

**LATE ITEM P21/3943 AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT 802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (REC) (ATTACHMENT)**

Ward : Bicton - Attadale - Alfred Cove  
 Category : Operational  
 Application Number : DA-2019-1200/B  
 Property : Lot 802 (10D) Birdwood Circus, Bicton WA 6157  
 Proposal : Amendment to a Single House (Site Works and Screening)  
 Applicant : Mr M J Tomasini  
 Owner : Mr M J and Mrs A R Tomasini  
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
 Previous Items : None  
 Responsible Officer : Peter Prendergast  
 Manager Statutory Planning

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input checked="" type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council to note.</i>

[3943 Amendment to Single House Site Works and Screening](#)

**P21/3943 AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT  
802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (REC) (ATTACHMENT)**

**KEY ISSUES / SUMMARY**

- The proposed development was presented to the Development Advisory Unit meeting held on 13 July 2021 and a report was published on the City's website. The development application has now been called up to Council for determination in accordance with the procedures outlined in the Local Planning Policy 1.1.
- Development approval is sought for site works and screening at Lot 802 (No. 10D) Birdwood Circus, Bicton.
- The details of the proposed development have been assessed against Local Planning Scheme No. 6 (LPS6), the provisions of State Planning Policy 7.3 Residential Design Codes Volume 1 (the R-Codes) and relevant local planning and Council policies.
- The proposed development requires a performance assessment in relation to building setbacks for the proposed screen wall, site works and visual privacy.
- The proposed development was advertised to the adjoining owners in accordance with Part 4 of the R-Codes and Local Planning Policy 1.1 Planning Process and Decision Making (LPP1.1).
- Three submissions, each from the same property, were received objecting to the proposed site works along the north-eastern lot boundary, building bulk and visual privacy.
- Amended plans were submitted by the applicant that partially addresses the objectors concerns; however the objection was not withdrawn.
- Notwithstanding the objection received, the proposed development as amended is acceptable when assessed against the relevant Design Principles of the R-Codes.
- It is recommended that approval be granted subject to conditions.



Figure 1: Aerial photography of subject site (No. 10D Birdwood Circus, Bicton)

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**P21/3943 AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT 802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (REC) (ATTACHMENT)****BACKGROUND**

Development Approval was previously granted for a two storey single house in 2019, with further amendments to the two storey house approved in 2020. This application is the result of a compliance matter where site works at the rear of the subject property occurred without approval which created visual privacy issues with the adjoining northern neighbour.

**Scheme Provisions**

MRS Zoning	: Urban
LPS6 Zoning	: Residential
R-Code	: R17.5
Use Type	: Residential
Use Class	: Permitted

**Site Details**

Lot Area	: 633m <sup>2</sup>
Retention of Existing Vegetation	: N/A
Street Tree(s)	: Yes
Street Furniture (drainage pits etc.)	: No
Site Details	: Refer to Figure 1 above

**DETAIL**

In March 2021, site works occurred at the subject property where additional retaining walls were constructed and fill was added to the site. In response to concerns raised with the City, compliance action was commenced against the owner of No. 10D Birdwood Circus, Bicton.

Subsequently, a development application was lodged for an amendment to the approved two storey single house at Lot 802 (10D) Birdwood Circus, Bicton. This application seeks approval for the raised ground levels and for a screening structure located adjacent to the northern boundary.

The application has been assessed against the provisions of Local Planning Scheme No. 6 (LPS6), State Planning Policy 7.3 Residential Design Codes Volume 1 (the R-Codes) and relevant local planning and council policies. A performance assessment is required in respect of the matters listed below.

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**Local Planning Scheme and Local Policy Requirements – State Planning Policy 7.3 Residential Design Codes/LPP3.1**

Development Requirement	Deemed to Comply standard	Proposed	Comments	Delegation to approve variation
Clause 5.1.3 C3.3 Lot Boundary Setbacks  CoM LPP3.1 Cl. 6 C3.4	Lot boundary wall Setback: 6m Length: 9m max height: 3m	Setback: >6m Length: 14m (overall total) Max: 3.8m	Requires assessment against the Design Principles of the R-Codes/LPP 3.1.	Development Advisory Unit (DAU)
Clause 5.3.7 C7.2 Site Works	Retaining walls, fill and excavation within the site and behind the required Street setback to comply with Table 4. Table 4 – Setback of site works and retaining walls Height of site works and/or retaining walls 2m – requires minimum setback of 2m	Retaining wall up to 1.9m in height measured above NGL  TOW: 34.3m NGL: 32.37m	Requires assessment against the Design Principles of the R-Codes.	Development Advisory Unit (DAU)
5.4.1 C1.1 Visual Privacy	Unenclosed outdoor active habitable spaces setback 7.5m for areas coded <R50.	4.3m	Requires assessment against the Design Principles of the R-Codes.	Development Advisory Unit (DAU)

The discussion in this report relates to each design element outlined above.

**STAKEHOLDER ENGAGEMENT**

**I. COMMUNITY**

Advertising Required: Yes  
 Neighbour's Comment Supplied: Yes  
 Reason: Required pursuant to LPP 1.1 Planning Process and Decision Making Clause 3.4(a)  
 Support/Object: Three objections received from one land owner

The submissions received object to the proposal citing concerns in relation to; building bulk, site works and visual privacy.

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A summary of the objection comments received and the City's response is provided in the table below.

<b>Summary of Issues Raised</b>	<b>Comments</b>	<b>Action (Condition/ Uphold/ Not Uphold)</b>
Bulk and scale of screen wall	Refer to the comments section of this report.	Not Uphold
Site works as a result of additional fill added to the site	Refer to the comments section of this report.	Not Uphold
Visual privacy impacts as a result of site works	Since initial consultation, the plans have been amended to include a privacy screen (screen wall) 1.6m in height measured above the finished ground level of the subject site. This structure will reduce overlooking of sensitive areas. Refer to comments section of this report.	Not Uphold

## **II. OTHER AGENCIES / CONSULTANTS**

No consultation with other agencies/consultants is required.

## **STATUTORY AND LEGAL IMPLICATIONS**

Should the City refuse the application or impose a condition that the applicant does not agree with they have the right to have the decision reviewed by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*.

## **FINANCIAL IMPLICATIONS**

There are no financial implications for the City relating to this proposal.

## **STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

There is no strategic risk or environmental management implications with this application.

## **POLICY IMPLICATIONS**

There are no policy implications for the City relating to this proposal.

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**P21/3943 AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT 802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (REC) (ATTACHMENT)****COMMENT**Lot Boundary Wall (Screen Wall)

A garage with a 9 metre long boundary wall was approved as part of the original decision. The proposed privacy screen, is considered as a boundary wall as per the provisions of LPP3.1. When the proposed privacy screen wall is assessed in conjunction with the garage wall, the total length and the height of the screen wall do not meet the deemed-to-comply provisions of LPP3.1 Cl. 6 C3.4 and therefore require a performance assessment. The screen wall is considered acceptable and can be supported for the following reasons:

- The screen wall length and height are the minimum required to provide a reasonable level of privacy to the adjoining property's secondary outdoor living area. A portion of the screen is located adjacent to a wall with no major openings reducing the bulk impact. The location of the screen wall does not adversely affect the neighbour's access to northern sunlight and ventilation nor does it impact the outlook from the east facing bedroom window.
- The screen is designed to minimise the visual privacy impact on the adjoining landowner while making more effective use of the subject site. The screen wall is located towards the rear of the subject site and on the southern lot boundary of the affected neighbour. The screen wall will be visible from the adjoining property's pool area which is a secondary outdoor living area. The proposal will not overshadow the northern neighbour;
- The lot boundary wall is setback 0.4m from the northern lot boundary of the subject site to mitigate impacts of building bulk and scale on the neighbour. The screen wall is stepped behind the existing boundary fence to create a degree of separation between the fence and the screen wall.

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Figure 2 – Proposed location of screen wall from viewed from the subject site



Figure 3 – Proposed location of screen wall viewed from northern neighbour's property

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Site Works

As outlined in the table above, the setback of the blade wall which forms part of the retaining wall of the subject site does not meet the deemed-to-comply provisions of the R-Codes and therefore requires a performance assessment. The proposed retaining wall setback is considered to meet the Design Principles of the R-Codes for the following reasons:

- Overall, the retaining wall setbacks meet the deemed-to-comply criteria, except for a blade wall which forms part of the pool pump/storage area. The blade wall is located behind the existing fence ensuring the wall will not add excess building bulk on to the adjoining northern property, or be seen from the street. The subject blade wall is setback 1m from the northern lot boundary in lieu of 2m;
- The approved dwelling meets the R-Codes deemed-to-comply criteria for solar access and ventilation. Therefore access to direct sunlight and ventilation on the adjoining northern property is not restricted;
- The site slopes by approximately 5 metres from the street to the rear lot boundary. The site works respond to the natural contours of the site, and the fill and retaining walls allow for a level outdoor living area creating a useable space for the occupants of the dwelling.
- The blade wall is located next to the adjoining property's service access leg and swimming pool and is not located next to the primary outdoor living area. The wall will not be visible from habitable rooms of the adjoining property as the boundary fence screens the retaining wall from view. All habitable rooms of the adjoining property are oriented towards the north and east and not towards the subject site; and
- The visual privacy issues associated with the fill and retaining walls have been adequately addressed through the proposed addition of a screen wall and is discussed further below.

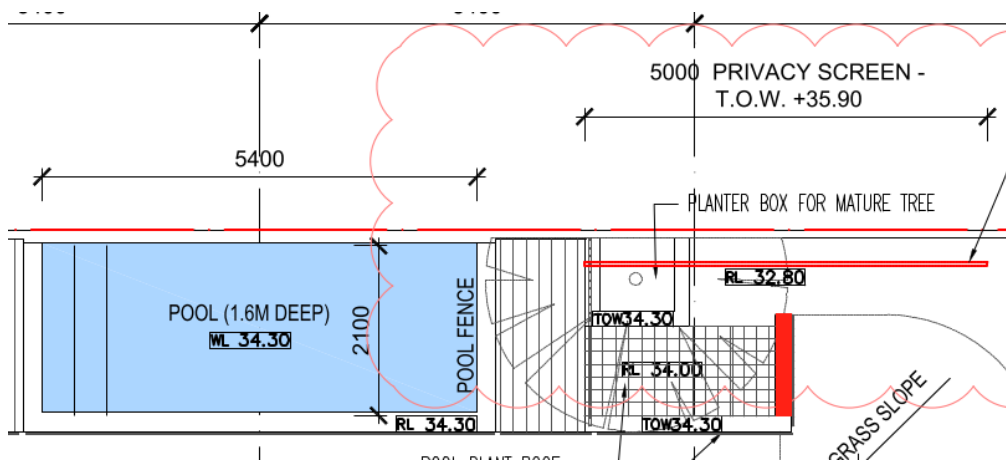


Figure 4 – Blade wall location shown in red

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Visual Privacy

As outlined in the table above, the proposed fill associated with site works creates a ground level greater than 0.5m height above natural ground level. This does not meet the deemed-to-comply provisions of 5.4.1 C1.1 and therefore requires a performance assessment. The height and length of the proposed screen wall is considered acceptable and adequate visual privacy is maintained for the adjoining property for the following reasons:

- The proposed screening ensures minimal direct overlooking of the pool area of the adjoining property. As depicted in the Figure 5 below, views are directed to the rear corner of the lot, ensuring the secondary living area and the majority of the pool area are maintained as private space; and
- The adjoining property to the north is designed with its primary outdoor living area orientated to the northern side of the dwelling. This ensures that the outdoor living area is not impacted by the current proposal. The proposed site works do not result in any overlooking of major openings to the adjoining property as it has been designed with highlight windows facing south, and its site has major openings facing east towards the swimming pool, or north towards the alfresco.

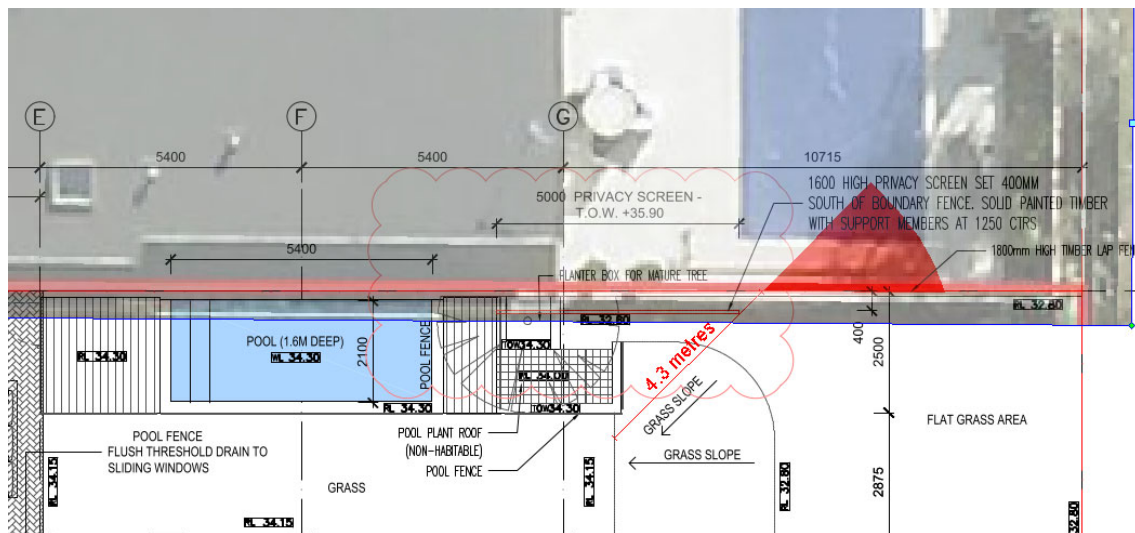


Figure 5 – Screen wall showing detail of restricted cone of vision

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

The Council may choose to refuse to grant approval for the proposed development and provide a reason for doing so. If the Council chooses to refuse the application, the applicant may exercise a right of review to the State Administrative Tribunal.

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**P21/3943 AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT 802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (REC) (ATTACHMENT)****CONCLUSION**

This application for amendments to the approved single house including site works and screening has been assessed and is considered to comply with the relevant planning framework, including the design principles of the R-Codes. Overall, the proposal has addressed the main issue of visual privacy onto the northern neighbour and the screen wall proposed is scaled down to length that is supportable by the City. Therefore these amendments proposed as part of this application are considered to provide an acceptable outcome. It is noted that the approach to deal with a breach of the planning requirements via the submission of an application such as this is a standard approach to compliance, and is in accordance with the City's planning compliance processes. Given the design principle assessment, it is concluded that that the development is acceptable, and is recommended for approval on that basis.

**OFFICER RECOMMENDATION (3943)****APPROVAL**

**That the Council approves DA-2019-1200/B for amendments to a Two Storey Single House at Lot 802 (10D) Birdwood Circus, Bicton WA 6157 subject to compliance with the following:**

- A) The previous planning approval DA-2019-1200/A dated 12 August 2020 (including remaining conditions);**
- B) The enclosed approved plans (referenced Site Plan, Ground Floor Plan, First Floor Plan and Elevations) stamped as approved on 26 July 2021;**
- C) Additional condition 13 be added:**
  - 13. The privacy screen shown on the approved plans (marked in red) shall meet the Deemed to Comply standards of Cl. 5.4.1 of the Residential Design Codes. The privacy screen shall be installed prior to initial occupation of the development and thereafter retained in perpetuity to the ongoing satisfaction of the City.**