



TOWN OF COTTESLOE  
 14 JUN 2016  
 RECEIVED





VIEW FROM FRONT FOOT PATH

TOWN OF COTTESLOE  
 14 JUN 2016  
 RECEIVED

NO.	DATE	AMENDMENT DETAILS
D	13-06-16	COUNCIL AMENDMENTS
C	14-01-16	COUNCIL AMENDMENTS
B	25-01-15	HISTORICAL TOPOGRAPHY
A	28-01-15	COUNCIL AMENDMENTS

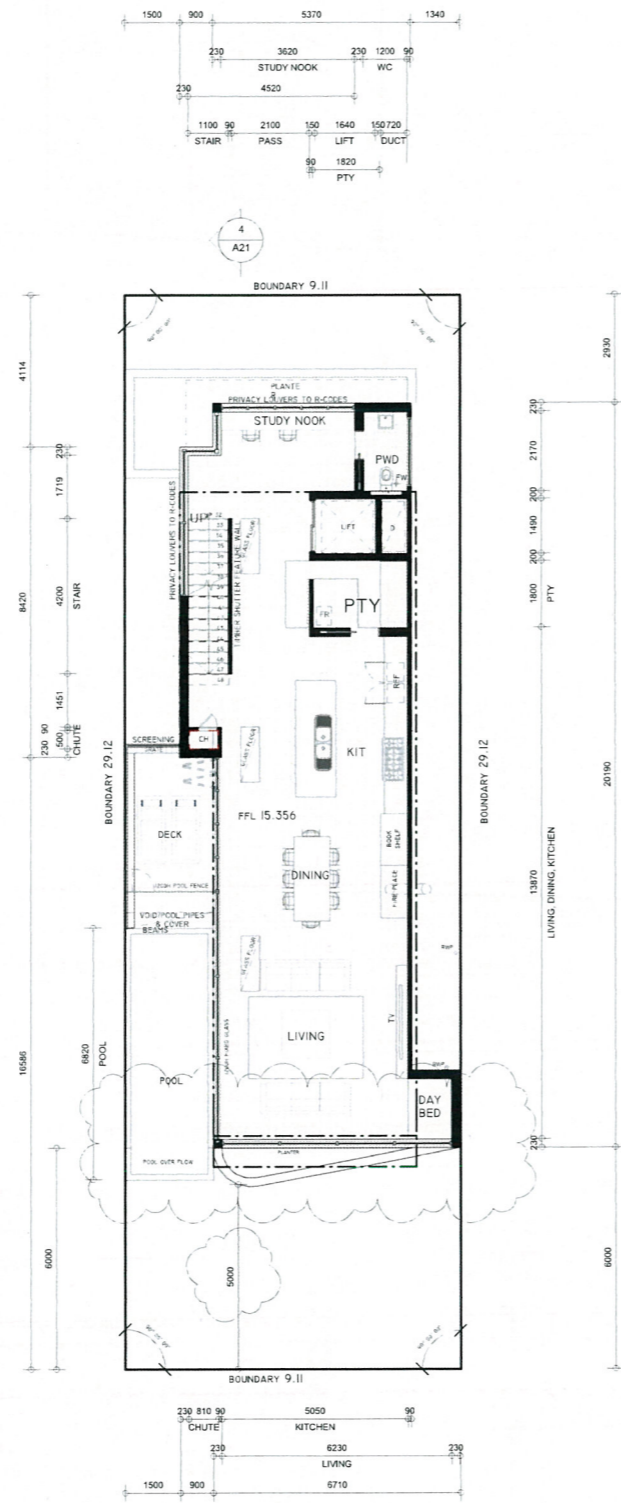
AMENDMENT	
 <a href="http://www.plandesignbuild.com.au">www.plandesignbuild.com.au</a>	
MICHAEL WILSON PLAN DESIGN BUILD PTY LTD T: 0437 085 753 W: WWW.PLANDESIGNBUILD.COM.AU E: PLANDESIGNBUILD@HOTMAIL.COM A: COTTESLOE W.A.	
CLIENT NAME:	
S. LITAS	
PROJECT NAME:	
5B OVERTON GARDENS, COTTESLOE	
DRAWING TITLE:	
COVER	
DRAWING Designer	CHECKED BY
AMENDMENT DATE:	AMENDMENT No.:
SCALE:	PAGE SIZE A1
DATE: 13-Jun-16 5:24:16 PM	JOB No.:
PAGE NO. A00	0000
NORTH:	
	





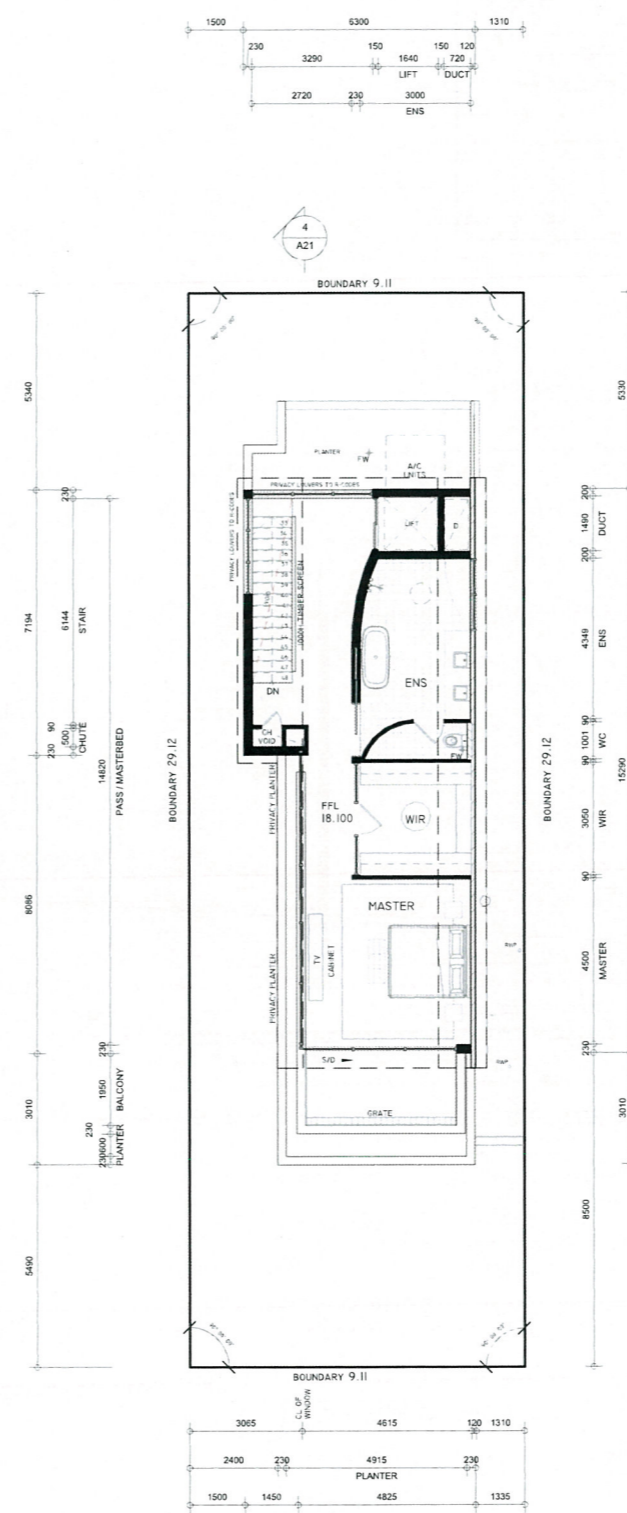
GROUND FLOOR FFL 12.698

1 : 100



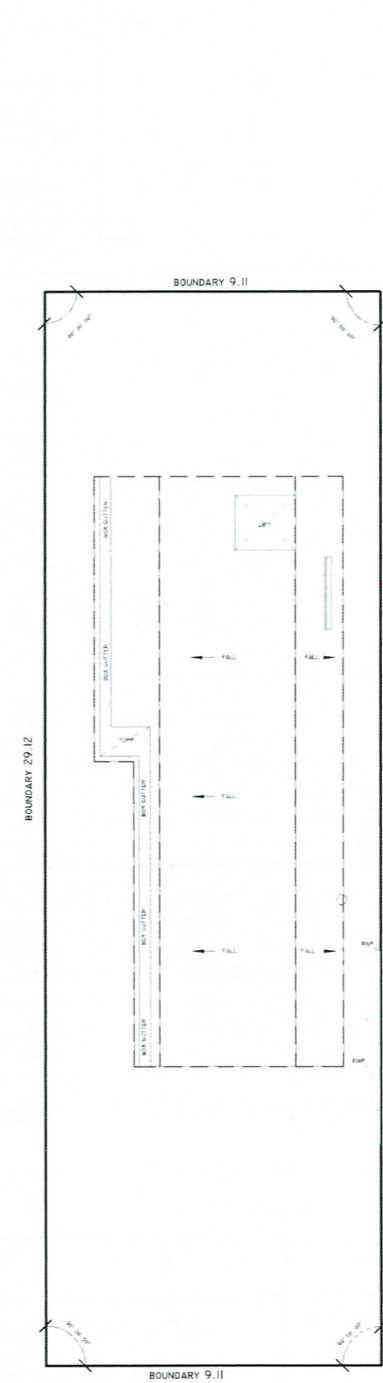
FIRST FLOOR FFL 15.356

1 : 100



SECOND FLOOR FFL 18.100

1 : 100



ROOF PLAN FFL 21.320

1 : 100

TOWN OF COTTESLOE  
14 JUN 2016  
RECEIVED

D	13-06-16	COUNCIL AMENDMENTS
C	14-12-15	COUNCIL AMENDMENTS
B	25-11-15	HISTORICAL TOPOGRAPHY
A	30-0-15	COUNCIL AMENDMENTS
NO.	DATE	AMENDMENT DETAILS



MICHAEL WILSON  
PLAN DESIGN BUILD PTY LTD  
T 0427 985 751  
W WWW.PLANDESIGNBUILD.COM.AU  
E PLANDESIGNBUILD@HOTMAIL.COM  
A COTTESLOE W.A.

CLIENT NAME:  
**S. LITAS**

PROJECT NAME:  
**5B OVERTON GARDENS,  
COTTESLOE**

DRAWING TITLE:  
**GROUND, FIRST, SECOND  
FL**

DRAWN BY: Designer	CHECKED BY:
AMENDMENT DATE:	AMENDMENT No.:
SCALE: 1 : 100	PAGE SIZE: A1
DATE: 13-Jun-16 5:24:24 PM	JOB No.:
PAGE NO. A02	<b>0000</b>



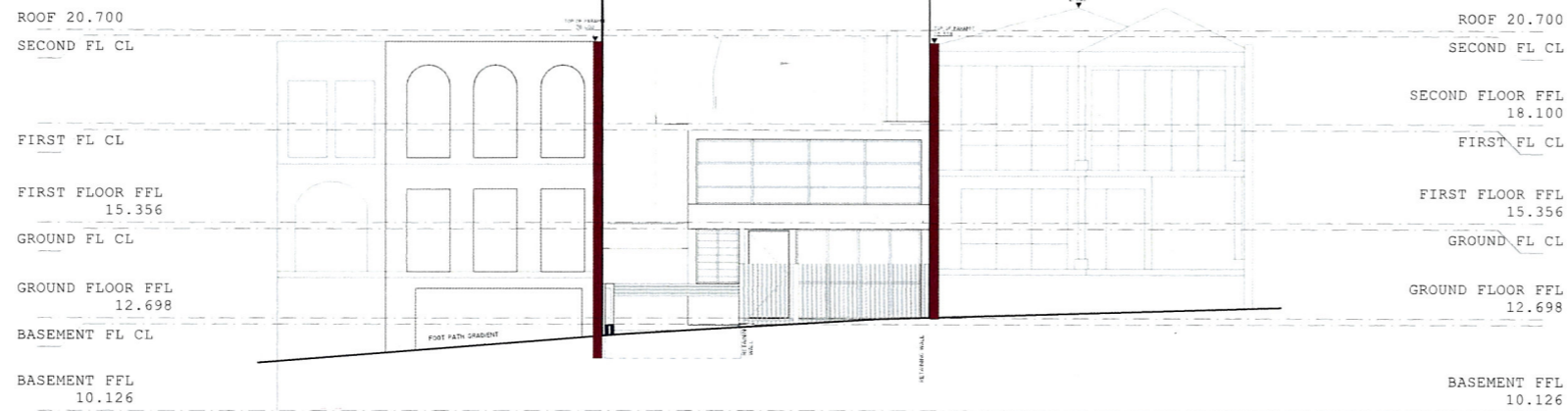


NORTH ELEVATION

1 : 100

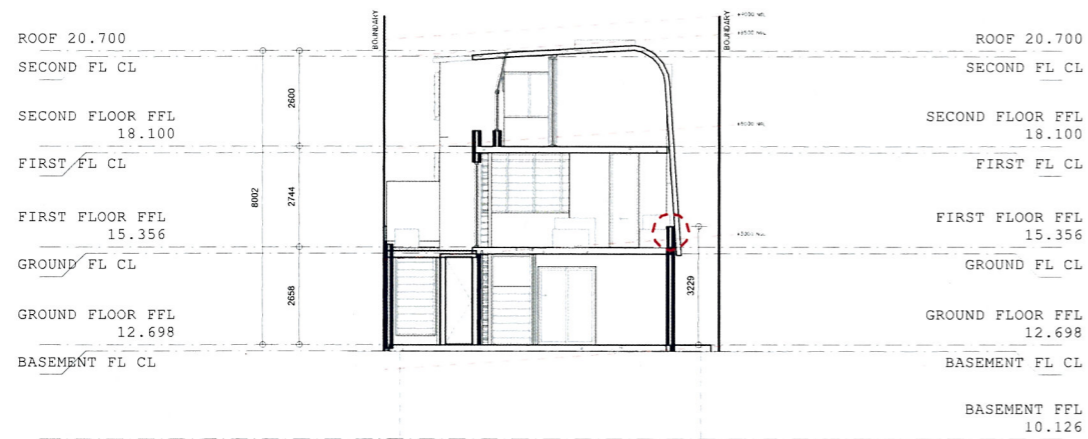
SOUTH ELEVATION

1 : 100



FRONT ELEVATION NEIGHBOURS

1 : 100



SECTION B

1 : 100



SOUTH FRONT 3D

TOWN OF COTTESLOE  
RECEIVED

TOWN OF COTTESLOE  
14 JUN 2016  
RECEIVED

NO.	DATE	AMENDMENT DETAILS



MICHAEL WILSON  
PLAN DESIGN BUILD PTY LTD  
T 6407 985 753  
W WWW.PLANDESIGNBUILD.COM.AU  
E PLANDSIGNBUILD@HOTMAIL.COM  
A COTTESLOE W.A.

CLIENT NAME:  
**S. LITAS**

PROJECT NAME:  
**5B OVERTON GARDENS,  
COTTESLOE**

DRAWING TITLE:  
**ELEVATIONS**

DRAWN BY:  
Designer

CHECKED BY:  
AMENDMENT No.

SCALE:  
1:100

PAGE SIZE:  
A1

DATE:  
13-Jun-16 5:24:28 PM

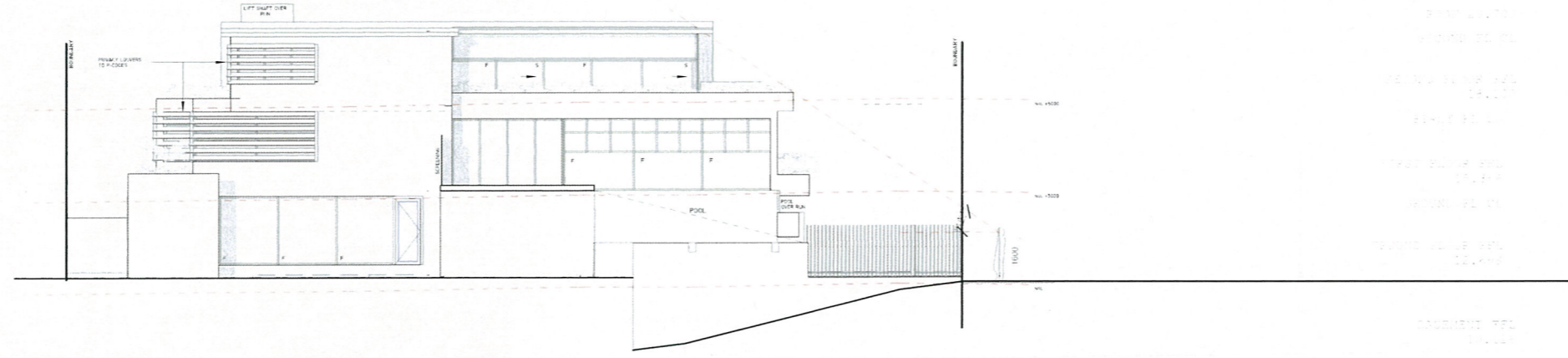
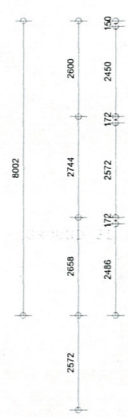
JOB No.:

**0000**

PAGE NO.:

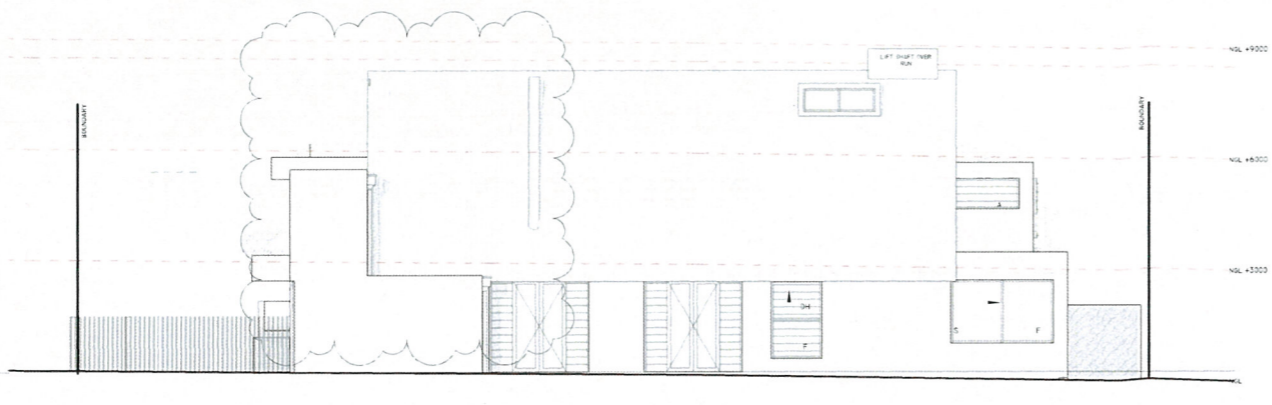
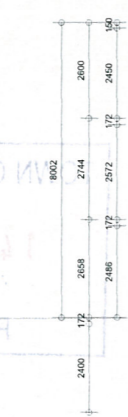
NORTH:





WEST ELEVATION

1 : 100



EAST ELEVATION

1 : 100



SECTION A

1 : 100



IMPOSED ROOF PLAN ON AERIAL SITE

TOWN OF COTTESLOE  
14 JUN 2016  
RECEIVED

D	13-06-16	COUNCIL AMENDMENTS
C	12-12-15	COUNCIL AMENDMENTS
B	25-11-15	HISTORICAL TOPOGRAPHY
A	15-09-15	COUNCIL AMENDMENTS
NO.	DATE	AMENDMENT DETAILS



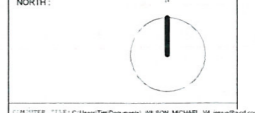
MICHAEL WILSON  
PLAN DESIGN BUILD PTY LTD  
T 0427 995 153  
W WWW.PLANDESIGNBUILD.COM.AU  
E PLANDSIGNBUILD@HOTMAIL.COM  
A. COTTESLOE W.A.

CLIENT NAME:  
S. LITAS

PROJECT NAME:  
5B OVERTON GARDENS,  
COTTESLOE

DRAWING TITLE:  
ELEVATIONS

DRAWN BY: Designer	CHECKED BY:
AMENDMENT DATE: 13-06-16	AMENDMENT No. : D
SCALE: 1:100	PAGE SIZE: A1
DATE: 13-Jun-16 5:24:33 PM	JOB No.:
PAGE NO. A21	0000



TOWN OF COTTESLOE  
 14 JUN 2016  
 RECEIVED



IMPOSED ROOF PLAN ON AERIAL SITE

TOWN OF COTTESLOE  
 14 JUN 2016  
 RECEIVED

D	13-06-16	COUNCIL AMENDMENTS
C	14-02-15	COUNCIL AMENDMENTS
B	25-11-15	HISTORICAL TOPOGRAPHY
A	30-10-15	COUNCIL AMENDMENTS

AMENDMENT



MICHAEL WILSON  
 PLAN DESIGN BUILD PTY LTD  
 T 0407 085 753  
 W WWW.PLANDESIGNBUILD.COM.AU  
 E PLANDSIGNBUILD@HOTMAIL.COM  
 A COTTESLOE W.A.

CLIENT NAME:  
**S. LITAS**

PROJECT NAME:  
**5B OVERTON GARDENS,  
 COTTESLOE**

DRAWING TITLE:  
**SECTION**

DRAWN BY:  
 Designer

CHECKED BY:

AMENDMENT DATE:

AMENDMENT No.:

SCALE:  
 A1

PAGE SIZE:

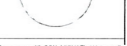
DATE:  
 13-Jun-16 5:24:37 PM

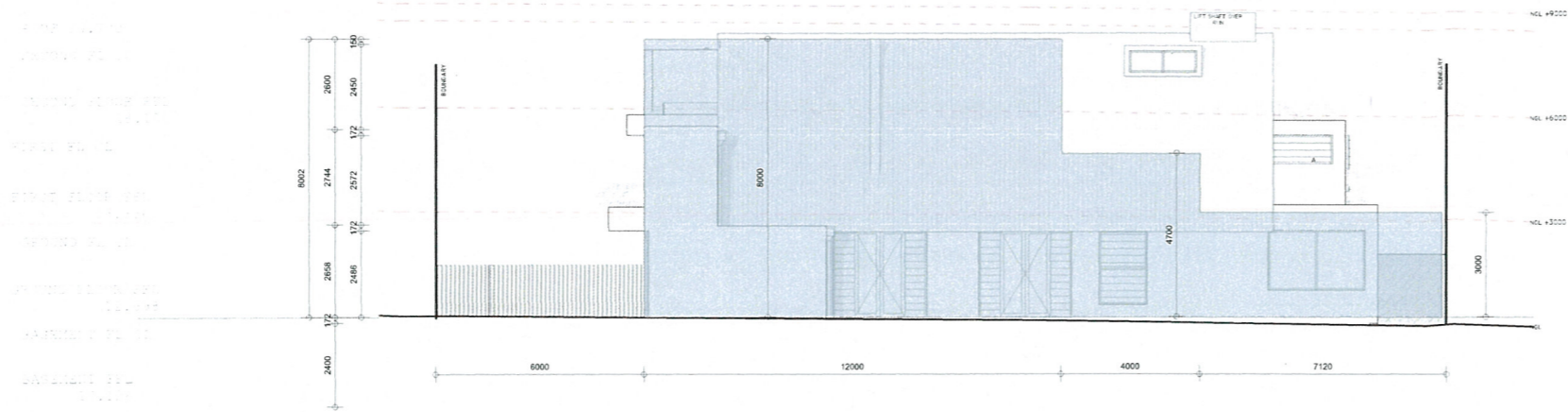
JOB No.:

PAGE NO.  
 A30

0000

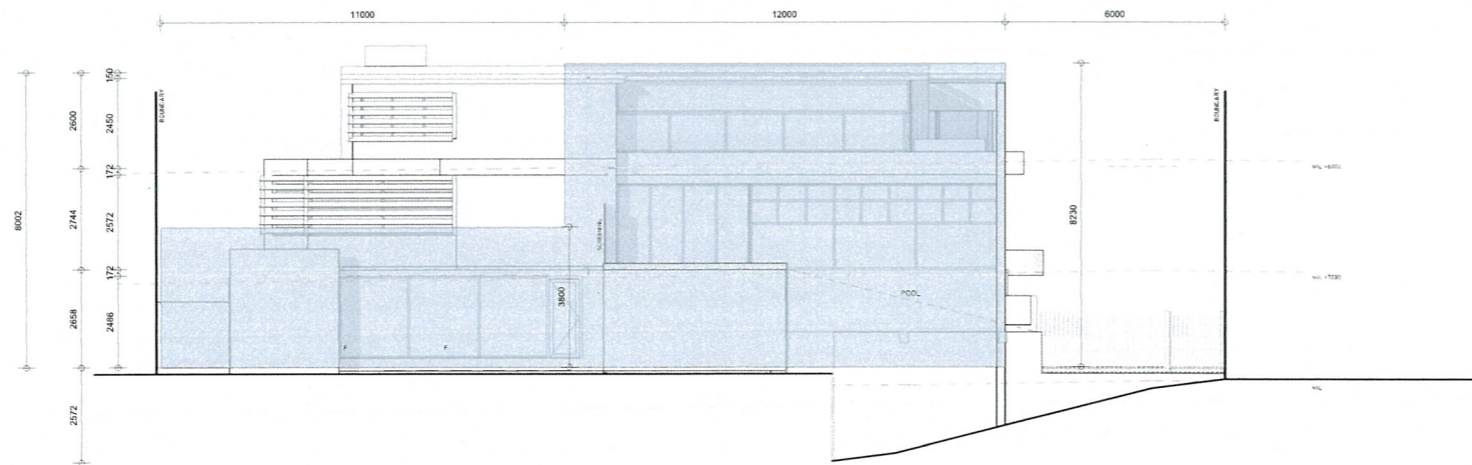
NORTH:





EAST ELEVATION \_ PARAPET


1 : 100



WEST ELEVATION \_ PARAPET

1 : 100

TOWN OF COTTESLOE  
14 JUN 2016  
RECEIVED

NO	DATE	AMENDMENT DETAILS
AMENDMENT		
 <a href="http://www.plandesignbuild.com.au">www.plandesignbuild.com.au</a>		
<b>MICHAEL WILSON</b> PLAN DESIGN BUILD PTY LTD T 9407 985 753 W WWW.PLANDESIGNBUILD.COM.AU E PLANDSIGNBUILD@HOTMAIL.COM A COTTESLOE W.A.		
CLIENT NAME		
<b>S. LITAS</b>		
PROJECT NAME		
<b>5B OVERTON GARDENS, COTTESLOE</b>		
DRAWING TITLE		
<b>PARAPET WALLS</b>		
DRAWN BY	DESIGNER	CHECKED BY
AMENDMENT DATE:	AMENDMENT No.:	
SCALE	PAGE SIZE	
DATE	JOB No.	
PAGE NO.	<b>0000</b>	
NORTH		
		



1900-1901  
1902-1903  
1904-1905  
1906-1907  
1908-1909  
1910-1911  
1912-1913  
1914-1915  
1916-1917  
1918-1919  
1920-1921  
1922-1923  
1924-1925  
1926-1927  
1928-1929  
1930-1931  
1932-1933  
1934-1935  
1936-1937  
1938-1939  
1940-1941  
1942-1943  
1944-1945  
1946-1947  
1948-1949  
1950-1951  
1952-1953  
1954-1955  
1956-1957  
1958-1959  
1960-1961  
1962-1963  
1964-1965  
1966-1967  
1968-1969  
1970-1971  
1972-1973  
1974-1975  
1976-1977  
1978-1979  
1980-1981  
1982-1983  
1984-1985  
1986-1987  
1988-1989  
1990-1991  
1992-1993  
1994-1995  
1996-1997  
1998-1999  
2000-2001  
2002-2003  
2004-2005  
2006-2007  
2008-2009  
2010-2011  
2012-2013  
2014-2015  
2016-2017  
2018-2019  
2020-2021  
2022-2023  
2024-2025

14 June 2016

Mr Andrew Jackson  
Manager Development Services  
Town of Cottesloe  
109 Broome Street  
COTTESLOE WA 6011

TOWN OF COTTESLOE

14 JUN 2016

RECEIVED

Dear Mr Jackson

**NO. 5B OVERTON GARDENS, COTTESLOE - PROPOSED THREE STOREY SINGLE HOUSE**

This letter has been prepared to assist the Town in the preparation of its report to Council on 28 June 2016 for the proposed construction of a three storey development at No. 5B Overton Gardens, Cottesloe.

The letter addresses the items raised by Ed Drewett in his email to Daniella Mrdja dated Friday 10 June 2016. In particular, it provides further justification to demonstrate that the proposal complies with the design principle requirements for vehicle sightlines, site works and retaining walls.

In addition, further evidence is submitted to demonstrate to Council that the proposal satisfies the Town's three storey dwelling requirement, subject to the presentation and appearance of the development as a two storey building.

**Sight lines**

It is submitted that the proposed development satisfies the design principles of Clause 5.2.5 of the R-Codes in relation vehicle sightlines along the south west corner of the site. Despite the imposition of the existing pier which has been constructed on the adjoining property and the proposed driveway gradient which is required to service the site, the vehicle access point will not be compromised in terms of safety and visibility.

The width of the proposed crossover is 3.5 metres where it intersects with the footpath, which provides sufficient space and visibility in respect to vehicle movement to and from the site. The width of the crossover ensures that the function of the footpath from the perspective of pedestrian safety is maintained.

### Site Works and Retaining

The proposed retaining wall and fill towards the north-western part of the site exceeds the deemed to comply provisions by a total of 100mm. This area is used for the purposes of drying clothing and has been designed in order to service the laundry area from which it can be accessed. The area in question is not an active habitable space, therefore it does not affect the amenity of the adjoining residence and is practical in terms of maintaining a consistent level along the rear of the development.

### Third Storey

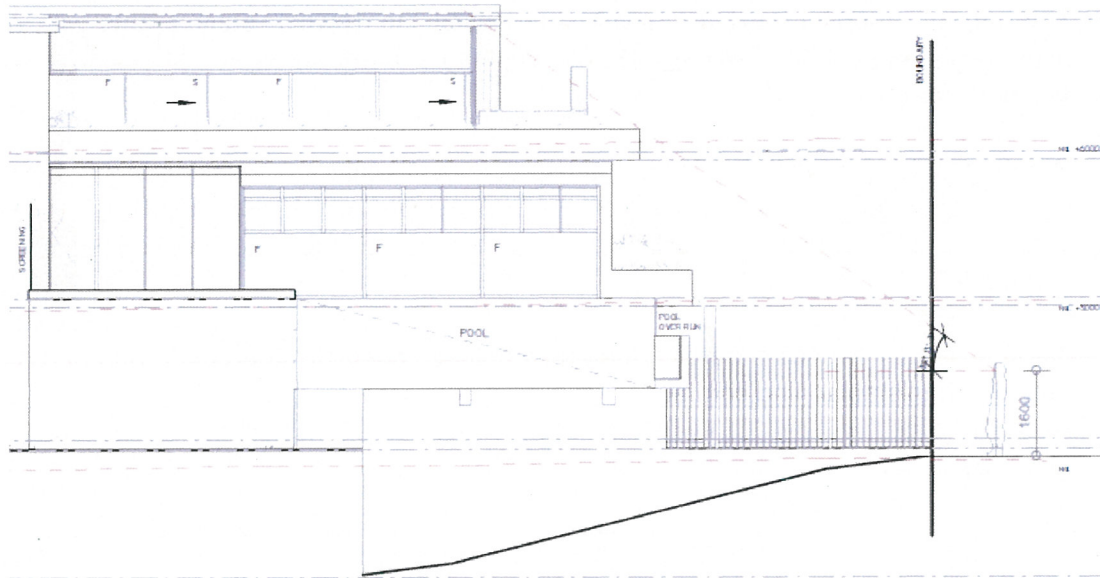
The Town has been provided with ongoing justification to demonstrate to Council that the proposed third storey satisfies the provisions of the Scheme in regards to the presentation of the building as a two storey development. This is one of three provisions which the Council must consider when applying judgement on a three storey proposal – the others being the height of the walls and roof and the need for the third storey to be contained within the roof area.

The provision relating to the appearance has been discussed in significant detail during the application process and at the State Administrative Tribunal (SAT) mediation held on 16 May 2016. It has taken nine months and six revisions of the proposal to present the current plan for determination and to arrive to a proposal which has skilfully addressed the provisions relating to three storey residential developments.

Generally, the accepted planning test in regards to maintaining an appropriate level of building bulk and scale and respect for streetscape and amenity is the presentation of the building from the perspective of the human scale. Figure 1 explains the human scale of the proposed development from the perspective of a pedestrian standing on the footpath in front of the property. The image is able to demonstrate that the third storey will not be visible from this location and that the design of the building is appropriate in terms of human scale.

The second storey has been setback to 6m from the Overton Gardens boundary whilst the third storey is setback an additional 2.5 metres behind the floor to achieve an 8.5m setback. Despite the potential for the development to be approved with a 2m setback under the R-Codes, it was important for our client to ensure that the views and amenity of neighbours was respected.

The 3D perspective below illustrates the relationship between the subject site and adjoining properties in support of the third storey proposal as submitted.



**Fig. 1:** Side elevation demonstrating the line of sight from the footpath – note that third storey is not visible due to its proposed setback and the projection of the second storey roof feature. The human scale of the building is appropriate.



**Fig. 2:** 3D streetscape perspective confirming the buildings two storey appearance in relation to its neighbours. The image illustrates the skilful integration and setback of the third storey into the roof space.

This proposal has been designed to ensure that the views, level of enjoyment and amenity experienced by its neighbours are protected and maintained.

It is proven that the plans which have been submitted for consideration by Council under Section 31 of the SAT Act succeed in complying with the provisions for three storey development in regards to building height, roof height and location.

The current proposal has successfully addressed the Town's requirements with a high quality proposal that will significantly contribute to enhancing the streetscape of Overton Gardens.

We respectfully ask that the Town approves the development in consideration of the merits of the proposal and the effort and concessions which our client has made during the SAT process to ensure that the amenity of the adjoining residents is maintained.

If you have any queries regarding the above, please contact me on \_\_\_\_\_ or \_\_\_\_\_

Yours sincerely

Petar Mrdja  
Director  
Urbanista Town Planning

---

**10.1.3 NO. 5B (LOT 42) OVERTON GARDENS – THREE-STOREY DWELLING**

<b>File Ref:</b>	<b>3268</b>
<b>Attachments:</b>	<a href="#">Aerial Photographic Report</a> <a href="#">Property Photos</a> <a href="#">Neighbour Submissions</a> <a href="#">Applicant Submission Plans</a>
<b>Responsible Officer:</b>	<b>Andrew Jackson</b> <b>Manager Development Services</b>
<b>Author:</b>	<b>Ed Drewett</b> <b>Senior Planning Officer</b>
<b>Proposed Meeting Date:</b>	<b>26 April 2016</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>
<b>Property Owner:</b>	<b>Mr S Litas</b>
<b>Applicant:</b>	<b>Plan Design Build Pty Ltd</b>
<b>Date of Application:</b>	<b>24 September 2015</b>
<b>Zoning:</b>	<b>Residential R60</b>
<b>Use:</b>	<b>P - A use that is permitted under this Scheme</b>
<b>Lot Area:</b>	<b>265m<sup>2</sup></b>
<b>M.R.S. Reservation:</b>	<b>Not applicable</b>

---

**REASON FOR LATE ITEM**

This report was previously in the Agenda for the 23 February 2016 Council Briefing, but in response to the recommendation for refusal the consultant requested that the application be withdrawn from consideration at the Briefing. The Town advised the consultant that the application would need to be withdrawn altogether (ie cancelled) in order to avoid being considered. Council was also advised accordingly, and on that presumption at the Briefing the item was excluded from consideration.

However, the applicant (owner) or the consultant did not act to cancel the application and the consultant subsequently continued to liaise with the Town towards revised plans for further consideration. It is apparent that Council was under the impression that the application had or would be cancelled, which did not eventuate, and was not informed otherwise.

A planning consultant then became involved for the applicant and following further liaison with the Town preliminary revised plans were submitted for feedback. The Town provided advice on certain aspects, which did not satisfy the consultants. The consultants then lodged an application for review (appeal) with the State Administrative Tribunal on the basis of a deemed refusal. The Town has written to the Tribunal contending that the appeal appears unreasonable given that the consultants had requested withdrawal of the proposal from Council consideration and liaised with the Town towards revised plans.

Therefore, in view of these process issues the purpose of this late item is to clarify to Council the status of the application and to enable Council to determine the application because the applicant/consultant did not cancel it, whereby the item should have proceeded to the February Council Meeting for determination. In

addition, an actual decision by Council would inform the application for review if it proceeds.

### SUMMARY

This proposed development exceeds the permitted building heights and storeys under Local Planning Scheme No. 3 ('LPS 3'), its driveway gradient does not satisfy Australian Standards, it will detract from the prevailing streetscape, and it does not address the design principles of the Residential Design Codes ('RDC') for Council to exercise its judgement in determining the application where it does not satisfy deemed-to-comply requirements. The recommendation is therefore to refuse the application.

### BACKGROUND

Nil

### PROPOSAL

This application is for a three-storey dwelling on a vacant lot which comprises the following:

Basement	Garage, two storerooms, cellar, lift, pool equipment store and stairs.
Ground level	3 bedrooms, living room, 2 bathrooms, lift, stairs, laundry and pool.
Level 1	Kitchen/dining/living room, lift, powder room, WC, stairs, side deck and front balcony.
Level 2	Master bedroom, ensuite, WIR, lift, stairs and front balcony.

### STRATEGIC IMPLICATIONS

Nil

### POLICY IMPLICATIONS

Nil

### STATUTORY ENVIRONMENT

- Local Planning Scheme No. 3
- Residential Design Codes
- Planning and Development (Local Planning Schemes) Regulations 2015 (*P & D Regs*)
- Planning and Development Act 2005
- Fencing Local Law

### FINANCIAL IMPLICATIONS

Nil

### STAFFING IMPLICATIONS

Nil

**SUSTAINABILITY IMPLICATIONS**

Nil

**CONSULTATION**

The application was advertised for 14 days to 8 adjoining owners. Four letters of objection were received (see summary below).

**STAFF COMMENT**

This lot is located on the northern side of Overton Gardens and is one of two lots that have remained vacant since being created as part of a ten lots subdivision located between Overton Gardens and Napier Street that was approved by the Western Australia Planning Commission in 1999.

The table below is a summary of the planning assessment of the proposal against the provisions of Local Planning Scheme No.3, the Planning & Development Regulations, and the Residential Design Codes.

Where the proposal requires further consideration or the exercise of judgement by Council, the relevant planning element is discussed in the section of the report following this table.

<b>Planning assessment</b>	<b>Complies</b>	<b>Requires exercise of judgement (where applicable)</b>
Use - single dwelling	✓	
Building height		Non-discretionary
Number of storeys		✓
Street setback		✓
Lot boundary setbacks		✓
Open space	✓	
Parking	✓	
Outdoor living areas	✓	
Street Surveillance	✓	
Sightlines		✓
Street walls and fences		✓
Vehicle access	✓ (excluding gradient)	
Visual privacy		✓
Solar access	✓	
Site works	✓	
Retaining walls	✓	
External fixtures	✓	
Matters to be considered by local government		✓

**Summary of issues received during public consultation****Olive Maxine and Brian Kent**

Object to proposed development:



- Not in keeping with LPS objectives;
- Will result in loss of general amenity and vistas;
- Will have a negative impact and devalue surrounding properties;
- Natural ground levels, rather than historical levels, should be used for assessment;
- Proposed walls exceed height requirements as are not part of roof;
- The roof is contrived in which to build a third storey;
- The proposed front balconies, with 1m high solid balustrades, will block views from neighbouring properties. Balconies and side fences should not be solid; and
- There will be overshadowing, we will be blocked in, and be unable to see down the street to drive out.

### **Edward and Jacqueline Hodgkinson**

Object to proposed development:

- The nominated ground level is not the natural ground level;
- The wall heights exceeds 7m;
- The roof is not curved;
- No screening is provided (to balconies);
- There will be a loss of privacy from the proposed pool;
- The building height will be 1.2m higher than all other residences; and
- The proposal will impact negatively on the street, affect vistas, general amenity and personal privacy.

### **Shayne Carter**

Objects to proposed development:

- The front setback will have a major adverse impact on adjoining residents;
- Historical ground levels have been used rather than Natural Ground Levels for calculation of heights, which is not in keeping with the Codes;
- The location of the front balconies will obstruct other residents' views; and
- The unique character of Cottesloe should be preserved for future generations.

### **Bradley W Moffat**

Objects to proposed development:

- The proposed balconies would be in conflict with existing balconies which are setback 6m from the front boundary;
- The proposed building is based on historical ground levels which is not in keeping with the Codes;
- The roof is not curved;
- By approving the height the property will be the only three-storey house in the street;

- It would look out of place and completely obstruct views; and
- Balconies should have see-through railings.

LPS 3	Building height
Permitted	<p>Maximum 6m wall height and 8.5m building height (7m maximum height to top of parapet).</p> <p><i>Wall height for a curved roof is measured to the median height between the lowest and highest points of the wall in accordance with Schedule 11 of LPS 3.</i></p>
Applicant's proposal	<ul style="list-style-type: none"> <li>• Median wall height of curved roof: 6.36m (RL: 19.18 - south elevation);</li> <li>• Median wall height of curved roof: 5.74m (RL: 18.56 - north elevation);</li> <li>• Building height: 8.5m (RL: 21.32)</li> <li>• Top of lift shaft: 8.9m (minor projection)</li> </ul> <p><i>These measurements have been calculated using the interpolated NGL (RL: 12.82) supplied by the applicant for the purposes of providing some height calculations, rather than as required under LPS 3.</i></p>

### Comment

- Building Height is defined in LPS 3 (clause 5.7.1) as follows:  
*Means the maximum vertical distance between any point of natural ground level and the uppermost part of the building directly above that point (roof ridge, parapet, or wall), excluding minor projections above that point.*
- Natural ground level is defined in the RDC as:  
*The levels on a site which precede the proposed development, excluding any site works unless approved by the decision-maker or established as part of a subdivision of the land preceding the development.*
- Schedule 13 of LPS 3 excludes clause 5.7.1 from the operation of discretion to exceed the absolute height limits for new residential dwellings.
- In 1999, the Development Services Committee in considering a request to vary building heights in this location as part of the new subdivision proposal resolved, inter alia:
  - to permit the filling of the site from the Napier Street footpath level to the Overton Gardens footpath level...and*
  - to use the revised levels as the basis for the calculation of the height restriction for each of the individual development sites.*
- The spot levels at the corners of the lot shown on the building approvals for the adjoining dwellings at 5A (approved 2004) and 5C (approved 2000) have been researched by the Town, and are as follows:

NW – 11.79	NE – 12.38
SW – 12.27	SE – 12.71

- The levels at the corners of 5B (Lot 42) which were used in the assessment of a new dwelling approved in 1999 but not constructed were as follows:

NW – 10.04	NE – 10.56
SW – 10.17	SE – 10.70

- The overall building height of the dwelling at 5B approved in 1999 was 8.5m (RL: 18.87), above the calculated average NGL of RL: 10.37 at the centre of the lot.
- The site survey plan submitted with the current application for 5B has the following levels at the corners:

NW – 12.09	NE – 12.50
SW – 12.25	SE – 12.70

- The spot levels at the corners of the lot shown on the applicant’s site survey plan appear closest to those shown on the building plans that were approved for 5A and 5C Overton Gardens and therefore may be a reasonable indication of NGL, rather than using the flat interpolated level supplied by the applicant which does not comply with LPS 3. On this basis, the average RL at the centre of the lot will be approximately 0.44m lower than that currently proposed (ie: RL: 12.38, rather than RL: 12.82).
- However, to satisfy LPS 3 requirements, the applicant should submit a contour survey plan from a licensed surveyor showing the natural ground level across the lot, either based on the spot levels used on the adjoining lots (Lots 41 & 43), or the existing footpath level between Napier Street and Overton Gardens (as resolved by the Development Services Committee in 1999) as a basis of determining NGL, and building height.
- The neighbouring properties were all granted wall height concessions by Council because of the small lot sizes. However, unlike the applications assessed under the previous Town Planning Scheme No. 2, LPS 3 does not allow discretion with respect to building height for new residential development and the calculation method for determining building height has changed.

**Conclusion**

**The proposed development exceeds the maximum permitted building height under LPS 3.**

LPS 3	Number of storeys
Permitted	Maximum two storeys, although this may be increased to three storeys where the development satisfies clause 5.7.4 of LPS 3 (see comment below).
Applicant’s proposal	Three storeys (excludes the basement as this constitutes an undercroft under LPS 3).

**Comment**

- Clause 5.7.4 of LPS 3 states:  
*In a residential zone the local government may permit a third storey to be located within the roof space of a dwelling, provided that the development complies with the maximum wall and roof height requirements stipulated in clause 5.7.2 and also provided that, in the opinion of the local government, the dwelling will retain the appearance of a two-storey dwelling and will not unduly adversely affect local amenity.*
- The proposed development partly exceeds the maximum permitted wall heights and would adversely affect local amenity due to its protruding front balconies which are inconsistent with the prevailing streetscape. It therefore does not satisfy Clause 5.7.4;
- Although the proposed master bedroom on the third floor would be setback 7m from the front boundary, its width represents 60% of the width of the lot which appears excessive and exceeds the width that would otherwise be achieved with a standard pitched roof design. Also, the proposed third storey balcony would project to 3m from the front boundary and be partially covered with the curved roof. This element would appear prominent on the streetscape and have an adverse affect on the amenity of the adjoining residents (as discussed separately in this report);

**Conclusion**

**The proposed dwelling does not satisfy clause 5.7.4 of LPS 3 for a third storey to be approved within the roof space.**

<b>RDC/LPS 3 – Street setback</b>	<b>Deemed-to-comply provision</b>	<b>Design principle</b>
Requirement	2m	N/A
Applicant's proposal	<ul style="list-style-type: none"> <li>• 7m (basement);</li> <li>• 7m (ground floor); 3m (supporting columns);</li> <li>• 4.46m (1<sup>st</sup> floor); 2.1m (balcony);</li> <li>• 7m (2<sup>nd</sup> floor); 3m (balcony)</li> </ul>	

**Comment**

- The proposed street setback exceeds the minimum 2m setback of the deemed-to-comply requirements of the RDC for a dwelling in a Residential R60 zone. However, in 1999 Council in considering development on the subdivided lots resolved, inter alia:  
*Buildings, including balconies and parking structures, to be setback 6.0m from Overton Gardens and Napier Street, in order to provide equity in terms of views from the proposed development.*
- This setback requirement has been applied to four of the five subdivided lots that have been developed along Overton Gardens. However, the proposed development will project forward into this setback area due to its 1<sup>st</sup> floor living room, projecting balconies on the first and second floors, and supporting columns on the ground floor.

- The Explanatory Guidelines of the RDC advise:  
*Street setback areas are an integral part of the streetscape and are fundamental to the amenity and particular character of residential localities. They may perform a number of different, but complementary roles:*
  - (i) continuity of the streetscape;
  - (ii) a visual setting for the dwelling;
  - (iii) a buffer against noise and general activity on the public street;
  - (iv) privacy for the dwelling;
  - (v) visual connection to the street, its users and to neighbours;
  - (vi) space for car parking and access; and
  - (vii) a transition zone between the public street and private dwelling.
- The *Planning and Development (Local Planning Schemes) Regulations 2015* 'Matters to be considered by local government' require, amongst other things, Council to have due regard to:  
*The compatibility of the development with its setting including the relationship of the development to development on adjoining land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.*
- In view of the established streetscape of the existing dwellings on the subdivided lots in this part of Overton Gardens as a result of Council's previous resolution, the proposal to protrude into this front setback area would disrupt the continuity of the streetscape and detract from the visual setting of the dwellings, as well as impose on the amenity of neighbouring residents. It would also be contrary to the relevant objectives of the RDC which are to ensure that development is sympathetic to the scale of the street and surrounding buildings.

**Conclusion**

**The proposed front setback to the first floor living area, balconies and supporting columns would disrupt the continuity of the streetscape, detract from the visual setting of the existing dwellings, impose on the amenity of neighbouring residents, and not appear sympathetic to the scale of the street and surrounding buildings.**

RDC – Lot boundary setback	Deemed-to-comply provision (based on estimated NGL taken from applicant's site survey plan)	Design principles
Requirement	<u>Western setbacks</u> <ul style="list-style-type: none"> <li>• 4m (1<sup>st</sup> floor living room);</li> <li>• 4.4m (1<sup>st</sup> floor front balcony);</li> <li>• 5.2m (2<sup>nd</sup> floor master bedroom);</li> <li>• 3.8m (2<sup>nd</sup> floor ensuite);</li> </ul>	Buildings set back from lot boundaries so as to: <ul style="list-style-type: none"> <li>• reduce impacts of building bulk on adjoining properties;</li> <li>• provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</li> <li>• minimise the extent of overlooking and resultant loss</li> </ul>

	<ul style="list-style-type: none"> <li>• 5m (2<sup>nd</sup> floor front balcony).</li> </ul> <p><u>Eastern setbacks</u></p> <ul style="list-style-type: none"> <li>• 1m (ground floor front pergola);</li> <li>• 1.5m (ground floor – rear section);</li> <li>• 2.7m (1<sup>st</sup> floor rear section – NB: window on floor plan not shown on elevation);</li> <li>• 2.8m (1<sup>st</sup> floor front balcony);</li> <li>• 4m (2<sup>nd</sup> floor front balcony).</li> </ul>	<p>of privacy on adjoining properties.</p> <p>Buildings built up to boundaries (other than the street boundary) where this:</p> <ul style="list-style-type: none"> <li>• makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;</li> <li>• does not compromise the design principle contained in clause 5.1.3 P3.1;</li> <li>• does not have any adverse impact on the amenity of the adjoining property;</li> <li>• ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and</li> <li>• positively contributes to the prevailing development context and streetscape.</li> </ul>
<p>Applicant's proposal</p>	<p><u>Western setbacks</u></p> <ul style="list-style-type: none"> <li>• 2.4m (1<sup>st</sup> floor living room);</li> <li>• 3.4m (1<sup>st</sup> floor front balcony);</li> <li>• 2.4m (2<sup>nd</sup> floor master bedroom);</li> <li>• 2.4m (2<sup>nd</sup> floor ensuite);</li> <li>• 2.4m (2<sup>nd</sup> floor front balcony);</li> <li>• Walls on boundary.</li> </ul> <p><u>Eastern setback</u></p> <ul style="list-style-type: none"> <li>• 0.4m (ground floor front pergola);</li> <li>• 1.2m (ground floor – rear section);</li> <li>• 1.2m (1<sup>st</sup> floor rear section);</li> <li>• 1m (1<sup>st</sup> floor front balcony);</li> <li>• 1.2m (2<sup>nd</sup> floor front balcony);</li> <li>• Walls on boundary.</li> </ul>	
<p><b><u>Comment</u></b></p> <ul style="list-style-type: none"> <li>• Although the adjoining dwellings either side of Lot 42 have single-storey and two-storey parapet walls these do not extend the full length of the boundaries and the applicant has not demonstrated how the proposed reduced setbacks adjoining and extending beyond these walls satisfy the design principles of the RDC.</li> <li>• In particular, the proposed first-floor, living room wall, on the eastern boundary and front balcony which would project in front of the neighbour's wall is unlikely to satisfy the design principles due to its adverse impact on amenity.</li> </ul>		

**Conclusion**

The applicant has not addressed the relevant design principles of the RDC for Council to exercise its judgement with respect to the reduced lot boundary setbacks.

RDC – Sight lines	Deemed-to-comply provision	Design principle
Requirement	Walls, fences and other structures truncated or reduced to no higher than 0.75m within 1.5m of where walls, fences, other structures adjoining vehicle access points where a driveway meets a public street.	Unobstructed sight lines provided at vehicle access points to ensure safety and visibility along vehicle access ways, streets, rights-of-way (ROW), communal streets, crossovers, and footpaths.
Applicant's proposal	Solid walls up to 1.5m in height within the 1.5m truncation area adjoining the proposed driveway.	

**Comment**

- The applicant has not addressed the relevant design principles of the RDC for Council to exercise its judgement in respect to sightlines.
- The Town does not support the height of the proposed solid walls within the required 1.5m truncation area as they would obstruct vehicle sightlines.

**Conclusion**

Adequate vehicle sightlines are required to be provided where the proposed driveway joins the street.

RDC – Street walls and fences	Deemed-to-comply provision/Fencing Local law.	Design principle
Requirement	Front fences within the primary street setback area that are visually permeable above 1.2m of NGL, measured from the primary street side of the front fence (up to 1.8m in height).	Front fences are low or restricted in height to permit surveillance (as per clause 5.2.3) and enhance streetscape (as per clause 5.1.2), with appropriate consideration to the need: <ul style="list-style-type: none"> <li>• for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and</li> <li>• for necessary privacy or noise screening for outdoor living areas where the street is</li> </ul>

		designated as a primary or district distributor or integrator arterial.
Applicant's proposal	Fencing within the primary street setback that exceeds 1.8m in height above NGL.	
<p><b><u>Conclusion</u></b></p> <p><b>The proposed fencing is not to exceed 1.8m in height within the front setback area in order to comply with Council's Fencing Local Law.</b></p>		

RDC – Visual privacy	Deemed-to-comply provision	Design principles
Requirement	<p>Major openings and unenclosed outdoor active habitable spaces, which have a floor level of more than 0.5m above natural ground level and overlook any part of any other residential property behind its street setback line are:</p> <p>i. set back, in direct line of sight within the cone of vision, from the lot boundary, a minimum distance as prescribed in the RDC or;</p> <p>ii. are provided with permanent screening to restrict views within the cone of vision from any major opening or an unenclosed outdoor active habitable space.</p> <p>Screening devices such as obscure glazing, timber screens, external blinds, window hoods and shutters are to be at least 1.6m in height, at least 75 per cent obscure, permanently</p>	<p>Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</p> <ul style="list-style-type: none"> <li>• building layout and location;</li> <li>• design of major openings;</li> <li>• landscape screening of outdoor active habitable spaces; and/or</li> <li>• location of screening devices.</li> </ul> <p>Maximum visual privacy to side and rear boundaries through measures such as:</p> <ul style="list-style-type: none"> <li>• offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;</li> <li>• building to the boundary where appropriate;</li> <li>• setting back the first floor from the side boundary;</li> <li>• providing higher or opaque and fixed windows; and/or</li> <li>• screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).</li> </ul>



	fixed, made of durable material and restrict view in the direction of overlooking into any adjoining property.	
Applicant's proposal	The proposed front balconies are not screened or setback outside the required cone-of-vision to the eastern and west boundaries, behind the front setback area.	
<p><b><u>Comment</u></b></p> <p>The unscreened front balconies would result in a loss of visual privacy to adjoining neighbours.</p> <p><b><u>Conclusion</u></b></p> <p><b>The applicant has not addressed the relevant design principles of the RDC for Council to exercise its judgement with respect to visual privacy.</b></p>		

### **Planning and Development (Local Planning Schemes) Regulations 2015**

#### **Matters to be considered by local government**

In considering an application for development approval the local government is to have due regard to the following relevant matters:

- the aims and provisions of this Scheme...
- the requirements of orderly and proper planning...
- any approved State planning policy;
- any policy of the Commission;
- any policy of the State;
- the compatibility of the development with its setting including the relationship of the development 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 development;
- the amenity of the locality including the following:
  - (i) environmental impacts of the development;
  - (ii) the character of the locality;
  - (iii) social impacts of the development;
- the history of the site where the development is to be located;
- the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;
- any submissions received on the application; and
- any other planning consideration the local government considers appropriate.

#### **Comment**

- The proposed three-storey dwelling does not satisfy the aims of LPS 3 as it would not sustain the amenity, character and streetscape quality of the locality.
- The proposed development does not comply with LPS 3 with respect to

permitted building heights or storeys.

- The applicant has not satisfactorily addressed the design principles of the RDC where it is necessary for Council to exercise its judgement.
- The proposed driveway gradient is non-compliant with Australian Standards; and
- Neighbour objections have been received on the grounds of loss of amenity, privacy and streetscape, etc.

### **Conclusion**

**The proposed development does not satisfy the matters that Council is to have regard to sufficient to allow the development to be approved.**

## **CONCLUSION**

The proposed dwelling exceeds the permitted building heights, it does not satisfy clause 5.7.4 of LPS 3 for a third storey to be approved within the roof space, the applicant has not satisfactorily addressed the relevant design principles of the RDC for Council to exercise its judgement with respect to various planning requirements, the driveway gradient exceeds Australian Standards, it does not provide adequate vehicle sightlines, the height of the proposed front fencing does not satisfy the Fencing Local Law, its bulk and scale will detract from the existing streetscape and it will have a detrimental impact on adjoining residents, most of whom have objected to the proposal.

Although Council could resolve to defer the application to enable the applicant to submit revised plans, it is considered that due to the fundamental non-compliance and significance of the changes to the design that would be required to satisfy the matters discussed in this report, a recommendation of refusal is appropriate.

### **Additional Information Following Council Briefing Session**

Owner – It is confirmed that the property has transferred to the new owner as named at the beginning of this report.

Applicant – The current applicant (a designer/builder consultant) representing the new owner is as named at the beginning of this report.

Setbacks – It is confirmed that under former Town Planning Scheme No. 2 the land had a density code of R50 (Foreshore Centre Zone), which had the same 2m minimum front setback and other setback standards as under the current R60 density code. However, as reported, historically Council has applied a 6m front setback requirement, and as assessed the proposed front setbacks are considered inappropriate in that regard.

Open space – The proposal provides 46% private open space, which exceeds the minimum 40% requirement for R60 land under the Residential Design Codes. Amendment No. 4 to Local Planning Scheme No. 3 discounts roof decks from the

open space calculation for dwellings at a density code under R40; therefore, it does not apply to this land.

### **VOTING**

Simple Majority

### **OFFICER RECOMMENDATION**

#### **Moved Mayor Dawkins, seconded Cr Boulter**

THAT Council REFUSE the application for a three-storey dwelling at 5B (Lot 42) Overton Gardens, Cottesloe, as shown on the plans submitted on 1 February 2016, for the following reasons:

1. The development does not comply with Local Planning Scheme No. 3 with respect to permitted building heights and storeys.
2. The proposed front setback would significantly disrupt the continuity of the streetscape, detract from the visual setting of the existing dwellings, impose on the amenity of neighbouring residents, and not appear sympathetic to the scale of the street and surrounding buildings.
3. The relevant design principles of the Residential Design Codes have not been satisfactorily addressed to enable Council to exercise its judgement with respect to:
  - (a) Side setbacks;
  - (b) Visual Privacy; and
  - (c) Vehicle sightlines.
4. The proposed driveway does not satisfy Australian Standards.

### **AMENDMENT**

#### **Moved Cr Boulter, seconded Cr Pyvis**

That a new point three (3) be added, and subsequent points renumbered, that reads "The application does not comply with the Council resolution of 1999 requiring buildings, including balconies and parking structures, to be setback 6.0m from Overton Gardens and Napier Street, in order to provide equity in terms of views from the proposed development."

Carried 8/0

### **COUNCIL RESOLUTION**

THAT Council REFUSE the application for a three-storey dwelling at 5B (Lot 42) Overton Gardens, Cottesloe, as shown on the plans submitted on 1 February 2016, for the following reasons:

1. The development does not comply with Local Planning Scheme No. 3 with respect to permitted building heights and storeys.

2. The proposed front setback would significantly disrupt the continuity of the streetscape, detract from the visual setting of the existing dwellings, impose on the amenity of neighbouring residents, and not appear sympathetic to the scale of the street and surrounding buildings.
3. The application does not comply with the Council resolution of 1999 requiring buildings, including balconies and parking structures, to be setback 6.0m from Overton Gardens and Napier Street, in order to provide equity in terms of views from the proposed development.
4. The relevant design principles of the Residential Design Codes have not been satisfactorily addressed to enable Council to exercise its judgement with respect to:
  - (a) Side setbacks;
  - (b) Visual Privacy; and
  - (c) Vehicle sightlines.
5. The proposed driveway does not satisfy Australian Standards.

**THE AMENDED SUBSTANTIVE MOTION WAS PUT**

**Carried 8/0**

