



City of Nedlands

Planning and Development Reports

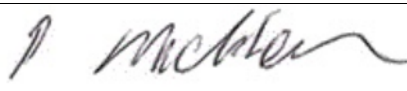
Committee Consideration – 8 September 2015
Council Resolution – 22 September 2015

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Council: 22 September 2015

PD39.15	(Lot 3) No. 7 Nardina Crescent, Dalkeith – Two Storey Single House
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Committee	8 September 2015
Council	22 September 2015
Applicant	Glory Holdings (WA) Pty Ltd
Owner	C Wang
Officer	Kate Bainbridge – Senior Statutory Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2015/150
Previous Item	Nil.
Attachments	1 – Site Plan and Survey Plan 2 – Ground Floor Plan 3 – Upper Floor Plan 4 – Elevations 5 – Site photographs

1.0 Executive Summary

The proposal is for a two storey single house and pool which is compliant with the deemed-to-comply provisions of the Residential Design Codes (R-Codes) with the exception of the proposed rear setback. The application was advertised to impacted neighbouring landowners and an objection was received in relation to the rear setback variation.

Where an objection has been received, administration does not have the delegation from Council to determine the application and therefore the application is referred to Council for determination.

The rear setback although non-compliant with the deemed-to-comply provisions is considered to comply with the design principles of the R-Codes, as the orientation of the lot (being a corner lot) means that the rear boundary functions more as a side boundary than a rear boundary. As a result, the application is recommended for approval.

2.0 Recommendation to Committee

Council approves the application for a Two Storey Single House and Pool at (Lot 3) No. 7 Nardina Crescent, Dalkeith, in accordance with the application

received on 1 May 2015 and amended plans received on 19 June 2015, subject to the following conditions and advice:

- 1) Amended plans are to be submitted with the building permit application demonstrating the upper floor balcony being setback 9m from the front boundary.
- 2) The development shall at all times comply with the approved plans.
- 3) All proposed visual privacy screens and obscure glass panels to Major Openings and Active Habitable Spaces shown on the approved drawings, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2013 (R-Codes)*. The structures shall be installed and remain in place permanently, unless otherwise approved by the City.
- 4) The crossover to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for the crossover from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
- 5) The redundant portion of the existing crossover shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.
- 6) A grated channel strip-drain shall be constructed across the driveway, aligned with and wholly contained within the property boundary, and the discharge from this drain to be run to a soak-well situated within the property.
- 7) All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
- 8) All footings and structures to retaining walls and fences, shall be constructed wholly inside the site boundaries of the Certificate of Title.
- 9) The street tree is to be retained and shall not be removed without prior written approval from the City.

Advice Notes specific to this approval:

- 1) The applicant is advised that a further planning application will be required for any new primary or secondary street fencing.

- 2) Any construction in the nature-strip / verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Technical Services, prior to construction.
- 3) Dividing fences behind the front setback line, height no greater than 1.8m above approved levels and complying with the provisions of the *City of Nedlands Fencing Local Law 2007* are deemed-to-comply with the Scheme and do not require further planning approval. A further planning application and approval is required for other fencing, including heights greater than 1.8m above approved ground levels and/or forward of the front setback line.
- 4) All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
- 5) All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well.
- 6) The swimming pool fencing installed is to comply with the *Building Act 2011*, the *Building Regulations 2012* and Australian Standard S 1926.1-1992.
- 7) The swimming pool, whether partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
- 8) All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block.
- 9) The applicant is advised to consult the City's *Visual and Acoustic Privacy Advisory Information* in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours.

Prior to selecting a location for an air-conditioner, the applicant is advised to consult the online fairair noise calculator at www.fairair.com.au and use this as a guide to prevent noise affecting neighbouring properties.

Prior to installing mechanical equipment, the applicant is advised to consult neighbours, and if necessary, take measures to suppress noise.

- 10) Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an 5

Removal and disposal of ACM shall be in accordance with *Health (Asbestos) Regulations 1992*, Regulations 5.43 - 5.53 of the *Occupational Safety and Health Regulations 1996*, *Code of Practice for the Safe Removal of Asbestos 2nd Edition*, *Code of Practice for the Management and Control of Asbestos in a Workplace*, and any Department of Commerce Worksafe requirements.

Where there is over 10m² of ACM or any amount of friable ACM to be removed, it shall be removed by a Worksafe licensed and trained individual or business.

- 11) This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS 2, contributing to well-planned and managed development in the City of Nedlands.

4.0 Legislation

- *Planning and Development Act 2005 (Act)*.
- Metropolitan Region Scheme (**MRS**).
- City of Nedlands Town Planning Scheme No. 2 (**TPS2**).
- Residential Design Codes of WA 2013 (**R-Codes**).
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

The proposal is for works to be constructed on a private lot, and therefore has no immediate budget or financial implications for the City, however should Council refuse the application, there may be financial implications through an appeal of Council's decision.

6.0 Risk management

Nil.

7.0 Background

7.1 Site Description

Lot area	850m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential – R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No

The subject property is bound by Minora Road to the north, Nardina Crescent to the west and residential properties to the south and east (refer to aerial image below), and currently accommodates a single storey single dwelling. The existing dwelling is proposed to be demolished to facilitate the construction of a new two storey dwelling. There is an approximate 1m slope up from north to south, with the southern neighbouring dwelling having a finished floor level of 0.78m higher than the proposed dwelling. The majority of the dwellings within vicinity of the subject property are two storey.



8.0 Discussion

The application seeks approval to construct a new two storey dwelling and swimming pool as depicted in the submitted plans (**Attachment 1 – 4**).

The development complies with the TPS2, Council Policies and the deemed-to-comply provisions of the R-Codes, with the exception of the ground floor being proposed to be setback 1m and the upper floor is proposed to be setback 3.4m from the rear boundary, in lieu of the required 6m.

8.1 Consultation

The development application was advertised to affected landowners by the City for 14 days for comment. A sign informing neighbouring landowners that a new two-storey dwelling is proposed at the subject property was also placed on site inviting comments on the proposal. One submission was received during the consultation period. The following is a summary of the concerns raised:

“The rear setback of the ground floor and upper floor being less than 6m will disadvantage my property in terms of building bulk and scale.”

Despite the concerns raised the City believes that the proposal meets the design principles of Clause 5.1.3 (Lot Boundary Setbacks) of the R-Codes as the shared lot boundary functions as a side lot boundary rather than rear lot boundary as discussed in the report.

The landowner has advised the following in response to the submitters concerns:

“We believe that the upper floor of the proposed dwelling has an average setback of 6 meters to the rear lot boundary.

There are no openings on the upper floor wall facing the southern neighbouring lot, therefore it does not create any privacy intrusion.

The southern neighbouring lot is higher than ours, and overshadowing is well under what is permitted. Additionally existing landscaping on the northern side of the neighbouring lot will assist in screening the proposed development.

I sincerely believe that the proposed building on 7 Nardina Crescent will not place the adjoining lot in any form of disadvantage in terms of privacy, building bulk or access to sunlight and ventilation as a result of the reduced rear setback.”

8.2 State Planning Policy 3.1 – Residential Design Codes

8.2.1 Lot Boundary Setbacks

The proposal is compliant with the deemed-to-comply provisions of the R-Codes with the exception of the following:

Deemed-to-comply Requirement	Proposed
The ground and upper floors are required to be setback 6m from the rear boundary in accordance with Table 1 of the R-Codes.	The ground floor is proposed to be setback 1m and the upper floor is proposed to be setback 3.4m from the rear boundary in lieu of the required 6m.

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following design principle provisions:


Design principles	Assessment/Comment
Impact of Building Bulk	As the subject property has two street frontages, the garage has been located as far from the street intersection as possible in a comparable position to the existing dwelling's garage. The subject property also has a smaller lot area than other R10 properties within the locality at 850m ² in lieu of a minimum 1000m ² , yet the development will still comply with the 60% open space required for the locality and proposed to be lower than the permitted 12.5% overshadowing.
Access to direct sunlight and ventilation	The impacted neighbouring dwelling to the south has only minor openings on the ground floor facing the subject dwelling with the upper floor setback over 5m from the shared lot boundary. As the southern neighbour's shared lot boundary with the subject property is their side lot boundary it is reasonable to expect similar setbacks are applied for the subject property. The setbacks provided to the southern side boundary to the proposed dwelling would be compliant Table 2a and 2b of the R-Codes if applicable and therefore the development is considered to permit adequate access to sunlight and ventilation to the proposed dwelling and the neighbouring landowner's dwelling.

<p>Overlooking and privacy loss</p>	<p>The ground floor of the dwelling is not proposed to be elevated. Additionally the ground floor of the subject dwelling has the garage and drying court adjacent to the southern rear boundary, both non-habitable spaces. The upper floor proposes no major openings on the upper floor facing south. The neighbouring landowner to the south is also elevated 0.78m above the proposed dwelling and therefore the proposed dwelling will not create overlooking opportunities or result in a loss of privacy for the southern neighbouring landowner.</p>
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9.0 Conclusion

The proposal is for a new two storey single house at the subject property. The proposal involves variations to the deemed-to-comply provisions of the R-Codes being the reduced rear lot boundary setback. The variation is considered to be compliant with the relevant design principles of the R-Codes. Accordingly, the application is recommended to the Council for approval.

PD40.15	(Lot 300) No. 3/29 Asquith Street, Mount Claremont – Proposed Change of Use (From Shop to Lunch Bar)
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Committee	8 September 2015
Council	22 September 2015
Applicant	K Hughie-Williams
Landowner	Burgess Rawson
Officer	Mr A D Bratley – Coordinator Statutory Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2015/183 – AS2/29
Previous Item	Nil
Attachments	1. Site Plan (A3) 2. Floor Plan (A3)

1.0 Executive Summary

A retrospective development application has been received which seeks approval to allow a lunch bar to continue operating from Unit 3 of the Mount Claremont Shopping Centre, the existence of which got brought to the City's attention as a result of a complaint being received. Unit 3 has previously been approved by the City to operate as a shop (deli).

Although the applicant has applied only for a lunch bar, customers are able to purchase meals (e.g. cooked breakfasts) to consume on the premises and/or purchase sandwiches and similar foodstuffs which can be consumed on or off the premises. As such, under Town Planning Scheme No.2 (TPS 2), the business has both restaurant (consumption of food on the premises) and lunch bar (consumption of food off the premises) components.

The proposal was advertised to nearby landowners for comment and during the advertising period 4 objections were received.

The application has been referred to Council for determination, as officers do not have the delegation to determine an application under instrument of delegation 6A, where specific objections have been received.

The restaurant component of the business results in a significant additional car parking shortfall and as such is not supported. However, the lunch bar component would not increase the number of car bays required and as such is supported. Provided the tables and chairs are removed from the premises and the business is operated in accordance with the TPS 2 definition of lunch bar, it is recommended Council approve the retrospective application.

1.1 Recommendation to Committee

- 1) Council approves the retrospective application for a lunch bar to continue operating at (Lot 300) No. 3/29 Asquith Street, Mount Claremont, subject to the following conditions and advice:
 - a) The development shall at all times comply with the approved plans.
 - b) Unless otherwise approved by the City, there shall be no tables and chairs available for customers.
 - c) The existing tables and chairs shall be removed from the premises within 14 days from this decision, to the City's satisfaction.
 - d) The use complying with the lunch bar definition as stipulated under Town Planning Scheme No. 2 (refer to advice note 1).
 - e) No unloading of vehicles is to occur that interferes with the parking of vehicles in the car park by visitors and employees. All car parking bays in the car park are to be made available at all times for the parking of vehicles by visitors and employees.
 - f) The operating hours of the lunch bar are restricted to:

Monday and Friday 7.00am to 6.00pm;
Saturday 7.00am to 4.00pm; and
Sunday 7.00am to 2.00pm.

Advice Notes specific to this approval:

1. The applicant is advised that the use 'Lunch Bar' is defined as being the following under the City's Town Planning Scheme No. 2:

"Means premises used for the preparation and/or sale of take-away sandwiches and similar foodstuffs within industrial and commercial areas in a form ready to be consumed without further preparation off the premises."
2. The applicant shall lodge with the City an *Application for Food Premises Alteration / Fit-out* which an Environmental Health Officer at the City is satisfied demonstrates food safety outcomes.
3. Prior to commencing a Food Business, the premises shall receive an inspection from an Environmental Health Officer at the City which cites the Food Business may commence operation.

4. **Upon commencement of a Food Business, a Food Safety Program which meets the requirements of the *Australian New Zealand Food Standards Code Standard 3.2.1 Food Safety Programs* shall be implemented and maintained.**
5. **Adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia.**
6. **Noise from service and/or delivery vehicles should be mitigated and such vehicles should not service the premises before 7.00 am or after 7.00 pm Monday to Saturday, or before 9.00 am or after 7.00 pm on Sundays and Public Holidays.**
7. **Prior to commencing a Food Business* a proprietor shall lodge with the City a *Food Business Registration / Notification Form*.**
****A food business is any business or activity that involves the sale of food or the handling of any type of food for sale in Australia***

2.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the requirements of TPS 2.

3.0 Legislation / Policy

- *Planning and Development Act 2005 (Act).*
- Metropolitan Region Scheme (MRS).
- City of Nedlands Town Planning Scheme No. 2 (TPS 2).
- Council Policy – Neighbour Consultation.

4.0 Budget / Financial Implications

Not applicable.

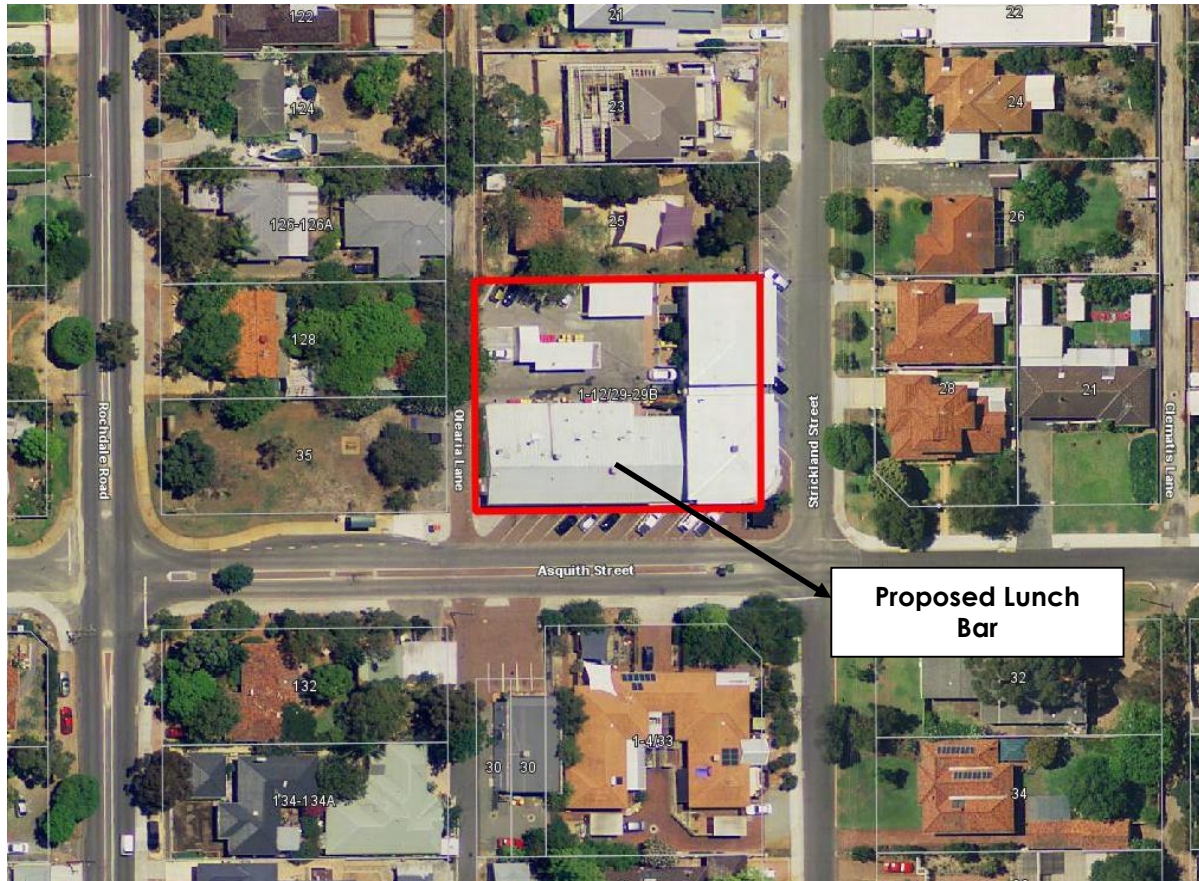
5.0 Risk Management

Not applicable.

6.0 Background

Property address	(Lot 300) No. 3/29 Asquith Street, Mount Claremont	
Lot area	2,023m ²	
Zoning/ Reserve	MRS	Urban
	TPS 2	Retail Shopping

The subject site has frontages to Asquith Street, Strickland Street and Olearia Lane, and the existing building on the site consists of residential and commercial premises. The commercial uses include shops, an office and the Deli Chicchi restaurant. Nearby properties contain dwellings, and commercial activities such as offices and the Annie's Child Care Centre as seen in the location plan on the next page.



7.0 Discussion

The application seeks retrospective approval to allow a lunch bar to continue operating from Unit 3 of the Mount Claremont Shopping Centre.

Although the applicant has applied only for a lunch bar, customers are able to purchase meals (e.g. cooked breakfasts) to consume on the premises and/or purchase sandwiches and similar foodstuffs which can be consumed on or off the premises.

As such, under Town Planning Scheme No.2 (TPS 2), the business has both restaurant (consumption of food on the premises) and lunch bar (consumption of food off the premises) components.

The details of the application are as follows:

- a) The business operates between Monday and Friday 7.00am to 6.00pm, Saturday 7.00am to 4.00pm, and Sunday 7.00am to 2.00pm.
- b) A total of 9 staff are on site at any one time.

- c) The peak hours of operation are between 12.00pm and 1.30pm, and 5.00pm and 5.45pm daily. Fridays and Saturdays being the busiest.
- d) Tables able to accommodate up to 34 persons are proposed to be available based on plans provided by the applicant.

Refer to Attachments 1 and 2.

7.1 Consultation

The proposal was advertised for 14 days to nearby landowners for comment in June 2015 due to a shortfall in the required amount of car bays. During the advertising period 4 objections were received. The following is a summary of the concerns raised:

- a) There being not enough car bays available; and
- b) There being similar uses in the shopping centre already.

The impact the lunch bar shall have on car bay demand and the area’s amenity is discussed in the following sections.

7.2 Town Planning Scheme No. 2

The following provisions of TPS 2 apply to such proposals.

7.2.1 Existing Car Parking Demand

Thirteen (13) car parking bays exist on the entire site, all at the rear of the buildings (refer to Attachment 1). The existing tenancies on the property require a total of 86 car bays, a deficit of 73 car bays therefore exists.

In addition, 8 car bays exist on the opposite side of Olearia Lane on 35 Asquith Street, and immediately adjoining the property are 11 on street car bays along Asquith Street and 13 on street car bays along Strickland Street.

The following TPS 2 car parking requirements apply to the existing shop operating from Unit 3:

Car Parking Provision	Car Parking Requirement
<p><i>Shop</i></p> <p>8.3 bays per 100sqm of leasable floor area.</p> <p>Unit 3 leasable area = 142 m²</p>	<p>12 car bays required</p>

The City frequently receives complaints from residents about vehicles allegedly used by those visiting the Mount Claremont Shopping Centre, obstructing driveways, parking on registered verges and overstaying in time restricted car bays. Previously the City has received a petition containing 441 signatures from landowners requesting the City to increase the number of car parking bays for the Mount Claremont Shopping Centre. The City is currently investigating where additional on street car bays could be provided.

7.2.2 Future Car Parking Demand

The Restaurant Component

The following TPS 2 car parking requirements apply to the restaurant component:

Car Parking Provision	Car Parking Requirement	Car Bay Shortfall
<p><i>Restaurant</i></p> <p>1 bay per 2.6sqm of restaurant seating area (the restaurant seating area being 95sqm); or 1 bay per 2 persons. Whichever is greater (being up to 43 persons).</p> <p>In this case the seating area is the greater.</p>	36 car bays required	97 car bay shortfall for the shopping centre.

The Lunch bar Component

TPS 2 does not contain a prescribed minimum number of car bays for a Lunch Bar use, therefore the number of car bays required is at Council's discretion. In recommending whether the provision of car bays is sufficient for the proposed use, the City has reviewed surrounding local governments' parking requirements for the use Lunch Bar, and the following car parking requirements apply to the lunch bar component.

Local Government	Car Parking Provision	Car Parking Requirement	Car Bay Shortfall
City of Subiaco	<i>Lunch Bar</i> 1 bay per 20 m ² net lettable area	5 bays required	66 bay shortfall for the shopping centre.

	Unit 3 net lettable area = 95m ²		
Town of Claremont	<p><i>Lunch Bar</i> 1 bay per 16.67 m² gross leasable area</p> <p>Unit 3 gross leasable area = 142 m²</p> <p>Under the Town of Claremont's Scheme a lunch bar is deemed to fall under the land use 'Shop.</p>	9 bays required	70 bay shortfall for the shopping centre.

7.2.3 Amenity

TPS 2 Clause	Assessment Comment
<p><i>"5.5.1 Council may refuse to approve any development if in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned"</i></p>	<p>The City is aware of car parking difficulties within the vicinity, and the impacts this is having on the amenity of the area as reflected by the number of complaints and the petition received from nearby landowners.</p> <p>The impact of the lunch bar is minimal but the restaurant component with an additional 36 car bays required, has a significant impact in terms of car parking.</p>
<p>Under clause 6.4.2 (Consideration of Applications) under TPS 2 the following provisions are to be taken into consideration:</p> <p>(a) The nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its</p>	<p>Compared with the authorised shop use for Unit 3, the nature of the proposed lunch bar use will mean that the demand for car bays in proximity to the shopping centre shall be similar. Whereas a restaurant is a more intense use of the unit.</p>

<p>(b) the vehicular and pedestrian access, including on-site circulation and provision for deliveries will not create any danger; and</p> <p>(c) the vehicle flows to and from the subject land will not be disruptive to existing traffic movements or circulation patterns.</p>	<p>environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;</p>
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7.3 Other Matters of Concern

During the advertising period concerns were also received with regard to there being similar uses already operating within the shopping centre. This is not a planning matter and as such is not considered in this assessment apart from when calculating the required amount of car parking bays to be provided on site.


8.0 Conclusion

As customers are currently able to consume food and drink on the premises the business operating from Unit 3 has a restaurant component with 34 seats. A restaurant use is deemed to be a more intense use of the unit than the current approved use of a 'Shop'. It is considered that there is inadequate provision of car parking to meet the predicted demand if the business continues to operate as it is currently.

If customers were not permitted to consume food and drink on the premises, only off site, the subsequent frequency and occupancy rate for the onsite car parking bays would be mean that car bays will be more regularly available for customers visiting the shopping centre. The business would be deemed to be a lunch bar if this were to occur, which shall require fewer car parking bays than the shop use previously approved for Unit 3.

It is recommended that the application be approved by Council subject to the premises being used as a lunch bar only as defined under TPS 2.

<p>PD41.15 Girl Guides Western Australia Inc. – Lease of Guides Hall at 121 Monash Avenue, Nedlands – Portion of Reserve 20838</p>

Committee	15 th September 2015
Council	29 th September 2015
Applicant	Girl Guides Western Australia Inc.
Owner	City of Nedlands
Officer	Rebecca Boley – Leased Assets Co-ordinator
Director	Peter Mickleson – Planning & Development
Director Signature	
File Reference	CAP-LB-00007
Previous Item	D22.10 on 27 th April 2010

1.0 Executive Summary

This report is presented to Council to consider the terms of a new lease agreement for a Guides hall at Monash Avenue, Nedlands, situated on Reserve 20838. The hall is a purpose built premises for girl guiding in the area. The terms of the new lease reflect City standard terms of lease.

1.1 Recommendation to Committee

Council

- 1) Approves and endorses the lease agreement with Girl Guides Western Australia Inc. for premises at Reserve 20838 in the terms contained in Attachment 1 and
- 2) Authorises the Mayor and CEO to execute the Deed of Lease with application of the City's common seal.

1.2 Strategic Community Plan

KFA: Community Development

This report requires Council to give consideration to aspects of the Strategic Community Plan relating to Community Development. Specifically the City's role of building and enhancing a sense of local community through support for local community organisations such as Girl Guides Inc. Agreeing to the continued tenure of this local community organisation within the community at a City premises on terms

that satisfy the City's other interests is an outcome that supports this Key Focus Area of the Strategic Community Plan 2013-2023.

2.0 Background

The lease premises subject of this report is the Girl Guides Hall on Monash Avenue, Nedlands. The hall is located on a Class A reserve being Reserve 20838. The reserve has the purpose of Recreation and the associated Management Order is vested in the City. The order contains a power to lease any portion of the reserve for any term not exceeding 21 years subject to the consent of the Minister for Lands.

The hall was built in 1957 for the purpose of Girl Guiding. The Girl Guides Western Australia Inc. (the Association) fund-raised for and arranged the construction of the building. The building has been leased to the Association since its construction. The current lease commenced on 1 May 2010 and expired on 30 April 2015. The Association has remained in lease of the premises on the same terms held over.

The City and the Association have been in negotiation of terms of the new lease. The terms of the new lease agreement contained in Attachment 1 are based on Council policy for lease of City premises to community groups. Such policy requires that Leases are for a community – purpose which aim to provide sporting clubs and other community-based user groups with secure, long- term tenure of a Council-owned facility and the right to its exclusive use. Criteria for eligibility to lease are that the user group requires exclusive use of a facility, the user group has the capacity to manage and maintain the facility, including any capital development required, and the user group is incorporated as a not-for-profit sporting club or community organisation; or a government department. The rationale of Council's leasing policy for community-purpose leasing is to provide the facility to the user-group free of rental charge, at no cost to Council. All costs associated with the facility must be met by the lessee. This includes cost of maintenance – both routine and capital (replacement and development); running costs – utility charges and insurances; and consumables required onsite.

2.1 Key Relevant Previous Council Decisions

D22.10 was considered by Council on 27 April 2010.

In this item Council considered terms of a new lease agreement for the same premises by Girl Guides WA Inc. The term of the Lease was 5 years, a shorter term than the standard 10 years with option to renew for a further term of 5 years. The shorter terms was adopted to ensure flexibility in any redevelopment of High view Park. This item also considered funding for necessary electrical works onsite.

2.2 Legislation / Policy

The Local Government Act 1995 at s3.58 outlines the requirements of a local government authority in disposing of property – the lease or licence of land in this instance. However in this particular situation the transaction is exempt under the Local Government (Functions and General) Regulations 1996 at Reg. 30 as the proposed lessee / licensee is a “not for profit” organisation.

3.0 Consultation Process

Required by legislation: Yes No
 Required by City of Nedlands policy: Yes No

The City has been in communication with Girl Guides Western Australia Inc. providing with standard terms of lease and reviewing any necessary amendments. Any proposed amendment was considered by both parties to arrive at terms contained in the attached draft Deed of Lease in Attachment 1.

Consultation with the community is not required.

4.0 Budget / Financial Implications

Within current approved budget: Yes No
 Requires further budget consideration: Yes No

Any financial costs associated with the lease to Girl Guides Western Australia Inc. will be borne by the group as lessee of the premises.

5.0 Risk management

Risk associated with this arrangement is incorporated into the terms of lease. The City's standard terms of lease are designed to shift responsibility to the lessee of peppercorn premises to the fullest extent possible. The rationale for this is that a lease at peppercorn rental is to be a no cost to the Council.

6.0 Discussion

The new terms of lease agreement as contained in Attachment 1 are for the most part the same as previous terms of lease except for the specific items noted below:

- Updated terminology on changes to legislation and statutory bodies
- Building insurance is to be undertaken by the Association now instead of the previous arrangement for City to undertake insurance and on-charge the Association costs associated with policy (any excess and premium charges).
- New requirement on Association as lessee to comply with safety and testing obligations in clause 14.2 – a statutory requirement for all premises.
- Indemnity provisions are expanded and clauses 8.1, 8.2 and 8.5 are new.
- New specific requirement for the Association as lessee to minimise nuisance to neighbours – clause 43.
- Renaming of the premises to reflect change in name on redefinition of girl guides areas – hall is now simply known as “Girl Guides Hall – Monash Avenue, Nedlands”.
- Term of lease will be the standard – 10 years + 5 year
- Lease includes provision at clause 44 for termination on redevelopment of Highview Park – on the City as lessor giving 6 months' notice to terminate lease. This provision retains flexibility for redevelopment of the reserve but enables group security of tenure.

The draft Deed of Lease in Attachment 1 reflects agreed terms between the City and Girl Guides Western Australia Inc.

The draft has been forwarded to the Department of Lands for review with request for Ministerial in-principle consent. This is required before City and lessee can execute any lease of a Crown reserve. As the terms of the Lease follow essentially City standard terms it is expected that such in-principle consent will be received shortly.

7.0 Conclusion

It is recommended that Council endorse the further lease agreement with the Girl Guides Western Australia Inc. on the terms contained in the attached draft Deed of Lease. Such terms have been agreed by the parties after considering Council's leasing policy, standard terms of lease, plans for the reserve and its vicinity, past tenure of the group onsite and necessary risk management requirements.

8.0 Attachments

1. Draft Deed of Lease