



**MINUTES OF A COUNCIL MEETING, HELD IN THE COUNCIL CHAMBERS, ON TUESDAY, 9 DECEMBER, 2008 COMMENCING AT 6.35PM.**

**369. DECLARATION OF OPENING OF MEETING**

The Mayor (Presiding Member) declared the meeting open.

**369.1 Present**

Mayor A Ferris	Presiding Member
Cr D Arnold	
Cr B de Jong	
Cr D Nardi	
Cr R Olson	
Cr M Rico	
Mr S Wearne	Chief Executive Officer
Mr C Warrener	Town Planner (To 11.35pm)
Ms J May	Minute Secretary

**370. ACKNOWLEDGEMENT OF COUNTRY**

Mayor Ferris made the following acknowledgement:

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

**371. WELCOME TO GALLERY AND INTRODUCTION OF ELECTED MEMBERS AND STAFF**

The Mayor welcomed 23 members of the public in the gallery and introduced Council members and staff.

**372. RECORD OF APPROVED LEAVE OF ABSENCE**

Cr C Collinson  
Cr A Wilson

**373. RECORD OF APOLOGIES**

Cr Dobro.

**374. PRESENTATIONS/DEPUTATIONS/PETITIONS/SUBMISSIONS**

Nil.

**375. PUBLIC QUESTION TIME**

Nil.

**376. APPLICATIONS FOR LEAVE OF ABSENCE**

Nil.

**377. CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**377.1 Council Meeting – 18 November 2008**

Cr Nardi – Cr Arnold

That the Minutes of the Council Meeting held on 18 November 2008 be confirmed.

CARRIED

**378. ANNOUNCEMENTS BY MAYOR WITHOUT DISCUSSION**

**378.1 Cr Dobro**

Mayor Ferris advised of the sad passing of Cr Dobro's grandmother, whom Cr Dobro had travelled to Canada to visit.

**378.2 East Fremantle Festival**

Mayor Ferris advised of the huge success of the East Fremantle Festival held last Sunday, 7 December from 1-8pm and thanked Cynthia Williamson, Council staff and elected members for their assistance in making the event so enjoyable.

**378.3 Pioneers' Lunch – 1 December 2008**

Mayor Ferris advised that the 2008 Pioneers' Lunch had been held on Monday 1 December 2008 and he thanked Cr Dobro (Deputy Mayor) for deputising for him on the day.

The Mayor also read an email from Colin and June Jones of Coolgardie Avenue advising that it was the first Pioneer Lunch they had attended and thanking Council for a very enjoyable afternoon.

**379. QUESTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN WITHOUT DISCUSSION BY COUNCIL MEMBERS**

Nil.

**380. MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN BY COUNCIL MEMBERS**

Nil.

**381. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)****381.1 T116.2 May Street No 41 (Lot 613)**

**Charles Livie:** Advising that his clients were not prepared to revise their plan any further to accommodate perceived privacy issues raised by the neighbour to the rear as the setback is well in excess of what is required, and there is a recommendation to plant screening to this rear boundary.

**Cr Rico – Cr de Jong**

**That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 383.6 & 386.1).**

CARRIED

**381.2 Pier Street No 3A**

**F & B Enright:** Submitting series of emails between the adjoining owner at 1C Fraser Street and themselves relating to boundary fence dispute.

**Cr Rico – Cr de Jong**

**That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 386.3 & 389.1).**

CARRIED

**381.3 T116.2 May Street No 41 (Lot 613)**

**Charles Livie:** Providing diagram which indicates that if a privacy landscaping screen was planted at the rear of 41 May Street it would be more than adequate to screen the swimming pool area because the existing fence provides a screen which already exists.

**Cr Rico – Cr de Jong**

**That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 383.6 & 386.1).**

CARRIED

**381.4 T113.3 Duke Street No 49 (Lot 78)**

**A Koroveshi Morton Seed & Grain Pty Ltd:** Setting out reasons why he, representing Mr & Mrs Morton (adjoining owners), did not believe Council has the power to approve the proposed storeroom at 49 Duke Street.



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Cr Rico – Cr de Jong

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 383.1). CARRIED

**382. ORDER OF BUSINESS:**

Cr Rico – Cr Arnold

That the order of business be changed to allow member of the public to speak to town planning applications. CARRIED

**383. TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN)**

*Cr Nardi made the following impartiality declaration in the matter of 49 Duke Street: "As a consequence of my friendship with the Morton's In-House Counsel, Mr Arthur Koroveshi, and the fact that he has acted as my legal representative in the past, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly.*

**383.1 T113.3 Duke Street No. 49 (Lot 78)**

**Applicant: Threadgold Architects**

**Owner: Mr & Mrs McLean**

**Application No. P183/2008**

The following additional report was submitted:

**Duke Street No. 49 (Lot 78)**

**Applicant: Threadgold Architects**

**Owner: Mr & Mrs McLean**

**Application No. P183/2008**

By Chris Warrener, Town Planner on 4 December 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval for a 6.4m long x 3.4m wide x 4.35m high storeroom incorporating a bathroom with a parapet wall along the south side boundary at 49 Duke Street.

**Statutory Considerations**

Town Planning Scheme No. 3 – Residential R20  
Local Planning Strategy - Plympton Precinct (LPS)  
Residential Design Codes (RDC)

**Relevant Council Policies**

Local Planning Policy No. 142 – Residential Development (LPP 142)

**Documentation**

Plans and relevant forms date stamp received on 2 October 2008

**Date Application Received**

2 October 2008

**Advertising**

Adjoining land owner only

**Date Advertised**

6 October 2008

**Close of Comment Period**

21 October 2008

**No. of Days Elapsed between Lodgement & Meeting Date**

67 days

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

5 March 1986	Building Permit 151/1098 approved for a steel framed carport;
17 March 1998	Council approves additions which involve a setback variation from 1m to 0m along the south side boundary;
23 June 1998	Building Licence 028/2696 approved for 2-storey extension;
17 April 2001	Council approves 2 sash windows for a family room subject to the bottom panels being fixed and obscure;
19 December 2001	Minister for Planning upholds appeal to allow the sash windows as proposed;
21 January 2002	Building Licence 33/3176 approved for installation of new windows;
19 October 2004	Council decides to advise the WAPC that it supports a boundary adjustment between 49 and 51 Duke Street;
4 November 2004	WAPC conditionally approves a boundary adjustment between 49 and 51 Duke Street;
7 December 2004	WAPC endorse for final approval Deposited Plan 43936 for the boundary adjustment;
2 December 2008	The Town Planning & Building Committee resolved: <i>"That the application for the construction of a storeroom incorporating a bathroom with a parapet wall along the south side boundary at No. 49 (Lot 78) Duke Street, East Fremantle be deferred to the December meeting of Council to allow for a further report with respect to some of the issues raised"</i> .

**Public Submissions**

At the close of the comment period 2 submissions were received.

<i>J &amp; J Morton</i> <i>51 Duke Street</i>	<ul style="list-style-type: none"> <li>- Objection;</li> <li>- Affect on amount of natural sunlight;</li> <li>- Development will result in the demolition of an old style outdoor toilet;</li> <li>- Concerns regarding the use of the store.</li> </ul>
<i>P &amp; S McVey</i> <i>47 Duke Street</i>	<ul style="list-style-type: none"> <li>- Support proposed storage structure;</li> <li>- In keeping with size and tone of the existing buildings, and will retain existing mature trees;</li> <li>- Offer greater level of privacy.</li> </ul>

**Site Inspection**

By Town Planner on 13 February 2008

**REPORT****Issues**Outbuildings

This application is for a store room and bathroom separated from the single house on the property at 49 Duke Street. This type of building is defined as "incidental development" pursuant to the RDC, and is more specifically referred to as an "outbuilding".

Being an outbuilding the RDC state that *there is a case for relaxed standards for some outbuildings. The criteria should be that they do not detract from the essential functions of private open space, the visual amenity of neighbours or the streetscape. This means that any outbuilding that is to be exempt from the standards of the dwelling should be:*

- relatively small in area;
- relatively low in height;
- sited so as to preserve the use and amenity of open space;
- setback sufficiently from boundaries;
- confined to single houses and grouped dwellings; and
- excluded from street setback areas." (RDC, April 2008 Update 0, page 37)

Residential Design Codes

Under the RDC the following provisions apply specifically to outbuildings:

**6.10  
Incidental  
Development  
Requirements**

To ensure that (a) outbuildings and fixtures attached to buildings do not detract from the streetscape, or the amenity of the development or that of adjoining residents; and (b) adequate provision is made for incidental facilities serving residents' needs.

**6.10.1  
Outbuildings**

Performance Criteria

*New development should meet these criteria.*

P1 Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties.

Acceptable Development

*The acceptable development provisions illustrate one way of meeting the associated performance criteria.*

A1 Outbuildings that:

- i are not attached to a dwelling;
- ii are non-habitable;
- iii collectively do not exceed 60 sq m in area or 10 per cent in aggregate of the site area, whichever is the lesser;
- iv do not exceed a wall height of 2.4 m;
- v do not exceed ridge height of 4.2 m;
- vi are not within the primary street setback area;
- vii do not reduce the amount of open space required in table 1; and
- viii comply with the siting and design requirements for the dwelling, but do not need to meet rear setback requirements of table 1.

Boundary Walls

The proposed outbuilding involves the construction of a parapet wall along the south side boundary, which is 3m high, and the building has a ridge height of 4.35m therefore Council is required to exercise its discretion to approve it.

*Boundary Wall*

The application is for a store/outbuilding which incorporates a 6.4m long parapet wall along the south side boundary.

The existing house at the front incorporates a 9m long wall along this boundary.

LPP 142 states:

*"A wall may be situated closer to an adjoining residential boundary than the standards prescribed in Tables 1, 2a or 2b of the Residential Design Codes where the following are observed:*

- (a) *Walls are not higher than 3m and up to 9m in length up to one side boundary;"*

This application will result in there being two walls with a combined length of 15.4m along one side boundary therefore Council's discretion is required to be exercised to permit the proposed store.

*Submissions*

An objection and a supporting submission were received.

The objection is from the owners of 51 Duke Street.

**Discussion**

The proposed outbuilding abuts the south side boundary next to a new garage, water tank, and the driveway at 51 Duke Street.

It is set back behind the single house at 49 Duke Street, it comprises an area of 20.02m<sup>2</sup>, it is not within the primary street setback area, and it does not result in the open space ratio falling below 50% (as required for an R20 coded property pursuant to the RDC).

The variations to the wall height along the south side and the ridge height of the proposed outbuilding are considered relatively minor variations and given its proposed location are variations that are considered reasonable under the circumstances.

The outbuilding is not considered to detrimentally affect the amenity of 51 Duke Street it will provide better privacy between both properties and is supported.

**RECOMMENDATION**

That Council exercise its discretion in granting approval for the following:

- (a) variation to the height of a wall on the south side from 2.4m to 3m, and ridge height from 4.2m to 4.35m pursuant to the Residential Design Codes;
- (b) variation to Local Planning Policy 142 for 2 walls along one side boundary with a combined length that exceeds 9m;

for the construction of a 6.4m long x 3.4m wide x 4.35m high outbuilding incorporating a bathroom with a parapet wall along the south side boundary at No. 49 (Lot 78) Duke Street, East Fremantle in accordance with the plans date stamp received on 2 October 2008 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 licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed store is not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
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. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
7. the proposed outbuilding is not to be used for the purposes of human habitation.
8. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

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

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- (c) *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 owner.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

The letter from Mr A Koroveshi (on behalf of Mr & Mrs Morton), referred from Correspondence (MB Ref 381.4) was tabled.

The CEO informed the meeting that he had earlier discussed the letter with Mr Koroveshi and advised him that he did not agree with Mr Koroveshi's contention that Council did not have the power to grant approval to the proposed development, noting in particular:

- (i) Clause 5.2.2 of TPS3 had not been fully quoted in his letter
- (ii) Pursuant to Clause 2.3.2 of TPS3, Planning Policy 142 was not *binding* on Council, ie Council had a discretion in terms of applying the policy
- (iii) In the CEO's view Mr Koroveshi had not given proper consideration and weight to the provisions in the R Codes relating to the applicability of Performance Criteria, including the applicability of Performance Criteria when the Acceptable Development Criteria had not been met.

The CEO noted Mr Koroveshi had not disputed the above contentions.

The CEO concluded that it was within the power of Council to exercise discretionary decision making in the matter.

Mr Morton (adjoining owner) addressed the meeting in opposition to the proposal.

Mr McLean (owner) addressed the meeting in support of the proposal.

**Cr Nardi – Cr de Jong**

**That Council exercise its discretion in granting approval for the following:**

- (a) variation to the height of a wall on the south side from 2.4m to 3m, and ridge height from 4.2m to 4.35m pursuant to the Residential Design Codes;**
- (b) variation to Local Planning Policy 142 for 2 walls along one side boundary with a combined length that exceeds 9m;**

**for the construction of a 6.4m long x 3.4m wide x 4.35m high outbuilding incorporating a bathroom with a parapet wall along the south side boundary at No. 49 (Lot 78) Duke Street, East Fremantle in accordance with the plans date stamp received on 2 October 2008 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 licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- 3. the proposed store is not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
- 4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief**



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Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.

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. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
7. the proposed outbuilding is not to be used for the purposes of human habitation.
8. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

**CARRIED****383.2 T113.5 View Terrace No. 65B (Lot 1)****Applicant: Craig Sheils Homes****Owner: M & D Turner****Application No. P186/2008**

The following additional report was considered:

**View Terrace No. 65B (Lot 1)****Applicant: Craig Sheils Homes****Owner: M & D Turner****Application No. P186/2008**

By Chris Warrener, Town Planner on 4 December 2008

**BACKGROUND****Description of Proposal**

An Application for Planning Approval for a 2-storey house incorporating a 4.86m long x 3m wide belowground swimming pool, and a 1.8m<sup>2</sup> spa pool, comprising:

Ground floor: garage & store, entry, stairwell, laundry, pool lounge, 2 bedrooms, powder room and bathroom;

First floor: balcony, living, dining & kitchen, stairwell, computer nook, bed 1, built in robe, powder room, en-suite.



**Statutory Considerations**

Town Planning Scheme No. 3 – Residential R12.5  
Local Planning Strategy - Richmond Hill Precinct (LPS)  
Residential Design Codes (RDC)

**Relevant Council Policies**

Local Planning Policy No. 142 – Residential Development (LPP 142)

**Documentation**

Plans and relevant forms date stamp received on 9 October 2008

**Date Application Received**

9 October 2008

**Advertising**

Adjoining landowners and sign on site

**Date Advertised**

17 October 2008

**Close of Comment Period**

3 November 2008

**No. of Days Elapsed between Lodgement & Meeting Date**

53 days

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

26 February 1982	Building Permit 095/561 approved for a timber brick & tile family room addition to the house at 65 View Terrace;
18 November 2003	Council decides to advise the WAPC that it does not support the subdivision of 65 View Terrace into 2 survey strata lots;
17 December 2003	WAPC grants conditional approval to the subdivision of 65 View Terrace into 2 survey strata lots;
23 December 2004	Demolitions Licence 465/2004 approved for single storey house at 65 View Terrace;
11 November 2005	WAPC endorses Survey Strata Plan 48493 for Final Approval for the subdivision of 65 View Terrace into 2 survey-strata lots (2 X 445m <sup>2</sup> );
19 September 2006	Council grants approval for a 2-storey house at 65A View Terrace;
8 December 2006	Building Licence 06/172 approved for a 2-storey house at 65A View Terrace;
2 December 2008	The Town Planning & Building Committee resolved: <i>“That the application for a two storey residence on Lot 1 (No. 65B) View Terrace, East Fremantle be held over to the December meeting of full Council to allow clarification of proposed wall height and setback discretions”.</i>

**CONSULTATION**

**Town Planning Advisory Panel Comments**

This application was considered by the Town Planning Advisory Panel at its meeting on 20 November 2008 and the following comments were made:

- good design;
- proportionate;
- typical, compliments adjoining 64A View Terrace development.

**Public Submissions**

At the close of the comment period 2 submissions were received.

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- J Wood*  
*67C View Terrace*
- New soil level is more than 1m higher since removal of the old residence;
  - Concerned that sunlight from November to March will be reduced from sunrise to 2pm;
  - Exceeds height limits;
  - Request that rear and side windows be frosted.
- M & J Cashman*  
*65A View Terrace*
- Bedrooms and bathroom at rear have potential to overshadow backyard of 65A View Terrace, request shadow study;
  - Request that windows to corridor be semi-transparent;
  - Request that balcony at the front be more open style to open up peripheral views to the east;
  - No objection to height variation.

**Site Inspection**

By Town Planner on 16 September 2008

<b>STATISTICS</b>	<b>Required</b>	<b>Proposed</b>
Land Area		445m <sup>2</sup> Existing
Open Space	55%	56% Acceptable
Zoning		R12.5
Heritage Listing		Not listed
<b><u>Setbacks:</u></b>		
Front (North)		
<i>Ground</i> <i>Garage</i>	7.5	9.9 Acceptable
<i>Upper</i> <i>Balcony</i>	7.5	7.5 Acceptable
Rear		
<i>Ground</i> <i>Bed 3 &amp; 2</i>	6.0	1.5 <b>Discretion Required</b>
<i>Upper</i> <i>Ensuite</i>	6.0	4.86 <b>Discretion Required</b>
Side (East)		
<i>Ground</i> <i>Bed 2</i>	1.0	1.0 Acceptable
<i>Lounge</i>	1.0	1.5 Acceptable
<i>Laundry</i>	1.0	1.0 Acceptable
<i>Stair</i>	1.0	2.4 Acceptable
<i>Garage</i>	1.0	1.0 Acceptable
<i>Upper</i> <i>WIR, pdr, computer</i>	1.5	1.5 Acceptable
<i>Stair</i>	1.2	2.4 Acceptable
<i>Dining, living</i>	1.2	1.5 Acceptable
<i>Balcony</i>	1.2	1.4

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STATISTICS		Required	Proposed
West			Acceptable
Ground	Garage	1.0	2.0
	Entry	1.5	Acceptable 4.66
	Stair	1.0	Acceptable 4.66
	Lounge	1.5	Acceptable 2.19
	Bed 3	1.0	Acceptable 1.0
Upper	Balcony	1.2	Acceptable 1.27
	Living, Dining	1.5	Acceptable 2.0
	Stair	1.1	Acceptable 4.66
	Bed 1	1.1	Acceptable 1.69
			Acceptable
<b>Wall Height:</b>			
Front (North)			
Upper	Balcony	6.50	6.70 to 7.20
			<b>Discretion Required</b>
Side (East)			
Upper	Stairs	5.60	5.60 to 5.90
			<b>Discretion Required</b>
	Dining/Living	5.60	5.90 to 6.30
			<b>Discretion Required</b>
	Balcony	6.50	7.10 to 7.60
			<b>Discretion Required</b>
Side (West)			
Upper	Balcony	6.50	6.70 to 6.50
			<b>Discretion Required</b>
	Dining/Living	5.60	5.00 to 5.70
			<b>Discretion Required</b>
<b>Building Height</b>		8.1	8.6
			<b>Discretion Required</b>

**REPORT****Assessment**

This application is for a property on the south side of View Terrace which is in a part of East Fremantle where the following provision applies under LPP 142:

*"Part 1 - Maximum Building Heights*

- (i) *The general intention is for buildings to retain the predominant bulk and scale of the locality/precinct.*
- (ii) *Category 'B' provisions as set out within Table 3 – Maximum Building Heights of the Residential Design Codes are applicable as the 'Acceptable Development' standards, except in localities where views are an important part of the amenity of the area then the maximum building height are as follows:*
  - *8.1m to the top of the pitched roof;*
  - *5.6m to the top of the external wall; and*
  - *6.5m to the top of an external wall (concealed roof)."*

The proposed house incorporates a flat/concealed roof over a portion (balcony) at the front, and the remainder comprises a pitched roof, therefore the 6.5m height limit applies at the front, and the 8.1m roof height and 5.6m wall height limits apply to the remainder.

### Issues

#### Wall Height

*Front (North)  
Common with View  
Terrace*

At the front (north side) a balcony varies in height between 6.7m and 7.2m above natural ground level (NGL).

This balcony is enclosed by a flat/concealed roof.

LPP 142 specifies a 6.5m height limit for a concealed/flat roof

*East (Side)  
Common with 67 View  
Terrace*

The upper floor wall on the east side for a stairwell, kitchen, dining and living room varies between 5.6m and 6.3m above NGL.

LPP 142 specifies a 5.6m wall height limit.

The wall for the balcony on the east side varies from up to 7.1m to 7.6m above NGL.

LPP 142 specifies a 6.5m height limit.

*West (Side)  
Common with 65A  
View Terrace*

The upper floor wall for the balcony on the west side varies from 6.5m to 6.7m above NGL.

LPP 142 specifies a 6.5m height limit.

The upper floor wall for the living and dining room varies up to 5.7m above NGL.

LPP 142 specifies a 5.6m wall height limit.

#### Setbacks

On the ground floor bedrooms 2 and 3 are set back 1.5m and an en-suite on the upper floor is set back 4.86m from the south side (rear) boundary common with 62 Pier Street (Owner – Mr G. Dundon).

The RDC specify a 6m rear setback for R12.5 coded property.

#### Streetscape

The application proposes a double garage at the front which occupies 69.58% of the width of the property frontage.

The relevant acceptable development provision under the RDC states:

*"A8 Where a garage is located in front or within 1 m of the building, a garage door and its supporting structures (or garage wall where a garage is aligned parallel to the street) facing the primary street are not to occupy more than 50 per cent of the frontage at the setback line as viewed from the street. This may be increased to 60 per cent where an upper floor or balcony extends for the full width of the garage and the entrance to the dwelling is clearly visible from the primary street."*

The design of the proposed house incorporates a flat roofed balcony at the front which extends for the full width of the double garage.



The garage is set back 2.2m behind the balcony overhang, so it might be argued that the above stated acceptable development provision does not apply because the garage is set back more than 1m behind the building.

The entrance to the house is located to the rear of the proposed garage next to the west side it is not visible to the street.

Submissions

The submission from 67C View Terrace, the property immediately east of the subject land, states concerns regarding the amount of fill that has been imported onto the site, the effect on solar access in the afternoon, building height, and requests that rear and side windows be frosted.

The submission from 65A View Terrace, the property immediately west of and abutting the subject land, is concerned at overshadow from the rooms at the rear, requests that windows to the corridor be semi-transparent, and the balcony at the front be opened up to preserve their northeast views.

TPAP Comments

The panel supported the application because it was considered to match/compliment the recently constructed house at 65A View Terrace, and because it was considered to be a design appropriate to property development along View Terrace.

**Discussion**

*Wall Height*

The proposed wall height variations are required to address the topography of the site to ensure that floor and ceiling heights maintain an even level through the proposed house.

These wall height variations are considered relatively minor and do not impact on any adjoining or nearby property views and are supported.

The balcony at the front could be modified to improve northeast views from the adjoining property at 65A View Terrace, and a condition addressing this issue is included in the following recommendation.

*Setbacks*

The proposed variations to the rear setback are not considered to have a detrimental impact on the amenity of the potentially affected adjoining property at 62 Pier Street, the potentially affected property owner has not objected to the application, the variations are supported.

*Streetscape*

The design of the proposed house incorporates a flat roofed balcony at the front which extends for the full width of the double garage.

The garage is set back 2.2m behind the balcony overhang, so it can be argued that the acceptable development provision under the RDC for the garage does not apply because the garage is located more than 1m from the main building line.

This design element is a unique "one-off" house design not repeated anywhere else in East Fremantle, and based on the opinion of TPAP is a design which compliments the abutting house at 65A View Terrace, and is supported.

*Submissions*

The applicant has responded in some detail to all of the issues and concerns stated in the submissions and this response is supported.

In regard to the submission from 67C View Terrace site levels have been checked by Council's Building Surveyor and there is no evidence to suggest that, apart from some clean fill that was used for the construction of a boundary wall when 65A View Terrace was built, site levels have not been altered.

Overall building height complies with LPP 142, and wall heights have been increased to accommodate the topography of the site.

There is no overlooking or overshadow of either adjoining property based on the assessment of overshadow under the RDC.

Site inspection reveals that the balcony to the front of the house at 65A View Terrace is screened so this property's northeast views are already obscured and there appears no reason to require that the balcony in the proposal be opened up.

**Conclusion**

The proposed house is considered quite a unique design, one which is considered to compliment its neighbour at 65A View Terrace and one which is considered to contribute in a positive way to the immediate local streetscape. The proposed development is supported.

**RECOMMENDATION**

That Council exercise its discretion in granting approval for the following:

- (a) variation to wall height on the north side for a concealed roof balcony pursuant to Local Planning Policy 142 from 6.5m to 7.2m;
- (b) variation to wall height on the east side for a stairwell, kitchen, dining and living room pursuant to Local Planning Policy 142 from 5.6m to 6.3m;
- (c) variation to wall height on the east side for a concealed roof balcony pursuant to Local Planning Policy 142 from 6.5m to 7.6m;
- (d) variation to wall height on the west side for a concealed roof balcony pursuant to Local Planning Policy 142 from 6.5m to 6.7m;
- (e) variation to wall height on the west side for a living and dining room pursuant to Local Planning Policy 142 from 5.6m to 5.7m;
- (f) variation to rear north boundary setbacks for bedrooms 2 & 3 from 6.0m to 1.5m and ensuite from 6.0m to 4.86m pursuant to Residential Design Codes;

for the construction of a 2-storey house incorporating a 4.86m long x 3m wide belowground swimming pool, and a 1.8m<sup>2</sup> spa pool, comprising:

Ground floor: garage & store, entry, stairwell, laundry, pool lounge, 2 bedrooms, powder room and bathroom;

First floor: balcony, living, dining & kitchen, stairwell, computer nook, bed 1, built in robe, powder room, en-suite;

at No. 65B (Lot 1) View Terrace, East Fremantle in accordance with the plans date stamp received on 9 October 2008 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 licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed works for the pool and spa are not to be commenced until approval

- from the Water Corporation has been obtained and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. protective barriers to be erected and maintained around excavation and any accumulated materials until such time as permanent fencing has been erected in accordance with the legal requirements.
  5. pool and spa installer and/or property owner to whom this licence is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the building licence has been granted.
  6. pool and spa filter and pump equipment to be located away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
  7. spa and swimming pool are to be sited a distance equal to the depth of the pool from the boundary, building and/or easement, or be certified by a structural engineer and approved by Council's Building Surveyor.
  8. prior to the issue of a building licence the applicant is to submit a report from a suitably qualified practising structural engineer describing the manner by which the excavation is to be undertaken and how any structure or property closer than one and half times the depth of the pool will be protected from potential damage caused by the excavation/and or the pool construction.
  9. pool contractor/builder is required to notify Council's Building Surveyor *immediately upon completion of all works* including fencing.
  10. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
  11. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
  12. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
  13. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
  14. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  15. 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.
  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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*



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- (b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.
- (c) 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 owner.
- (d) 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).
- (e) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.
- (f) matters relating to dividing fences are subject to the Dividing Fences Act 1961.

Mr Rule (architect) addressed the meeting in support of the proposal.

**Cr de Jong – Cr Olson**

**That Council exercise its discretion in granting approval for the following:**

- (a) variation to wall height on the north side for a concealed roof balcony pursuant to Local Planning Policy 142 from 6.5m to 7.2m;
- (b) variation to wall height on the east side for a stairwell, kitchen, dining and living room pursuant to Local Planning Policy 142 from 5.6m to 6.3m;
- (c) variation to wall height on the east side for a concealed roof balcony pursuant to Local Planning Policy 142 from 6.5m to 7.6m;
- (d) variation to wall height on the west side for a concealed roof balcony pursuant to Local Planning Policy 142 from 6.5m to 6.7m;
- (e) variation to wall height on the west side for a living and dining room pursuant to Local Planning Policy 142 from 5.6m to 5.7m;
- (f) variation to rear north boundary setbacks for bedrooms 2 & 3 from 6.0m to 1.5m and ensuite from 6.0m to 4.86m pursuant to Residential Design Codes;

for the construction of a 2-storey house incorporating a 4.86m long x 3m wide belowground swimming pool, and a 1.8m<sup>2</sup> spa pool, comprising:

**Ground floor:** garage & store, entry, stairwell, laundry, pool lounge, 2 bedrooms, powder room and bathroom;

**First floor:** balcony, living, dining & kitchen, stairwell, computer nook, bed 1, built in robe, powder room, en-suite;

at No. 65B (Lot 1) View Terrace, East Fremantle in accordance with the plans date stamp received on 9 October 2008 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 licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed works for the pool and spa are not to be commenced until approval from the Water Corporation has been obtained and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. protective barriers to be erected and maintained around excavation and any accumulated materials until such time as permanent fencing has been erected in accordance with the legal requirements.
5. pool and spa installer and/or property owner to whom this licence is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the building licence has been granted.



6. pool and spa filter and pump equipment to be located away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
7. spa and swimming pool are to be sited a distance equal to the depth of the pool from the boundary, building and/or easement, or be certified by a structural engineer and approved by Council's Building Surveyor.
8. prior to the issue of a building licence the applicant is to submit a report from a suitably qualified practising structural engineer describing the manner by which the excavation is to be undertaken and how any structure or property closer than one and half times the depth of the pool will be protected from potential damage caused by the excavation/and or the pool construction.
9. pool contractor/builder is required to notify Council's Building Surveyor immediately upon completion of all works including fencing.
10. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
11. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
12. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
13. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
14. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
15. 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.
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:*

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



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- (d) *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).*
- (e) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

**383.3** **T113.6 King Street No. 52 (Lot 4)**  
**Applicant: Gerard McCann Architect**  
**Owner: Elaine McGann**  
**Application No. P192/2008**

Mr McCann (architect) addressed the meeting in support of this proposal.

*Cr Olson – Cr de Jong*  
*The adoption of the Committee's recommendation.*

Amendment**Cr Nardi – Cr Rico**

**That the following be added to the recommendation as Footnote (g):**

***"In regard to the construction of the George Street wall, the applicant is requested to consider using materials in keeping with the heritage character of the existing residence.***

THE AMENDMENT WAS CARRIED AND FORMS PART OF THE MOTION

The motion, as amended, was put.

**Cr Olson – Cr de Jong**

**That Council exercise its discretion in granting approval for the following:**

- (a) **variation to the requirement for on-site car parking pursuant to Schedule 11, Town Planning Scheme No 3 and the Residential Design Codes from 4 spaces to 1;**
- (b) **variation to plot ratio for development in the George Street Mixed Use zone pursuant to Town Planning Scheme No 3 from 0.5 to 0.71;**
- for alterations and additions at No. 52 (Lot 4) King Street, East Fremantle comprising:**
- ... **convert the existing coal room or store to the south-east corner of Bedroom 2 into an ensuite toilet, convert the existing doorway into a window, and cut a new doorway into bedroom 2;**
  - ... **convert the existing south doorway into the kitchen into a window, leaving the existing reveal and frame intact, and infilling with a timber weatherboard below bench level, and a new window above bench level, fitting into the existing frame;**
  - ... **convert the existing kitchen east window into a doorway, with French doors onto the courtyard;**
  - ... **renovate the existing kitchen within the existing room;**
  - ... **remove the existing bathroom, and convert the space to a walk-through laundry, and cut a new opening in the east wall to access a new lobby to the courtyard and a new bathroom, with a parapet wall to the north boundary;**
  - ... **remove the existing courtyard pergola and lower the courtyard paving to below house floor level (currently 200mm above house floor level with attendant moisture problems)**
  - ... **rebuild a new pergola and wall to the street, and new paving;**
  - ... **remove the existing sub-standard walling to George St, and rebuild a new low wall with open aspect iron railings to the garden section of the south boundary (outside the kitchen and lounge), and then a new high courtyard wall in rendered brick or stone to RL 12.000;**
  - ... **construct a new Gallery building facing George St, infill the empty space between the existing house and the shops at Lots 486 and 487. The Gallery to**



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have a mezzanine storage area, and an attached storeroom and garage. A new roofed awning/verandah is proposed to overhang the George St footpath. The design of the Gallery is intended to partially reflect the domestic architecture of the house at 52 King St, but pick up the height and scale of the Council owned shop to the east on Lots 486 and 487. The gable windows in the roof of the proposed gallery are designed to reflect the gabled terrace row houses opposite in George St;

... install a new access doorway to the garage from the strata company rear right-of-way.

in accordance with the plans date stamp received on 21 October 2008 and south side elevation and site plan received on 4 November 2008 subject to the following conditions:

1. prior to the issue of a building licence the applicant/owner is to pay for the purchase and installation of one (1) stainless steel U-rail bicycle parking rack.
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed alterations and additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. 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.
7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. Development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
9. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

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



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- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *in regard to the provision of bicycle parking the applicant/owner is advised to contact Council's Works Supervisor.*
- (g) *In regard to the construction of the George Street wall, the applicant is requested to consider using materials in keeping with the heritage character of the existing residence.*

CARRIED**383.4 T113.7 Hamilton Street No. 33 (Lot 15)****Applicant: Gerard McCann Architect****Owner: GA & AC Brunsdon****Application No. P193/2008**

The following additional information was considered:

*At its meeting held on 2 December the Committee recommended for approval an application for alterations and additions to the house and property at 33 Hamilton Street comprising a double garage and store, workshop & granny flat, home office, laundry, dining, family room, en-suite, spa, and arbour over a courtyard.*

*Following the town planning agenda during "Business without notice by permission of the meeting" the following matter was raised by elected members:*

**"(c) Granny Flat / Workshop – 33 Hamilton Street**

*Clarification on regulations pertaining to a 'Granny Flat' and how a 'Workshop' would fit within the definition."*

*The granny flat and workshop are proposed to be contained in one building with boundary walls along the south and west sides of the property.*

*A "granny flat" is "ancillary accommodation" under the RDC. Ancillary accommodation is defined as follows:*

*"Self-contained living accommodation on the same lot as a single house that may be attached or detached from the single house occupied by members of the same family as the occupiers of the main dwelling." (RDC, April 2008 Update, Appendix 1, page 3)*

*Ancillary accommodation is a special purpose dwelling which may require discretionary approval under Council's town planning scheme. The following specific provisions under the RDC apply to ancillary accommodation:*

*"New development should meet these criteria.*

*P1 Ancillary dwellings that accommodate the needs of large or extended families without compromising the amenity of adjoining properties.*

*The acceptable development provisions illustrate one way of meeting the associated performance criteria.*

*A1 An additional dwelling or independent accommodation associated with a single house and on the same lot where:*

- i the sole occupant or occupants are members of the family of the occupiers of the main dwelling;*
- ii the lot is not less than 450 sq m in area;*
- iii the open space requirements of table 1 are met;*
- iv there is a maximum floor area of 60 sq m; and*
- iv one additional car space is provided."*

*(RDC, April 2008 Update, Part 7 Special purpose dwellings requirements, page 3)*

*The proposed granny flat conforms to the acceptable development provisions under the RDC however Council's discretion is required to be exercised to permit the two boundary walls pursuant to LPP 142.*



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*The workshop component of the application was assessed as being an integral part of the ancillary accommodation because it is contained under the same roof and in the same building as the granny flat.*

*If the workshop was in a "stand alone" building it would have been assessed against the provisions regarding outbuildings.*

*The granny flat component of the application is considered to be the dominant land use in relation to the building that is proposed to contain both uses, and the assessment has been undertaken on this basis.*

Mr McCann advised the meeting that he supported the Committee's recommendation.

**Cr de Jong – Cr Nardi**

**The adoption of the Committee's recommendation which is as follows:**

**That Council exercise its discretion in granting approval for the following:**

- (a) variation to Local Planning Policy 142 to permit walls longer than 9m along 2 side boundaries;**
- (b) variation to the Residential Design Codes in regard to Site Works to permit retaining walls along the north and west side boundaries which vary in height up to 0.6m above natural ground level;**

**for the construction of ground floor alterations and additions to the single storey house at No. 33 (Lot 15) Hamilton Street, East Fremantle comprising:**

- double garage and store;**
- workshop & granny flat;**
- home office, laundry dining, family room, en-suite, spa, and arbour over a courtyard;**

**in accordance with the plans date stamp received on 21 October 2008 subject to the following conditions:**

- 1. the proposed granny flat may only be used by members of the occupants'/owners' family and may not be leased for residential use by anyone else.**
- 2. 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.**
- 3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- 4. the proposed garage, granny flat, workshop and house alterations and additions are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
- 4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
- 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. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.**
- 7. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is**



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- to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
8. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  9. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
  10. the proposed works for the spa pool are not to be commenced until approval from the Water Corporation has been obtained and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  11. protective barriers to be erected and maintained around excavation and any accumulated materials until such time as permanent fencing has been erected in accordance with the legal requirements.
  12. spa pool installer and/or property owner to whom this licence is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the building licence has been granted.
  13. spa pool filter and pump equipment to be located away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
  14. spa pool is to be sited a distance equal to the depth of the pool from the boundary, building and/or easement, or be certified by a structural engineer and approved by Council's Building Surveyor.
  15. prior to the issue of a building licence the applicant is to submit a report from a suitably qualified practising structural engineer describing the manner by which the excavation is to be undertaken and how any structure or property closer than one and half times the depth of the pool will be protected from potential damage caused by the excavation/and or the pool construction.
  16. pool contractor/builder is required to notify Council's Building Surveyor *immediately upon completion of all works* including fencing.
  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:*

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



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- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
  - (f) *with regard to construction of the crossover the applicant/buildier is to contact Council's Works Supervisor.*
  - (g) *for the sake of authenticity of appearance it is suggested that the roof should be clad in short sheet zincalume finish custom orb and chimneys reconstructed where there is physical or documentary evidence of their previous existence.*
  - (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- CARRIED**

Cr Nardi made the following impartiality declaration in the matter of 36-42 Duke Street: "As a consequence of having a friendship with the neighbours at 45 Duke Street, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly.

**383.5 T113.8 Duke Street No. 36-42 (Lots 601 & 602)****Applicant: Gerard McCann Architect****Owner: LC Lauder & MR Howard****Application No. P194/2008**

Mr McCann (Architect) advised that he supported the Committee's recommendation.

**Cr de Jong – Cr Rico**

The adoption of the Committee's recommendation which is as follows:

That Council exercise its discretion in granting approval to redevelop the buildings at No's. 36-42 (Lots 601 & 602) Duke Street, East Fremantle to convert their use from antique furniture showrooms and workshops to 7 x 1 bedroom grouped dwellings, and 5 x 3 bedroom grouped dwellings in accordance with the plans date stamp received on 23 October 2008 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 licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed grouped dwellings are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. external conservation works recommended for the 1901 building in section 9.3 of the Conservation Plan to be completed as part of the adaptation of the building;
5. internal conservation works recommended for the 1901 building in section 9.3 of the Conservation Plan to be implemented as far as practical within the context of the internal adaptation as residential units;
6. interpretation of the building is to be undertaken, consistent with policy 2.7 and section 9.6.1 of the Conservation Plan;
7. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without



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- limitation any works associated with the proposal) which are required by another statutory or public authority.
9. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  10. 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.
  11. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
  12. this planning approval to remain valid for a period of 24 months from date of this approval.
  13. no earthworks shall encroach onto the Stirling Highway road reserve.
  14. no stormwater drainage shall be discharged onto the Stirling Highway reserve.
  15. the applicant shall make good any damage to the existing verge vegetation within the Stirling Highway reservation.
  16. no vehicle access shall be permitted onto the Stirling Highway reserve from the proposed Lot 601 and 602. This shall be noted on the deposited plan in accordance with Section 129BA of the Transfer of Land Act (as amended) as a restrictive covenant for the benefit of Main Roads WA at the expense of the applicant.
  17. the applicant is required to undertake a noise study to demonstrate that subdivision planning and design for residential or other noise sensitive buildings are such that external levels of traffic noise will not exceed Leq Day of 60 dB(A) or Leq Night of 55 dB(A), or to demonstrate that building design is such that internal levels of road traffic noise will comply with values listed in Australian Standard 2107 – Acoustics – Recommended design sound levels and reverberation times for building interiors.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (e) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (g) *all enquiries related to conditions 13-15 shall be directed to the Metropolitan Region – Asset Manager.*
- (h) *all enquires related to condition 16 shall be directed to the Land Project Co-Ordinator.*
- (i) *all enquires related to condition 17 shall be directed to the Manager Environment.*

**CARRIED**

Under s.5.21(4)(b) of the Local Government Act 1995, Cr Arnold requested that the voting of Council members be recorded.



Crs Nardi, Rico, de Jong and Olson & Mayor Ferris voted in favour of the recommendation with Cr Arnold having voted against the motion

**383.6 T113.9 View Terrace No 64A (Lot 2)**  
**Applicant: J Corp T/a Perceptions The Home Builders**  
**Owner: Tony Radaich & Beth Colgate**  
**Application No. P147/2008**

The following additional report was considered:

**View Terrace No 64A (Lot 2)**  
**Applicant: J Corp T/a Perceptions The Home Builders**  
**Owner: Tony Radaich & Beth Colgate**  
**Application No. P147/2008**

By Chris Warrener, Town Planner on 4 December 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval for a 2-storey house at 64A View Terrace comprising:

- double garage & store, laundry, porch, entry, computer nook, 2 bedrooms, 1 bathroom, theatre and roofed alfresco on the ground floor;
- gallery, kitchen, dining, living room, computer nook, master bedroom & en-suite, and balcony on the upper floor.

**Statutory Considerations**

Town Planning Scheme No. 3 – Residential R12.5  
Local Planning Strategy - Richmond Hill Precinct (LPS)  
Residential Design Codes (RDC)

**Relevant Council Policies**

Local Planning Policy 066 – Roofing (LPP 066)  
Local Planning Policy No. 142 – Residential Development (LPP 142)

**Documentation**

Plans and relevant forms date stamp received on 30 July 2008

**Date Application Received**

Original: 30 July 2008  
Amended plans: 29 October 2008

**Advertising**

Adjoining land owners only

**Date Advertised**

Original application: 1 August 2008  
Amended plans: 30 October 2008

**Close of Comment Period**

Original application: 15 August 2008  
Amended plans: 13 November 2008

**No. of Days Elapsed between Lodgement & Meeting Date**

33 days (Revised)

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

December 1979 Council decides to advise the owner that the rear of the lot cannot be developed as the property is zoned single residential;  
6 February 1987 Building Permit 110/1239 approved for a domestic garage;  
16 November 1992 Building Permit 164/2012 approved for an extension to form a new laundry;

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27 February 2002	Building Licence 037/3192 approved for a belowground swimming pool;
19 March 2002	Council grants approval for an upper floor balcony and stairs at the rear of the 3-level house at 64 View Terrace;
22 May 2002	Building Licence 34/3221 approved for balcony & stair;
16 November 2004	Council decides to advise the WAPC that it supports the battleaxe subdivision of 64 View Terrace into 2 lots (1 x 445m <sup>2</sup> , 1 x 507m <sup>2</sup> );
30 November 2004	WAPC grants conditional approval to the battleaxe subdivision;
15 July 2005	Demolition Licence 05/01 approved for brick garage & shed on proposed rear lot;
18 October 2005	Council grants approval for setback variations for a carport, fence & retaining wall at 64 View Terrace;
31 October 2005	Building Licence 05/92 approved for carport, fence & retaining wall;
1 March 2006	WAPC approves Survey Strata Plan 49123 for the subdivision of 64 View Terrace into 2 survey-strata lots (1 x 541m <sup>2</sup> , 1 x 429m <sup>2</sup> );
12 June 2007	Building Licence 07/160 approved for a retaining wall at the rear of 64A View Terrace.
23 September 2008	Council resolves: <i>"That the application be deferred to the next Town Planning &amp; Building Committee meeting to allow the applicants to submit revised plans that better or fully achieve compliance with the R Codes and LPP No 142 in terms of upper floor setbacks."</i>
2 December 2008	Committee recommends: <i>"That the application for a two storey residence on Lot 2 (No. 64A) View Terrace, East Fremantle be deferred to the December meeting of Council to allow officers to further investigate the infill aspect and setback provisions of LPP142"</i> .

**CONSULTATION****Town Planning Advisory Panel Comments**

The amended plans were considered by the Town Planning Advisory Panel at its meeting on 20 November 2008 and reiterated its comments on the originally submitted plans.

The following comments were made regarding the originally submitted plans:

- won't be seen from the street;
- small amount of detail which makes the house interesting;
- should be supported;
- should be height compliant.

**Public Submissions**

At the close of the comment period for the amended plans 2 submissions were received.

<i>S &amp; C Morgan 64 View Terrace</i>	<ul style="list-style-type: none"> <li>- object to amended plans due to impact of upper floor setbacks;</li> <li>- suggest redesign compromise.</li> </ul>
<i>A Brims &amp; L Jenke 13 Philip Street</i>	<ul style="list-style-type: none"> <li>- concern regarding upper floor setback requirements for dining room;</li> <li>- total loss of backyard privacy.</li> </ul>

**Site Inspection**

By Town Planner on 9 September 2008

By Councillors on Saturday 13 September 2008

**STATISTICS**

Land Area

**Required****Proposed**429m<sup>2</sup>

Existing

<b>STATISTICS</b>	<i>Required</i>	<i>Proposed</i>
Open Space	55%	59.55% Acceptable
Zoning		R12.5
<b><u>Setbacks:</u></b>		
South		
<i>Ground</i> Garage	1.0/Nil	<i>Policy 142</i> Nil Acceptable
<i>Bed 3</i>	1.0	1.77 Acceptable
<i>Upper</i> Living	1.2	2.2 Acceptable
Nook	4.0	4.0 Acceptable
Ensuite	4.0	4.7 Acceptable
North		
<i>Ground</i> Bed 2	1.5	4.42 Acceptable
Alfresco	1.5	7.6 Acceptable
Theatre	1.0	4.42 Acceptable
<i>Upper</i> Master	4.0	4.42 Acceptable
Balcony	7.5	7.6 Acceptable
Dining	4.0	4.42 Acceptable
East		
<i>Ground</i> Laundry	1.0	4.8 Acceptable
Bed 3	1.5	1.9 Acceptable
Bath & Bed 2	1.0	1.5 Acceptable
<i>Upper</i> Ensuite	1.2	1.8 Acceptable
Master	1.2	1.5 Acceptable
West		
<i>Ground</i> Theatre	1.0	1.6 Acceptable
Porch	1.5	3.6 Acceptable
Garage	1.0	6.6 Acceptable
<i>Upper</i> Dining	1.2	1.6 Acceptable
Kitchen	2.5	3.6 Acceptable
Living	6.0	6.6 Acceptable

**Height:**

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STATISTICS	Required	Proposed
Wall	5.6	5.6 Acceptable
Building	8.1	7.9 Acceptable
<b><u>Overshadowing:</u></b>	(12.207% of adjoining property)	

**REPORT****Issues**Earthworks/Fill

The proposed 2-storey house will be built on a property, which has been the subject of **three (3) separate incidences of fill** prior to the purchase of the property by the current owners.

1. **The first instance occurred** to obtain clearance to the conditions of a subdivision approval granted by the WAPC on 30 November 2004.

A copy of the proposed survey strata subdivision which provides site level information is attached.

Three (3) of the conditions were required to be undertaken to the satisfaction of the Council (LG) in order for "clearance" to be obtained for the purposes of implementing the subdivision.

Condition 1 states: *The land being filled and/or drained at the subdivider's cost to the satisfaction of the Western Australian Planning Commission, and any easements and/or reserves necessary for the implementation thereof, being provided free of cost (LG)*

Condition 5 states: *All existing outbuildings on the proposed 445m<sup>2</sup> lot and the common property lot being demolished and removed to the satisfaction of the Western Australian Planning Commission. (LG)*

To satisfy Condition 5 a shed in the northwest corner of the property and a brick garage that was situated mid-way along the battleaxe access leg next to 62 View Terrace had to be demolished.

Condition 6 states: *The existing dwelling being provided with two constructed car parking bays. (LG)*

To satisfy Conditions 1 and 5, as the subject property was a sloping block with a rather extreme slope in the northwest corner, the subdivider would have needed to import fill and clear and level the proposed new lot.

It is not known how much fill was used to satisfy these conditions.

2. **The second instance occurred** in relation to works undertaken in the front setback.

Partly to satisfy Condition 6, and to improve the appearance and use of the property at the front, 64 View Terrace, the owners applied for and obtained approval for a double carport, retaining wall and fence in the front setback.

Council approved the new carport, fencing and retaining walls on 17 October 2005.



Council's clearance to the conditions of the subdivision was subsequently granted in a letter dated 21 October 2005 addressed to the surveyor.

On 31 October 2005 a Building Licence was approved for the carport, new fencing, and a retaining wall in the front setback.

Work to construct the new carport, retaining wall and front fence must have occurred shortly thereafter, because on 15 November 2005 a telephone complaint was received by the former Town Planner *"about owner filling the rear of their lot (possible battleaxe lot) without approval"*.

The former Senior Planning Officer and the Building Surveyor inspected the property and, in written notes shown in Attachment 4, state *"Increase fill approx .45m on nwestern corner."*

The earthworks involving excavation for the carport and retaining wall in the front setback involved the excavation of spoil from this area, and it appears that all the spoil was relocated to the rear of the property rather than being trucked away.

Because it did not exceed 0.5m, the fill was apparently considered acceptable to the former Town Planner and not requiring of Council approval.

On 20 February 2006 the WAPC granted final approval to Survey Strata Plan 49123 for the creation of the two new lots resulting in the new address 64A View Terrace.

3. **The third instance occurred** in relation to retaining works undertaken by a new owner.

On 10 April 2007 64A View Terrace was sold, and on 12 June 2007 a Building Licence was issued for a boundary retaining wall along the northern portions of the west and east sides, and along the north side boundary.

The specifications for the retaining wall indicate that 0.49m of fill (maximum depth) would be retained.

The plan shows that additional limestone blocks were required to retain the fill that had previously been put in the area.

At its highest point this retaining wall is 1.2m, and would normally be subject to planning approval however 0.7m of this wall was required to retain fill previously placed on the block and planning approval was not required as this part of the wall was built to rectify a retaining situation which ought to have involved retaining walls on the prior occasions that the property had been filled.

As is seen elsewhere in East Fremantle the previous fill instances had simply been retained by the boundary fence.

The current application for a 2-storey house on the subject land does not involve the import of any more fill than is already in existence on the site, and Council's discretion is therefore not required to be exercised for it.

### Conclusion

The definition of "Natural Ground Level" as given in the R-Codes is as follows:

*"The levels on a site which precede the proposed development, excluding any site works unless approved by the council or established as part of subdivision of the land preceding development"*.

Whilst there are some uncertainties regarding exactly what occurred in relation to the three instances of fill referred to above, based on comprehensive research by the Town



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Planner, including a review of all available documentation (see further comment below), it cannot be concluded the natural ground levels being applied in this application are not consistent with the above definition.

It should be noted that following the Committee meeting the Town Planner spoke with Mr Rutigliano regarding the information which he had offered to provide regarding the fill issue however Mr Rutigliano has advised he is not able to locate this information.

Submissions

The two submissions oppose the application (refer detail under Public Submissions).

**Discussion**

In response to objections from adjoining property owners, the owners prepared and submitted amended plans.

The amended plans propose increased setbacks on the south and east sides for the upper floor to reduce the (perceived) impacts on the neighbouring properties.

The owners of 64 View Terrace have suggested a design alternative (see attached submission) that further increases the east side boundary setback as a 'compromise' solution that would be acceptable to them.

The owners of 13 Philip Street continue to oppose the application on the basis that the rear of their property will be overlooked by the development. However based on the boundary setbacks specified in the RDC to 'protect' privacy and 'prevent' overlooking, the application complies. In addition the applicant has agreed to modify the northeast dining room window to a minor opening, and this matter is further addressed as a condition in the following recommendation.

The overall size of the proposed house is relatively modest with nearly 60% open space, (on a smaller than average lot in this locality).

Considering the size of other houses nearby, and considering the size of the subject property this application will not result in the development of a house that could be considered to be bulky or "too big for its context".

**Conclusion**

The amended plans are considered to be a reasonable response to the issues that had been raised with regard to the setbacks and size of the upper floor proposed in the originally submitted plans, and the application based on the amended plans is supported.

There are no variations to an RDC standard or local planning policy for which Council's discretion is required to be exercised to allow this application to be approved.

**RECOMMENDATION**

That Council grants approval for the construction of a 2-storey house at No. 64A (Lot 2) View Terrace, East Fremantle comprising:

- double garage & store, laundry, porch, entry, computer nook, 2 bedrooms, 1 bathroom, theatre and roofed alfresco on the ground floor;
- gallery, kitchen, dining, living room, computer nook, master bedroom & en-suite, and balcony on the upper floor;

in accordance with the plans date stamp received on 29 October 2008 subject to the following conditions:

1. prior to the issue of a building licence amended plans are to be submitted specifying that the northeast facing windows for the upper floor dining room comprise a minor opening in accordance with the acceptable development standards prescribed under Clause 6.8.1 "Visual Privacy" of the Residential Design Codes.
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  4. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
  5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
  6. 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.
  7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
  8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
  9. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  10. 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.
  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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *the alfresco may not be enclosed without the prior written consent of Council.*

(h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.

Ms Colgate (owner) and Mr Ennis (Greg Rowe & Associates) addressed the meeting in support of the proposal.

**Cr de Jong – Cr Nardi**

**That Council grants approval for the construction of a 2-storey house at No. 64A (Lot 2) View Terrace, East Fremantle comprising:**

- double garage & store, laundry, porch, entry, computer nook, 2 bedrooms, 1 bathroom, theatre and roofed alfresco on the ground floor;
- gallery, kitchen, dining, living room, computer nook, master bedroom & ensuite, and balcony on the upper floor;

in accordance with the plans date stamp received on 29 October 2008 subject to the following conditions:

1. prior to the issue of a building licence amended plans are to be submitted specifying that the northeast facing windows for the upper floor dining room comprise a minor opening in accordance with the acceptable development standards prescribed under Clause 6.8.1 “Visual Privacy” of the Residential Design Codes.
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. 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.
7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant’s expense.
8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
9. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council’s Policy on Footpaths & Crossovers.
10. 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.

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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *the alfresco may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

- 383.6**     **T116.2 May Street No. 41 (Lot 613)**  
**Applicant: Celebration Nominees T/a Dale Alcock Home Improvement**  
**Owner: Tony & Kate Smith**  
**Application No. P172/2008**

The two letters from Charles Livie, referred from Correspondence (MB Ref 381.1 & 381.3) were tabled.

Ms Jones (owner to rear) addressed the meeting regarding concerns she has in relation to privacy for her swimming pool.

Mr Sardie (designer), Mr Livie (Dale Alcock) and Mr & Mrs Smith addressed the meeting in support of this proposal.

**384.     ADJOURNMENT**

Cr Arnold – Cr Nardi

That the meeting be adjourned at 8.20pm to allow further consideration of this proposal. CARRIED

**385.     RESUMPTION**

Cr Rico – Cr de Jong

That the meeting be resumed at 8.40pm with all those present prior to the adjournment, in attendance. CARRIED

**386.     TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN)**

- 386.1**     **T116.2 May Street No 41 (Lot 613) (Continued)**

Cr de Jong – Cr Nardi

The adoption of the Committee's recommendation which is as follows:

That Council exercise its discretion in granting approval for a variation to the north side boundary setback pursuant to the Residential Design Codes from 1.5m to

1.1m for the construction of 2-storey additions and alterations at the rear of the single storey house at No. 41 (Lot 613) May Street, East Fremantle comprising:

- alfresco, laundry and modifications to the bathroom, family, meals and kitchen on the ground floor;

- master bedroom, 2 bedrooms, WIR, en-suite and store/linen on the upper floor;

in accordance with the plans date stamp received on 27 November 2008 subject to the following conditions:

1. prior to the issue of a building licence the applicant/owner is to submit a Landscape Plan specifying the planting of additional screening vegetation next to the west side (rear) boundary.
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed extensions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. 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.
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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (e) *the alfresco may not be enclosed without the prior written consent of Council.*

CARRIED UNANIMOUSLY

Cr Nardi made the following impartiality declaration in the matter of 6 Fortescue Street: "As a consequence of my friendship with the applicant/architect, Mr Carl Huston, and the fact that my children associate with his children at school, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly."



**386.2 T116.3 6 Fortescue Street (Lots 181/182)**  
**Applicant: Carl Huston & Associates**  
**Owner: The Baptist Union of Western Australia Inc.**  
**Application No. P111/2008**

The following additional report was considered:

**6 Fortescue Street (Lots 181/182)**  
**Applicant: Carl Huston & Associates**  
**Owner: The Baptist Union of Western Australia Inc.**  
**Application No. P111/2008**

By Stuart Wearne, Chief Executive Officer, and Chris Warrener, Town Planner, and on 5 December 2008

As an author of the following report the Chief Executive Officer makes the following declarations:

- (i) *"Whilst the property is not an adjoining property, as part owner of 10 Fortescue Street, which is in the immediate vicinity of 6 Fortescue Street, the Chief Executive Officer believes that, by virtue of the traffic and streetscape implications arising from the development proposal, there is potentially a financial interest to be disclosed and the Chief Executive Officer hereby discloses a financial interest in the proposal."*
- (ii) *The adjoining owners, the Painos, are well known to me by virtue of being my neighbours, nevertheless I declare that all advice given in this report has been given impartially and on the merits of the issues concerned.*
- (iii) *Several years ago my daughter was a member of a Youth Group which was established by and met at the East Fremantle Baptist Church, nevertheless I declare that all advice given in this report has been given impartially and on the merits of the issues concerned.*

## **BACKGROUND**

### **Description of Proposal**

An Application for Planning Approval to build a kindergarten facility for 3 and 4 year olds, necessitating the demolition of the existing single storey house, and development of a portion of the land to the north, which was previously a bitumen surfaced basketball court however is now used as a carpark, as an outdoor play area.

### **Statutory Considerations**

Local Planning Scheme No. 3 – Primary Regional Road, Residential R12.5/R40 (LPS 3)  
Local Planning Strategy – Woodside Precinct (LPS)  
Health (Public Building) Regulations 1992  
Building Code of Australia  
Child Care Services Act 2007  
Child Care Services (Child Care) Regulations 2006

### **Documentation**

Plans and relevant forms date stamp received on 30 May 2008

### **Date Application Received**

30 May 2008

### **Advertising**

Adjoining landowners, sign on site, and advertisement in local newspaper. (Attachment 1)

### **Date Advertised**

18 June 2008

### **Close of Comment Period**

4 July 2008

**No. of Days Elapsed between Lodgement & Meeting Date**

193 days

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

- 18 Sept. 1978: Council resolves to advise the East Fremantle Baptist Church that it does not favour a Christian Community Primary School for 50 children to be conducted from the premises at the corner of Canning Highway & Fortescue Street;
- 5 Dec. 1997: CEO grants approval for removal of existing timber floor, its replacement with a concrete floor, and rotate the Church function by 180°;
- 17 March 1998: Council approves various alterations and additions to existing Church primarily involving three offices and parent's room.
- 19 May 1998: Council decides to advise the WAPC that it supports the amalgamation of Lots 181 & 182 Canning Highway;
- 2 June 1998: WAPC conditionally approves the amalgamation of Lots 181 & 182;
- 2 Sept. 1998: Building Licence 224b/2723 approved for 2-storey extensions to Baptist Church at 229 Canning Highway;
- 13 Nov. 1998: WAPC endorses Diagram 96701 for final approval for the amalgamation of Lots 181 & 182 and an 8.5m truncation at the corner of Canning Highway and Fortescue Street;
- 30 Nov. 2005: CEO advises the WAPC that the Town supports the amalgamation of Lots 181 & 182 Canning Highway and their subdivision into Lot 800 comprising 2198m<sup>2</sup> and Lot 800 comprising 488m<sup>2</sup> (house/manse lot)
- 14 March 2006: WAPC conditionally approves the amalgamation and subdivision;
- 11 November 2008: Town Planning & Building Committee recommended approval of the kindergarten development subject to conditions.
- 18 November 2008: Application deferred, at applicant's request, after concerns raised by Council officers regarding the authority for several existing uses of the site.
- 2 December 2008: Town Planning & Building Committee recommended:  
*"That the application for demolition of the single storey house at 6 Fortescue Street and its replacement with a kindergarten facility for 3 & 4 year olds be deferred to the December meeting of Council in order to allow elected members to carry out a site visit of the adjoining property to the south in particular to allow assessment of the setback issues."*

**CONSULTATION****Town Planning Advisory Panel Comments**

This application was considered by the Town Planning Advisory Panel at its meeting held on 22 July 2008 and the following comments were made:

- retention of church in the town is valuable.
- heritage assessment when completed will be instructive in terms of the house's historic relationship to the church and its cultural value in terms of its relationship to the church.
- building is proposed to be clad in silver custom orb – not convinced this is an appropriate material – totally alien to the streetscape.
- Council needs to carefully consider materials and colours schedule.

**Other Agency/Authority**

Department for Planning & Infrastructure (DPI)  
Department of Communities

**Public Submissions**

Two submissions were received:

1. *Submission from T. Paino (Attachment 3)*
  - Prefer building designed to be in keeping with the church buildings;

- Accept the concept;
  - South side wall of proposed class rooms should provide noise suppression
2. *Submission from S. Wearne (Attachment 3)*
- South side wall should be brick for noise attenuation;
  - Traffic management concern;
  - Appropriateness of use?
  - Need for kindergarten?

A response from the applicant to T Paino’s submission is attached (Attachment 4).

**REPORT**

**Introduction**

The East Fremantle Baptist Church proposes to develop a two classroom kindergarten to the south of the existing church at the corner of Canning Highway and Fortescue Street.

To construct the kindergarten it will be necessary to demolish a single storey timber framed fibre-cement clad and concrete tiled roof house built in the 1950’s used as a ‘manse’ for the church.

As part of the proposal, it is proposed to extend the existing 17 space carpark to the south and provide an additional 20 spaces to service the kindergarten.

It is proposed to operate the kindergarten during weekdays with three sessions between the hours of 9:00am and 2:45pm (morning session: 9:00am to 11:45am, afternoon session: 12:00pm to 2:45pm, full day session: 9:00am to 2:45pm).

Classes have been designed to cater for up to 20 children each, with one carer each.

The applicant further advised that a “Parents Support Program” may be introduced to run after business hours. The applicant also advised a “Sunday School Program”, which currently runs at the existing church building, might be relocated to the proposed kindergarten building.

**Issues**

Land use

The subject land is zoned Residential with a split density code of R12.5/40, and a portion of the land along its frontage with Canning Highway is reserved for Primary Regional Roads in the Metropolitan Region Scheme under TPS 3.

A Kindergarten falls within the use class “Pre-School/Kindergarten” in the Zoning Table, and this use is classified “A” in the Residential zone, which “*means that the use is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4.*”

Car parking

Schedule 11 to LPS 3 specifies the following parking requirement:

Educational Establishment - Pre-Primary	1 space for every staff member, plus 1 space for every 2 students
---	--

The proposed kindergarten will accommodate up to 40 students with 5 staff (1 administration, 4 teachers/carers) therefore 25 spaces are required.

The proposal is for 20 car spaces leaving a shortfall of 5 spaces, for which Council’s discretion is required to be exercised if this is to be allowed.



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DPI referral

In response to the initial referral of the application for comment, in a letter dated 26 June 2008, DPI advised that the property is affected by a Primary Regional Road (PRR) reserve in the Metropolitan Region Scheme (MRS) *"however the applicant is aware of the existing reserve requirements, which do not affect the application for the kindergarten."*

DPI further advised that it required a Transport Statement to assess the traffic impacts of the proposed development on Canning Highway (see Attachment 5).

Traffic Impacts

A kindergarten facility will generate additional traffic and this issue is considered to potentially impact on the amenity of properties next to and nearby the subject land, and on the local street network.

Canning Highway is a Primary Regional Road under the MRS, and the additional traffic load associated with the proposed kindergarten is considered to have an impact on the intersection of Fortescue Street and Canning Highway.

On this basis the application was referred to the Urban Transport Systems Branch of DPI for comment.

In response to the 26 June 2008 DPI letter the applicant submitted a Traffic Impact Statement (TIS) report (Attachment 6). This report was forwarded to DPI.

The TIS states that it is proposed to limit access to the carpark for the kindergarten to the two existing crossovers in Fortescue Street, and estimates annual average daily traffic at 75 vehicles. Public transport is readily available via 8 bus stops within walking distance of the site.

In its response letter dated 25 August 2008 (Attachment 7) DPI stated:  
*"the Department does not support the proposed development as submitted. The Department would support a modified proposal, which accords with the Town Planning Scheme....., demonstration of a satisfactory on site vehicle parking management plan and acceptable vehicle flow rates in local streets."*

By letter dated 2 September 2008 (Attachment 8) the applicant provided additional information in response to DPI's 25 August 2008 letter, which was forwarded to DPI.

In its response letter dated 26 September 2008 (Attachment 9) DPI advised:

*"Accordingly, UTS has no objections to the proposal on regional transport planning grounds provided the recommendations above are implemented."*

The recommendations referred to in DPI's letter are summarised as follows:

- The 3 tandem car parking bays to the northeast of the site should be marked "Clergy & Staff Parking";
- The car parking bay adjoining the northern front entry to the church to be deleted or approved on a temporary basis until the road widening occurs;
- The car parking bay adjoining the western entrance to the church building to be deleted as the rear manoeuvring area is inadequate which requires 6m clearance. It is suggested that this space be allocated for bicycle and motor cycle parking;
- The proposed two car parking bays on the eastern side of the truncation should be marked "Small Cars Only" due to the constrained manoeuvring area;
- Parking availability on site should be monitored and the time of activities varied to free up car parking bays if required.



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In addition to the matters raised by DPI by letter dated 6 October the CEO wrote to the applicant (Attachment 10) seeking advice or clarification on the following traffic related issues:

- If a particular DPI recommendation is supported, how is it to be implemented?;
- Vehicle impacts of the “parents support program” have not been raised or addressed with respect to parking or the traffic study;
- Vehicle impacts of the use of the property on weekends for use by the intended Sunday school programs have not been raised or addressed with respect to parking or the traffic study;
- Advice regarding how requirements in respect of car parking bay dimensions and manoeuvring areas, as per TPS 3, Schedule 12 are to be met;

By letter dated 7 October 2008 (Attachment 11) the applicant provided further clarification in response to the matters raised in the 26 September 2008 DPI letter and the 6 October 2008 CEO letter as follows:

- (1) Responses to 26 September 2008 DPI letter.  
The applicant submitted amended drawings, which specify the following:
  - Tandem car parking to northeast corner to be marked “Staff Only”;
  - Seeking Council approval to retain parking at northern end of the site on a temporary basis;
  - The parking bays at the western end of the Church entrance have been allocated for motorbike and bicycles as suggested;
  - Car bays next to the truncation are marked for “Small Cars Only”In regard to parking monitoring the applicant has not provided any information.
- (2) Responses to 6 October 2008 CEO letter with respect to traffic/parking – see also above:
  - Regarding implementation of the DPI recommendations the applicant has amended the drawings however has not advised how the parking is to be monitored;
  - Advises that the “Parents Support Program” is only concept at this stage and that if it is to be implemented it would have to run after business hours;
  - Advises that the “Sunday School Program” runs currently at the existing church building and a traffic assessment should therefore not be required;

## DISCUSSION

### Introduction

The framework for the following discussion is by reference to Clause 10.2 of TPS3: “Matters to be considered by local government”.

The preface to Clause 10.2 reads as follows:

*“The local government in considering an application for planning approval is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application.”*

Whilst the Clause applies to all planning applications, it is important in this case to note that, as already indicated, the proposed use has an “A” classification in Council’s Zoning Table, requiring firstly exercise of Council’s discretion and secondly mandatory public advertising.

As “A” use is only “one step up” from a use that is not permitted by the Scheme and careful attention needs to be given to relevant issues of public amenity etc.

Clause 10.2 contains subclauses (a) to (z). These are considered, in turn, below.

- 10.2(a) *“the aims, objectives and provisions of the Scheme and any other relevant town planning schemes operating within the Scheme area (including the Metropolitan Region Scheme)”*

The following comments are made:

- The most relevant aim of the Scheme is 1.6(d):  
*“To provide for a variety of development to meet the needs of the community with regard to housing, employment and services.”*
- The application was for a “3 and 4 year old kindergarten facility for the local area”. The issue of “needs of the community” for such a facility is addressed in more detail under “Community Need” below.
- Other relevant Scheme aims are “to preserve the existing character of the Town”...“To enhance the character and amenity of the Town”...“To facilitate and encourage effective public involvement in planning issues of significance to the character, amenity...of the Town”.
- The above criteria involves subjective assessment. For example the Scheme’s definition of “amenity” is “means all those factors which combine to form the character of an area and include the present and likely amenity”.
- It could be argued, for example, using this definition, that the proposed *enhances* amenity: it could also be argued that it *reduces* amenity.
- Since the implementation of the proposal would necessitate the demolition of the Manse, this aspect could also be considered in the context of the proposal’s potential effect on the character of the Town.
- Under the Town’s Municipal Inventory, the place has a Management Category C which is defined as “some heritage significance at the local level”. (See Attachment 2)
- The consultant commissioned by the applicant found the building “has some aesthetic value as an attractive fibrous cement house” although did not “contribute to the heritage significance of the Woodside East Precinct in which it is located”.
- See also 10.2(h) and 10.2(q) with respect to the Parking Shortfall issue and the interface of this issue with that of the fact that a large part of the overall site is affected by a Primary Regional Road reserve under the Metropolitan Region Scheme which involves potential road widening and which, if implemented in full or in part, could reduce parking provisions on the site even further.

- 10.2(b) *“the provisions of the Local Planning Strategy, including the aims and objectives, the strategy for the relevant sector and any planning proposals for the particular precinct.”*

Relevant provisions in the Local Planning Strategy (under Aims and Objectives) could be considered to be:

- “To support the development and on-going delivery of a range of community services appropriate to the needs of the local community.”



- “To encourage the integration of community facilities within designated commercial areas, so as to minimise travel demand and add to the vibrancy of existing centres.”
- “To promote multiple use of community facilities to maximise the use of resources and enable consolidation of facilities.”
- “To ensure a high standard of planning and design for any future community facilities, in keeping with the desired character of the town and its environs.”

With respect to the first dot point see “Community Need” below.

With respect to the second dot point, the proposal is at odds with this Local Planning Strategy objective, since the proposed facility involves a residential rather than a commercial area.

With respect to the third dot point, it could be argued that the proposal is at odds with this objective, given, for example, that instead of seeking to incorporate the service within the existing church buildings, it involves the demolition of a residential building in the residential zone which is currently being used for residential purposes.

With respect to the fourth dot point, this is a matter of subjective opinion – based for example on the perceived design. In other words an elected member may view the design positively, whereas others, eg members of the TPAP and the adjoining owner, have expressed concern regarding aspects of the design.

Comments by the TPAP are referred to above. (With respect to the comments of the TPAP, condition 8 of the “approval option” (see “Recommendation for Approval” below) has been included.)

Comments by the adjoining owner (note Council is obliged to consider such submissions received (10.2(z) refers) with regard to the design were as follows:

*“...we would have much preferred a building more in keeping with the existing buildings namely the beautiful little church and to some extent the newer church hall which was added some years ago.”*

Comments in the Local Planning Strategy pertaining specifically to land use in Woodside Ward are also relevant.

The first paragraph of “Land Use” for Woodside Ward reads as follows:

*“It is the Council’s intention to conserve the precinct’s heritage and to retain its existing character by maintaining single residences on large lots, avoiding pressures to remove mature trees, and preserve the spacious character of the area as reflected in the streetscapes and generous curtilages. New development in the precinct will generally be restricted to single residential. Some additional group housing may be permitted with street frontage on corner lots.”*

The proposal is not considered consistent with this objective.

- 10.2(c) *“the requirement of orderly and proper planning including any relevant proposed new town planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submission.”*

No relevance (other than to note the application has been subject to orderly and proper planning).

- 10.2(d) *“any approved statement of planning policy of the Commission.”*

No planning policy of relevance.

- 10.2(e) *“any approved environmental protection policy under the Environmental Protection Act 1986.*

No environmental protection policy of relevance.

- 10.2(f) *“any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State.”*

No policy of relevance.

- 10.2(g) *“any Local Planning Policy adopted by the local government under clause 2.4 or effective under clause 2.6, any heritage policy statement for a designated heritage area adopted under clause 7.2.2, and any other plan or guideline adopted by the local government under the Scheme.”*

No policy of relevance.

- 10.2(h) *“in the case of land reserved under the Scheme, the ultimate purpose intended for the reserve.”*

The issue of a portion of the land along the frontage of Canning Highway being reserved for a Primary Regional Road has been considered. Whilst most matters arising are considered to have been addressed, there is an issue regarding the parking shortfall which could be argued has not been satisfactorily resolved. See also 10.2(a) (last dot point) and 10.2(q).

- 10.2(i) *“the conservation of any place that has been entered in the Register within the meaning of the Heritage of Western Australia Act 1990, or which is included in the Heritage List under clause 7.1, and the effect of the proposal on the character or appearance of a heritage area.”*

Not relevant.

- 10.2(j) *“the compatibility of a use or development with its setting.”*

This is a difficult issue in some respects. In short the development and use is considered compatible with the church buildings situated to the north of the development (and their uses) however not considered compatible with the residential building to the south of the development (and its residential use).

The compatibility of the physical nature of the development (ie design, materials etc) with its setting is a matter of subjective judgement – see 10.2(b) above and 10.2(o) below – and could be argued either way.

- 10.2(k) *“any social issues that have an effect on the amenity of the locality.”*

No relevant issues.

- 10.2(l) *“the cultural significance of any place or area affected by the development.”*

No relevant issues.

- 10.2(m) *“the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment.”*

Not relevant.

- 10.2(n) *“whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk.”*

Not relevant.

- 10.2(o) *“the preservation of the amenity of the locality.”*

This is a relevant issue. Given the abovementioned Scheme definition of “amenity”, this could be taken to read “the preservation of the present and future character of the area”.

The character of the area is almost entirely residential. All commercial development is either on Canning Highway or Petra Street.

The proposal is not considered to preserve the existing character and in terms of future character could arguably set an undesirable precedent.

- 10.2(p) *“the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal.”*

In terms of the *adjoining land* to the south the main issues (as raised with Council by the owner of that land) concern:

- **Noise attenuation with respect to southern wall**

It is proposed the wall is clad in colorbond steel or aluminium. The two classrooms abut this wall and if the proposal is implemented, noise would be a concern. (In that regard it should be noted that no Noise Impact Assessment was submitted with respect to the application.) It is noted the applicant’s architect has stated “we will endeavour to make the proposed wall a high performance acoustic rated wall to minimise the transfer of noise”.

The applicant’s architect has also suggested that to further assist with noise attenuation “a brick boundary wall to an agreed height to help the issue at hand”. It should not be up to the adjoining owner to accept a brick wall, if they do not want such a wall, for noise attenuation purposes. The necessary noise attenuation should be incorporated into the development.

It is arguable that as a condition of any approval, this wall should be double brick. However the applicant may propose a suitable alternative, hence the recommendation for the construction of the southern wall is that its construction is to be “to the satisfaction of the CEO in consultation with relevant officers”. (Recommendation 3)

- **Setback of southern wall**

In the application the applicant proposed a setback ranging from 1.11m to 1.32m, over the entire length of the southern wall.

The justification given by the applicant for this small setback was “to maximise the use of the proposed playground area”. The applicant also expressed the view that the reduced setback “has minimal impact to the southern neighbour”.

In fact the adjoining owners had originally requested a 2.5m setback, for reasons of perceived overshadowing and not wishing to feel “hemmed in”. In the latter regard it is relevant to note that the development, if approved,

will result in the adjoining owners facing an unbroken wall (most likely of double brick) of a length of 25.2m, with almost no articulation, on their northern boundary (in addition to the dividing fence).

The setback area in question will also contain rainwater tanks.

The 2.5m setback was recommended by the Town Planning & Building Committee (Private Domain) when the matter was considered by the Committee on 11 November 2008.

In response to the situation the applicant wrote to Council on 13 November seeking the implementation of a 1.5m setback.

The applicant wrote:

- *“Setting the building back 2.5 metres will result in reducing the playground areas and significantly compromising the proposed scheme. Under the Childcare Act we need to maintain a minimum area of 372m<sup>2</sup> of outdoor play area for the number of children the kindergarten is intended to accommodate. This means the useable playground area for the church would be decreased by more than 30m<sup>2</sup>.*
- *Increasing the setback distance to 2.5 metres is poor planning and design for the site; it is in essence a wasted space that would serve no purpose other than appeasing the southern neighbour.*
- *Regarding the overshadowing of the southern neighbour, the overshadowing shadow diagram previously provided (the worst case scenario of the winter solstice) clearly indicates that part of the house will receive shadow, namely the lower portion of the south neighbours north wall, still allowing light into the openings of the house. Please find attached a Street Elevation Diagram for your reference. Furthermore, the area affected to the southeast is not an outdoor living space, and is most certainly not covering 25% of an outdoor living area as per the requirements of the R Codes.”*

Following a meeting between Associate Pastor Phil Beeck and the adjoining owners, the adjoining owners agreed to a “compromise” of 2m, whilst still expressing concern re the perceived overshadowing and “hemmed in” issue.

It had originally been understood by the Town Planner that the applicant had agreed to this, however the most recent correspondence on the matter indicates the owner/applicant is still seeking a 1.5m setback to apply and further, the owner’s representative has advised any increase on this would likely be “challenged”. It is unclear whether “challenge” refers to a challenge at Council meeting level only or also envisages a challenge via State Administrative Tribunal appeal provisions.

The applicant has noted Clause 5.5.1 of Town Planning Scheme 3 which states as follows:

*General Requirements: Unless otherwise provided for in the Scheme, development of land in the Residential Zone for purposes other than residential shall accord with the requirements of the Scheme for residential development under the relevant density code.*

It is important to note that whilst the clause is noted for its general relevance, it is not binding on Council in absolute terms, as, with respect to



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the R Codes generally, Council is still legally bound to consider all of those issues included in Clause 10.2 of the Scheme, which is what is occurring in relation to this matter.

It is also important to understand that the argument by the applicant/owner that 372m<sup>2</sup> of outdoor play area is the *minimum* area required under the Childcare (sic) Act, (which was not known, until this recent correspondence was received) is based on the number of children which the owner proposes to have in attendance at the facility at any one time.

The figure of 372m<sup>2</sup> derives from a formula stated in the Child Care Services (Child Care) Regulations 2006 pursuant to the Child Care Services Act 2007) for "outdoor space suitable for children's play, which is 9.3m<sup>2</sup> multiplied by the...maximum number of children who may attend a care session".

Because the maximum number proposed is 40, the resulting figure is  $9.3 \times 40 = 372\text{m}^2$ .

Thus whilst the concern regarding the effect of increasing the proposed setback is thus understood (notwithstanding the applicant has not explained how they were able to agree to increase the setback to 1.5m without, apparently, compromising the 372m<sup>2</sup> play area shown on their plans) it also needs to be understood that a very small adjustment to the maximum number of children attending is another option.

Under the plan submitted, it is estimated for each 0.5m the setback is increased, 12.6m<sup>2</sup> of the designated play area is lost, ie equating to just over one child, with respect to abovementioned statutory provisions.

In other words, rather than viewing the matter in terms of the amount of play area needed for the number of children the owner hopes to have in attendance at each session, the owner could, alternatively, agree to the 2m setback and more than accommodate the "loss" by enrolling one child less in two of the three classes. This would more than accommodate for the 0.5m increase in setback.

It is also believed the "loss" may be satisfactorily accommodated by minor adjustments to the design.

Another way of viewing the issue is to query the large area set aside for "church playground".

This playground is intended for use by playgroups which the Church operates, however it is noted that these playgroups have no Council approval, and are, effectively, an unauthorised departure from an earlier Council approval for an indoor crèche (see "1998 Council approval" below).

This was only determined after the applicant wrote to Council after the Town Planning & Building Committee (Private Domain) decision on the setback and it was determined that a review of all of the existing uses of the site would be appropriate.

The Church, whilst having written on 27 November apologising "for using the buildings for non complying uses" (See Attachment ~~19~~ 20), nevertheless wishes this particular use to continue and thus seeks to maintain that separate playground in their plans.

Nevertheless, it remains an option, if a 2m or greater setback were to be a condition of approval, for the "church playground" situation to be modified.

At the Town Planning & Building Committee (Private Domain) meeting held on 2 December 2008, elected members resolved as follows:

*"That the application for demolition of the single storey house at 6 Fortescue Street and its replacement with a kindergarten facility for 3 & 4 year olds be deferred to the December meeting of Council in order to allow elected members to carry out a site visit of the adjoining property to the south in particular to allow assessment of the setback issues."*

and later resolved to conduct a site visit on 4 December 2008.

All elected members other than Cr Dobro (overseas) and Cr Wilson (who had previously attended the site) subsequently made a site visit to 8 Fortescue Street, on either 3 or 4 December.

The first visit also involved the Town Planner Chris Warrener, Chief Executive Officer and Principal Building Surveyor, Paul Busby, who determined, with a laser distance meter, the location of the various setbacks which were under discussion (ie 1.5m, 2.0m and 2.5m or greater). Mr Busby's advice was referred to during that visit and the two subsequent visits by other elected members.

Responses from elected members with respect to the setback issue fell into these categories:

- (i) Development not supported, therefore setback issue considered irrelevant.
- (ii) *Minimum* of 2m setback agreed.
- (iii) Believe a larger setback should apply, however may reluctantly support 2m setback, on basis neighbours have indicated acceptance.

All elected members expressed disagreement with a 1.5m setback, and, as indicated, some elected members expressed a concern that even a 2m setback was insufficient.

Some elected members also expressed a concern regarding the lack of windows and other articulation on the southern boundary, and this concern has been addressed in Condition 21.

Noting the adjoining owners, whilst still concerned with issues of overshadowing and a sense of feeling "hemmed in", have indicated, following representations by the Church, agreement to the 2.5m setback, which was originally recommended by the Town Planning & Building Committee, being reduced to 2m. Accordingly, a 2m setback has been provided for in the relevant recommendation (Recommendation 2).

- **Dividing Fence**

According to the plans the proposed dividing fence is approximately 2.4 metres in height.

The East Fremantle Baptist Church has stated a need for "Facility fencing for both security of premises and protection of children" (See Attachment 16).

The architect has also suggested a brick boundary wall to assist with noise attenuation (see above).

The purpose of a dividing fence in a residential area should be to protect privacy between neighbours, not serve as a separate means of noise attenuation or security of a non residential premises.

A 2.4 metre high fence has the potential to create excessive shadow for the adjoining property (it is situated on the north side) and an unnecessarily heightened sense of being hemmed in. A brick wall could also further contribute to a hemmed in feeling.

The recommended condition of approval is that the fence be a 1.8m high hardiflex fence with galvanised steel capping, which is consistent with the character of existing fences in the area and consistent with the rear portion of the fence on the adjoining owner's property. As an alternative, a fence "to the satisfaction of the CEO in consultation with relevant officers" could also be considered appropriate.

- **Crossover**

The adjoining owner has, in his second submission, raised the issue of the most southerly crossover being adjacent to the northern boundary of his property.

Whilst this is simply a reflection of the location of the existing crossover to the Manse, this crossover is serving a single residence whereas it is now expected this crossover will serve for a considerable amount of traffic, giving rise to amenity issues with respect to the adjoining owner.

Given the layout of the proposed car parking there appears no real issue with moving this crossover further north, other than considering the location of existing street trees, however, in the event the application is approved, it is reasonable this occur in consultation with the applicant.

An appropriate condition reflecting this conclusion, Condition 15, has been included in the conditions of approval of the approval option.

- **Noise Attenuation with respect to carpark**

In addition to the abovementioned crossover issue is the issue of part of a carpark being built up against the boundary of the adjoining neighbour.

This gives rise to noise issues from engines, slamming doors etc, particularly after hours. Under 102.(q) – Existing Parking Utilisation – it is explained why Condition 1 has been included, as a means of limiting the approval to that of a kindergarten (which was what was applied for) with hours limited to 8am-6pm Monday to Friday.

Consistent with the basis of this recommendation, it is considered reasonable to limit the use of that part of the car park which is closest to the adjoining owner, to the abovementioned hours.

In that respect, Condition 18 refers. Condition 18 originally read:

*"Use of the south west area of the kindergarten carpark, designated as an area extending to 17m from the southern boundary, limited to 8am-6pm Monday to Friday."*

and this was previously recommended for approval by the Town Planning & Building Committee.

With respect to that Committee recommendation, the applicant has requested the condition be "relaxed for Sunday Services as the primary use for the site is a church with a Sunday Service". The Church has advised the Sunday Service is held between 10am and 11am.

The adjoining owner has agreed to this particular use.

In response to the request, Condition 18 has been modified to allow for the use of this section of the car park on Sundays between 9am and 3pm.

It should be noted that notwithstanding the restrictions of use of this section of the car park, this still leaves a significant majority of the car bays which have been designated for the kindergarten proposal, to be used for other church related activities "after hours".

In terms of *other land in the locality*, the main issues are as follows:

- **Traffic generation**

This issue is also discussed under 10.2(r) wherein it was concluded:

- (i) that the amount of traffic generated by the kindergarten appeared acceptable
- (ii) in the event the application was approved however it was later found the traffic generated was unacceptable, that proposed condition 4 of the "approval option" should help address this.

Other than the above comments it is noted that Council limited the letters regarding the application which were sent to other landowners in the street, to:

231 Canning Highway  
5, 7, 8, 9, 10, 11, 12 Fortescue Street  
7 & 9 Irwin Street

and that at least one elected member has expressed a concern that this form of advertising should have been broader than this. This view is considered to have validity, however the authors are not recommending any further advertising.

- **Appearance of the Proposal**

This has already been commented on with respect to 10.2(b), 10.2(a) and the comments of the Town Planning Advisory Panel.

The applicant (the owner's architect), in responding to the adjoining owner's concerns with the appearance, has noted (correctly) the "domestic scale" of the building. It is also noted the building is well setback from the street and will be landscaped.

However the applicant has also noted the building has "an industrial aesthetic", which, it could be held by some viewers, is at odds with the existing streetscape of residential buildings of a non "industrial aesthetic" architecture.

The applicant appears to anticipate this concern by reference to the *need* for "robust and maintenance free" building materials and the building being "*softened* by the proposed vegetation and landscaping".

- 10.2(q) "*whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles.*"

This is a relevant issue. Various traffic and parking investigations have taken place, leading to various modifications of the proposal.

The following issues are considered to remain:





- **Parking shortfall**

As indicated above, a five space shortfall with respect to the kindergarten has been identified.

Clause 5.5.3 provides that the options for dealing with this shortfall are as follows:

- refuse the development
- identify appropriate off site parking availability "in the immediate vicinity of the development site", which must "continue to be available for use in conjunction with the development at such times as it might reasonably be required".
- accept immediately adjacent on-street car parking as satisfying part or all of the car parking requirements for development "provided such allocation does not prejudice adjacent development or adversely affect the safety or amenity of the locality".

(Under TPS3 cash-in-lieu of parking is not an option for non residential development in a residential area.)

With respect to dot point two above there is no such off site parking availability.

With respect to dot point three above, there is currently sufficient on-street parking for five vehicles, however it is obvious that these bays are sometimes used by other persons accessing the church property and thus the "assignment" of these bays to the proposed kindergarten may exacerbate parking issues generally. There is also a concern re potential congestion so close to the Fortescue Street/Canning Highway intersection.

In most respects the proposed development is a "stand alone" facility, however it would rely on Council allocating five street parking bays in order to meet the identified parking shortfall.

Yet it is arguable, due to an identified parking shortfall for the site as a whole, that these 5 bays could equally have been assigned to other activities of the Church.

In that respect it is noted that under TPS3, the Church should be providing 32 bays, yet only 16 bays are provided in addition to the 20 bays assigned to the kindergarten. Further, this formula assumes the Church Service use will be the highest use and does not factor in the use of the hall, etc.

The above reinforces any argument that the five street car bays should not be assigned to the kindergarten proposal.

See also parking issues raised in "1998 Council approval" below.

Whilst the abovementioned concerns are valid, and could be considered legitimate grounds for refusal, it is concluded that on the proviso Condition 21 of the Recommendations for Approval option is implemented, it is also arguable that the application could be supported subject to that condition.

- **Existing Parking Utilisation**

The proposed kindergarten is a new development. Yet already, not infrequently, parking is an issue at the site due to other church related or church approved activities (see for example photos attached as Attachment 12).



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The photos show the proposed site of the classrooms being used for parking, on a day when other church parking was full and “spilling over” onto the road and verge.

In other words, whilst the parking provision for the proposed kindergarten has been addressed, what has not been satisfactorily addressed is how parking is to be provided for the other church related activities, particularly when there will be even less parking available for those activities.

This issue was raised with the applicant by the Town Planner in an email dated 12 August (see Attachment 13).

The response from the applicant was to advise “that if there was a problem, we would be happy to negotiate and potentially modify some of our times to satisfy Council.” The applicant went on to say “For example, we could have the two classes starting 15 minutes apart to spread out the traffic”. The applicant also advised that “negotiations could be made with the tenant” (referring to a group which rents room at the church two days a week) “with regards to starting/finishing times etc”.

Despite these reassurances the overall parking situation remains something of an uncertainty.

The uncertainty is added to by reference to the “parents support program” which the applicant, in an email to Council dated 19 August 2008, stated would be run in conjunction with the children’s program of the proposed kindergarten.

When it was noted to the architect, in a letter from the CEO dated 6 October (Attachment 10), that this aspect had not been raised, let alone addressed, in the traffic study, the architect advised this program was only a “concept” at this stage, and if it was to be implemented, would need to be run “after business hours”.

Yet the applicant had not referred to a “concept”. The applicant wrote:

*“We are also planning to run a parents support program as part of this. This program will provide parents with support and education on the important task of parenting their children. We currently run and will further promote marriage courses to the parents of these children as the family unit is critical in the development of our children.”*

The subsequent response from the applicant, that if this program is to be run, it will be run in the evening, highlights the issue of the proposed building being used for related, or even non related activities on days and times, not mentioned in the proposal.

As another example, the Kindergarten Feasibility Study which the applicant provided to Council, at Council’s request, subsequent to the planning application being received, stated that the kindergarten facility “would be available on weekends for use by Sunday school programs.”

This plan was never mentioned in the application and only discovered by Council officers by chance.

The applicant has advised (see Attachment 11) that as Sunday School programs are currently running in the existing church building, a traffic assessment should not be required.

Whilst there is some logic to this from a traffic viewpoint, it completely misses the point that the submitted proposal is for a *kindergarten*, operating limited hours on weekdays only and that the proposal has been advertised accordingly.

Adjoining owners were not advised, for example, of other, non kindergarten related, activities and therefore not given the opportunity to comment on such possible activities.

In short, the proposal is for a 3-4 year old kindergarten operating on weekdays between 9am and 2.45pm.

If the proposal is to be approved it is considered highly appropriate the approval should contain a condition which reasonably reflects those days and times.

Hence Condition 1 has been recommended in the approval option.

If such a condition is not imposed, there is an issue with the use of the building being broadened in unanticipated and uncontrolled ways, and in a manner which has not been addressed by the submitted traffic impact studies.

Such an outcome would mean the proposal had inappropriately been advertised both to the public and to DPI.

See also 10.2(zb) below.

- 10.2(r) *“the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.”*

These matters were considered in the relevant traffic studies and by referral to DPI.

The amount of traffic which would be generated by the kindergarten facility is considered acceptable, although Condition 4 has been provided (as suggested by the applicant) in the event of unanticipated adverse outcomes.

- 10.2(s) *“whether public transport services are necessary and, if so, whether they are available and adequate for the proposal.”*

Adequate public transport services are available.

- 10.2(t) *“whether public utility services are available and adequate for the proposal.”*

Adequate services are available.

- 10.2(u) *“whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities).”*

Not considered relevant.

- 10.2(v) *“whether adequate provision has been made for access by disabled persons.”*

Adequate provision has been made.

- 10.2(w) *“whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved.”*

Adequate provision appears to have been made for landscaping, nevertheless Condition 7 has been provided as a safeguard.

- 10.2(x) *“whether the proposal is likely to cause soil erosion or land degradation.”*

Not relevant.

- 10.2(y) *“the potential loss of any community service or benefit resulting from the planning approval.”*

Not relevant.

- 10.2(z) *“any relevant submissions received on the application”*

Submissions received from members of the public were considered with relevant comments referred to in this report.

- 10.2(za) *“the comments or submissions received from any authority consulted under clause 10.1.1.”*

All comments received from DPI were considered.

- 10.2(zb) *“any other planning consideration the local government considers relevant.”*

The following issue was also addressed, to some extent, under 10.2(q) above.

In a letter accompanying the application, the applicant, under the heading “Zoning”, stated “We are therefore asking Council to allow the non-conforming nature of the church and it’s activities to continue operating with respect to the new kindergarten facility”.

It is not clear what this meant. What is clear however is that all of the advertising and traffic assessments in respect of the application were based on the proposed kindergarten facility, only and no other uses have been factored in. Hence Recommendation 1 of the approval option.

Recommendation 1 is particularly important given the East Fremantle Baptist Church has stated in a recent letter to their Members, that, in the event of financial difficulties with the project, the East Fremantle Baptist Church would “look into various alternative uses for the K3 building and its land. For example, we could rent out the facilities during the times that K3 classes were not in session; or we could de-register the kindergarten, and the building and land could be used to generate a rental return through leasing...”

The above issue was raised with the applicant (Attachment 10) however the concerns raised not responded to. (Attachment 11)

It is thus considered to remain important that the applicant and owner understand any approval is for a *kindergarten only* – hence Recommendation 1 of the option for approval.

- 10.2(zc) *“whether the proposal is consistent with the principles of water sensitive urban design.”*

Not deemed a particular issue although noted rainwater tanks will be provided and issue of “water wise” plants will be taken into account in approved landscaping.

### **Community Need**

With respect to planning matters of relevance, the issue of its purpose and community need for the proposed facility was referred to above.

Initially, in seeking to clarify whether the Ministry of Education had a policy position on the need for such facilities/programs, Council officers were advised there was no position because, for this young age group, such an educational program was non compulsory.

This was an unexpected stance, particularly as another State Government Department, the Department of Communities, is required to licence such facilities. (See Attachment 17 and Recommendation 11) It was later learned however, that there is some contention in educational circles regarding the merits of such programs, with some educationalists reportedly being quite opposed to the concept of 3 year old kindergartens, on learning grounds.

Information from the Bayside City Council in Victoria (attached as Attachment 15) notes for example that “Kindergarten for three-year-old children is not funded by the government and many professionals believe that children are not disadvantaged if they do not attend three year old kindergarten”.

The same advice notes the Victorian State Government *does* provide funding for four year olds to attend kindergarten.

Whilst this proposal is for a 3/4 year old kindergarten, it is clearly understood most attendees will be 3 year olds.

Written statements by the proponent (the East Fremantle Baptist Church)(EFBC) refers to the facility as “K3” and the EFBC’s Feasibility Study (attached as Attachment 16) refers entirely to a three-year-old kindergarten on the cover, later qualifying this to “generally 3 year old”.

In various material, the EFBC have stated the following learning aims and objectives for the facility:

- learn basic social interaction skills
- learn some school processes
- facilitate developmental skills
- encompassing an “openly Christian ethos” with children and parents openly exposed to what “EFBC believe as a Christian community”

There is also, clearly, an objective to promote the church and its beliefs and values. To what extent this could be classed as “learning” and to what extent this aspect could be described as a “community need” is clearly debateable and subject to personal philosophy.

Nevertheless the facility is described as:

- (a) wonderful opportunity to minister into the broader community of East Fremantle in this way would bear great witness to God’s good work.
- (needing a) “Plan” (for) “a purposeful missional approach to the community via K3” which includes “a K3 statement of faith and values for the basis of operation”.
- “with Christian teachers and an anticipated attendance by children from the church this offers a wonderful opportunity for mission into the broader community”
- the magnificent potential that the church has to present a ministry to the community and further extend our witness for Christ through this facility.

The issue of the educational value of the facility, whilst relevant to the issue of community need, has not been factored into the Recommendations in this report, as it appears to be an uncertain issue even amongst educational professionals and is outside the expertise of the authors.

It is merely noted there is not a documented *need* for such facilities, in educational terms, and also some uncertainties in regard to learning outcomes.

Contact was also made with a relevant officer from the Children's Services section of the Department for Communities, regarding their views on the proposal.

This officer expressed the view that the development of programs such as this was a consequence of the Scott Report, which, several years ago, led to a "tightening up" of enrolment ages for Education Department run pre-primary facilities which in turn resulted in a number of private facilities being established for children of an age group which had previously been able to access Education Department facilities.

The Scott Report led to a benchmark whereby to be enrolled in kindergarten (in itself, not compulsory) a child needed to be turning 4 by 30 June in that particular year.

(Hence, whilst the applicant has referred to the "K3" as a "kindergarten for 3 year olds and those 4 year olds who don't yet qualify to attend a school based kindergarten", the Department for Communities use the term "pre kindergarten program", and believe this is a more appropriate term.)

The officer advised the K3 or "pre kindy" concept can be likened to a "supported playgroup". The officer further advised that the distinction between a facility such as this and a child care facility is that it involves sessions, often of 2½ hours, rather than being utilised by parents all day.

The officer advised the objectives of some parents is "socialisation and school readiness" of their child (for kindergarten, pre-primary etc), whilst for others they "simply need a break".

Regardless of any conclusion arrived at with regard to "need", it is important to note, however, that even if the need for the service *had* been established, or accepted, that as the WA Planning Commission state in relation to Child Care Centres "it is important to emphasise that the need for a service does not justify development in inappropriate locations".

The issue of the *target group* is also an issue.

Relevant Scheme provisions refer to the needs of the "local community". In the authors' view it is quite acceptable to consider the needs of the broader community, however it is the needs of the "local community" (meaning the Town of East Fremantle) which should be considered the primary issue.

The target group has been described in various ways by the applicant, for example:

- The Schedule 6 Application for Planning Approval form gave "development details" as "To demolish the existing house and build a new building to service the church and community"
- The Feasibility Study (prepared well prior to the submission of the planning application) stated:  
"The K3 will firstly target children who attend church, playgroup *and then* the local and wider community" (authors' italics) (Attachment 16).

With respect to the above it is noted that the Feasibility Study (Attachment 16) considered the 0-3 year old demographics of East Fremantle, Bicton, Palmyra and Attadale however, "noted that EFBC traditionally draws people from much further than these suburbs both for the congregation and playgroups".

Notwithstanding the comments in the Feasibility Study, in a letter dated 20 May 2008, which accompanied the planning application, the applicant stated "The church...has recognised the need for a 3 and 4 year old kindergarten facility for the local area" (and "The church has decided...to invest in such a facility to service the local community").

Noting from the EFBC's website in August, the EFBC had stated "This three/four-year-old kindergarten is opening...in 2009, and is currently seeking expressions of interest", besides cautioning the church that it could not be assumed Council approval would be granted, the church was asked for advice on expressions of interest to date.

In response the church advised they had received 38 expressions of interest to date, as follows:

Palmyra	10
East Fremantle	12
Other	16

"Other" were suburbs of Bibra Lake, North Fremantle, Beaconsfield, White Gum Valley, Kardinya, Bicton, Myaree, Atwell, Spearwood, Coogee.

The church also advised that of the actual 10 registrations received at that point, these were East Fremantle (5), Palmyra (3), Bibra Lake (1) and Coogee (1).

Given the church is seeking enrolments of up to 60 children (morning session-20; afternoon session-20; all day session-20), the 10 described as registered above is not a conclusive indication of the final outcome. The most likely scenario however would appear to be that at best about a 1/3-1/2 of the attendees would involve East Fremantle residents.

The issue was taken up with the applicant again in October (see Attachment 10). The applicant's response (see Attachment 11) did not clarify the issue any further.

Finally, as a matter of record, it is noted Council has received no request for such a facility from any member of the public at least in the last 9 years, other than from one member of the public wanting to establish such a facility on Council land and using Council facilities.

It is also noted the need for such a facility was not identified by the public in the recent Strategic Plan public consultation, and the establishment of such a facility does not form part of the Strategic Plan.

#### 1998 Council Approval

In November 1997 the Church submitted an application for planning approval proposing alterations and substantial additions to the west side of the existing church building, which entailed an entry and vestibule, two offices and an indoor crèche on the ground floor and an open plan office and store on the upper floor.

The application was approved and a copy of the subsequent Grant of Planning Consent is attached as Attachment 18.

Following a recent site visit, which was attended by the CEO, Town Planner, Principal Environmental Health Officer, Pastor Andrew Duncan, Associate Pastor Phil Beeck and the applicant Carl Huston, it is quite clear that at least some conditions, which are relevant to the current proposal, were not met, not to mention some conditions which are not relevant to the current proposal (eg conditions related to building details).

On review, the following conclusions have been reached.

- (i) Condition 6  
"Proposed room set aside as crèche being renamed parent's room for use by children during church activities."

This condition is considered to have been breached. This room is not (at least primarily) being used for its intended purposes, but is, rather, currently being used (under designation "crèche"):

- 4 days/week by the Cuddlepie Playgroup – reportedly generating parking requirements for up to 12 vehicles/day. Mothers are present, however, not engaged in church activities as such. This Playgroup also operates in the main hall and a play area which was not shown on the approved plans, however is understood to have been built following the Council approval.
- German language classes (understood to involve commercial operator based outside of the Town). This operator also uses an area which was designated on the plans as a church "class room".

These uses (and other uses referred to in this section of the report) are included in a list of current activities, as provided by the Church, which is attached as Attachment 19.

- (ii) Condition 7  
"Office function only for the use of the Pastors and/or Church Executives for religious activity"

In the report submitted to Council at the time the former Town Planner wrote:

"The proposal to extend the Baptist Church provides for three office rooms. The Town Planning Scheme definition of Place of Worship does not provide for an Office within a Community Zone.

The Town Planner discussed the issue with Pastor Jenner and was advised that the offices are in fact meeting rooms for Pastor Jenner, Pastor Field and the Church Executive. The approval needs to reflect this point."

It appears that the use of the ground floor offices conforms with this approval, however the use of the large upper office, is not. It is currently used by:

- a private music school, "Suzuki Music", currently operating 5 classes per week and with 4 of those 5 classes seen to be generating parking requirements for 12 cars;
  - a youth group;
  - the church for:
  - general use;
  - Sunday school;
  - meetings; and
  - training.

- (iii) Condition 8  
"Provision of landscape plan to the satisfaction of the "Town Planner."

This was not received.

- (iv) Condition 9  
"Provision of parking plan indicating designation of parking spaces (not within front setback)."

This was not received.

By virtue of this condition, parking should not be occurring within the front setbacks of either the original church or the 1998 additions, yet is. Such parking is also factored into the overall parking provision as shown in the plans submitted for the kindergarten proposal. Assuming "front setback" referred to the setback from





Canning Highway, 12 of the 16 "Church" bays shown on the current plans are located in the front setback, in contravention of that condition.

#### Use of Church Hall

The Church Hall (located to the rear of the church) is understood to have been built in the 1950's. It is used for various activities e.g. craft group, playgroup, Connexion Group, dancing & youth group. Essentially these uses are not being questioned with respect to the kindergarten application, except with respect to the parking shortfall issue.

At the time of the 1998 approval, the Church was said to have 39 bays and it was stated by the Town Planning Scheme "given church use provides the maximum deemed, 39 car spaces should be adequate".

In fact 39 car spaces was the *minimum* requirement under TPS2, given the Church has seating for 156 persons and the requirement was 1 bay per 4 persons (4 x 39 = 156).

Now however, the Church parking provision has dropped to 16, representing a considerable shortfall, and even then almost all of the parking is compromised by being in the front setback area as discussed above.

This is considered a potentially critical issue, sufficient in fact to recommend the Kindergarten not be approved, essentially because, whilst it leads to only a small drop in overall parking provision (39 to 36 bays) 20 of those bays are recommended for kindergarten use only from 8am to 6pm Monday to Friday and limited in terms of the after hours and weekend use to 9am to 3pm Sunday for church services only.

Accordingly, if the application is to be approved, it should be on the basis, at least in part, that the current unauthorised and apparently unrestricted activities be subject to review and ultimately, where appropriate, Council approved.

It is thus recommended if the application is to be approved that, with respect to the identified parking shortfall issue, the owner enters into a legally binding agreement with Council, which is to be to the satisfaction of Council and which provides that:

- (i) any use of the existing buildings, including existing uses which Council has determined is in breach of the Grant of Planning consent dated 17 March 1998, be terminated if requested by Council, unless otherwise approved by Council;
- (ii) any existing use of the existing buildings which Council concludes are not demonstrably directly related to the primary function or mission of the Church (and this definition is not to include activities which have been permitted, or are sought, purely for revenue raising purposes to further the primary function or mission of the Church) and are determined by Council to be causing parking problems of a level not acceptable to Council, be terminated if requested by Council, unless otherwise approved by Council.
- (iii) all future rentals or tenancies, with respect to the use of the existing buildings (and kindergarten, if approved) to require Council approval.

The above recommendation is reflected in Recommendation 22 of the Recommendation for Approval option.

With respect to this recommendation, none of the proposed conditions appear at odds with a proposal recently received from the church, which is attached as Attachment 20.

#### **Conclusion**

In physical terms the design of the proposed development has merit and it is accepted there is a support for such a facility by some members of the broader community (noting such support or wish for such a facility is not necessarily the same as "need").

However, noting the proposed location in the residential zone, there are issues with respect to whether this is an appropriate location for such a facility.

Many of these amenity issues are subjective in nature and this reinforces the broad conclusion that there are arguable grounds for both approving, or refusing the application.

Thus, in terms of recommendations, two options are submitted below.

#### **RECOMMENDATION FOR APPROVAL**

That Council exercise its discretion in granting approval for the demolition of the single storey house at 6 Fortescue Street, and its replacement with a kindergarten facility for 3 and 4 year olds in accordance with the plans date stamp received on 30 May 2008 subject to the following conditions:

1. The approval is confined to the operation of a pre-school/kindergarten only, with the use of the building limited to 8am-6pm, Monday to Friday and numbers of attendees limited to 40 at any time.
2. prior to the issue of a building licence amended plans are to be submitted showing a minimum of a 2m setback on the southern boundary and specifying a 1.8m (other than in the front setback where it steps down to 1.2m) hardiflex dividing fence between 6 and 8 Fortescue Street, with galvanised steel capping and the cost of which is to be borne by the owner of 6 Fortescue Street.
3. prior to the issue of a building licence, the materials to be used in the construction of the southern wall of the proposed development, and its construction, to be determined by the CEO in consultation with relevant officers and amended plans to be submitted in accordance with that determination.
4. prior to the issue of a building licence, the applicant to agree, in writing, to implement "right turn only" arrangements for vehicles leaving the car park, if requested by Council at a later date, if Council perceived significantly adverse traffic effects have resulted from the implementation of the proposal.
5. existing parking at the northern end of the site is temporarily approved at the discretion of Council and subject to Canning Highway road widening not occurring.
6. prior to the issue of a building licence the applicant/owner is to prepare and submit a car park monitoring program, to the satisfaction of the CEO in consultation with relevant officers, to allow Council to determine if the time of the activities at the property should be varied to free up car parking bays, and with any such determination by Council to be implemented by the owner.
7. prior to the issue of a building licence, a landscaping plan be submitted to the satisfaction of the CEO in consultation with relevant officers.
8. prior to the issue of a building licence colours of materials to be to the satisfaction of the CEO, in consultation with relevant officers.
9. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
10. the proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
11. the proposed works are not to be commenced until the plans are approved by the Child Care Licensing and Standards Unit.
12. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
13. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally

- adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
14. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
  15. prior to the issue of a building licence, the location of the crossovers to be determined by the CEO in consultation with relevant officers and if required amended plans to be submitted in accordance with this determination. New crossovers which are constructed under this approval are to be a maximum width of 3.0m, with the footpath to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  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. if the installation of any crossover results in the removal of a street tree, the street tree is to be replaced at the owner's expense, by a tree to the satisfaction of the CEO in consultation with relevant officers.
  18. use of the south west area of the kindergarten carpark, designated as an area extending to 17m from the southern boundary, limited to:
    - (i) 8am-6pm Monday to Friday for kindergarten purposes;
    - (ii) 9am to 3pm Sundays for Church Service purposes;with this section of the carpark physically prevented from being used outside of the abovementioned times by means which are to be to the satisfaction of Council.
  19. all signage to be to the satisfaction of the CEO, in consultation with relevant officers.
  20. this approval does not include approval for any externally mounted air conditioning units, any installation of which will require a separate Council approval.
  21. prior to the issue of a building licence, amended plans to be submitted specifying the inclusion of additional highlight windows on the south side wall, which are to be to the satisfaction of the Chief Executive Officer, in consultation with relevant officers.
  22. prior to the issue of a building licence the owner to enter into a legally binding agreement with Council, which is to be to the satisfaction of Council and which provides that:
    - (i) any use of the existing buildings, including existing uses which Council has determined is in breach of the Grant of Planning consent dated 17 March 1998, be terminated if requested by Council, unless otherwise approved by Council;
    - (ii) any existing use of the existing buildings which Council concludes are not demonstrably directly related to the primary function or mission of the Church (and this definition is not to include activities which have been permitted, or are sought, purely for revenue raising purposes to further the primary function or mission of the Church) and are determined by Council to be causing parking problems of a level not acceptable to Council, be terminated if requested by Council, unless otherwise approved by Council.
    - (iii) all future rentals or tenancies, with respect to the use of the existing buildings (and kindergarten, if approved) to require Council approval.
  23. the proposed kindergarten is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
  24. 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:*



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- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

**RECOMMENDATION FOR REFUSAL**

That Council refuses to grant planning approval for a 3 and 4 year old kindergarten facility at 6 Fortescue Street in accordance with the plans date stamped received on 3 May 2008 for the following reasons:

1. Community Need not demonstrated  
(Town Planning Scheme – clause 1.6(d))  
(Local Planning Strategy – clause 3.4)
2. Local Planning Strategy encourages integration of community facilities within designated commercial areas – this is a residential area  
(Local Planning Strategy – clause 3.4)
3. Does not represent multiple use of community facility  
(Local Planning Strategy – clause 3.4).
4. Design and proposed materials significantly incompatible with existing streetscape and does not preserve amenity of the locality.  
(Local Planning Strategy – clause 3.4, 5.3)  
(Submission received from adjoining owner – TPS3, sub clause 10.2(z)),  
(TPS3, sub clause 10.2(j))  
(TPS3, sub clause 10.2(o))
5. Adverse effect on adjoining land by virtue of noise, traffic and appearance of proposal  
(TPS3, sub clause 10.2(p))
6. Parking shortfall of 5 bays  
(TPS3, sub clause 10.2(q))

Mr Paino (adjoining owner) addressed the meeting advising that he and his wife would be prepared to agree to the proposal providing all of the recommended Council conditions were imposed on the approval.

Vijay (Operator of Little People Child Care at 193 Canning Highway) addressed the meeting expressing concern that this facility may have a detrimental effect on his business given he did not believe there was a need for a 3-4 year old kindergarten in the Town.

Mr Beeck (East Fremantle Baptist Church) and Mr Huston (architect) addressed the meeting in support of the proposal. Mr Beeck stated the 2m setback would be acceptable.

Cr Arnold

That Council refuses to grant planning approval for a 3 and 4 year old kindergarten facility at 6 Fortescue Street in accordance with the plans date stamped received on 3 May 2008 for the following reasons:

1. Community Need not demonstrated  
(Town Planning Scheme – clause 1.6(d))  
(Local Planning Strategy – clause 3.4)
2. Local Planning Strategy encourages integration of community facilities within designated commercial areas – this is a residential area  
(Local Planning Strategy – clause 3.4)
3. Does not represent multiple use of community facility  
(Local Planning Strategy – clause 3.4).
4. Design and proposed materials significantly incompatible with existing streetscape and does not preserve amenity of the locality.  
(Local Planning Strategy – clause 3.4, 5.3)  
(Submission received from adjoining owner – TPS3, sub clause 10.2(z)),  
(TPS3, sub clause 10.2(j))  
(TPS3, sub clause 10.2(o))
5. Adverse effect on adjoining land by virtue of noise, traffic and appearance of proposal  
(TPS3, sub clause 10.2(p))
6. Parking shortfall of 5 bays  
(TPS3, sub clause 10.2(q))

LAPSED THROUGH WANT OF A SECONDER

Cr Olson – Cr Rico

That Council exercise its discretion in granting approval for the demolition of the single storey house at 6 Fortescue Street, and its replacement with a kindergarten facility for 3 and 4 year olds in accordance with the plans date stamp received on 30 May 2008 subject to the following conditions:

1. The approval is confined to the operation of a pre-school/kindergarten only, with the use of the building limited to 8am-6pm, Monday to Friday and numbers of attendees limited to 40 at any time.
2. prior to the issue of a building licence amended plans are to be submitted showing a minimum of a 2m setback on the southern boundary and specifying a 1.8m (other than in the front setback where it steps down to 1.2m) hardiflex dividing fence between 6 and 8 Fortescue Street, with galvanised steel capping and the cost of which is to be borne by the owner of 6 Fortescue Street.
3. prior to the issue of a building licence, the materials to be used in the construction of the southern wall of the proposed development, and its construction, to be determined by the CEO in consultation with relevant officers and amended plans to be submitted in accordance with that determination.
4. prior to the issue of a building licence, the applicant to agree, in writing, to implement “right turn only” arrangements for vehicles leaving the car park, if requested by Council at a later date, if Council perceived significantly adverse traffic effects have resulted from the implementation of the proposal.
5. existing parking at the northern end of the site is temporarily approved at the discretion of Council and subject to Canning Highway road widening not occurring.
6. prior to the issue of a building licence the applicant/owner is to prepare and submit a car park monitoring program, to the satisfaction of the CEO in consultation with relevant officers, to allow Council to determine if the time of the activities at the property should be varied to free up car parking bays, and with any such determination by Council to be implemented by the owner.
7. prior to the issue of a building licence, a landscaping plan be submitted to the satisfaction of the CEO in consultation with relevant officers.
8. prior to the issue of a building licence colours of materials to be to the satisfaction of the CEO, in consultation with relevant officers.

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9. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
10. the proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
11. the proposed works are not to be commenced until the plans are approved by the Child Care Licensing and Standards Unit.
12. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
13. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
14. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
15. prior to the issue of a building licence, the location of the crossovers to be determined by the CEO in consultation with relevant officers and if required amended plans to be submitted in accordance with this determination. New crossovers which are constructed under this approval are to be a maximum width of 3.0m, with the footpath to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
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. if the installation of any crossover results in the removal of a street tree, the street tree is to be replaced at the owner's expense, by a tree to the satisfaction of the CEO in consultation with relevant officers.
18. use of the south west area of the kindergarten carpark, designated as an area extending to 17m from the southern boundary, limited to:
  - (i) 8am-6pm Monday to Friday for kindergarten purposes;
  - (ii) 9am to 3pm Sundays for Church Service purposes;with this section of the carpark physically prevented from being used outside of the abovementioned times by means which are to be to the satisfaction of Council.
19. all signage to be to the satisfaction of the CEO, in consultation with relevant officers.
20. this approval does not include approval for any externally mounted air conditioning units, any installation of which will require a separate Council approval.
21. prior to the issue of a building licence, amended plans to be submitted specifying the inclusion of additional highlight windows on the south side wall, which are to be to the satisfaction of the Chief Executive Officer, in consultation with relevant officers.

22. prior to the issue of a building licence the owner to enter into a legally binding agreement with Council, which is to be to the satisfaction of Council and which provides that:
- (i) any use of the existing buildings, including existing uses which Council has determined is in breach of the Grant of Planning consent dated 17 March 1998, be terminated if requested by Council, unless otherwise approved by Council;
  - (ii) any existing use of the existing buildings which Council concludes are not demonstrably directly related to the primary function or mission of the Church (and this definition is not to include activities which have been permitted, or are sought, purely for revenue raising purposes to further the primary function or mission of the Church) and are determined by Council to be causing parking problems of a level not acceptable to Council, be terminated if requested by Council, unless otherwise approved by Council.
  - (iii) all future rentals or tenancies, with respect to the use of the existing buildings (and kindergarten, if approved) to require Council approval.
23. the proposed kindergarten is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
24. 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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

**CARRIED**

Under s.5.21(4)(b) of the Local Government Act 1995, Cr Arnold requested that the voting of Council members be recorded.

Crs Rico, Olson, de Jong and Mayor Ferris voted in favour of the recommendation with Crs Nardi and Arnold having voted against the motion

**386.3*****Pier Street No 3A (Lot 2)******Applicant & Owner: WJ & FS Enright******Application No. P179/2008****By Chris Warrener, Town Planner on 5 December 2008***BACKGROUND****Description of Proposal**

An Application for Planning Approval for unauthorised existing development comprising a boundary wall higher than 1.8m, and a moulded wall feature fixed to the over-height boundary wall at the rear of 3A Pier Street

**Statutory Considerations**

Town Planning Scheme No. 3 – Part 8: Development of Land, Clause 8.4  
Local Planning Strategy - Richmond Precinct (LPS)

**Relevant Council Policies**

Local Planning Policy No. 143 – Fencing (LPP 143)

**Documentation**

Plans and relevant forms date stamp received on 30 September 2008

**Date Application Received**

30 September 2008

**Advertising**

Adjoining land owners only

**Date Advertised**

1 October 2008

**Close of Comment Period**

15 October 2008

**No. of Days Elapsed between Lodgement & Meeting Date**

69 days

**Any Relevant Previous Decisions of Council and/or History of an Issue or Site**

20 February 2001	Council decides to advise the WAPC that it has no objections to the subdivision of 3 Pier Street into 2 lots (1 X 441m <sup>2</sup> , 1 X 511m <sup>2</sup> );
2 April 2001	WAPC conditionally approves the subdivision;
17 June 2003	Council refuses an application for a 3-storey house at 3A Pier Street;
16 September 2003	Council defers a decision on an application for a 3-storey house at 3A Pier Street;
19 September 2003	WAPC endorses for final approval Survey Strata Plan for 3A & 3B Pier Street;
21 October 2003	Council grants conditional approval for a 3-level house at 3A Pier Street;
5 March 2004	Building Licence 129/3552 approved for 3-level residence;
20 April 2007	CEO requests Mr & Mrs Enright (owners) to cease building immediately, and to obtain a valid building licence;
16 May 2008	Infringement Notice issued to owner pursuant to the Environmental Protection Act 1986 s.79(1) for causing or allowing equipment to be used in such a way as to allow it to emit unreasonable noise;
25 August 2008	Building Surveyor advises that the owner is required to seek retrospective approvals for a rear boundary wall that is higher than 1.8m.
18 November 2008	Council resolved: <i>“That the application be deferred to the next Council Meeting on 9 December 2008 to provide the opportunity for the applicants and adjoining neighbour to arrive at a mutually agreed position”.</i>

**CONSULTATION**

**Public Submissions**

At the close of the comment period 1 submission was received; a further submission was received afterwards.

<i>L Smith</i> <i>1C Fraser Street</i>	<ul style="list-style-type: none"> <li>- negative impact on amenity;</li> <li>- errors in information submitted in application;</li> <li>- concerns regarding structural integrity of construction.</li> </ul>
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- 1 Thorn*  
*1B Fraser Street*
- amenity reduced by the section of wall that abuts a common driveway;
  - wall is 'unfinished and visually unappealing';
  - concerns regarding structural integrity of the wall.

**Site Inspection**

By Town Planner on 20 October 2008

**REPORT****Background**

On 15 August 2008 the Building Surveyor visited 1c Fraser Street to meet the owner who had contacted him to complain about a boundary wall that had been built at the rear of her property.

The file note from the Building Surveyor is attached (Attachment 1).

On 20 August 2008 the Building Surveyor met with one of the owners of 3A Pier Street to inspect the boundary wall.

The file note from the Building Surveyor is attached (Attachment 2).

In an email dated 24 September 2008 to the Building Surveyor the owner of 3A Pier Street explained the background to, and purpose for construction of the rear boundary wall (Attachment 3).

On 30 September 2008 the owners of 3A Pier Street submitted an application for the boundary wall.

On 20 October 2008 the Town Planner met the owners of 3A Pier Street to inspect the rear of their property.

The owners have built cement rendered masonry walls on the east and west side boundaries and at the rear (south side), and have planted turf grass and installed a centrally located circular limestone wall feature just forward of the rear boundary wall. 200mm high limestone block walls have been built 1m inside the east and west side boundary walls.

The submitted plans specify that the 2.4m height of the rear boundary wall is based on the top of the 200mm high limestone block walls next to the east and west side boundaries being "new ground level", that is the "00" level or natural ground level (NGL).

However it is the level of the grassed area which should be taken as NGL therefore the height of the boundary wall at the rear is actually 2.6m not 2.4m as specified on the submitted plans.

The western portion of the boundary wall at the rear is built up against a shed, which is at the rear of 1c Fraser Street. The height of this section of the boundary wall closely matches the height of this shed.

The eastern portion of the rear boundary wall is built next to a small courtyard which is at the rear of 1c Fraser Street. This courtyard is infested with weeds and appears to be unused.

**Issues****Unauthorised Development**

A masonry boundary fence built at the rear of 3A Pier Street is 2.6m above natural ground level (NGL).



LPP 143 states the following with regard to fence design:

*“3.1 Maximum Height*

*The maximum height of any part of the fence is to be 1.8m.”*

Under normal procedural circumstances Council would be required to exercise its discretion to permit a variation to fence height following consultation with potentially affected adjoining property owners.

In this particular case an over-height masonry boundary fence has been built without Council approval and this application is submitted pursuant to Clause 8.4 of TPS 3, which states:

*“8.4. Unauthorised Existing Developments*

*8.4.1. The local government may grant planning approval to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme.*

*8.4.2. Development which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except the granting of planning approval, and the continuation of the development unlawfully commenced is taken to be lawful upon the grant of planning approval.*

*Note: 1. Applications for approval to an existing development are made under Part 9.  
2. The approval by the local government of an existing development does not affect the power of the local government to take appropriate action for a breach of the Scheme or the Act in respect of the commencement or carrying out of development without planning approval.”*

Submissions

The owners of 1b and 1c Fraser Street at the rear of the subject land, have objected to the boundary wall.

**Discussion**

Submissions

The property at 1B Fraser Street does not abut the subject land.

A site visit confirms that the driveway between 1B and 1C Fraser Street which provides access from Fraser Street to the rear boundary of these properties is the only part of the property at 1B Fraser Street that could be said to be affected by the “unauthorised existing development” at the rear of 3A Pier Street.

In relation to the aesthetics of the boundary wall the owners of 3A Pier Street have stated that they intend to cement render the rear of this wall visible to 1B and 1C Fraser Street, subject to the affected owners agreeing to allow access to their properties for this work to be done.

At 1C Fraser Street there is a granny flat at the rear which was approved by Council in November 1992 on a reduced rear setback with a 2-storey house at the front.

There are 2 lock-up timber doors which provide access to this granny flat from the driveway access between 1B and 1C Fraser Street.

Fixed to these doors are brass numbers “1D”.

Confused about this situation because there are no records that there is a property at 1D Fraser Street, the Town Planner contacted the owner of 1C Fraser Street, the author of the submission objecting to the boundary wall at the rear, to enquire as to whether or not this was a separate property.



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Ms Smith advised that the postman had been delivering the mail to 1C Fraser Street by depositing it at the doors to the granny flat at the rear so she fixed the number 1D to the doors to the flat. She claims that the effect of this resulted in the mail to 1C then being delivered to 1C (notwithstanding that there is a clearly marked letterbox at the front of the property next to the footpath along Fraser Street).

The applicant/owner has responded to the submission from Ms Smith offering to "bag" (cement render) the side of the wall that faces 1C Fraser Street.

**Conclusion**

It is clear that the works being completed at the rear of 3A Pier Street are aesthetically pleasing and will contribute to the general amenity of this property.

However, the wall at the rear exceeds 'standard' fence height by 0.8m, and should have been approved by Council in the first instance.

It is evident that a portion of this wall would have been already over-height due to the presence of the shed at the rear in the north-west corner of 1C Fraser Street, and cement rendering this part of the wall by the owners of 3A Pier Street did not require Council's approval.

The remainder of the rear boundary wall backs onto a small undeveloped open space at the rear of 1C Fraser Street, and this part of the wall is the contentious issue.

According to the RDC a standard fence height of 1.8m along the rear boundary would cast a 2.7m wide shadow over the open space at the rear of 1C Fraser Street at midday on 21 June. A wall 2.6m high will increase this overshadow to 3.7m.

This increase in overshadow is not considered to be excessive given that the undeveloped courtyard is already substantially overshadowed by a 'standard' 1.8m high fence/wall.

Maintaining a consistent fence height at the rear is considered to be a better looking option than a "stepped down" fence.

It is not considered necessary to fix a moulded feature to this wall which extends above the existing wall height of 2.6m and this aspect of the application is not supported.

**RECOMMENDATION**

That Council pursuant to Town Planning Scheme 3, Clause 8.4 grants planning approval for unauthorised existing development comprising a boundary wall higher than 1.8m, and at the rear of No. 3A (Lot 2) Pier Street, East Fremantle in accordance with the plans date stamp received on 30 September 2008 subject to the following conditions:

1. prior to the issue of a Building Approval Certificate the applicant/owner is to submit amended plans which specify that the proposed moulded wall feature does not jut above the boundary wall
2. 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.
3. a Building Approval Certificate must be obtained, and this certificate must specify that the external finish of the side of the wall which faces 1B and 1C Fraser Street is to be to the satisfaction of the owners of these properties.

**Footnote:**

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

- (a) a copy of the approved plans as stamped by Council are attached and the application for a Building Approval Certificate is to conform with the approved plans unless otherwise approved by Council.



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- (b) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*

The email from Mr & Mrs Enright, referred from Correspondence (MB Ref 381.2) was tabled.

Ms Smith (adjoining owner) addressed the meeting in relation to the unauthorised wall.

Mrs Enright (owner) addressed the meeting in relation to this matter.

**387. ADJOURNMENT**

Mayor Ferris – Cr de Jong

That the meeting be adjourned at 10.20pm to allow further consideration of this matter. CARRIED

**388. RESUMPTION**

Cr de Jong – Cr Arnold

That the meeting be resumed at 10.30pm with all those present prior to the adjournment, in attendance. CARRIED

**389. TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN) CONTINUED:****389.1 Pier Street No 3A (Lot 2)**

Mayor Ferris – Cr de Jong

That Council refuse planning approval for the unauthorised existing development consisting of a wall higher than 1.8 metres at the rear of 3A Pier Street.

CARRIED UNANIMOUSLY

Reason for not supporting Officer's Recommendation

Council does not believe that the amenity of the property owner at 1C Fraser Street has been properly addressed in the officer's report.

**389.2 T113.4 Angwin Street No 27 (Lot 45)**

**Applicant & Owner: Riverview Asset P/L**

**Application No. P182/2008**

**Cr Olson – Cr de Jong**

The adoption of the Committee's recommendation which is as follows:

That Council exercise its discretion in granting approval for a variation to the north side boundary wall height pursuant to Local Planning Policy 143 – Fencing from 1.8m to 2.9m for the construction of a barbeque and sections of a new rendered brick fence/wall up to 2.9m above natural ground level (NGL), on the north side boundary common with Surbiton Road at No. 27 (Lot 45) Angwin Street, East Fremantle in accordance with the plans date stamp received on 30 September and revised plan (SK4) date stamp received 2 December 2008 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 licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.

4. 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.
5. 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:*

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

CARRIED

389.3

**T116.4 Sewell Street No. 70 (Lot 303)**

**Applicant & Owner: Andrew & Kathryn Davidson**

**Application No. P190/2008**

**Cr de Jong – Cr Nardi**

The adoption of the Committee's recommendation which is as follows:

That Council exercise its discretion in granting approval for a variation to the south side boundary setback for a boundary wall pursuant to the Residential Design Codes from 1.5m to 0m for the construction of alterations and additions to the single storey house at No. 70 (Lot 303) Sewell Street, East Fremantle comprising a shed, studio/games room, store, and a verandah extension on the north side in accordance with the plans date stamp received on 21 October 2008 subject to the following conditions:

1. prior to the issue of a building licence amended plans are to be submitted specifying that the walls for the proposed shed are separate from the common boundary fence.
2. the proposed studio is not to be used for the purposes of human habitation unless with the approval of Council.
3. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
4. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
5. the proposed additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
6. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
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.

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8. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
9. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
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:*

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *it is suggested that the applicant/owner consider the reinstatement of an awning over the triple casement windows at the front of the house.*
- (e) *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).*
- (f) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (g) *the verandah extension may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

389.4

**T116.5 Wolsely Road No. 24 (Units 1 – 12)**

**Applicant & Owner: The Owners of 24 Wolsely Road**

**Application No. P188/2008**

**Cr Olson – Cr Nardi**

That Council exercise its discretion in granting approval for the following:

- (a) variation to the length of a boundary wall on the east side pursuant to Local Planning Policy 142 from 9m to 11.7m;
- (b) variation to the permeability of a 5.8m long section of front fence from 60% to solid up to 1.8m high;

for the refurbishment of the 12 multiple dwellings at No. 24 Wolsely Road, East Fremantle comprising:

- 8 new carports;
- Storeroom;
- New visitor parking;
- New bin and drying area;
- Landscaping;
- New outdoor entertainment area including a gazebo in the southeast corner;
- New finishes to balconies, balustrades and building;
- Open style front fence including a 5.8m long X 1.8m high rendered brick wall along the corner truncation with signage: "Wolsely Apartments No 24";

in accordance with the plans date stamp received on 10 October 2008 subject to the following conditions:

1. prior to this issue of a building licence amended plans are to be submitted specifying that the infill fence panels are to be horizontal, and a landscape plan provided to the satisfaction of the CEO in consultation with relevant officers;

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2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed alterations and additions are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. 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.
7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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 owner.*
- (d) *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).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *the gazebo may not be enclosed without the prior written consent of Council.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

389.5

**T116.6 Osborne Road No. 53 (Lot 11)**

**Applicant: Manor Homebuilders Pty Ltd**

**Owner: Ricky Cooper & Liann Cooper**

**Application No. P165/2008**

*Cr de Jong – Cr Olson*

*That the officer's recommendation be adopted.*

LOST ON THE CASTING VOTE OF THE PRESIDING MEMBER

**Mayor Ferris – Cr Rico**

That the revised application for demolition of the existing residence and construction of a single storey residence at No. 53 (Lot 11) Osborne Road, East Fremantle in accordance with plans stamp dated 10 November 2008 be refused on the following grounds:

The detrimental impact on the local streetscape should the existing single storey residence be demolished as it is considered desirable to retain this residence along with those at 51 & 55 Osborne Road as part of a group of single storey bungalows representative of their era. This aim is considered to be consistent with the following objectives:

- (i) Clause 10.2(a), particularly in relation to Clauses 1.6(a), (b) & (c) of TPS No. 3.
- (ii) Clause 10.2(b), particularly in relation to Clauses 3.1 & 3.2 of Local Planning Strategy.
- (iii) Clause 10.2(j).
- (iv) Clause 10.2(o).
- (v) Clause 10.2(p).
- (vi) Clause 10.2(z), particularly in relation to the comments of the Town Planning Advisory Panel regarding the retention of the existing residence.

**Footnote**

*The Town Planner to negotiate further with the applicant regarding a proposal which utilises the existing residence.*

CARRIED ON THE CASTING VOTE OF THE PRESIDING MEMBER

**Reason for not supporting the Officer's Recommendation**

Council concluded that the proposed new development and the demolition of the existing property which this development would necessitate would not be consistent with the following objectives of Council's TPS3:

- (i) Clause 10.2(a), particularly in relation to Clauses 1.6(a), (b) & (c) of TPS No. 3.
- (ii) Clause 10.2(b), particularly in relation to Clauses 3.1 & 3.2 of Local Planning Strategy.
- (iii) Clause 10.2(j).
- (iv) Clause 10.2(o).
- (v) Clause 10.2(p).
- (vi) Clause 10.2(z), particularly in relation to the comments of the Town Planning Advisory Panel regarding the retention of the existing residence.

**389.6 T116.7 A Guide to Meeting Procedure (Brochure)**

**Cr Nardi – Cr de Jong**

**The adoption of the Committee's recommendation which is as follows:**

**That this matter be deferred to the next meeting of the Town Planning & Building Committee.**

CARRIED

**390. HEALTH & GENERAL PURPOSES****390.1 Strategic Waste Management Plan**

*By Shelley Cocks Principal Environmental Health Officer on 5 December 2008*

**BACKGROUND**

The Waste Management Board of Western Australia has developed the Zero Waste Plan Development Scheme in conjunction with the Western Australian Local Government Association and local governments.

**REPORT**

All local governments were required to analyse the current status quo of waste management and develop future initiatives to contribute to waste minimisation and landfill diversion for the next five years.

The Zero Waste Development Plan required participating local governments to develop a Strategic Waste Management Plan with funding provided by the Department of Environment and Conservation. This funding was provided to the SMRC in two phases.





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Phase 1 data was gathered in August 2007 and Phase 2 of the scheme involved the preparation of a draft plan.

The SMRC in collaboration with officers of the Cities of Cockburn, Fremantle, Melville, Rockingham and Towns of East Fremantle and Kwinana undertook a series of workshops facilitated by Mr Bruce Bowman of Bowmans and Associates to develop a draft plan. This plan must be endorsed by each of the member councils participating in the collaborative regional plan prior to final acceptance by the Department of Environment and Conservation.

The plan has been advertised in local newspapers seeking public comment and input was also invited from Councils.

Council at its meeting held on 21 October 2008 considered the draft Plan and resolved as follows:

*"That elected members review the draft Strategic Waste Management Plan along with its 44 recommendations and submit comments to the Principal Environmental Health Officer by Friday, 31 October, in order to facilitate an integrated Council response."*

At the end of the comment period, no submissions had been received from elected members. Shelley Cocks submitted a number of grammatical and typographical errors which have been included in the final report. The SMRC received many requests for copies of the Plan, however, only one submission was received by the cut off date of 14 November. This was from Dr Heather Lamont, Member Harvest Lakes Residents Association and was positive and supportive of the SWMP. Dr Lamont is to be responded to directly in respect of each of the points made.

A submission was also received after the cut off date from Mr Otto Mueller which covered a lot of general issues beyond the scope of the SWMP and he will also be contacted directly in respect of his submission.

At a meeting of the SMRC Regional Council on 27 November 2008, SMRC Council resolved the following:

"That

1. The minor amendments itemised in the report be incorporated into the final plan.
2. The SMRC Strategic Waste Management Plan be adopted,
3. that the adopted Strategic Waste Management Plan be sent to the member councils CEO's for endorsement with a request that it be addressed at their respective December meetings of Council."

**ATTACHMENT**

**RECOMMENDATION**

That Council endorse the Strategic Waste Management Plan as adopted by the SMRC on 27 November 2008.

**Mayor Ferris – Cr Rico**

**That Council endorse the Strategic Waste Management Plan as adopted by the SMRC on 27 November 2008.**

CARRIED

*The Town Planner left the meeting at 11.35pm.*



9 December 2008

## MINUTES

**391. REPORTS OF CHIEF EXECUTIVE OFFICER****391.1 *Regional and Local Community Infrastructure Program***

*By Stuart Wearne, Chief Executive Officer, on 5 December 2008*

**BACKGROUND**

Last week the Federal Government announced \$300 million was being offered to local governments across Australia to help councils rebuild and refurbish local community infrastructure.

This is a one off allocation in 2008/09 which comprises two components:

- (i) \$250m as grants for every local government
- (ii) \$50m for a competitive grants program for strategic regional projects requesting a Federal contribution of at least \$2m.

Attached is information regarding these grants.

**ATTACHMENT**

Funding guidelines indicate that the projects must be new, not included in existing Council budgets, not be for roads and capable of being completed by September 2009.

With respect to the first component, Council will receive \$119,000. Comment by Chris Fitzhardinge, the Chief Executive Officer of the South West Group, indicates in that regard, the Town of East Fremantle has done relatively well although it was always entitled to the minimum grant of \$100,000.

Council has until 30 January 2009 to take up this offer. Because of the time frame, a delegated authority is sought with respect to what information is provided prior to 30 January 2009.

With respect to the second component, applications are due on 23 December 2008.

No extensions will be offered and incomplete applications will not be accepted.

The Chief Executive Officer wishes to speak further on these grants at the Council Meeting.

Because of the quite inappropriate time frame, delegated authority with respect to applying for the grants is being sought.

**RECOMMENDATION**

That the Chief Executive Officer's report be received and a delegated authority be granted to the Chief Executive Officer to submit appropriate grant applications for the two components of the Regional and Local Community Infrastructure Program, within the specific time frames.

**Absolute Majority Resolution Required**

**Cr Arnold – Cr de Jong**

**That the Chief Executive Officer's report be received and a delegated authority be granted to the Chief Executive Officer to submit appropriate grant applications for the two components of the Regional and Local Community Infrastructure Program, within the specific time frames.**

CARRIED UNANIMOUSLY  
ABSOLUTE MAJORITY

**391.2 *Heritage Protection***

*By Stuart Wearne, Chief Executive Officer on 5 December 2008*

**BACKGROUND**

On 18 December 2007, Council adopted the following resolution:

*"Council agree to the following course of action with respect to a revised Municipal Inventory, a revised Heritage List, a Scheme amendment aimed at requiring all*

demolitions to have planning approval and further progressing the concept of heritage areas.

1. Council reaffirm that the entire Draft Heritage Survey has been adopted as Council's revised Municipal Inventory, for public consultation purposes.
2. Council deems the "proper public consultation", as required under the Heritage of WA Act with respect to the compilation of Municipal Inventories will comprise:
  - (i) Council's meeting of 16 August 2006 at which the Draft Heritage Survey 2006 was tabled and discussed and adopted as Council's revised Municipal Inventory;
  - (ii) Council's meeting of 18 December 2007 at which the Draft Heritage Survey 2006 was tabled and discussed and reaffirmed as Council's revised Municipal Inventory;
  - (iii) the public comment provisions as referred to in (3) below.
3. Council to adopt in principle that, subject to the carrying out of the public consultation requirements given in clause 7.1.3 of Town Planning Scheme 3, Council's Heritage List comprise (unless the named property has been demolished):
  - (i) all of the current entries in Council's Heritage List
  - (ii) all of the entries in Council's current Municipal Inventory
  - (iii) all of the entries in council's revised Municipal Inventory, at this stage for a twelve month interim period.
4. Pursuant to the above, Council officers and elected members carry out their respective community consultation obligations in relation to clause 7.1.3 of Town Planning Scheme 3 concerning the inclusion of new entries on to Council's Heritage List whilst at the same time giving home owners the opportunity to comment on the issue of the entry of their property onto Council's revised Municipal Inventory.
5. Following close of comment period and preparation of officer's report, Council to make a formal decision on entries to be included in the Municipal Inventory.
6. Following close of comment period and preparation of officer's report, Council to make a formal decision on entries to be included in the Heritage List.
7. Council officers carry out requirements under clause 7.1.4 of TPS3.
8. Council review the outcomes of the revised MI and revised Heritage List after 12 months.
9. Council officers pursue the issue of a Scheme amendment aimed at restoring the previous provision regarding all demolitions requiring planning approval.
10. Council officers further progress the "heritage areas" approach."

on the Chief Executive Officer's recommendation.

For numerous operational reasons, essentially staff shortages, competing tasks and most significantly the impact of the Left Bank legal proceedings, the implementation of these recommendation has not greatly progressed.



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The Chief Executive Officer has nevertheless attempted to ensure there were no adverse consequences of this situation, especially with respect to inappropriate requests.

Nevertheless, the Chief Executive Officer, over the next few months, wishes to significantly progress this issue.

Meanwhile, the Chief Executive Officer is concerned that some properties which Council wishes to include on its heritage list may be subject to demolition licence applications or other threats to the property's heritage values, over the Christmas/New Year recess period.

Accordingly, the Chief Executive Officer seeks delegated authority to make decisions with respect to item 5 and 6 of the abovementioned resolution, where considered appropriate to do so.

"Appropriate" in the above context would include:

- heritage listings deemed urgent due to threats of inappropriate demolitions etc (whether contended by owners or not)
- proposed inclusions on Heritage List where there is no contention by owners

**RECOMMENDATION**

That the following delegations be included in the Chief Executive Officer's current Delegations of Authority:

- (i) Pursuant to Section 45 of the Heritage of WA Act 1990, authority to include on the municipal inventory of the Town of East Fremantle, places within the Scheme area which the Chief Executive Officer considers are of cultural heritage significance and worthy of conservation under the relevant provisions of TPS3.
- (ii) Pursuant to clauses 7.1.2 and 7.1.3 of TPS3, authority to include on the Heritage List of the Town of East Fremantle, places within the Scheme area which the Chief Executive Officer considers are of cultural heritage significance and worthy of conservation under the relevant provisions of TPS3, subject to the required public consultation processes having been conducted, pursuant to clauses 7.1.3(a), (b), (c) & (d).

**Absolute Majority Resolution Required**

**Cr Rico – Cr Arnold**

**That the following delegations be included in the Chief Executive Officer's current Delegations of Authority:**

- (i) Pursuant to Section 45 of the Heritage of WA Act 1990, authority to include on the municipal inventory of the Town of East Fremantle, places within the Scheme area which the Chief Executive Officer considers are of cultural heritage significance and worthy of conservation under the relevant provisions of TPS3.
- (ii) Pursuant to clauses 7.1.2 and 7.1.3 of TPS3, authority to include on the Heritage List of the Town of East Fremantle, places within the Scheme area which the Chief Executive Officer considers are of cultural heritage significance and worthy of conservation under the relevant provisions of TPS3, subject to the required public consultation processes having been conducted, pursuant to clauses 7.1.3(a), (b), (c) & (d). CARRIED UNANIMOUSLY  
ABSOLUTE MAJORITY

**391.3 Brief Reports of Chief Executive Officer**

*By Stuart Wearne, Chief Executive Officer on 5 December 2008*

**(a) Royal George/Fremantle Society**

The Chief Executive Officer and Cr Collinson attended the recent AGM of the Fremantle Society which was held in the Royal George.

The attached letter refers.

**ATTACHMENT**



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It was appreciated that the Town was singled out for special thanks for the practical assistance and other forms of support which the Town has provided to the Fremantle Society, both at the meeting and in this letter.

As can be seen from the attached letter, Tom Perrigo advised the meeting that a development application had been received (whilst not mentioned, from the developers Terry McGee and Andrew Cobb) involving the Royal George "becoming a hotel again".

Elected members are advised this application has not yet been received by Council, however the Chief Executive Officer did speak at some length with Mr Perrigo after the meeting with respect to Council's issues and concerns regarding relevant events to date.

**RECOMMENDATION**

This information be received.

**Cr Rico – Cr de Jong**

**That this information be received.**

CARRIED

**(b) "Improving managing meetings, content and information and process of meetings, committees and workshops"**

The above was an agenda item submitted by Cr Arnold to the last Informal Briefing meeting.

The item generated a wide ranging discussion on various alternative means of managing Council business, in particular the "bigger items".

Outcomes were somewhat nebulous and difficult to document. Further, given the status of the Informal Briefings, outcomes are not necessarily "binding" on Council, even when the outcome is clear.

In this instance the Chief Executive Officer believes the next "best step" is to arrange a meeting between Cr Arnold, the Mayor, Cr Dobro (given Cr Dobro's role as both Deputy Mayor and Presiding Member of the Town Planning & Building Committee) and the Chief Executive Officer to further discuss Cr Arnold's suggestions and matters raised at the Informal Briefing (which neither the Mayor nor Cr Dobro had been able to attend).

Since the Informal Briefing, the Chief Executive Officer has spoken to the Mayor, Cr Dobro, Cr Arnold and Cr de Jong (who was the Presiding Member of the Informal Briefing) about this suggestion and all were understood to be in concurrence.

Currently Cr Dobro is away however it is expected the meeting will be held before Council resumes next February.

**RECOMMENDATION**

This information be received.

**Cr Rico – Cr de Jong**

**That this information be received.**

CARRIED

**391.4 *Geha Planning Application***

The CEO provided an update on developments in relation to this application.

**391.5 *East Fremantle Festival***

The CEO reiterated the Mayor's comments earlier in this meeting that the Festival, held last Sunday, had been a resounding success.

**Mayor Ferris – Cr Olson**

**That Council thank Festival Coordinator Cynthia Williamson, the East Fremantle Festival Committee and Council staff for their work in putting together the 2008 East Fremantle Festival which was a great success.**

CARRIED



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- 391.6**      **Application for event on East Fremantle Football ground**  
*By Stuart Wearne, Chief Executive Officer, on 9 December 2008*

**PURPOSE**

The purpose of this report is to obtain Council approval for an event to be held in February 2009 on East Fremantle Football Oval

**BACKGROUND**

Application has been received from Mr Alan Erdman of "Big Al's Poker Run". The application is seeking to use East Fremantle Football ground on Saturday 14 February 2009. Council has granted approval for "Big Al's Poker Run" to be held the last two years at East Fremantle Oval and by all accounts it has been a great success. Mr Alan Erdman has been in contact with the East Fremantle Football Club and has been given their approval to use the premises for staging the event on 14 February 2009.

**Description of Proposal/Application/Submission**

Copy of correspondence is attached.

**ATTACHMENT****REPORT****Introduction/Comments**

The reporting officer has received an application from Alan Erdman for use of the East Fremantle Oval to hold an event that uses a static display of hot rod vehicles presented by car enthusiasts. The event starts at the Burswood Parklands and finishes at East Fremantle Oval. It is expected that approximately 600 vehicles will be displayed in a static display with vehicle arriving on site at approximately 4pm on the day. The participants of the event are mainly families displaying early American classics, Australian Holdens and Fords and classical cars and hot rods.

Members of the public can view the vehicles followed by a barbeque picnic for the participants of the event and a presentation of awards for the event. After the presentation of awards participants will continue with entertainment into the night by way of a rock and roll band playing music of the sixties until approximately 11.30pm. The previous events have finished at 11.00pm however this will be their 30<sup>th</sup> Anniversary and Mr Erdman has requested an extra half hour be added to the night's celebrations.

**Issues**

The event poses a few issues which is planned will be managed as follows:

- **Impact of vehicles accessing the playing field**  
As the vehicles access the ground and remain stationary, issues of weight are not considered to be of concern. A bond would be taken from the event organisers to cover any cost of turf replacement due to oil leakage from vehicles. It would be anticipated that a bond of \$2000 would be sufficient to cover any costs Council may incur. The bond would be refundable should it not be necessary to replace any turf or irrigation. Irrigation would be turned off for this event over the weekend.
- **Noise management**  
As there will be a rock and roll band playing during the night it is planned to finish the playing of music at 11.30pm. Notification would need to be given to residents of Allen Street and Moss Street as the most directly affected residents in order that they have the opportunity to make alternative arrangements for that evening if they wish. Residents living in these streets would have been aware of the possibility of event like these when purchasing their homes next to a major public venue. All live band and recording generated noise will cease at 11:30pm
- **Waste & refuse management**  
As some 2000 people are expected to attend the event the management of refuse and rubbish is to be addressed through the supply of rubbish bins placed strategically around and throughout the ground to minimise the issue of litter. Costs associated with this will be paid for by the promoter of the event through the payment of the fee for the event.

- **Parking**  
During the football season between 2000 and 3000 people attend football games and this event is expected to attract some 2000 people. This will bring with it a need for parking and as the event has provided parking for all the participants, the impact of parking around the football ground is expected to be minimal. The area has coped with these numbers of people previously for football games and with all participants parking their vehicles on the oval in a display situation, parking around the ground is not expected to be high impact and will cause little or no problems. Costs associated with Rangers and the enforcement of local parking laws is to be covered by the event organiser in the fee for the use of the ground.
- **Event fees and charges**  
Fees charged for last year's event are listed below and this should form the basis of the fee.

<b>EVENT COSTS – EAST FREMANTLE OVAL</b>				
<b>Item</b>	<b>Qty</b>	<b>Unit Type</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Ground hire fee as per schedule of fees & charges	1	Lot	304.55	304.55
Rubbish bins collection & disposal	45	Each	3.94	177.30
Staff costs for placement & collection of bins	2	Hours	81.40	162.80
Ranger Services parking control	6	Hours	52.80	316.80
Final cleanup of site	4	Hours	123.75	495.00
General administration fee = 25% of costs	1	Lot	843.20	843.20
Contingencies				300.00
			Sub Total	2,599.65
			GST	259.96
			Total (rounded)	2860.00

As demonstrated in the above table, costs that Council will incur as a direct result of this event should form part of the fees and charges to be passed onto the event organiser with a \$2,000 bond, refundable should no damage to the ground occur.

Elected members may consider that as this event is partially a charity event and some of the proceeds are donated to charity, they may wish to waive or discount the fees and charges.

- **East Fremantle Football Club**  
The East Fremantle Football Club was originally approached for this event and in conversations held with the Chief Executive Officer of the Club he has stated the Club is supporting the event and will be providing some minor catering and availing the licensed area to the event.
- **Public liability insurance**  
The event organiser has indicated that all relevant insurance policies will be in place prior to the event and copies of these will be provided to the town for verification.
- **Emergency Management plan**  
An emergency management plan is currently being developed in accordance with relevant legislation and will be presented to the Town for its endorsement prior to the event. The event will not proceed without this plan.
- **Public entrance fees**  
Fees for ground entrance to the general public will be \$10.00. Surrounding affected residents will be offered complimentary entrance tickets.

#### **Statutory Requirements**

Nil

**Relevant Council Policies**

Council Policy No 102 Use of East Fremantle Oval and hours of use states as follows:

*“The East Fremantle Football Club and other prospective users of the East Fremantle Oval be advised that any activity on the oval which may adversely affect the amenity of the locality, that is by the use of the lights on the oval or by the generation of noise as part of training activities or competitive games, later than 9:00pm at night or earlier than 7:00am on Monday to Saturday or 9:00am Sundays, is not permitted.”*

As this event has noise generation after 9:00pm at night and uses the ground’s lights, an absolute majority of Council must approve the variation to the Policy to allow the event to proceed.

**Principal Activity Plan Implications**

Nil

**Strategic Plan Implications**

Nil

**Financial/Resource/Budget Implications**

No financial implications are expected on the budget for this event as all costs associated with the event incurred by Council will be charged to the organiser in the fees charged for holding the event.

**Conclusion(s)**

That the event should be supported by Council as the event is of low impact with minimal disturbance to residents and is generally a family orientated event.

**RECOMMENDATION(S)**

That Council approve the relaxation of Policy No 102 “Use of East Fremantle Oval” to allow the “Big Al’s Poker Run” event to be held at the East Fremantle Football ground on 9 February 2008 subject to the following:

1. payment of bond of \$2,000 to Council with other fees to be delegated to the Chief Executive Officer
2. all lighting associated with the event is terminated at 11:45pm
3. all noise generated by the playing of live and recorded music be in accordance with relevant noise abatement regulations and is to cease by 11.30pm on the day of the event.
4. this approval is subject to the provision of satisfactory public liability insurance documentation being presented to the satisfaction of the Chief Executive Officer.
5. this approval is subject to the satisfactory approval of an emergency management plan being present to the Chief Executive Officer prior to the events commencement.

**Absolute Majority Resolution Required**

**Cr Olson – Cr Rico**

**That Council approve the relaxation of Policy No 102 “Use of East Fremantle Oval” to allow the “Big Al’s Poker Run” event to be held at the East Fremantle Football ground on 9 February 2008 subject to the following:**

1. **payment of bond of \$2,000 to Council with other fees to be delegated to the Chief Executive Officer**
2. **all lighting associated with the event is terminated at 11:45pm**
3. **all noise generated by the playing of live and recorded music be in accordance with relevant noise abatement regulations and is to cease by 11.30pm on the day of the event.**
4. **this approval is subject to the provision of satisfactory public liability insurance documentation being presented to the satisfaction of the Chief Executive Officer.**



5. this approval is subject to the satisfactory approval of an emergency management plan being present to the Chief Executive Officer prior to the events commencement.

CARRIED  
ABSOLUTE MAJORITY

**391.7 Annual Electors' Meeting – 11 December 2008**

The CEO reminded elected members that the Annual Electors' Meeting would be held at 6.30pm on Thursday, 11 December 2008 and their attendance was requested.

**392. CONFIDENTIAL BUSINESS**

**392.1 Bitumen Footpath Tender**

Cr Rico – Cr Nardi

That this matter be dealt with on a confidential basis, in accordance with Section 5.23(2)(c) of the Local Government Act. CARRIED

A confidential report was considered.

**CONFIDENTIAL ATTACHMENT**

Cr Olson – Cr Arnold

Council accept the tender of \$288,772.30 from Armadale Bitumen for bitumen footpath works. CARRIED

**392.1 Left Bank Bar & Café**

Cr Olson – Cr Arnold

That this matter be dealt with on a confidential basis, in accordance with Section 5.23(2)(d) of the Local Government Act. CARRIED

The CEO provided an update on the current situation.

**393. OPENING OF MEETING TO PUBLIC**

Cr Nardi – Cr Rico

That the meeting be reopened to members of the public. CARRIED

**394. NOTICES OF MOTION BY ELECTED MEMBERS FOR CONSIDERATION AT THE FOLLOWING MEETING**

Nil.

**395. MOTIONS WITHOUT NOTICE OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING**

Nil.

**396. CLOSURE OF MEETING**

There being no further business, the meeting closed at 12.15am.

*I hereby certify that the Minutes of the meeting of the Council of the Town of East Fremantle, held on 9 December 2008, Minute Book reference 369. to 396. were confirmed at the meeting of the Council on*  
  
.....  
  
\_\_\_\_\_  
*Presiding Member*