



15 December 2009

MINUTES

MINUTES OF A COUNCIL MEETING, HELD IN THE COUNCIL CHAMBERS, ON TUESDAY, 15 DECEMBER, 2009 COMMENCING AT 6.35PM.

344. DECLARATION OF OPENING OF MEETING

The Mayor (Presiding Member) declared the meeting open.

344.1 Present

Mayor A Ferris	Presiding Member
Cr C Collinson	
Cr B de Jong	
Cr R Lilleyman	
Cr S Martin	
Cr D Nardi	
Cr M Rico	
Mr S Wearne	Chief Executive Officer
Mr R Doust	Acting Town Planner (To 10.35pm)
Ms J May	Minute Secretary

345. 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."

346. WELCOME TO GALLERY AND INTRODUCTION OF ELECTED MEMBERS AND STAFF

There were 20 members of the public in the gallery at the commencement of the meeting.

347. RECORD OF APPROVED LEAVE OF ABSENCE

Nil.

348. RECORD OF APOLOGIES

Apologies were submitted on behalf of Cr Wilson and Cr Olson.

349. PRESENTATIONS/DEPUTATIONS/PETITIONS/SUBMISSIONS

Nil.

350. PUBLIC QUESTION TIME

Mr Graham Mackie asked if a Council decision would be made tonight with respect to the proposed new shelters in Riverside Road. The Mayor advised the matter was not listed on the agenda and further that no decision was expected to be taken as Council was still awaiting advice from the Swan River Trust.

351. APPLICATIONS FOR LEAVE OF ABSENCE

351.1 Cr de Jong

Cr de Jong sought leave of absence for the Council Meeting on 2 February 2010.

Cr Rico – Cr Nardi

That leave of absence be granted to Cr de Jong for the Council Meeting on 2 February 2010.

CARRIED

352. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

352.1 Council Meeting – 17 November 2009

Cr Collinson – Cr Lilleyman

That the Minutes of the Council Meeting held on 17 November 2009 be confirmed.

CARRIED



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353. ANNOUNCEMENTS BY MAYOR WITHOUT DISCUSSION

353.1 *East Fremantle Festival*

Mayor Ferris advised that the East Fremantle Festival had been held on Sunday, 5 December 2009 and had again been an overwhelming success with over 10,000 people attending.

The Mayor wished to thank Council staff, particularly Shelley Cocks, Council's Principal Environmental Health Officer, Council's Festival Co-Ordinator, Cynthia Williamson and the elected members of the Festival Committee for their contribution in making this year's Festival so successful.

The Mayor also requested a letter of thanks be forwarded to Lotterywest for the \$17,393 grant received to assist in the organising of this year's event.

353.2 *Pioneers Christmas Lunch*

Mayor Ferris advised that Council's Pioneer Christmas Lunch was held this year on Monday, 7 December 2009 and attended by local members of parliament, a number of elected members and staff, and approximately 170 senior residents who had lived in the district for over 30 years.

The Mayor thanked the CEO, Sue Limbert, Janine May and other staff and volunteers for their assistance in organising this year's event.

Mayor Ferris read an email from Mrs Dawn Brown of Glyde Street thanking Council for the fantastic day.

353.3 *Citizenship Ceremony*

Mayor Ferris advised that 16 residents were granted citizenship at a ceremony held on Monday, 14 December and attended by Hon Melissa Parke MP, Hon Simon O'Brien MLC, Hon Lynn MacLaren MLC, a number of elected members and family and friends.

The Mayor thanked the CEO, Peta Cooper, Janine May and elected members for their assistance in making this such an enjoyable evening.

353.4 *Fremantle Society*

Mayor Ferris read correspondence from the Fremantle Society thanking Council for its cash donation of \$2,000 and in kind donation of \$3,000 towards a Premium Sponsorship for the publication of the forthcoming history of the Society.

353.5 *Central Institute of Technology*

Mayor Ferris advised of a certificate of appreciation from the Central Institute of Technology in recognition of the contribution and valued support Council's HACC services provided to students during 2009.

353.6 *Mr Robert Apps*

Mayor Ferris read an email from Mr Apps commending Council and the CEO on the modest rate rise this year compared to some other councils. Mr Apps advises that sometimes small proves to be sensible and desirable.

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

Nil.

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

Nil.



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356. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)**356.1 T112.6 Munro Street No 18 (Lot 5049)**

J Byrne/D Cullity: Submitting correspondence between themselves and the Christies dated December 2007 indicating an agreement relating to the earlier planning application that the entire length of the fence would be built on the Christie's property, flush on the Byrne/Cullity side.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 358.3 & 361.1).

CARRIED

356.2 T112.6 Munro Street No 18 (Lot 5049)

Peter Webb & Associates: Requesting, on behalf of Mr & Mrs Christie, that the fencing application for 18 Munro Street be withdrawn from the Council agenda of 15 December 2009.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 358.3 & 361.1).

CARRIED

356.3 T112.8 Penshurst Street No 12 (Lot 2)

ADM Group: Advising of the following changes to the planning application for 12 Penshurst Street, following the Town Planning & Building Committee meeting on 8 December:

- compliance with R Codes regarding excavation and fill
- compliance with height restrictions
- privacy screening to be installed to non-compliant windows on western side of development.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 361.2).

CARRIED

356.4 T113.2 Preston Point Road No 114 (Lot 4965)

P Bartolomei: Urging Council to require the applicants to comply with the height requirements for the proposed development at 114 Preston Point Road.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 361.4).

CARRIED

356.5 Sewell Street No 78 (Lot 299)

R & D Building: Submitting further information regarding the proposal and advising that in respect to the objections from the owner of 80 Sewell Street the following changes have been made to the proposal:

- the building has been moved to the north by 500mm
- the southern section of the building has been moved 1500mm to the east and reduced in height.

Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 361.5 & 364.1).

CARRIED

356.6 Sewell Street No 78 (Lot 299)

M Thirsk: Submitting objections to the proposal for 78 Sewell Street in relation to major overshadowing of her adjacent property.



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Cr Rico – Cr Collinson

That the correspondence be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref 361.5 & 364.1).

CARRIED

357. ORDER OF BUSINESS

Cr Martin – Cr de Jong

That the order of business be changed to allow members of the public to address planning applications.

CARRIED

358. TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN)

358.1 T112.3 George Street No. 88 (Lots 533 & 534)

Application No P160/09

Owner: Puresea Investments Pty Ltd

Mr Broad (applicant) addressed the meeting seeking reconsideration of the condition requiring screening to the north facing opening to the first floor dining area, as he considered this issue could be better assessed following the completion of the works.

Cr Martin – Cr Lilleyman

That Council amend the planning approval dated 15 July 2008 for a mixed use development at Lots 533 & 534 (No. 88) George Street, East Fremantle, by approving additional floor space as shown on plans received 26 October 2009 and subject to the following conditions:

1. The north facing opening to the first floor dining area is to be provided with visually impermeable privacy screening up to 1.6m in height above finished floor level. The requirement for this screening to be reviewed upon completion of the construction and delegated authority be issued to the CEO in conjunction with relevant officers to liaise with the affected neighbours regarding this matter.
2. All storm water resulting from the development is to be retained on site.
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 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.
5. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
6. The proposed works 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.
7. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *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.*
- (b) *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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- (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).*
- (d) *In regard to the condition relating to the finish of the neighbour's side of the rear boundary wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (e) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- CARRIED

358.2

T112.5 George Street No. 129-131**Applicant: Angelfyre Pty Ltd T/A "Gigi's on George"****Owner: E & D D'Alessandro****Application No. P106/2009**

Mr Lupis (restaurant owner) addressed the meeting in support of the works undertaken. He stated the infill metal panels had been removed. Regarding Condition 7, Mr Lupis stated that the bins were presently being placed in the car park area pursuant to a 12 month old agreement with the owner, Eric D'Alessandro.

The CEO advised that even if such an agreement existed, it was unacceptable due to the terms of the Pizza Palace planning approval, which was based, in part on the two car bays involved being provided and continuing to be provided, for the use of Pizza Palace.

Cr Nardi – Cr Collinson**That Council grant retrospective planning approval for:**

- a change in use from Consulting Rooms to Restaurant for the former tanning salon located on Part Lot 2 on Strata Plan 41827; and
- existing building works to Part Lots 2 and 3 on Strata Plan 41827;

associated with Gigi's Restaurant at 129-131 George Street, East Fremantle as shown on plans received 10 November 2009 and subject to the following conditions:

1. The limestone steps and retaining walls to the front of the outdoor dining area do not form part of this retrospective planning approval.
2. The metal infill panels provided to the upper portion of the balcony are to be removed, details of which are to be provided to the CEO for endorsement prior to issuance of a Building Approval Certificate.
3. The opaque, white plastic panels affixed to the lower portion of the front balcony are to be removed, details of which are to be provided to the CEO for endorsement prior to issuance of a Building Approval Certificate.
4. Weatherboard cladding or similar is to be provided to the street-facing limestone wall associated with the cool room, details of which are to be provided to and endorsed by the CEO for endorsement prior to issuance of a Building Approval Certificate.
5. A detailed landscaping plan is to be provided to and endorsed by the CEO for endorsement prior to issuance of a Building Approval Certificate.
6. There is to be no increase in the number of seats for restaurant patrons, compared with the situation which existed prior to the unauthorised works being carried out, with any increase requiring further planning approval.
7. Prior to the issue of a Building Approval Certificate, arrangements, which are to be to the satisfaction of the Chief Executive Officer, in consultation with relevant officers, are to be made for the storage of garbage and recyclable matter in appropriately designed and constructed bins, together with the appropriate location of those bins, which are not to be placed in the adjoining car park area to the east of the property, or on Council's footpath or on any other land belonging to Council or under Council's care and control.

Footnote:

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

- (a) *With respect to condition 1, in the event the limestone steps and retaining walls determined by Council have not been approved, they are to be the subject of a separate application for retrospective planning approval.*

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- (b) *The restaurant area approved as part of this application is not to be used for any purpose other than restaurant (including bar) without first obtaining planning approval for a change in use.*
- (c) *The service and consumption of alcohol in the restaurant area approved as part of this application is not permitted until an appropriate liquor licence has been secured*
- (d) *The works that are the subject of this approval are to be subject of application for a Building Approval Certificate.*
- (e) *A copy of the approved plans as stamped by Council are attached.* CARRIED

358.3 *T112.6 Munro Street No. 18 (Lot 5049)*

Application No. P159/09

Owner/Applicant: BJ Christie

The following additional report was considered:

Munro Street No. 18 (Lot 5049)

Application No. P159/09

Owner/Applicant: BJ Christie

By Rohan Doust, Acting Town Planner, and Stuart Wearne, Chief Executive Officer, 11 December 2009

BACKGROUND

Description of subject site

The subject site is:

- zoned Residential R12.5;
- 1062m² in area; and
- developed with a two-storey single house currently under construction.

Description of Proposal

Retrospective planning approval is sought for decorative caps that have been provided to existing fence piers.

Statutory Considerations

- Town Planning Scheme No. 3 (TPS3)
- TPS3 Local Planning Strategy
- Residential Design Codes of WA (the R-Codes)

Relevant Council Policies

- Council Policy Regarding Views (LPP071)
- Council Policy on Fencing (LPP143)

Date Application Received

26 October 2009

Advertising

Adjoining landowners

Date Advertised

24 November 2009

Close of Comment Period

8 December 2009

No. of Days Elapsed between Lodgement and Meeting Date

49 days

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

15 February 2005 Council refuses an application for Planning Approval for a 3-level residence;

- 21 June 2006 State Administrative Tribunal dismisses an appeal against Council's decision to refuse the application;
- 21 November 2006 Council grants conditional approval for variations to wall height, setbacks, & 2 crossovers for the construction of a 3-level house;
- 13 June 2007 Building Licence 07/116 issued for 3-level residence and pool;
- 24 July 2007 Demolition Licence 07/167 issued for 2-storey house;
- 11 December 2007 Amended Building Licence issued for amended boundary retaining wall details.
- 12 May 2008 Building Licence issued for amendments to the northwest and northeast elevations of the approved house.
- 8 December 2009 The Town Planning and Building Committee considered an application for retrospective approval for pier capping to the existing boundary fence. Determination of the application was deferred until the Council meeting of 15 December 2009 to allow the applicant to respond to neighbour correspondence and advise on any encroachment issues associated with the pier caps, and to allow the Acting Town Planner to address a further two items of neighbouring correspondence. This application is the subject of this report.

**CONSULTATION
With Applicant**

Further to the Committee meeting of 8 December 2009, the CEO wrote to Ms Christie on 9 December, as attached.

A response on behalf of the applicants was received from Mr Webb on 11 December, as attached.

In short, Mr Webb requests the matter is withdrawn from the Council Meeting of 15 December to allow his clients more time to respond to the matters raised.

In addition Mr Webb states that it is his clients' opinion that the fence is fully compliant, notwithstanding if this were the case, there would have been no grounds for his clients' application.

Mr Webb's claim presumably also extends to the encroachment issue, referred to in the letter to Ms Christie, notwithstanding it was Mr Christie who brought this issue to the attention of the Town Planner.

Public Submissions

Public consultation for this application closed 8 December 2009.

The Agenda item for the 8 December 2009 Town Planning and Building Committee meeting (the determination of which was deferred) included the first two neighbour's submissions set out below. Since compilation of the Agenda a further three submissions have been received, copies of which are attached and summarised and responded to below:

Neighbours' Comments	Response
<i>Response #1</i>	
Some comments regarding 'orderly and proper' planning and Council's obligations to enforce relevant town planning regulations.	Comments acknowledged and noted.



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Neighbours' Comments	Response
Some notes on the history of issues between the respondee, the owners of the subject site, and the Town of East Fremantle.	Comments acknowledged and noted.
Council should not grant retrospective planning approval for the fence.	<p>It is recommended that the portions of over height fence to the secondary street and rear boundaries be retrospectively approved as it is considered that these portions of fence do not impact on the amenity of adjoining properties.</p> <p>It is recommended that the portions of over-height fence located forward of the subject house be reduced in height to 1.8m and the pier caps be removed.</p>
<i>Response #2</i>	
The four brick piers at the front corner of the property are more intrusive than first suggested on plans	Comment acknowledged and noted.
Do not approve the brick pier within the subject property and to the front corner.	This pier (sans decorative capping) has been approved as part of an earlier building licence.
Concerned that the four piers could be used for further intrusive uses or structures.	Any modifications to the fence that do not accord with the Fencing Policy will require planning approval.
The solid section of fence which has been built without approval does block views.	Noted. Please refer to the respondent's next comment.
Propose the solid section of fence stay as it is if the number of piers could be reduced, particularly the one within the subject property and to the front corner	<p>All fence piers (sans capping) have approval from the Town.</p> <p>The section of solid fence was approved, but not in its current location on the boundary (it was approved running parallel to the front of the lot). It is considered that the solid section of fence is better located on the boundary as it results in a slight increase to the fencing permeability when viewed from the front of the lot.</p>
Any gate should be visually permeable.	Agreed. This accords with the provisions of the Fencing Policy.
The respondent be shown detailed drawings of the intended structure prior to Council's approval.	A southern elevation of the fence has been requested and is included in the attached plans



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<i>Response #3</i>	
The brick pillars and solid section of fence block lounge room views of Rottnest Island, the Indian Ocean and the horizon.	Agreed. The pier caps are of a bulky profile and directly obscure the horizon line as viewed from the front porch and lounge room on the adjoining property. This is exacerbated by the close massing of the piers at the shared boundary. Photographs of the subject area attached.
Request Council to ask the neighbours to remove the over-height plinths (pier caps) to allow for views and lessen the negative impact of the development.	It is recommended the height of the unapproved pier caps which impact on views be reviewed by Council.
<i>Response #4</i>	
Objection to the fence height.	Comment acknowledged and noted.
<i>Response #5</i>	
The fence height should be limited to 1.8m.	<p>It is considered that the height of the fence in the front setback area be reviewed.</p> <p>With respect to the other boundaries, it is considered that the 2.1m pier height can be supported given that the scale is compatible with that of the subject house, and given that these over-height portions of fence do not impact unduly on the amenity of adjoining properties including their access to views.</p> <p>It should be noted that one of the sections of over-height fence is located at the boundary shared with the respondent. In recommending that this portion of fence can remain at 2.1m high the following is noted:</p> <ul style="list-style-type: none"> - the fence piers do not unduly obscure views from the respondent's property; - the fence piers are not located adjacent to any outdoor or indoor living area. <p>Notwithstanding the above Council may wish to review the height of the fence to the boundary shared with the respondent.</p> <p>Photographs of this section of fence and its impact on views are attached.</p>

It is understood the applicant may table a response to the neighbour concerns at this Council meeting.

Town Planning Advisory Panel

The Panel viewed the proposal on 24 November 2009 and advised that:

- *Fence height to the north-eastern boundary should be compliant in order to preserve the neighbour's view corridor.*
- *The height variation to all other boundaries was seen to be acceptable as the scale of the fence accords with the scale of the house.*
- *The pier capping is considered acceptable.*



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The above advice is concurred with except the comment that the pier capping is considered acceptable. A site visit has demonstrated that the pier capping to the front yard of the subject lot impacts on views from the adjoining property and is therefore is considered that this aspect of the existing development be reviewed.

Site Inspection

By Acting Town Planner, most recently on 10 December 2009.

REPORT**Considerations**Height and Visual Permeability of Fence

The portion of fence that is the subject of this application is the existing decorative pier capping that has been provided to fencing along the:

- primary street (south-west) boundary;
- secondary street (north-west) boundary;
- rear boundary (an existing single house adjoins the subject site at this boundary); and
- section of side boundary in the front setback area (an existing single house adjoins the subject site at this boundary).

of the subject property.

The existing fence comprises masonry piers to a height of 1.8m above the existing retaining walls and/or ground levels as approved by the Town. Visually permeable infill panels may be affixed to the fence piers in accordance with the provisions of the fencing policy. The retaining walls themselves were approved as part of the planning approval for the house.

Decorative pier caps have been affixed to the fence. The pier capping results in the piers having a typical height of 2.1m. This height is greater than the 1.8m height limit set out in the Fencing Policy and accordingly the variation requires planning approval.

It is considered that the over height fence piers to the north-western (side) and north-eastern (rear) boundaries can be supported for the following reasons:

- the fence to the north-west (side) boundary abuts the secondary street and hence does not impact on the amenity of any adjoining property;
- the fence to the north-eastern (rear) boundary does abut a residential lot developed with a single house, but given that the fence is not located adjacent to any outdoor living areas or major openings on that site it is considered that the pier caps do not impact unduly on the amenity of that property (including its access to views) and hence can be supported (this section of fence is also addressed above in the section on neighbour responses); and
- the proposed 2.1m high fence piers are of a scale commensurate with the large two-storey dwelling with undercroft garage currently being constructed at the subject site.

It is recommended that the remaining portions of fence, ie the portion of front fence located in the front setback area, namely the:

- section along the south-west, front boundary;
 - section along the 8.53m-long truncation at the western corner of the lot; and the
 - section on the south-eastern side boundary this is located in the front setback area;
- be modified to ensure that pier heights do not exceed 1.8m as per the requirements of the Fencing Policy.

The primary reason for enforcing the 1.8m height provision for fencing in the subject lot's front yard is to allow for owners of the adjoining property to retain as much as possible of the ocean glimpses seen across the front yard (please refer to the attached photos). The pier caps are of a bulky profile and directly obscure the horizon line as viewed from the front porch and lounge room on the adjoining property. This is exacerbated by the close massing of the piers at the shared boundary.



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Accordingly it is recommended that a condition accompany any retrospective planning approval requiring the piers located in the front setback area being reduced in height to no more than 1.8m.

Pursuant to Clauses 10.2(o) and 10.2(p) of the TPS3, it is further recommended the above be achieved by removing the pier caps to the front fence. If the pier caps to the front are retained (and the fence reduced in height to a compliant 1.8m), the capping will still contribute to the bulk and scale of the fence as viewed from the adjoining property to the east, and will still impede views of the ocean as seen from that property.

Accordingly it is recommended that a condition accompany any retrospective planning stating that the pier caps to the front fence are to be removed.

Finally, there is a 1.5m-long portion of solid fence along the side boundary in the front setback area (ie the portion of fence with the meter box). Although this section of fence does not meet the visual permeability requirements of the Fencing Policy, it was approved as part of the application previously considered by Council. The approval was for this portion of fence to form part of the pedestrian gate area and be parallel with the front boundary. The fence has since been constructed along the side boundary. It is considered that the provision of this fence along the side boundary instead of parallel with the front boundary allows for better views from the adjoining property and hence this aspect of the proposal is supported.

Height of Pier Caps

In response to Mr Webb's comments the Acting Town Planner measured the height of the piers and caps and confirms the height of the piers are at a consistent 1.8m and the height of the caps another 0.3m (total 2.1m)

Possible Encroachment of the Pier Caps

A preliminary assessment by the Principal Building Surveyor indicates the pier caps potentially encroach over the property boundaries. It is recommended any retrospective approval include a condition indicating that any approval of the pier caps does not extend to any element of the pier caps located outside of the applicant's property boundary.

DISCUSSION

In consideration of Mr Webb's request it is concluded that whilst it is of course open to elected members to defer this matter until the February Council meeting, the deferral request is not justified and is not recommended to be supported.

In so recommending, elected members are advised Mr Webb has been advised that in response to his client's concerns, responses to Council's questions, which had been requested by 4pm 10 December, will be received and considered at any time prior to the Council Meeting of 15 December, or simply received at the Council Meeting.

This is notwithstanding the fact that despite the weight Mr Webb places on his client's need for adequate time to consider neighbour objections, the primary objections, which are from Mr Cullity, have been known to his clients for a considerable period, due to direct contact between themselves (or their agents) and Mr Cullity.

It is also notwithstanding the fact that in terms of the height of the fence, by virtue of the Christie's application, they are effectively conceding it is over height. It is a very simple matter to verify this and thus no reason for any delay.

It is also notwithstanding the fact that it was Mr Christie who raised the issue of the encroachment into the Cullity property, suggesting his clients have had a considerable period to investigate this issue already.

In any event, between December 9 when the Acting Town Planner spoke with Ms Christie and the Council Meeting of 15 December, there is more than sufficient time for any survey to be carried out.

It is also notwithstanding the fact that neither the applicants nor any of their agents chose to attend the Committee meeting of 8 December, at which they had the opportunity to make whatever representation they wished.

It is also notwithstanding the fact that Council wrote to Ms Christie the day after the meeting, spoke to Ms Christie before close of business that day about the contents of the letter and emailed the letter to an email address provided by Ms Christie.

It appears Mr Webb is correct in stating that his client did not receive the standard acknowledgement letter etc after the application was received. This was related to recent planning staff resource issues arising from staff shortages, staff changes and an upsurge in planning applications. Nevertheless his clients could always have checked the progress of the application and given the date of receipt, and the fact it was not considered at the November round of meetings, assumed the matter was to be dealt with in the February round.

In any event that aspect is more than considered to have been addressed by deferring decision making in this matter for a full week.

RECOMMENDATION

Council exercise its discretion in granting retrospective planning approval for:

- fence piers having heights of 2.1m in lieu of the 1.8m height limits as specified by the Local Laws Relating to Fencing (LPP143)

for existing fencing at Lot 5049 (No. 18) Munro Street, East Fremantle, as shown on plans received 26 October and 7 December 2009 and subject to the following conditions:

1. The fence piers to the:
 - south-west, front boundary;
 - 8.53m-long truncation at the western corner of the subject lot; and the
 - south-eastern side boundary and within the subject lot's front setback area;are to be reduced in height to 1.8m and the decorative capping provided to these piers is to be removed within 42 days from the date of this approval in order to maintain ocean glimpses as viewed from the adjoining property to the east.
2. This approval does not extend to any element of the pier caps located outside of the applicant's property boundaries.
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.
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. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
5. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *This decision does not include acknowledgement or approval of any additional 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 to 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) *In regard to the condition relating to the finish of the neighbour's side of the rear boundary 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.*

Correspondence from Ms Byrne (adjoining owner) and Peter Webb & Associates, referred from Correspondence (MB Ref 356.1 & 356.2) was tabled.

Ms Byrne (neighbour) addressed the meeting in opposition to the proposed over height fencing. Ms Byrne complained that as adjoining property owners they had not been adequately consulted by Council.

Mr Christie (owner) and Mr Webb (consultant) addressed the meeting regarding the proposal. Mr Christie objected to his neighbours being consulted by Council and claimed he had been advised by the former Town Planner that his application for retrospective approval would not be a problem and thus, despite being aware he did not have Council approval to do so, had proceeded to construct the fence, without Council approval, on that basis. Mr Christie advised that a recent survey revealed the fence was solely located within his property and he would be happy to shear off the pier cap protrusions into the adjoining owners' property.

Mr Webb outlined the history of the matter and made a number of comments, in particular that the State Administrative Tribunal have ruled on a number of occasions that "no one has a right to views across a private property" and further remarked that if that were not the case, then a local government could control private landscaping. Mr Webb stated that the State Administrative Tribunal would not support any Council decision which was based on the protection of views.

Mr Webb stated that his clients had fully paid for the fence themselves and there had never been any intention to seek any form of reimbursement from their neighbours.

Cr Collinson queried whether the applicant was asking for the matter to be deferred until February as he had understood was the case and as he understood Council officers had been intending to recommend, in order to allow the applicants to conduct any necessary surveys of the site (as they had requested) and to allow Council officers to conduct a compliance audit of the wall/fencing structures already constructed (given the applicant's earlier expressed view that the structures were compliant) and that officer advice to this effect had been circulated.

Mr Webb advised that it had originally been his client's intention to seek a deferral, however his client now wished the matter determined this evening.

359. ADJOURNMENT**Mayor Ferris – Cr de Jong****That the meeting be adjourned at 7.50pm for a short break to further consider this matter.****CARRIED****360. RESUMPTION****Cr Rico – Cr Martin****That the meeting be resumed at 8.15pm with all those present prior to the adjournment, in attendance.****CARRIED**



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**361. TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN)
(CONTINUED)****361.1 T112.6 Munro Street No. 18 (Lot 5049) (Continued)****Application No. P159/09****Owner/Applicant: BJ Christie****Cr de Jong – Cr Nardi**

Council exercise its discretion in granting retrospective planning approval for fencing at Lot 5049 (No. 18) Munro Street, East Fremantle, as shown on plans received 26 October and 7 December 2009 and subject to the following conditions:

1. The fence piers to be reduced to a height of 1.8m within 60 days.
2. This approval does not extend to any element of the pier caps located outside of the applicant's property boundaries.
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.
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. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
5. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *This decision does not include acknowledgement or approval of any additional 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 to 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 rear boundary 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 UNANIMOUSLY

Reason for not supporting officer's recommendation

Elected members considered there was a significant impact on the amenity of the neighbours and the Town.

361.2 Penshurst Street No. 12 (Lot 2 on Strata Plan 45836)**Application No. P144/09****Owner: DA Bahemia & JM Green****Applicant: ADM Group**

The following additional report was considered.

Penshurst Street No. 12 (Lot 2 on Strata Plan 45836)

Application No. P144/09

Owner: DA Bahemia & JM Green

Applicant: ADM Group

By Rohan Doust, Acting Town Planner, 11 December 2009

BACKGROUND

Description of subject site

The subject site is:

- 445m² in area;
- zoned Residential R12.5;
- located in the Richmond Hill Precinct
- a vacant lot that is part of a two-lot survey strata subdivision (the other strata lot has recently been developed with a two-storey single house);
- developed with retaining walls to the southern side of the lot as a result of subdivision works (as a result the lot now has a consistent natural ground level); and
- adjacent to two vacant lots to the south;

Description of Proposal

It's proposed to construct a two-storey single house with an undercroft double garage.

The undercroft garage is proposed to:

- be situated underneath and aligned flush with the front of the proposed dwelling
- have a finished floor level approximately 2.2m below the level of the front of the lot;
- be approximately 85m² in area with a 7.1m-wide frontage; and
- be provided with a sectional garage door.

The ground floor is proposed to:

- 204.8m² in area (including a 7.8m² front-facing balcony located above the undercroft);
- be set back 7.5 from the front of the lot;
- have a side setback of 2.5m to the south, a nil to 1.1m side setback to the north, and an 11m rear setback; and
- include a 28.7m² covered alfresco area at the rear.

The upper floor is proposed to be:

- 94.4m² in area (including a 14.1m² front-facing balcony);
- set back 9.1m from the front of the lot, with the balcony being set back at 6.2m;
- have side setbacks of 1.2m (to the north) and 2.5m (to the south), and a rear setback greater than 12m.

The two-storey walls are up to 5.8m in height and the overall (ridge) height is proposed to be 7.1-7.6m.

The proposed roof is of a hipped form pitched at 29° and provided with Colorbond cladding (Surfmist or Shale Grey in colour). The walls are proposed to be rendered masonry and painted in a pale white with grey tint.

Statutory Considerations

- Town Planning Scheme No. 3 (TPS3)
- TPS3 Local Planning Strategy
- Residential Design Codes of WA (the R-Codes)

Relevant Council Policies

- Council Policy on Roofing (LPP066)
- Local Planning Policy – Residential Development (LPP142)

Date Application Received

6 October 2009

No. of Days Elapsed between Lodgement & Meeting Date

69 days

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

28 July 1998 Council issues planning approval for a swimming pool
 18 February 2003 Council resolves to advise WAPC that the survey-strata subdivision of Lot 2 Peshurst Street is not supported
 11 March 2003 WAPC issues conditional approval to subdivide Lot 2 Peshurst Street into two survey strata lots (the subject lot being the southern-most one)
 17 February 2004 Council issues planning approval for the demolition of an existing dwelling
 23 June 2004 ToEF issues a building licence for a limestone retaining wall
 4 April 2006 Council issues planning approval for a two-storey dwelling
 8 December 2009 The Town Planning and Building Committee considered an application a two storey house and determination of the application was deferred to "enable elected members to undertake a site visit and in the meantime further information be provided on
 (a) current NGLs as opposed to the approved NGLs as part of the subdivision; and
 (b) the proposed excavation for the verge for the provisions of a crossover and its impact on various underlying utilities."

This application has been revised and is the subject of this report.

CONSULTATION

Principal Building Surveyor's Comment

Preliminary assessment has not identified any building matters that may impact upon the outcome of the planning approval.

Public Submissions

The application was referred to adjoining landowners 16 November 2009 to 1 December 2009. A sign was also erected on site.

One item of correspondence was received, which is summarised and responded to below:

Item	Response
No objection to the request for roof slope increment so long as there is absolutely no change from the natural ground level of the site.	The initial proposal viewed by the respondent featured an elevated ground floor level over 0.5m above natural ground level. Revised plans have reduced the finished floor level of the ground floor to a compliant 0.4m above natural ground level (the R-Codes permit up to 0.5m of fill).
Any fill or raising of levels will have an impact on the overall height and massing of the building and which would then set a precedent which may detract from the streetscape.	The height of the development complies as the overall (ridge) height of the development is 7.1-7.6m above natural ground level; LPP142 permits a maximum overall height of 8.1m. The proposal does not feature any variation to the fill or overall height requirements which may set a precedent for surrounding development.



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Item	Response
Concerns that the original ground level may not be right.	<p>Natural ground levels are taken to be the top of the retaining wall that was constructed as part of the subdivision. This is consistent with advice set out in the R-Codes.</p> <p>The proposal does set the top of the ground floor slab 0.4m above the top of the retaining walls. This is, however, less than the maximum permitted fill of 0.5m.</p>
An increase in ground levels and height would impact on the amenity of the respondent's children's house which is located at a lower level than the subject property.	<p>The proposal meets relevant overshadowing provisions (the two adjoining and vacant lots to the south are overshadowed 4.0% and 17.0% respectively; the R-Codes allow for 25%). The proposal does not overshadow the children's house at 65 Pier Street which is separated from the subject property by a road.</p> <p>Overlooking complies with the exception of the side facing openings of the front balconies (this variation is addressed in the relevant section below). It is noted that these openings do not overlook the respondent's children's house.</p> <p>The overall (ridge) height is proposed to be a compliant 7.1-7.6m. LPP142 permits an overall height up to 8.1m.</p>

Town Planning Advisory Panel

The Panel viewed the proposal on 24 November 2009 and advised that:

- *Research the retaining and fill and determine if they were approved as part of the subdivision. (The Acting Town Planner has subsequently determined that the retaining walls and fill were a requirement of the subdivision works.)*
- *Research the site's approved NGL and determine whether extra fill has been added to the site (The Acting Town Planner has subsequently determined that the site's NGL, being the level after the subdivision created the new lots, is the top of the retaining walls. Fill has in fact been added to the site above this level since the lot was created.)*
- *The ground floor level should be lowered to natural ground level. (The Acting Town Planner notes that this will resolve the issue of extra fill described above).*
- *The undercroft garage is supported in theory if its floor level is lowered.*
- *Roof pitch can be increased to comply with requirements and still remain under the height limit by lowering the floor of the dwelling.*
- *Drawings of poor quality and do not show all required information:*
 - *the elevational drawings should show the retaining walls (especially at the front of the lot)*
 - *the NGLs on Elevation 3 are inconsistent*
 - *detail roof pitch*
 - *detail materials and finishes*

The queries and comments raised by the Panel are considered to have been addressed via additional information from the applicant and modifications made to the proposal.

As of 11 December 2009 further advice on the revised proposal is being sought from the Panel. Any revised or additional minutes will be tabled at the Council meeting on 15 December 2009.

Site Inspection

By Acting Town Planner, most recently on 10 November 2009.



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REPORT**Considerations**Crossover

The application viewed by the Town Planning and Building Committee on 8 December 2009 featured a crossover that was proposed to be cut into the verge in order to reduce the gradient of the driveway to the undercroft garage. The Committee recommended that determination of the application be deferred so that the applicant could provide additional information on the proposed crossover arrangement.

This element has since been removed and the amended plans depict a regular crossover of single-vehicle width.

Natural Ground Levels and the Proposed Ground Floor Level

Natural ground level is taken to be the top of the retaining wall that was constructed as part of the subdivision. This is consistent with advice set out in the R-Codes.

On the basis of the above, the natural ground level at the site is taken to be 12.50, (the top of the retaining wall). In order to provide a manageable driveway gradient that doesn't require a crossover to be cut into the verge, the applicant have raised the floor level of the undercroft with the result that the finished floor level of the ground floor is at 12.90, or 0.4m above natural ground level. This accords with the relevant provisions of the R-Codes which limit fill on a site to not more than 0.5m above natural ground level.

With respect to the raised (but compliant) ground floor level, it is noted that the development provides a compliant overall height of 7.1-7.6m (LPP142 permits 8.1m) but does include a 0.2m wall height variation (see below).

The information sought by the Committee on natural ground levels is still being investigated and it is intended that this information will be provided at the Council meeting.

Wall Height

The upper floor portions of the proposed house have a wall height of 5.8m above natural ground level.

For sites where views are a consideration (this includes the subject lot), the Residential Development Policy limits wall height to 5.6m.

It is considered that a variation to the wall-height provisions can be supported for the following reasons:

- The height variation is minor at 0.2m.
- The 0.2m variation is not considered to impose a noticeable reduction in views from adjoining properties as the roof form of the dwelling would obscure such views irrespective of whether the wall height were reduced to a compliant 5.6m.
- At 7.1-7.7m, the overall height (or ridge height) of the dwelling is lower than the 8.1m limit set out in the Residential Development Policy.

Visual Privacy

The application viewed by the Town Planning and Building Committee on 8 December 2009 featured major openings to the upper floor which looked south and had the potential to impact on the visual privacy of the (undeveloped) adjoining lots.

The amended plans have provided privacy treatments to these openings and so they are no longer a source of overlooking.

The side-facing openings of both the ground floor and upper floor balconies are set back 2.5m from the northern side boundary and 4.0m from the southern side boundary. The R-Codes state that these openings are to have a line-of-sight setback distance of 7.5m. Accordingly, the side-facing balcony openings have the potential to impact on the visual privacy of adjoining properties.

In considering this variation the following is noted:

- the north-facing balcony opening overlooks a section of the adjoining property that is located in its side setback area and just behind the street setback line. This area is not associated with any outdoor living areas and is considered to be a low-use area.
- The south-facing overlooks a vacant lot to the south. Similar to the above comment, future development of this site will likely have a low-use side setback area being the subject of the proposed overlooking.
- Provision of screening to these opening may impact negatively on the building design and streetscape by increasing the building's bulk and scale through the partial enclosure of the front balconies.

Having regard to the above it is considered the unscreened side openings to the front balconies can be supported.

Setbacks

The application proposes two setback variations:

- *Ground floor northern (side) elevation*
A 12.3m-long section of wall is proposed to have a 1.1m setback to the northern side boundary. The R-Codes specify a 1.5m setback for this wall.

It is considered that this setback variation can be supported pursuant to the Performance Criteria of the R-Codes as:

- the setback allows for direct sun and ventilation to the subject building and to the adjoining house to the north;
- it does not result in any loss of visual privacy to the property to the north; and
- it does not result in any overshadowing of the adjoining property to the north as measured by the R-Codes.

It is noted that the planning approval dated 18 May 2004 for the adjoining two-storey dwelling to the north included a ground floor side setback variation of 1.0m in lieu of the required 1.5m for two portions of wall with an aggregate length of 9.4m).

- *Upper floor northern (side) elevation*
A 6.9m-long section of wall containing the balcony opening is setback 2.2m from the northern side boundary. The R-Codes specify a 4.2m setback for this section of wall.

It is considered that this setback variation can be supported pursuant to the Performance Criteria of the R-Codes for the same reasons as set out above.

- It is noted that if privacy screening were provided to the north-facing balcony opening the required setback for this wall would be reduced to 2.0m. Whilst such screening would technically make the setback for this wall comply, it is considered that it would impact negatively on the design of the building by partially enclosing the front-facing balcony and would do little to reduce overlooking (overlooking from this opening is relatively minor, see above).
- It is also noted that the planning approval dated 18 May 2004 for the adjoining two-storey dwelling to the north included an upper floor side setback variation of 1.5m in lieu of the required 5.0m setback for two portions of wall with an aggregate length of 19.7m).

It is noted the application viewed by the Town Planning and Building Committee on 8 December 2009 featured an additional non-compliant side setback for the southern elevation of the upper floor. Since the revised plans have removed the major openings from this section of wall its setback now complies.

Minor Incursion Into Street Setback Area

The two front balconies project 0.9m into the front setback area for a width of 50% of the frontage of the dwelling.

The Acceptable Development provisions of the R-Codes limit the extent of minor incursions to a width of 20% of the width of the building frontage.



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The relevant Performance Criteria of the R-Codes state that this provision may be varied where "minor incursions and projections [are] not to detract from the character of the streetscape".

It is considered that the proposed incursions are not incompatible with the character of the surrounding development. Accordingly it is considered that a variation to the relevant Acceptable Development provisions can be supported in this instance.

Width of Garage Doors

The R-Codes specify that the width of garage doors is not to be greater than 50% of the width of the lot frontage.

The proposed garage door is 5.8m wide and occupies 52% of the lot frontage.

It is considered that a variation to this provision can be supported as:

- the variation is relatively minor (2% or a 0.22m portion of the garage door); and
- the subject site has a relatively narrow frontage of 11.1m.

Materials and Finishes

It is recommended that any development approval include a condition requiring details of materials and finishes being provided to and endorsed by the CEO prior to issuance of a building licence.

RECOMMENDATION

Council exercise its discretion in granting approval for:

- wall heights being 5.8m above natural ground level in lieu of the 5.6m wall-height limit set out in the Residential Development Policy (LPP142);
- a 12.3m-long section of the ground floor northern side elevation being set back at 1.1m in lieu of the required 1.5m setback as per the Acceptable Development provisions of the Residential Design Codes of WA (the R-Codes);
- a 6.9m-long section of the upper-floor northern side elevation being set back at 2.2m in lieu of the required 4.2m setback as per the Acceptable Development provisions of the R-Codes;
- the major openings to the side of the front balconies being set back less than the 7.5m privacy setback requirement of the R-Codes;
- minor incursions into the street setback area (ie the balconies) occupying 50% of the width of the building frontage in lieu of the 20% maximum as per the R-Codes;
- the garage door occupying 52% of the width

for a two-storey single house with an undercroft double garage at Lot 2 on Strata Plan 45836 (No. 12) Peshurst Street, East Fremantle, as shown on plans received 11 December 2009 and subject to the following conditions:

1. Any air-conditioning plant is to be positioned so that it that will not result in an unreasonable loss of amenity to adjoining residents, details of which are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
2. Details of materials and finishes are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
3. All storm water resulting from the development is to be retained on site.
4. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
5. The proposed works are not to be commenced until Council has received an application for a 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.
6. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.

7. The proposed works are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
8. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
9. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *This approval does not cover the construction of a front fence or portions of side fence located forward of the subject house. Fencing in these locations may require further planning approval and/or a building licence.*
- (b) *With respect to condition 2), the installation of air-conditioning plant on the roof, or at a prominent position on the upper storey, is unlikely to be supported.*
- (c) *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.*
- (d) *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.*
- (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) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

The Acting Town Planner provided the following additional information:

"A search of the Town's files indicates that:

- *On 30 August 2004 the Town cleared a WAPC condition of subdivision which required the site to be retained.*
- *Records indicate that there were no details provided on the height of the retaining wall when this condition was cleared.*

Inquiries have also been made with the WAPC. The Commission advised that they do not have any information on the height of the retaining wall and noted that at any rate this was cleared by the Local Government.

On 26 October 2007 the Town issued a Certificate of Acknowledgement of Existing Structures for the retaining walls at the subject site. Comparing the plans which are the subject of the Certificate with the previously approved development plans for a two-storey building (approved on 4 April 2006), the height of the top of the retaining wall is approximately RHD12.5, which is the same height as shown on the plans which are currently being considered."

"The Town Planning Advisory viewed the abovementioned planning application on 24 November 2009.

Following advice from the Panel, the applicant provided amended plans and some additional information. These materials have been emailed to the Panel for further comment.



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Two Panel members have provided comments on the revised plans and additional materials, as follows:

1. *In relation to Penshurst – the fill issue raised by the neighbour is an issue and the building should be reduced in height (lowered) into the site as much as possible to limit the negative impacts on the adjoining property.*
2. *The drawings remain vague and it doesn't appear that the dwelling has been lowered on the property as suggested. The street elevation still does not show the extent or location of the retaining wall.*

If the survey drawing is to be believed the top of the retaining wall is about RL12.57 to the north and 12.5 to the south. The "ground" floor level of the dwelling is drawn at FFL12.9, although the drawings do not show the 400mm difference. Am I mistaken here?

I believe the ground floor level should be set at 12.7 maximum to allow for weathering to the north to be effected. This would lower the dwelling by 200mm."

The letter from the ADM Group, referred from Correspondence (MB Ref 356.3) was tabled.

Ms Costello (ADM Group) addressed the meeting in support of the revised application which included lowering the natural ground level and reducing the height of the proposal to comply with Council's requirements.

The Acting Town Planner clarified that the proposal did, in fact, require a height discretion.

Cr Nardi – Mayor Ferris

Council exercise its discretion in granting approval for:

- wall heights being 5.8m above natural ground level in lieu of the 5.6m wall-height limit set out in the Residential Development Policy (LPP142);
- a 12.3m-long section of the ground floor northern side elevation being set back at 1.1m in lieu of the required 1.5m setback as per the Acceptable Development provisions of the Residential Design Codes of WA (the R-Codes);
- a 6.9m-long section of the upper-floor northern side elevation being set back at 2.2m in lieu of the required 4.2m setback as per the Acceptable Development provisions of the R-Codes;
- the major openings to the side of the front balconies being set back less than the 7.5m privacy setback requirement of the R-Codes;
- minor incursions into the street setback area (ie the balconies) occupying 50% of the width of the building frontage in lieu of the 20% maximum as per the R-Codes;
- the garage door occupying 52% of the width

for a two-storey single house with an undercroft double garage at Lot 2 on Strata Plan 45836 (No. 12) Penshurst Street, East Fremantle, as shown on plans received 11 December 2009 and subject to the following conditions:

1. Any air-conditioning plant is to be positioned so that it that will not result in an unreasonable loss of amenity to adjoining residents, details of which are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
2. Details of materials and finishes are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
3. All storm water resulting from the development is to be retained on site.
4. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
5. The proposed works are not to be commenced until Council has received an application for a 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.

6. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
7. The proposed works are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
8. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
9. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *This approval does not cover the construction of a front fence or portions of side fence located forward of the subject house. Fencing in these locations may require further planning approval and/or a building licence.*
- (b) *With respect to condition 2), the installation of air-conditioning plant on the roof, or at a prominent position on the upper storey, is unlikely to be supported.*
- (c) *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.*
- (d) *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.*
- (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) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

361.3 *Pier Street No. 20 (Lot 232)*

Application No. P129/09

Owner: P & M King

Applicant: Alexander Quinn

Mr Quinn (applicant) addressed the meeting advising he supported the committee's recommendation.

Cr de Jong – Cr Nardi

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

Council exercise its discretion in granting approval for:

- wall heights to the upper floor being up to 8.0m above natural ground level in lieu of the 5.6m wall-height limit set out in the Residential Development Policy (LPP142);
- roof pitch being approximately 10° in lieu of the minimum 28° roof pitch set out in the Roofing Policy (LPP066);
- the western elevation being set back at 1.5m in lieu of the required 1.6m setback as per the Acceptable Development provisions of the Residential Design Codes of WA;

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- the eastern boundary wall being 2.5-3.4m high and 11.9m long in lieu of the 3.0m height limit and 9.0m length-limit set out in the Residential Development Policy (LPP142) ;

for a two-storey single house at Lot 232 (No. 20) Pier Street, East Fremantle, as shown on plans received on 17 September and 3 December 2009 and subject to the following conditions:

1. Any air-conditioning plant is to be positioned so that it that will not result in an unreasonable loss of amenity to adjoining residents, details of which are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
2. Details of materials and finishes are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
3. All storm water resulting from the development is to be retained on site.
4. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
5. The proposed works are not to be commenced until Council has received an application for a 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.
6. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
7. The proposed works are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
8. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
9. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *This approval does not cover the construction of a front fence or portions of side fence located forward of the subject house. Fencing in these locations may require further planning approval and/or a building licence.*
- (b) *With respect to condition 2), the installation of air-conditioning plant on the roof, or at a prominent position on the upper storey, is unlikely to be supported.*
- (c) *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.*
- (d) *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.*
- (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) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED



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361.4 Preston Point Road No. 114 (Lot 4965)**Application No. P128/09****Owner: L Morris****Applicant: RCI Building Consultants**

The letter from Mr Bartolomei, referred from Correspondence (MB ref 356.4) was tabled.

Mr Bartolomei addressed the meeting opposing any height discretion for the proposed development.

Cr de Jong – Cr Nardi**Council exercise its discretion in granting approval for:**

- wall heights up to 6.4m above natural ground level in lieu of the 5.6m wall height limit set out in the Residential Development Policy (LPP142);
- garage being located 1.6m forward of the frontage of the house instead of at or behind the frontage of the house as set out in the Residential Development Policy (LPP142);
- the upper floor western facade being setback 1.5-3.2m from the western side boundary in lieu of the 5.2m setback set out in the Residential Design Codes of WA;
- roof pitch being between 20°-25° in lieu of the minimum 28° roof pitch as set out in the Roofing Policy (LPP066);

for a two storey single house at Lot 4965 (#114) Preston Point Road, East Fremantle, as shown on plans received 3 and 7 December 2009 and subject to the following conditions:

1. Prior to the issue of a Building Licence amended plans be provided which indicate the overall height to be compliant with LPP142.
2. Details of materials and finishes are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
3. The driveway is to be modified so that it will interface with a single-vehicle-width crossover, details of which are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
4. Any air-conditioning plant is to be positioned so that it that will not result in an unreasonable loss of amenity to adjoining residents, details of which are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
5. All storm water resulting from the development is to be retained on site.
6. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
7. The proposed works are not to be commenced until Council has received an application for a 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.
8. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
9. The proposed works 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.
10. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
11. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *This approval does not cover the construction of a front fence or portions of side fence located forward of the subject house. Fencing in these locations may require further planning approval and/or a building licence.*
- (b) *The proposed crossover is not included as part of this approval (it lies outside the subject land). The Town's Crossover Policy (LPP123) limits the width of crossovers to 3.0m. Any crossover greater than this width will require written endorsement from the CEO.*
- (c) *With respect to condition 3), the installation of air-conditioning plant on the roof, or at a prominent position on the upper storey, is unlikely to be supported.*
- (d) *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.*
- (e) *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.*
- (f) *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).*
- (g) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

361.5

Sewell Street No. 78 (Lot 299)

Application No. P145/09

Owner: R & L Nicholson

Applicant: R & D Building Pty Ltd

By Rohan Doust, Acting Town Planner, 11 December 2009

BACKGROUND

Description of subject site

The subject site is:

- 508m² in area
- zoned Residential R20
- located in the Plympton Precinct
- developed with a single-storey fibro cottage that is not included on the Municipal Inventory

Description of Proposal

It is proposed to demolish the existing dwelling on the site.

It is proposed to construct a two-storey single house with a front double garage and front balcony to the upper floor.

The ground floor is proposed to:

- be 161m² in area (including the double garage)
- be set back 6.0m from the front of the lot
- have a side setback of 1.7-4.6m to the south, 1.0m-2.2m to the north and a rear setback of 13.7m

The upper floor is proposed to:

- occupy the same footprint as the ground floor
- include a 21.1m² front balcony
- have wall heights between 5.3m and 6.0m above the changing natural ground level

Materials and finishes comprise:

- timber battening to the front of the building, with the battens being 30mm wide dressed recycled jarrah and being mounted horizontally with 30mm gaps; and

- a combination of concrete panel and cedar cladding to the sides and rear. The concrete panel of a Class 1 finish, which is a high-quality finish suitable for exposed concrete.

The front yard includes recycled bricks for the driveway and native vegetation for the landscaping. A 3.0m high concrete panel screen wall links the house to the southern boundary. No front fence is proposed.

Statutory Considerations

- Town Planning Scheme No. 3 (TPS3)
- TPS3 Local Planning Strategy
- Residential Design Codes of WA (the R-Codes)

Relevant Council Policies

- Council Policy on Roofing (LPP066)
- Local Planning Policy – Residential Development (LPP142)

Date Application Received

8 October 2009

No. of Days Elapsed between Lodgement & Meeting Date

67 days

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

None

CONSULTATION

The proposal was referred to the adjoining land owners indicated on the attached location plan and a sign was placed on site. The referral period was 16 November 2009 to 1 December 2009.

One response was received, summarised and responded to below:

Item	Response
<p>Although the proposed residence will comply at 23% overshadowing, the shadow falls the adjoining property's outdoor north-facing outdoor living area and the glazing to its internal living areas.</p>	<p>The attached photos and overshadowing diagram demonstrate that the proposal will indeed overshadow these areas.</p> <p>In response to concerns raised, the applicant has reduced the amount of overshadowing to 20%, noting that approximately one third of this falls on neighbouring roofs.</p> <p>In addition, the proposed house provides greater-than-required setbacks in order to increase solar access for the southern lot.</p> <p>The shadow from the fence is indicated on the overshadowing diagram; it shows that this element by itself overshadows the greater extent of the adjoining outdoor living area.</p> <p>The proposal fully complies with the R-Codes' overshadowing provisions (this is discussed further in the relevant section below).</p>



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Item	Response
The closest portion of the proposed house is approximately one metre away from the shared boundary, affecting outdoor and indoor living areas.	The closest portion of the southern elevation has been moved from 1.2m to 1.7m away from the boundary (providing 0.7m more setback than required at the ground floor, and 0.5m more at the upper). The rest of the two-storey wall is set back between 0.6m and 2.4m more than required.
The section of building closest to the shared boundary is a two-storey stairway/laundry/bath area will create privacy and noise problems, and will also impact on views to the street and access to breezes.	<p>This portion of the building does not present any sources of overlooking. Its intended use is considered to be acceptable in terms of noise and privacy issues.</p> <p>The building provides greater-than-required setbacks allowing for adequate access to breezes.</p> <p>With respect to access to views of the street, any compliant development will in all likelihood impact on this -- and with respect to compliancy, it is noted that the proposed house has increased side setbacks to the respondent's property, provides more open space than required, and has an overall (ridge) height less than the permitted 9m.</p>
It is suggested that the house layout be reversed to that the stairway/laundry/bath area is to the northern boundary and the building be set further back.	Given the above, it is considered the proposed configuration is acceptable.

Town Planning Advisory Panel

The Panel viewed the proposal on 24 November 2009 and made the following comments:

- *Interesting design and good use of materials. If the details are well executed this could be a very interesting building*
- *There was no objection to the street setback of the upper storey.*
- *The panel requests a streetscape elevation and perspective view of the house in order to be convinced that the building detail of timber battening and shutter operation is effectively executed*
- *Details of the baton profiles are required.*
- *Details on the visual permeability of the shutters are required.*
- *Details of the garage door operation and whether it sits flush with the building when closed are required.*
- *Query the northern operable shutter as it will abut the northern boundary when open (the Town Planner has subsequently determined that the shutter can abut, but not project over, the boundary in accordance with BCA requirements).*
- *The north point on some of the drawings appears incorrect.*

Additional information has since been provided by the applicant addressing the items raised by the Panel. It is considered the provided information satisfactorily addresses the Panels comments and queries.

As of 11 December 2009 further advice on the revised proposal is being sought from the Panel. Any revised or additional minutes will be tabled at the Council meeting on 15 December 2009.

Principal Building Surveyor's Comment

Preliminary assessment has not identified any building matters that may impact upon the outcome of the planning approval. It is noted that the north-facing balcony shutter may abut, but not project over, the northern boundary in accordance with the BCA.

Site Inspection

By Acting Town Planner, most recently on 11 December 2009.

REPORT**Considerations**Demolition

Demolition of the existing single-storey fibro cottage does not form part of the application currently under consideration. Nonetheless it is noted that the house is not identified in the Municipal Inventory and it is considered that its demolition would not result in the loss of any significant built heritage.

Street Setback and Building Design

The building presents a sheer two-storey facade to the street, clad in horizontal timber battening and occupying half of the width of the site's 12.2m-wide frontage. The balcony includes shutters of the same timber battening which will, when closed, result in the building presenting as essentially a two-storey cube to the street. A streetscape elevation and perspectives of the proposal are attached.

Prefacing any consideration of the architectural style, it is noted that the building's front setback does comply with relevant provisions as:

- The ground floor street setback of 6.0m is in between the street setbacks of adjoining properties as per the provisions of the R-Codes and LPP142.
- The upper floor front balcony is set back at 6.0m from the street and the house proper set back at 9.2m. LPP142 specifies a street setback of at least 6.0m for the upper floor.

The Local Planning Strategy makes reference to building design and includes the following aims and objectives:

- *to safeguard and enhance the amenity of residential areas and ensure that housing relates to the character and scale of existing residential development*
- *to encourage high standards and innovative housing design, which recognises the need for privacy, solar access, cross ventilation and water sensitive design*

The Strategy also states that for the Plympton Precinct:

- *new development ... is to be generally small scale and sympathetic to the character (form, mass and materials) of existing development.*

These provisions are addressed below:

Bulk & Scale

The house provides approximately 68% open space (at least 50% is required) and has an overall height of 6.0m and 6.7m (LLP limits overall height to 9.0m).

Relationship with Adjoining Developments

The adjoining house to the north is a 1980s two-storey building with the upper floor a loft that is set back the same distance from the street as the floor below; the dwelling to the south is a Federation single-storey cottage included on the Municipal Inventory. It is considered the proposed house is compatible with the two-storey house to the north in terms of bulk and scale. With respect to the single-storey cottage to the south, the proposal features increased setbacks to the southern boundary, and manages the transition to the southern building via a single storey front screen wall linking the two structures. It is noted the southern cottage is closer to the street than the subject house.

Compatibility with the Locality

The Plympton Precinct is largely pre-WW2 housing stock with some more contemporary dwellings up to two storeys in height. It is considered the proposal is not incompatible with such surrounds.

Safeguarding Amenity

The development complies with the overshadowing provisions of the R-Codes (see below). There are two minor overlooking variations which are considered supportable (see below).

High Standards and Innovative Design

Details of the building materials are provided above and are indicated on the attached plans. It is considered the materials are of high-quality and will age well. Overall, the overall design is considered to be a well-executed example of contemporary architecture that will contribute to the future character of the locality.

Roof Pitch

LPP066 specifies a minimum roof pitch of 28°. A 12° roof pitch is proposed.

Given that the overall design is considered to be supportable (as set out above), it is considered that a reduced roof pitch as part of that design can be supported.

It is noted that the roof pitch results in the overall (ridge) height of the dwelling being between 6.0m and 6.7m above natural ground levels. This is significantly less than the maximum overall (ridge) height of 9.0m permitted under LPP142.

Overshadowing

The proposal overshadows 20% of the adjoining lot to the south. The R-Codes allow for 25% overshadowing.

Notwithstanding the above, the subject lot is oriented east-west and the proposed house does impact on the solar access of the neighbouring property to the south, in particular it's primary outdoor living area and adjacent glazed areas (photos of the area are attached as part of the neighbour's correspondence; the attached plans include an overshadowing diagram).

The Explanatory Guidelines section of the R-Codes acknowledges the overshadowing challenges posed by lots oriented east-west, and goes on to state that:

a shadow may not exceed the limit but may fall over the only available outdoor living area, or living room window, of an adjoining house

which is the case in this instance.

Given the above statement, and given that the house creates 5% less overshadowing than permitted, in terms of the R-Codes it is considered this aspect of the proposal is compliant.

This is not to suggest that it would not be within the discretion of Council, pursuant to Clause 10.2(p) and 10.2(o) of the Scheme, to still deem this aspect unacceptable in amenity terms.

In that respect it is noted the adjoining landowner to the south has expressed reservations about the location of the overshadowing. Clause 10.2(o) obliges Council to have due regard to "the preservation of the amity of the locality" and Clause 10.2(p) obliges Council to have due regard to "the relationship of the proposal to development on adjoining land or on other land in the locality". Nevertheless two relevant issues should be noted.

Firstly, due to the layout and location of the of the outdoor area on the southern neighbour's property which would be affected by overshadowing, it is concluded firstly



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that this area already experiences overshadowing from the existing adjoining development, and secondly that *any* new development on the lot in question in all likelihood is still going to cause significant overshadowing.

Secondly, notwithstanding the abovementioned Scheme provisions, it is accepted that R Code compliance carries considerable weight in most planning applications and would likely be of significance in an appeal situation, for example.

Setbacks

The northern two-storey facade is set back between 1.0m and 2.2m from the northern boundary. Whilst the ground-floor setback complies, the 10.2m length of the upper floor that is set back at 1.0m is required to be set back 1.5m as per the R-Codes.

In considering this variation the regard can be given to the following advice in the Explanatory Guidelines section of the R-Codes:

It should be council practice to assist where necessary by making concessions in particular cases, especially by modifying side setbacks to allow solar access

In this case the applicant has moved the development 0.5m closer to the northern boundary to increase solar access for the adjoining lot to the south. This has resulted in the 0.5m setback variation.

Given the above, and noting that the development meets overlooking, overshadowing, open space and height provisions, it is considered that the setback variation can be supported.

RECOMMENDATION

Council exercise its discretion in granting approval for:

- a 10.2m length of the upper floor wall to the northern boundary being set back 1.0m lieu of the required 1.5m setback as per the Acceptable Development provisions of the Residential Design Codes of WA;
- the roof pitch being 12° in lieu of the 28° minimum roof pitch specified by the Roofing Policy (LPP066)

for a two-storey single house at Lot 299 (No. 78) Sewell Street, East Fremantle, as shown on plans received 10 December 2009 and subject to the following conditions:

1. Any door, gate or similar to the opening in the front screen wall is to be visually permeable as per the definition in the Residential Design Codes of WA.
2. Any air-conditioning plant is to be positioned so that it that will not result in an unreasonable loss of amenity to adjoining residents, details of which are to be provided to and endorsed by the CEO prior to issuance of a Building Licence.
3. All storm water resulting from the development is to be retained on site.
4. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
5. The proposed works are not to be commenced until Council has received an application for a 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.
6. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
7. The proposed works are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
8. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally

adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

9. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *Approved materials and finishes are those shown on the approved plans.*
- (b) *The north-facing balcony shutter is not to encroach into the neighbouring lot.*
- (c) *This approval does not cover the construction of a front fence or portions of side fence located forward of the subject house. Fencing in these locations may require further planning approval and/or a building licence.*
- (d) *With respect to condition 2), the installation of air-conditioning plant on the roof, or at a prominent position on the upper storey, is unlikely to be supported.*
- (e) *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.*
- (f) *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.*
- (g) *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).*
- (h) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (i) *Additional details demonstrating that crossover will result in minimal disruption to the existing verge levels and that storm water will be effectively managed are to be provided to and endorsed by the CEO in consultation with relevant officers prior to issuance of a Building Licence.*

Letters from Mrs Thirsk & R & D Building, referred from Correspondence (MB Ref 356.5 & 356.6) were tabled.

Mrs Thirsk (adjoining owner) addressed the meeting expressing concern with the significant overshadowing which would occur to her property.

Mr Harris (designer) addressed the meeting regarding the modifications made to the earlier proposal.

362. ADJOURNMENT

Mayor Ferris – Cr Nardi

That the meeting be adjourned at 9.33pm for a short break to consider this matter further. CARRIED

363. RESUMPTION

Cr Nardi – Cr Rico

That the meeting be resumed at 10.15pm with all those present prior to the adjournment, in attendance. CARRIED

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**364. TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN)
(CONTINUED)**

364.1 Sewell Street No. 78 (Lot 299)
Application No. P145/09
Owner: R & L Nicholson
Applicant: R & D Building Pty Ltd
Mayor Ferris – Cr Nardi

That the matter be deferred to allow the applicant the opportunity to amend the design such as to achieve a front elevation which is more compatible with the existing streetscape. CARRIED

Cr Martin made the following impartiality declaration in the matter of 40A Oakover Street: "As a consequence of my friendship with the owner and the fact that my husband had undertaken work on this property 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".

364.2 T112.4 Oakover Street No. 40A (Lot 331)
Applicant: Broadhurst & Bott Architects
Owner: Pamela Ann Peelen
Application No. P81/2008
Cr de Jong – Cr Martin

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

That Council exercise its discretion in granting approval for a variation to roof pitch pursuant to Local Planning Policy 066 from 28° to 26°5' for the construction of a 2-storey house on the rear battleaxe lot at 40A Oakover Street, East Fremantle comprising:

Ground Floor: double garage, store, porch, entry, family dining & kitchen, livingroom, bedroom, bathroom, linen press, and laundry;

First Floor: 2 bedrooms, study and bathroom;

in accordance with the plans date stamp received on 23 October 2009 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. with regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
4. 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.



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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) *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 Rico requested that the voting of Council members be recorded.

Crs de Jong, Martin, Lilleyman, Collinson and Mayor Ferris voted in favour of the motion with Crs Rico and Nardi having voted against the motion.

364.3

T112.7 Staton Road No. 57 (Lot 2)***Application No. P91/09******Owner: W & C Zalewski******Applicant: Willcox & Associates Architects******Cr de Jong – Cr Nardi***

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

Council exercise its discretion in granting approval for:

- the height of the northern wall to the upper floor addition being 6.8m in lieu of the 6.0m wall-height-limit as set out in the Residential Development Policy (LPP142);
- roof pitch being between 0° and 6° in lieu of the minimum 28° roof pitch as set out in the Roofing Policy (LPP066);
- outbuilding wall height being 2.9m in lieu of the 2.4m height-limit set out in the Acceptable Development provisions of Residential Design Codes of WA; and
- water tanks being located adjacent to the northern boundary in lieu of the 1.0m setback as set out in the Rainwater Tanks Policy (LPP144);

for a two storey addition and extension to an existing single house as well as a rear double garage, pool, and boundary fencing at No. 57 (Lot 2) Staton Road, East Fremantle as shown on plans received 26 November 2009 and subject to the following conditions:

1. Overflow from the rainwater tanks is to be directed to soak well(s) within the property.
2. All storm water resulting from the development is to be retained on site.
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 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.
5. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
6. The proposed works 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.
7. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
8. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

- (a) *The proposed crossover is not included as part of this approval (it lies outside the subject land). It is intended that correspondence will be forwarded in due course stating that the proposed 5.5m wide crossover upgrade is supported.*
- (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) *Matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

The Acting Town Planner left the meeting at 10.35pm.

365. FINANCE

365.1 Accounts for Payment

By John Roberts, Executive Manager Finance & Administration on 10 December 2009

PURPOSE

To endorse the list of payments for the period 1 November 2009 to 30 November 2009.

BACKGROUND

It is a requirement of the Financial Management Regulations that the monthly Accounts for Payment are endorsed by the Council. The List of Accounts is attached.

ATTACHMENT

REPORT

Comments/Discussion

The List of Accounts for the period beginning 1 November 2009 and ending 30 November 2009 requires endorsement by the Council.

RECOMMENDATION TO COUNCIL

That the List of Accounts for the period beginning 1 November 2009 and ending 30 November 2009, be received, as per the following table:

<i>November 2009</i>		
Voucher Nos	Account	Amount
3722-3743	Municipal (Cheques)	\$12,269.03
EFT11320 – EFT11445	Electronic Transfer Funds	\$627,259.92
Payroll	Electronic Transfer Funds	\$135,677.22
	Direct Debits	Nil
	Municipal Total Payments	\$775,206.17

Cr Nardi – Cr Rico

That the List of Accounts for the period beginning 1 November 2009 and ending 30 November 2009, be received. CARRIED

365.2***Monthly Financial Activity Statement for Period Ending 30 November 2009***

By John Roberts Executive Manager Finance & Administration on 10 December 2009

PURPOSE

To provide financial information to the Council in the form of a financial activity statement for revenues and expenditures, both operating and capital, in accordance with statutory requirements.

BACKGROUND

The monthly Financial Activity Statement for the period ending 30 November 2009 is appended and includes the following:

- Financial Activity Statement
- Notes to the Financial Activity Statement including schedules of investments and rating information.
- Capital Works/Major Capital Project Status Report **ATTACHMENT**

The attached Financial Activity Statement is prepared in accordance with the amended Local Government (Financial Management) Regulations 1996; with additional material to provide Council with easy to understand financial information on Council activities undertaken during the financial year.

REPORT**Introduction/Comments**

The following is summary information on the attached financial reports:

The November 2009 year to date Financial Activity Statement report shows an overall actual surplus of \$4,149,517 compared to the year to date budget of \$3,471,110. Revenue and expenditure variances are generally timing in nature. The surplus is large at the start of the year as the full year rate revenue is brought to account. This surplus will decrease in the remaining months of 2009/10 as it is used to fund expenditure providing works and services..

The overall favourable variance of \$678,407 can be analysed as follows:

- The YTD actual Operating Revenue is \$5,918,147 compared to the YTD budget of \$5,925,216, a unfavourable variance of \$7,069. The variance is due primarily to the receipt of the HACC Growth Funding grant, and a grant for the revegetation of John Tonkin park plus an increase in planning development applications, offset by a lower than anticipated income from Old Royal George tenants and recoverable works, combined with a delay in grant receipts.
- The YTD actual Operating Expenditure is \$2,573,098 compared to the YTD budget of \$2,651,991, a favourable variance of \$278,893. The variance is due primarily to lower than anticipated expenditure on functional administration expenses and recyclable collection costs, together with a delay in implementing the Ranger HHD.
- The YTD actual Capital Expenditure is \$323,804 when compared to the YTD budget of \$724,241 a favourable variance of \$400,437. The variance is due to a delay in completing footpath, drainage and car park works combined with a delay in replacing vehicles.

Statutory Requirements

Local Government Act 1995 (As amended)

Local Government (Financial Management) Regulations 1996 (As amended)

Relevant Council Policies

Significant accounting policies are adopted by Council on a periodic basis. These policies are used in the preparation of the statutory reports submitted to Council.

Strategic Plan Implications

Nil

Financial/Resource/Budget Implications

The October 2009 Financial Activity Statement shows variances in income and expenditure when compared with budget estimates.

Conclusion

The attached Financial Activity Statement for the period 1 July 2009 to 30 November 2009 be presented to the Council for information.

RECOMMENDATION

That the Financial Activity Statement for the period ending 1 July 2009 to 30 November 2009 be received.

Various questions and issues regarding works contained in the statements were answered.

Cr Martin – Cr Collinson

That the Financial Activity Statement for the period ending 1 July 2009 to 30 November 2009 be received.

CARRIED

366. REPORTS OF CHIEF EXECUTIVE OFFICER

366.1 2009 Electors' Meeting

By Stuart Wearne, Chief Executive Officer, on 14 December 2009

PURPOSE

The purpose of this report is to facilitate consideration of any decisions taken at the 2009 Electors' Meeting.



15 December 2009

MINUTES

BACKGROUND

Under Section 5.33(1) of the Local Government Act 1995, all decisions made at an electors' meeting "are to be considered at the next ordinary council meeting or, if that is not practicable" at the next meeting thereafter.

Section 5.33(2) of the Act provides that *if* the Council makes a decision in response to a decision made at an electors' meeting, the reasons for the decision are to be recorded in the minutes.

REPORT

At the 2009 Electors' Meeting, held on Thursday, 10 December 2009, no motions which required a Council decision were moved. **ATTACHMENT**

Rather there were various statements and queries, some of which will be dealt with administratively as follows:

- (i) the integrity of the laterite footpath at 40 Dalgety Street is being investigated.
- (ii) arrangements have been made to place traffic counters in Dalgety Street in the new year.
- (iii) the rubbish truck drivers have been thanked with respect to rubbish collection in the area of the Newtons.
- (iv) the Rangers have been thanked with respect to their assistance with the Newton's dog.

RECOMMENDATION

That the report be received.

Cr Rico – Cr Nardi

That the report be received.

CARRIED

366.2***Briefing – Fremantle Ports***

The CEO drew elected members' attention to the attendance of only three elected members at the recent Fremantle Ports briefing, despite apologies being received from the Mayor and Cr Lilleyman only.

Originally all elected members, with the exception of Cr Lilleyman, had indicated their attendance at this meeting, after a suitable date was arrived at, at the Council Meeting. However despite a reminder being issued just before the briefing, which resulted in an apology from the Mayor only, only three had attended, together with the CEO. Fremantle Ports had in attendance their CEO, their Principal Planner and their Public Relations Officer, together with hired catering and bar staff, given this was a catered event, as had been advised. In addition a lengthy formal presentation had been arranged.

The CEO expressed the view that the low attendance had reflected poorly on Council.

366.3***Planning Approval – 40A Oakover Street***

The Chief Executive Officer declared the owner of 40A Oakover Street was known to him however this was not relevant to the advice he was about to give and further noted he had said nothing prior to Council making its decision.

The CEO then raised the issue of the need for any objection to the granting of a planning approval, to be based strictly on relevant provisions of Council's Town Planning Scheme, which, if opposing an application, elected members should articulate, particularly where the officer's recommendation was to approve. Otherwise Council decisions could result which were flawed, open to appeal or other form of legal challenge or at the very least reflect badly on the Council. The CEO noted that some of the points raised in the letter of objection received from an adjoining owner were not valid planning considerations.

366.4 Council Reform

The CEO reported on developments in relation to the State Government's local government "reform program", as follows:

Minister's Circular

On the afternoon of 7 December (receipted 8 December) Council was faxed a circular from the Minister (08-2009) headed "Interim Analysis – Local Government Reform Submissions". **ATTACHMENT**

The report referred to had been received that week by the Minister from the Local Government Reform Steering Committee.

The Minister indicated a number of local governments (though it was not clear if this was meant to cover all WA local governments) had been placed in one of three categories:

- (i) local governments which had expressed a desire to amalgamate.
- (ii) local governments which had "indicated a willingness to amalgamate but have been unable, in the time available, to obtain agreement with these proposed amalgamation partners".

With respect to this group the Minister concluded they should form "Regional Transition Groups" which he stated "will see several local governments working together under a formal, no opt-out agreement, with a view to forming a single entity by 2013.

- (iii) ("a small number of") local governments in regional areas, which due to their remoteness and size, mean that amalgamations are not a priority".

With regard to this group the Minister concluded they should form "Regional Collaborative Groups", with respect to which "councils will work collaboratively on a regional basis" and may or may not amalgamate (or, as the Minister put it, "transition to a single entity") in the future.

The Minister advised that financial incentives would be offered to local governments "embracing these reform options" and that "over the coming weeks" Departmental officers would liaise with local governments "to progress the best option for their region" with "outcomes from these discussions to be incorporated in the Steering Committee's final report".

The CEO advised that based on earlier reports, category (i) consisted of 9 local governments who were prepared to amalgamate into 3 local governments and category (ii) consisted of 54 local governments which had indicated in principle support for amalgamation. No details were given for category (iii).

The CEO noted that the Town of East Fremantle did not appear to fit any of the three options and it was not clear whether other categories existed.

The Town had not sought to amalgamate or indicated a willingness to amalgamate at a later date. The Town had expressed a preference for the third option, regional collaboration, however it was clear the Minister intended this to apply in limited regional areas only.

WALGA Media Release

On the same day the Minister's Circular was formally received, WALGA President Bill Mitchell, issued a press release praising the Minister for maintaining the principle of voluntary change and then outlining the three options involved. **ATTACHMENT**

Bill Mitchell's press release did not seem to note the Minister's collaborative option, which he said had been "a key component of the SSS final report", appeared to be confined to limited regional areas only, as indicated above.



15 December 2009

MINUTES

Letter from Minister

The situation became even more confusing when a letter from the Minister was received on the same day. **ATTACHMENT**

The Minister stated "I...have determined that the optional reform option for your local government is to engage with neighbouring local governments to form a Regional Transition Group".

This determination was notwithstanding Council did not express an interest in this option, which, according to the Minister's Circular received on the same day, was a criterion for a local government to be put in this group.

Council had, as already indicated, expressed a preference for the regional collaborative model, which the Minister seemed to be indicating would be utilised only in limited country regional areas, however WALGA had indicated no such qualification.

Letter to WALGA

In view of the above confusion, the CEO had written to WALGA, **ATTACHMENT.**

That letter is yet to receive a written response, although Tony Brown from WALGA had advised verbally that it was understood the Regional Collaborative Model would apply to the Kimberley and Pilbara only.

With respect to Bill Mitchell's press release, Tony Brown did say the interim report was confidential and Bill Mitchell had subsequently been "forced" to put out his press release without possessing a copy of the report and was further restricted in saying anything due to confidentiality provisions related to his membership of relevant committees.

WALGA Bulletin No 12

WALGA subsequently issued a bulletin. **ATTACHMENT**

WALGA notes "It is unclear what the process will be, should a particular local government choose to not volunteer to enter into a Regional Transition Group".

Both Tony Brown and this Bulletin indicated WALGA was seeking urgent clarification from the Minister.

The CEO commented that if the final outcome was that the Minister recommended the Town be amalgamated, that even if the statutory poll provisions applied, this could not be described as a voluntary process – as the Government had promised pre election and as the Minister had repeatedly advised would be the case after his backdown from his original comments made last February.

Under the poll provisions the onus is on a local government/local community to stop an amalgamation occurring through sufficient electors voting and if amalgamation is not opposed by sufficient numbers it becomes the "default" option.

The CEO further commented that it seemed extraordinary that in the space of two months, with 139 comprehensive submissions to consider, and with no discussion with the Town whatsoever, or any justification being offered, the Minister could write to the Town in a 1½ page proforma letter and state he had concluded that amalgamation was the "optional reform option" for the Town.

366.5***Swan River Trust – Riverside Road Shelters***

The CEO advised that he and the Acting Works Supervisor had met with representatives of the Swan River Trust to discuss the location of the shelters along Riverside Road and it appeared a decision from the Trust was to be expected shortly. The Mayor noted Council was not due to meet again until February.

Cr Collinson – Mayor Ferris

That the CEO be granted delegated authority to implement any decision of the Trust with respect to the Riverside Road shelters.

CARRIED
ABSOLUTE MAJORITY

366.6 Great Pram Push

The CEO advised a Mr Chris Dutton had recently written to Council regarding the staging of a “Great Pram Push” in East Fremantle on Sunday, April 18, 2010 by Mr Dutton’s health and fitness company. Mr Dutton has stated money raised from the event will go to charity. Considerable discussion had already taken place at an officer level, both in relation to an earlier request (which had involved staging the event on the same day as the East Fremantle Festival) and the more recent request.

The Mayor had suggested that as Council would not be meeting during January 2010 and the organisers needed to commence applying for necessary approvals etc, the CEO be given delegated authority to deal with this matter.

Mayor Ferris – Cr de Jong

That the CEO be granted delegated authority to deal with the application for the Great Pram Race proposed to be held in April 2010.

CARRIED

366.7 Newsletter

The CEO tabled a copy of Council’s December newsletter which was currently being printed for distribution prior to Christmas if possible.

366.8 Deputy Mayor

Mayor Ferris made a formal presentation of Cr de Jong’s Deputy Mayor badge and Cr de Jong reported on his representation of the Mayor at the recent City of Melville Council Dinner.

366.9 Thank you

Mayor Ferris thanked elected members and staff for their commitment during the year and wished everyone a safe and happy Christmas break.

367. CONFIDENTIAL BUSINESS

Nil.

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

Nil.

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

370. CLOSURE OF MEETING

There being no further business, the meeting closed at 11.45pm.

*I hereby certify that the Minutes of the meeting of the **Council** of the Town of East Fremantle, held on **15 December 2009**, Minute Book reference **344. to 370.** were confirmed at the meeting of the Council on*

.....

Presiding Member