MINUTES OF A TOWN PLANNING & BUILDING COMMITTEE (PRIVATE DOMAIN) MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON TUESDAY, 11 NOVEMBER, COMMENCING AT 6.37PM.

T94. OPENING OF MEETING

T94.1 ***Present***

Cr Stefanie Dobro	Presiding Member
Mayor Alan Ferris	from 7.25pm
Cr Barry de Jong	
Cr Richard Olson	
Cr Alex Wilson	
Mr Stuart Wearne	Chief Executive Officer to 10.15pm
Mr Chris Warrener	Town Planner
Mrs Peta Cooper	Minute Secretary
Cr David Arnold	Observer
Cr Dean Nardi	Observer

T95. WELCOME TO GALLERY

There were 24 members of the public in the gallery at the commencement of the meeting.

T96. APOLOGIES

An apology was submitted on behalf of Cr Maria Rico and Mayor Alan Ferris advised he would be arriving late for the meeting.

T97. CONFIRMATION OF MINUTES

T97.1 ***Town Planning & Building Committee (Private Domain) – 14 October 2008***

Cr Wilson – Cr Olson
That the Town Planning & Building Committee (Private Domain) minutes dated 14 October 2008 as adopted at the Council meeting held on 21 October 2008 be confirmed. CARRIED

T98. CORRESPONDENCE (LATE RELATING TO ITEM IN AGENDA)

Nil.

T99. REPORTS OF COMMITTEES

T99.1 ***Town Planning Advisory Panel – 28 October 2008***

Cr Olson – Cr de Jong
That the minutes of the Town Planning Advisory Panel meeting held on 28 October 2008 be received and each item considered when the relevant development application is being discussed. CARRIED

T100. REPORTS OF OFFICERS

T100.1 ***Receipt of Reports***

Cr de Jong – Cr Wilson
That the Reports of Officers be received. CARRIED

T100.2 ***Order of Business***

Cr de Jong – Cr Wilson
The order of business be altered to allow members of the public to speak to relevant agenda items. CARRIED

Cr Dobro made the following impartiality declaration in the matter of 33 Osborne Road: "As a consequence of my friendship with the applicant, Mr John Kirkness, 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.

T100.3 ***Osborne Road No. 33 (Lot 20)***
Applicant: John Kirkness
Owner: Brian & Elizabeth Lovell
Application No. P181/2008
By Chris Warrener, Town Planner on 29 October 2008

BACKGROUND
Description of Proposal
A request to Council to initiate an amendment to Town Planning Scheme No 3 to re-code the rear of 33 Osborne Road from R12.5 to R17.5 to allow the parent lot to be subdivided into 3 lots, the intent of which is to retain the existing 'old home' at the front, and develop 2 grouped dwelling units at the rear.

Statutory Considerations
Town Planning Scheme No. 3 – Residential R12.5
Local Planning Strategy - Richmond Precinct (LPS)

Documentation
Letter request and accompanying plans date stamp received on 16 September 2008

Date Application Received
16 September 2008

No. of Days Elapsed between Lodgement & Meeting Date
55 days

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

21 September 1992	Council grants approval for an upper storey addition & a small balcony;
18 December 2001	Council grants conditional approval for kitchen extensions & roof window;
26 November 2002	Building Licence 218/3332 approved for single storey additions.

Site Inspection
By Town Planner on 11 September 2008

REPORT
Issues
Land Use
The subject land comprises 2046m².

It contains an older style single storey house built in the 1940's, and is described in the applicant's request letter as *"a less common dwelling type being a late California Bungalow of unusually wide dimension and with strong classical detailing in its wide portico."*

The adjacent property to the south at 31 Osborne Road is a similar size with a similar dwelling.

Properties west, north, and south of 31 & 33 Osborne Road have been developed with grouped and multiple dwelling units the prevailing developed density of these properties varies between R20 and R80.

The subject land has a density of R12.5.

This proposal seeks to increase the density of the subject land to allow for the development of two grouped dwellings with a common driveway access located alongside the south side boundary.

Discussion
The proposal seeks to preserve the single storey dwelling unit at the front and construct two grouped dwellings at the rear.

Based on the developed density of property in the immediate locality it would not be unreasonable to support a moderate increase in the density of the subject land, which would not result in any change to the local streetscape because it is proposed to retain the single house at the front.

A pre-requisite to finalisation of a scheme amendment to achieve the aims of this application would be to include the existing house onto Council's Heritage List, and/or the registration of a caveat on the title for the subject land to ensure retention of this house in perpetuity.

RECOMMENDATION
That Council advises the applicant that it is prepared to initiate an amendment to the Town of East Fremantle Town Planning Scheme No 3 to recode 33 Osborne Road from R12.5 to R17.5 subject to the owners agreeing in writing to include the existing single house on the Heritage List, and prior to finalisation of a scheme amendment for a caveat to be registered on the title of the property to ensure the retention of this house and its curtilage in perpetuity.

Mr John Kirkness (applicant) addressed the meeting in support of the proposed scheme amendment.

RECOMMENDATION TO COUNCIL
Cr Dobro – Cr Olson
That Council advises the applicant that it is prepared to initiate an amendment to the Town of East Fremantle Town Planning Scheme No 3 to recode 33 Osborne Road from R12.5 to R17.5 subject to the owners agreeing in writing to include the existing single house on the Heritage List, and prior to finalisation of a scheme amendment for a caveat to be registered on the title of the property to ensure the retention of this house and its curtilage in perpetuity. CARRIED

T100.4 ***Walter Street No. 8B (Lot 3)***
Applicant: Ken Acton
Owner: Murray Alessandrini
Application No. P171/2008
By Chris Warrener, Town Planner on 29 October 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for ground floor additions and alterations to the single storey house at 8B Walter Street comprising:
- remove walls and glazing of bedroom 3 and convert this room into an activity room;

- remove piers of porch;
- addition of a courtyard adjoining the bathroom/ensuite and newly proposed bedroom 1;
- remove wall between bedrooms 1 and 2 and replace with bedrooms 2 and 3 and shower additions.

Statutory Considerations
Town Planning Scheme No. 3 – Residential R 12.5
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 11 September 2008

Date Application Received
11 September 2008

Advertising
Adjoining land owners only

Date Advertised
26 September 2008

Close of Comment Period
9 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
60 days

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

19 September 1989	WAPC grants final approval to the Strata Plan which results in the battleaxe subdivision of 8 Walter Street into 2 lots;
17 October 1989	Council approves an additional unit converting the property from Class 1 to Class 1A (Duplex);
26 September 1990	Building licence issued for additional dwelling at rear.

CONSULTATION
Public Submissions
At the close of the comment period no submissions were received.

Site Inspection
By Town Planner on 1 October 2008

STATISTICS	***Required***	***Proposed***
Land Area		478m² Existing
Open Space	55%	53.9% **Discretion Required**
Zoning		R12.5
Heritage Listing		Not Listed

STATISTICS		***Required***		***Proposed***
Setbacks:				
Front (west)				
Ground	*Carport*	6.0		N/a Acceptable
	Lounge	1.5		5.1 Acceptable
	Porch	1.0		3.1 Acceptable
	Bed 2	Nil/1.5	*Policy 142*	Nil **Discretion Required**
	Shower	Nil/1.5	*Policy 142*	Nil **Discretion Required**
	Bed 3	Nil/1.5	*Policy 142*	Nil **Discretion Required**
Rear(east)				
Ground	*Sitting*	1.5		2.0 Acceptable
	Laundry	1.5		2.0 Acceptable
	Activity	1.5		2.0 Acceptable
Side (south)				
Ground	*Bed 3*	Nil/1.0	*Policy 142*	Nil **Discretion Required**
	Bed 1	1.5		2.0 Acceptable
	Ens/Bath	1.0		3.4 Acceptable
	Activity	Nil/1.0	*Policy 142*	Nil **Discretion Required**
Height:				
Wall		6.00		2.44 Acceptable
Building		9.00		4.7 Acceptable

REPORT
Issues
Boundary Walls

West Side (Common with 8 Walter Street)

The application proposes a 10.9m long X 2.44m high wall for bedrooms 2, 3 and the shower that is setback 0m from the west side boundary common with 8 Walter Street.

LPP 142 States:

"A wall may be situated closer to an adjoining residential boundary than the standards prescribed in Tables 1, 2a or 2b of the Residential Design Codes where the following are observed:
(a) Walls are not higher than 3m and up to 9m in length up to one side boundary;"

Being longer than 9m Council's discretion is required to be exercised for this wall.

South Side (Common with 6 Walter Street)

The application proposes a 4m long x 2.44m high wall for an activity room set back 0m, and a 5.3m long x 2.44m high wall for bedroom 3 also set back 0m from the south side boundary.

The application if approved and implemented will result in the construction of 3 walls along two side boundaries.

LPP 142 allows a wall along one side boundary providing it is no longer than 9m or higher than 3m.

The 3 walls are less than 3m high however the wall along the west side boundary is longer than 9m, and Council's discretion is required to be exercised to permit these variations.

Open Space

The application proposes that with the additions to the single storey house will result in there being 53.9% open space.

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

Discussion

Boundary Walls

The wall proposed along the south side boundary is 10.8m long, and there are 3 boundary walls.

These aspects of the application are variations to LPP 142 for which Council's discretion is required to be exercised to allow.

Neither of the potentially affected property owners have objected to the application and given the relatively modest height of the proposed boundary walls the application is not considered to negatively impact on the amenity of the potentially affected adjoining properties.

Open Space

The variation to the open space provision is necessary to accommodate a single storey house on a property that comprises an area more suited to an R20 density code for which 50% open space is specified.

The open space variation is supported because it is considered relatively minor and is not considered to affect the amenity of the subject land.

RECOMMENDATION

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

(a) variation on the west side for the length of a boundary wall pursuant to LPP 142 from 9m to 10.8m;
(b) variation to LPP 142 to allow 3 walls along 2 side boundaries;
(c) variation to the percentage of open space pursuant to the Residential Design Codes from 55% to 53.9%;

for the construction of ground floor additions and alterations to the single storey house at No. 8B (Lot 3) Walter Street, East Fremantle comprising:

- remove walls and glazing of bedroom 3 and convert this room into an activity room;
- remove piers of porch;
- addition of a courtyard adjoining the bathroom/ensuite and newly proposed bedroom 1;
- remove wall between bedrooms 1 and 2 and replace with bedrooms 2 and 3 and shower additions;

in accordance with the plans date stamp received on 11 September 2008 subject to the following conditions:

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

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

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

Mr Murray Alessandrini (applicant) addressed the meeting in support of his development proposal.

RECOMMENDATION TO COUNCIL
Cr Wilson – Cr de Jong
That Council exercise its discretion in granting approval for the following:

(a) variation on the west side for the length of a boundary wall pursuant to LPP 142 from 9m to 10.8m;
(b) variation to LPP 142 to allow 3 walls along 2 side boundaries;
(c) variation to the percentage of open space pursuant to the Residential Design Codes from 55% to 53.9%;

for the construction of ground floor additions and alterations to the single storey house at No. 8B (Lot 3) Walter Street, East Fremantle comprising:

- **remove walls and glazing of bedroom 3 and convert this room into an activity room;**
- **remove piers of porch;**
- **addition of a courtyard adjoining the bathroom/ensuite and newly proposed bedroom 1;**
- **remove wall between bedrooms 1 and 2 and replace with bedrooms 2 and 3 and shower additions;**

in accordance with the plans date stamp received on 11 September 2008 subject to the following conditions:

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

Footnote:

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

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

(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. CARRIED

T100.5 ***Pier Street No 3A (Lot 2)***
Applicant & Owner: WJ & FS Enright
Application No. P179/2008
By Chris Warrener, Town Planner on 30 October 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for unauthorised existing development comprising a boundary wall higher than 1.8m, and a moulded wall feature fixed to the over-height boundary wall at the rear of 3A Pier Street

Statutory Considerations
Town Planning Scheme No. 3 – Part 8: Development of Land, Clause 8.4
Local Planning Strategy - Richmond Precinct (LPS)

Relevant Council Policies
Local Planning Policy No. 143 – Fencing (LPP 143)

Documentation
Plans and relevant forms date stamp received on 30 September 2008

Date Application Received
30 September 2008

Advertising
Adjoining land owners only

Date Advertised
1 October 2008

Close of Comment Period
15 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
41 days

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

20 February 2001	Council decides to advise the WAPC that it has no objections to the subdivision of 3 Pier Street into 2 lots (1 X 441m², 1 X 511m²);
2 April 2001	WAPC conditionally approves the subdivision;
17 June 2003	Council refuses an application for a 3-storey house at 3A Pier Street;
16 September 2003	Council defers a decision on an application for a 3-storey house at 3A Pier Street;
19 September 2003	WAPC endorses for final approval Survey Strata Plan for 3A & 3B Pier Street;
21 October 2003	Council grants conditional approval for a 3-level house at 3A Pier Street;
5 March 2004	Building Licence 129/3552 approved for 3-level residence;
20 April 2007	CEO requests Mr & Mrs Enright (owners) to cease building immediately, and to obtain a valid building licence;
16 May 2008	Infringement Notice issued to owner pursuant to the Environmental Protection Act 1986 s.79(1) for causing or allowing equipment to be used in such a way as to allow it to emit unreasonable noise;
25 August 2008	Building Surveyor advises that the owner is required to seek retrospective approvals for a rear boundary wall that is higher than 1.8m.

CONSULTATION
Public Submissions
At the close of the comment period 1 submission was received; a further submission was received afterwards.

L Smith *1C Fraser Street*	- negative impact on amenity; - errors in information submitted in application; - concerns regarding structural integrity of construction.
I Thorn *1B Fraser Street*	- amenity reduced by the section of wall that abuts a common driveway; - wall is 'unfinished and visually unappealing; - concerns regarding structural integrity of the wall.

Site Inspection
By Town Planner on 20 October 2008

REPORT
Background
On 15 August 2008 the Building Surveyor visited 1c Fraser Street to meet the owner who had contacted him to complain about a boundary wall that had been built at the rear of her property.

On 20 August 2008 the Building Surveyor met with one of the owners of 3A Pier Street to inspect the boundary wall.

In an email dated 24 September 2008 to the Building Surveyor the owner of 3A Pier Street explained the background to, and purpose for construction of the rear boundary wall.

On 30 September 2008 the owners of 3A Pier Street submitted an application for the boundary wall.

On 20 October 2008 the Town Planner met the owners of 3A Pier Street to inspect the rear of their property.

The owners have built cement rendered masonry walls on the east and west side boundaries and at the rear (south side), and have planted turf grass and installed a centrally located circular limestone wall feature just forward of the rear boundary wall. 200mm high limestone block walls have been built 1m inside the east and west side boundary walls.

The submitted plans specify that the 2.4m height of the rear boundary wall is based on the top of the 200mm high limestone block walls next to the east and west side boundaries being "new ground level", that is the "00" level or natural ground level (NGL).

However it is the level of the grassed area which should be taken as NGL therefore the height of the boundary wall at the rear is actually 2.6m not 2.4m as specified on the submitted plans.

The western portion of the boundary wall at the rear is built up against a shed, which is at the rear of 1c Fraser Street. The height of this section of the boundary wall closely matches the height of this shed.

The eastern portion of the rear boundary wall is built next to a small courtyard which is at the rear of 1c Fraser Street. This courtyard is infested with weeds and appears to be unused.

Issues

Unauthorised Development

A masonry boundary fence built at the rear of 3A Pier Street is 2.6m above natural ground level (NGL).

LPP 143 states the following with regard to fence design:

"3.1 Maximum Height

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

Under normal procedural circumstances Council would be required to exercise its discretion to permit a variation to fence height following consultation with potentially affected adjoining property owners.

In this particular case an over-height masonry boundary fence has been built without Council approval and this application is submitted pursuant to Clause 8.4 of TPS 3, which states:

"8.4. Unauthorised Existing Developments

8.4.1. The local government may grant planning approval to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme.

8.4.2. Development which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except the granting of planning approval, and the continuation of the development unlawfully commenced is taken to be lawful upon the grant of planning approval.

Note: 1. Applications for approval to an existing development are made under Part 9.
2. The approval by the local government of an existing development does not affect the power of the local government to take appropriate action for a breach of the Scheme or the Act in respect of the commencement or carrying out of development without planning approval."

Submissions

The owners of 1b and 1c Fraser Street at the rear of the subject land, have objected to the boundary wall.

Discussion

Submissions

The property at 1B Fraser Street does not abut the subject land.

A site visit confirms that the driveway between 1B and 1C Fraser Street which provides access from Fraser Street to the rear boundary of these properties is the only part of the property at 1B Fraser Street that could be said to be affected by the "unauthorised existing development" at the rear of 3A Pier Street.

In relation to the aesthetics of the boundary wall the owners of 3A Pier Street have stated that they intend to cement render the rear of this wall visible to 1B and 1C Fraser Street, subject to the affected owners agreeing to allow access to their properties for this work to be done.

At 1C Fraser Street there is a granny flat at the rear which was approved by Council in November 1992 on a reduced rear setback with a 2-storey house at the front.

There are 2 lock-up timber doors which provide access to this granny flat from the driveway access between 1B and 1C Fraser Street.

Fixed to these doors are brass numbers "1D".

Confused about this situation because there are no records that there is a property at 1D Fraser Street, the Town Planner contacted the owner of 1C Fraser Street, the author of the submission objecting to the boundary wall at the rear, to enquire as to whether or not this was a separate property.

Ms Smith advised that the postman had been delivering the mail to 1C Fraser Street by depositing it at the doors to the granny flat at the rear so she fixed the number 1D to the doors to the flat. She claims that the effect of this resulted in the mail to 1C then being delivered to 1C (notwithstanding that there is a clearly marked letterbox at the front of the property next to the footpath along Fraser Street).

The applicant/owner has responded to the submission from Ms Smith offering to "bag" (cement render) the side of the wall that faces 1C Fraser Street.

Conclusion
It is clear that the works being completed at the rear of 3A Pier Street are aesthetically pleasing and will contribute to the general amenity of this property.

However, the wall at the rear exceeds 'standard' fence height by 0.8m, and should have been approved by Council in the first instance.

It is evident that a portion of this wall would have been already over-height due to the presence of the shed at the rear in the north-west corner of 1C Fraser Street, and cement rendering this part of the wall by the owners of 3A Pier Street did not require Council's approval.

The remainder of the rear boundary wall backs onto a small undeveloped open space at the rear of 1C Fraser Street, and this part of the wall is the contentious issue.

According to the RDC a standard fence height of 1.8m along the rear boundary would cast a 2.7m wide shadow over the open space at the rear of 1C Fraser Street at midday on 21 June. A wall 2.6m high will increase this overshadow to 3.7m.

This increase in overshadow is not considered to be excessive given that the undeveloped courtyard is already substantially overshadowed by a 'standard' 1.8m high fence/wall.

Maintaining a consistent fence height at the rear is considered to be a better looking option than a "stepped down" fence.

It is not considered necessary to fix a moulded feature to this wall which extends above the existing wall height of 2.6m and this aspect of the application is not supported.

RECOMMENDATION
That Council pursuant to Town Planning Scheme 3, Clause 8.4 grants planning approval for unauthorised existing development comprising a boundary wall higher than 1.8m, and at the rear of No. 3A (Lot 2) Pier Street, East Fremantle in accordance with the plans date stamp received on 30 September 2008 subject to the following conditions:

1. prior to the issue of a Building Approval Certificate the applicant/owner is to submit amended plans which specify that the proposed moulded wall feature does not jut above the boundary wall
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.

3. a Building Approval Certificate must be obtained, and this certificate must specify that the external finish of the side of the wall which faces 1B and 1C Fraser Street is to be to the satisfaction of the owners of these properties.

Footnote:
The following are not conditions but notes of advice to the applicant/owner:
(a) a copy of the approved plans as stamped by Council are attached and the application for a Building Approval Certificate is to conform with the approved plans unless otherwise approved by Council.
(b) 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.

Ms Lesley Smith, adjoining neighbour at 1C Fraser Street, addressed the meeting on her concerns with the wall as constructed and Mr & Mrs Bill & Suzanne Enright (applicants) addressed the meeting in support of the structure and advised that they were confident that the wall was structurally sound.

RECOMMENDATION TO COUNCIL
Cr Dobro – Cr Olson
That the application seeking approval for unauthorised existing development comprising a boundary wall higher than 1.8m at the rear of 3A (Lot 2) Pier Street, East Fremantle be deferred pending a site visit being undertaken of both the applicant's property and that of the adjoining neighbour at 1C Fraser Street prior to the November meeting of Council. CARRIED

Cr Dobro made the following impartiality declaration in the matter of 2A Fletcher Street: "As a consequence of the applicant, Mr Marcus Burt, being the coach of my 8yr old daughter's soccer team, 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.

T100.6 ***Fletcher Street No. 2A (Lot 306)***
Applicant: Landcraft Construction
Owner: John Smith
Application No. P177/2008
By Chris Warrener, Town Planner on 6 November 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for a 9.87m long x 5.69m wide x 3.1m high pitched roof gazebo at 2A Fletcher Street.

Statutory Considerations
Town Planning Scheme No. 3 – Residential R 12.5
Local Planning Strategy - Woodside Precinct (LPS)
Residential Design Codes (RDC)

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

Documentation
Plans and relevant forms date stamp received on 24 September 2008

Date Application Received
24 September 2008

Advertising
Adjoining land owners only

Date Advertised
1 October 2008

Close of Comment Period
15 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
47 days

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

27 September 2001	Council decides that an application for a three storey house at 2A Fletcher Street be referred back to the Town Planning & Building Committee for further consideration;
6 November 2001	Council refuses an application for a two storey house at 2A Fletcher Street (Lot 307);
28 February 2002	Council approves a 2-storey house at 2A Fletcher Street;
29 November 2002	Building Licence issued for two storey house.

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comments were made:
- proposed structure should comply with setback guidelines on the eastern side.
- unimaginative solution – design could be more appropriate to the style of the house (ie lower pitched roof that mimics the verandah on the western side of the house).
- the long boxed gutter along the house noted – proper maintenance will be required.

Public Submissions
At the close of the comment period no submissions were received however a late submission was received from the owners of 2 Fletcher Street on 4 November 2008.

M & J Beilby *2 Fletcher Street*	Noise from entertaining area will affect 2 bedrooms.

Site Inspection
By Town Planner on 1 October 2008

STATISTICS		***Required***		***Proposed***
Land Area				442m² Existing
Open Space		55%		Existing
Zoning				R12.5
Heritage Listing				Not Listed
Setbacks:				
Front (north)				
Ground	*Pergola*	7.5	*Policy 142*	4.135 **Discretion Required**
Rear (south)				
Ground	*Pergola*	1.5		6.0 Acceptable
Side (east)				
Ground	*Pergola*	1.5	*Policy 142*	1.0 **Discretion Required**

REPORT
Issues

Streetscape The application proposes a gazebo setback 4.135m from the front boundary.

The RDC specify a 7.5m front setback for R12.5 coded property.

Boundary Setbacks The proposed gazebo is setback 1m from the east side boundary common with 2 Fletcher Street.

Being more than 9m long and proposed to be fixed to the east side of the existing house the RDC specify a 1.5m setback.

TPAP Comments The panel considered that the gazebo should comply with the setbacks specified in the RDC, and that its design could be modified so that the structure better reflected and was in symmetry with the design of the house.

Submission The late submission from the owners of 2 Fletcher Street states concerns regarding noise from the proposed entertaining area.

Discussion

Streetscape The proposed gazebo is considered to complement the appearance of and add to the general amenity of the existing house.

An existing patio at the property, which will be removed to 'make way' for the proposed gazebo, is similarly set back 4.135m from the front boundary; the proposed new gazebo will in some ways reflect what exists at the property.

Boundary Setbacks The TPAP considered that the setback along the east side should be made to comply with the setback specified in the RDC, and this is supported given the substantive nature of the proposed gazebo and its potential to impact on the amenity of 2 Fletcher Street.

TPAP Comments The applicant has provided photographs of the area of the property in which the proposed gazebo and barbeque will be built.

The common boundary between 2 and 2A Fletcher Street is defined by a masonry wall, and there is also additional screening vegetation on the subject land.

These elements are considered to ameliorate any privacy issues and contribute to noise suppression, and the application could be supported as submitted.

RECOMMENDATION

That Council exercise its discretion in granting approval for a variation to the north side (front) boundary setback pursuant to the Residential Design Codes from 7.5m to 4.135m; for the construction of a 9.87m long x 5.69m wide x 3.1m high pitched roof gazebo at No. 2A (Lot 306) Fletcher Street, East Fremantle in accordance with the plans date stamp received on 24 September 2008 subject to the following conditions:

1. prior to the issue of a building licence amended plans are to be submitted specifying the east side boundary setback of the proposed gazebo to be at 1.5m.
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where

varied in compliance with the conditions of this planning approval or with Council's further approval.

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

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

(a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.
(b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.
(c) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).
(d) the gazebo may not be enclosed without the prior written consent of Council.

Mr Marcus Burt (Landscraft Construction) addressed the meeting in support of the proposed development application and advised that a reduction in length of the gazebo roof would be acceptable.

Mayor Ferris entered the meeting at 7.25pm.

RECOMMENDATION TO COUNCIL
Cr Olson – Cr Dobro
That Council exercise its discretion in granting approval for a variation to the north side (front) boundary setback pursuant to the Residential Design Codes from 7.5m to 4.135m for the construction of a pitched roof gazebo at No. 2A (Lot 306) Fletcher Street, East Fremantle in accordance with the plans date stamp received on 24 September 2008 subject to the following conditions:

1. prior to the issue of a building licence amended plans are to be submitted specifying the following:
   (a) the length of the gazebo being reduced from 9.87m to 9.00m; and
   (b) the east side setback area to remain as a garden bed and not be paved.
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.

4. **the proposed 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.**
5. **all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
6. **all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.**
7. **this planning approval to remain valid for a period of 24 months from date of this approval.**

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

(a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.
(b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.
(c) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).
(d) the gazebo may not be enclosed without the prior written consent of Council.

CARRIED

Cr Wilson made the following impartiality declaration in the matter of 23 Wolsely Road: "As a consequence of the applicant, Mr Deane Barker, having done some work for me in the past, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits in terms of the benefit to the Town and vote accordingly.

T100.7 ***Wolsely Road No. 23 (Lot 304)***
Applicant: Deane Barker
Owner: John Richard & Patricia Olive Westaway
Application No. P115/2008
By Chris Warrener, Town Planner on 5 November 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for alterations and additions to 23 Wolsely Road comprising:

- remove carport on the west side, and construct a concrete double garage and store room in its place;
- replace a skillion roofed carport on the east side with a pitched roof carport;
- construct a 7m long x 4.5m wide x 5m high pitched roof patio at the rear of the new carport;
- remove a covered pergola at the rear and build a 15m long x 8.5m wide x 5m high gable roofed alfresco with outdoor kitchen;
- construct a covered timber deck off the family room at the rear, and install two sets of French doors and sliding window side lights;
- enlarge the family room by enclosing a portion of the verandah on the west side.

Total building coverage amounts to 33.4% of the property leaving 66.6% open space; the RDC recommend 55%.

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
Amended plans date stamp received on 23 September 2008

Date Application Received
16 June 2008

Advertising
Adjoining land owners only

Date Advertised
Original application: 8 July 2008
Amended plans: 31 September 2008

Close of Comment Period
Original application: 22 July 2008
Amended plans: 14 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
48 days

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

19 January 1976	Swimming Pool built at rear of 23 Wolsely Road;
11 March 1981	Building Licence issued for a garage and a workshop;
23 April 1981	Council decides to advise the Town Planning Board that it supports the subdivision of 23 Wolsely Road into 2 lots;
11 May 1981	Town Planning Board conditionally approves the subdivision of 23 Wolsely Road into 2 lots (1 x 1051m², 1 x 1389m²);
15 December 1986	Council grants approval for the conversion of a double garage into an isolated games room;
15 September 1987	Building Licence issued for conversion of a garage to a games room;
16 February 1999	Council grants conditional special approval for the demolition of a laundry and erection of a granny flat on a reduced east side setback and 19.5° roof pitch;
14 November 2000	Building Licence issued for an extension to an outbuilding/studio;
20 March 2007	Council approves a 4m long x 3.5m wide x 2.4m high garden shed next to the east side boundary behind an existing carport;
19 August 2008	Council resolves to adopt the Committee's recommendation which is as follows: *That the application for alterations/additions to the residence at No. 23 (Lot 304) Wolsely Road, East Fremantle be deferred pending the receipt of amended plans as discussed with applicant on 23 July 2008."*

CONSULTATION
Town Planning Advisory Panel Comments
The amended plans were considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comment was made:
- decorative gates to the front entrance to the garage might be better if they were solid wooden doors that extend the full height of garage (ie 3 Riverside Road).

Public Submissions
At the close of the second comment period no submissions were received.

Site Inspection
Site inspection by Town Planner in consultation with applicant on 23 July 2008

REPORT
Background
In response to the comments made by the Town Planning Advisory Panel on the original proposal, and the subsequent Council decision, the applicant has submitted plans amended to take into consideration those comments.

The design of the double garage on the west side has been modified, moved closer, and its roof pitched to more closely match the proportions and appearance of the existing house.

The front of this double garage is open and secured by the addition of two open style decorative gates.

The carport on the east side is proposed to be retained in its current form.

Issues
Boundary Walls
The application proposes a double garage with an 8m long wall along the west side boundary common with 66 Alexandra Road, a patio with a 17.1m long wall along the east side boundary common with the common property driveway access for 25 and 25A Wolsely Road, and a gable roofed alfresco area with an outdoor kitchen with a 8.58m long wall along the north side boundary common with 72 Alexandra Road.

The wall for the garage on the west side is 3m high, the wall for the patio on the east side is 3m high, and the parapet wall for the alfresco area along the north side is 4m high.

LPP 142 states:

"A wall may be situated closer to an adjoining residential boundary than the standards prescribed in Tables 1, 2a or 2b of the Residential Design Codes where the following are observed:
(a) Walls are not higher than 3m and up to 9m in length up to one side boundary;
(b) Walls are behind the main dwelling;"

The application proposes boundary walls along three side boundaries with the wall for the outdoor alfresco on the north side exceeding the 3m height limit.

Council is required to exercise its discretion to permit the boundary walls on more than one side boundary, and permit the higher boundary wall for the alfresco on the north side.

Discussion
Boundary Walls
In regard to the boundary walls the property already has boundary walls on more than one side boundary generally in the same location as the new structures that are herein proposed.

There is no detrimental impact on the amenity of the adjoining property on the east side at 25 Wolsely Road by the new patio, the amended plans for the garage on the west side result in an improved amenity for the neighbour at 66 Alexandra Road, and the wall for the alfresco, which is proposed to be in a limestone finish (as discussed with the applicant) will be a more attractive structure than the existing boundary fence for the neighbour at 72 Alexandra Road.

This matter has been discussed with the owner of 72 Alexandra Road who verbally advised that she supports this structure.

Conclusion
At the site meeting with the applicant on 23 July 2008 the aforementioned design changes were discussed and the applicant has now submitted amended plans in line with the comments of the TPAP and to reduce the impact of the boundary wall on the west side on the neighbour to the west.

RECOMMENDATION
That Council exercise its discretion in granting approval for the following:
(a) variation to Local Planning Policy 142 to allow boundary walls along three side boundaries;
(b) variation to Local Planning Policy 142 to allow a boundary wall along the north side which is higher than 3m;

for the construction of alterations and additions to 23 Wolsely Road comprising:
- remove carport on the west side, and construct a concrete double garage and store room in its place;
- replace a skillion roofed carport on the east side with a pitched roof carport;
- construct a 7m long x 4.5m wide x 5m high pitched roof patio at the rear of the new carport;
- remove a covered pergola at the rear and build a 15m long x 8.5m wide x 5m high gable roofed alfresco with outdoor kitchen;
- construct a covered timber deck off the family room at the rear, and install two sets of French doors and sliding window side lights;
- enlarge the family room by enclosing a portion of the verandah on the west side
- ;

in accordance with the plans date stamp received on 23 September 2008 subject to the following conditions:
1. prior to the issue of a building licence amended plans are to be submitted specifying that the doors for the double garage on the west side are solid to the satisfaction of the CEO in consultation with relevant officers.
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
4. the proposed alterations and additions are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
5. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
6. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
7. all parapet walls are to be fair faced brickwork, limestone or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.
8. this planning approval to remain valid for a period of 24 months from date of this approval.

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

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

Mr Deane Barker (applicant) addressed the meeting in support of the proposed development.

RECOMMENDATION TO COUNCIL
Cr Olson – Cr de Jong
That Council exercise its discretion in granting approval for the following:

(a) variation to Local Planning Policy 142 to allow boundary walls along three side boundaries;
(b) variation to Local Planning Policy 142 to allow a boundary wall along the north side which is higher than 3m;

for the construction of alterations and additions to 23 Wolsely Road comprising:

- **remove carport on the west side, and construct a concrete double garage and store room in its place;**
- **replace a skillion roofed carport on the east side with a pitched roof carport;**
- **construct a 7m long x 4.5m wide x 5m high pitched roof patio at the rear of the new carport;**
- **remove a covered pergola at the rear and build a 15m long x 8.5m wide x 5m high gable roofed alfresco with outdoor kitchen;**
- **construct a covered timber deck off the family room at the rear, and install two sets of French doors and sliding window side lights;**
- **enlarge the family room by enclosing a portion of the verandah on the west side**
- **;**

in accordance with the plans date stamp received on 23 September 2008 subject to the following conditions:

1. prior to the issue of a building licence amended plans are to be submitted specifying that the doors for the double garage on the west side are solid to the satisfaction of the CEO in consultation with relevant officers.
2. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
3. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.

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

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

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

CARRIED

T100.8 ***Walter Street No. 18B (Lot 8)***
Applicant & Owner: Beth McCrae Dungey
Application No. P57/2008
By Chris Warrener, Town Planner on 5 November 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for a 2-storey house at 18B Walter Street comprising:

Ground floor: Porch, double garage, entry, home theatre, laundry, hall, kitchen, pantry and scullery, dining and family room, alfresco;
First floor: 4 bedrooms, 2 bathrooms, built-in-robe, and built-in-linen room.

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 14 March 2008

Date Application Received
14 March 2008

Additional information
1 May 2008 Plans received illustrating wall and gate in the front.

Advertising
Adjoining land owners only

Date Advertised
2 October 2008

Close of Comment Period
16 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
41 days

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

4 November 1977	Building Licence issued for a patio attached to the front;
22 December 2004	Council advises the WAPC that it does not support the subdivision of 18 Walter Street into two 455m² lots;
15 January 2005	WAPC conditionally approves the subdivision to create 2 "long tom" lots;
25 September 2007	Demolition Licence 07/244 issued for single storey dwelling;
18 December 2007	Council conditionally approves variations to wall height and roof pitch for a 2-storey skillion-roofed house at 18A Walter Street;
20 May 2008	Council defers a decision on an application for a 2-storey pitched roof house: *"The adoption of the Committee's recommendation which is as follows: That the application for a two storey residence at 18B (Lot 8) Walter Street, East Fremantle be deferred pending the submission of revised plans that better address the streetscape."*

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comments were made:
- with more careful material selection and better design considerations proponent could reduce the apparent width of the garage and improve the front elevation as a result.
- standard project home in the mixed-form locality.
- setback on south boundary will be wasted space – depending on eventual house next door 'drying court' should get about 15 minutes of sun per day in high summer and no drying breeze.

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

Site Inspection
By Town Planner on 4 April 2008

STATISTICS			***Required***		***Proposed***
Land Area					455m² Existing
Open Space			55%		61% Acceptable
Zoning					R12.5
Heritage Listing					Not Listed
Setbacks:					
Front					
	Ground	*Porch*	7.5		7.5 Acceptable
		Garage	7.5		8.1 Acceptable
	Upper	*WIR*	7.5		9.9 Acceptable
		Bed 1	7.5		7.8 Acceptable
Rear					
	Ground	*Alfresco*	6.0		3.97 **Discretion Required**
	Upper	*Bedroom 4*	6.0		15.1 Acceptable
Side (north)					
	Ground	*Alfresco, Family, Dining*	1.5		2.86 Acceptable
		Kitchen	1.5		4.4 Acceptable
		Stair, Entry, Porch	1.5		1.66 Acceptable
	Upper	*Bed 4*	4.5		4.08 **Discretion Required**
		WIC	1.2		2.8 Acceptable
		WC, Stair	1.5		1.66 Acceptable
Side (south)					
	Ground	*Garage*	1.0/Nil	*Policy 142*	Nil Acceptable
		Home Theatre	1.5		1.5 Acceptable
		Dining, Family, Alfresco	1.5		2.1 Acceptable
	Upper	*Bed 1, Ensuite*	1.1		1.5 Acceptable
		Bed 2	1.1		2.0 Acceptable

STATISTICS		***Required***	***Proposed***
	Bed 3 & 4	1.1	1.5 Acceptable
Height:			
Wall		6.0	5.7 Acceptable
Building		9.0	8.2 Acceptable

Overshadowing: Correlates with non-habitable spaces of adjoining house 30%
Discretion required

REPORT
Issues
Boundary Setbacks

East Side (Rear) Common with 17 Stratford Street

A roofed outdoor alfresco area is set back 3.97m from the rear boundary.

The RDC specify a 6m rear setback for R12.5 coded property.

Streetscape

The application proposes a porch and a double garage at the front.

The double garage at 5.9m wide is set back 0.6m behind the porch, and comprises 55.347% of the width of the property frontage.

The relevant acceptable development provision states:

> *A8 Where a garage is located in front or within 1 m of the building, a garage door and its supporting structures (or garage wall where a garage is aligned parallel to the street) facing the primary street are not to occupy more than 50 per cent of the frontage at the setback line as viewed from the street. This may be increased to 60 per cent where an upper floor or balcony extends for the full width of the garage and the entrance to the dwelling is clearly visible from the primary street.* (RDC, 6.2 Streetscape, 6.2.8 Garage doors)

While the entrance to the proposed house is clearly visible from the primary street bedroom 1 above it does not extend for its full width (Bed 1 is 4.6m wide), it is only set back 0.6m behind the porch (not more than 1m as per the RDC), therefore Council's discretion is required to be exercised to approve the garage.

Overshadow

If approved and implemented the application results in there being 30% of the adjoining property being overshadowed. The RDC limit overshadow of R12.5 coded property to 25%.

TPAP Comments

The main concern of the panel was the garage for which it suggested use of materials and 'better design' so that its apparent dominance could be reduced.

Discussion

Boundary Setbacks

The setback variation for the proposed alfresco is considered acceptable because it is not considered to detrimentally impact on the amenity of the potentially affected property at 17 Stratford Street, and the potentially affected property owner has not objected to this variation or to the application.

Streetscape

The front elevation of the proposed house has been quite significantly altered compared with the plans that were considered by Council in May 2008, and the new elevation is considered to have a much improved streetscape appearance.

The now proposed elevation is considered to be more sympathetic to the local streetscape and is supported.

Overshadow

The adjoining property at 18A Walter Street has been approved for development of a 2-storey house, and this property is also owned by Beth Dungey.

The approved house design for 18A Walter Street does not propose an outdoor living area or habitable room on the north side which might be affected by the proposed overshadow.

The proposed overshadow will affect walls to stairwells and en-suites, which are not habitable rooms or areas which might be affected by overshadow, and it is therefore open to councillors to permit this variation given that it is not considered to affect the amenity of the adjoining property.

TPAP Comments

The applicant provided the following response to the comments raised by the panel:

"Elevation – General
The original application for this site was deferred by the committee as the elevation was not viewed upon favorably. The existing elevation is far more conservative in nature and addressed the committee's view. Whilst the elevation is conservative the use of mixed material i.e. a combination of face bricks and render should make the final appearance appealing.

Garage
I refer to the application for 18A Walter Street (recently approved). I confirm that the garage width shall be reduced to reflect the same approval as provided in 18A. (I recall this to be 4.95m in width) – Final plans shall be adjusted to reflect this. I shall discuss this with the designer and advise the committee at their next meeting.
I am happy to discuss the style of the garage with council.

Overshadow
I am the agent for the owner of 18A Walter Street – Beth Dungey I confirm she is happy to consent to the discretion required in the overshadowing that results from this design. I also note that the overshadowing does not affect the living areas of 18A (as noted in the comments)

South Boundary
The set back from the south boundary has been set to provide distance between 18A & 18B (as they are narrow lots); whilst this may be viewed as a token gesture; I believe it still assists with the amenity of 18A."

Conclusion
The current design is considered to be an improvement upon the submitted plans, the applicant has responded in a positive manner to the suggestions made by the Town Planning Advisory Panel, and the application 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 roofed alfresco area from 6m to 3.97m;
(b) variation to the width of a double garage as a percentage of the width of the property pursuant to the Residential Design Codes from 50% to 55.347%;
(c) variation to the extent of overshadow of the adjoining property pursuant to the Residential Design Codes from 25% to 30%;
for the construction of a 2-storey house at No. 18B (Lot 8) Walter Street, East Fremantle comprising:
Ground floor: Porch, double garage, entry, home theatre, laundry, hall, kitchen, pantry and scullery, dining and family room, alfresco;
First floor: 4 bedrooms, 2 bathrooms, built-in-robe, and built-in-linen room;
in accordance with the plans date stamp received on 30 September subject to the following conditions:
1. prior to the issue of a building licence amended plans are to be submitted specifying the garage door to be 4.8m wide;
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.
(b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.
(c) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.
(d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).
(e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.
(f) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.
(g) the alfresco may not be enclosed without the prior written consent of Council.
(h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.

Mr John Carrello (agent for the owner) addressed the meeting in support of the proposed development.

RECOMMENDATION TO COUNCIL
Mayor Ferris – Cr Olson
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 roofed alfresco area from 6m to 3.97m;
(b) variation to the width of a double garage as a percentage of the width of the property pursuant to the Residential Design Codes from 50% to 55.347%;
(c) variation to the extent of overshadow of the adjoining property pursuant to the Residential Design Codes from 25% to 30%;

for the construction of a 2-storey house at No. 18B (Lot 8) Walter Street, East Fremantle comprising:
Ground floor: Porch, double garage, entry, home theatre, laundry, hall, kitchen, pantry and scullery, dining and family room, alfresco;
First floor: 4 bedrooms, 2 bathrooms, built-in-robe, and built-in-linen room;
in accordance with the plans date stamp received on 30 September subject to the following conditions:

1. prior to the issue of a building licence amended plans are to be submitted specifying the garage door to be 4.8m wide.
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.
(b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.
(c) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.
(d) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).
(e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.

(f) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.
(g) the alfresco may not be enclosed without the prior written consent of Council.
(h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.
CARRIED

T100.9 ***May Street No. 41 (Lot 613)***
Applicant: Dale Alcock Home Improvement
Owner: Tony & Kate Smith
Application No. P172/2008
By Chris Warrener, Town Planner on 4 November 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for 2-storey alterations and additions at the rear of the single storey house at 41 May Street comprising:
- Alfresco, laundry and modifications to the bathroom, family, meals and kitchen on the ground floor;
- Master bedroom, 2 bedrooms, WIR, ensuite and store/linen on the upper floor.

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

Relevant Council Policies
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 15 September 2008

Date Application Received
15 September 2008

Additional information
Amended plans and streetscape drawing received on 24 October 2008 for reduced building height

Advertising
Adjoining land owners only

Date Advertised
26 September 2008

Close of Comment Period
9 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
55 days

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

1971	Rear patio approved;
1977	Patio enclosure approved;
31 July 1986	Council refuses an application to conduct an 'architectural practice' as a home occupation on the basis that the area is zoned 'Residential' and the proposed use conflicts with the Residential Zone Use Table;

26 November 1987	Council refused an application for extensions consisting carport with a boundary wall, extensions to the rear consisting of bedroom & bathroom, extensions to the meals area and a front fence 1.8m high;
19 December 1995	Council grants approval for a relaxation of standards to the north for the replacement of a boundary wall to allow additions of a new verandah, deck, rebuilding of laundry and roof replacement;
1 March 2001	Council granted approval for the re-pitching of the roof to the rear of the dwelling, and re-cladding of the entire roof.

CONSULTATION

Town Planning Advisory Panel Comments

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

- additions are modest and well contained given the size of the accommodation that is being added.
- heritage values as per MI listing quite high but sensitive additions should not be an issue.
- shame it is so bland.
- roof pitch of addition should match that of the original house – this would help overcome blandness.
- an entirely different contemporary roofline would also be appropriate in highlighting the new and existing structures.
- although addition is set well back on existing house, from a streetscape point of view this proposal does not appear sensitive (combination of windowless front elevation and mimicked roofline appear overwhelming) – perhaps introduce glazing to ensuite, stairwell void (and linen store)?
- existing eaves detail on original house should be repeated on the additions.
- would like to see that all three original chimneys are retained.
- computer image shows extension on south side as stepped in from original house – this does not correlate to the plans submitted.
- would love to see tuck pointing to front of building restored.

Public Submissions

At the close of the comment period 5 submissions were received.

G Blake & L Digby *43 May Street*	- *Objection;* - *Scale and height of development not appropriate within locality;* - *Concerns regarding overshadowing and potential overlooking;* - *Believe roof pitch and boundary setbacks should be compliant.*
D Priest *28 Silas Street*	- *Concerned at overlooking into rear garden and swimming pool;* - *Upper floor extension poorly designed with no thought given to minimise impacts of privacy and overlooking.*
T Allum *28 Silas Street*	- *Concerned at loss of privacy of landscaped area;* - *Wants Council to refuse extensions.*
T Jones *28 Silas Street*	- *Objection;* - *Predominant bulk and scale of existing houses in Silas and May Street are single storey;* - *Proposed inadequate side boundary setbacks are unacceptable;* - *Insensitive upper floor design and windows results in*

concerns over privacy and overshadowing.

K Farmer - *Objection;*
39 May Street - *Overlooking into western side of property;*
- *Bulk and scale is at odds with street.*

Site Inspection
By Town Planner on 22 October 2008

STATISTICS		***Required***		***Proposed***
Land Area				510m² Existing
Open Space		50%		63.6% Acceptable
Zoning				R20
Heritage Listing				Municipal Inventory
Setbacks:				
Front (May St)				
Upper	*Ensuite/Pdr*	6.0		15.1 Acceptable
	Stair/Void	6.0		15.1 Acceptable
	Store/Linen	6.0		17.2 Acceptable
Rear				
Ground	*Alfresco*	1.0		8.62 Acceptable
	Laundry	1.0		10.9 Acceptable
Upper	*Master bed*	4.5		12.6 Acceptable
	Bedroom 4 & 5	4.5		13.1 Acceptable
Side (north)				
Ground	*Alfresco*	1.0		4.15 Acceptable
	Laundry/Linen	1.5	*Policy 142*	1.0 **Discretion Required**
	Bathroom	1.5	*Policy 142*	1.0 **Discretion Required**
Upper	*Bed 4*	1.2		1.3 Acceptable
	Store/Linen	1.2		1.3 Acceptable
	Stair/Void	1.2		1.3 Acceptable
Side (south)				
	Alfresco	1.5		2.8 Acceptable
Upper	*Master Bed*	1.2		2.8 Acceptable
	WIR	1.2		2.8 Acceptable

STATISTICS		***Required***		***Proposed***
	Ensuite	1.2		2.8 Acceptable
Height:				
Wall		6.00		6.40 **Discretion Required**
Building		9.00		9.00 Acceptable
Overshadowing:		Into 43 May St = 21.4%		Acceptable
Privacy/Overlooking:				Acceptable
Policies:				
Roof Pitch		28° required	*LPP066*	25° **Discretion Required**

REPORT
Issues

Boundary Setbacks

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

The length of the proposed wall extension is 7m; the total length of the wall is 18m.

For the wall extension the RDC specify a 1m setback however for a total wall length of 18m the specified setback is 1.5m.

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

Submissions

All of the submissions object to the application.

The applicant has provided a detailed response to the submissions, and this response is supported.

TPAP Comments

In general TPAP supported the application subject to clarification of a number of matters and some minor design changes to make the additions more 'sympathetic' with the existing house.

Discussion

Boundary Setbacks

The submission from the property owner potentially affected by the setback variation on the north side at 39 May Street does not include any reference to this variation as being an issue.

This wall is proposed to be built along the same building line as the wall currently next to the north side boundary, and is not considered to detrimentally impact on the amenity of the potentially affected property; the setback variation is supported.

Submissions

The Town Planner conducted a site visit to assess the impacts of the proposed additions on the potentially affected adjoining properties.

In regard to the issues cited by the owners of 39 and 43 May Street regarding overlooking this issue is ameliorated by the fact

that there are no major openings on the proposed additions which might be a cause for concern.

In regard to the overshadow of 43 May Street the area being overshadowed is already substantially shaded by vegetation and structures on this property; the amount of overshadow is less than the limit specified in the RDC.

In addition the applicant in an effort to further reduce the impact has amended the plans to reduce wall heights to comply with the specified height limit under the RDC.

This particular objection is not considered to warrant further design changes to reduce the overshadow any more than is now proposed. In any event the proposed additions are set back more than the RDC specify.

In regard to the issues raised by the submission from 28 Silas Street at the rear the proposed additions are set back more than 8m at ground level and 12.9m on the upper level. The RDC specify a 6m rear setback. There is already vegetation at the rear of the subject property which will substantially hide the proposed additions and the applicant has offered to provide additional screening if required.

TPAP Comments

The applicant was requested to provide a response to the matters raised by the panel. In an email received on 4 November 2008 the applicant states:

"I have examined the possibility of placing extra windows on the front elevation. We have a revised bathroom layout, and the only position possible in the bathroom for a window, because of the outside roof height, is over the bath. We believe that this would be quite disjointed and would look out of place inside the bathroom. The clients would prefer not to have a bathroom window facing the road. A window on the front of the stairwell would only be possible as a high level window without any real purpose because there is a good window on the north facing elevation to give good light to the stairwell. A window in the store/linen room is also not desirable due to the effect of ultra violet light fading coloured bed linen and the owners would prefer not to have a window in this position.

The roof pitch for the proposed additions is at the same pitch as the existing home as shown on elevation No. 3.The streetscape perspective gives you the impression that there are different roof pitches. This is a result of the perspective view (viewing height) which makes the pitches look a little different. The front elevation also shows the roof pitches being the same. There is only one section of the roof which has a changed roof pitch. This is the portion of the roof connecting the front portion of the home to the second storey. This is not seen because it is behind the front ridge line and will have no impact on the streetscape. This portion of the roof is rebuilt to avoid the necessity to have a box gutter against the front wall of the second storey. This would be poor building practice.

I have just looked at the photo's that we have of the front of the property. I think that the home originally has had tuck pointing to

the front of the home. A t some stage in the history of the building it looks like the pointing has been altered (repaired - probably bagged) and has been painted over. Obviously it is not a practical consideration to return to the tuck pointing. It would mean removing all the brickwork to the front elevation and then rebuilding it with face brickwork (tuck pointed) It would also require the front verandah to be removed and rebuilt after the brickwork is replaced. All this would be at considerable cost to the owners. This change would also make the front of the second storey stand out more, because the second storey is to be rendered and coloured the same as the existing home making it much less significant to the streetscape."

Conclusion
The proposed additions to 41 May Street are considered to be relatively conservative in scale and do not involve any changes to the front façade of the existing house.

The impacts on neighbouring properties are not considered significant especially given the generous rear setback from 28 Silas Street, and the existence of vegetation and structures at 43 May Street which ameliorate any impact of the additions on that property.

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

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

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

in accordance with the plans date stamp received on 24 October 2008 subject to the following conditions:

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

7. this planning approval to remain valid for a period of 24 months from date of this approval.

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

Ms Toby Jones of 28 Silas Street and Ms Glenda Blake of 43 May Street addressed the meeting on their concerns with the proposed development in particular matters pertaining to setbacks, bulk and scale, privacy and overshadowing.

RECOMMENDATION TO COUNCIL
Cr Dobro – Cr Wilson
That the application for alterations/additions to the residence at No. 41 (Lot 613) May Street, East Fremantle be deferred pending a site visit being undertaken of both the applicant's property and that of the adjoining neighbours at 39 & 43 May Street and 28 Silas Street prior to the November meeting of Council. CARRIED

Mr Stuart Wearne, Chief Executive Officer, left the meeting at 8.10pm.

T100.10 ***View Terrace No. 16 (Lot 5)***
Applicant: Greg Rowe & Associates
Owner: Mark Trupp & Jennifer McDonald
Application No. P201/2007
By Chris Warrener, Town Planner on 6 November 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for additions to the rear of the single house at 16 View Terrace comprising a master bedroom, en-suite, library, living area, and balcony, and minor alterations and additions to the existing ground floor plan and entry.

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

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

Documentation
Amended plans date stamp received on 18 September & 21 October 2008

Date Application Received
12 October 2007

Additional information
Further amended plans date stamp received on 21 October 2000 show bedroom and living spaces 'flipped' to provide an 800mm reduction in the overall length of the addition at the upper level

Advertising
Surrounding landowners as per attached location map, sign on site.

Date Advertised
24 September 2008

Close of Comment Period
9 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
53 days

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

19 June 1976	Belowground concrete swimming pool registered;
19 November 2002	Council decides to advise the WAPC that it supports the subdivision of 14 & 16 View Terrace for the purposes of adjusting the common property boundary;
13 December 2002	WAPC conditionally approves the boundary adjustment subdivision;
20 November 2007	Council defers making a decision on an application for additions at the rear pending a site visit;
18 December 2007	Matter withdrawn from agenda at the applicant's request;
15 April 2008	Council defers making a decision on an application for additions to the 2-level house at 16 View Terrace comprising a new kitchen on the ground floor with upper floor additions comprising a master bedroom, en-suite, library, living area, and balcony under a metal clad gable roof;
17 June 2008	Council agrees to have item withdrawn from agenda;
2 September 2008	Council approves additions to the single house at No. 16 (Lot 5) View Terrace, East Fremantle comprising a new kitchen on the ground floor with upper floor additions comprising a master bedroom, en-suite, library, living area, and balcony under a metal clad gable roof in accordance with the plans date stamp received on 12 June 2008.

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comments were made:
- most of the height of the addition on the front elevation is covered by the height of the existing roof.
- significant detail and material issues to be resolved.
- given controversial nature of the development of this site it is critical to know what proposed materials are.
- current proposal has a much less massive presentation to View Terrace.
- north elevation is massive but follows from the fall in ground level and the proposed new addition.

Public Submissions
At the close of the comment period 3 submissions were received, 2 submissions were received after the advertising period closed.

C Gregory - 31 View Terrace
- Current plans are a great improvement on the previous ones;
- Height query;
- Should be more opening windows;
- Clarification sought regarding building materials and finishes, & placement of air conditioners.

T French - 19 View Terrace
- View impacts significant;
- Suggests redesign by narrowing & elongating the addition, and reducing the height of the addition.

P & P Thomson - 15 View Terrace
- Support for current revised application;
- Practical commonsense approach.

M. Seminara, T. Lowenhoff, R. & T. Seminara - 23 & 23A View Terrace
- Addition has significant impact on views from 23a View Terrace;
- Reject application, comply with height limit.

Site Inspection
By Town Planner on 21 October 2008.

REPORT
Background
At its meeting on 18 December 2007 Council agreed to a request from the owner to withdraw an application for 2nd storey additions at the rear of the house at 16 View Terrace.

That application proposed concealed/flat roofed additions at the rear, which incorporated wall heights that exceeded the height limit specified in LPP 142.

If approved and implemented that application would have resulted in the property having the appearance of a single storey house seen from View Terrace (with additions at the rear).

Following withdrawal of that application in 2008 the applicant submitted plans for 2-storey additions which involved removing the roof of the existing house and replacing it with steeply pitched metal clad roofing over the proposed additions.

This metal clad roof extended for the full width of the existing house, and conformed to the specified roof height limit pursuant to LPP 142. At its meeting held on 2 September 2008 Council approved the steeply pitched metal clad roof application.

The current application is for very much the same 2nd storey additions as the 2007 application (incorporating minor changes to ceiling heights and room sizes, and room configuration).

If approved and implemented this application results in the property continuing to have very much the same appearance of a single storey house from View Terrace, and with a 'box-like' upper floor addition at the rear.

According to the main objector, Mr Travis French on 3 October 2008 had a 'positive meeting' with the applicant, Mark Trupp, and his advisor, Aaron Lohman and it was his understanding that Mr Trupp would see if the architect could reduce the impact of the proposed structure in either or both of the following ways:
1. Narrow and elongate the addition;
2. Reduce the height of the addition.

In response the applicant/owner submitted plans with some minor modifications to the submitted plans. The plans with minor amendments were received on 21 October 2008. These are the plans now tabled for Council's approval, and propose reducing the extent of the proposed additions to further reduce Mr French's perceived view impacts of the proposed development.

Mr French has submitted comments on the further plan amendments, to which the applicant has submitted a response in addition to responding to comments made by TPAP.

Issues

Building Height

This application is for flat/concealed roofed additions at the rear, which involve the following height variations for which Council's discretion is required to be exercised to allow:

East Side	The additions incorporate an en-suite and master bedroom on the east side next to 18 View Terrace with a wall height that varies between 8.1m and 8.5m above deemed natural ground level (DNGL).
West Side	The additions incorporate a balcony, living room and WC on the west side next to 14 View Terrace. The height of the balustrade for the balcony is 6m above DNGL. The wall for the living room and WC varies between 8.1m and 8.4m above DNGL.
South Side (Front)	The additions incorporate a WC, mini-bar area, library and en-suite on the south side (front) with a wall height of 7.8m above DNGL. *LPP 142 specifies a wall height limit of 6.5m for a flat/concealed roof development.*

Submissions

3 of the 4 submissions contain objections to the application based on building height and view impacts.

View Impacts

1. The only specific reference to "view protection" in the RDC is found in Performance Criteria 6.7.1, which recognises the need to protect the amenity of *"adjoining properties"*, including where appropriate, access to views of significance.

   There were no submissions received from adjoining property owners regarding the impact of the proposed additions on views, and the author considers that the proposed development will not impact on the adjoining property views.

2. Notwithstanding that the view objectors are not adjoining property owners TPS 3 includes the following provision, which requires it to consider an application having regard, in part, to the following:

   "10.2 Matters to be Considered by Local Government
   The local government in considering an application for planning approval is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application —
   (o) the preservation of the amenity of the locality;

(p) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;
(z) any relevant submissions received on the application;"

This application has been carefully considered having regard to the above stated matters.

3. With respect to the abovementioned Scheme provisions 10.2(o), (p), & (z) it is noted that all of the submissions which objected to the application on the basis of view impacts are from the owners of properties, which do not adjoin the subject land. 2 of the submissions are from properties which do not view or which have an extremely distant view of the subject property (23A & 31 View Terrace).

The Town Planner undertook site visits to a number of properties when the application was originally submitted in 2007 to assess view impacts.

The Town Planner took photographs, and digital movie footage from these properties looking in a 180° arc from the respective front living rooms and balconies to assess the impact of the upper floor additions at 16 View Terrace on views.

The following is a summary of the findings:

19 View Terrace

At 19 View Terrace is a 2-storey house with expansive upper level balcony and large enclosed living areas behind.

This property is situated immediately behind/south of 16 View Terrace, and any additions thereto will be very visible to 19 View Terrace.

However the digital film footage shows the view of 16 View Terrace as a very small component of the overall view, and this view is considered to be the lesser rated of all the views, which are commanded from the balcony of 19 View Terrace.

23 View Terrace

At 23 View Terrace there is a 3-level home with a kitchen, living room and corner balcony on the upper floor, which have west, north, & northeast views of the ocean, the river, and buildings in the Perth Central Business District.

16 View Terrace cannot be seen from the kitchen or the living room however close to and from against the east side of the living room window, and from the balcony a person can obtain views of the subject property, and panoramic views in the distance of the city of Perth, the Swan River and Blackwall Reach, and the Indian Ocean.

The views of 16 View Terrace comprise a very small portion of the overall north facing view.

The proposed additions to 16 View Terrace will result in a small portion of the ocean view from the east side of the living room window and corner balcony being obstructed.

A number of the original objectors did not respond to Council's earlier request to visit their property in order to help assess the potential impact in this regard, however the following comments are made in regard to the observed impacts on their views(notwithstanding the difficulty of making an assessment when

the property owner declined to invite the reporting officer to conduct a site visit):

23A View Tce	16 View Terrace cannot be seen from the 3-level house on this property, it being situated behind a similarly built 3 level house at 23 View Terrace, and this will continue to be the case;
31 View Tce	16 View Terrace is almost invisible to views from this property;

The impact on property views by the upper floor additions varies depending on where views are obtained. Nevertheless in no case is it considered that there is a significant loss of significant views.

TPAP Comments
The panel were generally of the view that this application will result in a much reduced impact than the house that Council approved in September 2008, however it was concerned that the materials, colour and finish of the proposed addition will have a significant impact on the overall appearance of the development, and these details need to be clarified.

Discussion
The Applicant has provided a response (as attached) to the submissions, the contents of which are agreed with.

There were no submissions received from adjoining properties regarding the impact of the proposed additions on views.

Notwithstanding that the view objectors are not adjoining property owners, TPS 3 includes the following provision which requires it to consider an application having regard for the following:

"10.2. Matters to be Considered by Local Government

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

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

This application has been carefully considered having regard to the above stated matters.

TPAP Comments
The applicant provided the following response to the further comments made by Mr French, and the comments of TPAP:

"Comments on Objector's Submission
In response to the submission by Rex Harrison Pty Ltd (ITF Rex Harrison Trust) we advise that the roof height cannot be lowered any further than most recently presented due the minimum ceiling height requirements within the upper storey. Preservation of the period features and character of the original home is a fixed part of the design criteria, hence, the retention of the original ceiling in the ground floor living area and entry hall prevents any further reduction in roof height than as proposed. These matters are outlined in detail in the letter from Matthews Architecture dated 6 October 2008 (we have attached a copy of the letter to this email). Our Client has gone to considerable lengths (and additional expense) to reduce the scale of the addition as much as possible following the meeting with Mr Travis French. At this point, we cannot see any further changes that can be made without undermining the objectives of the proposal (i.e. additional space to be provided) or the integrity of the existing house.

Comments on Town Planning Advisory Panel Comments
With respect to the Advisory Panel's comments it is agreed the proposal presents to View Terrace in a more sympathetic manner than the addition already approved on the subject site. Most of the building height is concealed behind the existing roof line of the dwelling which further reduces any potential impact on the streetscape.

It is not considered that the northern elevation of the dwelling is massive as suggested by the Advisory Panel. Given the context of the existing built form in the locality it is considered that the proposal is consistent with the existing scale and character. Moreover, it is considered that the proposal presents less building bulk when compared with other dwellings in the locality, including the adjacent development under construction at No. 18 View Terrace. This proposal remains within the building envelope of the existing house and does not extend to the north.

In terms of building materials, no final decision has been made by our Client. The Client design philosophy is that the structure is designed to convey a sense of being light and airy, hence will contain abundant exposed glass and steel. Window/door frame finishes will be of commercial quality as will the glazing. Our client hopes to be able to clad the structure in flat panels of a non reflective material similar to brushed zinc (note this is not zincalume) sympathetic to the existing finishes of the dwelling, however, the final decision will be a function of cost, structural strength and ability to withstand coastal conditions. The roof will be finished in a colorbond colour but not zincalume."

Conclusion
The impact on property views by the upper floor additions varies depending on where views are obtained. Nevertheless in no case was it considered that there was a significant loss of significant views.

Opinions may be varied in regard to the appearance of the development however the positive views expressed by the members of TPAP are noted and it is concluded that it would be unreasonable to reject the application on purely aesthetic grounds, or on the basis that it will detrimentally affect amenity and the local streetscape.

While the application is for additions which do not comply with the building height limits specified in LPP 142 it is considered to result in a much lesser impact on views than the approved 'compliant' additions, and ensures that the integrity and appearance of the existing 'art deco' style single storey house remains. On this basis the application is supported.

RECOMMENDATION
That Council grant approval for the following:
(a) variation to wall height on the south side for a WC, mini-bar area, library and en-suite pursuant to Local Planning Policy 142 from 6.5m to 7.8m;
(b) variation to wall height on the east side for an upper floor en-suite and master bedroom pursuant to Local Planning Policy 142 from 6.5m to 8.5m;
(c) variation to wall height on the west side for a balcony, living room and WC pursuant to Local Planning Policy 142 from 6.5m to 8.4m;

for additions to the rear of the single house at No. 16 (Lot 5) View Terrace, East Fremantle comprising a master bedroom, en-suite, library, mini-bar area, WC, living area, and balcony, and minor alterations and additions to the existing ground floor plan and entry in accordance with the amended plans date stamp received on 21 October 2008 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 additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
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) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.
(c) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).

Mrs Pam Thomson of 15 View Terrace addressed the meeting in support of the proposed development application.

Messrs Mark Trupp (owner), Aaron Lohman (Greg Rowe & Associates), and Andrea Veccia-Scavalli (Matthews Architecture) addressed the meeting in support of the proposal advising that the design was the better outcome for the residents of View Terrace with the view issues having been addressed thereby having far less impact on existing residences. They also advised that discussions had taken place with the neighbour at 19 View Terrace.

Mr Stuart Wearne, Chief Executive Officer, returned to the meeting at 8.35pm.

RECOMMENDATION TO COUNCIL
Mayor Ferris – Cr Olson
That Council grant approval for the following:
(a) variation to wall height on the south side for a WC, mini-bar area, library and en-suite pursuant to Local Planning Policy 142 from 6.5m to 7.8m;
(b) variation to wall height on the east side for an upper floor en-suite and master bedroom pursuant to Local Planning Policy 142 from 6.5m to 8.5m;
(c) variation to wall height on the west side for a balcony, living room and WC pursuant to Local Planning Policy 142 from 6.5m to 8.4m;
for additions to the rear of the single house at No. 16 (Lot 5) View Terrace, East Fremantle comprising a master bedroom, en-suite, library, mini-bar area, WC, living area, and balcony, and minor alterations and additions to the existing ground floor plan and entry in accordance with the amended plans date stamp received on 21 October 2008 subject to the following conditions:
1. prior to the issue of a building licence a schedule of materials and finishes be submitted to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
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 additions are not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
5. **all stormwater to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
6. **this planning approval to remain valid for a period of 24 months from date of this approval.**

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) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.
(c) all noise levels produced by the construction of the development are to comply with the provisions of the Environmental Protection (Noise) Regulations 1997 (as amended).
(d) discretions have been granted on the basis of a number of matters specific to this site and this application including retention of the original house, setbacks of the original house which affect the development, and the lesser impact of this non compliant development over the compliant development.

CARRIED

The Chief Executive Officer made the following declarations:

(i) As part owner of 10 Fortescue Street, the Chief Executive Officer believes that, by virtue of the traffic and streetscape implications arising from the development proposal, there is potentially a financial interest to be disclosed and the Chief Executive Officer hereby discloses a financial interest in the proposal.
(ii) The adjoining owners, the Paino's, are well known to me by virtue of being my neighbours, nevertheless I declare that all advice given in this report has been given impartially and on the merits of the issues concerned.

T100.11 Fortescue Street No 6
Applicant: Carl Huston
Owner: The Baptist Union of Western Australia Inc.
Application No. P111/2008
By Chris Warrener, Town Planner and Stuart Wearne, Chief Executive Officer, on 10 November 2008

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

"Whilst the property is not an adjoining property, as part owner of 10 Fortescue Street, which is in the immediate vicinity of 6 Fortescue Street, the Chief Executive Officer believes that, by virtue of the traffic and streetscape implications arising from the development proposal, there is potentially a financial interest to be disclosed and the Chief Executive Officer hereby discloses a financial interest in the proposal."

BACKGROUND
Description of Proposal
An Application for Planning Approval to build a kindergarten facility for 3 and 4 year olds, necessitating the demolition of the existing single storey house, and develop a portion of

the land to the north, which was previously a bitumen surfaced basketball court however is now used as a carpark, as an outdoor play area.

Statutory Considerations
Local Planning Scheme No. 3 – Primary Regional Road, Residential R12.5/R40 (LPS 3)
Local Planning Strategy – Woodside Precinct (LPS)

Statutory Considerations (other)
Health (Public Building) Regulations 1992
Building Code of Australia
Child Care Services Act 2007
Child Care Services (Child Care) Regulations 2006

Documentation
Plans and relevant forms date stamp received on 30 May 2008

Date Application Received
30 May 2008

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

Date Advertised
18 June 2008

Close of Comment Period
4 July 2008

No. of Days Elapsed between Lodgement & Meeting Date
164 days

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

18 Sept. 1978:	Council decides to advise the East Fremantle Baptist Church that it does not favour a Christian Community Primary School for 50 children to be conducted from the premises at the corner of Canning Highway & Fortescue Street;
5 Dec. 1997:	CEO grants approval for removal of existing timber floor, its replacement with a concrete floor, and rotate the Church function by 180°;
17 March 1998:	Council approves an office and a day care/crèche facility at the house and back yard of 6 Fortescue Street;
19 May 1998:	Council decides to advise the WAPC that it supports the amalgamation of Lots 181 & 182 Canning Highway;
2 June 1998:	WAPC conditionally approves the amalgamation of Lots 181 & 182;
2 Sept. 1998:	Building Licence 224b/2723 approved for 2-storey extensions to Baptist Church at 229 Canning Highway;
13 Nov. 1998:	WAPC endorses Diagram 96701 for final approval for the amalgamation of Lots 181 & 182 and an 8.5m truncation at the corner of Canning Highway and Fortescue Street;
30 Nov. 2005:	CEO advises the WAPC that the Town supports the amalgamation of Lots 181 & 182 Canning Highway and their subdivision into Lot 800 comprising 2198m² and Lot 800 comprising 488m² (house/manse lot)
14 March 2006:	WAPC conditionally approves the amalgamation and subdivision;

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 22 July 2008 and the following comments were made:
- retention of church in the town is valuable.
- heritage assessment when completed will be instructive in terms of the house's historic relationship to the church and its cultural value in terms of its relationship to the church.
- building is proposed to be clad in silver custom orb – not convinced this is an appropriate material – totally alien to the streetscape.
- Council needs to carefully consider materials and colours schedule.

Other Agency/Authority
Department for Planning & Infrastructure (DPI)

Public Submissions
Two submissions were received:

1. *Submission from T. Paino*
   - Prefer building designed to be in keeping with the church buildings;
   - Accept the concept;
   - South side wall of proposed class rooms should provide noise suppression

2. *Submission from S. Wearne*
   - South side wall should be brick for noise attenuation;
   - Traffic management concern;
   - Appropriateness of use?
   - Need for kindergarten?

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

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

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

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

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

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

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

The portion of the property where it is proposed to build the kindergarten is zoned Residential R12.5/40.

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

Car parking
Schedule 11 to LPS 3 specifies the following parking requirement:

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

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

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

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

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

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

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

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

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

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

In its response letter dated 25 August 2008 DPI stated:

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

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

In its response letter dated 26 September 2008 DPI advised:

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

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

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

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

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

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

(1) Responses to 26 September 2008 DPI letter.
The applicant submitted amended drawings, which specify the following:
- Tandem car parking to northeast corner to be marked "Staff Only";
- Seeking Council approval to retain parking at northern end of the site on a temporary basis;
- The parking bays at the western end of the Church entrance have been allocated for motorbike and bicycles as suggested;
- Car bays next to the truncation are marked for "Small Cars Only"

In regard to parking monitoring the applicant has not provided any information.

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

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

The preface to Clause 10.2 reads as follows:

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

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

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

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

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

The following comments are made:

- The most relevant aim of the Scheme is 1.6(d):
  "To provide for a variety of development to meet the needs of the community with regard to housing, employment and services."

- The application was for a "3 and 4 year old kindergarten facility for the local area". The issue of "needs of the community" for such a facility is addressed in more detail under "Community Need" below.

- Other relevant Scheme aims are "to preserve the existing character of the Town"…"To enhance the character and amenity of the Town"…"To facilitate and encourage effective public involvement in planning issues of significance to the character, amenity…of the Town".

- The above criteria involves subjective assessment. For example the Scheme's definition of "amenity" is "means all those factors which combine to form the character of an area and include the present and likely amenity".

- It could be argued, for example, using this definition, that the proposed *enhances* amenity: it could also be argued that it *reduces* amenity.

- Since the implementation of the proposal would necessitate the demolition of the Manse, this aspect could also be considered in the context of the proposal's potential effect on the character of the Town.

- Under the Town's Municipal Inventory, the place has a Management Category C which is defined as "some heritage significance at the local level".

- The consultant commissioned by the applicant found the building "has some aesthetic value as an attractive fibrous cement house" although did

not "contribute to the heritage significance of the Woodside East Precinct in which it is located".

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

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

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

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

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

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

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

Comments by the TPAP are referred to above. (With respect to the comments of the TPAP, condition 8 has been included.)

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

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

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

The first paragraph of "Land Use" for Woodside Ward reads as follows:
"It is the Council's intention to conserve the precinct's heritage and to retain its existing character by maintaining single residences on large lots, avoiding pressures to remove mature trees, and preserve the spacious character of the area as reflected in the streetscapes and generous curtilages. New

development in the precinct will generally be restricted to single residential. Some additional group housing may be permitted with street frontage on corner lots."

The proposal is not considered consistent with this objective.

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

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

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

No planning policy of relevance.

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

No environmental protection policy of relevance.

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

No policy of relevance.

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

No policy of relevance.

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

The issue of a portion of the land along the frontage of Canning Highway being reserved for a Primary Regional Road has been taken into account.

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

Not relevant.

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

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

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

Whilst the applicant has referred to the Residential Design Codes in his application, these do not apply in the case of non residential development.

Nevertheless the R Code standards are instructive and in this respect the applicant notes that whereas under the R Codes a 1.5m setback would be required on the southern boundary, in this case the setback will only be 1.11-1.32 metres over the length of the southern wall.
The stated justification is "to maximise the use of the proposed playground area" and the applicant expresses the view that the reduced setback "has minimal impact to the southern neighbour".

Given the proposed development is a non residential development in a residential area, it is the authors' view that the residential standard should apply and a minimum 1.5m setback should be provided. It is further recommended that due to overshadow issues relating to the adjoining property, an additional 1m setback be provided to help address this issue.

The above is reflected in Recommendation 2 of the approval option.

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

No relevant issues.

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

No relevant issues.

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

Not relevant.

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

Not relevant.

10.2(o) *"the preservation of the amenity of the locality."*

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

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

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

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

This is a relevant issue. In terms of the adjoining land to the north, the "church" land, the main issue concerns traffic generation – which is discussed further under 10.2(r).

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

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

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

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

- **Dividing Fence**
  According to the plans the proposed dividing fence is approximately 2.4 metres in height.

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

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

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

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

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

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

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

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

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

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

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

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

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

- **Noise Attenuation with respect to carpark**
  In addition to the abovementioned crossover issue is the issue of part of a carpark being built up against the boundary of the adjoining neighbour.

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

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

  In that respect, Condition 18 refers.

  This still leaves a significant majority of the car bays which have been designated for the kindergarten proposal, to be used for other church related activities "after hours".

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

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

The following issues are considered to remain:

- **Parking shortfall**
  As indicated above, a five space shortfall has been identified.
  Clause 5.5.3 provides that the options for dealing with this shortfall are as follows:
  - refuse the development
  - identify appropriate off site parking availability "in the immediate vicinity of the development site", which must "continue to be available for use in conjunction with the development at such times as it might reasonably be required".
  - accept immediately adjacent on-street car parking as satisfying part or all of the car parking requirements for development "provided such allocation does not prejudice adjacent development or adversely affect the safety or amenity of the locality".

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

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

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

  Whilst the abovementioned concerns are valid, and could be considered legitimate grounds for refusal, it is concluded the issue is not a clear ground for refusal of the development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hence Condition 1 has been recommended in the approval option.

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

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

See also 10.2(zb) below.

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

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

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

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

Adequate public transport services are available.

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

Adequate services are available.

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

Not considered relevant.

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

Adequate provision has been made.

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

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

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

Not relevant.

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

Not relevant.

10.2(z) *"any relevant submissions received on the application"*

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

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

All comments received from DPI were considered.

10.2(zb) *"any other planning consideration the local government considers relevant."*

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

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

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

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

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

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

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

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

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

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

This was an unexpected stance, particularly as another State Government Department, the Department of Communities, is required to licence such facilities (Recommendation 11). It was later learned however, that there is some contention in educational circles regarding the merits of such programs, with some educationalists reportedly being quite opposed to the concept of 3 year old kindergartens, on learning grounds.

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

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

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

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

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

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

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

Nevertheless the facility is described as:

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

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

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

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

The issue of the target group is also an issue.

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

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

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

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

Notwithstanding the comments in the Feasibility Study, in a letter dated 20 May 2008, which accompanied the planning application, the applicant stated "The church…has recognised the need for a 3 and 4 year old kindergarten facility for the local area" (and) "The church has decided…to invest in such a facility to service the local community".

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

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

Palmyra	10
East Fremantle	12
Other	16

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

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

Given the church is seeking enrolments of up to 60 children (morning session-20; afternoon session-20; all day session-20), the 10 described as registered above is not a conclusive indication of the final outcome. The most likely scenario however would appear to be that at best about a ⅓-½ of the attendees would involve East Fremantle residents.

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

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

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

Conclusion

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

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

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

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

RECOMMENDATION FOR APPROVAL

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

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

adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.

14. where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.
15. prior to the issue of a building licence, the location of the crossovers to be determined by the CEO in consultation with relevant officers and if required amended plans to be submitted in accordance with this determination. New crossovers which are constructed under this approval are to be a maximum width of 3.0m, with the footpath to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.
16. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.
17. if the installation of any crossover results in the removal of a street tree, the street tree is to be replaced at the owner's expense, by a tree to the satisfaction of the CEO in consultation with relevant officers.
18. use of the south west area of the kindergarten carpark, designated as an area extending to 17m from the southern boundary, limited to 8am-6pm Monday to Friday.
19. all signage to be to the satisfaction of the CEO, in consultation with relevant officers.
20. the proposed kindergarten is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
21. this planning approval to remain valid for a period of 24 months from date of this approval.

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

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

RECOMMENDATION FOR REFUSAL

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

1. Community Need not demonstrated

(Town Planning Scheme – clause 1.6(d))
(Local Planning Strategy – clause 3.4)

2. Local Planning Strategy encourages integration of community facilities within designated commercial areas – this is a residential area
(Local Planning Strategy – clause 3.4)

3. Does not represent multiple use of community facility
(Local Planning Strategy – clause 3.4).

4. Design and proposed materials significantly incompatible with existing streetscape and does not preserve amenity of the locality.
(*Local Planning Strategy – clause 3.4, 5.3)*
(Submission received from adjoining owner – TPS3, sub clause 10.2(z)),
(TPS3, sub clause 10.2(j))
(TPS3, sub clause 10.2(o))

5. Adverse effect on adjoining land by virtue of noise, traffic and appearance of proposal
(TPS3, sub clause 10.2(p))

6. Parking shortfall of 5 bays
(TPS3, sub clause 10.2(q))

Mr Tony Paino of 8 Fortescue Street addressed the meeting and commented on a range of issues in relation to the proposed facility, in particular the potential impact of noise and concerns with regard to the facility and its associated car parking being utilised for purposes other than a kindergarten, particularly when those purposes involved periods which were outside of the specified hours and days of operation of the proposed kindergarten. Mr Paino nevertheless concluded his remarks by saying that if all of the conditions as given in the "Recommendation for Approval" in the officers' report were maintained, he would not be in opposition to the proposal.

Mr Phil Beeck (Associate Pastor) and Mr Carl Huston (Architect) addressed the meeting regarding various aspects of their application and the officer's report. Mr Beeck expressed the need for such a facility in the town. Mr Huston stated that as the proposal was classed as child care, the officers' conclusion regarding car parking requirements were wrong and rather than constituting a shortfall there was actually a surplus of car bays as child care parking requirements, under Town Planning Scheme No. 3, were less.

Mr Huston added that they were prepared to look at the finish of the dividing fence and that of the southern wall of the proposed building to assist with noise attenuation.

The Chief Executive Officer responded to various comments made by Mr Beeck and Mr Huston. On the issue of car parking, the CEO noted the application was for a kindergarten, not for a child care centre and that information submitted by the Church in respect of the application specifically stated that a K3 was not a child care centre. The CEO outlined the relevant provisions of Town Planning Scheme No. 3 for kindergarten car parking and concluded the officers' assessment in this regard which had identified a 5 bay shortfall was entirely correct.

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

1. **the approval is confined to the operation of a pre-school/kindergarten only, with the use of the building limited to 8am-6pm, Monday to Friday and numbers of attendees limited to 40.**
2. **prior to the issue of a building licence amended plans are to be submitted showing a minimum of a 2.5m setback on the southern boundary and specifying a 1.8m (other than in the front setback where it steps down to 1.2m) hardiflex dividing fence between 6 and 8 Fortescue Street, with galvanised steel capping and the cost of which is to be borne by the owner of 6 Fortescue Street.**
3. **prior to the issue of a building licence, the materials to be used in the construction of the southern wall of the proposed development, and its construction, to be determined by the CEO in consultation with relevant officers and amended plans to be submitted in accordance with that determination.**
4. **prior to the issue of a building licence, the applicant to agree, in writing, to implement "right turn only" arrangements for vehicles leaving the car park, if requested by Council at a later date, if Council perceived significantly adverse traffic effects have resulted from the implementation of the proposal.**
5. **existing parking at the northern end of the site is temporarily approved at the discretion of Council and subject to Canning Highway road widening not occurring.**
6. **prior to the issue of a building licence the applicant/owner is to prepare and submit a car park monitoring program, to the satisfaction of the CEO in consultation with relevant officers, to determine if the time of the activities at the property should be varied to free up car parking bays if deemed necessary by Council.**
7. **prior to the issue of a building licence, a landscaping plan be submitted to the satisfaction of the CEO in consultation with relevant officers.**
8. **prior to the issue of a building licence colours of materials to be to the satisfaction of the CEO, in consultation with relevant officers.**
9. **the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
10. **the proposed works are not to be commenced until Council has received an application for a demolition licence and a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
11. **the proposed works are not to be commenced until the plans are approved by the Child Care Licensing and Standards Unit.**
12. **all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
13. **all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.**
14. **where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without**

limitation any works associated with the proposal) which are required by another statutory or public authority.

15. prior to the issue of a building licence, the location of the crossovers to be determined by the CEO in consultation with relevant officers and if required amended plans to be submitted in accordance with this determination. New crossovers which are constructed under this approval are to be a maximum width of 3.0m, with the footpath to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.

16. in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.

17. if the installation of any crossover results in the removal of a street tree, the street tree is to be replaced at the owner's expense, by a tree to the satisfaction of the CEO in consultation with relevant officers.

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

19. all signage to be to the satisfaction of the CEO, in consultation with relevant officers.

20. the proposed kindergarten is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.

21. this planning approval to remain valid for a period of 24 months from date of this approval.

Footnote:

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

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

(b) a copy of the approved plans as stamped by Council are attached and the application for a building licence is to conform with the approved plans unless otherwise approved by Council.

(c) it is recommended that the applicant provides a Structural Engineer's dilapidation report, at the applicant's expense, specifying which structures on adjoining sites may be adversely affected by the works and providing a record of the existing condition of the structures. Two copies of each dilapidation report should be lodged with Council and one copy should be given to the owner of any affected owner.

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

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

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

CARRIED

Under s.5.21(4)(b) of the Local Government Act 1995, Cr Dobro requested that the voting of Council members be recorded.

Crs de Jong, Olson & Wilson voted in favour of the recommendation with Mayor Ferris & Cr Dobro having voted against the motion.

T101. ADJOURNMENT

Mayor Ferris – Cr Dobro
That the meeting be adjourned at 9.55pm. CARRIED

T102. RESUMPTION

Mayor Ferris – Cr Dobro
That the meeting be resumed at 10.15pm with all those present at the adjournment in attendance with the exception of Mr Stuart Wearne, Chief Executive Officer.

CARRIED

T103. REPORT'S OF OFFICERS (Cont)

T103.1 ***King Street No. 44 (Lot 445)***
Applicant & Owner: Phillip Edward Jankowski
Application No. P173/2008
By Chris Warrener, Town Planner on 29 October 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for unauthorised existing development for windows to a bathroom next to the south side boundary of 44 King Street to be frosted.

Statutory Considerations
Town Planning Scheme No. 3 – Clause 8.4 Unauthorised existing development
Local Planning Strategy – Plympton Precinct (LPS)
Residential Design Codes (RDC)

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

Documentation
Plans and relevant forms date stamp received on 19 September 2008

Date Application Received
19 September 2008

Advertising
Adjoining land owners only

Date Advertised
26 September 2008

Close of Comment Period
9 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
51 days

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

12 October 2004	Council defers the application for additions and alterations the dwelling to allow the applicants the opportunity to modify the design to reduce the adverse impact of the proposal on the neighbour to the south particularly having regard to the setback and wall height of this southern wall;
21 December 2004	Council's grants approval for the northern side boundary setback to the carport be reduced from 1m to nil for alterations and additions to an existing dwelling at 44 King Street;
22 December 2004	Demolition Licence 463/2004 issued for part of building prior to additions;
25 August 2005	Building Licence 134-22 approved for additions and alterations to dwelling;

5 May 2008	Council's Building Services send a letter to the owners of 44 King Street to inform them that the recent installation of a large glazed frame including a door and associated windows does not comply with the approved planning drawings submitted for the works.

CONSULTATION
Public Submissions
At the close of the comment period no submissions were received however a late submission was received on 30 October 2008 from the owner of the adjoining property.

B Luscombe	-	Opposes retrospective approval;
46 King Street	-	Should return to original plans and install a solid wall with high windows.

Site Inspection
By Town Planner on 1 October 2008.

REPORT
Background
On 21 December 2004 Council approved an application for planning approval for works to the property at 44 King Street comprising a carport and internal alterations and additions for a new kitchen, dining and living room, 2 bathrooms, a laundry, and an office.

On 5 May 2008 the Town Planner visited the grouped dwelling/terrace house at 46 King Street to inspect a privacy issue that had been raised by the tenant and owner in regard to some windows and a door to a bathroom recently built at 44 King Street.

These windows were not specified on the plans approved by Council in December 2004.

By letter dated 7 May 2008 the Building Surveyor wrote to the owner of 44 King Street stating 3 options to rectify the issues that had arisen with the plan discrepancy.

In a letter dated 11 May 2008 the owner of 44 King Street wrote to the Building Surveyor stating:

"I have ordered a small slatted privacy screen, which will be installed in the next four to six weeks. This will be fixed to the inside of the boundary wall, as shown in the attached drawing."

Note that this privacy screen was not one of the 3 options specified in the 7 May 2008 letter from Council's Building Surveyor.

On 15 May 2008 the Building Surveyor consulted with the owner of 44 King Street, and wrote to the owner of 46 King Street to suggest a solution involving fixing a screen to the boundary wall to restore privacy and prevent overlooking.

By letter dated 21 May 2008 the owner of 46 King Street complained that the works at 44 King Street do not correlate with the works specified on the plans which were advertised for the purpose of obtaining planning approval.

On 3 June 2008 the CEO wrote to the owner of 44 King Street to clarify the circumstances pertaining to the planning approval and building licence, and advised the owner not to proceed with the "slatted privacy screen", and to inform the Building Surveyor which of the 3 options outlined in the letter dated 7 May 2008 *"you intend to implement in an endeavour to bring this matter to a close."*

On 19 August 2008 the owner of 46 King Street wrote to the Building Surveyor stating:

"I object to the metal structure…….as a screen."

The Building Surveyor conducted a further site inspection on 28 August 2008 and confirmed that the screen had been installed without approval.

Issues

Approved Plans

On 21 December 2004 Council granted conditional approval to additions and alterations to the house at 44 King Street.

On 25 August 2005 a Building Licence was approved for plans which differ from the plans for which planning approval was granted.

The Building Licence plans specify additional floor to ceiling height windows to be installed for the bathroom next to the south side boundary whereas the Planning Approval plans are for hi-light windows.

Neighbour Complaint

The above 'Background' sets out the chronology of events and correspondence regarding the complaint about the additional windows that have been installed for the bathroom next to the south side boundary.

Council officers have endeavoured to rectify the situation in consultation with the respective property owners.

The application currently before Council is for the partial frosting of the additional bathroom windows, supposedly to eliminate the privacy and overlooking issues that have arisen.

Submission

The submission from the owner of the affected adjoining property at 46 King Street objects to the frosting of the bathroom windows as proposed by the applicant, and states:

"The owner of 44 King Street should return to his original plans and install a solid wall with high windows."

Discussion

In regard to the discrepancy between the plans for which Council granted Planning Approval and the plans that were submitted for the purposes of obtaining a Building Licence, it is incumbent on an applicant for a Building Licence to ensure that the Building Licence plans conform to the plans for which Planning Approval was granted.

It is the responsibility of the applicant to discuss beforehand with the Building Surveyor any changes which are proposed. In this case there is no record of there having been any discussion, and it is assumed that given the seemingly minor drawing changes the Building Surveyor of the day simply overlooked the change to the elevation for the bathroom on the south side.

This application for changes to unauthorised existing development for the middle portions of the left, middle and right windows to the bathroom to be frosted is not considered to adequately address the privacy issue between the neighbouring properties, and the applicant should be directed to undertake works to the building in accordance with the original Planning Approval.

RECOMMENDATION

That Council pursuant to s.214 of the Planning and Development Act 2005 directs the owner of 44 King Street to undertake works to ensure that the building additions comply

in all respects with the Planning Approval granted by Council on 21 December 2004, and such works are to be completed within 60 days of the date of this decision.

RECOMMENDATION TO COUNCIL
Mayor Ferris – Cr de Jong
That Council pursuant to s.214 of the Planning and Development Act 2005 directs the owner of 44 King Street to undertake works to ensure that the building additions comply in all respects with the Planning Approval granted by Council on 21 December 2004, and such works are to be completed within 60 days of the date of this decision. CARRIED UNANIMOUSLY

T103.2 ***Angwin Street No. 27 (Lot 45)***
Applicant & Owner: Riverview Asset P/L
Application No. P182/2008
By Chris Warrener, Town Planner on 29 October 2008

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

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

Relevant Council Policies
Local Planning Policy No. 143 – Fencing (LPP 143)

Documentation
Plans and relevant forms date stamp received on 30 September 2008

Date Application Received
30 September 2008

No. of Days Elapsed between Lodgement & Meeting Date
41 days

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

31 May 1985	Closure of Richmond Street road reserve from north of Lot 8 (No 21) Angwin Street to Surbiton Road;
22 October 1986	Easement registered to provide a right of carriageway over portion of Reserve 41519 (previously Richmond Street) for the purposes of providing vehicle access to 23 Angwin Street;
17 November 1986	Easement registered to provide a right of carriageway over portion of Reserve 41519 (previously Richmond Street) for the purposes of providing vehicle access to 21 Angwin Street;
20 June 1994	Council grants Planning Consent for a relaxation of setbacks for a bedroom and balcony additions at 27 Angwin Street;
19 September 1994	Council refuses to grant Planning Consent for a laundry, garage and studio addition within front setback;
April 1995	Council resolves: *"(a) Council will not be responsible for the capital cost and maintenance cost of Surbiton Road on the northern boundary of Lot 45 nor the easement at the rear of lots 45, 46 and 47, as Council maintains Angwin Street, thus providing access to all properties, that is lots 45, 46, 47 and 8,*

	(b) that the road and easement as described in (a) be used for access only, and not for parking of any type of vehicle. *(c) any improvements to the road and easement be subject to Council's approval, and any other public authority.* *Council's Town Planner is of the opinion that:* *- a landscape plan for road and barrier fencing/parks & recreation plan needs to be adopted prior to converting a single dwelling access into a four dwelling access.* *- Council may require a fee for the granting of any easement."*
26 May 1995	Council refuses to grant Planning Consent for a laundry, garage and studio addition within the front setback at 27 Angwin Street;
21 August 1995	Council grants special approval for zero setbacks to the east and south boundaries and a relaxation of standards for a reduced setback to a secondary street for erection of a laundry, garage and studio at 27 Angwin Street;
16 October 1995	Building Permit issued for the laundry, garage and studio;
15 February 2005	Council grants conditional approval for construction of a garage with access to Surbiton Road via Reserve 41519 and a rooftop garden to the rear/western boundary at 27 Angwin St;
17 October 2006	Council conditionally approves a garage, store, swimming pool, WC & shower, pavilion, and boundary walls with setback and wall height variations;
16 April 2008	Council grants approval for a garage and swimming pool.

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comment was made:
- vegetation should be continued along the verge on the north side of the proposed wall to soften the impact of the wall.

Site Inspection
By Town Planner on 9 October 2008

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

LPP 143 States:

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

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

Part 4 – Council Approval Required

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

4.1 a higher fence/wall is required for noise attenuation.

4.2 a less visually permeable fence would aid in reducing headlight glare from motor vehicles. This would apply more particularly where the subject property is opposite or adjacent to an intersection which could lead to intrusion of light into windows of habitable rooms.

4.3 where the contours of the ground or the difference in levels between one side of the fence and the other side warrant consideration of a higher fence.

4.4 where the applicant can demonstrate to Council that there is a need to provide visual screening to an outdoor living area. This may apply in situations where there is no alternative private living space other than in the front of the residence or for part off the secondary side boundary of a corner lot."

Discussion

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

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

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

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

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

RECOMMENDATION

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

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

5. this planning approval to remain valid for a period of 24 months from date of this approval.

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

RECOMMENDATION TO COUNCIL
Mayor Ferris – Cr Wilson
That the application for a barbeque and sections of a new rendered brick fence/wall at No. 27 (Lot 45) Angwin Street, East Fremantle be deferred pending the submission of revised plans that demonstrate compliance with Local Planning Policy No. 143 – Fencing. CARRIED

Cr Wilson made the following impartiality declaration in the matter of 26 Stratford Street: "As a consequence of my friendship with the applicant and the fact that my son plays on the same cricket team as the applicant's son, 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.

T103.3 ***Stratford Street No. 26 (Lot 86)***
Applicant & Owner: Jane Marie Ahern
Application No. P175/2008
By Chris Warrener, Town Planner on 29 October 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for alterations to a single storey house at 26 Stratford Street comprising:
- remove french doors and wall for the family room and install new bi-fold doors;
- pool fence, brick wall and retaining wall, and remove soil in rear lawn area;
- remove verandah and construct new deck;
- steel framed roof over bi-fold doors;
- new window into existing brickwork and replace existing window of kitchen;
- extend front porch with timber slat canopy;
- build new garden bed under shade frame;
- extend shade frame over entrance.

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 23 September 2008

Date Application Received
23 September 2008

Advertising
Adjoining land owners only

Date Advertised
26 September 2008

Close of Comment Period
9 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
48 days

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

23 July 1999	Approval granted under delegated authority for additions to replace sections at the rear north-east portion of the residence facing Stratford Street comprising a kitchen, dining room, family room, and a verandah;
5 October 1999	Council grants special approval for a reduced setback from the south side boundary from 1500 to 1055 for additions;
16 August 2000	Council grants approval for a fibreglass belowground swimming pool;
12 December 2000	Council refuses an application for an open carport with a reduce front setback;
25 July 2002	Council grants approval for a double carport;
20 August 2002	Building Licence issued for double carport.

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comments were made:
- might wish to consider installing a bladder rainwater tank underneath the decking.
- since the MI photograph has been taken a carport has been added.
- proposed new porch adds complexity to the original simple form of the frontage but given the presence now of the carport does provide continuity.

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

Site Inspection
By Town Planner on 1 October 2008

STATISTICS	***Required***		***Proposed***
Land Area			920m² Existing
Open Space	55%		66.7% Acceptable
Zoning			R12.5
Heritage Listing			Municipal Inventory
<u>Setbacks:</u>			
Front (west)			
Ground Porch	7.5	*Policy 142*	4.59 **Discretion Required**

STATISTICS		***Required***	***Proposed***
Rear (east)			
Ground	*Deck*	1.0	12.0 Acceptable
Side (north)			
Ground	*Deck*	1.0	3.9 Acceptable

Privacy: Deck
No FFL of Deck is given. (It seems to be above 500mm above NGL.)

REPORT
Issues
Streetscape
The application proposes a porch extension which is setback 4.59m from Stratford Street.

The RDC recommend a 7.5m front setback for R12.5 coded property.

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

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

In addition 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.
(iii) The following street setbacks apply also to any upper storey:
(a) Primary Street – minimum setback as prescribed by the Residential Design Codes – Table 1 – General Site Requirements, Column 8; and
(b) Secondary Street – minimum setback 50% of Primary Street."

The porch projects 2.91m into the street setback area and it comprises 20.17% of the width of the property frontage therefore Council's discretion is required to be exercised to permit the porch incursion.

Privacy
The application proposes a new deck at the rear of the existing dwelling proposed to be the same FFL of the existing house at 10.96 and therefore 596mm above natural ground level.

The RDC recommend major openings and unenclosed outdoor active habitable spaces (balconies, verandahs, terraces or other outdoor living areas) which have a floor level more than 0.5m above natural ground level and which overlook and part of any other residential property behind its street setback line, to comply with the following:

"i. Are setback, in direct line of sight within the cone of vision, from the boundary a minimum of:
- 4.5m in the case of bedrooms and studies;
- 6m in the case of habitable rooms other than bedrooms and studies; and
- 7.5m in the case of unenclosed outdoor active habitable spaces; or
ii. Are provided with permanent vertical screening to restrict views within the cone of vision from any major opening of an active habitable space; or

iii. Are provided with permanent vertical screening or equivalent, preventing direct line of sight within the cone of vision to ground level of the adjoining property if close than 25m to the opening or equivalent."

The proposed deck is setback 3.955m from the north side boundary common with 28A Stratford Street, not compliant with the RDC requirement of 7.5m for unenclosed active habitable spaces above 500mm above natural ground level and therefore Council's discretion is required to be exercised.

Discussion

Streetscape

Currently, where the proposed porch is going to extend to, a two brick course garden bed exists, which is in line with the existing carport, approved by Council in 2002, which is setback 6.09m, in lieu of the required 7.5m for R12.5 coded properties. The proposed porch extension will be in line with the existing carport, replacing the existing garden bed which will be located forward of the porch extension, under a shade frame.

While the setback of the shade frame for the porch does not comply with the front setback requirement for R12.5 coded properties, the projection of the porch in relation to the frontage of the property at 20.17% is a minor variation to the required 20%.

The proposed extension to the front portico is considered to complement the appearance of and add to the general amenity of the proposed house, and the front setback variation is supported.

Privacy

While the deck at the rear involves a variation to setbacks pursuant to the RDC for privacy/overlooking this situation is ameliorated by the existence of a boundary wall that separates 26 and 28 Stratford Street, which is 2.34m above natural ground level.

This wall eliminates overlooking between the properties, and the deck height variation is supported.

RECOMMENDATION

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

(a) variation to the west side (front) boundary setback for a porch pursuant to the Residential Design Codes from 7.5m to 6m;

(b) variation to the north side boundary setback for a deck that is 0.596m above natural ground level pursuant to the Residential Design Codes from 7.5m to 3.955m;

for the construction of alterations to a single storey house at 26 Stratford Street comprising:

- remove french doors and wall for the family room and install new bi-fold doors;
- pool fence, brick wall and retaining wall, and remove soil in rear lawn area;
- remove verandah and construct new deck;
- steel framed roof over bi-fold doors;
- new window into existing brickwork and replace existing window of kitchen;
- extend front porch with timber slat canopy;
- build new garden bed under shade frame;
- extend shade frame over entrance;

in accordance with the plans date stamp received on 23 September 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.

3. the proposed alterations are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
5. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.
6. this planning approval to remain valid for a period of 24 months from date of this approval.

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

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

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 (front) boundary setback for a porch pursuant to the Residential Design Codes from 7.5m to 6m;
(b) variation to the north side boundary setback for a deck that is 0.596m above natural ground level pursuant to the Residential Design Codes from 7.5m to 3.955m;

for the construction of alterations to a single storey house at 26 Stratford Street comprising:

- **remove french doors and wall for the family room and install new bi-fold doors;**
- **pool fence, brick wall and retaining wall, and remove soil in rear lawn area;**
- **remove verandah and construct new deck;**
- **steel framed roof over bi-fold doors;**
- **new window into existing brickwork and replace existing window of kitchen;**
- **extend front porch with timber slat canopy;**
- **build new garden bed under shade frame;**
- **extend shade frame over entrance;**

in accordance with the plans date stamp received on 23 September 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.

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

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

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

T103.4 ***Sewell Street No. 93 (Lot 2)***
Applicant: A T Brine & Sons
Owner: Kate Louise Fitzgerald
Application No. P170/2008
By Chris Warrener, Town Planner on 4 November 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for alterations to the single storey house at 93 Sewell Street comprising:
- replace concrete verandah and upgrade a concrete terrace;
- screen wall and brick balustrade with sculptured screen infill, supplied by owner;
- new metal deck roof for verandah;
- stud wall with rendered blue board.

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

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

Documentation
Plans and relevant forms date stamp received on 8 September 2008

Date Application Received
8 September 2008

Advertising
Adjoining land owners only

Date Advertised
26 September 2008

Close of Comment Period
9 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
63 days

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

19 October 2000	Council grants approval for the erection of alterations and additions to an existing dwelling subject to the conditions contained in the attached Appendix II Grant of Planning Consent form;
27 December 2000	Building Licence BL127/3001 issued for alterations and additions to existing dwelling.

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comments were made:
- no's. 91 & 93 Sewell Street are a pair and should be treated accordingly.
- semi-detached house with moderate/high MI values.
- would like to see the earlier concrete verandah roof reinstated – will retain symmetry with adjoining property to the north.
- proposed verandah roof will be out of context and height with property adjoining to the north.
- archway should be straight instead of curved.
- not clear on need for solid balustrade to carry over to the south side boundary.
- a more visually permeable front screen would be more appropriate.

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

Site Inspection
By Town Planner on 1 October 2008

STATISTICS		***Required***		***Proposed***
Land Area				Not applicable Existing
Zoning				R20
Heritage Listing				Municipal Inventory
Setbacks:				
Front				
Upper	*Terrace*	6.0	*Policy 142*	1.35 **Discretion Required**
Side (south)				
Upper	*Verandah*	1.1		1.1 Acceptable
	Terrace	1.0		1.1 Acceptable

REPORT
Issues

Front Setback The application proposes that the upgraded terrace be setback 1.35m from the primary street.

The RDC recommend a 6.0m front setback for R20 coded property.

TPAP Comments In general the panel did not support the application as submitted in particular the fact that the additions to the front are considered to be out of context with the adjoining attached grouped dwelling at 91 Sewell Street.

Discussion
On-site inspection revealed that the existing concrete terrace setback to the primary street is not proposed to be altered, it is simply proposed to be upgraded and its appearance improved.

The proposed upgrade will improve the general amenity of the house, and as the setback proposed is the same as currently exists, the front setback variation is supported.

TPAP Comments
The applicant/owner provided the following email response to the panel comments:

"archway should be straight instead of curved"

Given that the existing garage doors on both properties have wide flat arch openings at different heights I considered that the use of a classic round arch would provide relief and interest to the wall forming the frontage to the two properties. My carved stone panels which will feature both at the front and side of the house (please see attached picture, the front panels will be a simplify version of this) also incorporates a circular design so basically the arch ties it all together.

"not clear on need for solid balustrade to carry over to the south side boundary"

Extending the wall from the balustrade to the southern boundary serves three purposes:
1. It enhances the front elevation of the house by providing a broader visual base
2. Screens the dilapidated brick garage wall of the adjoining property from street view.

3. Most importantly the solid balustrade provides a better means of creating security. I live on my own and since moving here in May, attempts have been made to jimmying my front windows open, my neighbours house across the road has been ransacked, people have attempted to scale my side door to get into my house and due to the close proximity to Marmion Street I get a lot of people walking past. For my own protection and piece of mind, I would like my house to be totally secure and completely inaccessible to such people.

"a more visually permeable front screen would be more appropriate"

The street frontage balustrade will have three open carved lava stone panels which are more than 60% of the total balustrade area and allow some visual permeability from the street (please see attached picture, the front panels will be a simplify version of this). I feel the drawing submitted fails to portray the effect intended to be created. I've steered away from the previous existing wrought iron look, as I wanted my house to look more similar to that of my neighbours and I also wanted a little more privacy as the front room is my bedroom.

I really hope that the TPAP understands why I have chosen to design my house in this way and also appreciates that I cherish my privacy and sense of security. Please trust that I will make my house look as best it can with stylish wall features, classic neutral colour schemes and a touch of flowering vines.

Conclusion
The proposed alterations to the front of 93 Sewell Street are considered to improve the appearance and amenity of that property.

It is rather unfortunate that alterations are not being undertaken to 91 Sewell Street in a similar manner. In this way the entire building which comprises the two attached grouped dwellings would retain a symmetrical appearance.

However the addition of the single garage at the front of 93 Sewell Street does separate that dwelling from 91 Sewell Street in appearance, and it can be considered to be a completely separate and different dwelling notwithstanding that the two dwellings are attached.

The owner's response to the panel comments is supported to the extent that the alterations are considered to improve the appearance of the property, and are supported.

RECOMMENDATION
That Council exercise its discretion in granting approval for a variation to the east side (front) setback for an upgraded existing concrete terrace pursuant to the Residential Design Codes from 6.0m to 1.35m for alterations to the single storey house at No. 93 (Lot 2) Sewell Street, East Fremantle compromising:
- replace a concrete verandah and upgrade a concrete terrace;
- install a screen wall and brick balustrade with sculptured screen infill;
- install a new metal deck roof over the verandah;
- install a stud wall with rendered blue board;

in accordance with the plans date stamp received on 8 September 2008 subject to the following conditions:
1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed alterations are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.

4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
5. 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).

RECOMMENDATION TO COUNCIL
Mayor Ferris – Cr Olson
That Council exercise its discretion in granting approval for a variation to the east side (front) setback for an upgraded existing concrete terrace pursuant to the Residential Design Codes from 6.0m to 1.35m for alterations to the single storey house at No. 93 (Lot 2) Sewell Street, East Fremantle compromising:
- **replace a concrete verandah and upgrade a concrete terrace;**
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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 alterations are not to be utilised until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
4. **all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
5. **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.

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

Cr Olson made the following impartiality declaration in the matter of No. 26A Pier Street: "As a consequence of my having worked in the past with Ms Lisa Engelbrecht who submitted comment on the proposal on behalf of Webb & Brown-Neaves 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.

T103.5 ***Pier Street No. 26A (Lot 1)***
Applicant: Webb & Brown-Neaves
Owner: Pietro & Pamela Bongiascia
Application No. P180/2008
By Chris Warrener, Town Planner on 5 November 2008

BACKGROUND
Description of Proposal
An Application for Planning Approval for a 2-storey house at 26A Pier Street comprising:

Ground floor:	Double garage & store, porch, entry, laundry, 1 bedroom, en-suite, powder room, kitchen, dining room, living room, and alfresco;
First floor:	Balcony, upper living room, 3 bedrooms, 3 built-in robes, void and a bathroom.

Statutory Considerations
Town Planning Scheme No. 3 – Residential R 12.5
Local Planning Strategy – Richmond Hill Precinct (LPS)
Residential Design Codes (RDC)

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

Documentation
Plans and relevant forms date stamp received on 30 September 2008

Date Application Received
30 September 2008

Advertising
Adjoining land owners only

Date Advertised
30 September 2008

Close of Comment Period
14 October 2008

No. of Days Elapsed between Lodgement & Meeting Date
41 days

Any Relevant Previous Decisions of Council and/or History of an Issue or Site
9 July 2003 WAPC grants conditional approval to subdivide 26 Pier Street into 2 lots.

CONSULTATION
Town Planning Advisory Panel Comments
This application was considered by the Town Planning Advisory Panel at its meeting held on 28 October 2008 and the following comments were made:
- design is not cognisant of the topography.
- rear part of house could form part of the upper storey thereby eliminating need for excavation.
- the Panel appreciates the roof pitch.
- street elevation is quite simple – preferable to many.
- prominent garage door – specify low visual impact material.
- unremarkable project house on this narrow lot (with neighbours yet to come).

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

STATISTICS			***Required***		***Proposed***
Land Area					445m² Existing
Open Space			55%		56.8% Acceptable
Zoning					R12.5
Heritage Listing					Not Listed
Setbacks:					
Front					
	Ground	*Double Garage*	7.5		8.2 Acceptable
		Porch	7.5		8.0 Acceptable
	Upper	*Balcony*	7.5		7.5 Acceptable
		Balcony	7.5		7.8 Acceptable
Rear					
	Ground	*Alfresco*	1.0		3.18 Acceptable
		Living	1.0		7.1 Acceptable
		Dining	1.5		8.6 Acceptable
	Upper	*Bedroom 4*	2.5		16.2 Acceptable
		Bedroom 3	2.5		18.3 Acceptable
Side (east)					
	Ground	*Double Garage*	1.1	*Policy 142*	Nil **Discretion Required**
		Store	1.2		1.6 Acceptable
		Hallway	1.2		3.9 Acceptable

STATISTICS			***Required***		***Proposed***
		Laundry/Pdr	1.0		1.55 Acceptable
		Kitchen & Dining	1.0		1.15 Acceptable
		Alfresco	1.0		3.0 Acceptable
	Upper	*Balcony & Upper living & stairs*	1.6		1.58 **Discretion Required**
		Hallway	1.1		3.85 Acceptable
		WC	1.1		2.1 Acceptable
		Bed 4	1.1		1.58 Acceptable
Side (west)					
	Ground	*Porch & Entry*	1.1		1.5 Acceptable
		Ensuite/Bed 1	1.0		1.0 Acceptable
		Hallway	1.0		4.3 Acceptable
		Living	1.0		1.0 Acceptable
		Alfresco	1.0		1.9 Acceptable
	Upper	*Balcony, Bed 2 & 3 & Bath*	2.2	*Policy 142*	1.5 **Discretion Required**
		Bed 4	2.5		4.7
Height:					
Wall			8.1		8.7 **Discretion Required**
Building		*Top of Ext. wall*	5.6		5.5-6.5 **Discretion Required**
		Top of Ext. wall	6.5		6.5 Acceptable

Other Issues:

Garage Doors:	50% of frontage of setback line	62.6% **Discretion Required**

REPORT
Issues

Building Height

The proposed top of the pitched roof for the 2-storey house varies up to 8.3m above natural ground level.

Part 1 – Maximum Building Heights of LPP 142 states:

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

The application is in the Richmond Hill Precinct, which is identified as a locality where views are an important part of the amenity of the area.

Council's discretion is required to be exercised to allow the pitched roof height for the 2-storey house to exceed 8.1m.

Boundary Wall

The application proposes a 7m long wall for a double garage along the east side boundary. This wall varies in height from 2.6m to 3.5m above natural ground level (NGL).

LPP 142 States:

"Part 3 - Side and Rear Boundary Setback Variations

A wall may be situated closer to an adjoining residential boundary than the standards prescribed in Tables 1, 2a or 2b of the Residential Design Codes where the following are observed:
(a) Walls are not higher than 3m and up to 9m in length up to one side boundary;"

Council's discretion is required to be exercised to allow the garage wall to exceed 3m above NGL.

Boundary Setbacks

East Side Common with 26B Pier Street

The application proposes an upper floor balcony, living room and stairway setback 1.58m from the east side boundary.

The RDC recommend a 1.6m setback therefore Council's discretion is required to be exercised to permit a 0.02m setback variation.

West Side Common with 24B Pier Street

The upper floor wall on the west side boundary for a balcony, bedrooms 2 and 3 and a bathroom is setback 1.5m from the west side boundary.

The RDC recommend a 2.2m setback therefore Council's discretion is required to be exercised to permit a 0.7m setback variation.

Streetscape

The application proposes a 6.3m wide double garage.

A porch that is forward of the garage incorporates a supporting column which 'hides' a portion of the garage with only 5.5m of the garage visible to the street.

The portion of the garage that is visible to the street occupies 54.67% of the width of the property frontage.

The relevant RDC acceptable development provision states:

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

visible from the primary street." (RDC, 6.2 Streetscape requirements, 6.2.8 Garage doors, page 9)

A balcony above the garage extends for a width of 4.8m.

The entrance to the proposed dwelling is clearly visible to the street however as the balcony does not extend for the full width of the garage (shortfall of 1.5m) Council's discretion is required to be exercised to allow the garage.

TPAP Comments

In general the panel supported this application however it suggested some design changes and queried the materials selection for the garage.

Discussion

Building Height

The applicant has provided the following justification for the roof height variation:

"The subject site has a number of topographical constraints. The levels fall 5.0m from rear to front and the adjoining property to the west has been retained and constructed as a three level home. The neighbours FFL is only 0.2m lower than the proposed residence, despite a significant fall in levels (refer to attached photos and site plan).

The building height requirements are shown on the plans, to indicate the minor nature of the variation. The variation occurs at the front of the home, where ground levels drop substantially and will not impact on the availability of views.

The proposal is considered reasonable and does not produce excessive building bulk. A substantial amount of cutting is proposed at the rear of the site, so that nearly the entire ground floor is below NGL."

The topographic circumstances of this property contribute to the need for the increased building heights.

The impact is considered minor, and the appearance of the proposed house matches the contemporary development that has developed along this section of Pier Street.

The height variation has no impact on any adjoining or nearby property views, there were no submissions opposing the application, this height variation is supported.

Boundary Setbacks

In support of the boundary setback variations, the applicant states:

"A number of side setback variations have been identified to walls on the ground and first floors. The variations will not impact on the amenity of the adjoining sites and enables the proposed home to make effective use of the narrow site.

The adjoining site to the west is a substantial building, constructed on three levels. The adjoining property has been retained to account for the topography and constructed close to the common boundary. It does not appear to have major openings facing the subject site, and has services on that side.

The adjoining site to the east is currently vacant and it is considered that a similar development will be constructed there, as it has similar topography and dimensions.

The orientation of the lots ensures that there is no overshadowing produced by the reduced setbacks. There are no visual privacy variations and as stated previously, the entire storey at the rear of the home is below NGL, so will not be seen by the neighbours."

East Side Common with 26B Pier Street

The proposed boundary wall height for the garage varies to accommodate the steeply sloped topography of the property and is not considered to have any impact on the potentially affected adjoining property.

Similarly, the proposed upper floor wall setback variation along the east side boundary for the balcony, upper living and stairway is considered relatively minor and does not impact negatively on the potentially affected property at 26B Pier Street.

West Side Common with 24B Pier Street

The proposed upper floor setback variation is considered relatively minor and is considered not to impact negatively on the potentially affected property at 24B Pier Street; the potentially affected property owner has not objected to this variation.

<u>Streetscape</u>

In support of the garage frontage, the applicant states:

"The R Codes limit the width of a garage, based on the lot frontage, to reduce the dominance of parking structures on the streetscape. The subject site is only 10m wide, despite the minimum width in the R12.5 zone being 17m. The proposed double garage is of a standard size and therefore occupies greater than 50% of the frontage. The following design features are considered to reduce the dominance of the garage:

- *First floor balcony overhang;*
- *Entry porch extended forward of garage façade;*
- *The porch is proposed in a limestone render as a feature;*
- *The garage is located to one side, opening up the remainder of the narrow frontage for the house entry."*

One way of addressing the streetscape issues associated with the proposed garage would be to reduce its width or alternatively increase the width of the balcony above it to meet the relevant RDC acceptable development provision.

The applicant has provided justification to demonstrate how the appearance of the proposed development satisfies the relevant performance criteria under the RDC which states:

"P8 The extent of frontage and building façade occupied by garages assessed against the need to maintain a desired streetscape not dominated by garage doors." (RDC, 6.2 Streetscape requirements, 6.2.8 Garage doors, page 9)

Along this section of Pier Street there are many examples of garage frontage widths which similarly do not meet the RDC acceptable development provision relating to garages and their impact on the streetscape. Examples may be found at 22, 22B, 24A, 24B, 31A, 31B, 49A, 50A, 50B, 51A, and 51B.

The proposed garage and general streetscape appearance of the proposed development is considered to be generally consistent with development in the immediate locality and can be supported.

TPAP Comments

The applicant in an email states the following in response to the comments made by the panel:

- *the design is consistent with the existing cut/fill on adjoining sites;*
- *the rear part of the home is approximately 3/4 cut into the site (ie 1/4 is above NGL), so having it at first floor level would require filling at the rear, which would impact on the amenity of adjoining sites;*
- *the cutting in at the rear creates a private and protected courtyard, with access from the living areas of the home;*
- *we are happy to support a condition relating to the garage colour/material in order to reduce the visual impact.*

Conclusion

Given the topography of the property, and the design of housing development next to and near the proposed house, the design is considered to be in keeping with the character of the local streetscape and is supported.

RECOMMENDATION

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

(a) variation to wall height for a garage next to the east side boundary pursuant to Local Planning Policy 142 from 3m to 3.5m;
(b) variation to roof height pursuant to Local Planning Policy 142 for a small section at the front from 8.1m to 8.3m;
(c) variation to the east side boundary setback for a balcony, upper living area and stairway pursuant to the Residential Design Codes from 1.6m to 1.58m;
(d) variation to the west side boundary setback for a balcony, bedrooms 2 and 3 and a bathroom pursuant to the Residential Design Codes from 2.2m to 1.5m;
(e) variation to the width of a garage as a percentage of the property frontage pursuant to the Residential Design Codes from 50% to 54.67%;

for the construction of a 2-storey house at No. 26A (Lot 1) Pier Street, East Fremantle comprising:

Ground floor: Double garage & store, porch, entry, laundry, 1 bedroom, en-suite, powder room, kitchen, dining room, living room, and alfresco;

First floor: Balcony, upper living room, 3 bedrooms, 3 built-in robes, void and a bathroom.

in accordance with the plans date stamp received on 30 September 2008 subject to the following conditions:

1. the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.
2. the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.
3. the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.
4. all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.
5. all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to

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

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

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

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

RECOMMENDATION TO COUNCIL
Cr de Jong – Cr Olson
That Council exercise its discretion in granting approval for the following:

(a) variation to wall height for a garage next to the east side boundary pursuant to Local Planning Policy 142 from 3m to 3.5m;
(b) variation to roof height pursuant to Local Planning Policy 142 for a small section at the front from 8.1m to 8.3m;
(c) variation to the east side boundary setback for a balcony, upper living area and stairway pursuant to the Residential Design Codes from 1.6m to 1.58m;
(d) variation to the west side boundary setback for a balcony, bedrooms 2 and 3 and a bathroom pursuant to the Residential Design Codes from 2.2m to 1.5m;

(e) variation to the width of a garage as a percentage of the property frontage pursuant to the Residential Design Codes from 50% to 54.67%;

for the construction of a 2-storey house at No. 26A (Lot 1) Pier Street, East Fremantle comprising:

Ground floor: Double garage & store, porch, entry, laundry, 1 bedroom, en-suite, powder room, kitchen, dining room, living room, and alfresco;

First floor: Balcony, upper living room, 3 bedrooms, 3 built-in robes, void and a bathroom.

in accordance with the plans date stamp received on 30 September 2008 subject to the following conditions:

1. **the works are to be constructed in conformity with the drawings and written information accompanying the application for planning approval other than where varied in compliance with the conditions of this planning approval or with Council's further approval.**
2. **the proposed works are not to be commenced until Council has received an application for a building licence and the building licence issued in compliance with the conditions of this planning approval unless otherwise amended by Council.**
3. **the proposed dwelling is not to be occupied until all conditions attached to this planning approval have been finalised to the satisfaction of the Chief Executive Officer in consultation with relevant officers.**
4. **all stormwater is to be disposed of on site, an interceptor channel installed if required and a drainage plan be submitted to the satisfaction of the Chief Executive Officer in consultation with the Building Surveyor prior to the issue of a building licence.**
5. **all introduced filling of earth to the lot or excavated cutting into the existing ground level of the lot, either temporary or permanent, shall be adequately controlled to prevent damage to structures on adjoining lots or in the case of fill, not be allowed to encroach beyond the lot boundaries. This shall be in the form of structurally adequate retaining walls and/or sloping of fill at the natural angle of repose and/or another method as approved by the Town of East Fremantle.**
6. **all parapet walls are to be fair faced brickwork or cement rendered to the adjacent property face by way of agreement between the property owners and at the applicant's expense.**
7. **where this development requires that any facility or service within a street verge (street trees, footpath, crossover, light pole, drainage point or similar) is to be removed, modified or relocated then such works must be approved by Council and if approved, the total cost to be borne by the applicant. Council must act reasonably and not refuse any reasonable proposal for the removal, modification or relocation of such facilities or services (including, without limitation any works associated with the proposal) which are required by another statutory or public authority.**
8. **any new crossovers which are constructed under this approval are to be a maximum width of 3.0m, the footpath (where one exists) to continue uninterrupted across the width of the site and the crossover to be constructed in material and design to comply with Council's Policy on Footpaths & Crossovers.**
9. **in cases where there is an existing crossover this is to be removed and the kerb, verge and footpath are to be reinstated at the applicant's expense to the satisfaction of Council, unless on application, Council approval for the crossover to remain is obtained.**
10. **this planning approval to remain valid for a period of 24 months from date of this approval.**

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

(a) this decision does not include acknowledgement or approval of any unauthorised development which may be on the site.
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(e) in regard to the condition relating to the finish of the neighbour's side of the parapet wall it is recommended that the applicant consult with the neighbour to resolve a mutually agreed standard of finish.
(f) with regard to construction of the crossover the applicant/builder is to contact Council's Works Supervisor.
(g) the alfresco may not be enclosed without the prior written consent of Council.
(h) matters relating to dividing fences are subject to the Dividing Fences Act 1961.

CARRIED

T104. BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING

T104.1 A Guide to Meeting Procedures Brochure

Council members to receive a copy of the brochure for consideration at the November meeting of Council.

T105. CLOSURE OF MEETING

There being no further business the meeting closed at 10.36pm.

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 November 2008,*** *Minute Book reference* ***T94. to T105.*** *were confirmed at the meeting of the Committee on*

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Presiding Member