

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE

MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 20 APRIL 2009

CARL ASKEW
Chief Executive Officer

17 April 2009

DEVELOPMENT SERVICES COMMITTEE

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Moved Cr Boland, seconded Cr Woodhill

That Cr Dawkins chair tonight's Committee Meeting in Cr Walsh's absence.

Carried 5/0

1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member declared the meeting opened at 6:05pm.

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Present

| | |
|-------------------|------------------|
| Cr Jo Dawkins | Presiding Member |
| Cr Ian Woodhill | |
| Cr Jay Birnbrauer | |
| Cr Greg Boland | |
| Cr Vic Strzina | Arrived 6:08pm |
| Cr Bryan Miller | (Deputy) |

Officers Present

| | |
|--------------------|--------------------------------|
| Mr Carl Askew | Chief Executive Officer |
| Mr Andrew Jackson | Manager, Development Services |
| Mr Ed Drewett | Senior Planning Officer |
| Mr Will Schaefer | Planning Officer |
| Ms Pauline Dyer | Development Services Secretary |
| Ms Krystal Shenton | Executive Assistant |

Apologies

Cr Jack Walsh

Officer Apologies

Nil

Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 PUBLIC STATEMENT TIME

Mr Mike Owen, 61 Margaret Street, Cottesloe, Item 10.1.2 – Nos 238-240 Marine Parade, Cottesloe – Two Storey Dwelling with Undercroft and Swimming Pool

Mr Owen summarised his concerns in terms of amenity, fill, setbacks, privacy views, scale and streetscape and put that the proposal was excessive and should be revised.

Mr Steve Tobin, 16 Beach Street - Owner 238/240 Marine Parade, Cottesloe.

Mr Tobin explained that the proposal had evolved over two years and was intended to suit his family needs as well as environmental performance. He also referred to neighbour support north and south and that the property to the rear would be affected by any design for the site.

Mr David Hartree – Architect 238-240 Marine Parade, Cottesloe

Mr Hartree provided a handout with more detail and tabled a model design for the development as well as referred to the officer report and comments by the rear neighbours. He elaborated on the design approach to the site and the treatment / interpretation of the topography and building height, together with other aspects, and sought appropriate discretion. He also questioned the compliance of the rear neighbours' balcony on the boundary and commented on the interrelationship between that property and any development on the site. While preferring an approval to deferral, Mr Hartree acknowledged the concerns and after the meeting informally discussed working towards a redesign in liaison with officers.

6 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Moved Cr Strzina, seconded Cr Birnbrauer

[Minutes March 16 2009 Development Services Committee.doc](#)

The Minutes of the Ordinary meeting of the Development Services Committee, held on 16 March 2009 be confirmed.

Carried 6/0

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Cr Dawkins welcomed the Chief Executive Officer Carl Askew and the Executive Assistant Krystal Shenton to the meeting.

9 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

10 REPORTS OF COMMITTEES AND OFFICERS**10.1 PLANNING****10.1.1 NO. 14 TORRENS STREET – TWO-STOREY DWELLING AND POOL**

File No: 1579
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Ed Drewett
Senior Planning Officer
Property Owner: Paul Breen
Applicant: Kris J Wiacek Architect
Zoning: Residential
Use: P - A use that is permitted under this Scheme
Density: R30
Lot Area: 405m²

Proposed Meeting Date: 20-Apr-2009
Author Disclosure of Interest Nil

SUMMARY

The applicant is seeking the following variations to TPS 2 and/or the Residential Design Codes:

- Building height;
- Front setback;
- Setback to garage;
- Side setback;
- Wall on boundary, and
- Visual privacy.

Each of these issues is discussed in this report and refer to amended plans received on 24 March 2009.

Given the assessment that has been undertaken, the recommendation is to conditionally approve the application.

PROPOSAL

This application is for the demolition of an existing house and construction of a two-storey dwelling and pool. The proposed dwelling is of conventional design and is relatively modest in scale comprising 3 bedroom, 2 bathrooms, an ensuite, study, lounge, family room, games room and a pool. The design of the dwelling also utilises the lots east-west positioning by locating its main outdoor active habitable areas (alfresco area and pool) on the northern side for best solar orientation.

STATUTORY ENVIRONMENT

- Town of Cottesloe Town Planning Scheme No 2
- Residential Design Codes

POLICY IMPLICATIONS

- Building Heights
- Garages and Carports in the Front Setback Area

HERITAGE LISTING

The existing dwelling (to be demolished) is not on the Town's Municipal Inventory

DRAFT LOCAL PLANNING SCHEME NO 3

No changes are proposed to the zoning of the lot

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE****Town Planning Scheme Policy/Policies**

| Policy | Required | Provided |
|---|---|---|
| Garages and Carports in Front Setback Areas | 6m (may be reduced where relevant criteria are satisfied) | 3m |
| Height | 6m wall height; 8.5m roof height | <u>Main dwelling</u> Wall Height - 6.5m; Roof height - 8.5m <u>Ensuite</u> Wall height - 7.5m Roof height - 8.6m |

Residential Design Codes

| Design Element | Acceptable Standards | Provided | Performance Criteria Clause |
|----------------------------|---|-----------------|------------------------------------|
| 6.2 – Streetscape | Garages setback 4.5m from the primary street | 3m | Clause 6.2.3 – P3 |
| 6.3 – Boundary setback | 2.3m setback from upper floor to southern boundary | 2.12m | Clause 6.3.1 – P1 |
| 6.3 – Building on boundary | Wall built up to the boundary behind the (4m) front setback | 3m | Clause 6.3.2 – P2 |
| 6.8 – Visual Privacy | 7.5m from raised alfresco area | 3.35m; 6.21m | Clause 6.8.1 – P1 |

ADVERTISING OF PROPOSAL

The application was advertised as per Town Planning Scheme No 2. The advertising consisted of a letter to 5 adjoining property owners. 2 submissions were received.

The main points raised in the submissions are summarised as follows:

Kerin and Alan Tietzel, 169 Broome Street

- No concerns from an aesthetic point of view;
- Proposed pool will be required to avoid sewerage easement on the lot;
- Proposed waterfall feature should not be attached to existing common boundary wall as could cause damage. It must also not encroach boundary;
- The calculated average NGL should be 16.0;
- The proposed level of the ground floor is well above the NGL which appears excessive and will give the occupants an unacceptable view over the fence and into our home and recreation areas;
- Any build-up abutting the existing fence must protect that fence by construction of a retaining wall;
- No objection to flat roof to proposed garage but it is not to be used as a balcony as this would be invasive;

Mark and Kerryn Hands, 167 Broome Street

- The proposed residence will be well above the average NGL and is unacceptable relative to our property;
- We understand the height of walls, roof levels and setbacks will comply with Council requirements;
- Rear boundary wall is not on owner's property. There should be a free-standing retaining wall with appropriate damp-coursing;
- Flat roof above garage must not be used as a balcony.

APPLICANTS RESPONSE TO NEIGHBOUR'S COMMENTS

- Swimming pool will be constructed to the Water Corporation easement requirements (the depth of the pool is only 1m and will comply with WC retaining requirements);
- Proposed water feature will be attached to a new brick fence along the northern boundary;
- Average NGL has been calculated at 16.00;
- The alfresco area and windows above comply with cone of vision requirements of the RDC;
- There will be no access to the roof area above the garage;
- The level of the rear of the proposed residence is designed at 16.00m which is at average NGL.

Background

Following an assessment of the development application, the Town has been liaising with the applicant in an attempt to address concerns regarding height, setbacks, setback to garage, visual privacy and front fencing.

The Town subsequently received a letter and amended plans on 24 March 2009 from the applicant which addresses most of the initial concerns but does not satisfy all of Council's requirements.

Staff Comment

THE FOLLOWING COMMENTS ARE MADE REGARDING THE APPLICATION AND REVISED PLANS RECEIVED 24 MARCH 2009.

Building height

The calculation of building height stems from Council's determination of natural ground level (NGL). Clause 5.5.1 of the Council's Town Planning Scheme No2 expresses policy in relation to building height and paragraph (c) provides a basic formula in relation to measurement of such height.

However, provision is made for Council to depart from the formula where the natural ground forms indicate that a variation is warranted provided that the amenity of the area is not unreasonably diminished.

The NGL at the centre of the lot has been determined to be RL: 16.0 which has been derived using a site survey plan submitted by the applicant and drawn by a licensed surveyor.

Based on this NGL the maximum permitted wall height is 6m (RL: 22.0) and the maximum permitted ridge height is 8.5m (RL: 24.5).

The proposed dwelling has a wall height of 6.5m (RL: 22.5) and a roof height of 8.5m (RL: 24.5) and the proposed upper floor ensuite area has a wall height of 7.5m (RL: 23.5) and a roof height of 8.6m (RL: 24.6). Therefore, with the exception of the main roof height the proposed dwelling does not comply with TPS 2.

While TPS2 specifies the measure of wall height it is silent as to a definition of wall height, so the RDC and draft LPS3 are relied upon for guidance in this regard. This means that the effective wall height as it presents on a facade may be one measure, whereas the technical wall height by interpretation as constructed may be a greater measure. On this basis in exercising any discretion due to topography Council may choose to focus less on the actual height and more on the test of amenity as to the acceptability of the wall height.

Nonetheless, the applicant has advised that the wall heights will not exceed 6m (except for above the upper ensuite area), but this is not shown in the submitted plans based on the definition of Wall Height in the RDC and should therefore be

conditioned accordingly, particularly in view of concerns regarding height raised by the owners of the properties to the rear on the lower side.

With regards to the height of the proposed upper ensuite area, the applicant has requested positive consideration of the proposed variation on the grounds that it will increase the street appeal of the dwelling and will not cause any excessive overshadowing to neighbouring properties. Council could consider allowing a concession to this portion of the building as the natural ground level of the lot slopes approximately 1.8m from the west to the east and the calculated NGL is approximately 1m below the street level, so it may be warranted in this case to provide a more attractive and articulated appearance to the street without impacting on the amenity of the area. The proposed louvred design of the upper part of the raised walls will also be less visually obtrusive than solid walls and should further contribute to the overall design of the dwelling without adversely affecting adjoining properties.

Another way of considering this turret-like feature of a louvred band is as a break or transition between the solid walls below and the roof above, which as such appears visually more as part of the overall roof structure than a true wall structure. Hence while by definition this element may be identified as a continuation of the vertical wall surface, it might otherwise be seen as a fringe to the roof, especially as the roof might otherwise be designed with a steeper pitch or different shape (eg, a Mansard or barn-type) to meet the wall height standard.

Notwithstanding this, the roof height above the proposed ensuite should be reduced by 0.1m to 8.5m (RL: 24.5) above the calculated NGL to be consistent with TPS 2 and the roof height of the main dwelling. Such a minor change is unlikely to compromise the design and should be easily achievable.

The proposed covered balcony at the front of the dwelling has a flat roof and is 7m above the calculated NGL which complies with the Residential Design Codes (RDC), as relied upon by Council in considering such designs as TPS 2 is not explicit in this respect.

Front setback to house

The proposed lounge and bedroom 1 has a 6.245m front setback which is consistent with Council's preference for a minimum 6m setback (Council Resolution 28/10/02). However, the proposed upper floor ensuite over the garage and porch/balcony have reduced setbacks of 5.5m and 5m respectively.

Under Clause 6.2.2 of the RDC the proposed porch/balcony can be considered as *minor incursions into street setback* as it has been modified so as to project not more than 1m into the street setback area and not exceed 20% of the frontage. However, the upper floor ensuite should be setback a minimum 6m as this would be consistent with the setback to the existing dwelling on the lot and the primary frontage to the dwelling to the south.

Setback to garage

The proposed double garage is an integral feature of the proposed dwelling but only has a 3m front setback, in lieu of 4.5m required under the acceptable development standards of the RDC.

It is considered that the reduced setback to the garage can be supported under the relevant performance criteria of the RDC which states:

The setting back of carports and garages so as not to detract from the streetscape or appearance of the dwellings, or obstruct views of the dwellings from the street and vice versa.

The juxtaposition of the proposed garage to the house is sympathetic with its design and will assist in reducing the visual impact of an existing raised carport with a zero front setback that has been constructed on the adjoining lot to the north (approved 15/12/05). Two other double garages with reduced front setback have also been constructed at Nos. 4 & 6 Torrens Street and so there appears already be some precedent in the street. Furthermore, the width of the proposed garage is only 40% of the lot frontage and therefore it will not significantly obstruct views of the house from the street or vice versa.

Council's Policy for 'Garages and Carports in Front Setback Area' (Policy TPSP 003) generally requires garages to be positioned behind the 6m front setback line. However, consistent with the RDC the policy does also allow for garages to be constructed with a reduced 4.5m front setback in most cases and further variations can be considered having regard to:

- The relevant objectives of the RD Codes;
- The effect of such variation on the amenity of any adjoining lot;
- The existing and potential future use and development of any adjoining lots;
- Existing setbacks from the street alignment in the immediate locality, in the case of setbacks from the principle street.

Although this policy does not specifically address walls on boundaries (see below) it is nevertheless relevant in this case and the setback variations sought for the proposed garage can be supported for the reasons previously discussed. The applicant has further indicated that he would be prepared to install acrylic see-through segmented garage doors if considered necessary by Council.

Side setback

The upper floor of the proposed dwelling has a minimum 2.12m setback from the southern boundary, in lieu of 2.3m required under the RDC. This variation is relatively minor and can be considered under performance criteria which state:

Buildings set back from boundaries other than street boundaries so as to:

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide adequate direct sun to the building and appurtenant open spaces;*

- *assist with protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *assist in protecting privacy between adjoining properties.*

The side setback variation is 0.18m and will have a negligible affect on adjoining properties, especially as the dwelling to the south is separated by an existing driveway and will be approximately 6m from the southern elevation of the proposed dwelling.

Wall on boundary

The proposed double garage is to be located on the northern boundary with a 3m front setback, in lieu of a 6m front setback required under the acceptable development standards of the Codes for a wall on a boundary. The length and height of the proposed wall would otherwise be compliant with the codes.

The location of the wall on the boundary can be considered under performance criteria of the Codes which state:

Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

- *make effective use of space; or*
- *enhance privacy; or*
- *otherwise enhance the amenity of the development;*
- *not have any significant adverse effect on the amenity of the adjoining property; and*
- *ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.*

The location of the proposed garage on the boundary makes effective use of space and will assist in partially reducing the visual appearance of the adjoining carport. It will also be located a reasonable distance from the adjoining dwelling and being on its southern boundary it will not restrict solar access to the main habitable areas. Furthermore, there was no submission made during advertising of the proposal from the adjoining owner.

Visual Privacy

The proposed development complies with the visual privacy requirements of the RDC with the exception of the raised alfresco area on the northern side of the proposed dwelling, which has a FFL of up to approximately 1.1m above NGL and has a minimum 3.35m and 6.21m setback from the northern and eastern boundaries respectively, in lieu of the required 7.5m required under the RDC.

The relevant performance criteria of the Codes state:

Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.

Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.

Where they are used, they should be integrated with the building design and have minimal impact on residents' or neighbours' amenity.

Where opposite windows are offset from the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.

The front property (11c Hawkstone St) on the northern side is raised by approximately 0.7m with a brushwood fence above a retaining wall. This raised ground level is of similar height to the level of the proposed alfresco area and therefore the existing fence will provide reasonable privacy to the adjoining owner, particularly as the adjoining property is well setback.

The applicant has suggested that due to visual privacy concerns raised by the owner to the rear (at 167 Broome Street) the common boundary fence could be raised by 0.27m to avoid any possible overlooking from the proposed alfresco area. This would seem an acceptable solution but will need the adjoining owner's agreement. It does not, however, address the potential overlooking of the rear property along the northern boundary (at 169 Broome St) which has two habitable room windows on the ground floor facing the boundary. This owner has also raised the issue of privacy.

Rather than increasing the height of the rear portion of the existing northern boundary wall (unless the adjoining owner's approval is obtained), it is recommended that the proposed alfresco area should be screened to a height of 1.6m above its floor level where required to satisfy the Visual Privacy requirements of the RDC. Alternatively, the FFL of the alfresco may be lowered so as to not exceed 0.5m above the NGL, although this may result in a number of steps being required from the proposed family room which may not be a feasible option.

CONCLUSION

The applicant has attempted to address Town Planning Scheme No 2 and the RD Codes and, on balance, it is considered that the amended plans have merit and should largely be supported. Notwithstanding this, further design revisions are considered necessary to ensure that the development does not detract from the amenity of the surrounds and streetscape, as conditioned in the approval.

COMMITTEE COMMENT

Committee noted the tabled letter from the architect agreeing to meet certain recommended conditions and confirmed that the overall design changes would be acceptable, whereby Committee supported the proposal.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Strzina, seconded Cr Birnbrauer

That Council GRANT its Approval to Commence Development for the proposed two-storey dwelling (including pool) at No. 14 (Lot 6) Torrens Street, Cottesloe, in accordance with the plans submitted on 24 March 2009, subject to the following conditions:

- (a) All construction work shall be carried out in accordance with the Environmental Protection (Noise) Regulations 1997, Regulation 13 - Construction Sites.
- (b) Stormwater runoff from the driveway or any other paved portion of the site shall not be discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of stormwater runoff from roofed areas shall be included within the working drawings for a building licence.
- (c) The external profile of the development as shown on the approved plans shall not be changed, whether by the addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council.
- (d) The applicant applying to the Town of Cottesloe for approval to construct a crossover, in accordance with Council specifications, as approved by the Manager Engineering Services or an authorised officer.
- (e) The existing redundant crossover being removed and the verge, kerb and all surfaces made good at the applicant's expense to the satisfaction of the Manager Engineering Services.
- (f) Air-conditioning plant and equipment shall be located closer to the proposed dwelling than the adjoining dwellings, and suitably housed or treated as may be necessary, so as to ensure that sound levels emitted shall not exceed those outlined in the Environmental Protection (Noise) Regulations 1997.
- (g) Any fencing to the site within the front setback area shall be of an open- aspect design in accordance with Council's Fencing Local Law.
- (h) No retaining walls or fill within 1m of a common boundary shall exceed 0.5 metres above natural ground level.
- (i) The pool pump and filter shall be located so as not to impact on adjoining properties and suitably housed or treated as may be necessary so as to ensure that environmental nuisance due to noise or vibration from mechanical equipment is satisfactorily minimised to within permissible levels outlined in the Environmental Protection (Noise) Regulations 1997.
- (j) Wastewater or backwash from pool filtration systems shall be contained within the boundary of the property and disposed of into adequate soakwells.

- (k) A soakwell system shall be installed to the satisfaction of the Environmental Health Officer, having a minimum capacity of 763 litres and located a minimum 1.8 metres away from any building or boundary.
 - (l) Wastewater or backwash shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
 - (m) The proposed garage roof shall not be used as an active habitable space.
 - (n) The finish and colour of the boundary wall facing the northern neighbour shall be to the satisfaction of the Manager Development Services.
 - (o) The building licence plans shall be formulated to the satisfaction of the Manager Development Services to include:
 - i. The wall height of the dwelling, except for the upper-floor en suite portion, being reduced to 6m above the calculated NGL (ie: to a maximum of RL: 22);
 - ii. The roof height above the proposed upper-floor en suite portion being reduced to 8.5m above the calculated NGL (ie: to a maximum of RL: 24.5);
 - iii. The proposed upper-floor en suite portion being setback a minimum 6m from the front boundary; and
 - iv. The proposed north-facing alfresco area being screened to a minimum height of 1.6m from the finished floor level, or otherwise suitably addressed to provide reasonable privacy to the adjoining property owners.
- (2) Advise the submitters of this decision.

Carried 6/0

10.1.2 NOS. 238-240 (LOTS 4 & 5) MARINE PARADE – TWO-STOREY DWELLING WITH UNDERCROFT AND SWIMMING POOL

File No: 1631
Responsible Officer: Carl Askew
Chief Executive Officer
Author: William Schaefer
Planning Officer

Author Disclosure of Interest: Nil

Report Date: 15 April 2009
Senior Officer: Mr Andrew Jackson

Property Owner: Terrex Seismic

Applicant: Hartree & Associates Architects
Date of Application: 03 December 2008 (Amended 19 March 2009)

Zoning: Residential
Use: P- A use that is permitted under this Scheme
Density: R20
Lot Area: 728m2
M.R.S. Reservation: N/A

SUMMARY

The application is for a large single dwelling on two vacant lots. The proposal has been architect-designed with special to site and setting and a range of planning controls. A four-metre high mound of earth in the north-east corner of the site has substantially influenced the design of the proposal.

Dialogue between the applicant and the Town began in March 2007, with a single dwelling being proposed for No. 240 Marine Parade in March 2008. The owner then purchased the vacant block to the south and the proposal was withdrawn.

There has been ongoing dialogue between officers, the applicants and neighbours since submission of the current proposal. The applicants have provided supporting material, including a justification report, model and diagrams. The proposal has also been considered by the Design Advisory Panel at the earlier conceptual stage.

This report presents the technical assessment of the proposal and recommends approval subject to conditions.

PROPOSAL

The proposal is for a single dwelling of essentially two-storey design, with an undercroft and an integrated swimming pool at the front.

Architecturally, the proposal has been designed along modernist/contemporary lines. Similar designs are found throughout Cottesloe and notably in north Cottesloe. The dwelling has been articulated over the four-metre-high mound at the rear of the site.

A similar stepped or split-level approach has been applied to the two dwellings to the north and there is a built-up character to this stretch of Marine Parade and locality.

STREETSCAPE APPRECIATION

Streetscape-wise the proposal would present as a wide dwelling of large mass, with a height in keeping with the dwellings to the north and further south. This relative bulk is ameliorated by the above-average setbacks, stepping of the building, its broken-up design and detailing. In this way the dwelling is in a sense recessive, having an arrangement of layers and planes of built form which soften its impact, as well as the basement driveway cutting creating space.

It is also very visually permeable, with extensive glazing, perforated screening and the see-through pool virtually enlightening the dwelling. This is as opposed to a solid-walled design with smaller openings and a pitched roof, which would add weight to streetscape presence.

As to height, the streetscape drawing shows that the dwelling would be in line with a subtle stepping-down the street from north to south of building heights, so it would fit in with this pattern of scale. Also, when the anomalous single dwelling to the south is redeveloped, there would be better overall balance in the streetscape.

At the same time, the design has a certain thrust due to the suspended pool and forward-leaning front wall, together with some structural elements which add strength to its appearance. The locality is characterised by dwellings with interesting shapes, however, including those to the north and rear, whereby these aspects will contribute to this eclecticism.

Therefore, from a pure design perspective, despite its proportions, the proposal can be seen to be designed to suit the site and surrounds. Nonetheless it is required to be determined in relation to a number of planning parameters.

STATUTORY ENVIRONMENT

Town Planning Scheme No. 2
Residential Design Codes

POLICY IMPLICATIONS

Building Height

HERITAGE LISTING

N/A

DRAFT LOCAL PLANNING SCHEME NO. 3

Under LPS3, it is proposed to change the density coding of the site to R25. This would allow two grouped dwellings, and similarly the existing pair of lots would allow two separate dwellings. In this respect the mass of the proposed single dwelling may be less of an impact than two dwellings, depending on the design, such as any gap or view corridor, any walls on boundaries and setbacks, the spread of the built form and its materiality, and so on.

APPLICATION ASSESSMENT**AREAS OF NON-COMPLIANCE**

TPS2 – Building height variations – refer to this section in report.

Residential Design Codes

| Design Element | Provision or Acceptable Development Standard | Provided | Performance Criteria Clause |
|----------------------------------|--|---------------------------------------|------------------------------------|
| Building Height | 7.0m (parapet wall) | 8.5m | 6.7.1 – P1 |
| Front Setback | 6.0m | 5.0m (swimming pool only) | 6.2.2 – P2 |
| Boundary Setbacks | 1.6m to South Lower Ground; 2.7m to South Upper Ground; | 1.5m; 2.5m | 6.3.1 – P1 |
| Site Works | Up to 500mm | >500mm along a 4.0m of north boundary | 6.6.1 – P1 |
| Visual Privacy | 7.5m from Terrace northern boundary to | 3.4m | 6.8.1 – P1 |
| Solar Access for Adjoining Sites | 25% max | 61% | 6.9.1 – P1 |

STRATEGIC IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

N/A

CONSULTATION**Advertising**

Neighbours to the north and south of the site were notified by the applicant. Both neighbours have expressed written support for the proposal.

The Town notified the neighbour to the rear (No. 61 Margaret Street) of the revised plans submitted in March 2009.

The owners of No. 61 Margaret Street have lodged a written objection, which is summarised as follows:

Mike and Lesley Owen, 61 Margaret Street

- The four-metre-high mound in the north-east corner of the site was artificially created in the late 1990s and is now being used to increase the height of the proposed residence;
- The height of the proposal exceeds Council limits;
- The rear wall of the proposed residence increases the perceived effects of building bulk and overshadows habitable spaces;
- The glass walls at the rear of the proposed residence create overlooking issues despite the fact that they are setback in accordance with the Residential Design Codes; and
- The flat roof is capable of being used as a habitable space, or being cluttered with fixtures that will further diminish the rear neighbours' amenity.

It is noted that this property has been advertised for sale, and is probably a candidate for redevelopment itself, hence while the concerns remain valid its interrelationship with the proposal is likely to change.

APPLICANT'S JUSTIFICATION

The applicant submitted a report in support of the original proposal in December 2008. An extract from the report is attached, as is a copy of the submission. The technical response to the concerns raised by the Town's planning staff submitted with revised plans in March 2009 is also attached.

OFFICER'S COMMENT

With regard to the amended plans received on March 19 2009, the main issues regarding this proposal are as follows:

Building Height

The approach to the technical assessment of building height and how the proposal responds to that has been discussed in some detail with the architects, who have had several dwelling applications in Cottesloe in recent years, including other modern, flat roof designs. The Town's advice and the architects' rationale are attached.

As described below, TPS2 prevails as the starting-point in this respect, with some provision for discretion. The RDC are also relied upon as a reference for such designs. In exercising any discretion there is a test of amenity and a question of degree. Under TPS2 the applicable discretion is due to topography. TPS2 begins as follows:

5.1.1 Building Height (a) General Policy

Council's general policy for development within the district favours low-rise development of no more than two storeys to maintain privacy, views and general amenity, notwithstanding that Council may consider the circumstances and merits of each case in terms of the amenity and development control provisions of this Scheme.

The calculation of building height is directly related to Council's determination of natural ground level (NGL). Clause 5.1.1(c) goes on to provide a basic formula for the measurement of height and to specify qualified discretion:

For the purpose of measuring 'storey' and hence 'building height', Council shall generally follow the following formula, except in particular cases where natural ground forms indicate that a variation is warranted provided that the amenity of neighbouring areas is not unreasonably diminished.

According to site surveys provided by the applicant, most of the site is relatively level, but the presence of the four-metre-high mound in the north-east corner has significantly affected the determination of the NGL datum for the site. As the mound is too large to be ignored, the method of determining the datum by finding the geographical centre of site was deemed unsuitable. The four-corner-average method of determining the datum incorporates the effects of the mound and was therefore deemed more appropriate. The datum has been calculated to be 13.8m, as agreed between the Town and applicant in preliminary assessment to set this level for the purpose of design.

It is proposed to construct a building of up to 8.5m maximum height above the NGL datum. This entails a range of roof and associated wall heights around the dwelling, and while the TPS2 traditional (ie pitched) roof height standard is not exceeded, the wall heights are departures from the traditional 6m standard for two storeys, as well as the 3m standard for one storey. For example, the elevation plans show that two-storey wall heights range from approximately 6.5m through to the order of 7.1m, 7.3m and up to 8.5m, relative to either the upper or lower site average ground level (ie allowing for the mound effect).

While there is not doubt that these heights are in some parts sizeable variations, they are the result of the split-level design stepped-up the site. This means that in reality the constructed wall heights in relation to the ground level they sit on will tend to be lower, although some parts will still behave as high. This situation is described in the architects' submission. Notwithstanding, the stepped design has the effect that the dwelling will read as a split-level, two-storey building which is revealed as three levels from the street; as with the two dwellings to the north.

As TPS2 is not specific about flat roof designs, the method for assessing such designs in Cottesloe has been to refer to the Residential Design Codes as an appropriate guide, which provide for a maximum concealed roof / wall height of 7.0m under the Acceptable Development Standards. Draft LPS3 continues a similar height regime to TPS2 plus adopts this RDC 7m standard, so this method is considered valid.

Having regard to the RDC, as the proposed building heights exceed the 7m standard it is necessary to consider them under the relevant Performance Criteria (6.7.1 P 1), which state:

Building height consistent with the desired height of buildings in the locality, and to recognise the need to protect the amenities of adjoining properties, including where appropriate:

- * *Adequate direct sun to buildings and appurtenant open spaces*
- * *Adequate daylight to major openings to habitable rooms; and*
- * *Access to views of significance*

In terms of desired height of buildings for the locality, there is a variety of dwelling types in the area including single-storey and two-storey, as well as three-storey older style flats (multiple dwellings). However, low-rise is favoured for the district and new dwellings should generally adhere to the building height provisions of TPS2 and intended LPS3.

In terms of solar access, the proposed building height will significantly overshadow the rear of the adjoining single-storey property to the south (up to 61% of the lot is overshadowed) as well as potentially reduce direct sun to major openings on the northern elevation of that dwelling.

The height will also reduce ocean views currently enjoyed by the property to the rear of the site. It is acknowledged, however, that any two-storey development would have a similar impact on overshadowing and views. In this respect TPS2 in the general policy for building height identifies views as a relevant consideration, which is echoed in the "have regard to" amenity clause:

5.1.2 General

Notwithstanding the specific provisions of this Scheme in considering a proposed development, Council shall have regard to and may impose conditions relating to the following -

- (a) *the need for limitation of height or location of buildings to preserve or enhance views;*

It is perhaps difficult to find that the proposed building heights can be readily or wholly supported under the RDC, as it does not sufficiently satisfy the relevant performance criteria. This leaves the discretion available under TPS2 due to topography, which is considered to be of merit in the circumstances in this instance; taking into account privacy, views, amenity and the development control provisions. As assessed, privacy is satisfactory, views will be affected, general amenity is reasonable, the proposal is considered compatible with the streetscape, and the height measures will be exceeded.

In weighing-up all of this, the origin and affect of the mound in connection with the height of the design is potentially contentious, even though it is a given as a pre-existing development of the site; which is usually recognised. It is obvious that the landform of the neighbourhood rises and apparent that some sites along Marine Parade may have been levelled or excavated. The mound also is logical in relation to the retaining of the properties on the northern and eastern boundaries, even if not an engineered surcharge. Were the mound spread over the site, the rear portion of the dwelling would not occur in the same manner, although the site's ground level would be raised. Nonetheless, it is the mound which leads to the split-level design and the elevated rear portion of the dwelling which emphasises its height.

The fundamental determination required is what wall / roof heights Council is prepared to support in terms of the height controls and the degree of discretionary variation due to this topographical feature and the performance guidance of the RDC. In other words, how much further than the 6m wall and 8.5m roof height standards of TPS2, or the 7m benchmark under the RDC, the design should go. In this respect it is observed that a variation of up to 7.5m relative to NGL would represent a practical amount of additional height that is not excessive. To vary the height to 8.5m from NGL for a flat roof design would be more extreme (although it may not be critical depending on where the height sits and what it does). However, it is arbitrary to prescribe reduced heights where the architect would need to see what could be achieved by way of a comprehensive redesign.

In summary, the proposal is significantly over-height in certain areas, albeit well-designed to be attractive and limit the impact of scale and bulk. Yet the building does not have to be to the additional heights other than functionally in relation to the mound and to capture extensive views, which will be panoramic in any event.

Front Setback

It is proposed to have a setback of 5.0 metres from the Marine Parade boundary for the cantilevered swimming pool at the front of the dwelling. By resolution, Council prefers front setbacks of 6.0m.

Under the R20 density coding the R-Codes stipulate a minimum setback of 6.0 metres from the street boundary except where it can be shown that the following Performance Criteria are met:

Setback of buildings generally

Buildings set back from street boundaries an appropriate distance to ensure they:

- * *Contribute to the desired streetscape;*
- * *Provide adequate privacy and open space for dwellings; and*
- * *Allow safety clearances for easements for essential service corridors.*

At 1.4m in depth (ie thickness) and 6.0m wide, the glass-ended swimming pool is not expected to appear unduly bulky when viewed from the street. The effects of bulk are likely to be ameliorated by the pool being raised above the level of the driveway by some 3.3m. It is noted that the remainder of the dwelling is set back a minimum of 7.15m to the top of the front-most angled wall and 9m to its base, while the rest is set back at increasing distances to the various components, walls and surfaces into the site. It is therefore considered that the proposal contributes acceptably to the desired streetscape.

The proposed swimming pool does not impact on the privacy of adjoining dwellings behind their setback lines or affect open space to dwellings.

As the pool is intended to be cantilevered, the proposed incursion allows for safety clearances for easements for essential service corridors.

While this forward, raised pool in the front setback area is an unusual feature of the design, it is well-conceived as integral to the dwelling and would physically and visually float in the air in the same manner as a balcony, canopy eave or so on. The variation to 5m is effectively compensated for by the more-than-6m front setbacks to other parts of the dwelling and the L-shaped front portion in the design whereby most of the pool is located behind the 6m line and generally in line with the setbacks along this section of the street. Although in some other cases Council has been concerned about frontal or raised pools having bulk and privacy impacts, in this instance it is an elegant expression and less of a privacy concern. This is because front yards can be used in diverse ways and because Marine Parade is an exposed public beachfront environment with more activity and noise, hence a lesser expectation of seclusion or privacy.

The proposed open aspect of the front yard to the driveway ramp half of the property, as well as to the fenced half (ie of only medium height and with full-height rails) assists in the consideration of these setbacks, in not exacerbating the sense of building bulk as solid walls do.

On the above assessment basis the pool as proposed may be supported. Alternatively, it could be setback one more metre to reduce its total structural length into the site of approximately 7.5m, although that would limit the useable length of the pool to a little over 4m. This modification would not ruin the design and would increase compliance.

Side Setbacks

The following walls do not comply with the Acceptable Development Standards of the R-Codes in relation to side setbacks.

| Wall | Proposed Setback | Acceptable Development Standards Setback |
|---------------------------|------------------|--|
| Southern Elevation | | |
| Lower Ground Floor | 1.5m | 1.6m |
| Upper Ground Floor | 2.5m | 2.7m |

Where the Acceptable Development Standards for buildings set back from boundaries cannot be met it must be demonstrated that a proposal complies with the following Performance Criteria:

- * *Provide adequate direct sun and ventilation to the building;*
- * *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- * *Provide adequate direct sun to the building and appurtenant open spaces;*
- * *Assist with protection of access to direct sun for adjoining properties;*
- * *Assist in ameliorating the impacts of building bulk on adjoining properties;*
and
- * *Assist in protecting privacy between adjoining properties*

In this instance, the section of the wall does not significantly affect the provision of direct sunlight to the building, which already has ample windows facing west and north.

With regard to the property adjoining to the south, it is noted that the majority of shadow will fall on the roof of the neighbouring dwelling. As the prevailing winds are west/south westerly, it is not expected that the proposed reduced setbacks will affect ventilation to the neighbouring dwelling.

The provision of adequate direct sun to appurtenant open spaces is not applicable, as no habitable open space is proposed for the affected area.

As no major openings are proposed for either of the walls, it is considered privacy is not affected by the proposed reduced setback.

The variations being sought are relatively minor at 100mm and 200mm, whereby the reduced setbacks will not significantly contribute to the effects of building bulk.

The affected adjoining landowner has no concern.

Site Works (fill)

It is proposed to raise the level of the land for a distance of approximately 4.0m along the northern boundary to a maximum height of 700mm.

The Acceptable Development Standards of the R-Codes limit fill to no more than 500mm. As the proposed fill does not meet the above Acceptable Development Standards the following Performance Criterion is required to be addressed:

Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property.

The fill is intended for a depression in the natural ground level that occurs near the boundary, and would therefore retain the visual impression of the natural level of the site when viewed from the street.

Due to the higher ground levels of the adjoining northern lot, the level of filled land will still be 1.2m lower than the neighbouring ground level. Moreover, the existing dividing fence achieves a height of 2.5m above the ground level of the lot adjoining to the north and it is expected that fill is unlikely to impact on amenity.

Visual Privacy

The proposed development complies with the visual privacy requirements of the R-Codes in all respects except for overlooking to the north-west and north-east from the terrace, which is setback 3.4m in lieu of the 7.5m required by the Acceptable Development Standards.

The R-Codes allow the Acceptable Development Standards to be varied where the Performance Criteria 6.8.1 P1 can be met. These criteria state that:

Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.

Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscured glass.

Where these are used, they should be integrated with the building design and have minimal negative effect on residents' or neighbours' amenity.

The applicant has supplied justification for the variation, stating that the cones of vision overlook the roof of the adjoining property. A site inspection and the attached photographs have revealed that overlooking would occur onto wall and roof, with no active habitable spaces affected. The neighbour has signed consent to the proposal.

Solar Access (overshadowing)

The orientation of the site makes an above-standard shadow impact inevitable, which virtually any two-storey proposal would cause, as is the experience of the locality. In the circumstances the only way to minimise shadow is to develop at single storey and low height with generous setbacks, which is not the expectation. The trend is that as properties are added to or redeveloped they all tend to generate excess shadow with a degree of tolerance or a reasonable balance between the amount of shadow, and where it falls being approved as a necessary compromise.

The proposed dwelling overshadows the lot adjoining to the south by 61%, whereas the Acceptable Development Standards of the R-Codes specify a maximum of 25%. However, Performance Criteria 6.9.1 P1 allow for:

Development designed to protect solar access for neighbouring properties taking account of the potential to overshadow:

* *outdoor living areas;*

- * *major openings to habitable rooms;*
- * *solar collectors; or*
- * *balconies and verandahs.*

In this instance it is stated that the proposal does not overshadow the outdoor living areas at the rear of the affected dwelling. Whilst the neighbour has signed approval to the proposal, and an assessment of the site and examination of aerial photographs has confirmed that much of the shadow falls on the roofs of the adjoining dwelling, garage and shed, a verandah at the rear of the dwelling is overshadowed. It is thus considered that the proposal does not wholly satisfy the relevant Performance Criteria with regard to overshadowing. It should be noted that the situation would be improved were the height of the proposed dwelling reduced.

CONCLUSION

By reason of the proposed height and overshadowing in particular, and consideration of the pool setback, it is concluded that the application would best be deferred, so as to allow the architects and owner to review this assessment and liaise with officers towards a redesign which satisfactorily addresses the issues.

COMMITTEE COMMENT

Committee discussed the proposal at length, having regard to the report, model, presentations and additional material from the architect, including discussion with the officers and the attendees when requested. Committee was mindful of the quality of the design in itself, even though it did not readily comply with the planning parameters. Committee did not see the overshadowing as such an issue, although it was recognised that this could be increased, and indicated support for the reduced setback to the pool. Discussion ensued in relation to the site topography, building heights and design appreciation. Options for a recommendation to Council were also discussed, including conditional approval. In this respect the MDS cautioned against setting arbitrary height or other standards which the architects may not be able to practically design to. On balance, Committee agreed to support a deferral to facilitate consideration of a redesign to achieve greater compliance and generate fewer concerns. *Postscript: subsequently the architect has given thought to a redesign and met with officers to consider reduced wall heights, a curved roof and other changes towards a more acceptable proposal, which is anticipated to be resubmitted in due course.*

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Miller, seconded Cr Dawkins

That Council:

- (1) Due to the proposed variations sought with respect to building height, overshadowing and the front setback to the pool, defers determination of the application in order to allow the architects and owner to review the**

assessment contained in this report and to liaise with officers towards a redesign which satisfactorily addresses the issues.

- (2) Advise the submitters of this interim decision.**

Carried 6/0

11 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING

Nil

13 MEETING CLOSURE

The Presiding Member announced the closure of the meeting at 7:15pm.

CONFIRMED: PRESIDING MEMBER _____ *DATE: .../.../...*