

P21/3954 - AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT 802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (SECTION 31 SAT RECONSIDERATION) (REC) (ATTACHMENT)

Ward : Bicton - Attadale - Alfred Cove
 Category : Operational
 Application Number : DA-2019-1200/C
 Property : Lot 802 (10D) Birdwood Circus, Bicton
 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 : Item P21/3943 Amendment to Single House (Site Works and Screening) – Lot 802 (10D Birdwood Circus, Bicton – Ordinary meeting of Council held 17 August 2021
 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 & 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>

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- The previous DA (ref DA-2019-1200/B) sought approval for site works and screening. This DA was the subject of consultation with affected neighbours, which resulted in submissions opposing the development.
- The DA was presented to the Development Advisory Unit (DAU) meeting held on 13 July 2021 and a report was published on the City's website.
- The development application was the subject of a call up to Council for determination at the request of by Elected Members and in accordance with the procedures outlined in the Local Planning Policy 1.1, Planning Process and Decisions Making.
- An Elected Member site visit to the application site and the site of the adjoining neighbouring property took place on 9 August 2021.
- The application was then presented to the Ordinary Meeting of the Council held 17 August 2021, at which the application was refused.
- Subsequently an appeal against the decision of the Council was lodged with the State Administrative Tribunal (SAT). The appeal was directed to mediation, and a mediation took place at the property on 22 October 2021, attended by Cr Barber on behalf of the Council, with Council Officers also in attendance.
- At the on-site mediation, it was agreed that the City would, under Section 31 of the SAT Act, reconsider the details of the development in accordance with revised plans to reduce the height of the proposed visual privacy screen.
- These plans form the basis for the subject Section 31 reconsideration. The revised plans 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.
- Pursuant to s 31(1) of the State Administrative Tribunal Act 2004 (WA) reconsideration of the City's decision is required on or before 16 November 2021.
- The development as now proposed is considered to be acceptable when assessed against the relevant Design Principles of the R-Codes.
- It is recommended that planning approval is granted.

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

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.

The amended application was refused at the Ordinary Council Meet held on 17 August 2021. Following an application made to SAT by the applicant and mediation between the City and the applicant, an amended application has been lodged for reconsideration pursuant to Sec 31(1) of the State Administrative Tribunal Act 2004 (WA).

Scheme Provisions

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

Site Details

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Lot Area	: 633m ²
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. This application sought approval for the raised ground levels and for the installation of a screening structure located adjacent to the northern boundary. This DA was refused by Council on 17 August 2021.

Following an application made to SAT, and a subsequent mediation session held at the subject property, the SAT have issued orders to require the applicant to provide to the City a set of amended plans, and for the City to consider the amended plans on or before 16 November 2021 pursuant to s 31(1) of the State Administrative Tribunal Act 2004 (WA).

The applicant has provided the City with amended plans and 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.

[3954 Plans and Application DA-2019-1200C 10D Birdwood Circus BICTON](#)

[3954 Attachment 1 Council Report Ordinary Meeting 17 August 2021](#)

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 height: 3.3m	Requires assessment against the Design Principles of the R-Codes/LPP 3.1.	Council.

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Development Requirement	Deemed to Comply standard	Proposed	Comments	Delegation to approve variation
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.	Council
5.4.1 C1.1 Visual Privacy	Unenclosed outdoor active habitable spaces setback 7.5m for areas coded <R50.	2.5m	Requires assessment against the Design Principles of the R-Codes.	Council.

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

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Advertising Required: No
 Neighbour's Comment Supplied: No
 Reason: Required pursuant to LPP 1.1 Planning Process and Decision Making Clause 3.4(a)
 Support/Object: N/A

The amended application has not been readvertised to the affected landowner. The original submission comments can be found in the Council Report dated 17 August 2021 (refer to attachment 1).

II. OTHER AGENCIES / CONSULTANTS

No consultation with other agencies/consultants is required.

STATUTORY AND LEGAL IMPLICATIONS

The potential remains for this matter to be the subject of a further review by the SAT depending on the outcome of this Section 31 reconsideration.

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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.

COMMENT

The key issues for this DA relate to the nature of the proposed screening structure, including its length, height, bulk impacts, and the extent to which visual privacy is safeguarded by it.

It is noted that since the refusal by Council of the last DA, the owners of the neighbouring property to the north have installed a patio structure which is designed to provide heightened levels of privacy for that property, particularly in respect of their use of their swimming pool which comprises a secondary outdoor living area. The patio structure is of a skillion roof design, with the lowest point of the roof (eave) being located approximately 1m off the shared boundary (refer to Fig 3 below). This patio structure itself serves to mitigate the impact of the development the subject of this report.

Given the existence of this patio structure, the screening structure that was previously proposed may now be reduced in height to plug the gap that now exists between the new patio structure on the adjoining property, and the top of the dividing fence between the two properties (refer to Fig 3 below). This means that the concerns of Council in respect of the bulk impact that the screening structure as previously proposed had towards the northern neighbours is considerably reduced, whilst the privacy concerns are addressed. The details of the proposed screen are provided as an attachment to this report (refer to plans), and depict a 5m long screen located 0.1m off the dividing fence line, at a height of 1.1m above the top of fence height.

The screening structure is proposed with a maximum height of 3.3m, average 3.05m, as depicted in Figure 2 below. The amendment to the screen as negotiated after the SAT mediation aims to mitigate impacts of building bulk and scale on the adjoining neighbour. The screen is stepped behind the existing boundary fence to create a degree of separation between it and the fence.

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The screening structure will satisfy the visual privacy requirements of the R Codes, particularly when considered in conjunction with the recently constructed patio structure on the adjoining property which will ensure that the majority of the swimming pool area is not overlooked from the garden area of the application site. A small portion of the rear corner of the adjoining lot will remain visible but this area is not considered to be either the primary nor secondary outdoor living area of that property, and this degree of overlooking can be seen to satisfy the R Code requirements.

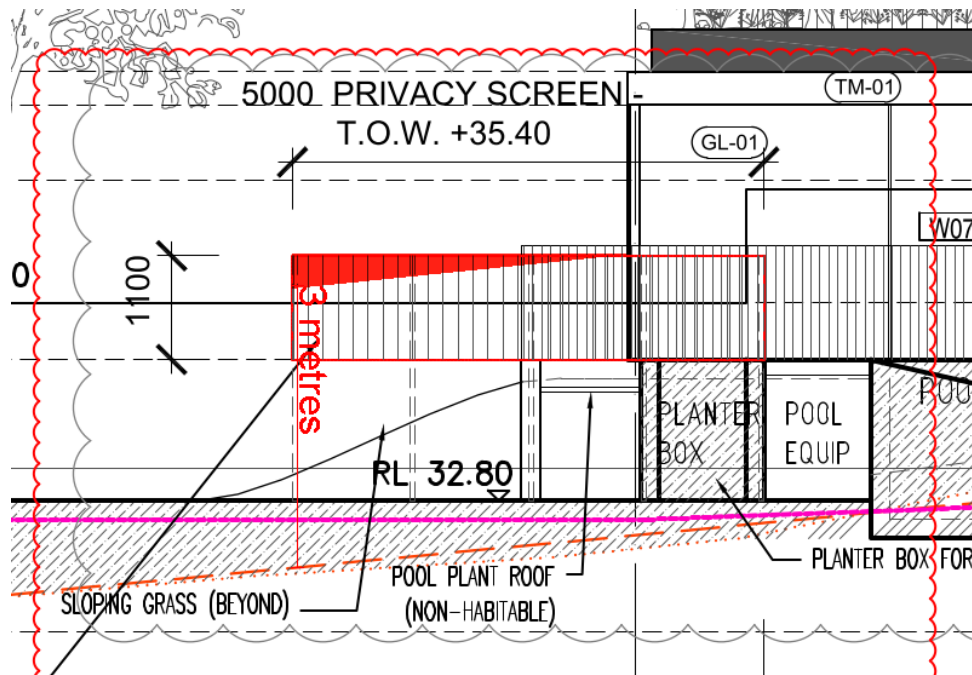


Figure 2 – Proposed screen wall height variation shown in red

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Figure 3 – Proposed location of screen wall from viewed from the subject site. The red block indicates the location of the proposed screen structure.

Site Works

The site works context is as previously outlined (refer to attachment 1).

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.

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 amended proposal has addressed the main issue of visual privacy onto the northern neighbour and the screen wall as now proposed is of reduced in height. Therefore the details proposed as part of this amended application are considered to provide an acceptable outcome which satisfies the design principles of the R Codes.

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OFFICER RECOMMENDATION (3954)

APPROVAL

That the Council approves DA-2019-1200/C 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 and Elevations) stamped as approved on 16 November 2021; and**
- C) Additional condition 13 to 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.**