



Agenda

Planning Committee

Wednesday 3 August 2022 6pm



Notice of Planning Committee Meeting

Elected Members

A Planning Committee meeting of the City of Fremantle will be held on **Wednesday 3 August 2022** in the Council Chamber, Walyalup Civic Centre, located at 151 High Street, Fremantle commencing at 6.00 pm.

Paul Garbett
Director Strategic Planning and Projects

29 July 2022



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1. Official opening, welcome and acknowledgement

Ngala kaaditj Whadjuk moort keyen kaadak nidja Walyalup boodja wer djinang Whadjuk kaaditjin wer nyiting boola yeye.

We acknowledge the Whadjuk people as the traditional owners of the greater Fremantle/Walyalup area and we recognise that their cultural and heritage beliefs are still important today.

2. Attendance, apologies and leaves of absence

[Insert any known apologies or previously approved leaves of absence OR]
There are no previously received apologies or approved leave of absence.

3. Disclosures of interests by members

Elected members must disclose any interests that may affect their decision-making. They may do this in a written notice given to the CEO; or at the meeting.

4. Responses to previous questions taken on notice

There are no responses to public questions taken on notice at a previous meeting.

5. Public question time

Members of the public have the opportunity to ask a question or make a statement at council and committee meetings during public question time.

Further guidance on public question time can be viewed [here](#), or upon entering the meeting.

6. Petitions

Petitions to be presented to the committee.
Petitions may be tabled at the meeting with the agreement of the presiding member.

7. Deputations

7.1 Special deputations

A special deputation may be made to the meeting in accordance with the City of Fremantle Meeting Procedures Policy.



There are no special deputation requests.

7.2 Presentations

Elected members and members of the public may make presentations to the meeting in accordance with the City of Fremantle Meeting Procedures Policy.

8. Confirmation of minutes

OFFICER'S RECOMMENDATION

The Planning Committee confirm the minutes of the Planning Committee meeting dated 6 July 2022

9. Elected member communication

Elected members may ask questions or make personal explanations on matters not included on the agenda.

10. Reports and recommendations

10.1 Deferred items

Nil



10.2 Committee delegation

PC2208-1 PEARSE STREET, NO. 32 (LOT 8) NORTH FREMANTLE - ADDITIONS AND ALTERATIONS (TWO STOREY) TO EXISTING SINGLE HOUSE (TG DA0161/22)

Meeting Date: 3 August 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1. Amended development plans
Additional information: 1. Site Photos
2. Heritage assessment

SUMMARY

Approval is sought for two storey additions and alterations to an existing Single house at 32 Pearse Street, North Fremantle.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- **Visual privacy (south)**
- **Site works (south)**
- **Building height (external wall)**

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for additions and alterations to an existing Single House at 32 Pearse Street, North Fremantle. The proposed works include:

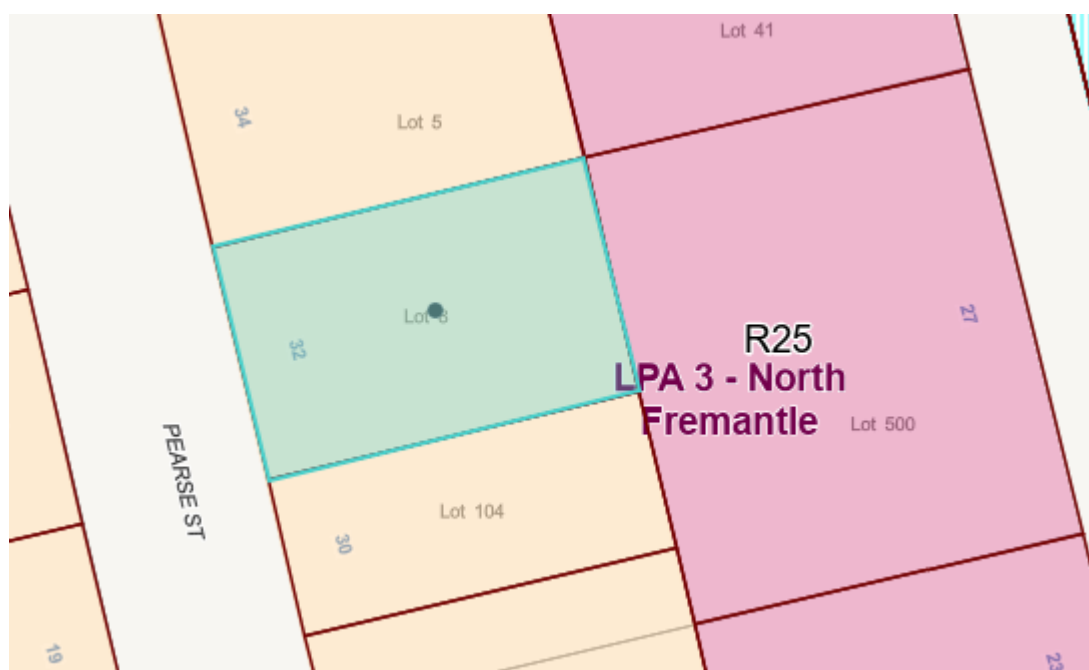
- A garage (marked on the plans as a carport) to the lower ground floor level of the dwelling and new lift;
- A verandah to the southern side of the ground floor of the dwelling; and
- A bedroom and balcony to the upper floor of the dwelling, built over the existing garden and WC.

The applicant submitted amended plans on 21 June 2022 adding a 1.8m high solid screen to the southern side of the proposed verandah.

Amended development plans are included as attachment 1.

Site/application information

Date received:	6 May 2022
Owner name:	Y A Hughes
Submitted by:	Tom Lemann Architect
Scheme:	Residential R25
Heritage listing:	Individually listed category 3, North Fremantle heritage area
Existing land use:	Single House
Use class:	Single House
Use permissibility:	P



CONSULTATION

External referrals

Nil required.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as the proposal sought to vary a number of elements of Council Policy, LPS4 or deemed-to-comply elements of the R-Codes. The advertising period concluded on 2 June 2022, and one submission was received. The following issues were raised (summarised):

- The carport/verandah will detract from the original appearance of the house.
- The verandah will overlook the adjoining property resulting in a loss of privacy.

- The carport/verandah addition will have a visual impact, cause crowding between dwellings, and detract from the visual appeal of the existing dwelling and the adjoining property.
- The submitter questioned the need for additional verandah area when there is an existing outdoor living area on the same aspect at the front of the house.
- Is the additional verandah is needed for entertaining then this area is directly opposite their bedrooms which will be impacted by entertaining noise.

In response to the above, the applicant submitted revised plans providing screening to the southern side of the proposed verandah/deck addition.

In response to the above, the following comments are provided by officers:

- The impact of the proposed development upon the heritage significance of the dwelling has been considered by the City's Heritage officers and supported in accordance with the attached report.
- It is noted that the initial consultation letter sent to neighbours noted a reduced setback to the southern site boundary. The introduction of the 1.8m high screen resulted in the wall satisfying deemed-to-comply setbacks.

The remaining comments are addressed in the officer comment below.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Where a proposal does not meet the Deemed-to-comply requirements of the R-Codes, an assessment is made against the relevant Design principles of the R-Codes. Not meeting the Deemed-to-comply requirements cannot be used as a reason for refusal. In this particular application the areas outlined below do not meet the Deemed-to-comply or policy provisions and need to be assessed under the Design principles:

- Visual privacy (south)
- Site works (south)
- Building height (external wall)

The above matters are discussed below.

Background

The subject site is located on the eastern side of Pearse Street, North Fremantle. The site has a land area of approximately 364m² and is currently occupied by a Single house. The site is zoned Residential and has a density coding of R25. The site is individually heritage listed (category 3) and located within the North Fremantle Heritage Area.

The existing dwelling is located to the northern side of the site and has a lower ground floor basement accessible from the proposed garage.

A search of the property file has revealed the following history for the site:

- DA650/06 – Additions and alterations.
- ET05/09 – Extension of term to DA650/06.
- VA14/09 – Modifications to approved plans under DA650/06.

Heritage Impact

The proposed additions have been assessed by the City's Heritage Officers as the subject dwelling is individually heritage listed (Category 3) and located within the North Fremantle Heritage Area.

The initial proposal included a dormer window to the front roof of the dwelling. On the advice of Heritage officers, this was changed to two velux skylights.

Per the Heritage Officer's report, the proposed verandah to the side of the dwelling is not considered to detract from the presentation of the dwelling or its contribution to the largely intact heritage streetscape. The roof form of the addition is subservient to the original house and allows the form of the original dwelling to remain clearly legible.

The proposed upper floor addition to the rear was found to have little impact upon the heritage house or the streetscape as it will not be readily visible from the street. The link element between the old and new portions of the house will also have a minimal impact as it is set in from the hips of the roof and allows the original form of the roof to be clearly legible.

Further comments are provided in the attached heritage assessment.

The proposal has also been assessed against the LPP 3.6 Heritage Areas, with the relevant criteria summarised in the table below.

Element	Officer comment
General	
i. Alterations and additions in heritage areas should respond sympathetically to the heritage values of the area as a whole and that part of the heritage area in the vicinity of the proposed development, with changes designed and sited in a manner that retains, conserves, respects and	In accordance with the attached heritage assessment, the proposed additions and alterations are considered to comprise changes to the place which are able to be supported.

complements the heritage significance of the place and area.	
ii. Alterations and additions to contributory places should seek to change as little as reasonably possible.	As proposed, the additions are to the side of the existing dwelling and do not make significant alteration to the existing building.
iii. Retention of the contributory places, conservation, rear additions and internal adaptations are the preferred form of developing places within a heritage area. This approach allows for the retention of the significant elements of a place and assists in retaining the heritage streetscape, whilst allowing change to meet modern living standards and expectations.	The proposed additions are to the rear and side of the existing heritage listed dwelling.
Siting and scale	
ii. Generally single storey additions that are less in height to the original building, located to the rear of the original building and constructed so that the roof of the new addition is independent from the original building's roof form can be supported from a heritage perspective.	While the proposed additions are higher than the existing dwelling, they are set to the rear of main house and include a linking roof. The rear addition materiality and roof form clearly differentiate the contemporary addition from the existing heritage dwelling which is consistent with LPP3.6 objectives.
iii. In order to allow a contributory building to retain its original form, if a single storey rear addition is attached to the original building, then this is to: • Be via a linked pavilion, or • Have side external walls of the extension set in from the side walls of the original building, or	The proposed addition is to the rear of the dwelling and is supported by a material change at the junction of the old and new portions.

• Be supported by a material change at the junction of the old and new.	
iv. Additions to the side of a building may be possible with careful consideration of the siting, bulk, scale, setbacks, design and impact on the original building and streetscape. The following offer some general guidance for an addition to the side of a building in a heritage area: • Additions to the side of a building should be single storey and less in height than the original building; • For contributory buildings, side additions should be set-back at least 1.0m from the adjacent front building line. (This setback line is taken as the front wall of the building that is the closest proximity to the proposed addition and is not the verandah, later infilled verandah or porch line); • Additions to the side of a contributory building should not alter the original roof form.	The proposed additions to the side of the dwelling are lightweight and open in nature.
v. Double storey additions to a contributory building may be considered where: • they are located to the rear of the original building; • they do not alter the original building roof line; • they are constructed so that the roof of the new addition is independent from the original building's roof form; • the roof form of the addition is not visible from the street (a minor variation to this may be	The upper floor addition is located to the rear of the dwelling and the new 'link roof' will not unduly impact the appearance of the dwelling as viewed from the street as a contributory place to the North Fremantle Heritage Area.

permitted based on a proposal's impact on the streetscape); AND • if the addition is attached to the original building, in order to allow the original building to retain its original form, then this is to: o Be via a linked pavilion, or o Have side external walls of the extension set in from the side walls of the original building, or o Be supported by a material change at the junction of the old and new.	
Form	
i.Additions to places within a heritage area must respect and harmonise with and be sympathetic to the predominant form of the prevailing streetscape and existing building, without falsely mimicking heritage detailing.	The design of the additions is supported in accordance with the attached heritage assessment.
ii.Where a building form is highly repetitive, significant departures in form will appear at variance to the streetscape and should not be introduced.	The proposed addition visible from the street is lightweight and subservient to the main house.
iii.The treatment of additions in terms of the roof form, proportions, materials, number, size and orientation of openings, ratio of window to wall etc. of an addition should relate to the existing contributory building and to its neighbours.	The proposed additions are either subservient to the main house in their form or set back so as to not be readily visible from the street. The new roof link is considered to align with the existing rear facing dormer window in its form.
iv.Symmetry or asymmetry of facades in the prevailing streetscape is an element of form to be kept consistent.	The façade of the main dwelling will be maintained as existing.
v.Contemporary addition designs should respond to,	In accordance with the below building height assessment, the rear addition is

and interpret, the scale, articulation and detail of the existing and nearby buildings in a modern, innovative and sympathetic way.	considered to appropriately address the height requirements applicable to the locality.
Roofs	
i. Traditionally roof lines are a predominant element of the streetscape. Additions should respond to and reinforce the existing characteristics of a streetscape or neighbourhood with regards to plate and wall heights, roof form, ridge lines, parapet lines, roof slopes and eaves overhangs.	The upper floor additions are located to the rear of the dwelling and will not overwhelm the existing house as viewed from the street.
ii. Roof forms that are contemporary in style (i.e. flat / skillion) may be considered for rear and side additions.	New roof form at rear is contemporary in style.
Verandahs/Porches/Awnings	
i. Verandahs, porches and awnings were often an important element of the original form of a building. The era and style of the original construction will determine if the front façade had a verandah, porch or awning.	The development includes a proposed verandah set in line with the existing dwelling.
Chimneys	
i. Chimneys are an architectural feature that identified the period of a building's construction. The retention and conservation of an original chimney is desirable, as they contribute significantly to housing character and the roofscapes of a heritage area. Existing chimneys are to be retained and conserved. New chimneys should be simple in design.	The existing chimney is to be retained.

Visual Privacy

Element	Requirement	Proposed	Extent of Variation
Proposed covered deck	7.5m set back or screened.	1.5m	5m

The overlooking from the proposed covered deck is considered to meet the Design principles of the R-Codes in the following ways:

- The majority of the south side of the deck has been screened to protect mutual privacy between No. 30 and the subject site, the erection of this screening is a recommended requirement of any approval for the works.
- A small opening for access from the carport is provided to the rear of the deck between the screen wall and the lift, limiting opportunities for direct overlooking of the neighbouring rear yard.
- The unscreened portion of the front of the deck provides for some overlooking towards the adjoining property, but the areas overlooked are generally readily visible from the primary street.

The upper floor south facing balcony is noted, however this is set back more than 7.5m from the side and rear boundary in accordance with the deemed-to-comply requirements of the R-Codes.

Building Height

Element	Requirement	Proposed	Extent of Variation
Building height – Local Planning Scheme No. 4 LPA3 – North Fremantle	5.5m wall height	6.34m	1.34m

As the proposal varies the maximum permissible heights prescribed by the North Fremantle Planning area LPS4 provisions, the additional building height needs to be assessed under the discretionary criteria of clause 4.8.1 (variation to height requirements), which are as follows:



Where sites contain or are adjacent to buildings that depict a height greater than that specified in the general or specific requirements in Schedule 7, Council may vary the maximum height requirements subject to being satisfied in relation to all of the following:

- (a) the variation would not be detrimental to the amenity of adjoining properties or the locality generally,*
- (b) degree to which the proposed height of external walls effectively graduates the scale between buildings of varying heights within the locality,*
- (c) conservation of the cultural heritage values of buildings on-site and adjoining, and*
- (d) any other relevant matter outlined in Council's local planning policies.*

The proposed building height is considered to meet the discretionary of clause 4.8.1 of the LPS4 for the following reasons:

- The proposed upper floor addition is located such that it will not cast undue winter shade upon the adjoining property and is set back to limit the visual privacy impact of the addition. The addition will not be readily visible from the street, therefore limiting its impact upon the amenity of the locality generally.
- The proposed addition is consistent with the predominant height patterns of the locality, the gable wall of the adjoining property exceeds the height of the proposed addition, and as per the below plan prepared by the applicant the addition will appropriately graduate the height of this wall between the building heights of the adjoining properties at No. 34 and No. 30 Pearse Street respectively (see below plan, Figure 1, demonstrating the graduation of building heights between the properties).
 - Note: the R-Codes were updated to consider gable ends part of a building wall height.
- The proposed addition is supported on heritage grounds in accordance with the attached heritage assessment and is considered to have limited detrimental impact upon the North Fremantle Heritage Area.

On the basis of the above, the additional building height is supported under clause 4.8.1 of the LPS4.

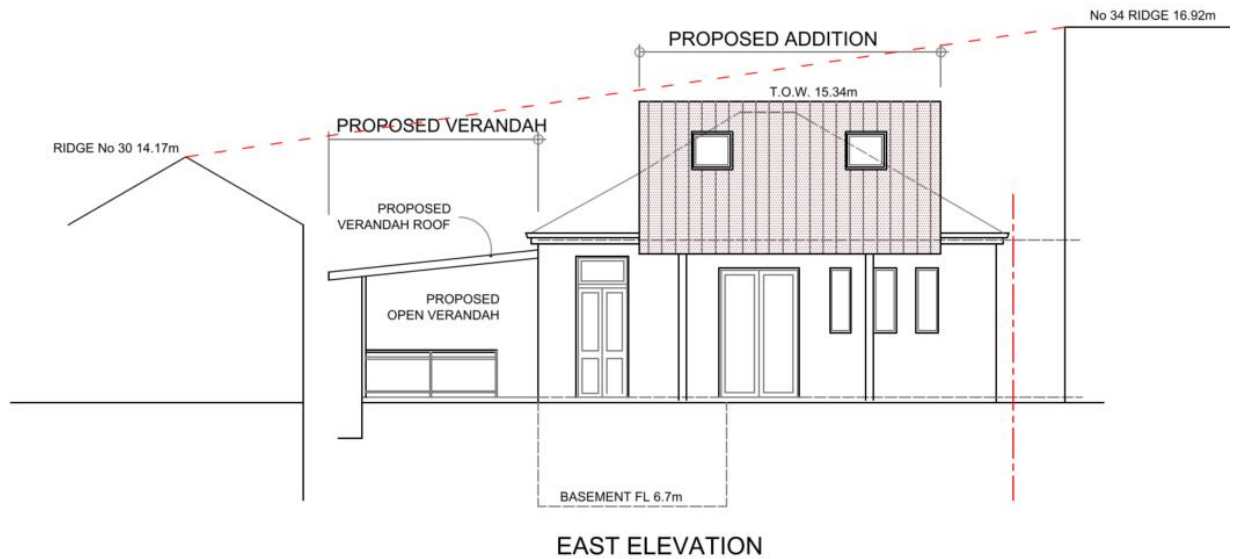


Figure 1: applicant's height demonstration.



Image 1: Rear yard of subject site facing No. 36.

Site works (south)

Element	Requirement	Proposed	Extent of Variation
Site fill	0.5m max height of set back	1m	0.5m

The site fill required for the proposed ramp is considered to meet the Design principles of the R-Codes in the following ways:

- The ramp is not a space likely to be used or occupied for long periods of time, being used to access the rear yard.
- The ramp is necessary for pedestrian access to the rear yard.

CONCLUSION

In accordance with the above considerations, the proposed additions and alterations are considered to be worthy of support, subject to the recommended conditions.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Council:

APPROVE under the Metropolitan Region Scheme and Local Planning Scheme No. 4, the Additions and Alterations (Two Storey) to existing Single House at No. 32 (Lot 8) Pearse Street, North Fremantle, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 21 June 2022. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**



- 2. All storm water discharge from the development hereby approved shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Any damage shall be rectified to the satisfaction of City of Fremantle.**
- 4. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.**
- 5. Prior to occupation of the development hereby approved, the 'proposed covered deck' shall be screened in accordance with the Residential Design Codes to the extent shown on the approved plans and thereafter maintained to the satisfaction of the City of Fremantle.**
- 6. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.**

Advice notes

- i) A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.**
- ii) Fire separation for the proposed building works must comply with Part 3.7.2 of the Building Code of Australia.**



**PC2208-2 THOMPSON ROAD, NO.2/86 (LOT 211), NORTH FREMANTLE
– ADDITIONS AND ALTERATIONS TO EXISTING HOUSE –
(CS DA0158/22)**

Meeting Date: 3 August 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1. Amended Development Plans
Additional information: 1. Site Photos

SUMMARY

Approval is sought for Additions and alterations to existing house at No.2/86 Thompson Road, North Fremantle.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- **Boundary wall (north)**
- **Street setback**
- **Open space**
- **Car parking**

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for the addition of a carport and alterations to an existing single house at No.2/86 Thompson Road, North Fremantle. The proposed works include:

- Conversion of existing single garage to living accommodation
- Addition of carport, including partial boundary wall
- Addition of fencing

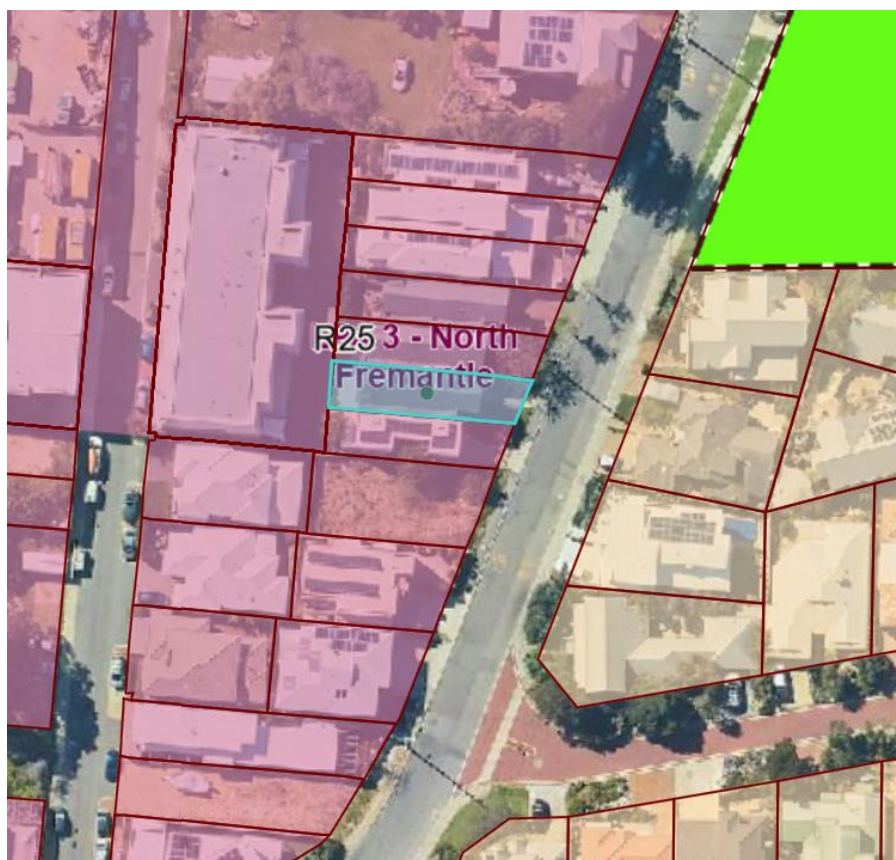
The applicant submitted amended plans on 4 July 2022 including the following:

- Reduction in length of the parapet (boundary) wall by approx. 1.7m (no longer than existing wall)
- Relocation of the section of roof where the previous boundary wall was removed to be located 600mm away from the northern lot boundary.

Development plans are included as attachment 1.

Site/application information

Date received:	6 May 2022
Owner name:	G Toms
Submitted by:	A Michael
Scheme:	Mixed Use Zone R25
Heritage listing:	North Fremantle Heritage Area
Existing land use:	Single house
Use class:	Single house
Use permissibility:	'A' (Existing use)



CONSULTATION
External referrals

Department of Water and Environmental Regulation (DWER)

The application was referred to DWER for comment as the site is located in an area identified as being affected by potential contamination. DWER have advised that they have no objection to the proposal subject to an advice note:

- *Asbestos-containing material (ACM) fragments are present in subsurface soil beneath a geosynthetic marker layer and a minimum of 500 millimetres of clean fill. Excavation or disturbance of soils below the geosynthetic*



marker layer is restricted, and the on-going management plan for the site (contained in 'Information brochure for prospective owners and occupiers of Lots 201 to 217 Thompson Road, North Fremantle – Presence of Asbestos Containing Materials in Soil at Depth', obtainable from Richard Noble, telephone 9380 3800) is required to be implemented.

These matters can be dealt with as relevant conditions and advice notes.

Internal referrals

Heritage

The proposed works are considered acceptable from a heritage perspective because they will have limited impact on the heritage values of the North Fremantle Heritage Area.

Community

The application was advertised in accordance with Schedule 2, clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015, as discretions were sought to the Residential Design Codes and Local Planning Policies. The advertising period concluded on 3 June 2022, and two submissions were received, as shown below:

SUPPORT/ OBJECT	COMMENTS	OFFICER RESPONSE
Comments	No objections if the following are met: • Two cars can be parked within the proposed fenced area • The proposed fence is to be 'open' with gaps between the slats to allow a visual connection between the house and street • Vegetation is visible from the street • No change to the existing boundary fence between 1/86 and 2/86 Thompson Road • The height of the fence is to be no more than the height of the existing fence at 1/86 Thompson	The proposal includes two car bays. The fencing has been considered against the City's fencing policy LPP2.8 and complies.
Comments/ Objection	Agree in principle with the proposed works as it will add value to the property	Amended plans have reduced the length of the wall by 1.7m, the height remains the



	Concern over the proposed boundary wall: • Length of the wall not a concern, but the proposed height (2.914m) is • The boundary wall will have a significant adverse impact on the property (at 3/86) • There will be a restriction of natural light to the front yard, and a feeling of being 'boxed in' by the new wall and existing tree Would be supportive of a build to extend the boundary wall to the same height as the existing wall and to the proposed length with a steel support beam to support the roof instead of the higher boundary wall such as is existing at 6/86 Thompson	same. The proposed boundary wall has been assessed against policy requirements below. The large tree is located in the front setback area of the neighbouring property (No.3/86 Thompson Road) and the applicant has no control over the retention or removal of this tree.
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In response to the above, the applicant submitted revised plans to address the following / the following response:

- Reduction in length of boundary wall on northern side by 1.7m in length
- Part of the roof repositioned 600mm away from the northern boundary

In response to the above, the following comments are provided by officers:

- The amended plans were sent to the submitter to the north for review/further comment. A further response of objection was provided by the neighbour reiterating the concerns of being 'boxed in' by the proposed boundary wall and existing tree at No.3/86 Thompson Road.

The remaining comments are addressed in the officer comment below.



OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Where a proposal does not meet the Deemed-to-comply requirements of the R-Codes, an assessment is made against the relevant Design principles of the R-Codes. Not meeting the Deemed-to-comply requirements cannot be used as a reason for refusal. In this particular application the areas outlined below do not meet the Deemed-to-comply or policy provisions and need to be assessed under the Design principles:

- Boundary wall (north)
- Street setback
- Open space
- Car parking

The above matters are discussed below.

Background

The subject site is located on the western side of Thompson Road in North Fremantle. The site has a land area of approximately 176m² and is currently a single house. The site is zoned Mixed Use and has a density coding of R25. The site is not individually heritage listed but is located within the North Fremantle Heritage Area.

In December 2004, the City granted planning approval under former Town Planning Scheme No.3 (TPS3) for the development of 24 residential units (grouped dwellings) on the site formerly known as No.86 Thompson Road. The approval included the demolition of existing warehouse buildings on site, and the subsequent development of 16 units, with the retention and conversion of another warehouse building into a further 8 residential units.

The subject site No.2/86 Thompson Road, forms part of the subdivision of the original parent lot No.86 Thompson Road, approved by the Western Australian Planning Commission (WAPC) in 2005. The applicant was awarded a density bonus for the removal of a non-conforming use, resulting in the subdivision creating undersized lots inconsistent with the R-Coding applicable to the site. In 2009, the WAPC endorsed subdivision of seven 'green title' lots (Lots 210-217). The lots created by this subdivision range from 164m² (1/86) to 236m² (7/86), creating lots sizes more consistent with an R40/50 density than R25 which is the R-Code applicable for this site.

Local Planning Policy 3.10 – Thompson Road, Craigie Street and Lime Street provide detail on the requirements and guidelines for boundary wall location, open space provision and car parking layout. This policy was adopted by Council in September 2008 and pre-dates the current version of the Residential Design Codes. Notably, the local planning policy does not provide for a design principle-based assessment as an alternative to prescribed deemed-to-comply development standards, unlike the current R-Codes. The current State planning framework allows local planning policies to modify the deemed-to-comply requirements for certain design elements under the R-Codes, but not modify design principles.

A search of the property file has revealed the following history for the site:

- BL0096/10 – Two storey dwelling - approved

Boundary wall

Element	Requirement	Proposed	Extent of Variation
Boundary wall	1m setback	Nil	1m

The location of boundary walls is indicated in LPP3.10, however there is no design principle assessment in this policy. Therefore, the proposed boundary wall element has been assessed against Local Planning Policy 2.4 – Boundary Walls, and is considered to meet the Design principles in the following ways:

- The proposed boundary wall (as amended) is not considered to have any adverse impact on the amenity of the adjoining property, noting the wall is located to the south of the neighbour.
- The proposed boundary wall allows for BCA requirements for fire separation to be met, as well as allowing best use of the space to the front of the dwelling.
- The proposed boundary wall (as amended) has been reduced in length, and is now no longer than the existing brick portion of wall that exists on site, with only the height being increased to a height of 2.9m (previously 1.8m)

Street setback

Element	Requirement	Proposed	Extent of Variation
Street setback	4m	4m - 2.7m	1.3m to Nil

The street setback is considered to meet the Design principles of the R-Codes in the following ways:

- The front boundary of these lots is angled, resulting in the southern section of the carport being closer to the boundary than the northern section.
- The upper floor existing dwelling is located 6.2 – 7.5m from the front boundary

- As a result of the awkward shaped lots, the southernmost lot (Unit 1) is closer to the front boundary, compared to the northern lot (Unit 7), however the streetscape views as similar.
- The proposed carport projects forward of the existing dwelling by only 3.5m rather than the usual carport depth of 6m, due to the existing upper floor of the dwelling being located further forward than the ground floor.
- The proposed carport has a boundary wall due to fire separation requirements on the narrow lot, which the amended plans have reduced in length after neighbour concerns.

Open Space

Element	Requirement	Proposed	Extent of Variation
Open Space	45% (79m ²)	36% (64m ²)	9% (15m ²)

The open space requirement is set out by LPP3.10. There is no design principle assessment for LPP3.10, but the proposed amount of open space is considered to meet the Design principles of the R-Codes in the following ways:

- The carport addition results in a reduced amount of open space, however the proposed carport is considered to reflect the existing streetscape character, particularly in the context of No's 1-7/86 Thompson Road and the existing carports at No's 5 and 6.
- The proposed carport is located towards the northern boundary to avoid impacting the property to the south, therefore does not affect natural sunlight to this property.
- The proposed carport is flat roofed and lightweight in nature, especially with the reduced length of boundary wall and is not considered to result in any unnecessary bulk to the site, or negatively impact the setting for the building or wider streetscape.
- There is no impact to the existing private outdoor living area which is located to the rear of the dwelling.

Car Parking

Element	Requirement	Proposed	Extent of Variation
Car Parking	Tandem – 2 bays	Side by side – 2 bays	Lay-out

There is no design principle assessment for this element in LPP3.10, however the proposed reconfigured parking layout is considered to meet the deemed to comply requirements of the R-Codes for car parking by providing the required two car parking bays.



CONCLUSION

The proposed carport addition and alterations are considered supportable as outlined above. The proposed carport is consistent with alterations and additions already undertaken to existing dwellings to the north (No's 5 and 6). The proposed additions and alterations are considered to be consistent with and complement the existing streetscape.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Additions and alterations to existing Single house at No. 2/86 Thompson Road, North Fremantle, subject to the following conditions:

- 1. This approval relates only to the development as indicated on the approved plans, dated 4 July 2022. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**
- 2. All storm water discharge shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 3. The approved development shall be wholly located within the cadastral boundaries of the subject site including any footing details of the development.**
- 4. Prior to occupation/use of the development hereby approved, the boundary wall located on the northern elevation shall be of a clean finish in any of the following materials:**
 - coloured sand render,**
 - face brick,**
 - painted surface,****and be thereafter maintained to the satisfaction of the City of Fremantle.**



- 5. Prior to the issue of a Building Permit for the development hereby approved, all fencing within the Primary Street setback area shall be visually permeable above 1.2 metres above natural ground level as per clause 5.2.4/C4 6.2.3 C3 of the Residential Design Codes and thereafter maintained to the satisfaction of the City of Fremantle.**
- 6. Prior to the occupation of the development hereby approved, vehicle crossovers shall be constructed to the City's specification and thereafter maintained to the satisfaction of the City of Fremantle.**
- 7. Prior to the issue of a building permit for the development hereby approved, the property driveway is to taper from garage to the street at a maximum rate of 1:5, and be a maximum width of 4.5 metres at the front property boundary, and thereafter maintained to the satisfaction of the City of Fremantle.**
- 8. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.**

Advice Note(s):

- i. A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.**
- ii. Fire separation for the proposed building works must comply with Part 3.7.2 of the Building Code of Australia.**
- iii. The applicant is advised that a crossover permit must be obtained from the City's Engineering Department. New/modified crossover(s) shall comply with the City's standard for crossovers, which are available on the City of Fremantle's web site.**
- iv. In regards to condition e) visually permeable (in reference to a wall, gate, door or fence) is defined by LPP2.8 Fences Policy as:**
 - Continuous vertical or horizontal gaps of at least 50mm width occupying not less than one half of its face in aggregate of the entire surface or where narrower than 50mm, occupying at**

least two thirds of the face in aggregate, as viewed directly from the street; or

- **A surface offering equal or lesser obstruction to view:**

Visual Permeability Based on Size of Slats

Slat Size	Gap Size
Slats less than 50 mm wide	Gap size equal to or greater than twice the slat size
Slats 50 mm wide and greater	Gap size equal to or greater than slat size

- v. **It is recommended that the applicant liaise with the adjoining property owner (s) regarding the possible retention or replacement of the existing dividing fence along the common lot boundary. Please refer to the Dividing Fences Act 1961 for the rights and responsibilities of land owners regarding dividing fences. Information is available at the following website: http://buildingcommission.wa.gov.au/bid/Dividing_Fences.aspx**
- vi. **The applicant is advised that asbestos-containing material (ACM) fragments are present in subsurface soil beneath a geosynthetic marker layer and a minimum of 500 millimetres of clean fill. Excavation or disturbance of soils below the geosynthetic marker layer is restricted, and the on-going management plan for the site (contained in 'Information brochure for prospective owners and occupiers of Lots 201 to 217 Thompson Road, North Fremantle – Presence of Asbestos Containing Materials in Soil at Depth', obtainable from Richard Noble, telephone 9380 3800) is required to be implemented.**
- vii. **The applicant is advised that further separate approval may be required from Western Power in regards to work proposed within or adjacent to the Electricity Easement at the eastern edge of the property.**



**PC2208-3 ROSE STREET, NO. 12 (LOT 18) SOUTH FREMANTLE -
ADDITIONS AND ALTERATIONS TO SINGLE HOUSE (TG
DA0190/22)**

Meeting Date: 3 August 2022
Responsible Officer: Manager Development Approvals
Decision Making Authority: Committee
Agenda attachments: 1. Development Plans
Additional information: 1. Site Photos

SUMMARY

Approval is sought for single storey additions and alterations to the existing Single House at 12 Rose Street, South Fremantle.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought and comments received during the notification period that cannot be addressed through conditions of approval. The application seeks discretionary assessments against the Local Planning Scheme No. 4 (LPS4), Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- **Boundary walls (east, west)**
- **Lot boundary setback (east)**
- **Over height dividing fence (West)**

The application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for single storey additions and alterations to an existing Single house at 12 Rose Street, South Fremantle. The proposed works include:

- Outdoor courtyard and alfresco area.
- Below ground pool.
- Sitting room, dining room and kitchen.
- Bedroom extension.
- Rear gate with timber façade above.
- Internal alterations to provide new ensuites and bathrooms.
- Demolition of an existing rear shed and demolition works to the rear of the dwelling.

Development plans are included as attachment 1.

Site/application information

Date received:	24 May 2022
Owner name:	S El-Raghy
Submitted by:	Risbec Designs
Scheme:	Residential R30
Heritage listing:	South Fremantle Heritage Area
Existing land use:	Single house
Use class:	Single house
Use permissibility:	P



CONSULTATION

External referrals

Nil required.

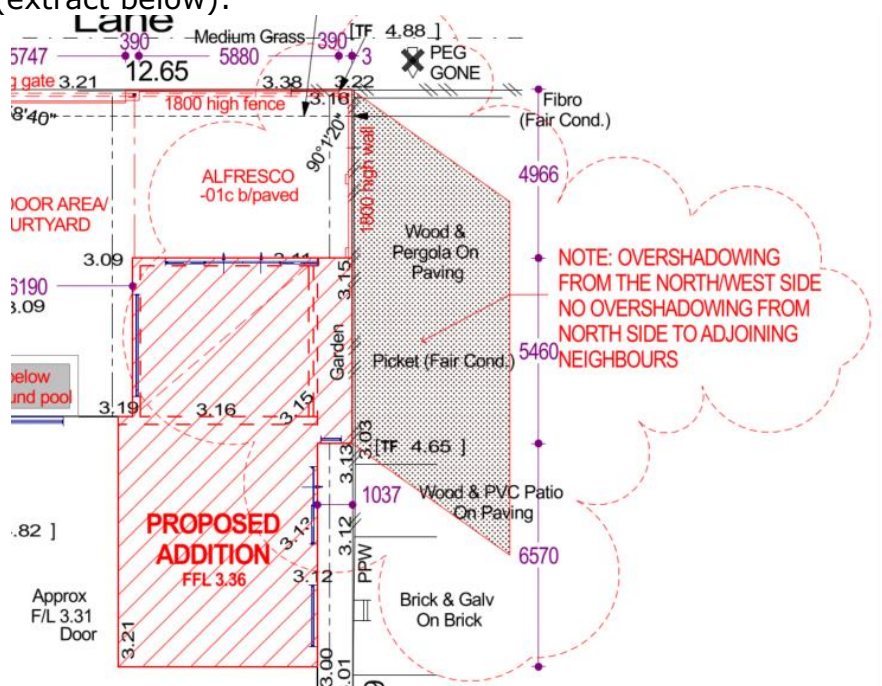
Community

The application was advertised in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as the proposal sought discretion against the R-Codes deemed-to-comply requirements and Council Policy. The advertising period concluded on 17 June 2022, and one submission was received. The following issues were raised (summarised):

- The submitter raised concerns with respect to the proposed boundary wall, especially with respect to the impact it might have on sunlight access to their rear yard.
- The submitter was concerned about the proposed finish of the boundary wall, requesting consideration be given to the presentation of the wall on their side of the boundary, making reference to the brick and limestone finish of their dwelling.

- In response to the above, the applicant submitted an afternoon overshadowing plan and advised the following:

- The finish of the boundary wall is intended to be Florentine limestone.
- The pergola is not intended to be affected by the proposed works and the addition will be built along side the pergola to the east.
- The applicant provided an overshadowing plan detailing the shade cast and its compliance with the R-Codes volume 1 requirements.
- The image below also shows the afternoon shadow impacts in the middle of winter (extract below):



- It is noted that due to the orientation of the subject lot, overshadowing at midday in midwinter (when shadows cast are at their greatest extent) will fall over the subject site only, as shadow falls directly to the south at this time.

32/56



OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Where a proposal does not meet the Deemed-to-comply requirements of the R-Codes, an assessment is made against the relevant Design principles of the R-Codes. Not meeting the Deemed-to-comply requirements cannot be used as a reason for refusal. In this particular application the areas outlined below do not meet the Deemed-to-comply or policy provisions and need to be assessed under the Design principles:

- Boundary walls (east)
- Lot boundary setback (east)
- Overheight boundary fence (west)

The above matters are discussed below.

Background

The subject site is located on the north side of Rose Street in South Fremantle. The site has a land area of approximately 379m² and is currently occupied by a Single house and associated outbuilding. The site is zoned Residential and has a density coding of R30. The site is not individually heritage listed but is located within the South Fremantle Heritage Area.

A search of the property file has revealed the following history for the site:

- DA253/08 – Demolition of rear addition and shed and construction of single storey additions and garage.
The works approved under this development application do not appear to have been pursued.

Heritage impact

In accordance with Local Planning Scheme No. 4 cl. 4.14, the proposed demolition works to facilitate the additions (the rear of the existing dwelling and rear outbuilding) are supported as they are considered to only impact areas of the dwelling which are of little or no heritage significance.

Heritage Areas Policy

3.5 – Additions and alterations

Element	Officer comment
General	
i. Alterations and additions in heritage areas should respond sympathetically to the heritage values of the area as a whole and that part of the heritage area in the vicinity of	The proposed development is set to the rear of the existing cottage so as to limit its impact upon the streetscape.

the proposed development, with changes designed and sited in a manner that retains, conserves, respects and complements the heritage significance of the place and area.	
ii. Alterations and additions to contributory places should seek to change as little as reasonably possible.	The proposed additions affect little of the existing form of the cottage, predominantly affecting later additions to the site.
iii. Retention of the contributory places, conservation, rear additions and internal adaptations are the preferred form of developing places within a heritage area. This approach allows for the retention of the significant elements of a place and assists in retaining the heritage streetscape, whilst allowing change to meet modern living standards and expectations.	The development retains the existing cottage.
Siting and scale	
ii. Generally single storey additions that are less in height to the original building, located to the rear of the original building and constructed so that the roof of the new addition is independent from the original building's roof form can be supported from a heritage perspective.	The majority of the works are set lower than the existing cottage.
iii. In order to allow a contributory building to retain its original form, if a single storey rear addition is attached to the original building, then this is to: • Be via a linked pavilion, or	The rear addition is clearly separated from the main dwelling and will be read as a rear addition.

• Have side external walls of the extension set in from the side walls of the original building, or • Be supported by a material change at the junction of the old and new.	
Form	
i.Additions to places within a heritage area must respect and harmonise with and be sympathetic to the predominant form of the prevailing streetscape and existing building, without falsely mimicking heritage detailing.	As proposed, the additions are not readily visible from the streetscape.
Roofs	
ii.Roof forms that are contemporary in style (i.e. flat / skillion) may be considered for rear and side additions.	The contemporary roof forms are proposed to a rear addition.
Materials, colours and detailing	
i.Significant original or early materials, and detailing to contributory places should be retained and conserved. Where it can be demonstrated that original fabric has been previously removed or unsympathetically altered, restoration/reconstruction of the street front facades to their original form and detailing is strongly encouraged. This should be based on documentary and/or physical evidence such as remaining traces of earlier fabric and old plans and photographs.	The proposed demolition impacts rear later additions to the original cottage.

The proposal has been reviewed by the City's heritage officers and as the works are single storey, to the rear of the dwelling and not affecting the original cottage roof form, they can be supported.

Boundary walls (east)

Element	Requirement	Proposed	Extent of Variation
Sitting room (east)	1m setback	0m	1m

The sitting room boundary wall is considered to meet the Design principles of the R-Codes in the following ways:

- The shade cast by the wall will predominantly fall over the subject site, especially at midday on midwinter due to the orientation of the subject lot. As shown in the applicant's overshadowing plan, some afternoon shade will impact the adjoining lot, but this is to an area already covered with a shade pergola.
- The wall is single storey and adjoins the neighbouring pergola which is built onto the property boundary.
- Boundary walls to rear yards are common in the immediate locality close to the rear laneway.
- The wall will not be readily visible from the street.

Lot boundary setback (east)

Element	Requirement	Proposed	Extent of Variation
Dining room/kitchen addition	1.5m setback	1m	0.5m

The setback of the addition is considered to meet the Design principles of the R-Codes in the following ways:

- The wall is single storey and the majority of the wall adjoins a boundary wall development on the adjoining lot, in these instances in accordance with the R-Codes and the City's Boundary Walls policy, building up to the property boundary can be permitted.
- The shade cast by the development will predominantly fall over the subject site, with some afternoon shade affecting the adjoining boundary wall, but this development will result in the shade being contained to the site rather than falling over the adjoining lot.
- The wall includes a window and door, but these elements are at ground level and would normally be readily screened by a standard dividing fence.

Boundary Fence

Element	Requirement	Proposed	Extent of Variation
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Outdoor Area / Courtyard	1.8m high	3.2m	1.4m
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The boundary fence proposed to the rear portion of the western boundary is considered to meet the Design principles of the R-Codes in the following ways:

- The wall is single storey and located adjacent to the neighbouring outbuilding which is built close to the common boundary, resulting in limited building bulk.
- The shade cast by the wall will predominantly fall over the subject site, especially at midday on midwinter due to the orientation of the subject lot. Morning shade will fall over the neighbouring lot, but this will predominantly affect the neighbouring outbuilding.
- The wall results in little to no privacy impact as it adjoins the neighbouring outbuilding and does not include overlooking windows.
- Boundary walls to rear yards are common in the immediate locality close to the rear laneway.
- The wall will not be readily visible from the street.

CONCLUSION

In accordance with the above considerations, the subject development application is considered to be worthy of support, subject to conditions.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil

OFFICER'S RECOMMENDATION

Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Demolition of rear outbuilding and additions and alterations to existing Single house at No. 12 (Lot 18) Rose Street, Fremantle, subject to the following condition(s):

- 1. This approval relates only to the development as indicated on the approved plans, dated 24 May 2022. It does not relate to any other development on this lot and must substantially commence within four years from the date of this decision letter.**



- 2. All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.**
- 3. All storm water discharge from the development hereby approved shall be contained and disposed of on-site unless otherwise approved by the City of Fremantle.**
- 4. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Any damage shall be rectified to the satisfaction of City of Fremantle.**
- 5. Prior to occupation/ use of the development hereby approved, the boundary wall located on the east and west boundaries shall be of a clean finish in any of the following materials:**
 - coloured sand render,**
 - face brick,**
 - painted surface,****and be thereafter maintained to the satisfaction of the City of Fremantle.**
- 6. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.**

Advice notes

- i) A building permit is required to be obtained for the proposed building work. The building permit must be issued prior to commencing any works on site.**
- ii) Fire separation for the proposed building works must comply with Part 3.7.2 of the Building Code of Australia.**



**PC2208-4 NICHOLAS CRESCENT, NO. 56 (STRATA LOT 1) HILTON -
UNAUTHORISED PRIMARY FENCING TO EXISTING SINGLE
HOUSE (TG DA0460/21)**

Meeting Date:	3 August 2022
Responsible Officer:	Manager Development Approvals
Decision Making Authority:	Committee
Agenda attachments:	1. Amended development plans
Additional information:	1. Site Photos 2. Heritage assessment

SUMMARY

Approval is sought retrospectively for a primary street fence that was constructed without approval at 56 Nicholas Crescent, Hilton by a previous property owner. The applicant (current property owner) proposes modifications to the fence as originally built to increase the degree of visual permeability and therefore surveillance between the site and the street, and improve the streetscape impact.

The proposal is referred to the Planning Committee (PC) due to the nature of some discretions being sought. The application seeks discretionary assessments against the Residential Design Codes (R-Codes) and Local Planning Policies. These discretionary assessments include the following:

- **Fencing height**
- **Vehicle sightlines**

Although the fence does not comply with the fencing provisions of the Hilton Local Planning Policy, in its amended form it is considered to satisfy the relevant Design principles of the R-Codes, subject to further amendment through a condition of approval to increase the degree of visual permeability of the upper sections of the fence. The amended application is recommended for conditional approval.

PROPOSAL

Detail

Approval is sought for a front fence constructed in 2015 to an existing Single House at 56 Nicholas Crescent. The fence was constructed by a previous owner of the property, not the current owner and applicant. The existing fence is solid to a height of 1.8m, and the applicant seeks approval to retain the fence with the following modifications:

- to reduce the height of the solid portion of fence facing Nicholas Crescent to 0.9m, with visually permeable infill panels above to a height of 1.8m.

- to reduce the height of the solid portion of fence facing the corner truncation to 0.9m, with visually permeable infill panels above to a height of 1.8m (shown on amended plans submitted by the applicant on 22 June 2022)
- No changes are proposed to the fencing facing Doolya Road.

The existing solid fence is shown below including a vehicle gate onto Nicholas Crescent and a pedestrian gate onto the corner truncation area.



Amended development plans are included as attachment 1.

Site/application information

Date received:	28 October 2021
Owner name:	J L Byford, A M Dunn
Submitted by:	J L Byford
Scheme:	Residential, R20
Heritage listing:	Hilton Heritage Area
Existing land use:	Single storey dwelling
Use class:	Single house
Use permissibility:	P



CONSULTATION
External referrals
Nil required.

OFFICER COMMENT

Statutory and policy assessment

The proposal has been assessed against the relevant provisions of LPS4, the R-Codes and relevant Council local planning policies. Where a proposal does not meet the Deemed-to-comply requirements of the R-Codes, an assessment is made against the relevant Design principles of the R-Codes. Not meeting the Deemed-to-comply requirements cannot be used as a reason for refusal. In this particular application the areas outlined below do not meet the Deemed-to-comply or policy provisions and need to be assessed under the Design principles:

- Modified fencing height
- Vehicle sightlines

The above matters are discussed below.

Background

The subject site is located on the corner of Nicholas Crescent and Doolya Road in Hilton. The site has a land area of approximately 511m² and is currently occupied by a Single house which faces Nicholas Crescent. The site is zoned Residential and has a density coding of R20. The site is not individually heritage listed but is located within the Hilton Heritage Area.

The subject site is generally flat with large trees to the primary and secondary street setback areas.

A search of the property file has revealed that in 2020 approval was issued for extensions and alterations to the rear of the existing dwelling (DA0214/20), these additions have recently been constructed.

With respect to the history of the existing fencing on site, the following is noted:

- In 2015 the former owner of the subject site constructed brick fencing to the primary and secondary street boundaries of the subject site, to a height of 1.8m.
- The City's Compliance team worked with the original landowner to seek to resolve the issue, eventually needing to take enforcement action against the former landowner. The City's enforcement action was deferred pending receipt of this application and its outcome.
- The subject application was lodged by the new landowner on the advice of the City's Compliance team to seek to resolve the ongoing compliance issues with the site. The current landowner was granted an extension to resolving the issue while the approved additions and alterations to the dwelling were carried out.

Hilton Fencing

Element	Requirement	Proposed	Extent of Variation (compared to 1.5m max height option)
Fencing height	LPP 3.7 provides 3 options for fencing forward of the building line: A maximum height of 0.9m and a minimum of 20% visually permeable above 300mm; or A maximum height of 1.2m and a minimum of 50% visually permeable above 300mm; or A maximum height of 1.5m and a minimum of 85% visually permeable above 300mm	A maximum height of 1.8m masonry pillars and visually permeable above 0.9m for the fencing facing Nicholas Crescent Solid fencing to 1.8m high to the corner truncation and the fencing forward of the building line on Doolya Road.	Nicholas Crescent – 0.3m overall height, 0.6m solid portion. Doolya Road – 0.3m overall height, 1.5m solid portion

- The prevailing streetscape of this section of Nicholas Crescent comprises the following:
 - 54 Nicholas Crescent – open wooden farm style fencing.
 - 52 Nicholas Crescent – 1m high picket fencing.
 - 50 Nicholas Crescent – No fence
 - 1-1A Holmes Place – 1.2m high picket fencing
 - 47 Nicholas Crescent – 1.2m high picket fencing
 - 45 Nicholas Crescent – no fence

Whilst not meeting the above LPP 3.7 fencing provisions, Council must also assess the proposal against the relevant Design Principles of the R-Codes and determine whether or not these are satisfied. These provisions read as follows:

R-Codes 5.2.4 P4	Officer comment
Front fences are low or restricted in height to permit surveillance and enhance streetscape.	The proposed fence is considered to be a typical fence for suburban built form generally, although not within the Hilton Garden Suburb. The applicant is proposing to reduce the solid component of the existing fence to 900mm with horizontal timber slat infill panels above on the Nicholas Crescent and corner truncation elevations. As amended, the fence would allow some level of visual surveillance between the street and the dwelling through the timber infill panels, especially if the level of visual permeability above 900mm achieved 85%. Whilst not a standard fencing height for Hilton, the proposed modified fence is not considered to be a seriously detrimental addition to either the Nicholas or Doolya Street streetscapes.

In considering the above, whilst the requirements of LPP 3.7 for acceptable fencing options have not been met, the modified proposal is on balance considered to meet the Design principle criteria of the R-Codes and as such is considered to be an acceptable compromise, subject to the degree of visual permeability of the infill panelling being increased to 85% by a condition of approval.

Vehicle Sightlines – R Codes 5.2.4 P5

Element	Requirement	Proposed	Extent of Variation
Sight lines	Unobstructed sightlines provided at vehicle access points to ensure safety and visibility along vehicle access ways, streets, rights-of-way, communal streets, crossovers and footpaths.	0m	1.5x1.5m truncation above 0.75m from ground level (Deemed-to-comply 5.2.4 C5)

The proposed modified fencing could be considered to meet the Design principles of the R-Codes in the following ways:

- The modified fence would comprise of a 3.65m wide sliding visually permeable gate and if 85% open infill panels above 900mm from natural ground level were provided for the remaining portions of fence either side of this access point sufficient sight line visibility could be achieved (this could be secured by a condition of planning approval). The 1.8m high brick piers each side of the vehicle gate are 350mm square and therefore not considered a significant obstruction to visibility between a driver exiting the property's driveway and pedestrians on the adjacent footpath.
- The modified fence design includes a high level of permeable infill which is considered to allow for an acceptable level of sightlines for cars reversing from the site onto Nicholas Crescent.

Heritage impact

The existing fence on site was not supported by the City's heritage officers and as such the applicant provided amended plans on 22 June 2022, which have been further considered by the City's Heritage Officers. The updated advice from the Heritage Officers based on the amended plans is as follows:

- 56 Nicholas Crescent is an original house constructed as part of Hilton Park Garden Suburb and is a contributory place within the Hilton Heritage Area. It is not individually included on the Heritage List.
- A key aspect of the heritage significance of Hilton Heritage Area is the garden suburb character with wide verges, open streetscapes, generous landscaping and curvilinear streets. LPP3.6 Hilton Heritage Area set out requirements for new fencing in this area to maintain this character. In 2019 further clarification was provided with the Hilton Heritage Area Front Fencing Guidelines. The policy and guidelines both state that the maximum

height for front fences in Hilton should be 1500mm where there is a 300mm high solid base and 85% visually permeable panels above.

- The 22 June 2022 proposal provided by the owner shows the solid brickwork cut down to 900mm high as stated in the heritage advice but the upper section of the wall appears on the plans to be closely spaced timber slats with minimal visual permeability. The level of visual permeability infill of the fence is not stated. If the permeability was 85% or greater as stated in LPP3.7, this is considered to be an acceptable compromise to achieve a satisfactory heritage outcome.

CONCLUSION

The fence, both in its existing form and as proposed to be modified in the current application, does not comply with any of the options for acceptable fencing design specified in LPP 3.7. However, officers consider that the fence in its latest proposed modified form, with the solid portion reduced in height along the corner truncation as well as on the Nicholas Crescent elevation, could be considered to meet the Design Principle criteria of the R-Codes subject to the degree of visual permeability of the portion above 900mm in height being increased. This could be secured through a condition of approval. The City's heritage officers consider the fence in this modified form would be an acceptable compromise outcome.

The fence on this site in its existing form (built by a previous owner not the current applicant) has been a long-standing compliance issue. The current property owner is willing to significantly modify the fence to seek to achieve an acceptable compromise outcome with the City.

Having regard to the above factors, officers consider that on balance the amended proposal is an acceptable outcome, subject to the timber infill sections of the fence achieving an 85% level of visual permeability. On this basis it is recommended that the application be approved, subject to a condition that the fence be brought into compliance with this approval within 120 days of this determination.

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

LEGAL IMPLICATIONS

Nil



OFFICER'S RECOMMENDATION
Council:

APPROVE, under the Metropolitan Region Scheme and Local Planning Scheme No. 4, Unauthorised Primary Street fencing to existing Single House at No. 56 (Strata lot 1) Nicholas Crescent, Hilton, subject to the following conditions:

- 1) This approval relates only to the development as indicated on the approved plans dated 22 June 2022. It does not relate to any other development on this lot.**
- 2) Notwithstanding condition 1 above, within 120 days of this determination notice, the fencing within the Primary Street setback area of the subject site (i.e the sections of fencing fronting Nicholas Crescent and the lot truncation at the corner of Nicholas Crescent and Doolya Street) shall be amended to be a maximum solid height of 0.9 metres with pillars extending to maximum of 1.8m and the infill be 85% visually permeable above 0.9 metres (900mm) above natural ground level as per clause 1.5.1 of the City of Fremantle's Local Planning Policy 3.7 – "Hilton Garden Suburb Precinct" Heritage Area Local Planning Policy, to the satisfaction of the City of Fremantle.**
- 3) The pedestrian access and / or vehicle gate, as indicated on the approved plans dated 22 June 2022, shall swing into the subject site only when opening or closing and shall not impede the adjoining road reservation.**
- 4) All works indicated on the approved plans, including any footings, shall be wholly located within the cadastral boundaries of the subject site.**
- 5) Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.**

Advice Note:

- i) The applicant is advised to contact City of Fremantle Compliance services via compliance@fremantle.wa.gov.au or 9432 9999 to ensure that the current development compliance investigation is finalised in a timely manner. If a building approval certificate is required for the works hereby**



approved, the applicant is encouraged to make application to the City of Fremantle as soon as practicable to ensure that the compliance investigation can be closed.

- ii) With respect to conditions **2**, these require that works are undertaken by the applicant to clear these conditions within 120 days of this approval. The applicant/landowner is advised to contact the City of Fremantle Compliance Services team via compliance@fremantle.wa.gov.au or 9432 9999 with photographic confirmation of these conditions having been cleared prior to the prescribed timeframe.
- iii) In regards to condition 2 'Visually permeable' is defined by the Residential Design Codes as:
 - In reference to a wall, gate, door or fence that the vertical surface has:
 - Continuous vertical or horizontal gaps of 50mm or greater width occupying not less than one third of the total surface area
 - Continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or
 - A surface offering equal or lesser obstruction to view;
 - As viewed directly from the primary street.
- iv) The applicant is advised that a BA13 application will be required to be submitted to the City and approved in order to finalise the current compliance investigation.
- v) A BA13 – Building Approval Certificate application form is required to be submitted for the unauthorised building works. A Certificate of Building Compliance (BA18) must be submitted with the application and signed and completed by a Registered Building Surveyor Contractor (private sector). [A list of Registered Building Surveyors can be obtained from the Department of Mines, Industry Regulation & Safety \(DMIRS\) website - Find a registered building surveyor | Department of Mines, Industry Regulation and Safety \(commerce.wa.gov.au\)](#)



PC2208-5 Information Report - August 2022

1. SCHEDULE OF APPLICATIONS DETERMINED UNDER DELEGATED AUTHORITY

Responsible Officer: Manager Development Approvals
Agenda attachments: 1: Schedule of applications determined under delegated authority

Under delegation, development approvals officers determined, in some cases subject to conditions, each of the applications relating to the place and proposals as listed in the attachments

2. UPDATE ON METRO INNER-SOUTH JDAP DETERMINATIONS AND RELEVANT STATE ADMINISTRATIVE TRIBUNAL APPLICATIONS FOR REVIEW

Responsible Officer: Manager Development Approvals
Agenda attachments: Nil

Applications that have been determined by the Metro Inner-South JDAP and/or are JDAP/Planning Committee determinations that are subject to an application for review at the State Administrative Tribunal are included below.

1. Application Reference
DA0352/21
Site Address and Proposal
No. 271a South Terrace, South Fremantle – Proposed change of use to small bar and alterations and additions to existing building
Planning Committee Consideration/Decision
At its meeting held on 1 December 2021, the Council resolved to refuse the application.
Current Status
- On 5 January 2022 an Application for Review by the State Administrative Tribunal was lodged by the owner. - A Mediation session between the parties was held on 4 February 2022. - The applicant submitted further information for discussion in mediation held on 22 March 2022. - The applicant is invited to submitted amended plans and the City was invited to reconsider its decision on or before 13 July 2022. - At its meeting of 6 July 2022, Planning Committee reconsidered the application, now recommended for approval, resolving to reaffirm its previous refusal.



- The application was referred to the July Ordinary Council Meeting, with the applicant consenting to an extension to allow the reconsideration to occur at that meeting.

2. Application Reference
DA0294/21
Site Address and Proposal
No. 207 High Street, Fremantle- Internal alterations to existing Grouped dwelling
Planning Committee Consideration/Decision
• Nil
Current Status
• On 24 March 2022 an Application for Review by the State Administrative Tribunal was lodged by the owner. • A Directions Hearing was held on 14 April 2022. • A Mediation session between the parties was held on 27 April 2022. • A further mediation session was scheduled for 27 July 2022.

3. Application Reference
DA0440/21
Site Address and Proposal
No. 90 Bracks Street, North Fremantle – Demolition of existing buildings and structures
Planning Committee Consideration/Decision
• At its meeting held on 2 March 2022, the Council resolved to approve the application subject to conditions not recommended by officers.
Current status
• On 30 March 2022 an Application for Review by the State Administrative Tribunal was lodged by the owner. • A Directions Hearing was vacated with orders issued instructing Council to reconsider its decision by the end of May. • A report reconsidering the application was presented to the May Ordinary Council Meeting with a recommendation for approval without the additional conditions requiring retention of fabric. • OCM reconsidered the application on 25 May 2022 and reaffirmed its original decision. • An extension to the timeframe for submitted expert evidence was agreed to between the parties. • A full hearing to determine the matter was held on July 19-20. • SAT has reserved their decision.



OFFICER'S RECOMMENDATION

Council receive the following information reports for August 2022:

- 1. Schedule of applications determined under delegated authority**
- 2. Update on Metro Inner-South JDAP determinations and relevant State Administrative Tribunal applications for review.**



10.3 Council decision

**PC2208-6 PLANNING COMPLIANCE - NO. 42 MCCLEERY STREET
BEACONSFIELD AND NO. 67 ATTFIELD STREET, FREMANTLE
- INCOMPLETE DEVELOPMENT (REF: RMP20/0036 AND
RMB22/0047)**

Meeting Date: 3 August 2022
Responsible Officer: Manager Field Services
Decision Making Authority: Council
Additional Information: 1: Site Photos

SUMMARY

The purpose of this report is for Council to consider issuing a Building Order in accordance with section 112 of the *Building Act 2011* (Act) on the owners of the properties at No. 42 McCleery Street, Beaconsfield and No. 67 Attfield Street, Fremantle, to complete building works within a specified period of time so as to make the buildings fit for human occupation. Failure to do so may result in a requirement for demolition.

In relation to No. 42 McCleery Street, the three storey dwelling received development approval on 29 November 2004 and a building licence on 16 March 2006. However, the development approval expired and a further approval was granted on 12 August 2008.

Similarly, No. 67 Attfield Street received development approval on 2 October 2008 and a building licence on 21 January 2011 for alterations and additions to single house. On 19 January 2012, the City approved amended plans for the extension.

Numerous complaints have been received by the City from adjoining property owners with regard to protracted, continuous building works occurring onsite resulting in ongoing dust and noise emanating from both of the subject properties. City Compliance Officers have brought the concerns to both properties' owners' attention over the years on multiple occasions throughout the construction process, however the buildings remain incomplete, and the owners have recently requested an additional extension of building permits to continue works onsite.

Officers consider that ample time has been provided for the works at both properties to be completed, and construction work should not be permitted to continue indefinitely due to the adverse amenity impacts upon neighbours. Accordingly, this report recommends that Council:



- 1. Authorises the CEO to issue a Building Order under section 112 of the *Building Act 2011* requiring works to be completed within 12 months to make the three storey dwelling at 42 McCleery Street, Beaconsfield fit for human occupation, or otherwise be demolished**
- 2. Authorises the CEO to issue a Building Order under section 112 of the *Building Act 2011* requiring works to be completed within 12 months to make the single house second storey additions at 67 Attfield Street, Fremantle fit for human occupation, or otherwise be demolished**

BACKGROUND

No. 42 McCleery Street, Beaconsfield

On 30 March 2012, the City received a written complaint with regard to the construction of a three storey dwelling at No. 42 McCleery Street which received Development Approval on 12 August 2008. At the time of the complaint being received the building works had been ongoing for approximately 5 to 6 years according to the complainants submission (this suggests the complainants time estimate was inaccurate, or works commenced prior to approvals being granted). The complainant raised concerns regarding dust emissions, excessive noise from the site and the duration of the building works. The complainant requested action be taken to resolve the matter and a timeframe for construction works to be completed as agreed by Council. Since receipt of this concern in 2012, being more than 10 years ago, the City has continued to receive similar complaints as a result of the incomplete dwelling and continued construction works occurring on site.

Officers recently met with the owner/developer following a request to extend the Building Permit to gain an understanding as to when the works would be complete. The owner explained that he was an owner Builder and that there were budget constraints which impeded progress of the works, and couldn't give a definitive date as to when the building would be entirely complete. Officers suggested engagement of a Registered Builder to complete the project, however the owner declined and cited budget constraints as the reason for not doing so. The owner advised of their intention to finalise works onsite through submission of an extension of the building permit, but if an extension is granted there is no mechanism to ensure the works will be completed within a fixed timeframe.

The building is approximately 85% complete and requires works to be undertaken including a kitchen to be installed, power and water to be commissioned and connected, wet areas to be complete, balustrading and external works to ensure the building is safe. Currently the Building is not fit for human occupation in accordance with the Building Act as the building is incomplete.



No. 67 Attfield Street, Fremantle

On 3 February 2019, the City received a written complaint with regard to the ongoing construction works for second storey additions to the existing single house at 67 Attfield Street which received Development Approval on 2 October 2008 and a Building Licence on 21 January 2011. The complainant raised a number of concerns, including noise, and transient people occupying the incomplete building at various times. According to the complainant's submission, building works had ceased some time back and prior to this had been ongoing for approximately 6 years. The complainant has requested the City take action to ensure the owner completes the building in a timely manner. The extension is approximately 20% complete and currently in a dilapidated condition.

Further to a recent inspection by City Compliance Officers it has been determined that given the extensive period the structural elements of the incomplete building has been exposed to the elements, the building would require considerable work to restore the structural integrity of the materials used. In addition, the building requires a roof, walls, windows, and all the internal features required for the building to be habitable. The owner has advised of their intention to engage an engineer to assess the current structure, with an architect and builder ready to finalise building works onsite. This however will require a further application to extend the expired building permit and will have to comply with current Building Code requirements.

In response to the concerns received in relation to both properties, City Officers have made several enquiries with the respective owners throughout the duration of construction and informed them of the various concerns received as a result of the unfinished works onsite.

CONSULTATION

Nil

OFFICER COMMENT

The buildings at the above-mentioned properties are currently incomplete and have remained incomplete for a considerable number of years (in excess of 10 years in the case of 42 McCleery Street). Further works are required to complete the buildings through a further extension of a building permit. Given both matters have been ongoing for a considerable amount of time, officers are reluctant to simply issue a further building permit extension to the owners, given the concerns regarding ongoing construction and noise that continues to impact the amenity of the surrounding property owners. For the reasons outlined in this report, further extending the building permits in itself is not likely to result in timely completion of the works or address and/or resolve the concerns expressed by complainants, which based on experience to date are considered likely to continue.



As an alternative course of action, Council at its discretion may allow a further building permit extension to be granted for completion of works and also issue a building order under section 112 of the *Building Act 2011* requiring completion of works by a specific timeframe and, and if the timeframe is breached, order demolition of the buildings where it is reasonably believed that the buildings in their current state are unfit for human occupation.

In light of the above, it is recommended that an extension to both building permits be issued and Building Orders under section 112 of the *Building Act 2011* be simultaneously issued in respect of both properties requiring the works to be completed (to a 'fit for human occupation' level) within 12 months. It should be noted the works required to be undertaken by a Building Order will not necessarily include works such as painting, landscaping etc. as these are not considered necessary to deem a building to be fit for human occupation. 12 months is recommended as a reasonable timeframe for completion of works having regard to the extent of works remaining to be carried out and current materials and labour supply issues in the building industry, but balancing these considerations against the amenity impacts neighbouring property occupiers are experiencing from the current condition of both buildings.

FINANCIAL IMPLICATIONS

Should Council adopt the Officers' recommendations, an approximate cost to draft and serve two Building Orders under section 112 of the *Building Act 2011* would be \$4,000. Should the property owners not comply with the time frames stipulated in the Building Order to complete the works and also not demolish the buildings, the City may do so and recover the costs of demolition through the courts.

LEGAL IMPLICATIONS

Under the current legislation there is no mechanism within the Act to ensure a building is complete within the permit time frame.

Duration of a building permit

A permit authority may set any validity period for a permit. This is usually done at the request of the applicant. Where the permit authority does not set a validity period, the default is two years. If a project takes longer than expected, an application to extend the permit (BA22) can be submitted to the relevant permit authority.

If a Local Government forms the view that a building is "unfit for human occupation" then the Local Government can choose to issue a Building Order under s 112(2)(g)(v) and (vi) of the Building Act 2011 to require renovation or



repair to the building to render the building fit for human occupation and/or require the demolition, dismantling or removal of the building.

A person served with a Building Order may apply to the State Administrative Tribunal for a review of the decision of the local government to make the Order, or in relation to a particular requirement of the Order.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required

OFFICER'S RECOMMENDATION

Council:

- 1 Authorise the Chief Executive Officer to issue a Building Order under section 112 of the *Building Act 2011* requiring works to be completed within 12 months to make the three storey dwelling at 42 McCleery Street, Beaconsfield deemed fit for human occupation, otherwise to be demolished should the 12 month time frame not be met**
- 2 Authorise the Chief Executive Officer to issue a Building Order under section 112 of the *Building Act 2011* requiring works to be completed within 12 months to make the single house second storey additions at 67 Attfield Street, Fremantle deemed fit for human occupation, otherwise to be demolished should the 12 month time frame not be met.**



11. Motions of which previous notice has been given

A member may raise at a meeting such business of the City as they consider appropriate, in the form of a motion of which notice has been given to the CEO.

12. Urgent business

In cases of extreme urgency or other special circumstances, matters may, on a motion that is carried by the meeting, be raised without notice and decided by the meeting.

13. Late items

In cases where information is received after the finalisation of an agenda, matters may be raised and decided by the meeting. A written report will be provided for late items.

14. Confidential business

Members of the public may be asked to leave the meeting while confidential business is addressed.

15. Closure