



# Special Council Meeting 17 December 2012

## MINUTES



**MINUTES OF A SPECIAL COUNCIL MEETING, HELD IN THE COUNCIL CHAMBERS, ON MONDAY, 17 DECEMBER 2012 COMMENCING AT 6.30PM.**

**INDEX**

- 341. DECLARATION OF OPENING OF MEETING**
  - 341.1 Present**
- 342. ACKNOWLEDGEMENT OF COUNTRY**
- 343. WELCOME TO GALLERY AND INTRODUCTION OF ELECTED MEMBERS AND STAFF**
- 344. RECORD OF APPROVED LEAVE OF ABSENCE**
- 345. RECORD OF APOLOGIES**
- 346. PUBLIC QUESTION TIME**
- 347. BUSINESS**
  - 347.1 No. 2 (Lot 3 & 4) Riverside Road, East Fremantle**  
*Applicant: B Williamson*  
*Owner: E Errington*  
*Application No. P161/12*
- 348. ADJOURNMENT**
- 349. RESUMPTION**
- 350. BUSINESS (CONTINUED)**
  - 350.1 No. 2 (Lot 3 & 4) Riverside Road, East Fremantle (Continued)**  
*Applicant: B Williamson*  
*Owner: E Errington*  
*Application No. P161/12*
  - 350.2 Delegations to CEO**
- 351. CLOSURE OF MEETING**



17 December 2012

MINUTES

**MINUTES OF A SPECIAL COUNCIL MEETING, HELD IN THE COUNCIL CHAMBERS, ON MONDAY, 17 DECEMBER 2012 COMMENCING AT 6.30PM.****341. DECLARATION OF OPENING OF MEETING**

The Mayor (Presiding Member) declared the meeting open.

**341.1 Present**

Mayor A Ferris	Presiding Member
Cr C Collinson	
Cr B de Jong	
Cr R Lilleyman	
Cr S Martin	
Cr R Olson	
Cr D Nardi	
Cr A Wilson	
Mr S Wearne	Chief Executive Officer
Mr J Douglas	Manager Planning Service
Mr A Malone	Senior Town Planner
Ms J May	Minute Secretary

**342. ACKNOWLEDGEMENT OF COUNTRY**

The Presiding Member 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.”*

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

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

**344. RECORD OF APPROVED LEAVE OF ABSENCE**

Nil.

**345. RECORD OF APOLOGIES**

Cr Rico.

**346. PUBLIC QUESTION TIME**

Nil.

**347. BUSINESS****347.1 No. 2 (Lot 3 & 4) Riverside Road, East Fremantle**

**Applicant: B Williamson**

**Owner: E Errington**

**Application No. P161/12**

By Andrew Malone, Senior Planning Officer, on 14 December 2012

**PURPOSE OF THIS REPORT**

This report reviews the amended plans provided to Council with regard to visual privacy. It should be read as supplementary to the Council report dated 29 November 2012. This report recommends the approval of a development application for a five-storey multiple dwelling (4 units) development at 2 (Lot 3 & 4) Riverside Road, East Fremantle, based on the applicant requesting the following variations:

- Building Size (Plot Ratio);
- Bicycle Parking;
- Site Works;
- Setback;

- Visual Privacy;
- Height; and
- Roof Pitch.

The abovementioned variations have been addressed previously. This report will address overlooking concerns and the amendments to the plans made in response to the Ordinary Council Meeting on 11 December 2012.

**STATUTORY ASSESSMENT**

**Visual Privacy**

7.4.1 Visual Privacy					
Wall Orientation	Major Opening Type	Required Setback	Proposed Setback	Variation	Status
East	Balcony: Unit 1	7.5m	4.1m	3.4m	D
East	Balcony: Unit 2	7.5m	4.1m	3.4m	D
East	Balcony: Unit 3	7.5m	4.1m	3.4m	D
East	Balcony: Unit 4	7.5m	4.1m	3.4m	D

The Acceptable Development Provisions (**ADP**) for visual privacy require major openings which have their floor level more than 0.5 metre above natural ground level, and positioned so as to overlook any part of any other residential property behind its setback line, to comply with the following:

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

Notwithstanding the above, the relevant ADP of the RDC 7.4.1 relate to “any part of any other residential property behind its street setback line”. The RDC accepts that the front setback area and intrusions into it are not assessed for visual privacy as they are visible from the public domain and cannot be afforded the same visual protection as private outdoor spaces behind the building setback. ‘Sunnys’ balconies are situated abutting the front setback and exist as highly visible spaces from the public domain (East Street and Riverside Road). It is unreasonable and impractical to presume that they should be afforded visual privacy from the proposed development, especially considering the clear overlooking from the street.

It is arguable that the relevant RDC provision requires any visual screening from the development to achieve compliance with the ADP and/or the Performance Criteria (**PC**) of Element 7.4.1.

Should it be considered that there is overlooking into private habitable space of the ‘Sunnys’ development, the balconies will be required to be assessed with a setback of 7.5 metres from the boundary to comply with the visual privacy requirements of the ADP. Alternatively, privacy screening may be established to meet the PC of the R Codes. The PC of 7.4.1 allows for:

*“Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location, and the design of major openings and outdoor active habitable spaces, screening devices, and landscape, or remoteness.”*

The applicant in a conciliatory approach to providing an acceptable outcome has provided two alternatives to address the concerns of the neighbours.

**Option 1: Garden Planter Box**

The applicant has amended the plans to maintain the cantilevered balcony design, an integral element in maintaining the buildings articulation to Riverside Road, however has

removed the ability for access to the cantilevered section of the balcony through the use of garden planter boxes to unit 1 and unit 2.

The planter boxes will limit access to the cantilevered section thereby minimising the potential to overlook into the 'Sunnys' development. The planter boxes are proposed to be 0.3 metres in height and will encompass the whole of the cantilevered balcony.

This is seen to sufficiently address the PC requirements of visual privacy by eliminating direct overlooking of active habitable spaces and outdoor living areas of other dwellings of the 'Sunnys' development.

#### **Option 2: Unit 1 Screening/ Planter Box Unit 2: Pergola**

This option again maintains the cantilevered balcony design, an integral element in maintaining the buildings articulation to Riverside Road. The applicant has proposed to provide 'blade' screening positioned at a 45° angle to eliminate overlooking to the Adjoining 'Sunnys' development to unit 1. This screening would be required to be fixed. The screening allows views of the river to be maintained, however eliminating overlooking into 'Sunnys'. A planter box is proposed to the point of the cantilever to limit access and provide an additional element, thereby minimise overlooking.

The cantilevered balcony to Unit 2 is proposed to be a Pergola element over Unit 1. There will be no access to this area. The pergola minimises the potential to overlook into the 'Sunnys' development.

Option 2 also sufficiently addresses the PC requirements of visual privacy by eliminating direct overlooking of active habitable spaces and outdoor living areas of other dwellings of the 'Sunnys' development.

#### **CONCLUSION**

The proposed Option 1 and Option 2 are considered to address Council's resolution at the Ordinary Council Meeting 11 December 2012 for:

*"The submission of amended plans that incorporate design/structural elements which deny direct line of sight from a vertical height of 1.75m above the floor level from the western side of the balconies on the ground and first floor levels."*

Amended plans are attached date stamped received 13 December 2012 and 14 December 2012. It is considered that both options 1 and 2 comply with the requirements of the ADP of the RDC and therefore should be supported by Council.

#### **RECOMMENDATION**

That Council approve the application for construction of a five storey, four unit, residential development at No. 2 (Lot 3 & 4) Riverside Road, East Fremantle, as described on the plans date stamped received 16 October 2012 and 30 November 2012 and as amended by the revised plans date stamped received 13 December 2012 or 14 December 2012, based on the preferred option of Council for visual privacy, subject to the recommended conditions as proposed in Council report dated 29 November 2012.

The Mayor advised that following on from the Council Meeting held on 11 December, a site inspection had been carried out earlier this evening at the Sunnys' units affected by this proposed development.

The Manager Planning Services spoke briefly of the recommendation options contained in the officer's report.

Mr John Kirkness (representing owners of Units 18/19/20/21 & 22/1 Riverside Road) referred to his correspondence circulated to elected members at the site visit and requested Council give consideration to a proposal to set back the Riverside Road frontage of the proposed development, at least to its western portion, by 1.25m which would locate the predominant corner of the building with its screening to the balconies beyond in direct alignment with the similar predominant corner to the adjacent Sunnys'

17 December 2012

## MINUTES

apartment building. Should Council not support the above preferred solution, it was requested that Council adopt Option 1 for Level 1 and Option 2 for Level 2 of the development.

Mr De San Miguel (owner of Unit 18/1 Riverside Road) addressed the meeting in support of the request to have the front setback increased by a further 1.25m but did not support the erection of privacy screens as proposed in Option 2.

Mr Bob Davy (designer) and Mr Barry Williamson (owner) advised the meeting that they were willing to amend the proposal to incorporate either (or a combination) of the options contained in the officer's report.

**348. ADJOURNMENT**

Cr Martin – Cr Lilleyman

That the meeting be adjourned at 6.50pm to allow the officers to produce an amended resolution incorporating changes required by elected members. CARRIED

**349. RESUMPTION**

Cr de Jong – Cr Wilson

That the meeting be resumed at 7.03pm, with all those present prior to the adjournment, in attendance. CARRIED

**350. BUSINESS (CONTINUED)****350.1 No. 2 (Lot 3 & 4) Riverside Road, East Fremantle (Continued)**

*Applicant: B Williamson*

*Owner: E Errington*

*Application No. P161/12*

Cr de Jong – Cr Wilson

That Council approve the application for construction of a four storey, four unit, residential development as No. 2 (Lot 3 & 4) Riverside Road, East Fremantle, as described on the plans date stamped received 16 October 2012 and 30 November 2012, and exercise its discretion in granting approval for the following variations:

- (a) building Size (Plot ratio);
- (b) bicycle Parking;
- (c) site Works;
- (d) setback;
- (e) visual Privacy;
- (f) height; and
- (g) roof Pitch

subject to the following conditions:

1. The submission of amended plans to the satisfaction of the Chief Executive Officer which incorporate the following elements:
  - (i) the cantilevered section to unit 1 to incorporate a planter box and to remain non habitable
  - (ii) the cantilevered section of unit 2 to be a pergola and to remain non habitable.
2. A detailed landscaping plan to be submitted and approved by the Chief Executive Officer for the planter box located at first floor (unit 1), prior to the commencement of site works.
3. Prior to the applicant submitting an application for a Building Licence to the Town, the applicant is to comply with the provisions of the Local Planning Policy Fremantle Port Buffer Development Guidelines.
4. Prior to the applicant submitting an application for a Building Licence to the Town, the applicant to comply with the provisions of any conditions or recommendations of the Fremantle Port Authority.
5. Prior to the applicant submitting an application for a Building Licence to the Town, Lots 3 and 4 are to be amalgamated into one lot.

6. Prior to occupancy of the dwellings, the applicant is to provide engineering details to the satisfaction of Chief Executive Officer in consultation with Council's Building Surveyor and Operations Manager for the work required to be undertaken in the reserve/verge on the east side of Reynolds Street to provide access to the proposed house.
7. Prior to occupation of the dwellings, the applicant to provide a secure external bicycle parking area with a minimum of four bicycle parking bays to be provided to the satisfaction of the Chief Executive Officer.
8. The boundary wall adjoining Canning Highway shall be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours.
9. The gatehouse adjoining Canning Highway and Riverside Road shall be kept clean and free of graffiti and vandalism at all times and any such graffiti or vandalism to be remedied within 24 hours.
10. The works to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
11. The proposed works are not to be commenced until Council has received an application for a Building Licence and the Building Licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
12. 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.
13. All parapet walls 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.
14. Prior to the installation of externally mounted air-conditioning plant, a development application, which demonstrates that noise from the air-conditioner will comply with the Environmental (Noise) Regulations 1997, is to be lodged and approved to the satisfaction of the Chief Executive Officer. (refer footnote (h) below).
15. Any roof mounted or freestanding plant or equipment such as air conditioning units to be located and/or screened so as not to be visible from beyond the boundaries of the development site.
16. A Rubbish Collection Strategy / Management Plan shall be submitted to and approved by the Chief Executive Officer prior to the commencement of works. Any alterations to the approved plans required as a result of the strategy / plan shall be incorporated into the building licence plans. The approved strategy / plan shall be implemented to the satisfaction of the Chief Executive Officer.
17. A detailed landscaping plan to be submitted and approved by the Chief Executive Officer prior to the commencement of site works. The plan to include location, species and planting details, having regard to water-wise garden practices.
18. All rubbish to be located and/or screened so as not to be visible from beyond the boundaries of the development site.
19. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
20. Maximum width of the crossover not to exceed 6.0 metres.
21. In cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.



17 December 2012

## MINUTES

22. The applicant shall notify the General Manager, Swan River Trust, in writing not less than seven (7) days prior to the commencement of works.
23. No dewatering shall occur prior to approval by the Swan River Trust of a site Dewatering Management Plan.
24. No fill, building material, rubbish or any other deleterious matter shall be placed in the Trust Development Control Area or allowed to enter the river as a result of the development.
25. The development shall be connected to the reticulated sewerage system prior to occupation.
26. Stormwater drainage shall be contained on site, or connected to the local government stormwater drainage system, to the satisfaction of the Town of East Fremantle on advice from the Swan River Trust.
27. 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 property.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (f) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (h) *under the Environmental Protection (Noise) Regulations 1997, the noise from an air-conditioner must meet assigned allowable noise levels at all times. The Environmental Protection Act 1986 sets penalties for non-compliance with the Regulations and the installer of a noisy air-conditioner can face penalties of up to \$5,000 under Section 80 of the Act. Refer to Department of Environmental Protection document—"An Installers Guide to Air-Conditioner Noise".*
- (i) *The applicant is advised that the selected building materials and colour scheme for the development should be of a low reflective standard, and harmonise with the river environment.*
- (j) *The applicant is advised that the Trust recommends planting of locally native species to reduce water and fertiliser requirements.*
- (k) *The applicant is advised that the proposal has the potential to be affected by sea level rise. It is recommended applicants understand the implications of potential sea level rise on their site. The onus rests with the applicant to undertake a risk assessment and exercise their judgement in determining the level of risk they are prepared to accept. The Trust's Climate Change Risk Assessment Project (2010) models impact of potential sea levels rise in the Swan and Canning Rivers, and sets out a methodology to assess the vulnerability of foreshore areas. Additional information is available on the website at [http://www.swanrivertrust.wa.gov.au/science/climate/content/climate\\_change\\_risk\\_assessments.aspx](http://www.swanrivertrust.wa.gov.au/science/climate/content/climate_change_risk_assessments.aspx). While mapping information is available from the*

***Trust, it is also recommended applicants undertake their own research and obtain appropriate independent professional advice relevant to the particular circumstances.*** CARRIED

**350.2 Delegations to CEO**

The Mayor read the following two options provided by the Chief Executive Officer in relation to the determination of planning applications during the Council recess:

- (i) The following recommendation:  
*“That for the period 18 December 2012 to 31 January 2013 Council delegates to the Chief Executive Officer, in consultation with the Manager Planning Services, under clause 11.3 of the Town Planning Scheme No 3, the power to approve planning applications not requiring a referral to the Town Planning Advisory Panel (ie those applications that do not impact upon the streetscape, are not associated with a property listed on the Municipal Inventory/Heritage List or are of a minor nature.”*  
ABSOLUTE MAJORITY REQUIRED

(This is exactly the same as the recommendation unanimously adopted last year, except for the changed dates and the addition of “in consultation with the Manager Planning Services”.)

- (ii) No delegation is granted and all matters are either dealt with at Special Meetings in January 2013 or held over to the normal round in February.

**Cr Martin – Cr Olson**

**That for the period 18 December 2012 to 31 January 2013 Council delegates to the Chief Executive Officer, in consultation with the Manager Planning Services, under clause 11.3 of the Town Planning Scheme No 3, the power to approve planning applications not requiring a referral to the Town Planning Advisory Panel (ie those applications that do not impact upon the streetscape, are not associated with a property listed on the Municipal Inventory/Heritage List or are of a minor nature.**

CARRIED  
ABSOLUTE MAJORITY

**351. CLOSURE OF MEETING**

There being no further business, the meeting closed at 7.10pm.

*I hereby certify that the Minutes of the Special Meeting of the **Council** of the Town of East Fremantle, held on **17 December 2012**, Minute Book reference **341. to 351.** were confirmed at the meeting of the Council on*

.....

\_\_\_\_\_

***Presiding Member***