


Planning and Development Reports

Committee Consideration – 11 June 2013
Council Resolution – 25 June 2013

Table of Contents

Item No.		Page No.
PD23.13	Finalisation of Scheme Amendment No. 198 – To add a clause to Schedule V – ‘Special Use Zone’ - that facilitates that a current Masterplan for the site controls its development.....	2
PD24.13	No. 5 (Lot 264) Strickland Street, Mount Claremont – Retrospective Fill and Retaining Walls.....	7
PD25.13	No. 20 (Lot 1) Jutland Parade Dalkeith – Retrospective Outbuilding.....	12
PD26.13	Sand Volley Australia Pty Ltd – Refurbishment of Existing and Construction of New Club Facilities	17
PD27.13	Swanbourne Nedlands Surf Life Saving Club – Lease and Sublease of Premises at 282 Marine Parade Swanbourne ...	29
PD28.13	20 (Lot 605) Circe Circle, Dalkeith – Unauthorised Use of Ancillary Accommodation.....	39

PD23.13 Finalisation of Scheme Amendment No. 198 – To add a clause to Schedule V – ‘Special Use Zone’ - that facilitates that a current Masterplan for the site controls its development

Committee	11 June 2013
Council	25 June 2013
Applicant	Peter Driscoll, Landvision on behalf of Hollywood Hospital
Owner	Hollywood Private Hospital Board
Officer	Jason Moore – Strategic Planning Officer
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File Reference	TPN/A198
Previous Item	PD57.12 – December 2012

Executive Summary

The purpose of this report is to recommend to Council to adopt Scheme Amendment No. 198. The scheme amendment relates to Hollywood Private Hospital and the inclusion of the Hollywood Private Hospital Masterplan into the Town Planning Scheme. This is a process driven scheme amendment that will allow Council to better regulate future development of the hospital site.

Council initiated the scheme amendment in December 2012 at its Ordinary Council Meeting. The amendment was advertised for forty two (42) days from 16 March 2013 until 26 April 2013. No objections were received. It is recommended that the amendment be adopted.

Recommendation to Committee

Council:

- 1. adopts Scheme Amendment No. 198 to Town Planning Scheme No. 2 without modification; and**
- 2. instructs administration to notify the Western Australian Planning Commission of its decision.**

Strategic Plan

KFA: Natural and Built Environment

KFA: Governance and Civic Leadership

Background

Property address	Formerly: Pt Loc 1715 and Pt Loc 8697 Monash Avenue, Nedlands (Attachment 1:Locality Plan) Now: Lot 564 (No. 101) Monash Avenue, Nedlands
Lot area	116,613.70 m ²
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Special Use – Schedule V

The original buildings on the site were constructed during World War II by the Commonwealth Government as a 500 bed hospital for service personnel. The facility subsequently was used to provide acute care for veterans and war widows, until it was acquired by the current owners, Ramsay Health Care, in 1994.

The hospital is currently licenced for 659 beds, and provides care for private patients, entitled war veterans and war widows.

Development at the site initially occurred on an 'as need' basis. In 2005, Council approved a masterplan, which is still in force, but requires updating to meet the future development requirements of the hospital.

In 2009, there was an attempt to revise the 2005 masterplan and amend the Town Planning Scheme in relation to this property to allow for developments with greater heights than applicable under the scheme. The scheme amendment was not progressed.

The request to amend the scheme as proposed was received from the applicant in early October 2012. Council initiated the scheme amendment in December 2012. The proposal was advertised for forty two (42) days from 16 March 2013 until 26 April 2013. No objections were received.

Key Relevant Previous Council Decisions

In December 2012, Council initiated Scheme Amendment No. 198 in accordance with the *Planning and Development Act 2005*.

Legislation / Policy

Scheme amendments are subject to part 5 of *Planning and Development Act 2005*.

The relevant legislation that is being amended is the City of Nedlands Town Planning Scheme No 2 (TPS 2). Under the scheme the following provisions currently apply to the site:

	Scheme provision	Detail of provision
Use	Schedule V	(i) Hospital and ancillary facilities (ii) Aged persons housing and frail aged persons hotel, subject to being advertised in accordance with the provisions of Clause 6.3.3 and 6.3.4
Building height	Clause 5.11	Maximum building height 10m - Council can vary datum that building height is calculated from; Maximum wall height 8.5m – no ability for variation
Setback	Table III	Minimum front setback: 6m subject to conditions Minimum side setbacks: 5m unless adjoining a residential zone in which case R-Code provisions apply Minimum rear setback: average of 8m, minimum of 5m
Plot Ratio	Table III	0.5
Amenity Clause	Clause 5.5	Provides Council authority to refuse a development that in council's opinion would adversely affect the amenity of the surrounding area

Discussion

The current provisions applicable to the site under the scheme are generic so that they are able to cater for the numerous other 'Special Use' sites in the City.

By not being tailor-made, the provision cannot maximise the opportunities on any specific site, or minimise potential impact of a development. A more refined approach to the planning of these sites is therefore desirable.

A masterplan is able to overcome the shortcomings of this generic approach and achieve a bespoke outcome, but only if it is embedded in the scheme in such a manner that overrides the generic provisions.

In relation to the Hollywood Hospital site, the shortcomings of the generic provisions is that they allow any future development to have a greater impact on

the North Hollywood residential area than necessary, while imposing a height restriction that is neither appropriate nor practical given that the contours of the site and the existing development in the locality.

These shortcomings presumably motivated the development of the 2005 masterplan for this site, but at that time no provisions were made to incorporate the masterplan into the scheme. It therefore lacks statutory force and by this stage it is also outdated.

This situation has prompted the need to revisit the overall process. This process includes the completion of a new masterplan and a scheme amendment to give statutory force to this masterplan and any future rendition of it.

Given the time implications, the scheme amendment is the first stage in the process. No updated masterplan is available yet, but once it becomes available it will be open to public consultation before final council adoption.

The proposed scheme amendment will be added to clauses (i) and (ii) of Schedule V of Town Planning Scheme No. 2. It is appropriate because the proposed additional clause encourages site specific planning for the Hollywood Hospital site, provides the necessary mechanism for the implementation of a masterplan and provides the necessary flexibility to adapt to future needs of the site through the masterplanning process.

The proposed amendment was advertised and there were no objections. The lack of objections combined with the planning merits result in a proposal that is therefore supported.

Consultation

During consultation process, there were no objections to the proposal. Details of the consultation process can be found below.

Conclusion

The current scheme provisions that guide the development at Hollywood Private Hospital are inadequate to achieve the best possible outcomes at the site. The proposed scheme amendment addresses this shortcoming by providing statutory force to a comprehensive development approach for the site.

It is therefore recommended that Council finalises the proposed scheme amendment.

Consultation Process

What consultation process was undertaken?

Consultation was undertaken as required under the *Planning and Development Act 2005*.

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

How and when was the community consulted?

The proposal was open for comment for a period of 42 days from 16 March 2013 until 26 April 2013.

Letters were mailed to residents and landowners affected by the proposal with a comment form and explanatory document enclosed.

A sign was erected on site notifying surrounding stakeholders.

The amendment was also advertised in 'The Post Newspaper' on 16 March 2013.

Response to Submissions

1. No responses were received from the public.
2. One (1) submission was received from a State Government Agency (Department of Education), there was no objection to the proposal

Budget / Financial Implications

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

Scheme Amendments have no financial implications for the City as all costs incurred in relation to the amendment will be recovered by the applicant.

Risk management


Lack of support of this proposal will prevent that more appropriate development options than are currently possible can be implemented at the Hollywood Hospital site.

Under Section 76 of the *Planning and Development Act 2005*, the Minister has the power to order a Local Government to adopt a proposed scheme amendment.

Attachments

1. Locality Plan
2. Scheme Amendment No. 198 Documentation

PD24.13 No. 5 (Lot 264) Strickland Street, Mount Claremont – Retrospective Fill and Retaining Walls

Committee	11 June 2013
Council	25 June 2013
Applicant	Janelle & John Rock
Owner	As Above
Officer	Laura Sabitzer – Planning Officer
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File Reference	DA13/48; ST8/5
Previous Item	Nil

Executive Summary

This application is for retrospective fill and retaining walls located at the front of No. 5 Strickland Street, Mount Claremont.

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

The fill within 1m of the common boundary does not comply with the Residential Design Codes, and as a result, this component of the application is recommended for refusal. The retaining walls and area of fill which is located more than 1m from the common boundary is compliant and is recommended for approval.

Recommendation to Committee

Council:

1. **approves the parts of the application for retrospective fill and retaining walls at No. 5 (Lot 246) Strickland Street, Mount Claremont in accordance with the application and the plans received 7 February 2013, in relation to the proposed retaining walls and fill (excluding filled areas within 1m of the northern boundary) subject to the following conditions:**
 - a. **all stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-**

wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development;

- b. all footings and structures to retaining walls shall be constructed wholly inside the site boundaries of the Certificate of Title; and
- c. any additional development, which is not in accordance with the original application or conditions of approval as outlined above, will require further approval by Council.

Advice Notes specific to this approval:

- a. the applicant shall make application to the Manager Property Services for a Building Permit, to acknowledge the retrospective works which have received planning approval; and
 - b. further planning approval from by Council is required for any fill or retaining walls on the lot, other than that shown on the approved plans.
2. refuses the parts of the application for retrospective fill and retaining walls at No. 5 (Lot 246) Strickland Street, Mount Claremont in accordance with the application and the plans received 7 February 2013, in relation to the fill within 1m of the common boundary, for the following reasons:
- a. the fill within 1m of the common boundary does not comply with Residential Design Codes Performance Criteria 6.6.1 P1 (Excavation and Fill) as it does not retain the visual impression of the natural levels of a site from the street and adjoining property; and
 - b. the proposal is not orderly and proper planning.
3. instructs the removal of the unauthorised fill within 60 days from the date of this decision.

Strategic Plan

KFA: Natural and Built Environment

Background

Property address	No. 5 (Lot 264) Strickland St, Mount Claremont
Lot area	1012 sq m
Zoning:	
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential R10/R20

A single storey dwelling was approved in 2010 at No. 5 Strickland Street, Mount Claremont. This application was approved with over-height fill, behind the building line on the northern side and an over-height dividing fence on the northern boundary. The adjoining owner consented to these variations.

In November 2012, the City received a complaint regarding fill forward of the building line. A file check and site visit confirmed that fill and retaining walls had been constructed at the front of the property without receiving planning approval or a building permit. Subsequently, a compliance letter was sent to the landowners requiring them to alter the unauthorised structures to bring them into conformity with the previously approved plans, or submit a retrospective planning application. A retrospective planning application was received by the City in February 2013.

This application is for retrospective fill (increase of ground level) and retaining walls located at the front of No. 5 Strickland Street, Mount Claremont. Refer to Attachments 1, 4 & 5 to view the location of the property and plans of the development and Attachment 6 for the previously approved site plan. Photographs of the development can be viewed at Attachment 3.

Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (Scheme)
- Residential Design Codes of WA 2010 (R-Codes)
- Council Policy 6.19 – Fill & Fencing (Fill & Fencing Policy)
- Council Policy 6.4 – Neighbour Consultation (Neighbour Consultation policy)

Discussion

Fill (increase of ground level)

Filling is up to 0.8m above natural ground level (NGL) within 1m of the common boundary. The R-Codes at clause 6.6.1 A1.4 requires that filling within 1m of the common is not to be more than 0.5m above NGL. The location of the fill which is greater than 0.5m above NGL is shown at Attachment 4.

Where the level of fill does not comply, it is assessed under the relevant performance criteria. The performance criteria is as follows:

“Development that retains the visual impression of the natural level of a site, as seen from the street or other public place, or from an adjoining property”.

It is considered that the proposed level of fill does not meet the abovementioned performance criteria. This is because the area of fill can be viewed from the street and the adjoining property and that the fill results in the site levels at No. 5 Strickland St being higher than No. 3 Strickland Street.

Viewing the photographs in Attachment 3, it is apparent that No. 5 Strickland Street is visibly higher than No. 3 Strickland Street. From reviewing the site survey of the two properties, the City’s documented contours and conducting a site visit, the natural level is approximately the level of the sand at front of No.3

Strickland Street. An image of the front of the sites prior to the development of the new residences at Nos. 3 & 5 Strickland Street (refer to Attachment 2) shows the visual impression of site levels as being even, with no site being visibly higher than the other.

The levels at the front of the subject property naturally slopes, with the natural levels at the southern side of the lot are higher than the natural levels of the northern half of the lot (refer to Attachment 4).

Whilst the Performance Criteria requires the assessment of whether the visual impression of the natural levels of the site is retained, it is acknowledged that the Acceptable Development Provision of clause 6.6.1 does permit the increase of natural levels. The NGL of the site can be increased by up to 0.5m and fill in the centre of the site (more than 3m from the front of the lot and setback 1m from side boundaries) can be raised by more than 0.5m and is considered to be compliant.

In this case, as the fill within 1m of the boundary is more than 0.5m above NGL, the City is required to assess this variation against the relevant Performance Criteria. It is considered that this variation does not satisfy the Performance Criteria of RCodes clause 6.6.1.

Retaining walls

The retaining walls at the NE corner (front) of the property comply with the Acceptable Development Provisions of the RCodes. Therefore, the retaining walls are recommended for approval.

Consultation

The adjoining owner has objected to the works. A summary of the neighbour consultation is found in Attachment 7. Please also refer to the Consultation Process section for details as to how consultation was conducted.

Conclusion

The retaining walls and fill (excluding fill within 1m of the northern boundary) complies with the Acceptable Development Provisions of the RCodes. As a result these components of the application are recommended for approval.

However, the area of fill which is within 1m of the northern boundary does not meet the relevant Acceptable Development Provisions or Performance Criteria of the RCodes. This is because the area of fill can be viewed from the street and adjoining property. The increase of ground levels in this area does not retain the visual impression of the site's natural levels.

Accordingly, with exception of the fill within 1m of northern boundary, the application is recommended approval.

Consultation Process

What consultation process was undertaken?

Required by legislation
(Scheme):

Yes No

Required by City of Nedlands policy
(Neighbour Consultation policy):

Yes No

How and when was the community consulted?

The application was advertised by letter to adjoining owner at No. 5 Strickland Street. The adjoining owner has objected to the works. The comment period was from 19 March 2013 - 2 April 2013.

A summary of the comments received during consultation can be viewed at Attachment 7.

Budget / Financial Implications

The application is for works constructed on a private lot, and therefore has no budget / financial implications for the City.


Risk management

Not applicable.

Attachments

1. Locality Plan
2. Google maps street view prior to redevelopment
3. Current photographs of site & adjoining property
4. Site Plan
5. Elevation Plan
6. Previously Approved Site Plan
7. Summary of Consultation

PD25.13 No. 20 (Lot 1) Jutland Parade Dalkeith – Retrospective Outbuilding

Committee	11 June 2013
Council	25 June 2013
Applicant	Roger Sant
Owner	M Balzarini and G Boventi
Officer	Thomas Geddes – Planning Officer
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File Reference	M13/12620
Previous Item	N/A

Executive Summary

This application is referred to Council for determination as the applicant has requested to be heard at Council on the matter.

The application is for retrospective approval of an outbuilding in the 9 metre front setback. This application is recommended for refusal as it does not meet the provisions of clause 5.3.3(a) of the City's Town Planning Scheme No. 2 (TPS2) and the Town Planning Scheme does not provide discretion to vary the provision.

Recommendation to Committee

Council:

1. **refuses a retrospective application for an outbuilding at No. 20 (Lot 1) Jutland Parade, Dalkeith in accordance with the application received 12 March 2013 and the plans received 12 March 2013 for the following reasons:**
 - a. **the 0.2 m front setback does not meet Clause 5.3.3(a) of the City's TPS2 and there is no discretion to vary the provision;**
 - b. **the 0.2m front setback is inconsistent with the provisions of clause 5.10.2(a) as it is considered to have an effect upon the amenity of the surrounding area;**
 - c. **the 0.2m front setback is inconsistent with the provisions of clause 5.5.1 of TPS2 as it is considered to have an effect upon the amenity of the surrounding streetscape and is not in keeping with the general character of the locality; and**

d. the proposal will not be orderly and proper planning.

Strategic Plan

KFA 1: Built Environment

Background

Property address	20 Jutland Parade Dalkeith
Lot area	2673m ²
Zoning:	Residential R12.5
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential

This application is for retrospective approval of a shed within the 9 metre front setback area. Refer to attachment 1 to view the plans of the outbuilding. Refer to attachments 2 & 3 for photographs of the outbuilding.

In December 2012, the City of Nedlands received complaints regarding a colour-bond shed erected at 20 Jutland Parade without planning approval. The structure was erected to replace an existing unapproved outbuilding on site which had become rusted and dilapidated. On 12 March 2013, the City received a retrospective application for this development.

The property is located within the Development Control Area under the City's TPS2.

Key Relevant Previous Council Decisions

Nil

Legislation / Policy

- Town Planning Scheme No. 2 (CI 5.3.3 – Front Setback Requirements)
- Town Planning Scheme No. 2 (CI 5.10.2(a) – Controlled Development Area)
- Town Planning Scheme No. 2 (CI 5.5.1 – Amenity)
- Town Planning Scheme No. 2 (CI 6.5.1 – Orderly and Proper Planning)

Discussion

Proposal

The subject site is a large block (2673m²) located at the corner of Jutland Parade and Adema Place in Dalkeith. An existing two storey house, pool, pool cabana and garage have been developed on the site.

The outbuilding has been erected in the front (northern) corner of the lot, 0.2 metres (20cm) from the front boundary of the property facing onto Jutland

Parade. The outbuilding is 2.35m high, extending 0.3m (30cm) above the existing 2.05m high solid brick fence.

The properties surrounding the subject site have observed the 9 metre front setback and the streetscape is generally open in character.

Requirements

Clause 5.3.3 of TPS No. 2 states that:

“a person shall not commence or carry out the development of any land within a Residential zone by the erection of a building used for residential purposes at a distance of less than 9m from a street alignment unless otherwise provided for in the scheme”.

The reduction of front setback requirements for outbuildings is not otherwise provided for in the Scheme and the Scheme does not provide discretion to vary the clause. For this reason, the Council does not have discretion to approve the application under the City of Nedlands Town Planning Scheme No.2.

Notwithstanding this, for completeness, a full assessment of the application under the scheme provisions (if discretion was available) has been completed. This assessment set out in the remainder of the report concludes that the proposal would not meet the scheme provisions, even if discretion was available:

Clause 5.10.2(a) states that:

“the Council shall consider the effect of the development on the amenity of the surrounding area...” It is considered that the structure affects the amenity of the surrounding area. The structure is also inconsistent with clause 5.5.1 of TPS2 as the development *“would adversely affect the amenity of the surrounding area”*.

Clause 6.5.1 states that:

the Council will have regard *“to the orderly and proper planning of the area”* in determining planning applications. The proposal is not considered to be orderly and proper planning.

Applicant’s Justification Summary (See attachment 3 for full submission):

The applicant proposes to amend the outbuilding slightly to reduce the height of the structure. The existing outbuilding is 2.35m high and the amended structure will be 2.16m high, a reduction of 0.19m (19cm).

The applicant states that:

- The area of the new amended structure is in the store area replacing an existing structure.
- This area was allocated on the original plans for utility infrastructure, household refuse storage and green waste bag collections.

Officer technical comment

It is considered that the shed impacts on the streetscape as the general locality is open in character. All dwellings & structures fronting this portion of Jutland Parade are setback at least 9m.

The developed structure does not meet the City of Nedlands Town Planning Scheme No. 2 requirements relating to primary street setbacks, and is not considered to meet the amenity requirements under the Scheme. The location of the outbuilding is not in keeping with the surrounding area and detracts from the streetscape and appearance of the dwelling. The Council does not have discretion to approve this application under clause 5.3.3 of TPS2.

Consultation

The three (3) objections to the development were related to the negative impact upon the streetscape that the development would have if approved, as well as the precedent that this approval may set. Objectors were also opposed to the contravention of the required front setback requirements.

Summary of comments received:	Officers technical comment:
<p>Streetscape amenity</p> <p><i>“A shed this close to the front boundary has a major negative impact on our streetscape. If it is allowed to remain it diminishes the value of our wonderful street.”</i></p>	<p>Upheld</p> <p>Clause 5.3.3 (a) of Town Planning Scheme No. 2 states that <i>“a person shall not commence or carry out the development of any land within a Residential zone by the erection of a building used for residential purposes at a distance of less than 9m from a street alignment unless otherwise provided for in the scheme”</i>. The scheme does not otherwise provide for variations from this requirement for outbuildings.</p>
<p>Contravention of 9m setback requirements</p>	<p>Upheld</p> <p>All of the three (3) objectors were opposed to the proposed variation from the setbacks required under clause 5.3.3 of Town Planning Scheme No. 2. These objections are considered to be valid as the structure cannot be approved forward of the 9m front setback and the structure is inconsistent with the surrounding streetscape.</p>

Conclusion

The application is contrary to the City’s Town Planning Scheme which requires new development to comply with the required 9m primary street setback and there is no discretion available in the Scheme to approve the application.

It is also concluded that if discretion was available, that as there are no other structures forward of the 9m setback in the surrounding area, the proposal is considered to have a significant impact on the streetscape in terms of the existing and future character of the neighbourhood. Allowing structures in the 9m setback is contrary to the intent of the Scheme.

The proposal does not comply with clause 5.3.3(a) of TPS 2 and the Council does not have discretion to approve the application. However, if discretion were available, the proposal would not comply with the intent of clauses 5.10.2(a) and 6.5.1 of TPS2 due to the effect on the amenity of the surrounding streetscape. For these reasons, it is recommended the application be refused.

Consultation Process

What consultation process was undertaken?

Required by legislation (Scheme/Codes): Yes No
 Required by City of Nedlands policy: Yes No

How and when was the community consulted?

Community consultation period:	22 March – 12 April 2013		
0 support	0 no objection	3 objections	

Budget / Financial Implications

The application is for works to be constructed on a private lot, and therefore has no budget/financial implications for the City.


Risk management

Not applicable.

Attachments

1. Plans (Site and Floor Plan)
2. Photographs of the Development
3. Applicant's Justification

PD26.13	Sand Volley Australia Pty Ltd – Refurbishment of Existing and Construction of New Club Facilities
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Committee	11 June 2013
Council	25 June 2013
Applicant	Sand Volley Australia Pty Ltd
Owner	City of Nedlands
Officer	Laura Sabitzer – Planning Officer
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File Reference	DA13/58; VE1/34
Previous Item	Item PD53.12 27 November 2012 Item C148.97 23 September 1997 Item F27.97 25 February 1997

Executive Summary

The purpose of the application is to rectify the unauthorised development on the site, which is subject to a sub lease agreement between the City, Hollywood-Subiaco Bowling Club and Sand Volley Australia Pty Ltd. The sub lease agreement has expired and a new sub lease agreement is currently being negotiated between the three parties. The new sublease agreement will be subject of a separate report to Council.

This application is for the refurbishment of existing and the construction of new club facilities for Sand Volley Australia Pty Ltd, which is located in Highview Park, Nedlands. Sand Volley is a sand sports facility which currently offers beach volleyball and netball tournaments. The activities of holding functions and the selling of alcohol at the venue are also considered with this application.

It has been referred to Council for determination as officers have no delegation to determine an application once objections have been received.

It is recommended that the application be approved, subject to the recommended conditions. The activity of selling alcohol at the venue has been considered, with Administration recommending that alcohol shall not be supplied or consumed at the premises. If Council decides to permit the activity of Sand Volley selling alcohol, additional conditions of approval have been included for Council's consideration.

Recommendation to Committee

Council approves an application for the refurbishment of existing and the construction of new club facilities at No. 34 Verdun Street (Reserve 22384), Nedlands in accordance with the application received 13 February 2013 and

the plans received 13 February 2013 and 26 March 2013 subject to the following conditions:

1. within 90 days from the date of this approval, all structures from the sublease area are to be removed, with exception of the following:

- a. ablution block;
- b. sand courts & nets;
- c. floodlights; and
- d. shed owned by Hollywood-Subiaco Bowling Club.

2. the operating hours of the recreational facility are restricted to:

Monday – Thursday	10:00 am – 10:30 pm
Friday	10:00 am – 11:00 pm
Saturday	10:00 am – 11:00 pm
Sunday	10:00 am – 10:30 pm.

3. a maximum of 70 patrons are permitted for private functions held at the venue.

4. no alcohol shall be supplied and/or consumed within the subleased area.

5. the recreational facility is to comply with the *Environmental Protection (Noise) Regulations 1997*.

6. floodlighting on reserves shall comply with the following requirements and be certified as being compliant with the relevant Australian Standards by a suitably qualified lighting consultant (refer to advice note 1);

a. all floodlights must be orientated and hooded to minimize their impact in the interests of pedestrian and/or vehicular safety and amenity; and

b. on reserves used for general recreational purposes and where the use of floodlighting has the potential to affect residential amenity, the lighting must be extinguished by 10.00pm.

7. the proposed structures shall be constructed wholly within the subleased area.

8. the use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building / roof has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner to treat the building / roof to reduce the reflectivity to a level acceptable to Council.

9. all stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development; and
10. any additional development, which is not in accordance with the original application or conditions of approval as outlined above, will require further approval by Council.

Advice Notes specific to this approval:

1. adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia. The proposed provision of public sanitary conveniences is sufficient for thirty (30) patrons on-site. Additional public sanitary conveniences are required if the premises is to accommodate more than thirty (30) patrons;
2. a suitably qualified lighting consultant is a Member of the Illuminating Engineering Society of Australia and New Zealand. The relevant Australian Standards are Australian Standard AS.4282 – Control of the Obtrusive Effects of Outdoor Lighting and the Australian Standard AS.2560 – Sports Lighting;
3. access to any public sanitary convenience shall not be through or pass adjacent to, without complete physical segregation from, any food preparation, storage, packing or handling area.
4. prior to commencing a Food Business* a proprietor shall lodge with the City a *Food Business Registration / Notification Form*; and
**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.*
5. 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.

Alternate recommendation

If Council, in principle consents to Sand Volley Australia Pty Ltd applying for liquor licence in accordance with the *Liquor Control Act 1988 (WA)* the following changes are recommended to the conditions listed above.

The following condition shall be omitted:

4. no alcohol shall be supplied and/or consumed within the subleased area.

And replaced with the following condition:

4. alcohol may be supplied and consumed within the subleased area in accordance with the following requirements:
- a. the premises has a valid liquor licence;
 - b. no alcohol shall be served thirty (30) minutes prior to the close of operating hours; and
 - c. where functions are held at the venue, the primary use of the facility for the duration of the function shall involve the playing of sand sports (i.e. beach volleyball and/or netball).

Strategic Plan

KFA: Natural and Built Environment

Background

Property address	No. 34 Verdun Street, Nedlands (Highview Park)
Reserve number	22384
Lot area	24, 279 sq m
Sub lease area	2, 421 sq m
Zoning:	
Town Planning Scheme No. 2	Recreation

Sand Volley Australia Pty Ltd (Sand Volley) operates at the north-west corner of Highview Park which is bounded by Smyth Road and Verdun Street, Nedlands (refer to Figure 1). Highview Park is an “A” class reserve vested in the City for the purpose of recreation pursuant to a management order.

Sand Volley is a sand sports business which currently offers beach volleyball and netball tournaments at the site. It is noted that Sand Volley is a privately owned business, rather than an incorporated sporting club.

The City leases a portion of land at Highview Park to Hollywood-Subiaco Bowling Club (Bowling Club). In 1997 the City, the Bowling Club and Sand Volley entered into a deed of sublease. Sand Volley subleases 2,421 sq m of land contained with the Bowling Club’s leased area. The location of the sublease area can be viewed at Attachment 4. Sand Volley has been operating at Highview Park since late 1997. The sublease agreement expired in 2004. The City is currently preparing a new sublease agreement in consultation with Sand Volley and the Bowling Club.

Referring to Figure 1, Sand Volley operates on a site which also accommodates the Hollywood-Subiaco Bowling Club and Suburban Lions Hockey Club. The land uses surrounding the subject site are residential townhouses to the north, the cemetery to the west and Hollywood Hospital to the east.



Figure 1: Location Plan

The existing structures within the Sand Volley sublease area have not obtained planning approval or a building permit. Additionally, the use of a recreation facility (Sand Volley) at the reserve has never received planning approval.

The City has required that the illegal structures on the site be rectified and that planning approval and a building certificate be obtained for the works. The City received a development application for the unauthorised development and the proposed new works on 13 February 2013. The development application is for the following:

- Removal of all existing structures within sublease area (excluding the ablution block, sand courts and nets, lighting and the Bowling Club's shed)
- Retrospective approval for the sand courts and nets
- Relocation, painting the exterior and addition to the existing toilet and shower facilities
- Reconstruction of existing patio/roofed area
- Addition of office, server and store building
- The selling of alcohol at the venue
- Holding private functions at the venue

The development plans can be viewed at Attachment 5. Refer to Attachment 2 for photos of the existing, unauthorised structures on-site.

Key Relevant Previous Council Decisions

Item F27.97 on 25 February 1997 – Council approved the Bowling Club's proposal to allow a "beach volley ball organisation" to use a part of their leased premises for the playing of volley ball. It was noted that alternative use for

volleyball conflicted with intended use of premises in their lease which would require a Deed of Variation of Lease to be prepared.

Item C148.97 on 23 September 1997 – Council approved the signing and sealing of Hollywood - Subiaco Bowling Club's Deed of Variation as noted in Item F27.97.

Item PD53.12 on 27 November 2012 – Council resolved to refer Sand Volley's sublease back to Administration to pursue negotiations with Sand Volley Australia Pty Ltd and Hollywood - Subiaco Bowling Club, with the view of preparing a new sub lease agreement. Administration recommended that the sub lease be terminated.

The City is currently drafting a new sublease agreement in consultation with the proprietors of Sand Volley and the Bowling Club. It is anticipated that the draft sublease agreement will be presented for Council's approval and endorsement at the July Council meeting.

Legislation / Policy

- City of Nedlands Town Planning Scheme No.2 (Scheme)
- Building Codes of Australia (BCA)
- Council Policy – Neighbour Consultation (Neighbour Consultation policy)

Discussion

Reserved land

The sublease area is on land which is reserved under the Scheme for recreation purposes. Part II of the Scheme relates to reserved land and requires that, "*in giving its approval Council shall have regard to the ultimate purpose intended for the reserve*". The land is reserved for recreation purposes and Sand Volley is a venue where sand sports, namely beach volleyball and netball are played. The existing and proposed club facilities are structures which relate and assist with the playing of these sports.

Club facilities (existing and proposed)

All of the existing club facilities on site have not been approved by the City. Refer to Attachment 2 to view photos of the existing development on site. In relation to club facilities, this application is for:

- Removal of all existing structures within sublease area (excluding the ablution block, sand courts and nets and the Bowling Club's shed)
- Retrospective approval for the sand courts and nets
- Relocation, painting the exterior and addition to the existing toilet and shower facilities (ablution block)
- Reconstruction of existing patio/roofed area
- Addition of office, servery and store building

The abovementioned single storey structures are proposed to be located in the north-west corner of the site. Referring to Attachment 5, the development proposes the following minimum setbacks; 6.6m from the western boundary (Smyth Road) and 3m from the northern boundary (Verdun Street).

The applicant has confirmed that the following external building materials/finishes shall be used:

Structure	External building material/finish
Toilet / shower block	Existing building, with addition of an accessible toilet. Exterior will be painted cream.
Office/servery/store building	New building, exterior will be clad with cream Colorbond sheeting

The existing structures which are to be retained and the proposed new structures have been assessed against the requirements of the Scheme. The Scheme does not provide any specific development controls (i.e. minimum setbacks, plot ratio) for development on reserved land. However the Scheme requires Council to have consideration to the intent of the reserve and whether the proposal represents orderly and proper planning.

The proposed building setbacks and external building materials are considered to be appropriate. It is noted that the buildings will be screened by an existing high hedge which extends around the perimeter of the site. The hedge is located within the Bowling Club's lease area. The lease agreement for the Bowling Club states that the lease shall not remove, altered or cut down any flora; meaning that if the hedge is proposed to be removed it would require the City's permission.

It is noted that the City's Building section has identified that the provision of public sanitary conveniences on-site is only sufficient for 30 patrons. The Building Codes of Australia stipulates the rate of public sanitary conveniences to the maximum number of patrons. Additional toilets will be required if Sand Volley wishes to have more than 30 patrons on site at one time. This matter will not impede this development application and will be dealt with once a building permit is submitted.

It is recommended that the existing and proposed club facility building are approved in accordance to the plans provided. A timeframe for the works to be completed will be included as a condition of the new sublease agreement. This is to ensure that the refurbishments and proposed club facilities are constructed and that the facilities are built in accordance to the relevant legislations (i.e. Building Codes of Australia). The current situation of the unauthorised development is a public liability issue, where there may be risk of injury to a patron or member of the public.

Selling of alcohol on the premises

Background

Sand Volley has notified the City that in the past they have operated a satellite bar on their site. When Sand Volley began operating in 1997, the Bowling Club held a liquor licence over the entire site (including the subleased area). It was agreed that alcohol purchased from the Bowling Club could be sold at the Sand Volley venue to Sand Volley patrons. This arrangement ceased after an inspection by the liquor licencing authority and lead to an associated change in boundary of the Bowling Club's liquor licence. Sand Volley was no longer within the licensed area of the Bowling Club. This meant that Sand Volley could no longer sell alcohol from the venue, unless a separate liquor licence was issued to Sand Volley.

In early 2012, Sand Volley enquired whether the City (being the landowners) would support an application for a liquor licence. The City declined the request, as it was viewed that Sand Volley participants could consume alcohol at the Bowling Club and there is no requirement for more than one liquor licence within the area leased to the Bowling Club.

It is noted that the Bowling Club and Suburban Lions Hockey Club (both located at Highview Park) currently hold active, club restricted liquor licences.

Applying for a liquor licence

Liquor licences are issued by the Department of Racing, Gaming and Liquor (WA). The City is a referral body only and does not determine such applications. However in this instance, the City is the landowner and can choose whether to sign the application form to consent Sand Volley applying for a liquor licence.

The applicants have provided the City with documentation for a Special Facility liquor licence application. The documentation indicates that the applicant wishes to serve alcohol on the premises between 12 noon and 10:00 pm, Monday to Sunday. It is proposed that Sand Volley would sell bottled alcoholic beverages to its patrons and during functions.

It noted that this development application, does not involve the determination of whether the City consents to Sand Volley making application for a liquor licence. Rather this development application considers the activity of selling alcohol from the Sand Volley venue. The decision of whether the City, as a landowner should consent to Sand Volley applying for a liquor licence under the *Liquor Control Act 1998* (WA) shall be presented to Council in due course.

Assessment of selling alcohol from the venue

The City considers that it is not appropriate that the activity of selling of alcohol occurs from Sand Volley.

It is accepted that there are other clubs located on City of Nedlands reserves which sell alcohol to its members. However in this case, the club facilities are located opposite residents. Other clubs have their clubrooms located considerable distance away from residential properties and are generally located in the centre of reserves, therefore buffering potential disturbance to residents.

The proposed patio/roofed area is located less than 10m away from residential properties. It is anticipated that this will be the main area where alcohol is consumed. It is considered that the consumption of alcohol at the location would impact the residential amenity of the nearby residents. The issue of Sand Volley selling alcohol on-site was the main concern identified from consultation. Nearby residents are concerned of increased patronage, traffic flow, noise, disorderly behaviour and consequent disturbance to local residents, as a result of the selling and consuming of liquor at the premises.

The Bowling Club and Suburban Lions Hockey Club currently hold active, club restricted liquor licences. These sporting clubs have premises which are in the vicinity of the Sand Volley club facilities (refer to Attachment 1). There is the ability for Sand Volley to develop a relationship with the Bowling Club or Suburban Lions Hockey Club to allow Sand Volley members to purchase and consume alcohol from the other sporting club's venue. These venues are considered to be in a more suitable location than the Sand Volley facilities. This is because the other sporting club's premises are located further away from the nearby residences, thus alleviating impacts on residential amenity. Furthermore, the other premises are already established to meet the requirements of the liquor licence authority for the sale and supply of alcohol. It is noted that Sand Volley is a privately owned business, whilst the Bowling and Hockey clubs are incorporated sporting clubs.

The inability to sell alcohol at the venue has been stated to not impact the viability of the Sand Volley business. The applicants have affirmed that the sale of alcohol at the venue does not impact membership numbers.

“Despite the loss of the sale of alcohol in November 2011, we have not seen a material change in our membership numbers. In fact numbers have been steady for the last 4-5 years, in large part because we are operating near capacity given the constraints on time we have set for ourselves”.

The City agrees that the sale of alcohol would not impact numbers at the venue, if the liquor licence is club restricted (i.e. alcohol can only be supplied to a club member, or guest in the company of a member of the club). The number of people at the venue at one time is restricted by operational factors such as the number / size of the sand courts and the rules of the sports played restricting the number of players per team.

The City recommends that alcohol is not supplied or consumed at the premises. However, if the Council wishes to approve the activity of selling alcohol from the venue, and in principle consents to Sand Volley applying for a liquor licence, an alternate recommendation is provided for Council's consideration.

Functions at the premises

The applicant has indicated that they have held functions in the past, and wish to continue offering functions at the venue. The main functions offered are corporate with approximately 20 – 40 people playing a 'round-robin' competition in conjunction with food and drink. Occasionally, events of up to 100 people are held on weekends; however the applicant has stated that generally weekend events involve 25 – 40 people.

The applicant wishes to obtain approval to hold functions up to 100 people. The City considers that this maximum number of patrons for functions is significant. The reasons for this are:

- The club facilities are located close to residential properties (approximately 10m away) and large functions would impact their residential amenity. Impacts include noise and disorderly behaviour.
- There are other venues at Highview Park which are more suitable to cater to functions of this size. This is because these venues are located further away from the nearby residential properties, thus alleviating the impacts to residential amenity. Additionally, the other venues are larger in size and have enclosed buildings.
- There is insufficient parking onsite to cater for functions of this size. Keeping in mind that the Bowling Club hires out its facilities for functions as well. There may be instances where both premises hold functions on the same day.
- According to the Building Codes of Australia, there will not be a sufficient number of public sanitary conveniences on-site to accommodate 100 patrons (refer to Advice Note 1).

Administration does not discount Sand Volley holding private functions, however, conditions of approval are recommended to minimise the impacts on the surrounding locality. It is recommended private functions shall have no more than 70 patrons. This is in line with the maximum number of patrons at the premises during the weeknight tournaments and the existing situation on site.

Orderly and proper planning

Council in determining the application is to have due regard to whether the proposal represents orderly and proper planning of the area.

TPS2 clause 6.5.1 (Determination by Council) states:

'The Council may determine an application by granting approval, refusing approval or granting approval subject to such conditions as it thinks fit, having regard to the orderly and proper planning of the area.'

In response, the proposal generally represents orderly and proper planning of the area. The recreational facility and associated club facilities are located on a recreational reserve.

The location of the club facilities are opposite residential properties. The residential properties are adjacent to land reserved for recreation purposes however the use of the premises for large functions and the selling and consuming of alcohol in close proximity to residents, is not considered to be orderly and proper planning nor meeting the intent of the reserve. Therefore conditions of approval restricting the size of function and the supply and consumption of alcohol at the premises are recommended. The buildings are deemed to be in orderly and proper planning of the area and are recommended for approval.

Consultation

A total of three (3) submissions received during the community consultation period, which objected to the proposal. A summary of the objections received and the City's response can be viewed at Attachment 6. Refer to the Consultation Process section for details as to how consultation was conducted.

Conclusion

Sand Volley has operated at the subject site in Highview Park since 1997. The existing structures within the Sand Volley sublease area have been constructed without obtaining planning approval or a building permit. Additionally, the use of a recreation facility (Sand Volley) at the reserve has not received planning approval. The purpose of this application is to rectify the unauthorised development.

The refurbishment of the existing and the construction of new club facilities have been assessed and are recommended for approval.

The main activity of the recreational facility is the playing of sand sports, namely beach volleyball and netball. However the recreational facility is also seeking the approval for the activities of holding private functions and selling alcohol at the premises. These additional activities at the premises have been considered, and are discussed above.

It is recommended that private functions can be held at the venue with a maximum of 70 patrons. With regard to the activity of selling alcohol, Administration recommends that alcohol shall not be supplied or consumed on site. If Council decides to permit the activity of Sand Volley selling alcohol, additional conditions of approval are recommended for Council's consideration. It is noted that this application does not involve the City consenting to Sand Volley applying for a liquor licence, rather the activity of selling alcohol from the site.

This application is recommended for approval, subject to conditions. An alternate recommendation is provided if Council decides to permit the selling and consumption of alcohol at the venue.

Consultation Process

What consultation process was undertaken?

Required by legislation
(Scheme): Yes No

Required by City of Nedlands policy
(Neighbour Consultation policy): Yes No

How and when was the community consulted?

The application was advertised by letter to relevant landowners and occupiers surrounding the development site. The comment period was from 5 April 2013 - 24 April 2013.

In total three (3) submissions were received, which objected to the proposal. A summary of the comments received during consultation can be viewed at Attachment 6.

Budget / Financial Implications

The proposed works will be funded by the applicant, and therefore has no budget / financial implications for the City.

Risk management

If Council decides to refuse the proposed club facilities and removal of the existing structures on site, there will be an outstanding compliance issue. The existing structures on site have not been authorised by the City and are of poor structural integrity. This is a public liability issue, where there may be risk of injury to a patron or member of the public.

Attachments

1. Locality plan
2. Photos of existing structures
3. Site survey
4. Lease survey
5. Development Plans
6. Summary of submissions received

PD27.13 Swanbourne Nedlands Surf Life Saving Club – Lease and Sublease of Premises at 282 Marine Parade Swanbourne

Committee	11 June 2013
Council	25 June 2013
Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File Reference	TRIM Ref: M13/13440; IFM/426-06
Previous Item	D97.10 – 14 December 2010 CM 23.05 – 13 December 2005 C7.05 – 22 February 2005 C95.01 – 23 October 2001 C33.01 – 10 April 2001

Executive Summary

This matter is now presented to Council for consideration of the proposed terms of the Lease and Sublease agreements for the Swanbourne Nedlands Surf Life Saving Club premises at 282 Marine Parade, Swanbourne.

The draft Deeds of Lease and Sublease are based largely upon the City's standard terms for lease of premises. There are non-standard provisions included to acknowledge historical developments in the Club's tenure at the premises. There remain two provisions that are further questioned by the Club. Council is now asked to consider the matter with the background, as provided with a recommendation, to approve the terms of the Deeds of Lease and Sublease as provided.

Recommendation to Committee

Council:

- 1. approves the City entering in to the Deed of Lease for a term of 21 years (as per Attachment 1) with the Swanbourne Nedlands Surf Life Saving Club;**

2. **approves the inclusion of the non-standard provision in the Lease for the payment to the Club of an annual grant for \$39,284.07 to be indexed by CPI and to be paid on 1 September annually and expiring on 1 March 2021;**
3. **approves the inclusion of the non-standard provision for the City to organise and pay for the insurance of the building at the premises and recover from the Club costs associated with any premium, excess or other costs arising from such insurance;**
4. **approves the City entering in to the Deed of Sublease for a term of 21 years (as per Attachment 2) with the Swanbourne Nedlands Surf Life Saving Club; and**
5. **approves the City entering into a lease arrangement for a term of 21 years for the premises that is the patrol tower, once the City has the requisite authority to grant a lease of this land.**

Strategic Plan

KFA: Natural and Built Environment

KFA: Community Development

KFA: Governance and Civic Leadership

Background

Swanbourne Nedlands Surf Life Saving Club Inc. operates out of a purpose built clubhouse and boat shed facility at the northern end of the Swanbourne Beach precinct. The Club's premises are for the most part located within Reserve 7804 for which the City is the management body pursuant to a Management Order. Under the Order the City has the power to lease the land for any term not exceeding 21 years. A small portion of the premises is located within Lot 404 on Deposited Plan 36773 which is land which the City leases from the State of Western Australia for a period of 21 years with an option to extend the initial term for a further 10 years. The majority of this lot is sub leased to Naked Fig Pty Ltd for the purpose of a cafe. The details of the Club's lease and sublease area are recorded in the survey sketch as per Attachment 3.

The Club's relationship with the site dates back to 1932 when the Club was formed and the City gave permission for the Club to use a shed located on site. Since then there has been further development with the lookout tower built on the beach side of the club rooms in 1995 along with the refurbishment of the change room facilities and upgrade to the gym. The City has contributed financially to the previous capital works.

The Lease agreement with commencement 24 November 1983 between the City and Club was for a term of 21 years, expiring on 24 November 2004. As per the holding over clause of that lease, the club remained as a week to week tenant subject to the same covenants and conditions detailed within that lease. Negotiations for a new lease were stalled until plans for the Swanbourne Beach

Redevelopment were determined, including the Naked Fig Cafe development and the associated financial impact on the club.

In 1999, the City provided a grant of \$21,000 to the Club as part of the CSRFF process towards Stage 1 of the club's redevelopment of their clubrooms.

In April 2001, the City provided a grant of \$19,250 to the club towards Stage 2 of their club redevelopment.

On 23 October 2001, Item C95.01, Council approved a \$100,000 grant to the club to enable the completion of additional building renovations at that time. One of the conditions attached to the grant was that the club agree to enter into negotiations towards a new lease.

On 13 December 2005, Item CM23.05, Council approved a ten year lease with the option of a further five year term between the City and Swanbourne Nedlands Surf Life Saving Club Inc whereby the club were responsible for all maintenance, cleaning, utility fees and insurance for all of the buildings contained within their leased area. This Council resolution also stated:

“that an annual grant of \$34,000 (indexed to the all groups CPI for Perth as calculated by the Australian Bureau of Statistics and adjusted annually and effective at the end of the September quarter commencing 2006/07) is paid by the City (the City) to the Swanbourne Nedlands Surf Life Saving Club (the Club), from the time that the Club ceases to receive income from the kiosk and to be calculated on a pro-rata basis in the first year”.

The kiosk which previously formed part of the Club's premises for which they received revenue from was disestablished and later demolished upon the establishment of the Swanbourne Beach Cafe - The Naked Fig Cafe.

The Deed of Lease was signed by the City and Club and had a commencement date of 2 March 2006.

On 30 June 2009, Item 13.1, Council considered the Club's application to Department of Racing Gaming and Liquor regarding a Club Liquor Licence and resolved to object to the proposed hours contained in their application. Council resolved to propose alternative operating hours in order to maintain the residential amenity of the area, which were as follows:

Monday to Friday	5:00 pm – 10:00 pm
Saturday	12:00 pm – 10:00 pm
Sunday	12:00 pm – 8:00 pm

Having considered the objections lodged and further submissions from the club, the Director of Liquor Licensing, approved the following hours:

Monday to Thursday	5:00 pm – 10:00 pm
Friday	5:00 pm – 12:00 am
Saturday	12:00 pm – 12:00 am
Sunday	12:00 pm – 9:00 pm

In order to amend the 2006 lease to reflect the change to Clause 42.1 from the original “Special Facility Liquor Licence” to a “Club Liquor” licence as approved by the Department of Racing, Gaming and Liquor, the City requested that McLeods Barristers and Solicitors (McLeods) prepare a Deed of Variation of Lease to accord the terms of the new Liquor Licence. In doing so, it was found that the lease with commencement date 2nd March 2006 had not been endorsed by the Minister for Lands as required under Section 18 of the *Land Administration Act 1997*.

On 17 August 2010, McLeods wrote to State Land Services enclosing the original 2006 lease stating that due to an inadvertent error, Ministerial consent had not been obtained. The letter requested the Minister for Lands to consider endorsing the 2006 lease retrospectively. On 22 September 2010, the Minister notified the City in writing that retrospective endorsement could not be given for any documents and therefore to all intents and purposes, the 2006 lease was null and void.

The City then instructed McLeods to prepare a new ten (10) year lease with the option of an additional five (5) year term based on the terms contained within the void 2006 lease, the City’s more recent standard lease template and additional clauses thought necessary and specific to the club and its locality. The issue with locality being that it is considered an ambient location at the Swanbourne Beach Precinct and in the past has attracted noise complaints from neighbouring residences. To address this, the Administration of the time, made requirement for an Event Management Plan, considering a specified process for event management necessary.

The draft lease agreement was put to Council to consider. City administration also sought Council directive to particular clauses within the draft lease which the Surf Club were not in agreement with but which Administration deemed appropriate.

On 14 December 2010, Item D97.10, Council resolved the following:

1. that the item lay on the table until the first Council meeting in February 2011; and;
2. that the CEO arranges for a workshop in late January/early February 2011 for Councillors, representatives from the Swanbourne Nedlands Surf Life Saving Club, Council’s lawyers and City Officers concerned to discuss terms of the amended lease.

A workshop was held at the City’s administration building on 3 February 2011 which proved inconclusive, and the majority of the draft lease issues remained unresolved. Since then, the City and Club have continued to negotiate the terms of the lease agreement, and more recently have reached a mutual consensus to the majority of terms for lease and sublease of the Club’s premises. The City is also now in receipt of a current survey sketch of the Club’s premises. This has highlighted that, contrary to previous handling of the lease agreement the Club’s premises, they are both located on reserve land, in which the City is vested with

management. In addition, the land leased to the City from the State of Western Australia, as well as the patrol tower, are located on unallocated Crown Land.

The City has instructed McLeods to write to State Land Services to request the portion of unallocated Crown land on which the patrol tower is located to be included in Reserve 7804 – reserve land in which the City is vested management and control as well as power to lease land.

Key Relevant Previous Council Decisions

Item D97.10, 14 December 2010 – Council resolved that the lease lay on the table and that the CEO arranges a workshop with Council lawyers, City officers and representatives from the Swanbourne Nedlands Surf Life Saving Club.

Item 13.1, 30 June 2009 - Council resolved to object to the proposed hours applied for by the club in regards a Club licence application made to the Department of Racing, Gaming and Liquor.

Item CM23.05, 13 December 2005 – Council resolved to approve the payment of an annual grant of \$34,000.00 (indexed to CPI and adjusted annually and effective at the end of the September quarter commencing 2006/07 by the City to the Club from the time that the Club ceased to receive income from the kiosk and to be calculated on a pro-rata basis in the first year). Council also approved a ten (10) year lease with the option of a further five (5) year term between the City and Club. The Lease included provision for the annual grant.

Item C95.01, 23 October 2001 – Council approved \$100,000 to the club to enable the completion of additional building renovations at that time. One of the conditions attached to the grant was that the club agree to enter into lease negotiations.

Item C33.01, 10 April 2001 – Council resolved to approve \$19,250.00 be allocated in 2001/02 budget to contribute towards the Club's clubroom building project.

Legislation / Policy

Local Government (Functions and General) Regulations 1996 – Regulation 30 deems that this disposition in form of Lease to a sporting Club in which no member is permitted to receive pecuniary profit from the Club's transactions – Swanbourne Nedlands Surf Life Saving Club Inc. is exempt from the requirements of S3.58 of the *Local Government Act 1995* relating to disposition of property.

Section 18 *Land Administration Act 1997* requires that the Minister for Lands must approve the Lease to the Club of Crown land (Reserve 7804).

Discussion

Following the receipt of the survey sketch of lease area from Brown McAllister Surveyors it was noted that the Club's premises is located on three separate parcels of land all currently with different forms of tenure. Therefore the draft Deed of Lease relates to the portion of the premises located on Reserve 7804. The draft Deed of Sublease relates to land leased to the City from the State of Western Australia. McLeods have undertaken to seek from State Land Services approval to include in Reserve 7804 the portion of unallocated Crown land on which the Club's patrol tower is located. If and when this is approved the City can enter into a Deed of Variation of Lease to include the proposed new portion of Reserve 7804 within the Club's lease area.

The draft Deeds of Lease and Sublease (the Deeds) as in Attachments 1 and 2 are now presented to Council for consideration with associated recommendation by Administration to approve and endorse the terms. The terms of the Deeds are accord the terms of the City's standard lease agreement for the most part – i.e. the lessee Club (Community or Sporting) pay an annual peppercorn rental and assume responsibility for the maintenance and upkeep of the premises.

The draft Deeds include deviation from the City's standard terms and these are marked in coloured font in Attachment 1 – the draft Lease.

The more notable non-standard provisions of the Deeds are:

Clause 5.4 – Costs – contrary to the standard requirement for the lessee to pay the legal costs associated with the preparation, execution and stamping of the Lease the City as Lessor in this case will bear the cost to acknowledge the error in administration of the 2006 Lease agreement in not receiving the Minister for Lands endorsement.

Clause 7.2 – Building Insurance – contrary to the standard requirement for the Lessee to effect and maintain insurance of the building on the Premises the City will undertake to organise this component and recover costs for premiums, excess or other costs arising in respect to such insurance.

Clause 41.2 – No variation or further licence without consent – administration agreed to the Club's request to remove the word "permit" from this provision as it was considered an unnecessarily cumbersome requirement on both parties for the Club to receive the City's consent before applying for Extended Trading Permits. These permits are typically for "one off events" in which the City has a right of address and can present objections through the Department of Racing Gaming and Liquor's processing of such applications.

Clause 42 – Minimise nuisance to neighbours – as requested by the Club there has been a minor change to replace "close proximity to" with "the vicinity of". This request was agreed by Administration as the change in wording continued to give the same context to the provision. Nuisance is objectively assessed in reference to certain standards and measures whether termed in "close proximity" or "in the vicinity of".

Clause 43 – Annual Grant – draft Deed of Lease only– this is a non-standard provision included to preserve the Club’s position as intended by both parties upon the signing of the Lease in 2006. The 2006 Lease encapsulated Council’s resolution of 13 December 2005 - to make an annual grant for \$34,000 indexed to CPI (the Grant) and payable upon cessation of Club receiving income from the kiosk (which was later demolished upon the establishment of the Naked Fig Cafe). The resolution further provided for the Grant to be recorded in the Deed of Lease with an initial term of 10 years plus an option to renew for a further 5 years. The Lease agreement contained a commencement date of 2 March 2006 and final expiration of 1 March 2021. The draft Lease in Attachment A includes this period for the Grant with expiry on 1 March 2021. Although the City considers that during this period until 2021 the Club will have adequate opportunity to find alternative means of income, from that provided from the kiosk, the City agrees to include the Grant until this time to preserve the good faith with the Club and uphold the agreement previously made and intended to be formalised in the 2006 signed Lease. Any term for the Grant beyond 1 March 2021 is considered far beyond the standard for financial provision to sporting or community groups in the City. The City expects that by this time the Club will have had ample opportunity to engage in other methods of fundraising to become financially independent of the City’s grant funding. Although any subsequent application made by the Club to the City for financial assistance / grant funding will be assessed on its merits. Recent review of the Club’s financial statements shows that the Club is currently in a sound financial position.

Clause 44 of the Lease and 43 of the Sublease - Acknowledgement Possession of Premises – this provision is specific to the circumstances surrounding the history of the Lease with the Club and is included to acknowledge the Club’s continued possession of and responsibility for the Premises. This provision also acknowledges the status of the 2006 Lease.

Club’s objection to two specific provisions of the draft Lease and Sublease

The Club for the most part has agreed to the terms of the draft Lease and Sublease contained in Attachments 1 and 2. However the Club continues to request further consideration of:

Clause 42 – Minimise nuisance to neighbours – as noted above this provision accords the City’s standard for the most part. The Club has in the past attracted a number of noise complaints in which at one point in the Lease negotiations Administration responded by requesting that the Club produce an Event Management Plan as a term of the Lease. The Club did so, however it was later considered by the City after further negotiation with the Club, that the Lease should be drafted to accord the City’s standard lease and so this requirement for an Event Management Plan was removed. The Club continues to insist that the City document within the Deeds a process for receiving and handling such complaints from neighbours. Administration maintains that the standard component of this provision which requires that conditions and directions imposed on the Club by the City in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises be “reasonable”. To further detail the process for determining what is a “reasonable”

condition is too restrictive for both parties. In respect to issues of “Noise” it is important to note that the City must in this respect act in two capacities – as Lessor of the Premises at Swanbourne Beach and also as the local government body authorised to address issues of “Noise” presented by the residents. The distinction is important to note as the City is obliged to act on complaints of Noise from residents whether or not they are the Lessor of the property attracting the complaints as the City also has a function to perform pursuant to the Environmental Protection (Noise) Regulations 1997 (Noise Regulations). So to document a process relating to noise within the Lease would have no impact on how the City responds as the body with delegated authority to enforce the Noise Regulations 1997.

Clause 43.3 of the Deed of Lease only – Expiry of Annual Grant – the Club has noted that as the Grant was intended to compensate the Club for loss of earnings upon the closure of the kiosk and request that the Grant should survive the full term of the Lease (ie. until its expiration in 2034) and then be renegotiated thereafter. For the reasons noted above Administration disagrees. The Club should be encouraged to become financially independent and self supporting in the framework of a sustainable sporting group within the community. Administration asserts that making the Grant to the Club during a period of 15 years provides a more than adequate opportunity for the Club to engage in alternative methods of fund raising to become self supporting.

Consultation

In more recent negotiations and in particular at a meeting on Monday 18th March 2013 Administration and the Club agreed to restart negotiations afresh and on terms of Lease based on the City’s standard Lease agreement. The parties also agreed that the grant should continue in accordance with the terms of the 2006 Lease which expired on 1 March 2021.

The City and Club have continued to negotiate to reach agreement as to the majority of the terms contained in the documentation in Attachments 1 and 2. As noted in this report only a couple of the terms are further queried by the Club.

Conclusion

The City’s Administration and Club have negotiated and mostly agree to the terms of lease and sublease as in the attached draft Deeds of Lease and Sublease. Although the City and Club are for the most part in agreement as to terms there remains from the Club’s perspective two outstanding queries as to terms. However for the reasons explained in the body of this report the Administration assert that the terms of the attached draft Deed of Lease and draft Deed of Sublease strikes the right balance between the City’s standard approach to the leasing of City premises to sporting and community groups and the preservation of the Club’s past agreements with the City.

Consultation Process

What consultation process was undertaken?

The City has met and further corresponded with the Club on numerous occasions to reach an agreement for the most part to the terms of the draft Deeds now presented to Council. The City has also forwarded a request via McLeods to State Land Services to include in Reserve 7804 the unallocated Crown land on which the patrol tower is located, thereby giving the City the management and care of the land as well as a power to lease the land.

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

How and when was the community consulted?

- The Administration met with the Premier, upon his request to discuss the future lease with the Club.
- In more recent negotiations the City met with the Swanbourne Nedlands Surf Life Saving Club on 18 March 2013.
- Numerous internal discussions as to terms of the Lease and Sub Lease.
- Numerous e-mail correspondences with the Club regarding ongoing negotiation of terms.
- Discussion with McLeods Barristers & Solicitors as to terms of the lease / sub lease documentation.
- Discussion with Brown McAllister Land Surveyors as to details of the Lease and Sub lease areas.

Budget / Financial Implications

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

The Administration has proposed to include the grant to the Club until 1 March 2021. This being the date the Lease agreement with commencement date 2 March 2006 would have expired had it been endorsed by the Minister for Lands. The Club requests that the Grant is continued through until the end of the term of the new lease agreement which is 30 April 2034. This extension would require further budget consideration. For example if we assumed the change in CPI would remain constant at the current rate of 2.5% and continuing at this rate throughout the term of the Lease, the amount of the grant as indexed to (the assumed rate of) CPI in 2021 would be \$49,060 and in 2033 \$65,980.

Risk management

An associated risk with maintaining the current situation where the Club occupies the premises subject to a holding over of their Lease agreement with commencement 24 November 1983 is unsatisfactory and not in accordance with terms of the City's current standard lease agreement. The City currently

continues to make payment of the Grant, which is not provided for in the lease with commencement in 1983 and the future of this, needs to be recorded to provide both parties with certainty especially as to budgetary requirements.


Any risk associated with the Club occupying the premises is rationalised in the terms of the Lease and Sublease agreements, being that rent is at a peppercorn rate, with responsibility for utilities and maintenance borne by the Club.

The standard provision relating to minimisation of nuisance is included to ensure the City as Lessor has the ability to impose reasonable conditions to minimise disruption, disturbance or nuisance to neighbouring properties. As with any of the City's leased buildings preservation of the public amenity is a key responsibility and the City must ensure such responsibility is continued where the care and control of premise are disposed of to another party.

Attachments

1. Deed of Lease between the City of Nedlands and Swanbourne Nedlands Surf Life Saving Club for portion of Reserve 7804.
2. Deed of Sublease between the City of Nedlands and Swanbourne Nedlands Surf Life Saving Club for portion of Lot 404 on Deposited Plan 36773.
3. Survey Sketch of Lease and Sublease areas for premises that are the Swanbourne Nedlands Surf Life Saving Club rooms.

PD28.13	20 (Lot 605) Circe Circle, Dalkeith – Unauthorised Use of Ancillary Accommodation
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Committee	11 June 2013
Council	25 June 2013
Owner	RC & JJ Drake
Officer	Jennifer Heyes – Manager Statutory Planning
Director	Peter Mickleson – Planning & Development
Director Signature	
File Reference	M13/13317
Previous Item	Nil

Executive Summary

The purpose of this report is for Council to consider and provide instructions to Administration in regard to a compliance matter for the unauthorised use of ancillary accommodation.

Under the City's Town Planning Scheme, ancillary accommodation can only be used by family members. The accommodation is currently being used by a non-family member. This is contrary to the Town Planning Scheme, the planning approval and a statutory declaration signed by the owner.

Approval was given for the ancillary accommodation in 1974. The compliance matter first came to the City's attention in 2004, when it was discovered the accommodation was no longer being used for a family member. Council gave approval for the unauthorised use to continue for an additional year (until 2005).

Notwithstanding this, the unauthorised use has continued. Following a complaint at the end of 2012, the City again wrote to the owners requesting that the unauthorised use of the accommodation cease. The unauthorised use did not cease.

In April this year, a Directions Notice was issued by the City, but the owners do not wish to cease the unauthorised use nor do they wish to complete an application and pay the applicable fees to rectify the non-conformity of the use. The applicants state that the non-family member needs to stay in the accommodation to look after them for health and other reasons.

A series of options are provided for Council to consider and provide instruction to the City to deal with the matter.

Recommendation to Committee

Council either:

Option 1

instructs the City to discontinue any enforcement action in relation to the matter; and in addition initiate a scheme amendment, at the City's cost, to either:

- a) provide for this property to be used as a 'grouped dwelling'; or**
- b) provide for all properties in the City of Nedlands to use ancillary accommodation for non-family members.**

Or:

Option 2

instructs the City to suspend the Directions Notice until the owners have been given 21 days to:

- a) rectify the 'self-contained' nature of the ancillary accommodation by removing the kitchen or such other method to the satisfaction of the City;**
- b) lodge an application for retrospective development approval for the use of the ancillary accommodation for persons other than family members (refer note 1); or**
- c) lodge an application for subdivision for two separate lots (refer note 2).**

If after 21 days the owner has not completed either a, b or c above, the City will continue with the Directions Notice requiring the owner to cease the unauthorised use of the ancillary accommodation;

Notes:

- 1. The City of Nedlands Town Planning Scheme does not give discretion to approve a retrospective application. If an application was lodged, the City would be required to recommend refusal.**
- 2. The City of Nedlands Town Planning Scheme does not provide for R10 lots to be subdivided into two. If an application for subdivision was lodged, the City would have to recommend refusal.**

Or:

Option 3 - Recommended by Administration

- a) instructs the City to continue with the Directions Notice dated 23 April 2013, which requires the owner to cease the unauthorised use of the ancillary accommodation.**

Note: Financial penalties may apply if the unauthorised use is not ceased and court action is required.

Strategic Plan

KFA: Natural and Built Environment

Property Details

Property address	20 Circe Circle, Dalkeith
Lot area	1072m ²
Zoning:	
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential R10

History

1965	The Council approved additions to a “Single House”, to create two Grouped Dwellings (i.e. a duplex) on the Land;
1974	The current landowner applied to the Council to have the additions converted to “Dual Accommodation”, for the purposes of a lower property valuation and therefore lower Council rates payable. In support of the application, a statutory declaration was signed by the owners stating that: <i>“...the entire residence at the above address has been and will be solely used to accommodate us and our relatives as a single family dwelling...”</i> ;
Late 1974	Planning approval was granted by the Council for the additions to be reclassified as Dual Accommodation, on the condition that: <i>“...if any change in the nature of the occupation occurs at any time, Council will be obliged to take immediate legal action for a breach of its Town Planning Scheme, and that the premises are approved for occupation by Ms Leila Angell Drake, and should any other member of your family wish to occupy them, they too will require Council approval.”</i> ;
Early 2004	Following a complaint, the City found that a person of no relation to the landowner, was residing in the additions approved only for family;
Mid 2004	The City agreed to a temporary stay to the occupancy agreement, so that the non-family member could remain in residence for the period of 26 July 2004 until 26 July 2005 (1 year). After this period, the use of the Land was required to revert to family use only, or the Landowner was to advise the City;
2012	The land was, and currently remains, occupied by the same non-

	family member, contrary to previous agreements and the approved land-use;
Early 2013	A Direction Notice was served to the owners instructing them to cease the unauthorised use. The owners refuse to revert to only family use, or alternatively lodge an application to rectify the matter.

Legislation / Policy

- *Planning & Development Act 2005*
- City of Nedlands Town Planning scheme No.2

Discussion

Introduction

This matter has come to the City's attention following a complaint that the accommodation is being used by a person not related to the owners of the dwelling.

As set out in the History section above, this is a matter that the City has been dealing with for many years. The matter appeared to have been resolved in 2004 when the Council provided the owners one additional year to rectify the unauthorised use.

It is now 7 years on from that time and the unauthorised use of the ancillary accommodation remains, and the owners wish to continue this.

Relevant statutory details

The property is zoned Residential R10.

Although the property originally had approval for a grouped dwelling on the site, this approval was relinquished by the owners in 1974, in order to reduce the rates payable on the property.

A new Planning approval was given for "Dual Accommodation". The dual accommodation approval was specifically for the use of Mrs. Leila Angell Drake. On the 15th October 1974, the City's Town Clerk wrote to the owners stating:

"it should be noted that if any change in the nature of the occupation occurs at any time, Council will be obliged to take immediate legal action for a breach of its Town Planning Scheme, and that the premises are approved for occupation by Mrs. Leila Angell Drake, and should any other member of your family wish to occupy them, they too will require Council approval."

Notwithstanding that the property has this approval, the Town Planning Scheme also allows any property in the R10 zone to have ancillary accommodation.

Clause 5.3.1(a) of TPS2 states:

“where an area is designated with an R. Code R.10 or R12.5, no development other than a single dwelling house or a ancillary accommodation unit is permitted”;

Clause 5.3.4(d) states that Ancillary Accommodation is required to be:

“...occupied by a person related to the persons occupying the remainder of the dwelling.”;

Ancillary Accommodation is defined by the *Residential Design Codes of WA 2010* (R-Codes) as (emphasis added):

“Self-contained living accommodation on the same lot as a single house that may be attached or detached from the single house occupied by members of the same family as the occupiers of the main dwelling.”;

In addition, the current review of R-Codes proposes to permit ancillary accommodation to be used by non-family members. In accordance with the intent of the draft R-Codes, several Councils have already amended their Town Planning Schemes to provide for this.

Options:

1. Discontinue enforcement action

The Council can decide not to enforce the planning approval and/or Town Planning Scheme.

This would allow the owners to continue with the unauthorised use until such time as the Council instructs otherwise.

The risks for the Council of doing this are:

- Inconsistent decision making;
- Setting a precedent for other similar situations;
- Complainant not satisfied that scheme is being administered correctly;

If the Council chooses not to enforce the scheme, then a scheme amendment should be initiated to change the scheme to allow for ancillary accommodation to be used by non-family members, either specifically for this property or for all properties in the City of Nedlands.

If a specific scheme amendment was initiated, it may still be considered to be setting a precedent and there would likely be subsequent pressure for others to be able to do the same.

If a full scheme amendment was initiated that would allow any ancillary accommodation to be used by non-family members. This would be in-line with the draft Residential Design Codes (and several other Councils) which are

proposing that ancillary accommodation permit any person to reside, not just family members.

If a full scheme amendment is initiated, this would reduce the risks set out above as all properties with ancillary accommodation would be able to use the accommodation for non-family members.

If a full scheme amendment was initiated, the Council would need to consider that this would result in two separate dwellings on the property (albeit, one would potentially be restricted in size). The site would effectively have two separate households on the one site.

In cases where scheme amendments are required for a specific proposal, the owners would normally request such a scheme amendment and pay the costs involved, which are estimated to be between \$10,000-\$15,000. However in this case, the owners have indicated that they are unable to pay any costs.

If Council considered a full scheme amendment was necessary so that all properties in the City would be able to use their ancillary accommodation for non-family members, it would be considered appropriate for Council to pay the costs of the amendment.

2. Suspend the enforcement action for a period of time to allow owner to rectify the building or until the development or subdivision application is made

a) Rectify the building (cost to owner)

An option is for the owners to remove the 'self-contained' nature of the ancillary accommodation. This would require the kitchen and/or bathroom to be removed from the ancillary accommodation.

If the kitchen or bathroom is removed from the ancillary accommodation, it would no longer be 'self-contained' and the non-family member could remain. The non-family member would then need to use the kitchen and/or bathroom in the other part of the dwelling, but they could remain on the property.

b) Development Application (cost to owner)

A development application could be made, and the Council would need to consider this application. In the meantime, the enforcement action would be suspended. However, the use of the ancillary accommodation for a non-family member is not permitted under the Town Planning Scheme, so the application would need to be refused.

The owner could appeal this decision to the State Tribunal (SAT) but as there is no discretion in the Town Planning Scheme to approve the use, the SAT would be unlikely to overturn the Council's decision. As with Council, SAT can only use discretion where it is available in the scheme.

c) Subdivision Application (cost to owner)

A subdivision application could be made to subdivide the property into two dwellings but this is contrary to the Town Planning Scheme because it is coded R10. The minimum lot area for R10 coding is 1000m². This property is 1072m². The property would need to be 2000m² to be able to be subdivided.

If the Council recommended approval for the subdivision it would be contrary to the Town Planning Scheme and would set a precedent for future applications for similar subdivisions.

Notwithstanding that a subdivision would be contrary to the Town Planning Scheme and would likely be recommended for refusal, a subdivision approval is ultimately approved by the Western Australian Planning Commission (WAPC), so the WAPC could over-rule the Council and approve such an application.

3. Enforce the Directions Notice

Continue with the Directions Notice and if the use is not ceased and/or an application is not lodged within the applicable timeframe, court action will follow and the owners will be liable to pay continuing penalties if it continues.

Although Court action is never preferable, the owners have been requested for many years to bring the property into compliance or lodge applications to rectify the non-compliance. The owners do not wish to cease the use nor lodge an application. This would ensure the use is ceased, otherwise significant fines will likely be imposed by the court.

Council has an obligation to enforce its scheme and respond to complaints of non-compliance with the scheme.

Conclusion

There are several options available to the Council to expedite this matter. Significant time and resources have been spent on dealing with the matter over many years and as such Administration recommend the Council instruct the City to either:

1. Discontinue enforcement action and initiate a scheme amendment (at the City's cost) which would eventually permit the use for all residents; or
2. Suspend the enforcement action until the owner has had an opportunity to remove the kitchen and/or bathroom from the ancillary accommodation; or until relevant planning applications are made (and if not approved revert to enforcement action); or
3. Take enforcement action to have the use ceased completely.

Consultation Process

What consultation process was undertaken?

Not required unless a development application is received or a scheme amendment is initiated. However, a complaint has been received regarding the unauthorised use of the dwelling.

Required by legislation:

Yes

No

Required by City of Nedlands policy:

Yes

No

Budget / Financial Implications

If Council initiates a full scheme amendment to permit ancillary accommodation for all properties in the City of Nedlands, this may necessitate additional planning resources, including financial. Legal action and enforcement action has existing and continuing financial costs.

Risk management

There are risks to the Council's reputation if the Town Planning Scheme is not upheld.

Attachments

1. Locality Plan