

**MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN) MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON TUESDAY, 2 DECEMBER, 2008 COMMENCING AT 6.35PM.**

**T106. OPENING OF MEETING**

The Chief Executive Officer, Stuart Wearne, opened the meeting and advised that as Cr Dobro was an apology for this evening's meeting, nominations would be called for Presiding Member.

**T106.1 Present**

Cr Barry de Jong	Presiding Member
Cr Dean Nardi	
Cr Richard Olson	
Cr Maria Rico	
Cr Alex Wilson	
Mr Stuart Wearne	Chief Executive Officer
Mr Chris Warrener	Town Planner to 11pm
Mrs Peta Cooper	Minute Secretary
Cr David Arnold	Observer

**T107. ELECTION OF PRESIDING MEMBER**

The Chief Executive Officer called for nominations for the position of Presiding Member in the absence of Cr Dobro.

Cr de Jong nominated Cr Olson who declined the nomination.

Cr Olson nominated Cr de Jong who accepted the nomination. The nomination was seconded by Cr Wilson.

Cr de Jong assumed the chair.

**T108. WELCOME TO GALLERY**

There were 26 members of the public in the gallery at the commencement of the meeting.

**T109. APOLOGIES**

Mayor Alan Ferris  
Cr Stefanie Dobro

**T110. CONFIRMATION OF MINUTES**

**T110.1 Town Planning & Building Committee (Private Domain) – 11 November 2008**

Cr Olson – Cr Wilson

That the Town Planning & Building Committee (Private Domain) minutes dated 11 November 2008 as adopted at the Council meeting held on 18 November 2008 be CARRIED.

**T111. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)**

Nil.

**T112. REPORTS OF COMMITTEES**

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**T112.1 Town Planning Advisory Panel – 20 November 2008**

**Cr Wilson – Cr Olson**

That the minutes of the Town Planning Advisory Panel meeting held on 20 November 2008 be received and each item considered when the relevant development application is being discussed. CARRIED

**T113. REPORTS OF OFFICERS**

**T113.1 Receipt of Reports**

**Cr Nardi – Cr Rico**

That the Reports of Officers be received. CARRIED

**T113.2 Order of Business**

**Cr Olson – Cr Rico**

The order of business be altered to allow members of the public to speak to relevant agenda items. CARRIED

*The Chief Executive Officer left the meeting at 6.45pm.*

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

*Cr Wilson made the following impartiality declaration in the matter of 49 Duke Street: "As a consequence of my having previously undertaken some work for the Mortons and the fact that my daughter plays soccer with the applicant's daughter, 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.*

**T113.3 Duke Street No. 49 (Lot 78)**  
**Applicant: Threadgold Architects**  
**Owner: Mr & Mrs McLean**  
**Application No. P183/2008**

By Chris Warrener, Town Planner on 3 November 2008

**BACKGROUND**

**Description of Proposal**

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

**Statutory Considerations**

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

**Relevant Council Policies**

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

**Documentation**

Plans and relevant forms date stamp received on 2 October 2008

**Date Application Received**

2 December 2008

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**Advertising**

Adjoining land owner only

**Date Advertised**

6 October 2008

**Close of Comment Period**

21 October 2008

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

60 days

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

5 March 1986	Building Permit 151/1098 approved for a steel framed carport;
17 March 1998	Council approves additions which involve a setback variation from 1m to 0m along the south side boundary;
23 June 1998	Building Licence 028/2696 approved for 2-storey extension;
17 April 2001	Council approves 2 sash windows for a family room subject to the bottom panels being fixed and obscure;
19 December 2001	Minister for Planning upholds appeal to allow the sash windows as proposed;
21 January 2002	Building Licence 33/3176 approved for installation of new windows;
19 October 2004	Council decides to advise the WAPC that it supports a boundary adjustment between 49 and 51 Duke Street;
4 November 2004	WAPC conditionally approves a boundary adjustment between 49 and 51 Duke Street;
7 December 2004	WAPC endorse for final approval Deposited Plan 43936 for the boundary adjustment.

**Public Submissions**

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

*J & J Morton*  
*51 Duke Street*

- Objection;
- Affect on amount of natural sunlight;
- Development will result in the demolition of an old style outdoor toilet;
- Concerns regarding the use of the store.

*P & S McVey*  
*47 Duke Street*

- Support proposed storage structure;
- In keeping with size and tone of the existing buildings, and will retain existing mature trees;
- Offer greater level of privacy.

**Site Inspection**

By Town Planner on 13 February 2008

**REPORT**

**Issues**

*Boundary Walls*

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

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



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LPP 142 states:

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

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

This application will result in there being 2 walls with a combined length of 15.4m along one side boundary therefore Council's discretion is required to be exercised to permit the proposed store.

*Submissions*

An objection and a supporting submission were received.

The objection is from the owners of 51 Duke Street.

**Discussion**

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

The store is not considered to affect the amenity of 51 Duke Street, in fact it will likely provide better privacy between both properties and is supported.

**RECOMMENDATION**

That Council exercise its discretion in granting approval for a variation to Local Planning Policy 142 for 2 walls along one side boundary with a combined length that exceeds 9m for the construction of a 6.4m long x 3.4m wide x 4.35m high storeroom incorporating a bathroom with a parapet wall along the south side boundary at No. 49 (Lot 78) Duke Street, East Fremantle in accordance with the plans date stamp received on 2 October 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed store is not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
5. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
6. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
7. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

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

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- (b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.
- (c) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.
- (d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).
- (e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.
- (f) matters relating to dividing fences are subject to the Dividing Fences Act 1961.

The Chief Executive Officer returned to the meeting at 6.53pm.

Mr Johnathon Morton (51 Duke Street) and Mr Arthur Koroveshi (In-House Counsel for the Mortons) addressed the meeting raising issues pertaining to:

- definition of outbuilding
- existing boundary walls and additional parapet wall
- loss of natural light & overshadowing
- a 1m setback was suggested for proposed storeroom

Mr Charles & Mrs Jane MacLean addressed the meeting in support of their application stating that it would reduce overlooking from the neighbouring development and also reduce tension between neighbours. It was said that the purpose of the parapet wall was to utilise an existing outdoor wc in the design and to not compromise their existing garden / open space area. A photograph showing the northern elevation of the neighbouring development was tabled by the MacLeans.

**RECOMMENDATION TO COUNCIL**

**Cr de Jong – Cr Nardi**

**That application for the construction of a storeroom incorporating a bathroom with a parapet wall along the south side boundary at No. 49 (Lot 78) Duke Street, East Fremantle be deferred to the December meeting of Council to allow for a further report with respect to some of the issues raised.**

CARRIED

**T113.4**

**Angwin Street No. 27 (Lot 45)**

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

**Application No. P182/2008**

By Chris Warrener, Town Planner on 29 October 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval for a barbeque and sections of new rendered brick fence/wall up to 2.9m above natural ground level (NGL), on the north side boundary common with Surbiton Road at 27 Angwin Street.

**Statutory Considerations**

Town Planning Scheme No. 3 – Residential R12.5

Local Planning Strategy - Riverside Precinct (LPS)

Residential Design Codes (RDC)

**Relevant Council Policies**

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

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**Documentation**

Plans and relevant forms date stamp received on 30 September 2008

**Date Application Received**

30 September 2008

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

62 days

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

- 31 May 1985 Closure of Richmond Street road reserve from north of Lot 8 (No 21) Angwin Street to Surbiton Road;
- 22 October 1986 Easement registered to provide a right of carriageway over portion of Reserve 41519 (previously Richmond Street) for the purposes of providing vehicle access to 23 Angwin Street;
- 17 November 1986 Easement registered to provide a right of carriageway over portion of Reserve 41519 (previously Richmond Street) for the purposes of providing vehicle access to 21 Angwin Street;
- 20 June 1994 Council grants Planning Consent for a relaxation of setbacks for a bedroom and balcony additions at 27 Angwin Street;
- 19 September 1994 Council refuses to grant Planning Consent for a laundry, garage and studio addition within front setback;
- April 1995 Council resolves:  
“(a) Council will not be responsible for the capital cost and maintenance cost of Surbiton Road on the northern boundary of Lot 45 nor the easement at the rear of lots 45, 46 and 47, as Council maintains Angwin Street, thus providing access to all properties, that is lots 45, 46, 47 and 8,  
(b) that the road and easement as described in (a) be used for access only, and not for parking of any type of vehicle.  
(c) any improvements to the road and easement be subject to Council’s approval, and any other public authority.  
Council’s Town Planner is of the opinion that:  
- a landscape plan for road and barrier fencing/parks & recreation plan needs to be adopted prior to converting a single dwelling access into a four dwelling access.  
- Council may require a fee for the granting of any easement.”
- 26 May 1995 Council refuses to grant Planning Consent for a laundry, garage and studio addition within the front setback at 27 Angwin Street;
- 21 August 1995 Council grants special approval for zero setbacks to the east and south boundaries and a relaxation of standards for a reduced setback to a secondary street for erection of a laundry, garage and studio at 27 Angwin Street;
- 16 October 1995 Building Permit issued for the laundry, garage and studio;
- 15 February 2005 Council grants conditional approval for construction of a garage with access to Surbiton Road via Reserve 41519 and a rooftop garden to the rear/western boundary at 27 Angwin St;
- 17 October 2006 Council conditionally approves a garage, store, swimming pool, WC & shower, pavilion, and boundary walls with setback and wall height variations;
- 16 April 2008 Council grants approval for a garage and swimming pool.
- 11 November 2008 The Town Planning & Building Committee resolved: “That the application for a barbeque and sections of a new rendered brick fence/wall at No. 27 (Lot 45) Angwin Street, East Fremantle be deferred pending the submission of revised plans that demonstrate compliance with Local Planning Policy No. 143 – Fencing”.
- 18 November 2008 Council resolved: “That this application be deferred, as per the applicant’s request, to the Town Planning & Building Committee (Private Domain) meeting on 2 December 2008”.

**CONSULTATION**

### Town Planning Advisory Panel Comments

This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comment was made:

- vegetation should be continued along the verge on the north side of the proposed wall to soften the impact of the wall.

### Site Inspection

By Town Planner on 9 October 2008

### REPORT

#### Issues

##### Boundary Fence

The application is for a boundary wall/fence at No. 27 Angwin Street. The proposed side boundary fence, common with Surbiton Road, is a rendered brick wall. The height of this wall varies from 2.14m to 2.9m above natural ground level (NGL).

LPP 143 States:

#### ***"Part 3 - Fence Design***

##### 3.3 Corner Lots

*Where a lot has frontage to two streets a fence/wall shall not be constructed within the first 6m of the secondary frontage from the primary frontage unless it is of the same materials and design as the fence/wall along the primary frontage.*

#### **Part 4 – Council Approval Required**

*Under special circumstances including those listed below Council may approve a fence to be less visually permeable and or with a maximum height greater than 1.8m:*

- 4.1 *a higher fence/wall is required for noise attenuation.*
- 4.2 *a less visually permeable fence would aid in reducing headlight glare from motor vehicles. This would apply more particularly where the subject property is opposite or adjacent to an intersection which could lead to intrusion of light into windows of habitable rooms.*
- 4.3 *where the contours of the ground or the difference in levels between one side of the fence and the other side warrant consideration of a higher fence.*
- 4.4 *where the applicant can demonstrate to Council that there is a need to provide visual screening to an outdoor living area. This may apply in situations where there is no alternative private living space other than in the front of the residence or for part off the secondary side boundary of a corner lot."*

### Discussion

In support of the application, in particular for the proposed new section of wall along Surbiton Road as it is above the 1.8m maximum height allowed, the applicant states:

1. *There is no private outdoor recreation area apart from the front yard (western end) of our lot;*
2. *We proposed to carry out substantial improvements including pool, BBQ area and gazebo;*
3. *We are protected, security and privacy wise, on the western and southern but not the northern boundary adjoining Surbiton Rd;*
4. *Surbiton Rd is used by an adjoining landowner for vehicular access, patrons of the Left Bank who walk there and also those who use the parking area adjoining where the wall is proposed;*
5. *Users of the adjoining park would also be able to see inside our private recreation area;*
6. *The lot slopes from east to west dramatically and what is proposed is consistent with that constructed or approved. The proposed 2.14m end of the wall will abut a wall of 2.5m and the other end having a height of 2.9m will abut a wall of 3.35m. The western boundary has been approved to a height of 3.6m and the southern boundary wall to a height of around 2.7m.*

*We are investing heavily in the outdoor area and, not unreasonably, would like to enjoy it without being overlooked by the public that uses Surbiton Rd and the adjoining park."*



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In regard to the solid wall height variation for the proposed fence along the north side boundary, which varies in height from 2.14m to 2.9m in lieu of 1.8m, this is considered acceptable based on the existing wall height along a portion of the north side boundary.

As the proposed new rendered brick fence section will match the existing fence adjacent to Surbiton Road, and there is a need to provide screening for the proposed BBQ and associated outdoor living area, the variation to the solid wall height can be supported.

**RECOMMENDATION**

That Council exercise its discretion in granting approval for a variation to the north side boundary wall height pursuant to Local Planning Policy 143 – Fencing from 1.8m to 2.9m for the construction of a barbeque and sections of a new rendered brick fence/wall up to 2.9m above natural ground level (NGL), on the north side boundary common with Surbiton Road at No. 27 (Lot 45) Angwin Street, East Fremantle in accordance with the plans date stamp received on 30 September 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
4. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
5. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*

Mr Dominic Maddestra (applicant) addressed the meeting in support of his application, in particular matters relating to privacy, mainly due to Left Bank patrons. Mr Maddestra tabled a revised plan (SK4) showing the wall at 1.8m.

**RECOMMENDATION TO COUNCIL**

**Cr Nardi – Cr Rico**

**That Council exercise its discretion in granting approval for a variation to the north side boundary wall height pursuant to Local Planning Policy 143 – Fencing from 1.8m to 2.9m for the construction of a barbeque and sections of a new rendered brick fence/wall up to 2.9m above natural ground level (NGL), on the north side boundary common with Surbiton Road at No. 27 (Lot 45) Angwin Street, East Fremantle in accordance with the plans date stamp received on 30 September and revised plan (SK4) date stamp received 2 December 2008 subject to the following conditions:**

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1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
4. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
5. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*

CARRIED

T113.5

**View Terrace No. 65B (Lot 1)**

**Applicant: Craig Sheils Homes**

**Owner: M & D Turner**

**Application No. P186/2008**

By Chris Warrener, Town Planner on 21 November 2008

**BACKGROUND**

**Description of Proposal**

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

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

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

**Statutory Considerations**

Town Planning Scheme No. 3 – Residential R12.5

Local Planning Strategy - Richmond Hill Precinct (LPS)

Residential Design Codes (RDC)

**Relevant Council Policies**

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

**Documentation**

Plans and relevant forms date stamp received on 9 October 2008

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**Date Application Received**

9 October 2008

**Advertising**

Adjoining landowners and sign on site

**Date Advertised**

17 October 2008

**Close of Comment Period**

3 November 2008

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

53 days

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

26 February 1982	Building Permit 095/561 approved for a timber brick & tile family room addition to the house at 65 View Terrace;
18 November 2003	Council decides to advise the WAPC that it does not support the subdivision of 65 View Terrace into 2 survey strata lots;
17 December 2003	WAPC grants conditional approval to the subdivision of 65 View Terrace into 2 survey strata lots;
23 December 2004	Demolitions Licence 465/2004 approved for single storey house at 65 View Terrace;
11 November 2005	WAPC endorses Survey Strata Plan 48493 for Final Approval for the subdivision of 65 View Terrace into 2 survey-strata lots (2 x 445m <sup>2</sup> );
19 September 2006	Council grants approval for a 2-storey house at 65A View Terrace;
8 December 2006	Building Licence 06/172 approved for a 2-storey house at 65A View Terrace.

**CONSULTATION**

**Town Planning Advisory Panel Comments**

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

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

**Public Submissions**

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

<i>J Wood</i> <i>67C View Terrace</i>	<ul style="list-style-type: none"><li>- New soil level is more than 1m higher since removal of the old residence;</li><li>- Concerned that sunlight from November to March will be reduced from sunrise to 2pm;</li><li>- Exceeds height limits;</li><li>- Request that rear and side windows be frosted.</li></ul>
<i>M &amp; J Cashman</i> <i>65A View Terrace</i>	<ul style="list-style-type: none"><li>- Bedrooms and bathroom at rear have potential to overshadow backyard of 65A View Terrace, request shadow study;</li><li>- Request that windows to corridor be semi-transparent;</li><li>- Request that balcony at the front be more open style to open up peripheral views to the east;</li><li>- No objection to height variation.</li></ul>

**Site Inspection**

By Town Planner on 16 September 2008

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STATISTICS		<i>Required</i>	<i>Proposed</i>	
Land Area			445m <sup>2</sup> Existing	
Open Space		55%	56% Acceptable	
Zoning			R12.5	
Heritage Listing			Not listed	
<b><u>Setbacks:</u></b>				
Front (North)				
	<i>Ground</i>	<i>Garage</i>	7.5 9.9 Acceptable	
		<i>Upper</i>	<i>Balcony</i>	7.5 7.5 Acceptable
Rear				
	<i>Ground</i>	<i>Bed 3 &amp; 2</i>	6.0 1.5 <b>Discretion Required</b>	
		<i>Upper</i>	<i>Ensuite</i>	6.0 4.86 <b>Discretion Required</b>
Side (East)				
	<i>Ground</i>	<i>Bed 2</i>	1.0 1.0 Acceptable	
		<i>Lounge</i>	1.0 1.5 Acceptable	
		<i>Laundry</i>	1.0 1.0 Acceptable	
		<i>Stair</i>	1.0 2.4 Acceptable	
		<i>Garage</i>	1.0 1.0 Acceptable	
	<i>Upper</i>	<i>WIR, pdr, computer</i>	1.5 1.5 Acceptable	
		<i>Stair</i>	1.2 2.4 Acceptable	
		<i>Dining, living</i>	1.2 1.5 Acceptable	
		<i>Balcony</i>	1.2 1.4 Acceptable	
West				
	<i>Ground</i>	<i>Garage</i>	1.0 2.0 Acceptable	
		<i>Entry</i>	1.5 4.66 Acceptable	
		<i>Stair</i>	1.0 4.66 Acceptable	
		<i>Lounge</i>	1.5 2.19 Acceptable	
		<i>Bed 3</i>	1.0 1.0 Acceptable	
	<i>Upper</i>	<i>Balcony</i>	1.2 1.27 Acceptable	
		<i>Living, Dining</i>	1.5 2.0 Acceptable	
		<i>Stair</i>	1.1 4.66 Acceptable	

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STATISTICS		Required	Proposed
	<i>Bed 1</i>	1.1	1.69 Acceptable
<b>Wall Height:</b>			
Front (North)			
	<i>Upper Balcony</i>	6.50	6.70 to 7.20 <b>Discretion Required</b>
Side (East)			
	<i>Upper Stairs</i>	5.60	5.60 to 5.90 <b>Discretion Required</b>
	<i>Dining/Living</i>	5.60	5.90 to 6.30 <b>Discretion Required</b>
	<i>Balcony</i>	6.50	7.10 to 7.60 <b>Discretion Required</b>
Side (West)			
	<i>Upper Balcony</i>	6.50	6.70 to 6.50 <b>Discretion Required</b>
	<i>Dining/Living</i>	5.60	5.00 to 5.70 <b>Discretion Required</b>
<b>Building Height</b>		8.1	8.6 <b>Discretion Required</b>

**REPORT**

**Assessment**

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

*"Part 1 - Maximum Building Heights*

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

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

**Issues**

Wall Height

*Front (North)  
Common with View  
Terrace*

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

This balcony is enclosed by a flat/concealed roof.

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



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*East (Side)  
Common with 67 View  
Terrace*

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

LPP 142 specifies a 5.6m wall height limit.

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

LPP 142 specifies a 6.5m height limit.

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

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

LPP 142 specifies a 6.5m height limit.

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

LPP 142 specifies a 5.6m wall height limit.

Streetscape

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

The relevant acceptable development provision under the RDC states:

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

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

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

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

Submissions

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

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



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TPAP Comments

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

**Discussion**

*Wall Height*

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

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

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

*Streetscape*

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

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

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

*Submissions*

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

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

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

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

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

**RECOMMENDATION**

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

- (a) variation to wall height on the north side for a concealed roof balcony pursuant to Local Planning Policy 142 from 6.5m to 7.2m;



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

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

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

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

at No. 65B (Lot 1) View Terrace, East Fremantle in accordance with the plans date stamp received on 9 October 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed works for the pool and spa are not to be commenced until approval from the Water Corporation has been obtained and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. protective barriers to be erected and maintained around excavation and any accumulated materials until such time as permanent fencing has been erected in accordance with the legal requirements.
5. pool and spa installer and/or property owner to whom this licence is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the building licence has been granted.
6. pool and spa filter and pump equipment to be located away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
7. spa and swimming pool are to be sited a distance equal to the depth of the pool from the boundary, building and/or easement, or be certified by a structural engineer and approved by Council's Building Surveyor.
8. prior to the issue of a building licence the applicant is to submit a report from a suitably qualified practising structural engineer describing the manner by which the excavation is to be undertaken and how any structure or property closer than one and half times the depth of the pool will be protected from potential damage caused by the excavation/and or the pool construction.
9. pool contractor/builder is required to notify Council's Building Surveyor *immediately upon completion of all works* including fencing.
10. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
11. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
12. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to



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encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

13. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
14. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
15. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
16. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

Mr Mick Rule (Architect) addressed the meeting in support of the proposed development stating that it was a difficult site and the height cues were taken from the residence approved for Lot 2 (65A).

**RECOMMENDATION TO COUNCIL**

**Cr de Jong – Cr Wilson**

**That the application for a two storey residence on Lot 1 (No. 65B) View Terrace, East Fremantle be held over to the December meeting of full Council to allow clarification of proposed wall height and setback discretions.**

CARRIED

- T113.6**     **King Street No. 52 (Lot 4)**  
**Applicant: Gerard McCann Architect**  
**Owner: Elaine McGann**  
**Application No. P192/2008**  
By Chris Warrener, Town Planner on 24 November 2008

### **BACKGROUND**

#### **Description of Proposal**

An Application for Planning Approval for alterations and additions at 52 King Street comprising:

- ... convert the existing coal room or store to the south-east corner of Bedroom 2 into an ensuite toilet, convert the existing doorway into a window, and cut a new doorway into bedroom 2;
- ... convert the existing south doorway into the kitchen into a window, leaving the existing reveal and frame intact, and infilling with a timber weatherboard below bench level, and a new window above bench level, fitting into the existing frame;
- ... convert the existing kitchen east window into a doorway, with French doors onto the courtyard;
- ... renovate the existing kitchen within the existing room;
- ... remove the existing bathroom, and convert the space to a walk-through laundry, and cut a new opening in the east wall to access a new lobby to the courtyard and a new bathroom, with a parapet wall to the north boundary;
- ... remove the existing courtyard pergola and lower the courtyard paving to below house floor level (currently 200mm above house floor level with attendant moisture problems)
- ... rebuild a new pergola and wall to the street, and new paving;
- ... remove the existing sub-standard walling to George St, and rebuild a new low wall with open aspect iron railings to the garden section of the south boundary (outside the kitchen and lounge), and then a new high courtyard wall in rendered brick or stone to RL 12.000;
- ... construct a new Gallery building facing George St, infill the empty space between the existing house and the shops at Lots 486 and 487. The Gallery to have a mezzanine storage area, and an attached storeroom and garage. A new roofed awning/verandah is proposed to overhang the George St footpath. The design of the Gallery is intended to partially reflect the domestic architecture of the house at 52 King St, but pick up the height and scale of the Council owned shop to the east on Lots 486 and 487. The gable windows in the roof of the proposed gallery are designed to reflect the gabled terrace row houses opposite in George St;
- ... install a new access doorway to the garage from the strata company rear right-of-way.

#### **Statutory Considerations**

Town Planning Scheme No. 3 – George Street Mixed Use zone

Local Planning Strategy - Plympton Precinct (LPS)

#### **Relevant Council Policies**

Local Planning Policy No. 140 – Port Buffer Development (LPP 140)

#### **Documentation**

Plans and relevant forms date stamp received on 21 October 2008

#### **Date Application Received**

21 October 2008

#### **Additional information**

4 November 2008     Plans received including a Site Plan, and elevation along George Street showing the courtyard wall and railings to confirm the scale and detailing of this element as it faces George Street.

#### **Advertising**

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Adjoining land owners only

**Date Advertised**

22 October 2008

**Close of Comment Period**

6 November 2008

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

41 days

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

18 December 1995 Council grants approval for additions incorporating a boundary wall to the south comprising a new bathroom, kitchen extension up to the George Street boundary line, and an increased dining room and a north facing court at 52 King Street.

**CONSULTATION**

**Town Planning Advisory Panel Comments**

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

- very sensitive design;
- commendable presentation.

**Other agency/authority**

Heritage Council of Western Australia (HCWA)

**Public Submissions**

At the close of the comment period no submissions were received.

**Site Inspection**

By Town Planner on 3 July 2008

**REPORT**

**Issues**

*Land Use*

In addition to the proposed alterations to the inside of the existing residence the application proposes the construction of a Gallery with frontage to George Street.

A gallery is a use that is reasonably determined as falling within the use class "Exhibition centre", which is defined as follows:

*"exhibition centre means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature, and includes a museum or art gallery."*

An exhibition centre is a "D" use in the George Street Mixed Use zone, which *means that the use is not permitted unless the local government has exercised its discretion by granting planning approval.*

*Heritage Council*

The application was referred to the Heritage Council for comment, which is a standard procedure for any application that involves a property which is on the Heritage List under TPS 3.

The Heritage Council states that it supports the application subject to the following recommendations:

1. The door and window frames to the new external door and window to the existing residence should be in timber to match the existing.

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2. The finishes and colour palette for the courtyard wall and new shop should be compatible with the heritage character of the George Street precinct.
3. Additional documentation (street elevation) should be produced to confirm that the side fence and courtyard wall will be complimentary with the existing residence and the George Street Precinct (with particular reference to height, detailing, materials and colour).

The applicant was provided with a copy of the advice from the Heritage Council.

*Car Parking*

In addition to the existing grouped dwelling the application proposes the construction of a gallery/exhibition centre. Schedule 11: Car Parking Standards under TPS 3 specifies the following car parking standard:

Exhibition	1 space per 30m <sup>2</sup> of exhibition area, plus 1 space for every staff member present at any one time
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The gallery is proposed to comprise a floor area of 33m<sup>2</sup> and there will be 1 staff member therefore 2 on-site car parking spaces are required.

In total the application proposes one on-site parking space, therefore there is a shortfall of 3 spaces (one for the grouped dwelling and 2 for the gallery) for which Council discretion is required to be exercised to allow.

*Plot Ratio*

The application proposes development that will result in the site having a plot ratio of 0.71.

The following standards under TPS 3 are relevant:

*"5.8.3 Plot Ratio: Except as otherwise permitted by the local government, the maximum plot ratio in the Commercial Zones are to be as follows:*

- (a) Town Centre: 0.5:1
- (b) Special Business 0.5:1
- (c) Mixed Use: 0.5:1"

As the proposal results in a plot ratio that exceeds 0.5 Council's discretion is required to be exercised to allow it.

**Discussion**

*Land Use*

The proposed gallery is a land use which is considered to contribute to the character and amenity of the George Street Mixed Use area, and is supported.

*Heritage Council*

The applicant has responded to the matters raised by the Heritage Council and will undertake the building works as specified in the plans submitted on 4 November 2008 to be in sympathy with the existing grouped dwelling and the local streetscape in line with the recommendations of the HCWA, which provided further advice in a letter dated 24 November 2008 stating:

*"We confirm that the proposed alterations and additions are supported as the additional documentation that has been produced confirms that the side fence and courtyard wall will be complimentary with the existing residence and the George Street Precinct."*



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*Car Parking*

In relation to the parking shortfall the applicant's covering letter states:

*"The existing garden is not used for parking, though some of the other houses in the row can access their rear gardens and use them for car parking. It is intended to formalise the situation with the provision of one lock-up car parking bay in the proposed garage. As the house is currently lived in by one person, and unlikely to ever house more than a couple, the provision of one bay is deemed more than adequate in an inner urban area like the George St precinct, and considering the green push for sustainable living with fewer cars. Parking on-site for the Gallery business is plainly impossible and clearly inconceivable, both from a rational and practical viewpoint, and considering the existence of public parking in the street outside, and in the Council owned public parking area adjacent to the proposal on Lots 486 and 487. This latter area is rarely used at present, and is potentially a very suitable parking area to service this proposed business. The George St precinct could not exist if on-site parking were to be provided, and the existence of good street parking resolves what would otherwise be a difficult streetscape issue."*

There are 4 kerbside car parking spaces in George Street next to 52 King Street, and a Council carpark (public) behind the shop next door at 128 George Street.

Any or all of these spaces could be applied to the on-site shortfall of 3 spaces.

In response to other development applications in George Street considered by Council in the past 2-years, which involve a parking shortfall, Council has not required a cash-in-lieu contribution, and in most cases has applied a condition requiring the equivalent provision of bicycle parking.

Given the circumstances pertaining to the subject land, and the nature of this application, the requirement for cash-in-lieu is not considered necessary.

It is recommended that the applicant/owner pay for the purchase and installation of one (1) stainless steel U-design bicycle parking rack (supports 2 bicycles), which can be installed in the pavement in a similar location at the street corner as has been done elsewhere along George Street.

*Plot Ratio*

Discretion is sought for the plot ratio to be increased from 0.5 to 0.71.

Plot ratio has generally been used as a method of gauging building bulk and scale.

In this case, the proposed development comprises a small gallery incorporating a loft for storage next to a grouped dwelling that was built in the early Federation period of West Australia's development.

The gallery is proposed to be built in a style that is considered to be sympathetic with its historic setting in a street along which the majority of properties comprise plot ratios that are above the standard specified in TPS 3.

These factors ameliorate the overall impact of the development.

Given the relative compatibility of orientation, bulk and scale with the adjoining property to the east and along both sides of George Street,

the proposed plot ratio will not have an undue adverse impact on the amenity of the George Street Mixed Use zone, and can be supported.

### RECOMMENDATION

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

- (a) variation to the requirement for on-site car parking pursuant to Schedule 11, Town Planning Scheme No 3 and the Residential Design Codes from 4 spaces to 1;
- (b) variation to plot ratio for development in the George Street Mixed Use zone pursuant to Town Planning Scheme No 3 from 0.5 to 0.71;

for alterations and additions at No. 52 (Lot 4) King Street, East Fremantle comprising:

- ... convert the existing coal room or store to the south-east corner of Bedroom 2 into an ensuite toilet, convert the existing doorway into a window, and cut a new doorway into bedroom 2;
- ... convert the existing south doorway into the kitchen into a window, leaving the existing reveal and frame intact, and infilling with a timber weatherboard below bench level, and a new window above bench level, fitting into the existing frame;
- ... convert the existing kitchen east window into a doorway, with French doors onto the courtyard;
- ... renovate the existing kitchen within the existing room;
- ... remove the existing bathroom, and convert the space to a walk-through laundry, and cut a new opening in the east wall to access a new lobby to the courtyard and a new bathroom, with a parapet wall to the north boundary;
- ... remove the existing courtyard pergola and lower the courtyard paving to below house floor level (currently 200mm above house floor level with attendant moisture problems)
- ... rebuild a new pergola and wall to the street, and new paving;
- ... remove the existing sub-standard walling to George St, and rebuild a new low wall with open aspect iron railings to the garden section of the south boundary (outside the kitchen and lounge), and then a new high courtyard wall in rendered brick or stone to RL 12.000;
- ... construct a new Gallery building facing George St, infill the empty space between the existing house and the shops at Lots 486 and 487. The Gallery to have a mezzanine storage area, and an attached storeroom and garage. A new roofed awning/verandah is proposed to overhang the George St footpath. The design of the Gallery is intended to partially reflect the domestic architecture of the house at 52 King St, but pick up the height and scale of the Council owned shop to the east on Lots 486 and 487. The gable windows in the roof of the proposed gallery are designed to reflect the gabled terrace row houses opposite in George St;
- ... install a new access doorway to the garage from the strata company rear right-of-way. in accordance with the plans date stamp received on 21 October 2008 and south side elevation and site plan received on 4 November 2008 subject to the following conditions:
  1. prior to the issue of a building licence the applicant/owner is to pay for the purchase and installation of one (1) stainless steel U-rail bicycle parking rack.
  2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
  3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  4. the proposed alterations and additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
  5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
  6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to

prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. Development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
9. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *in regard to the provision of bicycle parking the applicant/owner is advised to contact Council's Works Supervisor.*

Mr Gerard McCann (Architect) addressed the meeting in support of the proposed development. Mr McCann responded to Cr Wilson's comments on the retention of mature trees by saying that George Street is an urban shopping precinct and trees should be in the public domain. He concluded by saying that the fig tree to the east side of the accessway has been transplanted.

**RECOMMENDATION TO COUNCIL**

**Cr Nardi – Cr Olson**

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

- (a) **variation to the requirement for on-site car parking pursuant to Schedule 11, Town Planning Scheme No 3 and the Residential Design Codes from 4 spaces to 1;**
- (b) **variation to plot ratio for development in the George Street Mixed Use zone pursuant to Town Planning Scheme No 3 from 0.5 to 0.71;**

**for alterations and additions at No. 52 (Lot 4) King Street, East Fremantle comprising:**

- ... **convert the existing coal room or store to the south-east corner of Bedroom 2 into an ensuite toilet, convert the existing doorway into a window, and cut a new doorway into bedroom 2;**
- ... **convert the existing south doorway into the kitchen into a window, leaving the existing reveal and frame intact, and infilling with a timber weatherboard below bench level, and a new window above bench level, fitting into the existing frame;**
- ... **convert the existing kitchen east window into a doorway, with French doors onto the courtyard;**
- ... **renovate the existing kitchen within the existing room;**

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- ... remove the existing bathroom, and convert the space to a walk-through laundry, and cut a new opening in the east wall to access a new lobby to the courtyard and a new bathroom, with a parapet wall to the north boundary;
- ... remove the existing courtyard pergola and lower the courtyard paving to below house floor level (currently 200mm above house floor level with attendant moisture problems)
- ... rebuild a new pergola and wall to the street, and new paving;
- ... remove the existing sub-standard walling to George St, and rebuild a new low wall with open aspect iron railings to the garden section of the south boundary (outside the kitchen and lounge), and then a new high courtyard wall in rendered brick or stone to RL 12.000;
- ... construct a new Gallery building facing George St, infill the empty space between the existing house and the shops at Lots 486 and 487. The Gallery to have a mezzanine storage area, and an attached storeroom and garage. A new roofed awning/verandah is proposed to overhang the George St footpath. The design of the Gallery is intended to partially reflect the domestic architecture of the house at 52 King St, but pick up the height and scale of the Council owned shop to the east on Lots 486 and 487. The gable windows in the roof of the proposed gallery are designed to reflect the gabled terrace row houses opposite in George St;
- ... install a new access doorway to the garage from the strata company rear right-of-way.

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

1. prior to the issue of a building licence the applicant/owner is to pay for the purchase and installation of one (1) stainless steel U-rail bicycle parking rack.
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed alterations and additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. Development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
9. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *in regard to the provision of bicycle parking the applicant/owner is advised to contact Council's Works Supervisor.*

CARRIED

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

By Chris Warrener, Town Planner on 24 November 2008

#### **BACKGROUND**

##### **Description of Proposal**

An Application for Planning Approval for ground floor alterations and additions to the single storey house at 33 Hamilton Street comprising:

- Double garage and store;
- Workshop & granny flat;
- Home office, laundry dining, family room, en-suite, spa, and arbour over a courtyard.

##### **Statutory Considerations**

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

##### **Relevant Council Policies**

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

##### **Documentation**

Plans and relevant forms date stamp received on 21 October 2008

##### **Date Application Received**

21 October 2008

##### **Advertising**

Adjoining land owners only

2 December 2008

MINUTES

**Date Advertised**

22 October 2008

**Close of Comment Period**

6 November 2008

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

41 days

**CONSULTATION**

**Town Planning Advisory Panel Comments**

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

- appreciate dwgs, easy to understand;
- encourage reconstruction of the original chimneys where physical or documentary evidence shows they exist;
- sensitive design;
- commendable;
- prefer short sheet zinc finish custom orb for roof.

**Public Submissions**

At the close of the comment period no submissions were received.

**Site Inspection**

By Town Planner on 3 November 2008.

**STATISTICS**

	<i>Required</i>	<i>Proposed</i>
Land Area		890m <sup>2</sup> Existing
Open Space	50%	51.6% Acceptable
Zoning		R20
Heritage Listing		Listed

**Setbacks:**

Front				
<i>Ground</i>	<i>Garage</i>	6.0		6.8 Acceptable
Rear				
<i>Ground</i>	<i>Outdoor living</i>	1.5		8.0 Acceptable
	<i>Family</i>	1.5		8.0 Acceptable
	<i>Granny flat</i>	1.0/Nil	<i>Policy 142</i>	Nil Acceptable
Side (North)				
<i>Ground</i>	<i>Ensuite wall extension</i>	1.5	<i>Policy 142</i>	Nil <b>Discretion Required</b>
Side (South)				
<i>Ground</i>	<i>Granny/Workshop</i>	1.5	<i>Policy 142</i>	Nil <b>Discretion Required</b>

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STATISTICS		Required	Proposed
	Garage	1.0	3.2 Acceptable
<b>Height:</b>			
	Wall	6.0	3.0 Acceptable
	Building	9.0	7.0 Acceptable

**REPORT  
Issues**

*Boundary Walls*

This application proposes to extend a wall along the north side boundary common with 31 Hamilton Street for a proposed en-suite. The existing wall is 11.6m long, the proposed extension is 4m long the total length of the wall along the north side is 15.6m long.

The application proposes a granny flat and workshop in the southwest corner of the property.

This ancillary accommodation proposes a 14m long X up to 3m high parapet wall along the south side boundary common with 35 Hamilton Street, and a 6.7m long X 3m high parapet wall along the west side boundary common with 32 Moss Street.

LPP 142 states:

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

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

The application proposes walls along 3 side boundaries. The wall for the granny flat along the west side boundary is considered to comply with LPP 142 because it is less than 9m long and is no higher than 3m.

However the wall along the north side boundary which includes an extension for the en-suite, and the wall along the south side boundary for the granny flat and workshop exceed 9m in length therefore Council's discretion is required to be exercised to permit these two walls.

*Site Works*

The application proposes retaining walls along the west and north side boundaries which vary up to 0.6m above natural ground level (NGL).

The relevant acceptable development provision under the RDC states:

*"A1.4 Subject to A1.2, filling behind a street setback line and within 1 m of a common boundary not more than 0.5 m above the natural level at the boundary except where otherwise stated in a local planning policy or equivalent."*

The Town of East Fremantle does not have an adopted local planning policy that would otherwise permit the proposed retaining

walls therefore Council's discretion is required to be exercised to allow these works.

*TPAP Comments* The panel were in general very supportive of this application but with suggestions that the old chimneys be reconstructed and the roof sheeted in zinc finish colorbond. In this way the house would be returned to a more authentic appearance.

### Discussion

The proposed additions incorporate boundary wall variations, which are not considered to detrimentally affect the amenity of the potentially affected adjoining properties the adjoining property owners have not objected to the application.

The application if implemented will result in there being substantial improvements to the overall appearance of the property, the ongoing maintenance and retention of what is considered to be a building that has heritage value to the Town, and contribute positively to the local streetscape.

The proposed retaining walls at the rear are needed to preserve the sense of the natural topography of the site and locality with a view to the protection of streetscape and the amenity of adjoining properties, and are supported.

In regard to the suggestion by the TPAP for the roof to be in short sheet zinc finish colorbond, and the chimneys reconstructed where there is physical or documentary evidence of their previous existence, these suggestions are included in a footnote to the following recommendation.

### RECOMMENDATION

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

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

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

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

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

1. the proposed granny flat may only be used by members of the occupants'/owners' family and may not be leased for residential use by anyone else.
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed garage, granny flat, workshop and house alterations and additions are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
5. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to

- prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
6. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
  7. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
  8. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  9. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
  10. the proposed works for the spa pool are not to be commenced until approval from the Water Corporation has been obtained and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  11. protective barriers to be erected and maintained around excavation and any accumulated materials until such time as permanent fencing has been erected in accordance with the legal requirements.
  12. spa pool installer and/or property owner to whom this licence is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the building licence has been granted.
  13. spa pool filter and pump equipment to be located away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
  14. spa pool is to be sited a distance equal to the depth of the pool from the boundary, building and/or easement, or be certified by a structural engineer and approved by Council's Building Surveyor.
  15. prior to the issue of a building licence the applicant is to submit a report from a suitably qualified practising structural engineer describing the manner by which the excavation is to be undertaken and how any structure or property closer than one and half times the depth of the pool will be protected from potential damage caused by the excavation/and or the pool construction.
  16. pool contractor/builder is required to notify Council's Building Surveyor immediately upon completion of all works including fencing.
  17. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of*



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- the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
  - (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
  - (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
  - (g) *for the sake of authenticity of appearance it is suggested that the roof should be clad in short sheet zincalume finish custom orb and chimneys reconstructed where there is physical or documentary evidence of their previous existence.*
  - (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

Mr Gerard McCann (Architect) addressed the meeting in support of the proposed development.

**RECOMMENDATION TO COUNCIL**

**Cr Nardi – Cr Olson**

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

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

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

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

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

- 1. the proposed granny flat may only be used by members of the occupants'/owners' family and may not be leased for residential use by anyone else.**
- 2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
- 3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- 4. the proposed garage, granny flat, workshop and house alterations and additions are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
- 4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
- 5. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural**



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- angle of repose and/or another method as approved by the Town of East Fremantle.
6. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
  7. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
  8. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  9. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
  10. the proposed works for the spa pool are not to be commenced until approval from the Water Corporation has been obtained and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  11. protective barriers to be erected and maintained around excavation and any accumulated materials until such time as permanent fencing has been erected in accordance with the legal requirements.
  12. spa pool installer and/or property owner to whom this licence is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the building licence has been granted.
  13. spa pool filter and pump equipment to be located away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
  14. spa pool is to be sited a distance equal to the depth of the pool from the boundary, building and/or easement, or be certified by a structural engineer and approved by Council's Building Surveyor.
  15. prior to the issue of a building licence the applicant is to submit a report from a suitably qualified practising structural engineer describing the manner by which the excavation is to be undertaken and how any structure or property closer than one and half times the depth of the pool will be protected from potential damage caused by the excavation/and or the pool construction.
  16. pool contractor/builder is required to notify Council's Building Surveyor immediately upon completion of all works including fencing.
  17. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on*

*adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*

- (d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) for the sake of authenticity of appearance it is suggested that the roof should be clad in short sheet zincalume finish custom orb and chimneys reconstructed where there is physical or documentary evidence of their previous existence.*
- (h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

**T113.8 Duke Street No. 36-42 (Lots 601 & 602)**

**Applicant: Gerard McCann Architect**

**Owner: LC Lauder & MR Howard**

**Application No. P194/2008**

By Chris Warrener, Town Planner on 27 November 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval to redevelop the buildings at 36-42 Duke Street to convert their use from antique furniture showrooms and workshops to 7 x 1 bedroom apartments, and 5 x 3 bedroom apartments.

**Statutory Considerations**

Town Planning Scheme No. 3 – George Street Mixed Use zone  
Local Planning Strategy - Plympton Precinct (LPS)

**Relevant Council Policies**

Local Planning Policy No. 140 – Port Buffer Development (LPP 140)

**Documentation**

Plans and relevant forms date stamp received on 23 October 2008

**Date Application Received**

23 October 2008

**Advertising**

Adjoining landowners, sign on site, and advertisement in local newspaper

**Date Advertised**

24 October 2008

**Close of Comment Period**

10 November 2008

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

41 days

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

1897	Building at 36 Duke Street starts use as a brush factory;
20 May 1983	Council approves the use of 36 Duke Street for restoration and sale of furniture;
14 June 1983	Council approves use of the building at 42 Duke Street for the manufacture of decorative glass (Freedom Glass);
21 November 1983	Council grants conditional approval for the erection of two signs at 36 Duke Street;
16 April 1984	Council advises Lauder & Howard that it has no objections to repainting the exterior of the building at 36 Duke Street;
16 July 1984	Council approves signs on the façade of 36 Duke Street;
24 April 1986	CEO advises Lauder & Howard that signage on the east wall of the building at 36 Duke Street is approved;
19 June 1995	Council endorses a proposal for an opening to the front wall of the building at 42 Duke Street;
10 July 1995	Building Permit 100/2309 approved for installation of new door frame, doors and side-lights at 42 Duke Street;
24 July 1996	Building Surveyor approves removal of a chimney and portion of a parapet wall from the building at 36 Duke Street;
19 August 1996	Council decides to advise the WAPC that it supports the subdivision and amalgamation of Lots 1, 2 & 3;
10 December 1996	WAPC grants conditional approval to the subdivision & amalgamation;
25 February 1997	Council resolves to rezone 36 Duke Street to Residential Area 2;
June 1997	Conservation Plan prepared for Main Roads Department for 36 & 42 Duke Street;
16 December 1997	WAPC endorses for final approval Diagram 94449 for the subdivision & amalgamation;
21 July 1998	Council resolves to reconsider a proposal to convert existing workshop at 42 Duke Street into 2 workshops;
18 August 1998	Council grants special approval for 2 workshops at 42 Duke Street;
5 May 1999	Building Licence 93/2833 approved for alterations to the building at 42 Duke Street to form 2 separate workshops;
25 August 1999	Storm damages building; roof ends up on Stirling Highway;
3 August 2001	Premier Gallop, MP's, Crs & VIP's join in the reopening of Lauder & Howard's antiques;
1 March 2005	Council decides to congratulate Les Lauder for his receipt of the Premier's Australia Day Active Citizen Award.

**CONSULTATION**

**Town Planning Advisory Panel Comments**

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

- support application, good job;
- thorough, seriously considered;
- endorse comments of the Heritage Council;
- overall comments positive.

**Other agency/authority**

Heritage Council of Western Australia (HCWA)  
Department for Planning & Infrastructure (DPI)  
Main Roads WA (MRWA)

**Public Submissions**

At the close of the comment period one submission was received.

*P & J Jackson* Support conversion.  
*45 Duke Street*

**Site Inspection**

By Town Planner on 24 November 2008

**REPORT**

**Issues**

*Land Use*

The properties at 36 and 42 Duke Street are zoned "Mixed Use" under TPS 3.

Their current use is for the restoration, display and sale of antique furniture, which are uses determined as falling within the use classes "exhibition centre", and "industry – service" ("Lauder and Howard Antiques and Fine Furniture") under TPS 3.

This application proposes to convert the two buildings at 36 and 42 Duke Street into 12 apartments, which is a use that is determined as falling within the use class "grouped dwelling", which is defined under the RDC as:

*"A dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property."*

A "Grouped Dwelling" is classified as a "D" use in the George Street Mixed Use zone which *"means that the use is not permitted unless the local government has exercised its discretion by granting planning approval."*

It is proposed to convert the building at 36 Duke Street into 2 x 1-bedroom apartments and 5 x 3-bedroom apartments, and the building at 42 Duke Street will be converted into 5 x 1-bedroom apartments.

*HCWA*

The application was referred to the Heritage Council for comment, which is a standard procedure for any application that involves a property which is on the Heritage List under TPS 3.

The Heritage Council states:

*We confirm that the proposed works are supported subject to the following recommendations:*

- 1. The external conservation works recommended for the 1901 building in Section 9.3 of the Conservation Plan should be completed as part of the adaptation of the building.*
- 2. The internal conservation works recommended for the 1901 building in Section 9.3 of the Conservation Plan should be implemented as far as practical within the context of the internal adaptation as residential units.*
- 3. Interpretation of the building should be undertaken, consistent with Policy 2.7 and Section 9.6.1 of the Conservation Plan.*

The applicant was provided with a copy of the advice from the Heritage Council.

*DPI*

DPI suggested that the application should be referred to MRWA for comment because the Stirling Highway extension is classified as a Category 1 Primary Regional Road (PRR) in the Metropolitan Region Scheme (MRS).

*MRWA* MRWA is the state government authority responsible for the Stirling Highway extension however at the time of writing this report MRWA had not provided its response to Council's referral.

This road is fully constructed within the PRR reserve, and it is not likely that MRWA will want any conditions imposed on the application given that it is not proposed to alter the footprint of the existing buildings.

*Car Parking* The application proposes 7 x 1-bedroom apartments and 5 x 3-bedroom apartments

Pursuant to the RDC 10 car parking spaces are required for the 3-bedroom apartments, and 7 spaces are required for the single bedroom apartments, a total of 17 spaces.

As the application proposes 17 on-site car parking spaces Council is not being asked to consider a parking shortfall.

### Discussion

*Land Use* The land use "Grouped Dwelling" is considered entirely appropriate in the George Street Mixed Use zone, especially given that the major frontage of the buildings is opposite the single housing development along Duke Street, conversion of the buildings at 36-42 Duke Street for this purpose is supported.

*Heritage Council* The recommendations of HCWA are included as conditions in the following recommendation.

### RECOMMENDATION

That Council exercise its discretion in granting approval to redevelop the buildings at No's. 36-42 (Lots 601 & 602) Duke Street, East Fremantle to convert their use from antique furniture showrooms and workshops to 7 x 1 bedroom grouped dwellings, and 5 x 3 bedroom grouped dwellings in accordance with the plans date stamp received on 23 October 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed grouped dwellings are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. external conservation works recommended for the 1901 building in section 9.3 of the Conservation Plan to be completed as part of the adaptation of the building;
5. internal conservation works recommended for the 1901 building in section 9.3 of the Conservation Plan to be implemented as far as practical within the context of the internal adaptation as residential units;
6. interpretation of the building is to be undertaken, consistent with policy 2.7 and section 9.6.1 of the Conservation Plan;
7. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and



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- not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
9. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
  10. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
  11. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
  12. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

The following memo from the Town Planner, Chris Warrener, was tabled:

"Agenda Ref: T7.9 – Duke Street 36-42 (Lots 601 & 602)

*Please find attached copy of Main Roads WA response on the abovementioned development proposal.*

*As per Main Roads WA comment it is recommended that the following conditions and advice to the applicant be included in the officer's recommendation:*

13. *no earthworks shall encroach onto the Stirling Highway road reserve.*
14. *no stormwater drainage shall be discharged onto the Stirling Highway reserve.*
15. *the applicant shall make good any damage to the existing verge vegetation within the Stirling Highway reservation.*
16. *no vehicle access shall be permitted onto the Stirling Highway reserve from the proposed Lot 601 and 602. This shall be noted on the deposited plan in accordance with Section 129BA of the Transfer of Land Act (as amended) as a restrictive covenant for the benefit of Main Roads WA at the expense of the applicant.*
17. *the applicant is required to undertake a noise study to demonstrate that subdivision planning and design for residential or other noise sensitive buildings are such that external levels of traffic noise will not exceed Leq Day of 60 dB(A) or Leq Night of 55 dB(A), or to demonstrate that building design is such that internal levels of road traffic noise will comply with values listed in Australian Standard 2107 – Acoustics – Recommended design sound levels and reverberation times for building interiors.*



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*Advice to Applicant*

- (g) all enquiries related to conditions 13-15 shall be directed to the Metropolitan Region – Asset Manager.
- (h) all enquires related to condition 16 shall be directed to the Land Project Co-Ordinator.
- (i) all enquires related to condition 17 shall be directed to the Manager Environment.”

Mr Gerard McCann (Architect) addressed the meeting in support of the proposed development.

**RECOMMENDATION TO COUNCIL**

**Cr Wilson – Cr Olson**

**That Council exercise its discretion in granting approval to redevelop the buildings at No’s. 36-42 (Lots 601 & 602) Duke Street, East Fremantle to convert their use from antique furniture showrooms and workshops to 7 x 1 bedroom grouped dwellings, and 5 x 3 bedroom grouped dwellings in accordance with the plans date stamp received on 23 October 2008 subject to the following conditions:**

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council’s further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed grouped dwellings are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. external conservation works recommended for the 1901 building in section 9.3 of the Conservation Plan to be completed as part of the adaptation of the building;
5. internal conservation works recommended for the 1901 building in section 9.3 of the Conservation Plan to be implemented as far as practical within the context of the internal adaptation as residential units;
6. interpretation of the building is to be undertaken, consistent with policy 2.7 and section 9.6.1 of the Conservation Plan;
7. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
9. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council’s Policy on Footpaths & Crossovers.
10. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant’s expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
11. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
12. this planning approval to remain valid for a period of 24 months from date of this approval.

13. no earthworks shall encroach onto the Stirling Highway road reserve.
14. no stormwater drainage shall be discharged onto the Stirling Highway reserve.
15. the applicant shall make good any damage to the existing verge vegetation within the Stirling Highway reservation.
16. no vehicle access shall be permitted onto the Stirling Highway reserve from the proposed Lot 601 and 602. This shall be noted on the deposited plan in accordance with Section 129BA of the Transfer of Land Act (as amended) as a restrictive covenant for the benefit of Main Roads WA at the expense of the applicant.
17. the applicant is required to undertake a noise study to demonstrate that subdivision planning and design for residential or other noise sensitive buildings are such that external levels of traffic noise will not exceed Leq Day of 60 dB(A) or Leq Night of 55 dB(A), or to demonstrate that building design is such that internal levels of road traffic noise will comply with values listed in Australian Standard 2107 – Acoustics – Recommended design sound levels and reverberation times for building interiors.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (f) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*
- (g) *all enquiries related to conditions 13-15 shall be directed to the Metropolitan Region – Asset Manager.*
- (h) *all enquires related to condition 16 shall be directed to the Land Project Co-Ordinator.*
- (i) *all enquires related to condition 17 shall be directed to the Manager Environment.*

CARRIED

Cr Wilson made the following impartiality declaration in the matter of 64A View Terrace: "As a consequence of the adjoining neighbours at 66 View Terrace being known to me, 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.

**T113.9 View Terrace No 64A (Lot 2)**  
**Applicant: J Corp T/a Perceptions The Home Builders**  
**Owner: Tony Radaich & Beth Colgate**  
**Application No. P147/2008**  
By Chris Warrener, Town Planner on 26 November 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval for a 2-storey house at 64A View Terrace comprising:  
- double garage & store, laundry, porch, entry, computer nook, 2 bedrooms, 1 bathroom, theatre and roofed alfresco on the ground floor;

- gallery, kitchen, dining, living room, computer nook, master bedroom & en-suite, and balcony on the upper floor.

**Statutory Considerations**

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

**Relevant Council Policies**

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

**Documentation**

Plans and relevant forms date stamp received on 30 July 2008

**Date Application Received**

Original: 30 July 2008  
Amended plans: 29 October 2008

**Advertising**

Adjoining land owners only

**Date Advertised**

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

**Close of Comment Period**

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

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

33 days (Revised)

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

1 March 2006	WAPC approves Survey Strata Plan 49123 for the subdivision of 64 View Terrace into 2 survey-strata lots (1 x 541m <sup>2</sup> , 1 x 429m <sup>2</sup> );
December 1979	Council decides to advise the owner that the rear of the lot cannot be developed as the property is zoned single residential;
6 February 1987	Building Permit 110/1239 approved for a domestic garage;
16 November 1992	Building Permit 164/2012 approved for an extension to form a new laundry;
27 February 2002	Building Licence 037/3192 approved for a belowground swimming pool;
19 March 2002	Council grants approval for an upper floor balcony and stairs at the rear of the 3-level house at 64 View Terrace;
22 May 2002	Building Licence 34/3221 approved for balcony & stair;
16 November 2004	Council decides to advise the WAPC that it supports the battleaxe subdivision of 64 View Terrace into 2 lots (1 x 445m <sup>2</sup> , 1 x 507m <sup>2</sup> );
30 November 2004	WAPC grants conditional approval to the battleaxe subdivision;
15 July 2005	Demolition Licence 05/01 approved for brick garage & shed on proposed rear lot;
18 October 2005	Council grants approval for setback variations for a carport, fence & retaining wall at 64 View Terrace;
31 October 2005	Building Licence 05/92 approved for carport, fence & retaining wall;
12 June 2007	Building Licence 07/160 approved for a retaining wall at the rear of 64A View Terrace.
23 September 2008	Council resolves: <i>“That the application be deferred to the next Town Planning &amp; Building Committee meeting to allow the applicants to</i>

*submit revised plans that better or fully achieve compliance with the R Codes and LPP No 142 in terms of upper floor setbacks."*

**CONSULTATION**

**Town Planning Advisory Panel Comments**

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

The following comments were made regarding the originally submitted plans:

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

**Public Submissions**

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

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

**Site Inspection**

By Town Planner on 9 September 2008

By Councillors on Saturday 13 September 2008

<b>STATISTICS</b>	<b>Required</b>	<b>Proposed</b>
Land Area		429m <sup>2</sup> Existing
Open Space	55%	59.55% Acceptable
Zoning		R12.5
<b>Setbacks:</b>		
South		
<i>Ground Garage</i>	1.0/Nil	Nil Acceptable
<i>Bed 3</i>	1.0	1.77 Acceptable
<i>Upper Living</i>	4.0	2.2 <b>Discretion Required</b>
Nook	4.0	4.0 Acceptable
Ensuite	4.0	4.7 Acceptable
North		
<i>Ground Bed 2</i>	1.5	4.42 Acceptable
<i>Alfresco</i>	1.5	7.6 Acceptable
<i>Theatre</i>	1.0	4.42 Acceptable

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STATISTICS		<i>Required</i>	<i>Proposed</i>
Upper	Master	4.0	4.42 Acceptable
	Balcony	7.5	7.6 Acceptable
	Dining	4.0	4.42 Acceptable
East			
Ground	Laundry	1.0	4.8 Acceptable
	Bed 3	1.5	1.9 Acceptable
	Bath & Bed 2	1.0	1.5 Acceptable
Upper	Ensuite	4.0	Policy 142 1.8 <b>Discretion Required</b>
	Master	4.0	Policy 142 1.5 <b>Discretion Required</b>
West			
Ground	Theatre	1.0	1.6 Acceptable
	Porch	1.5	3.6 Acceptable
	Garage	1.0	6.6 Acceptable
Upper	Dining	4.0	Policy 142 1.6 <b>Discretion Required</b>
	Kitchen	4.0	Policy 142 3.6 <b>Discretion Required</b>
	Living	6.0	6.6 Acceptable
<b>Height:</b>			
	Wall	5.6	5.6 Acceptable
	Building	8.1	7.9 Acceptable

**Overshadowing:** (12.207% of adjoining property)

**REPORT  
Issues**

Assessment

Being situated in the Richmond Hill precinct of East Fremantle north of Pier Street, and on a rear battleaxe block, assessment of this application is subject to the following LPP 142 provisions:

- (ii) Category 'B' provisions as set out within Table 3 – Maximum Building Heights of the Residential Design Codes are applicable as the 'Acceptable Development' standards, except in localities where views are an important part of the amenity of the area then the maximum building height are as follows:
  - 8.1m to the top of the pitched roof;
  - 5.6m to the top of the external wall; and
  - 6.5m to the top of an external wall (concealed roof).
- (iii) Category 'A' provisions as set out within Table 3 – Maximum Building Heights of the Residential Design Codes are applicable as



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*the 'Acceptable Development' standards for development on battleaxe lots.*

*Where upper level portions are nonetheless applied for, Council shall only give consideration to relaxation of height Category 'A' scheme where the following are strictly observed:*

- *The proposal demonstrates design, bulk and scale that responds to the established character or other site specific circumstances;*
- *The provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped;*
- *Subject to the provisions of Residential Design Codes – Element 9 – Design for Climate and Element 8 – Privacy;*
- *A maximum of 30% of the ground floor area (including garages and roofed areas enclosed on three sides) being contained in all upper level portions of the dwelling; and*
- *Setbacks to the second storey being a minimum of 4m from all boundaries unless it is demonstrated to Council's satisfaction that a lesser setback will not adversely impact on amenity."*

Boundary Setbacks & Privacy Requirements

*Side (South)  
Common with 64A  
View Terrace*

The upper floor wall for a living room is set back 2.2m (original application - 1.8m) from the south side boundary. This wall is 5.7m long (original application - 8.5m long).

Pursuant to LPP 142 the specified setback is 4m.

*Side (East)  
Common with 66 View  
Terrace*

The upper floor wall for an en-suite is set back 1.8m (original application - study and en-suite is set back 1.6m), and the upper floor wall for a master bedroom is setback 1.5m (original application - 1.2m) from the east side boundary.

Pursuant to LPP 142 the specified setback is 4m.

*Side (West)  
Common with 62 View  
Terrace*

The upper floor wall for a dining room is set back 1.6m, and the upper floor wall for a kitchen is set back 3.6m from the west side boundary.

Pursuant to LPP 142 the specified setback is 4m.

Submissions

The two submissions oppose the application.

**Discussion**

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

The amended plans propose increased setbacks on the south and east sides of the upper floor which has been reduced in area to reduce the (perceived) impacts on the neighbouring properties.

While the amended plans propose increased setbacks they continue not to comply with LPP 142, and are not acceptable to the owners of 64 View Terrace.

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

The owners of 13 Philip Street continue to oppose the application on the basis that the rear of their property will be overlooked by the development. However based on the boundary setbacks specified in the RDC to 'protect' privacy and 'prevent' overlooking the application complies. In addition the applicant has agreed to modify the northeast dining room window

to a minor opening, and this matter is further addressed as a condition in the following recommendation.

LPP 142 provisions relating to battleaxe block development are aimed primarily at areas in which the predominant housing form is single storey.

The proposed house is situated in an area dominated by 2-storey and 3 and 4-level housing development, and it's therefore considered that the strict application of LPP 142 in relation to battleaxe lot development may not be applicable to the Richmond Hill/Preston Point area of East Fremantle.

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

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

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

#### **RECOMMENDATION**

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

- (a) variation to the upper floor south side boundary setback pursuant to Local Planning Policy 142 for a living room from 4m to 2.2m
  - (b) variation to the upper floor east side boundary setback pursuant to Local Planning Policy 142 for an en-suite, and a master bedroom and built-in-robe from 4m to 1.8m, and 1.5m respectively;
  - (c) variation to the upper floor west side boundary setback pursuant to Local Planning Policy 142 for a dining room and kitchen from 4m to 1.6m, and 3.6m respectively
- for the construction of a 2-storey house at No. 64A (Lot 2) View Terrace, East Fremantle comprising:

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

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

1. prior to the issue of a building licence amended plans are to be submitted specifying that the northeast facing windows for the upper floor dining room comprise a minor opening in accordance with the acceptable development standards prescribed under Clause 6.8.1 "Visual Privacy" of the Residential Design Codes.
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to



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encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
9. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
10. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
11. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (g) *the alfresco may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

The Chief Executive Officer advised that a result of having read the officer's report, noted the applicants' planning consultant's contentions regarding LPP142 and the R-Codes, and taken advice from the Town Planner, that he had circulated a memo (as follows) to elected members advising that it is probable that an amended report will be presented to Council next week with the likely outcome that all discretions referred to in the current report will be deemed to not be discretions according to the relevant provisions of the R-Codes.

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*“Agenda Ref: T7.10 – View Terrace No. 64A (Lot 2)*

*I have today reviewed comments made by Jordan Ennis of Greg Rowe & Associates regarding the applicability of Local Planning Policy No. 142 with respect to boundary setback requirements.*

*Mr Ennis contends that relevant provisions of the R-Codes do not allow the Acceptable Development Standards with respect to boundary setbacks to be varied by a Local Planning Policy.*

*Whilst Mr Ennis is incorrect in assuming the Residential Design Codes applied in the Town of East Fremantle at the time LPP142 was adopted (TPS2 contained no provision relating to the R-Codes), based on my and the Town Planner’s reading of the relevant provision in the R-Codes, including provisions relating to pre-existing local planning policies, that Mr Ennis is most probably correct in his interpretation.*

*In that event he is also correct in concluding that no discretion in terms of the Acceptable Development provision of the R-Codes, is required for the southern setback of the upper floor.*

*In fact, with respect to the discretions referred to in the officer’s report the following is almost certainly the correct position*

<b>Area</b>	<b>R-Code Acceptable Development</b>	<b>Proposed</b>
<i>.. Upper Living</i>		
<i>    South Side</i>	<i>1.20</i>	<i>2.20</i>
<i>.. Upper Ensuite</i>		
<i>    East Side</i>	<i>1.20</i>	<i>1.80</i>
<i>.. Master Bedroom</i>		
<i>    East Side</i>	<i>1.20</i>	<i>1.80</i>
<i>.. Upper Dining</i>		
<i>    West Side</i>	<i>1.20</i>	<i>1.60</i>
<i>.. Kitchen</i>		
<i>    West Side</i>	<i>1.20</i>	<i>3.60</i>

*At this point it is not intended to alter the officer’s report as further review (which may entail legal advice) is required.*

*It should be noted, that even if Mr Ennis is correct, provisions under 10.2(p) would arguably still allow Council to apply the standards which it has been applying under LPP142, however in this event, given the R-Code provisions, such an argument would have significantly less weight.*

*At this point it is advised that amended advice may be submitted to the Council meeting – meanwhile Committee members should make their recommendation on the basis of their perception of the impacts of the setbacks, whether this is in the context of LPP142 or 10.2(p) of TPS3.*

*Meanwhile Mr Ennis is thanked for drawing this matter to Council’s attention.”*

Mr Alan Brims of 13 Philip Street addressed the meeting on matters relating to privacy and overlooking. He also sought clarification as to whether this development would impact on the future development potential of his lot.

Mr Angelo Rutigliano of 66 View Terrace addressed the meeting on matters relating to setback provisions and filling of the subject land from demolition of the residence through to the construction of retaining walls following subdivision. Mr Rutigliano stated he had extensive documentation which supported his position on the issue.

Following advice from the Chief Executive Officer, the Presiding Member advised that this matter would be followed up with Mr Rutigliano prior to the Council meeting.

Mr Scott & Mrs Clare Morgan of 64 View Terrace addressed the meeting on the outcome of the September meeting of Council where they were of the view that the applicants were to consult with neighbours in order to broker a compromise. The Morgans advised that at no stage have the applicants offered a compromise in relation to this development. They felt that the revised plans did not address their concerns regarding amenity and view impacts (a photograph showing their viewing corridor was tabled by the Morgans) and sought further discussion and a degree of compromise from the applicants. Mr Morgan

also sought clarification on where they stood with the latest development regarding setback provisions in LPP142.

Ms Beth Colgate & Mr Tony Radaich (applicants) and Mr Jordan Ennis (Greg Rowe & Associates) addressed the meeting in support of the revised proposal.

Ms Colgate advised that their builder had spent time with the Morgans and they did not hear from them (the Morgans) following that meeting. The need to submit revised plans had impacted significantly on the cost of the proposed development. Ms Colgate also stated that it was felt that some discretion was justified given the requirement for a turning circle and the sewerage easement that runs through the lot.

Mr Ennis advised that the revised proposal complies with setback provisions of the R-Codes and his clients were satisfied with the officer's recommendation. The overshadowing meets the requirements of the Acceptable Development Standards of the R-Codes. He also stated that following the September meeting of the Town Planning & Building Committee he had addressed at length, the matter of fill on the subject lot.

#### **T114. ADJOURNMENT**

**Cr de Jong – Cr Wilson**  
That the meeting be adjourned at 9.18pm.

CARRIED

#### **T115. RESUMPTION**

**Cr de Jong – Cr Olson**  
That the meeting be resumed at 9.30pm with all those present at the adjournment in attendance.

CARRIED

#### **T116. REPORT'S OF OFFICERS (Cont)**

##### **T116.1 View Terrace No 64A (Lot 2)**

##### **RECOMMENDATION TO COUNCIL**

**Cr de Jong – Cr Wilson**  
That the application for a two storey residence on Lot 2 (No. 64A) View Terrace, East Fremantle be deferred to the December meeting of Council to allow officers to further investigate the infill aspect and setback provisions of LPP142. CARRIED

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

**Applicant: Celebration Nominees T/a Dale Alcock Home Improvement**

**Owner: Tony & Kate Smith**

**Application No. P172/2008**

By Chris Warrener, Town Planner on 27 November 2008

##### **BACKGROUND**

##### **Description of Proposal**

An Application for Planning Approval for 2-storey alterations and additions at the rear of the single storey house at 41 May Street comprising:

- alfresco, laundry and modifications to the bathroom, family, meals and kitchen on the ground floor;
- master bedroom, 2 bedrooms, WIR, ensuite and store/linen on the upper floor.

##### **Statutory Considerations**

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

##### **Relevant Council Policies**

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

**Documentation**

Plans and relevant forms date stamp received on 15 September 2008

**Date Application Received**

15 September 2008

**Additional information**

Amended plans received on 27 November 2008 for reduced building height, changes to room configuration on the ground floor, and reduction in upper floor space.

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

5 days

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

1971	Rear patio approved;
1977	Patio enclosure approved;
31 July 1986	Council refuses an application to conduct an 'architectural practice' as a home occupation on the basis that the area is zoned 'Residential' and the proposed use conflicts with the Residential Zone Use Table;
26 November 1987	Council refused an application for extensions consisting carport with a boundary wall, extensions to the rear consisting of bedroom & bathroom, extensions to the meals area and a front fence 1.8m high;
19 December 1995	Council grants approval for a relaxation of standards to the north for the replacement of a boundary wall to allow additions of a new verandah, deck, rebuilding of laundry and roof replacement;
1 March 2001	Council granted approval for the re-pitching of the roof to the rear of the dwelling, and re-cladding of the entire roof.
18 November 2008	Council resolves: <i>"That the application be deferred to provide an opportunity for the applicant to provide revised plans that better address the bulk and scale of the second storey addition and its impact on 39 and 43 May Street"</i> .

**STATISTICS**

	<b>Required</b>	<b>Proposed</b>
Land Area		510m <sup>2</sup> Existing
Open Space	50%	64.0% Acceptable
Zoning		R20
Heritage Listing		Draft MI

**Setbacks:**

Front (May Street)

*N/a – Additions to Rear*

Rear

<i>Ground</i>	<i>Familyroom</i>	1.50	10.00 Acceptable
	<i>Alfresco</i>	1.50	8.70 Acceptable
<i>Upper</i>	<i>Bedrooms 4 &amp; 5</i>	4.50	13.20 Acceptable

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<b>STATISTICS</b>		<b>Required</b>	<b>Proposed</b>
	<i>Master Bedroom</i>	4.50	12.70 Acceptable
Side (north)			
	<i>Ground Cellar, Meals &amp; Familyroom</i>	1.50	1.10 <b>Discretion Required</b>
	<i>Alfresco</i>	1.50	4.20 Acceptable
	<i>Upper Storeroom</i>	1.20	3.80 Acceptable
	<i>Stairs</i>	1.20	2.70 Acceptable
	<i>Bedroom 4</i>	1.20	1.65 Acceptable
Side (south)			
	<i>Alfresco &amp; Kitchen</i>	1.00	2.90 Acceptable
	<i>Upper Master Bedroom</i>	1.20	3.30 Acceptable
	<i>WIR &amp; Ensuite</i>	1.20	2.20 Acceptable
<b>Height:</b>			
	Wall	6.00	5.77 Acceptable
	Building	9.00	7.40 Acceptable
<b><u>Overshadowing:</u></b>	Into 43 May Street = 16.70%		Acceptable
<b><u>Privacy/Overlooking:</u></b>	N/a		
<b><u>Policies:</u></b>			
	Roof Pitch	28° required	<i>LPP06625°</i> Proposed <b>Discretion Required</b>

**REPORT**

**Background**

At its meeting held on 18 November 2008 Council considered an application for 2-storey additions at the rear of the single storey house at 41 May Street.

Objections to the application had been received from adjoining property owners concerned about overlooking (28 Silas Street), and overshadowing (43 May Street).

During the course of the application being assessed, and in response to the submissions the applicants submitted amended plans, which then brought the application into "compliance" in regard to the issue of wall height, and which also reduced the extent of overshadow of the property at 43 May Street.

However Council considered that the plans could be further modified to further reduce the impact of the additions. Council decided:

*"That the application be deferred to provide an opportunity for the applicant to provide revised plans that better address the bulk and scale of the second storey addition and its impact on 39 and 43 May Street."*



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Cr Dobro had made some suggestions during the Committee and Council meetings which the owners have taken on board and which are reflected in new plan amendments received on 27 November 2008.

The additions have been stepped down to the rear to further reduce wall height, and overshadow of 43 May Street (originally proposed at 21.4%, now proposed at 16.7%). The room configuration on the ground floor has been altered and the extent of the upper floor space has been reduced.

The application based on these amended plans is supported.

**Issues**

*Boundary Setbacks* On the north side next to the property at 39 May Street the ground floor wall for a laundry/linen and bathroom is setback 1.1m. This wall is an extension of a wall for the single storey house at the front, and replaces in part a parapet wall on the boundary.

The length of the proposed wall extension is 7m; the total length of the wall is 19.3m.

For the wall extension the RDC specify a 1m setback however for a total wall length of 19.3m the specified setback is 1.5m.

Technically speaking Council's discretion is required to be exercised for this wall.

**Discussion**

*Boundary Setbacks* The extension of the wall on the north side is not considered to detrimentally impact on the amenity of the potentially affected property, and the potentially affected property owner did not object to this variation when the application was advertised; the setback variation is supported.

**Conclusion**

The proposed additions to 41 May Street are considered to be relatively conservative in scale and with the additions now proposed to be "stepped down" at the rear are considered to be less of an impact than the original plans. The application does not propose any changes to the front façade of the existing house.

The impacts on neighbouring properties are not considered significant especially given the generous rear setback from 28 Silas Street, and the extent of overshadow has been further reduced to further ameliorate any impacts on 43 May Street.

The application is supported with a condition requiring the planting of additional screening vegetation at the rear.

**RECOMMENDATION**

That Council exercise its discretion in granting approval for a variation to the north side boundary setback pursuant to the Residential Design Codes from 1.5m to 1.1m for the construction of 2-storey additions and alterations at the rear of the single storey house at No. 41 (Lot 613) May Street, East Fremantle comprising:

- alfresco, laundry and modifications to the bathroom, family, meals and kitchen on the ground floor;
  - master bedroom, 2 bedrooms, WIR, en-suite and store/linen on the upper floor;
- in accordance with the plans date stamp received on 27 November 2008 subject to the following conditions:

1. prior to the issue of a building licence the applicant/owner is to submit a Landscape Plan specifying the planting of additional screening vegetation next to the west side (rear) boundary.



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2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed extensions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
7. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *the alfresco may not be enclosed without the prior written consent of Council.*

Mr Tony & Mrs Kate Smith (Owners) and Mr Max Sardi (Designer) addressed the meeting in support of the revised proposal for alterations/additions.

**RECOMMENDATION TO COUNCIL**

**Cr Olson – Cr Nardi**

**That Council exercise its discretion in granting approval for a variation to the north side boundary setback pursuant to the Residential Design Codes from 1.5m to 1.1m for the construction of 2-storey additions and alterations at the rear of the single storey house at No. 41 (Lot 613) May Street, East Fremantle comprising:**

- alfresco, laundry and modifications to the bathroom, family, meals and kitchen on the ground floor;
  - master bedroom, 2 bedrooms, WIR, en-suite and store/linen on the upper floor;
- in accordance with the plans date stamp received on 27 November 2008 subject to the following conditions:**

1. **prior to the issue of a building licence the applicant/owner is to submit a Landscape Plan specifying the planting of additional screening vegetation next to the west side (rear) boundary.**
2. **the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than**

- where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
  4. the proposed extensions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
  5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
  6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
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**Footnote:**

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- (a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.***
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- (c) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.***
- (d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).***
- (e) the alfresco may not be enclosed without the prior written consent of Council.***

**CARRIED**

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

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

By Stuart Wearne, Chief Executive Officer, and Chris Warrener, Town Planner, and on 1 December 2008

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

- (i) "Whilst the property is not an adjoining property, as part owner of 10 Fortescue Street, which is in the immediate vicinity of 6 Fortescue Street, the Chief Executive Officer believes that, by virtue of the traffic and streetscape implications arising from the development proposal, there is potentially

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*a financial interest to be disclosed and the Chief Executive Officer hereby discloses a financial interest in the proposal."*

- (ii) *The adjoining owners, the Painos, are well known to me by virtue of being my neighbours, nevertheless I declare that all advice given in this report has been given impartially and on the merits of the issues concerned.*
- (iii) *Several years ago my daughter was a member of a Youth Group which was established by and met at the East Fremantle Baptist Church, nevertheless I declare that all advice given in this report has been given impartially and on the merits of the issues concerned.*

**BACKGROUND**

**Description of Proposal**

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

**Statutory Considerations**

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

**Documentation**

Plans and relevant forms date stamp received on 30 May 2008

**Date Application Received**

30 May 2008

**Advertising**

Adjoining landowners, sign on site, and advertisement in local newspaper.

**Date Advertised**

18 June 2008

**Close of Comment Period**

4 July 2008

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

185 days

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

18 September 1978	Council resolves to advise the East Fremantle Baptist Church that it does not favour a Christian Community Primary School for 50 children to be conducted from the premises at the corner of Canning Highway & Fortescue Street;
5 December 1997	CEO grants approval for removal of existing timber floor, its replacement with a concrete floor, and rotate the Church function by 180°;
17 March 1998	Council approves various alterations and additions to existing Church primarily involving three offices and parent's room.
19 May 1998	Council decides to advise the WAPC that it supports the amalgamation of Lots 181 & 182 Canning Highway;
2 June 1998	WAPC conditionally approves the amalgamation of Lots 181 & 182;
2 September 1998	Building Licence 224b/2723 approved for 2-storey extensions to Baptist Church at 229 Canning Highway;

- 13 November 1998 WAPC endorses Diagram 96701 for final approval for the amalgamation of Lots 181 & 182 and an 8.5m truncation at the corner of Canning Highway and Fortescue Street;
- 30 November 2005 CEO advises the WAPC that the Town supports the amalgamation of Lots 181 & 182 Canning Highway and their subdivision into Lot 800 comprising 2198m<sup>2</sup> and Lot 800 comprising 488m<sup>2</sup> (house/manse lot);
- 14 March 2006 WAPC conditionally approves the amalgamation and subdivision;
- 11 November 2008 Town Planning & Building Committee recommended approval of the kindergarten development subject to conditions;
- 18 November 2008 Application deferred, at applicant's request, after concerns raised by Council officers regarding the authority for several existing uses of the site.

## CONSULTATION

### Town Planning Advisory Panel Comments

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

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

### Other Agency/Authority

Department for Planning & Infrastructure (DPI)  
Department of Communities

### Public Submissions

Two submissions were received:

- T Paino*  
*8 Fortescue Street*
- Prefer building designed to be in keeping with the church buildings;
  - Accept the concept;
  - South side wall of proposed class rooms should provide noise suppression.
- S Wearne*  
*10 Fortescue Street*
- South side wall should be brick for noise attenuation;
  - Traffic management concern;
  - Appropriateness of use?
  - Need for kindergarten?

A response from the applicant to T Paino's submission is attached.

## REPORT

### Introduction

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

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

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

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

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

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

### Issues

#### Land Use

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

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

#### Car Parking

Schedule 11 to LPS 3 specifies the following parking requirement:

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

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

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

#### DPI Referral

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

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

#### Traffic Impacts

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

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

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

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

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

In its response letter dated 25 August 2008 DPI stated:

*"the Department does not support the proposed development as submitted. The Department would support a modified proposal, which accords with the Town Planning Scheme....., demonstration of a satisfactory on site vehicle parking management plan and acceptable vehicle flow rates in local streets."*

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

In its response letter dated 26 September 2008 DPI advised:

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

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

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

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

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

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

(1) Responses to 26 September 2008 DPI letter.

The applicant submitted amended drawings, which specify the following:

- Tandem car parking to northeast corner to be marked "Staff Only";
  - Seeking Council approval to retain parking at northern end of the site on a temporary basis;
  - The parking bays at the western end of the Church entrance have been allocated for motorbike and bicycles as suggested;
  - Car bays next to the truncation are marked for "Small Cars Only"
- In regard to parking monitoring the applicant has not provided any information.

- (2) Responses to 6 October 2008 CEO letter with respect to traffic/parking – see also above:
- Regarding implementation of the DPI recommendations the applicant has amended the drawings however has not advised how the parking is to be monitored;
  - Advises that the “Parents Support Program” is only concept at this stage and that if it is to be implemented it would have to run after business hours;
  - Advises that the “Sunday School Program” runs currently at the existing church building and a traffic assessment should therefore not be required;

## DISCUSSION

### Introduction

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

The preface to Clause 10.2 reads as follows:

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

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

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

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

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

The following comments are made:

- The most relevant aim of the Scheme is 1.6(d):  
*“To provide for a variety of development to meet the needs of the community with regard to housing, employment and services.”*
- The application was for a “3 and 4 year old kindergarten facility for the local area”. The issue of “needs of the community” for such a facility is addressed in more detail under “Community Need” below.
- Other relevant Scheme aims are “to preserve the existing character of the Town”...“To enhance the character and amenity of the Town”...“To facilitate and encourage effective public involvement in planning issues of significance to the character, amenity...of the Town”.
- The above criteria involves subjective assessment. For example the Scheme’s definition of “amenity” is “means all those factors which combine to form the character of an area and include the present and likely amenity”.
- It could be argued, for example, using this definition, that the proposed *enhances* amenity: it could also be argued that it *reduces* amenity.
- Since the implementation of the proposal would necessitate the demolition of the Manse, this aspect could also be considered in the context of the proposal’s potential effect on the character of the Town.



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- Under the Town's Municipal Inventory, the place has a Management Category C which is defined as "some heritage significance at the local level".
- The consultant commissioned by the applicant found the building "has some aesthetic value as an attractive fibrous cement house" although did not "contribute to the heritage significance of the Woodside East Precinct in which it is located".
- See also 10.2(h) and 10.2(q) with respect to the Parking Shortfall issue and the interface of this issue with that of the fact that a large part of the overall site is affected by a Primary Regional Road reserve under the Metropolitan Region Scheme which involves potential road widening and which, if implemented in full or in part, could reduce parking provisions on the site even further.

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

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

- "To support the development and on-going delivery of a range of community services appropriate to the needs of the local community."
- "To encourage the integration of community facilities within designated commercial areas, so as to minimise travel demand and add to the vibrancy of existing centres."
- "To promote multiple use of community facilities to maximise the use of resources and enable consolidation of facilities."
- "To ensure a high standard of planning and design for any future community facilities, in keeping with the desired character of the town and its environs."

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

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

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

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

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

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

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

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

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

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

The proposal is not considered consistent with this objective.

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

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

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

No planning policy of relevance.

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

No environmental protection policy of relevance.

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

No policy of relevance.

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

No policy of relevance.

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

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

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

Not relevant.

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

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

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

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

No relevant issues.

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

No relevant issues.

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

Not relevant.

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

Not relevant.

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

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

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

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

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

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

- **Noise Attenuation with Respect to Southern Wall**

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



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

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

- **Setback of Southern Wall**

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

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

In fact the adjoining owners had originally requested a 2.5m setback, for reasons of perceived overshadowing and not wishing to feel "hemmed in". In the latter regard it is relevant to note that the development, if approved, will result in the adjoining owners facing an unbroken wall (most likely of double brick) of a length of 25.2m, with no windows, on their northern boundary (in addition to the dividing fence).

The setback area in question will also contain rainwater tanks.

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

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

The applicant wrote:

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



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

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

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

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

It is important to note that whilst the clause is noted for its general relevance, it is not binding on Council in absolute terms, as, with respect to the R Codes generally, Council is still legally bound to consider all of those issues included in Clause 10.2 of the Scheme, which is what is occurring in relation to this matter.

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

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

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

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

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

In other words, rather than viewing the matter in terms of the amount of play area needed for the number of children the owner hopes to have in attendance at each session, the owner could, alternatively, agree to the 2m setback and more than accommodate the “loss” by enrolling one child less in

two of the three classes. This would more than accommodate for the 0.5m increase in setback.

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

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

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

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

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

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

#### Conclusion

This is arguably a relatively small issue, involving 0.5m of setback, however it is a fundamental issue.

In the applicants' view, a 1.5m setback is sufficient, and also represents good planning in the sense of not having "wasted space".

The adjoining neighbour, on the other hand, feels strongly about the perceived overshadowing and risk of feeling "hemmed in" if the application is approved and a 1.5m setback allowed.

It is concluded that the most satisfactory means to resolve this issue is for elected members to conduct a site visit of the adjoining property.

- **Dividing Fence**

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

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

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

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

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

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

- **Crossover**

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

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

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

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

- **Noise Attenuation with Respect to Carpark**

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

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

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

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

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

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

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

The adjoining owner has agreed to this particular use.

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

It should be noted that notwithstanding the restrictions of use of this section of the car park, this still leaves a significant majority of the car bays which



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have been designated for the kindergarten proposal, to be used for other church related activities "after hours".

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

- **Traffic Generation**

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

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

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

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

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

- **Appearance of the Proposal**

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

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

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

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

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

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

The following issues are considered to remain:

- **Parking Shortfall**

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

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

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

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

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

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

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

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

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

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

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

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

- **Existing Parking Utilisation**

The proposed kindergarten is a new development. Yet already, not infrequently, parking is an issue at the site due to other church related or church approved activities.



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

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

This issue was raised with the applicant by the Town Planner in an email dated 12 August.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

Hence Condition 1 has been recommended in the approval option.

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

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

See also 10.2(zb) below.

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

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

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

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

Adequate public transport services are available.

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

Adequate services are available.

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

Not considered relevant.

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

Adequate provision has been made.



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

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

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

Not relevant.

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

Not relevant.

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

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

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

All comments received from DPI were considered.

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

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

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

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

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

The above issue was raised with the applicant however the concerns raised not responded to.

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

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

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

### Community Need

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

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

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

Information from the Bayside City Council in Victoria notes for example that "Kindergarten for three-year-old children is not funded by the government and many professionals believe that children are not disadvantaged if they do not attend three year old kindergarten".

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

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

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

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

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

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

Nevertheless the facility is described as:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

Notwithstanding the comments in the Feasibility Study, in a letter dated 20 May 2008, which accompanied the planning application, the applicant stated "The church...has

recognised the need for a 3 and 4 year old kindergarten facility for the local area” (and “The church has decided...to invest in such a facility to service the local community”.

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

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

Palmyra	10
East Fremantle	12
Other	16

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

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

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

The issue was taken up with the applicant again in October. The applicant’s response did not clarify the issue any further.

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

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

#### 1998 Council Approval

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

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

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



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On review, the following conclusions have been reached.

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

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

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

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

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

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

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

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

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

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

This was not received.

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

This was not received.

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

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

#### Use of Church Hall

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

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

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

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

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

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

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

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

With respect to the above recommendation, none of the proposed conditions appear at odds with a proposal recently received from the church.

#### **Conclusion**

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

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

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

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

#### **RECOMMENDATION FOR APPROVAL**

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

1. The approval is confined to the operation of a pre-school/kindergarten only, with the use of the building limited to 8am-6pm, Monday to Friday and numbers of attendees limited to 40 at any time.
2. prior to the issue of a building licence amended plans are to be submitted showing a minimum of a 2.5m setback on the southern boundary and specifying a 1.8m (other than in the front setback where it steps down to 1.2m) hardiflex dividing fence between 6 and 8 Fortescue Street, with galvanised steel capping and the cost of which is to be borne by the owner of 6 Fortescue Street.
3. prior to the issue of a building licence, the materials to be used in the construction of the southern wall of the proposed development, and its construction, to be determined by the CEO in consultation with relevant officers and amended plans to be submitted in accordance with that determination.
4. prior to the issue of a building licence, the applicant to agree, in writing, to implement "right turn only" arrangements for vehicles leaving the car park, if requested by Council at a later date, if Council perceived significantly adverse traffic effects have resulted from the implementation of the proposal.
5. existing parking at the northern end of the site is temporarily approved at the discretion of Council and subject to Canning Highway road widening not occurring.
6. prior to the issue of a building licence the applicant/owner is to prepare and submit a car park monitoring program, to the satisfaction of the CEO in consultation with relevant officers, to allow Council to determine if the time of the activities at the property should be varied to free up car parking bays, and with any such determination by Council to be implemented by the owner.
7. prior to the issue of a building licence, a landscaping plan be submitted to the satisfaction of the CEO in consultation with relevant officers.
8. prior to the issue of a building licence colours of materials to be to the satisfaction of the CEO, in consultation with relevant officers.
9. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
10. the proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
11. the proposed works are not to be commenced until the plans are approved by the Child Care Licensing and Standards Unit.
12. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
13. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
14. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be

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

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of*

*the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*

- (d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (f) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*
- (h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

#### **RECOMMENDATION FOR REFUSAL**

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

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

The Chief Executive Officer stated he was of the view as expressed in the officer's report, that it would be appropriate that this matter be held over pending a site visit prior to the Council meeting to assess the degree of overshadowing to the adjoining property and the impact of a reduced setback.

Mr Carl Huston (architect) addressed the meeting stating that the southern boundary setback does not impact on an outdoor living area and an increased setback from 1.5m to 2.5m would lose 30m<sup>2</sup> of usable playground space. Their site planning had given much consideration to the southern neighbour with the building's placement on the site acting as a buffer for the southern neighbour.

Mr Phil Beeck (Associate Pastor – EF Baptist Church) addressed matters pertaining to carparking, in particular with respect to the number of bays provided, and stated that the main problem at the moment occurred on Tuesdays and Wednesdays, particularly due to the combined impact of the playgroup and Suzuki music group.

**RECOMMENDATION TO COUNCIL**

Cr de Jong – Cr Nardi

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

T116.4

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

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

**Application No. P190/2008**

By Chris Warrener, Town Planner on 24 November 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval for ground floor alterations and additions to the single storey house at 70 Sewell Street comprising a shed, studio/games room, store, and a verandah extension on the north side.

The submitted plans show a proposed swimming pool, however the owner has requested due to its currently estimated cost (approx. \$60,000.00), that this aspect of the application be withdrawn.

**Statutory Considerations**

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

**Relevant Council Policies**

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

**Documentation**

Plans and relevant forms date stamp received on 21 October 2008

**Date Application Received**

21 October 2008

**Additional information**

3 November 2008 South and west side plan elevations received

**Advertising**

Adjoining land owners only

**Date Advertised**

22 October 2008

**Close of Comment Period**

6 November 2008

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

41 days

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

22 July 1991 Building Permit 96/1842 approved for additions to residence;  
24 July 1991 Building Permit 109/1844 approved for a timber-framed steel shed;  
17 June 2003 Council grants special approval for minor works at the rear comprising internal arrangement of rooms, removal of walls, increasing the size of the laundry/bathroom, new dormer window to west side of upper level bedroom and void;

16 October 2003 Building Licence 80A/3487 approved for 2-storey addition to residence.

**CONSULTATION**

**Town Planning Advisory Panel Comments**

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

- consider reinstating an awning to triple casement windows at the front;
- additions are minor and are supported.

**Public Submissions**

At the close of the comment period no submissions were received.

**Site Inspection**

By Town Planner on 24 November 2008

<b>STATISTICS</b>	<b>Required</b>	<b>Proposed</b>
Land Area		518m <sup>2</sup> Existing
Open Space	55%	58% Acceptable
Zoning		R20
Heritage Listing		Listed

**Setbacks:**

Rear (East)			
Ground	Shed	1.0/Nil	Policy 142 Nil Acceptable
	Studio	1.0	3.1 Acceptable
	Verandah extension	1.5	13.1 Acceptable
Side (North)			
Ground	Shed	1.0	10.0 Acceptable
	Studio	1.5	7.9 Acceptable
	Verandah extension	1.0	1.08 Acceptable
Side (South)			
Ground	Store/Studio/Shed	1.5	Nil <b>Discretion Required</b>

**REPORT**

**Issues**

*Land Use*

This application proposes additions at the rear of the house at 70 Sewell Street which include a "studio".

The owner advised verbally that this studio is intended to be used as a games room for her 'growing boys'.

*Boundary Setbacks* The application proposes a parapet wall for a store, the studio and a shed along the south side boundary common with 72 Sewell Street. This wall is 16.2m long and varies up to 3m high.

LPP 142 states:

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

- (a) Walls are not higher than 3m and up to 9m in length up to one side boundary;*
- (b) Walls are behind the main dwelling;*
- (c) Subject to the overshadow provisions of the Residential Design Codes – Element 9;*
- (d) In the opinion of the Council, the wall would be consistent with the character of development in the immediate locality and not adversely affect the amenity of adjoining property(s) having regard for views; and*
- (e) Having regard to the above, where the wall abuts an existing or simultaneously constructed wall of similar or greater dimensions.”*

While this wall is not higher than 3m, and for most of its length it abuts a similar height wall for another studio on the south side which is at the rear of 72 Sewell Street, it is longer than 9m.

Pursuant to the RDC the specified setback for this wall is 1.5m.

### **Discussion**

Provided the studio is not used for habitation, unless with the further approval of Council for “ancillary accommodation”, its currently proposed use is acceptable.

In regard to the variation to the boundary setback along the south side this is considered acceptable because for most of its length the wall is simply abutting a similar wall for another similar room on the adjoining property, and it simply acts as a substantial boundary fence that will provide added privacy between the two properties at 70 and 72 Sewell Street.

The Town Planner attended two counter enquiries with the potentially affected property owner to discuss the application and its potential impact on the neighbour’s property. The owner indicated that she is satisfied that the application will not have any impact on her property.

With regard to the panel comments a footnote is included in the following recommendation regarding the reinstatement of the awning over the triple casement windows at the front. It is considered desirable to reinstate this awning to improve the aesthetics and authenticity of the house, at the same time providing shade for the windows.

### **RECOMMENDATION**

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

1. prior to the issue of a building licence amended plans are to be submitted specifying that the walls for the proposed shed are separate from the common boundary fence.
2. the proposed studio is not to be used for the purposes of human habitation unless with the approval of Council.
3. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council’s further approval.



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4. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
5. the proposed additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
6. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
7. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
8. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
9. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
10. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *it is suggested that the applicant/owner consider the reinstatement of an awning over the triple casement windows at the front of the house.*
- (e) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (f) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (g) *the verandah extension may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

**RECOMMENDATION TO COUNCIL**

**Cr Olson – Cr Nardi**

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

- 1. prior to the issue of a building licence amended plans are to be submitted specifying that the walls for the proposed shed are separate from the common boundary fence.**

2. the proposed studio is not to be used for the purposes of human habitation unless with the approval of Council.
3. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
4. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
5. the proposed additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
6. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
7. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
8. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
9. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer.
10. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *it is suggested that the applicant/owner consider the reinstatement of an awning over the triple casement windows at the front of the house.*
- (e) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (f) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (g) *the verandah extension may not be enclosed without the prior written consent of Council.*
- (h) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

2 December 2008

MINUTES

**Applicant & Owner: The Owners of 24 Wolsely Road  
Application No. P188/2008**

By Chris Warrener, Town Planner on 21 November 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval to refurbish the 12 multiple dwellings at 24 Wolsely Road comprising:

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

**Statutory Considerations**

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

**Relevant Council Policies**

Local Planning Policy No. 142 – Residential Development (LPP 142)  
Local Planning Policy No. 143 – Fencing (LPP 143)

**Documentation**

Plans and relevant forms date stamp received on 10 October 2008

**Date Application Received**

10 October 2008

**Advertising**

Adjoining landowners and sign on site

**Date Advertised**

17 October 2008

**Close of Comment Period**

3 November 2008

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

52 days

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

18 February 1977 Town Clerk endorses Strata Plan for Units 1 – 12, 24 Wolsely Road.

**CONSULTATION**

**Town Planning Advisory Panel Comments**

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

- quite a simple building, good design;
- concern regarding design of the front fence, which appears to be out of context with the design of the building;
- fence design should repeat horizontal line of the building;
- need landscaping plan.

**Public Submissions**

At the close of the comment period 1 submission was received.

*B & N Baker*                      Object to approval at this time because they have not been in  
*12/24 Wolsely*                      contact with the strata manager regarding the application, and  
   maintenance concerns.

**Site Inspection**

By Town Planner on 5 September 2008

**REPORT**

**Issues**

*Setbacks*

The application includes provision for 4 new carports with an 11.7m long X 2.7m high parapet wall along the east side boundary common with 26 Wolsely Road.

LPP 142 states:

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

Being longer than 9m the boundary wall for the new carports requires Council's discretion to be exercised to be permitted.

*Front Fence*

LPP 143 specifies open style fencing in the front setback above 1.2m high.

The application proposes a 5.8m long section of a proposed new fence solid to 1.8m in the corner truncation.

*TPAP Comments*

In general the panel were complimentary of the design of the existing building and encouraged its refurbishment and retention however concerns were raised regarding the design of the front fence which is not considered to compliment this building.

The panel considered that horizontal infill (preferably stainless steel) would be more appropriate, and a landscaping plan prepared and implemented to further enhance the appearance of the property.

*Submission*

The submission objects to the application.

**Discussion**

This application proposes that the 12 multiple dwellings at the southeast corner of Wolsely Road and Alexandra Road be refurbished and additional visitor and undercover parking, landscaping, fencing, bin and clothes drying areas established.

The development if implemented is considered to improve the appearance of the property however the comments of TPAP in regard to the design of the front fence are valid and should be taken into consideration, hence a condition has been included in the following recommendation.

The major portion of this fence is open style, more visually permeable than LPP 143 specifies, and the short section of solid fence in the corner truncation is not considered to detract from the amenity of the property, nor will it interfere with sight distances at the corner, and is supported, with the inclusion of horizontal infill.

The carport wall on the east side is not considered to impact on the amenity of the potentially affected adjoining property and the potentially affected property owner has not objected to the application.

The submission is not considered valid because it does not relate to the application.



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### RECOMMENDATION

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

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

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

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

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

1. prior to this issue of a building licence amended plans are to be submitted specified that the infill fence panels are to be horizontal;
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed alterations and additions are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) the gazebo may not be enclosed without the prior written consent of Council.*
- (g) matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

**RECOMMENDATION TO COUNCIL**

**Cr Wilson – Cr Rico**

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

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

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

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

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

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

6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
7. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. this planning approval to remain valid for a period of 24 months from date of this approval.

**Footnote:**

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*
- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (f) *the gazebo may not be enclosed without the prior written consent of Council.*
- (g) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

**T116.6** **Osborne Road No. 53 (Lot 11)**  
**Applicant: Manor Homebuilders Pty Ltd**  
**Owner: Ricky Cooper & Liann Cooper**  
**Application No. P165/2008**

By Chris Warrener, Town Planner on 27 November 2008

**BACKGROUND**

**Description of Proposal**

An Application for Planning Approval for a single storey house comprising a porch entry, study, double garage, dining & lounge room, living, dining & kitchen, computer nook, 5 bedrooms, 3 bathrooms, laundry, roofed outdoor alfresco, shed, and swimming pool at 53 Osborne Road

**Statutory Considerations**

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

**Relevant Council Policies**

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

**Documentation**

Plans and relevant forms date stamp received on 26 August 2008

**Date Application Received**

26 August 2008

**Additional information**

Amended plans received on 10 November 2008

**Advertising**

Adjoining land owners only

**Date Advertised**

Original plans 8 September 2008

Amended plans 11 November 2008

**Close of Comment Period**

Original plans: 22 September 2008

Amended plans: 24 November 2008

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

7 days (amended plans)

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

11 November 1986 Building Permit 74/1206 approved for a carport;

21 October 2008 Council resolved: *"That the application for demolition of the existing residence and construction of a single storey residence at No. 53 (Lot 11) Osborne Road, East Fremantle be deferred to allow the applicants the opportunity to consider the retention and renovation of the existing single storey residence".*

**CONSULTATION**

**Town Planning Advisory Panel Comments**

The amended plans were considered by the Town Planning Advisory Panel at its meeting on 20 November 2008, and the following comments were made:

- loss of streetscape;
- original home should be retained;
- previous panel comments on the application apply.

The panel made the following comments (considered relevant to the amended plans) on the original application:

- faux historicism inappropriate;
- design intent appears thin and the house changes style behind the front façade;
- negative impact on the street;
- prefer original over the proposed;
- additions much more preferable.

**Public Submissions**

At the close of the comment period there were no submissions on the amended plans.

**Site Inspection**

By Town Planner on 27 November 2008

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**STATISTICS**

Land Area

**Required**

**Proposed**

804m<sup>2</sup>

Existing

Open Space

55%

53%

**Discretion Required**

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<b>STATISTICS</b>	<i>Required</i>	<i>Proposed</i>
Zoning		R12.5
Heritage Listing		Listed
<b><u>Setbacks:</u></b>		
Front (East)		
<i>Ground Robe</i>	7.5	8.7 Acceptable
<i>Master</i>	7.5	7.5 Acceptable
<i>Porch</i>	7.5	6.06 <b>Discretion Required</b>
<i>Garage</i>	7.5	8.18 Acceptable
Rear (West)		
<i>Ground Alfresco</i>	6.0	6.56 Acceptable
<i>Activity/Guest Bed</i>	6.0	6.02 Acceptable
Side (North)		
<i>Ground Garage</i>	Nil	<i>Policy 142</i> Nil Acceptable
<i>Dining</i>	1.5	5.28 Acceptable
<i>Kitchen</i>	1.0	2.5 Acceptable
<i>Dining/Alfresco</i>	1.5	3.1 Acceptable
Side (South)		
<i>Ground Ensuite</i>	1.0	1.1 Acceptable
<i>Bed 4</i>	1.5	1.7 Acceptable
<i>Bath</i>	1.0	1.1 Acceptable
<i>Bed 2, 3</i>	1.5	1.7 Acceptable
<i>Master</i>	1.0	1.1 Acceptable
<b><u>Height:</u></b>		
Wall	6.0	3.9 Acceptable
Building	9.0	7.2 Acceptable

**REPORT**

**Background**

At its meeting in October 2008 Council decided to defer an application for a single storey house at 53 Osborne Road, based on its preference that the existing single storey house be retained rather than demolished, and for the applicant/owner to consider additions as an alternative to demolition.



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The main reason behind this thinking is that there are 3 single storey bungalows at 51, 53 and 55 Osborne Road, all built around the same time, and all built in a similar style, and it was considered desirable to retain these houses as a group in their entirety to maintain the integrity of the streetscape.

The majority of the "original" single houses along the west side of Osborne Road have been retained, and most have been maintained and are in quite good condition as is the subject house.

The applicant advised verbally when submitting amended plans that the owners do not wish to retain the existing house.

The amended plans propose a house design which is designed to reflect the appearance of a "California bungalow". Except for the grouped and multiple dwelling developments at 23, 27-29, 37, 39, 43 and 45 Osborne Road the new design is very similar to the design of the single houses at 33, 51, 55, 65, and 67A Osborne Road.

The style of home now proposed is considered to be a more sympathetic design than the originally submitted plans in terms of it being in keeping with the style of the existing single houses along Osborne Road nevertheless it results in the demolition of a single house considered to be in good repair and a good representative of its era.

**Issues**

Boundary Setbacks

*Front (East)*

The application proposes a porch set back 6.06m from the front boundary.

The RDC recommend a 7.5m setback.

The RDC allow for minor incursions into the street setback area. The relevant acceptable development provision states:

*"In accordance with figure 1b, a porch, balcony, verandah, chimney, or the equivalent may (subject to the Building Code of Australia) project not more than 1m into the street setback area, provided that the total of such projections does not exceed 20 per cent of the frontage at any level."* (RDC, 6.2 Streetscape requirements, 6.2.2 Minor incursions into the street setback area, page 7)

The porch projects 1.44m into the street setback area and it comprises 29% of the width of the property frontage therefore Council's discretion is required to be exercised to permit the porch incursion.

*Rear (West)*

The application proposes a shed that is set back less than 1m from the rear boundary.

The RDC specify a 1m setback.

Open Space

The application proposes development that will occupy 42% of the property, leaving 53% open space (original application - 50.4% open space).

The RDC recommend 55% open space for R12.5 coded property.

TPAP Comments

The panel continue to be of the view that the original house should be retained given its context in relation to the houses

either side of it, and its preference for additions as opposed to demolition.

**Discussion**

*Municipal Inventory*

If approved, this application will result in the demolition of a single storey home built in the 1930's. It is described as a "Bungalow Porch House" in the MI with a management category rating of "C". It is assessed as being in very good condition with a high precinct value, not very rare and with moderate aesthetic value and architectural merit.

Under the MI the following statements apply to "C" rated properties:

*"Category 'C'*

*Places of Some Local Heritage Significance*

*Some heritage significance at a local level; places to be ideally retained and conserved; endeavour to conserve the significance of the place through the standard provisions of the Town of East Fremantle Planning Scheme and associated design guidelines; a Heritage Assessment / Impact Statement may be required as corollary to a development application, particularly in considering demolition of the place. Full documented record of places to be demolished shall be required. Further development needs to be within recognised design guidelines. Incentives should be considered where the condition or relative significance of the individual place is marginal but where a collective significance is served through retention and conservation."*

While the application is for a "new" house its redesign is intended to in some respects mimic the older style house designs either side with its centrally located porch at the front, window treatments, and face brick header courses to windows, front door and garage.

*Boundary Setbacks*

The proposed porch is considered to complement the appearance of and add to the general amenity of the proposed house, and the setback variation for it is supported.

The shed at the rear is a very minor structure that is not considered to impact on the potentially affected property at the rear the potentially affected property owner has not objected to the application, and this variation is supported.

*Open Space*

Given that this application is for a single storey house situated amongst other single storey houses on the west side of Osborne Road, which is considered to be a better development outcome than a 2-storey house especially given the inclusion of the porch at the front, the open space variation is not considered significant, and does not impact on the general amenity of the property or the local streetscape, and this variation is supported.

*TPAP Comments*

It is considered that a more sustainable outcome, one which results in the retention of the existing house that appears to be in harmony with the two houses on the adjoining properties, would be a better result.

However it is also relevant that the applicant has taken on board the comments made by the panel on the original application, which state:



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- *encourage applicant to redesign and provide a proposal that is respectful of, rather than mocking the original heritage and history of the area;*
- *new house acceptable but needs work on design to resemble neighbourhood;*

The applicant has redesigned the house in a way that is considered to be respectful of the heritage of the houses either side, and in the "California Bungalow" style that is reminiscent of much of the original remnant single-storey housing stock in the Richmond precinct, and along Osborne Road.

The Council decision on the original plans was to defer the application *"to allow the applicants the opportunity to consider the retention and renovation of the existing single storey residence"*.

The applicant and owner have considered the Council's suggested course of action, but have decided their preference is to build a new home.

In light of the above-referred matters the application based on the amended plans is reluctantly supported.

**RECOMMENDATION**

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

- (a) variation to the east side (front) boundary setback for a porch pursuant to the Residential Design Codes from 7.5m to 6.06m;
- (b) variation to the west side (rear) boundary setback for a shed pursuant to the Residential Design Codes from 1m to 0m;
- (c) variation to the provision of open space pursuant to the Residential Design Codes from 55% to 53%;

for the construction of a single storey house comprising a porch entry, study, double garage, dining & lounge room, living, dining & kitchen, computer nook, 5 bedrooms, 3 bathrooms, laundry, roofed outdoor alfresco, shed, and swimming pool at No. 53 (Lot 11) Osborne Road, East Fremantle in accordance with the plans date stamp received on 10 November 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a 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.
3. 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.
4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
5. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.



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6. all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
7. the proposed works for the swimming pool are not to be commenced until approval from the Water Corporation has been obtained and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
8. protective barriers to be erected and maintained around excavation and any accumulated materials until such time as permanent fencing has been erected in accordance with the legal requirements.
9. pool installer and/or property owner to whom this licence is issued are jointly responsible for all works to existing fencing, the repairs and resetting thereof as well as the provision of any retaining walls that are deemed required. All costs associated or implied by this condition are to be borne by the property owner to whom the building licence has been granted.
10. pool filter and pump equipment to be located away from boundaries as determined by Council and all pool equipment shall comply with noise abatement regulations.
11. swimming pool is to be sited a distance equal to the depth of the pool from the boundary, building and/or easement, or be certified by a structural engineer and approved by Council's Building Surveyor.
12. prior to the issue of a building licence the applicant is to submit a report from a suitably qualified practising structural engineer describing the manner by which the excavation is to be undertaken and how any structure or property closer than one and half times the depth of the pool will be protected from potential damage caused by the excavation/and or the pool construction.
13. pool contractor/builder is required to notify Council's Building Surveyor *immediately upon completion of all works* including fencing.
14. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
15. any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
16. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
17. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.*

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- (d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).
- (e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.
- (f) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.
- (g) the alfresco may not be enclosed without the prior written consent of Council.
- (h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.

Cr Olson – Cr de Jong

That the officer's recommendation be adopted.

LOST

**RECOMMENDATION TO COUNCIL**

**Cr Wilson – Cr Rico**

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

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

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

Reasons for Not Supporting Officer's Recommendation

The Committee were of a view that they could not support the demolition of the existing single storey residence but would give consideration to a proposal that provided for the retention and renovation of the existing residence.

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

**Cr de Jong – Cr Olson**

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

Mr Chris Warrener, Town Planner, left the meeting at 11.00pm.

**T117. BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING**

**T117.1** The Chief Executive Officer undertook to investigate the following matters raised by elected members:

**(a) Signage**

For Sale Sign – Angwin Street  
Trade Signs – Preston Point Road

**(b) Storeroom – 49 Duke Street**

Should the application be approved by Council, a condition be inserted such that the building not be used for habitable purposes.

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

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

**T117.2 Inspection of Properties - Town Planning Advisory Panel**

The Chief Executive Officer advised he had already initiated an inspection of properties at 62 & 64 Sewell Street and 77 Alexandra Road

**T117.3 Site Visit – 6 Fortescue Street**

Elected members resolved that a site visit be arranged for Thursday, 4 December commencing at 8.30am.

**T118. CLOSURE OF MEETING**

There being no further business the meeting closed at 11.10pm.

*I hereby certify that the Minutes of the meeting of the **Town Planning & Building Committee (Private Domain)** of the Town of East Fremantle, held on **2 December 2008**, Minute Book reference **T106. to T118.** were confirmed at the meeting of the Committee on*

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