

11 December 2007

MINUTES

MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN) MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON TUESDAY, 11 DECEMBER 2007, COMMENCING AT 6.32 PM.

PART II

T135.6 **Walter Street No 3A**
Applicant: Inhouse Building Design
Owner: Bevin Breakspeare
Application No. P213/2007

By Chris Warrener, Consultant Town Planner on 29 November 2007

BACKGROUND

Description of Proposal

An Application for Planning Approval for a 2-storey house on a rear/battleaxe block at 3A Walter Street comprising:

Ground floor: double carport, kitchen, pantry, dining room, living room, laundry, bathroom, study, entry, and porch;
Upper floor: 2 bedrooms, built-in-robos, and a bathroom.

Statutory Considerations

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

Relevant Council Policies

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

Documentation

Plans and relevant forms date stamp received on 31 October 2007

Date Application Received

31 October 2007

Advertising

Adjoining land owners only

Date Advertised

7 November 2007

Close of Comment Period

21 November 2007

No. of Days Elapsed between Lodgement & Meeting Date

41 days.

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

21 Nov. 1983: Council approves removal of a verge tree and construction of a double crossover at 3 Walter Street;
21 Aug. 2001: Council decides to advise the WAPC that it recommends the subdivision be refused;
26 Sept 2001: WAPC grants conditional approval to subdivide 3 Walter Street into 2 survey strata lots (1 X 485m², 1 X 426m²);
20 Aug. 2002: Council grants special approval for reduced setbacks for additions to the single storey house at 3 Walter Street;
8 June 2003: Building Licence 122/3430 issued for an attached carport at 3 Walter Street;

11 December 2007

MINUTES

- 14 Oct. 2003: WAPC endorses Survey Strata Plan for final approval creating 2 lots (1 X 428m², 1 X 483m²);
25 March 2004: Building Licence 122/3565 issued for additions;
20 Sept. 2005: Council grants approval to a 2-storey house at 3A Walter Street.

CONSULTATION

Town Planning Advisory Panel Comments

This application was considered by the Town Planning Advisory Panel and the following comments were made:

1. *It is unfortunate that the best solar access is granted to the carport (although this is really a garage)*
2. *This is a well planned and modest house for the tight site*
3. *The finials on the roof gables are an inappropriate gesture to the original front lot dwelling and should be deleted. They do not sit well on this proposed house.*
4. *The materials for the dwelling are only partly described. We are told about the zincalume roof (which possibly should be a light coloured colorbond) and the selected weatherboards, but wall finish and window material are not described, nor is the garage door.*

11 December 2007

MINUTES

Public Submissions

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

Submission from 10 Gill Street

- A retaining wall must be erected as the block has been re-levelled and the earth dumped against the boundary fence.

Site Inspection

By Consultant Town Planner on 13 November 2007

REPORT

Issues

The upper floor wall for a built in robe and stairwell is set back 3.14m from the west side boundary common with 12 Gill Street.

LPP 142 recommends a 4m setback for upper floors on rear/battleaxe lots.

Open Space

The application proposes the provision of 53.31% open space.

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

Discussion

This application is identical to a proposal which was approved by Council on 20 September 2005.

The applicant advised that the house was not built within 2 years because the owner who works overseas was offered a further employment contract and did not return to Perth, and given the 'heated building environment' the decision to build was 'put off'.

The proposed variations are considered minor, and do not impact on the amenity of any adjoining property, and can be supported.

In regard to the submission any retaining works that are required will be the subject of more detailed specifications required for the issue of a Building Licence, and a condition is included in the following recommendation to Council (see condition 6).

In future this condition will be included as a standard condition on all planning approvals.

TPAP Comments

The applicant provided an email response to the comments made by TPAP.

In regard to the comment on solar access the applicant advised that there are large windows in the north side wall from the kitchen and dining rooms, and the upper storey also include north facing windows.

The applicant states that the finials on the roof gables can be removed as a condition of the approval.

Materials proposed for the house include:

- roof in a light colourbond, eg. surfmist
- wall finish will be rendered in earthy tones
- the weatherboard will be the new JH-linea painted-in a lighter tone to the wall render;
- windows will be aluminium, awning sash type, colour is likely to be silver

11 December 2007

MINUTES

RECOMMENDATION

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

- (a) variation to the west side boundary setback for an upper floor built in robe and stairwell pursuant to Local Planning Policy 142 from 4.0m to 3.14m;
- (b) variation to the provision of open space pursuant to the Residential Design Codes from 55% to 53.31%;

for the construction of a 2-storey house on a rear/battleaxe block at 3A Walter Street comprising:

Ground floor: double carport, kitchen, pantry, dining room, living room, laundry, bathroom, study, entry, and porch;

Upper floor: 2 bedrooms, built-in-ropes, and a bathroom.

in accordance with the plans date stamp received on 31 October 2007 subject to the following conditions:

1. prior to the issue of a Building Licence the applicant is to submit amended plans for the removal of the finials on the roof gables;
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
7. all parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
9. any new crossovers which are constructed under this approval to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
10. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
11. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

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

11 December 2007

MINUTES

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

Mr P Broad (applicant) addressed the meeting in support of the proposal.

Cr Wilson returned to the meeting at 9.25pm.

RECOMMENDATION TO COUNCIL

Mayor Ferris – Cr de Jong

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

- (a) variation to the west side boundary setback for an upper floor built in robe and stairwell pursuant to Local Planning Policy 142 from 4.0m to 3.14m;
- (b) variation to the provision of open space pursuant to the Residential Design Codes from 55% to 53.31%;

for the construction of a 2-storey house on a rear/battleaxe block at 3A Walter Street comprising:

Ground floor: double carport, kitchen, pantry, dining room, living room, laundry, bathroom, study, entry, and porch;

Upper floor: 2 bedrooms, built-in-ropes, and a bathroom.

in accordance with the plans date stamp received on 31 October 2007 subject to the following conditions:

1. prior to the issue of a Building Licence the applicant is to submit amended plans for the removal of the finials on the roof gables;
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

11 December 2007

MINUTES

7. all parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
9. any new crossovers which are constructed under this approval to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
10. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
11. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

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

CARRIED

T135.7

Walter Street No 18A

Applicant: APG Homes

Owner: Beth McCrae Dungey

Application No. P202/2007

By Chris Warrener, Town Planner on 3 December 2007

BACKGROUND

Description of Proposal

An Application for Planning Approval for a 2-storey skillion-roofed house at 18 Walter Street with double garage, study, entry, theatre room, library, powder room, laundry, kitchen, living and dining room, and verandah at rear on the ground floor, with 4 bedrooms and 2 bathrooms on the upper floor.

The garage door occupies 46.9% of the property frontage.

11 December 2007

MINUTES

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)

Documentation

Plans and relevant forms date stamp received on 30 November 2007

Date Application Received

18 October 2007

No. of Days Elapsed between Lodgement & Meeting Date

11 days.

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

4 Nov. 1977: Building Licence issued for a patio attached to the front;
22 Dec. 2004: Council advises the WAPC that it does not support the subdivision of 18 Walter Street into two 455m² lots;
15 Jan. 2005: WAPC conditionally approves the subdivision to create 2 “long tom” lots;
20 Nov. 2007: Council decides to defer an application for a 2-storey house pending a revised proposal.

CONSULTATION

Town Planning Advisory Panel Comments

This original application was considered by the Town Planning Advisory Panel at its meeting on 23 October 2007 and the following comments were made:

- incompatible to streetscape
- pleasing contemporary design rather than faux historicism
- pitch plate to be higher

REPORT

Issues

At the meeting held on 20 November 2007 Council considered an application for a 2-storey house at 18A Walter Street, and decided:

That the application be deferred pending a revised proposal which addresses:

- *impact and interaction with streetscape*
- *wall height*
- *open space requirements.*

CARRIED

Discussion

The applicant has subsequently submitted amended plans (copy attached), which incorporate the addition of a gatehouse next to the proposed study at the front.

This is considered to improve the appearance of the proposed house from the street in terms of its “interaction with the streetscape”.

Wall height on the north side varies up to 7.2m above natural ground level (NGL). This is a necessary response to the proposed skillion roof design of the house. The impact of this variation will be on the adjoining property at 18B Walter Street, which is owned by the owner of the property which is the subject of this application.

The design of the house at 18B Walter Street will take into consideration this variation.

In relation to the variation to open space it is worth noting that the subject property comprises a lot that was the result of a subdivision, which produced lot areas applicable under an R20 density code. Open space for an R20 size lot is recommended to be 50% under the RDC.

The application proposes 52% open space therefore it complies at the R20 density.

Conclusion

This application is for a contemporary designed home not dissimilar to other homes recently completed nearby in the Richmond Hill precinct (see esp. No's 30B and 22A Gill Street).

The Town Planning Advisory Panel considered that it is a "pleasing contemporary design rather than faux historicism", and with the addition of the gatehouse next to the study is supported.

RECOMMENDATION

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

- (a) variation to the east side (rear) boundary setback pursuant to the Residential Design Codes for a verandah from 6m to 4.18m;
- (b) variation to roof pitch pursuant to Local Planning Policy 066 from 28° to 7°58';
- (c) variation to wall height on the north side pursuant to the Residential Design Codes from 6m to 7.2m;
- (d) variation to wall height on the east side pursuant to the Residential Design Codes from 6m to 6.9m;
- (e) variation to wall height on the west side pursuant to the Residential Design Codes from 6m to 6.3m;

for the construction of a 2-storey skillion-roofed house at 18 Walter Street with double garage, study, entry, theatre room, library, powder room, laundry, kitchen, living and dining room, and verandah at rear on the ground floor, with 4 bedrooms and 2 bathrooms on the upper floor in accordance with the plans date stamp received on 18 October 2007 subject to the following conditions:

1. prior to the issue of a Building Licence the applicant is to submit amended plans for the house to be at the recommended 7.5m front setback pursuant to the Residential Design Codes;
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. All introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
7. all parapet walls 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.

11 December 2007

MINUTES

8. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
9. any new crossovers which are constructed under this approval to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
10. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
11. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

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

Mr Carello (applicant) addressed the meeting in support of the proposal.

RECOMMENDATION TO COUNCIL

Cr Dobro – Cr de Jong

That the application be deferred pending the submission of a revised proposal which complied with the wall height requirements of the R Codes. CARRIED

T135.8

Canning Highway No 83

Applicant: MacCormac Architects

Owner: Canning 83 Pty Ltd

Application No. P98/2007

By Chris Warrener Consultant Town Planner on 6 December 2007

BACKGROUND

Description of Proposal

To reconsider a Council decision (pursuant to s31 of the State Administrative Tribunal Act 2004), which was made in August 2007 to refuse an Application for Planning Approval for a 4-storey Mixed Use development comprising an existing ground floor commercial building divided into 3 shops, with new development comprising 4 offices, and two 2-bedroom residential apartments on 3 upper levels.

11 December 2007

MINUTES

The two apartments are on the top/fourth level.

16 on site car parking spaces are proposed.

Statutory Considerations

Town Planning Scheme No. 3 (TPS 3) – Canning Highway Mixed Use zone
Metropolitan Region Scheme Reserve for Primary Regional Roads for Canning Highway
Western Australian Planning Commission Act 1985 Delegation
Local Planning Strategy - Plympton Precinct (LPS)
Residential Design Codes (RDC)

Documentation

Plans and relevant forms date stamp received on 4 May 2007

Date Application Received

4 May 2007

Additional Information Received

16 May 2007: Amended plans and cover letter received;
25 May 2007: Heritage Report (Ronald Bodycoat) received;
2 July 2007: Photo image of proposed development in existing built context;
4 July 2007: Additional heritage advice in response to Town Planning Advisory Panel comments.

Advertising

Adjoining land owners & sign on site

Date Advertised

1 June 2007

Close of Comment Period

19 June 2007

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

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

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

Footnote

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

11 December 2007

MINUTES

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

Ownership of the property subsequently changed.

- 21 Aug. 2007: Council decides to refuse an application for a 4-level mixed use development;
- 18 Sept. 2007: State Administrative Tribunal (SAT) receives an application for a review of the Council decision;
- 28 Sept. 2007: SAT Directions Hearing;
- 19 Oct. 2007: SAT Directions Hearing;
- 9 Nov. 2007: SAT Mediation;
- 3 Dec. 2007: SAT Mediation;

CONSULTATION

Town Planning Advisory Panel Comments

This application was considered by the Town Planning Advisory Panel (TPAP) at its meeting held on 26 June 2007 and the following comments were made:

- *existing shops should not be dominated by the proposed building*
- *need to investigate original roof design if different to existing*
- *too dominant in the corner and nothing of that scale in close proximity*
- *should be maximum of 3 storeys and no higher than adjoining Tradewinds*
- *design appropriate, not inconsistent with Tradewinds, but overwhelming on corner*
- *applicant to be commended for retaining and conserving shops*
- *important that details of the conservation works (colours, finishes, materials, detailing) be submitted to Council for planning approval*

Referral to Other Authorities

Department for Planning & Infrastructure (DPI) & Main Roads WA (MRWA)

Public Submissions

At the close of the comment period no submissions were received, however the WAPC and MRWA objected to the application because the application proposes development, that encroaches the MRS reserve for Canning Highway.

Site Inspection

By Consultant Town Planner on 31 May 2007.

REPORT

Background

In 2004 Council considered another application for a four storey development, which was deferred pending the submission of additional information. This information was never provided and that application lapsed.

The previous application proposed a bigger development in terms of built area than the current application, with fewer on-site parking spaces. Plan elevations for the previous application are attached.

The current application is for a significantly 'smaller' development, and it has been submitted with additional information regarding the matters raised in the decision that Council made in response to the 2004 application.

At its meeting on 21 August 2007 Council decided to refuse the current application based on advice it received from MRWA and DPI. A portion of the property is reserved for Primary Regional Roads under the Metropolitan Region Scheme (MRS)

11 December 2007

MINUTES

Council decided:

"Mayor O'Neill – Cr Dobro

That:

- 1. Council refuses to grant approval for the construction of a 4-storey Mixed Use development comprising an existing ground floor commercial building divided into 3 shops, with new development comprising 4 offices, and two 2-bedroom residential apartments on 3 upper levels on Lot 123 (No. 83) Canning Highway, East Fremantle in accordance with the plans date stamp received on 17 May 2007 on the grounds that the proposal does not accord with the purpose for which the land is reserved.*
- 2. Given the property's B^A rating in the Draft Town of East Fremantle Municipal Inventory the Chief Executive Officer in consultation with relevant officers, enter into negotiations with Main Roads WA and the Department for Planning & Infrastructure.*

Footnote:

Council does want this building restored and retained and would support some redevelopment of the site with retention and restoration of the existing building as an integral factor. CARRIED

The applicant applied to SAT for a review of this decision.

Following 2 Directions Hearings and the Mediation held on 9 November 2007 DPI reconsidered its previous advice, and advised that it would be prepared to support the development as submitted subject to a condition that:

"The landowner entering into a Deed of Agreement with the Western Australian Planning Commission (WAPC) and Main Roads Western Australia that upon the construction/upgrading of Canning Highway the applicant shall not seek compensation for that portion of the building subject to the Primary Regional Road (PRR) reservation in the Metropolitan Region Scheme (MRS).

Advice notes:

- 1. Upon acquisition of the land for any future Canning Highway construction works, the construction authority shall be responsible for modification of the building to provide for Canning Highway/Sewell Street corner truncation at the construction authority's cost. The landowner shall be paid compensation for the land only.*
- 2. DPI needs to review the PRR reservation for Canning Highway recognising its status as part of the Auslink network, and this will include truncation requirements, intersection design and carriageway plans. At this stage it would be premature to speculate on any potential changes to the current PRR reservation."*

At SAT Mediation held on 3 December 2007 it was agreed that the wording of this condition should be improved to refer to the current MRS reserve, and the reworded advice should be provided by the WAPC, (which is the authority responsible for the administration and implementation of the MRS) to Council.

Pursuant to the SAT Mediation on 3 December 2007 the following Order was made:

- 1. The applicant is to provide the respondent and the Western Australian Planning Commission with a revised condition in respect of the use of the reserved land at 79-83 Canning Highway, by 7 December 2007.*
- 2. The respondent is to endeavour to deal with this matter at its next meeting.*
- 3. The matter is adjourned to further mediation at 2pm Wednesday 19 December 2007.*

The applicant subsequently forwarded the following revised condition:

11 December 2007

MINUTES

"The Department will support the development of 79-83 Canning Highway, East Fremantle ("the Land"), shown in the development plans dated May 2007, subject to the land owner ("the Owner") entering into a Deed of Agreement with the Western Australian Planning Commission ("WAPC") which provides that if part of the Land, the subject of the primary regional road reserve ("Relevant Land"), shown in the Metropolitan Region Scheme as at 3 December 2007 and in the attached plan, is required to be taken by a statutory or public authority, then the Owner shall be entitled to exercise its rights and remedies at law, in equity or under statute to seek and obtain compensation (save and except that any increase in the value of that part of the existing buildings on the Relevant Land as at 3 December 2007, resulting from Canning 83 Pty Ltd carrying out the proposed development, will not be taken into account in determining the amount of compensation payable to the Owner) and which contains such other terms and conditions agreed to by the parties."

The wording of this condition is still to be agreed between the parties however the important advice currently is the preparedness of the WAPC to support the application subject to the imposition of such a condition.

In light of this situation Council is now invited by SAT "endeavour to deal with this matter at its next meeting".

The following report is submitted for Council's consideration.

Issues

Building Height

Wall height of the proposed development is up to 14m above natural ground level (NGL), and roof height is up to 15.8m above NGL.

TPS 3 sub-clause 5.8.2 states:

"5.8.2 Building Height: Except as otherwise permitted by the local government, the maximum height of buildings in the Commercial Zones are to be as follows:

<i>(a) Town Centre:</i>	<i>Walls: 8.0 metres</i>	<i>Overall: 10.5 metres</i>
<i>(b) Special Business:</i>	<i>Walls: 8.0 metres</i>	<i>Overall: 10.5 metres</i>
<i>(c) Mixed Use:</i>	<i>Walls: 5.5 metres</i>	<i>Overall: 8.0 metres"</i>

The subject land is in the Canning Highway Mixed Use zone therefore the proposed development exceeds the recommended wall height limit by 8.5m and overall by 7.8m.

Plot Ratio

The plot ratio of the proposed development calculated by the applicant (excluding wet areas) is 1.39:1.

TPS 3 sub-clause 5.8.3 states:

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

<i>(a) Town Centre:</i>	<i>0.5:1</i>
<i>(b) Special Business:</i>	<i>0.5:1</i>
<i>(c) Mixed Use:</i>	<i>0.5:1"</i>

The subject land is in the Canning Highway Mixed Use zone therefore the proposed development exceeds the plot ratio limit by 0.89.

Car Parking

The application proposes 16 on-site car parking spaces.

The application is for a mixed use development comprising 3 retail shops, 4 offices, and 2 residential apartments/dwelling units.

TPS 3 Schedule 11: Car Parking Standards specifies for a Shop, and Office use:

<i>Shop</i>	<i>1 space for every 20m² net lettable area (5 spaces per 100m² NLA) Minimum 4 spaces</i>
-------------	---

There are 3 shops with a total net lettable area of 156m² therefore 12 spaces are required.

<i>Office (excluding Bank, Building Society, Post Office or other such uses)</i>	<i>1 space for every 30m² net lettable area, Minimum 3 spaces per tenancy or office unit. (N.B. Offices with intensively used public areas require additional parking. Refer Banks, etc.)</i>
--	--

There are 4 offices therefore 12 spaces are required.

Pursuant to the RDC for a mixed use development of the type proposed 2 spaces are required for the 2 top floor apartments.

A total of 26 spaces are required for the proposed development, the application proposes 16 on-site spaces therefore there is a shortfall of 10 spaces.

Heritage

The premises are currently used as the "Port Liquor Store", and "Mon Computers".

The building is not heritage listed under TPS 3 however it is listed in the Draft MI with a B+ Management Category.

It is described as being from the "Federation" period, in a "Free Classical" style.

The Draft MI states the following for a B rated property:

"Considerable heritage significance at a local level; places generally considered worthy of high level of protection, to be retained and appropriately conserved; provide strong encouragement to owners under the Town of East Fremantle Planning Scheme to conserve the significance of the place. A Heritage Assessment / Impact Statement to be required as corollary to any development application. Incentives to promote heritage conservation may be considered where desirable conservation outcomes may be otherwise difficult to achieve."

The applicant has submitted a Heritage Report, and proposes to restore and conserve the existing building.

ATTACHMENT

Discussion

In regard to the variations proposed by this application TPS 3 allows variations to site and development standards and requirements subject to certain conditions.

The following provisions apply:

"5.6 Variations to site and development standards and requirements

5.6.1. Except for development in respect of which the Residential Design Codes apply, if a development is the subject of an application for planning approval and does not comply with a standard or requirement prescribed under the Scheme, the local

11 December 2007

MINUTES

government may, despite the non-compliance, approve the application unconditionally or subject to such conditions as the local government thinks fit.

5.6.2. *In considering an application for planning approval under this clause, where, in the opinion of the local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the variation, the local government is to —*

- (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 9.4; and*
- (b) have regard to any expressed views prior to making its determination to grant the variation.*

5.6.3. *The power conferred by this clause may only be exercised if the local government is satisfied that —*

- (a) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and*
- (b) the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.”*

Pursuant to 5.6.2 this application was advertised by way of a sign on site, and surrounding landowners were invited to lodge submissions.

There were no submissions.

Building height would be an issue if adjoining or nearby property views were affected, in this case they are not.

Pursuant to 5.6.3 (a) the following comments regarding the application in response to the criteria listed in clause 10.2 are relevant:

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

Being a mixture of residential and commercial uses the development is considered to satisfy the objective for development in the Mixed Use zone.

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

The Local Planning Strategy (LPS) states for land use in the mixed use zone along Canning Highway:

“The Mixed Use area situated on Canning Highway currently includes the Trade Winds Hotel (which incorporates the historic Plympton Hotel) and land to its east could sustain development of a similar intensity preferably with a large residential component. Properties west of the Trade Winds should remain occupied by low scale activities and buildings and retention of the existing buildings would generally be encouraged.” (LPS page 27).

The application site is east of the Trade Winds, it proposes to retain the existing heritage value building, and proposes residential use as well as commercial use therefore the application is considered to comply with the spirit and intent of the LPS.

In relation to building design the LPS states:

11 December 2007

MINUTES

"The Mixed Use zone on Canning Highway requires development standards to reflect existing building design patterns. A description of the desired building style may be appropriate, and this matter will also be addressed through the application of design guidelines."

While there are no design guidelines for development in the Canning Highway Mixed Use zone, the proposal is considered to be a pleasing aesthetic design complementary to the Trade Winds development, and presents a more attractive façade to the secondary street than current.

(j) *the compatibility of a use or development with its setting;*

The application is for a mixed use development in keeping with the objectives for development in the Mixed Use zone under TPS 3, which state:

- *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;*
- *To ensure future development within each of the Mixed Use Zones is sympathetic with the desired future character of each area, and that a significant residential component is retained as part of any new development;*
- *To promote the coordination of development within each of the Mixed Use zones and to facilitate the safe and convenient movement of pedestrians to and within the area;*
- *To ensure the location and design of vehicular access and parking facilities do not detract from the amenities of the area or the integrity of the streetscape.*

(k) *any social issues that have an effect on the amenity of the locality;*

The application proposes to redevelop a property which is next to a hotel and short stay residential development. The mix of uses proposed in the application and the modern contemporary building design are considered to make a positive contribution to the immediate locality and the community in general.

(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;*

The application is for a new building well set back from Canning Highway, with a more attractive façade to Sewell Street than current.

The appearance of the development is considered to provide a more attractive built element and streetscape presentation, which is largely due to the increased setback of the proposed development, and the simple, contemporary upper floor apartment design.

The development is considered to be an attractive addition to the corner of Sewell Street and Canning Highway complementing the Tradewinds.

If the development was built along the same lines and at the same height as Tradewinds this would result in a less attractive streetscape than if heights are varied as proposed to provide interest and articulation.

The effect of building to the same height as Tradewinds is considered to increase the bulky appearance of property between Hubble Street and Sewell Street, and along Sewell Street, and would result in a relatively "boring" streetscape.

The applicant states that while the development will be one floor higher than the Tradewinds, it *"will provide a book end to the block and create an appropriate point of emphasis to the western corner of the Canning Highway and Sewell Street."*

11 December 2007

MINUTES

The proposed "new" building will be well set back between 9m and 12m from Canning Highway, behind the Tradewinds development, and well behind the existing heritage value building on site, and is considered to present a more "friendly" appearance to Sewell Street than the subject property does currently.

Combined these elements of the proposal are considered to have a positive impact on the amenity of the area and the local streetscape.

Parking

Further to 5.6.3 (a) the following comments in response to criteria 10.2(q) are relevant:

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

The application proposes 16 on-site parking spaces. There is a shortfall of 10 spaces.

TPS 3, Clause 5.6 allows for relaxation of the applicable Parking Standard.

The power conferred in this clause can only be exercised if:

- (i) Council is satisfied the non compliance will not have an adverse effect upon the occupiers and users of the development, the inhabitants of the locality or the likely future development of the locality.
- (ii) Council is satisfied the relaxation would be appropriate having regard to the criteria set out in clause 10.2
and
- (iii) If, in the opinion of Council, the relaxation is likely to affect any owners or occupiers in the general locality or adjoining the site, the Council is to consult the affected parties, as per the provisions of clause 9.4 and have regard to any expressed views prior to making its determination to grant the relaxation.

With regard to the above provisions, car parking issues related to the Tradewinds are already causing problems in the area. It is also envisaged that redevelopment of other mixed use sites nearby, notably 59, 91, and 93 Canning Highway will give rise to further pressures on parking in the future.

TPS 3 provides 4 means for providing car parking when there is a shortfall:

- (i) on-site (TPS 3, sub-clause 5.8.6 refers)
- (ii) immediately adjacent on-street car parking pursuant to TPS 3, sub-clause 5.8.7 which states:

5.8.7 On-Street Parking: The local government may accept immediately adjacent on-street car parking as satisfying part or all of the car parking requirements for development, provided such allocation does not prejudice adjacent development or adversely affect the safety or amenity of the locality.

- (iii) off-site pursuant to TPS 3, sub-clause 5.8.6 which states, in part:

5.8.6 Location of Car Parking ... subject to the local government's approval, off-site in the immediate vicinity of the development site. In considering a proposal for off-site parking, applicants will need to demonstrate to the satisfaction of the local government that any off-site parking areas will continue to be available for use in conjunction

11 December 2007

MINUTES

with the development at such times as it might reasonably be required.

- (iv) cash-in-lieu pursuant to TPS 3, sub-clause 5.8.8 which states:

5.8.8 Cash-in-lieu of Parking: The local government may accept or require cash-in-lieu of all or a proportion of required car parking, based on the estimated cost of providing the requisite parking, including any associated access and manoeuvre facilities. Cash-in-lieu of parking shall be paid into a trust fund and used to provide public parking in the vicinity of the development site(s) in relation to which any cash-in-lieu contributions have been received.

In respect to the above the following comments are made:

In relation to (i), the application proposes on-site parking for 16 vehicles. This leaves a shortfall of 10 spaces.

In relation to (ii), 3 immediately adjacent on-street car parking spaces are available. It is considered reasonable to apply these on street spaces in lieu of the shortfall.

In relation to (iii), no off site parking is being proposed by the applicants.

In relation to (iv), it is considered appropriate to require a cash-in-lieu contribution which could then be used to develop additional public parking facilities nearby. It is open to elected members to determine a cash-in-lieu payment in respect of all or part of the identified 7 space shortfall (7 spaces assuming elected members support the application of the three on-street car parking spaces referred to above).

Heritage

It is proposed to restore and conserve the "old" liquor store building as an integral component of this application.

While the subject property is not on the Heritage List under TPS 3 it is in the Draft MI with a high Management Category rating.

It is therefore considered appropriate for Council to apply the following further TPS 3 provision in considering the variations proposed:

"7.5. Variations to Scheme provisions for a heritage place or heritage area

Where desirable to —

- (a) *facilitate the conservation of a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the Heritage List under clause 7.1.1; or*

- (b) *enhance or preserve heritage values in a heritage area designated under clause 7.2.1,*

the local government may vary any site or development requirement specified in the Scheme or the Residential Design Codes by following the procedures set out in clause 5.6.2."

The retention of the existing historic building, and redevelopment at the rear of 83 Canning Highway is similar to a recent application Council supported at 22 May Street, which involved retention of an "old" weatherboard and iron house with grouped dwelling development at the rear.

The applicant/owner verbally advised the Town Planner at Mediation on 3 December 2007 that he would be prepared to agree to the "old" building being included on the Heritage List under TPS 3, and to arrange for a "Restrictive Covenant" to be registered against the title to protect the building in the future.

11 December 2007

MINUTES

Building Height

In regard to the height of the proposed development the applicant submits as follows:

“The site is surrounded by a tall brick wall built up to the western and southern boundaries. The wall is part of the Trade Winds Hotel development and is approximately 10.3 metres high. The development has been elevated so that the underside of the first floor sits in line with the top of the existing stone wall in Sewell Street in order that the views to the north are obtained over the existing heritage parapet of the retail space facing Canning Highway (which has a height of approx 5.3 metres).

The upper floor will be occupied by two generously sized apartments and with 2.7 metre floor to ceiling height. The floors of the offices set at 3.4 metre floor to floor height. The total building height will be approx 16.4 metres because of the need to set the building above the existing parapet facing Canning Highway and as a direct response to the Trade Winds development.

The maximum height envisaged by TPS3 in this location is 8.0 metres although 10.5 metres is envisaged for Special Business Zonings and the Trade Winds boundary walls are 10.3 metres high.”

While a portion of the proposed development is higher than the adjacent Tradewinds development the higher component is well set back from Canning Highway and is considered to provide an attractive “architectural foil” for the built environment between Sewell Street and Hubble Street next to Canning Highway.

Plot Ratio

Discretion is sought for the plot ratio to be increased from 0.5 to 1.39.

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

In this case, the proposed development has an east–west orientation, abutting a larger development to the south and west (which also has its building bulk orientation east–west). The northern elevation has a mix of building heights.

These factors ameliorate the overall impact of the development.

Given the relative compatibility of orientation, bulk and scale with the adjoining property to the south and west, the proposed plot ratio will not have an undue adverse impact on the amenity of the Canning Highway Mixed Use zone, and can be supported.

Conclusion(s)

Based on the retention and restoration of the existing building on the site, the positive contribution to streetscape that the new building is considered to make, its compatibility with the adjoining Tradewinds development, and the general “tidying up” of what is presently an unattractive street corner the application with variations is supported.

RECOMMENDATION

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

- (a) variation to wall height pursuant to Town Planning Scheme No 3, sub-clause 5.8.2 from 5.5m to 14m;
- (b) variation to roof height pursuant to Town Planning Scheme No 3, sub-clause 5.8.2 from 8m to 15.8m;
- (c) variation to plot ratio for development in the Mixed Use zone pursuant to Town Planning Scheme No 3 from 0.5:1 to 1.39:1;

for the construction of a 4-storey Mixed Use development comprising an existing ground floor commercial building divided into 3 shops, with new development comprising 4 offices, and two 2-bedroom residential apartments on 3 upper levels in accordance with the plans date stamp received on 4 May 2007 subject to the following conditions:

11 December 2007

MINUTES

1. prior to the issue of a building licence the applicant is to pay for the valuation of, and pay the equivalent cash-in-lieu for a shortfall of 7 on-site car parking spaces;
2. To ensure the heritage values of the existing building (the "liquor store") at 83 Canning Highway are not adversely impacted upon at any time in the future; that the owners agree to the implementation of a Restrictive Covenant, the costs of which are to be met by the owners, and which will be between themselves, Council and the National Trust and which is to Council's satisfaction and designed to ensure that any proposed action which impacts on the heritage values of the property, including any development or demolition of all or part of the property, will require Council's express approval before that proposed action can be implemented.
3. the owner is to provide a written agreement for Council to include the existing building on the Heritage List under Town Planning Scheme No. 3;
4. The land owner ("the Owner") entering into a Deed of Agreement with the Western Australian Planning Commission ("WAPC") which provides that if part of the Land, the subject of the primary regional road reserve ("Relevant Land"), shown in the Metropolitan Region Scheme as at 3 December 2007 and in the attached plan, is required to be taken by a statutory or public authority, then the Owner shall be entitled to exercise its rights and remedies at law, in equity or under statute to seek and obtain compensation (save and except that any increase in the value of that part of the existing buildings on the Relevant Land as at 3 December 2007, resulting from Canning 83 Pty Ltd carrying out the proposed development, will not be taken into account in determining the amount of compensation payable to the Owner) and which contains such other terms and conditions agreed to by the parties."
5. 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.
6. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
7. 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.
8. all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
9. all parapet walls to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
10. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
11. any new crossovers which are constructed under this approval 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.
12. 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.
13. 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:

11 December 2007

MINUTES

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

Mr Naude (owner) and Mr MacCormac (architect) addressed the meeting in support of this proposal.

Elected members raised the issue of community consultation and the extent of advertising previously undertaken regarding this development.

Mr Naude was asked whether he would be amenable to the matter being deferred to allow full advertising of this proposal (ie newspaper advertisement, sign and letter drop) given the scale of the development.

Mr Naude advised that he was agreeable to advertising taking place provided the matter was considered by Council at its February 2008 round of meetings.

RECOMMENDATION TO COUNCIL

Mayor Ferris – Cr de Jong

That the application be held over pending public advertising in accordance with Section 9.4.3(b) of the Town Planning Scheme No 3.

CARRIED

T136. EN BLOC RECOMMENDATION TO COUNCIL

Mayor Ferris – Cr de Jong

That Council adopts en bloc the following recommendations of the Town Planning & Building Committee meeting of 11 December 2007 in respect to Items MB Ref T136.1 – T136.6.

CARRIED

T136.1 Dalgety Street No 39

Applicant & Owner: Paul & Kathryn Stark

Application No. P219/2007

By Chris Warrener, Consultant Town Planner on 26 November 2007

BACKGROUND

Description of Proposal

An Application for Planning Approval for a 5m X 5m X 3.6m high pitched roof gazebo next to the swimming pool at the rear of 39 Dalgety Street.

Statutory Considerations

Town Planning Scheme No. 3 – Residential R12.5

Local Planning Strategy - Woodside Precinct (LPS)

Residential Design Codes (RDC)

11 December 2007

MINUTES

Relevant Council Policies

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

Documentation

Plans and relevant forms date stamp received on 12 November 2007

Date Application Received

12 November 2007

No. of Days Elapsed between Lodgement & Meeting Date

29 days.

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

- 8 Jan 1990: Building Licence issued for additions;
13 Nov. 2003: CEO grants approval under delegated authority for partial demolition to facilitate alterations and additions comprising new bedrooms & ensuite, dining/family room, activity/games room, kitchen & laundry & outbuildings comprising a studio to the rear & a belowground swimming pool;
14 Jan. 2004: Building Licence issued for additions to residence & new studio;
13 Oct. 2004: CEO grants approval under delegated authority for a belowground swimming pool;
8 Aug. 2007: CEO grants approval under delegated authority for a belowground swimming pool;

CONSULTATION

REPORT

Issues

Boundary Setbacks

The proposed gazebo is set back 1m from the north side boundary common with 37 Dalgety Street, and is set back 1.3m from the west side boundary common with 38 Allen Street.

The RDC recommend a 1.5m setback.

Discussion

The gazebo is an open-sided structure designed to provide some outdoor shelter next to the approved swimming pool.

While the setbacks are less than recommended under the RDC the potentially affected property owners have all signed letters of “no objection” to the gazebo.

The variations are considered relatively minor and can be supported.

RECOMMENDATION

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

- (a) variation to the north side boundary setback pursuant to the Residential Design Codes from 1.5m to 1m
- (b) variation to the west side boundary setback pursuant to the Residential Design Codes from 1.5m to 1.3m

for the construction of a 5m X 5m X 3.6m high pitched roof gazebo next to the swimming pool at the rear of 39 Dalgety Street in accordance with the plans date stamp received on 12 November 2007 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.

11 December 2007

MINUTES

2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed gazebo **is not** to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
5. 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

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

- (a) **variation to the north side boundary setback pursuant to the Residential Design Codes from 1.5m to 1m**
- (b) **variation to the west side boundary setback pursuant to the Residential Design Codes from 1.5m to 1.3m**

for the construction of a 5m X 5m X 3.6m high pitched roof gazebo next to the swimming pool at the rear of 39 Dalgety Street in accordance with the plans date stamp received on 12 November 2007 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 building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
3. **the proposed gazebo **is not** to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
4. **all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
5. **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).*

11 December 2007

MINUTES

T136.2 Osborne Road No 39, Unit 1
Applicant: JM Jensen
Owner: Lisa Charmaine Mei Li Chan
Application No. P216/2007

By Chris Warrener, Consultant Town Planner on 26 November 2007

BACKGROUND

Description of Proposal

An Application for Planning Approval for a double carport in the front setback of Unit 1, 39 Osborne Road

Statutory Considerations

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

Relevant Council Policies

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

Documentation

Plans and relevant forms date stamp received on 7 November 2007

Date Application Received

7 November 2007

No. of Days Elapsed between Lodgement & Meeting Date

34 days.

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

- 15 Dec. 1986: Council grants planning approval for the erection of 5 additional units at 39 Osborne Road;
- 22 Dec. 1986: State Planning Commission endorses Certificate of Approval to a Strata Plan;
- 16 March 1987: Council grants planning approval for 5 units in addition to an existing dwelling;
- 18 March 1987: Building Licence 124A/1256 issued for additions to existing residence and 5"Class II" units;
- 17 Oct. 1988: Council approves erection of an enclosed garage between Unit 1 and the northern boundary;
- 25 Sept. 1991: Building Licence 139/1872 issued to enclose a verandah at Unit 1;
- 15 Nov. 1993: Council grants a relaxation of standards for a reduced setback to the northern boundary to allow the erection of a garage;
- 18 Nov. 1993: Building Licence 148/2108 issued for a new brick garage;

CONSULTATION

Site Inspection

By Consultant Town Planner on 26 November 2007

REPORT

Issues

Streetscape

LPP 142 states:

"Part 2 – Streetscape

- (i) *Buildings are to be set back such a distance as is generally consistent with the building set back on adjoining land and in the immediate locality.*

11 December 2007

MINUTES

- (ii) *Notwithstanding (i) above, garages and carports located at or behind the main building line for primary and secondary streets and in accordance with Table 1 – Minimum Setbacks of the Residential Design Codes.”*

The objective of this part of LPP 142 is to ensure that garages and/or carports are not the dominant feature in the front setback area, and should therefore be at a setback equal to or greater than the setback of the residence.

In this example the grouped dwelling Unit 1 at 39 Osborne Road is set back 8.7m from the front boundary. The proposed carport is set back 1.5m from the east side (front) boundary.

Being forward of the ‘main building line’ this application is for a carport which contravenes LPP 142.

Discussion

This application is for a double carport and includes demolition of a portion of the existing solid red brick fence and erection of an electric sliding gate.

The application plans show the sliding gate comprising horizontal slats however the owner advised in a telephone discussion with the Town Planner that the intention is to have an open grill style gate, which would comply with Council's front fence policy

The purpose of LPP 142 in relation to carports and garages is to reduce the dominance of these structures on the streetscape.

The subject property contains what was once a single house now a part of a grouped dwelling development. Unit 1 is bordered by a solid red brick fence, which surrounds the outdoor living area of this property.

When the parent lot was subdivided what was previously the ‘back yard’ of 39 Osborne Road was developed into 5 grouped dwellings, and the only yard space for Unit 1 is in the ‘front setback’ area, and the solid fence provides improved privacy for this area.

The proposed carport design has been prepared to match the design of the existing single storey house similar to a carport and a double garage forward of the building line on two other properties nearby at 40 and 42 Osborne Road.

Being an open sided structure a carport is considered to have less impact on streetscape than a garage in the front setback. Combined with the existing solid brick fence this particular carport application is not considered to negatively impact on streetscape, and combined with an open-style sliding gate, which improves the permeability and street views of the house, can be supported.

RECOMMENDATION

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

- (a) variation to Local Planning Policy 142 for a double carport forward of the main building line;
- (b) variation to the east side (front) boundary setback pursuant to the Residential Design Codes from 7.5m to 1.5m

for the construction of a double carport in the front setback of Unit 1, 39 Osborne Road in accordance with the plans date stamp received on 7 November 2007 subject to the following conditions:

- 1. prior to the issue of a Building licence the applicant is to submit amended plans specifying the electric auto sliding gate as open style complying with Local Planning Policy 143 – Fencing.
- 2. the works to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in

11 December 2007

MINUTES

- compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
 4. the proposed carport **is not** to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
 5. all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
 6. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
 7. any new crossovers which are constructed under this approval 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.
 8. 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.
 9. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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

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

- (a) **variation to Local Planning Policy 142 for a double carport forward of the main building line;**
- (b) **variation to the east side (front) boundary setback pursuant to the Residential Design Codes from 7.5m to 1.5m**

for the construction of a double carport in the front setback of Unit 1, 39 Osborne Road in accordance with the plans date stamp received on 7 November 2007 subject to the following conditions:

1. **prior to the issue of a Building licence the applicant is to submit amended plans specifying the electric auto sliding gate as open style complying with Local Planning Policy 143 – Fencing.**
2. **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.**
3. **the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**

11 December 2007

MINUTES

4. the proposed carport **is not** to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. If Council refuses to approve such works, then this condition cannot be satisfied and this planning approval is not valid.
7. any new crossovers which are constructed under this approval 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.
8. 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.
9. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

- (a) *this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.*
- (b) *a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.*
- (c) *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).*

T136.3

Stratford Street No 2

Applicant & Owner: Phillip Beekhuizen & Melissa Drieberg
Application No. P205/2007

By Chris Warrener, Consultant Town Planner on 28 November 2007

BACKGROUND

Description of Proposal

An Application for Planning Approval for a 7.5m long section of a front fence, visually non-permeable up to 2.2m high.

Statutory Considerations

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

Relevant Council Policies

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

Documentation

Plans and relevant forms date stamp received on 22 October 2007

11 December 2007

MINUTES

Date Application Received

22 October 2007

No. of Days Elapsed between Lodgement & Meeting Date

50 days

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

15 May 1991: Building Licence issued for a single residence;

14 Nov. 2002: Building Licence issued for a free standing gable-roofed pergola (patio).

23 July 2007: CEO grants approval under delegated authority for a 6.4m long X 3m wide below ground fibreglass swimming pool in the front setback.

CONSULTATION

Town Planning Advisory Panel

The application was referred to the Town Planning Advisory Panel who made the following comments:

1. *The existing fence is appropriate to the era of the dwelling*
2. *The new fence around the pool would look better without the timber panel inserts, which are both out of character and out of proportion with the existing. The timber picket inserts should be deleted in lieu of a solid wall element, however the wall height should be limited to 1800 above the footpath.*

Site Inspection

By Consultant Town Planner on 15 November 2007

REPORT

Issues

Fence policy

This application is for a 7.5m long section of front fence that is visually non-permeable up to 2.2m high.

LPP 143 states:

“Part 3 - Fence Design

Council requires front fences and walls above 1.2m to be visually permeable defined as:

Continuous vertical gaps of at least 50mm width occupying not less than 60% of the face in aggregate of the entire surface that is at least 60% of the length of the wall must be open. (Note: This differs from the ‘R’ Codes)

3.1 Maximum Height

The maximum height of any part of the fence is to be 1.8m.

Discussion

The section of fence proposed to be visually non-permeable is to be built alongside a swimming pool installed in the front setback, which was approved by Council in July 2007.

The existing front fence comprises a 0.7m high (above the footpath) limestone retaining wall with white timber pickets varying up to 1.17m high above the limestone retaining wall (total fence height above footpath = 1.8m).

The applicants’ plan proposes that 13.6m of this existing fence plus a new visually permeable front gate be retained. The total length of visually permeable fence = 14.8m.

11 December 2007

MINUTES

The applicants submitted a covering letter with the application stating 3 reasons in support of the proposed fence.

LPP 143 states:

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

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

In this particular example the application is for a portion of a front fence at a property, which is considered to fit within the circumstances outlined in point 4.4 above and can be supported.

However there does not appear to be a valid reason for supporting the new section of fence being higher than the existing fence above the footpath, at 1.8m, and the timber infills do not contribute to the aesthetics of this new section of fence.

At 1.8m above the footpath the fence provides an effective screen from views of passersby.

RECOMMENDATION

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

- (a) variation to Local Planning Policy 143 – Fencing for a 7.5m long section of a front fence to be visually non-permeable at 2 Stratford Street in accordance with the plans date stamp received on 22 October 2007 subject to the following conditions:
 1. prior to the issue of a Building Licence the applicant is to submit amended plans to limit the height of the new visually impermeable section of fence to 1.8m above the footpath, and to delete the timber infills in favour of the limestone finish;
 2. 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.
 3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
 4. the proposed fence **is not** to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
 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:

11 December 2007

MINUTES

- (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

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

- (a) variation to Local Planning Policy 143 – Fencing for a 7.5m long section of a front fence to be visually non-permeable

at 2 Stratford Street in accordance with the plans date stamp received on 22 October 2007 subject to the following conditions:

1. prior to the issue of a Building Licence the applicant is to submit amended plans to limit the height of the new visually impermeable section of fence to 1.8m above the footpath, and to delete the timber infills in favour of the limestone finish;
2. 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.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed fence is not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

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

T136.4

Munro Street No 11

Applicant: Adrian De Lucia

By Chris Warrener, Consultant Town Planner on 6 December 2007

BACKGROUND

Description of Proposal

An Application to Council for a second crossover at 11 Munro Street

Relevant Council Policies

Local Planning Policy 123 – Footpaths and Crossovers (LPP 123)

Documentation

Request letter date stamp received on 5 December 2007

Date Application Received

5 December 2007

11 December 2007

MINUTES

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

4 March 1982: Building Licence issued for an 8.4m X 6.0m timber framed pergola;
20 June 2006: Council grants conditional approval for a 3-level house incorporating a 6.5m wide crossover to Locke Crescent.

CONSULTATION

Site Inspection

By Consultant Town Planner on 6 December 2007

REPORT

Issues

Additional crossover

This application is for an additional crossover to the property at 11 Munro Street (corner Locke Crescent).

LPP 123 states:

"3.5 There will be only 1 crossover per lot unless otherwise agreed by an absolute majority of Council."

Discussion

At its meeting on 20 June 2006 Council approved an application for a 3-level house at 11 Munro Street.

The application proposed 2 crossovers, an existing 6.5m wide crossover off Locke Crescent, and a proposed 4.8m wide crossover off Munro Street.

The Locke Street crossover provides access to a proposed double garage the Munro Street crossover provides access to the main entry to the house and hard stand area for visitor parking.

However the Council decision to approve the application included the following condition:

"8. approval is not granted for proposed crossover to Munro Street"

In support of this application for the additional crossover to Munro Street the applicant states:

"Our approved proposal (currently under construction), sits at the corner of Locke Crescent and Munro street at a sweeping junction. Our design concept was initially developed in order to realise the full potential of the site and work with the natural topography of the land. As a result the primary garage facility is located at the Locke Crescent boundary of the site. This created easy access for daily use by the occupants who will not need admittance through the formal entry on a regular basis.

However, as the primary and formal entry addresses Munro Street, visitors will not have a suitable parking facility at this location. We feel a secondary single driveway access an important solution in minimizing on street and verge parking at this dangerous corner.

This setup was deemed suitable at 18 Munro Street which is almost a mirror image of this site on the opposite side of Munro Street. The secondary driveway access at number 18 (currently under construction) will help keep visiting cars off the street, limiting the potential for an accident and a negative impact to the streetscape."

The site has been inspected in light of the concerns raised by the applicant.

Being situated quite close to a street corner it would be desirable to reduce/eliminate the potential for on-street parking in this area for visitors to the main entry to the house.

The proposed Munro Street crossover will improve road safety by reducing/eliminating on-street parking close to a street corner on a downhill slope where sight distance south along Locke Crescent is obscured due to the acute angle of its intersection with Munro Street. However the width of this crossover should comply with LPP 123.

The property currently being redeveloped at 18 Munro Street, which was the subject of a protracted appeal process, does as this applicant states have 2 crossovers, one off Locke Crescent, and one off Munro Street.

Similar road geometry exists at this property and the additional crossover to Munro Street was supported by Council on the basis of road safety, and streetscape issues (keeping vehicles parked away from the corner off street on the property).

RECOMMENDATION

That Council exercise its discretion in granting approval for a variation to Local Planning Policy 123 for a second crossover at 11 Munro Street in accordance with the plans date stamp received on 18 May 2006 subject to the width of the additional crossover to Munro Street being limited to 3m.

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) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*

RECOMMENDATION TO COUNCIL

That Council exercise its discretion in granting approval for a variation to Local Planning Policy 123 for a second crossover at 11 Munro Street in accordance with the plans date stamp received on 18 May 2006 subject to the width of the additional crossover to Munro Street being limited to 3m.

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) *with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.*

T136.5

Angwin Street No 13

Applicant: Allerding & Associates

Owner: Ms S. Booth

Application No. P129/2007

By Chris Warrener, Consultant Town Planner on 7 December 2007

BACKGROUND

Description of Proposal

To reconsider the decision, which Council made at its meeting held on 18 September 2007, pursuant to an order made under s31 of the State Administrative Tribunal (SAT) Act 2004.

Council decided:

"Cr Dobro – Cr Ferris

That:

1. *Council refuses to amend its Planning Approval dated 2 March 2004 for the removal of rear balcony screens for the following reasons:*

11 December 2007

MINUTES

- (a) non compliance with the Acceptable Development criteria given in section 3.8.1 of the R Codes
 - (b) non compliance with clauses 10.2(a), 10.2(c), 10.2(j), 10.2(o), 10.2(p) and 10.2(z) of the Town of East Fremantle Town Planning Scheme No 3
2. Pursuant to Town Planning Scheme No 3 sub-clause 8.4.1 Council grant planning approval for modifications to the front fence at 13 Angwin Street in accordance with the plans date stamp received on 31 August 2007 subject to the following conditions:
- (a) a retrospective acknowledgement being obtained from Council's Building Surveyor for the unauthorised works to the front fence.
 - (b) the applicant/owner is to provide screening along the south side boundary in the front setback to the satisfaction of Council; and
 - (c) this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote

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

- (a) this decision of Council does not include acknowledgement or approval of any other 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 retrospective acknowledgement is to conform with the approved plans unless otherwise approved by Council.
- (c) in regard to the condition relating to the finish of the neighbour's side of the boundary wall for the rubbish bin recess area it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish. CARRIED

Statutory Considerations

Town Planning Scheme No. 3 – Clause 8.3 Amending or revoking a planning approval
Local Planning Strategy – Riverside Precinct (LPS)
Residential Design Codes (RDC)

Relevant Council Policies

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

Documentation

Plans and relevant forms date stamp received on 28 June 2007

Date Application Received

Application for a review received by SAT on 18 October 2007

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

- 16 Dec 2003: Council decides that an application for additions be held over pending receipt of west elevation showing relationship of revised proposal (building height of 29.00m AHD, wall height of 26.16m AHD and a minimum roof pitch of 26 degrees) in relation to adjoining sites.
- 2 March 2004: Council grants conditional approval for setback and height variations for additions to the 2-storey house;
- 10 June 2005: Approval granted under delegated authority for amended plans;
- 2 Aug 2005: Demolition Licence 05/04 issued for existing house;
- 4 Nov 2005: Building Licence 05/49 issued for additions and alterations;
- 12 June 2007: Request from Owner for a variation to the Building Approval regarding the front fence to accommodate a recessed bin area;
- 25 June 2007: Email from owner of adjoining property (11 Angwin Street) regarding unauthorised building and overlooking;
Site visit to investigate works at 13 Angwin Street;
- 18 Sept 2007: Council decides to refuse to amend the Planning Approval dated 2 March 2004 for the removal of rear balcony screens, and conditionally approves modifications to the front fence;
- 18 Oct 2007: SAT receives application for review;
- 31 Oct 2007: Directions Hearing;

11 December 2007

MINUTES

7 Nov 2007: Mediation on-site;
19 Nov 2007: Mediation at SAT.

CONSULTATION

Other agency/authority

State Administrative Tribunal (SAT)

Site Inspections

By Consultant Town Planner on 25 June, 23, 30 August, & 7 November 2007

REPORT

Background

This report has been prepared in response to an Order, made pursuant to a Mediation held at SAT on 19 November 2007, which states:

"2. Pursuant to s 31 of the State Administrative Tribunal Act 2004 the respondent is invited to reconsider the reviewable decisions at its meeting of 18 December 2007."

Section 31 of the SAT Act states:

"31. Tribunal may invite decision-maker to reconsider

- (1) At any stage of a proceeding for the review of a reviewable decision, the Tribunal may invite the decision-maker to reconsider the decision.*
- (2) Upon being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may
 - (a) affirm the decision;*
 - (b) vary the decision; or*
 - (c) set aside the decision and substitute its new decision.**
- (3) If the decision-maker varies the decision or sets it aside and substitutes a new decision, unless the proceeding for a review is withdrawn it is taken to be for the review of the decision as varied or the substituted decision."*

Council the decision maker is invited pursuant to the above section of the SAT Act, to reconsider the decision made at its meeting held on 18 September 2007.

History

At its meeting on 2 March 2004 Council approved (Attachment 1) the 3-level house at 13 Angwin Street subject to a number of standard conditions including the following additional condition:

"11. prior to first occupation, fixed obscure screening shall be provided to a height of 1.6m above the finished floor level to the ground and upper floor balconies facing west, the screening shall be not less than 2m in length extending from the south/western corner, to the satisfaction of the Chief Executive Officer in consultation with relevant officers."

This condition was applied based on the following information stated in the then officer's report to Council:

"Relaxation is sought for the southern side setback to the ground floor screened balcony be reduced from 5m to 1m. The location of the screened balcony is considered to have some impact on the adjoining property in terms of overlooking given the angled nature of the subject dwelling. As such, it is recommended that additional screening be provided to a portion of the south-west corner of the balcony. The setback with appropriate screening

11 December 2007

MINUTES

is considered not to have an adverse impact on the affected property and can be supported.

Relaxation is sought for the southern side setback to the upper floor screened balcony be reduced from 6.5m to 1m. The same considerations apply to this balcony as discussed above and the same screening provisions will be required."

A Building Licence for the development was issued on 4 November 2005; plans submitted for the purposes of obtaining this building licence specified the balcony screening pursuant to condition 11 of the planning approval.

On 12 June 2007 the property owner Ms Sue Booth submitted a request for a variation to the Building Approval regarding the front fence (Attachment 2).

On 25 June 2007 a part-owner of 11 Angwin Street Ms Kristen McPhail contacted the Town Planner to express concern about the works being undertaken at 13 Angwin Street, and followed this conversation up with an email regarding the matter (Attachment 3).

On the same day the Town Planner undertook a site inspection, and discovered that the works applied for on 12 June 2007 had been substantially commenced.

The Town Planner met Ms Booth at 13 Angwin Street and advised her that she did not have approval for the front fence works. At her invitation he also inspected the balcony views from the rear.

Following this inspection the Town Planner met Ms McPhail to undertake a similar inspection and consider the impact of the development at 13 Angwin Street on the property at 11 Angwin Street.

In a letter dated 26 June 2007 the owner of 13 Angwin Street was requested to stop work on the front fence, and lodge an Application for Planning Approval for the unauthorised works.

On 28 June 2007 Council received an Application for Planning Approval for the unauthorised works to the front fence, and additionally a request to amend the original planning approval by removing Condition 11 requiring balcony screening.

This application was referred to the potentially affected landowners for comment. The following summarises the submission from the McPhails:

Submission from Kristen & Andrew McPhail

- Object to location of garbage bin area because of overlooking
- Object to balcony screening not having been installed as required

At its meeting in September 2007 Council decided to grant conditional approval for the modifications to the front fence, and refuse to amend the Planning Approval regarding the rear balcony screening.

A condition of the approval for the front fence variations requires additional screening along the south side, and was imposed in response to the neighbours' objections regarding the impacts of the unauthorised works on their front yard privacy.

On 18 October 2007 SAT received an application for review of the Council's decision.

Issues

The reviewable decision comprises two issues:

1. the decision not to allow removal of the balcony screens, and

11 December 2007

MINUTES

2. the condition applying to approval for front fence variations, which states:
 “(b) *the applicant/owner is to provide screening along the south side boundary in the front setback to the satisfaction of Council;*”

1. Balcony screens

The condition requiring screening of the south west corner of the two balconies at the rear of the 3-level house at 11 Angwin Street was imposed in response to overlooking and also to ensure that the relevant privacy setbacks can be achieved.

The area overlooked comprises a gazebo and barbeque area and the north side portion of a verandah adjacent to a study.

The overlooking from the balconies is substantial and is of an outdoor living area and a habitable room for which the RDC recommend an effective privacy separation distance of 15m (page 79, RDC), however as this is “not realistically achievable” the RDC recommend an acceptable compromise setback of 7.5m.

The subject balconies are set back 1m from the boundary common with 11 Angwin Street therefore it was considered necessary to require additional screening to a portion of their west sides.

The applicant has submitted a “without prejudice” offer (Attachment 4) to settle the matter based on providing screening in the front setback area including obscure glazing of a stairwell window in lieu of installing the balcony screens at the rear.

This offer was forwarded to the owners of 11 Angwin Street for their consideration.

On 6 December 2007 Ms McPhail emailed a response to the Town Planner rejecting this offer and providing additional information regarding the stairwell window (Attachment 5).

2. Front fence

In regard to the screening in the front setback the applicant and SAT Member M. Connor advised Council’s Town Planner at the Directions Hearing on 31 October 2007, and at the Mediation on 19 November 2007 that they consider that because this condition does not directly relate to the modifications to the front fence it is not sustainable, and it is unlikely that the Tribunal would uphold it.

Following Mediation member Connor provided two examples (Attachments 6 & 7) of SAT decisions regarding conditions, which at the time SAT decided could not reasonably be imposed on the respective applications, and which, in the member’s and the applicant’s consultant’s view, are relevant to the subject matter, and go to a conclusion that the condition imposed on the front fence by the Town of East Fremantle cannot be reasonably sustained.

While the two examples provided by the SAT member are for two completely different matters to the subject matter it is considered reasonable to apply the principle that conditions of a planning approval should directly relate to the works, which are the subject of an application.

However it should be noted that in deciding whether or not to reconsider its decision to require screening as a condition of approval for the front fence variation Council should be mindful of the impact of the variations (particularly the bin enclosure) on the privacy and amenity of the neighbouring property at 11 Angwin Street.

The following matters listed in TPS 3 Clause 10.2, which Council must take in to consideration when it determines an application for planning approval, are considered relevant to this application:

11 December 2007

MINUTES

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

With respect to the above, under TPS 3, Part 4: Zones, the following stated objectives are relevant:

- *To safeguard and enhance the amenity of residential areas and ensure that new housing development is sympathetic with the character and scale of the existing built form.*
- *To encourage high standards and innovative housing design, which recognises the need for privacy, solar access, cross ventilation, water sensitive design and provision of ‘greenspace’.*
- *To recognise the importance of design elements such as the ‘front yard’ and the ‘back yard’ to the character, amenity and historical development of the Town and to the community.*

The amenity and privacy of the front yard at 11 Angwin Street are considered to be negatively impacted by the unauthorised works to the front fence, which include a bin enclosure overlooking an outdoor spa, and it is considered reasonable under the circumstances to impose a condition for screening to ameliorate these impacts.

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

In regard to (j) based on the objections raised by the neighbours at 11 Angwin Street, and the impacts observed on site the bin enclosure area is considered to be an incompatible use immediately adjacent to the neighbours’ outdoor spa.

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

In regard to (p) the unauthorised works in the front setback of 13 Angwin Street are considered to have a negative impact on the amenity of 11 Angwin Street therefore it is considered necessary to require screening to reduce this impact.

(z) *any relevant submissions received on the application;*

(zb) *any other planning consideration the local government considers relevant;*”

In regard to (z) and (zb) the owners of 11 Angwin Street objected to the proposed variations to the front fence at 13 Angwin Street. In response Council imposed a condition requiring the installation of screening to protect the privacy and amenity of the neighbouring property.

The condition requiring screening was reasonably imposed given that the variations to the front fence have a direct impact on the neighbour notably the location of the bin storage area, and in particular its impact on the amenity of the property at 11 Angwin Street, and given the neighbours’ stated objections to these unauthorised works, objections which have been assessed as valid in the circumstances, Council has an obligation pursuant to TPS 3 and the RDC to ensure that the impacts on the neighbours and their property are minimised.

Conclusion

The works to the front fence were unauthorised.

They impact on the amenity of the adjoining property.

It was open to Council to prosecute pursuant to “non-compliance” under TPS 3 and the Planning and Development Act 2005.

However in a spirit of goodwill and cooperation between neighbours (albeit subject to a condition requiring screening), Council approved these unauthorised works.

11 December 2007

MINUTES

The balcony screens at the rear are required as a condition of the Planning Approval granted by Council for the 3-level house at 13 Angwin Street in March 2004.

These balconies substantially overlook the adjoining property at 11 Angwin Street specifically an outdoor entertaining/living area, and a verandah next to a habitable room.

The removal of the screens will result in the development not "complying" with the privacy setback provisions of the RDC.

Irrespective of any agreement which might have, or might in future be negotiated between the adjoining property owners in regard to screening both in the front setback and the balconies at the rear, proper and orderly planning principles dictate that Council needs to base its decisions having regard to the privacy and amenity issues involved for *the property* and not just confine itself to considering the views of the current owners and neighbours.

In this particular case the overlooking is substantial, and is considered to have an impact not just on the amenity of the affected property owner, but also on the amenity of the affected property.

RECOMMENDATION

That Council advises the State Administrative Tribunal that pursuant to Order No 2 made at Mediation on 19 November 2007 regarding Matter No DR 348 of 2007 it has decided not to vary the reviewable decisions made at its meeting on 18 September 2007.

RECOMMENDATION TO COUNCIL

That Council advises the State Administrative Tribunal that pursuant to Order No 2 made at Mediation on 19 November 2007 regarding Matter No DR 348 of 2007 it has decided not to vary the reviewable decisions made at its meeting on 18 September 2007. CARRIED

136.6 *Municipal Inventory & Heritage List*

The CEO provided a verbal report on progress with respect to this issue and sought the views of elected members with respect to the direction which they wished Council to take on the issue.

There was unanimous agreement by elected members that the CEO prepare a report for the next Council meeting based on the following proposed course of action:

- 1, "Readopt" entire Draft Heritage Survey as Council's revised Municipal Inventory.
2. Council to adopt in principle that, subject to the carrying out of the public consultation requirements given in clause 7.1.3 of Town Planning Scheme 3, Council's Heritage List comprise (unless the named property has been demolished):
 - (i) all of the current entries in Council's Heritage List
 - (ii) all of the entries in Council's current Municipal Inventory
 - (iii) all of the entries in Council's revised Municipal Inventory, at this stage for a twelve month interim period.
3. Pursuant to the above, Council officers and elected members carry out their respective obligations in relation to clause 7.1.3 of Town Planning Scheme 3, at the same time giving home owners the opportunity to comment on the issue of the entry of their property onto Council's revised Municipal Inventory.
4. Following close of comment period and preparation of officer's report, Council to make a formal decision on entries to be included in the Municipal Inventory.
5. Following close of comment period and preparation of officer's report, Council to make a formal decision on entries to be included in the Heritage List.

T137. BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING

Nil.

T138. CLOSURE OF MEETING

There being no further business, the meeting closed at 10.30pm.

*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 11 December 2007, Minute Book reference **T124. to T138.** were confirmed at the meeting of the Committee on*

.....

Presiding Member

With the correction that the following impartiality declaration being inserted prior to MB Ref T135.3 Preston Point Road No 174:

*“Cr de Jong made the following impartiality declaration in the matter of 174 Preston Point Road:
“As a consequence of my friendship with the representative for the owners (Beth Thompson) 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.”*