

8 March 2011

MINUTES

MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN) MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON TUESDAY, 8 MARCH, 2011 COMMENCING AT 6.40PM.

T13. OPENING OF MEETING

T13.1 Present

Cr Alex Wilson	Presiding Member
Cr Cliff Collinson	
Cr Barry de Jong	
Cr Rob Lilleyman	
Cr Siân Martin	
Cr Dean Nardi	
Mr Jamie Douglas	Manager – Planning Services
Ms Gemma Basley	Town Planner
Mrs Peta Cooper	Minute Secretary

T14. ACKNOWLEDGEMENT OF COUNTRY

The Presiding Member made the following acknowledgement:

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

T15. WELCOME TO GALLERY

There were 22 members of the public in the gallery at the commencement of the meeting.

T16. APOLOGIES

Mayor Ferris
Cr Maria Rico

T17. CONFIRMATION OF MINUTES

T17.1 Town Planning & Building Committee (Private Domain) – 8 February 2011

Cr Nardi – Cr Lilleyman

That the Town Planning & Building Committee (Private Domain) minutes dated 8 February 2011 as adopted at the Council meeting held on 15 February 2011 be confirmed. CARRIED

T18. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)

T18.1 Duke Street No. 36-42 (Lots 601 & 602)

A petition opposing the application “in its entirety” and signed by 64 individuals was tabled.

Cr Martin – Cr Lilleyman

That the petition be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref T20.6). CARRIED

T18.2 George Street No. 48 (Lot 300)

Email from Mr David Vinicombe (Planning Solutions) responding to submissions lodged against the proposal for a Wine Bar and Restaurant at 48 George Street.

Cr Martin – Cr Lilleyman

That the email be received and held over for consideration when the matter comes forward for discussion later in the meeting (MB Ref T23.1). CARRIED

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T19. REPORTS OF COMMITTEES

T19.1 Town Planning Advisory Panel – 22 February 2011

Cr de Jong – Cr Collinson

That the minutes of the Town Planning Advisory Panel meeting held on 22 February 2011 be received and each item considered when the relevant development application is being discussed. CARRIED

T20. REPORTS OF OFFICERS – STATUTORY PLANNING/DEVELOPMENT CONTROL

T20.1 Receipt of Reports

Cr Martin – Cr Lilleyman

That the Reports of Officers be received. CARRIED

T20.2 Order of Business

Cr Martin – Cr Lilleyman

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

T20.3 Pier Street No. 23 (Lot 196)

Applicant & Owner: T & M Astill

By Jamie Douglas, Manager Planning Services on 4 March 2011

PURPOSE OF THIS REPORT:

This report considers an application to rezone the subject site from R12.5 to R 25 to facilitate its subdivision. Council's endorsement is sought for a recommendation to not initiate the proposed amendment and to address the matter as part of a general review of the density provisions in respect to the Residential R12.5 zone.

BACKGROUND

Description of Proposal

An application to amend Town Planning Scheme No 3 to alter the R-Code density coding of No. 23 (Lot 196) Pier Street from Residential R12.5 to facilitate the subdivision of the subject land into two lots and create two homes was received on 19 January 2011. Whilst the proposal identifies an R-coding of R25 it is considered that an R-coding of at least R25 would be necessary to facilitate a subdivision proposal.

Statutory Considerations

Planning and Development Act 2005, Part 5, Division 2, 3 and 4
Town Planning Scheme No. 3 – Residential R12.5

Strategic Planning Considerations

Local Planning Strategy - Richmond Hill Precinct (LPS)
Directions 2031- Spatial Framework for Perth and Peel

Date Application Received

19 January 2011

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

20 October 2009

Amendment 6

Rezoning Lot 10 (No. 8) Preston Point Road, from Residential R12.5 to Residential R25 approved by Council on 20/10/2009 and subsequently refused by Minister for Planning, Culture and the Arts.

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- 20 October 2009 Amendment 7
Rezoning Lot 20 (No. 33) Osborne Road, East Fremantle from Residential R12.5 to Residential R17.5 was approved by Council on 20/10/2009. The rezoning was initially refused by the Minister for Planning, Culture and the Arts but following a request for re-consideration, it was subsequently approved.
- 25 May 2010 Amendment 8
Rezoning Lot 192 (No.15) Pier Street from R12.5 to R25 and resolves to initiate an Amendment to TPS No. 3 to rezone the site to R25 subject to the submission of appropriate amendment documentation on 21 April 2009. The rezoning was approved by Council on 25 May 2010 and subsequently refused by the Minister for Planning, Culture and the Arts.
- 16 November 2010 Council resolved to undertake a general review of the density provision of TPS No. 3 to allow for infill opportunities in prescribed circumstances.

STATUTORY PROCESS TO AMEND THE PLANNING SCHEME

The process for Scheme Amendments under the Planning and Development Act 2005 is as follows:

- A Local Government may at its sole discretion decide whether or not to initiate an amendment (sec 75). There are no appeal provisions associated with this decision.
- The Minister may direct a Local Government to make an amendment or adopt a new Scheme (sec 76).
- A Local Government must have due regard to any State Planning Policy (such as 'Directions 2031' etc.) in preparing an amendment (sec 77).
- Proposed Scheme amendment to be referred to the Heritage Council (sec 79).
- Proposed Scheme amendment to be referred to the PEA (sec 81).
- Proposed Scheme amendment to be referred to relevant public authorities such as Water Corporation, Western Power, the Western Australian Planning Commission (sec 83).
- Subsequent to the above, the amendment is publicly advertised (sec 84).
- The amendment is submitted for the Final Approval of the Minister (sec 87) and if approved published in the Gazette (sec 87 (3)).

CONSIDERATION

TPS No. 3 was Gazetted in December 2004 which introduced an R-Coding density control of 12.5 (lot average of 800m²). The applicant wishes to pursue subdivision of the 931m² lot hence the request for the site to be rezoned to a higher density coding.

The proposal constitutes 'spot zoning' and is similar in this regard to previously proposed amendments 6, 7 & 8 of which two have been refused by the Minister and an application to re-zone 7 Pier Street which was refused by Council on 16 November 2010. It is considered the proposed spot zone will conflict with the principles of sound planning practice for the following reasons:

The proposed spot zone:

- Conflicts with the land use strategy and nominated density for residential development and specifically the Richmond Hill Precinct as stated in the Local Planning Strategy. Pursuant to Clause 10.2 Council is required to give due regard to the Local Planning Strategy and the aims and objectives of the Scheme.
- Is not supported by the zone objectives of the Scheme contained in Clause 4.2.
- Would create a precedent for further applications which would undermine the integrity of the zone provisions and Scheme objectives.
- Creates inequities in respect to similarly zoned properties.
- Prejudices the achievement of prescribed planning outcomes and development potential in respect to residential development within the Scheme area.

It is noted that previous attempts to achieve similar spot zonings pursuant to TPS No. 3 have ultimately been refused by the Minister although one of the proposals was

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eventually approved following a request for reconsideration by the applicant. That particular property had a lot area of 2046m². In light of previous advice from the Hon Minister there seems little merit in initiating the amendment as proposed and exhausting considerable resources on the statutory amendment process.

At its meeting of 16 November 2010 Council considered a similar application in respect of No. 7 Pier Street and determined that such applications would be more appropriately addressed by a strategic review of the density provisions of TPS No. 3. It is intended that such a review would utilise the 'split coding' provisions of the Scheme and could be appropriately applied within designated areas determined by a review of existing tenements and built form within the various precincts. The criteria for consideration of 'up-zoning' of specific sites may be included within an elaboration of existing clause 5.2.4 (see below) and Schedule 2 of the Scheme. Criteria for 'up-zoning' would address issues of heritage significance and streetscape impact etc. This approach would enable Council to consider the individual merit of each application before amending the Scheme to incorporate a site within Schedule 2. As previously noted some consequential changes to the Scheme and zone objectives and the land use strategy would be necessary to support this approach.

"5.2.4 Where a site is identified as having a split density coding such as R12.5/30, the higher code may only be employed where the specific requirements identified for development or re-development of the site as set out in Schedule 2 are addressed to the satisfaction of the local government. In all other circumstances, the lower of the two codes prevails."

CONCLUSION

It is necessary to consider any proposal for a Scheme amendment within the context of the established strategic and statutory planning framework. The current proposal for a spot zoning of a single lot is not supported by this framework. If approved the proposal would create a precedent for further applications which would undermine the integrity of the zone provisions and Scheme objectives, create inequities in respect to similarly zoned properties and prejudice the achievement of development certainty. Accordingly it is considered the application should be refused.

Prescribed infill/subdivision opportunities can be achieved through an alternative series of amendments to the Scheme and allow for consideration of subdivision applications on sites suitable for infill development and changes to the land use strategy to allow for proposals which would not detrimentally impact upon heritage values and the streetscape and would conform to relevant strategic and statutory planning framework. It is considered that such provisions would address state planning policies and 'Directions 2031' requirements for infill provision within established residential areas and would promote efficient use of land and infrastructure in accordance with the principles of 'Sustainable Development'.

It is proposed that a comprehensive review of the land use strategy and Scheme amendment proposals be submitted to a subsequent meeting of Council. The review will address the potential for infill development on the subject site.

RECOMMENDATION

That:

1. Council not initiate the proposed rezoning of Lot 196 (No. 23) Pier Street, East Fremantle from the R12.5 zone to the R25 zone.
2. The applicants be advised that Council has resolved to undertake a general review of the density provisions with the objective of providing for infill/re-subdivision on appropriate sites.

Mr Rob Agnew & Mr Toby Astill (owners) addressed the meeting in support of their application.

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Mr Agnew in seeking a timeline on the proposed review was advised by the Manager – Planning Services that the review will be addressed as part of Council's 'forward planning' programme and therefore a date cannot be provided at this time.

RECOMMENDATION TO COUNCIL

Cr de Jong – Cr Nardi

That:

1. Council not initiate the proposed rezoning of Lot 196 (No. 23) Pier Street, East Fremantle from the R12.5 zone to the R25 zone.
2. The applicants be advised that Council has resolved to undertake a general review of the density provisions with the objective of providing for infill/re-subdivision on appropriate sites.

CARRIED

T20.4

Dalgety Street No. 27 (Lot 60)

Applicant & Owner: Alexandra Hubbard & Rebecca Davey

Application P3/2011

By Gemma Basley, Town Planner on 3 March 2011

BACKGROUND

Purpose of this Report

An Application for Planning Approval for additions to the rear of the existing residence at 27 Dalgety Street, East Fremantle is the subject of this report.

Description of Proposal

The application proposes the following:

- to retain the original residence with the exception of the single garage;
- to construct an extension at the rear of the existing house to comprise a new laundry, kitchen and family room area as well as a games room and a study loft above this;
- to construct a double garage in place of the existing garage; and
- to utilise materials and finishes to match the existing residence including limestone, brick and timber work and window and door framing and roof tiles.

The report recommends that Council approve the application conditionally.

Description of Subject Site

The subject site:

- 1089m²
- is zoned Residential R12.5
- is developed with a heritage residence that is included in the Municipal Heritage Inventory as a 'B' Management Category
- located in the Woodside Precinct

Statutory Considerations

Town Planning Scheme No. 3 (TPS3)

Local Planning Strategy – Woodside Precinct (LPS)

R12.5 Residential Design Codes (RDC)

Relevant Council Policies

Local Planning Policy 066 : Roofing (LPP 066)

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

Impact on Public Domain

Tree in verge : No Impact

Light pole : No Impact

Crossover : No Impact

Footpath : No Impact

Streetscape : The new additions will be minimally visible from the streetscape but will be in keeping with existing development and will not have an adverse impact

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Documentation

Plans and relevant forms date stamp received on 5 January 2011 and the 18 February 2011.

Date Application Received

5 January 2011

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

16 June 2010 Delegated Approval granted for a shed in the rear yard of 27 Dalgety Street.

17 August 2010 Delegated Approval granted for the construction of a swimming pool in the back yard of 27 Dalgety Street.

CONSULTATION

Advertising

The application was advertised to adjoining land owners for two weeks between the 10 January and the 25 January 2011. During this period no submissions or objections were received.

Town Planning Advisory Panel

The subject application was initially assessed by the Town Planning Advisory Panel (TPAP) at its meeting on 25 January 2011 where the Panel made the following comments:

- Elevations are not distinct in distinguishing the integration of the old and proposed rooflines.
- Intervention with roofline of existing house not supported- query changes to roofline.
- Query height and utility of 'pop-up' element.
- Panel recommends retention of front chimney in garage for architectural integrity.

In response to the comments from the Town Planning Advisory Panel, the applicants liaised with the Town Planner and subsequently submitted revised plans which removed the cupola (pop up element), simplified the roofline, retained the chimney and retained the architectural details at the front of the house and incorporated this into the design of the garage. The Panel viewed these plans at its meeting of 22 February and commended the re-submission of plans which addresses the issues previously raised in respect to the initial design.

Taking into consideration the amendments made to the plans and the supportive comments received from the Panel, the application is considered suitable for determination.

Site Inspection

By Town Planner, 24 January 2011

STATISTICS

File P/DAL27
Zoning R12.5
Lot Area 1089m²
Heritage Listing Category 'B' on MI

Site:	Required	Proposed	Status
Open Space	50%	61.75%	Acceptable
Overshadowing	Less than 25%	Less than 25%	Acceptable
Height:	Required	Proposed	Status
Wall	3.0	3.0	Acceptable
Ridge	9.0	6.8	Acceptable

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STATISTICS

Roof type Pitched and skillion

Setbacks:							
Wall Orientation	Wall Type	Wall height	Wall length	Major opening	Required Setback	Actual Setback	Status
Front	Garage	3.2	7.0	No	7.5	11.5	Acceptable
Rear	Games	3.0	5.2	No	1.0	1.5	Acceptable
Side North	Laundry-Games	3.0	21	No	1.5	1.5	Acceptable
	Garage	3.23	7.2	No	1.0	Nil	Discretion
Side South	Whole	3.0	17	No	1.0	1.0	Acceptable
	Alfresco-Verandah	3.0	13	Yes	1.5	8.5	Acceptable

ASSESSMENT

The proposal accords with the provisions of TPS3, the R-Codes and the Town's Planning Policies with the exception of the following element which is assessed below.

Boundary Setbacks and Boundary Walls

The application proposes a nil setback for the garage to the northern boundary in lieu of the required 1.0 metre set back. Council's Local Planning Policy No. 142 provides for boundary walls up to a height of 3 metres and extending for a length of 9 metres up to one side of the boundary. The height of the proposed boundary wall will extend to 3.2 metres, which exceeds the maximum height requirements of the Policy. The increased boundary wall height is required so that the existing roof pitch over the garage can be retained over the new garage.

The proposed boundary wall only extends for 7.2 metres, which is shorter than permissible and this will assist in offsetting the additional height of the wall. The marginal increase in wall height is not going to restrict sunlight or ventilation to the adjoining lot and will not impact on the amenity of the streetscape and therefore meets the Performance Criteria of the Codes and Local Planning Policy No. 142. On this basis the setback variation and boundary wall height variations are supported.

Conclusion

It is considered the proposed design gives due regard to the Town's requirements relating to residential developments, as well as the requirements outlined within the Residential Design Codes 2008. The application has taken into consideration all of the comments made by the Town Planning Advisory Panel and has undertaken significant changes to the original design and has subsequently reduced the extent of discretions being sought. Whilst the application does seek some minor variations to the R-Codes these are considered minor in nature and to be acceptable.

RECOMMENDATION

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

- (a) a variation to the boundary setback requirements of the R-Codes to allow a nil setback from the garage to the northern boundary in lieu of the 1 metre setback requirement; and
- (b) a variation to LPP No. 142 to allow a boundary wall to extend to a height of 3.2 metres in lieu of the 3 metres height restriction of LPP No. 142 to allow a maximum wall height of 6.7 metres (retaining included);

for the construction of single storey additions and a double garage at No. 27 (Lot 60) Dalgety Street, East Fremantle in accordance with the plans date stamp received on the 18 February 2011 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 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. 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. All stormwater is to be disposed of on site, clear of all buildings and boundaries.
5. 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.
6. 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 submitted as part of a building licence.
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) *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 parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (e) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

Ms Rebecca Davey (applicant) addressed the meeting in support of the officer's recommendation.

RECOMMENDATION TO COUNCIL

Cr Nardi – Cr Lilleyman

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

- (a) **a variation to the boundary setback requirements of the R-Codes to allow a nil setback from the garage to the northern boundary in lieu of the 1 metre setback requirement; and**
- (b) **a variation to LPP No. 142 to allow a boundary wall to extend to a height of 3.2 metres in lieu of the 3 metres height restriction of LPP No. 142 to allow a maximum wall height of 6.7 metres (retaining included);**

for the construction of single storey additions and a double garage at No. 27 (Lot 60) Dalgety Street, East Fremantle in accordance with the plans date stamp received on the 18 February 2011 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.**

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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. All stormwater is to be disposed of on site, clear of all buildings and boundaries.
5. 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.
6. 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 submitted as part of a building licence.
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) *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 parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.*
- (e) *matters relating to dividing fences are subject to the Dividing Fences Act 1961.*

CARRIED

T20.5

Alexandra Road No. 42A (Lot 1)

Applicant: Gordon Fleet

Owner: Simon Fleet

Application No. P209/2010

By Gemma Basley, Town Planner on 2 March 2011

BACKGROUND

Purpose of the Report

An Application for an amendment to approved plans to reduce the extent of privacy screens on the west facing upper floor balcony of 42A Alexandra Road, East Fremantle is the subject of this report.

This report recommends conditional approval.

Background

Council granted Planning Approval for a two storey house with a west facing balcony at 42A Alexandra Road on the 18 July 2006. The balcony had a setback of 5.91 metres from the western boundary (shared with 42 Alexandra Road). During the consultation period of this application the western neighbours at 42 Alexandra Road lodged a submission requesting that the western opening of the balcony be screened to prevent overlooking into No. 42. In response to the neighbour submission, the plans were amended by the applicant to show screening to the western balcony. This screening formed part of the approved plans.

The development at No. 42A Alexandra Road is complete but the owners have not installed the privacy screens to the western opening of the upper floor balcony. Significant complaints have been received by Council from the owners of 42 Alexandra Road with regard to the screening not being installed.

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In an effort to resolve this matter, the owners of 42A Alexandra Road have submitted an Application for a Variation to the Planning Approval dated 18 July 2006, which proposes to install a privacy screen with a width of 1.0 metre and a height of 1.6 metres and being constructed of angled blades at 45°.

The subject application therefore only relates to the screening of the west facing balcony at 42A Alexandra Road, East Fremantle

Description of Site

The subject site is:

- a 360m² (middle battleaxe) block
- zoned Residential R12.5
- developed with a two storey residence and double garage
- adjoins 42 Alexandra to the west and 42B Alexandra to the east
- located in the Richmond Precinct.

Statutory Considerations

Town Planning Scheme No. 3

Local Planning Strategy - Richmond Precinct (LPS)

Residential Design Codes (RDC)

Relevant Council Policies

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

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact
Streetscape : No impact

Date Application Received and Documentation

Plans and relevant forms date stamp received on 18 November 2010

CONSULTATION

The plans were advertised to the adjoining neighbours (42 Alexandra Road) for a two week period between the 1 and the 15 December 2010.

At the close of advertising no submissions had been received.

On the 22 December 2010 a late submission was received from the owners of 42 Alexandra which stated that their preferred screening was as approved in 2006 and that a 2.0 metre wide privacy screen should be required.

On the 21 February 2011 an additional submission was submitted by the owners of 42 Alexandra Road requesting that the width of the screens be 2.4 metres to prevent direct view into the pool and living areas.

The submissions have been presented to the owners of 42A Alexandra Road who advise that they are not willing to widen the proposed privacy screens unless required by Council.

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

19 June 2001	Council decides to advise the WAPC that it does not support the subdivision of the rear lot at 42 Alexandra Road into 3 strata lots but it supports conditional approval for 2 strata lots;
30 August 2001	WAPC grants conditional approval for the 2 strata lot subdivision;
17 December 2002	Council grants special conditional approval for two 2-storey grouped dwellings on reduced setbacks at 42A & 42B Alexandra Road;

- 23 September 2003 WAPC grants final approval to Survey Strata Plan 43799 to create 2 strata lots (42A & 42B) to the rear of 42 Alexandra Road;
- 18 July 2006 Council grants approval for the construction of a 2-storey grouped dwelling (excluding the swimming pool), at 42A Alexandra Road.

ASSESSMENT

Design Considerations

Visual Privacy is one of the design elements under the control of the Residential Design Codes 2010. The Codes specify Acceptable Development provisions which illustrate one way of meeting the associated Performance Criteria. In relation to visual privacy the Codes state the Acceptable Development Provisions are as follows:

- "A1 Major openings and unenclosed outdoor active habitable spaces (balconies, verandas, terraces or other outdoor living areas) which have a floor level more than 0.5 metres above natural ground level and which overlook any part of any other residential property behind its street setback line to comply with the following:*
- i Are setback, in line of sight within the cone of vision, from the boundary a minimum of:

 - 7.5 m in the case of unenclosed outdoor active habitable spaces; or*
 - ii Are provided with permanent vertical screening to restrict views within the cone of vision from any major opening of an active habitable space; or*
 - iii Are provided with permanent vertical screening or equivalent, preventing direct line of sight within the cone of vision to ground level of the adjoining property if closer than 25 m to the opening or equivalent."*

The Performance Criteria in relation to Visual Privacy reads as follows:

"Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness. Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass. Where these are used, they should be integrated with the building design and have minimal negative effect on residents' or neighbours' amenity. Where opposite windows are offset from the edge of one window to the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows".

Where a proposed major opening to an active habitable space is less distant from the nearest point of common boundary than the setbacks set out above, the Codes recommends that the following information shall be provided:

Requirement	Response
The position and dimensions of any balcony or major openings to any active habitable space in any wall of an adjoining building which is visible from the development site and is located within 6 m of a boundary of the development site	There are no balconies or major openings to any active habitable spaces in any wall on the development at 42 Alexandra Road located within 6 metres of the boundary of the development site.
The position and level of any accessible outdoor area (eg lawn, paving, decking, balcony or swimming pool) on any adjoining property and within 6 m of a boundary of the development site.	<p>Within 6 metres of the boundary of the development site, a driveway, garage and upper floor rumpus room have been constructed. The paved driveway area is the only accessible area on the adjoining property within 6 metres of the boundary.</p> <p>A swimming pool is located behind a high wall and is set back in the order of 6.8 metres from the boundary.</p> <p>The living room area of 42 Alexandra is set back in the order of 17 metres from the boundary of the development site.</p>

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Requirement	Response
Provision of additional or marked-up plans and sections showing the cone of vision and critical lines of sight from those major openings as they relate to the adjoining property.	The balcony opening has lines of site to the south and to the west. Lines of site to the north are obscured by the two storey garage/loft.
Details of screening or other measures proposed to be used to reduce overlooking.	The applicants propose to use timber angled blade privacy screens which will extend to a height of 1.6 metres and which will be angled at 45 degrees.

It is assessed that the setback between the subject balcony and the dividing boundary combined with the set back between the dividing boundary and active habitable spaces of the neighbouring property, which amounts to 11.91 metres, is sufficient to warrant no screening at all.

The applicants are prepared to install privacy screens to a width of 1.0 metre to help address their neighbours' concerns.

Site Assessment

At the time Council approved the two storey residence at 42A Alexandra Road, which included the screening of the whole of the western opening of the balcony, the original residence remained on 42 Alexandra Road. At this time the house at 42 Alexandra was accessed from the east and the pool was considerably visible from 42A Alexandra Road.

On 19 June 2006 and 23 August 2008 Council approved an extensive demolition, alterations and additions to the residence at 42 Alexandra Road, East Fremantle including a two storey garage/loft adjacent to the shared boundary with 42A Alexandra thus significant changes have occurred to the dwelling at No. 42 Alexandra Road. This assists in demonstrating that the need for the balcony to be screened to prevent overlooking into 42A Alexandra has lessened significantly.

It is considered that whilst the balcony does not meet the setback requirements of the R-Codes it is sufficiently set back from the outdoor living areas and habitable room openings of No. 42 Alexandra Road to provide sufficient privacy.

Conclusion

There is a combined separation of 11.91 metres between the subject balcony and the nearest accessible active habitable area (swimming pool) on the adjoining lot. There is a combined separation of 22.91 metres between the subject balcony and the nearest accessible habitable room (living room) of the adjoining residence. Based on this it is considered that the western opening of the balcony at 42A Alexandra Road does not require any privacy screening.

The applicants have submitted a proposal to screen 1 metre of the balcony and based on the above assessment it is considered this meets the Performance Criteria under the R-Codes. It is concluded there is no acceptable justification to require that this screen be widened to 2.4 metres as requested by the neighbour.

The balcony is already installed with privacy blinds and combined with the proposed 1 metre privacy screen will provide adequate protection to prevent perceived overlooking into the outdoor living and the habitable areas of 42 Alexandra Road.

Based on the above, the application for an Amendment to the original Planning Approval to reduce the extent of screening on the west facing balcony is supported and recommended for approval.

RECOMMENDATION

That Council exercise its discretion in granting approval for a variation to the privacy requirements of the R-Codes to allow a balcony which is only partially screened to be set back 5.91 metres in lieu of the 7.5 metres for the installation of a 1.0 metre wide permanently fixed privacy screen to the western opening of the balcony at No. 42A (Lot 1) Alexandra Road, East Fremantle in accordance with the plans date stamp received on 18 November 2010 subject to the following conditions:

1. The privacy screens are to be a minimum height of 1.6 metres and are to comply with the requirements of the R-Codes 2010.
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 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.
4. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
5. The works are to be undertaken within 60 days of the decision date and this planning approval is only to remain valid for that period.

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.*

Mrs Christina Harlan (adjoining neighbour at 42 Alexandra Road) addressed the meeting in relation to privacy concerns and the fact that they were not consulted when neighbours were advised that the screening was not required.

Mrs Nicola Fleet (owner of 42A Alexandra) and Mr John Booth addressed the meeting in support of the reduced screening as they did not see overlooking as a problem with the balcony being some 22m from the Harlan's livingroom. Mrs Fleet and Mr Booth were of the view that a 1m screen would be sufficient to inhibit vision to the living area of the Harlan residence.

RECOMMENDATION TO COUNCIL

Cr Lilleyman – Cr Martin

That the application for an amendment to approved plans to reduce the extent of privacy screening on the west facing upper floor balcony of No. 42A (Lot 1) Alexandra Road, East Fremantle be deferred pending a site visit prior to the March Council meeting. CARRIED

Cr Nardi made the following impartiality declaration in the matter of No. 36-42 Duke Street: "As a consequence of my having worked with and having taught the daughter of Mrs Janet Jackson who has lodged an objection against the proposed redevelopment of the Lauder & Howard building, 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".

T20.6 Duke Street No. 36-42 (Lots 601 & 602)
Applicant: The Buchan Group - Architects
Owner: Manotel P/L
Application No. P199/2010

By Jamie Douglas, Manager Planning Services on 4 March 2011

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PURPOSE OF THIS REPORT

This report assess an application for a change of use, partial demolition, redevelopment and new construction to accommodate a mixed use office/residential/arts and entertainment venue at the former Lauder & Howard building, 36-42 Duke Street and recommends approval of an amended proposal involving the deletion of the office floor space.

BACKGROUND

Description of Proposal

An Application for Planning Approval to redevelop the buildings at 36-42 Duke Street comprising:

Residential

A three level residential building fronting Duke Street at the southern end of the property in a space currently occupied by a 1960's addition and factory sheds which are to be demolished (no heritage significance). The dwellings will comprise Five 1 – bedroom and seven 2- bedroom apartments with access to roof deck above the top five units.

Performing Arts Studio

Dance Studio and Performing Arts / Music Space to occupy the upstairs areas of the Heritage Building and an extension to be added to the rear of the Heritage Building.

Wine Bar/ Restaurant (Jazz Club)

This will occupy the basement of the Heritage Building, and a new extension on vacant land to the rear of the Heritage Building, which incorporates a new courtyard and amenities.

Commercial Office Spaces

Behind the old Lauder and Howard Building a five level commercial building with three levels of office space, above the new courtyard and amenities for the wine bar/restaurant.

Parking

Off-street parking for 49 cars : 19 at Duke Street level and 30 at lower ground floor level.

During the course of this assessment the proponents requested that determination of the office space be deferred (the four storey office 'tower' has been deleted from the amended proposal). Accordingly this component does not form part of this determination. However, the original assessment of this element has been retained within this report and notations have been added at relevant sections to identify the effect of the deletion of the office component in respect to the planning assessment.

Statutory Considerations

Town Planning Scheme No. 3 - George Street Mixed Use zone
Local Planning Strategy - Plympton Precinct (LPS)
TPS3 – Heritage List Clause 7.1

Relevant Council Policies

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

Documentation

Plans and relevant forms date stamp received on 26 October 2010
Revised Plans date stamp received on 21 January 2011

Date Application Received

26 October 2010

Advertising

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

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Date Advertised

2 February 2011

Close of Comment Period

21 February 2011

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, MPs, Mayor and CEO & VIP's join in the reopening of Lauder & Howard's antiques;
9 December 2008	Planning Approval granted to redevelop the buildings at 36-42 Duke Street from antique furniture showrooms and workshops to 7 x 1 bedroom apartments, and 5 x 3 bedroom apartments.

CONSULTATION

Town Planning Advisory Panel Comments

This application was initially considered by the Town Planning Advisory Panel at its meeting on 26 October 2010 and the following comments were made:

- Panel was unable to consider any off-site issues.
- Panel appreciates mixed- use nature of proposal and architectural distinction between existing heritage buildings and the proposal.
- Bulk and scale of commercial element of proposal too high in relation to Royal George. Height of the roof should not exceed the base of the dome.
- Commercial element too aggressive in contrast to existing heritage elements.
- Panel approves the concept of residential accommodation fronting Duke Street; however this element does appear over scaled;

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- Application very 'site centric', applicants encouraged to present some photo-realistic views of George Street to demonstrate relationship of proposal to the corner of Duke and George Streets and other key sightlines.
- Panel happy to consider any further refinements to the original application.

The Planning Advisory Panel reconsidered the revised plans and the additional information provided at its meeting on 22 February 2011 and advised:

- it is necessary that the Royal George should retain its primacy as the land mark building in the precinct to retain its heritage significance. The proposed office element will compete with and therefore diminish the Royal George.
- office component should be reduced by one storey so that it does not exceed the height of the cupola.
- Panel endorses comments by Andrew Rogerson.
- the proposed office building adds a bulky, disproportionate, unbalanced and over scaled design.
- this is a highly significant precinct and any development should not have a negative impact as this development does in its current form.
- as a fundamental design principle the building should not exceed the height of the cupola.
- the proposal once again reinforces the need for a Precinct Parking & Access Plan.
- existing façade detail of the Lauder & Howard building should be retained.
- façade and fenestrations of the proposed apartment building should more closely replicate the design cues and façade treatment of the Lauder & Howard building.

Other agency/authority

Heritage Council of Western Australia (HCWA)
Main Roads WA (MRWA)
National Trust of Australia

Main Roads WA

Summary of response received 16 December 2010.

The proposed development as presented is unacceptable to Main Roads, as the proposed development encroaches into the Stirling Highway road reserve. However, it would be acceptable (subject to standard conditions) if the proposed development is redesigned so it is contained within its boundaries.

In light of this advice the applicant revised the proposal so that the roof did not overhang the road reserve.

The Heritage Council

Summary of response received 25 November 2010.

We are not opposed to the aesthetics of the proposal; however from a heritage perspective, there is concern over the proposed height of the new office building. The adjacent Royal George Hotel is a prominent landmark and the proposed new office building may detract from the significance of the Hotel. It is recommended that the scale of the office building be reduced or reconfigured to allow the visual emphasis to remain on the Royal George.

Public Submissions

At the close of the comment period 15 submissions were received. A summary of the submissions and responses is contained in Attachment 4.

Site Inspection

By Manager Planning Services on 11 February 2011

ASSESSMENT

Land use

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

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Formerly the site was used for 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. Currently the site is used as a dance studio (in the original brush factory heritage buildings) and the industrial annex is vacant.

The proposed uses are defined as follows in the "Mixed Use Zone" - George Street Precinct under the Scheme:

.. Performing Arts Studio

There is no precise use definition for the proposed use under the Scheme. The applicants submit it is reasonable to assess the use as 'Community purpose' which is a listed as a 'D' use in the zoning table.

.. Community Purpose

The definition for a 'Community purpose' is as follows – means the use of premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit.

.. Dance Studio

It is considered that a dance studio which is a commercial operation does not fall comfortably within the above definition. Accordingly it is appropriate this be considered as an 'unlisted discretionary use'. It should be noted this use is already established (under a temporary 12 month planning permit) on the subject site.

.. Residential

Residential – Apartments – 'multiple dwelling' is listed as an 'A' use in the zoning table although not defined under the scheme.

The definition for multiple dwelling in the R-Codes is as follows 'A dwelling in a group of more than one dwelling on a lot where any part of a dwelling is vertically above part of any other but:

- does not include a grouped dwelling; and
- includes any dwellings above the ground floor in a mixed use development.

.. Wine Bar/ Restaurant (Jazz Club)

The Jazz Club could be defined as a 'Night Club' under the Scheme - "night club" means premises:

- used for entertainment with or without eating facilities; and
- licensed under the Liquor Licensing Act 1988,"

A "night club" is a prohibited use within the "mixed use" zone – George Street Precinct.

It is noted the proponent intends to operate the Jazz Club under a 'small bar licence' however land use definitions under the Scheme did not contemplate the advent of 'small bar licences' which provide for the establishment of wine bars where food is to be available for sale for a maximum number of 120 people. The closest definitions under the Scheme are 'restaurant' and 'tavern' which are defined as 'D' and 'A' uses respectively. Both this designations require an exercise of discretion by Council to approve the use while the 'A' designation further requires the advertisement of the proposal prior to any determination under clause 9.4.

The Director of Liquor Licensing issued a Policy on 22 January 2008 which identifies the provisions for Small Bars Licences. This Policy defines Small Bars as follows:

"Small bars are expected to be distinguishable from other licence types such as taverns or nightclubs, and the supply of liquor is expected to be an ancillary service to some other activity such as the consumption of food. Licences can be conditioned so as to support this expectation."

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Notwithstanding, the intent to operate the venue as a 'Jazz Club' it is considered the performance function is likely to be ancillary to the serving of food and beverage as such the proposed use is akin to a restaurant (under the above licence provisions) and it has been assessed as such in relation to its use status under the 'Zoning Table' and car parking requirements under the Scheme. Alternatively if the use were defined as an 'unlisted use', under the provisions of clause 9.4 it may be determined as if it were an 'A' use. The advertising requirements under clause 9.4 have been fulfilled and the proposal can accordingly be determined as a 'discretionary' use notwithstanding its precise definition under the Scheme.

In determining the merit of discretionary uses Council should have regard the Zone Objectives under clause 4.2 and the matters listed for consideration under clause 10.2 of the Scheme. The Council may be further guided by relevant statements within the Local Planning Strategy. The intent of these provisions can be summarised by reference to the following objective for the Mixed Use zone in TPS No 3.

"To provide for a limited range of commercial, civic and community facilities to meet the day to day needs of the community, but which will not prejudice the amenities of the neighbourhood."

.. Commercial Office Spaces

'Offices' are designated as a 'discretionary use' in the 'mixed use' zone under the Scheme.

The above uses are all considered appropriate with regard to the scheme objectives for the 'mixed use' zone identified in Clause 4.2 provided the following criteria are met:

- the development does not prejudice the amenity of the neighbourhood.
- a significant residential component is retained as part of any new development.
- it facilitates the safe and convenient movement of pedestrians to and within the area.
- the vehicular access and parking does not detract from the amenities of the area or the streetscape.

Providing the proposal does not prejudice residential amenity, the range of proposed uses are consistent with and support, planning objectives for this inner urban 'mixed use' zone providing residential infill, entertainment and workplace opportunities for the community.

Building Setback, Height, Plot Ratio and Outdoor Living Areas
Setbacks

Building setbacks are subject to Clause 5.8.1 of the Scheme which states:

5.8.1 Building Setbacks: Except as otherwise required or permitted by the local government, buildings in the Commercial Zones are to be aligned with the front property boundary, and are to be built up to any side boundary, other than a boundary which abuts the Residential Zone. In the case of a boundary which abuts land situated in the Residential Zone, the side setback standards applicable to the adjoining Residential Zoned land are to apply, unless varied in accordance with the provisions of clause 5.6 of the Scheme.

Note: In the case of a site included on the Heritage List referred to in Part 7 of the Scheme, the local government may require in any particular case, additional setbacks in order to protect the heritage value of the site.

The subject site abuts a residential zone, which has a density rating of R 12.5. The side wall of the proposed apartment block which is adjacent to a two storey dwelling at 46 Duke Street will extend for approximately 19 meters along the side boundary. This wall will be built to the boundary for the first two storeys to a height of 16.7 metres with the third storey stepped back from the side boundary 850 mm. to a height of 20.64 meters. The R-Code minimum side boundary setback for such a wall is 3.1 meters.

The proposal will not comply with the relevant R-Code side setback requirement, however it is considered a variation of this requirement is appropriate. Not to allow building up to the side boundary would be detrimental to the streetscape by creating a

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gap in an otherwise consistent facade which addresses the street frontage of the subject site.

The design of the adjacent house acknowledges the current industrial building, accordingly the side windows are high level and do not afford direct line of sight while the other natural light source in this northern elevation are glass bricks which are opaque. The proposal will not be visually intrusive for the adjacent dwelling however there will be some loss of direct sunlight to the glass bricks but this is not considered to be an unreasonable impact upon amenity.

The proposal would result in a 3.5% increase in overshadowing of the adjacent 46 Duke Street; however this will mainly occur across the roof of the property and over the front setback area. There will be some marginal reduction in overshadowing to the rear outdoor living area. The shadow cast will not extend over other neighbours. Overshadowing is therefore not considered to be a determining factor.

Height

Clause 5.8.2 specifies that maximum height in the 'Mixed Use Zone' is to be 5.5 metres for walls and 8.0 metres overall.

The building design utilises parapet walls and consequently the relevant height is assessed at the roof ridge height. For the proposed apartments this is 11.3 metres above the Duke Street ground level and for the office 'tower' it is 15 meters high relative to Duke Street and approximately 18 metres above natural ground level (due to the site fall). It is considered the following support a variation to the height provisions of Clause 8.5.2 of the Scheme:

- this is a unique large former industrial site, with an iconic heritage building.
- the site also has a considerable fall towards its boundary with the Stirling Highway.
- the proposed heights are partially in consequence of the sympathetic massing of the apartment block with the existing heritage building element.

The qualitative assessment of the proposal's height upon the streetscape and the heritage significance of the Royal George Hotel are discussed later in the report.

Note: Due to the deletion of the 4 storey office component the proposals maximum height is reduced to the roof ridge top height of the apartment building which is 11.3m.

Plot Ratio

Clause 5.8.3 specifies that the maximum Plot Ratio in the 'Mixed Use' zone is 0.5:1. This means that the net floor area (discounting lift wells, service areas etc.) shall not exceed half the area of the subject site. The subject site is 1440m² which means that the maximum floor area of the development allowable under this clause is 720m². The proposal has an aggregate net floor area 1685m² which is more than double that allowable under the scheme.

In accordance with Clause 5.3.4 an R-coding of R40 applies to the site. The applicable R-Code plot ratio is 0.6 with an open space requirement of 45% of the site as open space. Clearly, the proposal cannot comply either with the requirements of the Scheme or with the R-Codes in terms of its density and site coverage.

Note: Due to the deletion of the office component the aggregate net floor area is reduced by 380 m² to 1305m² resulting in a plot ratio of 0.9:1.

Outdoor Living Area

The outdoor living areas requirements of the R-Codes specify that balconies of a minimum 10m² in floor area with a minimum dimension of 2.4m should be directly accessible from a habitable living area of each unit. Each unit has two balconies whose combined area meets the R-Code requirement. The top floor units also have roof top decks. These have intervening privacy screens, but an additional screen should be

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provided on the eastern elevation of unit A12 to provide privacy to the neighbouring property.

Car Parking and Access

Parking Requirements

The proposal consists of the following uses which generate the indicated parking requirements pursuant with Schedule 11 of TPS No 3:

.. 12 Residential Apartments – 7 Two Bedroom and 5 One Bedroom

The Scheme defers to the R-Code requirements which are as follows - 0.75 spaces per 1 bedroom multiple dwelling and 0.35 bays per multiple dwelling plus 0.015 bays per m² of plot ratio area, to a maximum of two spaces per dwelling and not less than 10% of the required spaces provided for exclusive use of visitors.

0.35 spaces x 7 two bed units = 2.45 bays
662 m² of residential plot ratio x 0.015 = 9.93 bays
5 of 1bed units x 0.75 bays = 3.75 bays
Total = 16.13 bays

This equates to 17 bays + 2 visitor bays under the R-Code requirements.

Total 19 bays

.. Dance Studio and Performing Arts Space

This area is designed to accommodate a maximum of 20 students and 2 staff. If the parking requirements for Community Services is applied then a total of 4 bays for students and 2 for staff are required.

Total 6 bays

.. Wine Bar/Restaurant (Jazz Club)

Schedule 11 requirements for a restaurant require 1 space for every 5 seats or persons to be accommodated or 1 space per 5m² seating area, which ever is the greater, plus 1 space per staff member.

Based on the provided floor area of 136m² for seating this generates a requirement of 27 bays plus 5 bays for staff parking.

Total 32 bays

.. Offices

The Net Lettable Floor area of office space is 375m². The Scheme requirement is 1 space per 30m² NLA or a minimum of 3 spaces per tenancy or office unit.

Total 13 bays

The total on site car parking requirement for the development under the provisions of Schedule 11 of TPS No. 3 is 70 bays.

On Site Parking Provision

The development will provide a total of 49 parking spaces on site which leaves a theoretical shortfall of 21 bays. The proponents have submitted a Traffic and Parking Assessment by 'Transcore' P/L, December 2010. This study identified 5 on-street bays immediately adjacent to the development frontage that could be utilised for 2 residential visitor bays and 3 bays to address the commercial shortfall. This is considered appropriate pursuant to clause 5.8.7 which provides for Council to accept immediately adjacent on-street 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. This is consistent with the approach taken in relation to addressing the respective parking shortfalls of the Royal George Hotel application and Wine Store application.

Dissimilar to the Royal George, the proposal has potential for reciprocal or 'shared' parking between the various commercial uses which will operate at different times. To this end the 'Transcore' report notes the following:

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“However it must be acknowledged that these land uses will each operate or experience peak parking demand at different times of the day and days of the week. The Jazz Club will only be open in the late evening Wednesday to Friday and from lunch to midnight on weekends. The dance/performing arts spaces will predominately be used in the afternoons and early evenings Monday to Thursday and on Saturday mornings. The offices will be active during normal office hours, Monday to Friday.

The proposed residential parking area is located at the upper ground floor level and is separately accessed and self – contained.

The 30-bay lower ground floor car park will serve the commercial components of the development. During the day this will be used by the offices and dance studio parking. The 30 bays can accommodate the full demand for these uses during the day.

The dance studio/performing arts and jazz club is not expected to be full on these weekday evenings, so total parking demand is not expected to be any higher on these weekday evenings than on weekends when the Jazz Club will be busiest. Therefore the peak parking demand for the commercial uses will be approximately 29-30 cars. The parking requirement is fully provided for on site in the proposed development application.”

The above statement is predicated on an underestimate of the parking generation requirements of TPS No 3. From the above comments, it is reasonable to expect there will be overlap in parking demand between the dance studio/offices and dance studio/Jazz Club. However it is considered that the parking generation for the offices could be offset against that for the Jazz Club. This would mean that the total parking generation would then be residential - 19 bays and commercial 38 bays (comprising Jazz Club and Dance Studio demand). Total on site requirement = 57 bays leaving a net parking shortfall of 8 bays of which 5 can be accommodated by immediately adjacent on-street car parking.

Note: Due to the deletion of the office component the on site parking requirements of the Scheme are reduced by 13 bays. The amended proposal retains the same number of bays, however as the parking provision for the offices was assessed as being shared with that of the Jazz Club the assessed net parking shortfall is unaffected.

Vehicle Access

The ‘Transcore’ Report has concluded that the estimated traffic generation can be accommodated within the existing road capacity and concludes as follows:

“The proposed development is anticipated to generate up to 240 additional vehicle movements per day on the surrounding road network. This volume will disperse over several different routes in this area and this traffic increase can easily be accommodated on the local road network.

The George Street/Duke Street intersection will easily be able to accommodate the traffic flows from the proposed development and still have sufficient spare capacity to accommodate additional traffic from other development in the area, such as the proposed Royal George Hotel development.”

Streetscape/Heritage Impacts

The buildings on the subject site have not been entered on the Heritage Council Register of Heritage Places and are not classified by the National Trust. However the original brush factory building is included on the Town’s Heritage List by virtue of its inclusion in the George Street Precinct and on the Town’s Municipal Inventory with an A+ management category. The retention and restoration of the original building without substantial alteration will contribute to the George Street Precinct streetscape.

There is general concern from the Town Planning Advisory Panel and the Heritage Council that the height and mass of the proposed office building will complete with and detract from the significance of the Royal George Hotel which is a Listed Building. A submission was also received from Andrew Rogerson who is an architect and former long serving member of the Advisory Panel, this submission is as follows:

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The proposal shows a three level residential building fronting Duke Street at the southern end of the property. The upper level units labelled A8, 9, 10, 11, & 12 also appear to have access to a roof deck above their unit. The screening of these decks is not clearly articulated on the drawings, but Drawing DA-301 shows a dotted outline which seems to correspond with the decks. The southern-most deck would seem to create an overlooking issue for the neighbour directly south. I would suggest that these decks be disallowed. The drawings should articulate the decks more clearly on elevation.

Overall the proposed apartments (without the decks) would complement the streetscape on Duke Street and complement the old Lauder and Howard building.

Behind the old Lauder and Howard building a 5 level commercial building is proposed with 4 levels of commercial tenancy proposed above a service floor. The height of this building exceeds that of the dome of the old hotel and to my mind is too high by one level. I believe the building should be no taller than the base of the cupola of the hotel tower. Given that the hotel itself is subject of a redevelopment application, I am concerned that this important element in the skyline of the Plympton Ward will be built out.

The 3d images provided, whilst assisting to show the bulk of the development, are in fact misleading. The white and pale grey colours shown for the proposed new buildings make these appear cleaner and less dominating than is actually the case. The colours and materials actually proposed are noted on the elevations, but without colour information. I therefore assume that the colours shown on the elevations are truer to the proposal. These show darker colours which will give the building a heavier and more dominant appearance. The elevation of the commercial building from Stirling Highway is an interesting architectural solution, but will be criticised as being harsh. Again the actual material colours selected will make a difference here.

Overall, this is an innovative and interesting proposal for re-use of the old fabric, however, I believe the commercial building to be a storey too tall and as proposed is not sufficiently sensitive to the old hotel, or the Lauder and Howard building. The proposed location for the commercial building I believe is a clever solution to the site planning. Given its height however, it will cast shadow over the new apartments for a significant portion of the day.

The greater detail regarding the proposed roof decks on the residential building have been provided subsequent to this submission. This information includes a line of sight analysis which clarifies that no overlooking from the proposed roof terraces will occur into the habitable areas of neighbouring properties.

The proposed office tower is a striking piece of contemporary architecture and may even be considered iconic to the precinct in future years. To a large degree the height and roof form affords presence to the building. However it is noted that this presence competes with the Royal George since the roof form will exceed the height of the Royal George roof dome by 2 metres. The mass and bulk of the proposal also tends to over scale the Royal George whose major architectural feature, the copula, is a somewhat small and slender architectural element in comparison.

The proponent contends that:

- with the office building setback of 17 metres from the Duke Street frontage,
 - the screening effect of the existing Lauder and Howard building facade and the three storey apartment building set in front of the proposed building and
 - the site fall of 3 metres from the Duke Street frontage,
- “the small vertical commercial building has no impact on the streetscape and is not visible from Duke Street.”

It is apparent however from the tendered viewscape drawings that the 17 metre setback of the office building tends to strengthen its visual impact and dominance of the Royal George Hotel when viewed west from George Street and more generally from the town centre. The proposed building will also be visible from within the George Street Precinct looking down George Street to the east given the open vista afforded by the pedestrian underpass and road reserve.

The proposal incorporates a Heritage Impact Report prepared by ‘Heritage and Conservation Professionals’ (Rosemary Rosario).

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The report considers that the demolition of the 1960's extension will not impact the heritage significance of the site and that the retention of the heritage building will be a significant contribution to the streetscape. The report considers the design of the proposed residential apartments respects the form, proportion and aesthetic qualities of the former brush factory building. In respect to the impact upon the Royal George Hotel this report notes as follows;

"The height of this building to its highest point is higher than the dome on the adjacent Royal George Hotel, but lower than the spire on the dome on the hotel. The design of the building is contemporary with the upper floor screened by a contemporary response to the dome on the adjacent hotel. Together with the roof line of the adjacent Royal George Hotel, the commercial building will form a visual focal point when viewed from the west along George Street. The view along George Street currently terminates in the space between the former brush factory and the hotel. The new building will add an element of interest to this view and has been located far enough back on the site to ensure that it does not impact detrimentally on the heritage quality of the George Street streetscape."

To supplement the proponent's Heritage Impact Report, Council commissioned (at the proponent's expense) a further independent assessment by Heritage Architect Phillip Griffiths. This report will inform debate on the future consideration and concluded:

"The development would appear to be an outcome that could be supported, based on the information provided. However, the contextual information for the new development at 36- 42 Duke Street should be extended to include the Stirling Highway approaches from the north and south to allow an analysis of the visual impact on the landmark values of the George Hotel. The movement along this axis is dynamic as most movement is by vehicle moving at 60kph. An analysis of the likely impact may show that for brief moments there will be quite a strong impact that is reduced on closer approach. The impacts should be demonstrated. A rendered model would be most helpful and would assist Council to make its own judgement.

Details of the conservation outcomes for the Old Brush Factory should be provided to ascertain the impact on this building."

Note: In response to concern regarding the height and contemporary design of the proposed commercial building and its impact upon the heritage significance of the Royal George Hotel, the proponent has requested consideration of this element be deferred to allow for further analysis and development of possible alternate design options.

Residential Amenity

To an extent, all new commercial development which generates an intensification in use of a site will have some impact upon residential amenity within the George Street Mixed Use Precinct due to increased numbers of business customers accessing the site and the Precinct from other areas. This should be anticipated in a mixed use zone and is not necessarily inconsistent with the objectives of the Scheme and the Land Use Strategy if it can be reasonably conclude the impact is not sufficient to constitute a significant prejudicial impact on amenity.

The proposal will contain activities such as the Jazz Club and Dance Studio which will be to the benefit and enjoyment of many residents within the Precinct and the broader community. Because of the site characteristics, and its location on the site, the proposed Jazz Club should not generate noise that will prove intrusive to residents in the area. However, any approval would in any event be subject to Council's Noise Attenuation Planning Policy.

CONCLUSION

The proposal justifies consideration of variations to the scheme pursuant with *Clause 7.5 – Variations To Scheme Provisions for a Heritage Place or Heritage Area* - to facilitate the re-use and conservation of the heritage building. In considering the merit of any variation, Council is required to consider the requirements of Clause 10.2 of the Scheme.

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The following sub-clauses from this clause are considered of particular relevance:

- (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;*
- (j) *the compatibility of a use or development with its setting;*
- (l) *the cultural significance of any place or area affected by the development;*
- (o) *the preservation of the amenity of the locality;*
- (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;*

As identified in the above assessment the originally submitted proposal does not comply with the Scheme's provisions in terms of height, setbacks, plot ratio and car parking. The proposal has subsequently been amended by the deletion of the four storey office component which is deferred from consideration within this determination. The following table summarises the amended proposal's extent of non-compliance with the scheme's provisions:

Design Element	Required	Proposed	Extent of Non-Compliance
Side Setback	3.1m	Nil	3.1 metres
Height	8m	11.3 metres	2.3 metres
Plot Ratio	720m ² floor area	1305 m ² floor area	585 m ² floor area
Car Parking	70 bays	49 bays	21 bays

As can be seen the proposal (as initially submitted) represents a substantial 'over development' of the site in terms of the Scheme's normally applied standards relating to height, plot ratio and set backs. There is justification for the variation of the side boundary setback from 3.1 to nil metres. There is justification in reducing the initially assessed parking shortfall of 21 bays to 8 bays, based on reciprocal parking arrangements between the Wine Bar/Jazz Club and offices. There is further justification in allowing for the 5 immediately adjacent on-street parking bays to reduce the shortfall to 3 providing appropriate provisions are made with respect to the 3 bay shortfall.

In this regard it is concluded it would be to the general benefit of the development, residents and other businesses within the Precinct if, as an alternative to cash-in-lieu, the proponents were required to contribute a sum which would be directed to the development and implementation of a George Street Precinct Access and Parking Management Plan. If a requirement for a contribution of twenty seven thousand dollars (\$27,000) as an alternative to the assessed cash-in-lieu sum of sixty seven thousand five hundred dollars (\$67,500) were a condition of any approval, then it would be consistent with recommendations in respect to the proposed wine bar.

It is considered the height and plot ratio provisions of the Scheme do not support the stated objectives for development in what is an inner urban 'mixed use zone' and therefore variations to these provisions are justified. Additionally the unique features of this substantial post-industrial site and the proposal to conserve a significant heritage building provide further justification for varying that Scheme provision. The range of proposed uses are consistent with and support planning objectives for this inner urban 'mixed use 'zone providing residential infill, entertainment and workplace opportunities for the community.

In response to the submissions received and the Advisory Panel's comments the proponent has amended the application by the deletion of the four storey office floor space. This will allow time for more dialogue with Council and the community on possible alternate design proposals for this component.

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It is considered the amended proposal for residential apartments, Jazz Club/restaurant and dance studio merits approval.

RECOMMENDATION

That Council approve the application for a change of use, partial demolition, redevelopment and new construction to accommodate a mixed use residential, arts and entertainment venue at 36-42 Duke Street, East Fremantle in accordance with the amended plans date stamp received 3 March 2011 subject to the following conditions:

1. Prior to the grant of a building licence the owner of the land shall pay to the Town of East Fremantle (**Town**) \$27,000 representing the owner's contribution (**Contribution**) to a future George Street Precinct Access and Parking study (**the Study**). No use the subject of this approval may be commenced prior to the receipt of the Contribution by the Town.

The Contribution is to be held in trust by the Town, and may be used for the purposes of funding in whole or in part the Study and carrying out works consequent on the Study.

In the event that the Council of the Town does not resolve to commence the Study within 2 years following the date of this approval, the Town shall refund the Contribution to the owner.

2. The submission of an 'Acoustic Report' and the incorporation of measures to achieve acceptable 'noise criteria' as specified in the Town of East Fremantle Local Planning Policy – Noise Attenuation to the satisfaction of the Chief Executive Officer prior to the issue of a Building Licence.
3. Restaurant/Jazz Club customers shall not occupy the restaurant after 11 pm. except on Friday and Saturday nights when restaurant customers shall not occupy the restaurant after twelve midnight.
4. The developer shall replace the brick pavers in the footpath adjacent to the Duke and George Street site frontage with pavers appropriate to the conservation works to the satisfaction of the Chief Executive Officer.
5. A Landscape Plan shall be prepared and implemented to the satisfaction of the Chief Executive Officer. The Plan shall identify all vegetation to be retained and planted, a lighting plan, the design and finishes of all retaining walls and paved areas including the relevant footpath areas and be submitted and approved prior to the lodgement of drawings for Building Licence.
6. A Waste Management Plan is to be submitted and approved to the satisfaction of the Chief Executive Officer prior to the issue of a Building Licence.
7. The works are to be constructed in conformity with the amended drawings date stamped 'Received 3 March 2011' 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 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.
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 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.
11. All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
12. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally

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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. The development is to meet the built form requirements for Area 2 of the Fremantle Port Buffer as detailed in the Local Planning Policy - 'Fremantle Port Buffer Area Development Guidelines'.
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) *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) *With regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*

A petition referred from MB Ref T18.1 was tabled.

Mr & Mrs Peter & Janet Jackson, their son Luke Jackson, and Mr John Thompson expressed concern with the proposed redevelopment. Their concerns included:

- the majority of land in Duke Street is residential
- bulk and scale of the three storey element (not opposed to two storey)
- lack of private open space/green space to new units other than the proposed roof terraces
- insufficient landscaping proposed
- increased vehicular movement in Duke Street with the potential to encroach existing crossovers/private driveways
- insufficient on-site parking
- impact upon existing infrastructure
- renewal of town centre and the opportunity along with MRWA to achieve linkage via underpass and the prospect of additional parking
- compliance with noise abatement policy
- given the higher level of activity generated from the site the lack of a network/traffic movement plan in surrounding streets including that of pedestrians

Mr Alistair Wallace addressed the meeting in support of the proposed redevelopment with the view it will generate additional revenue and revitalise the area.

Mr Peter Unsworth (owner) in addressing the meeting acknowledged the residents' comments but felt they were overstated. He expressed concern with the late tabling of

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the petition. Mr Unsworth also went on to say that the building was purchased because of its Heritage value and it was his intention that the building would not be converted to a use that precluded access to the general community. This would then require the provision of on-site parking.

Ms Renee Coyle advised that the jazz club space would allow musicians to come and play, with the gallery space providing a rehearsal area and actor's studio. Ms Coyle stressed that a nite club was definitely not proposed.

Mr Lou Cotter (architect) advised that the warehouse form and internal elements of the building were retained for community use. He went on to say that whilst the character and heritage of the Royal George was appreciated, the cupola could be enhanced by the 'quirky' building behind, although this element has since been removed from the equation. The proposal before you is an example of sustainable development.

RECOMMENDATION TO COUNCIL

That Council approve the application for a change of use, partial demolition, redevelopment and new construction to accommodate a mixed use residential, arts and entertainment venue at 36-42 Duke Street, East Fremantle in accordance with the amended plans date stamp received 3 March 2011 subject to the following conditions:

1. **Prior to the grant of a building licence the owner of the land shall pay to the Town of East Fremantle (Town) \$27,000 representing the owner's contribution (Contribution) to a future George Street Precinct Access and Parking study (the Study). No use the subject of this approval may be commenced prior to the receipt of the Contribution by the Town.**

The Contribution is to be held in trust by the Town, and may be used for the purposes of funding in whole or in part the Study and carrying out works consequent on the Study.

In the event that the Council of the Town does not resolve to commence the Study within 2 years following the date of this approval, the Town shall refund the Contribution to the owner.

2. **The submission of an 'Acoustic Report' and the incorporation of measures to achieve acceptable 'noise criteria' as specified in the Town of East Fremantle Local Planning Policy – Noise Attenuation to the satisfaction of the Chief Executive Officer prior to the issue of a Building Licence.**
3. **Restaurant/Jazz Club customers shall not occupy the restaurant after 11 pm. except on Friday and Saturday nights when restaurant customers shall not occupy the restaurant after twelve midnight.**
4. **The developer shall replace the brick pavers in the footpath adjacent to the Duke and George Street site frontage with pavers appropriate to the conservation works to the satisfaction of the Chief Executive Officer.**
5. **A Landscape Plan shall be prepared and implemented to the satisfaction of the Chief Executive Officer. The Plan shall identify all vegetation to be retained and planted, a lighting plan, the design and finishes of all retaining walls and paved areas including the relevant footpath areas and be submitted and approved prior to the lodgement of drawings for Building Licence.**
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8. **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.**

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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 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.
11. All storm water is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
12. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
13. Where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
14. Any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
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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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- (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) *With regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*

CARRIED

T21. ADJOURNMENT

Cr Wilson – Cr Nardi

That the meeting be adjourned at 9.12pm.

CARRIED

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T22. RESUMPTION

Cr Wilson – Cr Nardi

That the meeting be resumed at 9.18pm with all those present at the adjournment in attendance. CARRIED

T23. REPORTS OF OFFICERS – STATUTORY PLANNING/DEVELOPMENT CONTROL (Cont)

Cr Collinson made the following impartiality declaration in the matter of 48 George Street: "As a consequence of Mr David Vinicombe (Planning Solutions) being known to me due to our having served on the South West District Planning Committee together, 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 Martin made the following impartiality declaration in the matter of 48 George Street: "As a consequence of Mr David Vinicombe (Planning Solutions) being known to me due to our having worked together on another development, 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".

T23.1 George Street No. 48 (Lot 300)

Applicant: Lisa Keen

Owner: Mulloway Pty Ltd

Application No. P234/2010

By Jamie Douglas, Manager Planning Services on 25 January 2011

BACKGROUND

Purpose of this Report

This report considers an application for a partial change of use from bottle shop to restaurant and wine bar and for an extension and internal alterations at 48 George Street. The proposal is recommended for conditional approval.

Statutory Considerations

Town Planning Scheme No. 3

Local Planning Strategy – Plympton Precinct (LPS)

Mixed Use – TPS No. 3

'A-' Management Category Municipal Heritage Inventory

Relevant Council Policies

Nil

Impact on Public Domain

Tree in verge : No impact

Light pole : No impact

Crossover : No impact

Footpath : No impact

Streetscape : No impact only internal building works are proposed.

Documentation

Plans and relevant forms date stamp received on 22 December 2010.

Date Application Received

22 December 2010

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

24 January 2001

A Planning Approval for alterations and additions to the bottle shop was approved by Council.

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21 April 2004 Building Licence issued for alterations and additions to the liquor store.
12 January 2011 Planning Approval issued for external repainting, replacement of awning and re-cladding of planter boxes.

CONSULTATION

Advertising

The application was advertised to the surrounding landowners for two weeks between the 5 and 28 January 2010 and in addition to on-site and newspaper advertising of the proposal. 12 submissions were received during the advertising period.

Site Inspection

By Manager Planning Services on 21 January 2010

Statistics

File P/GEO48
Zoning Mixed Use
Lot Area 560m²
Heritage Listing 'A-' Management Category

Site:	Required	Proposed	Status
Site Works on boundary/street setback	Maximum 0.5m	n/a	n/a

Height:	Required	Proposed	Status
Wall	3.0 metres	n/a	n/a
Ridge	6.0 metres	n/a	n/a
Roof type	n/a		

Privacy/Overlooking Setbacks	n/a
	The application proposes a minor infill of an alcove to align with an existing boundary wall. Setback requirements are not impacted. As such setbacks have not been assessed.

DESCRIPTION OF THE PROPOSAL

Planning Approval is sought for a partial change of use from existing bottle shop and retail use to bottle shop and restaurant/wine bar and for a minor extension and internal alterations associated with the proposed change of use at 48 George Street – The George Street Wine Store, East Fremantle. The change of use is proposed for the rear shop and cellar areas which have floor areas of 160m² and 100m² respectively and will have seating for 70 people – 48 on the ground floor and 22 overflow seats in the cellar.

The proposed hours of operation are:

Day	Bottle Shop	Restaurant/Wine Bar
Monday - Tuesday	9.30am – 10.00pm	11.00am – 10.00pm
Wednesday - Saturday	9.30am-10.00pm	11.00am-midnight
Sunday	10.00am-10.00pm	11.00am – 10.00pm

The total number of staff at any one time will be 5-6 (Wine Bar 3-4 & Bottle Shop 2-3)

The proposed works comprise internal fit out to support the proposed use, internal alterations and a minor extension on the side boundary to accommodate kitchen, toilets and new office. The only external works visible to the street include a new disabled persons ramp to the Hubble Street entry. Signage does not form part of this proposal.

No on site car parking is available.

ASSESSMENT

Land Use

The subject site is zoned 'mixed use' under TPS No3. Land use definitions under the Scheme did not contemplate the advent of 'small bar licences' which provide for the establishment of wine bars where food is to be available for sale. The closest definitions under the Scheme are 'restaurant' and 'tavern' which are defined as 'D' and 'A' uses respectively. Both these designations require an exercise of discretion by Council to approve the use while the 'A' designation further requires the advertisement of the proposal prior to any determination under clause 9.4. Alternatively if the use were defined as an 'unlisted use', under the provisions of clause 9.4 it may be determined as if it were an 'A' use. The advertising requirements under clause 9.4 have been fulfilled and the proposal can accordingly be determined as a 'discretionary' use notwithstanding its precise definition under the Scheme.

The Director of Liquor Licensing issued a Policy on 22 January 2008 which identifies the provisions for Small Bars Licences. This Policy defines Small Bars as follows:

"Small bars are expected to be distinguishable from other licence types such as taverns or nightclubs, and the supply of liquor is expected to be an ancillary service to some other activity such as the consumption of food. Licences can be conditioned so as to support this expectation."

In determining the merit of discretionary uses Council should have regard to the Zone Objectives under clause 4.2 and the matters listed for consideration under clause 10.2 of the Scheme. The Council may be further guided by relevant statements within the Local Planning Strategy. The intent of these provisions can be summarised by reference to the following objective for the Mixed Use zone in TPS No 3.

"To provide for a limited range of commercial, civic and community facilities to meet the day to day needs of the community, but which will not prejudice the amenities of the neighbourhood."

It is considered the use can be supported provided residential amenity of neighbouring properties will not be unreasonably impacted. However, residents' concerns in respect to the possible impact of noise, parking and traffic from a large number of people exiting the site at any one time are noted. The application states that seating will be provided for up to 70 people. Research of the 'small bar' licensing provisions shows that up to 120 persons can be accommodated under such a licence. It is therefore appropriate that any approval should include conditions to cap the maximum number of patrons in order to limit impact on residential amenity in the area. In light of the above, it is considered prudent to set this cap at 70 (the number proposed to be accommodated on the ground floor and cellar).

Some objections to the proposal cited the proliferation of small bars and restaurants in the George Street area. To the extent that these concerns relate to the competition that the proposal may represent to existing businesses, this is not a valid planning consideration. The objective of the National Competition Policy is to ensure that all businesses operate in a free market and that competition ultimately improves the range of goods and services. Accordingly it is inappropriate to attempt to influence the free market, or have regard to issues of commercial competition, in the consideration of any application for planning approval. It is considered that, providing the proposed use can function without an unreasonable impact upon amenity, it will support the community by providing an additional entertainment and social venue within walking distance of local residents.

Car Parking

A proposal for alterations and additions was approved by Council on 24 January 2001. The approval provided for a dispensation from the total assessed parking demand of 17 bays. It is appropriate to apply the existing dispensation to the total parking generation in the current assessment. Accordingly the basis for the assessed parking provisions are the Car Parking Standards as determined by Schedule 11 of the Scheme for the portions of the floor area which will be subject to the proposed use and the existing use. The

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assessment also must have regard for the existing historical parking dispensation which currently applies to the site and accounts for the 3 existing on site bays.

Given that it is a licence requirement that alcohol be served in association with food it is reasonable to apply the Scheme's parking standards for a 'restaurant'. These standards require 1 space for every 5 seats or persons to be accommodated or 1 space per 5m² seating area, which ever is the greater, plus 1 space per staff member. In this instance the latter requirement is the greater and is therefore applicable as follows;

Parking Assessment as Proposed – (Ground Floor & Cellar) - 70 Seats		Parking Assessment for Ground Floor Wine Bar Only – 48 Seats#	
Shop 160m ²	8 bays	Shop 260m ²	13 bays
Wine Bar – Ground Floor 65 m ^{2*}	13 bays	Wine Bar – Ground Floor 65 m ^{2*}	13 bays
Cellar - 80m ²	16 bays		
Staff	6 bays	Staff	6 bays
Total	43 bays	Total	32 bays
Less on site parking - 3 bays and existing dispensation -17 bays	= 23 bay shortfall	Less on site parking 3 bays and existing dispensation - 17 bays	= 12 bay shortfall

* area shown for seating has been scaled from the plans- bar, toilets and other service areas are not included in the floor area assessment in accordance with the Scheme's requirements.

the proponent has not agreed to a reduced floor area.

The applicants have submitted the following points in their proposal which will help mitigate the impact of the parking shortfall upon residential amenity:

- tendency for staff and patrons who live locally to walk or cycle to the site.
- there will be reciprocity of on street parking demand between surrounding uses and the bottle shop component and the wine bar since the coincident demand peaks for these uses occur at different times of the day.

It was has been previously noted in the Planning Assessment for the Royal George Hotel that:

“The George Street Precinct is developing as a vibrant mixed use precinct in accordance with the Town’s strategic and statutory planning objectives. It is evolving as a vibrant cultural heart to the Town and there are presently multiple development proposals within the precinct before Council for consideration. It is necessary to consider the combined effect of these multiple proposals within a strategic approach to parking and access if businesses are too thrive and residential amenity is to be protected in accordance with the Town’s planning objectives.”

The implementation of a Local Planning Policy to require all proposed developments within the George Street Mixed Use precinct to contribute to the Plan where parking demand cannot be contained on site would be an equitable and practical way of effectively managing future access and parking demands in the Precinct to the benefit of commercial and residential land users.”

In respect to the determination on the Royal George Hotel redevelopment, Council established the following precedents which may be applied to future commercial developments within this precinct:

- Council was prepared to exercise discretion in respect to the car-parking standards of the Scheme pursuant to Clause 7.5 to promote the conservation of a heritage site where there was no material impact upon residential amenity.
- Discretion exercised was to allow a dispensation from the Scheme's on-site parking requirements to the extent of the immediately adjacent on street spaces. Immediately adjacent was determined in accordance with clause 5.8.7 of the Scheme and was interpreted as the spaces associated with the site frontage providing this frontage was not associated with a residential property.

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- The preparation of a Precinct Access and Parking Plan is necessary.
- Developments should provide for any net parking shortfall after taking the above into account, either by additional on-site provisions, cash-in-lieu or a contribution to the Precinct Access and Parking Plan or a combination of these.

Applying these principles to this proposal (which provides for the sustainable economic use and preservation of a heritage building), it is reasonable to allow a shortfall of 5 on-site parking bays to be addressed by immediately adjacent on street parking spaces. These spaces include two bays which are time limited to 15 minutes up until 9 PM and a loading zone which applies up until 5 PM. In combination with the existing 17 bay dispensation and 3 on site spaces, this results in a net parking shortfall of 15 bays for the entire floor area proposed for the wine bar use.

The proponents have identified a preparedness to provide additional assistance in respect to parking demand (the proponents submission suggests that cash-in-lieu be assessed on the basis of a 6 car space shortfall). However, if cash-in-lieu for the above net parking shortfall was required the cost to the proponent would be (\$22,500 x 15 spaces) = \$337,500.

During the course of this assessment the proponents requested a one month deferral in order to make further submissions which included a 'Traffic and Parking Management Report' prepared by 'Transcore', a petition from 218 persons in support of the proposal, an Acoustic Engineer's report and a submission by, 'Planning Solutions' who are consultant Town Planner's. The following extract from this submission summarises the proponent's response:

An assessment of the parking requirements for the development indicates that the current approved activities on site generate a parking demand of 20 bays. This relates to an approval granted for extensions to the Liquor Store in September 2003, where it was noted in the Council report that concern was raised with respect to the proposed reduction in parking from 23.2 bays to 3 bays (on-site parking bays). Although the final discretion on parking was not clarified in the Council report, it is noted that Condition 13 required the retail area to be reduced, it has therefore been assumed in discussions with the Manager - Planning Services that this reference relates to a previous December 2000 approval which identified a parking dispensation of 17 bays.

It is understood that the Officers propose to acknowledge the existing parking dispensation of 17 bays. This is consistent with previous Council approvals for development on site and discretion provided under Clause 5.8.5 of Town Planning Scheme No 3 (TPS3). In this regard, Clause 5.8.5 provides for the application of alternative parking standards where no specific parking standards apply for a particular use. As no standards apply to a 'Wine Bar', it is understood that the standard to apply would most likely relate to that of a 'Restaurant' with an acknowledgement to the previous parking concessions granted.

The proposed modifications technically increase the parking requirement for the subject property to from 20 bays to 43 bays as follows:

Use/Staff	Area/Staff	Parking Requirement	Demand
Shop/Liquor Store	160m ²	1 bay per 20m ²	8 bays
Wine Bar	Ground floor seating area — 65m ² Cellar seating area — 80m ²	1 bay per 5m ²	29 bays
Staff	6	1 bay per staff member	6 bays
Total			43 bays

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Taking into account the existing concession of 17 car parking bays, the provision of three (3) bays on-site and the requirement of 43 bays above, the technical parking shortfall is 23 bays.

Discussions with Officers indicate that although there is significant street parking available in the locality, there is a need for a comprehensive parking/traffic study to address the ultimate development potential and impacts of the Mixed Use zone on the locality. In addition, consideration will be given to the contribution of cash-in-lieu for parking shortfalls as provided for by Clause 5.8.8 of TPS3. In this regard, it is noted that in the evening the main commercial activities in George Street are located in the centre and eastern end of the Mixed Use area. Accordingly, parking bays in front of and immediately available to the subject site are generally vacant and it is submitted that any requirement for cash-in-lieu parking take into account the existing availability of parking bays in the area and the parking demands as calculated in the Traffic and parking Assessment (see below).

The attached Traffic and Parking Management Assessment indicates that the following:

Applying the retail traffic generation rate to the 120m² of gallery retail results in a theoretical daily car trip generation of 145. Applying the restaurant traffic generation rate to the 65m² of ground floor seating area and 80m² of cellar seating area results in a theoretical daily trip generation of 82. As a result the proposal theoretically results in a reduction of about 60 daily vehicular trips. However the pattern of trips will be different with the peak patronage of the restaurant/wine bar operation expected to occur during Friday and Saturday evenings and the peak patronage of the existing retail gallery occurring on a Saturday day time.

Furthermore it is important to acknowledge that due to change of lifestyle associated with drink and driving, most patronages to the restaurant/wine bar is expected to occur by taxi, car pooling, walk or other means of transport. As a result the private car patronage to the restaurant/wine bar is not expected to be significant.

Some of the key outcomes of the parking survey indicate as follows:

- *During the anticipated Friday evening peak, the maximum parking occupancy occurred during the 7:30 pm to 8:00 pm period, however there were still 59 bays available within the survey area;*
- *The available parking bays during the peak of Friday 18 February survey (7.30 pm to 8:00pm,) were 24 bays along the western section of George Street (68% of bays available) and 25 bays along the eastern section of George Street (42% of bays available);*
- *The available parking bays during the peak of Friday 18 February survey (7:30 pm to 8:00 pm) for the sections of Hubble Street and Glyde Street included in the survey were 10 bays (77% of bays available);*
- *From the parking survey results it is evident that there will be ample on-street parking available (even excluding residential streets such as Hubble Street) within walking distance of the Wine Store during the anticipated peak operating times of Friday and Saturday evenings to accommodate the parking demand of the Wine Store with the proposed restaurant and small bar uses.*

The Traffic and Parking Assessment includes the following conclusions:

The site has satisfactory access by the existing road network, bus services and footpaths. At present in excess of 40% of the total patronage to the Wine Store is by walking.

The traffic generation calculations shows that as a result of the proposed change of use theoretically the total vehicular patronage to the site will be reduced.

All retail and commercial land uses along George Street rely on on-street parking to satisfy their parking demand. This approach is in line with the character of the area and works because of different peak operating times for various land uses.

Parking surveys undertaken demonstrate that during the anticipated peak operating times for the proposed restaurant/wine bar which is expected to be on Friday and Saturday evenings ample on street parking is available within walking distance of the site to accommodate the parking demand of the proposal.

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This assessment has excluded the available on-street parking along residential roads in the area such as Hubble Street in anticipation of the introduction of residents parking permits along these roads in the future.

The availability of on-street parking for the proposed change of use at the Wine Store would remove any demand on parking along the residential areas in the vicinity and therefore minimise any impacts on these areas.

It is significant to note that the Traffic and Parking Assessment report indicates (the traffic generation calculations for the proposal show a theoretical reduced demand compared to the current use and there is adequate on street parking bay availability to accommodate the proposal. In addition, whilst the current operations of the existing Wine Store are relatively low key, it is noted that alternative business practices associated with higher patronage shops and chain liquor stores would result in considerably greater traffic volumes in the locality and parking demand, whilst such business operations are not presently contemplated as it is our clients main desire to operate a wine bar and restaurant in conjunction with the existing boutique liquor store, if the current application is refused, commercial realities could result in modified business practices which would potentially have a greater impact on the locality than the current application.

Should Council consider that the proposal is required to contribute to cash-in-lieu to supplement parking provision in the locality, it is submitted that given the location of the subject site, at the western end of the Mixed Use Plympton Precinct, that consideration be given to a reduced contribution which recognises the surveyed parking bay availability at the western end of the Precinct. In this regard, it is noted from the parking survey results that 34 bays were available for the area west of Hubble Street (George Street, Hubble Street in front of the Wine Store and the school and Glyde Street in front of the school) during the Friday peak time. These bays, plus the three (3) bays available for staff on site provide for 37 bays — a total shortfall of 6 bays. It is therefore contended that any cash-in-lieu requirements for parking bays be based on this maximum surveyed 6 bay shortfall.

With regard to traffic concerns raised, the Traffic and Parking Assessment report indicates as follows:

George Street and Hubble Street form a four-way priority controlled intersection with priority on George Street. This intersection operates as a standard low volume four-way intersection and site observations have indicated no issues regarding traffic operations and safety at this intersection.

Traffic speed issues have not been specifically addressed by the Traffic and Parking Assessment report, however it is noted that this matter may be addressed further in the proposed comprehensive parking traffic study.

It is noted that no parking restrictions apply to adjacent residential streets, As evidenced from the submissions received, this issue already exists in the locality and accordingly, although the proposal may have the capacity to exacerbate the concerns raised) Council has the power to control these concerns through the implementation of Residential Parking Permit restrictions in the surrounding residential streets. These restrictions effectively apply in other Local Authority areas to control commercial parking intrusion into adjacent residential areas and ensure residents have sufficient access to street parking in their residential environment. It is therefore within the scope of Council's powers to apply the same parking restrictions to parking areas adjacent to residential properties in nearby residential streets and it is accordingly recommended that Council consider such action as part of determining this matter or as part of a comprehensive parking study into the Precinct.

Accordingly, it is recommended that the concerns raised with regard to parking be noted and dismissed in view of the fact that Council has the capacity to review and control commercial parking intrusion by the introduction of Residential Parking Permit restrictions in the adjacent residential areas and consider cash-in-lieu payments towards the provision of parking bays in the locality.

The difference in the assessed net parking shortfall (15 bays as assessed in this report and 6 bays as assessed by the proponents) is attributed to the application in this report of the Scheme's requirement that any on street parking should be immediately adjacent to the proposal. This is consistent with the assessment applied in respect to the Royal George Hotel redevelopment and the Lauder and Howard site development proposals and protects the development potential of other existing and future commercial operations in the Precinct by not alienating on street parking spaces that could otherwise

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be attributed to them. The proponent's submission relies upon a more general on street parking availability. When considering the hours of operation of the bottle shop and proposed wine bar there will be little opportunity for reciprocal parking between the two uses since they will generally be open at the same time. Therefore it is considered that should cash-in-lieu be required it should be for a net shortfall of 15 bays.

Consideration has been given to the possible impact in levying a cash-in-lieu sum of \$337,500. It is concluded it would be to the general benefit of the development, residents and other businesses within the Precinct if as an alternative to cash-in-lieu, the proponents were required to contribute a sum which would be directed to the development and implementation of a George Street Precinct Access and Parking Management Plan. As previously indicated the proponents have suggested they make a cash-in-lieu payment on the basis of a six bay shortfall (\$135,000). It is considered preferable as an alternative this amount be in the form of a contribution to the above Plan.

Noise

Noise has been raised as a legitimate concern by a number of submitters. Noise can be generated:

- from within the development.
- from the disposal of glass and other waste (outside and during operating hours).
- from patrons and cars exiting the site late at night.

The proponents commissioned Acoustic Engineer's Norman, Disney & Young to prepare a report addressing Council's Planning Policy - Noise Attenuation and have made a number of commitments and design changes with respect to noise abatement. The following extract is a summary of the proposals to address noise:

Amenity Protection

The prime amenity concerns relate to the potential for noise intrusion resulting directly from the proposed business operations and also from unruly customer behaviour and parking/traffic generated by the business activities, other amenity impact concerns relate to potential impacts on safety to local residents, children and property, vandalism, litter control and associated cost on local residents.

In regard to the noise concerns from the development itself, the Acoustic Report considered the following noise sources with potential to create noise impact as including (in no set order):

- *Crowd noise within the wine bar area.*
- *Crowd noise in the cellar area impacting external areas via the deli shop area.*
- *Rooftop mechanical plant, kitchen ventilation systems.*
- *Internal kitchen activities and bartending.*
- *Store loading activities including empty glass handling and rubbish removal.*
- *Street' noise, pedestrians entering or exiting the development, or standing outside (waiting).*

On the basis of the assessment provided in Section 4, the following treatments are recommended to achieve compliance with set criteria:

- *Detailed design of mechanical and external building services will need to be reviewed. The proponent will need to demonstrate that any additional equipment selected and any associated acoustic treatments will meet (and following installation have achieved) the criteria presented in Section 3.1.*
- *Wine bar ceiling: To the ceiling layer under the roof purlins, the addition of sealed flush 13mm plasterboard fixed using furring channels with 50mm polyester insulation direct to the entire finished ceiling level, or performance based equivalent revisions.*
- *Encourage verge pick up and waiting areas to be on George Street near the corner.*

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- *Ensure that doors in the facade to Hubble Street be Jilted with effective bottom and perimeter weather seals.*

The Acoustic Report notes details contained in the application as follows:

It is the intention of the owner to maintain reasonable hours of operation with respect to the surrounding tenants and residents. The boundary of this proposed use is internal only so as to reduce the impact to the surrounding tenants and the number of patrons who access the new food and drink service will be limited by seat numbers.

The Wine Store would also action the following Noise Amenity Plan to ensure a safe and pleasant environment for patrons and residents.

Noise Amenity Plan

Patron's access to the new food and drink service will be interior only and provided within the proposed opening hours as noted.

Music at low levels to adhere to a conversational level at all times — controlled by staff.

Free taxi booking service offered to all patrons to minimise any potential street noise.

Acoustic treatment is applied to the Kitchen and Bathroom ceiling planes in order to absorb maximum amount of noise. Service pipes will be insulated and not fixed directly to structure that could cause noise transfer, with direction of vents considered.

Kitchen to close no later than 9.00pm Sunday — Tuesday and 10.00pm Wednesday — Saturday.

No Glass waste to be handled externally after 9.00pm, and to be stored in dedicated glass recycle bins. There is ample internal storage room for this purpose.

The Acoustic Report addresses noise impacts from breakout areas and indicates as follows:

We note that state noise regulations would be limited in application in regard to unassigned 7 public (footpath) areas, and that the local planning policy does not require special measures in this regard.

Measures required cl 1

"... For commercial uses, measures are required to control noise emissions generated by the use, including.

(a) Noise break out from non-residential and other uses such as entertainment venues; and

(b) Mechanical plant."

Town of East Fremantle TPS No. 3 Local Planning Policy - Noise Attenuation

However, in accordance with the intent of the Local Planning Policy, we have assessed the likely noise impact from patrons outside the development.

An entrance and likely outdoor meeting area is most distant on the site from residential areas and faces existing commercial properties on the corner.

It is noted that contrary to other wine bars where external breakout areas exist for smokers (either on the property or the footpath), the applicant has indicated that the wine bar will be a totally smoke-free venue. Accordingly, issues associated with customers smoking in assigned outdoor areas within the property or the street verge will be controlled so as to avoid additional noise exposure to local residents.

In terms of noise impacts from parking of vehicles, this submission already details options available for Council to prevent commercial traffic parking in adjacent residential streets. These controls will also reduce the capacity for noise associated with customer parking in the locality. In addition, as indicated previously, the general demographics of local customers arriving by foot are not expected to result in irresponsible drinking or unruly behaviour and as a result, not expected to generate social concerns.

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Accordingly, it is contended that the noise impacts associated with the development can be controlled and be compliant with relevant state legislation and local Planning Policy.

With regard to other amenity impacts, the expected clientele of the proposed wine bar is not envisaged to impact on the safety of local residents, or result in increased levels of litter or vandalism. Accordingly, whilst it is acknowledged that fear exists in the minds of some respondents to the proposal relative to drunken behaviour, it is difficult to substantiate claims that customer behaviour, particularly from the expected local customers, will result in an increased level of criminal activity and cost to the local community. Put simply, the expected clientele is not envisaged to be the same as the typical profile associated with other established drinking establishments in the locality and therefore the propensity for unruly pedestrian behaviour is reduced. In this regard, the target audience for the Wine Bar differs from that of a typical pub/hotel. Further, unlike pubs/hotels, small bars are not seen as drinking destinations — more so social meeting places. Given the equal focus on the restaurant and wine bar, again unlike a pub/hotel, it is expected that the proposal will attract a different clientele for a different occasion. In addition to the above, given the peak hours of operation on Friday and Saturday evenings, school children are not expected to be affected by the proposal.

It is therefore considered that the proposal will not result in significant adverse amenity impacts in the locality and accordingly, it is recommended that amenity related submissions be dismissed.

It is considered the acoustic analysis and recommended responses satisfactorily address the performance criteria of the Planning Policy - Noise Attenuation. Subject to an approval condition to insure application of the recommendations of the Acoustic Engineer's report, it is considered the proposal will function without unreasonable impact upon residential amenity due to noise.

CONCLUSION

It is considered the proposed use accords with the aims and objectives for the 'Mixed Use Zone'- George Street Precinct by providing a venue for social interaction and entertainment to the benefit of local residents without an unreasonable impact upon residential amenity.

The proponents support for a strategic Precinct Access and Parking Plan is noted. It is appropriate that an exercise of discretion be considered in respect to on site parking provisions providing the proponents contribute (\$135,000) to the above Plan as an alternative to a cash-in-lieu payment.

RECOMMENDATION

That approval be granted for a partial change of use from bottle shop to restaurant and wine bar and for an extension and internal alterations at 48 George Street, in accordance with plans date stamp received on 22. December 2010 subject to the following conditions:

1. Prior to the grant of a building licence the owner of the land shall pay to the Town of East Fremantle (**Town**) \$135,000 representing the owner's contribution (**Contribution**) to a future George Street Precinct Access and Parking study (**the Study**).

No use the subject of this approval may be commenced prior to the receipt of the Contribution by the Town. The Contribution is to be held in trust by the Town, and may be used for the purposes of funding in whole or in part the Study and carrying out works consequent on the Study.

In the event that the Council of the Town does not resolve to commence the Study within 2 years following the date of this approval, the Town shall refund the Contribution to the owner.

2. Building Plans shall incorporate the proposed works and the development shall operate in accordance with, the recommendations contained within Section 5 of 'The Wine Store – Noise Impact Assessment Planning Solutions Report', Norman, Disney & Young, 21 February 2011.
3. Wine bar/restaurant customers shall not occupy the premises after twelve midnight, except on Sunday, Monday and Tuesday nights when customers shall not occupy the premises after 10.00pm.

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4. The maximum number of customers in the wine bar/restaurant shall not exceed seventy (70) at any one time.
5. A Waste Management Plan is to be submitted and approved to the satisfaction of the Chief Executive Officer prior to the issue of a Building Licence.
6. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval date stamped 'Received 22 December 2010' other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
7. The proposed works are not to be commenced until Council has issued a building licence in compliance with the conditions of this planning approval unless otherwise amended by Council.
8. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
9. The proposed 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 storm water 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.
11. Any proposed signage to be the subject of a separate application for planning approval.
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) *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) *With regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*

Correspondence referred from MB Ref T18.2 was tabled.

Mr David Vinicombe (Planning Solutions), Ms Lisa Keen (designer) and Mr Robert Bates-Smith (owner) addressed the meeting in support of the officer's recommendation.

Mr Vinicombe conceded that parking was a big issue with the site and that the owners were willing to work with Council in order to improve the overall amenity of the area.

Mr Bates-Smith asked how does planning view the current use as opposed to the proposed use. The Manager – Planning Services advised that this was covered in his report.

RECOMMENDATION TO COUNCIL

Cr Martin – Cr de Jong

That approval be granted for a partial change of use from bottle shop to restaurant and wine bar and for an extension and internal alterations at No. 48 (Lot 300) George Street, East Fremantle in accordance with plans date stamp received on 22 December 2010 & 23 February 2011 subject to the following conditions:

1. **Prior to the grant of a building licence the owner of the land shall pay to the Town of East Fremantle (Town) \$135,000 representing the owner's contribution (Contribution) to a future George Street Precinct Access and**

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Parking study (the Study). No use the subject of this approval may be commenced prior to the receipt of the Contribution by the Town.

The Contribution is to be held in trust by the Town, and may be used for the purposes of funding in whole or in part the Study and carrying out works consequent on the Study.

In the event that the Council of the Town does not resolve to commence the Study within 2 years following the date of this approval, the Town shall refund the Contribution to the owner.

2. Building Plans shall incorporate the proposed works and the development shall operate in accordance with, the recommendations contained within Section 5 of 'The Wine Store – Noise Impact Assessment Planning Solutions Report', Norman, Disney & Young, 21 February 2011.
3. Wine bar/restaurant customers shall not occupy the premises after twelve midnight, except on Sunday, Monday and Tuesday nights when customers shall not occupy the premises after 10.00pm.
4. The maximum number of customers in the wine bar/restaurant shall not exceed seventy (70) at any one time.
5. A Waste Management Plan is to be submitted and approved to the satisfaction of the Chief Executive Officer prior to the issue of a Building Licence.
6. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval date stamped 'Received on 22 December 2010 & 23 February 2011' other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
7. The proposed works are not to be commenced until Council has issued a building licence in compliance with the conditions of this planning approval unless otherwise amended by Council.
8. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
9. The proposed 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 storm water 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.
11. Any proposed signage to be the subject of a separate application for planning approval.
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) *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) *With regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*

CARRIED

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T23.2 Duke Street No. 49 (Lot 78)
Applicant & Owner: Charles & Jane MacLean
Application No. P204/2010
By Gemma Basley, Town Planner on 2 March 2011

BACKGROUND

Description of Proposal

An Application for a Retrospective Planning Approval for a screen which has been installed above the dividing fence separating No 49 and No. 51 Duke Street is the subject of this report.

The application seeks also to formalise the screening using a new solid frame, which would ultimately support a creeper.

This report does not support the existing screening and recommends that the Retrospective Planning Application be refused. The report does however support the construction of screening inside 49 Duke Street but set back from the dividing fence.

Applicant's Justification for the Proposal

The applicant advises that the screen has been erected primarily to overcome overlooking from upper floor windows of 51 Duke Street, which face north and look into the rear yard of 49 Duke Street.

The applicants previously sought Council's approval to construct a storeroom on the southern boundary of 49 Duke Street to respond to the overlooking from 51 Duke Street. The storeroom has been constructed but the applicants advise that it does not provide privacy to the living room windows and rear patio (an area used frequently to wash down after the beach). The applicants advise that the impact on the privacy of 49 Duke Street is intensified by the security camera system, which is installed on the northern side of 51 Duke Street.

Description of Site

The subject site is:

- a 501m² block
- zoned Residential R20
- developed with a residence and a studio in the rear yard
- listed as a 'C-' Management Category in the Municipal Heritage Inventory
- located in the Plympton Precinct

Statutory Considerations

Town Planning Scheme No. 3
Local Planning Strategy - Plympton 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)

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact

Documentation

Plans and relevant forms date stamp received on 3 November 2010.

Date Application Received

3 November 2010

CONSULTATION

Advertising

The plans were advertised to the adjoining neighbour (51 Duke Street) for a two week period between the 6 and 20 December 2010. During the advertising period a submission was submitted by the adjoining neighbour which is detailed below. A response from the applicant is also detailed below:

Neighbour Submission	Applicant Response
<p>Jonnie Morton – 51 Duke Street</p> <p>The combined length of the walls of the house and storeroom built up to the boundary of 49 Duke Street, is in the vicinity of 13m, which exceeds the dimensions set out in part 3 of “Local Planning Policy No. 142 – Residential Development”.</p> <p>The screen proposed at 49 Duke Street would affect our enjoyment of the last remaining outlook from our property, and is not necessary for the sake of preserving the privacy of 49 Duke.</p> <p>The windows that are complained of abut the staircase to the second level of our home and are not major openings to a habitable room. It is not possible to look into the backyard of 49 Duke Street from the living areas on the inside of the staircase. We have had horizontal blinds fitted to the windows referred to by the applicants and advise that: they are seldom drawn completely open and they further restrict the overlook into 49 Duke Street.</p> <p>The space between the house and the storeroom at 49 Duke Street is the only space along the northern boundary of our property and the amenity of our use of our property will be severely curtailed if that space was filled with the screen. In effect there would be a solid line of construction for over 15m along the length of our northern boundary, which would not be a pleasant outlook at all.</p> <p>I also note that the boundary fence between 49 and 51 Duke Street, which can be seen in the photographs provided by Mr and Mrs Maclean, is 1.9m tall, which is considerably higher than the average boundary fence, and provides more than reasonable privacy for 49 Duke. This is especially so considering that the space between the house and the storeroom is such that only if you were standing square to that space, and considerably high off ground level, could anybody have any real view of the backyard of 49 Duke Street.</p> <p>In the circumstances, I request that the Council does not grant approval for the erection of the proposed screen, and requests that Mr and Mrs Maclean remove the screen that they have erected without Council approval.</p>	<p>Charles MacLean – 49 Duke Street</p> <p>The screen in question is now dilapidated as it was intended as a temporary support and a more permanent and appealing screen was intended to replace this and to hold back the jacaranda branches that overhang the fence also.</p> <p>The windows that overlook our proposed outdoor shower area, and sitting room, I believe are bedroom windows, and the upper part of a staircase.</p> <p>The 2-3 metre gap in question, is, as already noted in our submission for building approval, adjacent to Mr. and Mrs. Morton’s driveway, and not a recreational area, and as Mr. Morton points out” Only if you were standing square to that space and considerably high off ground level could anybody have any real view” (unless they were standing on a staircase, or in a second storey room, for instance?) For this reason I cannot see how the amenity of no.51 could be thus curtailed.</p> <p>The “Higher than the average” boundary fence to which Mr. Morton refers, was installed by Mr. and Mrs. Morton, at our request, and following arbitration which was instigated as a result of legal action.</p> <p>A screen above the fence is an appropriate method of achieving some semblance of peaceful cohabitation. Our intention is not to antagonise our neighbours, but to keep the peace by removing potential for future conflict.</p>

The submissions will be responded to in the Assessment section of this report.

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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.

ASSESSMENT

Design Considerations

Visual Privacy is one of the design elements under the control of the Residential Design Codes 2010. The Codes specify Acceptable Development provisions which illustrate one way of meeting the associated Performance Criteria. In relation to visual privacy the Codes state the Acceptable Development Provisions are as follows:

- "A1 Major openings and unenclosed outdoor active habitable spaces (balconies, verandas, terraces or other outdoor living areas) which have a floor level more than 0.5 metres above natural ground level and which overlook any part of any other residential property behind its street setback line to comply with the following:
- i Are setback, in line of sight within the cone of vision, from the boundary a minimum of:
 - 4.5 m in the case of bedrooms; or
 - ii Are provided with permanent vertical screening to restrict views within the cone of vision from any major opening of an active habitable space; or
 - iii Are provided with permanent vertical screening or equivalent, preventing direct line of sight within the cone of vision to ground level of the adjoining property if closer than 25 m to the opening or equivalent."

The Performance Criteria in relation to Visual Privacy reads as follows:

"Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness. Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass. Where these are used, they should be integrated with the building design and have minimal negative effect on residents' or neighbours' amenity. Where opposite windows are offset from the edge of one window to the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows".

The windows referred to by the applicant that overlook the rear yard of 49 Duke Street relate to a stairwell and an upper floor bedroom window at 51 Duke Street. The bedroom window is set back more than 4.5 metres from the northern boundary and in accordance with the R-Code requirements does not require screening to prevent overlooking. The windows relating to the stairs are not major openings to a habitable room and also do not require screening to prevent overlooking. It is therefore considered that the visual privacy requirements of the R-Codes have been complied with in the development of 51 Duke Street.

Nevertheless, relevant provisions of Clause 10.2 of TPS No. 3 need also be considered, in particular Clause 10.2(p) which requires Council to have due regard to 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.

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In consideration of the above it is noted the owners of 51 Duke Street have objected to the retention of the current screening and any formalisation of the privacy screen based on it being unsightly, causing overshadowing and resulting in an extensive section of the dividing boundary being built up to. With this in mind the application for retrospective planning approval for the bamboo privacy screening is not supported and is recommended for refusal. The application for Planning Approval to formalise the bamboo screening into solid and fixed privacy screening is however supported but subject to the privacy screening being set back to lessen the impacts on 51 Duke Street.

Conclusion

The applicants have submitted an application to firstly obtain Retrospective Planning Approval for the existing bamboo screening and secondly to formalise this screening and construct a 2 metre high solid and fixed privacy screen above the dividing fence between 49 and 51 Duke Street.

As discussed above, the application for retrospective planning approval is not supported and it is recommended that this application be refused by Council because of the objections raised by the neighbour at 51 Duke Street and because there are other alternatives to address the 'perceived' overlooking that would have a reduced impact on 51 Duke Street.

The application for Planning Approval for the fixed privacy screening is considered to have some merit in that it will address the concerns of the owners of 49 Duke Street. In its current presentation, the application has not been supported by the neighbour. With this in mind and taking into account the requirements of the Building Code of Australia with regard to fire separation, it is recommended that approval be granted for the privacy screen but that this be required to be set back at least 0.5 metres from the dividing fence. It is considered that this outcome, will provide 49 Duke Street with the privacy they desire without impacting on the amenity of the adjoining 51 Duke Street.

RECOMMENDATION

That Council refuse to grant Retrospective Planning Approval for the bamboo screening which has been installed above the dividing fence for the following reasons:

- (a) the bamboo screening is not securely fixed, is unsightly and impacts on the amenity of the adjoining lot;
- (b) the neighbours object to the screening, which is attached to a dividing fence;
- (c) approval to the screening would result in a boundary wall with a length of some 18 metres and would cause an adverse effect on the amenity of the adjoining neighbour;

and that Council exercise its discretion in granting approval for the construction of a 4.0 metre high by 2.0 metre wide privacy screen at No. 49 Duke Street, East Fremantle in accordance with the plans date stamp received on 3 November 2010 subject to the following conditions:

1. The privacy screens are to be set back a minimum of 0.5 metres from the southern boundary.
2. A schedule of materials and finishes to be submitted to the satisfaction of the CEO prior to the issue of a Building Licence.
3. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
4. The proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
5. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
6. The works are to be undertaken within 60 days of the decision date and this planning approval is only to remain valid for that period.

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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.*

RECOMMENDATION TO COUNCIL

Cr de Jong – Cr Lilleyman

That Council refuse to grant Retrospective Planning Approval for the bamboo screening which has been installed above the dividing fence for the following reasons:

- (a) **the bamboo screening is not securely fixed, is unsightly and impacts on the amenity of the adjoining lot;**
- (b) **the neighbours object to the screening, which is attached to a dividing fence;**
- (c) **approval to the screening would result in a boundary wall with a length of some 18 metres and would cause and adverse effect on the amenity of the adjoining neighbour;**

and that Council exercise its discretion in granting approval for the construction of a 4.0 metre high by 2.0 metre wide privacy screen at No. 49 (Lot 78) Duke Street, East Fremantle in accordance with the plans date stamp received on 3 November 2010 subject to the following conditions:

- 1. The privacy screens are to be set back a minimum of 0.5 metres from the southern boundary.**
- 2. A schedule of materials and finishes to be submitted to the satisfaction of the CEO prior to the issue of a Building Licence.**
- 3. The works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
- 4. The proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
- 5. With regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.**
- 6. The works are to be undertaken within 90 days of the decision date and this planning approval is only to remain valid for that period.**

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.*

CARRIED

T23.3

Angwin Street No. 14 (Lot 3)

Applicant & Owner: Mr. Les Archibald

Application No. P170/10

By Jamie Douglas, Manager – Town Planning Services on 21 February 2011

PURPOSE OF THIS REPORT

At its meeting on 16 November 2010 Council refused an application for a steel sun shade structure in the front setback area at 14 Angwin Street. The applicant appealed this decision to the State Administrative Tribunal and has proposed minor design alterations.

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Mediation has been unsuccessful and the SAT has invited Council to reconsider its decision. This report recommends that the revised proposal be refused.

BACKGROUND

Description of Proposal

The application is for Planning Approval for a Shade Structure adjacent to the front boundary of the property. The Sun Shade is a rigid steel structure standing approximately 3.8 metres above ground level and supporting a cantilevered roofed area of 6.8 metres by 4.2 metres which is to be clad in corrugated colourbond roofing.

Council at its November meeting resolved to adopt the recommendation in the report and to refuse the proposal for the following reasons:

“The proposed suns shade structure does not meet the:

1. objectives of the Town Planning Scheme No.3 or the Local Planning Strategy since it would be a discordant element which is not supported by the prevailing built form character in the vicinity and its location on the elevated frontage of the property would have a substantial visual impact when viewed from the street and would not adhere to the established building line within the vicinity.
2. ‘Acceptable development’ requirements or the ‘Performance Criteria of the R-Codes. Section 6.2.2 – ‘Minor incursions into the street setback area’ because it intrudes more than one metre into the street setback area from the building frontage and would detract from the character of the streetscape.”

Statutory Considerations

Town Planning Scheme No. 3
Local Planning Strategy - Riverside Precinct (LPS)
Residential Design Codes

Relevant Council Policies

Local Planning Policy No. 142 : Residential Development (LPP 142)
Local Planning Policy No. 145 : Neighbourhood Consultation (LPP 145)
Council Policy No. 012 : Pergolas (CP 012)

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact
Streetscape : Angwin streetscape will be impacted by the proposed development

CONSULTATION

Town Planning Advisory Panel Comments

This application was considered by the Town Planning Advisory Panel at its meeting held on 26 October 2010 and the following comments were made:

- Structurally and materially inappropriate in relation to existing residence.
- Applicant should provide drawings depicting streetscape elevation of proposal in relation to front wall.
- A tree would be better.

The applicant responded to these comments as follows:

- There seems confusion regarding the type of shade structure – it is not a shade sail – the structure is made of steel and corrugated sheet metal roofing.
- Structure approved by a qualified engineer.
- Suggestion that “A tree would be better” is simplistic – not a viable alternative – it would take ten years for a tree to grow

CONSIDERATION

Pursuant with Section 31 (1) of the SAT Act, the Tribunal has ‘invited’ Council reconsider its determination to refuse the application for planning approval.

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When last considered the following conclusion was made in respect to the original design:

“The proposal is for a substantial structure standing approximately 3.8 metres above ground level in close proximity to the front boundary on what is a prominent and elevated site. It is considered to be a discordant element within the context of the prevailing streetscape character which will have a substantial visual impact. The proposal conflicts with the provisions of the Scheme, Planning Strategy and the R Codes in respect to its form and location within the street setback area.” – officer’s report 3 November 2010.

The Manager – Planning Services attended two rounds of mediation and attempted to gain a more acceptable design. To this end, Heritage Architect Phillip Griffiths was commissioned to provide some alternative designs. The following is a summary of his assessment and design proposals:

“There are numerous ways of resolving a shelter and the attached offers a couple of alternatives that would fit with the existing house.

The existing house is a kind of reproduction so that it has no significance in itself. Given the siting and elevation, any shelter in the front garden area will be quite prominent. The structure should look like it belongs in a garden and should have a domestic rather than industrial look.

The structures I have sketched could have a batten top to them, wires, or a sheet material, depending on the owner’s objective. Either one would fit with the style of the house. It would be better for it to be constructed in timber and painted rather than steel.

Either one could be made more complex if the owner wished, by adding elements from the main house, such as a timber frieze of verticals in the case of the twin pitched roof.”

The alternate design proposals were not acceptable to the proponent. At mediation the proponent submitted an alternate design which involves the attachment of two mouldings on each of the uprights to match the existing veranda posts. This is basically the same as the original design and does little to address the initial concerns.

As identified (by a planning consultant on behalf of the applicant) in the submission in support of the amended design, there are a number of shade structures in front of dwellings along the ‘high side’ of Angwin Street which the consultant planner contends, create a precedent for the approval of some form of shade structure in front of the building line on the subject site. However a review of Council’s records reveals that none of the structures identified by the planning consultant have been granted a planning approval and thus on the grounds above cannot be said to create a precedent. Further, even if they had been approved the shade structures on the neighbouring properties are less visually intrusive designs and more in keeping with the architecture of the principle dwelling (with respect to the non approved aspect, compliance action will now take place).

CONCLUSION

Every attempt has been made to mediate a more acceptable design outcome, however the applicant has held to the initial design with some slight modifications. It is considered the proposed minor alterations to the structure have made no material difference to the initial assessment (that the proposal will be detrimental to the streetscape and does not comply with the relevant requirements of TPS No.3 and the R-Codes). Accordingly, it is considered that the revised proposal should be refused.

RECOMMENDATION

It is recommended that Council refuse the revised application (date stamped received 23 February 2011) for the construction of a sunshade structure at 14 Angwin Street, East Fremantle for the following reasons:

The proposed sun shade structure does not meet the:

1. Objectives of the Town Planning Scheme No.3 or the Local Planning Strategy since it would be a discordant element which is not supported by the prevailing built form character in the vicinity and its location on the elevated frontage of the property

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would have a substantial visual impact when viewed from the street and would not adhere to the established building line within the vicinity.

2. 'Acceptable development' requirements or the 'Performance Criteria of the R-Codes. Section 6.2.2 – 'Minor incursions into the street setback area' because it intrudes more than one metre into the street setback area from the building frontage and would detract from the character of the streetscape.
3. Clause 10.2 (o) and (p) of the Town Planning Scheme No. 3 because it would be detrimental to the residential amenity of the locality and to land in the locality.

RECOMMENDATION TO COUNCIL

Cr Martin – Cr Collinson

It is recommended that Council refuse the revised application (date stamped received 23 February 2011) for the construction of a sunshade structure at 14 Angwin Street, East Fremantle for the following reasons:

The proposed sun shade structure does not meet the:

1. Objectives of the Town Planning Scheme No.3 or the Local Planning Strategy since it would be a discordant element which is not supported by the prevailing built form character in the vicinity and its location on the elevated frontage of the property would have a substantial visual impact when viewed from the street and would not adhere to the established building line within the vicinity.
2. 'Acceptable development' requirements or the 'Performance Criteria of the R-Codes. Section 6.2.2 – 'Minor incursions into the street setback area' because it intrudes more than one metre into the street setback area from the building frontage and would detract from the character of the streetscape.
3. Clause 10.2 (o) and (p) of the Town Planning Scheme No. 3 because it would be detrimental to the residential amenity of the locality and to land in the locality. CARRIED

T23.4

Windsor Road No. 48 (Lot 11)

Applicant: Phil Del Borrello

Owner: Eddy Giangiordano

Application No. P12/2011

By Gemma Basley Town Planner on 4th March 2010

BACKGROUND

Description of Proposal

An Application for Planning Approval for two flat roof patios at the rear of the property at 48 Windsor Road, East Fremantle is the subject of this report.

The report recommends conditional approval.

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 066 – Roofing (LPP 066)

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

Impact on Public Domain

Tree in verge : No Impact

Light pole : No Impact

Crossover : No Impact

Footpath : No Impact

Streetscape : No impact

Documentation

Plans and relevant forms date stamp received on 25 January 2011

8 March 2011

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Date Application Received

25 January 2011

CONSULTATION

Advertising

The application was advertised to adjoining land owners for two weeks between the 10 January and the 25 January 2011. During this period no submissions or objections were received.

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

14 February 1977 Building Licence issued for a timber-framed asbestos clad family room addition;
19 December 1978 Building Licence 103/856 issued for a patio;
2 April 2005 WAPC refuses an application to subdivide 48 Windsor Road into 2 lots (1 x 350m², 1 x 463m²);
16 October 2007 Council grants approval for the construction of a single storey house.

STATISTICS

File P/Win48
Zoning R12.5
Lot Area 1089m²

Site:	Required	Proposed	Status
Open Space	n/a	n/a	n/a
Overshadowing	Less than 25%	Less than 25%	Acceptable

Height:	Required	Proposed	Status
Wall	3.0	Less than 3.0	Acceptable
Ridge	6.0	Less than 6.0	Acceptable
Roof type	Pitched and skillion		

Setbacks:

The patio above the cellar is proposed to have large setbacks to the boundary with the closest boundary being 8.5 metres away.

The patio at the rear of the garage is proposed to have a 0.45 metre set back to the eastern and southern boundary and requires a **variation to the R-Codes**.

ASSESSMENT

It is proposed to construct two flat roofed patios at the rear of 48 Windsor Road, East Fremantle. The first patio, which is proposed to be constructed above the cellar, complies with all of the requirements of the R-Codes and Council's Town Planning Scheme No. 3. The patio at the rear of the garage only proposes a 0.45 metre setback to the eastern and southern boundary and requires a variation to the requirements of the R-Codes.

The patio, which is proposed to be located at the rear of the garage has been assessed against the Performance Criteria of the R-Codes and it is determined that the reduced setback is acceptable because it will not impact on the provision of sunlight and ventilation to the proposed patio structure or to the adjoining lots. The height of the proposed patio will not result in overshadowing and the reduced setback makes efficient use of an area that is currently under utilised.

It is considered the proposed design gives due regard to the Town's requirements relating to residential developments, as well as the requirements outlined within the Residential Design Codes 2008. Whilst the application does seek two minor setback variations these are considered minor in nature and to be acceptable.

RECOMMENDATION

That Council exercise its discretion in granting approval for a variation to the east side (rear) boundary setback to allow a 0.45 metre setback in lieu of the 1.0 metres setback required under the R-Codes for the construction of two flat roofed Colorbond patios at the rear of No. 48 (Lot 11) Windsor Road, East Fremantle in accordance with the plans date stamp received on 4 February 2011 subject to the following conditions:

1. 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.
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. all stormwater to be disposed of on site and clear of all buildings and boundaries.
4. 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).*

RECOMMENDATION TO COUNCIL

Cr de Jong – Cr Nardi

That Council exercise its discretion in granting approval for a variation to the east side (rear) boundary setback to allow a 0.45 metre setback in lieu of the 1.0 metres setback required under the R-Codes for the construction of two flat roofed Colorbond patios at the rear of No. 48 (Lot 11) Windsor Road, East Fremantle in accordance with the plans date stamp received on 4 February 2011 subject to the following conditions:

1. 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.
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. all stormwater to be disposed of on site and clear of all buildings and boundaries.
4. 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

8 March 2011

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Cr Collinson having declared an interest in the following item as he is the applicant for the subject development proposal relating to the replacement of the existing front verandah of the residence in which he resides, left the meeting at 10.17pm.

T23.5 King Street No. 46 & 48 (Lot 1)
Applicant & Owner: Cliff Collinson
Application No. 206/2010
By Gemma Basley, Town Planner on 2 March 2011

BACKGROUND

Description of Proposal

An Application for Planning Approval for the replacement of the existing skillion verandah with a bull nosed verandah at 46 and 48 King Street, East Fremantle is the subject of this report.

The report recommends that the application be deferred pending the submission of a heritage assessment.

Description of site

The subject site is:

- zoned Mixed Use
- developed with the King Street Mews Terrace Houses
- located in the Plympton Precinct.
- contained in the Municipal Heritage Inventory as an 'A^' Management Category

Statutory Considerations

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

Relevant Council Policies

Local Planning Policy 066 : Roofing (LPP 066)

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact
Streetscape : No impact

Documentation

Plans and relevant forms date stamp received on 23 November 2010.

Date Application Received

23 November 2010

CONSULTATION

Advertising

The plans were advertised to the owners of 46, 48, 50 and 52 King Street for a two week period between the 22 November and the 7 December 2010. During the advertising period 2 submissions were received which will be detailed and responded to below:

Submission	Applicant Response
Mr David Lea - 50 King Street Objects to the replacement of the existing verandah with a bull nose verandah. Changing 2 of the 4 verandahs would alter the building appearance from the street and detract from the existing character, which does	Surprised by submission and had an understanding that all strata owners were in agreement with replacing the verandahs as per the Minutes of the strata meeting of December 2008.

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Submission	Applicant Response
<p>not accord with TPS No. 3 Clause 1.6 (a) which states 'preserve the existing character'. As a heritage listed building a heritage assessment should have been carried out prior to any changes occurring.</p>	<p>The applicant contacted the Heritage Council of Western Australia (HCWA) for an opinion before submitting the application. The applicant was advised that the HCWA would support an application to replace some and not all of the verandahs on the basis that it would set a precedent to return the buildings to their original state. The bull nose verandahs were destroyed in the past and the application seeks merely to reinstate these in the same line that they were previously in (still clearly visible). The applicant advises that he has been trying to reinstate the bull nose verandahs for over 10 years without success and believes that a staged reinstatement is the only alternative</p>
<p>Ellie McGann - 52 King Street No objection to the replacement of the verandah with a bull nose verandah but because of the heritage nature of the buildings all of the verandahs should be replaced at the same time. This cannot be achieved because one owner is not ready to replace the verandah.</p>	

The submissions will be discussed in further detail in the Assessment Section of this report.

Town Planning Advisory Panel Comments

This application was considered by the Town Planning Advisory Panel at its meeting held on 10 November 2010 and the following comments were made:

- Heritage report required to justify verandah change.
- Detail reinstated should be historically accurate.
- Query 2 out of 4 to be altered.

The applicant has responded to the Panels comments by stating that the bull nose verandah is returning the verandah to its original state. The contours of the original verandah are still clearly marked and the new verandah will close as possible replicate the old original verandah.

The applicant also states that it is impossible to get all four strata owners to agree to the replacement at any one time and to have the funds available.

The applicant concludes that the application was submitted based on the advice received from HCWA that they would support a staged replacement of the bull nose verandahs because it could set a precedent for the others to follow.

Heritage Council of Western Australia

The application was referred to HCWA on the 23 November 2010. HCWA responded to the application and advised the following:

- The proposed works will have a negative impact on the consistency of the façade across the row of houses.
- If there is documentary evidence showing the verandahs were once bull nosed that may offer grounds to support the proposal.

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

23 July 1984 Building Licence issued for No. 48 King Street for new kitchen/bathroom alterations and additions;

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29 February 1991 Building Licence issued for No. 48 King Street for upper floor addition to rear of property.

ASSESSMENT

The Town Planner has visited the site and taken photos to show that the properties were originally installed with bull nose verandahs. These photos are attached to this report. An extract from the East Fremantle Heritage Trail brochure also refers to the King Street Terraces and describes them as originally having bull nose verandahs. This information confirms that the buildings were originally installed with bull nose verandahs and that the reinstatement of bull nose verandahs will assist in returning the terrace houses to their original state.

The streetscape view of the verandahs is interrupted by the native street trees, which have been strategically planted in front of the common walls which separate each house. It is possible that this vegetation could make the transition acceptable between the proposed bull nose verandahs at 46 and 48 King Street and the skillion verandahs at 50 and 52 King Street.

Based on the above, the comments from the Town Planning Advisory Panel, HCWA and the objections raised by the neighbours it is considered that a heritage assessment is required to assess the streetscape impact of replacing only 2 of the 4 verandahs. It is considered that a heritage assessment would also detail any impacts of the proposed roof replacement and any solutions to address this.

Based on the above it is recommended that the application be deferred to allow the applicant to submit a heritage assessment.

RECOMMENDATION

That Council defer determination of the application for the construction of a bull nose verandah at No. 46 & 48 (Lot 1) King Street, East Fremantle in accordance with the plans date stamp received on 8 November 2010 pending the submission of a heritage assessment, which is to be to the satisfaction of Council, which verifies the appropriateness of the staged verandah replacement and which offers solutions to integrating the bull nose verandahs with the remaining skillion verandahs.

RECOMMENDATION TO COUNCIL

Cr de Jong – Cr Lilleyman

That Council defer determination of the application for the construction of a bull nose verandah at No. 46 & 48 (Lot 1) King Street, East Fremantle in accordance with the plans date stamp received on 8 November 2010 pending the submission of a further officer's report to the March meeting of Council setting out appropriate conditions for approval.

Cr Collinson returned to the meeting at 10.27pm and it should be noted that he neither spoke nor voted on the foregoing item.

T23.6 Glyde Street No. 42 (Lot 147)
Owner: Town of East Fremantle
Applicant: Ann Reeves/Jono Farmer
Application: P9/2011
By Gemma Basley, Town Planner, 4 March 2011

BACKGROUND

Purpose of this Report

The report assesses an application for Planning Approval for the removal of an existing toilet block and the construction of a new accessible and ambulant toilet in its place. The toilet facility is at the rear of the building and is accessed via a ramp which extends from the building. Planning Approval has however recently been granted for the construction

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of decking at the rear of this building which will extend to the existing and new toilet facility.

The subject application also seeks to extend the decking around the toilet block and up to the southern boundary.

This report recommends conditional approval.

Description of Subject Site

The subject site:

- 1089m²
- is zoned Residential R12.5
- is developed with a heritage building that operates as the Glyde In Community Learning Centre and is included in the Municipal Heritage Inventory as a 'C' Management Category
- located in the Plympton Precinct

Statutory Considerations

Town Planning Scheme No. 3 (TPS3)
Local Planning Strategy – Plympton Precinct (LPS)
R20 Residential Design Codes (RDC)
George Street Precinct

Relevant Council Policies

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

Impact on Public Domain

Tree in verge : No impact
Light pole : No impact
Crossover : No impact
Footpath : No impact
Streetscape : The toilet will not be visible from the streetscape and will only be visible from the adjoining park as is already the case.

Documentation

Plans and relevant forms date stamp received on 17 January and 15 February 2011.

Date Application Received

17 Jan 2011

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

4 October 2010 Delegated Approval granted for construction of wooden deck at the rear of 42 Glyde Street.

CONSULTATION

Advertising

The application was advertised to adjoining land owners for two weeks between the 25 January and the 8 February 2011. During this period no submissions or objections were received.

Site Inspection

22 February 2011

ASSESSMENT

The proposal is to construct a new accessible and ambulant toilet in the place of the existing multi use toilet. The proposal also involves the extension of the timber deck over an area currently occupied by a disabled ramp. The application proposes to extend the decking all the way to the southern boundary of the lot so that the toilets can be accessed from the south.

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The proposed toilet is modest in size and will extend to a height of 2.837 metres with a finished level to match that of the existing building which is a maximum of 400mm above natural ground level.

It is considered that the extension of the decking up to the southern boundary and access to the toilets also being from the south could have impacts on the adjoining residential property. This is exasperated by the low dividing fence between the subject site and the neighbouring residential property. In addition it is necessary that the decking be set back a minimum of 450 mm from the boundary unless it is constructed of a fire rated (non timber) material as per the requirements of the Building Code of Australia (BCA).

With the above in mind, it is recommended that the decking be set back from the southern boundary by a minimum of 0.5 metres and that access to the proposed ambulant toilet be obtained from the north rather than the south.

Given the site features and the orientation of the toilet block it is not considered to have any greater potential to impact upon the neighbour's amenity than the existing toilet block.

Given that the application meets the majority of Council's Scheme requirements, the application is recommended for Conditional Approval.

RECOMMENDATION

That Council exercise its discretion in granting planning approval for a reduced setback of 0.5 metres from the deck to the southern boundary in lieu of the 1.0 metre required under the R-Codes for the construction of a new Accessible and Ambulant Toilet Block and the extension of the decked area at the rear of No. 42 (Lot 147) Glyde Street, East Fremantle in accordance with the plans date stamp received on 17 January 2011 and 15 February 2011 subject to the following conditions:

1. the wooden decked area to be set back a minimum of 0.5 metres from the southern boundary to meet the requirements of the Building Code of Australia and that access to the proposed ambulant toilet be from the north.
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 issued a building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. with regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
5. this planning approval to remain valid for a period of 24 months from date of this approval.

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

RECOMMENDATION TO COUNCIL

Cr Lilleyman – Cr Martin

That Council exercise its discretion in granting planning approval for a reduced setback of 0.5 metres from the deck to the southern boundary in lieu of the 1.0 metre required under the R-Codes for the construction of a new Accessible and

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Ambulant Toilet Block and the extension of the decked area at the rear of No. 42 (Lot 147) Glyde Street, East Fremantle in accordance with the plans date stamp received on 17 January 2011 and 15 February 2011 subject to the following conditions:

1. the wooden decked area to be set back a minimum of 0.5 metres from the southern boundary to meet the requirements of the Building Code of Australia and that access to the proposed ambulant toilet be from the north.
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 issued a building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. with regard to the plans submitted with respect to the building licence application, changes are not to be made in respect of the plans which have received planning approval, without those changes being specifically marked for Council's attention.
5. this planning approval to remain valid for a period of 24 months from date of this approval.

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.*

CARRIED

T23.7

Fraser Street No. 1 (Lot 10)

Applicant & Owner: J & S Moody

Application No. P1/2009

By Gemma Basley, Town Planner on 4 March 2011

BACKGROUND

Description of Proposal

An Application seeking approval for the renewal of the bed and breakfast use at No.1 Fraser Street, East Fremantle has been received and is the subject of this report.

This report recommends that the application be approved and a 12 month extension for the bed and breakfast operations be granted.

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 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; |
| 16 March 2010 | Council granted a 12-month extension for a bed and breakfast at No.1 Fraser Street. |

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ASSESSMENT

This application seeks approval for the renewal of the bed and breakfast use at No.1 (Lot 10) Fraser Street.

No. 1 Fraser Street is zoned 'Residential' under TPS 3. The use "Bed and Breakfast" is listed as an "A" use in the Residential zone in the zoning table in TPS 3, 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."

In accordance with clause 9.4 this application was advertised to surrounding property owners when it was originally received in February 2009. No objections to the bed and breakfast use were raised and the application was subsequently approved for a 12 month period on the 16th March 2009.

Under TPS 3 the use is defined as follows:

"means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast"

Discussion

The previous planning approval for bed and breakfast use expires on 16th March 2010. A condition of that approval requires the applicant to seek the renewal of that 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 not received any complaints relating to noise and/or anti social behaviour associated with the bed and breakfast operating at No. 1 Fraser Street, East Fremantle.

Based on the fact that no complaints have been received in the last 12 months it would appear that the bed and breakfast is operating satisfactorily and without any adverse impacts on the surrounding residential area. It is therefore recommended that the application for renewal of the bed and breakfast licence 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 (Lot 10) 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 Lilleyman – Cr Martin

That Council grant approval for the renewal of bed and breakfast use of the downstairs living area at No. 1 (Lot 10) Fraser Street, East Fremantle subject to the following conditions:

1. **Approval is for a period of 12 months only.**

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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. CARRIED

T23.8

Petra Street No. 111 (Lot 430)

Applicant & Owner: Ms Teresa Marra & Mr David Hayden

Application No. P80/2010

By Gemma Claire Basley, Town Planner on 1st March 2011

BACKGROUND

Purpose of this Report

The subject application proposes to amend a recent planning approval issued by Council (15 June 2010) for No. 111 Petra Street, East Fremantle. More specifically, Council has granted planning approval for renovations and additions to the residence including the construction of a garage in line with the main building line of the house and with a parapet wall on the northern boundary of the site.

The application proposes to amend the location of the garage by relocating it 2.5 metres forward to line up with the front of the verandah and the wall of the family room. In assessing the application it has become evident that the applicants have already commenced constructing the frame of the garage in a location, which has not yet been approved by Council. As such this Application will also be treated as a Retrospective Planning Application.

This report does not support the position of the garage forward of the main building line and recommends that the application be refused.

Description of Site

The subject site is:

- a 804m² block
- zoned Residential R12.5
- developed with a single storey residence listed on Council Draft Municipal Inventory (B- Management Category - Places of considerable local heritage significance); and
- adjoins two residential premises

Statutory Considerations

Town Planning Scheme No. 3

Local Planning Strategy - Richmond Precinct (LPS)

Residential Design Codes (RDC)

Relevant Council Policies

Local Planning Policy No. 142 : Residential Development

Impact on Public Domain

Tree in verge : No impact

Light pole : No impact

Crossover : No impact

Footpath : No impact

Streetscape : The construction of a garage (with a boundary wall) forward of the main building line will enclose and obscure streetscape views of the original verandah

Documentation

Plans and relevant forms date stamp received on 10 February 2011

Date Application Received

10 February 2011

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

15 June 2010 Council grants Approval for alterations and additions to the rear of the dwelling and the construction of a garage with a boundary wall on the northern side of the dwelling and in line with the main building line of the house.

CONSULTATION

Advertising

The application was advertised to the northern neighbour for a two week period between the 12 and 26 February 2011. No comments or objections were received.

Town Planning Advisory Panel Comments

This application was considered by the Town Planning Advisory Panel at its meeting held on 22 February 2011 and the following comments were made with a response from the applicant also provided below:

TPAP Comment	Applicant Response
<p>The proposed car parking provision should be an open carport and lightweight timber framed construction if it so be retained in its present location.</p>	<p>A full copy of the Applicants response is included in the Appendices.</p> <p>Since we have already sought and gained council approval for a solid garage, we have no conception as to why such a proviso should be in place.</p> <p>The solid garage was designed as an integral part of the provisional plans, in that it enclosed the northern extension of the dwelling, including the master bedroom and family bathroom. In short, placing a carport instead of a garage on the eastern sector of the house would give full provision for street view of some of the most private sections of the house.</p> <p>Our beautiful house of old was built about face in that the enclosed heritage verandah does not face north, but instead loses its sunlight by ten in the morning. Our only northern window previously was a solitary 800mm dormer. We had thought that with our new extension corridor slanting off we could provide better light for that room, but after viewing the passage of the sun we wished for a greater gap between the eastern edge of the window and the solid wall of the garage.</p> <p>The verandah had always been screened prior to our purchase, and we opened it up, only to contemplate that the 80s extension on the southern side was an immutable aspect of the house. To create a garage in line with it would we believe pull back into focus and balance the original centre of the home.</p>
<p>Alternatively if it is to be a solid walled garage it should be setback behind the alignment of the verandah.</p>	<p>If we were granted permission to bring the garage forward, a number of benefits would be made available. Since the room on the north east of the dwelling is our daughters' bedroom, a solid wall at the end of the verandah would (1) provide a sound barrier for the busy Petra St traffic (2) Blank out the street light which sits across the street. 3) Since we have intentionally built the extension to provide dwelling for aging parents, it is possible to place a set of steps and door from the garage to the front verandah to provide safety for any family member returning to the home at night.</p> <p>May we suggest a compromise. We have built an eco-sustainable extension in four months with lightweight sustainable materials. If the stipulation from the panel is for lightweight materials then we would be prepared to build our garage out of the same lightweight materials that have been used for the extension and with no brickwork involved.</p>

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The Town Planner responds to the applicant's comments below:

- Council's earlier approval for the garage was based on it being in line with the main building line of the house and behind the verandah.
- There are other alternatives to address the applicant's concerns with regard to sound and light impacts and the protection of the applicant's privacy.
- The former screening to the northern end of the verandah can be seen on the Heritage Survey which is included in the Appendices. The screening was a light weight lattice screen, which provided for some privacy but did not obscure the verandah entirely and still contributed to maintaining an open streetscape .
- The width of the proposed garage is not in proportion with other elements of the house and if pulled forward to align with the front of the verandah, the garage will dominate the frontage of the residence.

Principal Building Surveyor's Comment

The Principal Building Surveyor has advised that if the garage is approved up to the northern boundary then a fire rated parapet wall would be required along this boundary to meet the requirements of the Building Code of Australia (BCA).

The Principal Building Surveyor has further advised that it is not possible to construct a garage with a parapet wall, which utilises light weight materials because this would not meet the fire rating requirements of the BCA.

Finally, the Principal Building Surveyor has advised that if the structure is approved as a carport and permitted to extend to the northern boundary, it would be necessary to set back the roof of the carport a minimum of 450 mm from the boundary in order to meet the requirements of the BCA.

Site Inspection

By Town Planner on 1 March 2011

CONSIDERATIONS

The property is included in the Town's Municipal Heritage Inventory as a B^A Management Category. The Municipal Heritage Inventory describes properties and buildings included in the B Management Category as having considerable heritage significance at a local level; being generally considered worthy of high level of protection and to be retained and appropriately conserved.

Taking into account the above, this application will be assessed with the heritage significance of the residence in mind. The application does not include a heritage impact assessment.

ASSESSMENT

The subject application seeks approval to construct the previously approved garage forward of the main building line and in line with the verandah. The applicants have commenced constructing the frame of the garage. The applicant proposes to fully enclose the garage and to construct a parapet wall on the northern boundary.

Further to lodging the application and in response to the Panel's comments, the applicants have indicated a willingness to utilise light weight materials for the garage rather than utilising brickwork. Based on the advice from the Principal Building Surveyor, this is not achievable and it would be necessary to provide a 450 mm set back to the northern boundary.

There are two major issues to address in this application being the location of the carport forward of the main building line and the potential impact of this on the streetscape.

Local Planning Policy No. 142 states in Part 2 – Streetscape:

- (ii) *Notwithstanding (i) above, garages and/or carports are to be located at or behind the main building line of the house on the property.*

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The policy is not definitive in what constitutes the main building line however based on past assessments it is evident that the policy has been interpreted to refer to the dominant wall of the front of the house (the widest section of wall occupying the greatest part of the frontage of the dwelling). When applying this to the subject application, the main wall of the house is that which is behind the verandah. The location of the garage does not therefore accord with the requirements of Local Planning Policy No. 142 and is not supported.

The second issue is the impact of the proposed garage on the streetscape. The Residential Design Codes promotes open streetscapes which provide a visual setting for the dwelling and a transition zone between the public street and a private dwelling to provide for mutual surveillance and personal interaction without intrusion. It is assessed that the construction of an enclosed garage forward of the main building line will obscure portions of the front of the house and the verandah which will compromise the relationship between the public and private realm.

Whilst the applicant's pursuit of privacy is understood, it is considered that there are other ways in which privacy to the residence could be achieved without compromising the heritage integrity of the residence and the streetscape.

CONCLUSION

Based on the discussion above, approval for a fully enclosed garage forward of the main building line is not supported because of the potential impact on the streetscape and the heritage integrity of the dwelling.

Given the above it is recommended that retrospective approval for the garage forward of the main building line be refused.

RECOMMENDATION

That Council refuse the application for Planning Approval to locate a garage forward of the main building line at No. 111 (Lot 430) Petra Street, East Fremantle in accordance with the plans date stamped received on 10 February 2011 for the following reasons:

1. The location of the garage is forward of the main building line and does not meet the requirements of Local Planning Policy No. 142 (Part 2 – Streetscape).
2. The proposal is contrary to the requirements of Town Planning Scheme No. 3, (TPS3) specifically Clause 1.6 (a) and (c) and Clause 10.2 (o) which Council is required to take into consideration during its decision making process.
3. The proposal is contrary to Clause 6.2.7 of the Residential Design Codes because the location of the garage does not comply with the requirements of Local Planning Policy No. 142.

RECOMMENDATION TO COUNCIL

Cr Martin – Cr Nardi

That Council refuse the application for Planning Approval to locate a garage forward of the main building line at No. 111 (Lot 430) Petra Street, East Fremantle in accordance with the plans date stamped received on 10 February 2011 for the following reasons:

- 1. The location of the garage is forward of the main building line and does not meet the requirements of Local Planning Policy No. 142 (Part 2 – Streetscape).**
- 2. The proposal is contrary to the requirements of Town Planning Scheme No. 3, (TPS3) specifically Clause 1.6 (a) and (c) and Clause 10.2 (o) which Council is required to take into consideration during its decision making process.**
- 3. The proposal is contrary to Clause 6.2.7 of the Residential Design Codes because the location of the garage does not comply with the requirements of Local Planning Policy No. 142.**

CARRIED

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T24. REPORTS OF OFFICERS – STRATEGIC PLANNING

T24.1 *Proposed Local Planning Policy - Design Guideline Signage* By Jamie Douglas, Manager Planning Services on 18 February 2011

Purpose of this Report

This report recommends that the proposed Local Planning Policy – Design Guideline Signage (Attachment 1) be endorsed and that the procedures for ‘Making a Local Planning Policy’ specified in clause 2.4 of Town Planning Scheme No. 3 are implemented.

Background

As identified in the Audit of Planning Policies Report, (endorsed by Council at its meeting on 14 December 2010) there are currently three separate policies associated with signs. The three policies attempt to deal with specific issues associated with advertising signage on council reserves and the prohibition of election signage. However they do not provide a single comprehensive guideline for commercial and interpretative signage.

The proposed Local Planning Policy is required because the proliferation of commercial advertising has a significant impact on visual amenity and streetscape character. There is also a need to protect existing advertising from being obscured and to ensure multi-use developments are not covered in a proliferation of competing advertising or that advertising obstructs vehicular or pedestrian sight lines. The implementation of the proposed policy at this time will provide necessary guidance for major commercial developments which will be considered by Council in coming months.

The proposed draft ‘Design Guideline – Signage’ forms Attachment 1 to this report.

Statutory Process for the Adoption of a Local Planning Policy

Local Planning Policies are adopted under the Part 2 of TPS No. 3. Clause 2.4 of the Scheme requires that a proposed Policy is advertised for 2 consecutive weeks in a local newspaper and that submissions may be made during a period of not less than 21 days. Subsequent to the closure of the submission period, Council is then required to review the proposed Policy in the light of any submissions made and resolve whether or not to adopt the Policy with or without modification. If the Policy is adopted, a notice of the Policy must be advertised once in a local paper and it comes into force on the date of this advertisement. The Policy should also be forwarded to the Western Australian Planning Commission if Council decides it affects the interests of the Commission.

Existing Scheme Provisions Relating to Advertising Signs

The following Clause 5.9 of TPS No 3 relates to advertising signs.

5.9 *Advertising Signs*

- 5.9.1 *Except as provided for in Schedule 5 of the Scheme, no advertising sign are (sic) to be erected or displayed without the approval of the local government.*
- 5.9.2 *Advertising signs are to be designed and constructed having due regard to any relevant local government Policy.*
- 5.9.3 *In its determination of any application for erection or display of an advertising sign for which planning approval is required, the local government is to take into consideration the likely impact of the proposal on the safety and amenity of the area.*

The above Clause indicates that advertising signs will be controlled by a signage policy, although to date none has been developed for commercial advertising signs within the private domain. Schedule 5 of the Scheme identifies a range of signs which are ‘exempt’ from the need for planning approval. At its meeting on 15 February Council endorsed proposed Amendment 9 to the Scheme which incorporates the deletion of Schedule 5. This amendment will remove any duplication or conflict with the proposed ‘exempt sign’ specifications within the proposed Policy. It is considered more appropriate to capture the detailed requirements identified within Schedule 5 in the context of a Planning Policy as it

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is relatively easy to amend and update a Policy (in comparison to a Scheme provision) to reflect changing signage requirements over time. Until such time that Amendment 9 is Finally Approved, the provisions of the Scheme will prevail. However this is not an obstacle to the adoption of the Planning Policy.

Discussion

The development of the proposed Local Planning Policy 'Design Guideline – Signage' has involved a review of the various signage policies currently enforced by other local governments, developers and planning agencies. From this analysis, the range of issues to be addressed and the various types of signs in common usage has been determined. Levels of control have then been set for each sign type within the proposed policy which are considered appropriate for the desired urban form outcomes and broader planning objectives for East Fremantle.

The proposed Local Planning Policy 'Design Guideline – Signage' defines a range of different sign types and identifies for each type of sign whether it is 'exempt', 'permitted' 'discretionary' or 'prohibited' subject to certain criteria. In a similar fashion to the R-Codes, the Design Guideline specifies 'Acceptable Solutions' which are performance standards for 'permitted' determination and 'Alternative Performance Criteria' for 'discretionary' determination for the various sign types. Generally, where there are multiple signs proposed for a building or complex of buildings, the Guidelines require an approved signs regime to ensure that competition, obstruction and unnecessary proliferation of signage does not occur over time. The objective is to ensure the type and size of signs is appropriate for their location

Third party advertising and 'Billboards' have not been provided for. It is considered that such signage is not necessary to support the commercial function of businesses, would cause an unnecessary increase in the proliferation of signage and would have a detrimental visual impact upon the streetscape.

RECOMMENDATION

It is recommended that, pursuant to clause 2.4 of the Town of East Fremantle Town Planning Scheme No.3, the Council endorse the draft Local Planning Policy -'Design Guideline – Signage' which is Attachment 1 to this report for the purposes of public advertising.

RECOMMENDATION TO COUNCIL

Cr Martin – Cr Lilleyman

It is recommended that, pursuant to clause 2.4 of the Town of East Fremantle Town Planning Scheme No.3, the Council endorse the draft Local Planning Policy - 'Design Guideline – Signage' which is Attachment 1 to this report for the purposes of public advertising.

CARRIED

T25. URGENT BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING

T25.1 Town Centre

The Committee discussed progress on the drafting of planning guidelines and a Concept Plan for the Town Centre and the proposal for redevelopment of a strategic site within the Centre. The Committee acknowledged the urgent timeline for the determination of the redevelopment proposal and the need to finalise the planning guidelines to:

- influence the design of the redevelopment proposal;
- to provide a basis for its determination; and
- insure that strategic Objectives for the Town Centre are met.

The Committee requested a report be tabled at the next meeting of Council outlining a course for consultation and an approach for the completion of a planning framework to guide future development and achieve strategic Objectives for the Town Centre.

T26. CLOSURE OF MEETING

There being no further business the meeting closed at 10.51pm.

*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 **8 March 2011**, Minute Book reference **T13. to T26.** were confirmed at the meeting of the Committee on*

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Presiding Member