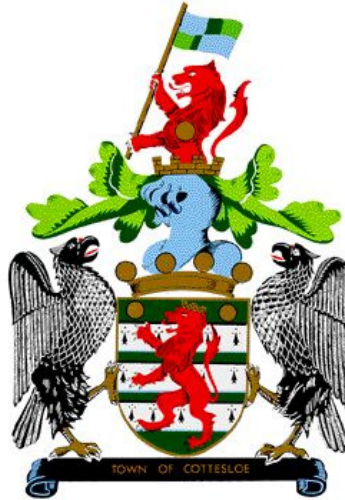


# TOWN OF COTTESLOE



## DEVELOPMENT SERVICES COMMITTEE

# MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE  
109 BROOME STREET, COTTESLOE  
6.00 PM, MONDAY, 18 MAY 2009

**CARL ASKEW**  
Chief Executive Officer

21 May 2009



## DEVELOPMENT SERVICES COMMITTEE

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**1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

The Presiding Officer announced the meeting opened at 6:05pm.

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

Cr Jack Walsh	Presiding Member
Cr Jo Dawkins	
Cr Ian Woodhill	
Cr Jay Birnbrauer	
Cr Greg Boland	
Cr Victor Strzina	Arrived 6:12pm

**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

**Apologies**

Nil

**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**

Item 10.1.6 - Rebecca Thompson (Greg Rowe & Associates) – BTF Investments

Ms Thompson briefly requested that the item be deferred. Mr Jackson explained that this was to enable further discussion on the matter and that Committee should consider the basis of any deferral prior to approval.

Item 10.1.3 – Jean-Mic Perrine – 1A Geraldine Street – Two-Storey Dwelling

Mr Perrine summarised the design approach, liaison with officers and advised that the conditions were acceptable.

Item 10.1.2 – Jayson Renouf – 6 Margaret Street – Alterations and Additions

Mr Renouf outlined the need for and design of the proposal and mentioned that it would also assist in privacy to his property from higher dwellings opposite overlooking his yard.

Item 10.1.4 – Jamie Loh - 2 & 4 Athelstan Road – Five Aged Persons Dwellings

Mr Loh referred to his awareness of the market for mature-aged persons dwellings in the Cottesloe context and explained that the proposal was seeking flexibility for the larger size of the dwellings.

Item 10.1.4 – Laurie Scanlan

Mr Scanlan described how the design of the proposal addressed the RDC requirements except for the size of the dwellings which was needed to suit the lifestyle of the residents.

**6 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

**7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

Moved Cr Strzina, Seconded Cr Birnbrauer

[Minutes April 20 2009 Development Services Committee.doc](#)

The Minutes of the Ordinary meeting of the Development Services Committee, held on 20 April 2009 be confirmed.

Carried 6/0

**8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

Nil

**9 PETITIONS/DEPUTATIONS/PRESENTATIONS**

Nil

**Note:**

For the benefit of the members of the public present the Chairman determined to consider the following items first:

- 10.1.6 Request for amendment to Town Planning Scheme no. 2 – nos 18-20 (lot 2) Avonmore Tce (cnr Rosendo St) – to permit three-storey residential development
- 10.1.3 No. 1a Geraldine Street – Two-Storey Dwelling With Pool and Roof Deck
- 10.1.2 Alterations and Additions, Lot 30 (No. 6) Margaret Street, Cottesloe
- 10.1.4. No. 2 & 4 Athelstan Road - Five Aged Persons dwellings

The chairman then returned to the printed order of the agenda.

The meeting was adjourned at 7.12pm due to a Special Council Meeting.

The meeting was re-opened at 8.33pm and the remaining items were dealt with.

The CEO did not return to the re-opened meeting.

**10 REPORTS OF COMMITTEES AND OFFICERS****10.1 PLANNING****10.1.1 ALTERATIONS AND ADDITIONS, LOT 20 (No. 22) ROSSER STREET, COTTESLOE**

<b>File No:</b>	<b>1623</b>
<b>Responsible Officer:</b>	<b>Carl Askew Chief Executive Officer</b>
<b>Author:</b>	<b>William Schaefer Planning Officer</b>
<b>Proposed Meeting Date:</b>	<b>18-May-2009</b>
<b>Author Disclosure of Interest</b>	<b>None</b>
<b>Property Owner:</b>	<b>R &amp; D Faulkner</b>
<b>Applicant:</b>	<b>Dale Alcock Home Improvement</b>
<b>Date of Application:</b>	<b>10 December 2008 (Amended 28 April 2009)</b>
<b>Zoning:</b>	<b>Residential</b>
<b>Use:</b>	<b>P – A use that is permitted under this Scheme</b>
<b>Density:</b>	<b>R20</b>
<b>Lot Area:</b>	<b>446m<sup>2</sup></b>
<b>M.R.S. Reservation:</b>	<b>N/A</b>

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**SUMMARY**

The application is for alterations and additions to the existing residence.

The application was listed to be dealt with under delegated authority, however, it has been referred to Council by Elected Members.

The proposed works comprise the addition of a bathroom, bedroom, verandah and front fence to the main residence, and a carport in the front setback area.

Plans were originally submitted to Council in December 2008. These plans asked for variations from Council's resolution on the front setback of residences, Council's Fencing Local Law, and Council's Policy on Garages and Carports in Front Setback Areas.

Following liaison with the Town's planning staff, revised plans were submitted on 28 April 2009 which overcame all variations other than the carport. Whilst the proposed carport does not comply with Council's resolution of a preferred setback of 6.0m, the carport has been justified under the relevant Council Policy.

At the time of writing this report, no written objections to the proposal have been received.

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



**PROPOSAL**

The proposal is for a double carport in the front setback area, plus single storey additions of a bathroom, bedroom, verandah and front fence to the residence.

A concession is sought for the following item:

- \* Carport in front setback area

**CONSULTATION**

The application is currently being advertised to the adjoining landowner to the north. At the time of writing this report no written submissions have been received. Any submissions received in the interim will be presented to Council.

**STATUTORY ENVIRONMENT**

Town Planning Scheme No. 2  
Residential Design Codes

**POLICY IMPLICATIONS**

Garages and Carports in Front Setback Area

**OFFICER'S COMMENT**

With regard to the revised plans received on 28 April 2009, the main issue is as follows:

Carport in front setback area

It is proposed to construct a double carport with a front setback of 3.0m, whereas it is Council's policy to have carports located behind the 6.0m setback line. Notwithstanding this, variations to the 6.0m setback are permitted where it can be demonstrated that the proposal meets the criteria of Council's Policy TPSP 003 – *Garages and Carports in Front Setback Area*:

*The materials of construction, design and appearance of a carport or garage erected within the front setback area shall be in character with the residence upon the site and be in harmony with the surrounding streetscape.*

*Further, the location of the building:*

- (a) shall not significantly affect view lines of adjacent properties,*
- (b) shall maintain adequate manoeuvre space for the safe ingress and egress of motor vehicles.*

*In consideration of variations to setback, Council shall also have regard to:*

- (a) the objectives set out in Clause 1.2 of the Residential Codes;*
- (b) the effect of such variation on the amenity of any adjoining lot;*

(c) the existing and potential future use and development of any adjoining lots; and

(d) existing setbacks from the street alignment in the immediate locality, in the case of the setback from the principal street alignment.

The applicant's justification is quoted and assessed as follows:

APPLICANT'S JUSTIFICATION	OFFICER'S COMMENTS
* Design, construction & materials in harmony with existing residence, which is in harmony with streetscape;	* Materials/finish of proposal are same as existing residence, which is considered in character with street;
* Open construction of carport allows good visibility, does not affect neighbour's view lines;	* Open construction and eave setback of carport meet criteria for preservation of view lines and neighbour's amenity;
* Rear ROW too narrow for safe ingress & egress. Proposal for carport in front setback still leaves adequate space for vehicle manoeuvre;	* Rear ROW (ROW # 56) is only 3.0m wide and rarely used by residents for access. ROW study indicates that location of fences in ROW makes access generally impractical.
* Unsuitable topography and location of existing structures at rear of lot has forced carport to out front, where courtyards requiring northern light are also desired. Setback variation permits proposed courtyards to retain access to northern light;	* Several examples of reduced setbacks to carports and garages on Rosser Street (refer photograph of streetscape). See Nos. 16, 16A and 18 Rosser, which have setbacks of close to zero.
* Eaves of carport setback 750mm from neighbouring lot. Amenity of neighbour preserved.	* 1.8m dividing fence located between carport and neighbouring residence is expected to ameliorate the impact of the carport on the adjoining property.

The relevant Acceptable Development Standard of the R-Codes (6.2.3 A3.4) contemplates carports in front setbacks provided that the width of the carport does not exceed 50% of the frontage at the building line and the construction allows an unobstructed view between the dwelling and the street.

In this instance the frontage at the building line is 11.06m, with the carport proposed to be 5.5m wide. Such figures satisfy the relevant standard. The construction of the carport also allows clear lines-of-sight between the street and the residence.

Thus, under an R-Code assessment, the proposal is seen to be acceptable.

Overall, the application is regarded as having met the relevant provisions of the Scheme, the R-Codes, Council's Local Fencing Law and Council's Policies.

**CONCLUSION**

The proposed alterations and additions are considered to satisfy the provisions of the Scheme, the 2008 R-Codes, Council's Fencing Local Law and the criteria of Council's policy of Garages and Carports in Front Setback Areas. The dwelling is single storey and modest, with the proposed improvements being relatively small-scale and consistent with the cottage character of this part of the street. Alternative vehicular access from the ROW is constrained, and the carport is in keeping with the desired outcome of off-street parking. Furthermore, the existing carport is to be replaced with a better one and it is only a single-width, rather than double-width, carport that is proposed.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

Moved Cr Walsh, seconded Cr Dawkins

That Council:

- (1) GRANT its Approval to Commence Development for the Alterations and Additions at Lot 20 (No. 20) Rosser Street, Cottesloe, in accordance with the revised plans submitted on 28 April 2009, subject to the following conditions:
  - (a) All construction work being 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 not being discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings submitted for a building licence.
  - (c) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
  - (e) The applicant applying to the Town of Cottesloe for approval to construct a crossover of a maximum width of 5.5m in accordance with Council specifications, and being approved by the Manger Engineering Services or an authorised officer.

- (f) That the existing redundant crossover in Rosser Street be removed, the verge, kerb and all surfaces made good at the applicant's expense.
  - (g) The applicant complying with the Town of Cottesloe – Policies and Procedures for the Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.
  - (h) 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.
- (2) ADVISE any submitters of this decision.

**AMENDMENT**

Moved Cr Birnbrauer, seconded Cr Walsh

Add a standard condition for open-aspect front setback area fencing in accordance with Council's Fencing Local Law.

Carried 6/0

**AMENDMENT**

Moved Cr Boland, seconded Cr Birnbrauer

Add a condition that the carport is setback 4.5m from the front boundary as per Council's Policy.

Lost 2/4

**AMENDMENT**

Moved Cr Boland, seconded Cr Strzina

Add a condition to delete any new fencing to form a courtyard in the front setback area, except for the front boundary fence.

Lost 2/4

**COMMITTEE COMMENT**

Committee discussed the proposed front fencing/courtyard and carport at some length and was of the view that design improvements could be made towards greater compliance and a more attractive streetscape.

**COMMITTEE RECOMMENDATION**

Moved Cr Walsh, seconded Cr Dawkins

**That Council:**

- (1) **GRANT its Approval to Commence Development for the Alterations and Additions at Lot 20 (No. 20) Rosser Street, Cottesloe, in accordance with**

the revised plans submitted on 28 April 2009, subject to the following conditions:

- (a) All construction work being 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 not being discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings submitted for a building licence.
  - (c) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
  - (e) The applicant applying to the Town of Cottesloe for approval to construct a crossover of a maximum width of 5.5m in accordance with Council specifications, and being approved by the Manger Engineering Services or an authorised officer.
  - (f) That the existing redundant crossover in Rosser Street be removed, the verge, kerb and all surfaces made good at the applicant's expense.
  - (g) The applicant complying with the Town of Cottesloe – Policies and Procedures for the Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees for development.
  - (h) 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.
  - (i) All new fencing in the front setback area shall be of “open-aspect” design and construction in accordance with Council's Fencing Local Law.
- (2) ADVISE any submitters of this decision.

Carried 6/0

**10.1.2 ALTERATIONS AND ADDITIONS, LOT 30 (No. 6) MARGARET STREET, COTTESLOE**

**File No:** 1654  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** William Schaefer  
Planning Officer

**Proposed Meeting Date:** 18-May-2009

**Author Disclosure of Interest:** None  
**Report Date:** 13 May 2009  
**Senior Officer:** Mr Andrew Jackson  
**Property Owner:** Mr Jayson and Mrs Amanda Renouf  
**Applicant:** Rodrigues Bodycoat Architects  
**Date of Application:** 10 February 2009 (Amended 16 April 2009 and 22 April 2009)

**Zoning:** Residential  
**Use:** P – A use that is permitted under this Scheme  
**Density:** R20  
**Lot Area:** 497m<sup>2</sup>  
**M.R.S. Reservation:** N/A

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**SUMMARY**

The application is for alterations and additions to the existing residence. The proposal has been architect-designed with special regard to the unusual site topography, which falls 5.07m from the Ozone Parade boundary at the rear to the Margaret Street boundary at the front. The effects of the unusual topography are exacerbated by the previous extensive excavation of the site, which has resulted in a portion of land at the rear of the site that is retained to a height of 2.8m.

Dialogue between the applicant and the Town commenced in February 2009 with the submission of the original proposal. The applicant has subsequently submitted revised plans and further supporting information.

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

**PROPOSAL**

The proposal is for a two-storey garage/workshop, playroom, study and terrace extensions.

Concessions are sought for the following items:

- \* Wall height
- \* Setback of garage from secondary street
- \* Overshadowing
- \* Walls on boundary

**STATUTORY ENVIRONMENT**

Town Planning Scheme No. 2  
Residential Design Codes

**POLICY IMPLICATIONS**

Building Height

**ADVERTISING**

The adjoining southern neighbour contacted the Council while Council was in receipt of the original plans dated 10 February 2009 and arranged an inspection. In response to these plans a written objection was lodged (refer attached).

The submission may be summarised as follows:

Mr Christopher Spaven, 4 Margaret Street

- \* The proposal will overshadow a clothes drying area, the studio and garden;
- \* There would be less objection if the roofline of the garage were altered to allow for the passage of more sunlight, and/or the garage wall were not as long;
- \* There are no objections to the additions to the main residence.

The revised plans currently before Council were advertised to the southern neighbour, northern neighbour and to two residences on the east side of Ozone Parade. No other written submissions have been received.

**APPLICANT'S JUSTIFICATION**

The applicant submitted a report in support of the original proposal in February 2009 and as part of the revised submission in April 2009. Both documents are attached to this report.

**OFFICER'S COMMENT**

With regard to the revised plans received on 22 April 2009, the main issues are as follows:

Wall Height

It is proposed to construct a gable-roofed, two storey garage/workshop with wall heights of 7.0m in lieu of the basic 6.0m allowed by Clause 5.1.1 (c) of the Scheme. The maximum ridge height of the proposed garage is 8.4m, which is below the 8.5m permitted under the Scheme. The 7.0m reflects the R-Codes height standard for flat-roofed buildings.

The Scheme states that exceptions may be permitted in cases where natural ground forms indicate that a variation is warranted provided the amenity of neighbouring areas is not unreasonably diminished.

In this case the lot falls up to 5.07m from east to west. The lot has been heavily excavated in the past, leaving the rear of the lot retained to a height of up to 2.8m. It is on this retained portion of land at the rear of the lot that the garage/ studio is proposed to be built.

It is argued that the existing topography has limited the choice of possible sites and levels for the proposed structure. Vehicular access is from Ozone Parade, with the existing crossover having set the floor of the garage at its present level.

From the boundary nearest Ozone Parade, the wall height to the top of the plate is only 4.4m above NGL. It should also be noted that:

- \* The garage storey is proposed to be 2.4m from floor to ceiling;
- \* The pitching height of the store/workshop level is proposed to be 1.8m.

Given that the overall height of the garage/studio is within the parameters of the Scheme, and the ceiling heights are relatively modest, it is considered that the extra wall heights are more a function of the constraints of natural ground forms than unsuitable design.

With regard to the effect of the over-height walls on the amenity of neighbouring areas, an objection to the degree of overshadowing has been submitted by the adjoining neighbour. However, the objection relates to the original proposal, as opposed to the revised plans currently before Council. The overshadowing issue is dealt with more fully in another section of this report.

It is doubtful in any case that the degree of overshadowing would be improved by a reduction in wall height, as the overshadowing is the function of roofline and wall length rather than wall height.

No other written objections have been received.

The amenity of the neighbouring areas is therefore considered not to have been unreasonably diminished by the proposed over-height walls.

In conclusion, the over-height walls appear to satisfy the clause of the Scheme that permits variations on the basis of natural ground forms and the preservation of amenity.

#### Setback of garage from street

It is proposed to have the garage set back 0.5m from the secondary street boundary, whereas Acceptable Development Standard 6.2.3 A3.3 of the R-Codes specifies a setback of 1.5m.

It is therefore necessary to assess the garage setback under the relevant performance criterion, which states:

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



There are several examples of residences with secondary street access from Ozone Parade that have garages within the 1.5m setback area. The double-width garage for No. 14 Grant Street, for example, has been constructed right up to the Ozone street boundary (refer photograph). The majority of the streetscape in either direction comprises solid boundary walls 1.8m in height (refer photograph), rather than the open front yards of residences that the codes were designed to preserve. No written objections to the secondary street setback have been received from the landowners adjacent or opposite.

With regard to the views of dwellings from the street or vice versa, it should be noted that the fall of the lot away from the secondary street and the extensive excavation of the site that has occurred in the past are such that only the rear roof of the residence is visible from Ozone Parade (refer photograph). The view to and from the residence is practically non-existent and the addition of the garage/workshop at the rear will not alter this situation.

The performance criterion of the R-Codes is therefore considered to have been met.

#### Overshadowing

The midwinter shadow cast by the proposal reaches 30%, whereas the Acceptable Development Standards of the R-Codes state that no more than 25% of a neighbouring lot may be overshadowed.

The proposal must therefore be justified under the Performance Criterion, which states:

*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 or verandahs.

In this instance, the adjoining neighbour has lodged an objection to the degree of overshadowing generated by the garage/workshop. However, this objection was made with reference to the original plans submitted in February 2009, as opposed to the revised plans currently before Council. The roofline of the original proposal was configured along less compliant lines, with 32% of the neighbour's lot being overshadowed.

In his submission the objector has stated that he would have less objection if the roofline were altered to allow more sunlight into his yard. The applicant has subsequently amended the roofline and the level of overshadowing has been reduced to 30%.

It should be noted that the shadow from the garage/workshop falls on the studio (labelled as garage) and vegetation at the rear of the neighbouring lot. As no outdoor living areas, major openings, solar collectors, balconies or verandahs are

overshadowed by the alterations at the rear of the lot, the proposal is considered to have satisfied the relevant performance criteria.

#### Walls on boundary

It is proposed to construct two new walls along the southern boundary. The wall for the garage/workshop is 8.6m long and up to 6.8m high; the study wall is intended to be 4.7m long and up to 2.8m high. For R-20 zoned areas, Acceptable Development Standard 6.3.2 A2 of the R-Codes allows walls not higher than 3.0m up to 9.0m in length.

The walls must therefore be assessed under the relevant performance criterion, which states:

*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; and*
- *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 proposed study wall forms an extension to the existing wall of the residence which permits the conversion of dead space into a useable room and therefore makes effective use of space. The neighbour has stated he has no objection to the addition and the effect of the proposed wall on the amenity of the adjoining property is considered likely to be negligible. As the extension is intended to occur in the already overshadowed area of the main house, there will be no effect on the passage of direct sun to the major openings to habitable rooms and outdoor living areas of the adjoining property.

As discussed in previous sections of this report, the location of the proposed garage/workshop is dictated by the crossover and unusual existing natural ground forms. The boundary wall is thus the function of a garage/workshop that makes effective use of the available space. As the shadow of the proposal falls on the neighbouring studio roof and an area of dense vegetation rather than on outdoor living areas and major openings to habitable rooms, it is considered that the wall on boundary will not have any significant adverse impact on the amenity of the adjoining property.

The relevant performance criterion is therefore considered to have been met.

#### **CONCLUSION**

The proposed alterations and additions are considered to warrant a variation to the Scheme's 6.0m wall height restriction. Furthermore, the proposal is assessed as having satisfied the performance criteria relevant to the setback of the garage from the secondary street, overshadowing and walls on the boundary.

**VOTING**

Simple Majority

**OFFICER RECOMMENDATION**

Moved Cr Dawkins, seconded Cr Strzina

That Council:

- (1) GRANT its Approval to Commence Development for the proposed Alterations and Additions at No. 6 (Lot 30) Margaret Street, Cottesloe, in accordance with the revised plans submitted on 22 April 2009, subject to the following conditions:
  - (a) All construction work being 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 not being discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings submitted for a building licence.
  - (c) The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.
  - (d) The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.
  - (e) 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.
  - (f) The walls along the southern boundary are to be finished to the satisfaction of the Manager Development Services.
  - (g) The existing redundant crossover in Margaret Street shall be removed, the verge, kerb and all surfaces made good at the applicant's expense.
  - (h) The applicant complying with the Town of Cottesloe – Policies and Procedures for the Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees.
- (2) ADVISE the submitters of this decision.

**AMENDMENT**

Moved Cr Birnbrauer, seconded Cr Boland

That the plans be revised to reduce the overshadowing to no more than 25%.

Carried 5/1

**COMMITTEE COMMENT**

Committee discussed the proposal in relation to streetscape presentation and design function generally and to the amount of overshadowing to the southern neighbouring property in particular. It was considered that the latter should be reduced to the 25% standard by revised plans, even though it was felt that this may be difficult to achieve.

**COMMITTEE RECOMMENDATION**

Moved Cr Walsh, seconded Cr Strzina

**That Council**

- (1) **GRANT its Approval to Commence Development for the proposed Alterations and Additions at No. 6 (Lot 30) Margaret Street, Cottesloe, in accordance with the revised plans submitted on 22 April 2009, subject to the following conditions:**
  - (a) **All construction work being 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 not being discharged onto the street reserve or adjoining properties, and the gutters and downpipes used for the disposal of the stormwater runoff from roofed areas being included within the working drawings submitted for a building licence.**
  - (c) **The external profile of the development as shown on the approved plans not being changed whether by the addition of any service plant, fitting, fixture, or otherwise, except with the written consent of Council.**
  - (d) **The roof surface being treated to reduce glare if Council considers that the glare adversely affects the amenity of adjoining or nearby neighbours following completion of the development.**
  - (e) **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.**
  - (f) **The walls along the southern boundary are to be finished to the satisfaction of the Manager Development Services.**

- (g) The existing redundant crossover in Margaret Street shall be removed, the verge, kerb and all surfaces made good at the applicant's expense.
  - (h) The applicant complying with the Town of Cottesloe – Policies and Procedures for the Street Trees, February 2000, where development requires the removal, replacement, protection or pruning of street trees.
  - (i) Revised plans being submitted at building licence stage, showing the design of the garage/studio being lowered or otherwise altered to reduce the overshadowing of the southern adjoining lot to no more than 25%, to the satisfaction of the Manager Development Services.
- (2) Advise the submitters of this decision.

Carried 5/1

**10.1.3 No. 1A GERALDINE STREET – TWO-STOREY DWELLING WITH POOL AND ROOF DECK**

**File No:** 1594  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Ed Drewett  
Senior Planning Officer  
**Property Owner:** Ms AY Ellies  
**Applicant:** Perrine Architecture  
**Zoning:** Residential R30  
**Use:** P – A use that is permitted under this Scheme  
**Lot Area:** 552m<sup>2</sup>

**Proposed Meeting Date:** 18-May-2009  
**Author Disclosure of Interest** Nil

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**SUMMARY**

This application is seeking the following variations to Town Planning Scheme No. 2 (TPS 2), Council's Policies and/or the Residential Design Codes:

- Front setback
- Visual privacy
- Walls on boundaries
- Fencing in front setback area
- Building height

Each of these issues is discussed in this report and refer to amended plans received 22 & 28 April 2009.

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

**PROPOSAL**

This application is for the construction of a two-storey dwelling with pool and roof-deck.

The proposed dwelling is of contemporary design comprising 4 bedrooms, 1 bathroom, 2 ensuites, study, living/dining/kitchen, laundry, utility/gym, pool and roof-top BBQ area and solar panels. The design of the dwelling utilises the lot's east-west positioning by locating its main outdoor active habitable areas on the northern side for best solar orientation.

**STATUTORY ENVIRONMENT**

- Town Planning Scheme No. 2
  - Residential Design Codes
  - Fencing Local Law
-

**HERITAGE LISTING**

N/A

**DRAFT LOCAL PLANNING SCHEME NO. 3**

It is proposed to rezone this lot to residential R40 making it potentially suitable for 2 grouped dwellings.

**APPLICATION ASSESSMENT****AREAS OF NON-COMPLIANCE**

<b>Policy</b>	<b>Required</b>	<b>Provided</b>
Fencing Local Law	Open aspect fencing above 0.9m	Solid walls between 1.5m and 2.4m
Streetscape	6m (Council resolution 28/10/02)	Min. 4.8m (ground floor); Min. 4m (upper floor)

**Residential Design Codes**

<b>Design Element</b>	<b>Acceptable Standards</b>	<b>Provided</b>	<b>Performance Criteria Clause</b>
6.3 – Boundary setbacks	Walls not higher than 3.5m with an average of 3m for 2/3 in length up to one side boundary	Wall height up to 6.3m on southern boundary; Walls on two side boundaries	Clause 3.3.2 – P2
6.8 – Privacy requirements	4.5m cone of vision to bedrooms; 7.5m cone of vision from accessible rooftop	Min. 2.7-4m cone of vision to bedrooms 2 & 3; Min. 4.5m cone of vision to balcony	Clause 6.8.1 – P1
6.7 – Building height	7m to top of external wall (concealed roof)	7.3m to top of balustrade	Clause 6.7.1 – P1

**ADVERTISING OF PROPOSAL**

The application was advertised as per Town Planning Scheme No. 2. The advertising consisted of a letter to 6 adjoining property owners. 2 submissions were received.

The main points raised in the submissions are as follows:

Fred Zuideveld (Overman Zuideveld), on behalf of Emily Berean, 6 Gadsdon Street

- Expresses concern relating to overlooking from the first floor bedroom window as due to the level difference of 1.5m between the properties the overlooking

into the private outdoor living space at the rear of 6 Gadsdon Street is increased;

- Suggests that overlooking could be reduced by the inclusion of a vertical privacy screen fixed adjacent to the west side of the first floor bedroom window. This will also have a secondary benefit of shading the window from late afternoon sun and could be conditioned accordingly; and
- No concern in relation to the inclusion of a roof terrace as designed on the proposed residence.

David Lang, 6A Gadsdon Street

- Bedroom 2 window has potential to overlook the back garden and affect the privacy of two upstairs bedrooms facing east. The proposed window should be smaller, moved further east and have sight screens installed to prevent overlooking a garden area;
- Objects to rooftop barbeque area which effectively becomes a 3<sup>rd</sup> storey entertaining area. The proposed area high above the house is likely to infringe the neighbour's privacy and to create noise nuisance; and
- Council is urged to insist on a permanent barrier surrounding the barbeque/entertainment area to ensure that no-one has access to the flat roof.

**BACKGROUND**

Following an assessment of the development application, the Town has been liaising with the applicant in an attempt to address various concerns including height, setbacks, walls on boundaries, retaining walls, visual privacy, overshadowing, front fencing and surveillance of the street.

The Town subsequently received amended plans on 22 & 28 April 2009 which address most of the initial concerns but do not satisfy all of Council's requirements.

**APPLICANT'S JUSTIFICATION**

The applicant has submitted information in support of the proposal and addressing various statutory requirements.

A summary of the main points relevant to the proposed design and this assessment are as follows:

- The proposal is specifically designed to create high levels of amenity for the occupants by creating a multi-tiered design solution in respect of passive design and energy efficiency;
- The design solution represents a fully-autonomous energy efficient house, which will enjoy mild to low subsidiary energy requirements throughout both winter and summer cycles;



- The building has been specifically designed to address the centre of the site and to create a modern built form set well away from the boundaries. In doing so, the application creates a significant area of open space to the northern third of the site, which is the primary access of view from Geraldine Street. In effect, the proposal provides for a sculptural and open vista to the street;
- Materials are natural and highly resilient to the marine location. Natural sandstone panels, glass and aluminium form the majority of the built form surface, with the glazing being tinted to maximise energy efficiency and harmonise with the natural tones of the building;
- The design represents a synthesis of modern form, quality material, and a high degree of passive design;
- A reduced front setback is proposed as TPS 2 allows the front setback to be varied, the lot sits at the end of a cul-de-sac and the adjoining garage to the north has a reduced setback;
- By the application of the proposed variations to the front setbacks the proposed development creates a landscaped avenue for the full depth of the lot and along the main axis of Geraldine Street. Built form within that corridor of any size would have a significantly greater impact on the streetscape than the carefully considered composition of the proposed development;
- Under the proposed R40 zoning, the setback required of the two potential lots would be significantly less than those proposed here. In any case, this lot is shorter than all the other lots in the street (by around 50%) and by comparison, a 6m front setback would represent a punitive (approx.) 30% of the lot area as setback area to the street with no benefits to privacy and amenity to the residence;
- The proposed walls on boundaries make effective use of space as the lot has limited area and the location of the dwelling allows maximum northern winter sun access;
- The walls will screen the development from heavily-used communal drying facilities, storage facilities, communal car parking and other communal areas that belong to the block of flats on the southern boundary. The flats will overlook the proposed development at 2<sup>nd</sup> and 3<sup>rd</sup> floor level;
- The walls have been specifically located to coincide with existing walls and communal carparking areas of the adjoining units to the south and the rights-of-way has existing walls to boundaries along its extent;
- No adjoining major openings or habitable or outdoor living areas are deprived of direct sun by the proposed walls to boundaries; and
- One small portion of the proposed building (approx. 15% of the total area of the building) uses a contemporary form of pitched roof. The roof pitches from a

point with a wall height of 6m which is allowable under TPS 2 and forms a roof space which provides shelter for that area.

**STAFF COMMENT**

The following comments are made regarding the application and submitted plans received 22 & 28 April 2009.

The proposed development (as amended) complies with Town Planning Scheme No. 2, relevant Council Policies and the Residential Design Codes (RDC) with the exception of the following:

- Front setback
- Visual privacy
- Walls on boundaries
- Fencing in front setback area
- Building height

Each of these issues is discussed below:

Front setback

The applicant is seeking a variation to Council's preference for a 6m front setback (Council's resolution 28/10/02).

- A minimum 4m setback is proposed to a protruding wall structure (both floors) and to a utility/gym area/corridor on the upper floor;
- A minimum 4.8m setback is proposed to the ground floor entry and upper floor void area;

The remainder of the building has a front setback greater than 6m (6.95m).

Under the acceptable development standards of the RD Codes a 4m minimum front setback is required, although this may be further reduced by up to 50% provided that the area of any building, including a carport or garage, intruding into the setback area is compensated for by at least an equal area of contiguous open space between the setback line and line drawn parallel to it at twice the setback distance.

In this case, the proposed development has a minimum 4m setback and therefore complies with the acceptable standards of the Codes.

Although the majority of dwellings in Geraldine Street do appear to have substantive front setbacks (albeit some with solid walls & gatehouse), they nevertheless are zoned R20 which is different to the subject lot which is zoned R30 (& proposed R40) and therefore these existing dwellings can be expected to contribute to a different streetscape based on the density factor alone. Furthermore, the remainder of Geraldine Street has an attractive verge area on both sides unlike the subject lot that has no verge and is adjoining an existing garage on the northern boundary with a reduced setback to Geraldine Street, which is permitted (to 1.5m), as the existing dwelling fronts Gadsdon Street and backs onto Geraldine Street.

The unique size, shape and location of the subject lot lends itself to consideration of a reduced front setback as it will not significantly impact on the existing streetscape, it recognises the higher density zoning, and the proposed design of the dwelling ensures that a significant portion of the site on the northern side compensates for the reduced setback.

The Draft Local Planning Scheme No.3 addresses front setbacks as follows:

*Despite anything contained in the RD Codes to the contrary, in the case of areas with a residential density code of R30, the local government may require an R20 front setback of 6m to be applied, for the preservation of streetscapes, view corridors and amenity.*

As already mentioned, it is not considered that the proposed reduced setback will have a significant visual impact on the existing streetscape and the location of the lot at the end of a cul-de-sac ensures that view corridors and amenity are adequately preserved and therefore the proposed development would satisfy this requirement.

#### Visual Privacy

The proposed upper floor windows to bedrooms 2 & 3, and the roof deck area, do not comply with the acceptable development standards of the RD Codes for visual privacy and need to be assessed under performance criteria.

The relevant performance criteria (Clause 6.8.1) states:

*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.*

There is some potential for overlooking of the adjoining multiple dwellings on the southern side of the lot from the proposed bedroom 3 window and rear section of roof deck. However, direct overlooking of active habitable spaces will be limited due to the design and juxtapositioning of the proposed dwelling to the boundary. Furthermore, the adjoining units are predominantly orientated to the south and back onto the development site. Most windows along their northern elevation are therefore either bedroom/bathroom type windows rather than to main living areas and therefore will potentially be less affected by overlooking.

The Bedroom 2 window located on the upper floor (northern elevation) of the proposed development does have potential to overlook active habitable spaces and

outdoor living areas of the properties to the west of the lot and therefore should be screened or setback in accordance with the acceptable development standards of the Codes. This would also largely satisfy concerns raised by the owners of 6 & 6A Gadsdon Street.

#### Walls on boundaries

The proposed walls on the southern boundary do not comply with the acceptable development standard of the RD Codes and therefore need to be considered under the relevant performance criteria 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; and*
- 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 single storey wall pertaining to the proposed dressing room and ensuite has an average height of 3.2m above NGL and length of 8.8m, and will be abutting an existing wall of similar dimension on the southern lot adjoining. A 1.275m wide portion of this proposed wall will also extend to a height of 6.7m on the southern boundary with the setback to the remainder of the upper floor gradually increasing away from the boundary.

The single storey walls to the proposed garage will have an approximate height of 3m above NGL and length of 6m and 7m along the eastern and southern boundaries respectively.

The proposed walls make effective use of space by enabling the design of the proposed dwelling to utilise maximum northern solar access. The proposed garage wall abutting the existing pedestrian accessway along the eastern boundary is permitted under the acceptable development standards (Clause 6.3.1) of the RD Codes and the garage wall along the southern boundary will be abutting a communal car parking area and therefore will have no significant adverse effect on the amenity of the adjoining property. There is also an existing high solid fence along this boundary which will effectively screen the proposed walls.

The proposed upper floor section of wall on the boundary is relatively small in width and is unlikely to have a significant effect on the amenity of the adjoining flats compared to if the wall was setback 1.2m from the boundary as required under the acceptable development standards of the Codes. Furthermore, the existing dwelling to the west of the lot at 6 Gadsdon Street has an existing 2-storey wall on the southern boundary adjoining the flats which is far more extensive than the proposed wall and potentially has a greater impact on the adjoining flats.

### Fencing in front setback area

2.4m high concrete panels and a 1.5m high solid stone clad fence are proposed in the front setback area.

Under Council's Fencing Local Law fencing in the front setback area above 0.9m in height is to be of an open aspect design.

Although the applicant advised in his submission of 14 February 2009 that the fencing design has been altered to suit, this is not shown on the amended plans and should therefore be conditioned accordingly to avoid detracting from the streetscape or setting a precedent for solid walls. This is considered important given the reduced front setback and the streetscape presentation of this no-through road.

### 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.

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. However, a variation is not considered warranted in this case as the site is relatively flat.

The NGL at the centre of the lot has been determined to be RL: 25.0 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: 31.0) and the maximum permitted ridge height is 8.5m (RL: 33.5). However, where a concealed (flat) roof is proposed Council has generally allowed a maximum permitted wall height up to 7m (RL: 32.0) in accordance with the acceptable development standards of the RD Codes, as the Scheme is silent on this type of roof; while proposed LPS 3 does provide for it in the same manner as the RD Codes.

The proposed dwelling generally complies with these height requirements, with the lower 6m wall height being applied to the proposed roofed area and the remaining concealed roof height being 6.3m high on the southern side and 6.8m on the northern side. Notwithstanding this, it is considered appropriate to condition the wall height to 6m above NGL where the roof extends above, to ensure compliance with the Scheme.

The proposed balustrade on top of the flat roof area exceeds the maximum 7m building height permitted under the acceptable development standards of the RD Codes by approximately 0.3m. However, providing the balustrade is within the covered roof space area then the height may be permitted, similar to a gable wall being allowed to a roofed area.

Any balustrade beyond the roofed area should be restricted to a maximum height of 7m above NGL as the proposed increased height above this would be difficult to support under the relevant performance criteria of the Codes, particularly as it would not be consistent with the desired height of buildings in the locality and any increase in height would generally exacerbate the building bulk as well as set an undesirable precedent in the area.

TPS 2 advises that the maximum building height in a residential zone shall be two storeys except that Council may permit a 3<sup>rd</sup> storey to be located within the roof space of a dwelling provided that the development complies with the maximum wall and roof height provisions stipulated in the Scheme and also provided that, in Council's opinion the dwelling will retain the appearance of a two storey dwelling and will not adversely affect local amenity.

In this case, the proposed roofed area will be conditioned to ensure compliance with the building height provisions of the Scheme and it will generally have the appearance of a 2 storey dwelling, albeit of a contemporary design.

The remaining part of the accessible roof deck that does not have a floor or ceiling above does not constitute a separate storey as the Scheme defines Storey as:

*That proportion of a building which is situated between the top of any floor and the top of the floor next above, or if there is no floor above it, that portion between the top of the floor and the ceiling above it.*

## **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, it is recommended further design revisions are considered necessary to ensure that visual privacy is addressed from the proposed Bedroom 2 window, walls within the front setback area comply with the Council's Fencing Local Law and the building height is compliant with the Scheme and acceptable development standards of the RD Codes.

## **VOTING**

Simple Majority

## **OFFICER RECOMMENDATION**

Moved Cr Dawkins, seconded Cr Birnbrauer

That Council:

- (1) GRANT its Approval to Commence Development for the proposed two-storey dwelling with pool and roof deck at No. 1A (Lot 77) Geraldine Street, Cottesloe, in accordance with the plans submitted on 22 & 28 April 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, pedestrian accessway 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. The crossover width is not to exceed 5.5m.
- (e) 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.
- (f) No retaining walls or fill within 1m of a common boundary shall exceed 0.5 metres above natural ground level.
- (g) 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.
- (h) Wastewater or backwash from pool filtration systems shall be contained within the boundary of the property and disposed of into adequate soakwells.
- (i) 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.
- (j) Wastewater or backwash shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- (k) The finish and colour of the boundary wall facing the southern neighbour and the pedestrian accessway shall be to the satisfaction of the Manager Development Services.
- (l) The northern and western flat roof areas shall not be used as an active habitable space.
- (m) The building licence plans shall be formulated to the satisfaction of the Manager Development Services to include:
  - i The proposed bedroom 2 window being screened on its western side to a minimum height of 1.6m from the finished first floor level, or

otherwise suitably addressed to provide reasonable privacy to the adjoining western neighbours;

- ii. The wall height not exceeding 6m above the calculated NGL (ie: to a maximum RL: 31.0) where proposed to be roofed, other than with a concealed (flat) roof;
  - iii. The top of the roof deck balustrade not exceeding 7m above NGL (ie: RL: 32.0), where not positioned within a proposed roofed area; and
  - iv. Fencing and walls within the front setback area being of an open-aspect design above 0.9m in accordance with Council's Fencing Local Law.
- (2) ADVISE any submitter of this decision.

#### **AMENDMENT**

Moved Cr Boland, seconded Cr Woodhill

That the following words be added to condition (l): *and shall not be accessed except for building maintenance or servicing.*

Carried 5/1

#### **COMMITTEE COMMENT**

Committee discussed the proposal broadly in relation to the rooftop terrace and was satisfied to strengthen condition (l) in order to ensure privacy. Committee also supported condition (m) for revised plans for additional refinements and requirements, including open-aspect fencing for the front setback area.

#### **COMMITTEE RECOMMENDATION**

Moved Cr Dawkins, seconded Cr Birnbrauer

**That Council:**

- (1) **GRANT its Approval to Commence Development for the proposed two-storey dwelling with pool and roof deck at No. 1A (Lot 77) Geraldine Street, Cottesloe, in accordance with the plans submitted on 22 & 28 April 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, pedestrian access way 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. The crossover width is not to exceed 5.5m.
- (e) 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.
- (f) No retaining walls or fill within 1m of a common boundary shall exceed 0.5 metres above natural ground level.
- (g) 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.
- (h) Wastewater or backwash from pool filtration systems shall be contained within the boundary of the property and disposed of into adequate soakwells.
- (i) 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.
- (j) Wastewater or backwash shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.
- (k) The finish and colour of the boundary wall facing the southern neighbour and the pedestrian access way shall be to the satisfaction of the Manager Development Services.
- (l) The northern and western flat roof areas shall not be used as an active habitable space and shall not be accessed except for building maintenance or servicing.
- (m) The building licence plans shall be formulated to the satisfaction of the Manager Development Services to include:
  - i The proposed bedroom 2 window being screened on its western side to a minimum height of 1.6m from the finished first floor level, or otherwise suitably addressed to provide reasonable privacy to the adjoining western neighbours;

- ii. The wall height not exceeding 6m above the calculated NGL (ie: to a maximum RL: 31.0) where proposed to be roofed, other than with a concealed (flat) roof;
  - iii. The top of the roof deck balustrade not exceeding 7m above NGL (ie: RL: 32.0), where not positioned within a proposed roofed area; and
  - iv. Fencing and walls within the front setback area being of an open-aspect design above 0.9m in accordance with Council's Fencing Local Law.
- (2) Advise any submitter of this decision.

Carried 6/0

**10.1.4 NO. 2 & 4 ATHELSTAN ROAD - FIVE AGED PERSONS DWELLINGS**

**File No:** 1572  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Ed Drewett  
Senior Planning Officer  
**Property Owners:** M J Hansen, T J Loh, D L Court & E S Cooley  
**Applicant:** Lawrence Scanlan & Associates Pty Ltd  
**Zoning:** Residential R20  
**Use:** P- A use that is permitted under this Scheme  
**Lot Area:** 1667m<sup>2</sup>

**Proposed Meeting Date:** 18-May-2009  
**Author Disclosure of Interest** Nil

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**SUMMARY**

This application is seeking the following variations to Town Planning Scheme No. 2 (TPS 2), Council's Policies and/or the Residential Design Codes:

- Plot Ratio
- Front setback to balconies;
- Removal of street tree

These issues are discussed in this report and refer to amended plans received on 17 & 20 March and 1 May 2009.

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

**PROPOSAL**

This application is for the demolition of two single dwellings and construction of 5 two-storey aged persons dwellings.

The proposed dwellings are attached and each comprise a master bedroom with ensuite, study, kitchen, living area, laundry, WIR, store/garage at ground floor level, with 2 additional bedrooms, bathroom/ensuite, family room (kitchenette/family room for 1 dwelling) and balcony on the upper floors.

The dwellings are of contemporary design with their main outdoor active habitable areas on the northern side for best solar orientation.

**STATUTORY ENVIRONMENT**

- Town of Cottesloe Town Planning Scheme No. 2
  - Council's Street Tree Policy
  - Residential Design Codes
-

**HERITAGE LISTING**

The existing dwellings (to be demolished) are not on the Town's Municipal Inventory.

**DRAFT LOCAL PLANNING SCHEME NO. 3**

No change is proposed to the zoning and density of these lots.

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

<b>Policy</b>	<b>Required</b>	<b>Proposed</b>
Street Trees	Retention of street trees	Removal of 1 street tree

**Residential Design Codes**

<b>Design Element</b>	<b>Acceptable Standards</b>	<b>Provided</b>	<b>Performance Criteria Clause</b>
6.2 – Streetscape	Balcony projecting no more than 1m into the street setback area providing it does not exceed 20% of the frontage	Unit 1 – 0.2m projection for 49% of frontage; Unit 5 – 0.2m projection for 61% of frontage	Clause 6.2.2 – P2
7.1 – Special purpose dwellings	Maximum plot ratio for single houses and grouped dwellings – 100m <sup>2</sup>	Unit 1 – 266.86m <sup>2</sup> ; Unit 2 – 265.52m <sup>2</sup> ; Unit 3 – 264.68m <sup>2</sup> ; Unit 4 – 260.84m <sup>2</sup> ; Unit 5 – 247.03m <sup>2</sup>	Clause 7.1.2 – P2

**ADVERTISING OF PROPOSAL**

The application was advertised as per Town Planning Scheme No 2. The advertising consisted of a letter to 11 adjoining properties. A petition was received with 7 signatures from the owners of 1, 3, 6, 7, 8, 9 & 10 Athelstan Road and also endorsed by the owners of 5 Athelstan Road.

The main points raised in the petition are as follows:

- Given these properties are being designated as “over 55s” the design appears to be unnecessary and ‘over the top’;
- Typically these developments are single-storey, whereas in this case each dwelling is double-storey;

- The Codes stipulate a maximum area for each dwelling of 100m<sup>2</sup>, these dwellings are individually over 200m<sup>2</sup>;
- The west end of the Athelstan Road cul-de-sac has 13 dwellings and a population of approx. 35 people. The development would significantly change the demographic of the street with the 5 dwellings, each with the capacity to sleep 6 people;
- The street will change from a low density, quiet, family-orientated street to one where there is significantly higher density and traffic;
- The density of the housing is more appropriate in Subi Centro rather than a quiet street in Cottesloe;
- The streetscape will be adversely affected with an approximate 45m double-storey continuous wall running down the property over two blocks. This creates a development of great bulk with no break in the solid wall (the wall behind the garages); and
- All the above factors will contribute to the devaluation of the properties in the street and this development is an example of abusing the concessions provided under the Code.

#### **BACKGROUND**

Following an assessment of the development application, the Town has been liaising with the applicant in an attempt to address various concerns including lot area, height, setbacks, setback to garages, boundary wall height, visual privacy, open space, courtyards, fencing, width of driveways, street trees and plot ratio.

The Town subsequently received a letter and amended plans on 17 March 2009 and additional supplementary plans on 20 March and 1 May 2009. These plans address most of the initial concerns but do not satisfy all of Council's requirements.

#### **APPLICANT'S JUSTIFICATION**

The applicant submitted a detailed report with the application in support of the proposal. A copy of the report is attached although some details have subsequently been modified in the later submitted amended plans.

A summary of the main points raised that are particularly relevant to this planning assessment are as follows:

- The proposed site is ideal for over 55s dwellings as it is central to shops, public transport and within walking distance of the beach. Judging by the lack of developments available within Cottesloe, it appears that this size of property has proven quite difficult to achieve elsewhere;
- The proposed development mostly meets the acceptable development standards of the RDC and justification is provided where variations are sought;

- The subject lots rising over 5m from front to back poses a challenge in order to achieve a balanced outcome addressing the client's brief and statutory planning criteria;
- One of the design principles embraced was to minimise the visual massing of the buildings by introducing a number of architectural styles to produce a series of smaller houses rather than the perception of a single larger development. This also allows the development to sit comfortably within the streetscape that is in itself quite unique and already offers-up an eclectic grouping of bungalows on the north-south orientated sites;
- The setbacks to the first floor living areas are well behind the ground floor setbacks and the open terraces help reduce the visual mass and also reduce shading during winter;
- The design incorporates a mixture of external finishes;
- There are many developments on similar sized blocks and topography throughout Cottesloe, where walls located on common boundaries with similar bulk and mass have been approved;
- The development has been designed to restrict overshadowing and minimise heat-load gains due to the small amount of western facing glass (except for the western most residence);
- Open space is provided in accordance with the RDC;
- The development has been designed to cater for "over 55s" and with minor modification will be suitable for disabled clientele;
- First floor accommodation is designed for guests and/or grandchildren;
- All rooms have been intentionally oversized to cater for owners who are currently domiciled in the immediate area and demand large rooms to accommodate their existing oversized furniture and to be similar to what they are used to;
- Our client's research has identified that the following features are required by the target demographic:
  - (i) The size and number of rooms as presented is what is considered a minimum requirement;
  - (ii) North-facing, protected gardens are desirable;
  - (iii) Higher ceilings – minimum 3m downstairs and 2.7m upstairs are mandatory;
  - (iv) No common walls are preferable;
  - (v) High level of privacy, security, acoustic and environmental outcomes;
  - (vi) Incorporation of double glazing and Environmental Sustainable Design Principles;

- It is acknowledged that the houses proposed are far larger in size than that envisaged by the original outcomes-based guidelines. However, in this locality, the proponents are trying to accommodate the people who live in the immediate area and the size, the number of rooms and their proportions are all what the owners are demanding; and
- In order to provide for our elderly constituents to resettle in purpose-made houses designed for the aged and infirm and located close to their friends and immediate family, this type of accommodation is definitely required. Otherwise, our elderly will be forced to move to other suburbs well away from their familiar environs where they have (in some cases) resided for their lives.

### STAFF COMMENT

The following comments are made regarding the application and revised plans received 17 & 20 March and 1 May 2009.

The proposed development (as amended) complies with Town Planning Scheme No. 2, relevant Council Policies and the Residential Design Codes (RDC) for aged persons dwellings, with the exception of the following:

- Plot Ratio;
- Front setback to balconies for Units 1 & 5;
- Removal of street tree;

Each of these issues is discussed below.

#### Plot Ratio

Under Town Planning Scheme No. 2 the lot is zoned Residential R20. This would permit a maximum 3 single or grouped dwellings on the amalgamated lots. However, Clause 6.1.3 of the RDC states:

*For the purposes of an aged or dependent persons' dwelling, the minimum site area may be reduced by up to one third, in accordance with part 7.1.2 and 7.1.3.*

If the 1/3 reduction is applied then the average and minimum lot area may be reduced as shown below:

Single house or grouped dwellings (without reduction)	Aged or dependent persons' dwelling (with reduction)
Min. 440m <sup>2</sup> Ave. 500m <sup>2</sup>	Min. 293.34m <sup>2</sup> Ave. 333.34m <sup>2</sup>

On this basis, the amalgamated lots would accommodate 5 aged or dependent persons' dwellings.

The proposed minimum lot areas range from 329.25m<sup>2</sup> to 330.64m<sup>2</sup> which are all in excess of the minimum lot area permissible.

The issue with the proposed development arises over the proposed plot ratio for each dwelling.

Under Clause 7.1.2 of the RDC the acceptable development standards for aged and dependent persons' dwellings state, inter alia:

*A maximum plot ratio area of:*

- *In the case of single houses or grouped dwellings – 100m<sup>2</sup>*

Plot ratio is defined as:

*The ratio of the gross total of all floors of buildings on a site to the area of land in the site boundaries. For this purpose, such areas shall include the area of any walls but not include the areas of any lift shafts, stairs or stair landings common to two or more dwellings, machinery, air conditioning and equipment rooms, non-habitable space that is wholly below natural ground level, areas used exclusively for the parking of wheeled vehicles at or below natural ground level, lobbies or amenities areas common to more than one dwelling, or balconies or verandahs open on at least two sides.*

The plot ratio for each of the proposed dwellings is as follows:

Unit 1 (western end)	266.86m <sup>2</sup>
Unit 2	265.52m <sup>2</sup>
Unit 3	264.68m <sup>2</sup>
Unit 4	260.84m <sup>2</sup>
Unit 5	247.03m <sup>2</sup>

All of the proposed units are therefore in excess of the maximum permitted plot ratio area permitted under the acceptable development standards of the Codes.

The relevant Performance Criteria of the RDC state:

*Dwellings that accommodate the special needs of aged or dependent persons and which:*

- *Are designed to meet the needs of aged or dependent persons;*
- *Are located in proximity to public transport and convenience shopping;*
- *Have due regard to the topography of the locality in which the site is located;*  
*and*
- *Satisfy a demand for aged or dependent persons' accommodation*

Although the proposed development has been designed to take account of existing topography and will have reasonable access to public transport and local shops, the scale of each dwelling is of concern, especially as the applicant has advised that the first floor accommodation is for guests and/or grandchildren, rather than being specifically designed to meet the needs of aged or dependent persons. On this basis, the variation sought to plot ratio is difficult to support under performance criteria.



The explanatory guidelines of the RDC further discuss the special purpose dwelling requirements and state:

*The intention of this provision is to encourage the development of small-scale specialised housing in local communities, as an alternative to larger scale, relatively segregated complexes.*

*Because aged or dependent persons' dwellings are generally smaller than conventional dwellings, and the occupants do not usually have a high car ownership ratio, the codes under acceptable development provision 6.1.3 allow the reduction of the site area by one-third of that provided for by the code applying to the site, together with reduced car parking standards.*

*To prevent these concessions from being abused, for example as a back door way of increasing density for standard housing without re-coding an area, the concessions are subject to four constraints:*

- *There is a limit on the size of such dwellings;*
- *They must be purpose-designed;*
- *There is a minimum of five dwellings in a single development; and*
- *They are subject to a legal agreement to restrict occupancy.*

The guidelines also state:

*It is important that dwellings designated aged or dependent persons are designed to allow for aging in place whereby dwellings cater for an individual to remain in their chosen place of residence even though their physical and sensory abilities may change over their lifespan, with certain minimum standards, as set out in appropriate Australian Standards, that are part of construction or can be introduced with relative ease. In particular, this would include designs with minimal use of levels or stairs, adequate passageways and door widths, roofed car parking spaces, accessible utilities and slip resistant floors for kitchen, laundries, bathrooms and toilets as described in the AS 4299-1995 Adaptable housing. This would result in such dwellings being more flexible to accommodate the changing needs of older people.*

Although the applicant's supporting documentation can be taken into consideration, the proposed two-storey dwellings nevertheless do not represent small scale specialised housing that meet the specific requirements of the Codes for a reduction in site area to be applied. This number of new two-storey dwellings would equate to an approximate density of R35, rather than the existing R20 code, and the combination of the number and the size of the proposed dwellings would have a negative visual impact on the existing streetscape which is predominantly comprised of low-density single-residential dwellings on individual lots.

#### Front setback

Units 1 (western end) and Unit 5 (eastern end) have balconies which intrude 0.2m into Council's preferred 6m front setback (Council resolution 28/10/02).

Under the RDC these are considered minor incursions that satisfy both the relevant acceptable development standards and performance criteria. The proposed balcony incursions form an integral part of the design of each of the end dwellings and will not detract from the streetscape.

### Street Tree

The crossover to proposed unit 1 necessitates the removal of a street tree.

The objective of Council's Street Tree Policy is to recognise the environmental and aesthetic contribution that street trees make to the continuing development and presentation of the streetscape. The policy also emphasises that tree removal must be seen only as a last resort, used for dead and/or dangerous trees.

In this case, the Manager, Engineering Services has advised that the Peppermint tree may be removed because of its poor condition and location near the intersection. However, the tree and stump is to be removed at the owner's expense and a new semi-mature peppermint tree is to be planted in a suitable location to the satisfaction of the Manager. This has therefore been conditioned accordingly.

### 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.

The Council's Policy in relation to Building Heights states:

*Provided that it is satisfied that the amenity of the neighbouring area will not be adversely affected, the Council will...measure building height for attached houses and grouped dwellings from NGL as determined by Council at the centre of the area contained within the external walls of each individual house.*

On this basis, the NGL at the centre of each proposed dwelling has been determined to be as shown in the table below, which has been derived using a site survey plan submitted by the applicant and drawn by a licensed surveyor.

ANGL (RL)	Unit 1 – 11.60 Unit 2 – 11.30 Unit 3 – 10.50 Unit 4 – 9.75 Unit 5 – 9.50
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Based on this NGL the maximum permitted heights (RL) are as follows:

		Permitted	Proposed
ANGL +6m	Unit 1	17.60	17.60
+8.5m		20.10	18.85
ANGL +7m	Unit 2	18.30	18.16
	Unit 3	17.50	14.11

	Unit 4	16.75	16.02
	Unit 5	16.50	15.27

On this basis, all the proposed dwellings comply with Council's Building height requirements.

## CONCLUSION

The applicant has attempted to address Town Planning Scheme No. 2 and the RD Codes. However, the main issue with the development is whether it should be entitled to an increased density in view of the proposed plot ratio of each dwelling which significantly exceeds the maximum area permitted under the Acceptable Development Standards of the RD Codes. Furthermore, the proposed development does not represent small-scale specialised housing in this case and, if approved as proposed, would potentially be visually detrimental to the streetscape and could set a precedent for similar increased density requests

Therefore, approval is recommended but conditional upon the size of the dwellings being made compliant with the standard for this specialised type of housing. This will necessitate a redesign. The alternative decisions would be deferral for the submission of revised plans before Council is prepared to support the overall proposal and its detailed redesign, or refusal on the basis of being contrary to the intent and size standard for this type of housing.

## VOTING

Simple Majority

## OFFICER RECOMMENDATION

Moved Cr Strzina, seconded Cr Birnbrauer

That Council:

- (1) GRANT its Approval to Commence Development for the proposed 5 Aged Persons Dwellings at Nos. 2 & 4 (Lots 20 & 21) Athelstan Road, Cottesloe, in accordance with the plans submitted on 17 & 20 March and 1 May 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 driveways 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 the crossovers, in accordance with Council specifications, as approved by the Manager Engineering Services or an authorised officer.
- (e) The existing redundant crossovers 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 dwellings 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 finish and colour of the boundary wall facing the eastern neighbour shall be to the satisfaction of the Manager Development Services.
  - (ii) Prior to the issue of a building licence:
    - Revised plans shall be submitted showing each dwelling having a maximum plot ratio of 100m<sup>2</sup> as defined by the Residential Design Codes, to the satisfaction of the Manager Development Services; and
    - The proposed development shall comply with the acceptable development standards of the Residential Design Codes specific to Aged or dependent persons' dwellings, Clause 7.1.2 - A2 (iii) & (iv).
- (i) At least one occupant of each dwelling is to be disabled or a physically dependent person or aged over 55, or be the surviving spouse of such a person; the owner entering into a legal agreement, binding the owner, their heirs and successors in title to ensure that this provision is maintained, to the satisfaction of the Manager Development Services prior to occupation;
- (j) The amalgamation of Lots 20 & 21 being finalised by the Western Australian Planning Commission before commencement of development.
- (k) The existing street tree (identified on the approved plans to be removed) shall be removed at the owner's expense, including the stump, and a replacement semi-mature Peppermint tree shall be planted in a location to be approved by the Manager Engineering Services;

- (2) Advise the submitters of this decision.

**AMENDMENT**

Moved Cr Boland, seconded Cr Birnbrauer

That the proposal be recommended for refusal in accordance with the form of words provided by the officers.

**COMMITTEE COMMENT**

Committee expressed mixed views about the proposal, especially the matter of the size of such dwellings and the operation of the density bonus provisions, as well as the overall streetscape impact, noting the concerns of submitters. On balance, Committee was uncomfortable with the proposal and after considering the options of deferral or refusal as outlined by officers decided to recommend that a refusal would be in order.

**COMMITTEE RECOMMENDATION**

Moved Cr Boland, seconded Cr Birnbrauer

**That Council refuse the application for Five Aged Persons' Dwellings at Nos. 2 & 4 (Lots 20 & 21) Athelstan Road, Cottesloe, on the grounds that the proposal:**

- 1. has a plot ratio for each dwelling which significantly exceeds the maximum area permitted under the Acceptable Development Standards of the Residential Design Codes;**
- 2. does not represent small-scale, specialised housing designed to meet the specific needs of aged or dependent persons;**
- 3. would be visually detrimental to the streetscape and contrary to the general provisions of Town Planning Scheme No. 2;**
- 4. would set an undesirable precedent for similar increased density development in the locality; and**
- 5. would be detrimental to the orderly and proper planning and the preservation of the amenity of the locality.**

Carried 6/0

**10.1.5 NO. 26 BOREHAM STREET - TWO-STOREY FRONT EXTENSION TO EXISTING DWELLING AND POOL**

**File No:** 1678  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Ed Drewett  
Senior Planning Officer  
**Property Owner:** G Ward & S Bertrand  
**Applicant:** Humphrey Builders and Designers  
**Zoning:** Residential R20  
**Use:** P-A use that is permitted under this Scheme  
**Lot Area:** 708m<sup>2</sup>

**Proposed Meeting Date:** 18-May-2009  
**Author Disclosure of Interest** Nil

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**SUMMARY**

This application is seeking the following variations to Town Planning Scheme No. 2 (TPS 2), Council's Policies and/or the Residential Design Codes (RDC):

- Building height;
- Front setback to carport;
- Setback to porch/balcony;
- Setback to western boundary;
- Wall on boundary;
- Removal of street tree; and
- Fencing in front setback area.

Each of these issues is discussed in this report and refer to amended plans received 5 May 2009.

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

**PROPOSAL**

This application is for the demolition of a significant portion of the existing dwelling and for the construction of a two-storey front extension and addition to an existing pool.

The proposed extension is of a conventional design comprising 6 bedrooms, 2 bathrooms, an ensuite, pantry, WIR, store, new entry, carport, laundry and playroom. The remaining single-storey rear portion of the existing dwelling will continue to be used as a study, kitchen and living area with deck.

The main outdoor living area and pool will remain on the northern side of the lot for best solar orientation.

**STATUTORY ENVIRONMENT**

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

**POLICY IMPLICATIONS**

- Garages and Carports in the Front Setback Area
- Council's Street Tree Policy
- Council's Fencing Local Law

**HERITAGE LISTING**

The existing dwelling is not on the Town's Municipal Inventory.

**DRAFT LOCAL PLANNING SCHEME NO.3**

No changes are proposed to the zoning or density of the lot.

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

<b>Policy</b>	<b>Required</b>	<b>Proposed</b>
Street Trees	Retention of street trees	Removal of 1 street tree
Streetscape	6m (Council's resolution 28/10/02)	5m to front porch and balcony (complies with RDC)
Height	6m wall height; 8.5m ridge height	Wall height – 6.32m Ridge height – 9.00m
Garages and Carports in Front Setback Area	6m (may be reduced where relevant criteria are satisfied)	4m
Fencing Local Law	Open aspect fencing above 0.9m in front setback	Solid walls to 1.8m

**Residential Design Codes**

<b>Design Element</b>	<b>Acceptable Standards</b>	<b>Provided</b>	<b>Performance Criteria Clause</b>
6.3 – Boundary setback	1.7m from ground floor to western boundary; 2.2m from upper floor to western boundary	1.60m & 2.05m from ground and upper floors to western boundary respectively	Clause 6.2.3 – P1
6.3 – Building on boundary	Wall built up to the boundary behind the (6m) front setback	4m front setback	Clause 6.3.2 – P2

**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. No submissions were received, but the applicant has provided signatures from both adjoining owners and the landowner to the rear (24 & 30 Boreham Street & 107 Eric Street) stating no objection to the proposal.

**BACKGROUND**

Following an assessment of the development application, the Town has been liaising with the applicant in an attempt to address various concerns including height, setbacks, carport on boundary, visual privacy, removal of street tree and front fencing.

The Town subsequently received a letter and amended plans on 5 May 2009 from the applicant which addresses some of the initial concerns but does not satisfy all of Council's requirements.

**APPLICANT'S JUSTIFICATION**

The applicant has submitted information in support of the proposal and addressing various statutory requirements.

A summary of the main points relevant to the proposed design and this assessment are as follows:

- The existing house is a face brick residence with an iron roof and an old shop built up to the footpath. In 2003 a contemporary rear extension was added with a large north facing living area. It is proposed to demolish the old house and shop but to retain the newer living area extension and then build a new 2-storey addition in a complementary style;
- Because of the sloping site it is difficult to lower the wall heights any further. The ground floor ceiling height is only 2.75m and the upper floor plate height is only 2.25m. These heights are bare minimum and it is only the sloping ground



- that pushes the wall heights above the deemed to satisfy requirements of the Codes;
- The proposed wall height is only 5.3m above NGL at the street;
  - There will be no overshadowing of neighbouring properties;
  - The walls have been kept as low as possible;
  - The proposed ridge height has been lowered 110mm by reducing the pitch to 26 degrees. Lowering the pitch further would create a marked difference between the existing and new roof pitches;
  - The ridge is less than 8m above NGL at the street;
  - The porch and balcony have been setback a further 1m to provide a 5m front setback;
  - The adjoining owner has no objection to the location of the proposed carport on the side boundary;
  - A 4m front setback is proposed to the carport to allow provision of a large store behind which is designed to store bikes, canoes, camping equipment and other bulky items;
  - By demolishing the old shop and existing front fence and replacing them with a setback screen, open entry portico and open carport, an aesthetically pleasing street elevation is created. This contributes to the desired streetscape, provides adequate privacy and open space and allows for safety clearances;
  - The proposed extension has been centred on the existing opening at ground floor level. If the setbacks to the western boundary are increased then 200mm will be lost out of bedrooms 2 & 4 which would make them considerably smaller;
  - The reduced side setback still allows adequate light and ventilation to the neighbouring property on the western side;
  - Obscure glazing has been added to the rear bedroom and playroom windows;
  - The street tree will be replaced by the owner; and
  - The front screen wall will be 1.8m and an open design above 0.9m.

**STAFF COMMENT**

The following comments are made regarding the application and revised plans received 5 May 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: 22.0 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:28) and the maximum permitted ridge height is 8.5m (RL:30.5). The proposed dwelling has a wall height of 6.32m (RL: 28.32) and a ridge height 9m (RL: 31.0) and therefore a variation of 0.32m and 0.5m is sought.

Notwithstanding this, the proposed wall and ridge heights of the addition will only appear 5.25m and 7.93m respectively above the lowest part of the street frontage of the lot (SW side) and this will be further reduced to heights of only approximately 4.62m and 7.3m above the highest point along the street frontage (SW side). The appearance of the proposed extension will therefore not have a significant detrimental impact on the streetscape.

Furthermore, the height variations take account of both the ceiling height of the rear portion of building (to be retained) and the topography of the lot which has a 3.86m difference between the front and rear. It is therefore not unreasonable to support the height variation on these grounds.

The relevant performance criteria of the RDC (Clause 6.7.1) in relation to height 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*

There are a variety of housing types in the locality including single-storey and two-storey houses and therefore the proposed addition will not appear out-of-keeping with the existing streetscape, especially as the topography of the lot slopes down away from the street. The location of the addition on the northern side of Boreham Street also ensures that adequate direct sun and daylight will be maintained to adjoining properties despite the increased height proposed as overshadowing will be restricted to the road reserve. Views of significance will not be adversely affected by the proposal and the owners of the adjoining properties on both sides and to the rear

have no objection. On this basis, the proposed height variation can be supported under performance criteria of the RDC.

Setback to carport

The proposed double carport is an integral feature of the proposed addition but only has a 4m front setback.

The acceptable development standards of the RDC allow carports within the street setback area provided that its width does not exceed 50% of the frontage at the building line. In this case the proposed front setback to the carport complies with the RDC as it will not exceed 43% of the frontage.

Council's Policy for 'Garages and Carports in Front Setback Area' (Policy TPSP 003) generally requires carports to be positioned behind the 6m front setback line. However, the policy does also allow for carports 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; and
- Existing setbacks from the street alignment in the immediate locality, in the case of setbacks from the principle street.

The Policy further states:

*A carport may, with the approval of Council, be constructed up to the street alignment.*

In this case, the setback variations sought for the proposed carport can be supported as it replaces an existing structure (disused shop attached to the dwelling) which has a zero setback from the street, both adjoining owners have no objection and there are other examples of carports in the locality that are within the street setback area. Furthermore, providing that it is not enclosed then it will not significantly obstruct views of the house or vice versa. This has therefore been conditioned accordingly.

Although the size of the proposed storeroom at the rear of the carport could be reduced to increase the front setback to the carport, the applicant has requested that it remain as shown as it has been specifically designed for the storage of various bulky items and it would be of inadequate size if reduced.

Front setback to porch/balcony

The main part of the proposed addition has a 6.0m and 7.77m front setback to the ground and upper floors respectively, which is consistent with Council's preference for a minimum 6m setback (Council resolution 28/10/02). However, the proposed front porch and balcony have a reduced front setback of 5m.

Under Clause 6.2.2 of the RDC the proposed porch and balcony can be considered as a *minor incursion into the street setback* and therefore it complies with the relevant acceptable development standard of the Codes 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 (17% frontage proposed). In addition, it would also comply with the acceptable development standards of the RDC in respect to *setback of buildings generally* (Clause 6.2.1) and will appear an improvement on the streetscape compared to the existing zero front setback.

#### Side setback

The ground and upper floors of the proposed addition have a 1.6m and 2.05m setback from the western boundary, in lieu of a minimum 1.7m and 2.2m setback 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 variations are 0.1m and 0.15m respectively and will have a negligible affect on adjoining properties, especially as the dwelling to the west is separated by an existing driveway and carport and is well clear from the western elevation of the proposed addition.

#### Wall on boundary

The proposed carport is to be located on the eastern boundary with a 4m front setback, in lieu of a 6m front setback required under the acceptable development standards of the RDC for a *wall on the boundary*. The length and height of the proposed structure (ie: roof and piers) would otherwise be compliant with the Codes.

The location of the carport 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 carport on the eastern boundary makes effective use of space and will be less intrusive than the existing building which has a zero front

setback, albeit it currently separated from the boundary by a driveway. The proposed carport will also be located a reasonable distance from the adjoining dwelling and being on its eastern boundary it will not restrict solar access to main habitable areas. Furthermore, there was no objection to the proposal from the adjoining owner.

#### Removal of street tree

The proposed new crossover necessitates the removal of a street tree.

The objective of Council's Street Tree Policy is to recognise the environmental and aesthetic contribution that street trees make to the continuing development and presentation of the streetscape. The policy also emphasises that tree removal must be seen only as a last resort, used for dead and/or dangerous trees.

In this case, the Manager Engineering Services has advised that the existing tree may be removed because it is no longer considered a suitable species for street tree use in the Town. However, the tree and stump is required to be removed at the owner's expense and a semi-mature Bottlebrush is to be planted in a suitable location to the satisfaction of the Manager. This has therefore been conditioned accordingly.

#### Fencing in front setback area

The proposed fencing along the front of the southern courtyard area has been amended to comply with Council's Fencing Local Law. However, the proposed solid 1.8m high walls within the 6m front setback area along the eastern and western boundaries should also be amended to not exceed a height of 0.9m above NGL in accordance with the Local Law.

#### Extension to existing pool

There is no objection to supporting the extension to the existing pool at the rear of the lot, as proposed.

### **CONCLUSION**

The proposed extensions to the existing dwelling and pool can be supported with the variations sought as these satisfy the relevant performance criteria of the RD Codes. Furthermore, although Council's discretion is also required for a number of these variations, including for the reduced setback to the carport and height of the front extension, the relevant policy criteria and issues such as privacy, views and general amenity have all been satisfactorily addressed and the variations can therefore be supported.

### **VOTING**

Simple Majority

**COMMITTEE COMMENT**

Committee discussed the proposal briefly and was satisfied with the design overall and the conditions as recommended.

**OFFICER & COMMITTEE RECOMMENDATION**

Moved Cr Birnbrauer, seconded Cr Dawkins

**That Council:**

**GRANT its Approval to Commence Development for the proposed two-storey front addition and extension to the existing pool at 26 (Lot 19) Boreham Street, Cottesloe, in accordance with the plans submitted on 5 May 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 driveways 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 the 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) Fencing and walls within the front setback area being of an open-aspect design above 0.9m in accordance with Council's Fencing Local Law.
- (g) The finish and colour of the boundary wall facing the eastern neighbour shall be to the satisfaction of the Manager Development Services.
- (h) The existing street tree (identified on the approved plans to be removed) shall be removed at the owner's expense, including the stump, and a replacement semi-mature Bottlebrush shall be planted in a location to be approved by the Manager Engineering Services;
- (i) The proposed upper-floor side and rear windows (excluding bathrooms), and the sides of the proposed front balcony, shall be adequately screened (and non-openable) to a minimum 1.6m above the finished floor level, as indicated on the approved plans, to the satisfaction of the Manager Development Services.

- (j) The carport shall remain open on all sides, except where it abuts the proposed addition, and shall not have any garage-type solid door.**
- (k) 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.**
- (l) Wastewater or backwash from pool filtration systems shall be contained within the boundary of the property and disposed of into adequate soakwells.**
- (m) 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.**
- (n) Wastewater or backwash shall not be disposed of into the Council's street drainage system or the Water Corporation's sewer.**

Carried 6/0

**10.1.6 REQUEST FOR AMENDMENT TO TOWN PLANNING SCHEME NO. 2 – NOS 18-20 (LOT 2)  
AVONMORE TCE (CNR ROSENDO ST) – TO PERMIT THREE-STOREY RESIDENTIAL  
DEVELOPMENT**

**File No:** D09/3137  
**Responsible Officer:** Carl Askew  
**Chief Executive Officer**  
**Author:** Andrew Jackson  
**Manager Development Services**

**Proposed Meeting Date:** 18-May-2009

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**INTRODUCTION**

- This report presents a request for an Amendment to Town Planning Scheme No. 2 (TPS2), to introduce particular Scheme provisions to permit three-storey residential development on the subject site.
- TPS2 and proposed Local Planning Scheme No. 3 (LPS3) both restrict the height of residential development to two-storey, with only limited discretion which does not extend to allowing full three-storey buildings.
- The request is premised on the existing three-storey flats on the site, consideration over recent years of concept designs for replacement dwellings, the character of the locality and interpretation of relevant planning controls.
- This report assesses the requested amendment and recommends that it not be supported by Council.

**BACKGROUND**

- There is a history of proposals to redevelop the site over the past decade.
- In 1998 Council dealt with proposals to demolish the flats building and create six lots for single dwellings, but this was not proceeded with.
- Council's concerns at that time included density, ground levels, streetscape, design, access, height, building envelopes, vehicular access, setbacks and street trees.
- An appeal against conditions requiring height compliance with TPS2 was lost.
- From 2006 onwards the Design Advisory Panel and officers informally considered a series of concepts for redevelopment of the flats with three-storey residential complexes.
- A development application of the latest concept was lodged in 2008, then withdrawn when the Town emphasised that a prerequisite amendment would be necessary as TPS2 could not permit residential development of more than two-storeys.

**PROPOSAL**

- Planning consultants Greg Rowe and Associates have submitted the attached justification report in support of the amendment request.
  - In summary, the report contains site information, consideration of planning controls and aspects, details of the locality and the description of the development concept.
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- This is not repeated here so should be read in its entirety to understand the rationale put forward.
- The amendment proposal does not seek to alter the Residential zoning or R30 density coding of the land.
- It proposes that a building height limit of *three storeys or 11.5m* be specified for the subject land in Schedule 5: Special Provisions of the Scheme Text.
- No other changes or new provisions are proposed.
- This method is similar to some other amendments and also allows for an indicative concept plan to be referenced in the Schedule in order to guide a future development application for determination by Council.

### **STATUTORY ENVIRONMENT**

- The Planning & Development Act 2005 empowers amending town planning schemes and the Town Planning Regulations govern the procedure for this.
- Council is the responsible authority to determine whether or not an amendment should be initiated and there is no right of review.
- TPS2 is the current scheme by which land use and development are controlled and which is able to be amended.
- Proposed LPS3 has passed through the advertising phase and Council is presently considering the submissions towards final approval, whereby it is a *seriously entertained planning proposal* which Council can have regard to in evaluating a request to amend TPS2.
- Amendments to TPS2 can still be made, as LPS3 remains several months away, however, Council is not required to amend TPS2 and could consider that as LPS3 draws closer TPS2 should not be amended.
- An alternative may be to consider the change by way of a modification to LPS3 (a submission was made accordingly) or by way of an amendment to LPS3 (for reasons of timing or wider consideration).

### **STRATEGIC IMPLICATIONS**

- The amendment request is fundamentally a strategic matter for Council to determine, in relation to the framework of TPS2 plus LPS3 and its associated Local Planning Strategy.
- This is considered more-so than simply a technical assessment to demonstrate that the intended conceptual development would be acceptable.

### **POLICY IMPLICATIONS**

- The amendment proposal does not relate directly to any planning policy under TPS2.

### **FINANCIAL IMPLICATIONS**

- The amendment proposal does not represent a cost to Council.

### **PLANNING ASSESSEMENT**

- In response to the rationale from the consultants, the following points are made.
- TPS2 is clear in its provisions that development in the Residential Zone is limited to two storeys (in accordance with particular heights in metres) with no discretion

for the number of storeys; except for a third storey in roofspace, subject to a two-storey appearance and amenity.

- Privacy, views and building bulk are also identified as relevant planning considerations in relation to height.
- TPS2 Policy 5: Building Heights is essentially an elaboration of the Scheme operationally and cannot really be relied upon to contend amendment of the residential height limit.
- The height provisions of the Scheme prevail over the Residential Design Codes (RDC).
- In the life of TPS2 Council has made no amendment to it to increase residential building height.
- Proposed LPS3 continues this residential height regime, is more prescriptive, contains less discretion, is more certain and again prevails over the RDC.
- This approach is reflected in the Local Planning Strategy, which underscores Council's adherence to the two-storey standards to control the scale, form and amenity of residential development.
- Whilst the justification report refers to parts of the Strategy as potentially supporting the amendment request, when read as a whole the Strategy strongly conveys Council's planning direction and preference of lower-rise residential and other development, as articulated in the provisions of LPS3.
- Schedule 13 of LPS3 emphatically proscribes height discretion for residential development; so in the justification report the interpretation and expression of this is erroneous – the performance criteria quoted are taken from the RDC rather than LPS3 and are not applicable.
- The submission to LPS3 (attached) is appropriate to be determined in that connection, and while echoing this amendment request, does not in itself add weight to the matter.
- Note that the submission refers to a height limit of three storeys and *12 metres* but does not indicate why this differs from the 11.5m sought in the amendment request to TPS2.
- The submission suggests that the LPS3 height limit is arbitrary, when it is in fact a deliberate planning strategy aimed at securing and protecting amenity, despite historic over-height (and over-density) development.
- The suggestion in the submission that *economic reality* goes against redevelopment of existing over-height buildings at two storeys is questionable – 24 Princes Street not far away is an example of a three-storey block 16 small flats redeveloped at two storeys as eight luxury apartments, which sold very well.
- As a principle, neither the original owners nor the successive owners of historic over-height buildings have a right to redevelop to that height if the planning rules no longer permit such, as any purchaser buys only the right to develop under the existing rules, so there is no entitlement to capitalise on the present height.
- LPS3 does contain a discretionary density-bonus clause in respect of historic over-density development, but not any such height variation provision.
- In addition to the framework of planning controls, the justification report promotes the amendment based on the concept design details (height, architecture, materials, access, parking, sustainability, facilities, landscaping) and a number of planning considerations (surrounding development, views, streetscape, bulk and scale, density).

- This argues that the context and character of the locality support the concept development on merit; however, as explained the Schemes and Strategy are aimed at redevelopment creating a different, less impacting, scale and built form.
- There would be undesirable implications were Council to support a one-off, site-specific amendment as a departure from the established strategic height regime.
- This would appear inequitable and could generate pressure for further selective relaxation of the height limit in an unplanned fashion.
- The juxtaposition of three-storey redevelopment with existing two-storey development would be likely to lead to adverse amenity impacts, together with streetscape and view impacts over the wider area.

### **CONCLUSION**

- While the approach taken in the justification report can be appreciated as one way of considering the suitability of the site in relation to the height of buildings, it does not account for the long term planning strategy consistently applied by Council to manage the scale and amenity of residential development, as implemented via TPS2 and intended under LPS3.
- On this basis the comparative design merit of any concept development proposal is considered insufficient reason to amend a district-wide and sustained strategy through special provisions for an individual site.

### **VOTING**

Simple Majority

### **OFFICER RECOMMENDATION**

Moved Cr Walsh, seconded Cr Dawkins

That Council declines the request to amend TPS2 to permit three-storey residential development on the subject site, as the request is contrary to the strategic intent and detailed provisions of TPS2 as well as proposed LPS3.

### **AMENDMENT**

Moved Cr Walsh, seconded Cr Dawkins

That at the request of the proponent the item is deferred to allow further liaison between the proponent and Town towards a future report to Council.

Carried 4/2

### **COMMITTEE COMMENT**

Committee noted the report and the recommendation to decline the requested scheme amendment, however, Committee was prepared to support deferral of the item as requested by the consultant to allow further dialogue with the Town before future consideration and determination by Council.

**COMMITTEE RECOMMENDATION**

Moved Cr Walsh, seconded Cr Dawkins

**That Council defer consideration of the Scheme Amendment request pending further liaison between the proponent and the Town towards a future report to Council on the proposal.**

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 9:18 PM.

*CONFIRMED: PRESIDING MEMBER* \_\_\_\_\_ *DATE: .../.../...*