



SHIRE OF PEPPERMINT GROVE

ATTACHMENTS

Special Council Meeting

12th September 2023

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Ordinary Council Meeting

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- Landscaping Treatment Submission - Allerding and Associates
- Stewarts Boundary Suggestion - Grounds Kent Architects
- Site Plan with Shire Hatching

8.1.2 12 The Esplanade – Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing)

ATTACHMENT DETAILS

Attachment No	Description
Attachment 1	Development Application Submissions and Drawings
Attachment 2	Summary Table of Design Modifications
Attachment 3	Comparison Drawings of Design Modifications

Voting Requirement	:	Simple Majority
Location / Property Index	:	12 The Esplanade, Peppermint Grove
Application Number	:	DA2022/00029
LPS No 4 Zoning	:	Residential R10
Land Use	:	Single House
Lot Area	:	1597m ²
Disclosure of any Interest	:	Nil.
Previous Items	:	Item 8.1.1, 28 February 2023 Item 8.1.4, 23 August 2022 Item 7.1, 10 December 2019 Item 8.1.3, 23 July 2019
Applicant	:	Planning Solutions
Owner	:	Theresa Lynn Smith
Assessing Officer	:	Mr J Gajic
Authorising Officer	:	Mr J. Gajic

PURPOSE OF REPORT

To inform the Council's reconsideration at the direction of the State Administrative Tribunal (SAT) of a development application not supported by Council at the February Ordinary Council Meeting (OCM).

SUMMARY AND KEY ISSUES

- The place is listed in the Municipal Heritage List (category 1).
- The broad concept for conservation for heritage places in the Burra Charter is to *do as much as necessary to care for the place and to make it usable, but otherwise change as little as possible so that its heritage significance is retained.*
- This report should be read in conjunction with previous items listed above that provide a chronology of previous development application determinations.
- In August 2022 Council approved alterations and additions to the heritage house and, in doing so, annexed the proposed site works and the street wall that were not supported.

- In February 2023 the application for site works and the street wall was assessed to constitute a minor variation to the initial design and refused on the same grounds that warranted their earlier annexation.
- The proponent sought a review of Council's refusal at the SAT and a mediation process ensued.
- SAT Member Rochelle Lavery (Member Lavery) has ordered that the Shire reconsider amended plans with further revisions to terracing to the southeast of the subject site and the provision of a detailed landscaping plan.

LOCATION

12 The Esplanade, Peppermint Grove.

BACKGROUND

There is a three (3) metre crossfall along the 25m frontage of the subject site and significant crossfall for adjoining properties. This section of The Esplanade is significantly elevated above Freshwater Bay.

The Council has considered several applications in recent years pertaining to alterations and additions and restoration on the subject site. An approval was granted in August 2022 for alterations and additions to the heritage house. The site works and street wall component of the proposal was not supported at that time and were annexed from the approval with a conditional requirement to lodge a new standalone application for that component that better respected the natural topography and local planning policy framework.

Application DA2022/00029 was subsequently lodged specific to the annexed siteworks and street wall. Council again did not support this aspect of the development and formally refused DA2022/00029 at the 28th February Ordinary Council Meeting (OCM).

An application for review DR 68 of 2023 was lodged to the SAT on 26 April with an initial Directions Hearing held on 30th June. Two subsequent Mediation Sessions have been held. In response to the mediation process SAT Member Lavery has ordered that the proponent make further revisions to their proposal and that Council reconsider the application at the 22 August OCM.

At the second Mediation Session held on 6 July Member Lavery it was accepted by the Shire that the street wall was now satisfactory and that matters of vehicular access was not being contested. The focus of the mediation related to the impact of the proposed site works on the southern neighbour with specific regard to the extent of fill and resultant building bulk, solar access and visual privacy concerns.

CONSULTATION

The Directions Hearing was attended by representatives of the Applicant (Theresa Lynn Smith) and Respondent (Shire of Peppermint Grove). It was agreed that mediation was warranted.

The initial mediation session was held on 26th May on site and attended by Councillors, and representatives for both the Applicant and the southern neighbours. This session enabled Member Lavery to attend both the subject site and view the proposed development from the perspective of the neighbour's substantially constructed house. Steve Allarding and Associates presented on behalf of the neighbour and distributed plans for an alternative design response that was not supported by the Applicant. The mediation then continued between the Applicant and their representatives Planning Solutions, and the Shire who were represented by Elected Members and Shire staff. Member Lavery directed that both parties attend a second mediation session.

The second mediation session was held on 6 July at 565 Hay Street. The Shire sought two clear design outcomes. Firstly, a reduction in height of approximately 1250mm to the driveway in the vicinity of the landing to accord with the current ground levels. This reduction would otherwise result in the finished design levels responding to the natural features of the site and requiring less fill as required by the design principles contained in the Residential Design Codes of Western Australia (R-Codes). Secondly, that retaining walls behind the nine (9) metre street setback line to comply with the deemed-to-comply requirements contained in the R-Codes. The deemed-to-comply requires retaining walls to be rounded up to the nearest 500mm and then offset that height from the lot boundary.

The Applicant's representatives rejected a lowering of the driveway and asserted that the deemed-to-comply requirement for the setback of retaining walls from the southern lot boundary would serve no practical planning purpose. The Applicant conceded that fill associated with terracing in the south-eastern corner of the property could be further stepped down from the levels that had been slightly modified following the initial Mediation Session. Member Lavery ordered that the Applicant provide to the Respondent by 28th July further revised plans that had regard to the fore-mentioned concession and a detailed landscaping plan for Council reconsideration on or before 6 October.

Revised plans for Council reconsideration were submitted on 21st July and a Concept Landscaping Plan on 27th July. Planning Solutions were contacted to seek confirmation whether their client was amenable to a notification under the Transfer of Land Act be placed on title to provide greater transparency regarding constraints pertaining to the future erection of dividing fencing along the southern boundary and the requirement to maintain landscaping in accordance with an approved plan.

Selected plans from the amended plan were provided to the southern neighbour on 27th July as part of the readvertising process. Advertising closed on 10th August 2023. Any submission(s) received after the drafting of this report will be presented to Council at the Agenda Briefing Session. If warranted, this officer report will be amended.

The Shire's contracted building surveyors at the City of Nedlands have confirmed that a barrier along the southern boundary was not required under the Building Code on the grounds that the landscaped area adjacent to the southern property boundary did not constitute an accessway.

STRATEGIC IMPLICATIONS

There are no Strategic Plan implications evident at this time.

LOCAL PLANNING POLICY IMPLICATIONS

The proposal does not comply with relevant Local Planning Policy.

STATUTORY IMPLICATIONS

There are no statutory implications evident at this time.

FINANCIAL IMPLICATIONS

There are no financial implications evident at this time.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications evident at this time.

SOCIAL IMPLICATIONS

There are no social implications evident at this time.

OFFICER COMMENT

The proponent has made several concessions from the largely unchanged proposal refused by Council at the 28 February OCM . These concessions are now suitably captured in the attached plan set, summary table and comparison drawings.

The design changes principally relate to fencing (the street wall and fence, and the dividing fence on the southern boundary), and terracing to the south-east corner of the site and extent of fill in the vicinity of the southern boundary.

The street wall has been reduced in height to not exceed 2.1m above the natural ground level and the 90 per cent open aspect steel railing fencing above reduced to a height of 700mm for that extent to which the sliding access gate will be positioned when open. The resultant combined wall and fence height now varies between 1.9m to 2.7m above the natural ground level. The access gate and open aspect railing fencing is consistent in appearance and materials and will provide a contrast to the street wall stonework. The street wall, access gate and open aspect railing fencing has been assessed to satisfy the applicable design principles contained in the R-Codes, and the planning policy framework.

The previously proposed 1000mm and 1.8m high brushwood dividing fencing along the southern boundary has been deleted to reduce the impact of bulk and scale on the southern neighbour. The landscaping plan has designated *Sweet Viburnum* (2m – 7m flowering

evergreen shrub) and *Swamp Lilly* (1.5m – 3m flowering evergreen shrub) along the boundary at spacings that upon maturity will provide a solid screen and restrict access. Concerns raised pertaining to the enforcement of restricting dividing fencing along the southern boundary were dismissed by Member Lavery. Nonetheless, it is paramount that any condition of approval restricting subsequent as-of-right development or imposing ongoing obligations are sufficiently transparent for future owners and Development Services staff. A section 70A notification under the Transfer of Land Act is recommended to be placed on title to achieve the necessary transparency and potentially mitigate costly enforcement.

The extent of fill has been reduced generally to the southeast corner of the site. The second terrace at the 22.30m level has been extended along the southern boundary and subsequently widened 500mm following the second Mediation Session. This has resulted in fill along the southern boundary 6m to 12m from The Esplanade being reduced by 1050mm. A fourth terrace has additionally been introduced at the 22.80m level adjacent to the pedestrian path landing. This has resulted in a 550mm reduction of fill and further stepping of the forecourt from the southern boundary.

It remains the officer's assessment that the site works have not adequately considered and responded to the natural features of the site. The site works require extensive fill resulting in the finished levels not respecting the natural ground level at the southern lot boundary.

Notwithstanding the officer's assessment, the clear direction of Member Lavery must be afforded due regard. Regard must also be afforded to the concessions the proponent has made to their original design, and the disruption to service delivery associated with a Full Hearing

Member Lavery was of the clear view that the design principles for site works contained in the Residential Design Codes of WA have been satisfied, and that the southern neighbour will not be adversely impacted to the extent that the application should be refused. It was Member Lavery's view that matters of building bulk were not apparent due to the extent of fill not being visible when viewed at ground level from the southern neighbour's property and that dividing fencing could be conditionally restricted. Member Lavery has made it clear that should the matter progress to a Full Hearing the negotiated lowered terracing in conjunction with landscaping will be assessed to adequately protect visual privacy, as such landscaping will restrict access to the southern boundary. The practicality of enforcing landscaping conditions and reviewing previous approvals in order to provide advice was discussed. Whilst Member Lavery was largely dismissive of these concerns, it is the officer's view that a notification on title is necessary to afford transparency to any such conditions.

As previously reported, the proponent's engineering assessment for works within The Esplanade including the verge has been independently verified by Porter Consulting Engineers (Porter). It is the view of Porter that the proposed design will need to be refined to align with broader traffic works programmed for that section of The Esplanade and better facilitate movements across the adjacent median strip. A condition of any subsequent development approval will need to confirm project management and detailed design acceptance arrangements, and ensure all design, direct project management, and traffic management costs are wholly borne by the proponent/landowner. Relocating the existing crossover will cause a degree of disruption to road users and pedestrians. Indirect project management costs will likely be incurred by the Shire.

It remains the planning assessment that activation of the front garden and improved access to the main front entry of the house is not in itself sufficient grounds to support siteworks requiring such significant fill, or to modify infrastructure within the road reservation where a functional crossover is already in place. Nevertheless, the Shire and the proponent have through mediation enabled a greatly improved design to now come before Council. The street wall and fence and broader relationship of the development with the street is now acceptable. Member Lavery has provided clear direction that it is likely that the Shire's refusal would be set aside at a Full Hearing. Should the matter proceed to a Full Hearing any further concessions may be limited and not outweigh the cost of resourcing the appeal and disruption to service delivery.

OPTIONS

Council has the option of again refusing DA2022/00029 substantively on the same grounds as contained in the Council Decision for Item 8.1.1, in the 28 February 2023 OCM and proceeding to a Full Hearing at the SAT. Should the Council decide that the application be refused, due regard should be afforded to the street wall and fence modifications and reduced terrace levels to the southeast corner of the site. These revisions lessen perceptions of bulk and improve visibility of the house when viewed from the street. It has been accepted that the existing non-compliant street wall is out of character with the heritage place and far more imposing on the streetscape.

Should Council seek to refuse DA2022/00029 the following grounds are provided:

1. The Proposal is inconsistent with the R-Codes Objectives of Part 5 Section 5.2 Streetscape which requires consideration of the following:
 - a. *To contribute towards the character of streetscapes including their views and vistas and provides security for occupants and passers-by, a landscape to ensure adequate shade, privacy and open space for occupants, and an attractive setting for the collection of buildings.*
2. The Proposal is inconsistent with the R-Codes Objectives of Part 5 Section 5.3 Site Planning and Design which requires consideration of the following:
 - a. *To ensure each development makes a contribution to a streetscape by respecting the natural topography for each site, adjoining properties and the amenity of the locality.*
3. The Proposal is inconsistent with the R-Codes Design Principles of Element 5.3.7 – Site Works.
4. The proposal is inconsistent with the R-Codes Design Principles of Element 5.4.1 – Visual Privacy.
5. The Proposal is inconsistent with the R-Codes Design Principles of Element 5.2.5 – Sight lines.

6. The development is inconsistent with the aims and provisions of the Local Planning Scheme No. 4 pursuant to Clause 67(2)(a) which seeks to preserve the amenity of the Shire and the quality and characteristics of its streetscapes.
7. The siteworks are inconsistent with the policy principles of State Planning Policy 2.10 Swan-Canning River System pertaining to design and development. Specifically, the siteworks are not consistent in the context of its setting and the characteristics of the site.
8. The submissions from the southern neighbour raise relevant planning concerns including headlight spill which is not specifically addressed by local planning policy.
Council has the alternative option of conditionally approving DA2022/00029 in light of the negotiated modifications and clear indication from Member Lavery that at a Full Hearing the SAT would set aside any refusal on the grounds of bulk and visual privacy impacts on the southern neighbour.

OFFICER RECOMMENDATION – ITEM NO 8.1.2

That Council approve the amended plans submitted on 21 and 27 July 2023 in response to State Administrative Tribunal mediation associated with DA2022/00029 for Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing) lodged on subject to the following conditions:

1. The approved building works and layout as identified on the endorsed plans together with any requirements and annotations detailed thereon shall not be altered without the prior written consent of the CEO.
2. Prior to this permit having force or effect, revised construction and engineering drawings and a traffic management plan associated with the relocation of the existing crossover and modifications to The Esplanade median strip must be submitted for the approval of the CEO. The detailed drawings and traffic management plan shall be verified by Porter Consulting Engineers (the Shire’s contracted engineers) and provide for all vehicle manoeuvres and accord with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications. Suitable controls shall be implemented to ensure that at least one lane of The Esplanade always remains open to vehicular traffic.

Once approved, the detailed and engineering drawings and a traffic management plan shall form part of this permit.

3. Prior to endorsement of the detailed engineering plans and traffic management plan the proponent must pay the Shire’s costs for Porter Consulting Engineers to review the Pertias plans dated 10/02/2023, and all verification costs associated with the review of revised construction and engineering drawings and the assessment of the traffic management plan.
4. Prior to this permit having force or effect a Section 70A notification under the Transfer of Land Act shall be placed on the land title notifying prospective

purchasers of the land of the requirement to adhere with the approved landscaping plan, and restrictions pertaining to dividing fencing along the southern property boundary.

5. Prior to this permit having force or effect the applicant shall submit for approval and to the satisfaction of the CEO a Construction Management Plan (CMP) binding all contractors working on the site.

Once approved, the CMP shall form part of this development approval.

6. Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) landscaping shall be established in accordance with the approved landscaping plan to the satisfaction of the CEO. The landscaping shall thereafter be maintained in a healthy condition. Dead or diseased plants shall be replaced as soon as practical.
7. Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) the redundant vehicular crossover must be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare reinstated in accordance with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications.
8. Prior to removal of the juvenile verge tree to facilitate construction of the relocated crossover, a replacement *Agonis flexuosa* (WA Weeping Peppermint) shall be established in accordance with the Tree Planting Specification contained in the Shire's Public Tree Management Strategy 2022. Once established, the replacement Peppermint tree shall be maintained in a healthy condition at no cost to the Shire for a period of twelve (12) month to the satisfaction of the CEO.
9. In accordance with the Shire of Peppermint Grove Local Planning Policy 9 – Development Bonds a \$5000 development bond must be submitted to the Shire prior to the issuance of a Building Permit to ensure any damage to public property caused by building works is rectified and the satisfactory completion of the development including works within the road reservation.
10. All works identified on the endorsed plans shall be wholly located within the lot boundaries of the subject site.
11. The ongoing use of the site and approved development works shall not cause erosion or degradation to the subject or surrounding land. Should the CEO deem it necessary to undertake mitigation works; plans, specifications and work schedules may be required to be submitted and the works undertaken by the proponent at no cost and to the satisfaction of the CEO.
12. The construction works shall only occur between the hours of 7.00am and 7.00pm, Monday to Saturday, and not at all on Sunday or Public Holidays. Any

variation to the above hours must be identified in an approved Construction Management Plan or, the prior written consent of the CEO otherwise obtained.

13. This approval shall remain current for development to substantially commence within two years of the date of issue of this notice. All works associated with this approval (once commenced) shall be completed before the end of the third year from the date of issue of this notice.

Advice Notes.

1. In approving this application Council has assessed the proposal against Local Planning Scheme No. 4, Local Planning Policies and the Design Principles of the Residential Design Codes of Western Australia and has and has exercised its discretion in relation to the following matters:
 - Site works.
 - Street walls and fences.
 - Sightlines.
2. This is a Development Approval only and does not remove the responsibility of the proponent/owner to comply with all relevant building, health, engineering or Local Laws requirements of the Shire, any obligations under the Environment Protection Act 1986, or the requirements of external agencies.
3. In respect to condition 2, Porter Consulting Engineers have recommended that in lieu of *relaying existing pavers to suit proposed levels* as stated in drawing CI-03.50 “Re-grading existing raised slow point” that the surface of the plateau be relayed with red asphalt to reduce maintenance. Prior to preparing revised construction and engineering drawings you are encouraged to make contact with the Shire’s Manager of Infrastructure Services.
4. In respect to condition 2, the traffic management plan is to be prepared by a registered Roadworks Traffic Manager.
5. In respect to condition 3, the Shire will provide tax invoices from Porter Consulting Engineers and may charge an administration fee for project management services.
6. In respect to condition 4, the proponent is encouraged to make contact with the Shire’s Manager of Development Services to confirm wording of the notification prior to preparing your Form N1 for local government attestation.
7. In respect to condition 5, the Attention is drawn to ‘Guideline for managing impacts of dust (www.wa.gov.au) (DEC, March 2011)’ and, specifically, Appendix 1 Site risk assessment/classification for activities generating uncontaminated dust. The Shire will accept the provisions and contingencies arrangements for a medium risk activity as outlined on page 38 of the Guideline.

8. In respect to condition 8, a tree protection fence for the replacement Peppermint tree must be installed on the verge at the no cost to the Shire. The type of fencing must be in line with the Australian Standard for Protection of Trees on Development Sites AS4970-2009. At a minimum the tree protection zone fencing will cover 2m x 2m around the trunk.
9. No building works are to be undertaken prior to the issue of a Building Permit. Your Building Application plan set must align with the plans approved as part of any Development Approval granted by the Shire in relation to the street wall and retaining walls the subject of this Permit.
10. Building Applications will be placed on hold unless the plan set include duplicates of those endorsed as part of any corresponding Development Approval, or the applicant certifies that the plan set is consistent with those endorsed as part of any corresponding Development Approval or demonstrates to the satisfaction of the CEO that any variations are trivial.
11. In respect to Development Bonds, the Shire requires the applicant to arrange for the inspection of all Shire infrastructure including the street verge adjacent to the property post completion to confirm the satisfactory completion of works and determine any necessary remediation of impacts on public infrastructure and lands. Should any necessary remediation works not be satisfactorily completed by the proponent in a reasonable time frame, funds from the bond may be used to satisfactorily complete the works. Project management and/or administrative fees may also apply.
12. In respect to Development Bonds, should the situation on the street verge be dangerous in the opinion of the CEO, funds from the bond may be used to make the site safe or to a standard under any approved Construction Management Plan. Project management and/or administrative fees may also apply.
13. The Shire does not warrant or exempt the applicant from any civil claim(s) arising from damage to private property and associated with the approved works.
14. Unless otherwise varied by a permit under the Activities in Thoroughfares and Public Places and Trading Local Law 2021 or an approved Construction Management Plan, all construction materials associated with the approved works shall be wholly stored within the subject land.
15. The prior written approval of CEO is required for the temporary closure of any footpath, road or laneway.
16. The proponent is responsible for ensuring all contractors adhere to the construction hours. In the event of enforcement action being undertaken, infringement notices will be issued to the proponent.

17. It is the responsibility of the proponent to search the title of the property to ascertain the presence of any easements that in any case must not be built upon without the prior consent of the affected party.
18. During the construction stage adjoining lots are not to be entered without the prior written consent of the affected owner(s).
19. In respect to condition 13, a further two years is added to the decision date by which the development shall be substantially commenced, pursuant to Schedule 4, Clause 4.2 of the Clause 78H Notice of Exemption from Planning Requirements During State of Emergency signed by the Minister for Planning on 8 April 2020 (as amended).
20. Should the proponent and/or owner be aggrieved by this decision, or any of the conditions imposed, there is a right of review under the *Planning and Development Act 2005*. An application for review must be submitted in accordance with Part XIV of the *Planning and Development Act 2005* within 28 days of the date of this decision to: the State Administrative Tribunal, GPO Box U1991, Perth, WA 6845. Further information regarding this right of review is available on the SAT website www.sat.justice.wa.gov.au or by phoning 9219 3111 or 1300 306 017.

COUNCIL MOTION – ITEM NO 8.1.2

Moved Cr Hohnen

Seconded Cr Horrex

That Council approve the amended plans submitted on 21 and 27 July 2023 in response to State Administrative Tribunal mediation associated with DA2022/00029 for Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing) lodged on subject to the following conditions:

1. Prior to this permit having force or effect amended plans generally in accordance with the submitted plans submitted on 21 and 27 July 2023 shall be submitted to the satisfaction of the CEO and endorsed. The amended plans shall have further regard to the following:
 - (i) The extent of the driveway and associated terrace at the 23.35m and 23.45m levels hatched with red ink on plans modified by the Shire shall be lowered to no greater than the 22.75m level.
 - (ii) A physical barrier (such as a non-mountable kerb) shall be installed along the south side of the driveway to delineate and prevent access into the adjacent landscaping.

Once endorsed, the revised plan set shall form part of this permit.

2. The approved building works and layout as identified on the endorsed plans together with any requirements and annotations detailed thereon shall not be altered without the prior written consent of the CEO.
3. Prior to this permit having force or effect, revised construction and engineering drawings and a traffic management plan associated with the relocation of the existing crossover and modifications to The Esplanade median strip must be submitted for the approval of the CEO. The detailed drawings and traffic management plan shall be verified by Porter Consulting Engineers (the Shire's contracted engineers) and provide for all vehicle maneuvers and accord with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications. Suitable controls shall be implemented to ensure that at least one lane of The Esplanade always remains open to vehicular traffic.

Once approved, the detailed and engineering drawings and a traffic management plan shall form part of this permit.

4. Prior to endorsement of the detailed engineering plans and traffic management plan the proponent must pay the Shire's costs for Porter Consulting Engineers to review the Pertias plans dated 10/02/2023, and all verification costs associated with the review of revised construction and engineering drawings and the assessment of the traffic management plan.
5. The following requirements apply to landscaping and for dividing fencing along the southern property boundary:
 - (i) Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) the landscaping shall be established and, thereafter, be maintained in accordance with the endorsed plan to the satisfaction of the CEO. Dead or diseased plants shall be replaced as soon as practical.
 - (ii) Spray drift must be contained within the subject site.
 - (iii) Dividing fencing shall not be erected where indicated by red ink on the endorsed site plan without the prior written consent of the CEO.
 - (iv) Prior to this permit having force or effect a Section 70A notification under the Transfer of Land Act shall be placed on the land title notifying prospective purchasers of the land of the requirement to adhere with the approved landscaping plan, and restrictions pertaining to dividing fencing along the southern property boundary.

6. Prior to this permit having force or effect the applicant shall submit for approval and to the satisfaction of the CEO a Construction Management Plan (CMP) binding all contractors working on the site.

Once approved, the CMP shall form part of this development approval.

7. Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) the redundant vehicular crossover must be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare reinstated in accordance with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications.
8. Prior to removal of the juvenile verge tree to facilitate construction of the relocated crossover, a replacement *Agonis flexuosa* (WA Weeping Peppermint) shall be established in accordance with the Tree Planting Specification contained in the Shire's Public Tree Management Strategy 2022. Once established, the replacement Peppermint tree shall be maintained in a healthy condition at no cost to the Shire for a period of twelve (12) months to the satisfaction of the CEO.
9. In accordance with the Shire of Peppermint Grove Local Planning Policy 9 – Development Bonds a \$5000 development bond must be submitted to the Shire prior to the issuance of a Building Permit to ensure any damage to public property caused by building works is rectified and the satisfactory completion of the development including works within the road reservation.
10. All works identified on the endorsed plans shall be wholly located within the lot boundaries of the subject site.
11. The ongoing use of the site and approved development works shall not cause erosion or degradation to the subject or surrounding land.

Should the CEO deem it necessary to undertake mitigation works; plans, specifications and work schedules may be required to be submitted and the works undertaken by the proponent at no cost and to the satisfaction of the CEO.

12. The construction works shall only occur between the hours of 7.00am and 7.00pm, Monday to Saturday, and not at all on Sunday or Public Holidays. Any variation to the above hours must be identified in an approved Construction Management Plan or, the prior written consent of the CEO otherwise obtained.
13. This approval shall remain current for development to substantially commence within two years of the date of issue of this notice. All works

associated with this approval (once commenced) shall be completed before the end of the third year from the date of issue of this notice.

Advice Notes.

1. In approving this application Council has assessed the proposal against Local Planning Scheme No. 4, Local Planning Policies and the Design Principles of the Residential Design Codes of Western Australia and has and has exercised its discretion in relation to the following matters:
 - Site works.
 - Street walls and fences.
 - Sightlines.
2. This is a Development Approval only and does not remove the responsibility of the proponent/owner to comply with all relevant building, health, engineering or Local Laws requirements of the Shire, any obligations under the Environment Protection Act 1986, or the requirements of external agencies.
3. In respect to condition 3:
 - (i) Porter Consulting Engineers have recommended that in lieu of *relaying existing pavers to suit proposed levels* as stated in drawing CI-03.50 “Re-grading existing raised slow point” that the surface of the plateau be relayed with red asphalt to reduce maintenance. Prior to preparing revised construction and engineering drawings you are encouraged to make contact with the Shire’s Manager of Infrastructure Services.
 - (ii) The traffic management plan is to be prepared by a registered Roadworks Traffic Manager.
 - (iii) The Shire will provide tax invoices from Porter Consulting Engineers and may charge an administration fee for project management services.
4. In respect to condition 5:
 - (i) The proponent is encouraged to make contact with the Shire’s Manager of Development Services to confirm wording of the notification prior to preparing your Form N1 for local government attestation.
 - (ii) The endorsed landscaping plan shall not be modified without the prior written consent of the CEO.
 - (iii) Spray drift includes both agricultural chemicals and reticulation.
5. In respect to condition 6, your Attention is drawn to [‘Guideline for](#)

managing impacts of dust (www.wa.gov.au) (DEC, March 2011)' and, specifically, Appendix 1 Site risk assessment/classification for activities generating uncontaminated dust. The Shire will accept the provisions and contingencies arrangements for a medium risk activity as outlined on page 38 of the Guideline.

6. In respect to condition 8, a tree protection fence for the replacement Peppermint tree must be installed on the verge at no cost to the Shire. The type of fencing must be in line with the Australian Standard for Protection of Trees on Development Sites AS4970-2009. At a minimum the tree protection zone fencing will cover 2m x 2m around the trunk.
7. No building works are to be undertaken prior to the issue of a Building Permit. Your Building Application plan set must align with the plans approved as part of any Development Approval granted by the Shire in relation to the street wall and retaining walls the subject of this Permit.
8. Building Applications will be placed on hold unless the plan set include duplicates of those endorsed as part of any corresponding Development Approval, or the applicant certifies that the plan set is consistent with those endorsed as part of any corresponding Development Approval or demonstrates to the satisfaction of the CEO that any variations are trivial.
9. In respect to Development Bonds, the Shire requires the applicant to arrange for the inspection of all Shire infrastructure including the street verge adjacent to the property post completion to confirm the satisfactory completion of works and determine any necessary remediation of impacts on public infrastructure and lands. Should any necessary remediation works not be satisfactorily completed by the proponent in a reasonable time frame, funds from the bond may be used to satisfactorily complete the works. Project management and/or administrative fees may also apply.
10. In respect to Development Bonds, should the situation on the street verge be dangerous in the opinion of the CEO, funds from the bond may be used to make the site safe or to a standard under any approved Construction Management Plan. Project management and/or administrative fees may also apply.
11. The Shire does not warrant or exempt the applicant from any civil claim(s) arising from damage to private property and associated with the approved works.
12. Unless otherwise varied by a permit under the Activities in Thoroughfares and Public Places and Trading Local Law 2021 or an approved Construction Management Plan, all construction materials associated with the approved works shall be wholly stored within the subject land.

13. Prior written approval of the CEO is required for the temporary closure of any footpath, road or laneway.
14. The proponent is responsible for ensuring all contractors adhere to the construction hours. In the event of enforcement action being undertaken, infringement notices will be issued to the proponent.
15. It is the responsibility of the proponent to search the title of the property to ascertain the presence of any easements that in any case must not be built upon without the prior consent of the affected party.
16. During the construction stage adjoining lots are not to be entered without the prior written consent of the affected owner(s).
17. In respect to condition 13, a further two years is added to the decision date by which the development shall be substantially commenced, pursuant to Schedule 4, Clause 4.2 of the Clause 78H Notice of Exemption from Planning Requirements During State of Emergency signed by the Minister for Planning on 8 April 2020 (as amended).
18. Boundary walls performing a retention function shall be suitably designed and constructed to prevent water penetration and articulated as part of your Building Application.
19. Should the proponent and/or owner be aggrieved by this decision, or any of the conditions imposed, there is a right of review under the *Planning and Development Act 2005*. An application for review must be submitted in accordance with Part XIV of the *Planning and Development Act 2005* within 28 days of the date of this decision to: the State Administrative Tribunal, GPO Box U1991, Perth, WA 6845. Further information regarding this right of review is available on the SAT website www.sat.justice.wa.gov.au or by phoning 9219 3111 or 1300 306 017.

PROCEDURAL MOTION

Moved: Cr Farley

Cr Dawkins

That the matter be deferred pending clarification on landscaping and levels.

CARRIED 7/0



MRS Form 1 Application for Planning Approval

Owner/s details

Registered proprietor/s (landowner/s) or the authorised agent's details **must** be provided in this section. If there are more than two landowners please provide all relevant information on a separate page. Signature/s must be provided by all registered proprietors or by an authorised agent. **Alternatively**, a letter of consent, which is signed by all registered proprietors or by the authorised agent, can be provided.

Full name Theresa Lynn Smith
 Company/agency (if applicable)
 ACN/ABN (if applicable)
 Postal address 12 The Esplanade
 Town/suburb Peppermint Grove Postcode 6011
 Signature  Date 20/10/2022
The landowner/s or authorised agent consents to the applicant submitting this application.
 Print name and position Theresa Lynn Smith, landowner (registered proprietor)
(if signing on behalf of a company or agency)

Applicant details

Name/company Planning Solutions
 Contact person Oliver Basson
 Postal address GPO Box 2709
 Town/suburb Cloisters Square PO Postcode 6850
 Phone (08) 9227 7970 Email admin@planningsolutions.com.au
 Applicant signature 
 Print name and position Oliver Basson, Senior Planner Date 28/10/2022
(if signing on behalf of a company or agency)

Property details

Certificate of title description of land:	Lot No 63	Location No
Plan or diagram 3783	Vol 1133	Folio 271
Certificate of title description of land:	Lot No	Location No
Plan or diagram	Vol	Folio

Title encumbrances (e.g. easements, restrictive covenants) Refer to Certificate of Title
 Locality of development (house no., street name, suburb, etc) 12 The Esplanade, Peppermint Grove
 Nearest street intersection The Esplanade / Forrest Street
 Existing building/land use Single House
 Description of proposed development and/or use Amendment to existing development approval - Additions and Alterations to a Single House (site works and landscaping).
 Nature of any existing buildings and/or use Residential
 Approximate cost of proposed development (excl. gst) \$ N/A - amendment to existing approval
 Estimated time of completion Following Development Approval

Office use only	
Acceptance officer's initials _____	Date received _____
Local government reference No. _____	Commission reference No. _____

The information and plans provided with this application may be made available by the WAPC for public viewing in connection with the application.

Additional Information to be provided on the MRS Form 1

- Is the development within a designated Bushfire Prone Area? ✓ Yes No
- If 'yes', have bushfire hazard issues been identified and addressed (e.g. by providing a BAL Assessment(s) or BAL Contour Map and a Bushfire Management Plan with the application)? Yes No
✓ N/A
- If NA is selected and the development is in a designated bushfire prone area then a short statement justifying why SPP 3.7 does not apply should be included.
- Does your application require determination by a Development Assessment Panel? (DAP) Yes ✓ No
- Please refer to the following website for DAP requirements: www.dplh.wa.gov.au/daps
- If yes, please complete DAP Application Form as per DAP requirements.

Checklist (supporting information)

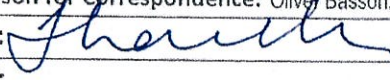
Please complete the checklist below and ensure that all the relevant information is provided with the application.

1. Completed Metropolitan Region Scheme (MRS) Form 1
2. Plans at a scale not less than 1:500 (A3) showing:-
 - (i) the location of the site including street names, lot number(s), north point and the dimensions of the site;
 - (ii) the existing and proposed ground and floor levels over the whole of the land that is the subject of the application, including details of proposed cut and fill, and retaining walls;
 - (iii) the location, metric dimensions, materials, finishes and type of all existing and proposed structures, including services, on the land that is the subject of the application and all existing structures and vegetation proposed to be removed;
 - (iv) the existing and proposed use of the site, including proposed hours of operation and buildings to be erected on the site;
 - (v) the existing and proposed means of access and egress for pedestrians and vehicles to and from the site;
 - (vi) the location, number, dimensions and layout of all car parking spaces intended to be provided, including provision for the disabled;
 - (vii) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas;
 - (viii) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop those areas;
 - (ix) the nature and extent of any open space and landscaping proposed for the site; and
 - (x) proposed external lighting and signage.
3. Plans, elevations and sections, as appropriate, of any building or structure proposed to be erected or altered and of any building or structure it is intended to retain;
4. Any specialist studies that the responsible authority may require the applicant to undertake in support of the application such as traffic, heritage, environmental, engineering or urban design studies;
5. Any management plans the responsible authority may require to support or implement the application; and
6. Any other plan or information that the responsible authority may require to enable the application to be determined. This may include scale models or information in digital formats.

For additional information please refer to Development Control Policy 1.2
www.dplh.wa.gov.au/getmedia/37533b97-e0ad-4947-9d00-c4d62fa92746/DCP_1-2_general_principles



APPLICATION FOR DEVELOPMENT APPROVAL

OWNER DETAILS	
Name: Theresa Lynn Smith	
Address: 12 The Esplanade, Peppermint Grove	
	Postcode: 6011
PHONE	
Mobile:	Home:
Email: admin@planningsolutions.com.au	
Contact Person for Correspondence: Oliver Basson, Planning Solutions	
Signature: 	Date: 20-10-2022
Signature:	Date:
<small>The signature of owner(s) is required on all applications. This application will not proceed without that signature. For the purposes of signing this application an owner includes the persons referred to in the Planning and Development (Local Planning Scheme) Regulations 2015 clause 62(2)</small>	

APPLICANT DETAILS	
Applicant:	Owner <input type="checkbox"/> Other <input checked="" type="checkbox"/>
<i>If other please complete the details below</i>	
Name: Planning Solutions	
Address: GPO Box 2709 Cloisters Square PO	
	Postcode: 6850
ABN (If applicable):	
PHONE	
Mobile: 0433 745 682	Office: (08) 9227 7970
Email: admin@planningsolutions.com.au	
Contact Person for Correspondence: Oliver Basson, Senior Planner	
Signature: 	Date: 28/10/2022

PROPERTY DETAILS			
Lot No: 63		Street No: 12	
Street Name: The Esplanade			
Suburb: Peppermint Grove			
Nearest Street Intersection: The Esplanade / Forrest Street			
Title encumbrances (e.g. easements, restrictive covenants): Refer to Certificate of Title			
Location No:	Plan No:	Certificate of Title	
N/A	3783	Volume	Folio
		1133	271



PROPOSED DEVELOPMENT	
Nature of Development	<input checked="" type="checkbox"/> Works <input type="checkbox"/> Use <input type="checkbox"/> Works and Use
Description of Proposed works and/or use: Amendment to existing development approval - Additions and Alterations to a Single House (site works and landscaping).	
Nature of any existing buildings and/or use: Residential (Single House)	
Approximate cost of proposed development: N/A - amendment to existing approval	
Estimated completion date/project duration: Following development approval	

Separate Applications are Required for:

1. Fencing – Shire of Peppermint Grove Local Laws Relating to Fencing showing location, materials and height of all boundary fences.
2. Swimming Pools and Ornamental pool/ponds greater than 300mm in depth.
3. Floodlights.

Office Use Only

Accepting Officer: _____

Date Received: _____

Local Government Reference Number: _____

PS reference: 8214
Shire's references: DA2019/00016, DA2020/100013 and DA2022/00015

28 October 2022

Chief Executive Officer
Shire of Peppermint Grove
PO Box 221
Cottesloe 6911

Attention: Planning Services

Dear Sir/Madam,

**LOT 63 (12) THE ESPLANADE, PEPPERMINT GROVE
APPLICATION FOR APPROVAL TO COMMENCE DEVELOPMENT
AMENDMENT TO APPROVED ADDITIONS AND ALTERATIONS TO A SINGLE HOUSE AND OUTBUILDING**

Planning Solutions acts on behalf of Theresa Smith, the registered proprietor of Lot 63 (12) The Esplanade, Peppermint Grove (**subject site**). We are pleased to make this application for an amendment to the existing development approval, to modify the approved site works and landscaping generally contained within the front setback area to The Esplanade and along the southern lot boundary.

Regarding the above, please find enclosed:

1. The Shire of Peppermint Grove Development Application Form and Checklist, signed by the applicant/landowner.
2. The Metropolitan Region Scheme Form 1, signed by the applicant/landowner.
3. A copy of the amended Development Approval dated 2 September 2020 (**Attachment 1**).
4. A copy of the Development Approval dated 29 August 2022 (**Attachment 2**).
5. The development plans depicting the proposed works (modifications to the existing development approval), which generally include site works, retaining and landscaping (**Attachment 3**).
6. A copy of the Certificate of Title and Plan applicable to the subject site (**Attachment 4**).

Payment of the applicable development application fee in accordance with the Shire of Peppermint Grove's fee and charges schedule will be made following lodgement of the development application.

The following submission discusses various matters pertaining to the proposal, including:

- Background
 - Site details
 - Proposal
 - Town planning considerations
-
- We respectfully request the Shire of Peppermint Grove (Shire) grant approval to the proposed development.



Level 1, 251 St Georges Tce, Perth WA
(08) 9227 7970
GPO Box 2709
Cloisters Square PO 6850

admin@planningsolutions.com.au
www.planningsolutions.com.au
ACN 143 573 184 ABN 23 143 573 184
Planning Solutions (Aust) Pty Ltd

1 BACKGROUND

1.1 December 2019 Development approval

A development application was lodged on 13 June 2019 for 'Additions and Conservation Works' to the existing single house on the subject site. At the Ordinary Council meeting on 27 August 2019, Council resolved to refuse the application, citing encroachment into the prescribed 9-metre front setback.

An appeal was made to the State Administrative Tribunal (SAT), with mediation occurring, and Council subsequently invited to reconsider its decision based on revised plans and updated supporting information. At the 10 December 2019 Special Council meeting, Council resolved to approve 'Additions and Conservation Works' on the subject site (DA2019/00016).

1.2 September 2020 Development approval (amendments)

An application for an Amendment to DA2019/00016 – Alterations and Additions was approved by the Shire on 2 September 2020 (Shire ref DA2020/00013). The approval was valid for a period of 2 years from the approval date, expiring on 2 September 2022.

Having regard for the State of Emergency planning changes resulting from the Covid-19 pandemic, proponents are exempted from the requirement to substantially commence development for a development application approved on, or before, the date upon which the State of Emergency Declaration ceases to have effect, or is revoked. A new deadline for substantial commencement is substituted, being the day which is 2 years after the day on which the development approval would have ceased to be valid. The development approval is therefore valid until 2 September 2024.

The amended development approval for Alterations and Additions (DA2020/00013) is therefore still valid and may be enacted by the proponent. Of relevance to this proposal, we note that site works, fill and retaining was approved along the southern lot boundary at heights of RL 23.45m and RL 23.58. A northern crossover to the Esplanade is also approved.

Refer to Attachment 1 for a copy of the September 2020 development approval.

1.3 August 2022 Development approval

An application for Additions and Alterations to a Single House and Outbuilding (DA 2022 / 00015) was approved by the Shire on 29 August 2022. The development approval excluded portions of the site subject to the approval by applying the following two conditions:

2. *This approval is limited to that extent of works hatched by red ink on the endorsed site plan (PA02A).*
3. *Further planning approval must be obtained for ancillary works including, but not limited to; site works, retaining walls, driveway and vehicular crossover, and boundary fencing not otherwise contained within the area hatched by red ink on the endorsed site plan (PA02A).*

In effect, the proponent now has two development approvals at their disposal to enact. One applying largely to the rear (western) portion of the subject site and the existing single dwelling (DA 2022 / 00015), and one applying to the southern and eastern aspects of the site (DA2020/00013).

Refer to Attachment 2 for a copy of the August 2022 development approval.

2 PROPOSAL

As a result of the southern and eastern portions of the subject site being excluded from the August 2022 development approval, this proposal seeks to amend the valid September 2020 development approval (DA2020/00013), noting the approved site levels can be implemented, should the proponent wish (subject to satisfying the applicable conditions of development approval). In fact, there is evidence to suggest the development approval has already been substantially commenced, with building/construction works commencing on site.

The proposal seeks to obtain development approval for ancillary works, including (but not limited to):

- site works
- retaining walls
- driveway and new vehicular crossover
- boundary fencing

The works proposed are minor modifications to the existing approved development, and do not substantially change the appearance or function of the approved development.

Refer to Attachment 3 for a copy of the Development Plans.

3 SITE DETAILS

3.1 Legal description

The subject site is legally described as "Lot 63 on Plan 3783", being the whole of the land contained within Certificate of Title Volume 1133 and Folio 271. The subject site has a total area of 1,597m². Refer to Attachment 4 for a copy of the Certificate of Title and Plan.

3.2 Local context, land use and topography

The subject is located within the suburb of Peppermint Grove and is predominantly surrounded by detached single residential dwellings. Presbyterian Ladies College is located approximately 50m north west of the subject site and the Swan River is located approximately 55m to the east. The Esplanade is approximately 500m long, providing a connection from Bindaring Parade in the north, to Keane Street in the south.

Based on LocateWA topographical data, The Esplanade's road level increases from approximately 10m AHD at Leake Street to 35m AHD at Bindaring Parade. A 25m incline over 500m is considered steep by metropolitan Perth's standards. The road level of The Esplanade directly east of the subject site is approximately 22m AHD. There is a three (3) metre crossfall along the 25m frontage of the subject site, from north to south.

The consequence of the local streetscapes topographical features is that most dwellings sit at a higher level than The Esplanade pavement level. A consequential design response to this, implemented by most dwellings within the local streetscape, is a form of solid wall for retaining along The Esplanade's street boundary. There are several examples of dwellings with front walls within the local streetscape (and adjoining streets) which are particularly prominent - these are illustrated in photographs 1-6 below.

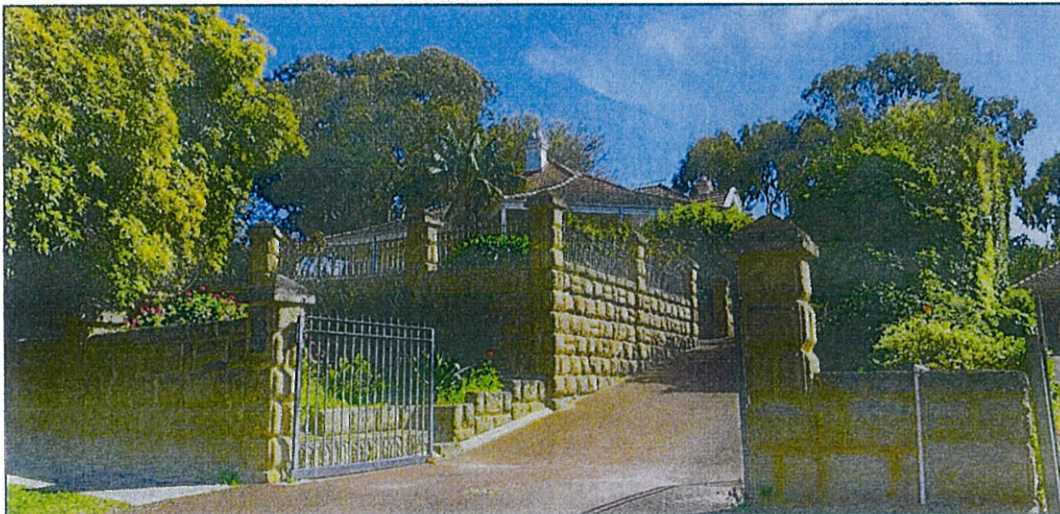
The main elements/characteristics shared by these front walls include:

- A height which can be considered prominent when viewed from street level.
- A solid material of blockwork (generally limestone) and/or smooth composition.
- Soft landscaping, typically incorporated along the top of the wall for the entirety of its length.
- Open style fencing on top of the solid wall.
- A transitioned reduction of the top of wall height consistent where sites front undulating sections of the street/verge.

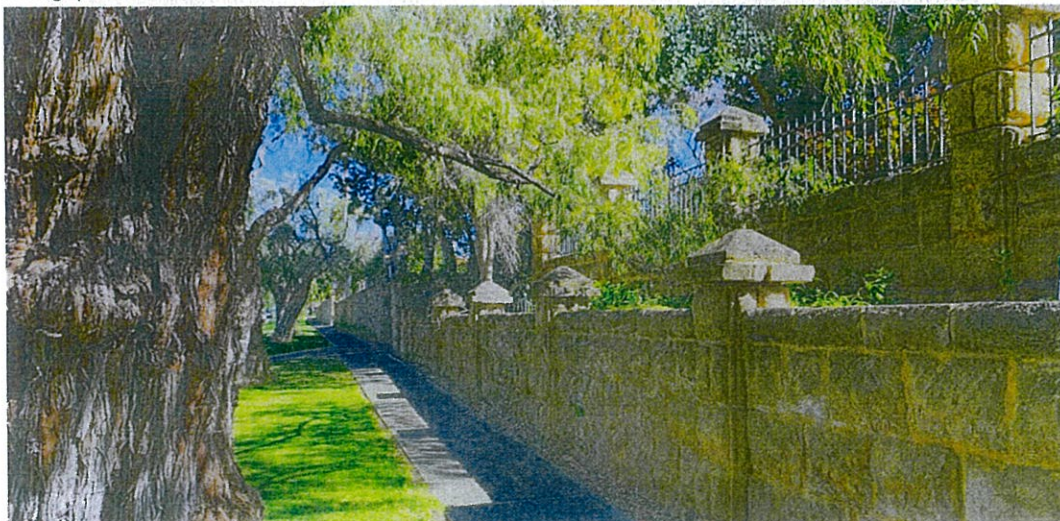
Refer to Figure 1, aerial photograph of the subject site and surrounds, and to photographs 1-6.



Figure 1: Aerial photograph of the subject site and surrounds (Source: Nearmap)



Photograph 1: Solid 'Pillow Face' limestone front walls at No.150 Forrest Street, with terraced landscaping and open fencing above.



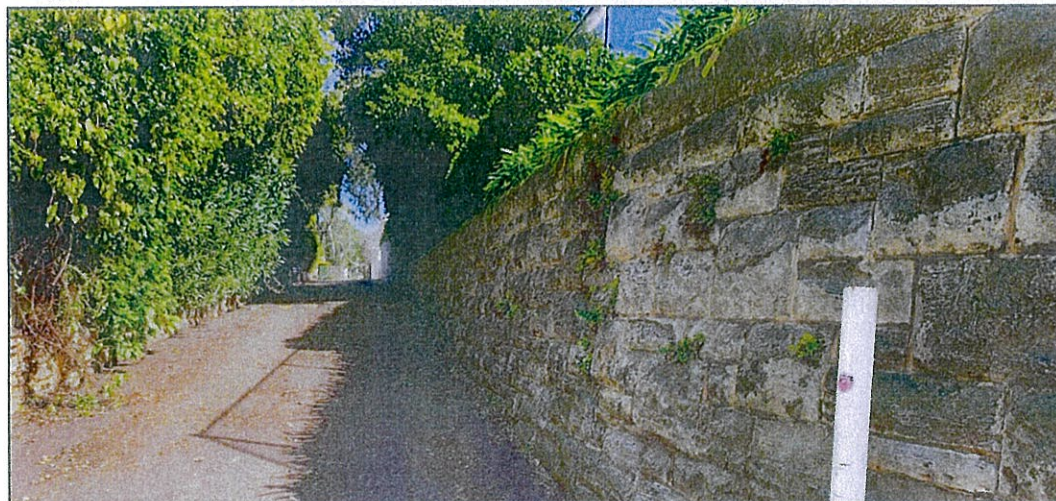
Photograph 2: Solid 'Pillow Face' limestone front walls at No.150 Forrest Street, with terraced landscaping and open fencing.



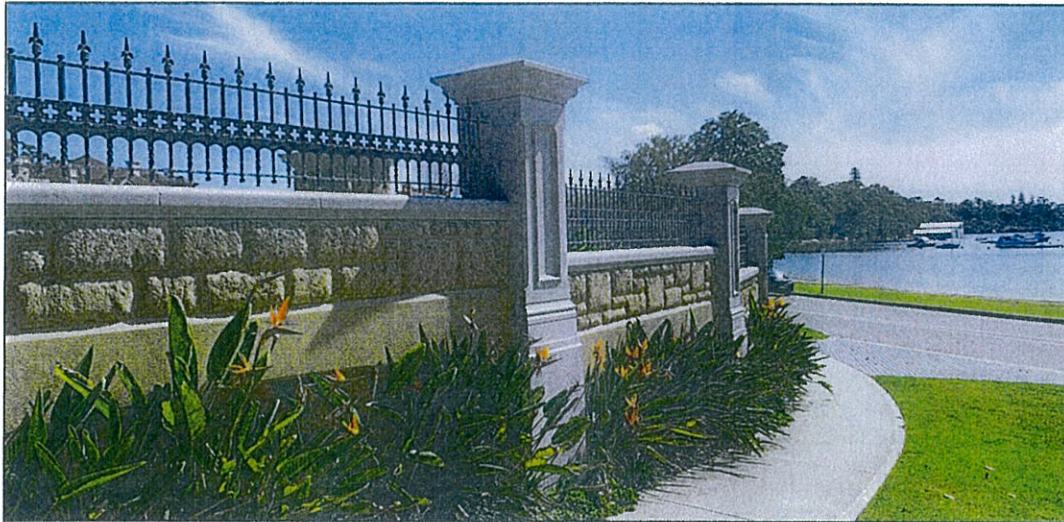
Photograph 3: No.16 The Esplanade, with a solid truncated wall fronting The Esplanade and Forrest Street.



Photograph 4: The solid wall of No.22 The Esplanade. The sloping site has been levelled out, with a high wall on the southern boundary.



Photograph 5: The solid wall of No.22 The Esplanade, with landscaping and open fencing above.



Photograph 6: The boundary wall of No.60 The Esplanade, comprising solid portions of limestone and open steel balustrades above.

4 TOWN PLANNING CONSIDERATIONS

4.1 Requirements for amendments to development approvals

This is an application made pursuant to clause 77(1) of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, being an application:

(c) to amend an aspect of the development approved which, if amended, would not substantially change the development approved.

The State Administrative Tribunal discussed the tests to be applied to determine if an amendment substantially changes a proposal in the matter of *SITA Australia Pty Ltd and Wheatbelt Joint Development Assessment Panel [2015] WASAT 40 (SITA decision)*, summarised at [11] as:

the issue is one of looking at the substance of the amendment or variation sought. The authorities suggest, speaking generally, that the issue of substance is to be approached liberally, and with a 'broad brush'. To some extent also a pragmatic approach may be taken on the issue of whether the amended development application remains in essence the same proposal as was considered by the decision-maker.

The question is, therefore, whether the essential character of the development remains unaffected. In our view, this is unequivocally the case. The development remains a single house, with a vehicle crossover proposed in an almost identical location to an approved crossover location. The proposed site levels are very similar to what have previously been approved, with some levels actually lower. From a streetscape perspective, the setting and design elements of the fencing are largely unchanged.

Key changes include the removal of the at-grade (but underground) garage and crossover in the south eastern aspect of the site and the relocation of the stairwell from the southern boundary. The hydrotherapy pool has been removed to accommodate the extension of the driveway to the west, but within the front setback area, the driveway is in essence the same alignment as previously approved.

Applying a liberal and broad-brush approach, the amendments proposed do not substantially change the development approved. Further analysis and comparison of proposed vs approved components of the development will be examined further in this submission.

The amendments (and previously approved components of the development) result in variations to the development standards set out in the planning framework (more on this below). This does not mean the amendments substantially change the approved development. In *Moore River Company Pty Ltd and Western Australian Planning Commission* [2006] WASAT 269 (quoted in the SITA decision at [15]), the Tribunal confirmed:

The fact that there may be arguments as to the planning merits of the configuration of the revised plan does not mean that the revised plan amounts to a substantially different proposal.

We note that under clause 77(2) of the Deemed Provisions the application shall be dealt with as if it were an application for development approval and accordingly all normal procedural matters associated with a development application (including consultation with adjoining owners/occupiers if required) applies to this application.

Numerous, extensive and significant changes to a proposal do not mean that its essence necessarily changes. The fact that modifications might lead to new arguments as to the planning merits of the amended proposal does not mean that a new proposal has eventuated, particularly if the proposed use remains the same.

Therefore, the following submission assesses only the proposed amendments against the relevant planning framework, with a new development application not required. For the above reasons, the application to amend the approved development is valid.

4.2 Metropolitan Region Scheme

The subject site is zoned Urban under the provisions of the Metropolitan Region Scheme (MRS). The land to the east of The Esplanade (adjoining the Swan River) is reserved Parks and Recreation under the provisions of the MRS. The proposal is consistent with the intent of the MRS and therefore warrants approval.

4.3 Shire of Peppermint Grove Local Planning Scheme No. 4

The Shire of Peppermint Grove *Town Planning Scheme No. 4 (LPS4)* applies to the subject site. The provisions of LPS4 are supplemented by the deemed provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. Where a deemed provision is inconsistent with a provision of LPS4, the deemed provision prevails to the extent of the inconsistency.

4.3.1 Use class and permissibility

Pursuant to the provisions of LPS4, the subject site is zoned Residential with an applicable density of R10. The relevant objectives of the Residential zone are:

To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.

To promote a residential environment consistent with the heritage of the locality and to enhance a sense of place and community identity.

To enhance those characteristics which contribute towards residential amenity, and to avoid those forms of development which have the potential to prejudice the preservation of the high amenity value of a safe and attractive residential environment.

The proposed development meets the objectives of the Residential zone by proposing high quality works and building materials that result in an enhanced outcome for the subject site and The Esplanade streetscape. The house on the subject site is Category 1 Municipal Heritage Listed and we understand is one of the Shire's oldest buildings (c.1910). The works respond to this heritage by proposing materials and a streetscape consistent with houses in Peppermint Grove (refer to photos 1-6).

The 'Pillow Face' limestone retaining wall on the eastern lot boundary is a significant improvement to the existing painted brick retaining wall. The material is aligned with the character and unique identity of Peppermint Grove and is almost directly comparable to the front (southern) fencing of No.150 Forrest Street, Peppermint Grove. In terms of a sense of place, the limestone cliffs of Peppermint Grove leading into the Swan River are referenced in the materiality of the proposal.

When considering the existing character and streetscape of the locality, we note the Shire's description, as provided in the 23 August 2022 Ordinary Council meeting agenda:

Whilst not uniform, the built form in the immediate area is dominated by expansive elevated homes with solid masonry front walls and fences. Front fencing is generally non-compliant with current policy, but typically 'steps down' the slope, enabling maintenance of a visual connection to houses when viewed from the street. Front setbacks are predominantly compliant and feature 'soft' landscaping.

The proposal does exactly this. It steps down a portion of the solid limestone front wall at its southern aspect, reducing the height of the boundary wall and perceived bulk at what is the lowest portion of the site, and therefore the highest portion of wall. For a 2.75m long portion of the eastern boundary (southern aspect) the proposed fencing height is only between 1.4m and 1.6m high. This facilitates (and maintains) a visual connection with the dwelling on the subject site when viewed from The Esplanade, particularly for vehicles travelling northbound.

In terms of existing visual connection for pedestrians, it is already limited by the existing fencing and the approved retaining wall on the lot to the south. Although the solid fence is being brought further south, truncated terraced landscaping will seek to maintain this view. Refer to Photographs 7 and 8 below.



Photograph 7: The existing boundary wall of the subject site, as viewed from The Esplanade verge.



Photograph 8: The existing boundary wall of the subject site, as viewed from The Esplanade verge.

4.3.2 Development requirements of LPS4

LPS4 has limited provisions of relevance to this proposal, with plot ratio and street setback requirements unaffected by the proposed modifications.

4.4 Matters to be Considered

Clause 67(2) of the Deemed Provisions sets out the matters for which due regard is to be given when considering a development application. Refer to Table 1 below for an assessment of the relevant matters.

Table 1 - Matters to be considered

Matter to be considered	Provided
(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;	<p>The aims and provisions of LPS4 are addressed in this report. Of direct relevance to this proposal is aim (a):</p> <p><i>To maintain and encourage a high quality environment; preserve the amenity of the Shire and protect the quality and characteristics of its streetscapes;</i></p> <p>The proposal seeks to preserve and enhance the existing amenity of the subject site, which is occupied by one of the oldest buildings in the Shire. The proposed materials and site levels respond to Peppermint Grove's unique topography, built form and streetscapes.</p>
(b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving;	<p>There are no known amendments to LPS4 that would affect the merits of this proposal.</p>
(c) any approved State planning policy	<p>State Planning Policy 7.3 Residential Design Codes Volume 1 is addressed in subsequent sections of this report.</p>
(fa) any local planning strategy for this Scheme endorsed by the Commission	<p>Of relevance, the Shire's local planning strategy states:</p> <p><i>Peppermint Grove is recognised as one of the State's most prominent suburbs. The Shire's ideal setting, including its lush tree lined streets and stately home, play a significant role in creating the suburbs unique and distinguished sense of character.</i></p> <p>The proposed works seek to ensure this prominence and uniqueness of the suburb remains.</p>
(g) any local planning policy for the Scheme area;	<p>The Shire's local planning policies of relevance to this proposal are addressed in section 4.6.</p>
(k) the built heritage conservation of any place that is of cultural significance	<p>The heritage status of the building on the subject site has been considered as part of this proposal, including the proposed works and materials to ensure the heritage values are protected and enhanced.</p>
(l) the effect of the proposal on the cultural heritage significance of the area in which the development is located;	<p>The Heritage Council's Inherit database provides the following description of the subject site:</p> <p><i>This elevated rendered brick, timber and tile residence, in the Federation Queen Anne style, although considerably adapted has cultural significance because it is one of the older surviving residences along The Esplanade from the pre World War I period. It is typical of the style and scale of pre World War I residences that were constructed in this part of Peppermint Grove. It has associations with several Peppermint Grove families over 9 decades. It is part of a cultural group.</i></p> <p>The proposed works seek to maintain and enhance the cultural heritage significance of the subject site, by proposing front</p>

Matter to be considered	Provided
<p>(m) <i>the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;</i></p>	<p>fencing synonymous with the type of fencing seen in Peppermint Grove. The Shire should be encouraging heritage retention, as is proposed as part of this application, to ensure houses of this nature are not dominated by modern dwellings with contemporary fencing. Those types of houses can be built in any suburb, whereas the preservation of unique heritage houses is not always possible.</p> <p>The proposed development is entirely compatible in its setting, being a single house in the Residential zone. The height, bulk, scale and appearance of the proposed front wall and site works are assessed throughout this report.</p>
<p>(n) <i>the amenity of the locality including the following –</i> (i) <i>environmental impacts of the development;</i> (ii) <i>the character of the locality;</i> (iii) <i>social impacts of the development;</i></p>	<p>The proposal does not result in any adverse environmental impacts. In terms of character, the proposal is consistent with the streetscape of The Esplanade, by proposing site works and retaining walls, typically, with landscaping and open fencing above. The proposed materials are consistent with the character of Peppermint Grove.</p> <p>In terms of social impacts, the proposed development (specifically the levelling of the site) facilitates the enhanced (and safe) use of the site for its residents. Historically, we understand the slope of the property has been difficult to navigate, especially given the residents are getting older.</p>
<p>(p) <i>whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;</i></p>	<p>The proposed landscaping within the front setback area is a major feature of the proposal. No significant trees are to be removed as part of this proposal. The verge tree is proposed to be relocated to accommodate the crossover. The landscaping areas will be densely planted. We expect a detailed landscape plan can be provided as a condition of development approval, if considered necessary by the Shire.</p>
<p>(q) <i>the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk</i></p>	<p>The proposed development is an existing single house in a bushfire prone area, and does not seek to intensify the land use. Accordingly, no bushfire reporting is required as part of this proposal, as this proposal is only for external site works.</p>
<p>(s) <i>the adequacy of –</i> (i) <i>the proposed means of access to and egress from the site; and</i> (ii) <i>arrangements for the loading, unloading, manoeuvring and parking of vehicles;</i></p>	<p>The proposal includes one vehicle crossover to The Esplanade, for left-in, left-out movements. A crossover has previously been approved in this location.</p>
<p>(t) <i>the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;</i></p>	<p>The amount of traffic generated by the residents of a single house is negligible, with no traffic reporting required.</p>
<p>(u) <i>the availability and adequacy for the development of the following –</i> (i) <i>public transport services;</i> (ii) <i>public utility services;</i> (iii) <i>storage, management and collection of waste;</i> (iv) <i>access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);</i> (v) <i>access by older people and people with disability;</i></p>	<p>The proposed development and its site levels are adequate and have been designed for access by older people and people with a disability.</p>
<p>(v) <i>the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;</i></p>	<p>The proposal will not result in the loss of a community benefit. Conversely, the proposal will result in a benefit to the public, by resulting in a significantly enhanced presentation to The Esplanade.</p>

Matter to be considered	Provided
(w) <i>the history of the site where the development is to be located;</i>	The site has previously been used for residential purposes, and will continue to be. In consideration of the historic development approvals applicable to the site, including similar site levels and retaining, the history of the site is important in establishing consistency in decision making.
(x) <i>the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;</i>	<p>There is a clear and demonstrable positive social outcome resulting from this development. The subject site is in one of Peppermint Grove's most iconic areas. The proposal is unlikely to have adverse impacts on the amenity of the surrounding area, as the works enhance The Esplanade's streetscape in accordance with the unique character of Peppermint Grove.</p> <p>Amenity of the adjoining neighbours to the south has been considered, noting that the approved site levels are very similar to the levels proposed as part of this application.</p> <p>In terms of their amenity, this proposal removes an existing driveway and previously approved garage from the south eastern portion of the site which would have generated activity and noise in that part of the site.</p>
(y) <i>any submissions received on the application;</i>	Any submissions will be considered during public advertising of the application.

Having regard to the relevant matters to be considered, the proposed development warrants approval.

4.5 Local Planning Policies

4.5.1 Local Planning Policy 1 – Design and Streetscape

The Shire's Local Planning Policy 1 – Design and Streetscape (LPP1) was prepared in consideration of Peppermint Grove's unique garden neighbourhood character, which is highly valued by the community, residents and visitors. LPP1 requires significant additions to an existing building to be responsive to existing context and contribute positively to the prevailing streetscape. An assessment is provided in Table 2 below.

Table 2 - Assessment against the provisions of LPP 1

Provision	Assessment
Objectives	
<i>To maintain and encourage a high-quality environment; preserve the amenity of the Shire and protect the quality and characteristics of its streetscapes.</i>	Peppermint Grove undoubtedly has a unique character, evident with its large and well landscaped houses, with mature Peppermint Trees lining many of its streets. The proposed development seeks to preserve the amenity of the Shire, and not only protect, but enhance one of its most prominent streetscapes (The Esplanade).
<i>To maintain, enhance and encourage a high level of amenity in terms of the unique character and identity of development, streetscapes, public open spaces and lifestyle qualities within the Shire.</i>	The proposed limestone front wall is entirely appropriate, with limestone being a commonly seen material in houses and front boundary fences in the locality. ✓
Primary Street Setbacks	
<i>The 9-metre prescribed setback under the Local Planning Scheme is the minimum in most instances within the Shire.</i>	There is an existing setback variation, with the existing dwelling providing a 7.35m setback (approximately) to The Esplanade. N/A
<i>Council is able to require a greater or lesser setback based on the prevailing setbacks of adjoining houses under the provisions of Clause 67 I(m)(n) of the Deemed provisions of Planning and Development (Local Planning Scheme) Regulations 2015.</i>	

Provision	Assessment	
<p><i>In determining views to the street from dwellings and views from the street to dwellings, the setbacks to immediately adjoining dwellings or approved outbuildings are the primary reference points.</i></p> <p><i>Where setbacks are greater or lesser than 9-metres for immediately adjacent houses, the proposed development setback should be stepped to the extent necessary to ensure it does not obscure views to adjoining houses or prevent their contribution to the streetscape (as outlined in figure LPP1 below)</i></p>		N/A
<p><i>Particular attention shall be given to situations where neighbouring dwellings are on the Shire's Heritage List to ensure the heritage values of these adjoining dwellings are not diminished.</i></p>	Not applicable - The dwelling on the subject site is on the Shire's Heritage List (Municipal Heritage Inventory). The two adjoining houses to the north and south are not.	N/A
<p><i>Consideration is to be given to circumstances where changes to existing streetscape patterns may be desirable to create long term cohesion where an unsympathetic pattern of development has emerged.</i></p>	Not applicable - two houses are located either side of the subject site (one currently under construction).	N/A
Front Setback Area and Landscaping		
<p><i>Soft landscaping (garden planting), particularly in the front setback area is an essential element that contributes to the character of the Shire. Plans which provide for adequate deep planted soft landscaping (at least 50% of the front setback area) are a pre-requisite to the issue of a building permit for a new dwelling.</i></p>	Within the existing 7.35m front setback area, the proposal includes approximately 60m ² of soft landscaping beds. This does not include the trafficable turf paving areas. The proposal does not include a new dwelling, therefore the 50% provision of soft landscaping in the front setback area does not apply.	✓
Colours Materials and Finishes		
<p><i>With few exceptions, the predominant building materials in Peppermint Grove are brick and/or rendered brick, stone, with tile or coloured zincalume* roofs, and the colour palette is neutral.</i></p> <p><i>Alternative external construction and cladding materials as well as colour schemes can be considered subject to Council approval via the development assessment process.</i></p>	The proposed materials within the front setback area include 'Pillow Face' limestone and open aspect black metal railing (steel balustrades). These materials are entirely consistent with those seen in front setback areas and streetscaped of Peppermint Grove.	✓
Street Presence		
<p><i>New houses in the Shire should address the primary street in the traditional manner, with a clearly legible front entrance both to the site and the house itself.</i></p>	Not applicable - No new house is proposed.	N/A
<p><i>The street elevation should not be dominated by garage doors and to this end Council will not support more than one double garage (door width of up to 4.5 metres) to the primary or secondary street elevations.</i></p>	No garage doors are visible from the street elevation. This proposal removes the previously approved garage at the southern portion of The Esplanade frontage.	✓
Verge Crossovers for Residential Access		
<p><i>Where vehicular access is from a street Council will allow the construction of a verge crossover provided it conforms to the following principles:-</i></p>	Noted. Refer to assessment below.	Refer below
<p><i>One crossover per dwelling site; and</i></p>	Only one crossover is proposed as part of this application, which is in a location almost identical to the previously approved location.	✓
<p><i>Single vehicle-width crossovers are encouraged to retain and protect green street verges and street trees; and</i></p>		✓

Provision	Assessment	
<i>Any additional width of crossover must be justified by demonstrating a low impact on the provision of an adequate portion of green verge and street tree planting; and</i>	One single width 3m wide crossover is proposed. An immature Peppermint Tree is proposed to be relocated to the southern part of the verge.	
<i>Any additional width to a single-vehicle crossover shall comply with the Shire's crossover construction policy.</i>	Not applicable - no additional width is proposed. Specific crossover design can be confirmed at the detailed design/building permit stage.	N/A

In consideration of the assessment against the Shire's LPP1 above, the proposed development is acceptable and warrants approval.

4.5.2 Local Planning Policy 3 – Heritage Places

The existing house on the subject site is listed as a Category 1 heritage building on the Shire's municipal heritage inventory. A Category 1 heritage building is described as follows:

Buildings, which due to their character create the atmosphere of Peppermint Grove, therefore should be retained, but may be altered and extended in a manner which is both discreet and sympathetic to the original fabric and character so that a significant proportion of the original building is retained and from the street the additions are seen to be a continuation of the same fabric and character.

No works are proposed to the existing heritage building as part of this application. The proposed site works are discreet and sympathetic to the original fabric and character of the building, and do not prejudice the heritage values of the existing house. In fact, they seek to enhance its values by removing the painted brick wall and replacing it with a 'Pillow Face' limestone retaining wall, which is more aligned with the character of the Shire.

Given no works are proposed to the existing house as part of this proposal, only a brief assessment is provided against the provisions of the Shire's Local Planning Policy 3 – Heritage Places (LPP3).

Table 3 - Assessment against the provisions of LPP3

Provision	Assessment	
Objectives		
<i>To maintain and encourage a high-quality environment; preserve the amenity of the Shire and protect the quality and characteristics of its streetscapes.</i>	As discussed throughout this submission, the proposed works seek to enhance the amenity of the streetscape, in consideration of the existing character of the locality, including the heritage listed dwelling on the subject site.	✓
<i>To preserve the heritage fabric and contribution to the streetscape of existing heritage listed properties.</i>		
Planning Policy		
<i>Conservation of a heritage place, area or precinct includes managing change in such a way that the heritage significance is retained and/or enhanced in order that:</i>		
<i>The form and fabric of buildings on the Heritage List is preserved.</i>	N/A - no changes to the building proposed as part of this application.	N/A
<i>The contribution of a heritage building to the streetscape is protected.</i>	The proposed works are respectful of the heritage values of the dwelling, and have been designed in consideration of this. Unlike other more modern houses on The Esplanade, the proposal includes a limestone wall, of which the materiality and design is of a similar time to the architecture of the heritage house.	✓
<i>Alterations and additions result in architecture that is both of its time and is respectful to places of local heritage significance.</i>		

Provision	Assessment
<p><i>The existing building remains the dominant structure on the site when viewed from the street.</i></p>	<p>The existing dwelling will remain the dominant structure on the subject site. We understand the dwelling will still be able to be seen by vehicles driving on The Esplanade in both directions. Pedestrians will be able to view the dwelling from the northern part of the site with the portions of open style fencing. In any case, this section of The Esplanade is more frequently trafficked by vehicles than pedestrians.</p>
<p><i>New development within the immediate locality of a heritage area or precinct is respectful of the heritage area or precinct and does not detract from its heritage significance.</i></p>	<p>The proposed works are architecturally designed and respectful of the heritage values of the existing dwelling. The heritage significance is enhanced by high quality fencing and landscaping within the front setback area.</p>
<p><i>All development (including maintenance, conservation, adaptation, alterations, additions, demolition and new buildings) affecting heritage places, areas and precincts (including development within the immediate locality of a heritage area or precinct) should meet the following principles;</i></p>	
<p><i>Significant heritage fabric should be retained, protected and restored with 'like for like' authentic restoration to original detail wherever possible.</i></p>	
<p><i>Original front elevations and features to be retained and/or restored wherever possible.</i></p>	
<p><i>Intrusive finishes and elements where they conceal or negatively impact upon the heritage significance of a building may be removed.</i></p>	<p>Not applicable – no changes to the fabric of the existing dwelling proposed as part of this application.</p>
<p><i>Work that can be reversed in the future is desirable. Work that cannot be reversed may be supported, provided the heritage significance of the building is not compromised.</i></p>	<p>N/A</p>
<p><i>The location of 'new technologies' on a heritage building should be undertaken in an unobtrusive manner so they do not negatively impact upon the heritage significance of the building.</i></p>	
<p><i>Additions should not overwhelm the existing building in terms of bulk, form and scale.</i></p>	

In consideration of the assessment against the Shire's LPP3 above, the proposed development is acceptable and warrants approval.

4.5.3 Local Planning Policy 12 – Front Fences

The objective of Local Planning Policy 12 – Front Fences (LPP 12) is to provide guidance on the circumstances and parameters where front fencing can be approved without causing detriment to the streetscape, the character of the neighbourhood, or the loss of visibility of valued properties from the street (such as heritage listed properties).

An assessment against the relevant provisions of LPP12 is provided in Table 4 below.

Table 4 - Assessment against the provisions of LPP12

Provision	Assessment	
Objectives		
<i>To provide design guidelines for screen fencing along the front boundary of a residential property that would exceed the 1.2-metres maximum permitted under the Deemed-to-comply provisions of the R-Codes.</i>	Noted. The proposed front wall exceeds the 1.2m maximum height.	Refer below
<i>To encourage a high-quality standard of front fencing within the Shire of Peppermint Grove that allows houses to visually contribute to the streetscape.</i>	The proposed front fencing is of an exceptional standard, and one that will make a positive contribution to the streetscape. Limestone is a material synonymous with Peppermint Grove, whether it be used for the walls of its heritage houses, front fences or seen on the cliffs of the Swan River. The proposed fencing is considered to be a significant improvement to the existing half limestone and half painted brick fencing.	✓
<i>To ensure front fencing to heritage places is of a complementary design, scale and materiality.</i>	The design and materiality are unquestionably complementary to the existing heritage house on the subject site. The scale/height of the fence is a direct result of the naturally steep topography of the properties on The Esplanade. The proposal seeks to reduce the extent of this bulk by providing truncated landscaped terraces at its south eastern aspect, where the portion of wall would ordinarily be at its highest.	✓
<i>To ensure that adequate physical security is available, while maintaining an open visual aspect between the houses and the street for the purpose of passive surveillance.</i>	The terraced landscaping and the feature pedestrian entry and associated stairs seeks to maintain an open visual aspect to the street from the house. For vehicles travelling south on The Esplanade, the works in the front setback area allow more of the site to be seen, with aspects of open style fencing and by bringing the site to a consistent level.	✓
Primary Street Frontage		
<i>A front boundary fence is to be of an appropriate height and open aspect design and construction in order that there is strong visual relationship between the street, the front setback area and the front of the house;</i>	The eastern boundary fence is largely solid, with open style fencing above and open style fencing to the north where the crossover is located. The truncated terraced landscaping element seeks to step down the height and scale of the wall, maintaining the visual relationship between the street and the house. The fencing will provide an attractive visual connection with the streetscape.	Variation ✓
<i>For all walls along the front boundary, where the lower portion of the wall is solid, the height shall not exceed 900mm;</i>	The solid wall exceeds the 900mm height specified by this provision due to the unique topography of the site. The intent of this provision would be understood for a flat site.	Variation
<i>Columns, piers or posts forming the structural support shall;</i> <i>a. Not exceed 2.1 metres in height above the mean natural ground level on the street side of the fence; and</i> <i>b. Not exceed 600mm in either depth or width; and</i> <i>c. Not be less than 1.8 metres clear of any other column.</i>	The proposal seeks to vary this provision due to the unique sloping topology of the site and the required finished floor levels.	Variation
<i>Infill panels (where necessary above the lower wall and between any columns, piers or posts) shall be designed for permeability of at least 50% open view with a minimum gap of 50mm between pickets.</i>	Not applicable - No infill panels proposed.	N/A



Provision	Assessment
<p><i>Blade fencing, where the depth of the infill picket is, proportionally more than the profile section facing the street, there shall be sufficient width so that views to the house are not obscured. This can be achieved where the gap between blades is a minimum of twice the depth. For instance, 25mm deep blades shall be spaced 50mm apart.</i></p>	<p>Not applicable - No blade fencing proposed. N/A</p>
<p>Heritage Places</p>	
<p><i>Compatible front fencing is an important design element that frames a site of cultural heritage significance.</i> <i>When new or replacement fences are proposed, a planning application will be required by the Shire for either a new or replacement front fence. Where there is no evidence of any original fencing with the Local History Collection, a design typical of the era in which the house was built and being complementary in terms of materials, should be submitted to Council for development approval.</i></p>	<p>We understand the proposed front fencing is of a design and comprised of materials typical of the era in which the house was built. The materials and fencing type are complimentary to the existing heritage house and nearby houses in the locality. ✓</p>

In consideration of the assessment against the Shire's LPP12 above, and although variations are sought, the proposed development responds to a very unique site in terms of its topography and existing dwelling. Approval is sought and warranted for these variations.

4.6 State Planning Policy 7.3 - Residential Design Codes Volume 1

Pursuant to Clause 25 (1) of LPS4, State Planning Policy 7.3 - Residential Design Codes Volume 1 (R-Codes) is to be read as part of LPS4. Clause 26 of LPS4 modifies some provisions of the R-Codes which are of no relevance to this proposal.

The objectives of the R-Codes are:

- (a) To ensure residential development meets community expectations regarding appearance, use and density.*
- (b) To ensure designs respond to the natural and built features of the local context and, in the case of precincts undergoing transition, the desired future character as stated in the local planning framework.*
- (c) To ensure adequate provision of direct sunlight and ventilation for buildings and to limit the impacts of building bulk, overlooking, and overshadowing on adjoining properties.*
- (d) To ensure open space (private and communal) is provided on site that:*
 - *is landscaped to enhance streetscapes;*
 - *complements nearby buildings; and*
 - *provides privacy, direct sunlight and recreational opportunities.*
- (e) To ensure that design and development is appropriately scaled, particularly in respect to bulk and height, and is sympathetic to the scale of the street and surrounding buildings, or in precincts undergoing transition, development achieves the desired future character identified in local planning framework.*

Pertinent to this proposal, the appearance of the front fencing is likely to meet community expectations for Peppermint Grove, of not just the suburb, but also the expectations of wider Perth for Peppermint Grove. The works also respond to the natural features of the locality, being a steeply sloping topography.

Part 5 of the R-Codes pertains to the provision of the design elements for all single house(s) and grouped dwellings; and multiple dwellings in areas coded less than R40.

Where a proposal does not meet a deemed-to-comply provision of the R-Codes, the decision-maker is required to exercise discretion to judge the merit of the proposal. Clause 2.5.1 of the R-Codes states:

Subject to clauses 2.5.2 and 2.5.3, the decision-maker is to exercise its judgement to consider the merits of proposals by having regard to objectives and balancing these with the consideration of design principles provided in the R-Codes Volume 1.

The decision-maker, in its assessment of a proposal that addresses the design principle(s), should not apply the corresponding deemed-to-comply provision(s). [emphasis added]

Clause 2.5.2 of the R-Codes notes the relevant considerations include:

- (a) any relevant purpose, objectives and provisions of the scheme;
- (b) any relevant objectives and provisions of the R-Codes Volume 1;
- (c) a provision of a local planning policy adopted by the decision-maker consistent with and pursuant to the R-Codes Volume 1; and
- (d) orderly and proper planning.

Under clause 7.3.1 of the R-Codes, local planning policies can amend or replace deemed-to-comply provisions of the R-Codes and/or augment the R-Codes Volume 1 by providing local housing objectives to guide judgements about the merits of proposals for any aspect of residential development covered by this volume that does not meet the requirements or is not provided for, under the R-Codes Volume 1. The Shire's local planning policies have been considered in this submission.

4.6.1 R-Codes Deemed-to-comply assessment

The following tables provide an assessment against the deemed-to-comply requirements of the R-Codes. Those elements not relevant to the proposal have been omitted. Where a deemed-to-comply requirement is not met, written justification as to how the proposal meets the design principles and objectives of the R-Codes is provided in the subsequent section of this submission.

Table 5 - Deemed-to-comply assessment tables

5.2.3 Street surveillance			
Deemed-to-comply requirement	Required	Proposed	Deemed-to-comply Yes/No
C3.1 - Entry points	Clearly definable entry points visible and accessible from the street	<p>The proposal includes two clearly defined access points, one being the vehicle crossover at the north eastern portion of the subject site and one being the pedestrian access stairs.</p> <p>Both access points are easily accessible from the street, noting the vehicle crossover accommodated left-in, left-out movements to The Esplanade.</p>	✓

5.2.3 Street surveillance			
Deemed-to-comply requirement	Required	Proposed	Deemed-to-comply Yes/No
C3.2 - Surveillance	At least one major opening from a habitable room of the dwelling faces the street and the pedestrian or vehicular approach to the dwelling	Existing major openings from the existing dwelling face The Esplanade and are able to provide surveillance to the street and entry points. The proposed front wall facilitates a similar surveillance scenario to what was previously approved by the Shire. Instead of a garage in the south eastern aspect, there is now portions of solid wall and tiered landscaping.	✓

5.2.4 Street walls and fences			
Deemed-to-comply requirement	Required	Proposed	Deemed-to-comply Yes/No
C4 - Fence height	Fencing within primary street setback area visually permeable above 1.2m	A length of approximately 15.6m of the proposed fencing to The Esplanade is non-permeable above 1.2m in height, then provided with open fencing on top of the portions of solid wall. A 6.1m portion of the eastern lot boundary is open fencing.	✗

5.2.5 Sightlines			
Deemed-to-comply requirement	Required	Proposed	Deemed-to-comply Yes/No
C5 - Sightlines	No structures higher than 0.75m within 1.5m of where walls, fences, or other structures adjoin an intersection of streets and/or driveways.	The proposed 3m wide crossover is provided with 1.5m wide areas either side of it, free from any structures which may be considered to impede sightlines.	✓

5.3.2 Landscaping				
Deemed-to-comply requirement	Required	Proposed	Deemed-to-comply Yes/No	
C2.2i - Trees	Minimum no. of trees	1	The number of trees proposed is a detailed design consideration and can be confirmed at the building permit stage. However, more than one tree is likely to be provided in the substantial areas of soft landscaping.	✓
	Minimum tree planting area, free of impervious surfaces and roof cover	2m x 2m	Landscaping areas are greater than 2m x 2m in dimension in consideration of the permeable trafficable turf paving.	✓
C2.2ii - Street setback area	Landscaping of the street setback area with not more than 50% of this area to consist of impervious surfaces	Not more than 50% of the landscaping within the street setback area comprises impervious surfaces.	✓	

5.3.5 Vehicular access			
Deemed-to-comply requirement	Required	Proposed	Deemed-to-comply Yes/No
C5.1 – Access to on-site parking	From communal street or right-of-way; or	No communal street, right of way or secondary street is available.	✓
	from secondary street where no right-of-way or communal street exists; or	Access is proposed from the primary street (The Esplanade).	
	from primary street where no secondary street, right-of-way or communal street exists	The existing vehicle crossover is proposed to be relocated northwards, in a similar location to the crossover that was previously approved.	
C5.2 – Driveways to primary and secondary streets	Minimum width of 3m for driveways serving four dwellings or less – otherwise refer C5.5	The new crossover is a maximum width of 6m.	✓
	Maximum width of 6m	Not applicable.	N/A
	Maximum aggregate width of 9m (where more than one driveway proposed)		
C5.3 – Driveways	Setback of 0.5m from side lot boundary	The northern edge of the crossover is set back 1.5m from the northern lot boundary.	✓
	No closer than 6m to a street corner	Not applicable.	N/A
	Align at right angle to the street	Where the crossover meets the lot boundary and the street, it is aligned at a right angle.	✓
	Avoids street trees	The location of the new crossover requires the relocation of an immature Peppermint Tree.	✗
C5.4 – Driveways where two-way access required	Driveway to be designed for two-way access to allow vehicles to enter street in forward gear if driveway serves five or more dwellings, or the distance from a car space to the street 15m or more, or the street a primary distributor or integrator arterial.	Not applicable. Two-way access is not required, however, vehicles can enter the street in forward gear.	N/A

5.3.7 Site works			
Deemed-to-comply requirement	Required	Proposed	Deemed-to-comply Yes/No
C7.1 – Retaining and site works in street setback area	Retaining, fill, and excavation between street boundary and street setback not more than 0.5m except where necessary	Retaining and fill within the street setback exceeds 0.5m and is entirely necessary. The design principle assessment in the subsequent section provides further justification for this variation to deemed-to-comply requirement	✗
C7.2 – Retaining and site works behind street setback	Height of works / excavation / retaining	1.6m of fill and retaining is proposed on the eastern lot boundary (southernmost corner).	✗
	Setback required		
C7.3 – Site works within 1m of lot boundary	Fill and excavation within 1m of lot boundary not more than 0.5m	The proposal seeks to introduce a maximum fill to RL 23.45m (2.53m) retained by walls on the southern lot boundary.	✗

5.4.2 Solar access				
Deemed-to-comply requirement	Density code of adjoining property	Required	Proposed	Deemed-to-comply Yes/No
C2.1- Overshadowing of adjoining property	R10	No more than 25 per cent of the site area	We understand the proposal overshadows No.14 The Esplanade (the property to the south) by approximately 4%.	✓

4.6.2 Design principle assessment

The following assessment has been undertaken against those elements which are not deemed to comply with the R-Codes.

Table 5 - Design principle assessment

Design principle	Justification
<p>5.2.4 Street walls and fences</p> <p><i>P4 Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3) and enhance streetscape (as per clause 5.1.2), with appropriate consideration to the need:</i></p> <ul style="list-style-type: none"> for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and for necessary privacy or noise screening for outdoor living areas where the street is designated as a primary or district distributor or integrator arterial. 	<p>The existing painted brick and limestone wall fronting The Esplanade comprises an area of approximately 46m². Refer to drawing PA06D (Proposed Streetscape Wall with Existing Wall Outlined).</p> <p>The proposed solid wall with a Nil setback to The Esplanade comprises an area of approximately 41m². Therefore, the proposal reduces the extent of solid wall fronting The Esplanade compared to the existing wall. This represents a 10.8% reduction.</p> <p>Although not considered as a low fence at the southern aspect, the fence seeks to enhance the streetscape, in consideration of Peppermint Grove's unique character. The solid wall will naturally provide noise attenuation from traffic on The Esplanade.</p> <p>The fencing acts as a retaining wall, to facilitate levelling of the site and will also provide a level of privacy for residents of the subject site, even without outdoor living areas proposed in the street setback area. The extent of solid wall seeks to strike a balance between privacy for residents of the subject site and ensuring the existing dwelling on the subject site remains able to be seen from The Esplanade.</p>
<p>5.3.7 Site works</p> <p><i>P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</i></p> <p><i>P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.</i></p> <p><i>P7.3 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.</i></p>	<p>The proposed site works / retaining arrangements meet the design principles for the following reasons:</p> <ul style="list-style-type: none"> Given the site's unique features, fill exceeding 0.5m in some areas is unavoidable. To provide a level surface on a significantly sloping site, fill of greater than 0.5m is required. In our experience, development of single houses rarely occur on sites that with a topography variance of much greater than 1.5m. The

Design principle	Justification
	<p>subject site has a crossfall of approximately 3m from north to south over its 25.11m frontage to The Esplanade.</p> <ul style="list-style-type: none"> • The proposed development addresses the prevailing topographical features of the site through finished floor levels which respond to the natural ground levels within the respective part of the site. It is a logical design response to provide a flat site. • The retaining along the eastern and southern portions of the site will largely not be evident to the neighbouring property to the south, as there is already a retaining wall on that boundary. • The earthworks and retaining within the south-eastern part of the subject site are unlikely to have intrusive impacts on the neighbouring property to the south. In particular: <ul style="list-style-type: none"> ○ There is already a retaining wall on this boundary. ○ The proposed landscaping areas will be planted with dense vegetation, separating any activity on the subject site from the property to the south. The proposed fill is therefore unobtrusive and is simply required to provide a level site. ○ The vegetation and proposed fencing provide a good level of screening. ○ There was previously a stairwell proposed at the southernmost aspect, generating higher level of activity than what is currently proposed in this portion of the site. <p>Overall, the proposed site works arrangements are site-responsive, and address the prevailing topographical features of not only the site, but the unique topography of The Esplanade in an appropriate and sensitive manner.</p> <p>The proposal represents the efficient use of topographically constrained land, in the interest of achieving a sound planning outcome with a development which will offer a clear benefit to its residents, resultant in negligible (if any) adverse impacts on neighbours, and will result in an enhanced streetscape for The Esplanade.</p>

5 CONCLUSION

The proposal should be favourably determined, on individual merit, recognising the proposal does not vary significantly from what has previously been approved by the Shire.

Site levels and levels of fill are inherently the same as what have previously been approved along the southern boundary. The only material different is that the previously approved stair case, which facilitated lower site levels (at 21.00, 20.50 and 20.00) within 1.5m of the southern boundary has been replaced with terraced landscaping beds, with slightly higher site levels. The previously approved at-grade undercroft car park has been removed, with the proposed crossover at the northern aspect of the site in an almost identical location to where it was previously approved.

The bulk and scale of the proposed front fencing is not inconsistent with the streetscape of The Esplanade or the Peppermint Grove locality. The proposed wall materials and landscaping produces an exemplary development outcome, one that adequately meets the expectations and prestige of developments within Peppermint Grove.



We therefore respectfully request the application for development approval be considered on its merits and favourably determined under Council discretion.

Should you have any queries or require further clarification in regard to the proposal, please do not hesitate to contact the writer.

Yours faithfully,

A handwritten signature in cursive script that reads 'Oliver Basson'.

OLIVER BASSON
SENIOR PLANNER

Attachment 1
2020 Development Approval



Attachment 2
August 2022 Development Approval



Attachment 3
Development Plans



Attachment 4
Certificate of Title and Plan



18 JULY 2023

DRAWINGS FOR PLANNING APPROVAL
FRONT SETBACK & SOUTH BOUNDARY SITE WORKS
(Amended Version H)

SMITH

12 The Esplanade, Peppermint Grove

DRAWINGS

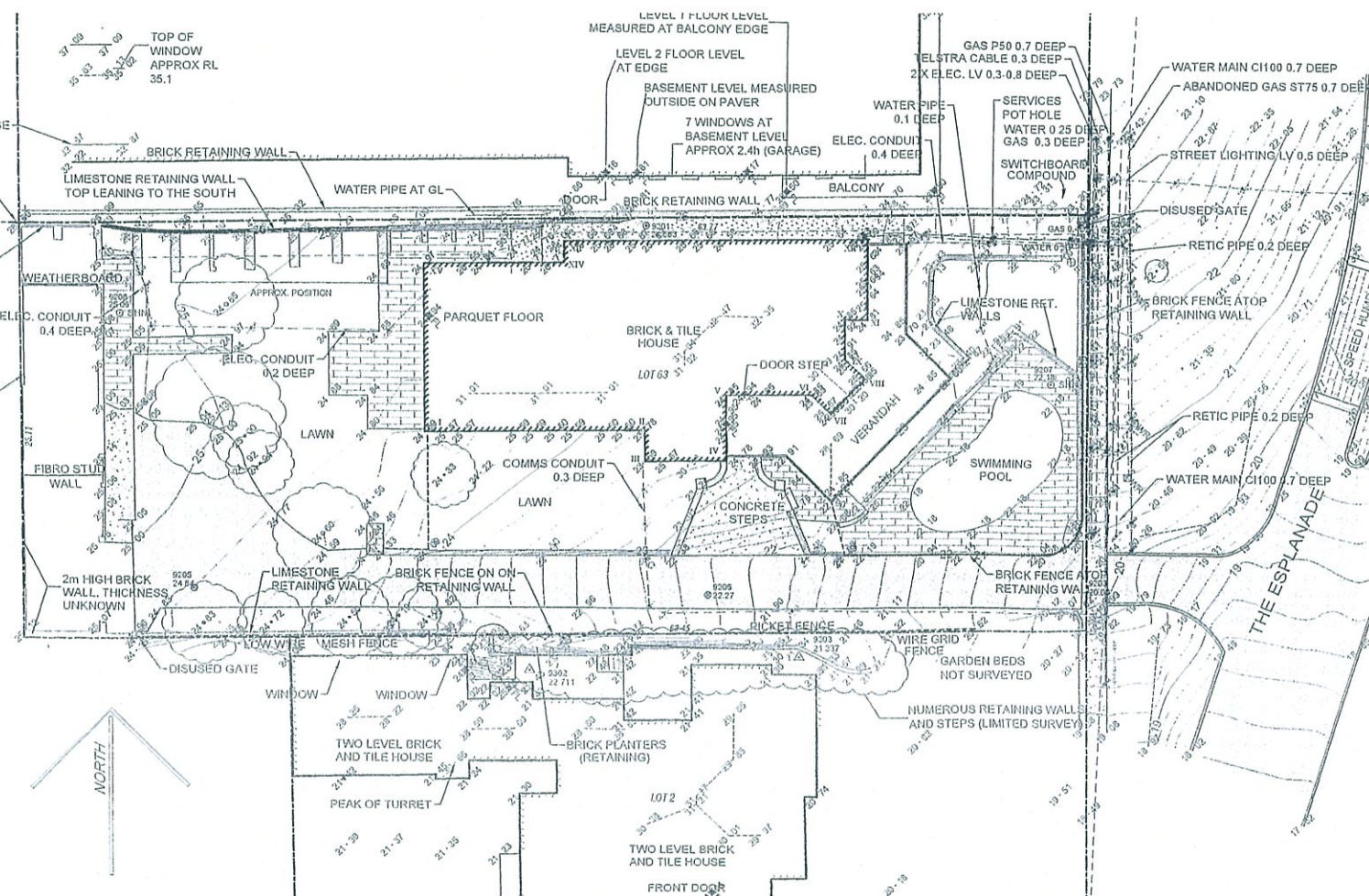
FS01	Feature Survey
PA01H	Site Plan
PA02F	Plan - West End (Page 1 of 2)
PA02H	Plan - East End (Page 2 of 2)
PA03F	Plan - West End Overlay (Page 1 of 2)
PA03G	Plan - East End Overlay (Page 2 of 2)
PA04G	East Elevation - Streetscape
PA05F	East Elevation - Previous levels Overlay
PA06G	East Elevation - Existing wall Overlay
PA07H	East Elevation Section
PA08E	South Elevation Section
PA09F	Elevation - South Boundary - West End (Page 1 of 2)
PA09G	Elevation - South Boundary - East End (Page 2 of 2)
PA10D	Perspective - South East
PA11B	Perspective - North East
PA12D	LANDSCAPE PLAN - East End
PA13E	LANDSCAPE PLAN - Detail East End
PA14A	VIEW overlooking South East from LOT 63

Job No. 21 746

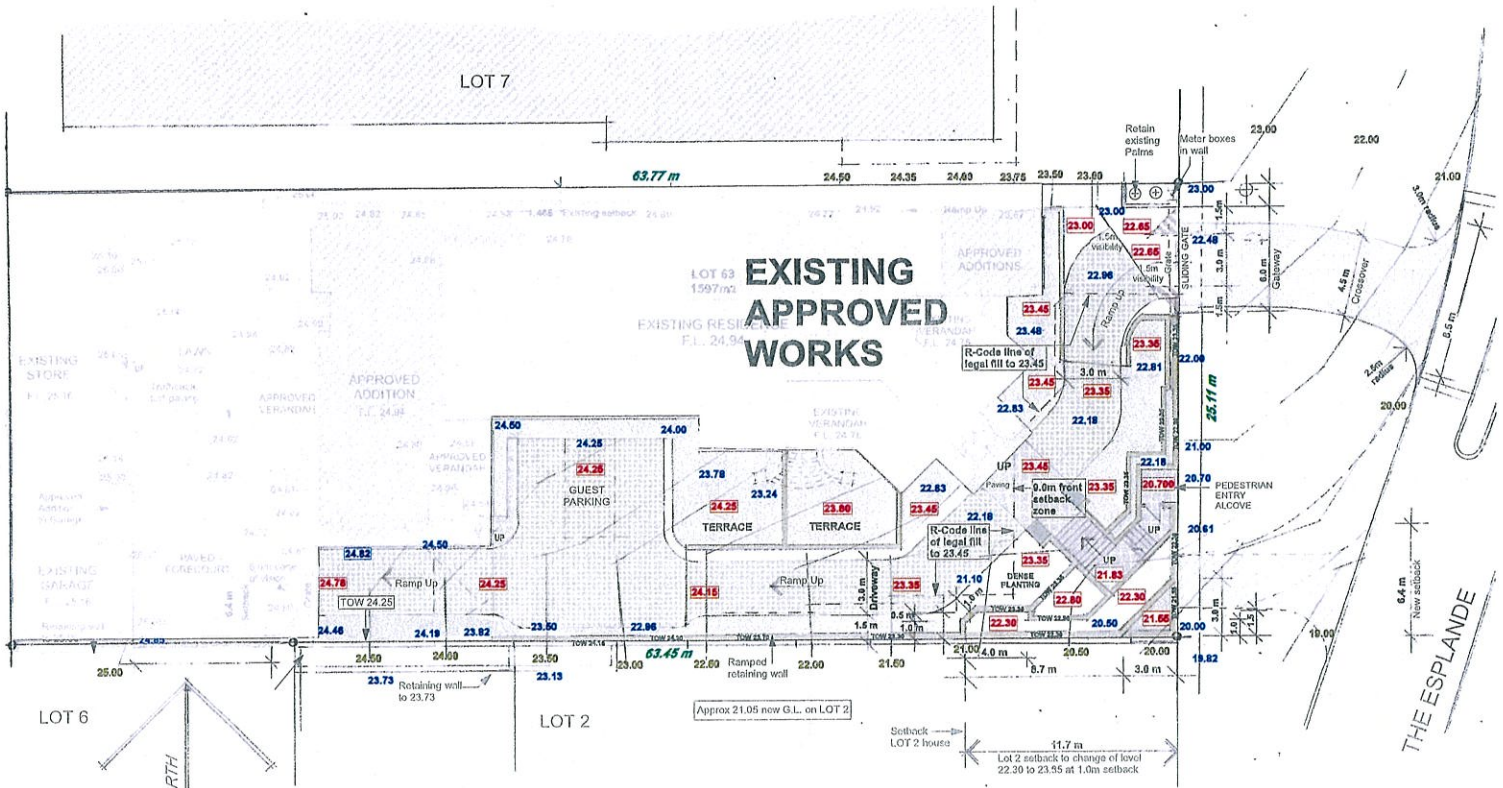
GERARD McCANN ARCHITECT

301/21 FREEMAN LOOP NORTH FREMANTLE WA 6159 M: 0419 947 890 E: gmccann@inet.net.au





GERARD McCANN ARCHITECT <small>2012/1 FREEMAN LOOP, NORTH FREMANTLE WA 6155 M 0419 947 890 E gmcann@gha.net.au</small>		SMITH CLIENT	ADDITIONS & ALTERATIONS STAGE 2 PROJECT	'LAKESIDE' 12 THE ESPLANADE PEPPERMINT GROVE LOCATION	FEATURE SURVEY DRAWING	SCALE DATE DRAWN GRIFFITHS ARCHITECTS	1:200 @ A3 APRIL 2019 21-746 FS01
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SITE PLAN 1:200
Proposed site Works

REFER DWG's PA08E
(West & East End)
FOR LOT 63 PROFILE
@ BOUNDARY

REFER DWG's PA02F/H
(West & East End)
FOR DETAIL PLAN

- General Notes**
1. REVISION H
South Boundary retaining wall

GERARD McCANN ARCHITECT
301/21 FREEMAN LOOP NORTH FREMANTLE WA 6159 | 08 9419 947 890 | E: gmcann@smcl.net.au

SMITH
CLIENT

PROPOSED
SITE WORKS
PROJECT

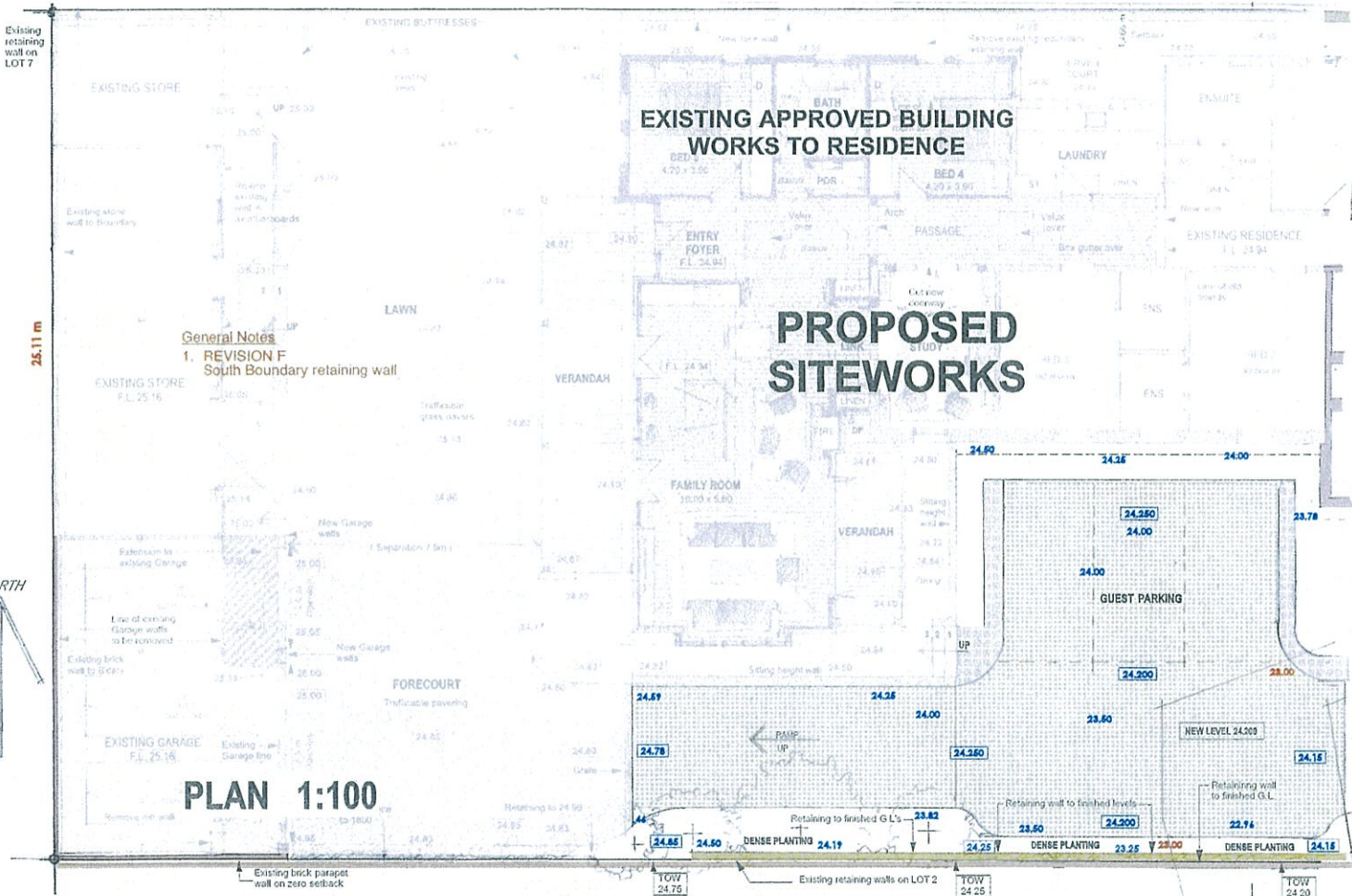
'LAKESIDE'
12 THE ESPLANDE
PEPPERMINT GROVE
LOCATION

SITE PLAN -
Proposed Site Works
DRAWING

SCALE
DATE
DRAWN

1:200 @A3
11 JULY 2023
GMcC

21-746 PA01H



General Notes
 1. REVISION F
 South Boundary retaining wall

PLAN 1:100



**EXISTING APPROVED BUILDING
WORKS TO RESIDENCE**

EXISTING
RESIDENCE



**PROPOSED
SITWORKS**

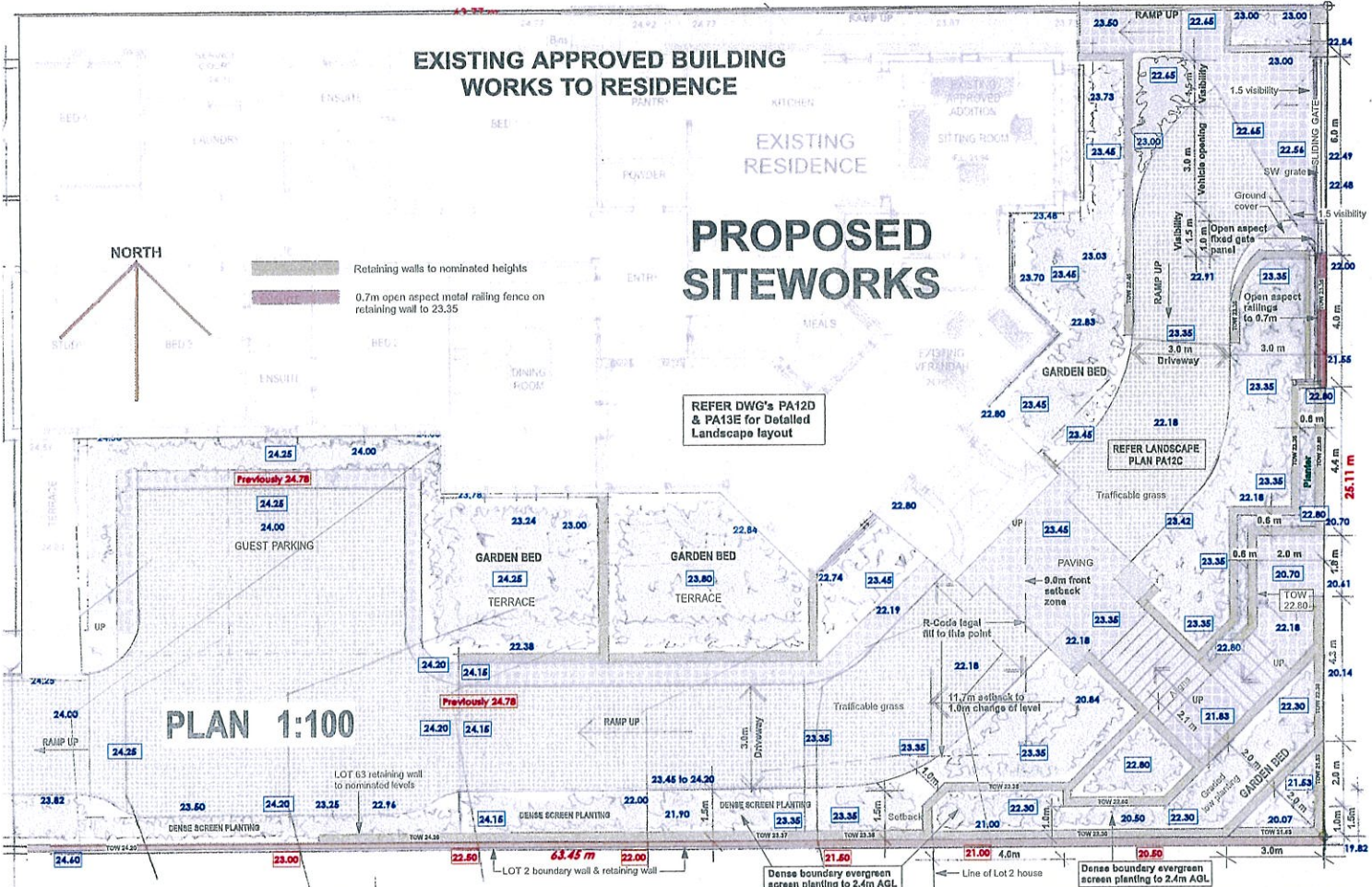
REFER DWG's PA12D
& PA13E for Detailed
Landscape layout

REFER LANDSCAPE
PLAN PA12C

PLAN 1:100

NORTH

-  Retaining walls to nominated heights
-  0.7m open aspect metal railing fence on retaining wall to 23.35



GERARD McCANN ARCHITECT
301/21 FREEMAN LOOP NORTH FREEMANTLE WA 6150 P: 0419 947 350 E: gmc@gerardmccann.com.au

SMITH
CLIENT
PROPOSED
SITWORKS
PROJECT

'LAKESIDE'
12 THE ESPLANADE
PEPPERMINT GROVE
LOCATION

PLAN - EAST END
PROPOSED SITE
WORKS
DRAWING






SCALE
DATE
DIVISION

1:100 @ A3
11 JULY 2023
GMC-C

21-746 PA02H
(Page 2 of 2)

EXISTING APPROVED BUILDING WORKS TO RESIDENCE

OVERLAY OF PREVIOUSLY APPROVED SITEWORKS

-  PREVIOUSLY @ 20.00
-  PREVIOUSLY APPROVED 24.78 (CURRENT PROPOSED 24.25)
-  PREVIOUSLY APPROVED RAMPED 23.45 TO 24.25 (CURRENT PROPOSED 23.45 TO 24.15)
-  PREVIOUSLY APPROVED 23.45 (CURRENT PROPOSED 23.45 TO 23.42)
-  PREVIOUSLY APPROVED 23.45 (CURRENT PROPOSED 23.45 & 23.42)

General Notes
 1. REVISION F
 South Boundary retaining wall

PLAN 1:100

Existing retaining wall on LOT 7

25.11 m

NORTH

GERARD McCANN ARCHITECT

30/121 FREEMAN LOOP NORTH FREEMANTLE WA 6159 M 0419 947 850 E gmccann@inet.net.au

SMITH

PROPOSED SITEWORKS

LAKESIDE
 12 THE ESPLANADE
 PEPPERMINT GROVE

PLAN - WEST END
 OVERLAY

SCALE

1:100 - A3

21-746

PA03F

CLIENT

PROJECT

LOCATION

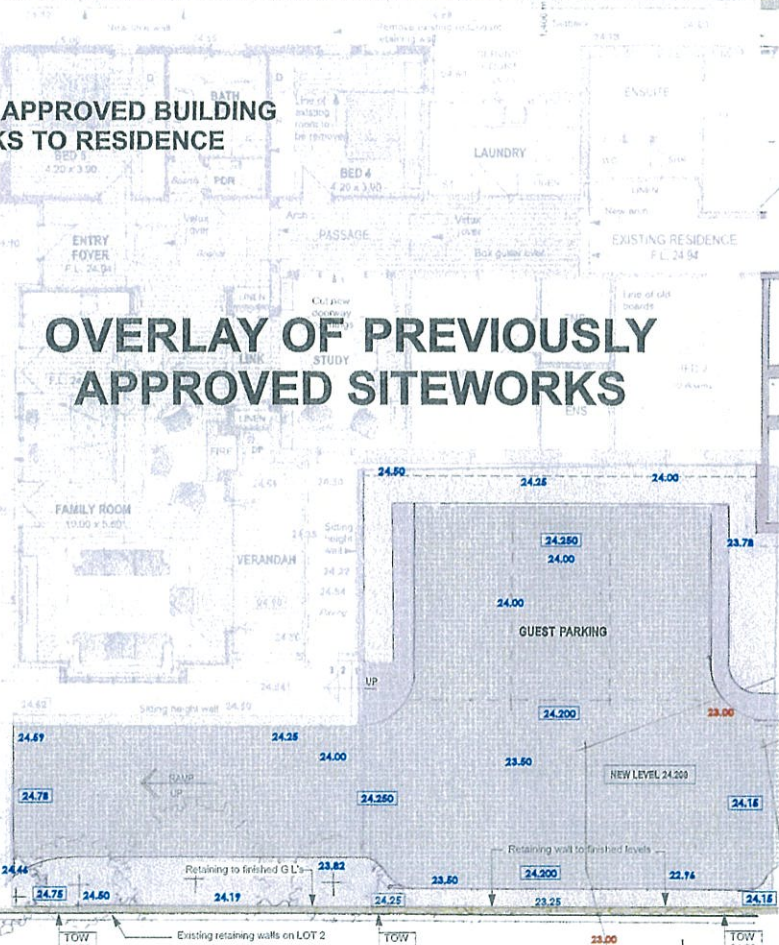
DRAWING

DATE

23 MAY 2023

GMCC

(Page 1 of 2)



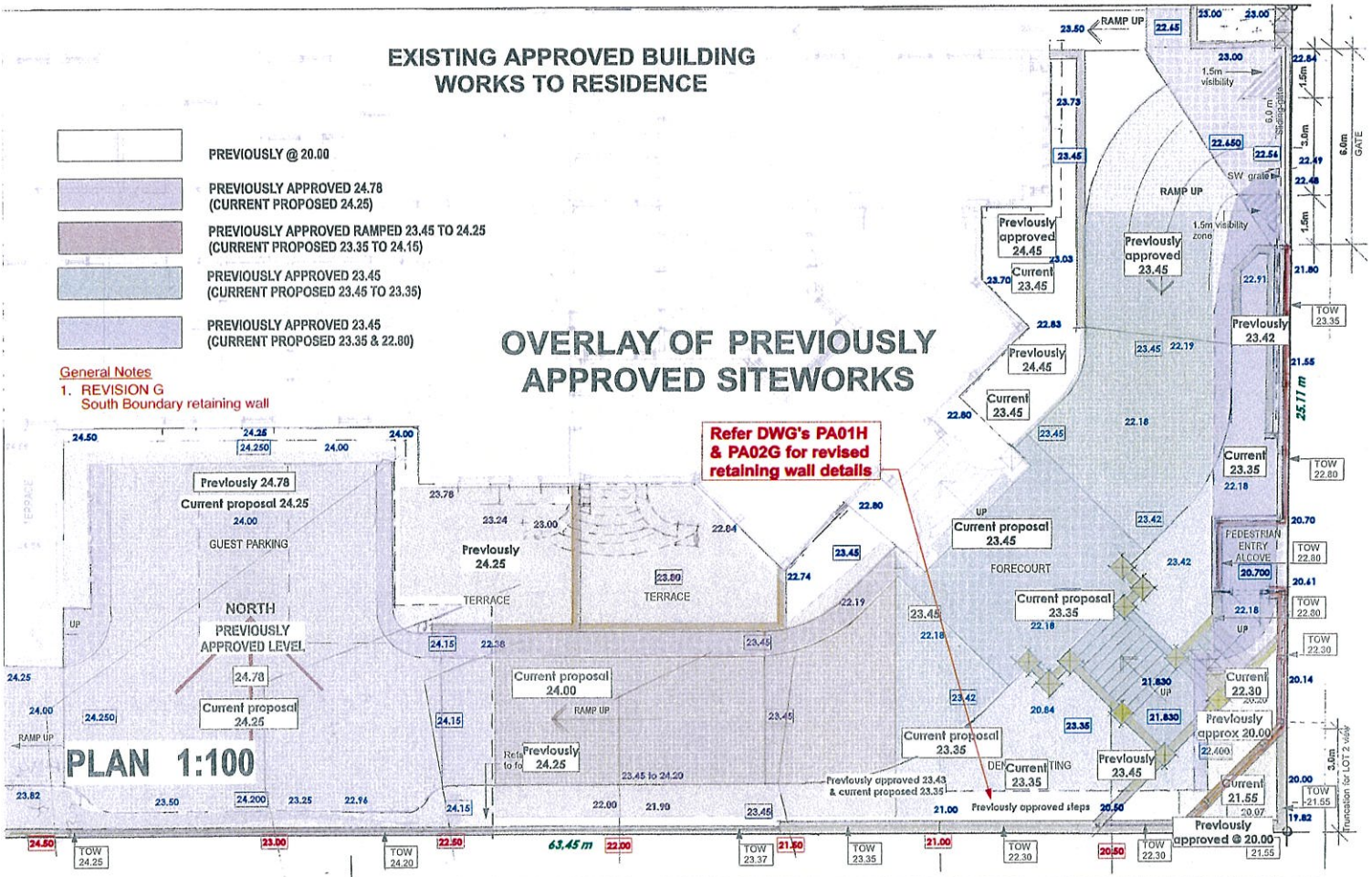
EXISTING APPROVED BUILDING WORKS TO RESIDENCE

- PREVIOUSLY @ 20.00
- PREVIOUSLY APPROVED 24.78 (CURRENT PROPOSED 24.25)
- PREVIOUSLY APPROVED RAMPED 23.45 TO 24.25 (CURRENT PROPOSED 23.35 TO 24.15)
- PREVIOUSLY APPROVED 23.45 (CURRENT PROPOSED 23.45 TO 23.35)
- PREVIOUSLY APPROVED 23.45 (CURRENT PROPOSED 23.35 & 22.80)

General Notes
 1. REVISION G
 South Boundary retaining wall

OVERLAY OF PREVIOUSLY APPROVED SITEWORKS

Refer DWG's PA01H & PA02G for revised retaining wall details



PLAN 1:100

GERARD McCANN ARCHITECT

30/121 FREEMAN LOOP NORTH FREMANTLE, WA 6155 P. 0419 947 050 E. gmcann@net.net.au

SMITH

PROPOSED

'LAKESIDE'
12 THE ESPLANADE

PLAN - EAST END

SCALE

1:100 #A3

21-746

PA03G

CLIENT

PROJECT

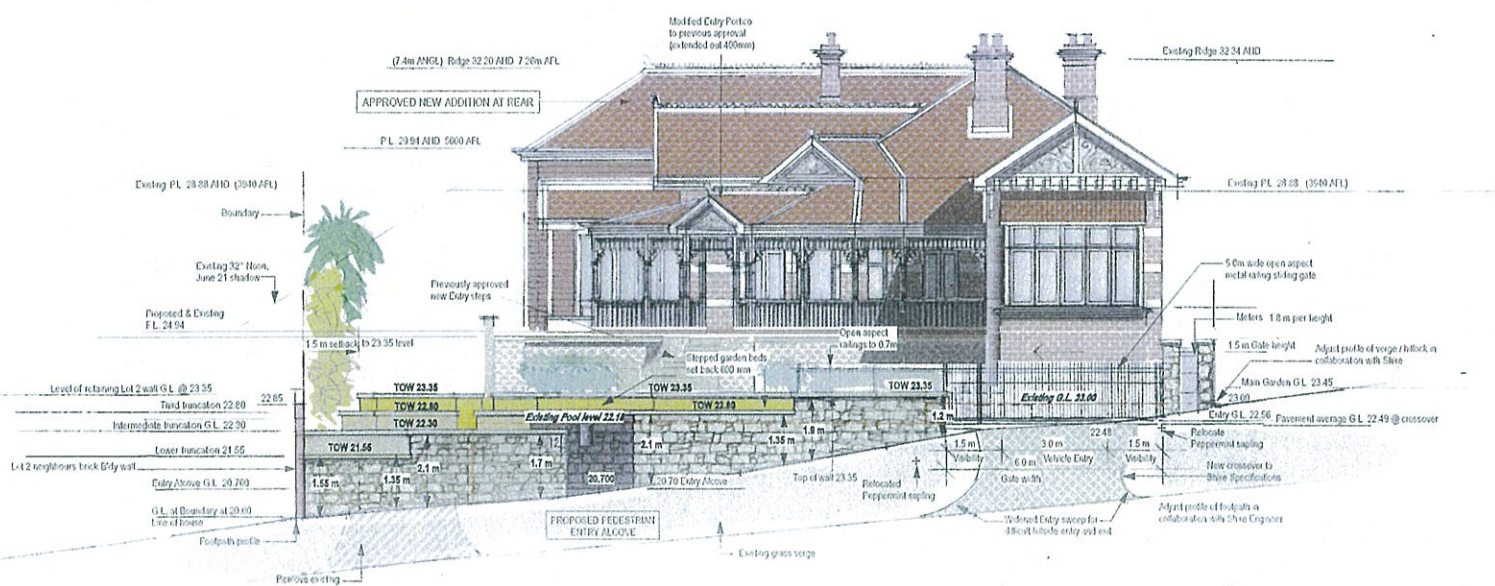
PEPPERMINT GROVE

LOCATION

DATE

12 JUNE 2023

[Page 2 of 2]

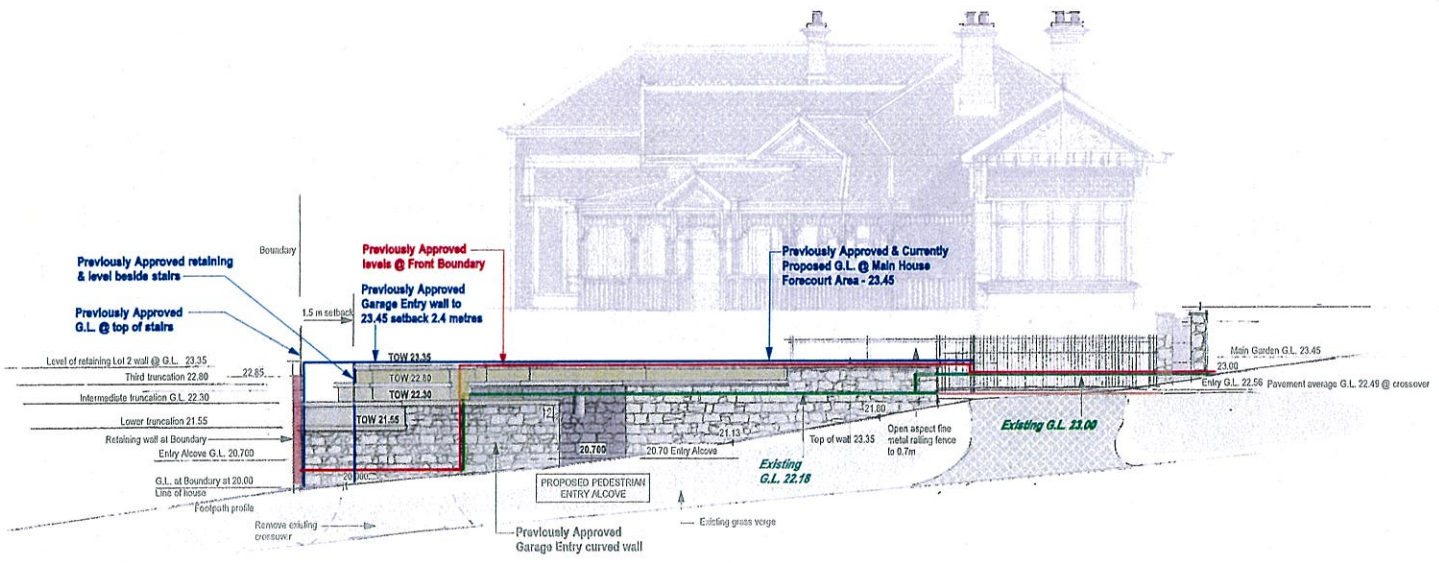


EAST ELEVATION 1:100
Streetscape

General Notes
 1. REVISION G
 East Boundary retaining wall

GERARD McCANN ARCHITECT
 30/1/21 FREEMAN LOOP, NORTH FREEMANTLE WA 6155 M: 0419 942 890 E: gmcann@net.net.au

SMITH	PROPOSED SITEWORKS	LAKESIDE 12 THE ESPLANADE PEPPERMINT GROVE	ELEVATIONS EAST Proposed Streetscape DRAWING	SCALE DATE	1:100 @ A3 13 JULY 2023	21-746 PA04G
CLIENT	PROJECT	LOCATION		DRAWN	GM-C	



EAST ELEVATION 1:100
Current Proposed Streetscape
with Previously Approved Levels Overlay

GERARD McCANN ARCHITECT
 301/21 FREEMAN LOOP, NORTH FREEMANTLE, WA 6159 TEL 0419 947 890 E: gmcann@net.net.au

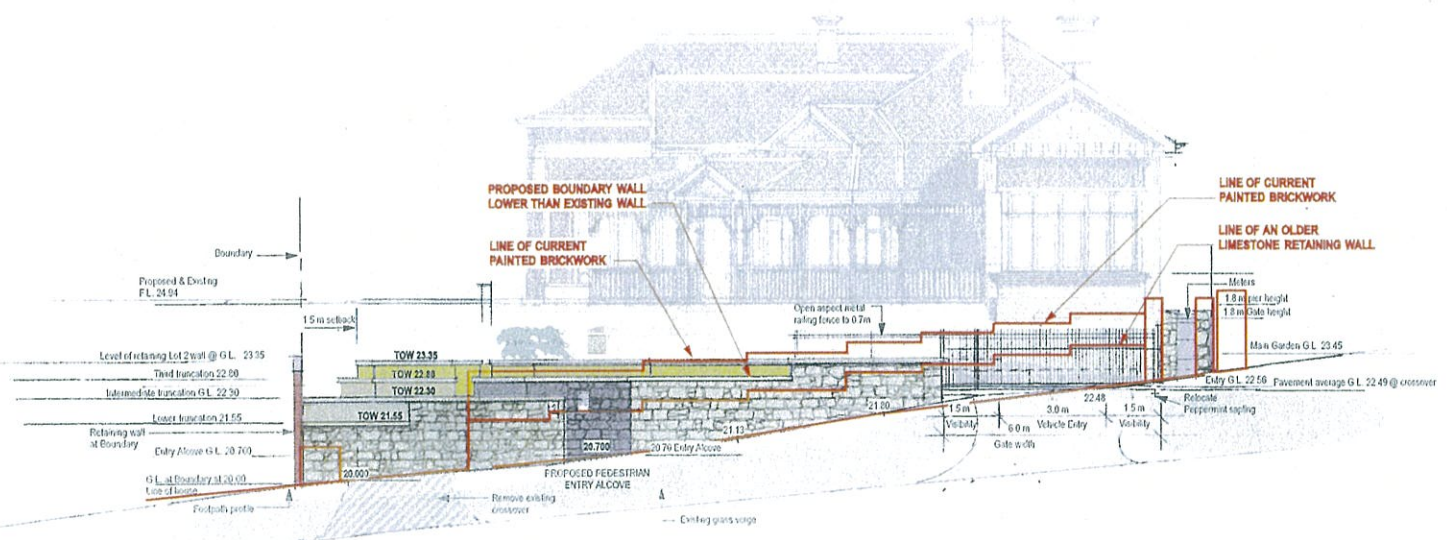
SMITH PROPOSED
 CLIENT SITEWORKS
 PROJECT

'LAKESIDE'
 12 THE ESPLANADE
 PEPPERMINN GROVE
 LOCATION

ELEVATIONS EAST -
 Proposed Streetscape
 DRAWING

SCALE 1:100 @ A3
 DATE 13 JULY 2023
 DRAWN GMCC

21-746 PA05F



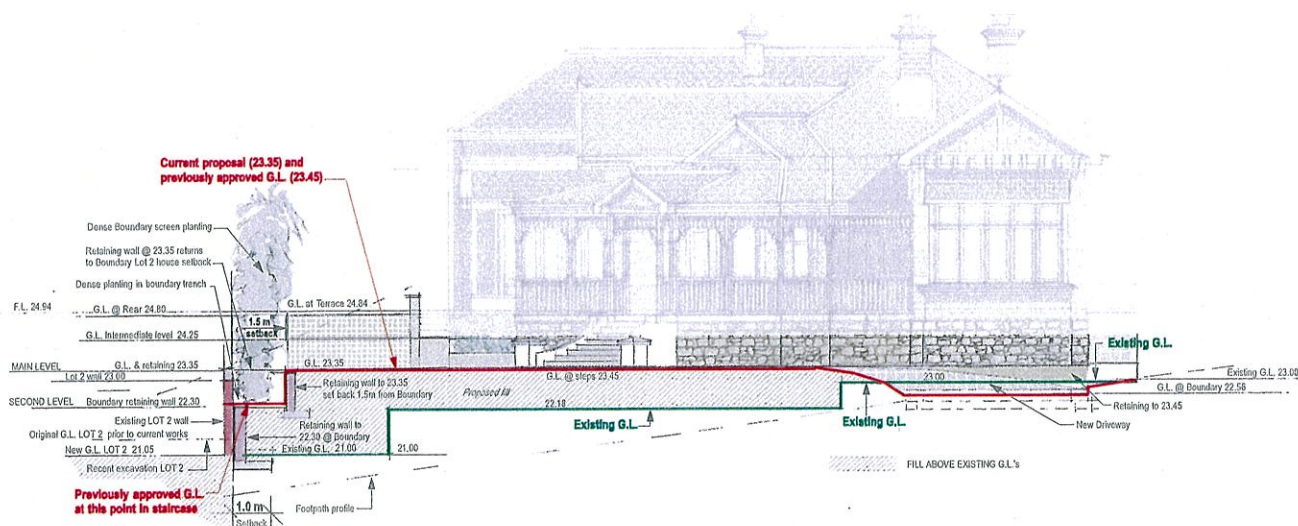
EAST ELEVATION 1:100
Proposed Streetscape Wall
with Existing Wall Outlined

General Notes
 1. REVISION G
 East Boundary retaining wall

GERARD McCANN ARCHITECT
 301/21 FREEMAN LOOP NORTH FREEMANTLE WA 6155 P 0419 547 895 E gmc@mccann.net.au

SMITH	PROPOSED STEWORKS	LAKESIDE 12 THE ESPLANADE PEPPERMINT GROVE	PROPOSED STREETScape WALL & EXISTING WALL OUTLINE	SCALE	1:100 @ A3
CLIENT	PROJECT	LOCATION	DRAWING	DATE	13 JULY 2023
				DRAWN	GMcC

21-746 PA06G



EAST ELEVATION 1:100 EXISTING RESIDENCE
 Section through front setback area at 7.5m setback line

General Notes
 1. REVISION H
 South Boundary retaining wall

GERARD McCANN ARCHITECT

SMITH
 CLIENT

PROPOSED
 SITEWORKS
 PROJECT

'LAKESIDE'
 12 THE ESPLANADE
 PEPPERMINT GROVE
 LOCATION

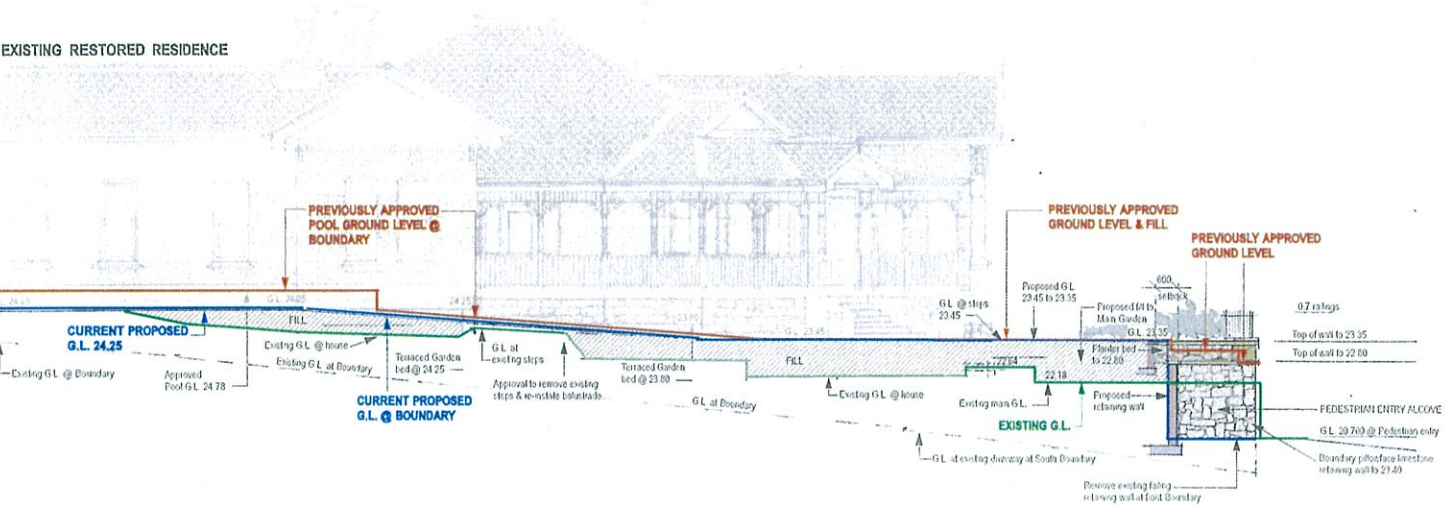
ELEVATION - EAST
 Section through Front
 Setback
 DRAWING

SCALE
 DATE
 DRAWN

1:100 - A3
 18 JULY 2023
 GM-C

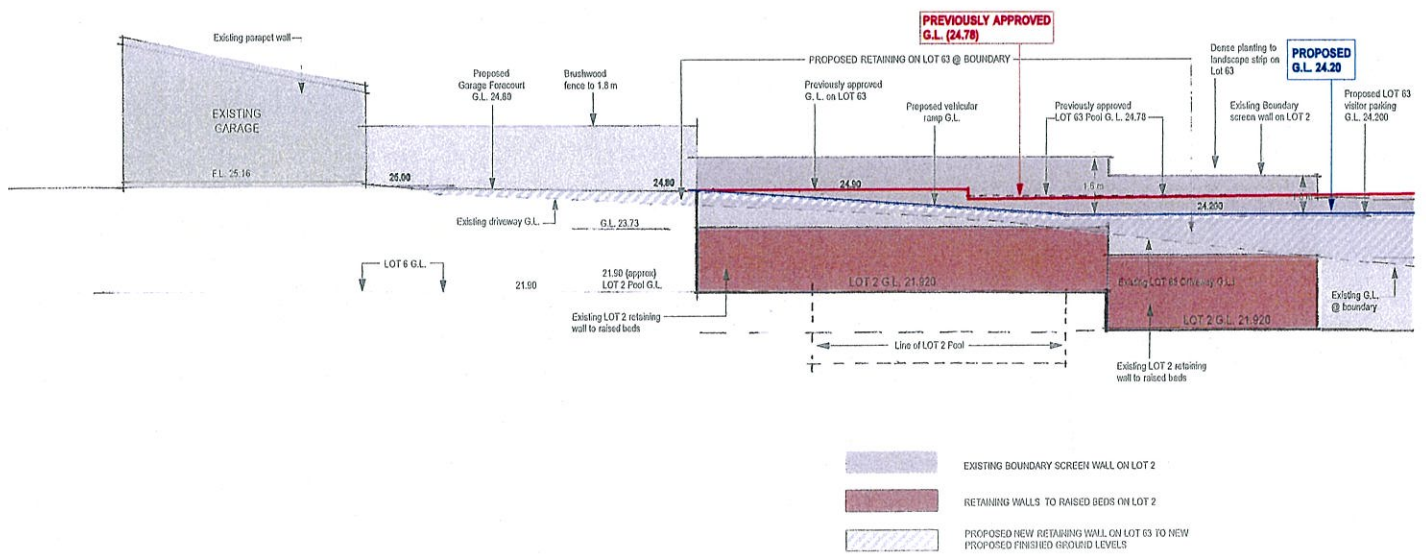
21-746 PA07H

301121 FREEMAN LOOP NORTH FRENCHTLE WA 6159 TEL: 0419 947 950 E: gmcann@west.net.au



SOUTH ELEVATION 1:100
East End
CROSS SECTION OF FRONT SETBACK
WALL & FILL AT PEDESTRIAN ENTRY ALCOVE

General Notes
 1. REVISION E
 East Boundary retaining wall



**ELEVATION - SOUTH BOUNDARY
RETAINING & FENCE 1:100
West End**

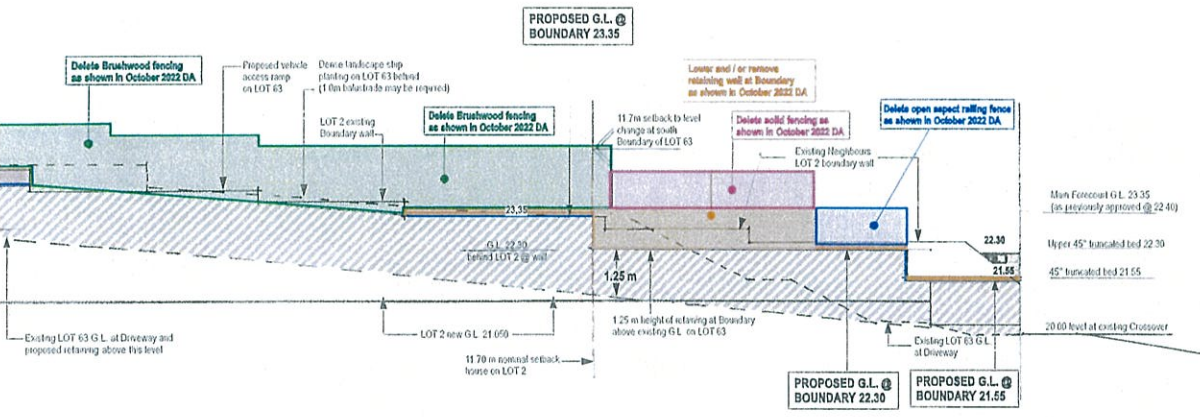
General Notes
1. REVISION F
South Boundary retaining wall

GERARD McCANN ARCHITECT
30/121 FREEMAN LOOP NORTH FRESHWATER WA 6150 P: 0419 547 350 E: gmcann@inet.net.au

SMITH PROPOSED 'LAKESIDE' 12 THE ESPLANADE PEPPERMINT GROVE
CLIENT SITEWORKS PROJECT LOCATION

ELEVATION - SOUTH BOUNDARY - Retaining & Fence - West End
DRAWING SCALE 1:100 @ A3
DATE 23 MAY 2023
DRAWN GMcC

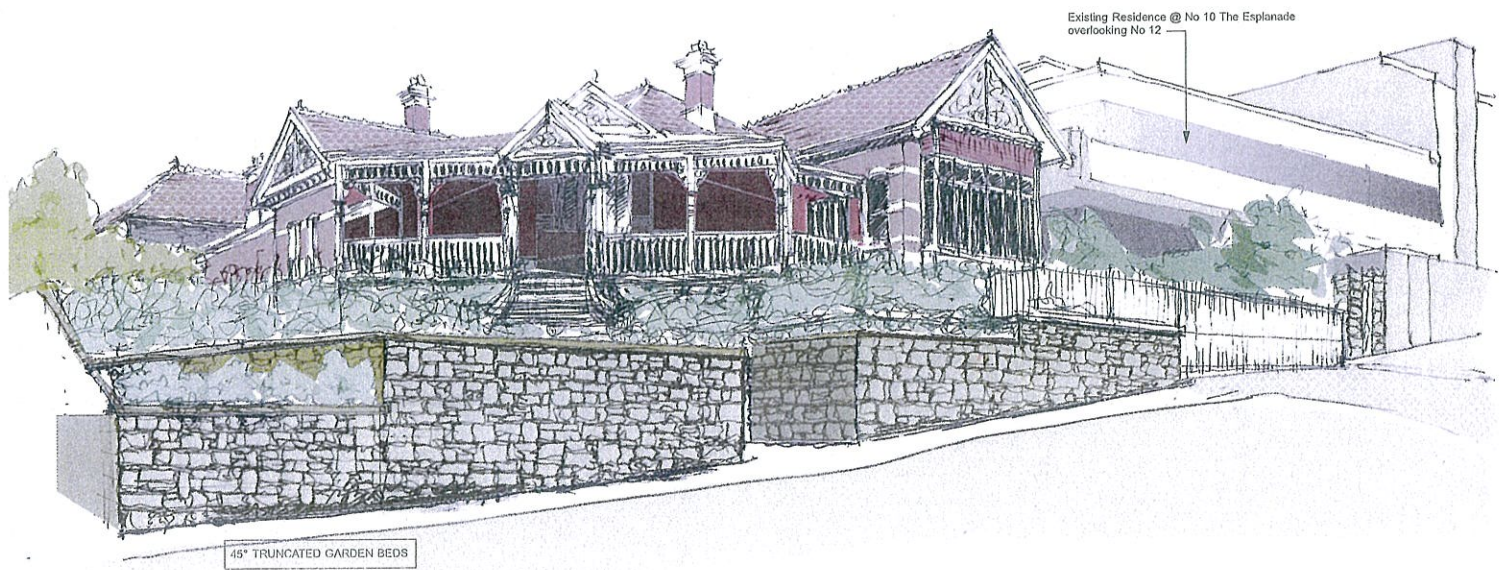
21-746 PA09F
(Page 1 of 2)



**ELEVATION - SOUTH BOUNDARY
RETAINING & FENCE 1:100
East End**
Reduction in wall heights from Oct 2022 DA

-  PROPOSED NEW RETAINING WALL ON LOT 63 TO PROPOSED FINISHED GRADE LEVELS
-  LOWERING OF BOUNDARY RETAINING WALL FROM OCT 2022 DA
-  REMOVAL OF OPEN ASPECT RAILING FROM OCT 2022 DA
-  DELETION OF BRUSHWOOD FENCING TO 1.0m FROM OCT 2022 DA
-  DELETE SOLID FENCING TO 1.0m FROM OCT 2022 DA

General Notes
1. REVISION H
South Boundary retaining wall



PERSPECTIVE 1:100
SOUTH EAST CORNER OF LOT

General Notes
1. REVISION C
 South East Boundary retaining wall

GERARD McCANN ARCHITECT

301/21 FREEMAN LOOP NORTH FREMANTLE WA 6159 TEL: 0419 947 890 E: gmcann@westnet.au

SMITH

CLIENT

PROPOSED

SITEWORKS

PROJECT

'LAKESIDE'
 12 THE ESPLANADE
 PEPPERMINT GROVE
 LOCATION

PERSPECTIVE - South /
 East Corner of Lot

DRAWING

SCALE

DATE

DRAWN

1:100 @ A3

13 JULY 2023

GMcC

21-746 PA10C



PERSPECTIVE 1:100
NORTH EAST CORNER OF LOT

General Notes
 1. REVISION B
 North East Boundary retaining wall

GERARD McCANN ARCHITECT
 30/121 FREEMAN LOOP NORTH FRESHWATER WA 6159 M 0419147 830 E gmccann@gerardmccann.com.au

SMITH CLIENT	PROPOSED SITEWORKS PROJECT	'LAKESIDE' 12 THE ESPLANADE PEPPERMINT GROVE LOCATION	PERSPECTIVE - North / East Corner of Lot DRAWING	SCALE DATE DRAWN	1:100 @ A3 13 JUNE 2023 GMC	21-746 PA11B
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From: [Steve Allering](#)
To: [Joel Gajic](#)
Cc: [Don Burnett](#); [Steve Allering](#); [Reception](#)
Subject: RE: 12 The Esplanade landscaping and fencing
Date: Wednesday, 30 August 2023 3:57:42 PM
Attachments: [image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[Stewarts Boundary Suggestion_280823.pdf](#)

Dear Joel

Thanks for your email below.

We have had an opportunity to now review the officers/Council's proposed recommendation regarding both the treatment of the interface and the lowering of the driveway at the front of the property.

In order to answer some of your questions below, we have modelled the effect of lowering the driveway, and have made some assumptions as to how the applicant could grade the driveway beyond the red hashed area at a 3-degree gradient towards the rear of their property. Whilst the Council's solution does not address all of our clients' issues, it does go some way to addressing them, particularly if it can be considered with the suggested treatment of levels further along the driveway per the attached plans, and our client wishes to express their appreciation of the Council's continued consideration of their amenity and safety concerns in its deliberations.

Boundary interface

I have attached a perspective created from the model from the architects that depicts the lower driveway with the 3-degree gradient towards the rear of the property, that may assist in answering your questions below.

As you can see in the perspective, the requirement for a separate safety barrier on the boundary to prevent people from falling into our clients property, may already be addressed by the fact that if a plan can be achieved with the applicant that provides the gradient we have shown, the existing dividing wall built by our client shown in white (which was built approx. 1.8m high from the applicants existing NGL), would effectively act as the human barrier. Indicatively in red pen marking, our architects have determined that this may be able to achieve a 1 metre height without the need for a separate safety barrier.

This would then respond to the recessing of the garden beds because the natural lowering of the driveway and planting levels would address this issue.

That would then leave:

- The requirement to install mature landscaping as opposed to 5 litre pots to address the interface issues identified earlier;
- A separate need to also consider that whilst human safety would be addressed with the suggested treatments in our perspective, that some form of:
 - vehicle safety bollards/kerbing to an appropriate standard may also need to be installed on the applicant's property on the front corner bend where the driveway heads west to the rear of the property; and
 - Adjacent to the proposed visitor/spare car park area along the applicant's southern side of the building, to prevent accidental entry at height from an errant vehicle manoeuvre into our client's property.
- Landscaping to be maintained in perpetuity (supported also through the use of the s70a legal constraint)
- Consultation with our client on the modified landscape plan once developed.

We previously suggested the finalisation of these matters could be addressed by way of a further condition for a modified landscape plan to be separately approved by the Shire unless the Applicant can prepare a plan in advance of Council's consideration. Such a plan would need to consider the above treatments.

Unknown Treatment of Driveway Gradient towards the rear

With respect to the driveway levels, because the Council's current proposed condition only specifies lowering of driveway heights within the front setback area, the applicant may choose a different manner in which to treat the gradient. However, we submit the treatments our clients' architects have developed appear to be the most appropriate manner in which the gradient ought to be treated because it:

- appropriately responds to the human safety issues without the need for a separate safety barrier;
- provides an increased reduction in fill along the boundary; and,
- responds to the issue of recessing the landscape beds.

We ask that Council also consider extending their draft proposed condition to also address treatment along the southern boundary as generally depicted by our perspective. We would be happy to provide any further detail around that to assist Council in their deliberations.

Kind regards

Steve Allering | Director

letter logo no text 80



M: [+61 412 381 700](tel:+61412381700) | **T:** [+61 8 9382 3000](tel:+61893823000) | **F:** [+61 8 9382 3005](tel:+61893823005) |

E: steve@alleringassoc.com | **W:** www.alleringassoc.com

125 Hamersley Road, Subiaco WA 6008



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From: Joel Gajic <joel.gajic@peppermintgrove.wa.gov.au>

Sent: Wednesday, August 23, 2023 2:58 PM

To: Steve Allering <steve@alleringassoc.com>

Cc: Don Burnett <don.burnett@peppermintgrove.wa.gov.au>

Subject: 12 The Esplanade landscaping and fencing

Good afternoon, Steve

The Shire Council at yesterday's OCM deferred determination of the application to seek further clarification and consensus on matters pertaining to fencing and landscaping. An alternative officer recommendation (see attached) was tabled that partially addressed the following concerns raised in the submission by Philip Dobson - Hotchkin Hanly Lawyers:

- Safety (risk of fall)
- Landscaping (need to plant species reference Vt at a greater state of maturity than 5lt pots, desire for beds to be recessed 200mm below retaining walls to mitigate soil spill and leaf fall)
- S70A notification supported but needs to require landscaping to be maintained in perpetuity.

I am tasked with further informing the attached amended officer recommendation with regard to the landscaping plan and a suitable barrier to mitigate the risk of a fall.

Please clarify what form an acceptable safety barrier to your client would look like - whether a combination of solid wall and open aspect, and landscaping.

Providing a 200mm 'lip' to prevent soil spill, establishing landscaping in a larger nominal pot size and ongoing maintenance of the landscaping would appear fairly straight-forward.

Regards

Joel Gajic

Manager of Development Services



1 Leake Street, PEPPERMINT GROVE WA 6011

PO Box 221, Cottesloe WA 6911

T: 08 9286 8600 M: 0488 327 715

E: joel.gajic@peppermintgrove.wa.gov.au

W: <http://www.peppermintgrove.wa.gov.au>

www.thegrovelibrary.com



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RAMP GRADED FROM NEW ARRIVAL LEVEL
TO WHERE IT MEETS OLD RAMP. (3° GRADE)
2 CARPARKS ON RAMP
3° CROSS FELL

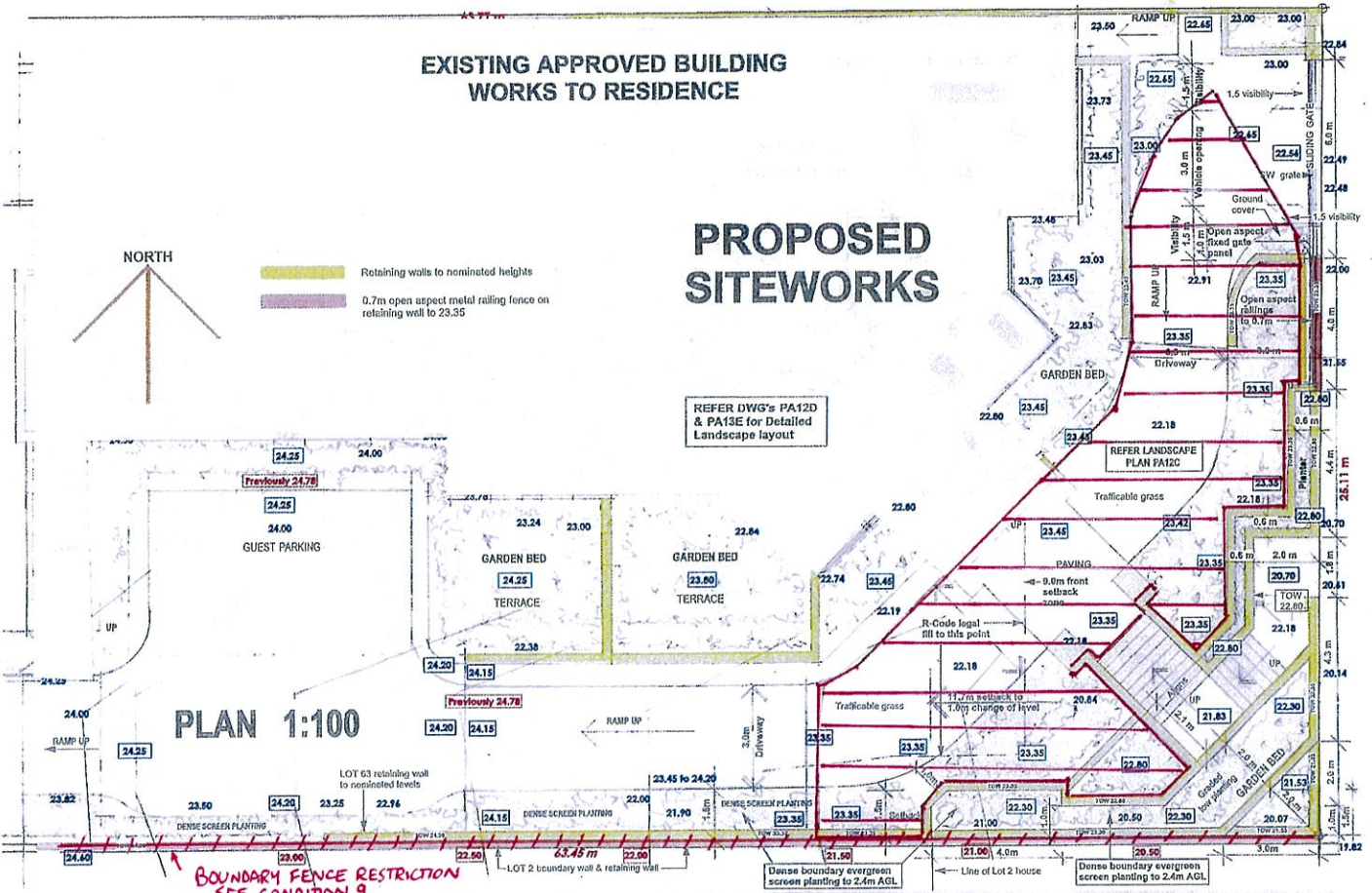


STEWARTS BOUNDARY
WITH COUNCIL CONDITION TO PROP
ARRIVAL BY 600 M.

CKA
28.08.2013.

EXISTING APPROVED BUILDING WORKS TO RESIDENCE

PROPOSED SITEWORKS



REFER DWG'S PA12D & PA13E for Detailed Landscape layout

REFER LANDSCAPE PLAN PA12C

GERARD McCANN ARCHITECT
 30/121 FREEMAN LOOP NORTH FREEMANVILLE VIC 3159 TEL 0419 517 810 E. gmcann@out.net.au

SMITH PROPOSED SITEWORKS
 CLIENT PROJECT

LAKESIDE 1/2 THE ESPERANDE PEPPERMINT GROVE LOCATION
 PLAN - EAST END PROPOSED SITE WORKS DRAWING
 SCALE 1:100 @ A3
 DATE 11 JULY 2023
 DRAWN GMCC
 21-746 PA02H (Page 2 of 2)