

MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN) MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON TUESDAY, 9 MARCH, 2010 COMMENCING AT 6.34PM.

T126. OPENING OF MEETING

T126.1 Present

Cr Alex Wilson	Presiding Member
Mayor Alan Ferris	
Cr Barry de Jong	
Cr Rob Lilleyman	
Cr Siân Martin	from 7.25pm
Cr Dean Nardi	
Cr Maria Rico	
Mr Stuart Wearne	Chief Executive Officer
Ms Gemma Basley	Acting Town Planner
Mrs Peta Cooper	Minute Secretary

T127. WELCOME TO GALLERY

There were 3 members of the public in the gallery at the commencement of the meeting.

T128. APOLOGIES

An apology was submitted on behalf of Cr Siân Martin who advised that she would be arriving late for the meeting and Cr Cliff Collinson.

T129. CONFIRMATION OF MINUTES

T129.1 Town Planning & Building Committee (Private Domain) – 9 February 2010

Cr Nardi – Cr Rico

That the Town Planning & Building Committee (Private Domain) minutes dated 9 February 2010 as adopted at the Council meeting held on 16 February 2010 be confirmed. CARRIED

T130. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)

Nil.

T131. REPORTS OF COMMITTEES

T131.1 Town Planning Advisory Panel – 25 March 2008

Cr Wilson – Mayor Ferris

That the minutes of the Town Planning Advisory Panel meeting held on 23 February 2010 be received and each item considered when the relevant development application is being discussed. CARRIED

T132. REPORTS OF OFFICERS

T132.1 Receipt of Reports

Mayor Ferris – Cr Rico

That the Reports of Officers be received. CARRIED

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T132.2 Order of Business

Mayor Ferris – Cr Rico

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

T132.3 Preston Point Road No. 37 (Unit 11) & No. 43 (Unit 22)

Applicant/Owner: A Patrick

Application No. P208/2008 & 33/2009

By Pina Mastrodomenico, Acting Town Planner on 2 March 2010

BACKGROUND

Description of Proposal

An Application to permit the premises at 11/37 Preston Point Road and 22/43 Preston Point Road to continue to be used for "Short Stay Accommodation" has been made.

Statutory Considerations

Town Planning Scheme No. 3 – Residential R 30
Residential Design Codes (R Codes)

Relevant Council Policies

Residential Development Policy (LPP 142)

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

17 February 2009 Council approved an application for Planning Approval to allow the premises 11/37 Preston Point Road to be used for "Short Stay Accommodation".

23 April 2009 Council approved an application for Planning Approval to allow the premises 22/43 Preston Point Road to be used for "Short Stay Accommodation".

REPORT

Issues

This application seeks approval for the renewal of the use "short stay accommodation" at 11/37 Preston Point Road and 22/43 Preston Point Road.

Discussion

The previous planning approval for "short stay accommodation" at 11/37 Preston Point Road expired on 17 February 2009. The previous planning approval for "short stay accommodation" at 22/43 Preston Point Road is due to expire on 21 April 2010. The applicant has requested that both applications for renewal be dealt with under the one application.

A condition of each approval requires the applicant to seek Planning Approval every 12 months and states the following:

"The approval may be revoked by Council, prior to the expiration of the 12 months period referred to in (1) above, if any adverse impacts involving noise, antisocial behaviour or parking are unable to be controlled by the applicant or their representative in a timely and effective manner which is to Council's satisfaction."

In the past 12 months the Town has not received any complaints relating to any adverse impacts involving noise, antisocial behaviour or parking. It is therefore recommend that the two applications for renewal be approved for a further period of 12 months.

RECOMMENDATION

That Council grant approval for the renewal of the use "short stay accommodation" at 11/37 Preston Point Road and 22/43 Preston Point Road East Fremantle subject to the following conditions:

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1. Approval is for 12 months only.
2. Any continuation of the short stay accommodation use will require a new Council approval.
3. The written consent of the Strata Company to the use of the dwelling for short stay accommodation purposes must be provided.
4. Maximum accommodation is 4 persons (based on two bedrooms being provided)
5. Each short stay accommodation booking must be for a minimum stay of 3 consecutive nights.
6. A minimum of one on site parking bay for the exclusive use of one or more of the occupants must be provided.
7. A complaints management procedure, which is to be to the satisfaction of the Chief Executive Officer and which covers or includes the control of noise, antisocial behaviour, security, parking, residents' code of conduct is to be provided.
8. The owner or manager of the short stay dwelling must be contactable, using contact details provided to the Town, at any time of the day or night and the manager must respond, within 12 hours, to any contact relating to the short stay dwelling.
9. The approval may be revoked by Council, prior to the expiration of the 12 months period referred to in (1) above, if any adverse impacts involving noise, antisocial behaviour or parking are unable to be controlled by the applicant or their representative in a timely and effective manner which is to Council's satisfaction.
10. No on site signage is permitted with respect to the application.

Ms Ann Patrick (applicant) addressed the meeting in support of her application and advised that she was satisfied with the officer's report.

RECOMMENDATION TO COUNCIL

Cr de Jong – Cr Rico

That Council grant approval for the renewal of the use "short stay accommodation" at 11/37 Preston Point Road and 22/43 Preston Point Road East Fremantle subject to the following conditions:

1. **Approval is for 12 months only.**
2. **Any continuation of the short stay accommodation use will require a new Council approval.**
3. **The written consent of the Strata Company to the use of the dwelling for short stay accommodation purposes must be provided.**
4. **Maximum accommodation is 4 persons (based on two bedrooms being provided)**
5. **Each short stay accommodation booking must be for a minimum stay of 3 consecutive nights.**
6. **A minimum of one on site parking bay for the exclusive use of one or more of the occupants must be provided.**
7. **A complaints management procedure, which is to be to the satisfaction of the Chief Executive Officer and which covers or includes the control of noise, antisocial behaviour, security, parking, residents' code of conduct is to be provided.**
8. **The owner or manager of the short stay dwelling must be contactable, using contact details provided to the Town, at any time of the day or night and the manager must respond, within 12 hours, to any contact relating to the short stay dwelling.**
9. **The approval may be revoked by Council, prior to the expiration of the 12 months period referred to in (1) above, if any adverse impacts involving noise, antisocial behaviour or parking are unable to be controlled by the applicant or their representative in a timely and effective manner which is to Council's satisfaction.**
10. **No on site signage is permitted with respect to the application.** CARRIED

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T132.4 **Wolsely Road No.30 (Lot 1)**
Applicant/Owner: M & T Dean
Application No. P21/2009

By Pina Mastrodomenico, Acting Town Planner on 4 March 2010

BACKGROUND

Description of Subject Site

The subject site is 1067m² in area and developed with a single-storey single dwelling that is not included on the Municipal Inventory.

Description of Proposal

An Application for Planning Approval is requested for additions to the ground floor and a second storey addition to the existing single storey dwelling at 30 Wolsely Road.

The applicant is proposing the following additions to the existing dwelling:

- Master bedroom and ensuite to the front of the dwelling;
- Dining, kitchen, family and laundry to the rear of dwelling;
- Shed and alfresco; and
- A second storey addition.

The proposal results in the provision of 70.7% open space.

Statutory Considerations

Town Planning Scheme No. 3 – Residential R12.5
Residential Design Codes (R Codes)

Relevant Council Policies

Residential Development Policy (LPP142)

Date Application Received

25 January 2010

No. of Days Elapsed between Lodgement & Meeting Date

42 days

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

Nil

CONSULTATION

Site Inspection

By Town Planner on 4 March 2010

REPORT

Setbacks

The proposal complies with TPS3, the R Codes and the Town's planning policies with the exception of the following.

Number of Boundary Walls

The shed and alfresco propose boundary walls on the east and west elevation respectively.

The R Codes limit the number of boundary walls to one per lot. It is considered a variation to this provision can be supported for the following reasons:

- All other setbacks comply;
- No overshadowing onto neighbouring properties;
- The height of the boundary walls comply;
- No objections from neighbouring properties; and

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- The length of the boundary walls (5.9m and 5.3m) are considered relatively minor in relation to the length of the lot boundary (52.91m).

RECOMMENDATION

That Council grant approval for additions to the existing single storey dwelling at No. 30 (Lot 1) Wolsely Road, East Fremantle in accordance with the plans received on 25 January 2010 and subject to the following conditions;

1. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. The proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
4. The 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. This planning approval to remain valid for a period of 24 months from date of this approval.
7. External faces of boundary walls are to be finished to the same standard as the rest of the development, details of which are to be provided to, and endorsed by, the Chief Executive Office prior to issuance of a Building Licence.

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).*
- (d) *In regard to the condition relating to the finish of the neighbour's side of the boundary walls it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*

RECOMMENDATION TO COUNCIL

Cr Rico – Cr de Jong

That the application for alterations/additions to the residence located at No. 30 (Lot 1) Wolsely Road, East Fremantle be deferred pending clarification of issues relating to open space provisions and the boundary wall proposed for the eastern elevation of the shed to the rear. CARRIED

T132.5

Wolsely Road No. 38 (Lot 5)

Applicant: Freedom Pools & Spas

Owner: S Johnston & S McKercher

Application P196/09

By Rohan Doust, Acting Town Planner, 15 February 2010

INTRODUCTION

This application is for retrospective approval for fencing, a spa and shade sails.



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A Delegated Authority report dealing with this application has already been circulated to Councillors on 22 January 2010. The referral period closed 3 February 2010 – no comments were received from elected members. At this stage the application has not been determined.

There is some background to this application which was not detailed in the Delegated Authority report. The background is set out in the following updated report. Further detail on the provisions of the Fencing Policy (LPP143) is also provided.

The Recommendation set out in the Delegated Authority report has been changed to ensure that the existing fencing is modified so as to accord with what has previously been approved.

In addition, works to the former corner shop have left the building without its awning and tiles to the facade. Although these (and other compliance) matters lie outside the scope of the current retrospective planning application, this report does comment on these issues.

BACKGROUND

Description of Subject Site

The subject site is:

- 531m² in area;
- zoned Residential R12.5;
- located in the Richmond Precinct; and
- developed with an Interwar former shop which is listed in the Municipal Inventory (Management Category B-[^]) as well as a recently constructed two-storey residence.

Previous Planning Approval

Council issued planning approval for the conversion of the existing shop and construction of a two-storey single house at the subject site on 21 February 2006.

This approval covered the following sections of fence:

- a portion of visually permeable fence to Wolsely Road, featuring a horizontal timber baton infill panel; and
- a portion of visually permeable fence to Osborne Road, featuring four horizontal timber baton infill panels.

This fencing is depicted on the extract from the planning approval at Attachment 4.

The planning report for this application stated that the front of the property was determined to be Osborne Road. The approval did not include any conditions relating to the fencing.

Previous Building Licence

A building licence was issued for the shop conversion and two-storey house on 5 May 2006. The then building surveyor approved the following sections of fence as part of the building licence:

- a portion of visually permeable fence to Wolsely Road, featuring a horizontal timber baton infill panel; and
- a portion of visually *impermeable* fence to Osborne Road, featuring four Mini Orb infill panels.

That is, the building licence shows a visually impermeable fence to Osborne Road whereas the planning approval has an open fence in this location. An extract from the approved building licence is included at Attachment 5.

Description of Proposal

Retrospective planning approval is sought for three shade sails, a spa and a section of boundary fence on Osborne Road.

The shade sails have been erected over an outdoor living area facing the side street (Osborne Road). The shade sails have a combined area of approximately 21m² and an overall height of approximately 2.9-3.4m above the finished floor level of the outdoor living area. The shade sails have steel uprights and white plastic canopies. They are set back at least 1.0m from the side boundary.

A spa has been installed within the outdoor living area and underneath the shade sails. The spa is approximately 2.1m x 2.1m in area and set back 1.4m from the side boundary.

A section side fence has been erected along the eastern edge of the outdoor living area. This fence is visually impermeable, has a height of 1.8m above the finished floor levels of the outdoor living area, and is of rendered masonry construction.

Statutory Considerations

Town Planning Scheme 3 (TPS3)
Local Planning Strategy – Richmond Precinct (LPS)
Residential Design Codes (the R-Codes)

Relevant Council Policies

LPP142 – Residential Development
LPP143 – Fencing

Date Application Received

27 October 2009 (most recent plans received 16 November 2009)

Advertising

- The proposal has been referred to adjoining landowners for a period of 14 days commencing 24 November 2009. No written responses have been received.
- The application has been referred to Councillors via the Delegated Authority Memorandum from 22 January to 3 February 2010. No comments were received. This application has yet to be determined and is the subject of this report.

Any Relevant Previous Decisions of Council

21 February 2006 Council approves a two-storey residential addition to the existing and shop

CONSULTATION

Building Surveyor's Comment

Preliminary assessment has not identified any matters that may impact on the outcome of the planning application.

Site Inspection

By Acting Town Planner on 22 December 2009

Town Planning Advisory Panel

The Panel viewed the proposal on 23 February 2010 and made the following comments:

Advice	Response
Shop tiles to be reinstated.	Agreed
Shop awning to be reinstated.	Agreed
The height and visual permeability of the fence to reflect previous planning approval.	Agreed
Applicant to consider using vegetation for privacy screening.	Agreed

Neighbour comments

No neighbour comments have been received.

REPORT

Considerations

The works comprising the shade sails and spa accords with the provisions of TPS3, the R-Codes and the Town's Planning Policies.

However, the section of fencing to Osborne Road does not accord with the Fencing Policy, as set out below:

Height and Visual Permeability of Fence to Osborne Road

The subject site is a corner lot. The Fencing Policy states that:

"This Policy applies to all fences/wall forward of the building line of a property or forward of the facade (or facades for a corner lot) of the main residence."

What this means is that for corner lots, fencing to *both* frontages is required to be visually permeable.

As stated above, the planning approval issued 21 February 2006 shows a 1.8m high, visually permeable fence to Osborne Road.

However, this section of fence to Osborne Road has been constructed in accordance with the Building Licence which shows the fence being up to 2.9m in height and visually impermeable (ie Mini Orb infill panels have been used in place of the approved timber batons).

Normally, the Building Licence should accord with the Planning Approval. However, in this case it appears that the then Building Surveyor did not take into account the changes made to the fence in the drawings submitted for a Building Licence as required (perhaps because these changes weren't identified on the Building Licence plans as required), and accordingly a Building Licence was issued which shows fencing at odds with that shown on the Planning Approval.

Despite the fact that a Building Licence has been issued, this does not remove the requirement that the fencing needs to either:

- accord with the Planning Approval; or
- receive retrospective Planning Approval.

The applicants have chosen to seek retrospective planning approval for a visually impermeable fence up to 2.9m high along Osborne Road.

It is considered that such a fence is inappropriate in this locality, and is not supported for the following reasons:

- The subject site has a dual frontage, and accordingly its development has a significant impact on the streetscape in this locality. The Planning Approval issued 21 February 2006 was in part contingent upon there being a 1.8m-high, open fence along Osborne Road in order to help offset the additional bulk and scale associated with the redevelopment of the site. It is considered that a solid, over-height fence in this location significantly contributes to the bulk and scale of the development and accordingly detracts from the streetscape. Please refer to the photographs at Attachment 7.
- The Fencing Policy states that this section of fence is not to exceed 1.8m in height and is required to be visually impermeable.
The Fencing Policy does, however, state that a variation to the maximum permitted height of 1.8m can be considered under special circumstances, including the following:
 - 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*

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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 of the secondary side boundary of a corner lot.*

It is considered that the first three of the above provisions are not applicable to the subject site and therefore are not appropriate grounds to vary the Policy requirements. With respect to the last point regarding visual screening, this matter can be considered applicable to the subject site as the fencing encloses an outdoor living area to the secondary street (Osborne Road). However, there are alternative methods for providing privacy to the outdoor living area (such as using vegetation) that do not result in an over-height, visually permeable fence to Osborne Road.

Further, despite alternative options being available, the applicants have chosen to develop their property in the manner they have chosen, including consigning this outdoor living area to this location and it is not considered reasonable that the streetscape be compromised to accommodate their choices in this regard.

Further, the original planning approval was predicated, in part, on a conforming fence and it is not considered appropriate that, having gained that approval, significant changes to fencing are then sought in the manner which has occurred.

On the basis of the above it is recommended that any retrospective planning approval include a condition requiring the fence to Osborne Road be reduced in height to 1.8m and provided with visually permeable infill panels, as per the Fencing Policy and the Planning Approval issued 21 February 2006.

Other Matters

There are some further outstanding issues at the site. These matters lie outside the scope of the current retrospective planning application; what follows is just an update on how these matters are intended to be resolved.

- **Shop Tiles**

The Planning Approval of 21 February 2006 included the following condition:

"The facade of the existing building once used as a "corner shop", which includes two windows and a door is to be retained and restored in accordance with the Heritage Report. Council recognises that the sourcing of wall tiles for the front façade may be difficult and delegated this issue to the Chief Executive Officer in consultation with relevant officers, however, Council is of the opinion that the original tiles should be retained as much as is practicable."

The existing tiles to the corner shop have been removed. Renovation works have been completed and no tiles have been reinstated.

- **Shop Awning**

The former corner shop featured an awning over the footpath to both frontages. This awning has been removed. The Planning Approval of 21 February 2006 included the following *advice* (i.e. not a condition):

"If at all possible the awning be refurbished and retained and this matter to be considered further at the point of 'application for building licence."

Prior to the building licence being issued the Chief Executive Officer advised the applicants an awning was required and the building licence drawings included an awning. The lack of awning is thus in breach of the building licence.

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The above matters lie outside the scope of the retrospective planning application under consideration, and accordingly it is inappropriate to address them via conditions of retrospective approval. It is intended that they be followed up via appropriate orders being issued, with the objective of achieving compliance with the relevant planning and building approvals.

RECOMMENDATION

That Council grant retrospective planning approval for three shade sails, a spa and fencing at No. 38 (Lot 5) Wolsely Road, East Fremantle as shown on plans received 16 November 2009 and subject to the following conditions:

1. The fencing to Osborne Road is to be reduced in height to no more than 1.8m and is to be provided with visually permeable infill panels at least above 1.2m, in accordance with the Planning Approval issued 21 February 2006 and the requirements of the Fencing Policy (LPP143)
2. This planning approval to remain valid for a period of 24 months from date of this approval.

Footnotes:

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

- (a) *Vegetation may be used to provide privacy to the outdoor living area facing Osborne Road.*
- (b) *Please contact the Water Corporation to ascertain if any additional approval or clearance is required for the spa.*
- (c) *A set of approved plans is attached. Any application for a building licence is to conform to the approved plans (unless otherwise amended by the Town).*
- (d) *This approval does not include acknowledgement or approval of any additional unauthorised development which may be on the site.*
- (e) *Any noise associated with the construction of the development is to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*

Mr Stephen Johnston (owner) addressed the meeting in support of the works undertaken on the subject site.

RECOMMENDATION TO COUNCIL

Mayor Ferris – Cr Nardi

That the application for retrospective planning approval for various works undertaken at No. 38 (Lot 5) Wolsely Road, East Fremantle be deferred to the Council meeting and in the meantime a site visit be scheduled for Saturday, 13 March commencing at 9.30am. CARRIED

T132.6

Fraser Street No. 1 (Lot 10)

Applicant/Owner: J & S Moody

Application No. P1/2009

By Pina Mastrodomenico, Acting Town Planner on 3 March 2010

BACKGROUND

Description of Proposal

An Application seeking approval for the renewal of the bed and breakfast use at No.1 Fraser Street has been made.

Statutory Considerations

Town Planning Scheme No. 3 – Residential R 12.5
Residential Design Codes (R Codes)

Relevant Council Policies

Residential Development Policy (LPP 142)

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

18 January 2008 CEO grants approval under delegated authority for a verandah



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- and deck. CEO grants approval under delegated authority for a swimming pool and fence;
- 28 June 2008 CEO acting under delegated authority approves amended plans for the deck;
- 10 February 2009 Council approved an application for Planning Approval to allow the downstairs living area of No.1 Fraser Street for bed and breakfast use.

REPORT

Issues

This application seeks approval for the renewal of the bed and breakfast use at No.1 Fraser Street.

Discussion

The previous planning approval for bed and breakfast use expired on 10 February 2009. A condition of that approval requires the applicant to seek Planning Approval every 12 months.

Condition 3 of the previous approval states the following:

- “3. *The approval may be revoked by Council, prior to the expiration of the 12 months period referred to in (1) above, if any adverse impacts involving noise, antisocial behaviour or parking are unable to be controlled by the applicant or their representative in a timely and effective manner which is to Council’s satisfaction.*”

The Town has been notified that complaints relating to noise and anti social behaviour have been received on during the period of 27/12/09 to 16/1/10. The owners have advised that during the period of time that the complaints were made the bed and breakfast accommodation was not being used and a family member was living at the premises whilst the owners were away. The owners have further advised that the family member responsible for the noise will not be residing at the premises in the future. Based on the fact that the complaints made were not related to the bed and breakfast use it is recommended that the application for renewal be approved for a further period of 12 months.

RECOMMENDATION

That Council grant approval for the renewal of bed and breakfast use of the downstairs living area at No. 1 Fraser Street, East Fremantle subject to the following conditions:

1. Approval is for a period of 12 months only.
2. Any continuation of the Bed & Breakfast use will require a new Council approval.
3. The approval may be revoked by Council, prior to the expiration of the 12 months period referred to in (1) above, if any adverse impacts involving noise, antisocial behaviour or parking are unable to be controlled by the applicants in a timely and effective manner which is to Council’s satisfaction.

RECOMMENDATION TO COUNCIL

Cr de Jong – Cr Rico

That Council grant approval for the renewal of bed and breakfast use of the downstairs living area at No. 1 Fraser Street, East Fremantle subject to the following conditions:

- 1. Approval is for a period of 12 months only.**
- 2. Any continuation of the Bed & Breakfast use will require a new Council approval.**
- 3. The approval may be revoked by Council, prior to the expiration of the 12 month period referred to in (1) above, if any adverse impacts involving noise, antisocial behaviour or parking are unable to be controlled by the applicants in a timely and effective manner which is to Council’s satisfaction.**

and the Chief Executive Officer in consultation with relevant officers to review the conditions relating to an approval to operate a ‘bed & breakfast’ with a view to

including conditions which help address possible complaints, such as noise complaints that may arise. CARRIED

T132.7 Canning Highway No. 83 (Lot 123)

Applicant: B McMaster

Owner: Canning 83 Pty Ltd

Application No. P98/2007

By Pina Mastrodomenico, Acting Town Planner on 2 March 2010

BACKGROUND

Description of Proposal

An Application for an extension of a Planning Approval a 4-storey Mixed Use development comprising of the following;

- An existing ground floor commercial building divided into 3 shops, with new development comprising 4 offices;
- Two 2-bedroom residential apartments on 3 upper levels.

Statutory Considerations

Town Planning Scheme No. 3 – Canning Highway Mixed Use zone
Residential Design Codes (R Codes)

Relevant Council Policies

Residential Development Policy (LPP142)

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

17 August 2004 Council decides to defer consideration of an application for a Mixed Use development comprising commercial use on the ground floor with 4 residential units on 3 upper levels pending:

- “1. receipt of:
 - (a) additional visual details that would assist councillors to address issues such as appearance, bulk and scale, setbacks and impact of proposal; and
 - (b) additional information on the car parking to be provided in particular the issue of entry and egress.
2. the Chief Executive Officer in consultation with relevant officers clarifying issues relating to the relaxation of plot ratio in respect of Town Planning Scheme No 2 and No 3 for Mixed Use/Residential and any other relevant matters.
3. receipt of a satisfactory Conservation Plan and accompanying Heritage Impact Statement regarding the proposed development, with such plan and impact statement to be prepared at the applicant's expense by an experienced consultant listed in the current Heritage Council of WA Directory of Consultants.

Footnote

The applicant be encouraged to address some of the issues of non compliance in the new development eg building height, bulk and scale, parking and building design.”

Following this decision there was no further communication with the applicant.

Ownership of the property subsequently changed.

21 August 2007 Council decides to refuse an application for a 4-level mixed use development;
18 September 2007 State Administrative Tribunal (SAT) receives an application for a review of the Council decision;
28 September 2007 SAT Directions Hearing;
19 October 2007 SAT Directions Hearing;
9 November 2007 SAT Mediation;
3 December 2007 SAT Mediation;

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- 18 December 2007 Council resolved:
*"Mayor Ferris – Cr de Jong
That the application be held over pending public advertising in accordance
with Section 9.4.3(b) of the Town Planning Scheme No.3. CARRIED"*
- 19 February 2008 Council resolved:
*"Mayor Ferris – Cr Dobro
That the application be held over to allow the applicants to demonstrate
the height and visual impact of this proposal, particularly in relation to
Sewell Street. CARRIED"*
- 15 April 2008 Council approved an application for a 4-storey Mixed Use
development comprising an existing ground floor commercial
building divided into 3 shops, with new development comprising 4
offices, and two 2-bedroom residential apartments on 3 upper
levels.

REPORT

Issues

Extension of Planning Approval

TPS 3 Clause 10.5 states:

- "10.5. Term of planning approval
- 10.5.1. *Where the local government grants planning approval for the development of
land —*
- (a) *the development approved is to be substantially commenced within 2
years, or such other period as specified in the approval, after the date of
the Determination; and*
- (b) *the approval lapses if the development has not substantially commenced
before the expiration of that period.*
- 10.5.2. *A written request may be made to the local government for an extension of
the term of planning approval at any time prior to the expiry of the approval
period in clause 10.5.1."*

Discussion

The current planning approval for the subject site is due to expire on 10 April 2010. The applicant has stated that the reason for seeking an extension to the existing planning approval is to commence the sales process for the property since the previous owners have gone into receivership.

Based on the above information a 12-month extension is considered appropriate.

RECOMMENDATION

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

- (a) variation to roof height pursuant to Town Planning Scheme No 3, sub-clause 5.8.2 from 8m to 12.9m;
- (b) variation to plot ratio for development in the Mixed Use zone pursuant to Town Planning Scheme No 3 from 0.5:1 to 1.39:1;

for the construction of a 4-storey Mixed Use development comprising an existing ground floor commercial building divided into 3 shops, with new development comprising 4 offices, and two 2-bedroom residential apartments on 3 upper levels at No. 83 (Lot 123) Canning Highway, East Fremantle in accordance with the received on 15 April 2008 for a period of 12 months subject to:

1. the proposed mechanical vehicle stacker is to be approved by the CEO in consultation with the Town Planner and Principal Building Surveyor. If the stacker is not approved as appropriate prior to the issue of a Building Licence the equivalent cash-in-lieu payment of on-site car parking spaces must be included in condition 2 below.



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2. prior to the issue of a building licence the applicant is to pay for the valuation of, and pay the equivalent cash-in-lieu for the identified shortfall of on-site car parking spaces, with such identification of the shortfall to the satisfaction of the CEO.
3. prior to the issue of a building licence to ensure the heritage values of the existing building (the "liquor store") at 83 Canning Highway are not adversely impacted upon at any time in the future; that the owners agree to the implementation of a Restrictive Covenant, the costs of which are to be met by the owners, and which will be between themselves, Council and the National Trust and which is to Council's satisfaction and designed to ensure that any proposed action which impacts on the heritage values of the property, including any development or demolition of all or part of the property, will require Council's express approval before that proposed action can be implemented.
4. prior to the issue of a building licence, to ensure the heritage values of the existing building are protected, a Conservation Plan for the conservation and restoration works, which is to be to Council's satisfaction, to be produced.
5. prior to the issue of a building licence the land owner ("the Owner") entering into a Deed of Agreement with the Western Australian Planning Commission ("WAPC") which provides that if part of the Land, the subject of the primary regional road reserve ("Relevant Land"), shown in the Metropolitan Region Scheme as at 3 December 2007 and in the attached plan, is required to be taken by a statutory or public authority, then the Owner shall be entitled to exercise its rights and remedies at law, in equity or under statute to seek and obtain compensation (save and except that any increase in the value of that part of the existing buildings on the Relevant Land as at 3 December 2007, resulting from Canning 83 Pty Ltd carrying out the proposed development, will not be taken into account in determining the amount of compensation payable to the Owner) and which contains such other terms and conditions agreed to by the parties."
6. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer;
7. the works to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
8. 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.
9. the proposed development 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.
10. all stormwater 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.
11. all parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
12. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
13. any new crossovers which are constructed under this approval to be a maximum width of 6.0m, 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.
14. 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.

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

RECOMMENDATION TO COUNCIL

Cr Wilson – Cr de Jong

That Council exercise its discretion in granting a 12 month extension to the planning approval granted on 15 April 2008 for the following:

- (a) variation to roof height pursuant to Town Planning Scheme No 3, sub-clause 5.8.2 from 8m to 12.9m;**
- (b) variation to plot ratio for development in the Mixed Use zone pursuant to Town Planning Scheme No 3 from 0.5:1 to 1.39:1;**

for the construction of a 4-storey Mixed Use development comprising an existing ground floor commercial building divided into 3 shops, with new development comprising 4 offices and two 2-bedroom residential apartments on 3 upper levels at No. 83 (Lot 123) Canning Highway, East Fremantle in accordance with the plans received on 15 April 2008 subject to:

- 1. the proposed mechanical vehicle stacker is to be approved by the CEO in consultation with the Town Planner and Principal Building Surveyor. If the stacker is not approved as appropriate prior to the issue of a Building Licence the equivalent cash-in-lieu payment of on-site car parking spaces must be included in condition 2 below.**
- 2. prior to the issue of a building licence the applicant is to pay for the valuation of, and pay the equivalent cash-in-lieu for the identified shortfall of on-site car parking spaces, with such identification of the shortfall to the satisfaction of the CEO.**
- 3. prior to the issue of a building licence to ensure the heritage values of the existing building (the "liquor store") at 83 Canning Highway are not adversely impacted upon at any time in the future; that the owners agree to the implementation of a Restrictive Covenant, the costs of which are to be met by the owners, and which will be between themselves, Council and the National Trust and which is to Council's satisfaction and designed to ensure that any proposed action which impacts on the heritage values of the property, including any development or demolition of all or part of the property, will require Council's express approval before that proposed action can be implemented.**
- 4. prior to the issue of a building licence, to ensure the heritage values of the existing building are protected, a Conservation Plan for the conservation and restoration works, which is to be to Council's satisfaction, to be produced.**



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5. prior to the issue of a building licence the land owner ("the Owner") entering into a Deed of Agreement with the Western Australian Planning Commission ("WAPC") which provides that if part of the Land, the subject of the primary regional road reserve ("Relevant Land"), shown in the Metropolitan Region Scheme as at 3 December 2007 and in the attached plan, is required to be taken by a statutory or public authority, then the Owner shall be entitled to exercise its rights and remedies at law, in equity or under statute to seek and obtain compensation (save and except that any increase in the value of that part of the existing buildings on the Relevant Land as at 3 December 2007, resulting from Canning 83 Pty Ltd carrying out the proposed development, will not be taken into account in determining the amount of compensation payable to the Owner) and which contains such other terms and conditions agreed to by the parties."
6. development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer;
7. the works to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
8. 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.
9. the proposed development 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.
10. all stormwater 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.
11. all parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
12. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
13. any new crossovers which are constructed under this approval to be a maximum width of 6.0m, 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.
14. 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.

Footnote:

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

- (a) *this decision of Council 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*

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

- (d) *all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).*
- (e) *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.*

CARRIED

T132.8

Oakover No. 35A (Lot 2)

Owner: B Dodd & N Foley

Applicant: Mandurah Building by Design

Application No. P133/09

By Rohan Doust, Acting Town Planner, 12 February 2010

BACKGROUND

Description of site

The subject site is:

- a battle-axe lot 548m² in area;
- zoned Residential R12.5;
- located in the Woodside Precinct; and
- currently undeveloped.

Description of Proposal

It is proposed to construct a two-storey single house.

The ground floor is 209.9m² in area, resulting in the provision of 62% open space (noting that the battle-axe access leg is included in the site area as per Part 6.1.2.A2ii of the R-Codes). The upper floor is 87.7m² in extent and includes a north-facing balcony.

The roof is of a hipped form pitched at 25° and clad in Colorbond roof sheeting of an unspecified colour. The house is constructed in rendered brick of an unspecified colour and the portico and garage are proposed to be clad in stone.

Statutory Considerations

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

Relevant Council Policies

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

Date Application Received

22 September 2009 (amended plans received 12, 13 & 15 February 2010).

Advertising

Adjoining landowners

Date Advertised

28 October 2009 to 11 November 2009

No. of Days Elapsed between Lodgement & Meeting Date

175 days

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

None

CONSULTATION

Principal Building Surveyor's Comment

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

Town Planning Advisory Panel

The Panel viewed the proposal on 27 October 2009. The Panel's advice is set out and responded to below:

Comments	Response
The general style and form of the development is not contextually appropriate. The development ought to reference the more traditional building forms typified by the surrounding development.	The development provides a pitched roof and a traditional entry statement reflective of surrounding development. Materials and finishes are rendered brick and Colorbond, also compatible with surrounding development. Given the development is located on a rear battle-axe lot, its impact on the streetscape is limited and accordingly the proposed building style is not objected to.
The proposal features a complex floor plan which results in an overly fussy roof form that is not reflective of or compatible with the simpler roof forms associated with existing and historical pattern of development in the locality.	Amended plans received 12 February 2010 have reduced the extent of the upper floor, resulting in a more simplified hipped roof form. It is considered the modified roof form is compatible with the form of surrounding development.
The proposal exhibits poor solar-passive design.	Agreed. However in the absence of any planning provisions relating to energy efficiency, there is no requirement that the building be designed in accordance with solar-passive principles. The Building Code of Australia does however require a certain level of energy efficiency and the development will need to accord with these requirements as part of any building licence.
The Panel was advised by the Town Planner that the proposal features a ridge height in excess of that permitted (ie 8.7m in lieu of 8.1m). The Panel stated that the ridge height should be reduced to 8.1m. Subsequent to the Panel meeting the Town Planner determined that the development is permitted to have a ridge height of not more than 6m (though variations can be considered provided issues of bulk and scale, landscaping and privacy are resolved).	Amended plans have reduced the ridge height to 7.7m. The Residential Development Policy (LPP142) states that the overall height of development on battle-axe lots is limited to 6.0m (ie single storey), however LPP142 does allow for the height restriction to be relaxed where an upper floor is limited in extent as per the policy requirements. As set out in the section below, the development is considered to meet the provisions of LPP142 and hence the overall height of 7.7m is supported.

A copy of the Panel's advice is provided at Attachment 3.

Public Submissions

One public submission has been received from an adjoining landowner as summarised and responded to below:

Comments	Response
<p>The south wall of the house is proposed to be set back 1.2m in lieu of the required 1.5m</p> <p>Three bedroom windows face the south boundary and although these are highlight windows they must be considered as major openings</p>	<p>Amended plans have revised the setbacks to the southern boundary, with the ground floor now being set back between 1.2m and 1.8m which complies with the requirements of the R-Codes.</p> <p>These (ground floor) bedroom windows <i>are</i> highlight windows and as a result do not impact on the visual privacy of the adjoining property as measured by the R-Codes.</p>
<p>The finished floor level of the house is 10.400 which means that a retaining wall with an average height of 0.45m is required to be constructed along the southern boundary. No retaining is shown on the plans.</p>	<p>Amended plans have reduced the finished floor level to 10.100, which is approximately nil to 0.3m above natural ground level and alleviates the need to construct a retaining wall along the southern boundary.</p> <p>The applicant has advised verbally that no retaining is proposed for the southern boundary.</p>
<p>The respondent's property has a swimming pool area adjacent to the proposed development. The proposed development will overshadow the pool area.</p> <p>The natural ground level respondent's property is below that of the subject property, resulting in the provision of a 2.7m high fence which will further overshadow the pool area and garden beds.</p>	<p>The overshadowing diagram at Attachment 2 shows that approximately 25% of the pool is to be overshadowed.</p> <p>The swimming pool is located close to the boundary and adjacent to the proposed development site (see the location plan at Attachment 1). In addition, the lots in this locality are oriented east-west.</p> <p>Due to the pool location and lot orientation, a fully compliant development on the subject site will in all likelihood impact on the pool area's solar access.</p> <p>The Explanatory Guidelines section of the R-Codes acknowledges the overshadowing challenges posed by lots oriented east-west, and goes on to state that:</p> <p><i>a shadow may not exceed the limit but may fall over the only available outdoor living area, or living room window, of an adjoining house.</i></p> <p>Given the above statement, and given that the proposed house results in a compliant 6.7% overshadowing, in terms of the R-Codes it is considered that this aspect of the proposal is compliant.</p> <p>With respect to the shadow cast by the fence, no changes to the existing fencing configuration are proposed.</p>

A copy of the neighbour's correspondence is provided at Attachment 4.

Site Inspection

By Acting Town Planner on 14 January 2010.



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REPORT

Considerations

The proposal meets the provisions of the R-Codes and applicable Local Planning Policies with the exception of the following:

Extent of Upper Floor

The Residential Development Policy (LPP142) limits building heights on battle-axe lots to single storey. A two-storey building is proposed.

LPP142 does, however, allow for an upper floor on battle-axe sites where the following is "strictly observed":

1. *The proposal demonstrates design, bulk and scale that responds to the established character or other site specific circumstances;*
2. *The provision of a landscaping plan demonstrating a minimum of 50% of the effective lot area being landscaped;*
3. *Subject to the provisions of Residential Design Codes – Element 9 – Design for Climate and Element 8 – Privacy;*
4. *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*
5. *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.*

These provisions are addressed below:

1. Design, Bulk and Scale

The design of the proposal is considered compatible with that of both historical and contemporary forms of development in the locality. With respect to bulk and scale, the development provides 62% open space (a minimum 55% is required) and all setbacks comply with the R-Codes. In addition overshadowing is 6.7% (a maximum of 25% is permitted).

2. Landscaping

It is recommended that any planning approval include a condition requiring a landscaping plan in accordance with this provision being provided to and endorsed by the CEO prior to issuance of a building licence.

3. Subject to Overshadowing and Privacy Provisions

The proposal accords with overshadowing provisions (6.7% in lieu of a maximum 25%). Whilst there is a source of overlooking on the upper floor (from the balcony), this variation is recommended to be supported as set out in the section below.

4. Upper Floor 30% of Ground Floor

The upper floor is proposed to have a footprint that is 41.8% of that of the ground floor, i.e. the upper floor is 24.8m² greater than permitted.

In considering this variation it is noted that the extent of the ground floor is less than permitted (38% site cover in lieu of the maximum 45% site cover). Should the ground floor be increased in size to 45% site cover, this would mean that the size of the upper floor becomes 36% of that of the ground floor. Hence a larger building will actually result in the extent of the top floor being technically more compliant.

Given the above, it is suggested the top floor be assessed as being 36% of the maximum permitted area of the ground floor area.

This leaves the size of the upper floor being 6%, or 12.m², more than permitted. It is considered that this variation may be supported as follows:

- The proposal includes an upper level balcony 10.8m² in area, helping to lend the second storey an open aspect and reduce its perceived bulk and scale.
- The area of the ground floor is 36.7m² less than that permitted. This reduces the overall bulk and scale of the development and helps offset the extra floor

- area of the upper level.
- All setbacks to the upper floor are greater than those required by the R-Codes.
- The proposal meets the overshadowing provisions of the R-Codes.

5. Upper Floor Set Back at 4.0m

The upper floor is proposed to be set back as follows:

Wall	Proposed Setback	4m Setback Provided?
North	5.9-8.1m	Yes
East	5.9-9.0m	Yes
South	3.1-5.6m	No
West	4.4m	Yes

The southern upper floor wall does not meet the required 4.0m setback.

It is considered that a variation can be supported in this instance for the following reasons:

- The section of wall at reduced setback is relatively limited in extent at 7.8m in length.
- The section of wall at the reduced 3.1m setback is offset by an additional 3.2m long section of wall with a greater-than-required setback of 5.6m.
- The proposal meets the overshadowing provisions of the R-Codes.
- There are no sources of overlooking in the section of wall at reduced setback.
- The setback variation is considered relatively minor (i.e. the proposed setback is 0.9m less than the required 4.0m setback).
- Greater-than-required setbacks are provided to the north, east and west upper floor walls.

Visual Privacy

The R-Codes require a 7.5m privacy setback distance for the upper level balcony. The balcony is proposed to be set back 5.9m from the adjoining property to the north, and accordingly has the potential to impact on the visual privacy of that property.

It is considered that the overlooking variation can be supported for the following reasons:

- The section of the adjoining property that is overlooked by the balcony comprises a driveway and shed/garage (refer to the location plan at Attachment 1). On this basis it is considered the balcony does not impact unduly on the amenity of that property.
- The privacy setback variation is considered relatively minor (5.9m setback in lieu of 7.5m, a shortfall of 1.6m).

Roof Pitch

The proposal features a 25° roof pitch in lieu of the 28° roof pitch required by LPP066. It is considered that this variation can be supported as:

- The proposed roof pitch is compatible with the form and scale of the development.
- The development is on a rear battle-axe lot and on this basis in is considered any impact on the streetscape as a result of the reduced roof pitch will be minimal.
- The roof pitch variation is minor at 3°.

RECOMMENDATION

Council exercise its discretion in granting approval for:

- the floor area of the upper floor comprising 41.8% of the floor area of the ground floor; the Residential Development Policy (LPP142) limits the area of the upper floor to 30% of that of the ground floor;
- a 7.7m length of the upper floor southern wall being set back 3.1m in lieu of the 4.0m setback required by the Residential Development Policy (LPP142);
- roof pitch being 25° in lieu of the minimum 28° roof pitch required by the Roofing policy (LPP066);
- an unscreened upper level balcony being set back 5.9m from the northern boundary in lieu of the 7.5m privacy setback as per the Residential Design Codes;

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for a two storey single house at No. 35A (Lot 2) Oakover Street, East Fremantle as shown on plans received 11, 12 and 15 February 2010 and subject to the following conditions:

1. Walls and/or fences are to be truncated or reduced in height to no higher than 0.75m within 1.5m of where the driveway meets the public realm.
2. Any air conditioning plant is to be positioned so as to minimise impacts on the streetscape and neighbours' amenity, details of which are to be provided to and endorsed by the CEO prior to issuance of a building licence.
3. A minimum of 50% of the effective lot area is to be landscaped in accordance with Part 1(iii) of the Residential Development Policy (LPP142). In this regard a landscaping plan is to be provided to and endorsed by the CEO prior to issuance of a building licence.
4. Materials and finishes are to be of a high standard, details of which are to be provided to and endorsed by the CEO prior to issuance of a building licence.
5. Exposed boundary walls are to be finished to the same standard as the rest of the development, details of which are to be provided to and endorsed by the CEO prior to issuance of a building licence.
6. All storm water resulting from the development is to be retained on site.
7. 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.
8. 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.
9. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
10. The proposed works are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
11. Any 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.
12. This planning approval to remain valid for a period of 24 months from date of this approval.

That the applicant be advised of the following:

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

Adoption of Officer's Recommendation

Mayor Ferris – Cr Lilleyman

That the officer's recommendation be adopted.

LOST

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Reasons for Not Supporting Officer's Recommendation

The Committee were of the view that the proposed development application for No. 35A (Lot 2) Oakover Street, East Fremantle was considered to have an adverse affect on the amenity of the southern neighbour and non compliance with the following:

- (a) Acceptable Development provisions and the Performance Criteria of the Residential Design Codes in relation to Part 6 – Design Elements- Clause 6.8.1 – Visual Privacy (A1)(i).
- (b) Part 1 (iii) of Local Planning Policy 142 'Residential Development', particularly in relation to development on battleaxe lots.
- (c) the following provisions of Town Planning Scheme No. 3:
 - i) Clause 10.2(a) & (b), particularly in relation to Clause 3.2 of the Local Planning Strategy.
 - ii) Clause 10.2(g).
 - iii) Clause 10.2(j).
 - iv) Clause 10.2(o).
 - v) Clause 10.2(p).
 - vi) Clause 10.2(z)(za), particularly in relation to the comments of the Town Planning Advisory Panel.

T133. BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING

Nil.

T134. CLOSURE OF MEETING

There being no further business the meeting closed at 8.20pm.

*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 **9 March 2010**, Minute Book reference **T126. to T134.** were confirmed at the meeting of the Committee on*

.....

Presiding Member