. The following comments were recorded.

- (a) The overall built form merits;
  - The Committee support the proposed redevelopment.
  - The Committee appreciate the retention of the existing dwelling.
  - The Committee support the garage location set back behind the existing building line.
- (b) The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development.
  - The Committee note the materials proposed are sympathetic with the original dwelling.
  - The Committee support the movement of the solar panels to reduce any streetscape impact.
- (c) The relationship with and impact on the broader public realm and streetscape;
  - No further comment at this time.
- (d) The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;
  - No further comment at this time.
- (e) The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;
  - No further comment at this time.
- (f) The demonstration of other qualities of best practice urban design including “Crime Prevention” Through Environmental Design performance, protection of important view corridors and lively civic places;
  - No further comment at this time.

Applicant’s Response

No comment was received from the applicant.

Officer’s Response

CDAC’s comments 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

A site inspection was undertaken.

### Comment

#### Statutory Assessment

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies including the Residential Design Guidelines, as well as the Residential Design Code. A summary of the assessment is provided in the following tables.

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

#### Residential Design Codes Assessment

| Design Element                         | Required                               | Proposed          | Status |
|--|--|-------------------|--------|
| Street Front Setback                   | 7.5m                                   | Average 8m        | A      |
| Secondary Street Setback               | N/A                                    | N/A               | N/A    |
| Lot boundary setbacks                  |  |                   |        |
| <u>West</u><br>Bed 3, bath and kitchen | 2.2m                                   | 23.5m             | A      |
| <u>East</u>                            | 1m                                     | 1.096m            | A      |
| <u>North</u><br>Patio                  | 1.1m                                   | 1.1m              | A      |
| <u>South</u><br>Bed 2 & 3              | 1.5m                                   | 3.85m             | A      |
| Open Space                             | 55%                                    | 78%               | A      |
| Building Height                        |  |                   |        |
| Wall height                            | 6m                                     | 4.1m              | A      |
| Roof height                            | 9m                                     | 6.7m              | A      |
| Car Parking                            | 2                                      | 2                 | A      |
| Site Works                             | Less than 0.5m                         | 0.8m              | D      |
| Visual Privacy                         | 7.5m setback for active outdoor spaces | 0m                | D      |
| Overshadowing                          | ≤25%                                   | 2.6%              | 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 | N/A    |
| 3.7.3 Development of Existing Buildings               | N/A    |
| 3.7.4 Site Works                                      | N/A    |
| 3.7.5 Demolition                                      | N/A    |
| 3.7.6 Construction of New Buildings                   | N/A    |
| 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                                    | A      |
| 3.7.11 Front Fences                                   | A      |
| 3.7.12 Pergolas                                       | A      |
| 3.7.13 Incidental Development Requirements            | A      |
| 3.7.14 Footpaths and Crossovers                       | D      |
| 3.7.15 Garage   | A      |
| 3.7.16.4.3.3 Fremantle Port Buffer Area               | N/A    |
| 3.7.17.3.3 Garages and Carports                       | A      |
| 3.7.17 Precinct Requirements                          | D      |

The application proposes extensions to an existing single storey dwelling. The extensions include new bedrooms, bathroom, toilet, laundry, kitchen, dining, patio and garage.

### Site Works

The proposed development does not comply with the deemed to comply requirements of Provision 5.3.8 C8 of the Residential Design Codes for the garden bed in terms of height above natural ground level. Retaining walls are supposed to have a maximum height of 0.5m above natural ground level, but in this case the top of the retaining wall of the garden bed is located 0.8m above natural ground level. The presence of the garden bed forces users of the patio to be located away from the boundary which improves privacy for the neighbours and does not detrimentally affect adjoining properties in accordance with Design principles 5.38 P8. For this reason the garden bed height and location is supported.

### Visual Privacy (Patio)

The proposed development does not comply with the deemed to comply requirements of Provision 5.4 C1.1 of the Residential Design Code for visual privacy from the patio. Unenclosed active habitable spaces over 0.5m above natural ground level are required to have a setback of 7.5m from the boundary. However, minimal direct overlooking of active outdoor habitable spaces and outdoor living areas of adjacent dwellings can be achieved through building layout and location. In this case the patio overlooks the driveway of the rear battleaxe lot and achieves a setback from the front of the dwelling in excess of 7.5m. Similarly the patio overlooks the front dwelling at 13 Petra Street, but direct overlooking of this dwelling is mitigated by the additional boundary fence between the rear dwelling driveway and the front dwelling. Such an arrangement reduces the extent of overlooking and the loss of privacy in accordance with Design Principles 5.4 P1.1 and P1.2 and for this reason the patio with its proposed position and height above natural ground levels is supported. It is also worth noting that all the owners of the neighbouring properties have supported the proposed development in its current form or have not presented any objections to the proposal.

### Crossovers

The proposed development does not comply with the acceptable development provision 3.7.14.3 A5.1 of the Residential Design Guidelines for a maximum of one crossover per lot. In this case the applicant has applied for a second crossover to link the proposed garage to the street. The previous crossover is requested to be retained to ensure that garden rubbish can continue to be moved from the property yard and to ensure that there is additional visitor parking. The proposal for a second crossover cannot be supported as it creates a precedent for future development proposals with the possibility of incremental change that has negative impacts on the streetscapes of East Fremantle. Council has been consistent with the enforcement of one crossover per lot. As such a condition will be imposed that requires the removal of the second crossover at the applicant's cost.

### **Conclusion**

The first two variations as stated above are considered acceptable while the third has required a condition being imposed. The development application is recommended for approval subject to conditions.

- Ms Maria Rico (owner) requested an additional 3m crossover and retention of the existing crossover. Parking is not permitted on the street due to the cycle path, parking on the verge is not possible due to safety and visibility. The additional crossover will be utilised by visitors and by herself. The additional crossover will not affect the streetscape. The overall width of the two crossovers would be 6m. A single 5m crossover would create some difficulties, vegetation to be removed, fencing and gates to be amended.

**Amendment**

Mayor O'Neill moved

(a) That approval be granted for two crossovers to be 3m wide as applied for.

Lapsed due to no seconder

**11.8 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP030218**

Cr Nardi moved, seconded Cr Collinson

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

- (i) Provision 5.3.8 C8 – Residential Design Codes – Site Works – garden bed location does not adversely affect neighbours;
- (ii) Provision 5.4 C1.1 – Residential Design Codes – Visual Privacy – patio is located such that there is minimal impact on neighboring dwellings;

for proposed alterations and additions including garage, patio and cellar at No 11 (Lot 390) Petra Street, East Fremantle, in accordance with the plans date stamped received on 6 December 2018, subject to the following conditions:

- (1) The original crossover to the property is to be removed and the footpath, verge and kerbing is to be reinstated to the satisfaction of the Chief Executive Officer, in consultation with the operations manager, at the applicant's expense.
- (2) The new crossover is to be a maximum width of 30% of the lot frontage up to a maximum width of 5.0 metres.
- (3) The front fence is to be retained with the area above 1.2 metres to have at least 60% visual permeability.
- (4) 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.
- (5) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (6) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (7) All 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.
- (8) 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.
- (9) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.



(10) This planning approval 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.

---

**11.9 Staton Road, No 70 (Lot 54) Home Occupation (Beauty and Skin Therapy)**

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Nuala Briggs and Steven Tadman                       |
| <b>Applicant</b>           | As above   |
| <b>File ref</b>            | P104/18; P/STA70                                     |
| <b>Prepared by</b>         | James Bannerman Planning Officer                     |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

**Purpose**

For Council to consider a planning application for a home occupation (Beauty and Skin Therapy Business) at No. 70 Staton Road, East Fremantle.

**Executive Summary**

The applicant is seeking Council approval for the operation of a beauty and skin therapy business. This business offers skin treatments to female clientele that includes cosmetic tattooing. The business would be operated from 2 front rooms inside an existing residential dwelling; one room would be the business office and the other would be the treatment room with a couch and sink.

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

**Background**

Zoning: Residential R17.5  
Site area: 438m<sup>2</sup>

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

P116/16- planning approval granted for 2 storey dwelling  
Building Permit 2017058- building approval granted to construct two storey dwelling

There have been issues between the owners of this property and the neighboring property to the south at 68 Staton Road regarding the dividing fence along the boundary, as well as issues around possible failure to complete the dwelling in accordance with the planning approval including design solutions used to ensure visual privacy between 70 and 68 Staton Road.

**Consultation**

Advertising

The application was advertised to surrounding land owners from 16 November to 30 November 2018. Three (3) submissions were received. The submission noted the following comments and the applicant and officer responses are provided below:

Submission 1

- Staton Road is a quiet residential area with many young children.
- The road is narrow and has limited street parking which makes entering and exiting driveways difficult.
- A private business that adds extra traffic is out of character with the street.
- The location is unsuitable for a commercial business operating during the evenings and on weekends.

- Signage in a residential area is unacceptable.

#### Submission 2

- Residential areas are for enjoying the peace and quiet.
- Signage will detract from the street view.
- Parking has been an ongoing problem in the street during the construction of the dwelling at 70 Staton Road.
- Clients of the proposed business will cause more parking problems.
- There is an abundance of commercial properties available which are in close proximity and include parking.
- The area is zoned for residential uses.

#### Submission 3

- The parking must be onsite.
- There should not be any signage or advertising as it is a residential area and not a main thoroughfare that warrants advertising.
- As members of the public will enter the premises the current temporary boundary fence is inadequate for security and privacy reasons.

#### Applicant's response

- *The new residence is a home and there is no intention to turn it into a commercial operation.*
- *Apologies for previous issues regarding parking related to home construction.*
- *Only one client will be seen at a time and appointments will be staggered.*
- *2 parking spaces are available on site for customer parking*
- *There is no requirement for signage at the current time.*
- *Relocation to commercial properties would be unviable for a business this size.*
- *The business has been designed to provide therapy in a relaxing home environment.*

#### Officer response

The objection letters and applicant's response are acknowledged and are addressed in the Comment section of this report.

#### Community Design Advisory Committee (CDAC)

This matter was not referred to CDAC as it is not a building design issue.

#### **Statutory Environment**

*Planning and Development Act 2005*

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

#### **Policy Implications**

Nil

#### **Financial Implications**

Nil

#### **Strategic Implications**

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

Built Environment

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

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

Natural Environment

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

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

**Site Inspection**

7 December 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 as well as the Planning and Development (Local Planning Schemes) Regulations 2015

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

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

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (n) the amenity of the locality including the following- (ii) the character of the locality;*
- (r) the suitability of the land for the development taking into account the possible risk to human health or safety;*

- (s) *the adequacy of —(i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles; (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- (v) *the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;*
- (x) *the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*
- (y) *any submissions received on the application;*
- (zb) *any other planning consideration the local government considers appropriate.*

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

The proposed home occupation will be carried out in the Residential Zone as defined by the Local Planning Scheme No 3. One of the aims of the Residential zone is to protect residential areas from encroachment of inappropriate land uses which are likely to detract from residential amenity, but to provide for a limited range of home-based activities compatible with the locality.

In areas that are zoned for residential uses home occupation is considered a “P” use- which means that the use is permitted by the Scheme providing the use complies with the relevant development standards and requirements of the Scheme.

Home occupation as defined by LPS No 3 is an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which should address the criteria as listed below;

| <b>Home Occupation Criteria</b>   | <b>Comment</b>   |
|---|--|
| Does not employ any person not a member of the occupier’s household;  | Applicant is the only employee of the home occupation  |
| Will not cause injury to or adversely affect the amenity of the neighbourhood   | There is concern from surrounding residents that there will be issues with parking and loss of amenity                               |
| Does not occupy an area greater than 20 square metres   | Total area allocated to business 22 square metres  |
| Does not display a sign exceeding 0.2 square metres;  | The applicant has stated in response to community consultation that at the current time there is no need for signage or advertising. |
| Does not involve the retail sale, display or hire of any goods of any nature;   | The owner of the business does sell goods through the website linked to the business.  |
| In relation to vehicles and parking, does not result in the requirement for a greater number of parking facilities than normally required for a single dwelling or an increase in traffic volume in the neighbourhood, does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight, and does not include provision for the fueling, repair or maintenance of motor vehicles | Parking can be provided from the available car bays at the front of the residential dwelling.  |
| Does not involve the use of an essential service of greater capacity than normally required in the zone.  | Complies   |

A home beauty business is potentially the type of home occupation that has minimal impacts on surrounding properties if the requirements of the Scheme are met including parking, signage and health.

#### Car Parking

Required car parking in respect of any non-residential development in the Residential Zone shall be provided in accordance with the standards and specifications set out in Schedule 10 of the scheme. Schedule 10 of LPS No 3 requires that a home occupation refers to the parking requirements of the R Codes and the need for 2 parking bays per dwelling. In this case there are 2 car parking spaces inside the carport of the dwelling, as well as 2 additional car bays outside the carport in the front setback area, and behind the electric gates at the entrance to the property. There will be sufficient parking for customers within the boundaries of the subject property providing that there is only 1 customer at a time as stated by the applicant.

At the same time there is a need to prevent parking overflowing onto the nearby street and verge areas. As such a condition will be imposed that limits all parking related to the operation of the home occupation to the parking spaces onsite and a requirement that this parking is available to all customers during business hours

#### Signage

A statement is made in the application requesting an A frame sign and flag to advertise the business, however, there is a response from the applicant following the advertising period that there is no requirement for signage at the current time. As such any requirement for signage should be addressed by the applicant through a separate development application at a later date. In residential areas it is essential that commercial operations that create issues that impact on the amenity of surrounding residents are mitigated including matters such as excessive signage and advertising which can create visual pollution.

#### Opening Hours

The applicant states that the business would treat for 20 hours per week with one customer at a time however, the stated operating hours are greater as provided below;

| Days                | Times                       | Daily Hours | Total Hours     |
|---------------------|-----------------------------|-------------|-----------------|
| Monday and Friday   | 12 noon – 7pm               | 7 hours     | 14 hours        |
| Tuesday to Thursday | 9am – 5pm                   | 8 hours     | 24 hours        |
| Saturday            | 9am -2pm                    | 5 hours     | 5 hours         |
| Closed              | Sundays and public holidays | 0 hours     | 0 hours         |
| <b>Total Hours</b>  |                             |             | <b>43 hours</b> |

The website of the business clearly states that the opening times are subject to variation to suit client requirements including late night appointments. Such arrangements are not in the interests of maintaining residential amenity. It is not considered unreasonable to reduce the operating hours to ensure that residential amenity of the area is not affected and a condition will be imposed that limits business hours to reduce detrimental effects on amenity.

#### Health

The Town's Principal Environmental Health Officer provided comment that there was no reason to refuse the application on the grounds of health issues. The owner has been made aware of the health requirements of such an operation and conditions will be imposed that require the owner to comply

with the Health (Skin Penetration Procedure) Regulations 1998, and the associated Code of Practice for Skin Penetration Procedures.

Comment From Surrounding Residents

There were 3 submissions which were opposed to the establishment of the business on the grounds of parking, signage and loss of amenity. All comments were considered legitimate concerns regarding businesses operating in residential areas and have been addressed in the proposed conditions.

Council is aware that the business is currently operating without planning approval. A check of the Facebook site of the business showed that the business was officially opened at the subject site on October 23 2018. There are some concerns that such practices should not be tolerated, however there is also a view that such businesses should be formalised and brought within official channels of control, rather than operating covertly in the Town.

At the same time it is critical that the interests of residents surrounding the subject property are protected. Although home occupation is permissible within residential areas it is necessary to ensure that the business is not of a size or type that does not adversely affect the amenity of nearby residents. Although people have a right to earn an income and the residential home can serve a twin role of being a home and business location the objectives of residential areas have primacy over commercial interests. As part of this the business hours will be limited to mitigate the impact on residential amenity and there will be a condition imposed requiring a new planning application to be made within 6 months that will address any concerns that may have arisen in the intervening period with the provision of revocation of the planning approval if the home occupation fails to comply with the conditions of planning approval. The 6 month approval will enable an ongoing assessment of the business and an appropriate response should there be adverse impacts on the residential area.

**Conclusion**

It is considered that the proposal can be supported in accordance with the requirements of home occupation, subject to the conditions of planning approval.

- Naula Briggs and Stephen Tadman (owners) advise that the business was previously run in North Fremantle with no issues of parking, noise etc. It is not a business with a high volume of people that will visit the property at any one time and the maximum number of hours that it will be operating is 20 hours per week. Request some flexibility with the hours of operation and clarification on the condition regarding the gates to be left open.

**OFFICER RECOMMENDATION**

Mayor O'Neill moved, seconded Cr Collinson

That Council support approval of the proposed home occupation (Beauty and Skin Therapy Business) at No. 70 (Lot 54) Staton Road, East Fremantle, in accordance with the plans date stamped received 31 October 2018, subject to the following conditions:

- (1) No person shall be employed in the home occupation, other than the owner of the property.
- (2) The home occupation is limited to one customer being treated at a time.
- (3) The home occupation is limited to operating for the following days and times;

|  |                 |
|--|-----------------|
| Monday and Friday                      | 12 noon to 5 pm |
| Tuesday, Wednesday and Thursday        | 9 am to 5 pm    |
| Weekends, public holidays and evenings | Closed          |

Approval is not granted to operate the business on week-ends and public holidays, or before 9 am

- and after 5 pm Monday to Friday.
- (4) The home business shall be conducted in an unobtrusive manner that will not prejudicially affect the amenity of the area.
  - (5) The home occupation shall be conducted within an area marked on the approved plans.
  - (6) No vehicles associated with the home occupation shall be parked on the street or on the road verge.
  - (7) The owner is to ensure that suitable on site car parking is available for clients during business hours including having the electric gates at the front of the property open during business operating hours.
  - (8) The owner of the business is to advise the clients that suitable parking is available on site.
  - (9) The business is to be operated in compliance with the Health (Skin Penetration Procedure) Regulations 1998 and the associated Code of Practice for Skin Penetration Procedures.
  - (10) The premises of the home occupation are to be inspected by Council's Principal Environmental Health Officer prior to commencement of the proposed home occupation. It is the responsibility of the owner of the business to contact the Council to ensure compliance with environmental health requirements prior to operation.
  - (11) This planning approval is to remain valid for 6 months from the date of this approval. After this date, a further planning approval will be required to be submitted to continue operating the business from the current site.
  - (12) The approval may be revoked by Council, prior to the expiration of the 6 month period referred to in (11) above if there are any adverse impacts involving noise, parking, vehicle traffic and surrounding amenity which are unable to be controlled by the applicant in a timely and effective manner which is to the satisfaction of the Council.
  - (13) This planning approval does not include any planning approval for any signage or advertising. A separate planning application is to be made for signage and advertising.

Footnote:

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

- (i) *This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (ii) *A copy of the approved plans as stamped by Council are attached.*
- (iii) *All noise levels produced by the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (iv) *Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – "An Installers Guide to Air Conditioner Noise".*

**AMENDMENT**

Moved Cr McPhail, seconder Cr White

The Committee amended the following conditions (3) and (9) of the officer's recommendation and included an additional condition (14):

- (3) The home occupation is limited to operating for the following days and times;

|   |                    |
|---|--------------------|
| Monday                                  | 12 noon to 5.30 pm |
| Tuesday, Wednesday, Thursday and Friday | 9 am to 5.30 pm    |
| Saturday                                | 10am to 2pm        |
| Sundays, public holidays and evenings   | Closed             |



Approval is not granted to operate the business on Sundays and public holidays, or before 9 am and after 5.30 pm Monday to Friday.

- (7) The owner is to ensure that suitable on site car parking is available for clients during business hours.
- (14) Operating hours in any one week shall not exceed 20 hours.

(CARRIED 3:2)

**11.9 SUBSTANTIVE MOTION/COMMITTEE RESOLUTION TP040219**

Mayor O'Neill moved, seconded Cr Collinson

That Council support approval of the proposed home occupation (Beauty and Skin Therapy Business) at No. 70 (Lot 54) Staton Road, East Fremantle, in accordance with the plans date stamped received 31 October 2018, subject to the following conditions:

- (1) No person shall be employed in the home occupation, other than the owner of the property.
- (2) The home occupation is limited to one customer being treated at a time.
- (3) The home occupation is limited to operating for the following days and times;

|   |                    |
|---|--------------------|
| Monday and Friday                       | 12 noon to 5.30 pm |
| Tuesday, Wednesday, Thursday and Friday | 9 am to 5.30 pm    |
| Saturday                                | 10 am to 2.00pm    |
| Sundays, public holidays and evenings   | Closed             |

Approval is not granted to operate the business on Sundays and public holidays, or before 9 am and after 5.30 pm Monday to Friday.

- (4) The home business shall be conducted in an unobtrusive manner that will not prejudicially affect the amenity of the area.
- (5) The home occupation shall be conducted within an area marked on the approved plans.
- (6) No vehicles associated with the home occupation shall be parked on the street or on the road verge.
- (7) The owner is to ensure that suitable on site car parking is available for clients during business hours.
- (8) The owner of the business is to advise the clients that suitable parking is available on site.
- (9) The business is to be operated in compliance with the Health (Skin Penetration Procedure) Regulations 1998 and the associated Code of Practice for Skin Penetration Procedures.
- (10) The premises of the home occupation are to be inspected by Council's Principal Environmental Health Officer prior to commencement of the proposed home occupation. It is the responsibility of the owner of the business to contact the Council to ensure compliance with environmental health requirements prior to operation.
- (11) This planning approval is to remain valid for 6 months from the date of this approval. After this date, a further planning approval will be required to be submitted to continue operating the business from the current site.
- (12) The approval may be revoked by Council, prior to the expiration of the 6 month period referred to in (11) above if there are any adverse impacts involving noise, parking, vehicle traffic and surrounding amenity which are unable to be controlled by the applicant in a timely and effective manner which is to the satisfaction of the Council.
- (13) This planning approval does not include any planning approval for any signage or advertising. A separate planning application is to be made for signage and advertising.
- (14) Operating hours in any one week shall not exceed 20 hours.

**Footnote:**

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

- (i) This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.***
- (ii) A copy of the approved plans as stamped by Council are attached.***
- (iii) All noise levels produced by the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).***
- (iv) Under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document – “An Installers Guide to Air Conditioner Noise”.***

***(CARRIED 3:2)***

**Note:**

The Committee’s delegation was not exercised as the minimum 4 votes in support of the officer’s recommendation was not gained and the matter is referred to the next meeting of Council.

---

**11.2 Silas Street, Unit 24 No 3 Lot 123- Mixed Use Development- Change of Use From Office to Recreation- Private**

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Sarah Boxley   |
| <b>Applicant</b>           | Anahata Investments Pty Ltd                          |
| <b>File ref</b>            | P103/18; P/SIL3/U24                                  |
| <b>Prepared by</b>         | James Bannerman Planning Officer                     |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 6 February 2018                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

**Purpose**

For Council to consider a planning application for a change of use from office to private recreation for the purpose of a yoga studio at Unit 24 No. 3 (Lot 123) Silas Street, East Fremantle.

**Executive Summary**

The subject site is zoned Town Centre. The applicant is requesting approval for a change of use from an office to private recreation for the purpose of a yoga studio (Off the Wall Yoga). In addition the applicant is proposing below awning signage and window signage.

The proposal has 3 issues; land use, car parking and signage.

In terms of land use the change from office to private recreation is considered appropriate for the Town Centre.

The proposed use has a parking shortfall of 10 car bays.

The signage proposal lacks detail.

It is considered that the proposal for the change of use and signage can be supported subject to conditions of planning approval being imposed.

**Background**

Zoning: Town Centre

Site area: 141m<sup>2</sup>

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

P047/18 - Unit 26 - change of use from shop/office to consulting rooms - approved

P084/16 - Unit 27 - alfresco area for café - approved

P067/16 - Unit 28 – change of use from shop to consulting room - approved

**Consultation**

Advertising

The application was advertised to surrounding land owners from 16 November to 30 November 2018. No submissions were received.

Community Design Advisory Committee (CDAC)

This application was not considered by CDAC.

### Statutory Environment

*Planning and Development Act 2005*

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

*Town Centre Redevelopment Guidelines- Local planning Policy 3.1.4*

### Policy Implications

Nil

### Financial Implications

Nil

### Strategic Implications

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

#### Built Environment

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

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

#### Natural Environment

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

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

### Site Inspection

N/A

**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 table.

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

Town Centre Redevelopment Guidelines- Local Planning Policy 3.1.4

| Design Element                 | Required   | Proposed  | Status |
|--------------------------------|--|---|--------|
| Urban Structure                | -  | -   | N/A    |
| Land Use                       | Developments shall incorporate commercial uses consistent with those permitted under the relevant TPS No3 zoning   | Change of use from office to recreation- private          | D      |
| Building Form Scale and Height |  |   | N/A    |
| Occupant Amenity               |  |   | N/A    |
| Street Interface               |  |   | N/A    |
| Pedestrian Amenity             |  |   | N/A    |
| Vehicle Movement and Access    |  |   | N/A    |
| Landscape and Public Spaces    | Car parking shall be provided at a rate consistent with the TPS No 3 minimum requirements, but with a discount of 20% in the case of mixed use buildings where the residential component accounts for at least 40% of the total plot-ratio area<br>14 car bays | Existing parking allocation of 4 car bays with office use | D      |
| Resource Conservation          |  |   | N/A    |
| Signage and Services           |  |   | D      |

The subject site is zoned town centre. Approval is sought for a change of use from office to recreation-private for a yoga studio. There are 3 matters that require discussion in relation to this planning application;

- Land use: change of use from office to recreation-private
- Parking
- Signage and advertising

Land use

The proposed change from office to recreation-private (yoga studio is considered an appropriate land use in the Town Centre). Recreation- private is defined under LPS No 3 as "premises used for indoor or outdoor leisure, recreation or sport which are not usually open to the public without charge." There is no specific land use listed in the Scheme for yoga studio.

The building is designed for a range of mixed uses and recreation- private aligns with the objectives and intent of the Town Centre zone “to provide for a range of commercial, shopping, civic and community facilities to meet the day to day needs of the community and which will contribute towards the vibrancy of the town”. The use of the premises will help activate the area and promote pedestrian traffic in an area that currently has a number of vacant commercial premises. However, there are serious deficiencies in the provision of parking.

#### Car parking

A number of clauses from LPS No3 are applicable in this case.

#### Clause 5.8.5 Car Parking and Vehicular Access

Car parking in respect of this proposal is to be provided in accordance with Schedule 10 and 11 of the Scheme. One parking bay is required for every 10m<sup>2</sup> of net floor area for uses related to indoor recreation-health studio, plus an additional space for every staff member present during peak operation. A total of 14 car bays are required which equates to thirteen (13) car bays for premises with a net floor area of 128m<sup>2</sup> and one (1) additional bay for staff. The premises currently has 4 car bays allocated for this office (although the car bays are not specifically allocated in the outdoor parking area).

#### Clause 5.8.6 Location of Car Parking

Required car parking is to be provided on the site of development for which it is required, or subject to the local government’s approval, offsite in the immediate vicinity of the development site. In considering a proposal for off-site parking, applicants will need to demonstrate to the satisfaction of the local government that any off-site parking areas will be available for use as required.

#### Clause 5.8.7 On-Street Parking

The local government may accept on street car parking located immediately adjacent to the proposed development provided it does not prejudice adjacent development or adversely affect the safety or amenity of the locality.

#### Clause 5.8.8 Cash-in-Lieu of Parking

The local government may accept or require cash-in-lieu of all or a proportion of required car parking, based on the estimated cost of providing the requisite parking, including any associated access and manoeuvre facilities. Cash-in-lieu of parking shall be paid into a trust fund and used to provide public parking in the vicinity of the development site in relation to which any cash-in-lieu contributions have been received.

#### Car Parking Shortfall

Based on the requirements in the Scheme related to parking there is a 10 bay parking shortfall for this application. Council will have to consider whether to relax the parking requirement or not. Under Clause 5.6.1 Council may approve the application if it does not meet the Scheme requirements, however it can only do so if the following criteria are met;

It must comply with the provisions of Clause 5.6.2 of the Scheme which states;

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

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

- 5.6.3. *The power conferred by this clause may only be exercised if the local government is satisfied that —*
- (a) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and*
  - (b) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.*

In considering an application like this the local government is to have due regard to Clause 67 of the Planning and Development Local Planning Scheme Regulation 2015 Schedule 2 Deemed Provisions which lists the following matters for consideration;

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (g) any local planning policy for the Scheme area;*
- (s) the adequacy of —*
  - (i) the proposed means of access to and egress from the site; and*
  - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;*
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- (u) the availability and adequacy for the development of the following —*
  - (i) public transport services;*
  - (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);*
- (v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;*
- (w) the history of the site where the development is to be located;*
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*
- (y) any submissions received on the application;*
- (z) any other planning consideration the local government considers appropriate.*

The applicant has provided information outlining their arguments as to why the proposed change of use should be supported. In a survey conducted by the applicant over a period of 3 days including a Saturday, Sunday and Tuesday, there were a significant number of vacant car bays that could be utilised by yoga participants. A short survey such as this has issues in that it shows when there are going to be significant number of vacancies; 2 out of the 3 days surveyed are over the weekend, rather than busier times during the working week.

In addition it is claimed that parking demand will be lower than the scheme requirement because more popular yoga classes are held in the mornings or evenings. Of 28 yoga classes 5 are held before 8am and 9am and 9 are held after 5pm. The remaining classes are held during business hours and typically have fewer participants (according to the applicant), and hence lower parking requirements. It is also claimed that some participants in yoga will ride or walk to the classes and the owners of the business will encourage yoga participants to ride or walk to the classes.

If Council is of the view that the parking shortfall cannot be supported then there are a number of options that could be considered;

1. Refuse the proposed change of use

2. Approve the change of use subject to the payment of cash in lieu for parking.
3. Approve the change of use for 12 months and require a development approval being submitted with a requirement that a parking study be completed by an independent traffic consultancy to demonstrate that the approval be extended.
4. Approve the change of use subject to a condition significantly limiting the number of patrons during normal office hours (ie 9am to 5pm) to ensure appropriate car parking is available to other businesses.

Option 1 does not help to activate the Town Centre. Option 2 is probably unviable for a business of the scale and nature of the one that is the subject of this report and would require Council to find and create parking equivalent to the value of money that is collected from cash in lieu payments. Option 3 would allow the business to operate subject to the requirement for an independent traffic management consultancy providing their report to support an extension of change of use. Option 4 reduces parking pressures during peak times when it would have the greatest adverse effects on surrounding businesses, but still allows the yoga business to operate when it is busiest (before 9am and after 5pm).

#### Signage and Advertising

The Town Centre Redevelopment Guidelines requires that all signage shall comply with the Signage Design Guidelines Policy 3.1.3. There are 2 types of signage proposed;

- Signage affixed to the window of the proposed yoga studio;
- Below awning signage in front of the proposed yoga studio.

According to the signage policy window signs should not exceed 50% of the surface area of a window and as such a condition will be imposed that requires this.

The current proposal has proposed below awning signage. There are a number of requirements in relation to this including;

- Maximum height of 450mm
- Maximum width of 300mm
- Shall not project beyond the awning or exceed 2700mm in length whichever is shorter.
- Shall not be approved if there is another awning sign or horizontal projecting wall sign on the same site.

However, a lack of information from the applicant has meant that a full assessment cannot be completed and as such it will be recommended that signage approval is limited to window signage and another application will have to be made regarding other signage that might be required by the business.

#### **Conclusion**

It is considered that the change of use can be supported subject to conditions. In this case it is believed that the most appropriate response is to approve the change of use subject to a condition that limits the number of customers to ten (10) during normal business hours (9am to 5pm) and limit signage to window signage only.

#### **11.2 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP050219**

**Cr Nardi moved, seconded Cr McPhail**

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



(i) Clause 5.8.5- Car parking of Local Planning Scheme No. 3 to allow an onsite car parking shortfall of ten (10) bays

for a change of use from office to recreation- private at No 3 Unit 24 (Lot 123) Silas Road, East Fremantle as indicated on the plans date stamped received 30 October 2018, subject to the following conditions:

- (1) No more than one (1) staff member and ten (10) clients can attend the premises at any time between 9am and 5pm Monday to Friday.
- (2) The window signage shall not exceed 50% of the total surface area of the windows of the premises.
- (3) This planning approval does not include approval for any other signage other than that listed in condition (2). No other unauthorised signage is to be displayed.
- (4) Any change to the type, design, location or illumination of signage shall be the subject of a further development approval application for Council's consideration.
- (5) The change of use approval is for Recreation- Private (yoga classes) only. If any other use or other recreation use is proposed then a further development approval application will be required to be submitted for Council's consideration as to the suitability of the use and parking availability and requirements in the Town Centre.
- (6) The premises must be inspected by the Town's Environmental Health Officer prior to opening.
- (7) Any works are to be constructed in conformity with the drawings and written information in relation to use accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (8) With regard to the plans submitted with respect to the building permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (9) The proposed use is not to be commenced until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
- (10) This planning approval is to remain valid for a period of 24 months from the date of this approval.

**Footnote:**

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

- (i) *This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (ii) *A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform to the approved plans unless otherwise approved by Council.*
- (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).*
- (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 3:2)

**Note:**

The Committee's delegation was not exercised as the minimum 4 votes in support of the officer's recommendation was not gained and the matter is referred to the next meeting of Council

---

### 11.3 Woodhouse Street, No 27 (Lot 299) Proposed Steel Framed Vergola Structure

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Angelina Mule  |
| <b>Applicant</b>           | Vergola WA   |
| <b>File ref</b>            | P112/18; WOO27                                       |
| <b>Prepared by</b>         | James Bannerman Planning Officer                     |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### **Purpose**

This report considers a planning application for proposed steel framed vergola structure at No 27 (Lot 299) Woodhouse Street, East Fremantle.

#### **Executive Summary**

The applicant is seeking Council approval for a patio to be constructed in the front setback area of an existing dwelling. It is considered that the development proposal cannot be supported.

#### **Background**

Zoning: Residential R17.5  
Site area: 860m<sup>2</sup>

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

P137/17 – development application for patio - refused

#### **Consultation**

##### Advertising

The proposed development was advertised to properties to the west and east of the subject property and one submission was received that was not supportive of the proposed development on the basis of the following comments;

- Scale and bulk is excessive and proposal seems enlarged and taller than previous proposal
- Height is excessive relative to intended purpose
- Bulk is excessive, and not visually permeable
- Structure is not consistent with streetscape and detracts from the character of the streetscape
- Structure is incongruous with existing building
- Concerns about setback
- Adversely affects view corridors

##### Officer response

Submissions are noted.

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

The application was referred to CDAC on 21 January 2019. The following comments were recorded.

- (a) The overall built form merits;
  - The Committee do not support the proposed vergola.
  - The Committee note the plans do not appear to be correct and accurate.

- The Panel do not support the vergola located forward of the building. The proposed vergola does not comply with the required front and side setbacks.
- The proposal has a negative impact to the streetscape.
- (b) The quality of architectural design including its impact upon the heritage significance of the place and its relationship to adjoining development.
  - No further comment at this time.
- (c) The relationship with and impact on the broader public realm and streetscape;
  - No further comment at this time.
- (d) The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;
  - No further comment at this time.
- (e) The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;
  - No further comment at this time.
- (f) The demonstration of other qualities of best practice urban design including “Crime Prevention” Through Environmental Design performance, protection of important view corridors and lively civic places;
  - No further comment at this time.

Applicant Response

Nil

Officer Response

CDAC’s comments 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**

A site inspection was undertaken.

**Comment**

**Statutory Assessment**

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies including the Residential Design Guidelines, as well as the Residential Design Code. A summary of the assessment is provided in the following tables.

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

**Residential Design Codes Assessment**

| <b>Design Element</b>        | <b>Required</b> | <b>Proposed</b>   | <b>Status</b> |
|------------------------------|-----------------|-------------------|---------------|
| Street Front Setback         | 6m              | 0.12m             | D             |
| Secondary Street Setback     | 1.5m            | 14.8              | A             |
| <b>Lot boundary setbacks</b> |                 |                   |               |
| East                         | 1.5m            | 1.35m             | D             |
| Open Space                   | N/A             | N/A               | N/A           |
| <b>Building Height</b>       |                 |                   |               |
| Wall height                  | 5.6m            | 2.99m             | A             |
| Roof height                  | 8.1m            | 2.99m             | A             |
| Car Parking                  | N/A             | N/A               | N/A           |
| Site Works                   | Less than 0.5m  | N/A               | N/A           |
| Visual Privacy               | N/A             | N/A               | N/A           |
| Overshadowing                | ≤25%            | 0%                | 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 | D      |
| 3.7.3 Development of Existing Buildings               | N/A    |
| 3.7.4 Site Works                                      | N/A    |
| 3.7.5 Demolition                                      | N/A    |
| 3.7.6 Construction of New Buildings                   | N/A    |
| 3.7.7 Building Setbacks and Orientation               | D      |
| 3.7.8 Roof Form and Pitch                             | N/A    |
| 3.7.9 Materials and Colours                           | N/A    |
| 3.7.10 Landscaping                                    | N/A    |
| 3.7.11 Front Fences                                   | N/A    |
| 3.7.12 Pergolas                                       | D      |
| 3.7.13 Incidental Development Requirements            | N/A    |
| 3.7.14 Footpaths and Crossovers                       | N/A    |
| 3.7.15 Garage   | N/A    |
| 3.7.16.4.3.3 Fremantle Port Buffer Area               | N/A    |
| 3.7.17.3.3 Garages and Carports                       | N/A    |
| 3.7.17 Precinct Requirements                          | D      |

The application proposes a flat roofed steel framed patio. The proposed patio has a primary street setback of 0.12m. A setback of 6m is required. The proposed patio is set back 1.35m from the eastern boundary. A setback of 1.5m is required. The proposed structure does not comply with the required front and side setbacks required by the Residential Design Codes.

The proposed patio is located in the front setback area of the property and will add to the existing bulk and scale of the front boundary wall. It is accepted that development does not occur in the front setback area of dwellings located on lots of this size. There is an expectation that development will occur in the area behind the front setback area and permitting such development will set a dangerous precedent for similar types of development. It is in direct contrast with the prevailing character of East Fremantle residential development.

The proposed structure does not meet a number of aims of Local Planning Scheme No 3. The proposal will have a detrimental impact on the streetscape due to the reduced front setback. Not only is the proposed structure in the front setback area, but it is located in the furthestmost point forward of the existing dwelling on site.

It fails to meet the aims of the Scheme (Clause 1.6);

- (a) *To recognise the historical development of East Fremantle and to preserve the existing character of the Town;*
- (b) *To enhance the character and amenity of the Town and to promote a sense of place and community identity within each of the precincts of the Town*

It fails to meet the general objectives of zones within the Scheme area (Clause 4.2);

- *To recognise the historical development of East Fremantle and its contribution to the identity of the Town;*
- *To conserve significant places of heritage value and to preserve the existing character of the Town.*

It also fails to meet the goals of the Residential Zone within the Scheme Area (Clause 4.2);

- 
- *To safeguard and enhance the amenity of residential areas and ensure that new housing development is sympathetic with the character and scale of the existing built form;*
  - *To recognise the importance of design elements such as the front yard and the back yard to the character, amenity and historical development of the Town and to the community.*

The proposed development also conflicts with Clause 67 (m) and (n) of the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 Deemed Provisions for Local Planning Schemes;

- *The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality, including but not limited to the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- *The amenity of the locality including the following –*
  - (ii) *the character of the locality.*

Additionally Clause 5.1.2 of the Residential Design Codes states;

Design Principles P2.1

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

- *Contribute to, and are consistent with, an established streetscape;*
- *Provide adequate privacy and open space for dwellings*
- *Accommodate site planning requirements such as parking, landscaping and utilities; and*
- *Allow safety clearances for easements for essential services;*

and

Design Principles P2.2

*Buildings mass and form that:*

- *Uses design features to affect the size and scale of the building;*
- *Uses appropriate minor projections that do not detract from the character of the streetscape;*
- *Minimises the proportion of the facade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and*
- *Positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.*

The patio does not contribute and is not consistent with the streetscape and does not contribute positively to the prevailing or future development of the area or the streetscape as outlined in the local planning framework.

The Residential Design Guidelines provide design controls for development in East Fremantle in addition to the R Codes taking into account a variety of contextual differences to development in East Fremantle. Clause 3.7.7.3 A1.3 states;

*Where instances of front setbacks of adjacent residences vary, the front setback of the new development shall either;*

- Match the front setback of one existing dwelling or*
- Be the average of the two setbacks*

The proposed patio does not achieve either of these requirements.

Similarly Clause 3.7.12.3 A6.2 of the Residential design Guidelines states that;

*Pergolas are not to be located within the front setback area. The council shall approve pergolas in the front setback area where the applicant can demonstrate that pergolas in the front setback area are an*

*established feature of the streetscape. Pergolas in the front setback area are not an established feature of East Fremantle streetscapes.*

The proposed development cannot be supported as its impact on the streetscape and adjoining neighbours is not considered acceptable. The proposed patio does not contribute to the streetscape and is not consistent with the prevailing development along Woodhouse Street. The structure would have negative built form outcomes for the area contributing to a decline in the character of front yards of the Town. The Town has always set an expectation that development should be limited in front setback areas to ensure that streetscapes are open and free of development such as that proposed.

**11.3 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP060219**

**Cr Nardi moved, seconded Cr White**

**That development approval for a patio at the front of an existing dwelling at No 27 (Lot 229) Woodhouse Road, East Fremantle, as outlined in the plans date stamped received 29 November 2018, be Refused for the following reasons:**

- (1) The proposed development does not comply with orderly and proper planning of the area.**
- (2) The proposed development conflicts with the Clause 1.6 Aims of the Local Planning Scheme No 3.**
- (3) The proposed development conflicts with Clause 4.2 General Zone Objectives and Residential Zone Objectives of the Local Planning Scheme No 3.**
- (4) The proposed development conflicts with the provisions of the Town of East Fremantle Local Planning Scheme no 3 – deemed Provision Clause 67 (m & n) because it is incompatible with;**
  - (a) The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality, including but not limited to the likely effect of the height, bulk, scale, orientation and appearance of the development;**
  - (b) The amenity of the locality including the following –**
    - (i) the character of the locality.**
- (5) The proposed development does not comply with the Clause 3.7.7.3 A1.3 and Clause 3.7.12.3 A6.2 of the Town of East Fremantle’s Residential Design Guidelines.**
- (6) The proposed development does not comply with the Design Principles of Clause 5.1.2 Street Setbacks of the Residential Design Codes.**

**(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 Richmond Circus No 70 (Lot 226) - Carport

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Mark Hochstadt and Rachel Bodel                      |
| <b>Applicant</b>           | Softwoods Timberyard Pty Ltd                         |
| <b>File ref</b>            | P908/18; P/RIC70                                     |
| <b>Prepared by</b>         | James Bannerman Planning Officer                     |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### **Purpose**

For Council to consider a planning application for a carport at No. 70 Richmond Circus, East Fremantle.

#### **Executive Summary**

A carport is proposed to be constructed within the front setback area of the subject property. The applicant is seeking Council approval for the following variation:

- (i) Carport- primary street front setback- 1.5m from the front boundary.

It is considered that the above variation should be refused.

#### **Background**

Zoning: Residential R20

Site area: 585m<sup>2</sup>

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

28 August 1998: Building Permit 2721 issued for a two storey residence.

22 November 2006: Development Approval for a Verandah/Pergola addition.

#### **Consultation**

##### Advertising

The application was not formally advertised to surrounding properties by the Town, however, the applicant approached the neighbouring property at No 8 Raceway Road and the owner had no objections to the proposed development.

##### Officer response

The comments provided by the neighbouring property are noted.

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

This application was considered at the CDAC meeting of 19 November 2018 and the Committee made the following comments. The applicant's response is provided in italics below the Committee's comments.

- (b) *The overall built form merits;*

- The Committee do not support the proposed garage. The Committee commented that the development could set an undesirable design precedence for the area.

*The proposed structure is a carport not a garage.*

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



- No comment.
- (d) *The relationship with and impact on the broader public realm and streetscape;*
  - The Committee commented on the unacceptable front setback and that the development has an imposing presence on the streetscape.  
*The proposed development adds to the streetscape and is sympathetic to the design of the existing home and is neither imposing nor undesirable.*
- (e) *The impact on the character of the precinct, including its impact upon heritage structures, significant natural features and landmarks;*
  - No comment
- (f) *The extent to which the proposal is designed to be resource efficient, climatically appropriate, responsive to climate change and a contribution to environmental sustainability;*
  - No comment.
- (g) *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.

Officer’s response

The CDAC comments and applicant’s response 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**

11 December 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 as well as the Residential Design Code. A summary of the assessment is provided in the following tables.

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

Residential Design Codes Assessment

| <b>Design Element</b>         | <b>Required</b>                             | <b>Proposed</b>                                       | <b>Status</b> |
|-------------------------------|---|---|---------------|
| Street Front Setback          |   |   | N/A           |
| Secondary Street Setback      |   |   | N/A           |
| <b>Lot boundary setbacks</b>  |   |   |               |
| South                         | Zero lot setback for 1/3 of boundary length | Zero lot setback for less than 1/3 of boundary length | A             |
| Open Space                    | 50%   | 56%   | A             |
| Car Parking                   | 2   | 2   | A             |
| Site Works                    |   |   | N/A           |
| <b>Visual privacy setback</b> |   |   | N/A           |
| Overshadowing                 | ≤25%  | 10.3%   | A             |
| Drainage                      | On-site                                     | To be conditioned                                     | A             |

Local Planning Policies Assessment

| LPP Residential Design Guidelines Provision           | Status |
|---|--------|
| 3.7.2 Additions and Alterations to Existing Buildings | A      |
| 3.7.3 Development of Existing Buildings               | N/A    |
| 3.7.4 Site Works                                      | N/A    |
| 3.7.5 Demolition                                      | N/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                             | 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    |
| 3.7.17.3.3 Garages and Carports                       | D      |
| 3.7.20 Precinct Requirements                          | D      |

Carport Setback

The applicant proposes a carport in the front setback area which fails to comply with the acceptable development requirements of the Residential Design Guidelines Clause 3.7.20.3.3 A2. Although it is possible to locate a carport forward of the building line it must not dominate the streetscape or buildings. In this case the carport would set a precedent where large number of carport structures could be located forward of the building line, thereby creating a streetscape that was potentially dominated by carports and garages constructed in the front setback area. It has been accepted practice in the Richmond Raceway precinct that new carports and garages would comply with the acceptable development provisions of the Residential Design Guidelines and would abide by the desired development outcomes Clause 3.7.20.3.1 that include:

- *Garages and carports shall be incorporated into and be compatible with the design of the dwelling*
- *Garages and carports shall not visually dominate the dwelling as viewed from the street.*

The applicant has made the comment that there are 4 dwellings that are within 80m of the proposed development that have had approvals within the front setback area. However, it must be noted that these 4 properties are located in Woodside precinct, whereas the property that is subject to this development application is situated in Richmond Raceway precinct. There are different design guidelines that are applicable for the 2 areas; in this case the guidelines relevant to Richmond Raceway precinct must be applied, as the outcome would have an undesirable impact on the established character and amenity of the area.

**Conclusion**

The development application is recommended for refusal.

**11.4 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP070219**

**Cr White moved, seconded Cr McPhail**

**That Council refuse the development application for a single carport for vehicle parking in the front setback area at No 70 (Lot 226) Richmond Circus, East Fremantle, as outlined on plans date stamped received on 19 October 2018, for the following reasons:**

- (1) The proposed development does not comply with the orderly and proper planning of the area.**
- (2) The proposed development does not comply with the following requirements of the Local planning Scheme No 3:**
  - (a) The proposed development conflicts with Clause 1.6 Aims of the Scheme in particular Clause 1.6 (b)**
  - (b) The proposed development conflicts with Clause 4.2 Objectives of the Zones Residential Objectives:**
    - (i) To safeguard and enhance the amenity of residential areas and ensure that new housing development is sympathetic with the character and scale of the existing built form**
  - (c) The proposed development conflicts with the provisions of the Town of East Fremantle Local Planning Scheme No 3 – Deemed Provision Clause 67 because it is incompatible with:**
    - (i) Clause 67 (n) the amenity of the locality including the following- (ii) *the character of the locality;***
- (3) The proposed development does not comply with the Local Planning Policy Residential Design Guidelines in particular:**
  - (a) Clause 3.7.20.3.1 that include:**
    - (i) Garages and carports shall be incorporated into and be compatible with the design of the dwelling.**
    - (ii) Garages and carports shall not visually dominate the dwelling as viewed from the street.**
  - (b) Clause 3.7.20.3.3 that requires garages and carports are constructed behind the building line and comply with the following:**
    - (i) Setback a minimum distance of 1.2m behind the building line.**

**(CARRIED 3:2)**

Note:

The Committee's delegation was not exercised as the minimum 4 votes in support of the officer's recommendation was not gained and the matter is referred to the next meeting of Council.

---

### 11.5 Duke Street, No. 70 (Lot 500) – Ancillary Dwelling

|                            |  |
|----------------------------|--|
| <b>Applicant/Owner</b>     | J & L Harris   |
| <b>File ref</b>            | P/DUK70; P099/18                                     |
| <b>Prepared by</b>         | Christine Catchpole, Senior Planning Officer         |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### **Purpose**

This report considers a development approval application for the construction of an ancillary dwelling at No. 70 Duke Street, East Fremantle.

#### **Executive Summary**

The subject lot is located on Duke Street toward the Marmion Street end of the street block. The subject site is a lot of 508m<sup>2</sup> and contains a Municipal Inventory listed dwelling (Category C – Federation Bungalow). The ancillary dwelling is proposed to be constructed toward the rear of the lot.

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

- Lot boundary setback – nil to southern side boundary;
- Solar access – permitted 25%; proposed 27%;
- Roof pitch – permitted 28° - 36°; proposed 5°; and
- Fremantle Port Buffer Zone – building requirements.

It is considered the variations proposed will not have a significant impact on the amenity of the adjacent lots and the application can therefore be supported subject to conditions relating to parapet walls, roof reflectivity, use of the ancillary dwelling and Port buffer zone building requirements.

#### **Background**

Zoning: Residential R20

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

#### **Consultation**

##### Advertising

Referral to Main Roads WA (MRWA) has been undertaken as the lot abuts a Primary Regional Road reservation under the MRS. MRWA has not objected to the proposal subject to a condition relating to implementing measures to ameliorate the impact of transport noise along Stirling Highway. A number of advice notes, all of which are included in the Officer's recommendation, were also recommended.

The application was advertised to the surrounding land owners from 2 November to 6 December 2018. No submissions were received.

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

This application was not referred to the CDAC. The proposed ancillary dwelling is to be located to the rear of the property and as such it is considered to have minimal impact on the streetscape or the heritage values of the existing dwelling.

---

### Statutory Environment

*Planning and Development Act 2005*

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

*Residential Design Codes of WA*

*Referral to Main Roads WA – lot abuts a Primary Regional Road Reservation under the MRS*

### Policy Implications

*WAPC State Planning Policy 5.4 “Road and Rail Transport Noise and Freight Considerations in Land Use Planning Fremantle Port Buffer Zone - Area 2*

*Town of East Fremantle Residential Design Guidelines 2016*

*Municipal Heritage Inventory - ‘C’ Category – Federation Bungalow c1911*

### Financial Implications

Nil

### Strategic Implications

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

#### Built Environment

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

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

#### Natural Environment

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

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

### Site Inspection

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

Residential Design Codes Assessment

| Design Element                                   | Required                    | Proposed                        | Status   |
|--|-----------------------------|---------------------------------|----------|
| Street Front Setback                             | 6.0m                        | No change to existing           | A        |
| <b>Lot Boundary Setback (ancillary dwelling)</b> | <b>Side (south) – 1.0m</b>  | <b>Nil (up to lot boundary)</b> | <b>D</b> |
| Plot Ratio                                       | ≤70m <sup>2</sup>           | ~40m <sup>2</sup>               | A        |
| Open Space                                       | 50%                         | 55%                             | A        |
| Outdoor Living                                   | 30m <sup>2</sup>            | ~84m <sup>2</sup>               | A        |
| Car Parking                                      | 1 bay reqd' for dwelling    | 1 (front setback area)          | A        |
|  | 0 bays req'd for anc. dwell | No bay provided                 | A        |
| Site Works                                       | Less than 500mm             | Less than 500mm                 | A        |
| <b>Overshadowing</b>                             | <b>≤25%</b>                 | <b>27%</b>                      | <b>D</b> |
| Drainage   | On-site                     | On-site                         | A        |

Local Planning Policies Assessment

| LPP Residential Design Guidelines Provision              | Status   |
|--|----------|
| 3.7.2 Additions and Alterations to Existing Buildings    | N/A      |
| 3.7.3 Development of Existing Buildings                  | N/A      |
| 3.7.4 Site Works   | A        |
| 3.7.5 Demolition   | N/A      |
| 3.7.6 Construction of New Buildings                      | A        |
| <b>3.7.7 Building Setbacks and Orientation</b>           | <b>D</b> |
| <b>3.7.8 Roof Form and Pitch (ancillary dwelling 5°)</b> | <b>D</b> |
| 3.7.9 Materials and Colours                              | A        |
| 3.7.10 Landscaping                                       | A        |
| 3.7.11 Front Fences                                      | N/A      |
| 3.7.12 Pergolas  | N/A      |
| 3.7.13 Incidental Development Requirements               | N/A      |
| 3.7.14 Footpaths and Crossovers                          | N/A      |
| 3.7.18.3 Garages and Carports                            | N/A      |
| 3.7.15-20 Precinct Requirements                          | A        |

| Building Height (R-Codes) | Required | Proposed | Status |
|---------------------------|----------|----------|--------|
| Wall height (R-Codes)     | 6.0m     | 2.7m     | A      |
| Ridge height (R-Codes)    | 9.0m     | 3.7m     | A      |

The application proposes the construction of an ancillary dwelling at the rear of an original cottage. The cottage has been renovated and extended and an uncovered parking bay has been provided in the front setback area. The proposed ancillary dwelling will comprise a combined meals/sitting area/kitchenette, bedroom, bathroom and 'cupboard' laundry. The living and bedroom areas will open onto the garden

---

with the southern parapet wall having no openings. No parking bay is required as the lot is within 250 metres of a high frequency public transport route on Marmion Street.

There are a number of variations to the R-Codes and the Residential Design Guidelines and these are discussed below.

#### Lot boundary setback

A nil lot boundary setback is proposed and the adjoining owner has not objected or commented on the proposal. The parapet wall proposed on the southern boundary is addressed through a condition of planning approval and is not considered to raise issues in relation to residential amenity.

The Design Principles of the R-Codes in respect to the reduced lot boundary setback are considered satisfied in that the ancillary dwelling does not unnecessarily contribute to building bulk on the adjoining lot and adequate sun and ventilation to open spaces on the adjoining property will still be provided. Overshadowing marginally exceeds the acceptable limits for the R20 coding at 27% of the adjoining lot to the south. However, the reduced setback which contributes to the overshadowing is supportable on the basis that the neighbour's amenity is not considered to be detrimentally impacted by the 2% additional shade cover.

#### Solar access - overshadowing

As noted above overshadowing greater than that permitted under the R-Codes will occur (i.e. permitted 25%; proposed 27%). The outdoor living area of the lot which is partly adjacent to the proposed ancillary dwelling is already covered by shade sails. However, the majority of the rear garden of the lot to the south will remain unshaded.

#### Roof pitch

The variation in roof pitch (28° - 36° permitted; 5° proposed) is not considered significant in this circumstance as it will have no impact on building bulk or appearance of the dwelling. It is therefore considered to have a negligible impact on neighbour amenity and the heritage dwelling or streetscape. Due to the roofing materials proposed the roof reflectivity condition has been applied.

#### Fremantle Ports – Buffer Zone Area 2

The Town's Residential Design Guidelines contain provisions which duplicate the built form requirements of the Fremantle Ports Buffer Zone Policy. This is to ensure that the potential impacts that could arise from the operation of the Port are minimised with the construction of new buildings and attention is given to window opening construction materials and noise and air conditioning requirements.

#### Heritage

The dwelling is categorised as category 'C' in the Municipal Inventory. The proposal is considered to acknowledge the heritage value of the property. The existing dwelling maintains a strong presence on the site, has been restored and renovated and the ancillary dwelling will sit as a distinct structure to the rear of the site with little to no visibility from the street. Details of colours, materials and finishes will be requested at Building Permit application stage to ensure the Town is satisfied with the construction materials in respect to overall development of the site.

#### **Conclusion**

It is considered the variations to the R-Codes and the Residential Design Guidelines as proposed will not have a significant impact on the amenity of the subject lot or adjoining sites and the application can



therefore be supported subject to conditions relating to noise minimisation, roof reflectivity, parapet walls, specified screening requirements and use of the ancillary dwelling.

**11.5 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP080219**

Mayor O'Neill moved, seconded Cr Nardi

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

- (i) Clause 5.3.1 – Lot Boundary Setback of the Residential Design Codes of WA to permit a lot boundary setback of less than 1.0 metre from the southern boundary;
- (ii) Clause 5.4.2 (C2.1) - Solar Access for Adjoining Sites of the Residential Design Codes of WA to permit greater than 25% overshadowing of the adjoining property site area;
- (iii) Clause 3.7.8.3 – Roof Pitch of the Residential Design Guidelines 2016 to allow a roof form and pitch of less than 28°,

for construction of an ancillary dwelling at No. 70 (Lot 500) Duke Street, East Fremantle, in accordance with the plans date stamped received 22 October 2018, subject to the following conditions:

- (1) Main Roads WA condition of approval (letter dated 29 November 2018) which states as follows:  
*“This noise sensitive development adjacent to an existing major transport corridor must implement measures to ameliorate the impact of transport noise in accordance with WAPC State Planning Policy 5.4 “Road and Rail Transport Noise and Freight Considerations in Land Use Planning and implement noise insulation “Deemed to Comply” packages for this ancillary dwelling”.*
- (2) A door with obscure glazing is to be installed on the western elevation of the ancillary dwelling as indicated on plans date stamped received 22 October 2018.
- (3) The ancillary dwelling is to fully comply with the Fremantle Ports Buffer Zone Area 2 – Built Form Requirements A1 and A2.1 as outlined in the Council’s Residential Design Guidelines 2016. The built form requirements to be indicated on the Building Permit plans submitted with the Building Permit application.
- (4) The ancillary dwelling is not to be used for the purpose of a home occupation, short term accommodation or bed and breakfast accommodation without further Council approval (see Footnote (i) below).
- (5) The parapet wall on the southern boundary is to be of a suitable material to the adjacent lot property face by way of agreement between the property owners and at the applicant’s expense.
- (6) No clothes drying facilities/structures or bin enclosure to be visible from the street.
- (7) The ancillary dwelling is not to be constructed on a foundation pad or podium that exceeds 500mm above natural ground level.
- (8) The details of colour, materials and finishes to be used in construction of the ancillary dwelling to be to the satisfaction of the Chief Executive Officer and to be submitted at Building Permit application stage.
- (9) If requested by Council within the first two years following installation, the metal roofing to be treated to reduce reflectivity. The treatment to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (10) The proposed works are not to be commenced until approval from the Water Corporation has been obtained and the building permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.

- (11) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (12) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention
- (13) 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.
- (14) 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.
- (15) 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.
- (16) This planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (i) *In regard to condition 4, if use of the ancillary dwelling for any other purpose other than an ancillary dwelling, including a home occupation, short term or bed and breakfast accommodation a development approval application is to be submitted for Council's consideration.*
- (ii) *Main Roads advice:*
  - (a) *This property abuts a Metropolitan Region Scheme Primary Road Reservation as shown on the attached plan - LP01 1.3190-2 (Enlargement attached) and PP01-9421-158.*
  - (b) *The project for the upgrading and widening of Stirling Highway is not in the current four year forward estimated construction program and all projects not listed are considered long term.*
  - (c) *Please be aware that the timing information is subject to change and that Main Roads assumes no liability for the information provided.*
- (iii) *This decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (iv) *A copy of the approved plans as stamped by Council are attached and the application for a Building Permit is to conform with the approved plans unless otherwise approved by Council.*
- (v) *It is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected property.*
- (vi) *All noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*

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

***(CARRIED UNANIMOUSLY)***

**Note:**

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

---

### 11.6 Canning Highway, No 238A (Lot 300) Proposed New Single Storey Dwelling

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Paul and Kathryn Ricci                               |
| <b>Applicant</b>           | BGC Residential – Debbie Lim                         |
| <b>File ref</b>            | P106/18; CAN238A                                     |
| <b>Prepared by</b>         | James Bannerman Planning Officer                     |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### **Purpose**

This report considers a planning application for a new single storey dwelling at 238A (Lot 300) Canning Highway, East Fremantle.

#### **Executive Summary**

The applicant is seeking Council approval for the following variations;

- (i) Garage Width – proposed garage is 33% of lot width where 30% is required
- (ii) Outdoor living area – half of uncovered where 2/3 uncovered is required

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

#### **Background**

Zoning: Residential R12.5/40

Site area: 300m<sup>2</sup>

#### **Consultation**

##### Advertising

The application was advertised to surrounding land owners from 28 November to 14 December 2018. No submissions were received.

##### Officer response

Nil

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

The application was referred to CDAC. The Committee did not provide any comment at this time.

##### External Consultation

The application was referred to Main Roads Western Australia (MRWA). Initially advice was received that did not support the proposed development, but following discussions with MRWA new advice dated 21 January 2019 was received which changed their stance such that the proposed development was supported subject to the following conditions;

1. No earthworks shall encroach into the Canning Highway road reserve.
2. No stormwater shall be discharged into the Canning Highway road reserve.
3. The ground levels along the Canning Highway boundary are to be maintained as existing.

---

Officer Response

The conditions that were requested by MRWA will be included as part of the proposed development approval.

**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**

A site inspection was undertaken.

## Comment

### Statutory Assessment

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies including the Residential Design Guidelines, as well as the Residential Design Code. A summary of the assessment is provided in the following tables.

| Legend<br><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        | 2.5m            | 2.7m              | A      |
| Secondary Street Setback    | 1m              | 1.551m            | A      |
| Lot boundary setbacks       |                 |                   |        |
| North- living area          | 1.5m            | 1.56m             | A      |
| East- dining , ensuite, WIR | 1m              | 1.096m            | A      |
| East- alfresco              | 1m              | 1.096m            | A      |
| North-alfresco              | 1m              | 2.4m              | A      |
| Open Space                  | 45%             | 46.5%             | A      |
| Building Height             |                 |                   |        |
| Wall height                 | 5.6m            | 2.8m              | A      |
| Roof height                 | 8.1m            | 5.2m              | A      |
| Setback of Carport          | 3m              | 3.5m              | A      |
| Primary street setback      | 2.5m            | 2.7m              | A      |
| Car Parking                 | 2               | 2                 | A      |
| Site Works                  | Less than 500mm | Less than 500mm   | A      |
| Overshadowing               | ≤25%            | N/A               | N/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 | N/A    |
| 3.7.3 Development of Existing Buildings               | N/A    |
| 3.7.4 Site Works                                      | N/A    |
| 3.7.5 Demolition                                      | N/A    |
| 3.7.6 Construction of New Buildings                   | A      |
| 3.7.7 Building Setbacks and Orientation               | A      |
| 3.7.8 Roof Form and Pitch                             | A      |
| 3.7.9 Materials and Colours                           | N/A    |
| 3.7.10 Landscaping                                    | N/A    |
| 3.7.11 Front Fences                                   | D      |
| 3.7.12 Pergolas                                       | N/A    |
| 3.7.13 Incidental Development Requirements            | N/A    |
| 3.7.14 Footpaths and Crossovers                       | D      |
| 3.7.16.4.3.3 Fremantle Port Buffer Area               | N/A    |
| 3.7.17.3.3 Garages and Carports                       | D      |
| 3.7.17 Precinct Requirements                          | D      |

---

Heritage

The proposed development is not on the heritage list.

Garage Width

The proposed development does not achieve the acceptable development provisions of the Residential Design Guidelines Provision 3.7.15.3.2 where garage width is required to be no more than 30%. As the lot is an unusual shape the maximum width of the lot (16.8m) was utilised to determine the lot frontage. The proposed garage width is equivalent to 33% (5.61m) of the lot width. The proposed garage width is supported on the basis that it is setback further from the front boundary than the proposed dwelling, integrated into the proposed dwelling and compatible with the design of the dwelling given the site constraints including small lot size, proximity to Canning Highway and requirement from Main Roads WA that vehicle access cannot be from Canning Highway.

Outdoor Living Area

The proposed development does not achieve the deemed to comply requirements of the Residential Design Codes Provision 5.3.1 C1.1 where the outdoor living area does not have 2/3 of the required area without permanent roof cover (13.3m<sup>2</sup> required, 9.64m<sup>2</sup> provided). The design principles can be achieved given the constraints on this site; the small size of the lot (300m<sup>2</sup>), requirement to utilise area away from Canning Highway for the outdoor living area and requirement that vehicle access be from a street other than Canning Highway. The outdoor living area is capable of use in conjunction with the dining area of the proposed dwelling, open to winter sun and ventilation and optimises the use of the northern aspect of the site. Any reduction in the covered alfresco area would make the outdoor living area unusable and impractical. The variation to the area that is not covered is therefore supported.

Street Walls and Fences

No street walls and fences were included on the plans submitted for assessment. As the property fronts onto Canning Highway it is essential that requirements relating to walls and fences are met in accordance with the Residential Design Guidelines Provision 3.7.11.5. As such a condition will be included requiring the submission of a development application for any proposed front and side boundary walls and fences that face Stratford Street and Canning Highway.

Driveway and Crossover Width

A condition will be imposed requiring the maximum width of the driveway and crossover to be 5m in compliance with the Residential Design Codes Provision 3.7.14.3 A2.2.

MRWA Conditions

The proposed development is wholly located within the Canning Highway road reserve and included in the Metropolitan Region Scheme. They have requested that 3 conditions be imposed as part of the development approval. These conditions were also included in the advice received from MRWA when the lot was subdivided in 2018. The conditions as listed in the advice received from MRWA will be included in the development approval.

**Conclusion**

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

**11.6 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP090219**

Cr McPhail moved, seconded Cr White

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

- (i) Provision 3.7.15.3.2 – Residential Design Guidelines – Garage width – 30% required, 33% provided;
- (ii) Provision 5.3.1 C1 - Residential Design Codes – Uncovered outdoor living area – required two thirds covered, provided half uncovered;

for proposed new single storey dwelling at No 238A (Lot 300) Canning Highway, East Fremantle, in accordance with the plans date stamped received on 15 November 2018, subject to the following conditions:

- (1) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (2) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (3) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (4) A traffic management plan and a parking management plan (that takes deliveries and workers on site into account) is to be submitted and approved prior to the submission of a building permit.
- (5) 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.
- (6) No stormwater shall be discharged onto the Canning Highway road reserve.
- (7) The crossover and driveway is to be a maximum width of 5m and constructed to Council's requirements in consultation with the Town's operations manager.
- (8) Any proposed fencing or walls on the Canning Highway or Stratford Street lot frontages, including the front setback area, will require the submission of a development application for Council's consideration. All fencing and walls are required to be in compliance with the Residential Design Guidelines in terms of materials, dimensions and visual permeability as well as truncations and sightlines where the fence or wall meets the vehicle driveway.
- (9) If requested by Council within the first two years following installation, the roofing is to be treated to reduce reflectivity. The treatment is to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.
- (10) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
- (11) No earthworks shall encroach into the Canning Highway road reserve.
- (12) The ground levels along the Canning Highway boundary are to be maintained as existing.



- (13) Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
- (14) 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.

---

### 11.7 Sewell Street No 82 (Lot 297) Proposed carport and alfresco

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Silvia Monaco  |
| <b>Applicant</b>           | Tony Monaco  |
| <b>File ref</b>            | P113/18; SEW82                                       |
| <b>Prepared by</b>         | James Bannerman Planning Officer                     |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting date</b>        | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### **Purpose**

This report considers a planning application for a new carport, alfresco, laundry, replacement of existing tile roof with a Colorbond roof and new front fence at 82 (Lot 297) Sewell Street, East Fremantle.

#### **Executive Summary**

The applicant is seeking Council approval for the following variations;

- (i) Side boundary setback – carport wall located forward of main building and on boundary where it is permissible if located behind front setback area
- (ii) Primary street setback – carport set back 4.185m from front lot boundary where 4.5m is required
- (iii) Carport Width – proposed carport is 33% of lot width where 30% is required

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

#### **Background**

Zoning: Residential R20  
Site area: 508m<sup>2</sup>

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

Dispute over dividing fence between 82 Sewell and 87 King Street that was ultimately decided in court

#### **Consultation**

##### Advertising

The application was advertised to surrounding land owners from 7 December to 21 December 2018. No submissions were received.

##### Officer response

Nil

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

The application was referred to CDAC. The following comments were recorded.

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

- The Committee has concerns with regards to the impact the carport will have to the neighbour's northern light, solar access and ventilation. The carport will impact on the adjoining neighbour's windows.
- A minimum of 4.5 metre setback is required from the front boundary to provide for a sufficient front setback and to allow for a vehicle to park in the front of the property.

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

#### Applicant Response

No response was received from the applicant.

#### Officer Response

CDAC’s comments are noted.

Although the location of the carport may reduce the access to sunlight to the neighbouring property at 84 Sewell Street there is improved privacy between the 2 properties as a result of the location of the carport wall along the side boundary and adequate ventilation is still possible as there is a gap of approximately 1m between the garage wall and the windows on the northern side of 84 Sewell Street.

In terms of the reduced setback from the street there are few other options for the subject property as there is an existing driveway in place and adequate space between the dwelling and the boundary for a carport. Although the setback is less than that required by the Residential Design Codes the variation is less than 10% of what is required and more than the dwelling setbacks on the properties on both the northern and southern sides of the subject property and more than the carport setbacks on a number of properties elsewhere along Sewell Street.

#### **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

A site inspection was undertaken.

### Comment

#### Statutory Assessment

The proposal has been assessed against the provisions of Local Planning Scheme No. 3 and the Town's Local Planning Policies including the Residential Design Guidelines, as well as the Residential Design Code. A summary of the assessment is provided in the following tables.

| Legend<br><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     | -               | -                 | N/A    |
| Secondary Street Setback | -               | -                 | N/A    |
| Lot boundary setbacks    |                 |                   |        |
| <u>North alfresco</u>    | 1m              | 1.235m            | A      |
| <u>East alfresco</u>     | 1m              | 11m               | A      |
| <u>South alfresco</u>    | 1m              | 2.5m              | A      |
| <u>North laundry</u>     | 1m              | 1.235m            | A      |
| <u>South garage</u>      | 1m              | 0m                | D      |
| Open Space               | 50%             | 66%               | A      |
| Building Height          |                 |                   |        |
| Wall height              | 6m              | 3.5m              | A      |
| Roof height              | 9m              | 5.7m              | A      |
| Setback of Carport       |                 |                   |        |
| Primary street setback   | 4.5m            | 4.185m            | D      |
| Car Parking              | 2               | 2                 | A      |
| Site Works               | Less than 500mm | Less than 500mm   | A      |
| Overshadowing            | ≤25%            | 16%               | 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                   | 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                                   | A          |
| 3.7.12 Pergolas                                       | N/A        |
| 3.7.13 Incidental Development Requirements            | N/A        |
| 3.7.14 Footpaths and Crossovers                       | N/A        |
| 3.7.16.4.3.3 Fremantle Port Buffer Area               | Conditions |
| 3.7.17.3.3 Garages and Carports                       | D          |
| 3.7.17 Precinct Requirements                          | D          |

Heritage

The proposed development is not on the heritage list.

Lot Boundary Setback (Side of Carport Wall)

The proposed development does not comply with the deemed to comply requirements of provision 5.1.3 C3.2 ii of the Residential Design Codes for the side boundary setback for the carport wall. Although the carport walls are no higher than 3m for less than 9m as required by this clause it is not behind the front setback area. However, in accordance with the design principles 5.1.3 P3.2 buildings built up to boundaries, other than the street boundary is considered permissible if it allows for more effective use of space for enhanced privacy, does not have an adverse impact on the amenity of the adjoining property, reduces the impact of building bulk on adjoining properties, does not compromise sunlight or

ventilation to the building and open spaces on this site or the adjoining site and minimises the extent of overlooking and loss of privacy on adjoining properties. Although the location of the carport may reduce the access to sunlight to the neighbouring property at 84 Sewell Street there is improved privacy between the 2 properties as a result of the location of the carport wall along the side boundary. Whilst it is acknowledged there is an impact to the access to sunlight, it is considered the setback of the dwelling and location of the window will still facilitate light into the room. Adequate ventilation is still possible as there is a gap of approximately 1m between the garage wall and the windows on the northern side of 84 Sewell Street. For this reason the carport wall built on the lot boundary is supported. A condition has been included in the Officer's Recommendation that the finish of the parapet wall is to be constructed in consultation with the owners of the adjoining lot.

#### Primary Street Setback (Carport)

The proposed development does not comply with the deemed to comply provision 5.2.1 C1.1 i of the Residential Design Codes for the primary street setback for the carport. It does achieve the design principles provision 5.2.1 P1; the proposed carport maintains clear sightlines along the street and does not detract from the streetscape or appearance of the dwellings or obstructs views of the dwellings from the street and vice versa. It is setback 4.185m which is more than the carport at 86 Sewell St (setback of 3.6m from the front lot boundary) while the garage at 30 Marmion St is setback 1.7m from Sewell St (the side boundary). The carport is also set back further than either the carport or house at 80 Sewell (3.15m) and 84 Sewell (1.0m). The proposed carport is not a dominant feature of the dwelling or the streetscape and the reduced setback is less than 10% of what is required by the Residential Design Codes. The reduced carport setback is considered to have minimal impact and is therefore supported.

#### Carport Width

The proposed development does not comply with provision 3.7.16.3.2 of the Residential Design Guidelines in terms of carport width. The proposed carport is equivalent to 33% of the lot width where 30% is the maximum. The proposed carport is visually permeable and is designed to complement the existing dwelling with similar roof pitch. It is similar in width to many carports along streets in the Plympton precinct and given that many lots in the precinct are relatively narrow and it is only a single carport ensures that it does not dominate the lot. The additional carport width is therefore supported.

#### **Conclusion**

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

#### **11.7 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP100219**

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

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

- (i) Clause 5.1.3 C3.2 ii – Residential Design Codes - Carport Wall Side Boundary Setback – 0m required (if behind front setback area) 0m (in front setback area);**
- (ii) Clause 5.2.1 C1.1 i – Residential Design Codes - Primary Street Setback (Carport) – 4.5m required, 4.185m provided;**
- (iii) Clause 3.7.16.3.2 – Residential Design Guidelines - Carport Width – 30% required, 33% provided;**

**for proposed carport, alfresco, laundry, new roof and new front wall at No 82 (Lot 297) Sewell Street, East Fremantle, in accordance with the plans date stamped received on 4 December 2018, subject to the following conditions:**

- (1) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
- (2) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- (3) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.**
- (4) If requested by Council within the first two years following installation, the roofing is to be treated to reduce reflectivity. The treatment is to be to the satisfaction of the Chief Executive Officer in consultation with relevant officers and all associated costs to be borne by the owner.**
- (5) The works are to comply with the Fremantle Buffer Area requirements including;**
  - (i) Any glass used for windows or other openings shall be laminated safety glass of minimum thickness of 6mm of double glazed utilizing laminated or toughened safety glass of a minimum thickness of 3mm.**
  - (ii) All safety glass shall be manufactured and installed to an appropriate Australian Standard.**
  - (iii) Air conditioning systems are to have internally centrally located shut down point and associated procedures for emergency use.**
  - (iv) There is a preference for refrigerative systems.**
  - (v) Quiet house design principles are to be utilised.**
  - (vi) All development shall incorporate roof insulation.**
- (6) All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a Building Permit.**
- (7) All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.**
- (8) The parapet wall of the carport is to be constructed in consultation with the owners of the adjoining lot in regards to the exterior wall finish and colour.**
- (9) The carport is to remain open and not to be fully enclosed. Any proposal to fully enclose the carport is required to have a development application submitted for consideration 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.



---

**11.10 Allen Street, No 35 (Lot 12) Demolition and Site Works Including Retaining Walls and Fill**

|                            |  |
|----------------------------|--|
| <b>Owner</b>               | Heath and Ruth Tyrrell   |
| <b>Applicant</b>           | Heath Tyrrell  |
| <b>File ref</b>            | P107/2018; P/ALL35   |
| <b>Prepared by</b>         | James Bannerman Planning Officer<br>Andrew Malone, Executive Manager Regulatory Services |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services                                     |
| <b>Meeting date</b>        | 5 February 2019  |
| <b>Voting requirements</b> | Simple Majority  |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

**Purpose**

That Council considers a planning application for the demolition of an existing dwelling and site works including retaining walls and fill at No 35 Lot 12 Allen Street, East Fremantle.

**Executive Summary**

This report considers the demolition of the existing dwelling and site works on a lot that has been subdivided. The applicant is seeking Council approval for the following variations:

- (i) Clause 5.3.7- R Code Street- Siteworks
- (ii) Clause 5.3.8- R Codes- Retaining Wall

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

**Background**

Zoning: Residential R12.5

Site area: 1197m<sup>2</sup> & 1161m<sup>2</sup> No 41 Lot 501 Allen Street

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

The subject site was created from the amalgamation of 2 lots No 35 (Lot 12) Allen Street- area 1197m<sup>2</sup>- and No 41 (Lot 50) Allen Street- area 1161m<sup>2</sup>- and subsequent re-subdivision into 3 survey strata lots.

No 41 (Lot 50) Fletcher Street on the corner of Allen and Fletcher street was reduced in area to 893m<sup>2</sup> 2 further lots facing Allen Street were simultaneously created - front lot of 735m<sup>2</sup> and rear battle-axe lot of 730m<sup>2</sup>. The subdivision was approved by the Western Australian Planning Commission and the Town of East Fremantle supported the proposed subdivision. This will be discussed in further detail in the 'Comment' section of this report.

**Consultation**

Advertising

The application was advertised to surrounding land owners from 28 November to 14 December 2018. Two (2) submissions were received. The submission noted the following comments and the applicant and officer responses are provided below:

| <b>Submission</b>  | <b>Applicant Response</b>  | <b>Officer Response</b>  |
|--|--|--|
| <p><u>Submission 1</u></p> <p>(i) In regards to Clause 5.3.1 of Local planning Scheme No 3 Density Bonus for Corner Lots the local government may approve development up to R20 on corner lots where the dwellings are designed to face each of the street frontages and in the opinion of the local government there will be an improvement in the amenity of the street.</p> <p>(ii) The application will have a negative effect on the amenity of our residence at 1A Fletcher Street.</p> <p>(iii) R20 density is not a right and may be granted by Council.</p> <p>(iv) I am disappointed that that I was not made aware of the application and Council did little to recommend against subdivision although it did not comply with the Town Planning Scheme</p>  | <p>(i) Street frontage amenity is irrelevant to subdivision.</p> <p>(ii) The relevant zoning for the site has already been granted.</p> <p>(iii) Development applications are always made available for inspection.</p>  | <p>(i) Provided the requirements of subdivisions are met in accordance with the Local planning Scheme including the lot areas and frontage widths the Town will support subdivisions on corner lots. Ultimately however, subdivisions are decided by the Western Australian Planning Commission.</p> <p>(ii) The development application is only in relation to the lot heights and retaining walls. There is no proposal for a development application for a dwelling before Council.</p> <p>(iii) The R20 density is decided by Council but subdivision is determined by the WAPC.</p> <p>(iv) The subdivision of the subject lots was approved by the WAPC and the Town supported the proposal because it achieved the requirements of LPS No 3 and the R codes.</p>  |
| <p><u>Submission 2</u></p> <p>(i) The heritage nature of East Fremantle needs to be retained and the proposed subdivision will detract from this and have a negative effect on property values. People have bought houses on big blocks with trees so they are not crammed next to neighbours.</p> <p>(ii) The proposed subdivision with the proposed fill will result in 2 two storey dwellings that will overlook neighbouring blocks and detract from the amenity of neighbours.</p> <p>(iii) We have no objection to the existing house being demolished provided the replacement is single storey or partially double storey but no windows overlooking neighbours back yards.</p> <p>(iv) The existing house is attractive and would benefit from renovations in a heritage style and seems to be the only house in Allen Street that isn't heritage protected.</p> <p>(v) Ugly modern designs detract from the heritage nature of East Fremantle and negatively affect property values and amenity.</p> | <p>(i) There are many instances of varying lot sizes with trees and open space in all suburbs.</p> <p>(ii) There is confusion with future development applications and lot subdivision.</p> <p>(iii) Any development application will have to comply with the R-Codes and Town Planning Scheme.</p> <p>(iv) Points (iv) and (v) is criticizing East Fremantle Planners and Councillors for allowing ugly modern monstrosities.</p> <p>(v) Reference to heritage is a red herring designed to appeal to Councillors emotions and are irrelevant. This a not a development application for proposed dwellings.</p> | <p>(i) The Town of East Fremantle is protective of heritage properties, however, if a dwelling is either not on the heritage list or is not listed as Category A or B properties then the owner can apply for demolition.</p> <p>(ii) Large blocks with trees are not a guarantee that owners will not develop structures that increase the site coverage or remove trees.</p> <p>(iii) This report is dealing with a development application for lot heights and retaining walls. There is no development application for a double story dwelling at the subject address before Council at the moment.</p> <p>(iv) The owners of properties such as the subject lots are entitled to make a development application for a double storey dwelling with windows and for it to be assessed against the Residential Design Guidelines and the Residential Design Code.</p> <p>(v) The aesthetics of a dwelling is subjective. The Residential Design Guidelines encourages new development to adopt more contemporary design styles rather than mimic heritage architecture.</p> <p>i) Property values are not a relevant planning consideration.</p> |

---

Community Design Advisory Committee (CDAC)

This application was not referred to CDAC.

**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**

January 2019

---

## Comment

### Context

The subject site was created from the amalgamation of 2 lots No 35 (Lot 12) Allen Street- area 1197m<sup>2</sup>- and No 41 (Lot 50) Allen Street- area 1161m<sup>2</sup>- and subsequent re-subdivision into 3 survey strata lots.

No 41 (Lot 50) Fletcher Street on the corner of Allen and Fletcher street was reduced in area to 893m<sup>2</sup> 2 further lots facing Allen Street were simultaneously created - front lot of 735m<sup>2</sup> and rear battle-axe lot of 730m<sup>2</sup>. The subdivision was approved by the Western Australian Planning Commission and the Town of East Fremantle supported the proposed subdivision.

The amalgamation of the 2 lots into a single parent lot created a 2358m<sup>2</sup> corner lot. The applicant applied to the WAPC for subdivision of this lot. The Local Government (administration) recommended support for the subdivision. Given the existing site circumstances and the application of the R20 code under clause 5.3.1 of LPS No. 3 which states as outlined below, approval of the proposed subdivision was considered acceptable and was supported subject to the conditions:

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

The local government being administration (as differentiated from Council) supported the subdivision based on the following:

The subdivision proposal complied with the minimum and average site area per dwelling and minimum lot frontage requirements under the R20 density code. In fact the proposed lot areas comply with the provisions of the R12.5 density coding of the area (minimum lot area 700m<sup>2</sup>, average lot area 800m<sup>2</sup>) with a 5% variation as provided for under the State Planning Policy for subdivision. As noted above the actual lot areas, comply with the WAPC Policy requirements.

Notwithstanding the above point, the proposed subdivided lots are significantly consistent with the prevailing area (with the exception of the battle-axe design). However it is recognised that battle-axe lots are present in the town, specifically on Petra and Marmion Street.

Whilst the density bonus was utilised (not necessarily required to be utilised due to complying R12.5 densities), the applicant has liaised with Council for a significant period of time to ensure a subdivision and development is created which recognises the prevailing built form within the town.

Were the applicant to utilise the provisions of the R20 provisions, 4 lots could have resulted, which would have resulted in a development that was not wholly consistent with the character of the town.

Lastly the above provisions state that subdivision can be supported where *there will be an improvement in the overall amenity of the streets as a result of the development*. A development application has not been presented to Council. Preliminary discussions with the applicant indicated the design would be consistent with the prevailing design of the area (that being said it is noted above should 2 long east/west lots have been created, the resultant design for the area could be considered to have a greater impact to the streetscape and the adjoining neighbours). The dwelling proposed to be demolished is not a character home and does not significantly add to the streetscape. The proposed subdivision will present in a similar streetscape form to the existing streetscape. The development of the new dwellings

on Allen Street is considered an overall improvement. The rear dwelling will not be seen from the streetscape due to the lot levels and rear battle-axe lot and therefore has minimal street impact.

In light of the above the subdivision was supported, subject to a number of standard subdivision conditions.

#### Statutory Assessment

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

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

| Design Elements        | Required | Proposed                          | Status |
|------------------------|----------|-----------------------------------|--------|
| <b>Site Works</b>      |          |                                   |        |
| <b>Front Lot</b>       | <0.5m    | Cutting 0.9m to 1.02m             | D      |
|                        |          | Fill <0.5                         | A      |
| <b>Rear Lot</b>        | <0.5m    | Cutting 0.09m to 0.34m            | A      |
|                        |          | Fill 0.05m to 1.0m                | D      |
| <b>Retaining Walls</b> |          |                                   |        |
| <b>Front Lot</b>       |          |                                   |        |
| North                  | <0.5m    | 0-1.0m                            | D      |
| South                  | <0.5m    | 1.1m                              | D      |
| West                   | <0.5m    | 1.1m                              | D      |
| East                   | <0.5m    | 1.1m                              | D      |
| <b>Rear Lot</b>        |          |                                   |        |
| North                  | <0.5m    | 0m-1.0m                           | D      |
| South                  | <0.5m    | Existing retaining walls in place | A      |
| West                   | <0.5m    | 0.32m-1.13m                       | D      |
| East                   | <0.5m    | 0.5m                              | A      |

There is currently a dwelling located across the lot along with 2 sheds and a garage. The applicant has applied to demolish these structures. There is no reason for refusing the proposed demolition. None of the structures are on the heritage list and as such are not protected by Part 7 of Local Planning Scheme No 3.

#### Site Works

##### Front Lot

- The new front lot that faces Allen Street will have a site level of 23.5m across the whole site (with the exception of a corner truncation).
- There is a 4m corner truncation at the north eastern apex of the lot with a site level of 23m.
- The street is on a slope increasing in height by 1.5m from north to south.
- This involves cutting into the site at No 41 Allen Street such that this portion of the lot is reduced in height between 0.9m and 1.02m and filling the northern section of the lot such that there are increases in the existing ground level heights.

---

Rear Lot

- The rear lot will have a site level of 23.0m.
- The rear lot slopes upwards from north to south increasing in height by 1.5m across the lot.
- The lot is being cut away between 0.09m and 0.34m in the southern eastern quarter and filled elsewhere between 0.05m and 1.0m.

The site works for the subject lots have been carried out such that there is both cut and fill. Fill in the front lot is less than 0.5m which is compliant with the R Codes, but this is matched by removal of earth between 0.9m and 1.02m which exceeds the deemed to comply provisions of the R Codes. The slope of Allen Street means that there is going to be differences in heights of the lot at different points that interface with the street. The crossover for the front lot is at street level but the height of the lot increases northwards relative to Allen Street.

The rear lot is lower than the front lot and with a 1.5m variation across the lot from north to south there has to be some changes in heights to obtain a level lot. There is excavation of between 0.09m to 0.34m which achieves the deemed to comply requirements of the R Codes. Fill of between 0.05m and 1m is used to build up the lot at the north western corner.

Retaining Walls

Front Lot

- A retaining wall is built around the whole lot with the exception of the opening for the cross-over and driveway on the south eastern corner.
- The height of the retaining wall falls as it edges southwards along Allen Street until the lot and retaining wall is at a similar height to the footpath and front verge.
- The northern retaining wall of the front lot is setback 4m from the boundary fence with Lot 11 Allen Street to provide an access lane for the rear battleaxe lot.
- There is a corner truncation between the lot and the battleaxe lot accessway that reduces the height of the retaining walls on the boundary of the lot to 23m and improves sightlines at the interface between the laneway and the footpath.
- The retaining wall on the north eastern corner of the front lot is 1.0m higher than the surrounding land, but given that it is setback 4m from the neighbouring property for 26.77m it complies with the deemed to comply height requirements of the R Codes.
- The 8.553m retaining wall on the western edge of the lot nearest Lot 101 Fletcher Street is setback 1.5m from the boundary which achieves the deemed to comply requirements for retaining wall heights required by the R Codes.
- The retaining wall at the west of the front lot facing Allen Street is 1.06m lower than the neighbouring property at Lot 101 Fletcher Road.

Rear Lot

- A retaining wall is proposed for the rear (western boundary) of the lot for 19.82m at heights varying from 0.32m to 1.13m above the neighbouring properties.
- There is also a retaining wall on the northern boundary that extends for 44.0m varying between 0.08m and 1.13m in height above the neighbouring property
- Based on the heights of the lot and the variation across the site it is not unreasonable to see retaining wall set at 23.0m height.

For the front lot the retaining walls exceed 0.5m wall height but attempts have been made to reduce the impact of the site level relative to the street slope by including a 4m corner truncation that reduces the lot height by 0.5m in the truncation area.

The rear lot has a retaining wall along the northern and western boundary which exceeds 0.5m in height.

One of the problems with this site is the considerable slope across the site from south to north and from east to west. The rear lot in particular varies in natural ground levels from 23.5m down to 22.0m. By lowering the site more there is the threat that the existing retaining wall of properties on the southern boundary will be undermined more. The lot is already considerably lower than 1A and 1B Fletcher Street with points along the boundary showing differences of between 2.04m and 2.65m. At the same time there is between 0.32m and 1.13m difference in height between the subject lot and the neighbouring properties to the west. To the north the site is up to 1.13m above the neighbouring property. A balance has to be achieved with regards to site heights. In this case the site levels are appropriate for a sloping site such as this and the retaining walls are appropriate heights given the variations in site heights across the lots.

#### Submissions

In terms of submissions that have been made by surrounding residents the points raised are not helpful in understanding the real issue with the proposed development application relating to site levels and retaining walls. The comments made refer to property values, amenity, heritage, opposition to two storey development, opposition to development with windows overlooking neighbouring backyards, and opposition to the proposed subdivision. As noted above it is considered that the battle-axe lot will have less impact than two long east west lots particularly to the adjoining neighbour and streetscape. The concerns raised are on the whole matters that are unrelated to the proposed development to be determined by Council, as discussed here. As stated in the officer responses to the submissions the points covered are largely unrelated to this proposed development application.

In regards to the comments provided by residents following advertising the matter being dealt with is in relation to the proposed demolition, site works and construction of retaining walls on the subject lots not a subdivision approval. Subdivisions are approved by the Western Australia Planning Commission and not the Town of East Fremantle, however as noted above the application was supported by administration based on the aspects as outlined above. Significantly the proposed the proposed lot areas comply with the provisions of the R12.5 density coding of the area (minimum lot area 700m<sup>2</sup>, average lot area 800m<sup>2</sup>) with a 5% variation as provided for under the State Planning Policy for subdivision. As noted above the actual lot areas, comply with the WAPC Policy requirements, therefore refusal of the subdivision would have been difficult to justify.

The Town has a chance to comment on proposed subdivision, but does not act as the final decision maker. The WAPC will make decisions relating to the viability of subdivision based on criteria such as minimum lot sizes, average lot sizes and street frontage length in accordance with the local planning scheme and the R Codes. In this case the lot was amalgamated and then subdivided based on the total area of the combined area of No 39 and No 41 Allen Street. This meant that a subdivision could occur with a density coding of R20 in accordance with the Density Bonus for Corner Lots provided by Clause 5.3.1 of LPS No 3.

In this case No 41 was reduced in size to 893m<sup>2</sup> and 2 additional strata lots were created with the rear lot equal to 730m<sup>2</sup> and the front strata lot equal to 735m<sup>2</sup>. No 41 faces Fletcher Street and the 2 strata lots face Allen Street. The lots that are created are in accordance with the minimum (450m<sup>2</sup>) and average (450m<sup>2</sup>) lot sizes for R20. The Town supported the proposed subdivision and imposed standard subdivision conditions.

### Conclusion

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

#### 11.10 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP110219

Cr White moved, seconded Cr Nardi

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

- (i) Clause 5.3.7- R Code Street- Site works
- (ii) Clause 5.3.8- R Codes- Retaining Wall-

for proposed demolition, retaining walls and site works at No 35 (Lot 12) Allen Street, East Fremantle, in accordance with the plans date stamped received on 21 December 2018, subject to the following conditions;

- (1) The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
- (2) The proposed works are not to be commenced until Council has received an application for a Building Permit and the Building Permit issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
- (3) With regard to the plans submitted with respect to the Building Permit application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
- (4) All 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.
- (5) 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.
- (6) 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.
- (7) 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.**

**(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)

### 12.1 Economics and Industry Standing Committee Inquiry into Short-stay Accommodation in WA – Draft Town of East Fremantle Submission

|                            |  |
|----------------------------|--|
| <b>File ref</b>            | B/PTP1   |
| <b>Prepared by</b>         | James Bannerman, Planning Officer                    |
| <b>Supervised by</b>       | Andrew Malone, Executive Manager Regulatory Services |
| <b>Meeting Date:</b>       | 5 February 2019                                      |
| <b>Voting requirements</b> | Simple Majority                                      |
| <b>Documents tabled</b>    | Nil  |
| <b>Attachments</b>         | Nil  |

#### **Purpose**

This report considers a response to requests for submissions from the Legislative Assembly of Western Australia *Committee Inquiry into Short-stay Accommodation in WA*.

#### **Executive Summary**

The Economics and Industry Standing Committee has invited written submissions to its Inquiry into Short-Stay Accommodation in Western Australia (WA).

The Committee is seeking data from local governments in regard to the number of accommodation sources offered by online platforms in the local government authority and changes over the past 5 years, as well as comments in relation to the following:

1. The forms and regulatory status of short-stay accommodation providers in regional and metropolitan Western Australia, including existing powers available to local government authorities;
2. The changing market and social dynamics in the short-stay accommodation sector;
3. Issues in the short-stay accommodation sector, particularly associated with emerging business models utilising online booking platforms; and
4. Approaches within Australia and international jurisdictions to ensure the appropriate regulation of short-stay accommodation

Changes in the use of technology and marketing have created environments whereby non-standard hosts (for example other than hotels and motels) are able to offer their homes, investment properties, spare rooms and other ancillary lodging for short-stay accommodation. These offers may often be made either with or without necessary planning, building, health or other approvals.

The Town of East Fremantle has not experienced any known significant issues in relation to short-stay accommodation. However, the number of planning applications for short-stay accommodation has been steadily increasing over recent years. Further regulation in this area may assist in keeping possible future issues in check.

It is considered imperative that any possible future regulation and/or policy involving local government is developed in direct consultation with local government and in any subsequent approval and implementation, local government is not unnecessarily burdened by requirements for additional resources without adequate State government support and contribution.

#### **Background**

---

The Committee has resolved to investigate and report on regulation of short-stay accommodation in WA concerning issues around customer safety, insurance, land use planning, building standards, stay length, neighbourhood amenity, registering, licensing and taxation.

The inquiry has been convened to respond to concerns that current regulatory frameworks do not adequately address the issues faced by stakeholders in the short-stay accommodation industry including providers and local government. It is supported by the State Government and the Minister for Planning, Hon Rita Saffiotti MLA and the findings and recommendations from the Inquiry will inform future regulation in this field.

The New South Wales government has responded to a similar inquiry by introducing a new planning framework in relation to short-term accommodation. Some local governments in WA, including the Shire of Augusta-Margaret River, have introduced local planning policies to address some of the issues they have encountered. The City of Busselton and the City of Fremantle has introduced a local law requiring registration and planning approval for short-stay accommodation. The City of Wanneroo has a requirement for a management plan and a waste management plan to be provided with any development application for short stay accommodation, as well as an explanation of the compatibility of the proposal with the planning scheme's zone objectives. From a health perspective Wanneroo also requires compliance with the Environmental Protection Act 1986, Health (Miscellaneous Provisions) Act 1911 and the Food Act 2008.

The submission period for this Inquiry closed on 25 January, however, the Committee has agreed to accept a late submission from the Town of East Fremantle. All submissions will become public after tabling in the Legislative Assembly.

### **Statutory Environment**

Reform proposals linked to short-stay accommodation may lead to changes to planning legislation (including the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*), as well as planning documents developed thereunder (including local planning strategies and local planning schemes) and statutory approval processes.

Any proposed changes may have subsidiary effects on other regulation in the fields of environmental health and building compliance.

### **Policy Implications**

Reform proposals may require the introduction of a local planning policy dealing with short-stay accommodation and possible changes to the Town's internal administrative and regulatory processes.

### **Financial Implications**

Some reform proposals may require increased resource commitment in terms of staff and time.

### **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**

Not applicable

**Comment**

A review of short-stay accommodation in WA is welcomed and may be considered by some as overdue.

The following comments are made with regard to the Inquiry parameters:

**1. The forms and regulatory status of short-stay accommodation providers in regional and metropolitan Western Australia, including existing powers available to local government authorities**

The Town deals with land use including short-stay accommodation through Local Planning Scheme No. 3. There are 3 forms of short-stay accommodation that are listed as uses in the zoning table: bed and breakfast, motels and hotels. There are no other short-stay accommodation uses that are formally recognised under the planning scheme. A proposal for short-stay accommodation, must therefore be considered as a 'use not listed' in the Zoning Table under the provisions of the planning scheme and advertised for public comment before Council can determine the application

In each instance the proposed accommodation would be required to comply with the relevant definitions and requirements as provided in the local planning scheme as listed below or have the Council determine the use is consistent with the objectives and purposes of the particular zone and permit the use:

| Use Class         | Definition   |
|-------------------|--|
| Bed and Breakfast | A dwelling used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast   |
| Hotel             | Premises the subject of a hotel licence other than a small bar or tavern license granted under the <i>Liquor Control Act 1988</i> including any betting agency on the premises   |
| Motel             | Premises used to accommodate patrons in a manner similar to a hotel but in which specific provision is made for the accommodation of patrons with motor vehicles and may comprise premises licensed under the <i>Liquor Licensing Act 1988</i> ( <i>sic Liquor Control</i> ) |

|           |
|-----------|
| Act 1988) |
|-----------|

The Town has not adopted any local planning policies or local laws regarding short-stay accommodation at this time. However, it does apply the Western Australian Planning Commission (WAPC) *'Holiday Homes Guidelines – Short Stay Use of Residential Dwellings'* (published September 2009) which is intended by the WAPC to be used as a guide in the assessment of short-stay accommodation applications. The Town Building Surveyor also determines if the short-stay accommodation proposed will result in a change to the classification of the building/dwelling thereby requiring a Building Permit application to be submitted and compliance with the Building Codes of Australia

Council only grants temporary approvals, usually of 12 month duration with a condition of approval being that the applicant is required to re-apply at the expiry of 12 months. A standardised set of conditions is also imposed which are specific to matters such as number of bedrooms and occupants, vehicle parking, management plans and other general amenity matters. This approach enables Council to monitor the use and its potential impact on the surrounding locality and provides an ability to revoke the approval if this is considered necessary.

## **2. The changing market and social dynamics in the short-stay accommodation sector**

The differences between various types of short-stay accommodation appears to have become ambiguous. The emergence of online and mobile phone based accommodation booking services has meant that any owner of a room or dwelling including a bed, bedroom, apartment, 'granny flat' or house is able to market and sell accommodation globally in competition with established accommodation providers.

Traditional barriers to entry of accommodation providers have been broken down and weakened the market dominance of the large motel and hotel operators in a similar way that Uber has forced change on the taxi industry and Netflix has changed television viewing habits.

In a more deregulated environment prices typically fall, however, it could be at a cost with a decline in safety and accessibility regulations, quality of some accommodation and residential communities potentially suffering from a decline in amenity resulting from a variety of factors including increased vehicle traffic, parking difficulties, insufficient servicing (for example bin capacities and collection) and anti-social behaviour.

On the other hand, the Town is aware that short-stay accommodation services are being provided without approvals (general location established from internet searches). Surrounding residents remain unaware of the use of these properties as the operators of the property manage their properties carefully and ensure that there are minimal impacts on the amenity of the neighbourhood.

Air BnB is arguably the most well-known online accommodation booking platform, although there are many others including Stayz, Expedia, Wotif and Trivago. All provide booking services for a variety of accommodation, however, Air BnB has targeted residential properties to become holiday accommodation. Air BnB has received attention with stories of residential homes being used as 'party houses' and suffering damage by guests. A number of articles and documentaries have been produced, as well as a dedicated website created ([insideAirBnB.com](http://insideAirBnB.com)) that highlight issues around Air BnB operations. As previously stated, however, it is noted that there are a number of other online booking service operators in existence.

A search of Council's records, together with online data, shows that within the Town of East Fremantle:

- 31 properties have approved ancillary accommodation;
- 29 properties have had additions and extensions including studios or rooms (not categorised as ancillary accommodation);
- 18 properties have formal approval for providing short-stay accommodation (not Air BnB);
- 3 properties have been formally approved to operate a bed and breakfast use;
- 5 properties have been formally approved to operate as Air BnB; and

- 84 properties are listed as being available for short-stay accommodation in East Fremantle according to “insideAirBnB.com” (accurate to October 2018).

It is possible that those properties with ancillary accommodation, granny flats, studios or additional vacant rooms may also have the potential to use those lodgings for short-stay accommodation.

Some properties listed as being available in East Fremantle may be outside the Town’s boundaries, but within close proximity to the Town’s attractions. Dwellings are identified by general locality rather than specific address.

Regulation alone does not necessarily prevent short-stay accommodation operating without the necessary approvals. The addition of onerous hurdles in approval processes could in fact discourage short-stay accommodation operators from seeking permission to operate. Having the ability to impose and enforce high penalties for operating without approval, however, could provide an appropriate incentive to gain approvals. If there are no significant amenity impacts on residential neighbourhoods, it is possible for the Town to be unaware of the operation of short-stay accommodation. In such instances, it may be difficult to justify the need or value of developing, implementing and enforcing regulation, although Council potentially has a responsibility to require approvals to ensure compliance with building codes, universal access and fire safety.

### **3. Issues in the short-stay accommodation sector, particularly associated with emerging business models utilising online booking platforms**

There is no simple delineation of issues or response to the issues created by the emergence of online booking platforms for short-stay accommodation. Many encompass a variety of operational, planning, building and health matters.

#### Lack of Personal Contact

Online booking platforms are simple to operate, portable, relatively anonymous and take relatively little time or effort compared to traditional booking systems. They have become a regular feature of people’s lives. Operators of short-stay accommodation can remain relatively disconnected from formal government processes and customers of these services are happy to use online providers because they are quick, appear to provide value for money and are generally unconcerned by issues surrounding accommodation operations.

#### Building Classification Changes

The Building Code of Australia recognises different building/use categories and requirements depending on whether a structure is a single residential dwelling or a multi-storey residential dwelling and/or provides short-stay accommodation and how many people are staying within it. If the use of a residential dwelling changes to a commercial function, such as short-stay accommodation, there is a potential change in the classification for building purposes that places higher compliance requirements for safety, emergency and construction standards. In addition, as the number of rooms and guests increases the minimum acceptable criteria under the Building Code becomes more onerous. Short-stay accommodation that is not approved accordingly is in breach of the Building Code Australia.

#### Insurance

For insurance purposes there are different requirements for residential dwellings compared to commercial buildings. Some short-stay accommodation might be defined as commercial, rather than residential depending on the size of the operation and number of rooms. This is a matter for the operator of the accommodation to deal with and is not a local government consideration.

#### Health

---

There is a requirement that all premises that serve food comply with the Food Act 2008. There is also a requirement that operators of short stay accommodation comply with the Environmental Protection Act 1986 and Health (Miscellaneous Provisions) Act 1911. Again it is the responsibility of the operator to comply with the relevant legislation, although local government is required to police non-compliance.

#### Unfair Competition

Short-stay accommodation businesses operating without a valid approval are financially and operationally advantaged over those that do. Savings are made in time and fees associated with not gaining approvals. In addition, approvals are generally subject to conditions that may impose operational limitations or additional costs in ensuring compliance with planning and building requirements which are not necessarily self-imposed by those who operate without approvals.

There needs to be a balance such that short-stay accommodation operators are not discouraged from applying for planning approval to ensure that providers meet health and safety requirements and do not cause a deterioration in neighbourhood amenity or public safety.

#### Neighbourhood Amenity

The concentration of short-stay accommodation in one particular residential area has the potential to concentrate potential problems. A large number of short-stay accommodation units located together increases the likelihood of neighbouring properties seeking out similar commercial opportunities that tap into the visitor population. Whilst there can be positive economic benefits for the accommodation operators and surrounding local economy, informal and unregulated short-stay accommodation may become problematic if residential areas are overwhelmed by their activities and amenity impacts.

It is important to maintain the positive characteristics of precincts that are popular for short-stay accommodation including tree lined streetscapes, heritage properties, walkable built environments, safe and clean residential areas with high levels of amenity.

From an urban planning perspective, there is a risk of incremental change occurring in residential areas where a concentration of short-stay accommodation has occurred. Residential areas can become increasingly commercialised and blighted. Urban infrastructure may deteriorate more quickly and require maintenance or replacement within shorter timeframes and extra burden can be placed on services such as waste collection.

In the Town's experience short-stay accommodation is nearly always proposed to be located in residential zoned areas. Existing residents have a reasonable expectation that resident amenity should be maintained and should be prioritised over permitting commercial enterprises. Allowing a concentration of short-stay accommodation in residential zoned areas puts resident amenity at risk. Similarly, if established short-stay accommodation in appropriately zoned areas is not patronised then this may jeopardise the viability of existing accommodation businesses and other supporting commercial uses in areas designed and planned specifically for this purpose.

Perceptions of the problems may be quite different from reality with social media and popular media amplifying the negative aspects of short-stay accommodation and ignoring the positive aspects. However, there may be residents that tolerate issues, do not contact the Town to complain about issues with nearby short-stay accommodation that does not have formal approval to operate

#### Economy

As previously stated, short-stay accommodation may have positive benefits for the local economy including nearby businesses. Shortages of local short-stay accommodation may mean that there are fewer spin-off benefits for the local economy.

#### **4. Approaches within Australia and international jurisdictions to ensure the appropriate regulation of short-stay accommodation**

---

The Town does not actively encourage short stay accommodation in residential areas because they are not zoned for these uses, however, landowners may apply for approval to utilise vacant bedrooms, studios, ancillary accommodation, apartments and homes as short-stay accommodation. The Town's preference is for this accommodation to operate through formal regulated channels to ensure potential issues can be identified and conditions applied as part of the planning and building approval process. This is to ensure that premises are compliant with relevant health and safety requirements, as well as maintain neighbourhood amenity. It is recognised, however, that online and mobile technology enables businesses to operate without the Town being appropriately notified.

The Town does not want or intend to impose harsh measures to police short-stay accommodation. However, in a situation where the Town is made aware of problems associated with a property operating as short-stay accommodation (whether approved or not) the Town will take measures to respond. Typically this would be addressed by the Regulatory Services section and might include ensuring compliance in relation to occupancy/bed numbers, noise, preparation of food by the proprietor, parking, traffic and waste disposal under the relevant legislation and regulations, as well as require the operators to submit a retrospective development application.

The Town has not developed a local planning policy with regard to short-stay accommodation to date, however, it is something that may be contemplated in the future.

#### **General Comments**

It is considered appropriate that Council makes a number of comments in relation to the Inquiry into Short-stay Accommodation.

Caution is needed when attempting to streamline and provide uniformity around the regulation of short-stay accommodation. A "one size fits all" approach to legislation and policies linked to short-stay accommodation is not considered appropriate. There are significant differences between local governments across the State in terms of surface area, population, economic and demographic profile, urban environments, attractiveness and suitability for short-stay accommodation. For this reason it may be more beneficial for local governments to formulate local planning policies and local laws under existing legislation and according to their own circumstance.

It is essential that details of any future short-stay accommodation regulatory and policy proposals by State government involve input and scrutiny from local government. If expected to implement policy and regulation it is critical that local government has input into its development. It is suggested that a working group be established to assist in the formulation of policies and regulation and should include officers from local government with a broad background in economic development, tourism?, urban planning, building compliance and environmental health.

Caution is required to ensure that local governments are not unnecessarily burdened by proposals that increase compliance, responsibility and workloads. Proposals that increase the burden on local government in respect to costs and staffing need to be appropriately supported, resourced and compensated by State government. It is essential that smaller local governments are given the means to raise necessary funds to implement and enforce legislation or policies around short-stay accommodation, without sacrificing other expenditure priorities.

Any recommendations resulting from the Committee Inquiry need to be clearly communicated across communities to protect the interests of stakeholders including residents, property owners, and providers of short-stay accommodation. A well communicated stance by State government that does not give stakeholders mixed messages about short-stay accommodation is essential. It is considered essential that State government takes the lead role in developing a robust public awareness and



information campaign to explain and promote proposals linked to legislation or policies on short-stay accommodation.

It is recommended that the general comments from this report be included as a submission to be forwarded to the Economics and Industry Standing Committee of the Legislative Assembly (Committee Inquiry into Short-stay Accommodation in WA).

**12.1 OFFICER RECOMMENDATION/COMMITTEE RESOLUTION TP120219**

**Cr Nardi moved, seconded Cr White**

**That Council:**

- (1) Adopt this report as the basis for a submission to the Economics and Industry Standing Committee of the Legislative Assembly (Committee Inquiry into Short-stay Accommodation in WA) and**
- (2) Forward the adopted Town of East Fremantle Submission – As referred to in (1) above, to the Economics and Industry Standing Committee of the Legislative Assembly (Committee Inquiry into Short-Stay Accommodation in WA)**

**(CARRIED UNANIMOUSLY)**

13. MATTERS BEHIND CLOSED DOORS

Nil.

14. CLOSURE OF MEETING

There being no further business, the Presiding Member declared the meeting closed at 8:00pm.

*I hereby certify that the Minutes of the ordinary meeting of the Town Planning & Building Committee of the Town of East Fremantle, held on 5 February 2019, Minute Book reference 1. to 14 were confirmed at the meeting of the Committee on:*

*5 MARCH 2019*

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