

REPORTS AND RECOMMENDATIONS

FOR THE

DEVELOPMENT ADVISORY UNIT

MEETING

HELD ON

TUESDAY, 13 JULY 2021

1. This Meeting makes Recommendations to the Manager Statutory Planning.
2. Should any Elected Member wish to discuss the content of any item included as part of the attached agenda, please contact Peter Prendergast, Manager Statutory Planning. Contact should be established as soon as possible after the publication of the agenda to the City of Melville website. Contact details are as follows: peter.prendergast@melville.wa.gov.au or Tel 9364 0626.
3. Should an Elected Member propose that an item on this agenda be referred to Council for determination, a request to that effect must be made to the Chief Executive Officer (CEO). This request shall be made in accordance with the requirements set out by Clause 3.5.4 of Local Planning Policy LPP 1.1 'Planning Process and Decision Making'.
4. Should any applicant or adjoining property owner object to any proposal included as part of this DAU agenda, then an opportunity exists to request that the application be determined by Council. All such requests should be referred to an Elected Member of Council for the Ward within which the development application is located. An Elected Member may request that the application be determined by Council. Any call up request from an Elected Member shall be made in accordance with the requirements set out by Clause 3.5.4 of Local Planning Policy LPP 1.1 'Planning Process and Decision Making'.
5. In the absence of any referral request, a decision on any application included as part of this DAU agenda can take place under delegated authority to the Manager Statutory Planning, after midday on the second Monday after the Friday publication of the minutes to the City's website. In the event that the DAU minutes are not published to the City's website until the Monday after the DAU meeting, a decision on the application can still take place the following Monday.

DISTRIBUTED: FRIDAY, 16 JULY 2021



**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,
BOORAGOON, COMMENCING AT 9:00 AM ON TUESDAY, 13 JULY 2021.**

PRESENT

M Scarfone
G Russell
B Ashwood
T Cappellucci
R Boswell

A/Manager Statutory Planning
Manager Building Services
Senior Planning Officer
Senior Planning Officer
Planning Officer

DISCLOSURES OF INTEREST

**DISCLOSURE OF FINANCIAL INTERESTS
LOCAL GOVERNMENT ACT 1995****Members' interests in matters to be discussed at meetings to be disclosed**

S.5.65 (1) A member who as an interest in any matter to be discussed at a Council or Committee meeting that will be attended by the member must disclose the nature of the interest -

- (a) in a written notice given to the Chief Executive Officer before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

Penalty: \$10,000 or imprisonment for 2 years.

Meeting to be informed of disclosures

S.5.66 If a member has disclosed an interest in a written notice given to the Chief Executive Officer before a meeting then before the meeting -

- (a) the Chief Executive Officer is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) the person who is to preside at the meeting is to bring the notice to the attention of the persons who attend the meeting.

Disclosing members not to participate in meetings

S.5.67 A member who makes a disclosure under Section 5.65 must not -

- (a) preside at the part of the meeting relating to the matter; or
- (b) participate in, or be present during, any discussion or decision making procedure relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under Section 5.68 or 5.69.

Penalty: \$10,000 or imprisonment for 2 years.

Please refer to your Handbook for definitions of interests and other detail.



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U21/0565 – 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.
 Responsible Officer : Mark Scarfone
 Acting Manager Statutory Planning
 Previous Items : DA-2019-1200/A – Amendment to a Two Storey Single Dwelling

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>

U21/0565 – AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT 802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (REC) (ATTACHMENT)**KEY ISSUES / SUMMARY**

- Development approval is sought for amendments to a two storey single house 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 (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 objecting to the proposed site works along the north-eastern lot boundary, building bulk and visual privacy were received.
- 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 conditional conditions.



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



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

A copy of the plans forms part of the attachments to the Agenda which were distributed to Elected Members on Friday, 16 July 2021.

DETAIL

In March 2021, site works occurred at the subject property where additional retaining walls and fill was added to the site resulting in visual privacy concerns from the northern neighbour. In response to concerns raised to the City, compliance action was commenced against the owner of No. 10D Birdwood Circus, Bicton.

Subsequently, a development application was lodged for amendments to the two storey single dwelling at Lot 802 (10D) Birdwood Circus, Bicton.

This application seeks to raise the ground levels and add a screening structure which will improve the visual privacy of the adjoining dwelling.

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 (LPP3.1). A performance assessment is required in respect of the matters listed below.

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State Planning Policy 7.3 Residential Design Codes/LPP3.1

Design Element	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 1.93m 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.

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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 from one land owner received.

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

The applicant provided revised plans in response to concerns raised and proposes a screen wall 0.4m from the northern lot boundary to reduce the impact of overlooking onto the northern neighbour. The revised plans were provided to the adjoining landowner who confirmed the original objection still stands.

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

Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
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.



U21/0565 – AMENDMENT TO SINGLE HOUSE (SITE WORKS AND SCREENING) – LOT 802 (10D) BIRDWOOD CIRCUS, BICTON WA 6157 (REC) (ATTACHMENT)

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.

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 is located at 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 pool area. The proposal will overshadow the northern neighbour;
- The lot boundary wall is setback 0.4m from the northern lot boundary of the subject site to try and 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.
- The screen wall length and height are the minimum required to provide a reasonable level of privacy to the adjoining properties secondary living space. 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.



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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 minor in its appearance that 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 proposed dwelling meets the deemed-to-comply criteria from the R-codes for solar access and ventilation. Therefore access to direct sunlight and ventilation on the adjoining northern property is not restricted;
- The proposed site works respond to the natural contours of the site, and are required as the site slopes by approximately 5 metres from the street to the rear lot boundary. The proposed levels and associated fill and retaining wall 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 proposed 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
- Overall the retaining wall is compliant with the deemed-to-comply criteria from the Residential Design Codes, the fill associated with the retaining creates an overlooking variation towards the northern neighbour where by the northern neighbour is able to see the occupants of the subject site. However this has been addressed by the addition of a screen wall and is discussed further below.



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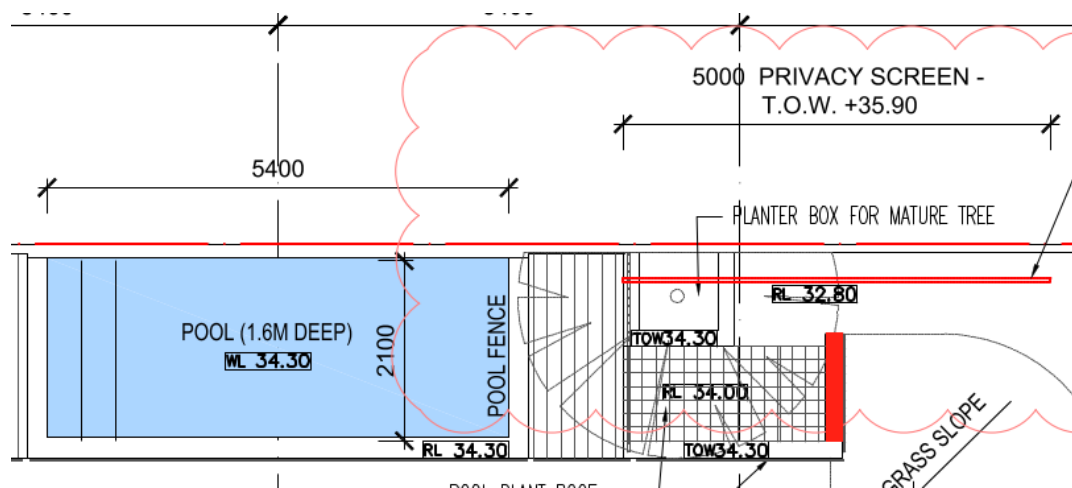


Figure 4 – Blade wall location shown in red

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 proposed screen wall is considered acceptable as described above 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 space and the majority of the pool area are maintained as private spaces.
- The adjoining property to the north is designed with its primary outdoor living area orientated to the northern side of the dwelling which has no interface with the subject property. The master bedroom on the southern side of the adjoining property does not have an interface with the subject property's design and only has highlight windows facing south. All major openings facing east towards the swimming pool, or north towards the alfresco. The addition of the screen wall restricts views into adjoining property and ensures that the view is on an oblique angle minimising adverse overlooking impacts; and

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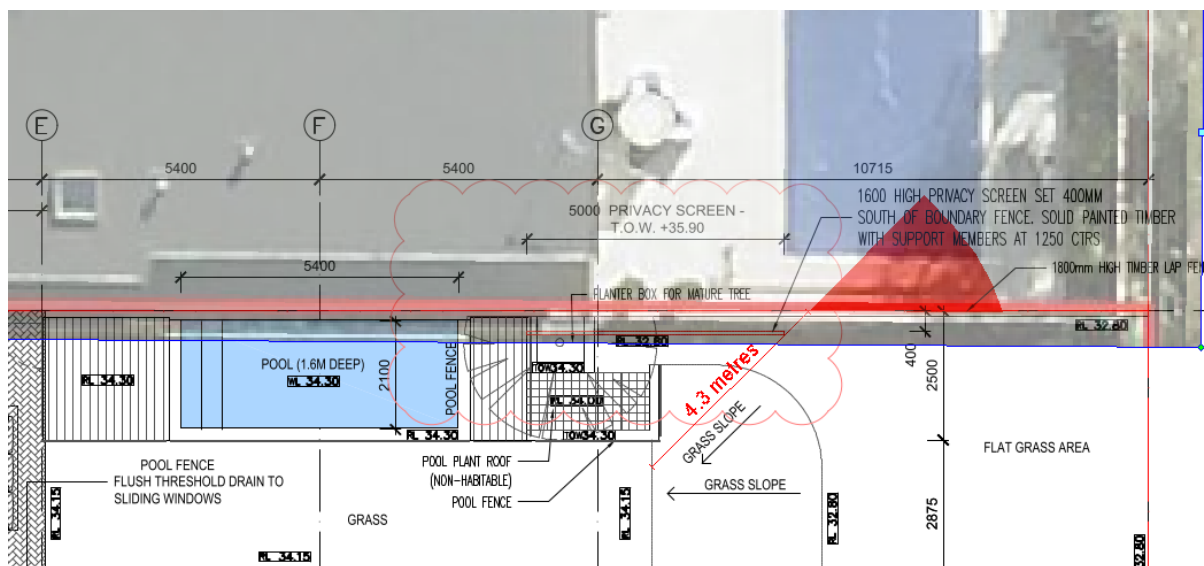


Figure 5 – Screen wall showing detail of restricted cone of vision

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

This application is proposed to be approved under delegation through the Development Advisory Unit (DAU) process.

Should Elected Members have an alternative view, the DAU 'call-up' procedures provide an opportunity to call this matter up for formal Council consideration.

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 is considered to be an acceptable outcome. Given the design principle assessment, it is concluded that that the development is acceptable, and is recommended for approved subject to the following conditions.

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OFFICER RECOMMENDATION**APPROVAL**

This Approval to Commence Development is approved 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.**